

**Minutes Of A Meeting
Of The
City Council
August 5, 2003**

A meeting of the Fayetteville City Council was held on August 5, 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, Lucas, Jordan, Mayor Coody, Assistant City Attorney David Whitaker, City Clerk Sondra Smith, Staff, Press, and Audience

Alderman Reynolds motioned to table all the New Business items to the August 19, 2003 City Council Meeting. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Mayor Coody: The first thing we have on the Agenda tonight, we have a presentation from Mr. Cody Hiland from the Public Utilities Commission and he is going to explain to us the reasoning behind the increase in gas rates. I know there is going to be a 90% increase in the meter charge and an increase in the fuel charge and I asked him to come address the Council and to whomever might want to hear it about the rational and the reasoning behind the rate increases.

Cody Hiland: Thank you Mr. Mayor. I am the ruling community liaison for the Public Service Commission, as most of you know our job is to regulate utilities. As part of that, Arkansas Western Gas has requested a rate increase on their gas bill. Your gas bill is divided into three parts, you have the gas commodity itself, you have the customer charge, and you have the delivery rate which is a part of the bill. 60-70% of your gas rate is the commodity itself, that is not regulated by the commission, there is a real misconception about that. The problems you hear about in the winter with the spikes in the gas, it's resulting from the commodity. That's strictly driven supply in demand, commission doesn't regulate that, we do regulate around that, we regulate the companies affiliates and the way they calculate and the way that they are allowed to bid on the gas and that sort of thing. The rate increase itself addresses the customer charge, now what we had was AWG asked for an increase from seven dollars which is their customer charge right now and the customer charge represents the fixed rate, they're asking originally to increase that to thirteen dollars. The commission upon receiving the filing, the commission staff went out and investigated, looked at the books, did the accounting and came back with an alternative which is usually the case and said that we felt like they were entitled to a \$2.40 increase in their customer charge. Just to give you the parameters, a regulated utility is entitled to a reasonable rate of return on their investment per the United States Supreme Court. On the flip side of that the rate payer is entitled to a reasonable rate and an adequate and safe service and so those are the big picture parameters within which the commission makes the decision. The settlement proposal before the commission is that it increases the customer charge to \$2.40. The gas cost

itself will be effected itself for Northwest Arkansas by the proposed consolidation. What we have now is AWG has divided into two parts of the state, the northwest and the northeast. It's very typical in cases like this upon the first rate case after having bought another company to combine companies and consolidate them. That's what they're requesting to do in this case and that's what the commission staff has agreed to allow them to do. The result of that is averaging the cost across the board. In that it's more expensive to buy gas if you're in Northeast Arkansas than it is in Northwest, it will result in a small increase for Northwest Arkansas. It's about two cents per hundred cubic feet of gas. The average customer uses 64 CCF of gas per month which is about \$1.12 increase as a result of the consolidation. That as a result, we've got about a \$4.09 increase overall when you add a two year one time only cost recovery that was accounted for based on a lawsuit that was involved where the gas company didn't charge as much as they should have. There were no legal fees, there are no legal fees involved in the cost recovery, that's strictly the gas that was used by the rate payer and they didn't charge enough for it per the court. The bottom line is \$4.09 increase, that's involved in the settlement. We had a technical hearing the 22nd of last month the three commissioners heard testimony, the Arkansas Attorney General who serves as the Consumer Advocate in this case weighed in heavily and has several questions regarding some expenses that were used and agreed to, the commissioners also had some questions about that. The bottom line is a decision will be made probably in a month or so, we are going to be having a public comment hearing for the City of Fayetteville August 12, 2003 at 6:30 at the U of A Continuing Education Building and at that hearing it's an opportunity for anyone who wants to go on the record. There will be a transcript taken and it will be a part of the official docket. It's an opportunity to vent or to praise the commission whatever you want to do, but it's an opportunity for the commissioners to hear from you on what you think about the issue. With that said regarding the rate case, there's also the issue of the cost of gas this winter. Again, the cost of gas is not regulated by the commission it's strictly supply and demand at the well head. That's the problem that you use in the winter time, we don't have the reserves that we used to have due to a lot of reasons but primarily or a big part of that is the use of electric generation plants, using Natural Gas to power up so the reserves that we used to have in the summer time that we could use for the demand in the winter time are being used by the electric generation plants so that's a big problem with our supply. We try to encourage folks in the short term to look at AWG levelized billing option, it doesn't reduce your cost, but it does reduce your volatility of the gas bill and you can budget for it a little better that way and then the weatherization, obviously some people can't afford to do that, but that is a way to prevent some of the cost from sky rocketing. With that it's a real brief synopsis but I'd be happy to answer any questions if I can, if I can't, we'll definitely get answers back to you.

Mayor Coody: Does anyone have any questions for Mr. Hiland.

Alderman Reynolds: Yeah, Mayor last week I read in the newspaper where the gas company reported like 4 ½ to 5 million dollars more profit this year than they had last year. Why are they seeking an increase?

Mr. Hiland: To specifically answer your question, I haven't seen those numbers, but any time a company is entitled to a reasonable rate of return on their investment, any time they are not getting that, their option is to go to the commission to have that approved or disapproved or find a middle ground. There's a calculation used to do that, they don't just pick a number out of the sky. They have to meet their revenue requirement, and if they haven't met their revenue requirement based on that calculation, then they are entitled to come ask for it. I might also say too, if we don't give it to them and they are entitled to it, they will just go to the courts and get it. The commission is an administrative agency with quasi-legislative, quasi-judicial, but we are administrative in nature and if we do not give them what they are entitled to under the law, they do have an option of taking that to the court system and getting it if we do not comply with the Supreme Court.

Alderman Reynolds: I'd like to see you stick to your guns and see if we can get to \$2.40. Thank you.

Mayor Coody: Any other questions. So based on the consolidation, prices are going up.

Mr. Hiland: Based on the consolidation Mayor, the cost of the gas will go up. An average customer will be \$1.12, that's \$.02 per CCF. What that means is if the consolidation occurs based on the more expensive nature of serving North East Arkansas, there will be, if you average the cost, it will go up slightly for Northwest Arkansas.

Mayor Coody: So we'll be subsidizing the more expensive in Northwest Arkansas.

Mr. Hiland: That argument has been made, but on the flip side of that most of the plant that's going in this companies area is going in Northwest Arkansas, the pipelines and all of the plant so if the consolidation occurs, Northeast Arkansas will have to share that burden without getting the benefit also. But yes that argument has been made, one that the commissioners brought up at the technical hearing last week.

Mayor Coody: So by eliminating competition, prices go up essentially. I mean there's no economy of scales savings here.

Mr. Hiland: Well, I don't think there's been one exception where a company has come in and AWG came in and purchased another company. At the next rate case, they consolidate the company and make it one company. For instance, Entergy, it's more expensive to serve folks in El Dorado than it is in Little Rock, but they still average the cost because it's company wide. I think if you'll see long term, especially if the gas applies around Northwest Arkansas start diminishing, and that's long term, I think it won't be such a variance in the price and again that's based on a customer that used 64 CCF, that's an average customer, it will be \$1.12 increase and there will be a commencer decrease in Northeast Arkansas.

Mayor Coody: Alright, any other questions or comments? Thank you very much for your presentation. Mr. Williams, do you want to make an announcement on the HMR tax?

Kit Williams: I have a short statement about our HMR taxes which of course are our Hotel Motel and Restaurant taxes as you know, it generates about 3 million dollars a year which is split evenly between the City Parks Department and the A & P Commission which uses much of it's revenue to pay bonds on the town center and the continuing Education Center. Over the last couple of years, my office and the Fayetteville City Prosecutor Casey Jones have made collection of overdue HMR taxes, a top priority. We have collected over \$125,000 of those unpaid overdue taxes which were paid by customers, but not paid on time by the restaurant owners or managers. Although we still have a few problem restaurants, the vast majority now promptly remit the HMR taxes they collect on a timely basis. There has been some question about how we should collect HMR taxes from caterers, our ordinance clearly states that our HMR tax applies if a caterer delivers or serves catered food or beverages in Fayetteville. Bentonville apparently taxes caterers who prepare food in Bentonville. Our ordinance ensures a level playing field for any caterer serving food in our Town Center or elsewhere in Fayetteville, if we taxed where the food was prepared, instead of where it was being served, we would be penalizing any caterer located in Fayetteville and as I pointed out in my letter of July 29th which I gave you a copy of, I believe our ordinance complies with the state authorizing statute and normal sales application policies, I just want to let you know that we might be challenged in court by one of those unhappy caterers in Fayetteville. A few months after I began serving as City Attorney in 2001, I reviewed the taxes that were being collected in Restaurants and clubs from customers, with the help of our Accounting Department I discovered that we had failed to properly change our HMR tax policy after the City voters had passed a liquor by the drink provision for non-private club restaurants. Customers of those restaurants were properly paying the supplemental City tax on mixed drinks that should not have been paying any other special taxes such as our HMR tax on mixed drinks. I informed Mayor Coody of this overpayment problem and he immediately instructed our Accounting Department to notify all on premise alcohol consumption establishments to end collection of the HMR tax on mixed drinks. Unfortunately when several restaurants with bars finally provided our Accounting Department with properly documented records substantiating their HMR tax payments, the City's Accounting Department discovered 3 or 4 to still be remitting this HMR tax to the City. We immediately notified again to stop collecting this invalid tax. The bars and restaurants claim their payments were simply bookkeeping errors, but unless they can provide satisfactory proof that their customers were not assessed in paying this improper tax, refunds would have to only be made to the customers, not to the restaurants and bars. Let me take this time to again remind all managers of non private club restaurants, liquor by the drink establishments who serve liquor by the drink that they should not be collecting HMR taxes on mixed drinks.

Mayor Coody: Thank you. A couple weeks ago when I mentioned it, I didn't think we collected sales tax on liquor by the drink, this HMR tax was the thing I was thinking

about because I remember vaguely two years ago we sent these letters out letting people know we shouldn't be collecting HMR sales tax on liquor by the drink.

Alderman Davis: I've got a question for you if I may Mayor. Talking about the out of town caterer's, right now we are having them go ahead and pay the HMR tax which could be in question whether they need to in Bentonville so to speak. Could we not come back and charge those people in the future a kitchen fee verses having an HMR tax for those individuals.

Kit Williams: I know the authority for charging HMR tax; I'm not sure what a kitchen fee would be.

Alderman Davis: I don't know I mean they're using the operation; they're coming in from out of town. I'm trying to see how you could possibly make it an equal playing field with the local caterers.

Kit Williams: I think it's an equal playing field now since we're charging anybody that uses our Town Center the HMR tax whether they prepare the food inside or outside of town, also caterers who serve at other locations beside the Town Center also need to pay the HMR tax, this is going to be part of what we're doing with the Business License program that we're going to present to you to try to get a better handle on people that don't have a business location here in town that are preparing food and delivering it into Fayetteville because it is our position and the position of the Finance Director that all of these individuals should be paying this HMR tax, that's clearly what our ordinance said you all passed and that's what we're going to continue to enforce until I'm told otherwise.

Mayor Coody: Any questions or comments for Kit on these items. Thank you Kit, we'll now move along to the Consent Agenda.

Consent:

Approval Of The Minutes: Approval of the July 8, 2003 meeting minutes. Approval of the December 17, 2002 meeting minutes.

Marinoni Offer and Acceptance/Broyles Road: A resolution approving an offer and acceptance contract between the City of Fayetteville and Paul Marinoni, Jr. and Suellen Mary Marinoni in an amount not to exceed \$43,400.00 for the purchase of approximately seventy (70) feet of right-of-way for the extension of Broyles Road and to obtain permanent and temporary easements for the construction of sewer line to the new wastewater treatment plant; and approving a budget adjustment in the amount of \$78,400.00 for same.

Resolution 113-03 As Recorded In The Office Of The City Clerk

Multi-Craft Contractors, Inc. Bid #03-42 Back-Up Generators: A resolution awarding Bid #03-42 to Multi-Craft Contractors, Inc. in the amount of \$103,885.00 to install back-up generators at each of the Fayetteville Fire Department's five facilities; and approving a project contingency in the amount of \$10,389.00 for same.

Resolution 114-03 As Recorded In The Office Of The City Clerk

Arkansas Parks and Tourism Outdoor Recreation Grant/Lake Fayetteville Spillway Bridge Project: A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Arkansas Parks and Tourism Outdoor Recreation Grant in an amount up to \$250,000.00 for the Lake Fayetteville Spillway Bridge Project.

Resolution 115-03 As Recorded In The Office Of The City Clerk

USDA Forest Service Supplemental Lease Agreement No. 1: A resolution authorizing the Mayor and the City Clerk to execute Amendment No. 1 to the lease agreement with the USDA Forest Service authorizing the City of Fayetteville to construct loading pads, approach ramps, and other civil works at the Fayetteville Municipal Airport associated with the air tanker operations base; and approving a budget adjustment recognizing the receipt of \$1,200,000.00 as reimbursement for the City's expenditures.

Resolution 116-03 As Recorded In The Office Of The City Clerk

McClelland Consulting Engineers, Inc. Task Order No. 2: A resolution approving Task Order No. 2 in the amount of \$84,400.00 with McClelland Consulting Engineers for engineering, design, and construction oversight associated with the construction of the USDA Forest Service Tanker Base at the Fayetteville Municipal Airport; and approving a budget adjustment for the same amount.

Resolution 117-03 As Recorded In The Office Of The City Clerk

Alderman Davis motioned to approve the Consent Agenda. Alderman Jordan Seconded. Upon roll call the motion passed unanimously.

Old Business:

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. ***This ordinance was left on the first reading at the July 15, 2003 City Council Meeting.***

Mayor Coody: Do we want to suspend the rules and go onto the second reading?

Alderman Marr: Before we do that I would like to throw out the amendments that I spoke about at Agenda Session so our debate tonight can be focused on thinking about those items as well as we move forward, vote them up, vote them down so we know what format we're actually going to be taking public comment on regarding the ordinance and in doing so, Kit why don't you answer that, is that appropriate.

Kit Williams: Yes, in fact I would probably recommend that you all decide on the amendments before we go onto the second reading. I know normally we just go to the second reading, I think it would be good to be able to have some idea what the second reading should sound like and so I would hope that you all would lay whatever amendments you have on the table, allow public comment on those amendments and then when we come back, do some voting to figure out which amendments passed and which do not and then we can go onto the second reading then if that's o.k. with you all I think that would probably be better.

Mayor Coody: How many amendments do people have to put on the table this evening?

Alderman Marr: I have four.

Alderman Thiel: We have not seen these is that correct?

Alderman Marr: That's correct. I don't think that you're going to need to see them I mean in terms that they are not complicated; they're actually striking items within the ordinance.

Mayor Coody: Does anyone else have any amendments, is this the only one?

Kit Williams: Yeah Brenda had one too I think, at least there was one that I had presented that I had talked to her about.

Mayor Coody: Don, you have the floor right now, do you want to present yours?

Alderman Marr: I will if I can. The first amendment I would like to make is I would like to move that we strike Item 8 Section C: Bars, Taverns, Nightclubs, Cocktail Lounges, Cabarets, etc. Alderman Cook seconded.

Mayor Coody: We have a motion and a second to strike Section 8 which reads Bars, Taverns, Nightclubs, Cocktail Lounges, Cabarets, etc.

Kit Williams: Normally Mayor anytime there is one amendment on the floor you would never do another one, my suggestion is that we ignore "Robert's Rules Of Order" and put all the amendments out and then let the people speak on them before you vote because they will be wanting to address I would imagine these amendments and if we did it one amendment at a time, we're going to be here until 3:00 AM in the morning so I would

suggest that maybe we ignore Robert's Rules of Order with the Council's permission and get all the amendments out on the floor and then open it up if that's ok.

Mayor Coody: So we have one amendment that basically exempts Bars, Taverns, Nightclubs, Cocktail Lounges, and Cabarets from the ordinance. What's your second and third amendment?

Alderman Marr: The second amendment is I move that we strike Item 11 Section C; an outside area within a reasonable distance of 15 feet from a main entrance to an enclosed area in which smoking is prohibited. Alderman Jordan seconded.

Mayor Coody: Do you have another one?

Alderman Marr: Yes I do. The third item is I'd like to make a wording change on item 13 Section C from Business vehicle with at least one non smoker as an occupant to City owned or leased vehicles. Alderman Jordan seconded.

Mayor Coody: This basically would exempt business vehicles except for City owned vehicles.

Mayor Coody: What's your next one?

Alderman Marr: I would like to add a section that said should this ordinance pass that the effective date of this ordinance will be February 1, 2004. Alderman Jordan seconded.

Mayor Coody verified all the amendments with Alderman Marr.

Kit Williams: I have one question Mayor. Does your exemption of the bars also include the change of language of places to of employment to exclude bars and does it also include "including bars" under the Subsection D which is exemptions?

Alderman Marr: Yes it does.

Mayor Coody: So we would need to make that change too. Where was that Kit?

Kit Williams: Subsection D just adds bars; I have some language that I placed earlier before the Council and then same thing with the workplaces.

Mayor Coody: Is that agreeable to you?

Alderman Marr: Yes.

Alderman Jordan seconded.

Mayor Coody: Are there any other amendments that we need to discuss at this time.

Alderman Thiel: We got a rather lengthy explanation from the City Attorney and my original intention was to exclude private restaurant bars or such as the Country Club the Elks Lodge, VFW, and American Legion and I would like the City Attorney to explain why the term private club cannot be utilized, why we cannot just exempt simply private club and I'd like the City Attorney to explain that.

Kit Williams: I would not say you could not exclude private clubs, but if you just excluded private clubs all private club licenses are held by non profit corporation that have to have been in existence for a year and have a hundred members and members have to pay a \$500 fee and basically if you remember before we had liquor by the drink before that was adopted by the voters of Fayetteville we had many private clubs, many restaurants were quote private clubs and they could become I would imagine private clubs again if they so chose. The first ordinance, the current ordinance that's on the books does not exempt private clubs; they are just assumed to be part of any restaurant that would have to have a non smoking section. If the City Council chose to exempt private clubs which you are legally entitled to do, it would be difficult I think to limit it only to the organizations that Alderman Thiel spoke about I think probably any current restaurant that has a bar would be able to apply for a private club license and so this would basically be the exception that swallowed the rule. You could do that if you wanted to.

Alderman Thiel: I had spoken to you about the non profit. That's the part that got confusing I thought.

Kit Williams: As you saw when I sent the memo out to you all on August 1st I quoted from the Arkansas Statutes and the quote of the definition of private club and it say's private club means a non profit corporation. So every private club is a non profit corporation. I know it seems like they're in business but in fact technically they're not and technically under our Arkansas Alcohol Laws, the private clubs are non profit corporation. Don't ask me to explain how that happens, I just can tell you what the Statutes say.

Alderman Thiel: Well I guess then I will go ahead and make the amendment that Kit suggested which would be definition of Fraternal Organization and then that would be exempt. You want to read the definition of Fraternal Organization or I will. Non profit organization that A: is chartered by a national organization which is been in continual existence since 1990, B: is tax exempt under 501 C8, 10, or 19 of the Internal Revenue Code, C: operates under a lot system with a representative form of government, and D: is organized for the exclusive benefit of the members of the organization and their dependents. So I would make that motion that the Fraternal Organization be exempt.

Mayor Coody: Is there a second to this amendment, hearing none, this amendment fails. We have four amendments before us right now, we can start discussing the amendment ourselves, we can take public comment, would you like to go ahead and get some public comment first. I'm going to ask since we have such an enormous crowd tonight what I'd

like to do is ask that we all bear with each other and play by a set of rules. We generally don't have to enact since we don't generally have this size crowd. I would ask everyone that would like to speak on these amendments, not the ordinance itself, but on these specific four amendments because that's all we're discussing right now, to line up in a straight line behind the microphone and that way when you finish speaking I might ask you to step outside to make room for anybody else that would like to come in to address this because we have people that would like to speak of this and I would like to everyone who feels the dying need to speak on this issue to be able to speak to it. We're going to ask people to be very brief because if everybody took five minutes we would be here until next Wednesday, so if we could start on this I would appreciate it. The microphone is new, you don't have to adjust it up or down, everyone will be able to hear you just fine, but everyone who would like to speak on these amendments, please make yourself at home, and come join us.

Alderman Reynolds: Mayor, you spoke about one shot only.

Mayor Coody: Also I will ask before you start, I'm going to be looking at the clock and if someone speaks longer that I think is necessary, I'm going to ask for a timeout and I don't want to have to ask that more than once. Last time we had some people that continued to speak, we had to have one person removed from the room for applauding so we don't want any applauding or cheering regardless of what side you're on, we want to show respect for all sides of the issue. If you speak once on an issue, please do not speak on it a second time. Thank you very much.

Julie Sill, Co-Owner of Common Grounds Restaurant, Eugene Kovach, citizen, Zack Wakefield, owner of Big Daddy's Sports Bar and Grill, Mary Proctor, Owner of Club West, and Kirby Sanders, citizen, all spoke against the amendments.

Catherine Donnelly, Smoke Free Fayetteville: If you mire everything down in all these amendments you are going to have a lot of people saying well what about me, if it's not equal across the board, it's unfair because you cannot possibly be in 186 different places and say, well, this is more like a cabaret or bar, really the only way to be equal is to just have the ordinance the way it's stood and without all the amendments. Thank you.

Eli Koscheski, citizen: What defines a bar and what defines a restaurant specifically.

Kit Williams: The ordinance gives the following definitions for bars and restaurants this is what we're looking at right now, Bar-an establishment that is devoted solely to the sale and service of alcoholic beverages where on premises consumption and where the service of food if any is incidental to the consumption of such beverages. Restaurant- an eating establishment including but not limited to dining establishments, coffee shops, cafeterias, sandwich shops, private and public cafeterias which gives or offers for sale food to the public, guest, or employees as well as non residential kitchen and catering facilities in which food is prepared on the premises for serving elsewhere. The term restaurant shall include a bar area within a restaurant. That is the current definition which we're considering right now in this ordinance.

Mayor Coody: Does that help?

Eli Koscheski: Could we consider placing an idea that restaurants could apply for a privatization where they could privatize they're restaurant for smoking.

Kit Williams: That's not in the ordinance right now. None of the amendments would allow that.

David Whitlow, citizen: He had my first question taken care of, I'd seen other drafts I guess that had a 70/30 amendment to the definition and I didn't know what we were talking about.

Mayor Coody: Is that what the State Health Department, who uses 70/30 to the state.

Kit Williams: The State Health Department I think in their proposed regulation had submitted that to the Governor but that was not an amendment that had been presented at this point.

Alderman Marr: I actually looked at that and referred to that at the Agenda Session, worked with the City Attorney to try to come up with a joint definition and took it to the street on Thursday. I got some significant opposition from both sides of this campaign people on the free choice side related around the 70/30 split and how it might impact the 60% Sunday Liquor issue and whether that was significant enough in terms of the actual percentage numbers and on the smoke free side the creation for smoking rooms and so at this point I've left it as it reads.

Mayor Coody: The definition of a good compromise is one where no one is happy, I think this one qualifies.

David Whitlow: My next question was what's the rational for moving the section 8 of C.

Alderman Marr: At the first reading on the 15th of July, I think the Council would agree, 95% of the people who spoke, spoke to us related to Bars how cigarettes and alcohol went together, people were 21 years old and can make the decisions, I think there's some clear distinction of differences that we heard that night. Quite frankly I agree with the lady that spoke earlier about the fact of the amendments. I was looking for to see a step of progress is why I'm making this particular move because I personally don't like the idea of compromising the health argument. If I believe it's a health argument for bars, I believe it's a health argument for restaurants, but I also think the community is a part of a social change and what we heard at the first meeting was significantly that bars, this community may not be ready for that.

David Whitlow: If that's the case then how is taking out 8 but leaving in 12 won't that effect Bars, Taverns, Nightclubs, Cocktail Lounges, Cabarets, etc.

Alderman Marr: That's what we're here debating tonight.

A discussion followed.

David Whitlow: What's the reasoning for having the February 4, 2004 effective date and if we're going to put it off that long, my hope from tonight on the whole thing is that maybe we appoint an Ad hoc Committee to look at the issue and have some staff look at tax consequences, and those kinds of issues and if we do have an amendment and it's excepted then I don't see a reason to rush off, maybe it's better to look at it since it is such a controversial issue.

Mayor Coody: Would you please address that Mr. Marr.

Alderman Marr: February 1st was selected for several reasons. First, it provides a 5 ½ month transition if we were to make a decision on the 19th of August and that's an if. The second item was after talking with restaurant owners on Thursday, they had concerns about the ordinance being implemented during a busy Football Season, a Holiday Season, and not having it go into effect in January so that January which a typically slower month would give them time to address their business plans and not in the busiest season, so that's how February 1st came about.

Cole Pruitt, Bar Tender at Club West, and Anthony McNutt, a citizen, both spoke against the amendments.

Judy Wall, citizen: Apparently Mr. Marr said that he wanted to get past Football Season, if this is not going to have an economic impact on the City, then why are you waiting until after the biggest time when they would need the money. I would like to see you put in a little bit more time and effort, let's talk about it, let's all sit down and do what we need to do and find a solution that's workable. I would ask that you please table it and please consider this a little bit more. I do believe it will seriously affect our City.

Alderman Marr: Mayor, I do want to make my point clear. The comment related to football was from specifically a restaurant owner that I spoke with and they're interpretation of the impact. I still stand beside the fact that I think economically our businesses will be sustained when we look at this with 12 months of receipts.

Dr. Jean Gibson, a citizen, spoke against the amendment.

Mayor Coody: Anyone else want to address these amendments in particular, seeing none, I'm going to bring it back to Council to where we can discuss these amendments.

Alderman Davis: Don I have a question for you and that is on 13. You've got City owned or leased vehicles, I understand the definition of City owned, but what is a leased vehicle, does that mean going to GMC and leasing a car.

Alderman Marr: I think the writing of that definition would be City, owned or leased vehicles.

Mayor Coody: Are there any other questions or comments concerning these amendments.

Kit Williams: You probably need to consider them one at a time at this point and the first one was to exempt Bars and Taverns including the language that would be needed for the places of employment as well as the edition of the language on Subsection D which would put bars in through the exempt area.

Mayor Coody read the amendment to exempt bars etc.

Mayor Coody: Is there any other discussion on this particular amendment. Shall the amendment pass?

Upon roll call the motion passed 5-3-0. Alderman Reynolds, Thiel and Rhoads voted no.

Mayor Coody: The second one was exemption of #11 where we are exempting an outside area within a reasonable distance of 15 Feet of from a main entrance to an enclosed area in which smoking is prohibited.

Kit Williams: There would no longer be a prohibited area that would prohibit smoking.

Mayor Coody: Shall the amendment pass.

Upon roll call the amendment passed 7-1-0. Alderman Reynolds voted No.

Mayor Coody: We are now to a third amendment which is change #13 from Business vehicles to City owned or leased.

Mayor Coody: Shall the amendment pass?

Upon roll call the amendment passed unanimously.

Mayor Coody: Now we have the fourth amendment which is to have an effective day of February 1, 2004.

Mayor Coody: Shall the amendment pass?

Upon roll call the amendment passed 7-1-0. Alderman Reynolds voted no.

Mayor Coody: Thank you. So the four amendments passed which dramatically changes this ordinance. Now we can begin discussion on is there any other discussion we have before us before we go right into discussing the overall ordinance. Alright, what we'll do

now, I know at the first meeting we took all the public comment and generally speaking, the first reading we take public comment, the second reading, the City Council gets into the fray if you so choose this time, we can go ahead and have public comment again or we can have comment among the City Council, what's your wish. Public, alright, I'm going to ask something please; if you have spoken before and do not have anything new and different to add then I will please ask you to allow other people to speak who have not had a chance to speak. This is a big issue and we want everyone to be able to speak their peace tonight and those of you who have spoken before, we would ask that you please refrain, and with that being said, I'm going to continue to ask people to be brief and concise. Who would like to begin the discussion please?

Zack Wakefield, Big Daddy's Sports Bar and Grill, Julie Sill, Common Grounds, and Joe Alexander, citizen, spoke against the ordinance.

Jeff Collins, Smoke Free: I'm here to talk about Economic studies that have been done, you all know that I'm an economist and I have had the opportunity to review the studies that have been done over the last twelve years specifically with regard to hospitality industry, but I've also looked at the other economic studies that have been done looking at the impacts of smoking. What I can tell you is from the studies that have been done which would meet the criteria of academic credibility, I can not find a study where they look at objective measures such as revenues, employment, claims for unemployment insurance, and there's actually a couple more that I forget right off the top of my head. I can not find a study at this stage which shows a negative impact to this industry as a whole. This is not to say that individual businesses are not hurt by these sorts of ordinances, but on net, if you look at the objective studies that have been done, again, if someone has one please bring it to me so we can analyze and identify first of all where it came from, they're methodology, whether or not they controlled for the economic activity that's underlined what's going on within the municipality where the ban was initiated. If you can bring me studies that show me something other than this, I'd be happy to look at them and comment on them. At this stage, given the studies that I've looked at, what I'm saying is that I don't find any that show negative impact. The question you might ask is how can all these people that own bars be wrong, how can they say, these are not going to cause an impact to my business and what they don't understand is the idea that there's a couple of underline basic economic principles going on, the first is that you are talking about 25% of the population that smokes and 75% that doesn't. While I have no doubt that the smokers will leave Fayetteville, you have to remember that we are surrounded by a population that live in municipalities that would have no smoking ban and so people who have a preference for Non smoking establishments that now have no place to go, are likely to be attracted into these establishments so that if you look at the literature and you ask how these ordinances don't create negative impacts for the industry as a whole, what you see is the sorting behavior that goes on. All the people have to go out and gain information, non smokers have to go out and spend some time going into those sorts of establishments finding out if they like the food and the service and eventually what happens is after all this sorting behavior takes place, you end up with a different clientele, but not necessarily a smaller clientele or a clientele that spends less money. There are a number of other factors that go into

this, but these are sort of the dominant things you find in the literature. The last thing I would suggest is that if you look at the attributes of the population, the employers and employees of these sorts of businesses, they tend to be very high income and they tend not to smoke. As we try to encourage people to come to Northwest Arkansas with higher incomes, they're looking for quality of life. If you look at our health statistics, they're all strongly negative and so this sends a signal from a marketing perspective that we are somehow different. Thank you.

Dr. Victor Denoble, Smoke Free: To set the record straight, there's an article in the Northwest Arkansas today that says quote "I am here to tell you that tobacco is bad for you and tell you that the tobacco companies have lied." That's not true. I'm actually here to talk to you about some of the research that was done inside the tobacco industry. I'm a Scientist, my specialty is drug addiction and from 1980-1984 I worked with Phillip Morris Tobacco. My job at Phillip Morris Tobacco was to remove nicotine from a cigarette, why, because Phillip Morris recognized that nicotine is a drug that causes cardiovascular problems. My job was to find a drug that we could put into a cigarette that would go to the smokers brain keep the smoker addicted, but a drug that wouldn't produce heart disease. I'm not here to talk about heart disease; I'm here to talk about second hand smoke. In 1981 the Biochemical Research Division at Phillip Morris received reports from a laboratory in Europe in Clone Germany that animals forced to inhale second hand smoke were developing abnormal cell growth in their larynx and their lungs. In 1981 the Biochemical Research Division of Phillip Morris which I was in was asked to review the data. We came back with a conclusion that second hand smoke was causing some sort of biological chain which we couldn't account for. Phillip Morris asked us to do a study on the second hand smoke but they didn't want us to do it on animals because they found that animals were too close to people. So what they did a researcher named Louise Woo from Phillip Morris, she got a plant and when the plant grows and repairs itself, it repairs itself the same way our lungs do, so the plant mimics our lungs, so we did a study and we exposed the plant to second hand smoke and concentration that were equivalent to spending fifteen minutes every three hours in second hand smoke, the plant developed abnormalities, the conclusion was that second hand smoke is a potential bio health hazard and we had no known level of what was safe. That was our conclusion in 1984. He went on to speak in favor of the ordinance.

Dr. Hershey Garner, Smoke Free, I had a couple of things that were perplexing to me and then I'll say what I meant to say when I got here, we wanted to postpone deliberating on this and I think what Victor said is on point, I can't imagine what resources we would bring to the issue that California and New York and other states that have addressed this issue haven't already, this ground has been plowed pretty fine. Second issue is the free choice illusion. I don't know whether the other restaurant owners have ever tried to put in a sidewalk, tried to paint their building, we don't have a choice here. You have to get permission to move trees, move parking spaces, and place potted plants in front of your building, if you are going to regulate my life, leave my esthetics alone and take care of my health which brings me to a cancer issue. I'm just going to talk about the Lung Cancers that I've seen in the fifteen years I've been here. About 3900 Northwest Arkansas residents have come down with Lung Cancer since I've been here, 50 of those

live in the Fayetteville City Limits, 35 of those; they're only risk factor for developing their terminal disease was second hand exposure. Two of my patients a year from Fayetteville are dying of second hand smoke. It's kind of perplexing that we don't want to lose patrons to Springdale, but we don't mind losing them to the graveyard and I would ask that you just take a look at this, not the chicken little the sky is falling, we're all going to go broke, because as I said as a business owner I don't think so and I don't think the data supports that just the health facts. I think it's a public health workplace issue.

Alderman Jordan: So you're saying that you know for a fact that two patients per year are dying because of second hand smoke.

Dr. Hershey Garner: It's probably more than that; I'm only talking about lung cancer.

Dr. Jim Raczynski, Dean of the University of Arkansas for Medical Sciences College and Public Health: I want to address two real issues here, one is the reason for smoking policies. First, a cleaner environment is a healthier environment, there is absolutely no question about it, if you're in an environment where there is second hand smoke, you inhale that second hand smoke, there have been several studies that have been done, that demonstrate that we can demonstrate evidence of that in the byproducts from the smoke that you've inhaled in your body. In fact there are studies that have been done with infants in an environment that have had second hand smoke where the infants show the equivalent of smoking a pack a day of cigarettes directly so there is no question that smoke exposure is not good for you. Second, cost savings; in Arkansas or smoking related illnesses from both direct smoke exposure and indirect smoke exposure, the estimate is annually that we spend \$634,000,000. Now in Medicaid alone the estimates are that we spend \$189,000,000 annually, that's 14% of the Medicaid budget. If we had those kinds of revenues, we could stop smoking immediately we could solve the education crisis in the state, there's no question about it. Third, smoking rates; there's no question about it, in community's that have come in and enacted these policies, the smoking rates that decreased. Fourth, the influence on our youth; where do our youth learn to smoke, they learn to smoke from watching the others around them, the others in their environment. The thinking is even though I don't have data or evidence, changing the smoking policies regulating smoking, prevents youth from going on and modeling those in their environment and picking up the habit of smoking. He went on to speak in favor of the ordinance.

Nina Moore with Beer Keg spoke against the ordinance.

Elizabeth Mashie, Fayetteville High School: I would like to give you a children's standpoint. Children make up a very marketable cigarette consumer base and you may ask why, it's because most adults don't make the decision at age 30 to start smoking. Children are exposed to it at an early age and they think it's ok and whether it's in the home or in a restaurant or in their school environment, that's what they are going to be exposed to and that what they are going to accept as a lifestyle. A child who lives with a smoker inhales 102 packs of cigarettes in 5 years so there pretty much addicted already right. Second hand smoke whether it's at home or at a restaurant dramatically increases

children's risk of cardiovascular disease and asthma. As a representative of Fayetteville youth, I have been educating my peers of these problems and what they are doing. When it comes to this ordinance and second hand smoke we obviously don't have any kids up there on the City Council so as a kid I can only say so much to make you listen to me but I just ask you please to protect the children of Fayetteville and as a kid I realize that I am the future of your world so please just keep me alive. Support a smoke free Fayetteville. Thank you.

Kathy Trotter, a business owner spoke in favor of this ordinance.

Sarah Faitak, Registered Nurse: I am here to encourage you to vote yes for this smoke free ordinance. One reason I've chosen Fayetteville for my home is the progressive nature of the community. Simply the fact that we are engaged in a discussion of eliminating smoking in restaurants and bars tells me that those who live here care about the quality of life we have in our town, that's important to me. I also love the fact that I live in a town where just about any night of the week you can hear live music and you can have a pick of good restaurants in which to enjoy dining with your family and friends. My mother was one of those people that promoters of smoking like to tell about, she smoked Phillip Morris without a filter for over 60 years and didn't even have a cough, my dad however who never smoked a cigarette in his life, worked as a retail store owner and was not exposed to any out of the ordinary fumes, suffered emphysema which was a clear result of my mothers second hand smoke. My siblings and I have had numerous ear infections and as adults, we have chronic sinus problems. After spending last week with my smoking mother in law it is evident that cigarette smoke is a trigger to my sinus problems. That is why even though I now have reached a stage in my life where I have some disposable income and can afford to enjoy some of the entertainment in Fayetteville, I find that I have two choices, either go where there is smoke and regret that I have or stay at home. I am going to admit that before smoke became a problem for me, I was a casual smoker, I have enjoyed a cigarette or two especially while in a bar or listening to music, but I stopped smoking when I woke up to the fact that the risks were far greater than the benefits. I hope you too will realize that continuing to expose workers and patrons of Fayetteville's restaurants is far riskier than the benefit of our community. For the health of our community I hope that you will vote for the amendment. Thank you.

Dr. Joel Carver, Cardiologist: I eat almost exclusively on Dickson street, home of wonderful restaurants. I see as a cardiologist as clearly a public health issue, second hand smoke is dangerous, second hand smoke does kill both in the short term and in the long term. 30 minutes of exposure to smoke in a bar makes your blood cells platelet as sticky as a person that smokes a pack a day. It limits your cardiac reserve to dilate; it makes your aorta very stiff. I would like to especially call your attention to information presented in March to the American College of Cardiology that in Helena, Montana, a community of 65,000 within 6 months of passing a smoke free work place ordinance had a 60% decline in the incidents of heart attacks. They went from over 7 per month in a community hospital to under 3 per month. That ordinance was reversed by court order and within 6 months of reestablishing smoke in the workplace, the heart attack rate

returned to its normal level. Once again this is clearly a health issue and I take it personally because I get to tell the 35 year old woman with 2 young children that she is now a widow, I get to see the fear in a 40 year old man who's just had a heart attack and he then wonders if he will have grandchildren. Yes, I get to see the 13 year old Middle School student who dies of an asthma attack in our community. I look at item #10 on your Vision 2020 on your Guiding Principles, "Reputation as a Safe Community" I hope that you will use this to guide your vision and use the courage to pass this ordinance so that Fayetteville will continue to be a safe and most importantly a very healthy community.

Laureen Barrios, Free Choice: I work at Applebee's Restaurant and I have been there for 3 years now. I am a non smoker, but I support the Free Choice Fayetteville. I grew up in a home with 2 parents who smoke a lot and I feel that with this ordinance being passed I will lose a lot of that money to support myself through College and I am definitely against it and I hope you will listen to all the other comments about it. Thank you very much.

Amanda Barrios, Free Choice: I don't see this as a health problem, I see this as a choice issue, I am also a waitress at Club West here in Fayetteville and I have been for a year, I don't want to see this passed. I don't want to lose my job; I don't want my little sisters to lose their jobs. My parents have five kids that they are supporting in College, 2 out of state and 3 in state. My sisters chose to come to the University of Arkansas together. We love Fayetteville, this is a great place to live, a great community, and a good place for me to continue my education and to go on and work here. I would like to stay here and I would like to raise a family here one day, but I don't want anyone taking away my right to choose where I can smoke and where I can't, it's ridiculous. I don't want anything to happen to my little sisters, I'm the only person that they have here to take care of them. Our parents are about 6 hours away and they look to me when something goes wrong with them. Now them working in a restaurant, this is going to greatly affect their income because they are both waitresses and bar tenders at Applebees and have been there for a while and if this is going to affect their income, this is going to affect me as well and my parents and I would like to see this motion denied. I do not want this to pass. I don't want to lose my job and I don't want anyone else to lose theirs. I want to have the right to choose where I can and cannot smoke.

Amanda Harrington, Free Choice: I believe free choice is your right and I would like to read our Free Choice Fayetteville Mission Statement. (Ms. Harrington read the Free Choice Fayetteville Mission Statement). July 17th Club West conducted a survey of our customers. We had approximately 450 customers that filled out this survey; the survey was given to Mr. Jordan so he has the exact figures of that survey. I would say approximately 378 citizens that came into Club West were against the smoking ban and they also thought that the citizens not the committee should vote on whether Fayetteville should be smoke free or whether it should be free choice. Thank you for your time.

Shawn Reber, a citizen, spoke against this ordinance.

Lashara Doss, Smoke Free: Since you have already made amendments to the ordinance that I hope that in the future when other cities around you and other people across the nation establish their smoking ordinances that you will be prepared to implement some of the things that amended today and that by then you will be educated and understand a lot of the economics enough to be able to feel comfortable to make that decision and I just want to remind you that when we created this ordinance we did it in a nondiscriminatory manor, we did it to secure the health of all employees of all workplaces including restaurants and bars and passing the amendments today you are saying that people who work in bars are not necessarily important as people who are working your restaurants. Overall on the whole ordinance I just ask you to remember those who don't have a choice since you're hearing a lot about choice, the asthmatic children, they can't go to their favorite restaurants right now because it allows smoking, the pregnant mother or the patient that suffers from lung disease as far as emphysema and things of that nature who can't go and hear their favorite music at a bar because it has smoking and I just ask that in the future you learn more about what's going on around you and when you see the other cities, there are other cities currently working on it in the state, hopefully you will be ready to include the bars.

Jim Taylor, Smoke Free: This ordinance is about individual rights, I understand that and I sincerely believe in the rights of an individual smoker to smoke when they feel the desire so long as it does not infringe upon a non smoker at any time and that's what this ordinance is addressing. It simply protects non smokers from the second hand the known hazardous second hand smoke which we know is indisputable, this ordinance is not about making smokers into non smokers, it is not about making smoking illegal in any form or fashion, it in no way prevents someone from smoking any more than a good DWI law which prevents someone from driving behind the wheel while they're drunk or it prevents someone from drinking at home. It will simply allow non smokers the right to be free of the proven health damaging effects of second hand smoke while in public places, we know that second hand smoke kills, it's indisputable, every authoritative review assessment of the evidence continues to prove this everyday. The EPA in 1993 as ten years ago has shown that this is a class A carcinogen, you can look this up on epa.gov sight this is not new information to us and we are still in this battle trying to protect people. Restaurant and bar owners involuntarily inhale enough second hand smoke to suffer the same health consequences as a pack a day smoker. He went on to speak in favor of the ordinance.

Ilene Lane, Smoke Free: I didn't come here to speak, I came to listen, but I feel compelled to. Some of the people here that just made the comment that everybody has the right to smoke wherever they want, I hope they never come to my house because I have big signs that say "If we see you smoking we'll assume you're on fire and take appropriate action." I worked for the federal government and research for many years back in the 60's and even then when they knew less about tobacco, I can tell you that it's deadly and the research that we did showed this, but not only that I can speak as the statistics in my own family. I had four sisters and five brothers, four brothers smoked and one didn't, my parents never smoked, one sister smoked and the others did not smoke, everyone in my family that smoked died, the oldest one lived to be 57 years old.

The ones who were not smokers lived into their 80's. I'm the youngest one of the family now and I'm 70 years old, I had a doctor many years ago tell me I have a condition, I was born with a heart condition, and if I would've been a smoker I wouldn't have lived to be 35 years old. I believe this and I'm still working 10 hours a day 5 days a week. I plan maybe in the next 10 or 20 years to retire but I hope that I can reach that. Smoking is deadly and second hand smoke is too. She went on to speak in favor of the ordinance.

Deborah Henderson, Registered Nurse: I've called Fayetteville home for 32 years. I don't live in the City limits, just over the line so I can't express my desire for more smoke free workplace restaurants and bars in a vote. However, in the past eight weeks, we've spent \$350 not including taxes and generous tips in 6 of Fayetteville's sit down restaurants. Whenever possible we choose smoke free and I don't mean smoke free fast food, I mean sit down, listen to some music, and spend a little money. I really miss cowboy barbecue from Club West, but after growing up with smokers and after indulging in the habit for ten years myself, I've lost 30% of my lung function and I simply can't go where there are a lot of people exhaling smoke. We have 510,000 adults and 55,000 teenagers who smoke in this state. We spend roughly \$633,000,000 a year, \$189,000,000 in Medicaid to take care of those sick smokers and that's tax payer money. Smokers who become sick need oxygen to breathe, they need corrective heart surgery, they need rehabilitation, and they need lifetime support after suffering devastating strokes. You and I help pay for it. In my career I get to talk to about a thousand school kids a year about the effects of smoking and the voices of the ones who say they will never smoke are very often overshadowed by those who shrug and say you have to die of something. They don't understand the concept of a long slow death. When they go to work in an environment that allows smoking, they have many more opportunities to become regular daily smokers, I've heard a lot pro choice people say they'd never take their children into a smoky restaurant, why is it ok for their older teenagers and young adults to work in those smoky environments. One final point, it's against the state health regulations for workers to smoke in kitchens of restaurants and bars, we're protecting the food, and based on one of the amendments tonight it sounds like we'll be protecting the upholstery in the City owned cars from second hand smoke, we need to be protecting all the people in the restaurants, bars, and workplaces.

Walt Eilers, Smoke Free: I am a local business man, I do market research, and I specialize in customer satisfaction product development and feasibility studies. Earlier Jeff made a point that I would like to put a different spin on, Dr. Collins I mean. I would like you to think because we've heard people whaling about losing business and losing jobs, I'd like to put this spin on it to you, the University of Arkansas has just concluded a study about the future growth of Northwest Arkansas and we've seen the numbers and they are staggering numbers. I've just completed in the past two years that I've been here, three referent studies and a feasibility study involving those people who are moving here, those people who work in the Wal-Mart environment, those people who work in the Hunt Environment and the purpose of these studies has been to find out what are their preferences. These are people who earn high three figures and have disposable income, my studies show a negative perception of dining in Fayetteville, the folks that I have interviewed in the studies that I have done find that they do not come to Fayetteville

because they work in a smoke free environment, they live in a smoke free environment, they are non smokers and so they are spending their money elsewhere. I see an economic opportunity in the ordinance that you all are studying and that opportunity is for Fayetteville to be different than the rest of Northwest Arkansas. I see the opportunity from the work that I have done that there will be people who will leave here, Jeff has already said that in his comments, but I see a much greater opportunity for people who are willing to spend \$200 for dinner for four people and go out to the show at the Walton Arts Center that they will come here where as they are not doing it now. There is substantial future growth coming of the same type of individuals that I have just finished interviewing. These will be people who are professionals and who are moving here from areas like California and New York and they are used to a smoke free environment so in your leadership please consider that there is an upside to this ordinance and that would be that it would make Fayetteville attractive to people who are looking for a smoke free environment for their entertainment and to spend their discretionary income. My second point is Arkansas currently ranks 47th among the states in its health ranking, it was 46th last year. The two reasons that we ranked so badly are obesity and high incidents of smoking. There is but one state wide carrier who offers health care insurance Blue Cross and Blue Shield, you check your health insurance rates compared to what I used to pay in Louisiana, Mississippi, or Maryland and you will find that the rates here have an economic disadvantage to the businesses, if you do not have smoking and you increase the peoples awareness that they have a free choice not to smoke than where you see other cities that had the non smoking ordinance, you will also see competition, come back into your healthcare and that those rates can go down so that money goes to the bottom line of businesses and the other economic impact, the opportunity is there for businesses who are different than others. You are on the right course, I came here in December to ask you to buy Mt. Sequoyah because it was the right thing to do and I'm here to ask you to do the right thing again, you have taken a great leadership position and this resolution fits on the wall behind you.

Susan Foley, Smoke Free: I am really wearing two hats tonight, I'm representing the American Cancer Society who I work for and also some of my past economic and business experience that I think would be valued to the Council since I know some of the opposition has brought up many economic incidence or questions about that. As a nations oldest and largest non profit agency The American Cancer Society obviously we have conducted many funded research studies and I know that you all have been studied to death and I won't bore you with that but to support the second hand smoke as the third leading preventable cause of death and I want to emphasize preventable because it is just that. In Arkansas alone Lung Cancer is the leading cause of death by Cancer. In the U.S right now 53,000 non smokers are killed by second hand smoke and if you don't believe me you can look at the journal for American Medical Association because that study was performed by them. I'm also speaking from my past business experience for nine years I worked for the Northwest Arkansas Mall, five years of those I was the Marketing Director and for the last four years I was the Mall Manager. During my 10 years the State's Blue Law was appealed and many of you who were younger may not know what the Blue Law is. The Blue Law was where you could not open a store on Sunday, you couldn't sell goods and many of our merchants when in 1985 I believe when that was

repealed they had considerable worries about this. The merchants were concerned mostly because a fear of the unknown. I think that at that time sales were having around \$200 per square foot and the year after that Blue Law was repealed, our sales were over \$300 per square foot, and my point is that the merchants were fearful of change. When sales go down or up, with the extra salaries that they would have to pay their workers and the electricity and other expenses associated with keeping their business, would it be offset by profits, they didn't know, we didn't know, all we knew is that it was a law that was passed and we needed to abide by it. Of course our local merchants again are worrying about sales because the proposed ordinance represents change. The mall merchants were also concerned when the mall became smoke free. Would folks decide we didn't welcome their dollar any longer and they wanted to go elsewhere, I hear the very same fears from our restaurant owner that I heard from the merchants from the mall, but the fears are unwarranted, guests or customers will patronize your business establishment, not because you offer smoking, but because the unique environment you offer because of the quality of food you serve or because the superb service you provide or the esthetics you value and you've prized in your economic entrepreneurialism in opening a restaurant, but instead of being worried about an ordinance designed to improve the health of our city, I think that we should exist the healthy competitive economic vibrancy where guests decide what establishments they are going to dine in based on the merchants survival of the fittest. I want to tell the opposition that no one is telling you to not smoke; you simply can indulge in any behavior that you choose, as long as it doesn't interfere with the freedom of choice that I have and that is to breathe free and fresh air. I think it took a lot of courage for Shirley and for Don to make the ordinance, I know you all have taken a lot of heat from it, I don't believe there is a reason to send a Scientist to work on study after study to debate this point, I think that we know the evidence, we know second hand smoke is deadly, we know it causes death, what we're asking is if you really want to have free choice, let there be a choice for those of us who don't smoke that can come and enjoy the restaurants. Thanks.

Rita Perera, Smoke Free: I can no longer walk away from this, see I'm a cancer survivor and if you'll look really close, you'll notice I have half a neck. I never smoked, I never drank, and I have secondary smoke cancer. The reason I know this is because when I developed this cancer, I was in California and because the Doctors were so baffled by my case, they sent me to Stanford University to the best head and neck clinic in the world. I happened to end up with the finest Doctor in the World and his name was Dr. Willard Fee. Dr. Fee evaluated me with a tumor board at Stanford University and decided that yes I definitely had a Right Piliard Tonsil Cancer and it was a very rare form of Cancer that usually only hits men, very rare for a woman to develop this type of Cancer and only when you are an out and out alcoholic or a compulsive smoker. I went and had this all done and they made me fill out millions of papers that went into a database. When the database came back, they said with my history there was no other conclusion to come to except that this was caused by secondary smoke. I lived with a man for 25 years, I loved him, he died very suddenly at age 45 and he only smoked 4 packs of Kent's a day and he enjoyed every one of them until he died. I went on as a psychiatric nurse for a State Facility with the Criminally Insane and in this facility the State provided them with cigarettes to appease the patients to keep them calm. Since it was a lock down situation, I

inhaled secondary smoke every 12-16 hour shift I worked. It was nauseating, you would walk in there and it was like walking into a fog bank. I, like this other lady had four children and I had to work. I inhaled the smoke. Stanford said that is the only conclusion they had come to and they said, my lungs were in very good condition for all the damage that had been done to my throat, but their conclusion was to get this rare of a Cancer, had to come from secondary smoke. This is not me saying this; this is the best head, neck and throat in the world. I want people to look. I have often wondered why I survived because this happened in 1987 and when I read the paper this morning and I saw this add I said you cannot any longer rejoice that you survived and turn this into something good and positive. So ladies and gentleman, Cancer isn't nice, and if any restaurant here wants to try to pay me for the pain I've been through, I have no saliva, I must carry water all the time and I cannot have any sun, not because I smoked, but because somebody took my rights away and they smoked, I hope they enjoyed it because it almost killed me. I don't want to take anyone's right away to smoke either, if you want to smoke this is fine, but please don't bring it to the public. I don't know why I survived, maybe this is the moment, I don't know, but I do know I have to speak out for God's sake, for those that don't have a voice, please, please, please, it's not just bad for their health, but it's bad for yours and my health. Thank you.

Steve Frankenberger spoke against the ordinance and suggested that the City Council table it and find out what the Science is and then perceive.

Lynnlea Rubble: Smoke Free, I just want to ask you, do you have Asthma?

Mayor Coody: Me Personally.

Lynnlea Rubble: Yes

Mayor Coody: No

Lynnlea Rubble: Have you ever had a contest with your friends by holding your breath under the water the longest.

Mayor Coody: Yes

Lynnlea Rubble: Ok when you came up you were out of breath right?

Mayor Coody: Yes

Lynnlea Rubble: Well, every time I go to a restaurant and there are smokers around me, I have to deal with not being able to breathe, it's like holding my breath under water and coming back up for as long as I am there and when I come out and I want to say that when I went out there to help bring some signs in the people out there were smoking, when I came back in, I almost had to get my inhaler because I personally barely could breathe, so I want to ask you if you let smokers blow smoke in our face and just let them take it outside instead, I think you'd be saving twice as many lives as what we have now

in the restaurants. When the people that are against this and come up here and say oh I'm going to lose my job, what about me losing my breathe or me losing my life. Thank you.

Cambre Horne-Brooks, Project Coordinator for the Northwest Arkansas Tobacco Free Coalition: As you are aware, cigarette smoke has been established as a major cause of Lung Cancer and a primary contributor to premature death and Heart Disease. I would like to address Mr. Frankenberger's response about a little bit of exposure, what that means is far as this goes, the US Environmental Protection Agency has classified second hand smoke as a group A carcinogen that is known to cause Cancer in humans on which there is no known safe level of exposure. They are saying that if you go into some place and if there is a little smoke they cannot recommend that you are ok. They are not going to take the risk in saying a little bit will give you a little bit of Cancer or a little bit of Brain Disease so go ahead and take that risk. Their recommendation is why not eliminate it all together and have no risk options at all. She went on to speak in favor of the ordinance.

Eli Koscheski, a citizen, spoke against the ordinance. He said I just want to be given the opportunity to choose for my life where I want to go, what I want to become. Let's look at it in a different way and a little different angle and hey, let's try to be American's here and be free and give everyone the opportunity to choose something.

Bob Jordan and Amy Jones, both with Smoke Free spoke in favor of the ordinance.

Chrissy Agers, Free Choice: This is not a health issue, this is rights. I feel sorry for the people who are affected by second hand smoke and my sympathy and my heart goes out to them, but really it's not their say so, it's the people like the ladies who worked around the smoke, it's their choice, it was their choice to work around it. Don't take that right away from the property owners of the restaurants and the bars, that's what you are doing. Do you see how outrageous that it is, I mean, these are peoples rights we're talking about, this is not a health issue. Do you see the statistics of New York and Springfield, MO because of this, because of what happened, because they do have a smoking ban? This is nonsense. This is people's rights and peoples livelihoods and peoples dreams that we're talking about here. How dare you guys try to dictate to people to the property owners and what they can and cannot do with their property. This is all about rights, it's not about health.

Dr. Jean Gibson, Free Choice: I am a Chiropractor Acupuncturist here in Fayetteville and right now, I could probably use a drink, I'm so tired, how about you all. I've been in Fayetteville practicing for 10 years, I've helped a number of people stop smoking. We all know smoking is bad for you, we know it causes disease, it's probably the single most preventable cause of disease. The questions really is second hand smoke is it as bad, does it kill you like they report it does so I'm really here to look at the Science and the statistics. We have to look at the Agenda and the American Cancer Society and American Heart Association, American Lung Association, their main agenda really with the smoking issue is to stop smoking all together which is a good cause, but at the same

time, it shouldn't overcome an individual property rights, owners, to decide whether they have a smoking establishment or not. She went on to speak against the ordinance.

Shannon Cunningham, a citizen, spoke against the ordinance.

Laurie Rey, citizen: At the last hearing, it was said that numerous smoke free ordinances around the country have been challenged and resented. In light of the passage of over 1600 successful smoke free ordinances throughout the United States, we know this to be untrue. More specifically on July 15, Tim Sanderlynn reported to you that Tempe, AZ ordinance had been challenged and reversed. I have in my possession a letter dated June 2, 2003 from the Mayor of Tempe who states how successful this ordinance has been for his community. What community's are finding is that once a smoke free ordinance has been enacted, the majority of the people who live and visit there love it. They become very supportive and the community adjusts in a short period of time to a very desirable way of life. Restaurant and Bar Owners Realize that a smoke free Ordinance is indeed good for Business. At this very moment, many communities across the United States are working on the enactment of similar ordinances to the one being considered tonight. What a smoke free ordinance is not, it is not an earth shattering event, it is fast becoming the norm across the Country as more and more cities work to become smoke free. What a smoke free ordinance is, there has been a progressive new movement of successful smoke free ordinances since the 1980's and Dr. Denoble described that before. We know that a smoke free ordinance for any community is a win win situation for all, why, because the health of the workers and the patrons are protected and the smokers can still smoke, they just have to go outside. We know that once again Arkansas has been rated as one of the five least healthy states in the nation. Smoking and tobacco use is a significant contributor to this undesirable and very discouraging rating. As our elected City Council, you were elected to protect the health of the citizens. It is your responsibility to lead. This is an opportunity for you to lead and I ask you to do this by passing this ordinance and not bringing this to a referendum passing this ordinance as a council. By doing so, you will protect the health of the citizens that you were elected to serve. You will be taking a bold step forward as the first City in the State of Arkansas to significantly address the issue of smoking in a proactive manor through a smoke free ordinance and you will be thanked by thousands of people in the years to come for clearing the air of second hand smoke. Thank you very much for your consideration.

Alderman Davis: I've got a question for you. It's my understanding Tempe is a suburb of Phoenix. Is Phoenix a non smoking city?

Laura Rey: I don not know about Phoenix. Does any one else know?

Citizen: It is a smoking City.

Alderman Davis: Could you get me the study for the last year and a half or as you said they went non smoking in 2002. Can you get me a copy of that?

Laura Rey: Yes. Thank you.

Dillon Ferrall, Free Choice: I have a couple of points and I would like to point something out about what was said by the last speaker. The ordinance in Tempe was passed by the people of Tempe, not the Council which is probably what took the divisiveness out of the issue. I'm here tonight primarily to speak out for 15,000 people who aren't in town right now who spend money in our town, who eat in the restaurants, who go out at night to the bars, who primarily economically support this town and that is the students of the University of Arkansas. This meeting is during finals week for summer too and Fall Semester doesn't start for another 3 weeks. I believe it would in the best interest of every one to at least table this until the University can be in session so that the University Students can be heard. We're talking about reducing the freedoms of the people of Fayetteville, people who have choices of other places they can go. He went on to speak against this ordinance.

Jay Piercall and Richard Maynard with Free Choice, Frances Langham, a citizen, and Wendy Conrad with Free Choice spoke against the ordinance.

Katherine Donald with Smoke Free spoke in favor of the ordinance.

David Whitlow, a citizen: I am new to Fayetteville, I've been here about two weeks now, I'm an Attorney, and I moved here from California, I just learned about this issue last Saturday actually. I've read through this and I'm here for the University of Arkansas, they have an Ag Law Advanced Law program, I see a lot of problems with this and obviously it's a controversial issue you've seen all the speakers tonight, and I would really request that the Council form an Ad hoc Committee as you have the right to do to look at this, have interested parties, staff members from the City Council to put together a staff report. Yesterday I came down and talked with the Clerk, got some information, but I really didn't see any of the analysis of the issue and I don't know if you have things different from what I've seen, but I see problems with the ordinance, I see no real investigation of consequences of the ordinance and I don't see any expiration of Alternative means for achieving something similar to what the ordinance is doing. He went on to speak against the ordinance.

Mary Alice Serafini, a citizen, Bearnard Sullivan, an Off Campus Senator for the University of Arkansas, Amanda Roberts, Smoke Free, Frank Giardino, Smoke Free spoke in favor of the Ordinance.

Cheryl McMullen, a citizen, spoke against the ordinance.

Penny Wolfe, Smoke Free: I would like to address City Council and ask how many of you have children. I have a little boy who has asthma, it's not a pretty sight, and there is no worse feeling than holding your child in the Hospital when they can't breathe to the point of an adrenaline shot. Second hand smoke is not a funny thing. I would ask that City Council do the right positive thing and vote for a smoke free Fayetteville, if nothing more, but for the children. Many people come up here and tell you; smoking is not a hazard, it is a hazard. Thank you.

Rick Schweik, Owner of Cool Water Village and Al Vick, a citizen spoke against the ordinance.

Sandy Prince and Kurt Wolfe, both citizens, spoke in favor of the ordinance.

Mary Proctor with Free Choice spoke against the ordinance.

Jim Stufflebam, Free Choice: The fact that this issue is in front of this body at all kind of bothers me. I think it flies in the face of one of the basic principals that this nation was founded on, Freedom of Choice. The reason the people migrated to this country was to get that freedom of choice so I'd urge you to be very careful when you start socially tinkering with the freedom of choice that so many people have fought for. Thank you.

Kathy Grisham, a citizen with Smoke Free spoke in a favor of the ordinance.

Kirby Sanders, Smoke Free: It was interesting to me to hear the news that the second hand smoke now causes cavities, I guess and give them one more weak and it's going to cause Aids and premature baldness. They are claiming skewed science and spun statistics from the side of the Free Choice and we are claiming that they are bringing you spun statistics and skewed Science on their side. What better argument do you need to table this and study it before you kill it? If they say you are being presented false stats from this side, and we say that you are being presented false stats from that side, what remains to be done, go through it. He went on to speak in favor of tabling this item.

Katherine Venema, a citizen, spoke in favor of the ordinance.

Judy Wall, Free Choice: I had a wonderful conversation with some people who were of the opposition; there are good people in both sides of this. They are all citizens here, I don't want a split divided community, but what I don't want is I don't want to see my friends, people that I care about lose their businesses. We are not asking you to do something horrible, we're not telling you, everybody start smoking, or everybody stop smoking, we're just saying please stop and consider these people, sit down and talk about the economic. It all boils down to that, we want the City to grow, the reason it will grow is because the economics, it isn't just going to grow magically, I'm just saying please consider this. They are talking about people, family, and friends dying because of second hand smoke, nobody is standing here saying that smoking is good, I'm just saying, please don't just arbitrarily decide this without talking to people who's absolute lives are at stake, their businesses, their homes, their family, their kids, what they contribute to the community through their volunteer service, there won't be any of that, because they won't have a business, they won't have an income. She went on to speak against the ordinance.

Bill Meyers, a citizen, spoke against the ordinance.

Mayor Coody: Thank you for the public comment tonight. I'm going to close it to public comment right now and I would appreciate it if we could all take about a 10 minute break, get up and stretch around a little bit and then come back and open this up to City Council discussion at about 10:37 PM.

Mayor Coody: All Right. Kit I understand that we haven't brought this to the second reading yet, is that right.

Kit Williams: Yes, I have not done the second reading of this and primarily I did not want to do that until the amendments were decided on and what I would suggest if you want to go to the second reading is actually to suspend the rules and allow me just to read the new title and the new sections that were changed rather than reading the entire ordinance.

Alderman Davis: Mayor I am wondering if we ought to discuss this amongst ourselves before we go to a second reading. I don't know if we are really in a hurry to go to the second reading tonight or further than that this evening and that's up to the Council to decide I'm just asking a question.

Mayor Coody: All right, well let's see what the Council thinks, is there a motion and a second to go to the second reading.

Alderman Reynolds: Mayor, it seems like that both sides think they are right here and it's pretty decisive. Personally I'd like to see this go to the Ordinance Review Committee and left on the second reading and us look at it the first week in September.

Alderman Davis: Now Swifty, do you mean left on the first reading, because we have not had the second reading yet.

Alderman Reynolds: Right, leave it on the First Reading.

Mayor Coody: All right, is there no motion to bring this to the second reading.

Alderman Marr: Mayor I want to comment on that, you know, has this not been a second meeting debate, if we want to talk about sending it somewhere, you know, we can have that discussion. I believe we have been having a meeting tonight and we've had a lot of discussion, a lot of issues and I personally don't like the idea of leaving it on the First Reading. We are progressing through this debate, at some point we are going to make a decision it may be to do nothing, it may be to forward this, it may be to send it to the people, it may be for a vote, it may be to send it to a committee for a time period and it comes back with some other recommendation, I don't know what that's going to be, but we've been here since 6:00 PM having a meeting and this has really been our only item. I'd at least like us to consider taking it to the second reading, if we want to leave it there, then we leave it there.

Kit Williams: I will say that the only way for it not to go to the second reading is have a motion to table because it would automatically go to the second reading, this is the second meeting we've discussed it, we just postponed the reading initially so, for it not to go to the second reading, there would have to be a motion to table and second it and that would have to get a majority vote or else we would need to read it.

Mayor Coody: The concern that I have by leaving the ordinance, the first reading is very different than the ordinance as amended so if we would be sending something to the Ordinance Review, would it be the ordinance that's on the first reading or would it be the amended ordinance.

Kit Williams: No it would be the amended ordinance.

Alderman Rhoads: There is nothing to stop us from going to the second reading tonight and then still tabling it at the next meeting if we so desire. Is that correct?

Kit Williams: That's correct.

Mayor Coody: Is there a motion to move this to the second reading.

**Alderman Cook motioned 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 Cook: Can I make one comment. There were several notions about enforcement and how we're going to handle that, is there any way we can have Chief Hoyt come and talk about that issue with us.

Mayor Coody: We could, we did ask him about this early on and I think he was quoted on this in the newspaper if I'm not mistaken, basically Chief Hoyt's position was at the time, and he didn't see enforcement as being an issue. Mr. Roberts, you might verify this for me.

Eldon Roberts: From what I understand, he says that 95% of the people obey the law anyway so once that passes, we don't see it as being a problem.

Mayor Coody: So I guess that answers that question.

Alderman Cook: Not really.

Mayor Coody: It's late, what was your question again.

Alderman Cook: Well there were several citizens concerned about how it would be enforced.

Mayor Coody: I don't know the answer to that. I know that when we passed the smoking ordinance back in 1991 everybody figured there would be a whole lot of hue and cry, and I think we had 3 complaints in the first month and since then there haven't been any complaints at all.

Alderman Marr: So I think the request is that Chief Hoyt come and speak to the Council specifically to how it would be enforced, are there any concerns on manpower I think was an issue brought up, whether there is added issues with the outside people going outside, if he could speak to that issue and maybe, we currently have bike patrols or patrol on Dickson Street Specifically, how that might be impacted if we did this ordinance. Those are the types of things that people have asked us questions about.

Mayor Coody: That's a very good point and I will make sure at the next meeting where this is discussed he'll be here to talk about these issues.

Alderman Thiel: May I just say one thing on that subject of enforcement that I think Julie from Common Grounds brought out the point that I had observed myself that the current ordinance we have has not been enforced very well and that is a concern, is this one going to be enforced in the same manner that that one has been enforced in.

Alderman Lucas: What particular part of it are you referring to?

Alderman Thiel: I think the sections were supposed to be more defined, more separated than they are right now. I think there are some restaurants that have really gotten pretty negligent about having the smoking sections right beside the non smoking sections. I can think of a couple of restaurants that really violate my understanding of the original ordinance. I know whenever it first went into effect; there was a major effort to really have separate sections.

Mayor Coody: What we can do is ask some folks to be more diligent in their code enforcement and see if we can't solve that problem.

Alderman Thiel: Then that is another question, is Code Enforcement going to do this or is the Police Department going to enforce this.

Mayor Coody: Actually, the enforcer is the Fire Chief according to the ordinance.

Alderman Davis: I thought it was up to the Mayor to decide who the enforcer is.

Kit Williams: Part of the problem with the original ordinance that is in effect right now is that it really didn't designate the kind of separation that would be required between these sections very well. There is one provision in the non smoking section that say's that smoke should not normally go into the non smoking area, but it really didn't say very much and the bad news Mayor is it says "The Mayor shall designate officers responsible." This newer ordinance I will say is more clear and not necessarily perfect at

all in the way it describes restaurants and bars and things, but it is more clear than the current ordinance.

Alderman Lucas: It really doesn't designate how far apart or anything like that from the previous ordinance that I could find.

Kit Williams: No it did not. The strongest language it said is that describing what a designated smoking area was, it said an area that is situated to where smoke from the smoking area does not reach the non smoking area. That's pretty vague.

Alderman Reynolds: In December of 1991 when this other smoking ordinance went into effect, did that include public places. Otherwise we're one of the biggest violators in the City because we have a smoking room on the first floor.

Mayor Coody: Actually if it's a designated smoking area then I think that is acceptable to the ordinance, however, in our latest policies and procedures, we have eliminated smoking rooms in City Government buildings.

Alderman Davis: It say's in the current ordinance that a designated smoking area, an area that has separated from non smoking areas, so we have that downstairs.

Mayor Coody: Well we don't anymore.

Alderman Davis: Mayor you still are the police authority according to this old ordinance.

Mayor Coody: All right. So is this going to be going to Review Committee. What's the Councils wish on this?

Alderman Reynolds motioned to table indefinitely. The motion failed for lack of a second.

Alderman Rhoads: If we are going to ask the people's vote on it then it would appear that the Ordinance Committee ought to fine tune it so the people can vote on something that's a little bit easier to understand than what we are struggling with tonight.

Alderman Rhoads motioned to send the ordinance to the Ordinance Review Committee. Alderman Reynolds seconded.

Mayor Coody: We have a motion and a second to send it to Ordinance Review Committee however; I do want to make a change. This is a big enough issue to where I think the Ordinance Review Committee in this particular circumstance needed to be a committee of the whole. Can we do that?

Kit Williams: You can do whatever you all want to do.

Mayor Coody: I would like for us to do that because I would like to have everyone's input on this deal and not have four people show up and make an ordinance that the other four may not approve of.

Alderman Thiel: Well I have a question then, is this going to the Ordinance Review Committee to be refined to go as a referendum.

Mayor Coody: It sounds like that's where that's headed, but, that is going to be up to the Council.

Alderman Davis: But Mayor if that's the case, the Ordinance Review, those four people on that committee can do that and bring it back to the Council and let all eight of us hash it out at that point and then decide if we want to send it to the citizens.

Alderman Rhoads: My motion was to take it to the Review Committee and that gives you the option then to vote on it still at a later date as Council or we can then have another motion once it's been refined and the Council accepts that, to then take it to a referendum. You have the option of doing either one with that scenario.

Alderman Marr: Could someone speak to what actually the areas to be evaluated are going to be. I mean we have a philosophical divide on two major areas and the fine tuning that we are doing, are we trying to get a fine tune ordinance that's going to meet, or are we going to come up with some sort of great solution that we haven't come up with in the last month and a half or are we working on wording to send this to the people. If we're going to talk about sending this ordinance to the citizens to vote on, I'd like us to put a time frame on the study of this. If we're going to bring it back to the Council, I'd like us to put a time frame on this because as I said a week ago paralysis of analysis, I've heard the Police Chief, we've heard economic study impact. I'm trying to figure out what are the areas we are going to visit within that committee if somebody could speak to that.

Alderman Davis: Would you allow us to bring it back to the Council from Ordinance Review, the first meeting in September. It would give us roughly three weeks to go to the ordinance review, look at any impact studies, and listen to the Police Chief of how enforcement might occur.

Alderman Jordan: I think the point here is how long is that going to take. Are we talking about having this ordinance put together by the first of September Bob?

Alderman Davis: That's what I'm suggesting is having it back before the Council the first meeting of September.

Alderman Jordan: So that would give us about three weeks.

Alderman Lucas: Again, I'm like Don, what are you looking to refine.

Alderman Thiel: I think there was an Attorney that spoke and I think there does need to be some clarification here. Let's ask our City Attorney if he thinks that this is bulletproof.

Kit Williams: I would say probably that there is no such thing as a bulletproof ordinance, you can always be challenged. I think this ordinance is in pretty good shape now, that doesn't mean that there could be some refining done, there could be a consideration in the Ordinance Review Committee about whether or not they would recommend an amendment that would be a proposal to send it to the voters, any of those amendments or changes the Ordinance Review Committee might suggest would all have to be then done in front of the full council by amendments and so it's not like the Ordinance Review Committee can change anything. The ordinance will be back in front of you for the third reading whenever that is going to be the ordinance that you just amended tonight. I will also say by sending it to Ordinance Review Committee, that's not an automatic tabling so it will come up at our next meeting. If you wish to have a delay and not have it come up for the next meeting so there needs to be a motion to table the ordinance until maybe the first meeting in September if that's what you want to do, because the motion to send it to Ordinance Review does not table the motion, it would still remain on our Agenda.

Alderman Cook: Could we not accomplish the same thing with just the third reading instead of Ordinance Review.

Alderman Davis: I'm wondering if that might be able to cut down on some of the discussion at the next meeting because a lot of the verbiage will already be brought forward. I'm just wandering about as far as Council discussion if four Council persons has already discussed it and probably gotten the opinions and advice of the other Alderpersons too, it may help some of our discussion.

Mayor Coody: It may, but the fear that I have is that four people on the Ordinance Review Committee will come up with something, bring it before the committee of the whole and then we start the whole argument all over again. I'd rather have something hammered out among all eight City Council People and then bring that forward to where that can be presented to the public instead of trying to hammer out differences between the Ordinance Review Committee members and the remaining members on the City Council.

Alderman Jordan: If you don't do that and four people decide that and then you bring it in here then the other four that's not been involved in discussion is going to say now wait a minute.

Mayor Coody: I've seen it happened a dozen times.

Alderman Rhoads: I think when Alderman Marr requested our input as far as amendments, we sort of did an ordinance review then and although I think perhaps if we did it in concert with all of us together in the same room, we might get better results

Alderman Rhoads motioned to amend his previous motion and have the ordinance committee be a special meeting including the City Council as a whole. Alderman Reynolds seconded.

Kit Williams: Let me make one note to the public, the Ordinance Review Committee is a committee of the City Council and even though it is a public meeting and the public is invited to attend, normally there is no public comment allowed at the Ordinance Review Committee. This is a time for the Alderman to look at the ordinance to talk among themselves and to try to come up with what they believe is the best possible result. I just want the audience to know that it is not like a regular City Council Meeting where everybody gets to get up and make their statements.

Alderman Rhoads: But keep those emails, cards, and letters coming.

Alderman Jordan: So what's the time frame here?

Mayor Coody: Is it the First of September, is that what I heard.

Kit Williams: That's for the final result, not necessarily the meeting.

Alderman Jordan: Don, did you not have any comments?

Alderman Marr: I'm still waiting on an answer to the question on specifically what are the topical areas of this ordinance that we want to look at so that when we come to this meeting we're either prepared to have reviewed economic data, bring information, is this one meeting, is it three meetings within this four week period. Can we get some guidance as to what we are going to do?

Alderman Davis: That's a good question and I think one of the issues that Kyle brought up, the enforcement of this issue and no one really seems to have the answers at this point in time. I think it needs to be stated very clearly.

Alderman Marr: What are the other areas?

Alderman Rhoads: I'm sure we'll find plenty as we go through it because I heard, I think it was the young Attorney Whitlow had several comments, I did not write them all down, but I would presume that will get enough comment to make some pretty decent changes and if we are keeping in mind that our purpose is to one either bring it to a vote of this Council or two, to bring it to the voter of the people, then I think that simplifying it for a vote of the people would probably make it easier to make the people to vote on it if it were a lot simpler and so with that in mind, I would look at trying to simplify the text, reduce it so it's not quite as long.

Mayor Coody: All right we have a motion and a second. Any other discussion on this item? So we're going to have the committee as a whole to address this and have some results by the meeting of the 2nd.

Alderman Rhoads: I do have another comment, this is in response to Don's comment, I don't see this meeting of the full Council acting as the Ordinance Review Committee as one to determine economic data. I think we've heard a lot of that and will probably hear a lot more if it goes to a vote, then I'm sure you will see a lot more of that for the people to consider. I think what we've got to figure out as an ordinance committee is exactly how will it read where it's enforceable, where it's an ordinance that can be easily understood at the ballot box.

Alderman Jordan: Unless I missed the conversation among all the business owners that I've heard tonight that the economic is part of their argument and I think for us not to at least discuss that.

Alderman Rhoads: I would presume that would be discussed at the third reading and would be fully discussed if it comes to a vote, I think that any time you pick up a paper you'd see it.

Mayor Coody: I think the intent is to look at this ordinance and clarify it and simplify it and make something to present to the public again.

Alderman Marr: Mayor, I have a question for Kit. We talked about simplifying the language and the ordinance for a ballot election, what we basically did is we took 95-05 and we made changes within that existing ordinance primarily. Could you very briefly speak to what sections of this ordinance in terms of simplifying for the people we would reduce because I'm looking at it and I don't see what section we would pull out other than maybe we don't want all the where as's.

Kit Williams: The part with the where as's I think that I don't know if we could shorten the ordinance and also make it more clear. To clarify it, I think you might want to look at some of the definitions of restaurants and bars because I can see that as being potential problems in what a bar is and what is a restaurant, but that would require a longer definition probably instead of a shorter definition. The current ordinance we have is very short on it's definitions, but sometimes you need to be specific enough so that people are very clear at whether they qualify as a restaurant or bar and I do think that is something that we might want to look at in order to make it clear to the people that would be effected whether or not they are a bar which is being exempted or are they a restaurant which is totally controlled. I think that is a very important distinction, I don't know if we can make it short, but I think we can make it maybe clearer.

Alderman Thiel: Mayor could I say something. The existing ordinance we already have, it seems like the wording, if it was taken to the vote would be just the portions that have been changed, and it wouldn't be the whole ordinance. We already have the ordinance.

Kit Williams: Well except that according to our Fayetteville Code when you amend a section of a code you're supposed to repeal the section and do the entire section over again because it makes it much more clear for someone to be able to read the whole section and not have to jump back and forth. Our code requires us to repeal the entire amended section and replace it with a whole new section, that's why that's how it's been structured.

Alderman Rhoads: Are you saying Kit that if we put this to a vote that there we might see the entire smoking ordinance voted against and therefore, say smoking at Wal-Mart and so forth, because I certainly wouldn't be in favor of that.

Kit Williams: No that would not happen, this ordinance if it's passed either by the City Council, there are two provisions in it, one is that you repeal the old one and new is that you put in the new one. If the ordinance is not passed then the old one continues, same thing with if it goes to the vote of the people, if they vote for it, it repeals the old one at the same time, it enacts the new one, so if it fails, then the new one remains in full force and effect.

Mayor Coody: All right, any other questions or comments on this, we have a motion and a second to send this to the Ordinance Review Committee which is the committee of the whole.

Mayor Coody: Shall the motion pass?

Upon roll call the motion passed 5-3-0. Alderman Cook, Alderman Marr, and Alderman Lucas voted no.

Kit Williams: Now if you don't want this to be on the next agenda you are going to need to table this until the first meeting in September or else this ordinance will be on our next agenda.

Alderman Davis motioned to table this item until September 2, 2003. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.

Meeting Adjourned at 11:10 PM.

Sondra Smith
City Clerk