

**Aldermen**

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

Mayor Lioneld Jordan  
City Attorney Kit Williams  
City Clerk Sondra Smith



**City of Fayetteville Arkansas  
City Council Meeting Minutes  
May 18, 2010**

A meeting of the Fayetteville City Council was held on May 18, 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 Gray, Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.**

**Pledge of Allegiance**

**Mayor's Announcements, Proclamations and Recognitions: None**

**Presentations, Reports and Discussion Items:**

**Mayor Jordan** pointed out that there have been some adjustments to Consent Item #7.

**City Attorney Kit Williams** briefed the Council on the changes and the additional documents that were received.

**Alderman Cook** announced the Board and Committee vacancies.

**Agenda Additions: None**

**Consent:**

Approval of the May 4, 2010 City Council meeting minutes.

***Approved***

**2010 Community Development Block Grant (CDBG):** A resolution amending the 2010 city budget by approving a budget adjustment to recognize a 2010 Community Development Block Grant revenue increase of \$55,208.00.

*Resolution 79-10 as recorded in the office of the City Clerk.*

**Animal Services Donation:** A resolution amending the 2010 city budget by approving a budget adjustment to recognize animal services donation revenue for the first quarter of 2010 in the amount of \$11,050.00.

*Resolution 80-10 as recorded in the office of the City Clerk.*

**Arkansas Recreational Trails Program Grant:** A resolution expressing the willingness of the City of Fayetteville, Arkansas to utilize Federal-Aid Recreational Funds.

*Resolution 81-10 as recorded in the office of the City Clerk.*

**2010 Bulletproof Vest Partnership Grant:** A resolution authorizing the Mayor to apply for a 2010 Bulletproof Vest Partnership fifty percent matching grant through the U.S. Department of Justice in the amount of \$18,200.00 for the replacement of twenty-five body armor vests for the Fayetteville Police Department.

*Resolution 82-10 as recorded in the office of the City Clerk.*

**Justice Assistance Grant (JAG):** A resolution authorizing application for a 2010-2011 Justice Assistance Grant (JAG) for federal and state funding in the amount of \$167,586.00 and \$33,517.00 respectively, for the primary funding source of the 4<sup>th</sup> Judicial District Drug Task Force.

*Resolution 83-10 as recorded in the office of the City Clerk.*

**2010 Federal Emergency Management Agency Assistance Grant:** A resolution authorizing application for a 2010 Federal Emergency Management Agency Assistance to firefighters grant in the amount of \$360,000.00 to purchase a specialized fire apparatus for the Fayetteville Fire Department.

*Resolution 84-10 as recorded in the office of the City Clerk.*

**Arkansas Power Electronics International (APEI):** A resolution certifying local government endorsement of business to participate in the tax back program{The Consolidated Incentive Act of 2003, Ark. Code Ann. §15-4-2706(D)}

*Resolution 85-10 as recorded in the office of the City Clerk.*

**Kearney National/Cooper Power:** A resolution authorizing purchase in lieu of condemnation proceedings authorized in Resolution 52-10 and approving a contract for the purchase of land adjoining the Fayetteville Executive Airport-Drake Field from Kearney-National, Inc. through an

assignment from Cooper Power Systems, LLC, in the amount of \$218,907.87, including applicable closing costs, as part of the Runway 16 Safety Area Improvement Project.

***Resolution 86-10 as recorded in the office of the City Clerk.***

**Alderman Thiel moved to approve the Consent Agenda. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.**

**Unfinished Business:**

**Amend Chapter 72 (Nonconsensual Towing):** An ordinance to amend Chapter 72 Parking Regulations of the Fayetteville Code to enact regulations for nonconsensual towing of vehicles within the Entertainment District Parking Zone. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

**Alderman Lewis moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.**

***City Attorney Kit Williams read the ordinance.***

**Don Marr,** Chief of Staff stated our consultant is going to give you some information on national towing rates and things that you talked about at the last meeting.

**Chris Pecoraro,** Parking Consultant referenced two resources, Towing and Recovery Administration of America and Tow Partners which is an industry group that shares their data as far as rates and fees go. He stated we came up with data for national averages based on their online documents. He continued to discuss their findings.

**Alderman Thiel:** Did you break that down to nonconsensual tows?

**Chris Pecoraro:** They do not break it out as nonconsensual or consensual on those sites. They are giving their average rates for a tow. Their rates are very close to what we have offered in our ordinance. He continued to describe the rates.

**Alderman Lewis:** What is a heavy duty versus light duty?

**Chris Pecoraro:** That is an RV or larger vehicle.

**Alderman Lewis:** So an SUV or pickup truck is still considered light duty?

**Chris Pecoraro:** Yes.

**Alderman Ferrell:** What is the discerning factor on 4-wheel drive?

**Chris Pecoraro:** There is some consideration, depending on if it is a vehicle with locking hubs versus non locking hubs, and the age of the vehicle. There is a consideration there that might require dollies or a different type of wrecker to be used.

**Lee Dancer** with A & B Towing expressed his concerns with nonconsensual towing and the proposed amount. He explained the current procedures that they are operating under. He asked the Council to stick with the same pricing as the current contract.

**Alderman Thiel:** The price range we are talking about here is not out of the way and in fact in some cases it is what some businesses are already charging. This has been an issue and if it requires regulations then so be it. Now that we can do that I feel strongly that we should move forward with this. I support it.

**Alderman Lewis:** I understand that with a nonconsensual tow there would be additional staff time but we are proposing \$60 and on the national average that is on the upper end. To me we are saying that we are taking that into consideration. Also what is the \$80?

**City Attorney Kit Williams:** That is if there is a parking lot for customers or residents. The \$60 only applies to paid parking lots.

**Alderman Lewis:** The \$80 is beyond the national average and beyond the Midwest and the South, even on a smaller scale it is higher than the average.

**Alderman Petty:** I agree with Alderman Thiel. I think the legislation as it is currently drafted is pretty good. I think we should leave this on the second reading just because we have so much going on in this whole push for parking. I would prefer that we deal with it all at once.

**This ordinance was left on the Second Reading.**

**Amend Chapter 72 (§72.18 Residential Parking Permit):** An ordinance to amend Chapter 72 Parking Regulations by enacting §72.18 Residential Parking Permit Program for Entertainment District Parking Zone. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

**Alderman Petty moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion. Upon roll call the motion passed unanimously.**

**City Attorney Kit Williams read the ordinance.**

**Sharon Crosson,** Parking and Telecommunications Manager gave a brief description of the ordinance. She presented the Council with two parking options to offer the residents in the entertainment district. The first option is to offer guest hang tags for the residents. We proposed having two guest tags per dwelling that would be validated with the renewal of their residential permit. The second option is to offer 30 passes per dwelling that the resident could use whenever they choose. She stated the options might address the issues that were presented by the public at the last meeting.

**Alderman Thiel:** The 30 passes would be good for one time.

**Sharon Crosson:** They would get 30 passes electronically.

**Alderman Thiel:** It seems to me that they would rather have 30 as opposed to two.

**Chris Pecoraro:** The 30 would have a date marked on them when they are used. They would self expire based on use electronically or by penciling the date on them.

**Alderman Marr:** What we are asking you to do in the amendment would be that the language is general enough that it allows the city to modify and implement a guest pass program. He went on to further explain the options.

**Sharon Crosson:** The advantage that option 1 would have over option 2 is essentially you would have 60 passes per month because you could use those two hang tags every day of the month but you can only use two per day.

**Chris Pecoraro:** We are looking at flexibility so we can address all the residents' needs.

**Don Marr:** What you will see in the ordinance is the implementation of the guest pass program.

**City Attorney Kit Williams:** Under Subsection "H" of the handout I gave you it sets the goals to accommodate the needs of both residents and businesses and allows implementation to the Administration. This is brand new and it may need to be tweaked as it goes along.

**Alderman Petty moved to amend the ordinance by adding Subsection "H." Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.**

**Julie Dorrow** with the Dickson Street Neighborhood Association stated I would like to meet with the residents to see what they think but I think it is a good compromise.

**Alderman Lewis:** In addition to the fact that we will address this again in two weeks to me it is looking at the method and the neighborhood appreciates that there is a method being proposed to deal with this. The specifics wouldn't come until later.

**City Attorney Kit Williams** read the proposed Subsection "H."

**Upon roll call the motion passed unanimously.**

**Mayor Jordan:** I had Kit draft up free parking for 70 CC's or less on motor bikes and then the bicycles would be free as well.

**City Attorney Kit Williams** explained the new definition in Subsection "B" and provisions to Subsection "E" that were created per Mayor Jordan's request.

**Alderman Rhoads:** Can we change high mileage to high efficiency?

**Alderman Thiel:** Fuel efficient.

**Mayor Jordan:** Okay.

**Alderman Ferrell:** On the designated areas is there a guess on how many of those there would be?

**Don Marr:** We do not have a specific number but we are looking at there being bike and scooter and smaller designated motorcycle parking which would have fees tied to it designated in both on-street and in the lots. We would allow spaces for all three of those. Two of those would be non charged spaces.

**Alderman Lucas:** If someone with a motorcycle wanted to park in a parking spot could they pay?

**Don Marr:** They can if they pay the rate.

**City Attorney Kit Williams:** The ordinance reads they would not be ticketed but they would have to pay the whole rate.

**Alderman Lucas:** In #2 it says they are prohibited from parking in standard on-street parking spaces.

**Don Marr:** It should not say that.

**Mayor Jordan:** We should fix that.

**City Attorney Kit Williams:** We will just strike that and still keep them off the sidewalks.

**Alderman Rhoads** moved to adopt the proposed amendments to Subsection "B" and "E", to change the language to state "fuel efficient" and also removing the portion in #2 prohibiting motorcycles from parking in standard on-street parking spaces. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed unanimously.

**The ordinance was left on the second reading.**

**Amend Chapter 72 (Electronic Payment Station Program):** An ordinance to amend Article III Parking Meters of Chapter 72 Parking Regulations by changing its name and adding provisions for an electronic payment station program for paid parking lots and paid on-street parking and for other reasons. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

**Alderman Petty** moved to suspend the rules and go to the second reading. **Alderman Gray** seconded the motion. Upon roll call the motion passed unanimously.

**City Attorney Kit Williams** read the ordinance.

**Sharon Crosson** gave a brief description of the ordinance. She stated there were no changes from the previous discussion other than the location of one of the revenue machines.

**Alderman Lucas:** Is that on Maple?

**Sharon Crosson:** Yes, only one side of the street there is parking and we feel that the three that are on Lafayette can be spaced out better and better utilize the funds for those machines.

**Missy Darwin Kincaid,** Director of Development at The Walton Arts Center and resident of Ward 1 spoke in favor of the ordinance and stated this will even the options out for parking.

**Jeff Gearhart,** resident of 533 N. Razorback Rd. and Walton Arts Center Board member spoke on the current parking issues and went on to speak in favor of the ordinance.

**Bill Rogers,** resident of Ward 1 spoke on the plan and stated the fees are reasonable and fair. He also spoke in favor of the ordinance.

**Ryan Epp,** Co-owner of a business on Dickson spoke on the current parking issues. He asked if the Council had any ideas to help with employee parking.

**Mayor Jordan:** We are offering some discounts to employees are we not?

**Don Marr:** The lots that are being designated here are not the lots that we are giving discounted parking to employees in. The discounted parking for employees is a 90% discount in areas that are remote from the downtown street. Those locations are still being worked out. If an employee wants to park next door to the place they work that is considered more prime parking and they would be charged as any other customer would. There is a parking permit program for individuals who want to pay and do the monthly parking program within the Walton Arts Center from 7 a.m. to 4 p.m.

**Alderman Rhoads:** In Mr. Epps situation his employees might have to park three blocks away but they might also get an 80-90% discount to whatever the parking would be. So it really would only be three blocks walking which is an incredibly short walk.

**Ryan Epp:** I am not sure that my employees are going to want to walk that every morning.

**Alderman Rhoads:** I think that is a change that has to come to Fayetteville. I think I am more apt to ask people like your employees to change a little.

**Ryan Epp:** Has the City done a survey asking people if they would be willing to pay for parking?

**Mayor Jordan:** Not that I am aware of.

**Alderman Lewis:** Does your business have customers that come to it?

**Ryan Epp:** We are a salon/spa and they make their appointment and drive in just for us. We don't get a lot of traffic so we market our business to where people come to us. He went on to speak on why he chose this area for his business.

**Alderman Marr:** Many businesses who built locations in this area are required by our code to have a certain amount of spaces for the type of business that goes into the location. Many of the businesses at the time chose to use shared parking agreements rather than to provide that parking.

People have utilized free parking that will no longer be free that was not designed to be the parking for their business but to be general public parking. He went on to speak on discounted parking and the options that they have considered.

**Vina Hyde**, board member of the Walton Arts Center spoke on the student participation at the Walton Arts Center. She also spoke on the current parking issues and she stated I hope you will support this plan.

**Calvin Bay**, a volunteer at the Walton Arts Center expressed his concerns with the current parking issues. He spoke in favor of the ordinance.

**Andy Gibbs**, resident of Ward 3 and member of the Walton Arts Center Council spoke in favor of the ordinance and thanked the Council for their efforts to deal with the issue of parking to make it more accessible and to continue to support the Walton Arts Center and Dickson Street.

**Janet McMullen**, resident of Ward 4 read a few excerpts from the letters that she previously sent to the Council. She expressed her concerns with paid parking and stated I am strongly opposed to the ordinance.

**Bill Waite**, resident of Ward 3 and Dickson Street business owner spoke in favor of the plan and stated it will generate revenue that will help to build long needed additional parking.

**Steve Butler**, a business owner expressed his concerns with the ordinance. He asked if anyone has explored a shuttle or pilot program.

**Mayor Jordan:** I think we are looking at some shuttle busses aren't we?

**Sharon Crosson:** Yes, I would like for everybody to keep in mind that this is the first step of many to come. In the past cities that were growing had a minimum requirement on parking and the number of spaces they were required to have. Cities today are now having a maximum because in your downtown area we do not want to use up all the land for surface parking spaces. That is a thing of the past so we need to have a maximum on surface parking lots in this area. That is the only way the Business District is going to grow is if we use the land for businesses rather than surface parking.

**Steve Butler:** The parking garage downtown, is that paid parking or free parking by the Town Center?

**Sharon Crosson:** That is paid.

**Steve Butler:** I will pay for shuttles for four different events to see if it is feasible to help out. Who would I need to talk to about doing that?

**Mayor Jordan:** Probably Sharon.

**Steve Butler:** I will get together with her and we will see how that goes. He went on to discuss it further.

**Don Marr:** There is a significant amount of free parking still available in the Dickson Street area. He spoke on future efforts to educate citizens about free parking.

**Alderman Lewis:** Can you put in perspective the distance?

**Mayor Jordan:** It takes 11 minutes to walk from my office to the Walton Arts Center.

**Alderman Lewis:** Wasn't there a comparison done or something.

**Don Marr:** I don't know that we have the actual distances from each of these lots but we do conduct surveys annually that look at how many spaces are occupied, etc. We see the demand because in peak periods the lots are full. He continued to discuss the current parking lots.

**Alderman Lewis** stated this was about perception and not really distance.

**Don Marr:** Sharon just told me we do have that and we will get that to you before the next meeting.

**Steve Clark,** President of the Fayetteville Chamber of Commerce spoke in favor of the ordinance. He stated this comprehensive plan is very important for the vitality of our existing businesses and the attraction of new businesses.

**Cheryl Wallet,** business owner on Dickson Street spoke on behalf of her customers and spoke against the ordinance. She expressed her concerns about the affect this would have on downtown businesses.

**Alderman Ferrell:** Are you a food business or bar?

**Cheryl Wallet:** A bar.

**Alderman Ferrell:** How long has your business been there?

**Cheryl Wallet:** I have been there for six years.

**This ordinance was left on the Second Reading.**

**Amend Chapter 72 (\$72.99 Penalties):** An ordinance to amend Article III Parking Meters and Electronic Payment Stations of Chapter 72 Parking Regulations by amending §72.99 Penalties. *This ordinance was left on the First Reading at the May 4, 2010 City Council meeting.*

**Alderman Lewis moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.**

***City Attorney Kit Williams read the ordinance.***

**City Attorney Kit Williams:** Alderman Ferrell has an amendment that he suggested to be drafted on this. He stated the additional language was that the second and third offense had to be

committed within 12 months of the previous offenses in order for the increase in cost penalty to be effective.

**City Attorney Kit Williams read the proposed amendment.**

**Alderman Ferrell:** This would be year to date from the date of your first ticket to the date of your third ticket.

**Don Marr:** It is a rolling twelve month look back. Previously once you received your third ticket that was the price you paid for the rest of your life.

**Alderman Ferrell moved to amend the ordinance to state "offenses would only go up if they were committed within twelve months of the previous offense." Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.**

**This ordinance was left on the Second Reading.**

**Parking Program Personnel:** A resolution approving a budget adjustment in the amount of \$498,542.00 for the implementation and funding of the parking program in the Entertainment District Parking Zone and approving the addition of 2.5 full-time equivalent positions in the Parking Management Division for the 2010 budget. *This resolution was tabled at the May 4, 2010 City Council meeting to the June 1, 2010 City Council meeting.*

**Paul Becker,** Finance Director gave a brief description of the resolution. He stated this budget adjustment would provide for the expenses to pay for the paid parking and include the addition of 2 ½ people to the off-street parking fund. This would pay for the system to implement it.

**Don Marr** asked if the Council had any further questions regarding the handout of the expenses categorized that was handed out at Agenda Session. There is 2.5 head count associated with this. We have identified two positions in the Development Services area for that. We would like to know if you would like us to transfer that existing head count or leave it as two additional head count to be paid by parking revenues. If you choose the option of permanently eliminating the two positions from Development Services, would you be open to the fact that if Development Services turns around and development takes off, then we would come back to you to look at the addition of that head count back into Development Services.

**Alderman Petty:** I like the original proposal rather than completely eliminating positions from another department. I don't think it makes sense to say we need to eliminate other positions that do not have anyone in them just to create two more that are fully funded from the program that is being proposed. I would rather keep it simple.

**Alderman Ferrell** disagreed and stated if our economy turns around all of us would look at something like that. You are taking a head count rather than adding head count.

**Alderman Thiel:** We have seen that this administration has not filled positions that were utilized in the past. I don't understand why we would eliminate the positions. I will support the original ordinance and not amend this.

**Alderman Gray:** I don't see any reason for the staff to have to come back and ask for them. I would like to see it left that way.

**Alderman Lucas:** I agree with Mr. Ferrell. Sometimes government is too big. We have an opportunity to not increase the number of people to a city that is stressed. It does not seem like good business to increase the number of positions when you are having trouble. I think it is the smartest thing and the best business to move those positions and not increase the number of positions in the city.

**Alderman Lewis:** We need people to run this program. It makes sense to use that space as a method to run a program that we need currently, and when we need those positions later then you fill those.

**Alderman Petty** asked Don Marr if there is any difference between these two ideas as a practical matter?

**Don Marr:** For me it's a matter of whether we come back and ask you for the head count when we have the need or we don't have to come back. We are just looking for some guidance, either way it is going to be positions funded by Parking Revenue.

**Paul Becker:** We do not intend to fill them this year but it is up to you if you want to reduce the two positions.

**Alderman Petty:** However we do this it seems it is inconsequential as long as we get the positions filled and pass the parking program. One requires more government work in the future and one doesn't.

**Alderman Lucas:** Once you open positions it is hard to take them away and put them somewhere else. I think we need to look at when we don't need positions moving them somewhere else.

**Alderman Ferrell** moved to amend the ordinance to eliminate two positions in the General Fund from Development Services and transfer those positions to the Parking Fund. **Alderman Lucas** seconded the motion. Upon roll call the motion failed 3-5. **Alderman Ferrell, Lucas, and Lewis** voting yes. **Alderman Gray, Thiel, Cook, Petty, and Rhoads** voting no.

**This amendment failed.**

**Alderman Thiel** moved to table the resolution to the June 1, 2010 City Council meeting. **Alderman Petty** seconded the motion.

**Barbara Putman** with the Walton Arts Center spoke on the current programs at the Walton Arts Center and how they impact the City. She stated this proposal will allow us to improve our services and continue with those programs. She went on to speak in favor of the resolution.

**Kit Williams** clarified the amendment.

**Peter Lane**, President and CEO, Walton Arts Center, Ward 2 resident, spoke on the importance of a long term parking deck. He stated as a non profit we are there to serve the public and we need to break even. The support of the parking program will help the Walton Arts Center to continue to maintain the excellence in programming and the diversity of its educational offerings. He spoke on the benefits of the plan.

**Upon roll call the motion passed 7-1. Alderman Ferrell voting no.**

**New Business:**

**Amend §72.02 Impoundment Procedures:** An ordinance to amend §72.02 Impoundment Procedures of the Code of Fayetteville to clarify when the Police may initiate a nonconsensual tow of a vehicle.

**Alderman Cook:** There are a couple of amendments that I want to make to this. A copy of the proposed amendments has been given to the Council.

**City Attorney Kit Williams:** One is to allow a different rate for nonconsensual tows that are not police initiated. The second one is for vehicles that could not be towed economically the police would be authorized to initiate a tow at a higher rate.

**Alderman Cook moved to amend Subsection A. 4 and add Section 5 to the ordinance. Alderman Thiel seconded the motion.**

**Alderman Lewis:** Is this police initiated only?

**City Attorney Kit Williams:** The change to Subsection 4 was to allow the Mayor or Mayor designee to have a different kind of initiated tow so that it would not have to be a police initiated tow.

**Mayor Jordan:** Sharon and her group would be able to make that sort of call.

**Alderman Lewis:** In order to reduce towing is there a way to contact the owner of the vehicle?

**Sharon Crosson:** Yes, we have access to the Arkansas ACIC information. We try to call them currently.

**Alderman Lewis:** The phone number is what I was wondering.

**City Attorney Kit Williams:** I doubt we would have a cell phone number.

**Sharon Crosson:** No, we do not get the phone number from ACIC. A lot of times we have information from the utilities records and records that we have on file.

**Alderman Lewis:** If they have had a ticket before, would you have their phone number.

**Sharon Crosson:** Not through ACIC.

**Alderman Lewis:** That is part of the policy already? You attempt to do that?

**Sharon Crosson:** Yes.

**Alderman Lewis:** That's great.

**Alderman Ferrell** thanked Alderman Cook for considering the amendment. It is a good amendment.

**Alderman Cook:** It started from the residents wanting it.

**Upon roll call the motion passed unanimously.**

*City Attorney Kit Williams read the ordinance as amended.*

**City Attorney Kit Williams** stated this came from Alderman Cook and Alderman Petty because there had been some problems with towing.

**Alderman Cook:** We had a residential parking meeting. One of the comments was residents driveways were getting blocked and we didn't have the ability to move those cars.

**Alderman Cook moved to suspend the rules and go to the second reading. Alderman Petty seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.**

*City Attorney Kit Williams read the ordinance.*

**This ordinance was left on the Second Reading**

**§94.09 Sale of Fireworks:** An ordinance to amend Article I General Provisions of Chapter 94 Fire Prevention of the Fayetteville City Code by repealing §94.05 Sale and Use of Fireworks and enacting a new §94.09 Sale of Fireworks.

**City Attorney Kit Williams** stated it was requested by City Council that we modify the ordinance so that it only affects the sale of fireworks and has no effect on the current regulations over their use.

**Alderman Petty moved to amend the ordinance to only include §94.09 Sale of Fireworks. Alderman Lewis seconded the motion.**

**City Attorney Kit Williams** explained the amendment for the public.

**Chief David Dayringer:** We support the change in the ordinance. We don't think any additional fires are going to occur because of the ordinance changes over what normally occurs in a year.

**Don Marr** stated we plan to bring forward a change in uses. What we will allow to be sold within the City currently is rather restricted in our current use. He thanked the Chief for bringing the ordinance forward.

**Mayor Jordan:** We were only going to do the sale of the fireworks but it seemed a little somewhat counter productive to sell them and not allow anyone to use them.

**Alderman Lewis:** Can someone have a fireworks stand in only particular areas or anywhere?

**City Attorney Kit Williams:** It has to meet the zoning requirements.

**Chief David Dayringer:** They can't be within 250 feet of a gasoline dispensing location and it has to be at least 50 feet away from the street.

**Don Marr:** It can be in any commercial zoning.

**Alderman Ferrell:** Is there anybody that would have any kind of an idea what the percentage of gross sales for stick rockets would be?

**Bruce Matthews** spoke on his concerns with the timing of the ordinance. The first discussion of this was about a month ago. Mr. Clark with Uncle Sam's is initiating this. Location is important in the sale of fireworks. I did not know this was happening. Mr. Clark has had a month's head start on acquiring locations. I ask the Council to pass the ordinance but not allow sales until next year.

**Alderman Rhoads:** How is it that Mr. Clark got a one month jump on you?

**Bruce Matthews:** I have no idea. The first that I heard of this was in the paper yesterday and I saw it on the news last night.

**Alderman Rhoads:** Can someone else address my question.

**Chief David Dayringer:** Mr. Clark was contacted back in April when research was being done on the subject to try to get a handle on what the impact was in Springdale.

**Alderman Rhoads:** He didn't know we were going to do anything did he?

**Chief David Dayringer:** That's correct.

**Bruce Matthews:** If the fire department had come and visited with me about the possibility that this was going to be put into effect, I would have immediately started my investigation as to who would be interested in opening up their property for the sale of fireworks.

**Pat Butler** stated he agrees that giving a months notice it is hard to do but he is still willing to do it. He also stated his concerns with the timing of the ordinance. I am concerned about larger players getting all of the tents. How are you going to make it so it is fair for everyone? He said 10% to 15% of the sales are bottle rockets and stick rockets.

**Alderman Ferrell:** I'm assuming the guy the Chief contacted is one of bigger dealers.

**Pat Butler:** Yes, one of the biggest in the area.

**Alderman Ferrell:** Let's assume they contacted you and the Sam's guy came to you and said "you've had thirty days on this deal", what would you tell him?

**Pat Butler:** Like I said I think it's an unfair advantage but I'm ready to go forward. If you pass it tonight I want to get a permit.

**Alderman Lucas:** Did I hear that you can start selling in the county on June 20<sup>th</sup>?

**Pat Butler:** I believe that date is correct.

**Alderman Lucas:** That is a week before this takes affect.

**Pat Butler:** I'm not as concerned about that time. Most of the business is done in the week before July 4<sup>th</sup>.

**Karla Eddie Heifner** spoke in favor of the ordinance but stated those of us outside the city limits who have been making a living for awhile are going to be hurt by this.

**Alderman Rhoads:** Do you remember more or less when in April you contacted Mr. Clark?

**Chief David Dayringer:** I think it was toward the end of April.

**Alderman Rhoads:** Do you know when we put this out to the public?

**Don Marr:** It would have been when the agenda was released.

**Alderman Rhoads:** That would be a few days before Agenda Session?

**Don Marr:** It would be the Thursday prior to Agenda Session.

**Alderman Rhoads:** Do you have a date on that?

**Don Marr:** The agenda request was done on April 26<sup>th</sup>. It would have been available to the general public through the Clerk's distribution on the 6<sup>th</sup> or 7<sup>th</sup>.

**Alderman Rhoads:** That's not thirty days it's more like two weeks.

**Don Marr:** That's correct it would be nine business days.

**Alderman Rhoads** stated he likes a fair playing field when it comes to business and thirty days would make a big impact on me this close to the fireworks season. Nine days probably not so much of an impact because I think you have time to adjust and the City needs the revenue.

**Reggie Hale, Hale Fireworks:** How did it come out to the public?

**City Clerk Sondra Smith:** The City Council Tentative Agenda was made available on May 6<sup>th</sup>. We have a list of citizens and press that have chosen to get the agenda from the City Clerk's office. We will be happy to add any one to that list. We have no control over when the paper decides to publish an article.

**Reggie Hale:** Probably most of the fireworks people didn't see it until it was in the paper. The percentage of rockets on a stick is going to be a bigger than 15% to 20%.

**Alderman Lewis:** How much does it cost to get a location?

**Reggie Hale:** It varies it can be between \$500 and \$10,000.

**Alderman Lewis:** That can be in any C-2 zoning?

**Don Marr:** Any commercial zoning. It is often staffs policy to research and find information from providers. When we contacted the City of Springdale they gave us individuals to contact and that is how city staff gets information. It wasn't done to give unfair advantages to individuals.

**Mayor Jordan:** I agreed with that. I find it somewhat offensive that folks feel that we were giving someone a leg up. The Chief did his proper research.

**Alderman Lucas** stated she agreed because we are always asking have you researched this.

**Cit Clerk Sondra Smith:** I would like to make the public aware that City Council agendas are on the City website and they are on the Community Access Television Station.

**Alderman Ferrell:** The amendment is just splitting it, right?

**City Attorney Kit Williams:** That's correct.

**Upon roll call the motion passed unanimously.**

**City Attorney Kit Williams read the ordinance.**

**Alderman Thiel** stated she supports the idea of the City being able to generate the revenue that this will create. She also stated the question is do we implement it this year or next year.

**Alderman Rhoads** stated he appreciates that we have city staff doing whatever they can to help control expenses and raise revenue. He applauded the Chief and agreed with the Mayor that his intentions were honorable and right. He also stated that he supports the ordinance but he would support it being effective next year.

**Alderman Rhoads moved to amend the ordinance effective date to January 1, 2011.**  
**Alderman Thiel seconded the motion.**

**City Attorney Kit Williams:** This would be adding a new Section 3 that would say this ordinance shall go into affect January 1, 2011.

**Alderman Lewis:** I think we should allow them to sell them this year if we are going to do this. There is revenue for the city.

**Alderman Lucas** agreed with Alderman Lewis.

**Alderman Petty** stated you have a responsibility as a citizen to make sure you are informed. I think we should pass this.

**Alderman Gray** stated she is torn because she can hear both sides and she would love to have the revenue. She also stated she was a little distressed that we were late getting it out.

**Alderman Ferrell** stated he echoes what Alderman Rhoads said in the fact that he applauds the Chief and the city employees that are looking for ways to cut expenses and bring in revenue. There was no intent to give anyone an advantage. He stated he supports starting this year.

**Alderman Lucas:** The amendment is to postpone it until next year?

**Mayor Jordan:** Yes.

**Upon roll call the motion failed 3-5. Alderman Gray, Thiel, and Rhoads voting yes. Alderman Cook, Petty, Ferrell, Lucas, and Lewis voting no.**

**The amendment failed.**

**Alderman Petty moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.**

*City Attorney Kit Williams read the ordinance.*

**Tracy Hoskins** stated he has done some research and his understanding is if we are not allowed to sale fireworks on a stick the City would be giving away approximately 25% of its sales tax revenue. People can go out of the city limits and buy these products and while they are there they will buy the other products as well. He would encourage that to be changed.

**Alderman Ferrell:** What was the thinking on disqualifying fireworks on a stick?

**Don Marr:** We didn't disqualify any item from being sold.

**Alderman Ferrell:** It's in this ordinance.

**Don Marr:** We felt that bottle rocks were the number one item of injury and potential fire. We did not make any changes to what we were already allowing.

**Alderman Ferrell:** As a kid I saw more accidents involving large firecrackers than I did with bottle rockets. I would amend to strike the part about Subsection D.

**Alderman Ferrell moved to amend the ordinance to remove Subsection D and Subsection G. There was no second to the motion.**

**Alderman Ferrell:** I consider the fact that we are doing this as a revenue source and unless there's some overwhelming compelling statistics that can be given to me I think it's a fair thing to do to help raise sales tax.

**Alderman Thiel:** Are you saying we allow bottle rockets in the city limits?

**City Attorney Kit Williams:** To be sold in the city limits.

**Alderman Thiel:** What about the sign business? Are you saying eliminate the discharge of bottle rockets or fireworks that travel on a stick in the City of Fayetteville? Are you saying eliminate that?

**Alderman Ferrell:** Yes. Just don't put the sign up.

**Alderman Gray:** Is it going to be legal or not.

**City Attorney Kit Williams:** This doesn't change the use.

**Alderman Thiel:** It just changes putting up a sign.

**Alderman Lewis:** Why would we get rid of "G"?

**Alderman Ferrell:** This is going to be broken into two parts. There is going to be a chance to address that.

**Alderman Lewis:** For the use part?

**Alderman Ferrell:** Yes.

**Upon roll call the motion passed 7-1. Alderman Petty voting no.**

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

***City Attorney Kit Williams read the ordinance.***

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

***Ordinance 5320 as Recorded in the office of the City Clerk***

**Amend Chapter §163.14 Revocation or Change of Conditional Use:** An ordinance amending §163.14 of the Unified Development Code to permit a periodic review of conditional use permits as described herein.

**City Attorney Kit Williams read the ordinance.**

**Jeremy Pate**, Internal Services and Development Director gave a brief description of the ordinance. He requested an amendment to Subsection 1.

**Alderman Ferrell:** If you have a long time holder of a conditional use permit, and someone owned the property around them to where they were the only residents on that side of the block within 100 feet, and it is more than 100 feet behind them to another resident, are we saying that one person will have to sign the petition for a hearing?

**Jeremy Pate:** If I understand you correctly, if they're an adjacent property owner and they own all the property that surrounds within 100 feet, I would say yes.

**Alderman Thiel moved to amend Subsection 1 of the ordinance to read an adjacent property owner and 50% or more of the property owners within 100 feet of the property boundary. Alderman Petty seconded the motion. Upon roll call the motion passed unanimously.**

**Alderman Ferrell:** I think when a citizen comes in and has an established enterprise that has been successful in receiving a conditional use permit, there is an expectation by that person that it will be honored. I oppose the ordinance.

**Alderman Lucas:** When a zoning is done can we go back and say that's not appropriate zoning and redo it?

**Jeremy Pate:** Sure, it is a legislative action of the Council.

**Alderman Lucas:** There was a piece of property on Gregg Street and when they built the apartments there they didn't have to abide by the present day zoning. It had been zoned a long time ago and when it came time to build they didn't have to meet the present day requirements.

**Jeremy Pate:** Was this about 2002? In 2003 we changed our code.

**Alderman Lucas:** We had already changed the zoning requirements, but when they built they were able to build because they had already been zoned and approved for that.

**Jeremy Pate:** The development had been approved many years before and we did not have a sunset clause for those developments. That is when the Council adopted that ordinance.

**Alderman Ferrell:** How big of a problem has this been as far as complaints?

**Jeremy Pate:** It's not been a big issue.

**Sharon Stiles**, resident of Ward 1 and owner of Long Ago Antiques gave a brief history of the conditional use permit that was issued for their business. She requested the Council to consider a revision to the petition portion of the proposed amendment. She also requested that the petitioner be required to attend a Planning Commission review.

**Kyle Unser**, Representative for Sharon Stiles: There is an existing frame work for the review of conditional use permits. The Stiles have a conditional use permit with no conditions on it. The Unified Development Code states what they can and can't do and what can cause them to lose their conditional use permit. They are non use for 12 months or the violation of a condition. No where in the Unified Development Code, as it exists now, is there any type of provision that says your conditional use permit can be revoked if you are not in harmony with the neighborhood. These folks have a vested property right in their conditional use permit. This ordinance does not provide any guidance on what the criteria for deciding whether or not the conditional use permit should be revoked is. It just says it can be revoked or modified. It does not say why or what it takes. You can deny this or apply it prospectively and not retrospectively.

**Mayor Jordan:** This started a least a year ago when I first came into office because of air quality complaints. We have conditional use businesses that have no conditions.

**City Attorney Kit Williams:** Added some history that was not presented by the Stiles attorney. This ordinance is to correct a mistake that was made. This ordinance gives neighbors who might be adversely affected by a conditional use the right to request the Planning Commission every five years to look at it and see whether or not this is something that should be reviewed, continued, or denied.

**Alderman Lewis:** If compatibility is built in how does it not then become a violation of it if it is brought forward?

**City Attorney Kit Williams:** Compatibility is in the Unified Development Code as one of the requirements for the Planning Commission to look at in order to grant a conditional use. This provision is to correct the oversight in the 2006 ordinance that was passed that established procedures for review of conditional uses.

**Alderman Ferrell:** Jeremy stated this has not been a problem and the Mayor told us what started this whole deal. Are we using a shot gun approach to this when we do not need a shot gun approach?

**Alderman Thiel:** This can add conditions which in some cases they do not have conditions. We've got some conditional use permits that could create problems. I tend to think I support this.

**Alderman Lucas:** I like the five years because it keeps harassments down. To suddenly put conditions on a business that has been in business for years I don't think that is good. I like the idea of changing it and moving forward on future conditional uses.

**Mayor Jordan:** I would recommend that we don't pass this tonight.

**Alderman Ferrell:** Brenda where do you stand on moving forward? Would you entertain something as far as now when we have conditional use permits they can be revisited within the five year period as opposed to going back?

**Alderman Thiel:** I don't think that would solve the problem. There have been a lot of conditional uses permitted throughout many years that didn't have conditions placed on them or

things that are not allowed now. I don't think doing the ones that are currently reviewed does much because they are reviewed properly now. Conditions are placed on them in a different way than they were.

**Alderman Ferrell:** This is enabling in a sense that would allow once every five years they can do a review.

**City Attorney Kit Williams:** Before the 2006 amendment they could do it and there was no time limit. In 2006 we limited the ways that someone could come back and challenge a conditional use.

**Alderman Petty:** Compatibility is the whole reason we have conditional uses to be fair and to put a compatibility review onto the things that aren't typical.

### **This ordinance was left on the First Reading**

**Amend Chapter 178 Outdoor Vendors:** An ordinance amending Title XV: Unified Development Code of the City of Fayetteville, to amend Chapter 178: Outdoor Vendors to allow for the sale of locally produced arts and crafts by outdoor vendors on public sidewalks and to permit consideration of larger vending carts for specific locations as a conditional use permit by the Planning Commission.

*City Attorney Kit Williams read the ordinance.*

**Jeremy Pate** gave a brief description of the ordinance.

**Alderman Petty:** The request about food carts and the sizes came from a citizen who had a cart and wanted to serve food that would take more preparation than other food so the cart needed to be larger. The code disallowed that.

**Alderman Gray:** I think this is great.

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

*City Attorney Kit Williams read the ordinance.*

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

*City Attorney Kit Williams read the ordinance.*

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

**Ordinance 5321 as Recorded in the office of the City Clerk**

**National Bike to Work Week:** A resolution to encourage Fayetteville citizens to participate in National Bike to Work Week and to make Fayetteville even more bicycle-friendly.

**Alderman Cook** stated this come forward from the Fayetteville Forward Transportation Action Committee and Laura Kelly with the Bicycle Coalition of the Ozarks. He gave a brief description of the resolution.

**Alderman Cook moved to add Section 3 of the ordinance that references the action plan. Alderman Petty seconded the motion.**

**Laura Kelly:** Thanked Kyle for bringing the resolution forward.

**Alderman Cook:** Asked Matt Mihalevich to speak on an item that is on the upcoming Street Committee agenda.

**Matt Mihalevich:** We've outlined six miles of roads that are existing width to accommodate bikes in a safer manner with stripping and signage.

**Alderman Lucas:** That also came forward from Fayetteville Forward Transportation didn't it?

**Matt Mihalevich:** Yes, that's right.

**Matt Mihalevich:** We are looking at having a bicycle climbing lane for some of the steeper streets.

**Upon roll call the motion passed unanimously.**

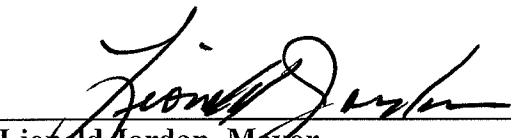
**Alderman Cook moved to approve the resolution. Alderman Petty seconded the motion. Upon roll call the resolution passed unanimously.**

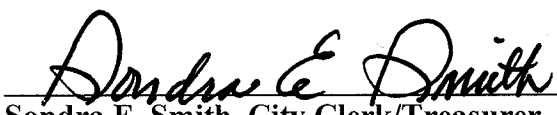
*Resolution 87-10 as recorded in the office of the City Clerk.*

**Announcements:**

Alderman Lewis announced the Watershed Luncheon meeting.

**Meeting adjourned at 10:10 p.m.**

  
Lionel Jordan, Mayor

  
Sondra E. Smith, City Clerk/Treasurer