

**AGENDA REQUEST FORM**

**FOR: Council Meeting of May 4, 2021**

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**FROM: Mayor Lioneld Jordan**

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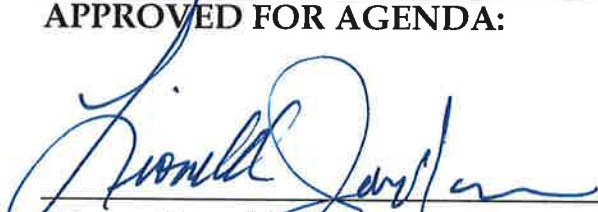
**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

A RESOLUTION TO AFFIRM THE CITY OF FAYETTEVILLE'S COMMITMENT TO DIVERSITY, INCLUSION, AND PROTECTION OF OUR TRANSGENDER CITIZENS, RESIDENTS, AND VISITORS


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**APPROVED FOR AGENDA:**

  
\_\_\_\_\_  
Mayor Lioneld Jordan

4/27/21  
Date

  
\_\_\_\_\_  
Kit Williams  
City Attorney

April 27, 2021  
Date



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: **Mayor Jordan**  
**City Council**

CC: **Susan Norton**, Chief of Staff

FROM: **Kit Williams**, City Attorney

DATE: **April 27, 2021**

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal line extending to the right.

RE: **Reaffirming Fayetteville's Welcoming of All Persons**

Some of the Arkansas Legislature's recently passed bills have appeared to limit rights of persons whose gender identity may not match the gender assigned to the person at birth. Fayetteville voters rejected discrimination against transgender citizens and visitors when they voted to enact the **Uniform Civil Rights Protection** section into the *Fayetteville Code* in 2015.

The express **Purpose** section of the **Uniform Civil Rights Protection** states: "Fayetteville is a welcoming, fair, and tolerant city which endeavors to ensure that all of its citizens and visitors will be free from unfair discrimination" and specifically sought to extend civil rights protection "to lesbian, gay, bisexual, and transgender citizens and visitors."

The Fayetteville City Council has further expressed the welcoming and inclusive nature of Fayetteville and our residents by actions detailed in the proposed Resolution sponsored by Mayor Jordan and me. We believe this is an appropriate opportunity for the Fayetteville City Council to reaffirm Fayetteville's commitment to being a welcoming and tolerant community for all persons and visitors.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION TO AFFIRM THE CITY OF FAYETTEVILLE'S COMMITMENT TO DIVERSITY, INCLUSION, AND PROTECTION OF OUR TRANSGENDER CITIZENS, RESIDENTS, AND VISITORS

**WHEREAS**, on June 16, 2015, the Fayetteville City Council passed Ordinance No. 5781 and requested our citizens to vote to enact the **Uniform Civil Rights Protection** section into the *Fayetteville Code*; and

**WHEREAS**, the express **Purpose** section of **Uniform Civil Rights Protection** states: "Fayetteville is a welcoming, fair, and tolerant city which endeavors to ensure that all of its citizens and visitors will be free from unfair discrimination;" and

**WHEREAS**, the **Purpose** section specifically sought to extend civil rights protection "to lesbian, gay, bisexual, and transgender citizens and visitors;" and

**WHEREAS**, on September 8, 2015, the citizens of Fayetteville voted to approve and enact the **Uniform Civil Rights Protection** section which stated in part: "The right of an otherwise qualified person to be free from discrimination because of sexual orientation and gender identity is the same right of every citizen to be free from discrimination because of race, religion, national origin, gender and disability as recognized and protected by the Arkansas Civil Rights Act of 1993;" and

**WHEREAS**, although Arkansas Attorney General Leslie Rutledge sued the City of Fayetteville and after a three year litigation battle convinced the Arkansas Supreme Court to invalidate our citizen-passed **Uniform Civil Rights Protection** ordinance, Fayetteville's commitment to oppose discrimination against LGBT citizens, residents and visitors remains strong within our city and in the hearts of our citizens who voted to enact the ordinance; and

**WHEREAS**, on April 3, 2018, the Fayetteville City Council passed a Resolution to Approve and Adopt the Welcoming Fayetteville Plan presented by Mayor Jordan; and

**WHEREAS**, this Welcoming Fayetteville Plan affirmed that Fayetteville valued cultural diversity and sought to remove barriers that could impede any person from feeling welcomed and appreciated in Fayetteville; and

**WHEREAS**, on October 20, 2020 the Fayetteville City Council enacted a Hate Crime Component for the City prosecutions into the *Fayetteville Code* which provided protection for our LGBT citizens, residents, and visitors; and

**WHEREAS**, on February 18, 2021, the Fayetteville City Council unanimously passed Resolution 55-21 to support the **Hate Crime Act** which would protect LGBT victims which was being presented to the State Legislature by the Governor and many State Legislators.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby affirms the City of Fayetteville's commitment to diversity and inclusion for all persons especially including our transgender neighbors and visitors.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby affirms our commitment to do everything in our power to honor and protect all persons regardless of their gender identity so that everyone will feel welcome and safe in Fayetteville.

**PASSED and APPROVED** this 4<sup>th</sup> day of May, 2021.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**KARA PAXTON**, City Clerk/Treasurer



113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

**Resolution: 92-18**

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**File Number: 2018-0190**

**WELCOMING FAYETTEVILLE PLAN:**

A RESOLUTION TO APPROVE AND ADOPT THE WELCOMING FAYETTEVILLE PLAN

**WHEREAS**, in the Fall of 2016, Mayor Jordan was first introduced to the Welcoming City concept as a way to harness and foster the significant economic impact of new Americans in the region; and

**WHEREAS**, beyond the economic impact, there is value in the cultural diversity that new Americans bring to our school and workplaces including better problem-solving and critical thinking skills; and

**WHEREAS**, Mayor Jordan announced in his 2017 State of the City Address his intention to create a Welcoming Plan for the City of Fayetteville; and

**WHEREAS**, throughout 2017, City staff met with stakeholders in various sectors and held multiple public input sessions to identify existing conditions, barriers, and areas to improve in order to present 25 recommendations for action in three categories - The Community, The Economic Impact, and The Future; and

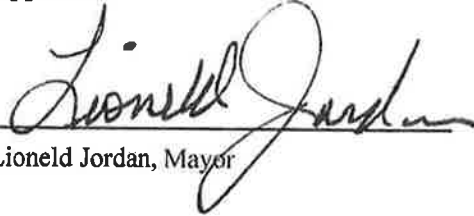
**WHEREAS**, adopting and implementing the Welcoming Fayetteville Plan is a natural extension of Fayetteville's values and hospitality and serves as a way to memorialize where we've been and where we are going as a diverse university City that brings cultures together.

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

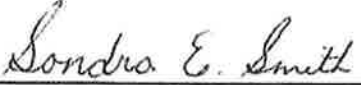
**Section 1:** That the City Council of the City of Fayetteville, Arkansas hereby approves and adopts the Welcoming Fayetteville Plan, a copy of which is attached to this Resolution.

PASSED and APPROVED on 4/3/2018

**Approved:**

  
Lioneld Jordan, Mayor

**Attest:**

  
Sondra E. Smith, City Clerk Treasurer





113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

**Ordinance: 6368**

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**File Number: 2020-0709**

**AMEND §130.01 ADOPTION OF STATE CRIMINAL CODE:**

**AN ORDINANCE TO AMEND §130.01 ADOPTION OF STATE CRIMINAL CODE OF THE FAYETTEVILLE CODE TO INCLUDE A HATE CRIME COMPONENT WITHIN CITY PROSECUTIONS OF CERTAIN STATE CRIMINAL MISDEMEANORS**

**WHEREAS**, the vast majority of states recognize that when certain crimes are committed to hurt or terrorize persons because of their race, religion, gender, gender identity, sexual orientation, disability or national origin, such especially reprehensible and unacceptable conduct should be properly identified and criminally punished as "hate crimes;" and

**WHEREAS**, the Legislature has enacted A.C.A. §16-123-106, **Hate offenses** to authorize a civil action for intimidation, harassment, violence or vandalism directed at a victim because of racial, religious or ethnic animosity, but such victims deserve further protection; and

**WHEREAS**, Arkansas is one of the last states in our nation which ignores the intentionally cruel and terrorizing nature of these hate crimes by failing to label them as hate crimes or to criminally punish the perpetrators for these hate crimes; and

**WHEREAS**, the City of Fayetteville wishes to do everything legally possible to shine the light on those who commit such hate crimes; and

**WHEREAS**, the City Council is "authorized and empowered to prohibit and punish any act, matter, or thing which the laws of this state make a misdemeanor" (A.C.A. §14-55-501); and

**WHEREAS**, "the penalties fixed by a city must fall within the state minimums and maximums," *Ford v. City of Hot Springs*, 294 Ark. 435, 743 S.W. 2d 394, 395 (1988); and

**WHEREAS**, a city ordinance based upon a state law making an act a misdemeanor must have the exact same punishment provision as that state criminal law and may neither exceed nor allow "less severe penalties... than are prescribed for similar offenses against the state laws" (A.C.A. §14-55-502 **State law to be followed**); and

**WHEREAS**, when a criminal commits acts in such manner as to be guilty of a state misdemeanor and commits such criminal conduct with the intention to hurt or terrorize the victim or others because of their race, religion, gender, gender identity, national origin, sexual orientation, or disability, the City Prosecutor should be able to present evidence of such hate crime intention to the Court and jury.

**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 amends **Article I §130.01 Adoption of State Criminal Code** by repealing it in its entirety and enacting a replacement **Article I §130.01** as follows:

**"130.01 Adoption by Reference of Appropriate State Criminal Misdemeanor Statutes as Violations of the Fayetteville Code with the Authorization for the Fayetteville City Prosecutor to also Prove a Hate Crime Element for such Violation.**

(A) This section shall be called the "*Hate Crime Recognition as Deterrence Code*."

(B) The City of Fayetteville hereby adopts by reference the *Arkansas State Criminal Code* for the following misdemeanors found within that Code and determines that any person who would be guilty of a misdemeanor pursuant to one of the below listed crimes and also commits such criminal conduct with the intention or purpose to hurt, intimidate or terrorize the victim or others because of their actual or perceived race, religion, gender, gender identity, national origin, sexual orientation or disability would be guilty of violating this *Hate Crime Recognition as Deterrence Code* and subject to the exact penalties prescribed for these misdemeanors pursuant to State Law.

- (1) **Battery in the Third Degree**, A.C.A. §5-13-203
- (2) **Assault in the Second Degree**, A.C.A. §5-13-206
- (3) **Assault in the Third Degree**, A.C.A. §5-13-207
- (4) **Coercion**, A.C.A. §5-13-208
- (5) **Terroristic Threatening**, A.C.A. §5-13-301
- (6) **Arson**, A.C.A. §5-38-301
- (7) **Criminal Mischief in First Degree**, A.C.A. §5-38-203



- (8) Criminal Mischief in Second Degree, A.C.A. §5-38-204
- (9) Filing False report with law enforcement agency, A.C.A. §5-54-122
- (10) Disorderly Conduct, A.C.A. §5-71-207
- (11) Harassment, A.C.A. §5-71-208
- (12) Harassing Communication, A.C.A. §5-71-209
- (13) Communication a False Alarm, A.C.A. §5-71-210
- (14) Threatening a fire or bombing, A.C.A. §5-71-211
- (15) Cyberbullying, A.C.A. §5-71-217
- (16) Stalking in the Third Degree, A.C.A. §5-71-229(c)


This adoption by reference of the above listed sections of the *Arkansas Criminal Code* shall also include any and all future amendments to those identified sections relating to misdemeanors and punishments therefor.

(C)The City Prosecutor shall report annually during the first City Council meeting in May of the number of suspects that the City Prosecutor's Officer has prosecuted under this *Hate Crimes Recognition as Deterrence Code* and the number of guilty verdicts, guilty or no contest pleas obtained for the previous annual period ending March 31.

(D)Severability. If any word, phrase, clause, sentence, item, paragraph, section, or title of this ordinance or of the *Hate Crimes Recognition as Deterrence Code* is declared or adjudged to be illegal, invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the ordinance or *Code* which shall remain in full force and effect as if the portion so declared or adjudged illegal, invalid or unconstitutional was not originally a part of the ordinances or *Code*.

PASSED and APPROVED on 10/20/2020

Approved:

  
Lioneld Jordan, Mayor

Attest:

  
Kara Paxton, City Clerk Treasurer





113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

**Resolution: 55-21**

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**File Number: 2021-0140**

**SUPPORT HATE CRIMES ENACTMENT:**

**A RESOLUTION TO SUPPORT THE ENACTMENT OF SENTENCE ENHANCEMENT FOR HATE CRIMES AS SET OUT IN SENATE BILL 3 AND HOUSE BILL 1020 TO BETTER PROTECT A VICTIM WHO WAS PURPOSELY SELECTED FOR CRIMINAL HARM BECAUSE OF RACE, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY, OR OTHER PERSONAL ATTRIBUTE**

**WHEREAS**, in Arkansas, as well as most every other state in these United States, sometimes a criminal selects a victim for harm or oppression because of that person's race, religion, ethnicity, national origin, sexual orientation, gender identity, age, disability, sex or other personal attribute; and

**WHEREAS**, if the prosecutor can prove beyond a reasonable doubt that such hatred motivated the crime, enhanced punishment is appropriate; and

**WHEREAS**, during the 2021 Regular Session of the 93rd General Assembly of Arkansas two bills - Senate Bill 3 introduced by Senator Jim Hendren, and House Bill 1020 introduced by Representative Frederick Love would create a methodology for the enhancement of a sentence of imprisonment, the amount of a fine, and the length of a period of probation, if a specified attribute is shown to have led to a person's victimization by the criminal; and

**WHEREAS**, the attributes proposed include past or current service in the armed forces of the United States, race, color, religion, ethnicity, ancestry, national origin, homelessness, gender identity, sex, sexual orientation, or disability; and

**WHEREAS**, a criminal harming and victimize someone because of their personal attribute sends a horrible statement that such a victim should not be treated the same as every other human being; and

**WHEREAS**, victimizing a person because their race, sex, religion or any other characteristic is totally and completely contrary to the individual protections and rights contained in the Constitution of the State of Arkansas and the Constitution of the United States, and to ideals of the Declaration of Independence, as well as our Pledge of Allegiance: "with liberty and justice for all;" and

**WHEREAS**, the City Council of the City of Fayetteville, Arkansas, joins wholeheartedly with the Board of Directors of our Capitol City in support of these Hate Crimes bills so that Arkansas can join with almost every other state of these United State to provide added protection for those most often victimized by hateful criminals.

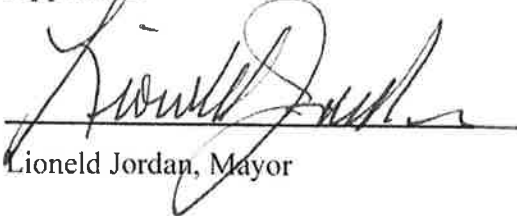
**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

**Section 1.** That the City Council of the City of Fayetteville, Arkansas hereby wholeheartedly joins with Little Rock to endorse and recommend approval of Arkansas Hate Crimes legislation as set forth in Senate Bill 3 and House Bill 1020 of the 2021 Regular Session of the 93rd Arkansas General Assembly.


**Section 2.** That the City Council of the City of Fayetteville, Arkansas hereby expresses their respect and appreciation to Senator Jim Hendren of Gravette, Arkansas, and Representative Frederick J. Love of Mablevale, Arkansas, as the initial sponsors, and Representatives Fred Allen, Denise Jones Ennett, Tippi McCullough, and Joy Springer, and Senators Linda Chesterfield and Joyce Elliot of Little Rock, Arkansas, Representative Jamie Scott of North Little Rock, Arkansas, Representative Monte Hodges of Blytheville, Arkansas, Representative Nicole Clowney and Representative David Whitaker of Fayetteville, Arkansas, Representative Jay Richardson of Fort Smith, Arkansas, Representative Jay Wardlaw of Hermitage, Arkansas, Senator David Wallace of Leachville, Arkansas, Representative David Fielding of Magnolia, Arkansas, Representative Reginald Murdock of Mariana, Arkansas, Representative Milton Nicks, Jr., of Marion, Arkansas, Representatives Kenneth Ferguson and Vivian Flowers of Pine Bluff, Arkansas, and Representative Joe Jett of Success, Arkansas, for their filing or co-sponsorship of Senate Bill 3 and House Bill 1020.

PASSED and APPROVED on 2/18/2021

Approved:

  
Lioneld Jordan, Mayor

Attest:

  
Kara Paxton, City Clerk Treasurer

