

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – 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
June 7, 2011**

A meeting of the Fayetteville City Council was held on June 7, 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, City Attorney Kit Williams, 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

Agenda Additions: None

Consent:

Approval of the May 17, 2011 City Council meeting minutes.

Approved

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.

Resolution 83-11 as recorded in the office of the City Clerk

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.

Resolution 84-11 as recorded in the office of the City Clerk

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.

Resolution 85-11 as recorded in the office of the City Clerk

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.

Resolution 86-11 as recorded in the office of the City Clerk

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.

Resolution 87-11 as recorded in the office of the City Clerk

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.

Resolution 88-11 as recorded in the office of the City Clerk

Fayetteville Police Department Policies: A resolution approving Fayetteville Police Department Policies 1.3.4 Less Lethal Weapons, 41.1.1 Patrol, and 62.1.12 Police Traffic Radar Operation.

Resolution 89-11 as recorded in the office of the City Clerk

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.

Resolution 90-11 as recorded in the office of the City Clerk

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.

Resolution 91-11 as recorded in the office of the City Clerk

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

Resolution 92-11 as recorded in the office of the City Clerk

Alderman Petty moved to approve the Consent Agenda. Alderman Gray 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. This ordinance was left on the Second Reading at the May 17, 2011 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Gray: Tonight we are going to be making one of the most important votes that we have ever made as a Council. I want to remind you of the poll that was taken long before we started this discussion which stated that 64% of the voters said they prefer we not have smoking in bars. We need to remember that as we listen to the facts, make our decision, and vote. We are making a decision for the health of the people of Fayetteville. None of us wants our revenue to go down. I do not have any reason to think that our nonsmoking bars are going to lose revenue.

Alderman Ferrell asked Alderman Gray have you recently received any research that did not come from the Smoke Free Coalition but from other sources that illustrated an impact on places that have gone smoke free.

Alderman Gray: I don't think that I have.

Alderman Ferrell: I recently received several from other businesses and I wondered if you had seen them.

Joe Maynard, resident of Ward 1 stated I believe you are elected to protect the people's liberty. This city does some very good things. We have a very tolerant city. Regulating private associations and the culture of the city is something the city does not do well. We all agree smoking is harmful. The city has the responsibility to protect citizens from unknown hazards. A legal activity in a bar should not be regulated.

Kim Agee, resident of Ward 3 spoke in support of smoke free Fayetteville and discussed the affects of second hand smoke. He spoke in favor of the ordinance.

Ashley McCue, a Fayetteville resident stated we don't know what causes cancer. There is very little reason to suspect that an occasional exposure to second hand smoke does the same kind of damage as smoking. She spoke against the ordinance.

Alderman Lewis: You mentioned you thought that the nonsmoking restaurants were a good thing. Did you live here during that debate?

Ashley McCue: I lived in Ohio where smoking is banned in all public places. One of the things I love about living in Fayetteville is that it seems to take into account the wants and needs of all the citizens in the compromise that it has now.

Alderman Ferrell: How long has it been since you moved here from Ohio?

Ashley McCue: Five years.

Alderman Ferrell: How long ago was the smoking ban passed in Ohio?

Ashley McCue: It passed in 2006.

Alderman Ferrell: I was looking at some studies and some of the data that I got stated that in Ohio it had a negative impact on the entertainment industry and the tax base. Would you care to comment on whether that is accurate?

Ashley McCue: In my experience it was very negative. I and most of my friends are smokers so it gave us one more reason to stay home and the entertainment industry suffered a lot.

Alderman Gray: Do you know what percentage of the Fayetteville citizens smoke?

Ashley McCue: No Ma'am.

Alderman Gray: It's 15%. 85% do not smoke.

Ashley McCue: What percentage of Fayetteville's citizenry is a bar goer?

Alderman Gray: I have no idea but I know that we would like for 100% of bar goers to be able to go to 100% of the bars.

Ashley McCue: It might be worth looking into as to what percentage of the population actually goes to bars and what percentage of the bar going population is smoking and nonsmoking. She discussed the affect this will have on the smoking population.

Collin Turner, a Ward 2 resident pointed out dangers in many other areas of life. I don't know the economics of it all but I think it's going to balance out in the end.

Matt Marshall, a bartender stated smoking is dangerous. The people that work in bars understand that danger. These jobs are not easy to come by. We have no illusions of the dangers associated with that. He spoke against the ordinance.

Alderman Gray: Do you know how many bars are smoking?

Matt Marshall: I think it's 19 of the 32 that have private club licenses.

Alderman Gray: Do you feel like that is going to be a huge detriment to Dickson Street?

Matt Marshall: Yes, it's going to make the bars go out of business. People like to go out and smoke and drink. It's all about choices.

Alderman Adams: Have you worked at Mickey Finn's on a night when the management of the bar decided to voluntarily go smoke free to accommodate a group who wouldn't come without it being smoke free?

Matt Marshall: Yes, for a law school party.

Alderman Adams: So when there is a group that wishes to have an event at a place that is smoke free your very work place decided that it was economically to its benefit to go along with that. When you said you believe this puts people out of work or hurts jobs, you benefited from that very group that wouldn't come unless it was smoke free.

Matt Marshall: That was one day.

Alderman Adams: Do you have any idea about the economic benefit if you did that regularly?

Matt Marshall: I have talked to some of the regulars and a lot of the older guys are not going to come out anymore. They are going to sit at their houses and drink. We are trying to make money and if a group wants to come in and give us money to be smoke free for one night that is fine. That is my boss's decision to make.

A citizen stated if you ban smoking in bars where I enjoy going, you have taken the right of the people out of our hands and made our decision for us and that is wrong. He spoke against the ordinance.

J.R. Few, Creative Director for Hansel Art and Advertising and a volunteer with Arkansas Cancer coalition: I have to ask why a public health issue as evidenced based as smoke free air is

even being debated. The only business that loses money with clean indoor air is the tobacco business. Clean indoor air requirements are simple and will save lives. Smoke free air protects nonsmokers, helps smokers quit, and is an example to young people that tobacco was never appropriate, desirable or normal. He gave statistics on the affects of second hand smoke. He spoke in favor of the ordinance.

Alderman Ferrell: You are in art and advertising. Have any of the tobacco advocates ever been a customer of yours?

J.R. Few: I bet in the last seven years I have made \$2,000.

Cathleen Holloway, resident of Ward 3 and former employee of restaurants and bars spoke on the long term affects that second hand smoke had on her. It was not her choice, which was previously stated, due to the pay differences compared to other jobs. She spoke in favor of the ordinance.

Alderman Lewis: You said you have lived here a few years.

Cathleen Holloway: Yes, all through the 70's and then I traveled around and worked elsewhere and then finally got to come back home in 2003.

Alderman Lewis: So were you here while the restaurant debate was going on?

Cathleen Holloway: It was going on right when I moved back.

Ashley Reed, a nursing student and an employee at a local bar stated it is my choice to work in a smoking bar and this is a matter of rights since it's a private club and not public property.

Al Witte, a citizen: I previously smoked. I quit and it was the best thing I ever did. I taught constitutional law most of my life. About the only place I go in Fayetteville is a bar. This amendment goes too far. Only adults can drink and smoke. Why don't we keep Fayetteville tolerant? He spoke against the ordinance.

Alderman Ferrell: I think you did a wonderful job of explaining the aura and attraction of what Fayetteville really is.

Stan Dobbs, who currently works in a bar, stated I think it should be our decision. I believe that if this goes into effect it will vastly affect our income and our patrons. He spoke against the ordinance.

Cambre Horne Brooks, resident of Fayetteville spoke on the positive impact of policy changes. She stated her journey with smoke free began a long time ago. In 1967 in this community we allowed smoking in a maternity ward. In 2005 we had a place where students and faculty at school could smoke a cigarette. Social change is hard and policy change is hard. This is about saving lives, changing lives, and moving this community forward. The tobacco industry said it was not addictive and it did not cause cancer, heart disease, or strokes. The worst thing they did

is say they were not marketing to our children and young adults. They hoped they would fine replacement smokers because many people die from the use of this product more than any other product. We are not here to regulate smokers but I do want to save lives and I want this community to be a better place. If you follow the guidelines you will have a social norm change. After the passage of the 2004 ordinance, in this community, we saw a 16% reduction of smoking in young adults and students. Where I work we are the only program in NW Arkansas who offers cessation to low income individuals who are uninsured.

Alderman Ferrell: Are there other smoking cessation and or smoking rehab projects in NW Arkansas?

Cambre Horne Brooks: I believe AHEC and MANA offer them but they are \$250 per person and they do not offer prescription assistance to help people quit.

Alderman Ferrell: And they are not funded by tobacco supplement money?

Cambre Horne Brooks: No, they are not and neither is the cessation program at Community Clinic.

Alderman Ferrell: So there are no tobacco cessation rehab projects in NW Arkansas?

Cambre Horne Brooks: No, the master tobacco settlement agreement said we are better spent preventing smoking than trying to stop it. That is why policies are the most efficient route to make sure that happens in our community.

Alderman Lewis: What is the amount of money that goes into tobacco industry marketing as opposed to tobacco settlement money?

Cambre Horne Brooks: It is incredibly off kilter and I think someone from the NWA Tobacco Free that is here can tell you that number but it's something to the degree of ten to one. One penny to \$10.00 is used in marketing.

Tyler Clark, with the NW Arkansas Tobacco Free Coalition stated on average the tobacco industry spends \$160 million in marketing in Arkansas compared to \$14 million of what we are able to spend in the state.

Alderman Petty: Do you know at what age most people begin smoking?

Cambre Horne Brooks: We know that the target for the tobacco industry is 18 to 24 but if you start smoking in the eighth grade you have about a 90% chance to become a lifetime smoker. Change is tough, but I hope that you all are brave enough to go on that frontier.

Angela Leichner, Owner of the Beer Keg stated it is not fair that we should have to worry about this. She questioned why they should be told that they can not do something that is legal. She spoke against the ordinance.

Alderman Lewis: I understand that you and your husband are the only employees. Have you ever had additional employees?

Angela Leichner: We have had additional employees in the past.

Alderman Ferrell: The people that are pushing this amendment advise that through their research this won't have a negligible affect if any should this amendment pass. What do you say to that.

Angela Leichner: I don't smoke but my husband smokes and I cannot think of any possible way that it could be positive for us or the other businesses that are nearby us. These people are local people and enjoy smoking and having a drink.

Alderman Tennant: How many hours a week are you in the bar?

Angela Leichner: Probably somewhere in the neighborhood of 60 plus hours.

Tyler Clark: To answer your question from earlier Alderman Petty, the average first age of use is 12 years of age. This is your chance to vastly improve the health and well being for Fayetteville residents for years to come. He spoke in favor of the ordinance.

Alderman Ferrell: What is the easiest and most logical way for people that do not want to be exposed to smoke or second hand smoke to avoid it?

Tyler Clark: If someone is smoking near you you can ask them to put it out or do not go to a venue that has smoke. However I don't have a choice to breathe, but I have a choice to smoke.

Alderman Ferrell: I read that there is growing civil disobedience in New York.

Tyler Clark: Mayor Bloomberg addresses that and I do not think it is the same for Fayetteville.

Alderman Lewis: It has been stated that if you are x then go to a bar that is x. Can you respond to that?

Tyler Clark: There are a couple of bars that I enjoy but I cannot tolerate the smoke. I should be given the choice to go wherever I would like to go.

Patricia Roberts, a Fayetteville resident stated I think we need to figure in where these stats for this disease are coming from. I go to bars that only allow smoking and I have never seen a poll taken in these smoking establishments. Nobody that I have talked to was asked whether or not they were a smoker that smoked. You do not have the right to tell me what I can or cannot do with my own body as long as I am not hurting another person. The people that do not smoke have choices.

Jennifer Stilts, resident of Ward 2 stated if smoking is considered a right then it should be considered something that you can do that won't affect others. She spoke in favor of the ordinance.

Robert Patton, a law student and physician spoke on the harmful affects of cigarette smoking. I have witnessed first hand the effects of smoking. It is the number one health issue in this country. It is a serious health problem and it costs all of us a lot of money in healthcare. I do not belong to any particular group. I am here because I am a physician. I believe this will reduce smoking. Smoking is not a protected minority.

Alderman Ferrell: At the last meeting we acknowledged that there is a direct correlation between smoking and hazard to your health. We all understand that.

Chris Varga, Owner of Ryleighs which is a smoking bar and Sideway's which is a nonsmoking bar stated smoking is bad for you but for me it is a liberties thing. I don't tell you how to run your business so please don't tell me how to run mine. He spoke against the ordinance.

Alderman Tennant: You and your wife run those two bars correct?

Chris Varga: Yes.

Alderman Tennant: If you had to estimate how many hours do the two of you spend in those bars per week?

Chris Varga: I put in well over 60 to 80 hours per week between the two bars.

Bryant Adams, who recently moved to Fayetteville stated the reason I hope Fayetteville will refrain from passing this is simply because I think our government does a little too much too often. He spoke against the ordinance.

Alderman Lewis: So what is your perception on the roll of government?

Bryant Adams: My perception on the roll of government is to provide for the health and welfare of public safety. I certainly think those are important issues however I think that health and welfare issues might not stretch all the way into the individual business owner's domain.

Nate Allen, a Fayetteville resident: It seems one of the first arguments on behalf of this ordinance was to enhance Fayetteville's cutting edge image. The Fayetteville image I treasure has been replaced by the arrogance of affluence. If this ordinance passes we will have people closing their doors and moving out.

Alderman Lewis: I am wondering about the minority that you are defining. Is it the businesses that allow smoking? Is that the minority that you are referring to?

Nate Allen: The clientele that I know at Rogers Rec and the Beer Keg, the blue collar people that smoke, basically this ordinance is one more slap at them.

Steve Frankenger, a Fayetteville resident stated freedom of choice does not mean that I get to make a choice that you agree with. Giving up cigarettes was probably the hardest thing I have ever done and picking up that first pack of cigarettes was the stupidest thing I have ever done. I do not go to bars so I do not have anything at stake except freedom. No one is being denied any right now. You can breathe free air now. You have to go out of your way to find a smoking environment. Say no to this. This is none of your business.

Alderman Gray: Have you ever had anyone die from second hand smoke?

Steve Frakenberger: I don't know if it was second hand smoke, but my father-in-law died at age 50 from coronary heart disease.

Alderman Gray: Was he a smoker?

Steve Frankenger: Yes. My mother-in-law is approaching 80 and has been smoking since she was 12.

Alderman Lewis: You mentioned freedom so at what point does one persons freedom start and another person's freedom begin?

Steve Frankenger: That's a tough question and this country has been arguing that question for over 250 years. That debate has always gone in the direction of let's maximize the amount of freedom that society can have without falling apart.

John Brooks, a Ward 1 resident stated it is the government's responsibility to protect its citizen's. The polls that we keep hearing about that are in favor of this are not just numbers that are being made up. In 2003 Fayetteville took the lead and they passed an ordinance and the state passed one shortly after that. People that I know in Little Rock have asked me when we are going to get the bars and make Fayetteville a better healthier place. No one is being banned from smoking.

Alderman Ferrell: Did you say that your friends in Little Rock said go up to Fayetteville and take care of this?

John Brooks: No, they asked me when Fayetteville was going to take the lead again and make a comprehensive ordinance.

Alderman Ferrell: There are people that say they have scientific data that red meat is bad for your health. Let's just say we have a group from central Arkansas that gets some funding from the government and they come up here and want us to pass a law to shut down every restaurant that serves red meat. Would you favor us doing something like that?

John Brooks: I think we would have to cross that bridge when we get there but that is not the reality of what we are talking about.

Cambre Horne Brooks: I am a health advocate and smoking is not my only issue. My job is to educate the public on the factors that cause chronic disease. There is not one hamburger that is going to cause obesity on me. You don't shut down restaurants because they do not cause second hand obesity. Their behavior does not affect my cardio vascular but smoking does.

Alderman Ferrell: I understand that but can you understand that it's possible for a group to come here and try to get us to pass an ordinance like that.

Lori Ray, a Fayetteville resident stated every credible study shows that there is no financial harm to businesses in cities that enact smoking bans but in fact they show just the opposite. More folks will choose Fayetteville to wine, dine, entertain, and spend their money due to the smoke free atmosphere. A majority of Fayetteville residents support a smoke free ordinance. 85% of Fayetteville residents do not smoke. Let Fayetteville stand out as a leader again in the state.

Karon Reese, a resident of Ward 1 stated I will not go near a bar that allows smoking. I will be on the side that will help the economy after these bars go nonsmoking and I encourage you to vote for this ordinance.

Susie Shinn, resident of Ward 1 addressed the claim that government has no place in the operation of private businesses by pointing out that they are public places and therefore subject to regulation to protect workers and patrons. She spoke in favor of the ordinance.

Jennifer, a citizen gave her family's military history and she stated half of them smoke and the other half do not, however no one smokes in the house out of respect for one another. She stated what this boils down to is respect for one another. She spoke in favor of the ordinance.

Jordan McDaniel, who currently attends the U of A stated I believe I have the right to breathe fresh air and what gives them the right to endanger my health. She spoke in favor of the ordinance.

Dr. Carolyn Jessler, a cardio thoracic surgeon spoke on the affects of second hand smoking and gave statistics on tobacco related deaths. About 85% of all lung cancer is from people who smoke. I have focused my career on this issue in order to have fewer people dying. In Arkansas we have 4,900 people who die every year from tobacco. There is no safe level of second hand smoke. It is a choice on whether you go into a bar or not. What I believe the importance for this is how we protect the people who work in those environments. Everybody has a right to a healthy work environment.

Alderman Ferrell: We all understand that smoking is harmful to your health. You said 85% of lung cancer is related to smoking, when a person gets a malignancy and it metastasizes to the lungs, what kind of cancer is that called? Does it go back to the origin of where it started before?

Dr. Carolyn Jessler: Yes, it would be like kidney cancer that metastasizes to the lung. 30% of all cancers are caused by tobacco. The number one cause of lung cancer death in Arkansas and the US is lung cancer.

Jamie Thornton, resident of Ward 3: As a nonsmoker I believe that my rights should be respected as well. There are a lot of places I would like to go that are not smoke free. Second hand smoke is harmful therefore it should be illegal. I have never been paid by the Tobacco Free Coalition.

Alderman Lewis: You mentioned you own a restaurant and I am curious to know if you were involved in the nonsmoking for restaurants effort.

Jamie Thornton: Yes I was. I volunteered for that and for this.

Alderman Lewis: What were people saying would happen to the restaurants?

Jamie Thornton: Every conversation I had with someone said it was against the restaurant owner's rights and they had the privilege to do what they wanted to do. They also said that people would go to Springdale and Bentonville to eat. I believe the studies have shown that the sales tax revenue for businesses have gone up since the ban went into effect. So these arguments are not valid.

Paige Daniel, Project Coordinator for the NW Arkansas Tobacco Free Coalition handed out information to the Council and gave examples of communities that passed a smoking ban. She listed positive results due to the bans. She spoke in favor of the ordinance.

Megan Dunaway, resident of Ward 3 stated sidestepping this danger does not resolve the problem. She spoke in favor of the ordinance.

Scott Phelps, a Fayetteville resident stated you do not have the right to come in and tell a bar owner how to run his business. He spoke against the ordinance.

Mary Alice Serafini, Director of the University Health Center spoke on a survey conducted at the University of Arkansas on cigarette use. She pointed out the positive health impacts if smoking is removed from bars. She spoke in favor of the ordinance.

Alderman Lewis: Do you know the student population coming in this fall?

Mary Alice Serafini: It should be about 23,000 students.

Alderman Lewis: How many of those work on campus?

Mary Alice Serafini: I don't know that percentage.

Alderman Ferrell: You said you are not speaking for the University.

Mary Alice Serafini: No, I am not here representing the University.

Michael voiced his concern about some of the bars that do not have a place to build patios so that people can smoke. Everyone knows that smoking is bad for you. Businesses should have the ability to choose if they allow smoking. This ban intrudes on the freedoms of business owners. There needs to be choices.

Alderman Lewis: Did you work off campus?

Michael: I worked in restaurants, which I believe should have no smoking.

Jennifer Bronson, resident of Ward 3 referenced several studies regarding the effects of smoking. She voiced her concerns about patrons that may have unknown health conditions and women that may be pregnant and working. Bar owners concerned about economic success are the first to admit that their choices are limited by what the tobacco industry has done to our society and the addictive nature of cigarettes. If they can't offer this luxury they do not have a business. Nonsmokers deserve to be protected.

Tammy Marks, Ward 4 resident: Smokers have the right to endanger themselves with their potentially lethal addiction but they do not have the right to endanger anyone else. Only one in seven adults smoke and a large majority prefer nonsmoking environments. If the majority wants to keep the air clear of smoke how can it be undemocratic to ban smoking in bars especially if the ban won't cause economic harm and will improve health. Most people want to quit smoking but can't. Nobody should have the legal right to hurt other people.

Sandy Prince, Ward 3 resident and works for Hope Cancer Research: The amount of dollars spent on healthcare specifically for lung cancer is 6% of our gross national product. In 1995 that was \$41 billion. The cost to care for a lung cancer patient from the Medicare point of view is \$59,000 after diagnostic. About 10% of that cost will be passed on to the consumer. The overall cost for care, if you consider everything, was \$1,190,000 per person and it did not afford that person very much life at all. I do not judge smokers. I just want them to live a little bit better and longer.

Zack Stokes: It matters to the youth here that we get rid of smoking.

David Allen, I am opposed to this amendment. The government should not be able to tell the owners of private clubs whether or not they allow a legal activity to take place in their business. The government should not be taking choices away from its people. It is your choice to go into one of these establishments.

Wade Ogley: I think that in a strictly 21 and over environment you have to let adults make adult decisions. Tobacco is legal for adults.

Scott Greenwood, we know smoking is bad for your health. This is not just a city issue it will also affect the county as a financial loss. There will be a loss in business. It will take years to get that revenue back. He passed out some financial information and went over that information. Proper air ventilation will disburse the smoke. He also suggested a smoking permit for bars that

allow smoking. He stated obesity is the number one killer right now. There are other things we need to be worrying about. He asked that the ordinance be tabled.

Alderman Gray: We are working on the obesity problem in this country. Once we recognize a problem that is when government has to step in.

Tyler Clark: We compared six SEC cities that had similar policies one passed a workplace 100% smoke free policy, four passed a 100% restaurant policy and three passed a 100% bar policy. The detail shows that cities, with some type of policy, saw no negative affect on their economic impact. There was an increase in their beverage and food revenue when they went to a smoke free bar policy.

Alderman Gray: We are talking about stand alone bars that do not serve food.

Mark Wright owner of On the Mark Sports Bar & Grill: This is not a health issue when it comes to someone that owns a business and has to pay the taxes that we have to pay. He listed some cities and states that have voted down a smoking ban or are revisiting their ban. Why do we have to go outside it's our air, don't we live together as a democracy? There are only a few of us that allow smoking.

Alderman Petty: The municipal ban on indoor smoking in Austin, Texas still stands. There are also several municipal bans in other Texas cities. I think you can look at any part of the United States and find different viewpoints on this issue. What we need to remember is Fayetteville is unique and we are going to come to our own decision on this issue. We have standards for the studies that we are going to look at and respect.

Alderman Gray: Will this affect your bar?

Mark Wright: It will close my bar.

Alderman Gray: Do you serve food?

Mark Wright: Yes

Alderman Gray: If you serve food you can't have smoking anyway. Any bar that serves food is not considered an open bar.

Tyler Clark: He has an exemption from the State of Arkansas which allows him to serve food but no one under the age of 21 is allowed.

Curt Wolfe, resident of Ward 2: My position has to do with smoke free workplaces. I am ashamed to know what I know about the effects of second hand smoke and that Fayetteville knows what the effects of second hand smoke are but yet we still facilitate unsafe work places. I would like to think the City of Fayetteville would provide protection so wherever my children socialize or work they will not jeopardize their health because they are working or patronizing an

unsafe workplace. There has been a lot of talk about the economics and in 2003 everybody cried they were going to go out of business and we never saw that happen.

Louise Mann, Ward 4 resident asked the Council to please vote for a smoke free Fayetteville.

Don Marr, Ward 2 resident thanked the Mayor for letting him speak. I was the original sponsor the last time we had this debate. The previous ordinance excluded bars as a part of the ordinance. I made the concession of pulling bars out because I believed that it would not have passed with it in it. My family earned their income raising tobacco in central Virginia. You don't get closer to smoking than I got. This is not about being personal it is about our beliefs and it is okay to have different beliefs.

There is nothing in this ordinance that prohibits someone's ability to smoke, what it does is control where they can smoke. Smoking is a habit that people get, it is expensive, it is expensive to treat and expensive to people who are not covered by means of paying for it. We heard about economics last time. Like any business if you don't adapt you are going to be impacted. This industry is an industry whose life is much shorter than some businesses.

Nancy Allen: I am a former smoker and had a terrible time quitting smoking. I would imagine everyone that smokes wishes they didn't. I don't think this ordinance will make them quit smoking. I agree with the article in the paper that stated this is going too far. This is over the top in my opinion. I hope that you do what you feel is right.

Alderman Gray: We have bartenders and musicians that spend lots of hours in the bars. We have heard tonight that every bit of second hand smoke is harmful according to our reports which I believe. I am troubled about why we feel we are going to protect the work place of everyone in our city but we are not going to protect workers in bars or musicians. We have heard that they can work some place else but that is not the case in every situation. For us to overlook the fact that many of them do not have insurance is a huge economic impact on the citizens of Fayetteville who have insurance. People that have insurance are paying for a person that does not have insurance for their health treatment. We have a very strong sense of community which means we care about each other. We do not want to put our citizens in a situation where they do not have clear air to breathe. That is our responsibility as policy makers for the citizens of Fayetteville to ensure they have a healthy workplace.

Alderman Adams: I have worked at the University for 33 years and I will never forget going into a class where a professor smoked. We are protected now and smoking is not allowed on campus. I am grateful that I work in a place that was progressive and cared about my health. We raised a couple of girls who were students at the University and I know the pressures as a student are real. Our students are learning to smoke in the very environment that we are trying to teach them the best way to live. In Bentonville you can not smoke in parks. You can still smoke here outside of enclosed public places. I understand the rights of business owners. I believe this is a health issue.

Alderman Lewis: My grandparents owned and operated a tobacco farm in Ohio. My grandfather would tell us to not smoke because you can not stop. In a lot of ways smoking is not

a choice because it becomes an addiction. Both sides see the importance of choice. When the choice begins to impact others it is the role of a governmental body to develop policy to weigh the rights of all citizens. In a public place where the public is invited, the actions, not the person themselves, are creating a nuisance to others. The city is completely in its space to abate nuisances. This can become a nuisance for people in that public space but it also affects people's health. It minimizes options in a job search. As a Council member we have to consider all of the citizens.

Alderman Ferrell: We have people that their livelihood is at stake and some people that have been trying to drive policy. I feel this will have an impact. We have a few sanctuary bars left in this town. I have smoked for years and I am addicted. I think I have the right to smoke. I will not vote to knock these jobs down.

Alderman Thiel: In 1991 the city passed the first ordinance that banned smoking in public places and people survived. I think that ban encouraged a lot of people at that time to quit smoking or to never start smoking. The voters passed a ban on smoking in restaurants and I don't think the sky fell. By doing this we offered employees a safe place to work and breathe. Now we are doing the same thing for bartenders, waiters and people that work in bands. I feel the City Council has the authority and responsibility to regulate for public safety and the welfare of the citizens of Fayetteville. The good things about this out weigh the negative.

Alderman Tennant: The City of Fayetteville is full of caring compassionate people. This Council truly cares about the citizens. It is an honor to serve with each and every one of them. The selfish part of me wants this to pass because I do not smoke and do not like to be around smoke. I understand that people that smoke are making a bad decision for their life. Smoking has affected my life personally. I can not base my vote on my selfishness. Maybe it is a choice and maybe it is important that we defend the right to make a bad choice. To me it comes down to decision and choice but just as important the value that we place on the person's ability to make their own decision. There is a choice for adults in the city to go to or not go to a smoking establishment. There is a choice of the business owner to have or not have a smoking establishment.

On occasion I go to a smoking bar and I do not need you to protect me from that. I think government's role is that we must protect those who can't protect themselves to the best of our ability. I agree with the ordinance as it stands now. I think the coalition has done a great job. We as a society pay for many of those people that make bad decisions. We can do as much as we should as a government and we have already done that in the existing ordinance. To take the next step as a city government is one step too far.

Alderman Kinion: I worked in the public schools as an educator and a volunteer for the American Lung Association so that 5th graders would not smoke. I think education is the key. If you are educated you are going to make wiser choices. I went into 18 different bars in the last six weeks and talked to employees and none of them wanted me to tell them how to make a decision. This ordinance is not going to change anyone's mind about smoking. I don't believe that I can make a choice for these individuals.

Alderman Petty: I think some of us have made a mistake in the perception of this issue. I think second hand smoke is an exceptional danger. The statistics show that quit rates improve by 84% after the passing of legislation like this. We would help people who make bad decisions by passing this legislation. Education is by far the best way to work on this. There is nothing that provides more education than the experience of, every bar you go to, every person knowing it is wrong to smoke indoors and create a toxic environment for the rest of the public. That is an educative measure that can only happen through public policy.

Alderman Thiel: You have to be 21 to go into a private bar that serves mixed drinks and alcohol.

City Attorney Kit Williams: Any bar that would allow smoking by state law can not allow anyone under 21 to be in the bar. A bar that would not allow smoking, people under 21 could come in, but not be served.

Alderman Thiel: In a lot of smoking bars you have a lot of under aged people, students that are being subjected to smoke. I hope we do a better job of regulating the bars.

Mayor Jordan: I commend this Council on their courage to vote tonight. I want to thank the people that have expressed their opinion. I would support this amendment if I could vote. In 2003 I had over 700 comments regarding smoking. 52% were in favor and 48% were against it. When it went to a vote of the people 51% were in favor and 49% were against.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance failed 5-3. Alderman Petty, Adams, Lewis, Gray, and Thiel voting yes. Alderman Tennant, Ferrell, and Kinion voting no.

Note: the ordinance needed six votes to pass and the Mayor could not vote.

The ordinance failed.

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.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the rezoning. Planning Commission forwarded this item to the City Council with a vote of 9-0. Staff supports the application.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Lewis: I really appreciate that this is Community Services a formed based code.

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

Ordinance 5412 as Recorded in the office of the City Clerk

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.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the vacation. The Board of Adjustments saw a variance request for this application and approved that request. Staff recommends approval.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5413 as Recorded in the office of the City Clerk

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.

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

Alderman Lewis: That area has drainage issues. Has the design been made yet?

Chris Brown: Yes.

Alderman Lewis: I think that is a really important thing that needs to be considered on that project.

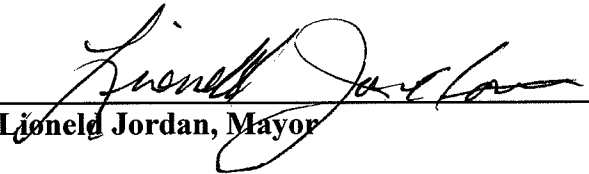
Chris Brown: The drainage system is included as part of the construction. The project will drain much better than it does now.

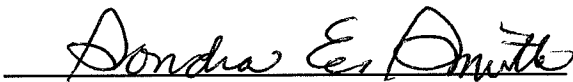
Alderman Thiel: I am glad this project is moving forward. We need a safer road there.

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

Resolution 93-11 as recorded in the office of the City Clerk.

Meeting adjourned at 11:45 p.m.


Lionel Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer

