

AGENDA REQUEST

FOR: COUNCIL MEETING OF DECEMBER 6, 2011

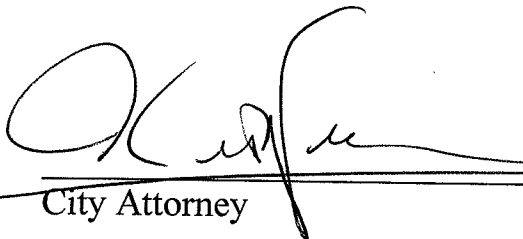
FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Repeal §34.27 Of The Code Of Fayetteville And To Enact A Replacement §34.27 **Sale Of Municipally Owned Real Property** Of The Code Of Fayetteville And To Enact An Emergency Clause

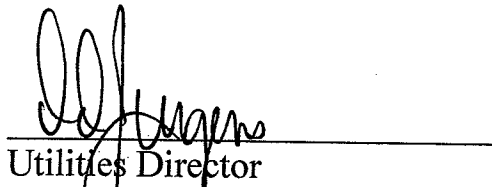
APPROVED FOR AGENDA:



City Attorney

Nov 4, 2011


Date



Utilities Director

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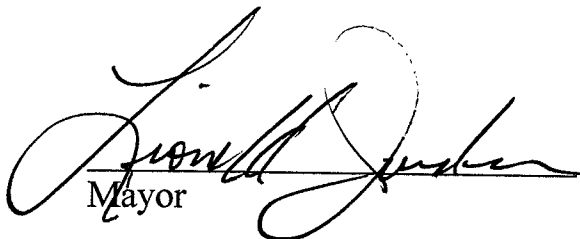
Date



Chief of Staff

11/4/11

Date



Mayor

11/7/11

Date



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Kim D.



**LEGAL
DEPARTMENT**

Fayetteville
ARKANSAS

Departmental Correspondence

www.accessfayetteville.org

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
David Jurgens, Utilities Director
Paul Becker, Finance Director

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

DATE: November 4, 2011

RE: Amending §34.27 Sale of Municipally Owned Real Property

Earlier this week Utilities Director David Jurgens came to the City Attorney's Office because he needed to sell a water/sewer easement to the Springdale Water and Sewer Commission to replace the existing water/sewer easement the Springdale Water and Sewer Commission was losing because of the widening of Highway 265. Because this would be a sale of a real property interest (the easement), we were concerned that §34.27 **Sale of Municipally Owned Real Property** must be applied.

Even though later amendments to §34.27 gave partial exemptions for sales to public entities, the City Council would probably need to obtain an "independent appraisal" since the Springdale Water and Sewer Commission's appraisal was not "obtained by the city" nor probably "independent" as expressly required by the detailed restrictions of §34.27. The costs of the appraisal and display ad in the newspaper would constitute a significant percentage of this proposed \$3,000.00 sale. The 30 day wait after publication of the display ad, certified mail and posting of signs before the City Council could consider the sale will unreasonable delay (two months from the beginning) the Springdale Water and Sewer Commission's work to relocate their mains.

The situation has again brought to the forefront the unnecessary expenses and delays caused by §34.27 when the City Council should be able to use its unhindered authority, sufficient knowledge, and good judgment to decide whether or not to sell city property. This code section was first enacted on January 2, 2002 in an attempt to ensure Fayetteville citizens received the highest amount of money for any city land that might be sold because it was no longer needed for a corporate purpose. Unfortunately, the multiple City Council meetings and Resolutions, notification requirements, multiple publications, appraisals, sealed bidding process, etc. of this code section made selling any city property pursuant to this section almost impossible.

Its expensive process requiring two appraisals and multiple newspaper advertisements resulted in less money received for our citizens the **only time** in a decade that it was actually used to sell property to a private entity. That purchaser was the only bidder and bid only the minimum price set earlier in a public meeting. Our taxpayers had to pay for two independent appraisals, at least four “conspicuous display advertisements” in the paper and certified mail to all adjacent property owners which meant our taxpayers lost money because of the cumbersome and expensive process required by §34.27.

The City Council itself soon saw the real problems this ordinance had caused and began creating exemptions and more exemptions and more exemptions through the years when confronted with the proper need to sell city property to public utilities, nonprofit organizations, government agencies and to private entities for industrial development and for redevelopment. Even with all those exemptions the current §34.27 remains so cumbersome, time consuming and expensive that it works like shackles on the City Council when the City Council members need and should be able to make timely decisions about city property no longer needed for city purposes.

I trust the common sense and careful consideration of the City Council when it comes to decide whether or not to sell city property that is not being used or otherwise not needed for corporate purposes. The City Council can look at the price the City initially paid for some or all of the property it is considering selling. It can look at any existing appraisal on the property or get a new appraisal if needed. The City can properly rezone the property before any sale to ensure the new owner’s use will be compatible with its neighbors.

CONCLUSION

The City Council should trust itself to make a wise and informed decision about whether or not to sell city property and to whom and for how much. It does not need the existing code section's expensive, cumbersome and lengthy restrictions on the City Council's own power and discretion to do what is best for our citizens. Thus, I recommend you amend the **Sale of Municipally Owned Real Property** as shown on the attached proposed ordinance to comply with state law and in recognition of the City Council's proven ability to be good stewards of the City's finances and property.

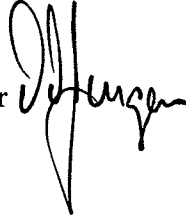
An Emergency Clause is necessary so that the new ordinance can take effect immediately and empower the City Council to sell the requested easement to the Springdale Water and Sewer Commission so as not to delay its construction of mains. Attached is David Jurgens' memo about this easement.

Even though this is not proposed to be brought to you before the City Council meeting of December 6, 2011, I wanted you to know a month early of my proposed amendment so you would have plenty of time to consider this change. Please let me know of any thoughts or concerns about this proposed change.

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Water/Sewer Committee



Date: November 3, 2011

Subject: Crossover Road- Northern Section- Springdale Water Utilities Easement Acquisition

RECOMMENDATION

City Administration recommends approving the sale of one permanent and one temporary construction easements to the Springdale Water and Sewer Commission for the north section of the Highway 265 AHTD widening project between Joyce Boulevard and the northern City limits.

BACKGROUND

AHTD is widening Crossover Road (Highway 265) between Joyce Boulevard and the northern City limits. They do not allow utilities to remain inside their easement. The area north of Clear Creek receives water service from the Springdale. Just like the City of Fayetteville, Springdale is being required to relocate their utility lines, so they need to acquire land owned by the City for their new easements. This land was purchased by the Water Department in the 1940's as part of Lake Fayetteville.

DISCUSSION

Springdale is relocating their water lines on the east side of Highway 265. To move their lines, they require one permanent easement of 0.383 acres on one tract of land valued at \$2,400, and one temporary construction easements valued at \$600. The values were established by an appraisal performed by Reed & Associates, and are consistent with Springdale's offers for the remainder of this project. The City's land agents have reviewed this easement; it meets all criteria we would apply when acquiring our own easements.

Sale of City property must comply with §34.27 of Fayetteville's Code of Ordinances, which the City Attorney is recommending be modified due to its complexity and expense. In this case, the cost of specifically complying with the ordinance as currently written would cost almost as much as the revenues received from the sale. This proposed sale complies with the City Attorney's recommended modification of the ordinance, but does not comply with the ordinance as it exists without the proposed modifications.

BUDGET IMPACT

As the land was purchased by the Water/Sewer fund, revenues received from this sale must be entered into the Water/Sewer fund. This will reflect a \$3000 in Water/Sewer revenue.

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL §34.27 OF THE CODE OF FAYETTEVILLE AND TO ENACT A REPLACEMENT §34.27 SALE OF MUNICIPALLY OWNED REAL PROPERTY OF THE CODE OF FAYETTEVILLE AND TO ENACT AN EMERGENCY CLAUSE

WHEREAS, §34.27 of the Code of Fayetteville was enacted on January 2, 2002 in an attempt to ensure that the citizens of Fayetteville would receive the highest possible amount of money for a parcel of City property if the City Council determined to sell such City property because it no longer served a municipal purpose; and

WHEREAS, the number of notices, publications, appraisals, City Council hearings and public bidding process made this selling process so cumbersome, long and expensive that the ordinance was amended by the City Council in 2002, 2004 and 2005 to provide numerous exemptions from §34.27's requirements for various types of land sales; and

WHEREAS, in the decade of its existence, the full process specified in §34.27 for the sale of City property to a private entity has occurred only once, took months to accomplish and resulted in only a single bidder who purchased the property at the minimum set price for the City land; and

WHEREAS, state law specifically authorizes that only the City Council can sell City land by passing a Resolution or can exchange land with another city by passing an Ordinance, thus ensuring that the City Council will always have the final say in any proposed City land sale or exchange.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals §34.27 of the Code of Fayetteville and enacts a replacement §34.27 **Sale of Municipally Owned Real Property** of the Code of Fayetteville as shown below:

“§34.27 Sale of Municipally Owned Real Property

(A) The City may sell real property only after the City Council has passed a Resolution expressly authorizing such sale. The City Council shall determine whether the property should be rezoned prior to its sale.

(B) Such City Council Resolution shall contain a specific finding by the City Council that the subject real property is no longer needed for municipal purposes.

(C) The City may exchange real and personal property with other cities or Washington County only after authorization by ordinance passed by the City Council. The City Council through such ordinance may place limits on the uses that will be allowed of such property as part of the exchange of property agreement.”

Section 2: Emergency Clause. That the City Council of the City of Fayetteville, Arkansas hereby finds that this change in the manner in which the City Council can sell city property is essential in expediting the conveyance of a water and sewer easement to the Springdale Water and Sewer Commission in a timely manner and declares that this ordinance is necessary to preserve the public health and therefore an emergency is hereby declared to exist so that this ordinance shall be in full force and effect from the date of its passage and approval.

PASSED and APPROVED this 6th day of December, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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quarry, because the ordinance was enacted pursuant to subdivision (1) of this section. Contrary to the city's argument, since the quarry was located outside the corporate city limits but within one mile of those limits, the city could not regulate the quarry without a judicial determination that its activities constituted a nuisance, and no such judicial determination had been made; the quarry was not a

nuisance per se. *Rogers Group, Inc. v. City of Fayetteville*, 629 F.3d 784 (8th Cir. 2010).

Public Health.

A town has the authority to legislate for the protection of public health. *Phillips v. Town of Oak Grove*, 333 Ark. 183, 968 S.W.2d 600 (1998).

14-54-104. Additional powers of cities of the first class.

CASE NOTES

Streets, Alleys, Etc.

Ordinance vacating a street exceeded the scope of subdivision (2) when it attempted to extinguish an abutting landowner's property right of ingress and egress over the street without compensation. *Wright v. City of Monticello*, 345 Ark. 420, 47 S.W.3d 851 (2001).

Trial court did not err in deciding that

§ 14-54-303 was controlling for the town to vacate a street, because an incorporated town's ability to vacate a street under § 14-54-303 was independent, and §§ 14-301-301 to 14-301-303 had no application when an incorporated town used its authority under § 14-54-303. *Riley v. Town of Higginson*, 2009 Ark. App. 294, 307 S.W.3d 34 (2009).

SUBCHAPTER 3 — REAL AND PERSONAL PROPERTY

SECTION.

14-54-302. Purchase, lease, and sale authorized.

SECTION.

14-54-304. Property exchange by municipalities.

14-54-302. Purchase, lease, and sale authorized.

(a)(1) Municipal corporations are empowered and authorized to sell, convey, lease, rent, or let any real estate or personal property owned or controlled by the municipal corporations. This power and authorization shall extend and apply to all such real estate and personal property, including that which is held by the municipal corporation for public or governmental uses and purposes.

(2) Municipal corporations are empowered and authorized to buy any real estate or personal property.

(b)(1) Municipal corporations are also empowered and authorized to donate property, or any part thereof, to the federal government or any agency thereof, for any one (1) or more of the following purposes, that is, having the real estate, personal property, or both, activated, reactivated, improved, or enlarged by the donee.

(2)(A) The municipal corporation may donate the fee simple title and absolute interest, without any reservations or restrictions, in and to all real estate, personal property, or both, or any part of the property, to the federal government, if this property was previously conveyed or otherwise transferred by the federal government to the municipal corporation without cost to the municipal corporation.

14-54-303

LOCAL GOVERNMENT

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(B) All other donation instruments shall contain provisions by which the title to the property donated shall revert to the municipal corporation when the donated property is no longer used by the donee for the purposes for which it was donated.

(c) The execution of all contracts and conveyances and lease contracts shall be performed by the mayor and city clerk or recorder, when authorized by a resolution in writing and approved by a majority vote of the city council present and participating.

History. Acts 1935, No. 176, § 2; Pope's 183, § 2; A.S.A. 1947, § 19-2310; Acts Dig., § 9539; Acts 1953, No. 13, § 1; 1959, 2005, No. 436, § 1. No. 159, § 1; 1977, No. 823, § 1; 1983, No.

14-54-802

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RESEARCH REFERENCES

U. Ark. Little Rock. L. Rev. Survey of assembly, Local Government, 28 U. Ark. Legislation, 2005 Arkansas General As- Little Rock. L. Rev. 373.

14-54-803

CASE NOTES

Contracts Not Formally Authorized. Absence of a city council's resolution was fatal to the validity and viability of an alleged Memorandum of Understanding between a mayor and the owner of a stagecoach who sought to sell the stagecoach to the city. Dotson v. City of Lowell, 375 Ark. 89, 289 S.W.3d 55 (2008).

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14-54-303. Authority of incorporated towns.

CASE NOTES

Proper Authority. Trial court did not err in deciding that this section was controlling for the town to vacate a street, because an incorporated town's ability to vacate a street under this section was independent, and §§ 14-301-301 to 14-301-303 had no application when an incorporated town used its authority under this section. Riley v. Town of Higginson, 2009 Ark. App. 294, 307 S.W.3d 34 (2009).

SECTION.
14-54-902.
14-54-903.

14-54-304. Property exchange by municipalities.

Municipalities are authorized to exchange properties, real or personal, with other municipalities or with counties. Provided, any such exchange shall be approved by ordinance of the governing body of the municipality and shall be accomplished in accordance with procedures prescribed by the governing body.

History. Acts 1999, No. 1248, § 2. 1248 became law without the Governor's signature.
Publisher's Notes. Acts 1999, No.

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Current law

FAYETTEVILLE CODE OF ORDINANCES TITLE III ADMINISTRATION

An employee of the city shall be permitted to furnish services as an independent contractor to the City only if:

- (A) The employee fully discloses his or her direct or indirect financial interest in any contract or service agreement to the City Council and such services are approved by City Council Resolution;
- (B) No favoritism is allowed to the city employee over other possible service providers;
- (C) Such services are not of the same type as performed by the city employee in his or her regular city job, nor are services for the department wherein the employee works;
- (D) The employee's immediate supervisor specifically approves such extension of employee service and ensures it will not adversely affect the employee's regular city employment duties;
- (E) City employees who are not within the Parks and Recreation Department are specifically allowed to work as independent contractors as scorekeepers, referees and umpires for the Fayetteville Parks and Recreation Department without the need for a City Council Resolution.

(Code 1965, §2-70; Ord. No. 3013, 6-5-84; Code 1991, §34.26; Ord. 5351, 9-7-10)

State law reference(s)--Purchase, lease and sale authorized, A.C.A. §14-42-107.

34.27 Sale Of Municipally Owned Real Property

- (A) Municipally owned real property shall not be offered for sale without the express authorization, by resolution, of the City Council. The City Council shall determine whether the property should be rezoned prior to offering it for sale.
- (B) Such resolutions shall contain a specific finding by the City Council that the subject real property no longer serves a municipal purpose.
- (C) Two simultaneous and independent appraisals of the real property shall be obtained by the city for the City Council's consideration, dated within six months of the proposed sale.
- (D) Public notice shall be given not less than thirty calendar days before the first City Council meeting at which such a resolution is introduced, by all of the following means:

- (1) A conspicuous display advertisement placed in a newspaper of general circulation in the city, on at least four separate occasions;
 - (2) Certified mail, return receipt requested, to all adjacent property owners; and
 - (3) Signs, prominently displayed, and at all approaches to the subject real property, announcing that the City Council will be considering the sale of the real property, the date on which the sale is to be debated, as well as the telephone number of the mayor's office.
- (E) Upon an affirmative vote of the City Council, the city shall solicit sealed bids, at a minimum price set by the City Council, from all interested parties. Bids must equal or exceed the minimum price set by the City Council and the appraised value of the property.
 - (F) The city shall sell the subject real property to the highest qualified bidder. In the event none of the bids from a qualified bidder equals the minimum price set by the City Council, the city shall reject all bids, and may reopen the bidding, upon City Council approval.
 - (G) Upon receipt of an acceptable bid, and authorization by a separate resolution of the City Council, the conveyance of the real property shall be performed by the mayor and city clerk.
 - (H) Exemptions from the requirements of this ordinance:
 - (1) The sale of the industrial park, business park, and technology park lands are expressly exempt from the provisions of this ordinance. Industrial park land includes all of the land in and around the South Industrial park as specifically identified within the black bold line on the map attached as Exhibit A.
 - (2) The sale of real property to other public entities or to a non-profit corporation for charitable purposes shall only require a single appraisal, a single display advertisement placed in a newspaper of general circulation in the city, the certified mail, and sign requirements set forth in subsections (D)(2) & (3). Following the setting of a minimum price by the City Council no lower than the appraised value, the public entity or non-profit corporation may purchase the property at that price, and

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

the sale shall be exempt from the provisions of subsections (E), (F) & (G) of this ordinance.

(3) If the City Council has approved by ordinance the Project Plan for a Redevelopment District that includes the acquisition of real property or buildings with the intent to resell this property to a private developer, this acquired property shall be exempt from the requirements of this section and can be sold by City Council Resolution.

(4) The dedication of real property to the Arkansas State Highway Commission shall be exempt from the requirements of this section and may be dedicated by City Council Resolution.

Note--Ord. 4380, adopted March 19, 2002, enacts provisions for exemptions from the requirements of ordinance; such provisions have been set forth above. This ordinance was enacted with an Exhibit A attached thereto and may be viewed in the office of the city clerk anytime during regular business hours.

(Ord. No. 4358, 1-2-02; Ord. No. 4380, §1, (Ex. A), 3-19-02; Ord. No. 4651, 12-07-04; Ord. 4752, 9-06-05)

State law reference(s)--Purchase, lease and sale authorized, A.C.A. §14-54-302; Bidding process, A.C.A. §14-54-402.

34.28 Purchase By Reverse Internet Auction

- (A) Bidders shall be provided instructions and individually secured passwords for access to the reverse Internet auction by either the City, or reverse Internet auction vendor;
- (B) The bidding process shall be timed, and the time shall be part of the reverse Internet auction specifications;
- (C) The reverse Internet auction shall be held at a specific date and time;
- (D) The reverse Internet auction and bidding process shall be interactive with each bidder able to make multiple bids during the allotted time;
- (E) Each bidder shall be continually signaled his or her relative position in the bidding process;

(F) Bidders shall remain anonymous and shall not have access to other bidders or bids; and

(G) The City Council shall have access to real-time data including all bids and bid amounts.

(H) The City is authorized to pay a reasonable fee to the reverse Internet auction vendor.

(1) The fee may be included as part of the bids received during the reverse Internet auction and paid by the winning bidder or paid separately by the City.

(a) The City Council retains the right to:

(i) Refuse all bids made during the reverse Internet auction; and

(ii) Begin the reverse Internet auction process anew if the City Council determines it is in the best interest of the city or town.

(Ord. 4724, 7-19-05)

34.29-34.99 Reserved

