

**Minutes Of A Meeting
Of The
City Council
September 2, 2003**

A meeting of the Fayetteville City Council was held on September 2, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

The Meeting was called to order by Mayor Coody.

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

A Presentation on the Trails Master Plan.

Steve Hatfield gave a presentation on the Trails Master Plan.

Mayor Coody: Thank you Steve, one of the things we are very pleased about is the progress that we are beginning to make in the trails network, we started off with zero trails here not too long ago and now we're creeping up on getting a network put together. The one that we are starting to work on now, the latest one is the West Mud Creek Trail which is going to be an incredible beautiful trail along Mud Creek that goes out to the business park, Steve took me on a tour there the other day and there are four and five foot diameter trees back in there that we can see and its going to be beautiful. We will be using all of the savings that we had from that job to put toward other trails. I am really pleased with your progress Steve and I am really glad you are on the job and I am really glad that we are making this kind of progress. Thanks for your presentation.

Alderman Thiel: I would just like to say you have done an excellent job with this plan, I think it is a really good tool for the City and for the citizens, I think visually it's a very attractive tool. I think the GIS maps are excellent, I know it was a lot of work and I think we were getting a little impatient, but I think it was worth the wait.

A Presentation on the Botanical Garden of the Ozarks, Inc. Master Plan.

Blair Johanson gave a presentation on the Botanical Garden of the Ozarks, Inc. Master Plan.

Mayor Coody: Thank you very much, it was a good presentation. We have a real push for economic development and I believe all of us understand that this could be a real shot in the arm for Fayetteville, not only the quality of life but for advancing the beginnings of the tourism market here in town, so we would like to wish you guys total success.

CONSENT:

Approval Of The Minutes: Approval of the July 15, 2003, August 5, 2003, and August 12, 2003 meeting minutes.

Destruction of Records: A resolution authorizing the office of the City Clerk to destroy certain records pursuant to §13-4-204 of the Arkansas Code.

Resolution 128-03 As Recorded In The Office Of The City Clerk.

Botanical Garden of the Ozarks, Inc. Master Plan: A resolution approving the Botanical Garden of the Ozarks Master Plan.

Resolution 129-03 As Recorded In The Office Of The City Clerk.

Botanical Garden Land Lease: A resolution approving a land lease agreement with the Botanical Garden of the Ozarks for the purpose of operating a Botanical Garden at Lake Fayetteville Park

Resolution 130-03 As Recorded In The Office Of The City Clerk.

Alternative Transportation and Trails Master Plan: A resolution adopting the Alternative Transportation and Trails Master Plan as an official planning document.

Resolution 131-03 As Recorded In The Office Of The City Clerk.

McClelland Engineers Contract Amendment # 3 Wilson Springs Business Park: A resolution approving contract amendment No. 3 with McClelland Consulting Engineers, Inc. in an amount not to exceed \$5,000.00 to complete survey work required under the real estate contract with Legacy Project, LLC.

Resolution 132-03 As Recorded In The Office Of The City Clerk.

Bank of America Procurement Card: A resolution to accept a contract with Bank of America Corporate Purchasing Card Agreement.

Resolution 133-03 As Recorded In The Office Of The City Clerk.

Alderman Marr said on the August 12, 2003 minutes at the end of the minutes it says shall the resolution pass it never records the actual vote, I just want to get that added to these minutes.

Alderman Marr moved to approve the consent as read. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

NEW BUSINESS:

Cost Share Bid Waiver M.P Construction: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with M. P. Construction, Inc. in an amount not to exceed \$63,600.75 for the construction of a double 2' x 8' box culvert under Linda Jo Place.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

Alderman Jordan: It's a bad flooding area, I'm glad to see something like this being done in that area.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 4511 As Recorded In The Office Of The City Clerk.

Marjorie Lee Brooks Condemnation: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Marjorie Lee Brooks, *ET ALIA* to secure the necessary easements and rights-of-way for Gregg Avenue improvements.

Mayor Coody: I spoke to their attorney this afternoon and the paperwork was sent to Little Rock this afternoon. Should we table this indefinitely?

Kit Williams: You're saying that in fact they have accepted the Highway Departments offer.

Mayor Coody: I have not seen the paperwork but when I spoke to Marjorie Brooks's attorney, they said they have sent the paperwork off to Little Rock and that was at 4:30 and the State closes about 4:30, so I am assuming everything is all right.

Kit Williams: Yes, I think probably a motion to indefinitely table this would be all right, I think the only reason this was being rushed along is because the State Highway Department was pressuring us to get all this done so there would have to be a special meeting if something falls through.

Alderman Jordan moved to table this resolution indefinitely. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Ruth Thornton Condemnation: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by Ruth C. Thornton to secure the necessary easements and rights-of-way for Gregg Avenue improvements.

Mayor Coody: This one has not been secured and they don't believe that it will be so we probably will have to move along on this condemnation. The reason that the State is wanting us to agree to this tonight is because if we miss tonight's approval of this then they will not be able to let the bids for construction and if we miss this bidding round we may have to wait another quarter, before we can start work on Gregg Avenue extension, which is why they want us to approve this tonight.

Alderman Davis moved to approve the resolution. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.

Resolution 134-03 As Recorded In The Office Of The City Clerk.

Mayor Coody: What has been put before us tonight is this is the third item the State wanted us to approve; we didn't know they wanted this fast tracked as well. This is a pretty simple one, the City of Fayetteville owns land along Gregg Avenue that should have been put into right-of-way for the Highway Department awhile back and apparently it was not and they need to have a resolution declaring this property that we already own dedicated as highway right-of-way.

Alderman Davis moved to suspend the rules and add the Marjorie Lee Steele Brooks, Gregg Avenue Right of Way to the agenda. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

Mayor Coody: Any questions on what I just described about this right-of-way acquisition, since we already own it.

Marjorie Lee Steele Brooks Gregg Avenue Right of Way: A resolution to declare City owned property as right of way for Gregg Avenue.

Alderman Jordan moved to approve the resolution. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Resolution 135-03 As Recorded In The Office Of The City Clerk.

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 second reading at the August 5, 2003 City Council Meeting.*

This ordinance was tabled at the August 5, 2003 City Council meeting until the September 2, 2003 City Council meeting.

Alderman Marr: Mayor before we open it to the public to comment on the entire ordinance, a suggestion I would like to throw out is if we have more proposed amendments that we handle them as we did at the last reading where we try to get those out so we can have public comment regarding the amendments and then move forward on the format of the ordinance.

Mayor Coody: I think that's perfectly acceptable.

Alderman Thiel: I have a question and then I have two proposed amendments. The question is I had a constituent contact me about this, how the ordinance would affect the following situation: An individual or group rents a meeting room in a hotel that doesn't have a bar and they hire someone to provide a cash bar for the event, is this room exempt from the ordinance since it comes under the definition of a bar, how is this going to work? He just wanted an answer to that.

Kit Williams: Part of it depends on how the ordinance finally ends up, let's assume its as it is presented to you right now as amended on August 5, the hotels have designated smoking and non-smoking rooms but those would be guest rooms, if this was a guest room that was a designated smoking room I don't think there would be any problem there you can do basically what you want to I think in your own guest room, however if this were a large exhibition room, then I don't think there are any provisions within this ordinance that would exempt that room that I can see. The only exemptions are bars, which are basically stand alone facilities and therefore any other place within the hotel except for the guest rooms that are smoking I don't think would be exempt under this ordinance.

Alderman Thiel: A temporary bar would not qualify as a bar then under this ordinance?

Kit Williams: I don't think it would.

Alderman Thiel: I just wanted that answer. The first amendment I would like to propose is to remove the Code Compliance Officers from the enforcement of this ordinance. That is under E, Enforcement in the

short version, which I'm using; we haven't moved to adopt one or the other, but that is the one that was recommended from the ordinance review committee. I understand Kit's reason for placing it in the ordinance because the smoking ordinance is currently within the health and sanitation section of the code book, however I think the Police Department should be the sole enforcement agency of this ordinance. I think it would be less confusing to the public and I think the Code Enforcement Division does not have enough staff nor do they have staff on call at night when most complaints would be made. That would be my first amendment; the second amendment would be to give businesses an opportunity to offer a smoking area for their employees. This amendment would be placed at the end of the definition of place of employment, at the very end of that section. It would read as follows: An enclosed smoking room with a ventilation system that ensures its air is not commingled with the now smoking areas of the building may be provided by a business for its smoking employees use and shall not be considered a place of employment for purposes of this section. Alderman Davis brought up some good points at the ordinance review meeting that small businesses will really be affected by this, this would be one way that they could possibly not have to eliminate some of their employees that smoke or don't smoke, I'm not sure if that would happen but this would also provide the factories that do provide smoking right now to allow a smoking section for their employees. Do we want to do this one at a time, I would make a motion on these or how do you want me to do this?

Alderman Davis: I have a question, you are talking about the short version right now, don't we need to take the items we discussed at ordinance review and bring them over one at a time and decide if we want to have the short version?

Kit Williams: You might want to go that way first or you might just want to throw the issues on the table as Alderman Thiel has. What ever you all decide to do.

Alderman Thiel: I guess my question about the short version is we have two short version drafts, one refers to a vote of the people, one does not, so I guess I would prefer making a motion to pass my amendments apart from that and then we would discuss whether or not we want to refer this to a vote of the people, which is one of the short versions, is that not correct Kit.

Kit Williams: I did prepare two versions of the short version, one being a referral to a vote of the people and one being just an ordinary ordinance.

Alderman Rhoads: They are both the same except for?

Alderman Thiel: I would move to pass the amendment on removing Code Compliance Officers from the enforcement of this ordinance.

Alderman Lucas: This was in the shortened version, it wasn't in the original version, it was the Mayor that was the designee, and he would designate who would enforce it in the original one, which we have voted on.

Alderman Thiel: So I would have until we get to that.

Mayor Coody: I don't have any intention in putting Code Compliance Officers in that role.

Alderman Davis: You would be good doing that Dan.

Alderman Lucas: So we might want to just leave it like it was in the original one.

Alderman Thiel: So I would need to make that amendment whenever we get to the point of voting on whether we are going to take this to a referendum?

Alderman Rhoads: I think you would vote on it whenever we vote on the short or the long version. If we are going to vote on the short then you would want to put your amendment in there.

Alderman Thiel: But we are going to be voting, if I understand this correctly, when we vote on the short versions we are going to be voting on whether to refer it to a vote or not.

Kit Williams: Someone can make a motion on which short version they want to have, if you want to do it incrementally as Alderman Rhoads was talking about, the first short version that would be presented would be just the way it is right now without a referral to the voters and at that point while that was still pending you could move to amend the short version to remove the Code Compliance Officers from the enforcement provisions. The Code Compliance Officers will not be able to enforce this unless you the City Council gives them that right. The Mayor cannot designate them to enforce this, he can designate the police officers, but he can't designate them to do that. The way I read the Attorney General's opinion and the State law this must be done by the City Council, that is why I included it in there so the Mayor would have that as one of his options, but if you don't want the Mayor to have that option, just remove it.

Alderman Marr: I would like to move that we adopt the short version of the ordinance as drafted by ordinance review, the one that takes it to three whereas clauses and changes the ordinance in such a manner that it includes, the inclusion of places covered by the ordinance with the exception of two exemptions, bars and retail tobacco stores, as drafted without the referendum component. So in the format as an ordinance only at this point. Alderman Davis seconded.

Alderman Lucas: I have a question, are you including an enclosed private office that is not regularly entered?

Alderman Marr: I am including this last draft that we have.

Alderman Lucas: Under place of employment?

Alderman Marr: Yes.

Alderman Lucas: So that's being included in there?

Alderman Marr: Yes. That was in the original ordinance as well.

Mayor Coody: Is this the first short.

Alderman Marr: This is the very first regular ordinance short version.

Alderman Rhoads: Without referendum.

Alderman Thiel: I would second that amendment.

Alderman Rhoads: It has already been seconded.

Mayor Coody: We have a motion and a second to approve the first short ordinance. We've had a lot of public comment on this, generally we take public comment on all these, but we would be here if we discuss every jot and tiddle as they say, we will be here until probably next Thursday, what I would like to do is if somebody just has an overwhelming desire to speak to this particular question before us on the first short

ordinance I would appreciate hearing from you, if you have spoken before, I will ask if you could refrain from speaking to let other people speak who haven't spoken on this issue.

Alderman Marr: Not to drag this meeting out but so that people are clear because of the change that we've made and the fact that this ordinance is much more shortly written now I would like to ask that we have our City Attorney read this ordinance so that everyone's clear on what the short version regular ordinance is.

Mayor Coody: Would you mind Kit?

Kit Williams: No, I just want to make sure I have the right one here. I understand the motion to be to adopt basically what I entitled the regular ordinance or the standard ordinance no vote by citizens. Is that the motion on the floor?

Alderman Marr: Yes

Mr. Williams read the ordinance.

Mayor Coody: Does that satisfy the reading of this ordinance? I would like to ask everyone to be very brief in your comments, what I would like to do if you do go over about three to four minutes I will ask you to please with the time sign to finish, so we can try to let everyone speak who would like to. If you have spoken before I am going to ask you to please let other people speak instead of speaking again unless you have completely changed sides in this argument. Thank you.

Cyrus Young: I would like to get my mind straight on what you all just did. Don Marr made a motion and Kit just read something, now is that a motion to amend the ordinance that is on your table right now? You will have to vote on that amendment and then you will have to vote to suspend the rules and read it a third time?

Kit Williams: I don't think they would actually have to, but my recommendation to them was that if they do move to have this changed as significantly as we have done here, I would like to go ahead since I have already read it for you to go ahead and suspend the rules so we can go to the second and third readings of this since it has changed so dramatically assuming that this amendment would pass.

Cyrus Young: So your actual vote will be the third vote you take.

Mayor Coody: Yes, I think so.

Sharon Davidson: Asked the Council to vote on this tonight.

Gene Kovach: Spoke against the ordinance.

Matt Lerch: Spoke about the United Nations World Health Organizations Tobacco Free Initiative. He submitted the rules under the United Nations.

Mike Young: Spoke in favor of the ordinance.

Pat Butler: Spoke in favor of the ordinance.

Pat Donnelly: Spoke in favor of the ordinance.

Kirby Sanders: Spoke against the ordinance.

Stoney Rawlins, President of the Student Government at the University of Arkansas: Read a resolution that was passed against the ordinance.

Alderman Marr: Your role at the student government.

Stoney Rawlins: I am the President of the Student Government, I didn't sponsor this legislation.

Alderman Marr: Do you have a similar resolution in reference to the University's smoking policy?

Stoney Rawlins: No sir, I am just doing this on behalf of an associated student.

Alderman Marr: So this is really to the City not the University.

Stoney Rawlins: Yes sir.

Alderman Marr: Did the student government take a position on the University Smoking Policy?

Stoney Rawlins: No sir they didn't.

Alderman Marr: Thank you.

Dillon Ferrell: Spoke against the ordinance.

William McMullen: Spoke on the ordinance.

Gary Wheeler: Spoke in favor of the ordinance.

George Weiss: Right now if the business has both a bar and tables and they serve food and they serve liquor, this is counted as a restaurant, is that true? If that same business at 10:00 in the evening decides to serve no more food, serves only liquor, is that a bar at that point in time. Can the same business depending on the time of day be both a restaurant where cigarette smoking, if you pass this would be banned and then later in the evening cigarette smoking would be allowed if it's a bar.

Kit Williams: There has been one amendment proposed that would allow that, without that amendment, I think my opinion would be no it would remain what it is which is a restaurant with a bar area even if the restaurant quit serving food. However the City Council may amend the smoking ordinance and provide a provision where after a certain hour if the restaurant is closed that it could then become a bar, it's their opinion.

Gloria Housley: Spoke in favor of the ordinance.

David Whitlow: Spoke against the ordinance. He spoke about the escalated fine structure for the businesses.

Alderman Marr: That has been changed. There is no longer a progressive fining from \$100 to \$200 to \$500; it is a \$100 flat fine with no progressive fine. That was a change made at ordinance review.

Mayor Coody: The gentleman earlier asked a question about police enforcement and the Police Chief has spoken to this issue a couple of times, I don't know that he is here tonight, but he has said that he doesn't see this to be a problem if it passes and as far as the enforcement goes didn't think that if this passes he doesn't

see that if an owner of a restaurant is trying to do what they can and a customer won't do what he has been asked, then it is his job just to call the police and the police aren't going to ticket a restaurant owner for at least trying.

Dr. Jean Gibson: Spoke against the ordinance.

Kim Lowery: Spoke against the ordinance.

A Doctor: Spoke in favor of the ordinance.

Mary Proctor: Spoke against the ordinance. I would ask that you define multiple fines as far as work places, public places, referring to businesses; multi fines would be suspension or taking away a license. How many is multiple, is it three, is it four, is it five, is it at somebody's discretion.

Kit Williams: I think it would be a pattern that the enforcement people would look at and if there was a pattern of multiple violations of this ordinance and I think they would look at what types of violations there were, there can be very minor violations, someone doesn't have a sign up right or there can be a violation where they are encouraging employees and customers to violate the ordinance. That is not absolutely defined multiple means more than one and I think that the people that would be examining this would look at all the factors involved, not just the number of violations that a owner or manager might have of this ordinance to determine whether or not a license issued by the City would be revoked or suspended.

Mary Proctor: So it is up to that person's judgment?

Kit Williams: Just like in virtually every court or administrative hearing there is discretion involved both with the prosecutor and with the administrative judge where the municipal judge in determining the appropriate action, whether it be punishment or not, if you try to spell things out too closely then you tie the hands of your officials and don't let them use their own common sense, so I think it makes much more sense to say multiple violations as opposed to saying if there's three or if there's four, because at that point in time there might be very minor violations, or there could be very significant ones and I think they should be handled differently. I think each case needs to be looked on for itself.

Terry Payton: Spoke in favor of the ordinance.

Brian Wilkie: Spoke against the ordinance.

Judy Wall: Spoke against the ordinance.

Suzanne MacRae: Is an establishment that is basically a music establishment that doesn't serve food, is that a bar?

Kit Williams: If their primary purpose is to serve alcohol, if they are a bar and their primary purpose is to serve beverages and the service of food, if any is incidental then that's a bar.

Suzanne MacRae: Spoke in favor of the ordinance.

Stephan Pollard: Spoke in favor of the ordinance.

Joe Fennel: Spoke against the ordinance.

Andrea Fournet: Weren't you supposed to be discussing the amendments?

Mayor Coody: Basically it's the short version of the ordinance that we are discussing right now.

Andrea Fournet: The way it is written now, bars are out, you can smoke in a bar but you can't smoke in a restaurant correct?

Alderman Thiel: All public businesses.

Andrea Fournet: Except for a bar.

Alderman Thiel: Except for a bar.

Kit Williams: A bar is defined as an establishment whose service of food if any is incidental to their service of alcohol or beverages.

Andrea Fournet: It's illegal to buy cigarettes under the age of 18 correct?

Mayor Coody: I believe so, yes.

Andrea Fournet: Is it illegal to smoke in a restaurant and a bar under the age of 18?

Kit Williams: I don't think that is correct although I can't tell you for sure.

Andrea Fournet: Spoke in favor of the ordinance.

Vicky Hilliard: Spoke in favor of the ordinance.

Julie Sill: Spoke against the ordinance.

Jeff Collins: Spoke in favor of the ordinance.

Cathy Grisham: Spoke in favor of the ordinance.

Charles Ball: Spoke in favor of the ordinance.

Phillip Price: Spoke in favor of the ordinance.

Richard Maynard: Spoke against the ordinance.

Rick Schweik: Spoke against the ordinance.

Jim Smith: Spoke in favor of the ordinance.

Matthew Hask: Spoke in favor of the ordinance.

Sandy Prince: Spoke in favor of the ordinance.

Janet McMullen: Does this ordinance mean that the president of our corporation could not smoke in his office nor could the sheet metal fabricator smoke in the shop?

Kit Williams: It is possible, everything would have to be looked at individually, and there is an exemption under the place of employment definition that states an enclosed private office that is not regularly entered or occupied by a non-smoking employee is not a place of employment for purposes of this section. If it is not a place of employment, it is not regulated, unless it is a public place, which is like restaurants and bars. If you had a private closed separated office that a non-smoking employee did not frequent, did not regularly enter or occupy then that would not be regulated.

Janet McMullen: So if I had two fabricators in the shop and one smokes and one doesn't, does that mean the other one has to go outside to smoke.

Kit Williams: That would be a regulated workplace, that's correct.

Janet McMullen: Spoke against the ordinance.

Cambre Horne-Brooks: Spoke in favor of the ordinance.

Kathy Trotter: Spoke in favor of the ordinance.

Mark Wright: Spoke against the ordinance.

Jean Ann Wilson: Spoke in favor of the ordinance.

David Horne: Spoke on the ordinance.

Alderman Davis: Mayor I have a question and Kit maybe you can help us with this. A bar and a restaurant, let's say for instance someone now decides to have a bar which is smoking and they have it enclosed according to the definition, but we have the restaurant next door, once again it is going to be enclosed, but you have a kitchen that is multi-faceted for both facilities, so if someone wants nachos in the bar, they can get nachos, if they want a full course meal in the restaurant they can. How does that common kitchen area work out in this definition or does it?

Kit Williams: I don't know if it does because the definition says an establishment meaning for a bar that primarily serves liquor and the restaurant is an establishment meaning a single one with a bar area being part of that restaurant so that it seems that if a common kitchen was shared they wouldn't be two separate establishments there would be an establishment which is either a bar or a restaurant. They would have to be totally separate, legally as well as physically before you could qualify as a stand alone bar.

Alderman Davis: Let's say both of them have exterior entrances into each section; do you still stand by the same comments you just made?

Kit Williams: I don't think they could have a joint kitchen, I think a joint kitchen means not two establishments it means one establishment, I would think. It is very difficult to talk about these things in the abstract, when you don't know all the facts and factors involved, but at first blush it would seem to be if you have a common kitchen then you are not two different establishments.

Alderman Davis: I know some instances where that could occur here in Fayetteville and that is why I asked the question. I think Common Grounds may have that issue along with Jose's has that situation right now where they probably could go with a bar on one side and a restaurant on the other, but they could possibly have the problem with a common kitchen and if we decide to put it in where they could have a common kitchen, what would be the verbiage we would need to put in the ordinance to allow that.

Kit Williams: I am not exactly sure, I guess we could just try to Draft something that would say that a bar would not be part of a restaurant just because it shares a common kitchen, I don't know exactly how you would do that, this is the first time this has been brought up, this particular issue, but it would be some language similar to that.

Alderman Davis: I kind of brought it up at the ordinance review and when we discussed it, we kind of went over it real quickly. I would like for us to look at some way to Draft the proper language to where certain establishments that are already set up would be able to do that, would have the ability to operate that way should there be a second to the motion of this nature and should the Council up here tonight decide to accept something like that.

Kit Williams: I know Alderman Thiel did present something of a similar sort of motion, because she would have allowed a bar area of a restaurant if it was separately enclosed with a separate entrance and separate ventilation, to be a bar and not a restaurant, she didn't, I don't think address the common kitchen situation, but at that point I don't think there was very much support from the Ordinance Review Committee. I did not see it and so that's why I didn't draft any further language, although I drafted language for her on that, which was considered by the City Council.

Alderman Davis: I'm not sure of the language, but I would like for us to look at some way that the restaurants that do have a common kitchen between two solid walls, then essentially what you have is a common kitchen. You would have ingress and egress from the kitchen to the bar area and ingress and egress also to the restaurant which could be at different ends of the kitchen more than likely and with the ventilation in the kitchen. Anyone that ever works in a restaurant business will tell you that the problem with the kitchen is trying to keep it cool or hot, all the air goes out the ventilation system, so usually your utility bills are a lot higher because of all the stuff that goes out the chimney.

Alderman Thiel: I would just like to point out the memo the City Attorney gave us in reference to that. Establishments can reorganize their business and basically get two separate alcohol permits, in other words the restaurant side could serve alcohol, but primarily food and still be required to be no smoking under this ordinance and their bar then they would have to limit the amount of food they serve or they could possibly even do a take out from the restaurant side, I'm not sure. I think that certain businesses could probably circumvent this ordinance by doing so, I think my idea was rather than require them to go through that which they very likely will, we would be offering some type of amendment that would give them the ability of doing that without having to reorganize their business and go through that expense. I think the City Attorney is correct, you can certainly make that motion, that amendment but it seemed like at the ordinance review there wasn't that much support for it. I will leave it in your court now because I didn't have much luck with it.

Alderman Davis: I'm not sure of the verbiage Kit, but I would like to have whatever you think would be legal along that line put into an ordinance to where a restaurant and a bar could use a common kitchen to have ingress and egress into the divided establishments.

Mayor Coody: Any other comments on this potential amendment?

Alderman Lucas: Will we vote on this separately?

Mayor Coody: Yes.

Kit Williams: Would your amendment also include some of the language that Alderman Thiel had used that the bar would need to be separately enclosed with separate ventilation to ensure its air would not be commingled with the restaurants air?

Alderman Davis: That's fine with me, the way I am discussing it we definitely are going to have two separate entities, the only common area is the kitchen where the employees have to go back and forth through, usually those are doors that have a tendency to open and close as you push your way through in most cases. Brenda do you care to add anything to that?

Alderman Thiel: The definition of a bar in the concept that was presented at ordinance review read under the definition of a bar, a separate stand alone establishment within it's own building or an establishment in an enclosed area within a separate part of the building with a ventilation system that insures that it's air is not commingled with no-smoking areas of the building and with an entrance separate from the entrance to the restaurant whether termed a private club or public establishment that is devoted primary to the sale and service of alcoholic beverages for on premise consumption and where the service of food, if any is only incidental to the consumption of such beverages. It gives a provision in there that would allow a separate entrance to the bar area. So you want me to make this motion, I have made some other amendment proposals.

Alderman Davis: The way I want to make sure that we do have the language in there that talks about the common kitchen. This particular one doesn't actually name a common kitchen.

Alderman Thiel: I guess I don't understand why that has to be named.

Alderman Davis: The only reason I'm saying that is so there is no question as far as interpretation next year or five years from now if it's black and white, it's black and white, if it's gray, it's going to be gray and that's going to depend upon what different individuals think.

Alderman Rhoads: If you don't do what Bob is asking right now, I think it will not work for a common kitchen. I think a common kitchen will be enough to defeat the ability of smoking in one and not in the other, so I think you need this clarification.

Mayor Coody: Any other comments on this item? What is the wish of the Council?

Alderman Davis: Well I brought it up as a proposal and I haven't heard a second.

Alderman Reynolds: Well you get a second. I want to support a common kitchen; I hate to see businesses have to go through the expense of putting in a second kitchen.

Alderman Davis moved to have a restaurant and a bar that can share a common kitchen as long as the restaurant and the bar have separate entrances. Alderman Reynolds seconded.

Alderman Marr: I am not going to support the proposed amendment. I am not going to support it because we have comprised and every time we comprise we move the goal post again. We've gone from protecting the health and public safety of everyone to protecting the health and public safety of everyone but bars and now we are going to protect it for some of the restaurants and I am not going to support that.

Alderman Reynolds: I don't think that we are protecting restaurants, Mr. Marr, I think what we are doing is keeping the business owners from going through the expense, all the restaurants that have bars from putting in a separate kitchen. They can use a common kitchen to take care of their business, if it is a small serving hole into the bar and a small window going into the restaurant, it would be a neutral kitchen, but it would be a small opening, they would be in there and if the cooks are both not smoking, then I don't see a problem with it.

Alderman Davis: You do have to have ingress and egress from the exterior the way that I have brought this up to be able to be a bar separate, with a restaurant separate you also have to have a separate entrance, ingress and egress.

Kit Williams: So the way I understand your potential amendment and correct me if I am wrong is that it would incorporate the language that Brenda read but you would also want to add to that a sentence that a bar and restaurant may share a common kitchen without changing the status of either one.

Alderman Davis: Correct.

Kit Williams: That would just be another sentence added onto that definition that you had proposed Alderman Thiel.

Mayor Coody: Let me ask this Kit, instead of voting on each of these amendments as they happen to come up and then not knowing what the conglomerate aggregate would be at the end, maybe we should discuss each potential amendment and then go back and vote on each one individually.

Kit Williams: However you all want to do it, the votes do need to be done certainly individually, but if you want to discuss other amendments.

Mayor Coody: I think I would like to discuss other amendments before we start voting on each individual one. I will keep a list and we will compare notes at the end.

Alderman Marr: So basically we have two items before us right now, one is changing the definition of a restaurant, because that is what we are doing, we're changing how we handle a bar within a restaurant. I want to make sure that I'm clear, is that right, or adding in the item we talked about at the Ordinance Review Meeting which was the definition, at the time we didn't have support, maybe that's changed since then and we are adding a common kitchen as an additional component of that definition, is that right?

Kit Williams: That is my understanding, but that is now melted into a single amendment. We are also considering Brenda's first amendment which is to remove the Code Compliance Enforcement Officer's, the first sentence under that section which allowed Code Compliance Officers to enforce this and secondly her other amendment which was to provide an enclosed smoking room for employees at the businesses option. Those were the first two amendments that I heard.

Alderman Thiel: I have not actually made a motion on either one of those or received a second.

Alderman Rhoads: I think what we are going to do is talk about the proposed amendments and then perhaps go and see if we can get a motion and a second and then vote.

Alderman Thiel: We have already done a motion and a second on the definition of a bar.

Alderman Rhoads: I am just trying to figure out procedurally, I am with the Mayor; I want to hear all of the things that are going to be proposed as amendments before I vote on any of them. That's my preference.

Alderman Thiel: I think that as parliamentary procedure we should have a motion and a second on these or otherwise they wouldn't be discussed.

Kit Williams: That is probably true, have you made a motion on yours or you don't want to.

Alderman Thiel: I am making a motion right now.

Alderman Thiel moved to remove Code Compliance Officers from the enforcement of this ordinance. Alderman Reynolds seconded.

Alderman Thiel moved to offer a smoking area for employees. Alderman Reynolds seconded.

Alderman Reynolds: We are talking about factories like Superior Wheel, Marshalltown, American Air Filter, etc.

Alderman Davis: Mayor I guess I will bring up one more, as I mentioned the other day in the ordinance review meeting I have had quite a few people call and we heard another lady this evening talking about the small businesses. Being in a business where I work a lot of different companies and so forth, I have heard that people are concerned about companies that have five or fewer employees and a lot of situations what happens is the owner and their wife may work there and both of them may be smokers, and they actually own the business, but they may have a receptionist or someone else that is a non-smoker and their concern is that by passing this ordinance in a small business situation it takes away their ability to do what they do in their business on a normal basis, if they so desire to smoke. They have told me if it comes down to that choice they will end up having to possibly let people go so that they can go ahead since they are the owners of the business and they are the ones that supply the payrolls to those individuals, they may end up having to let some individuals go so they can keep their private rights. I guess I would like to put an amendment here provided I get a second that businesses that have five or fewer people would be excluded from this ordinance.

Alderman Davis moved that businesses that have five or fewer people be excluded from this ordinance. Alderman Rhoads seconded.

Mayor Coody: Let me ask this, there seems to be redundancy here, Bob correct me if I am wrong, but it seems like exempting businesses with five or fewer employees, if the smoking room for those smoking employees that would like to smoke in a business would that not cover that same scenario?

Alderman Davis: Mayor in most cases a small business mode does not have a separate room where you can go smoke. Usually you may have a mail room and two or three offices where you put your individuals along with a reception area and that's it, I mean you are not looking at someone that is going to be housing 3,000 or 4,000 square feet, you're looking at little offices that are going to consist of maybe 1,100 to 1,200 square feet in fact some of them are strictly open. The owner of the business may have his own little office; I think we are looking at two different situations there. I think if you are looking at an employee smoking lounge, you are looking at Marshalltown and places of that nature where you have the factories that are being given the opportunity to have a smoking room for their employees, whereas in a small business usually you don't have that much space.

Alderman Thiel: It seems to me that an enclosed private office that is not regularly entered or occupied by a non-smoking employee is not a place of employment for purposes of this section, it seems like that would cover what you are talking about because if they wanted to have their own office as a smoking office they just wouldn't let their non-smoking employees come in there, that would be pretty simple, they would meet them outside the office, I feel like that is kind of covered here.

Alderman Davis: But that is not real, that is not the way it works in the business world, you are going to get up from your desk, you are going to ask someone to bring you a file, you are going to go back to your desk, sit down, pick up the phone and make a call or two and then that individual is going to walk into your office with the file that you requested, so that individual is going to come back and forth in and out of your office, that is the real world. I don't think you are going to see the business owner continue to get up from their

desk and go outside and close their door and say, I need that file and I am going to wait here until you bring it to me. I don't think that is going to happen, I think they are going to go back into their office, make some additional phone calls and that person is going to walk in and say here is your file. Maybe they are going to knock on the door and say Mr. or Mrs. Owner your file is here on the floor whenever you are ready to come and get it, I would be surprised if that happens.

Mayor Coody: I would too, I think there would be enough flexibility in a small office to where they could probably handle whatever came up, and I can't imagine that we would need to legislate this.

Alderman Davis: But this kind of leaves it questionable.

Alderman Marr: I am just curious there has been tons of discussion all the way up to this meeting about whether it's a vote or not and I heard nobody bring that forward as an option, is that something that we are going to talk about as an amendment since we are putting them all on the table?

Alderman Thiel: This would be the time to do that, because we are getting ready to vote on this ordinance so if there is going to be an amendment to take this to a vote this is the time to do it.

Mayor Coody: Are there any other amendments? So far we have the Smoking Lounge in Businesses, Remove Code Compliance Officers, Sharing a Common Kitchen and Exempting Businesses with Five or Fewer Employees.

Alderman Rhoads: There is nothing to prohibit us from adding other amendments aside from a referendum.

Alderman Marr: No there's not, but what rule are we going to play by, are we going to play by getting them all out and talking about them or are we not going to do that.

Mayor Coody: We have done four out of however many there are, let's go ahead and get them all on the table and find out where we stand because we might find that one potential amendment might be a conflict or redundant with another potential amendment so I would just as soon get them all out on the table.

Mayor Coody: Kyle do you have any amendments that you want to add?

Kyle Cook: No, I personally think we should vote on what we have here, we can beat this thing and beat this thing with changes.

Mayor Coody: We aren't through beating it yet though.

Mayor Coody: Brenda did you have any more amendments you wanted to add?

Alderman Thiel: No.

Mayor Coody: Swifty?

Alderman Reynolds: No, I don't have any more amendments, but I have one comment. Don I would rather not water it down here, but what I am trying to do is protect the people that are in business here today that's already operating. In the future I would be willing for anybody that's coming to town to build their building to meet our ordinance in the future. If we put any thing in there like the kitchens we do it for existing restaurants now and that way it is not watered down in the future. Any new restaurants coming to town would have to open under the new ordinance and we give the existing restaurants until 2006 to meet their ordinance. If we pass it as it is and we don't give our restaurants a break, they have to have everything

changed in four months, that is not possible, that is the reason I say we need to give them a little help with the kitchens.

Mayor Coody: Don did you have any more amendments. Did you want to wait?

Alderman Rhoads: I have some Mayor. I think that if I own a restaurant that does substantial bar business from 10:00 P.M. to 2:00 A.M., but because I'm a restaurant I can't have smoking, then I am at a disadvantage and so I would want to have an amendment that would allow smoking after a certain time or after the kitchen closes and I guess I would rather have my amendment to be after the kitchen closes and allow that owner of that establishment or the manager to post some sort of sign saying that they will allow smoking after he or she closes the kitchen. I would propose in the alternative another probably more sweeping amendment and that would be that we would leave the whereas's in take everything else out and put in something along these lines, that owners of any sort of business or place of employment would post a sign indicating that they either allow smoking in all or some of it's facility or they don't.

Mayor Coody: That's different than convert to smoking.

Alderman Rhoads: No, I said that's in the alternative, in other words what that would do Mayor is that whether you're a factory, small business, restaurant, or bar all you have to do is to post a sign indicating that you allow some smoking or smoking in some part of the facility or all of the facility or you don't and that way people could walk up to your business and see that sign and say you know what I don't think I want to go in there because I don't want to be around smoke or I don't mind I will go in there.

Alderman Davis: Now Robert if I understand what you're saying your first amendment is more or less a red light green light situation is that correct?

Alderman Rhoads: That's right.

Alderman Davis: What is your verbiage that you would like to have?

Alderman Rhoads: My verbiage was the owner or the manager would post a sign indicating that after the kitchen closes and I think it should be specific as to what time the kitchen would close that there is allowed smoking in smoking sections or wherever he wants to have smoking and whether that's 9:00 or 8:00 or 10:00 as long as he posts a sign that gives people fair warning.

Alderman Davis: You need a second on your red light, green light and I will give you a second on that so we can discuss it.

Alderman Rhoads moved to have the owner or manager post a sign indicating that after the kitchen closes smoking would be allowed. They would need to indicate what time the smoking would be allowed. Alderman Davis seconded.

Mayor Coody: Well we could do that or we could just do a motion and a second.

Alderman Thiel: You are saying do away completely with the ordinance we already have?

Alderman Rhoads: Yes. That was my second one.

Alderman Thiel: We have a pretty good ordinance as is.

Alderman Davis: Well he has to get a second for that one for discussion.

Alderman Thiel: You've had a second?

Alderman Davis: No, he has a second on the red light, green light to where the business owner decides to put up a sign when the kitchen closes.

Mayor Coody: I would like to get all the amendments out and then we will go down the list one after the other and do the motions and seconds and just do them all one at a time.

Mayor Coody: Bob did you have anything else?

Alderman Davis: Not at this time.

Alderman Rhoads: I have a motion and a second on the first one. I also put a motion up on the alternative for eliminating the ordinance and posting signs. I wonder if I could get a second on that one.

Alderman Rhoads moved to post signs that the establishment is smoking, non-smoking or some combination and replace our existing ordinance with that. Alderman Reynolds seconded.

Mayor Coody: Shirley did you have anything else?

Alderman Lucas: No.

Mayor Coody: Lioneld?

Alderman Jordan: No I don't believe so.

Mayor Coody: Does anyone have any other amendments that they want to bring forward right now?

Alderman Rhoads: Well, I am not sure what the procedure should be because it seems whatever we decide, let's say we take some of these amendments or we take that final one that was just motioned and seconded at the end of all of that I think you could still entertain a motion, I guess I want to get a ruling on this, you can entertain a motion that this all be taken before the people.

Alderman Marr: What's left?

Mayor Coody: Let's find out where we are first.

Alderman Rhoads: I am asking a parliamentary question here.

Mayor Coody: Here is the way I picture this, that we go through here, we won't know what the final outlook of this thing is until we find out what amendments are going to be added or subtracted. I think at that point if some one wanted to make a motion to do something with the entire ordinance whether it's to vote it up or down or send it to a vote of the people it would be appropriate at that time, once we get these hammered out where we know what the whole ball of wax looks like, does that make since.

Alderman Marr: Could you go through who has the motion and who has the second on each one of these please?

Sondra Smith:

1. **Code Compliance from Enforcement: Thiel and Reynolds.**

2. **Add a Smoking Room for Employees: Thiel and Reynolds.**
3. **Common Kitchen: Davis and Reynolds.**
4. **Five or Fewer Employees the Business is Excluded: Davis and Rhoads.**
5. **Owner or Manager to Post Smoking after Kitchen Closes Signs: Rhoads and Davis**
6. **Eliminating the current ordinance and post signs if smoking is allowed or not: Rhoads and Reynolds.**

Mayor Coody: I'm confused, the one about the whereas's and leaving everything else out.

Kit Williams: That is posting a sign only; it is not taking everything else out just posting a sign.

Alderman Thiel: But that is repealing our current ordinance.

Kit Williams: I think that is what he indicated, repealing the current ordinance and posting signs only.

Alderman Thiel: Anything we do here is repealing our current ordinance basically.

Kit Williams: Replacing the current ordinance with whatever ordinance that you come up with.

Mayor Coody: All right first let's do the smoking room in businesses for smokers. Is there any other discussion on that item?

Alderman Thiel: Can I just read that one more time? An enclosed smoking room with a ventilation system that ensures its air is not commingled with non-smoking areas of the building may be provided by a business for its smoking employees use and shall not be considered a place of employment for purposes of this section.

Alderman Rhoads: I am wrestling as to how to proceed as far as my voting and I guess I have some fundamental concerns about all of this and so to just water this thing down, I am not sure that is the appropriate thing to do or not. I hear the people and I take their comments very serious that indicate that we have been elected to make decisions and we want to know how you feel on the subject. I feel obligated to indicate how I feel on the general proposition and then I will probably vote against all of the amendments, well I don't know I will just have to kind of walk through this thing and then try to decide. At the end of the day we are going to vote on if the people are going to get a chance to see this and so I am not sure what the people should be voting on when they get it, that's the predicament that I'm in. Can I have another minute or two Mayor? I don't do this very often and I apologize in advance, I realize it's getting late. I have a personal opinion about smoking; I have an opinion that comes from the hundreds of contacts that, I like everyone else have received and I have an opinion that is formulating as I hear my fellow Council members speak. On a personal front, I saw how three packs a day gave my father emphysema and how emphysema ravaged his life, I have wrestled with smoking in my life as well, so from a personal stand point I've seen what it does and I know that second hand smoke is not a good thing, I know this is a health issue. I also appreciate all of the people on the side of the issue that believe that we should ban smoking, some of the people that have come up to me personally I've known and respected for a long time and some are new people that I have never met and they've made good sense to me and I know their hearts in it. I don't look at necessarily the fact that this is going to tear this City apart, the fact that there is a disagreement, yes there are some people that have probably gotten a bit catty and maybe as we discuss this further maybe we'll do the same but I hope not, but at the end of the day I think we will be able to do what's best for Fayetteville on this issue and many issues to come. I personally respect Don and Shirley for bringing this up. It was being discussed and a number of people were probably approached about bringing it up and again I appreciate the fact that they had the guts to bring it up and they have taken some grief for it, hopefully they are thick skinned. I guess I'm not convinced by the statistics, I don't think the statistics carry the day for either side

whether its health statistics or whether its economic statistics. What I have given the greatest weight to are the people that have come to me that you all have heard up here that indicate "I am not a smoker, I don't like smoking, however I have a real concern about the government taking away the rights of individuals and business owners" and that to me is the argument that is strong and loud. People say that if we pass an ordinance that further bans smoking we will prove to the world that we are a progressive city and I don't know if your progressiveness is measured by the number of ordinances that you pass, to me its pretty darn progressive when you have 110 facilities that are non-smoking and that you have facilities like Hugo's and others that are going non-smoking when you have entertainment venues that are deciding that this particular concert event is going to be non-smoking, when they do it on their own free will because they are listening to the marketplace, that is progressive, that means your voices are being heard and to me that measures progressiveness considerably more. I also have difficulty trying to understand if there really is a movement amongst the service workers, I've talked to a number of them whether its bars or restaurants and as I have talked to the owners and I haven't talked to the service people, the waiters and the bartenders, in front of the owners, I have talked to them by themselves and I don't see any sort of movement to speak of that they feel they need someone to protect them so I have difficulty following that line of reasoning. When it is all said and done I will vote for allowing business owners to make their own decisions and hopefully the marketplace will be a further prompter of these people to perhaps do things that I have heard so many people ask them to do. Lessons will be learned from this debate, this has been I think Joe called this a really rough summer, a long summer because of this issue, well it has brought this issue to a lot of restaurants and bar owners, attention and focus and I think that there are people that no matter how this goes will make changes in their business and that your voices will be heard and so that is a lesson that's learned. I think another lesson that will be learned is that when you have a ordinance that says that you should have a separate smoking section and you make people crawl through that smoking section to get to the non-smoking and you don't ventilate very well, you're not really doing your customers any service and so I think that is another lesson that's going to be learned. Mayor I appreciate you giving me a few minutes here.

Alderman Lucas: There are a few things I think we need to think about before we vote on these amendments and everything, to begin with the smoking ban is not new, we are just expanding on what a very brave group of people did 10 years ago and I know Robert may do away with it all tonight but anyway I think it's something that we need, it was not proposed to get the bars and the restaurants. I love to eat, I hate to cook, this is a health issue, even the tobacco companies and some people that are opposed to the ban that have spoken before us agree that environmental tobacco smoke is bad for your health. Smokers don't smoke in airplanes, malls, Razorback basketball games, at the malls and the Razorback games they take it outside. Smokers haven't stopped flying or shopping or going to the games even though they said, I can remember 10 years ago, well I just won't go to those any more. Those bans are protecting the health and safety of customers and workers so why is there smoking allowed in the restaurants and bars, are not the workers and customers of these establishments entitled to the same protection. People say we need it for the hospitality industry and believe you me I know that the hospitality industry is important in Fayetteville, but does this mean our hospitality industry is only for smokers, I hope not although I have been told over and over if you don't like the smoke don't come to my place. It has been mentioned that there are a equal number of smoke free restaurants, but if you look at the list of the 110 non-smoking restaurants, I think deli's and grocery stores are great but I think when you consider going out for a nice dinner, you don't go to a deli or a grocery store and there are a lot of those in that list of the 110. Again is that the kind of hospitality industry we want to tout. People's rights, for years it appeared that the majority smoked and the non-smokers as several people have told me we just had to tolerate it and now it's our turn. Then the information starting coming out about the bad health affects of second hand smoke, the non-smokers started speaking up, they got a table in the corner and as more and more demanded more the place got larger and now we have more non-smokers than we do smokers and maybe that's why this is important. A lot of people were still hesitant about complaining, I know I was, we had just been geared all these years that smokers by golly they could smoke and that was just an established fact and you just dealt with it. There are a lot people that have come to me and have called me that are not members of these groups that has brought this before us, they're getting

braver now because these people did bring it forward and did bring this information forward and so they now are being braver and saying yes this smoking ban needs to be done. Smokers have told me that when they go into a place they request the non-smoking section because they prefer to eat where there is less smoke, so when Don Marr asked me to cosign it, it was a no brainier especially since I am a nurse and I have seen a lot of results. I have seen how one persons smoking can affect other people and the bad health affect it has on all people, young and old. I new it would be a struggle, you're messing with people's addiction, I was a former smoker, I know. People must realize that we are not trying to stop their smoking, just take it outside. In an ideal world people would be considerate of each other, a smoker would realize that maybe the people to the table next to them would like to enjoy their meal without the smoke, so in an ideal world this wouldn't have to be, people would be considerate of each other, but that is not happening. Actually this could save businesses a lot of expense because they wouldn't have to have the more powerful ventilating systems so who knows they might be able to lower their drink prices. We must remember that it is simply their smoke that's not what we want and for the safety and health of workers and customers, we needed to pass this in its original form, with that said it seems that bars were what the people most wanted protected. I was willing to compromise and exempt the bars, in order for this to pass I did not push for parks although I wanted them and since one was vehemently against it and to avoid more delay because the others thought they needed to talk about it, I sure didn't want any more delays on this, so I withdrew that. A number of people have expressed no referendum with my tax dollars to pay for it and so we were elected to make tough decisions and we need to make this decision for the safety and health of the citizens.

Kit Williams: There is a couple of different ways to dot the I's Mayor procedurally. There is one overriding amendment that's right now on the floor and that is the amendment made by Alderman Marr to go to the short version, I think that was the version that basically everybody had agreed to at the ordinance review committee, if you want to pass on that and then you consider everyone of these other amendments to amend the short version and see which ones pass and which ones do not. You could go that way if that would be the Council's desire.

Mayor Coody: So we have a motion and a second already to approve the short version of the ordinance.

Kit Williams: This is just the amendment to do that, this is not voting on the ordinance. You just need to have a vote on this amendment to go to the shorter version as I read it.

Mayor Coody asked shall the amendment pass.

Upon roll call the amendment passed unanimously.

Mayor Coody: Smoking lounge, smoking place in businesses that would not be considered a work area for smokers. How do you have that worded?

Kit Williams: An enclosed smoking room with a ventilation system that ensures that its air is not commingled with the non-smoking areas of the building may be provided by a business for its smoking employees use and shall not be considered a place of employment for purposes of this section.

Mayor Coody: We have a motion and a second on this. Shall this amendment pass?

Upon roll call the motion failed 3-5. Aldermen Davis, Reynolds and Thiel voting yes. Aldermen Marr, Rhoads, Lucas, Jordan and Cook voting no.

Mayor Coody: Removing Code Compliance from the enforcement list.

Kit Williams: It would just be the first sentence in sub-paragraph E-1 which currently states City Code Compliance Officers are empowered to issue citations for violations of this section, that sentence would be removed.

Mayor Coody: Shall this amendment pass.

Upon roll call the amendment failed 3-5. Aldermen Davis, Reynolds and Thiel voting yes. Aldermen Marr, Rhoads, Lucas, Jordan and Cook voting no.

Mayor Coody: The next one is share a common kitchen.

Kit Williams: It is not just share a common kitchen, but it is also all the language that Alderman Thiel wrote about an enclosed separate entrance, separate ventilation to ensure the air is not commingled and adding a sentence to that which would state that use of a common kitchen between a restaurant and bar would not change the definition of either one. I will get better language if this passes.

Mayor Coody: Shall the amendment pass.

Upon roll call the amendment failed 3-5. Aldermen Davis, Reynolds and Thiel voting yes. Aldermen Marr, Rhoads, Lucas, Jordan and Cook voting no.

Mayor Coody: Businesses with five or fewer employees exempted.

Kit Williams: It would be under the definition of place of employment, it would be another sentence which would state, businesses with five or fewer people shall not be considered a place of employment for purposes of this ordinance.

Mayor Coody: Shall the amendment pass.

Upon roll call the amendment failed 3-5. Aldermen Davis, Reynolds and Thiel voting yes. Aldermen Marr, Rhoads, Lucas, Jordan and Cook voting no.

Mayor Coody: Convert to smoking after the kitchen closes, the red light, green light.

Kit Williams: Basically I had already provided wording at one point to the ordinance review committee so that would be the precise wording, it would be basically when a manager, except it wouldn't have the time that I had in there, so it's when a manager posts a sign that the kitchen has closed the restaurant bar area becomes a bar.

Mayor Coody: Shall the amendment pass.

Upon roll call the amendment failed 1-7. Aldermen Thiel voting yes. Aldermen Marr, Rhoads, Davis, Lucas, Jordan, Reynolds and Cook voting no.

Mayor Coody: Signage to go smoking or non-smoking or some combination thereof.

Kit Williams: This would repeal the current ordinance and replace it with a requirement that the owner/manager would post a sign about whether his business or workplace is smoking or non-smoking or a combination.

Mayor Coody: Shall the amendment pass.

Upon roll call the amendment failed 2-6. Aldermen Rhoads and Reynolds voting yes. Aldermen Marr, Davis, Lucas, Jordan, Thiel and Cook voting no.

Alderman Jordan: Mr. Mayor I want to change my vote, I want to reconsider a vote that I made, I voted against the amendment on the Code Enforcement Officer and I change my vote to a yes.

Kit Williams: You can move to reconsider that issue.

Alderman Jordan: I would like to move to reconsider that issue.

Mayor Coody: So you voted, how did you vote on that?

Alderman Jordan: I voted no.

Mayor Coody: How was the vote on that 3-5?

Kit Williams: He just wants to move to reconsider that.

Alderman Cook: Seconded.

Mayor Coody: Shall the motion to reconsider pass.

Upon roll call the motion to reconsider passed 7-1. Aldermen Marr, Rhoads, Davis, Jordan, Reynolds, Thiel and Cook voting yes. Aldermen Lucas voting no.

Kit Williams: It will be a new vote whenever you get there.

Mayor Coody: So the question is to remove the Code Compliance and it failed earlier so we'll ask the question again.

Alderman Marr: Can we have some discussion from Alderman Jordan and Alderman Thiel about why we think that should not be in there.

Alderman Jordan: The reason I reconsidered that, I think the Code Enforcement people are strapped with a heavy enough workload as it is without adding policing the smokers in restaurants and that is the only reason that I have. I just think its too much of a work load for them, I think they are going to be out and supposedly checking to make sure codes are being enforced in the City such as trash in the yard and grass too high and things like that and I think that will be a large enough job for them and I think we only have three Code Enforcement Officers in the City and that is basically why I reconsidered my vote.

Alderman Thiel: I would just like to point out we have three officers but only two would be able to enforce this because one of those is paid out of the HUD funding and only can work in the target area and I think there is only one restaurant in the target area. The reason I brought this forward is not only because of their work load but I think it would be confusing to the public as to who to contact, plus they do not work at night, I think a lot of the violations of this would occur at night and they would not even be available to do this, unless we want to start paying that division overtime, so I felt very strongly about having Code Enforcement Division not a part of this proposal.

Alderman Marr: When I originally thought about the language of that in this ordinance I didn't think of it about extending their hours to the night or adding staff to it, but should they be out during the day, it was my

understanding from the City Attorney that in order for them to have any opportunity to issue a citation if the City wanted them to, it would need to be listed within the ordinance, so that if for some reason maybe they are out in the middle of the day and someone had a complaint and we wanted an alternative other than the police department, if the Mayor thought that, that needed to be or if the police department thought that needed to be that is why. I am certainly not opposed to taking it out if the Council thinks that, that's going to be a big issue. I didn't look at it as charging them with the issue, but giving them the authority to do it should we need them to do it.

Alderman Thiel: I think the way the verbiage was in the ordinance they were placed first above the police officers and the original verbiage in the original ordinance was just fine, the Mayor basically it's his responsibility to assign. We've gotten into a definition now of the enforcement which I'm not opposed to that, but the original ordinance did not specify that.

Alderman Marr: I support that the Mayor is charged with executing this but it was part of the original draft given him the authority to do whatever he believes as the administrator of the City to do.

Kit Williams: He does have that duty by State law no matter what we say he is charged with the enforcement of all the ordinances, but of course he delegates that. The only difference would be as Alderman Marr said is before he could delegate enforcement of this ordinance to anyone but the police you would have to put it in here.

Mayor Coody: Since this would be my responsibility I have no argument with taking code compliance officers out because I wouldn't be assigning them to this job anyway. I think the word authority was used and I think that if this passes and we do have a problem with a troublesome situation I would rather send police to deal with it than the Code Compliance Officer who wouldn't have the experience or probably the self confidence it might take to deal with belligerent or possibly belligerent situations so I wouldn't be using Code Compliance folks anyway. So we have a motion to reconsider to remove the Code Compliance.

Kit Williams: At this point it would be up for the vote again; it has already been reconsidered so now the amendment to remove it would be up for a vote again.

Mayor Coody: **Shall the Amendment to remove Code Compliance pass.**

Kit Williams: The amendment would be to strike that language.

Upon roll call the amendment passed unanimously.

Mayor Coody: Is that the last one, is that the last amendment that we have listed.

Kit Williams: Yes that is the last one that has already been moved and seconded.

Mayor Coody: So now we get down to brass tacks, the question before us now is the ordinance as a whole whether we are going to pass this or what.

Alderman Rhoads: Mr. Mayor, what we have before us is whether to pass it as a Council or to pass it for the people to vote on it.

Mayor Coody: That motion has not been made.

Alderman Rhoads: If we vote here as a Council Mr. Williams and I have heard a number of people on both sides of the issue say that no matter how its voted its going to go to a public vote because there will be

enough signatures that it will be voted on. What is the difference between the City Council putting it to a referendum verses the people getting a petition signed putting it to a referendum as far as cost to the City, timing or anything else, or for that matter how it would read.

Kit Williams: I think the only true difference would be the effort that would be required to get the number of legitimate Fayetteville voters to sign which I think is about 3,000. It's 15% of the total number of people that voted in the general election for the office of Mayor at the last general election and the timing because if in fact the City Council voted to refer it to the vote of the people in the same ordinance at the same time that can be done with a vote of five aldermen to do that or four aldermen and the mayor. It takes five affirmative votes to pass any ordinance whether it's a referral to the vote of the people or whether it is just a regular ordinance. If it is passed as a referral to the vote of the people tonight I am pretty convinced that there is only one legal date that the special election could be held because of recent laws that have been passed and that would be November 11th, the second Tuesday in November. If on the other hand a simple ordinance was passed and the people were opposed to that ordinance, then they would have 31 days to collect about 3,000 signatures, they would then turn the signatures over to our City Clerk who would have the duty to verify that these were in fact legally registered Fayetteville voters. Once she had done that then it would be encumbering upon the City Council to set the date for the special election, you would have again about the same 60 to 90 day window at that point that you would have right now in order to set a special election, it would have to be on the second Tuesday of some month and the cost for a special election would be the same.

Alderman Rhoads: So would that be before or after November 11th?

Kit Williams: It would certainly almost be afterwards, I can't image that even if they had the signatures tonight it would take a bit of a time for our clerk to go through them all, so as early as it possibly could be is December and more likely it could push it into January, I am not sure, it would be either December or January.

Alderman Rhoads: If we pass the ordinance and someone got the signatures to take it to a referendum would that vote be then to merely repeal what we had voted on and therefore if the referendum was successful from that stand point you would end up with no law on this?

Kit Williams: No it would be to repeal this entire ordinance that at this point does two things it repeals our current ordinance and replaces it with another one. So the referendum would undo what was done tonight.

Alderman Rhoads moved to take this to a referendum. Alderman Reynolds seconded.

Alderman Thiel: You didn't get all the clarification that I wanted from Kit about if this ordinance passes because we have passed an ordinance they have 31 days in order to get the signatures. If this ordinance fails, is that the same amount of time that the Coalition would have to bring forward a repeal?

Kit Williams: No, there would be nothing to repeal and so they would have to go with what is called an initiated act sort of situation where they would have to have the same number of signatures. The proponents of the smoking ordinance could draft any smoking ordinance they wanted to, it wouldn't have to be what you all considered, but the election on that would not be a special election, that would be at the next general election. They have to have their signatures I think 90 days before the general election that would be a long time because that is more than a year away.

Alderman Jordan: I've done a lot of soul searching since this started, I have kept a tally of the amount of contacts that I've had since January and they have totaled to about 770 contacts. The votes have been about 407 in favor of the ordinance and 363 against. The easy thing for me to do tonight, the simplest thing and

probably the most politically smart thing for me to do is to vote in the referendum. The only thing that would keep me from doing that is basically me, because I have a certain set of core beliefs I go by and there is one thing that I go by it is a simple thing that I go by that some things are taught and some things are caught, now you can teach me a foreign language, you can teach me mathematics, you can teach me how to study the stars, hey you folks can probably teach me some social skills up here, but you can't teach me heart and you can't teach me courage, you can't teach me tenacity and you can't teach me leadership because that is in me, that is something I caught onto a long time ago, I don't know where, but I did and once you catch it, it is like an incurable disease it's with you the rest of your life and that's who I am and that's what I believe. I was elected and I ran on a platform that said I would be responsive and be responsible. My job is to demonstrate leadership in this City and a leader knows the way, shows the way and goes the way. I was elected to make tough decisions I know how uncomfortable they are for me and I will not leave by responsibility that I was elected to do to the people. I will cowboy up here tonight and do what I was elected to do and I am going to vote on this ordinance.

Alderman Davis: Mayor it sounds like we are all up here trying to tell the truths about why we are looking at this ordinance one way or the other. Personally there is no question as to the health issue; I think everybody up here can agree with that along with a lot of people in the audience agree with that also. You know on the Dickson Street improvements we spent about \$2.2 million dollars on that project so far and we probably are going to have some additional overruns that we may not have been aware of that may run another half a million dollars. I look at the city taxpayer dollars and had I known about this ordinance before we approved to spend those dollars on Dickson Street, I'm not sure I would have gone ahead and agreed to spend citizen's taxpayer's dollars down there on those particular projects. I have not been convinced yet about the economic situation on this particular ordinance, as you know we had a budget meeting about a month ago and in that meeting we learned that the administration is forecasting about 1 ½ % growth in our total sales tax revenue for next year, well I question those numbers. The reason is because one, currently we are seeing a lot of the local residents going to Rogers to go to the stadium seat movie theater and when most people go there they not only go to the movie, but they go to dine out restaurants and buy dry goods while they are there, on an average people spend between \$100 and \$200 when they go to Rogers and that takes money out of our economy, until we get a stadium seat theater in Fayetteville, I feel that trend will continue. I am one of those people that have the tendency to go to Rogers to the movies and not long ago I went to see a Saturday matinee and there were 10 people from Fayetteville watching the movie in Rogers and the majority of us went out and bought dry goods and ate dinner that night. I look at that and I'm going wow, if we decide to pass this smoking ban, not only are we the ones going to Rogers to watch a good movie in a good movie theater which Fayetteville right now does not have. We are also taking those people, the smoking clientele and asking them possibly to go else where, so not only do we lose those people that are going to a good theater, we are losing the smoking people that are probably going to have to go elsewhere also, so you are getting a double whammy there. Now, granted Dickson Street I feel like in time hopefully will recover, but we don't know, they have had a tough time for the last 12 months. The merchants I have spoken to on Dickson Street they have had a real tough time making it day to day and if all of a sudden we institute this ban it is going to make it a little longer for them to recover, sure it might rebound in 12 months or 14 months but my question is are we looking at having a brand new street that has a lot of curb appeal but you have boarded up windows, I don't know the answer to that. Some people I know are going to sit here and question those thoughts and that's fine, but I'm also concerned about the local ma and pop restaurant that might not make it and the individuals in those establishments that may lose their jobs. Like I mentioned some people aren't concerned about either one of my points and don't feel like either one of my points are factual but should they become fact and not fiction, the City then, when we are looking at street improvements would have to look at possibly increasing millages or other taxes or maybe a combination of both to generate enough revenue so we can provide our current City services possibly or we may be forced to have to cut back on services that we provide and I'm not sure the citizens want to see that, am I thinking too strongly here about the down side, I don't know, but I look at revenue and I look at dollars and cents and right now I don't see where we are seeing a lot of growth in the capital side on our revenue collections for

the City of Fayetteville. We have to make some changes to make sure that, that occurs, sure we may get a stadium seat theater sooner or later, but that may be 24 months down the road, who knows. I went to a restaurant the other night and my wife and I were sitting there and we had seen these people the previous Thursday night and we were poking fun at one another about this ordinance and they were telling me how I needed to vote for this ordinance and I was giving them a hard time telling them I really wasn't sure how I was going to vote, as we were sitting there this couple came in and they sit across the way and on our way out they wanted me to come over and talk to them and I did and they said you need to make sure you vote for this ordinance because we don't like to be in facilities where smoking is allowed and I looked at them and I noticed over in the corner there was a person smoking and I said what are you doing here there is someone with a cigarette over in the corner and the wife looked at me and said if you think that's bad you should have been here last week. I looked at them and said you mean you came back. That brings me up to Ms. Venema who was here a month ago and Ms. Venema made a very good comment, her comment was the people that were for this ban should just decide not to patronize restaurants that allowed smoking and I agree with that if you really believe and you want to make a change, don't go to those facilities that allow smoking and I've always felt that way, if you want change, do something about it, don't make laws and don't put things on the books because you feel like you need to go places that you feel like you can't go because you don't like what's there, just don't go there and you tell all your friends not to go there and eventually I guarantee you all those restaurants because the dollar is what makes them function and they will make the changes necessary to make sure they get your dollars. My family the majority of time we go to a non-smoking restaurant. Yes, there are 110 restaurants listed that are non-smoking and granted probably 74 of them are fast foods or deli's, but there are a great number here of good quality restaurants that my family and I go out to because we know it's a smoke free atmosphere and we enjoy that too. No one has ever forced me to go into a smoking restaurant, if I've decided to do that it was on my own ability because I wanted to go in there and yes I have walked into restaurants that were too smoky on a particular night and decided that we did not want to eat there. During this two-month debate every time I have gone into a restaurant whether I've had clients with me or my family I have asked the employees of the restaurant without the owner present what do you think about what the City is doing and not a one of them has told me we needed a change. When I have talked to them and gotten their opinion I have asked them to send another waiter or waitress over and let them express their views also. So, yes I have asked a lot of people in the business, not the owners, but the employees and I have yet to have an employee tell me we needed a change. I can't tell you about the bar side because I don't frequent the bars very often so I can't tell you about that but I can tell you about the restaurants.

Alderman Thiel: I am like Lioneld, I certainly am not afraid to vote on this I feel like it shows strength, I guess my question would be as to why we would vote on this because ultimately I am convinced it is going to be taken to a referendum. I feel like if they could gather in a weeks time 3,000 signatures, regardless if they are registered to vote or residents of Fayetteville, I think in 31 days they can gather enough signatures to put this on the ballot. It will prolong this whole debate because they will have 31 days and then it will be set for sometime in December or January, whereas if we set this as a referendum at this time it would go before the voters November 11th. I also believe that as controversial and the fact that this issue affects everyone I think people would be able to accept the decision and live with the decision of a public vote far more than they could nine people on this Council. Regardless of whether we vote this up or down I think it is going to go to a referendum it's just a matter of when and how soon.

Alderman Cook: We've gone too far down this road in my opinion to send it off to the people, I think the City Council should make the decision, I think the democratic process is in place, we should make the decision up or down and let the process go, which ever side doesn't like our decision then they will get a referendum on the ballot, that's the way the process is, it's already in place, but I really do think we should vote on it and make a decision.

Alderman Reynolds: Mayor we have had a good turn out on every session that we've had on both sides of this and I feel like the people on both sides have put up a good argument and I am like Brenda this thing is either going to go to the voters in November, December or January, so we might as well cut the chase and put it on November 11th, I'm for the referendum.

Alderman Rhoads: As we all have said we have all made many contacts, it is pretty darn even and everybody you talk to has an opinion wherever you go. Brenda's point about the fact that it will get to the voters quicker and I think we all agree that no matter what it's going to get to the voters and so it will get there quicker if we set that in motion and if it gets there quicker it will end it quicker. It is a big change, it's a big change in Fayetteville and I think if I owned a restaurant or a bar or any sort of business I would feel that the referendum is more like the market place speaking than the eight or potentially nine of us speaking so that is why I would encourage people to vote for the referendum.

Don Marr: If they don't know where I stand now.

Kit Williams: May I ask the mover if the motion was basically to adopt all the language that was in the short version that said to refer to the vote, because obviously it's not just a motion to amend but it's a motion to change the ordinance by not only adding Section 2 which is the section that refers it to the vote on November 11th, but also some wording in the title and in some of the other clauses, with the exception of the one part that had been taken out about the Code Compliance Officers.

Alderman Rhoads: That's correct.

Mayor Coody: So if this motion to send it to a referendum passes then there would be no change in our restaurants or anything until after the elections and then how long after the election, let's just assume for a minute that it would pass.

Kit Williams: Section 2 states just like the ordinance that it does not take effect until February 1, 2004 if it passes, if it doesn't pass then the current ordinance would remain in affect and it does remain into affect up onto the election.

Mayor Coody: Well obviously this is going to come down to a tie, which I have been looking forward to so much because I get to play dictator for a minute which is my least favorite job in the world and I have concerns, I am strongly supportive of this ordinance. I support it for several reasons, one reason is that I don't think we should base our economy on habits that people have that is bad for everyone's health, I think that every cigarette butt that we see thrown down on the sidewalks, on the streets that we have to go pick up was not put there by a non smoker. This is a fairness issue, I think that for too long the fairness has swung to the 25% of the people who smoke and the 75% of the people who do not smoke have had to suffer for the smoking habits of the smoking community. If everyone was as considerate as a lot of people are where they would just simply step outside to smoke they would field dress their butts and carry them in, we wouldn't be in this situation, this situation is a result not of the smoking habit but of those smokers who are totally inconsiderate of the majority of people who do not smoke and that's the problem. We've eliminated bars I think that was a good thing to do, I would go out to listen to more live music if there was a smoke free environment, my wife is allergic to smoke and I don't go out without her and she wouldn't go into an area that is filled with smoke and I certainly wouldn't enjoy it either. This whole thing has been blown out of proportion to a stupendous degree, to think that this is a plot that we are subcoming to right now is beyond comprehension as a start. I think that this is basically an issue that is coming not just to Arkansas but to the entire United States, so many cities and states have banned smoking in one form or another. I was the one that sponsored the smoking ordinance back in 1991 and we had much the same argument then. Everybody came out saying you're taking away my rights, my business is going to fail, and the world economy is going to collapse, nothing like that happened, as a matter of fact after about two weeks it was like it had always

been in place. There were a lot of restaurants, banks and groceries that wanted to keep their mouths shut about voicing any kind of opinion, but they let me know privately, as has happened this time, some very significant bar owners even though they are exempted they still support this but they don't want to be the prize of their industry here in town. I know you may disagree but I know whom I've talked to. I know that back 11 years ago when a lot of folks wanted us to pass a smoking ordinance but didn't want to be publicly in favor of it for fear of running off customers who smoke, they let the City Council pass it and even though the ordinance didn't take effect for 30 days, they put signs on their doors the following morning, saying smoking prohibited. Until 11 years ago you could smoke cigarettes in the produce section, you could smoke in the banks, and you could smoke anywhere in town you wanted to, that's unthinkable today, yet 11 years ago that's exactly how it was. The situation then was more radical because we were going from zero to having a smoking ordinance, all this does is take an existing ordinance and expand it one small step where basically restaurants goers who want to smoke are basically asked to step outside to do so. People have been in this building now for 5 ½ hours and I think there are a lot of smoker in here that have been able to take it. Eating in a restaurant usually takes 45 minutes maybe an hour, a flight across the country, going to church, going to the grocery store all of these are smoke free environments, I don't see this as a big see change in the way we do business. The draw back to our voting on this tonight and passing it straight up here is the dilemma that I face, that I want to see something good passed for the City of Fayetteville. The draw back to us voting on this tonight is the fact that if we vote on this tonight we have given ammunition to the anti ordinance forces to go out and say the government is determining your rights they are taking away your rights, your privileges and you need to stand up to the government, which is a whole different argument than the smoking ordinance. If this goes to a vote of the people then that argument is taken away and the government is not telling anybody anything against their will. This goes straight to a vote of the people and when the people speak then everybody's going to listen, of course it's also been said that if we give this to a referendum then big tobacco is going to come in and spend a ton of money on advertising. I fully expect that to happen too because tobacco came in 11 years ago and tried to get us to shut down the ordinance, they did it once, they tried a second time but we beat them a second time. I fully expect tobacco to come in and spend money on advertising this time but with a well orchestrated campaign of the truth not fear, that the whole world economy is going to collapse if Fayetteville passes this, that every business is going to go out of business, that everybody is going to go to Rogers because they can smoke up there, I don't believe that for a minute. I think there will be a wrinkle in time for maybe a few weeks but after that it's going to be business back to normal as usual just like it happened 11 years ago. I want to pass this thing straight up tonight, but I think its better for the long term Fayetteville if we pass this off to the voters, because if we pass this tonight there will be a referendum and there will be the battle cry don't let the government take your rights away. I think that is a bogus argument but that is the argument that's going to be made. Right now non-smokers have had their rights taken away and non-smokers are paying elevated health care cost to pay for the poor health of the smokers in the State of Arkansas. According to Blue Cross Blue Shield who does our City's insurance, 60 health care providers have left the state in the last five years because of two things low per capital income and poor health and there was two things about Arkansas's health that are bad, one is obesity, the second one, the stronger one, is smoking and because our per capital income is low and our health is low all of us non-smokers are paying elevated health care cost to subsidize the health care cost of the smoking community if you are in a group rate. Nobody is standing up for the non-smokers saying what about my rights to keep my money in my pocket and pay for my health care when I am trying to take better care of myself, those rights are being trampled by the smoking community and I don't think that's fair. If we are going to be talking about a fairness issue let's talk fairness on both sides, am I making myself clear on how I stand on this deal? If we vote on this tonight and we vote it up, I think in the long run it's going to hurt the movement because there will be that battle cry that is bogus, like I said, but it is going to be the battle cry none the less. If we send it straight to the voters I especially will be shot at for being weak and not a good leader. I think for the long run good health of this movement we need to let the people decide and the people who support this need to organize and go out and get people to vote for it if the majority of the people don't smoke and if the majority of the people want to see this happen then it will pass and when it passes then there

won't be this debate back and forth about well the government made us do it and we are going to thumb our noses at the government which I'm sure would happen if we just pass it tonight.

Kit Williams: If you want I could go ahead and read Section 2 which is the new section in which would be the affected part of this amendment so that everyone knows and I will have read that.

Alderman Marr: So Kit will there be two votes, one on this amendment and then one on the final.

Kit Williams: That's right. Section 2 would read that the City Council of the City of Fayetteville, Arkansas hereby refers to the people of the City of Fayetteville the above proposed ordinance repealing the current § 95.05 of the Fayetteville Code and enacting the new § 95.05 regulation of smoking in most public places for their adoption or rejection in a special election be held within the City of Fayetteville pursuant to Amendment 7 of the Arkansas Constitution on Tuesday, November 11, 2003.

Mr. Williams read the rest of the ordinance.

Mayor Coody asked shall the amendment pass.

Upon roll call the amendment failed 4-4. Aldermen Rhoads, Davis, Reynolds, and Thiel voting yes. Aldermen Marr, Lucas, Jordan, and Cook voting no. Mayor Coody chose not to break the tie. The amendment failed for lack of majority.

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

Mr. Williams read the ordinance.

Alderman Marr: Mayor I want to thank everyone on the Council for what you have endured, I know it hasn't been easy, I know you have taken a number of calls and for those of us that have work days and those of us that have things that are not related to work but in our personal lives I understand and I hope the public understands the amount of time you took for this issue and I thank you for that. I would like to thank the citizens of Fayetteville even those that are on the opposing side of this ordinance because I think as Joe Fennel talked about earlier tonight agreeing to disagree is okay and I certainly think that we will continue, as many of you believe this debate will end up probably at an election box one day. I want to thank our Mayor because I know how difficult it is when you have people coming before you and really having to struggle with your personal beliefs, your beliefs of representing other people. I think that it is just another example, while it might be difficult and someone may say well I won't vote for you again, because lord knows I've read enough of that about myself in the paper, you have to get comfortable with the fact that what you did was right and you believe in your convictions and if you lose because of that then you know that you took a step forward. I will certainly support you and I appreciate your vote. The other thing is this has always been about health, always been about health, Robert talked about he was most influenced by non-smokers who wanted choice and I can respect that, I have friends, I have restaurants that I go to, I have individuals who have told me, how can you tell us what to do when you don't want people telling you how to live your life and I can respect that, but I am more influenced by the physicians, I am more influenced by the medical information, I am more influenced by the fact that this is a step where we will be saying to the people we want to lower long term health care cost for Arkansas, we want to provide safe environments for everyone. Thirdly the economic impact, we talk about smoking clientele going elsewhere and I certainly hope that doesn't happen, I hope they will go outside and sit on a patio, but I think we also have an opportunity of inviting others to our community who seek non-smoking environments. I'm sorry for those people who don't think that this should have ever come forward, but I think that if one thing we learned in this debate is when you have the number of people talking about the things that they are talking about related to this issue then

we needed to debate it and we need to make a decision. If the people override us for those of you that are on the other side of this vote as we move forward, then that's how it will be, if the people support it then that's how it will be. I would encourage people who have learned anything through this process to get involved, because one thing I think no one can charge this group with is not being well studied, not being well researched and not looking at the information and while some people may not believe that I know that everyone has carried folders of pros, cons, tons of information and I think we are doing the right thing.

Alderman Davis: Don and Shirley once again I appreciate you all bringing this forward, it has been a very educational and a very lively debated topic. I want everybody to remember regardless of whatever happens tonight that I get the impression by talking to certain people that they think if we vote this up it takes care of the smoking situation, I beg to differ. What I see is you are examples to your children and whatever you do at home is what your child wants to imitate in most cases, to me that's where the smoking problem begins, it is not because someone is able to go to a restaurant at 18 years old and decide to light up a cigarette, that's not where the problem begins, the problem begins at home, and I think its up to you and us and each and every person that has children to make sure that our children do what we think they ought to and try to lead them in the right directions. Too many times we let our kids choose all the time and we don't always set the boundaries and that's where a lot of this occurs and these problems arise from so I hope that regardless of whatever happens here we don't always expect government to help us out and direct our children down the path. It is up to each and every one of us to direct our children down the path we want them to go.

Mayor Coody: With 44% of our children smoking in high schools we are not doing a very good job. One thing I want to add is the fact that, that is the main thing that we have to worry about is our young people starting to smoke because the industry needs them to start smoking and nobody in their 20's to 30's begins to smoke. If I were to ask all the smokers in the room how many are glad that you started and if you knew what you know today if you would start again, if you were a non-smoker I bet very few would say yes. The question is how many of you want your children to pick up the habit, very few would say yes to that too.

Alderman Davis: So many times I have seen on Dickson Street for instance mom and dads pull out a cigarette after they leave a restaurant or just walking down the street and they have their children there with them well that's giving them the idea that it's okay.

Mayor Coody: Also people have said they were smokers until they got tired of going outside to smoke realizing that it was just becoming less and less socially acceptable and that helped them quit and then they became better role models for younger people and they became healthier in turn. I want to see the most affective thing we can do to get something to happen, I don't know which is the best way to go, I think if we pass this up it may be a more dangerous route than sending it straight to the folks, and I think it may be more dangerous. I don't mind making the decision to support it, the only thing I don't like is by making the decision to pass this straight up, and in the long term it hurts the cause, that's what bothers me. That's the thing I am not sure about, I think we are taking a little bit more of a risk tonight by passing this straight up rather than sending it off to the voters, but we're going to count on those folks that want to see this substained to rally the forces when it comes time.

Alderman Lucas: I want to just say thank you Don for bringing this up. This has been tough and thank you all. I know you have gotten at least as many contacts as I have and its been a lot, but I thought this was a very important issue, a health issue for Fayetteville and I thought enough people had wanted it brought forward that we should do this and so that's why I agreed with Don to do this. Thank you all for all your input and everything, its been great, however this goes I still think that it is a health issue and it's coming, I had a email from my daughter today that the Louisville Kentucky Council the heart of the tobacco area is considering this, so it is coming however it goes today or in the next month or so and I thank you all.

Mayor Coody: On a personal note, I would like to ask all of us that have friends out in the audience for and against this issue don't jettison friendships over this one item of disagreement, it is very important that we maintain our friendships, that we maintain good relationships, that we maintain respect for each other, it is very important that we don't let this divide us. I've seen it happen before where we've had votes up here which severed long standing relationships and that's not right, we're better than that and I want us to maintain our good friendships and good relationships and I hope that those of you who are on the other side of the coin from those of us up here, bear with us on this and today's opponents are tomorrow's allies and we will be allies the next go around.

Alderman Reynolds: I don't know why we didn't enforce the ordinance we had. You have been around three years in November, why didn't we enforce what we had; if we had we probably wouldn't be here today.

Mayor Coody: It was not enforced for the years before I took office and to go back and start enforcing it after restaurants have been built without the enforcement would have been a nightmare to go back and do.

Alderman Reynolds: So that's where we are at tonight, a nightmare.

Mayor Coody asked shall the ordinance pass.

Upon roll call the ordinance passed 5-3. Aldermen Marr, Lucas, Jordan, Thiel and Cook voting yes. Aldermen Rhoads, Davis and Reynolds voting no.

Meeting adjourned at 10:50 PM

Sondra Smith
City Clerk