Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Steve Tyler
Ward 2 – Andre' Good
Ward 3 – Don Hutchings
Ward 4 – George Catsavis
At Large Position 5 – Pam Weber
At Large Position 6 – Kevin Settle
At Large Position 7 – Philip H. Merry Jr.

AGENDA

Fort Smith Board of Directors

Study Session

November 13, 2012 ~ 12:00 Noon

Fort Smith Public Library Community Room
3201 Rogers Avenue

1. Review 2013 funding recommendations of the Outside Agency Review Panel

2. Discuss regularly scheduled meetings of the Board of Directors for 2013

3. Review of sexually oriented business zoning

4. Discussion regarding reinstatement of Citizens Forum at regular meetings
   ~ Weber/Catsavis requested at the October 9, 2012 study session ~

5. Review preliminary agenda for the November 20, 2012 regular meeting

SS1.

MEMORANDUM

November 8, 2012

TO: Mayor, Board and City Administrator

FROM : Christy Deuster-Administrative Coordinator Finance Department Christy

SUBJECT: 2013 Outside Agency Funding Award Recommendations

Attached for your consideration is the 2013 outside agency service contract funding award recommendations. A total of 27 agencies applied for funding in three categories as follows: 5-Recreation, 8-Arts & Humanities and 14-Social and Community Services. **Exhibit A** is an overview of the applications received by category, amount requested and recommended awards. **Exhibit B** is a master list compiled from panel review sessions, and panel observations/concerns for each applicant. The worksheet also highlights the total dollar amount requested for each category.

The 2013 proposed budget includes $162,000 for this program which is consistent with 2012. The funding was divided equally among the three categories as directed by the Board, allowing each category $54,000.

Notices that applications were available for download on the City web site were emailed on August 1, 2012. In addition, notices ran in the Times Record on August 1, 8, and 22. An ad ran on the City Access Channel for the month of August as well to ensure maximum exposure for the program.

Each individual category panels met two times to review applications and determine their recommendations for funding with the exception of the Recreation panel, which was able to assign award recommendations in one meeting. A final meeting with all category panelists and the core panel members was held to finalize award recommendations. Media notices were sent for these meetings, meeting dates were posted on the web site on the City calendar, and notice of reviews emailed to agencies who applied for funding. This year, several agencies attended reviews for their category. From feedback I received, attending the review gave agencies a greater appreciation for the awards process and the difficulty in stretching each allocation, particularly in the Social and Community Service category where there is consistently the greatest number of applicants.

These agency awards will be approved when the final 2013 Budget document is presented to the Board for consideration on December 4th unless the Board makes adjustments to the panel's recommendations. Service contracts for each agency approved for funding will be submitted in December as well for consideration.

Should you have any questions or require more information, please let me know.

Overview

EXHIBIT A

2013 Outside Agency Applications

27 Total Applications

2013 Proposed Allocation for Program 162,000

Agency	*$ Allocation*	2013 Allocation Process Requested	Awarded	Difference
RECREATION				
5 Applications	*$ 54,000*			
1st Tee		$ 10,000	$ 8,000	$ (2,000)
ARC for the River Valley		$ 10,000	$ 5,000	$ (5,000)
Fort Smith Boys & Girls Clubs		$ 40,000	$ 16,000	$ (24,000)
Girls Inc.		$ 15,000	$ 10,000	$ (5,000)
Lincoln Youth Service		$ 17,000	$ 15,000	$ (2,000)
Total		$ 92,000	$ 54,000	$ (38,000)
ARTS & HUMANITIES				
8 Applications	$ 54,000			
Fort Smith Chorale		$ 6,000	$ 5,135	$ (865)
Fort Smith Heritage Foundation		$ 8,876	$ 8,045	$ (831)
Fort Smith Little Theater		$ 6,000	$ 5,600	$ (400)
Fort Smith Museum of History		$ 7,668	$ 6,386	$ (1,282)
Fort Smith Regional Art Museum		$ 20,000	$ 10,500	$ (9,500)
Fort Smith Symphony		$ 13,000	$ 10,385	$ (2,615)
Juneteenth		$ 35,000	$ 1,500	$ (33,500)
Western Arkansas Ballet		$ 6,999	$ 6,449	$ (550)
Total		$ 103,543	$ 54,000	$ (49,543)

EXHIBIT A cont.

Agency	$ Allocation	2013 Allocation Process Requested	Awarded	Difference
SOCIAL & COMMUNITY SERVICES				
14 Applications	**$ 54,000**			
River Valley Regional Food Bank		$ 20,320	$ 4,901	$ (15,419)
Don Reynolds Cancer Support House		$ 5,000	$ 2,495	$ (2,505)
The Steps, Inc		$ 7,200	$ 3,600	$ (3,600)
Lincoln Childcare		$ 6,000	$ 4,948	$ (1,052)
Community Dental Clinic		$ 22,000	$ 2,670	$ (19,330)
Ar Valley Habitat for Humanity		$ 10,000	$ 3,332	$ (6,668)
Crisis Intervention Center		$ 25,000	$ 6,267	$ (18,733)
Girls Shelter		$ 8,000	$ 2,631	$ (5,369)
Kistler Center		$ 6,000	$ 2,779	$ (3,221)
FS Christian Women's Job Corp		$ 10,000	$ -	$ (10,000)
Next Step Day Room		$ 20,000	$ 4,616	$ (15,384)
Fountain of Youth Adult Day Care		$ 17,300	$ 5,472	$ (11,828)
Community Services Clearinghouse		$ 25,000	$ 6,267	$ (18,733)
Good Samaritan Clinic		$ 10,000	$ 4,022	$ (5,978)
Total		$191,820	$54,000	-$137,820
Grand Total All Requests				
28 Applications	$ 162,000	$ 387,363	$ 162,000	$ (225,363)

Recreation Worksheet

Requesting Agency	Amount Requested	Use	Observations	Reduction/Reasoning	Allocation	$
1st Tee	$ 10,000	Utilities	Asking for 55% of utilities	Agency has financial means to absorb the slight decrease from the 2012 allocation. Reduction has minimal impact on agencies overall budget . Slight decrease of $952 from 2012 allocation, and an increase of $2,571 from the 2011 allocation.	0.15	$ 8,000
ARC For the River Valley	$ 10,000	Utilities ($6,300) & Fees for Bowling Program (3,700) approx.	Repeat of use of funds for bowling program. 70% of the clientele participate in the weekly bowling program.	$2,708 increase in allocation to $5,000 would assist members with the cost of bowling program. The program receives a discounted rate from bowling alley and members do pay a portion of the cost each week as well. Clients are on limited income and weekly discretionary spending, allocation will help offset some of the cost for them to bowl.	0.09	$ 5,000
Fort Smith Boys & Girls Clubs	$ 40,000	Utilities- Approximately $90,000 annually.	Utility funds have historically been exhausted within the first 6 months of the year.	The impact of reduction is minimal on overall budget. 2011-2012 increase in allocation was considerable, this allocation will "split the difference". Based on submitted financial information, this agency has the ability to sustain a small decrease and continue to provide services at current levels. This organization has other funding opportunities that smaller agencies may not have. This is a small decrease of $5,384 from the 2012 allocation and an increase of $8,761 from the 2011 allocation.	0.30	$ 16,000
Girls Inc.	$ 15,000	Utilities- Approximately $18,000 annually	Utility funds have historically been exhausted by the fourth quarter of the year.	Allocation is comparable to 2011 award, and would still cover over 50% of budgeted utilities. There is sustainability in the organization to be able to absorb the decrease. At review time, agency still had funds from 2012 award remaining for use. Allocation is a decrease of $728 from 2011 allocation, and $859 decrease from 2012 allocation.	0.18	$ 10,000
Lincoln Youth Service	$ 17,000	Operations	Funds for full operations and improvements to facility. No concerns.	Small organization with limited staff and resources for being able to obtain funding from other sources. Provides services to numerous kids with little to no options available if program didn't exist. Center is heavily dependant on funds from the City for operations. Provides a unique program for kids. Award is an increase of $2,496 from the 2012 allocation, and an increase of $2,331 from the 2011 award.	0.28	$ 15,000
Total Requested	$ 92,000					
					1.00	$54,000

Total to Allocate	$ 54,000
Amount over	$ 38,000
% over	70%

Review panel took into consideration each agencies award for prior funding cycles, their ability for other funding sources whether through grants, federal funds, fund raiser activities, activity fees or donations. The panel also considered this program and the awards impact on each agencies total budget to determine where the most need was.

EXHIBIT B

Arts & Humanities

Requesting Agency	Amount Requested	Use	Observations	Reduction/Reasoning	Allocation	$
Fort Smith Chorale	6,000	musicians	Funds will be used to cover costs of musicians who perform with the Chorale during the year.		0.1	$5,135
Fort Smith Heritage Foundation	8,876	utilites	Julie Moncrief responded /patrons up 1,000 50% to 75% More than prior year, due partially to increased publicity, more events, more rentals	On reviewing submitted financials, investments took a hit and as a result, assets are down-Utilities funded at 85% of requested amount which should fund approximately 6 months of utility costs. After a disbursement on October 9 from the City, the foundation has $633 remaining for the rest of 2012 from an award of $5,178.	0.15	$8,044.60
Fort Smith Little Theater	6,000	utilites	No free admission or free school programs noted in application packet?	100% volunteer organization, affordable for most citizens , do have program for Girls Shelter residents & reduced tickets for seniors, show admissions/ticket sales increased. Utility requests funded at 85% of requested amount. Stable, long standing organization in the community. 2012 award of $4,734 was exhausted at last disbursement on August 21.	0.1	$5,600
Fort Smith Museum of History	7,668	Maintenance of elevator. Yearly expenditure.	Lisa Gramlich's response: Discounted/free tickets offered to school groups; UAFS students admission is free w/ student id. School groups afforded free admission as well. Invoice submitted at request of panel for cost review. Annual maintenance cost for elevator repair increased by 3% for 2013.	Award recommendation will pay approximately 83% of annual elevator maintenance cost. There is a discount for companies that are able to pay the fee annually instead of on a monthly basis. This funding allows them to take advantage of the discount.	0.12	$6,386
Fort Smith Regional Art Museum	20,000	general operating support to include utilites	Awarded $10,000 in 2012. 2012 application submission indicated they would be moved in to new facility by beginning of 2012. Plans are when open, there will be family days 6 times a year free military family admissions every Labor and Memorial Day . Fund allocation for 2012 was based on move into the new facility and offer of reduced tickets and free programs to patrons. New location is currently not yet open to the public. Grant funding increased in 2012.	Scheduled to move in 2013, however, 2012 budget application indicated they would be moved in by the first of 2012. Have to estimate utilities. Financial information shows an increase in grants; the majority of their assets is the building itself. The panel is not able to see the fruits of their labor or any services provided to citizens currently as the Museum is still not open and running. After the last reimbursement from the City on September 5th, they still have $4,400 remaining from 2012 allocation of $10,728. The award will be for utility reimbursement only.	0.19	$10,500
Fort Smith Symphony	13,000	facility rental	Sandy Sanders' response: Symphony has several school programs throughout the year, all rehearsals are free and open to public. Advertising material/web site notes availability of free/reduced services. Free admission for Childrens Emergency Shelter, 1st Kids & Boys Shelter kids. They go to 40 to 42 schools, 2 counties in Ok, 5 counties: Sebastian, Logan, Franklin, Scott, Crawford. Perform Earquake program to expose school children to music- 2 concerts for all schools.	None Noted.	0.19	$10,385

Panel considerations:Free/Discount programs for seniors, youth and citizens on low or fixed income. Current utility reimbursements were weighed against requests to determine how far award recommendations will stretch.

EXHIBIT B

Juneteenth	35,000	cost of expenses /general support	MIssion of organization needs to be more clearly defined for future submissions. Several partnered projects during the year were listed. Form 990 indicates $48,000 in contributions which covers costs listed for event, why was the amount requested from the City so large? When organization was established, event was free to public, but due to limited sponsors and economy, they now have to charge $10 per person and food is extra. They hope to be able to host a Valentine Day event in 2013 similiar to one they held in 2010, but have been unable to have in 2011 or 2012 due to budget constraints. Organization was very cooperative in answering additional questions and requests for clarification. Approx. 8,000 attend this one day event.	Funding recommendationis at approx. 4% of request. Concerns from the panel are this is currently a single, annual event, as opposed to other organizations in the catergory that offer multiple programs for citizens throughout the calendar year. The return on the City's investment is not as great for a single event as for organizations that hold multiple events throughout the year. Multiple events also afford more opportunity for a larger number of citizens to take advantage of their programs/services throughout the year. The limited funds for the outside agency funding program does not allow the City the means to be the sole sponsor for this event. This award will allow Juneteenth to pay for media expenses gaining them more exposure for their event, increasing the number of citizens who attend.	0.03	$1,500.25
Western Arkansas Ballet	6,999	utilites	Award for 2011 according to financials was more thasn sufficient to cover the cost of utilities. At date of review, reimbursement from the City for paid utilities has been $2,000 which includes bills for services through the month of June.	None Noted.	0.12	$6,449.15
Total Requested	$ 103,543					
					1.00	$54,000
Total to Allocate	$ 54,000		utilities at 85% chorale & museum 75%, art museum 50%, juneteenth approx. 10% one day event			
Amount over	$ 49,543			Total Allocation		$54,000.00
% over	92%					
				Remaining Funds Left to Allocate		$0.00

Panel considerations:Free/Discount programs for seniors, youth and citizens on low or fixed income. Current utility reimbursements were weighed against requests to determine how far award recommendations will stretch.

EXHIBIT B

Social/Community Services Worksheet

Requesting Agency	Amount Requested	Use	Observations	Reduction/Reasoning	Allocation	$
River Valley Regional Food Bank	$20,320.00	Help with utilities	40% are FS residents allocated $ based on % of FS citizens served.	Agency has other funding sources available and does receive additional funding.	0.09	$4,901
Reynolds Cancer Support House	$5,000.00	Assist with providing transportation assistance, short term prescription assistance and medical supplies for clients.	Last year they asked for money to start a new program	Through fund raising activites and other funding sources, they do receive additional funding.	0.05	$2,495
The STEPS Inc	$7,200.00	Help with utilities	New applicant, nothing last year, how many of the weekly people are duplicates? How much is FS?Average utilites $600 a month.Give vouchers for families to their thrift store for clothing , 45 vouchers were used the month of the application. Provide safe supervised visits for kids in foster care w/parents & family coordinate w/ DHS.	Proposed award would fund approximately 6 months of utility costs.	$0.07	$3,600
Lincoln Childcare Center	$6,000.00	Help with utilities	Parents couldn't have a job, gives families opportunites to work and have affordable child care.	2012 award of $5,725 covered approximately 6 months of utility costs for center.	0.09	$4,948
Community Dental Clinic	$22,000.00	operations/general mission	Sole provider of this type service, specific, not duplicated services.	None noted	0.05	$2,670
Ar Valley Habitat for Humanity	$10,000.00	Housing Repair program	do full homes 50,000 each, had to cut back on homes building, trying to focus on home repairs including wheelchair ramps, repair roofs etc.	not life sustaining service. IE. Food, clothing, and medicine. Proposed award would enable them to repair homes for approximately four families.	0.06	$3,332
Crisis Intervention Center	$25,000.00	utility/food wages	feed children/mothers, provide child care, train for jobs	60% local residents . Proposed award would be for utilitity reimbursement, no awards recommended for general operating expenses.	0.12	$6,267
Girls Shelter	$8,000.00	Help with utilities	average 6 girls daily 7 days week small budget provided 3 months utility	Are only able to house 6 girls at any time.	0.05	$2,631
Kistler Center	$6,000.00	Help with utilities	Repeat as these are ongoing clients. Operating & utility costs increased in 2012. Center doesn't turn anyone away,regardless of their ability to pay. One of the only places in the area that provides the service , medical need	None Noted.	0.05	$2,779
FS Christian Women's Job Service Corp	$10,000.00	General operating expenses	Panel recognizes organizations offerings, and encourages application for the 2014 Budget cycle.	Omitted documentation requirement not received by 24 hour deadline. Documents were still outstanding at time of initial review.	0.00	$0
Next Step Day Room	$20,000.00	operations	1,866 people served		0.08	$4,616

Fountain of Youth	$17,300.00	To help with utility costs and office supplies.	provides a service not available any other place, gives families the opportunity to hold down jobs and care for ailing parent/relative.	Funding will assist with utility costs. No funds awarded for office supplies.	0.10	$5,472
Community Services Clearninghouse	$25,000.00	food costs	24 schools 426 kids on program weekly	Note Noted.	0.12	$6,267
Good Samaritan Clinic	$10,000.00	Help with cost of supplies and testing equipment for diabetic clients	lab testing, drugs, medical supplies , life sustaining services, provides medicine diabetic clients would not get .	None Noted.	0.07	$4,022
Total Requested	$191,820.00				1.00	
Total to Allocate	$54,000.00					**$54,000.00**
Amount over	$137,820.00					$0.00
% Over	255%					

Priority: life sustaining services, sole provider of services, food,shelter, clothing. To serve the greatest number of citizens.

MEMORANDUM

To: Ray Gosack, City Administrator

From: Sherri Gard, City Clerk

Date: November 9, 2012

Re: 2013 Board Meeting Schedule

Attached is a 2013 calendar that identifies all regularly scheduled meetings of the Board *(regular meetings and study sessions)*. All City recognized holidays in which City offices will be closed are also identified and noted in red. There are two (2) holiday conflicts, which are highlighted on the attached. As you can see, there is a conflict with the first regular meeting on Tuesday, January 1st.

Section 2-26 of the Fort Smith Municipal Code states that regular meetings shall be held *"...on the first and third Tuesday evening, 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."*

Although the Code currently requires the first meeting in 2013 to be held on Wednesday, January 2nd, the Board may opt to select an alternate date if they so desire.

Since regular meetings are held at the Fort Smith Public Schools Service Center, the City must coordinate with the school for use of the meeting room on dates other than the first and third Tuesday of each month. Although Fort Smith Public Schools administrative staff return on Wednesday, January 2nd, students do not return until Thursday, January 3rd. Due to such, I've been advised school personnel will be minimal on January 2nd thereby creating difficulty in having a school staff member present at the facility that evening. The school has indicated their willingness to try and accommodate if the Board desires to stay with the meeting date of Wednesday, January 2nd; however, they prefer an alternate date of Thursday, January 3rd.

If the Board opts to hold the meeting on Wednesday, January 2nd and the school cannot accommodate, such can be held at an alternate location; however, please note that live or rebroadcast of the meeting would not be available.

City offices are closed both on Christmas Eve and Christmas Day; therefore, I must also note the only other holiday conflict is the December 24th study session. This should not be a problem as the Board usually does not meet the week of Christmas anyway.

The year 2013 contains five (5) months that have five (5) Tuesdays, i.e. January, April, July, October and December. The Board typically does not hold a study session on a fifth Tuesday; however, such dates are identified on the attached calendar as "TENTATIVE" in the event a study session is requested. The library community room is also reserved on said dates.

As you may recall, several members of the Board were not available to attend the July 3, 2012 regular meeting due to previously scheduled plans to be out of town for Independence Day. It became apparent immediately after adjournment of the June 26th study session that a quorum would not be present for the July 3rd regular meeting; therefore, said meeting had to be rescheduled. Planning and zoning cases are automatically scheduled for the first meeting of the month; therefore, it would be helpful for the Board to advise if the July 2, 2013 meeting should be rescheduled.

The Board may also find it desirable to consider identifying a week, or multiple weeks, in which the Board will not meet. The Board may opt to reschedule a regular meeting or take advantage of a fifth Tuesday. This would allow members of the Board to schedule vacations without having to be absent from a scheduled meeting of the Board. For convenience, spring break is also noted on the attached calendar.

Each year, the Board must adopt an ordinance identifying regular meeting dates for the upcoming year. If the Board desires to select an alternate date for a regular meeting, such can be specifically identified in the annual ordinance, which is scheduled for consideration at the November 20, 2012 regular meeting.

If you have any questions, please let me know.

2013 BOARD MEETING CALENDAR

~ January 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1 ~~REGULAR MEETING~~ NEW YEAR'S DAY	2 REGULAR MEETING	3	4	5
6	7	8 STUDY SESSION	9	10	11	12
13	14	15 REGULAR MEETING	16	17	18	19
20	21 MLK JR. DAY	22 STUDY SESSION	23	24	25	26
27	28	29 STUDY SESSION "TENTATIVE"	30	31	Notes:	

~ February 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5 REGULAR MEETING	6	7	8	9
10	11	12 STUDY SESSION	13	14	15	16
17	18	19 REGULAR MEETING	20	21	22	23
24	25	26 STUDY SESSION	27	28	Notes:	

~ March 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5 REGULAR MEETING	6	7	8	9
10	11	12 STUDY SESSION	13	14	15	16
17	18	19 REGULAR MEETING	20	21	22	23
	Spring Break					
24	25	26 STUDY SESSION	27	28	29 GOOD FRIDAY	30
31	Notes:					

~ April 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2 REGULAR MEETING	3	4	5	6
7	8	9 STUDY SESSION	10	11	12	13
14	15	16 REGULAR MEETING	17	18	19	20
21	22	23 STUDY SESSION	24	25	26	27
28	29	30 STUDY SESSION "TENTATIVE"	Notes:			

~ May 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7 REGULAR MEETING	8	9	10	11
12	13	14 STUDY SESSION	15	16	17	18
19	20	21 REGULAR MEETING	22	23	24	25
26	27 MEMORIAL DAY	28 STUDY SESSION	29	30	31	Notes:

~ June 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4 REGULAR MEETING	5	6	7	8
9	10	11 STUDY SESSION	12	13	14	15
16	17	18 REGULAR MEETING	19	20	21	22
23	24	25 STUDY SESSION	26	27	28	29
30	Notes:					

~ July 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2 REGULAR MEETING	3	4 INDEPENDENCE DAY	5	6
7	8	9 STUDY SESSION	10	11	12	13
14	15	16 REGULAR MEETING	17	18	19	20
21	22	23 STUDY SESSION	24	25	26	27
28	29	30 STUDY SESSION "TENTATIVE"	31	Notes:		

~ August 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6 REGULAR MEETING	7	8	9	10
11	12	13 STUDY SESSION	14	15	16	17
18	19	20 REGULAR MEETING	21	22	23	24
25	26	27 STUDY SESSION	28	29	30	31

~ September 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2 LABOR DAY	3 REGULAR MEETING	4	5	6	7
8	9	10 STUDY SESSION	11	12	13	14
15	16	17 REGULAR MEETING	18	19	20	21
22	23	24 STUDY SESSION	25	26	27	28
29	30	Notes:				

~ October 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1 REGULAR MEETING	2	3	4	5
6	7	8 STUDY SESSION	9	10	11	12
13	14	15 REGULAR MEETING	16	17	18	19
20	21	22 STUDY SESSION	23	24	25	26
27	28	29 STUDY SESSION "TENTATIVE"	30	31	Notes:	

~ November 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5 REGULAR MEETING	6	7	8	9
10	11 VETERANS' DAY	12 STUDY SESSION	13	14	15	16
17	18	19 REGULAR MEETING	20	21	22	23
24	25	26 STUDY SESSION	27	28 THANKSGIVING	29 THANKSGIVING	30

~ December 2013 ~

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3 REGULAR MEETING	4	5	6	7
8	9	10 STUDY SESSION	11	12	13	14
15	16	17 REGULAR MEETING	18	19	20	21
22	23	24 ~~STUDY SESSION~~ CHRISTMAS EVE	25 CHRISTMAS	26	27	28
29	30	31 STUDY SESSION "TENTATIVE"	Notes:			

3.

Memorandum

To: Ray Gosack, City Administrator

From: Wally Bailey, Director of Development Services

Date: 11/8/2012

Re: Sexually Oriented Business Zoning

The Board of Directors reviewed the sexually oriented business ordinance and approved several amendments to the ordinance in May 2012. During that discussion there was much discussion about the zoning districts and buffering requirements to be included in the ordinance. Section 14-155 (*which is enclosed*) includes the allowed zoning districts and the many requirements for separating from other uses.

I asked Russell Gibson, IT Director, to map the requirements of section 14-155 to show the areas of the city that currently allow a sexually oriented business. The map is enclosed and reflects that about 1.4% land area of the City corporate limits would permit a sexually oriented business.

You will recall the staff and city attorney expressed concerns about having such a small area could present us with a future legal challenge for not having enough area available for these uses. I have provided a copy or Rick Wade's, assistant city attorney, as a refresher concerning that discussion.

Since the approval of the ordinance in May, we have continued to review several possible scenarios to get the Fort Smith ordinance closer to what the courts have said is an acceptable land area. I have enclosed a map that shows areas of the City zoned Commercial-5, Industrial-2 and Industrial-3. The C-5 areas are in red while the Industrial districts are purple. This map reflects a land area that is about 4% of the corporate limits of the city.

While we cannot say for sure how a court will rule with regard to the required land area, we do feel more comfortable that an amendment that would permit 4% versus 1.4% could put us in a better position should a legal challenge occur.

Please contact me if you have any questions.

SECTION 14-155. Location Restrictions.

Sexually oriented businesses not already lawfully operating on the effective date of this division shall be permitted only in zoning districts Commercial 2, Commercial 3-P, Commercial 4-P, Commercial 5, Commercial 5-SPL(S), and Commercial 6, subject to the following:

1. The sexually oriented business may not be operated within:
   a. 1,000 feet of a church or other place of public worship;
   b. 1,000 feet of a public or private elementary, secondary, or post-secondary school;
   c. 1,000 feet of a public park;
   d. 1,000 feet of a hospital;
   e. 1,000 feet of a licensed day-care center;
   f. 1,000 feet of an entertainment business that is oriented primarily towards children;
   g. 1,000 feet of a residence;
   h. 1,000 feet of another sexually oriented business;
   i. 1,000 feet of a playground;
   j. 1,000 feet of a public library;
   k. 1,000 feet of a recreational area or facility;
   l. 1,000 feet of a walking trail; or
   m. 1,000 feet of a child care facility.

   These provisions, 1(a) through 1(m), shall not apply to a sexually oriented business already lawfully operating on the effective date of this division if a church or other place of worship, or a public or private elementary, secondary, or post-secondary school, or any public park, or any hospital, or any licensed day-care center, or any entertainment business that is oriented primarily towards children, or any residence, or a playground, or a public library, or a recreational area or facility, or a walking trail, or a child care facility is subsequently established within 1,000 feet.
2. Any legally established sexually oriented business, which would otherwise become non-conforming because of a zone change or the establishment of another use, may continue to operate in the same location if such zone

another use, may continue to operate in the same location if such zone change or new use is not caused by or is not the fault of the sexually oriented business.

3. A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business classified pursuant to Section 14-144.

4. For the purpose of this division, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property of the premises where a sexually oriented business is conducted, to the nearest property line of a church or other place of public worship; public or private elementary, secondary or post-secondary school; public park; hospital; licensed day care center; entertainment business that is oriented primarily towards children; boundary of any residential district; other sexually oriented business; playground; public library; recreational area or facility; and a walking trail or child care facility.

SECTION 14-156. Additional Regulations for Adult Motels.

A) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this division.

(B) A person in control of an adult motel must have a sexually oriented business license or be subject to penalties as set forth below.

(C) For purposes of subsection (B) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(D) Any person convicted of the violation of subsection (B) of this Section shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-157. Additional Regulations for Escort Agencies.

(A) An escort agency shall not employ any person under the age of eighteen (18) years.

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

JERRY L. CANFIELD, P.A.
THOMAS A. DAILY, P.A.
WYMAN R. WADE, JR., P.A.
DOUGLAS M. CARSON, P.A.
ROBERT R. BRIGGS, P.A. †
C. MICHAEL DAILY, P.A. † •
L. MATTHEW DAVIS, P.A. †
COLBY T. ROE

† Also Licensed in Oklahoma
• Also Licensed in Wyoming & North Dakota

KMW BUILDING
58 SOUTH SIXTH STREET
P.O. BOX 1446
FORT SMITH, AR 72902
TELEPHONE (479) 782-0361
FAX (479) 782-6160

WRITER'S E-MAIL ADDRESS
RWade@DailyWoods.com

JAMES E. WEST
DALE CARLTON
PHILLIP E. NORVELL †

OF COUNSEL

HARRY P. DAILY (1886-1965)
JOHN P. WOODS (1886-1976)
JOHN S. DAILY (1912-1987)
BEN CORE (1924-2007)

April 17, 2012

Mr. Wally Bailey
Director of Development Services
P.O. Box 1908
Fort Smith, AR 72902

Re: Sexually Oriented Businesses

Dear Mr. Bailey:

As the City of Fort Smith reviews its existing ordinances regulating sexually oriented businesses, a brief legal refresher might be in order. Perhaps, most important, is the fact that the U.S. Supreme Court has long held that city zoning ordinances which place limits on the location of adult uses are valid exercises of a city's police power. See Young v. American Mini Theatres, Inc., 427 U.S. 50, 62-63 (1976). Though such regulations treat adult uses differently from other uses based on their sexually explicit nature, they are "designed to prevent crime . . . maintain property values, . . . and preserve . . . the quality of urban life." City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48, 106 S.Ct. 925 (1986).

Some of the litigation that has developed over cities' regulation of sexually oriented businesses has focused on whether the city has provided adequate space for such businesses to operate and as to whether such businesses could be located solely in specific zones, e.g., industrial zones. In Z.J. Gifts v. City of Aurora, the Tenth Circuit Court of Appeals found that the city's locating of sexually oriented businesses within the city's industrial zones, which comprised approximately 10.9% of the city's area (approximately 3,200 acres of this land – fully 3.6% of the city's total area – was located near existing water and sewer services) was reasonable. The Tenth Circuit noted that the 10.9% made even more land available than the amount that had previously been found to be adequate in Renton, supra. In Renton, the U.S. Supreme Court found adequate the fact that the City of Renton's ordinance left "some 520 acres, or more than 5% of the entire land area of Renton, open to use as adult theater sites." Renton, 106 S.Ct. at 932.

Also, in Ambassador Books & Video, Inc. v. City of Little Rock, 20 F.3d 858 (8th Cir. 1994), the Eighth Circuit Court of Appeals found that the City of Little Rock's allocation of 6.75% of the areas (small, scattered sections of the city) in which sexually oriented businesses could locate, i.e., 97 available sites, was a percentage comparable to the "more than 5%" in Renton, supra, and more than the 6.6% of the total acreage of commercial land approved in Alexander v. City of Minneapolis, 928

F.2d 278 (1991), (Minneapolis' ordinance required adults-only businesses to operate within certain specified areas of the city).

Applying First Amendment principles, the U.S. Supreme Court and several federal circuit courts of appeals have determined that sexually oriented businesses, while operating as legitimate businesses, may be regulated, including restrictions on where such businesses may be located. However, the courts have said that such businesses must be allowed "reasonable alternative avenues of communication," pursuant to the First Amendment. This means that municipalities, while having the ability to locate sexually oriented businesses in specific areas of town, and away from identified types of facilities, e.g., schools, churches, must allocate a reasonable percentage of the city's landmass for operation of these businesses. As to how low that percentage may go, the courts have indicated that approximately 5% of the entire land area of one city was sufficient and that 6.6% of the total acreage of land zoned for commercial properties in another city provided reasonable alternative avenues of communication.

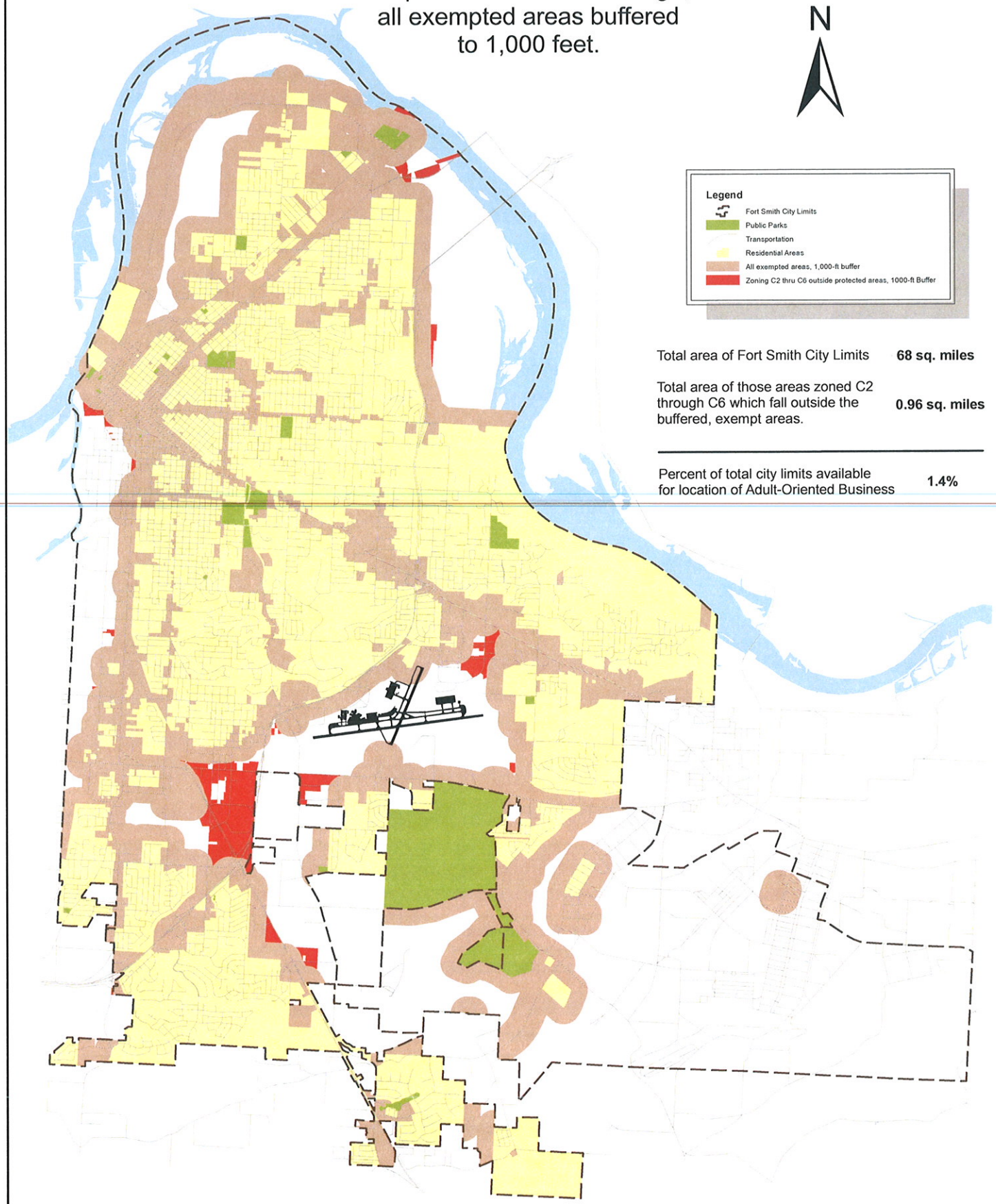
Should you require additional input, please let us know.

Sincerely yours,

Wyman R. Wade, Jr.
WRW/cmm

Adult-Oriented Business Analysis

Areas available for location of Adult-Oriented Business
Proposed Ordinance Change,
all exempted areas buffered
to 1,000 feet.

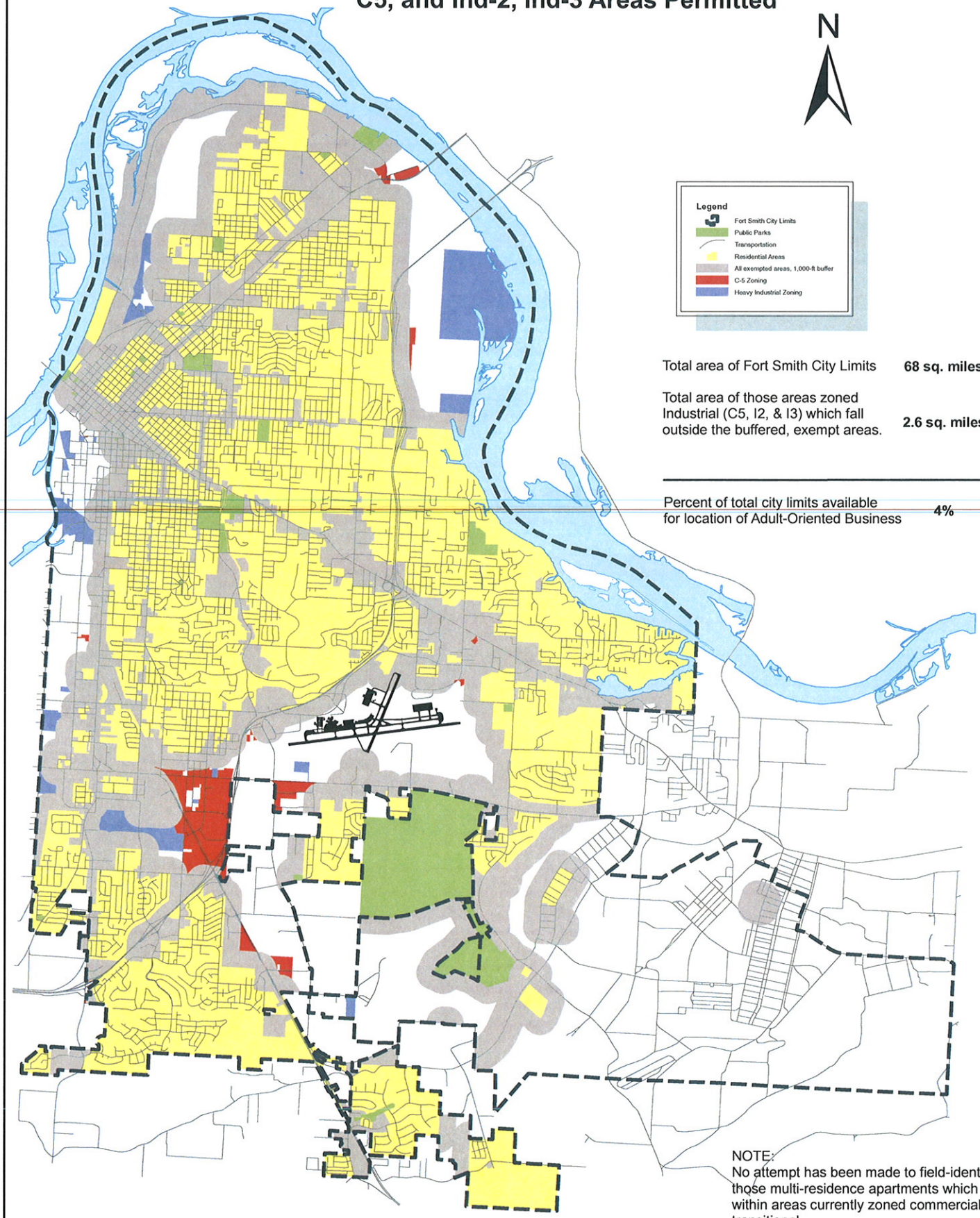


Total area of Fort Smith City Limits	**68 sq. miles**
Total area of those areas zoned C2 through C6 which fall outside the buffered, exempt areas.	**0.96 sq. miles**
Percent of total city limits available for location of Adult-Oriented Business	**1.4%**

Adult-Oriented Business Analysis

Areas available for location of Adult-Oriented Businesses

C5, and Ind-2, Ind-3 Areas Permitted



Total area of Fort Smith City Limits	**68 sq. miles**
Total area of those areas zoned Industrial (C5, I2, & I3) which fall outside the buffered, exempt areas.	**2.6 sq. miles**
Percent of total city limits available for location of Adult-Oriented Business	**4%**

NOTE:
No attempt has been made to field-identify all those multi-residence apartments which fall within areas currently zoned commercial or transitional.

4

MEMORANDUM

November 9, 2012

TO: Mayor and Board of Directors

FROM : Ray Gosack, City Administrator

SUBJECT: Citizens Forum and Town Hall Meetings

Directors Weber and Catsavis have requested reconsideration of the town hall/citizens forum at regular board of directors meetings. Allowing citizens to address their elected representatives is a constitutional right. It builds trust and understanding between citizens and public officials.

Exercise of this right can take many forms, including citizen participation at public meetings. Other forms include written or telephone contact, in person contact one-on-one, and other public meeting opportunities such as the neighborhood ward meetings begun last year.

This memo will provide a brief history, a summary of citizen participation with both the citizens forum and town hall formats, and options for the board to consider.

HISTORY

Until May 2012, the board conducted a citizens forum at the end of each regular board meeting. During the forum, citizens were allowed to address topics involving city government that weren't an item on the meeting agenda. Citizens were given 2 minutes to introduce their topics. Citizens forums were televised as part of the regular meetings until funding for televising the meetings was eliminated with the adoption of the 2012 budget.

When funding for televising the regular board meetings was restored, the board elected to not televise the citizens forum. The forum was replaced with a town hall meeting held immediately

following adjournment of the first regular meeting of the month. Citizens are given 5 minutes to address the board, and sit at a table with the mayor and board. This format allows for more discussion between citizens and board members than what was possible in the citizens forum. The town hall meetings aren't televised or recorded, and aren't included in the meeting minutes.

SUMMARY OF CITIZEN PARTICIPATION

Attached is a summary of citizen participation during the last 6 months of citizens forums (November 2011 - April 2012) and the first 6 months of town hall meetings (May 2012 - October 2012). A total of 15 different citizens participated in citizens forums, whereas a total of 12 different citizens participated in town hall meetings. Although the participation numbers are similar, there were less than half as many town hall meetings as there were citizens forums since town hall meetings are held only once per month and citizens forums were held twice per month. At the citizens forums, two citizens accounted for 50% of the 36 total appearances of citizens. At the town hall meetings, there were a total of 14 appearances. The greatest number of appearances by any citizen was two. Automated sanitation service was the most popular topic, by far, in both the citizens forums and the town hall meetings.

OPTIONS

The board may wish to consider the following options.

1) Continue with the town hall meetings.

2) Return to the citizens forum at the end of regular meetings.

3) Either format could be held at both regular meetings each month, or only at the first regular meeting of each month.

4) Either format can be televised or not televised. The board should consider how televising this portion of the meeting affects citizens' willingness and comfort level to address the board; and the general public's interest in watching this portion of the meeting on TV and the city's web site.

5) Eliminate both the town hall meeting and citizens forum, and rely on the other communications opportunities identified above (e-mail, telephone, neighborhood ward meetings, one-on-one contacts).

CONCLUSION

Citizen engagement is important to the success of any local government. Opportunities for engagement must be provided in a way that citizens feel comfortable participating. The opportunities should also be structured so that a civil meeting decorum is maintained. Please contact me if there’s any questions or a need for more information.

Attachments

CITIZENS FORUM & TOWN HALL MEETINGS

Six-Month Comparison of Citizen Participation and Issues / Comments

CITIZEN PARTICIPATION

	NAME	CITIZENS FORUM Nov. 2011 - April 2012	TOWN HALL May 2012 - Oct. 2012
1	Altes, Bobby		1
2	Amon, Kim	1	
3	Amon, Randy	2	
4	Bell, Candy	1	
5	Bell, J. P.	1	1
6	Corley, Vince		1
7	Culberson, Joel	3	1
8	George, Linda		1
9	Gray, Zue Ella	1	
10	Grooms, Brian & Roneka	1	
11	Hancock, Bradley	1	
12	Harris, David		2
13	Hart, Effie Drosopoulos		1
14	Leding, Michael S.		1
15	Lee, LeAnn for Xochitl Borroso		1
16	Mayo, Elizabeth	12	1
17	McCurtain, Edward	1	
18	Menzies, Rick		1
19	Novak, Pauline		2
20	Plank, Carolyn	2	
21	Raymond, Anna	1	
22	Raymond, Thomas H.	1	
23	Vincent, Louis	2	
24	Wingfield, Rosemary	6	
	TOTAL NUMBER OF CITIZENS PARTICIPATING	15	12
	TOTAL NUMBER OF APPEARANCES	36	14

ISSUES / COMMENTS

	ISSUES / COMMENTS	CITIZENS FORUM Nov. 2011 - April 2012	TOWN HALL May 2012 - Oct. 2012
1	Animal issues	2	
2	Automated sanitation service	15	6
3	Budget (City & Mayor)	4	
4	Business (private)		1
5	Christmas lights	1	
6	Convention Center lease	1	
7	FOIA (Board e-maiils)		1
8	Great Arkansas Cleanup	1	
9	Mayor Ray Baker Rose	2	
10	National Cemetery	1	
11	Prepared food tax	2	
12	Property cleanup liens		1
13	Public Transit		2
14	Residential parking	1	
15	Televised meetings	4	
16	Ward meetings (quarterly)	1	
17	Water (fluoridation, Van Buren true-up, drainage)	3	2
18	Zoning		1
19	Other ("on television", IQ, freedoms, treatment, etc.)	8	2
	TOTAL ISSUES / COMMENTS	14	8

CITIZENS FORUM
Citizen Participation and Issues / Comments
November 2011 - April 2012

November 1, 2011

Carolyn Plank:	Automated sanitation service
Anna Raymond:	Automated sanitation service
Thomas H. Raymond:	Automated sanitation service
Elizabeth Mayo:	Animal regulations / prepared food tax
Rosemary Wingfield:	Automated sanitation service / residential parking

November 15, 2011

Elizabeth Mayo:	Prepared food tax
Louis Vincent:	Water fluoridation

December 6, 2011

E. A. Mayo:	Many recognize her because she's "on television"
Rosemary Wingfield:	Mayor Ray Baker Rose
J. P. Bell:	Automated sanitation service
Joel Culberson:	Ward 1 meeting / Televised meetings

December 20, 2011

Louis Vincent:	Van Buren water true-up
E. A. Mayo:	People have conveyed appreciation for her speaking at meetings
Kim Amon:	Appreciation for Christmas lights
Randy Amon:	National Cemetery is valued asset to city
Rosemary Wingfield:	Automated sanitation service
Candy Bell:	Automated sanitation service

January 3, 2012

E. A. Mayo:	Discontent with Mayor's budget

January 17, 2012

Rosemary Wingfield:	Automated sanitation service
E. A. Mayo:	Televised meetings / Discontent with Mayor's budget
Edward McCurtain:	Van Buren water true-up
Randy Amon:	Appreciation to Mayor and Board for their service

NOTE: Meetings were not televised February 2012 through April 2012

February 7, 2012

Rosemary Wingfield:	Automated sanitation service
Joel Culberson:	Automated sanitation service
E. A. Mayo:	Discontent with City budget / Citizen participation at meetings / "Mayor Ray Baker Rose" / Televised meetings

February 21, 2012

E. A. Mayo:	Convention center lease / Discontent with City budget

CITIZENS FORUM
Citizen Participation and Issues / Comments
November 2011 - April 2012
~ Continued ~

March 6, 2012

E. A. Mayo:	Alleged Mayor rude when citizens address the Board
Joel Culberson:	Automated sanitation service / Animal Services Task Force
Carolyn Plank:	Great Arkansas Cleanup

March 20, 2012

E. A. Mayo:	Conveyed she has very high IQ
Bradley Hancock:	Automated sanitation service
Brian & Roneka Grooms:	Automated sanitation service
Zue Ella Gray:	Automated sanitation service

April 3, 2012

Elizabeth Mayo:	Citizens freedoms and rights being eroded

April 17, 2012

Rosemary Wingfield:	Automated sanitation service
E. A. Mayo:	Televised meetings / Alleged mistreatment while addressing the Board

CITIZENS FORUM CITIZEN PARTICIPATION AND ISSUES / COMMENTS
NOVEMBER 2011 TO APRIL 2012 (6 months)

Name	Times to Speak	Issues / Comments	Times Mentioned
1. Elizabeth / E. A. Mayo	12	Automated sanitation service	15
2. Rosemary Wingfield	6	Televised meetings	4
3. Joel Culberson	3	Budget *(City & Mayor)*	4
4. Carolyn Plank	2	Water *(fluoridation & Van Buren true-up)*	3
5. Louis Vincent	2	Animal issues	2
6 .Randy Amon	2	Prepared food tax	2
7. Anna Raymond	1	Mayor Ray Baker Rose	2
8. Thomas H. Raymond	1	Residential parking	1
9. J. P. Bell	1	Ward meetings	1
10. Kim Amon	1	Christmas lights	1
11. Candy Bell	1	National Cemetery	1
12. Edward McCurtain	1	Convention Center lease	1
13. Bradley Hancock	1	Great Arkansas Cleanup	1
14. Brian & Roneka Grooms	1	Other *("on television", IQ, freedoms, treatment)*	8
15. Zue Ella Gray	1		

TOWN HALL MEETINGS
Citizen Participation and Issues / Comments
May 2012 - October 2012

May 1, 2012

David Harris:	Automated sanitation service *(3rd party hauler)*
LeAnn Lee for Xochitl Borroso:	Water issue at 6717 Sunchase Lane
Vince Corly:	Automated sanitation service
Rick Menzies:	Automated sanitation service
J. P. Bell:	Automated sanitation service

June 5, 2012

Bobby Altes:	Automated sanitation service *(3rd party hauler)*
Michael S. Leding:	Drainage issue
Linda George:	Private business complaint
Effie Drosopoulos Hart:	Property cleanup liens
Joel Culberson:	FOIA of Board emails
Pauline Novak:	Public Transit *(cleanliness of buses)*
Elizabeth Mayo:	Comments at meetings / Automated sanitation service

July 3, 2012 rescheduled to June 29, 2012 / No Town Hall Meeting

August 7, 2012

No one present to speak

September 4, 2012

Pauline Novak:	Public Transit *(dirty seats)*

October 2, 2012

David Harris:	Zoning at Chaffee and Extra-Territorial Jurisdiction / Emergency management training

TOWN HALL CITIZEN PARTICIPATION AND ISSUES / COMMENTS
MAY 2012 TO OCTOBER 2012 (6 months)

Name	Times to Speak
1. David Harris	2
2. Pauline Novak	2
3. LeAnn Lee for Xochitl Borroso	1
4. Vince Corly	1
5. Rick Menzies	1
6. J. P. Bell	1
7. Bobby Altes	1
8. Michael S. Leding	1
9. Linda George	1
10. Effie Drosopoulos Hart	1
11. Joel Culberson	1
12. Elizabeth Mayo	1

Issues / Comments	Times Mentioned
Automated sanitation service	6
Water / drainage issues	2
Public Transit	2
Zoning	1
Private business complaint	1
Property cleanup liens	1
FOIA *(Board e-mails)*	1
Other	2