

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
March 16, 2010**

A meeting of the Fayetteville City Council was held on March 16, 2010 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Gray

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

Presentations, Reports and Discussion Items:

Nominating Committee Report:

Alderman Cook read the Nominating Committee Report.

Alderman Petty questioned why there was not a copy of the full application for the A & P Commission applicant.

Alderman Thiel stated that probably was not the applicant's fault but that is probably what the A & P Commission provided.

Mayor Jordan: We will look into that. We really don't have an answer right now.

Alderman Petty: Thank you Mayor.

Marilyn Heifner: He filled out the regular application form and I turned that into the City Clerk.

Alderman Petty: I saw that but it said a resume was attached and there wasn't one.

Marilyn Heifner: That was my mistake. There wasn't a resume it was just the application.

Alderman Petty: In looking over the application, Brandon for the reason you wanted to serve, you said to accomplish proposed ideas and that was pretty much the extent of the application. It would just be helpful when we are reviewing candidates to have more information than that.

Alderman Ferrell moved to approve the Nominating Committee Report. Alderman Petty seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

Agenda Additions: None

Consent:

Approval of the March 2, 2010 City Council meeting minutes.

Approved

Preferred Office Products, Inc.: A resolution approving a contract with Preferred Office Products, Inc. for the purchase through the current state procurement contract of five copiers in the total amount of \$73,033.00.

Resolution 44-10 as recorded in the office of the City Clerk.

Goodwin & Goodwin, Inc. Bid #10-18: A resolution awarding Bid #10-18 and approving a contract with Goodwin & Goodwin, Inc. in the amount of \$433,005.00 for construction of the Broyles Avenue gravity sewer line, approving a project contingency of \$45,000.00, and approving a budget adjustment of \$478,005.00.

Resolution 45-10 as recorded in the office of the City Clerk.

Redford Construction, Inc. Bid #10-19: A resolution awarding Bid #10-19 and approving a contract with Redford Construction, Inc. in the amount of \$893,640.00 for construction of the Broyles Avenue force main sewer line, approving a project contingency of \$90,000.00, and approving a budget adjustment in the amount of \$983,640.00.

Resolution 46-10 as recorded in the office of the City Clerk.

Alderman Petty moved to approve the Consent Agenda. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

Unfinished Business: None

New Business:

Amend Chapter 114.03 First Thursday Fayetteville: An ordinance to amend the Code of Fayetteville by enacting §114.03 First Thursday Fayetteville to authorize the Fayetteville Convention and Visitors Bureau to control the public parking spaces on both sides of East Street on the square and to close East Street to traffic from 4:00 p.m. until 10:00 p.m. on the first Thursday of the month.

City Attorney Kit Williams read the ordinance.

Julie McQuade, Community Outreach Coordinator briefly explained First Thursday Fayetteville. She stated after evaluating this event City staff felt like it would be more beneficial to the event if an entity such as the Convention and Visitor's Bureau, specifically that entity, were given permission to manage the event, especially since they have already have a similar ordinance for the Lights of the Ozarks.

Alderman Ferrell: I saw a lot of people there the couple of times that I was down there. It sounds like it is a pretty good deal.

Alderman Lucas moved to suspend the rules and go to the second reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-0. Alderman Cook was absent during the vote. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the third and final reading. Alderman Lewis seconded the motion. Upon roll call the motion passed 6-0. Alderman Cook was absent during the vote. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Petty: Julie, you said that the City was not able to provide resources if a private entity managed this event, is that right?

Julie McQuade: That was the determination with internal staff discussions when we were evaluating all the options.

Alderman Petty: So how did you justify providing resources when it was being organized by two private galleries?

Julie McQuade: It was actually being organized by City Administration and the Convention and Visitor's Bureau. We were the overseeing entities last year and then there were downtown merchants and others that assisted with the planning of it.

Alderman Petty: Kit can you clarify? Is that true that we cannot provide resources to private entities?

City Attorney Kit Williams: I think that we provide resources all the time to private citizens and other entities and we provide parking for our citizens. The Planning Department approves building permits for private entities. We can't go out and work for a private entity individually, but if a private entity comes to the City and says, I would like to see a festival or something else can you help, I don't think the City has to say no. The City Government can help its citizens and local businesses if they have an idea to do something. I don't think that it would be improper for the City to have assisted in the formation of this festival.

Alderman Petty: I just wanted to clear up the record because I think people need to know, potential organizers, that the City can provide resources whether they are a for profit or non profit entity. I think we should be there to help them.

City Attorney Kit Williams: There has to be a public purpose, but I think there clearly is a public purpose in this because it is for our citizens and to also help the economic vitality of our downtown square and the businesses around it. I think that is a good public purpose that we can devote resources to.

Alderman Lewis: I would like to commend all the volunteers that have put so many hours into developing this program to get it to the point where it could become official. I appreciate all the work that has gone into it.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-0. Alderman Cook was absent during the vote. Alderman Gray was absent.

Alderman Lucas: I want to thank Julie McQuade. She has worked on this a long time. Several groups have worked on this and I am so happy to see it happen.

Mayor Jordan: When we got through the Fayetteville Forward a group of artists came into the office and said we have an idea. They said we will volunteer time to make sure that First Thursday works and they did. Shirley Lucas was involved in that. There were lots of volunteers. Julie did a great job. This has been successful and greater than anything that we could have imagined.

Ordinance 5307 as Recorded in the office of the City Clerk.

Amend Chapter 114.02 Farmers' Market: An ordinance to amend §114.02 Farmers' Market by allowing an extra hour of operation (until 2:00 p.m.) on Saturdays and to allow operation from 4:00 p.m. until dark during First Thursday Events.

City Attorney Kit Williams read the ordinance.

Julie McQuade: They have asked that this item be tabled.

Mayor Jordan: I would like to table this for two weeks.

City Attorney Kit Williams: We can just leave it on the first reading.

This ordinance was left on the First Reading

ADM 09-3413 Amend Title XV (Hillside/Hilltop Overlay District): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 167: Tree Preservation and Protection, Chapter 169: Grading Plan Submittal and Chapter 173: Building Regulations in order to strengthen the provisions of the Hillside/Hilltop Overlay District Regulations.

City Attorney Kit Williams read the ordinance.

Karen Minkel, Director of Strategic Planning and Internal Consulting gave a brief description of the ordinance. She stated this is more of a clarification for staff and members of the public. She stated staff recommends approval.

Alderman Lewis: Can you talk about staff time? I don't think it will add to staff time but can you clarify that?

Karen Minkel: That is correct, it would not. You would be looking for the stamp of a licensed engineer or architect.

Alderman Petty: I have a question about the process the engineers might use to sign off on a foundation, without engineering it, in a place that would not require it how would they so that? Would they look at the soil maps?

Karen Minkel: No they would be physically going to the site itself. That is one of the reasons we are proposing this because it is site specific.

Chris Brown, City Engineer stated the first step would be a site visit. You would have some test pits or something done so that you could see the soil where the foundation would be placed. An engineer can determine if there is a problem. They can see that the soil is suitable for a foundation and then sign off and say the City's standard foundation would be satisfactory. It is basically a matter of stamping the City's standard design and submitting that as part of the

permit. If they do determine that there are some iffy soils then they would do additional investigating and do a geo-technical analysis and proceed on with the full design.

Alderman Petty: In fuller detail how do they look at the soil? Do they have to do a full soil classification?

Chris Brown: You can just do a visual inspection. There are tools that can be used for on-site inspections that would not require any geo-technical analysis.

Alderman Petty: When I was talking to staff about the same intent, everywhere there are expansive clay, the main thing that was going to take staff time in developing that ordinance was, coming up with additional specifications that the City might have for places with compromised soils. This solution that we came up with here, where we have an Engineer go out and a soil classification is not really needed for exemption seems pretty elegant to me. It has me wondering if that would work, then maybe we do not need to develop those rigorous specifications, and that would reduce the amount of staff time required to develop that other ordinance.

Alderman Ferrell: With each step, from the soil testing and to whatever other action that needed to be taken, there would be an additional cost to the developer or builder wouldn't it?

Chris Brown: Yes.

Alderman Thiel: I think that has always been the argument about having engineered foundations on hillsides. We have ordinances already in place to protect the homeowner and the adjacent properties from harm that might occur if the property slides. This is one more thing in place. She explained what the Ordinance Review Committee discussed when forming the ordinance. She stated there were two members in favor and two opposed to this at that time. She stated you try to protect homeowners from making mistakes that cost them in the long run and affect other people.

Alderman Lucas: One of the things we heard from people whose homes had slid was they were buying the home suspecting that in a few years it is going to start sliding. That was one of the things we were looking at.

Alderman Lewis: Chris, the City Engineers do not go out and look at this, it is the hired engineers that look and they say you are going to need more special conditions for the foundation or not. The seal is of the engineer or architect is that correct?

Karen Minkel: That is correct. We had a lot of discussion about soils and whether you have potential for a failed foundation. I just want to mention that on our website you can look at the Hillside/Hilltop Overlay District and you can also go to the Natural Resource Conservation Services website and they have soil maps which is an additional resource that the public can use.

Fran Alexander, a citizen stated had this been in place several years ago when Mission Hills was built my mothers house would not be coming down the hill above it. She went on to speak

on how the shifting affected the area and continued to speak in favor of the ordinance. She stated soil needs to be in a whole different ordinance and I urge you to help the citizens.

Alderman Petty: Karen, I asked you to find any foundation failures that impacted other adjacent properties because I felt like we were mixing intentions. Did you ever find any failures?

Karen Minkel: We can't find anything that says conclusively that this caused this to happen partly because the Hillside/Hilltop Ordinance was enacted in 2006 and prevented some of the other contributing factors to how a foundation might fail and affect other properties. When you see the failure you can find correlations but we can't determine cause in any statistical way because we do not have all the data.

Alderman Petty: We all know erosion can create foundation failures but do you think it is likely that foundation failures create the kind of erosion that moves the street?

Chris Brown: I don't know how that would happen.

Alderman Petty: I just want to establish that this is about protecting homeowner's investments and has little to do with environmental protection. The bulk of the environmental protection ordinance that was passed in 2006 has to do with the excellent tree preservation that went into it. I just want to make sure that everyone understands that foundations are not something that causes the kind of damage that affects other properties.

Chris Brown: Typically a foundation failure does damage to the house that it's holding up. We have not seen extreme failure.

Alderman Lewis: The reason I care about this is for future homeowners who have purchased a home and lenders, realtors, and brokers are not required to talk about the foundation. This is saying please hire an engineer and look at this area because statistically it is highly likely that there maybe foundation troubles in these areas.

Alderman Ferrell: It is not a plea but a mandate right?

Alderman Lewis: We are saying that in these areas in order to have a building permit issued you need to have the engineers sign off on it.

Alderman Ferrell: I understand the intent of the ordinance. I think the City is placing itself between the property owner and the discretion of the property owner with a mandate that might or might not help property owners and or their ability to afford to build a home. It is pretty expensive to have an engineer come out and look at something.

Mayor Jordan: Karen, do you have any idea what it might cost to have something like this done?

Karen Minkel: It costs several hundred dollars to come out to your site. It could go either way. You could find out that you have poor soil and you need significant engineering work on your foundation. In that case it does cost additional money to build the home but in our view you are saving money for a failed foundation in the future. The engineer might come out and say your soil is fine and the builder might have been planning on over engineering on the hillside. That could potentially be a cost savings.

Alderman Thiel: Adella supports this. She wanted to vote on this but she is not here tonight. We have discussed this quite a bit and I would like to move forward.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Petty: I would like to hold it on the second reading. Based on what was said tonight, about having an engineer go out there and having that be a low cost option in certain cases where the soil is not bad, if we put that into my alternate legislation that we were looking at before, that takes away almost all the staff time that was going to go into that. I would like to talk with staff and see if we can move the overlay map forward since that would be the only remaining piece of that.

Alderman Thiel: My concern with that is you are talking about a city wide ordinance. I may support that at some point in time. The Hillside Hilltop Overlay District, just the District itself, was worked on for months. I feel like there was a lot of public input and public knowledge about what we were doing. We made compromises and we worked with them. I feel something that would affect the entire city or a large part of it needs to have a lot of public discussion. It is much more encompassing than this ordinance is. We have an established overlay district. The other idea is something that can be done totally separately and should be looked into. It is not something that can be considered in two weeks.

Alderman Petty: It is not city wide it is just where the clay soils are which is exactly what this is. The whole reason for doing this is that in our Hillside District 75% to 80% of it is clay soil. Everyone knows that clay soils are bad. Pulling a map together is not a problem and we could copy the language out of this. I don't think it would take very long to put that together as long as we do not have to do the City specifications for foundations which was going to be an intensive process.

Mayor Jordan: Karen do you think you could get that pulled together in two weeks?

Karen Minkel: If we were to use this methodology staff could draft an ordinance but I don't think we would be prepared to make a recommendation within two weeks. There is more than one issue to be looked at. What Alderman Petty is talking about is an expansive clay soils overlay district that would impact approximately 50% of the city. One of the determinations that would need to be made is the buffer that you would add to the soil data that we currently have.

Staff would also want to look at in terms of recommendation what we would be comfortable recommending for a methodology that affected 50% of the city.

Alderman Lewis: I agree with Brenda but I respect the intent that you are talking about Matthew. Looking into the soils and what is going on citywide is a good idea. That is a lot of work and it is more than just clay, it is different kinds of soils and it is going to take a lot of research. There are public meetings that need to happen on that. I would like to move forward with this but I think that is an additional project for staff that will take a significant amount of time.

Alderman Petty: Jeremy when we last spoke about this you said that you guys had decided a buffer of 10 feet around the soil borders would be appropriate. Does that recommendation stand and are you confident in it?

Jeremy Pate: Not at all, that is just one number that we have thrown out as a potential buffer. We also threw out 50 feet. It is really the fine grain versus the coarse grain of what the soils map shows us. It is a really a broad brush stroke. So determining how fuzzy that line is is certainly something we want to look at. That line can be several lots wide or a subdivision or street width wide. Understanding that is something that deserves a little more time.

Alderman Ferrell: Did you say that Adella had interest in this?

Alderman Thiel: Yes, she supports this and was actually the one that asked staff to bring this back forward.

Alderman Thiel moved to suspend the rules and go to the third and final reading. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: I want to commend Alderman Thiel who has worked on this since 2005. I supported it then and I will support it now if I have to vote. I agree with Alderman Petty. I think we do need to look at the expanded soil study but right now we have the Hillside Ordinance before us and we need to vote on it and then look at the other. I promise we will look at it and bring some type of plan back.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 5-2. Alderman Lucas, Lewis, Thiel, Cook and Petty voting yes. Alderman Rhoads and Ferrell voting no. Alderman Gray was absent.

Alderman Lewis: This is something that came out of Fayetteville Forward as a request.

Ordinance 5308 as Recorded in the office of the City Clerk.

Annexation of 99 Acres: A resolution to express the intention of the City Council to accept the annexation of approximately 99 acres when detached by the City of Johnson and to enter into various proposals and agreements with the City of Johnson.

City Attorney Kit Williams gave a brief description of the resolution. He stated it would be committing both cities to work together to resolve this detachment annexation issue that has been a problem for us north of the Van Asche extension. This is north of where we would build Van Asche Boulevard into the mall. That particular 99 acres would be detached from the City of Johnson and annexed into the City of Fayetteville. The City of Fayetteville and Johnson would agree to a sewer contract which we have never had with the City of Johnson. He explained the current water and sewer contract issues. He also explained the current lawsuit and what the passage of this resolution would do.

Alderman Petty: What happens if we do not approve this?

City Attorney Kit Williams: The suit will go forward. There are portions of these 99 acres that are not involved in the detachment suit so they would not be detached from the City of Johnson, but it certainly is in your power to say you do not want to provide sewer there.

Alderman Petty: I support it and I think it is a good idea.

Alderman Ferrell: If citizens or property owners in one of the cities petition the other city to be annexed today, before this is done, what is the law today?

City Attorney Kit Williams: They would not be able to detach from the city they are in unless they ask that city for essential municipal services that the other city cannot and will not supply. That is the primary reason the current landowners would be successful in detaching from Johnson and annexing into Fayetteville. If we enter into this agreement then that argument will be gone because we will now be providing sewer service to Johnson citizens and so they would not be able to use the lack of municipal services ever again to be able to involuntarily detach from Johnson. There is a provision in this that Johnson wanted that states in the future we would only do this by agreement with the Johnson City Council, which we have done with Farmington and Springdale in the past. Even without that because there would be no essential services that were not being provided they would not have a legal right detach.

Alderman Ferrell: So we have other agreements with other cities.

City Attorney Kit Williams: We have exchanged territories with Springdale and Farmington in the past through this simultaneous detachment and annexation.

Alderman Ferrell: If this is passed it will be different, than it is today, having to have permission from both municipalities.

City Attorney Kit Williams: Are you talking about a property owners leaving?

Alderman Ferrell: Yes.

City Attorney Kit Williams: It will be different than today because today they would actually have a right to leave Johnson because sewer service is not being provided. In the future they will not and we will also have a resolution saying we will not do that.

Alderman Ferrell: You are saying we have that same understanding with Farmington?

City Attorney Kit Williams: Since we provide sewer service to Farmington then no property owner there could attempt to leave without the Farmington City Council's permission. They are having the essential services provided by Farmington therefore they would not have a good legal cause to detach without Farmington's permission.

Alderman Ferrell: My primary concern was Fayetteville but it sounds like it is alright. The \$35,000 payment is a one time payment?

City Attorney Kit Williams: It is a one time payment and it should be a wash. We would be annexing in businesses that would be paying sales tax to us.

Alderman Lewis: You mentioned taxes do you mean property taxes?

City Attorney Kit Williams: If for all purposes it is brought within the City of Fayetteville.

Bob Caustrell, resident of Howard Nickell Road spoke on behalf of his Property Owners Association and stated this is a great idea but he expressed his concerns with the context. He stated my purpose here is to request that when the Master Street Plan does come up for revision that you please take our neighborhood out of the interior by-pass.

Alderman Cook: I am going to support this but I have two issues. One is obviously annexation but the other is water and sewer services. I don't like pushing our services outside the city limits. My concern is long term cost associated with the water service.

Alderman Lucas: I am in favor of this and I am hoping that you all will support this.

Alderman Lewis: I am also going to support it but the thing that has helped me support it is that we were already providing water and sewer to that area. Is that correct?

David Jurgens: That is correct.

Alderman Lewis: We are already maintaining those services in that area.

David Jurgens: That is correct, there are parts of that in the southern portion of Johnson that do not have development or water and sewer service but we have been providing water service to part of that for over 100 years.

Alderman Lewis: And we have capacity?

David Jurgens: Yes ma'am. The largest sewer line that we have in our system is there and the largest waterline that we have in our city is there as well within just a few hundred yards of the city limits.

Alderman Lewis: The zoning of this is R-A?

Jeremy Pate: Automatically when annexations come in the zoning is typically R-A.

Alderman Lewis: It's the property owners that would initiate a zoning change if that were to occur.

Jeremy Pate: That is typically the case.

Alderman Lewis: And that would have to come before the Council?

Jeremy Pate: Yes, all zoning changes must be made by the Council.

City Attorney Kit Williams: Keep in mind that for these particular land owners there was an agreement by the City Council to zone the property north of Van Asche into commercial but that would be the logical thing anyway. A Council can't totally tie the hands of another Council, but there is another one that was passed in 2008 where the City Council said we would not go forward with the Van Asche extension until the land was annexed into the city.

Don Marr: This is a resolution that means you are going to see multiple items coming before you. You will see zoning and the actual contract terms of this. This is just giving staff authorization for further detail and negotiation of the contract. Some of these items, like the \$35,000, right of way acquisition for Van Asche, and items that are in the City Attorney's memo, will come before you as additional considerations. It gives guidance that it is our intentions to proceed in those areas and that's what we're looking for related to this.

Mayor Jordan: I want to thank City Attorney Kit Williams for helping us on this. I asked him when they came to us to negotiate this and he did an excellent job.

City Attorney Kit Williams: Thanks Mayor.

Alderman Ferrell moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed 7-0. Alderman Gray was absent.

Resolution 47-10 as recorded in the office of the City Clerk.

Amend §35.40 of the Fayetteville Code: An ordinance to amend §35.40 of the Fayetteville Code to require organizers of festivals using public property for over two days to ensure its vendors will comply with Health and Tax Laws and to publicly account for revenues received and expenses paid.

City Attorney Kit Williams read the ordinance.

Alderman Petty: There are really only two things that changed from the previous ordinance. The first one is where it said festivals lasting longer than two days, before it said Bikes Blues and BBQ. The second change is in Section F there is an addition to ask the long festivals to open their books so we can better account for tax collections and assess the economic benefit.

Alderman Lewis asked Paul how this would affect our accounting of this.

Paul Becker: All I can say is that if this passes, they will be required to report revenues and there is no way of actually auditing that. So we would have to take any report at face value. I don't know that it would audit anything. It would give information as far as revenues created but there is no way of auditing that or directly tying it back 100%.

City Attorney Kit Williams: I'd like to point out to the Council that the original ordinance involving Bikes, Blues and BBQ really came at the encouragement of Bikes, Blues and BBQ organizers and City staff. It was directed at trying to ensure that their vendors would actually be more likely to pay state sales taxes. They are not responsible for doing any thing but going around and picking up the envelopes. The state sales taxes which are paid are all private. We can't know how much it is. We can't know what's in that envelope. We felt along with Bikes, Blues and BBQ that going around every night attempting to pick up these envelopes was a way to try to better collect the sales taxes that should have been paid by the festival vendors. Bikes, Blues and BBQ worked with the city to do that and have done that now since this ordinance passed. I think they were in favor of that ordinance and worked with the city to do it. As Alderman Petty has said this basically just extends that to any other festival that would be using city property for more than two days.

Don Marr: Sharon Crosson our Parking and Telecommunications Manager who processes these special event permit requests said one suggestion that came up was the wording in these to either look at consecutive days or to talk about certain events. With it being two or more days the way that it is written currently, our question is would First Thursday fall as that, would Lights of the Ozarks fall as that, events where we have multiple days but not consecutive days in terms of some of these relationships. That's one thing we would like to discuss as a part of this ordinance as well.

Alderman Petty moved to amend the ordinance to state two consecutive days. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

Alderman Ferrell: The way it's laid out it appears there are not a lot of changes, but the way I read it its kind of in codes and my perception is there is a lot more work. In this community where we are trying to welcome festivals, I think this could turn us into a ghost town of festivals if this ordinance is passed. I think consideration of this ordinance sends a negative message to potential new festivals who will have to hire a comptroller for not for profit festivals. If it is felt necessary to do any adjustment to the ordinance we currently have I think a good idea would be to get input from the festival organizers, the Visitor's Bureau, and the Chamber of Commerce

before we enact legislation or amend legislation. I think we have really tried to put our best foot forward in establishing a festival friendly community. I think the more work that is done requires more staff time and I can not support this.

Don Marr: In the effort to be all honest here, even on the Bikes Blues and BBQ, on Item C where it talks about the taxes at the end of each day's operation we have been doing that in city staff on the days that the event is receiving revenues. Even though it's a multi-day event we're not collecting items at the end of every single day. We're collecting them on Friday and Saturday of their major retail activities. So they are operating on the day they set up without staff going by and collecting envelopes. We can change that but again we might be going out and doing that and have nothing to collect.

City Attorney Kit Williams: This is how the current ordinance reads.

Don Marr: I do understand that is how it currently reads. I guess my point is that the parking lot closes prior to Bikes, Blues and BBQ and we're not collecting items because there are no sales on Monday. It's a set up day.

City Attorney Kit Williams: If that's correct and there wouldn't be any required sales and use taxes to collect and this wouldn't be effective for that. It says at the end of each day where the vendor remits all required sales and use taxes so if there are no sales then there's no Sales and use tax. You wouldn't have to do it.

Don Marr: As long as that's the clear interpretation.

Alderman Thiel: Does the Bikes, Blues, and BBQ organizer collect the tax or does the city? I understand Kit earlier say that the organizers.

City Attorney Kit Williams: They originally said they were going to do that. I'm not sure if that's what's happening now.

Alderman Thiel: I'm asking for clarification if staff has to do this then how much time staff is spending to do this.

Sharon Crosson, Parking and Telecommunications Manager: For Bikes, Blues and BBQ the organizers are collecting the tax from the vendors. That is the only festival that we have right now that has other outside vendors wanting to come in as a transit merchant. Multiple merchants do not fall under the Bikes and Blues umbrella. The first year the ordinance passed those merchants were very reluctant to turn over their state sales tax money to an event organizer that was not their event organizer. The state sales tax code from the State of Arkansas said whatever event producers they fall under, which would be in that case the City of Fayetteville, because we issue their Transit Merchant License. We decided to take city staff to collect just the extra ones that came in. We have about 50 of those. The Parking Staff is going with a uniformed Police Officer on those days to collect those taxes for those that fall outside the Bikes, Blues and BBQ vendors.

Alderman Thiel: Is that all the time? Those aren't regular hours or are they?

Sharon Crosson: On Friday they are regular hours and Saturday they are not.

Alderman Thiel: I'd be curious to know if we are actually coming out ahead on this. We don't have any way to determine.

Don Marr: Remember we're not opening the envelope. We're doing nothing more than collection and making sure they get sent to the state. So there is no way to account for that particular time versus the actual collection envelope. Some merchants who are in business on an on-going basis turn in their reported revenue with the regular reporting. So you're not even collecting those because they report them with their normal monthly or quarterly reports.

Alderman Thiel: Thank you Sharon.

Nelson Driver, Executive Director of Bikes, Blues and BBQ: We don't collect transit merchant tax. We collect Bikes Blues and BBQ vendors only. On average we have 130-150 different vendors that fall under that, out of that probably close to 50% of those already currently have an Arkansas State Sales Tax permit. They don't remit to us but directly to the state.

Steve Butler, Butler Broadcasting: I shutter the thought of having to put an accounting system together to track a charity event that is for the community that people seem to like. Does this mean if we do a two day event for Springfest we have to go through all this?

Alderman Petty: If it is more than two days.

Steven Butler: If we set up on Friday, and do a free concert on Friday, Saturday, and Sunday, then we will have to go through this rigmarole.

Alderman Petty: As it's currently written that is correct.

Steve Clark, President of Chamber of Commerce: Thank you for giving me the opportunity to appear here tonight. We recognize that the City has a right to regulate business so long as there is a rational and reasonable connection to protecting the health, safety, and welfare of the citizens of our community. With regard to this ordinance, on its face it is devoid either in specifics or in generalities as to a concern of the safety, health, or welfare of our City. There is no diminished need identified from statistical data, or empirical data, or even anecdotal data. This seems to be based on an arbitrary decision that business participating in festivals that last more than two days are going to be subject to regulation that's based on nothing other than we just chose this arbitrarily. That alone frightens business. A lot of the businesses that participate are local businesses and that arbitrariness of such an ordinance frightens them. They don't know if the next time this Council meets that there will be an ordinance offered that will either go to one day or a day and a half or some other provision that might be added.

The other thing that is a concern to businesses is it was mentioned there is not much change to the recommended language and from our prospective that is just not correct. The existing

language uses the word "should" legally, that is a word of suggestion, the proposed ordinance uses the word "shall" and that is a word of mandate. There is a great difference between a suggestion and a mandate. The "shall" not only takes what is arbitrary but that arbitrariness compelled to be applied really strikes fair in the heart of any reasonable business person. The thing that really drives home to me is that this ordinance on its face does not give an existing business person any notice of what is expected of them with standards that are easily defined. There are a number of definitions of what a day is and what festivals are. When you start looking at mandating something and commanding shall as the language rather than should you are significantly changing the level of the playing field.

This ordinance on its face ignores the Fourth Amendment rights and protections of privacy that businesses enjoy. The standard that is being imposed says these businesses will become your agents. If the festival is over two days and you are the festival organizer and that festival has businesses that function under its umbrella that festival organizer becomes the City agent to make sure these actions that are mandated are done and completed in a timely fashion. The ordinance is devoid of what a timely fashion is or any explanation of how this should be done. For most businesses there is an enough risk in doing business without asking to be someone else's servant or agent. There is no appeal process. You are asking a business to take a risk they are not willing to take. This could open the City up to litigation. I do not believe it would be wise policy for this Council to adopt this ordinance as it is presently being offered. Its unstated presumption is that business people act illegally. I urge you to vote no on this ordinance and its consideration.

Alderman Petty: The Bikes, Blues and BBQ Board supported the ordinance that is on the books now when it came forward. I just want to make sure I understood your points correctly. Would you be in favor of repealing what is on the books now because it requires the same collects for Bikes, Blues and BBQ specifically?

Steve Clark: I would not but I didn't come here to represent Bikes, Blue and BBQ. I came here to represent businesses. I am concerned about the mandate that makes businesses the agents of the City.

Marilyn Heifner, Fayetteville Advertising and Promotion Commission: I've been doing festivals since 1994. The Health Department regulates the food for any festival therefore I see that position in the ordinance as unnecessary. It is a state law for the promoter of a festival to collect the sales tax at the end of each day and to turn in a list to the state of those vendors that they have so I see no reason for that in the ordinance. I guess the elephant in the room is to turn in the revenue and expenditures. Many of the successful festivals in Fayetteville are run by non-profit agencies. There are some that are run for profit by promoters and our citizens, like softball tournaments, Lights of the Ozarks, Solar Splash, and a lot of biathlons. All of those would be affected. Sometimes I think that with the things we already have in place maybe it's just a little too much government involvement in individual promoters business. What would be gained by this ordinance? I can't see that there is anything to be gained except we will be running out of Fayetteville some very successful festivals that we have now. I would urge you to not pass this ordinance.

Alderman Petty: Marilyn did the A&P Commission hold a vote on this ordinance before you came to speak tonight.

Marilyn Heifner: No.

Alderman Petty: Have you spoken with any of the festival organizers that you mentioned with the exception of Bikes, Blues and BBQ about this ordinance?

Marilyn Heifner: I haven't spoken with Bikes, Blues and BBQ about this ordinance.

Alderman Petty: Nor any of the other festivals organizers you mentioned?

Marilyn Heifner: No.

Alderman Petty: I have. I spoke to the Bikes, Blues and BBQ Board in the fall of last year and asked to see their books and they refused. Every other organizer I've spoke to said that's not a problem, we already maintain books we would be stupid not to maintain a balance sheet and we would have no problem letting you see that.

Marilyn Heifner: What does the City Council gain from looking at their books? Are you going to deny them the opportunity to bring that festival here?

Alderman Ferrell: Alderman Petty, how many organizations did you look at the books of?

Alderman Petty: Two.

Alderman Ferrell: Out of how many?

Alderman Petty: I know two festival organizers personally and asked them if they would have a problem showing the City government their books and they said no, absolutely not.

Alderman Ferrell: Would you mind telling us who they were?

Alderman Petty: I would but they asked me not to betray their trust.

Alderman Ferrell: Okay, thank you. Yet we're trying to mandate that we would have the ability to go in and look. That seems rather inconsistent. I'm going to vote against the ordinance.

Alderman Petty: I want to address some of these things. I think the point that was made earlier that we are going to run people off with this is a red herring. I don't think that's true. I think you look at something as small as Springfest, even they maintain a balance sheet. I would be surprised and appalled if they did not. It's the same with any festival. It's just a matter of being willing to provide it. Anybody who runs an \$800,000 festival maintains books. It's not a big deal there. I guess with regards to privacy that was brought up, I just want to make sure everyone understands that we are talking about looking at the books of the organizers not the

books of every vendor that comes through. I want to make sure every one is clear on that. We are just talking about festival organizers.

Alderman Lucas: I really don't see what advantage the city would have to look at these people's books. We're just happy to have festivals that come to Fayetteville and bring people that spend their money. So I'm very much opposed to this ordinance.

Alderman Rhoads moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third and final reading. Alderman Lucas seconded the motion.

Alderman Thiel: There are parts of this that I'm not opposed to. The only difference between this and the one that Bikes, Blues, and BBQ already complies with is section F. As far as requiring that vendors remit their taxes that is an issue that came up with Bikes, Blues, and BBQ. We felt that we were having a problem so we dealt with it by passing an ordinance. I would suggest to Alderman Petty that maybe he go back to the drawing board or possibly make an amendment to remove "F". I think there are positives, if you work with the Chamber, and define the amount of days for a festival. I think that there are some things in this that are good.

Upon roll call the motion passed 7-0. Alderman Gray was absent.

City Attorney Kit Williams read the ordinance.

Alderman Petty asked City Attorney Kit Williams if he was comfortable with the language.

City Attorney Kit Williams: The current code has five "shall's" in it, no "should's". It's all "shalls", just like all ordinances are because they are not encouragements, usually they're requirements. I don't think that any person would be made an agent of the city. We are requiring vendors to do things. We are not saying you are our agent. However, we did work with Bikes, Blues and BBQ with the last ordinance in order to make sure we had an ordinance that they were happy with as well with what City Council wanted. From a purely legally point of view, I think the City Council has the power to do this if you want to. It's a policy decision about whether or not you want to do it.

Alderman Petty I think "F" needs to be in there, because we are giving ten's of thousands of dollars to multi-day festivals. Any multi-day festival that is going to get that kind of support from us no matter whom it is. I think there is a principle of transparency in there that we need to follow. I think it's fair to see those kinds of books because we are giving them so many resources.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 1-6. Alderman Petty voting yes. Alderman Rhoads, Ferrell, Lucas, Lewis, Thiel and Cook voting no. Alderman Gray was absent.

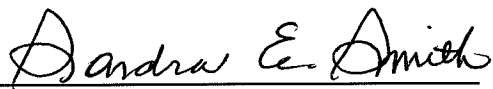
The ordinance failed.

Announcements: None

City Council Tour: None

Meeting adjourned at 8:10 p.m.


Lioneld Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer