

# ***AGENDA***

## **FORT SMITH BOARD OF DIRECTORS STUDY SESSION**

***MAY 11, 2010 ~ 12:00 NOON***

**FORT SMITH PUBLIC LIBRARY  
COMMUNITY ROOM  
3201 ROGERS AVENUE**

1. Review City of Fort Smith employee health plans ~ *Continued from the March 9, 2010 study session* ~
2. Discuss application for COPS grant
3. Discuss the possible use of New Market Tax Credits to assist with redevelopment of blighted areas
4. Additional review of procedural ordinance relative to Section 2-43 as such applies to the position of internal auditor
5. Review preliminary agenda for May 18, 2010 regular meeting

## MEMORANDUM

**TO:** Mayor, Board of Directors and City Administrator

**FROM:** Richard B. Jones, Director of Human Resources 

**DATE:** May 6, 2010

**SUBJECT:** City of Fort Smith Health Plan Review Continued from March 9, 2010

The total cost of the city's self funded health plan for 2009 was \$6,111,051. The total cost of the Municipal Health Benefit Fund to the city based on the AML class 2 rates for 2009 would have been \$6,047,184, amounting to a very small difference of \$63,867 or slightly more than 1%.

As requested I conducted a survey asking the city's employees and retirees including the library, airport and A & P commission what health plan coverage they would prefer for 2011. A total of 680 surveys were completed. The results are as follows: 602 surveys indicated, "I would prefer to keep the city's current self-funded health coverage program. 12 surveys indicated, "I would prefer the city use the Arkansas Municipal Health Benefits Fund coverage program sponsored by the Arkansas Municipal League. 45 surveys indicated, "I would prefer that the city use another health coverage program different than the city's self-funded health coverage program or the Arkansas Municipal Health Benefits Fund coverage. 10 surveys indicated, "I do not have a preference". 11 surveys were returned without making a survey choice but all had comments which are included with all the comments made from all the survey documents.

The city's current health plan promotes "HEALTH RESPONSIBILITY" through prevention by rewarding employees and their families for healthy behaviors including seeking medical care to manage all their existing health conditions. **The city's health plan allows access to use the city's medical clinic IMWELL Health for no out of pocket cost or a physician office or urgent care visit for a \$25 co-pay.** The Municipal Health Benefit Fund does not provide "**first dollar care**" for physician office visits creating a significant barrier to primary care for our employees and their families. The Municipal Health Benefit Fund requires each covered life to meet a \$200 deductible before paying out medical benefits. With more than 14,000 office and urgent care visits in 2009 the Municipal Health Benefit Fund would only "**shift cost**" to our employees and their families.

Only by continuing with our self funded health program will we be able to sustain our progress toward healthy employees and families and long term cost containment. It is my sincere recommendation that the city continue with our self-funded health plan.

**City of Fort Smith  
Comparison of Health Plans  
May 2010**

<b>Major Program Differences</b>	<b>Ft. Smith Health Program</b>	<b>MHBF</b>
1. Governance	Local control with 3 <sup>rd</sup> party claims administration and employer coalition provider network.	Multi-employer trust fund governed by Board of Trustees that are member officials and employees. AML serves as administrator.
2. Claims Risk Exposure	Sole responsibility with reinsurance	Shared with other Arkansas city employer pool members
3. Reserve Requirements	Sole responsibility – At 12/31/09 reserve was \$5.3 million	None required – Primary and supplemental reserves maintained by MHBF and AML.
4. Dedicated primary care clinic	IMWell Clinic at no cost to employee	None. AML recommends that IMWell Clinic be retained.
5. Co-insurance paid by employees for their share of medical expense	20%	10%
6. Initial employee cost prior to fund responsibility	Co-pays when applicable plus \$400 deductible	\$200 deductible only - no additional co-pays for medical care
7. Life insurance cost (supplemental to any basic coverage)	20 ½ cents per \$1000 for this basic life, 4 cent per \$1000 for the AD&D and 33 cents per \$1000 additional life.	20 cents per 1,000 estimated to produce approximately \$175,000 savings for employees on supplemental coverage
8. Drug co-pay	Fixed amount or % whichever is greater with national network	Fixed amounts with national network
9. Other benefits	Separate insurance must be purchased by employee	Dental, vision, hearing aids and basic life insurance

Features/Covered Services	
Lifetime Maximum Benefits	
Annual Maximum Benefits	
New Born Child 1st year	
Coinsurance	
Deductible	
Deductible Family Maximum	
Maximum Out-of-Pocket	
Out of Pocket Family Maximum	
Physician Office Visit	
IMWell Clinic	
Hospital Inpatient	
Emergency Room	
Adult Well Exam	
Child Well Exam	
Colonoscopies	
In Patient Rehab - Acute	
Hearing Aids	
Chiropractor Maximum	
Home Health Maximum	
Physical Therapy	
Transplant	
OTC (list)	
Generic	
Preferred Brand	
Non Preferred Brand	
Mail Order	
<b>Dental</b>	
Annual Maximum (non Orthodontia)	
Annual Maximum (Orthodontia)	
TMJ	
Deductible	
Coinsurance - Preventive	
Coinsurance - Major	
Coinsurance - Major	
Coinsurance - Ortho	
<b>Vision</b>	
Deductible	
Annual Maximum	
Copay	

City of Fort Worth	
In-Network	Out-of-Network
\$1,000,000	\$1,000,000
\$1,000,000	\$1,000,000
\$1,000,000	\$1,000,000
80%	60%
\$400.00	\$600.00
\$1,200.00	\$1,800.00
\$2,500.00	\$10,000.00
\$7,500.00	\$30,000.00
\$25 copay	60% after deductible
\$0 Employee payment	N/A
80% after deductible	60% after deductible
80% after deductible	60%
100% to \$750	
No copay, no limit up to age 2, thereafter 100% to \$750.	
80% after Deductible	60% after Deductible
80%	60%
Not covered	
\$1,500	
\$10,000	
\$5,000	
Approved facilities no maximum	
<b>Prescription Drugs</b>	
N/A	
\$8 or 20%	
\$25 or 30%	
\$40 or 40%	
\$20/\$87.50	
<b>Separate Plan</b>	
\$1,500	
\$1,500	
\$2,500 under medical plan	
\$50 Waived on Preventive & Ortho	
80%	
80%	
80%	
50%	
<b>Separate Plan</b>	
None: Exams & Lenses in Network	
\$10 Exam, \$10 Materials	

Arkansas Municipal League	
In-Network	Out-of-Network
\$2,000,000	\$2,000,000
\$300,000	\$300,000
\$150,000	\$150,000
90%	50%
\$200.00	\$200.00
No Limit	No Limit
\$2,000.00	No Limit
No Limit	No Limit
<b>Deductible &amp; Coinsurance</b>	<b>Deductible &amp; Coinsurance</b>
None	N/A
90% after deductible	50% after deductible
\$100 copay + Deductible and coinsurance, waived if admitted	\$100 copay + Deductible and coinsurance, waived if admitted
\$30 copay then 100% to \$300, thereafter deductible and coinsurance	\$30 copay then 100% to \$300, thereafter deductible and coinsurance
\$30 copay then 100% to \$200, up to age 19. Thereafter members responsibility.	\$30 copay then 100% to \$200, up to age 19. Thereafter members responsibility.
90% after Deductible	50% after Deductible
30 days	
\$1,500 per ear every 3 years	
\$1,000	
\$3,000	
\$2,500	
<b>Deductible &amp; Coinsurance</b>	<b>Deductible &amp; Coinsurance</b>
<b>Prescription Drugs</b>	
\$5	
\$10	
\$30	
\$50	
3X copay	
<b>Separate Plan</b>	
\$1,200	
\$1,000	
\$1,000	
\$50	
90%	50%
90%	50%
90%	50%
90%	50%
<b>Separate Plan</b>	
\$50	
\$150	
N/A	

## City of Fort Smith Health Plan Survey for 2011 Results

Survey Options	Selected Preference	Comments Made with Selection	Selection Percentages
I would prefer to keep the city's current self-funded health coverage program	602	104	88.5%
I would prefer the city use the Arkansas Municipal Health Benefits Fund coverage program sponsored by the Arkansas Municipal League	12	0	1.8%
I would prefer that the city use another health coverage program different than the city's self-funded health coverage program or the Arkansas Municipal Health Benefits Fund coverage	45	14	6.6%
I do not have any preference	10	4	1.5%
No preference selected but comments made	11	11	1.6%
Totals	680	133	100.0%

All comments are attached

The comments below went with those who selected this option on the survey

“I would prefer to keep the city’s current self-funded health coverage program.”

### Responses

Why has AML not returned the trust money to the City from our previous participation?

Mr. Zimmerman’s comments were not accurate relating to the availability of the entire \$ 5mil.

Political Theater!

Review options for employee wellness, as an opportunity to promote Health. Provide locations for workout/physical fitness in order to reduce health care costs over time.

This (2010) has been the first year I felt like the Wellness Program was fair – it only penalized risky behavior if the system is taxed. Leave it alone!

Prescription Drug Program needs to be adjusted. We pay a percentage of what a computer says the drug cost (not the actual cost). We are paying well over 50% for all prescriptions filled because of what a computer says. Example – Generic Drug cost pharmacy 31.00 dollars and I pay 20.00 dollars because the computer says it cost \$120.00. This needs to be corrected.

Wellness is a critical component of a community’s overall vitality. Wellness impacts education & economic development. The City of Fort Smith is a leader in wellness. We should continue to maintain control of employee and retiree health expenses.

The current program is the best the City has ever had over a 30 year history.

The health program wellness is 100% positive.

Current plan better addresses the needs of my family. Have not heard good things about AML program from people on that program....told this would not be a good decision.

Why would we want a higher deductible and/or to have to pay a deductible just to see a doctor once a year? That is total absolute, asinine, ridiculous.

Richard and HR staff has done a great job with the health care plan as it stands!

Do we still get to use our preferred providers?

There is not issue with the current coverage, find something else that is not broken to fix.

I see no compelling reason to change, and the Municipal League Plan looks a lot less appealing for my family’s needs.

Want to have flexible spending and keep current program to try the HRA Wellness Program/give current program a chance it is still evolving and works well for us.

I think we should do away with the health coaching and keep the IM Well Clinic.

IMWELL Clinic is good.

I have been on the AML Plan in the past, and rarely met my deductible. Having a co-pay instead of a deductible is a benefit. Also, I want to assume a lot of people would quit going to the doctor if we lost the I'm Well Clinic.

Thank you for giving the employees a chance to have input in this decision. Wellness should be a consideration. It is a great benefit.

Don't fix something that's not broken.

I would like to know why we were not presented other plans to review like Blue Cross/Blue Shield. Also why only Municipal League Plan? Seem very political.

The only issue I have at this time our insurance is having to speak with the health coach and having to pass the BMI, blood pressure, and the other test to get a lower deductible.

I had Municipal League w/my husband several years ago and DID NOT like the coverage.

I am quite happy with the current health plan. The ability to question directly the people that make the decisions out ways many other factors.

I have had several emergency situations with medical issues in my family. One with my son and one with me, because of our excellent reputation with the City's self-funded health coverage our relationship with the doctors allowed my son to be seen every day at the office first and then ultimately sent to the hospital. No questions asked! I was a thankful Mom!

The City continues to provide excellent health insurance benefits to its employees. Richard Jones, HR Director, has worked diligently to keep cost down while assuming excellent benefits. The current plan is working very well and there is no reason to change.

Not sure there is enough information to make a decision.

The current plan seems to be serving us well. I see no benefit to the City to change plans.

Based on comments from workers who have Municipal League, it appears that it is not a good choice.

If both plans cost about the same I want to stay and not change it. It works well for my family the way it is.

I believe we should keep our coverage for the IM Well Clinic.

Prefer to be self owned – Has worked well so far.

Appreciate the wellness program and total package.

Very happy with current plan and IM Well Clinic

Please allow us to keep our current insurance program. The fact that we control benefits and other wellness programs, like the IM Well Clinic benefit and the wellness testing and the at work weight watchers program are a great benefit comfort to me as an employee. Also being able to call HR and being able to talk to someone at UMR is so important that we control and have some flexibility in benefits and covered items has been invaluable to me and my family.

I am happy with our current health insurance.

I would like to be able to take the funds that are used for insurance and put it into a medical savings account that accumulates from year to year. The city pays more for insurance for me than what it puts in my retirement.

Please leave alone.

My name is Wendy Beshears and I am very happy with the city's current self-funded health coverage program.

The city's medical expense experience has been outstanding over the last 5 or 6 years at about 1% increase per year as opposed to 4% nationwide. The difference in cost with AML is negligible. Why change a plan that is working.

I just don't think the Municipal Insurance is any good. It adds some but takes away a lot more.

The current plan offers more benefits than AR Municipal League, same cost, and local control. Director Gary Campbell should reclude himself as he is President of the Board of AR Municipal League. If he really wanted the city to look @ other options, why did he only propose the plan in which he has an interest?

Although the prescription benefits with the AMHB would benefit me, it is not offset by the cost of office visits that I'd need to pay if I could no longer go to IMWELL Clinic. I am now, for the first time in my adult life (I am 43) actively working on wellness and preventative care instead of only seeing a doctor for major reasons. I have missed less work the last few years and I feel it is a direct result of the Wellness Education.

I have had other insurances operated on the same structure as Ark. Municipal League – it is not as beneficial as our current plan. I think we would be making a huge mistake if we change our coverage. I also think the current emphasis on wellness saves us money in the long run.

Need hearing aids covered. Extenuating circumstances apply.

I like having an insurance that rewards preventive options.

I would like to see hearing aids covered, the lifetime maximum benefits raised, and deductibles lowered.

The current self-funded plan is my preferred choice over the Arkansas Municipal Health Benefit Fund! I would like to see some other options/choices if the city is considering changing plans.

Perhaps get quotes from Blue Cross/Blue Shield, etc. For me there is no benefit changing to the AMHBF.

I would like to see more choices brought into our options for doctors. My PCP for many years went to NWA. I still use him, but I would like to see him in our network coverage. The doctor choice in Fort Smith has in my opinion been reduced. When I go see him, the office usually is not sure about our insurance.

Without having specific employee cost information, I do not want to change our health insurance.

I like AML lifetime \$2,000,000 the current system is not perfect but I would rather talk with ya'll rather than anyone from the AML.

This would not benefit employees.

I think that if the board decides to change to any plan, that they should look at multiple insurance companies to see what would work best for the average worker. I also think that the insurance that he city has not is doing a fine job.

Before any changes are made we need a risk assessment to identify potential problems such as premium increases, benefit reduction, health care barriers, etc.

Is AML the only other option at this point?

Will questions and problems be answered/resolved with AML than they are now?

Do away with wellness program.

Keep looking to improve.

I think we need to stay with our insurance plan.

Need to pay less per paycheck.

Please consider the proven benefits to both the employee's health and the city's finances. I have personally benefited from the Wellness Program and feel many others have also under the existing plan.

Don't try to fix something that isn't broken.

I've had no problems with coverage except the \$1,200 deductible. The wellness did not contact me. I did lab work and turned in.

Not enough time to make a decision that may fit me.

Would like another health coverage program like Blue Cross don't think the city would do that, had no problems when we had Blue Cross.

Wellness (preventive) makes sense.

Current plan and HR are doing a good job.

This is the best plan for the money available in the market place. Well managed. You cannot get a better plan than paying the claims directly to the doctor or hospital. When you cut out the middle man it does not get better than that. Claims are paid quickly, IM Well is the best thing that has been set up for employees. Keep up the good work.

Only thing I would like to change is the insurance co gets a break on the medical bill. That break should go to the employee not the insurance co. Also I would like to see the buy up plan come back so we can have 90% paid.

If you use it very much you realize we have a pretty good, well paying plan compared to others. It's also affordable local control is good for us.

I believe we need to stay with what we have now with the city.

Tried Municipal League Insurance before and it did not work. No one liked it!

Too much changes have been changed, already.

This plan works!

I feel by changing insurance is only going to cost me more money in the long run with a family plan. More deductibles, higher office visits by not having IM WELL. Why are we trying to penalize employees'. Keep it the way it is!

I like having the city's plan because it is better for me. I like the IM WELL Clinic to because you don't have to pay to see the doctor at all and in this economy the working class needs this. The city's plan has a lot more advantages overall than the new plan.

If it isn't broke....don't fix it.

Need to know more.

Want to keep Wellness Program.

Is our deductible \$1200 less wellness credits or \$400?

I want to keep the current plan. I am happy with this. Please don't change this program.

I would not get the wellness checks that I should get every year. I am very pleased with our insurance. I would even be willing to pay a little more to keep the plan that we have now.

Tell Gary Campbell to quit thinking.

I would let my insurance go if this change occurred. There would be absolutely no point in me having insurance that I can't afford to use. I am extremely pleased with my current plan and it

benefits me and my needs. I don't have any desire to work 40+ hours a week, be away from my children that whole time, and gain nothing but a paycheck. I would prefer insurance I can afford.

I don't think it really matters what we want – so do what you want.

They discussed saving money yet the board wasted time and money on doing this. All for a major conflict of interest! Get your priorities straight.

If you make profit on program! Why can't you lower our co-pay – on prescription medicines?

I barely know our insurance, having been here less than a year, would rather stay with the devil I barely now than go with a devil I don't.

Cut the big bosses pay and give the people that work more money.

I think it's a conflict of interest for a councilman that is the president of this organization to try and push this coverage on the city.

I have a friend that has health insurance with the Arkansas Municipal League. She says it is very expensive for her and her family to receive medical care. City employees did not receive pay increases 2 of the last 3 years. An increase in our health insurance would make it harder for some employees to live and/or receive proper medical treatment.

I think that the wellness benefits are essential to keeping us healthy and catching major diseases. If this change is to save money, why can't we rework the current plan.

It is not broken, do not fix it!

Really like what we have. It has worked very well for me and my family. This has been the best coverage we have ever had, especially the Wellness component.

When you compare the two plans the Municipal has less coverage. No wellness plan.

With the passage of the new health care law it will impact the Municipal Plan more than the City.

I love EHC!

The Wellness Program is a big plus for us all. It has helped me tremendously. IM Well clinic is beneficial.

I would be willing to pay a little each pay period to KEEP the city self-funded. Also less coverage as I see it would mean more missed work days as it could be cost prohibitive for me.

Wellness is important to me and I have seen the program help co-workers deal with health issues that are controllable by lifestyle factors. I think that the City's plan has been moving in the right direction in bringing health to its employees.

I prefer to keep the self funded plan. It would be too difficult to start over. Our plan pays more in max benefits to start and seems to make more sense. We know what we have.

I have very little or no problems with our current insurance.

I believe what we are doing now is working, so why change it, I like our current insurance and that we have some say so in it.

I wouldn't be opposed to looking at other health care to see if anything better.

I absolutely do not think the Arkansas Municipal Health Benefits Fund is a good idea. Being self insured is more advantageous than being a part of a large consortium for whatever reason. The small problems that are more frequent, are easier to fix. As long as our self insured keeps up with large insurance groups bargaining power as far as coverage is concerned. If became worse, then outsource to several bids from several companies.

I think it is highly unethical for a City Director associated with the Municipal League to even suggest that he has.

My health has dramatically improved on our insurance. I've lost 15 lbs, stopped smoking and started exercising regularly. I would hate to think what could happen to others with some of these issues if the change or opportunity was not there. I thank our Ins.

Why change – When what we are doing is working so well. There is no way to know if the new insurance company will be any less costly to us and the city in the near future.

I like the City's coverage and I am extremely pleased with it. I like the idea of being able to get my questions answered asap. Never had a problem getting those answered.

I am happy with our current insurance.

The comments below went with those who selected this option on the survey

“I would prefer the city use the Arkansas Municipal Health Benefits Fund coverage program sponsored by the Arkansas Municipal League.”

**Responses**

None for this survey selection

The comments below went with those who selected this option on the survey

“I would prefer that the city use another health coverage program different than the city’s self-funded health coverage program or the Arkansas Municipal Health Benefits Fund coverage.”

### Responses

I would like to see other health coverage programs besides the current city and the Arkansas Municipal Health Benefit fund.

I feel that we can get better coverage through an outside agency which also limits the city liability.

Blue Cross Blue Shield

I have used AMHB before and it was a nightmare! Please don’t do this to our families.

\$350.02 a month family insurance cost is too high for lower paid employees.

The wellness plan needs to stop. Them calling you all the time does not help. Wives and spouses should not have to comply with the city’s rules on health care.

The I Am Well clinic is a good thing. Keep it and the no co-pay if you use that clinic.

The flexible deductible needs to stop. Some employees are paying \$1,200.00 for both them and their wife both.

The City is not picking up the cost of the insurance as much as other employees in this area.

We need to look at blue Cross and Blue Shield insurance 80/20 plan.

The monthly cost is too high and I know that I haven’t been able to afford family insurance, here at the City.

I have had Blue Cross & Blue Shield in the past and had no complaints with their service.

Let’s explore other insurance and see what’s best for our needs.

I’d like to see the costs of our current plan compared to BC/BS or other plans. I want change we can believe in.

I was promised no cost health care when I was hired. The city has violated this contract with me. And no I do not want to be a victim of Obama Care!

I think it would be beneficial to employees and their families to bid on 3<sup>rd</sup> part plans such as blue Cross Blue Shield. I, for one, am seeing my costs continually rise while my salary remains nearly the same.

Perhaps a wider variety of plans should be looked at and considered. For example what would a Blue Cross/Blue Shield look like?

I feel the best course of action is for the city to explore all options (including third party) to better suit employee needs while minimizing costs for the city.

I prefer any Plan that does not require a \$1,400 deductible:

As the plan stands I'm better off opting out and being a dependent on my wife's plan.

Employees should be paid back whatever money is not spent at the end of the year. Give their money back.

The comments below went with those who selected this option on the survey

“I do not have any preference.”

### Responses

I would like to see City allow outside companies bid for our coverage every two – three years.

I want to see Richard Jones go toe to toe with someone else and come up with an opinion based off of that.

Could not gather enough information in fifteen minutes to make a good decision

They all suck. We pay more every year and get less in return. If we are rewarded one year for quitting the use of tobacco we are penalized the next year for something else like gaining weight. The reason we gained weight is cause we quit using tobacco!!!!

The comments below were submitted without a selection being marked on the survey.

### Responses

I would prefer the city get bids from outside insurance companies, then let city employees choose the company.

Need more information concerning other insurance carriers unable to currently formulate an educated response.

Health insurance was suppose to be a "benefit" to me as a city employee. Because I didn't want to become part of the "Wellness Plan" I was going to be penalized. Why should I be penalized? It's a benefit. I dropped the medical insurance because of this. I'm sure that saved you some money.

I am unable to make a choice at this time. I feel that we need to see what other options are available.

I do not have enough information; however, I do oppose the Municipal League's option. Other plans should be explored. Especially in these times. Hearing coverage should be considered.

Hard decision to make until Federal law goes into effect and see how that changes the market.

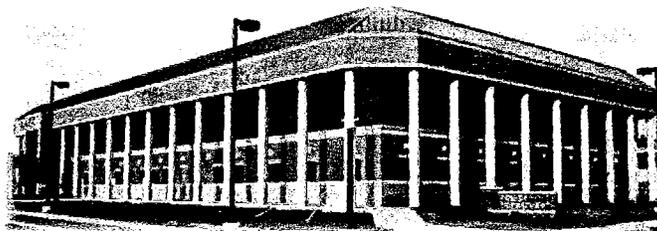
I think someone from AML should come by and talk to everyone.

I like what we have going. Wish co-pay was less and would also like more info on AML.

Would like more information on both sides

Information provided was too biased to make an objectionable decision.

I think we need to go back to Blue Cross & Blue Shield. My wife has it and it's cheaper than family plan at the City. I currently do not have city medical insurance.



## **Fort Smith Police Department**

Kevin Lindsey, Chief of Police

### **INTERDEPARTMENTAL MEMORANDUM**

**To: Dennis Kelly, City Administrator**

**From: Kevin Lindsey, Chief of Police**

**Subject: 2010 Community Oriented Policing Services Hiring Program Grant**

**Date: May 6, 2010**

The Fort Smith Police Department is requesting authorization from the Board of Directors to continue in the grant application process based upon notification on April 13, 2010, by the Office of Community Oriented Policing Services (COPS Office) that they will open the 2010 COPS Hiring Program (CHP) and will award \$298 million to address the full-time sworn officer needs of state, local and tribal law enforcement agencies nationwide to increase their capacity to engage in community policing. In 2010, COPS will select CHP grantees from the existing pool of approximately 6,000 2009 COPS Hiring Recovery Program (CHRP) applications. The COPS Office will not accept new applications for the 2010 COPS Hiring Program, and expects to make fewer than 500 awards with the limited amount of funding available.

The police department submitted an application last year under CHRP, but did not receive funding. Our application was placed in a pending status and carried forward into FY 2010 in anticipation of additional hiring funds being made available. The COPS Office will now consider our existing application for funding under CHP in 2010. CHP funding will cover officer's entry-level salary and benefits for three years with no local match requirement. However, CHP funding does require that the positions awarded be retained for a minimum of 12 months at the conclusion of 36 months of federal funding for each position. The police department has requested funding for two (2) full time officers to be assigned to the Bike Patrol Unit, to complement the department's community policing responsibilities in our neighborhoods and schools.

The Fort Smith Police Department is currently oriented to be a Community Policing Department. The department routinely engages in neighborhood problem-solving meetings to address specific issues within localized geographic areas of our city. We work in partnership with various non-profit organizations, such as the Salvation Army, the Red Cross, local shelters and other civic organizations in trying to meet the needs of

Interdepartmental Memorandum – Dennis Kelly  
2010 Community Oriented Policing Services Hiring Program Grant  
May 6, 2010

our citizens. In January, 2010, the Fort Smith Police Department, through a partnership with the Fort Smith School District, hired two (2) School Resource Officers that are dedicated to the school district and complement current school-based programs provided by Bike Patrol officers.

In June, the police department will be required to update our existing CHRP application, which will reflect a total salary request of \$365,000 for two officers for the three year grant period. The total three-year salary package for two officers at the current rate is \$352,694.94. The additional amount will cover any salary increases. The police department is confident that the requirement to retain officers hired under this grant program for a 12 month period can be met, if necessary, through attrition by retirements and/or other means. Staff recommends approval to proceed with the grant process.



## MEMORANDUM

3

April 29, 2010

**TO:** Dennis Kelly, City Administrator

**FROM:** Ray Gosack, Deputy City Administrator

**SUBJECT:** New Market Tax Credits

The federal government provides an economic development stimulus known as *new market tax credits*. The credits are intended to encourage development and redevelopment in areas where investment may be less likely to occur. The credits can underwrite approximately 25% of a project's costs. The use of new market tax credits in Fort Smith would support the neighborhood revitalization goals of the city's comprehensive plan.

Projects utilizing new market tax credits must be located in low-to-moderate income census tracts. Projects can include housing, retail, office and other commercial developments.

In order for a community to use new market tax credits, there must be a redevelopment agency that has the authority to prepare redevelopment plans and apply for the tax credits. In Arkansas, housing authorities may be authorized to act as redevelopment agencies if approved by the controlling city (see letter from the housing authority's attorney and the concurring memo from the assistant city attorney).

Attached is a proposal from the Fort Smith Housing Authority to serve as the redevelopment agency for Fort Smith. Once a redevelopment agency is created, a redevelopment plan must be prepared. This plan must be reviewed by the city's planning commission and approved by the board of directors.

After a plan is approved, the housing authority would have the latitude to implement the plan subject to the city's normal development requirements. The board couldn't direct the housing authority on "how" to implement the plan. Thus, a redevelopment plan would need to include any conditions the board deems important. Such conditions might include geographic areas, types

of projects, and the use of eminent domain.

If the board concurs, an ordinance designating the Fort Smith Housing Authority as Fort Smith's redevelopment agency will be prepared. Please contact me or Ken Pyle if there's any questions or a need for more information.

*Ray*

Attachments

cc: Ken Pyle, Fort Smith Housing Authority

## ***Fort Smith Housing Authority***

2100 North 31<sup>st</sup> Street  
Fort Smith, Arkansas 72904  
(479) 785-4881 FAX (479) 709-9381

### **New Markets Tax Credits**

#### **An Economic Development Opportunity for Fort Smith April 2010**

**Background:** In December 2000, Congress passed and President Clinton signed into law legislation establishing the New Markets Tax Credit (NMTC) program. The purpose of the new program is to encourage commercial, retail and housing investment into eligible communities as defined by census tract data (income levels, poverty and unemployment rates). The program awards a tax credit equal to 39% of project cost which is then sold to an investor to provide an equity investment to the project. Funding will often include below market rate, interest-only loans. The NMTC portion of a project's funding will, in general, be approximately 20-25% of total funds. The tax credits are intended to provide the additional funds that would allow an otherwise infeasible project to go forward in an eligible community.

**Geographic Area:** The eligible census tracts in Fort Smith are depicted on Exhibit A. The shaded areas cover the entire Central Business Improvement District, all of north Fort Smith west of Waldron Road and north of Grand Avenue. Closer to downtown, the area goes as far south as Dodson Avenue and east to Old Greenwood Road/Greenwood Road. Potential projects which might be able to use NMTCs are the Marshal's Museum, Sparks Hospital and various downtown commercial, retail, and housing mixed-use development.

**Proposal:** The Fort Smith Housing Authority (FSHA) seeks to become a "redevelopment agency" for the eligible census tracts within Fort Smith. The Arkansas Housing Authorities Act provides the statutory authority to adopt this mission. Exhibit B documents the legal research and basis for the expanded FSHA mission. The City Attorney has reviewed Exhibit B and concurs with its conclusions. A "redevelopment plan" must be submitted to the *Planning Commission and approved by the Fort Smith Board of Directors* to guide the FSHA in its choice of projects and redevelopment initiatives. Exhibit C presents a task list and process description to obtain approval as a "redevelopment agency" and approval of the redevelopment plan for the eligible area. If approved, the FSHA would apply to the U.S. Department of the Treasury for certification as a Community Development Entity (CDE), making us eligible to apply for an allocation of NMTCs in 2011.

**New Markets Tax Credits in Arkansas:** Currently, the only CDE in Arkansas with an allocation of NMTCs is the Heartland Renaissance Fund, Inc. (HRF) < [www.heartlandrf.com](http://www.heartlandrf.com) > a subsidiary of the Arkansas Capital Corporation. HRF received a total of \$125 million in NMTCs in the 2008 supplemental and 2009 award cycles. Over the past four months, principals of HRF have visited Fort Smith three times to meet with representatives of the Marshal's Museum, Sparks Hospital and the Central Business Improvement District to discuss their interest in placing NMTCs into specific local projects. HRF is very interested in quickly identifying appropriate projects because they must have at least 85% of their current allocation deployed before they are eligible to apply for additional credits in 2010. Although still a few years away from being ready to commence construction, the Marshal's Museum is of great interest to HRF as a signature project for Arkansas and a nearly perfect fit for NMTCs. Similarly, the proposed \$20 million in capital projects at Sparks Hospital are also prime candidates for NMTC development. We believe our CDE, focused on Fort Smith, would be another possible source of gap financing to assist with the above projects and others in our eligible census tracts. The HRF/Arkansas Capital principals endorse our seeking CDE certification. We are not in competition with them, except as it relates to bringing increased economic development opportunity to our city, region and State.

**Funding:** The FSHA Board of Commissioners is supportive of seeking this new mission authority and will fund the entire certification and NMTC allocation application costs from non-federal FSHA resources. No City funds are being requested.

We look forward to the opportunity to present our vision for pursuing this potential funding source for redevelopment of the low income areas of Fort Smith. We are scheduled to discuss our proposal with the entire Board of Directors at the May 11, 2010 Study Session.

# **Fort Smith Housing Authority-Redevelopment Agency**

## **Questions and Answers**

**Q: Why create a redevelopment plan for Fort Smith?**

**A: Many worthwhile projects like the Marshal's Museum, Sparks Hospital expansion, the restoration or redevelopment of vacant commercial space, and new housing may benefit from public/private partnership financing. Redevelopment plans give those reviewing NMTC applications more confidence that the applicant has the support of the local community and that projects are included because they fit a coherent development strategy for the eligible census tracts.**

**Q: What area(s) will be included in the redevelopment plan?**

**A: The shaded areas of the City of Fort Smith depicted on Exhibit B.**

**Q: Why should the Fort Smith Housing Authority be designated the City Redevelopment Agency?**

**A: The Fort Smith Housing Authority has experience in tax credit programs, grants management, compliance, and development that make it the organization with the capacity and credibility to do redevelopment using New Market Tax Credits and attract public and private financing.**

**Q: Why does the Forth Smith Authority need to be designated as a Redevelopment Agency?**

**A: The designation allows the Fort Smith Housing Authority to undertake activities beyond low income housing. Those activities include financing projects like the Marshal's Museum, Sparks Hospital capital projects or mixed-use commercial projects that the Housing Authority does not have legal authority to undertake without city designation.**

**Q: How will this effort be funded?**

**A: The FSHA has the resources to fund the preparation of applications and will be reimbursed over time from new grant sources such as the New Market Tax Credit Program.**

**Q: What is the New Market Tax Credit Program?**

**A: A program of the U.S. Department of the Treasury that assists financing of commercial and community facility projects located in eligible census tracts. In the most basic analysis it provides a grant for a portion of community redevelopment projects.**

**Q: Can New Market Tax Credits be used for housing?**

**A: Yes, housing for any-income families can be included as long as it represents less than 80% of the revenue of a project. Hence, some type of commercial development must be part of the project (mixed-use retail or office space with housing above or behind.)**

Key:  QCT  QCT- Distressed  Not Qualified

Show details

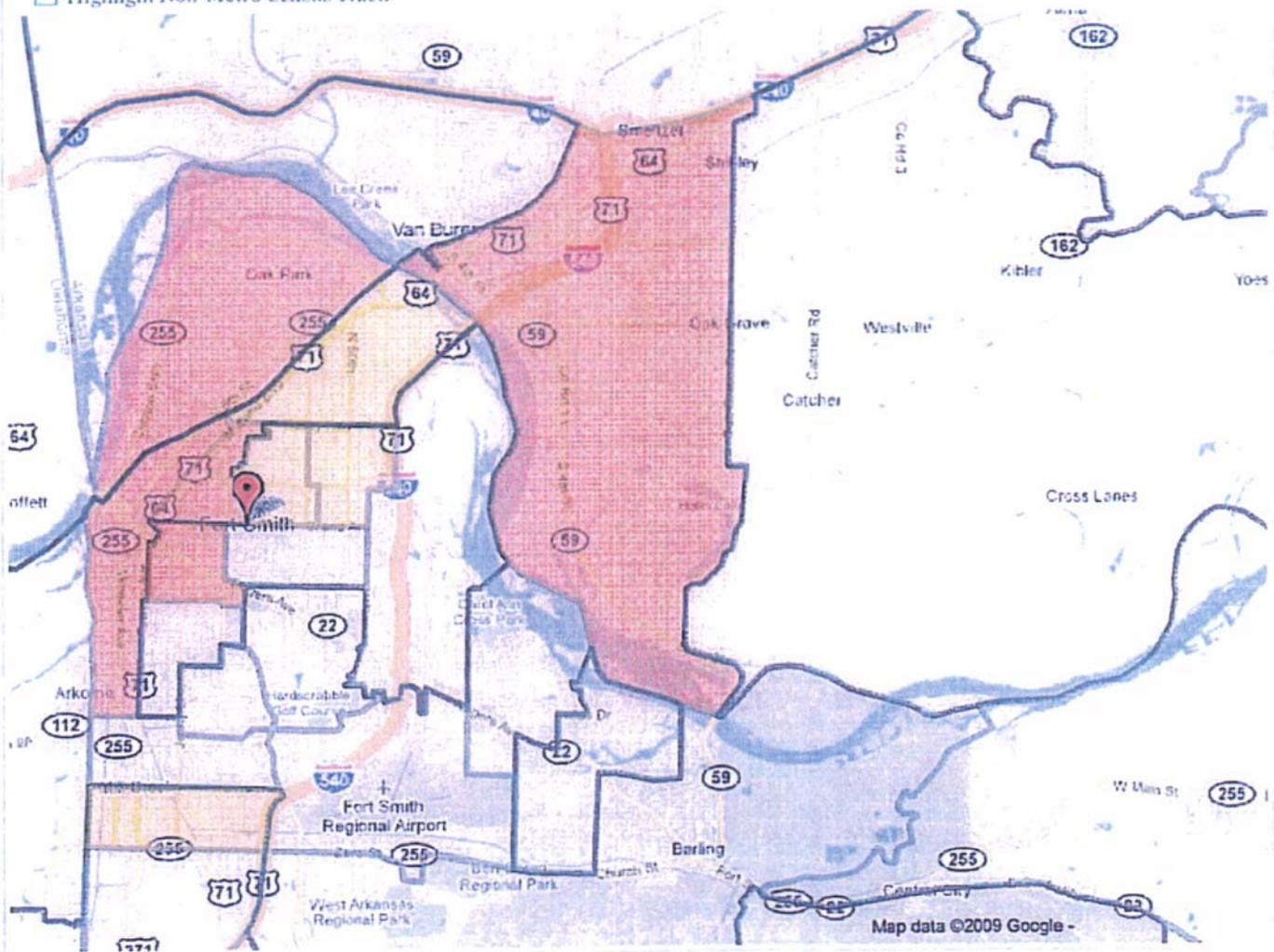
Orange census tracts are qualified under the NMTC program and red census tracts meet one of the top 3 higher distress criteria outlined in the allocation application which include: (i) poverty rates greater than 30 percent; (ii) 60% median family income; and (iii) unemployment rates at least 1.5 times the national average of 5.8% from the 2000 Census.

All census tracts are outlined and clicking on a census tract will pop-up a balloon containing information including: census tract number, poverty rate, median income percentage, unemployment percentage, MSA, population, census tract median family income, MSA median family income, and state median family income.

Enter a Census Tract# or an Address to show appropriate location then click on shaded regions to show Census Tract information. Drag map to view Census Tract information for other areas.

Search for  around

Highlight Non-Metro Census Tracts





## MEMORANDUM

To: Ken Pyle, Executive Director (via email)  
Fort Smith Housing Authority

From: Kathryn A. Stocks

Re: New Market Tax Credits

Date: February 15, 2010

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As we discussed, I believe the best avenue to achieve the objectives of the Housing Authority to use New Market Tax Credits to improve the community would be for the Housing Authority itself to be the party responsible for the redevelopment under the following provisions. These provisions give you the required statutory authority to do more than just housing subject to the City of Fort Smith's approval. This way there would be no issue of whether you acting as the lead on these matters was inappropriate since you are the Executive Director of the Housing Authority. Further, this way another entity would not have to be formed nor would you have to modify any of the current 501(c) entities since they are very specific in regards to being used for housing.

The following provisions relate to the ability of a housing authority to implement redevelopment projects. Ark. Code Ann. § 14-169-601 provides as follows:

(1) There exists in many communities within this state blighted areas, as defined in § 14-169-604, or areas in the process of becoming blighted;

(2)(A) Such areas impair economic values and tax revenues;

(B) Such areas cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the state; and

(C) These conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, and accident protection, and other public services and facilities;

(3) The clearance, replanning, and preparation for rebuilding of these areas and the prevention or the reduction of blight and its causes are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern;

(4)(A) Redevelopment activities will stimulate residential construction which is closely correlated with general economic activity; and

(B) Such undertakings authorized by this subchapter will aid the production of better housing and more desirable neighborhood and community development at lower costs and will make possible a more stable and larger volume of residential construction, which will assist materially in achieving and maintaining full employment; and

(5)(A) It is in the public interest that advance preparation for such projects and activities be made; and

(B) The necessity in the public interest for the provisions enacted in this subchapter is declared as a matter of legislative determination.

Ark. Code Ann. § 14-169-604 provides:

Any housing authority established pursuant to the Housing Authorities Act, §§ 14-169-201 -- 14-169-205, 14-169-207 -- 14-169-225, 14-169-227, 14-169-229 -- 14-169-240, and 14-169-804, and any amendments thereto, may carry out any work or undertaking to be called a "redevelopment project", to:

(1) Acquire blighted areas, which are defined as areas, including slum areas, with buildings or improvements which by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors are detrimental to the safety, health, morals, or welfare of the community;

(2) Acquire other real property for the purpose of removing, preventing, or reducing blight, blighting factors, or the causes of blight;

(3) Acquire real property where the acquisition of the area by the authority is necessary to carry out a redevelopment plan;

(4) Clear any areas acquired and install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(5) Sell land so acquired for uses in accordance with the redevelopment plan; or

(6) Accomplish a combination of these projects to carry out a redevelopment plan.

Because this provision allows you to sell land after you purchased it, this would allow a mixed development.

Ark. Code Ann. § 14-169-605 provides:

(a) In undertaking development projects, a housing authority shall have all the rights, powers, privileges, and immunities that a housing authority has under the Housing Authorities Act ... and any other provision of law relating to slum clearance and housing projects for persons of low income including, without limiting the generality of the foregoing, the power to make and execute contracts, to issue bonds and other obligations and give security therefor, to acquire real property by eminent domain or purchase, and to do any and all things necessary to carry out projects, in the same manner as though all the provisions of law applicable to slum clearance and housing projects were applicable to redevelopment projects undertaken under this subchapter.

This code section gives you very broad powers in regards to obtaining financing as well as acquiring property by eminent domain.

The following code section Ark. Code Ann. § 14-169-606 is the provision that requires that the City of Fort Smith approve redevelopment projects:

(a) An authority shall not initiate any redevelopment project under this subchapter until the governing body or agency ... in which any of the area to be covered by the project is situated, has approved a plan, to be called the "redevelopment plan," which provides an outline for the development or redevelopment of the area and is sufficiently complete to indicate:

(1) Its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements;

(2) Proposed land uses and building requirements in the area; and

(3) The method for the temporary relocation of persons living in such areas; and also the method for providing, unless already available, decent, safe, and sanitary dwellings substantially equal in number to the number of substandard dwellings to be cleared from the area, at rents within the financial reach of the income groups displaced from the substandard dwellings.

(b) Municipalities are authorized to approve redevelopment plans through their governing body or agency designated by it for that purpose.

This particular section is one of the few sections under the Redevelopment Section that has any case law cites. In Arkansas Louisiana Gas Co. v. City of Little Rock, 1974, 256 Ark. 112, 506 S.W.2d 555 (1974), the court held the General Assembly did not intend that "urban renewal projects be carried out by the housing authority in some type of principal-agent relationship whereby the authority would be acting under the direction and control of and subservient to the wishes of the local governing body", but rather intended that "once the governing body of the municipality approves a proposed urban renewal project and executes a cooperation agreement, the authority is free to develop the project according to the plans and without direction from the municipality." Id. at 115. The project at issue in this case was the modernization of a storm drainage system and drainage ditch.

Ark. Code Ann. § 14-169-607 gives the Housing Authority the right to "borrow money or accept contributions from the federal government to assist in its undertaking redevelopment projects. An authority may do any and all things necessary or desirable to secure such financial aid, including obligating itself in any contract with the federal government for annual contributions to convey to the federal government the project to which the contract relates upon the occurrence of a substantial default under it, in the same manner as it may do to secure such aid in connection with slum clearance and housing projects under the provisions of the Housing Authorities Act...."

Again the following provision would give you the ability to have a mixed development and probably a strictly commercial development as long as this would improve the conditions of the housing around it or improve conditions so that the Housing Authority could develop housing in the vicinity.

Ark. Code Ann. § 14-169-609 states:

(a)(1) The authority may make land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan.

(2) The land may be made available at its use value, which represents the value, whether expressed in terms of rental or capital price, at which the authority determines the land should be made available in order that it may be developed or redeveloped for the purposes specified in the plan.

(b)(1) To assure that land acquired in a redevelopment project is used in accordance with the redevelopment plan, an authority, upon the sale or lease of the land, shall obligate purchasers or lessees to:

(A) Use the land for the purpose designated in the redevelopment plan;

(B) Begin the building of their improvements within a period of time which the authority fixes as reasonable; and

(C) Comply with such other conditions as are necessary to carry out the purposes of this subchapter.

(2) Any such obligations by the purchaser shall be covenants and conditions running with the land where the authority so stipulates. (emphasis added.)

These provisions are under the chapter on Urban Renewal and are similar to the above provisions but have some additional features.

Ark. Code Ann. § 14-169-703 provides as follows:

(a)(1) In addition to its authority under any section of § 14-169-601 et seq., a housing authority is authorized to plan and undertake urban renewal projects.

(2) As used in this subchapter, an urban renewal project may include undertakings and activities for the elimination and for the prevention of the development or spread of slums or blighted, deteriorated, or deteriorating areas and may involve any work or undertaking for such purposes constituting a redevelopment project or any rehabilitation or conservation work, or any combination of such undertaking or work. Such undertaking and work may include:

(A) Carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements;

(B) Acquisition of:

(i) A slum area or a deteriorated or deteriorating area; or

(ii) Land which is predominantly open and which, because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community; or

(iii) Open land necessary for sound community growth. The requirement of this subchapter that the area be a slum area or a blighted, deteriorated, or deteriorating area shall not be applicable in the case of an open land project; or

(iv) Acquisition of any other real property in the urban renewal project area where necessary to eliminate unhealthful, insanitary, or unsafe conditions, lessen density, eliminate obsolete or

other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities, and demolition, removal, or rehabilitation of buildings and improvements;

(C) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the objectives of the urban renewal project; and

(D) The disposition, for uses in accordance with the objectives of the urban renewal project, of any property, or part of it, acquired in the area of such project. Disposition shall be in the manner prescribed in this subchapter for the disposition of property in a redevelopment project area.

(b) Notwithstanding any other provisions of this subchapter, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of tornado, flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the Governor has certified the need for disaster assistance under Public Law 81-875 or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to any provisions of this subchapter requiring that the urban renewal area is a slum area, or a blighted, deteriorated, or deteriorating area, or that the urban renewal area be predominantly residential in character or be developed or redeveloped for residential uses.

Ark. Code Ann. § 14-169-704 states:

(a) Any urban renewal project undertaken pursuant to § 14-169-703 shall be undertaken in accordance with an urban renewal plan for the area of the project.

(b) As used in this subchapter, an "urban renewal plan" means a plan as it exists from time to time for an urban renewal project. This plan shall:

(1) Conform to the general plan for the municipality as a whole; and

(2) Be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the area of the urban renewal project, zoning, and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic,

public transportation, public utilities, recreational and community facilities, and other public improvements.

(c) An urban renewal plan shall be prepared and approved pursuant to the same procedure as provided in § 14-169-601 et seq. with respect to a redevelopment plan.

(d) Where real property acquired by a municipality is to be transferred in accordance with the urban renewal plan or such parts of the contract or plan as the housing authority may determine, the transfer may be recorded in the land records of the county in such manner as to afford actual or constructive notice of it.

Since the Housing Authority has never done an urban renewal project, the City would have the option to create its own Urban Renewal Agency under Ark. Code Ann. § 14-169-708. (I do not know if this has ever been done and could ask the City if you would like me to do so.)

As long as the Housing Authority obtains the New Market Tax Credits in its name and does not use an entity like the Heartland fund, the constitutional issues involving a municipality becoming a stockholder in a for-profit entity should not be an issue.

Please let me know if I can be of any other assistance.

KAS/aw

**Designation of Fort Smith Housing Authority  
As  
Redevelopment Agency**

EXHIBIT C

**Task List**

**Task I Groundwork**

- Legal Research—Kathryn Stocks, Fort Smith Housing Authority Attorney
- Legal Review—Jerry Canfield, City Attorney
- Review Comprehensive Plan/ Housing elements for compliance
- Develop timetable of hearings and votes on adoption

**Task II City Board of Directors Endorsement and Approval**

- Provide Redevelopment Agency Proposal and Q & A from FSHA to City Board of Directors and Planning Commission members
- Meet w/Board members individually to answer questions/provide background
- Describe Process—Timeline/Hearings/Land Use/Zoning
- Study Session on May 11, 2010
- Vote to consider Redevelopment Agency Designation in June 2010

**Task III Planning Commission Endorsement of Redevelopment Plan**

- Meet w/Commissioners individually to answer questions/provide background
- Describe Process—Timeline/Hearings/Land Use/Zoning
- Study Session and voting session schedule to be determined

**Task IV Public education/Citizen input/CBID/Chamber/Rotary**

- PowerPoint Presentation for CBID/Chamber/Rotary, etc
- Press Release and Interviews w/Times-Record and The City Wire

### **Task V Prepare drafts of Plan for review and discussion**

1. Local objectives identified through research and public involvement
  - Land use
  - Parking
  - Recreational
  - Community facilities
  - Housing
  - Mixed-use downtown/other areas
2. Land use and building requirements (conformity with zoning)
3. Relocation
4. Financing Plan—NMTC/Build America Bonds/Historic Tax Credits
5. Document blighted areas
6. Plan to measure impact

### **Task VI Planning Commission Actions/Recommendation**

- Redevelopment Plan review and recommendation

### **Task VII Board of Directors Action/Approval**

- Fort Smith Housing Authority as Redevelopment Agency (June 2010)
- Redevelopment Plan vote to follow Planning Commission recommendation

# Memo

**To:** Jerry Canfield  
**From:** Rick Wade  
**CC:**  
**Date:** 03/22/10  
**Re:** Fort Smith Housing Authority vis-a-vis Redevelopment

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Subchapter 6, Chapter 169 (Housing Authorities and Urban Renewal Agencies), concerns itself with "Redevelopment Generally." The subchapter was previously considered by the Arkansas Supreme Court and determined not to be unconstitutional. Rowe v. Housing Auth., 220 Ark. 698, 249 S.W.2d 551 (1952).

A.C.A. § 14-169-601 (Repl. 1998) sets forth the declarations of the Arkansas General Assembly. Simply put, the legislature has recognized that many communities have "blighted areas" or areas that are in the process of becoming blighted and that such conditions affect economic values, tax revenues, and impact on public health, safety, morals and welfare. Subchapter 6, codified at A.C.A. §§ 14-169-601 through 14-169-609, establishes a mechanism, i.e., a housing authority, by which steps may be taken to clear a blighted area (includes slum areas, with buildings or improvements which by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination or other factors are detrimental to the safety, health, morals, or welfare of the community), and to replan and repair for the rebuilding of the identified area and to prevent or reduce blight. The statute recognizes that redevelopment activities will stimulate residential construction which is closely related to general economic activity.

A.C.A. § 14-169-604 provides that a duly established housing authority "may carry out any work or undertaking" to be called a "redevelopment project" to: acquire blighted areas; acquire other real property for the purpose of removing, preventing, or reducing blight or the causes of blight; acquire real property when such acquisition is necessary to carry out a redevelopment plan; clear any areas acquired and then take steps to prepare the site in accordance with the redevelopment plan; sell land in accordance with the redevelopment plan; or accomplish a combination of these projects to carry out a redevelopment plan.

A.C.A. § 14-169-605 provides that, in undertaking development projects, a housing authority shall have all the rights that a housing authority would have under the Housing Authorities Act and any other provisions of law relating to slum clearance and housing projects for persons of low income.

As to involvement by the local municipality, A.C.A. § 14-169-606 provides as follows:

(a) An authority shall not initiate any redevelopment project under this subchapter until the governing body . . . empowered by law so to act . . . , i.e., 'municipalities,' in which any of the area to be covered by the project is situated, has approved a plan, to be called the "redevelopment plan," which provides an outline for the development or redevelopment of the area and is sufficiently complete to indicate:

(1) Its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements;

(2) Proposed land uses and building requirements in the area; and

(3) The method for the temporary relocation of persons living in such areas; and also the method for providing, unless already available, decent, safe, and sanitary dwellings substantially equal in number to the number of substandard dwellings to be cleared from the area, at rents within the financial reach of the income groups displaced from the substandard dwellings.

(b) Municipalities are authorized to approve redevelopment plans through their governing body . . . for that purpose.

(c) Any state public body . . . [includes a city of the first class where the housing authority is created] shall have the same rights and powers to cooperate with and assist housing authorities with respect to redevelopment projects that . . . [such city] has pursuant to the Housing Authorities Act . . . for the purpose of assisting the development or administration of slum clearance and housing projects in the same manner as though the provisions of the Housing Authorities Act were applicable to redevelopment projects undertaken under this subchapter.

(Emphasis added).

A.C.A. § 14-169-609 then provides that the authority may make the land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan. To assure that land acquired in a redevelopment project is used in accordance with the redevelopment plan, an authority, upon the sale or lease of the land, shall obligate purchasers or lessees to use the land for the purpose designated in the redevelopment plan, to begin the building of their improvements within a reasonable period of time, and to comply with any other necessary conditions to carry out the purposes of the subchapter – any such obligations are to be covenants and conditions running with the land where the authority so stipulates.

Subchapter 6 clearly provides authority to a duly constituted housing authority to take steps to clear blighted areas, as that term is defined in the subchapter. The Arkansas General Assembly has recognized that clearance of, and the prevention of, blighted areas is good for the economy and the health and welfare of citizens. However, it also seems clear that a housing authority shall not initiate

any redevelopment project until the governing body has approved the "redevelopment plan," which must provide the information set forth in A.C.A. § 14-169-606. While the statute is silent as to possible modifications of the redevelopment plan, it is reasonable to conclude that, after the initial redevelopment plan has been presented to and approved by the governing body, the housing authority could seek modification which, in turn, would have to be approved by the governing body. As to any other control that the governing body might have over the housing authority, such control seems to be limited, both as to direct control and as to indirect control. The Arkansas Attorney General, Opinion No. 2009-125, in response to a question about A.C.A. § 14-169-207 (creating housing authorities), opined that cities have some limited direct control over certain aspects of housing authorities and, additionally, have some limited indirect control. The Attorney General described the direct control as the ability to appoint a certain number of commissioners to the initial housing authority and removal of a commissioner for misconduct. The Attorney General went on to opine that the indirect control would be found in the fact that a housing authority would be subject to all laws governing the locality in which the authority is operating, i.e., "all housing projects of a housing authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated." A.C.A. § 14-169-205(a) (Repl. 1998).

Opinion No. 2009-125

September 29, 2009

The Honorable Tracy Pennartz  
State Representative  
Post Office Box 11551  
Fort Smith, Arkansas 72917

Dear Representative Pennartz:

I am writing in response to your request for an opinion regarding A.C.A. §§ 14-169-209 and 14-169-210 (Repl. 1998). You ask nine questions, some of which I have combined and paraphrased:

If a municipality creates a housing authority pursuant to A.C.A. § 14-169-207, what, if any, control does the municipality have over the housing authority?

Can a municipality apply its formally adopted Code of Business Conduct to the housing authority and its board members?[[1]]

If so, can such Code of Business Conduct be more stringent than the applicable Arkansas statute?

Under applicable Arkansas statutes, is a housing authority required to adopt its own Code of Ethics or Code of Business Conduct? If so, can the housing authority's code be less stringent than the municipality's code?

Assume a housing-authority commissioner owns property situated on a site where a proposed housing-authority project may be built. If that commissioner participates in the discussions about whether to approve the proposed project, does that commissioner violate A.C.A. § 14-169-209?

Assume a housing-authority commissioner owns property situated on a site where a proposed housing-authority project may be built. If that commissioner failed to inform the board of this fact—in writing—would A.C.A. § 14-169-209 have been violated?

Assume a housing-authority commissioner owns residential property situated across the street from a proposed housing-authority project. Does the ownership of that property constitute a "conflict of interest" pursuant to A.C.A. § 14-169-209?

#### RESPONSE

As for your first question, municipalities have limited direct control and limited indirect control over housing authorities. Some of these controls are described in more detail below. In my opinion, the answer your second question is "no," which renders your third question moot. The answer to your fourth

question is “no.” The answer to your fifth question is unclear. The answers to your sixth and seventh questions are “yes” and “no,” respectively.

## DISCUSSION

**Question 1: If a municipality creates a housing authority pursuant to A.C.A. § 14-169-207, what, if any, control does the municipality have over the housing authority?**

Cities have some limited direct control over certain aspects of the housing authorities and the cities have indirect control. The direct powers are varied. For example, cities may appoint certain number of commissioners to the initial housing authority (14-169-208(a)(2)(A)) and the city may remove a commissioner for misconduct (14-169-210(a)). The indirect control appears broader because housing authorities are subject to all laws governing the locality in which the authority is operating: “All housing projects of a housing authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated.” A.C.A. § 14-169-205(a) (Repl. 1998).

**Question 2: Can a municipality apply its formally adopted Code of Business Conduct to the housing authority and its board members?**

Nothing in A.C.A. §§ 14-169-209 and -210 permits the municipality to require a housing authority abide by a “Code of Business Conduct.” As noted above, the municipality has limited direct control over housing authorities. Most of these direct controls pertain to the creation and initial staffing of the authority. None of the direct controls specifically permits the municipality to require the housing authority to abide by a code of business conduct. As also noted above, housing authorities are subject to some indirect control from the municipality. Specifically, housing authorities are “subject to all local laws governing the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated.” A “formally adopted Code of Business Conduct” does not appear to fit one of these categories of laws to which a housing authority is subject.

**Question 3: If so, can such Code of Business Conduct be more stringent than the applicable Arkansas statute?[[2]]**

Given my response to your second question, this question is moot.

**Question 4: Under applicable Arkansas statutes, is a housing authority required to adopt its own Code of Ethics or Code of Business Conduct? If so, can the housing authority’s code be less stringent than the municipality’s code?**

No statute found in A.C.A. §§ 14-169-201 to 14-169-240 requires the adoption of such a code.

**Question 5: Assume a housing-authority commissioner owns property situated on a site where a proposed housing-authority project may be built. If that commissioner participates in the discussions about whether to approve the proposed project, does that commissioner violate A.C.A. § 14-169-209?**

In my opinion, the answer to your question is unclear. Section 14-169-209 states:

(a) No commissioner or employee of a housing authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

(b)(1) If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he immediately shall disclose it, in writing, to the authority. The disclosure shall be entered upon the minutes of the authority.

(2) Failure so to disclose an interest shall constitute misconduct in office.

Your factual assumptions trigger subsection (b). As such, subsection (b) requires the commissioner to disclose his or her property interest in writing. The statute is silent on whether the commissioner must abstain from discussing whether to approve the planned development.

Question 6: Assume a housing-authority commissioner owns property situated on a site where a proposed housing-authority project may be built. If that commissioner failed to inform the board of this fact—in writing—would A.C.A. § 14-169-209 have been violated?

Yes. As indicated in the above quoted section, if commissioners have a property interest that is subject to subsection 14-169-209(b), they must disclose that interest “in writing” to the housing authority.

Question 7: Assume a housing-authority commissioner owns residential property situated across the street from a proposed housing-authority project. Does the ownership of that property constitute a “conflict of interest” pursuant to A.C.A. § 14-169-209?

No. Before A.C.A. § 14-169-209 even applies to a given commissioner’s property interest, a threshold requirement is that the commissioner’s property fall within the footprint of the property “included or planned to be included in any [housing-authority] project.” By describing the commissioner’s property as “across the street from a proposed housing-authority project,” I assume you mean the commissioner’s property is not included within the footprint of a housing authority project (or proposed project). Therefore, under your factual assumption, section 14-169-209 is not triggered.

Assistant Attorney General Ryan Owsley prepared the foregoing opinion, which I hereby approve.

Sincerely,

Dustin McDaniel  
Attorney General

DM/RO:cyh

[1]To be consistent with the relevant statutes, where your questions use the term “board members,” I have substituted the term “commissioners.”

[2]The introductory portion of your opinion request indicates that your questions concern the “conflict of interest” provisions of A.C.A. [§§] 14-169-209 and 210.” Thus, I interpret your phrase “applicable Arkansas statute[s]” to mean these two statutes.

**MEMORANDUM**

DATE: May 7, 2010

TO: Mr. Dennis Kelly

FROM: Mitzi Kimbrough, Internal Auditor *Mitzi*

SUBJECT: Ordinance repealing and replacing Article II of Chapter 2, Sections 2-26...

The attached ordinance includes changes made to Section 2-42 as were discussed by Jerry Canfield, Dennis Kelly and Mitzi Kimbrough this morning. Directors and the mayor may request information that is routine and readily available directly from the internal auditor, who will respond directly to the requesting director or mayor. A request for information that is not routine or is not readily available shall be made through the city administrator, by majority vote of the board of directors, or through the Audit Committee.

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

**AN ORDINANCE REPEALING AND REPLACING  
ARTICLE II OF CHAPTER 2, SECTIONS 2-26 THROUGH 2-47,  
OF THE FORT SMITH MUNICIPAL CODE**

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BE IT ORDAINED AND ENACTED by the Board of Directors of the City of Fort Smith, Arkansas that:

SECTION 1: Article II of Chapter 2, including Sections 2-26 through 2-47, of the Fort Smith Municipal Code is hereby repealed in its entirety and replaced with the following language:

**ARTICLE II. MAYOR AND BOARD OF DIRECTORS\***

**Sec. 2-26. Regular meetings of the board of directors.**

Beginning January 1, 2010 and continuing through December 31, 2010, the regular meetings of the city board of directors shall be held at 6:00 p.m. in the board room at the Fort Smith Public Schools Service Center, 3205 Jenny Lind, on the first and third Tuesday evenings, unless such date is a legal holiday, in which case such meeting shall be held on the following evening at the same time and place.

**Sec. 2-27. Special meetings.**

Special meetings of the board of directors may be called by a majority of the board of directors as follows:

(a) On oral motion stating the time, date, place (if then known) and item or items of business on the agenda for the proposed meeting adopted by the board of directors at any regular meeting or special meeting of the board which is attended by all directors and the mayor. The city clerk shall confirm the meeting called by notice to each director, the mayor, and the city administrator of the time, date, place and item or items of business on the agenda for the meeting called.

(b) When four (4) or more members of the board of directors are present and all members of the board and the mayor, whether present or absent, consent in writing to the holding of the meeting. The written consent shall contain the time, date, place and item or items of business on the agenda, and shall be recorded in the minutes of the board by the city clerk. Absent members and the mayor may give written consent to the meeting by facsimile or electronic mail addressed to the city clerk.

(c) When four (4) or more members of the board of directors give notice to the city clerk, either orally or in writing, of the time, date, and item or items of business on the agenda for the special meeting. Oral notice received by the city clerk shall be reduced to writing and recorded in the minutes of the board. Written notice of the special meeting of the board shall contain the time, date, place and item or items of business on the agenda, and shall be either delivered to each member of the board, the mayor and the city administrator at least twenty-four (24) hours before the time of the meeting called, or shall be sent by electronic mail or facsimile to each member of the board of directors and to the mayor to addresses or facsimile numbers provided by each for this purpose at least forty-eight (48) hours before the time of the meeting called. The city administrator may request all members of the board of directors to call a special meeting for any specified purpose by notice to each member of the board of directors and the mayor of the time, date, place and item or items of business on the agenda of the proposed meeting. The requested meeting may be called by four (4) or more members of the board of directors as provided in this subsection.

(d) If an emergency event, which could not have been reasonably anticipated but which, because of its importance and pressing urgency, requires immediate consideration, the board of directors may have a special meeting at any time and at any place when at least four (4) or more directors are present, and after written notice has been given of the time, place and item of business for consideration to each director, and to the news media by the most expeditious manner possible, at least two (2) hours prior to the meeting. Expeditious manner shall be deemed satisfied if attempted contact is by e-mail, telephone and facsimile copy. Any action taken at such meeting shall be reported promptly to the mayor and to all members of the board of directors who were absent, and any action taken shall be an item of business on the agenda at the next regular or special meeting of the board of directors duly called for reconsideration at the request of any member of the board of directors.

(e) The city clerk shall prepare and give all notice required by this section and the Freedom of Information Act of 1967 [A.C.A. 25-19-101], and when required such notice shall be given to each member of the board, the mayor, the city administrator, the public and the news media pursuant to the Freedom of Information Act of 1967 [A.C.A. § 25-19-101]. Said notice shall include the time, date, place and item or items of business on the agenda for the meeting called.

(f) No special meeting of the board of directors shall be called to order until the two (2) hour notice of the meeting is first given to the public and the representatives of the news media as required by the Freedom of Information Act of 1967 [A.C.A. § 25-19-101 et seq.]. The mayor and each member of the board of directors shall be deemed to have consented to any special

meeting of the board of directors and its consideration of the items of business stated on the agenda at the beginning of the meeting if they are present at the beginning of the meeting and do not object to the holding of the meeting.

**Sec. 2-28. Executive sessions.**

(a) Executive sessions of the board of directors shall be scheduled as the last item of business on a regular or special meeting agenda, subject to the provisions of Section 2-37(a) for re-arranging the order of the meeting agenda.

(b) Except as otherwise specifically provided by law, executive sessions will be permitted only for the purpose of discussing or considering employment, appointment, promotion, demotion, disciplining or resignation of any public officer or employee.

(c) Any item of business arising at a study session, regular or special meeting of the board, requiring the consideration of the board in executive session shall be automatically postponed for executive session at the next regular or special meeting of the board. A motion duly adopted to consider an item of business in executive session shall automatically postpone consideration of the item of business. All seven (7) directors may concur with adding the item to the agenda of the meeting in progress for an executive session before adjournment of the regular or special meeting in progress. If consideration at the regular or special meeting in progress does not occur, the matter shall be scheduled for an executive session at the next regular or special meeting.

(d) Any decision of the board of directors made in executive session, which decision is required by the Freedom of Information Act of 1967 [A.C.A. § 25-19-101 et seq.] to be presented and voted on at the public meeting, shall be the subject of formal action by the board which shall reconvene in public session after the executive session.

(e) Only the members of the board, the mayor, and the city administrator shall regularly attend executive sessions of the board. Persons specifically requested to attend a particular meeting may do so as allowed by the Arkansas Freedom of Information Act, and such person or persons shall leave the meeting at the conclusion of the matter pertaining to them.

**Sec. 2-29. Study session meetings.**

(a) The board of directors may hold study session meetings at such times, under such circumstances and on such conditions as the board may prescribe for the purpose of informing themselves of the business and affairs of the city, provided no official action of the board of directors shall be taken at such meetings. The city clerk shall not be required to keep minutes of study session meetings.

(b) The city clerk shall prepare and give notice of study session meetings. Such notice shall be given to each member of the board, the mayor, the city administrator, the public and the news media pursuant to the Freedom of Information Act of 1967 [A.C.A. § 25-19-101]. Said notice

shall include the time, date, place and item or items of business on the agenda for the meeting called.

(c) The regularly-scheduled study session meeting shall precede the regular meeting of the board by at least five (5) days.

(d) To the extent practical, items of business or matters which are complex or involve policy decisions shall be presented at a study session meeting together with a briefing of relevant facts and circumstances prior to being placed on the agenda of a regular meeting. Additionally, the city administrator shall provide a list of all then-known items contemplated to be on the next regular meeting agenda.

(e) The time and place of study session meetings shall be determined by a majority of the members of the board, and notice given as herein provided.

(f) Only the city administrator, the mayor, or a member of the board of directors may invite persons to address the board of directors at a study session, and a majority of the board of directors may limit the time of a presentation, or deny any presentation to the board. In all controversial and complex matters, such a briefing may be a condition precedent to further consideration of the item of business. The city administrator or his staff shall undertake reasonable efforts to give notice of the study session to persons having an existing direct interest, as contrasted with a general interest, in the item of business under study by the board of directors at a study session, and the board of directors may to permit such directly interested persons to make informed presentations to the board if requested to do so.

(g) The study session meeting room shall be so arranged as to encourage and facilitate communication between the mayor, the members of the board of directors, the city administrator and any invited guests.

#### **Sec. 2-30. Personnel to attend study session meetings.**

(a) The city administrator or the deputy city administrator and city clerk or assistant city clerk shall attend all study session meetings of the board. The city administrator shall also require the presence at the study session meetings of other employees of the city having relevant superior personal knowledge or expert opinion of matters to be presented to the board for consideration.

(b) The board of directors may on a motion duly adopted require the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code, or in his absence an assistant qualified and licensed attorney at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code, or any other municipal employee to attend study session meetings of the board.

#### **Sec. 2-31. Formulation of agenda.**

Each item of business for consideration by the board of directors at any regular, special, study session or executive session meeting of the board shall be first placed on a written agenda. The agenda shall be formulated and disseminated according to the following directions.

(a) The preparation of the agenda for each regular, special, study session or executive session meeting of the board of directors shall be the duty of the city clerk, under the supervision of the mayor.

(b) An item of business may be placed on the agenda for any regular, special, study session or executive session meeting of the board at a study session meeting preceding the meeting of consideration by the city administrator, or by the concurrence of any two (2) members of the board. An item of business may be placed on the agenda for any regular, special, study session or executive session meeting of the board at any time by the city administrator provided notice of the specific subject of the addition to the agenda is given to the mayor and the members of the board of directors at least forty-eight (48) hours before the meeting of consideration.

(c) An item of business may be placed on the agenda at least forty-eight (48) hours prior to the time of the meeting of consideration by four (4) members of the board upon notice to the city clerk of the name of the proposed directors and the specific subject of the items of business to be considered. The city clerk shall immediately notify the directors, the city administrator and the mayor of the specific subject of the addition to the agenda.

(d) Any item of business may be denied a place on or removed from the agenda by notice of four (4) directors to the city clerk prior to the date of the meeting of the proposed consideration. The city clerk shall immediately notify the city administrator, the mayor, the directors and other interested persons of such action.

(e) An item of business requiring immediate action by the board may be placed on the agenda within forty-eight (48) hours or at the meeting of consideration by notice from all seven (7) members of the board to the city clerk pursuant to subsection (c) above or by unanimous vote of the entire membership of the board. An absent member of the board may express consent to consideration by those present in writing, or by facsimile or electronic mail communicated to the city clerk.

(f) An item of business presented at a regular or special meeting of the board, not placed on the agenda of the meeting at which presented, shall be automatically placed on the agenda of the following regular meeting unless its place on the agenda is denied, or it is removed as provided in this article.

(g) Any ordinance or resolution placed on the agenda of any regular or special meeting of the board requiring by its terms the appointment by the board of a person and the insertion of a person's name in the ordinance or resolution shall be automatically referred to and constitute a call of an executive session prior to adjournment of such meeting, and formal action on the ordinance or resolution shall take place in public session after the executive session.

**Sec. 2-32. Briefing of board by the city administrator.**

(a) The city administrator may present to the board of directors at any meeting any matter without detailed briefing for the purpose of determining whether the board desires that the matter be staffed and the board thoroughly briefed at a subsequent meeting of the board, or not. Available information relevant to the question of further consideration and briefing should be presented.

(b) It shall be the duty of the city administrator to keep the members of the board advised of all facts and circumstances pertaining to or affecting the legislative policy of the city, and it shall be the duty of the city administrator and his staff to investigate, assimilate relevant information, and brief the board of directors on all matters requiring consideration and legislative action by the board.

(c) Before any complex or controversial item of business is placed on the agenda of a regular, special, study session or executive session meeting of the board by the city administrator, the city administrator and his staff shall first present to the board so much of the following as is relevant and feasible:

- (1) Statement of the problem or the issue presented.
- (2) A statement of all pertinent and relevant facts together with available documentation.
- (3) Any expert opinion concerning the item of business for consideration.
- (4) Copies of other municipal legislation affecting the item of business.
- (5) Copies of pertinent comparable legislation in other municipalities.
- (6) Statement of the intended results of any proposed legislation or statement of policy on the problems sought to be eliminated, or the good to be accomplished by the proposed legislation.
- (7) A statement of the obstacles to accomplishment of the desired objective.
- (8) A statement of the possible solutions with advantages and disadvantages of each.
- (9) The course of action recommended by the city administrator, if any, and his reasons therefor.

(d) It shall be the duty of the city administrator and his staff to present to the board the same information outlined in this section for each item of business initiated by members of the board at their request, or by citizens presenting complex or controversial items of business, provided the city administrator may require as a condition precedent to his presentation of an item of business initiated by a citizen that the initiating person attend a meeting of the board and make a presentation of relevant facts and circumstances to the board and such other of the staff briefing

requirements outlined in the preceding subsection as is relevant and reasonable.

(e) The majority of the board may, by vote, if timely done pursuant to section 2-31, place a complex or controversial item of business on the agenda at the request of the city administrator without the complete and thorough briefing to the board required by this section.

(f) All or any part of the information to the board required by this section may be furnished either orally or in writing to each member of the board prior to or at the presentation of the item of business for a place on the agenda.

(g) The city administrator shall request the board of directors to authorize the necessary staff, equipment and material to perform the duties prescribed by this article.

**Sec. 2-33. Meeting material, equipment and supplies.**

(a) The city clerk shall have present at each meeting of the board of directors a copy of Robert's Rules of Order, a copy of this Code, and at the meeting of initial consideration, a copy of every other contract, resolution or ordinance of the city directly affecting matters of consideration by the board. The city administrator shall advise the city clerk prior to each meeting of the subject of matters proposed for consideration by the board which are not known by the city clerk to be already on the agenda. The city clerk shall provide necessary supplies for each director at each meeting. The city administrator shall have present at the meeting of initial consideration every legal opinion, and other letters, documents, charts, maps or photographs not in the possession of the city clerk directly affecting new matters of consideration by the board at each regular, special, study session or executive session meeting of the board, except where impractical because of the complexity or bulk of the documents, in which case available summaries shall be utilized.

(b) Upon request by any director, the city administrator and his staff shall have present at any subsequent meeting of consideration the relevant documents described in subsection (a) above.

**Sec. 2-34. Presiding officer; vote; mayor's veto; overriding veto.**

(a) The mayor shall preside at all regular, special, and study session meetings, including executive sessions, of the board of directors but shall not have a vote on any matter coming before the board. The mayor shall have the power of veto over all decisions made by the board of directors, except with respect to matters relative to city personnel, but a veto by the mayor may be overridden by the affirmative vote of five (5) or more members of the board of directors. In the absence of the mayor, the assistant mayor shall have the same duties and authority as chairman without veto, and also shall have the right to vote as a director.

(b) In the absence of both the mayor and the assistant mayor the board of directors shall elect from its membership a person to serve as chairman of the meeting. Such election of a chairman shall not occur before the designated starting time of the meeting and shall not occur before a

quorum is present.

**Sec. 2-35. Rules of order.**

(a) Robert's Rules of Order shall govern the proceedings of all regular, special, agenda and executive meetings of the board of directors, except as modified by A.C.A. tit. 14, ch. 48 [§ 14-48-101 et seq.], and the provisions of this article. The city administrator shall provide a copy of Robert's Rules of Order to each member of the board of directors, the mayor and the city clerk.

(b) The mayor, assistant mayor or other person presiding over the meeting shall have the affirmative duty and authority to require the members of the board of directors and other persons present at the meeting to comply with the rules of order. The chairman of the meeting shall constantly maintain the decorum of the meeting, and shall have authority to order the removal of persons not on the board of directors violating the rules of order or disturbing the meeting. The chairman of the meeting may require the city administrator to provide a person having police authority to be present at a meeting to assist in the performance of the duties of the presiding officer. It is the purpose of this subsection to require the chairman of the meeting to enforce the rules of order and to maintain the decorum of the meeting without a request for rule compliance or objection to rule violation by a member of the board of directors. If a member of the board of directors believes there is a violation of the foregoing by a citizen, he or she may make a motion to end the presentation or assert a point of order. If said motion receives a second, there shall immediately be taken a vote of the board of directors on the motion to end the presentation. The chairman may enforce the point of order or may submit same to a vote of the board of directors.

(c) A majority of the board may on a motion, without second, order the previous question, which shall have the effect to cut off all debate and bring the board to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the item of business to its passage or rejection. It shall be in order, pending the motion for the previous question, or after the previous question shall have been ordered on its passage, for the mayor to entertain and submit without debate a motion to commit, with or without instructions, to a standing or select committee. All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether an appeal or otherwise, without debate.

(d) No member of the board of directors shall speak or debate on any item of business, which is not on the agenda at any regular meeting of the board of directors, except on a motion to add the item of business to the agenda as provided in this article, without the unanimous consent of the members of the board who are present.

(e) The minutes of each regular or special meeting of the board of directors shall be accurately summarized by the city clerk, reduced to writing, and a copy provided to each member of the

board of directors and the mayor prior to the next regular meeting. No minutes of any past meeting of the board of directors shall be read at any subsequent meeting unless a reading is requested by a member of the board of directors.

(f) The chairman of each meeting of the board shall rotate the opportunity to first speak or debate on successive items of business among the members of the board.

(g) All special and standing committees of the board shall be appointed by the chairman of the meeting, subject to the approval of a majority of the board, which approval shall be recorded.

(h) The membership of standing committees shall terminate on December thirty-first of each year and new members appointed at the next regular meeting of the board. Special committees shall terminate upon the presentation to the board of a committee report stating that it is final or at the expiration of one (1) year, whichever event occurs first.

(i) The referral of a matter or item of business to a committee shall have the effect of requiring the city administrator and his staff to fully support the committee in its work.

**Sec. 2-36. Presentation of information requiring no board action.**

(a) Any information or report may be presented to the board of directors by the city administrator, by the mayor, or by a member of the board at any meeting of the board. No official action shall be taken on such matter unless first placed on the agenda as provided herein.

(b) Any member of the board may request the city administrator to remain after any meeting for the purpose of informing the city administrator of specific citizen complaints or other matters not requiring the attention of the entire board and the city administrator and his staff shall note the complaints or matters presented for action under section 2-45, or for other appropriate action, and the director presenting the complaint or the matter shall be advised of the action taken.

**Sec. 2-37. Agenda consideration at opening of meeting; public comment on agenda items.**

(a) After each regular or special meeting of the board of directors is called to order and the roll is called, the mayor shall inquire of the members of the board of directors if any director desires to present any item of business or other matter to the board during the meeting, or which is not already on the agenda of a regular or special meeting. If the mayor receives an affirmative response, the subject of all such items of business or matters for consideration shall be promptly determined. No person, except a member of the board of directors, shall be permitted by the mayor to discuss any item of business or other matter presented at the meeting for a place on the agenda until the item of business is placed on the agenda, or other matter is approved by the board for presentation at the meeting. The mayor shall submit separately to the board for vote without motion each item of business or other matter proposed by a director. A director presenting items requiring board action, but not placed on the agenda of the meeting at which presented, shall be told by the mayor that the item will be on the agenda for the next regular

meeting of the board, unless removed by a majority of the board. At each regular or special meeting of the board the mayor may then ascertain the number of persons present for each item on the agenda and shall rearrange the order of the agenda subject to the approval of the board, so that the business of the largest groups of people present is first on the agenda.

(b) After a motion is made and seconded for approval of each item on the agenda of any regular or special meeting of the board, and before such item is discussed by members of the board, the mayor shall inquire of those present if anyone has a statement to make concerning the item under consideration. An applicant before the board may have up to five (5) minutes to make an opening presentation. If a group of citizens opposes the applicant, they may have up to five (5) minutes to make an opposing presentation. Each side shall have up to three (3) minutes to make a rebuttal presentation. All other comments from citizens shall be limited to no more than two (2) minutes per citizen. Any of these time limits may be extended by a consensus of the members of the board. Citizen comments must be relevant to the agenda item under consideration.

**Sec. 2-38. Ordinances and resolutions--Passage; one subject, title rule.**

(a) All ordinances, resolutions or orders for the appropriation of money shall require for their passage or adoption the concurrence of a majority of the board of directors. All by-laws and ordinances of a general or permanent nature shall be fully and distinctly read on three (3) different days, unless five (5) members of the board of directors shall dispense with the rule. The affirmative vote of at least five (5) directors to suspend the rule shall dispense with the requirement to fully read the item and with the requirement of voting on three (3) different days. No ordinance shall contain more than one (1) subject which shall be clearly expressed in its title.

(b) The formality of suspending the rules regarding readings on successive dates shall not be required in the event of a unanimous vote of the entire board.

(c) If a by-law or ordinance is duly adopted, or amended, and a director voting against the measure states consents to dispensing with the rules, such director's vote on the measure adopted shall be recorded for the measure to reflect the unanimous vote required by subsection (b) above.

(d) If it shall be necessary for the preservation of the public peace, health and safety that a measure shall become effective immediately, and the measure contains an emergency section, a separate roll call vote by yea and nay shall be had on the emergency section. Five (5) or more votes in favor of the emergency shall be required. If the emergency section is not adopted, the remainder of the measure shall be considered passed.

**Sec. 2-39. Same--Voting requirements.**

(a) On the passage of every ordinance, resolution or order to enter into a contract by the board of

directors, the yeas and nays shall be called and recorded; and to pass any ordinance, resolution or order, a concurrence of at least four (4) members of the board of directors shall be required.

(b) When a motion for passage or adoption of an item of business which is the subject of an ordinance or resolution on the agenda at any regular, or special meeting of the board of directors is duly seconded, the ordinance or resolution shall be read prior to the first vote, subjected to any other parliamentary procedure including subsidiary and privileged motions, and then put to vote to end that only one (1) vote shall be taken on each main motion.

#### **Sec. 2-40. Salaries.**

(a) The mayor shall receive compensation in the amount of ten thousand dollars (\$10,000.00) per year. Additionally, the mayor shall receive as reimbursement for vehicle expense the sum of four hundred fifty dollars (\$450.00) per month.

(b) Each member of the board of directors shall receive compensation in the amount of one thousand dollars (\$1,000.00) per year. A member's compensation shall be reduced by one-twenty-fourth (1/24th) for each regular meeting at which a member is absent. No such compensation shall be paid for attendance at any special meeting called by the board of directors. Each member of the board of directors shall receive as reimbursement for vehicle expense the sum of four hundred dollars (\$400.00) per month.

#### **Sec. 2-41. Actual expenses.**

(a) The mayor and the members of the board of directors shall be reimbursed for actual out-of-pocket expenses incurred in the performance of their official duties, and they shall be reimbursed for personal automobile use on city business requiring travel more than twenty-five (25) miles one (1) way from the principal office location of the city.

(b) Application for reimbursement shall be made within thirty (30) days of the date the non-travel expense is incurred or within two (2) weeks of the date the travel is concluded and the application shall be supported by appropriate vouchers in the same manner as provided by the city administrator for reimbursement of expenses of other municipal personnel. Reconciliation of travel advances shall be made within two (2) weeks of the date the travel is concluded. In addition, the application for reimbursement shall state the date and item of municipal business requiring the expenditure or travel. All travel expense reimbursements and travel advances shall be made in accordance with the city's travel policy.

(c) To the extent feasible, the city administrator shall establish a procedure for providing direct services and supplies to the mayor and the members of the board necessary to an efficient and economical performance of their official duties.

**Sec. 2-42. Administrative assistance to the board of directors.**

(a) The city administrator shall provide such secretarial assistance to the board of directors and the mayor as is prescribed by the board for its members and the mayor. The city administrator shall provide adequate office space and the necessary furniture, equipment and supplies for one (1) member of the board, or the mayor to work effectively on city business. Available personnel, supplies, space, furniture and equipment now utilized by the mayor may be designated and assigned to the requirements of this section.

(b) Each member of the board of directors shall be provided with supplies, documents and information necessary to the proper performance of the duties of director in preparation for and in attending meetings of the board.

(c) Official stationery bearing the names of the mayor and the members of the board shall be provided to the board.

(d) The city administrator shall provide to each member of the board of directors on request an appropriately designed identification card for use by the members of the board on official business.

(e) Directors and the mayor may request information that is routine and readily available from any department or office head of the city. The department or office head shall furnish all available information and facts requested by the directors and mayor to the city administrator, who shall then forward such information and facts to all directors and the mayor. Requests from directors or the mayor for information that is not routine or is not readily available shall be made through the city administrator.

(f) Directors and the mayor may request information that is routine and readily available by request made directly to the internal auditor, who will respond directly to the requesting director or mayor. A request for information that is not routine or is not readily available shall be made through the city administrator, by majority vote of the board of directors, or through the Audit Committee.

**Sec. 2-43. Director approval procedure of city administrator personnel action.**

Except as otherwise provided in this article, the city administrator shall obtain the approval of the board of directors prior to the employment or discharge of exempt personnel of the city who are heads of departments, city clerk, internal auditor, and the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code as follows:

(1) The city administrator shall notify all members of the board of directors either orally or in writing of the proposed action, the reasons therefor, and all relevant and pertinent facts bearing upon the decision of either employment or discharge. After notification from the city administrator, there shall be scheduled an executive session at the next regular or special meeting of the board of directors to discuss approval, denial or modification of the city administrator's

proposed action.

(2) Following the board's action, the city administrator shall then notify in person or by telephone the individual subject to the approved action and may confirm the action in writing to the individual.

(3) Where reasonable and feasible, employees of the city shall be first given an opportunity to resign at the request of the city administrator and the board of directors prior to notice of discharge.

(4) No director nor the mayor shall communicate the exempt personnel action proposed by the city administrator, except through the city administrator as herein provided.

#### **Sec. 2-44. Citizen complaints and citizen initiated items of business.**

(a) Any citizen having a complaint or an item of business with the city should present the complaint or the item of business to the city administrator's office for action prior to presentation of the complaint or item of business to the board of directors at a meeting. Before presentation of the complaint or item of business to the board of directors, the aggrieved citizen shall first notify the city administrator, or his designated representative, of the nature of the complaint, and the city administrator shall immediately cause an investigation to be made of the complaint or requested item of business and notify the citizen and board of directors of the results of the investigation and recommended action, if any. A citizen who remains aggrieved by the action of the city administrator may then present the matter to the board of directors at any subsequent regular meeting after giving notice to the city administrator at least seven (7) days before the regular meeting. The matter shall be scheduled as an item of business on the regular meeting agenda. The city administrator shall provide the board of directors with a briefing report on the citizen's request, any action taken by the city administrator or his staff, and other information deemed relevant by the city administrator. The citizen shall have up to three (3) minutes to present his or her request at the regular meeting. The board of directors may extend this time limit by its concurrence. After considering the citizen's request, the board of directors may:

- (1) take any action it deems appropriate, consistent with applicable law;
- (2) determine to not consider the matter any further;
- (3) request additional information from the citizen or the city administrator;
- (4) defer the matter for further consideration at a study session meeting or a subsequent regular meeting.

If the board of directors determines to not consider the matter any further, the city administrator shall not schedule on a regular, special or study session meeting agenda any identical or substantially similar request made by any citizen within one (1) year of the board of directors' determination to not consider the matter any further.

(b) At each regular meeting, there shall be an item on the agenda immediately preceding adjournment of the meeting, which item shall allow citizens to introduce matters to the board of directors. Each citizen shall have up to two (2) minutes to present his or her matters, which matters shall be limited to those involving the city government and shall not be directly related to items considered on that meeting's agenda. If a matter presented by a citizen requires consideration of possible action by the board of directors or the city administrator, the matter shall be handled in accordance with Section 2-44(a).

**Sec. 2-45. Record of action requested by the board.**

The city clerk shall maintain a list of the items of business for which a member of the board has requested a staff briefing or other action, and a list of all items referred to the city administrator or other city official for action, the date of the request or referral, and the name of the person making the request or presenting the item referred, and the anticipated date for a report on the action requested. The date of the subsequent report or briefing shall be noted on the list.

**Sec. 2-46. Notice.**

Unless otherwise specifically provided in this article, any notice to the city clerk required by this article may be given orally or in writing. Notice received orally shall be first recorded in writing by the recipient. All notices shall be immediately communicated to the city clerk, who shall maintain a permanent record of all notices in the minutes of the meetings of the board. Unless otherwise specifically provided in this article, the city clerk shall give written notice of each item of business placed on the agenda of any regular, special, study session or executive meeting of the board to the members of the board, the mayor and the city administrator at least four (4) days prior to the date of the meeting of consideration. Actual notice of any item of business subsequently placed on the agenda as provided herein shall be immediately given by the city clerk to each member of the board, the mayor and the city administrator by the most effective and expeditious means available.

**Sec. 2-47. Effect of noncompliance with article; procedures.**

(a) Failure to comply with the provisions of this article shall not invalidate any action of the board which is otherwise in accordance with the law of this state, unless a member of the board states the objection at the time of the action, or files an objection to the action of the board at or prior to the next regular meeting of the board. If a member of the board makes or files an objection to a proceeding, the facts and grounds for the objection shall be stated by the objecting director and referred by him to the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code for opinion, which shall be presented to the board as an item of business on the agenda at the second regular meeting following the challenged action.

(b) If the opinion of the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code states that the challenged action violates the provisions of this article, the matter challenged shall automatically be reconsidered by the board.

(c) If the opinion of the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code states that the challenged action does not violate the provisions of this article, no further consideration of the challenged action shall be required.

(d) At the adjournment of the second regular meeting following the challenged action, all violations of the provisions of this article shall be deemed waived, the action taken confirmed, and no violation of this article shall be grounds for invalidating any action of the board thereafter, if the action otherwise complies with the laws of this state.

SECTION 2: Emergency Clause. The immediate effectiveness of this Ordinance establishing procedures for the governing body of the City is required to provide for the orderly conducting of the affairs of the governing body and the City. Therefore, an emergency is declared, and this Ordinance shall be in full force and effect immediately upon its passage and approval.

PASSED and APPROVED this \_\_\_\_\_ day of May, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk