

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Sarah Marsh
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Martin W. Schoppmeyer, Jr.
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Alan T. Long

**City of Fayetteville Arkansas
City Council Meeting Minutes
June 18, 2013**

A meeting of the Fayetteville City Council was held on June 18, 2013 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

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

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Nominating Committee Report

Alderman Gray presented the Nominating Committee Report to the Council. A copy of the report is attached.

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

Agenda Additions: None

Consent:

Approval of the May 21, 2013 and June 04, 2013 City Council meeting minutes.

Approved

RFQ #13-01 McGoodwin, Williams and Yates, Inc.: A resolution awarding RFQ #13-01 and approving a contract with McGoodwin, Williams and Yates, Inc. in an amount not to exceed \$109,000.00 for engineering design services at the Solid Waste transfer station on Happy Hollow Road, and approving a budget adjustment.

Resolution 133-13 as recorded in the office of the City Clerk.

Bid #13-32 Frank Gardner Construction, LLC: A resolution awarding Bid #13-32 and authorizing a contract with Frank Gardner Construction, LLC in the amount of \$41,280.00 for the purchase of an overhead lube system for the Fleet Division, and approving a ten percent (10%) project contingency.

Resolution 134-13 as recorded in the office of the City Clerk.

Williams Tractor of Fayetteville Case Farmall 105U Tractor: A resolution authorizing the purchase of one (1) Case Farmall 105U tractor from Williams Tractor of Fayetteville in the amount of \$52,410.00, pursuant to a National Joint Powers Alliance Cooperative purchasing agreement, for use by the Parks and Recreation Department.

Resolution 135-13 as recorded in the office of the City Clerk.

Stribling Equipment of Springdale John Deere 524K Wheel Loader: A resolution authorizing the purchase of one (1) John Deere 524K wheel loader from Stribling Equipment of Springdale in the amount of \$129,077.00, pursuant to a National Joint Powers Alliance Cooperative purchasing agreement, for use by the Solid Waste Division.

Resolution 136-13 as recorded in the office of the City Clerk.

J.A. Riggs of Springdale, 308E Excavators: A resolution authorizing the purchase of two (2) Caterpillar 308E excavators from J.A. Riggs of Springdale in the total amount of \$239,734.00, pursuant to a National Joint Powers Alliance Cooperative purchasing agreement, for use by the Water and Sewer Division and the Transportation Division, and approving a budget adjustment.

Resolution 137-13 as recorded in the office of the City Clerk.

J.A. Riggs of Springdale, 120 M2 Motor Grader: A resolution authorizing the purchase of one (1) Caterpillar 120M2 motor grader from J.A Riggs of Springdale in the amount of \$230,928.00, pursuant to a National Joint Powers Alliance Cooperative purchasing agreement, for use by the Transportation Division.

Resolution 138-13 as recorded in the office of the City Clerk.

Amend Resolution No. 94-13: A resolution amending Resolution No. 94-13 awarding Bid #13-23 and authorizing a contract with Center Point Contractors, Inc. in the amount of \$289,675.00 for construction of an executive hangar addition at Fayetteville Executive Airport-Drake Field.

Resolution 139-13 as recorded in the office of the City Clerk.

2013 Hazmat Services Revenue: A resolution approving a budget adjustment in the total amount of \$11,239.80 to recognize 2013 hazmat services revenue from Washington County, and authorizing associated expenses.

Resolution 140-13 as recorded in the office of the City Clerk.

Transportation Bond Projects: A resolution approving a budget adjustment in the total amount of \$201,621.00 to transfer escrow balances to certain transportation bond projects.

Resolution 141-13 as recorded in the office of the City Clerk.

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

Unfinished Business:

Amend Chapters 151, 161, 164 and 172: An ordinance to amend Chapters 151, 161, 164 and 172 of the Unified Development Code to modify certain standards within Urban Zoning Districts, to clarify and add flexibility to some of these requirements, to amend building height references and add a maximum building height to the C-1 Zoning District, and to provide supplement design standards for auto-oriented facilities within these districts. ***This ordinance was left on the Second Reading at the June 4, 2013 City Council meeting.***

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

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services: The one issue we have been working toward is related to height measurements. I passed out a brief memo and potential changes to look at. Not changes in the height limits but how you measure those limitations. We have recommended

removing references to height by story, instead using a numerical value consistent within the city.

Alderman Petty: Thank you for putting the work in on this. I prefer having a consensus around any clarification at all. If that means that consensus is around removing the reference to stories and just referencing the feet, that's better than not having the clarification in the first place. I would prefer to adopt this as it's been presented and not amend it to the exhibit.

Nina Sharkey, member of the Historic Resource Action Group of Fayetteville Forward: I live in my home close to the corner of Dickson Street and Block Avenue. I have no set back protection from my property boundaries because my home is located in the Main Street Center District. A builder can potentially build on three sides of my home, directly on my property line, 84 feet high without any setbacks. This would block out all natural light into my home, and drastically affect its livability, possibly even forcing me to move. If you allow the code to stay as is, you are sending the message that the preservation of the unique character of this town is unimportant.

Cindy Arsaga: We need to be reasonable in what we ask developers to do to protect our downtown and the way that it looks, and how we approach single family dwellings in the downtown area because we don't want to lose them.

Alderman Marsh: We are missing an opportunity to use building height as a powerful incentive to encourage green building and energy efficiency. FAR Bonus (Floor Area Ration Bonus) is a height or density bonus rewarded to developers who meet certain energy efficiency standards or environmental performance goals. This is a revenue neutral way the community can encourage green building.

Alderman Marsh moved to remove references to building heights. The motion died for lack of a second. Motion died.

Alderman Petty: Even though you didn't get a second, I hope you continue that discussion because FAR Bonuses are something I have been talking about with staff for about two or three years now. It's a good tool to encourage the kind of form based development that we want. I am sensitive to Ms. Sharkey's concerns, as we all should be. I want to make sure we understand there is more than one way to address them. We don't need eight story buildings everywhere, but it's okay to have a couple. We have to decide where those punctuations are going to occur. If that's not the right spot for that, then we can decide that. We shouldn't change the Main Street Center zoning regulations; we should change the zoning district that is applied to the properties.

Alderman Adams: I am a fan of the step back transition. There is no step back transition. Can you clarify these step back transitions?

Jeremy Pate: The step back transition was first created with our downtown master plan. That is when a 15 foot setback was created from the right away. Because downtown properties and commercial properties often change, we have never had a step back from a side property line for the downtown master plan. In reference to our downtown master plan, we have step back from

zero to 15 feet, but we propose adding that to all of our districts. That is what you would be adding tonight if you approve this as proposed.

Alderman Marsh: Would it be possible to put in some means of review for when one of these large multi-story buildings goes in next to a single family home?

Jeremy Pate: It would be possible. It would be a subjective view at that point. That could be something that we could look at.

Mayor Jordan: These very discussions occurred when we were going to put a hotel down there.

A discussion followed on current height limits, building heights and how they were established in the past.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Alderman Marsh and Kinion voting no.

Ordinance 5592 as recorded in the office of the City Clerk.

New Business:

Levi Storage Center, LLC: A resolution approving negotiation and purchase of 1.3 acres of property for construction of Town Branch Trail and the expansion of Greathouse Park from Levi Storage Center, LLC in an amount not to exceed \$41,862.00 upon condition that existing liens on the real estate are released.

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

Kit Williams: We have reviewed the letter that states if we provide a check payable to the bank and the owner, we will receive from the owner a deed and from the bank a release of the mortgage. That would all be done at the same time of the closing. With that, this is fine and you can pass this resolution. We will ensure we will get the necessary documents before we give them the money.

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

Resolution 142-13 as recorded in the office of the City Clerk.

Pacific Vet Group-USA, Inc.: A resolution to sell about 14.9 acres of land in the Industrial Park to Pacific Vet Group-USA, Inc. for \$223,500.00 and other valuable consideration and to approve a budget adjustment.

David Jurgens, Utilities director gave a brief description of the resolution and changes made in the contract.

Ross Wolfenden, Vice President for Research and Development for Pacific Vet Group: Pacific Vet Group was originally a University of Arkansas spin off company. We are an animal health company. We are an alternative to antibiotics company. We do a lot of work with mostly poultry companies. We develop probiotics products.

Alderman Marsh: Is there a way we can get Pacific Vet to agree to take the low impact development path through our code rather than just doing traditional storm water?

Kit Williams: It was an option of the developer to do that. It was never required to be mandatory. We are trying to encourage this industry to locate in town. That was always designed to be an optional thing for them to do.

Alderman Marsh: I'm trying to look out for the interest of the adjacent property owners that were concerned about storm water. This might be a good way to hold them to that aspect of our developmental standards.

Mayor Jordan: Jeremy, do you have a run down of these developmental standards?

Jeremy Pate gave a run down on developmental standards.

Alderman Marsh: There's a proposed industrial development in my neighborhood and I had neighbors knocking on my door very concerned about the storm water. The Fayette Junction Master Plan identified as their number two priority low impact development strategies. There is nothing we can do to hold those people to those standards. We want to encourage green businesses and green businesses are attracted to green infrastructure. This would be a great opportunity for us to get green infrastructure commitment that would also address some of the concerns of the neighbors.

Ross Wolfenden: That would be a fairly major change, and that's not something I can bless before the council.

Mayor Jordan: He doesn't have the authority.

Alderman Marsh: We are giving them a pretty good deal, there's a lot of public investment in making this happen. I see on your master plan there are some indications that you do intend to do some low impact development techniques, I think this is holding you to that.

Steve Clark, President of the Chamber of Commerce: I issue a word of caution on this proposal if you are going to take action and tell developers how to develop. If you give them a regulatory scheme that allows them to follow the option that they best believe fits with their project and they meet all standards, then you later come back and say that we wish you would meet different standards, you inject yourself into a decision that's not properly yours.

Mayor Jordan: Mr. Clark, how many jobs will this bring into the city?

Steve Clark: It will bring 60 to 65 jobs.

Mayor Jordan: What's the average salary?

Steve Clark: \$65,000.

Mayor Jordan: That's a local company?

Steve Clark: Yes sir.

Mayor Jordan: It's a green business?

Steve Clark: Yes sir.

Mayor Jordan: It will make it a tax paying entity?

Steve Clark: Yes sir.

Mayor Jordan: The state has invested some money in this as well?

Steve Clark: Yes sir, big numbers.

Alderman Adams: Thank you Mr. Clark for your good work and service to our city.

Alderman Tennant: This is a great example of the city, Arkansas Economic Development Council (AEDC), and the Governor's office getting together to find suitable businesses for the City of Fayetteville.

Mayor Jordan: I understand if the council wants to make Low Impact Development (LID) ordinances mandatory, but to change it right now when we are ready to sign the contract is not particularly fair.

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

Resolution 143-13 as recorded in the office of the City Clerk.

Enact §116.02 Door to Door Solicitation at Private Residences: An ordinance to enact §116.02 Door to Door Solicitation Regulations for Private Residences into the Fayetteville Code.

City Attorney Kit Williams read the ordinance.

Alderman Tennant gave a brief description of the ordinance.

Alderman Petty: Kit, could you explain to me the requirements that already exist in our business permitting code section? Don't all door to door solicitors, if they are for profit, have to have a business permit and be subject to a fine if they didn't?

Kit Williams: I'm not sure if they would or not. I thought you had to have a business location within the city.

Jeremy Pate: You have to have a physical business address in the city.

Alderman Marsh: I really support the intent of this, but I want to make sure we are protecting people's first amendment right to petition. People will still have the right to petition without having to register with the city or pay money, is that correct?

Kit Williams: That is correct. There are exemptions listed in the ordinance. Mr. Williams reviewed the exemptions that are in the ordinance.

I would like to have the ordinance amended to remove some language. In the second whereas clause remove *and will not bother citizens who have registered with the City of Fayetteville that they do not wish commercial vendors to come to their residence*. I would like removed where I talk about first amendment right, the language *as long as they do not seek nor accept money, pledges, or donations*. Remove the endings of the second and third whereas clauses be removed.

Alderman Petty moved to amend the ordinance as requested by City Attorney Kit Williams. Alderman Long seconded the motion. Upon roll call the amendment passed unanimously.

Brian Smith, representing the Northwest Arkansas Times: We are not opposed to a door to door ordinance per say, we are opposed when there are less restrictive means to accomplish the city's objectives. If you require a physical business address for a business permit then you would run into issues with the 14th Amendment.

Kit Williams: It doesn't bar people from coming into the city. We just don't require them to get a business license.

Brian Smith: Does it say that in the ordinance?

Kit Williams: Yes.

Brian Smith: Our position at the newspaper is that the time restriction is too restrictive to accomplish the objective of the ordinance. Our request is that the hours be 9:00 p.m. A majority of our sales comes from door to door solicitation. Putting a time limit on that would severely limit our circulation and have a big impact on what we do, as much as 25% or more. Requiring the registration and the permit would achieve the objectives of the ordinance in keeping the people out. Not opposed to the background checks, although I ask that there be a time frame put in as far as the offenses.

Alderman Tennant: I think the words subject to background check gives off plenty of warning to people, whether we do them or not. Do you have an idea of what percentage of your circulation sales does come from door to door sales at night?

Brian Smith: In Northwest Arkansas it's 48%. Our sales channels are kiosk, telemarketing, direct marketing, direct mail, inserts into newspaper racks, and door to door.

Alderman Gray: Mr. Smith, I don't want to do anything to lessen the newspaper business. I would support moving that to 9:00. Is that the only thing, just the 9:00?

Brian Smith: If there could be a discussion on the time frame for convictions. I'm a believer in second chances.

Kit Williams reviewed a memo that was handed out that contained requested changes from the Northwest Arkansas Times. He presented proposed changes to the ordinance.

Alderman Gray: Proposed an amendment to the time in the ordinance.

Alderman Kinion: I think it is pretty restrictive. I hope it meets the needs. I received a lot of support for this. I think this amendment is a fine compromise.

Don Marr, Chief of Staff: Is the intent that the individual applying for the \$5 permit will pay for their own background check or are they providing the document for their background check? We want to make sure there's not a budgetary impact to the city paying to get those background checks.

Alderman Tennant: My intent was that any cost incurred would be paid for.

A discussion followed on the cost involved in the background checks and who would pay for the cost.

Alderman Tennant: Would you need time to come up with that dollar figure of what that might cost? We can wait until we get that dollar figure.

Alderman Adams: My questions are: what are the cost of the decals, cost of printing the decals, how are the decals distributed, how can a citizen get one, can a POA President distribute them to all the citizens in that POA or does the citizen have to request it individually. What kind of staffing issues are there in your office with this? How is it enforced, who goes when a citizen complains (police, code compliance,) and what are the penalties when the solicitors are running away?

Jeremy Pate: We would order decals in bulk, and have them available at no charge for the citizens. They would need to come by the city to pick them up. We would like to distribute some to POA Presidents or neighborhood associations.

Regarding enforcement during the daytime, code enforcement officers would be on call for complaints. After hours, enforcement would be our non-emergency police number. We would have to try to catch them that will be an issue. There is no immediate penalty. We would follow our standard enforcement penalty.

City Attorney Kit William: The penalty would be our general enforcement section which is for all ordinances, that are not specific on how much a fine would be, and that is up to a \$500 fine administered by the District Court upon their conviction.

Don Marr: Code Compliance staff has very specific things that they are authorized to address. Currently this is not one of those. If the intention is for it to fall under Code Compliance, we would need to give them authority to address it. Otherwise, it would be handled by the Police Department.

Kit Williams: The Police Department would be the more appropriate agency to enforce this.

Alderman Marsh: Does anyone have any suggestions on how we can minimize stacks of sample newspapers being left when someone is out of town? That is a clear sign to burglars that nobody is home. Maybe if there is a limit of one then they can't leave any more there.

Alderman Tennant: If someone calls and says to stop leaving samples, does that stop them?

Brian Smith: Yes. We have provisions in our circulation management software that takes addresses out of the route lists, delivery lists and anything for a carrier to see to throw a paper.

Alderman Tennant: A call could stop that from happening.

Brian Smith: We have managers in the field at 2 a.m. to follow up to make sure things are happening the way they should to be happening. We have provisions in places to make sure that if someone does not want to be sampled or have their door knocked to minimize that.

Alderman Adams: Don, would you entertain further amendments to this that would answer those questions that you've presented from staff?

Don Marr: If you address these amendments then maybe hold this until the next meeting.

Brian Smith: We currently go to the state police and run the background checks and provide those when we go to Springdale or any other municipality that requires them. We ask that we be allowed to bring that.

Kit Williams: That's how the ordinance currently reads.

Don Marr: We would prefer not to be in the background check business for all of these. We'd like for them to be provided with the exception of girl scouts, schools, etc. We just want clarification.

Alderman Gray: We should leave it as it is. The applicant provides the background check.

Alderman Gray moved to amend the ordinance from 10:00 a.m. to 9:00 p.m., and to add a 5 year look back period for background checks, and change the definition of solicitor. Alderman Kinion seconded the motion. Upon roll call the amendment passed unanimously.

Kit Williams: It might be that we want to exclude from background checks non-profits, especially of youths, and maybe only require background checks from the for-profit entities.

Alderman Tennant: I would be in support of holding it for a couple of weeks because I don't want to push anything through. My intent is not to burden the staff.

Alderman Adams: Is there a way we can figure out how to let citizens print their own stickers from their own home?

Alderman Tennant: That's a viable option.

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

City Attorney Kit Williams read the ordinance.

Left on the Second Reading

Amend Resolution No. 183-12: A resolution to amend Resolution No. 183-12 which approved a contract to allow access to City of Fayetteville sewage system in order to approve an amended agreement.

Alderman Gray and Kit Williams gave a brief description of the resolution.

Kim Hessey, representing Phil Phillips and Hughmont Village, LLC.: This was the development that was originally approved in 2005, and constructed in 2008. Through changes in partnership and different contractors went out of business, the development became stalled.

Alderman Petty: What specifically were the conflicts between our RSF-4 standards and the county's conditional use permit?

Kim Hessey: The original design was per your RSF-4 standards, and when we requested a conditional use permit and met with the City of Fayetteville about bringing this back under current conditions, none of them liked the design. They requested we come up with something more unique.

Alderman Petty: I can not vote for this. We have to draw the line somewhere. We drew that line at the city limits. It is presumptive to assume we are going to annex this in the future. There are people inside the city that do not have sewer access.

Alderman Kinion: The concern was, if there is a failure, it goes right into the creek where we have effluent of our east side plant and suddenly we have the concern on how to handle that. After touring it and looking at it extensively through the water and sewer committee, we did not want to take the risk of a failure of a system that's going to impact the affluent from the east side plant anyway. While we don't think this was a forward, well thought out development, it is there and it is going to be developed. We were not pleased about it but felt like it was the right thing to do.

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

Resolution 144-13 as recorded in the office of the City Clerk.

City Council Agenda Session Presentations: None

City Council Tour: None

Announcements:

Kit Williams: We have several people going to Municipal League this week. I thank you for going. I think it's a good thing to do.

Don Marr: Other announcements we have are that we are currently in National Adopt a Cat Month. Fees are waived for adoption of cats here in Fayetteville through June 22nd.

Fayetteville City Fire Department, the International Fire Department and EMS are joining together for Safety and Health Week, June 16-22 to focus on safety and health education.

The Fayetteville Transfer Station at the Solid Waste Division is closed for repairs. They are not accepting items to be dropped off at the transfer station this week through the 23rd. We hope to open next week.

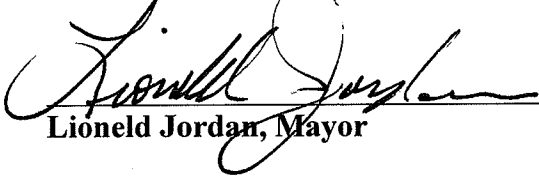
The City of Fayetteville was awarded a FEMA Firefighter Assistance Grant for \$120,736.00 for Urban Firefighter Gear.

I want to remind citizens that the Wheeler Brothers from Austin, Texas who were a part of our Gulley Park Concert Series was rescheduled for July 18th.

We are a part of hosting the Air Race Classic. We have 47 teams of female aviators set to touch down this week at the Fayetteville Executive Airport. The race begins today in Washington. The final leg ends here in Fayetteville on Thursday and Friday.

June 11, 2013 5:15 or immediately following Agenda Session Fund Balance/Budget Discussion

Adjournment: 8:05 p.m.


Lioneld Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer

Nominating Committee Report

Meeting: Wednesday, June 12, 2013

City Hall, Room 326, 4:00 p.m.

Members Present – Adella Gray, Justin Tennant, Rhonda Adams, and Mark Kinion

The Mayor recommends the following candidate for appointment:

HISTORIC DISTRICT COMMISSION

- Teresa Turk – One term ending 06/30/16

The Committee recommends the following candidates for appointment:

ANIMAL SERVICES ADVISORY BOARD

- No applicants – One Veterinarian term ending 06/30/16
- Stacey Fraser – One Business term ending 06/30/16
- Ashley Yayock – One Citizen-at-Large term ending 06/30/16

AUDIT COMMITTEE

- Jacob Pesicek – One unexpired term ending 12/31/15

CITY BOARD OF HEALTH

- No applications were received

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

- No applications were received

ENVIRONMENTAL ACTION COMMITTEE

- Connie Crisp – One Citizen-at-Large term ending 06/30/16

FAYETTEVILLE ARTS COUNCIL

- Houston Hughes – One Working Artist term ending 06/30/16
- David Wright – One Working Artist term ending 06/30/16
- Shannon Mitchell – One Arts and Cultural/Citizen-at-Large term ending 06/30/16
- Justin Hunter – One Unexpired Working Artist term ending 06/30/14

PARKS AND RECREATION ADVISORY BOARD

- Richie Lamb – One unexpired term ending 12/31/14

TELECOMMUNICATIONS BOARD

- No applications were received

WALTON ARTS CENTER COUNCIL, INC.

- Steve Clark – One term ending 06/30/16
- Barbara Taylor – One term ending 06/30/16

WALTON ARTS CENTER FOUNDATION

Mary Ann Greenwood – One term ending 06/30/16

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