

**Special City Council
Meeting Minutes
April 30, 2002**

A special meeting of the Fayetteville City Council was held on April 30, 2002 at 4:20 p.m. in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Aldermen Thiel, Santos, Jordan, Reynolds, Davis, Mayor Coody, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience. Alderman Young absent.

New Business:

Waste Management: A resolution to approve an interim agreement with Waste Management, Inc. to allow them to temporarily expand the hours of operation of the Solid Waste Transfer Station and pay for replacement of the lip edge guard on the dumping platform, to declare an emergency and for other purposes.

Mayor Coody: We're here today to discuss a contract with Waste Management to kind of get us through this emergency period. Do you have the agreements in front of you?

Kit Williams: It's called the Interim Agreement.

Mayor Coody: Kit do you want to let us read it and then you can explain the agreement and answer any questions that we may have.

Kit Williams: As you may remember Mayor, yourself, myself, and the members of the Solid Waste Division of the city met with representatives of Waste Management Monday morning. We discussed their need to use our transfer station in order to properly service the cities of Springdale, Rogers and other customers in Northwest Arkansas since their landfill has been closed. If they do not use our transfer station they will have to try to truck their garbage in garbage trucks to distance landfills which is simply not feasible. This would cause major problems for the citizens of Rogers and Springdale and other people. We negotiated with them; they were very forthcoming and helpful. We have worked out this proposed interim agreement through our city staff, my understanding is that the city staff is in favor of this and they endorse this.

I did provide several safeguards for the citizens including requiring the garbage trucks to follow designated routes on major highways and not use city streets in order to get to the transfer station. There are other particular safety guards for liability potentials which are not substantial but I thought that we should still cover them. We are now presenting this to you along with the resolution to adopt it so that you can go ahead and go forward with this. They certainly need to use our transfer station and I think this is a good agreement to allow them to use it. You should note also that it has a 30 day notice provision that if we or they want to cancel this agreement we/they can with a 30 day notice. This agreement would end if the Tontitown landfill is reopened for regular business because at that point they would not need our transfer station.

Mayor Coody: I might note that the first whereas says if **suddenly and expectedly closed** it should read **unexpectedly**.

Kit Williams: I think you're right.

Mayor Coody: Other than that do you want me to read this or do you want to read this resolution?

Kit Williams: It's your choice Mayor.

Mayor Coody reads the resolution in its entirety.

Kit Williams: I should note that actually on the emergency clause we're not going to take a separate vote on that, as you are aware it requires six votes from the Council members. We only have five members here. However, I think this resolution is effective immediately anyway. It had not been in the past before the legislature changed the law. I do think that the resolution is effective immediately. Let's strike Section 2 out; we'll just leave Section 1. I think that everything else is okay because there is an emergency situation, that's why we're having this special meeting.

Alderman Davis: The second Section 1.

Kit Williams: Yes. The second Section 1.

Alderman Santos: A resolution wouldn't require an emergency clause like an ordinance would.

Kit Williams: I think you are correct, I think despite the fact that the legislature has changed the law somewhat and made it a little bit unclear I still think the rule is that resolutions take effect immediately.

Mayor Coody: Waste Management and us have agreed that they would use a designated route which would come down south on I-540 to the intersection of I-540 on Business 71 and then head east on Highway 16?

Kit Williams: Highway 16 East.

Mayor Coody: That would go all the way to the transfer station. So it's entirely on the heavy use state highways and it stays away from our lesser city streets and lesser state highways. They will be required to use this route coming and going all their trucks will use it. We will be collecting a 5% franchise fee that we normally collect in a circumstance like this, which will help cover some of our costs that we might have although we don't anticipate any cost. They're going to be covering our overtime costs, administrative costs; they've agreed to cover all that. This is a good way that we can help out our sister cities and it's not going to put us in a bind at all.

Kit Williams: We did also provide for free overflow parking at our airport for the numerous semi-trailer trucks that they're going to have, that was requested by Mr. Dumas because we didn't want them at the transfer station where they'd get in each other's way. There's will be some overflow parking as long as the trucks and trailers are clean and sanitary when they are parked at our airport.

Alderman Davis: Where does this place the city as far as additional liability?

Kit Williams: I really don't think we have too much. One thing that did concern me about liability was the fact that our municipal waste would be mixed with waste from Springdale, Rogers and other places and that's why I put Section 8 in there, since the City of Fayetteville's solid waste will be co-mingled by Waste Management with about twice the volume of other municipal and solid waste brought in by Waste Management during this emergency period, paragraph 10.01 of the General Specifications of our current contract with them is modified so that title and liability for any hazardous waste and non-acceptable waste is presumed not to generated or delivered by the City of Fayetteville during this period. That changes slightly our other contract with them where it left the liability with us but at that point in time most of waste going to the transfer stations was coming from Fayetteville, now most of the waste will be coming from other cities, in addition the waste is being shipped to several different landfills. We don't want to assume any liability for any of these other landfills if we don't have to, therefore I included that in the contract and they agreed with that portion.

Alderman Reynolds: How long are we going to give them to correct their problem with Tontitown?

Alderman Santos: If there is a problem.

Kit Williams: It's not us giving them any time, that is up to the State. If we are dissatisfied with this interim agreement and it begins to go on longer than what the City Council wants, then the City Council has the right, according to the last paragraph, to give 30 day's notice to terminate this agreement. We would want to make sure that whatever we did would not leave them in a situation that the sister cities to the north would have too much garbage that wasn't being picked up, because that could effect the health and safety of our entire region.

Alderman Davis: Kit I'm still concerned about No. 8, if we get in a situation where something is a pollutant its going to be possibly the argument that it was the City of Fayetteville waste and not Springdale, Rogers, etc. and that's a concern. I feel we will have the he said, she said type of situation. Is there anyway that we could be named on their liability policies as additional insured with waiver of the situation?

Kit Williams: In our original agreement with them they are required to have liability coverage if they are operating a transfer station. I think this probably protects us about as well as can be expected in an interim sort of agreement.

Alderman Davis: We can tighten that up some can't we?

Kit Williams: It takes two parties to contract. If you read their contract with us that we have right now, that is for another almost five years, it was redone in '99 but effective for a five year renewal on April 1, 2001. They arguably have the right to use our transfer station without this agreement. They have chosen and we have chosen to enter into an interim agreement to be good neighbors and to work together on this. I think we have some good provisions in here that was not in our other agreement. I think they have a strong arguable right, if they are operating as our transfer station there is a provision in there saying that they will not only handle Fayetteville's waste but they will handle waste that is not Fayetteville's waste and there's even some provisions about fees.

Alderman Davis: That is what concerns me, waste that is not Fayetteville's.

Kit Williams: That's right. Under the current contract that we have with them that runs another four years, they have a right to have this waste go through our transfer station.

Alderman Davis: You can be added on to a policy for an additional charge of little to nothing, they may charge you \$100, and it depends on the carrier. Most carriers will go ahead if it's requested through labor determination, which will extend or limit the city's obligations where they could come back and take us to court at some point in time. I would like to see that added to this agreement. That way we're putting further distance between us and anything that may happen in the future that could happen to the transfer station.

Alderman Santos: I don't think we need to have any insurance to help them make money either. I think we're perfectly well covered here.

Mayor Coody: Waste Management do you all have an answer to Alderman Davis's concerns regarding insurance?

Mr. Wheatley with Waste Management: We would refer to the original contract. We think that there is substantial coverage in that original contract. This is just an interim agreement based upon the original contract.

Alderman Davis: I don't have the original contract in hand to see what it says.

Alderman Santos: The additional modifications that any liability for any hazardous waste and non-acceptable waste is presumed not to have been generated or delivered by the City of Fayetteville.

Kit Williams: Obviously that's what carries the liability is the solid waste, that's how you could trace it back and provide liability to a city or to another entity, if it's your solid waste that causes the problem. That's why I put the presumption in this contract which is almost impossible to rebut because all this trash is being co-mingled that it did not come from the City of Fayetteville. I think that would be a very strong legal defense and that's why I wanted it in there. I appreciate Waste Management agreeing to that, because by doing that they basically have cut us off if there is some allegation in the future that the solid waste that is coming out of the transfer station and going to another landfill where we usually don't put it that there is presumption that it did not come from Fayetteville and therefore it came from Waste Management's other clients. Because of the fact that the waste is being co-mingled that presumption would almost be impossible to rebut in a case. I don't know how they would be able to rebut that.

Alderman Davis: Why are we arguing over something that maybe as little as a \$100 bucks or zero? Why don't we go ahead and ask them to add that in there and that way it takes care of it.

Mayor Coody: Would you guys be willing to add in this insurance carrier clause that Alderman Davis is asking about.

Alderman Davis: To add the city to be named as an additional insurer?

Mr. Wheatley with Waste Management: Mayor I'm sure we would. I can't say for sure in a public meeting because I don't know the exact cost.

Mayor Coody: I know you need to get it cleared by your superiors and your legal representatives. What we could do is go ahead and make the assumption that we will do this, by this approach we can go ahead and get this passed and deal with this tomorrow morning first thing.

Mr. Wheatley with Waste Management: We agree to that.

Alderman Davis: I'm going to add an amendment on here to add a waiver of subrogation with the City of Fayetteville to be named as additional insured.

Kit Williams: Is that exactly how you want this to state?

Alderman Davis: However you think it needs to be written. I'm just trying to protect the city to the best of our ability and trying to make it that much broader for somebody to come back and sue the city.

Kit Williams: A waiver of subrogation doesn't protect the city in that we can get sued. It doesn't stop us from getting sued. How do you want that to read?

Alderman Davis: I would say we want to be named as individual insurer to the current pollution policy, general liability policy, and also give the City of Fayetteville waiver of subrogation.

Alderman Reynolds: We need to set a time limit.

Mayor Coody: If this goes on more than 30 days I would be surprised.

Alderman Reynolds: I think we need to set a time to bring it back and look at it in case it does.

Alderman Davis: Do you want to add something to this?

Alderman Reynolds: I'd say we bring it back if it lasts longer than 60 days.

Kit Williams: We've have a 30 day notice on this, you can bring it back anytime you want to so I don't think you need to put anything in the contract because there's already a 30 day notice in the contract that all you'd have to do as a Council is say we want to end this contract.

Alderman Reynolds: After May the 30th it comes back to us again?

Kit Williams: No. What I'm saying is that if you get dissatisfied with this contract at anytime, then you just agree we want to terminate this interim agreement. However, I must advise you as stated here in, the underlying agreement, Waste Management of Arkansas, Inc. would argue that they have the right, without this interim agreement to do exactly what they are doing at our landfill without following our restrictions and without paying us for the replacement of the lip edge guard, without any of these other provisions in here, without giving us any presumption that this is not our trash going somewhere else if its hazardous waste. They would argue that they don't have to do anything that the current four year contract that they're on right now gives them the absolute right to do this

without any of these other provisions. My advice to you is that we've worked out a pretty good contract with them where they have gone beyond what might be absolutely required and they have signed it. Mr. Chuck Dees, the group vice president out of Houston has already approved the one that is in front of you, my advice as your attorney is this is a good interim agreement.

Mayor Coody: So if this was approved in 1999 it had to come before the City Council to be approved, is that right?

Kit Williams: It was. It was essentially approved in 1999, effective April 1, 2001 for another five year renewal.

Mayor Coody: Was the subrogation insurance brought up at that point?

Kit Williams: I don't know.

Mayor Coody: We'll talk about the insurance tomorrow morning bright and early.

Kit Williams: I probably can't do this tomorrow, I've got oral arguments in Little Rock before the Supreme Court that I have to leave tomorrow and go to. We need to try to win that case and I need to be prepared for that. I also have to appear and give my opinion on a \$9,000,000.00 bond issue that's being closed tomorrow at Stephens.

Alderman Davis: Can David take over and finish it?

Kit Williams: I don't know. I can ask David to try to do that. It's your pleasure as to whether you want to accept this as presented by administration or if you want to try to get amendments done as Mr. Davis has suggested.

Alderman Thiel: I thought we were going to go ahead and accept it like this, but you were going to make this proposal that we get this done within a certain amount of time.

Alderman Davis: Also can we have this added on to this particular proposal?

Mayor Coody: You can make a motion.

Alderman Davis: That is my motion.

Mayor Coody: Your motion is that we have the insurance before we vote on it or is your motion that we talk about it first thing tomorrow.

Alderman Davis: You can talk about it first thing in the morning but that's what the city would like to have.

Alderman Davis moved to amend the Resolution by adding the City of Fayetteville as an additional insured to the contract and insurance policy. Alderman Santos seconded the amendment. Upon roll call the motion passed 5-0. Alderman Young was absent.

Alderman Santos moved to approve the Resolution as amended. Alderman Jordan seconded. Upon roll call the Resolution passed 5-0. Alderman Young was absent.

RESOLUTION 66-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

John Sampier with Waste Management: I am a municipal marketing manager for Northwest Arkansas for Waste Management. The City of Fayetteville's trash goes through their transfer station. We didn't discuss about whether or not we had the right under our present contract to use the transfer station. I called Mayor Coody and asked him if we could meet and given our situation would it be possible to consolidate our rates for the Fayetteville transfer station and serve our customers in an expeditious manner. We appreciate Mayor Coody, City Attorney Kit Williams, Carol Hill, and the department heads that have been involved in this; we've talked for a considerable period of time about it. Here's the practical aspect of what you've done. When I called the mayors of other cities and communities today and asked them if there are any problems they said no. Most residential customers and commercial customers if they hadn't read the paper they would not have noticed that anything was different. That was our goal, to keep the streets picked up and the cities clean is a health and safety issue and with Mayor Coody's leadership this has happened and I hope the other cities and other communities in Northwest Arkansas notices what Fayetteville has done. This is a very important public/private partnership for the citizens as Mayor Coody said. Gary Dumas has been more than helpful. I simply want to thank the Council and especially Mayor Coody for what you've done. It's a good thing.

Mayor Coody: Thank you. I'm glad we could help. This meeting is adjourned.

Meeting adjourned at 4:50 p.m.