

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Final Agenda City of Fayetteville Arkansas City Council Meeting June 7, 2011

A meeting of the Fayetteville City Council will be held on June 7, 2011 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. Approval of the May 17, 2011 City Council meeting minutes. **APPROVED**
2. **Bid #10-56 Upchurch Electrical Supply Company:** A resolution authorizing the purchase of twelve (12) additional LED fixtures in the amount of \$15,408.00 plus applicable sales tax from Upchurch Electrical Supply Company pursuant to Bid #10-56 for street installation near the Fayetteville Public Library, and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 83-11

3. **Bid #11-30 Meridian Construction Management, Inc.:** A resolution awarding Bid #11-30 and authorizing a contract with Meridian Construction Management, Inc. in the amount of \$26,890.00 for demolition of the Lake Sequoyah boat dock, and approving a fifteen percent (15%) project contingency.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 84-11

4. **Bid #11-35 King Electrical Contractors, Inc.:** A resolution awarding Bid #11-35 and authorizing a contract with King Electrical Contractors in the amount of \$54,581.00 for construction and installation of an emergency electrical generator at the Fayetteville Senior Center, and approving a ten percent (10%) project contingency.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 85-11

5. **Bid #11-38 RJR Enterprises, Inc.:** A resolution awarding Bid #11-38 and authorizing a contract with RJR Enterprises, Inc. in the amount of \$67,739.00 for construction of recreational swings at Lake Fayetteville Park, and authorizing a ten percent (10%) project contingency.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 86-11

6. **Multi-Craft Contractors, Inc.:** A resolution authorizing a contract with Multi-Craft Contractors, Inc. in the amount of \$26,290.00 for one (1) HVAC unit and associated equipment for the Yvonne Richardson Center, and approving a ten percent (10%) project contingency.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 87-11

7. **Amend Resolution No. 04-10:** A resolution amending Resolution No. 04-10 and approving an agreement with Arkansas Western Gas Company in the amount of \$102,053.65 for relocation of gas lines and appurtenances as part of the RSA Runway 16 Improvement Project at the Fayetteville Executive Airport.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 88-11

8. **Fayetteville Police Department Policies:** A resolution approving Fayetteville Police Department Policies 1.3.4 Less Lethal Weapons, 41.1.1 Patrol, and 61.1.12 Police Traffic Radar Operation.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 89-11

9. **2011 ADEQ Recycling Grant:** A resolution authorizing application for a 2011 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$23,500.00 to fund a pilot apartment recycling container.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 90-11

- 10. Arkansas Highway and Transportation Department Contract:** A resolution authorizing a contract with the Arkansas Highway and Transportation Department for design of water and sewer relocations relating to the widening of Crossover Road (State Highway 265) between Joyce Boulevard and Albright Road.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 91-11

- 11. Beaver Water District:** A resolution authorizing a contract with the Beaver Water District for land application disposal of water treatment residuals.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 92-11

B. Unfinished Business:

- 1. Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment:** An ordinance to amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment of the Fayetteville Code by removing the exemption for bars. *This ordinance was left on the First Reading at the May 3, 2011 City Council meeting. This ordinance was left on the Second Reading at the May 17, 2011 City Council meeting.*

THIS ITEM FAILED.

C. New Business:

- 1. RZN 11-3799 (Corner of Mount Comfort and Oakland Avenue/Oakland Courts):** An ordinance rezoning that property described in rezoning petition RZN 11-3799, for approximately 1.43 acres, located at the corner of Mount Comfort Road and Oakland Avenue from RMF-24, Residential Multi-Family, 24 units per acre to CS, Community Services.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5412

- 2. VAC 11-3837 (1849 South Garland Avenue ROW Vacation):** An ordinance approving VAC 11-3837 submitted by Morgan Hooker for property located at 1849 South Garland Avenue to vacate a portion of an un-constructed right-of-way, a total of 258 square feet.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5413

- 3. Bid #11-37 Dean Crowder Construction, Inc.:** A resolution awarding Bid #11-37 and authorizing a contract with Dean Crowder Construction, Inc. in the amount of \$3,815,173.70 for construction of improvements to Cato Springs Road and Razorback Road to School Avenue, approving a five percent project contingency, and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 93-11

City Council Tour: Monday, June 6, 2011 at 4:30 p.m. The Council will tour the Westside Wastewater Treatment Plant and Woolsey Prairie.

Announcements:

Adjournment: 11:45 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

City Council Meeting:

June 7, 2011

Adjourn: 11:45 p.m.

Subject:	Roll				
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Mayor Jordan	✓			

9-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Mayor Jordan				

Subject:	Consent				
Motion To:		Approve			
Motion By:		Petty			
Seconded:		Gray			
Minutes approved <u>passed</u> 83-11 thru 92-11	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Mayor Jordan				

Subject:		Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment			
Motion To:			3rd Read	Pass	
Motion By:			Gray		
Seconded:			Ferrell		
B. 1 Unfinished Business <u>Failed</u>	Petty	✓	✓		
	Tennant	✓	N		
	Ferrell	✓	N		
	Adams	✓	✓		
	Lewis	✓	✓		
	Gray	✓	✓		
	Thiel	✓	✓		
	Kinion	✓	N		
	Mayor Jordan				

8-0

5-3

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Mayor Jordan				

Subject:		RZN 11-3799 (Corner of Mount Comfort and Oakland Avenue/Oakland Courts)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Fernell	Thiel	
Seconded:			Lewis	Gray	
C. 1 New Business <u>passed</u> 5412	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject:		VAC 11-3837 (1849 South Garland Avenue ROW Vacation)			
Motion To:			2nd Read	3rd Read	Pass
Motion By:			Thiel	Thiel	
Seconded:			Fernell	Fernell	
C. 2 New Business <u>passed</u> 5413	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Kinion	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0

Subject:	Bid #11-37 Dean Crowder Construction, Inc				
Motion To:		<i>Approve</i>			
Motion By:		<i>Thiel</i>			
Seconded:		<i>Ferrell</i>			
C. 3 New Business <i>passed</i> <i>93-11</i>	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Mayor Jordan				



TO: Mayor Jordan

Kit Williams
City Attorney

THRU: Sondra Smith, City Clerk

Jason B. Kelley
Assistant City Attorney

FROM: Kit Williams, City Attorney

DATE: June 8, 2011

RE: Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of June 7, 2011

- 1. Upchurch Electrical Supply Co.:** A resolution authorizing the purchase of twelve additional LED fixtures in the amount of \$15,408.00 plus applicable sales tax from Upchurch Electrical Supply Company pursuant to Bid #10-56 for street installation near the Fayetteville Public Library, and approving a budget adjustment.
- 2. Meridian Construction Management, Inc.:** A resolution awarding Bid #11-30 and authorizing a contract with Meridian Construction Management, Inc. in the amount of \$26,890.00 for demolition of the Lake Sequoyah Boat Dock and approving a 15% project contingency.
- 3. King Electrical Contractors, Inc.:** A resolution awarding Bid #11-35 and authorizing a contract with King Electrical Contractors in the amount of \$54,581.00 for construction and installation of an emergency electrical generator at the Fayetteville Senior Center and approving a 10% project contingency.
- 4. RJR Enterprises, Inc.:** A resolution awarding Bid #11-38 and authorizing a contract with RJR Enterprises, Inc. in the amount of \$67,739.00 for construction of recreational swings at Lake Fayetteville Park, and authorizing a 10% project contingency.
- 5. Multi-Craft Contractors, Inc.:** A resolution authorizing a contract with Multi-Craft Contractors, Inc. in the amount of \$26,290.00 for one HVAC unit and associated equipment for the Yvonne Richardson Center, and approving a 10% project contingency.

- 6. Amendment to Resolution No. 04-10:** A resolution amending Resolution No. 04-10 and approving an agreement with Arkansas Western Gas Company in the amount of \$102,053.65 for relocation of gas lines and appurtenances as part of the RSA Runway 16 Improvement Project at the Fayetteville Executive Airport.
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- 10. Beaver Water District:** A resolution authorizing a contract with the Beaver Water District for land application disposal of water treatment residuals.



TO: Mayor Jordan

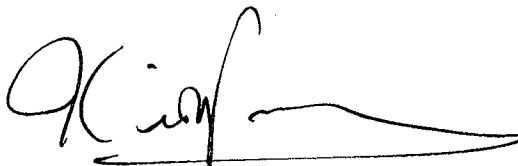
Kit Williams
City Attorney

THRU: Sondra Smith, City Clerk

Jason B. Kelley

Assistant City Attorney

FROM: Kit Williams, City Attorney



DATE: June 9, 2011

**RE: Resolutions prepared by the City Attorney's Office and
passed at the City Council meeting of June 7, 2011**

The following resolution was omitted from the memo issued June 8, 2011 detailing the passed ordinances and resolutions from the June 7, 2011 City Council meeting.

- 1. Dean Crowder Construction, Inc.:** A resolution awarding Bid #11-37 and authorizing a contract with Dean Crowder Construction, Inc. in the amount of \$3,815,173.70 for construction of improvements to Cato Springs Road and Razorback Road to School Avenue, approving a five percent project contingency, and approving a budget adjustment..

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Left on the Second Reading

C. New Business:

- 1. RZN 11-3799 (Corner of Mount Comfort and Oakland Avenue/Oakland Courts):**
An ordinance rezoning that property described in rezoning petition RZN 11-3799, for approximately 1.43 acres, located at the corner of Mount Comfort Road and Oakland Avenue from RMF-24, Residential Multi-Family, 24 units per acre to CS, Community Services.
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City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)
All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Requisition No.:	Date:	A. 4
P.O Number:	5.26.2011	Bid #11-35 King Electrical Contractors, Inc.
	Expected Delivery Date:	Page 1 of 2

Vendor #:	5974	Vendor Name:	King Electrical Contractors, Inc.		Mail	Yes: ☒ No: ☐
Address:	2145 W. Moore Ln.		Fob Point:		Taxable	Yes: ☐ No: ☒
City:	Fayetteville	State:	AR	Zip Code:	72704	Ship to code:
Requester:	Larry Rennie			Requester's Employee #:	650	Extension:
					363	

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	100KW emergency generator and associated equipment for Fayetteville Senior Center	1			\$54,581.00	4470-9470-5400.00	02046-0202		
2					\$0.00				
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

Special Instructions:	Subtotal:	\$54,581.00
	Tax:	
	Total:	\$54,581.00

Approvals:		
Mayor: _____	Department Director: _____	Purchasing Manager: _____
Finance & Internal Services Director: _____	Budget Manager: _____	IT Manager: _____
Dispatch Manager: _____	Utilities Manager: _____	Other: _____

RESOLUTION NO. _____

A RESOLUTION AMENDING RESOLUTION NO. 04-10 AND APPROVING AN AGREEMENT WITH ARKANSAS WESTERN GAS COMPANY IN THE AMOUNT OF \$102,053.65 FOR RELOCATION OF GAS LINES AND APPURTENANCES AS PART OF THE RSA RUNWAY 16 IMPROVEMENT PROJECT AT THE FAYETTEVILLE EXECUTIVE AIRPORT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends Resolution No. 04-10 by deleting the reference to \$83,000.00 and replacing it with \$102,053.65, and by deleting the project contingency.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

1-800-563-0012
www.awgonline.com

Account Number: 411010049704
Customer Number: 1101000380
CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE AR 72701-6069

Page: 1
Invoice Number: 401000056945
Billing Date: 05/25/2011
Mail Date: 05/26/2011

Includes Corrections to Prior Periods

Previous Balance	\$127,675.44
Payment	\$0.00
Adjustment	(\$127,675.44)
Balance Forward	\$0.00
Current Amount/Charges	\$102,053.65

Total Amount Due	\$102,053.65
Current Amount Due Date	06/17/2011

Security Deposit on Record	\$0.00
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• If payment for Current Amount/Charges is not received by 06/17/2011, a late payment charge of \$15.00 will be assessed. Current Amount/Charges are due on 06/17/2011.

Online Customer Care

• Access to your Account is now available via the Internet and Phone. On the Internet, you can change account information, view your consumption history, sign up for recurring electronic payment or electronic-bill (paperless bill) and also view your statement. Go to www.awgonline.com to sign-up today.

Important Information

• For your convenience you can pay your bill electronically using a credit card or by automatic withdrawal from your bank account. You can learn more by calling our Customer Care Center or by logging onto www.awgonline.com.
• If you suspect a gas leak, don't wait. Leave the area and from a safe distance call our emergency service number at 1-800-563-0012. Choose your language and press option 1.

Correspondence

• If you have questions concerning your bill statement, service or delayed payment agreement please call our Customer Care Center at 1-800-563-0012.
• Please send all correspondence and legal notices separately to Arkansas Western Gas Company, PO Box 13286, Fayetteville, AR 72703-1002.
• To update your mailing address visit www.awgonline.com and log into your account, or call us at 1-800-563-0012.

Disclosure

• **Electronic Check-Re-presentment Policy**
In the event that your check is returned unpaid for insufficient or uncollected funds, we may re-present your check electronically. In the ordinary course of business, your check will not be provided to you with your bank statement, but a copy can be retrieved by contacting your financial institution.
• Effective June 1, 2011, when you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

Rebates

• With AWG's energy-efficiency programs, you'll save money and energy at the same time! Take advantage of rebates and low or no-cost energy tips. Visit www.ExcessIsOut.com for more information!

**Check your account
anytime, anywhere!**

Arkansas Western Gas
makes it easy to

- ☒ check your account balance,
- ☒ make a one-time payment
- ☒ sign up for recurring auto payments and more.

Register your account online
at www.awgonline.com. Just
click the "Account Login"
button to get started!

Or if you'd prefer, call
1-800-563-0012 and after
choosing your language,
press option 2.

Please do not staple or fold

Please return this portion with your payment and write your account number on the check.

Loan Overpayment	Account Number	Current Amount Due Date	Total Amount Due
Check here and indicate amount of overpayment on back ☐	411010049704	06/17/2011	\$102,053.65

I have added the following amount to my bill as my donation to Salvation Army's
Hearts Warming Homes \$ ____ Other ☐ \$ 5 ☐ \$ 10 ☐ \$ 20

Total Amount Enclosed: _____

CITY OF FAYETTEVILLE
IO 1004607-CITY AIP 3-05-0020 0038-2009
113 W MOUNTAIN ST
FAYETTEVILLE AR 72701-6069



Arkansas Western Gas Company
PO Box 660559
Dallas TX 75266-0559

411010049704 1048 010205365

Account Number: 411010049704
Customer Number: 1101000380
CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE AR 72701-6069

Page: 2
Invoice Number: 401000056945
Billing Date: 05/25/2011
Mail Date: 05/26/2011

Includes Corrections to Prior Periods

Regulated Service	102053.65
Total Current Charges	\$102,053.65

<u>Adjustments</u>		
Canceled Regulated Service	05/25/2011	(127,675.44)
Total Adjustments		(\$127,675.44)

- We apologize for the delay in providing your invoice.



INVOICE DETAIL

BILL TO : _____

City of Fayetteville - Fayetteville Executive
Airport, Drake Field
Attn: Ray Boudreaux
4500 S School Ave, Suite F
Fayetteville, AR 72701

Invoice # :	1048- 401000056945
Invoice Date :	05/25/2011
Customer Account # :	411010049704
Internal Order # :	1004607

Customer Reference / Order # :

IO 1004607 AIP 3-05-0020---0038-2009

Item	Description / Details	Total
1	Relocation for Drake Field Airport Runway 16 Safety Area Improvements AIP 3-05-0020---038-2009	102,053.65

NOTE: Original invoice 401000056756 in the amount of
\$127,675.44 has been cancelled - do not pay.
This revised invoice has removed overhead charges
from the reimbursable project costs.

Questions concerning this invoice? Please contact:

PROPERTY ACCOUNTING - Attn: James Koch
Phone: (479) 582-7867
E-mail: James.Koch@Sourcegas.com

SUBTOTAL	\$	102,053.65
TAX RATE		0.00%
SALES TAX		-
OTHER		-
TOTAL	\$	102,053.65

THANK YOU FOR YOUR BUSINESS!

INVOICE SUMMARY

I/O # : 1004607

Relocation for Drake Field Airport
Runway 16 Safety Area Improvements
0020—038-2009

AIP 3-05-

<u>Type of Charge</u>	<u>Amount</u>
Labor and Payroll	16,494.73
Employee Expense	-
Material/Supplies	11,621.42
Outside Services / Legal	73,937.50
Vehicle Expenses	-
Right of Way	-
Utilities - Gas & Water	-
Permits, Licenses	-
Other Exp & Fees	-
ROW - Other	-
Subtotal - Direct Charges	102,053.65
Overhead Allocation	-
AFUDC	-
Total Project Charges	102,053.65
Betterment	-
Adjusted Total Charges	<u>102,053.65</u>
Billable Amount	100.00%
	102,053.65
	Less Adjustment
	-
NET Amount Due	<u><u>102,053.65</u></u>

Aldermen

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
May 17, 2011**

A meeting of the Fayetteville City Council was held on May 17, 2011 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, Kinion, Petty, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, Assistant City Attorney Jason Kelley, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items: None

Quarterly Financial Report

Paul Becker, Finance Director presented the Quarterly Financial Report to the City Council.

Alderman Adams: I would like you to explain the item on Building and Permits?

Paul Becker: That is the money that we receive for approving building permits.

Alderman Adams: There was one very large increase in that, I understand that was the school.

Paul Becker: Yes it was. That has come through for the construction and some of the permitting there has been done. That is why we are showing that over budget. We are about \$60,000 over where I would expect to be at this point in time. He gave an update on building permit collections.

Mayor Jordan thanked the staff and the City Council for making this budget as good as it is.

Agenda Additions: None

Consent:

Approval of the May 5, 2011 City Council meeting minutes.

Approved

City of West Fork Inter-Local Agreement: A resolution approving an Inter-Local Agreement between the City of Fayetteville, Arkansas and the City of West Fork, Arkansas to provide animal sheltering services to West Fork through 2011.

Resolution 76-11 as recorded in the office of the City Clerk

Ranger's Pantry Pet Food Bank Donation Revenue: A resolution approving a budget adjustment in the amount of \$1,619.00 representing citizen donation revenue to the Animal Services Division Ranger's Pantry Pet Food Bank during the first quarter of 2011.

Resolution 77-11 as recorded in the office of the City Clerk

Police Department Policies: A resolution approving Fayetteville Police Department policies 15.1 Planning and Research, 15.3 Criminal Analysis, 41.2.13 Seatbelt Usage, and 45.1.1 Community Oriented Policing.

Resolution 78-11 as recorded in the office of the City Clerk

Education Access Television Contract: A resolution to approve an agreement with the Fayetteville School District to operate the City's Educational Access Channel.

Resolution 79-11 as recorded in the office of the City Clerk

Highway 16 East Widening Project: A resolution to approve two donation warranty deeds, three donation warranty permanent easement deeds and one temporary construction easement for the City of Fayetteville to convey to the Arkansas State Highway Commission for the Highway 16 East Widening Project.

Resolution 80-11 as recorded in the office of the City Clerk

Emergency Operations Plan "EOP": A resolution approving an emergency operations plan for the City of Fayetteville as the method for handling all emergencies occurring within the City.

Resolution 81-11 as recorded in the office of the City Clerk

2011 COPS Hiring Grant: A resolution authorizing application for a 2011 Community Oriented Policing Services hiring grant through the U.S. Department of Justice.

Resolution 82-11 as recorded in the office of the City Clerk

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

Unfinished Business:

Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment:

An ordinance to amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment of the Fayetteville Code by removing the exemption for bars. *This ordinance was left on the First Reading at the May 3, 2011 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.

Assistant City Attorney Jason Kelley read the ordinance.

Alderman Gray: We would like to amend this ordinance so that the effective date is January 2, 2012. We feel this would give owners a chance to make some adjustments and would give them a chance to make plans if they want to change their facility.

Assistant City Attorney Jason Kelley read the amended Section 3 of the ordinance.

Alderman Gray moved to amend the effective date of the ordinance to January 2, 2012. Alderman Lewis seconded the motion.

Scott Ringwood, a citizen questioned the amendment.

Assistant City Attorney Jason Kelley clarified the amendment.

Don Marr also clarified the effective date should the amendment pass.

Alderman Ferrell: If the ordinance should fail to be amended then it's a moot point to amend it to January 2nd.

Upon roll call the motion passed unanimously.

Alderman Gray: I think what we are talking about is purely a health and safety issue and that is the reason this ordinance is being brought forward.

Scott Phipps, a Fayetteville resident stated this is a matter of choice and adults need to be allowed to make those choices. He spoke against the ordinance.

Jonie Harrell, a Fayetteville resident stated I have always had the choice of where I can work and I don't think we should accommodate anyone else. She spoke against the ordinance.

Janet Gladner, a Fayetteville resident who currently works in a bar stated I believe it is my choice where I work. I am opposed to the ban.

Corey McCain, a Fayetteville resident who currently works on Dickson Street stated I really believe it is up to the business owners and the people that attend those bars. He spoke against the ordinance.

Matt Marshall, a bartender and Fayetteville resident stated there has been a lot of discussion with a lot of people that work at smoking bars and the consensus is that it is our choice. He presented the Council with 66 signed statements from workers that work in smoking bars saying that it is their choice to work in a second hand environment. There are 35 places in the entertainment district where you can drink alcohol in a nonsmoking environment. There are 18 smoking establishments in the entertainment district. He spoke against the ordinance.

Alderman Ferrell: The numbers you gave about the establishments, did you say there were 36 nonsmoking? Do you have an idea in town what it is?

Matt Marshall: I can only imagine. I was wrong there are 39 nonsmoking establishments in the entertainment district and 15 smoking establishments in the entertainment district.

Lyell Thompson, a Fayetteville citizen spoke against the ordinance. He shared stories of his family members who smoked and still lived long lives.

Stacy Raven, a Fayetteville resident stated we all know that smoking is bad. I think deciding that businesses should not have smoking is unfair to those people who want to smoke in bars. I think we can all agree that we want businesses to be able to run their business the way they want to and people should be able to do what they want as long as it's legal. We all want the City to be fair.

Cone Turner, resident of 225 Thompson stated I am against the ordinance. He stated you can not approve of something and still let others go with it. If you do not want to be around a smoker ask the person smoking if they will not smoke around you.

Andrew Nelson, bartender at Jose's stated the Entertainment District doesn't need another hit and there are plenty of choices to go to a bar that has nonsmoking. He spoke against the ordinance.

Tyler Clark, Project Coordinator for the Tobacco Free Coalition spoke about the air quality survey that was conducted that compared the levels of secondhand smoke in bars that allowed smoking and bars that did not allow smoking. He presented several statistics from the survey.

He stated the survey showed that employees and patrons are exposed to pollutions that are dangerous to their health and above the EPA standards.

Alderman Lewis: How much time were they in each spot?

Tyler Lewis: On average from 30 to 45 minutes, so a very small period of time.

Alderman Ferrell: How did the proprietors react to this?

Tyler Lewis: It was a blind test, no one knew but if they asked the couple was instructed to tell them, but no one ever asked.

Alderman Ferrell: Understanding that most of the funding comes from smoking cessation there was a question asked tonight by one of the citizens about ideas for going to abolition of tobacco. Have you guys thought about moving on to abolition of tobacco since there has been a proven correlation between all tobacco usages?

Tyler Lewis: No sir that would not be a priority for the Tobacco Free Coalition.

Alderman Ferrell: Do you plan to go statewide with this?

Tyler Lewis: I think as mentioned before in the previous meetings Fayetteville is usually looked at as a barometer change for the community. This ordinance started in 1992 and then in 2004 we came back and took care of the restaurants and now the bars. Between 2004 and 2005 the State went pretty much smoke free as well with an exception of those few venues. Arkansas could very well go next which would be a benefit to the state as a whole. We want to protect people now from second hand smoke.

Alderman Ferrell: Will you be pursuing that change and trying to drive policy change for the state? My understanding is that if you are 21 years old and it's a bar you can go in and smoke.

Tyler Lewis: Our priority would be Northwest Arkansas and our efforts are for educational purposes.

There was a discussion about smoking outside and the outside air quality.

Angela Lightner, owner of the Beer Keg stated the smoking ban is not just about smoking in bars but the right to have the choice. This is about the right to have a choice. I choose not to smoke but several of our customers have made the choice to smoke. We do not need someone to protect us from smoke. You should have the choice to visit a smoking or a nonsmoking establishment. We want the choice to keep the Beer Keg and any other bar that wants the same choice as a smoking establishment. She spoke against the ordinance.

Alderman Gray: Do you have any idea how much money the Veteran's hospital spends on tobacco related illness?

Angela Lightner: I am sure they use a whole lot but we do not need to be protected from people. Everybody knows the hazards of smoking but it is our business. Anybody that does not want to be around second hand smoke has a choice.

Alderman Lewis: As a business owner do you consider your business open to anyone over 21?

Angela Lightner: Exactly.

Alderman Adams: Do you have music?

Angela Lightner: No, we have a small jukebox.

Alderman Adams: Do you have a panic bar on your door in case of a fire?

Angela Lightner: We have a front and back door and the place is less than 400 square feet.

Alderman Kinion: If this passes do you think a lot of your visitors will quit smoking?

Angela Lightner: No sir. I seriously doubt it will cause any of them to quit smoking. It will cause us to have to spend a lot of money if we want to keep the revenue of our customers. A lot of them have said they would probably just stay home because they want to smoke when they drink a beer or it will cause us to spend a lot of money to make a place outside that they would be able to go and smoke. We don't make that much money.

Alderman Thiel: Do you have any room to build an outside patio?

Angela Lightner: We have a little fenced in area in the back. I like the idea of being able to choose to do that on my own versus being forced to do that.

Alderman Lewis: You indicated anyone over 21 can come to your business and so what about the choices of everyone over 21? If your business is open to anyone over 21, is it really if smoking is permitted because there are individuals who cannot function in an environment where there is an air quality situation.

Angela Lightner: You have to be 21 to drink. We are one of the few places left where people can smoke and have a drink if they would like and we would like to keep that choice.

Tami Clinkingbeard, a Ward 4 resident spoke on the right to breathe fresh air. I believe I have the right to breathe fresh air and be protected from air that is being contaminated by smoke. Who has the right to endanger my life or create health problems that have become a financial draw for all of us. She asked the City Council to protect all citizens of Fayetteville from the dangers of second hand smoke. She spoke in favor of the ordinance.

Scott Greenwood, a previous bar owner spoke on the smoking businesses in Fayetteville and the income that they bring in and pointed out that if those businesses close that will be a loss to the City. I do not know the City can afford to lose any more money. You should have machines that

reduce the smoke in your bars. What I do on my private time is my business. I think we are looking at this incorrectly. We need to use business sense when running the city. This will affect hundreds of people. He spoke against the ordinance.

Alderman Adams: You said you opened three bars; did you hire bouncers at those bars?

Scott Greenwood: No, we did not need them. At those places I was there and we did not allow people like that.

Alderman Adams: So you protected your patrons from danger.

Scott Greenwood: Absolutely, when people came in to my place of business it was a gathering place.

Alderman Adams: So you provided protection, that's good.

Alderman Gray: Which bar do you own in Fayetteville?

Scott Greenwood: I do not own a bar in Fayetteville at this time. I am a previous bar owner. I would not open one in Fayetteville at this time because this ordinance would scare me because I would not be able to open it as I wish. We are going to force our tax dollars to another city. We need to keep our dollars here.

Charles Lloyd, a Fayetteville resident: We are all adults, we have freedom of choice and let capitalism sort it out.

Tyler Sours, a Fayetteville resident: You have heard a lot about smokers rights. No one is trying to take away the right to smoke. This ordinance is not banning smoking in general. By smoking in public places and bars the entire community's right to clean air is denied. Two other rights are also impaired, the right to work and the right to patronize. There is a vast difference between choosing to take the risk and having that risk involuntarily imposed upon you. Business owners have the right to do business as they see fit but when they invite the public into their establishment they have the responsibility to make it safe for all their customers. She spoke in favor of the ordinance.

Alderman Ferrell: Have you been in business establishments that have signs that say we reserve the right to refuse your business?

Tyler Sours: Yes sir.

Alderman Ferrell: Do you believe they have the right to put that sign up?

Tyler Sours: I believe so.

Alderman Ferrell: You said they don't have the right to preclude someone from coming in. They don't have the right to fog the air up for all of us that may want to go in there. So it seems rather inconsistent.

Alderman Lewis: If a business has a right to refuse service except if it's race, sex, disability, national origin or religion and if it's a disability and her friend cannot breathe in that public establishment, I think that is what she is saying. That becomes a non choice when a person with a disability cannot function in that public space.

Tyler Sours gave her findings on some research on the American's with Disabilities Act. I don't know that saying you have a choice to go somewhere else is really that valid of an argument.

Jordan McDaniel, a Fayetteville resident: Big tobacco targets college age students. The younger the person is when they start smoking the longer the use of the product or the more addictive they become. She spoke in favor of the ordinance.

Page Daniel, a Fayetteville resident: I view the public debate for smoke free bars as a sign for social norm change. She spoke about the organization called Mothers Against Drunk Driving and the positive changes that have occurred due to the start of the organization. She spoke in favor of this ordinance.

Casey Sheeler, a Fayetteville resident spoke on the risks of smoking. She spoke in favor of the ordinance.

Ryan Abshire, a bar patron stated this is a matter of choice and bars are not providing essential services. He spoke against the ordinance.

David Allen, a Fayetteville resident stated this is purely an issue of choice and adults can make their own decisions. There are more nonsmoking businesses in Fayetteville than smoking allowing for plenty of options for everyone. He asked the Council to leave the ability to choose in the peoples hands.

Zach Wooden; owner of three bars, two smoking and one nonsmoking stated I am completely against it. Why do you allow smoking in a smoke shop? What constitutes a smoke shop?

Assistant City Attorney Jason Kelley gave the definition of a smoke shop.

Zach Wooden: On that same line can a retail smoke shop sell beer if that is not their primary product?

Assistant City Attorney Jason Kelly: I can't advise him as to what to do but I can read the definition.

Zach Wooden: That is kind of a slippery slope there. I can see it being abused either way. I have no space to provide a patio. He also suggested the idea of smoke rooms.

Alderman Ferrell: Did the original smoking ordinance exempt smoke tobacco shops?

Assistant City Attorney Jason Kelley: Smoking was prohibited in all public places and places of employment and City vehicles unless they were specifically exempted. There were two exemptions bars and retail tobacco stores.

Alderman Ferrell: I have never seen anybody smoke in a retail tobacco store.

Sandy Prince with Hope Cancer Resources gave a list of cancers directly attributed to tobacco use.

Alderman Lewis: Do all the patients you deal with have health insurance?

Sandy Prince: No, we primarily serve the under served patients who have cancer with prescription assistance, smoking cessation, transportation and cycle social counseling. Most of the people that we deal with are underinsured.

Kathy Grisham, a Fayetteville resident stated this would ensure that every public business has free, clear, clean air for anyone in that business to breathe. She spoke on health care costs to the entire community due to people not acting in a responsible way with tobacco. The cost to Fayetteville is \$20 million per year.

Alderman Lewis: How did the \$20 million come about?

Kathy Grisham: In Arkansas the annual healthcare costs are \$812 million and then taking the percentage per capita is how that was derived.

Wade Ogle, Owner of two local bars, one which is smoking and one that is nonsmoking stated my partner and I are against this ordinance and we feel like in a strictly 21 environment, that offers no essential public services, that we should be allowed to sort this out between our staff, customers and ourselves.

Alderman Gray: Do you provide health insurance for your workers?

Wade Ogle: No they are all part time.

Alderman Gray: How many workers do you have in your two bars?

Wade Ogle: About fifteen.

Alderman Gray: Do you know what happens when they get sick enough to go to the doctor?

Wade Ogle: They have to take care of themselves.

Alderman Tennant: The Crown Pub recently went to nonsmoking.

Wade Ogle: Yes, in November.

Alderman Tennant: And you did that why?

Wade Ogle: I felt the general tenure of the clientele, the nonsmokers out weighed the smokers.

Alderman Tennant: So would it be fair to say that you let the market decide your decision?

Wade Ogle: Yes.

Lori Ray, resident of Ward 4 stated I very strongly support moving Fayetteville forward to be a 100% smoke free community. She spoke in favor of the ordinance.

Keith Vire, a Fayetteville resident spoke on the effects smoking has on the musicians who play at the bars. He stated it would be a great thing for them to be able to play in a smoke free environment.

James Pitman who works on Dickson Street pointed out that the people who have spoken against this ordinance have first hand experience with the people on Dickson as opposed to the speakers in favor who do not regularly visit these facilities. He spoke against the ordinance.

Eleanor Hughes, a Fayetteville resident spoke on business requirements and stated that having a comprehensive smoke free policy for places of business is not regulating morality and it's a logical next step for our community. She spoke in favor of the ordinance.

Sarah Varga, Owner of two bars on Dickson one being smoke free and the other a smoking establishment stated I am against the amendment. Your decision will affect people and I would like business owners to have a choice.

Alderman Gray: When you opened Sideway's it was nonsmoking, why did you decide to do that?

Sarah Varga: It was my personal choice to have a nonsmoking environment.

Alderman Kinion: So basically what you have done is look at the market and hit both elements of the market so you could broaden your reach and have a more successful model for your business.

Sarah Varga: I can't say yes or no to that; we just made the decision based on our own personal choice.

Alderman Kinion: You were undecided last time we talked. It was very relevant.

Sarah Varga: The reason that scares me so much is because I have been doing a lot of research on the internet as far as what has happened to bars and restaurants after cities and states have passed ordinances.

Alderman Kinion: Thank you for coming back because we had talked and that's relevant.

Alderman Ferrell: Sarah you said, despite the idea you came to, you would like to be able to have the option should you decide to open another bar in Fayetteville

Sarah Varga: Correct.

Alderman Ferrell: What would be your consideration on that?

Sarah Varga: I guess the people that are prepared to pay more for a drink is the type of place I would like to open.

Mark Risk, a resident of 660 Lyle Lane spoke against the ordinance and stated it is a property right issue. We are being forced to do something other than what a free society should allow.

Alderman Tennant: You still own residential rental property?

Mark Risk: Yes.

Alderman Tennant: In the residential rental property that you own are you seeing any trends with people renting that are more smoking or nonsmoking? Are you seeing a difference in more people smoking or less people smoking?

Mark Risk: I would say probably less because that is the overall trend in society and fewer people are smoking. We don't make it a condition to rent that you can't smoke. We leave it up to their choice.

Alderman Petty: I am always sensitive when someone is critical of the science that we have been looking at. I was wondering if you would read the conclusion again from the study you brought up.

Mark Risk: We find no evidence that legislated U.S. smoking bans were associated with short term reductions in hospital admissions for acute myocardial infarction or other diseases in the elderly, children or working aged adults. He gave a reference to the website where this could be found.

Alderman Petty: I want to explain to the Council more clearly what I intended in cosponsoring this. I have no interest in whether or not there are short term affects from this ordinance when it comes to public health. I have always been concerned with long term benefits of this ordinance and that is what we are working for. I would be very interested if any members of the public have any information on the long term affects of what this might do.

He asked everyone to raise their hand if they were here as a member, supporter, volunteer or employee of the Tobacco Free Coalition and if they are paid. He also asked members of the audience to raise their hand if they had a business interest, real estate interest or are employed by a smoking establishment.

Alderman Lewis: Mr. Risk, in regards to your comments of property rights my question is mostly about the idea that 51% of the population of Fayetteville does not own property and are renting so in saying protecting property rights do you feel that people who own property have more rights than people who don't?

Mark Risk: I think as a property owner we are taxpayers and we have put roots down in the City. I feel that myself or someone who has been here for years and has invested in this town should be given a little more consideration than someone who is just in and out.

Alderman Ferrell: How many of the owners or employees of bars receive public money to fight this?

Alderman Adams: Mr. Risk does your business have pool tables and a large open space?

Mark Risk: I do not own On the Mark. We are the landlord and rent it to On the Mark.

Alderman Adams: You were expressing concern about your business shutting down. I spend my days working with a very large group of students over 21 who I believe would come to that business if smoking were banned there. I think it could be very lucrative for your business.

Mark Risk: It might be and that is our decision to make. I appreciate your comments.

Alderman Adams: There are groups of students who won't come because of that.

Alison Tussey who works in two different bars stated I am against the smoking ban completely and I believe adults have the right to choose themselves. I don't believe this is a health issue at all and I believe it is completely a choice issue.

Alderman Gray: Do you work in one of the bars that have health insurance?

Alison Tussey: No I do not.

Alderman Gray: If you got too sick to pay your bills who would pay your bills?

Alison Tussey: I would pay my bills just like everyone else.

Alderman Gray: Do you realize that many times people get so sick that they can't pay their bills.

Alison Tussey: I am an intelligent enough adult to understand that.

Alderman Gray: I think that is a very serious issue to consider and that is one of the reasons we are bringing this forward.

Ashlee Reed who has worked on Dickson Street for six years stated I do not agree with the smoking ban. The bar that I work at installed a smoke ventilation system that had such a negative air pressure that we had to cut a hole in the ceiling. We really don't have a problem with it.

Geary Warlick who currently works at several establishments stated I think it is hypocritical that we are debating smoking being a health issue at bars in comparison to cirrhosis of the liver or drunk driving related accidents that kill. It's just a matter of choice.

Cambre Horne Brooks, a Fayetteville resident quoted some important guidance offered by Philip Morris regarding second hand smoke. In this information they state smoking should be regulated indoors. There are other studies from health organizations regarding the public effects of smoking and their opinion on whether the government should have the right to intervene on this public health issue.

Alderman Thiel: Are there any studies that have been done in Fayetteville or any other cities, that have banned smoking in public places, in regard to whether there has been a reduction in smoking?

Cambre Horne Brooks briefly explained a study conducted in Montana. There is a 20 percent measured outcome that is generally seen in reduction of smoking in your community after passing an ordinance.

Alderman Thiel: Could you get some of that information to us?

Cambre Horne Brooks: Absolutely. Regarding Mr. Ferrell's piece about the postcard, the cost was \$326 and it came from private donations.

Alderman Ferrell: What about all the ads in the newspapers?

Cambre Horne Brooks: Those are coming from the NWA Tobacco Free Coalition and they don't include any called action, they are simply educating the public on second hand smoke.

Alderman Ferrell: Can you give me an idea on how much has been spent of the tobacco settlement money?

Cambre Horne Brooks: I am going to guess about \$5,000.

Cody McChristian stated I support smoke free bars and public health.

Joe McDermott, a bartender: I am opposed to the smoking ban. We have all pretty much agreed that we know the risks of smoking. It is an option to go to a smoking bar or a nonsmoking bar. I don't understand why there is a need to ban smoking from every bar.

Alderman Lewis: How did you hear about this topic?

Joe McDermott: Word of mouth and the people I work with.

Cheryl Wahl, Owner of Zooloos on Dickson Street, a smoking establishment: We try to keep the bar ventilated. I know I have choices but I have the right to make a decision. Our customer's should have the right to make that choice. She spoke against the ordinance.

David Farmer, a bartender stated it is a health issue. We have health warnings on the doors and it is their option to come in or go to a nonsmoking establishment. I feel like this is a choice and a freedom. That is why I am opposed to the ban.

Brian Holt with Hope Cancer Resources stated this is a matter of public health and that falls under your purview as far as being able to help improve the health of Northwest Arkansas. When the original ordinance was passed I think it paved the way for the state to adopt the laws and regulations that they have. He spoke in favor of the ordinance.

Alderman Lewis: The illnesses that you treat are any of them categorized as a disability or are they ongoing and long-term?

Brian Holt: I do not believe they are categorized as a disability but they can be long term.

Jamie Thornton, resident of Ward 3 stated this policy is about public health. Health is health; it has nothing to do with business decisions and pocket books. He spoke in favor of the ordinance.

Rachel Goodrey, resident of Ward 4 stated I support smoke free bars and public health.

Andrew Shealer a patron of bars in Fayetteville and a resident of Northwest Arkansas stated the precedence is already in place for these types of regulations to be viewed as acceptable. Public health and safety trumps personal decision. I am anti big government and pro business owner's choice. He spoke in favor of the ordinance.

David Williams, a Fayetteville resident spoke in support of the ordinance. He shared his perspective from his 40 years of experience in health care administration and education. I am a member of the Fayetteville Forward Economic Development Health Committee. The goal of that committee is, in 20 years Fayetteville and the Northwest Arkansas area would be the healthiest population in mid America at the lowest per capital cost. I think this ordinance is an important piece of work in attaining that goal. This is a public health issue.

Alderman Lewis: Can you talk more about the FFEAC participation because I don't know that everyone was involved in that.

David Williams: Several hundred citizens participated in Fayetteville Forward Economic Development Summits. We shared long term visions and dreams that were related to economic development in a very forward thinking context so people could help improve the quality of life and economy over the long term.

Mark Wright, a bar owner questioned one of the whereas clauses that was read at the beginning of the meeting by Assistant City Attorney Jason Kelley.

Assistant City Attorney Jason Kelley read the second whereas clause of the ordinance.

Mark Wright: I love Fayetteville. He referenced a similar situation in Kansas City where a lot of bars had to close due to a smoking ban. He spoke against the ordinance.

Alderman Gray: There have been a lot of comments about Springdale bars and I would like to call up Tyler Clark to speak on that issue.

Tyler Clark stated there are only five bars in Springdale that allow smoking.

Alderman Ferrell: Are you planning to go to Springdale after this and try them?

Tyler Clark: I don't know sir.

Alderman Lewis: As I was looking through the material on different websites there is data that suggests that there are significant increases in the market value in businesses as a result of smoking being eliminated from public spaces.

Tyler Clark: You have to keep in consideration that 85% of Washington County is nonsmoking so you have to think that bars are opening themselves up to more potential customers. Across the nation in the smoke free venues I can see an increase in value. He gave examples in other communities where they saw changes in sales tax revenue.

Mark Wright: I have been open nine years and my average length of employment per employee is 5.27 years. He listed the positive things that his bar has to offer citizens and employees.

Alderman Lewis: Do you have an estimated cost for the ventilation system that you put in?

Mark Wright: It can be anywhere from \$800 to \$25,000, it depends on the square footage.

Alderman Adams: Have you ever thought about going nonsmoking in your place?

Mark Wright: Yes.

Alderman Adams: Do you understand there is a possibility that more people would come in if you did go that way?

Mark Wright: Yes, but I have to remember the people that got me to where I am today. Until I have a place for them to go I wouldn't feel right.

Nancy Allen, resident of Ward 2 stated this is a concern to me that you might be taking away too many privileges and rights. She spoke against the ordinance.

Jessica Beil, a Fayetteville resident who currently works in the entertainment district pointed out that there are other places of employment that have nonsmoking that she can work at. It should be her choice. She spoke against the ordinance.

Alderman Lewis: So what about the other people that do not have as many options and have not been doing it as long? Should they have to consider working in fewer places?

Jessica Beil: I started working with the chains and it is harder to get a job in the entertainment district than with a chain.

Spencer Hastings who currently works in the entertainment district stated I am opposed to the smoking ban and pointed out that to regulate something that does not need to be regulated seems inefficient. He spoke against the ordinance.

Susie Shinn, resident of Ward 1 argued that the government does have a place in business owners operation. We know the affects of second hand smoke. She spoke against the ordinance.

Alderman Ferrell: I don't think there is any question that we believe there are health risks associated with smoking. The other side of the question seems to be is it a person's choice to be able to do something.

Alderman Petty: I recognize a lot of people that have made comments here and I feel like I have given a clear answer on my position. This is not a choice between smoking and nonsmoking; this is about smoking inside or outside of public. He spoke on the dangers and health affects of second hand smoke. I think the long term benefits of this are very important.

Alderman Lewis stated we all have choices until our choices negatively impact someone else's choices. I have to think about the businesses and the patrons. She spoke on the affects this would have on the community as a whole.

This ordinance was left on the Second Reading

New Business:

Arkansas Western Gas: An ordinance waiving the requirements of formal competitive bidding and approving a contract with Arkansas Western Gas Company in the amount of \$74,594.00 plus a contingency of \$15,710.00 for the relocation of gas mains and facilities necessary for the Cato Springs Road widening project.

Assistant City Attorney Jason Kelley read the ordinance.

Chris Brown, City Engineer gave a brief description of the ordinance.

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

Assistant City Attorney Jason Kelley read the ordinance.

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

Assistant City Attorney Jason Kelley read the ordinance.

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

Ordinance 5411 as Recorded in the office of the City Clerk

Announcements:

Meeting adjourned at 8:50 p.m.

Lioneld Jordan, Mayor

Sondra E. Smith, City Clerk/Treasurer

*Smoking
City Council Meeting 6/7/11
Amend 95.05 Regulations
of Smoking in Most Public
Places*

Letters of Support- Smoke-Free Bars in Fayetteville

Joseph W. Thompson, MD..... Arkansas Surgeon General
Rep. Greg Leding.....Arkansas House of Representatives
J. Gary Wheeler, MD.....Arkansas Children Hospital
Cornelya Dorbin, MPA.....Arkansas Cancer Coalition
Mayor Piercy Kitty.....Eugene, Oregon
Kim Agree, MD.....Fayetteville Resident, Physician
Andrea Foren.....Maxine's Tap Room
Danny L. Proffitt, MD.....Fayetteville Resident
Mayor Richard Howorth.....Oxford, Mississippi
Paul Halverson DrPh, FACHE.....Arkansas Department of Health
Bob Gullett, MD.....University of Arkansas For Medical Sciences
Keaton Smith.....Fayetteville Resident



SURGEON GENERAL, STATE OF ARKANSAS
JOSEPH W. THOMPSON, MD, MPH

May 26, 2011

Fayetteville City Council
113 W. Mountain Street
Fayetteville, AR 72701

Dear Aldermen:

I support the proposed amendment to the City of Fayetteville's smoking ordinance that calls for taverns and bars in Fayetteville to be smoke-free. This action will continue Fayetteville's forward-thinking policy leadership to establish a healthy, vibrant environment for all citizens.

Exposure to secondhand smoke in any setting is a significant health concern because it is a well-documented cause of cancer, heart disease and other life-threatening illnesses. The vast majority of Arkansans are non-smokers. Both non-smoking employees and patrons deserve to be protected against the threat to their health posed by secondhand smoke.

We have made good progress in Arkansas to protect our citizens from the adverse effects of tobacco. The City of Fayetteville has been at the forefront of this endeavor, leading the state in implementation of a smoke-free ordinance in 2004. I urge you to continue this good work by taking a strong stance in favor of your citizen's health and making all public places in Fayetteville 100% smoke-free, including taverns and bars.

Sincerely,

A handwritten signature in cursive script that reads "Joe Thompson".

Joseph W. Thompson, MD, MPH
Surgeon General, State of Arkansas
Director, Arkansas Center for Health Improvement

1401 W. Capitol Avenue, Victory Building - Suite 300
Little Rock, Arkansas 72201

(501) 526-2231
ThompsonJosephW@uams.edu



STATE OF ARKANSAS

House of Representatives

REPRESENTATIVE

Greg Leding

50 South School Avenue, Apt. I
Fayetteville, Arkansas 72701-5906

479-966-9201 Legislative Office
479-422-8099 Residence
greg@gregleding.com

DISTRICT 92

Counties:

Part Washington

COMMITTEES

Public Health, Welfare and Labor
Vice Chairperson, Human Services
Subcommittee

Agriculture, Forestry and Economic
Development
Parks and Tourism Subcommittee

Committee on Advanced
Communications and Information
Technology

Legislative Council

May 20, 2011

Dear Members of the Fayetteville City Council,

As both a resident of downtown Fayetteville and a loyal patron of its businesses, I fully support smoke-free environments. Secondhand smoke represents a clear danger to customers and employees. Studies indicate that working just one eight-hour shift in a smoke-filled bar is the equivalent of smoking one pack of cigarettes.

Also, as someone who chooses smoke-free establishments over those that allow smoking, I believe smoke-free policies can benefit businesses. A study of college towns in the SEC suggests smoke-free policies in bars and restaurants actually improved sales for smoke-free establishments.

Currently, nineteen states have strong laws providing for smoke-free workplaces. I believe Fayetteville can lead Arkansas to join these states in promoting better health for its citizens.

Thank you for your time and consideration in this matter, and sincere thanks, too, for the work you do serving our community. I appreciate the reality that it's not always easy. Thank you.

Sincerely,

A handwritten signature in dark ink that reads "GREG LEDING".

Rep. Greg Leding

The Honorable Mayor Jordan and Fayetteville City Council

5/24/11

113 W. Mountain Street

Fayetteville, AR 72701

I appreciate very much your consideration of a regulation to ban smoking in bars in Fayetteville. *You are being asked to decide if smoking in bars is legal.* As a physician at the Arkansas Children's Hospital taking care of children, adolescents and their parents from every part of Arkansas, I am overwhelmed by the negative effects of tobacco smoke and the cost to all of us from these behaviors. In my personal opinion, to support this behavior in any way by promoting smoking in any business setting (the net effect of a vote against the proposal) is to lend "government" support to an industry which produces a product which has no benefits and when used as designed causes early death and disease to its uses.

Instead we need to help people overcome their addiction to tobacco. The best way to do that is to send a clear message that tobacco use is not acceptable and the most effective way to send that message is by banning its use in public places where its harm goes beyond the individual to the gathered public, including the innocent employees who work because they need employment.

I hope you will support the proposed measure and help Arkansas move forward in becoming a healthier place to live.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Gary Wheeler', with a long horizontal flourish extending to the right.

J. Gary Wheeler, MD

901 N. University Avenue
Little Rock, AR 72207
(501) 603-5225



May 20, 2011

City of Fayetteville Administration
113 West Mountain Street
Fayetteville, AR 72701

Mayor Jordan and Alderman,

The Arkansas Cancer Coalition (ACC) cares deeply about the health of Arkansans. Tobacco use is a dangerous and often deadly addiction. Our city and state governments have a responsibility to safeguard Arkansans from the debilitating effects of secondhand smoke. Those who prize their own health have a right not to be affected by involuntary exposure to this harmful substance.

ACC is a network of cancer fighting organizations working together to reduce, and ultimately eliminate, the burden of cancer for every person in the state. ACC's membership is comprised of almost 1,000 physicians, nurses, healthcare administrators, social workers, educators, and nonprofit activists that belong to over 60 partner organizations.

ACC recognizes Fayetteville as a leading city and trendsetter for health advancements in Arkansas. Smoke free policies in Fayetteville set the stage for comprehensive change that will benefit all Arkansans. The Let's Clear the Air campaign (www.cleartheairarkansas.com) is an informational campaign designed to educate the entire state about the health effects of secondhand smoke and raise awareness of employees who are still exposed while at work, despite the current Clean Indoor Air Act. We spoke to actual wait staff, bartenders and musicians in order to create the campaign. All the materials reflect their opinions about what it's like to work in a smoke-filled environment. We encourage you to put yourself in their shoes – how would you feel after working long shifts in a smoking environment; why are other Arkansans protected while at work, but you're not?

Comprehensive smoke-free policies are a win for both the people and the business interests of Fayetteville. ACC will continue to promote the information from Let's Clear the Air so that the entire state is informed.

Sincerely,

A handwritten signature in dark ink, reading 'Cornelya Dorbin'. The signature is fluid and cursive, with the first name 'Cornelya' being more prominent than the last name 'Dorbin'.

Cornelya Dorbin, MPA
Arkansas Cancer Coalition

I would say that we are very satisfied with our ordinance and it has led to a state wide ordinance being passed. It has gone through evolutions with the business community. I don't think they have lost much business but they have felt the pinch of having to make several adjustments over time. It has led to refinements of how much open space must be in an outdoor smoking area. It has led to a lot of folks standing outside smoking and some butt trash issues in various places.

Overall we are glad to not breathe smoke in or out of bars. We think it is a safer/healthier place of employment. We think it encourages reduction in overall smoking along with other strategies.

-Mayor Piercy Kitty
Eugene, OR
777 Pearl Street, Room 105
Eugene, OR 97401
541-682-5010
541-682-5414 (Fax)
Kitty.Piercy@ci.eugene.or.us

March 10, 2011

Dear City of Fayetteville Alderman,

I wholeheartedly support and endorse the proposal that will create smoke-free taverns and bars in Fayetteville.

Secondhand smoke is a serious public health problem that results in the deaths of over 50,000 Americans every year. Secondhand smoke is recognized as a class A carcinogen by the Environmental Protection Agency; it is known to cause cancer, heart disease and other illnesses in adults and youth alike.

As a physician who deals with lung problems, I've seen many patients who have suffered the consequences of secondhand smoke. Some of these people have died from diseases that were caused by secondhand smoke. Most of them had no idea that they were exposing themselves to a lethal substance when they inhaled someone else's smoke.

I believe that it's important to educate and protect the public from dangers in the workplace. Because our government has taken a stand in favor of occupational safety, we no longer have children in factories or workers inhaling deadly asbestos fibers. The numbers show that secondhand smoke is also a serious workplace safety issue.

Thank you for your efforts to protect the citizens and workers of the City of Fayetteville from the dangers of secondhand smoke. Please take a strong stance in favor of the public's health and approve a 100% smoke-free environment in Fayetteville's bars.

Sincerely,
Kim Agee, M.D.

1561 Rhonda Drive
Fayetteville, AR 72703

(479) 856-5243

Monday, March 07, 2011

MAXINE'S TAP ROOM FAYETTEVILLE, ARKANSAS

Dear City of Fayetteville Alderman,

I, Andrea Foren, owner of Maxine's Tap room applaud the efforts of a City ordinance that would make taverns and bars in Fayetteville smoke-free. Secondhand smoke is a public health concern, an established class A carcinogen known to cause emphysema, cancer, heart disease, and other illnesses in adults and youth alike.

Maxine's Tap Room was established in March of 1950 by my great aunt, Maxine Miller at the young age of 24 years old. Little people know that even at such a young age, she was a heavy smoker. The founding of Maxine's kicked off as a smoking bar and remained such for decades. Maxine worked in the bar most all of her life since its opening until the decline of her health in the early 2000's. Very few people know she was diagnosed with emphysema in her late 60's or early 70's, which more than likely was a direct result from her many years of smoking and being in a smoking environment while working. This eventually led to a stroke and her health rapidly declined. She went from being at her bar every night to getting to go maybe once a month because she was confined to a wheel chair and did not have the energy to even sit up for long periods of time.

The effects of smoking resulted in her death in 2006 at the age of 82 years old. I watched my family member, role model, & mentor's health deteriorate, knowing it could have been prevented if only she had decided to quit smoking and hadn't worked in a smoking environment for so many years.

I took over Maxine's in 2006 after her death and fire that heavily damaged the business, which was ironically from a cigarette. In May of 2010, exactly 4 years after the date of her death, I made Maxine's Tap Room smoke-free in honor of Maxine.

Some of my patrons were upset; however the next day, they were still there, sitting on their same bar stool, purchasing their usual happy hour drink, AND going outside to smoke. The best part of the decision was that being smoke-free brought in SEVERAL patrons that told me they did not come in my business because it was so smoky. Hearing people tell me they will come in my business because it is healthier is a great feeling! Some people criticize me and say that Maxine would be furious at me; however, I truly believe, even at her most stubborn, she would have agreed and fully supported my decision.

I am very passionate about smoke free environments. Not only does it protect my personal health, it also protects the health of my employees and will hopefully encourage my thirsty patrons to stop smoking. It is ultimately each smoker's decision; but, I truly feel the fewer places that allow smoking, the easier it will be for them to quit, if they ever decide to take such a brave move.

I feel VERY strongly that if there would have been a push for no smoking in bars back in the 1950's, that Maxine would still be with me today, sitting on her bar stool, drinking only her coffee without the presence of a cigarette in an ash tray. Because there was not a push for no-smoking, I now work without her presence and wish she was there, still ordering me around & smiling.

Your efforts to push for no smoking will get some resistance; however, a push to safe life is never something you will regret. Thank you for your efforts to protect the citizens and workers of the City of Fayetteville from the dangers of secondhand smoke. Please take a strong stance in favor of the public's health and approve 100% smoke-free environments in Fayetteville's bars. Thank you for your time.

Sincerely,

Andrea Foren
Owner, Maxine's Tap Room
Physical: 107 N Block, Fayetteville, AR 72701
Mailing: PO Box 1183, Prairie Grove, AR 72753
Business phone: 479.442.9601
Cell: 479.236.8605

TO WHOM IT MAY CONCERN:

As a physician in Northwest Arkansas for the past 33 years, I continue to be amazed at the costs to society related to the use of tobacco, alcohol and drugs. Each day that I round in our area hospitals I see 15 - 20 patients at each of two hospitals. Usually, half or more of the admissions are related to the effects of tobacco, alcohol and illicit drugs. The majority are due to tobacco.

This not only impacts the smoking patient, but causes the admission of countless young children due to asthma and related illnesses such as ear infections, pneumonia and the like. The health of the community is overwhelmingly affected by those who smoke.

Dr. Danny L. Proffitt, MD

Dear Mayor Jordan,

I am writing you, and the City Council members if you wish to forward this to them, at the suggestion of Page Daniel, with whom I have had some correspondence regarding the smoke-free ordinance enacted by the City of Oxford (Mississippi) Mayor and Board of Aldermen in 2006 at the time when I served as mayor of the city. From what Page has mentioned to me, I understand Fayetteville is now in the process of reviewing an amendment to your own ordinance, or perhaps creating a new one.

Please understand I do not wish to pretend to have any superior intelligence -- I only wish to share very briefly Oxford's experience, which has been altogether positive. We did have opposition to our proposed ordinance. Those who impose such an ordinance on the grounds of government interference in citizens' rights -- smoking is indeed legal -- of course have every right to voice their opposition.

However, our board, and, ultimately, virtually our entire community, supported the ordinance because, upon reading the Surgeon General's report which came under the Bush administration (I'm sure you have already seen this, but here is the link if not: <http://www.surgeongeneral.gov/library/secondhandsmoke/>) the argument that a smoker's right to smoke in public places is greater than a citizen's right to a smoke-free environment does not hold water. I should add that our definition of public places includes privately-owned property where the public is allowed use. We also banned smoking in any buildings where people are employed, including private buildings.

Many of the people who opposed the ordinance have since told me that they are glad it was passed, and no one -- and I mean no one -- has told me that it was wrong, or a bad idea. It has been viewed as a very positive step for our city by an enormous majority.

Please call me, my successor (Mayor Pat Patterson), Oxford City Attorney Pope Mallette, or, really, anyone you know in Oxford, if you want further information or testimony. With best wishes to you and your Council members -- I know how difficult your job is!

Yours respectfully

Richard Howorth
Oxford Mayor, 2001 - 2009

UAMS

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FOR MEDICAL SCIENCES**

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1125 N. College Avenue
Fayetteville, Arkansas
72703

June 3, 2011

Mr. Tyler B. Clark
Project Coordinator
NWA Tobacco Free Coalition
614 East Emma Avenue
Suite 300
Springdale AR 72764

Dear Mr. Clark:

As the Center Director of AHEC-NW in Fayetteville and Springdale and Asst. Vice Chancellor of UAMS Northwest, we would like to express our full and complete support of the smoke-free bar initiative in the City of Fayetteville and hope that this is the beginning of a 100% smoke-free Fayetteville.

Sincerely,



Robert R. Gullett, Jr., M.D.
Director, AHEC-NW
Assistant Vice-Chancellor – UAMS Northwest
479-713-8000
479-582-1056 (fax)

rgullett@uams.edu

RRG:esw



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Mike Beebe

Paul K. Halverson, DrPH, FACHE, Director and State Health Officer

June 2, 2011

Dear Mayor Jordan and Aldermen:

I am so proud that the NW Arkansas Tobacco-Free Coalition is advocating comprehensive clean air for Fayetteville. We know that strong tobacco control efforts are one of the best methods to improve the health of Arkansans and providing environments without contamination from secondhand smoke is critical to these efforts. It is estimated that 500 Arkansans die each year from secondhand smoke (SHS).

There is clear scientific evidence that there is NO safe level of tobacco smoke exposure. Secondhand smoke immediately increases the risk for heart disease - BOTH in people who do not smoke and those that already do. Secondhand smoke causes lung cancer. One of the main causes of Sudden Infant Death Syndrome is from exposure to SHS. Although adults are definitely affected by SHS, children cannot control their exposure and thus, it is even more critical we protect them. Children exposed to SHS have increased colds, bronchitis, pneumonia, wheezing, asthma and ear infections.

People claim that they have a 'right to smoke' – but actually, everyone has a very basic human right to a clean environment with clear air to breathe. People who smoke do not have the right to pollute the air for others. Other common complaints are that businesses will suffer economically. Numerous studies around the US, the world and in NW Arkansas have demonstrated that there are no economic detriments to providing clean air environments – rather in most places, revenues have increased. In Washington State, bars and taverns received 20% more gross income in 2007 after they went smokefree with an average growth rate stronger than before the smokefree law. In New York City, the tax receipts from restaurants and bars increased almost 9% following implementation of their smokefree law. Even the study done by the Sam M. Walton College of Business Center for Business and Economic Research in Southeastern Conference cities demonstrated an average of 25% increase in tax revenues from bars in cities that implemented a comprehensive smokefree policies compared to SEC cities who did not.

A survey in Arkansas showed that 65% of people who go to bars would stay there the same *or longer* if they were smokefree. Over 90% of Arkansans believe that ALL employees deserve a smokefree workplace – even including Arkansans who smoke. Overall, the data are very clear that the overwhelming majority of Arkansans support a comprehensive smokefree law.

Fayetteville is leading the state in providing safe and clean air and provides a good example for the rest of the state to emulate. We know that clean air laws are one of the most important components of comprehensive tobacco control policies because they immediately start to improve the lives of Arkansans.

The Department of Health is a strong supporter of any law which inculcates the lessons we have learned from the dangers of secondhand smoke. .

Sincerely,

Paul Halverson, DrPH, FACHE
Director and State Health Officer

3/14/2011

Dear City of Fayetteville Aldermen,

I applaud the efforts of a proposal that would allow taverns and bars in Fayetteville to be smoke-free.

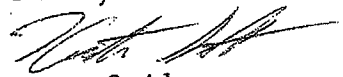
Secondhand smoke is a public health concern for bar employees and patrons.

Secondhand smoke is an established class A carcinogen known to cause cancer, heart disease and other illnesses in adults and youth alike.

I have had the opportunity to speak with several personal friends of mine that work in our downtown entertainment district. Some work at establishments that allow smoking inside, and some do not. The employees at non-smoking establishments invariably prefer that their employer retain policies that ask smokers to step outside. The employees of establishments that currently offer the option to smoke indoors feel that if this option was removed, patrons would complain initially, but would understand and peaceably comply after a short transition period.

Thank you for your efforts to protect the citizens and workers of the City of Fayetteville from the dangers of secondhand smoke. Please take a strong stance in favor of the public's health and approve a 100% smoke-free environment in Fayetteville's bars.

Thank you!



Keaton Smith

313 E Lafayette St #305

479-879-7922

Smoking

City Council meeting

6/7/11 Amend 95.05

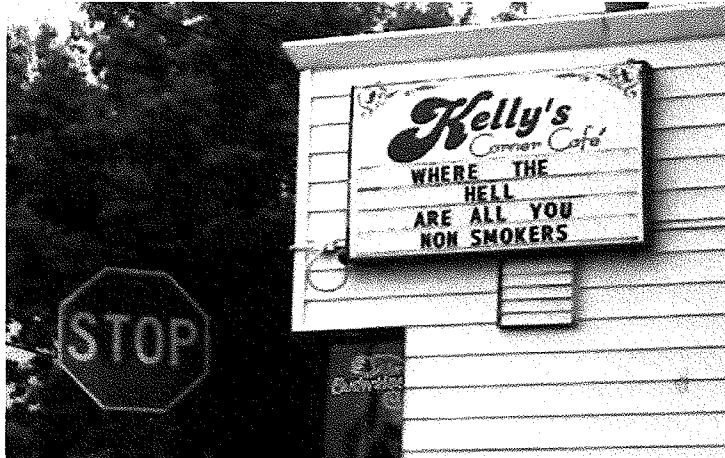
Regulations of Smoking
in most Public Place

Secondhand Smoke and Smoking Bans

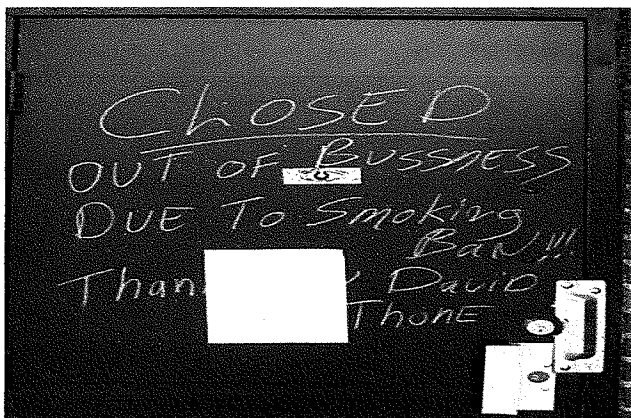
Is The Debate Really Over?



"Law-abiding business owners have a right to operate their establishments free from the tyranny of government officials who overstep their authority and trample personal property rights, all while in pursuit of the extraction of fees." - 1851 Center for Constitutional Law Director, Maurice Thompson



"The Surgeon General's office takes the award for disseminating widely throughout the media the blatant lie that even brief exposure to secondhand smoke can cause cardiovascular disease and that inhaling even the smallest amount of tobacco smoke causes cancer." - Dr. Michael Siegel



"They have created a fear that is based on nothing." - Dr. Philippe Even

Table of Contents, Why we Fight the Bans	1
A Non-Smoking Doctor Opposed To Smoking Bans	2
Exposures to second-hand smoke lower than believed	3
Still Pooping In My Salad	4
Smoking Ban Advocate Says Some Claims Are Just Smoke	6
The Economic Losers From Smoking Bans	8
The Air According to OSHA	13
Huffing And Puffing	15
Debunking Carmona's 2006 Surgeon General's Report	16
Additional Reading	17
Clearing the Air	18

Why we fight the bans

Well-meaning caretakers often use scare tactics and propaganda to discourage certain behavior by children. It's kind of understandable.

"You'll shoot your eye out!"

"That will stunt your growth!"

"Keep doing that and you'll go blind!"

To some degree these warnings are based on exaggerations or downright lies propelled by wishes for what some see as appropriate social behavior.

This is not, however, a good tactic to use on adults. Most of us know that a whiff of smoke does not cause anyone to fall over dead and that smoking does not automatically lead to lung cancer. We do know that throwing your smoking customers out the door darn sure does cause business losses and closures.

Perhaps the nannies have talked down to children so long that they don't know how to talk eye-to-eye with adults. Perhaps they think lying to adults is the same as lying to kids, an appropriate way to accomplish what they see



as a greater good, an appropriate way to fulfill their agenda.

This may work with some elected representatives – those who cannot or will not come to their own conclusions through searching the truth, but independent thinkers, including a growing number of elected representatives, are guided by the discovery of truth and they

are rising up and shouting back against the propaganda.

True scientists follow a methodical process to discover truth and discard false notions. Business owners make decisions affecting the security of themselves, their families and those on their payroll based on facts, not wishes.

Freedom-loving citizens know that their happiness can't be bought with others' stolen liberty.

We do not appreciate lies, even for our own good. We want the truth, not propaganda. We want laws based on truth from unbiased sources, not convenient lies and exaggerations used to sell snake oil.

A non-smoking doctor opposed to smoking bans

A letter from a practicing physician and member of American Cancer Society

By Robert E. Madden, M.D

I'm Robert E. Madden MD, FACS. I am also a non-smoker. HOWEVER I am a passionate opponent smoking bans. Most of the opposition to the smoking bans has been based upon economic factors such as loss of business revenue, even closings. My opposition is due to loss of individual freedom and abuse of scientific fact.

I am a practicing chest surgeon, a teacher and a former cancer researcher. I am also past president of the NY Cancer Society. I will not tell you that smoking is harmless and without risk, in fact one in eight hundred smokers will develop lung cancer. Asthmatics should avoid tobacco smoke. What I will say is: 1) it's a personal choice and 2) so called second smoke (ETS) is virtually harmless. One may not like the smell but it has not been shown to cause cancer, even in bartenders. If people do not like the odor then they may go elsewhere. Those who support the ban have no right to deny 24% of the adult population their enjoyment of a popular product based on dislike, possibly hatred of smoking. This attitude is that of a bigot, akin to anti-Semitism or racism.

To me the most offensive element of the smoking bans is the resort to science as "proving that environmental smoke, second hand smoke, causes lung cancer". Not only is this unproven but there is abundant and substantial evidence to the contrary. It is frustrating, even insulting, for a scientist like myself to hear the bloated statistics put out by the American Cancer Society (of which I am a member) and the American Lung Association used to justify what is best described as a political agenda. Smokers enjoy smoking. Most non-smokers are neutral. Anti-smokers hate smoking. It is this last group that drives the engine of smoking bans. Smoking sections in restaurants, ventilated bars and the like have been satisfactory and used for years. To those who choose to smoke they do so at their own risk. To those eschew smoking let them patronize establishments whose owners prohibit smoking. To impose a city wide or a state wide ban is to deny people of their rights.

Respectfully, Robert E. Madden, M.D

Dr. Madden was contacted by Sheila Martin in preparation of this booklet. Dr. Madden verified that he is the author of this letter and still holds the views expressed.

Exposures to second-hand smoke lower than believed, ORNL study finds

OAK RIDGE, Tenn., Feb. 2, 2000 —

Exposures to environmental tobacco smoke may be lower than earlier studies indicated for bartenders, waiters and waitresses, according to a study conducted by researchers at the Department of Energy's Oak Ridge National Laboratory (ORNL).

While people who work as wait staff and bartenders may generally be considered to be more highly exposed to environmental tobacco smoke, data from our study suggests that the situation is more complex," said Roger Jenkins of the Chemical and Analytical Chemistry Division.

The study, which involved 173 people employed at restaurants or taverns of varying sizes in the Knoxville area, concluded that exposures to respirable suspended particulate matter (RSP), for example, were considerably below limits established by the Occupational Safety and Health Administration (OSHA) for the workplace.

Subjects, who were non-smokers, wore pumps that sampled the air they were breathing while at work for a minimum of four hours. Researchers recorded a maximum RSP level of 768 micrograms per cubic meter. The OSHA standard for RSP is 5,000 micrograms per cubic meter over eight hours. Samples from the subjects were analyzed for ultraviolet absorbing and fluorescing particulate matter, solanesol, 3-ethenyl pyridine, nicotine and RSP.

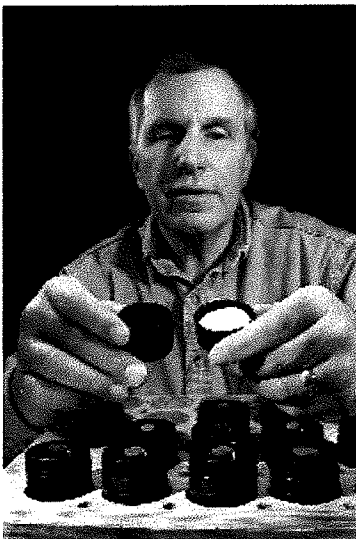
Other constituents of environmental tobacco smoke, sometimes called second-hand smoke, also were not present in the levels previously thought, Jenkins said. For example, a study published in the Journal of the American Medical Association in 1993 concluded that average RSP levels were 117 and 348 micrograms per cubic meter for bars and restaurants, respectively, while the ORNL study found those levels to be 67 and 135, respectively.

While the higher estimates in earlier studies may be explained by the choice of the establishments in which the studies were conducted, another reason for the difference could be that today's ventilation systems are more efficient, Jenkins said.

The Knoxville study also showed that for bartenders who live with smokers, the away-from-work exposure is at least as important as the at-work exposure. And people who are highly exposed at home tend to be more highly exposed at work, probably because they don't avoid it as much, Jenkins said.

Jenkins' paper, "Determination of Exposure to Environmental Tobacco Smoke in Restaurants and Tavern Workers in One U.S. City," is scheduled to be published in this month's issue of Journal of Exposure Analysis and Environmental Epidemiology.

The "Restaurant and Tavern Workers" study builds upon findings of an earlier ORNL study involving 16 cities and



more than 1,500 subjects nationwide. In that study, test subjects wore separate air sampling devices at work and away from work over a 24-hour period. Results from this approach differ dramatically from stationary air sampling, which does not take into account the constantly changing conditions as people move from place to place throughout the day, Jenkins said.

"The fact is that while individuals may live or work in environments where there is smoke, stationary monitors cannot take into account changes in smoke exposure resulting from changes in a person's micro-environment," Jenkins said. "In these micro-environments, a person may be closer to or farther away from various sources of environmental tobacco smoke."

Over the last six or seven years, more data on personal exposure to tobacco smoke has become available and the methods for measuring and analyzing the smoke have become more sophisticated.

The 16-cities study, the largest of its kind ever conducted in a single country, found the highest levels of environmental tobacco smoke nicotine levels in workplaces where smoking is permitted to be between 9.41 and 14.9 micrograms per cubic meter, far lower than the numbers assumed by EPA and OSHA.

"A well-known toxicological principle is that the poison is in the dose," Jenkins said. "It's pretty clear that the environmental tobacco smoke dose is pretty low for most people."

Extensive controls were employed in collecting and analyzing the air samples collected by the 1,564 participants in the study, Jenkins said. Test subjects also submitted to saliva tests that would reveal cotinine, a constituent of tobacco smoke. Smokers were excluded from the study.

Cities used for the study were Baltimore; Boise, Idaho; Buffalo; Columbus, Ohio; Daytona Beach, Fla.; Fresno, Calif.; Grand Rapids, Mich.; Indianapolis; Knoxville; New Orleans; Philadelphia; Phoenix; Portland, Maine; San Antonio, Texas; Seattle and St. Louis.

A book that delves into this work, "The Chemistry of Environmental Tobacco Smoke: Composition and Measurement: Second Edition," is expected to be released in March. Co-writers are Jenkins, Mike Guerin and Bruce Tomkins of the Chemical and Analytical Sciences Division.

Authors of the restaurants and tavern workers study are Jenkins, Mike Maskarinec and Amy Dindal of the Chemical and Analytical Sciences Division and Richard Counts of the Computer Science and Mathematics Division.

The research was funded by the Center for Indoor Air Research. ORNL is a DOE multiprogram research facility managed by Lockheed Martin Energy Research Corporation.

Still Pooping in My Salad

By: Joseph Bast

Heartland Institute Heartlander

April-May 2008

Five years ago I wrote an essay in The Heartlander titled "Please Don't Poop in My Salad." It came from an email I received from an anti-smoking activist in Milwaukee, who called himself "Harry," who was annoyed by an op-ed I had written that ran in a daily newspaper.

Harry wrote, "if Bast promises not to smoke within ten feet of me, I promise not to poop in his salad bowl while he's eating." Only he didn't say "poop."

Harry epitomized the mood and tactics, and often the language, of the anti-smoking movement of the time. I regret to report that the debate has not gotten any more civil. That's too bad, because there's a lot at stake in how this debate unfolds.

Secondhand Smoke

Smoking bans are usually justified by concern over the health effects of exposure to secondhand smoke. In 2006, U.S. Surgeon General Richard Carmona said, "the debate is over. The science is clear: Secondhand smoke is not a mere annoyance, but a serious health hazard." He released a massive report -- 709 pages -- that said "secondhand smoke is a major cause of disease, including lung cancer and coronary heart disease, in healthy nonsmokers."

But here's the problem: None of the claims in the Surgeon General's report would pass muster in a court of law because the studies it relies on have sample sizes that are too small, or the time periods they cover are too brief, or the effects they show on human health are too small to be reliable.

Most of the research cited in this report was rejected by a federal judge in 1993, when EPA first tried to classify secondhand smoke as a human carcinogen. The judge said EPA cherry-picked studies to support its position, misrepresented the findings of the most important studies, and failed to honor scientific standards.

The largest and most credible study ever conducted of spouses of smokers, by James Enstrom and Geoffrey Kabat, was published in the



May 12, 2003 issue of the British Medical Journal. They found "the results do not support a causal relationship between environmental tobacco smoke and tobacco-related mortality. The association between tobacco smoke and coronary heart disease and lung cancer may be considerably weaker than generally believed."

The study is mentioned just once in the Surgeon General's report, on page 673, in an appendix listing studies that were too recent to be included in the report. But it was published three years before the Surgeon General's report, and the report quotes other more recent studies.

No Public Outcry

The scare tactics of the Surgeon General and other anti-smoking advocates, such as the American Cancer Society, are intended to create public support for smoking bans. But what really drives the anti-smoking movement is private profit, not concern for the public good.

The Robert Wood Johnson Foundation has contributed more than \$200 million to anti-smoking groups. Why is it so opposed to smoking? It owns \$5.4 billion in Johnson & Johnson stock, and its board is controlled by former Johnson & Johnson executives. Johnson & Johnson is the manufacturer of Nicoderm and other smoking cessation products. By demonizing tobacco, they're creating a market for their products.

The Robert Wood Johnson Foundation created the Campaign for Tobacco-Free Kids with a \$20 million grant in 1996. The Campaign for Tobacco-Free Kids helped negotiate the Master Settlement Agreement between the tobacco industry and state attorneys general in 1998.

The Master Settlement Agreement funds the American Legacy Foundation, which runs the television ads you often see attacking smokers and tobacco companies. The American Legacy Foundation spends \$130 million a year opposing smoking and has awarded grants of more than \$150 million to other groups since its inception. It has net assets of more than \$1 billion.

All this is just the tip of a billion-dollar industry devoted to attacking smokers. Thousands of people now work full-time attacking smokers, and they have life-long funding. They are the ones quoted in newspapers and talking on the radio. They design and run the ads. They lobby in state capitols and Washington DC.

What does the average Joe Lunch Bucket think? He just wants to be left alone.

Economics of Bans

Why should we actively oppose smoking bans?

One good reason is because bans really do hurt bars and restaurants. Two of the best studies of the economic impact of smoking bans -- a 2002 survey of 300 businesses in California by KPMG, the big accounting firm, and a 2004 study by Deloitte & Touche -- found major negative effects of smoking bans on restaurants and bars. The first study found 59 percent of bars and restaurants that served alcohol experienced a decrease in business. The average decline in sales was 26 percent, and 29 percent laid off staff. The second study found declines in annual sales of 36 percent at restaurants in communities with smoking bans.

It's about Freedom

The attack on smokers and bar and restaurant owners is the tip of a spear aimed at the heart of all of our liberties. Smoking bans say private

businesses are actually public places and can be regulated by the state. By what authority does the state say a person cannot smoke in a particular place, regardless of whether there are others in the room, and regardless of whether the owner of that place approves?

This is unprecedented interference with the private property rights of owners. It starts with workplaces, then restaurants and bars, then parks and sidewalks, and soon it will be homes and private cars. Once we say the state can violate people's private property and privacy rights, where does it end?

Like all victimless crime laws, the laws against smoking are difficult to enforce. With 23 percent of the adult population of the U.S. still smoking, it would require a police state to actually

enforce a ban on smoking in all places that serve the public. Is that what we want?.

No Smoking Comrade



Your Body is Property of the State.

Time to Speak Out

Unfortunately, many people who generally support less government, lower taxes, and free-market solutions to social and economic problems nevertheless stand on the sidelines of this debate, saying, "I don't smoke, so this isn't my issue." Or they smoke and blame themselves for being poor parents or poor citizens -- they believe what the television ads say -- and so they don't turn out to vote against smoking bans.

It's time for that to stop. Fundamental liberties are being put at risk by the anti-smoking campaign. These rights didn't come to us easily or as a matter of entitlement. Our forefathers fought a war for independence to secure these rights. We owe it to them not to abandon these rights without a fight.

Joseph Bast (jbast@heartland.org) is president of The Heartland Institute.

Smoking Ban Advocate Says Some Claims Are Just Smoke

By Paul Soutar/KansasWatchdog.org February 20, 2010

Opponents to a statewide smoking ban say anti-tobacco advocates are playing a little loose with their facts.

They have an unlikely ally in Michael Siegel, a medical doctor and professor of community health sciences at Boston University's School of Public Health. He's a long-standing anti-tobacco advocate, a proponent of smoking bans and a strong critic of bad science.

In a story published Feb. 18 on his [weblog](#), "The rest of the Story: Tobacco News Analysis and Commentary," Siegel wrote, "It is irresponsible to disseminate conclusions that are not supported by any scientific evidence, especially if that information will be used to infringe upon the freedom, autonomy, and rights of individuals."

"I believe that anti-smoking groups have been recently exaggerating the evidence in several ways," Siegel said during a phone interview Wednesday. "To me, the truth is enough. I really don't understand why these groups are exaggerating when I think it would be enough to tell the truth."

"A lot of groups have been saying that 30 minutes of exposure to secondhand hand smoke is enough to cause heart disease. I think that's an exaggeration. It's not true that somebody walks into a smoky restaurant for thirty minutes and they're going to suffer a heart attack."

The proposed ban would not exempt bars and other gathering spots for adult smokers

Another exaggerated claim Siegel sees is that passing a smoking ban will immediately and dramatically reduce heart attacks. "The evidence shows that in countries which have enacted these bans, they haven't seen a decline in heart attacks within one or two years of the ban," Siegel said.

The third claim Siegel objects to is called third-hand smoking. Some smoking ban advocates say nicotine left on a person's clothing and skin is deposited on the surfaces away from the smoking area then create vapor that exposes non-smokers to harm. "I think that's just a gross exaggeration, and the levels of exposure are so small that it's not creating any meaningful hazard,"

Siegel says credibility is the key to changing public attitudes about health. "Once we start exaggerating the evidence and the public becomes aware of this they're going to lose trust in everything that we say."

Proponents of a statewide total ban on public smoking came under fire at a recent Health and Human Services committee meeting of the Kansas

House of Representatives. Committee Chair Brenda Landwehr, R-Wichita, and other committee members challenged smoking ban advocates claims about studies used to support a ban.

Several ban supporters referenced a study led by Dr. David Meyers, professor of cardiology and preventive medicine at Kansas University Medical Center. The study, officially [released Sept. 29, 2009](#), in the [Journal of the American College of Cardiology \(JACC\)](#), claimed bans correlated to at least a 17 percent reduction in heart attacks shortly after enacted.

On Nov. 10, 2009, JACC published a [correction](#) to the study. The language of the correction gave no hint of its importance nor did it say the study's most quoted claim was nullified.

Siegel, who was critical of the study's original findings, published the correction and clarified its meaning on web sites he operates. The KU study was an analysis of smoking ban studies in 11 locations. Data from one of the studies was incorrectly reported, thus throwing off the broader analysis.

"As it turns out, the study findings were due to a careless error. In the original study, the authors had inadvertently reported the Pueblo study has having reported a 70 percent reduction in heart attacks (a result that is completely implausible and clearly should have been noticed as having been in error). Instead, that study actually reported a 34 percent reduction in heart attacks. The meta-analysis authors published a [correction](#) in which they re-analyzed the correct data.

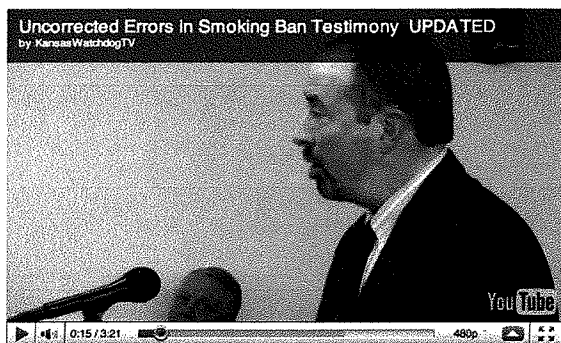
"It turns out that the 11 studies did not find a 17 percent reduction in heart attacks, only an 8% reduction.

"This level of decline in admissions for heart attacks is obviously not significantly different from the levels of decline in heart attacks that are being observed in the absence of smoking bans, which have varied between 5 percent and 10 percent per year in many communities."

The study's original claims of a dramatic decrease in heart attacks was heralded by dozens of anti-smoking groups and reported by media across Kansas and around the world.

The [correction](#) received far [less exposure](#). For example, the Lawrence Journal World reported the study's 17 percent claim on Sept. 27, 2009. Well after the correction was published by the JACC, a Feb. 9, 2010, article the Lawrence newspaper's online edition included a link to the original, uncorrected story.

Dr. Mike Munger, president of the Kansas Academy of Family Physicians, used the uncorrected study's findings in the Feb. 10 HHS committee meeting. His office sent notice of the correction to Landwehr Feb. 16 after committee members were made aware of the correction by an anti-ban advocate.



Dr. Jason Eberhart-Phillips testifies in support of the smoking ban before the HHS Committee. UPDATE: He has since been fired.

Dr. Jason Eberhart-Phillips, director of the Health Kansas Department of Health and Environment, also used the data and sent a detailed explanation of the correction to a committee member around the same time.

Smoking rights advocates support a House bill because it creates a uniform public smoking ban statewide, preempting a hodgepodge of local ordinances. It permits smoking in bars so long as signs outside warn that smoking is permitted inside, prohibits anyone under 21 from entering and requires a \$1 per square foot fee for an exemption. The House bill does not automatically exempt state-owned casinos.

Anti-tobacco activists support a Senate bill which leaves existing local bans intact and offers no exemption for bars, private clubs or other drinking establishments. Several ban proponents said they're willing to accept the bill's exemption for state-owned casinos in order to avoid broader exemptions.

Siegel says the casino exemption is rank hypocrisy that, along with some shady science, helps fuel the skepticism tobacco supporters have for real science he says supports smoking bans.

Siegel says his colleagues have attacked him for his stand. "People think somehow if I'm saying these things, if I don't buy every single line that the anti-smoking groups say, somehow I must be working for big tobacco."

He says he decided to speak out when his conscience would no longer allow him to be silent. "I'm trying to tell it like it is. When it comes to smoking bans and their effect on youth the evidence shows an effect. When it comes to an effect on adult cessation, I don't see an effect. I'm basically calling it as the science sees it.

That perspective is not welcome in the anti-smoking movement, Siegel says. "They don't see that there's any role for scientific objectivity. Either you just spout the entire line of propaganda or you are somehow not worthy of being in the movement."

Siegel sees parallels to suppression of dissent in the global warming issue. "This is why there isn't a lot of dissent in the anti-smoking movement, because people are afraid to speak out because this is the way they're going to be treated. They know that if they speak out their funding is going to be at risk and they're going to be not able to participate in the tobacco control community. They're not going to be invited to speak at conferences. It hurts their careers."

He says the parallels extend to the animal rights movement as well. "It went so far that they basically lost credibility. I think this is the way eventually that things are going in the anti-smoking movement unless they kind of wake up and change their approach.

Smoking rights advocates have created several web sites monitoring the Robert Wood Johnson Foundation's spending on anti-smoking efforts. The foundation was created in 1968 by the founder of Johnson & Johnson and became the largest single investor in the world's largest health products maker.

Johnson & Johnson and its subsidiaries make and market more smoking cessation products than any other company and critics say RWJF's anti-smoking advocacy is merely a way to redirect tobacco money to smoking cessation product sales.

Siegel says he doesn't believe RWJF is motivated by anything other than a genuine public health movement but he is worried that talk of an profit motive does not bode well for a scientific approach to public health.

"Even the fact that there's a perception that somehow this is a movement that Johnson & Johnson is behind, it sounds like people are already losing sight of the fact that this is a significant health hazard and this is the problem when you make hysterical health claims."

For more stories on the smoking ban go to <http://kansas.watchdog.org> and search for "smoking ban".

The economic losers from smoking bans

Should policymakers worry about harm to bars, VFWs, and fraternal organizations?

BY MICHAEL L. MARLOW

Smoking bans in public places are promoted for a variety of reasons, including protecting public health and discouraging smoking. Such bans have become increasingly common in

The United States. According to the ban-advocacy group Americans for Nonsmokers' Rights, 29 states now prohibit smoking in restaurants and 25 in bars. The group further claims that 17,628 municipalities are covered by either local or state bans on smoking in workplaces, restaurants, and/or bars. Business owners often raise concerns that they will be economically harmed by the bans. Ban proponents dismiss those concerns. The proponents typically cite two literature reviews, one by M. Scollo et al. in 2003, and the other by Michael Eriksen and Frank Chaloupka in 2007, that describe the academic literature as showing that the bans have no statistically significant negative economic effects on bars and restaurants, and may even have positive economic effects. Economists are naturally skeptical of assertions that a government intervention could yield benefits with no costs. Such intervention would be an example of the proverbial "free lunch," and free lunches are few and far between. This article uses empirical evidence from Ohio's recently adopted smoking ban to determine if such bans have negative economic effects on bars and restaurants. The article examines ban noncompliance data from Ohio, under the hypothesis that establishments that regularly violate the ban do so because it is profitable to do so. The detail of the noncompliance data allows this analysis to determine what sorts of establishments, if any, are harmed by the bans and what sorts of establishments are not. Ohio's comprehensive ban took effect in May of 2007. By the end of 2009, over 21,000 citations for violating the prohibition were issued to 4,422 restaurants and bars, and another 11,000 citations were issued to 1,190 veterans organizations, fraternal organizations, and private clubs. The data indicates that individuals — owners, employees, customers, and smokers associated with bars and organizations are much more likely to be harmed than their counterparts in restaurants. An important implication of this research is that previous studies underestimated harm because they did not consider the implications of establishments not complying with the bans. This article also raises the important question of whether policymakers pay less attention to the desires of some establishments and their clientele — namely, bars and clubs, along with their patrons — than to others — namely restaurants and their customers. Thus, a fuller accounting of who bears the costs of bans should be weighed against any gains—both economic and public health—in a debate over the desirability of smoking bans.

PREVIOUS STUDIES

Previous studies of the economic effect of smoking bans have typically used "community effects" methodology in their analysis. That is, they used aggregate data in their analysis, looking for changes in total revenues or tax receipts for all restaurants, bars, organizations, and other establishments



combined. "Community effects" studies often conclude that bans do not exert harm because nonsmokers outnumber smokers, and thus bans cause more nonsmokers to frequent businesses and out-spend smokers who may lower their frequency and spending. The problem with this methodology is that it is like looking at a community with 30 bars and restaurants and, after observing that total revenues have been \$150 million for each of the past five years, concluding that no changes occurred over that time. Lost in the aggregation is the possibility that some owners gained \$2 million in revenues, some lost \$2 million, and still others experienced no change. An unchanged or rising community aggregate cannot uncover whether revenues for some owners fell, or some owners went out of business, or if new businesses entered the community during the examination period. More careful studies that disaggregate analysis to the level of individual businesses find that smoking bans exert differential effects: some establishments gain, some lose, and others are unaffected. A 1996 study that I conducted with William Boyes of bar and restaurant owners following the 1990 smoking ban in San Luis Obispo, CA found that 17 percent gained, 25 percent lost, and 57 percent were unaffected. A 2000 nationwide study that I conducted with John Dunhamon the anticipated effects of a smoking ban found that surveyed bar owners predicted losses from smoking bans twice as often as restaurant owners. For bars, 82 percent predicted harm, 2 percent reported gains, and 14 percent were unaffected. For restaurants, 39 percent predicted losses, 10 percent reported

gains, and 51 percent were unaffected. Owners who catered to many smokers predicted losses much more often than those who did not. A 2003 study that I also conducted with John Dunham of Wisconsin bar and restaurant owners concluded that bar owners lost business 50 percent more often than restaurant owners following adoption of a local smoking ban. Smoking ban studies that disaggregate to the level of business in the United Kingdom, Scotland, and India also yield evidence of differential effects. Common sense suggests that owners who had not found it profitable to voluntarily forbid smoking prior to a ban will be harmed by a ban more often and more likely to be cited for noncompliance. As for claims that smoking bans boost the value of bars and restaurants, a recent study by Robert Fleck and Andrew Hanssen suggests that, because bans are often adopted most readily in areas that are experiencing above-average rises in property values, studies of those bans mistakenly conclude that they cause rising business values, when actually business values were merely rising in step with overall real estate gains in those communities. Bars probably suffer more harm from bans than restaurants because bars provide a more social atmosphere where customers enjoy mingling with one another. Bar owners find it more expensive, and many customers would find it unappealing, to segregate smokers from nonsmokers, as would more normally occur in restaurants where such mingling is less important. Most bars are also too small to profitably offer smoking/nonsmoking choices for billiards, darts, or dancing. Research showing that restaurant owners offer substantially more nonsmoking seating than bars is consistent with this hypothesis. A new study by Dinska Van Gucht et al. of 110 Belgian smokers assessed over four days is consistent with expectations that locations that focus on alcohol and social gathering are much more strongly associated with smoking than other locations. Over one-half of all 6,397 cigarettes (14.5 per person per day, on average) smoked were in just five types of locations: living rooms, kitchens, outdoors, in cars, and in bars. The most frequent circumstances under which these cigarettes were smoked were after eating, while watching TV or listening to the radio, on a work break, "on the go," together with alcohol, in the company of others, while having coffee, and at work. This study is consistent with expectations that social settings in which alcohol is present are more associated with smoking than restaurants where smokers apparently are more content to smoke upon leaving the premises than during meals. Moreover, studies also suggest that alcohol consumption influences both the magnitude and the emotional valence of cigarette cravings, thus again forging the connection between alcohol establishments and smoking.

SOME MATTER MORE THAN OTHERS?

Ban proponents who cite "community effects" analyses are not arguing that the bans are Pareto-optimal, as that would require either no harm to any bar or restaurant owner or adequate compensation to those who are injured by the ban. They probably mean that harm to individual owners are matched, or smaller than, gains to other owners. However, this distinction is usually never discussed. Community effects studies do not disaggregate to the level of individual owners, thus making it unclear who gains or loses and whether characteristics of gainers and losers differ in any significant manner. A recent exception is a 2009 study by Hans Melbert

and Karl Lund of Norway's ban, in which aggregate revenue gains of restaurants were found to outweigh aggregate losses for bars. The authors conclude, "Some smaller sub-sectors might experience a decline, but the hospitality industry on the whole will not experience a statistically significant decline in revenue." Apparently, the authors used a social welfare function in which all bars and restaurants are treated equally and that, as long as the overall sum of revenues did not decline, the net economic damage is either zero or nonexistent. Of course, this also ignores gains or losses imposed on workers, customers, nonsmokers, and smokers.

This discussion raises questions of whether a policy that creates winners and losers is ethical — certainly an issue that deserves clarification when advocating bans on the grounds that somehow the overall community is either unaffected or gains from bans. If, for example, most winners are restaurants and most losers are bars, does this fact matter? Does it matter if most bars that lose are small, local "mom and pop" establishments that serve little or no food, rather than large corporate chains that offer full-service bars along with large-scale food operations? Unfortunately, the "community effects" methodology does not allow inspection of who actually gains or loses.

NONCOMPLIANCE AS AN INDICATOR OF HARM

A few compliance studies exist based on independent observations of small subsets of affected businesses. A 2003 study by M.D. Weber et al. examining 650 California establishments per year for five years found compliance rates rose from 46 percent to 76 percent for bars and from 92 percent to 99 percent for bars/restaurants over 1998–2002. A 2009 study by Roland Moore et al. of 121 stand-alone bars in San Francisco found a 30 percent noncompliance rate during 2002–2003. A 2008 study by Douglas Eadie et al. of Scotland's ban found that, despite government claims of 98 percent compliance, compliance rates from a sample of eight bars varied substantially, with the lowest levels observed in bars located in lower-income neighborhoods. These studies never entertain the hypothesis that noncompliance indicates bans harm some businesses. An advantage of examining compliance data is that commonly used measures of revenue or tax receipts may not always reflect harm. Data on profits at the level of individual firms have never been examined either, though such data would provide better measurement of harm than revenues. Moreover, bans affect owners, employees, and customers in ways that involve revenues, prices, services, hours of operation, wages, hours worked, menu items, and other factors. Measuring harm by any subset of these factors is clearly not possible since research has shown that bans exert different effects on these many factors across different businesses. A recent example makes clear that bans push owners to rearrange their business attributes. Nick Hogan, a former pub landlord, became the first person to be jailed in connection with the UK smoking ban after refusing to pay a fine and costs of roughly \$11,000. Hogan argued: "Ninety percent of people who come into my pub want to smoke. Even the nonsmokers think there should be a choice. These laws are ridiculous." In contrast, Deborah Arnott, chief executive of the anti-smoking group ash, insisted it was a myth that the smoking bans in any way damaged pubs. Arnott stated: "Many pubs have shifted their focus to serving food, so they have changed their nature." But her analysis is flawed;

shifting away from alcohol and toward food reflects harm reduction efforts, and likely would have been implemented prior to the ban if they were truly profit-enhancing. A focus on revenues or tax receipts is unlikely to measure true levels of harm. Owners who do not find it profitable to comply with a ban will predictably be those with the most to lose from fuller compliance and, other than those who close their businesses, are those most damaged by a ban. Fuller compliance could be promoted through higher fines, more frequent inspections, and possible confiscation of liquor licenses or forced closures of businesses. Continued noncompliance would thus appear to be a useful indicator of harm from bans and does not force us to choose any one attribute — such as revenues or tax receipts — to measure harm.

OHIO'S SMOKING BAN

Ohio voters approved the state's indoor smoking ban in November of 2006. The Ohio Department of Health estimates that 280,000 public places and places of employment are covered by the ban, which excludes only private residences, family-owned businesses with no non-family employees, certain areas of nursing homes, outdoor patios, and some retail tobacco stores. Business owners have three responsibilities: prohibit smoking in any public place or place of employment, remove ashtrays, and post clearly legible no-smoking signs with the toll-free enforcement number in conspicuous places. The law allows for both businesses and individuals to be fined for violations, though recent court actions have called into question the legality of fining owners for smoking by customers. Businesses receive warning letters for first violations,

\$100 fines for second violations, \$500 fines for third violations, \$1,000 for fourth violations, and \$2,500 for fifth and subsequent violations. Fines may also be doubled for intentional violations at the discretion of the enforcement entity and may also be assessed on a daily basis for continuing violations. Individuals receive warning letters for first violations, and then \$100 for the second and subsequent violations. There are also penalties for retaliation against complainants that begin with a warning letter for first violations, \$1,000 fines for second violations, and \$2,500 fines for third and subsequent violations.

NONCOMPLIANCE

A complete list of citations for violating Ohio's smoking ban beginning with initial enforcement in May 2007 to year-end 2009 was obtained Through the kind efforts of Pam Parker of the group "Opponents of Ohio Bans." This list contains the entire population of citations and thus does not suffer from small sample bias that hampered the few previous studies that collected compliance data. Locations of citations were separated into four categories by inspection of their business name and, when it was not obvious, an Internet search was undertaken in order to judge which group they belonged in.

The four groups are: Bars, which are businesses that focus on alcohol sales or, if they also serve food, prominently list alcohol on their menu. Business names often contain "bar," "pub," "brew," "club," "drinking," "sports bar,"

"billiards," "darts," "lounge," or "public house" in their title. Most are small bars, but there are also national corporate chains, such as Chili's and Applebee's, that offer full-service bars. This category was selected on the basis of previous research indicating that businesses that focus on alcohol are more frequently harmed by bans. Previous research also indicates a connection between smoking and alcohol consumption, thus suggesting bars attract relatively many smokers.

Restaurants, which provide food and non-alcoholic beverages, though some provide limited alcoholic drink menus that are not prominently listed on their menu. Examples of national corporate chains are Denny's and Bob Evans Restaurants, as well as "fast food" chains (e.g., McDonalds, Burger King, Wendy's) and many breakfast/lunch businesses. Previous research has indicated that smokers tend to smoke following meals, thus suggesting smokers frequenting restaurants are less apt to want to smoke while in restaurants than when in bars.

Organizations, which include fraternal organizations (e.g., Elk and Moose lodges), veterans' groups (e.g., Veterans of Foreign Wars, American Legion), and private clubs (e.g., shooting clubs, country clubs, swim clubs). Many of these organizations offer full-service bars and thus are closer to "bar" than "restaurant" categories. Research also indicates that smoking prevalence of veterans is as much as 25 percent higher than nonveterans. Research suggests that the military's smoking culture is bolstered by a high rate of alcohol consumption, which many believe to be associated with smoking as well.

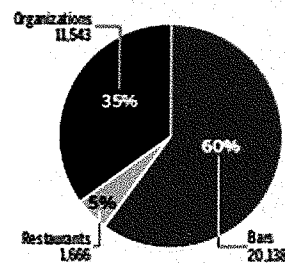
Other, which includes all other locations in which citations were given. Locations are highly varied and include elementary and secondary schools, universities, parking garages, courthouses, gasoline stations, supermarkets, convenience stores, floral shops, apartment and office buildings, hotels, manufacturing plants, nursing homes, rental car companies, buses, medical offices, and hospitals.

Figure 1 displays the numbers of citations issued for noncompliance for bar, restaurant, and organization categories from May 2007 to December 2009. The "other" category of roughly 14,000 citations will not be analyzed

further because it is heterogeneous and has not been the focus of previous inquiry. Bars lead in violations with 20,138 (60 percent), with organizations cited 11,543 times (35 percent), and restaurants 1,666 times (5 percent). The data thus indicate that bars and organizations find noncompliance more profitable than restaurants. That organizations experience so many citations suggests they are more like bars than restaurants.

Figure 1

Smoking Ban Violations May 2007-December 2009



NOTE: Some establishments were cited multiple times.

Figure 2 displays individual locations cited for noncompliance. In cases of multiple locations of the same business name, each unique location was counted once; e.g., multiple "Mike's Bar and Grill" locations in a town would each be counted once. Bars again lead citations with 3,471 (62 percent), followed by organizations with 1,190 (35 percent), and restaurants with 951 (17 percent).

Figure 2
Locations Cited for Violations
May 2007–December 2009

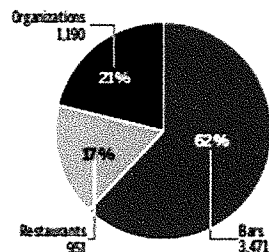


Table 1

Citations Per Business
May 2007–December 2009

	Mean	Median	Max	Min.	Std. Dev.	Obs.
Bar	5.8	2	119	1	9.87	3471
Restaurant	1.7	1	48	1	2.67	951
Organization	9.7	3	218	1	19.10	1190
All	5.9	2	218	1	12.03	5612

Table 1 displays average citations per location. Bars average 5.8 citations, restaurants 1.7 citations, and organizations 9.7 citations. Maximum citations ranged from 48 for restaurants (specifically, a restaurant focusing on chicken wings), 119 for bars (specifically, a night club), to 218 for organizations (a vfw). Conventional tests indicate differences in means are significant between these categories and confirm that bars and organizations experience continued noncompliance more often than restaurants. Figure 3 displays the distribution of citation frequency by individual establishments. The evidence indicates restaurants are much less likely to be found in continued noncompliance.

Table 2 displays the top 10 bars and organizations cited

Table 2

The Top 10 Noncompliers
Bars and Organizations

Ranking	Bars	Citations	Organizations	Citations
1	Night Club	119	Veterans of Foreign Wars	218
2	Night Club	119	Loyal Order of Moose	207
3	Saloon	103	Fraternal Order of Eagles	157
4	Tavern	99	Loyal Order of Moose	155
5	Lounge	96	Loyal Order of Moose	131
6	Pub	95	Fraternal Order of Eagles	118
7	Sports Bar	95	Fraternal Order of Eagles	116
8	Pub	93	Veterans of Foreign Wars	111
9	Pub	93	Loyal Order of Moose	111
10	Tavern	85	Fraternal Order of Eagles	110

NOTE: Specific business names and organization numbers were removed to protect privacy.

for Continued noncompliance. Specific names and identifying lodge numbers are removed to protect privacy. All top 10 bars contained the words "saloon," "tavern," "night club," "pub" or "lounge" in their names. Large corporate chains with full-service bars (e.g., Chili's and Applebee's) received just one citation. The top 10 organizations are vfw's and Moose and Eagle lodges.

Table 3 displays summary statistics of the organizations cited foremost continued noncompliance. The Fraternal Order of Eagles leads with 2,648 citations issued to 164 branches, followed by Veterans of Foreign Wars with 2,239 citations issued to 253 branches. In total, these eight organizations were issued 9,606 citations to 851 branches. The eight organizations accounted for 83 percent of all citations and 71 percent of individual locations within the organization grouping. Obviously, citations represent few of the instances in which the ban has been violated and citation data are subject to various biases. It is unlikely that public health authorities pick their visits on a purely random basis, and common sense suggests locations with relatively many smokers violating the law are targeted. Thus, citation data

Table 3

Top Organizations in Continued Noncompliance

May 2007–December 2009

Organization	Citations	Branches	Average Per Organization
Fraternal Order of Eagles	2648	164	16.1
Veterans of Foreign Wars	2239	253	8.8
American Legion	1720	190	9.1
Loyal Order of Moose	1699	85	20.0
Amvets	1015	91	11.2
Elks Lodge	200	47	4.3
Fraternal Order of Orioles	55	10	5.5
Knights of Columbus	28	11	2.5
Total	9604	851	11.3

probably indicate bars and organizations are where smokers continue to smoke the most. No information is available on how many inspections found full compliance. Owners, employees, and customers who prefer to keep smoking have also undoubtedly developed sophisticated tactics to avoid detection. Working hours of enforcement officers are probably well known, and their faces are likely becoming common knowledge.

CONCLUSION

Noncompliance data indicate that smoking bans impose economic harm on some bars, restaurants, and organizations, with continued noncompliance mostly in bars and organizations. Cases of continued noncompliance apparently indicate where smokers congregate and continue to smoke in the presence of the ban. Previous studies underestimated harm to the degree that continued noncompliance indicates higher losses from greater enforcement. Public health authorities rarely publicly complain about noncompliance, since drawing attention to these owners is inconsistent with claims that bans

do not cause economic harm. Public airing of continued citations might also empower owners to seek remedies for losses. Studies claiming that bans impose benefits without costs distort the debate over whether communities should adopt the prohibitions. Even if ban proponents reject the Pareto optimal framework that requires adequate compensation for harm, the question remains regarding who gains and loses within the net benefit framework that apparently underlies the "community effects" methodology. "Community effects" studies gloss over costs imposed on individual owners, workers, customers, and smokers. This article's focus on continued noncompliance provides new information on who loses — mostly individuals associated with bars and organizations — and a fuller accounting of their costs should be weighed against any benefits — both economic and public health — in debates over desirability of smoking bans. A reasonable question remains whether it is appropriate to target so much of the harm from smoking bans on sectors that provide social settings for adult customers. Bars and most of the organizations cited for continued noncompliance do not cater to children, which clearly takes away arguments that bans somehow protect the health of children. Members of social clubs and patrons of bars also voluntarily choose these locations and it would appear that nonsmokers have plentiful opportunities for avoiding smoking by visiting one of many locations in full compliance. Bars in continued noncompliance probably reflect the remaining locations where smokers feel comfortable congregating with a shared purpose of violating the ban. It is hard to believe that these locations would not be common knowledge by nonsmokers and easily avoided by those wishing to frequent smoke-free locations. Some might also worry that smoking bans in effect target specific locations for harm such as those catering to smokers and alcohol drinkers. That raises the possibility that

bans are used to systematically target individuals who gather at bars, veterans associations, and fraternal organizations. It would appear that these individuals matter less in our definition of communities than those not targeted, when one accepts the validity of a "community effects" methodology to judge whether or not a ban causes economic harm. If true, it would be more ethical to simply state that targeting such locations for harm is appropriate rather than pretending that no one suffers harm or that, even if there are more winners than losers, that bans do not systematically penalize some in our communities more than others.

Finally, enforcement costs in Ohio have been estimated at \$3.2 million and, although \$1.2 million in fines have been levied, only \$400,000 has so far been collected. A recent court decision has suggested that owners are not legally responsible for customers who continue to smoke and has lent support for owners wishing to recover past paid fines. Given roughly 47,000 citations, enforcement costs of roughly \$68 per fine is a hefty tax imposed on taxpayers, given only \$8.50 in revenue per citation. The difference — \$59.50 per citation — is picked up by taxpayers and is another cost associated with the ban.

Michael L. Marlow is professor of economics at California Polytechnic State University in San Luis Obispo. He received no grants or funding of any kind for preparing this paper. He has received past grants from Philip Morris Management Corp. for other research into the economic effects of smoking bans, and that research led to refereed publications, all of which acknowledged that support.



THE AIR, ACCORDING TO OSHA

Though repetition has little to do with "the truth," we're repeatedly told that there's "no safe level of exposure to secondhand smoke."

OSHA begs to differ.

OSHA has established PELs (Permissible Exposure Levels) for all the measurable chemicals, including the 40 alleged carcinogens, in secondhand smoke. PELs are levels of exposure for an 8-hour workday from which, according to OSHA, no harm will result.

Of course the idea of "thousands of chemicals" can itself sound spooky. Perhaps it would help to note that coffee contains over 1000 chemicals, 19 of which are known to be rat carcinogens.

-*"Rodent Carcinogens: Setting Priorities"* Gold Et Al., Science, 258: 261-65 (1992)

There. Feel better?

As for secondhand smoke in the air, OSHA has stated outright that:

"Field studies of environmental tobacco smoke indicate that under normal conditions, the components in tobacco smoke are diluted below existing Permissible Exposure Levels (PELS.) as referenced in the Air Contaminant Standard (29 CFR 1910.1000)...It would be very rare to find a workplace with so much smoking that any individual PEL would be exceeded."

-Letter From Greg Watchman, Acting Ass't Sec'y, OSHA, To Leroy J Pletten, PHD, July 8, 1997

Indeed it would.

Independent health researchers have done the chemistry and the math to prove how very very rare that would be.

As you're about to see in a moment.

In 1999, comments were solicited by the government from an independent Public and Health Policy Research group, Littlewood & Fennel of Austin, Tx, on the subject of secondhand smoke.

Using EPA figures on the emissions per cigarette of everything measurable in secondhand smoke, they compared them to OSHA's PELs.

The following excerpt and chart are directly from their report and their Washington testimony:

CALCULATING THE NON-EXISTENT RISKS OF ETS

"We have taken the substances for which measurements have actually been obtained--very few, of course, because it's difficult to even find these chemicals in diffuse and diluted ETS.

"We posit a sealed, unventilated enclosure that is 20 feet square with a 9 foot ceiling clearance.

"Taking the figures for ETS yields per cigarette directly from the EPA, we calculated the number of cigarettes that would be required to reach the lowest published "danger" threshold for each of these substances. The results are actually quite amusing. In fact, it is difficult to imagine a situation where these threshold limits could be realized.

"Our chart (Table 1) illustrates each of these substances, but let me report some notable examples.

"For Benzo[a]pyrene, 222,000 cigarettes would be required to reach the lowest published "danger" threshold.

"For Acetone, 118,000 cigarettes would be required.

"Toluene would require 50,000 packs of simultaneously smoldering cigarettes.

"At the lower end of the scale-- in the case of Acetaldehyde or Hydrazine, more than 14,000 smokers would need to light up simultaneously in our little room to reach the threshold at which they might begin to pose a danger.

"For Hydroquinone, "only" 1250 cigarettes are required. Perhaps we could post a notice limiting this 20-foot square room to 300 rather tightly-packed people smoking no more than 62 packs per hour?

"Of course the moment we introduce real world factors to the room -- a door, an open window or two, or a healthy level of mechanical air exchange (remember, the room we've been talking about is sealed) achieving these levels becomes even more implausible.

"It becomes increasingly clear to us that ETS is a political, rather than scientific, scapegoat."

-*"Toxic Toxicology"* Littlewood & Fennel

Coming at OSHA from quite a different angle is litigator (and how!) John Banzhaf, founder and president of Action on Smoking and Health (ASH).

Banzhaf is on record as wanting to remove healthy children from intact homes if one of their family smokes. He also favors national smoking bans both indoors and out throughout America, and has litigation kits for sale on how to get your landlord to evict your smoking neighbors.

Banzhaf originally wanted OSHA to ban smoking in all American workplaces.

It's not even that OSHA wasn't happy to play along; it's just that--darn it -- they couldn't find the real-world science to make it credible.

So Banzhaf sued them. Suing federal agencies to get them to do what you want is, alas, a new trick in the political deck of cards. But OSHA, at least apparently, hung tough.

In response to Banzhaf's law suit they said the best they could do would be to set some official standards for permissible levels of smoking in the workplace.

Scaring Banzhaf, and Glantz and the rest of them to death.

Permissible levels? No, no. That would mean that OSHA, officially, said that smoking was permitted. That in fact, there were levels (hard to exceed, as we hope we've already shown) that were generally safe.

This so frightened Banzhaf that he dropped the case. Here are excerpts from his press release:

"ASH has agreed to dismiss its lawsuit against OSHA...to avoid serious harm to the non-smokers rights movement from adverse action OSHA had threatened to take if forced by the suit to do it....developing some hypothetical [ASH's characterization] measurement of smoke pollution that might be a better remedy than prohibiting smoking....[T]his could seriously hurt efforts to pass non-smokers' rights legislation at the state and local level...

Another major threat was that, if the agency were forced by ASH's suit to promulgate a rule regulating workplace smoking, [it] would be likely to pass a weak one.... This weak rule in turn could preempt future and possibly even existing non-smokers rights laws-- a risk no one was willing to take.

As a result of ASH's dismissal of the suit, OSHA will now withdraw its rule-making proceedings but will do so without using any of the damaging [to Anti activists] language they had threatened to include."
-ASH Nixes OSHA Suit To Prevent Harm To Movement

Looking on the bright side, Banzhaf concludes:

"We might now be even more successful in persuading states and localities to ban smoking on their own, once they no longer have OSHA rule-making to hide behind."

Once again, the Anti-Smoking Movement reveals that it's true motive is basically Prohibition (stopping smokers from smoking; making them "social outcasts") --not "safe air."

And the attitude seems to be, as Stanton Glantz says, if the science doesn't "help" you, don't do the science.

Huffing and puffing

By Dan Deming - Community columnist Jan. 20, 2009



I'm convinced that the recent City Council decision to no longer pursue additional restrictions on smoking in Hutchinson was correct, and the three members who reached that conclusion - Bob Bush, Dave Razo and a reluctant but eventual

"light-seeing" Ron Sellers - deserve praise from those of us who feel government is already too much in our lives and needs to "butt out," pun intended.

Listening to the debate over two council meetings was fascinating, including Mayor Trish Rose's assertion (correctly) that "civil rights are restricted all the time by government" and are often "arbitrary" in some limits on how citizens may lawfully act. Her Honor argued that handwriting is on the wall for additional smoking restrictions, and so Hutchinson won't get stuck with an ordinance that bars smoking in private offices and virtually everywhere else, as favored by the Reno County Tobacco Use Prevention Coalition, we ought to negotiate a limited ban that excludes bars and taverns, where opposition to further restrictions has been strongest. There is something to be said for that position.

Councilwoman Cindy Proett, who has developed into an effective, sensible public servant who is willing to ask good questions, noted the push for vastly restricting rights of smokers and rights of property owners to decide how to use their offices and buildings, was "spawned by a small group who are not business owners," and later suggested working out a compromise with those pushing for major restrictions.

Councilman Dave Razo made his position clear from the outset: Leave the current restrictions against smoking in restaurants alone, it is working well, and don't expand it. Bob Bush challenged the mayor's defense of restricting civil rights by maintaining there must be a "valid reason to act." In Bush's view, guarding people from secondhand smoke and the proven dangers of smoking doesn't meet that "valid reason" test and giving in to the small band of taxpayer-funded proponents of a total ban would amount to "government by blackmail" and "compromising values."

This issue could have and would have gone to the

"let's sit down with the proponents and see if we can work out a watered-down yet more restrictive ordinance route" had it not been for the somewhat late awakening of Ron Sellers, who initially declared himself "on the fence" in knowing what is the best thing to do. Seemingly moved by a woman from the audience who argued most people in private offices and businesses had no idea of their rights that were about to be taken away, coupled with concerns that if the publicly financed Tobacco Coalition advocates got their way, poor old Joe The Smoker, who operates his own repair shop and puffs away while fixing vehicles, could also find himself a lawbreaker and subject to being cited by the smoking police, Sellers eventually sided with Razo and Bush.

Noticeably absent from attending these key discussions on expanding smoking restrictions were representatives of the county health department's Tobacco Coalition. They had launched the effort to further limit smoking in Hutchinson, seemed put off when the council didn't respond favorably to their cause, then disappeared into the night when the important and decisive discussions at City Hall took place. This group may come back with a petition, aimed at sufficient signatures to force adoption of a broadly worded smoking ban or forcing a city election. We can only hope that if they do, they will be responsible enough to time that petition so the city doesn't have to hold a costly special election to settle a question that many of us believe the City Council majority has already properly decided.

While most people in Hutchinson don't smoke, don't like to be around smokers, appreciate the opportunity to go to a local restaurant without having unwanted smoke with their food, they also don't want government telling other businesses whether they can or cannot allow smoking. It is a problem that the local marketplace has largely decided. Government already abridges many of our rights and is far too involved in everyday lives, although some of this "involvement" is necessary and in the majority's best interests. The time for an expanded government-mandated smoking ban and its infringement on individual and property owners' rights has not come. Let's hope the smoking police and their government grant do-gooders will take the hint and shift their efforts to more worthwhile and productive causes.

Dan Deming was elected to the Reno County Commission after this commentary was published in The Hutchinson News. He is a retired general manager of Hutchinson radio station KWBW,

The Debate on Secondhand Smoke

Debunking Carmona's 2006 Surgeon General's Report

On June 27, 2006, Surgeon General Richard Carmona made this statement^[i] about his report *Health Consequences of Involuntary Exposure to Tobacco Smoke*:

"The debate is over, the science is clear: secondhand smoke is not a mere annoyance, but a serious health hazard that causes premature death and disease in children and nonsmoking adults."

BUT Carmona points out flaws in his methodology in his report

On page 21 of his report^[ii], Carmona states *"Recognizing that there is still an active discussion around the use of meta-analysis to pool data from observational studies (versus clinical trials), the authors of this Surgeon General's report used this methodology to summarize the available data when deemed appropriate and useful, even while recognizing that the uncertainty around the meta-analytic estimates may exceed the uncertainty indicated by conventional statistical indices, because of biases either with the observational studies or produced by the manner of their selection."*

"Did Carmona Read His Own Report?^[iii]"

Jacob Sullum of Reason Magazine interviewed Dr. Michael Siegel, Professor in the Department of Community Health Services, Boston University School of Public Health, about Carmona's report. Siegel criticizes the Office of the Surgeon General for falsely claiming or implying that brief, transient exposure to secondhand smoke raises the risk of lung cancer, cardiovascular disease, and heart attack. The inaccurate or misleading statements appear not in the surgeon general's report on secondhand smoke but in the press release, fact sheet, and remarks by Surgeon General Richard Carmona that accompanied the report's publication.

Dr. Siegel writes: *No evidence is presented in the Surgeon General's report to support this claim. And certainly, the Surgeon General's report draws no such conclusion.*

In fact, such a conclusion flies in the face of common medical sense. How could it possibly be that a brief exposure to secondhand smoke can

cause heart disease? It takes many years for heart disease to develop. It takes years of exposure to tobacco smoke even for a smoker to develop heart disease. I estimate that it takes at least 25 years of exposure (based on the fact that very few smokers are diagnosed with heart disease before age 40). So how could it possibly be that for an active smoker, heart disease takes 25 years of exposure to tobacco smoke to develop, but for a passive smoker, it only takes a single, transient, brief exposure?

It is also quite misleading to tell the public that a brief exposure to secondhand smoke increases the risk of lung cancer. There is certainly no evidence for this and the Surgeon General's report itself draws no such conclusion. In fact, the report makes it clear that most of the studies linking secondhand smoke and lung cancer studied nonsmokers with many years of intense exposure.

In his remarks, Carmona similarly claimed that "breathing secondhand smoke for even a short time can damage cells and set the cancer process in motion. Brief exposure can have immediate harmful effects on blood and blood vessels, potentially increasing the risk of a heart attack." Clearly, it's not just the news media that are misrepresenting the findings of the surgeon general's report. So is the surgeon general.

^[i]
<http://www.surgeongeneral.gov/news/speeches/06272006a.html>

^[ii]
<http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter1.pdf>

^[iii] <http://reason.com/blog/2006/06/29/did-carmona-read-his-own-repor>

Additional reading

From Jeremy Richards, Ph.D.

Southeast Regional Director and
Director of Historical Research
Citizens Freedom Alliance

Associate Professor of History
Gordon College

Failing smoking bans:

Failed York County, SC ban (ban partially scaled back)
<http://www.charlotteobserver.com/2010/10/05/1739822/across-the-region-the-latest-from.html>

Failed Galveston, TX ban (Galveston partially backtracks)

<http://galvestondailynews.com/story/178330>

Failed Dutch ban (Partial scaleback):

<http://reason.com/blog/2010/11/08/the-new-law-will-allow-consume>

Failed Illinois casino ban (Casinos will be exempt under this bill, state needs \$\$\$\$)

<http://www.wlsam.com/Article.asp?id=2039403&spid=>

Failed Greek ban to be partially scaled back (also ignored anyway):

http://www.ekathimerini.com/4dcgi/_w_articles_politics_100008_19/11/2010_121278
<http://www.earthtimes.org/articles/show/307671,greeces-smoking-ban-not-working-say-officials.html>

Failing French ban:

<http://www.time.com/time/world/article/0,8599,1949817,00.html>

Failing Indian ban:

<http://timesofindia.indiatimes.com/city/kanpur/Defying-law-smoking-continues-unchecked-at-public-places/articleshow/5518223.cms>

Failing Maltese ban (even cops break it):

<http://www.timesofmalta.com/articles/view/20100207/local/smoking-laws-widely-ignored-even-by-police>

Failing Bahrain ban:

<http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=266697>

Failing Israeli ban:

<http://www.jpost.com/LocalIsrael/TelAvivAndCenter/Article.aspx?id=166424>

Failing Big Apple (NY, NY) ban:

http://www.officialwire.com/main.php?action=posted_news&rid=96765&catid=101

Failing American bans:

Bars and clubs all over the country pretty much:
http://www.usatoday.com/news/nation/2009-12-06-bars-ignore-smoking-bans_N.htm#Login

Failing Nanny Bloomberg NYC ban again:

NYTimes, late to the game as it frequently is these days. Better late than never:
<http://www.nytimes.com/2010/01/03/fashion/03smoking.html?pagewanted=1&partner=rss&emc=rss>

Even around hospitals bans are ignored

<http://www.abc.net.au/local/audio/2010/04/28/2885190.htm>

List of 600 Ohio smokeeasie businesses that ignore the Ohio ban
<http://www.smokechoke.com/>

Failing North Carolina ban (merely five months later)

<http://www.wsocvtv.com/news/23636558/detail.html>

History of smoking ban disasters:

http://www.heartland.org/policybot/results/23460/History_Shows_Smoking_Bans_Likely_to_Be_Repealed.html



Clearing The Air

Private pharmaceutical nicotine entities (RWJF / Johnson & Johnson Co.) fund the smoking ban movement in order to promote their financial interests...

Friday, January 05, 2007

100 bars and restaurants put out of business in less than two years since Minneapolis, St. Paul, and Bloomington, MN. enacted smoking bans

<http://cleanairquality.blogspot.com/2009/03/worldwide-economic-meltdown-and.html>



Update: Nearly 400 Minneapolis and St. Paul area bars and restaurants closed after smoking bans were implemented. These businesses and jobs were eliminated by government intervention long before the economic crisis of '08-'09.....and in fact were the cause of the aforementioned economic turmoil as the economic effects were identical in hundreds of other smoking bans around the globe. See which MN lawmakers voted to eliminate choice and jobs here in MN.

Just remember what the Nicoderm (RWJF) funded smoking ban lobbyists told lawmakers "...smoking bans are good for business....." They just didn't mention that the business they were referring to was the Johnson & Johnson pharmaceutical nicotine business:

<http://cleanairquality.blogspot.com/2007/12/minnesota-smoking-ban-triples-demand-of.html>

As of 10/1/2007 a new Minnesota statewide smoking ban is beginning to have a negative financial impact on bars and restaurants outside of the metro area, the metro area closings started to occur after Mpls, St. Paul, and Bloomington smoking bans in 4/2005)

According to this 2004 end of year Star Tribune article only 14 establishments closed in '04.....the last full year without a smoking ban. (Scroll down to *The party's over* heading) Since implementing smoking bans the Twin Cities area has seen nearly 400 closings.....the facts speak for themselves, smoking bans are very bad for business.

*Smoking
City Council Meeting 6/2/11
Amend 95.05 Regulation
of Smoking in Most
Public Places.*

Ray Barretto Lost to Second-Hand Smoke

Died of Lung Cancer... but never smoked. Breathed in smoke from smokers at nightclubs... Read on...

Ray Barretto Passed Away, Fri Feb 17, 2006

The Lost of Another Great Latin Music Giant... - Reprint permission from DJ Henry Knowles

New York, NY- Feb 17, 2006- Family spokesperson George Rivera announced this morning that Ray Barretto died at the Hackensack University Medical Center in Hackensack, N.J. at 5 a.m. Wife, Annette Rivera (Brandy) who had been a constant by his side since he was taken to the hospital late last month was taken home to rest. We will get more information from the family later. **Click Here for Story...**

For nearly 40 years, conguero and bandleader Ray Barretto has been one of the leading forces in Latin jazz. His hard, compelling playing style has graced the recordings of saxophonists Gene Ammons, Lou Donaldson, Sonny Stitt, and guitarists Wes Montgomery and Kenny Burrell.

Born April 29, 1929, in Brooklyn-New York, Barretto is one of the most prolific and influential Latin percussionists in the history of modern jazz. With a musical heritage as deeply rooted in the bebop jam sessions held in Harlem during the late-'40s as in his Puerto Rican ancestry, Barretto has spent over four decades refining the integration of Afro-Caribbean rhythms with the improvisational elements of jazz. Coincidentally, it was the tune "Manteca" recorded by Gillespie with Chano Pozo on percussion that drove Barretto to music. And it was a version of that same tune that became Barretto's first recording with Red Garland.

Few artists have been as successful over the years at fusing these two genres as Barretto, an undisputed master of this style. A pioneer of the salsa movement, Barretto achieved international superstardom and released nearly two dozen albums with the Fania label from the late-'60s until salsa's popularity peaked in the mid-1980's.



More about Ray Barretto

Ray Barretto a.k.a. Hard Hands... a Puerto Rican jazz musician, widely credited as the godfather of Latin jazz. He is also the first Hispanic to record a Latin song which became a "hit" in the American Billboard Charts.

Barretto's parents moved to New York from Puerto Rico in the early 1920s, looking for a better life. He was raised in Spanish Harlem and at a very young age was influenced by his mother's love of music and by the jazz music of musicians such as Duke Ellington and Count Basie.

In 1946, when Barretto was 17 years old, he joined the Army. While stationed in Germany, Barretto met Belgium vibist Fats Sadi, who was working there. However, it was when he heard Dizzy Gillespie's "Manteca" with Cuban percussionist, Chano Pozo, that he realized his true calling in life.

In 1949, when Barretto returned home from the service, he started to visit clubs and participated in jam sessions, where he perfected his conga playing. On one occasion Charlie Parker heard Barretto play and invited him to play in his band. Later, he was asked to play for Jose Curbelo and Tito Puente, for whom he played for four years. Barretto developed a unique style of playing the conga and soon he was sought by other jazz band leaders. Latin percussionists started to appear in jazz groups with frequency as a consequence of Barretto's musical influence.



In 1960, Barretto was a house musician for the Prestige, Blue Note, and Riverside labels. New York had become

the center of Latin music in the United States and a style called "Charanga" was the Latin music craze of the time.

In 1961, Barretto recorded his first hit, "El Watusi", the first Latin song to enter the Billboard charts. In 1967, he joined the Fania record label where he recorded "Acid", an experiment joining rhythm and blues with Latin music.

Barretto played the conga in recording sessions for the Rolling Stones and the Bee Gees. In 1975 he was nominated for a Grammy Award for the song "Barretto". From 1976 to 1978, Barretto recorded three records for Atlantic Records, including "La Cuna", and was nominated for a Grammy for "Barretto Live...Tomorrow". In 1979, he produced a salsa record for Fania, titled "Ricanstruction", which was named 1980 "Best Album" by Latin N.Y. Magazine, with Barretto crowned as Conga Player of the Year.

In 1990, Barretto finally won a Grammy for the song "Ritmo en el Corazon" (Rhythm in the Heart), which featured the vocals of Celia Cruz. In 1999, Barretto was inducted into the International Latin Music Hall of Fame.

Barretto lived in New York and was an active musical producer, as well as the leader of a touring band which has embarked in tours of the United States, Europe, Israel and Latin America. Barretto passed away 17 February 2006 at the Hackensack University Hospital of multiple health complications.

Discography

(may not be 100% accurate)

Time Was - Time Is (2005), Ray Barretto 50th Anniversary: Live in Puerto Rico (2004), Homage Art (2003) Bomba Bomba (2002), Trancedance (2001), Portraits In Jazz & Clave (2000), Contact! (1998), My Summertime (1996), La Cuna (1995), Latin Gold Collection (1995), Taboo (1994), Latino Con Soul (1994), Ancestral Messages (1993), Descarga Criolla (1992), Live in New York (1992), Handprints (1991), Ray Barretto (1990), Irresistible (1989), Hard Hands (1988), Aqui Se Puede (1987), Todo Se Va Poder (1984), Tremendo Trio: Celia Cruz, Adalberto Santiago & Ray Barretto (1983), Que Viva La Musica (1982), Rhythm Of Life (1982), Soy Dichoso (1981), Giant Force (1980), La Cuna (1979), Rican/Struction (1979), Can You Feel It? (1978), Gracias (1978), Energy to Burn (1977), Eye of the Beholder (1977), Tomorrow: Barretto Live (1976), Barretto (1975), Carnaval (1973), Indestructible (1972), The Other Road (1973), Cocinando (1972), Head Sounds (1972), Message (1972), Barretto Power (1972), Acid (1972), From The Beginning (1971), Together (1970), Hard Hands (1968), Fiesta En El Barrio (1968), Alma Alegre (1967), Soul Drummer (1967), El Ray Criollo (1966), Senos 007 (1966), Viva Watusi (1965), Mysterious Instinct (Akannaginnagi) Featuring Brock Peters (1965), Guajira y Guaganco (1964), Moderna De Siempre (1964), Swing La Moderna (1964), On Fire Again "Encendido Otra Vez" (1963), The Big Hits Latin Style (1963), Latino! (1963), La Moderna & El Watusi (1962), Pachanga (1962), Charanga La Moderna (1962), Cocinando Suave (1962), Barretto Para Bailar (1961)

Ray Barretto can also be found on basically all the legendary recordings of "The Fania All Stars"

Smoking City Council Meeting
6/7/11

« Attorney General's Office Defends Restricting
Access to Driver's Licenses

Government Information Online: Ask A
Librarian Project Continues »

Michigan Bar Employee Dies From Second-Hand Smoke

02/09/08

D 10:37:12 pm, Categories: State News, Smoking

Michigan Bar Employee Dies From Second-Hand Smoke

A 19-year-old woman shows up for work at a smoke-filled Michigan bar, appearing both healthy and happy. She's worked there without incident for several months. Fifteen minutes later, she collapses and dies within minutes of that.

A mystery?

No. An autopsy showed the woman died of a severe asthma attack. Dr. Ken Rosenman, a professor of medicine and chief of the division of occupational and environmental medicine at Michigan State University's College of Medicine, said the death is directly linked to the secondhand smoke in her workplace.

He published his findings this month in the American Journal of Industrial Medicine, making it what is believed to be the first documented link of secondhand smoke to an asthma-related death in an adult, Rosenman said.

"This is a very dramatic case," he said. "The other associations have been with chronic exposure. This is the first time someone dropped dead right there."

He declined to identify the woman, the bar or the town because of a confidentiality agreement with the victim's family.

The report comes at a time when legislation to ban smoking in bars and restaurants has passed the Michigan House of Representative but appears stalled in the state Senate.

Asthma is a chronic disease that leaves sufferers with extremely sensitive air passages in their lungs that can be swollen or inflamed. The problem can be triggered by air-quality problems such as smoke.

Rosenman said he suspects this death may not be unique. But no one has been able to track asthma-related deaths and their links to secondhand smoke before now. MSU, however, has three grants from the U.S. Centers for Disease Control and Prevention that allows researchers to track work-related deaths, work-related asthma and asthma deaths, making it the only institution to find the links between these incidents.

State Sen. Ray Basham, D-Taylor, the sponsor of the smoking-ban bill in the Senate, said 32 states and Ontario have passed some version of no-smoking laws. Michigan's version bans smoking in bars and restaurants but leaves some exceptions for cigar shops, casinos and bingo halls.

"I have a granddaughter who has asthma. If you've ever seen an attack, it's not a pretty thing," he said. "We're losing 3,000 people a year in Michigan to secondhand smoke."

The Michigan Restaurant Association opposes the smoking bans. Owners should decide which places are smoking or nonsmoking, and patrons can choose whether to visit them, said Andy Deloney, its vice president of public affairs.

"If you want to talk about banning smoking because of this unfortunate incident, then let's ban smoking, period," Deloney said. "Don't say we're going to take away your individual choices in bars and restaurants but you can go into a tribal casino and smoke."

For the full article, see Peggy Walsh-Sarnecki, "[Asthma death tied to smoke; MSU professor documents risk in the workplace](#)", Detroit Free Press, February 9, 2008.

D Permalink

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Mon	Tue	Wed	Thu	Fri	Sat	Sun
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					
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Ballot proposal

Banking & Finance

Budget

Business

Campaign Disclosure

Children & Youth

Civil Rights

Amend 95.05 Regulation
of Smoking in Most
Public Places.

Case Report

How Many Deaths Will it Take? A Death From Asthma Associated With Work-Related Environmental Tobacco Smoke

Martha Stanbury, MSPH,¹ Debra Chester, MS,² Elizabeth A. Hanna, RN,²
and Kenneth D. Rosenman, MD^{2*}

Background Despite epidemiologic, experimental and observational data on the association of environmental tobacco smoke (ETS) and adverse health effects, bar and restaurant workers remain exposed to ETS in the majority of states and countries.

Methods Three public health surveillance systems were used to identify and conduct a follow-up investigation of a reported acute asthma death of a young waitress in a bar.

Results The waitress collapsed at the bar where she worked and was declared dead shortly thereafter. Evaluation of the circumstances of her death and her medical history concluded that her death was from acute asthma due to environmental tobacco smoke at work.

Conclusions This is the first reported acute asthma death associated with work-related ETS. Recent studies of asthma among bar and restaurant workers before and after smoking bans support this association. This death dramatizes the need to enact legal protections for workers in the hospitality industry from secondhand smoke. *Am. J. Ind. Med.* 51:111–116, 2008. © 2007 Wiley-Liss, Inc.

KEY WORDS: asthma; environmental tobacco smoke; work-related; bars and restaurants; asthma death

INTRODUCTION

Despite the evidence of the adverse health effects of environmental tobacco smoke (ETS), bar and restaurant workers continue to be exposed to ETS at work in states and localities that have not passed smoke-free laws. The importance for protecting this group from involuntary exposure to this health hazard has recently been summarized

[Eisner, 2006; Koh et al., 2007]. The 2006 Surgeon General's report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, concluded that ETS causes coronary heart disease, lung cancer and premature death, but that the evidence was suggestive rather than sufficient to conclude the causal relationship of ETS and asthma exacerbations in adults [Office on Smoking and Health, 2006]. Recent studies have shown improvement in air quality for bar and restaurant workers after a smoking ban [Skogstad et al., 2006; Goodman et al., 2007]. This article describes findings from public health surveillance systems in Michigan that identified the workplace death of a young asthmatic waitress and then conducted a worksite investigation to determine factors at her workplace that may have caused or contributed to her death. Recent published studies of ETS and hospitality workers are reviewed in light of the probable association of her death with exposure to second-hand smoke at work.

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METHODS

Michigan has three public health surveillance systems that involve public health reporting and investigation of work-related asthma, two are for work-related conditions and one is for asthma deaths. First, occupational disease reports are collected and compiled based on the state Public Health Code mandate that health care providers, hospitals, clinics and employers report work-related illnesses [Reilly et al., 2006]. Second, in-depth evaluations of acute work-related deaths are conducted under a program funded in multiple states by the National Institute for Occupational Safety and Health (NIOSH) titled "Fatal Assessment and Control Evaluation (FACE)" [Rosenman et al., 2006]. Third, the state maintains a rapid asthma death notification and investigation system, called the Michigan Asthma Mortality Review (MAMR), to identify interventions to prevent future asthma deaths [Rosenman et al., 2007]. The first two systems are maintained by a university that is a bona fide agent of the state and the third is administered by that university under contract to the state health department. Data sharing across the systems is conducted as allowed in the Public Health Code and approved by the Institutional Review Boards of the university and the state health department.

Mandatory Disease Reporting

Public health reporting of work-related diseases has been mandated since 1978 by the Michigan Public Health Code (Article 368, Part 56, P.A.1978 as amended). Similar to long-standing reporting requirements for infectious diseases, this law requires reporting of personal identifiers and, additionally, name and address of the person's employer, so that public health officials can follow back to collect additional information. Special public health surveillance initiatives for selected occupational diseases have been built on this reporting system including work-related asthma [Rosenman et al., 1997]. The asthma surveillance initiative includes in-depth interviews with reported cases to identify the exposure(s) that caused or exacerbated the asthma, collection of medical records and selected work-site follow-up by industrial hygienists from the Michigan Occupational Safety and Health Administration (MIOSHA) to evaluate and remediate exposure risks for both the index worker and co-workers.

Michigan FACE (MIFACE)

The objectives of the MIFACE program are to track the types of work situations where acute work-related deaths have occurred, identify the underlying causes of each reported work-related fatality, and formulate and disseminate prevention strategies to reduce work-related fatalities. Work-related deaths are identified from a number of data sources

including death certificates, newspaper clippings, medical examiners, and the Michigan Occupational Safety and Health Administration (MIOSHA). Most deaths identified in the MIFACE program are traumatic fatalities, but acute deaths secondary to asphyxiants, carbon monoxide or chemical exposure, including work-related asthma deaths, are within the scope of the program. Once a work-related death has been identified and confirmed, an investigation is conducted to collect detailed information about the circumstances associated with the fatal event. Source documents are reviewed, including reports from other agencies that investigated the death (e.g., medical examiner, MIOSHA). MIFACE also contacts the employer to request permission to conduct an on-site investigation. MIFACE investigators do not enforce compliance with MIOSHA rules and do not assign fault or blame. A report is written at the conclusion of the investigation that describes the event and makes recommendations for prevention of similar events; this report is sent to the employer and other groups that can potentially effect work practice changes to eliminate or reduce the chances of a similar event in the future.

MAMR

Deaths where asthma is listed as the underlying cause of death are identified from the death data files at the Michigan Department of Community Health. Upon receipt of the death certificate the next of kin is contacted and if agreeable is interviewed. All medical, pharmacy, emergency response, and medical examiner records from the year prior to death are obtained. Information from the death certificate, autopsy, next-of-kin interview, and medical records are summarized for each case and provided for review by an expert advisory panel of physicians, nurses, asthma educators, and social workers. The panel identifies causal factors including those related to health insurance, co-morbidities, asthma triggers, medical utilization and medical care, and the panel provides recommendations for follow-up prevention actions.

The asthma death described here was identified and followed up under the mandates and established procedures of these three surveillance system. The case presentation and field investigation narratives were summarized from source material in the surveillance systems.

RESULTS

Case Presentation

A young adult asthmatic student and part-time waitress collapsed at the bar where she worked and was transported to a hospital emergency room where she was declared dead. Status asthmaticus was listed as the cause of death on the death certificate. An autopsy was performed; "asphyxia secondary to acute asthma attack" was listed as the cause of

death. No evidence of acute or chronic cardiac or neurologic disease was found. Pathologic findings for the lung were noted as follows: "There is mild chronic bronchiolitis with a focal moderate interstitial eosinophilic infiltrate. Goblet cell hyperplasia and a distinctive 'saw-tooth' luminal morphology of some of the bronchiolar mucosa is identified. The bronchiolar lumens are variably filled with fibrinous exudates, small mucous plugs and foamy macrophages. There is congestion in the surrounding alveolar parenchyma. No smooth muscle hyperplasia or bronchiolar fibrosis is seen."

The circumstances surrounding her death were as follows. When she arrived at work at mid-evening, she greeted her co-workers and talked with the DJ for approximately 15 min, who was setting up in a room adjacent to the bar. It was reported that she was not experiencing any difficulty breathing at this time and that she appeared "jovial." She then walked about 25 feet to an open section of the bar. There were approximately 30 people in the bar area. Shortly after she went behind the bar, she grabbed the bar manager, saying she needed to get to the hospital and that she needed fresh air. She also stated she wished she had her inhaler with her. As the two walked out from behind the bar and toward the back door, she collapsed onto the dance floor. The bar patrons were asked if anyone had an inhaler. Someone did, and the victim attempted to use the inhaler, but was unable to do so. According to the bar manager, the inhaler mist came back into her face. After her collapse, the bar manager called the owner, who told the bar manager to call for an ambulance. The call was recorded by 911 at 21 min after her arrival at work. The ambulance arrived in 5 min. Emergency Medical Services (EMS) found her unresponsive, without a pulse, and with agonal respirations, which quickly stopped. The monitor showed asystole. CPR was started; EMS reported great difficulty trying to expand her lungs with an ambu-bag. When her airway was opened for intubation, 600–700 cc of clear fluid came from her mouth. Five hundred cubic centimetres were then suctioned from her airway, and she was then intubated without difficulty. When she arrived at the Emergency Department (ED) she was unresponsive and the monitor showed asystole. She had a pulse with chest compressions, and her pupils were fixed and dilated. An IV was started and advanced cardiac life support medications were given without a change in her condition. The code was ended at 30 min after the 911 call was recorded.

The patient had been asthmatic since age 2. She was under the care of an asthma and allergy specialist and had health insurance up until 6 weeks prior to death. She had made four visits to her physician in the year prior to her death, each of them for a "flare up" of her asthma, and she had been treated at the ED 2–3 times in that year. She had prescriptions for Albuterol, which she used in a nebulizer 3–4 times a week, Proventil MDI, Singulair, and Advair. However, she was reported to only use her medication when she was having

breathing difficulty. Medical records from her outpatient visits were available for review and were consistent with moderate persistent asthma according to the National Heart, Lung and Blood Institute guidelines [NHLBI, 1997]. She had been treated at the ED approximately three times a year since age 5 and she had been in the ICU twice in her life, with one intubation.

Allergy testing showed that she had allergies to nuts, trees, ragweed, mold, dust mites, and house mites. She had never smoked cigarettes and did not drink alcohol or use illicit drugs. There were no pets in the home. She went to school in the morning, and worked at a fast food restaurant and the bar where she died. She was not prescribed antibiotics in the weeks before death and had no other ongoing medical problems. Based on her body mass index (BMI), she was obese.

Field Investigation

The bar where the decedent worked has been in business for approximately 3 years and employed approximately 11 people, 5 of whom were present at the time of the incident. The bar had two separate areas, including the bar area with limited seating and another room to the side with a DJ booth and a small dance floor, which was accessed from the bar through an opening half-way to the rear of the bar. The bar area, which was approximately 18 by 80 feet with doors at the front and rear, had seating for 39 patrons, 11 at the bar itself and 28 at seven tables. The front door was very near the area where the victim first began to have breathing problems. The owner described the ventilation in the bar area as having a "smoke eater," which drew air from the patron seating area into a 2- to 3-foot high plenum above the drop. This drawn air was then discharged above the back door to the outside of the building. There were six rectangular fans laid on top of the vent panels, presumably to assist in the air discharge to the ceiling plenum. These fans were inexpensive air cooling fans one would purchase for home use rather than industrial exhaust fans (See Fig. 1). The "smoke eater" ventilation was reported to have been working, but the air cooling fans were not turned on at the time of the incident. The bar owner stated that the manager reported that the bar was "not overly smoky" at the time of the incident. The actual number of smokers among the 30 patrons present at the time was not known; however, the MIFACE investigator noted a pronounced tobacco smoke odor during her on-site investigation even though there were only a few patrons present, calling it a "typical smoky bar."

Two health and safety recommendations and their rationale were made in the MIFACE investigation report [Michigan State University, 2006]:

- (1) Even though ventilation systems can reduce odor, they cannot guard against environmental tobacco smoke



FIGURE 1. Fan laying on ceiling panel in bar area.

health dangers. Therefore, "To protect the health of employees, private business owners, including bar and restaurant owners, should consider prohibiting smoking within their establishments."

- (2) The bar manager called the bar owner rather than calling 911 immediately when the crisis was unfolding, and potential life-saving minutes were lost. The owner had not developed an emergency plan or trained employees in appropriate response. Therefore, "Business owners should develop, implement and train employees in the business' emergency response plan."

DISCUSSION

Deaths from asthma are rare but alarming events. Risk factors for fatal asthma death include history of severe asthma attack requiring intubation and ventilation, poor compliance with outpatient management and medications, and psychosocial factors. Risk factors may be patient-related (e.g., poor compliance with prescribed medication), features of asthma (e.g., severe allergies, prednisone-resistance) medical-care-related (e.g., inadequate prescription of steroids, inadequate diagnosis, needed referral for high-risk patients), and system-related (e.g., psycho-social factors such as family dysfunction, poverty, and psychiatric disorders) [Strunk et al., 1998]. Secondhand smoke exposure was found to have moderately high risk (Odds Ratio = 7.1) for intubation among young adult asthmatics [LeSon and Gershwin, 1996].

Successful disease management techniques are available to provide control over asthma symptoms and a high quality of life. Identification and avoidance of the asthma triggers that provoke airway inflammation, including

irritants and allergens, are among the key components of long-term control [NHLBI, 1997]. Tobacco smoke is a recognized respiratory tract irritant [LeSon and Gershwin, 1996; Office on Smoking and Health, 2006] and may promote an inflammatory process [Skogstad et al., 2006].

In the past 20 years there has been increasing evidence of the adverse effects of environmental tobacco smoke (ETS) on non-malignant respiratory disease in general and asthma specifically. In the 2006 Surgeon General's report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, studies were reviewed covering etiologic, morbidity, experimental and observational studies of asthma and ETS. That report concluded that "...the evidence is suggestive but not sufficient to infer a causal relationship between secondhand smoke exposure and a worsening of asthma control" [Office on Smoking and Health, 2006]. The difficulties of conducting studies relating ETS to both pulmonary function and asthma were described in this and other reviews [Coultas, 1998; Weiss et al., 1999; Institute of Medicine, 2000]. Experimental studies, which have generated conflicting data, were limited by short exposure duration and small sample size. Observational studies were based on self-reports of ETS exposure and symptoms, and were subject to selection and recall bias. In addition, the contribution of workplace ETS exposures to overall self-reported exposure to ETS was not investigated.

Recent laws banning smoking in public places in a number of countries, states, and communities have provided an opportunity to conduct better studies of the effects of ETS on respiratory health in general and asthma in particular. Bars generally have high levels of cigarette smoke, and employees have long periods of exposure. Studies in Ireland [Goodman et al., 2007], Scotland [Menzies et al., 2006], Norway [Ellingsen et al., 2006; Skogstad et al., 2006], and Kentucky [Hahn et al., 2006] compared parameters of exposure and health outcomes including reported symptoms and lung function measures in bar/restaurant workers before and after the bans. All four studies included direct biological measures of ETS exposure: salivary, urinary or serum cotinine, or hair nicotine, and the Norway study measured air nicotine. In addition, total air particulate samples were taken in the Ireland and Norway studies. The usefulness of direct measures of ETS and their association with adverse respiratory outcomes had first been reported in a 2005 study, where nicotine badges and hair nicotine were used to measure exposure by a cohort of non-smoking asthmatics; the study found that directly measured ETS exposure was associated with poorer asthma outcomes [Eisner et al., 2005].

The studies in Ireland and Kentucky did not differentiate their findings related to the asthma status of their cohorts. In Ireland, concentrations of airborne particulate matter and salivary cotinine declined significantly, pulmonary function tests showed significant improvements, and respiratory

symptoms declined among nonsmoking barmen after the ban. In the Kentucky study, significant declines in hair nicotine and respiratory symptoms, particularly among non-smokers, were documented in the months after the smoking ban.

The studies in Norway and Scotland provided results on impacts to asthmatic workers, in addition to smoking and non-smoking workers in general. The Norway study measured cross shift changes in lung function and found that, among asthmatics, the decreases in FEV, FEV₁, and FEF_{25-75%} were significantly larger across the workshift before than after the ban. Concentrations of total dust and nicotine declined significantly after the ban as well. Menzies et al. measured respiratory symptoms, spirometry measurements, serum cotinine levels, peripheral inflammatory cell counts, and exhaled nitric oxide levels before and after introduction of a smoking ban in Scotland among a group of non-asthmatic and asthmatic nonsmoking bar workers and found that bar workers with asthma experienced an even larger improvement in pulmonary function than those without asthma after the smoking ban. The addition of these studies of respiratory health and asthma in workers with high exposure to ETS further supports the evidence that ETS is a hazard and that people with asthma have an even greater risk.

This is the first reported acute asthma death associated with work-related ETS. Michigan is the only state with three surveillance systems that include overlapping mandates and responsibilities for public health response to work-related illnesses and injuries. This may explain why work-related asthma deaths from ETS have not been identified elsewhere.

Several limitations should be noted related to this case report. First, the deceased's asthma was not under optimum control; this would increase the likelihood of an adverse reaction with exposure to an asthma trigger. Second, there are no measurements of particulate matter in the bar where she died; thus the association with secondhand smoke is based on the temporal relationship of exposure to her acute respiratory symptoms and her subsequent collapse in the absence of any other known trigger for this acute effect. However, the epidemiologic and experimental data linking ETS to acute, non-malignant respiratory conditions including exacerbation of asthma, supports the clinical impression of an association.

Primary prevention to eliminate the risk of asthma exacerbation from ETS would be to make all workplaces, including bars and restaurants, smoke free. Workplaces should be accessible to all workers and patrons, including those with respiratory conditions. Patrons may have a choice when considering where to eat or drink, but the employees of those bars and restaurants do not have a choice, particularly in the low paying hospitality industry. To date, 17 states and dozens of municipalities in the United States have legislated smoke-free bars and restaurants [Koh et al., 2007]. Most of the provinces in Canada and Australia and eleven other countries are, or soon will be, completely smoke-free in bars

and restaurants [ANRF, 2007]. Although the world has "begun to reclaim clean air as the social norm" [Koh et al., 2007], countless numbers of workers are still being involuntarily exposed, and legislative change requires continued perseverance. In the absence of smoke-free legislation, employers would be well off voluntarily adopting smoke-free policies, given that employers have been held legally liable for employee exposure to ETS [Zellers et al., 2007], and the evidence that smoke-free policies do not have a negative financial impact on bars [Alamar and Glantz, 2007].

A pro-smoking website has posted a statement that "[T]he only real justification for a total ban [on smoking in public places] would be incontrovertible proof that environmental tobacco smoke is a deadly health hazard" [Forestonline.org, 2007]. Environmental tobacco smoke was deadly to the patient presented here. Although it is doubtful smoking advocates would consider the proof "incontrovertible," we find the circumstances of this death are convincing to conclude that this young woman died from exposure to work-related second hand smoke. Her death provides dramatic evidence of the need for smoke-free legislation to protect the health of bar and restaurant workers.

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FINANCIAL LOSS

Smoking
City Council Meeting 6/7/11
Amend 95.05 Regulation
of Smoking in most
Public Places

NUMBER OF (ESTB.) 22

(AVG.) GROSS DOLLARS A DAY \$ 1,500.⁰⁰

= \$ 33,000.⁰⁰ A DAY

(6) DAY WORK WEEK = \$ 198,000

ONE YEAR SALES (52 weeks) = 10,296,000.⁰⁰

STATE TAX 6%

CITY TAX ~~2.0%~~ 2.0%

MIX DRINK TAX 3.0%

COUNTY TAX 1.25%

ADDITIONAL PREP FOOD TAX 2.0%

TOTAL TAXES 14.25%

\$ 10,296,000.⁰⁰

X 14.25%

= \$ 1,467,180.⁰⁰

10,296,000.⁰⁰

Y2 = 5,148,000.⁰⁰

X 14.25%

= 733,590

- SEC TOWNS -

June 7th 2011

		POP	ENROLL
ATHENS	GEORGIA	114,983	35,520
TUCALOOSA	ALABAMA	93,215	30,232
Fayetteville	ARKANSAS	77,143	21,406
KNOXVILLE	TENNESSEE	184,802	27,107
NASHVILLE	VANDERBILT	635,710	12,093
GAINESVILLE	FLORIDA	124,491	51,474
OXFORD	OLE MISS *	16,706	19,644 *
Baton Rouge	L. S. U.	229,553	28,810
AUBURN	AUBURN, AL.	53,380	25,078
COLUMBIA	SOUTH CAROLINA	129,333	28,481
LEXINGTON	KENTUCKY	296,545	26,054

Hutch's Sports Bar

Gross Annual Rev 500,000

$$\begin{array}{r} 52 \text{ weeks} \\ \hline \div 52 \\ \hline = 9,615.19 \text{ A week} \end{array}$$

$$\begin{array}{r} 22 \text{ (ESTAB)} \\ \times 22 \\ \hline \end{array}$$

$$= 211,530.00$$

$$\begin{array}{r} \times 52 \text{ weeks} \\ \hline \times 52 \\ \hline = 10,999,560.00 \end{array}$$

$$\frac{1}{2} = 5,499,780.00$$

*Smoking
City Council Meeting 6/7/11
Amend 95.05 Regulation
of Smoking in Most Public
Places*

- 1 Anglers In** [Show Map](#)
20570 Park Rd
Rogers, AR 72756-7518
- 2 Deja Vu** [Show Map](#)
3404 SE Macy Rd
Bentonville, AR 72712
- 3 Good Vibrations Inc.** [Show Map](#)
2500 N 17th St
Rogers, AR 72756-2109
- 4 Kyle's Club 71** [Show Map](#)
2102 1/2 S 8th St
Rogers, AR 72758
(479) 899-6300
- 5 The Bayou** [Show Map](#)
115 N Dixieland Rd
Rogers, AR 72756-3252
- 6 Elks Lodge 1987** [Show Map](#)
4444 N Crossover Rd
Springdale, AR 72764-8600
- 7 El Tenampa** [Show Map](#)
125 Mill St
Springdale, AR 72764-4550
- 8 Fatty Hackers Sports Club** [Show Map](#)
2005 S Thompson St
Springdale, AR 72764
(479) 751-0881
- 9 Jokers** [Show Map](#)
1039 S Gutensohn Rd
Springdale, AR 72762
(479) 750-3441
- 10 The China Doll** [Show Map](#)
2001 S Thompson St
Springdale, AR 72764-6329

**The Fez Hookah Lounge**

207 N Thompson St
Springdale, AR 72764

[Show Map](#)**Mcb's Pub**

3100 Market St
Rogers, AR 72758-8254

[Show Map](#)**Palm Noodle Bar**

200 S Bloomington St # B
Lowell, AR 72745
(479) 770-0011

[Show Map](#)**Sunset Saloon**

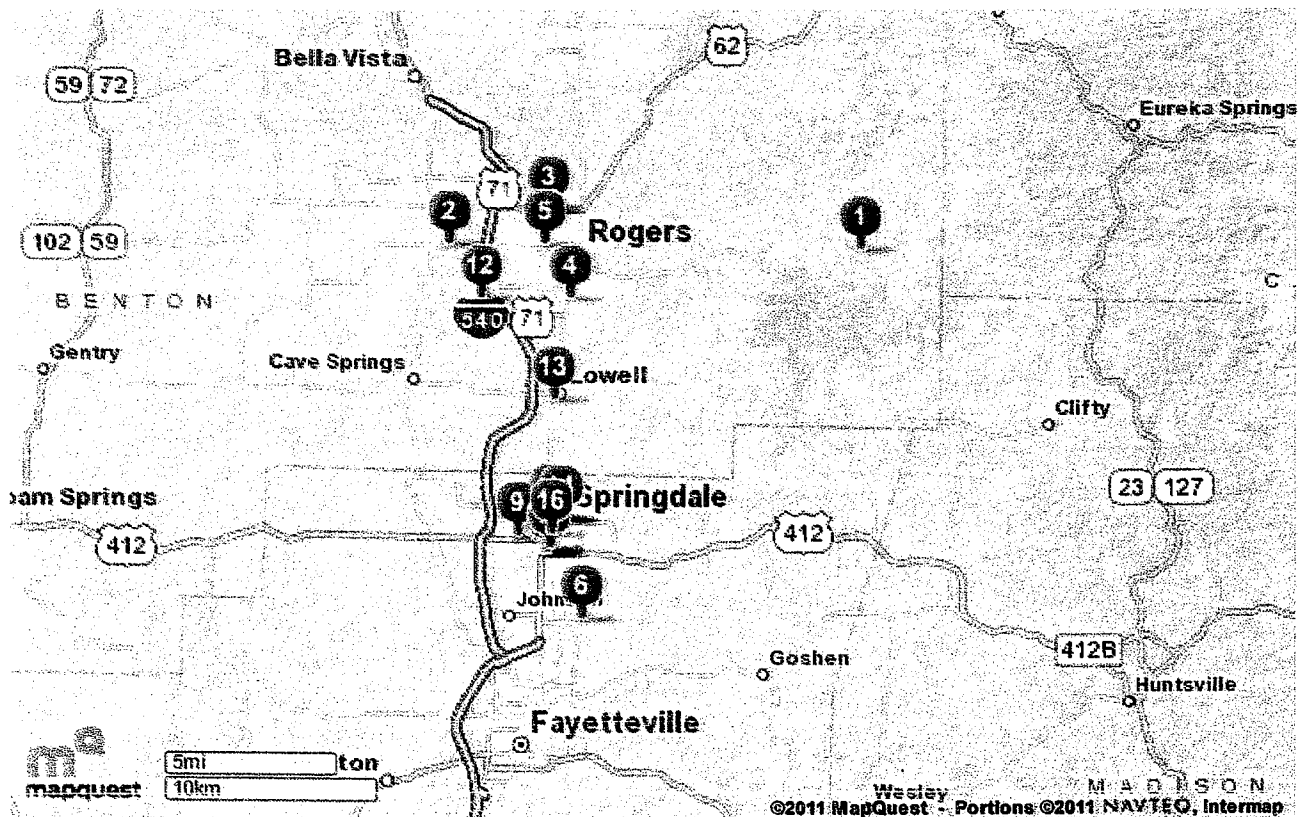
130 W Emma Ave
Springdale, AR 72764-4305

[Show Map](#)**Mom's Place Tavern**

1408 S Thompson St
Springdale, AR 72764-6318

[Show Map](#)**The Bar**

705 S Thompson St
Springdale, AR 72764-4248

[Show Map](#)

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Fatality Assessment and Control Evaluation (FACE) Program

Young Adult Female Waitress Died From an Asthma Attack While Working in a Bar

Michigan Case Report: 04MI223

Released: April 17, 2006
Corrected: August 08, 2007

Summary

On May 1, 2004, a 19-year-old African-American female waitress working at a bar died from an asthma attack. The bar was divided into two separate areas, the bar area with limited seating and a room with a disc jockey (DJ) booth (See Figure 1). When the victim arrived at work at 9:45 p.m., she talked with the DJ who was setting up in the adjacent room, then walked about 25 feet to an open section of the bar. The bar owner stated she was not experiencing any difficulty breathing at this time. There were approximately 30 people in the bar area. No individuals were in the room with the DJ. According to the owner, the bar was not "overly smoky". Shortly after the victim went behind the bar, she grabbed the bar manager, saying she needed to get to the hospital and that she needed fresh air. The victim said she wished she had her inhaler with her. As the two walked out from behind the bar and toward the back door, the victim collapsed onto the dance floor. The bar patrons were asked if anyone had an inhaler. Someone did, and the victim attempted to use the inhaler, but was unable to do so. According to the bar manager, the inhaler mist came back into her face. Emergency Medical Service (EMS) was called and she was transported to a local hospital where she was declared dead 30 minutes from the time of the call to EMS.



Figure 1. Bar where incident occurred.

Recommendations:

- To protect the health of employees, private business owners, including bar and restaurant owners, should consider prohibiting smoking within their establishments.
- Business owners should develop, implement and train employees in the business' emergency response plan.

Introduction

On May 1, 2004, a 19-year-old African-American female waitress working at a bar died from an asthma attack. MIFACE investigators were informed of this incident by a referral from an asthma study. On September 27, 2005, the MIFACE researcher talked with the owner of the bar where the victim worked and visited the incident scene. The bar owner permitted the MIFACE researcher to take pictures of the establishment. During the writing of this report, the death certificate and medical examiner death scene investigation report were obtained.

The bar has been in business for approximately three years and employs approximately 11 people. There were five employees on site at the time of the incident. The victim worked as a waitress and as a door monitor. She checked for age identification and took cover charges to enter the establishment. The bar served primarily alcohol and food snacks. The victim worked part-time, on an on-call basis to staff the 10:00 p.m. – 2:00 a.m. shift. The victim had been employed at this establishment for approximately three months. She also worked another part-time job at a fast food establishment. The employer did not have an emergency action plan.

Michigan Case Report

[NIOSH FACE Home](#)
[State-based Case Reports](#)
[Michigan Case Reports](#)

On This Page...

- [Summary](#)
- [Introduction](#)
- [Investigation](#)
- [Cause of Death](#)
- [Recommendations and Discussion](#)
- [Resources](#)
- [Michigan FACE Program](#)

*Smoking
City Council meeting
6/7/11*

*Amend
95.05
Regulation
of Smoking
in most public
places.*

[Back to Top](#)

Investigation

The bar had two separate areas, the bar area with limited seating and another room with a DJ booth that also sat patrons. The bar area was approximately 18 feet wide and 80 feet long. The front door was very near the area where the victim first began to have breathing problems. (See [Figure 1](#)). Walking toward the back door, there was a pool table adjacent to the bar, then a small dance floor. The bar seating accommodated 11 patrons, and had seven tables near the wall, each with four chairs. The room with the DJ booth had a small dance floor, and could be accessed by a standard size door from the bar area. The access door was across from the pool table.

The owner described the ventilation in the bar area as having a "smoke eater", which drew air from the patron seating area into a 2- to 3-foot high plenum above the drop ceiling (See [Figure 2](#)). This drawn air was then discharged above the back door to the outside of the building. There were six rectangular exhaust fans laid on top of the vent panels, presumably to assist in the air discharge to the ceiling plenum (See [Figure 3](#)). The "smoke eater" ventilation was working, but the exhaust fans were not turned on at the time of the incident.

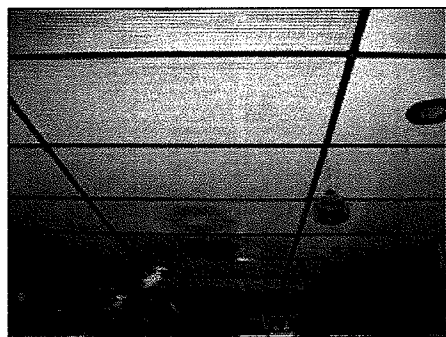


Figure 2. Ceiling panels in bar area.

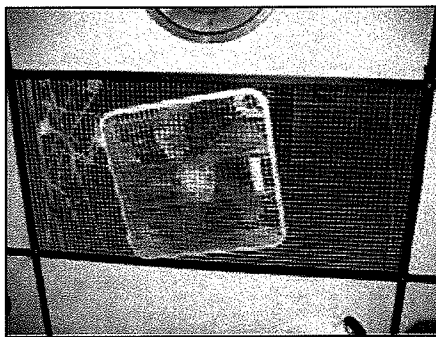


Figure 3. Fan laying on ceiling panel in bar area.

According to the medical examiner's report, the victim's father had seen her at 9:30 p.m. and stated she was having breathing problems at that time.

The victim arrived at work at approximately 9:45 p.m. and greeted her coworkers. She walked into the room with the DJ booth and talked with the DJ for approximately 15 minutes while he was setting up for the evening. After talking with the DJ, she walked through the door to the bar area, walked along the bar to the open area of the bar (See [Figure 1](#)). The owner stated that the DJ and the bar manager indicated that she was not experiencing difficulty breathing at this time. There were approximately 30 people in the bar area, and there were no individuals in the room with the DJ. According to the owner, the bar was not "overly smoky". Shortly after the victim went behind the bar, she grabbed the bar manager, saying she needed to get to the hospital and that she needed fresh air. The victim said she wished she had her inhaler with her. The manager and the victim walked out from behind the bar and toward the back door. The victim collapsed onto the dance floor. The bar patrons were asked if anyone had an inhaler. Someone did, and the victim attempted to use the inhaler, but was unable to do so. According to the owner, the inhaler mist came back into her face.

After her collapse, the bar manager called the owner, who told the bar manager to call for an ambulance. The call was recorded by 911 at 10:06 p.m. The ambulance arrived in five minutes. EMS found her unresponsive, without a pulse and having agonal respirations. Approximately five minutes after EMS arrival, the victim stopped breathing, and EMS started CPR. EMS tried to assist breathing with a mask and bag, but according to the medical examiner report, the EMS personnel could not get air into her lungs. She was transported via ambulance to a local hospital. When she arrived at the hospital, she was unresponsive and the heart monitor showed no heartbeat. She was declared dead at the hospital at 10:36 p.m.

According to the owner, she had not previously had an asthma attack at work. She did not carry her inhaler to work on the day of the incident.

[Back to Top](#)

Cause of Death

The cause of death as stated on the death certificate was status asthmaticus. A medical examiner report and toxicology results were not obtained.

Recommendations/Discussion

To protect the health of employees, private business owners, including bar and restaurant owners should consider prohibiting smoking within their establishments.

Ventilation systems, including the most commonly utilized ventilation system – general dilution ventilation – can reduce odor, but fail to guard against environmental tobacco smoke (ETS or secondhand smoke) health dangers. Secondhand smoke is a known asthma trigger. The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)¹, in their position document on Environmental Tobacco Smoke (June 30, 2005) conclude that:

- “It is the consensus of the medical community and its cognizant authorities that ETS is a health risk, causing lung cancer and heart disease in adults, and exacerbation of asthma, lower respiratory illnesses and other adverse effects on the respiratory health of children.
- At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity.
- Although complete separation and isolation of smoking rooms can control ETS exposure in non-smoking spaces in the same building, adverse health effects for the occupants of the smoking room cannot be controlled by ventilation.
- No other engineering approaches, including current and advanced dilution ventilation or air cleaning technologies, have been demonstrated or should be relied upon to control health risks from ETS exposure in spaces where smoking occurs. Some engineering measures may reduce that exposure and the corresponding risk to some degree while also addressing to some extent the comfort issues of odor and some forms of irritation.
- An increasing number of local and national governments, as well as many private building owners, are adopting and implementing bans on indoor smoking.
- At a minimum, ASHRAE members must abide by local regulations and building codes and stay aware of changes in areas where they practice, and should educate and inform their clients of the substantial limitations and the available benefits of engineering controls.
- Because of ASHRAE’s mission to act for the benefit of the public, it encourages elimination of smoking in the indoor environment as the optimal way to minimize ETS exposure.”

The full text of the ASHRAE position document on Environmental Tobacco Smoke may be found at: http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239_347.pdf

There is no safe level of exposure to secondhand smoke. Occupational, environmental and public health agencies have recognized that substantial subpopulations with disease states such as asthma or heart disease have their conditions exacerbated by ETS exposure. Air monitoring studies in bars, restaurants and other venues that permit smoking in Massachusetts, Virginia, Minnesota, Delaware and other international locales have shown that the levels of respirable particulate air pollution concentrations inside of these establishments are magnitudes above the respirable particulate air pollution levels found in the outdoor environment; these pollutants are regulated by the Environmental Protection Agency under the National Ambient Air Quality Standard (NAAQS).

According to the American Lung Association *State of Tobacco Control: 2005 report*² “For adult nonsmokers, the workplace is the primary source of secondhand smoke exposure. Levels of secondhand smoke in restaurants and bars are approximately 1.6 times greater and 7.6 times greater, respectively, than in office workplaces. Food service workers have a 50 percent greater risk of dying from lung cancer than the general population”. The American Lung Association Report may be found on the Internet at: <http://lungaction.org/reports/tobacco-control05.html> (Link no longer available 1/12/2010)

The State of Michigan does not at the time of this report, have a state smoke-free workplace law in place. Private businesses and bars do not have any smoking restrictions; restaurants do have smoking restrictions (i.e. allow smoking in restricted areas). Working in an establishment that permits smoking provides an unhealthy work environment for employees. MIFACE recommends that all private business owners, including owners of bars and restaurants, provide a smoke-free work environment to reduce the risk of their workers developing secondhand smoke-related disease and the exacerbation of existing health conditions.

Business owners should develop, implement and train employees in the business’ emergency response plan.

An emergency situation occurred on the evening of the victim’s death – she had an acute asthma attack. The bar manager did not immediately call 911. Instead she phoned the owner of the bar to let him know what was going on. Only after the owner was contacted was emergency response called. The owner had not developed an emergency response plan. Consequently, valuable time was lost in

providing emergency treatment for the victim.

Emergencies can and do happen, including personal injuries, fires, natural disasters such as tornadoes and floods, and violent acts. An emergency action plan describes the actions employees should take to ensure their safety if a fire or other emergency situation occurs.

MIOSHA General Industry Safety Standard Part 6, Fire Exits, Rule 608³ requires that a business with over 10 employees have a written emergency plan. In businesses with fewer than 10 employees, the plan can be communicated orally and need not be in writing. Rule 608 requires that employers inform employees of emergency escape procedures and emergency routes to approved means of egress. In addition, employers must ensure that a sufficient number of persons are designated to assist in a safe and orderly evacuation. MIOSHA General Industry Safety Standard Part 6 may be found and downloaded at: http://www.michigan.gov/documents/CIS_WSH_part6_38111_7.pdf.

To develop the emergency action plan, identify the potential hazards the business may face. While conducting the hazard assessment, consider hazards to both employees and customers. Potential threats for bars, restaurants, and lounges include but are not limited to: fire, violent acts, tornados, acute illness (e.g., asthma attack, heart attack), the computer "goes down", water main break, power outage, etc.

After what could go wrong, develop the emergency action plan to address the threats identified. Good business practice, state and local laws and regulations should be considered in the plan development process. The best emergency action plans include the employees in the process and specify what employees should do during an emergency. When employees are included in the planning, it encourages them to offer suggestions about potential hazards, worst-case scenarios, and proper emergency responses.

Designate a person to be in charge of managing the emergency. In this incident, emergency response was unable to provide medical assistance to the victim while inside of the bar due to the intrusion of well-meaning staff and bar patrons. The emergency response personnel needed to take the victim outside to provide medical care. If an individual was designated to be the person "in charge", and the staff was trained to keep not only themselves away from the scene, but also the bar patrons, EMS would have been able to work and again, time would not have been lost in the medical treatment for the victim.

After the plan is developed, review it with employees to make sure everyone knows what to do before, during, and after an emergency. The emergency plan should be reviewed with all employees not only when it is initially developed, but also when employees' responsibilities outlined in the plan change, and when the plan itself changes.

To help make sure employees know what's expected of them in an emergency, consider conducting a "tabletop" exercise. The "tabletop" exercise provides an opportunity to "dry run" the plan and talk over how things might go in an emergency scenario. The "dry run" can provide insight about what might have been missed in your original plan and what might need to be changed in the plan.

Keep a copy of the emergency plan in an easily accessible location that's convenient to all employees. And, as a best practice, employers should give each employee a copy of the ERP during training and new-employee orientations.

Federal OSHA has an e-tool to assist employers in developing an emergency action plan. The e-tool can be found at: <http://www.osha.gov/SLTC/etools/evacuation/index.html>.

[Back to Top](#)

Resources

MIOSHA standards cited in this report may be found at and downloaded from the MIOSHA, Michigan Department of Labor and Economic Growth (DLEG) web site at:

http://www.michigan.gov/dleg/0,1607,7-154-11407_15368---00.html (Link updated 12/11/2007).

MIOSHA standards are available for a fee by writing to: Michigan Department of Labor and Economic Growth, MIOSHA Standards Section, P.O. Box 30643, Lansing, Michigan 48909-8143 or calling (517) 322-1845.

1. ANSI/ASHRAE Standard 62.1-2004, *Ventilation for Acceptable Indoor Air Quality*. http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239_347.pdf
2. American Lung Association. State of Tobacco Control: 2005. Internet Address: <http://lungaction.org/reports/tobacco-control05.html> (Link no longer available 1/12/2010)
3. Department of Labor and Economic Growth, MIOSHA. General Industry Safety Standard Part 6, Fire Exits. http://www.michigan.gov/documents/CIS_WSH_part6_38111_7.pdf

4. US Department of Labor, OSHA. Evacuation Plans and Procedures. Internet Address: <http://www.osha.gov/SLTC/etools/evacuation/index.html>
5. Effective Emergency Response Plans – anticipate the worst, prepare for the best results. Carl Griffith, Rick Vulpitta. National Safety Council. <http://www.nsc.org/issues/emerg/99esc.htm>
(Link no longer valid 4/16/2007)

Michigan FACE Program

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MIFACE Investigation Report # 04MI223 Evaluation (see page 8 of report)

To contact Michigan State FACE program personnel regarding State-based FACE reports, please use information listed on the Contact Sheet on the NIOSH FACE web site Please contact In-house FACE program personnel regarding In-house FACE reports and to gain assistance when State-FACE program personnel cannot be reached.

◀ Michigan Case Reports

Smoking
City Council Meeting 6/7/11
Amend 95.05 Regulation of Smoking
in Most Public Places

Studies for City Council

Cancer and Tobacco: It's Effect on Individuals and Populations.....

The Starkville & Hattiesburg Heart Attack Studies.....

Reduced Incidence of admissions for myocardial infarction asso. w/ public smoking ban: before & after...

Declines in Hospital Admissions for Acute Myocardial Infarction.... After implementation of.....

Public Smoking Bans are Good for the Heart.....

Bartenders' Respiratory Health After Establishment of Smoke-Free Bars and Taverns.....

Tobacco Smoke Exposure in Nonsmoking Hospitality Workers before & after a State Smoking Ban.....

Secondhand smoke, age of exposure and lung cancer risk.....

Cancer and Tobacco: Its Effects on Individuals and Populations

Bernard W. Stewart,
Patricia F. Cotter and
James E. Bishop

Abstract

Tobacco smoking as the major cause of cancer is unrivalled and as western countries come to terms with its toll and smoking rates decline, the burden of tobacco-caused disease is far from reaching its peak in developing countries. Tobacco smoking causes cancer of the lung, as well as cancer of the oral cavity, naso-, oro- and hypopharynx, nasal cavity and paranasal sinuses, larynx, oesophagus, stomach, pancreas, liver, kidney (body and pelvis), ureter, urinary bladder, uterine cervix and bone marrow (myeloid leukaemia).

For lung cancer, incidence is almost precisely correlated with mortality and the only option currently available to markedly reduce the burden of lung cancer in the community is to reduce tobacco consumption.

For the cancer patient, continued smoking carries an increased risk of treatment complications or a second malignancy at the same or another site and the increased risk of a new primary cancer for many years after the original diagnosis. There is substantial medical evidence that continued smoking may reduce the effectiveness of treatment or worsen side effects of treatment.

The risk of death from smoking is substantial: about half of all cigarette smokers are eventually killed by their habit. Physicians and health professionals are in a unique position to capitalise on the teachable moment presented by the diagnosis of a smoking-caused disease and advise all smokers to quit. Unless these and other effective measures are implemented to prevent people from smoking and to help current users quit, tobacco will kill one billion people in the 21st century.

Keywords: Tobacco, environmental tobacco smoke, teachable moment, treatment effects.

1. The Need to Eliminate Tobacco-Induced Cancer

Reference to tobacco occupies a singular position in any overview of cancer biology and clinical oncology. Theoretically, exogenous causative factors may be considered with reference to any tumour type and any such discussion has ramifications for prevention and the possibility of reducing the burden of incidence and mortality. Exogenous carcinogens include tobacco, alcoholic beverages, ultra-violet light and a range of occupational and environmental exposures.

In the classic appraisal made by Doll and Peto in 1981¹ regarding the causation of cancer in the USA, 30% of all cancer deaths were attributable to tobacco, with no other single agent of comparable standing with regards to cancer causation.² Lung cancer is the leading cause of cancer-related mortality worldwide, with almost 1.2 million deaths per year.³ In delineating the role of tobacco smoking in lung cancer, many studies are directed to a heterogeneous grouping identified as non-small-cell lung cancer (NSCLC, comprising 80% of lung cancers), which includes adenocarcinoma, bronchioloalveolar, squamous, anaplastic and large-cell carcinomas.

1.1 Causation proven

The overwhelming body of epidemiological evidence indicates that the risk of lung and other cancers is determined by the duration of smoking, the amount of tobacco smoke inhaled (usually

2 B. Stewart et al.

expressed in 'pack years') and the intensity of exposure, as indicated by the depth of inhalation. The carcinogenicity of tobacco smoke is clear both from such epidemiological studies and also from a huge spectrum of experimental data. The vital contribution of experimental studies has come through detailed analyses of the processes whereby the multiple carcinogens in tobacco smoke cause malignant transformation of respiratory and other epithelial tissue.

The particulate phase of tobacco smoke contains nicotine, nitrosamines, *N*-nitrosonornicotine, metals (cadmium, nickel and polonium-210), polycyclic aromatic hydrocarbons and carcinogenic aromatic amines (4-aminophenyl). The vapour phase contains carbon monoxide, carbon dioxide, benzene, ammonia, formaldehyde, hydrogen cyanide, and nitrosamines. Approximately 60 recognised carcinogens are present, along with toxic agents likely to induce tissue injury and consequent proliferative activity in respiratory epithelium.⁴ Nicotine may contribute directly to carcinogenesis by stimulating cell proliferation and inhibiting apoptosis, thereby mediating promotion and progression of lung cancer.⁵

In the face of such a carcinogenic insult, which may continue over several decades, the lung is remarkably resistant to tumourigenesis. Only a minority of heavy smokers — 16% of men and 9.5% of women — develop lung cancer.

1.2 Multiple target organs

The most authoritative statements on the carcinogenicity of particular agents are evaluations made in the context of *IARC Monographs on the Evaluation of the Carcinogenic Risks to Humans*, edited by the International Agency for Research on Cancer, an arm of the World Health Organization (WHO). *IARC Monographs on Tobacco Smoking and on Involuntary Smoking* were published in 2004 and are the definitive publications in relation to a range of matters.⁶ Tobacco smoking causes cancer of the lung, as well as cancer of the oral cavity, naso-, oro- and hypopharynx, nasal cavity and paranasal sinuses, larynx, oesophagus, stomach, pancreas, liver, kidney (body and pelvis), ureter, urinary bladder, uterine cervix and bone marrow (myeloid leukaemia). Available data

indicate that tobacco smoking does not cause cancers of the female breast and endometrium.

The *IARC Monograph* on tobacco smoking provides comprehensive information in relation to each of the tumour types caused by smoking. Such details include the relationship of risk to exposure, the proportion of disease attributable to tobacco and the extent of reversibility of risk consequent upon smoking cessation. The causation of each of the tumour types known to be a consequence of tobacco smoking may be analysed with reference to the route of exposure to tobacco smoke or related metabolites, organic-specific metabolism of particular carcinogens and the cell biology of relevant tumours.

In respect of tobacco-induced lung cancer, the basics have been known for decades, though even in relation to lung cancer, new insights regarding tobacco continue to be revealed. The most important matter resolved in recent years concerns the carcinogenicity of so-called 'light' or 'mild' cigarettes. Cigarettes formulated to deliver less tar when subjected to 'smoking machine' analysis were marketed and advertised as presenting a lesser risk of ill-health than regular cigarettes. It is now established that smokers of light or mild cigarettes are essentially subject to the same risk of lung cancer as smokers of regular cigarettes.⁷ The data indicate that smoking behaviour is dominated by the smoker's need to achieve a given intake of nicotine. Low or mild cigarettes provoke changes in smoking behaviour: more frequent inhalation, deeper inhalation and/or consumption of a greater number of cigarettes per day.⁸ It is hypothesised that the usage of light or mild cigarettes accounts for an increasing proportion of adenocarcinoma by comparison with other histological types of non-small cell lung cancer.

Despite early implications, recent data suggest that women are no more susceptible than men to the carcinogenic effects of cigarette smoking to the lung.⁹ Paradoxically, in the same study amongst those reporting having never smoked tobacco in any form, women had slightly higher rates of lung cancer than men. Lung cancer is a lethal disease and although some progress has been made in recent years, the five-year survival rate in developed countries remains less than 15%. For lung cancer, incidence is almost precisely correlated with mortality, which is not the situation for the other common cancers in developed countries: breast,

4 B. Stewart et al.

colon and prostate cancer. As a consequence, the only option currently available to markedly reduce the burden of lung cancer in the community is to reduce tobacco consumption.

2. The Genetics of Susceptibility

Knowledge of the genes mediating metabolism of tobacco smoke-derived carcinogens and those genes accounting for the repair of such damage was vigorously pursued. A specific stimulus for this research was the hypothesis that individual susceptibility to lung cancer may be revealed by genetic variation amongst such genes. Information concerning genetic determination of susceptibility to lung cancer independent of smoking behaviour and for susceptibility to nicotine addiction is available,¹⁰ but will not be considered here. On the specific issue of genetic determination of susceptibility to tobacco smoke carcinogenesis, there has been no consistent association between specific SNPs in XRCC1 and risk of lung cancer.

2.1 Lung cancer is a different disease in smokers

The characteristics of lung cancer in smokers, as distinct from lung cancer in never smokers, are sufficiently marked as to justify characterising these as two different tumour types with reference to both aetiology and clinical course.¹¹ A difference between the putatively distinct tumour types is most clearly indicated by mutation in epidermal growth factor receptor (EGFR). EGFR mutations are much more common in lung cancers afflicting people who have never smoked (45%), by comparison with those with tobacco-associated disease (7%).¹² This scenario is correlated with markedly increased responsiveness to the corresponding low molecular weight kinase inhibitors erlotinib and gefitinib. Patients likely to respond to these kinase inhibitors are those who are non-smokers, women and those of Asian ancestry; smokers with lung cancer show little response.¹³ Lung cancers in smokers exhibit distinct patterns of TP53 and KRAS mutations, with KRAS mutations almost unknown in never smoker lung cancers. Indeed, it appears that EGRF and KRAS mutations are mutually exclusive.¹⁴ Histologically, adenocarcinomas are considered to be less commonly

attributable to tobacco smoking than squamous or large cell lung cancers. The distinction being drawn between apparently different lung tumour types affecting smokers and never smokers means that smoking status and history are not only relevant to public health, but to the clinical management of lung cancer. In a recent Japanese study, the 'never-smoking NSCLC' patient group exhibited significantly superior overall and cancer-specific survival than the 'smoking NSCLC' group.¹⁵

2.2 Evidence of reversibility

Elucidation of the molecular processes resulting in cancer causation by tobacco smoke has contributed directly to proving that the epidemiological association between smoking and lung cancer is causal. A decreased risk of cancer amongst former smokers indicates the degree to which carcinogenesis is reversible, which is consistent with both cellular and molecular data.^{16,17}

Once direct exposure to tobacco smoke ceases, the tissue and molecular injury, which may otherwise contribute to cancer development, tends toward normal.¹⁸ Accordingly, the aetiology of tobacco-induced lung cancer strongly favours smoking cessation as the most immediate, and effective, preventive measure. Both public health policy and primary health care are properly based on smoking cessation as a central tenet of cancer control.

3. Prospects for Population-Based Screening

In developed countries, risk factors for lung cancer are clear. As summarised by Spitz and her colleagues, for never smokers they include regular exposure to environmental tobacco smoke and a family history of cancer in two or more first-degree relatives. For former smokers, risk factors are emphysema, no prior hay fever, dust exposure, and family history of cancer in two or more first-degree relatives. For current smokers, additional risk factors include asbestos exposure, and the family history variable involves one or more first-degree relatives with a smoking-related cancer.¹⁹

With criteria which clearly establish persons at high risk of lung cancer being evident over decades, and the clinical prospect of extremely poor survival once diagnosis is made, the context

and benefits of population-based screening for lung cancer are immediately clear, and have been so for years.

In the 1950s autopsy studies showed that the lungs of heavy smokers were affected by multiple sites of preinvasive and early invasive cancer associated with the clinical disease leading to the patients' death. Protocols for lung cancer screening initially involved chest X-rays and sputum cytology and prior to 1980, evaluation of such procedures was undertaken in multiple studies. The results of these trials were uniformly negative, insofar as none showed any reduction in lung cancer mortality in the group subject to X-ray, with or without sputum cytology.²⁰ Chest X-ray was effective at identifying many additional small tumours in the lung that could be removed. However, that intervention did not reduce the likelihood that individuals would be diagnosed with new cases of advanced lung cancer or would die of lung cancer.

3.1 *Current status of computed tomography (CT) screening*

Current approaches to lung cancer screening are totally focused on CT because this technology is demonstrably more sensitive for the detection of very small nodules. That said, the titles of recent editorials — referring to 'are we ready?', 'spiraling into confusion' and 'yet another problem'²¹⁻²³ — clearly indicate that no basis has been established for the widespread introduction of CT screening for lung cancer. A central consideration is that the available data do not reveal a consistent reduction in lung cancer mortality as a consequence of CT-based screening. As might be anticipated from the earlier X-ray studies, many more patients with stage one disease are identified amongst those at risk as subjected to CT than amongst controls. Some insight into the challenge posed by data currently available is posed by Black and Baron,²¹ who asked "How is it possible that two large studies published within six months of each other could lead to such dramatically different conclusions about the effectiveness of CT screening?" The best explanation for the paradox is the difference in the primary outcome measurements. One study,²⁴ concluding that asymptomatic individuals should not be screened, relied on mortality. The other,²⁵ which focused on survival, suggested that CT screening of high-risk

individuals could prevent 80% of lung cancer deaths. Prolonged survival need not imply reduced mortality in the population.

There is direct evidence that, by comparison with chest X-ray and sputum cytology, spiral CT is a more effective screening methodology, and has the potential to detect disease more accurately. However, the potential for over diagnosis is also evident.²⁶ For lung cancer screening purposes, publications involving CT include 11 observational studies and six randomised trials.²⁰ Taking these data into account, Field and Duffy conclude that "we still do not have experimental evidence for or against the implementation of this screening modality". It may be, however, that lung cancer screening predicated on the detection of early stage lesions is an inherently flawed approach. The notion that for a period before advanced disease, lung cancer is localised and treatable may be wrong. Perhaps the early stage lesions currently detected in trials are not the precursors of advanced disease, which otherwise develops via a different pathway²⁷ and attempts are being made to characterise subsets of early disease in order to clarify this matter. A significant fraction of patients (30–40%) with stage one disease who undergo surgery die of recurrent disease. Such patients appear to be characterised by methylation of the promoter regions of four particular genes.²⁸

3.2 Genetic profiling of pre-malignant tissue

Gene expression profiling has been extensively assessed in relation to clinical disease, specifically as a possible means to predict metastatic behaviour.²⁹ The same technology has been applied to bronchial epithelium at risk of tobacco smoke-induced malignant transformation. Spira and colleagues³⁰ analysed histologically normal large-airway cells obtained at bronchoscopy from smokers, to determine whether gene expression data might be used for biomarker purposes. They identified an 80-gene biomarker that distinguished smokers with and without lung cancer (80% sensitive, 84% specific). Combining cytopathology of lower airway cells with the biomarker suggested a means of assessing cancer-specific airway-wide responses to cigarette smoke, as a means of indicating individuals at highest risk. In a further study, the independence of the biomarker from other clinical risk factors was demonstrated,

8 B. Stewart et al.

suggesting that use of a 'clincogenomic' model may expedite more invasive testing and definitive therapy for smokers with lung cancer and reduce invasive diagnostic procedures for individuals without lung cancer.³¹

4. Chemoprevention

Granted the ready identification of persons at high risk for lung cancer (i.e. current and former smokers), chemoprevention has been, and continues to be, an immediately attractive and obvious consideration. Cancer chemoprevention is, in large part, predicated on epidemiological data indicating above average consumption of fresh fruit and vegetables as reducing cancer risk for multiple tumour types, and the efficacy of micronutrients in reducing, if not preventing, carcinogenesis in rodents.³² However, attempts to prevent lung cancer by relatively short-term consumption of certain vitamins and antioxidants met with spectacular failures: a slightly increased incidence of lung cancer was recorded by comparison with relevant control groups in a trial context. In the case of a trial based in Finland, β -carotene-induced lung cancer elevation was most pronounced in men who smoked heaviest and drank the most.³³ In the US trial a similar effect was most pronounced in current (as opposed to former) smokers and in participants with the highest alcohol intake.³⁴ Better results might be obtained using different agents over a longer timeframe, and using biomarkers rather than cancer diagnosis as an end point.³⁵ For the moment, there appears to be few if any attempts to present chemoprevention as a credible response to the burden of tobacco-induced lung cancer.

5. Passive Smoking

No level of exposure to environmental tobacco smoke may be regarded as safe. Apart from cancer, passive smoking can cause heart disease in non-smoking adults and increase the risk of sudden infant death syndrome, acute respiratory infections, middle-ear disease and exacerbation of asthma in children. This discussion of the hazard is limited to cancer causation.

As established in active smokers, tobacco smoke is carcinogenic, with the polycyclic hydrocarbons and nitrosamines therein

exhibiting a genotoxic mechanism of action. On this basis, any level of exposure to such a biological toxin would be anticipated to present a carcinogenic risk. Accordingly, good public health practice would dictate that preventable exposure to any level of tobacco smoke should not occur. The present discussion of passive smoking (which is synonymous with exposure to environmental tobacco smoke, or to secondhand smoke) might therefore proceed directly to the implementation of practicable measures to prevent exposure. In practice, however, the social and economic considerations which surround tobacco smoking have dictated that specific research be conducted to establish that exposure to environmental tobacco smoke — investigated in its own right — does present a carcinogenic hazard to humans.

5.1. Chemical composition

Environmental tobacco smoke consists of a mixture of exhaled mainstream smoke and smoke emitted from the burning tip of the cigarette (or its equivalent in relation to other smoking techniques), called sidestream smoke, all diluted with ambient air. Environmental tobacco smoke consists of a particulate and a gaseous phase, and the chemical composition of mainstream and sidestream smoke have been extensively documented.³⁶ Carcinogens that occur in environmental tobacco smoke include benzene, 1,3-butadiene, benzo[*a*]pyrene, 4-(methyl-nitrosamino)-1-(3-pyridyl)-1-butanone and many others. Such compounds may mediate specific mutations of genes encoding for cell cycle and growth control, thereby leading to tumourigenesis. Moreover, epigenetic mechanisms, which could result in gene silencing without any effect on the coding sequence of the gene in question, may also be involved in malignant transformation occurring as a result of passive smoking.³⁷

Cotinine, and its parent compound nicotine, are highly specific for exposure to secondhand smoke; cotinine is currently the most suitable biomarker for assessing recent exposure to environmental tobacco smoke.³⁸ Several studies have shown that concentrations of smoke-derived carcinogen adducts, including haemoglobin adducts of aromatic amines, are higher in adult involuntary smokers and in the children of smoking mothers than in individuals not

exposed to secondhand smoke. Metabolites of the tobacco-specific carcinogen, 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone, have been found to be consistently elevated in passive smokers.^{6,39}

Exposure to secondhand smoke may occur in many contexts, but has been most extensively investigated in relation to smoking by spouses at home, and in the workplace. Before various smoking restrictions were adopted, particularly high levels of environmental tobacco smoke were encountered by flight attendants and hospitality workers.

5.2 ETS and cancer causation

In its 2002 evaluation of 'Involuntary Smoking', the IARC noted more than 50 relevant studies concerning risk of lung cancer, concerning which there are a limited number of meta-analyses.⁶ These show a statistically significant and consistent association between lung cancer risk in spouses of smokers and exposure to secondhand smoke from the smoking spouse. The excess risk is of the order of 20% for women and 30% for men, and the excess risk increases with increasing exposure. Lung cancer in never-smokers subject to passive smoking at work exhibits an increase in risk of 12–19%. The evidence is sufficient to conclude that involuntary smoking is a cause of lung cancer (IARC Group one carcinogen). Evidence in relation to other cancers, specifically including breast cancer and childhood cancer, is equivocal in relation to establishment of causation.

In the United States, exposure to secondhand smoke declined approximately 70% from the late 1980s through 2002.⁴⁰ Restrictions placed on smoking indoors in jurisdictions throughout the world have reduced exposure to environmental tobacco smoke. However, it is evident that not all options are equally effective in this regard. Within single buildings, the banning of smoking in particular areas or rooms is markedly ineffective so far as protecting non-smokers is concerned, with levels of smoke-related pollutants and particulates in such areas sometimes being comparable to those where smoking is allowed.⁴¹ The US Surgeon General has concluded that protecting non-smokers from environmental tobacco smoke can only be accomplished by completely eliminating smoking in indoor places.

Measures to prevent involuntary exposure to secondhand smoke have been developed and adopted widely and recently, IARC assessed the evidence for effectiveness of such policies.⁴² Where studied, smoke-free workplace policies consistently decrease exposure to secondhand smoke in high-exposure settings by 80–90%, and can lead to widespread decreases in exposure of up to 40%. Studies of workers affected by workplace smoking restrictions reveal individual decreased cigarette use of two to four cigarettes per day. The weight of evidence suggests that smoke-free work places do not result in increased smoking at home.

6. Cancer Patients Who Smoke

6.1 *The effects of smoking on survival*

The diagnosis of cancer provides an incentive for many patients to make a serious attempt to quit smoking.⁴³ The diagnosis provides a 'teachable moment' for clinicians. Assisting smokers to quit may also have a favourable outcome on their long term prognosis.⁴⁴ In contrast, continued smoking carries an increased risk of treatment complications or a second malignancy at the same or another site and the increased risk of a new primary cancer for many years after the original diagnosis. There is substantial medical evidence that continued smoking may reduce the effectiveness of treatment or worsen side effects of treatment. This section focuses on the outcomes expected for those current and former smokers who have a cancer diagnosis and how their cancer prognosis is affected by their ability to quit.

Both current and former smokers may be expected to have an increased number and severity of tobacco-related co-morbid conditions that would adversely affect their general health status, symptom experience and quality of life.⁴⁴ The long term effects of smoking in cancer patients are uniformly negative, although risk will decline with time since cessation.⁴⁴ Independent of the aetiological effects of tobacco carcinogens in relation to numerous tumour types, a growing literature also documents the direct and indirect adverse effects of smoking on oncologic treatment efficacy

(short and long term outcomes), treatment-related toxicity and consequent morbidity, quality of life, recurrence of primary disease, second primary tumours and survival time.⁴³

Specifically for NSCLC patients, smoking is both the cause of lung cancer and, when it continues following diagnosis, is also a cause of worse prognosis.^{45,46} Smoking is an important independent predictor of poor lung cancer prognosis, increasing the hazard of dying by approximately one third compared to former or never smokers.^{46,47} With regards to overall survival, the outcome is significantly more positive for former smokers (RR = 0.543), recent quitters (RR = 0.340) and non-smokers (RR = 0.447), when compared to current smokers.⁴⁶ This adverse effect on patients with lung cancer occurs relatively late in the course of management and may in part be due to the ongoing smoking that occurs after diagnosis.⁴⁷ The effect of smoking on survival has also been studied among breast cancer patients. A history of smoking increased mortality following diagnosis from causes other than breast cancer, but not mortality from breast cancer.^{48,49} However, one study found conflicting associations between hormone receptor status and smoking, where women with oestrogen receptor (ER) and progesterone receptor (PR) positive tumours who were current smokers had an increased risk of breast cancer death, compared with never smokers.⁴⁹ Another study has suggested that the lower survival rate of smokers with breast cancer may be the result of an impairment of immunity or that smoking may promote the development of more aggressive, oestrogen-receptor negative tumours. Further, exposure to HRT before diagnosis was associated with an improved prognosis among smokers.⁴⁸

6.2 Smoking as a risk factor for increased cancer stage at diagnosis

The effects of smoking on the spread of cancer have not been widely studied. However there is some evidence that smoking is associated with an increased stage at diagnosis and an adverse affect on metastatic behaviour.⁵⁰

6.2.1 Increased secondary primary tumours

The information reported about second lung cancers in patients treated for NSCLC is quite different from that reported about patients treated for SCLC. Patients with NSCLC develop second primary cancers at a rate of approximately 1–2% per year. Patients successfully treated for SCLC develop second primary lung cancers at an average rate of approximately 6% per year, which increases from 2% to more than 10% per patient per year after ten years.⁵¹ Cancer patients who smoke have a significantly increased risk of secondary primary tumours, with an elevated risk observed regardless of whether the initial malignancy is related to smoking or not.⁴⁴ For example, individuals treated with radiation therapy to the chest (e.g. for breast cancer) are at increased risk of secondary primary tumours of the lung if they smoke.⁴⁴ Smoking increases the risk of SCLC from six-fold to 15-fold in patients treated for Hodgkin disease and breast cancer. This suggests a multiplicative interaction between smoking and chest radiotherapy in patients treated for small-cell lung cancer, Hodgkin disease, and breast cancer.⁵¹

In patients with small-cell lung carcinoma who continue to smoke, the risk of a second lung cancer is approximately doubled overall.⁵² In two studies of survivors of SCLC, the risk of a second cancer (mostly non-SCLC) was 3.5-fold to 4.4-fold higher than in the general population. In those who continued to smoke, the risk was far higher in those who also received chest irradiation (RR = 21.0) and alkylating agents (RR = 19.0).^{52–54} This risk increased over time for SCLC survivors, with a cumulative incidence of 44% at 14 years.⁵⁵ In contrast, patients with a first primary tobacco-related cancer such as NSCLC also have a high risk of a second tobacco-related cancer, but their risk appears to remain more stable over time.⁵⁵

6.3 Treatment

6.3.1 Surgery and wound healing

Smoking has major consequences for patients who undergo surgery and specifically in relation to the period immediately

following surgery. Smoking affects tissue oxygenation, heart rate, airways clearance, immune response, and circulation. In addition, smokers on average also require higher doses of analgesia for pain relief.⁵⁶

Respiratory complications in the post-operative period, such as some combination of pulmonary infections, atelectasis, bronchospasm, and the need for prolonged ventilation, as well as a higher post-operative mortality rate, are more common in smokers.⁵⁷ In addition, reconstructive surgery may be compromised, as smoking substantially increases the risk of wound infection, flap necrosis, and fat necrosis, and these complications may also delay adjuvant chemotherapy and radiotherapy.⁵⁸ Smoking cessation for longer than three weeks before reconstructive head and neck surgery is beneficial for all smokers and reduces the incidence of impaired wound healing.⁵⁹

The Faculty of Anaesthetists of the Royal Australian College of Surgeons advises that smokers be counselled to stop smoking completely, or failing that, to abstain for at least six to eight weeks before surgery. Abstinence for the 12 hours immediately prior to surgery is particularly important, in order to achieve maximum tissue oxygenation.⁶⁰ The timing of cessation is relevant, as a reduction in peri-operative complications is not seen until a period of abstinence of five to eight weeks' duration. In general, smokers have a nearly six-fold increase in risk of a post-operative pulmonary complication.⁶¹ In addition, several early studies have documented that smokers who decrease consumption but do not quit entirely, or quit but have been abstinent for less than two months, may have a higher rate of complications post-operatively.⁶² Recently the issue of smoking cessation and peri-operative complications has been studied specifically in patients undergoing thoracotomy for primary or secondary lung tumours. In this study there was no evidence of a paradoxical increase in pulmonary complications among those who quit smoking within two months of undergoing surgery. However the types of complications differed between the recent quitter and ongoing smoker subgroups. All the complications in the ongoing smoker group were pneumonias; in the recent quitter subgroup fewer pneumonias occurred.^{59,63} There is a strong incentive to advise patients to quit smoking

immediately and capitalise on the 'teachable moment' that a cancer diagnosis provides.

6.3.2 Radiation therapy and chemotherapy

Smoking cigarettes during radiotherapy appears to prolong the period of reaction and may reduce the chance of cure.⁶⁴ Radiation therapy for head and neck cancer patients who continue to smoke has been associated with lower rates of complete response (45% in smokers vs. 74% in non-smokers) and a poorer two-year survival (39% in smokers vs. 66% in non-smokers).⁶⁵ In addition, among NSCLC patients diagnosed with early stage disease, current smokers have a poorer prognosis for survival after radiation therapy.⁶⁶ Similarly, in patients with advanced NSCLC, never smokers have an improved outcome over smokers when treated with chemotherapy.⁶⁷ This effect has also been demonstrated in lung cancer patients (both NSCLC and SCLC), where those with a cigarette burden of 40 or over pack years have a worse response to platinum-based chemotherapy, compared to those who have a cigarette burden of less than 40 pack years.⁶⁸

Radiotherapy for breast cancer also significantly increases the risk of lung carcinoma more than ten years after exposure in women who smoked at the time of their breast cancer treatment. The increased risk is restricted to women who smoked at the time of radiotherapy and is not evident in non-smoking women. Squamous cell carcinoma of the lung appears to be the histopathologic subgroup most closely related to ionizing radiation.⁶⁹ Complications for patients receiving radiation therapy for cervical cancer are also more evident among patients who smoke, as they experience an increased incidence of gastro-intestinal complications.⁷⁰ Smokers present with higher risk grade prostate cancers⁷¹ and smokers (both current and previous), treated with external beam radiotherapy for localised prostate cancer appear to be at a greater risk of developing metastatic disease.⁷²

In addition, particular attention should be devoted to preventing patients from both smoking and taking antioxidant supplements during radiation therapy, as this combination appears to reduce the efficacy of radiation therapy.⁷³

6.4 Drug interactions

Treatment-related weight loss and cachexia would be expected to be exacerbated by smoking, as smoking suppresses appetite and weight gain. In addition nicotine, via the induction of hepatic enzymes, increases metabolism of many pharmaceutical agents and potentially decreases their efficacy.⁴⁴ The effect of smoking on the pharmacology of many anti-cancer drugs is not well understood.

6.5 Inflammatory markers

Inflammation is associated with poor prognosis and decreased survival in many types of cancer, and higher levels of inflammatory markers have been seen in smokers.⁷⁴ These in turn may influence drug pharmacology and are implicated as prognostic markers.

6.6 Future directions/further research

Tobacco smoking is the largest single preventable cause of death and disease in Australia today. More than 50 years ago Doll and Bradford Hill in the UK and Wynder in the US reported that smoking and lung cancer appeared to be causally linked.⁵⁶ Since that time the health consequences of smoking have been widely studied and extensively reported, but in comparison the effects of smoking on cancer patients are relatively under-researched. Table 1 outlines some areas of potential future research.

Table 1. Recommendations for future research on smoking in cancer patients.

Area of research	Recommendation
Pharmacotherapy for nicotine dependence treatment	• Evaluate the efficacy of NRT (gum, patch, nasal spray, inhaler), non-nicotine medications (bupropion, clonidine, nortriptyline, and varenicline), and combination therapies (e.g. high-dose NRT, combined NRT and bupropion) in increasing tobacco abstinence rates in oncology patients.

(Continued)

Table 1. (Continued)

Area of research	Recommendation
Methodologic issues	• Assess the efficacy of nicotine and non-nicotine medications in managing symptoms of nicotine withdrawal, craving, stress, and depression among cancer patients. • Assess the effect of nicotine in cigarettes and nicotine in NRT on cancer drugs/treatment. • Obtain sample sizes needed to provide adequate statistical power for hypothesis testing. • Collect and report demographic and medical data including disease site, type, stage, and treatment. • Report on the timing of intervention relative to time of cancer diagnosis and treatment. • Include at least six-month outcomes to assess stability of treatment effects. • Assess tobacco use status using both seven-day point prevalence and continuous abstinence.
Prevention of disease recurrence	• Examine factors predictive of smoking relapse and relapse in cancer patients. • Evaluate relapse prevention strategies within nicotine dependence treatment interventions: cognitive-behavioural strategies, long-term use of pharmacotherapy, support mechanisms, and extended follow-up may increase abstinence maintenance.
Cancer treatment and quality of life	• Studies to determine the extent of interaction of radiation and chemotherapy agents in smokers compared to non-smokers. Further determine the type and extent of physical and psychological benefits experienced by cancer patients who stop smoking. This research is needed across cancer sites, as benefits may differ. • Clinical trials should routinely collect smoking status and include primary outcomes related to quality of life and oncology treatment. • Quality of life assessment may include global measures and site-specific measures.

Source: Adapted from Ref. 86.

7. Cancer Prevention — Reversal of Risk Upon Quitting

7.1 *The individual*

For much of the 20th century, smoking was regarded as a socially learned habit and as a personal choice, but it is now recognised that cigarette smoking is primarily a manifestation of nicotine addiction and that smokers individualise their level of nicotine intake. Although by the age of 20, 80% of cigarette smokers regret that they ever started, as a result of their addiction to nicotine, many will continue to smoke for a substantial proportion of their adult life.⁷⁵

The risk of death from smoking is substantial: about half of all cigarette smokers are eventually killed by their habit.⁷⁶ Many are killed while they are still only in middle age (35–69 years of age), and could have anticipated living for another ten, 20, 30 or more years.⁷⁷ Those who continue to smoke lose on average about ten years of life, compared to non-smokers. Individuals who stop smoking at around 60, 50, 40, or 30 years gain respectively about three, six, nine, or ten years of life compared with those who continue to smoke.⁷⁶ Hence, those who stop smoking in early middle age (around the age of 40) avoid most of their risk of being killed by tobacco smoking.

The risk of dying from lung cancer for people who never smoke, is less than 1% (Fig. 1). However the risk of lung cancer is high for people who smoke all their lives, but this risk can be substantially modified if quitting occurs at any age.⁷⁷

Sixteen percent of smokers will die from lung cancer by age 75 if they don't die from something else first. Smoking causes even more deaths from other diseases than from lung cancer; overall, half of all persistent smokers are killed by tobacco. For people who stop at age 50, the risk of dying of lung cancer is only about 6%.⁷⁷

The main findings of Sir Richard Doll's study on smoking and death in British doctors are that the chances of a 35-year-old surviving to age 70 and beyond are 81% for non-smokers, compared to only 58% for smokers. A quarter of all the smokers were



Stopping smoking: avoiding lung cancer

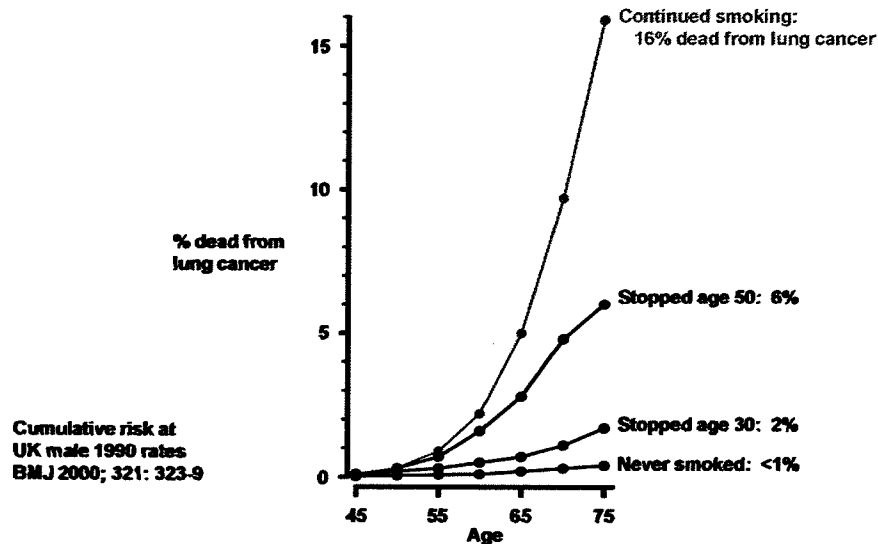


Figure 1. Risk of lung cancer with smoking cessation.⁸⁷

killed by tobacco when they were aged 35 to 69 years, mainly from diseases such as lung cancer, coronary events and chronic lung disease. On average, the doctors who smoked died ten years earlier than non-smokers (Fig. 2). But it is not just a question of mortality: long-term smokers suffer more disease and disability before they die at younger ages. On average smokers suffer reduced quality of life for a greater number of years than non-smokers.⁷⁸

The other main finding from Richard Doll's study was that stopping smoking was remarkably effective (Fig. 3). Even in early middle age (or at about age 40 years), those who stopped before they had incurable lung cancer or some other fatal disease avoided most of their risk of being killed by tobacco, and stopping before middle age was even more effective.

There are health benefits of quitting for all smokers, regardless of age, sex or length of time that they have been smoking.



Survival to age 70 and beyond: effect of smoking in male British doctors

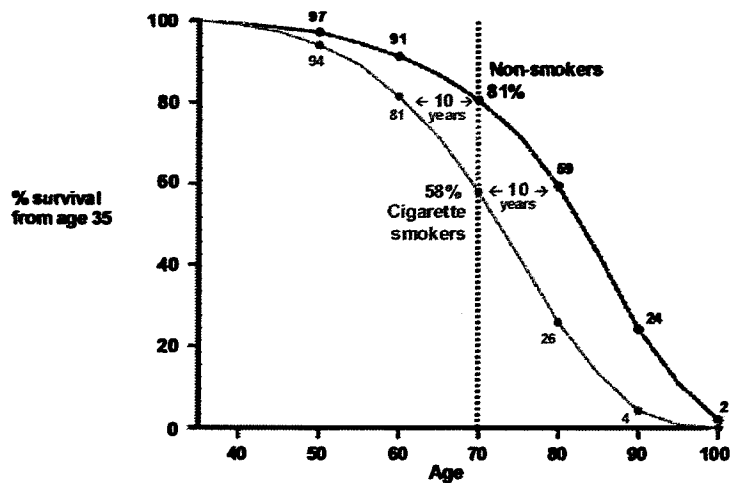


Figure 2. Survival from age 35 years in British doctors.⁸⁸



Effect of stopping smoking at about age 40

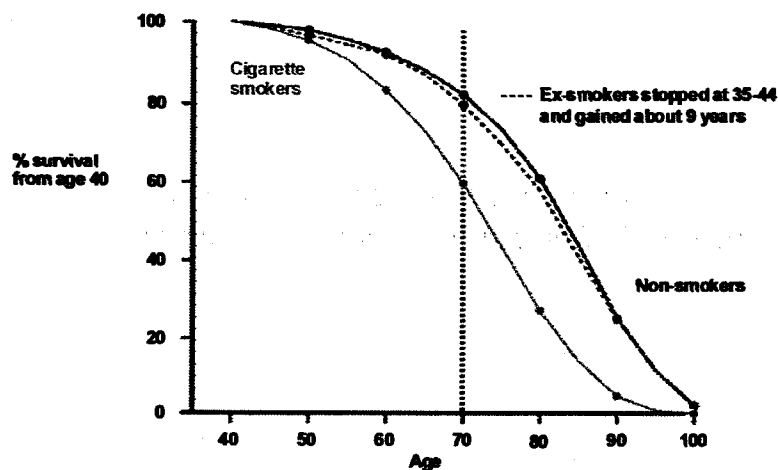


Figure 3. Effect of smoking cessation at age 40 years.

People who have already developed smoking-related health problems, like heart disease, can still benefit from quitting. For example, compared to continuing smokers, people who quit smoking after having a myocardial infarction reduce their chances of having another one by 50%. There are many benefits to quitting, with some even occurring within hours of stopping smoking.

7.2 Cancer patients

Some information about barriers to smoking cessation can be inferred from the characteristics of patients who continue to smoke following a cancer diagnosis (Table 2). Patients diagnosed with tobacco-related cancers typically report long histories of heavy tobacco use, indicating strong nicotine dependence.⁷⁹ Success in quitting smoking may also be challenged by the pressure for abrupt and immediate cessation following diagnosis. In addition, the cancer diagnosis is often confirmation of a smoker's worst fears and a reinforcement of their previous inability to quit leading to the fatalistic belief that it is too late to quit. The psychological distress of a cancer diagnosis is likely to lead heavily nicotine-dependent smokers to rely on smoking to regulate mood and cope with distress.⁷⁹

Table 2. Benefits and barriers to quitting.

Benefits	Barriers
Improved survival rate	High psychological distress
Fewer treatment complications	High nicotine dependence
Improved treatment efficacy	Abrupt cessation vs. 'commitment to abstinence'
Reduced risk of disease recurrence and second primary tumour	Low quitting self-efficacy
Improved mastery and control	Knowledge deficits
	Negative social support

Source: Ref. 79.

7.3 *The population perspective*

Around 30% of male cancer deaths are smoking-related, compared to around 13% of female cancer deaths; two in five of all deaths caused by smoking are from cancer.⁸⁰ Unlike many other areas of public health, there is little debate about the best way to mitigate the tobacco problem. The seven components of a comprehensive strategy were originally laid out in the landmark 1962 Smoking and Health Report of the Royal College of Physicians.⁸¹ These components — public education, restriction of sales to minors, restriction of tobacco promotion, restricting smoking in public places, increasing tobacco tax/price, consumer information and production regulation, and cessation support services — are required to act synergistically to reduce smoking rates in a population.

It has been estimated that \$2 has been saved on health care for each \$1 spent on tobacco control programs to date.⁸² The total economic benefits of tobacco control programs are estimated to exceed health-related and other expenditure by at least fifty to one.⁸³

7.4 *A global perspective*

Tobacco is the largest cause of preventable death in the world, causing one in ten deaths worldwide. If current trends continue, it is projected that by 2030 tobacco will result in ten million deaths annually, of which 70% will have occurred in developing countries.⁸⁴

The total number of smokers is increasing mainly due to expansion of the world's population; by 2030 there will be at least another two billion people. Unless smoking prevalence rates decline dramatically, the absolute number of smokers will increase. The expected continuing decrease in male smoking prevalence also may be offset, in part, by a potentially dangerous increase in female smoking rates, especially in developing countries.⁸⁵

One hundred million people died from tobacco use in the 20th century and unless effective measures are implemented to prevent people from smoking and to help current users quit, tobacco will kill one billion people in the 21st century.⁸⁵

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24 B. Stewart et al.

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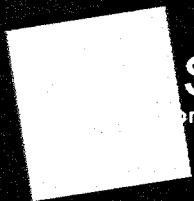
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Starkville & Hattiesburg Heart Attack Studies

Changes in Heart Attack Admissions Following the Implementation of Local Smoke-Free Ordinances



OCTOBER 2010

Starkville implemented a comprehensive smoke-free ordinance that prohibited smoking inside of all indoor public places on May 20, 2006. Seven months later, Hattiesburg implemented a similar comprehensive ordinance on January 1, 2007.

Findings from controlled observational studies demonstrate that hospital admissions for heart attacks in both Starkville and Hattiesburg decreased substantially following the implementation of the smoke-free ordinances. Moreover, the observed decrease in these communities was much higher than that observed in control communities that did not have a smoke-free ordinance.

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BACKGROUND

Over the past 20 years, approximately half of the States, and an additional 360 communities have prohibited smoking inside of bars and restaurants. After Helena, Montana enacted a smoke-free law, local cardiologists began to notice that they were treating fewer patients for heart attacks. The ensuing research led to more than a dozen scientific studies that have found a decrease in heart attack admissions following the implementation of a smoke-free law. Importantly, each of these studies has examined very different types of places, from small cities, to states, and even entire countries. Although the methods and the size of the heart attack reductions have varied across studies, the general finding of a reduction in heart attacks has remained consistent.

PREVIOUS RESEARCH & EMERGING SCIENTIFIC CONSENSUS

In September of 2009, two independent meta-analyses concluded that heart attack admissions had dropped significantly following the implementation of smoke-free laws. One review published in *Circulation: The Journal of the American Heart Association*, concluded that heart attack admissions decreased, on average, by 17% the first year that a smoke-free law was in place, and that this benefit increases with time¹. Independently, another study published in the *American Journal of Cardiology*, reviewed five of the seminal studies on the effects of smoking bans on risk for heart attack and reached a similar conclusion². The authors stated, "When taken in the aggregate, these studies offer consistent evidence that smoking bans are associated with reduction in the risk for AMI (Acute Myocardial Infarction, AKA heart attacks) in the general public (p. 1423)²."

In October 2009 at the request of the Centers for Disease Control and Prevention, the Institute of Medicine (IOM) released another review³ that reached the same conclusion. "Consistent data confirms for the committee that smoking bans do, in fact, decrease the rate of heart attacks." The IOM is an independent, nonprofit organization that works outside of the government. Their mission is to provide unbiased and authoritative advice to the federal government on policy matters pertaining to the health of the public. Given the mission of the IOM, this report essentially establishes a scientific consensus on the finding that smoking bans

Starkville residents experienced a 27.7% reduction in heart attack admissions compared to the 14.8% reduction observed among those who did not live in Starkville, resulting in a cost savings of \$288,270.

decrease the number of heart attacks.

These three reviews reveal the emerging scientific consensus concerning decreases in heart attack admissions following the implementation of smoke-free laws. It should be noted, however, that most of these studies provide indirect evidence of an association between tobacco smoke exposure and heart attack admissions⁴⁻¹³. Given the nature of retrospective research, reliable data on smoking status of heart attack victims were not available for these studies. Only two studies had the data necessary to demonstrate that hospital admissions decreased specifically for non-smokers^{14,15}. For the majority of these studies, it is feasible that some of the observed decreases in heart attack admissions could have arisen from reductions in active smoking, rather than reduced exposure of non-smokers. However, air quality studies demonstrate that exposure to tobacco smoke substantially decreases following the implementation of a smoke-free law; and experimental studies of humans, animals, and cell cultures demonstrate that tobacco smoke exposure has short-term impacts on the cardiovascular system³. It is also important to note that the IOM committee "could not determine whether acute exposures were triggering acute coronary events, chronic exposures were causing chronic damage that eventually resulted in acute coronary events, or a combination of chronic damage and an acute-exposure trigger led to the increased risk of acute coronary events (p. 7)²."

METHODS

These studies applied a controlled observational approach to objectively examine the hypothesized impact of smoke-free laws on hospital admissions for heart attacks in Starkville and in Hattiesburg. The Starkville

Hattiesburg residents experienced a 13.4% reduction in heart attack admissions compared to the 3.8% reduction observed among those who did not live in Hattiesburg, resulting in a cost savings of \$2,367,909.

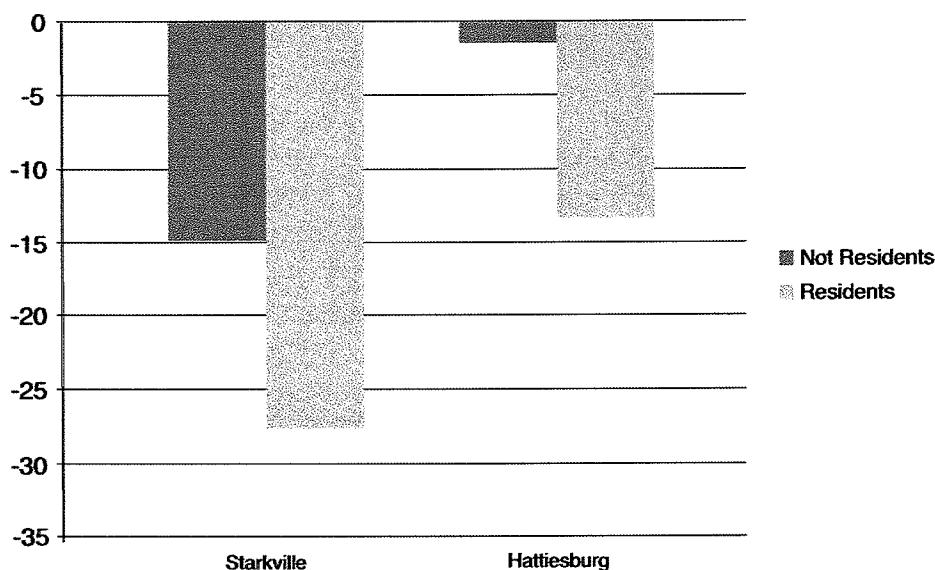
Study examined the number of heart attack admissions between July 29, 2004 and April 7, 2009; while the Hattiesburg Study examined admissions between April 21, 2005 and June 30, 2009. Each study compared the number of heart attack admissions among people living within the city limits to those living in the local hospital catchment area, but

outside of the city limits (and thus not protected by the smoke-free ordinance). This design provides a means to control for larger trends that might be occurring in Mississippi and that could be responsible for any observed decrease in hospital admissions for heart attacks.

Three hospitals participated in this study: Forrest General Hospital, Wesley Medical Center, and Oktibbeha County Hospital. The first two hospitals are located in Hattiesburg, Mississippi (Lamar and Forrest Counties) and the latter is located in Starkville, MS. Admission records for acute myocardial infarctions were obtained from these three hospitals. Each hospital provided the date of admission for patients with a primary diagnosis of acute myocardial infarction (ICD-9, 410) during the study period. Because data were not available for an equal number of days prior to and after the smoke-free ordinances were implemented, analyses compare the number of heart attacks after implementation to a standardized rate prior to implementation. The standardized rate is calculated by multiplying the number of heart attack admissions by the ratio of days post-implementation to pre-implementation during the study period.

1,049 heart attack admissions, compared to the standardized rate of 1,090 admissions prior to the implementation. Thus, Hattiesburg residents experienced a 13.4% reduction in heart attack admissions compared to the 3.8% reduction observed among those who did not live in Hattiesburg.

Cost Savings | It is possible to estimate the cost savings of these reductions in heart attack admissions by applying the methods used by a study of New York hospital admissions⁹. Previous research of in-hospital costs for acute myocardial infarction estimated the total median in-hospital costs to be \$14,772 (1998 dollars)¹⁶. Using this approach, the reductions in heart attack admissions resulted in cost savings of \$215,233 in Starkville and \$1,767,970 in Hattiesburg. The Bureau of Labor Statistics provides an inflation calculator¹⁷ that can convert these figures to 2010 dollars. Using these estimates, the smoke-free ordinances were followed by



RESULTS

Starkville | During the 1,053 day period following the implementation of the smoke-free ordinance in Starkville, there were 38 heart attack admissions among Starkville residents, compared to the standardized rate of 52.57 admissions prior to the implementation. Outside of Starkville, there were 19 heart attack admissions, compared to the standardized rate of 22.30 admissions prior to the implementation. Thus, Starkville residents experienced a 27.7% reduction in heart attack admissions compared to the 14.8% reduction observed among those who did not live in Starkville.

Hattiesburg | During the 911 day period following the implementation of the smoke-free ordinance in Hattiesburg, there were 299 heart attack admissions among Hattiesburg residents, compared to the standardized rate of 345 admissions prior to the implementation. Outside of Hattiesburg, there were

cost savings of \$288,270 in Starkville and \$2,367,909 in Hattiesburg during the study period.

CONCLUSIONS

Consistent with previous research, residents of Starkville and Hattiesburg experienced reductions in heart attacks following the implementation of a smoke-free ordinance. Moreover, these reductions were greater than those observed in the control populations that did not live in a community with a smoke-free ordinance. These two studies, when considered in the context of 12 similar studies and the IOM Report, demonstrate that Mississippi could experience a substantial decrease in heart attacks, as well as substantial cost savings, if more communities and/or the state implemented smoke-free laws.

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Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study

Richard P Sargent, Robert M Shepard, Stanton A Glantz

Abstract

Objective To determine whether there was a change in hospital admissions for acute myocardial infarction while a local law banning smoking in public and in workplaces was in effect.

Design Analysis of admissions from December 1997 through November 2003 using Poisson analysis.

Setting Helena, Montana, a geographically isolated community with one hospital serving a population of 68 140.

Participants All patients admitted for acute myocardial infarction.

Main outcome measures Number of monthly admissions for acute myocardial infarction for people living in and outside Helena.

Results During the six months the law was enforced the number of admissions fell significantly (-16 admissions, 95% confidence interval -31.7 to -0.3), from an average of 40 admissions during the same months in the years before and after the law to a total of 24 admissions during the six months the law was in effect. There was a non-significant increase of 5.6 (-5.2 to 16.4) in the number of admissions from outside Helena during the same period, from 12.4 in the years before and after the law to 18 while the law was in effect.

Conclusions Laws to enforce smoke-free workplaces and public places may be associated with an effect on morbidity from heart disease.

Introduction

Secondhand smoke increases the risk of acute myocardial infarction.¹⁻⁷ Smoking also increases the risk of acute myocardial infarction, but this risk falls rapidly after people stop smoking.⁸ The effects of secondhand smoke on platelets and the endothelium both occur rapidly (within 30 minutes) and are nearly as large in passive as in active smokers.¹⁻⁵ The reductions in heart rate variability that occur with two hours of exposure increase the risk of myocardial infarction by around 10%.⁹ Ordinances that end smoking in workplaces and public places both eliminate exposure to secondhand smoke and reduce the prevalence of smoking and cigarette consumption.¹⁰ We examined whether enactment of legislation to require smoke-free workplaces and public places might be associated with a decline in hospital admissions for acute myocardial infarction.¹¹

Helena, Montana, USA, is a geographically isolated community that imposed such a law from 5 June 2002. Opponents won a court order suspending enforcement of the law on 3 December 2002. This allowed us to examine the association of the ordinance with admissions for myocardial infarction from within Helena (intervention) and from outside Helena, where the ordinance did not apply (control).

Methods

St Peter's Community Hospital serves all heart patients in Helena and the surrounding area, with a total population of 68 140. It is nearly 100 km to the next nearest hospital with cardiology services.

About 90% of the population of Helena live in the 59601 zip code. The 10% remaining live in the 59602 zip code, which includes a residential area immediately adjacent to Helena. Many people who live there work in Helena. We surveyed 500 consecutive patients aged over 18 years old who resided in the 59602 zip code and were admitted to the hospital for all causes. Of the 213 of these patients who were employed outside the home, 192 worked in the 59601 zip code area, so we considered 59602 part of Helena for our analyses. We also included zip codes 59604 and 59624 (post office boxes in Helena). All other 596xx zip codes, 59713, and 59728 were considered "not Helena."

Selection of patients

St Peter's Hospital uses a combination of paper and electronic medical records and computerised billing. We reviewed charts for the months of June to November (the months the ban was in effect) for each year from 1998 to 2003 for patients with a primary or secondary diagnosis of acute myocardial infarction (ICD-9 (international classification of diseases, ninth revision) codes 410.xx). During these months, there were 10 497 admissions for all causes (including acute myocardial infarction) from Helena and 3367 from outside Helena. The attending physician made the diagnosis at the time of discharge, and the hospital billing staff assigned the codes. (Two of the authors (RPS and RMS) were attending physicians for 18 of the 304 admissions included in this study and so assigned the diagnosis. All but three of these patients were treated

Papers pp 988, 989

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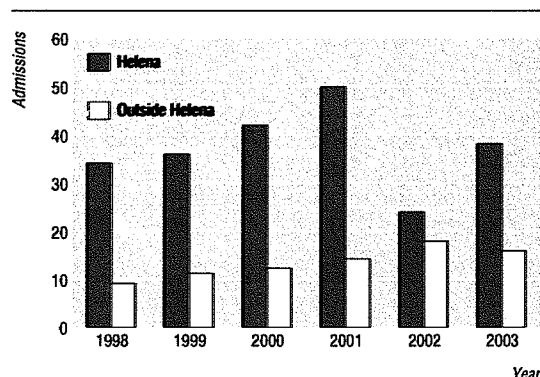
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Admissions for acute myocardial infarction during six month periods June-November before, during (2002), and after the smoke-free ordinance (ordinance did not apply outside Helena). The law was implemented on 5 June 2002

before we thought of doing this study. These three patients were also seen by a cardiologist and thus had independent blinded corroboration of the diagnosis.) Data were sorted by primary and secondary diagnoses and by zip code to compare the incidence of acute myocardial infarction in residents with zip codes for the city of Helena and residents of the surrounding areas, where there was no ban.

We studied patients' charts if there was a primary or secondary discharge or emergency room diagnosis of acute myocardial infarction. Acute myocardial infarction was the primary diagnosis for 283 cases. Selection criteria were onset of symptoms in the study area, a primary diagnosis of acute myocardial infarction, and no recent procedure that could have precipitated acute myocardial infarction. We excluded eight cases because onset of symptoms occurred outside the study area and one because the patient died in the emergency room three days after angioplasty. The charts of three patients were reviewed because of multiple admissions in any 60 day period. Of a total of five such admissions, one was excluded because there was no chemical evidence (raised troponin I concentrations or creatine phosphokinase activity) for a new event. We therefore included 274 admissions with a primary diagnosis in the analysis.

We reviewed 71 cases with a secondary diagnosis of acute myocardial infarction. To be included, patients had to have chemical evidence (raised troponin I concentrations or creatine phosphokinase activity) at the time of admission or within the first 24 hours, onset of symptoms inside the study area, and no recent procedure that could have precipitated acute myocardial infarction. In the analysis we included 30 admissions with a secondary diagnosis and excluded 41.

Admissions for acute myocardial infarction during six month period (June to November) when smoking ban was enforced and equivalent months in years before and after ban, according to areas with (Helena) and without enforcement*

	Helena	Not Helena
Ordinance year (2002)	24	18
Other years†	40	12.4
Difference (95% CI)	-16 (-31.7 to -0.3)	5.6 (-5.2 to 16.4)
Helena difference-not Helena difference (95% CI)	-21.6 (-40.6 to -2.6)	

*All comparisons done assuming Poisson distribution.

†Average number of admissions during six month period for years other than 2002.

In all cases, we accepted the attending physician's diagnosis of acute myocardial infarction, and all attending physicians (other than the authors) were blinded to the study. In the three cases included after the study was started a consulting cardiologist, who was blinded to the study, confirmed the diagnosis, according to the medical record. We did not change any diagnosis. We excluded or included cases according to the criteria noted above.

We reviewed charts of patients from outside the study area to determine whether onset of symptoms was in or out of the study area and included them if the patient's symptoms started in the study area. Twenty six patients in the primary acute myocardial infarction group had out of area zip codes; 14 were included. Eight patients with a secondary diagnosis of acute myocardial infarction had zip codes out of the area. We included three patients with a diagnosis of primary myocardial infarction (for example, primary diagnosis of cardiogenic shock with secondary diagnosis of acute myocardial infarction) whose symptoms had started in the study area.

Overall we selected 354 admissions for review, and 304 met the inclusion criteria.

Statistical methods

We tested the hypothesis that the law was associated with changes in the total number of admissions for acute myocardial infarction in the six months of June to November (when the law was in effect). We compared the number of admissions during the six months the law was in effect (in 2002) with the average number of admissions during the same six months in the years before (1998-2001) and after (2003) the law.

Results

During the six months the smoke-free law was in effect (June-November 2002, figure), there was a significant drop in the number of admissions for acute myocardial infarction by -16 admissions (95% confidence interval -31.7 to -0.3) in Helena. During the same six months in the years before and after the law the average number of admissions was 40 compared with a total of 24 admissions during the six months of the law (table). There was a non-significant increase of 5.6 admissions per month (-5.2 to 16.4) from outside Helena during the same period, from 12.4 before the law compared with 18 during the law. The changes inside and outside Helena were significantly different during these months (table).

Discussion

During the implementation of a smoke-free law that applied to public places and workplaces we observed a significant drop in admissions for acute myocardial infarction. This is the first study to report such an association. Like any initial report, further research is desirable to confirm the finding. The observations that admission rates fell in the area where the law was implemented but not outside the area, suggests that smoke-free laws not only protect people from the long term dangers of secondhand smoke but that they may also be associated with a rapid decrease in heart attacks.

Strengths of study

An important aspect of this study is that it was done in one isolated place with a single hospital that dealt with all admissions for acute myocardial infarction. In most other places that have implemented smoke-free policies, there are several hospitals with people moving across jurisdictional boundaries for work, housing, and health care. These factors "smear out" the effect of any smoke-free policies in both space and time. Data from California, however, could be interpreted as supporting our results. Death rates from heart disease fell faster in California than elsewhere in the United States during the California tobacco control programme,¹² which, while including a tax increase and media campaign (including the promotion of smoke-free environments), focused on creating smoke-free workplaces and public places.¹³ The fraction of the population covered by smoking restrictions rapidly increased as a result of the campaign,^{14 15} and there was a parallel reduction in deaths from heart disease.¹² Helena's small size and isolation were important contributing factors to our ability to detect a change in admission rates.

Weaknesses of study

Helena's small size, however, can also be an important limitation of the study as the total number of acute myocardial infarctions we observed was small. The statistical approach to analysis, with the Poisson distribution, does not account for the secular trend of increasing admissions over time (figure) and biases the results towards the null. Despite these small numbers and conservative statistical analysis, however, we were able to detect a significant change associated with the smoke-free law.

This is a "before and after" study that relies on historical controls (before and after the period that the law was in effect), not a randomised controlled trial. Because this study simply observed a change in the number of admissions for acute myocardial infarction, there is always the chance that the change we observed was due to some unobserved confounding variable or systematic bias.

Our data were from billing records for people who reached the hospital. We reviewed death records for Lewis and Clark County but did not include them because of concern about the accuracy of the assigned causes of death.

The criteria for identifying acute myocardial infarction changed during the study period. In March 1999 St Peter's began using troponin I concentration for diagnosis. To test whether this change could have affected the results, we conducted a regression analysis, including a variable indicating whether troponin I concentration was used; this variable did not approach significance. The change in diagnostic approach does not seem to affect our results.

We did not make any direct observations to measure how much exposure to secondhand smoke was reduced during the months when the law was in force. We do not know the prevalence of smoking in venues covered by ban, though the city-county health department reported that all but two businesses complied.¹⁶

What is already known on this topic

Secondhand smoke causes acute (within 30 minutes) changes in platelet and vascular endothelial function and reductions in heart rate variability that all increase the risk of an acute myocardial infarction

Epidemiological studies have shown that people living or working in an environment polluted with secondhand smoke have a 30% increase in risk of acute myocardial infarction

Smoke-free workplace and public place laws rapidly reduce exposure to secondhand smoke

What this paper adds

In the six months in which a law to ban smoking in the workplace and in public places was enforced in an isolated community, admissions to the local hospital for acute myocardial infarction fell compared with the same months in the years before and after the law was in effect

Smoke-free laws may be associated with a rapid effect on morbidity from heart disease

Relation to other studies

Researchers have predicted that smoke-free laws would be associated with a reduced incidence of acute myocardial infarction through a combination of reduced exposure to secondhand smoke and encouraging smokers to quit¹¹ (38% of the patients with acute myocardial infarction in the study were current smokers, 29% were former smokers, and 33% had never smoked at the time of admission). While both of these effects are probably occurring, we do not have large enough sample size to estimate their relative contribution to our results. Several mechanisms, including increased platelet activation,^{1 2 5} inhibition of vascular endothelium,¹⁷ impairment of coronary artery dilatation capacity,¹⁸⁻²¹ decreases in antioxidant substances especially ascorbic acid,²² aortic stiffening,²³ and impaired heart rate variability,⁹ all of which could increase the likelihood of an acute coronary event, have been measured within minutes to hours of exposure to secondhand smoke. Even occasional exposure to secondhand smoke has been associated with an increased risk for acute coronary syndromes.²⁴

The effect associated with the smoke-free law may seem large but is consistent with the observed effects of secondhand smoke on cardiac disease. Secondhand smoke increases the risk of a myocardial infarction by about 30%^{2 4}; if all this effect were to occur immediately, we would expect a fall of $-0.30 \times 40.5 = -12.2$ in admissions during the six months the law was in effect, which is within the 95% confidence interval for the estimate of the effect (a drop of -32.2 to -0.8 admissions). Creation of smoke-free environments, as required by the law, would also reduce the risk of acute myocardial infarction among those smokers who stop smoking or reduce consumption.

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Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?

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Could eating in a smoky restaurant precipitate an acute myocardial infarction in a non-smoker? As unlikely as this sounds, a growing body of scientific data suggests that this is possible. In this context, the results of the observational study in Helena, MT are provocative: hospital admissions for acute myocardial infarction declined by about 40% during the six months in which a comprehensive local ordinance on clean air was in effect, and rebounded after the ordinance was suspended.¹

Given the small size and observational design of the study, these findings might be discounted or even disregarded altogether. However, the study focuses attention on an interesting subset of literature on secondhand smoke and its consequences. We now have a considerable amount of epidemiological literature and laboratory data on the mechanisms by which relatively small exposures to toxins in tobacco smoke seem to cause unexpectedly large increases in the risk of acute cardiovascular disease.²⁻⁷

Secondhand smoke causes coronary heart disease

Exposure to secondhand smoke increases the risk of fatal and non-fatal coronary heart disease in non-smokers by about 30%.^{2,5,8,9} Because coronary

heart disease is a leading cause of death in many countries, even relatively small increases in risk from this one factor can result in a large population burden of disease attributable to exposure to tobacco smoke.^{10,11} While the substantial cardiovascular risks posed by active smoking are now almost universally accepted, the tobacco industry and some other observers continue to question the idea that secondhand smoke can cause cardiovascular disease and death.¹²⁻¹⁵ Notwithstanding the substantial clinical and experimental evidence regarding the adverse cardiovascular effects of exposure to secondhand smoke, some have argued that an association between low level environmental exposures and health outcomes should be more critically evaluated, particularly when the relative risk for the exposure is below 2.0.^{14,15} In addition, the risk of coronary heart disease associated with the typical self reported level of exposure to secondhand smoke (for example, that of a non-smoker living with a smoker) can seem disproportionate. It is more than one third of the risk associated with smoking 20 cigarettes a day, even though the measured exposure to tobacco smoke among non-smokers is only about 1% of the exposure from smoking 20 cigarettes a day.^{2,4,5,16}

Declines in Hospital Admissions for Acute Myocardial Infarction in New York State After Implementation of a Comprehensive Smoking Ban

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Exposure to environmental tobacco smoke is a preventable public health hazard associated with an estimated 35 000 deaths a year from coronary heart disease in nonsmokers.¹⁻⁶ Active smoking is a well-established cause of acute myocardial infarction (AMI), and exposure to environmental tobacco smoke is estimated to increase the risk of AMI in nonsmokers by about 30% compared with no exposure.⁷ Even at low doses, environmental tobacco smoke increases cardiovascular disease risk.^{8,9} It may also increase the risk of stroke in both men and women; however, the link is equivocal compared with that for AMI.^{4,5,10-13} Mechanisms by which environmental tobacco smoke may induce cardiovascular events include increased platelet adhesion and subsequent thrombosis,¹⁴ changes in vascular endothelial functioning,¹⁵ and impaired arterial dilatation capacity,¹⁵ which have implications for reducing vascular flow and development of atherosclerosis.²

The accumulating evidence of the health risks posed by environmental tobacco smoke has led municipalities (e.g., Boston, Mass, New York, NY), states (e.g., Massachusetts, Rhode Island, New York), and nations (e.g., Ireland, Norway, Scotland) to enact strong smoking bans and restrictions to reduce nonsmokers' exposure to environmental tobacco smoke. Two recent studies examined the effect of a comprehensive smoking ban on population-level cardiovascular events in local communities. Hospital admissions for AMI at a single hospital serving residents of Helena, Mont, decreased by about 40% after smoking restrictions in work and public places were implemented.¹⁶ When the ban was lifted, the rate of admissions returned to pre-restriction levels. A nearby comparison community that had no smoking restrictions showed slight increases in hospitalizations during the same period.

Objectives. Reductions in exposure to environmental tobacco smoke have been shown to attenuate the risk of cardiovascular disease. We examined whether the 2003 implementation of a comprehensive smoking ban in New York State was associated with reduced hospital admissions for acute myocardial infarction and stroke, beyond the effect of moderate, local and statewide smoking restrictions, and independent of secular trends.

Methods. We analyzed trends in county-level, age-adjusted, monthly hospital admission rates for acute myocardial infarction and stroke from 1995 to 2004 to identify any association between admission rates and implementation of the smoking ban. We used regression models to adjust for the effects of pre-existing smoking restrictions, seasonal trends in admissions, differences across counties, and secular trends.

Results. In 2004, there were 3813 fewer hospital admissions for acute myocardial infarction than would have been expected in the absence of the comprehensive smoking ban. Direct health care cost savings of \$56 million were realized in 2004. There was no reduction in the number of admissions for stroke.

Conclusions. Hospital admission rates for acute myocardial infarction were reduced by 8% as a result of a comprehensive smoking ban in New York State after we controlled for other relevant factors. Comprehensive smoking bans constitute a simple, effective intervention to substantially improve the public's health. (*Am J Public Health.* 2007;97:2035-2039. doi:10.2105/AJPH.2006.099994)

A similar study in Pueblo, Colo, examined the total number of hospital admissions for AMI that occurred 18 months before and after a smoking ban was implemented in most workplaces, including bars and restaurants.¹⁷ There were 27% fewer AMI admissions to the 2 hospitals serving Pueblo in the 18 months after the smoking ban went into effect; there was no reduction in a comparison community. Both the Helena and Pueblo studies identified significant reductions in hospitalizations for AMI, which were associated with the implementation of comprehensive smoking bans in communities where no previous law existed. However, these studies were geographically limited and the total number of cardiovascular events was relatively small.

New York State enacted limited statewide smoking restrictions in 1989. The restrictions limited or prohibited smoking in many public places including schools, hospitals, public buildings, and retail stores.¹⁸ Employers were

required to develop smoking policies and provide smoke-free work areas upon employee request. Larger restaurants were required to establish nonsmoking sections. Countywide smoking restrictions began in 1995 when Suffolk County and the 5 New York City counties implemented laws that restricted smoking in restaurants. By 2002, 75% of New Yorkers were subject to local smoking restrictions that were stronger than the state law.¹⁹ Many of these local laws completely banned smoking in workplaces and some expanded restrictions on smoking in restaurants. None limited smoking in bars. On July 24, 2003, New York implemented a statewide comprehensive smoking ban that prohibited smoking in all workplaces including restaurants and bars. After implementation of the statewide law, population exposure to environmental tobacco smoke declined nearly 50%. Cotinine levels in the saliva from a representative sample of New York State adults,

declined from 0.078 ng/mL to 0.041 ng/mL.²⁰ Nassau County and New York City implemented similar comprehensive bans in March 2003.

We compared hospital admissions for AMI and stroke before and after the 2003 statewide comprehensive smoking ban went into effect. Prior to the comprehensive ban, between 1995 and 2003, moderate statewide and local smoking restrictions were enacted. After controlling for seasonal trends, changes in clinical care, geographic differences in hospitalization rates, and other secular trends, we hypothesized that implementation of the 2003 comprehensive statewide smoking ban is associated with reduced hospital admissions for AMI and stroke over and above the effect on admissions of more-moderate smoking restrictions.

METHODS

We obtained data about hospital admissions for AMI and stroke from a comprehensive administrative database maintained by the New York State Department of Health. All nonfederal public and private hospitals certified for inpatient care are required to submit patient data, including diagnoses, within 180 days of the end of the facility's fiscal year. We derived admission rates from the principal primary diagnosis that necessitated the admission. To increase accuracy, the principal admitting diagnosis is established at discharge and is based on the results of medical tests and other findings learned during the admission. AMI and stroke as secondary diagnoses were not used to establish admission rates.

Our analysis included 10 years of data because that time frame encompassed all of the local policies enacted in New York State. We did not include data before the 1989 statewide restriction because that law preceded electronic reporting and there were concerns about comprehensiveness and reliability.

We used *International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM)*²¹ diagnostic codes 410.00–410.99 to identify admissions associated with a discharge diagnosis of AMI, and diagnostic codes 430.00–438.99 to identify admissions associated with stroke. The number of monthly hospital admissions associated with

AMI and stroke from January 1995 to December 2004 and for persons aged 35 years and older, was extracted for each of New York State's 62 counties. We combined the number of hospital admissions with county population data²² to calculate the monthly rate of hospital admissions for each condition. Rates were age-adjusted to the New York population, using year 2000 US Census data.

Information about New York county smoking restrictions was provided by the Americans for Nonsmokers' Rights Foundation Local Tobacco Control Ordinance Database (<http://www.no-smoke.org>). The database describes all municipal smoking bans, including dates of enactment and implementation and the specific restrictions and prohibitions of each. We defined comprehensive laws as those that prohibit smoking in all worksites, including restaurants, bars, and other hospitality venues with few or no exemptions. This includes the comprehensive statewide ban enacted on July 24, 2003, as well as the comprehensive laws enacted by Nassau County and New York City in March 2003. Moderate laws were defined as those that restrict smoking in most worksites but provide little or no protection in hospitality venues and include the remainder of the county laws. We considered restrictions that applied only to municipal buildings too limited in scope to include in the analysis. We rounded implementation dates for all laws to the nearest month.

We applied multiple linear regression using standard methods for interrupted time-series analysis to monthly age-adjusted county rates of hospital admission for AMI and stroke.^{23,24} Monthly age-adjusted rates from each of 62 counties over 120 months resulted in an effective sample size of 7440 observations. We used a linear time-trend variable (month) to quantify changes in treatment, population risk factors, and other secular trends. Two dichotomous variables accounted for the main effect of comprehensive and moderate laws on hospital admissions, measuring the instantaneous change in rates at the time of smoking ban implementation. Interactions between laws and time accounted for continued rate changes following implementation of the law. Fixed county-level differences in rates of cardiovascular disease risk factors and other

conditions (e.g., obesity) were explained by county indicator variables. We used the interaction of county indicator variables with time to control for county-specific secular change. We used indicator variables for month of the year to measure seasonal variation in AMI admissions.

Two estimates were made of admissions averted as a result of the statewide 2003 comprehensive smoking ban. The first estimate measured the effect of the 2003 comprehensive ban over the 1989 state law, plus the patchwork of local laws in place at the time of enactment. This estimated how much additional benefit the comprehensive state law provided over all the laws that existed at the time of its enactment. The second estimate measured the effect of the statewide comprehensive law over the early state law only, as if no local laws existed.

Estimated regression coefficients were used to predict the number of hospital admissions averted as a result of the implementation of comprehensive smoking bans. For the first prediction, we estimated monthly rates by removing the comprehensive law main effect and the comprehensive law by time interaction (i.e., setting these coefficients to zero). For the second estimate, we also removed local laws. The difference between the regression-based predictions with and without the influence of the comprehensive smoking restrictions represented the associated decrease in admissions rate. To calculate the number of admissions averted, we added the difference in fitted values to the actual monthly admission rates and then converted the difference into admission numbers, taking into account both the rate and the population aged 35 years and older in the state.

RESULTS

Table 1 displays the number of AMI and stroke admissions, the annual age-adjusted admission rates per 100 000, and the number of facilities that reported each year from 1995 to 2004. The age-adjusted rates reflect a statewide average of more than 46 000 annual admissions for AMI and more than 58 000 annual stroke admissions during the 10 years of the study. A mean of 252 hospitals reported discharge information each year.

TABLE 1—Numbers and Rates of Hospital Admissions for Acute Myocardial Infarction (AMI) and Stroke: New York State, 1995–2004

Year	No. of Hospitals Reporting	No. of Admissions		Rate ^a	
		AMI	Stroke	AMI	Stroke
1995	261	44 683	58 056	493.3	641.0
1996	260	45 449	60 410	496.2	659.5
1997	255	44 961	59 323	485.3	640.3
1998	255	44 651	59 133	475.6	629.9
1999	253	45 589	58 638	479.1	616.3
2000	252	48 010	59 701	490.0	609.4
2001	251	48 015	58 732	483.0	590.9
2002	248	47 943	58 118	476.4	577.5
2003	246	47 683	56 573	469.9	557.5
2004	243	45 412	56 149	445.4	550.7

^aAge-adjusted rate per 100 000 adjusted to 2000 US Census (aged 35 years and older).

The reduction in the number of hospitals over time was because of a net increase in the number of hospitals closing during this period.

Results of the regression analysis are reported in Table 2. The main effects for the comprehensive smoking ban and moderate smoking restrictions measured the change in the intercept of the trend line in hospital admissions. That is, they measured whether the trend line shifted up or down, without regard to any change in the slope of the line, at the time the law was enacted. Neither main effect was significant; there was no sudden reduction in the hospitalization rate associated with the implementation of these laws.

The interactions between the law indicators and time measured change in the slope of the trend line after enactment of the law. Both interaction effects were significant and negative, which indicates that enactment of moderate laws at the county level and the statewide comprehensive smoking ban were associated with an accelerated decline in monthly AMI hospitalizations in New York State. The unstandardized parameter estimate for the moderate smoking restrictions $\times$ time interaction term was -0.15 ($P < .01$), implying that enactment of a moderate smoking restriction in a county would reduce the monthly trend rate in AMI hospital admissions in that county by 0.15 per 100 000 persons per month, on average. The comprehensive smoking ban $\times$ time interaction was also significant ($P < .001$)

and showed that the statewide comprehensive smoking ban was associated with a reduction in the rate of hospital admissions by an average of 0.32 per 100 000 persons per month in all counties, more than twice the reduction of the moderate smoking restrictions.

Figure 1 shows the observed number of AMI hospitalizations from January 2002 through December 2004 and the estimated number of admissions had there been no comprehensive state law enacted. From August 2003 to December 2004, the model predicts 4033 fewer AMI admissions in New York associated with the comprehensive state smoking ban over the 1989 state law and the patchwork of local laws. The

reduction in 2004 alone was 3813 AMI admissions statewide, a little more than an 8% decline. The comprehensive state law was associated with a 19% decline in admissions, had there been no local laws intervening between the 1989 state law and the 2003 comprehensive law.

Estimates of cost savings accrued from the averted AMI hospital admissions were calculated on the basis of the average in-hospital cost per AMI hospitalization of \$14 772.²⁵ After estimating the economic effect of the comprehensive law over and above prior state and local moderate laws, the resulting cost savings was \$56 million in 2004 (1998 dollars).

There were no significant negative associations between the stroke admission rate and moderate or comprehensive restrictions on smoking.

DISCUSSION

Rates of hospital admissions for AMI were reduced by 8% after a comprehensive ban on smoking in work sites, including hospitality venues (e.g., bars and restaurants), in New York State. This is equivalent to a reduction of approximately 3800 AMI hospital admissions in 2004 and an estimated cost savings of \$56 million. Our results show that enactment of clean indoor air laws was associated with an accelerated decline of hospital admissions and that a comprehensive statewide law had the largest effect.

TABLE 2—Interrupted Time-Series Results Predicting Monthly Hospital Admission Rates per 100 000 Population for Acute Myocardial Infarction (AMI) and Stroke as a Function of Smoking Restrictions and Secular Trends: New York State, 1995–2004

Smoking Restriction	AMI		Stroke	
	b (95% CI)	t	b (95% CI)	t
Comprehensive smoking ban	-0.80 (-2.7, 1.1)	-0.81	-1.14 (-2.6, .30)	-1.55
Comprehensive smoking ban $\times$ time interaction	-0.32*** (-.47, -.16)	-4.10	0.06 (-.06, .18)	0.94
Moderate smoking restrictions	-1.1 (-2.3, .13)	-1.75	1.3* (.26, 2.26)	2.46
Moderate smoking restrictions $\times$ time interaction	-0.15** (-.25, -.06)	-3.10	0.05 (-.03, .14)	1.30
Overall F-test (138 7301)	98.92***		65.09***	

Note. Regression models also include indicator variables for month of admission (11 variables), county (61 variables), and a time-by-county interaction (61 variables).

* $P < .05$; ** $P < .01$; *** $P < .001$

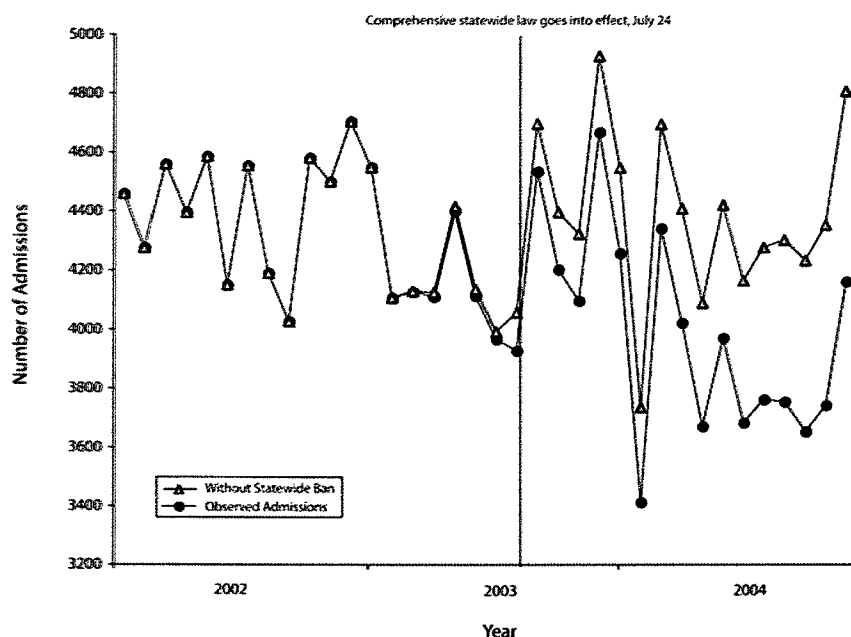


FIGURE 1—Observed number of hospital admissions for acute myocardial infarction and predicted number of hospital admissions in the absence of a comprehensive smoking ban, by month: New York State, 2002–2004.

The reduction in AMI hospital admissions we found is substantially smaller than that found in 2 previous studies conducted in Helena, Mont, (40% reduction) and Pueblo, Colo, (27% reduction). In a commentary on the Helena study, Pechacek and Babb²⁶ estimated that comprehensive smoking bans would likely reduce AMI admissions by a more conservative 10% to 15%.

The smaller effect size that we found is probably because of the incremental enactment of smoking bans and restrictions in New York over time and the generally modest level of environmental tobacco smoke exposure among New York residents before the implementation of the comprehensive statewide law. The first statewide restriction was passed in 1989, whereas local moderate and comprehensive laws were enacted in New York counties beginning in 1995. The 2003 statewide smoking ban superseded existing laws that offered moderate protection and coverage to a large percentage of New York's population. We measured the increased increment in protection that would be provided if a

statewide comprehensive law replaced existing, more moderate local and statewide restrictions. Because of the incremental nature of the laws and specific characteristics of the database that focus on rates rather than individual patient-level data, we believe that our results represent low estimates of the relation between environmental tobacco smoke and AMI. Our results are thus consistent with the estimate of Pechacek and Babb²⁶ and suggest that comprehensive statewide smoking bans offer greater health protection than do more-modest smoking restrictions. Additional studies are needed to better understand the association between smoking restrictions and hospital admissions for stroke.

A weakness of this study was the inability to assess the effect of changing smoking prevalence on hospital admissions given the causal relation between active smoking and AMI. Although smoking prevalence was not available for each county and month, we repeated the analysis with quarterly statewide smoking prevalence estimates as an additional variable in the model. There was no association between

hospital admissions and smoking prevalence. Smoking prevalence was relatively stable during the study period (1995 to 2004), although a downward trend began in 2000.

A lack of individual patient-level information is another weakness of this study and may have contributed to the fact that only small effects were found. Specific details about patient smoking status, exposure to environmental tobacco smoke, or other risk factors (e.g., obesity) for AMI were unknown but were summarized in the regression models to a limited extent by the time and county variables (because population rates, and not individual events, were modeled).

Our conclusions are strengthened by 2 studies that showed New York's comprehensive statewide smoking ban actually reduced opportunities for exposure to environmental tobacco smoke. Although there is limited information about the effect of moderate smoking restrictions,²⁷ a 2004 study of compliance with the statewide smoking ban by New York's hospitality venues showed that 93% of restaurants, bars, and bowling facilities were in compliance with the law in the year after implementation.²⁸ One month before the law, just 31% of these venues were smoke-free. A 2005 study of nonsmoking hospitality workers in New York showed significant reductions in saliva cotinine levels and symptoms associated with cigarette smoke exposure after the comprehensive law went into effect.²⁹

Clinical implications of this and related studies are most relevant for patients who have existing cardiac conditions. Although environmental tobacco smoke exposure should be avoided by all, physicians should be particularly mindful of their cardiac patients who, if they smoke, should be advised to quit, and if they do not smoke, should be advised to avoid any exposure to environmental tobacco smoke.

Our study results support and extend previous studies to show that comprehensive smoking bans are associated with reductions in the rate of hospitalizations for AMI. Comprehensive smoking bans constitute a simple, effective intervention to substantially improve the public health. ■

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Contributors

H.R. Juster originated and supervised the study in its entirety. B.R. Loomis and M.C. Farrelly substantially directed the analysis and interpretation. T.M. Himman directed data analysis and large dataset manipulation. A. Hyland, U.E. Bauer, and G.S. Birkhead participated in review of the procedures, analysis, and interpretation. All authors participated in writing, editing, and revising the article.

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Public Smoking Bans Are Good for the Heart

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Public Smoking Bans Are Good for the Heart*

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In this time of health care reform debate in the U.S., it is fashionable to focus on what is wrong. Unmentioned is arguably the most important health triumph in the past 50 years: the steep decrease in deaths from cardiovascular disease (1–3). Between 1950 and 2005, the age-adjusted, all-age death rate from heart disease decreased from 587 per 100,000 persons to 211 per 100,000, a spectacular improvement (4). As often happens with such remarkable successes, the credit gets shared. One factor with a major claim to causality is the decrease in smoking prevalence as the result of strong tobacco-control programs (5,6).

See page 1249

In that regard, Goldman (2) estimates that 25% of the decrease in deaths from cardiovascular disease is from decreased disease incidence and 75% is from reducing deaths in persons with known disease. Of that 75% decrease, approximately one-half is due to risk factor reduction. Obviously, smoking figures in both primary prevention (decreased disease incidence) and secondary prevention (risk factor reduction). Indeed, the decrease in smoking prevalence is another modern health triumph. The prevalence of smoking among men in the U.S. has decreased from 57% in 1955 to 21% in 2007, whereas smoking among women declined from a high of 34% in 1965 to 18% in 2007 (5). The 2007 overall smoking prevalence rate of 19.8% marked a modern low (7).

There are 2 routes whereby tobacco smoke can hurt a patient's heart—by smoking directly or by inhaling someone else's smoke. When smoking rates were high, it was hard to avoid secondhand smoke, and it was also unclear that secondhand smoke was damaging because the assumption was that—as with smoking and lung cancer—sustained exposure was required for harm. But now that smoking is less common and smokers are increasingly marginalized (8,9), evidence has emerged that secondhand smoke exposure is nearly as harmful to the heart as is chronic active smoking. Barnoya and Glantz (10) recently reviewed the many ways in which this harm occurs. Secondhand smoke exposure alters platelet function, causes endothelial dysfunction, increases arterial stiffness, decreases levels of high-density lipoprotein, increases markers of inflammation, increases arterial intima-

media thickening, increases infarct size, causes oxidative stress and mitochondrial damage, decreases heart rate variability (thus increasing the risk of malignant arrhythmias), and increases insulin resistance (10). It is hard to imagine substances that would be more cardiotoxic. Furthermore, these adverse effects are observed at very low exposure doses (11).

So, what can cardiologists do to keep their patients from being exposed to tobacco smoke? Obviously, they should counsel patients who smoke to quit by serving as a resource to help that happen; directing them to affiliated cessation systems such as those of Kaiser Permanente, Group Health Cooperative, the Mayo Clinic, or the Veterans Administration system; or referring them to toll-free telephone counseling available through 1-800-QUIT NOW (12,13). However, cardiologists now must also attend to the risks of secondhand smoke exposure.

This issue of the *Journal* contains a meta-analysis by Myers et al. (14) of published studies that examine changes in rates of acute myocardial infarction (AMI) after the institution of second-hand smoke bans in specific locales. The review takes advantage of natural experiments in which public smoking was banned, and rates of AMI were compared before and after that ban, sometimes including comparison sites without a ban. The inclusion criteria restricted the analysis to only 11 peer-reviewed articles representing 10 sites: 5 from the U.S., 1 from Canada, 3 from Italy, and 1 from Scotland. Observation times for measuring the effect ranged from as short as 2 months to as long as 3 years. The populations covered in the studies varied from a high of 19 million people (New York State) to a low of 29,000 (Bowling Green, Ohio). In the meta-analysis, overall results were weighted by the population size included in each study, as well as the duration of observation after the ban was imposed.

The overall mean decrease in AMI incidence after ban imposition was 17%. All studies showed at least 1 subgroup with decreases, and 9 had overall substantial declines, ranging from –9% to –50%. Two sites, both in Italy, had essentially no change. Differences were greater in sites from the U.S. and in those with longer observation periods, with AMI incidence decreasing by 26% with each year of post-ban observation. As shown in the authors' Figure 3, the longer the observation period after the ban, the lower the incidence rates.

Why is this article important? First, by adding published reports outside of the U.S., it builds on evidence of a previous meta-analysis that showed a decrease in post-ban AMI incidence of 19% (15). When the first observation of the effect of smoking bans on community disease incidence in Helena, Montana, was reported, it was unclear whether this

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relationship was an artifact or real, especially because the comparison site had a large (46%) increase in AMI frequency (16). To some, those results seemed too good to be true. By combining all of the published studies on the effects of such bans, Myers et al. (14) add to the evidence that these bans do protect the hearts of those prone to coronary disease. Further, in the 5 reports that used nonban comparison sites, the nonban sites all had much smaller decreases in AMI prevalence. Finally, the findings that the effect is stronger the longer the period of observation and that the largest declines occurred in the U.S.—where smoking prevalence is lower and thus the proportion of nonsmokers who could be exposed to second-hand smoke is greater—support the hypothesis that smoking bans are beneficial. As the authors note, the smaller effect sizes all occurred in studies outside the U.S. plus the New York State study. All these sites had short observation periods.

What are the limitations of this study? Publication bias is always a potential problem, although the authors were unable to surface any reports that went unpublished. More problematic is the reality that in the >3,000 communities and 33 states that restrict public smoking in the U.S. (17), most have not tracked changes in AMI incidence. The same holds for other countries. Another potential limitation is the vigor with which such bans are enforced. Given the lower smoking prevalence rates in the U.S. and the stigma attached to smoking in that country, it is likely that such bans are more easily accepted there and better enforced than in Italy and Scotland, where the published reports showed either a lower (Italy) or average (Scotland) effect of smoking bans. A related question is whether these decreases merely reflect the secular trends of decreasing AMI frequency. However, the rate of decrease is much greater than those secular trends, and those studies with comparison sites all showed lower rates of decline, or in the case of Helena, a 46% increase.

Could there have been a coding effect, whereby the diagnosis of AMI somehow changed in communities with bans? That seems unlikely. More troubling is the fact that the effects are much smaller in the reports from large population sites, with the exception of Scotland. The authors tested whether geographic region (U.S. vs. non-U.S.), population size, or length of post-ban observation period affected the incidence reduction rate and concluded that region and observation period did but size did not. How robust that conclusion is remains to be seen. It is likely that the larger the population encompassed by a ban, the less uniform enforcement of the ban might be.

The take-away messages for cardiologists are clear. A 17% risk reduction for AMI is not trivial. It is prudent to assume that exposure to secondhand smoke is almost as dangerous to persons with diagnosed or latent coronary disease as active smoking (10). Therefore, cardiologists should expand their clinical repertoire to include screening and counseling for secondhand smoke exposure, just as they screen for lipid disorders. In their roles as health advocates, they should also support bans on public smoking, as well as other tobacco control measures such as tax increases on cigarettes, counter-marketing campaigns, and expanded cessation services such as telephone quitlines (6,18,19). These initiatives lower the prob-

ability of young people initiating smoking, increase the rate at which smokers quit, and lower the frequency of smoking among those not yet willing or able to quit. Cardiologists not only have much to celebrate about the spectacular decreases in cardiovascular disease, they also have the opportunity to do much more. Further decreased exposure to tobacco smoke, such as occurs with public smoking bans, is a keystone to such progress.

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Bartenders' Respiratory Health After Establishment of Smoke-Free Bars and Taverns

Mark D. Eisner, MD; Alexander K. Smith, BS; Paul D. Blanc, MD, MSPH

Context.—The association between environmental tobacco smoke (ETS) exposure and respiratory symptoms has not been well established in adults.

Objective.—To study the respiratory health of bartenders before and after legislative prohibition of smoking in all bars and taverns by the state of California.

Design.—Cohort of bartenders interviewed before and after smoking prohibition.

Setting and Participants.—Bartenders at a random sample of bars and taverns in San Francisco.

Main Outcome Measures.—Interviews assessed respiratory symptoms, sensory irritation symptoms, ETS exposure, personal smoking, and recent upper respiratory tract infections. Spirometric assessment included forced expiratory volume in 1 second (FEV₁) and forced vital capacity (FVC) measurements.

Results.—Fifty-three of 67 eligible bartenders were interviewed. At baseline, all 53 bartenders reported workplace ETS exposure. After the smoking ban, self-reported ETS exposure at work declined from a median of 28 to 2 hours per week ($P < .001$). Thirty-nine bartenders (74%) initially reported respiratory symptoms. Of those symptomatic at baseline, 23 (59%) no longer had symptoms at follow-up ($P < .001$). Forty-one bartenders (77%) initially reported sensory irritation symptoms. At follow-up, 32 (78%) of these subjects had resolution of symptoms ($P < .001$). After prohibition of workplace smoking, we observed improvement in mean FVC (0.189 L; 95% confidence interval [CI], 0.082–0.296 L; 4.2% change) and, to a lesser extent, mean FEV₁ (0.039 L; 95% CI, –0.030 to 0.107 L; 1.2% change). Complete cessation of workplace ETS exposure (compared with continued exposure) was associated with improved mean FVC (0.287 L; 95% CI, 0.088–0.486; 6.8% change) and mean FEV₁ (0.142 L; 95% CI, 0.020–0.264 L; 4.5% change), after controlling for personal smoking and recent upper respiratory tract infections.

Conclusion.—Establishment of smoke-free bars and taverns was associated with a rapid improvement of respiratory health.

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THE LONG-TERM health effects of exposure to environmental tobacco smoke (ETS) have been established during the past 2 decades. Strong epidemiologic evidence links ETS exposure with lung cancer^{1,2} and atherosclerotic cardiovascular disease.^{3–6} As a result, ETS has been estimated as the third leading preventable cause of death.⁷ By contrast, the more immediate impact of ETS exposure on adult respiratory health has received less attention.⁸ Although household ETS exposure is a known cause of respiratory symp-

oms in children,^{2,9} studies examining the effect of ETS on adult respiratory symptoms have yielded conflicting results.^{2,10–18}

While most epidemiologic studies have focused on household ETS,^{12,11,19} the workplace is now recognized as a major site of exposure.^{10,20–25} Bar and tavern workers,

See also p 1947 and Patient Page.

in particular, are exposed to high ambient levels of ETS, reaching levels 4 to 6 times higher than in other workplaces.^{26–29} This high-level exposure is paralleled by an increased risk of lung cancer in bartenders, after controlling for personal smoking.^{30,31} The effect of ETS on respiratory symptoms and lung function, however, has not been examined in these heavily exposed workers.

Recent California statewide legislation,³² which now mandates smoke-free bars and taverns, provided an unusual opportunity to prospectively evaluate the effect of reduced ETS exposure on respiratory symptoms, sensory irritation symptoms (eye, nose, and throat), and pulmonary function in bartenders.

METHODS

Overview

California State Assembly Bill 13 amended the California Labor Code (section 6404.5) to prohibit tobacco smoking in bars and taverns starting January 1, 1998.^{32,33} From December 1 to 31, 1997, we interviewed and performed spirometry on participating bartenders in their workplaces (bar or tavern). Follow-up interviews and spirometry were performed from February 1 to 28, 1998, to evaluate changes in symptoms or lung function following the institution of smoke-free bars.

Recruitment of Freestanding Bars and Taverns

The present study was approved by the University of California, San Francisco, Committee on Human Research. We obtained a list of all bars and taverns ($N = 366$) in the city and county of San Francisco from a commercial yellow pages directory (under subject headings "bars," "cocktail lounges," or "taverns"). After review of the listings, we excluded businesses known to be restaurants ($n = 66$) or associated with hotels ($n = 4$). Of the 296 listings, we randomly sampled 105 freestanding establishments. Each bar or tavern proprietor was contacted by a letter describing the study and given the opportunity to decline participation by prepaid, self-addressed postcard. We telephoned each owner who did not return the decline postcard and requested permission to visit their bar or tavern to recruit bartenders for the study.

Of the 105 freestanding bars and taverns sampled, 13 establishments were no longer in business and 9 were located in restaurants, leaving 83 eligible businesses. In 22 cases, the owner could not be reached by telephone despite 6 or more

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attempts. The owners of 36 bars declined study participation; 7 returned the decline postcard and 29 declined by telephone. During telephone contact, the reasons provided for declining were disagreement with the change in the Labor Code ($n = 8$, 28%), inconvenience ($n = 3$, 11%), or not stated ($n = 18$, 61%). Ultimately, 25 bars and taverns (30%) still in business participated. As presented later in the "Methods" section, we found no evidence of systematic bias introduced by bar or tavern nonparticipation.

Recruitment of Bartenders

At prearranged times, a single study investigator (M.D.E.) visited each participating bar or tavern and attempted to recruit all bartenders who worked there at least 1 daytime shift per week. Because study participation required about 15 minutes per subject, we were unable to conduct the study during peak business hours. The 25 participating bars and taverns employed 124 bartenders, with 67 bartenders working at least 1 weekly daytime shift. Fifty-four of the daytime bartenders (81%) completed baseline interviews and spirometry; 53 of these subjects (98%) completed follow-up. A small number of subjects ($n = 3$, 6%) were no longer working in bars or taverns at the time of the follow-up interview and lung function assessment (these subjects were retained for analysis). The mean interval (SD) between baseline and follow-up interviews was 56 (9) days (median, 56 days).

The estimated annual average number of bartenders employed in San Francisco was 1930 (1994 data based on the California Employment Development Department Labor Market Information Database). Our study sample of bartenders, then, represents approximately 2.8% of all bartenders employed in San Francisco.

Interviews

All subjects underwent a standard baseline interview conducted by a single study investigator (M.D.E.) in their workplaces. Respiratory symptoms were assessed with 5 questions from the International Union Against Tuberculosis and Lung Disease (IUATLD) Bronchial Symptoms Questionnaire.³⁴ The questions related to wheezing, dyspnea, morning cough, cough during the rest of the day or night, and phlegm production. The IUATLD instrument has been validated against the criterion of bronchial hyper-responsiveness.^{34,35} To evaluate change in respiratory symptoms during a short period, we modified the IUATLD questions to assess symptoms during the past 4 weeks rather than the previous 12 months. In addition to the IUATLD battery, we also assessed sensory irritation symptoms, which can result from ETS-related

noxious stimulation of upper respiratory tract and corneal mucous membranes.² Three questions ascertained the presence of red, teary, or irritated eyes; runny nose, sneezing, or nose irritation; and sore or scratchy throat during the past 4 weeks.

Personal, active cigarette smoking was measured using questions developed for the National Health Interview Survey.³⁶ In 3 additional questions, we evaluated ETS exposure duration in work, home, and other settings during the previous 7 days (in hours per week).

Several questions focused on baseline health and demographic characteristics. Using a question from the National Health and Nutrition Examination Survey (NHANES), we assessed whether subjects had physician-diagnosed asthma.³⁷ In addition, medication use for asthma was ascertained. We evaluated whether subjects had an upper respiratory tract infection (URI) during the past 4 weeks with the following question: "In the last 4 weeks, have you had a cold?" Finally, demographic information was collected, including age, sex, race, and education.

Conducted about 8 weeks later, follow-up interviews contained the same questions about respiratory symptoms, sensory irritation symptoms, personal smoking, ETS exposure, and URIs. At the end of the second interview, we ascertained personal beliefs about the health effects of ETS exposure and attitudes about the prohibition of smoking in bars and taverns.

Spirometry

All participating bartenders underwent spirometry at both baseline and follow-up in their workplaces. We measured lung function with a portable spirometer (Creative Biomedics, San Clemente, Calif). Using a standard protocol conforming to American Thoracic Society Guidelines, we had each subject perform at least 3 forced expiratory maneuvers.³⁸ Forced expiratory volume in 1 second (FEV₁), forced vital capacity (FVC), and forced expiratory flow, midexpiratory phase (FEF_{25%-75%}) were determined.

Participating and Nonparticipating Bars and Taverns

To assess the comparability of participating and nonparticipating establishments, we obtained information about San Francisco bars and taverns from several sources. The State of California Department of Alcoholic Beverage Control provided liquor license issuance dates and license status. We extracted data about establishment size (square meters), county health district (based on census tract), length of time in business (either same owner or same establishment name), and health code violations from Department of

Public Health Environmental Health Section inspection records. Table 1 shows that there were no statistically significant differences between participating and nonparticipating bars ($P > .40$ in all cases).

To estimate how closely our sample of bartenders matched the target population of San Francisco bartenders, we reviewed demographic data for an available comparison group—unionized San Francisco bartenders ($n = 462$)—obtained from the Hotel and Restaurant Employees and Bartenders Union Local 2 (affiliated with the American Federation of Labor-Congress of Industrial Organizations). Compared with union members, the bartenders in our sample were younger (mean [SD], 42.2 [14] vs 51.0 [11.4] years; $P < .001$) and more likely to be female (28% vs 17%; $P = .05$). There was no statistically significant difference in the proportion of non-white bartenders in our sample compared with union members (37% vs 29%; $P = .25$).

Statistical Analysis

Our general analytic framework compared the respiratory health of bartenders before and after prohibition of smoking in bars and taverns. The study had 2 central hypotheses. First, respiratory and sensory irritation symptoms would improve among bartenders after reduced ETS exposure following the legislative ban. Second, bartenders' pulmonary function would improve after reduction in workplace ETS exposure.

Interview and spirometry data were analyzed using SAS software version 6.12 (SAS Institute Inc, Cary, NC), unless otherwise noted. We compared the change in work duration (hours per week), personal smoking, and ETS exposure using the paired *t* test for normally distributed variables, paired Wilcoxon signed rank test for nonnormally distributed continuous variables, and McNemar χ^2 test for dichotomous variables.

To reduce the number of statistical comparisons, we defined 2 a priori primary symptom end points: any respiratory symptom (wheeze, shortness of breath, morning cough, cough during the rest of the day or night, or phlegm production) and any sensory irritation symptom (eye, nose, or throat). The McNemar χ^2 test was used to compare the observed change in each symptom end point with that expected by chance. We then performed secondary analyses to evaluate the change in each symptom type during follow-up.

To address the potential confounding effect of recent URIs, we repeated the primary analyses excluding these subjects. To control for personal smoking, we also repeated the analyses stratified by smoking status. Using Stata software version 5.0 (Stata Corp, College Station,

Tex), we then performed conditional logistic regression analysis³⁹ on the entire sample to estimate the impact of reduced workplace ETS exposure on the 2 primary symptom outcomes, controlling for the effects of URIs and personal cigarette consumption at both interviews.

The change in pulmonary function after reduction in workplace ETS exposure was examined using paired *t* tests. The primary end points were FEV₁, FVC, and FEF_{25%-75%}. As before, we repeated the analyses excluding subjects with URIs. We also controlled for the potential confounding effect of personal smoking by further stratifying the analysis by smoking status. Because the legislative ban was only partially successful in prohibiting smoking in some bars, we were able to examine the effect of complete (vs partial) cessation of workplace ETS exposure on each pulmonary function parameter using multiple linear regression analysis. The multivariate model controlled for personal smoking, reduced daily cigarette consumption at follow-up, and URIs during the 4 weeks prior to baseline. To evaluate a dose-response relationship, we repeated the multivariate analysis using complete workplace exposure cessation as the referent case and 2 dichotomous indicator variables for moderate exposure (1-6 h/wk) and high exposure (≥ 7 h/wk). These cut points provided similar subject numbers in moderate-level (*n* = 14) and high-level (*n* = 15) categories.

RESULTS

Bartender Characteristics

For the 53 participating bartenders completing follow-up interviews and spirometry, the average (SD) age was 42.5 (14.0) years. A substantial proportion of subjects were female (28%) and non-white (38%) (Table 2). The mean duration of employment at the current bar or tavern was 6.1 (SD, 7.1) years (median, 3.0 years). Other subject characteristics are summarized in Table 2.

Cigarette Smoking and ETS Exposure

Forty (76%) of the 53 bartenders reported a history of ever smoking, with 24 (45%) currently smoking at baseline (Table 3). There was no change in the proportion of current smokers from baseline to follow-up interviews, after prohibition of workplace smoking. Among the current smokers, there was no overall change in daily cigarette consumption during the follow-up period.

At baseline, all 53 subjects reported ETS exposure while working in bars or taverns during the 7 days prior to interview. After prohibition of smoking, there was no significant change in weekly work dura-

Table 1.—Comparison of Participating and Nonparticipating Bars and Taverns in San Francisco*

Characteristic	Participating Bars (<i>n</i> = 25)	Nonparticipating Bars (<i>n</i> = 58)
Health center location, No. (%)		
2	5 (20)	13 (22)
3	2 (9)	8 (14)
4	7 (28)	14 (24)
5	11 (44)	23 (40)
Establishment size, mean (SD), m ²	143.91 (95.76)	126.36 (84.06)
Years in business, mean (SD), y	13.6 (9.5)	15.3 (8.3)
Current liquor license duration, mean (SD), y	9.9 (6.5)	9.0 (7.0)
Liquor license with active status, No. (%)	25 (100)	58 (100)
Any health code violation in past 1 year, No. (%)	11 (46)	25 (43)

**P* > .40 in all comparisons of participating vs nonparticipating bars. The sources of data are the Department of Public Health Environmental Health Section inspection records (health center location, establishment size, years in business, and health code violations) and State of California Department of Alcoholic Beverage Control (liquor license information).

tion from baseline (mean [SD], 33.4 [14.9] hours) to follow-up interviews (32.2 [17.5] hours; *P* = .48). However, self-reported workplace ETS exposure sharply declined from a median of 28 to 2 h/wk (*P* < .001) after the smoke-free workplace law went into effect (Table 3). We observed a parallel decrease in other (non-work) and total ETS exposure. Despite the prohibition of smoking, 29 subjects (55%) continued to report some ETS exposure (≥ 1 h/wk) while working as bartenders.

Respiratory and Sensory Irritation Symptoms

Thirty-nine (74%) of the 53 bartenders reported respiratory symptoms at baseline, while only 17 (32%) were still symptomatic at follow-up (Table 4). Of the 39 bartenders reporting baseline symptoms, 23 subjects (59%) no longer indicated any respiratory symptoms after prohibition of smoking (*P* < .001). The majority of bartenders also had at least 1 sensory irritation symptom at baseline (77%), with fewer reporting symptoms at follow-up (19%). With introduction of smoke-free workplaces, sensory symptoms were no longer present in 32 (78%) of the 41 previously symptomatic subjects (*P* < .001).

Since URIs can be associated with both respiratory and sensory irritation symptoms, we repeated the analyses excluding the 8 subjects who reported a recent URI at baseline interview. A majority of the remaining 45 bartenders (69%) still reported respiratory symptoms at baseline, with most of these subjects (65%) indicating resolution of symptoms at follow-up (*P* < .001). Similarly, most bartenders without recent URIs noted sensory irritation symptoms at baseline (76%). At follow-up interview, the majority of these subjects (79%) no longer reported any sensory symptoms (*P* < .001).

We recognized that smoke-free bars and taverns might lead bartenders to curtail their personal smoking, which could diminish respiratory symptoms. After stratifying the analysis by smoking status, we observed similar results. Of the previ-

Table 2.—Baseline Bartender Characteristics (*n* = 53)

Age, mean (SD), y	42.5 (14.0)
Sex, No. (%) female	15 (28)
Race, No. (%)	
White, non-Hispanic	33 (62)
Hispanic	10 (19)
African American	2 (4)
Asian/Pacific Islander	6 (11)
Other	2 (4)
Education, highest level attained, No. (%)	
High school	13 (25)
College or greater	40 (76)
Duration of current bar employment, y	
Mean (SD)	6.1 (7.1)
Median (25th-75th interquartile range)	3.0 (1.5-8.0)
History of physician-diagnosed asthma, No. (%)	9 (17)
Currently receiving asthma medications, No. (%)	4 (8)

ously symptomatic smoking bartenders, the majority no longer reported respiratory (63%) or sensory irritation symptoms (80%) at follow-up (*P* < .001 in both cases). Similarly, most nonsmoking bartenders with baseline symptoms reported resolution of respiratory (53%) or sensory irritation symptoms (76%) (*P* = .02 and *P* < .001, respectively).

Conditional logistic regression analysis was performed to estimate the independent impact of reduced bar ETS exposure on the primary symptom end points. A 5-hour reduction in workplace ETS exposure was associated with a lower risk of respiratory symptoms at follow-up (odds ratio [OR], 0.7; 95% confidence interval [CI], 0.5-0.9), after controlling for URIs and daily cigarette consumption at both interviews. In a similar analysis, a 5-hour decrement in bar ETS exposure was associated with reduced risk of sensory irritation symptoms at follow-up (OR, 0.5; 95% CI, 0.3-0.8). Excluding the 3 subjects no longer working as bartenders at follow-up did not appreciably affect these risk estimates.

Pulmonary Function

After prohibition of smoking, the mean FVC and FEV₁ both increased at follow-up (Table 5). Flow rate at mid-lung volumes (FEF_{25%-75%}), which was

Table 3.—Personal Smoking and Environmental Tobacco Smoke Exposure at Baseline and Follow-up Interviews (n = 53)*

	Baseline	Follow-up†
Personal (direct) smoking		
Ever smoked cigarettes, No. (%)	40 (76)	...
Currently smokes cigarettes, No. (%)	24 (45)	24 (45)
Daily smoking, mean No. of packs per day (SD)	1.0 (0.6)	1.0 (0.6)
Environmental tobacco smoke exposure, median (25th-75th interquartile range)		
Bar or tavern exposure, h in past 7 d	28 (20-40)	2 (0-10)‡
Other exposure, h in past 7 d	7 (0-20)	2 (0-15)§
Total exposure, h in past 7 d	40 (30-55)	10 (2-30)‡

*Environmental tobacco smoke exposure at follow-up excludes 3 subjects who no longer worked in bars. Including these subjects, exposure at follow-up was bar or tavern median, 2 (interquartile range, 0-9) hours; other, 2 (0-10) hours, and total, 10 (2-30) hours. Ellipses indicate data not applicable.

†All comparisons are $P > .99$ unless otherwise indicated (McNemar test for current smoking, paired t test for daily smoking).

‡ $P < .001$ by Wilcoxon signed rank test.

§ $P = .07$ by Wilcoxon signed rank test.

Table 4.—Respiratory and Sensory Irritation Symptoms in Bartenders Before and After Prohibition of Smoking in Bars (n = 53)

	Prevalence of Symptoms		Change in Symptoms at Follow-up*			
	Baseline, No. (%)	Follow-up, No. (%)	Reduction, No.	Increase, No.	No Change, No.	P Value†
Any respiratory symptom‡	39 (74)	17 (32)	23	1	29	<.001
Wheezing	17 (32)	8 (15)	12	3	38	.02
Dyspnea	10 (19)	4 (8)	8	2	43	.06
Cough, morning	28 (53)	12 (23)	17	1	35	<.001
Cough, rest of day or night	26 (49)	6 (11)	21	1	31	<.001
Phlegm production	28 (53)	6 (11)	22	0	31	<.001
Any sensory irritation symptom‡	41 (77)	10 (19)	32	1	20	<.001
Eye	22 (42)	3 (6)	20	1	32	<.001
Nose	32 (60)	8 (15)	25	1	27	<.001
Throat	13 (25)	7 (13)	9	3	41	.08

*Reduction, symptoms at baseline but none at follow-up; increase, no symptoms at baseline and new symptoms at follow-up; and no change, either symptomatic at both interviews or asymptomatic at both interviews.

†Any respiratory symptom and any sensory irritation symptom are primary end points. Individual symptom analyses are secondary.

‡McNemar χ^2 test, comparing observed change in symptoms over time with that expected by chance. For example, of the 39 subjects with any respiratory symptom at baseline, 23 (59%) no longer had symptoms at follow-up ($P < .001$).

Table 5.—Pulmonary Function in Bartenders Before and After Prohibition of Smoking in Bars (n = 53)*

Measurement	Baseline Mean (SE) [% Predicted]	Follow-up Mean (SE) [% Predicted]	Change, Mean (95% CI)†	% Change‡
FEV ₁ , L/s	3.38 (0.13) [89.2 (2.4)]	3.42 (0.14) [89.9 (2.4)]	0.039 (-0.030 to 0.107)	1.2
FVC, L	4.43 (0.15) [95.5 (2.2)]	4.62 (0.17) [99.8 (2.4)]	0.189 (0.082 to 0.296)	4.2
FEF _{25%-75%} , L/s	3.37 (0.19) [81.6 (3.5)]	3.18 (0.17) [80.3 (3.8)]	-0.190 (-0.405 to 0.025)	-5.7

*FEV₁ indicates forced expiratory volume in 1 second; FVC, forced vital capacity; FEF_{25%-75%}, forced expiratory flow, midexpiratory phase; and CI, confidence interval.

†95% CIs are based on paired t test.

‡Compared with baseline value of pulmonary function measurement.

highly variable, declined during the study period.

As with symptom end points, we performed additional analyses to control for the effects of recent URIs and personal smoking. Excluding the 8 subjects who reported URIs in the 4 weeks prior to baseline, we found a statistically significant improvement in both FVC (0.233 L; 95% CI, 0.124-0.343 L) and FEV₁ (0.083 L; 95% CI, 0.015-0.151 L). After further stratification by smoking status, we observed a similar estimated improvement in FVC among smokers (0.238 L; 95% CI, 0.081-0.395 L) and nonsmokers (0.229 L; 95% CI, 0.063-0.394 L). The FEV₁ in-

crease was also comparable among smokers (0.096 L; 95% CI, -0.013 to 0.204 L) and nonsmokers (0.070 L; 95% CI, -0.020 to 0.159 L), although the CIs did not exclude no significant change.

Compared with some continued ETS exposure in bars or taverns at follow-up, complete workplace exposure cessation was associated with improved FVC (0.287 L; 95% CI, 0.088-0.486 L) and FEV₁ (0.142 L; 95% CI, 0.020-0.264 L), after controlling for current smoking, decreased daily cigarette consumption, and recent URIs. Expressed as an adjusted mean percentage change, FVC and FEV₁ increased by 6.8% and 4.5%, respectively. After con-

trolling for these covariates, FEF_{25%-75%} also increased during follow-up, but the effect was not statistically significant (0.081 L; 95% CI, -0.349 to 0.511 L). A history of asthma, when added to the model, was not associated with change in pulmonary function ($P > .60$). Excluding the 3 subjects no longer working as bartenders at follow-up did not appreciably change the effect estimates or CIs.

To evaluate a dose-response relationship, we repeated the multivariate analysis using 3 categories of workplace ETS exposure at follow-up: none, moderate (1-6 hours), and high (≥ 7 hours). Bartenders with complete workplace ETS exposure cessation had improved FVC (0.326 L; 95% CI, 0.009-0.565 L) and FEV₁ (0.157 L; 95% CI, 0.001-0.303 L), relative to those indicating persistent high-level workplace exposure. Compared with bartenders reporting only moderate levels of ETS exposure in bars or taverns, complete workplace exposure cessation was associated with a smaller improvement in FVC (0.244 L; 95% CI, 0-0.489 L) and FEV₁ (0.127 L; 95% CI, -0.024 to 0.277 L).

Relationship Between Symptoms and Pulmonary Function

We repeated the multiple linear regression analyses to evaluate whether pulmonary function improved in 2 separate strata: subjects whose respiratory symptoms resolved (n = 23) and subjects with persistent or new symptoms (n = 30) at follow-up. In bartenders who reported resolution of respiratory symptoms, complete cessation of workplace ETS exposure was associated with improved FVC (0.464 L; 95% CI, 0.172-0.757 L) and FEV₁ (0.202 L; 95% CI, 0.002-0.403 L). The subjects with continued symptoms also experienced improvement in FEV₁ (0.146 L; 95% CI, -0.010 to 0.302 L) and FVC (0.139 L; 95% CI, -0.164 to 0.441 L), although the CIs overlap no change.

Bartenders' Attitudes About the Health Effects of ETS and the Prohibition of Smoking

Eleven (21%) of the 53 bartenders expressed the belief that ETS exposure has no adverse effect on their personal health. The remaining 42 bartenders believed that ETS has a slight effect (40%) or moderate-to-severe effect (40%) on their health.

When asked about their personal attitude toward the prohibition of smoking in bars, 24 (45%) of the 53 bartenders strongly or somewhat (19%) disagreed with the legislative ban. The remaining bartenders were neutral (9%), somewhat agreed (8%), or strongly agreed (19%). Most bartenders who believed that ETS has a moderate-to-severe adverse health effect agreed with the prohibition of smoking in bars

(67%), compared with those who thought ETS had a slight or no effect on their health (16%; $P < .001$).

Bartender attitudes were related to smoking status. A greater proportion of nonsmoking bartenders (52%) believed that ETS had a moderate-to-severe health effect than smoking bartenders (27%; $P = .06$). Similarly, more nonsmokers agreed with the legislation (59%) than smokers (12%; $P < .001$).

COMMENT

Our study indicates that self-reported workplace ETS exposure was ubiquitous among bartenders, with most reporting heavy exposure. After statewide legislation mandating smoke-free bars and taverns was enacted, San Francisco bartenders reported a substantial reduction in workplace ETS exposure. The prevalence of respiratory and sensory irritation symptoms, which initially affected the majority of bartenders, declined markedly after the smoking ban. Similarly, pulmonary function improved following reduction of workplace ETS exposure, after controlling for personal smoking and URIs.

In previous studies, prohibition of workplace smoking has effectively reduced employee ETS exposure. Smoke-free workplaces have been associated with decreased personal cigarette consumption,^{40,42} public smoking,⁴³ and self-reported ETS exposure.⁴⁴ In addition, workplace smoking bans result in dramatic reduction of indoor airborne nicotine concentrations, reflecting decreased ambient ETS levels.^{22,45,46} The efficacy of smoking prohibition in bars and taverns, however, has been less well established. After smoking was prohibited in a sports tavern, investigators found decreased respiratory suspended particulate concentrations, suggesting lower ETS levels.⁴⁶ The present study indicates that legislative prohibition of smoking substantially reduced, but did not eliminate, self-reported workplace ETS exposure among bartenders.

In adults, the evidence linking ETS exposure with respiratory symptoms has been inconclusive. Several studies have demonstrated an association between self-reported obstructive lung disease and ETS exposure.^{15,16,47} A recent cross-sectional study of 4187 nonsmoking Swiss adults found an increased risk of wheeze, dyspnea, and bronchitis symptoms in subjects reporting ETS exposure during the past year.¹⁰ Similarly, workplace ETS exposure was related to increased cough, phlegm production, and dyspnea in 80 adults enrolling in a fitness program.⁴⁸ Other studies, however, have not demonstrated a consistent, significant increase in respiratory symptoms in adults exposed to household^{11-14,17,18} or workplace ETS.¹⁷ Furthermore, a smoking ban in sev-

eral Canadian office buildings was not associated with any significant reduction in respiratory symptoms 1 year later.⁴² Our study, which demonstrated reduced respiratory symptoms after prohibition of workplace smoking, helps confirm the adverse impact of ETS exposure on immediate respiratory health.

Environmental tobacco smoke contains potent respiratory irritants, such as ammonia, sulfur dioxide, acrolein, and formaldehyde,² that could potentially impair lung function. In several cross-sectional epidemiologic studies, ETS exposure was associated with small reductions in FEV₁ (2.8%-6.7%)⁴⁹⁻⁵³ and FVC (2.6%-5.4%)^{49,53} compared with unexposed subjects. Another study found no impact of ETS exposure on FEV₁ or FVC, but FEF_{25%-75%} was reduced.⁵⁴ A recent prospective investigation of 26 bar workers demonstrated a significant reduction in FEV₁ (0.042 L) immediately following ETS exposure during a work shift.⁵⁵ Not all studies, however, have found consistent pulmonary function decrements.^{11,56} Although the effect of ETS exposure cessation on adult lung function has not been characterized, the salutary effect of personal cigarette smoking cessation is well established. Several studies demonstrated modest increases in FEV₁ (1.2%-4.8%) shortly after personal smoking cessation.⁵⁷⁻⁶¹ Our study suggests that lung function may also improve, to a small degree, after cessation of heavy ETS exposure.

Although we adhered to a standard spirometry protocol,³⁸ we cannot exclude the contribution of training to the observed pulmonary function improvement. The proportionally larger increase in FVC than FEV₁, in particular, could be consistent with a learning effect. The CIs, however, are broad, with overlap between the estimated relative improvement in FEV₁ and FVC. Also, the FEV₁ improvement is similar to the acute decrement previously described in bar workers after a work shift.⁵⁵ Similarly, the unadjusted relative increase in FEV₁ (1.2%) is comparable with the FEV₁ change described in both smoking cessation studies⁵⁷⁻⁶¹ and cross-sectional studies of ETS.⁴⁹⁻⁵³ The unadjusted FVC improvement (4.2%) also seems compatible with the ETS-related decrement described in epidemiologic studies.^{49,53} Finally, the unexpected trend toward decreasing FEF_{25%-75%}, a highly variable measure, disappeared after adjustment for smoking and URIs. Overall, the improvement in lung function is consistent with a causal effect of reduced workplace ETS exposure.

The present study has several additional limitations, including the use of interviews to assess ETS exposure and symptom status. Interview administration by an unblinded investigator could

have biased subject responses, although we attempted to maintain standard conditions. Although many studies demonstrate modest correlations between self-reported ETS exposure and biomarker levels, such as serum cotinine,^{20,62,63} we cannot exclude some systematic misclassification of exposure. For example, bartenders with respiratory symptoms might be more likely to report ETS exposure, whereas asymptomatic subjects might underreport exposure. Similarly, controversy generated by the smoke-free bar and tavern legislation could have biased symptom reporting. If subjects who agreed with the smoking ban were more likely to report symptom reduction, the observed improvement in symptom status could be inflated. However, the majority of subjects disagreed with the new legislation, which would not be expected to favorably bias symptom reporting. Moreover, the objective measure of pulmonary function helps validate the reduction in respiratory symptoms.

The low participation rate by bars and taverns (30%) raises the concern of generalizability to all bars. Owner attitude toward the smoking ban could have influenced their decision to allow study participation, making systematic differences between participating and nonparticipating bars possible. However, we found no differences in any characteristic examined between participating and nonparticipating establishments. Importantly, business size, which is 1 determinant of ambient ETS concentration,⁶⁴ did not differ.

Similarly, differences between study participants and the entire population of San Francisco bartenders could limit the generalizability of our results. To assess how representative our sample was, we compared our subjects with an available bartender group from the same sampling area. Participating bartenders were younger and more likely to be female than unionized bartenders; there were no differences in race. Unionized workers, however, are generally more likely to be older and male than the general working population,⁶⁵ potentially explaining these observed differences. Although we found little evidence of systematic differences between our sample and the target population, residual differences may still limit the generalizability of our findings to all bartenders in San Francisco, and more broadly, in California overall.

The small sample size, while not likely to affect study generalizability, limited our power to detect differences in some aspects of respiratory health. The unadjusted improvement of FEV₁, in particular, had a CI including no change. Similarly, there was limited power to detect a dose-response relationship. Although we

attempted to perform parsimonious regression analyses, the sample size was small for multivariate procedures.

Finally, confounding by personal smoking and URIs could potentially explain the observed improvement in respiratory health. After statistically controlling for these issues, we still observed improvement in respiratory symptoms and lung function after prohibition of smoking. Reliance on self-report, however, raises the possibility that unmeasured baseline URIs or reduced active smoking could still partially explain the observed improvement in respiratory health indexes.

Our study demonstrates that reduced ETS exposure, occurring after implementation of smoke-free workplace legislation, was associated with improved adult respiratory health during a short observation period. In addition to potentially reducing the long-term risk of lung cancer and cardiovascular disease, workplace smoking prohibition appears to have immediate beneficial effects on adult respiratory health.

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Tobacco Smoke Exposure in Nonsmoking Hospitality Workers before and after a State Smoking Ban

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Abstract

Secondhand smoke exposure is estimated to account for 3,000 cancer deaths per year. Although several countries and states in the United States have passed comprehensive smoke-free laws to protect all employees, a significant number of workers are still not protected. The purpose of this study was to determine the effects of passing a comprehensive smoking ban that included bars and restaurants on biomarkers of nicotine and carcinogen exposure. The urines of nonsmoking employees ($n = 24$) of bars and restaurants that allowed smoking before the smoke-free law were analyzed before and after the law was passed in Minnesota. The results showed significant reductions in both total cotinine and 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanol (free plus glucuronidated) after the ban was instituted. These results provide further support for the importance of protecting employees working in all venues. *Cancer Epidemiol Biomarkers Prev*; 19(4); 1016–21. ©2010 AACR.

Introduction

Exposure to secondhand smoke (SHS) has been consistently identified as a public health hazard and cause of disease (1). The U.S. Environmental Protection Agency (EPA) classified SHS as a group A carcinogen (2) and the International Agency for Research on Cancer (IARC) also classified SHS as carcinogenic to humans (3). SHS exposure has been associated with the increased risks for lung cancer (1, 3), coronary heart disease (1), and possibly respiratory disease (1). The health risks of SHS are no longer in dispute, leading to a number of local ordinances and state legislative initiatives that have restricted smoking in public places. Due to these smoking bans, cotinine levels have decreased approximately 50% to 70% in nonsmokers as observed in state and national surveys (4, 5). Although causality cannot be inferred, a cross-sectional study has shown a dose-response relationship between exposure to SHS, as measured by cotinine, and extensiveness of clean indoor air acts in subject's county of residence (6). As of August 2009, 27 states had implemented smoke-free workplace policies that include restaurants and bars (7).

Even with an overall increase in restrictions in smoking in public places, a significant number of smoke-free workplace policies still do not include hospitality venues such

as bars, restaurants, and casinos. Establishment owners have proposed exemptions to these laws claiming economic hardship if these venues were to become smoke free. Unfortunately, these exemptions have resulted in greater SHS exposure among some hospitality workers. For example, bartenders have a 2- to 4-fold increase in SHS exposure compared with table waiting staff (8). Siegel and Skeer (9) found that workers in these venues had three to four times greater excess risk of lung cancer mortality than those exposed to the "typical de manifestis" levels used to determine obligatory regulation of a hazardous worksite. Similarly, in the Boston pubs tested by Repace et al. (10), before a smoking ban, indoor air quality did not meet the Occupational Health and Safety Significant Standards for environmental exposure. According to the EPA Air Quality Index, levels of outdoor fine particulate matter at several of these pubs averaged in the "very unhealthy" category. These findings on SHS exposure indicate that hospitality workers may be at an increased health risk in the absence of comprehensive indoor air policies.

The enactment of comprehensive smoke-free workplace laws in some U.S. states as well as in other countries has provided an opportunity to examine the effect of these laws on tobacco toxicant exposure among workers in these venues. The results from these studies should allay the questions about positive health benefits from comprehensive bans. These studies show significant reductions in air levels of small particulate matter (11–18), particulate polycyclic aromatic hydrocarbons (10, 19), nicotine (20), and benzene (11) after enactment of smoking bans. Similarly, countries that have instituted nationwide laws prohibiting indoor smoking in public places showed significantly lower levels of small particulate matter in these venues than countries without such bans (21). Additionally, nonsmoking workers had a significant reduction in levels

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of cotinine, a metabolite of nicotine (4, 11-15, 20, 22-24), or nicotine levels in hair (25). To date, no study has examined employee exposure to both nicotine and 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone, a potent tobacco-specific lung carcinogen found in tobacco smoke, before and after the implementation of a comprehensive ban. Such an opportunity occurred when Minnesota enacted a comprehensive statewide law prohibiting smoking in virtually all indoor workplaces, including bars and restaurants, beginning October 1, 2007.

Materials and Methods

The study was submitted to and approved by the University of Minnesota's Institutional Review Board: Committee on the Use of Human Subjects.

Eligible subjects were nonsmokers who worked in bars, restaurants, or bowling alleys where smoking was allowed before October 1, 2007 when the statewide smoke-free law took effect. Subjects were recruited through local tobacco control leaders. They were recruited from the following Minnesota communities: Thief River Falls, Duluth, St. Cloud, Red Wing, and Moorhead. Recruitment of subjects was done by local tobacco control leaders, who contacted nonsmoking bar, restaurant, and bowling alley employees who reported work exposure to tobacco smoke. The local recruiters informed the potential participant of the opportunity to participate in a study with the University of Minnesota and ClearWay MinnesotaSM (an independent, nonprofit organization funded by the state's 1998 tobacco settlement with the tobacco industry). They were told that this study would investigate the health effects of the upcoming statewide smoke-free law. Interested potential subjects were instructed to telephone the University of Minnesota's Tobacco Use Research Center, at which time they provided oral consent to be screened over the phone for study eligibility.

Potential participants who reported they were currently not using tobacco or nicotine products and had not used them for the last 6 mo, lived in a nonsmoking household, and were employed in a hospitality venue where they were exposed to SHS for shifts of 6 or more hours were informed of the study procedures. Interested subjects were mailed a packet that included a letter describing the study, a consent form, and a Demographics and Smoke Exposure Environment form with questions about typical work hours and extent of tobacco smoke exposure at work, in the home and when socializing. The questionnaire also included questions on their employment venues, size of smoking and nonsmoking sections, and their employer's policy on smoking. Subjects mailed the consent form and the Smoke Exposure questionnaire back to the Tobacco Use Research Center in a self-addressed, stamped envelope. Subjects received a urine cup in the packet for the sample collection that was to occur within the 2 wk before the law going into effect on October 1, 2007. A Sample Day Questionnaire was to be completed the morning the urine

sample was collected. This questionnaire asked about the number of hours worked the day preceding the sample collection, occupancy at the hospitality venue, and the estimated percentage of patrons who smoked during the subjects' shift. Subjects were instructed to collect the urine sample from their first void in the morning, after they had completed at least a 6 h shift the day before. The urine samples and the Sample Day Questionnaire were returned to the local contact where the sample was frozen until shipment. The samples were sent to the University of Minnesota on ice in thermal coolers through overnight shipment.

Urine cups and the second Sample Day Questionnaire were mailed out to the subjects to obtain the post-October 1 sample. Samples were collected 4 to 8 wk after the law went into effect. The post-October 1 sample was also frozen and shipped by the local contact to the University of Minnesota. Subjects were compensated \$100 for providing both urine samples.

Analysis was done by the University of Minnesota Transdisciplinary Tobacco Use Research Center Biomarkers Core laboratory. Samples were analyzed for creatinine and urinary metabolites of 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone, 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanol (NNAL) and its glucuronides (NNAL-Glucs), or total NNAL, as previously described (26). In addition, samples were analyzed for total cotinine (cotinine plus cotinine-N-glucuronide) as previously described (27). The biomarker values are presented as both unadjusted and adjusted for creatinine to correct for urine volume.

Summary statistics included number and percentage of subjects for categorical variables and the mean, SD, median, range, and 95% confidence intervals for continuous variables. For statistical analysis, total NNAL levels below the detection limit were given a value of 0.0025 pmol per milligram of creatinine, whereas those for total cotinine were assigned a value of 1.0 nanogram per milligram of creatinine, both of which are approximately half the detection limit. Due to a skewed distribution to high values, both total cotinine and total NNAL were transformed to the natural logarithmic scale. The difference of the log-transformed biomarkers before and after the smoking ban is reported as the corrected geometric mean and confidence interval using Cox's method (28). These mean values represent the estimated average ratio of the measurements before and after the ban. The differences in total NNAL and total cotinine levels before and after the smoking ban were evaluated with the two-sided Wilcoxon signed-rank test.

The Spearman correlation measured the association between total NNAL and total cotinine levels and exposure to SHS at work. *P* values of <0.05 were considered statistically significant. All analyses were done using SAS version 9.1 (SAS Institute, Inc.).

Results

Thirty-one subjects provided oral consent by telephone and 24 returned the written consent form, completed the

Table 1. SHS exposure before and after the smoking ban

Amount of SHS exposure	Before smoking ban	After smoking ban
Duration of shift, h (mean $\pm$ SD)	8.0 $\pm$ 2.1 (range, 6-15)	7.7 $\pm$ 2.4 (range, 4-15)
Time in smoking areas, h (mean $\pm$ SD)	7.2 $\pm$ 2.9 (range, 1-15)	—
Smoke exposure outside of work (no. of subjects)	4	1
Smoke exposure outside of work, h (mean $\pm$ SD)	1.9 $\pm$ 2.8 (range, 0-6)*	0.25

*The extents of exposure were 15, 35 min, 1, and 6 h for the four individuals.

additional questionnaires, and returned both urine samples. All subjects were Caucasian and 15 were female. They worked in a bar and grill ($n = 7$), bar ($n = 5$), restaurant ($n = 6$), bowling alley ($n = 5$), and one subject did not provide information on their hospitality workplace. They averaged 29.6 years of age (range, 18-58) and worked an average of 3.9 (SD, 1.4) shifts per week and 6.9 (SD, 1.3) hours per shift. The mean percent of the hospitality venues considered as a smoking section was 52.2% (SD, 35.5%; range, 10-100%). The mean number of hours spent in the smoking section before the ban was estimated to be about 7.2 (SD, 2.9; range, 1-15 hours). Nineteen subjects indicated that they were around smokers most or all of the time at work and four indicated exposure to SHS outside of work some of the time ($n = 3$) or very often ($n = 1$). None or very little exposure to SHS outside of the work environment was reported by 20 of the participants.

Table 1 shows the extent of SHS exposure at the workplace and outside the workplace just before the time of urine collection before and after the statewide smoke-free law went into effect.

Table 2 shows the data for each subject. Although one subject (#14) had a seemingly high total cotinine level, the total NNAL level was consistent for an SHS-exposed nonsmoker; therefore, his data were retained in the analysis. One subject (#24) had total NNAL and total cotinine levels that were higher than would be expected for a nonsmoker. The data were analyzed with and without this data point, and because no differences were found in the analyses, the subject's data were retained.

Nineteen of 24 workers (79%) showed at least a 50% reduction in total cotinine and 13 (54%) showed at least a 50% reduction in total NNAL. One subject had levels at the limit of detection for total cotinine before and after the ban; two subjects had levels that were at the limit of detection before the ban and slightly higher after the ban; and one subject had slightly higher levels after the ban when the value was adjusted for creatinine. For total NNAL, the respective numbers of subjects in these categories were 6, 2 and 1, respectively.

Table 3 shows the median percent decreases in total cotinine and total NNAL after the ban, geometric means for the before the ban/after the ban ratios of total NNAL and total cotinine, and the median differences in these biomarkers before and after the ban. Significant reductions

were seen for all measures ($P \leq 0.001$). Levels of total NNAL (pmol/mg creatine) were significantly correlated with number of hours worked in the smoking section ($r = 0.43$; $P < 0.05$), but total cotinine (ng/mg creatinine) was not ($r = 0.20$; $P > 0.30$).

Discussion

The results of this study are consistent with others that we have conducted, examining SHS exposure levels in patrons and workers in restaurants and bars (29-31). In one of the prior studies, total NNAL and total cotinine were measured in workers at bars and restaurants that allowed smoking (30). Twenty-four hour urine collections were obtained during and after their work day and during a nonwork day. The results showed that for total cotinine the median difference was 7.5 ng/mL and the mean difference was 11.6 ng/mL on work days compared with nonwork days. The values were 0.025 and 0.033 pmol/mL, respectively, for total NNAL. In another study, total NNAL and cotinine levels of 32 nonsmoking workers in bars and restaurants that prohibited smoking were compared with 52 nonsmoking employees of bars and restaurants where smoking was allowed (31). The employees of restaurants and bars where smoking was permitted were significantly more likely to have detectable levels of urinary total NNAL as well as urinary total cotinine and to experience thrice greater increase in levels of total NNAL and 10 times greater increase in total cotinine levels compared with workers in similar venues that did not allow smoking.

It is notable that eight of the subjects in the current study did not have detectable levels of total NNAL before the ban. Five of these eight subjects were employees of two restaurants. The low levels of total NNAL may have been a function of the level of exposure on the day that they collected urine samples; perhaps they had higher exposure on other days. The 57% to 77% reductions in total NNAL levels is consistent with studies that have shown reductions in particulate matter or respirable suspended particles that range from 68% to 99%, with the majority of studies showing >80% reductions (10-17, 19, 32). The percent reduction in total NNAL exceeds the 30% coefficient of variation observed across repeated total NNAL measurements in smokers, according to our

Table 2. Preban and postban urinary total cotinine and total NNAL levels in nonsmoking hospitality workers

ID	When	Total cotinine		Total NNAL	
		ng/mL*	ng/mg creatinine†	pmol/mL*	pmol/mg creatinine†
1	Preban	26	11.4	LOD	LOD
	Postban	5	3.2	LOD	LOD
2	Preban	39	23.9	0.168	0.103
	Postban	5	8.6	0.026	0.0448
3	Preban	18	9.1	0.035	0.0179
	Postban	6	4.7	LOD	LOD
4	Preban	12	21.4	LOD	LOD
	Postban	2	2.9	0.021	0.0304
5	Preban	25	18.7	0.097	0.0726
	Postban	3	2.2	LOD	LOD
6	Preban	26	10.1	0.049	0.0192
	Postban	LOD	LOD	LOD	LOD
7	Preban	26	12.0	0.084	0.0387
	Postban	10	12.5	0.041	0.0516
8	Preban	7	6.1	0.018	0.0157
	Postban	LOD	LOD	LOD	LOD
9	Preban	42	25.9	0.127	0.0782
	Postban	7	3.9	0.019	0.0104
10	Preban	LOD	LOD	0.008	0.0034
	Postban	3	Not available	LOD	LOD
11	Preban	66	58.4	0.219	0.194
	Postban	LOD	LOD	LOD	LOD
12	Preban	8	8.1	0.055	0.0553
	Postban	2	1.2	LOD	LOD
13	Preban	LOD	LOD	LOD	LOD
	Postban	5	2.2	LOD	LOD
14	Preban	390	500	0.069	0.0888
	Postban	9	20.0	0.022	0.0489
15	Preban	18	14.3	0.104	0.0828
	Postban	LOD	LOD	LOD	LOD
16	Preban	4	3.3	LOD	LOD
	Postban	LOD	LOD	0.017	0.0120
17	Preban	LOD	LOD	LOD	LOD
	Postban	LOD	LOD	LOD	LOD
18	Preban	6	5.1	LOD	LOD
	Postban	LOD	LOD	LOD	LOD
19	Preban	3	5.5	0.050	0.0909
	Postban	LOD	LOD	LOD	LOD
20	Preban	9	6.8	0.038	0.0288
	Postban	LOD	LOD	LOD	LOD
21	Preban	5	6.9	LOD	LOD
	Postban	2	2.3	LOD	LOD
22	Preban	7	5.3	0.092	0.0692
	Postban	LOD	LOD	LOD	LOD
23	Preban	15	20.5	LOD	LOD
	Postban	LOD	LOD	LOD	LOD
24	Preban	1,820	1,456	0.763	0.611
	Postban	651	455	0.509	0.356

*Unadjusted for creatinine.

†Adjusted for creatinine; total cotinine limit of detection (LOD), 1.0 ng per mg creatinine; total NNAL LOD, 0.0025 pmol per mg creatinine.

Table 3. Change in total cotinine and total NNAL from before to after the smoking ban ($n = 24$)

Biomarker	Median percent decrease after the ban	Geometric mean of before/after (95% CI)	Median difference (before minus after)	P (before minus after)
Total cotinine ng/mL*	83.3%	12.3 (5.7-26.6)	11.0	<0.001
Total cotinine ng/mg creatinine†	78.6%	9.3 (5.1-16.9)	6.9	<0.001
Total NNAL pmol/mL*	76.6%	21.4 (6.2-73.7)	0.039	<0.001
Total NNAL pmol/mg creatinine†	56.5%	19.8 (5.4-72.8)	0.018	0.001

Abbreviation: CI, confidence interval.

*Unadjusted for creatinine.

†Adjusted for creatinine; total cotinine LOD, 1.0 ng per mg creatinine; total NNAL LOD, 0.0025 pmol per mg creatinine.

unpublished data, but no similar data are available for nonsmokers exposed to SHS.

Unlike total NNAL, the majority of subjects did have detectable levels of total cotinine in their urine before the ban. Prior studies using cotinine as an outcome measure showed a reduction in levels preban and postban that ranged from 43% to 95% with a mean reduction of ~76% (4, 11-15, 20, 22-24, 33). These observations are in line with the ~80% reduction observed in total cotinine in this study and these findings are consistent with the 83% and 98% reduction observed in air nicotine concentrations observed before and after bans (15, 20). Similar to total NNAL, the coefficient of variation observed across repeated total cotinine measurements in smokers is ~30%, according to our unpublished data, but no data are available for nonsmokers exposed to SHS.

The levels of 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone and nicotine exposure reported here are significantly less than found among smokers. However, in spite of these low exposure levels, SHS is believed to contribute to 3,000 lung cancer deaths and >35,000 coronary heart disease deaths per year in the United States (1) and can negatively affect the health outcomes of individuals who already have a disease (34).

With accumulating findings such as those observed in this study, there is increasingly less challenge to the concept that reducing tobacco smoke in hospitality venues will reduce employee exposure to tobacco toxicants and ultimately reduce health risk. Consistent with significant reductions in exposures, smoke-free bans have resulted in a rapid effect on reduction in hospital admissions for acute myocardial infarctions in the community (35-37) as well as decreased respiratory symptoms and increased pulmonary function in bartenders (13, 24, 38) or other hospitality workers (23) and improved systemic inflammatory markers (24). Not only do these laws provide health benefits to employees and patrons, smoke-free workplace bans provide benefits to other groups. Rates of smoking initiation after bans are reduced in adolescents (39). A review of 26 studies before and after smoking bans estimated that bans resulted in a reduction in

the prevalence of smoking by 3.8%, reduction in the number of cigarettes per day by 3.1, and an estimated drop in U.S. consumption of 4.5% (40). In addition, smokers are more likely to make a quit attempt and be successful (41, 42). Studies also show minimal economic problems associated with bans (43).

A limitation of this study is that the subjects were self selected. They were recruited by local tobacco control leaders who support and in some cases work to advance comprehensive smoke-free workplace policies. It is possible that a participant may have altered his or her behavior to influence the study outcome. However, our results are consistent with other published studies on restaurant and bar workers showing decreased levels of cotinine and other tobacco related exposure biomarkers after smoking bans went into effect (11, 12, 20). Additional limitations included the lack of sensitivity in our analytic methods to adequately determine the concentrations of NNAL in all workers before the ban and only a single measurement point before and after the ban.

In summary, it is critical for states and communities to continue to support strict restrictions on smoking in workplaces to ensure that all employees, including those in the hospitality industry, are guaranteed a safe work environment, free of exposures to carcinogens and toxicants that enhance the risk of cancer, cardiovascular, and pulmonary disease.

Disclosure of Potential Conflicts of Interest

Dorothy Hatsukami is conducting a clinical trial supported by Nabi Biopharmaceuticals. The other authors disclosed no potential conflicts of interest.

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Second hand smoke, age of exposure and lung cancer risk

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Abstract

Background—Exposure to second hand smoke (SHS) has been identified as a risk factor for lung cancer for three decades. It is also known that the lung continues to grow from birth to adulthood, when lung growth stops. We hypothesize that after adjusting for active cigarette smoking, if SHS exposure took place during the period of growth i.e. in the earlier part of life (0 to 25 years of age) the risk of lung cancer is greater compared to an exposure occurring after age 25.

Method—Second hand smoke exposure was self-reported for three different activities (leisure, work and at home) for this study population of 1669 cases and 1263 controls. We created variables that captured location of exposure and timing of first exposure with respect to a study participant's age (0 - 25, >25 years of age). Multiple logistic regressions were used to study the association between SHS exposure and lung cancer, adjusting for age, gender and active smoking variables.

Result—For study participants that were exposed to SHS at both activities (work and leisure) and compared to one or no activity, the adjusted odds ratio (AOR) for lung cancer was 1.30(1.08-1.57) when exposure occurred between birth and age 25 and 0.66(0.21-1.57) if exposure occurred after age 25 years. Respective results for nonsmokers were: 1.29 (0.82-2.02) and 0.87 (0.22-3.38), and current and ex smokers combined 1.28 (1.04-1.58) and 0.66 (0.15-2.85).

Conclusion—All individuals exposed to SHS have a higher risk of risk of lung cancer. Furthermore, this study suggests that subjects first exposed before age 25 have a higher lung cancer risk compared to those for whom first exposure occurred after age 25 years.

Keywords

Second hand smoke; age of exposure; lung cancer risk

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Introduction

Lung cancer is the leading cause of cancer death for both men and women in the United States. Past studies have demonstrated the association between active cigarette smoking (mainstream smoke, MSS) or second hand smoke (SHS) exposure and the risk of adult non-small cell lung cancer (NSCLC). However, less is known about the effect of the age of exposure, particularly to SHS, on the risk of NSCLC (1-3). Most studies (4-18) have focused on paternal and maternal smoking during pregnancy and the effect on childhood illnesses and cancers in general or more recently the risk of lung cancer for non-smoking women exposed to tobacco smoke during childhood (19-28). Very few studies (19,22,29,30) have focused on the effect of the period of exposure relevant for lung cancer development while also assessing the significance of lifetime exposure by location.

The lung continues to grow from birth to adulthood (31) and most lung growth is over by age 18 (32-34), but lung volume continues to expand to 25, suggesting additional growth may occur (35-39). Exposure of target organs to carcinogens during periods of rapid cell division or childhood is known to increase the risk of cancer and elevated exposure to carcinogens has been associated with higher levels of both DNA-adducts and somatic aberrations in cancer cells and may lead to genetic abnormalities that result in the development into cancer (40,41).

SHS consists of emissions from cigarettes, pipes and cigars, as well as exhaled materials from MSS, which contains several chemicals including over 50 known carcinogens (40,42,43). The concentrations of benzo(a)pyrene, toluene, dimethylnitrosamines in SHS is much higher than in MSS, and the smaller particles in SHS are more likely to be deposited in the lung. SHS may induce DNA adducts, sister chromosome exchange (44), oxidative DNA damage (45,46), and increased number of *p53* mutations in lung cancer (47,48), suggesting a similar etiologic mechanism for cases exposed to SHS and to MSS.

SHS exposure may occur at home (including childhood exposure from parents/other family members and exposure from spouse/family members in adulthood), at work (occupational exposure), and at leisure (exposure at public places other than work). Due to public health education and as a result of legislation in several developed countries, exposure to second hand smoke is declining at work and public places but direct marketing to younger populations by tobacco companies has contributed to continued high exposure among youths (49-52). The intensity or frequency of exposure in work places has been noted to be generally higher than that of at home or leisure places (53), and results from a previous study has suggested that SHS exposure at work places may have a stronger effect on NSCLC risk than exposure at home or at leisure places (54).

We hypothesize that after adjusting for active cigarette smoking, if the SHS exposure took place during the critical period of growth i.e. in the earlier part of life (0 to 25 years of age) the risk of lung cancer is greater compared to an exposure occurring after age 25.

Materials and Methods

Study Population

This study was reviewed and approved by the Institutional Review Boards of the Massachusetts General Hospital and the Harvard School of Public Health. The study population of 1669 cases and 1263 controls is derived from a large case control study evaluating the molecular epidemiology of lung cancer, which began in 1992 at the Massachusetts General Hospital (MGH). Eligible cases included any person over the age of 18 years, with a diagnosis of primary lung cancer. An MGH lung pathologist confirmed all cases. The controls were the friends or spouses of cancer patients or the friends or spouses of other surgery patients in the same

hospital. Potential controls that carried a previous diagnosis of any cancer (other than non-melanoma skin cancer) were excluded from participation. Controls were recruited among friends and non-blood related family members of the cases (usually spouses) (41%). If friends of lung cancer patients were not available, controls were recruited from friends and family of patients either receiving thoracic surgery, chemotherapy or radiation treatment for a condition other than lung cancer (59%).

Data collection

Interviewer-administered questionnaires (a modified version of the detailed American Thoracic Society health questionnaire) collected information on demographics, occupational exposures, and detailed smoking histories from each subject. Some participants chose to complete the questionnaire at home, and return it by mail in a self-addressed stamped envelope. Participants were contacted by telephone when there was missing data. Age, gender, race, weight, education, medical history, smoking history, family history of cancer, work history, exposure to various substances, participation in many activities, and food preparation and consumption data were collected. Smoking status was defined as non-smoker (smoked less than one cigarette per day for less than a year), ex-smoker (quit smoking at least one month prior to diagnosis) and current smoker (at time of diagnosis). Pack-years were calculated to estimate the cumulative exposure to smoking by multiplying the number of packs smoked per day by the number of years smoked. Second hand smoke exposure was self-reported for three different activities (leisure, work and at home) and determined from information obtained in the health questionnaire. Exposure for each location was categorized as an indicator variable equal to 1 if the participant reported exposure to SHS and equal to 0 otherwise. We created a similar indicator variable that captured timing of first exposure with respect to a study participant's age (0 - 25, >25 years of age).

Population characteristics were tabulated, and significant differences in the distribution of the principal covariates were tested using the chi square, Fisher exact, and student t tests, where appropriate. Multiple logistic regressions was used to assess the association between second hand smoke and lung cancer risk, adjusting for age, gender, indicator variables for smoking status (non-smoker, ex-smoker and current smoker) and a continuous variable for cumulative smoking exposure (pack-years).

Statistical Analysis

Demographic and clinical information were compared across smoking and SHS locations for both cases and controls. Multiple logistic regression was used to assess the association between SHS and lung cancer risk, adjusting for age (continuous variable), gender, indicator variables for smoking status (non-smoker, ex-smoker and current smoker), a continuous variable for cumulative smoking exposure (pack-years) and an indicator variable for alcohol intake (yes, no). Where indicated, the odds ratio (OR) and 95 % confidence intervals (CI) for the risk of lung cancer was calculated from these models. All statistical testing was done at the two-sided 0.05 level, and SAS software version 9.1 (SAS Institute, Cary, NC) was used.

Results

Patient characteristics

There were a total of 1669 cases and 1263 controls. The distribution of demographic and clinical characteristics by smoking status is summarized in Table 1. Overall median age (standard deviation) was 62 (12) years, males were 49%; 604 (21%) non smokers, 1464 (50%) ex smokers, 864 (29%) current smokers; median packyears (standard deviation) for ex and current smokers 39 (37). Patients with early stage (stages I and II) numbered 803 (50%), with adenocarcinoma 698 (42%), squamous 339 (21%), others 615 (37%).

Table 2 shows the distribution of SHS exposure by location and age at exposure. No exposure to SHS at work or leisure 212 (7%), one activity 727 (25%), or both 1993 (68%). Persons with exposure to SHS between birth and age 25 numbered 403 (14%), and after age 25, 2529 (86%). Exposure at home was excluded from further analysis since there was little variability by outcome status (most subjects reported exposure from birth).

Adjusted odds ratios of SHS at work and leisure are shown in table 3. For study participants who were exposed to SHS at both activities and compared to one or no activity, the adjusted odds ratio (AOR) for lung cancer was 1.30(1.08-1.57) when exposure occurred between birth and age 25 and 0.66(0.21-1.57) if exposure occurred after age 25 years. Respective results for nonsmokers were: 1.29 (0.82-2.02) and 0.87 (0.22-3.38), and for current and ex smokers combined: 1.28 (1.04-1.58) and 0.66 (0.15-2.85).

Discussion

Previous studies of biochemical markers of exposure and toxicological studies, confirm that there is a causal association between the risk of NSCLC and exposure to SHS(2). Similar conclusions have been reached by past summary scientific reports (43,55). We suggest further that subjects first exposed before age 25 have a higher lung cancer risk compared to those for whom first exposure occurred after age 25 years. Consistent results are seen in our study for different smoking categories, i.e. current, past and non smokers. Our results go to further support the hypothesis that SHS has a similar harmful effect as for cases exposed to MSS.

Growing evidence (19,22,29,30) suggests that exposure to SHS in childhood increases the risk of lung cancer in adulthood. With the decline of adult smoking in public and work places in the United States and Europe but still very prevalent in other regions around the world, SHS exposure and associated risks are still a major source of uncontrolled exposure in younger individuals, especially in children without the ability to negotiate a smoke free environment at home, work or leisure. Most lung cancers occur in smokers but still a significant proportion (approximately 10%) develops in lifetime nonsmokers (56) and approximately 3,000 lung cancer deaths occur each year among adult nonsmokers in the United States as a result of exposure to SHS (57). No risk-free level of exposure to SHS exists(43) and exposure to SHS has also been linked with slowed lung growth in children (58). In a study that investigated the effects of SHS exposure in childhood and the subsequent risk of lung cancer among female primary lung cancer cases and their hospital based controls (matched on age, residential area and lifetime smoking status), Wang and colleagues (30) showed that passive smoking from household exposure to tobacco smoke significantly increased the risk of lung cancer for both smoking and non smoking pairs when exposed under the age of 15 years ($p<0.05$). In a similar study in Taiwan, Lee et al (22) found that environmental tobacco smoke exposure occurring in childhood increased the effect of high doses of exposure in adult life in the development of lung cancer. In women exposed to greater than 20 smoker-years, compared to never exposed, the risk of lung cancer was 1.8 (1.2-2.9). When the exposure was greater than 40 years the risk was 2.2 (1.4-3.7). In addition, when smoker-years was treated as a continuous variable, the increased risk associated with a one unit increase larger for childhood exposure compared to adulthood (1.35 vs.1.27). In a population-based case-control study of lung cancer among lifetime nonsmoking women and with measured lifetime residential and workplace environmental tobacco smoke, the odds ratio for women with passive exposure as a child and as an adult was 1.63 (0.8-3.5) and for those exposed only as an adult 1.20 (0.5-3.0). Although no increase was observed with childhood exposure only, there were just 2 cases in that category.

SHS exposure and associated risks are increasingly becoming a major source of uncontrolled exposure in younger individuals, especially in children without the ability to negotiate a smoke free environment at home, work or leisure. A worldwide study among students aged 13-15

years (58), showed that nearly half of never smokers were exposed to SHS at home (46.8%), and a similar percentage were exposed in places other than the home (47.8%). Never smokers exposed to SHS at home were 1.4-2.1 times more likely to be susceptible to initiating smoking than those not exposed. Students exposed to SHS in places other than the home were 1.3-1.8 times more likely to be susceptible to initiating smoking than those not exposed, especially for SHS exposure at home.

The strengths of this study include large sample size, relatively homogeneous population, and almost complete demographic and smoking information. However, we acknowledge several limitations to our study. As expected of a case control study, recall bias may have affected our results. Smoking and SHS exposure history were collected by questionnaire and patients' recall and are not validated biochemically. However, given the nature of controls (friends and non blood related family) the impetus to recall would be similar (non differential) across case status, with controls possibly as affected by diagnosis of friend or family member. Nondifferential misclassification biases to the null making the odds ratio a conservative estimate of the actual magnitude of association

We also observed similar and consistent results in different smoking categories. To ensure that control selection was representative we compared the smoking habits of our controls to the smoking habits of the general Massachusetts population and found no significance differences. It is most likely that these controls would have been referred to MGH for treatment, if they were to become cases as they were either their spouses or friends. Residual confounding may be another limitation that exists for the results in our study. We observed a slightly stronger effect of SHS exposure among smokers as compared to non smokers, which may be explained partly by residual confounding. However, the associations were consistent in different subgroups of smoking status (past, current and non smokers), and we adjusted for pack-years of smoking and years since cessation (for past smokers) in all of the analysis. Residual confounding may bias the magnitude of the association but it is unlikely to change the direction of the association. In our analysis we did not adjust for the duration or the amount of SHS exposure.

To conclude, results from this epidemiological study support the evidence that individuals first exposed to SHS before age 25 have a higher lung cancer risk compared to those for whom first exposure occurred after age 25 years. These results need to be confirmed by other independent studies and further studies are needed to more accurately assess the SHS exposure and fully investigate the SHS-age of exposure interaction and to what extent this is influenced by the duration or the amount of SHS exposure.

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Table I

Table Ia. Demographic Characteristics (by smoking status) of Study Subjects

	Never smokers		Ex-smokers		Current smokers		Whole population	
	Cases (n=138)	Controls (n=466)	Cases (n=894)	Controls (n=570)	Cases (n=637)	Controls (n=227)	Cases (n=1669)	Controls (n=1263)
Age *	62(13)	57(13)	68 (9)	61 (10)	61(10)	54 (11)	65 (10)	59 (12)
Cigarette smoking								
Pack-years			53 (36)	29 (27)	64 (37)	38 (27)	53 (38)	20 (27)
Years since quit			15 (12)	20 (12)			8 (11)	9 (13)

Table Ib. Demographic Characteristics (by smoking status) of Study Subjects

	Never smokers		Ex-smokers		Current smokers		Whole population	
	Cases (n=138)	Controls (n=466)	Cases (n=894)	Controls (n=570)	Cases (n=637)	Controls (n=227)	Cases (n=1669)	Controls (n=1263)
Gender **								
Male	56 (41)	177 (38)	512 (57)	290 (51)	321 (50)	86 (38)	889 (53)	553 (44)
Female	82 (59)	289 (62)	382 (43)	280 (49)	316 (50)	141 (62)	780 (47)	710 (56)
Race								
White	129 (97)	451 (96)	871 (98)	561 (98)	610 (96)	220 (97)	1610 (97)	1232 (97)
Non white	9 (3)	15 (4)	23 (2)	9 (2)	27 (4)	7 (3)	59 (3)	31 (3)
Histology								
Adenocarcinoma	72 (54)		374(42)		252 (40)		698 (42)	
Squamous cell	10 (8)		189 (21)		140 (22)		339 (21)	
Other	51 (38)		324 (37)		240 (38)		615 (37)	
Stage								
I and II	57 (43)		460 (53)		286 (46)		803 (50)	
III and IV	75 (57)		409 (47)		331 (54)		815 (50)	

* Entries are mean (SD)

** Entries are counts(%); some subjects have incomplete data on stage and histology

Table II

Distribution of SHS variables for all subjects

	Non smokers + < 15cigarette pack-years		Non Smokers		Ex-smokers		Current Smokers		Whole population	
Exposure at all ages	Cases (n=267)	Controls (n=732)	Cases (n=138)	Controls (n=466)	Cases (n=894)	Controls (n=570)	Cases (n=637)	Controls (n=227)	Cases (n=1669)	Controls (n=1263)
Home										
No	42 (16)	115 (16)	24 (17)	73 (16)	76 (9)	78 (14)	21 (3)	15 (7)	121 (7)	166 (13)
Yes	25 (84)	617 (84)	114 (83)	393 (84)	818 (91)	492 (86)	616 (97)	212 (93)	1548 (93)	1097 (87)
Work										
No	85 (32)	306 (42)	53 (38)	200 (43)	117 (13)	159 (28)	84 (13)	66 (29)	254 (15)	425 (34)
Yes	182 (68)	426 (58)	85 (62)	266 (57)	777 (87)	411 (72)	553 (87)	161 (71)	1415 (85)	838 (66)
Leisure										
No	64 (24)	178 (24)	39 (28)	129 (28)	118 (13)	82 (14)	84 (13)	20 (9)	241 (14)	231 (18)
Yes	203 (76)	554 (76)	99 (72)	337 (72)	776 (87)	488 (85)	553 (87)	207 (91)	1428 (86)	1032 (82)
Exposure after age 25										
Home										
No	14 (25)	52 (29)	9 (26)	32 (25)	20 (26)	37 (40)	8 (17)	9 (36)	37 (23)	78 (32)
Yes	41 (75)	126 (71)	25 (74)	96 (75)	58 (74)	55 (60)	38 (83)	16 (64)	121 (77)	167 (68)
Work										
No	39 (71)	129 (72)	25 (74)	91 (71)	49 (63)	61 (66)	26 (57)	20 (80)	100 (63)	172 (70)
Yes	16 (29)	49 (28)	9 (26)	37 (29)	29 (37)	31 (34)	20 (43)	5 (20)	58 (37)	73 (30)
Leisure										
No	45 (82)	137 (77)	31 (91)	100 (78)	54 (69)	62 (67)	35 (76)	14 (56)	120 (76)	176 (72)
Yes	10 (18)	41 (23)	3 (9)	28 (22)	24 (31)	30 (33)	11 (24)	11 (44)	38 (24)	69 (28)
Exposure up to age 25										
Home										
No	28 (13)	63 (11)	15 (14)	41 (12)	56 (7)	41 (9)	13 (2)	6 (3)	84 (6)	88 (9)
Yes	184 (87)	491 (89)	89 (86)	297 (88)	760 (93)	437 (91)	578 (98)	196 (97)	1427 (94)	930 (91)
Work										
No	46 (22)	177 (32)	28 (27)	109 (32)	68 (8)	98 (21)	58 (10)	46 (23)	154 (10)	253 (25)
Yes	166 (78)	377 (68)	76 (73)	229 (68)	748 (92)	380 (79)	533 (90)	156 (77)	1357 (90)	765 (75)
Leisure										
No	19 (9)	41 (7)	8 (8)	29 (9)	64 (8)	20 (4)	49 (8)	6 (3)	121 (8)	55 (5)
Yes	193 (91)	513 (93)	96 (92)	309 (91)	752 (92)	458 (96)	542 (92)	196 (97)	1390 (92)	963 (95)

Table III
Adjusted Odds Ratio (95%CI) of SHS duration at Work and Leisure places and lung cancer risk*

All subjects (1669 cases, 1261 controls)

Exposure after age 25	
SHS at one or no activity	Referent
SHS at two activities	0.66 (0.21-1.57)
Exposure up to age 25	
SHS at one or no activity	Referent
SHS at two activities	1.30 (1.08-1.57)
Nonsmokers + < 15cigarette pack-years (272 cases, 740 controls)	
Exposure after age 25	
SHS at one or no activity	Referent
SHS at two activities	0.94 (0.31-2.80)
Exposure up to age 25	
SHS at one or no activity	Referent
SHS at two activities	1.30 (0.96-1.76)
Nonsmokers (138 cases, 766 controls)	
Exposure after age 25	
SHS at one or no activity	Referent
SHS at two activities	0.87 (0.22-3.38)
Exposure up to age 25	
SHS at one or no activity	Referent
SHS at two activities	1.29 (0.82-2.02)
Ex smokers (894 cases, 570 controls)	
Exposure after age 25	
SHS at one or no activity	Referent
SHS at two activities	1.03 (0.10-10.20)
Exposure up to age 25	
SHS at one or no activity	Referent
SHS at two activities	1.55 (0.94-2.56)
Current smokers (693 cases, 227 controls)	
Exposure after age 25	
SHS at one or no activity	Referent
SHS at two activities	4.29 (0.153-119.99)
Exposure up to age 25	
SHS at one or no activity	Referent
SHS at two activities	1.08 (0.76-1.53)
Current and ex smokers combined (1587 cases, 797 controls)	
Exposure after age 25	
SHS at one or no activity	Referent
SHS at two activities	0.66 (0.15-2.85)
Exposure up to age 25	
SHS at one or no activity	Referent
SHS at two activities	1.28 (1.04-1.58)

* Logistic regression models were used, adjusting for age, gender, active cigarette Smoking (smoking status, pack-years, years since cessation), and smoking cigar/pipe.

** Exposure at home was excluded from further analysis since there was little variability by outcome status (most subjects reported exposure from birth).

Hi, my name is _____

Here is something to think about. Children make up a marketable cigarette consumer base.

Why? Because **most adults don't make** the decision to start smoking at the age of 30. **Instead it is teens who are picking up the habit.** The younger a person starts to smoke, the more highly addicted they will become, the longer the person will smoke, and the more likely it is that they will die of a tobacco related disease.

Let me share a quote with you from R.J. Reynolds Tobacco Co. Marketing Plan:

"They represent tomorrow's cigarette business.... At the time 14-24 age group matures, they will account for a key share of the total cigarette volume- for at least the next 25 years."

In fact, more than half of all smokers begin smoking before the age of 14 and 90% begin by the age of 19. The average age of the first use is 13-14 years of age.

Let me highlight some **Arkansas** tobacco statistics.

- **3900** Arkansas kids (under 18) become new daily smokers each year.
- **7.6 million packs** of cigarettes are bought or smoked by kids each year in Arkansas

Furthermore, Secondhand smoke impacts us also.

- A child who lives with a smoker inhales the equivalent of **102 packs** of cigarettes in just five years.
- **177,000** Kids in Arkansas are **exposed to secondhand smoke at home**
- Children who live in a smoke-filled environment are more likely to start smoking themselves.

This means that 64,000 kids in Arkansas will die prematurely from smoking

As a **representative of Fayetteville youth**, I **pledge** to continue to **educate my peers** about the problems of smoking. Unfortunately when it comes to secondhand smoke, I can do little to protect themselves. **So I ask you, as elected officials, to protect the young adults of Fayetteville from the dangers of secondhand smoke. Thank you.**

Handsel Art
7 June 2011
contact J.R. Few
handselart@marioncountv.com
<http://handselart.blogspot.com/>
or 870-427-1365

*Smoking
City Council Meeting 6/7/11
Amend 95.05 Regulation
of Smoking in most
Public Places*

ADDRESS TO THE FAYETTEVILLE, AR CITY COUNCIL

Thank you for the opportunity to speak this evening.

My name is J.R. Pinky Few. I'm Creative Director for Handsel Art and Advertising. I've been a tobacco free advocate for about a decade. In 2006 I was recognized with the Trailblazer Award by the Coalition for a Tobacco Free Arkansas. The National Public Health Communications Coalition cited my work in print media w gold and silver awards in 2007. In 2009 I was invited to speak on effective rural media at the ASH Wales conference in Cardiff, Wales. I currently work as a volunteer w the Arkansas Cancer Coalition on the Communications Committee and act as co-chair of the Lung Cancer Work Group.

I have to ask why a public health issue as evidence based as smoke free air is being debated. The Surgeon General Richard Carmona's report in 2006 stated that there was unequivocally no safe exposure to secondhand smoke. Surgeon General Regina Benjamin's 2010 report, "explains beyond a shadow of a doubt how tobacco smoke causes disease, validates earlier findings, and expands and strengthens the science base." She adds, "Armed with this irrefutable data, the time has come to mount a full-scale assault on the tobacco epidemic". So why are we here?

George Santayana is quoted that those who do not learn from history are doomed to repeat it.

In 1954, responding to growing epidemiological evidence relating tobacco to disease, the tobacco industry took out a full page ad in 400 of the largest newspapers in the country. Titled a "Frank statement to cigarette smokers", it promised to work closely with public health officials to understand the speculation about tobacco and disease. This spawned the creation of the Tobacco Industry Research Committee. That developed into the American Tobacco Institute and marks the beginning of decades of deceit and manipulation of our laws and public opinion. In 2006 a Federal Court convicted the tobacco industry of Racketeering and Fraud. In her final opinion Judge Gladys Kessler notes,

"These public promises were intended to deceive the American public into believing that there was no risk associated with passive smoking and that Defendants would fund objective research to find definitive answers. Instead, over the decades that followed, Defendants took steps to undermine independent research, to fund research designed and controlled to generate industry favorable results, and to suppress adverse research results."

We are here because this historic fraud was, and continues to be, so very successful. The industry created, funds, and manipulates hospitality groups and smokers clubs to create the illusion that there was any question about the science or rights behind clean indoor air. Smoking is a privilege. Breathing is a right.

We hear concerns about lost business revenue when there are no legitimate, peer reviewed studies of tax receipts that do not show clean indoor air to be revenue neutral or advantageous to smoke free businesses. The only business that loses money with clean indoor air is the tobacco business.

I'll warrant you're hearing the same pro tobacco arguments today that you heard in 2003. The forecast economic doom didn't happen then either. And in fact since 2003 research has shown that comprehensive smoke free space significantly reduces deaths from cardiovascular disease. In 2003 the study in Helena, Montana showed a 42% reduction in area heart attacks after a comprehensive law. This was replicated in Pueblo NM, in CA, in NY, in Italy. The National Academy of Sciences concluded from 11 key studies that comprehensive smoke free air in public spaces reduced heart attacks from 6% to 47% . These results were often seen almost immediately in many cases. This makes sense because we know that even brief exposure compromises the cardiovascular system.

Because of the lag time between exposure and cancers we have not seen the reduction among cancer deaths caused by tobacco smoke yet. However, the California EPA has classified secondhand smoke as a Toxic Air Contaminant and as such subject to regulation even out of doors. This finding was the result of research showing a casual relationship between adult asthma, pre-term deliveries, and a significantly increased risk of breast cancer among primarily younger pre-menopausal women. This is pertinent today because so many young women work in bars before they start a family.

The risk of death from heart disease or cancer should never be a condition of employment or patronage.

100 years ago infectious disease was the leading cause of death. Simple sanitation, clean water and hand washing, saved millions of lives. Today tobacco is the leading cause of death and second hand smoke is the third leading cause. 100 years ago we did not have multinational corporations hiding behind rhetoric minimizing the risks to public health and claiming personal liberties. Today we do. We don't force this rhetoric on sanitation or hand washing requirements. We don't carefully weigh an individual's right to build unsafely, to drive drunk or faster than the speed limit. Why should we phrase the question about clean indoor air as one of personal liberties? The fact is we shouldn't. Smoke free air is a matter of public health. The only place that rights come into play is a human right to every opportunity for health and safety.

Clean indoor air requirements are simple and will save lives. Smoke free air protects nonsmokers, helps smokers quit, and is the example to young people that tobacco is never appropriate, desirable, or normal.

The data and ethics are straightforward and clear. It is well past time for comprehensive clean indoor air. That is why we are here.

Thank you.

###

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Tentative Agenda City of Fayetteville Arkansas City Council Meeting June 7, 2011

A meeting of the Fayetteville City Council will be held on June 7, 2011 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

City Council Agenda Session Presentations:

- 1. Economic Development Contract Quarterly Update Report** by the Fayetteville Chamber of Commerce representatives Chung Tan, Curtis Northcutt and Steve Clark
- 2. Drainage, Sidewalk, and Overlay Program Presentation** – presented by Don Marr, Terry Gulley, and Chris Brown/Sarah Wrede.

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

- 1. Approval of the May 17, 2011 City Council meeting minutes.**

2. **Bid #10-56 Upchurch Electrical Supply Company:** A resolution authorizing the purchase of twelve (12) additional LED fixtures in the amount of \$15,408.00 plus applicable sales tax from Upchurch Electrical Supply Company pursuant to Bid #10-56 for street installation near the Fayetteville Public Library, and approving a budget adjustment.
3. **Bid #11-30 Meridian Construction Management, Inc.:** A resolution awarding Bid #11-30 and authorizing a contract with Meridian Construction Management, Inc. in the amount of \$26,890.00 for demolition of the Lake Sequoyah boat dock, and approving a fifteen percent (15%) project contingency.
4. **Bid #11-35 King Electrical Contractors, Inc.:** A resolution awarding Bid #11-35 and authorizing a contract with King Electrical Contractors in the amount of \$54,581.00 for construction and installation of an emergency electrical generator at the Fayetteville Senior Center, and approving a ten percent (10%) project contingency.
5. **Bid #11-38 RJR Enterprises, Inc.:** A resolution awarding Bid #11-38 and authorizing a contract with RJR Enterprises, Inc. in the amount of \$67,739.00 for construction of recreational swings at Lake Fayetteville Park, and authorizing a ten percent (10%) project contingency.
6. **Multi-Craft Contractors, Inc.:** A resolution authorizing a contract with Multi-Craft Contractors, Inc. in the amount of \$26,290.00 for one (1) HVAC unit and associated equipment for the Yvonne Richardson Center, and approving a ten percent (10%) project contingency.
7. **Amend Resolution No. 04-10:** A resolution amending Resolution No. 04-10 and approving an agreement with Arkansas Western Gas Company in the amount of \$127,675.44 for relocation of gas lines and appurtenances as part of the RSA Runway 16 Improvement Project at the Fayetteville Executive Airport.
8. **Fayetteville Police Department Policies:** A resolution approving Fayetteville Police Department Policies 1.3.4 Less Lethal Weapons, 41.1.1 Patrol, and 61.1.12 Police Traffic Radar Operation.
9. **2011 ADEQ Recycling Grant:** A resolution authorizing application for a 2011 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$23,500.00 to fund a pilot apartment recycling container.
10. **Arkansas Highway and Transportation Department Contract:** A resolution authorizing a contract with the Arkansas Highway and Transportation Department for design of water and sewer relocations relating to the widening of Crossover Road (State Highway 265) between Joyce Boulevard and Albright Road.
11. **Beaver Water District:** A resolution authorizing a contract with the Beaver Water District for land application disposal of water treatment residuals.

B. Unfinished Business:

- 1. Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment:** An ordinance to amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment of the Fayetteville Code by removing the exemption for bars. *This ordinance was left on the First Reading at the May 3, 2011 City Council meeting. This ordinance was left on the Second Reading at the May 17, 2011 City Council meeting.*

Left on the Second Reading

C. New Business:

- 1. RZN 11-3799 (Corner of Mount Comfort and Oakland Avenue/Oakland Courts):** An ordinance rezoning that property described in rezoning petition RZN 11-3799, for approximately 1.43 acres, located at the corner of Mount Comfort Road and Oakland Avenue from RMF-24, Residential Multi-Family, 24 units per acre to CS, Community Services.
- 2. VAC 11-3837 (1849 South Garland Avenue ROW Vacation):** An ordinance approving VAC 11-3837 submitted by Morgan Hooker for property located at 1849 South Garland Avenue to vacate a portion of an un-constructed right-of-way, a total of 258 square feet.
- 3. Bid #11-37 Dean Crowder Construction, Inc.:** A resolution awarding Bid #11-37 and authorizing a contract with Dean Crowder Construction, Inc. in the amount of \$3,815,173.70 for construction of improvements to Cato Springs Road and Razorback Road to School Avenue, approving a five percent project contingency, and approving a budget adjustment.

City Council Tour: Monday, June 6, 2011 at 4:30 p.m. The Council will tour the Westside Wastewater Treatment Plant and Woolsey Prairie.

Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

City of Fayetteville Staff Review Form

A. 2
 Bid #10-56 Upchurch
 Electrical Supply Company
 Page 1 of 12

**City Council Agenda Items
 and
 Contracts, Leases or Agreements**

6/7/2011

City Council Meeting Date
 Agenda Items Only

John Coleman

Submitted By

Sustainability & Strategic Planning

Division

Chief of Staff

Department

Action Required:

A resolution to approve the purchase of twelve (12) LED fixtures in the amount of \$15,408 utilizing Bid 10-56 from Upchurch Electric. The LED fixtures will be installed on streets adjacent to the Fayetteville Public Library. There is a budget adjustment attached to fund the entire amount and it will true up the Energy Grant in all sub-projects to date.

\$ 15,408.00
 Cost of this request

\$ 150,000.45
 Category / Project Budget

Energy Block Grant
 Program Category / Project Name

2240.9240.5315.00
 Account Number

\$ 137,923.45
 Funds Used to Date

Energy Block Grant
 Program / Project Category Name

09011.0030
 Project Number

\$ 12,077.00
 Remaining Balance

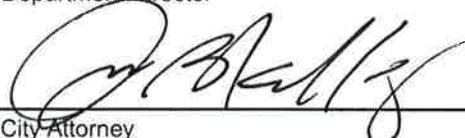
Energy Block Grant
 Fund Name

Budgeted Item ☐Budget Adjustment Attached ☒


 Department Director

Date

Previous Ordinance or Resolution #


 City Attorney

Date

Original Contract Date:

Original Contract Number:


 Finance and Internal Services Director

Date

Received in City Clerk's Office 05-13-11 10:03 RCVD



 Chief of Staff

Date

Received in
 Mayor's Office


 Mayor

Date



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: John Coleman, Sustainability & Strategic Planning Director

Date: May 18, 2011

Subject: Fayetteville Public Library LEDs

PROPOSAL:

Staff requests approval of a resolution for the purchase of twelve (12) LED fixtures in the amount of \$15,408 utilizing Bid 10-56 from Upchurch Electric. The LED fixtures will be installed on streets adjacent to the Fayetteville Public Library.

RECOMMENDATION:

The purchase of the LED fixtures was advertised on August 25, 2010 as Bid #10-56 with official bids received on September 15th, 2010. Upchurch Electrical Supply Company was low bid. The official bid tab is attached as well as the original resolution.

In October 2010, staff began field testing the LED light fixtures submitted by Upchurch Electrical to ensure they met specification standards. In March, City Council approved the purchase of twenty-five (25) LEDs for Frisco Trail specified in Bid #10-56. This request for LEDs at the Fayetteville Public Library serves as the second purchase from Bid #10-56.

BUDGET IMPACT:

The LED fixtures will be purchased using funds from the Energy Efficiency and Conservation Block Grant as part of the American Recovery and Reinvestment Act (ARRA) in the amount of \$15,408 plus tax. Existing poles will be used.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE PURCHASE OF TWELVE (12) ADDITIONAL LED FIXTURES IN THE AMOUNT OF \$15,408.00 PLUS APPLICABLE SALES TAX FROM UPCHURCH ELECTRICAL SUPPLY COMPANY PURSUANT TO BID #10-56 FOR STREET INSTALLATION NEAR THE FAYETTEVILLE PUBLIC LIBRARY, AND APPROVING A BUDGET ADJUSTMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the purchase of twelve (12) additional LED fixtures in the amount of \$15,408.00 plus applicable sales tax from Upchurch Electrical Supply Company pursuant to Bid #10-56 for street installation near the Fayetteville Public Library.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "A".

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 2
Bid #10-56 Upchurch
Electrical Supply Company
Page 1 of 12

Budget Year 2011	Division: Strategic Planning & Internal Consulting Department: Chief of Staff	Request Date 6/7/2011	Adjustment Number
----------------------------	--	---------------------------------	--------------------------

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

Additional funding is needed for the LED lights sub-project and for the Community Revolving Loan Fund and this BA also trues up each sub-project YTD..



Division Head 	Date 5/20/11	Prepared By: Peggy Bell	<i>ehutchens</i>
Budget Director 	Date 5/20/11	Reference: Energy Block Grant	
Department Director 	Date 5-20-2011	Budget & Research Use Only	
Finance Director 	Date 5-23-11	Type: A B C D E P	
Chief of Staff 	Date 5/23/11	General Ledger Date	6/7/2011
Mayor 	Date 5/23/11	Posted to General Ledger	Initial Date
		Checked / Verified	Initial Date

TOTAL BUDGET ADJUSTMENT

Account Name	Account Number	Increase / (Decrease)		Project.Sub Number
		Expense	Revenue	
ADDPublications & dues	2240.9240.5303.00	1,200	-	09011 . 0030
Professional services	2240.9240.5314.00	(1,200)	-	09011 . 0030
Contract services	2240.9240.5315.00	5,000	-	09011 . 0050
Minor equipment	2240.9240.5210.00	(5,000)	-	09011 . 0050
Public notification	2240.9240.5301.00	637	-	09011 0020
Professional services	2240.9240.5314.00	4,456	-	09011 0020
Other special projects	2240.9240.5342.99	(5,093)	-	09011 0020
Minor equipment	2240.9240.5210.00	18,505	-	09011 0010
Fixed assets	2240.9240.5801.00	8,926	-	09011 0010
Contract services	2240.9240.5315.00	(27,431)	-	09011 0010
Contract services	2240.9240.5315.00	4,531	-	09011 0030
Professional services	2240.9240.5314.00	(4,531)	-	09011 0010
Other special projects	2240.9240.5342.99	5,456	-	09011 0020
Professional services	2240.9240.5314.00	(5,456)	-	09011 0010
			-	
			-	
			-	
			-	
			-	
			-	

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

P-Cards shall be used when possible. If a vendor does not accept P-Card, please note at the bottom (Call x256 with questions)
 All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

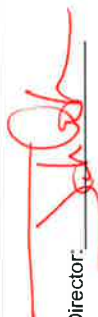
Vendor #		Vendor Name:		Upchurch Electric		Fob Point:		Requisition No.:		Date: 5/18/2011	
Address:		2355 N Gregg Street		State: AR		Zip Code: 72703		P.O Number:		Expected Delivery Date	
City: Fayetteville		Requester: John Coleman		Ship to code:		Requester's Employee #: 2974		Extension: 272		Inventory #	
Item		Description		Quantity		Unit of Issue		Unit Cost		Extended Cost	
1		Bid 10-56 - LEDs		12		EA		1,284.00		\$15,408.00	
2											
3											
4											
5											
6											
7											
8											
9											
10											
.		Shipping/Handling				Lot					
Special Instructions:											
Subtotal: \$15,408.00 Tax: \$0.00 Total: \$15,408.00											

Approvals:

Mayor: _____

Finance & Internal Services Director: _____

Dispatch Manager: _____

Department Director: 

Budget Manager: _____

Utilities Manager: _____

Purchasing Manager: _____

Chief Of Staff: _____

Other: _____

RESOLUTION NO. 104-10

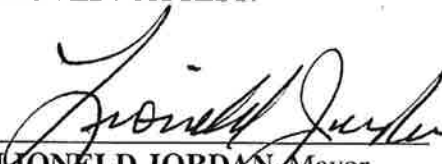
A RESOLUTION AWARDING BID #10-40 AND APPROVING THE PURCHASE OF THIRTY-THREE (33) LED LIGHT FIXTURES AND POLES IN THE AMOUNT OF \$60,351.89 FROM DYNAMIC LIGHTING SOLUTIONS FOR INSTALLATION ON SCULL CREEK TRAIL BETWEEN NORTH STREET AND MAPLE AVENUE

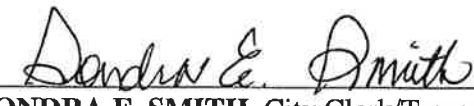
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #10-40 and approves the purchase of thirty-three (33) LED light fixtures and poles in the amount of \$60,351.89 from Dynamic Lighting Solutions for installation on Scull Creek Trail between North Street and Maple Avenue.

PASSED and APPROVED this 15th day of June, 2010.

APPROVED: ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk/Treasurer



City of Fayetteville Staff Review Form

A. 2
 Bid #10-56 Upchurch
 Electrical Supply Company
 Page 7 of 12

**City Council Agenda Items
 and
 Contracts, Leases or Agreements**

6/15/2010

City Council Meeting Date
 Agenda Items Only

John Coleman
 Submitted By

Division

Sustainability
 Department

Action Required:

Approve purchase of 33 LED light fixtures and poles from Dynamic Lighting Solutions on Scull Creek Trail to be installed on the section from North Street to Maple Avenue

\$46,363.52 (lights)	\$150,000 (lights)	Energy Block Grant
\$13,988.37 (poles)	\$ 1,248,847.00	Trails
Cost of this request	Category / Project Budget	Program Category / Project Name
2240.9240.5315.00 (lights)	\$18,483.27 (lights)	Energy Block Grant
4520.9550.5814.05 (poles)	\$ 130,894.00	Trails
Account Number	Funds Used to Date	Program / Project Category Name
09011.0030 (lights)	\$131,516.73 (lights)	Energy Block Grant
06036.1004 (poles)	\$ 1,117,953.00	Trails
Project Number	Remaining Balance	Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐


 Department Director 6/3/10
 Date

Previous Ordinance or Resolution # _____


 City Attorney 6-3-10
 Date

Original Contract Date: _____

Original Contract Number: _____


 Finance and Internal Services Director 6-3-2010
 Date

Received in City Clerk's Office



 Chief of Staff 6-3-10
 Date

Received in Mayor's Office



 Mayor 6/4/10
 Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8272

CORRESPONDENCE

TO: Mayor Jordan and City Council
FROM: John Coleman, Sustainability Director *JC*
Thru: Don Marr, Chief of Staff
DATE: May 28, 2010
SUBJECT: LEDs on Scull Creek

Description

Using funds from the Energy Efficiency and Conservation Block Grant as part of the American Recovery and Reinvestment Act (ARRA), the City is set to purchase 33 LED lights at a cost of \$42,438 from Dynamic Lighting. Existing trail funds will cover the \$12,804 cost for the 33 poles. The lights will be installed on the section of Scull Creek Trail that extends from Maple Avenue to North Street.



BID: 10-56
 DATE: 09/15/10
 2:00 PM
 CITY OF FAYETTEVILLE

Bid 10-56, Frisco Trail LED Lighting Equipment

Item	Description	Quantity	<i>Upchurch Electric</i>	
			Price Each	Total Price
1	Lighting Fixture	25	\$1,284.00	\$32,100.00
	Manufacturer		Beacon	
	Model		PIE20/PC/LED60W-120/DIR3/LSP/EQS/BG/AA-38/B/BG	
2	Fiberglass Pole	25	\$546.00	\$13,650.00
	Manufacturer		NPG	
	Model		WPODS15ASDS4DB-GRN	
TOTAL BID PRICE:			\$45,750.00	

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED: P. Vice J. Foren 9/15/10
 P. VICE, PURCH MGR WITNESS DATE



City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8220

TDD (Telecommunication Device for the Deaf): 479.521.1316

INVITATION TO BID

INVITATION TO BID: Bid 10-56, Frisco Trail LED Lighting Equipment

DEADLINE: Wednesday, September 15, 2010 at 2:00 PM, Local Time

DELIVERY LOCATION: Room 306 – 113 W. Mountain, Fayetteville, AR 72701

PURCHASING AGENT: Andrea Foren, CPPB, aforen@ci.fayetteville.ar.us, 479.575.8220

DATE OF ISSUE AND ADVERTISEMENT: Wednesday, August 25, 2010

INVITATION TO BID BID 10-56, Frisco Trail LED Lighting Equipment

No late bids shall be accepted. Bid's shall be submitted in sealed envelopes labeled "Bid 10-56, Frisco Trail LED Lighting Equipment" with the name and address of the bidder.

All Proposals shall be submitted in accordance with the attached City of Fayetteville specifications and bid documents attached hereto. Each Proposer is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection. Any bid, proposal, or statements of qualification will be rejected that violates or conflicts with state, local, or federal laws, ordinances, or policies.

The undersigned hereby offers to furnish & deliver the articles or services as specified, at the prices & terms stated herein, and in strict accordance with the specifications and general conditions of bidding, all of which are made a part of this offer. This offer is not subject to withdrawal unless upon mutual written agreement by the Proposer/Bidder and City Purchasing Manager.

Name of Firm: Upchurch Electric
Contact Person: DARRELL STRANGE Title: Sales
E-Mail: DARRELLS@UPCHURCHELECTRICAL.COM Phone: 479-521-2823
Business Address: 2355 North Gregg St.
City: FAYETTEVILLE State: AR. Zip: 72703
Signature: [Signature] Date: 9/15/10

City of Fayetteville
Bid 10-56, Frisco Trail LED Lighting Equipment
SECTION D: Statement of Disclosure – To Be Submitted With ALL BIDS

This page does not count towards page limitations set forth in this request for proposal or bid.

Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

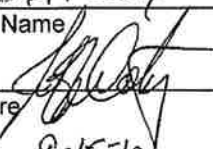
PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

 X 1) NO KNOWN RELATIONSHIP EXISTS

 2) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID OR PROPOSAL:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

Jeff Doty
Printed Name

Signature
9-15-10
Date

City Council Agenda Items
and
Contracts, Leases or Agreements

6/7/2011

City Council Meeting Date
Agenda Items Only

Byron Humphry

Submitted By

Park Maintenance

Division

Parks and Recreation

Department

Action Required:

A resolution awarding Bid #11-30 and approval of a contract with Meridian Construction Management, Inc. in the amount of \$26,890, with a 15% project contingency of \$4,034 for a total project cost of \$30,924 for the Boat Dock Demolition at Lake Sequoyah.

\$ 30,924.00
Cost of this request

\$ 90,000.00
Category / Project Budget

Lake Sequoyah Improvements
Program Category / Project Name

2250.9256.5806.00
Account Number

\$ -
Funds Used to Date

Lake Sequoyah Improvements
Program / Project Category Name

02043.2
Project Number

\$ 90,000.00
Remaining Balance

Park Land Dedication (SE)
Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Commie E. Morston
Department Director 5-20-11
Date

Previous Ordinance or Resolution #

Bob Kelly
City Attorney 5-20-11
Date

Original Contract Date:

Original Contract Number:

Paula A. Behn
Finance and Internal Services Director 5-20-2011
Date

Received in City 5-20-11 P12:10 RCVD
Clerk's Office

Don Man
Chief of Staff 5-23-11
Date

Received in
Mayor's Office



Donald Jordan
Mayor 5/23/11
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director

From: Byron Humphry, Maintenance Superintendent 

Date: May 19, 2011

Subject: **Bid #11-30, Boat Dock Demolition at Lake Sequoyah
Agenda Request for June 7, 2011 Meeting**

PROPOSAL:

Lake Sequoyah Park, consisting of 1,400 acres, is one of the city's three lake properties serving the city as well as the adjacent neighborhoods and communities. The park is situated in the southeast quadrant of town and is located at 6608 East Lake Sequoyah Drive.

There are four boat docks at Lake Sequoyah that were constructed in or around 1957. The boat docks are wooden with sheet metal roofing. The docks are supported by wooden pilings that are set in the lake bottom. Over the years, the submersed wooden pilings have deteriorated at and below the waterline to the point that they are no longer structurally sound. The water level at Lake Sequoyah fluctuates with rain events and frequently floods the docks exposing the girders and deck boards to water and mud. This repeated action of flooding and drying for the past 50 plus years has further increased the deterioration of the support structures and has compromised the overall structural integrity of the docks. As a result, the docks were closed in January 2011 and all boats were removed in preparation for demolition. The project was approved as part of the 2010 CIP.

The project was advertised on May 2 and 9, and bids were opened on May 18, 2011. Eleven vendors including Arkansas Wrecking Company of Oklahoma, Inc., Barnes Construction Company, Inc., Benchmark Construction, Booher Construction, General Construction Solutions, Inc., Heckathorn Construction Company, Inc., JL Bryson, Inc., Larry Diggs Construction, Inc., Lipsmeyer Demolition, Inc., Meridian Construction Management, Inc. and Tomlinson Asphalt Company, Inc. submitted bids. Meridian Construction Management, Inc. was the low bid in the amount of \$26,890. (See attached bid tabulation sheet.) If approved, the demolition project is anticipated to begin in July 2011 and be completed in fall 2011.

RECOMMENDATION:

A resolution awarding Bid #11-30 and approval of a contract with Meridian Construction Management, Inc. in the amount of \$26,890, with a 15% project contingency of \$4,034 for a total project cost of \$30,924 for the Boat Dock Demolition at Lake Sequoyah.

BUDGET IMPACT:

This project is funded with Park Land Dedication (SE) funds (\$90,000). Total project cost including a 15% project contingency is \$30,924.

Attachments:

Bid Tabulation Sheet

Contract Agreement Signed by Contractor

Purchase Requisition

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-30 AND AUTHORIZING A CONTRACT WITH MERIDIAN CONSTRUCTION MANAGEMENT, INC. IN THE AMOUNT OF \$26,890.00 FOR DEMOLITION OF THE LAKE SEQUOYAH BOAT DOCK, AND APPROVING A FIFTEEN PERCENT (15%) PROJECT CONTINGENCY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-30 and authorizes a contract with Meridian Construction Management, Inc. in the amount of \$26,890.00 for demolition of the Lake Sequoyah boat dock.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a fifteen percent (15%) project contingency.

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



A. 3
Bid #11-30 Meridian Construction
Management, Inc.
Page 5 of 10
BID: 11-30
DATE: 05/18/11
TIME: 3:00 PM
CITY OF FAYETTEVILLE

Bid 11-30, Boat Dock Demolition at Lake Sequoyah

BIDDER	TOTAL BID PRICE
1 Ark Wrecking Company of Oklahoma, Inc.	\$124,980.00
2 Barnes Construction Company, Inc.	\$52,520.00
3 Benchmark Construction	\$57,800.00
4 Booher Construction	\$67,500.00
5 General Construction Solutions, Inc.	\$84,444.00
6 Heckathorn Construction Company, Inc.	\$85,687.00
7 JL Bryson, Inc.	\$80,000.00
8 Larry Diggs Construction, Inc.	\$44,687.00
9 Lipsmeyer Demolition, Inc.	\$75,000.00
10 Meridian Construction Management, Inc.	\$26,890.00
11 Tomlinson Asphalt Company, Inc.	\$44,800.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

05/18/11

DATE



THE CITY OF FAYETTEVILLE, ARKANSAS

www.accessfayetteville.org

CONTRACT

REFERENCE BID: 11-30, Boat Dock Demolition at Lake Sequoyah

Contractor: Meridian Construction Management, Inc.

Term: Single Project

This contract executed this ____ day of _____, 2011, between the City of Fayetteville, Arkansas, and **Meridian Construction Management, Inc.** In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Meridian Construction Management, Inc.** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 11-30 as stated in **Meridian Construction Management, Inc.** bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 11-30, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay **Meridian Construction Management, Inc.** based on their bid proposal in an amount not to exceed **\$26,890.00.** Payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after receipt of invoice. Not to exceed price shall include any applicable local, state, and federal taxes as stated in the bid documents.
3. The Contract documents which comprise the contract between the City of Fayetteville and **Meridian Construction Management, Inc.** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 11-30 with the specifications and conditions typed thereon.
 - B. **Meridian Construction Management, Inc.** bid proposal.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City of Fayetteville and **Meridian Construction Management, Inc.** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Meridian Construction Management, Inc.**
5. **Meridian Construction Management, Inc.** shall not assign its duties under the terms of this agreement.
6. **Meridian Construction Management, Inc.** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from **Meridian Construction Management, Inc.** performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

7. **Meridian Construction Management, Inc.** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet, the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, **Meridian Construction Management, Inc.** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workmen's Compensation

Statutory Amount

**Comprehensive General &
Automobile Insurance**

Bodily Injury Liability

\$500,000 for each person injured.
\$1,000,000 for each accident.

Property Damage Liability

\$1,000,000 aggregate.

The premiums for all insurance and the bond required herein shall be paid by **Meridian Construction Management, Inc.**

8. **Meridian Construction Management, Inc.** to furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or **Meridian Construction Management, Inc.** with 10 days written notice.
10. **Freedom of Information Act:** City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
11. **Changes in Scope or Price:** Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost or fees.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2011.

**CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS**

LIONELD JORDAN, Mayor

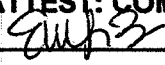
Attest:

Sondra Smith, City Clerk



CONTRACTOR
BY Bodie T. Bell, President
NAME AND TITLE

ATTEST: COMPANY SECRETARY



PO Box 538, Rogers AR 72757
BUSINESS ADDRESS

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)
All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Requisition No.:	Date: A. 3
P.O Number:	6/7/2011 Bid #11-30 Meridian Construction Management, Inc.
	Expected Delivery Date: Page 9 of 10

Vendor #:	Vendor Name: Meridian Construction Management, Inc.	Mail Yes:___ No:___
-----------	---	---------------------

Address: PO Box 538	Fob Point:	Taxable Yes:___ No:___	Quotes Attached Yes:___ Bid,Tab___ No:___
---------------------	------------	------------------------	---

City: Rogers	State: AR	Zip Code: 72757	Ship to code:	Divison Head Approval: 
--------------	-----------	-----------------	---------------	--

Requester: Byron Humphry, Maintenance Superintendent	Requester's Employee #: 2557	Extension: 368
--	------------------------------	----------------

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Boat Dock Demolition at Lake Sequoyah	1	1	LS	\$26,890.00	2250.9256.5806.00	02043.2		
2					\$0.00				
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

Special Instructions: Tax is included in the bid price.	Subtotal: \$26,890.00 Tax: _____ Total: \$26,890.00
--	---

Approvals:		
Mayor: _____	Department Director: _____	Purchasing Manager: _____
Finance & Internal Services Director: _____	Budget Manager: _____	IT Manager: _____
Dispatch Manager: _____	Utilities Manager: _____	Other: _____

City of Fayetteville Staff Review Form

A. 4
 Bid #11-35 King Electrical
 Contractors, Inc.
 Page 1 of 12

City Council Agenda Items
 and
 Contracts, Leases or Agreements

JUNE 7

City Council Meeting Date
 Agenda Items Only

Larry Rennie Building Maintenance Finiance
 Submitted By Division Department

Action Required:

Approve a contract with King Electrical Contractors, Inc for \$54,581 to add a 100KW emergency generator and associated equipment at the Fayetteville Senior Center located at 945 S College Ave. A 10% contingency of \$5,458 is requested for a total approval request of \$60,039.

<u>\$60,039</u> Cost of this request	<u>\$ 617,307.00</u> Category / Project Budget	<u>Building Improvements</u> Program Category / Project Name
<u>4470-9470-5400:00</u> Account Number	<u>\$34,360</u> Funds Used to Date	<u>other improvements</u> Program / Project Category Name
<u>02046-0202</u> Project Number	<u>\$ 582,947.00</u> Remaining Balance	<u>Sales Tax Capital</u> Fund Name

Budgeted Item ☒ Budget Adjustment Attached ☐

Paul A. Burch 5-3-2011
 Department Director Date

Previous Ordinance or Resolution # _____

[Signature] 5-5-11
 City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Burch 5-6-2011
 Finance and Internal Services Director Date

Received in City Clerk's Office 05-03-11 P01:56 RCVD
Kim J.

[Signature] 5-6-11
 Chief of Staff Date

Received in Mayor's Office
 ENTERED 5/5/11

[Signature] 5/6/11
 Mayor Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan

From: Paul Becker FISD Director

Larry Rennie Building Maintenance Supt.

Date: 5/02/2011

Subject: Senior Center Emergency Generator

PROPOSAL: Addition of a 100KW emergency generator and associated equipment at the Fayetteville Senior Center located at 945 S College Ave. This will allow for the use of the Senior Center as an emergency facility if needed.

RECOMMENDATION: Staff recommends City Council accept the bid from King Electrical Contractors, Inc for the amount of \$54,581 and approve a project contingency of \$5,458 for a total project cost of \$60,039.

BUDGET IMPACT: Funding for this project is from the Sales Tax Capital Improvement.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-35 AND AUTHORIZING A CONTRACT WITH KING ELECTRICAL CONTRACTORS IN THE AMOUNT OF \$54,581.00 FOR CONSTRUCTION AND INSTALLATION OF AN EMERGENCY ELECTRICAL GENERATOR AT THE FAYETTEVILLE SENIOR CENTER, AND APPROVING A TEN PERCENT (10%) PROJECT CONTINGENCY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-35 and authorizes a contract with King Electrical Contractors in the amount of \$54,581.00 for construction and installation of an emergency electrical generator at the Fayetteville Senior Center.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a ten percent (10%) project contingency.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



BID: 11-35
DATE: 04/29/11
TIME: 2:00 PM
CITY OF FAYETTEVILLE

**Bid 11-35, Construction - Installation of Generator
at Sr. Center**

BIDDER	TOTAL BID PRICE
1 King Electrical Contractors	\$54,581.00
2 Multi-Craft Contractors, Inc.	\$60,750.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED: P. Vice
P. VICE, PURCH MGR

J. Foreman
WITNESS

4/29/11
DATE

City of Fayetteville
 Bid 11-35, Construction – Installation of Generator at Sr. Center
 Bid Form

BASE BID

ITEM#	DESCRIPTION	UNIT	QTY.	TOTAL
1	Turn-key price for complete installation and purchase of generator for Fayetteville Sr. Center	L.S.	1.00	\$ <u>54,581.00</u>

fifty four thousand five hundred eighty one dollars

TOTAL BASE BID PRICE (will be used for bid evaluation and award)

\$ 54,581.00

EXECUTION OF BID -

Bidders are requested to indicate by check mark or "Yes/No" on each line of the Technical Specifications the compliance of the item bid. Actual specification of any deficient item must be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation must be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*NAME OF FIRM: King Electrical Contractors License # 0063870411
 Purchase Order and /Payments shall be issued to this name

*BUSINESS ADDRESS: 2145 W Moore Ln

*CITY: Fayetteville *STATE: AR *ZIP: 72704

*PHONE: 479-443-0006 FAX: 479-443-1719

*E-MAIL: Chris@CKingelectric.net

*BY: (PRINTED NAME) Chris King

*AUTHORIZED SIGNATURE: CK King

*TITLE: President

*DATE: 4 1 29 12011

Acknowledge Addendum No. 1 Dated: April 20 2011

Acknowledge Addendum No. 2 Dated: April 25 2011

Acknowledge Addendum No. _____ Dated: _____

Acknowledge Addendum No. _____ Dated: _____

City of Fayetteville
Bid 11-35, Construction – Installation of Generator at Sr. Center
Vendor References

The following information is required from all Proposers so all proposals may be reviewed and properly evaluated

COMPANY NAME: King Electrical Contractors

BUSINESS ADDRESS: 2145 W Moore Lane Fayetteville AR 72704

NUMBER OF YEARS IN BUSINESS: 24 HOW LONG IN PRESENT LOCATION: 24

TOTAL NUMBER OF CURRENT EMPLOYEES: 31 FULL TIME _____ PART TIME _____

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: 4 FULL TIME _____ PART TIME _____

PLEASE LIST LOCAL COMMERCIAL AND/OR GOVERNMENTAL REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED SIMILAR CONTRACT SERVICES FOR WITHIN THE PAST THREE (3) YEARS (All fields must be completed):

1. City of Fayetteville

COMPANY NAME

Fayetteville AR

CITY, STATE, ZIP

Larry Rennie

CONTACT PERSON

575-8361

TELEPHONE

FAX NUMBER

E-MAIL ADDRESS

3. Heckathorn Construction

COMPANY NAME

1880 N Birch Fay. AR

CITY, STATE, ZIP

David Hale

CONTACT PERSON

442-5386

TELEPHONE

FAX NUMBER

E-MAIL ADDRESS

2. Washington Water Authority

COMPANY NAME

Farmington AR

CITY, STATE, ZIP

Josh Moore

CONTACT PERSON

267-2111

TELEPHONE

FAX NUMBER

E-MAIL ADDRESS

4. _____

COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

FAX NUMBER

E-MAIL ADDRESS

City of Fayetteville

Bid 11-35, Construction – Installation of Generator at Sr. Center

Debarment Certification Form – THIS FORM SHOULD BE SUBMITTED WITH ALL BIDS

As A BIDDER on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 “Debarment and Suspension” requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Questions regarding this form should be directed to the City of Fayetteville Purchasing Division.

NAME: Chris King
COMPANY: King Electrical Contractors
PHYSICAL ADDRESS: 2145 W Moore Lane Fayetteville AR 72704
MAILING ADDRESS: 2145 W Moore Lane Fayetteville AR 72704
PHONE: 479-443-0006 FAX: 479-443-1719
EMAIL: Chris@CKingelectric.net
SIGNATURE: CK King
DATE: 4-29-11

NOTICE:

CAUSE: Debarment by an agency pursuant to FAR 9.406-2, GPO Instructions 110.11A, or PS Publication 41, for one or more of the following causes (a) conviction of or civil judgment for fraud violation of antitrust laws, embezzlement, theft, forgery, bribery, false statements, or other offenses indicating a lack of business integrity; (b) violation of the terms of a Government contract, such as a willful failure to perform in accordance with its terms or a history of failure to perform; or (c) any other cause of a serious and compelling nature affecting responsibility. (See Code N- Debarment pursuant to FAR 9.406 2(b)(2) Drug Free Workplace Act of 1988.)

TREATMENT: Contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to renew or otherwise extend the duration of current contracts, or consent to subcontracts with these contractors, unless the City determines that there is a compelling reason for such action. Government prime contractors, when required by the terms of their contract, shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that is debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so. Debarments are for a specified term as determined by the debarring agency and as indicated in the listing.

City of Fayetteville
Bid 11-35, Construction – Installation of Generator at Sr. Center
Statement of Disclosure – To Be Submitted With ALL Bids

This page does not count towards page limitations set forth in this request for proposal or bid.

Proposer must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response. This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

☒ 1.) NO KNOWN RELATIONSHIP EXISTS

☐ 2.) RELATIONSHIP EXISTS (Please explain)

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID OR PROPOSAL:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

Chris King
Printed Name

CK King
Signature

4-29-11
Date

BID BOND

Conforms with The American Institute of
Architects, A.I.A. Document No. A-310

KNOW ALL BY THESE PRESENTS, That we, King Electrical Contractors, Inc.

_____ as Principal, hereinafter called the Principal,

and the The Gray Casualty & Surety Company

of P. O. Box 6202, Metairie, Louisiana, a corporation duly organized under

the laws of the State of Louisiana, as Surety, hereinafter called the Surety, are held and firmly bound unto

City of Fayetteville, Arkansas as Obligee, hereinafter called the Obligee,

in the sum of Five Percent of Amount of Bid

Dollars (\$ 5% of Bid), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Senior Center Generator

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 29th day of April, 2011

Ally Davis

Witness

King Electrical Contractors, Inc.

(Seal)

{ CA K6 President
Principal
Title

Pamela K. Hay

Witness

The Gray Casualty & Surety Company

{ By William H. Griffin
William H. Griffin Attorney-in-Fact

age 10 of 1731

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint **William H. Griffin, Matthew K. Cashion, Jr., Judy Schoggen and Pamela K. Hays, of Little Rock, Arkansas jointly or severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$10,000,000.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of The Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 30th day of June, 2003.

Michael T. Gay

Michael T. Gray
President, The Gray Insurance Company
and
Executive Vice President,
The Gray Casualty & Surety Company

Attest:

Mark Mangano

Mark S. Manguno
Secretary,
The Gray Insurance Company,
The Gray Casualty & Surety Company



State of Louisiana

SS:

Parish of Jefferson

On this 30th day of June, 2003, before me, a Notary Public, personally appeared Michael T Gray, President of the Gray Insurance Company and Executive Vice President of The Gray Casualty & Surety Company, and Mark S. Manguno, Secretary of The Gray Insurance Company and The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



[Signature]

Lisa S. Millar, Notary Public, Parish of Orleans
State of Louisiana
My Commission is for Life

I, Mark M. Manguno, Secretary of The Gray Insurance Company and The Gray Casualty & Surety Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 29th day of April, 2011



Mark Mangano

Mark S. Manguno, Secretary
The Gray Insurance Company
The Gray Casualty & Surety Company

KING ELECTRICAL CONTRACTORS

2145 W MOORE LANE
FAYETTEVILLE ARKANSAS 72704
Phone (479)443-0006
Fax (479)443-1719

WARRANTY/GUARANTEE

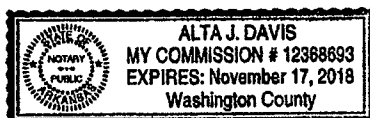
Project: Senior Center Generator
Fayetteville Arkansas

King Electrical Contractors hereby, guarantees and warrant all defects in labor and material provided by this subcontractor, on the above referenced project for a period of one year. All wiring does meet or exceed applicable NEC and NFPA standards. By signing this agreement the subcontractor hereby warrants the work stated above. Period of warranty starts from the date of substantial completion.

Signed: Chp H
Title: President
Date: 4-29-11

State of Arkansas, County of Washington, Sworn to and
Subscribed before me this 29th day of April, 2011

NOTARY PUBLIC Alta J Davis EXPIRES 11-17-2018





State
of
Arkansas

CONTRACTORS LICENSING BOARD

A. 4
Bid #11-35 King Electrical
Contractors, Inc.
Page 12 of 12

4100 Richards Road
North Little Rock, Arkansas 72117
501/372-4661
Fax 501/372-2247
www.arkansas.gov/clb

April 25, 2011

King Electrical Contractors, Inc.
2145 W Moore Ln
Fayetteville, AR 72704

Dear Sir or Madam,

We received your renewal application on April 20, 2011 and have started processing; however, before the application can be considered for renewal the following is needed:

- * A current reviewed or audited financial statement is required. The statement must include the CPA opinion page, balance sheet, and footnotes. The statement can either be faxed to 501-372-2247, mailed to the address above, or emailed to shannon.gardecki@arkansas.gov.**
- If emailed, I will respond verifying that the financial statement was received. If you have not received a response within 24 hours (after the email is sent), please fax to 501-372-2247.**

You have use of your license until 6/24/2011. Missing information must be received in this office no later than 6/15/2011.

If there are any questions, please contact me at 501-371-1634.

Sincerely,

A handwritten signature in cursive script that reads "Shannon Gardecki".

Shannon Gardecki
Junior Clerk

ID #7890

City of Fayetteville Staff Review Form

A. 5
 Bid #11-38 RJR Enterprises, Inc.
 Page 1 of 24

City Council Agenda Items
 and
 Contracts, Leases or Agreements

6/7/2011

City Council Meeting Date
 Agenda Items Only

Carole Jones

Submitted By

Park Planning

Division

Parks and Recreation

Department

Action Required:

A resolution awarding Bid #11-38 and approval of a contract with RJR Enterprises, Inc. in the amount of \$67,739 with a 10% project contingency of \$6,774 for a total project cost of \$74,513 for the Construction of North Shore Swing Improvements.

\$ 74,513.00

Cost of this request

\$ 125,000.00

Category / Project Budget

Lake Fayetteville North Playground

Program Category / Project Name

2250.9255.5806.00

Account Number

\$ -

Funds Used to Date

Lake Fayetteville Improvements

Program / Project Category Name

02043.1001

Project Number

\$ 125,000.00

Remaining Balance

Parks Development

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Connie Emonston
 Department Director

11-19-11

Date

Previous Ordinance or Resolution #

Bob Kelly
 City Attorney

5-20-11

Date

Original Contract Date:

Original Contract Number:

P. Ulice
 Finance and Internal Services Director

5-23-11

Date

Received in City
 Clerk's Office

05-20-11 P03:02 RCVD

Don Ma
 Chief of Staff

5-23-11

Date

Received in
 Mayor's Office

ENTERED
 5/20/11 BEP

Lionel Jones
 Mayor

5/23/11

Date

Comments:



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director *CE*
Alison Jumper, Park Planning Superintendent *AJ*

From: Carole Jones, Park Planner *CJ*

Date: May 19, 2011

Subject: Bid #11-38, Construction of North Shore Swing Improvements
Agenda Request for June 7, 2011 Meeting

PROPOSAL:

Lake Fayetteville Park, consisting of 590 acres, is a community park serving the entire city as well as the adjacent neighborhoods and communities. Approximately 3,300 homes within the city limits of Fayetteville are located in a one mile radius of the park ultimately serving an estimated 8,250 Fayetteville residents. The park is situated in the northeast quadrant of town east of College Avenue (U.S. Highway 71B), west of Crossover Road (Arkansas Highway 265) and north of Zion Road.

The existing swing structure was custom built before 1982 and is not in compliance with current ADA, CPSC and ASTM guidelines. The project includes the demolition of the existing swing structure, construction of an ADA-accessible concrete pad with safety surface tiles, construction of an ADA-accessible sidewalk, and associated site work. The number of existing swings has recently been reduced in order to meet clearance requirements. This project includes installing four belt swings for ages 5 and up. Additionally, in an effort to accommodate numerous citizen requests, a toddler swing for ages 2-5 and one fully ADA accessible swing will also be installed. The project was approved as part of the 2010 CIP.

The project was advertised on May 4 and 11, and bids were opened on May 18, 2011. Three vendors including RJR Enterprises, Inc., Sweetser Construction, Inc. and General Construction Solutions, Inc. submitted bids. RJR Enterprises, Inc. was the low bid in the amount of \$67,739. (See attached bid tabulation sheet.) If approved, the construction of the project is anticipated to begin in July 2011 and be completed in fall 2011.

RECOMMENDATION:

A resolution awarding Bid #11-38 and approval of a contract with RJR Enterprises, Inc. in the amount of \$67,739 with a 10% project contingency of \$6,774 for a total project cost of \$74,513 for the Construction of North Shore Swing Improvements.

BUDGET IMPACT:

This project is funded with Parks Development funds (\$125,000). Total project cost including a 10% project contingency is \$74,513.

Attachments:

Bid Tabulation Sheet

RJR Enterprises, Inc. Bid Submittal

Contract Agreement Signed by Contractor

Purchase Requisition

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-38 AND AUTHORIZING A CONTRACT WITH RJR ENTERPRISES, INC. IN THE AMOUNT OF \$67,739.00 FOR CONSTRUCTION OF RECREATIONAL SWINGS AT LAKE FAYETTEVILLE PARK, AND AUTHORIZING A TEN PERCENT (10%) PROJECT CONTINGENCY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-38 and authorizes a contract with RJR Enterprises, Inc. in the amount of \$67,739.00 for construction of recreational swings at Lake Fayetteville Park.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes a ten percent (10%) project contingency.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Section 00 52 13

AGREEMENT

BETWEEN CITY OF FAYETTEVILLE AND CONTRACTOR

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2011 by and between the City of Fayetteville, Arkansas (hereinafter called CITY OF FAYETTEVILLE) and RJR Enterprises, Inc. (herein after called CONTRACTOR).

CITY OF FAYETTEVILLE and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents.

The work generally consists of the demolition, removal and disposal of the existing swing set and two benches and construction of new swings with ADA accessible surfacing, sidewalks and associated site work at **Lake Fayetteville Park North Shore** and all items indicated in the Drawings and Specifications.

Article 2. PROJECT MANAGER.

The Project has been designed by

City of Fayetteville Parks and Recreation Department
1455 South Happy Hollow Road
Fayetteville, Arkansas 72701

and will be hereinafter called PARKS AND RECREATION DEPARTMENT PROJECT MANAGER and who is to act as CITY OF FAYETTEVILLE's representative, assume all duties and responsibilities, and have the rights and authority assigned to PROJECT MANAGER in the Contract Documents in connection with completion of the Work in accordance with the Contract documents.

Article 3. CONTRACT TIME.

3.1. The Work for Construction of North Shore Swing Improvements at Lake Fayetteville shall be substantially completed within 90 consecutive calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraphs 14.07.B & C of the General Conditions within 120 consecutive calendar days after the date when the Contract Time commences to run.

3.2. *Liquidated Damages.* CITY OF FAYETTEVILLE and CONTRACTOR recognize that time is of the essence of the Agreement and that CITY OF FAYETTEVILLE will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus and extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by CITY OF FAYETTEVILLE if the Work is not completed on

time. Accordingly, instead of requiring any such proof, City of Fayetteville and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY OF FAYETTEVILLE Two hundred and fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY OF FAYETTEVILLE, CONTRACTOR shall pay CITY OF FAYETTEVILLE Two hundred and fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

CITY OF FAYETTEVILLE shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined from the following Schedule of Values pursuant to paragraphs 4.1 and 4.2 below:

4.1. For all Work other than Unit Price Work, an amount equal to the sum of the established lump sums for each separately identified item of Lump Sum Work; and

4.2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 4.2.

PAYMENT ITEMS

RJR Enterprises, Inc.					
ITEM#	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	TOTAL
1	Mobilization (not to exceed 5% of project bid)	L.S.	1.00	\$3,300.00	\$3,300.00
2	Bonds and insurance	L.S.	1.00	\$3,225.27	\$3,225.27
3	Demolition, removal and disposal of existing swing structure and two benches	L.S.	1.00	\$300.00	\$300.00
4	Site preparation - including tree stump removal, tree protection fencing and protection of existing sidewalk	L.S.	1.00	\$1,800.00	\$1,800.00
5	Erosion control - including silt fence, construction entrance/exit and concrete waste management	L.S.	1.00	\$4,500.00	\$4,500.00
6	Unclassified excavation	C.Y.	160.00	\$25.00	\$4,000.00
7	Select fill (hillside) - complete in place per details	C.Y.	110.00	\$16.00	\$1,760.00
8	Concrete sub-base for swing surface tiles (4-inch thickness) - complete in place per details	S.Y.	215.00	\$45.00	\$9,675.00
9	5-inch O.D., 8-foot height arch swings with four belt seats, one full-bucket toddler seat and one ADA accessible molded seat with yoke - complete in place per details and manufacturer's instructions	L.S.	1.00	\$6,983.76	\$6,983.76
10	Surface tiles (approx. 185 SY) - complete in place per details	L.S.	1.00	\$25,320.00	\$25,320.00
11	Benches - complete in place per details	EA.	2.00	\$600.00	\$1,200.00
12	Five-foot wide fiber reinforced concrete sidewalk and two 8-foot x 4-foot bench slabs (4-inch thickness) - complete in place per details	S.Y.	35.00	\$45.00	\$1,575.00
13	Site restoration - including 4-inch depth topsoil, fescue sod and water	AC.	0.05	\$10,000.00	\$500.00
14	Site restoration - including 4-inch depth topsoil, fescue seed, straw and water	AC.	0.60	\$6,000.00	\$3,600.00
TOTAL CONTRACT AMOUNT					\$67,739.03

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.B of the General Conditions.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions or as modified in the Supplementary Conditions. Applications for Payment will be processed by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in the General Conditions.

5.1. Progress Payments. CITY OF FAYETTEVILLE shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, on or about the 1st day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below and SC-14.02 . All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions and based on the number of units completed in the case of Unit Price Work or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in case, less the aggregate of payments previously made and less such amounts as PARKS AND RECREATION DEPARTMENT PROJECT MANAGER shall determine, or CITY OF FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

90 percent of Work completed (with the balance of 10 percent being retainage), If Work has been 50 percent completed as determined by the PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, and if the character and progress of the Work have been satisfactory to CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, CITY OF FAYETTEVILLE, on recommendation of PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed.

100 percent of materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to CITY OF FAYETTEVILLE as provided in paragraphs 14.02.B.5 & 14.02.D of the General Conditions. That is, if any such items are setup for that type payment in the Specifications.

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 98 percent of the Contract Price (with the balance of 2 percent being retainage), less such amounts as PARKS AND RECREATION DEPARTMENT PROJECT MANAGER shall determine, or CITY OF FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraphs 14.07.B & C of the General Conditions, CITY OF FAYETTEVILLE shall pay the remainder of the Contract Price as recommended by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in said paragraphs 14.07.B & C.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce CITY OF FAYETTEVILLE to enter into this Agreement CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7) and the other related data identified in the Bidding Documents including "technical data."

6.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A of

the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02 of the General Conditions.

CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.5. CONTRACTOR is aware of the general nature of work to be performed by CITY OF FAYETTEVILLE and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7. CONTRACTOR has given PARKS AND RECREATION DEPARTMENT PROJECT MANAGER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER is acceptable to CONTRACTOR and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between CITY OF FAYETTEVILLE and CONTRACTOR concerning the Work consist of the following:

- 7.1. This Agreement (pages 1 to 8, inclusive).
- 7.2. Performance and Payment Bonds, (Exhibits A and B respectively).
- 7.3. Certificates of Insurance, (Exhibit C).

- 7.4. Documentation submitted by CONTRACTOR prior to Notice of Selection (Exhibit D).
- 7.5. General Conditions (pages 1 to 42, inclusive).
- 7.6. Supplementary Conditions (pages 1 to 13 inclusive).
- 7.7. Specifications consisting of Divisions 1 through 32 as listed in table of contents thereof.
- 7.8. Addendum number 1, inclusive.
- 7.9. One set of drawings (not attached hereto) consisting of: a cover sheet and additional sheets numbered two through eight with each sheet bearing the following general title: **Construction of North Shore Swing Improvements.**
- 7.10. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
 - 7.10.1. Notice to Proceed
 - 7.10.2 All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 8. MISCELLANEOUS.

8.1. Terms used in the Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3. CITY OF FAYETTEVILLE and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon stricken provision or part thereof with a valid and enforceable provision that comes as close as possible expressing the intention of the stricken provision.

8.5. Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

8.6. Freedom of Information Act. City contract and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, CONTRACTOR will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.) Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, and one counterpart has been delivered to CONTRACTOR. All portions of the Contract Documents have been signed, initialed, or identified by CITY OF FAYETTEVILLE and CONTRACTOR or identified by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER on their behalf.

This Agreement will be effective on _____, 2011 (which is the Effective Date of The Agreement).

CITY OF FAYETTEVILLE:

CONTRACTOR

By: _____
Mayor

By:  _____
Vice President

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

*Attest  _____

* If a Corporation, attest by the Secretary.

Address for giving notices

Address for giving notices

(If CITY OF FAYETTEVILLE is a public body, attach License No. _____ evidence of authority to sign and resolution or other documents Agent for service of process: authorizing execution of Agreement.)

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)



BID: 11-38
DATE: 05/18/11
TIME: 2:00 PM
CITY OF FAYETTEVILLE

Bid 11-38, Construction of North Shore Swing Improvements

BIDDER	TOTAL BID PRICE
1 General Construction Solutions, Inc.	\$88,937.00
2 RJR Enterprises, Inc.	\$67,739.03
3 Sweetser Construction, Inc.	\$78,796.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:


P. VICE, PURCH MGR


WITNESS

05/19/11
DATE



Project Check List

Bid 11-38, Construction of North Shore Swing Improvements

This checklist is for the Bidder's use in preparing & submitting a bid. It is not intended to include all details necessary to prepare a bid and shall not be used as a substitute for the requirements of the bid documents. Information is shown below only as a matter of convenience. Use of this checklist does not relieve the Bidder from the responsibility of meeting all requirements of the Specifications concerning the preparation of an acceptable bid. Bidders are welcome to use this form as a coversheet for a sealed envelope; however, using this form itself is NOT a requirement.

- ☒ 5% Bid Bond of the amount bid accompanied by required documentation (Power of Attorney, etc.)
 - In lieu of a bid bond, the bidder may submit a cashier's check for at least five percent (5%) of the amount bid (inclusive of any deductive alternates). Cashiers checks shall be made payable to the City of Fayetteville, AR.
- ☒ All addenda shall be signed, acknowledged, and submitted on the appropriate forms (submitting the actual addendums or marking acknowledgement on other bid pages).
- ☒ All line items shall be appropriately filled out and extended to reveal the line item price as well as the total bid price. Total base bid should be calculated in the provided space.
- ☒ All bidders shall submit the following forms with each bid: Bid Pricing Form, Bid Proposal Form, Vendor References, Debarment Certification Form, & Statement of Disclosure.
- ☒ All pages provided with signature lines shall be appropriately signed, dated accordingly, and included with submitted bid documents.
- ☒ All bid documents shall be delivered in a sealed envelope to the address listed below before the stated deadline on the coversheet of the bid. All bids should be delivered with the name of the bidder (contractor) on the sealed envelope as well as the bidders Arkansas Contractors License Number.

City of Fayetteville, AR
Purchasing Division – Suite 306
113 W. Mountain
Fayetteville, AR 72702

CONTRACTOR NAME: RJR Enterprises Inc. [Signature]
ARKANSAS CONTRACTOR'S LICENSE #: 0043500411

Section 00 41 13

BID FORM

Item No.	Estimated Quantity	Unit	Description of Item	Unit Price	Total Amount
1	1	Lump Sum	Mobilization - (not to exceed 5% of total bid)		
			<u>Three Thousand Three Hundred and ⁰⁰/₁₀₀ dollars</u> amount written in words	<u>\$(3,300.00)/L.S.</u> in figures	<u>\$ 3,300.00</u> in figures
2	1	Lump Sum	Bonds and insurance		
			<u>Three Thousand Two Hundred Twenty Five ²⁷/₁₀₀ dollars</u> amount written in words	<u>\$(3,225.27)/L.S.</u> in figures	<u>\$ 3,225.27</u> in figures
3	1	Lump Sum	Demolition, removal and disposal of existing swing structure and two benches		
			<u>Three Hundred and ⁰⁰/₁₀₀ dollars</u> amount written in words	<u>\$(300.00)/L.S.</u> in figures	<u>\$ 300.00</u> in figures
4	1	Lump Sum	Site preparation - including tree stump removal, tree protection fencing and protection of existing sidewalk		
			<u>One Thousand Eight Hundred and ⁰⁰/₁₀₀ dollars</u> amount written in words	<u>\$(1,800.00)/L.S.</u> in figures	<u>\$ 1,800.00</u> in figures
5	1	Lump Sum	Erosion control - including silt fence, construction entrance/exit and concrete waste management		
			<u>Four Thousand Five Hundred and ⁰⁰/₁₀₀ dollars</u> amount written in words	<u>\$(4,500.00)/L.S.</u> in figures	<u>\$ 4,500.00</u> in figures
6	160	Cubic Yards	Unclassified excavation		
			<u>Four Thousand and ⁰⁰/₁₀₀ dollars</u> amount written in words	<u>\$(25.00)/C.Y.</u> in figures	<u>\$ 4,000.00</u> in figures
7	110	Cubic Yards	Select fill (hillside) - complete in place per details		
			<u>One Thousand Seven Hundred Sixty ⁰⁰/₁₀₀ dollars</u> amount written in words	<u>\$(16.00)/C.Y.</u> in figures	<u>\$ 1,760.00</u> in figures
8	215	Square Yards	Concrete sub-base for swing surface tiles (4-inch thickness) - complete in place per details		
			<u>Nine Thousand Six Hundred Seventy Five ⁰⁰/₁₀₀ dollars</u> amount written in words	<u>\$(45.00)/S.Y.</u> in figures	<u>\$ 4,675.00</u> in figures
9	1	Lump Sum	5-inch O.D., 8-foot height arch swings with four belt seats, one full-bucket toddler seat and one ADA accessible molded seat with yoke - complete in place per details and manufacturer's instructions		
			<u>Six Thousand Nine Hundred Eighty Three and ⁷⁶/₁₀₀ dollars</u> amount written in words	<u>\$(6,483.76)/L.S.</u> in figures	<u>\$ 6,483.76</u> in figures
10	1	Lump Sum	Surface tiles (approx. 185 SY) - complete in place per details		
			<u>Twenty Five Thousand Three Hundred Twenty and ⁰⁰/₁₀₀ dollars</u> amount written in words	<u>\$(25,320.00)/L.S.</u> in figures	<u>\$ 25,320.00</u> in figures

This bid form continues on the next page...

BID FORM Continued

Item No.	Estimated Quantity	Unit	Description of Item	Unit Price	Total Amount
11	2	Each	Benches - complete in place per details		
	<u>One Thousand Two Hundred and ⁴/₁₀₀</u>		dollars	<u>\$(600.00) /EA.</u>	<u>\$ 1,200.00</u>
	amount written in words			in figures	in figures
			Five-foot wide fiber reinforced concrete sidewalk and two 8-foot x 4-foot bench slabs (4-inch thickness) - complete in place per details		
12	35	Square Yards			
	<u>One Thousand Five Hundred Seventy Five ⁴/₁₀₀</u>		dollars	<u>\$(45.00) /S.Y.</u>	<u>\$ 1,575.00</u>
	amount written in words			in figures	in figures
			Site restoration - including 4-inch depth topsoil, fescue sod and water		
13	0.05	Acres			
	<u>Five Hundred and ⁴/₁₀₀</u>		dollars	<u>\$(10,000.00) /AC.</u>	<u>\$ 500.00</u>
	amount written in words			in figures	in figures
			Site restoration - including 4-inch depth topsoil, fescue seed, straw and water		
14	0.60	Acres			
	<u>Three Thousand Six Hundred and ⁴/₁₀₀</u>		dollars	<u>\$(6,000.00) /AC.</u>	<u>\$ 3,600.00</u>
	amount written in words			in figures	in figures

TOTAL BID

Sixty Seven Thousand Seven Hundred Thirty Nine ⁰³/₁₀₀ \$ 67,739.03
 amount written in words in figures

The Bidder shall state the price bid in words and figures (written in ink or typed) for each pay item, and the total bid. In case of conflict between words and figures, the words, unless obviously incorrect, shall govern.

Bidder understands that the Owner reserves the right to award the total project, or to reject any or all bids and to waive any informalities in the bidding.

Bidder agrees that this Bid shall be good and will not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

Respectfully submitted,

Firm Name

RJR Enterprises Inc.

By

Ryan C. Brown VP vice-President

Address

804 N 42nd St

City

Bagers

State

AR

** Arkansas State Contractor's License Number

0043500411

** A Contractor's License is required to bid this project. This project requires a five (5) percent bid bond at time of bid opening. After contract award, a one hundred (100) percent performance and payment bond is required along with proof of insurance before construction begins.

End of Section 00 41 13

BID BOND
(Percentage)

Bond No. 61063144

KNOW ALL PERSONS BY THESE PRESENTS, That we R J R Enterprises, Inc.
of 804 N. 42ND ST., ROGERS, AR 72756

_____, hereinafter referred to as the Principal, and
WESTERN SURETY COMPANY

as Surety, are held and firmly bound unto City of City of Fayetteville

~~xx~~ _____, hereinafter referred to as the Obligor, in the amount of
Five Percent of the Amount Bid
(5%), for the payment of which we bind ourselves, our legal representatives,
successors and assigns, jointly and severally, firmly by these presents.

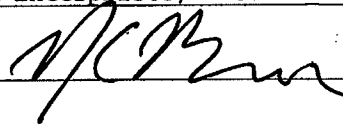
WHEREAS, Principal has submitted or is about to submit a proposal to Obligor on a contract for _____
Northshore Swing Improvements

NOW, THEREFORE, if the said contract be awarded to Principal and Principal shall, within such time as may be
specified, enter into the contract in writing and give such bond or bonds as may be specified in the bidding or
contract documents with surety acceptable to Obligor; or if Principal shall fail to do so, pay to Obligor the
damages which Obligor may suffer by reason of such failure not exceeding the penalty of this bond, then this
obligation shall be void; otherwise to remain in full force and effect.

SIGNED, SEALED AND DATED this 18th day of May, 2011

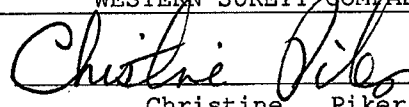
Principal

R J R Enterprises, Inc.

BY: 

Surety

WESTERN SURETY COMPANY

BY: 

Christine Piker, Attorney-in-Fact

Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 61063144

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Christine Piker

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: R J R Enterprises, Inc.

Obligee: City of City of Fayetteville

Amount: \$500,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Senior Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of August 18th, 2011, but until such time shall be irrevocable and in full force and effect.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 18th day of May, 2011.

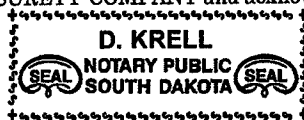


WESTERN SURETY COMPANY

Paul T. Bruflat

Paul T. Bruflat, Senior Vice President

On this 18th day of May, in the year 2011, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



My Commission Expires November 30, 2012

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 18th day of May, 2011.

WESTERN SURETY COMPANY

Paul T. Bruflat

Paul T. Bruflat, Senior Vice President



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS

Bid 11-38, Addendum 1

Bid 11-38, Construction of North Shore Swing Improvements

City of Fayetteville – Purchasing Division
113 W. Mountain – Room 306
Fayetteville, AR 72701
Phone: 479.575.8220
E-Mail: aforen@ci.fayetteville.ar.us

Date: Wednesday, May 11, 2011

To: All interested parties

From: Andrea Foren, CPPB, Purchasing Agent

Notice: This addendum is hereby made a part of the bid documents to the same extent as though it were originally included therein. Bidders should indicate their receipt of same in the appropriate blank listed herein. Failure to do so may subject vendor to disqualification. Addendum should be attached to the inside cover of the bidding documents, signed, and dated.

- 1.) Webcoat bench model number B6WBWINGLINESM is approved as an equal. Webcoat Products; P.O. Box 3160; McAlester, OK 74501; 1-800-505-5101; www.webcoat.com.
- 2.) There are no slabs under the existing benches as indicated on Sheet 4 of the drawings.
- 3.) Attached are the minutes and sign-in sheet from the pre-bid meeting that was held on May 11, 2011

Acknowledge Addendum #1:

Printed Name: Ryan Brown

Signature: [Signature]

Title: Vice-Pres Date: 5/17/2011

Company: RJR Enterprises Inc

City of Fayetteville
Bid 11-38, Construction of North Shore Swing Improvements
Statement of Disclosure (please submit with Bid)

ATTENTION: Please submit this form with your bid.

DISCLOSURE STATEMENT:

Bidder must disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Your response must disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official.

If, to your knowledge, no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response.

This form must be completed and returned in order for your bid/proposal to be eligible for consideration.

PLEASE CHECK ONE OF THE FOLLOWING TWO OPTIONS, AS IT APPROPRIATELY APPLIES TO YOUR FIRM:

Correct 1.) NO KNOWN RELATIONSHIP EXISTS

No 2.) RELATIONSHIP EXISTS (Please explain)

No Relationship

PLEASE FILL OUT THE SECTION BELOW AND SUBMIT THIS FORM WITH YOUR BID:

- 1.) I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein are accurate and true; and
- 2.) My organization shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment.

Ryan C. Brown
Printed Name

[Signature]
Signed

City of Fayetteville
Bid 11-38, Construction of North Shore Swing Improvements

Certification of Debarment – THIS FORM NEEDS TO BE SUBMITTED WITH EVERY BID

ATTENTION: Please submit this form with your bid.

As A BIDDER on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Your signature certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Questions regarding this form should be directed to the City of Fayetteville Purchasing Division.

NAME: Ryan Brown
COMPANY: RJR Enterprises Inc.
PHYSICAL ADDRESS: 804 N42nd St. Rogers, Ar 72756
MAILING ADDRESS: 804 N42nd St. Rogers, Ar 72756
PHONE: 479-936-1042 FAX: 479-631-6574
EMAIL: Ryanbrown@nwasjs.com
SIGNATURE: MChen vice-President
DATE: 5/17/2011



CERTIFICATE OF LIABILITY INSURANCE

A. 5 OP ID: CP
Bid #11-38 RJR Enterprises, Inc.
Page 22 of 24
05/17/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Rogers Insurance Agency P.O. Box 2048 Rogers, AR 72757-2048 Roland W. Julian, CIC		479-636-4551	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: RJREN-1
INSURED RJR Enterprises, Inc. 804 North 42nd Street Rogers, AR 72756		INSURER(S) AFFORDING COVERAGE INSURER A: Cincinnati Insurance Company INSURER B: Accident Fund Ins Co. INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 10677 10166	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			EPP0028068	07/01/10	07/01/11	EACH OCCURRENCE \$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000
	☐ POLICY ☐ PRO-JECT ☐ LOC						GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY			EPP0028068	07/01/10	07/01/11	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☒ ANY AUTO						BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	☐ SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
A	☒ HIRED AUTOS			EPP0028068	07/01/10	07/01/11	\$
A	☒ NON-OWNED AUTOS						\$
							\$
A	☒ UMBRELLA LIAB ☒ OCCUR			UMB 0028068	07/01/10	07/01/11	EACH OCCURRENCE \$ 1,000,000
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE \$ 1,000,000
	☐ DEDUCTIBLE						\$
	☒ RETENTION \$ 0						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC 2038636	09/14/10	09/14/11	☒ WC STATU-TORY LIMITS ☐ OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N ☒ Y	N/A				E.L. EACH ACCIDENT \$ 100,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 100,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Project: Northshore Swing Improvements

CERTIFICATE HOLDER City of Fayetteville 113 W. Mountain Fayetteville, AR 72701	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>BW Julian</i>
--	--

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)

All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

City Of Fayetteville - Purchase Order (PO) Request (Not a Purchase Order) All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions) All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us						Requisition No.: Date: 6/7/2011 Bid #11-38 RJR Enterprises, Inc. Page 23 of 24			
Vendor #: 8493		Vendor Name: RJR Enterprises, Inc.				P.O Number:		Expected Delivery Date:	
Address: 804 North 42nd Street						Fob Point:		Mail Yes: No:	
City: Rogers		State: AR		Zip Code: 72756		Ship to code:		Taxable Yes: No: Quotes Attached Yes: No:	
Requester: Carole Jones, Park Planner						Requester's Employee #: 3003		Division Head Approval: <i>Carole Jones</i>	
						Extension: 472			
Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Construction of North Shore Swing Improvements	1	1	LS	\$67,739.03	2250.9255.5806.00	02043.1001		
2					\$0.00				
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				
Special Instructions: Tax is included in the bid price.						Subtotal: \$67,739.03 Tax: Total: \$67,739.03			
Approvals: Mayor: _____ Department Director: _____ Purchasing Manager: _____ Finance & Internal Services Director: _____ Budget Manager: _____ IT Manager: _____ Dispatch Manager: _____ Utilities Manager: _____ Other: _____									

City of Fayetteville Staff Review Form

A. 6
Multi-Craft Contractors, Inc.
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

6-2-2011

City Council Meeting Date
Agenda Items Only

Larry Rennie

Submitted By

Building Maintenance

Division

Finiance

Department

Action Required:

Approve a contract with Multi-Craft Contractors Inc. For NTE \$23,900 to replace a Trane 25 ton HVAC unit and associated equipment located at the Yvonne Richardson Center. A 10% contingency of \$2,390 is requested for a total approval request of \$26,290.

\$26,290

Cost of this request

\$ 617,307.00

Category / Project Budget

Building Improvements

Program Category / Project Name

4470-9470-5400:00

Account Number

\$39,650

Funds Used to Date

Other Improvements

Program / Project Category Name

02046-0904

Project Number

\$ 577,657.00

Remaining Balance

Sales Tax Capital+A3:BI13

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Paul A. Becker
Department Director

5-20-2011

Date

Previous Ordinance or Resolution #

[Signature]
City Attorney

5-20-11

Date

Original Contract Date:

Original Contract Number:

Paul A. Becker
Finance and Internal Services Director

5-20-2011

Date

Received in City Clerk's Office 5-20-11 P12:08 RCVD

[Signature]
Chief of Staff

5-23-11

Date

Received in Mayor's Office

ENTERED
5/20/11
[Signature]

[Signature]
Mayor

5/23/11
Date

Comments:



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Fayetteville City Council

Thru: Mayor Lionald Jordan

From: Paul Becker FISC Director

Larry Rennie Building Maintenance Supt.

Date: 5/19/2011

Subject: Yvonne Richardson HVAC Replacement

PROPOSAL: Replacement of a Trane 25 Ton HVAC system and associated equipment . Existing equipment has reached the end of its useful life. Replacing existing R22 system with a environmentally friendly R410A system.

RECOMMENDATION: Staff recommends City Council accept the contract bid from Multi-Craft Contractors Inc. for the amount of \$23,900 and approve a project contingency of \$2,390 for a total project cost of \$26,290

BUDGET IMPACT:Funding for this project is from the Sales Tax Capital Improvement.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING A CONTRACT WITH MULTI-CRAFT CONTRACTORS, INC. IN THE AMOUNT OF \$26,290.00 FOR ONE (1) HVAC UNIT AND ASSOCIATED EQUIPMENT FOR THE YVONNE RICHARDSON CENTER, AND APPROVING A TEN PERCENT (10%) PROJECT CONTINGENCY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes a contract with Multi-Craft Contractors, Inc. in the amount of \$26,290.00 for one (1) HVAC unit and associated equipment for the Yvonne Richardson Center.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes a ten percent (10%) project contingency.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

BID: 11-22
DATE: 03/22/11
TIME: 2:00 PM
CITY OF FAYETTEVILLE

Bid 11-22, HVAC Installation and Repair Services

Name of Contractor:			Carrier Corporation				Multi-Craft Contractors, Inc.			
SECTION A: Materials Subject to Buy American Requirements			A	B	C (A x B)	D (B + C)	A	B	C (A x B)	D (B + C)
Item	Description	Mark Up %	Contractors Material Cost Estimate	SS Amount of Mark Up	SS Amount Mark Up PLUS Material Cost	Mark Up %	Contractors Material Cost Estimate	SS Amount of Mark Up	SS Amount Mark Up PLUS Material Cost	
1	General Material (Cost plus %) \$0-\$100	100%	\$1,500	\$1,500	\$3,000.00	30%	\$1,500	\$450.00	\$1,950.00	
2	General Material (Cost plus %) \$101-\$500	75%	\$3,000	\$2,250	\$5,250.00	25%	\$3,000	\$750.00	\$3,750.00	
3	General Material (Cost plus %) \$501-\$1000	50%	\$1,500	\$750	\$2,250.00	15%	\$1,500	\$225.00	\$1,725.00	
4	General Material (Cost plus %) \$1001-and up	33%	\$1,500	\$495	\$1,995.00	15%	\$1,500	\$225.00	\$1,725.00	
5	Purchases of New Units	25%	\$30,000	\$7,500	\$37,500.00	15%	\$30,000	\$4,500.00	\$34,500.00	
6	Rental Equipment (Cost plus %)	25%	\$1,500	\$375	\$1,875.00	10%	\$1,500	\$150.00	\$1,650.00	
Estimated Cost for Section A (Sum of Items 1-6):			\$51,870.00			\$45,300.00				
SECTION B: Labor Subject to Davis-Bacon Wage Rates			A	B	C (A x B)	A	B	C (A x B)		
Item	Description	Estimated hours	Hourly Rate	Estimated Labor Cost	Estimated hours	Hourly Rate	Estimated Labor Cost			
7	HVAC - Rate 1 (Fabricator/Installer)	140	\$85.50	\$11,970.00	140	\$50.00	\$7,000.00			
8	HVAC - Rate 2 (Installer/Mechanic)	140	\$85.50	\$11,970.00	140	\$50.00	\$7,000.00			
9	HVAC - Rate 3 (Installer/Technician)	42	\$85.50	\$3,591.00	42	\$65.00	\$2,730.00			
10	HVAC - Rate 4 (Commissioning Agent)	3	\$99.00	\$297.00	3	\$69.00	\$207.00			
Estimated Cost for Section B (Sum of Items 7-10):			\$27,828.00			\$16,937.00				
**Total Estimated Cost for Items 1-10 (Sum of Section A + Section B)			\$79,698.00			\$62,237.00				

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

P. VICE, PURCH MGR

WITNESS

DATE

P. Vice

[Signature]

03/22/11

2300 Lowell Road - P.O. Box 1760
Springdale, AR 72765
Phone 479-751-7411
Fax 479-751-0316

**Air Works, division of
Multi-Craft
Contractors, Inc.**

Fax

To:	Larry Rennie	From:	Bob Miller
Fax:	479-575-8223	Pages:	3 (including this cover sheet)
Phone:	479-575-8363	Date:	5-17-11
Re:	Richardson Center	CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments: Here is the proposal with the standard unit. It only drops the EER from 10.6 to 10.0. I have included a programmable Honeywell thermostat that we can lock out the keypad once the units are programmed to your desired set points. Contact me with any questions.

Thank You,



Bob Miller

Please call immediately if all pages are not received in legible form.

4470-9470-5400
02046 - 0904

AIR WORKS NTE - 23,900
10% Contingency of 2,390.00
TOTAL Project Cost of \$26,290



P.O. Box 1760
2300 N Lowell Rd
Springdale, AR 72765
(479) 751-7411
Fax: (479) 751-0316
www.multi-craft.net

Arkansas Contractors: 0025810311
Arkansas Electrical: M2320
Arkansas HVAC: 135450
Arkansas Plumbing: MP3613

May 17, 2011

Quote: 1QS04181503

Larry Rennie
City of Fayetteville
240 E. Rock St.
Fayetteville, Ar 72701

PH: 479-575-8363
FX: 479-575-8223

RE: Replace 25 Ton package unit

AirWorks, Inc. a division of Multi-Craft Contractors, Inc. is pleased to present the following proposal.

Scope of work:

- Shut down and lock out electrical circuits and gas line to the existing package unit.
- Remove and dispose of existing package unit per E.P.A. guidelines.
- Install new Trane Standard Efficiency (10.00 EER) package unit with economizer, condenser coil hail guards and 2" MERV 7 air filters.
- Provide all labor and materials required to connect existing electrical circuits and gas line to new unit.
- Provide all labor and materials required to connect existing duct work to new unit.
- Provide and install a new digital, programmable thermostat.
- Start system and verify proper operation.
- All crane fees and permits are included in this proposal.
- WARRANTY: The new equipment will carry standard manufacturer's warranties; AirWorks will provide a 1 year labor warranty.
- Exclusions: Any and all electrical wiring, wire, conduit or devices on the service side of the existing disconnect switch.

Total Price: \$ 23,900.00 (includes all applicable taxes)

This price is based upon all work being performed during normal daytime business hours. Above stated price is valid for thirty (30) days.

We appreciate this opportunity to be of service to you. If you have any questions, please contact us.

Sincerely,

Bob Miller

Bob Miller
Commercial Sales
ram@multi-craft.net
PH: 479-236-8529 cell

Accepted By: _____
If accepted please sign and Fax: 479-751-0316.

Date: _____

TERMS AND CONDITIONS

- A. Customer will provide and permit reasonable access to all necessary areas. Air Works, Inc. will be allowed to start and stop equipment as necessary to perform its services and be permitted access to existing facilities and building services covered under this Agreement.
- B. In the unlikely event of failure to perform its obligations, Air Works, Inc.'s liability is limited to repair or replacement at its option. Under no circumstances will Air Works, Inc. be responsible for loss of use, loss of profits, or increased operating claims of the customer, or any special, indirect or consequential damages.
- C. The agreement does not include responsibility for system design deficiencies, such as, but not limited to poor air distribution, water flow imbalances, etc. It does not include responsibility for system, equipment and component obsolescence, electrical failures, unserviceable equipment, and operating the system(s).
- D. Air Works, Inc. will not be liable for delays or failure to obligate due to fire, flood, freezing, unavailability of material, riots, acts of God, or any cause beyond reasonable control.
- E. This agreement does not include any services occasioned by improper operation, negligence except the negligence of Air Works, vandalism, or alterations, modifications, abuse, or misuse, or repairs to equipment not performed by Air Works, Inc. Also excluded is the furnishing of materials and supplies for painting or refurbishing equipment.
- F. Air Works, Inc. shall not be required to furnish any items of equipment, labor, or make special tests recommended or required by insurance companies, Federal, State, Municipal or other authorities except as otherwise included in this Agreement.
- G. In the event either party must commence a legal action in order to enforce any rights under this contract, the successful party shall be entitled to all court costs and reasonable attorney's fees as determined by the court for prosecuting and defending the claim, as the case may be.
- H. Air Works, Inc. shall not be liable for the operation of the equipment nor for injuries to persons or damage to property, except those directly due to the negligent acts or omissions of its employees and in no event shall it be liable for consequential or speculative damages. It shall not be liable for expense incurred in removing, replacing or refinishing any part of the building structure necessary to the execution of this Agreement. It shall not be held liable for any loss by reason of delays in transportation, delays caused by priority or preference rating, or orders or regulations established by any government, authority, or agency.
- I. In the event of additional freight, labor, or material costs resulting from the customer's request to avoid delays with respect to equipment warranties, or accelerated delivery of parts and supplies, the customer agrees to pay these additional costs.
- J. Air Works, Inc.'s service shall not include the identification, detection, abatement, encapsulation or removal of asbestos or products or materials containing asbestos or similar hazardous substances. In the event Air Works, Inc. encounters such material in performing its work, Air Works, Inc. will have the right to discontinue work and remove its employees until the hazard is corrected or its determined no hazard exists.
- K. This Agreement contains the entire Contract and the parties hereby agree that this Agreement has been agreed to and the entire Agreement is then accepted and approved by an authorized person for both parties, and no statement, remark, agreement or, understanding, oral or written, not contained herein, will be recognized or enforced.
- L. This agreement does not include the disposal of hazardous waste. Any charges incurred for their proper disposal will be borne by the customer as an extra to the contract price.

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

6/7/2011

City Council Meeting Date
Agenda Items Only

Ray M. Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Action Required: Approve payment to Arkansas Western Gas Company for utility relocation costs.

Contact: James F Koch, P.E., Senior Engineer; PO Box 13288, Fayetteville AR 72703-1002; 479-582-8267; FAX 479-521-5455; CELL 479-530-7372; james.koch@sourcegas.com

\$ 127,675.44
Cost of this request

\$ 419,257.00
Category / Project Budget

Correct Runway 16 RSA
Program Category / Project Name

5550.3960.7820.38
Account Number

\$ 221,412.13
Funds Used to Date

Airport Capital Exp
Program / Project Category Name

07039 1
Project Number

\$ 197,844.87
Remaining Balance

Airport
Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

Department Director

Date

Previous Ordinance or Resolution # 04-10

Original Contract Date: 1/5/2010

Original Contract Number:

City Attorney

Date

Finance and Internal Services Director

Date

Received in City Clerk's Office 05-20-11 A11:22 RCVD
Kim J.

Chief of Staff

Date

Received in Mayor's Office

Mayor

Date



Comments:

City Council Meeting of: June 7, 2011
Agenda Item Number:



AVIATION DIVISION
FAYETTEVILLE EXECUTIVE AIRPORT • DRAKE FIELD

CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor Jordan

THRU: Chief of Staff

THRU: Staff/Contract Review Committee

THRU: Terry Gully, Transportation Director *TG*

FROM: Ray M. Boudreaux, Aviation Director *RB*

DATE: May 19, 2011

SUBJECT: Approve increase in the contract amount with Arkansas Western Gas Company for relocation of gas lines as part of the Runway 16 Safety Area Improvement Project at Drake Field.

RECOMMENDATION: Review and Approve the Invoice from Arkansas Western Gas Company in the amount of \$127,675.44 for payment with grant proceeds from the Runway 16 Safety Area Improvement Project.

BACKGROUND: The contract with Arkansas Western Gas Company was approved by the City Council January 5, 2010 in the amount of \$83,000.00, and allowed for a contingency of \$5,000.00, to relocate the gas lines to the new Highway 71 right of way and out of the airport safety area. The work was completed in the summer of 2010 and an invoice was never sent nor was notice given that the work had been completed. The contract with AWG required AWG to notify the Airport that the work was complete and to send an invoice for payment within six (6) months of completion. When preparing the grant close out documents we discovered that we had not been invoiced and had not paid for the AWG work and contacted them. They promptly sent an invoice in an amount \$39,675.44 more than the initial contract plus contingency. We have contacted the FAA and they will cover the additional cost in the grant. The project to improve the Runway 16 Safety Area came in \$120,726 over the approved grant amount for a total project cost of \$3,743,273.00. The overage represents a 3.33% increase.

BUDGET IMPACT: This project and the increase in the AWG cost is covered by FAA/AIP and State Aeronautics Grant Funding as part of the Runway 16 Safety Area Improvement Project.

Attachments: Staff Review
AWG Invoice
Contract with AWG for gas line relocation

RESOLUTION NO. _____

A RESOLUTION AMENDING RESOLUTION NO. 04-10 AND APPROVING AN AGREEMENT WITH ARKANSAS WESTERN GAS COMPANY IN THE AMOUNT OF \$127,675.44 FOR RELOCATION OF GAS LINES AND APPURTENANCES AS PART OF THE RSA RUNWAY 16 IMPROVEMENT PROJECT AT THE FAYETTEVILLE EXECUTIVE AIRPORT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends Resolution No. 04-10 by deleting the reference to \$83,000.00 and replacing it with \$127,675.44, and by deleting the project contingency.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

RESOLUTION NO. 04-10

A RESOLUTION APPROVING AN AGREEMENT WITH ARKANSAS WESTERN GAS COMPANY IN THE AMOUNT OF \$83,000.00 FOR RELOCATION OF GAS LINES AND APPURTENANCES AS PART OF THE RSA RUNWAY 16 IMPROVEMENT PROJECT AT THE FAYETTEVILLE EXECUTIVE AIRPORT, AND APPROVING A \$5,000.00 CONTINGENCY

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves an agreement with the Arkansas Western Gas Company, a copy of which is attached to this Resolution as Exhibit "A" and incorporated herein as if set out word for word, in the amount of \$83,000.00 for relocation of gas lines and appurtenances to allow construction of improvements as part of the RSA Runway 16 Improvement Project at the Fayetteville Executive Airport.

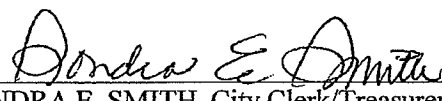
Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency in the amount of \$5,000.00.

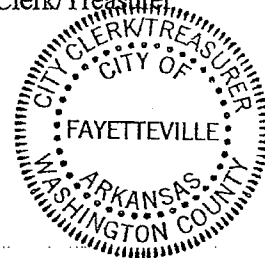
PASSED and APPROVED this 5th day of January, 2010.

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk/Treasurer



1-800-563-0012
www.awgonline.com

Account Number: 411010049704
Customer Number: 1101000380
CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE AR 72701-6069

Page: 1
Invoice Number: 401000056756
Billing Date: 05/18/2011
Mail Date: 05/19/2011

Previous Balance \$0.00
Payment \$0.00
Balance Forward \$0.00
Current Amount/Charges \$127,675.44

Total Amount Due \$127,675.44
Current Amount Due Date 06/10/2011

Security Deposit on Record \$0.00

• If payment for Current Amount/Charges is not received by 06/10/2011, a late payment charge of \$15.00 will be assessed. Current Amount/Charges are due on 06/10/2011.

Online Customer Care

• Access to your Account is now available via the Internet and Phone. On the Internet, you can change account information, view your consumption history, sign up for recurring electronic payment or electronic bill (paperless bill) and also view your statement. Go to www.awgonline.com to sign-up today.

Important Information

• For your convenience you can pay your bill electronically using a credit card or by automatic withdrawal from your bank account. You can learn more by calling our Customer Care Center or by logging onto www.awgonline.com.
• If you suspect a gas leak, don't wait. Leave the area and from a safe distance call our emergency service number at 1-800-563-0012. Choose your language and press option 1.

Correspondence

• If you have questions concerning your bill statement, service or delayed payment agreement please call our Customer Care Center at 1-800-563-0012.
• Please send all correspondence and legal notices separately to Arkansas Western Gas Company, PO Box 13288, Fayetteville, AR 72703-1002.
• To update your mailing address visit www.awgonline.com and log into your account, or call us at 1-800-563-0012.

Disclosure

• **Electronic Check-Re-presentment Policy**
In the event that your check is returned unpaid for insufficient or uncollected funds, we may re-present your check electronically. In the ordinary course of business, your check will not be provided to you with your bank statement, but a copy can be retrieved by contacting your financial institution.
• Effective June 1, 2011, when you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

Rebates

• With AWG's energy-efficiency programs, you'll save money and energy at the same time! Take advantage of rebates and low or no-cost energy tips. Visit www.ExcessIsOut.com for more information!

**Check your account
anytime, anywhere!**

Arkansas Western Gas
makes it easy to

- ☒ check your account balance,
- ☒ make a one-time payment
- ☒ sign up for recurring auto payments and more.

Register your account online
at www.awgonline.com. Just
click the "Account Login"
button to get started!

Or if you'd prefer, call
1-800-563-0012 and after
choosing your language,
press option 2.

Please do not staple or fold

Please return this portion with your payment and write your account number on the check.

Loan Overpayment	Account Number	Current Amount Due Date	Total Amount Due
Check here and indicate amount of overpayment on back ☐	411010049704	06/10/2011	\$127,675.44

I have added the following amount to my bill as my donation to Salvation Army's
Hearts Warming Homes \$ _____ Other ☐ \$ 5 ☐ \$ 10 ☐ \$ 20

Total Amount Enclosed: _____

CITY OF FAYETTEVILLE
IO 1004607-CITY AIP 3-05-0020 0038-2009
113 W MOUNTAIN ST
FAYETTEVILLE AR 72701-6069



Arkansas Western Gas Company
PO Box 660559
Dallas TX 75266-0559

411010049704 1048 012767544

Account Number: 411010049704
Customer Number: 1101000380
CITY OF FAYETTEVILLE
113 W MOUNTAIN ST
FAYETTEVILLE AR 72701-6069

Page: 2
Invoice Number: 401000056756
Billing Date: 05/18/2011
Mail Date: 05/19/2011

Regulated Service	127675.44
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Total Current Charges	\$127,675.44
------------------------------	---------------------



INVOICE DETAIL

BILL TO: _____

City of Fayetteville - Fayetteville Executive
Airport, Drake Field
Attn: Ray Boudreaux
4500 S School Ave, Suite F
Fayetteville, AR 72701

Invoice # :	1048- 401000056756
Invoice Date :	05/18/2011
Customer Account # :	411010049704
Internal Order # :	1004607

Customer Reference / Order # :

IO 1004607
AIP 3-05-0020—0038-2009

Item	Description / Details	Total
1	Relocation for Drake Field Airport Runway 16 Safety Area Improvements AIP 3-05-0020—038-2009	127,675.44

Questions concerning this invoice? Please contact:

PROPERTY ACCOUNTING - Attn: James Koch
Phone: (479) 582-7867
E-mail: James.Koch@Sourcegas.com

SUBTOTAL	\$	127,675.44
TAX RATE		0.00%
SALES TAX		-
OTHER		-
TOTAL	\$	127,675.44

THANK YOU FOR YOUR BUSINESS!

INVOICE SUMMARY

I/O # : 1004607

Relocation for Drake Field Airport
Runway 16 Safety Area Improvements
0020--038-2009

AIP 3-05-

<u>Type of Charge</u>	<u>Amount</u>
Labor and Payroll	16,494.73
Employee Expense	-
Material/Supplies	11,621.42
Outside Services / Legal	73,937.50
Vehicle Expenses	-
Right of Way	-
Utilities - Gas & Water	-
Permits, Licenses	-
Other Exp & Fees	-
ROW - Other	-
Subtotal - Direct Charges	102,053.65
Overhead Allocation	25,621.79
AFUDC	-
Total Project Charges	127,675.44
Betterment	-
Adjusted Total Charges	<u>127,675.44</u>
Billable Amount	100.00%
	127,675.44
	Less Adjustment
	-
NET Amount Due	<u>127,675.44</u>

1004607

Timesheet Download from MDSI System

File #	Last, First	Hours	HCC	Pay Date	Order
1701	Davis,Ronald	7.00	8111	08/13/2010	1004607
1771	Holmes,Lester	34.00	8111	05/21/2010	1004607
1771	Holmes,Lester	15.50	8111	06/04/2010	1004607
1771	Holmes,Lester	57.00	8111	06/18/2010	1004607
1771	Holmes,Lester	29.50	8111	07/02/2010	1004607
1662	Bradshaw,Donald	17.00	8111	07/16/2010	1004607
1662	Bradshaw,Donald	16.00	8111	07/30/2010	1004607
1728	Ferguson,William	16.75	8111	07/16/2010	1004607
1741	Gonzalez,Omar	8.00	8111	07/02/2010	1004607
1798	Lackey,Sheldon	7.00	8111	07/16/2010	1004607
1895	Simpson,Jason	23.50	8111	07/02/2010	1004607
1895	Simpson,Jason	30.00	8111	07/16/2010	1004607
1895	Simpson,Jason	14.00	8111	07/30/2010	1004607
1922	Talley,Roger	7.00	8111	07/16/2010	1004607
1923	Taylor,Grant	17.00	8111	07/16/2010	1004607
1923	Taylor,Grant	16.00	8111	07/30/2010	1004607
1939	Wade,Roger	37.72	8111	07/02/2010	1004607
1939	Wade,Roger	15.35	8111	07/16/2010	1004607
1939	Wade,Roger	13.83	8111	07/30/2010	1004607
1940	Wade,Vernon	16.00	8111	07/02/2010	1004607
1940	Wade,Vernon	48.42	8111	07/16/2010	1004607
1940	Wade,Vernon	14.00	8111	07/30/2010	1004607

460.57 Total Labor Hours

MATERIALS - Stock Transfer

1004607

Co Code	Order	Account	Ref. Doc. No.	Period	Yr	Posting Date	FERC	Material	Material Description	Quantity	UOM	Amount
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	101456	PIPE 4 SDR11.5 PE2406/2708 x 500'	2000	FT	3538.45
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100513	PIPE 4" SDR11.5 PE2406/2708X40' STRAIGHT	1719	EA	2900.90
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100214	CAP 4" SDR11 PE2406 BUTT FUSION	4	EA	31.30
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100292	TEE 4" SDR11 PE2406 BUTT FUSION	5	EA	71.62
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100235	ELBOW 4" SDR11 90 DEG PE2406 BUTT FUSION	5	EA	62.97
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100220	COUPLING 2" PE3408/4710 ELECTRO-FUSION	1	EA	8.33
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100247	REDUCER 4 X 2" SDR11 PE2406 BUTT FUSION	3	EA	22.49
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100208	CAP 2" SDR11 PE2406 BUTT FUSION	5	EA	8.21
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100499	PIPE 2" SDR11 PE2406/2708 x 500'	2132	FT	1150.11
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100234	ELBOW 4" SDR11 45 DEG PE2406 BUTT FUSION	4	EA	58.45
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100320	FITTING 2" WE X PE2406 SDR11 TRANSITION	1	FT	15.19
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	102633	NIPPLE SWAGE 2 X 1 BW X THD STD BLACK	1	EA	20.17
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	102499	STOP 3/4 X 1 AY MCDONALD	1	ROL	11.40
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100311	TEE 4 X 2" HV PE2406 TAP ELECTRO-FUSION	1	EA	72.35
1048	1004607	601010	4900025231	7	2010	7/28/2010	3760	100222	COUPLING 4" PE3408/4710 ELECTRO-FUSION	2	EA	52.72
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100442	PIPE 3-1/2 X .216"W X-42 FBE PE CS	2	FT	13.38
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100326	FITTING 4" WE X PE2406 SDR11 TRANSITION	1	EA	39.99
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100222	COUPLING 4" PE3408/4710 ELECTRO-FUSION	4	EA	105.44
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100132	ELBOW 3" 90 DEG LONG STD BUTT WELD CS	1	EA	15.31
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	102533	VALVE BALL PLASTIC 4 81211 ROCKWELL PE	1	EA	210.76
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100249	REDUCER 4 X 3" SDR11 PE2406 BUTT FUSION	1	EA	8.50
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100816	TAPE DENSYL 4 X 33	5	ROL	128.73
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100140	ELBOW 4" 90 DEG LONG STD BUTT WELD CS	1	EA	24.98
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101120	CUPS SEAL 3 60# 08-0114-0003-00	1	EA	25.89
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100100	Anode 17# Mag 17D3 10' #12 LEAD PKG	1	EA	64.56
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101152	TEE 3 BLACKHAWK 3 WAY	1	EA	202.65
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100324	FITTING 3" WE X PE2406 SDR11 TRANSITION	1	EA	26.96
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100235	ELBOW 4" SDR11 90 DEG PE2406 BUTT FUSION	1	EA	12.59
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100229	ELBOW 2" SDR11 90 DEG PE2406 BUTT FUSION	1	EA	3.90
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100307	TEE 2 X 2" HV PE2406 TAP ELECTRO-FUSION	1	EA	63.69
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	102733	CAP 2 IPS PE3408/PE4710 ELECTROFUSION	4	EA	50.18
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101249	ELL 1 1/4 90 DEG STD WT WELD	1	EA	5.55
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100220	COUPLING 2" PE3408/4710 ELECTRO-FUSION	2	EA	16.67
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100813	CONNECTOR TRACER WIRE #90120	5	EA	20.20
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101530	CLAMP BAND #2450 JIFFY 2 X 6	1	EA	13.62
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101589	CLAMP FC 2 X 7 1/2 SMITH-BLAIR 225	1	EA	55.44
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100536	RISER 2" MPT X PE2406 SDR11	1	EA	70.96
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	102501	STOP 2 AY MCDONALD	1	EA	35.77
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	102735	CAP 4 IPS PE3408/PE4710 ELECTROFUSION	1	EA	43.51
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101020	PLUG 2 BLK	1	EA	2.09
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100143	ELBOW 6" 90 DEG LONG STD BUTT WELD CS	1	EA	45.25
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100176	REDUCER 6 X 2" BUTT WELD CONCENTRIC S	1	EA	67.59
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100983	NIPPLE 2 X 12 BLK XH	1	EA	12.58
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101035	REDUCER 1 X 3/4 BLK MI	1	EA	1.59

MATERIALS - Stock Transfer

1004607

Co Code	Order	Account	Ref. Doc./No.	Period	Yr	Posting Date	FERC	Material	Material Description	Quantity	UOM	Amount
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100220	COUPLING 2" PE3408/4710 ELECTRO-FUSION	5	EA	41.66
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100307	TEE 2 X 2" HV PE2406 TAP ELECTRO-FUSION	3	EA	191.07
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101150	TEE 1 1/4 BLACKHAWK 3 WAY	2	EA	184.72
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101207	FITTING TRANS 1 1/4 X 1 1/4 PE2406/2708	1	EA	11.25
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	101240	CAP WELD 1 1/4 STD WT	2	EA	18.08
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100219	COUPLING 1-1/4" PE3408/4710 ELECTRO-FUS	2	EA	16.40
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100243	REDUCER 2 X 1-1/4" SDR11 PE2406 BUTT FUS	1	EA	3.50
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100100	Anode 17# Mag 17D3 10' #12 LEAD PKG	4	EA	258.26
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	102732	CAP 1 1/4 IPS PE3408/PE4710 ELECTROFUSIO	2	EA	24.44
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	102734	CAP 3 IPS PE3408/PE4710 ELECTROFUSION	2	EA	49.72
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100112	CAP 3" BUTT WELD STD CARBON STEEL	1	EA	9.31
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100816	TAPE DENSYL 4 X 33	1	ROL	25.75
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100320	FITTING 2" WE X PE2406 SDR11 TRANSITION	2	EA	30.38
1048	1004607	601010	4900025233	7	2010	7/28/2010	3760	100501	PIPE 3" SDR11.5 PE2406/2708 X 500'	6	FT	7.24
												10,284.77

APAC Central, Inc.
PO Box 9208
Fayetteville, AR 72703

Phone: 479-587-3300
Toll Free: 877-920-2722

ARKANSAS WESTERN GAS
ATTN: ACCOUNTS PAYABLE
PO BOX 13288
FAYETTEVILLE, AR 72703-1002



Customer Number	Invoice Date	Invoice Number	Customer Job	Receivable Type
207898	07/03/10	7000278424	1004507	20
Customer PO		00006	Stone - Springdale Quarry	ARWAF062
Ship to		HWY 71 AND BAILEY		

Page 1 of 1

TOTALS		Product Cost	Freight	Quantity	Tax	Total
		\$151.43	\$92.87	20.19	\$22.60	\$266.90

Date	Invoice	Product	Product Description	Unit	Quantity	Price	Tax	Amount
05/30/10	173380	032335S	CLASS 7 BASE (SG-2)	TON	20.19	7.50	14.01	183.44
06/30/10	173380		Truck - 55	TON	20.19	4.80	8.59	101.46

Invoice Totals Authority Summary
AR State Tax 8
AR Fayetteville City 2
AR Washington County 1.25

14.55
4.25
3.05

Company Code (4)	1048
GL Account (6)	1051010
Internal Order (10)	1004607
PERC Code (5)	3760
Approval	[Signature]
Approval ID	11654
Date	7/16/10

ARKANSAS WESTERN GAS
ATTN: ACCOUNTS PAYABLE
PO BOX 13288
FAYETTEVILLE, AR 72703-1002

Invoice Number	Invoice Date	Customer Number	Invoice Amount
7000278424	07/03/10	207898	\$266.90



Terms: Our terms are Net 30 Days. We will assess up to the states legal maximum rate for finance charges on delinquent accounts.

Remit To
APAC Central, Inc.
PO Box 9208
Fayetteville, AR 72703

Please tear off and return this remittance coupon
with your payment so it can be applied correctly.

APAC Central, Inc.
PO Box 9208
Fayetteville, AR 72703

Phone: 479-587-3300
Toll Free: 877-920-2722

ARKANSAS WESTERN GAS
ATTN: ACCOUNTS PAYABLE
PO BOX 13288
FAYETTEVILLE, AR 72703-1002



Customer Number	Invoice Date	Invoice Number	Customer Job	Receivable Type
207995	07/03/10	7000278426	1004807	20
Customer PO	Plant	Ship to	Ship to	Ship to
	00006	Stons - Springdale Quarry		AR/WFA082
		HWY 71 AND SHORT		

Page 1 of 1

TOTALS		Product Code	Freight	Quantity	Tax	Total		
		\$454.44	\$278.71	60.59	\$67.81	\$800.96		
Date	Truck #	Product	Product Description	Unit	Quantity	Price	Tax	Amount
05/30/10	173405	0323345	CLASS 7 BASE (SB-2)	TON	20.15	7.50	13.68	165.11
05/30/10	173405		Truck - 108	TON	20.15	4.50	8.37	101.25
05/30/10	173423	0323355	CLASS 7 BASE (SB-2)	TON	20.15	7.50	13.68	165.11
06/30/10	173423		Truck - 109	TON	20.15	4.50	8.37	101.25
07/01/10	173570	0323365	CLASS 7 BASE (SB-2)	TON	20.29	7.50	14.35	165.25
07/01/10	173570		Truck - 84	TON	20.29	4.50	8.63	101.91

Invoice Taxing Authority Summary:
AR State Tax 6
AR Fayetteville City 2
AR Washington County 1.25

43.89
14.67
8.15

Company Code (6)	1048
GL Account (6)	601010
Internal Order (10)	1004807
PERC Code (4)	037600
Approval	[Signature]
Approval ID	1654 Date 7/13/10

ARKANSAS WESTERN GAS
ATTN: ACCOUNTS PAYABLE
PO BOX 13288
FAYETTEVILLE, AR 72703-1002

Invoice Number	Invoice Date	Customer Number	Invoice Amount
7000278426	07/03/10	207995	\$800.96



Terms: Our terms are Net 30 Days. We will assess up to the states legal maximum rate for finance charges on delinquent accounts.

Remit to:
APAC Central, Inc.
PO Box 9208
Fayetteville, AR 72703

Please tear off and return this remittance coupon with your payment so it can be applied correctly.

APAC Central, Inc.
PO Box 9208
Fayetteville, AR 72703

Phone: 479-587-3300
Toll Free: 877-920-2722

ARKANSAS WESTERN GAS
ATTN ACCOUNTS PAYABLE
PO BOX 13288
FAYETTEVILLE, AR 72703-1002



Customer Number	Invoice Date	Invoice Number	Customer Job	Receivable Type
207996	05/15/10	7000256061	100-4907	20
Customer PO	Plant	Plant	Plant	Tax Code
	00005	Stone - Springdale Quarry		ARBEN7000
Ship to	SUPERSTCP			

Page 1 of 1

TOTALS		Product Cost	Freight	Quantity	Tax	Total
		\$156.70	\$95.50	20.76	\$17.59	\$268.79

Date	Invoice	Product	Product Description	UOM	Quantity	Price	Tax	Amount
05/19/10	169175	023335S	CLASS 7 BASE (SB-2)	TON	20.79	7.50	10.50	155.63
05/12/10	169175		Truck - 32	TON	20.76	4.80	5.69	102.19

Invoice Taxing Authority Summary:
AR State Tax 6
AR Benton County 1

15.07
2.52

Company Code (4)	1048
GL Account (6)	601010
Internal Order (10)	1004607
FISC Code (4)	3760
Approval	<i>[Signature]</i>
Approval ID	1654 Date 5/21/10

ARKANSAS WESTERN GAS
ATTN ACCOUNTS PAYABLE
PO BOX 13288
FAYETTEVILLE, AR 72703-1002

Invoice Number	Invoice Date	Customer Number	Invoice Amount
7000256061	05/15/10	207996	\$268.79



Terms: Our terms are Net 30 Days. We will assess up to the states legal maximum rate for finance charges on delinquent accounts.

Remit To:
APAC Central, Inc.
PO Box 9208
Fayetteville, AR 72703

Please tear off and return this remittance coupon with your payment so it can be applied correctly.

Barrows Excavation Inc
49 County Road 404
Berryville, AR 72616
USA

Voice: 870-423-4813
Fax: 870-423-6494

INVOICE

Invoice Number: 30773
Invoice Date: Jun 10, 2010
Page: 1
Duplicate

Bill To:

Arkansas Western Gas
A SourceGas Company
PO Box 13258
Fayetteville, AR 72703

Ship to:

Customer ID	Customer PO	Payment Terms	
arwestamgas	10awg02	Net 30 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
			7/10/10

Item	Description	Quantity	Unit Price	Amount
	Drake Field Relocation			
	Install 4" PE Pipe	3,719.00	12.50	46,487.50
	Install 2" PE Pipe	2,132.00	12.50	26,650.00
	Traffic Maintenance			300.00
	Mobilization			600.00
<i>Dr. David L. Hester</i> Po # 50002838 6/11/10				

Subtotal	73,937.50
Sales Tax	
Total Invoice Amount	73,937.50
Payment/Credit Applied	
TOTAL	73,937.50

Check/Credit Memo No:

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

1/5/2010

City Council Meeting Date
Agenda Items Only

Ray M. Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Action Required: Approve a Utility Relocation Agreement with Arkansas Western Gas in the amount of \$83,000; Approve a \$5,000 contingency amount.

Contact James F Koch, P.E., Senior Engineer; PO Box 13288, Fayetteville AR 72703-1002; 479-582-8267; FAX 479-521-5455; CELL 479-530-7372; james.koch@sourcegas.com

\$ 83,000.00

Cost of this request

\$ 4,036,675.00

Category / Project Budget

Correct Runway 16 RSA

Program Category / Project Name

5550.3960.7820.38

Account Number

\$ 3,647,505.00

Funds Used to Date

D8100_AVED

Program / Project Category Name

07039 3

Project Number

\$ 389,170.00

Remaining Balance

Airport

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Department Director

12-16-09

Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

12-17-09

Date

Original Contract Number:

Finance and Internal Services Director

12-17-2009

Date

Received in City
Clerk's Office

ENTERED
12/17
ED

Chief of Staff

12-18-09

Date

Received in
Mayor's Office

ENTERED
12/18/09
PH

Mayor

12-18-09

Date

Comments:



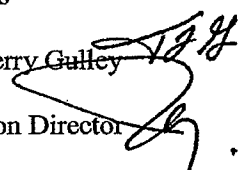
THE CITY OF FAYETTEVILLE, ARKANSAS
AVIATION DIVISION
4500 S School Ave, Ste F
Fayetteville, AR 72701
P (479) 718-7642

CITY COUNCIL MEMO

To: Mayor Jordan

Thru: Chief of Staff, Don Marr

Thru: City Attorney, Kit Williams

Thru: Transportation Director, Terry Gallely 

From: Ray M. Boudreaux, Aviation Director 

Date: December 15, 2009

Subject: Utility Relocation Agreement with Arkansas Western Gas Company for the RSA Runway 16 Improvement Project at the Airport.

PROPOSAL: As part of the Runway Safety Area Improvement Project at the Airport, utility relocations are required. Expense for the relocations is included in the FAA/AIP grant. This item is to approve an agreement with Arkansas Western Gas Company for the relocation of a Gas Line that is located in the current US Highway 71 right of way to the new right of way which follows the realigned highway.

RECOMMENDATION: Recommend approval of the Agreement with Arkansas Western Gas Company and signatures of the Mayor and City Clerk.

BUDGET IMPACT: The Agreement states that the City would pay the cost of the relocation. The estimate for this work provided by the Gas Company is \$83,000.00. The agreement allows that if the cost is less, the City would pay less and if more the City would pay more. We would request that a \$5,000.00 contingency be added to the budget in case the cost escalates. McClelland Consulting Engineers will oversee the work to insure that the City gets what we pay for. There is sufficient budget in the Grant Project for this work.

Atch: Agreement
Staff Review Form

ARKANSAS WESTERN GAS COMPANY
UTILITY CONSTRUCTION/RELOCATION AGREEMENT

Property Developer: City of Fayetteville
Address: 113 West Mountain Street
Fayetteville, AR 72701

Job Location: Hwy 71 – Drake Field, Fayetteville, AR
Runway 16 Safety Area Improvements (Hwy 71 Relocation), Drake Field
AIP 3-05-0020—038-2009.

THIS AGREEMENT, made and entered into this 5th day of January, 2010, by and between City of Fayetteville, acting by and through its duly authorized representative, hereinafter referred to as the "Developer," and ARKANSAS WESTERN GAS COMPANY, acting by and through its duly authorized representative, hereinafter referred to as the "Owner."

WITNESSETH:

WHEREAS, THE "Developer" proposes to make certain improvements at the location designation as shown above; and as part of the necessary work of such improvements, "Owner" must adjust or relocate certain of its existing facilities, and in connection with such adjustment, or relocation, "Developer" shall participate in the costs of such work to the extent herein agreed upon; and

WHEREAS, the proposed improvement necessitates the adjustment and/or relocation of certain facilities of "Owner" as described in the following description of work.

Install pipe with all necessary appurtenances to relocate for the proposed Runway 16 Safety Area Improvements (Hwy 71 Relocation), Drake Field" AIP 3-05-0020—038-2009, as planned and presented in the design plans provided by the City of Fayetteville's Engineer of Record, McClelland Consulting Engineers, Inc. City of Fayetteville will reimburse 100% of the actual cost of all materials, contract labor, company labor hours, and equipment including Engineering and Inspection costs to Arkansas Western Gas Company.

And, such adjustment, relocation or construction being shown in detail in "Owner's" plans, sketches, estimate of cost, and specifications (when applicable) which are attached hereto and made a part hereof; and

WHEREAS, the "Developer" desires to implement the herein described utility adjustments or relocations and approve the proposed utility construction of "Owner" by entering into an agreement with said "Owner."

NOW, THEREFORE, IT IS HEREBY AGREED:

1. Where applicable hereunder by reason of new utility occupancy or crossing of "Developer's" property, "Developer" hereby grants to "Owner" a right-of-way license and permission to install and operate utility facilities on or across "Developer's" properties as shown

on the approved plans or sketch maps attached hereto and made a part hereof, and to execute such easements or right-of-way grants as may be necessary to evidence and record such right of "Owner."

2. Where applicable hereunder by reason of new construction on existing utility rights of way, "Owner" hereby grants to "Developer" the right to use for his purposes the lands within the project limits on or across which "Owner" holds a valid property interest antedating "Developer's" rights which were subsequently acquired in the same lands, and which property rights "Owner" shall retain so long as "Owner" (or "Owner's" successors or assigns) continues such use and occupancy and does not abandon, and thereby release, such property interest to "Developer" through facility removal in making said adjustments or by subsequent facility removal for "Owner's" convenience; and the "Developer" hereby agrees that "Owner," by granting said right and by said continued joint use and occupancy, does not waive any future claim for reimbursement for adjustment cost as may be eligible for reimbursement by reason of such prior property interest, nor does "Owner" waive any other legal or property right held under the Law or Constitution of the State or the United States.

3. In the event that future construction, reconstruction, expansion, relocation, rehabilitation, betterment, maintenance, or other work on the facilities owned and operated by either the "Developer" or the "Owner" in the area jointly occupied or used under either or both the above provisions of this Agreement will disturb, detrimentally affect, interfere, or be inconvenient to the facilities or responsibilities of either party, the parties hereto shall reach agreement in writing as to locations, extent, and methods of such work before the work is undertaken. In a case of emergency, and where immediate action is necessary for the protection of the public and to minimize damage to or loss of investment in the property of the "Developer" or the "Owner" either party hereto may, at its own responsibility and risk, make any necessary emergency repairs, and shall notify the other party hereto of such action as soon as practicable.

4. "Owner" shall inform "Developer," in writing, three days or more in advance of the date work is to be started, and shall keep the "Developer" informed of progress and activity related to the work being performed, and shall furnish written notice when the work is completed.

5. "Developer" agrees that the cost of the utility adjustment and/or construction provided for hereunder shall be paid to "Owner" as follows. "Owner" agrees that "Developer" will only pay actual cost of adjustment should actual cost be less than \$ 83,000.00. If actual cost exceeds \$ 83,000.00, the "Developer" will pay the actual cost. Exhibit "A" is cost estimate as submitted to City of Fayetteville.

6. "Owner" shall accept as full payment for work hereunder the amount developed or accumulated as eligible actual and related indirect costs in accordance with "Owner's" accounting procedure, which is the Uniform System of Accounts prescribed by the Arkansas Public Service Commission. "Owner" further agrees to retain said cost records and accounts for inspection and audit for a period of not less than one (1) year from the date of final payment.

7. "Owner" shall be responsible for any and all hazards to persons, property, and traffic, and shall save the "Developer" harmless in all respects from any and all losses, damages, or injuries caused by any negligent act or omission by "Owner's" employees or agent performing work under this Agreement or future maintenance or servicing work on facilities constructed under this Agreement; and "Owner" shall, in completing said work, perform clean up and

restoration of appearances of the work area including disposal of surplus materials and debris, so as not to leave the work area in an unsafe or unsightly condition.

8. If requested by "Owner" in writing, "Developer" shall make intermediate progress payments in amounts not exceeding ninety percent (90%) of eligible billed costs, and no more often than monthly intervals, for work hereunder upon receipt of statements in two (2) copies for periodic and unpaid costs, provided the herein estimated reimbursable amount is \$2,000.00 or more, and that no such intermediate payment shall be construed as final settlement for any item included in any intermediate billing.

9. "Owner" shall, within six (6) months after completion of the adjustment and acceptance thereof by the "Developer," prepare and submit to "Developer" a detailed complete (including intermediate billings, if any) and final bill in two (2) copies and covering the total cost for the adjustment of "Owner's" facilities.

10. The "Developer," upon receiving from "Owner" the final billing documents complete as listed next above, shall pay "Owner" for the eligible actual cost, less all prior payments, if any, for making the adjustments in "Owner's" facilities as agreed herein. "Developer" shall pay "Owner" within thirty (30) days after such billing documents are received. If "Developer" fails to pay within said time, the amount due shall bear interest at the rate of 10 percent per annum until paid. "Developer" shall have the right to inspect and audit the books of account of "Owner" during normal business hours of "Owner" at any time within the time limit set forth in Paragraph 6 to determine the correctness of "Owner's" billing. "Owner" agrees to refund any and all amounts paid in payments found in the audit to exceed the total amount eligible for work hereunder.

11. It is mutually agreed by the parties hereto that the provisions of this Agreement pertaining to relative property rights, right-of-way occupancy permission, access for servicing when applicable and joint use of rights of way shall continue in full force and effect from the date of execution, and shall be perpetually binding upon each party's legal representatives, successors or assigns.

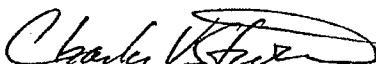
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate by their duly authorized representatives the date first herein above written.

"OWNER"

"DEVELOPER"

ARKANSAS WESTERN GAS COMPANY

City of Fayetteville

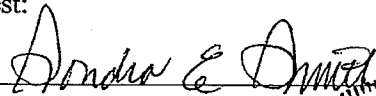

Its: Vice-President - AWG Operations

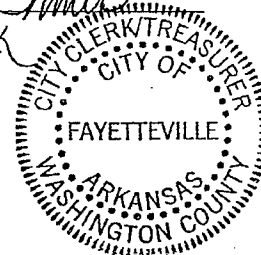

Its: Mayor

Attest:

Attest:

Its: Secretary


Its: City Clerk



City of Fayetteville Staff Review Form

A. 8
Fayetteville Police Department Policies
Page 1 of 18

**City Council Agenda Items
and
Contracts, Leases or Agreements**

6/7/2011

City Council Meeting Date
Agenda Items Only

Greg Tabor
Submitted By

Police
Division

Police
Department

Action Required:

Staff seeks council approval of a resolution to adopt Fayetteville Police Department Policies: 1.3.4, Less Lethal Weapons; 41.1.1 Patrol and 62.1.12 Police Traffic Radar Operation

\$0

Cost of this request

Category / Project Budget

Program Category / Project Name

Account Number

Funds Used to Date

Program / Project Category Name

Project Number

\$

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐


Department Director

Date

5-19-11

Previous Ordinance or Resolution #

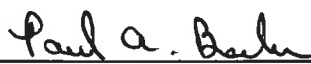

City Attorney

Date

5-20-11

Original Contract Date:

Original Contract Number:


Finance and Internal Services Director

Date

5-20-2011

Received in City
Clerk's Office

05-20-11A09:17 RCVD




Chief of Staff

Date

5-23-11

Received in
Mayor's Office

ENTERED
5/20/11
AH


Mayor

Date

5/23/11

Comments:



To: Mayor Lioneld Jordan and City Council
From: Greg Tabor, Chief of Police 
Date: Friday, May 20, 2011
Re: Police Department Policy Amendments

Recommendation:

Council approves a resolution adopting Fayetteville Police Department Policies: 1.3.4, Less Lethal Weapons; 41.1.1, Patrol and 62.1.12, Police Traffic Radar Operation

Background and Discussion:

The current Fayetteville Police Department Policies were approved by council resolution #3-99 on January 5th, 1999. The department is currently in the process of reviewing all policies and updating as necessary to conform to current practices and to comply with accreditation standards.

Budget Impact:

None

From: Rob Turberville
To: Smith, Sondra
CC: Tabor, Greg
Date: 5/20/2011 8:54 AM
Subject: Policy Revision
Attachments: 1.3.4 Less-Lethal Weapons version 2.doc; 41.1.1 Patrol.doc; 62.1.12 Police Traffic Radar Operation Revision Draft.doc

Sondra,

I'm sending you electronic copies of policy drafts for the next council session. Each attachment has comments included to document revisions. I will send you hard copies separately along with the staff review forms. Let me know if you have any questions.

1.3.4 - Less Lethal Weapons - This draft hasn't changed a great deal in substance from the old policy. The biggest change is we have removed the usage and reporting procedures from the old policy and placed them into a separate general order on less lethal weapons. The policy covers less lethal weapons in general while the general order is more specific to the usage of each one.

41.1.1 - Patrol - Some changes in this draft were made to streamline the text and make it more concise. Other changes were made to reflect current departmental practices that had never been documented in policy while other amendments were made to meet accreditation standards.

62.1.12 - Police Traffic Radar Operation - Language in the text of this draft was streamlined to make it more concise from the old policy. Also language was changed to reflect the changes in the equipment currently being used by the department.

Lt. Rob Turberville
Fayetteville Police Dept.
479/587-3500
rturberville@ci.fayetteville.ar.us
TDD(Telecommunications Device for the Deaf): 479/521-1316

RESOLUTION NO. _____

**A RESOLUTION APPROVING FAYETTEVILLE POLICE DEPARTMENT
POLICIES 1.3.4 LESS LETHAL WEAPONS, 41.1.1 PATROL, AND 61.1.12
POLICE TRAFFIC RADAR OPERATION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves Fayetteville Police Department policies 1.3.4 Less Lethal Weapons, 41.1.1 Patrol, and 61.1.12 Police Traffic Radar Operation. A copy of the policies, marked as Exhibit "A", is attached hereto and made a part hereof.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

POLICIES, PROCEDURES, AND RULES

Subject: 1.3.4 Less-Lethal Weapons and Defensive Tactics	Effective Date: November 3, 2009
Reference: 1.3.1	Version: 1
CALEA: 1.3.4, 1.3.5, 1.3.6, 1.3.11	No. Pages: 4

I. PURPOSE

The purpose of this directive is to establish specific guidelines for the use of authorized less than lethal weapons and defensive tactics.[CALEA 1.3.4]

II. DISCUSSION

Defensive tactics and less-lethal weapons provide officers with additional use of force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty.

Deleted: All Police Officers of the Fayetteville Police Department are directed to obtain defensive tactics training and certification to carry and use the departmental authorized less-lethal weapons.

III. POLICY

It shall be the policy of the Fayetteville Police Department that officers use defensive tactics and less-lethal weapons when warranted, but only in accordance with the guidelines set forth here.

A. Defensive Tactics

The *Use of Force Continuum* is included as a guide in the appropriate use of force. It is recognized that it cannot be rigidly applied in rapidly unfolding and fluid situations. Officers should generally use the level of force that can reasonably be expected to succeed in controlling the situation. Officers are not required to move in a hierarchical fashion through all the levels of control, but instead, should use that level of force that is appropriate and reasonable under existing circumstances. [CALEA 1.3.1]

The force continuum contains areas of control, which will be used by an officer, and the levels of resistance, which are used by the offender.

1. Levels of Control:

- a. Officer Presence: The professional appearance and uniform of a police officer.
- b. Verbal Direction: The appropriate verbal response and commands used to attempt to direct the action of a suspect.
- c. Empty Hand: Soft empty hand techniques are designed to control passive or defensive resistance. They are used when verbal direction/commands are not effective and there is non-compliance with lawful orders. Pressure Point Control Tactics (PPCT) is the department approved defensive tactics system. Soft empty hand control techniques include strength



techniques, joint locks, pressure points or distraction techniques, which are hand and leg strikes to specific motor nerve points.

Hard Empty Hand Control techniques are designed to control active aggression, but can be used to control defensive resistance when lower forms of control have failed or when the officer believes lower forms of control will fail.

d. Intermediate Weapons: An intermediate weapon is any tool used when empty hand control has been, or will likely be, ineffective or dangerous for the officers to attempt, and deadly force is not justified.

The department issued impact weapon is the expandable baton. Officers have discretion to use the expandable baton as a defensive tactics tool to counter resistance and assaultive behavior. The OC aerosol spray and Conducted Energy Weapon are also classified as intermediate weapons.

The OC aerosol spray and Conducted Energy Weapon provides officers with additional use-of-force options against aggressive animals or for gaining compliance of resistant or aggressive individuals during arrest, detention and other enforcement situations that occur in the line of duty.

Usage criteria for intermediate weapons is as follows:

- (1) The use of any intermediate weapon is considered a use of force and shall be deployed in a manner consistent with this agency's use of force policy and in accordance with guidelines set forth herein.
- (2) An intermediate weapon may be used when:
 - (a) verbal dialogue has failed to bring about the subject's compliance, and
 - (b) the subject has signaled an intention to actively resist the officer's efforts to make the arrest, and
 - (c) the use of empty hand techniques has been, or will likely be, ineffective or not reasonable under the circumstances.
 - (d) when confronted with an aggressive animal.
- (3) Whenever practical and reasonable, officers should issue a verbal warning prior the use of an intermediate weapon.
- (4) An officer may use deadly force to protect himself or others from the use, or threatened use, of an intermediate weapon when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.
- (5) An intermediate weapon is not designed, nor expected, to be used in place of deadly force when deadly force is justified. The intermediate weapon is another tool in the use of force continuum to assist in preventing injury to officers or others.
- (6) Once a suspect is compliant, the use of an intermediate weapon is no longer justified.
- (7) If an intermediate weapon has been deployed, officers shall seek appropriate medical aid and/or assistance if necessary. Reference may be made to general orders specific to the less lethal weapon. [CALEA 1.3.5]

e. Deadly/lethal force: Force likely to cause death or serious physical injury.

2. Levels of Resistance:

- a. Psychological Intimidation: The suspect attempts to intimidate the officers psychologically. These are non-verbal cues such as suspect attitude or physical appearance or physical readiness.
- b. Passive Resistance: The suspect makes no attempt to fight the officer or even pull away. He simply forces the officer to do all the work. An example would be the protestor who causes the officer to pick him up and carry him from the scene or the drunk driver who will not step from the car but must be physically pulled out.
- c. Verbal Non-Compliance: This includes verbal threats from the suspect towards the officers. A suspect may not be resisting just by threatening the officer but may simply refuse to comply with orders, be unwilling to comply or ignore the officer completely
- d. Defensive Resistance: The suspect performs actions that attempt to prevent officers from controlling him, such as pulling away when handcuffing is attempted. He may simply move away from the officer or push the officer's hands away. The suspect makes no attempt to harm the officer, just tries to defeat the arrest.
- e. Active Aggression: The suspect attempts to harm the officer by physical actions such as striking or kicking him.
- f. Aggravated Aggression: The suspect is attempting to harm the officer by use of a weapon or empty handed at a deadly force level.

3. De-escalation of Force:

Officers must immediately de-escalate down to empty hands or verbal commands after gaining compliance through the use of an intermediate weapon.

Officers, for their own protection, should understand and comply with the force continuum.

4. Training:

Officers must be certified in the use of the Conducted Energy Weapon (CEW), Pepper Spray, police baton and Pressure Point Control Tactics before authorization to use such defensive tactics.

Officers are required to attend refresher training on handgun retention and PPCT Tactics as scheduled by the Training Division.

B. Less-lethal Weapons

Less lethal weapons provide officers with additional use-of-force options for gaining compliance of resistant or aggressive individuals in arrest and other enforcement situations that occur in the line of duty. It is the policy of this department that officers use less lethal weapons when warranted, but only in accordance with the guidelines of this policy set forth here. Less lethal weapons are not designed to be used in place of deadly force when deadly force is justified. Less lethal weapons are other tools in the use-of-force continuum to assist in preventing injury to officers and others.

Deleted: All Police Officers of the Fayetteville Police Department are directed to obtain certification to carry and use less lethal weapons as authorized by the Chief of Police.

Officers will receive in-service refresher training on the use of less lethal weapons on an annual basis. [CALEA 1.3.12] A certified weapons or tactics instructor will conduct refresher training. The training division will maintain documentation of refresher training. Remedial training, if necessary, will be given to any officer who is unable to demonstrate knowledge and proficiency of less lethal weapons prior to resuming official duties.[CALEA 1.3.11]

Department authorized less lethal weapons:

1. Police Baton
2. Pepper Aerosol Restraint Spray
3. Conducted Energy Weapon

Deleted: than

Reference should be made to general orders issued on Less Lethal weapons.

Comment: Usage procedures for each less lethal weapon removed and created in separate general orders

Additional less lethal weapons utilized by department personnel that are considered to be specialized weapons may include the pepper ball gun, flash-bang distractive devices and the 40 mm launcher. These less lethal weapons are not for routine, day to day use by officers but are available for use by certified personnel when needed.

FAYETTEVILLE POLICE DEPARTMENT
FAYETTEVILLE, ARKANSAS

POLICIES, PROCEDURES, AND RULES

Subject: 41.1.1 Patrol	Effective Date:
Reference: 41.2.17, 41.3.5, 1.2.2, G.O. #24	Version: 1
CALEA: 41	No. Pages: 6

I. PURPOSE

The purpose of this directive is to state policies relating to the organization, administration, and operations of the patrol component of the Fayetteville Police Department.

II. POLICY

The patrol function is a primary law enforcement responsibility and embraces much more than the act of patrolling. It is a generalized service in which officers engage in a wide variety of activities to include, but not limited to, enforcing traffic/criminal laws, apprehending criminals, responding to calls for service, crime prevention, accident investigation, conducting preliminary and follow-up investigations, community relations, maintenance of public order, etc. It is the policy the Fayetteville Police Department shall be available for public service and emergency calls 24 hours a day, each day of the week. [CALEA 41.1.1a]

Comment: Language revised and streamlined

A. ORGANIZATION AND ADMINISTRATION

1. Patrol Performance

- a. The Chief of Police shall be responsible for reviewing annual patrol performance measures.
- b. These performance measures must be attainable, quantifiable, and measurable.

2. The Chief of Police will be responsible for establishing procedures to ensure positive communication between patrol and other divisions and programs within the department.

3. Officer Assignment

- a. The Chief of Police will be responsible for assigning officers to a shift. [CALEA 41.1.1 b.]
- b. The assignment will be based on a uniform procedure to ensure impartiality in the decision making process. Supervisors assigned to patrol will make decisions pertaining to any shift scheduling amongst personnel and shall

consider this based on department needs and personnel requests. [CALEA 41.1.1 c.]

- c. Patrol shift supervisors scheduling responsibilities include:
- 1) Beat assignment and beat rotation schedules. [CALEA 41.1.1 d,e.]
 - 2) Ensuring sufficient personnel are available for daily assignment to meet prescribed minimum staffing levels.
 - 3) Anticipating pre-planned major events and ensuring availability of personnel required.
 - 4) Monitoring and minimizing overtime expenditures.
 - 5) Coordinating officers attendance at training, meetings, court, etc.
- d. The shift supervisor(s) will be responsible for field operations.
- e. When determining scheduling for patrol officers and first line supervisors, daily workload requirements, maximum coverage and departmental needs take priority over personal preference. [CALEA 41.1.1 f.]

Comment: Language revised to reflect current departmental practices

Comment: Language added to reflect current practices

Comment: Previously read as "shift sergeant"

4. Roll Call and Briefing

- a. Officers shall attend roll call and briefing at the beginning of each shift until released by the shift supervisor. Shift roll call/briefing shall include: [CALEA 41.1.2]
- 1) Briefing officers with information regarding daily patrol activity, with particular attention given to unusual situations and changes in the status of wanted persons, stolen vehicles, and major investigations;
 - 2) Notifying officers of potential and actual police hazards in the area;
 - 3) Notifying officers of changes in schedules and assignments;
 - 4) Notifying officers of new or revised policies, procedures, rules and general orders; and
 - 5) Evaluating officer readiness to assume patrol (uniform, equipment, vehicle, etc).

5. Response to some calls may require additional officers in order to deal effectively with the incident. The Chief of Police and/or his designee will determine these call types. Examples include, but are not limited to:

- a. An assault/battery on an officer;
- b. On-scene arrest for a felony or violent misdemeanor;
- c. Resistance to arrest;
- d. Use of force;
- e. A crime in progress; or
- f. A fleeing suspect.

Central Dispatch Center shall ensure the dispatch of two officers to these call types and patrol supervisors have the authority to increase/decrease the number of officers responding to any incident. When necessary, officers should request back-up assistance, and where possible, responding officers should coordinate their simultaneous arrival.

6. The Chief of Police shall determine what calls do not require the dispatch of an officer and can be effectively handled by receiving information through an alternative method (telephone, on-line, etc).

7. The Chief of Police shall be notified through the chain of command, unless otherwise specified, as soon as possible of the following types of incidents:

Comment: Section added per CALEA standards

- a. Serious injury to Police Officer. (Immediate notification required)
- b. Accident involving police vehicle where an officer or citizen is injured or major property damage is involved.
- c. Major crimes to include murder, bank/store robbery, prisoner escape, or any heinous crime.
- d. Barricaded/hostage situation.
- e. Disasters or catastrophes. (Immediate notification required)
- f. Serious complaint or incident involving an officer.
- g. Fatality accidents.
- h. Any incident where there may be a question of the department's liability or which may result in a heightened community interest (Immediate notification required) [CALEA 11.4.5]

B. OPERATIONS

1. Preliminary and Follow-up Investigations.

Comment: The "ten code" (i.e. 10-20, 10-4) has been removed from this section of policy and is given to new officers in training

Preliminary investigation is a matter of routine for patrol officers. Follow-up investigations may be done at the officer's initiation or supervisor direction. Follow-up investigations on certain crimes may be coordinated and/or conducted by investigative personnel as determined by a supervisor.

Comment: Language revised to reflect current practices

2. An emergency mode of operation with emergency lights and siren activated may be used when responding to the following listed emergencies. Officers may exceed the speed limit, proceed with caution through stop signs and red lights, and may disregard other traffic laws when done safely in response to the following listed emergencies: [CALEA 41.2.1]

Comment: Section added to meet CALEA standards

- a. Authorized pursuits
- b. Aggravated assault in progress
- c. Rape in progress
- d. Armed Robbery in progress
- e. Kidnapping in progress
- f. Serious injury accident
- g. Officer in need of assistance
- h. Any other serious incident or with supervisor authorization

This exemption shall not relieve any officer of an authorized emergency vehicle from the lawful responsibility to drive with due regard for the safety of all persons, nor shall it protect the officer from the consequence of a reckless disregard for the safety of others.

3. In the course of routine patrol and in response to non-emergency calls, officers will operate their vehicles without the use of emergency lights or siren.

4. Officers assigned to patrol must understand, as first responders, they may find themselves on many occasions at scenes where they need to make additional notifications to personnel or agencies with specific expertise and/or authority: [CALEA 41.2.4]

Comment: Section added to meet CALEA standards

- a. Officers of the Fayetteville Police Department are expected to make logical decisions in this area and fully consider various types of notifications that may need to be made for safety as well as case or investigation preservation and purposes.
- b. In cases of death response/investigation, officers with the assistance of dispatch should notify shift supervision, detective supervisory personnel, and coroner's office.
- c. In incidents where medical treatment is warranted, officers should ensure Emergency Medical Services Personnel are notified.
- d. In cases where public utilities have been disturbed, officers should request dispatch assist them in making the proper notifications to public utilities personnel.
- e. In cases involving crimes in other jurisdictions, officers shall be responsible for making prompt notification to the appropriate law enforcement agency. Officers shall also be responsible for applicable reports or documentation.

5. Officers responding to an investigation of missing persons will apply the following protocol: [CALEA 41.2.5]

Comment: Section added to meet CALEA standards

- a. If the missing person is determined to be a child, elderly (age 65 or older or an Alzheimer's patient) or disabled, the officer shall notify the supervisor and follow the guidelines set forth in appropriate FPD General Orders [CALEA 41.2.5].
- b. In cases of missing persons where foul play is suspected, the officer shall report this information to his supervisor who shall make notification to a supervisor of CID [CALEA 41.2.5 f].
- c. In other types of missing person reports, officers will investigate without delay. The responding officer shall gather investigative information and a detailed description of the missing person and initiate the notification process through NCIC/ACIC. Upon locating the missing person, officers will ensure the missing person's status is updated in NCIC/ACIC. [CALEA 41.2.5 a, b, c]
- d. Follow up investigation will be conducted by patrol and/or investigative personnel when necessary. [CALEA 41.2.5 d, e]
- e. In each missing person report situation, officers and their supervisors will make a determination as to what type of field search effort will be undertaken. Requests for additional resources or coordination with other agencies may be necessary. Factors to be considered in this determination include:

- 1) Length of time that has passed since the disappearance;

- 2) Age and mobility of the missing person;
- 3) Infirmary and/or need for medication;
- 4) Suspicious circumstances to include foul play suspected.

e. Types of searches that may be used include, but are not limited to [CALEA 41.2.5e]:

- 1) At time of report, officers should always begin with a search of the missing person's residence and surrounding area. Children in particular may be hiding or have gone unnoticed inside the residence;
- 2) Door to door (foot search making contacts with residents/passers-by);
- 3) Neighborhood canvas (larger scale foot and vehicle search);
- 4) Use of K9.

f. The supervisor will ensure that Dispatch broadcasts the following information, if known, area wide:

- 1) Name, race, sex, and date of birth;
- 2) Physical Description;
- 3) Clothing Description;
- 4) Physical/Mental disabilities;
- 5) Unusual circumstances;
- 6) Vehicle Information.

6. Field Interviews//Intelligence Reports - Patrol personnel will document all field interviews/intelligence reports to provide other officers and detectives with information concerning suspicious persons. (See FPD 1.2.2)

7. Officer Access to Radio Communications

- a. When possible, all patrol officers shall be equipped with a portable radio and/or a mobile radio unit.
- b. Patrol officers shall give their badge number as their unit number in radio communications.
- c. Patrol officers shall utilize the appropriate 10-code, signals and dispositions in keeping each other, supervisors, and dispatchers informed of locations, the nature or status of a call, and developments in an investigation.

8. Uniforms – Refer to 41.3.5 Grooming and Uniform Requirements.

Comment: All information on uniforms is now in 41.3.5

9. Specialized Assignments - Fayetteville Police Department recognizes the need to staff specialized units which provide a supportive function to the patrol division. [CALEA 16.2.3]

Comment: Section added to meet CALEA standard

- a. An announcement shall be made and posted to all personnel when an opening occurs to a specialized unit.
- b. The announcement will contain requirements and criteria for personnel to be appointed to the specialized unit.

- c. The announcement will describe the selection process to be used for appointment to the specialized unit.
- d. The following are specialized assignments within the department:

- 1) Detective
- 2) Emergency Response Team
- 3) Crisis Negotiation Team
- 4) Canine Officer
- 5) Bicycle Patrol
- 6) Motorcycle Patrol
- 7) School Resource Officer
- 8) Field Training Officer

9. Canine, motorcycle and bicycle units - The canine, motorcycle and bicycle units provide a specialized, supportive function to patrol units.

POLICIES, PROCEDURES, AND RULES

Subject: 62.1.12 Police Traffic Radar Operation	Effective Date:
Reference:	Version: 1
CALEA: 61.1.9	No. Pages: 3

I. PURPOSE

The purpose of this policy is to establish guidelines for operation of the department's speed enforcement program.

II. POLICY

A. Police traffic radar will only be used when operating personnel are qualified under the rules of the Commission on Law Enforcement Standards and Training, and equipment is properly certified. While assigned to the field training program, newly certified radar operators will receive "hands-on" training with the specific radar equipment used by our department. [CALEA 61.1.9 c.]

1. All officers are instructed to cease the use of police traffic radar at any time circumstances indicate a loss of confidence in equipment. All requests for assistance in pinpointing or eliminating such indications are to be directed to the radar instructor or specialist forthwith. [CALEA 61.1.9 c.]

Comment: Language revised to be more concise in that it combines two bullets into one from previous policy

B. Operator Responsibilities [CALEA 61.1.9 b.]

1. No traffic summons/arrests will be made with stationary radar unless the following conditions have been satisfied. The operator must:
 - (a) Establish visual contact with the target vehicle;
 - (b) Visually estimate the speed, range (distance) and location of the target vehicle;
 - (c) Observe other traffic and the environment for interference;
 - (d) Listen to the Doppler return audio for pitch and clarity;
 - (e) Obtain a stable radar reading;
 - (f) Manually lock the radar reading;
 - (g) Visually reconfirm identification of the target vehicle; and
 - (h) Apprehend the target vehicle (pacing to obtain additional evidence, if possible).

When any doubt exists as to the identity of a target vehicle, no enforcement action is

to be taken. Good judgment and common sense must be exercised in the operation of police traffic radar.

2. Radar will not be utilized by members of this department when the main strength of the radar beam detects and displays a target on the other side of any traffic control device which requires a reduction of speed.

No radar will be used within 30 days of the initial posting of any traffic control device which requires a reduction of speed on an already established street or highway. (This provision shall not apply to spot speed studies in which no enforcement action is taken.)

- (a) Radar will not be utilized on multiple (4 lanes, or more) lane streets or highways during periods of heavy traffic volume.
 - (b) Radar will not be utilized during periods of inclement weather (rain, snow, ice, sleet, etc.) heavy enough to require the extended use of windshield wipers.
 - (c) Radar will not be operated within 100 feet of a power substation.
 - (d) No radar readings are to be locked in while the operator or any passenger in his vehicle is transmitting over a citizens band (CB) or mobile police radio.
 - (e) It is the operator's responsibility to:
 - (1) log his calibration tests, date, time, and location,
 - (2) familiarize himself with the operator's manual for the radar unit utilized,
 - (3) check the radar equipment at the start of each shift (two tuning forks - numbered, etc. and report any discrepancies to the shift supervisor), and
 - (4) place the radar unit in the "radar holster" at all times when the radar unit is not actually in the operator's hands.
3. Except for radar or vehicle repairs, all radar units and related equipment shall remain in the police vehicle which they have been assigned. Anytime a radar unit is removed from the police unit, such as for radar or vehicle repairs, the fact must be documented by a supervisor on the information board in the briefing room.

C. Operational Considerations

All police traffic radar operated by this department must be: [CALEA 61.1.9 a.]

- (1) of the make and model approved by the Chief of Police,
 - (2) identified by make, model, serial number, purchase date and ownership on the form filed with the supervisor in charge of this function, and
 - (3) included in the department's blanket FCC license.
1. Recertification of operators is required within every five (5) years following the last issuance of a radar certificate. Operators must satisfactorily complete a radar refresher course to be recertified. [CALEA 61.1.9 e.]

2. All police traffic radar units utilized by this department will undergo field calibration checking in the following manner:

- (a) At the beginning of each shift each radar unit will be tested with assigned tuning forks.
- (b) At the beginning of each shift an internal function test will be performed.
(Note: Should the radar set fail any of the above tests, the unit is to be taken out of service immediately.)
After each speeding summons/arrests in which radar was utilized, each of the above tests (tuning forks, internal function test) will be repeated. (Note: Should the radar set fail any of the above tests, the unit is to be taken out of service immediately.) [CALEA 61.1.9 c.]
- (c) At least once each year, each radar unit and each tuning fork will undergo electronic calibration checks utilizing equipment traceable to the National Bureau of Standards. [CALEA 61.1.9 d.]

Comment: "Internal function" added here to combine "internal circuit" and "internal lamp" functions tests from old policy

City of Fayetteville Staff Review Form

A. 9
2011 ADEQ Recycling Grant
Page 1 of 6

**City Council Agenda Items
and
Contracts, Leases or Agreements**

6/7/2011

City Council Meeting Date
Agenda Items Only

David Jurgens
Submitted By

Solid Waste
Division

Utilities
Department

Action Required:

Resolution Authorizing Application for a 2011 ADEQ Recycling Grant through the Boston Mountain Solid Waste District for \$ 23,500 for a pilot Apartment Recycling Container.

\$ _____ Cost of this request	_____ Category / Project Budget	_____ Program Category / Project Name
_____ Account Number	_____ Funds Used to Date	_____ Program / Project Category Name
_____ Project Number	\$ _____ Remaining Balance	_____ Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐



Department Director

20 May 11
Date

Previous Ordinance or Resolution # _____



City Attorney

5-20-11
Date

Original Contract Date: _____

Original Contract Number: _____



Finance and Internal Services Director

5-20-2011
Date

Received in City
Clerk's Office

05-20-11 A08:25 RCV



Chief of Staff

5-23-11
Date

Received in
Mayor's Office

ENTERED
5/23/11
JH



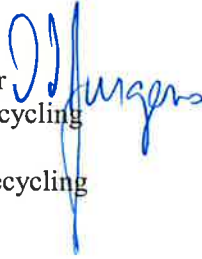
Mayor

Date

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff
David Jurgens, Utilities Director
Carrol Hill, Solid Waste and Recycling



From: Brian Pugh, Solid Waste and Recycling

Date: May 11, 2011

Subject: Resolution Authorizing Application for a 2011 ADEQ Recycling Grant through the Boston Mountain Solid Waste District for \$ 23,500 for a Pilot Apartment Recycling Container.

RECOMMENDATION

Fayetteville City Administration recommends authorizing application for a 2011 Arkansas Department of Environmental Quality (ADEQ) recycling grant through the Boston Mountain Solid Waste District for \$23,500 for a pilot apartment recycling container.

BACKGROUND

Each year the Arkansas Department of Environmental Quality issues recycling grants through local Solid Waste Districts to help fund recycling programs. The City has benefited from these grants in the past. The Boston Mountain Solid Waste District compiles the grant pre applications and submits them to their Grant Committee for review. ADEQ no longer requires a signature from the Mayor for the pre application process. The pre application deadline to ADEQ is July 15th, 2011.

DISCUSSION

This grant will be used to purchase a new container for use in a pilot program for apartment recycling. The container would be collected utilizing the existing vehicles dedicated to the Drop Box program. Staff is currently engaged in a Solid Waste and Recycling Plan in which pilot programs are to be identified. This pilot would be included in the plan for future consideration of expansion of recycling services to apartment complexes. With expanded programs and service in small business and paper recycling areas, apartment recycling is the next area where the City is looking to expand the recycling program. The challenges inherent in apartment recycling require that we move slowly, using small pilot programs to determine the best methods of providing service.

The new container uses a new concept in waste handling by utilizing solar power to dump containers and also houses a multiple bin configuration on a drop box style container which will support the source separated nature of the recycling program. The container can be easily incorporated into existing operations since collection is handled with a drop off style truck, whereby eliminating the need to purchase new vehicles for recycling collections at apartments.

BUDGET IMPACT

The recycling grant awards are not matching grants, so no City funds are obligated with this request. Upon approval and award of the grant a budget adjustment will be requested to recognize the grant revenue and a capital project will be created.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING APPLICATION FOR A 2011 ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY RECYCLING GRANT THROUGH THE BOSTON MOUNTAIN SOLID WASTE DISTRICT IN THE AMOUNT OF \$23,500.00 TO FUND A PILOT APARTMENT RECYCLING CONTAINER

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes application for a 2011 Arkansas Department of Environmental Quality recycling grant through the Boston Mountain Solid Waste District in the amount of \$23,500.00 to fund a pilot apartment recycling container.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



Multiple Activated Dumping Rolloff Containers



Municipalities & Commercial Recycling Solutions



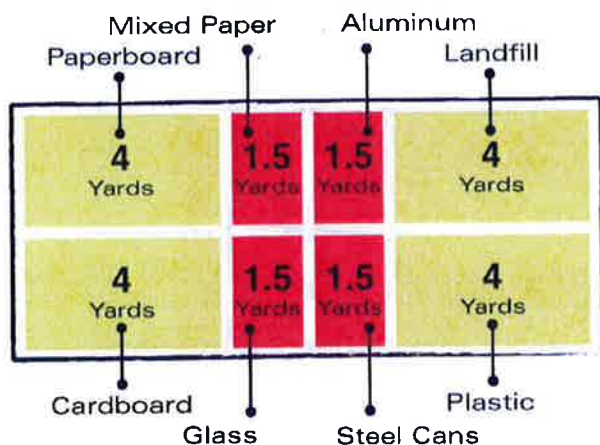
MADROC at recycle Convenience Center

Recycling can be so much easier with the MADROC

Our MADROC containers provide individual compartments to separate recycle content before being hauled to a MERF or Transfer Station. The multiple compartment design helps municipalities and the waste hauling industry in their efforts to recycle & save energy.

- Used in Schools, Recycle Convenience Centers, Curb Side Recycling, as well as Local, State and Federal Government Agencies.

- Used in various Commercial Industries such as Offices, Apartment Complexes, Sustainable Communities, Manufacturing, Retail, Medical, Restaurants, Transportation, Trade & Wholesale environments.



Typical School Recycling Configuration

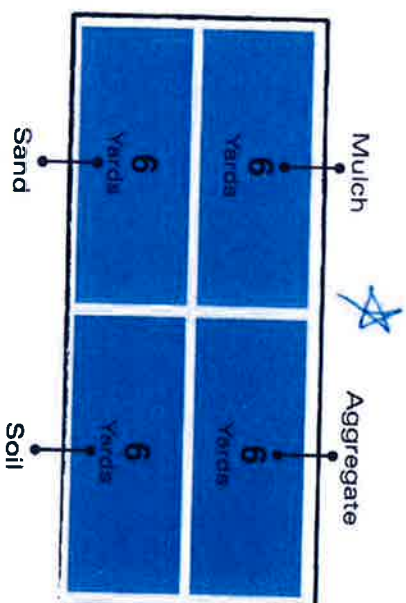
Hauling for Agricultural & Landscaping Supply Industries



The MADROC Container can save time and make you money

Our MADROC containers provide individual compartments to separate materials. The Multiple Compartment design allows one vehicle to haul to multiple customers in a single trip compared to most supplier vehicles that can only haul one order at a time. The current delivery method exhausts time and the ability to process getting out orders to customers. The MADROC saves valuable time and money so you can accommodate your customers more efficiently, adding profit to your bottom line.

With its heavy duty and rigid frame, our containers can distribute products such as aggregate, mulch, sand, compost, soil, fertilizers, seed, grain and numerous other products. Up to 50,000 gross lbs. the MADROC's unique design prevents weight distribution for loading and unloading without the worry of tipping.



Typical Agricultural & Landscaping Configuration

City of Fayetteville Staff Review Form

A. 10
Arkansas Highway and
Transportation Department Contract
Page 1 of 6

**City Council Agenda Items
and
Contracts, Leases or Agreements**

6/7/2011

City Council Meeting Date
Agenda Items Only

David Jurgens

Submitted By

Utilities

Division

Utilities

Department

Action Required:

Resolution approving an agreement with the Arkansas Highway and Transportation Department for water and sewer relocations relating to the widening of Crossover Road (Highway 265) between Joyce Boulevard and the northern City limits.

\$ -	\$ 5,241,743	Hwy 265 W-S Relocations
Cost of this request	Category / Project Budget	Program Category / Project Name
5400-5600-5314.00	\$ 5,075,567	Water/Sewer Improvements
Account Number	Funds Used to Date	Program / Project Category Name
08072-1102	\$ 166,176	Water and Sewer and W/S Bonds
Project Number	Remaining Balance	Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

David Jurgens
Department Director

20 May 11
Date

Previous Ordinance or Resolution #

David J. Kelly
City Attorney

5-20-11
Date

Original Contract Date:

P. Uice
Finance and Internal Services Director

5-23-11
Date

Original Contract Number:

Don Man
Chief of Staff

5-23-11
Date

Received in City
Clerk's Office

05-20-11 P02:58 RCVD

Lionel Jordan
Mayor

5/23/11
Date

Received in
Mayor's Office

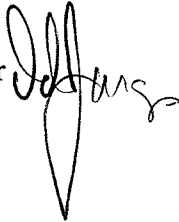
ENTERED
5/20/11 BRR

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Water/Sewer Committee



Date: May 16, 2011

Subject: Crossover Road- Northern Section- Water and Sewer Relocation AHTD-Utility Agreement for Design

RECOMMENDATION

City Administration recommends approval of an agreement with the Arkansas Highway and Transportation Department for design of water and sewer relocations relating to the widening of Crossover Road (Highway 265) between Joyce Boulevard and Albright Road.

BACKGROUND

The project involves relocating water and sewer lines as required in preparation for the Arkansas Highway and Transportation Department (AHTD) widening of Crossover Road (Hwy 265) between Joyce and the northern City limits. The design contract has been awarded to McClelland Consulting Engineers as a change order to their design on the Mission – Joyce section of the work.

DISCUSSION

This agreement commits the AHTD to reimburse the City for the tasks shown below:

- Field surveys to confirm rights-of-ways and utility locations
- project cost estimating with AHTD and Fayetteville shares predicted
- right-of-way requirement identification and easement document development
- final engineering design

Proportional cost shares will be identified as the design progresses.

BUDGET IMPACT

The City's portion will be funded from Water and Sewer revenue bonds; the remainder will be paid by the AHTD. The cost share split will be determined when the design is completed.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING A CONTRACT WITH THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT FOR DESIGN OF WATER AND SEWER RELOCATIONS RELATING TO THE WIDENING OF CROSSOVER ROAD (STATE HIGHWAY 265) BETWEEN JOYCE BOULEVARD AND ALBRIGHT ROAD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes a contract with the Arkansas Highway and Transportation Department for design of water and sewer relocations relating to the widening of Crossover Road (State Highway 265) between Joyce Boulevard and Albright Road.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

ARKANSAS STATE HIGHWAY COMMISSION
HIGHWAY - UTILITY AGREEMENT FOR PRELIMINARY ENGINEERING SERVICES

Job No. 040518 (Utilities) FAP No. STP-9142(27)
Job Location E. Joyce Blvd. - City Limits Utility Owner City of Fayetteville
(Fayetteville)(S) Water and Sewer
Route 265 Section 2 Consultant McClelland Consulting
County Washington Engineers, Inc.

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the Arkansas State Highway Commission, acting by and through the duly authorized representatives of the Arkansas State Highway and Transportation Department, with headquarters at Little Rock, Arkansas, hereinafter referred to as the "Department" and the **City of Fayetteville Water and Sewer of Fayetteville, Arkansas** acting by and through its duly authorized representatives, hereinafter referred to as the "Owner" WITNESSETH:

(1). The "Department" proposes to make highway improvements and the "Owner" is required to adjust or relocate its facilities, as necessary, to clear highway construction.

(2). The "Owner" is not adequately staffed to carry out the necessary preliminary engineering and has requested the services of the licensed engineering company of **McClelland Consulting Engineers, Inc.** to perform the following services.

- (a) Make all necessary field surveys and investigation and subsequently prepare complete plans, estimate of costs, and construction specifications.
- (b) Furnish four (4) copies of plans, specifications, etc. for "Department" review and approval.
- (c) If construction work is to be performed by other than "Owner's" forces, prepare all necessary documents to secure bids and let a contract for the proposed work.
- (d) Conduct bid opening and complete contract documents.

(3). The "Owner" has entered into a contract with the consultant, subject to the "Department's" approval, and has furnished a copy which is attached and made part of this agreement. The estimated costs are not to exceed **\$144,001.99**.

(4a). The cost of preliminary engineering services shall be eligible for reimbursement from the "Department" at the same ratio as the adjustment of "Owner's" facilities are eligible.

(4b). "Owner" agrees to retain cost records and accounts for inspection and audit for a period of three (3) years from the date of final payment.

(5). The consultant shall begin work **5** days after receiving written authorization from "Owner" and complete **134** days thereafter.

(6). The "Department" may suspend or cancel the work under this contract at any time. Reimbursement will be made, in a proportionate amount, for any services performed by the consultant prior to the receipt, by the "Owner," of written notice of cancellation.

(7). "Owner" shall be responsible for any and all hazards to persons, property, and traffic. With respect to traffic control, owner shall adhere to the requirements of the "Manual of Uniform Traffic Control Devices", as amended and supplemented.

(8). This agreement is governed by all applicable State and Federal laws, rules, and regulations including the Arkansas State Highway Commission Utility Accommodation Policy adopted by Commission Minute Order 96-167 as amended and supplemented, the Federal Aid Program Guide on Utility Adjustments and Accommodation on Federal Aid Highway Projects as amended and supplemented, and the provisions of 23 CFR § 645 as amended and supplemented.

(9). Subject to the terms and conditions herein, neither the "Owner" nor the "Department" by execution of this agreement waives or relinquishes any rights which either may legally have within the limits of the law or constitution either State or Federal.

City of Fayetteville
Water and Sewer

ARKANSAS STATE HIGHWAY COMMISSION
Acting By and Through The
ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

Name (Typed or Printed)

(For) Director of Highways & Transportation

Title

Right of Way Division Head

Signature

Section Head-Utilities Section
Right of Way Division

FEDERAL TAXPAYER IDENTIFICATION#

Name (Typed or Printed)

Title

Signature

City of Fayetteville Staff Review Form

A. 11
Beaver Water District
Page 1 of 8City Council Agenda Items
and
Contracts, Leases or Agreements

07-Jun-11

City Council Meeting Date
Agenda Items Only

David Jurgens

Submitted By

Wastewater Treatment

Division

Utilities

Department

Action Required:

Approval of a contract with the Beaver Water District (BWD) which establishes pricing and conditions by which the City of Fayetteville will receive and land apply BWD water treatment residual (WTR). Execution of the actions covered by this agreement is contingent upon ADEQ issuing the City a permit for the same.

Cost of this request

Category / Project Budget

Program Category / Project Name

Account Number

Funds Used to Date

Wastewater Treatment

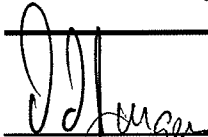
Program / Project Category Name

Project Number

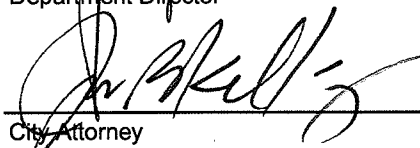
Remaining Balance

Water/Sewer

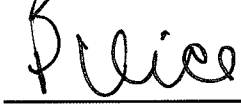
Fund Name

Budgeted Item ☐Budget Adjustment Attached ☐

Department Director
20 May 11
Date

Previous Ordinance or Resolution #


City Attorney
5-20-11
Date

Original Contract Date:


Finance and Internal Services Director
5-23-11
Date

Original Contract Number:


Chief of Staff
5-23-11
Date

Received in City

Clerk's Office 05-20-11 P03:46 RCV


Mayor
5/23/11
DateReceived in
Mayor's Office


Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director 
Fayetteville Water and Sewer Committee

Date: May 20, 2011

Subject: Beaver Water District Water Treatment Residual Disposal Contract

RECOMMENDATION

City Administration recommends approving a contract with the Beaver Water District (BWD) which establishes pricing and conditions by which the City of Fayetteville will receive and land apply BWD water treatment residual (WTR). Execution of the actions covered by this agreement is contingent upon ADEQ issuing the City a permit for the same.

BACKGROUND

Beaver Water District produces water treatment residuals as a direct by-product of their treatment process. The WTR is very rich in aluminum sulfate (alum), which binds with phosphorus and other material in the water and either settles or is filtered out in the treatment process. Joint University of Arkansas, BWD and City testing has shown that the WTR, when applied to land, can bind with free phosphorus in soil, with the result that the phosphorus will no longer leach into ground water or be available to mix with storm water. BWD currently takes their WTR, with an annual volume of around 6,100 wet tons, to the Waste Management landfill in Tontitown.

DISCUSSION

This agreement establishes the conditions and terms whereby BWD will pay Fayetteville to land apply the WTR on the City's fields where biosolids have been previously applied. The soil in these fields has a very high phosphorus content. The contract was approved by the BWD board May 19, 2011. Upon contract approval, staff will develop and submit a land application permit application to ADEQ. ADEQ staff has stated strong support to the project, but there is no guarantee of approval until a permit is actually issued. Upon permit issuance, there will be an estimated \$192,000 in equipment purchases required (tractor, spreader, and loader). Operational costs for this task are integrated into the CH2M Hill wastewater treatment operations contract. The payback period is estimated at less than five years.

This process produces several mutual benefits to both the City and BWD.

1. Provides a new steady, reliable revenue stream to the City, estimated at \$198,250 per year.
2. Helps reduce free phosphorus in the soil, thus reducing the amount of phosphorus that can percolate into ground water and eventually enter the White River and Beaver Lake.
3. Reduces BWD operating expenses.

BUDGET IMPACT

There is no appropriation directly associated with contract approval. There will be equipment purchases to be paid from capital funds, and operational expenses, incorporated into the CH2M Hill wastewater operations contract.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING A CONTRACT WITH THE BEAVER
WATER DISTRICT FOR LAND APPLICATION DISPOSAL OF WATER
TREATMENT RESIDUALS**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes a contract with Beaver Water District for land application disposal of water treatment residuals.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**CONTRACT FOR WATER TREATMENT RESIDUAL DISPOSAL SERVICE
BETWEEN THE
CITY OF FAYETTEVILLE, ARKANSAS, AND THE BEAVER WATER DISTRICT**

THIS CONTRACT made and entered into this _____ day of _____, 2011, by and between the City of Fayetteville, Arkansas, a municipal corporation, (hereinafter called "Fayetteville"), whose address for any formal notice is 113 West Mountain, Fayetteville, AR, 72701 and the Beaver Water District, a regional water distribution district created under Arkansas Act 114 of 1957 (hereinafter called "BWD"), whose address for any formal notice is PO Box 400, Lowell, AR 72745.

WITNESSETH:

WHEREAS, Fayetteville now owns and operates a biosolids management site located at 16464 Wyman Road, Fayetteville, Arkansas; and,

WHEREAS Fayetteville has previously applied municipal biosolids to the property at the biosolids management site; and,

WHEREAS, BWD produces an average of 6,100 wet tons of water treatment residuals ("WTR") per year from the water treatment facility in Lowell, Arkansas; and,

WHEREAS, scientific studies have shown that the alum in water treatment residuals may bind phosphorus in soil and reduce the concentration of phosphorus in non-point source runoff; and,

WHEREAS, it is to their mutual advantage that BWD and Fayetteville enter into an agreement to establish provisions for BWD to dispose of WTR at the Fayetteville biosolids management site; and,

WHEREAS, in meeting this service commitment, Fayetteville must ensure that this service does not place a financial burden on the citizens of Fayetteville, nor should there be any additional financial burden on the BWD wholesale water customers for disposal of these WTR for which the BWD does not receive a corresponding benefit; and,

WHEREAS, it is to the parties' mutual benefit that a procedure be established for setting disposal fees sufficient to cover costs incurred by Fayetteville in performing this service;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREINAFTER SET FORTH, FAYETTEVILLE AND BWD HERETO MUTUALLY AGREE AS FOLLOWS;

(1) **COOPERATION:** Fayetteville and BWD shall mutually cooperate, and all matters related to this agreement shall be communicated through the Fayetteville City Council and the BWD Board of Directors, or their authorized representatives.

(2) **OWNERSHIP:** It is agreed by the parties that Fayetteville shall continue to own, operate, and maintain the biosolids management site, and that the BWD shall continue to own, operate, and maintain the water treatment facility in Lowell, Arkansas.

(3) **TERM OF CONTRACT:** Fayetteville and BWD hereby agree that the initial term of this Contract shall be for a period of five (5) years from the date of this Contract. Thereafter, this Contract shall be automatically renewed for successive terms of one (1) year each unless cancelled by either party not less than sixty (60) calendar days prior to termination.

Either party may terminate this Contract for a material breach of this Contract by the other party by giving written notice of the breach and allowing the other party a reasonable time to correct the breach. Excepting breaches by BWD for non-payment of Fayetteville invoices, neither party shall terminate this Agreement without giving the other party thirty (30) calendar days' written notice of intent to terminate for failure of the other party to correct the breach within a reasonable time.

(4) **EFFECTIVE DATE:** This Contract shall become effective and enforceable on the date of this Contract.

(5) **REGULATORY RESPONSIBILITIES:** Fayetteville shall apply for and maintain compliance with a permit from the Arkansas Department of Environmental Quality (ADEQ) for land application of WTR. The site management plan shall be modified as necessary and approved by ADEQ before commencement of disposal operations. Fayetteville shall apply the WTR to the land as directed under the provisions of the permit as well as the ADEQ approved site management plan. Fayetteville shall perform and pay for all sampling and analysis of the WTR, soil, groundwater, and surface water at the biosolids management site as required by the ADEQ permit. Copies of all analyses shall be provided to BWD.

(6) **DISPOSAL COSTS:** BWD shall produce the WTR and convey them to the Fayetteville site. BWD shall be responsible for all costs associated with producing and conveying the WTR to the Fayetteville site and shall pay Fayetteville \$32.50 per wet ton of solids disposed of on the Fayetteville site. This is a fixed cost with the exception of fuel price changes and regulatory changes. This cost is based on a City fuel cost of \$3.25 per gallon, which corresponds to \$2.30 per wet ton of WTR. The billed price shall include a proportional fuel cost adjustment that shall be reflected on each invoice as a separate line item. This fuel cost adjustment may be either a debit or a credit. Should regulatory requirements change resulting in a change in costs, the per-ton price shall be renegotiated.

(7) **BILLING AND PAYMENTS:** Fayetteville shall weigh each truckload of conveyed WTR and provide a receipt for that load to the driver of the truck. Fayetteville shall issue a billing statement to BWD on a monthly basis with payment due on a net thirty (30) calendar day basis. Fayetteville will provide BWD with a copy of an annual certification of its truck scales.

(8) **LIABILITY:** It is stipulated that the furnishing of WTR disposal service by Fayetteville is a governmental function and that Fayetteville does not agree to furnish any specific amount of WTR disposal service. WTR disposal service shall not be provided when conditions of weather, resource availability, restrictions of permit or site management plan are unfavorable, although it is the intention of Fayetteville to provide such disposal service at all times that these conditions are favorable. Fayetteville will notify BWD as soon as practicable when such conditions exist that will not permit the disposal of WTR. In those instances, BWD reserves the right to either use an alternate disposal method (i.e., landfilling) or to store the WTR at BWD for later transport and disposal by Fayetteville. BWD and Fayetteville commit to work together to coordinate WTR disposal schedules. Fayetteville shall not be responsible for acts of God, acts of war, acts of foreign or domestic terrorism, insurrections or rebellions, acts of a public enemy, acts of any unauthorized person, firm or corporation, or acts of BWD. BWD shall not be responsible for acts of God, acts of war, acts of foreign or domestic terrorism, insurrections or rebellions, acts of a public enemy, acts of any unauthorized person, firm or corporation, or acts of Fayetteville.

Neither party shall be liable for damages, delays or failure to perform its obligations, under this Contract if such failure is due to any unforeseen circumstances beyond its reasonable control. The party invoking this clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) business days after its occurrence, and shall take reasonable measures to mitigate any impact of an unforeseen circumstance.

Regardless of anything in this Contract to the contrary, title to, ownership of, and legal responsibility and liability for any and all pre-existing conditions at or from the biosolids management site shall remain with Fayetteville. Fayetteville shall release, defend, indemnify and hold BWD harmless from any and all liability which may in any manner be related to, arise from, or in any way be directly or indirectly caused by such pre-existing conditions. BWD shall release, defend, indemnify and hold Fayetteville harmless from any and all liability caused solely by WTR disposed by BWD.

(9) **NOTICES:** Any written notices provided for herein shall be sufficient if sent by certified mail, return receipt requested, postage prepaid, to the respective parties, at the addresses listed above.

(10) **IMMEDIATE TERMINATION OF CONTRACT:** Notwithstanding anything in this Contract, Fayetteville reserves the right to discontinue performing the disposal of WTR for BWD without notice and immediately terminate this Contract for any of the following reasons:

- a. If conditions of the ADEQ land application permit or approved site management plan cannot be maintained through normal operating practices or if such conditions impose undue financial hardship on Fayetteville;

- b. If the constituents within the WTR change such that the WTR exceeds the ADEQ permit limits for any regulated parameter or causes adverse impact to the Fayetteville biosolids management site;
- c. For emergencies where damage to property, equipment or life is possible or likely to occur;
- d. If ADEQ terminates the land application permit;
- e. For noncompliance with the rules and regulations of the Arkansas Department of Health (ADH), ADEQ, the U.S. Environmental Protection Agency; or
- f. Pursuant to an order of any local, state, or federal agency or court having jurisdiction over the disposal of WTR.

BWD reserves the right to terminate this Agreement immediately for any of the following reasons:

- a. If ADEQ terminates the land application permit;
- b. For noncompliance with the rules and regulations of the ADH, ADEQ, or the U.S. Environmental Protection Agency; or
- c. Pursuant to an order of any local, state, or federal agency or court having jurisdiction over the disposal of WTR.

(11) **CITY AS PUBLIC UTILITY:** Fayetteville shall perform all work under this Contract as a Public Utility. Neither Fayetteville nor BWD shall be responsible for the acts or omissions of the other entity's officers, agents, employees, contractors and subcontractors. Nothing in the Contract shall be construed as creating a partnership or joint venture between the City of Fayetteville and BWD.

(12) **SOVEREIGN IMMUNITY:** Nothing in this contract shall be construed to waive or limit the sovereign immunity enjoyed by both entities. Any provision that could be interpreted as a waiver or limitation of the sovereign immunity of either party is expressly rejected and invalidated to the extent of such waiver or limitation.

(13) **ARKANSAS FREEDOM OF INFORMATION ACT:** City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request related to this Contract is presented to the City of Fayetteville, or to BWD, the entity receiving the FOIA request will do everything possible to provide the applicable documents in its possession in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized costs pursuant to the FOIA may be assessed for this compliance.

(14) **CHANGES, MODIFICATIONS OR AMENDMENTS:** Changes, modifications, or amendments to this Contract shall not be allowed without a formal written Contract amendment approved by the Mayor and the City Council of Fayetteville and the Chief Executive Officer and the Board of Directors of BWD in advance of the change.

(15) **AUTHORITY:** Both parties represent and warrant to the other party that the execution and delivery and performance of this Contract has been duly authorized by

the responsible parties hereof. Both parties warrant that all required approvals have been obtained and the executing party below has such authority to bind the other party.

(16) **JURISDICTION:** This Contract shall be governed by and interpreted in accordance with the laws of the State of Arkansas.

(17) **SEVERABILITY AND SURVIVAL:** If any phrase, clause, sentence or paragraph of this contract shall be declared invalid by the Judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining sentences or paragraphs of this Contract.

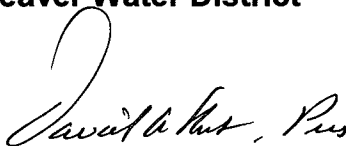
(18) **ENTIRE AGREEMENT:** This Contract contains all representations and the entire understanding between the parties with respect to the subject matter of this Contract. Any prior correspondence, memoranda, or agreements with respect to WTR disposal, whether or not such correspondence, memoranda or agreements are in conflict with this Contract, are intended to be replaced in total by this Contract. The parties mutually declare there are no oral understandings or promises not contained in the Contract which contains the complete, integrated, and final agreement between the parties.

IN WITNESS WHEREOF, the Mayor and City Clerk of the City of Fayetteville, Arkansas, by authority of a resolution adopted by the City Council of the City of Fayetteville, Arkansas, and the Chief Executive Officer and President of the Board of Directors of BWD, Arkansas, by authority of a resolution adopted by the Board of Directors of BWD, have hereunto set their hand and caused the corporation seal to be affixed and dated this _____ day of _____ 2011.

City of Fayetteville, Arkansas

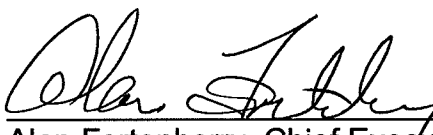
Beaver Water District

Mayor Lioneld Jordan



David A. Short, President

Sondra Smith, City Clerk



Alan Fortenberry, Chief Executive Officer

AGENDA REQUEST

B. 1
Amend §95.05 Regulation
of Smoking in Most Public
Places and Places of Employment
Page 1 of 126

FOR: COUNCIL MEETING OF MAY 3, 2011

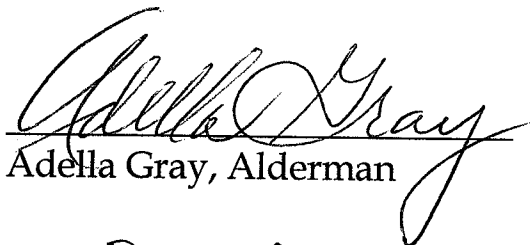
FROM:

ALDERMAN ADELLA GRAY

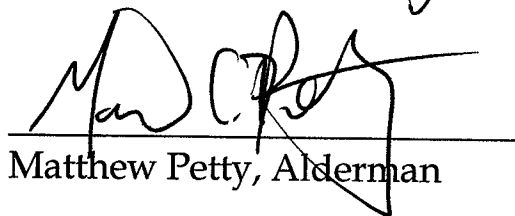
ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend §95.05 Regulation Of Smoking In Most Public Places And Places Of Employment Of The Fayetteville Code By Removing The Exemption For Bars

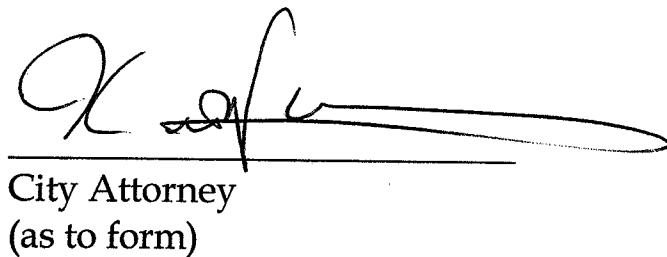
APPROVED FOR AGENDA:


Adella Gray, Alderman

4/19/11
Date


Matthew Petty, Alderman

4-20-2011
Date


City Attorney
(as to form)

4-17-2011
Date

Left on Second Reading at the May 17, 2011 CC mtg.
Left on First Reading at the May 3rd 2011 CC mtg.



Departmental Correspondence

B. 1
Amend 93.00 Regulation
of Smoking in Most Public
Places and Places of Employment
Page 2 of 26

LEGAL DEPARTMENT

www.accessfayetteville.org

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff

FROM: Kit Williams, City Attorney

DATE: February 25, 2011

RE: Proposed Amendment to Smoking Ordinance to include bars

The Smoking Ordinance was passed by the City Council and was later referred to the voters after a petition drive by its opponents. The voters passed the ordinance under provisions of Amendment 7 of the Arkansas Constitution after a hotly contested election campaign. Because of this citizens' vote, Amendment 7 protects this electoral decision by requiring that :

"No measure approved by the people shall be amended or repealed by . . . any City Council, except upon a yea and nay vote on roll call of two-thirds of all members elected to . . . the City Council. . . ."

This means that any proposed amendment to the Smoking Ordinance by the Fayetteville City Council will require the affirmative vote of six aldermen. The Mayor may not vote on this issue because of the above wording of Amendment 7 as he was not "elected . . . to the City Council."

I have been asked about referring any passed amendment to the voters for their final approval. This can be done pursuant to A.C.A. Section 14-55-301 "by a majority vote of its members." If this is not a section within the actual ordinance passed by the City Council, a later ordinance (within 30 days) can also refer an ordinance to the voters, but then a two-thirds majority of the City Council is required for passage.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND §95.05 REGULATION OF SMOKING IN
MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT OF THE
FAYETTEVILLE CODE BY REMOVING THE EXEMPTION FOR BARS**

WHEREAS, second hand smoke is dangerous for employees and patrons of bars; and

WHEREAS, bartenders have higher rates of lung cancer than firefighters, coal miners and workers in some other occupations in which air pollution is a problem.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals §95.05(C) *Exemptions* in its entirety and enacts a replacement §95.05(C) as shown below:

“(C) *Exemption.*

“Retail tobacco stores are exempted from the smoking prohibition of this ordinance.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §95.05(A) *Definitions* by deleting the reference to a “bar” within the definition of “*Place of employment*,” so that the third sentence shall read: “A ‘retail tobacco store’ is not a place of employment for purposes of this section.”

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby determines that this ordinance shall not go into effect until January 2, 2012.

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §95.05 **REGULATION OF SMOKING IN MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT OF THE FAYETTEVILLE CODE BY REMOVING THE EXEMPTION FOR BARS**

WHEREAS, second hand smoke is dangerous for employees and patrons of bars; and

WHEREAS, bartenders have higher rates of lung cancer than firefighters, coal miners and workers in some other occupations in which air pollution is a problem.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals §95.05(C) *Exemptions* in its entirety and enacts a replacement §95.05(C) as shown below:

“(C) *Exemption.*

“Retail tobacco stores are exempted from the smoking prohibition of this ordinance.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §95.05(A) *Definitions* by deleting the reference to a “bar” within the definition of “*Place of employment*,” so that the third sentence shall read: “A ‘retail tobacco store’ is not a place of employment for purposes of this section.”

PASSED and APPROVED this 3rd day of May, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Current law

FAYETTEVILLE CODE OF ORDINANCES
TITLE IX GENERAL REGULATIONS

thereupon service of the publication as now provided for by law against nonresident defendants may be had, and an attorney ad litem may be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

(Code 1965, §§11-3, 11-3.1; Ord. No. 1303, 5-28-62; Ord. No. 1721, 12-15-69; Ord. No. 2557, 9-4-79; Ord. No. 2922, 5-17-83; Code 1991, §95.03)

State law reference(s)--Enforcement of lien for clearance by municipality, A.C.A. §14-54-904; Notice to unknown or nonresident owners, A.C.A. §14-54-902.

95.04 Public Nuisance; Abatement

- (A) It shall be unlawful for the owners, occupants, tenants, or lessees of any dwelling or place of business to allow garbage, trash or other litter to accumulate on his premises, or to place or cause to be placed paper, cardboard or other litter in such manner as to cause unsightly or unsanitary conditions in the city.
- (B) Code Compliance Officers or their authorized representatives shall have the duty of notifying the owner, occupant, tenant, or lessee of a dwelling or place of business where one or more of the conditions described in subsection (A) of this section is found to exist.
- (C) It shall be the duty of the owner, occupant, tenant or lessee of such premises to correct said condition or conditions within 30 days from date of receipt of such notice.
- (D) If the owner, occupant, tenant, or lessee fails to obey such notice and continues to maintain said prohibited condition or conditions, such person shall be deemed in violation of this section and shall be subject to the penal provisions contained in this chapter.
- (E) The provisions of this section are supplementary to, and do not amend or repeal the provisions of §§95.01 through 95.03 of this Code.

(Code 1965, §10-5; Ord. No. 1194, 4-6-59; Ord. No. 1619, 8-19-68; Code 1991, §95.04)

Cross reference(s)--Penalty, §95.99.

State law reference(s)--Municipal authority, A.C.A. §14-54-901; Removal or razing of buildings, A.C.A. §14-56-203.

95.05 Regulation Of Smoking In Most Public Places And Places Of Employment

- (A) **Definitions.** For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bar. An establishment, whether termed a private club or public establishment, that is devoted primarily to the sale and service of alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

Restaurant. An eating establishment, including but not limited to dining establishments, private clubs, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Enclosed area. All space partially enclosed between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Manager. The owner, lessee, or other person in charge of a public place.

Place of employment. An enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, hallways, classrooms, and employee cafeterias. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. A "bar" and a "retail tobacco store" are not places of employment for purposes of this Section. An enclosed private office that is not regularly entered or occupied by a nonsmoking employee is not a place of employment for purposes of this section.

Public place.

- (1) Any enclosed indoor area that is used by the public or private club members and guests, except designated hotel and motel guest rooms.
- (2) Any swimming pool owned or operated by the city.

Retail Tobacco Store. A retail store utilized primarily for the sale and use of tobacco products

Remove
"bar"

FAYETTEVILLE CODE OF ORDINANCES
TITLE IX GENERAL REGULATIONS

and accessories and in which the sale of other products is merely incidental.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(B) *Prohibition of Smoking in public places and places of employment*

Smoking is prohibited in all public places, places of employment, and city vehicles unless specifically exempted in subsection (C).

(C) *Exemptions.*

The following types of establishments are exempted from the smoking prohibition of this ordinance:

- (1) Bars
- (2) Retail tobacco stores

(D) *Duties of Managers.*

- (1) The manager of a place within which smoking is prohibited by this ordinance shall place "No Smoking" or "Smoke Free" signage at the major entrance and other appropriate places within the establishment.
- (2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit or fail to make reasonable efforts to prevent smoking in any area where smoking is prohibited.

(E) *Enforcement.*

- (1) City police shall enforce this section pursuant to their normal police power.
- (2) If a manager knowingly permits or fails to make reasonable efforts to prevent smoking by the establishment's customers or employees where prohibited by this section, the manager shall be guilty of a violation and a fine or not more than \$100.00 per occurrence.
- (3) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty (\$50.00) dollars per occurrence.
- (4) In addition to the fines established by this Section, multiple violations of this Section by a

person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued for the premises on which the violation occurred.

(F) *Jurisdiction.*

This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(G) *Effective date.*

This ordinance shall take effect on February 1, 2004

(Ord. No. 3584, 12-17-91; Code 1991, §95.05; Ord. 4512, 09-02-03)

95.06-95.98 Reserved

95.99 Penalty

- (A) Any person failing to comply with an order as described by §95.01 shall, upon conviction, be punished by a fine of not less than \$10.00 nor more than \$100.00.
- (B) Whoever violates §95.04 shall be punished by a fine of not more than \$500.00 or double that sum for each repetition of such offense, or violation; provided, no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state. The penalty for allowing the continuation thereof shall not exceed \$250.00 for each day that the same is unlawfully continued.
- (C) There is hereby created the office of Code Compliance Officer. Code Compliance Officers shall be hired by the Mayor or his designated representative and shall perform the duties and exercise the powers set forth in this chapter.
- (D) Code Compliance Officers are hereby authorized to issue citations to any person violating the provisions of §§95.01-95.04 or § 173.08(A) of the Code of Fayetteville, provided that their authority is expressly limited to removing or causing the removal of unsanitary or unsightly things, or to correcting or causing the correction of unsafe or unsanitary conditions on the property in question.

Remove
Bars →

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff

FROM: Kit Williams, City Attorney

DATE: April 29, 2011

RE: Smoking Ordinance History

On November 5, 1991, the Fayetteville Board of Directors adopted a smoking policy for City-owned facilities. On November 19, 1991, the Fayetteville Board of Directors tabled a smoking ordinance so that members of the hospitality industry could meet with Rob Leflar of the Sierra Club to come up with a compromise smoking ordinance for businesses serving the public like restaurants, grocery stores, theaters, etc. That ordinance was again tabled at the December 3, 1991, Board meeting.

On December 17, 1991, the Fayetteville Board of Directors heard recommendations about a proposed compromise smoking ordinance from Rob Leflar who stated he had worked "in good faith with the Chamber of Commerce and the hospitality industry." He stated "good faith efforts were made on all sides in reaching a compromise which he believes is acceptable to all." Only five non-Fayetteville Board Members spoke on this issue and all five supported the smoking ordinance. The Fayetteville Board of Directors passed the ordinance on a 4-2 vote with Board of Directors Mike Green, Julie Nash, Dan Coody and Shell Spivey voting in favor, and Directors Fred Vorsanger and Ann Henry voting against. (Attached is a copy of those minutes and Ordinance No. 3584.)

A little more than a decade later, the Fayetteville City Council heard from citizens that Ordinance No. 3584, codified as §95.05 of the Fayetteville Code, was not effectively protecting non-smokers from secondhand smoke. Therefore Aldermen Marr and Jordan sponsored a wholesale rewrite of the Smoking Ordinance which was transformed into an almost total ban of smoking in all businesses and places of

employment. The introduction of this ordinance at the City Council meeting began the Smoking Ordinance War of 2003. This ordinance sparked more heated debate, citizen participation and public controversy than any issue in this decade. Every meeting was packed with numerous strident or thoughtful, compelling or weak arguments on both sides of the issue presented for hours to the Mayor and City Council. Our TV ratings (and some blood pressure readings) soared.

The original proposal sponsored by Aldermen Marr and Jordan did not exempt bars, but in an effort to compromise bars were exempted at the second City Council meeting. This had no appreciable effect upon vigorous opposition to the ordinance, and it created a problem of how bars and restaurants that served alcohol could be properly distinguished and defined.

The new Smoking Ordinance (No. 4512) was finally passed on September 2, 2003, on a 5 to 3 vote with Aldermen Don Marr, Shirley Lucas, Lioneld Jordan, Brenda Thiel and Kyle Cook voting yes. A separate vote to refer it to the voters in a referendum failed on a 4 to 4 vote with Mayor Coody refusing to cast an affirmative vote. The opposition to the ordinance organized a petition drive and after some initial problems were finally able to collect enough valid signatures to call a Referendum. After a hard fought campaign and a great voter turn out, the Smoking Ordinance was passed by the Fayetteville voters and went into effect in 2004.

The City also survived a legal challenge to the Smoking Ordinance winning a judgment in the Circuit Court of Washington County in a lawsuit questioning the statutory power of Fayetteville to enact such a Smoking Ordinance. After a few initial enforcement problems, the controversy died away after the election.

In the 2006 Legislative session, the General Assembly passed the Arkansas Clean Indoor Air Act of 2006 (A.C.A. §20-27-1801). This state law was very similar to the Fayetteville Smoking Ordinance except that it even applied to bars unless the bar (or restaurant) prohibited "at all times all persons less than twenty-one (21) years of age from entering the premises" A.C.A. §20-27-1805(8)(A). This new state law was expressly not preemptive of existing or future smoking ordinances that could be adopted by cities.

"This subchapter is cumulative to and does not prohibit the enactment of ... local ordinances prohibiting smoking that are more restrictive than ... this subchapter." A.C.A. §20-27-1808(a)

As mentioned in my memo of February 25, 2011 which is in your Agenda packet, the City Council cannot amend 95.05 **Regulation of Smoking in Most Public Places** except by six affirmative aldermen votes because this ordinance was referred to and approved by Fayetteville voters in 2004. *Amendment 7 to the Arkansas Constitution.*

However, I believe that a simple majority (five affirmative votes) can pass an ordinance referring this proposed change to the voters pursuant to A.C.A. §14-55-301(a). Mayor Jordan can vote for the referral to the voters ordinance, but may not vote for an amendment change directly enacted by the City Council. *Amendment 7 to the Arkansas Constitution.*

December 17, 1991

no easements have been acquired on the south side; however, 10 acres for the tank site and access thereto has been acquired by a long term lease. The acquisition of easements is the only delaying factor for this portion of the project.

In conclusion, Bunn reported that total funds expended to date on the 36 inch line total project at approximately \$500,000. The majority of that is engineering fees and acquisition of easements. Bunn reiterated Linebaugh's statement that there is a possibility for consumption water management for one more summer. Whether water management will be necessary for the summer of 1993 will depend on the progress of construction. The planned construction of water tanks, which will provide an additional 12 million gallons, is scheduled to be completed first in order to be in service for the summer of 1993. In addition, the progress of construction at the Beaver Treatment Plant could affect the 1993 service.

OLD BUSINESS

Items that have been brought before the Board but were tabled or no decision made to allow for further information to be presented.

SMOKING POLICY

Mayor Vorsanger reintroduced an ordinance regulating smoking in certain public areas.

Vorsanger explained that the Board of Directors adopted a smoking policy for City owned facilities at their November 5, 1991 meeting. The matter before the Board now is the consideration of enacting a smoking policy for certain public places.

Vorsanger further reported that the Board voted at the November 19 meeting to table this ordinance to allow people from the hospitality industry in Fayetteville to meet with Robert Leflar and others who drafted the original ordinance to come up with a compromise ordinance that both business people as well as the non-smoking community could endorse.

In addition, Vorsanger reported that the Board voted at the December 3 meeting to leave the item on the table to allow further time for the two groups to reach a compromise ordinance and to be presented to the Board members for their consideration prior to the meeting.

Mayor Vorsanger requested input from the other Board members as to whether they should take the previous ordinance off the table, or start anew, leaving the old ordinance on the table and address the new ordinances before them this evening.

December 17, 1991

Director Green recommended that they leave the old ordinance on the table and start anew with the revised ordinance.

City Attorney Rose verified that by the Board's inactivity, the previous ordinance is automatically tabled indefinitely.

Director Coody, seconded by Spivey, made a motion to adopt the new ordinance dated December 17th.

The ordinance was read for the first time. Green, seconded by Coody, made a motion to suspend the rules and place the ordinance on its second reading. Upon roll call, the motion passed by a vote of 6 to 0. The ordinance was read for the second time. Coody, seconded by Green, made a motion to further suspend the rules and place the ordinance on its third and final reading. Upon roll call, the motion was passed by a vote of 6 to 0. The ordinance was read for the third and final time.

Director Coody thanked Rob Leflar and members of the Sierra Club for their efforts in reaching the compromise ordinance being presented.

Director Spivey thanked all interested parties, including the hotel and restaurant owners, who were all instrumental in the compromise settlement of this issue.

Sierra Club representative Rob Leflar addressed the Board. Leflar reported that he had fulfilled his pledge to work in good faith with the Chamber of Commerce and the hospitality industry. Many hours of discussion were held in which the concerns of both sides were voiced and good faith efforts were made on all sides in reaching a compromise which he believes is acceptable to all. Leflar further expressed his appreciation to Coy Kaylor, Pat Henry, Bill Clodfelter, and Wayne Dyer for their effective negotiations and contributions to the process. He further stated that these gentlemen would prefer not to have a smoking ordinance, but in the event of the Board's judgment that an ordinance is necessary in the best interests of the City, they believe that the new ordinance is acceptable and one they can live with.

Leflar further addressed the concerns raised by Mayor Vorsanger at the last Board meeting regarding enforcement of the ordinance stating this concern is addressed in the new ordinance by giving the City Manager authority to designate an officer most appropriate for enforcement of the ordinance. In addition, Leflar reported his contact with Jim McSwain, Fire Chief of the City of Lawrence, Kansas (a strong business and University community with a comparable population to Fayetteville), regarding McSwain's responsibility for enforcement of a similar ordinance, relayed his experience that in over 4 years since their ordinance was passed, a total of 45 complaints have been received with the majority received in the first year. Once their citizens became familiar

December 17, 1991

with the provisions of the ordinance, the number of complaints dramatically reduced and enforcement became a minor problem. Leflar stated that he believes a similar situation will be realized in the City of Fayetteville.

Leflar proceeded to explain the points of significant change in the new ordinance as follows:

- 1) Paragraph A(2a) pertaining to the designation of designated smoking area, the word "clearly" was omitted;
- 2) Paragraph A(2b) contains a provision which will essentially serve as a "grandfather clause" so that existing restaurants can use their existing physical barriers and ventilation systems to avoid major remodelling expenses in order to comply with the provisions of the ordinance and can merely post "smoking" and "non-smoking" signs in areas of their choice;
- 3) Paragraph A(3) includes a new definition for "designated non-smoking areas";
- 4) Paragraph A(6) pertaining to the definition of "public place" has specifically exempted hotel/motel guest rooms; banks were moved from category "B" into category "C";
- 5) Paragraph C(6) contains an exemption of existing restaurants with a total public seating of 30 or less, where it is difficult to separate "smoking" from "non-smoking"; however, said exempt restaurants would be required to post a notice on the outside of their establishments informing potential customers of that fact;
- 6) Paragraph E(3) clearly states that managers of public places will place conspicuous signs at all entrances, up to a maximum of six; posting one of the following statements: "Smoking Prohibited" or "Smoking Prohibited Except Within Designated Smoking Areas" or "Smoking Permitted Except Within Designated Non-Smoking Areas"; with the option of which sign to post being that of each individual facility by their management;
- 7) Paragraph E(5) addresses management's enforcement of the ordinance in order to comply by asking smokers to refrain from smoking in a non-smoking area or directing smokers to designated smoking areas;
- 8) Paragraph F addresses City enforcement by authorizing the City Manager to designate an officer responsible for enforcement of the ordinance;

December 17, 1991

- 9) Paragraph F(2) states that an inadvertent first offender could be given a warning rather than being fined;
- 10) Paragraph F states that the City officials responsible for granting permits for new facilities would consider applicant's compliance with "smoking" and "non-smoking" citing designation as a factor in granting of permits.

In conclusion, Leflar stated that the process by which the parties arrived at an acceptable compromise will stand as a good example of "bending bridges" and set a good example for future controversies among different areas and groups in the community.

Molly Wolfe, student at the University of Arkansas, addressed the Board encouraging them to support the smoking ordinance and feels strongly about this issue as her conscious efforts at health/safety seem to be in vain when she has to be subjected to second hand smoke in public places. With all the hazards that we don't have control over, this is one that can be controlled. *

Janet Titus, immediate past President of the Washington County Medical Society, addressed the Board in support of the new smoking ordinance as it supports in spirit the goals of the Washington County Medical Society efforts for a smoking ordinance. She stated that it seems to be an acceptable compromise that helps to protect the health and welfare of the majority of citizens without overly taxing the facilities' ability to serve their customers who wish to smoke. As a physician, she spends a lot of time trying to convince her patients not to smoke, and a position like this taken by a public entity, supports her stand against smoking.

Mayor Vorsanger addressed Dr. Titus regarding his confusion with the ordinance and her letter wherein they talk about the risks of smoking which he agrees with, but the ordinance as well as the last paragraph in her letter states, ". . . the Washington County Medical Society strongly supports efforts to regulate smoking in all public areas, all area hospitals have already taken the lead in banning smoking, except by patients in their rooms" which he finds confusing and contradictory.

Dr. Titus responded that nurses find some patients to be extremely difficult to deal with when they are raving about wanting to have a cigarette in the middle of the night. The original ruling was that patients could smoke only with the direct permission of their physician which quickly fell by the wayside as it is difficult to confront long term smokers with this restriction. Although Dr. Titus would like to see smoking banned completely, she does not believe it is practical in those situations. In addition, the hospitals when admitting patients assign rooms according to smoking preference. Titus also stated that regulating smoking by staff in nursing homes will help considerably in those facilities.

December 17, 1991

Director Henry stated that despite the fact that physicians are trained in health issues, and many have stopped smoking themselves, they cannot convince their patients to stop smoking as some people have no choice as they are addicted to the habit.

Dale Smith, owner of Carolyn's Restaurant, addressed the Board stating that his restaurant is already in compliance with this ordinance, and he would like to think that an ordinance like this wasn't necessary; however, people simply don't smoke responsibly nor realize the seriousness of this issue. Therefore, an ordinance is required to help control the problem as well as further educating people on the hazards of smoking.

Carol Fossey, physician practicing in the Fayetteville area, addressed the Board recommending that the Board pass this smoking ordinance as a good compromise and stated the importance of the City Board as representatives of the well being of the citizens of Fayetteville. Fossey encouraged the passage of an ordinance to help protect non-smokers from passive smoke.

Director Henry inquired as to whether this ordinance will require many changes from the hospitality industry that have not already been implemented.

Leflar stated that some additional signage would be required.

Henry stated that bars, beauty shops, and barber shops were exempted from this ordinance, and it is really not any broader than any of the previous proposed ordinances. The ordinance will take care of some additional problems. Henry further stated her concern that this ordinance was placing a lot of responsibility on managers of public establishments, especially in view of the fact that physicians are not willing to confront their patients. In addition, Henry stated that the City was being asked to solve this problem and to do what each individual has every right and the ability to control in their own situations. In closing, Henry stated that although this ordinance appears to be a compromise, she believes it is just the continuation of a trend to ask the government to do things that each individual should be able to do for themselves.

Betty Lou Olson addressed the Board stating that a common response received by a non-smoker requesting that someone not smoke in their presence is "I am not breaking the law"; therefore, an ordinance is necessary for enforcement.

Director Nash pointed out that this is not a smoking ban. She has received various opinions on a smoking ordinance and believes that both sides have made concessions and are willing to live with this ordinance. She is pleased to see this sort of communication and cooperation by everyone involved.

December 17, 1991

Mayor Vorsanger stated his concerns that: (1) chewing tobacco, which he considers more offensive than smoking, is not included in this ordinance; (2) it's okay to smoke and drink, but if you smoke and eat, the required signs needs to be posted; and (3) government should not regulate people or businesses in this matter. He stated he would vote against the ordinance.

Director Henry stated her agreement with Mayor Vorsanger, stating that she would like to see the word "tobacco" used in the ordinance.

Director Green stated that the Board needed to realize that this is a start and they have to start somewhere. This happens to be an ordinance which is at least bearable to most of those involved. Although it is not the answer to everything, this ordinance itself is at least a compromise and a good start, and the other issues will take care of themselves in time or can be addressed by the Board in the future if necessary. Even though he would prefer not to be asked to regulate business, there are valid reasons for trying to protect non-smokers from passive smoke; therefore, he stated that he would support the ordinance.

Mayor Vorsanger stated that one of the wonderful things about democracy and being on the Board of Directors is that they will all vote their conscience.

Upon roll call, the ordinance passed by a vote of 4 to 2, with Directors Vorsanger and Henry voting against the ordinance.

ORDINANCE 3584 APPEARS ON PAGE 7/ OF ORDINANCE AND RESOLUTION BOOK XXVI

UTILITY VEHICLE BID AWARD

Mayor Vorsanger reintroduced a resolution awarding Bid 91-61 to Ron Blackwell Ford for \$68,028 and to Lewis Ford Sales for \$43,857 for the purchase of seven (7) light and medium duty utility vehicles.

Vorsanger further reported that Staff recommends awarding the bids for the purchase of 4-1992 Jeep Cherokees, a 1991 Ford Ranger, a 1992 Ford F-250 pickup with a slip in dump bed, and a 1992 Ford Ranger 4x4.

Vorsanger explained that this item was tabled at the December 3, 1991 meeting so that the department needs for 4x4 vehicles could be presented to the Board.

Director Coody stated that in response to his questions regarding the necessity of the 4x4 vehicles, he has received a lot of input which include the following options: (1) Continue with current situation with 4-wheel drive Jeep Cherokee sport wagons; (2) Provide sufficient justification to reject the lowest bid to allow

FILED FOR RECORD

'91 DEC 20 PM 3:41

WASHINGTON CO AR
LIMEYER

ORDINANCE NO. 3584

AN ORDINANCE TO REGULATE SMOKING IN CERTAIN
PUBLIC PLACES AND TO AMEND CHAPTER 95 OF THE
CODE OF ORDINANCES OF THE CITY OF
FAYETTEVILLE, ARKANSAS BY ADDING A NEW SECTION
95.05.

WHEREAS, studies by the Surgeon General of the United States, the National Academy of Sciences, the National Institute of Occupational Safety and Health, and other scientific and health organizations demonstrate that passive smoking, or involuntary exposure to other people's tobacco smoke, is a significant health hazard for elderly people, children, individuals with cardiovascular disease, and individuals with impaired respiratory function;

WHEREAS, health hazards caused by passive smoking include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm;

WHEREAS, non-smokers who suffer allergies, respiratory diseases and other ill effects of passive smoking may experience a loss of job productivity and may be forced to take periodic sick leave because of such adverse reactions;

WHEREAS, smoking is a frequent cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause losses to business;

WHEREAS, the Fayetteville business community has taken important steps to increase customer satisfaction by providing non-smoking areas, and this trend should be encouraged; and

WHEREAS, the purpose of this ordinance is to protect public health, safety and welfare by prohibiting smoking in certain public places essential to members of the public, and by restricting smoking to designated smoking areas in other specified public places;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. Chapter 95 of the Code of Fayetteville is hereby amended by adding Section 95.05 to read as follows:

§95.05 Regulating Smoking in Certain Public Places.

(a) Definitions.

- (1) "Bar" means an area devoted to the sale and service of alcoholic beverages for on-premises consumption, where the service of food, if any, is only incidental to the consumption of such beverages.

LIBER 1446 PAGE 848

MICROFILMED

- (2) "Designated smoking area" means an area:
- (A) that is separated from non-smoking areas; is designated by appropriate signs which are clearly visible to patrons in and entering the area, or is in a facility where conspicuous signs are posted that smoking is permitted in the entire facility except for non-smoking areas; contains ashtrays, containers, or other receptacles for extinguishing smoking materials; and does not include service lines or cashier areas; and
 - (B) that is situated so that smoke from the smoking area does not normally enter a non-smoking area; provided that in the case of a public place that is in business or operation on the date of enactment of this ordinance, whether under the same or new management, no new physical barriers or ventilation systems need to be installed, and such public place shall be deemed to satisfy this subparagraph (a)(2)(B) if it utilizes existing physical barriers or ventilation systems to minimize the drift of smoke into non-smoking areas.
- (3) "Designated non-smoking area" means an area that is separated from smoking areas, and is designated by appropriate signs which are clearly visible to patrons and entering the area.
- (4) "Health care facilities" means all enclosed indoor areas in which health care is provided to the general public (other than areas to which smoking policy is already established by state law (A.C.A. §§ 20-27-701 thru 703), including nursing and convalescent homes, optometrists', podiatrists', and chiropractors' offices, and physical therapy facilities.
- (5) "Manager" means the owner, lessee, or other person in charge of a public place.
- (6) "Public place" means (a) any enclosed indoor area that is used by the general public, except hotel and motel guest rooms and areas restricted to use only by employees or management of a private business; and (b) any swimming pool owned or operated by the city, including the entire area within the pool enclosure. A private residence shall not be considered a public place for purposes of this ordinance, unless it is used as a health care or licensed child care facility.

(7) "Smoking" means holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(b) Restrictions on Smoking in Public Places Essential to Members of the Public.

No person shall smoke in the following public places:

- (1) health care facilities, except in private or semi-private rooms occupied by one or more patients all of whom are smokers who have requested to be placed in rooms where smoking is permitted;
- (2) licensed child care facilities, except in areas in which children being cared for are never present;
- (3) polling places;
- (4) courtrooms and jury waiting and deliberation rooms;
- (5) rooms, halls or other places of meeting or public assembly, during such times as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city; provided that this ordinance shall not apply to meetings of private organizations;
- (6) drug stores, grocery stores, banks, libraries, and laundromats;
- (7) public transportation terminals;
- (8) buses, taxis, and airport limousines operating within the city limits;
- (9) elevators accessible to the public;
- (10) restrooms, except in facilities listed in subsection (d) of this ordinance; and
- (11) swimming pools owned or operated by the city.

(c) Restrictions on Smoking in Certain Other Public Places.

No person shall smoke in the following public places, except in designated smoking areas:

- (1) facilities primarily used for exhibiting any motion picture, lecture, musical recital,

stage or other similar performance, except when smoking is part of a stage production;

- (2) enclosed walkways in malls and shopping centers;
 - (3) hotels and motels;
 - (4) museums and galleries;
 - (5) bank and retail stores doing business with the general public, except for retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;
 - (6) restaurants in business on the date of enactment of this ordinance, whether under the same or new management, if the seating capacity is 30 or less and the management posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the restaurant; and
 - (7) health spas, roller rinks, bowling alleys, and other indoor sports or recreation facilities, except for pool halls.
- (d) The provisions of this ordinance shall not apply to the following facilities, provided that the facility posts a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility:
- (1) bars, and separated bar areas of restaurants;
 - (2) beauty salons and barber shops;
 - (3) retail stores whose primary source of revenue is the sale of tobacco and tobacco-related products;
 - (4) gasoline stations and convenience stores; and
 - (5) pool halls; and
 - (6) restaurants in business on the date of enactment of this ordinance, whether under the same or new management, if the seating capacity is 30 or less.
- (e) Duties of Managers of Public Places.
- (1) The manager of public place to which this ordinance applies shall make one of the following three designations. The manager may

designate: (A) the entire public place as a non-smoking facility; or (B) separate areas of the public place as a designated smoking and non-smoking, if permitted by paragraph (c) of this ordinance; or (C) the entire public place as a smoking-permitted facility, if permitted by paragraph (d) of this ordinance.

- (2) The manager of a public place, if the entire public place has been designated a smoking-permitted facility, shall post a conspicuous notice on each public entrance stating that smoking is permitted throughout the facility.
- (3) The manager of a public place in which smoking is prohibited or restricted shall place conspicuous signs at each public entrance up to a maximum of six entrances, and at appropriate places within the public place, notifying the public that (A) smoking is prohibited, or (B) that smoking is prohibited except within designated smoking areas, or (C) that smoking is permitted except within designated non-smoking areas.
- (4) The manager of a public place in which a smoking and non-smoking areas has been designated shall comply with the requirements of this ordinance for sitting of the designated smoking and non-smoking areas.
- (5) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit, or fail to make reasonable efforts to prevent, smoking in any area where smoking is prohibited. The manager may fulfill this duty by asking smokers to refrain from smoking in a non-smoking area or directing smokers to designated smoking areas.
- (6) Nothing in this ordinance shall preclude the manager of a public place listed in paragraphs (c) or (d) of this ordinance from designating all of the facility to be non-smoking, or from designating part of public place listed in paragraph (d) as a non-smoking area.

(f) Enforcement.

- (1) The City Manager shall designate officers responsible for enforcing the provisions of this ordinance, with due regard for the circumstances of each type of facility subject to the ordinance.

(2) The violation of any provision of this ordinance shall be punishable by a fine of not less than \$10.00 and not more than \$100, except that in inadvertent first offender may be given a warning. Each day a violation of this ordinance continues shall be a separate offense.

(3) City officials responsible for issuing building permits and certificates of occupancy for facilities subject to this ordinance shall consider applicants' compliance with, or agreement to comply with paragraph (e)(4) as a factor in deciding whether to issue the permit.

(g) Relation to Other Laws and Regulations.

Nothing in this ordinance excuses noncompliance with any state or federal law, or any rule or regulation adopted pursuant thereto (including any rule adopted for the University of Arkansas or for the public schools), which prohibits or regulates smoking.

(h) Severability.

If any part of this ordinance, or the application of the same to any person or set of circumstances, is for any reason held to be void or invalid, the validity of the remaining parts of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby.

(i) Effective Date.

This ordinance shall be effective three months after the date of approval by the Fayetteville Board of Directors.

PASSED AND APPROVED this 17th day of December, 1991.

APPROVED:

By: [Signature]
Mayor



ORDINANCE NO. 4512

AN ORDINANCE TO AMEND §95.05 REGULATION OF SMOKING IN CERTAIN PUBLIC PLACES OF THE CODE OF FAYETTEVILLE AND TO ENACT A REPLACEMENT §95.05 REGULATION OF SMOKING IN MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT

WHEREAS, the Fayetteville City Council has determined that further restrictions of smoking in enclosed public places and work places are needed to protect the health and safety of citizens and to ensure the right of nonsmokers to breathe smoke free air; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, hereby repeals **§95.05 Regulation of smoking in certain public places** of the Fayetteville Code in its entirety and enacts the following new **§95.05 Regulation of smoking in most public places and places of employment** of the Fayetteville Code to replace it:

"Sec. 95.05. Regulation of smoking in most public places and places of employment.

- (A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the

context clearly indicates or requires a different meaning.

Bar. An establishment, whether termed a private club or public establishment, that is devoted primarily to the sale and service of



alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

Restaurant. An eating establishment, including but not limited to dining establishments, private clubs, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Enclosed area. All space partially enclosed between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Manager. The owner, lessee, or other person in charge of a public place.

Place of employment. An enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, hallways, classrooms, and employee cafeterias. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. A "bar" and a "retail tobacco store" are not places of employment for purposes of this Section. An enclosed private office that is not regularly entered or occupied by a nonsmoking employee is not a place of employment for purposes of this section.

Public place.

- (1) Any enclosed indoor area that is used by the public or private club members and guests, except designated hotel and motel guest rooms.
- (2) Any swimming pool owned or operated by the city.

Retail Tobacco Store. A retail store utilized primarily for the sale and use of tobacco products and accessories and in which the sale of other products is merely incidental.

Smoking. Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(B) Prohibition of Smoking in public places and places of employment

Smoking is prohibited in all public places, places of employment, and city vehicles unless specifically exempted in subsection (C).

(C) Exemptions.

The following types of establishments are exempted from the smoking prohibition of this ordinance:

- (1) Bars
- (2) Retail tobacco stores

(D) Duties of Managers.

- (1) The manager of a place within which smoking is prohibited by this ordinance shall place "No Smoking" or "Smoke Free" signage at the major entrance and other appropriate places within the establishment.
- (2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit or fail to make reasonable efforts to prevent smoking in any area where smoking is prohibited.

(E) Enforcement.

- (1) City police shall enforce this section pursuant to their normal police power.
- (2) If a manager knowingly permits or fails to make reasonable efforts to prevent smoking by the establishment's customers or employees where prohibited by this section, the manager shall be guilty of a violation and a fine or not more than \$100.00 per occurrence.
- (3) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty (\$50.00) dollars per occurrence.
- (4) In addition to the fines established by this Section, multiple violations of this Section by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued for the premises on which the violation occurred.

(F) *Jurisdiction.*

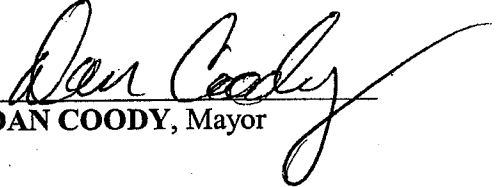
This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(G) *Effective date.*

This ordinance shall take effect on February 1, 2004.

PASSED and APPROVED this the 2nd day of September, 2003.

APPROVED:

By: 
DAN COODY, Mayor

ATTEST:

By: 
SONDRA SMITH, City Clerk



City Clerk - FW: Support Smoke Free Bars!

From: "Adella Gray" <adellag@cox.net>
To: "City Clerk" <city_clerk@ci.fayetteville.ar.us>
Date: 4/28/2011 11:12 AM
Subject: FW: Support Smoke Free Bars!

Sondra, please send to all alderman.
Thanks, Adella

From: Stephan Pollard [mailto:stephan.pollard@gmail.com]
Sent: Thursday, April 28, 2011 8:48 AM
To: adellag@cox.net
Subject: Support Smoke Free Bars!

Hello Adella!

Thank you for sponsoring the smoke-free bars ordinance. I support this important public health measure.

Sincerely,

Stephan Pollard
Ward 2

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trem | wel
(E) N E R G Y + (E) N V I R O N M E N T
GREEN BUILDING WIND SOLAR SUSTAINABILITY

Stephan Pollard, PhD-Environmental Dynamics, CGPM
Chief Executive Officer
Trem | Wel Energy, LLC
555 W. Maple St., Suite C
Fayetteville, AR 72701
M: 479.799.9190
E: stephan.pollard@trem-wel.com
W: trem-wel.com

City Clerk - FW: Smoking Ordinance

From: "Adella Gray" <adellag@cox.net>
To: "City Clerk" <city_clerk@ci.fayetteville.ar.us>
Date: 4/27/2011 4:57 PM
Subject: FW: Smoking Ordinance

Sondra,
Please send this fine letter to all alderman, the mayor and Chief of Staff.
Thank You,
Adella

From: Robert Patton [mailto:rcpattonsr@gmail.com]
Sent: Wednesday, April 27, 2011 4:15 PM
To: adellag@cox.net
Subject: Smoking Ordinance

Dear Ms. Gray,

I want to add my voice to the yes column regarding strengthening the no smoking ordinance banning smoking in all bars. Soon you will hear from the medical community, Dr. Joe Bates and Dr. Hersey Garner, who will speak to the significant ill effects of tobacco use. As an emergency medicine physician, I am aware of the serious effects of smoking, including passive smoking, and look forward to these two fine physicians' presentation.

I wish to offer encouragement in another area. It is your responsibility as a council member to protect the health and welfare of the citizens you represent. The local paper alluded to this ordinance as a "nanny ordinance". I take exception to that pejorative description. Your yes vote has a long historical precedent of responsible leaders protecting the health and resources of their community. First, by discouraging smoking in public spaces, you are protecting the resources of the community. Research demonstrates that smokers are less healthy and utilize more healthcare resources than the nonsmoker. We, as citizens, pay a part of that bill through higher healthcare costs. Second, in a time of high unemployment, you are protecting the worker faced with a decision between their job and their health. It is unfair to put any worker in that position.

The health risks that tobacco smoke carries is well documented. There is no excuse for exempting public venues such as bars and restaurants from its ban. Research shows that anti-smoking legislation results in a reduction of overall tobacco use in the community. This is a good thing.

Sincerely,

Robert Patton, MD

Sondra Smith - FW: Smoking Ordinance

From: "Adella Gray" <adellag@cox.net>
To: "Sondra Smith" <ssmith@ci.fayetteville.ar.us>
Date: 5/4/2011 10:13 AM
Subject: FW: Smoking Ordinance

Sondra, please forward to all aldermen.
Thanks,
Adella

From: Pat_A_Smith@arwd.uscourts.gov [mailto:Pat_A_Smith@arwd.uscourts.gov]
Sent: Wednesday, May 04, 2011 9:39 AM
To: adellag@cox.net
Subject: Smoking Ordinance

I would strongly urge you to extend the non-smoking ordinance to bars. I do not believe this is an invasion of personal rights issue. In America we have the right to live as we choose, but there are boundaries. That's why we have laws and ordinances. It is instead a health issue. The focus of your decision should rest there. I know many people who smoke but do not do so in their homes or cars. They go outside to protect their family and to keep their home and car free of the nicotine odors. These same people want to go to a bar or public place and smoke with no concern for those around them. Most major cities have adopted non-smoking policies, and the social life of the cities has not been adversely affected. You used the argument that in most major cities people pay for parking to pass a parking ordinance that many feared would put them out of business. I hope you will be as adamant in extending the non-smoking ordinance. If all bars are non-smoking, everyone is on an even keel.

Thank you for considering my comments.

Pat Smith

Lisa Branson - Re: Fwd: smoking ban

From: Lioneld Jordan
To: backpacker200@msn.com; Jordan, Lioneld
Date: 5/9/2011 2:33 PM
Subject: Re: Fwd: smoking ban
CC: smith,sondra

Mary,
I will see your e-mail gets sent to the City Council. Thank you for your input. I am sure the C.C. will listen to your concerns, and comments, and take them into consideration. They do a great job, and will vote their conscious after hearing all the sides of the issue.
Thanks,
Mayor Jordan

Lioneld Jordan, Mayor
113 W. Mountain St.
Fayetteville, AR 72701
479-575-8331 Phone
479-575-8257 Fax
TDD (Telecommunications Device for the Deaf) 479-521-1316

>>> Lioneld Jordan 5/9/2011 11:51 AM >>>
FYI
Iana

Mayor Lioneld Jordan
113 W. Mountain St.
Fayetteville, AR 72701
479-575-8331
TDD (Telecommunications Device for the Deaf) 479-521-1316

>>> Carl Ownbey <> 5/4/2011 5:08 PM >>>
Dear Mayor Jordan; As I don't know what ward I'm in, and can not find that information on the accessfayetteville website, I am emailing you in hope that you will pass my opinion on to the city council members.
I understand they are considering a proposal that would do away with smoking in free standing bars.
Since a person has to be 21 years old to enter or work in these bars, I feel that a patron or employee of these bars is a free participant in the smoking atmosphere. I feel that a non-smoker is free to chose a bar where smoking is already not allowed. I really somehow get the feeling that the people who are pushing this smoking ban are "do-gooders" who like to impose their will on others. I really feel that a basic freedom would be taken away from a person who wishes to have a beer, smoke, and enjoy the camaraderie of the people with whom he has enjoyed it for these many years before a bunch of "do-gooders" arbitrarily took that freedom from him.
Now, let me say that I despise smoking, have never smoked, will not go into a smoking atmosphere, nor will I go into a business establishment that allows people to stand near the entrance and smoke.
I feel that it will be a sad day for Fayetteville if the City Council enacts smoking ban on free standing bars. That would just go above and beyond "protecting the health" of the community.
Thank you for your service to the community.
Mary Chodrick
604 N. Rockcliff Road
Fayetteville

Lisa Branson - Fwd: Smoking ordinance amendment and market failure

From: City Clerk
To: Aldermen
Date: 5/25/2011 10:38 AM
Subject: Fwd: Smoking ordinance amendment and market failure
CC: d3williams@sbcglobal.net

City clerk, please forward to our Mayor and Aldermen. Thank you.

*Office of the City Clerk
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
(479)575-8323
city_clerk@ci.fayetteville.ar.us*

TDD (Telecommunications Device for the Deaf): (479) 521-1316

>>> "David L. Williams" d3williams@sbcglobal.net> 5/25/2011 10:16 AM >>

Dear Mayor and Aldermen:

I have heard that some council members think the market will take care of the bar non-smoking issue and therefore do not support the proposed amendment. My viewpoint is that this is a situation that is ripe for market failure which cries for the amendment. Here's why:

My understanding is that one form of market failure is when a negative externality exists wherein the costs to someone or society fall on someone other than the parties involved in the transaction. For me, that appears to be the case if indoor businesses that serve the public are allowed to sustain toxic environments that contribute to escalating, long-term health care costs and suffering. **My perspective is that, in the case of public goods like cleaner environment, healthier populations & workplaces, and safer products or services, a mixed economy that has cost-efficient combinations of competition and government oversight works better than a pure market economy.** Examples range from airline safety & smoking restrictions to employee hand washing.

Due to the addictive tendencies of smoking & drinking in combination, I think it is unlikely that the market will sufficiently protect the customers, workers or public from the hazards and escalating costs of healthcare associated with indoor smoking in bars. The proposed amendment strikes me as a low-cost protection in Fayetteville's best economic and quality of life interest.

Thank you for your consideration of this perspective.

David L. Williams, Ward 4 Citizen

*Handed out at the
City Council Meeting
5-17-2011*

FAYETTEVILLE, ARKANSAS
AIR QUALITY MONITORING STUDY

Mark J. Travers, PhD, MS

Lisa Vogl, BS

Department of Health Behavior



February 2011

EXECUTIVE SUMMARY

In January, 2011, indoor air quality was assessed in 28 bars in Fayetteville, Arkansas. Six locations were smoke-free and 22 locations permitted indoor smoking.

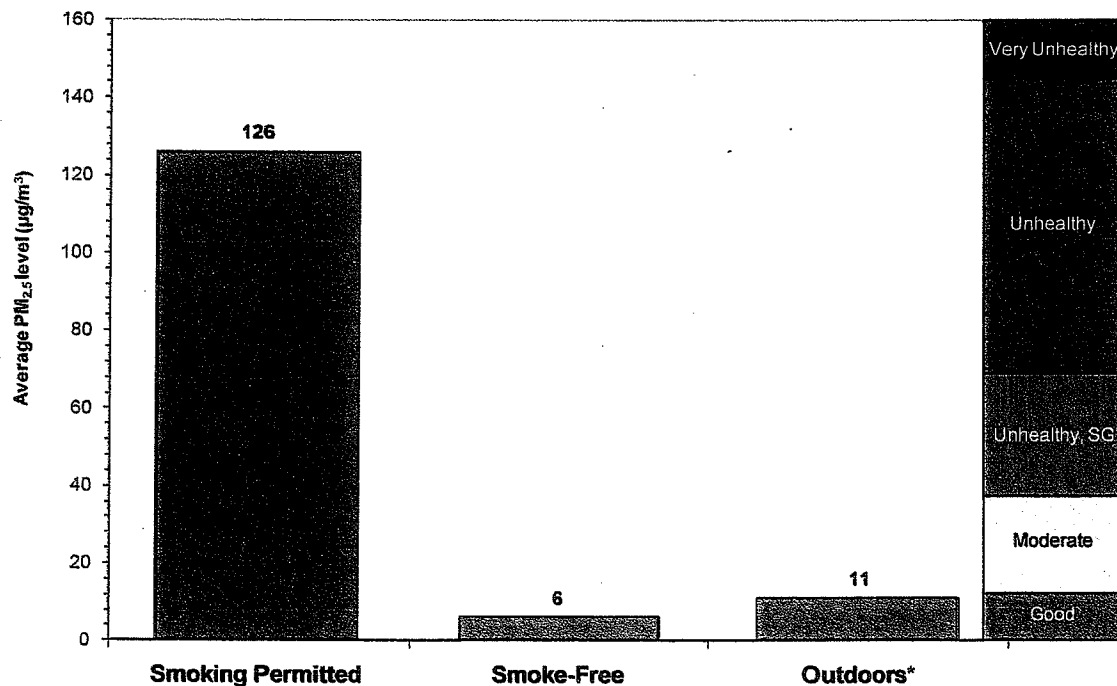
The concentration of fine particle air pollution, $PM_{2.5}$, was measured with a TSI SidePak AM510 Personal Aerosol Monitor. $PM_{2.5}$ is particulate matter in the air smaller than 2.5 microns in diameter. Particles of this size are released in significant amounts from burning cigarettes, are easily inhaled deep into the lungs, and cause a variety of adverse health effects including cardiovascular and respiratory morbidity and death.

Key findings of the study include:

- In the 22 locations with observed smoking, there were, on average, 2.6 cigarettes burning during the visits. This translates to an average of 0.40 burning cigarettes per 100 cubic meters of air in these places.
- In the 22 locations with observed indoor smoking the level of fine particle air pollution was unhealthy ($PM_{2.5} = 126 \mu g/m^3$). This level of particle air pollution is 12 times higher than outdoor air in Arkansas and 21 times higher than the smoke-free locations.
- Employees working full time in the locations with indoor smoking are exposed to levels of air pollution 2.5 times higher than safe annual levels established by the U.S. Environmental Protection Agency due to their occupational exposure to tobacco smoke pollution.

Figure 1.

Average Level of Indoor Air Pollution in Fayetteville Bars



* Used for comparison purposes. Based on the 2008 average $PM_{2.5}$ level from the EPA monitoring sites in Springdale, Arkansas (<http://www.epa.gov/air/data/>). The color-coded EPA Air Quality Index is also shown to demonstrate the magnitude of the measured particle levels

INTRODUCTION

Secondhand smoke (SHS) contains at least 250 chemicals that are known to be toxic or carcinogenic, and is itself a known human carcinogen,[1] responsible for an estimated 3,000 lung cancer deaths annually in *never smokers* in the U.S., as well as more than 35,000 deaths annually from coronary heart disease in *never smokers*, and respiratory infections, asthma, Sudden Infant Death Syndrome, and other illnesses in children.[2] Although population-based data show declining SHS exposure in the U.S. overall, SHS exposure remains a major public health concern that is entirely preventable.[3, 4] Because establishing smoke-free environments is the most effective method for reducing SHS exposure in public places,[5] Healthy People 2020 Objective TU-13 encourages all States, Territories, Tribes and the District of Columbia to establish laws on smoke-free indoor air that prohibit smoking in public places and worksites.[6]

Currently in the U.S., 28 states, Washington D.C., and Puerto Rico have passed strong smoke-free air laws that include restaurants and bars. The states are Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, Utah, Vermont, Washington, and Wisconsin. Well over 50% of the U.S. population is now protected from secondhand smoke in all public places.[7] Nine Canadian provinces and territories also have comprehensive smoke-free air laws in effect. Hundreds of cities and counties across the U.S. have also taken action, as have whole countries including Ireland, Scotland, Uruguay, Norway, New Zealand, Sweden, Italy, Spain, England and France.

In September of 2003, the Fayetteville City Council passed an ordinance that would prohibit smoking in most workplaces in city limits, including restaurants and their attached bars. On February 10, 2004 the voters in Fayetteville upheld the City Council's decision through a referendum. Bars and taverns in Fayetteville that only allow patrons above the age of 21 and do not serve food are exempt from the ordinance. The Arkansas Clean Indoor Air Act[8] went into effect in July 2006 and requires most workplaces and public places to be smokefree with the exception of bars and restaurants that prohibit at all times persons under the age of 21, businesses with 2 or less employees not open to the public, designated hotel rooms(<20%), and designated areas of long-term care facilities. So, currently in Fayetteville most workplaces and public places are smokefree although there are about 30 bars that are exempt from the clean indoor air legislation and permit indoor smoking.

The goal of this study was to determine the level of fine particle air pollution in Fayetteville bars where smoking was permitted and compare this to smoke-free locations. It is hypothesized that: 1) indoor particle air pollution levels will be significantly lower in locations where smoking is not allowed compared to locations where smoking is permitted; and, 2) across all venues sampled, the degree of indoor particle air pollution will be correlated with the amount of smoking.

METHODS

In January, 2011, indoor air quality and the presence of smoking were assessed in 28 restaurants and bars in Fayetteville, Arkansas. There were 6 locations with no observed smoking and 22 locations with observed smoking.

MEASUREMENT PROTOCOL

A minimum of 30 minutes was spent in each venue. The number of people inside the venue and the number of burning cigarettes were recorded every 15 minutes during sampling. These observations were averaged over the time inside the venue to determine the average number of people on the premises and the average number of burning cigarettes. Room dimensions were also determined using a combination of any or all of the following techniques; a sonic measuring device, counting of construction materials of a known size such as floor tiles, or estimation. Room volumes were calculated from these dimensions. The active smoker density was calculated by dividing the average number of burning cigarettes by the volume of the room in meters.

A TSI SidePak AM510 Personal Aerosol Monitor (TSI, Inc., St. Paul, MN) was used to sample and record the levels of respirable suspended particles in the air. The SidePak uses a built-in sampling pump to draw air through the device where the particulate matter in the air scatters the light from a laser. This portable light-scattering aerosol monitor was fitted with a 2.5 μm impactor in order to measure the concentration of particulate matter with a mass-median aerodynamic diameter less than or equal to 2.5 μm , or $\text{PM}_{2.5}$. Tobacco smoke particles are almost exclusively less than 2.5 μm with a mass-median diameter of 0.2 μm . [9] The Sidepak was used with a calibration factor setting of 0.32, suitable for secondhand smoke. [10, 11] In addition, the SidePak was zero-calibrated prior to each use by attaching a HEPA filter according to the manufacturer's specifications.

The equipment was set to a one-minute log interval, which averages the previous 60 one-second measurements. Sampling was discreet in order not to disturb the occupants' normal behavior. For each venue, the first and last minute of logged data were removed because they are averaged with outdoors

PM_{2.5} is the concentration of particulate matter in the air smaller than 2.5 microns in diameter. Particles of this size are released in significant amounts from burning cigarettes, are easily inhaled deep into the lungs, and are associated with pulmonary and cardiovascular disease and mortality.

TSI SIDEPAK AM510 PERSONAL
AEROSOL MONITOR



and entryway air. The remaining data points were averaged to provide an average $PM_{2.5}$ concentration within the venue.

STATISTICAL ANALYSES

The primary goal was to assess the difference in the average levels of $PM_{2.5}$ between establishments allowing smoking and those that are smoke-free. Statistical significance is assessed using the Mann-Whitney test on the $PM_{2.5}$ concentrations. The second hypothesis was tested by using all 28 sample visits and correlating the average smoker densities to the $PM_{2.5}$ levels using the Spearman rank correlation coefficient (r_s). Descriptive statistics including the venue volume, number of patrons, and average smoker density (i.e., number of burning cigarettes) per 100 m^3 are reported for each venue and averaged for all venues.

RESULTS

A summary of each location visited is shown in Table 1. The average $PM_{2.5}$ level in the 22 locations permitting indoor smoking was $126 \mu\text{g}/\text{m}^3$ (Figure 1). The $PM_{2.5}$ concentrations in places with smoking were significantly higher than smoke-free locations where the mean $PM_{2.5}$ concentration was $6 \mu\text{g}/\text{m}^3$ ($U=0.00$, $p<0.01$, $r=.71$).

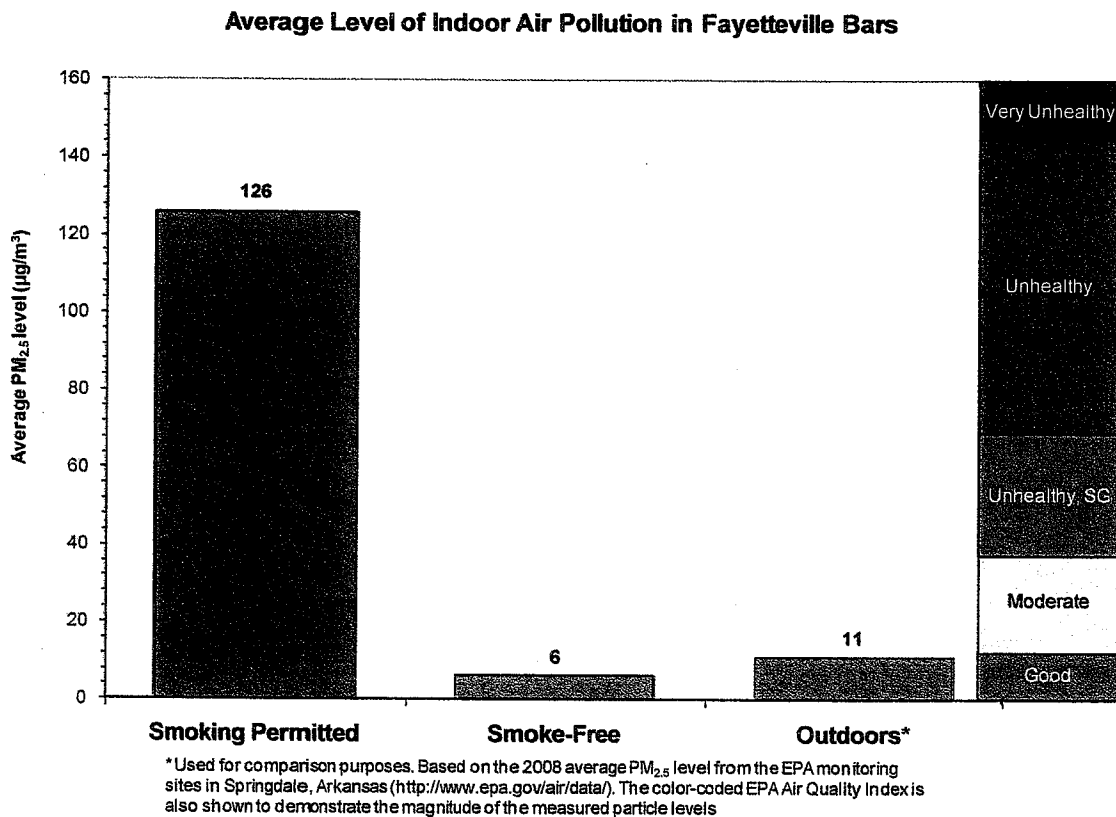
Table 1. Fine Particle Air Pollution in Arkansas Bars

Venue Number	Size (m^3)	Average # people	Average # burning cigs	Active smoker density*	Average $PM_{2.5}$ level ($\mu\text{g}/\text{m}^3$)
Smoke-free					
1	292	4	0.0	0.00	8
2	321	12	0.0	0.00	7
3	504	17	0.0	0.00	3
4	170	3	0.0	0.00	7
5	510	13	0.0	0.00	4
6	1068	12	0.0	0.00	9
Average (n=6)	477	10	0.0	0.00	6
Smoking Permitted					
7	7785	14	3.0	0.04	39
8	272	20	4.3	1.59	396
9	1360	7	0.7	0.05	117
10	1632	7	0.7	0.04	168
11	517	6	1.3	0.26	262
12	255	14	2.3	0.92	86
13	1911	5	1.3	0.07	71
14	232	11	2.3	0.99	262
15	1481	8	1.3	0.09	44
16	726	23	4.0	0.55	160
17	1088	6	1.0	0.09	39
18	2869	20	2.0	0.07	136
19	2125	10	0.3	0.01	26
20	1247	13	3.7	0.30	158
21	1198	11	1.0	0.08	49
22	1405	23	4.7	0.33	71
23	3061	12	2.7	0.09	21
24	680	21	3.3	0.49	108
25	227	15	4.7	2.07	206
26	436	4	1.0	0.23	14
27	4897	47	6.5	0.13	100
28	1450	30	6.0	0.41	242
Average (n=22)	1675	15	2.6	0.40	126

*Average number of burning cigarettes per 100 cubic meters.

In the 22 locations with observed smoking the average number of burning cigarettes was 2.6 which corresponds to an average smoker density (ASD) of 0.40 burning cigarette per 100 m³. Looking at all 28 sample visits, PM_{2.5} levels are positively associated with the active smoker density indicating that the amount of indoor smoking may be the primary driver of the indoor particle pollution levels. This association was statistically significant ($r_s=0.78$, $p<0.01$).

Figure 1.



The real-time plots showing the level of indoor air pollution in each venue sampled is presented in Figures 2-5, starting on page 11. The real-time PM_{2.5} plots reveal the following results: 1) low background levels are observed outdoors; 2) high levels of indoor air pollution are observed in the venues where smoking was observed; and 3) peak exposure levels in some venues where smoking was observed reached levels far in excess of the average recorded level.

DISCUSSION

The EPA cited over 80 epidemiologic studies in creating a particulate air pollution standard in 1997.[12] The EPA has recently updated this standard and, in order to protect the public health, the EPA has set limits of $15 \mu\text{g}/\text{m}^3$ as the average annual level of $\text{PM}_{2.5}$ exposure and $35 \mu\text{g}/\text{m}^3$ for 24-hour exposure.[12] In order to compare the findings in this study with the annual EPA $\text{PM}_{2.5}$ exposure standard, it was assumed that a full-time employee in the locations sampled that allow smoking works 8 hours, 250 days a year, is exposed to $126 \mu\text{g}/\text{m}^3$ (the average level in the sites with smoking) on the job, and is exposed only to background particle levels of $11 \mu\text{g}/\text{m}^3$ during non-work times. For a full-time employee their average annual $\text{PM}_{2.5}$ exposure is $37 \mu\text{g}/\text{m}^3$. The EPA average annual $\text{PM}_{2.5}$ limit is exceeded by 2.5 times due to their occupational exposure. Based on the latest scientific evidence, the EPA staff currently proposes even lower $\text{PM}_{2.5}$ standards to adequately protect the public health,[13] making the high $\text{PM}_{2.5}$ exposures of people in smoking environments even more alarming.

Previous studies have evaluated air quality by measuring the change in levels of respirable suspended particles (RSP) between smokefree venues and those that permit smoking. Ott et al. did a study of a single tavern in California and showed an 82% average decrease in RSP levels after smoking was prohibited by a city ordinance.[14] Repace studied 8 hospitality venues, including one casino, in Delaware before and after a statewide prohibition of smoking in these types of venues and found that about 90% of the fine particle pollution could be attributed to tobacco smoke.[15] Similarly, in a study of 22 hospitality venues in Western New York, Travers et al. found a 90% reduction in RSP levels in bars and restaurants, an 84% reduction in large recreation venues such as bingo halls and bowling alleys, and a 58% reduction even in locations where only secondhand smoke from an adjacent room was observed at baseline.[16] A cross-sectional study of 53 hospitality venues in 7 major cities across the U.S. showed 82% less indoor air pollution in the locations subject to smokefree air laws, even though compliance with the laws was less than 100%.[17]

Other studies have directly assessed the effects SHS exposure has on human health. Rapid improvements in the respiratory health of bartenders were seen after a state smokefree workplace law was implemented in California[18]. Smokefree legislation in Scotland was associated with significant early improvements in symptoms, lung function, and systemic inflammation of all bar workers, while asthmatic bar workers also showed reduced airway inflammation and improved quality of life.[19] Farrelly et al. also showed a significant decrease in both salivary cotinine concentrations and sensory symptoms in hospitality workers after New York State's smokefree law prohibited smoking in their worksites.[20] A meta-analysis of the 8 published studies looking at the effects of smokefree air policies on heart attack admissions yielded an estimate of an immediate 19% reduction in heart attack admissions associated with these laws.[21] In its 2009 report, *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence*, the Institute of Medicine also concludes that secondhand-smoke exposure increases the risk of coronary heart disease and heart attacks and that clean indoor air laws reduce this risk. Given the prevalence of heart attacks, and the resultant deaths, clean indoor air laws can have a substantial impact on public health.[22]

The effects of passive smoking on the cardiovascular system in terms of increased platelet aggregation, endothelial dysfunction, increased arterial stiffness, increased atherosclerosis, increased oxidative stress and decreased antioxidant defense, inflammation, decreased energy production in the heart muscle, and a decrease in the parasympathetic output to the heart, are often nearly as large (averaging 80% to 90%) as chronic active smoking. Even brief exposures to SHS, of minutes to hours, are associated with many of these cardiovascular effects. The effects of secondhand smoke are substantial and rapid, explaining the relatively large health risks associated with secondhand smoke exposure that have been reported in epidemiological studies.[23]

The hazardous health effects of exposure to second-hand smoke are now well-documented and established in various independent research studies and numerous international reports. The body of scientific evidence is overwhelming: there is no doubt within the international scientific community that second-hand smoke causes heart disease, lung cancer, nasal sinus cancer, sudden infant death syndrome (SIDS), asthma and middle ear infections in children and various other respiratory illnesses. There is also evidence suggesting second-hand smoke exposure is also causally associated with stroke, low birthweight, spontaneous abortion, negative effects on the development of cognition and behavior, exacerbation of cystic fibrosis, cervical cancer and breast cancer. The health effects of secondhand smoke exposure are detailed in recent reports by the California Environmental Protection Agency[24] and the U.S. Surgeon General[25, 26].

CONCLUSIONS

This study demonstrates that employees and patrons in Fayetteville bars permitting indoor smoking are exposed to harmful levels of indoor air pollution resulting from indoor smoking. A comprehensive smoke-free air policy that prohibits indoor smoking in all indoor places is the only proven means to eliminate this exposure to toxic tobacco smoke pollution. This type of policy will result in improved quality of life and health outcomes for Fayetteville workers and residents.

ACKNOWLEDGMENTS

The study was funded by Northwest Arkansas Tobacco Free Coalition.

Support for Roswell Park Cancer Institute researchers was provided by the Flight Attendant Medical Research Institute.

Roswell Park Cancer Institute (RPCI) is America's first cancer center founded in 1898 by Dr. Roswell Park. RPCI is the only upstate New York facility to hold the National Cancer Center designation of "comprehensive cancer center" and to serve as a member of the prestigious National Comprehensive Cancer Network.

Over its long history, Roswell Park Cancer Institute has made fundamental contributions to reducing the cancer burden and has successfully maintained an exemplary leadership role in setting the national standards for cancer care, research and education.

The campus spans 25 acres in downtown Buffalo and consists of 15 buildings with about one million square feet of space. A new hospital building, completed in 1998, houses a comprehensive diagnostic and treatment center. In addition, the Institute built a new medical research complex and renovated existing education and research space to support its future growth and expansion.

For more information about Roswell Park and cancer in general, please contact the Cancer Call Center at 1-877-ASK-RPCI (1-877-275-7724).



Figure 2

Arkansas Air Quality Monitoring Study January, 2011

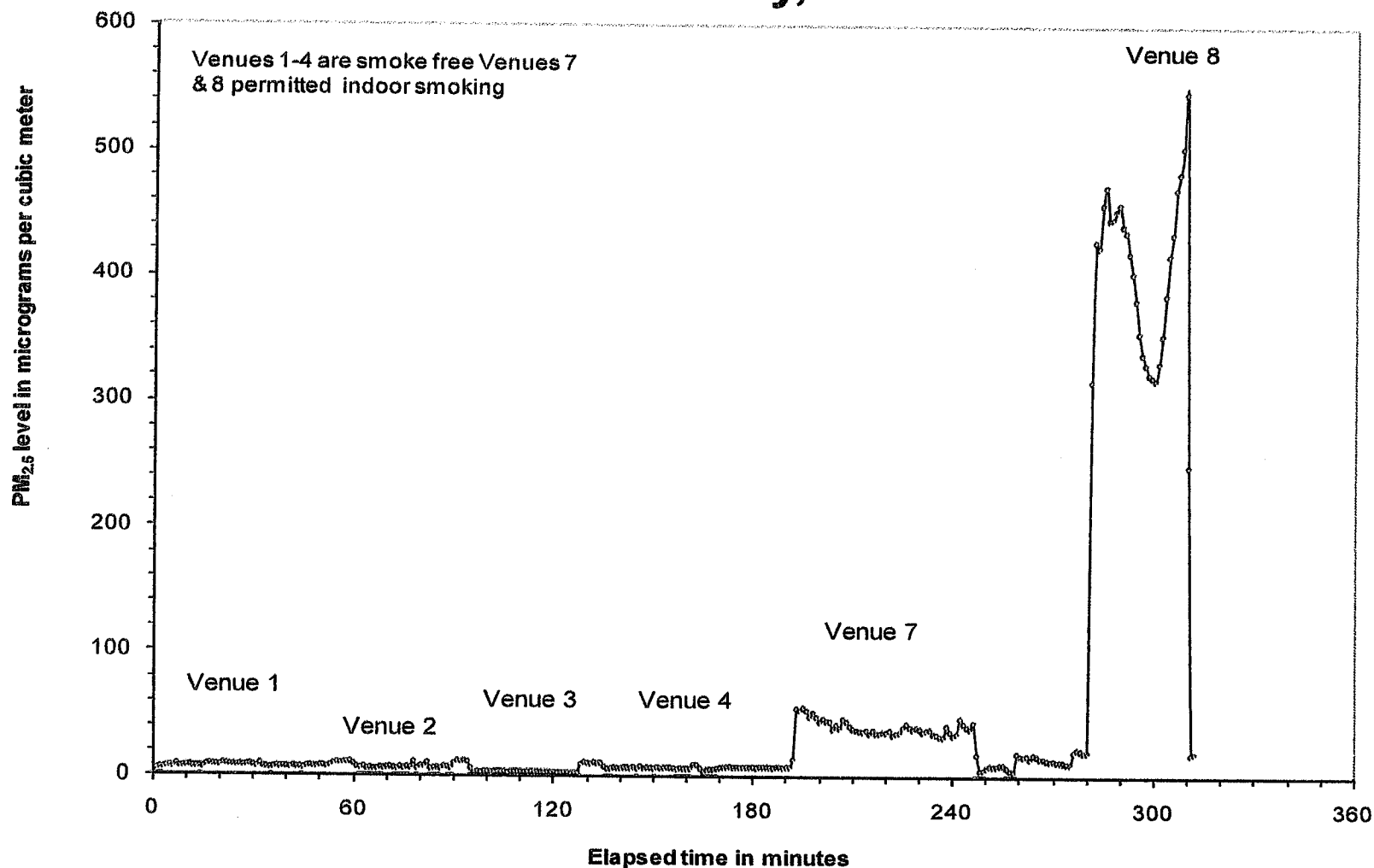


Figure 3 **Arkansas Air Quality Monitoring Study**
January, 2011

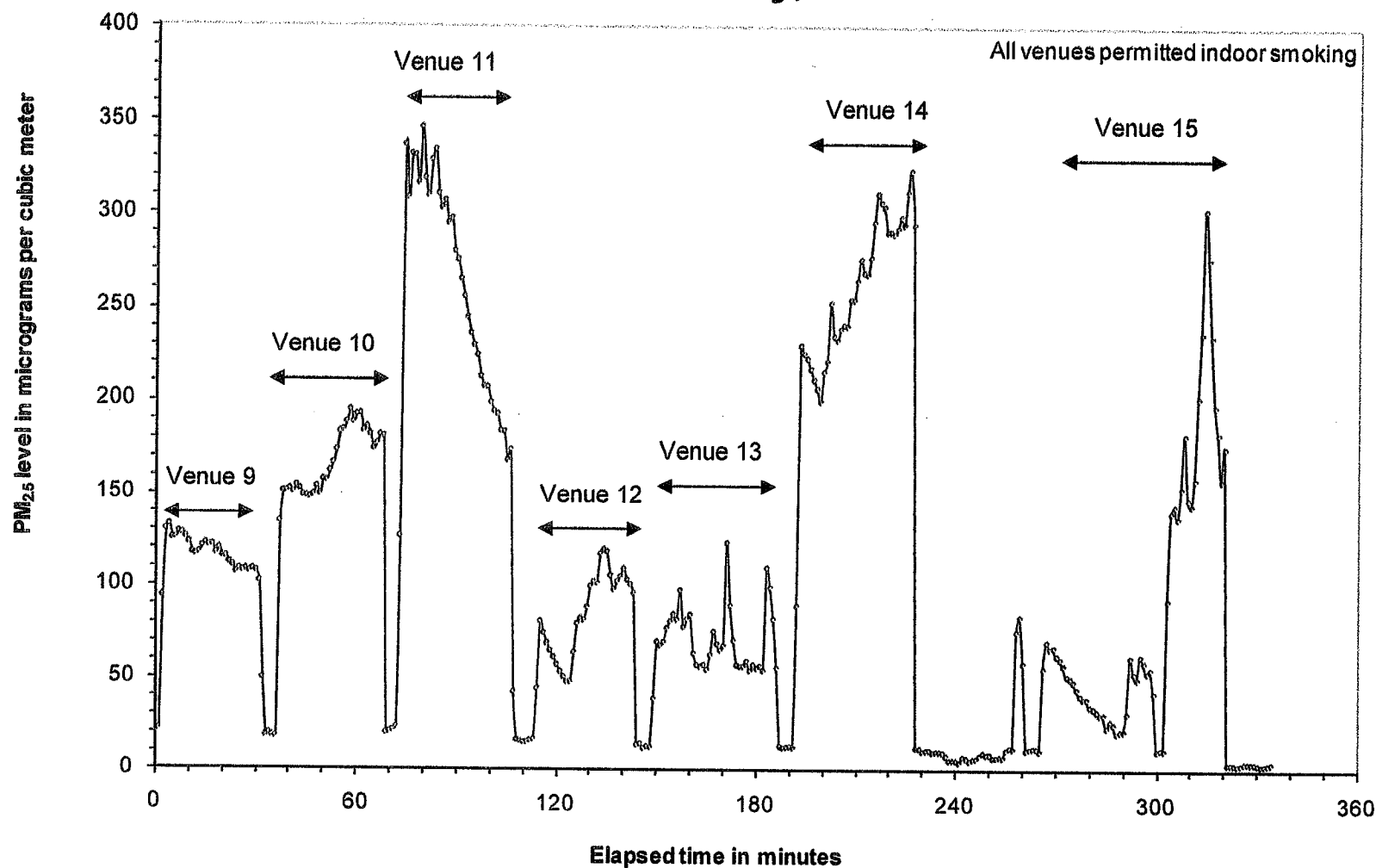


Figure 4 **Arkansas Air Quality Monitoring Study**
January, 2011

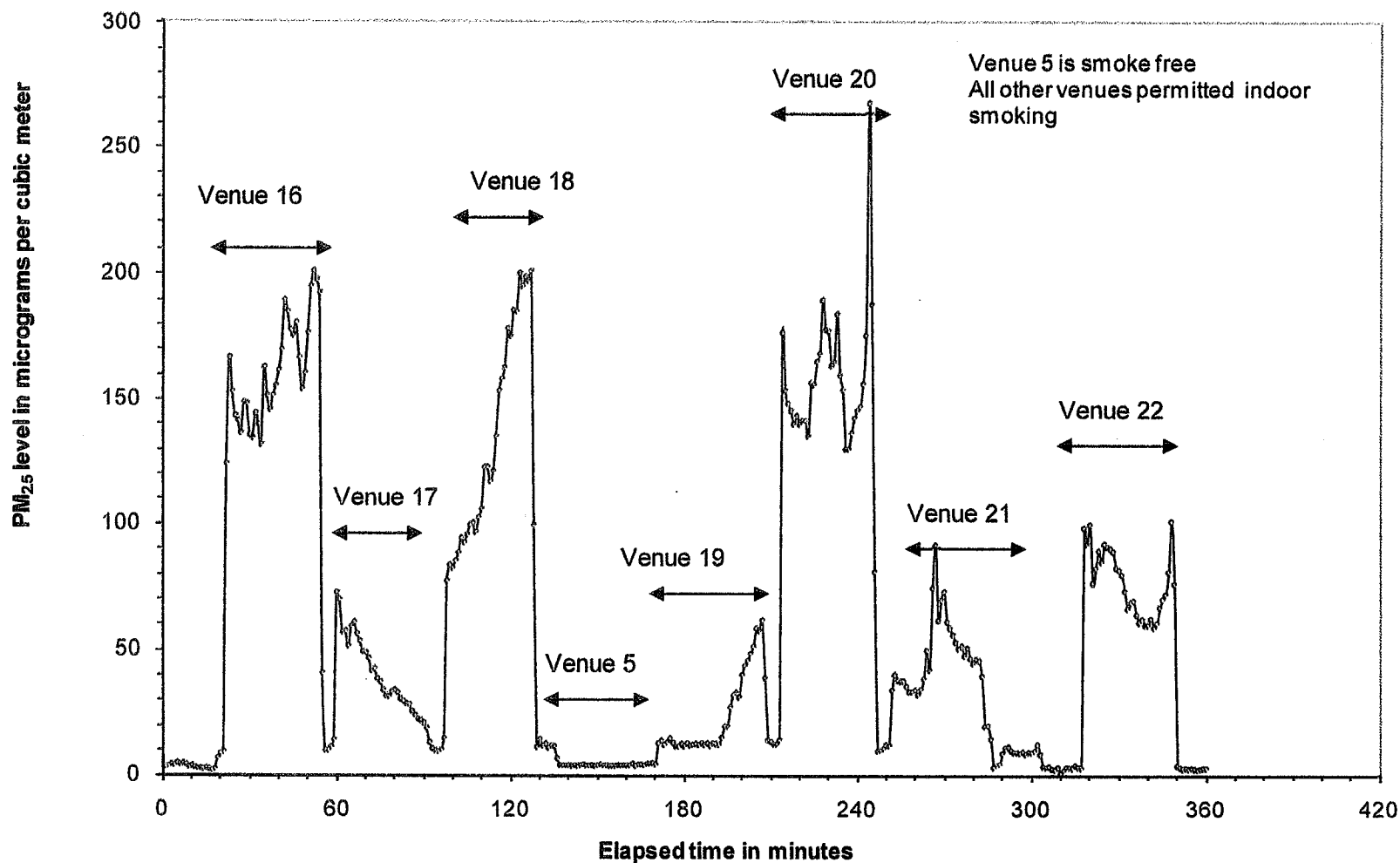
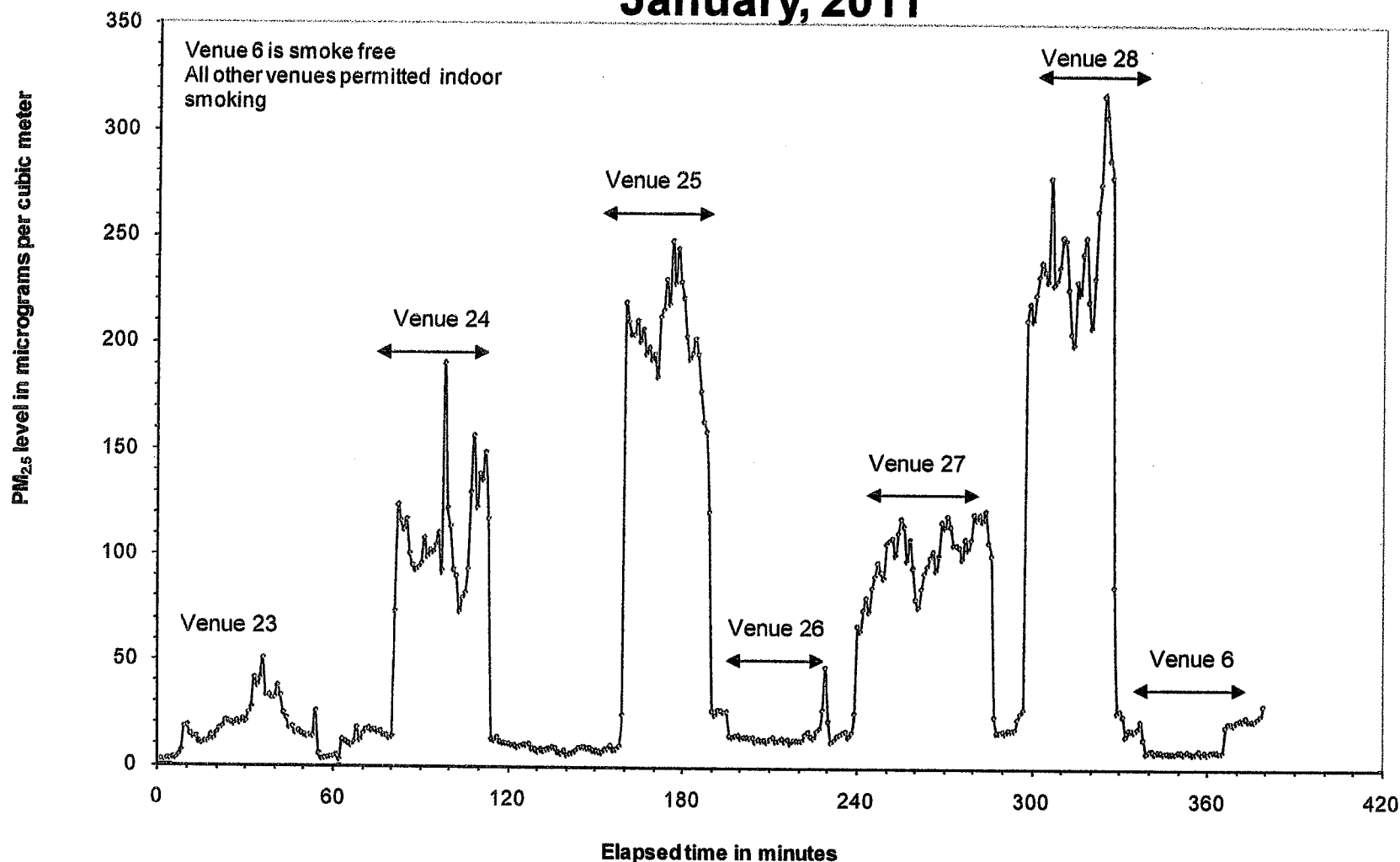


Figure 5 **Arkansas Air Quality Monitoring Study**
January, 2011



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I CAN CHOOSE

If you are against the proposed smoking ban in Fayetteville's bars let your voice be heard.

If you believe that informed adults can make their own decisions, if you believe this is an issue of personal rights being taken away, if you believe that others should not be making decisions in your name that will affect your personal rights than it is time to let your voice be heard.

Please meet at JR's on Block Street at 5:00p.m. on Tuesday, May 17th in preparation for the City Council meeting taking place at 6:00p.m. that night.

If you value the people's right to choose we need your participation.

Those who have the ability to act have the responsibility to act.

**OPPOSE THE AMENDMENT
FOR SMOKING IN BARS**

1. Lynna Lipari
2. Dany D. Fitzgerald
3. John G. Galt
4. Robert M. M.
5. Charles E. Morton
6. David Watson
7. Tom McMillen
8. Tyler Krieger
9. Caleb Ledbetter
10. Dore Roberts
11. Jon Linderman
12. Salvatore J. Lupis
13. John M.
14. John M.
15. Cathy Benton Kane
16. Burt K.
17. Ellen Jones
18. Raymond Johnson
19. John M.
20. Steve Hawks
21. Mary Chiswell
22. Steve Zebell
23. Mary E. Miller
24. Cornie P.
25. Bella P.
26. Agnes Mary
27. Cornie Glass
28. Sarah Kaines
29. Mike Bruce
30. Rick Ramping
31. Mary D.
32. Mary A. Smith
33. M. F.
34. Reggie P.
35. M. M.
36. Sandra J.
37. Laurel W.
38. John K.
39. Ann J.

40. Rick J. Barr
41. John
42. KALE OGLE
43. Landre K. Allen
44. Rocky L. Wells
45. Janet L. Bryan
46. Garry B.
47. Mike Johnson
48. John B.
49. Abner Meadows
50. Wayne Meadows
51. Gabby Meadows
52. Kathy Spencer
53. Melissa J.
54. John J.
55. John J.
56. John J.
57. Daggy Barton
58. Sherman G. M.
59. Tom W. Tiger
60. Dan M. Murphy
61. Steve Hawks
62. Roger Long
63. John J.
64. Herb Marshall
65. John J.
66. Linda Summers
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OPPOSE THE AMENDMENT FOR SMOKING IN BARS

1. Ken Ray
2. Billie
3. Kay
4. Karen
5. K.A. Koles
6. Pat McBay
7. Dary W. J.
8. Beth
9. Nest Wendel
10. Christina W. W.
11. Ch. R.
12. Jason J. J.
13. Randall I. E.
14. John C. C.
15. John D. D.
16. Mary J. J.
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OPPOSE THE AMENDMENT FOR SMOKING IN BARS

1. P. V.
2. Ann Lind
3. Stacy Latham
4. Ray Chap
5. Randy Ricks
6. Brian Sullivan
7. W. J. Dwyer
8. W. J. Dwyer
9. T. R. Howard
10. Christy Dasher
11. Shant Dasher
12. Stan Dasher
13. Brian Newman
14. J. J. Smith
15. J. J. Mason
16. Fat Agular
17. Sherry Hill
18. Monty Lyons
19. Monty Lyons
20. Stephanie Holcomb
21. Stephanie Holcomb
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26. Stephanie Holcomb
27. Stephanie Holcomb
28. William E. Wilson
29. William E. Wilson
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31. William E. Wilson
32. William E. Wilson
33. William E. Wilson
34. William E. Wilson
35. Michele W. Beck
36. Thomas M. Ward
37. William E. Whitefield
38. Julian Bejarano
39. Fat Stevens

40. Scott Phipps
41. Scott Phipps
42. Scott Phipps
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51. Scott Phipps
52. Scott Phipps
53. Scott Phipps
54. Scott Phipps
55. David Roney
56. Thomas Preston
57. Thomas Preston
58. Thomas Preston
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60. Thomas Preston
61. Thomas Preston
62. Thomas Preston
63. Thomas Preston
64. Kerri Smith
65. Gen Longstrech
66. Gen Longstrech
67. Sara Plume
68. Sara Plume
69. Sara Plume
70. Sara Plume
71. Sara Plume
72. Natalie 26
73. Tiffany Morrow
74. Tiffany Morrow
75. Tiffany Morrow
76. Tiffany Morrow
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78. Tiffany Morrow
79. Tiffany Morrow
80. Tiffany Morrow
81. Joe Rabin
82. Janie Hume
83. A. Gooker

84. ~~James P. Fikes~~
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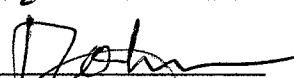
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I am opposed to the proposed amendment to the current smoking policy of Fayetteville. I believe the choice to be a smoking establishment should be left to the owner of the establishment, I also believe people can choose to enter or not to enter a smoking establishment. By signing this document I certify that I am of legal voting age and registered to vote in Fayetteville, Arkansas.

Name	Address	Signature
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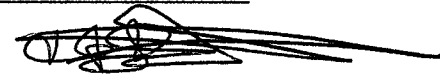
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Thomas Cochran	14416 Wallin Mtn Rd	
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Kim Lorch	4668 Tumbleweed	
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Erica Hayes	650 W. Center #1	
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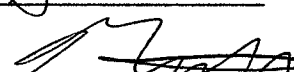
CRAIG NELSON	1900 N GARLAND #20	
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LEDA BURNETTE	1356 CARDINAL DR. 72703	
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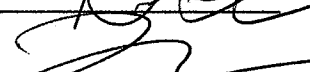
Kate Knox	1788 N. Leverett	
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Nick Pianello	667 N. Meadowlands Dr.	
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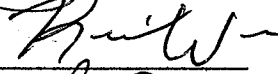
Charlie Willett	10371 Morning Sun Dr.	
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Mark Sutherland	644 West Dickson	
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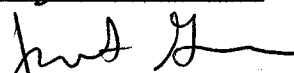
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Nick Corcoran	915 N Lindell	
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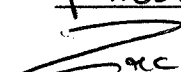
Donald Helt	1299 Fieldstone Fayetteville	
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Kellin Williams	9446 Reed Cove Alexander	
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Corey McLean	748 Liberty Dr. Fayetteville	
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JANET GLADNER	160-2 S HILL FAY. 72701	
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Alison Tussey	109 N. School Ave, Fay, AR 72701	
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Eric Wooden	2609 N. Old Wore Rd. Fay, AR 72703	
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Signature

Matt Wagner

Handwritten signature

Wm. Segal

~~Chapman & Myers~~



No ~~Wash~~ ~~Sak~~

Итого 847

Henry

Apr 6 Back (yes)

Myrtle Grove, AR 7204

Sent. C.

I am opposed to the proposed amendment to the current smoking policy of Fayetteville. I believe the choice to be a smoking establishment should be left to the owner of the establishment, I also believe people can choose to enter or not to enter a smoking establishment. By signing this document I certify that I am of legal voting age and registered to vote in Fayetteville, Arkansas.

Name	Address	Signature
Wesley Holt	916 E. TOWNSHIP	[Signature]
CHRIS KLAMP	2549 N. ALABAMA	[Signature]
Kimberly Idom	1241 S Holland Dr Fayetteville AR 72704	[Signature]
Jayna Smith	1241 S. Holland Dr. FYT 72704	[Signature]
Mike Rutledge	34 MARVEL ST Farmington 72730	[Signature]
Elizabeth Rutledge	34 marvel st. Farmington 72730	[Signature]
DERICK HARTBERGER	685 N. LEVERETT APT. 5 FAY, AR 72701	[Signature]
Emily Buckingham	757 Paris Ave. Fay, AR 72701	[Signature]
CHRISTOPHER BOYLLS	950 CLEVELAND FAY, AR 72701	[Signature]
CAUSEY JACOB	2493 W. ORLANDO DR APT 6	[Signature]
Drew Douglas	204 W. Meadow St Fayetteville, AR 72701	[Signature]
Amanda Haggard	514 Tennyson Fayetteville, AR 72704	[Signature]
Marsh, Daniel	1386 Knollcrest cr. Fayetteville, AR 72704	[Signature]
Patricia Davis	1386 Knollcrest circle Fay 72704	[Signature]
Ryan Pickett	974 W. Hughes Fayetteville 72701	[Signature]

I am opposed to the proposed amendment to the current smoking policy of Fayetteville. I believe the choice to be a smoking establishment should be left to the owner of the establishment, I also believe people can choose to enter or not to enter a smoking establishment. By signing this document I certify that I am of legal voting age and registered to vote in Fayetteville, Arkansas.

Name	Address	Signature
Carolyn Heinerman	529 N. Whitman Ave B-2 Fayetteville, AR 72701	[Signature]
Natalie Sherman	3515 Fredricksburg Cir. Fayetteville, AR 72703	Natalie Sherman
Stephanie Coleman	1744 N. Green Valley, Fayetteville, AR 72703	Steph Coleman
Carolyn Eiler	850 W. Davis Fayetteville, AR 72703	[Signature]
Stefan Palmer	850 W. Davis Fayetteville, AR 72703	[Signature]
Wade Ogle	3804 Woodside 72704	[Signature]

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Name

Address

Signature

Mitchell Marray 3687 Township

[Signature]

Lori Marray 3687 Township

[Signature]

~~1645 N. 2nd St~~

~~1096 E. Broadview~~

[Signature]

Country Lane

Country Lane

Iris Wright

[Signature]

Ben Everett 1597 W Cannardale

[Signature]

Jason Curton 2733 W Dave Dr.

[Signature]

~~5887 S. 1st St~~

Joy Black 5887 S. 1st St

[Signature]

Erney Omele

[Signature]

Chris

Chris

Paul Wood

—

PLB-WL

I am opposed to the proposed amendment to the current smoking policy of Fayetteville. I believe the choice to be a smoking establishment should be left to the owner of the establishment, I also believe people can choose to enter or not to enter a smoking establishment. By signing this document I certify that I am of legal voting age and registered to vote in Fayetteville, Arkansas.

Name	Address	Signature
James Murphy	149 30 th E/Pharr	[Signature]
CASON CROSS	1390 Wedington #12	[Signature]
Melvin Campbell	1390 Wedington #12	[Signature]
Hector Fonseca	620 Sweet ave	[Signature]
Michelle Hudson	728 Trust St.	[Signature]
Willard West	(Willard West) 17090 West Farm Rd. West Fork, AR	[Signature]
COREY D. GILBERT	614 W. CLEVELAND #12 72701	[Signature]
Jeff Hollingsworth	3931 Abby Ln Apt. 200	[Signature]
Janie Norris	834 W. 12 th Presentation	[Signature]
David Edwards	1555 N MLK Blvd	David Edwards
Matthew Spivey	310 South Street	[Signature]
Irene Pritchard	321 N Gregg Ave	[Signature]
Joelyn Smith	367 N Gregg Ave	[Signature]
Mary Watson	725 W Stone St #3 Fayetteville 72701	Merry Watson
[Signature]		
Dan Shuler	15 N 1/4. Mans Apt 9	[Signature]
WISH I COULD		

I am opposed to the proposed amendment to the current smoking policy of Fayetteville. I believe the choice to be a smoking establishment should be left to the owner of the establishment, I also believe people can choose to enter or not to enter a smoking establishment. By signing this document I certify that I am of legal voting age and registered to vote in Fayetteville, Arkansas.

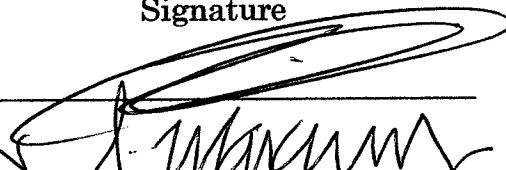
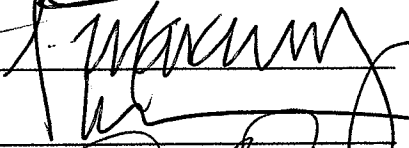
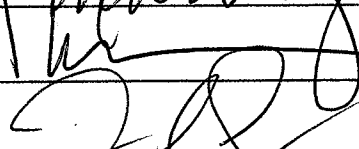
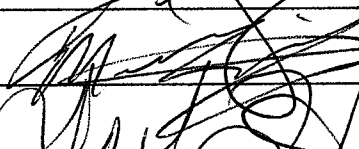
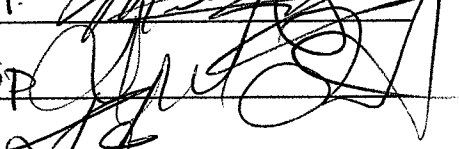
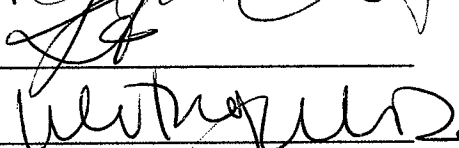
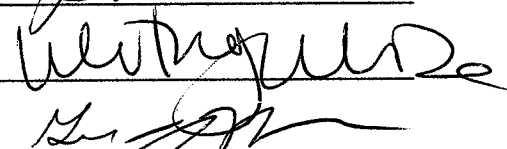
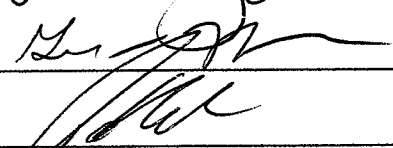
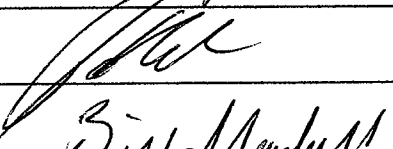
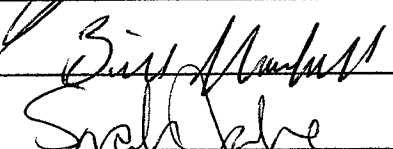
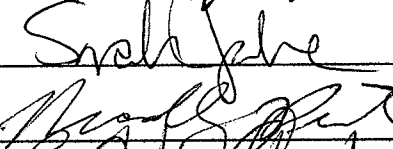
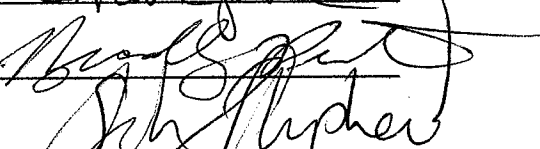
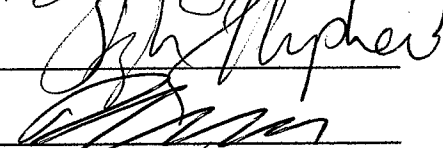
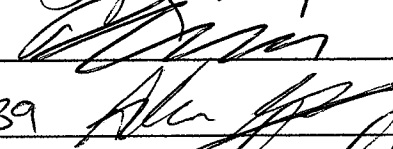
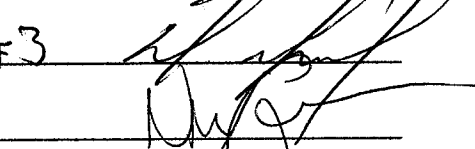
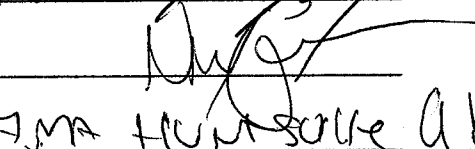
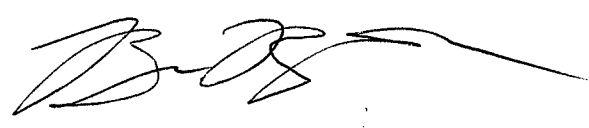
Name

Address

Signature

Julesta	924 N. Escoto Ave	Julesta
William Hoyer	415 East 13th	William Hoyer
Summer Collier	15 Shocust	Summer Collier
Thomas E. Galt	30 W. Greenwood	Thomas E. Galt
Kyle	35 Carol Ln	Kyle
Eric Friar	342 Combs	Eric Friar
Darryl M. Smith	16235 W. Highway 7787	Darryl M. Smith
Duke A. Galt	2676 Cedar Ave	Duke A. Galt
Tom Alexander	510 Pacific St.	Tom Alexander
Seth Travis	4246 W. Patrick St.	Seth Travis
John M. Bogart	12 School apt 1004	John M. Bogart
Jose San	533 E. Pines	Jose San
Kayla Nalpur	320 E. Redbud Ln.	Kayla Nalpur
Shane V. V. V.	775 U. Sycamore	Shane V. V. V.
COG	614 #12 Cleveland	COG
David J. Smith	2667 Garden Long Dr #5 Fayetteville, AR	David J. Smith
Daniel Adams	665 Madison St	Daniel Adams
Alexandra Nazareali	4223 Hwy 66 Elkins 72727	Alexandra Nazareali
MEEGAN WARREN	194 N. Duncan 72701	MEEGAN WARREN

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Name	Address	Signature
Krystal King	204 N Duncan Apt A	
LIZ MASCHING	628 W. DICKSON	
KELLY MICHAEL	126 S Locust #4	
Jarrod Wiggins	1985 East Huntsville	
Mark Hershfield	2537 N Surreys Pl.	
Amanda Frantz	496 N. Loral Canyon Loop	
Naren Hughes	4355 Chaparral	
Whitney White	11	
Grace Hughes	1906 Ridgecrest st	
Jeff Ed	4323 W Patrick	
Bill Mandell	370 Arkansas Ave.	
Sarah Jabo	632 Vandeventer	
BRADLEY PRATER	2022 USA LANE	
Stephanie Shepherd	857 W. Fairview	
David Allen	122 W. meadow #3	
Andrew Nelson	1560 N. Laverett Ave #139	
Dan Daniel	219 W. Church Ave #3	
Nicholas Claso	239 N. Church Ave #1	
BRIAN REYNOLDS	RT4 Box 207 MA Huntsville AR	

Name	Address	Signature
Zachary Warren	3550 E Huntsville Rd.	Zachary Warren
Zack Smith	2496 N. Wilderness Ln. Fayetteville, 72703	Zack Smith

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Max A Leichter

Name

BEER keg

Place of Business

10 yrs. Owner

Years of Service

50 EAST Township

Address

E-mail (optional)

Max A Leichter

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Angela Leichner

Name

The Beer Keg

Place of Business

Owner - 10 yrs

Years of Service

50 E. Township

Address

angela.leichner@att.net

E-mail (optional)

Angela Leichner

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Mark D. Wright

Name

ON THE MARK

Place of Business

~~26 yrs.~~ 26 yrs. ^{LJ'S} US PIZZA ^{Hugo's} & on the mark

Years of Service

2588 N Gregg Fay AR 72703

Address

onthe mark@arkansas.net

E-mail (optional)

MW

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

JANET GLADNER

Printed name

BREWSKI'S

Place of business

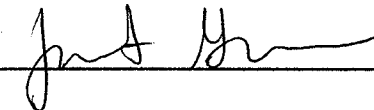
2

Years of service

408 W DICKSON

Address

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Manna Keene

Name

ON the Mark

Place of Business

two years

Years of Service

1223 N. Sang Avenue

Address

E-mail (optional)

Manna Keene

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Creed Holladay

Name

On The Mark

Place of Business

Nine years

Years of Service

1232 S. Dunn Ave Fayetteville AR, 72701

Address

E-mail (optional)

Creed Holladay

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Blake McKee

Name

ON THE MARK

Place of Business

Two years

Years of Service

2470 JEREMIAH LN, FAYETTEVILLE

Address

E-mail (optional)

Blake McKee

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Mariah Person

Name

On the Mark

Place of Business

Six years

Years of Service

2470 Jeremiah Ln

Address

E-mail (optional)

Mark Person

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

JOSEPH PIERSON

Name

ON THE MARK

Place of Business

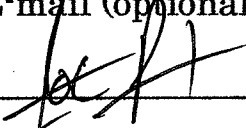
5

Years of Service

2470 N. JEREMIAH

Address

E-mail (optional)


Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

JASON SHOPE

Name

ON THE MARK

Place of Business

Seven Years

Years of Service

12474 Ford's Rock Landing Howell, AR.

Address

E-mail (optional)

[Signature]

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Alison Tussey

Printed name

JP's Lightbulb Club & Mickey Finn's

Place of business

7.5 & 1 year

Years of service

109 N. School Ave, Fayetteville, AR 72701

Address

alituss@gmail.com

E-mail (optional)

A. Tussey

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Cameron J Clark

Printed name

You know? UNO!

Place of business

212

Years of service

120 N Florene

Address

sealtyme13@yahoo.com

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

KEWNETH WALKER

Printed name

Green Room

Place of business

1

Years of service

Address

E-mail (optional)

KEWNETH WALKER

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

TREY FINCHER

Name

BRZUSKIS

Place of Business

OVER 5 YEARS

Years of Service

612 N WALNUT AVE

Address

trexfincher1013@yahoo.com

E-mail (optional)

Tre Fincher

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

LOGAN SHOOT

Name

BREWSKI'S

Place of Business

1.

Years of Service

THE LINKS

Address

E-mail (optional)

Logan Shoot

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

NOAH Gyles

Printed name

Uno Uno's

Place of business

1 month

Years of service

1526 N OAKLAND AVE
FAYETTEVILLE AR.

Address

NOAHGYLES@GMAIL.COM

E-mail (optional)

Noah Gyles

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

RICHARD THOMPSON

Name

KINGFISH

Place of Business

14 MONTHS

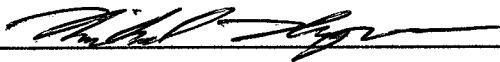
Years of Service

1611 N. DAWN, FAYETTEVILLE, AR 72703

Address

—

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Ken Sasman

Name

King fish

Place of Business

1 yr

Years of Service

4246 Patrick St

Address

Water Logged 72@aol.com

E-mail (optional)

Ken Sasman

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Brandon Burke

Name

Mickey Finns Irish Pub

Place of Business

3 years 5 month

Years of Service

Address

TankSyb@gmail.com

E-mail (optional)

Brandon Burke

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Cody Ryan Wright

Name

Mickey Finns

Place of Business

3

Years of Service

908 N 2nd Stilwell OK

Address

E-mail (optional)

CH Z

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Margaret A. Chahal

Name

Busters / Jones

Place of Business

4

Years of Service

1128 N. Broadview Dr

Address

Maggie_Chahal@yahoo.com

E-mail (optional)

M. A. Chahal

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Michael Cheval

Name

Busters

Place of Business

3 months

Years of Service

5486 Carey Way, Springdale, AR 72764

Address

E-mail (optional)

Michael Cheval

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

R. Jill Scott

Name

You know. 'Unos'

Place of Business

5

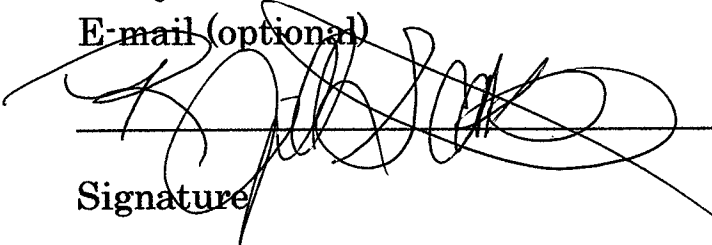
Years of Service

118 Florence St. Fay, 72704

Address

Rjscott@uark.edu

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

SPENCER HASTINGS

Name

JR'S NIGHTBULB CLUB

Place of Business

Z

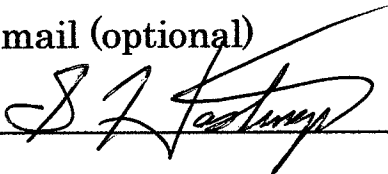
Years of Service

239 N CHURCH #1 FAY... 72701

Address

SHASTING1888@GMAIL.COM

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Jessica Beil

Name

Buster belly's 3 Kingfish

Place of Business

2425 3 14R

Years of Service

121-1 Bales St. FAY... 72401

Address

jessicaannbeil@gmail.com

E-mail (optional)

[Signature]

Signature

Dude!

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

John McMillan

Name

Bogue

Place of Business

2

Years of Service

Dickson 2766 P Boxwood 72703

Address

E-mail (optional)

John McMillan

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

PATRICK LARNEY

Name

BREWSKI'S

Place of Business

6

Years of Service

12 E. SYCAMORE ST.

Address

Carnastics @ yahoo

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Joseph L Blavescinas

Name

Rogers R.E.C.

Place of Business

One Year

Years of Service

65 S. Duncan Apt. 10

Address

E-mail (optional)

Joseph Blavescinas

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Kurt Currie

Printed name

Ryleigh's Boon Boon Room

Place of business

1

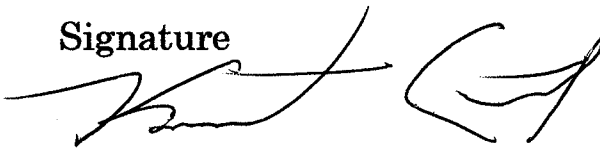
Years of service

48 E. Sout St, Fayetteville Ar. 72701

Address

E-mail (optional)

Signature



I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Stefan Tank

Name

Fans

Place of Business

2

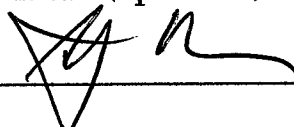
Years of Service

844 W. Dickson Suite 1

Address

N/A

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Laci Embrey

Printed name

Kingfish

Place of business

1

Years of service

3407 W. Chevaux Dr. Fay. Ar. 72704

Address

E-mail (optional)

Laci Embrey

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

HOLLIS HATCH

Printed name

KING FISH

Place of business

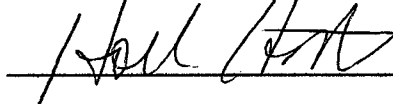
1

Years of service

4246 W PATRICK RAYNEVILLE 72704

Address

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Chelsea Simmons

Name

Shetz

Place of Business

1

Years of Service

996 Daisy Lane Fayetteville AR 72704

Address

E-mail (optional)

Chelsea Simmons

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Brice Alexander

Printed name

Mickey Finns / Jose's / Kingfish / Piano Bar /
414 / Stir /

Place of business

11

Years of service

318 W Spring St

Address

E-mail (optional)

Re afe

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

SHAWN GRAY

Printed name

21st AMENDMENT

Place of business

CMC

Years of service

PO BOX 1584

Address

~~SHAWN GRAY~~

E-mail (optional)

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Wayne Slaughter

Printed name

Brewski's

Place of business

4

Years of service

408 W Dickson

Address

ironwayne9@excite.com

E-mail (optional)

Art Slaughter

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Garrett Gunderson

Printed name

Brewskis + Firms

Place of business

5 year + 1 year

Years of service

610 Walnut Fwy 72701

Address

E-mail (optional)

[Signature]

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Taylor Nash

Printed name

21st Amendment

Place of business

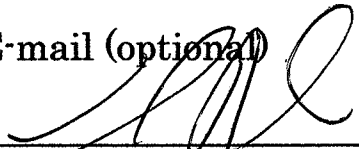
1

Years of service

~~PO BOX~~ 2729 N. Stanton

Address

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

CHRIS SELLERS

Printed name

KINGFISH + ABOUT 7 OTHER BARS

Place of business

17

Years of service

715 BUCKLE RAY 72701

Address

grimsellers@yahoo.com

E-mail (optional)

Ch-Sell

Signature

By THE WAY I AM A NON-SMOKER.

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

George Shatwell

Printed name

Ryleighs

Place of business

6 months

Years of service

11 Arnold Lane Bella Vista, AR 72715

Address

george.shatwell@gmail.com

E-mail (optional)

[Signature]

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Amanda McVay

Printed name

Kingfish

Place of business

1

Years of service

122 W. Meadow St

Address

E-mail (optional)

Amanda McVay

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Charlie Rausch

Printed name

Brewski's

Place of business

412

Years of service

408 W. Dickson

Address

E-mail (optional)

Charlie Rausch

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

DAVID K. OTTEN

Printed name

BREWSKI'S

Place of business

.5

Years of service

207 N. Church Ave #7

Address

dave.otten@gmail.com

E-mail (optional)

David K. Otten

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Chris Hartsell

Printed name

Buster Belly's

Place of business

4

Years of service

~~1525~~ 1525 N. Garland

Address

E-mail (optional)

Chris Hartsell

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

David Bassett

Printed name

Buster's

Place of business

6

Years of service

122 W. Meadow st. Apt #1

Address



E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

ADAM COLE TROUPE

Printed name

BUSTER BEWY'S

Place of business

5

Years of service

109 N. School Ave #5

Address

Adam Cole Troupe

E-mail (optional)

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

MATT PETERSON

Name

21ST AMENDMENT

Place of Business

2

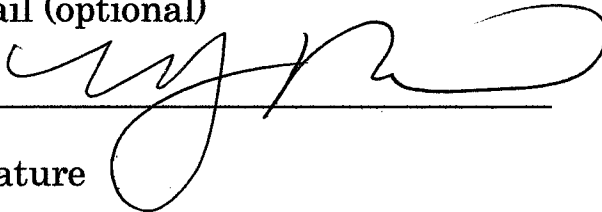
Years of Service

~~992~~ 1717 N. WALNUT AVE FAY 72701

Address

mjpete1@gmail.com

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Michael Wade

Name

Art's Bar & Grill

Place of Business

7 years

Years of Service

2530 College Ave

Address

E-mail (optional)

Michael Wade

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Philip Halber

Name

Mickey Finns

Place of Business

4

Years of Service

2644 westminster Dr
~~2644 westminster Dr~~ ~~644 westminster Dr~~

Address

E-mail (optional)

Philip Halber

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Tera Norrid

Name

Club Tangerine

Place of Business

1

Years of Service

5628 W Legacy St. Fay 72704

Address

~~teranorrid~~ teranorrid@gmail.com

E-mail (optional)

Tera Norrid

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

BOB DY CRAFT

Printed name

TAYLOR J ALK

Place of business

TABLER 15

Years of service

15 102 N. BLOCK

Address

B CRAFT @ Cox. Nct

E-mail (optional)

Joe

Signature

[Signature]

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

ASHLEY REID

Printed name

KINGFISH

Place of business

1 year 2 months

Years of service

262 N. SCHOOL AVE

Address

ASHEREID@GMAIL.COM

E-mail (optional)

Ashley Reid

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Sarah Brown

Printed name

Buster Belly's

Place of business

2

Years of service

122 W. Meadow St. Apt. 1 Fayetteville, AR

Address

Sarah.Brown062@gmail.com

E-mail (optional)

Sarah Brown

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Jason McGill

Name

Buster Belly's

Place of Business

14

Years of Service

775 S. Government Fayetteville AR

Address

E-mail (optional)

[Signature]

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Was Mouser

Name

Buster Belly's

Place of Business

2

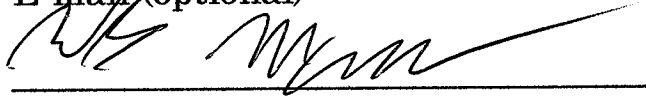
Years of Service

1628 N. Broadview Dr Fayetteville AR 72703

Address

~~Box~~

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

TYRONE LEALE

Name

ROQUE

Place of Business

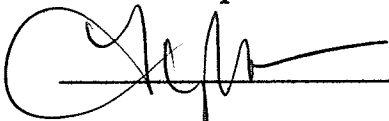
ALOT - 5 ish

Years of Service

12 E. SUPAMORE

Address

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

James Pittman

Name

Roger's Rec

Place of Business

3

Years of Service

605 W. Dickson Fayetteville, AR 72701

Address

E-mail (optional)

James Pittman

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Matt Marshall

Name

Mickey Sims

Place of Business

3

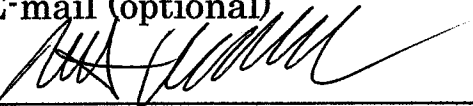
Years of Service

121 Miles st. Fayetteville

Address

mpj.marshall@gmail.com

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Timothy Reid

Printed name

Brewski's Draft Emporium

Place of business

2

Years of service

565 Evergreen Lane, Fayetteville, AR 72703

Address

Tereid@cox.net

E-mail (optional)

Tim Reid

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Hailey Watts

Name

Mickey Finn's Irish Pub

Place of Business

6 years

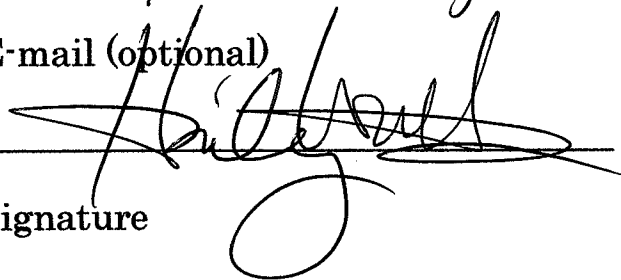
Years of Service

522 W. Maple #8 Fay, Ar 72701

Address

Hailey.Watts77@gmail.com

E-mail (optional)



Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Chris Abel

Name

Stir

Place of Business

4 years

Years of Service

PO Box 8994 Fayetteville, Ark 72703

Address

E-mail (optional)

Chall

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Raymond D Cincione

Name

Shotz 414 W. Dickson

Place of Business

8

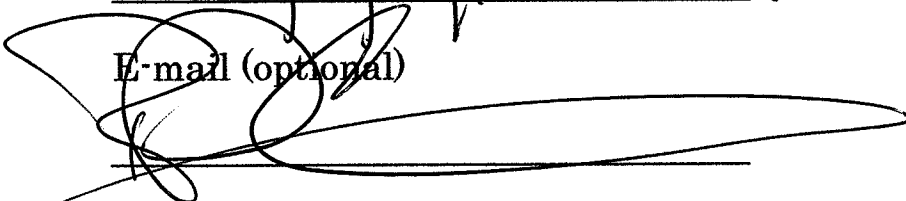
Years of Service

15 North Locust Ave #8

Address

Stingrayray44@yahoo.com

E-mail (optional)


Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

MARYGLEN LONG

Name

STIR

Place of Business

I

Years of Service

2142 N. TULL AVE FAYETTEVILLE, AR

Address

E-mail (optional)

Mary Glen Long

Signature

JENN

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Jennifer Genece Yancey

Printed name

You know?? Uno!!

Place of business

2 months

Years of service

3210 S. Thompson Springdale, AR

Address

E-mail (optional)

Jennifer Yancey

Signature

ADAM

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Adam Keith Hetch

Printed name

You know?? Uno!!

Place of business

1

Years of service

120 N. Florene St. Fayetteville, AR 72703

Address

E-mail (optional)

Adam K. Hetch

Signature

I choose to work in a smoking establishment where I am knowingly exposed to second hand smoke and any potential health risks it might pose. I choose to work in this environment because I am an adult and capable of making my own decisions.

Cole Keene

Name

Stir

Place of Business

3 yrs +

Years of Service

414 W. Dickson

Address

E-mail (optional)

ColKeene

Signature

City of Fayetteville Staff Review Form

City Council Agenda Items and Contracts, Leases or Agreements

C. 1
RZN 11-3799 (Corner of
Mount Comfort and Oakland
Avenue/Oakland Courts)
Page 1 of 24

6/7/2011

City Council Meeting Date
Agenda Items Only

Dara Sanders
Submitted By

Planning
Division

Development Services
Department

Action Required:

RZN 11-3799: (Corner of Mount Comfort and Oakland Avenue/Oakland Courts, 405): Submitted by Robert Sharp Architect, Inc. for property located at the corner of Mount Comfort and Oakland Avenue. The property is zoned RMF-24, Residential Multi-Family, 24 Units per acre and contains approximately 1.43 acres. The request is to rezone the subject property to CS, Community Services.

Cost of this request

\$

Category / Project Budget

Program Category / Project Name

Account Number

\$

Funds Used to Date

Program / Project Category Name

Project Number

\$

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Department Director

05-11-2011
Date

Previous Ordinance or Resolution #

City Attorney

Date

Original Contract Date:

Original Contract Number:

Finance and Internal Services Director

Date

Chief of Staff

Date

Mayor

Date

Received in City Clerk's Office 05-12-11 A08:32 RCVD

Received in Mayor's Office



Comments:



CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director 

From: Dara Sanders, Current Planner

Date: May 11, 2011

Subject: RZN 11-3799 (Oakland Courts)

RECOMMENDATION

Planning Commission and staff recommend approval of an ordinance to rezone the subject property from RMF- 24, Residential Multi-family 24 dwelling units/acre, to CS, Community Services.

BACKGROUND

The project boundary contains approximately 1.43 acres and is made up of seven undeveloped lots bounded by Mount Comfort, Oakland Avenue, Hazel Street, and Storer Avenue. This site is located north of North Street and the University of Arkansas and is located near several existing bus stops.

The request is to rezone the property from RMF- 24, Residential Multi-family 24 dwelling units/acre, to CS, Community Services. The applicant has stated that the intent is to develop the subject property for multi-family residences along Oakland Avenue, Hazel Street, and Storer Avenue and for nonresidential uses along Mount Comfort Road, which is accessed directly from North Street.

DISCUSSION

On May 2, 2011 the Planning Commission forwarded this item to the City Council with a recommendation for approval with a vote of 9-0-0.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 11-3799, FOR APPROXIMATELY 1.43 ACRES, LOCATED AT THE CORNER OF MOUNT COMFORT ROAD AND OAKLAND AVENUE FROM RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE TO CS, COMMUNITY SERVICES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the zone classification of the following described property is hereby changed as follows:

From RMF-24, Residential Multi-Family, 24 units per acre to CS, Community Services, as shown on Exhibits "A" and "B" attached hereto and made a part hereof.

Section 2: That the official zoning map of the City of Fayetteville, Arkansas is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED and APPROVED this day of , 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

EXHIBIT "A"

C. 1
RZN 11-3799 (Corner of
Mount Comfort and Oakland
Avenue/Oakland Courts)
Page 4 of 24

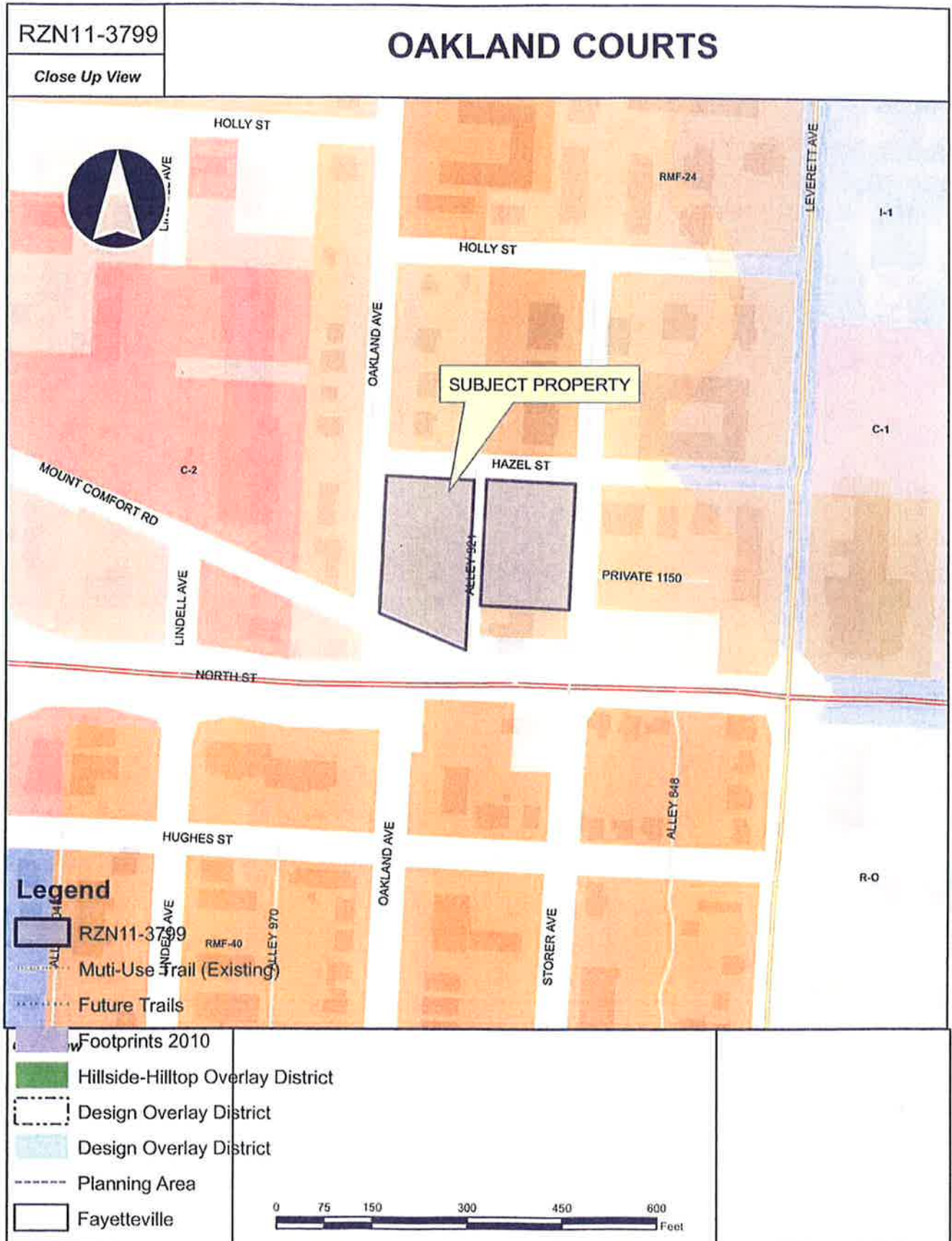


EXHIBIT "B"
RZN 11-3799

SURVEY DESCRIPTION - NEW LOT 13

ALL OF LOTS 3, 4, 5, AND 6 OF BLOCK 16 OF THE CORRECTED PLAT OF SOUTH 680 FEET OF COLLEGE ADDITION RECORDED AS FILE #1-20 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS BEING ALSO DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE SAID LOT 6 BEING A SET 5/8" REBAR W/CAP (PS 1496); THENCE S87°05'35"E, ALONG THE NORTH LINE OF THE ABOVE SAID LOT 6, A DISTANCE OF 140.00 FEET TO THE NORTHEAST CORNER OF THE ABOVE SAID LOT 6 BEING A SET 5/8" REBAR W/CAP (PS 1496); THENCE S02°54'25"W, ALONG THE EAST LINE OF THE ABOVE SAID LOTS 3, 4, 5, AND 6, A DISTANCE OF 200.00 FEET TO THE SOUTHEAST CORNER OF THE ABOVE SAID LOT 3 BEING A SET 5/8" REBAR W/CAP (PS 1496); THENCE N87°05'35"W, ALONG THE SOUTH LINE OF THE ABOVE SAID LOT 3, A DISTANCE OF 140.00 FEET TO THE SOUTHWEST CORNER OF THE ABOVE SAID LOT 3 BEING A SET 5/8" REBAR W/CAP (PS 1496); THENCE N02°54'25"E, ALONG THE WEST LINE OF THE ABOVE SAID LOTS 3, 4, 5, AND 6, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 28,000 SQUARE FEET OR 0.64 ACRES, MORE OR LESS.

SURVEY DESCRIPTION - NEW LOT 12

ALL OF LOTS 7, 8, 9, 10, AND 11 OF BLOCK 16 OF THE CORRECTED PLAT OF SOUTH 680 FEET OF COLLEGE ADDITION RECORDED AS FILE #1-20 IN THE CIRCUIT CLERK'S OFFICE OF WASHINGTON COUNTY, ARKANSAS BEING ALSO DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE SAID LOT 7 BEING A SET 5/8" REBAR W/CAP (PS 1496); THENCE S87°05'35"E, ALONG THE NORTH LINE OF THE ABOVE SAID LOT 7, A DISTANCE OF 140.00 FEET TO THE NORTHEAST CORNER OF THE ABOVE SAID LOT 7 BEING A SET 5/8" REBAR W/CAP (PS 1496); THENCE S02°54'25"W, ALONG THE EAST LINE OF THE ABOVE SAID LOTS 7, 8, 9, 10, AND 11, A DISTANCE OF 270.80 FEET TO THE SOUTHEAST CORNER OF THE ABOVE SAID LOT 11 BEING A SET 5/8" REBAR W/CAP (PS 1496); THENCE N66°59'34"W, ALONG THE SOUTH LINE OF THE ABOVE SAID LOT 11, A DISTANCE OF 149.08 FEET TO THE SOUTHWEST CORNER OF THE ABOVE SAID LOT 11 BEING A SET 5/8" REBAR W/CAP (PS 1496); THENCE N02°54'25"E, ALONG THE WEST LINE OF THE ABOVE SAID LOTS 7, 8, 9, 10, AND 11, A DISTANCE OF 219.57 FEET TO THE POINT OF BEGINNING AND CONTAINING 34,326 SQUARE FEET OR 0.79 ACRES, MORE OR LESS.



~~PC Meeting of April 25, 2011~~
Rescheduled PC Meeting of May 2, 2011

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dara Sanders, Current Planner
THRU: Jeremy Pate, Development Services Director
DATE: ~~April 18, 2011~~ Updated May 11, 2011

RZN 11-3799: Rezone (CORNER OF MT. COMFORT RD. & OAKLAND AVE./OAKLAND COURTS, 405): Submitted by ROBERT SHARP ARCHITECT, INC. for property located at the corner of MOUNT COMFORT ROAD AND OAKLAND AVENUE. The property is zoned RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS/ACRE and contains approximately 1.43 acres. The request is to rezone the subject property to CS, COMMUNITY SERVICES. Planner: Dara Sanders

BACKGROUND:

Property Description and History: The project boundary contains approximately 1.43 acres and is made up of seven undeveloped lots bounded by Mount Comfort, Oakland Avenue, Hazel Street, and Storer Avenue. This site is located north of North Street and the University of Arkansas and is located near several existing bus stops. The properties to the north and south are primarily multi-family residences with nonresidential services to the east and west.

SURROUNDING LAND USE AND ZONING:

Direction from Site	Land Use	Zoning
North	Single- and Multi- family residences	RMF-24, Residential Multi-family, 24 units/acre RMF-40, Residential Multi-family, 40 units/acre
South	Single- and Multi- family residences	RMF-40, Residential Multi-family, 40 units/acre R-O, Residential Office
West	Single- and Multi- family residences Retail, eating places, office, and gasoline stations	RMF-24, Residential Multi-family, 24 units/acre C-2, Thoroughfare Commercial
East	Single- and Multi- family residences Offices and the St. James Church	RMF-24, Residential Multi-family, 24 units/acre R-O, Residential Office

Proposal: The request is to rezone the property from RMF- 24, Residential Multi-family 24 dwelling units/acre, to CS, Community Services. The applicant has stated that the intent is to develop the subject property for multi-family residences along Oakland Avenue, Hazel Street, and Storer Avenue and for nonresidential uses along Mount Comfort Road, which is accessed directly from North Street.

Public Comment: Staff has not received public comment.

RECOMMENDATION:

Staff recommends forwarding RZN 11-3799 to the City Council with a recommendation for approval based on findings stated herein.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>April 25, 2011</u> <u>May 2, 2011</u>		☐ Tabled	☐ Forwarded	☐ Denied	
Motion: Kennedy		Second: Winston		Vote: 9-0-0	
CITY COUNCIL ACTION:		Required	<u>YES</u>		
Date:		☐ Approved	☐ Denied		

INFRASTRUCTURE:

Streets: The site has access to Mt. Comfort Road, Oakland Avenue, Hazel Street, and Storer Avenue. Mount Comfort Road is an improved two lane city street in this location; however, Oakland Avenue, Hazel Street, and Storer Avenue are unimproved paved two-lane city streets along this property frontage. Street improvements will be evaluated at the time of development submittal.

Water: Public water is available to the property. There is 1" water main on the east side of Oakland Avenue, a 1" main on the south side of Hazel Street, and a 1.25" main on the west side of Storer Avenue. Public water main improvements may need to be extended to the property to provide domestic and fire flow for any proposed development.

Sewer: Sanitary sewer is available to the site. There is a 6" public main located along the west side of Oakland Avenue and along the west side if Storer avenue. Public sewer improvements will be evaluated at the time of development submittal.

Drainage: Standard improvements and requirements for drainage will be evaluated at the time of development. This property is not affected by the 100-year floodplain and the Streamside Protection Zones.

Police: The Fayetteville Police Department does to find that this request will cause a substantial call volume increases or traffic danger and congestion problems.

Fire: The Fayetteville Fire Department has not expressed concerns with this request.

CITY PLAN 2025 FUTURE LAND USE PLAN: *City Plan 2025 Future Land Use Plan designates this site as **City Neighborhood Area**.*

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The City of Fayetteville's planning principles encourage the creation of identifiable and self-sustaining neighborhoods that vary in location-specific intensity and contain an appropriate mixture of uses that offer services within walking distance and are adaptable to change over time. The subject property is designated as "City Neighborhood Area", which encourages complete, compact, and connected neighborhoods with a dense and primarily residential urban fabric and a mixture of low-intensity nonresidential uses that are usually confined to corner locations. The guiding policies in this land use designation are to provide a mixture of uses to serve the surrounding residences, to utilize principles of traditional residential urban design, and to develop strategies to encourage density sufficient to support public transit, and to encourage pedestrian-friendly buildings that address the street.

The undeveloped site is located in a neighborhood that was platted in 1928 to be a dense and connected neighborhood with narrow lots and alley access. However, the majority of this neighborhood was developed for multi-family apartment buildings and complexes in the 1950s and 1980s, according to Washington County property information, and the surrounding nonresidential services are located primarily within conventional developments in the strip commercial form. While redevelopment and infill is highly likely in this area in the near future, the bulk and area requirements of the existing underlying zoning districts may not be appropriate to achieve the desired form associated with the City Neighborhood Area land use designation.

Staff finds that the request to rezone the subject property to CS, Community Services is consistent with the stated principles and policies, as well as several goals of City Plan 2025, as the associated regulations encourage a density sufficient to support public transit and requires traditional urban design. The subject property is a desirable location to encourage infill development, and the CS zoning district will allow for a mixture of uses and require pedestrian-friendly building form and design.

While the CS zoning district does permit some uses that could be incompatible with the residences to the north of the property, such as retail establishments of up to 25,000 square feet, gasoline service stations and drive through restaurants,

staff finds that the likelihood of development the site for such uses is low, as the surrounding underutilized commercial properties to the west lend themselves much more convenient for such uses due to visibility, access, and existing utilities.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff finds that the applicant's rezoning request for the subject property is not needed at this time, as the subject property could be developed under the existing RMF-24 zoning district. This district has been modified recently from to require an urban form with a build-to zone and minimum buildable street frontage percentage of 50% instead of the previous conventional setback requirement. With the addition of Use Unit 12, Limited Business, permitted by Planning Commission approval of a conditional use permit, the RMF-24 zoning district has the potential to allow for some nonresidential services subject to strict square footage limitations and use conditions.

However, staff does find that the rezoning request is justified. The CS zoning district would allow for a mixture of uses, including nonresidential uses that would be subject to higher design standards, and requires a higher minimum buildable street frontage percentage than the RMF-24 district. The CS zoning is more consistent with the goals and objects of City Plan 2025 to encourage efficient land use and traditional town form than the underlying single-use RMF-24 zoning district.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: It is expected that a rezoning from RMF-24 to CS will create an increase in traffic resulting from the nonresidential uses; however, the subject property is undeveloped, and any development would subsequently increase traffic at this location. The site is accessed by four adjacent public streets, which can be accessed by North Street, Mount Comfort Road, and Leverett Avenue. The site also contains existing alley right-of-way that has the potential to serve as access to all new development, resulting in fewer curb cuts onto the surrounding local streets.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: Increased load on public services were taken into consideration and recommendations from the Engineering, Fire, and Police Departments are

included in this report. The proposed zoning would not adversely affect public services.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:
 - a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;
 - b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: N/A

161.14 District RMF-24, Residential Multi-Family – Twenty-Four Units Per Acre

(A) *Purpose.* The RMF-24 Multi-family Residential District is designed to permit and encourage the developing of a variety of dwelling types in suitable environments in a variety of densities.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 26	Multi-family dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 11	Manufactured home park
Unit 12	Limited business
Unit 25	Professional offices
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	24 or less
----------------	------------

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Manufactured home park	100 ft.
Lot within a Manufactured home park	50 ft.
Single-family	60 ft.
Two-family	60 ft.
Three or more	90 ft.
Professional offices	100 ft.

(2) *Lot area minimum.*

Manufactured home park	3 acres
Lot within a mobile home park	4,200 sq. ft.
Townhouses:	
Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.
Single-family	6,000 sq. ft.
Two-family	7,000 sq. ft.
Three or more	9,000 sq. ft.
Fraternity or Sorority	2 acres
Professional offices	1 acres

(3) *Land area per dwelling unit.*

Manufactured home	3,000 sq. ft.
Apartments:	
No bedroom	1,700 sq. ft.
One bedroom	1,700 sq. ft.
Two bedroom	2,000 sq. ft.
Fraternity or Sorority	1,000 sq. ft. per resident

(E) *Setback requirements.*

Front	Side	Rear
The principal façade of a building shall be built within a build-to zone that is located between 10 feet and a line 25 feet from the front property line.	8 ft.	25 ft.
HHOD Front	HHOD Side	HHOD Rear
15 ft.	8 ft.	15 ft.

Cross reference(s)--Variance, Ch. 156.

(F) *Building height regulations.*

Building Height Maximum	60ft.
-------------------------	-------

Height regulations. Any building which exceeds the height of 20 feet shall be set back from any side boundary line of an adjacent single family district, an additional distance of one foot for each foot of height in excess of 20 feet.

(G) *Building area.* None.

(H) *Minimum buildable street frontage.* 50% of the lot width.

161.19 Community Services

(A) *Purpose.* The *Community Services* district is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the Community Services district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 24	Home occupations
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling	18 ft.
All others	None

(2) *Lot area minimum.* None

(E) *Setback regulations.*

Front:	The principal façade of a building shall be built within a build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None
Side or rear, when contiguous to a residential district:	15 feet

(F) *Height regulations.* Maximum height is 4 stories or 56 feet which ever is less.

(G) *Minimum buildable street frontage.* 65% of the lot width.

April 19, 2011

Jeremy Pate
Development Services Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

This document is in response to the request comments on the proposed RZN 11-3799: Rezone (CORNER OF MT. COMFORT RD. & OAKLAND AVE./OAKLAND COURTS, 405): Submitted by ROBERT SHARP ARCHITECT, INC. for property located at the corner of MOUNT COMFORT ROAD AND OAKLAND AVENUE.

I do not believe the rezoning of this property will cause any substantial call volume or traffic congestion problems. I would have some traffic safety concern should future ingress or egress be placed on to Mount Comfort Road from this property.

Sincerely,

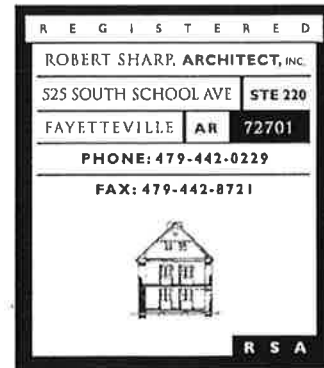
Captain William Brown
Fayetteville Police Department

March 16, 2011

Jeremy Pate, Director of Development Services
City of Fayetteville
113 West Mountain Street
Fayetteville, Arkansas

Via Hand Delivery

**RE: OAKLAND COURTS
PROPOSED REZONING**



Dear Mr. Pate,

I am writing to you to request a rezoning of property owned by Terry Turpin of St. George Landholdings LLC at the corners of Mount Comfort Road, Oakland Avenue, Hazel Street, and Storer Avenue.

a. Current Ownership Information: The property includes 1.43 acres more or less. The property is bisected by a public alley. The property is currently zoned RMF 24 and we are requesting a rezoning to Community Services. The current property owner is contemplating a sale of the property to Brandon Rains of B R Management Services. Mr. Rains would construct new buildings and manage them. He has hired Robert Sharp Architect and H2 Engineering for this task.

b. Reason for the Rezoning Request: This property is an ideal candidate for Fayetteville's form based zoning category. The form based code allows a mix of uses, such as retail and residential. The form based code is concerned with creating the public realm by placing buildings along a build-to line across the street frontage to provide a vibrant and continuous pedestrian experience. It is notable that Dover Kohl and Partners selected this area of Fayetteville to illustrate a mid-rise mixed use development in the Fayetteville 2025 Plan. Their reasons for focusing on this area were to take advantage of proximity to the University of Arkansas, the existing rail road corridor (which may become a transit corridor in the future) and the adjacency to North Street an east/west principal arterial street and its proximity to Garland Avenue a major north/south principal arterial. The Future Land Use Map indicates that this area should be "City Neighborhood", a land use that encourages "denser and primarily residential fabric...mixed and low intensity nonresidential uses are usually confined to corner locations." Another compelling reason for a rezoning of this property is its proximity to the Scull Creek Trail, Fayetteville's primary multi-use trail and the backbone of the alternative transportation system.

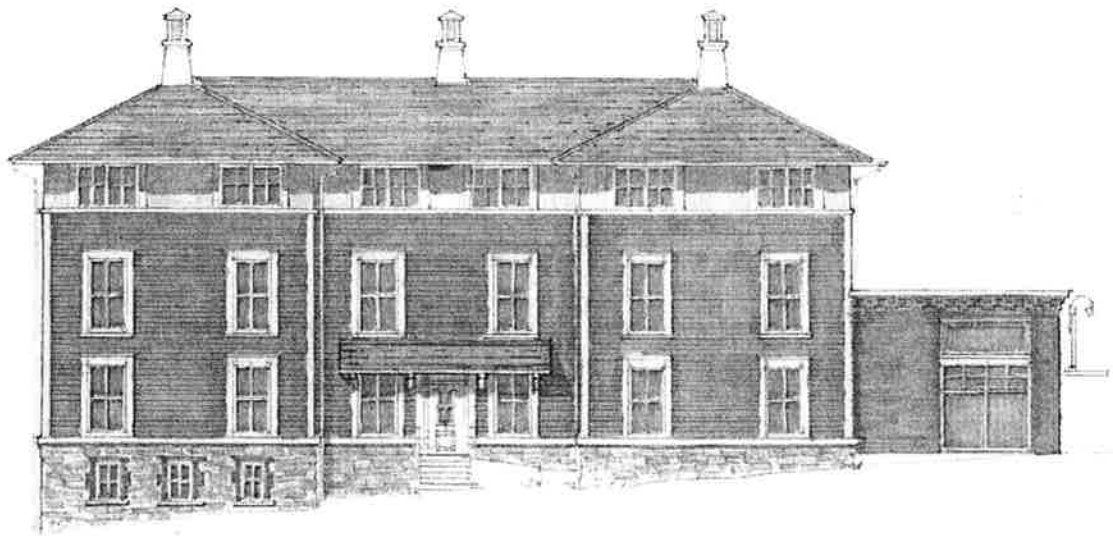
A rezoning to Community Services will allow a collection of three story buildings on this site with commercial frontage along Mount Comfort Road and Multi-Family Residential frontages along Oakland, Hazel, and Storer. The form based code carries with it architectural standards as described in UDC 166.24 to encourage quality construction and pedestrian amenities; a feature that the existing RMF 24 zoning does not include.

A building on this site could be a visible and prominent addition to the North Street corridor, an area that is badly in need of quality redevelopment.

c. Relation of Proposed Rezoning to Adjacent Properties:

Land Use Compatibility: The Community Services zoning category allows the development of this property in a way that is respectful of the existing uses and zoning in the neighborhood and immediate context. The property is currently bordered by property that is zoned RO, RMF24, RMF40, and C1. Clearly, this is a diverse area that is zoned for a fairly high level of development intensity. The Community Services zoning category allows the uses of retail, office, and multi-family uses so that a building can be built that complements the existing development pattern. Height limit in RMF24 is 60' as opposed to a height limit in Community Services of 56'. The buildings we are contemplating will be three stories in height, which would be allowed under either RMF24 or Community Services. Height limit for C1 is unlimited; for RO is 60' and for RMF 40 is 60'. Community Services seems to be consistent in scale and massing with the existing adjacent zoning categories.

Appearance: The appearance of the proposed buildings will be superior to the existing built fabric. Attention will be paid to the use of authentic materials, good proportions, natural light, and the creation of well landscaped courtyards. Parking will be concealed in the middle of the block. Most of the existing surrounding buildings are fairly dated and of generally low quality. This building could spur redevelopment, renovation, and increased property values in the immediate area. Signage will meet the standards of Fayetteville's Sign Ordinance and will not be oversized or out of character with the neighboring uses. Signage will be submitted for approval during development review.

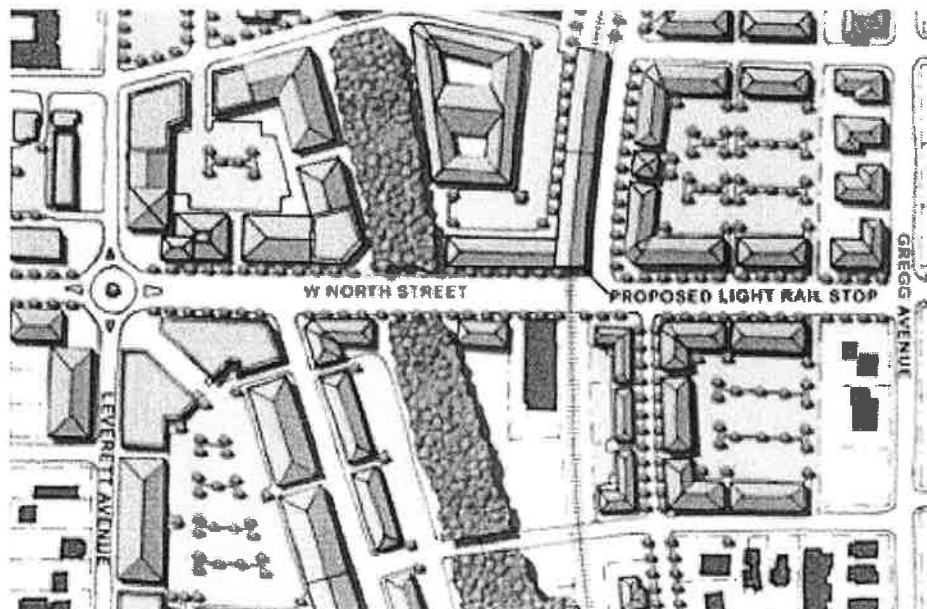


PROPOSED FAÇADE DESIGN, OAKLAND COURTS

Traffic: Traffic patterns for the area will be consistent with the current RMF zoning. Under the current zoning, 145 bedrooms could be constructed (1.43 acres x 24 units/acre x 3 bedrooms/unit = 145 bedrooms). Our intention is to construct approximately 62 units, 30 of which will be two bedroom units and the remainder one bedroom units for a total of 92 bedrooms. We also plan on building 3,000 sq ft of retail and office space. The automotive traffic impact of 92 bedrooms and 3,000 sq ft of commercial space would be similar to, or less than, the current zoning capacity.

Also, the mixed use nature of the proposed uses spreads the automotive traffic loads out, rather than concentrating them at certain times of day. Perhaps most importantly, the location of transit stops and the Scull Creek Trail allows a good percentage of traffic to and from the site to be in the form of transit, pedestrian, and bicycle traffic modes. For those that do use automotive transportation, the proximity of major east/west and north/south corridors allow traffic flow without overloading residential and local streets.

- d. Availability of Water and Sewer:* Currently, water and sanitary sewer lines serve the property on Storer Avenue and Oakland Avenue. Based upon GIS data, the water line on Storer Avenue is a 6" line; the water line on Oakland Avenue is a 6" line. The sanitary sewer line on Storer is a 6" line; the sanitary sewer line along Oakland is a 6" line. We have had initial meetings with the City of Fayetteville regarding the capacity of both the water and sanitary sewer lines. H2 Engineering is currently performing a sewer capacity analysis to determine how to handle the sewer service requirements of the proposed project. If necessary, water and sewer service lines will be replaced or supplemented as required to serve the domestic and life-safety needs of the project.
- e. Consistency with City of Fayetteville Objectives:* As mentioned previously, the request to rezone to Community Services is entirely consistent with the City of Fayetteville's objectives, policies, and principles. The document that spells out these policies in the most detail is Fayetteville's City Plan 2025, which was adopted unanimously by the City Council in July of 2006. That document declares in Goal 1 that "Appropriate Infill and Revitalization" are our highest priority. This rezoning helps the city to meet that goal by allowing mixed-use buildings built to the standards of a form-based zoning category on this property. The following illustrations prepared by Dover Kohl and Partners demonstrate the character possible when form based codes are combined with proper site planning and architectural design standards.



PROPOSED DESIGN, NORTH AND LAFAYETTE,
DOVER KOHL & PARTNERS, CITY PLAN 20205



PROPOSED DESIGN, NORTH AND LAFAYETTE,
DOVER KOHL & PARTNERS, CITY PLAN 20205

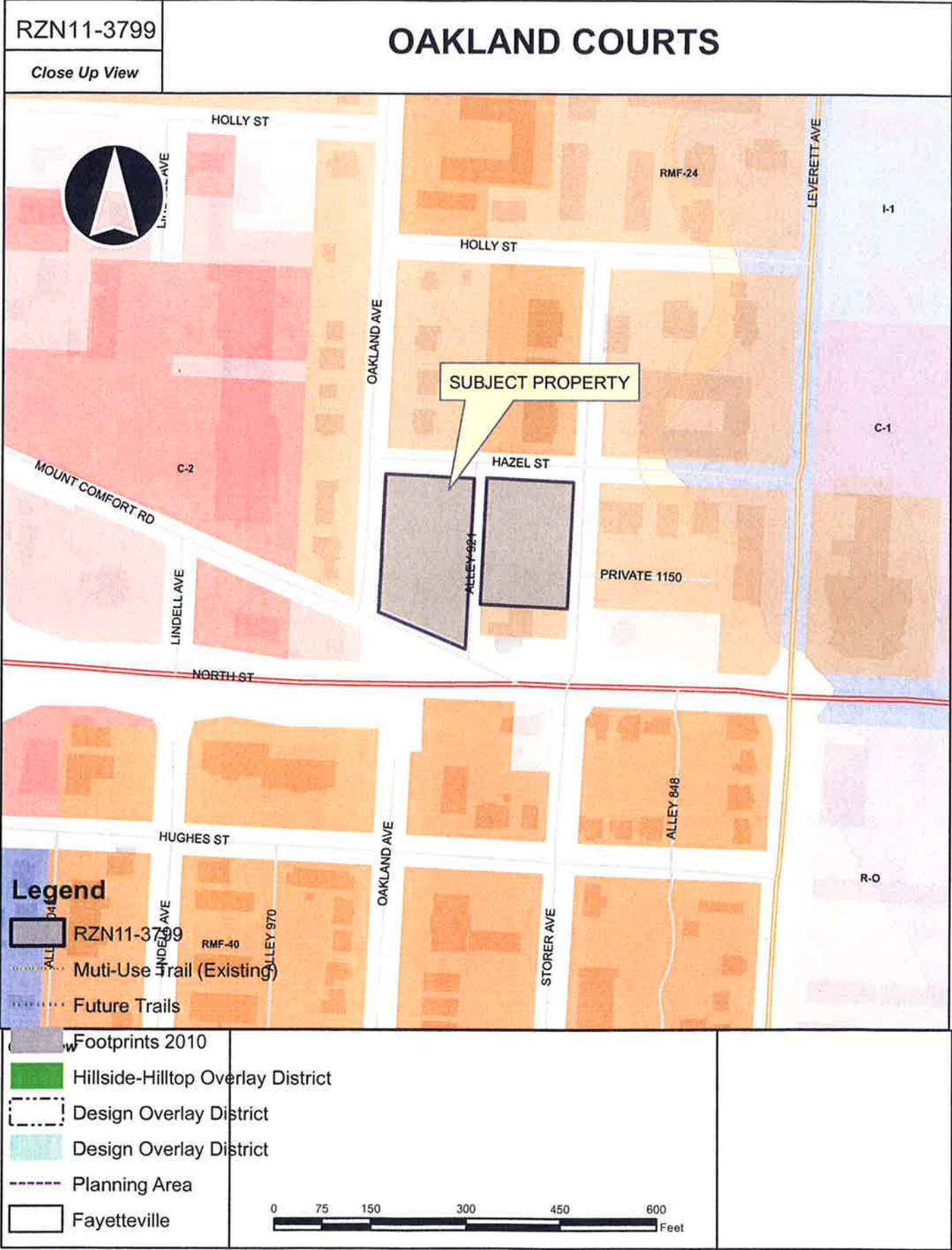
- f. Justification and Timing of the Rezoning Request:* The timing and justification of the rezoning is appropriate. The current property owner has a willing buyer that feels that the current zoning does not support his business goals for the project.
- g. Traffic Danger and Congestion:* As discussed previously, the traffic impact is virtually the same whether the property is developed as an RMF24 three bedroom project or a Community Service one and two bedroom project. This site is well served by North Street (a principal arterial), Garland Avenue (a principal arterial), and Leverett Avenue (a collector), so the traffic impact will be negligible relative to the existing traffic counts along these major thoroughfares. As mentioned previously, introducing a certain amount of retail and office use at this site will reduce the amount of travel from purely residential areas by locating services within the neighborhood.
- h. Population Density:* The population density will be the same under the proposed zoning of the Community Services and the existing density of RMF 24. Changing the zoning will not add residents nor will it increase impact on water, sewer, or schools.
- i. Impracticality of the Existing Zoning:* The existing zoning does not allow mixed use, nor does it encourage a built form that enhances the pedestrian experience. The Community Services zoning category is a more practical fit for the property. Also, RMF24 zoning has the effect of encouraging the development of three and four bedroom apartments should the developer choose to maximize the capacity of the site. Three and four bedroom apartments skew strongly towards a student population, with its attendant noise, litter, and late night characteristics.

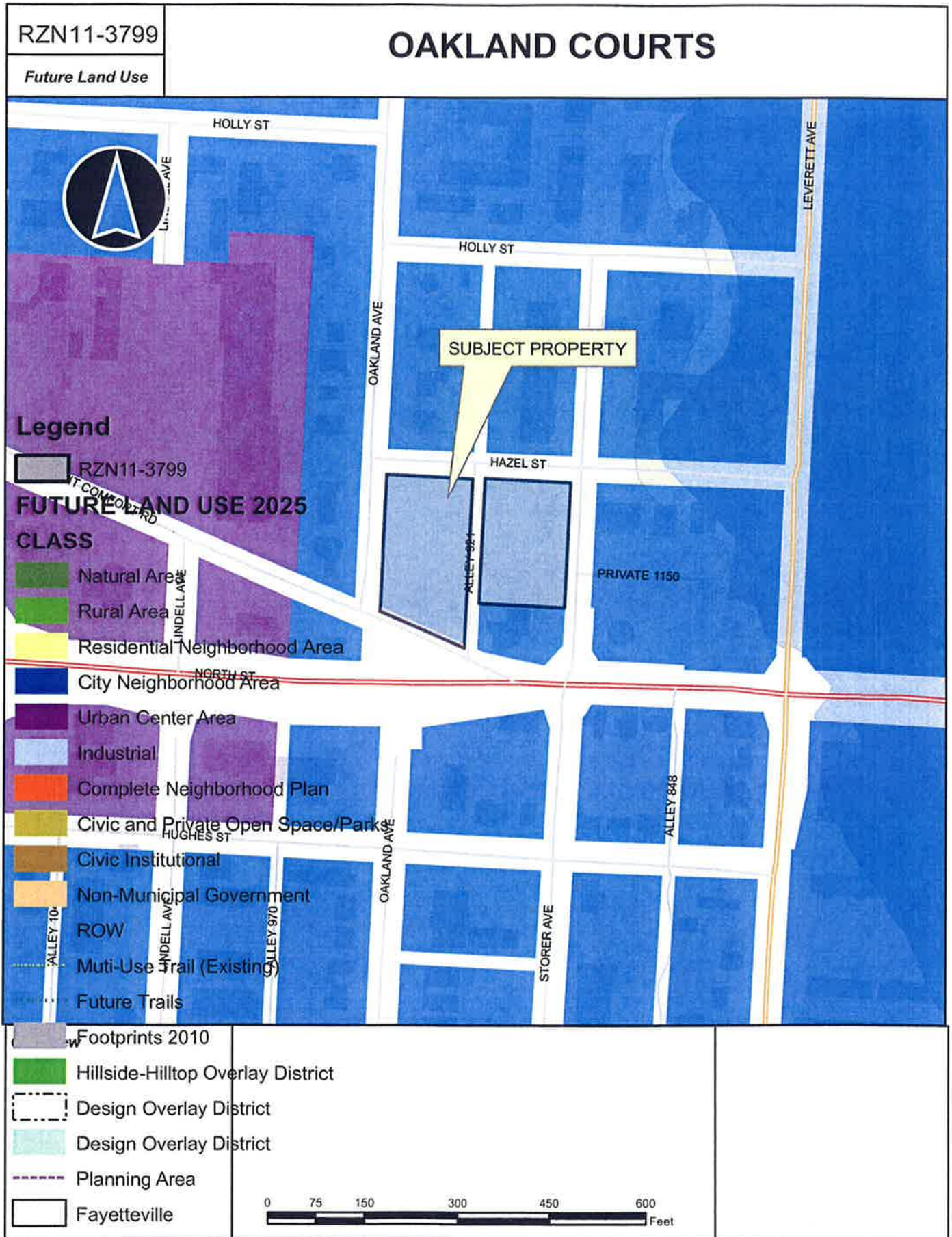
Please contact me if you have any questions regarding this proposed rezoning at 479.442.0229 or via e-mail at rob@sharparch.net. I look forward to the opportunity of discussing this proposal in greater detail.

Sincerely,

Robert Sharp
Robert Sharp, Architect, Inc.

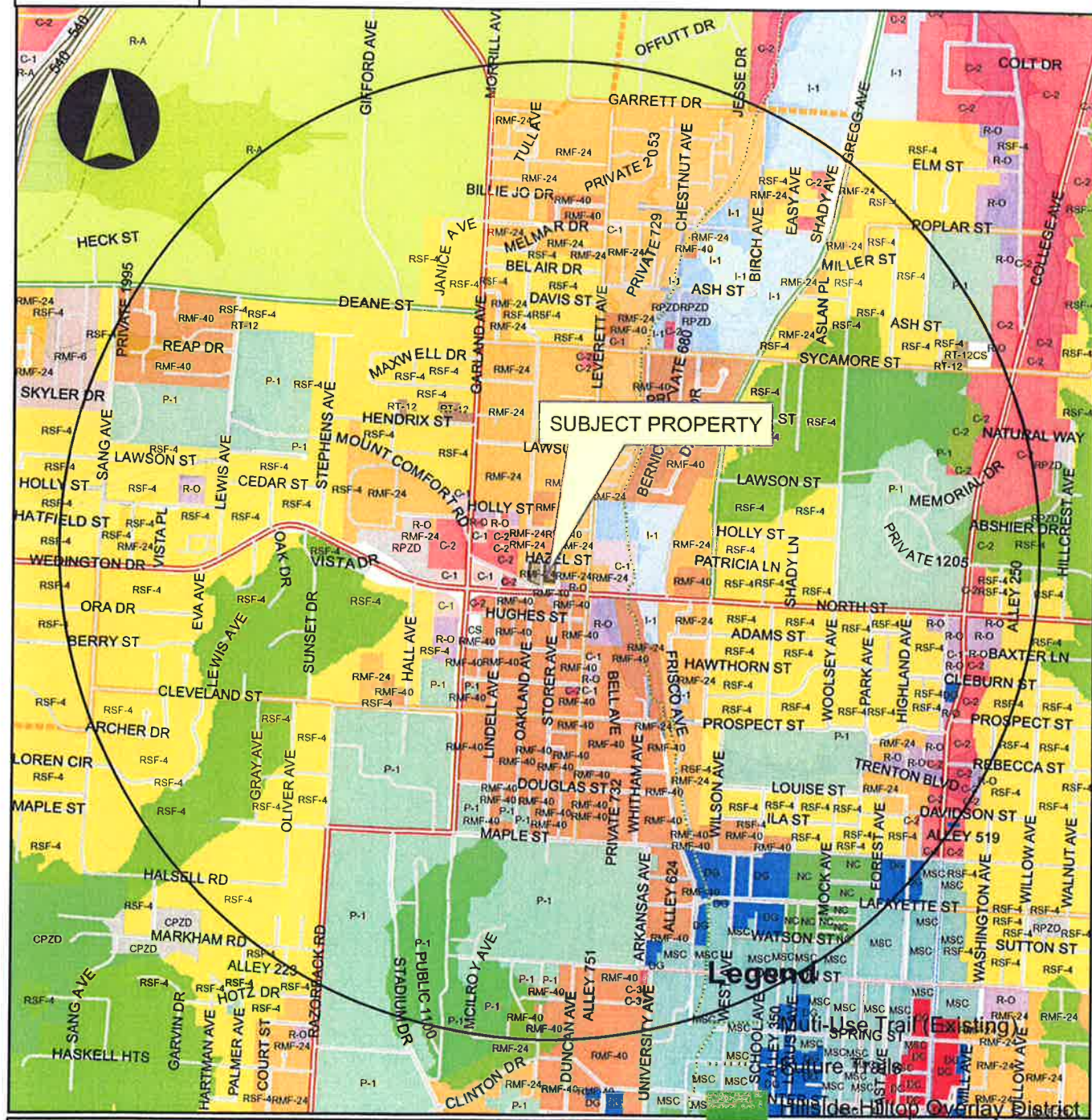
cc: File



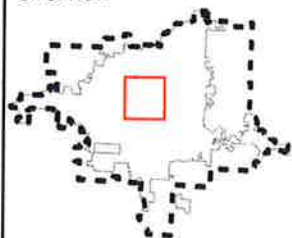


One Mile View

OAKLAND COURTS



Overview



Legend

Subject Property



RZN11-3799

Boundary

0 0.25 0.5

 RZN11-3799

Design Overlay District

Planning Area

Fayetteville

Miles

RZN11-3799

Close Up View

OAKLAND COURTS



Legend

- RZN11-3799
- Hillside-Hilltop Overlay District
- Design Overlay District
- Design Overlay District
- Planning Area
- Fayetteville



City of Fayetteville Staff Review Form

C. 2
 VAC 11-3837 (1849
 South Garland Avenue
 ROW Vacation)
 Page 1 of 10

City Council Agenda Items
 and
 Contracts, Leases or Agreements

6/7/2011

City Council Meeting Date
 Agenda Items Only

Andrew Garner
 Submitted By

Planning
 Division

Development Services
 Department

Action Required:

VAC 11-3837: Vacation (1849 South Garland Avenue ROW Vacation): Submitted by MORGAN HOOKER for property located at 1849 South Garland Avenue. The property is zoned I-1, Heavy Commercial Light Industrial. The request is to vacate a portion of an un-constructed right-of-way.

Cost of this request

\$

Category / Project Budget

Program Category / Project Name

Account Number

\$

Funds Used to Date

Program / Project Category Name

Project Number

\$

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Kim D.
 Department Director

05-12-2011
 Date

Previous Ordinance or Resolution #

Kim D.
 City Attorney

5-20-2011
 Date

Original Contract Date:

Original Contract Number:

Paul A. Becher
 Finance and Internal Services Director

5-20-2011
 Date

Received in City 05-19-11 P03:36 RCVD
 Clerk's Office

Jim M.
 Chief of Staff

5-23-11
 Date

Received in
 Mayor's Office

Frederick Jordan
 Mayor

5/23/11
 Date



Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Jeremy Pate, Development Services Director *JP*

From: Andrew Garner, Senior Planner

Date: May 11, 2011

Subject: VAC 11-3837 (1849 South Garland Avenue Right-of-way Vacation)

RECOMMENDATION

Planning Staff recommends approval of an ordinance vacating an un-constructed right-of-way on the subject property containing approximately 258 square feet.

BACKGROUND

The subject property is located at 1849 South Garland Avenue, contains 4.38 acres and is zoned I-1, Heavy Commercial and Light Industrial. The applicant proposes to remodel the existing structure and continue to utilize it for a warehouse and shop, and allow for a portion of it to be converted into an office in the future. The metal building was constructed in 1920 according to Washington County parcel records. The building has historically been used and is continuing to be used for a warehouse and other nonresidential uses. A survey of the property for a pending property sale revealed that approximately 4.1 feet of the southeast corner of the building is located in the existing 60-foot South Garland Avenue right-of-way. The Board of Adjustment on Monday, April 4, 2011 voted to approve a proposal to bring the non-conforming building setback into compliance. In addition to the Board of Adjustment approval, City Council approval to vacate the small sliver of right-of-way underneath the southeast corner of the building is required to be approved in order to construct improvements to the building.

DISCUSSION

The southeast corner of the building encroaches slightly into the un-constructed right-of-way of South Garland Avenue. Garland Avenue is an unimproved two-lane road in this location. Garland Avenue could be widened and improved to its Master Street Plan designation as a Collector Street even with the existing building, with minor realignment of the sidewalk.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 11-3837 SUBMITTED BY MORGAN HOOKER FOR PROPERTY LOCATED AT 1849 SOUTH GARLAND AVENUE TO VACATE A PORTION OF AN UN-CONSTRUCTED RIGHT-OF-WAY, A TOTAL OF 258 SQUARE FEET.

WHEREAS, the City Council has the authority under A.C.A. § 14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes; and

WHEREAS, the City Council has determined that the following described portion of the un-constructed right-of-way is not required for corporate purposes;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following right-of-way as described in Exhibit B (attached).

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached and labeled Exhibit A shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the following Condition of Approval and shall not be in effect until this condition is met:

“Any relocation of existing utilities shall be at the owner/developer’s expense.”

“ **PASSED** and **APPROVED** this day of , 2011.

APPROVED:

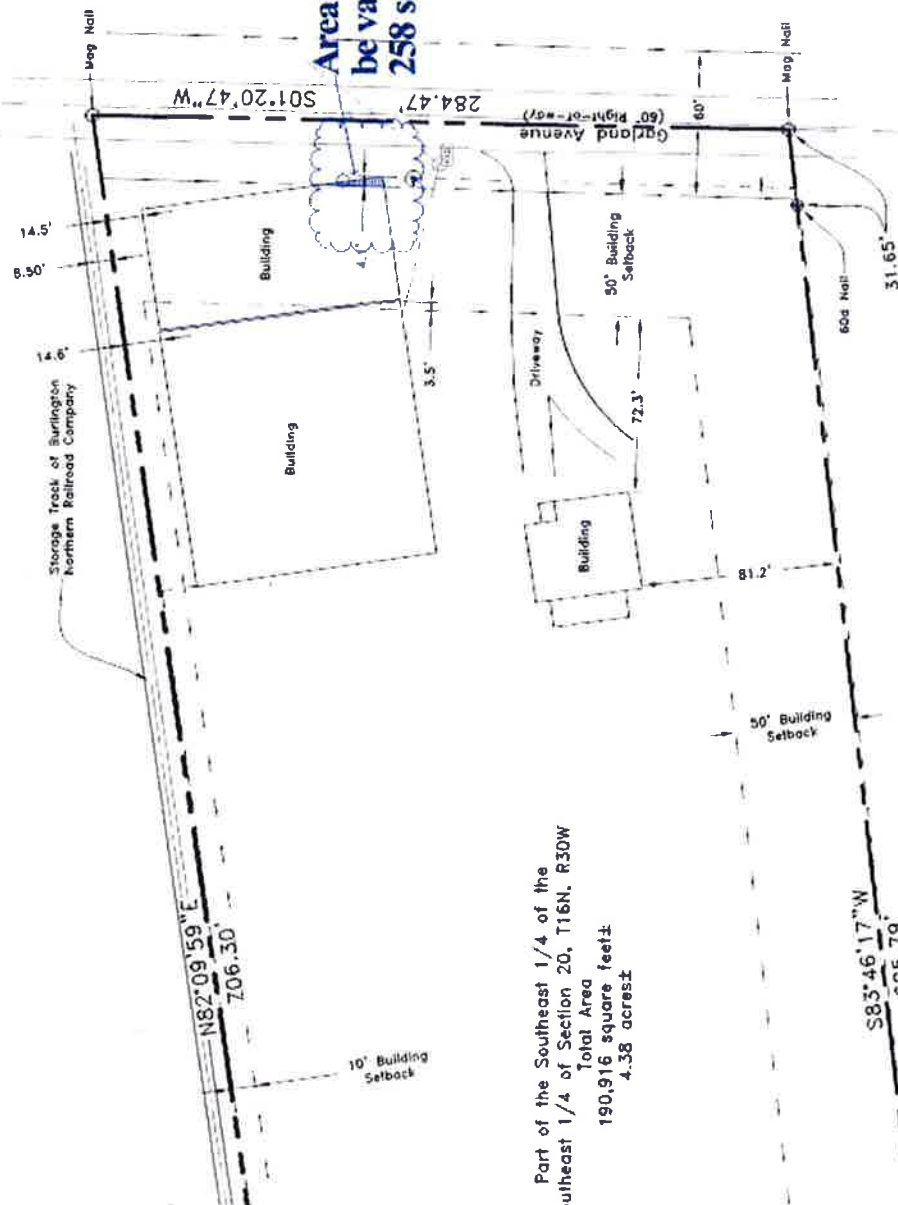
ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Exhibit 'A'

VAC 11-3837



Part of the Southeast 1/4 of the
 Southeast 1/4 of Section 20, T16N, R30W
 Total Area
 190.916 square feet ±
 4.38 acres



Vicinity Map
 Not to Scale

Notes:

1. The boundary configuration shown on this survey does not purport to be a tract split, replat or any other subdivision of land as may be defined by city, county, or state law.
2. Except as specifically stated or shown on this plat, the survey does not purport to reflect any of the following which may be applicable to the subject real estate:
 Easements, other than those easements which were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision restrictions; zoning or other land-use regulations, or any other facts which an accurate and current title search may disclose.
3. Every document of record reviewed and considered as a part of this survey is noted hereon. Only the documents noted hereon were supplied the surveyor.
4. This plat represents a boundary survey of the parcel described in Deed Book 1352 at Page 217 in the Circuit Clerk's Office of Washington County, Arkansas.
5. Basis of Bearings: East line of the Southeast 1/4 of the Southeast 1/4 of Section 20 taken to be N01°20'47\"
6. This survey is valid only if the drawing includes the seal and signature of the surveyor.
7. This survey meets current "Arkansas Minimum Standards for Property Boundary Surveys and Plats".
8. A title search was not conducted by a certified title company. All documents were provided by the client/clients and/or researched by H2 Engineering, Inc. The survey may be subject to record/unrecorded; easements, rights of way, covenants, building setback lines, subdivision restrictions, zoning, land regulations or other facts which an accurate and current title search may reveal.
9. Declaration is made to the original purchaser of the survey and is not transferable to any additional institutions or subsequent owners.
10. This property is zoned I-1 (Heavy Commercial and Light Industrial).
11. Building setbacks for zone I-1 are as follows:

Survey Description
 Part of the Southeast 1/4 of the Southeast 1/4 of Section 20, Township 16 North, Range 30 West of the Fifth Principal Meridian, City of Fayetteville, Washington County, Arkansas. Survey was conducted pursuant to Arkansas

EXHIBIT "B"
VAC 11-3837

LEGAL DESCRIPTION (PORTION TO BE VACATED):

Part of the Southeast 1/4 of the Southeast 1/4 of Section 20, Township 16 North, Range 30 West of the Fifth Principal Meridian, City of Fayetteville, Washington County, Arkansas being more particularly described as follows:

Commencing at the Southeast corner of the above said Section 20 being a found State Section Corner Monument; thence N01°20'47"E, along the East line of the above said Southeast 1/4 of the Southeast 1/4, a distance of 624.73 feet; thence N88°39'13"W, leaving the above said East line, a distance of 23.03 feet to the True Point of Beginning being the Southeast corner of an existing building; thence S81°46'55"W, along the South edge of the above said existing building, a distance of 9.20 feet to a point on the West right-of-way line of Garland Avenue; thence N01°52'53"E, along the above said West right-of-way line, a distance of 57.06 feet to a point on the East edge of the above said existing building; thence S07°23'43"E, along the above said East edge of the existing building, a distance of 56.18 feet to the Point of Beginning and containing 258 square feet.

From: Morgan Hooker <morgan@townbuildersinc.com>
To: Andrew Garner <agarner@ci.fayetteville.ar.us>
CC: Morgan Hooker <morgan@townbuildersinc.com>
Date: 4/26/2011 11:14 AM
Subject: Garland office / warehouse

Andrew here is a simple lists of the improvements we would like to make to the warehouse on Garland Ave.

The existing warehouse is approximately 5,000 square feet. At some point we would like the ability to convert 2,200 sf into office space. This would happen over the next 3 years. Currently we need to make improvements to the current structure because it has not been maintained and needs some repairs. The roof needs to be removed and replaced. As the roof is replaced there will need to be structure repaired. Also the siding will need to be replaced and repaired and structure will need to be repaired as this takes place. There are several places that the foundation will need to be repaired / replaced as well. We will be removing the existing privacy fence at the front property line and moving it back toward the back of the warehouse. There is an existing duplex on the property that we will refurbish over time as well. The duplex is not encroaching in any of the setbacks. We will be upgrading the electric service and plumbing at the time we begin convert the warehouse to partial office. We would like to keep the parking area gravel because of the nature of the traffic that the remaining warehouse will get and the nature of traffic that we get at the construction office. The office finish is intended to be very raw and simple. We will keep the "warehouse" look on the inside but bring all the services up to code. At this time we need to locate the entrance to the office on the South end of the property for access to the parking.

Andrew please let me know if you need additional information to get this on the next City Council agenda.

Thanks for your help.

Morgan

Sent from my iPad



4a COLLECTOR (THROUGH) RESIDENTIAL NEIGHBORHOOD CITY NEIGHBORHOOD

Design Service Volume: < 4,000 vpd,
 < 6000 vpd with left
 turn bays

Desired Operating Speed: 25-30 mph

Travel Lanes: Two 14' shared motorist
 and cyclist lanes

Turn Lane: 12' turn bays where
 warranted

Bicycle Lanes: Shared with drive lane

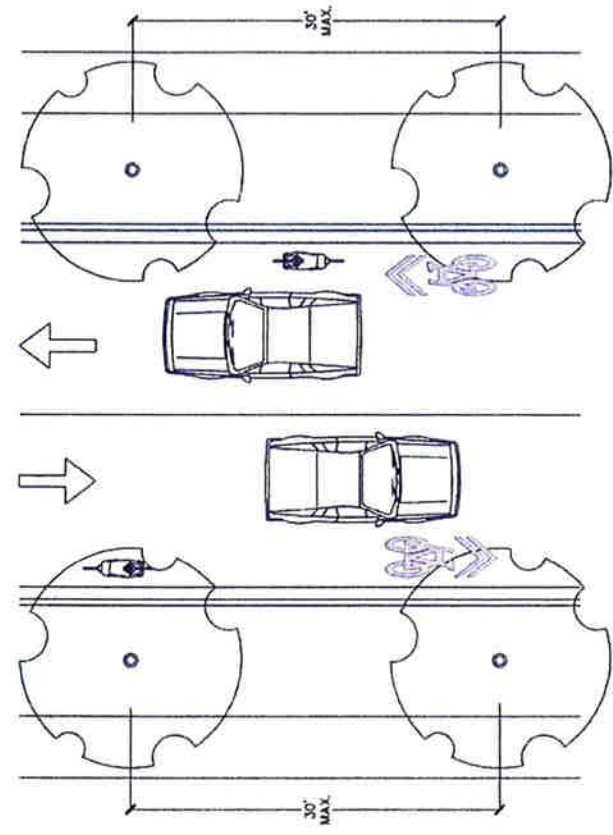
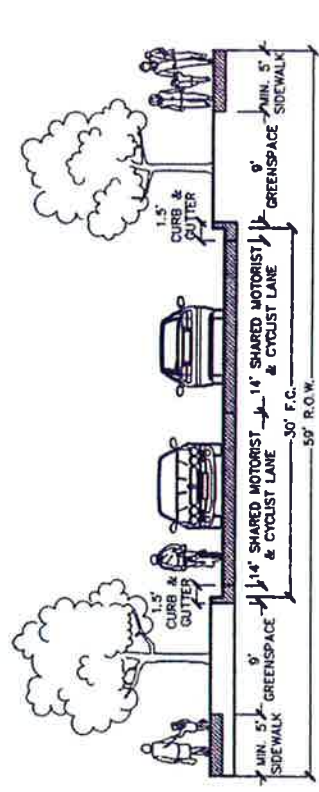
Parking: None

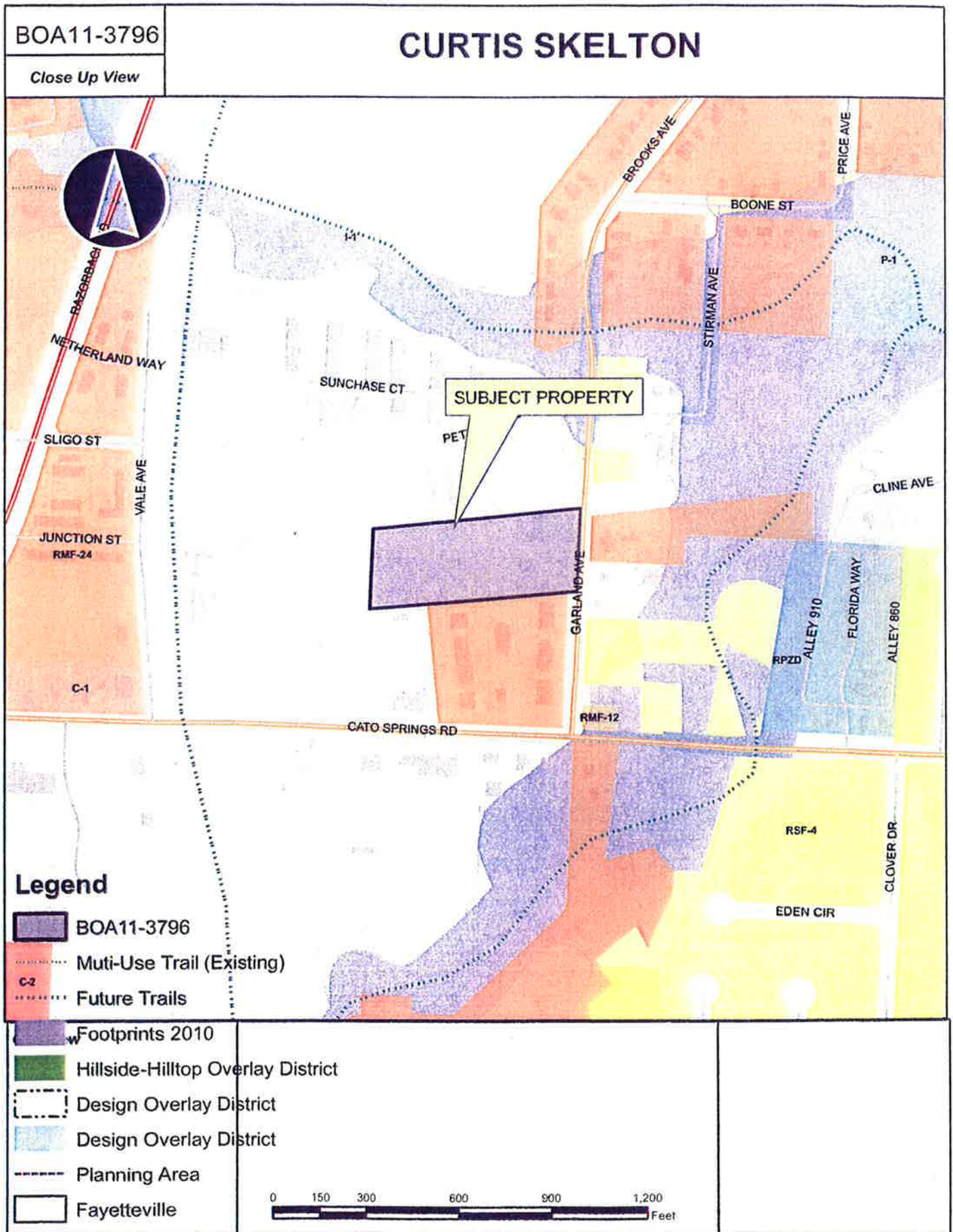
Paved Width: 30' from face of curb

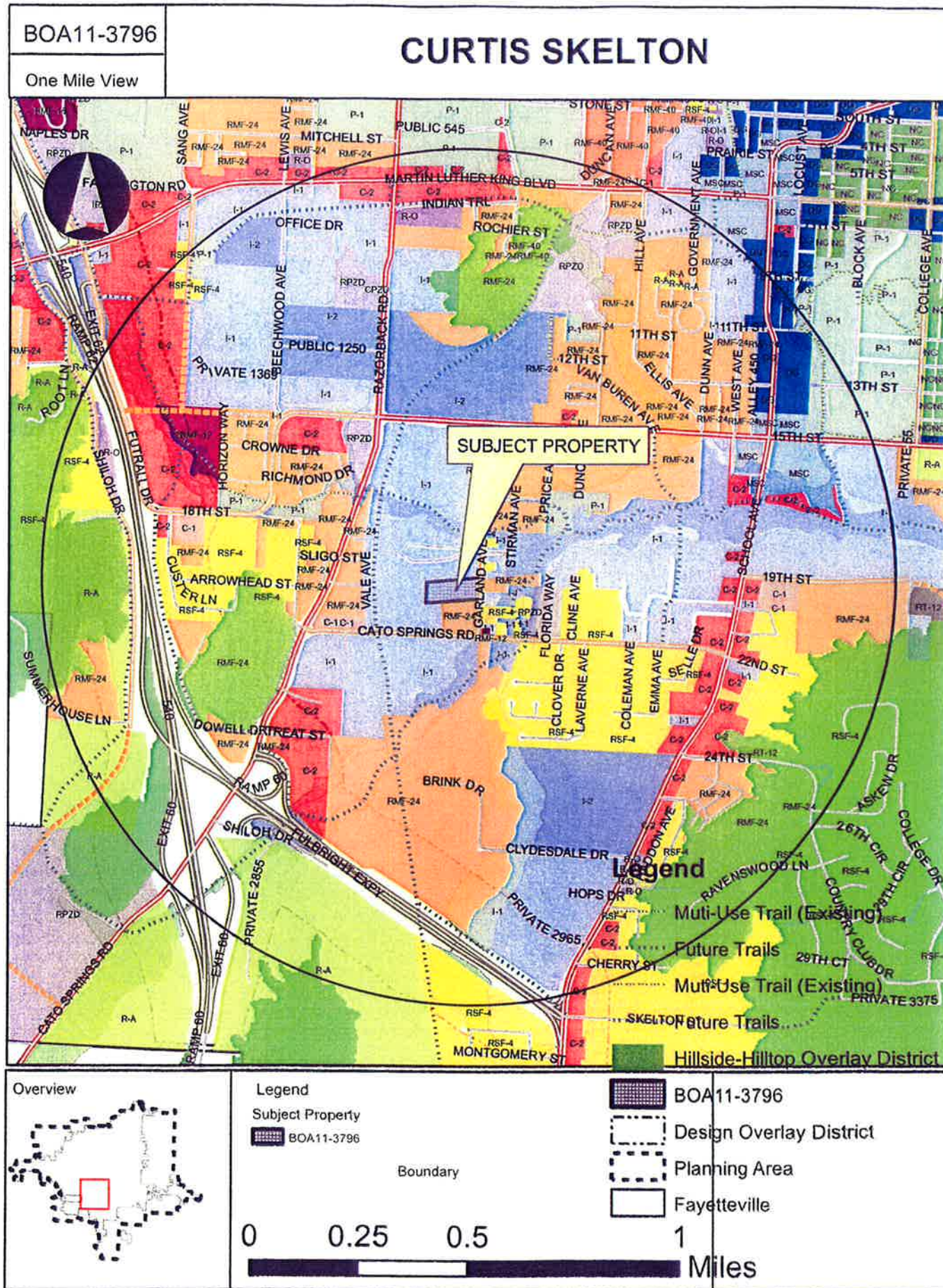
Right of Way: 59'

Sidewalks: Both sides of street,
 min. 5' wide, located
 in R.O.W. at R.O.W. line

Greenspace: Both sides of street,
 min. 9' wide







C. 3
Bid #11-37 Dean Crowder
Construction, Inc.
Page 1 of 18

6/7/2011

Chris Brown 
Submitted By

Development Services
Department

A resolution to award a contract Dean Crowder Construction (lowest bidder on Bid 11-37) , in the amount of \$3,815,173. for construction of improvements to Cato Springs Road, Razorback Road to School Avenue, and approve a project contingency of 5% in the amount of \$190,759. This project will use funds from the 2009 Transportation Bond Issue, a contribution from W&S for relocation of lines, and a federal earmark that was outlined in Resolution 80-06.

\$585,494 Trans. Bond Money	\$ 907,742.00	
\$350,000 W&S contribution	\$ 2,103,928.00	
\$2,879,679 Federal grant/expense	\$ 2,879,679.00	Cato Springs Road
Cost of this request	Category / Project Budget	Program Category / Project Name
4520.9540.5809.00	\$ -	Street Improvements
5400.5640.5808.00	\$ -	Waterline Improvements
4470.9470.5809.00	\$ -	Federal Funding/Grant/Earmark
Account Number	Funds Used to Date	Program / Project Category Name
	\$ 907,742.00	2009 Street Bonds
	\$ 2,103,928.00	W&S Relocate/2009 Bond Proceeds
06035.1200	\$ 2,879,679.00	Federal Earmark
Project Number	Remaining Balance	Fund Name

Budget Adjustment Attached	X
----------------------------	---

Previous Ordinance or Resolution #

Original Contract Date: _____

Original Contract Number: _____

Received in City
Clerk's Office

Received in
Mayor's Office

ENTERED
5/20/11
Pik

Revised January 15, 2009



www.accessfayetteville.org

C. 3
Bid #11-37 Dean Crowder
Construction, Inc.

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

Page 2 of 18

CITY COUNCIL AGENDA MEMO

Council Meeting of June 7, 2011

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director *JP*

From: Chris Brown, City Engineer *CB*

Date: May 19, 2011

Subject: A resolution to award a contract to Dean Crowder Construction, Inc. in the amount of \$3,815,172.70 for construction of improvements to Cato Springs Road, Razorback Road to School Avenue, approve a project contingency of 5% in the amount of \$190,759.00, and approve a Budget Adjustment.

PROPOSAL:

On May 6th, the City received four (4) construction bids ranging from a low of \$3,815,172.70 to a high of \$4,445,805.10. Dean Crowder Construction, Inc. submitted the low bid which was 23% below the Engineer's Estimate of \$4,703,957.50. The City has received a written recommendation from our consultant engineer, Garver, to award this contract to Crowder Construction and staff concurs with this recommendation.

Secondly, staff has prepared the attached spreadsheet which outlines the entire project expenditures from the study/concept/design phase to the future project completion phase showing all proposed funding sources. Although this agenda item only addresses approval of the construction contract with contingency, staff would like the City Council to be fully informed with all estimated project costs. In the future, staff will present the City Council with other contracts, e.g. Arkansas & Missouri Railroad, and at that time will propose additional budget adjustment(s) to cover additional third party contracts (see attached spreadsheet).

Please take note that as part of the Federal-Aid process, the Mayor has submitted the required Certification Letter to the Arkansas State Highway and Transportation Department (AHTD) requesting their review of the bid tabulations and concurrence in award of the contract to Dean Crowder Construction, Inc. The actual execution of the construction agreement will occur after receipt of AHTD concurrence.

RECOMMENDATION:

Staff recommends approval of a resolution awarding a contract to Dean Crowder Construction, Inc. in the amount of \$3,815,172.70 for construction of improvements to Cato Springs Road, Razorback Road to School Avenue, approval of a 5% project contingency in the amount of \$190,759.00, and approve the attached Budget Adjustment.

BUDGET IMPACT:

This contract will be paid from the Transportation Bond Fund, the Federal Earmark Fund, and a \$350,000 contribution from the Water & Sewer Relocate Fund to assist with the relocation & upgrade of the existing water & sewer lines.

040496 Cato Springs Road (S. School - Razorback)

C. 3
 Bid #11-37 Dean Crowder
 Construction, Inc.
 Page 4 of 18

PROJECT EXPENDITURES	Engineering/Const Mgmt		
	Consultant Engineer	Orig Design Contract	\$227,550
		Amendmt #1	\$278,150
		Amendmt #2	\$196,350
		Garver Subtotal	\$702,050
	Engineering Staff Time (2006-2011)	Engs, Surveyors, Land Agents	\$144,627
	Const. Project Manager		\$63,000
	Const. Project Inspector		\$84,000
	Staff Engineer		\$12,600
	City Engineer		\$7,100
	In-house Surveying (2 Man)		\$3,000
		Contra Subtotal	\$314,327
	Materials Testing Lab		\$20,000
		Engineering Total	\$1,036,377
	Right Of Way		
			\$258,457
		Contingency	\$50,000
		Right Of Way Total	\$308,457
	Utilities		
	Arkansas Western Gas		\$94,312
	SWEPCO		\$177,886
	AT&T		\$0
		Utilities Total	\$272,198
	A&M Railroad		
	Control House, Gates & Signals		\$166,932
	Conc. Panels, Timber Ties, Ballast		\$189,054
		Railroad Total	\$355,986
	Construction		
	Water & Sewer		\$691,389
	Road		\$3,123,784
		SubTotal	\$3,815,173
		5% Contingency	\$190,759
		Construction Total	\$4,005,932
	Permits		
	ADOH		\$500
	NOI		\$200
	STAA		\$200
	Railroad		\$5,800
		Permits Total	\$6,700
	AHTD Administration		
	AHTD Design Admin.		\$5,000
	AHTD Construction Admin.		\$25,000
		AHTD Admin Total	\$30,000
	GRAND TOTAL PROJECT COST		\$6,015,650
FUNDING SOURCES	Federal Funding (Max.)		-\$2,879,679
	<u>TOTAL COST TO CITY</u>		<u>\$3,135,971</u>
	Water & Sewer Funding		-\$350,000
	CIP Funding (Excess Project Funds)		-\$441,335
	<u>TOTAL COST TO BOND PROGRAM</u>		<u>\$2,344,636</u>

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #11-37 AND AUTHORIZING A CONTRACT WITH DEAN CROWDER CONSTRUCTION, INC. IN THE AMOUNT OF \$3,815,173.70 FOR CONSTRUCTION OF IMPROVEMENTS TO CATO SPRINGS ROAD AND RAZORBACK ROAD TO SCHOOL AVENUE, APPROVING A FIVE PERCENT PRJOECT CONTINGENCY, AND APPROVING A BUDGET ADJUSTMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards Bid #11-37 and authorizes a contract with Dean Crowder Construction, Inc. in the amount of \$3,815,173.70 for construction of improvements to Cato Springs Road and Razorback Road to School Avenue. A copy of the contract is attached as Exhibit "A".

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a five percent project contingency.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "B".

PASSED and APPROVED this 7th day of June, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

DOCUMENT 00500 – AGREEMENT

BETWEEN OWNER AND CONTRACTOR

Contract Name/Title: **CATO SPRINGS ROAD IMPROVEMENTS, RAZORBACK ROAD
TO SCHOOL AVENUE.**

Contract No.: _____

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20__ by and
between The City of Fayetteville, Arkansas and _____.(hereinafter called Contractor).

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract
Documents. The work under this Contract includes, but is not limited to:

Repair, widening, and overlay of approximately 5280 LF of Cato Springs Road, construction of a
pedestrian bridge, and construction of associated earthwork, curb and gutter, sidewalk,
underground drainage, drainage swales, driveways, fencing, 12 inch water line and
appurtenances, 8 inch waterline and appurtenances, 8 inch sanitary sewer, sanitary sewer
manholes, water/sanitary sewer services, and miscellaneous related items.

Refer to Section 00400-Bid Form for quantities:

ARTICLE 2 - ENGINEER

2.01 The Contract Documents have been prepared by GARVER. GARVER assumes all
duties and responsibilities, and has the rights and authority assigned to Engineer in
the Contract Documents in connection with completion of the Work in accordance
with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

3.01 TIME OF THE ESSENCE:

A. All time limits for milestones, if any, Substantial Completion, and
completion and readiness for final payment as stated in the Contract
Documents are of the essence of the Contract.

00500 Agreement
Cato Springs Road Improvements

00500 - 1

Garver Project No. 0605-1700



DOCUMENT 00500 – AGREEMENT (continued)

3.02 DATES FOR SUBSTANTIAL COMPLETION AND FINAL PAYMENT:

- A. The Work will be Substantially Completed within 150 calendar days after the date when the Contract Times commence to run as provided in the GENERAL CONDITIONS for Erosion Control, Clearing and Grubbing, and Water and Sewer.
- B. The Work will be Substantially Completed within 450 calendar days after the date when the Contract Times commence to run as provided in the GENERAL CONDITIONS, and completed and ready for final payment in accordance with the GENERAL CONDITIONS within 480 calendar days after the date when the Contract Times commence to run.

3.03 LIQUIDATED DAMAGES:

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that The City of Fayetteville will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the GENERAL CONDITIONS. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by The City of Fayetteville if the Work is not Substantially Completed on time. Accordingly, instead of requiring any such proof, The City of Fayetteville and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay The City of Fayetteville Seven Hundred Fifty Dollars (\$750.00) for each calendar day that expires after the time specified above in Paragraph 3.02 for Substantial Completion until the Work is Substantially Complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 3.02 for completion and readiness for final payment or any proper extension thereof granted by The City of Fayetteville, Contractor shall pay The City of Fayetteville Seven Hundred Fifty Dollars (\$750.00) for each calendar day that expires after the time specified for completion and readiness for final payment.

DOCUMENT 00500 – AGREEMENT (continued)

ARTICLE 4 - CONTRACT PRICE

- 4.01 The CITY OF FAYETTEVILLE agrees to pay, and the CONTRACTOR agrees to accept, as full and final compensation for all work done under this agreement, the amount based on the prices bid in the Proposal (BID FORM) which is hereto attached, for the actual amount accomplished under each pay item, said payments to be made in lawful money of the United States at the time and in the manner set forth in the Specifications.
- 4.02 As provided in the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in the General Conditions. Unit prices have been computed as provided in the General Conditions.

ARTICLE 5 - PAYMENT PROCEDURES

- 5.01 SUBMITTAL AND PROCESSING OF PAYMENTS:
- A. Contractor shall submit Applications for Payment in accordance with the GENERAL CONDITIONS. Applications for Payment will be processed by Engineer as provided in the GENERAL CONDITIONS.
- 5.02 PROGRESS PAYMENTS, RETAINAGE:
- A. The City of Fayetteville shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 15th day of each month during construction. All such payments will be measured by the schedule of values established in the GENERAL CONDITIONS (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case,

DOCUMENT 00500 – AGREEMENT (continued)

less the aggregate of payments previously made and less such amounts as Engineer shall determine, or The City of Fayetteville may withhold, in accordance with the GENERAL CONDITIONS.

- a. 95% of Work Completed (with the balance being retainage); and
- b. 100% of Equipment and Materials not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to The City of Fayetteville as provided in the GENERAL CONDITIONS.

- 2. Upon Substantial Completion, The City of Fayetteville shall pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price (with the balance being retainage), less such amounts as Engineer shall determine, or The City of Fayetteville may withhold, in accordance with the GENERAL CONDITIONS.

5.03 **FINAL PAYMENT:**

- A. Upon final completion and acceptance of the Work in accordance with the GENERAL CONDITIONS, The City of Fayetteville shall pay the remainder of the Contract Price as recommended by Engineer and as provided in the GENERAL CONDITIONS.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

- 6.01 In order to induce The City of Fayetteville to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents including the Addenda and other related data identified in the Bid Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work.

DOCUMENT 00500 – AGREEMENT (continued)

- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- D. Contractor has carefully studied all:
 - (1) Reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site; and
 - (2) Reports and drawings of a Hazardous Environmental Condition, if any, at the Site. Contractor acknowledges that The City of Fayetteville and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
- E. Contractor has obtained and carefully studied (or assumes responsibility of having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance, and furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- F. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performing and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

DOCUMENT 00500 – AGREEMENT (continued)

- G. Contractor is aware of the general nature of work to be performed by The City of Fayetteville and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 - CONTRACT DOCUMENTS

7.01 CONTENTS:

- A. The Contract Documents which comprise the entire Agreement between The City of Fayetteville and Contractor concerning the Work consist of the following and may only be amended, modified, or supplemented as provided in the GENERAL CONDITIONS:
 - 1. This Agreement.
 - 2. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed.
 - b. Contractor's Bid.

DOCUMENT 00500 – AGREEMENT (continued)

- c. Documentation submitted by Contractor prior to Notice of Award.
- d. Federal funding documentation
- 3. Performance, Payment, and other Bonds.
- 4. General Conditions.
- 5. Supplementary Conditions.
- 6. Specifications consisting of divisions and sections as listed in table of contents of Project Manual.
- 7. Drawings consisting of a cover sheet and sheets as listed in the table of contents thereof, with each sheet bearing the following general title:

**CATO SPRINGS ROAD IMPROVEMENTS RAZORBACK ROAD
TO SCHOOL AVENUE.**

- 8. Addenda numbers one (1) to _____ (____), inclusive.
- 9. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the GENERAL CONDITIONS.

ARTICLE 8 - MISCELLANEOUS

8.01 **TERMS:**

- A. Terms used in this Agreement which are defined in the GENERAL CONDITIONS shall have the meanings stated in the GENERAL CONDITIONS.

DOCUMENT 00500 – AGREEMENT (continued)

8.02 ASSIGNMENT OF CONTRACT:

- A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.03 SUCCESSORS AND ASSIGNS:

- A. The City of Fayetteville and Contractor each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 SEVERABILITY:

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon The City of Fayetteville and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

OTHER PROVISIONS: Not Applicable.

IN WITNESS WHEREOF, The City of Fayetteville and Contractor have signed this Agreement in quadruplicate. One counterpart each has been delivered to Contractor and Engineer. Two counterparts each has been delivered to The City of Fayetteville. All portions of the Contract

DOCUMENT 00500 – AGREEMENT (continued)

Documents have been signed, initialed, or identified by The City of Fayetteville and Contractor or identified by Engineer on their behalf.

This Agreement will be effective on _____, 20__, which is the Effective Date of the Agreement.

CONTRACTOR _____ CITY OF FAYETTEVILLE _____

By: _____ By: _____

Title: _____ Title: _____

(SEAL)

(SEAL)

Attest _____ Attest _____

Address for giving notices

Address for giving notices

License No. _____ (attach evidence of authority to

sign and resolution or other documents

Agent for Service of process

authorizing execution of Agreement)

(If Contractor is a corporation,
attach evidence of authority to
sign.)

Approved As to Form:

By: _____

Attorney For: _____

DOCUMENT 00500 – AGREEMENT (continued)

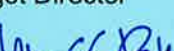
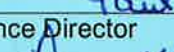
END OF DOCUMENT 00500

C. 3 V11.0310
Bid #11-37 Dean Crowder
Construction, Inc.
June 3, 2018

Budget Year 2011	Division: Engineering Department: Development Services	Request Date 6/7/2011	Adjustment Number Construction, Inc. Page 1
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BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION	
1	2
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99	100

Additional funding is needed for the Cato Springs Road project - 06035.1200. The bid for construction came in at \$3,815,173.00 with a contingency of \$190,759 for a total of \$4,005,932. \$2,879,679 of this funding has been earmarked by the AHTD in a cost share agreement. \$350,000 of this funding will be contributed from Water & Sewer Revenue Bonds.

Division Head	Date
	2/17/12
Budget Director	Date
	05-19-2011
Department Director	Date
	5-20-2011
Finance Director	Date
	5-23-11
Chief of Staff	Date
	5/23/11
Mayor	Date
	

Prepared By: ehutchens

Reference:

Budget & Research Use Only

Type: A B C D E P

General Ledger Date 6/7/2011

Posted to General Ledger	Initial	Date
--------------------------	---------	------

Checked / Verified	<u> </u>	<u> </u>
	Initial	Date

TOTAL BUDGET ADJUSTMENT		2,879,679	2,879,679	
		Increase / (Decrease)		Project.Sub
Account Number	Expense	Revenue		Number
4470.9470.5809.00	2,879,679	-		06035 . 1200
4470.0947.4309.00		2,879,679		06035 . 1200
5400.5640.5808.00	350,000	-		06035 . 1200
5400.5740.5815.00	(350,000)			09018 . 0902



Agenda Session 5/31/2011

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
June 7, 2011**

A meeting of the Fayetteville City Council will be held on June 7, 2011 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

City Council Agenda Session Presentations:

1. **Economic Development Contract Quarterly Update Report** by the Fayetteville Chamber of Commerce representatives Chung Tan, Curtis Northcutt and Steve Clark
2. **Drainage, Sidewalk, and Overlay Program Presentation** – presented by Don Marr, Terry Gulley, and Chris Brown/Sarah Wrede.

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

Agenda Additions:

A. Consent:

1. **Approval of the May 17, 2011 City Council meeting minutes.**

2. **Bid #10-56 Upchurch Electrical Supply Company:** A resolution authorizing the purchase of twelve (12) additional LED fixtures in the amount of \$15,408.00 plus applicable sales tax from Upchurch Electrical Supply Company pursuant to Bid #10-56 for street installation near the Fayetteville Public Library, and approving a budget adjustment.
3. **Bid #11-30 Meridian Construction Management, Inc.:** A resolution awarding Bid #11-30 and authorizing a contract with Meridian Construction Management, Inc. in the amount of \$26,890.00 for demolition of the Lake Sequoyah boat dock, and approving a fifteen percent (15%) project contingency.
4. **Bid #11-35 King Electrical Contractors, Inc.:** A resolution awarding Bid #11-35 and authorizing a contract with King Electrical Contractors in the amount of \$54,581.00 for construction and installation of an emergency electrical generator at the Fayetteville Senior Center, and approving a ten percent (10%) project contingency.
5. **Bid #11-38 RJR Enterprises, Inc.:** A resolution awarding Bid #11-38 and authorizing a contract with RJR Enterprises, Inc. in the amount of \$67,739.00 for construction of recreational swings at Lake Fayetteville Park, and authorizing a ten percent (10%) project contingency.
6. **Multi-Craft Contractors, Inc.:** A resolution authorizing a contract with Multi-Craft Contractors, Inc. in the amount of \$26,290.00 for one (1) HVAC unit and associated equipment for the Yvonne Richardson Center, and approving a ten percent (10%) project contingency.
- New Resolution* 7. **Amend Resolution No. 04-10:** A resolution amending Resolution No. 04-10 and approving an agreement with Arkansas Western Gas Company in the amount of \$127,675.44 for relocation of gas lines and appurtenances as part of the RSA Runway 16 Improvement Project at the Fayetteville Executive Airport.
8. **Fayetteville Police Department Policies:** A resolution approving Fayetteville Police Department Policies 1.3.4 Less Lethal Weapons, 41.1.1 Patrol, and 61.1.12 Police Traffic Radar Operation.
9. **2011 ADEQ Recycling Grant:** A resolution authorizing application for a 2011 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$23,500.00 to fund a pilot apartment recycling container.
10. **Arkansas Highway and Transportation Department Contract:** A resolution authorizing a contract with the Arkansas Highway and Transportation Department for design of water and sewer relocations relating to the widening of Crossover Road (State Highway 265) between Joyce Boulevard and Albright Road.
11. **Beaver Water District:** A resolution authorizing a contract with the Beaver Water District for land application disposal of water treatment residuals.

B. Unfinished Business:

1. **Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment:** An ordinance to amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment of the Fayetteville Code by removing the exemption for bars. *This ordinance was left on the First Reading at the May 3, 2011 City Council meeting. This ordinance was left on the Second Reading at the May 17, 2011 City Council meeting.*

Left on the Second Reading

C. New Business:

1. **RZN 11-3799 (Corner of Mount Comfort and Oakland Avenue/Oakland Courts):** An ordinance rezoning that property described in rezoning petition RZN 11-3799, for approximately 1.43 acres, located at the corner of Mount Comfort Road and Oakland Avenue from RMF-24, Residential Multi-Family, 24 units per acre to CS, Community Services.
2. **VAC 11-3837 (1849 South Garland Avenue ROW Vacation):** An ordinance approving VAC 11-3837 submitted by Morgan Hooker for property located at 1849 South Garland Avenue to vacate a portion of an un-constructed right-of-way, a total of 258 square feet.
3. **Bid #11-37 Dean Crowder Construction, Inc.:** A resolution awarding Bid #11-37 and authorizing a contract with Dean Crowder Construction, Inc. in the amount of \$3,815,173.70 for construction of improvements to Cato Springs Road and Razorback Road to School Avenue, approving a five percent project contingency, and approving a budget adjustment.

City Council Tour: Monday, June 6, 2011 at 4:30 p.m. The Council will tour the Westside Wastewater Treatment Plant and Woolsey Prairie.

Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

Pre-Agenda Meeting 5/25/11

Aldermen

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
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5. **Bid #11-38 RJR Enterprises, Inc.:** A resolution awarding Bid #11-38 and authorizing a contract with RJR Enterprises, Inc. in the amount of \$67,739.00 for construction of recreational swings at Lake Fayetteville Park, and authorizing a ten percent (10%) project contingency.
6. **Multi-Craft Contractors, Inc.:** A resolution authorizing a contract with Multi-Craft Contractors, Inc. in the amount of \$26,290.00 for one (1) HVAC unit and associated equipment for the Yvonne Richardson Center, and approving a ten percent (10%) project contingency.
7. **Amend Resolution No. 04-10:** A resolution amending Resolution No. 04-10 and approving an agreement with Arkansas Western Gas Company in the amount of \$127,675.44 for relocation of gas lines and appurtenances as part of the RSA Runway 16 Improvement Project at the Fayetteville Executive Airport.
8. **Fayetteville Police Department Policies:** A resolution approving Fayetteville Police Department Policies 1.3.4 Less Lethal Weapons, 41.1.1 Patrol, and 61.1.12 Police Traffic Radar Operation.
9. **2011 ADEQ Recycling Grant:** A resolution authorizing application for a 2011 Arkansas Department of Environmental Quality Recycling Grant through the Boston Mountain Solid Waste District in the amount of \$23,500.00 to fund a pilot apartment recycling container.
10. **Arkansas Highway and Transportation Department Contract:** A resolution authorizing a contract with the Arkansas Highway and Transportation Department for design of water and sewer relocations relating to the widening of Crossover Road (State Highway 265) between Joyce Boulevard and Albright Road.
11. **Beaver Water District:** A resolution authorizing a contract with the Beaver Water District for land application disposal of water treatment residuals.

B. Unfinished Business:

- ✓ **Amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment:** An ordinance to amend §95.05 Regulation of Smoking in Most Public Places and Places of Employment of the Fayetteville Code by removing the exemption for bars. *This ordinance was left on the First Reading at the May 3, 2011 City Council meeting. This ordinance was left on the Second Reading at the May 17, 2011 City Council meeting.*

Left on the Second Reading

C. New Business:

- ✓ **RZN 11-3799 (Corner of Mount Comfort and Oakland Avenue/Oakland Courts):** An ordinance rezoning that property described in rezoning petition RZN 11-3799, for approximately 1.43 acres, located at the corner of Mount Comfort Road and Oakland Avenue from RMF-24, Residential Multi-Family, 24 units per acre to CS, Community Services.
- ✓ **VAC 11-3837 (1849 South Garland Avenue ROW Vacation):** An ordinance approving VAC 11-3837 submitted by Morgan Hooker for property located at 1849 South Garland Avenue to vacate a portion of an un-constructed right-of-way, a total of 258 square feet.
- ✓ **Bid #11-37 Dean Crowder Construction, Inc.:** A resolution awarding Bid #11-37 and authorizing a contract with Dean Crowder Construction, Inc. in the amount of \$3,815,173.70 for construction of improvements to Cato Springs Road and Razorback Road to School Avenue, approving a five percent project contingency, and approving a budget adjustment.

City Council Tour: Monday, June 6, 2011 at 4:30 p.m. The Council will tour the Westside Wastewater Treatment Plant and Woolsey Prairie.

Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

Handed out at Agenda Session 5/31/11

2011 Sidewalk Project List

Sidewalks Not Constructed in 2011

Location	From	To	Sidewalk Length
1 Eden Cir.	Cul-de-sac	Clover Dr.	250
1 Huntsville Rd.	Blair Ave.	Morningside Dr.	500
1 Spring St.	College Ave.	Fletcher Ave.	2,185
2 Ash St.	Rayview Dr.	Walnut Ave.	480
2 Davidson St.	Park Ave.	College Ave.	850
2 Forest Ave.	Louise St.	Maple St.	1,350
2 Gregg Ave.	Sycamore St.	Spruce St.	725
2 Lafayette St.	Washington Ave.	Willow Ave.	100
2 Lawson St.	Porter Rd.	Sang Ave.	520
2 Oakland Ave.	Sycamore St.	Mt. Comfort Rd.	2,250
2 Old Wire Rd.	Broadview Dr.	Broadview Dr.	350
2 Park Ave.	North St.	Prospect St.	1,275
2 Sycamore St.	College Ave.	Walnut Ave.	300
2 Walnut Ave.	Ash St.	Sycamore St.	1,100
2 Willow Ave.	Maple St.	Rebecca St.	1030
3 Mission Blvd. (N)	Vandergriff Dr.	Covington Park	2,300
4 Center St.	Hartman Ave.	Razorback Rd.	825
4 Salem Rd.	Old Town Ln.	Earnhart Dr.	460
4 Salem Rd.	Bentgrass Rd.	Clabber Creek Blvd.	317

Sidewalks to be completed in 2011

1 Morningside Dr.	Fairlane St.	Fifteenth St.	2,000
1 Morningside Dr.	Huntsville Rd.	Fairlane St.	610
2 Prospect St.	Frisco Ave.	Gregg Ave.	225
2 Mt. Comfort Rd.	Lewis Ave.	Stephens Ave.	1100
2 Mt. Comfort Rd.	Stephens Ave.	Garland Ave.	1,824
3 Hilldale Dr.	Loxley Ave.	Stanton Ave.	388
3 Loxley Ave.	Rolling Hills Dr.	Hilldale Dr.	1,659
3 Stanton Ave.	Hilldale Dr.	Old Wire Rd.	1,490
4 Cleveland St.	Oliver Ave.	Hall Ave.	720
4 Razorback Rd.	Cleveland St.	Maple St.	1,310
4 Fifteenth St.	Beechwood Ave.	Razorback Rd.	1,050

Ozark Regional Transit Grant Project

Proposed 2011 Overlays to be completed

Street	From	To	Length	Wards
East Ave.	Fourth St.	South St.	334	1
Haddon Ave.	Lester St.	Dead End	244	1
Lester	School Ave.	Haddon Ave.	333	1
Paradise Ln.	Huntsville Ave.	Cul de sac	1,157	1
Thirteenth St.	Ellis Ave.	School Ave	1204	1
Thirteenth St.	Block Ave.	College Ave.	740	1
Mountain St.	College Ave.	County Ave.	182	1
Calvin St.	Knox Dr.	Old Wire Rd.	858	2
Delaware Ave.	Stone St.	Dead End	900	2
Knapp Dr.	Mcconnell Ave.	Gate	1,627	2
School Ave.	Spring St.	Center St.	728	2
Elaine Ave.	Concrete	Sweetbriar Dr.	2,235	3
Hilldale	Loxley Ave.	Stanton Ave.	716	3
Joyce	Crossover	City Limits	2356	3
Oakcliff	Loxley Ave.	Stagecoach Dr.	693	3
Sweetbriar Dr.	Old Missouri Rd.	Elaine	1,636	3
Bogan Dr.	Fifty-fourth Ave.	Dead End	600	4
Fifty-fourth Ave.	Wedington Dr.	Persimmon St.	2,600	4
One Mile Rd.	Hwy 62	Old Farmington Rd.	748	4
Persimmon St.	Divit Dr.	Broyles Ave.	1,500	4
Sandra St.	One Mile Rd.	Old Farmington Rd.	687	4
Treat St.	Razorback Rd.	Cul-de-sac	881	4
Velda Ct.	One Mile Rd.	Cul-de-sac	325	4

Not to be completed

Street	From	To	Length	Wards
Barton Ave.	Walker Rd.	Huntsville Rd.	509	1
Coach	Sunraise Mountain	Dead End	757	1
Dunn Ave.	National St.	Eleventh St.	453	1
Jackson Dr.	Jackson Dr.	Rockwood Tr.	475	1
Missouri Way	Oklahoma Way	Dogwood Ln.	1,012	1
Oklahoma Way	Missouri Way	Texas Way	1,200	1
Rock Ave.	Willow Ave.	Walker Rd.	886	1
Texas Way	Oklahoma Way	Skyline Dr.	1,025	1
Walker Rd.	Willow Ave.	Rock St.	1,187	1
Ash St.	Rayview Dr.	Walnut Ave.	480	2
Center St.	Church Ave.	Block Ave.	363	2
East Ave.	Mountain St.	Rock St.	347	2
Lawson St.	Porter Rd.	Sang Ave.	1,463	2
Leverett Ave.	Poplar St.	North St.	3,931	2
Meadow St.	Gregg Ave.	West Ave.	354	2
Mountain St.	East Ave.	College Ave.	453	2
Sheridan Ave.	Overcrest St.	Elm St.	548	2
Sycamore St.	College Ave.	Walnut Ave.	600	2
Walnut Ave.	Ash St.	Sycamore St.	1,074	2
Windy Hill Dr.	Juneway Terr.	Sheridan Ave.	576	2
Alice St.	Nolan Ave.	Martin Ave.	449	3
Bertha St.	Lee Ave.	Stubblefield Rd.	788	3
Langston Pl.	Summerhill Dr.	Cul de Sac	109	3
Market Ave.	Parking Lot	Rolling Hills Dr.	479	3
Martin Ave.	Alice St.	Bertha St.	690	3
Masonic Dr.	Nottingham Ct.	Cul de Sac	1,395	3
Nolan Ave.	Alice St.	Bertha St.	609	3
Oxford Pl.	Summerhill Dr.	Cul de Sac	187	3
Stearns St.	Joyce Blvd.	Dead End	850	3
Summerhill Dr.	Masonic Dr.	Stubblefield Rd.	923	3
Wimbledon Pl.	Summerhill Dr.	Cul de Sac	160	3
Windsor Pl.	Summerhill Dr.	Cul de Sac	140	3
Zion Rd.	Randal Rd.	Taliesin Ln..	1,546	3
Arbuckle Ln	M. L. K. Blvd.	Dead End	277	4
Gabbard Dr.	Mitchell St.	Dead End	387	4
Kaywood Ln.	Gabbard Dr.	Dead End	296	4
Lancelot Ave.	Wedington Dr.	Dead End	566	4
Maple St.	Sang Ave.	Dead End	1,245	4
Valley View Dr.	Wedington Dr.	Valley View Dr.	660	4
Sang Ave.	Cleveland St.	Wedington Dr.	1,305	4

City of Fayetteville
Service Requests for Drainage Maintenance

Service Requests for drainage maintenance sorted by ward and priority

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May 31, 2011

Ward	Affected Addresses		Problem Description	Comments	Est Cost	Est Time	Priority	
1	449	N	Assembly Dr	Erosion under roadway and ditch line.	Rebuild shoulder, shape ditch 1,600 ft.	\$7,500	10	High
1	1115	S	Baldwin	Flooding in house	Inspect area for possible improvements	\$0	0	High
1			Buchanan & Stone	Ditches need to be cleaned	Clean ditches	\$0	1	High
1			Hope	Street is directing water their driveway since the street was resurfaced.	Mill and relay asphalt	\$4,000	1	High
1	1737	N	Applebury Dr.	Flooding in back yard, below the drainage discharge points on Viewpoint Dr.	Drainage System for entire hillside area needed.	\$10,000	10	Med
1	1725	E	Clark St	Drain at Ainsworth and Clark overflowing and caught with debris, continual problem	Clean drain	\$0	0.5	Med
1	733	N	Crest	The area collecting storm water in the yard is lower than the outlet culvert under Rockwood Trail	Lower culver under street	\$20,000	2	Med
1			Gregg & Center	Logs under bridge need to be cleared	Clean out	\$0	0.5	Med
1			Huntsville & MLK	Flooding	Flooding	\$0	0	Med
1	2832	E	Hyland Park Rd	Basement flooding	Construct inlet box	\$2,500	3	Med
1	1515	N	Lunsford	Runoff into property	Add curb to street (350 ft)	\$4,000	5	Med
1	704	E	Maple	Erosion ditch and roadway	Clean and shape ditch	\$0	1	Med
1	203	N	Oklahoma Way	Ditch needs to be cleaned; pipes clogged	Clean ditch, replace driveway pipes	\$1,000	5	Med
1	217	E	Oklahoma Way	Dip Ditch	Same as 203 Ok Way	\$0	0	Med
1	1009	E	Rockwood	Chucks of road coming off going into yard	Replace curb, overlay 1500 ft	\$60,000	60	Med
1	356	W	Skelton St.	Culvert Clogged	Clean drain	\$0	0.5	Med
1	550	W	Skelton St.	Street flooding/Undersized Structures	Evaluate structure size	\$0	1	Med
1	530	N	Vinson Dr	Clean ditches	Clean ditch	\$0	1	Med
1	658	W	15th	Drain right at curve clogged, wants screen over to prevent debris pileup	Clean drain	\$0	0.5	Routine
1			1719 S Garland	Culvert clogged	Clean pipe	\$0	0.5	Routine
1	408	N	Andrew	Assembly drive runoff destroying driveway	Repair washout - will require drainage project to control water	\$100	0.5	Routine
1	1625	E	Anson	Runoff going into garage at address, citizen believes drainage pipe needs to be cleaned and box inlet is collapsed	Box has been cleaned, need to repair	\$500	5	Routine
1	1438	W	Cato Springs	Ditches need to be cleaned	Clean ditch	\$0	1	Routine
1	597	W	Cherry	Ditches clogged	Clean ditch	\$0	0.5	Routine
1	1101	S	Curtis	Ditch needs to be cleaned	Clean ditch	\$0	1	Routine
1	1235	S	Duncan Ave	Culvert clogged	Clean pipe	\$0	0.5	Routine

City of Fayetteville
Service Requests for Drainage Maintenance

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May 31, 2011

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1	521	N	Fallin	Water flooding	Add curb to street (850ft)	\$10,500	10	Routine
1	565	N	Fallin	Clean Ditches	Clean ditch	\$0	1	Routine
1	2925	S	Haddon Ave	Culvert clogged with debris	Clean drain	\$0	0.5	Routine
1	1397	E	Huntsville Rd	Reshape ditch	Clean ditch	\$0	1	Routine
1			Huntsville Rd. near Mill Ave.	Debris in channel - Bridge plugged	Clean out	\$0	0.5	Routine
1	2148	S	Laverne Ave	Culvert damaged and collapsed	Owner pay for pipe, replace	\$250	1	Routine
1	1616	E	Shadowridge	Flooding flows into basement	Clean drain pipe	\$0	0.5	Routine
1			Tallgrass & Talon	Water flow from Talon causes flooding on Tall grass	Evaluate	\$0	0	Routine
1	2695	E	Travis	Drain pipe is not complete water empties into back yard	Clean ditch	\$0	1	Routine
1	1798	N	Viewpoint	Ditch across street needs to be cleaned	Clean ditch	\$0	1	Routine
1		S	Walker Rd.	Culvert clogged	Clean pipe	\$0	0.5	Routine
1	1236		Warford Dr	Wants culvert put in	Waiting on citizen to pay for pipe	\$250	0.5	Routine
1	1248	S	Warford Dr	Ditch needs to be cleaned	Regrade ditch, replace driveway pipes	\$250	0.5	Routine
1	1309	S	Warford Dr	Culvert filled completely and flooding building	Regrade ditch, replace driveway pipes	\$250	0.5	Routine
1			Warford Dr & 13th	Culvert too small overflows when rains	Regrade ditch, replace driveway pipes	\$250	0.5	Routine
1	1134		Washington Ave	Culvert clogged	Clean pipe	\$0	0.5	Routine
1			Washington Ave Bridge # 19605	Drift Accumulation	Clean channel	\$0	1	Routine
1			Willow & 6th	Flooding	Flooding	\$0	0	Routine
1	3130	E	Huntsville	Ditch is constantly full of water	Refer to Highway Dept for cleaning	\$0	0	Routine
1	1244	N	Mission	Drains clogged	Refer to Highway Dept for cleaning	\$0	0	Routine
1			Mission east of Old wire	Street flooding. (State Hwy.) Capacity of drainage inadequate.	Refer to Highway for evaluation	\$0	0	Routine
1	1724		Applebury Pl.	Ravine clogged and floods yard	Private land	\$0	0	N/A
1	2501		Armstrong	Driveway washed-out	Repaired washout, owner needs to replace pipe	\$5,000	2	N/A
1	970	S	Baldwin	Extend culvert to direct flow to creek	No work by city	\$0	0	N/A
1	3527	W	Earnhardt	Drainage inlet clogged - wetland area water level high	Private, POA maintenance	\$0	0	N/A
1	2747	E	Londonderry	Flooding in house	Flooding, evaluate	\$0	0	N/A
1	487	S	Pierremont Dr	Drainage ditch behind home	Move utilities and reshape ditch	\$0	1	N/A
1			Revere	This property receives drainage from the hillside. The property owner has added landscaping that doesn't allow for a clear path of the water through his property	Diverting at the street may be a possibility but more likely the water should continue to pass through this property.	\$0	0	N/A

City of Fayetteville
Service Requests for Drainage Maintenance

Service Requests for drainage maintenance sorted by ward and priority

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May 31, 2011

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1	2149	E Camelot	Water runoff further up hill eroding yard	Private	\$0	0	N/A
1	1215	Bailey	Culvert broken, hole in driveway	Reset pipe Done 5-26-11	\$0	0	Complete
1	1215	W Bailey	Drainage issues caving in driveway	Reset pipe Done 5-26-11	\$0	0	Complete
1		Crossover & Mission	Large drain near Penguin Ed's has large tree in drain	Done	\$0	0	Complete
1	512	Prairie	Culvert Clogged	Done	\$0	0	Complete
1	2080	S Pumpkin Ridge	Culvert Clogged and erosion	Done	\$0	0	Complete
Ward 2							
2	142	W Cleburn	Ditch and pipes clogged	Install 300' pipe, 2 inlets	\$15,000	10	High
2	685	N Leverett	Drainage on sidewalk a issue	Rebuild alley and add drainage	\$12,125	10	High
2	970	N Rush Dr.	Culvert collapsing	Install pipe in driveway	\$500	1	High
2	980	Rush Dr.	Collapsed Pipe downstream of Rush needs replacement, acquire easment before work can take place	Acquisition of Easement and pipe replacement	\$4,000	2	High
2	980	N Rush Dr.	Basement flooding	Install pipe construct inlet boxes	\$8,500	8	High
2	423	E Lafayette	Water from street flooding yard	Installation of Drop Inlet/DW Reconstruction	\$1,250	3	Med
2	425	E Lafayette	Drainage insufficient washes out driveway often	Install drop inlet and pipe	\$1,250	3	Med
2	1408	N Addington	Culvert being washed away	Asphalt patch	\$50	0.5	Routine
2	1910	N Austin	Clogged culvert under roadway	Clean drain	\$0	0.5	Routine
2	143	E Cleburn	Culvert collapsing and needs to be replaced	Replace pipe	\$15,500	5	Routine
2	550	W Dickson	Culvert clogged at train tracks	Clean out	\$0	0.5	Routine
2		Dickson & Olive	Culvert clogged causing flooding in street	Repair shoulder of street	\$250	1	Routine
2		Frisco & Gregg Ave.	Street Flooding- Closed street	Low water bridge	\$0	1	Routine
2		Frisco at Scull Creek	This is a low water crossing which floods often.	Construction of new bridge and approaches.	\$0	0	Routine
2		Garland & Lawson	Large limbs in ditch	Clean ditch	\$0	0.5	Routine
2	603	N Highland Ave	Street Washed out	Repair washout	\$500	1	Routine
2	1718	W Lawson	Creek filled with debris from sidewalk diverting water	Clean drainage channel	\$0	3	Routine
2		Rock & Block	Vehicle hit drainbox	Replace top of drainbox	\$250	3	Routine
2	900	E Ash	Runoff from hill going under house and causing damage	Private	\$0	0	N/A
2	2232	N Briarwood	Flooding in home	Replace curb and drive approach	\$1,500	3	N/A
2	310	E Cleburn	Private work	No work by city	\$0	0	N/A
2		Cornerstone Apt.	Flooding of private street connection between apartments complexes.	Private	\$0	0	N/A
2	111	W Ila	Drainage Blocked by new fence	Private	\$0	0	N/A
2	1209	N Oakland	Creek bank eroded and spilling over property into roadway	Private	\$0	0	N/A
2	605	N Park	Basement flooding	Private	\$0	0	N/A
2	1359	N Stephens	Drainage issue	Meet and evaluate	\$0	0	N/A

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May 31, 2011

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2	747	N	Washington Ave	Drain clogged between 747 and 735; off of ROW	Would require cleaning ditch on private property	\$0	0	N/A
2	747	N	Washington Ave	Culvert Clogged	Clean pipe			N/A
2			Oakland & Hughes	Erosion ditch and roadway	Done	\$0	0	Complete
2	254	W	Prospect	Pipes blocked with debris.	Done	\$0	0	Complete
2			Rebecca & College	Ditch clogged with debris	Done	\$0	0	Complete
2	1756	N	Woolsey	Culvert Clogged	Done	\$0	0	Complete
Ward 3								
3	1669	N	Charlee Ave	Flooding	Evaluate	?	?	High
3	2690	N	Colette	Culvert isn't big enough to handle water and it floods her garage	Replace pipe	\$500	1	High
3	1671	N	Ramsey	Street Flooding-inadequate culvert capacity	Install box culvert	\$15,000	5	Med
3			Skillem Rd immediately east of Crossover	Erosion behind southeast wing wall	Backfill washout	\$500	1	Med
3			Appleby Rd. Bridge # x0529	Drift Accumulation; gravel Accumulation	Clean channel	\$0	1	Routine
3			Drake & Garland	Flooding has washed out driveway and gravel	Replace driveway tile	\$350	0.5	Routine
3	2205	N	East Oaks	Ditch needs to be cleaned	Clean drainage channel	\$0	5	Routine
3	2088	E	Jonquil Rd	Culvert clogged	Clean pipe	\$0	0.5	Routine
3	1027	E	Oaks Manor	Standing water on street	Yard behind curb stays wet install French drain	\$500	3	Routine
3	2117	N	Old Wire Rd	Ditch clogged with debris	Clean drain	\$0	0.5	Routine
3			Old Wire Rd. Bridge # x0657	Drift Accumulation	Clean channel	\$0	1	Routine
3	533	E	Redbud	Ditch clogged with debris	Clean ditch	\$0	1	Routine
3	332	W	Redwing Cir	Storm drain overflowing and flooding yard	Clean out	\$0	1	Routine
3	2625	N	Stagecoach	Flooding Into yard	Replace curb (1350 ft, 10 drives)	\$25,000	20	Routine
3	1625	E	Wellsley	Drain is backing up into street	Clean out	\$0	0.5	Routine
3			Ranch & Mission	Ditch needs to be cleaned gravel in ROW	Refer to Highway Dept	\$0	0	Routine
3	5091	E	Boulder	Debris at bottom of drive, wash out	Private street	\$0	0	N/A
3	3244	N	College Avenue	Runoff from flooding at Firestone	Private	\$0	0	N/A
3			Gregg & Township	Flooding	Flooding	\$0	0	N/A
3	1648	E	Mission	Clean out retention pond	Private	\$0	0	N/A
3	3497	N	Sandpiper	Creek erosion	Private	\$0	0	N/A
3			Century Drive	Culvert clogged	Clean drain	\$0	0	Complete
3			Century Drive	Stream inlet is blocked at right of way	Private	\$0	0	Complete
3	2572	E	Ferguson Ave	Need to check drainage pipe	Done	\$0	0	Complete
3			Old Wire & Oak Bailey	Ditch filled with water	Done	\$0	0	Complete

City of Fayetteville
Service Requests for Drainage Maintenance

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May 31, 2011

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3	2541		Old Wire Rd	Ditch drainage inadequate and/or clogs frequently; houses to west are below Old Wire and are flooded when ditch capacity is exceeded	Done	\$0	0	Complete
3	515	N	Redbud	Drainage is directed from street and causes serious flooding	Done	\$0	0	Complete
3	3209	E	Zion	Culvert bent	Done	\$0	0	Complete
3	3209		Zion	Culvert clogged	Done	\$0	0	Complete
Ward 4								
4	824	N	Hall	Driveway flooding	Add inlet and pipe, expand box intakes	\$7,500	5	High
4			Jeremiah & Emil	Street buckling due to wash out	Repair street failure	\$2,500	3	High
4	401	S	Lewis	Flooding in Bedroom	Clean drainage channel	\$0	2	High
4	106	N	Palmer	Flooding in house	Install pipe	\$2,250	2	High
4	916	N	Sang	Ditches overflow on to street on east side and floods garage at address	Build inlet box	\$2,000	3	High
4			Sang & Ora	Flooding on street	Build inlet box	\$0	0	High
4	1940		Custer	Bank erosion on creek is cutting into yard	Stabilize bank to stop erosion	\$1,000	5	Med
4	668	N	Gray Ave	Drainage issue; extensive	Will require drainage project to control	?	?	Med
4	1920	W	Kaywood Ln	Street Washed out	Repair washout	\$500	1	Med
4	5900		Michael Cole Drive	Road drainage is undersized since Wedington widening increased flow to area	Replace pipe under road in two areas.	\$2,500	2	Med
4	3064		Old Farmington	Culvert too small overflows when rains	Replace pipe	\$6,200	5	Med
4	2315	W	Ora	Flooding in home	Low area	\$0	1	Med
4	2887	N	Pyrite	Pipe in SW corner too small to handle flow	Evaluate	\$0	0	Med
4	2456	N	Southwick Dr	Drain clogged after storms; citizen requests permanent solution to flooding; continual problem	Improper design, install new inlet and pipe	\$5,000	3	Med
4			54th Ave. Bridge # 21307	Drift Accumulation	Clean channel	\$0	1	Routine
4			59th & Wedington	No drainage system flooding	Evaluate	\$0	0	Routine
4	925	N	Betty Jo	Drainage issues at 925 and 927 floods often	Wash drain pipe	\$0	0.5	Routine
4			Bridgeport Dr. Bridge #21936	Drift Accumulation	Clean channel	\$0	1	Routine
4			Camellia Ln. Bridge #21877	Drift Accumulation	Clean channel	\$0	1	Routine
4	27	N	Court	Culverts on west side of street completely clogged	Replace pipe, clean ditch	\$5,600	5	Routine
4			Hotz & Thomas	Drain clogged	Clean out pipe	\$0	1	Routine
4	3970	W	MLK	North fork of Farmington Creek where it goes under Camilla	Clean culvert	\$0	0.5	Routine
4	1520	W	Nettleship	Clean ditch	Clean ditch	\$0	0.5	Routine
4	5206	W	Persimmon	Wants culvert put in	Waiting on citizen to pay for pipe	\$350	0.5	Routine
4		W	Persimmon	Flooding / Street under water at low bridge.	Replace bridge	\$0	0	Routine

City of Fayetteville
Service Requests for Drainage Maintenance

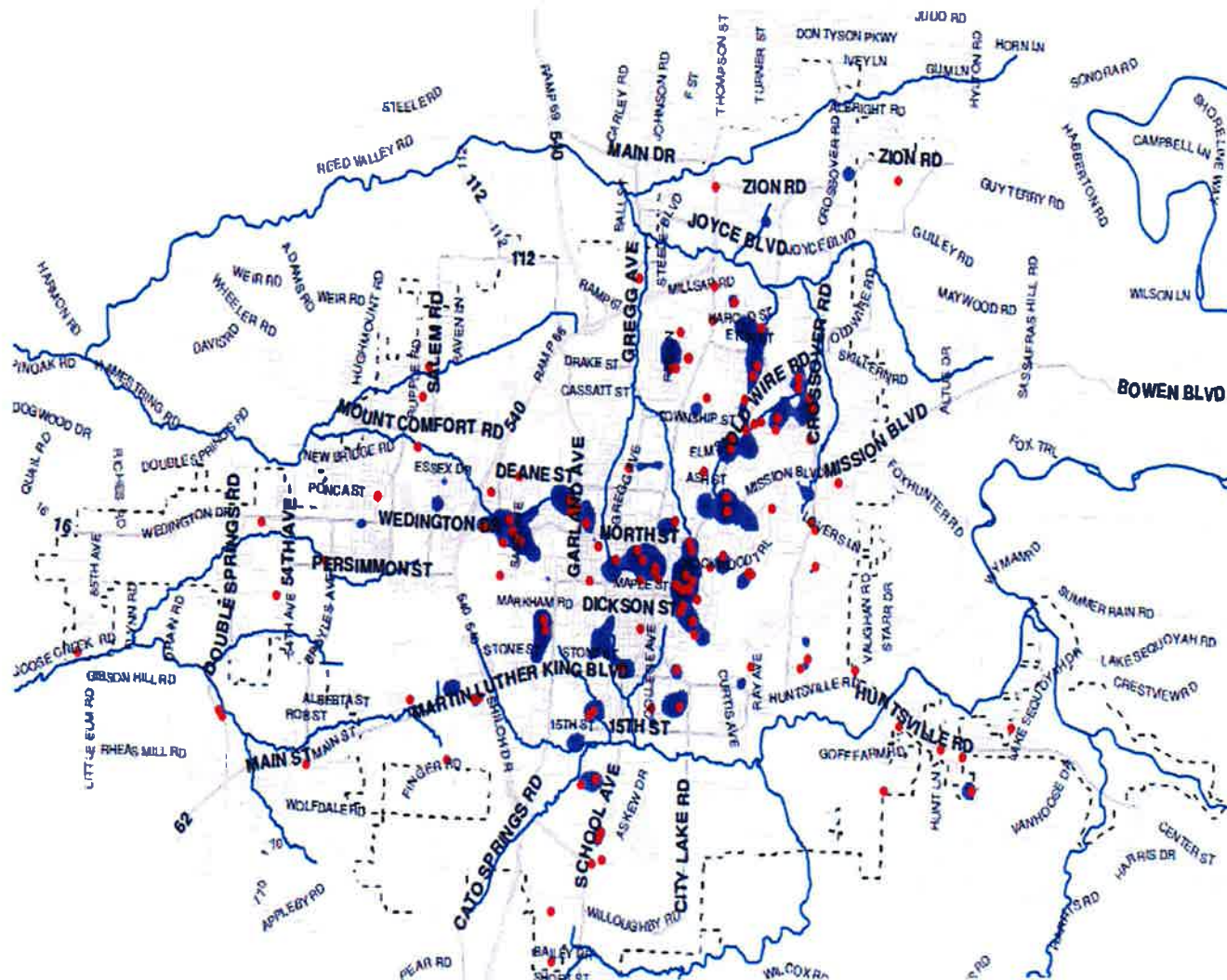
Service Requests for drainage maintenance sorted by ward and priority

Yellow highlight indicates Service Request may not be City responsibility i.e. State Highway or private responsibility

May 31, 2011

Ward	Affected Addresses		Problem Description	Comments	Est Cost	Est Time	Priority
4		Raven	Ditches clogged	Clean ditch	\$0	1	Routine
4		Ripple Rd. Bridge #17407	Erosion under concrete footing	Pour concrete to fill void	\$1,000	1	Routine
4	4450	W Sandingham St	Mosquito infestation due to standing water	Low area	\$0	0	Routine
4	221	N Thomas Ave	Culvert Clogged	Clean drain	\$0	0.5	Routine
4	636	N Waterman	Clogged pipes	Clean pipes	\$0	0.5	Routine
4	3499	W MLK	Ditches clogged	Refer to Highway Dept.	\$0	0	Routine
4	2589	W MLK (In front of Denny's)	Drainage issue water doesn't go into system but flows on street	Refer to Highway Dept.	\$0	0	Routine
4		Smokehouse & 6th	Flooding in Street	Refer to Highway Dept.	\$0	0	Routine
4	3727	W Brightwater Pl	Drainage at citizen's home is insufficient	Private	\$0	0	N/A
4		Clabber Creek Subdivision	Poor drainage from pond to Clabber Creek	Private	\$0	0	N/A
4	5361	W Clevenger	Creek filled with debris flooding at address	Private	\$0	0	N/A
4	5411	W Clevenger	Possible Beaver Dam in Creek	Private	\$0	0	N/A
4	5413	W Clevenger	Creek needs to be cleaned out	Private	\$0	0	N/A
4	1854	W Custer	Culvert collapsed and clogged- Private needs to be replaced	Private	\$0	0	N/A
4		Custer Ln	Flooding	Drain outlet blocked on private property	\$0	0	N/A
4	3603	W Marsh St	Drainage issue in area-- wetland, water level is too high	Private	\$0	0	N/A
4	2575	W MLK	Flooding in culverts clogged	May be private	\$0	0	N/A
4	2026	W Stone	Citizen concerned with Runoff	No work by city	\$0	0	N/A
4		54th & Tackett	Storm Drain Clogged	Done	\$0	0	Complete
4	1232	S Dinsmore	Culvert and ditches clogged	Done	\$0	0	Complete
4	3425	Dinsmore	Culverts need to be cleared	Done	\$0	0	Complete
4		Hidden Creek & Morning Mist	Manhole came off	Done	\$0	0	Complete
4	1149	W Indian	Ditch near home is filled with debris	Done	\$0	0	Complete
4	2975	W Old Farmington Rd	Clean ditch on both sides of driveway and unclog culvert	Done	\$0	0	Complete
4		Razorback & Mitchell	Clog near fence line	Done	\$0	0	Complete
4		Sellers Rd. Bridge #19973	Drift Accumulation	Done	\$0	0	Complete
				Est Totals	\$265,275	278	

Drainage Related Service Requests



Red – Service Requests April 20 to present

Blue Shading – High Density areas for Service Requests since 2006

City of Fayetteville Drainage Improvement Project List

DRAFT

Projects ranked by priority per staff

Yellow highlight indicates Service Request may not be City responsibility i.e. State Highway or private responsibility

May 31, 2011

Priority	Ward	Location Description	Project	Stream Name	Problem Description
1	2	Maple, Mission, Olive, Walnut, Gunter Area	Upper Scull Creek Project Group	Scull Creek (upper)	Drainage system in area inadequate.
2	3	Rolling Hills, Eton, Stanton, Hilldale, Oakcliff, Loxely, Woodbrook Area	Missouri Creek Project Group	Missouri Creek	Flooding/Debris
3	4 and 2	Lewis, Cleveland, Ora, Sang, Wedington, West End Area	Upper Hamestring Project Group	Hamestring Creek	Flooding due to inadequate drainage and lack of capacity in channel
4	2	Scull Creek corridor from North to Poplar	Scull Creek Project	Scull Creek	Street flooding-Water from apartments / private property runs into street and overloads system.
5	1	Elmhurst, McClinton, Fairlane, Janelle Area	McClinton Project Area	Town Branch	Street flooding Inadequate drainage structures, water overflows pipes and floods street. Drainage system needs upgrade
6	1	1757 N Crossover		Flynn Creek	Creek flooding to storage buildings
7	4	MLK & Camelia		North Fork Farmington Branch	Street flooding
8	1	11th, Ellis, Duncan Area	Lower College Branch Group	College Branch	Flooding in yard from creek channel
9	3	Primrose		Niokaska Creek	Culvert overflows and floods down driveway to house
Medium	2	Arthur Hart and Megan Drive		Hamestring Creek	The culvert under I-540 is undersized causing backup of water
Medium	2	Park near Wilson Park		Scull Creek	Basement flooding
Low	1	15th near Dunn		College Branch	Street flooding (AHTD)
Low	1	Mission east of Old wire		Niokaska Creek	Street flooding. (State Hwy.) Capacity of drainage inadequate.
Low	1	Skelton Street		Town Branch	Street flooding/Undersized Structures
Low	1	Garland, Stirman, Greathouse Spgs. Park Area		Town Branch at Cato Springs	Natural creek channel prone to flooding.
Low	1	River Meadows-Goff Farm Rd. to Doral		West Fork	Street Flooding-Heavy rains overloaded drainage system.
Low	1	Danita Street		West Fork	This street has no drainage

Low	1	Country Ridge		West Fork	Offsite Drainage from the south flows through 3 yards to Mally Wagnon Road. Flat grades create ponding issues
Low	1	Roberts Road		West Fork	Flooding in low lying area
Low	2	Cornerstone Apt.		Hamestring Creek	Flooding of private street connection between apartments complexes.
Low	2	Frisco at Scull Creek		Scull Creek	This is a low water crossing which floods often.
Low	3	Magnolia Drive		Niokaska Creek	Eroding bank in drainage easement
Low	4	Persimmon at Owl Creek		Owl Creek	Flooding / Street under water at low bridge.
done	3	Boxwood		Niokaska	Drainage through backyards causing erosion
done	4	Red Oak Park		Hamestring Creek	Erosion through park and downstream property