

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
October 30, 2015**

A special meeting of the Fayetteville City Council was held on October 30, 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.

Alderman Long arrived at 5:33 p.m. Alderman La Tour arrived at 5:36 p.m.

Pledge of Allegiance

Mayor's Announcements, Proclamations, and Recognitions: None

City Council Meeting Presentations, Reports, and Discussion Items: None

Agenda Additions: None

New 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. At the October 20, 2015 City Council meeting, this ordinance was left on the second reading and moved to a Special City Council meeting on October 30, 2015.*

Alderman Petty moved to suspend the rules and go to the third and final reading. Alderman Gray seconded the motion. Upon roll call the motion passed 6-0. Alderman La Tour and Long were absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: I had hoped that we would have an Attorney General's opinion in by today. We have not received that. We have to decide what we are going to do with the Firemen's Pension Fund.

Paul Becker, Chief Financial Officer: The funds were established under separate Boards of Trustees as far back as the late 1940's and early 1950's. They are supported by property taxes, 0.4 mills, insurance, and premium taxes, for each of the Fire and Police Pension Funds. The police also get certain fees from the state to help the funding of the pension plan. The plans functioned well from the 50's through the 90's. Increases were requested by the Board of Trustees and approved by Arkansas Fire and Police Pension Review Board (PRB). The plan was established at a base of 50% of the salary for the retirees and by 2001 the amount was increased to a 90% base. Approved in 2003, there was a temporary 3% COLA for a three year period. In 2006, the income coming into the plan started reducing because of interest earnings. In 2007, a benefits increase was requested, and it was denied by PRB. In 2009, PRB declared the fund, projected insolvent. As of 2014, the pension fund has an unfunded liability of about \$14 million. The investment advisors have given it about seven more years based on the current earnings.

In 2010, PRB gave a presentation to the City Council and Board of Trustees. They indicated there was a 91% risk of ruin and indicated the fund could be insolvent as early as 2020 or 2024. PRB recommended the city pay in \$250,000 for a 30 year period or \$325,000 for a 15 year period to keep the plan solvent. The city did not have that kind of funding available. It was indicated to us by the City Attorney that it was not a city liability. It was a liability of that trust fund. In the last few weeks, PRB has come to discuss the condition of the fund. They have now indicated to us that this fund could be consolidated with Arkansas Local Police and Fire Retirement System (LOPFI), because the amortization period has been lengthened from 15 years to 25 years. It would be consolidated with LOPFI funds which are projected to earn 8% in the future, that it could be sent down there at no cost at this point in time, however that is just for this year. That changes each year based on an actuarial study. It could be consolidated at no cost to the city, but that could change at any time. There are variables involved in that. Once it is sent to LOPFI, the city takes on that liability by contract to pay what is necessary to pay the pensioners. One of the variables is property taxes, if it increases 2%, there would be a cost over time, if the property taxes increased 3%, there wouldn't be as great a cost. If it increased less than 2%, that liability would increase. The rate of property tax increase is very pertinent to this study. Over the last five years city taxes have increased 1.7%. Over the last ten years, it has been over 4%. It is a variable which would determine the size that the liability might be. Another variable would be investment returns. If

investment returns are 8%, that would either eliminate the possibility of a liability or it would decrease it going forward. The fund currently here is gaining 3.6%. If it gains 8% with consolidation at LOPFI, it would be a much greater interest earning. LOPFI has gained roughly 9% since its inception. That rate has decreased over time. We never know what the premium tax turnback is going to be. It changes from year to year. The mortality rate is a variable. The variables are all over the map. I can't give you an accurate judgment on what the chances of a liability are. There is a risk that the city would take on liability. It could be substantial if the city agreed to enter into a contract with LOPFI for the administration of this plan.

I'll summarize your options. You could keep the plan here and subsidize it for \$150,000 to \$350,000. We don't have \$350,000 laying around to spend. We could leave it where it is and do nothing, and that is almost certain failure. The City Council could agree to consolidate it with no revenue stream and send it to LOPFI but you could be taking on a large liability. It could be sent to the voters to increase the millage. A revenue stream would be created and send it to LOPFI with that stream and guard the city against a liability that is not funded in the future. A legislative option could be pursued to decrease the pension funds.

Alderman Long has been diligent in requesting an Attorney General's opinion of what our legal position is for the trustees' ability to be able to reduce the pensions. Our City Attorney has indicated in his opinion that this is not a city liability. The city may have constitutional issues taking on this liability.

City Attorney Kit Williams: For a decade I have been warning the Fire Pension Board that this was a problem that would not go away. There was a study done in 2010 by the actuary, Jody Carreiro about how it would be possible to save this plan without new revenue. He estimated that if the pension benefits were reduced half way back to where they started, the pension fund would probably be able to stabilize and not go bankrupt. This was never attempted. The Attorney General said that the Pension Board did not have that power. I felt like they did have the power. We drafted up a statute and presented it to the legislature to expressly give them that power, but because of opposition from pensioners, the statute failed. None of those options have been taken by the Pension Board, and we find ourselves where we are right now. I've written many memos on this. My position is the same as it was when we first started discussing this. I believe it is a grave situation from a constitutional point of view. A court could find that we would be unconstitutionally extending our credit to the Pension Board. What we might end up doing is not saving the pension plan, but instead lining the pockets of a private attorney who would sue us.

You have a compelling case from many of these retirees. I'd hoped that a different solution would have been arrived at back in 2010 when cuts would not have had to be as bad as they would have to now. I do not believe the City Council should consolidate with LOPFI. I believe it will expose us to litigation that we could possibly lose. I want to do what is most safe for our taxpayers. The safest way to go is to have the taxpayers raise the millage themselves. I think that can only occur during a General Election. This could help the plan stabilize.

Alderman Tennant: If there is a Primary Election or Judge's Election, we couldn't put this on that election. It would have to be in November, 2016?

City Attorney Kit Williams: The statute is very unclear and contradictory. It talks about having it at a Special Election, but then there is the provision that says, you have to conduct it as you would for Amendment 7. It is clearly an initiated act to have more millage accessed. If you read Amendment 7, it says, only at a General Election. I would be hesitant as your City Attorney to suggest doing it at a Special Election and see if the courts will agree that it is okay. If the court disagreed, then all the money collected in those taxes would be illegally collected. We would then have to pay some attorney who sued us. I know it can be done in a General Election. It possibly could be done in a Special Election, but I don't think it is worth the gamble.

Alderman Tennant: I don't want to have or spend the money on another Special Election. Does the Pension Board have a mechanism to bring this forward to the people for a vote? Do we have to send it to a vote?

City Attorney Kit Williams: Amendment 31 states 20 citizens by petition can bring this to the voters. It doesn't have to be the Fire Pension Board or the City Council. In order of having a reasonable chance of success, it needs the endorsement from the Pension Board and City Council. We would have to do the ballot to make sure it is done correctly.

Alderman Long: Paul, when you looked at the returns on LOPFI, did you look at their average three year returns and average five year returns?

Paul Becker: I didn't look at three year returns. I looked at what David Clark sent me. I have the returns between 2005 and 2015. I have those calculated at 6.6%.

Alderman Long: The reason I was asking that question, it was said that probably we would be looking at funding it in five to six years. The five year return would be something I would be interested in seeing.

Alderman La Tour: One of my jobs on the City Council is to guard the public purse. I have the greatest admiration for fire and police. When I look at all the facts and circumstances surrounding this, I find it difficult to obligate the citizens of Fayetteville, who will be paying that tax. I like the idea of sending it to them to decide the issue. If they feel it is important, they will pass that tax upon themselves. I would vote to send it to the people, but I can't vote to assume up to a \$9 million liability. LOPFI is not going to assume all of our liabilities without an "I Owe You" from the City of Fayetteville. I do not want to obligate the people of Fayetteville to pay whatever that liability is. I urge City Council to do what we can and encourage the people of Fayetteville to consider this issue.

David Clark, Director of LOPFI and PRB: As far as the investment returns, the cumulative return for the last 32 years was 10.35%. The last five years was 8.15%. The last ten years was 5.84%. The last 20 years it was 8.58%. The assumed rate is still 8%. The Board of Trustees are going to hear from the actuaries about adjusting that possibly downward at the December meeting. I don't know how the board will vote. We provided you plenty of numbers and you have gone through those multiple times.

Pete Reagan, Fire Pension Board: City staff and Council have expressed concerns about the associated cost, but that all depends on several variables. When there is a liability to the city, it's not going to be there very long, because we are all going to die. That pendulum will swing back and the city will be making positive money going towards the LOPFI benefit for current employees. 164 old Fire and Police Pension plans have merged with LOPFI, and not one lawsuit has been filed. City of Fayetteville Ordinance 1136, Section 2 states, "The ballot title shall appear as follows: The question of the levy of an annual tax; of not more than one mill on the dollar upon the assessed value of the real and personal property within the City of Fayetteville, Arkansas for purpose of paying pensions to retired Firemen, and pensions to widows and minor children of deceased Firemen and widows and minor children of deceased retired Firemen." The key word is, not more than one mill. You as a City Council have the authority by this ordinance to increase the millage.

Pat Boudrey, 12923 West Highway 62, Farmington stated she understands the City Council's dilemma of the Fire Pension, Police Pension, taxes, citizens that pay those taxes, current employees concerned about their future, and all the legal issues involved. She requested City Council to consider some course of action that will save the plan and consolidate it with LOPFI.

Peter Tonnessen, Ward 3 does not believe this is an emergency. He stated this has been a known problem since 2009. He believes the taxpayers should have time to be heard. He stated if the city is inclined to do anything, the most it should do is present a millage increase to the voters in a General Election. He stated that the City of Detroit went through bankruptcy because of excessive government pensions. He wants the citizens of Fayetteville to be protected.

Alderman Long: The board recommended to us that we consolidate with LOPFI. Can we take an action to not consolidate with LOPFI without a board recommendation?

City Attorney Kit Williams: The proper procedure is to have the board ask us to do that. They not only asked us to consolidate, but appointed us as their representative to do the necessary procedures. Mr. Clark, does it require the board to make that request to the City Council before consolidation could happen?

David Clark: That was the purpose of the resolution that they passed.

City Attorney Kit Williams: Is that absolutely necessary? Both the board and the City Council would have to agree?

David Clark: Yes, that is correct.

Alderman Long: The original City Council resolution that was read to us earlier authorizes us to go up to one mill to fund our own funds. Could we not, with our own action increase our millage?

City Attorney Kit Williams: That was an ordinance calling for an election. We have yet to be able to find any ballot from 1957 that might say what the actual ballot language was. We have asked the county who keeps these ballots to look. Mayor Jordan, Sondra, and I have all looked.

City Clerk Sondra Smith: I have looked through 11 years of old records. I have talked to the county archives, and Mayor Jordan has talked to the county. They can't find the ballot language.

Alderman Long: By what authority are we collecting the .4 mills that we are collecting now?

City Clerk Sondra Smith: We know it went to a vote of the people because Mayor Jordan found the newspaper article stating it went to the vote of the people. We can't find the actual ballot language. We are still searching.

Mayor Jordan: This was brought up yesterday at the Pension Board meeting. I have been researching this. When you look at the old tax records, we levied, just like we levied .4, and millage for the library. We approve that every year before the end of October. Sondra brought me the research and we looked at the taxes. In 1948, there is no record of any kind of pension fund for the police or fire. In 1949, there is a pension fund of .5 mill for the police only, and it stayed like that until the election of 1957. In 1957 is when it starts getting vague. I assume the people voted to give the City Council authority to go up to a mill. I don't know that, because I can't find the ballot on either one of these pensions, from 1948 to 1949, and 1957. I went through the county archives. I went to the library and researched newspapers. The people passed an initiative for the Fire Department in 1957. It says, "The proposal to set aside up to one mill of the city tax for the Firemen's Pension, passed 1,199 to 346." Ordinance 1136 that was passed in May, 1957. Even though a Council passes a titled ballot language, it can be changed by a judge. I assume it can be changed by an Election Commission.

Alderman Long: If there was a lawsuit and the ballot language was changed, would that not of come up in the research?

City Attorney Kit Williams: It would be more likely that you would be able to find a ballot, then some lawsuit. Hopefully, the county will be able to find a ballot. Amendment 31 says, "After consent of the majority of those voting on the question at any General or Special Election in cities of the first or second class, the cities may annually thereafter, levy a tax on the assessed value of real and personal property, not to exceed two mills on the dollar, from which there shall be created a fund to pay retirement salaries and pensions to policemen and firemen, widows, and minor children. The annual levy shall not exceed one mill on the dollar for police and one mill on the dollar for fire." That is the authorizing constitutional provision that allowed this to be submitted to the voters. It is the statute that makes it confusing about Special Elections.

If I had been the City Attorney at that time, I would have probably stated what the actual millage should be. Maybe it was believed that the City Council could determine what it was every time. Even if that is what the ballot says, I still have concerns. I would be reluctant, without having a ballot, to attempt to raise the millage without a vote of the citizens. Every time you deal with taxes, it is a minefield. My recommendation is that it would be much safer to submit it to the voters.

Mayor Jordan: I can't figure out how it was decided upon .5 mills. I don't know when that was done, how it was done or if it was a City Council decision. I know that an election occurred in 1948, and I can't find any record of a ballot. In 1957, it says it could be up to a mill and someone decided to put it at .5 mill.

A discussion followed about the history of the millage rate and Amendment 59 lawsuit.

Alderman Long: If we waited until the April enrollment date for the LOPFI plan to find out some more information, and possibly send it back to the board to see if they would consider letting the Fayetteville voters fund their own pension plan, without going through an external plan, where would be in terms of solvency?

Paul Becker: This depends on what the market does and what the interest earnings are. We aren't going to earn as much interest between now and then if the plan stays where it is, in relation if it went to LOPFI. If the investments go down, we wouldn't lose as much either. We would be in the same type of position, at that point in time, that a decision could be made.

Alderman Long: We could wait until April and be in the exact same situation, but we could have an Attorney General's opinion by then to put us on a more solid legal footing. We would hopefully have a ballot to look and see what it said.

Paul Becker: The old Fire Pension Fund paid for an actuarial study, and we would have to have another study done. If the City Council chooses to do this, we should offer to fund that study. I was adamant that the city should not pay for the study originally done. That was the Fire Pension's responsibility. However, if we are going to delay this decision, and have another \$1,500 study done, then we should offer to pay for the actuarial study.

A discussion followed about an additional actuarial study being done.

Alderman Long: David, LOPFI is considering by the end of this year decreasing their percentage?

David Clark: Yes, the assumed rate of return.

Alderman Long: We could have more information on that as well.

David Clark: Correct.

Alderman Long: \$1,500 would be a small price to pay to make a better decision.

Paul Becker: David, a new study would be required?

David Clark: Yes.

Mayor Jordan: If it is postponed until the spring, I want to include the Police Pension plan to have a complete package if it goes to a vote of the people.

Alderman Tennant agreed with Alderman Long and Mayor Jordan's comments about taking more time and including the Police Pension plan package. He stated that the study is a good investment.

Alderman Kinion: We still need more information that we don't have. We can make assumptions, but it would be premature to enter into an agreement that is less than desirable. This doesn't mean we are abandoning our responsibility to look out for the retirement as we move forward. Based on the information we have in front of us today, it would be very hard for me to support moving forward with an agreement. When analyzed, it places all the authority on an outside organization, but all the risk and payment on the taxpayers of our city.

Alderman Petty: What is the current rate of return on the pension fund?

Paul Becker: 3.69%

Alderman Petty: I believe this fund will eventually have to be consolidated. Right now it is earning 3.69%, and we are in good times. In the recession, LOPFI was earning more than 5%. It is a better investment to be in LOPFI than for us to manage this small fund on our own. I believe people will have to raise their taxes. If it was an acceptable level of risk to all of us, we could say we are just going to consolidate, and wait for what happens. 164 cities have done this, and in theory we should be in the clear legally.

I am going to vote against consolidation today. It is easy to say, 164 other cities haven't been sued yet when times have been relatively good. When the city is the guarantor and times go bad, that is when the very hard conversations end up in a court room. I think the current pension levels are on balance and for the vast majority of the pensioners more than reasonable. We have a moral obligation to keep the pensions funded, but because we are in a legal fog. I can't ignore our City Attorney's advice at what might happen if we were to hit a big iceberg, like the next recession. We need to take time to be diligent and protect ourselves.

A discussion followed about tabling the ordinance.

Alderman Marsh: I understand the motivation behind tabling. I would rather let this motion die and then start fresh.

Alderman La Tour: I agree with Alderman Marsh. I would like to see us vote yes or no, on the motion to consolidate with LOPFI. I hope that all of you retirees know that we aren't abandoning you. We are in a difficult position.

Alderman Long: It would be better to table it because we would have updated information in our packets. Everything would be together and seem more organized.

Alderman Tennant: If we vote this up or down, then it is gone. If we table it, then it is still in its entirety. We just have to update it with information.

Alderman La Tour: As long as one of those pensioners are alive, it will not go away.

Mayor Jordan: We all agree that we want to take care of the firemen.

Alderman Long moved to table the ordinance to the May 17, 2016 City Council meeting. Alderman Tennant seconded the motion. Upon roll call the motion to table failed 3-5. Alderman Gray, Tennant and Long voting yes. Alderman Marsh, Kinion, Petty, Schoppmeyer, and La Tour voting no.

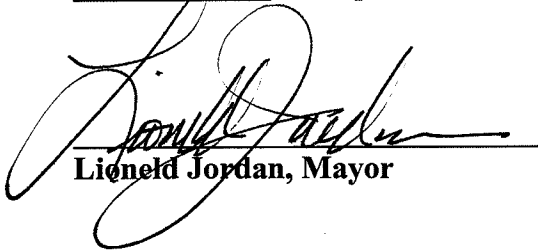
Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 0-8.

This Ordinance Failed

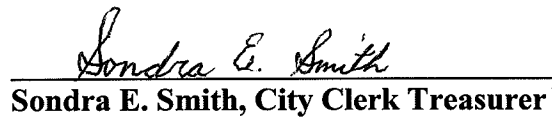
Mayor Jordan: I will get with the Pension Boards and we will bring something back.

Announcements: None

Adjournment: 6:51 p.m.



Lionel Jordan, Mayor



Sondra E. Smith, City Clerk Treasurer