

# AGENDA REQUEST FORM

RECEIVED

MAR 30 2012

CITY OF FAYETTEVILLE  
CITY CLERK'S OFFICE

FOR: COUNCIL MEETING OF April 17, 2012

---

FROM: Ordinance Review Committee  
City Attorney Kit Williams

---

## ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO AMEND §34.27 SALE OF MUNICIPALLY OWNED REAL  
PROPERTY OF THE CODE OF FAYETTEVILLE


---

## APPROVED FOR AGENDA:

  
\_\_\_\_\_  
Kit Williams, City Attorney

April 2, 2012  
Date



  
\_\_\_\_\_  
Paul Becker, Finance Director

4-2-2012  
Date

  
\_\_\_\_\_  
Don Mays, Chief of Staff

4-2-12  
Date

  
\_\_\_\_\_  
Lioneld Jordan, Mayor

4/3/12  
Date

TO: **Mayor Jordan**  
**City Council**

**Kit Williams**  
*City Attorney*

FROM: **Kit Williams**, City Attorney



**Jason B. Kelley**  
*Assistant City Attorney*

DATE: **March 30, 2012**

RE: **Return of revised Ordinance to amend §34.27 from the  
Ordinance Review Committee for City Council consideration**

Pursuant to the instructions of the City Council, the proposed amendment to §34.27 **Sale of Municipally Owned Real Property** was considered by the Ordinance Review Committee on March 21, 2012. Several improvements relating to recommending that the City Council consider whether an appraisal is advisable and improvements to the Public Notice requirements were adopted by the Ordinance Review Committee who then unanimously recommended this revised ordinance for passage by the City Council.

The Ordinance Review Committee's proposed revision would do the following:

- (1) Maintain the City Council's power to determine whether or not the subject City property should be sold.
- (2) Maintain the City Council's power and responsibility to ensure such property is properly zoned before it is sold and appraised if advisable.
- (3) Maintain public and neighborhood notification prior to any sale by requiring publication in the newspaper, letters to all adjacent property owners and prominently displayed signs at least 15 days before the City Council meeting.
- (4) Restore the City Council's power to consider benefits to our citizens (good paying jobs, clean technology, environmental protection and preservation of sensitive areas, provision of needed services to our citizens, etc.) when determining whether to sell such property, to whom, and for what consideration.

Basically this proposed ordinance requires good public and neighbor notification, but then relies upon the common sense and good judgment of the City Council to make the correct sell or no sell decision in the best interests of the Citizens and City of Fayetteville.

**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**

**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 or appraised 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) Public Notice, that the City Council is considering the sale of the real property at the City Council Meeting with the appropriate date and time of the meeting and which shall include the property’s address, acreage, improvements and potential purchase price, shall be given not less than fifteen (15) days before the City Council may consider a Resolution to approve a sale of City real property (except rights of way or easements for public utilities) by all of the following means:

- (1) First class mail to all adjacent property owners;
- (2) Prominently displayed signs on the property; and
- (3) Publication in a newspaper of general circulation in the City.

(D) 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.”

**PASSED and APPROVED** this 17<sup>th</sup> day of April, 2012.

APPROVED:

ATTEST:

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

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

FAYETTEVILLE CODE OF ORDINANCES  
TITLE III ADMINISTRATION

bag or other container) shall be advertised for sale as an organic based fertilizer product at a pre-determined base price twice each year, normally on or about March 1<sup>st</sup> and September 1<sup>st</sup> of a given year. Bulk quantities, if available, shall be pre-committed for each marketing period on a first call, first commit basis, up to 60% of the projected available amount. Any remaining amount shall be marketed during the marketing period at the same base price on a first call, first commit basis.

(2) A base or standard price for bulk quantities of dried biosolids shall be established for each marketing period based on the best information available from fair market value of similar products or from the cooperative extension service. Adjustments as determined by operating personnel may be made based on current costs of production; method of delivery; quality of product available; quantities purchased; or other market-driven conditions.

(3) Quantities of dried biosolids less than 500 pounds and placed in a bag or other container may be made available to the public via various reputable retail outlets at any given time, according to reasonable terms and conditions as approved by the City Purchasing Manager. The price charged for less than bulk quantities may be adjusted by operating personnel based on current costs of production; method of delivery; quality of product available; quantities purchased; or other market-driven conditions.

(E) The City Council may waive the requirements for public auction or formal competitive bids for sales of personal property in exceptional situations where such procedures are deemed not feasible nor practical.

(Code 1965, §2-69; Ord. No. 1215, 9-14-59; Ord. No. 1827, 10-4-71; Ord. No. 2006, 5-7-74; Ord. No. 3545, 4-16-91; Code 1991, §34.25; Ord. 4553, 04-06-04; Ord. 4723, 7-19-05; Ord. 5440, 9-20-11)

**34.26 Limited Authority of City Employee To Provide Services To The City**

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

Current law

FAYETTEVILLE CODE OF ORDINANCES  
TITLE III ADMINISTRATION

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 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.
- (5) (H)(5) The City Council may sell a water and sewer utility easement to an adjoining city or water and sewer commission if approved by City Council Resolution. Such easement sale is exempt from all requirements of this section.

**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; Ord. 5465, 12-6-11)

**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