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

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

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

City of Fayetteville Arkansas
City Council Meeting
October 20, 2015

A meeting of the Fayetteville City Council was held on October 20, 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:

Public Facilities Board Appointment – Mayor's appointment subject to confirmation by the Governing Body.

Mayor Jordan stated he reappointed Stephen Cosby to the Public Facilities Board.

City Attorney Kit Williams explained the responsibilities of the board.

John La Tour: What does Mr. Cosby do for a living?

City Attorney Kit Williams: I'm not sure. He is a well-respected long time citizen that has been on this board for a long time.

Alderman Long moved to approve the appointment. Alderman Tennant seconded the motion. Upon roll call the motion passed unanimously.

Ozark Regional Transit Presentation

Joel Gardner, Executive Director of Ozark Regional Transit, apologized for not being present at the last City Council meeting. He presented the Ozark Regional Transit report.

Alderman La Tour: I'm pleased to hear that your technology can triangulate and know where your buses and transits are. I'm concerned with public safety in the Downtown area. Many days when I leave my office, traveling west on Center Street, there is an indention in the street that was made to accommodate your buses, but many times there are more buses present than can be accommodated by that indention.

Joel Gardner: Are you talking about right in front of Hillcrest Towers?

Alderman La Tour: Yes.

Joel Gardner: We have looked at that many times. It's a clock scheduling change, and it's just a matter of figuring out how to do that.

Alderman La Tour: Let me make a suggestion. You can instruct your drivers if they get to the location and there is not a safe place to park, simply make the block, until there is a safe place to park.

Joel Gardner: Yes, sir. Thank you.

Agenda Additions: None

Consent:

Approval of the September 29, 2015 Special City Council meeting minutes.

Approved

Fayetteville Police Department Policies: A resolution to approve Fayetteville Police Department Policies on disciplinary and award procedures and professional standards and to eliminate Fayetteville Policies no longer needed on jailer duty; jail emergency plan, prisoner care and suicide identification.

Resolution 188-15 as recorded in the office of the City Clerk

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

Unfinished Business:

Fayetteville Fire Pension and Relief Fund Proposal to Consolidate with LOPFI: An ordinance transferring administration of retirement coverage for eligible members of the Fayetteville Fire Pension and Relief Fund to the Arkansas Local Police and Fire Retirement System (LOPFI) and authorizing the Mayor to enter into an irrevocable agreement with LOPFI and approving an emergency clause. *At the October 6, 2015 City Council meeting, this ordinance was left on the first reading.*

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

City Attorney Kit Williams read the ordinance.

David Clark, Executive Director of LOPFI: I'm here to answer any follow up questions that the Council may have. I talked through a lot of details on September 29th. If there are questions regarding any of the scenarios that the Mayor's office asked for, we have Lawrence Watts one of the actuaries with PRB to answer questions.

We have a good proposal from the LOPFI actuary report that there would not be any out of pocket or additional cost to the city to consolidate the pension fund with LOPFI. The question then becomes, what happens several years out. I understand that's the question Council has at this point.

Alderman La Tour: Mr. Clark, thank you for coming and answering our questions. We feel reluctance to sign onto a blank check. We are talking about an obligation in the future. We can't get our minds around what that is, and what we are committing our citizens to fund. Could the benefits being paid out as a percentage of ending salary be adjusted from 90% to something else that would make the fund solvent? If so, what would that rate be?

David Clark: There is not a legal mechanism to reduce benefits. The 90% level of the benefits are the benefits that need to continue to be paid.

Alderman La Tour: It would be against the law to reduce benefits?

David Clark: It would be against the law, that's correct. That's the reason why there was a proposal in the last legislative session to enact a provision of law to permit a benefit reduction. That did not make it out of legislature.

Alderman La Tour: Who was lobbying for or against that law? Were you there?

David Clark: I was not there. The system that I work for, the PRB, did not support the proposal. It made it out of the Joint Retirement Committee, the House, and was stopped at the Senate. That

was the right outcome for that proposed legislation. PRB has taken a position that it would not be a moral action to reduce benefits now at this stage for these retirees.

These people have retired and in this case have been retired for a number of years. Survivors have been retired for many years after they have lost their spouse, and living on the benefit levels that they now have. To ask them to make an adjustment because the fund has not been properly funded for decades is not the correct way to attack this.

Alderman Tennant: It was recently raised to 90%, correct?

David Clark: Correct, 2001.

Alderman Tennant: It wasn't against the law to raise it, but it would be against the law to drop it back down?

David Clark: That's correct, because there is a provision in code that has the benefit increase process that has to be followed. The Projected Insolvent special report that the PRB actuaries produced, showed there was three benefit increases that were enacted, 1996, 2001, and 2003.

The law requires that at least three fourths of the membership of the local Board of Trustees has to pass a resolution in order for the PRB to take action. There are seven trustees, so you have to have six trustees to pass the resolution. In all the cases where those benefit increase resolutions were passed, it was a unanimous pass by the local Board of Trustees, which includes the Mayor, not this Mayor, and the City Clerk. There was only one resolution Mrs. Smith was a part of with the benefit increase process. It was predecessors. My point is that every benefit increase could have been stopped, if two of the trustees had not passed the resolution.

Alderman Tennant: Thank you for the clarification.

Mayor Jordan: It was a unanimous vote.

David Clark: Absolutely, yes.

Alderman La Tour: I would have an easier time agreeing to transfer this fund to LOPFI if it wasn't firemen themselves sitting on that trustee board. In my mind that's a conflict of interest. They are on that board and charged with fiduciary responsibilities.

We have firemen who have been beneficiaries of the fund, sitting as trustees managing the fund. It was somewhat reckless of them to vote to increase their percentage of salary percentages without a good actuarial report. Apparently, the actuary was wrong, we are $9 million in the hole now.

David Clark: I have to agree with you to a point, as far as the example of fiduciary responsibilities. You are correct. All seven of the trustees, which includes the city officials, are fiduciaries of the pension fund. When the benefit increases were passed by resolution and PRB said yes or no, and in this case the three that I outlined were always yes. The evaluations came back showing the requested changes could be afforded at that time. Now we have the benefit of

looking backwards, but my point is the fiduciaries of the plan weren't just passing an increase for themselves, it was for 60 people at that time.

Alderman La Tour: Our country is in an $18 trillion dollar debt. We got there because nobody has the courage to stand up and say this is good, but some things we just can't afford.

David Clark: On the pension fund level we have a bigger issue. The actuarially required contribution or what the pension fund needed to have in employer contributions coming in for decades of time, was not made. That does not mean the city violated law, because they did not. The law was flawed, it only required a matching contribution. The members had to contribute 6% and the city was only required to contribute 6%. The city contributed 12% after a certain point in time, which was certainly a huge increase in employer contributions, but it was still not what the pension fund needed. This was decade after decade, so the insolvency has been accomplished not just of benefit increases, which clearly put pressure on the funded level. When there is not enough money coming in that the valuations show need to be occurring, that too makes for where we are today, and that is a severely underfunded pension fund.

Alderman La Tour: Are we unique within the State of Arkansas? Are there other cities that are having this kind of problem?

David Clark: There are other cities. The one that was the largest pension fund that was in a similar situation, was the Little Rock Police Pension Fund. They consolidated or assigned the administration of their plan to LOPFI in 2013. They used the 25 year amortization period, but they had also already gone to the voters and asked for a sales tax increase. The premise of the increase, was a portion of the revenue would come in for the Police Pension Fund and the Fire Pension Fund. They have a huge injection of cash coming in to help defray their cost. They still have to dig into the General Fund because the pension fund was grossly underfunded. It was much worse than the Fayetteville plan.

Alderman La Tour: How close are we to our maximum millage rate for the Firemen Pension Fund? Aren't we running up against the limit?

City Attorney Kit Williams: No. When the pension plans began, the constitution allows up to 1 mill for each plan. The voters approved 1 mill to be split between the two plans, 0.5 of a mil. In 2001, Amendment 59 Rollback required that all the entities that had a millage had to rollback their millage. Both funds were rolled back 0.4 a mil. At this point there are still 0.6 of a mill available for each fund if the voters would vote to do that.

Alderman La Tour: The last Council meeting we voted to increase the tax on our citizens. I'm not sure this would be the time to come back and ask them for more tax.

Alderman Long: You said the fund was not properly funded. Can you say in what way you think the fund was not funded properly?

David Clark: The annual valuations that are produced every year, the computer contribution that was produced was just over $3.2 million that was needed to come in, and that's over and above

investment earnings. What was put in by the City was almost $757,000. It went from $3.2 million that needed to be put in, and $757,000 was actually what flowed into the pension fund.

City Attorney Kit Williams: That would have been needed to be put in for five years in order to pay off the actuarial indebtness of the fund. The city has done everything that is legally required, and we continue to do that by paying the millage. There was not a requirement for us to match nonexistent salary now, because we have no active workers. I have constitutional concerns about making donations of General Fund revenue into the pension plan.

Our Finance Director, Paul Becker, said he talked to you about the agreement. When I questioned him about the fact that there was a fee in the agreement in paragraph 5 that says the annual fee paid to LOPFI for administration for the Fire Pension Plan shall not exceed ½ of 1% of the annual payroll and 1% of the annual Fire Pension assets. At 1% of the assets which would be the pension fund. In order to get 8% return, you have to get 9% return. He said that you didn't really charge this and you would submit an agreement that did not have those amounts in there. Do you have that agreement?

David Clark: Yes, I have that agreement with me.

City Attorney Kit Williams: I have not seen that.

David Clark: Certainly, you're correct. The law states that the administrative fee shall not be greater than amounts you citied. Payroll for the local plan members is zero. Any fee that would be attached to that would be zero, so it would be 1% of the system assets, but the LOPFI system has not needed to levee that charge even though it's available in law.

I told Paul, because there has been questions that have come up in this year with other pension funds that have consolidated, we were already planning in the 2016 iterations of these agreements to remove that paragraph. I have no problem removing that paragraph for Fayetteville. I have completed originals with that paragraph removed.

City Attorney Kit Williams: Thank you.

Alderman Long: My next question is about the actuary's advice when they increased the percentage of pay out to 90%. The actuaries say that the fund in their opinion would remain solvent if they increased it to that percentage?

David Clark: At that time, that's correct, back in 2001.

Alderman Long: Did they give the same advice every time that the increase was done?

David Clark: The first one was in 1996 and the answer was yes, so that is the reason the pension fund was able to proceed. In 2001, the answer was yes and then in 2003 it was a temporary cost of living adjustments. That was put into play and then the extension from DROP was moved from five years to ten years. That is a cost saver for the plan because assets stay in the pension plan longer when a person participates in DROP for a longer period of time. In each case the report or

valuation had to show that the pension fund could be supported with the current revenue streams that were coming in at that time and investments earnings. Evaluations show that the plan could enact those increases.

Alderman Long: Sondra, you were on the board and you were there to vote for one of the increases. Do you remember what the rationale was, from the perspective of a board member?

City Clerk Sondra Smith: The first process was for us to get an actuarial study to see if the board could sustain an increase, which we did. They came back and told us we could. The only two increases that I remember voting for is the one raising the volunteers to a minimum of $100 a month, which was a very small increase, and the 3% temporary COLA for three years. The one thing I was concerned about is that the benefit increases were done on a cash flow basis, instead of an actuarial soundness basis. PRB can explain the difference, but it was more favorable to do a benefit increase on a cash flow basis.

David Clark: Sondra is correct. There is a cash flow model that's used for plans that have more than 50 participants and it looks at all the revenue streams that are coming in. The other revenues that would come into the pension fund, whether it's millage, there have been a couple very small gifts that have been reported on the financial reports that have come into the pension fund over the years. We can all look backwards and know that investment earnings back at that time were pretty strong, so the valuations show that if the investments continue to produce the results that they have produced, then the plan would be able to afford the increases. We know that shortly thereafter, the bounce of 2000 decade was a very poor performer when it comes to investments. What contributed was the under performance of the investments.

Alderman Gray: Kit, you have opined that you feel that it is illegal for us to take this action and that we would be opening ourselves up for lawsuits.

City Attorney Kit Williams: I'm concerned that a court could determine that an action of assuming the debt, basically is what you would be doing for the taxpayers of Fayetteville, the pension plans would be an extension of credit of the city to another governmental entity that's not controlled by the city, but in fact controlled by the Board of Trustees and with the pensioners having the majority on that board and control of the board. The Mayor and Clerk have moved twice to request the board to look at potentially reducing the benefit rates and each time their motion has been voted down by the pensioners. It is obviously the pensioners who control that and they are a separate entity.

The concern I have is that the court could decide that maybe this was in fact an extension of credit to another governmental entity, which is prohibited by the Arkansas constitution. This is the same provision in the constitution that was violated in the incinerator case where we extended credit to the Northwest Arkansas Resource Recovery Authority. This led to massive litigation and attorney fees exceeding $5 million, that we eventually got to pay.

My advice to you is that you should not approve consolidation at this time. There is a constitutional way to be able to shore up these pension funds, and that is by a millage vote by the taxpayers, which is specifically authorizing the constitution for this purpose to pay for the pension plans.

That would be up to the taxpayers of Fayetteville. There is compelling cases amongst the pensioners, especially some of the more elderly ones, nobody want to see their benefits cut. When it has been suggested in the past and we looked at it in 2010, the benefits would have only had to be cut by 70%. It would have been at 70% instead of 90% and if you remember they all started at 50%. In 2010 after the big crash, Jody Carreiro came up here and predicted that it would be likely the pension fund could survive, if the benefits were reduced by 20%, down to 70%, but that was not agreed to by the pension board.

Constitutionally the millage can be raised or pension benefits can be lowered. I believe they can be lowered legally, even though the Attorney General disagrees with me or a combination of both. I recommend that you do not consolidate because it exposes us to litigation.

Alderman Gray: Mr. Clark how many retirees are we talking about that this would affect their monthly paycheck?

David Clark: Under the local plan there are 51.

Alderman Gray: How many beneficiaries?

David Clark: That is a total number or retirees.

Alderman Gray: We are not talking about the check being cut completely. We are talking about it being lowered sufficiently and whatever is left would be divided out among those retirees.

David Clark: With a benefit reduction, yes ma'am.

Alderman Gray: I've had many emails and one today pointed out to me that he is a retiree living in our city on a flat income as all retirees are. He asked that we as a Council remember that there are lots of retirees in Fayetteville on a flat income and should we make the decision to raise the tax again, we are affecting all of those individuals.

Alderman Tennant: Kit, going back to your previous comments about the legal case that we lost, what was the estimated amount of both attorneys?

City Attorney Kit Williams: Around $5 million or so.

Alderman Tennant: How did the city pay for that?

City Attorney Kit Williams: We didn't build a lot of infrastructure for a while. We didn't raise a number of employees during that period of time because we were concerned that we might lose that lawsuit.

Alderman Tennant: It was paid out of General Fund?

City Attorney Kit Williams: I think it was. It might have come out of the Wastewater Fund because this incinerator was before our wastewater issue. They raised the rate to pay for this and

that was another thing that the Supreme Court said was unconstitutional. It was not a fee, in fact it was a tax because we were receiving nothing for it.

Alderman Tennant: I see.

City Attorney Kit Williams: When we cut the big checks, I don't really remember which fund they came out of.

Alderman Tennant: I was just curious how we came up with that much money.

Alderman Petty: My thoughts last time that consolidation was financially too risky to do, but our City Attorney comments are giving me pause. Would it change your opinion at all if people voted for consolidation?

City Attorney Kit Williams: Probably not. I think they are held to the same constitutional standards that you are, but if they voted for the millage that would certainly be within their power.

Alderman Petty: My concern is that even with the millage it is a small fund. It is not going to get the kind of investment returns it needs to be healthy, which is why I am inclined, absent the constitutional concerns, to consolidate. We are pulling our money to get better investment returns. I'm very wary anytime our lawyer says this is unconstitutional.

Alderman Long: What happened to Little Rock in 2013 when they consolidated? Were there any challenges to that?

David Clark: No, there have been no legal challenges. I mentioned in September that LOPFI administers 164 of the local pension funds. Since that time two more have consolidated and we expect two additional ones before the end of the month.

Alderman Long: Little Rock was also a private pension plan?

David Clark: It was a closed pension plan.

Alderman Long: I know state law lays out how these plans are divided out after they become completely insolvent for the remainder of the funds.

David Clark: You may be also looking to the provision that Mr. Williams talked about at the September meeting, and that is when there is fewer than five members of the pension fund that state law says that the cities shall step in and assign administration to LOPFI. Clearly this fund is not anywhere close to that population count.

Alderman Long: I was referring to the other section.

City Attorney Kit Williams: There is another section that talks about the fund running out of money and then have it divided pro rata until it runs out of money again, and wait for the next year for more millage and turnback funds to come in. That is something hopefully we can avoid. I

have been asking the pension board for the last nine years to do something. I have memos from 2006 saying this fund is not going to survive and we must do something. My suggestion was that you must consider reducing pension benefits, even though nobody likes that. I regret that they were raised too high because people get used to receiving their money. It is very hard to give it back, but the pension fund is going to run out of money, if there is not going to be more millage coming in to support it. There must be something on the other side, a reduction of benefits so that the fund does not go bankrupt.

Alderman Long: That was the basis of my question. I approached Senator Collins, Representatives Whittaker and Leding this week, since there have been other consolidations in the state, if the Attorney General has already written opinions on this. They reached out for an Attorney General opinion to see if one exists already. You never know when those will come back.

Alderman La Tour: Mr. Clark, can you give me an idea of the range of benefits on a monthly basis this fund is paying out? What is the biggest benefit payout and what is the smallest? I would presume since Mrs. Smith said they raised the minimum of volunteers to $100 a month which is probably the minimum? What is the maximum benefit being paid out right now?

David Clark: I can give you an average. All I have is raw dollars by groups of members. Of the 51 people we talked about, there is $1.143 million that's paid out to 36 individuals as of December 31, 2014, which averages out to an annualized amount of $31,764.

City Attorney Kit Williams: I sent a memo on October 1, 2015. I attached a letter I had sent to Representative Whittaker when we were seeking to have the right given to the pension board members if they wanted to reduce benefits. The last part of my last sentence I say, "*The top 10 monthly pension benefits go from Pete Reagan's $42,428 annual to Marion Doss $73,302 annually.*" I think there's additional money beyond a monthly benefit. Those are the top, but it is not very evenly distributed. I also pointed out in the letter about the fact that we have three regular, not volunteer people that receive less than $1,000 a month.

Alderman La Tour: I was just trying to get a handle on the maximum and minimum. We know the average now. Thank you.

Pete Reagan, 2086 South Mally Wagnon Road: Thank you for your time and allowing me to address you on this very important issue. I have compiled some notes and comparisons of both LOPFI and our old fire pension systems. Currently Fayetteville Firefighters can retire after 30 years of service, a salary of 98.1% of their salary with a 3% compounded COLA.

The old fire pensioners retired at 90% of salary with no COLA. I want to point out one individual that I do know, retired in the late sixties or early seventies, retired at $330 a month. Currently the City of Fayetteville is paying 24.5% of payroll on each firefighter towards their LOPFI retirement. This amount is subject to change depending on several factors including investment income, employee turnover, medical retirement, etc. This equation is figured into an actuary study performed each year on the LOPFI pension so that the LOPFI pension will never be in the shape that the old fire pension plan is in now. The most that the City of Fayetteville ever paid into the

old pension system for the firefighters was 12%. I'm not sure of the date, but I think it was the late 80's, early 90's when Fred Vorsanger was Mayor.

The old retired firefighters received a smaller retirement plan than current firefighters. Our retirement dollars continue to shrink because of inflation with no cost of living correction. In contrast social security retirement and the current firefighter plan both have a cost of living correction. To make things worse we are now faced with financial insecurities that no one should face. It would be morally wrong for the City of Fayetteville to walk away from past promises. We did the same job as the current firefighters. We worked the same 56 hour work week, including holidays and weekends, served the public, and put our lives on the line without the benefit of safety equipment available to modern firefighters today.

The question why has the old pension board not reduced benefits to prolong existence of the pension plan. The answer is simple, it would be illegal to do so. The Attorney General for the State of Arkansas, the highest ranking law official in the state has given his opinion that it would be illegal to reduce a pensioner's benefit. Mr. Williams our City Attorney has given an opinion of the contrary. However, he can point to no Arkansas Appeals Court or Supreme Court opinion that supports his opinion. As Mr. Williams knows his opinion is merely an opinion, unsupported by an Arkansas Appellant court. As Mr. Williams further knows, an Arkansas Attorney's opinion is given greater deference by our Appeals Court than the opinion of any attorney, including a City Attorney. We the old pension board members have paid for a special actuarial evaluation. I believe they have presented you a good plan that at some point in the future, 8 to 10 years down the road, might cost the cities some additional monies. At some point your money will be returned, as we will all pass away. On behalf of the retired firefighters we urge you to protect our retirement system. No matter what the disaster, we never hesitated to put our lives on the line. We were always there for all of Fayetteville, we will always be there for you. We are asking our Council to be there for us.

Buddy Ledford, 4545 East Huntsville Road: I have been a resident of Fayetteville for over 50 years. In addition to that I served 18 years on the Fayetteville Civil Service Commission. I'm currently on my second term on the Pension Review Board.

In 2001 when this last benefit increase was voted in, most people like myself accept the standard of living based on your past years or months. You have so much income and so much discretionary expense. What happens when you reduce that income by 35% to 50%? Out of the 51 remaining pensioners, in my opinion, you are going to create at least 35 bankruptcies. The other issue had to do with referring this issue to the voters on a millage increase. I see that as kicking the can down the road. We just recently approved a 1 mill increase. You come back to a voter this soon with another, and chances are it's not going to pass. I urge you to consolidate with LOPFI now. You ask the question how would be fund it? City of Fayetteville is a good size government. They have projects coming on and going off every day. Why can't we target certain projects that are going to be terminating within the next 10 years? Little Rock, Hot Springs, and Fort Smith all have chosen a way to work around this complex issue. I think Fayetteville can do the same. First, you have to want too. Second, you have to find a way to fund it. Finding funding from projects over the next 10 years is the way to do that.

Peter Tonnessen, Ward 3: I don't always agree with Mr. Williams, but I think his memorandum from September 29th and October 1st were clear thinking and well written with excellent advice. The state has clearly spoken, the statute provides its remedy here, which these people need to prorate among themselves or just burn out and get new funding. I ask the Council not to lock the citizens of this city into a terrible debt. Mr. Williams has done a tremendous service to this city with those memorandums. I would ask all of you to follow his advice.

Lorraine O'Neal, 2001 West Wedington Apt. 82 spoke in opposition of ordinance.

Jan Judy stated her husband was a Fayetteville firefighter for 20 years. She asked that the Council really consider this and stated we are not trying to take advantage of the city in increasing our benefits. She explained that most of the people were drawing very small checks and only a few at the top draws a higher amount. She asked Council to figure out a way to support the pension fund at its present rate.

Gayle Jenkins, 1238 North Center Elkins spoke in support of the ordinance.

Alderman Kinion asked that the ordinance be left on the Second Reading.

Mayor Jordan explained in detail that a decision needs to be made by October 31, 2015.

City Attorney Kit Williams: A decision needs to be made before the end of October. This window is open every year, but this fund is continuing to lose money and ground. I would imagine the next report would be based upon the funds balance at the end of this year which will be substantially lower than what is was in 2014. Therefore, the report will be that much more difficult.

Mayor Jordan: Mark, I don't mind calling a Special City Council meeting.

Alderman Kinion: My understanding is it is annual. I hate to push it off annually because of the amount of loss in the fund. It's not an easy decision and I need more information.

Alderman Petty: I think some things are worth a special session if that is what it takes. I'm interested in seeing if we can get an Attorney General opinion based on the constitutionality questions in that time frame.

Alderman Long: If we have to have a special meeting, I would hope that we could have it on the 30th, the day before to give the Attorney General enough time to come back with an opinion. What is the reason for making a decision by October 31st? It couldn't be by November 3rd?

Mayor Jordan: No, it has to be by October 31st.

David Clark: The due date by the end of October is so we can use these valuation results, as they are based on 2014 information and be able to complete the rest of the paperwork and transfer the assets to LOPFI, and start benefit payments on January 1st. If this valuation expires, then you will need to start the process anew, on or after April 1st of next year.

Alderman Long: Would those two business day set you back? You wouldn't be able to work with those two extra business days from October 30th to November 3rd?

David Clark: No, we have a due date for a reason and that's so that we treat each plan exactly the same. We give everybody the same due date. This report was pushed out on June 11th of this year, so it's not as though this is a last minute report.

Alderman Marsh: One of the things that is really difficult for me is the disparity between the different benefit amounts. I know they are based on a percentage of final pay. I'm seeing people that are making $767 a month verses Marion Doss that is making over $6,000 a month. Is there anyway within the pension system to equalize these so that if we do require a cut in benefits, we are not cutting from these people who are subsisting on the very low amounts? How can this be levelized?

David Clark: To reduce benefits in any shape or form would require a legislative action. That too would probably run a constitutional tests as far as the impairment of the contracts. That is not a debate for tonight, but that would have to have a legal mechanism in order to be able to adjust benefit levels at all. The variation in the benefit levels that were mentioned, that has to do with a person's pay. One person is not necessarily going to earn the same as the next person. Then you have different benefits that are added, such as what is called an age 60 bonus. If an individual worked more than 25 years and reached age 60, then there is an additional benefits added to their base benefit. That is payable to them, whereas the neighboring person may have left employment after 20 years of service, so they would not be entitled to that benefit. That is also a product of state law. That's part of the differences of pay.

Mayor Jordan: What do you want to do? Do you want to hold it and let me call a special meeting?

Alderman La Tour: I think we all feel it's important enough that we would make time in our schedules to come to a special meeting. I think it's looking like we are going to court. If we assume the liability, the taxpayers still foot the bill. If we go directly to the taxpayers and say give us a millage increase to help make the fund solvent, they are flipping the bill. Looks like the taxpayers are going to pay for this one way or the other. From a taxpayers perspective our best course of action is let it go to a court of law and we might win. If we win it doesn't cost the taxpayers anything. The firefighters are left with the constitution provisions of proration. If we lose, we will be out some legal fees, but we are going to pay the same amount we would have paid in the beginning. We appreciate the firefighters, policemen, and everyone who serves us. We basically agree with everything everybody says, that yes you did provide service and we are pleased with that service. We don't want to leave you hanging out to dry, but this is the dilemma we are in. Do we assume this big debt for the taxpayers? Not everybody on this Council feels this way, but I view my position on this Council as a sacred duty to guard the public purse.

We are going to be voting on some things later tonight where we are going to spend millions of dollars renovating an office building. Maybe our firefighters are worth more than an office building. Maybe people can put up with crowded conditions to help the firefighters out. Maybe that would be a good trade off. Maybe we could be creative to avoid a lawsuit. I don't know that

we are willing to make those political choices. There may be some legalities there. I'm amazed at the State Legislature would make it illegal to lower benefits. We are left with very few options.

Alderman Tennant: This is the worst I have felt about a position since I have been here. This is by far the worst. I am having to look at a widower in their eyes and tell them I don't want to do something. I know this is not a good business decision. I run a hundred plus million dollar business and this is a bad business decision to send this to LOPFI. Hope is not a strategy and it looks like a pension group based the future on "we hope it works out" and now it's not, and they are looking at us to fix it. We have to base everything we are doing on hope that this thing will work out okay. That's a horrible position for us to be in. It's a horrible position to put us in. We all deeply care about this city, but this is difficult. I will try to make a special meeting.

Peter Tonnessen: If they've known since 2009 that the fund is insolvent and this gentleman from LOPFI said basically what expires in October is a bunch of assumptions which would have to be reworked, how is this an emergency?

Mayor Jordan: This was brought to the board and the board voted to bring it here by a 4-2 vote. We got it in June, Paul tried to get everybody together. Everybody couldn't get together, so we set it up for the end of September. We have had our meetings and this is the second or third meeting. There was a special meeting then the board did a resolution. It can be put off until April, but we would have to do a new study to do that. The board did not feel like they wanted to wait until April again, because every day it's losing money. No one is trying to rush anything. If we don't make this decision by the end of October, whether they consolidate, don't take any action, put it to a vote of the people, we make it by October, or we wait until next April. You will also be dealing with the Police Pension board, before this is over. Council if you do not take action, this fund is going to be done in about 8 to 10 years. The Police fund will last a little longer.

City Attorney Kit Williams: They are in much better shape.

Mayor Jordan: We can send it to LOPFI, and when you send it to LOPFI you lose control of the fund. They will decide what you are going to pay. You can send it to a vote of the people and if they vote in a mill that will be split two different way, and it will be a .9 for each one.

Alderman La Tour: I don't think it will be done in 8 to 10 years because they're getting the millage rate. They have income each year. It would go to the constitutional provision whether it is prorated.

Mayor Jordan: They are going to get the .4 no matter what. We are speculating how long it is going to last. The last count we had in 2010. I think Mr. Carreiro stated it would last about 10 years.

City Attorney Kit Williams: I think that's correct. They run a lot of scenarios, but it's all dependent upon earnings in the future. Fortunately from 2010 to 2014 there was a pretty good rise in the stock market that prolonged the number of years, but there is a question about, is that going to be a constant rise in the stock market or not, and that is somewhat questionable.

Mayor Jordan: At that point in time they said if we would reduce the fund by 20% they thought it could remain solvent. Sondra made a motion at the next meeting we had, I seconded it, we voted and it was a 2-4 vote, not too. We might have done that another time, but I don't remember. It ended up at the Legislature and the Legislature voted that we couldn't do that. The Attorney General said we couldn't, and the City Attorney said we could. This is one thing that is a fact. This fund is insolvent and it is going down. We are going to have to make some hard decisions. It's not been easy for Sondra and I on that board. I'm sure it's not easy for the other board members, because they are trying to protect the people that draw their pension. Somewhere in the mix of all this, we have to figure out a pathway.

Alderman Gray: What are we waiting for?

Alderman Long: My request was to review Kit's opinion and see if that was the Attorney General's opinion. Also, to see if another opinion is already been written, taking into account other consolidations that have happened in the State of Arkansas.

Mayor Jordan: On one hand we have an obligation to the retired pensioners and we also have an obligation to the taxpayers.

This ordinance was left on the Second Reading and a Special City Council meeting was called for Friday, October 30, 2015.

New Business:

USDA Farmers Market Promotion Program Grant: A resolution to authorize the acceptance of a USDA Farmers Market Promotion Program Grant with the USDA Agricultural Marketing Service in the amount of $58,856.00 for the City to expand and promote economic opportunities for producers operating through the Fayetteville Farmers Market, to approve an agreement with the Rural Mountain Producers Exchange and to approve a budget adjustment.

Peter Nierengarten, Sustainability & Resilience Director gave a brief description of the resolution. He stated there is no match for the city as part of the grant.

John La Tour: How do I become a vendor at the Farmer's Market?

Teresa Maurer, Vendor Coordinator for the Farmer's Market: We have an application process that is open four months a year, from December to March. During that process people can apply. Our Board of Directors makes a determination after a farm or kitchen visit about admitting you to the market.

Alderman La Tour: I was visiting with a constituent who applied to become a vendor at the Farmer's Market and she was told she had to prove that she had been doing business for 12 months in some other market. Is that one of your requirements?

Teresa Maurer: It is no longer one of our requirements.

Alderman La Tour: Who sits on that board that decides when someone has met the requirements?

Teresa Maurer: Our board is made up of nine members of the Farmer's Market. They're elected by the membership of the market.

Alderman La Tour: They elect themselves?

Teresa Maurer: Yes, our board is elected by the members.

Alderman La Tour: There's no over sight by the City Council?

Teresa Maurer: We have an operational agreement with the city about how we operate the market on city property.

Alderman La Tour: This is the reason we have $18 trillion dollars in federal debt. We are getting money from federal governments for our local projects. I would much rather see the farmers and the crafts people at farmers market fund this themselves, instead of relying on federal dollars. I can't support it.

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

Resolution 189-15 as recorded in the office of the City Clerk

Walton Family Foundation: A resolution to express the City Council's thanks and gratitude to the Walton Family Foundation for its generous $390,000.00 matching grant for the construction of the Clabber Creek Trail, to approve the grant agreement and to approve a budget adjustment to recognize this $390,000.00 grant.

Matt Mihalevich, Trails Coordinator gave a brief description of the resolution.

Alderman Long thanked Matt and the rest of the staff for working so hard on the project.

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

Resolution 190-15 as recorded in the office of the City Clerk

Bid 15-42 JLA Enterprises, Inc.: A resolution to award Bid No. 15-42, to authorize the contract with JLA Enterprises, Inc. in the amount of $425,521.90 for construction of a restroom and parking lot improvements at Gordon Long Park, to approve a 5% project contingency in the amount of $21,276.10, and to approve a budget adjustment.

Matt Mihalevich, Trails Coordinator gave a brief description of the resolution.

Alderman La Tour: I realize the need for it. It is half way between Wilson Park and Lake Fayetteville. It would be a great addition, but we have to ask ourselves the question, is it more important than the fireman retirees? Could we not fund this into that?

Alderman Long: We could wait on this, but it would cost anywhere between $150,000 and $200,000 more because this is using TAP funding for part of the project.

Alderman Petty: We get this comment a lot that money we are going to spend for one thing should be spent on something else, but nine out of ten times the proposal reflects funding sources that are restricted. On this particular one, $260,000 from a Transportation specific program, a grant from the Illinois River Watershed Partnership that has to be used for this, that is the second source and the third source is donations from the organizers of the Hogeye Marathon. We couldn't take this money and put it to something else if we wanted too.

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

Resolution 191-15 as recorded in the office of the City Clerk

Benchmark Construction of NWA Contract: A resolution to approve a contract with Benchmark Construction of NWA, Inc. in the amount of $3,373,506.91 for the construction of the Recycling And Trash Collection Facility Expansion; to approve a project contingency in the amount of $150,000.00; to approve Change Order No. 1 to reflect value engineering items and reduce the contract amount by $298,732.00; and to approve a budget adjustment.

Chris Brown, City Engineer gave a brief description of the resolution. He recommends approving the construction bid.

Alderman La Tour: The project looks nice. What is the current square footage in the office area?

Chris Brown: The current office area is approximately 2,800 square feet.

Alderman La Tour: Once this new building is built, what will it be then?

Chris Brown: 5,400 square feet, plus the 2,800 square feet, which is a total of 8,200 square feet.

Alderman La Tour: Around $300,000 for this project is coming from the reserve, and the rest of the funding is coming from other projects that had been completed, and this is left over money?

Chris Brown: That is correct.

Alderman La Tour: How were those projects funded? Where did that money come from to fund those other projects?

Chris Brown: All of this funding is from the Solid Waste fund.

Alderman La Tour: How does that fund grow?

Chris Brown: They have revenue streams from the rate payers, and also from recycling efforts.

Alderman La Tour: I would suspect that 90% to 95% of the funding into that fund comes from rate payers. Those are the citizens of Fayetteville. Those are the taxpayers we are charging. We are getting ready to spend $4 million for a building that the taxpayers funded. That is a hidden tax in my mind. We overcharge them $4 million, now we are going to spend it on ourselves.

Terry Gulley, Transportation Services Director: The additional money is coming from rate studies done in the past, and we have funds built in every year to try and anticipate the future growth needs. This money can be used for vehicles, building, site improvements, and for anything we need to do to continue to provide services for citizens. It grows at different rates. This money has been accumulating for many years. We knew these needs were going to be coming so we have tried to build up a fund balance so we could address them when those needs become apparent. Funding comes from us selling our recycling products that we collect on the street. We have had years when we have made a million dollars, and this year has been a bad year due to the market. In the time when there was an economic turndown for the construction business, we got some very good bids. It saved us a half a million dollars. We want to do another rate study and determine what those rates currently need to be.

Our work force has gone up 30%. We meet with a group of high school students to educate them on the advantages of recycling. If it is a clear day, the meeting is in the parking lot in front of the building. We do not have a space big enough for 40 people. We manage how the truck traffic comes in and out to minimize the interaction between people trying to setup service, tour the building, and being educated. We want to expand our recycling programs in the future.

Alderman La Tour: We have $4.1 million in cash ready to spend it on this building. Do we have more than that in the fund?

Terry Gulley: Around $2.5 to $3 million. We do not want to spend down everything out of that. We do not know what future needs might arise as we make decisions about our recycling programs. We are trying to strike a balance between getting the needs to try and do what we can to expand our programs, meet the needs of our staff, and any future needs for the next 30 years.

Alderman La Tour: Can one of those changes be to go to a waste management recycling? If we did, it would make these facilities obsolete.

Terry Gulley: It could be, if that was the direction you chose to go as a group.

Alderman La Tour: We have an election coming up in November of next year, and there could be some changes on our City Council.

Terry Gulley: The current situation is presenting it to you, and accepting whatever decision you all make as a group. I can't control the future.

Alderman Long: This is the opposite situation of the Firemen's Pension. We were blindsided by the need to come up with money. What we are building may not perfect or for a good reason, but to your point Alderman La Tour, saving money over the years to prepare for site improvements at a city property is a good idea. It helps our citizens to prepare so they don't have a huge rate hike or a tax increase to cover a facility that is 20 years old that needs to be replaced.

Current funds available are approximately $2.1 million, and the proposed budget adjustment includes reallocation of funds remaining in capital projects to increase the Solid Waste office and transfer station expansion project. Listed is $480,000 from the compost site slab expansion, $31,000 from the West Side Recycling Drop Off Facility, $591,000 from the Recycling Drop Off Facility North/Central project, and $40,000 from the Solid Waste Madvac project. Do we have a need to divert those funds?

Terry Gulley explained that most of the $2.1 million was savings through other projects that had been consolidated to be able to put to this project. It was then determined what the additional cost would be to fund the building. He stated the other $1.4 million came from the items that Alderman Long listed. He went on to explain how savings cost on those projects accumulated over the years.

Alderman Long: Education is the key to success in our recycling program. I see a very large breakroom and meeting rooms. Is that going to be a solid wall?

Terry Gulley: It can be petitioned off so that two meetings could be going on in that space.

Alderman Long: We have plans of spending money on the educational space. Do we have plans of creating an educational program to use in that space?

Terry Gulley: Brian Pugh and his education programs can use it for that. We will have a lot of wall space to have educational displays set up. We have plans to set up educational items in the entry way.

A discussion followed about future office space needs.

Alderman Tennant: If there is a necessary HR situation that comes up internally between a manager and employee, it bothers me that we are cramped for space to have those kinds of conversations in private. There are specific rules about what has to be done legally when someone has an HR situation. Do you feel comfortable that there is enough space if an HR situation came up, and how are we prepared to deal with those kinds of situations in the current environment?

Terry Gulley explained that there are two offices that supervisors can share to discuss HR situations with employees. He stated that is all they have for private space because all the other offices are never vacant.

A discussion followed about office space in the building to conduct private HR situations.

Alderman Kinion: This has been discussed for several years in the Solid Waste & Sewer Committee. We have grown exponentially in the processing and management of solid waste. We

have new activities, and our staff has grown out of necessity in order to meet the growth. There is no staff that I have ever worked with professionally that is more in tune of looking for savings. If you look at the return in funds that we have through our value engineering with this group, it is pretty remarkable. If you are in a private corporation, a lot of times you will take the funds and use them so that you don't have to return them. These pooled funds have allowed us to move forward in a much needed facility that is offering safety, and the capacity to offer staff to operate in a professional manner. It is a necessary operation for the management of the waste collection and the transfer of the solid waste.

We have the whole operational program that we are looking at. The current rate already has this built in and we have collected it. The amount in the reserves is specifically for this type of surprise that is costing a little bit more. We built this with a look into the future and we did it responsibly. We do have the funds there, and we will still have the funds there for future activity after Kessler. This is going to meet the needs that we have now with an eye on the future with a very well designed professional facility. This facility will improve the capacity of having good personnel management and processes. We got a lot of projects done during the time when there was the availability of some lower bids so that we could move forward on this. This organization has worked together to save funds so that we can accomplish what is needed.

Alderman La Tour: I keep thinking about my associate who lives in Springdale who pays about half of what we pay for trash collection and recycling. We have accumulated $7 million additional in that fund from our rate payers so that we can fund these buildings. Maybe that is what the people of Fayetteville want, but I would rather get a lower rate. Mr. Gulley, how long have you worked for the city in your current position?

Terry Gulley: Relating to recycling and Trash, it's been since 2011. I have been the Transportation Manager since January, 2003.

Alderman La Tour requested information on rate studies.

Don Marr, Chief of Staff: The last rate study for the Solid Waste & Trash Division was in 1996.

Alderman La Tour: That study showed an increase or decrease in the rate?

Don Marr: I can get that information to you. I'm sure it was an increase from the prior rate study which is done typically every five to six years. The city has not done one in the waste management because prior to the last two years where the Council has an ordinance that has a CPI adjustment, the Council had not adjusted rates upward in that same five to six year period.

Alderman La Tour: I suspect you are right. I think a study would show a rate increase, not a decrease. That may exasperate the problem I'm discussing. Our rates may be too high. I believe there are citizens who would rather have more money in their pocket so that they could pay higher taxes.

A discussion followed about utilization of the breakroom by employees and for educational purposes.

Alderman Marsh: This is not a surprise. We have been talking about this at the Water Sewer Committee for years. This reserve money we have built up is not a result of overcharging our rate payers, it is a result of responsible long range planning. The $2.1 million overrun needs to be put in perspective. We spend over $2 million every year on landfill tipping fees alone. By expanding this resource recovery facility, it enables us to spend less on throwing valuable resources into our diminishing landfill space. I want to commend this group for not only carrying on with this plan in helping us build this new facility, but doing it in a way that will reduce our energy cost. We will be saving over 22% as the anticipated energy savings of this building versus a base line building, as well as over 50% of water savings. This is a fantastic plan.

Louise Mann, 629 Gray Avenue: Is the Transfer Station and the Recycling Facility going to stay intact the way it is right now?

Don Marr: Yes.

Louise Mann: We know that before the Kessler study has come back? Single stream is a very different collection and process than what we are doing currently.

Don Marr: This renovation has nothing to do with the Transfer Center or any move towards single stream. Recycling will continue being processed as is. This is maintaining the operation and collection of residential, exactly as it is today.

Louise Mann: If we switch to single stream, has it already been decided that Georgia Pacific will run the single stream facility?

Don Marr: There has been no decision on the single stream movement.

Louise Mann: If we do switch to single stream it is a very different facility. Single stream has been exposed as a failed experiment nationwide. Those people who are still looking at single stream are looking to build expensive facilities. I ask you to wait on any changes in our physical facility until we get the report back from Kessler.

A discussion followed about the numerous studies showing problems of using single stream.

Alderman Marsh moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed 6-2. Alderman Long and La Tour voting no.

Resolution 192-15 as recorded in the office of the City Clerk

McGoodwin, Williams And Yates, Inc. Amendment No. 3: A resolution to approve Amendment No. 3 to the agreement with McGoodwin, Williams and Yates, Inc. for construction phase services associated with the Recycling and Trash Collection Division Office Building Expansion and Site Improvements in an amount not to exceed $217,861.00.

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

Alderman La Tour: Ms. Mann brought up a valid point. If we are moving to a single stream recycling strategy, can we use this $4 million facility?

Chris Brown: The proposal in front of you is an office expansion for existing and future staff.

Alderman La Tour: If we decided to go to a private collector of trash and recycling, would we need this facility?

Chris Brown: It would have to be discussed. Potentially, if it were privatized then the private entity could use this same office building as a lease type space.

Don Marr: If we were going to outsource our recycling and trash facilities to a private provider, we would not need this facility.

Alderman Kinion: There has to be a collection facility somewhere.

Don Marr: The question is, would we be building an office space? Typically, the administrative and collection staff would be employees of the outsource provider, housed wherever they chose to do so.

Alderman Petty moved to approve the resolution. Alderman Marsh seconded the motion. Upon roll call the resolution passed 7-1. Alderman La Tour voting no.

Resolution 193-15 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 services for the Recycling and Trash Collection Facility Expansion and Improvements Project in an amount not to exceed $25,000.00.

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

Alderman Petty moved to approve the resolution. Alderman Marsh seconded the motion. Upon roll call the resolution passed 7-1. Alderman La Tour voting no.

Resolution 194-15 as recorded in the office of the City Clerk

VAC 15-5206 (5026 Talon Trail/Falcon Ridge S/D): An ordinance to approve VAC 15-5206 submitted by Jorgensen and Associates, Inc. for property located at 5026 E. Talon Trail to vacate a drainage 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 8-0 in favor of the request. Staff is recommending approval.

Alderman Long: Usually on these vacations of easements we see the engineering firm who is requesting it. Could we also have the property owner added to that?

Jeremy Pate: Added to the request?

Alderman Long: Yes.

Jeremy Pate: I'm sure we could.

Alderman Long: I'm guessing that an engineering firm wouldn't request it without the property owner wanting it.

Jeremy Pate: The physical application, which is not included in your packet, must be signed by the property owner. We do get permission from the property owner for an engineer or architect to represent them.

Alderman Long: Could we start getting a copy of that in our packet?

Jeremy Pate: Yes.

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

City Attorney Kit Williams read the ordinance.

Alderman Long moved to suspend the rules and go to the third and final reading. Alderman Gray 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 5815 as Recorded in the office of the City Clerk

ADM 15-5205 (SW Corner Van Asche & Steele Blvds./CMN Business Park, Lot 6): An ordinance to amend Ordinance No. 3936 by amending the restrictions which had prohibited restaurants by allowing such use unit 13 restaurants with outdoor music as conditional uses upon a 2.24 acre parcel (lot 6) on the southwest corner of Van Asche and Steele Boulevards.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. He stated the decision is whether to amend the Bill of Assurance to allow for restaurant use on the property.

Asa Hutchinson III, Attorney Representing the Applicant stated that their client is under contract to purchase and develop the property. He believes the appeal process takes too long, and decided to instead request Council to lift the restriction. He gave a brief discussion explaining why in his opinion that the restriction does not apply.

Alderman Tennant: If and when they apply for an outdoor music permit, will they have to follow the same laws that everybody else has with regards to noise?

Jeremy Pate: That is correct. Outdoor music establishments are conditional use permit in any zone.

Alderman Tennant: It doesn't matter where?

Jeremy Pate: There are some restrictions that are required in any zone that they are located within. The Planning Commission has the ability to limit hours of operation.

Don Marr: I was the author of the outdoor conditional use ordinance. The intention was neighborhood protection.

Alderman La Tour: My family and I reside 400 feet from a large venue here in town. When there are 72,000 people in attendance, not considering the fireworks, I can go to sleep. We have a geographic protection and a noise ordinance. I would be very supportive of this proposal.

Alderman Tennant: If you look at this spot of land and then you go up north on Steele, eventually you come to the Joyce and Steele Intersection. The restaurant that is currently in that shopping center on the northwest corner, aren't they moving across into the space at the corner of Joyce and Steel?

Jeremy Pate: Correct. On the southeast corner.

Alderman Tennant: We have a reputable Fayetteville business that is wanting to expand and invest in that corner. I have heard nothing negative. There is a lot of difference in this area between 1995 and now. This business will have to follow all the rules. I am in support of this.

Alderman Marsh: Something we deal with in my neighborhood is scent from restaurants. Do we have an ordinance that addresses air pollution?

Jeremy Pate: No, we do not have any ordinances related to air quality. Those are a state issue.

City Attorney Kit Williams: We are specifically preempted by the state statutes from legislating air quality.

Mickey Harrington, Attorney for the Developer of CMN Properties spoke in favor of the ordinance. She stated the sellers support the restrictions being lifted. They do not feel that it is a breaking of trust with the neighborhood.

Jim Irwin: I was here in 1995. I am representing the family and we ask for your support of this.

Marshal King, 3441 North Sandpiper Drive spoke in favor of the ordinance. He stated the proposed restaurant will not add any noise that doesn't already exist.

City Attorney Kit Williams: Mr. Hutchinson, you stated time is of the essence as to why you didn't do the appeal. Do you need to have this moved forward tonight?

Asa Hutchinson III: If possible, it would be tremendously helpful.

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 Tennant moved to suspend the rules and go to the third and final reading. Alderman Gray 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 5816 as Recorded in the office of the City Clerk

ANX 15-5181: (1620 S. Ed Edwards Rd./Salsbury): An ordinance to annex that property described in Annexation Petition ANX 15-5181 submitted by Curtis Hogue for property located at 1620 S. Ed Edwards Road containing approximately 0.83 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. The Planning Commission is recommending annexing the property and assigning a zoning of RSF-2.

Curtis Hogue, representing the applicant explained that there would be health benefits for the applicant if the property was allowed to be annexed and hook on to sewer in the city.

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

City Attorney Kit Williams read the ordinance.

Alderman Long moved to suspend the rules and go to the third and final reading. Alderman La Tour seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Kinion voiced his concern about runoff in the area. He stated he hopes there are improvements to manage the drainage problem as more development occurs.

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

Ordinance 5817 as Recorded in the office of the City Clerk

AMEND CHAPTER 167 AND 177: An ordinance to repeal §167.04 (J)(5) *Maintenance Agreement and Landscape Establishment Guarantee*, to enact §167.10 **Tree Maintenance Agreements** and to amend § 177.05 (A)(2)(f) by deleting a portion of this subsection and enacting §177.10 **Tree Maintenance Agreements** to improve maintenance and survivability of mitigation trees.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams expressed his appreciation for Derek Linn for working on the ordinance. He stated at Agenda Session that Alderman Petty inquired about an emergency clause being added to the ordinance.

Alderman Petty moved to amend the ordinance to add an Emergency Clause. Alderman Long seconded the motion. Upon roll call the motion passed unanimously.

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.

Alderman Marsh expressed her appreciation to the Park staff for their work at the tree give away.

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

Alderman Long moved to approve an Emergency Clause. Alderman Marsh seconded the motion. Upon roll call the motion passed unanimously.

Ordinance 5818 as Recorded in the office of the City Clerk.

Announcements:

Alderman Long: There will be a Ward 4 meeting on October 26, 2015 at 6:00 p.m. in Room 111 at City Hall.

Alderman La Tour: Cross Church in Fayetteville will be honoring our first responders on October 25, 2015.

Alderman Gray: There will not be a Ward 1 meeting on Friday, October 23, 2015.

Don Marr, Chief of Staff: There will be a ribbon cutting for the opening of our Spring Street Municipal Parking Deck on October 23, 2015 at 11:00 a.m.

The Fayetteville Animal Shelter is hosting its 5th Annual Free Cat Adoption on October 23, 2015.

City Council Agenda Session Presentations: None

City Council Tour: None

Adjournment: 8:49 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith

Sondra E. Smith, City Clerk Treasurer