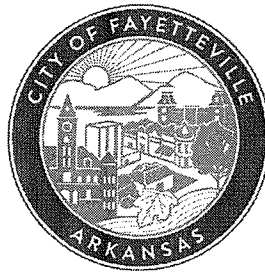


Council Member Adella Gray
Ward 1 Position 1

Council Member Sarah Marsh
Ward 1 Position 2

Council Member Mark Kinion
Ward 2 Position 1

Council Member Matthew Petty
Ward 2 Position 2



Council Member Justin Tennant
Ward 3 Position 1

Council Member Sarah Bunch
Ward 3 Position 2

Council Member John La Tour
Ward 4 Position 1

Council Member 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
November 7, 2017**

A meeting of the Fayetteville City Council was held on November 7, 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: Council Members Adella Gray, Mark Kinion, Matthew Petty, Justin Tennant, Sarah Bunch, John La Tour, Mayor Lioneld Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Absent: Council Members Sarah Marsh and Alan Long.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Mayor Jordan welcomed journalism students from the University of Arkansas.

City Council Meeting Presentations, Reports, and Discussion Items:

Monthly Financial Report - Paul Becker

Paul Becker, Chief Financial Officer gave a brief summary of the Monthly Financial Report for 2017. He stated the city is looking good going into 2018.

Council Member La Tour: What was the overall sales tax rate increase?

Paul Becker: About 4.7% over the prior year.

Council Member La Tour: Would you say that is a good rate of increase or mediocre?

Paul Becker: It is good.

Council Member La Tour: It is very good.

Paul Becker: It is more than I projected. I hope it continues.

Agenda Additions: None

Consent:

Approval of the October 17, 2017 City Council Meeting Minutes.

Approved

Bid #17-50 JA Riggs Tractor Company: A resolution to award Bid #17-50 and authorize the purchase of a Caterpillar 930M Four-Wheel Drive Articulated Loader from JA Riggs Tractor Company of Springdale, Arkansas in the amount of \$175,962.00 for use by the Recycling and Trash Collection Division.

Resolution 224-17 as recorded in the office of the City Clerk

Professional Turf Products, L.P.: A resolution to authorize the purchase of a Toro Ground Master 4000D from Professional Turf Products, L.P. of Lenexa, Kansas in the amount of \$65,156.88, pursuant to a National Joint Powers Alliance cooperative purchasing contract, for use by the Parks and Recreation Department, and to approve a budget adjustment.

Resolution 225-17 as recorded in the office of the City Clerk

Alamo Industrial: A resolution to authorize the purchase of an Alamo RidgeRunner remote control slope mower from Alamo Industrial of Seguin, Texas in the amount of \$48,220.66, pursuant to a National Joint Powers Alliance cooperative purchasing contract, for use by the Parks and Recreation Department, and to approve a budget adjustment.

Resolution 226-17 as recorded in the office of the City Clerk

MHC Kenworth: A resolution to authorize the purchase of a 2018 Kenworth T800 Truck Tractor from MHC Kenworth of Springdale, Arkansas in the amount of \$135,052.44, pursuant to a National Joint Powers Alliance cooperative purchasing contract, for use by the Wastewater Treatment Division.

Resolution 227-17 as recorded in the office of the City Clerk

Hazmat Services Revenue: A resolution to approve a budget adjustment in the amount of \$5,603.00 recognizing hazmat services revenue received from Washington County and increasing the related expense budget.

Resolution 228-17 as recorded in the office of the City Clerk

2017 Arkansas Department of Environmental Quality Grant: A resolution to authorize acceptance of a 2017 Arkansas Department of Environmental Quality grant through the Boston Mountain Solid Waste District in the amount of \$8,000.00 for the purchase of food waste carts for the composting program, and to approve a budget adjustment.

Resolution 229-17 as recorded in the office of the City Clerk

Campbell Bell Property Owners Association, Inc.: A resolution to approve a lease agreement with the Campbell Bell Property Owners Association, Inc. for fourteen (14) parking spaces in Fayetteville Municipal Parking Lot 1, located at 160 West Mountain Street, for an additional five (5) years at a monthly cost of \$50.00 per parking space.

Resolution 230-17 as recorded in the office of the City Clerk

Blocker & Wallace Service, LLC: A resolution to authorize a service contract with Blocker & Wallace Service, LLC in the total amount of \$31,355.18 for the repair of two mechanical blower units used at the West Side Water Resource Recovery Facility.

Resolution 231-17 as recorded in the office of the City Clerk

RFP #17-06 Collection Bureau of America, Ltd: A resolution to award RFP #17-06 and authorize a one-year contract with Collection Bureau of America, Ltd for account collection services with an option to renew for up to four (4) additional one-year terms.

Resolution 232-17 as recorded in the office of the City Clerk

Arkansas Roofing Kompany Conway, Inc. Change Order 2: A resolution to approve Change Order No. 2 to the contract with Arkansas Roofing Kompany Conway, Inc. in the amount of \$55,000.00 by expanding the project scope to include rehabilitation of the South Delta Aviation hangar roof and installation of gutters on the Wings Avionics hangar.

Resolution 233-17 as recorded in the office of the City Clerk

Granicus, Inc.: A resolution to approve the First Amendment to the contract with Granicus, Inc. in the amount of \$1,140.00 for the purchase of a virtual performance accelerator, and to approve an annual 10% project contingency for the purchase of software, maintenance, and licenses for the Granicus system.

Resolution 234-17 as recorded in the office of the City Clerk

L.D. 'Abby' Abbiatti Boat Ramp: A resolution to name the boat ramp at Lake Fayetteville the "L.D. 'Abby' Abbiatti Boat Ramp" in honor of the late L.D. Abbiatti.

Resolution 235-17 as recorded in the office of the City Clerk

Northwest Arkansas Regional Planning Commission: A resolution to approve a one-year contract with the Northwest Arkansas Regional Planning Commission in the amount of \$41,505.61 for a Stormwater Education Program for 2018.

Resolution 236-17 as recorded in the office of the City Clerk

Council Member Kinion moved to accept the Consent Agenda as read. **Council Member La Tour** seconded the motion. Upon roll call the motion passed 6-0. **Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray** voting yes. **Council Members Marsh and Long** were absent.

Unfinished Business:

Small Cell Communications Facilities: An ordinance to enact §110.03 **Small Cell Facilities and Networks** into Chapter 110: **Telecommunication Franchise, Billposting, and Small Cell Facilities and Networks**. At the October 17, 2017 City Council Meeting this ordinance was left on the second reading. At the October 3, 2017 City Council Meeting this ordinance was left on the first reading.

Council Member Gray moved to suspend the rules and go to the third and final reading. **Council Member Kinion** seconded the motion. Upon roll call the motion passed 6-0. **Council Members Kinion, Petty, Bunch, La Tour, and Gray** voting yes. **Mayor Jordan** voting yes. **Council Member Tennant** recused. **Council Members Marsh and Long** were absent.

City Attorney Kit Williams read the ordinance.

Assistant City Attorney Blake Pennington gave a brief description of the ordinance and spoke about amendments being proposed. He stated the City Council received an email copy of the amendments and suggested amending Exhibit A to the current copy that Council has viewed so there can be more discussion.

A discussion followed on how the amendments were arranged in Exhibit A.

Council Member Petty stated he had a meeting with staff and telecommunication providers to help create some amendments that would make the ordinance a little more flexible. He spoke about height limits for poles. He stated another way for flexibility is allowing the Zoning and Development Administrator to grant variances. He thanked the staff for their work.

Assistant City Attorney Blake Pennington: The specific changes are in (E)(1) which talks about collocated facilities and facilities located on existing structures, which grants additional five feet by right. If there is an existing telephone pole, we recognize the providers are going to have to stick an antenna on top of that. Instead of going through the variance process with the Planning Director every time, they can go up to five feet automatically. They can request an additional amount, but no more than 10 feet total. Under new facilities in public rights of way, we changed it to base the height limitation on street classification and also allow for that variance procedure for an additional 10 feet if needed because of topographical considerations or line of sight issues. We clarified in (F)(6) about the distance between new facilities. Basically, we are trying to spread out ugly poles as much as possible.

Cathy Foraker, AT&T thanked city staff for their work and is grateful for the amendments.

Susan Davis, Verizon stated great progress has been made for a favorable ordinance for the city and wireless carrier industry. She spoke in favor of the amendments. She requested more time for the industry to make final technical changes.

Brent Stephenson, 318 South Pulaski Street in Little Rock stated he is representing T-Mobile. He thanked the city staff for their work. He requested more time to work on technical clarifications. He spoke in favor of the amendments.

John Scott, Ward 3 citizen. He stated he is an attorney representing AT&T and requested the ordinance as a whole be tabled to allow more time to work on it.

Marcus Hall, Poplar Street believes technical clarifications as defined by the providers seems to mean financial. He is fearful that state legislation could get involved if dragged out. He stated he wants the City Council to vote in favor of the ordinance.

Council Member Kinion spoke in favor of the amendments. He stated a standard and baseline is being set that can be reviewed in the future if a specific situation needs to be looked at that is going to be inhibited because of what they've passed tonight. He believes it is a flexible baseline that will meet the needs of the community, as well as the needs of the technology as it develops.

Council Member Kinion moved to amend the ordinance to Exhibit A that was emailed to the City Council. **Council Member Petty** seconded the motion. Upon roll call the motion passed 5-0. **Council Members Kinion, Petty, Bunch, La Tour, and Gray** voting yes. **Council Member Tennant** recused. **Council Members Marsh and Long** were absent.

Council Member Petty: I'm not for or against tabling for any particular reason. I would like to hear from one of the carriers about the technical clarifications. I'm reluctant to table it because it's been worked on for so long and there has been numerous meetings.

Council Member Kinion believes they are ready to move forward as amended. He stated what is in front of them is very well incorporated with the established Unified Development Code. He stated it has been discussed for a long time. He stated there has been a lot of technical information provided and we have had time to compare it with other communities with the implementation. He

believes it is a good amendment and can meet the needs of the providers, community, and provide the technology.

John Scott stated this is an unusual situation where businesses who want to invest in the city aren't trying to rush something through. He stated two to four weeks would allow it to be done better and allow engineering more time to know what communities to devote resources too. He stated Verizon, T-Mobile, and AT&T are unified carriers and they are the ones who provide connectivity. He stated there is no state law on the books that will be place in the next four weeks. He spoke about federal law. He requested more time for the amended ordinance to be reviewed. He stated they want to invest in the community and they aren't challenging the money. He stated they are requesting more time as a matter of clarity.

Brent Stephenson stated he was still on the phone with city staff at 4:30 p.m. before the City Council meeting trying to clarify some of the faults and nuances of the ordinance. He stated the municipalities that have the best ordinances will be first in line. He stated he wants to make sure the technology and public policy match up. He requested more time for the ordinance to be reviewed.

Marcus Hall stated he feels like there is a little bit of hollow threats in some of the statements. He stated it is a very lucrative arena. He believes there are plenty of investments that will come in the community. He wants the City of Fayetteville to be a leader. He requested the ordinance to be passed and not tabled.

Cathy Foraker stated progress was made, but is requesting more time for the language to be reviewed.

Brian Adams, 61 Shipley stated he was a contract employee for Verizon. He requested for the item to be tabled to allow more time for the language to be reviewed.

Council Member Kinion: I want to hear from our staff about the integration of what we have before us in regard to technology, as well as the integration in our current standards with our Unified Development Code.

Assistant City Attorney Blake Pennington: We tried to incorporate as much language from the UDC as possible.

Council Member Kinion: I was trying to look at the balance between the current UDC, which we have to revise regularly in order to meet the changes in the community. We also recognize it is there for reason. I would hate to impair our logic in establishing standards that are already in the code.

Assistant City Attorney Blake Pennington: A lot of the definitions are carried over from the UDC. We have adopted our construction management standards. The process for obtaining a new facility on private property is just adopting the conditional use standard and process for cell towers. We didn't want to stray too far from language our staff is already comfortable with and language you have passed in the past. This is a brand-new area and there are a lot of things that had to come

into play for this. There were two copies of the ordinance that I emailed to Cathy this afternoon. One had some old language from a variance procedure that had been updated. That was the only difference and it was not an issue we talked about at all today. Other than me saying, this was the change between the first and second version. We loosened the language based upon the Planning Director's recommendation. We moved from an undue hardship standard to a difficult to provide service standard. That was the only difference between those two versions. The definitions haven't changed other than us adding the definition, stealth technology, from the very beginning. The intent of the ordinance is that a structure is a support structure and a facility is all of it. We have staff who is knowledgeable and comfortable with the language and they can work with the providers if there are any questions. If questions remain, they have the ability to appeal to the City Council.

Council Member La Tour gave a brief description about frequency modulation and amplitude modulation. He stated when you have an ordinance that places a height restriction of five feet or ten feet above the pole, those can have a massive impact on the service area of the antenna. He believes the carriers engineers need more time to review the changes. He stated he needs time to review the content. He spoke about his concerns with absent Council Members. He believes the item should be tabled.

Council Member Petty: I'm ready to vote on this tonight. It is a good ordinance and we have been diligent in its drafting. I think if the industry representatives had the ability to make the decision, they would vote yes too, but some of these things might need to be checked by a larger bureaucracy. I don't see the harm in two weeks, but I'm a little frustrated by waiting longer. I don't see there is eminent preemption legislation, which would be my primary concern about waiting. I share Council Member La Tour's description of the absent Council Members.

Don Marr, Chief of Staff: Thank you to Cathy Foraker. Back in the legislative session when AT&T introduced a bill, we talked about the importance of having the communities be able to weigh in and talk about what's important to them. They gave us a chance to do that by not running the bill. We've tried to have this conversation with anybody who has come forward. Blake, Susan, and Keith have done a fantastic job of trying to listen to everyone and continuing to negotiate. I don't think waiting two weeks will hurt and will allow their engineering team to review it.

Council Member Gray stated she would be fine to table the item for two weeks.

Council Member Kinion stated he will not be complacent about the well-established UDC that is in place that defines the community and standards.

Don Marr stated the Mayor's direction to the staff is to maintain community aesthetics and the code items that are so important and that have already passed. He stated they have no intention of compromising that. He thanked Council Member Kinion for his leadership.

Mayor Jordan: If you want to table this, then that is okay. This has been going on for months and months. I have come to a point where this needs to end. I agree with Council Member La Tour and Council Member Kinion's points. This isn't the first time I've seen cell towers at the Council. I'm all in favor of 5G, but the day our citizens see giant poles going up in our right-of-way in this

city, they are going to say something about it. We need to produce the kind of cells that are not obtrusive. I am glad to see these amendments.

A discussion followed about setting a deadline by the next Agenda Session for provider feedback on the existing document to allow turnaround time.

Council Member La Tour moved to table the ordinance to the November 21, 2017 City Council meeting. Council Member Petty seconded the motion. Upon roll call the motion to table passed 5-0. Council Members Kinion, Petty, Bunch, La Tour, and Gray voting yes. Council Member Tennant recused. Council Members Marsh and Long were absent.

This ordinance was left on the third reading and tabled to the November 21, 2017 City Council meeting.

RZN 17-5925: (820 S. Government Ave./Barnes): An ordinance to rezone that property described in rezoning petition RZN 17-5925 for approximately 1.73 acres located at 820 South Government Avenue from RMF-24, Residential Multi Family, 24 units per acre, MSC, Main Street Center, and I-1, Heavy Commercial & Light Industrial to I-1, Heavy Commercial & Light Industrial. *At the October 17, 2017 City Council Meeting this ordinance was left on the second reading.*

Council Member Gray moved to suspend the rules and go to the third and final reading. Council Member Tennant seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

City Attorney Kit Williams read the ordinance.

Council Member Petty stated he can't support this as it is presented. He believes it sets a bad precedent. He stated to rezone this item gets dangerously close to spot zoning. He stated it could allow a petroleum storage facility by right and highlights the risk. He stated he is concerned about removing the right for residential to happen there. He believes it introduces a new barrier that shouldn't be there.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-1. Council Members Kinion, Tennant, Bunch, La Tour, and Gray voting yes. Council Member Petty voting no. Council Members Marsh and Long were absent.

Ordinance 6006 as Recorded in the office of the City Clerk

New Business:

Bid #17-49 Diamond International Trucks, Inc.: A resolution to award Bid #17-49 and authorize the purchase of five (5) International 7300 4x2 Recycling Trucks with Kann Bodies from

Diamond International Trucks, Inc. d/b/a Summit Truck Group of Lowell, Arkansas in the total amount of \$845,500.00 for use by the Recycling and Trash Collection Division.

Terry Gulley, Transportation Services Director gave a brief description of the resolution.

Council Member La Tour: The employees that manage and operate our Recycling program, what is our turnover rate among those people?

Kyle McCarty, Solid Waste Operations Supervisor: So far, this year we've probably had eight positions open within the Recycling field. We have had a tough time staying fully staffed.

Council Member La Tour: What would be the reasons for a high turnover rate? Is there a lot of lifting, is it a difficult job or high risk?

Kyle McCarty: It is definitely a difficult job. They are outside in the elements. The style of truck we use is where the drivers are outside of the truck at every single stop. They pick up every bin and all of that weight on the truck is something their back has lifted.

Council Member Gray: Have you looked at different styles of trucks to try to do something that might be easier on the workers?

Terry Gulley: It has been brought up. We have attended WasteExpo and looked at every available truck there. We've talked to Kann Manufacturing that makes these particular trucks we use. These have been greatly improved over trucks we started the program with. We adjusted so the employee did not have to step up and down on the truck, and got it lower to reduce shoulder injuries. We have looked at other types of trucks, but we have not found anything that fits the ability to pick up the eight different types of items we do now.

Mayor Jordan: Did you get employee input about the truck type?

Kyle McCarty stated they haven't had the opportunity to have a demo truck provided to the city for the drivers to be able to use. He spoke about trough trucks and the city's eight commodity needs. He spoke about cardboard challenges. He stated the trough truck doesn't provide a means to compact the plastics because it takes up so much room due to the air volume in the bottles. He stated to be able to utilize the compactors that they have compared to the trough trucks, there was some limitations based on size and available space.

Mayor Jordan: You don't have enough space for the cardboard and plastics to be compacted?

Kyle McCarty: Yes, sir. I would say the plastics is the highest because loading it in the trough truck there isn't a compaction system similar to what we have. You can move the partitions that are inside the body to try to optimize what space you use, but the overall capacity of the trough truck that they bid was 41 cubic yards. We are able to do 30 yards worth of plastics on our trucks. Loading the cardboard was a difficult option to get it to lay in the truck flat to make more room.

Terry Gulley spoke about trough truck bids.

Mayor Jordan confirmed the item had been through the Equipment Committee.

Louise Mann, 629 Gray Avenue spoke about an article from EarthFix, which is a public media partnership of Oregon public radio. She spoke about the contamination percentage for multi-stream recycling. She spoke about the Port Townsend trough trucks. She requested to know how the trucks being approved tonight would reduce employee turnover. She stated her concern is that the city is buying the trucks and getting ready to do a rate study and in six months when the rate study is complete, the city will go to single stream. She spoke about bins on wheels.

Mayor Jordan: Is our contamination rate under 5%?

Brian Pugh, Waste Reduction Coordinator: When we did a pilot last year and picked up all materials in the bins, it was closer to 2% of things in the bin that were not recyclables.

Mayor Jordan: That's good.

Brian Pugh: We don't have any doubt that our recycling program provides clean materials. I don't think the trucks are going to reduce turnover. Our trucks are what they are and our drivers have to get out and sort the materials. It's not a job for everybody. The Council decided back in February with our Diversion Plan that we were going to stick with our program the way it is. We have been delayed with the truck purchases. The city is growing and we need these trucks today. We want to expand our collections. Even if we order them tomorrow, it could take eight to ten months before we get the trucks. I encourage the Council to let us buy these trucks so we can do the work you have asked us to do. As far as after the rate study and what's going to happen with single stream, I don't think that is even a consideration for the Council at this point. We were told we were not to prioritize single stream for the next ten years. We are going to continue with the program we have and make the best of it. We are going to treat our workers the best we can with the equipment we have.

Mayor Jordan: What about bins on wheels that Louise mentioned?

Brian Pugh: In 2002, we were spending around \$30,000 a year on 18-gallon bins. That wasn't any wheeled carts. In 2017, we have encouraged citizens to put paper items in one bin and cans and bottles in another bin. We have had to double the purchases of the bins we have in our program. We are spending close to \$55,000 a year on containers for the program. If we were to switch that and go to a stackable system that has some kind of cart dolly, the cost would be a lot higher than what it is currently. I don't think making citizens sort more is going to increase participation. In Port Townsend, we were told they have that separated into four different areas. Glass, cardboard, and mixed paper is separated. Bottles and cans go together. When they told us that the bottles and cans were brought back to their facility and sent to a single stream facility for further processing, we assumed that was not something Council wanted us to pursue.

Council Member Kinion: We looked at single stream and we decided not to do single stream for the next ten years. We went to committee, it came to Council and that is where we stand. To speculate on that is simply a wild speculation. In our operations, we have to look at the efficiencies because this is an Enterprise budget. We are looking at a rate study. We will be using this model

we have with these trucks and curbside sorting to set the rate as we go forward. This is going to set the baseline, standard, and operational cost associated with the activity that's going to be imperative as we look at the total cost of the Recycling Program. It's no secret our Recycling Program cost more than what we make off of it. We are doing it because it is the right thing to do. We have put off this purchase for so long that our current fleet of vehicles is falling apart. We have looked at every option. We have looked at managing the situation so our recyclables are acceptable in the market.

Louise Mann: The generation leaving Fayetteville is 60 years of age and older. I'm not happy about paying 9% sales tax when I see the process that was used to study single stream. Over the past two years the guys that run these trucks could have designed the perfect truck and been a model for the nation. Single stream is a mess and we have been dumping on countries that don't have good environmental or child labor laws. We are going to see more 60 and older people leaving. We are going to be losing money, experience, and volunteers. This staff has used my ideas and it has benefited the city.

Council Member Kinion: Ms. Mann, we have ultimate respect for you and your information. You have been one of the best educators for me. Tonight, we are talking about purchasing vehicles so we can continue a program based on the information we have. We have to move forward and get these into operation.

Council Member La Tour stated he supports the purchase of the trucks because of the need for them. He stated it is the same system, but just a newer model. He stated he can see value in what Ms. Mann is teaching. He spoke about trough trucks and mechanisms to help the employee have a better work experience.

Don Marr, Chief of Staff stated he thinks Louise Mann is probably the resident expert on recycling in Arkansas. He spoke about the teachings of Ms. Mann. He spoke about his time working in the Recycling & Trash Collection Division. He stated we are not spending one second on single stream recycling. He spoke about employee safety, truck design, and worker injury. He stated they are committed to talking to the people who build trucks about what changes can be made. He stated Brenda Reed, HR Director is committed to addressing and looking at staff retention and recruitment. He stated there are some challenges, we pick up more commodities, we compress items, and we do not want to dump as much because going back and forth also has a cost on the rate payer. He stated it's not to get to single stream, it is to have the most efficient curbside pickup program possible and safest for the worker. We are not ignoring the fact that we have to take care of workers.

Mayor Jordan: I have never been a strong proponent of single stream because of the contamination rate. I am part of the past 60 group and I was trained to recycle. I separate my glass, plastic, and paper. We looked at some of the trough trucks, but we couldn't seem to get the capacity. They are \$18,000 more than each one of these trucks. I have to balance the finances of the city. Maybe, we can look at something later on. We had put off buying these trucks because we were having the discussion about single stream or keeping curbside. It went through the Equipment Committee. What are the thoughts of the committee?

Council Member Gray: We heard many of the same discussions we've heard tonight about the importance of having these trucks so we can deliver services. I had asked Terry Gulley to report to us and he told these exact same things to the Equipment Committee. We felt like we had to buy the trucks.

Mayor Jordan: We don't have the capacity on the trough trucks to do the cardboard program like we need to do it. We got the added expense, plus we don't have the same capacity to do the plastic and cardboard that we need to do.

Council Member La Tour: The Equipment Committee did have a discussion. Terry Gulley told me we were staying with the same recycling program. We approved it.

Council Member Bunch: At the Equipment Committee we heard the same thing you have heard tonight. I feel comfortable voting on these trucks because our fleet is barely operating. We need to do something pretty quick.

Council Member La Tour moved to approve the resolution. Council Member Bunch seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

Resolution 237-17 as recorded in the office of the City Clerk

Arkansas Crime Information Center Bid Waiver: An ordinance to waive the requirements of formal competitive bidding through 2022, and to authorize payments to the Arkansas Crime Information Center for fees related to state computer and teleprocessing transactions in 2017.

City Attorney Kit Williams read the ordinance.

Greg Tabor, Chief of Police gave a brief description of the ordinance.

Council Member Gray moved to suspend the rules and go to the second reading. Council Member Tennant seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

City Attorney Kit Williams read the ordinance.

Council Member Gray moved to suspend the rules and go to the third and final reading. Council Member La Tour seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

Ordinance 6007 as Recorded in the office of the City Clerk

RZN 17-5933 (1324 W. Cleveland St./Arkansas Legacy, LLC): An ordinance to rezone that property described in rezoning petition RZN 17-5933 for approximately 3.29 acres located at 1324 West Cleveland Street from RSF-4, Residential Single Family, 4 units per acre to NC, Neighborhood Conservation and RI-U, Residential Intermediate-Urban subject to a Bill of Assurance.

City Attorney Kit Williams read the ordinance.

Andrew Garner, City Planning Director gave a brief description of the ordinance. The Planning Commission recommended approval unanimously. Staff is in favor of the request.

Mayor Jordan: Was there any opposition at the Planning Commission about the project?

Andrew Garner There was not. There was no public comment at the Planning Commission.

Paul Jeske, Applicant, 2820 Riverside Drive, Salem, Oregon stated he wants to do the same thing the city wants to do in terms of traditional town form. He believes they are being sensitive to the neighbors. He has concerns about the parking lot at the corner of Hall Street and Cleveland Street. He stated parking lots don't contribute to the neighborhood.

Brian Teague, Community by Design stated he was representing the owner of the property. He stated he attended two Ward 4 meetings and there wasn't any opposition. He stated the transitional nature of the proposal is compatible with the surrounding neighborhoods. He believes the project won't have an impact on traffic.

Council Member Gray moved to suspend the rules and go to the second reading. Council Member La Tour seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

City Attorney Kit Williams read the ordinance.

Council Member Gray stated she was very pleased to support the ordinance.

Council Member La Tour moved to suspend the rules and go to the third and final reading. Council Member Gray seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

Ordinance 6008 as Recorded in the office of the City Clerk

Central Emergency Medical Services: A resolution to approve the sale of the property and building at 833 North Crossover Road to Central Emergency Medical Services for use as an ambulance station for \$175,000.00 and to approve Mayor Jordan's execution of a deed and any other necessary documents to effectuate this sale.

David Dayringer, Fire Chief gave a brief description of the resolution. He stated two bids were received for the property and staff recommends accepting the lower bid. He spoke about the compelling reasons to accept the lower bid in the interest of public safety.

Mayor Jordan: There was \$2,000 difference in the price. Can we take into other considerations when we look at this sort of thing?

City Attorney Kit Williamson: Yes. This is similar to when we considered selling two acres to Kum & Go or Casey's. I informed the City Council at the time that you could take into consideration something besides money. The money is obviously important, but there can be other considerations such as public benefit. The amount between the two prices bid is barely over 1%. It's \$2,000 over \$175,000. There is also a monetary benefit. We are members of CEMS. We help fund their operations because an ambulance service can't fund all of this operation. The county, city, and other cities help fund the operation of CEMS. By allowing a sale in this manner they get a facility that already has an extremely large garage. It is a good location. It has the facilities that are better able to be equipped as an ambulance station than some other piece of property they would have to try to acquire. If you decide the considerations are enough to overcome the \$2,000, you are on safe ground.

Council Member La Tour: It is a win for everybody. I believe we should do this.

Stuart Sanders, Elkins Resident: I am a Commercial Real Estate Appraiser. I saw an advertisement in the paper that the city was proposing to transfer this property based on an appraisal that had been performed to Central Emergency Medical Services. I was concerned of the amount of the appraisal. I did an appraisal of the property and I looked at the appraisal that was performed. The appraisal performed was based on its valuation as a residence. It's an office and has been utilized as an office for the last 11 years. The proposed uses are for office for both the ambulance service and for myself.

Arkansas Law Act 470 states, "Municipal real estate or personal property to be disposed of as one unit shall not be sold without competitive bidding if the amount exceeds \$20,000 or the maximum provided by resolution unless the Mayor certifies in writing to the governing body of the

municipality that in his or her opinion the fair market value of the item or lot is less than the amount established by the ordinance.” I submitted a competitive bid and my bid won, based on dollar amount. The state statute itself is qualified on dollar amounts. If the amount exceeds \$20,000 then bids are in dollars. If other considerations can be tabulated, then why not sell the property to whoever you wanted to begin with for \$1. Why go through this charade? As far as the argument of saving lives, I agree that CEMS saves lives. Why can’t they continue to save lives from their dispatch office just across the street? I don’t believe you are complying with the state statute.

City Attorney Kit Williams: This was not a charade. It had to be out for competitive bidding because that’s what state law says. That doesn’t mean money alone is something that can be used by the city or considered by the city in the sale of property. In 2013, the City Council was considering the sale of 2 acres of land to Kum & Go or Casey’s. I issued a one-page memo entitled “Considerations relevant to the offers to purchase the two-acre parcel.” In that memo, I quoted from Arkansas Attorney General Opinion No. 2001-135: “With respect to the issue of consideration, it is well established that a municipal corporation may convey public property or an interest therein based upon consideration other than money.” An earlier Arkansas Attorney General Opinion No. 96-351 stated: “The Arkansas Supreme court has held that even non-monetary consideration can be adequate if a ‘public advantage’ will result from the lease.” Act 470 merely states that municipal real estate “shall not be sold without competitive bidding.” It never states that only monetary consideration can be considered. The court interprets statutes as saying, “It is well-settled that any interpretation of a statute by this court subsequently becomes a part of the statute itself. The General Assembly is presumed to be familiar with this court’s interpretations of its statutes, and if it disagrees with those interpretations, it can amend the statutes. Without such amendments, however, our interpretations of the statutes remain the law.”

Even though the Legislature amended A.C.A. 14-54-302 Purchase, Lease and Sale Authorized by adding “disposal” and later requiring real estate to be sold with “competitive bidding,” it did not change the Arkansas Supreme Court’s well-established rule that such sale could be “based upon consideration other than money.” The Legislature could have added a “cash only” provision as they did in A.C.A. 22-6-601 (h) for the sale of state real property, but it did not, which leaves the long-standing rule allowing “public benefit” to be part of the consideration for municipal land sales. Every major city in Arkansas has invested in an industrial park or some other thing like that where they have acquired land that they want to sale to help industry or business come to their town. We have done that many times. We sometimes give a discount if we really want the business there. We aren’t considering just money. We are considering the public benefit, which the Supreme Court has interpreted as being appropriate. In the ordinance it says, the City Council has approved a deed limitation to ensure that the use of the property shall be and remain to be for Central Emergency Medical Services provision of ambulance and other governmental type services. In this particular case, there is a clear public benefit that you can consider.

Council Member Tennant: If we pass this resolution, it still has to go through closing?

City Attorney Kit Williams: Yes.

Council Member Tennant: If that falls through, then we could take the second bid?

City Attorney Kit Williams: Yes.

Council Member Tennant: In your opinion, if litigation arises, you think it's defensible?

City Attorney Kit Williams: Yes, I believe the Supreme Court has made it clear that something besides monetary value can be used by a municipality in considering to sale a property. There have been two cases where they have said that. We have the Attorney General opinion that says this is well established law in Arkansas.

Mayor Jordan: When the Chief brought this to me, he said they were trying to hit a nine-minute response time. That means lives and that means property. I support this.

Council Member Gray moved to approve the resolution. Council Member La Tour seconded the motion. Upon roll call the motion passed 6-0. Council Members Kinion, Petty, Tennant, Bunch, La Tour, and Gray voting yes. Council Members Marsh and Long were absent.

Resolution 238-17 as recorded in the office of the City Clerk

VIP Club: An ordinance to approve the application of Sami Ammar Haddaji, on behalf of VIP Club for a permit to operate as a private club in the City of Fayetteville at 326 North West Avenue #6.

City Attorney Kit Williams read the ordinance.

Kenneth R. Mourton, Attorney for the Applicant stated his clients are requesting an application to have approval to operate a private club.

Greg Tabor; Chief of Police: I have some concerns about this. The concerns are not with the applicant, it is with the location. The applicant has had an alcohol permit before and no known violations while he had that permit. This location is at the intersection of West and Watson. There are also three other very popular bars in that area. In early summer, we started seeing issues down in that specific area of West and Watson. Issues like I've never seen since I've been a Police Officer, but for sure since I've been the Police Chief. I meet with the Mayor every Monday and a lot of those meetings are dominated about discussions of West and Watson. We've worked with local property owners to get more lights and to control parking. We have had situations where it has maxed us out at 2 a.m. We have had the County and the University to help answer calls because of the ruckus. We have had some serious crime occurring down there at 2 a.m., such as aggravated assault and shooting. We have concerns about people pouring into the streets and we can't seem to get them to move along. We have concerns about emergency vehicle access. We have put a light trailer and a surveillance trailer down there. We have involved the Fire Department to help us with blocked emergency exits. We have worked extremely hard since the summer to get this under control. In the last three weeks, it has gotten better because of a combination of things. We think it is because we have put more officers down there. We have pulled the bike officers from the mall and put them down there. We have spent a significant amount of money on overtime. The Social

Club went out of business down there and if we put a 4th club back into that proximity, we are going to have the same issues we were having several months ago.

Council Member Petty: Is it your sense that it's the number of people there, more than operations of the particular clubs that is contributing to the problem?

Greg Tabor, Chief of Police: It is all the above. You have over service at some of your clubs. Then people pour out onto the streets and that causes fights.

City Attorney Kit Williams: When you say over service, do you mean too much alcohol being served to an individual?

Greg Tabor, Chief of Police: Yes, too much alcohol being served in those establishments. If you took these four bars and separated them on each end of West and Dickson, I don't think you would have the problems. You wouldn't have as many people congregating in that area at 2 a.m. when the bars let out.

City Attorney Kit Williams: Are you getting any help from the ABC on trying to have a little bit better cooperation from the current bar owners?

Greg Tabor, Chief of Police: We have. That was about the first step we took. We talked to the bar owners. We were getting cooperation from them, but they can only do so much. We have involved ABC and there have been some violations written. There have been some fire code violations written also. We have involved everybody we know to involve.

Council Member Petty: There have been a concentration of bars there for a number of years. It seems like in the last six months there has been an escalation. Is that accurate?

Greg Tabor, Chief of Police: That is a fair statement. One of the bars may have changed their business model. It is used to be an event type center and now it is more of a bar.

Council Member La Tour: I defer to your opinion. Criminal justice is your living, not mine. If you think it's a bad idea, then I think it is a bad idea.

Council Member Kinion: Mr. Mourton, you have heard the concerns. There needs to be some kind of resolution to handle the concerns. This is an entertainment area with bars and this is a building that has typically been a bar. I hate to discriminate on a business point because you have the right to use your building to support a business. I don't know what an alternative business would be. Do you know of a way to resolve an issue of increased crime in the area if you were to be given the opportunity to establish a club?

Kenneth R. Mourton: I will visit with my client about that. I've owned a beer distribution facility for 30 years and it has changed quite a bit in those years. My client has cut down the occupancy level to 50% of what the occupancy level was before. As far as what can be done, I don't have the expertise in that field. My clients would be willing to meet with Chief Tabor and do what they

could to assist. It may be an overall issue with the whole Entertainment District. Maybe the Chief and the merchants in the area could have that discussion to resolve some issues.

Mayor Jordan: We could leave it on this reading to see if anything could be worked out.

Council Member Kinion: I would like to leave it on the First Reading. I live in this area and the nature of that area can be rambunctious. We have seen a higher density of population. We have parking in the area. We have a cycle of increased incidence, but I hope there's a way it can be managed so it doesn't impair the opportunity for the business.

Kenneth R. Mourton: My clients would be happy to meet for discussions.

Council Member Kinion spoke about it being a good idea for a meeting.

Council Member Tennant: I appreciate the time to get some more information. I hate to discriminate against a business because of the timing. Maybe they are going to do something better to make the area better. I'm more concerned with the process of what happens to a club if they are deemed to be causing issues and adding to the problems. Does ABC step in and what are the legal ramifications?

City Attorney Kit Williams: Back in the 1990's we had a severe problem with what was called, River City on North College. We determined they were a nuisance and closed them down. I don't know of any other time we have done that. It is theoretically possible, but when you have three clubs emptying out at the same time, I don't know who you are going to point the finger at.

Greg Tabor, Chief of Police: ABC has a strict set of rules. Anytime that we catch somebody fighting and we know they were in a certain club, it is a violation on that club. We have a process for any alleged ABC violation. We send that information to the ABC and they deal with it administratively. There are some things we could do in working with the applicant to address our concerns. How formal does it need to be? Would it be like a Bill of Assurance? I still have the concern about the 2 a.m. time. I had not heard about the decreased occupancy and that it is a great idea. I have concerns, no matter how good a job they are doing. Those people are still pouring out into the streets where the problems are starting.

City Attorney Kit Williams: We are in uncharted territories. There is no guidance in the law. It says you can approve or disapprove. It doesn't say what you are supposed to look at or decide. If you are going to disapprove it, there needs to be some good reasons. We have heard some reasons. It is not the policy of Fayetteville to keep buildings vacant. We don't want to have that as a final result, so hopefully we can work something out. I have some ideas that I can talk with Chief Tabor about.

Kenneth R. Mourton: My clients don't want any problems. They have been in business in that area before and they have never had a violation with the ABC or Police Department as far as I know. It is a problem, but it's a problem bigger than just my clients. We are willing to do what we can to work everything out.

Don Marr, Chief of Staff: During the legislative session this came about because communities wanted an input on the front end into the permit request. Our old dance hall permits were conditional uses that allowed the city to work with the operators to put conditions in place. Kit and I have talked about the need to revamp this process as it relates to the city. These applications are sometimes coming in to a Council Member or the City Attorney office. The entity who is probably the best to address it is our Police Department. As we develop this new process, these applications are probably going to start at the Police Department so we can have information on the front end. It's not normally our practice as a city to not support new business owners and the development of buildings, but at the same time we need to maintain a safe environment.

Kenneth R. Mourton: This is different in that all applications before the ABC, the city has requested the Police Department to respond if they have objections. A lot of this activity down there comes from a lot of other clubs that has on premise restaurant, liquor, and beer license. Other than the ABC asking the city to give input, there's not a lot the city can do. On private clubs, now you have to have the city to sign off through an ordinance, which is probably discriminatory on the issues of your restaurant, hotel, liquor by the drink. It is a bigger issue that has to be looked at.

This ordinance was left on the First Reading

Announcements:

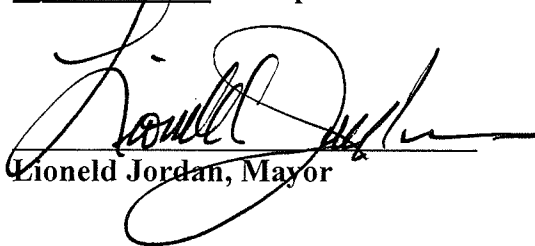
Don Marr, Chief of Staff: On November 17, 2017 at 6:00 p.m. will be the parade and lighting for Lights of the Ozarks. The lights will be on from 5:00 p.m. to 1:00 a.m. nightly with carriage rides and other treats on the square.

City offices will be closed on Friday, November 10, 2017 in observance of Veteran's Day. All Solid Waste commercial routes will run on Friday. We don't have residential route pick up on Friday.

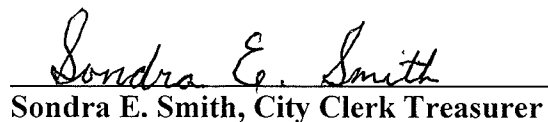
City Council Agenda Session Presentations: None

City Council Tour: None

Adjournment: 8:19 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk Treasurer