



AGENDA

FORT SMITH BOARD OF DIRECTORS REGULAR MEETING

JUNE 1, 2010 ~ 6:00 P.M.

**FORT SMITH PUBLIC SCHOOLS
SERVICE CENTER
3205 JENNY LIND ROAD**

THIS MEETING IS BEING TELECAST LIVE ON THE CITY CABLE ACCESS CHANNEL 6

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

**PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF
BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING**

(Section 2-37 of Ordinance No. 24-10)

APPROVE MINUTES OF THE MAY 18, 2010 REGULAR MEETING

ITEMS OF BUSINESS:

1. Ordinance rezoning identified property and amending the zoning map from Commercial-Regional (C-4) to Residential Single Family Medium Density (RS-3) by classification at 701, 707, 709, 715, 719, 801, 704, 706, 716, 720 North 32nd Street
2. Resolution authorizing an amendment to the Western Arkansas Tennis Association agreement to allow advertising at the Creekmore Tennis Center
3. Ordinance amending Chapter 14, Article II, of the Fort Smith City Code of Ordinances to add a section regulating the possession, sale and ingestion of certain substances
4. Resolution supporting the Fort Smith Housing Authority and its efforts to use New Market Tax Credits to stimulate development and redevelopment in low-to-moderate income areas of Fort Smith

5. Resolution to accept the bids and authorize contracts for the construction of Street Overlays/Reconstruction, Project No. 10-03-C (\$1,091,129.12)

OFFICIALS FORUM ~ presentation of information requiring no official action
(Section 2-36 of Ordinance No. 24-10)

- A. Mayor
- B. Directors
- C. City Administrator

EXECUTIVE SESSION

- ▶ Performance evaluation - City Administrator
~ Continued from May 18, 2010 regular meeting ~
- ▶ Appointments: Airport Commission (1)
~ Tabled at the May 18, 2010 regular meeting ~

CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. *Presentations are limited to 2 minutes for each citizen*
(Section 2-44(b) of Ordinance No. 24-10)

ADJOURN

1,
ORDINANCE NO. _____

**AN ORDINANCE REZONING IDENTIFIED PROPERTY
AND AMENDING THE ZONING MAP**

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 5-5-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on May 11, 2010, that said change be made;

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

SECTION 1: That the following property to-wit:

Part of Mores Addition to the City of Fort Smith, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Southwest (SW) corner of Lot 39 of Mores Addition; thence N 332.0' along and parallel to the west property lines of Lots 34-39 to a point 32' north of the Southwest (SW) property corner of Lot 34; thence E 128.7' to a point 32' north of the Southeast (SE) corner of Lot 34; thence S 50' along and parallel to the east property line of Lot 34; thence east 228.6' to a point 32' north of the Southeast (SE) corner of Lot 58; thence S 282' along and parallel to the east property lines of Lots 54-58 to the Southeast (SE) corner of Lot 54; thence W 303.3' along and parallel to the South property line of Lots 54 and 39 to the point of beginning, containing 93,093 square feet more or less.

More commonly known as 701, 707, 709, 715, 719, 801, 704, 706, 710, 716 and 720 North 32nd Street, should be, and is hereby rezoned from Commercial Regional (C-4) to Residential Single Family Medium Density (RS-3) by Classification.

Approved as to Form:



City Attorney
Pulsbrook / time

The zoning map of the City of Fort Smith is hereby amended to reflect said rezoning.

PASSED AND APPROVED THIS _____ DAY OF JUNE, 2010.

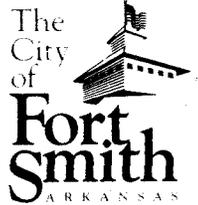
APPROVED:

Mayor

ATTEST:

City Clerk

May 26, 2010



Honorable Mayor and Board of Directors
City of Fort Smith, Arkansas

Re: Rezoning #5-5-10; A request by the City of Fort Smith, agent, for Planning Commission consideration of a zone change from Commercial Regional (C-4) to Residential Single Family Medium Density (RS-3) by Classification located at 701, 707, 709, 715, 719, 801, 704, 706, 710, 716 & 720 North 32nd Street.

On May 11, 2010, the City Planning Commission held a public hearing to consider the above rezoning request.

Ms. Maggie Rice read the staff report. Ms. Rice stated that this is a corrective rezoning to allow the zoning to accurately reflect how this area has development. She noted that this rezoning would allow for property owners in the area to alter or expand their use. Ms. Rice also stated that the Master Land Use Plan classifies this section of North 32nd Street as Residential Detached and at the present time, the existing development on North 32nd Street would match the proposed rezoning. Ms. Rice also advised the Commission that a neighborhood meeting was held on Tuesday, April 27, 2010, and the only person in attendance was a staff person.

No one was present to speak in opposition to this request.

Following a discussion by the Commission, Chairman Griffin then called for the vote on this rezoning request. The vote was 9 in favor and 0 opposed.

A copy of the draft minutes and staff report to the Planning Commission is enclosed for your review.

The Planning Commission hereby certifies this zoning map amendment to the Board of Directors in accordance with A.C.A. 14-56-422.

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File
City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 785-2801
Administrative Offices FAX (501) 784-2407

Memo

To: City Planning Commission

From: Planning Staff

Date: April 30, 2010

Subject: Rezoning #5-5-10; A request by the City of Fort Smith, agent, for Planning Commission consideration of a zone change from Commercial Regional (C-4) to Residential Single Family Medium Density (RS-3) by classification at 701, 707, 709, 715, 719, 801, 704, 706, 710, 716, 720 North 32nd Street.

LOT LOCATION AND SIZE

The requested rezoning area is on North 32nd Street between Grand Avenue and Hardie Avenue. The area to be rezoned includes 11 properties and contains an area of approximately two acres.

EXISTING ZONING

The existing zoning on this tract is Commercial Regional (C-4). Characteristics of this district are as follows:

Uses: Large shopping centers, residential uses, parking garages, business schools, medical laboratories and related accessory uses.

Area Regulations:

Front Yard Setback - 25 feet (next to right-of-way)

Setback (Adjacent Non Right-of-Way) - 20 feet

Lot Coverage - 50%

Minimum Lot Size - 3 acres

Height - 45 feet plus 1 foot vertical per each additional 1 foot horizontal

NOTE: Approved master development plan. Said plan is to be reviewed and approved by staff prior to the issuance of building permit for the property.

REQUESTED ZONING

The requested zoning on this tract is Residential Single Family Medium/High Density (RS-3). Characteristics of this zone are as follows:

Purpose: A medium density zone for family living situated close to schools, churches and shopping.

Uses: General uses allowed in this zone include single family homes, country clubs and recreational centers. Conditional uses allowed in this zone (with Planning Commission approval) include public and private schools, churches, day care facilities and community facilities.

Area Regulations:

- Minimum Lot Area - 6,500 square feet
- Front Yard Setback - 25 feet
- Side Yard Setback - 7.5 feet
- Side Yard Setback on Street Side of Corner Lot-15 feet
- Rear Yard Setback - 10 feet
- Separation of Buildings - 10 feet
- Maximum Height - 25 feet (1+1)

Density Regulations:

Single Family Development - 4 units/acre

SURROUNDING ZONING AND LAND USE

The area to the north and west is zoned Commercial Regional (C-4) and is developed as a grocery store, warehouse, and retail strip center.

The area to the south and east is zoned Residential Multifamily Medium Density (RM-3) and is developed as single family residences.

PROPOSED REZONING

This is a corrective rezoning to reflect how the area has developed. The zone that is requested is in compliance with the Master Land Use Plan.

LAND USE PLAN COMPLIANCE

The *Master Land Use Plan* classifies this site as Residential Detached. That classification is intended to create and maintain stable neighborhoods, provide safe, attractive family environments, and protect property values. The home occupation if approved will not compromise the goals and objectives of the *Master Land Use Plan*.

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies North 32nd Street as a Local Road.

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STAFF COMMENTS AND RECOMMENDATIONS

The proposed corrective rezoning is to allow the zoning to accurately reflect how this area has developed. This rezoning will allow for property owners in the area to alter or expand their use. The Master Land Use Plan classifies this section of North 32nd Street as Residential Detached. At the present time, the existing development on North 32nd Street will match the proposed rezoning.

A neighborhood meeting was held on Tuesday, April 27, 2010. The only person in attendance was a staff person.

Staff recommends approval of the requested rezoning.

10

PETITION FOR CHANGE IN ZONING MAP

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description)

see attached

2. Address of property: 701, 707, 709, 715, 719, 801, 704, 706, 710, 716, 720 NORTH 32nd Street
3. The above described property is now zoned: Commercial Regional (C-9)

4. Application is hereby made to change the zoning classification of the above described property to RS-3 by classification.
(Extension or classification)

5. Why is the zoning change requested?

Corrective Rezoning - area is developed with single family residences.

6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

CITY OF FORT SMITH

~~Owner or Agent Name~~
(please print)

Owner

PO Box 1908
FORT SMITH, AR 72902
~~Owner or Agent Mailing Address~~

[Signature] or
Agent

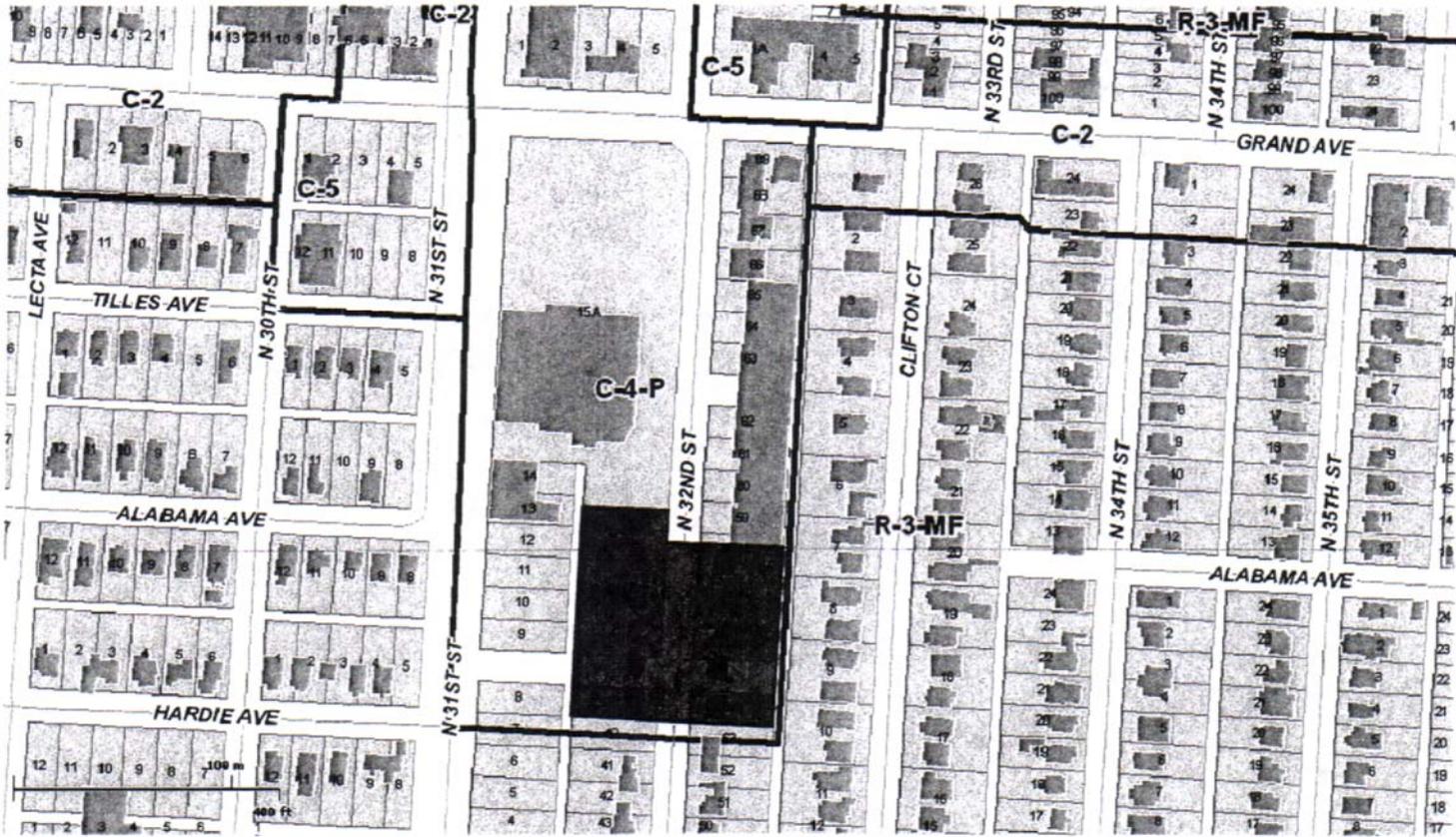
479. 784. 2216
~~Owner or Agent Phone Number~~

Part of Mores Addition to the City of Fort Smith, Sebastian County, Arkansas being more particularly described as follows:

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Rezoning # 5-5-10: From Commercial-4 (C-4) to Residential Single Family Medium/High Density (RS-3)

701, 704, 706, 707, 709, 710, 715, 716, 719, 720 and 801 North 32nd Street



2009 City of Fort Smith, AR. Printed on Thu Apr 22 2010 03:07:27 PM.

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MLU for Rezoning #5-5-10. From Commercial-4 (C-4) to Residential Single Family Medium/High Density (RS-3)

701, 704, 706, 707, 709, 710, 715, 716, 719, 720 and 801 North 32nd Street



Salvation Army
908 N 32nd Street
Fort Smith, AR 72903

John Casey
808 Clifton Court
Fort Smith, AR 72903

Citimort Gage, Inc.
1000 Technology Drive
O'Fallon, MO 63304

Jennifer Willis
628 Clifton Court
Fort Smith, AR 72903

Jose & Maldonad Martinez
3017 N Hardie Avenue
Fort Smith, AR 72901

Carolyn Spencer
613 Clifton Court
Fort Smith, AR 72903

Michael Booker
620 Clifton Court
Fort Smith, AR 72903

Matthew Adams
8319 Eufaula Drive
Hackett, AR 72937

Susan & Meredith Reece
8013 Yorktown Road
Fort Smith, AR 72903

Aaron & Taylor Spence
any Spence
401 Towson Avenue
Fort Smith, AR 72901

Chan Holcombe Trust
1521 N. Waldron Road
Fort Smith, AR 72904

Hartsel Acord
1306 Trail S. Edge Drive
Conway, AR 72032

Paul Basinger
605 Clifton Court
Fort Smith, AR 72903

Carl Creel
3201 Kinkead Avenue
Fort Smith, AR 72903

John Casey
2716 Reeder
Fort Smith, AR 72901

Jasper & Cathy Olsen
720 North 32nd Street
Fort Smith, AR 72903

Nita Fawcett & Esther Johnson
706 North 32nd Street
Fort Smith, AR 72903

Terry & Tonya Knotts
615 North 32nd Street
Fort Smtih, AR 72903

Jimmy & Carol Trotter
612 Clifton Court
Fort Smith, AR 72903

Laverne Frances
10 Sugar Maple Bend
Rudy, AR 72952

Arnulfo & Maria Alvarado
3308 North 46th Street #4
Fort Smith, AR 72904

Betty Wells & Kathy Hart
2600 Dallas Street
Fort Smith, AR 72901

John Casey
635 Clifton Court
Fort Smith, AR 72903

Huoc Hoa Tran
700 North 31st Street
Fort Smith, AR 72901

AR-NM-1103-029, LLC
P. O. Box 2973
Fort Smith, AR 72913

Thomas James & Judy Scherer
7707 "T" Street
Little Rock, AR 72227

John Casey
808 Clifton Court
Fort Smith, AR 72903

Ollie Amos
801 North 32nd Street
Fort Smith, AR 72903

Patrick & Robin Kirkendall
724 Clifton Court
Fort Smith, AR 72903

Lilia Ramirez Gonzalez
618 North 32nd Street
Fort Smith, AR 72903

Soledad & Jose Antonio Araujo
704 North 32nd Street
Fort Smith, AR 72903

Joseluis Bueno
608 North 32nd Street
Fort Smith, AR 72903

Eric Young
713 Clifton Court
Fort Smith, AR 72903

Shannon & Jacqueline Gressett
609 Clifton Court
Fort Smith, AR 72903

Westphal Investment
109 North 6th Street
Fort Smith, AR 72901

Rick & Connie Krebs
621 Clifton Court
Fort Smith, AR 72904

Michael & Laurel Thomas
810 Clifton Court
Fort Smith, AR 72901

Vanessa Clements
704 Clifton Court
Fort Smith, AR 72903

Allen Louis Clardy
716 North 32nd Street
Fort Smith, AR 72903

Betty Carpenter
715 North 32nd Street
Fort Smith, AR 72903

Paul & Mary Gechter
919 South 24th Street
Fort Smith, AR 72901

Robert & Karen Johnson
631 Clifton Court
Fort Smith, AR 72903

Luan Cong Pham
1801 S. Atlanta
Fort Smith, AR 72901

Ha Yen Pham
3012 Tilles Avenue
Fort Smith, AR 72903

Larry & Jane Haynes
705 Clifton Court
Fort Smith, AR 72903

Glenn Price Trust
1746 E. Herbert Avenue
Salt Lake City, UT 84108

Neal & Pamela Johnston
806 Clifton Court
Fort Smith, AR 72903

Freda Brewer
621 North 32nd Street
Fort Smith, AR 72903

Leaha Carter
634 Clifton Court
Fort Smith, AR 72903

Perkins Orthotics & Prosthetics
P. O. Box 2644
Fort Smith, AR 72901

Omar Lee Zubidat
1108 S. Adams
Lavaca, AR 72941

Jessica Travis
c/o Net Co., Inc.
1701 Centerview Dr. 121
Little Rock, AR 72211

Amanda Conrad
624 Clifton Court
Fort Smith, AR 72903

Sequoyah Energy
4300 Rogers Avenue-Suite 20 #13
Fort Smith, AR 72903

Debra Smith
605 North 32nd Street
Fort Smith, AR 72903

Timothy & Maria Chilcott
801 Clifton Court
Fort Smith, AR 72903

Rodolfoz Perez
616 Clifton Court
Fort Smith, AR 72901

Vernon Riddle, Jr.
615 Clifton Court
Fort Smith, AR 72903

DRAFT

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT
AGENDA
ROSE ROOM
CREEKMORE PARK COMMUNITY CENTER
5:30 P.M.
MAY 11, 2010**

On roll call, the following Commissioners were present: Keith Lau, Pam Weber, Jennifer Parks, Steve Griffin, Mike Lorenz, Travis Stephens, Jennifer Canada, Walton Maurras and Brandon Woodrome.

Chairman Griffin then called for the vote on the minutes from the April 13, 2010, Planning Commission meeting. Motion was made by Commissioner Parks, seconded by Commissioner Lorenz and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

- 1. Rezoning #5-5-10; A request by the City of Fort Smith, agent, for a zone change from Commercial Regional (C-4) to RS-3 by Classification located at 701, 707, 709, 715, 719, 801, 704, 706, 710, 716 and 720 North 32nd Street.**

Ms. Maggie Rice read the staff report. Ms. Rice stated that this is a corrective rezoning to allow the zoning to accurately reflect how this area has development. She noted that this rezoning would allow for property owners in the area to alter or expand their use. Ms. Rice also stated that the Master Land Use Plan classifies this section of North 32nd Street as Residential Detached and at the present time, the existing development on North 32nd Street would match the proposed rezoning. Ms. Rice also advised the Commission that a neighborhood meeting was held on Tuesday, April 27, 2010, and the only person in attendance was a staff person.

No one was present to speak in opposition to this request.

Chairman Griffin then called for the vote on this rezoning request. The vote was 9 in favor and 0 opposed.

- 2. Home Occupation #10-5-10; A request by Alejandro Moron for a home occupation for a contractor and lawn care business located at 522 North 21st Street.**

Ms. Maggie Rice read the staff report indicating that the purpose of this home occupation request is to allow the applicant to operate a contractor and lawn care business from his residence. Ms. Rice stated that the applicant has indicated that the business will be conducted various hours daily as work demands, Monday through Sunday. She noted that the applicant has a Dodge Ram truck which will be used for the business and an 18' trailer which will be stored in the back yard after the installation of a gate in the existing

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE WESTERN ARKANSAS TENNIS ASSOCIATION AGREEMENT TO ALLOW ADVERTISING AT THE CREEKMORE TENNIS CENTER

WHEREAS, the Western Arkansas Tennis Association (WATA) has requested permission to sell advertisement on wind screens to raise funding for capital improvements at the Creekmore Tennis Center;

WHEREAS, the Parks and Recreation Commission approved of the recommendation to sell advertisement on wind screens to raise funding for capital improvements at the Creekmore Tennis Center;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

The Mayor is hereby authorized to execute, his signature being attested by the City Clerk, an amended agreement with WATA, substantially in the form attached hereto.

This Resolution passed this _____ day of June, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

*Approved as to form
JSC
no publication required*



Memo:

May 27, 2010

To: Dennis Kelly, City Administrator
From: Mike Alsup, Director of Parks and Recreation *Mike Alsup*
Re: Recommendation to allow the sale of advertisement at Creekmore Tennis Center

The Parks Commission made a recommendation that either the City allocate funding for the resurfacing of the tennis courts at Creekmore Park or that Western Arkansas Tennis Association (WATA) be allowed to sell advertisement on the wind screens at each court to provide funding for this project and other large maintenance or capital expenses. The Board of Directors agreed to place on the June 1, 2010 agenda a resolution accepting the recommendation to allow WATA to sell advertisement.

The resolution proposes to amend the agreement with WATA by adding section 21 ADVERTISING to allow the sale of advertisement and contains the guidelines for the advertisement and use of funds generated. The funding generated will be used to repair and resurface the tennis courts. Additional funds will be used for other large maintenance or capital improvements to the Creekmore Tennis Center.

Approval of the proposed amendment will provide a method of funding the ongoing maintenance of the courts. Under WATA's management, the courts are used by many citizens of Fort Smith for open play, leagues, instruction, and school teams. Currently the University of Arkansas Fort Smith and the high schools use the courts for practice and matches. WATA is to be commended for their work in promoting tennis in our community. This action will make it possible for WATA to continue this work.

attachment

cc: Park Commission
Marge Griesse, WATA

AGREEMENT

THIS AGREEMENT MADE AND ENTERED INTO this ____ day of _____, 2010, by and between the City of Fort Smith, Arkansas, hereinafter "CITY" and Western Arkansas Tennis Association pursuant to resolution of its Board of Directors, hereinafter "Contractor" or "WATA," for the provision of tennis services at the Creekmore Tennis Center at Creekmore Park, hereinafter "Tennis Center."

WITNESSETH

WHEREAS, the CITY is the owner of the real property described as the Creekmore Tennis Center (located on the City owned real property identified on the plat attached as Exhibit A attached hereto) used for the benefit of its citizens as a "public park"; and,

WHEREAS, the parties desire that the subject property continue to be used, in part, for organized public athletic activities supervised by Contractor; and,

WHEREAS, the parties desire to place in writing the terms of their mutual agreement regarding the responsibilities of the parties with regard to the use of the described real and personal properties owned by Contractor;

NOW, THEREFORE, in exchange of the mutual terms and conditions set forth herein, which are acknowledged by the parties to be sufficient to support the obligations set forth herein, the parties agree as follows:

1. **PURPOSES:** Contractor shall provide tennis services at the Creekmore Tennis Center at Creekmore Park. Contractor shall supervise activities at the Tennis Center as an independent contractor as identified in paragraph 16. Contractor shall use the facility for conducting scheduled tennis activity programs for the public park benefit of the citizens of the City of Fort Smith.

2. **SCHEDULING & HOURS:** Except as noted in this paragraph, Contractor shall have the right to schedule the use of the courts on the subject property. All of the property shall be available for public park uses by the citizens of the CITY of Fort Smith at all times not scheduled for Contractor activities. The CITY reserves the right to schedule and use the property, including structures and other facilities, at all times not scheduled by Contractor. At least one tennis court will be open for public use at all times not scheduled for WATA activities. WATA activities, tournaments and special events, lasting longer than four consecutive days or more must be approved in writing by the City prior to scheduling by WATA.

2.01 **Hours of Operation:** Contractor shall establish daily operational hours, subject to CITY review and approval. Daily operational hours shall be publicly posted on-site at the Tennis Center.

3. **ACTIVITIES & SERVICES:** Contractor is authorized and required to provide organization, administration, and supervision of tennis competition, including scheduling of courts, leagues, and tournament play during hours of operation, and shall provide concession services to the public.

3.01 Lessons and Clinics: Paid tennis lessons and clinics shall be taught only by qualified instructors as certified by USPTR or USPTA. Contractor shall have the exclusive right to provide paid tennis instruction.

3.02 Tournaments: Contractor shall make reasonable efforts to develop and facilitate/host special events and tournaments such as City, County, State, Regional, and National tournaments.

3.03 Leagues: Contractor shall make available facilities for youth and adult play in organized leagues, ensuring equal access to all CITY residents without regard to race, religion, color, national origin, sex, age, or handicap.

3.04 Special Events: Contractor may offer special activities such as corporate outings, charity benefits, and exhibitions. Contractor shall also cooperate with the CITY in providing tennis services at other, selected CITY sponsored special events and activities at the Tennis Center on mutually agreed upon terms.

3.05 Concession and Stringing: Concession and racquet stringing rights are awarded to Contractor and may be self-operated or contracted to a third party.

3.06 Food and Beverages: Contractor is hereby authorized to sell food and beverages at the Tennis Center. Contractor shall ensure that all local and state regulations are adhered to. All food and beverage products kept on hand by Contractor shall be stored and handled with due regard to sanitation. In the event that Contractor's food and beverage products are deemed by the CITY to be less than first class in quality, the CITY shall have the right to order the improvements of the quality of any such product kept or offered for sale.

3.07 Pro Shop: Contractor shall provide and maintain such inventory of tennis merchandise as is deemed necessary by the joint agreement of Contractor and CITY to adequately meet the public demand. The CITY shall have the right to prohibit the sale or rental of any item of merchandise on finding that the item is of such inferior quality as to not be in the public interest to be offered for sale, or that such item is not necessary for proper service to the public.

3.08 Quality of Goods and Service: Service to the public, with goods and merchandise of the best quality and at reasonable charges, is of prime concern to the CITY and is considered a part of the consideration for this Agreement. Therefore, Contractor agrees to operate and manage the Tennis Center facilities and services offered in a first-class manner, and comparable to other similar facilities and services during the entire term of this Agreement. Contractor, following receipt of written notification issued under sub-paragraph 19.01, shall immediately withdraw or remove from sale any goods or services which may be found objectionable to the CITY based on findings that the provision of such goods or services are harmful to the public welfare.

3.09 Signs: Contractor shall not post additional, permanent signs at the Tennis Center or improvements thereon, unless prior approval is obtained from the CITY. Contractor may post temporary signs, banners, and the like to promote special activities and to allow publicity for sponsors of the various activities at the Tennis Center.

3.10 **Nondiscrimination:** Contractor shall conduct activities on a non-discriminatory basis with regard to race, national origin, religion, disability or gender. The provisions of this sub-paragraph shall not prevent Contractor from establishing recreational activities according to the ages and skill level of the participants in the activities.

4. **MAINTENANCE:** The property shall be maintained according to the following sub-paragraphs.

4.01 **Grounds:** The CITY, at its own expense, shall maintain to a standard within its discretion, the structural parts of the Tennis Center and courts, which shall include court surfaces, fences, gates, lights and light poles on the tennis courts, side walks, paved areas, trees and landscape, foundations, exterior walls, sub-flooring, and roof. The CITY will replace burned-out light bulbs over the tennis courts, empty large trash receptacles on courts and replace HVAC filters.

4.02 **Premises:** WATA shall, as its own expense, be responsible for routine janitorial services of the office areas, storage rooms, and tennis courts at the Tennis Center, in particular cleaning and replacement of consumables (toilet paper, soap, etc.). Routine janitorial services shall include: court sweeping, litter control, pro shop cleaning (including toilet areas), replacing interior light bulbs, etc. These examples are not an all-inclusive list but are merely provided to guide both parties in defining areas of responsibility. Specifically, it shall be the obligation of WATA to insure conformance with all relevant codes and ordinances of the CITY and applicable Health Codes in connection with the Tennis Center.

5. **UTILITIES:** The CITY shall provide public utilities (sewer, water, and electricity) for uses of the park by Contractor and by the public generally. All telephone numbers that identify Creekmore Tennis Center to the public shall be placed in the name of Contractor and shall not be transferable to any other location. The City shall provide the main phone line and internet connection for the Center. WATA shall reimburse the City for any long distance charges on the main phone line.

6. **IMPROVEMENTS:** Contractor shall have no right to construct additional improvements or to remodel or to modify or alter the facilities in any way without prior written permission from the CITY.

6.01 **Appliances & Personal Property:** WATA, at its own expense, shall provide furniture and office and tennis equipment required for the Tennis Center building operation. WATA shall have the right to control personal property and equipment owned by WATA and stored in the structures at the Tennis Center. In the event of an involuntary cancellation or termination of this Agreement, WATA shall accomplish the removal of personal property within seven (7) days of such cancellation or termination. Should WATA fail to remove said appliances, furniture, and equipment within the applicable time period, WATA shall forfeit all right, title and interest therein and the CITY may elect to keep same upon the premises or to sell, remove or demolish same without recourse.

7. **INSPECTIONS:** Regularly scheduled joint inspections of the Tennis Center and review of Contractor's operations shall be made by the CITY with a representative of Contractor. The written report of such inspections shall be recorded, ranked, retained for reference, and forwarded to Contractor and the CITY as confirmation of the inspection.

8. **SAFETY:** Contractor shall immediately correct any unsafe practices or conditions which come to its attention or if notified of such by the CITY.

8.01 **Identification:** Contractor shall establish an identification system for personnel assigned to the Tennis Center which clearly indicates to Tennis Center patrons and other members of the general public the name of the person(s) on duty.

8.02 **Injuries:** Contractor shall notify emergency medical services (911) in the event of illness or injury occurring at the Tennis Center. Contractor shall notify the City of an incident through email or a written report.

8.03 **Security Devices:** Contractor may provide any lawful devices, installation, or equipment designed for the purpose of protecting the Tennis Center from theft, burglary or vandalism, provided written approval for installation is first obtained from the CITY.

9. **COMPLIANCE WITH LAW:** Contractor shall conform to and abide by all CITY and county ordinances, and all state and federal laws and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the Tennis Center operation(s) and/or any construction required or authorized, the same must be first obtained from the regulatory agency having present jurisdiction. Contractor shall also conform to and abide by all rules, regulations, procedures and policies of the CITY Board of Directors and the CITY Administrator insofar as the same or any of them are applicable.

10. **EMERGENCY CONTACT:** Contractor shall provide the CITY with the names and telephone numbers of the Executive Director and President should an emergency situation occur during hours when Contractor's normal work force is not present.

11. **CLOSURE:** If the governing body of the CITY does not appropriate sufficient funds to operate the Tennis Center as a park facility, this contract is subject to the absolute right of the CITY to discontinue use of the Tennis Center upon three months notice. In such event, Contractor shall have no legal rights pursuant to this. Contractor acknowledges that the CITY has the authority to temporarily or permanently close the Tennis Center if the CITY determines that the conditions require closure or the remediation of such conditions is too costly.

12. **TERM & RENEWAL:** The term of this Agreement shall be for a period of (3) years, subject to the other provisions of the Agreement.

13. **REVENUES:** all revenues derived from the operation of the Tennis Center shall be the property of Contractor.

13.01 **Registers:** All sales shall be recorded by means of cash registers that publicly display the amount of each sale. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. In the event of a technical or electrical failure of the cash register, Contractor shall record by hand all collections, and issue a sequentially, pre-numbered customer's receipt in a like manner.

14. **ACCOUNTING:** Contractor shall be required to maintain a method of accounting to the satisfaction of the CITY, which correctly and accurately reflects the gross receipts and disbursements of

Contractor in connection with the Tennis Center operation. The method of accounting, including bank accounts established for the Tennis Center operation, shall be separate from the accounting system used for any other business operated by contractor and shall be separate from the accounting system used for recording Contractor's personal financial affairs.

14.01 Records: Contractor's method of accounting shall include the keeping of the following documents:

- a. Regular books of accounting such as general ledgers.
- b. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
- c. State and federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown.
- d. Cash register tape
- e. Any other reporting records that the CITY's Department of Finance deems necessary for proper reporting of receipts.

14.02 Open Inspection: All documents and accounting records required to be kept pursuant to the Agreement shall be maintained and open for inspection and re-inspection during normal business hours upon forty-eight (48) hours advance notice during the term of this Agreement and for three (3) years thereafter. In addition, during the term of this Agreement, the CITY may observe the operation of the business and may from time to time conduct an audit and re-audit of the books and business conducted by Contractor and for three (3) years after end of this Agreement so that accuracy of the above records can be confirmed. All information obtained in connection with the CITY's inspection of records or audit shall be treated as public information pursuant to the Arkansas Freedom of Information Act. If Contractor deems any such information to be of a confidential nature, (i.e., not intended for disclosure to third persons) Contractor should so indicate. The CITY will then exercise its best efforts to protect this information, but only to the extent that the law permits. The CITY shall not be liable, nor assume any responsibility, for any loss or damage that may result directly or indirectly from any breach of confidentiality.

14.03 Reporting: WATA shall furnish an annual report to include court usage and an income statement. The court usage report shall include usage by individuals, leagues, tournaments, schools and others. The income statement shall include a listing of types of revenues received such as court fees, tournament fees and sponsorships, concessions, and fees or percentages charged to instructors and the amount collected. The statement shall also include expenditures by category in the operation of the Center and amounts. The annual report shall be submitted within thirty (30) days of the end of June.

14.04 Annual Report: Contractor shall employ a certified public accountant to furnish an annual written report with appropriate schedule(s) to the CITY. The annual report and certification shall be submitted within one hundred and twenty (120) days of the close of each calendar year.

15. INDEMNITY: Contractor shall indemnify and hold the CITY harmless from all claims, liens, actions, and judgments, including reasonable legal fees and costs incurred with reference thereto, caused by the fault, negligence, breach of contract or violation of law by the Contractor under this Agreement.

15.01 Liability Insurance: Contractor shall provide and maintain at its own expense during the term of this Agreement liability insurance in the minimum amount of \$100,000.00 per person, \$300,000.00 per occurrence, and \$50,000.00 property damage for the purposes of providing liability protection to Contractor with reference to the premises and activities on the property.

15.02 Casualty Insurance: The CITY shall maintain fire, storm and other casualty insurance on the improvements located on the Tennis Center in amounts determined by the CITY. Any such insurance policy shall designate the CITY as the insured under the policy. All insurance proceeds shall be utilized to repair or replace damaged structures and/or improvements, unless a different use for the proceeds is designated, in the CITY's sole discretion. To the extent they desire insurance, Contractor will insure its own personal property.

16. INDEPENDENT CONTRACTOR: It is acknowledged and agreed that Contractor is acting as an independent contractor and that no employee, agent or volunteer of Contractor shall be considered an employee or agent of the CITY nor may this Agreement be so construed. Contractor shall comply with the requirements of Arkansas Workers' Compensation law.

17. PARK RULES: The property and its use shall be subject to the park rules of the CITY of Fort Smith codified in Article II of Chapter 18 of the Fort Smith Code. The CITY reserves the right to adopt and implement additional park rules and regulations at any time during the term of this Agreement. WATA will be provided notice of any additional park rules and regulations prior to implementation of said rules and/or regulations.

17.01 WATA RULES: WATA shall have the right to impose reasonable rules on participation in connection with tennis activities and programs and use of facilities, provided that such rules do not conflict with any requirement under this Agreement or rules adopted by the CITY.

18. ADDRESSES: Any notice required or permitted to be given pursuant to this Agreement shall be provided to the other party at the addresses indicated:

City of Fort Smith
Parks & Recreation Director
3301 South M Street
Fort Smith, Arkansas 72903

WATA
Executive Director
3303 South M Street
Fort Smith, Arkansas 72903

19. DISAGREEMENT OR BREACH: Either party to this Agreement may provide notice to the other party at the address indicated in the preceding paragraph 18 of any disagreement or breach.

19.01 Notice & Response: The notice shall specify the nature of the alleged violation and its corresponding provision in this Agreement. Within seven (7) days, the other party shall respond in writing regarding the alleged violation of the Agreement. If the alleged violation has been cured, the response shall so note. If, after the exchange of notice of violation and response, either party considers the issue to be unresolved, that party shall notify the other of the date, time and place of a meeting (to be held within the City of Fort Smith no sooner than seven (7) days nor later than fourteen (14) days from the date of said notice of meeting) at which representatives of the parties shall discuss the alleged violation and the response thereto.

19.02 **Termination:** In the event the meeting of the parties pursuant to the procedures in sub-paragraph 19.01 above does not resolve the alleged violation, the CITY reserves the right to terminate this Agreement after seven (7) days written notice to the Contractor. Either party may pursue any available judicial remedy.

19.03 **Hazards:** Irrespective of the Notice & Response provision, in the event the CITY determines that any condition on the Tennis Center constitutes an imminent health hazard to any member of the public, the CITY shall have the right to take immediate action to correct such condition. In such event, the CITY shall notify a representative of Contractor by telephone, facsimile or other method deemed to provide expedient notice to the Contractor. Expenses associated with curative action shall be borne by the party responsible for maintenance that would have prevented such condition under this Agreement. If Contractor does not subsequently agree to pay the expense of any curative action so charged, the CITY has the right under this Agreement to petition a court of competent jurisdiction to declare the rights of the parties and, if it is declared that the expense was the obligation of Contractor under this Agreement, Contractor shall immediately pay the expense to the CITY after exhausting judicial remedies regarding that issue. Any failure of Contractor to comply with the provisions of this sub-paragraph shall be a basis for the CITY, in its sole discretion, to terminate this Agreement on seven (7) days written notice.

19.04 **Right of Entry:** Should Contractor fail, after thirty (30) days notice from the CITY of the need to perform its required routine maintenance obligations, the CITY in addition to all other available remedies may, but shall not be obligated to, exercise its Right of Entry and perform Contractor's failed obligations, using any equipment or materials on the premises suitable for such purposes. Contractor shall reimburse the CITY on demand for its costs in performing Contractor's obligations. In addition, the CITY shall have the right to step in and perform Contractor's obligations under this contract while any litigation is pending.

20. **DEFINITIONS:** References to actions or notices to or from the CITY in this agreement shall be construed to refer to the City Administrator or his authorized representative. Any authorization or permission required or authorized under this Agreement shall be valid only if issued by the City Administrator or his authorized representative.

21. **ADVERTISING:** WATA is authorized to sell advertisement on the wind screens at Creekmore Park Tennis Center for the purpose of funding the repairs and resurfacing of the tennis courts. These funds may also be used for other large maintenance projects or capital improvements to the center.

21.01 All advertisement must be approved by the Parks and Recreation Director prior to ordering the wind screens.

21.02 Denial of advertisement may be appealed to the Parks and Recreation Commission.

21.03 Projects funded under this section will be executed and managed by the Parks Department according to the City's purchasing policies. WATA will provide funding for the projects to the City.

21.04 Funds from advertising under this provision may not be used for day to day operation of the tennis center.

21.05 Advertising is limited to business logos, business names, family names, or other approved logos or names.

21.06 Advertising must not promote alcoholic beverages, tobacco products, gambling,

sexually explicit materials or graphically violent material.

21.07 The following advertising materials are prohibited:

1. Political
2. Public issue or viewpoint
3. Tobacco and tobacco related products, or advertisements of a business, the principal purpose of which is selling the same
4. Alcoholic beverages or advertisements of a business, the principal purpose of which is selling of same
5. Obscene materials, sexually explicit materials, including graphic representations of sexual conduct, or advertisements of a business, the principal purpose of which is selling of same
6. Gambling or advertisements of a business, the principal purpose of which is selling of same
7. Graphically violent or threatening materials
8. Non-consented use of a person's name
9. Race, religion, gender, or age demeaning or discriminatory materials

THIS AGREEMENT EXECUTED as of the date first set forth above by the Mayor and the City Clerk of the City of Fort Smith pursuant to Resolution No. _____ of the Fort Smith Board of Directors and by the authorized representative of Western Arkansas Tennis Association, a non-profit corporation organized under the laws of the State of Arkansas, pursuant to resolution of the WATA Board of Directors adopted on June _____, 2010.

CITY OF FORT SMITH, ARKANSAS

By: _____
Mayor

ATTESTED:

City Clerk

WESTERN ARKANSAS TENNIS ASSOCIATION:

By: _____
WATA Representative

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF SEBASTIAN)

On this _____ day of _____, 2010, before me personally appeared Ray Baker, personally known to me to be the individual who executed the within and foregoing instrument, and he acknowledged that he signed the same as the duly authorized agent of the City of Fort Smith, and that the same is the free and voluntary act and deed of the City of Fort Smith, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 2010.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF SEBASTIAN)

On this _____ day of _____, 2010, before me personally appeared _____, personally known to me, and acknowledged said instrument to be his free and voluntary act and deed, for the uses purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 2010.

Notary Public

My Commission Expires:

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CHAPTER 14, ARTICLE II, OF THE FORT SMITH
CITY CODE OF ORDINANCES REGULATING THE POSSESSION, SALE AND
INGESTION OF CERTAIN SUBSTANCES**

WHEREAS, the Board of Directors of the City of Fort Smith, Arkansas, has determined that within the city limits of the City of Fort Smith, Arkansas, there are certain substances available for sale which produce intoxicating effects similar to THC or marijuana; and,

WHEREAS, at this point, neither the state of Arkansas, nor the federal government, have enacted any laws to regulate the sale, possession or ingestion of same, and have not yet categorized such substances as illegal, controlled substances; and,

WHEREAS, it has been determined that the effects of these substances are potentially dangerous to users, and, furthermore, that the long-term effects are unknown, and thus constitute a health concern to the citizens of the City of Fort Smith, Arkansas;

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

Chapter 14, Article II, of the Fort Smith Municipal Code is amended by adding Section 14-32, which shall read as follows:

Sec. 14-32. Possession, Sale and Ingestion of Certain Substances

- (a) It shall be unlawful for any person to use, possess, purchase, sell, publicly display for sale or attempt to sell, give, or barter any one or more of the following substances within the city limits of the City of Fort Smith, Arkansas:
- (1) Salviadinorum or salvinorum A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts
 - (2) (6aR,10aR)-9-(hydroxymethyl)-6, 6dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol some trade or other names: HU-210
 - (3) 1-Pentyl-3-(1-naphthoyl)indole – some trade or other names: JWH-018\Spice
 - (4) 1-Butyl-3-(1naphthoyl)indole – some trade or other names: JWH-073
 - (5) N-benzylpiperazine – some other trade names: BZP
 - (6) 1-(3-[trifluoromethylphenyl]) piperazine – some trade or other names: TFMPP
 - (7) Or any similar substance.

- (b) It is not a violation of this Ordinance if a person was acting under the supervision of an authorized law enforcement officer to enforce or ensure compliance with this Ordinance.**
- (c) It is unlawful for any person, knowingly, to breathe, inhale or drink any compound, liquid or chemical listed within this Ordinance, or a similar substance for the purpose of inducing a condition of intoxication, stupefaction, giddiness, paralysis, irrational behavior, or in any manner, changing, distorting or disturbing the auditory, visual, or mental process.**
- (d) It is unlawful for any person, within the city limits of the City of Fort Smith, Arkansas, knowingly, to sell, offer for sale, deliver, give, or possess with the intent to sell, deliver or give to any other person any compound, liquid, or chemical set forth herein, or other substance that will induce a condition of intoxication through breathing or inhalation if he or she has reasonable cause to believe that the compound, liquid or chemical sold, offered for sale, delivered, given or possessed with the intent to sell or give will be used for the purpose of violating this Ordinance.**
- (e) This Ordinance does not apply to any person who commits any act described in this Ordinance pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act. This Ordinance likewise does not apply to the inhalation of anesthesia for a medical or dental purpose.**
- (f) Any person found to be in violation of this Ordinance will be guilty of a misdemeanor and upon conviction shall be subject to the penalties set forth in section 1-9 of this Code of Ordinances.**

Emergency Clause. It is hereby determined that the sale, use, and possession of the substances identified in this Ordinance is a significant risk to the health, safety and welfare of the City's inhabitants, and, that such substances are currently being sold and used, without regulation or prohibition, and thus an emergency exists that requires the immediate effectiveness of this Ordinance.

This Ordinance adopted this ____ day of _____, 2010.

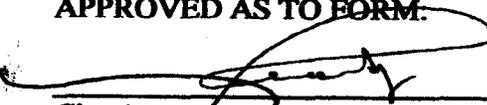
APPROVED:

Mayor

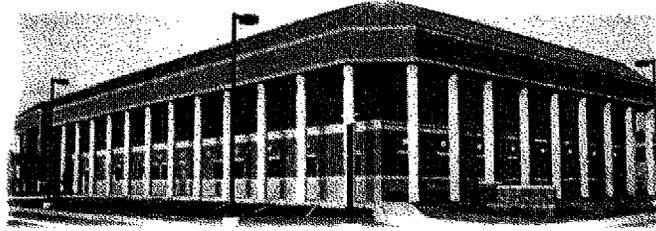
ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney
Publish 1 time



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Dennis Kelly, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: Herbal Substances (i.e. K-2) Ordinance

Date: May 25, 2010

At the May 25, 2010 regular Board of Director Study Session, staff presented Directors with two versions of an ordinance banning the possession, use, sale, and other activities associated with the identified substances. Directors moved to bring the ordinance version before them that addressed all persons, regardless of age. The information below was included in the original memorandum presented to the Board of Directors for the Study Session.

Currently, legal herbal mixtures and synthetic chemical compounds are being marketed as a "legal high" in the Fort Smith region. These products are sold in retail outlets under names such as K-2, Spice, Genie and Yucatan Fire. Research indicates these herbal mixtures have similar effects to that of *cannabis* or marijuana. These products pose a threat to public safety as they are increasingly being abused by teens and young adults around the nation.

In researching K-2 and similar herbal mixtures, we found that these products are increasingly being sold at smoke shops, gas stations, convenience stores and novelty shops across the nation, and more specifically in the City of Fort Smith. Law enforcement authorities are encountering herbal mixtures being sold as incense with greater frequency and there are documented cases in Greenwood, Arkansas and in Crawford County, Arkansas where teens and young adults were found to be in possession of these herbal mixtures. These substances are readily available to teens and young adults, and there are currently no state or federal laws regulating the sale, possession or ingestion of these substances.

Some of the chemical compounds found in herbal mixtures, such as K-2, have been found to be 100 times more potent than THC, the active ingredient in *cannabis*. The adverse side effects of these compounds can include, but are not limited to, pain attacks, heart

palpitations, hallucinations, delusions, vomiting, increased agitation, and dilated pupils. The long term effects of these compounds are not yet known, which increases the danger of ingesting such compounds.

Several municipalities and counties in Arkansas have recently enacted ordinances banning K-2 and similar products, and include: Greenwood, Springdale, Rogers, Crawford County, Benton County, and most recently, Sebastian County. While some of the ordinances enacted have been aimed at juveniles, others have been enacted to ban the substances for the entire population. Prior to the Missouri State Legislature passing a law banning the substances statewide, there were several municipalities and counties which enacted ordinances to ban the substances, to include: Pettis County, MO, St. Charles County, MO, Camdenton, MO and Lake Ozark, MO.

These products are currently sold within the city limits of Fort Smith in at least two locations, making them readily available to the citizens of Fort Smith, as well as surrounding communities. Although little is known about the long term effects of this substance on humans, these substances may pose significant risk to the health, safety and welfare of the City's inhabitants, creating a need to regulate these substances.

GULF COAST HIDTA INTELLIGENCE BULLETIN

Spice/K2Overview:

An emerging threat in the Gulf Coast HIDTA is the abuse of a combination of legal herbal mixtures and synthetic chemical compounds marketed as a "legal high." This product, commonly retailed under the names of Spice, Mojo, K2, or Genie, has become increasingly abused by teens and young adults and has gained the attention of law enforcement authorities and legislators. Until recently, the "legal weed" was exclusively purchased over the Internet; however, due to its popularity, it is becoming increasingly sold at smoke shops, gas stations and convenience stores. The plants used to create this legal high include baybean, blue lotus, pink lotus and lion's tail. They were used by ancient cultures as a sedative or for euphoric effects. In addition to the natural herbal contents, these products also contain several synthetic chemical compounds that are potentially hazardous. These products, designed to be smoked, are produced internationally and imported into the United States.



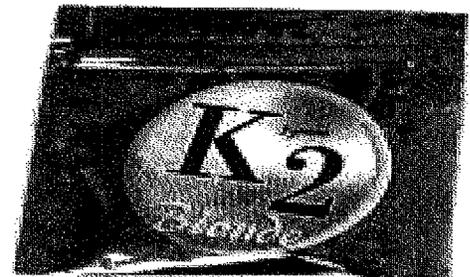
Law enforcement authorities are encountering these herbal incenses with greater frequency and some cities in the United States have witnessed an increase in hospitalizations due to the adverse effects of the herbs. Reports indicate that this combination of herbs has similar effects to that of cannabis. These adverse side effects include, but are not limited to, pain attacks, heart palpitations, hallucinations, delusions, vomiting, increased agitation and dilated pupils. There are no accepted urine drug testing or field test kits able to detect the chemicals; however, laboratory testing can detect the presence of synthetics. Chemical testing has revealed that some of the synthetic chemicals found in these products are controlled substance schedule 1 drugs. One of these synthetics, HU-210, is structurally similar to, but is reportedly 100 times more potent than THC, the active ingredient in cannabis.

Cost: These products are available in several volumes, including three gram packs, 400 milligram packs and 800 milligram packs with retail around \$5 for a pre-rolled herbal cigarette to around \$20 to \$50 for the three gram package.

Legislation: Currently, Alabama and Louisiana have introduced legislation making several of the chemical compounds in these substances illegal. The Mississippi Bureau of Narcotics has sent a proposal to Mississippi legislators seeking to make these chemical compounds illegal. A town in Northern Arkansas has passed a city ordinance outlawing the sale and possession of these products. Out of concern for its citizens, especially teenagers and young adults, the city enacted the law prior to the potential increase in abuse. Businesses caught retailing the product face the possibility of having their license revoked plus a \$200 fine for each sale of the product while citizens in possession of the product face a \$500 fine. Due to the increased usage and adverse effects of the product, many other states are working on legislation to ban these chemicals. Currently, Kansas is the only state to have already passed legislation to ban these chemical substances.



April 2010



GULF COAST HIDTA INTELLIGENCE BULLETIN



Spice/K2

Incidents: The U.S. Customs and Border Protection seized two packages at a DHL freight hub in Dayton, Ohio containing 31.65 kilograms of herbal incense. The packages were shipped from the Czech Republic to Port Richey, Florida. This product tested positive for HU-210 at a CBP laboratory in Chicago. In February 2010, a CBP laboratory in Atlanta tested two shipments of suspected herbal incense. The product tested positive for JWH-018, a synthetic cannabinoid.

Extracts: The naturally occurring ingredients in these smoking herbal blends have been utilized by ancient cultures. Spice/K2 includes the following herbs:

Baybean - smoked as a marijuana substitute

Maconha Brava - smoked for visionary effects

Blue Lotus - flowers known for visionary and inebriating effects

Pink Lotus - smoked or turned into a drink for euphoric effects

Dwarf Scullcap - used as a sedative

Siberian Motherwort - used as medicine and a smoking herb

Indian Warrior - used as a muscle relaxer

Lion's Tail - used for euphoric effects

Chemicals: The following are examples of the synthetics found in these products.

HU-210 - structurally and pharmacologically similar to THC, the main ingredient in marijuana. It is listed as a Schedule 1 Controlled Substance.

CP 47,497 - has pain reliever effects and binds to one of the two sub-types of cannabinoid receptors in the brain (CB₁).

JWH-018 - a synthetic cannabinoid and effects both the CB₁ and CB₂ receptors in the brain.

Packaging/Brand Names: Spice, K2, Moio, Genie, Yucatan Fire



Sources: Alabama Bureau of Investigation, Drug Enforcement Administration, Louisiana State Police, Mississippi Bureau of Narcotics, National Drug Intelligence Center, South Florida HIDTA, U.S. Customs and Border Protection

Gulf Coast HIDTA
3838 North Causeway Boulevard
Lakeway Three
Suite 1900
Metairie LA 70002
Phone: 504-840-1400
Fax: 504-840-6701

RESOLUTION NO. _____

**A RESOLUTION SUPPORTING THE FORT SMITH HOUSING AUTHORITY
AND ITS EFFORTS TO USE NEW MARKET TAX CREDITS
TO STIMULATE DEVELOPMENT AND REDEVELOPMENT
IN LOW-TO-MODERATE INCOME AREAS OF FORT SMITH**

WHEREAS, the use of new market tax credits offered by the U.S. Treasury Department can stimulate development and redevelopment projects in low-to-moderate income areas which might not otherwise benefit from such projects; and

WHEREAS, the revitalization of residential and commercial neighborhoods are goals of the City of Fort Smith's Comprehensive Plan adopted in 2002; and

WHEREAS, the use of new market tax credits would support those goals of the comprehensive plan, particularly in areas of Fort Smith which might not otherwise prosper from development and redevelopment projects; and

WHEREAS, the Fort Smith Housing Authority has proposed that it prepare a redevelopment plan and seek to become a certified community development entity eligible to apply for new market tax credits; and

WHEREAS, Arkansas Code 14-169-604 provides housing authorities with the authority to undertake development projects to reduce slum and blighted conditions subject to municipal approval of a redevelopment plan as required by Arkansas Code 14-169-606;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

The City of Fort Smith endorses and supports the proposal by the Fort Smith Housing Authority to prepare a redevelopment plan and to become a certified community development entity in order to pursue the use of new market tax credits to stimulate development and redevelopment projects in low-to-moderate income areas of Fort Smith.

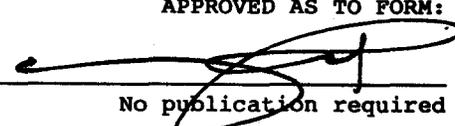
This Resolution passed this _____ day of June, 2010.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk


No publication required



MEMORANDUM

May 26, 2010

TO: Dennis Kelly, City Administrator

FROM: Ray Gosack, Deputy City Administrator

SUBJECT: New Market Tax Credits

At the May 11th study session, the board reviewed a proposal to utilize new market tax credits in Fort Smith. New market tax credits are an economic development tool to stimulate development and redevelopment in low-to-moderate income areas of Fort Smith. The proposal entails the Fort Smith Housing Authority acting as the community development entity. Possible projects wouldn't be limited to housing, and may include commercial, retail, office, and institutional uses.

Attached is a resolution of support for the Fort Smith Housing Authority to pursue the use of new market tax credits and to become a certified community development entity. The resolution will enhance the chances of receiving an allocation of new market tax credits from the U.S. Department of the Treasury.

One of the housing authority's next steps will be to prepare a redevelopment plan. The housing authority will undertake public involvement in the preparation of this plan. The plan will be reviewed by the planning commission and approved by the board of directors.

The staff recommends approval of the attached resolution. The use of new market tax credits will support the neighborhood revitalization goals of the city's comprehensive plan.

Attachment

cc: Ken Pyle, Fort Smith Housing Authority

A handwritten signature in cursive script that reads "Ray".

RESOLUTION _____

**A RESOLUTION TO ACCEPT THE BIDS AND AUTHORIZE
CONTRACTS FOR THE CONSTRUCTION OF
STREET OVERLAYS/RECONSTRUCTION
PROJECT NO. 10-03-C**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The bid of Wilson Brothers Construction Co., Inc., received May 25, 2010, for the construction of Street Overlays/Reconstruction, Project No. 10-03-C, in the amount of \$1,084,209.12 be accepted.

SECTION 2: The Mayor is authorized to execute a contract with Wilson Brothers Construction Co., Inc., subject to the terms set forth in Section 1 above.

SECTION 3: The bid of Ark-Con Testing, received May 25, 2010, for quality control testing services for the construction of Street Overlays/Reconstruction, Project No. 10-03-C, in the amount of \$6,920.00 be accepted.

SECTION 4: The Mayor is authorized to execute a contract with Ark-Con Testing, subject to the terms set forth in Section 3 above.

SECTION 5: Payment for construction authorized by Section 1 and Section 3 is hereby authorized from the Sales Tax Fund (1105).

This resolution adopted this _____ day of June, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form

JSC

No Publication Required
 Publish _____ Times

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

FROM: Stan Snodgrass, P.E., Director of Engineering *SS*

DATE: May 25, 2010

SUBJECT: Street Overlays/Reconstruction
Project No. 10-03-C

The above subject project consists of asphalt street overlays, reconstruction and minor drainage improvements to the streets listed on the attached sheet and shown on the attached exhibit. The total length of streets to be improved is approximately 2.0 miles.

Construction plans and specifications were prepared by Morrison-Shipleigh Engineers, Inc. of Fort Smith. An advertisement was published and bids were received on May 25, 2010. Five contractors requested plans and specifications and three bids were received which are summarized as follows:

CONTRACTOR	AMOUNT	CONTRACTOR	AMOUNT
1. Wilson Brothers Co., Inc. Alma, AR	\$1,084,209.12	3. Township Builders Little Rock, AR	\$1,672,671.00
2. Forsgren, Inc. Fort Smith, AR	\$1,118,826.32	Engineer's Estimate	\$1,522,000.00

I recommend that the lowest bid be accepted and that the construction contract be awarded to Wilson Brothers Construction Co., Inc. The estimated notice to proceed date for this contract is June 15, 2010. Based on the contract duration of 210 days, the estimated completion date would be January 11, 2011.

Also, one bid was received on May 25, 2010, for project quality assurance testing from Ark-Con Testing of Van Buren, in the amount of \$6,920.00. I recommend that the quality assurance testing contract be awarded to Ark-Con Testing.

Attached is a Resolution to accomplish the above recommendations. Funds are available in the Sales Tax Program (1105) for the construction and testing.

**2010 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION
PROJECT NO. 10-03-C**

STREET	FROM	TO	LENGTH
WALDRON AVE.	ROGERS AVE.	N. OF GORDON LN.	2,600
EUPER LN.	WALDRON RD.	BURNHAM RD.	2,033
BURNHAM CT.	DUNCAN RD.	END OF ROAD	241
DUNCAN RD.	WALDRON RD.	BURNHAM RD.	1,984
SOUTH Y ST.	58TH ST.	END OF ROAD	844
SUNCHASE LN.	66TH ST.	68TH CR.	836
68TH CR.	END OF ROAD	END OF ROAD	473
DALLAS ST.	66TH ST.	70TH DR.	1,345



MEMORANDUM

TO: Mayor and Board of Directors
FROM: Wendy Beshears, Administrative Assistant
DATE: May 24, 2010
SUBJECT: Airport Commission

The term of Mr. M. Scott Archer of the Airport Commission will expire June 30, 2010. Mr. Archer would like to be reappointed.

The applicants available at this time are:

John Huffman	8301 Clover Drive
Thomas Gage	1115 S. Waldron Road; Ste. 101
James E. Kelly, III	5500 Painter Lane
Andrew Smith	9225 Rosewood Drive
Reginald (Rusty) Henderson	8812 Royal Ridge Drive

Appointments are by the Mayor confirmed by the Board of Directors. One appointment is needed; the term will expire June 30, 2013.

AGENDA ~ Summary

FORT SMITH BOARD OF DIRECTORS REGULAR MEETING

JUNE 1, 2010 ~ 6:00 P.M.

**FORT SMITH PUBLIC SCHOOLS
SERVICE CENTER
3205 JENNY LIND ROAD**

THIS MEETING IS BEING TELECAST LIVE ON THE CITY CABLE ACCESS CHANNEL 6

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

All present, except Director Goodman. (Director Goodman arrived during the presentation of Item No. 1)

PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING

(Section 2-37 of Ordinance No. 24-10)

Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website

APPROVE MINUTES OF THE MAY 18, 2010 REGULAR MEETING

Unanimously approved as written

ITEMS OF BUSINESS:

1. Ordinance rezoning identified property and amending the zoning map from Commercial-Regional (C-4) to Residential Single Family Medium Density (RS-3) by classification at 701, 707, 709, 715, 719, 801, 704, 706, 716, 720 North 32nd Street
Approved 7 in favor, 0 opposed / Ordinance No. 26-10
2. Resolution authorizing an amendment to the Western Arkansas Tennis Association agreement to allow advertising at the Creekmore Tennis Center
Approved 7 in favor, 0 opposed / Resolutions No. R-105-10

3. Ordinance amending Chapter 14, Article II, of the Fort Smith City Code of Ordinances to add a section regulating the possession, sale and ingestion of certain substances
Approved 7 in favor, 0 opposed / Ordinance No. 27-10
4. Resolution supporting the Fort Smith Housing Authority and its efforts to use New Market Tax Credits to stimulate development and redevelopment in low-to-moderate income areas of Fort Smith
Approved 6 in favor, 1 opposed (Good) / Resolution No. R-106-10
5. Resolution to accept the bids and authorize contracts for the construction of Street Overlays/Reconstruction, Project No. 10-03-C (\$1,091,129.12)
Approved 7 in favor, 0 opposed / Resolution No. R-107-10

OFFICIALS FORUM ~ presentation of information requiring no official action

(Section 2-36 of Ordinance No. 24-10)

Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website

- A. Mayor
- B. Directors
- C. City Administrator

EXECUTIVE SESSION

- ▶ Performance evaluation - City Administrator
~ *Continued from May 18, 2010 regular meeting* ~
Mayor Baker simply announced the Board “completed” the performance evaluation.
- ▶ Appointments: **Airport Commission** ~*Tabled at the May 18, 2010 regular meeting*~
M. Scott Archer (reappointment)
Term expires June 30, 2013

CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. *Presentations are limited to 2 minutes for each citizen*

(Section 2-44(b) of Ordinance No. 24-10)

Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website

ADJOURN

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ JUNE 1, 2010 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Mayor Ray Baker, presiding. Invocation was given by Director Don Hutchings, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, Bill Maddox, Gary Campbell and Kevin Settle. Director Cole Goodman arrived prior to presentation of Item No. 1. The Mayor declared a quorum present.

Pursuant to the newly adopted meeting procedures, Mayor Baker inquired if any Board member had an item of business to present that was not already on the agenda. There was none presented.

The minutes of the May 18, 2010 regular meeting were presented for approval. Hutchings, seconded by Campbell, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

With regard to the time limit policy for persons wishing to address the Board, Mayor Baker communicated that five (5) minutes per side would be extended on controversial items with three (3) minutes for rebuttal per side.

Item No. 1 was an ordinance rezoning identified property and amending the zoning map from Commercial-Regional (C-4) to Residential Single Family Medium Density (RS-3) by classification at 701, 707, 709, 715, 719, 801, 704, 706, 716, 720 North 32nd Street

Senior Planner Maggie Rice briefed the Board on the item advising such is per the

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request of the City of Fort Smith and is a corrective zoning to accurately reflect how the area has developed. The proposed zone change was prompted due to the request of a property owner to initiate improvements to his residential structure whereby such was not allowed because of the commercial zoning classification. Upon approval, the amendment will allow the property owners in the area to alter or expand their use. As required, a neighborhood meeting was held on Tuesday, April 27, 2010 with only City staff in attendance. The Planning Commission held a public hearing on May 11, 2010 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of nine (9) in favor and zero (0) opposed.

Director Hutchings requested confirmation that no opposition to the proposed rezoning had been conveyed whereby Ms. Rice confirmed such was correct.

Maddox, seconded by Campbell, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 26-10.

Item No. 2 was a resolution authorizing an amendment to the Western Arkansas Tennis Association agreement to allow advertising at the Creekmore Tennis Center

Director of Parks and Recreation Mike Alsup briefed the Board on the item as reviewed at the May 25, 2010 study session. The tennis courts at Creekmore Park are in need of resurfacing and approval of the proposed amendment will allow the Western Arkansas Tennis Association (WATA) to sell advertisements on the wind screens at each

June 1, 2010 Regular Meeting

court to provide funding for the project, as well as other large maintenance or capital expenses. The Parks and Recreation Commission reviewed the matter and recommended approval of the proposed amendment. Although advertising is prohibited in city parks, the City Attorney has advised no amendment to the Municipal Code is required as the proposed resolution is sufficient to address the matter; therefore, he recommended approval.

Goodman, seconded by Maddox, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-105-10.

Item No.3 was an ordinance amending Chapter 14, Article II, of the Fort Smith City Code of Ordinances to add a section regulating the possession, sale and ingestion of certain substances

Police Chief Kevin Lindsey briefed the Board on the item as discussed at the May 25, 2010 study session. Currently, legal herbal mixtures and synthetic chemical compounds, such as K-2, are being marketed as a “legal high” in the Fort Smith region. Several surrounding municipalities have banned the sale and possession of such products, which are currently sold within the city limits of Fort Smith in at least two locations. Some municipalities have prohibited the use of such products only for minors; however, the proposed ordinance prohibits the possession, sale and ingestion of certain substances for all ages.

Campbell, seconded by Hutchings, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by

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caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried. Goodman, seconded by Settle, moved adoption of the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 27-10.

Item No. 4 was a resolution supporting the Fort Smith Housing Authority and its efforts to use New Market Tax Credits to stimulate development and redevelopment in low-to-moderate income areas of Fort Smith

Deputy Administrator Ray Gosack briefed the Board on the item as discussed at the May 11, 2010 study session. The tax credits are a stimulus tool offered by the federal government to encourage development and redevelopment in low-to-moderate income areas. In order to utilize the tax credits, a development plan must be prepared and approved by the City of Fort Smith Board of Directors. The Fort Smith Housing Authority (FSHA) is currently in the process of developing the plan and have indicated their intent to obtain public input to assist in its creation. Once finalized, the plan will be submitted for review and approval by the Planning Commission. The resolution essentially conveys the City's support for the FSHA to pursue the use of new market tax credits and to become the certified community development entity for the City. Although the FSHA will be the development entity, possible projects would not be limited to housing, and may include commercial, retail, office and institutional uses.

There was lengthy discussion with much concern expressed regarding the powers of eminent domain to acquire private property for private use.

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Ken Pyle, FSHA Executive Director, advised that the FSHA may only utilize said powers for acquisition of private property for public use; however, upon completion of the development, such property may be turned over to another private individual or entity for private use. The development plan will contain the types and general locations of the projects and the FSHA is hopeful to have the development plan presented to the Planning Commission in July. Upon approval by the Planning Commission, such will be presented to the Board at a study session soon thereafter. Formal consideration of the development plan by the Board of Directors is tentatively scheduled for the first meeting in August.

City Attorney Rick Wade clarified that the FSHA may only implement the power of eminent domain to acquire privately owned properties that are in blighted condition in nuisance areas of the city, which will be generally identified within the development plan. If property is initially acquired for public use and eventually utilized for private use, (provided the aforementioned criteria is followed and according to existing case law) he conveyed much assurance that such could withstand potential future litigation before the Arkansas Supreme Court. If the Board so desires, the City of Fort Smith may include additional conditions and/or guidelines within the development plan to ensure the improvement projects initiated by the FSHA coincide with the City's criteria for development or redevelopment.

Mayor Baker spoke in favor of the new market tax credits; however, he conveyed much concern with the proposed resolution and feels the City of Fort Smith should be the designated development agency to oversee the development projects.

Administrator Kelly noted that the City does not maintain adequate staffing to

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implement the program or obtain financing for such, and stated that the FSHA is better equipped to oversee the tax credit developments.

In response to Mayor Baker's comment, he advocated that the FSHA has the much needed experience to utilize low income housing tax credits and to oversee development projects. The U.S. Department of the Treasury requires development entities to provide a multi-year track record of development projects; therefore, such experience will be a valued asset for the City.

Director Tyler questioned if the FSHA will require additional staff to adequately manage the projects.

Mr. Pyle responded that the employment of two individuals, one clerical position and one full-time staff person is anticipated.

Campbell, seconded by Tyler, moved adoption of the resolution. Prior to the vote, Director Settle requested confirmation that the development plan must be approved by the Board prior to initiation of projects, and Mr. Pyle confirmed such is correct.

The motion remaining on the floor, the members voted as follows: ayes - Tyler, Hutchings, Maddox, Campbell, Settle and Goodman; nays - Good. The Mayor declared the motion carried and the resolution was adopted and given No. R-106-10.

Item No. 5 was a resolution to accept the bids and authorize contracts for the construction of Street Overlays/Reconstruction, Project No. 10-03-C (\$1,091,129.12)

Director of Engineering Stan Snodgrass briefed the Board advising the item authorizes contracts for asphalt street overlays, reconstruction and minor drainage improvements to Waldron Avenue, Euper Lane, Burnham Court, Duncan Road, South "Y"

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Street, Sunchase Lane, 68th Circle and Dallas Street. The total length of streets to be improved is approximately 2.0 miles.

Settle, seconded by Hutchings, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-107-10.

Mayor Baker commented that this date is Director Hutchings birthday and everyone joined in to sing "Happy Birthday" to him.

The Mayor opened the Officials Forum; however, no comments were offered.

An executive session was held and after reconvening, the Mayor announced the following appointment nomination:

AIRPORT COMMISSION
M. Scott Archer (reappointment)
Term expires June 30, 2013

Note: Director Hutchings left immediately prior to reconvening from executive session.

Settle, seconded by Good, moved acceptance of the appointment nomination. The members present all voting affirmatively, the Mayor declared the motion carried.

Mayor Baker simply announced that the performance evaluation of the City Administrator has been completed.

With regard to the time limit policy for persons wishing to address the Board, Mayor Baker communicated that due to the newly adopted meeting procedures, two (2) minutes will be allotted for those participating in the Citizens Forum.

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Mayor Baker opened the Citizens Forum with the following individuals present to address the Board:

- Eric Arthur
815 North "B" Street

Re: Expressed concern with the City's budget deficit, as well as the Mayor's budget, and inquired how such will be resolved.

Administrator Kelly noted that revenues are being closely monitored and upon completion of the second quarter (June 30), a determination will be made if additional budget adjustments are necessary.

- Paul Speer
27910 Highway 22
Charleston, AR

Re: Encouraged the decrease of "wasteful spending" and recommended street improvements be temporarily postponed and said monies utilized for other purposes until revenues are increased.

Director Settle clarified that street improvements were approved by the voters and Director Maddox noted that due to said tax being approved by voters, such monies may only be utilized for street improvements and no other purpose.

- Jerry Hamel
8701 Rogers Avenue

Re: Questioned the Mayor, City Administrator and each member of the Board if they were familiar with budgets and requested confirmation that the City can "live within its budget".

Director Settle simply noted that Arkansas State Law requires municipalities to maintain a balanced budget.

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- Nan Bartlett
1500 Fresno, Apt. 22

Re: Expressed much concern with the influx of illegal immigrants to the region; therefore, she urged the arrest of those violating immigration laws and encouraged the Board to take all necessary action to ensure such occurs.

Mayor Baker advised such authority must be granted by the federal government and noted the City of Fort Smith has requested such on multiple occasions; however, each request has been denied.

- Louis Vincent
28 Courtland Street

Re: Alleged police officers already maintain the authority to arrest illegal immigrants and urged such authority be utilized.

There being no further business to come before the Board, Maddox moved that the meeting adjourn. The motion was seconded by Settle and the members present all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned.

APPROVED:


MAYOR

ATTEST:


CITY CLERK