

AGENDA REQUEST FORM

FOR: City Council Meeting of January 20, 2015

FROM:
City Attorney Kit Williams

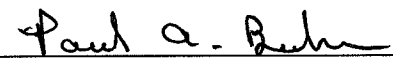
ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO ENACT ARTICLE III PROCEDURE TO EXERCISE INITIATIVE AND REFERENDUM RIGHTS OF CHAPTER 36: ELECTIONS INTO THE FAYETTEVILLE CODE TO CLARIFY THE PROPER PROCEDURE FOR THE CITIZENS' RIGHT OF THE INITIATIVE AND REFERENDUM


APPROVED FOR AGENDA:


City Attorney Kit Williams

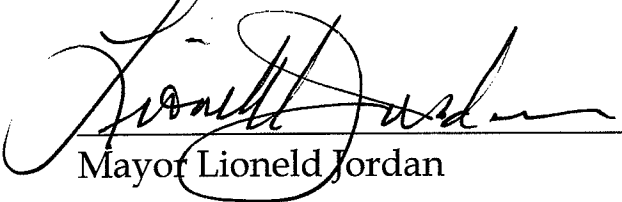
January 2, 2015
Date


Paul Becker, Finance Director

JANUARY 5, 2015
Date


Don Marr, Chief of Staff

1/5/2015
Date


Mayor Lioneld Jordan

1/6/15
Date



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: Mayor
City Council

FROM: Kit Williams, City Attorney

DATE: December 23, 2014

RE: **Avoiding future litigation over ballot language for initiated or referred local legislation**

Prior to the recent referendum concerning the Civil Rights Administration ordinance, Fayetteville had not been forced into any litigation over a referendum's or initiative's proposed ballot language. Referral of the Road Impact Fee and Smoking Ordinance complied with the tests set forth for state legislation referendums and initiatives {A.C.A. § 7-9-107 (c)} and the forms set forth for county ordinances {A.C.A. § 14-14-917 (d)}. However, neither of these statutes are controlling over the referendum or initiative of city ordinance because Amendment 7, now codified as **Article 5 § 1 of the Arkansas Constitution** places procedural power in the City Council.

"Municipalities may provide for the exercise of the initiative and referendum as to their local legislation."

This is only a general grant of procedural power to municipalities which must still follow other provisions of the **Arkansas Constitution** regarding how many signatures of local voters need to be obtained and the time period for the petition sponsors to gather such signatures. Other constitutional procedures including submission of the petitions of the City Clerk, the Clerk's examination and decision regarding the petition's

sufficiency and the granting of additional time to the sponsors must be followed and cannot be varied by local legislation.

In order to avoid future litigation, to bring our procedure in line with state and county referendums and initiatives, and to eliminate potentially misleading wording in referendums rejected by state law {A.C.A. § 7-9-107 (c)}, I have drafted a proposed new section to be enacted into **Chapter 36: Elections of the Fayetteville Code**. This proposal is attached to this memo.

This proposed ordinance is one of the rare times that I believe it is appropriate to have any legislation proposed by an elected official other than an Aldermen or the Mayor (through his staff). I believe I am empowered to present such ordinance because it concerns a legal issue for the **Fayetteville Code** and especially because it generated litigation in which Fayetteville was recently sued by opponents of a referendum in Circuit Court. That suit brought to my attention the need for local legislation as authorized by **Article 5 § 1** of the **Arkansas Constitution** to clarify proper procedure and wording of any initiative or referendum of local legislation.

As you see, I placed a difficult, but obtainable burden on myself and my successors as Fayetteville City Attorney to quickly examine, analyze and either certify or correct any proposed initiative or referendum petition within two business days. Such rapid analysis is always necessary for referendum petitions and could be necessary for initiative petitions.

Please review my proposed ordinance and let me know if you believe changes, additions or deletions would be advisable. I plan to submit this with the Tentative Agenda for the January 20th City Council meeting.

§ 7-9-104. Form of initiative petition -- Sufficiency of signatures.

(a) The petition for an ordinance, act, or amendment proposed by initiative shall be on substantially the following form:

Initiative Petition

(b) The information provided by the person on the petition may be used as evidence of the validity or invalidity of the signature. However, if a signature of a registered voter on the petition is sufficient to verify the voter's name, then it shall not be adjudged invalid for failure to sign the name or write the residence and city or town of residence exactly as it appears on voter registration records, for failure to print the name in the space provided, for failure to provide the correct date of birth, nor for failure to provide the correct date of signing the petition, all the information being an aid to verification rather than a mandatory requirement to perfect the validity of the signature.

(c) No additional sheets of voter signatures shall be attached to any petition unless the sheets contain the full language of the petition.

(d) (1) The signature section of the petition shall be formatted and shall contain the number of signature lines prescribed by the Secretary of State.

(2) Before the circulation of a statewide petition for signatures, the sponsor shall file a printed petition part with the Secretary of State in the exact form that will be used for obtaining signatures.

§ 7-9-105. Form of referendum petition -- Sufficiency of signatures.

(a) The petition and order of referendum for an ordinance or act shall be on substantially the following form:

Referendum Petition

(b) The information provided by the person on the petition may be used as evidence of the validity or invalidity of the signature. However, if a signature of a registered voter on the petition is sufficient to verify the voter's name, then it shall not be adjudged invalid for failure to sign the name or write the residence and city or town of residence exactly as it appears on voter registration records, for failure to print the name in the space provided, for failure to provide the correct date of birth, nor for failure to provide the correct date of signing the petition, all of that information being an aid to verification rather than a mandatory requirement to perfect the validity of the signature.

(c) No additional sheets of voter signatures shall be attached to any petition unless the sheets contain the full language of the petition.

(d) (1) The signature section of the petition shall be formatted and shall contain the number of signature lines as prescribed by the Secretary of State.

(2) Before the circulation of a statewide petition for signatures, the sponsor shall file a printed petition part with the Secretary of State in the exact form that will be used for obtaining signatures.

§ 7-9-107. Approval of ballot titles and popular names of petitions prior to circulation -- Publication.

(a) Before any initiative or referendum petition ordering a vote upon any amendment or act shall be circulated for obtaining signatures of petitioners, the sponsors shall submit the original draft to the Attorney General, with a proposed legislative or ballot title and popular name.

(b) Within ten (10) days, the Attorney General shall approve and certify or shall substitute and certify a more suitable and correct ballot title and popular name for each amendment or act. The ballot title so submitted or supplied by the Attorney General shall briefly and concisely state the purpose of the proposed measure.

(c) If, as a result of his or her review of the ballot title and popular name of a proposed initiated act or a proposed amendment to the Arkansas Constitution, the Attorney General determines that 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, the Attorney General may reject the entire ballot title, popular name, and petition and state his or her reasons therefor and instruct the petitioners to redesign the proposed measure and the ballot title and popular name in a manner that would not be misleading.

(d) If the Attorney General refuses to act or if the sponsors feel aggrieved at the Attorney General's acts in such premises, the sponsors may, by petition, apply to the Supreme Court for proper relief.

§ 14-14-917. Initiative and referendum elections.

(d) **Ballot Specifications for Initiative and Referendum Measures.** Upon receipt of any initiative or referendum measure certified as sufficient by a county clerk, it shall be the duty of the members of the county board of election commissioners to take due cognizance and to certify the results of the vote cast thereon. 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. _____"

In arranging the ballot title on the ballot, the commissioners shall place it separate and apart from the ballot titles of the state acts, constitutional amendments, and the like. If the board of election commissioners fails or refuses to submit a proposed initiative or referendum ordinance when it is properly petitioned and certified as sufficient, the qualified electors of the county may vote for or against the ordinance or measure by writing or stamping on their ballots the proposed ballot title, followed by the word "FOR" or "AGAINST", and a majority of the votes so cast shall be sufficient to adopt or reject the proposed ordinance.

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

CHAPTER 36: ELECTIONS

**ARTICLE I
GENERAL PROVISIONS**

**36.01 Initiative Petitions; When To Be
Filed**

All municipal initiative petitions shall be filed pursuant to Amendment 7 of the Constitution of the State of Arkansas found in Article 5 §1 of the Arkansas Constitution. These initiative petitions shall be filed no later than 83 days before the general election date.

(Code 1965, §2-22.1; Ord. No. 2472, 10-3-78; Code 1991, §36.01; Ord. 5528, 9-18-12)

State law reference(s)--Form of initiative petition-sufficiency of signatures, A.C.A. §7-9-104.

36.02-36.14 Reserved

**ARTICLE II
REFERENDUMS**

36.15 When Petition 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.

(Code 1965, §2-19; Ord. No. 588, 12-21-25; Code 1991, §36.15)

State law reference(s)--Form of referendum petition-sufficiency of signatures, A.C.A. §7-9-105(a).

36.16 – 36.99 Reserved

ORDINANCE NO. _____

AN ORDINANCE TO ENACT ARTICLE III PROCEDURE TO EXERCISE INITIATIVE AND REFERENDUM RIGHTS OF CHAPTER 36: ELECTIONS INTO THE FAYETTEVILLE CODE TO CLARIFY THE PROPER PROCEDURE FOR THE CITIZENS' RIGHT OF THE INITIATIVE AND REFERENDUM

WHEREAS, Amendment 7 of the Arkansas Constitution (now codified as **Article 5 § 1**) states: "Municipalities may provide for the exercise of the initiative and referendum as to their local legislation;" and

WHEREAS, the State Legislature has been granted express authority to provide "for the exercise of the initiative and referendum as to counties," (**Amendment 7 of the Arkansas Constitution**) and has enacted A.C.A. § 14-14-917 **Initiative and referendum elections** to provide for the proper exercise of the initiative and referendum for county ordinances; and

WHEREAS, the lack of clarity for proper municipal referendum procedure led to litigation against Mayor Jordan, the City Council and City Clerk Sondra Smith after she certified the last referendum petition for a special election; and

WHEREAS, this litigation can be avoided in the future if the City enacts proper procedures modeled upon long established state law for state and county initiatives and referendums.

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 hereby enacts **Article III Procedure To Exercise Initiative and Referendum Rights** of Chapter 36: **Elections** into the Fayetteville Code to clarify the proper procedure for the citizens' right of the initiative and referendum for municipal legislation as follows:

“Article III Procedure To Exercise Initiative And Referendum Rights

§ 36.20 Initiative and Referendum Petitions

Pursuant to **Article 5 § 1 of the Arkansas Constitution**, the City establishes the following procedure for the exercise of the citizens’ right of the initiative and referendum of city legislation.

(a) *Petitions Must Be Submitted To City Attorney For Certification Or Correction.*

Before any initiative or referendum petition ordering a vote upon any municipal legislation shall be circulated to obtain signatures, the sponsor shall submit the original draft of the petition with the attached legislation to the City Attorney with any proposed legislative or ballot title.

(b) *Review And Certification Or Correction Within Two Business Days.*

(1) Within two business days, the City Attorney shall approve and certify or shall substitute and certify a more suitable and correct petition and/or ballot title.

(2) The City Attorney shall ensure the form of any initiative petition complies with A.C.A. § 7-9-104.

(3) The City Attorney shall ensure the form of any referendum petition complies with A.C.A. § 7-9-105.

(4) The City Attorney shall ensure that any ballot title conforms with A.C.A. § 14-14-917 (d) and A.C.A. § 7-9-107 (c) so as not to be misleading to voters.

(c) *Appeal To Circuit Court.*

If the City Attorney fails to act within two business days after receipt of the proposed initiative or referendum petition or if the sponsors feel aggrieved by the City Attorney’s actions or proposal, they may immediately file suit in the Washington County Circuit Court.

(d) *Extension Of Time For Petitioners May Be Granted By Circuit Court.*

If the Circuit Court grants the sponsors their requested relief related to the proper form of the petition or ballot title, the time when the referendum petitions must be filed shall be extended until 31 days after the Court’s decision is

announced as long as **Article 5 § 1 of the *Arkansas Constitution***'s provision of a maximum 90 days after the passage of the legislature is not violated."

PASSED and **APPROVED** this 20th day of January, 2015.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer