

City of Fayetteville Staff Review Form

2014-0430

Legistar File ID

10/7/2014

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Sondra E. Smith

9/30/2014

City Clerk/Treasurer /
 General Government Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution calling a Special Election regarding Civil Rights Ordinance Number 5703, due to referendum petitions that were received on September 20, 2014, and approval of a budget adjustment in the amount of \$40,000 to cover the cost of the special election.

Budget Impact:

1010.1510.5318.00

1010 - General Fund

Account Number

Fund

Project Number

Project Title

Budgeted Item? No

Current Budget \$ 25,000.00

Funds Obligated \$ 25,000.00

Current Balance \$ -

Does item have a cost? Yes

Item Cost \$ 40,000.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 40,000.00

Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution # 5703

Original Contract Number: N/A

Approval Date: _____

Comments: We currently have \$25,000 budgeted for the November 4, 2014 General Election. The current budget is needed to pay for that election therefore a budget adjustment is needed to pay for the Special Election.

Sondra E. Smith – City Clerk Treasurer
Lisa Branson – Deputy City Clerk



Phone 479.575.8323
cityclerk@fayetteville-ar.gov

113 W. Mountain Street, Suite 308
Fayetteville, AR 72701

City Council Agenda Memo

Meeting of October 7, 2014

To: Mayor Lioneld Jordan and City Council
From: Sondra Smith, City Clerk *Sondra Smith*
Date: September 30, 2014
Re: Special Election

RECOMMENDATION:

Approval of a resolution calling for a special election regarding Civil Rights Ordinance Number 5703. Referendum petitions were received on September 20, 2014, and have been verified as sufficient to call a special election. The petitions requested an election date of December 9, 2014. The County Clerk has confirmed a special election can be held on December 9, 2014 provided a copy of the approved resolution is received on or before October 10, 2014.

BACKGROUND:

The Fayetteville City Council approved Ordinance Number 5703 on August 20, 2014. The 2013-2014 Initiative or Referenda Handbook from the Secretary of State states, fifteen (15) percent of the legal voters of any municipality may order the referendum or invoke the initiative upon any local measure. In municipalities the number of signatures required upon any petition shall be computed upon the total votes cast at the last preceding general election.

The November 6, 2012 general election official results, the total votes cast for the office of Mayor in the City of Fayetteville was 27,296. Therefore, fifteen (15) percent of the total votes cast for mayor calculates to **4,095** signatures that are required on initiative or referenda petitions. The signatures on the petitions must be of registered voters that reside in the City of Fayetteville.

City Code 36.15 When Petitions Need To Be Filed

All referendum petitions under Amendment 7 to the Constitution of the State of Arkansas must be filed with the City Clerk within 31 days after the passage of the ordinance to which it relates.

The deadline for submitting petitions was Saturday, September 20, 2014. Since the deadline fell on a Saturday, the City Clerk office was open on September 20, 2014 to receive any potential petitions that might be submitted.

About 1:30 p.m. Saturday, September 20, 2014 we received **802 petitions**. We began the process of date stamping, and verifying the number of signatures submitted. In my preliminary analysis of the petitions received they contained **5,714 signatures**.

The petitions with the ordinance and affidavits attached yielded slightly more than the 4,095 signatures required to call a special referendum election. Therefore, as Fayetteville City Clerk, I certified the referendum petition concerning Ordinance Number 5703 passed on August 20, 2014 as sufficient pursuant to the requirements of Amendment 7 and Arkansas law.

BUDGET IMPACT:

The special election is estimated to cost \$20,000 to \$40,000. The cost is determined by the number of voters that cast votes and any cost associated with the election.

OFFICE OF THE CITY CLERK TREASURER

Sondra E. Smith – City Clerk Treasurer
Lisa Branson – Deputy City Clerk



Phone 479.575.8323
cityclerk@fayetteville-ar.gov

113 W. Mountain Street, Suite 308
Fayetteville, AR 72701

Departmental Correspondence

To: Mayor Lioneld Jordan
City Council
City Attorney Kit Williams
Assistant City Attorney Blake Pennington

From: Sondra Smith, City Clerk Treasurer *See*

Date: September 20, 2014

RE: Referendum Petitions

According to the 2013-2014 Initiative or Referenda Handbook from the Secretary of State, fifteen (15) percent of the legal voters of any municipality may order the referendum or invoke the initiative upon any local measure. In municipalities the number of signatures required upon any petition shall be computed upon the total votes cast at the last preceding general election.

According to the November 6, 2012 General Election Official Results the total votes cast for the office of Mayor in the City of Fayetteville was 27,296. Therefore, fifteen (15) percent of the total votes cast for mayor calculates to **4,095** signatures that are required on initiative or referenda petitions. The signatures on the petitions must be of registered voters that reside in the City of Fayetteville.

City Code 36.15 When Petitions Need To Be Filed

All referendum petitions under Amendment 7 to the Constitution of the State of Arkansas must be filed with the City Clerk within 31 days after the passage of the ordinance to which it relates.

According to City Attorney Kit Williams the deadline for submitting petitions was today, September 20, 2014. Since the deadline fell on a Saturday, the City Clerk office was open today to receive any potential petitions that might be submitted.

About 1:30 p.m. today, Saturday, September 20, 2014 we received **802 petitions**. We began the process of date stamping, and verifying the number of signatures submitted. In my preliminary analysis of the petitions received they contained **5,714 signatures**.

We have ten (10) days to complete the verification process, therefore Monday we will begin the process of verifying the signatures.

I would like to thank City Clerk staff Gina Roberts, Lisa Branson, Kim Johnson and Dee McCoy for coming in on a Saturday to help with the petition process. I would also like to thank Lindsley Smith, Communications & Marketing Director for being available to communicate with citizens and the press, the City Attorney office, for legal assistance and Building Maintenance for their help with setting up.

OFFICE OF THE CITY CLERK TREASURER

Sondra E. Smith – City Clerk Treasurer
Lisa Branson – Deputy City Clerk



Phone 479.575.8323
cityclerk@fayetteville-ar.gov

113 W. Mountain Street, Suite 308
Fayetteville, AR 72701

To: **Lioneld Jordan, Mayor**
City Council

From: **Sondra Smith, City Clerk** *See*

Date: **September 26, 2014**

Re: **Petition for Referendum on Civil Rights Ordinance Number 5703**

My office has spent innumerable hours reviewing thousands of signatures on the petitions presented by Travis W. Story legal counsel for Repeal 119 Fayetteville requesting a referendum on recently passed Ordinance Number 5703 to amend the Fayetteville code by enacting **Chapter 119 Civil Rights Administration** for the City of Fayetteville. We had to reject signatures on petitions that were not properly notarized as required by Amendment 7 and state law. Arkansas Supreme Court decisions require a liberal evaluation of the petitions so that the goals of citizen review of government action is promoted.

Repeal 119 Fayetteville filed 802 petitions to my office on September 20, 2014. A copy of Ordinance Number 5703 was attached to each of the 802 petitions. Our evaluation revealed the petitions contained approximately 5,714 signatures.

My office then attempted to validate the signatures on the petitions filed on September 20, 2014. We eliminated duplicate signatures, registered voters who became registered **after they signed the petition** or who failed to date the petition so that we could not determine whether their recent voter registration occurred before or after they signed the petition.

In all of our evaluations of the petitions, we accepted the affidavit of the canvasser as true. Every affidavit is a sworn statement that the canvasser personally witnessed each voter sign the petition. Thus, we did not question the accurateness of any signature on a properly sworn to petition. My office is only supposed to examine what is presented and filed in my office to see if the referendum petition is sufficient. Information or allegations about questionable signatures or questions of canvassers is a subject for litigation before a Judge, and not within my power or responsibility as Fayetteville City Clerk.

CONCLUSION

The petitions with the ordinance and affidavits attached yielded slightly more than the 4,095 signatures required to call a special referendum election. **Therefore, as Fayetteville City Clerk, I certify that the Referendum Petition concerning Ordinance Number 5703 passed on August 20, 2014 is SUFFICIENT pursuant to the requirements of Amendment 7 and Arkansas law.**

Smith, Sondra

From: Becky Lewallen <BLewallen@co.washington.ar.us>
Sent: Tuesday, September 30, 2014 12:00 PM
To: Smith, Sondra
Subject: RE: City of Fayetteville Referendum Election

Sondra,

We will have your election December 9, 2014 as long as you can file your ordinance with us on or by October 10, 2014. The law requires it to be filed in our office sixty days before the election. I think Jennifer would like ballot language information as soon as possible so they can start working on ballot prep. Do you think you can have the ordinance filed with us by October 10, 2014?

Thanks,

BeckyLewallen

Washington County Clerk

From: Smith, Sondra <:ssmith@fayetteville-ar.gov>
Sent: Tuesday, September 30, 2014 11:54 AM
To: Election Commission; Becky Lewallen
Cc: Williams, Kit; Travis Story
Subject: City of Fayetteville Referendum Election

Hi Jennifer and Becky

The City of Fayetteville has verified signatures on petitions that were turned in to send the Civil Rights Ordinance that was passed on August 20, 2014 to a Special Election. The petitions called for an election date of December 9, 2014. I will place an item on the City Council agenda requesting the Special Election. I have a few questions for you

1. Is it feasible to have a Special Election on December 9, 2014 for this referendum.
2. What date do you need the ballot title to meet the December 9, 2014 Special Election date.
3. If the Special Election is not feasible for December 9, 2014 please explain why
4. If December 9, 2014 is not feasible what date is feasible for a Special Election regarding this referendum.

We appreciate your service. Thanks for your help!
Sondra

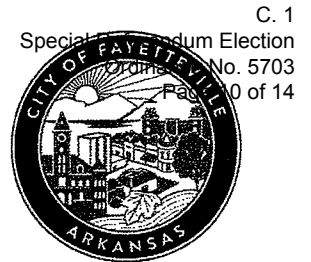
Office of the City Clerk Treasurer
Sondra E. Smith CAMC, CMC
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OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



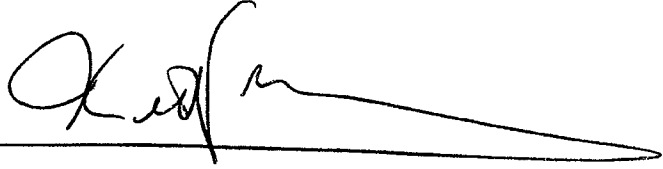
C. 1
Special Ordinance Election
No. 5703
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Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: Mayor Jordan
Sondra Smith, City Clerk/Treasurer
City Council

FROM: Kit Williams, City Attorney 

DATE: September 30, 2014

RE: Civil Rights Ordinance Referendum

Amendment 7 to the *Arkansas Constitution* (now codified as Article 5 § 1 of the *Arkansas Constitution*) and Title 7 of the *Arkansas Code* establish the procedures for setting the special election date and creating the ballot form for a referendum.

Special Election Date

The special election must occur within 120 days of the City Clerk's certification of the petition calling for the referendum. The City Clerk certified the sufficiency of the petition on September 26, 2014; therefore, the election must be held no later than January 27, 2015. Ark. Code Ann § 7-11-205 requires that special elections be held on the second Tuesday of the month which restricts the possible election dates to December 9, 2014 or January 13, 2015. If the City Council chooses the December election date, the Election Commission must receive the ballot information no later than October 10, 2014.

Ballot Form

Ark. Code Ann. § 7-11-204 requires the resolution passed by City Council setting the special election to include:

- (1) The date of the special election;
- (2) The full text of any measure or question for which the election is called;
- (3) The ballot title, if any, for the measure or question for which the election is called; and
- (4) Any other information required by law.

Ark. Code Ann. § 7-9-105 includes a form that was adopted by the General Assembly as a template for referendum petitions. The information contained in the petition is then used to create the ballot for the election. Rather than precisely following this form, the petitioners seeking to refer the Civil Rights Administration Ordinance to the voters suggested their own ballot title which might unfortunately confuse the voters.

This mistake does not invalidate the petition, but the ballot title should follow the form prescribed by the Legislature. It is more straightforward and understandable for the ballot to follow the form set forth in state law, in which a "For" vote on the ballot is actually a vote **for** the ordinance and an "Against" vote is a vote **against** the ordinance. This would be much clearer for voters than a "For" vote on the ballot actually being a vote **against** the ordinance and an "Against" vote being a vote **for** the ordinance. Therefore, the proposed Special Election and Ballot Resolution contains the language that conforms to Ark. Code Ann. § 7-11-204 and 7-11-107 (c).

The statutory requirement that a "For" vote must be **for the measure** and cannot be against its enactment is made very clear by A.C.A. § 7-9-107 (c). Although this statute relates to state issues and gives the Arkansas Attorney General the duty to correct misleading ballot titles, it is certainly instructive in our case despite the fact that this statute does not give city attorneys this pre-circulation corrective powers.

This statute requires a “redesign...(of) the ballot title” if:

“the ballot title, or the nature of the issue, is presented in such manner that the ballot title would be misleading or **designed in such manner that a vote ‘FOR’ the issue would be a vote against the matter** or viewpoint that the voter believes himself or herself casting a vote for, or, conversely, that a vote ‘AGAINST’ an issue would be a vote for a viewpoint that the voter is against.” A.C.A. § 7-9-107 (c) (emphasis added).

Unfortunately, the petitioners’ proposed ballot title to “Repeal” suffers from the exact misleading problem prohibited by the Legislature in A.C.A. § 7-9-107 (c). Such a misleading ballot title would confuse voters on both sides of this issue and thus must be corrected to conform with state law.

The Legislature spelled out what should be the ballot language for County ordinances subjected to a referendum in Ark. Code Ann. § 14-14-917, *Initiative and Referendum Elections*. I regret that this was not expressly made applicable to municipal referendum elections or that municipal referendum elections do not have their own state statute to clearly explain exactly how a ballot should read. However, I believe that city councils are closely analogous to county quorum courts so that the same referendum procedure for their ordinances should be applicable to both local governing bodies.

In Ark. Code Ann. § 14-14-917(d), *Ballot Specifications for Initiative and Referendum Measures*, the Legislature states:

“So that electors may vote upon the ordinance or measure, the board shall cause the ballot title to be placed on the ballot to be used in the election, stating plainly and separately the title of the ordinance or measure so initiated or referred to the electors with these words:

FOR PROPOSED INITIATIVE (OR REFERRED) ORDINANCE
(OR AMENDMENT) NO. _____

AGAINST PROPOSED INITIATIVE (OR REFERRED)
ORDINANCE (OR AMENDMENT) NO. _____."

If the proposed Special Election and Ballot Resolution is approved, the ballot at the special election will include the title of the Ordinance that was passed on August 20, 2014 along with the full text of the ordinance. Below that, there will be two options for the voters: For Referred Ordinance No. 5703 and Against Referred Ordinance No. 5703.

Exhibit A

PROPOSED BALLOT LANGUAGE FOR
REFERENDUM ELECTION FOR FAYETTEVILLE CITY ORDINANCE NO. 5703

ORDINANCE NO. 5703

AN ORDINANCE TO AMEND THE FAYETTEVILLE CODE BY ENACTING CHAPTER 119 **CIVIL RIGHTS ADMINISTRATION** TO PROTECT THE CIVIL RIGHTS OF FAYETTEVILLE CITIZENS AND VISITORS AND TO CREATE THE POSITION OF CIVIL RIGHTS ADMINISTRATOR FOR THE CITY OF FAYETTEVILLE

WHEREAS, the City of Fayetteville seeks to protect and safeguard the right and opportunity of all persons to be free from unfair discrimination based on real or perceived race, ethnicity, national origin, age, gender, gender identity, gender expression, familial status, marital status, socioeconomic background, religion, sexual orientation, disability and veteran status; and

WHEREAS, the City of Fayetteville seeks to promote the public health and welfare of all persons who live or work in the City of Fayetteville and to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas enacts Chapter 119 **Civil Rights Administration** as shown on Exhibit "A" attached hereto.

FOR REFERRED ORDINANCE NO. 5703

AGAINST REFERRED ORDINANCE NO. 5703