Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Steve Tyler
Ward 2 – Andre' Good
Ward 3 – Don Hutchings
Ward 4 – George Catsavis
At Large Position 5 – Pam Weber
At Large Position 6 – Kevin Settle
At Large Position 7 – Philip H. Merry Jr.

AGENDA

Fort Smith Board of Directors

Study Session

June 12, 2012 ~ 12:00 Noon

Fort Smith Public Library Community Room
3201 Rogers Avenue

1. Discussion of the construction delivery method for Fire Station No. 11

2. Review proposal to develop and implement Information and Communications Technology Business Continuity Plan and Disaster Recovery strategy at the EOC Data Center

3. Review proposed amendments to park rules relative to public assembly

4. Review preliminary agenda for the June 19, 2012 regular meeting

Fort Smith Fire Department

200 North Fifth Street
Fort Smith, Arkansas 72901
479-783-4052

Mike Richards
Fire Chief

Memo

To: Ray Gosack, City Administrator
From: Mike Richards, Fire Chief
Date: June 6, 2012
Re: Construction Delivery Method for Fire Station 11

With approval of the Architect Services Agreement with Guest Reddick Architects at the June 5 Board meeting we are proceeding with the next phase for the construction of Fire Station 11 at Chaffee Crossing. A decision on the construction delivery method needs to be made soon to ensure a smooth, cost-efficient, and timely construction project. The construction delivery method can have wide-reaching effects on the budget, schedule, and quality of the project. This will be a complicated project that must be managed by experienced and well qualified professionals.

Fire Department Staff has researched various construction delivery methods for Fire Station 11. We believe that it is in the best interest of the City and are recommending the use of the Construction Manager at Risk construction delivery method instead of the traditional Design-Bid-Build method. The following outline will illustrate some of the more significant pros and cons of each delivery method.

<u>Construction Manager at Risk</u>

PROS

- Construction Manager (CM) chosen based on qualifications and experience and not low bid amount
- CM works with Architect in the Developmental Design (DD) and Construction Document (CD) phases to help make cost saving adjustments early in the project
    - CM provides continuous budget control throughout the design process
- CM has experience in choosing sub contractors for the project
- There will still be competitive bids from subcontractors for the project
    - The CM assists in the bidding process and the bids are opened in public
- The CM at Risk method normally reduces the total project construction delivery time
- Reduced change orders in construction
- CM provides “checks and balances” (design vs. constructability)
- Maximum value achieved

CONS

- Potentially higher costs than just accepting the “low-bid” method

Design-Bid-Build

PROS

- Traditional and most familiar to the general public and City staff
- Potential lowest initial cost via competitive bidding

CONS

- Selection of the general contractor is typically based on price, instead of qualifications and experience
    - Can be difficult to "disqualify" unqualified and/or inexperienced contractors
        - May be a significant factor in this economy and market
- No construction input during DD and CD phases resulting in less value engineering early in the process. This can lead to higher construction costs.
- Project delivery time is longer due to "linear" process of this method
    - If early DD estimates are inaccurate and too low, there is a risk of a significant delay in the project due to the need to re-design the project to fit the budget
    - Only one phase can be done at a time before beginning next phase
- Owner holds the major risk in the project especially for time delays
    - The Design Team does commit to design the project within budget even if re-design and re-bidding is necessary
- Highest potential for change orders

With approval from the Board of Directors to use the Construction Manager at Risk method of delivery for Fire Station 11, our next step would be to release a Request for Qualifications (RFQ) proposal for selecting a CM. It is very important we begin this selection process to work with the A/E team in the DD and CD design phases of this project to maximize the benefits of using a CM. Also, any delay in the decision to use the CM at Risk method or selection process will delay the DD and/or CD phases and therefore prolong the entire construction project. The Board of Directors will have final approval of the selection of the Construction Manager.

Any delay, whether it is due to a pending decision of the delivery method or the decision to use the design-bid-build method, could have a negative impact on our future Insurance Service Office (ISO) Public Protective Classifications ratings. ISO is scheduled to return to Fort Smith sometime in the late summer/early fall of 2013. It will be important that we show significant improvements in fire protection capabilities when they return to ensure we maintain our excellent Class 2 fire protection rating. For these reasons I recommend that we use the Construction Manager at Risk option for the construction of Fire Station 11.

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Fort Smith Police Department

Kevin Lindsey, Chief of Police

Inter-Departmental Memorandum

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: EOC/Training Center Information and Communications Technology Business Continuity Plan and Disaster Recovery Project

Date: June 8, 2012

In 2006, the City of Fort Smith began installation of a new radio system as a part of the Arkansas Wireless Information Network (AWIN). This project was completed in January of 2012 with the installation of backup communications consoles at the Dispatch Center of the Emergency Operations Center/ Regional Law Enforcement Training Facility (EOC), located at 8400 Zero Street. In completing the backup radio communications project, initial work was also completed on the department's data center. This work included installation of raised flooring, uninterruptable power supplies (UPS), radio equipment, server racks, air conditioning equipment, and specialized ground wiring. All of these equipment installations provide the necessary backbone for development of a data center in line with the police department's business continuity plan and disaster recovery project.

The proposed lease/purchase plan will facilitate the purchase and installation of necessary equipment to bring this facility up to full capability within 8 – 12 months. Equipment and installation costs for the project will be spread over a three year period using funding from the Federal 2012 Justice Assistance Grant and regularly budgeted funds from Program 4702-230. Most of the project costs are supplemented by interest free financing from the State Contract approved vendor. There will not be an increase in fund requests in this account as a result of this project. Instead, a portion of the typical annual funding request will be diverted to this project. This is possible because of reduced costs in other areas as a result of the ability to eliminate some recurring fees, replacement of outdated equipment with newer systems, and extended return on investment of project outcomes.

Completion of this project will facilitate full voice, radio, and Internet communications for the backup communications center (Secondary Public Safety Answering Point) and Training Facility. In addition, a data backup solution and near real-time disaster recovery site will establish business continuity for the department's data needs. This is a vital investment that will provide a five to seven year return on our initial investment while providing necessary Public Safety services to our citizens.

Essential details about the project are included in the following pages.

Critical Components Required by Public Safety

Radio Communications
AT&T Internet and WAN Communications – Provides for communication with other City Departments and Mobile Data
Network Infrastructure to support mission critical telephone service, servers and data recovery
911 phone system - Collaborating with Sebastian County for future deployment
Non-Emergency City Phone System
Backup and recovery of mission critical data and client / server operations

Advantages and Disadvantages

Police department is not requesting additional funding for these projects. Annual leasing payments will be included in normal budget process (not an increase to normal budget)

City is being offered 0% finance option for all the projects purchased through Dell

Use of Dell as authorized contractor for State of Arkansas

Leasing is accepted by the City for capital purchases in excess of $200,000;

Reduced cost of ownership

Bridge expenses between budget years

Protection against "technology obsolescence“

Planned rotation cycles (higher productivity per user)

Capital conservation

Balance project costs with benefits

Facilitates completion of projects necessary for full functionality of EOC data center

Project Summary

Project	Description / Purpose	Benefits
1) **EOC Network & City Phones** Cost: $109,199.79	- Foundation, 1st phase of the BCP / DR design - Firewalls, Routers, Switches, Phones and supporting TELECOM	- Nothing else works without it - Training Academy Employees - Failover & increase call density for 911 non-emergency phones
2) **Disk-to-Disk Backup** Cost: $43,700.00	- Hardware and Software between HQ / EOC locations - Provides ability to Backup and Recovery mission critical data	- Current system is 7 years old - Eliminate & Reduce cost of tapes - Eliminate cost of 3rd party Tap storage - Reduce backup operations from weeks to hours - Disaster Recovery would be hours rather than months - Deduplication, 80 – 90% of data is static
3) **EOC Server Virtualization** Cost: $131,323.75	- Specialized Servers, Storage and software - Critical part of Department technology and BCP / DR strategy	- Rather then deploy numerous servers extend PD use of Virtualization Technology - 12 to 1 ratio - Distributed Production - Site Recovery Manager – Replication of Servers
4) **PD Storage** Cost: $25,127.25	- Centralize Access, Share and Store information - Living in the Multimedia age - Storage retention policy	- Replace out of warranty equipment - Solution Architecture will play multiple roles, Employee, D2D Back/Recovery, Server Virtualization
5) **VDI (Department Desktops)** Cost: $160,217.90	- Extend technology from Servers to Desktops - Centralized vs. Distributed approach - 80% of Fortune 500 use it - 140 Desktop, 67% are 6/7 years of age - User productivity being affected - ROI is 3 years, how will the PD move forward	- Cut cost of desktops $350 vs. $1,200 - Technology Consolidation and Cost elimination - Centrally manage desktops, applications - Rapid technology deployment, minutes not hours or days - Provide a personalized & portable desktop no matter the device or location - Focused IT staff training (Servers & Desktops)

Financial Plan

1) EOC Network and Phone System
   45K JAG grant and funding from Police department 2012 Computer budget
2) Other BCP/DR requirements and Technology projects
   - 3 Year 0% Lease for all Dell equipment and software,
   - First payment in 2013 which will include taxes (Factored into normal budget process)

Cost Summary

Cisco- paid with 2012 available funds

Project	Cost	Funding Source	
EOC Network & 911 VoIP City Phone System	$109,199.79	45k JAG Grant & FSPD 4702-230	

Dell Lease Contract- three year lease/ purchase option with no interest

Project	Cost	2013 1st Payment	2014 2nd Payment	2015 3rd Payment
1) Disk to Disk Backup	43,700.00	17,033.16	13,333.20	13,333.20
2) EOC Server Virtualization	131,323.75	51,187.21	40,068.27	40,068.27
3) PD Storage Space	25,127.25	9,794.07	7,666.59	7,666.59
4) VDI (Department Desktop) Virtual Desktop Integration	160,217.90	62,449.54	48,884.18	48,884.18
Totals	**$360,368.90**	**$140,463.98**	**$109,952.24**	**$109,952.24**

PARKS RECREATION
FORT SMITH

Memo:

June 8, 2012

To: Ray Gosack, City Administrator
From: Mike Alsup, Parks and Recreation Director
Re: An ordinance proposing Section 18-81 of the Fort Smith Municipal Code, a section to provide regulations for Public Assembly and Special Events, and amendments to Sections 18-66 and 18-77

An ordinance proposing a section be added to the Municipal Code to provide regulations for special events and public assemblies with anticipated attendance of over fifty (50), was submitted to the Board of Directors in November; the Board tabled the proposed ordinance for review by the State Attorney General. Revisions were made to address concerns expressed with the original proposal prior to Attorney General McDaniel's review. His review was received and the proposed section was revised to address issues written in the Attorney General's, opinion. Gatherings with an anticipated attendance of less than fifty (50) are not affected. Also, someone circulating a petition in a park would not be affected provided the activity does not disrupt other programs and patrons in the park.

The court case of Thomas versus Chicago Park District and other sources were used in the opinion to provide an analysis of the proposed ordinance in regard to the First Amendment of the U.S. Constitution. Of particular note is the U.S. Supreme Court decision that regulations of this type are legitimate.

> I. The proposed ordinance
> The proposed ordinance is clearly aimed at coordinating multiple uses of the city's public parks, ensuring that park facilities are preserved from damage, and ensuring that attendees are protected from dangerous or unlawful activity. The U.S. Supreme Court has declared that these purposes are legitimate governmental interests. The proposed ordinance attempts to accomplish this set of goals by establishing a system for obtaining a permit or license for all "Public Assemblies" or "Special Events" that people plan to hold in a public park. (Page 2, Attorney General Opinion)

The "Application" of the opinion located on pages 4 through 6 lists five (5) issues to be considered. The proposed ordinance was revised to address these issues.

The first issue is limiting the permitting authority's ability to deny a permit. The Director of Parks and Recreation or his or her designee is the permitting authority. The permitting authority must only be able to deny a permit based on Section 7 Grounds for Denial of Application for Permit. Denial of an application is not left to his or her discretion.

The second issue is duplicative provisions. The City Attorney addressed this issue; the number of grounds for denial was reduced from twenty-two (22) to eighteen (18).

The third issue concerns the constitutionality of allowing a permitted group to exclude others from the park. This issue was addressed by eliminating the permitted group's ability to deny access to the park. The Parks and Recreation Department staff and City of Fort Smith Police officers may deny access to individuals who are disrupting recreational programs in City parks according to Municipal Code 18-66, Disruption of recreational programs.

The fourth issue concerned the number of people anticipated at a Special Event constituting the need for a permit. This was addressed by adding a designation of fifty (50) or more persons to the definition of Special Event.

The fifth issue concerns the $500 fee/deposit. The deposit is to cover the cost of restoration and clean up of the permitted area in the event the permittee does not leave the premises in the condition the property was in prior to the event. No changes were needed for this issue.

The regulations were modeled after the City of Philadelphia's regulations for use of parks facilities. The issues Attorney General McDaniel brought to light in the opinion have been addressed. These issues were based on case law with special consideration given to a case involving the City of Chicago Park District's regulations governing the use of their facilities. The Supreme Court has declared that regulating the use of municipal park facilities is permissible to preserve the facilities and protect the people.

The amendments to ordinances 18-66 and 18-77 are needed for consistency with the proposed ordinance. The amendments to both sections include verbiage relating to activities permitted by the Director of Parks and Recreation addressed in proposed Section 18-81.

The amendment to section 18-66 includes "... or other conduct...." The original language only addresses verbal disruptions of recreational activities. Other conduct may also disrupt recreational activities. Disruptions that are not abusive, profane, or indecent language might include someone bringing a guitar to a concert and singing their own song or someone loudly expressing their view about a subject during an event. This amendment will give Police officers or Parks Department staff the authority to stop disruptive language or behavior at recreational activities on park property or property maintained by the Parks Department.

The amendment to section 18-77 gives acknowledgment to the permitting procedure currently in place. The amendment will make the procedure enforceable.

Please call me with any questions.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE III, OF THE FORT SMITH MUNICIPAL CODE TO AMEND SECTIONS 18-66 AND 18-77 REGARDING PARK RULES AND TO ADD SECTION 18-81 REGARDING PERMITS FOR PUBLIC ASSEMBLY OR SPECIAL EVENTS IN CITY PARKS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The Fort Smith Municipal Code is hereby amended to amend Sections 18-66 and 18-77 and to add Section 18-81 to Chapter 18, Article III:

Sec. 18-66.

No abusive, profane or indecent language or other conduct reasonably calculated to annoy or disrupt any recreational program or other authorized activity will be permitted within any park area whether the program or activity is provided by the City of Fort Smith or authorized by the Director of the Parks and Recreation Department or his or her designee through a permit for a specific time and place within city parks.

Sec. 18-77.

The sale, solicitation, or exhibit of goods or services is prohibited in any park area. This prohibition shall not apply to vendors and individuals holding a valid Parks and Recreation Department concessions or use permit or authorized under a public assembly or special events permit issued by the Director of the Parks and Recreation Department or his or her designee.

Sec. 18-81. Permits for Public Assembly or Special Events in City Parks.

(1) Definitions

a. "Appeal" shall have the meaning set forth in subsection (12).

b. "Applicant" means the person or entity that seeks the issuance of a Permit.

c. "Application" means a written application for a Permit on a form prescribed for such purpose.

d. "City" means "The City of Fort Smith" acting through its Parks and Recreation Department.

e. "City Property" herein means all City parks, plazas and public spaces that have been constructed or maintained under the administration of the Parks and

Recreation Department. The term "City Property" herein shall not include City facilities or grounds not under the auspices of the Parks and Recreation Department.

f. "Permit" means a written authorization issued by the Parks and Recreation Department for the staging or production of a Public Assembly or Special Event on City Property under stated terms and conditions.

g. "Permittee" means the person or entity to whom a Permit is issued.

h. "Permit Denial" means a written notice from the Director of the Parks and Recreation Department or his or her designee informing an Applicant that the Applicant's Application for a Permit has been denied. (see subsection 10 below)

I. "Permit Revocation" means a written notice from the Director of the Parks and Recreation Department or his or her designee informing a Permittee that the Permit has been revoked. (see subsection 11 below)

j. "Public Assembly" means a demonstration, a meeting or gathering, a rally or protest event, a political rally or event, speechmaking, marching, the holding of vigils or religious services, and all other like forms of conduct on City Property, the primary purposes of which is expressive activity or the communication or expression of views or grievances, that (1) is engaged in by more than fifty (50) persons and the conduct of which has the effect, intent, or propensity to draw a crowd of onlookers, or (2) will occur on or in any City property administered by the Parks and Recreation Department without compliance with the normal and customary regulations or controls governing such places. The term "Public Assembly" shall not mean the casual use of City Property or "Special Event."

k. "Public Assembly or Special Event Sponsor" means the person or entity that is responsible for the staging or production of a Public Assembly or Special Event.

l. "Special Event" means a public spectator event or attraction, concert, sports event, pageant, ceremony or similar event that is open to the public and reasonably calculated to attract fifty (50) or more persons.

(2) Permit Requirement for a Public Assembly or Special Event

No person or entity shall conduct or hold a Public Assembly or Special Event on City Property without first obtaining a Permit from the Director of the Parks and Recreation Department or his or her designee.

(3) Application for Permit

a. The Applicant must apply for a Permit by filing an Application, in person or by U.S. mail, fax, or electronic means with the Parks and Recreation Department at Creekmore Community Center, 3301 South M Street, Fort Smith, Arkansas 72903.

b. The Application must be filled out completely and signed and dated by the Applicant. If the Public Assembly or Special Event is sponsored or produced by an entity, a person legally authorized to bind the entity must also sign the Application.

c. The Application must contain the following information:

1. the name; address; e-mail address, if available; day-time telephone number; and fax number, if available, of the Applicant;

2. the name of the person who will be in charge of the Public Assembly or Special Event on-site;

3. the name; address; e-mail address, if available; day-time telephone number; and fax number, if available, of the Public Assembly or Special Event Sponsor;

4. the date, time, duration, and location of the proposed Public Assembly or Special Event (including the set up and take down times);

5. an estimate of the approximate number of persons who are reasonably expected to attend the Public Assembly or Special Event;

6. if the Public Assembly or Special Event will include a march, a detailed description of the proposed route of the march (with assembling, starting, and ending points) and the proposed starting and ending times for the march;

7. a statement of any equipment expected to be used by the Applicant or Public Assembly or Special Event Sponsor;

8. a statement of any equipment or facilities that the Applicant or Public Assembly or Special Event Sponsor desires to use from the Parks and Recreation Department;

9. if the Public Assembly or Special Event is a spontaneous event which has been planned in response to a specific occurrence, such occurrence must be briefly described; and

10. a certification that the Applicant and Public Assembly or Special Event Sponsor will comply with all governmental rules and regulations applicable to the Public Assembly or Special Event.

d. After submission of an Application, the Applicant must immediately provide the Parks and Recreation Department with any information that will amend, supplement or change any of the information originally provided in the Application.

(4) Application Deadlines for Public Assembly or Special Event

a. Public Assembly:

1. The Application for a Permit must be submitted to the Parks and Recreation Department at least five (5) business days prior to the proposed date and time of the Public Assembly. However, the Parks and Recreation Department will accept Applications less than five (5) days prior to the proposed date and time of the Public Assembly, provided, however, that the proposed Public Assembly is a spontaneously planned event in response to a recent occurrence (e.g., a march or rally that is timed to coincide with a recent or future political or other announcement, decision, determination, or declaration by a local, state, or federal official).

2. Where (1) the Applicant has requested the Parks and Recreation Department to provide special or technical services for purposes of assisting in the production or staging of the Public Assembly, (2) the Applicant has requested or requires the rental and use of Parks and Recreation Department owned equipment or facilities for the production or staging of the Public Assembly, or (3) the Applicant intends to erect fixed structures upon City Property, e.g., sound stage or canopies, the Application for a Permit must be submitted to the Parks and Recreation Department at least forty-five (45) days prior to the proposed date and time of the Public Assembly. Absent extraordinary circumstances, the Parks and Recreation Department will not accept Applications meeting the criteria of this subsection beyond this forty-five (45) day deadline.

3. An Application shall be deemed submitted on the date it is received by the Parks and Recreation Department or, if received on a holiday, after normal business hours, or on a day City offices are otherwise closed, on the next business day.

b. Special Event

1. The Application for a Permit must be submitted to the Parks and Recreation Department at least forty-five (45) days prior to the proposed date and time of the Special Event. Absent extraordinary circumstances, the Parks and Recreation Department will not accept Applications meeting the criteria of this subsection beyond this forty-five (45) day deadline.

2. An Application shall be deemed submitted on the date it is received by the Parks and Recreation Department or, if received on a holiday, after normal business hours, or on a day City offices are otherwise closed, on the next business day.

(5) Deposits for Public Assembly or Special Event

a. Prior to issuance of a Permit, a Deposit in the amount of $500 shall be required to cover costs of any damage to the facility such as restoration, rehabilitation, and cleanup of the area used, as well as other costs resulting from the Public Assembly or Special Event. It is the Applicant's responsibility to return the property to the condition it was in prior to the event. The Applicant agrees to reimburse the City for clean up and restoration that exceeds $500.

(6) Order of Processing

The Parks and Recreation Department will process Applications for a Permit in the order that they are received. The Parks and Recreation Department will allocate the use of a particular City Property or a part thereof among competing Applicants in the order of receipt of fully executed Applications together with the required application fee. The Parks and Recreation Department will have priority use of the requested City Property where the proposed Public Assembly or Special Event conflicts or interferes with a previously scheduled event or with an annual or otherwise regularly-held event or ceremony that is sponsored by or on behalf of the Parks and Recreation Department.

(7) Grounds for Denial of Application for Permit

a. The Parks and Recreation Department will approve an Application and grant a Permit unless there is a sufficient basis for denial of the Application.

b. To the extent permitted by law, the Parks and Recreation Department may deny an application for permit if the applicant or person or entity on whose behalf the application for permit was made has on prior occasions made material misrepresentations regarding the nature or scope of an event or activity previously permitted or has violated the terms of prior permits issued to or on behalf of the applicant. An application for permit may also be denied on any one of the following grounds:

1. the Application for a Permit (including any required attachments and submissions) is not fully completed and executed;

2. the Application for a Permit contains a material falsehood or misrepresentation;

3. the Applicant has not tendered the required application fee;

4. the proposed Public Assembly or Special Event conflicts or interferes with a previously scheduled, annual, or otherwise regularly-held event or ceremony that is sponsored by or on behalf of the Parks and Recreation Department or any other person or entity at the same City Property for the same date and time;

5. a fully executed prior Application for a Permit for the same City Property and for the same date and time has been received, and a Permit has been or will be granted to a different Applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular City Property or part thereof;

6. the property sought to be used for the Public Assembly or Special Event is closed or partially closed for construction, renovations, or other reasons, and use of the City Property may reasonably pose a threat to the safety of participants or may reasonably pose an adverse impact upon the natural environment of the City Property;

7. the Public Assembly or Special Event will substantially or unnecessarily interfere with traffic in the area contiguous to the activity, and will unreasonably disrupt movement or circulation of vehicular or pedestrian traffic, unless there are readily available at the time of the proposed Public Assembly or Special Event sufficient city resources to mitigate any interference or disruption;

8. there are unavailable at the time of the Public Assembly or Special Event a sufficient number of police officers to police and protect participants in the Public Assembly or Special Event and non-participants from traffic related hazards in light of the other demands for police protection at the time of the proposed Public Assembly or Special Event or the Public Assembly or Special Event will otherwise place an undue burden on other personnel resources of the City.

9. the Parks and Recreation Department has revoked a Permit which was previously issued to the Applicant or has revoked a permit for a Public Assembly or Special Event that was previously sponsored by the Public Assembly or Special Event Sponsor;

10. the size of the City Property cannot safely and reasonably accommodate the expected number of participants in the Public Assembly or Special Event without an unduly adverse impact upon the landscape, planting, or natural environment of the City Property;

11. the Public Assembly or Special Event and the concentration of persons, vehicles or things at the assembly or event and disbanding areas is reasonably expected to have an unduly adverse impact on the public

health or safety of the Applicant, other users of the City Property, City employees, or the public (e.g., the Public Assembly will unreasonably interfere with the movement or service capabilities of police vehicles, fire fighting equipment, or emergency medical or ambulance services);

12. the Public Assembly or Special Event will unreasonably interfere with customary functions and uses of, and ingress and egress to and from, buildings that are immediately adjacent to the City Property;

13. the Applicant, or the person or entity on whose behalf the Application for a Permit was made, has on prior occasions damaged City Property and has not paid in full for such damage;

14. the Applicant, or the person or entity on whose behalf the Application for a Permit was made, has not reimbursed the Parks and Recreation Department for requested Parks and Recreation Department personnel or equipment or facilities utilized in connection with a previously issued Permit.

15. the Applicant has not complied or cannot comply with applicable licensure requirements, ordinances, or regulations of the City concerning the sale or offering for sale of any goods or services, including the requirement to obtain a City business privilege license;

16. the Public Assembly or Special Event is prohibited by law, including but not limited to, applicable City ordinances and regulations;

17. the City Property requested is a non-public forum that has not been opened for expressive activity to the general public; or

18. the Application is sought for an event that is more appropriately covered by the Parks and Recreation Department's Special Events Policy or an event that does not satisfy the definition of "Public Assembly."

(8) Action of Application: Amendment or Revision of Applications

a. In the case of Applications submitted for Public Assembly under the deadline set forth in subsection 4(a) above, the Director of the Parks and Recreation Department or his or her designee will grant or deny the Application within two (2) business days after receipt of the Application.

b. In the case of Applications submitted under the deadline set forth in subsection 4(a)(2) above, the Director of the Parks and Recreation Department or his or her designee will grant or deny the Application within thirty (30) days of receipt of the Application.

c. Any amendment or revision of an Application for a Permit for either a Public Assembly or Special Event will for purposes of determining the priority of the Application, relate back to the original filing thereof; but the time within which the Parks and Recreation Department will grant or deny the Application for a Permit will be computed from the date of amendment or revision.

(9) Notice of Action; Issuance of Permit

a. The Parks and Recreation Department will immediately provide to the Applicant notice of the grant or denial of the Application for a Permit in accordance with the written instructions of the Applicant in the Application.

b. Upon approval of the Application for a Permit, the Parks and Recreation Department will issue to the Applicant a Permit denoting the location of the City Property, and the date, time, and duration for which the Permit is valid. The Permit will note thereon any reasonable restrictions, and any other special requirements, that are applicable to the Permit.

c. The Permit will be made available for personal pick up by the Applicant, or will be transmitted to the Applicant, in accordance with the written instructions of the Applicant in the Application.

d. A Permit cannot be transferred or assigned, except that a Permit may be assigned or transferred to an entity that is a legal successor to the Permittee only after obtaining written permission from the Parks and Recreation Department.

(10) Denial of Application; Contents of Notice

a. In the Permit Denial, the Parks and Recreation Department will expressly set forth all grounds upon which the Application for a Permit was denied.

b. Where feasible and applicable, the Permit Denial will contain a proposal by the Parks and Recreation Department for measures by which the Applicant may cure any identified defects in the Application.

c. Where the grounds for the Permit Denial are those identified in subsection 7(b)(4, 5, 6, 7, 8, 10, 11, or 12) above, the Parks and Recreation Department will offer to the Applicant:

1. a proposal to hold the Public Assembly or Special Event at different City Property, if available, for the same date and time, so long as the alternate City Property is reasonably similar to the proposed location with comparable public visibility; or

2. a proposal to hold the Public Assembly or Special Event at the same City Property, if available, but on an alternative date or time.

d. The Parks and Recreation Department will transmit the Permit Denial to the Applicant in accordance with the written instructions of the Applicant in the Application or make the Permit Denial available for personal pick up by the Applicant.

e. An Applicant desiring to accept an alternate proposal made by the Parks and Recreation Department in accordance with subsection (10)© above will promptly notify the Parks and Recreation Department in writing of its acceptance.

(11) Permit Revocation

Upon written notice to a Permittee, the Parks and Recreation Department may revoke a Permit, where it has been determined that: the Permittee does not intend to comply with, cannot comply with, or has violated, any of the conditions or restrictions applicable to the Permit, including but not limited to the following:

a. failure of the Applicant to obtain any permits or licenses that are legally required by The City of Fort Smith Code or any City ordinances in connection with the Public Assembly or Special Event;

b. failure of the Applicant to remit any required user fee(s) or deposit(s) for City-owned equipment or facilities;

c. or failure to comply with any conditions applicable to the Permit.

(12) Procedures for Appeal of Permit Denials and Permit Revocations

a. An Applicant who is denied a Permit, or a Permittee whose Permit has been revoked, may file a written Appeal from such Permit Denial or Permit Revocation with the City Administrator or his or her designee.

b. The Appeal must state succinctly the grounds upon which it is asserted that the Permit Denial or Permit Revocation should be modified or reversed. The Appeal must be accompanied by copies of the Application for a Permit, the written Permit Denial or Permit Revocation from the Parks and Recreation Department, and any other papers or documentation material to the determination.

c. The City Administrator or his or her designee shall promptly affirm, modify, or reverse the Permit Denial or Permit Revocation and give notice in writing of the final decision to the Applicant. The City Administrator or his or her designee's decision shall be the final decision of the City.

(13) Permit Restrictions and Permissions

a. The Parks and Recreation Department may place reasonable restrictions on the conduct of a Public Assembly or Special Event, which restrictions may consider

the customary use and nature of the City Property, recreational use policies, the size and location of the City Property, and the degree to which the Public Assembly or Special Event might interfere with the customary uses and adopted recreational use policies for the City Property.

b. Applicants of Permitted Public Assemblies or Special Events have authorization from the Parks and Recreation Department to select food or merchandise vendors that comply with applicable public health codes and City business regulations to provide goods and services at the permitted Public Assembly. The Applicant may prohibit food and merchandise vendors at their discretion within the permitted area during the duration of the Permit.

c. Applicants of Permitted Public Assemblies or Special Events may allow the solicitation of signatures for petitions, gifts, money, or for goods or services within the Permitted area during the duration of the Permit.

(14) Compliance with Applicable Law

a. A Permittee must comply with all applicable provisions of The City of Fort Smith Municipal Code and all City ordinances, including those provisions concerning food and noise levels. A Permittee must obtain, in advance of a Public Assembly or Special Event, separate permits for certain activities that are accessory to a Public Assembly or Special Event, including, but not limited to, vending of food and goods, special parking facilities, hanging banners, setting up tents, use of fireworks, and serving alcoholic beverages.

b. Failure to obtain any such permits may be a basis for revocation of a Permit.

c. The issuance of a Permit will not supersede a requirement for the Applicant to obtain any other permits required by law.

(15) Insurance

a. The Applicant shall procure and maintain a general liability insurance policy of at least $300,000 at all times during the Applicant's use of City Property and shall name "The City of Fort Smith" as an additional insured thereunder.

b. The Applicant shall provide the Parks and Recreation Department with a certificate of insurance from the insurer evidencing such coverage prior to the Applicant's use of the City Property, and within the time prescribed by the Parks and Recreation Department. The certificate shall also provide that the insurer shall give the Parks and Recreation Department reasonable advance notice of insurer's intent to cancel the insurance coverage provided.

(16) Indemnity Agreement

Upon submission of an Application and the issuance of a Permit, each Applicant shall be deemed to have agreed to defend, indemnify and hold harmless the City, its elected and appointed officials, agents, and employees, from and against any and all claims against the City, its elected and appointed officials, agents, and employees, and for all damage or losses to City-owned buildings, structures, or other property, which arise from the acts or omissions of the Applicant or persons within or under the direct control or supervision of the Applicant (e.g., employees).

(17) Reimbursement of City Equipment and Facilities Costs

a. Each Public Assembly or Special Event Sponsor shall pay any applicable rental fees in advance of the Public Assembly or Special Event, for any and all equipment and facilities to be provided by the Parks and Recreation Department for use in connection with the production or staging of the Public Assembly or Special Event. A schedule of such equipment and facility rental fees shall be provided to an Applicant upon request.

b. Following the conclusion of a Public Assembly or Special Event, the Public Assembly or Special Event Sponsor shall pay the Parks and/or Recreation Department for the repair and/or replacement costs (as determined by the Parks and Recreation Department in its sole discretion) of equipment and/or facilities not returned or returned in an unacceptable condition (reasonable wear and tear excepted).

(18) Reimbursement of City Personnel Costs

Each Public Assembly or Special Event Sponsor shall reimburse the Parks and Recreation Department an amount equal to all applicable personnel costs for services that are specifically requested from the Parks and Recreation Department for the purpose of staging and conducting the Public Assembly or Special Event.

(19) Waiver of Insurance Requirement

a. Any requirement for insurance may be waived by the City Administrator, or his or her designee, if the requirement will be so financially burdensome that it will preclude the Applicant from using City Property for the proposed Public Assembly. A waiver of the insurance requirement contained in subsection 15 shall not be permitted where the Public Assembly will require equipment, services, or facilities set forth in subsection 4(a)(2). A waiver of the insurance requirement shall not be permitted for Special Events.

b. Fees for City-owned equipment, facilities, and City-provided services that are requested by the Applicant cannot be waived pursuant to this subsection.

c. Application for a waiver of the insurance requirement shall be made simultaneously with the Application and must include an affidavit by the Applicant and sufficient financial information about the Applicant to enable the City Administrator, or his or her designee, to determine whether the insurance requirement will be so financially burdensome that it will preclude the Applicant from using the City Property for the proposed Public Assembly.

SECTION 2: Severability; Amendments

In the event that any provision of this Ordinance, or the application thereof to any person or circumstance, shall be judged invalid, the remainder of this Ordinance and the application of any such remaining provisions to other persons or circumstances; shall not be affected thereby.

SECTION 3: Emergency Clause. An emergency is hereby declared to exist relating to the appropriateness of the rules and regulations for Fort Smith Parks. Therefore this Ordinance shall be in full force and effect upon and after the date of passage.

Passed and approved this _____day of June, 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk