

Added at  
Agenda  
Session 11-29-11  
NB#1

**AGENDA REQUEST**

**FOR: COUNCIL MEETING OF DECEMBER 6, 2011**

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**FROM:**

**MATTHEW PETTY, ALDERMAN  
MAYOR JORDAN**

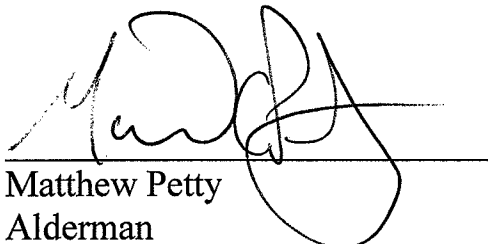
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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

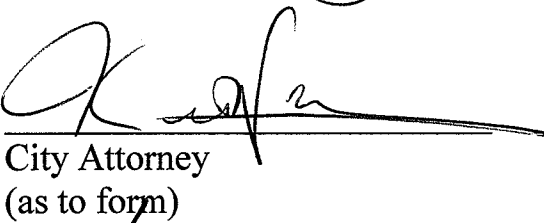
An Ordinance To Amend §94.05 Use Of Fireworks Of The Fayetteville Code By Amending (F) To Replace "First Night" With "Last Night"

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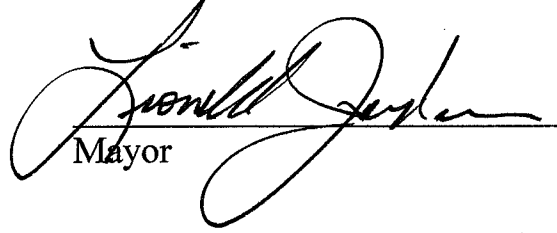
**APPROVED FOR AGENDA:**

  
Matthew Petty  
Alderman

11-29-2011  
Date

  
City Attorney  
(as to form)

11-29-2011  
Date

  
Mayor

11/29/11  
Date

**From:** Matthew Petty - Fayetteville Ward 2 <citycouncil@matthewpetty.org>  
**To:** Kit Williams <kwilliams@ci.fayetteville.ar.us>  
**Date:** 11/29/2011 11:45 AM  
**Subject:** Last Night Fayetteville

Hi Kit - I got this message from the organizer for the New Year's celebration on the square. If she needs help, I'll sponsor the ordinance change. Her message is below; can you advise?

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Hi Matt!

I really need your help with a city matter...Last Night Fayetteville was awarded \$\$ from the Fayetteville A&P to have a fireworks show from the Town Center. There's a problem with the ordinance, however - it lists First Night Fayetteville as the exclusive organization to do the show, and we need to change that to CEAG. I spoke with Mark Stevens, assistant fire marshal, who said we have to have an alderman petition Kit Williams to have this ordinance changed. We need to move on this ASAP - is this something you can help us out on??? It's ordinance #94.05, section F.

Please let me know!

THANKS!  
Lauren  
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-M



Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

TO: Mayor Jordan  
City Council

CC: David Dayringer, Fire Chief  
Don Marr, Chief of Staff  
Sondra Smith, City Clerk

FROM: Kit Williams, City Attorney

DATE: November 30, 2011

RE: Ordinance to change group allowed to conduct public display of fireworks on New Years Eve goes into effect when passed

Prior to Act 1552 of 2005 approved on April 5, 2005 (and effective immediately because of its emergency clause) all ordinances would not go into effect until at least 30 days after passage unless they contained an emergency clause. Act 1552 did not change this effective date "for ordinances of a general or permanent nature ..." A.C.A. §14-55-203 (c)(1)(A).

The Act did change the "effective date of an ordinance that is not of a general or permanent nature ... (to) the date of passage ..." A.C.A. §14-55-203 (c)(2). Changing only the designated group that will be allowed to conduct a fireworks display on New Years Eve is certainly of a **specific** rather than a **general** nature. This ordinance only affects a single group's ability to conduct a public fireworks display on a single day of the year. It does not affect nor is it applicable to the public at large nor to any time except New Years Eve. Thus, I believe that it is fair to give this ordinance immediate effect so that a fireworks permit may be issued by the Fire Marshall if Creative Economy Action Group, Inc. d/b/a Last Night Fayetteville complies with the remaining unchanged parts of the City Code.

The ordinances waiving competitive bidding and awarding contracts for the Fayetteville Senior Center and the Fayetteville Boys and Girls Club would be effective immediately upon passage for the same reason.

I did amend the code amendment to designate the nonprofit corporation, Creative Economy Action Group, Inc. d/b/a Last Night Fayetteville, rather than just Last Night Fayetteville. Attached is the amended version. Please amend the ordinance **before** I read it during the meeting so it will be absolutely clear which group is being authorized to apply for a public display of fireworks permit.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE TO AMEND §94.05 **USE OF FIREWORKS** OF THE FAYETTEVILLE CODE BY AMENDING (F) TO REPLACE "FIRST NIGHT FAYETTEVILLE" WITH "CREATIVE ECONOMY ACTION GROUP, INC. D/B/A LAST NIGHT FAYETTEVILLE"

**WHEREAS**, First Night Fayetteville has for years been permitted to conduct an annual fireworks display in Fayetteville on December 31st; and

**WHEREAS**, "Creative Economy Action Group, Inc. d/b/a Last Night Fayetteville" has now replaced First Night Fayetteville and seeks to continue this traditional New Years fireworks display celebration.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends §94.05 **Use of Fireworks** of the Fayetteville Code by amending (F) to change the name of the organization permitted to conduct the annual New Years Eve public fireworks display from "First Night Fayetteville" to "Creative Economy Action Group, Inc. d/b/a Last Night Fayetteville."

**PASSED and APPROVED** this 6<sup>th</sup> day of December, 2011.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

Only change

FAYETTEVILLE CODE OF ORDINANCES  
TITLE IX GENERAL REGULATIONS

it immediately, and if such person shall refuse, neglect or fail to do so, any organized fire suppression force may summarily abate the nuisance thus constituted by controlling or extinguishing the fire, and the cost thereof may be recovered from such person by civil action.  
(Code 1965, §9-13; Ord. No. 1379, 12-9-63; Code 1991, §94.03)

Cross reference(s)--Penalty, §94.99.

**94.05 Use Of Fireworks**

(A) *Consumer fireworks.* Fireworks which are not prohibited under state or federal law and which are considered consumer fireworks as defined by federal law and regulations may lawfully be discharged within Fayetteville only as prescribed below:

- (1) Fireworks may only be discharged upon private property with the consent of the property owner and between the hours of 10:00 a.m. until 10:00 p.m. on July 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> and from 10:00 a.m. until 11:00 p.m. on July 4<sup>th</sup> and at no other time or date.
- (2) If any person less than the age of 16 years is present, an adult (at least 21 years of age) must supervise the discharge of all fireworks.
- (3) No skyrockets or aerial fireworks attached to a stick may be discharged.

(B) *Public display of fireworks.* Public displays of fireworks may be allowed upon the application and granting of a public fireworks display permit by the Mayor or his designee subject to the following conditions:

- (1) An applicant must possess a valid state fireworks permit and comply with all applicable state and federal laws and regulations and requirements of NFPA 1123 to apply for a Fayetteville public fireworks display permit.
- (2) Public fireworks display permits may be issued for the dates allowed pursuant to subsections (D), (E), and (F) below, and for the hours of 10:00 a.m. through 11:00 p.m. on July 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup>.
- (3) Public fireworks display permits may be issued as a part of any special event permit issued by the City.

(C) The fire chief or mayor shall be authorized to declare an emergency and prohibit all use of fireworks upon a determination that such use would create a fire hazard due to dry conditions.

(D) The fire chief or mayor shall be authorized to approve an alternate date for any lawful public display which is canceled due to adverse weather conditions or pursuant to §94.04(E).

(E) It shall also be lawful for the University of Arkansas to conduct the annual "Fireworks Night" to celebrate and congratulate the Razorback Baseball Team at its last home game of the year in or near Baum Baseball Stadium. Said fireworks display shall comply with all applicable regulations and laws of the State of Arkansas.

(F) It shall be lawful for First Night Fayetteville to conduct an annual public fireworks display to celebrate New Year's if approved by the Fayetteville Fire Marshall and if in full compliance with all applicable regulations and laws of the State of Arkansas.

(Code 1965, §9-9.1; Ord. No. 1705, 10-6-69; Ord. No. 1807, 8-2-71; Ord. No. 2156, 10-21-75; Ord. No. 3359, 6-7-88; Ord. No. 3553, 6-18-91; Ord. No. 3706, §1, 6-1-93, Ord. No. 4195, 10-19-99; Ord. No. 4308, 4-17-01; Code 1991, §94.04; Ord. 5096, 12-27-07; Ord. 5320, 5-18-10; Ord. 5329, 6-1-10)

Cross reference(s)--Penalty, §94.99.

State law reference(s)--Public displays excepted, A.C.A. §20-22-702; Power of municipalities unaffected, A.C.A. §20-22-704; Violation of subchapter, A.C.A. §20-22-705; Possession, sale and use unlawful-Exceptions, A.C.A. §20-22-708.

**94.06 Flammable And Combustible Liquids; Liquefied Petroleum Gases**

(A) *Adoption of NFPA 30 and NFPA 30A.*

- (1) The requirements contained in this section shall be applicable to all aboveground tanks used for the outside storage and dispensing of flammable and Class II combustible liquids within the city. Such installations shall comply with the applicable requirements of National Fire Association Protection Standard (NFPA) 30-1993 and NFPA 30A-1993, except as modified herein. Refineries that comply with NFPA 30 and the applicable sections of the *Standard Fire Prevention Code* adopted by the city shall be exempt from this section.

(B) *Definitions.*

- (1) In addition to the definitions contained in NFPA 30 and NFPA 30A, the following definition shall apply:

*Premises:* A parcel of land, which may include one or more contiguous platted lots, occupied or intended for

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**WHEREAS**, "Last Night Fayetteville" has now replaced First Night Fayetteville and seeks to continue this traditional New Years fireworks display celebration.

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**PASSED and APPROVED** this 6<sup>th</sup> day of December, 2011.

**APPROVED:**

**ATTEST:**

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**