

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 Sarah Bunch
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
February 21, 2017**

A meeting of the Fayetteville City Council was held on February 21, 2017 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, Sarah Bunch, John La Tour, Alan Long, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Award Presentation - Certificate of Achievement

Mayor Jordan presented the Certificate of Achievement of Excellence in Finance and Reporting to the City of Fayetteville for its comprehensive annual financial report for the fiscal year ending December 31, 2015.

Paul Becker, Chief Financial Officer accepted the certificate on behalf of the Accounting Department.

Mayor Jordan presented Paul Becker with the Financial Reporting Achievement award from the Government Finance Officers Association United States and Canada.

Paul Becker, Chief Financial Officer: Thank you very much to my staff, City Council, and Mayor Jordan for their support.

Mayor Jordan: Thank you, Paul. It is very well deserved. You do a great job for us.

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

Agenda Additions:

Arkansas General Assembly: A resolution to request the Arkansas General Assembly to refrain from removing the authority of local governments to resolve local issues and enact development regulations to foster improved economic growth.

Alderman Marsh moved to suspend the rules and add the resolution to the agenda. Alderman Long seconded the motion. Upon roll call the motion passed 7-1. Alderman Marsh, Kinion, Petty, Tennant, Bunch, Long, and Gray voting yes. Alderman La Tour voting no.

Don Marr, Chief of Staff gave a brief description of the resolution. He stated the City of Fayetteville is not the only city that was opposing this. He stated we were representing the Mayor as the Chief Executive Officer and his position on this. He stated he thinks the discussion was whether the City Council wanted to take a voice as a majority. He believes it gives the city more talking points when they are in front of the legislators.

City Attorney Kit Williams: At the Agenda Session I talked about this. Several members of the City Council encouraged me to write this resolution. The tree ordinance has been effective. It has helped economic growth and the equality of life for our citizens. It has helped our land values. As a private homeowner I have cut down trees on my property. No one has ever said I couldn't do it because I have a right to do it. It's only when you have large commercial developments or building an entire neighborhood that the original developer can't be cutting down the trees. Once it has been there, then it is up to the property owner to decide that. I think that is the right thing to do. The legislature would like to take the power away from our citizens. That is big government leaning on Fayetteville citizens and I don't like it.

Don Marr: We reminded the committee when this was before them that the Fayetteville Tree Preservation ordinance generated from a lawsuit from citizens of Fayetteville. It was not passed by the Council alone prior to the League of Women Voters suing the city over our tree ordinance.

Alderman La Tour: This City Council gave us the discretion to cut down our own trees and this City Council can take away that discretion. Perhaps a state law would better protect us and take it out of our jurisdiction. This state law may help us reach a better balance. If we already have the freedom to cut down trees once our subdivisions are established, what would the state law change? It would still give us the same freedom. I would rather leave it up to the state legislators.

Alderman Long: I find it interesting that a particular Arkansas Legislator has targeted many Fayetteville ordinances. He has said how much he appreciates local government, except that must mean only when it doesn't favor what he believes in.

Don Marr: That particular law would restrict us from having our ordinances in the development aspect and not just for the individual property owner. This is why we are opposing it. It is our job to defend the ordinances that are passed by the City Council.

Alderman Marsh: Because our ordinance just applies to large scale developments, this isn't a home owner going in and cutting down one tree. This is a developer buying several acres on a hillside and cutting down a whole forest and creating issues. Fayetteville is a certified wildlife habitat and people love our beautiful environment. This is allowing us to protect that.

Alderman Petty: There is a real conservative case to be made for the ordinance we have on the books. We have laws against being able to pollute because of the affects it has on your neighbors and the people you share a community with. We have a law that prevents you from doing a wholesale removal of trees on your property. It is very reasonable. When you look at a downtown property where we want things to be very dense and urban, you only have to keep 10% of the tree canopy covering the site. If it is already cleared, you don't even have to bring it up to that. When you remove trees at the wholesale level, you are in effect polluting things around you. The ecosystem that makes our clean air and clean water doesn't stop at property lines.

Mayor Jordan: This would also include your streamside protection. This city has spent millions of dollars repairing streamside's. I have heard from many of you Council members that the number one issue you have in this town is drainage. The more we allow streambanks to erode, the more issues we will have with drainage.

Alderman Long moved to approve the resolution. Alderman Bunch seconded the motion. Upon roll call the resolution passed 7-1. Alderman Marsh, Kinion, Petty, Tennant, Bunch, Long, and Gray voting yes. Alderman La Tour voting no.

Resolution 52-17 as recorded in the office of the City Clerk

Consent:

Approval of the January 31, 2017 Special City Council Meeting Minutes and the February 7, 2017 City Council Meeting Minutes.

Approved

JL Bryson, Inc. and CH2M Hill Engineers, Inc. Settlement Agreement: A resolution to authorize Mayor Jordan to sign a settlement agreement with JL Bryson, Inc. and CH2M Hill Engineers, Inc. regarding a delay claim associated with the installation of the ozone disinfection system at the Noland Wastewater Treatment Plant, to approve a payment in the amount of \$19,000.00 to JL Bryson, Inc., and to approve a budget adjustment.

Resolution 47-17 as recorded in the office of the City Clerk

Erin Kaiser Reimbursement: A resolution pursuant to Fayetteville Code of Ordinances section 39.10(C)(4) to authorize the Mayor to pay the amount of \$6,258.18 to Erin Kaiser for a wastewater damage claim arising at 2232 North Briarwood Lane in addition to a previous payment of \$14,557.62 to Servpro for sewer damage mitigation services.

Resolution 48-17 as recorded in the office of the City Clerk

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

Unfinished Business:

Solid Waste Reduction, Diversion and Recycling Master Plan: A resolution to adopt the Solid Waste Reduction, Diversion and Recycling Master Plan as developed by Kessler Consulting, Incorporated. *At the December 6, 2016 City Council Meeting this resolution was tabled to February 21, 2017.*

Terry Gulley, Transportation Services Director gave a brief description of the resolution. He stated in the past there have been talks with Boston Mountain and Benton County Solid Waste District about the potential of looking at single stream. He stated they have not come up with anyone stepping forward other than the City of Fayetteville to address that at this time. He stated the City of Fayetteville did not believe the mini MRF option was sustainable. He discussed expanding apartment recycling. He stated the main thing that needs addressed, is a resolution with some type of direction on how the City Council wants them to go. He stated several decisions are needing to be made and can't be delayed any longer.

Brian Pugh, Waste Reduction Coordinator presented a PowerPoint giving a brief background and description about the recycling program in the last few years. He stated in addition to the curbside and drop-off program, the City of Fayetteville has added a lot of services. He stated the thing that keeps people from participating in curbside recycling is the bin.

Jeff Coles, Recycling & Trash Collection Director gave a brief description about construction and demolition debris processing. He spoke about recommended initial implementation steps to replace page 105 of the proposed Recycling and Trash Master Plan. He stated they wanted to develop an environmentally and economically sustainable materials management system that maximizes waste diversion and minimizes waste disposal. He stated the City of Fayetteville has to find a means to work through because they have surpassed an operational threshold.

Alderman Kinion: This has been reviewed by the Water, Sewer & Solid Waste Committee with the recommendation of the administration, as well as input from the public. I would like to bring forth an amendment to the proposed ordinance on the table as published and handed out to City Council. We have removed the conversion to single stream recycling. We have removed the development of a detailed Single Stream Conversion Plan and schedule. We are replacing that with what was mentioned today by the administration.

A discussion followed about the proposed amended resolution.

Alderman La Tour stated he believes this is a step in the right direction. He doesn't want anyone policing citizens' trash and fining people because something didn't get recycled properly. He stated he's pleased they are backing off of the 80% diversion rate. He believes it would be less of a temptation to use coercion or manipulation to achieve a high rate. He likes the idea of keeping the curbside recycling and not moving to a single stream. He stated his heart goes out to employees who fight traffic to recycle at curbside.

Alderman Marsh: I am disappointed that the discussion over single stream is going to result in us lowering our diversion goal to 40%. This is saying we are going to do better about recycling, whereas before we were saying we were going to be leaders in recycling. I prefer being a leader in all things sustainable. Our route drivers start collecting at 5:00 a.m. in all types of inclement weather. These are real people sorting your recyclables by the curb which is hazardous. It is just a matter of time before a route driver is hit by a car. I can't support endangering our staff when there is a safer option. Single stream would allow our drivers to collect recyclables using an automated truck and then take it to a local facility for sorting. It would provide better safety. Our recycling route drivers have the highest job turnover rate and injury rate than all city staff. Our current curb sort system works great for single family homes, but not all our residents live in single family homes. Switching to single stream will allow us to collect in bulk and sort them at a facility with the assistance of the latest in recycling technology. We are currently limited in the number of different types of materials we can recycle by the number of bins in our trucks. Our current diversion rate has been stuck at or below 20% for the last ten years despite aggressive education campaigns. The bins are designed to be as ergonomic as possible for our workers. With single stream we can switch to the roll off bins that are easier for people with mobility issues. Our pilot shows that by making participation simpler it will drastically cut the amount of good usable resources that ends up in our landfill. I hope you will join me in supporting single stream.

Alderman Long: Fayetteville has done well with the curb sort program. Fayetteville has done a great job protecting our recyclable commodities. Buyers still give us priority in our down markets compared to other cities selling more contaminated materials. The Pay-As-You-Throw program has been a good start in helping people to consider their consumption habits. When the workers are collecting, they leave recyclables in the bin to educate people on what they can and can't recycle. This protects our contamination rates too. Fayetteville has the highest rate of glass recycling in the United States and that is without Arkansas having a container deposit law. I'm happy we are looking to double the diversion rate to even 40%. We have a great curb sort program we can improve on. We need to make it a priority to keep our recyclables clean and maintain our quality so we can protect our markets for our recyclable materials.

Kelly Mulhollan, 885 North Fritz spoke in opposition of single stream recycling.

Grant James, 1072 South Sports Fan stated he works with the Office of Sustainability at the U of A. He stated he was speaking as a citizen and not a representative of the university. He spoke in favor of single stream recycling.

John Kester, 3037 North Azure Avenue stated that staff should wear appropriate clothing for inclement weather. He stated firemen and policemen die every day and doesn't believe recycling people die that often.

Citizen, from Madison County complimented the City of Fayetteville glass program. She stated diverting is not recycling.

Lauren Huckins, 1101 South Duncan spoke in opposition of single stream recycling. She spoke for dual stream recycling.

Carol "Kris" Kristophel spoke in opposition of single stream recycling.

Don Bennet, 1231 Deane Street stated he was the executive Director at Tri Cycle Farms. He spoke about their composting program and the recovery of food for distribution. He requested Council to consider helping programs such as theirs.

Justin Taylor, Boston Mountain Solid Waste District stated research shows the highest diversion rates are all on the west coast. He stated there is a recipe of items they use to achieve that diversion rate and single stream is one of the things they use. He hopes a broader look will be taken at all the research in guiding Fayetteville forward.

Brian Pugh: Justin was under contract working with the City of Fayetteville as our part time educator until the end of last year. We owe Justin support because he is mainly the one going out and talking to kids and adults trying to change their behaviors about recycling. We have a new educator named Rachel Krauss. She is doing a great job as well.

Sara Gosman, 112 West Maple Street requested for Council to consider leaving single stream recycling on the table.

Rob Smith, Northwest Arkansas Council spoke about other cities being involved for a more regional approach.

Sara Lubey, Ripple Glass spoke about contamination issues. She requested the city to keep glass out of single stream recycling if it is decided to go that way.

Kellen Uteck, 2824 North Stage Coach stated keeping recycling as simple as possible is the key to success. He spoke in favor of single stream recycling.

Cory Reynolds, Specialized Real Estate Group stated he would like to see continued development of research in multifamily recycling.

Taylor Bridges, U of A student stated putting an item in a recycling bin, is not recycling. She spoke in opposition of single stream recycling.

Eric Boles, Director of the Office of Sustainability at the U of A. He stated he was speaking as a citizen and not a representative of the university. He stated he toured a single stream facility at the

City of Little Rock and Little Rock was able to sell their recyclable materials for the same price as the City of Fayetteville was selling their paper. He believes there has been a thorough process and the pilot seemed well conducted. He thinks it would be a shame to throw all the good research out the door.

Brian Pugh: I toured the Little Rock facility with Eric and he is correct about the commodity pricing. Materials recycled in single stream systems will typically bring the same amount of revenue as what we have in our program.

Mayor Jordan: Even though the materials were contaminated, they are selling it for the same price?

Brian Pugh: Yes. That is just the Little Rock example.

Alderman Long: Were the materials they were being paid for already sorted and cleaned?

Brian Pugh: No.

Alderman Long: A lot of times you can command a higher of a volume.

Brian Pugh: They like to deal with volumes.

Alderman Long: The size of the city has an impact on that as well.

Brian Pugh: My point is, they were getting the same prices that particular month as we were getting. They were doing single stream recycling and we are doing curb sort.

Robyn Reed, Director of Boston Mountain Solid Waste District voiced her support for single stream recycling.

Mayor Jordan: What would be your position for a regional MRF system? Would you be in favor of that?

Robyn Reed: Yes, I would be in favor of it. There are a lot of great examples around the nation that have worked using a regional approach.

Andrew Miles, 1884 Caton Drive with the Environmental Action Committee. He stated the EAC is urging the Council to vote for the issue. He stated it is a plan for multiple issues and not just recycling.

Louise Mann, 629 Gray Avenue spoke in opposition of single stream recycling.

Dylan Cardwell, 1250 Highbush stated he participated in the pilot program and spoke in favor of carts. He believes it is a better choice than using bins.

Fran Alexander, Fox Hunter Road spoke about waste prevention, which she believes is being confused with waste management. She suggested, for the City of Fayetteville, that the solution for increasing participation be put directly to the public.

Alderman Petty: If we amend to the resolution being proposed, with the new implementation plan and the other Solid Waste Districts in the region approach us and ask us to participate with them, is our answer going to be yes or no?

Mayor Jordan: The answer would be yes.

Alderman Gray: This is a tough issue. I agree with Alderman Marsh and all the folks who have spoken tonight in favor of recycling. I like what Alderman Petty spoke about. To move to 40% is a good step. I would like to see us move to single stream and be the leader of the state. We paid a lot of money for our study and we had an excellently ran pilot program. Both of which told us that single stream is the way we need to go. When you look at the cities with the highest diversion rate, they are all using single stream. We don't need to go the easy route. We usually go for what is hard, but is a leadership position.

Alderman Bunch: I agree with a lot of the comments that have been made this evening. I like Alderman Gray's comments about being a leader. Without a processor at this time, I am comfortable with this resolution. I want to keep single stream in the back of our mind and on the table. This is a compromise I can live with. It increases the rate to 40%. It's not a perfect compromise because it leaves a lot to be desired when talking about apartments. I would like to revisit single stream in the future as a possibility for our whole region, not just Fayetteville.

Alderman Kinion: This doesn't preclude any other type of investigation in the future. We are approaching a time where we have to look at a rate study. An Enterprise Fund has to support what we do and this is an Enterprise Fund. What you pay for the solid waste on your bill has to cover our operations. The reason we have a good compromise in front of us now is because it takes us to the next step. We can then implement the initial activity towards a realistic rate study. Currently, we spend more on our operations for Solid Waste management than we bring in. This is the value of having real data. I encourage us to move forward with the resolution I have suggested. This does not preclude any advances in technology or close the door for any creative ideas. We have real data that shows a very strong acceptance and preference for single stream, but we also value data that shows it is not perfect. Curbside and single stream recycling was a very small part of this study. I want us to look at this in a comprehensive way. Being divided in our community is not going to take us to the next step as we look at how to manage recycling. It is going to take a regional approach to have a MRF.

Alderman Marsh: The compromise put forth by staff and the Water & Sewer Committee has a lot of great things to it. I would like to see us place a special emphasis on food recovery towards hunger relief in our community. It needs to be priority number one. With the increase in development and construction, it is imperative we move forward with the construction and demolition waste recycling. With the impending purchase of more recycling infrastructure, it would be a mistake to not move forward with single stream at this time. I am disappointed that we are watering down our diversion goal to 40%. I want Fayetteville to be a leader. This isn't a

recycling plan. This is a Solid Waste Reduction, Diversion and Recycling Master Plan. The goal is to reduce waste, keep resources out of our landfill, and to recycle into usable products. This has an impact on our workforce. It sends a message to the less able in our community or who can't afford to live in single family houses. How can we be an inclusive community in allowing everyone to recycle? It would be a mistake to not adopt the whole plan this evening.

Don Marr, Chief of Staff: We think the study has been valuable. We learned our 80% striving goal needs to be a stair stepped approach. Any improvement we see moving to a higher goal is a positive step from where we were. Whether it is the City of Fayetteville processing or regional processing, it doesn't exist today at the scale to support the capital expenditure necessary to have a single stream processing facility. The report is very clear that Fayetteville alone with its volume can't support one long term in a financially sustainable way. It requires partnerships. The negotiation of working with Bentonville, Springdale, Rogers, and Siloam Springs combined volumes are needed to support financially a capital expenditure of a processing center. A center that has the type of technology and equipment we want to deal with social worker issues in addition to clean end user supply material. We don't have a commitment today from the Mayor of Bentonville, Mayor of Springdale, or Mayor of Rogers. We have interest from the Siloam Springs City Manager. The reality is that we would have to go to their provider because they are in long term contracts if we are going to talk about a regional solution. Mayor Jordan's direction to us is to make progress. If single stream discussion in Fayetteville on a small scale keeps us from making progress, it's not the right first move. We adopt plans that have long term goals in it where we take steps to advance and move in that direction. This is what we are doing here. We should be doing an updated rate study, today. The last one was in 1992. We have been able to sustain our rates for 25 years, but planning needs to be done. Staff needs to make equipment purchases now to do what we do currently. All the things on this plan got us to 50%. Providing services for multifamily individuals is a real challenge for us in the current method. We need a solution. This is a regional discussion. The city should not lose control of its waste stream so we know what is in it. I encourage you to adopt this plan.

Alderman Kinion moved to amend the resolution to the one handed out at tonight's City Council meeting. Alderman La Tour seconded the motion. Upon roll call the motion passed unanimously.

Alderman Petty: Thank you to staff for working so hard on this. I agree with everything Don Marr said. There are a lot of people in this community that wanted us to adopt the plan without an amendment. There are a lot of people who wanted us to totally reject the idea of single stream. Sometimes a middle way is better and it is true in this case. I am disappointed that this has been so political. We are taking a huge step tonight. A bigger step than any other city in Arkansas has ever taken. We are being a leader. The fact finding that is in the report is immensely useful for decision making. We should be proud we are making an evidence based decision tonight and not a decision based on emotions. We have a program that as compared to what we've learned through this study and pilot, has us throwing away one pound for every three we should be recycling. Council and I hear you loud and clear that recycling happens when it gets turned into something else, otherwise it's just a different kind of landfill. That doesn't mean diversion isn't important. Our challenges are not merely behavioral. There are real structural issues. I like that we are going to do something for people who live in multifamily buildings. We need a minimum of 20,000 new

housing units to meet population growth over the next 20 years. With the system we have today, we can only let them recycle if they are in predominately single family houses. If we were to build a local facility and the region started to coordinate on this issue in future years, our own facility would be superseded. I acknowledge these things take a long time to do when the collaboration is so complicated, but I am optimistic it will happen. The whole premise that proponents of single stream have argued is that the first systems and many of the systems that followed were absolutely terrible. The ones that are continuing to be operated that were on the leading or middle edge of this change in the markets are terrible. The premise we have been asked to consider is that technology has gotten better. There have been breakthroughs in technology that makes single stream systems different than the ones that were built and are constantly cited as examples. We heard from Kessler that it is getting better all the time. I'm glad for the plan we have before us.

Mayor Jordan: This has been a little difficult because I usually see a strong unified environmental community. On this issue we seem to be somewhat divided. We have always been taught to not contaminate the waste stream. I want to protect the environment and keep it as clean as I possibly can. At the end of the day everyone wants a good recycling program. There are different opinions and that is what makes this city. When Kessler first came in, I thought we were looking at a regional approach to a state of the art MRF facility. That simply has not happened yet. I did not want to wait any longer on the food composting and the construction. Do not blame the staff because the staff works for the Mayor. I directed them and then we took it to the Water & Sewer Committee. Alderman Petty is correct that these are huge steps. The city is moving forward in a progressive manner. We are going to keep ongoing discussions regionally.

Alderman Kinion moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 49-17 as recorded in the office of the City Clerk

New Business:

Kessler Consulting, Inc.: A resolution to authorize Mayor Jordan to make a final payment to Kessler Consulting, Inc. in the amount of \$11,010.00 for extra work associated with the Solid Waste Reduction, Diversion, and Recycling Master Plan, and to approve a budget adjustment.

Jeff Coles, Recycling & Trash Collection Director gave a brief description of the resolution.

Alderman Long: I feel \$11,000 is a bit much for the bill that we are being presented with. To arrange a meeting with the editorial board and put together a PowerPoint presentation are things I do all day long and don't bill \$11,000. I don't think I can support this. Is there some explanation or extenuating circumstance?

Jeff Coles: We knew that due to the protracted nature of this consultancy of 20 months, it became apparent we were going to need them to come back again for another presentation. We entered into and negotiated with them.

Alderman Long: When did we know that?

Jeff Coles: It would have been prior to the September meeting.

Alderman Long: Is this not a budgeted item?

Jeff Coles: The contract was not amended and there was no contingency money. It was an oversight on my part.

Alderman Petty: In December the Council voted to bring them back when we tabled this. While I am surprised by the amount, I think paying it is the right thing to do.

Alderman La Tour: We should pay it because it is the responsible thing to do. We should learn from this process and do a better job.

Mayor Jordan: You are correct, John.

Don Marr: The staff reports to me. It is a lesson we have learned and we will make sure it doesn't happen again. In this particular case we audited the bill. We have hourly rates that were part of the RFP proposal process per individual for the hours they outlined. It is a large bill, but it is properly billed for the rate disclosed in the RFP. We should have gotten this approval earlier and we apologize for that.

Alderman Long: I can't vote for this. The City of Fayetteville is being taken advantage of because of how far along we were in the process. They knew they had to come back and what other choice did we have.

Mayor Jordan: Staff works for the Chief of Staff and the Chief of Staff works for me. At the end of the day I am as responsible as anybody else.

Alderman Kinion moved to approve the resolution. Alderman Marsh seconded the motion. Upon roll call the resolution passed 7-1. Alderman Marsh, Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Alderman Long voting no.

Resolution 50-17 as recorded in the office of the City Clerk

RZN 16-5667 (1918 S. Garland Ave./Anderson): An ordinance to rezone that property described in rezoning petition RZN 16-5667 for about 0.32 acres located at 1918 S. Garland Avenue from I-1, Heavy Commercial & Light Industrial to RSF-8, Residential Single Family, 8 units per acre.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. Staff supports the request. The Planning Commission voted 7-1 in favor of the request.

Alderman Marsh: I haven't received any feedback about this property. I hoped to see it go a little denser.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5952 as Recorded in the office of the City Clerk

VAC 16-5687: (2790 N. Signet Place/Bowers): An ordinance to approve VAC 16-5687 for property located at 2790 N. Signet Place to vacate a portion of a general utility easement.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. Staff supports the request. The Planning Commission recommends approval.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5953 as Recorded in the office of the City Clerk

VAC 16-5688: (3300 WA. Grove Dr./Planet Fitness): An ordinance to approve VAC 16-5688 for property located at 3300 W. Grove Drive to vacate a Water/Sewer easement.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Development Services gave a brief description of the ordinance. Staff supports the request. The Planning Commission voted 7-1 in favor of the request.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5954 as Recorded in the office of the City Clerk

Amendment to the 2017 Adopted Budget: A resolution to amend the 2017 adopted budget by re-appropriating \$63,137,158.00 in bonded or ongoing capital projects, outstanding obligations and grant funded items.

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

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

Resolution 51-17 as recorded in the office of the City Clerk

Amend §110.02 Telecommunications Franchises: An ordinance to amend §110.02 **Telecommunications Franchises** of the City Code to include and incorporate references to competing local exchange carriers and any other telecommunications providers desiring to use city street rights of way.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: We have been receiving requests to consider the installation of poles and other facilities for these competing local exchange carriers. Some of them have claimed they already received Certificate of Public Convenience and Necessity from the Public Service Commission. I looked at the current ordinance we have and not the one for cell towers, which is in a separate section and involves towers that are a significantly higher power than what these mini towers would have. I thought it would be best to incorporate, within our current ordinance, rather

than having to read a five or six page ordinance. Instead I incorporated competing local exchange carriers into that. We have been contacted by AT&T who has some questions and concerns about this. The reason I wanted to put it in with the other franchise is that it would be a level playing field. They are wanting to use our rights of way which the cell tower companies usually don't have to. They are renting space on the ground somewhere. These will be in our right of way and be extremely close to our citizens. There is another complaint from AT&T that it was not every right of way within the city. Not every public easement, no trails right of way were included in here. I intentionally did that. No alleys, there are platted alleys all over town that aren't even built. I don't think our neighbors or citizens would like to see cell towers going up in their back yard just because there is a platted and unbuilt alley back there. I would rather see them on city streets. I gave considerable discretion to our Director of Planning to grant mini variances including the needs of the company as well as if there were other poles that are higher. We would like to see these located on utility poles or street light poles rather than building new poles. I am willing to work with AT&T and any other provider. My interest is protecting our citizens' rights and trying to obtain what we should for our right of way and to treat all the companies the same. Alderman Tennant asked me to leave it on the first reading and I agreed.

Alderman Marsh: I watched a utility company massacre a lot of trees adjacent to my office. Several of them were large and healthy trees. I would like to work into the consideration of approval, preservation of existing tree canopy.

City Attorney Kit Williams: I would love to see that. SWEPCO and Ozarks Electric are regulated by the Public Service Commission. They have basically the right to do what they want within our right of way to protect their property. We have gone through these battles before and it is a constant thing. We have talked with AEP and Ozarks Electric to try to have them moderate what they do. Except for discussions with them, that is about the only power we have with them. We can't put within any of our ordinances where they can't do what the PSC says they can do.

Alderman Marsh: I wonder if we are exasperating the problem by limiting the height of the poles. To the casual walker or driver in the neighborhood it doesn't matter if the pole is 20 feet or 40 feet. Maybe having taller poles would enable us to protect more tree canopy.

City Attorney Kit Williams: That is one of the things that the current planner can look at in the variance provisions. Maybe fewer poles if they are a little bit taller. These are not real high powered antennas on these. We need some sort of ordinance to provide a framework.

Alderman Tennant: I would appreciate leaving this on the first reading. I don't work for AT&T, I work for Verizon, but I don't work on the consumer side. I am on the enterprise side. One of the things I dislike the most about this city is some of the existing poles we have in different places. It takes away from our city's beauty. I am on the side of some of the technology vendors like Verizon who are spending tons of money on small cell and different technologies that will accelerate technology and data by hundreds of times. There is a need sometimes for those technology advances which unfortunately come with that expansion of a network. I believe there are technologies coming with the technology which doesn't necessarily need poles, small or large. I want to investigate the technology side and bring that forward at the next meeting.

City Attorney Kit Williams: This ordinance was not done to try to keep these companies out or make it where they can't function effectively. It was to see if we could regulate them to have as little impact on our aesthetics as possible.

Alderman Long: I know you said we can't do anything within their easement because they have a total right to that. There is a somewhat similar issue we have had in Fayetteville with them cutting down trees and what they called prescriptive easements. They basically say we need power here so we prescribed an easement and it has been there for 10 years, but we haven't literally given them the right to cut down those trees. They will just come in and cut people's trees down and they don't have the absolute right to do it. I would love to see this include something that says they can't. This might be a good opportunity to create some state law. Prescriptive easements are becoming a big problem in the City of Fayetteville with the utility companies.

City Attorney Kit Williams: By definition, a prescriptive easement is not going to be within our right of way. They already have that. We have been aware of these issues where they claim a prescriptive easement and yet they have never paid for it. I don't think that from a legal point of view they actually do have the right to go in there and clear lines where they have never obtained an easement.

Don Marr: We have another expert in our city, Susan Norton, who is serving on the National League of Cities, Telecommunications Committee. Micro cell and small cell environment is a huge discussion topic point, not only in our city, but across the United States. This is particularly with utility companies who are looking to deploy them so they can read meters without having to have meter readers. The Mayor's plan to have Wi-Fi accessibility in public spaces is an avenue. It is important that we get this right. We are a very young millennial oriented city where the use of technology is extremely important to our citizens. We have an aesthetic concern that is taking place on the national level. Many cities are wanting to have control and Kit is bringing this forward to help us protect, but not limit our ability to have faster networks with more capabilities for our citizens.

This item was left on the First Reading.

Announcements:

City Attorney Kit Williams: I argued the Civil Rights case before the Supreme Court in trying to defend the ordinance our citizens passed. I was honored to do it.

Don Marr: Parts of Wilson Park will be closed due to renovations.

The public is invited to learn about invasive species and hands on removal workshop. It is taking place at Veterans Park on Wednesday, February 22, 2017 from 4:00 p.m. to 6:00 p.m. It is being led by our Environmental Action Committee.

The City of Fayetteville is requesting proposals for public art for the Trail of Tears mural on the Tsa La Gi Trail. Submittals can be provided by artist. The deadline is March 20, 2017. Preference will be given to art that is of the Native American heritage.

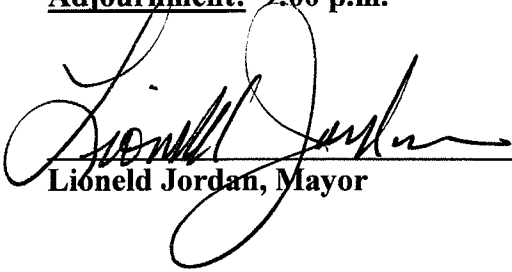
There will be four dates to participate in the Bulky Waste Spring Clean Up. There are upcoming spring events beginning. The event dates and times are listed on the City of Fayetteville website.

The Willow Bend groundbreaking will be Friday, February 24, 2017 at 12:30.

City Council Agenda Session Presentations: None

City Council Tour: None

Adjournment: 9:00 p.m.


Lioneld Jordan, Mayor
Sondra E. Smith, City Clerk Treasurer