

**Minutes Of A Meeting
Of The
City Council
July 15, 2003**

A meeting of the Fayetteville City Council was held on July 15, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Alderman Davis

Audit Committee Presentation: We had a clean audit opinion for calendar year 2002, it is the first of five years that BKD did the audit; there were no material weaknesses and no reportable conditions. The accounting staff, Steve Davis, Nancy Smith and Marsha Farthing have done a great job.

CONSENT:

Approval Of The Minutes: Approval of the July 1, 2003 meeting minutes.

Bulk Material Purchase: A resolution approving the purchase of various bulk materials and services in the amount of \$165,000.00.

Resolution 100-03 As Recorded In The Office Of The City Clerk.

CH2MHill Goose Creek Stream Modeling Contract: A resolution to approve an engineering contract with CH2MHill, Inc. in the not to exceed amount of \$150,610.00 for Goose Creek Stream modeling and technical support for preparation of the NPDES permits for the wastewater systems improvement project.

Resolution 101-03 As Recorded In The Office Of The City Clerk.

Sidewalk and Trails Task Force: A resolution establishing the Sidewalks and Trails Task Force, setting forth the selection process for membership and its duties and responsibilities.

Resolution 102-03 As Recorded In The Office Of The City Clerk.

Downtown Dickson Enhancement Project (DDEP) Budget Adjustment: A resolution approving an appropriation to the Downtown Dickson Enhancement Project (DDEP) in an amount not to exceed \$20,000.00 to provide planning, design, and economic development services for the remainder of FY2003; and approving a budget adjustment in the amount of \$20,000.00 for same.

Resolution 103-03 As Recorded In The Office Of The City Clerk.

Township Builders, Inc./Sang/Hollywood & 6th Street Intersection Improvements: A resolution to approve a contract with Township Builders, Inc. in the amount of \$596,446.00 plus a project contingency in the amount of \$60,000.00 for the Sang Avenue and Hollywood intersection with 6th Street improvements and to approve a budget adjustment of \$80,564.00.

Resolution 104-03 As Recorded In The Office Of The City Clerk.

Markham Hill Development Co., LLC: A resolution approving an offer and acceptance contract between the City of Fayetteville and Markham Hill Development Co., LLC for the purchase of approximately two acres on Ruppel Road south of Wedington Drive in the amount of \$145,277.00 to be the site of the new west side fire station.

Resolution 105-03 As Recorded In The Office Of The City Clerk.

Wittenberg, Delony and Davidson: A resolution to approve an amendment to the architect contract with Wittenberg, Delony and Davidson increasing the fee by the amount of \$15,000.00 for engineering services associated with fire station number seven.

Resolution 106-03 As Recorded In The Office Of The City Clerk.

Alderman Jordan moved to approve the consent as read. Alderman Marr seconded. Upon roll call the motion passed 7-0. Alderman Davis was absent.

OLD BUSINESS:

RZN 03-19.00 (Tom Broyles 14.66 acres): An ordinance rezoning that property described in rezoning petition RZN 03-19.00 as submitted by Jerry Kelso on behalf of Tom Broyles for property located East of Beachwood Avenue South of 15th Street, moving the current zoning line to a new configuration with the subject property being R-2, Medium Density Residential. ***This ordinance was left on the first reading at the July 1, 2003 City Council meeting.***

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Marr seconded. Upon roll call the motion passed 6-0. Alderman Rhoads recused. Alderman Davis was absent.

Mr. Williams read the ordinance.

Alderman Jordan: I want to be sure that we do have a signed Bill of Assurance.

Mayor Coody: We do have a signed Bill of Assurance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Marr seconded. Upon roll call the motion passed 6-0. Alderman Rhoads recused. Alderman Davis was absent.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Rhoads recused. Alderman Davis was absent.

Ordinance 4501 As Recorded In The Office Of The City Clerk

RZN 03-20.00 (Tom Broyles 7.45 acres): An ordinance rezoning that property described in rezoning petition RZN 03-20.00 as submitted by Jerry Kelso on behalf of Tom Broyles for property located East of Beachwood Avenue South of 15th Street, moving the current zoning line to a new configuration with the subject property being zoned C-2, Thoroughfare Commercial. *This ordinance was left on the first reading at the July 1, 2003 City Council meeting.*

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Cook seconded. Upon roll call the motion passed 6-0. Alderman Rhoads recused. Alderman Davis was absent.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Cook seconded. Upon roll call the motion passed 6-0. Alderman Rhoads recused. Alderman Davis was absent.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Rhoads recused. Alderman Davis was absent.

Ordinance 4502 As Recorded In The Office Of The City Clerk

Zoning Map Adoption: An ordinance adopting a new official Zoning Map of the City of Fayetteville and incorporating the renamed zoning districts on the new official Zoning Map as adopted in Title 15; the Unified Development Code of the Fayetteville Code of Ordinances. *This ordinance was left on the second reading at the July 1, 2003 City Council meeting.*

Alderman Marr moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded. Upon roll call the motion passed 7-0. Alderman Davis was absent.

Mr. Williams read the ordinance.

Alderman Marr: Have we received any disputed items to look at in this last two-week period from any citizen on this map?

Dawn Warrick, Planning: At 3:30 this afternoon I received a letter from a property owner, I have two copies of that letter here, I was under the impression that he was also distributing copies to the City Council, I don't know if you all have received that, like I said I got it about 3:30 this afternoon. It is concerning property which is located east of the Arkansas Missouri railroad tracks beginning at North Street, ending approximately at Douglas Street, this property owner believes that the property should be identified as an industrial zoning district, however it is identified as R-2 and now RMF-24 a multi-family zoning district. This is the only public comment that the Planning Division has received. The file with regards to all rezoning actions that have taken place within the City between 1970 when the last official zoning map was adopted and today have been reviewed many times by Planning Staff within the past 18 months in order to present to you an updated official zoning map identifying all amendments to the 1970 map that have occurred that have been processed through the City Council and ordinances have been established changing zoning districts. This area has been researched, we are confident that the information reflected in the map that is before you tonight reflects the proper zoning for this area and I would encourage this property owner, if he chooses and wishes to request a change in that zoning designation to go through the rezoning request procedure, to bring that forward through Staff review, Planning Commission recommendation and City Council consideration. Like I said I don't believe that this particular area is reflected incorrectly, we have researched it and offered to make all those files available to the property owner. At this point if the City Council is uncomfortable with the information on the map you certainly have the ability to table this, leave it on the table until the next meeting if you choose, but like I said we were not able to find any City Council minutes, ordinances or files that changed the designation of this property to reflect anything other than what's currently shown on the map.

Alderman Thiel: In his letter did he give any reason as to why he didn't agree?

Dawn Warrick, Planning: It is not too long, I will be glad to read it if you would like there are five statements listed on here.

1. I respectfully request that the 75x1600 plot of land that I own adjoining the east side of the Arkansas Missouri railroad tracks beginning at North Street and ending at approximately Douglass Street to the south not be shown as R-2 Medium Density Residential on the City Zoning Map to be adopted tonight.
2. This property is realistically light industrial as it was so zoned from 1940 into the 70's or 80's and as the property across the railroad tracks on the west side continues to this day. Today there is still a large lumber yard shed on my referenced property about 120 feet from North Street, there were two above ground oil and gasoline wholesalers on the property until the late 50's or 60's.
3. The property's best utilization would include rented storage units or parking for university students and employees.
4. The trains make the property's use for residential applications a poor choice.
5. I respectfully request that you make this letter a part of the City Council minutes for tonight July 15, 2003.

Respectfully submitted N. Glenn Sowder.

Mayor Coody: It sounds like Mr. Sowder isn't disputing the rezoning, he is requesting that we?

Dawn Warrick, Planning: I believe he is requesting a zone change. That's not the purpose of adopting a new official zoning map. We do not propose any zone changes that have not already been through the City Council process with this map adoption. tonight, we are only requesting that this new map be adopted to reflect all of the changes that have occurred and been approved by the City Council since June of 1970.

Cyrus Young: If this zoning map is approved where will it reside if somebody wants to look at the zoning?

Dawn Warrick, Planning: Mr. Williams you can correct me but I believe the ordinance states that it will reside in the Planning Division with copies to be held in the City Clerk's office.

Kit Williams: Did we have any plans also to put it on our web page?

Dawn Warrick, Planning: Yes, it will also be live on the web site.

Cyrus Young: The City Clerk is what I was concerned about. I was also concerned that whenever you make changes the changes get to the City Clerk because regardless of what the ordinance says, unless they have changed it, state law and Arkansas Supreme Court say it will reside in the City Clerk's office that is why I am concerned because somebody could challenge it, you know an old zoning map from 1940, whatever is in the City Clerk's office that is it according to the Arkansas Supreme Court and that is why I was concerned.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance 7-0. Alderman Davis was absent.

Ordinance 4503 As Recorded In The Office Of The City Clerk

NEW BUSINESS:

Public Hearing Raze and Removal 1003, 1015 and 1017 W Cato Springs Road: A resolution ordering the razing and removal of dilapidated and unsafe structures owned by Alex and Lori Mahler located at 1003, 1015 and 1017 West Cato Springs Road in the City of Fayetteville, Arkansas.

Chad Ball, Community Resources: As of March we have contacted Mr. Mahler concerning this building and we are looking at three different building, two of them are pretty much down. We are looking to try to get them cleaned up and all of it removed. The third building hasn't really been started, so we are looking to try to get him to raze and remove 1003 W. Cato Springs and clean up the other two.

Hugh Earnest, CEO: I guess the bottom line Mr. Mayor and Council is that obviously there has been some movement on the site, it's a particular problem because two of the houses are

aggressing being removed however there is still a great deal of debris on the site and one house has not yet been touched.

Mayor Coody: So would it be your recommendation that we go ahead and approve this resolution so we can make sure the job gets done.

Hugh Earnest, CEO: Yes sir.

Alderman Thiel: So he is not going to have the opportunity to do any more, unless he does it very quickly.

Hugh Earnest, CEO: He will have a time frame in which to do it. This simply puts him under the clock.

Alderman Reynolds: Hugh what is he going to have 60 or 90 days for completion of demolition?

Yolanda Fields, Community Resources: We will give him 30 days to get that completed. We do have the two structures down that debris has not been removed and then we need the third structure taken care of.

Alderman Reynolds: Thank you Yolanda and I appreciate what your office is doing.

Alderman Marr: So the first contact with this property owner was March of this year.

Yolanda Fields, Community Resources: March that would be correct.

Mayor Coody asked shall the Resolution pass. Upon roll call the resolution passed 7-0. Alderman Davis was absent.

Resolution 107-03 As Recorded In The Office Of The City Clerk.

Amend Chapter 33 (Telecommunications Board): An ordinance amending Chapter 33, Departments, Boards, Commissions and Authorities, of the Code of Fayetteville, by redefining the composition, officers, staffing, procedures and duties of the board.

Mr. Williams read the ordinance.

Alderman Jordan: We hashed this out for several months. We went through the budget process and there seemed to be some problems with the funding with Public Access Television so Don and I headed up a committee that basically looked into this ordinance. We looked it over and made some changes to it. The first item was did we really even want the Telecom Board and the majority of the committee said they did. We looked over the purpose, intent, compositions and duties. We staggered some of the terms so you would not have everyone going off at the same time. It went to the Telecom Board, Ordinance Review and now it is before the City Council.

Alderman Marr: The key changes were the actual definitions of the channels that it was just a cable board even though we had changed the name to the Telecommunications Board it still didn't give clear direction to board members the areas of purview that they were to look at. The other big change was asking this board to be the avenue at which the Council would get recommendations on Telecommunication infrastructure needs of the city, list serves, where we needed service, things of that nature, to be a more working committee...

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Marr seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Davis was absent.

Ordinance 4504 As Recorded In The Office Of The City Clerk

Greg Boettcher, Water and Wastewater Director: A little history on the wastewater contracts, on June 5 we held an open published meeting of the water and sewer committee to present background information, contract data, maps and other information which we have completed. At that time we also entertained any questions that may arise regarding the project. We felt it was a very important undertaking, it represents about 13.7 million dollars worth of professional service contracts, one of which you approved earlier under consent. The remaining five have to do with program management, design and bidding. What we propose tonight for the Council is to just do a brief over view of who the firms are, representatives are here with the five firms, and have them give you a brief introduction as to what their role is and some of their qualifications.

There was a presentation on Agenda Items 3, 4, 5, 6 and 7.

Jeff Erf: Do you have an exact number for the total?

Gregg Boettcher: The total including the earlier contract with CH2MHill is \$13,740,592.

Jeff Erf: I reviewed some of the contracts and I noticed that each one of them contained a clause that indicated that the engineering firms had to comply with the Freedom of Information Act. My question is to the City Attorney, I just want to make sure, do the engineering firms know what that means and are they aware of the implementation of that?

Kit Williams: I am sure they are they are very smart people and I actually pretty much drafted that clause myself to make sure that it was clear that they would need to comply as contractors with the City just like every other contractor would need to comply too.

Jeff Erf: And subcontractors that they hire.

Kit Williams: They will have to comply all the way through.

Jeff Erf: I just want that for the record. Thank you very much.

Alderman Thiel: The City Staff spent over a year to get to this point of signing these contracts and I am confident that we are making the best decision for the City by moving forward with this. I feel that we are hiring a firm that will manage this project and do value engineering and work with OMI on the operations aspect. I feel very confident in this and I feel we need to move forward as soon as possible.

Black and Veatch Corporation: A resolution to approve an engineering contract with Black and Veatch Corporation in the not to exceed amount of \$2,363,200.00 for engineering services related to improvements to the Nolan Wastewater Treatment Plant.

Mayor Coody asked shall the Resolution pass. Upon roll call the resolution passed 7-0. Alderman Davis was absent.

Resolution 108-03 As Recorded In The Office Of The City Clerk.

Burns and McDonnell Engineering Company, Inc.: A resolution to approve an hourly rate engineering contract with Burns and McDonnell Engineering Company, Inc. in the not to exceed amount of \$2,685,366.00 for engineering services related to design and bidding phase Program Management Services including value engineering for the Wastewater System Improvement Project.

Mayor Coody asked shall the Resolution pass. Upon roll call the resolution passed 7-0. Alderman Davis was absent.

Resolution 109-03 As Recorded In The Office Of The City Clerk.

Garver Engineers, LLC.: A resolution to approve an engineering contract with Garver Engineers, LLC. in the not to exceed amount of \$1,721,886.00 for engineering services related to the East Pipelines and Pump Stations.

Mayor Coody asked shall the Resolution pass. Upon roll call the resolution passed 7-0. Alderman Davis was absent.

Resolution 110-03 As Recorded In The Office Of The City Clerk.

McGoodwin, Williams and Yates, Inc.: A resolution to approve an engineering contract with McGoodwin, Williams and Yates, Inc. in the not to exceed amount of \$4,318,812.00 for engineering services related to the new West Wastewater Treatment Plant, Wetlands Mitigation and Broyles Road improvements.

Mayor Coody asked shall the Resolution pass. Upon roll call the resolution passed 7-0. Alderman Davis was absent.

Resolution 111-03 As Recorded In The Office Of The City Clerk.

RJN Group, Inc.: A resolution to approve an engineering contract with RJN Group, Inc. in the not to exceed amount of \$2,500,718.00 for engineering services related to the West Pipelines and Pump Stations.

Mayor Coody asked shall the Resolution pass. Upon roll call the resolution passed 7-0. Alderman Davis was absent.

Resolution 112-03 As Recorded In The Office Of The City Clerk.

Smoking in Certain Public Places: An ordinance to amend §95.05 **Regulation Of Smoking In Certain Public Places** of the code of Fayetteville and to enact a replacement §95.05 **Regulation Of Smoking In Most Public Places And Places Of Employment** in order to remove exemptions for bars, pool halls, small restaurants, beauty salons, barber shops and designated smoking areas in enclosed public access areas in restaurants, theaters, roller rinks, bowling alleys, and retail stores, etc.

Mayor Coody asked for a show of hands of people in favor of the smoking ban.

Mayor Coody asked for a show of hands of people opposed to the smoking ban.

Mr. Williams read the ordinance.

Smoke Free Fayetteville spoke in support of the proposed ordinance.

Citizens speaking on behalf of Smoke Free Fayetteville:

Barbara Price-Davis: We do not have a presentation to make tonight, we have very noted health professionals who have always contended that this is a health issue for us, we would like an opportunity for our health officials to make that case and present that evidence.

Dr. Michael Cross a Fayetteville Physician: When I talk about smoking I am also talking about the passive smoke that is indirect smoke that affects us. The smoking pushes the body to extreme measures, our body reacts in a negative way to smoke, and it is not a benefit to our body. Smoking is never a good thing; there is no literature that supports positive affects of passive smoking or smoking, for there are no benefits. It is totally destructive to our bodies, to our children; it doesn't add one thing to our life. America we are unhealthy, we need to get back

to a healthy way of living. We need to set examples for our children, to give them a place to eat and enjoy, it is difficult to eat in a restaurant, you cannot separate smoke in a restaurant where you do not inhale surrounding smoke, and a total separate environment does not work. I support whatever makes our lives healthier and safer and I would propose that we do not need to be around a lot of passive smoke or any smoke at all, it is totally unhealthy. Thank you for your time.

Dr. David Borne a Family Physician from Little Rock and he works for the State Health Department: As a state employee I am speaking neither for or against this ordinance, I am speaking to the ordinance, I am speaking for clean indoor air. There is a lot of emotion on this issue and a lot of people are very concerned. People want their rights or what they perceive to be their rights and when family members have lost loved ones they are certainly emotional about this issue. This is not a question of if you pass this ordinance or not it is a matter of when. The board of health passed regulations on smoking in restaurants last year; they didn't take affect because the Governor wouldn't sign them. The political process is about public interest versus special interest. The special interest is the tobacco industry, clearly when you can't smoke everywhere, fewer cigarettes are smoked and they sell fewer. When people can't smoke when they want to they are motivated to quit and fewer cigarettes are sold. It is the matter of the health of the public versus the health of the tobacco industry. My second point is about health, I am not going to dwell on that, I will give you what Phillip Morris's web site shows. They say we agree with the overwhelming medical and scientific evidence that cigarette smoking causes disease. They say that the evidence is sufficient that we should regulate smoking in public places, that is from the tobacco industry itself. That is the end of my comments on the health effects, it's bad. There is no question that smoking is bad and second hand smoke is bad. A lot of times the industry will say let's put in some filters and that will take care of it. The filters do a reasonable good job on the odor and the haze but again I will give you Phillip Morris's statement on this. Phillip Morris says our programs are not intended to address the health effects of second hand smoke. You cannot find anyone who will tell you that ventilation removes the health hazards of second hand smoke; America's for Non Smokers Rights debunk a lot of the myths about how ventilation might help. If you do look toward ventilation as a cure I would ask you to have whoever installs the ventilation system to sign the Ventilation System Health Affidavit and say yes our systems reduce or remove the health risk and we are willing to step up and be liable for any health effects that happen in spite of these ventilation systems. There are two types of data on whether these ordinances have adverse economic impact, one is the opinion polls if you ask enough restaurant owners or bar owners does this hurt your business they say oh yes, it's bad for business. The other type of data is tax data, there are five states now that are completely smoke free in all their work sites and hundreds of towns and the data from their tax reports are very clear, there is no adverse economic impact of these types of ordinances. Personal rights and free choice is a very powerful argument, it's a very powerful argument for clean indoor air, because we should all have the personal right to air that's not going to cause disease for us. We spoke at the start, made the Pledge of Allegiance about Liberty and Justice for All, how can you have liberty if people can't go out into public places because of the damage to their health. In Washington County from 1996 to 2000 you had a total of 431 lung cancers; in Fayetteville from 1996 to 2000 you had a total of 166 lung cancers. I would just close by saying this is inevitable and I would like to see a world where my children grow up and they don't have to run that risk

of lung cancer. I hope that you all will step up to the plate and do this ordinance in a prompt fashion.

Dr. Steve Johnson a Fayetteville Physician: I am a former smoker and consider myself a nicotine addict, I am also currently a passive smoker many of us are to a lesser or greater degree every day. I do not consider myself either a political activist or a particularly public person, I do consider myself reasonably conservative and I think government sometimes does some things that they shouldn't do. Despite all of those points however I am here tonight to speak and to support the regulation of smoking in public workplaces in Fayetteville. My interest tonight is both the health consequences of tobacco smoke and also the public policy issues of the proposed ordinance under consideration. There is no reason to obviously believe that my views are shared by all who have interest in this issue tonight. People who are reasonable certainly can disagree. Over the years the most vocal critics of the information regarding the adverse effects of tobacco have been spokes people for the tobacco industry, even they as you heard now however have admitted that they distorted the facts and lied about their knowledge of harm caused by tobacco smoke. The true bottom line about tobacco smoke is that it kills people; people die prematurely because of smoking. The statistics are easily obtainable but remember that some people who never smoked a cigarette, pipe or a cigar die prematurely because of cigarette or other tobacco smoke, just as importantly many more people aren't dead, but rather living with the non-lethal but substantial affects of smoking related illness. Most people with heart disease don't feel fine one minute and then suddenly die the next minute. They endure years sometimes of changes and alterations in their life styles, expensive medical therapy's and other uncertainties and consequences. They spend a good deal of their money on doctors, drugs and hospitals. Most patients with emphysema die after long years with important daily constant difficulty with their breathing, side affects from their medications and also significant financial burden. Most patients with lung cancer first endure pain, shortness of breath and the side affects of surgery, radiation therapy and or chemotherapy and then they die. For those who don't deal with these people on a daily basis it's understandably difficult to keep these facts in perspective, but when it comes to tobacco smoke it is hard, really very hard to execrate the incredible impact on peoples lives that it has, this is just but one of the tragedies of the preventable illnesses. Nicotine is an addictive drug, ordinary, good, intelligent and family loving people are nicotine addicts, they are not bad people, and the behavior of that addiction to nicotine is directly affected by their cravings. Smokers readily admit to me that they behave irrationally regarding their smoking; they try to stop, but find they can't. A whole industry of products, hypnotist, acupunctures and others have developed to assist smoker, too often unfortunately these efforts fail, and the nicotine addict continues to be irrational about smoking. I have one positive note and that is I surely don't believe that any smoker, smokes in public with the intent to harm anyone, but they do harm others. How should we translate these facts into public policy, despite the recommendation of the State Board of Health as you heard, our governor has decided that this is an issue that doesn't warrant state wide action, he determined that local government should tackle this issue. Interestingly a local newspaper editorial suggested that this is not an issue for the City government, but rather state health officials, reasonable people do disagree. Historically this has been an issue for local government in other states and it can be here. In Fayetteville we have an opportunity to set an important precedence for our state, when the debate is done, the votes are cast and potential legal challenge is decided we might be able to say that we took a stand for what is right. Although one may exist, I am unaware of any employer in Fayetteville who has

allowed exposure of his employees to environmental tobacco smoke and actively warned them of the consequences or has offered to compensate them for any adverse health affects. We do not have such lead way with respect to other workplace hazards, no health care facility can ignore its responsibility to warn its employees about the risk of transmittable diseases and how to minimum those risks, no construction foreman can ignore the requirement that workers wear hard hats and observe other recognized safety rules, no entertainment facility can bypass fire codes and put its employees and patrons at risk and simply say they had a free choice to go some where else. Why is tobacco different, I think that is a debate for another time. Let me close by saying I don't think that tobacco should be different. I think the City Council has a tremendous opportunity now to commit to the principle that no one has the right to decide whether he allow harm to be done to others in the name of Freedom of Choice.

Barbara Kumpe Advocacy Director for the American Heart Association and also the chairman of the Coalition for Tobacco Free Arkansas: I am here to talk to you today on behalf of the many volunteers and individuals that are affected by cardiovascular disease, including stroke. The leading cause of death is heart disease in our nation, stroke is the number three cause of death and stroke is the leading cause of disability. The number one controllable risk factor for these major health problems is smoking and second hand smoke. There was a study that was done in Montana that was presented at the Annual Scientific Sessions of the American College of Cardiology in Chicago that shows the immediate benefits of comprehensive smoke free workplace laws and the results of a decline of nearly 60% in the number of heart attacks, this is significant. The American Heart Association also had the economic impact of city after city and community that has gone smoke free. The economic impact of 100% smoke free ordinances, Fort Wayne Indiana, the sales tax data was collected between 1987 and 2000, two years after the ordinance was enacted no statically significant variances in revenues were found. These are town after towns, after towns that have done and shown the exact same results from the studies that they have done. The American Heart Association is also the leading authority dealing with cardiovascular diseases and research, and I have study after study of articles that have been presented by the American Heart Association and its researchers on the effects of second hand smoke. Smoking is a problem and we are here today to ask you to step forth and show the state of Arkansas that Fayetteville can be smoke free. You have been given the task and we appreciate the position that you are in, but it is a right and I do agree that each individual in our United States has a right. There is another level of people that we have not even talked about and you say people have a choice whether to go into a restaurant or not, you are exactly right, what about the delivery men that deliver the products the restaurants need, the UPS man that has to go in there every day because his business requires him to, what about the mailman that has to go in there, we know that the smoke does not leave the restaurants they close down at night the effects of it are still there. It is very important for you as the Council members to think about the health of your community, and I know it weighs on your shoulders tonight, but again the American Heart Association supports you in passing this ordinance for a smoke free Fayetteville. Let me tell you the United States and cities all across the United States are watching Fayetteville to see what you do and in the recent studies that we have seen, the Northwest Arkansas part of the state is going to surpass even the Little Rock area and I would love to see Fayetteville be smoke free for your community and your citizens, because it is a health issue. If smokers want to smoke I understand, they have a right, but take it outside, not in the air that I breathe, and let my children, my family members and my friends be able to come

into a restaurant and be smoke free. One thing you have to remember at least then they will be able to taste the burgers or smell the food and smell how good it is instead of the cigarette smoke. I appreciate your willingness to take on this issue and the American Heart Association supports a Smoke Free Fayetteville. Thank you.

Brain Holt, President and CEO of Northwest Arkansas Radiation Institute: At NARTI we provide radiation treatment for cancer patients. We are also dedicated to improving the public health in Northwest Arkansas through early detection and cancer prevention education opportunities. I have been employed at NARTI for about 10 years; I am a supporter of this proposed ordinance from both a professional and personal standpoint. The bottom line for me is this is a question of public health and you as a City Council have the responsibility to improve and protect the health of our citizens where you can. I commend you for considering this ordinance. The ordinance itself states the crux of the matter, studies have proven that second hand tobacco smoke causes cancer, that separation of smokers from non-smokers in the same air space does not eliminate exposure to second hand smoke, that employees that work in a smoking environment are at significantly greater risk for heart attack and for dying from cardiovascular disease and cancer. According to national cancer institute second hand smoke results in the early death of up to 65,000 people annually and second hand smoke is especially harmful to children and the elderly. There are numerous studies that site the detrimental affects of second hand smoke on people. Second hand smoke contains over 4,000 chemicals and 43 known cancer causing toxins, second hand smoke is the third leading preventable cause of death in the U.S., killing over 53,000 non-smokers each year. Even half an hour of second hand smoke exposure causes heart damage similar to that of habitual smokers. A study of 1999 by the American Society of Heating Refrigerating and Air Conditioning Engineers, non smoking areas don't help, the simple separation of smokers from non-smokers within the same air space may reduce, but can not eliminate the exposure of non-smokers to second hand smoke, ventilation technologies are incapable of removing all second hand smoke and its toxic constituents from the air. Ventilation technology is not a safe alternate to smoke free environments. Sitting in a non-smoking section of a restaurant over an hour can be as harmful as smoking one and half cigarettes, two hours in a smoky bar is the same as smoking nearly four cigarettes. We have situations where employees in particular are at risk; second hand smoke is a significant occupational health hazard for food service workers. There is a 50% increase in lung cancer risk among food service workers due to tobacco smoke exposure in the work place. It does not take a lifetime for an employee to experience the consequences of breathing second hand smoke. Exposure to as few as 26 smoking customers daily during a course of a year will double the risk of developing lung cancer. Workers exposed to second hand smoke on the job are 34% more likely to get lung cancer; workplace smoking increases an employer's legal liability as well. Non-smoking employees have received settlements in cases based on their exposure to second hand smoke. There is a growing trend in this country; an ordinance like this contributes to this as well, to eliminate smoking in the workplace. Nationwide in 1999 nearly 70% of all indoor workers reported a smoke free environment compared to 46% in 1993. Second hand smoke hurts children, asthma is twice as common among children exposed to second hand smoke and they are less likely to out grow their asthma than children who have not been exposed. Children are also impacted in having bronchitis, pneumonia, middle ear infections, chronic respiratory systems and low birth rate; second hand smoke is also linked to sudden infant death syndrome. From a personal stand point I have witnessed the effects of smoking and second hand smoke on

my family as well. Concerns have been expressed about the economic impact of this ordinance; there are numerous studies that have already been mentioned that should dispel those fears. Three studies are documented in material that you have already received. The public health need in this country is great, with more than 400,000 people dying annually from tobacco related illnesses according to the CDC, another 40-60,000 or more dying annually as a result to exposure to second hand smoke. The US Department of Health and Human Services concluded in a study completed in 2000 that regulatory restrictions can reduce morbidity and mortality related to tobacco. Ordinances such as this are effective in improving health. There are questions raised by opponents of this ordinance that are worthy of discussion, but when you boil it all down the primary issue that I believe this council must address is that second hand smoke is a threat to the health of the majority in our community who choose not to smoke. Passing this ordinance will positively impact the health of the residents in Fayetteville and be an example to other communities in this region and in this state. I'm hopeful that you will pass this ordinance. Thank you.

Kyle Hardy a Lung Specialist: Looking at 1995 data 23% of Americans smoke, if our community reflects nationwide numbers that means over 75% of our citizens do not smoke cigarettes and are exposed to passive smoking in restaurants. The cost for smoking and smoking related illnesses are astronomical, in 1993 the estimated smoking attributed cost for medical care were \$50 billion dollars, when you include lost work and lost productivity from people that are too ill to work or died prematurely the cost were estimated at \$97 billion dollars that year, in 1990 440,000 Americans died directly related to smoking related illness, that was more than 1 out of every 5 deaths that year attributed to smoking. Smoking is the principle cause for emphysema, which is now the fourth ranked cause of death in the United States; it currently kills more than 100,000 Americans a year. Lung cancer is the most common cause of cancer death in the United States, approximately 154,000 deaths in the United States occurred in 1992 due to lung cancer alone. The problem is so severe in this area that we have created a lung cancer clinic, it meets one half day a week, in that one half day a week clinic we diagnose 365 cases of lung cancer a year. Cigarette smoking is estimated to be responsible for 87% of the cases of lung cancer that we see. Cardiovascular affects, the American Heart Association has noted that smoking is the single most attributable risk factor contributing to premature morbidity and mortality in the United States accounting for 400,000 deaths annually. Passive smoke has been characterized by the EPA as a Class A known human carcinogen, it is known to cause cancer, and it contains the same and sometimes higher concentrations of the compounds found in main stream smoke which includes benzene, which causes leukemia and other products. Those by-products from passive smoke can be measured in body fluids, when you go into a restaurant and sit and smoke or sit and not smoke if you are a non-smoker, you go in and you are there exposed to passive smoke, when you come out some of those substances can be measured in your blood stream, some of those substances have also been found attached to DNA in the bodies of non-smokers. EPA estimates that passive smoke causes 150 of 300,000 excess cases of lower respiratory illnesses a year and as we have already heard contributes significantly to lung cancer and cardiovascular disease. In my practice I believe that I have identified two people who have acquired lung cancer through passive smoking. It is a huge social issue; smoking is an obvious threat to both smokers and to people around them. The economic cost for smoking from health care loss to productivity is astronomical, it's not borne by smokers alone, non-smokers help bear the cost of smoking related expenses by higher insurance premiums, Medicare does not cover the

cost of smoking related illness and we all pay for that with our tax dollars, in addition we pay higher cost for goods and services due to loss productivity from people who smoke. It's not okay to smoke, you're killing yourself slowly, you are our friends, our neighbors, our family and we don't want to watch you continue to do this. The cost of smoking is borne by everyone, not by smokers alone. It is not okay that you are introducing known toxicants into the environment to injure those of us that choose not to smoke. I think we need to be concerned about the business people in the community who are worried about loss of income and to those people I would say we have already heard of studies, I have read studies indicating that there has been no loss of income, no loss of business due to laws such as this. Thank you.

Free Choice Fayetteville spoke in opposition of the proposed ordinance.

Citizens speaking on behalf of Free Choice Fayetteville:

Richard Maynard: It is my job in this presentation to explain who we are, why we have formed and to give you an outline of our side of the debate tonight. First of all I would like to thank Mayor Coody and the Council for giving us this time to present our arguments. The committee for Free Choice Fayetteville formed just three weeks ago and we have been scrambling every since to get organized, stealing time between our jobs and family obligations. We decided to call ourselves a committee rather than a coalition because we didn't want to copy the Smoke Free Coalition's name for obvious reasons but in fact we are a coalition, I would say probably more of a coalition than they are. We are a coalition of owner's patrons, staff, concerned citizens from all walks of life, from both ends of the political spectrum and everywhere in between agree on one thing and that is our belief that your mission to protect the health and welfare of your citizens was never intended to mean making decisions about the personal health choices of those citizens. So far you have only heard one side of the debate and tonight you are going to hear another and I hope you listen. You will hear some new information on the health risk of second hand smoke from some of the same sources that are often used by Smoke Free Coalitions across the country, namely from the EPA and the WHO, information buried in those reports and not cherry picked to fit a desired result. I am a little confused because I thought we were here to talk about smoking in bars and restaurants, not smoking in public places and I certainly did not think we were here to talk about the evils of cigarettes, which we all know. The arguments that we've heard from the Smoke Free Coalitions might be good arguments for another debate on whether to outlaw tobacco all together and criminalize the behavior of 25% of our citizens, but I don't think they are pertinent to this discussion here, which is simply whether or not to allow this still legal substance on private premises and in establishments where smoking has traditionally been a part of that experience. No one is required to step into bars or restaurants and comparing bars and restaurants to grocery stores, banks and to hospitals is just one of many apples and oranges arguments that we've heard. Private bars and restaurants if you didn't know it are not public property, they are private property, and we are actually called guests when we walk in there. I am also here tonight about the economic impact that these bans have had on small businesses. I just want to back up one thing about the health argument too, because it is one thing that we can all agree on here tonight and that is smoking is very bad for your health and if you do it long enough it can very well kill you. I know that very personally as some of you know, I lost my mother several months ago, undoubtedly a result of her nearly 60 years of smoking but that is kind of the point, it took

nearly 60 years for her smoking to kill her, that's some epidemic. As hard as it was to lose her and believe me it was very hard, that was still the life she chose, so if direct smoke can take that long or even 30 or 40 years than how deadly can second hand smoke be. Certainly smoking is a health risk and if direct smoking is a health risk than certainly there is some health risk to second hand smoke, but it is not anthrax either and to hear some of the statistics thrown out statistics that don't even begin to meet the limpness test of common sense you would think that was about the level of second hand smoke, 65,000 deaths each year due to second hand smoke, excuse me. As one of our local columnist said in his column last year, don't insult my intelligence, I couldn't agree more. You will also hear about the economic impact that these bans have had on small businesses. Everywhere, that they have been adopted and not just the faceless statistics based on the false criteria of year end sales and tax revenues, but the real human cost these bans have had on hard working individuals like Joe Fennel, like John Justis or like your own colleague Robert Reynolds as well as on their employees, individuals that have lost revenue and often lost businesses, their only crime being to offer their guests the choice of smoking or non-smoking and again I emphasize guest. This is a scenario that has played itself out time and time again in every town and every state that these draconian bands have been enacted, lost jobs and lost businesses and not one life saved. We are using a false criteria for this, year end sales and tax revenues are too long to wait for most bars and restaurants, you can not absorb a 3 or 4 month loss, California itself as Mr. Sandlin will tell you in a little while, those places do not show up on those sales and tax and revenues, because they no longer exist. The facts are very clear, if smoking bans were good for the hospitality business why would tavern owners in my former city and state New York have joined together to form Tavernier's United For Fairness, otherwise called tough New York, almost four months after this ban has taken effect in New York City, in fact they have a rally on July 24th to try to repeal this ban on the day that the state ban takes place, why would they do this if these smoking bans were helping their business, these people are not pro smoking, they are not spending all this time and money on a principle, they are doing it because they are losing money hand over fist, I don't care what anybody comes up here and tells you, the imperial evidence is clear from the people in the front lines of these battles that the statistics just don't show. When I hear about this ban in New York, I knew it would never fly because like Arkansans, New Yorkers do not like to be told what to do. You will also here from the owners and employees of these establishments, people who have completely cut out of the dialogue on this ordinance until tonight, which to me is the most aggrievous and inexcusable part of all. It is amazing to me that so many members of the Smoke Free Collation who I am sure are very good in there own professions including health have suddenly become experts on the hospitality industry and even experts on ventilation systems as well. To listen to these economic analyses it is equally amazing that Joe Fennel, John Justis and Swifty Reynolds have stayed in business as long as they have. You know the one area that I think I have made a contribution to this community, is my neighborhood, especially with bringing developers and neighborhoods together outside of city hall to try to come to some consensus. You have all patted me on the head many times for doing that and said what good neighbors we are, well how is this any different, why weren't these proprietors included, why did Mr. Marr and Ms. Lucas not even talk to one local independent proprietors of a local bar or restaurant before they decided to enthusiastically sponsor this ordinance. When I said in our letter last week to you Mayor and this Council this issue had already become divisive and volatile that was a big part of the reason why. Why weren't these businessmen and businesswomen even consulted? Now we have heard from the Smoke Free Coalition that they had a list of 15 to 20 establishments that would support

a ban as long as it was a city wide ban to create an even playing field, which seems to fly in the face of their contention that smoke free is good for business, if it is good for business that one could reasonably assume that people would be flocking to the smoke free establishments already in the city and as we saw in the paper today there are many. An even playing field is again another false assumption brought forth by this Smoke Free Coalition. Bars and restaurants are not grocery store, banks and they certainly are not hospitals and they are certainly not health clubs, they are not just businesses, but they are also social clubs, each with its own clientele and each owner knowing better than you or me and certainly better than any one in the Smoke Free Coalition what's best for his or her guest, what works for Olive Garden may not work for Rogers Reck and what works for Jose's won't necessarily work for Grubbs, Common Grounds or Big Daddy's. Anyone who has ever worked in this business as I have knows that to be true. We have been told there is a list, Alderman Davis has repeatedly asked for this list of restaurants that support a smoking ban, we have asked for this list too, some proprietors on the committee for Free Choice Fayetteville are very curious if they may be on that list, finally we got an answer, there is no list. In an email sent to Rick Schweik from Ms. Horne-Brooks just last Tuesday, she said we regret to tell you that we do not have any list of restaurants indicating support for the proposed ordinance, she goes on to say that volunteers of the Northwest Arkansas Tobacco Free Coalition met one on one with about 20 restaurants and bars, yours included in January and February of this year, these visits were meant for educational purposes only and we did not keep any list or data of information. According to Mr. Schweik their educational purposes were basically to educate him about what they intended to do to his business. As we saw in the paper today out of this poll that was taken by the A&P, I think it was 31 that supported the ban 52. Now somebody wrote that, that said hooray that only 28 restaurants opposed the ban, in other words they were including, now get this 31 were in favor of the ban 52 against it and we don't know what kind of restaurants they were, 104 were undecided or didn't care and somehow out of that figure, we got 28% of the restaurants in Fayetteville support this ban. In other words 52 out of the 187, well I will use that same criteria, 31 out of 187 support the ban that means only 16%. The workers, this has been a big key point of the Smoke Free Coalition, and I was one of them for many years as I said, both here and in New York, this was never about the welfare of workers, you will hear from them tonight as well as some of the other workers that patronize these establishments they may have something to say about their own ability to make decisions about their own health, if this was ever about the welfare of the workers, then again why was this put out on an email by the Northwest Arkansas Tobacco Free Coalition list serve on April 18th of this year, months after they started their campaign and in it, it says contact me if you are a waitress or a waiter or know someone who is and want to contribute to the efforts of Smoke Free Fayetteville, why would they not know of waitresses or waiters at this late in their campaign if worker health had ever been the issue. Clearly this was a recruiting measure, not only do they not have much or any support from the owners, but they also have little or no support from the employees as you will see in just a minute. Finally you are going to hear about choice, and let me explain our name Free Choice Fayetteville, because there seems to be some confusion about what we mean by that. When we say Free Choice, we are not advocating, we are not promoting smoking or claiming our right to smoke just anywhere we choose, those boundaries were set some years ago and we have no argument with them, nor is anyone demanding that proprietors provide smoking sections to this legal substance when those proprietors have chosen to go smoke free, when we say Free Choice, we mean not only is it the right of the owners of restaurants and bars about what legal substances are used on their premises based on the desires of their

customers, but it is also your Free Choice and also your responsibility to make your own decisions about which establishments that you choose to patronize, again this is not public property, that's the Free Choice we are talking about. No one's right to breathe and no one's children's right to breathe is being violated, if it is being violated at all unless that person chooses to walk into an environment where smoking is allowed, now it's just that simple. In three weeks time our committee has grown from a handful to over 60 and I have a list of those that signed on with phone numbers if anyone cares to verify the names. We have put petitions in over 30 bars, restaurants, convenience store, a couple of tobacco stores and in that three weeks we have collected 3,300 signatures, I don't think that is bad for just three weeks work, and also in this a few of the bars owners did want to do a poll of their employees, the ones that seemed to be incapable of making their own health decisions, the results of that at Jose's 55 employees against this ban only 10 for, Bordino's 16 against only 1 for, Common Grounds 13 against only 4 for, Brew Pub 44 against 2 for. Now the city can say that the signatures on this petition were coerced, you can believe that if you care to. Unlike these petitions ours come from the only people that truly count on this debate the patrons, owners, and staff of these establishments, the people that keep these establishments alive and who keep the hospitality business thriving in Fayetteville and among these citizens 3,300 there is very little support for this smoke ban, in fact I would say there is almost none. I would like to present these petitions to you Mayor.

Betsy Finocchi: I am honored tonight to speak on behalf of the Free Choice Fayetteville group. My portion of the presentation will cover the health issue, which may seem at first the most difficult hurdle for us to overcome, however it is actually quite simple. In January 1993 the Environmental Protection Agency released a report on the affects of environmental tobacco smoke or second hand smoke that has become the entire basis of the health claims made by the smoke free coalitions across the country. This study concluded that second hand smoke is a Class A carcinogen and that 3,000 people die each year due to lung cancer caused by second hand smoke. The coalition is proud that the Surgeon General, The American Heart Association and The American Cancer Society even tobacco companies agree that second hand smoke is dangerous or even life threatening. These organizations are making that statement based on the very same EPA study to which I just referred, so all we have to really do is look at that one study, which has proven to be a fraud. I am not saying it's a fraud I am quoting a Federal Court decision, which overturned the study calling it an out right fraud. In 1994 a congressional inquiry into the EPA and its methods specifically as they related to the agencies dealing with second hand smoke concluded that the agency disregarded information and made findings based on selective information. The EPA study which is the very core of the Tobacco Free Coalition's case which causes them to start every argument by saying that 3,000 or 53,000 or 65,000 people die every year from second hand smoke is scientifically invalid. You probably assume as I did at first that a study of this importance conducted by the EPA would include scientific research including medical examinations and records from a very large sample of the population over a long period of time, this was not the case. The EPA study is based solely upon surveys that were sent out to a few thousand people across the country, the responses to these surveys were fed into a computer and statistics were compiled to support their theory. Some of these surveys were even filled out by substitutes for the actual person that was supposed to be surveyed. There were no bodies to be counted; the 3,000 number is a statistical result. Where do they get numbers like 50,000 or 53,000 or 65,000 these are estimates and exploitation from more statistics. The Tobacco Free Coalition has added deaths from heart disease and other causes, simply blamed

these deaths on second hand smoke. Basic common sense should tell you that these numbers are preposterous, if 65,000 people died last year from second hand smoke that would mean that in 1965 when three times as many people smoked cigarettes over 200,000 people should have dropped dead from second hand smoke, wouldn't we have noticed that. The U.S. Congressional Research Service works exclusively for congress conducting research analysis legislation and providing information at the request of congressional committees, just to let you know they are not working for any body but congress. The U.S. Congressional Research Service after analyzing the EPA's report concluded that the statistical evidence does not appear to support a conclusion that there are substantial health affects of passive smoking, even at the greatest exposure levels very few or even no deaths can be attributed to environmental tobacco smoke, that alone should be enough to make you at least question the claims being made by the Tobacco Free Coalition regarding the health issue, it should make you disregard them all together. I can stop there but there have actually been other studies conducted that prove that second hand smoke does not increase the risk of lung cancer, real studies conducted over a long periods of time which include actual medical records and scientific results. In 1998 the World Health Organization conducted a study that span 10 years and covered seven European countries. The study concluded that there were no statically significant risks for non-smokers who either lived with or worked with smokers. The Wall Street Journal had this to say about the study. IT is obvious that anti-smoking activist have knowingly overstated the risk of second hand smoke. OSHA has done extensive studies on the effects of second hand smoke in the work place. Their findings were that the effects on hospitality workers was so erratic, so hard to quantify and so arbitrary that they could not justify regulating those businesses and just this year in 2003 The American Cancer Society's Cancer Prevention Study shows the same results. They followed 35,561 never smoking California's married to smokers over 40 years, actually 39 years from 1959 to 1998, the results showed no lung cancer risk what so ever, over 35,000 people studied over 40 years and there was no increase of lung cancer in those people than in other non-smokers, in fact it was a slightly lower risk. Although the EPA study has been debunked by science and legally vacated by a Federal Judge it is still regularly quoted by government agencies, charity organizations and the anti-smoking movement as if it were legitimate, unfortunately the truth will probably not change the minds of those in the Tobacco Free Coalition because they are very committed to their cause and have invested a lot of time and energy into it, but in fact this is not a health issue at all. In 1991 when Governor Mike Huckabee would not approve a statewide smoking ban similar to the proposed ordinance before you, he said and I quote "It really comes down to whether or not we have a right to tell private business owners what they can do with their own business". I ask each of you to please vote against the ordinance before you.

Tim Sanderlin: You have had a lot of stats thrown at you throughout this entire campaign here, this is more than just statistics, we are talking about real business owners, real employees, and real people. The most prominent example would be in California, between 1994 and 1999 the overall economy in California increased 31%, fast food restaurants saw an increase of their permits by 12%, however restaurants and bars were down 3.3%, that is only in permits, which means that over 1000 restaurants went out of business and we all know that restaurants go out of business all the time, this shows that no one was there to take their place. Immediately following the full ban in 1998, which California enacted the restaurant ban in 1994 and included bars in 1998, a study of 300 businesses, all down California from San Francisco to San Diego showed

the following, 59.3% experienced a decrease in business while only 6.7% showed an increase. 22.6% averaged decline in sales across the board, 59% of work staff reported a loss of tips and 30% were forced to lay off employees or reduce the number of hours because of loss of revenue. The studies that the Smoke Free people have that suggest no change or an increase in sales, if you look closely they include places like fast food restaurants and deli's. Now business may indeed have picked up at MacDonald's, but for restaurants and bar owners the result is pretty much devastating. California is not alone, a study of 14 communities in Massachusetts showed that of those businesses in those 14 communities, 10% to 71% lost revenue and only 4% to 27% gained jobs, 920 employees were laid off and 14 businesses were closed in the first 80 days of a failed smoking ban in British Columbia Canada, British Columbia quickly rescinded this ban after 90 days because of the economic impact. 40 small businesses closed within the first 18 months of a smoking ban in Nowata which now also looking at rescinding their ban. The finance director of Tempe, Arizona recently stated in a 2002 study bars were submitting significantly less tax revenue to the city. Mays collections were down 20%, recently reported sales for August showed that bars showed a 20.4 decline in revenue and July's collections were off over 33%. Now the Smoke Free people have said that these bans are sweeping the country. It is true in fact those 1609 municipalities have a smoking ban in place, out of those 1609 only 54 have a ban even approaching what is being proposed in front of you and out of those 29 are in Maine. When these smoking bans go into effect and like I said the Smoke Free people will say that they are just sweeping the country, what they don't tell you that right behind these bans being enacted is a wave of these bans being rescinded. A smoking ban went into affect in Massachusetts in October 2000 a few months afterwards the Chairman of the Board of Health; Ralph R. Thompson admitted, "He and his fellow board members weren't aware of just how devastating the bans impact would prove to be on area businesses. They recently rescinded their ban. Los Angeles passed a ban 1993 a full year before the state did; Los Angeles was about to rescind their ban when the state went into affect. It is interesting to note that Los Angeles still does not actively enforce this ban. Close to 65% of communities across this county that have passed smoking bans have either rescinded or liberalized their laws. That 's not only just for businesses there are also headaches for the city, currently Tempe, Arizona and Austin, Texas are embroiled in lawsuits. Helena, Montana, Plano, Texas, Montgomery County Maryland and the entire state of Ohio have all had their bans reversed by federal courts as unconstitutional. Here in Fayetteville the Community Resource and Code Compliance Director, Yolanda Fields said that her department could not enforce the ban at present, but could if you gave us a staff and a budget. Chad Ball who is the Code Compliance Director said if we have to enforce the ban we would have to run two shifts and put officers on call. I don't know about you, but I don't want our police force having to deal with this kind of thing and I don't think we can afford to pay enforcers to deal with this. New York has also had this problem where at first they were going to have the police department take care of the ban, but they had to hire a group of enforcers whose salary far out weighs the amount of money they get in fines. I urge you not to risk the jobs and the livelihood of both workers and owners here in Fayetteville.

Joe Fennel, of Jose's and Bordino's: Thank you Mayor Coody and Council members for the opportunity to speak. As I noticed the 2008 goals up there I noticed that Dickson Street is one of the Crown Jewels and as I look at the vision of 2020 I don't see anything about Smoke Free Fayetteville, I see a Fun City in which to live, Dickson Street and the Downtown Area Developed as the Cultural Entertainment District, that's why I am here tonight. I hate smoke,

anyone who knows me, knows I hate smoke, but what I hate more is some special interest group or the government telling me how to run my business, it's my business, our customers come to Jose's and Bordino's by their choice, I have always tried to take care of our customers, deliver what they want but never have they told me they want 100% smoke free restaurant, never. We have operated a non-smoking restaurant long before this issue came to Fayetteville; this is our choice, our customers and Jose's ownership. My issue with this proposed smoking ban is this, Jose's is already a 100% non-smoking restaurant, we allow smoking in our bar, so I believe that we are taking care of our customers, we are providing a healthy environment in which to dine, drink and socialize, but if you want to enjoy our bar that is your conscience decision to enter, to join our customers who do smoke, but guess what it was your choice, so yes we do support choice. I have worked hard to give Fayetteville citizens restaurants they can be proud of, I have worked hard in many different arenas trying to make Fayetteville the great city that it is, but did this special interest group ask for any input on the matter? Did they ask anyone from our industry for input, no, why, because they don't care about our industry, they don't care about our livelihoods, all they care about is their agenda and that is health, why now are we in the hospitality business being projected as bad people, we don't care about our customers, we don't care about our employees, this is ridiculous. The editor of our local newspaper refers to us as operators of gathering places that are poisonous, hazardous, and down right disagreeable, it took them 23 years to come to the conclusion that Joe Fennel is destroying Fayetteville, what's next, are they going to tell us that cheese fries, sour crème, guacamole, beef, chicken and fried chips will harm you, yes that's coming. What about the health of our business, our industry, what about that health, is that not of importance, is the health of our industry not important to Fayetteville, Arkansas. I beg to differ, don't you think we in our industry might know more about what we do and how we do it than a special interest group that had not one representative from our industry, that is wrong, they didn't ask, they don't care, that's wrong and as wrong as wrong can be. I don't care about New York City, San Francisco, Austin, El Paso, I don't care, I care about Fayetteville, Arkansas and I care where we're headed. As our neighbors to the north continue to prosper and grow at an alarming rate, do we need to keep creating reasons and regulations in Fayetteville that continue to favor them. If this was such a good healthy change why is this smoke free proposal not a regional issue, this is a major issue for us because we do not believe this proposed ordinance Smoke Free Fayetteville, benefits Fayetteville in our battle to retain customers and grow our economy. If the city really has a problem with how the restaurants and bars operate don't you think one of their employees would have asked questions. So as I said earlier, I hate smoke, but when I choose to be around it, it is my choice and it should always be my choice. The day you believe that someone other than yourself can make better decisions for you, you have just given up your basic right to freedom, you are free to make a choice, make a good choice based on what you believe is right and true. Smoke Free Fayetteville and Free Choice Fayetteville, one issue, two sides, nothing is different in Fayetteville, its just a new year, last year it was the sound ordinance, an ordinance was developed and put in place that is ridiculous, our street side operation which I own, at times violates that ordinance on evenings when we are full of customers and all those customers are doing is talking, laughing, having a good time, its not live music, its people. Nearly every Harley Davidson that rumbles up Dickson Street is in violation of the ordinance that was created, because the ordinance is ridiculous, it's poorly written and it is wrong and guess what our police officers have better things to do. This issue is about what's best for Fayetteville, not whether you are a smoker or non-smoker, your health or your employees health, its about choice, we are

not talking about a new federal law here, a state law, county law, Northwest Arkansas law, we are talking about Fayetteville law. The ordinance has a lot of problems the language is very vague, the enforcement and penalties are ridiculous and the potential harm for our industry and our city are tough to swallow, so we will fight, we will fight for the right to choose as the customer and business owner just the way it should be. Every city in our nation who has adopted this smoking ban has hurt the independent restaurant operator. Every one of my neighbors on Dickson Street is an independent operator as well as myself and we're scared of what may happen. Nothing good will come from this, don't you believe, don't you think that if I believed for one moment that a totally non-smoking bar would give me an advantage as a business man over the other 18-20 bars that are on my block of Dickson Street, don't you believe I would have played that card by now, you know I like my fellow bar and restaurant operators, my neighbors on Dickson Street, but if I thought I could benefit business by going non-smoking I would have already done it. Our in-house survey of bar customers over the past three weeks has convinced me that it would be a wise business decision to voice my objections to this proposed ordinance. Even with the customer base of nearly 70% non-smokers, the numbers didn't work, half of those responding felt like it should be their choice, my choice, not something crammed down my throat. I tried a non-smoking bar for nearly two years in Bordino's and bar business was non-existent. Pure and simple I do not believe this proposed ordinance would be best for Fayetteville, my voice is for choice.

John Justis, Owner of Club West: Spoke against the ordinance.

Jim Smith: Spoke in favor of the ordinance.

Gene Kovach: Spoke against the ordinance.

Kirby Sanders: Spoke against the ordinance.

Shelly Davis: Spoke against the ordinance.

Joy Ewalt: Spoke in favor of the ordinance.

Frank Whalen: Spoke against the ordinance.

Kathy Grisham: Spoke in favor of the ordinance.

Alderman Rhoads: Ms. Grisham will you be able to provide a copy of the survey, is it in readable form.

Ms. Grisham: Yes

Alderman Rhoads: That includes who took the survey, the name.

Ms. Grisham: I can give you that information too.

Alderman Rhoads: Is it a local company that specializes in surveys.

Ms. Grisham: Yes

Alderman Rhoads: Their name.

Ms. Grisham: I am not sure of their name.

Audience: It's the same group that runs National Accounting Systems; they are a local telemarketing firm.

Janet McMullen: Spoke against the ordinance.

Michael Grindstaff: Spoke against the ordinance.

Kurt Wolfe: Spoke in favor of the ordinance.

Brandon Beard: Spoke against the ordinance.

Daniel Griffin: Spoke in favor of the ordinance.

Daniel Gold: Spoke in favor of the ordinance.

Barry Arnold: Spoke in favor of the ordinance.

Julie Sill Owner of Common Grounds: Spoke against the ordinance.

Daniel Rue: Spoke in favor of the ordinance.

Elizabeth Love: Spoke in favor of the ordinance.

Barbara Price-Davis: Spoke in favor of the ordinance.

Alderman Reynolds: I would like to ask Barbara Davis is she a resident of the City of Fayetteville.

Barbara Price-Davis: Yes sir I am, I live in Ward 3.

Alderman Reynolds: Thank you. Did this program start three years ago? Did you have your first meeting at the Jones Center in Springdale about setting up Fayetteville for the Smoke Free Coalition?

Barbara Price-Davis: Smoke Free Coalition started actually several years ago.

Alderman Reynolds: At the Jones Center in Springdale.

Barbara Price-Davis: The Jones Center in Springdale houses many non-profits for Northwest Arkansas because we get free rent, but yes it does. Many of our organizations and community partners are housed there; many of them are housed throughout Northwest Arkansas.

Mark Wright: I would like to know if I could get a copy of the 10 restaurants that she got a hold of and discussed the Smoke Free ordinance with.

Mayor Coody: Is there a chance that we can get a copy of that so we can distribute it to those people that would like to see it.

Barbara Price-Davis: The reason that we did not release any of the owner's names and their comments is because we didn't ask for their permission to do so. We spoke with them in an educational environment, to educate them about the dangers of second hand smoke and about the Smoke Free workplace ordinances and why we were doing this and what impact they could expect. We answered their questions and concerns, we did not ask them if we could share those questions and concerns or release their names. That is why there has been no list, the only reason I said Joe Fennel is because he stood up here and said he was not contacted and there were three of us in this room that did have that meeting.

Mark Wright: Spoke against the ordinance.

Laura Knapp: Spoke against the ordinance.

Matt Lurch: Spoke in favor of this ordinance going to the polls.

Laura Cragner: Spoke against the ordinance.

Al Vick: Spoke against the ordinance.

Amanda Harrington: Spoke against the ordinance.

Mary Proctor: Spoke against the ordinance.

Alderman Jordan: Ms. Proctor what is the name of your business.

Mary Proctor: Club West and Cowboy Barbeque and Catering.

Mayor Coody: I have to hand it to you Club West gets the award for best attendance.

Suzanne Gray: Spoke in favor of the ordinance.

Paige Smith: Spoke against the ordinance.

Andy Long: Spoke against the ordinance.

Keith Emis: He spoke against the ordinance. He would like to see it go to a vote of the people.

David Morris: Spoke against the ordinance. He would like to see it go to a vote of the people.

Steve Fox: Spoke against the ordinance. He would like to see it go to a vote of the people.

Susan Beard: Spoke against the ordinance.

Pam Allen: Spoke in favor of the ordinance.

Mike Gill: Spoke against the ordinance.

Dillon Farrell: Spoke against the ordinance.

Judy Wall: Spoke against the ordinance.

John Fushe: Spoke against the ordinance.

Sharon Davidson: Spoke on the ordinance.

Randy Allen: He would like to see it go to a vote of the people.

Stacey Effrig: Spoke against the ordinance.

Brice Curry: Spoke against the ordinance.

Mayor Coody: Just for the record the taxes on liquor do not go to the City they go to the state. Do we collect taxes on hard liquor?

Kit Williams: You bet we do.

Mayor Coody: I stand corrected. I was talking about liquor by the drink; do we collect tax by the drink?

Kit Williams: Mr. Mayor we just like every other city that allows liquor sales, we require licenses from our local establishments and we also apply the state statute allowed percent for the liquor sales and beer sales and wine sales. So yes we do collect taxes locally as well as of course the State collects a lot of tax too on liquor sales.

Mayor Coody: Okay thank you that was different than what I was told earlier.

Matthew Haas: Spoke in favor of the ordinance.

Pat Butler: Spoke in favor of the ordinance.

Can you tell me what separates the businesses that are regulated and the businesses that are not.

Kit Williams: Restaurants are in fact regulated right now if they have more than 30 seats where they are required to have a no smoking area. Bars are not regulated, pool halls are not regulated, many other places are not regulated, but we have had a smoking ordinance that regulates restaurants and many other places.

Alderman Jordan: On the EPA study, someone said the EPA study was thrown out by a judge; give me the judge's name.

Kathy Grisham: It was Judge William Osteen and he was a North Carolina Judge.

Alderman Jordan: Okay and that decision was reversed.

Kathy Grisham: He ruled against it when a lawsuit was brought by the tobacco industry, it was reversed in 2002 leaving the original 1993 EPA Environmental Study standing.

Alderman Rhoads: I thought I understood someone to say in the public comment that outdoor patios would be covered in this and the way I read it they are not covered. Is that correct Kit?

Kit Williams: That is correct, it has to be an enclosed area and I think they were concerned about the doorway but as it reads now it is the main entrance and the main entrance is very rarely through the patio, so I think the patio, the balcony at the Brew Pub and places like that would not be covered by the ordinance, the way I understand it.

Alderman Thiel: the 15-foot.

Kit Williams: It's the main entrance. Is that the understanding of the sponsors?

Alderman Marr: Yes it is. It is my understanding.

Alderman Rhoads: So the main entrance to Jose's outdoor venue, is it the bar entrance. Would that 15-foot rule not allow people to smoke in the area that is the outdoor enclosed area?

Kit Williams: I think that the outdoor enclosed area is much farther than 15 feet from what I would consider as the main entrance of Jose's. It is the side entrance.

Alderman Rhoads: Business vehicles with at least one non-smoker as an occupant, what is a business vehicle?

Kit Williams: I guess that would be a vehicle that's owned by a company that is being used for business at that point in time.

Alderman Rhoads: If it is a company that is based in Los Angeles driving through Fayetteville are they covered?

Kit Williams: Potentially I guess you could say they were, I doubt if that would arise, I don't think we are going to be patrolling, for example City police don't even have authority on the interstate, only the State police do that.

The ordinance was left on the first reading.

Meeting adjourned at 11:00 PM

Sondra Smith
City Clerk