

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



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

**City of Fayetteville Arkansas
City Council Meeting Minutes
June 1, 2010**

A meeting of the Fayetteville City Council was held on June 1, 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:

Alderman Cook encouraged everyone to review the board and committee applications that have been received. He stated they are in the City Clerk's Office.

Presentations, Reports and Discussion Items:

Quarterly Report of the Financial Condition of the City – City Clerk Sondra Smith, Finance Director Paul Becker.

The quarterly report was emailed to the City Council.

Paul Becker, Finance Director gave a brief summary of the quarterly report.

Agenda Additions: None

Consent:

Approval of the May 18, 2010 City Council meeting minutes.

Approved

Bid #10-32 B&H Photo/Video: A resolution awarding Bid #10-32 and approving the purchase of video editing equipment in the amount of \$39,792.00 from B&H Photo/Video/Pro-Audio for use by the government channel and public access channel.

Resolution 88-10 as recorded in the office of the City Clerk.

Bid #10-33 J. Johnson Construction Company, LLC: A resolution awarding Bid #10-33 and approving a contract with J. Johnson Construction Company, LLC in the amount of \$46,279.00 for the construction of block retaining walls for the Frisco Trail from Maple Street to Spring Street, and approving a project contingency of \$9,255.80.

Resolution 89-10 as recorded in the office of the City Clerk.

Investigate Covert Drug Transactions: A resolution authorizing the Fayetteville Police Department to accept additional funding through the 2010 Gulf Coast High Intensity Drug Trafficking Area (HIDTA) Grant in the amount of \$31,695.00 to investigate covert drug transactions and approving a budget adjustment.

Resolution 90-10 as recorded in the office of the City Clerk.

2009 Arkansas Department of Environmental Quality Recycling Grant: A resolution authorizing acceptance of a 2009 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$47,250.00 for recycling containers for the West Side Recycling Drop Off Facility, and approving a budget adjustment recognizing the grant revenue.

Resolution 91-10 as recorded in the office of the City Clerk.

Engineering Elements, PLLC: A resolution approving a contract with Engineering Elements, PLLC in the total amount of \$25,900.00 for energy audit services.

Resolution 92-10 as recorded in the office of the City Clerk.

Joe Perme Construction, Inc.: A resolution authorizing a contract with Joe Perme Construction, Inc. in the amount of \$21,800.00 for improvements to a public facility building (1932 S. Garland) through the Community Development Block Grant Public Facility Program.

Resolution 93-10 as recorded in the office of the City Clerk.

Rausch Coleman Holmes, LLC: A resolution approving a contract amendment with Rausch Coleman Holmes, LLC for an additional \$61,797.91 in 6" concrete pavement, and approving a budget adjustment.

Resolution 94-10 as recorded in the office of the City Clerk.

Bid #10-35 All Around Landscaping, Inc.: A resolution awarding Bid #10-35 and approving a contract with All Around Landscaping, Inc. in the amount of \$96,185.00 for planting and maintenance of trees, and providing a ten percent (10%) project contingency.

Resolution 95-10 as recorded in the office of the City Clerk.

Bid #10-38 TEECO Safety (Bullet Proof Vests): A resolution awarding Bid #10-38 and approving the purchase of Bullet Proof Vests with ballistic panels and carriers from TEECO Safety, Inc. in a total amount not to exceed \$71,672.37 through the end of 2010 and in such amount in 2011 as authorized by the 2011 City Budget.

Resolution 96-10 as recorded in the office of the City Clerk.

ASPCA Grant (Microchipping & Tagging): A resolution authorizing application and acceptance of an ASPCA Grant in the amount of \$5,000.00 for "A ticket home microchipping and tagging program" for the Fayetteville Animal Shelter and approving a budget adjustment.

Resolution 97-10 as recorded in the office of the City Clerk.

Alderman Cook moved to approve the Consent Agenda. Alderman Petty 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. This ordinance was left on the Second Reading at the May 18, 2010 City Council meeting.*

Alderman Petty moved to suspend the rules and go to the third reading. Alderman Ferrell 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 5322 as Recorded in the office of the City Clerk

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. This ordinance was left on the Second Reading at the May 18, 2010 City Council meeting.*

Alderman Gray 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: I understand there are some amendments we need to look at.

Don Marr, Chief of Staff stated we are looking at multiple ways to establish residency in terms of issuing residential permits. He described the residential permit process. The first amendment is to broaden it from vehicle registration to give us other documents acceptable to establish residency.

City Attorney Kit Williams: I drafted the following sentence to accomplish that "The Parking Division may accept other reliable documentation of ownership or occupancy of a residence within the zone to justify issuance of a residential parking permit for a resident's vehicle."

Alderman Petty: This was one of the things the Dickson Street Neighborhood Association asked us to bring forward.

Alderman Petty moved to amend the ordinance by adding "The Parking Division may accept other reliable documentation of ownership or occupancy of a residence within the zone to justify issuance of a residential parking permit for a resident's vehicle." Alderman Cook seconded the motion. Upon roll call the motion passed unanimously.

Mayor Jordan: The other amendment that we have is for oversized vehicles.

City Attorney Kit Williams: This amendment will continue to allow an operator/owner of a moving van or other oversized vehicle that needs to park on the street, in order to serve a residence or business within the district, to have a special limited time and location parking permit issued by the Parking Division. It also states any resident within the Entertainment Parking Zone who owns a motorcycle or motorscooter with over 70 cubic centimeters displacement may be issued a residential permit which would allow free parking only in a special designated motorcycle, motor scooter, on-street parking spaces and is prohibited from parking in a standard on-street parking space reserved for resident's cars. Operators of motorcycles and motor scooters may park in paid parking spaces at the standard parking rate. No motorcycle or motor scooter can park on a sidewalk. Operators of fuel efficient scooters and bicycles may park free at any special designated parking spaces but must pay the standard parking rate if parked in the normal paid parking space. No bicycle may be parked on a sidewalk unless it is utilizing a permanently installed and committed bicycle rack.

Alderman Cook: The State licensing cut-off is at 50cc's. The only reason I thought that 50 cc's would be better is because it is already out there and the State does it. It is standardized and it seems it would be easier for staff to enforce.

Mayor Jordan: The reason I went with 70cc's is that is the highest range of scooter.

City Attorney Kit Williams: The State requires if you have 50cc's and higher you must have a license. If you are under that you do not need a license.

Alderman Cook: There are quite a few that are over 50cc's. I have seen those myself. I know we are trying to accommodate students at the same time.

Alderman Cook moved to amend the ordinance to reduce the size of motor bikes to 50cc. Alderman Ferrell seconded the motion.

Alderman Thiel: It might be easier for whoever is enforcing this, if they are not licensed under 50cc's, then they would automatically know that they qualify. Under 50cc's wouldn't be licensed and it would be easy to recognize.

Alderman Rhoads: 70cc's would include so many scooters.

Alderman Thiel: Do you think it would be an advantage, enforcement wise, to pick out the ones that were licensed or not licensed?

Don Marr: That would probably be a training aspect for the staff to know what qualified as a 70cc. I don't think it would be any different than some of the other codes we have to train staff on.

Alderman Ferrell: Most of the ones that I see are 49cc or less because it saves them money. I think you have to have insurance if you license it too.

Alderman Lewis: Do they look any different? They basically look the same?

Alderman Cook: Yes.

Alderman Lucas: So the only difference would be if they are licensed or not.

City Attorney Kit Williams: Not always because some that should be licensed probably are not. The Parking Division will still have to recognize the ones that should be licensed.

Alderman Petty: It comes down to the intent of this amendment. For me it is to encourage fuel efficient forms of transportation that take up little space. Any reduction we can create in the demand for those spaces is really a savings that we need to pursue. That is why I support the 70cc limit because it includes more scooters.

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

This Amendment failed.

Alderman Petty moved to amend sub-section E of the ordinance to clarify over sized vehicles. The amendment would be as the proposed final version that the City Attorney handed out at the City Council meeting. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

Alderman Lewis thanked the residents in Ward 2 for working together and trying to find ways to agree on these things.

Alderman Petty: One of the other concerns that the neighborhood had was regarding the renewal periods. He asked Don Marr to restate the intentions for the record.

Don Marr: It is our intention to look at multiple renewal methods for owners of properties, to look at annual renewals and for those non-owners to look at lease document time periods on a quarterly basis. The other item that we addressed for residential was to deal with the visitor pass program. We discussed this at the last meeting also to allow two options, two hang tags that could be used and distributed by the permit holders or 30 one day passes. That is not included in the detail of the ordinance but is part of the administrative policies.

Alderman Cook: We talked about bringing this back up in 90 days.

Don Marr: At the request of all of you we are to review this in 90 days from the date of implementation and again at twelve months.

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

Ordinance 5323 as Recorded in the office of the City Clerk

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. This ordinance was left on the Second Reading at the May 18, 2010 City Council meeting.*

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: I am bringing forward an amendment to this after hearing some of the discussions about the motorcycle parking on Dickson Street. He read the proposed amendment.

Don Marr: We would like to propose an amendment that would reduce or provide a 50% discount when motorcycles are parked in designated motorcycle spaces. He gave a brief description of the rates.

Alderman Thiel moved to amend the ordinance to allow a 50% discount for motorcycles. Alderman Petty seconded the motion.

Alderman Rhoads: What are we going to do as far as enforcing this during the time of Bike's, Blue's and BBQ and other large festivals?

Don Marr: The second amendment that we want to make relates to special events. We plan to address that shortly.

City Attorney Kit Williams handed out a copy of both of the proposed amendments.

Don Marr: The second amendment has to do with parking lots being assigned by the Mayor to special event holders to support festivals. This is to provide flexibility for festivals and it would also allow the Mayor to waive the enforcement in an event such as Bike's, Blues and BBQ. He read the amendment.

William Harris, resident of 258 S. Church asked the council to reconsider the parking rates that are being proposed.

Upon roll call the motion passed unanimously.

Alderman Cook: The only part I had a concern about was where it says specifically designated or all on-street paid parking spaces. That does not include residential or does it?

City Attorney Kit Williams: It does not include residential. It is paid parking.

Alderman Lewis: The 16 day, is that a flexible number?

City Attorney Kit Williams: That is the cap.

Don Marr: We did that based on looking at the events that reoccur annually and then having some allowance for those unknown items. It would put a burden on the Mayor during the special permit request to weigh it against economic impact and things for the City. Anyone that just wants to have a small event could not take away the income related to the parking lots through a special event permit request.

Alderman Thiel moved to amend the ordinance to allow the Mayor to waive enforcement during special events. Alderman Lewis seconded the motion.

City Attorney Kit Williams: This is a new subsection M.

Don Marr: This is specific to the entertainment district zone so that events in other areas of town do not have that cap where we don't have paid parking lots. If someone wanted an event on the Square it would continue as unlimited at this point.

Alderman Petty: I support it and I think it is something that is necessary. It does concern me a little because we already give so much support for festivals. I would encourage the Mayor to be critical of the requests that are received so that we don't subsidize festivals more than they need.

Upon roll call the motion passed unanimously.

City Attorney Kit Williams: There was one minor change to the definition of proximity card. It will read 7 a.m to 4 p.m.

Don Marr: That request is because, if we have a proximity card for the renters of those lots, the time that we would allow access would be as early as 7 a.m.

Alderman Thiel moved to amend the time allocation for the proximity access cards to state 7 a.m to 4 p.m. **Alderman Petty** seconded the motion.

Alderman Petty: If a student gets out of class and they come down after the 4 p.m. period will they be charged for an hour of use or will they be ticketed for going over the time?

Chris Pecoraro, Parking Consultant: The most effective way to handle that is we can maintain records on their overage and either charge it directly to a credit card that we keep on file for their account or we can invoice it the next month as overtime parking.

Upon roll call the motion passed unanimously.

Don Marr handed out information packets on parking rates. He gave an explanation of the rates.

Sharon Crosson gave a slide presentation on the distance measurements from the mall employee parking lots to different destinations within the mall. She compared those distances to the free parking lots on Dickson Street and different destinations along Dickson Street. She stated some of the distances at the mall were the same and took the same amount of time.

Alderman Lewis thanked Sharon Crosson for the comparison.

Alderman Thiel: I really appreciate these comparative rates with other cities and all the walking that Sharon did.

Alderman Ferrell: I think what staff and the city wanted to accomplish was to try to resolve the current problem that we have with parking for the arts and entertainment district. This is a step in that direction to do that.

William Harris: I am in favor of increasing the rates to cover costs.

Mary Ann Greenwood, a citizen stated I support this. She spoke in favor of the ordinance. She thanked the Mayor, Council and staff for their work on the parking issue.

Julie Sell, a business owner spoke on the current parking issues on Dickson Street. She stated a parking deck is needed. She stated she would like to get free parking for the employees. She spoke in favor of the ordinance.

Tina Hodne, a Fayetteville resident and board member of the Walton Arts Center Council stated I am in support of this parking plan. She stated that parking is an issue with people visiting the Walton Arts Center.

Peggy Treaver, resident of Dickson Street stated the way everyone has come together to hash this out is wonderful and this is why I live in Fayetteville, Arkansas.

Hugh Kincaid, a citizen spoke in favor of the ordinance. He commended the Council and Mayor for seizing the initiative to solve the parking programs for the Walton Arts Center and the area. He recommended that the Council vote in favor of the ordinance.

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 May 18, 2010 City Council meeting. This resolution was tabled at the May 18, 2010 City Council meeting to the June 1, 2010 City Council meeting.*

Paul Becker stated now that you have approved the program we need to set a budget to run the program. He gave a brief description of the resolution.

Mayor Jordan: When we do the contract with the Walton Arts Center we will bring it back to the Council before anything is signed.

Alderman Ferrell: We are talking about the number of employee jobs that we didn't fill. How many was that?

Paul Becker: 13.5 FTE's currently and 7.5 FTE's last year.

Alderman Ferrell: If those positions are filled and these two are added that would be 15 paid positions?

Paul Becker: The positions that are currently not filled are 13.5. This would be 2.5 extra. That is 16 positions.

Alderman Ferrell: It would be 16 total if we filled the positions that are open.

Paul Becker: That is correct but we do not anticipate filling those positions throughout this year. Discussions next year would revolve around what we do.

Jeff Schomberg, board member at the Walton Arts Center assured the Council that the money generated from the revenue stream will be very well spent serving the children of Northwest Arkansas and continue to bring even greater entertainment and content to the Walton Arts Center.

Terry Trotter, Chief Operating Officer at the Walton Arts Center expressed her appreciation for the financial support to the Walton Arts Center. She spoke in favor of the resolution.

Alderman Ferrell: I have no problem with the revenue stream helping the Walton Arts Center however in its current form where it is married to providing additional employees I do.

Alderman Lewis: I would like to reiterate the fact that this is an investment in a major economic driver for Fayetteville. There is so much return on this investment. It is essential that we support this.

Alderman Lucas: It bothered me that we are adding FTE's in this time where we are looking at furlough days. This is very important and we are going to have to have more people to operate this parking program. I am going to support it but I hope we don't fill the positions unless we really need them.

A Fayetteville resident asked the Council to consider allocation of funding to the Walton Arts Center.

Alderman Lewis: I appreciate the time that has been taken and the research that has been done. I am supportive of developing a well planned, reliable mechanism for people to park in our downtown.

Alderman Petty: I live less than one block away from Dickson. I have asked people what they think about the plans and everyone that I heard from understands why we are doing this. I support it and I have been very impressed with how detailed we have been about receiving comments and integrating them.

Alderman Lucas: I am very supportive of finding a way to develop parking for our entertainment district. I am also very supportive of the Walton arts Center. I think it is important for Fayetteville to support the Walton Arts Center and I strongly support this parking program.

Mayor Jordan spoke on the efforts made by himself and staff toward obtaining this parking program. He explained what this revenue would do for the City if approved. I support a parking deck for the downtown Dickson Street area and help for the Walton Arts Center. He thanked everyone for their hard work.

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

Ordinance 5324 as Recorded in the office of the City Clerk

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. This ordinance was left on the Second Reading at the May 18, 2010 City Council meeting.*

Alderman Gray moved to suspend the rules and go to the third reading. **Alderman Cook** 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.

Don Marr: There is no additional information from staff.

Alderman Petty: I want to encourage us to move a little more quickly than we might and upgrade the parking infrastructure downtown. That is something we need to look closely at next year if we are going to raise the rates all over.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Rhoads** was absent during the vote.

Ordinance 5325 as Recorded in the office of the City Clerk

Don Marr thanked the Council for giving staff the support needed to go to the public and begin the dialogue. He expressed his appreciation to the Mayor, Aldermen, city offices, the Walton Arts Center and the public for their contributions and hard work on this project.

Alderman Gray: This is the reason it is so nice to be a part of Fayetteville. She thanked several individuals for their work on this project.

Alderman Gray moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the resolution passed 7-1. Alderman Ferrell voting no.

Resolution 98-10 as recorded in the office of the City Clerk.

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. *This ordinance was left on the Second Reading at the May 18, 2010 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: Everything was modified and amended at the last meeting.

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

Ordinance 5326 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. *This ordinance was left on the First Reading at the May 18, 2010 City Council meeting.*

Alderman Thiel 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.

Jeremy Pate: We made an amendment at the last meeting to Section E. 1 to clarify how we measure the distance.

Alderman Lewis: As it reads currently it says that review of these conditional uses only happens if there is a violation of the conditions.

Jeremy Pate: That is the current code. That would still remain in place so that would still be an option to look at a violation of a conditional use. We have a mechanism where if there is indeed a violation of a condition of approval of the conditional use permit we can work with the property owner to correct that without having to go the Planning Commission. He explained the process.

Alderman Ferrell: You visited the Stiles furniture place on more than one occasion. Do you remember the last time?

Jeremy Pate: Probably less than a year ago.

Alderman Ferrell: Did you encounter any public violations?

Jeremy Pate: Not at the time, no.

Alderman Lucas: The review that you talk about will be according to present day codes. They will be reevaluated on the present day codes.

Jeremy Pate: The review would come before the Planning Commission to review compatibility. Conditional use permits are not allowed in a zone except by special review and special conditions being placed upon that use in order to make it compatible. He gave examples of special reviews. In a case where we would have a conditional use permit that has no conditions and there is a complaint about that use we as staff would say what is the real issue or complaint. That is why we wrote this ordinance amendment as we did. They have to tell us what the problem is.

Alderman Lucas: So you could actually put them out of business.

Jeremy Pate: That is one option. That is something we would take very carefully. It could be appealed from either party to this board for review.

Alderman Lewis: We have a conditional use process now and we don't set out to put someone out of business. That is two different things. Conditional uses are intended to allow that organization to be there with the conditional uses so that it makes it compatible. That is the point of having conditional uses.

Jeremy Pate: The largest task and finding the Planning Commission makes is whether the use is compatible with that neighborhood. Often times there are certain conditions that need to be placed upon it to make it more acceptable and compatible with that neighborhood.

Alderman Ferrell: Would it be fair to say there were not any problems with the complaints on conditional use permits but a situation that exists today was really the prime mover for drafting this amendment.

Jeremy Pate: There was definitely a catalyst from one project for this particular instance. We felt it was prudent to look at many of our conditional use permits to see if it will be applicable in more than just one case.

Alderman Lucas: So this is retroactive to all conditional uses?

Jeremy Pate: That is correct. It would affect more of the older conditional use permits than it would newer conditional use permits because we have 10 to 15 conditions on almost every conditional use permit that we pass today.

Alderman Lucas: But it could affect them if there was a complaint.

Jeremy Pate: Yes. There are certainly things that we are not thinking of today that in 25 years might be an issue.

Louise Mann, resident of 629 Gray Avenue: I hope you will reinstitute the due process that we previously had with this ordinance. I think we need to leave due process in there so we can review things as times change and as compatibility in neighborhoods change.

Bob Estes, representing Melissa Terry and Flint Richter who are the adjoiners to the Stiles spoke on the past review process for conditional use permits. He explained what a conditional use is. He stated we have no ordinance in place to allow for a review of a conditional use that has no conditions. Should there be a concern among the Council, that a review of a conditional use result in a revocation, an amendment to the proposed amendment before you, removing the word revocation and providing that upon review the Planning Commission may modify the conditional use with new or altered conditions or allow the conditional use to continue would be appropriate. I ask you to go to the third reading tonight and pass the proposed amendment.

Alderman Lewis: To me it's like a compromise. You are saying in order to address the unconditioned conditional uses you could have a due process, a review system, for those but offer removing revocation as an option for Planning Commission.

City Attorney Kit Williams: Initially something that would be analyzed under this, at the Planning Commission, the two parts that could be done would be either approve it as is or modify and put conditions upon it. That way the applicant would know exactly what conditions they must satisfy in order to continue having a conditional use. You could do that by simply modifying Section 2 to remove the "or revoke a conditional use permit." That would then place that conditional use like all the conditional uses that are granted now they would all have conditions.

Alderman Lewis: I would like to make that amendment because I feel you need to be sensitive to these entities that have been there a long time and they need time to become more compatible. They would have a due process and know what to expect. That way there's not a shutting down of them. If they have been there that long there are probably quite a few things that need to be addressed.

Alderman Lewis moved to amend section two of the ordinance to remove "or revoke the conditional use permit." Alderman Thiel seconded the motion.

Alderman Rhoads: In going after a conditional use and trying to get one granted the harmony of the neighborhood is a valid consideration that the Planning Commission should take into

consideration, however not in a subsequent review. Harmony with the rest of the neighborhood in a subsequent review would not be a consideration.

Mr. Estes: Compatibility is an essential criteria and element of a conditional use.

Alderman Rhoads: Whether it's in the granting or in the review?

Mr. Estes: Yes, compatibility is always salient to a conditional use.

Bill Harris, resident of Ward 2, would it be prudent to amend the word "permit" to read "require" a periodic review of the conditional use?

Sharon Stiles, resident of Ward 1 requested that the ordinance not be put on the third reading. She stated her attorney had other obligations and she would like him to answer issues that have come up. I appreciate the suggestion about removing revocation. She stated she likes the idea of reviewing once every five years. She asked the Council to add an amendment that would require the petitioner to appear before the Planning Commission. We feel we are compatible with our neighbors. We have made many changes over the years. We were reviewed by the Planning Commission in 2004 and no conditions were added at that time. She read a list of the current properties in the neighborhood and the length of time they have been in the neighborhood.

Alderman Ferrell asked that the ordinance be left on the second reading and hold off on the amendment until her attorney looks at this.

Alderman Thiel stated she disagreed. If I understood correctly Ms. Stiles felt like that would be a good amendment. That doesn't mean we are passing the ordinance tonight. You indicated that you supported the amendment?

Sharon Stiles: Yes, the way I understood it, it would mean that if this passed and the petitions were sufficient, and we were reviewed, they could add conditions at the meeting but not revoke our permit.

City Attorney Kit Williams: That's correct.

Sharon Stiles: If we didn't adhere to those conditions then at a later point they could revoke our permit.

Alderman Thiel: Do you feel like your attorney needs to be here for us to make that amendment?

Sharon Stiles: I don't have a problem with making that amendment tonight. I just don't want you to vote on it as a third reading tonight.

Alderman Thiel: Based on that I still withhold my second to the motion.

Upon roll call the motion passed unanimously.

This ordinance was left on the Second Reading.

New Business:

Stream Standards and Wastewater Discharge Requirements: A resolution authorizing participation in cooperative regional efforts to monitor, evaluate, and report the likely effects that future proposed changes to Stream Standards and Wastewater Discharge Requirements may have on Northwest Arkansas.

David Jurgens, Utilities Director gave a brief description of the resolution.

Alderman Ferrell stated in the past we didn't have the cohesiveness that we now have with our Northwest Arkansas neighbors and Mayors. I think there is strength in numbers and appreciate the way this has gone.

Mayor Jordan: Thanked Alderman Ferrell.

Alderman Lewis stated she agrees and stated Fayetteville has been a leader in looking at this at a watershed approach. She also stated she hopes we can continue that and investing in this is a way to do that. I was concerned that this would lock us into something, if the other Mayor's were going down a road that Fayetteville wasn't interested in going, and as I understand it does not.

City Attorney Kit Williams: We were very careful to draft it to make sure that this was not anything that would be used for expenditure to prepare for litigation. It doesn't require us to join any litigation.

Paul Becker, Finance & Internal Services Director stated we got a reimbursement from OMI, based on payments that we had made for expenditures that were not done. We will take a portion of that and recognize that revenue. That will provide the \$30,000.

Alderman Lewis moved to approve the resolution. Alderman Lucas seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 99-10 as recorded in the office of the City Clerk.

2009 General Improvement Fund Economic Development Grant: A resolution to accept a 2009 General Improvement Fund Economic Development Grant in the amount of \$100,000.00 to purchase equipment for the exclusive use and benefit of the Northwest Arkansas Community College and to approve a budget adjustment.

Karen Minkel, Strategic Planning and Internal Consulting Director gave a brief description of the resolution. She thanked several people for their support in this application. The Center of Excellence ribbon cutting is on Wednesday, June 9, 2010 at 1:00 p.m.

Mayor Jordan thanked Karen for her work on the grant. He also thanked Alderman Lewis.

Alderman Thiel moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 100-10 as recorded in the office of the City Clerk.

ADM 10-3561 (Townhouse-Duplex Clarification): An ordinance amending Title XV: Unified Development Code of the City of Fayetteville Chapter 151: Definitions and §164.11(B) to clarify the side setback requirements and definition of single family attached/townhouse dwellings.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Internal Services and Development Director gave a brief description of the ordinance. He stated staff and Planning Commission recommend approval.

Alderman Thiel stated she appreciates staff finding something that needs to be tweaked to make everything work better.

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

City Attorney Kit Williams read the ordinance.

Alderman Ferrell moved to suspend the rules and go to the third reading. **Alderman Rhoads** 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 5327 as Recorded in the office of the City Clerk

Authorizing Interfund Loan for Parking Program: A resolution authorizing an interfund loan from the Replacement & Disaster Fund to the Off Street Parking Fund for the purchase of machinery and equipment necessary to implement the Entertainment District Parking Program, and providing for repayment of the loan over a sixty (60) month period at an interest rate of three percent (3%) per annum.

Paul Becker, Finance and Internal Services Director gave a brief description of the resolution. We have a choice of doing internal or external financing and I am recommending that we do internal financing. This will be borrowed from and repaid back to the Replacement & Disaster Fund

Alderman Petty: What kind of interest rate would we expect from an external loan?

Paul Becker: I don't know exactly because I haven't priced it. I would think it would be in the 4% or 4.5% range.

Don Marr, Chief of Staff: Based on preliminary inquiries if we use the amount that we were quoted versus the internal financing we would have about an \$18,500 savings per year for five years. It would be about a \$92,000 savings by internally financing.

Paul Becker: If we went to external financing there would be administrative costs as far as legal work and things of that nature because we would have to follow the legal course of Amendment 78.

Alderman Lewis: I feel strongly that if you are able to loan it to yourself and pay yourself back it's a smart way to do your financing. I also appreciate that you checked on the limits on emergency spending, it is smart to make sure we have that reserve and we do.

Alderman Thiel moved to approve the resolution. Alderman Lewis seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 101-10 as recorded in the office of the City Clerk.

Associated Time and Parking Controls: An ordinance waiving the requirements of formal competitive bidding and approving a contract with Associated Time and Parking Controls in the amount of \$810,974.00 for the purchase of access and revenue control equipment for the Entertainment District Parking Program, approving a project contingency of \$11,153.00, and approving a budget adjustment of \$774,335.00.

City Attorney Kit Williams read the ordinance.

Sharon Crosson, Parking and Telecommunications Manager stated she was going to let Chris speak upon the sole source for the bid waiver with Associated Time. We have been doing business with them for the last five years and that's who we have our equipment with now.

Chris Pecoraro, Parking Consultant stated by sole sourcing this to Associated Time we are able to expand on the existing systems that the City already owns. There is an initial savings in the new head end components and software of roughly \$120,000 to reduce our investment in this new system for the Entertainment District. It's important with these types of systems, being that they are specialized systems that we have local support that can respond to issues with the payment equipment. Associated Time is the only manufacturer representative of these systems in this area. That was a second determining factor in moving towards sole sourcing with them.

Sharon Crosson stated the University of Arkansas also uses Associated Time that would insure that we could integrate their equipment with ours.

Alderman Ferrell: You stated you had someone in the area. Is that in Northwest Arkansas?

Chris Pecoraro: They currently support your systems in the downtown monthly structures and the existing off street pay stations.

Alderman Ferrell: Are they located in Fayetteville?

Chris Pecoraro: Their technician lives locally here.

Alderman Ferrell: Sharon you were telling us there was a \$54,000 discount that was applied, was that included in the \$120,000?

Chris Pecoraro: The \$120,000 is savings we experienced because we are expanding on existing systems that we already own. The over all savings on this package exceeds \$230,000 on the final negotiated price.

Alderman Ferrell: Was there a figure of \$54,000?

Sharon Crosson: It was \$58,000 that was recognized through Associated Time and an additional \$176,000 that Chris was able to negotiate through his national accounts program.

Mayor Jordan: If possible I would like to pass this tonight because we are time sensitive on this.

Don Marr: The lead time for the equipment and installation is why it's important.

Alderman Cook 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.

Alderman Cook moved to suspend the rules and go to the third reading. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Petty: The memo received from the City Attorney explained some cost associated with this that are excluded, the data infrastructure and electrical work, where do we plan to pay that from?

City Attorney Kit Williams: That was already included in the previous resolution as part of the program budget.

Don Marr: In the item that was 2.5 head count.

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

Ordinance 5328 as Recorded in the office of the City Clerk

§94.05 Use of Fireworks: An ordinance to amend §94.05 Use of Fireworks of the Code of Fayetteville.

City Attorney Kit Williams read the ordinance.

Chief David Dayringer gave a brief description of the ordinance.

Don Marr: At Agenda Session the question was asked about surrounding communities and whether they allowed the use of skyrockets or items attached to a stick. The Chief did a survey of the surrounding communities. He listed the cities that did not allow skyrockets and the cities that allowed skyrockets.

Alderman Thiel: Clarify the days that we can currently have fireworks in Fayetteville.

City Attorney Kit Williams: The only change is it now allows firecrackers. Before that you could have other kinds of fireworks but you couldn't have skyrockets and firecrackers. The days were only for two days, July 3rd and 4th.

Alderman Thiel: This has expanded that and also the days.

City Attorney Kit Williams: This doubles it to 1st, 2nd, 3rd, 4th and it now would allow firecrackers.

Don Marr: The new ordinance has times in it, where the other ordinance spoke to specific dates. This one adds a time frame at which they can be shot on those days.

Alderman Thiel: It could be argued that they didn't make noise either. I would not support an amendment to add the use of fireworks on a stick.

Mayor Jordan: When we brought forward the ordinance to begin with we didn't have the bottle rocks and stuff on a stick but you all amended it and put it on there. I think they are dangerous.

Don Marr: The communities that are restricting their use also allow the sell of them just as you have.

Alderman Cook: I advocate the safe use of fireworks. The one thing I would possibly change is the time. I wonder if anybody would consider starting at 10:00 a.m. as opposed to 8:00 a.m. I completely agree with fireworks on a stick I don't think that is a good choice.

City Attorney Kit Williams: Does that apply not only to private but also public displays?

Alderman Cook: Yes.

Alderman Cook moved to amend the morning start time of the ordinance from 8:00 a.m. to 10:00 a.m. Alderman Thiel seconded the motion. Upon roll call the motion passed unanimously.

Alderman Thiel: We are going to go through three readings tonight because otherwise we wouldn't be able to allow this?

City Attorney Kit Williams: That's correct normally it takes 31 days for most ordinances to go into effect including this one to change the code.

Alderman Thiel: It concerns me because we have no public here.

Alderman Lewis: At the last discussion of selling them there was something about a sign the vendors had to put up. Is that part of the permitting process for vendors?

Alderman Ferrell: We amended that out.

Alderman Lewis: Can we reinstall that?

City Attorney Kit Williams: You can't put it in use of fireworks. You have to put it in sale of fireworks.

Alderman Lewis: I thought that was going to be part of the process.

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

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: We could put it into Ordinance 5320 that you passed. We could amend that. We would have to suspend the rules to put it on the agenda and then it is 31 days before its effective so it would be effective about a day before July 4th. It's probably too late to effectively do it for the sale.

Alderman Lewis: Can it be an administrative process as part of their permitting process?

Don Marr: When applicants come in to apply for a permit we could make the notice part of the packet the Fire Marshall gives when he does the inspection, they could give it to customers. We are already going to be on site with the Fire Marshall to do an inspection.

Alderman Lewis: That's okay with me.

Don Marr: We will also put an announcement on the Government Channel.

Alderman Ferrell: In the passage of this all things considered this is a hallmark gigantic step for Fayetteville in the passage of this.

Alderman Ferrell moved to suspend the rules and go to the third reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-1. Alderman Petty voting no.

City Attorney Kit Williams read the ordinance.

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

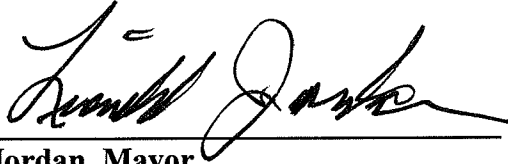
Ordinance 5329 as Recorded in the office of the City Clerk

Announcements:

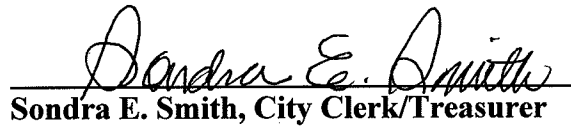
Alderman Lucas welcomed Wal-Mart associates, vendors, and shareholders to Fayetteville and Ward 4.

Don Marr: There will be visitors coming this weekend for the NCAA Regional Tournament that the Razorbacks will be hosting.

Meeting adjourned at 9:05 p.m.



Lioneld Jordan, Mayor



Sondra E. Smith, City Clerk/Treasurer