

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
May 17, 2016**

A meeting of the Fayetteville City Council was held on May 17, 2016 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, John La Tour, Alan Long, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Alderman Martin Schoppmeyer was absent.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

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

Agenda Additions: None

Consent:

Approval of the May 3, 2016 City Council Meeting Minutes.

Approved

Microsoft Corporation Enterprise Agreement Renewal: A resolution to authorize a three year renewal of the Enterprise Agreement with Microsoft Corporation, through its authorized reseller SHI International Corporation, for software products in the amount of \$137,200.00 per year plus applicable taxes, and to approve a contingency in the amount of \$13,700.00 per year for additional software licenses as needed.

Resolution 96-16 as recorded in the office of the City Clerk

Animal Services Donation Revenue: A resolution to approve a budget adjustment in the amount of \$81,602.00 representing donation revenue to Animal Services for the first quarter of 2016.

Resolution 97-16 as recorded in the office of the City Clerk

Alliance Pump & Mechanical, Inc.: A resolution to approve a change order to the contract with Alliance Pump & Mechanical, Inc. in the amount of \$43,521.00 plus applicable taxes for additional repair services required to rebuild seven (7) gearboxes at the Noland Wastewater Treatment Plant.

Resolution 98-16 as recorded in the office of the City Clerk

Bid #16-30 Central Laundry Equipment, Inc.: A resolution to award Bid #16-30 and authorize the purchase of four commercial washer extractors and five drying units from Central Laundry Equipment, Inc. of Ward, Arkansas in the amount of \$65,130.00 plus applicable taxes for use by the Fire Department.

Resolution 99-16 as recorded in the office of the City Clerk

Braden Neighborhood Park: A resolution to approve a budget adjustment in the amount of \$3,723.00 recognizing parkland dedication fees from the Northeast Quadrant to be used for a portion of improvements to and expansion of the playground at Braden Neighborhood Park.

Resolution 100-16 as recorded in the office of the City Clerk

Arkansas Department of Parks and Tourism's Outdoor Recreation Grant: A resolution to authorize acceptance of a 50/50 matching grant from the Arkansas Department of Parks and Tourism's Outdoor Recreation Grant Program in the amount of \$150,000.00 for the construction of playground and parking improvements at Wilson Park, and to approve a budget adjustment.

Resolution 101-16 as recorded in the office of the City Clerk

Parks and Recreation Department Donation Revenue: A resolution to approve a budget adjustment in the amount of \$29,387.00 representing donation revenue to the Parks and Recreation Department.

Resolution 102-16 as recorded in the office of the City Clerk

Recreational Trails Grant Application-Trail Replacement: A resolution to express the willingness of the City of Fayetteville to utilize Federal-Aid Recreational Trails funds and authorize application for a 20% local match grant through the Arkansas Recreational Trails Program in an amount up to \$56,000.00 for the replacement of a section of the Razorback Regional Greenway from Maple Street to Frisco Avenue.

Resolution 103-16 as recorded in the office of the City Clerk

Transportation Alternatives Program - Mud Creek Trail Lighting: A resolution to express the willingness of the City of Fayetteville to utilize Federal-Aid Transportation Alternatives Program funds and authorize application for a 20% local match grant through the Arkansas Transportation Alternatives Program in an amount up to \$500,000.00 for the installation of trail lighting along the Razorback Regional Greenway and the Mud Creek Trail from the Fulbright Expressway to Old Missouri Road.

Resolution 104-16 as recorded in the office of the City Clerk

Levi Storage Center, LLC Purchase for Cato Springs Trail: A resolution to approve the purchase of 1.5 acres of property for construction of the Cato Springs Trail from Levi Storage Center, LLC in the amount of \$31,296.00, and to approve a project contingency in the amount of \$3,129.60.

Resolution 105-16 as recorded in the office of the City Clerk

Home Team, LLC: A resolution to accept the donation of 1.5 acres of property from home team, LLC with the restriction that no development shall occur on the property for at least fifty (50) years.

Resolution 106-16 as recorded in the office of the City Clerk

Fayetteville Active Transportation Plan Map Amendments: A resolution to approve amendments to the Fayetteville Active Transportation Plan Map to add a connector trail between the Hamestring Creek Trail and the Shiloh Trail, to remove a paved trail from the Kessler Mountain Ridge, and to add a loop trail around the Regional Park.

Resolution 107-16 as recorded in the office of the City Clerk

Alderman Gray moved to accept the Consent Agenda as read. Alderman Marsh seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

Unfinished Business:

Amend §72.58 Off-Street Parking Facilities; Rules and Rates: An ordinance to amend §72.58 Off-Street Parking Facilities; Rules and Rates (M) to limit the Mayor's authority to assign any city owned paid parking lots or on-street paid parking spaces within the Entertainment District or

the closure of city streets for the use of a permitted special event to not more than two (2) days per year without express approval of the City Council. *This ordinance was left on the first reading at the February 16, 2016 City Council meeting. At the March 1, 2016 City Council meeting, this ordinance was left on the second reading and tabled to April 5, 2016. The ordinance was left on the second reading at the April 5, 2016 City Council meeting and tabled until the May 17, 2016 City Council meeting.*

City Attorney Kit Williams: The Ordinance Review Committee met and considered this a couple different times. We have some suggested changes, but they aren't prepared properly in the ordinance form yet. There is a request from the Ordinance Review Committee to postpone decision on this until June 21, 2016.

Alderman Tennant: We want to make sure we have it in the right form.

Alderman Tennant moved to table the ordinance to the June 21, 2016 City Council meeting. Alderman Long seconded the motion. Upon roll call the motion to table passed 7-0. Alderman Schoppmeyer was absent.

This ordinance was tabled to the June 21, 2016 City Council meeting.

VAC 16-5354 (1137 W. MLK Blvd./Arena Village): An ordinance to approve VAC 16-5354 submitted by Steve Fowler for property located at 1137 West Martin Luther King Boulevard to vacate portions of a utility easement. *This ordinance was left on the first reading at the May 3, 2016 City Council meeting.*

Alderman Long moved to suspend the rules and go to the second reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. Staff and the Planning Commission recommend approval.

Alderman Kinion: I requested further information from Planning on this because I was concerned about the location. My concerns about where it was located and how it would impact the velocity of the runoff in this area, were answered. I would be happy to support this.

Alderman Kinion moved to suspend the rules and go to the third and final reading. Alderman Marsh seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Schoppmeyer was absent.

Ordinance 5872 as recorded in the office of the City Clerk

Amend Chapter 116: Door to Door Solicitation: An ordinance to Amend Chapter 116: Door to Door Solicitation of the Fayetteville Code by repealing §116.01, enacting a replacement §116.01 and by amending the definition of solicitor in §116.02 (a) (4). *This ordinance was left on the first reading at the May 3, 2016 City Council Meeting.*

Alderman Long moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: This was amended at the last meeting. I think it is in good form and I have heard no comments in my office about this.

Alderman Tennant moved to suspend the rules and go to the third and final reading. Alderman Long seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Schoppmeyer was absent.

Ordinance 5873 as recorded in the office of the City Clerk

New Business:

Falling Waters Appeal: An ordinance to rezone that property described in Rezoning Petition RZN 16-5385 for approximately 35.31 acres on Dead Horse Mountain Road from R-A, Residential Agriculture to RSF-2, Residential Single Family, 2 units per acre subject to a Bill of Assurance limiting development to 51 homes.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: Subsequent to drafting this ordinance, the Bill of Assurance was submitted that not only limited the number of homes to 51, but also restricting all of the construction traffic to Dead Horse Mountain Road. That's what the Bill of Assurance now says and this is what you will be considering. I will amend the title and the ordinance to say that.

Mayor Jordan: The traffic won't be going through the neighborhood?

City Attorney Kit Williams: The construction traffic will be limited to Dead Horse Mountain Road. When the other road is completed, then there will be traffic in both directions from the neighborhood to the north of this and possibly to Cherry Hills Drive. There won't be any traffic until there is a later development and that road is extended.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. The Planning Commission voted 7-2 against the rezoning. Staff does not recommend approval.

Robert Rhoads, Attorney Representing Buffington Homes: The biggest difference between this project from what you saw as a PZD and what you saw a year ago is the Bill of Assurance item specifically indicating that all of the construction traffic will go out Dead Horse Mountain Road. The reason this is significant is because most of the people that spoke against this project a year ago, it was primarily due to the construction traffic going through their neighborhoods. The developers at the time couldn't just snap their fingers and make that change on that particular project the way it was configured. It was a development in a different part of this overall property that they own. Developers heard what the people and City Council members had to say about traffic not going through the subdivision. This is a large change. I hope it will go a long way in receiving your support for this project.

The Buffington people have met with neighbors, sent out a letter, and they are willing to meet with whoever wants to meet with them to discuss plans for the project. If the Buffington people develop this with what they currently have, it will be 17 versus the 51. They are still going to do the same infrastructure. The argument was made as to why we should allow this because the city will have to maintain the infrastructure. You are still going to have to maintain the infrastructure, but instead of having 51 homes that provides a tax basis to go towards the infrastructure, you are only going to have 17.

Adjacent property is currently zoned and built out with twice as much density in some cases as what we are asking for. This property is compatible with what you have done before and what you are continuing to do on Huntsville Road. We do not consider this to be sprawl. There is a spreadsheet that is signed by one of the owners and it lays out the dollar amounts. I'm not talking about the price of the property. The purchase price of the property is not included in that spreadsheet. That is the amount of money that was used by the developers once they got their PZD granted at 2 per acre versus now at 1.4 per acre. As a result of that they purchased the property, put up substantial money, and a lot of other cost. That went into their desire to develop this piece of property through the PZD. They didn't develop it because of the recession. It was then changed from the PZD in a broad scale rezoning of all expired PZD's by your city staff and City Council to the R-A. I ask you to consider that they have made substantial steps while they had the right to develop it with the 2 homes per acre. When a landowner takes the steps of over a million dollars, it would be considered by the courts of Arkansas as substantial steps, then they still have rights greater than the R-A in this particular case. We are asking you to let us develop this as it currently sits before you with the Bill of Assurance.

Alderman Tennant: The construction traffic was my main hang up before. What communication will the developer be giving to the different contractors coming in and out stating they must use Dead Horse Mountain Road?

Robert Rhoads: No contractors will go through the neighborhood. They will have front end meetings with all the people involved. They can do emails with all the contractors involved. It is very normal to have construction entrance and exit signs put up. If there any other suggestions, they will consider those as well.

Alderman Tennant: I talked to some contractors. They said if they are told what they are supposed to do, they adhere to that.

Clay Carlton, Owner gave a brief presentation of the overall layout of the concept plats. He stated it was his intent to maintain a green tree built along the backside of the lots. He believes by not disturbing the trees it will help with runoff and erosion. He believes they are compatible with the surrounding neighborhoods. He stated that they like to build to the market.

Alderman La Tour: Thank you for being sensitive to market needs and building for people who like infill and for people who like larger lots. You are meeting the desires of the people.

Mayor Jordan: You have spent a million dollars?

Robert Rhoads: Actually, more than that.

Clay Carlton: We will never get out of this project ahead. It has been a long eleven years.

Mayor Jordan: I'm trying to be sure that it is on record that you have spent a million dollars.

Clay Carlton: We have spent a lot more than that.

Alderman Gray: I believe the spreadsheet said \$3.5 million. Is that correct?

Clay Carlton stated that was correct. He spoke about all the cost involved to date.

Alderman Gray: What year did you buy the property?

Clay Carlton: In 2006.

Alderman Gray: This \$3.5 million is what you all have spent during the last 10 years?

Clay Carlton: Plus the cost of the land.

Alderman Gray: What was the cost of the land?

Clay Carlton: \$3.4 million.

Alderman Gray: \$3.4 million in addition to the \$3.5 million is what you all have invested?

Clay Carlton: Yes and a little more.

Alderman Gray: This is the reason why I hope that our City Council will consider allowing these developers to move forward with this project.

City Attorney Kit Williams: I told the Planning Commission that the Unified Development Code must be construed in favor of the property owner and not in the favor of the city. I have said that for many years. In my research I noticed in one of the cases an issue that I had not been aware of. It is called the, Substantial Use Test. It has to do with a landowner getting a vested interest in the ability to develop their property. The case was out of West Helena and had to do with the building of a mobile home park. The Supreme Court has said that when someone makes a substantial investment into a project and it is in good faith, because it was legal when that individual was starting to do that, then they get a vested interest in being able to finish at least a portion of the project. This is very similar at what we are looking at here. I didn't realize it was that many millions that had been invested. It was expensive for them to bring the water underneath the White River. That was done in order to serve the PZD which had been approved. The ordinance allowed them to do the PZD and they were trying to do the infrastructure that was needed for the PZD. Then we went into the great recession and nobody was buying real estate. They couldn't go forward, but had to keep paying interest cost every year.

This is a decision for the City Council to decide if they made a substantial investment to entitle them to at least some development of their property. When you look at the possible development of this property, R-A is very unlikely to be economically possible because you have to build a long street for very few lots. It is the same infrastructure for 51 lots. The City Council needs to consider if they made a substantial investment, was it done in good faith, and was it done during the time they had the right to do it. It was done in good faith. They do have some vested interest in this case. This particular proposal seems fairly reasonable.

Alderman Marsh: How long before our PZD's expire?

Jeremy Pate: Under our previous Planned Zoning District ordinance, the applicant set their own expiration date. The Council reviews the proposal and either approved or rejected it.

Alderman Marsh: Do we know what the original term of this PZD was?

Jeremy Pate: It was several years. It was to be built out over phases. I don't recall the exact dates.

Alderman Marsh: We allowed the developer to set their own timeline for development and they were not able to fulfill their commitment within that time period based on changes in the market. It seems like it was the market preventing this development and not the city.

City Attorney Kit Williams: You are absolutely correct. It is the market that prevented the development. The problem we run into and it is a very unusual situation that I haven't seen before. We changed the PZD ordinance. The PZD was a zoning decision that didn't last forever. It's

questionable in my mind why we ever did that. Every other zoning decision is permanent until it is rezoned. These expired and then a developer couldn't do anything. The reason there was a time limit is because at that point there was a combination of not only zoning, but development. Developments usually do have expiration times. If this had been a zoning decision that allowed them to build their development, they would have had to come back later and do another large scale development or preliminary plat, but they would still have the zoning. It's only because for that period of time we combined the two which we later discovered was not the right way to do it. We have changed that now and PZD's will be permanent, but they don't provide any development rights.

Alderman Marsh: It seems like the applicant did have the opportunity to have a zoning change instead of filing for the initial PZD. They filed for the PZD and set their own terms as to when they could complete the development. They weren't able to meet those terms due to changes in the market. The city is just sticking with their agreement.

Alderman Long: On the spreadsheet was a city required water pressure study that cost some money. Was that a requirement by the city?

Jeremy Pate: I don't know the answer without doing some research.

City Attorney Kit Williams: I imagine that was tied to the reason that they eventually had to go and drill underneath the White River in order to get the water over there. There were several developers that got together and paid to get the water line over.

Alderman La Tour: History gives us a good perspective of what is going on, but I don't think history should govern our decision tonight. We have developers with close to \$8 million invested. It is unconscionable to make them maintain that investment and not allow them to go forward with their investment. I believe what they are proposing is a very modest development. I'm strongly in support of it.

Jay Ray, 2050 South Cherry Hills Drive stated Dead Horse Mountain Road floods about five to six times a year. He voiced his concerns about flooding in the area. He spoke in opposition of the ordinance.

Jim Lilly, 1863 South Cherry Hills Drive stated his concerns about flooding on Dead Horse Mountain Road. He voiced his concerns about the construction traffic and safety. He spoke in opposition of the ordinance.

Kasey Weathers, 2080 South Pumpkin Ridge Drive stated he opposed it the first time, but agrees that the subdivision as platted the second time around is the better of the two evils. He voiced his concerns about flooding and traffic.

Helen Carlton, spouse to Clay Carlton. She stated when the real estate market crashed in 2008 it put a stop to all the hard work and dreams of the community. She stated they tread water to stay afloat and do the right thing, instead of leaving a graveyard of half developed land like so many

other developers did back then. She stated they worked hard and did the right thing to continue to pay the bank. She asked for City Council's support of the project.

Larry Altman, 2059 South Cherry Hills Drive stated he would like to know why the developer had not built any homes since others had been built in the last ten years. He believes City Plan 2030 provides a great vision for the future of Fayetteville and wants city leaders to follow the plan.

Karen Mathes, 3848 Spyglass Hill Drive stated her concerns about the West Fork of the White River being an impaired waterway. She believes that the development will have an impact on the river.

Jeane Stutzman, 3970 Spyglass Hill Drive stated she is not opposed to the owners developing as it is currently zoned, but doesn't believe the additional houses are in the best interest of the neighborhood. She voiced her concerns about traffic.

Wanda Altman, 2059 South Cherry Hills Drive stated she doesn't believe the case in West Helena is the same as what is occurring with this development. She stated other homes have been built for years in that area. She stated the land should be protected under the City Plan 2030.

Diane Watters, 2032 Pumpkin Ridge Drive stated there had been a lot of discussion about money invested, but she wanted to know what price is put on environment, beauty, and animals. She spoke in opposition of the ordinance.

Pierce Osborne, 540 Crest Drive stated that no one wants a project built beside them. He doesn't believe it is right that the city approved the project at one point and have now changed the rules. He spoke in favor of the ordinance.

Alderman Gray: I agree with Mr. Osborne. We have changed the rules in the middle of the game. I hope we think really hard about not allowing these developers to develop. We know that hill is going to be developed and this plan that they have brought forward is a reasonable plan. Maybe you prefer to have one house per 2 acres. If it is not financially feasible, we can't ask developers to do that. I hope you will think very hard about what we are saying to developers who want to develop in Fayetteville. We can't ask these men who have this money invested to let that beautiful hill sit there so we can all enjoy it. The city bought Kessler Mountain, but we can't buy every mountain around town.

Alderman Marsh: I can't support this plan. The developers are making a good faith effort to try to do better in order to recoup their investment. As a person who did lose a lot in the recession, I have a lot of empathy for them. However, we have a commitment to our city with the 2030 City Plan. This development is very contrary to the principles that are in that plan. Our Planning Commission and staff have both recommended denial of this request and they did so with very good reason. We have not resolved the flooding concerns. This sets a dangerous precedent to future development in this area.

Alderman Petty: My main concern is the cost of the infrastructure and I appreciate Mr. Rhoads remarks about mitigating some of those by building more homes. I am sensitive to staff's

comments that they made to the Planning Commission that this is on the edge of town and the first step to stopping development on the edge and making things more compact is to stop letting more development happen on the edge. I think there are meaningful improvements that have been made since last time. It does give me pause, even though I would normally default without thinking about it too hard voting against this. I am concerned about the water quality issues. It would make it easier for me to vote yes if there was a commitment in writing to low impact development water quality treatment.

Mayor Jordan: That is a good point. The City Attorney wrote a memo that said, “The very unusual circumstance of the Falling Waters PZD approval coupled with the costs to bore under the White River to bring water/sewer to the development could trigger vested interests in development rights for the property. Refusing to allow any economically feasible development on any of the Falling Waters’ forested hillside property might be found to be an unconstitutional deprivation of preexisting use rights.” Those are good points you need to remember as well.

Alderman Gray moved to suspend the rules and go to the second reading. Alderman La Tour seconded the motion. Upon roll call the motion failed 5-2. Alderman La Tour, Long, Gray, Marsh and Tennant voting yes. Alderman Kinion and Petty voting no. Alderman Schoppmeyer was absent.

This ordinance was left on the First Reading

U.S. Geological Survey Joint Funding Agreement: An ordinance to waive the requirements of formal competitive bidding and authorize a Joint Funding Agreement with the U.S. Geological Survey for stream gauge operation and maintenance and water quality sampling and monitoring at various locations in the City of Fayetteville for 2016 with the amount paid by the city not to exceed \$61,721.00.

City Attorney Kit Williams read the ordinance.

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

Alderman Kinion: This has gone before the Water & Sewer Committee. We support this and bring it forward. We are talking about water quality. We are trying to establish good base lines as we move forward with our arguments in front of the ADEQ regarding the sediment and pollution load and the activity that may establish standards as we move forward. It’s very important we get this data that we can use to justify our arguments.

City Attorney Kit Williams stated he wanted to amend the wording of the ordinance due to newspaper publication cost. He proposed the ordinance to say, “attached to the Engineering Divisions agenda item.”

A discussion followed about the Attorney General’s opinion of ordinances and exhibits being published to the newspaper.

Alderman Kinion moved to amend the ordinance to say, attached to the Engineering Divisions agenda item. Alderman Marsh seconded the motion. Upon roll call the amendment passed 7-0. Alderman Schoppmeyer was absent.

Alderman Petty: Mud Creek is one of the most polluted creeks in the state. It is because there is so much pavement around it. In the first hour during a rain event, the water entering Mud Creek is more polluted than sewage. We are going to have to take active steps to repair Mud Creek. I hope we come to some consensus in future budget discussions about this and pursue some extra grant opportunities.

Alderman Kinion moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

Alderman Marsh moved to suspend the rules and go to the third and final reading. Alderman Kinion seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Schoppmeyer was absent.

Ordinance 5874 as recorded in the office of the City Clerk

Amend §92.31 Dangerous Animals and Enact §92.07 Inhumane Traps Prohibited: An ordinance to amend §92.31 **Dangerous Animals** to provide the Animal Services Division with additional options to declare an animal dangerous and allow the rehoming of a dangerous animal with the approval of the Animal Services Superintendent, and to enact a new §92.07 **Inhumane Traps Prohibited**.

City Attorney Kit Williams read the ordinance.

Justine Lentz, Animal Services Superintendent gave a brief description of the ordinance.

Alderman Kinion: This has been to the Animal Services Advisory Committee and they wanted to bring it forward to City Council.

Alderman La Tour: When talking about wild animals and not using inhumane treatment, would that include poisonous snakes?

Justine Lentz: If you thought your life was in danger, I don't think anybody is going to write you a ticket for killing a snake. There are professional wildlife trappers that make their business in Northwest Arkansas that we can refer to people.

Alderman Kinion moved to suspend the rules and go to the second reading. Alderman Long seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

Alderman Long moved to suspend the rules and go to the third and final reading. Alderman Tennant seconded the motion. Upon roll call the motion passed 7-0. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Schoppmeyer was absent.

Ordinance 5875 as recorded in the office of the City Clerk

Special Election for Fayetteville Public Library: An ordinance calling and setting a date for a special election on the questions of (1) the raising by one and one-half (1.5) mills the current one (1.0) mill city tax on real and personal property supporting the maintenance and operation of Fayetteville Public Library, and (2) the imposition of a one and two-tenths (1.2) mill city tax on real and personal property to be pledged to an issue or issues of bonds not to exceed \$26,500,000 in principal amount to finance capital improvements to Fayetteville Public Library; prescribing other matters pertaining thereto; and declaring an emergency.

City Attorney Kit Williams read the ordinance.

Paul Becker, Chief Financial Officer gave a brief description of the ordinance.

David Johnson, Executive Director for the Fayetteville Public Library: In 2015 we averaged 184 people an hour coming to the library. They are utilizing a full range of resources. We are no longer just a traditional library in the consumer mode where you come and check out materials. When you look at future population growth, our library is central to our quality of life. In order to continue to provide that quality to people, we need to grow in anticipation of the people that will be coming.

Alderman La Tour: How do we arrive at the August 9, 2016 date?

David Johnson explained that in order to have the money for 2017, the August 9, 2016 date would be needed for the special election.

Alderman La Tour: If we had the election on November 8, 2016 it would be too late?

David Johnson: Yes. The money would not be available for the 2017 budget year.

Alderman La Tour: Could you amend your budgeting year and get it in there?

David Johnson: We have already cut \$1.5 million out of our budget over the past four years. We are running as lean as we can. We need those funds as quickly as we can have them.

Alderman La Tour: You cut things that were non-essential services for the public?

David Johnson: Yes. The hours of operation we held sacred. Over two years we have taken about \$70,000 out of our book budget, we have taken money out of our facilities and maintenance, and taken funds out of our programming. Our staff went without a raise when city employees got a raise in 2015. We have done everything we can to cut and generate revenue wherever possible.

Alderman La Tour: I applaud your efforts. The Court of Appeals unanimously affirmed the city's position in the lawsuit. Have any of the parties appealed to the State Supreme Court?

City Attorney Kit Williams: The Stone heirs have lost all the way through this. We have had seven judges unanimously say that what the city and Washington Regional did was correct and the proper result. They asked for review to the Arkansas Supreme Court. We replied to that, as has Washington Regional. We do not believe there is any merit in their appeal. The Arkansas Supreme Court has yet to make a final decision on that review.

Alderman La Tour: The millage that we are asking the voters to increase to finance the bond is to build buildings on land that we aren't sure we can acquire.

David Johnson: We have an option for expansion on the Blair footprint. Our concern is disruption of operations. We have a plan if the city hospital property doesn't come our way. We still can expand and accommodate our needs.

Alderman La Tour: My main problem with this proposal on August 9, 2016 is that I view it as voter suppression. Special elections have low voter turnout. If we had this at the general election we would have a much higher turnout. I would like to see this moved to a general election date. I don't like tax increases.

City Attorney Kit Williams: There might be Council members that don't like this date. This election was not called by the Library Board of Trustees. It was called by the citizens of Fayetteville pursuant to Amendment 30. The citizens of Fayetteville are the ultimate deciders and they requested August 9, 2016 to be the special election. It is the duty of the City Council once the City Clerk has said that the petitions are sufficient and accurate to call the special election as requested by citizens. It is beyond our power to question the citizens who have lawfully petitioned for this special election for the millage increase on August 9, 2016.

Alderman Long: If the library had to build on the existing footprint, would the budget look the same?

David Johnson: Yes. The \$26 million that we are asking for, we will make all considerations to get it done within that budget. Anything in excess would be raised privately. We are looking at raising \$23 million from private donations.

Alderman Long: Do we have to do an emergency clause?

City Attorney Kit Williams explained in order to make the August 9, 2016 election date, the ordinance should be in full force so that the County Clerk and Election Commission can begin the process of printing the ballots.

Alderman Long: Are we compelled to administratively pass an emergency clause?

City Attorney Kit Williams: The problem with not approving it is that you would not be following the dictates of the petitioners who sought a special election of August 9, 2016. If the County Clerk and Election Commission weren't able to get the ballots printed in time, then we would be frustrating the petitioners. This is why I agreed to do an emergency clause. It would be improper not to do that so we can get the election held as requested.

Alderman Long: We have to vote yes to an emergency clause?

City Attorney Kit Williams: My opinion is that if you do not vote in favor of the emergency clause to make this effective immediately, you could be found to be frustrating the expressed desires of the petitioners who petitioned for the election.

Gordon Wilbourn, Kutak Rock: It's not just for the convenience of the Election Commission and the County Clerk. It is mandated state law that you have to present them with the ordinance at least 60 days before the election. Without the emergency clause, the August 6, 2016 date doesn't work, which is written into the ordinance.

Alderman Long: Thank you. I understand the emergency clause and the bond process. I wanted to be more certain for my constituents.

Alderman La Tour: Maybe we should pass a tax and maybe the citizens want to vote for a tax. I would rather see it done on a general election date where we wouldn't incur the extra cost and have much more participation instead of deferring to a petition signed by 100 people. I would like to examine the petition. I presume I will find a lot of library friends on that petition. I doubt that is a cross section of our city.

David Johnson: In terms of cost to the city of holding the election, the library has anonymous donors paying for the election. We will not be asking the city to pay for this election.

Alderman La Tour: Could we have the names of those anonymous donors?

City Attorney Kit Williams: The City Clerk has already checked all the signatures and she would be happy to give you copies of the petitions. It is the people of Arkansas that passed Amendment

30 that empowered 100 tax paying electors of the city to make that petition for the special election. They did not give the power to the City Council to change the will of the 100 tax paying electors.

Alderman La Tour: I agree we can't change their date and what they have proposed, but we can vote it up or down. We the City Council for the city budget raised our taxes in 2015. Looks like these 100 people are fixing to raise our taxes in 2016. We have another group of folks probably coming back later this year or next year wanting to raise taxes again. I'm concerned we are balancing these budgets on the backs of our working people.

City Attorney Kit Williams: We are required to do this by the constitution. You must do your duty to enact the ordinance that properly calls the election as requested by the petition. We all took an oath to follow the constitution of the State of Arkansas and obey its laws.

Pat Besom, 15 North West Avenue doesn't believe there should be a special election. She stated that with the election being in the summer, it will bring a smaller percentage of the population expressing their views.

A discussion followed about anonymous donors.

Kyle Smith, 2801 West Dove stated that Fayetteville has had two record setting turnout special elections in the last two years. He doesn't believe there should be concern about the City of Fayetteville's ability to stand up for itself on the issue.

Alderman Marsh moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion. Upon roll call the motion passed 6-1. Alderman Long, Gray, Marsh, Kinion, Petty and Tennant voting yes. Alderman La Tour voting no. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: To prevent the filing of numerous petitions by 100 citizens seeking all kinds of millage, you better be a library, or fire and police pension fund because those are the ones that got the constitutional amendments passed.

Alderman La Tour expressed his dissatisfaction with all three readings being read at one City Council meeting.

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 6-1. Alderman Long, Gray, Marsh, Kinion, Petty and Tennant voting yes. Alderman La Tour voting no. Alderman Schoppmeyer was absent.

City Attorney Kit Williams read the ordinance.

Alderman Marsh: We absolutely have to support our library. It is one of the most important institutions in our city. It is an impressive facility and ranks as one of the top in the nation. We

should hang on to that ranking for economic development and recruitment purposes. The library is there to serve everyone.

Alderman La Tour: The library is important. I'm not saying I don't want a library. Having a special election in August is not a meaningful way to let citizens participate.

Alderman Petty stated that in Fayetteville there has been a historically good turnout for special elections. He stated he would uphold the oath he took when he assumed the office of Alderman.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-1. Alderman Long, Gray, Marsh, Kinion, Petty and Tennant voting yes. Alderman La Tour voting no. Alderman Schoppmeyer was absent.

Alderman Long: Can we table this? I'm not prepared to vote for the emergency clause tonight. Looking at the numbers it may not pass.

City Attorney Kit Williams: The emergency clause requires six alderman votes. The Mayor is not allowed to vote for the emergency clause. I believe it would be a dangerous thing to do with the need to have the ordinance to the County Clerk and Election Commission as quickly as possible. I don't know if there would be any possible bond ramifications if the emergency clause was not passed. I've never seen an emergency clause which is part of the ordinance, not at least voted on, on the night it was read and approved.

Gordon Wilbourn: I have been to a lot of City Council meetings and I have never seen it tabled. One of the provisions directs the City Clerk to make it available to the Election Commission. If the ordinance is not effective, I don't know if the City Clerk can do that. If that's not done by June 7, 2016 then you can't make the August election date.

City Attorney Kit Williams: Our next meeting is June 7, 2016. It would make it hard for the City Clerk to get the ordinance to the County Clerk and the Election Commission after they have already closed for the day. When dealing with bonds it is better to have a clean operation and not try to do something that has never been done before. It could risk an attack with \$26 million at stake. That would be attractive to attorneys that like to sue. All of the major losses the city has suffered in the 1980's that we paid off in the 1990's, which included about \$7 to \$10 million in attorney fees, were on bond issues. My advice is that the emergency clause should be enacted tonight in order to avoid that kind of issue.

Alderman Long: I have had so many people contact me and ask why this is an emergency. I'm still getting feedback from them and that is why I am not prepared to vote for an emergency clause tonight.

Alderman La Tour: I asked Maylon Rice in our Agenda Session as to what exactly was the emergency. His answer to me was that we have to keep up with other libraries. I think of an emergency as someone going out of business or dying. To keep up with other libraries doesn't sound like an emergency to me. I want this to be on the general election.

Alderman Petty: I want to make an appeal to Alderman Long. We are going to have several Alderman absent at the next meeting, which will make passing an emergency clause at that meeting impossible. We all get questions from our constituents that can be challenging to answer. In this case we have an answer that is iron clad. The Arkansas Constitution binds us to put this to a vote. We are confusing the issue of the emergency clause with the issue that needs to be decided in August.

Alderman Long: I haven't gotten a real yes or no if we are required to vote for an emergency clause. I want this to go to the election.

City Attorney Kit Williams gave a brief description of Amendment 30 and stated that an emergency clause should be passed.

Alderman La Tour stated a bond issue can be passed anytime. He doesn't believe the ordinance is an emergency.

Mayor Jordan: Kit, I have the authority to call a special meeting?

City Attorney Kit Williams: Yes. If we have a special meeting it still requires the emergency clause to be passed or you are not complying with your duties under the constitution to refer this to the vote of the people.

Alderman Long: Kit answered the question I was interested in and I am prepared to vote.

Alderman Marsh moved to approve an Emergency Clause. Alderman Gray seconded the motion. Upon roll call the motion passed 6-1. Alderman Long, Gray, Marsh, Kinion, Petty and Tennant voting yes. Alderman La Tour voting no. Alderman Schoppmeyer was absent.

Ordinance 5876 as recorded in the office of the City Clerk

Economic Development Strategic Plan: A resolution to approve and adopt the Fayetteville First Economic Development Strategic Plan.

Jeremy Pate, Director of Development Services gave a brief description of the resolution.

Don Marr, Chief of Staff: Thank you to Dale and his team for the work they have done and the thousands of citizens that participated in the process. This is a five year plan. Dale will highlight items that we have significant amount of strategic priorities and action items to accomplish over that time period. We are extremely pleased with the plan they put together.

Dale Boyette, Boyette Strategic Advisors thanked City Council for their participation in the plan. He believes it is a very realistic plan that can be implemented over the next five years. He presented a power point presentation on the Fayetteville First Economic Development Strategic Plan.

Alderman Gray: Could you please discuss the tax climate.

Dale Boyette: Arkansas is not a low tax state anymore. Arkansas is ranked 37th out of 50 states as the worst business tax climate. It surfaces as an issue across the board. The Tax Foundation report is what business and industry look at. It is an issue.

Alderman Petty: If we think of our Economic Development approach as being a portfolio of strategies, the traditional way of doing things was to try and recruit big companies. If we are trying to arrange a diverse portfolio of strategies with recruiting or developing our own, how do we balance that and choose where we allocate our resources?

Dale Boyette: This is a five year plan and the Fayetteville First plan hits on all of those things. Certainly, not ignoring manufacturing and your legacy manufactures, but having them as a focus. It addresses the other sectors that are important to Fayetteville in moving forward. There are certain types of retail that Fayetteville needs to compete for and needs to attract. It is important to the people who live here and your overall economic development success. There are a lot of things already going on in the area of entrepreneurship and innovation in the private sector. It has to be supported and be a focus. As far as knowing where to put the resources, there will be an implementation plan associated with this document. There will have to be resources assigned to it. There will have to be further discussion among different parties to determine what the resources focus should be. As far as knowing exactly what percentage of them should be spent when, that is going to fluctuate over the next five years. What you do in 2016 may need to be adjusted in 2020. You have to look at this short term, but think about five years rather than the next six months.

Jeff Amerine, Startup Junkie Consulting: This area is great and we attract the best and brightest from many different countries and states. If we give them a compelling reason to stay and create new enterprise and to build small business, we will go from being the third best place in the country to have small business and startup to being number one. When trying to prioritize resources and what to put money on, supporting our small businesses, our startups, our innovators and talent is where to put the emphasis. Two out of every three new jobs comes from small business and startups. I encourage you to take this great work that the Boyette group did and keep Fayetteville moving forward.

Dale Boyette made a correction from an earlier statement. He stated Arkansas is 38th worst on the Tax Foundation report, not 37th.

Alderman Gray: We are listed as number one on the best affordable city to live in. Talk to me about that.

Dale Boyette: I need to look at the criteria for what determines the ranking. There all kinds of empirical data that are looked at for each of those surveys. I have not looked at that one to understand the data. It really doesn't make sense when you talk about the business cost and the tax cost and at the same it is the most affordable. The real issue is that the Tax Foundation ranks Arkansas 38th and that is something companies looks at.

Alderman Marsh: Please talk more about the retail sector. We need more clarification on the differentiation between the big box national retailers as opposed to more of an experiential retail. Consumer habits are changing. People are going online to do a lot of their shopping. What they

are looking for in a shopping experience is the pedestrian oriented experience of certain types of shopping centers.

Dale Boyette: Those types of retail businesses require places to establish their business. There are places in Fayetteville to establish those types of businesses. When you look at Fayetteville as an outsider and you compare on the benchmarking side, you look at what you think might be missing. You then do a retail gap analysis and you see that retail specialty shops in some areas are missing. You would think there's an opportunity for a real significant art supply store in the art district off of Martin Luther King. An art supply store would create opportunity for artist to walk to that store, keep taxes here, create jobs, and provide a service to the artist entrepreneur. There is some opportunity on those types of businesses that aren't big box. There is opportunity for neighborhood type stores that are national chains. You have to look at redevelopment opportunities for the retail space for those types of boutique companies.

Don Marr, Chief of Staff stated that decisions need to be made off of data and not from emotions. He spoke about the average income in the area. He spoke about continuing to support the legacy businesses and help them grow. He stated to continually improve the perception of being business friendly is needed. He believes the ability to train and develop people is important.

Mayor Jordan thanked everyone for their work on the Economic Development Strategic Plan. He spoke about Fayetteville's rankings as fastest growing city in Arkansas, third best place in the United States to live in, first in most affordable city to live in, third best in the United States for startup businesses outside of the Silicon Valley, and best in Arkansas for environmental protection. He stated that the city is averaging two new businesses a day. He has a great deal of pride in the City of Fayetteville and considers all blessed to live here.

Alderman Petty moved to approve the resolution. Alderman Marsh seconded the motion. Upon roll call the resolution passed 7-0. Alderman Schoppmeyer was absent.

Resolution 108-16 as recorded in the office of the City Clerk

Announcements:

Don Marr, Chief of Staff went over a list of road construction projects in the City of Fayetteville.

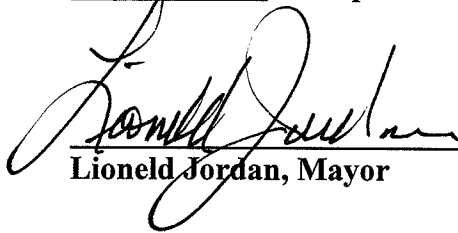
May 20, 2016 is National Bike to Work Day.

Alderman Long: There will not be a Ward 4 meeting this month due to it falling on a holiday. June will be our next meeting.

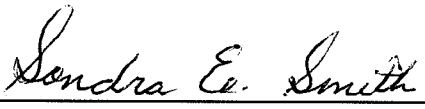
City Council Agenda Session Presentations: None

City Council Tour: None

Adjournment: 9:20 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk Treasurer