Alderman Adella Gray
Ward 1 Position 1

Alderman Sarah Marsh
Ward 1 Position 2

Alderman Mark Kinion
Ward 2 Position 1

Alderman Matthew Petty
Ward 2 Position 2

Alderman Justin Tennant
Ward 3 Position 1

Alderman Martin W. Schoppmeyer, Jr.
Ward 3 Position 2

Alderman John La Tour
Ward 4 Position 1

Alderman Alan T. Long
Ward 4 Position 2

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

City of Fayetteville Arkansas
City Council Meeting
September 6, 2016

A meeting of the Fayetteville City Council was held on September 6, 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, 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 Mark Kinion was absent.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports, and Discussion Items:

2016 2nd Quarter Financial Report - Paul Becker

Paul Becker, Chief Financial Officer gave a brief summary of the 2nd Quarter Financial Report for 2016.

Consent:

Approval of the August 16, 2016 City Council Meeting Minutes.

Approved

Fischer Snacks, LLC: A resolution to approve an amendment to the contract with Fischer Snacks, LLC to provide for operation of the soccer concession stand at Kessler Mountain Regional Park.

Resolution 154-16 as recorded in the office of the City Clerk

Grubbs, Hoskyn, Barton & Wyatt, Inc. Amendment No. 1: A resolution to approve Amendment No. 1 to the contract with Grubbs, Hoskyn, Barton & Wyatt, Inc. for additional construction materials testing related to the addition of a parking lot at Kessler Mountain Regional Park in an amount not to exceed $2,000.00.

Resolution 155-16 as recorded in the office of the City Clerk

RFP 16-02 Johanson Consulting, Inc. d/b/a Johanson Group: A resolution to award RFP 16-02 and approve a one (1) year contract with automatic renewals for four (4) additional one (1) year terms with Johanson Consulting, Inc. d/b/a Johanson Group for a classification, compensation and benefits study in the amount of $45,725.00 for the first year, to approve an annual project contingency of $4,500.00 for ongoing market reviews and consulting services each year the contract is in effect, and to approve a one (1) year software license and support agreement with automatic renewals for four (4) additional one (1) year terms with DB Squared, LLC for DBCompensation software in the amount of $1,200.00 per month for the first three years and $250.00 per month for the last two years.

Resolution 156-16 as recorded in the office of the City Clerk

RFQ No. 16-08 - First Security Bank Professional Services Contract: A resolution to award RFQ No. 16-08 and approve a five (5) year professional services contract with First Security Bank for the provision of investment management services.

Resolution 157-16 as recorded in the office of the City Clerk

Bid No. 16-36 Donelson Construction Co., LLC: A resolution to award Bid No. 16-36 and approve a contract with Donelson Construction Co., LLC in the amount of $217,855.00 for asphalt micro-surfacing of city streets at a cost of $2.33 per square yard, and to approve a project contingency in the amount of $21,786.00.

Resolution 158-16 as recorded in the office of the City Clerk

Bid No. 16-47 Countryside Farm and Lawn Equipment Company, Inc.: A resolution to award Bid No. 16-47 and approve the purchase of a Meyer V Force Spreader from Countryside Farm and Lawn Equipment Company, Inc. in the amount of $29,395.00 for use at the Biosolids Management Site.

Resolution 159-16 as recorded in the office of the City Clerk

2016 Justice Assistance Grant Local Solicitation Award: A resolution authorize acceptance of a 2016 Justice Assistance Grant Local Solicitation Award in the amount of $81,531.00, of which

$34,748.00 will be used by the Fayetteville Police Department, with $31,014.00 to be disbursed to the City of Springdale and $15,769.00 to Washington County, and to approve a budget adjustment.

Resolution 160-16 as recorded in the office of the City Clerk

Flintlock Development, LLC Cost Share Agreement: A resolution to approve a 50/50 cost share agreement with Flintlock Development, LLC for construction of a sewer main along a portion of South Street between South College Avenue and East Huntsville Road at a total cost of $28,238.48.

Resolution 161-16 as recorded in the office of the City Clerk

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

Public Hearing:

Raze and Removal - Holdings, LLC, 1503 North Garland Avenue: A resolution to order the razing and removal of a dilapidated and unsafe structure on property owned by C Holdings, LLC located at 1503 North Garland Avenue in the City of Fayetteville, Arkansas, and to approve a budget adjustment.

Mayor Jordan opened the Public Hearing.

David Carver, Code Compliance Administrator gave a brief description of the resolution.

Mayor Jordan requested to know if the owner of the property was in attendance. No one came forward.

Matthew Cabe, Building Official: David and I went to this property last summer when we did the initial raze and removal. We went out last week and there was substantial deterioration from our visit earlier this summer. The ceiling is falling in, which means the roof is compromised. Water infiltration and vandalism are present. The structure is beyond reasonable renovation rehabilitation.

City Attorney Kit Williams: In your opinion this is an unsafe structure?

Matthew Cabe: Absolutely. It is not a place for people to inhabit.

There was no public comment.

Mayor Jordan closed the Public Hearing.

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

Resolution 162-16 as recorded in the office of the City Clerk

Unfinished Business:

RZN 16-5442 (2514 W. Lori Rd./Razorback Golf Course): An ordinance to rezone that property described in rezoning petition RZN 16-5442 for approximately 99.10 acres located at 2514 West Lori road from R-A, Residential Agricultural; RSF-1, Residential Single Family, one unit per acre and RSF-4, Residential Single Family, 4 units per acre to NC, Neighborhood Conservation; R-A, Residential Agricultural and NS, Neighborhood Services. *At the August 2, 2016 City Council meeting this ordinance was tabled indefinitely. At the July 19, 2016 City Council meeting this ordinance was left on the first reading.*

Alderman La Tour: A few weeks ago we tabled indefinitely a rezoning for the Razorback Golf Course by Mr. Ron Caviness. He has come forward now with a Bill of Assurance. I would like for us to consider it again.

Alderman La Tour moved to remove RZN 16-5442 (2514 W. Lori Rd./Razorback Golf Course) from the table. Alderman Gray seconded the motion. Upon roll call the motion passed 7-0. Alderman Kinion was absent.

Alderman Long: I've had the opportunity to talk with some neighbors regarding this. I request we leave it on this reading so we can have public notification go out to the neighborhoods for them to be more informed.

Alderman Long moved to table the ordinance to the September 20, 2016 City Council meeting. Alderman Tennant seconded the motion. Upon roll call the motion passed 6-1 to table. Alderman La Tour voting no. Alderman Kinion was absent.

This ordinance was left on the First Reading and tabled to the September 20, 2016 City Council meeting.

New Business:

VAC 16-5519 (Intersection of McMillan Dr. & Wedington Dr./Fitness One Gym): An ordinance to approve VAC 16-5519 submitted by Milholland and Associates, Inc. for property located at the intersection of McMillan Drive and Wedington Drive to vacate a portion of a utility easement.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. The Planning Commission voted in favor 9-0. Staff recommends approval.

Alderman Marsh 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 Kinion was absent.

City Attorney Kit Williams read the ordinance.

Alderman Tennant 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 Kinion 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 Kinion was absent.

Ordinance 5899 as Recorded in the office of the City Clerk

RZN 16-5508 (North of Colfax Loop/The Coves SD, Ph. III): An ordinance to rezone that property described in rezoning petition RZN 16-5508 for approximately 35.98 acres located north of Colfax Loop from an expired R-PZD, Residential Planned Zoning District to NC, Neighborhood Conservation and R-A, Residential Agricultural.

City Attorney Kit Williams read the ordinance.

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

Jesse Fulcher, Rausch Coleman stated he is completely fine with Neighborhood Conservation and happy with either residential district that the Council would prefer.

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 Kinion was absent.

City Attorney Kit Williams read the ordinance.

Alderman Gray 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 Kinion 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 Kinion was absent.

Ordinance 5900 as Recorded in the office of the City Clerk

RZN 16-5500 (335 E. 7th St./Niederman) Appeal: An ordinance to rezone that property described in rezoning petition RZN 16-5500 for approximately 0.23 acres located at 335 East 7th Street from NC, Neighborhood Conservation to DG, Downtown General.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. The Planning Commission voted 4-4 with one member abstaining. Staff believes the requested rezoning is incompatible with the area and does not support the rezoning request.

Alderman Petty: I don't have any interest in this property, but I am partnered with the applicant on other projects. To avoid any appearance of impropriety I am going to recuse myself from this discussion.

Alderman La Tour: Why did the staff recommend not going forward? This is a very small piece of property.

Jeremy Pate: On the map you will see Neighborhood Conservation and RSF-18. These are primarily single family. There's not a lot of larger multi-family. You might be surprised what you could fit on a quarter acre lot, particularly with the lack of zero setbacks in Downtown General. If developed commercially there are no parking regulations. Parking wouldn't have to be provided. It is something we have to evaluate as we look at a rezoning request, particularly on the impact of surrounding neighbors and the neighborhood itself.

Alderman La Tour: I'm concerned you would say we don't have any parking regulations. We as a Council decide that we didn't want to regulate. It shows a lack of confidence in a business person's ability to choose the right number of parking places for their chosen business. Most entrepreneurs will select what is in their best interest, which means they will select what is best in the public's interest.

Zara Niederman, Applicant: In this neighborhood it is primarily multi-family. You will see duplexes, triplexes, and fourplexes all surrounded by this property. Neighborhood Conservation does not seem to be the most appropriate. We are trying to increase density close to Downtown. I understand that Planning may have issues with Downtown General. There are some things they could be worried about in regards to building height and some businesses that could go in there. I'm thinking of putting four units on there.

City Attorney Kit Williams: Since this is a rezoning, you aren't supposed to be discussing what your development plans are.

Zara Niederman: I brought that up because as you go through what all the options are, I think this is going to come up continuously. How do you build neighborhood scale housing that's not apartment complexes, increasingly densifying the core of Fayetteville or anywhere it's appropriate

for that matter? How do we build flexible housing that's just not large student apartments? How do we build things that have multiple sizes and spaces? I didn't see anything that worked particularly well except for Downtown General. I am appreciative of Planning Commission, Planning staff, and Council for pushing the envelope and moving forward to be progressive on adding things to the zoning.

Alderman Long: This is an investment property for you. It could be you or someone else that develops it. When we are looking at zoning that is one of the things we have to consider. It could be built to that specification such as height. There are ways to get that zoning, but make assurances that it won't reach those height levels. We can't ask you for a Bill of Assurance legally in the request process. Staff has worked with many people in the past to work through those things if the applicant wants too. As it stands for Downtown General, I wouldn't be able to vote for it as it is. If there were restrictions on it, then it would look a lot different.

Zara Niederman: With regard to height restriction, I would certainly be okay with that. I could probably do less than 45, but that's what Neighborhood Conservation is. With regard to the uses I would be okay with that. I might want to look a little more closely at what would be appropriate and talk with the Planning staff to see what they think.

City Attorney Kit Williams: I think that is probably good. We can't consider a Bill of Assurance unless it has been offered in writing and signed. You might want to get with Planning if you are considering that and look carefully at your options. A Bill of Assurance is like part of the rezoning itself and runs with the land. You need to be careful with that.

Alderman Marsh: We are in a situation again where we have a developer trying to do the right thing. They are trying to build the appropriate infill housing that we are supposed to be prioritizing and yet we do not have an appropriate zoning tool to enable that to happen. We have this issue where our development codes are not in alignment with our master plan goals. We need to have more development tools. Based on the discussion here tonight, I want to table this for two weeks and give the applicant an opportunity to consider other options.

A discussion followed about leaving the item on the First Reading.

This ordinance was left on the First Reading

Amend §151.01 Definitions, §174.03 Exemptions; §174.04, §174.10 On-Site Freestanding Signs and §174.12 Wall Signs: An ordinance to amend §151.01 **Definitions**, §174.03 **Exemptions**; §174.04, §174.10 **On-Site Freestanding Signs** and §174.12 **Wall Signs** to more closely conform to the latest United States Supreme Court decisions on sign ordinances and to declare an emergency.

City Attorney Kit Williams: I ask that you amend what was originally proposed to the one I sent you last week. It now includes a specific provisional to ensure A-frame signs would still be allowed on the right-of-way when someone's property abuts up to the sidewalk and they have no other place to put the sign.

Alderman Petty: It is a good solution. I appreciate the City Attorney drafting it up.

Peter Tonnessen, Ward 3 stated he did not understand why the sign issue was being treated as an emergency.

City Attorney Kit Williams: Right now we are just talking about whether we are going to amend what was originally submitted to the City Council to ensure that A-frame signs would be allowed. I haven't read the rest of it yet.

Alderman Petty moved to amend the ordinance to include a provisional to ensure A-frame signs would still be allowed on the right-of-way when someone's property abuts up to the sidewalk and they have no other place to put the sign. Alderman Marsh seconded the motion. Upon roll call the motion passed 7-0. Alderman Kinion was absent.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: I have been looking at this ever since the constitutional decision was made. The initial analysis of the constitutional decision seemed to make it almost impossible to have any kind of effective sign ordinance. Upon further consideration the common belief is we can make a sign ordinance that would accomplish what our current sign ordinance does, but be in better conformance with the language of the Supreme Court. This is one of many times the sign ordinance has had to be amended as the Supreme Court has announced different rules and constitutional analysis. The emergency clause is needed because the 60 days before the election is going to occur later on this week. I believe it is vital that this be in effect at this General Election. I did not want to have confusion and wanted to make sure people understood this would be the ordinance that would control. Thank you to Jeremy Pate and Planning Department for their help.

Alderman Gray: Thank you Kit for all the work on this. I know it is a subject that gets mentioned a lot in the community. This is an excellent ordinance.

City Attorney Kit Williams: If this is passed tonight, my plan is to immediately send out a memo before the election to make it even clearer what the sign regulations are for non-commercial signs.

Alderman La Tour: If I put up two signs in my yard and they are exactly the same size, except the words are different. One is a "For Sale" sign and the other is a "Vote" sign. Do I have to take down the voting sign three days after the election?

City Attorney Kit Williams: Yes. During the period 60 days before the election, up to three days after it, you can have an unlimited number of small signs the same size as a real estate sign. You may have a non-commercial sign 365 days a year if you don't have a real estate sign up. However, if you have a real estate sign up, you have used up your sign allotment except during the election period. The reason we had to allow real estate signs is from the Supreme Court decision. There is a rule that says you can't favor commercial signs over non-commercial signs.

Peter Tonnessen, Ward 3: I don't understand why this is an emergency. The Supreme Court issued its ruling in January, 2015. Why didn't we have this in time for the election on the library?

This shouldn't be pushed through in a rush unless we know there have been problems with the ordinance in its current form in the past or there are real threats of litigation for the city.

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

City Attorney Kit Williams read the ordinance.

Alderman Long: They can have a real estate sign year round, but can't express their political opinions at the same time. Is there not a way for us to make an allowance for that in the City of Fayetteville? If your house is for sale, should you not still be able to express a political opinion with a political sign at the same time?

City Attorney Kit Williams: One of the purposes of the sign ordinance is to advance the aesthetics of Fayetteville. It would be allowable for the City Council to say someone can have a non-commercial sign anytime they want, even two or three or four, whether or not they have a real estate sign. You could say you can have unlimited number of non-commercial signs year round everywhere. That is somewhat dangerous because one of the supports for the sign ordinance, which is aesthetics, will be whittled away. It will to some extent make it weaker because you will basically be saying that an unlimited number or large number of signs even in residential areas is not a danger to aesthetics. When I wrote this I tried to keep it as similar to the ordinance we have had for many years and has been approved by our appellate courts. It is much better the way the Supreme Court differentiated between commercial and non-commercial. That is what we need to use too. This ordinance is stronger and has more armor on it to defend it from any attack and that is why I have proposed it. We have an election coming up. We need to get it passed and in effect so that people will know the rules.

Alderman Long: I'm looking at the idea of one political sign per household. I don't know what the harm would be just because there is a real estate sign there. It would be wise for us to have an exemption for that. There are all kinds of political views in this community and I like to know what they are. I want to amend the ordinance to allow for a non-commercial sign 365 days a year even with a real estate sign.

Alderman La Tour: It concerns me when we are talking about how we can protect ourselves from attacks. I like pretty towns and streets. I don't think a town is truly beautiful if our First Amendment freedoms are being suppressed. I like to know what our citizens are thinking and give them the opportunity to express themselves without fear of some code violation.

Alderman Petty: I'm not against the amendment in principle, but I'm not going to support it tonight. I don't think this is the right time to have an extended discussion about the entire ordinance. I would like to change a few things about it too. The approach to changing parts of the ordinance should be more ordered, especially due to the timeliness of the election. If we are going to discuss an amendment tonight, I want to know what the precise language is going to be before we vote on it.

Alderman Long: Just because someone is selling their home and has a real estate sign, we shouldn't prevent them from expressing their political opinions with one small sign. We should add a general exception for an allowance for that small political sign 365 days a year.

City Attorney Kit Williams: Such a change can be enacted by the City Council, but I am very concerned we don't have the precise language to do it tonight. This is an ordinance that does need to go in effect and is an emergency. In the near future you can have an unlimited number of signs up for the next 60 days. During that period of time, I will be happy to speak with you and draft a language that would change the ordinance to allow having both the real estate sign and a non-commercial sign up 365 days a year. I would rather have you all pass this tonight with the emergency clause so it can go in effect and control this election.

Alderman Marsh: I agree with Alderman Petty's concerns and I would like for us to pass this tonight. I see other opportunities for improvement in the sign ordinance. I want us to do a comprehensive review at a later date. Alderman Long has some valid points.

Alderman La Tour: I am supporting the peoples' right to free speech. We shouldn't require a real estate sign to be there in order for me to express my ideas. Our citizens should be free to have a sign in their yard of reasonable size expressing their political views, whether or not they have a real estate sign.

City Attorney Kit Williams: They do not have to have a real estate sign in their yard in order to have a non-commercial sign. The thing Alderman Long wants to change is that you can have your non-commercial sign regardless and if you want to put a real estate sign up, you can do that also. I can work with him to try to get a reasonable amendment. I don't want to try and do this tonight because there is no emergency for that.

Alderman Long: Kit, if it doesn't pass after we vote, I would appreciate it if we could have it ready for the next Council meeting.

Mayor Jordan asked for clarification on the proposed amendment.

City Attorney Kit Williams: We don't have an amendment on the floor. We have a suggestion that the ordinance be changed. We need precise wording when we do the ordinance. The sign ordinance is very complicated and intertwined. It is dangerous to try and change it on the fly. There is no reason to do it, since by Thursday or Friday there will be an unlimited number of non-commercial signs somebody can put in their yard.

Peter Tonnessen, Ward 3 stated he is not in favor of a lot of signs.

Alderman Tennant: I support what Alderman Long is saying, but I couldn't vote for the amendment tonight without seeing it.

Alderman Long moved to allow for a non-commercial sign 365 days a year even with a real estate sign. Alderman La Tour seconded the motion. Upon roll call the ordinance failed 2-

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

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 La Tour voting no. Alderman Kinion was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-1. Alderman La Tour voting no. Alderman Kinion was absent.

Alderman Petty moved to approve an Emergency Clause. Alderman Marsh seconded the motion. Upon roll call the motion passed 6-1. Alderman La Tour voting no. Alderman Kinion was absent.

Emergency Clause Approved

Ordinance 5901 as Recorded in the office of the City Clerk

Announcements:

Don Marr, Chief of Staff: The city has begun our business license renewal process for this year. It runs through October 31, 2016. Businesses can do it online, in person, or by mail.

Our first Fall Bulky Waste cleanup is on Saturday, September 10, 2016. The locations are at Owl Creek Elementary School and the Recycling & Trash Collection Facility.

In an effort to support our Spring Street Entertainment District parking deck, there will be a promotion for free parking on Friday, September 9, 2016.

For football games, the City of Fayetteville is partnering with the University of Arkansas for the Walton Arts Center lot to be a park and ride to the games. We had 247 of our 292 spaces utilized this past Saturday. We will continue that for home football games. It was done as an effort for Dickson Street merchants to encourage people to come back to Downtown and spend money in the city rather than getting on the road and exiting our community.

City Council Agenda Session Presentations: None

City Council Tour: None

Adjournment: 6:59 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk Treasurer