



# ***AGENDA***

**FORT SMITH BOARD OF DIRECTORS  
REGULAR MEETING**

***October 18, 2011 ~ 6:00 P.M.***

**FORT SMITH PUBLIC SCHOOLS  
SERVICE CENTER  
3205 JENNY LIND ROAD**

***THIS MEETING IS BEING TELECAST LIVE ON THE CITY CABLE ACCESS CHANNEL 6***

**INVOCATION & PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS  
OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING**

***(Section 2-37 of Ordinance No. 24-10)***

**APPROVE MINUTES OF THE OCTOBER 4, 2011 REGULAR MEETING**

**ITEMS OF BUSINESS:**

1. Ordinance repealing Sections 22-2 (b) and 22-2(c) of the Fort Smith Municipal Code
2. Resolution stating the Board of Directors' commitment to not increase the prepared food tax rate
3. Consent Agenda
  - A. Resolution authorizing a time extension for the construction of Drainage Improvements, Phase I, Project No. 10-06-B (52 Days)
  - B. Resolution accepting completion of and authorizing final payment for the construction of Drainage Improvements, Phase I, Project No. 10-06-B (\$24,185.68 / Engineering Department / Budgeted - Sales Tax Fund)

- C. Resolution authorizing a change order for the construction of Carnall Avenue Sanitary Sewer Relocation, Project No. 11-06-C (\$15,598.20 / Engineering Department / Budgeted - Sales Tax Fund)
- D. Resolution accepting completion of and authorizing final payment for the construction of Carnall Avenue Sanitary Sewer Relocation, Project No. 11-06-C (\$34,345.72 / Engineering Department / Budgeted – Sales Tax Fund)
- E. Resolution affirming support for the passage of the 2011 Interstate Rehabilitation Program and urging Arkansas voters to vote FOR the ballot issue at the special election called for Tuesday, November 8, 2011
- F. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant – Contract 3 (\$852,862.77 / Utility Department / Budgeted - 2008 Revenue Bonds)
- G. Resolution accepting the project as complete and authorizing final payment to Terra Renewal, LLC, for the Lee Creek Water Treatment Plant Residuals Lagoons Cleaning (\$320,120.00 / Utility Department / Budgeted – Operating Budget Fund Line Item 219)
- H. Resolution authorizing partial payment to Branco Enterprises, Inc. for construction of the Phase II “P” Street Wastewater Treatment Plant Wet Weather Improvements – Schedule 2 (\$1,330,901.00 / Utility Department / Budgeted – 2009 Sales Tax Bonds)

**OFFICIALS FORUM ~ presentation of information requiring no official action  
(Section 2-36 of Ordinance No. 24-10)**

- A. Mayor
- B. Directors
- C. City Administrator

**EXECUTIVE SESSION**

- Appointments: Fire Code Board of Appeals and Adjustments (1) , Oak Cemetery Commission (1) and National League of Cities Conference voting delegates (*November 9 – 12, 2011 / Phoenix, Arizona*)

**CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. Presentations are limited to 2 minutes for each citizen (Section 2-44(b) of Ordinance No. 24-10)**

**ADJOURN**

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

**1**

**AN ORDINANCE REPEALING SECTIONS 22-2(b)  
AND 22-2(c) 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:** Section 22-2(b) and Section 22-2(c) of the Fort Smith Municipal Code are hereby repealed.

**SECTION 2:** Emergency Clause. It is hereby found and determined that the provisions of Sections 22-2(b) and 22-2(c) unnecessarily restrict commercial activity and should be immediately repealed. Therefore, an emergency is declared, and, for the protection of the health, safety and welfare of the inhabitants of the City, this Ordinance shall be effective, and same is hereby made effective, as of the date of approval of this Ordinance.

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF OCTOBER, 2011**

**APPROVED:**

\_\_\_\_\_  
Mayor

**ATTEST:**

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

*Approved as to form  
JSC  
Publish 1 time*



## MEMORANDUM

**Date:** October 13, 2011

**To:** Ray Gosack, City Administrator

**From:** Jayne Hughes, Downtown Development Coordinator, CBID 

**RE:** Regulating merchandise on streets and sidewalks

It was brought to our attention that an ordinance previously created to regulate merchandise on streets and sidewalks had become outdated. Article 1, Section 22-2 of the Fort Smith Municipal Code regulates merchandise and other things which infringe upon streets and sidewalks in the city limits of Fort Smith, Arkansas. There were 3 subsections to this particular ordinance (a), (b) & (c). Subsection (b) and (c) regulated additional things that we no longer want to enforce.

With this in mind it is the recommendation of city staff to repeal sub section (b) and (c) of Article 1, Section 22-2. The updated version will read as follows:

**Sec. 22-2-Merchandise, etc., prohibited on streets, etc.**

Except as authorized in Article II, it shall be unlawful for any person owning, conducting or controlling any business in the city to exhibit or permit to be exhibited, any merchandise of any kind, or any movable signs or showcases upon a sidewalk, street or any public right- of- way or to exhibit or permit to be exhibited any merchandise of any kind, or moveable signs of showcases attached to any building in such a way as to infringe upon any sidewalk, street or other public right- of- way.

I have included in this information a copy of the original Article 1, Section 22-2 and also the Article II for your reference.

If you have further questions please give me a call.

784-1001

650-7001

**ARTICLE I. IN GENERAL\*****Sec. 22-1. Franchise required for sales of natural gas in rights-of-way.**

No person shall have the authority to use the city rights-of-way to construct and/or to operate any facilities for the purpose of delivery, consumption, marketing or selling any natural gas to any residential, commercial or industrial customer within the city unless it shall have first obtained in writing a franchise agreement from the city. (Ord. No. 92-89, § II, 11-21-89)

**Cross references**—Licenses, taxation and miscellaneous business regulations, Ch. 13; franchise fee for gas company, §§ 13-147, 13-148; odorization of natural gas, § 17-1.

**Sec. 22-2. Merchandise, etc., prohibited on streets, etc.**

(a) Except as authorized in article II, it shall be unlawful for any person owning, conducting or controlling any business in the city to exhibit or permit to be exhibited, any merchandise of any kind, or any movable signs or showcases upon a sidewalk, street or any public right-of-way or to exhibit or permit to be exhibited any merchandise of any kind, or any movable signs or showcases attached to any building in such a way as to infringe upon any sidewalk, street or other public right-of-way.

(b) Except as prohibited in article II, it shall be lawful for any person owning, conducting or controlling any business in the city to exhibit merchandise, movable signs, or showcases upon private property so long as such merchandise, movable signs or showcases do not infringe upon any sidewalk, street or any public right-of-way and so long as such display of merchandise, movable signs or showcases do not create a traffic hazard by obstructing the view at a traffic intersection.

(c) Except as authorized in article II, it shall be unlawful for any restaurant or eating house to offer, keep for sale or prepare for selling any merchandise or culinary products of any kind in

\***Cross reference**—Naming of city buildings and facilities, § 2-3.

or through any window of such restaurant or eating house opening into the sidewalk on the city street.

(Code 1976, § 27-2)

**Cross reference**—Licenses, taxation and miscellaneous business regulations, Ch. 13.

**Sec. 22-3. House numbering.**

(a) All houses now fronting on the public streets and avenues of the city shall be numbered in conformity with the following guidelines:

- (1) For Garrison Avenue and all streets running parallel thereto, the base line or initial point of numbering shall be the Arkansas River.
- (2) For all streets running at right angles to Garrison Avenue on either side and for streets running parallel with Towson Avenue on either side, Garrison Avenue and Rogers Avenue shall be the continuous base line.
- (3) For all streets running on either side of and at right angles to Towson Avenue, the base line shall be the state line.
- (4) There shall be allowed twenty-five (25) feet for each number and one hundred (100) numbers to each block, and the initial number at the base line shall be one, the first number in the second block shall be one hundred (100), in the third two hundred (200), and so on. Variances to the twenty-five (25) feet standard and the standard of one hundred (100) numbers per block may be authorized as necessary by the city administrator, or his designee.
- (5) Where streets run northeast and southwest or southeast and northwest, the southeast and southwest sides, respectively, shall have even numbers, and the northwest and northeast sides, respectively, shall have the corresponding odd numbers. Where streets run north and south and east and west, the west and south sides, respectively, shall have even numbers, and the east and north sides, respectively, shall have the corresponding odd numbers.

- (6) Beginning at the Arkansas River the first number on the northeast side of Garrison Avenue and streets parallel thereto shall be one and the first number on the southwest side thereof shall be two (2), and so on to First Street. At First Street the first number shall be one hundred (100) on the southwest side, and one hundred one (101) on the northeast side, and so on.
- (7) From Garrison Avenue and Rogers Avenue, the first numbers on any street leading therefrom northeast, southwest or south, shall be one for the northwest or west side and two (2) for the southeast or east side, taking into consideration the loss of blocks on the north and south side of Rogers Avenue by the fact of Rogers Avenue being a diagonal street, then the first number on the second block shall be continuous and to correspond with the same lot or block numbers on Towson Avenue and so on, and this shall be so upon both sides of Rogers Avenue. Provided, that when such streets cross Garrison Avenue or Rogers Avenue in a straight continuous line the letter "N" (North) or "S" (South) shall be used with the appropriate number to designate on which side of Garrison Avenue or Rogers Avenue any number may be found. Provided, that the numbers in blocks 537-538-539-540-541-543-544 and the west half of block 545 (in the Reserve Addition to the City of Fort Smith, Arkansas) shall begin with 400.

(b) All buildings now being erected or that may hereafter be erected shall have the appropriate number or numbers established by subsection (a) placed on the same within ten (10) days after completion. All persons numbering houses shall apply to the city administrator, or his designated agent, to ascertain the correct number. The figures for numbers herein required shall not be less than three (3) inches in height.

(c) All persons owning or occupying property are hereby required to number their buildings in conformity with the provisions of this section. (Code 1976, § 27-3)

Cross reference—Buildings and building regulations, Ch. 6.

**Sec. 22-4. Installation of street lights on public streets and in residential subdivisions.**

(a) There is hereby delegated to the city administrator, or his designated agents, the authority to authorize the installation of street lights on the public streets controlled by the city according to the following guidelines:

- (1) Unless determined to be unfeasible or unnecessary, street lights shall be authorized for installation at the intersections of all arterial and collector streets.
- (2) Unless determined to be unfeasible or unnecessary, street lights shall be authorized for installation at the end of all dead-end or cul-de-sac streets having a length of at least five hundred (500) feet.
- (3) Installation is authorized at any other location on the public streets determined, by the city administrator or his designated agents, to constitute a traffic hazard or impediment to public safety by reason of lack of lighting.

(b) Installation of street lights in residential subdivisions shall be subject to the following:

- (1) The administrator, or his designated agents, shall not, except as otherwise provided herein, authorize the installation of street lights in residential subdivisions until the subdivision in question (or a phase thereof platted separately under the subdivision regulations of the city) is complete with reference to the installation of subdivision regulation required improvements and there is at least a ten (10) percent occupancy of all platted lots or, in the case of multifamily dwellings, a ten (10) percent occupancy of all dwelling units on platted lots. Installations shall be of standard lighting equipment.
- (2) Pursuant to a written request of the developer of any subdivision, the city administrator, or his designated agents, is hereby delegated the authority to authorize installations of other than city standard street light equipment or installations at a time preceding the completion and oc-

cupancy requirements of subsection (b)(1) above. Such written request of the developer shall be in a form and backed with such financial security as is deemed necessary by the city administrator and the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111—2-113 of this Code. In the instance of a request for installation of other than standard installation types, the written request must guarantee payment by the developer of all costs above ordinary installation and maintenance costs and shall contain a written acknowledgment that the city makes no commitment and is not required to continue the installation of other than the standard installation longer than a specifically designated period of time. In the instance of a request for early installations, the written request must guarantee to the city the initial payment by the developer of all installation costs and all utility costs until the above established completion and occupancy provisions have been met, at which time the city will reimburse installation costs (but in no amount in excess of the installation cost the city would have incurred at that time) and the city will assume the obligation for utility expense on such lights.

(Code 1976, § 27-4; Ord. No. 35-92, § 1, 5-19-92; Ord. No. 3-02, § 5, 1-22-02)

#### **Sec. 22-5. Sidewalk specifications.**

Persons constructing or repairing sidewalks in the city shall do so in accordance with all applicable specifications promulgated by the city administration.

#### **Sec. 22-6. Removal of roadside memorials.**

Items left in street rights-of-way at the scenes of fatal traffic accidents as memorials to the victims, commonly known as roadside memorials, shall be removed by the street and traffic control department approximately thirty (30) days after

the memorial is first erected. Removed items not claimed within thirty (30) days of removal shall be considered abandoned property.  
(Ord. No. 54-03, § 1, 7-15-03)

#### **Secs. 22-7—22-35. Reserved.**

### **ARTICLE II. SIDEWALK VENDING\***

#### **DIVISION 1. GENERALLY**

#### **Sec. 22-36. Definitions.**

For purposes of this article, the following definitions shall apply:

*Central business district* shall mean the following:

Parts of Sections 4, 5, 8, 9, 16, and 17, Township 8 North, Range 32 West, Sebastian County, Arkansas being more particularly described as follows:

All of the following parts of the Fitzgerald Addition to the City of Fort Smith: Blocks: A, B, K, 1, 2, 3, 7, 8, 9, 10, 58A, 62, and 65; and the East Half of Blocks: 66, 67, 68; and the West Half of Blocks: C, D, E, F, 50, 61 and 94.

All of the following parts to the Original City of Fort Smith: Blocks: A, 1, 2, 3, 4, 7, 8, 9, 10, 15, 16, 17, 18, 23, 24, 25, 26, 29, 30, 48, 49, 50 and 51.

All of the following parts to the Reserve Addition of the City of Fort Smith: Blocks: 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 512, 513, 514, 515, 516, 517, 518A, 519, 521, 522, 523, 524, 525, 526, 529, 530, 531, 532, 533, 536, 541, 542, 543, 544, 545, 546, 547, 548, 561, 562, 563, 564, 565 and 566; and the East Half of Blocks 549, 560, 567.

All of the following additions to the City of Fort Smith: Sparks Regional Medical Center Lots 1 and 2, Southside Garrison Avenue Addition, Corrected Stuart Daniels

\*Cross reference—Licenses, taxation and miscellaneous business regulations, Ch. 13.

Addition, Shipley Addition 1, Kremer's Addition and ARS Addition Lots 2 and 3. All properties contiguous (to the extent of the initial platted lot or, if not platted, legal ownership contiguous to the street Right-of-Way) to the West side of Towson Avenue between Dodson Avenue and South "D" Street.

All properties contiguous (to the extent of the initial platted lot or, if not platted, legal ownership contiguous to the street Right-of-Way) to the South side of South "D" Street between Wheeler Avenue and Towson Avenue.

All properties contiguous (to the extent of the initial platted lot or, if not platted, legal ownership contiguous to the street Right-of-Way) to the North side of North "B" Street between Clayton Expressway and North 11th Street.

Also,

A Tract of Land between the Eastern Bank of Maximum Recession of the Arkansas River and the East Right-of-Way line of Clayton Expressway running from the South Right-of-Way line of Garrison Avenue Northeasterly to a line 1950 feet more or less, South of and parallel to the North line of Section 5, Township 8 North, Range 32 West, Sebastian County, Arkansas.

*Stand* shall mean any table, showcase, rack, pushcart, wagon or other wheeled vehicle or device which is hand pushed or pulled, without the assistance of a motor vehicle or other source of power, used for the displaying, storing or transporting of products offered for sale by a vendor.

*Vendor* shall mean any person engaged in the selling or offering for sale of food or beverages or art or crafts or other products on the public sidewalks from a stand.  
(Code 1976, § 21-11; Ord. No. 54-87, § 2, 7-7-87; Ord. No. 70-08, § 1, 11-18-08)

**Sec. 22-37. Findings and purpose.**

It is found and declared that:

- (1) The primary purpose of public sidewalks is for use by pedestrian traffic.

- (2) Vending on the downtown public sidewalks promotes the public interest by contributing to an active and attractive pedestrian environment.
- (3) Reasonable regulation of sidewalk vending is necessary to protect the public health, safety and welfare.

(Code 1976, § 21-10; Ord. No. 54-87, § 1, 7-7-87; Ord. No. 70-08, § 1, 11-18-08)

**Sec. 22-38. Prohibited conduct.**

No vendor shall:

- (1) Vend within one hundred (100) feet of any church assembly place while an assembly of the church is in session.
- (2) Vend on any sidewalks where vending is otherwise prohibited.
- (3) Leave any stand unattended.
- (4) Store, park or leave any stand overnight on any street or sidewalk.
- (5) Sell food or beverages for immediate consumption, unless there is a litter receptacle available within twenty (20) feet of the vending stand for public use.
- (6) Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales.
- (7) Place any items relating to the operation of the vending business anywhere other than in, on or under the stand.
- (8) Set up, maintain or permit the use of any table, crate, carton, rack or any other device to increase the selling or display capacity of his stand.
- (9) Solicit or conduct business with persons in motor vehicles.
- (10) Sell anything other than that which such vendor is licensed to vend.
- (11) Vend at any location where the sidewalk is not over five (5) feet in width.
- (12) Vend within fifteen (15) feet of an entrance way to any building.
- (13) Vend within twenty-five (25) feet of any driveway entrance.

(14) Vend within ten (10) feet of the crosswalk at the intersection.  
(Code 1976, § 21-15; Ord. No. 54-87, § 6, 7-7-87; Ord. No. 70-08, § 1, 11-18-08)

**Sec. 22-39. Vendor stand specifications.**

(a) No stand shall exceed eight (8) feet in length, and all stands shall have a width compatible with that of a standard cart design.

(b) The height of each stand may be determined by the design needs of the vendor's product, but in no case shall it be greater than six (6) feet.

(c) All lettering shall be of constant height with smooth-painted edges having not more than one-eighth-inch variation.

(d) No advertising shall be permitted on any stand, except to identify the name of the product and the name of the vendor and a posting of prices.  
(Code 1976, § 21-16; Ord. No. 54-87, § 7, 7-7-87; Ord. No. 70-08, § 1, 11-18-08)

**Secs. 22-40—22-50. Reserved.**

DIVISION 2. PERMIT

**Sec. 22-51. Required; display; fee; renewal.**

(a) *Required.* It shall be unlawful to sell or offer for sale any food or beverage or art or craft or any other product on any public sidewalk within the city without first obtaining a permit from the city.

(b) *Display.* All city-required permits shall be displayed on the cart at all times.

(c) *Fee.* A permit fee in the amount established by the board of directors for a one-year permit period shall be required upon issuance of the permit.

(d) *Renewal.* All permits are valid for the entire approved one-year period, unless revoked or suspended by the city prior to expiration. An

application to renew a permit shall be made no later than thirty (30) days before the expiration of the current permit.

(Code 1976, § 21-12; Ord. No. 54-87, §§ 3, 8—11, 7-7-87; Ord. No. 70-08, § 1, 11-18-08)

**Sec. 22-52. Applications.**

(a) Applications shall contain the following information:

- (1) The name, home and business address of the applicant and the name and address of the owner, if other than the applicant of the vending business.
- (2) A description of the type of food or beverage or art or craft or of any other product proposed for vending.
- (3) A description of the proposed location(s) and hours of operation.
- (4) A description and photograph of the stand to be used.
- (5) Certification by the city/county health department for food and/or beverage sales.
- (6) Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the licensee and the city from all claims for damages to property and bodily injury including death, which may arise from operations under or in connection with the license. Such insurance shall provide that the policy shall not terminate or be cancelled prior to the expiration date without thirty (30) days' advance written notice to the city administrator. Minimum liability limits of one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per occurrence and fifty thousand dollars (\$50,000.00) for property damage shall be provided by such policy.
- (7) List of, and approval from, all business owners or operators within fifty (50) feet of the stand location.

(b) Applications shall be filed with the planning department of the city.  
(Code 1976, § 21-13; Ord. No. 54-87, § 4, 7-7-87; Ord. No. 70-08, § 1, 11-18-08)

**Sec. 22-53. Issuance; denial, suspension and revocation; appeal.**

(a) *Issuance of permit.* No later than fifteen (15) days after the filing of a completed application for a vendor's permit the applicant shall be notified by the planning department of the decision on the issuance or denial of the license.

(b) *Denial, suspension and revocation.* Any permit may be denied, suspended or revoked by the city for any of the following causes:

- (1) Fraud or misrepresentation contained in the application for the permit.
- (2) Fraud or misrepresentation made in the course of carrying on the business of vending.
- (3) Conduct of the permitted business in such manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.
- (4) Conduct of the vendor which is contrary to the provisions of this division.
- (5) The proposed sale of food or beverages or art or crafts or other products inappropriate or incompatible with standards promulgated by the central business improvement district commission.

(c) *Appeals.* Whenever the planning department shall reject or refuse to approve the application of a vendor or revoke a valid permit, the applicant may appeal the decision of the planning department to the board of directors. Notice of appeal shall be in writing and filed within ten (10) working days after the appealed decision is rendered by the planning department. A fee in the amount established by the board of directors shall accompany such notice of appeal.  
(Code 1976, § 21-14; Ord. No. 54-87, §§ 5, 11, 12, 7-7-87; Ord. No. 70-08, § 1, 11-18-08)

**Secs. 22-54—22-75. Reserved.**

**ARTICLE III. DRIVEWAY APPROACHES AND CURBS**

**Sec. 22-76. Definitions.**

For the purposes of this article, the words "driveway approach" shall be defined as follows:

- (1) *Residential single-family (Class I).* A residential driveway approach is one (1) providing access to a single-family residence.
- (2) *Residential duplex (Class I-DP).* A residential driveway approach which provides access to a duplex residential unit.
- (3) *Multiple-family residential; small commercial and industrial (Class II).* A small commercial and industrial approach which provides access to property not used for the residential uses as defined above, and which has less than two hundred (200) vehicular movements per day.
- (4) *Large commercial and industrial (Class III).* A large commercial and industrial driveway approach is one (1) providing access to a property not used for one (1) of the residential uses as defined above, and which has more than two hundred (200) vehicular movements per day.

(Code 1976, § 27-33; Ord. No. 42-95, §§ 1, 2, 5-16-95)

**Cross reference**—Definitions and rules of construction generally, § 1-2.

**Sec. 22-77. Permit required; application; permit issuance, fee.**

(a) It shall be unlawful for any person to construct, reconstruct, alter, remove and/or replace any curb, curb and gutter or driveway approach on public property within the city without first having obtained a permit from the city administrator. All such construction, reconstruction, alteration, removal or replacement shall be under the supervision of the city administrator and in accordance with the specifications hereinafter provided, except that the replacement of driveway approaches existing at the time of the adoption of this article shall not require construction with a surfacing of a greater standard than existing at the time of application for permit.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION STATING THE BOARD OF DIRECTORS' COMMITMENT  
TO NOT INCREASE THE PREPARED FOOD TAX RATE**

WHEREAS, by the passage of Ordinance No. 57-11 on July 28, 2011 the Board of Directors has called for an election on whether or not to enact a 1% prepared food tax for the operation of the Fort Smith Convention Center; and

WHEREAS, in Section 14 of said ordinance, the Board of Directors has committed to review the rate of said prepared food tax for the possibility of discontinuing the tax, lowering the tax rate, or otherwise modifying the tax within 5 years of enactment of the prepared food tax; and

WHEREAS, Arkansas Statute 26-75-602(a) allows cities to enact up to a 3% prepared food tax for authorized purposes; and

WHEREAS, the Board of Directors has no plans or intent to enact a prepared food tax higher than 1%;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

The Board of Directors commits that it has no plans or intent to enact a prepared food tax higher than 1%, and is committed to lowering the tax rate within 5 years if possible.

This Resolution passed this \_\_\_\_\_ day of October, 2011.

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

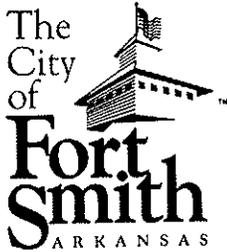
ATTEST:

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

APPROVED AS TO FORM:



\_\_\_\_\_  
No Publication Required



## *MEMORANDUM*

October 13, 2011

**TO:** Mayor and Board of Directors

**FROM:** Ray Gosack, City Administrator

**SUBJECT:** Prepared Food Tax Election

Reports have been circulating about the prepared food tax election that the board may raise the rate of the prepared food tax even if voters approve the 1% proposal on the November 8<sup>th</sup> ballot. Attached is a resolution which states the board's intent to not enact a prepared food tax rate higher than 1%, and reaffirms the board's previous commitment to consider lowering the tax rate within 5 years. This resolution will address the false reports that have been circulated.

Attachments

ORDINANCE NO. 57-11

AN ORDINANCE REPEALING ORDINANCE 14-11 AND PROVIDING FOR THE LEVY OF A ONE PERCENT (1%) TAX ON THE GROSS RECEIPTS OR GROSS PROCEEDS RECEIVED BY RESTAURANTS, CAFES, CAFETERIAS, DELICATESSENS, DRIVE-IN RESTAURANTS, CARRY-OUT RESTAURANTS, CONCESSION STANDS, CONVENIENCE STORES, AND GROCERY STORE-RESTAURANTS FROM THE SALE OF PREPARED FOOD AND BEVERAGES FOR ON-PREMISES OR OFF-PREMISES CONSUMPTION; AND CALLING A SPECIAL ELECTION IN THE CITY OF FORT SMITH, ARKANSAS, ON THE QUESTION OF THE APPROVAL OR REJECTION OF THE LEVYING OF A ONE PERCENT (1%) TAX ON THE GROSS RECEIPTS OR GROSS PROCEEDS FROM THE SALE OF PREPARED FOOD AND BEVERAGES; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the Board of Directors of the City of Fort Smith, Arkansas (the "City"), on February 24, 2011, enacted Ordinance 14-11 for the purpose of providing a means of financial support for the existing Fort Smith Convention Center and for providing a means for the continued upkeep to and improvements of that facility; and,

WHEREAS, subsequent to the enactment of Ordinance 14-11 a petition for referendum was filed which remains unresolved legally; and,

WHEREAS, Ordinance 14-11 did not contain an emergency clause resulting in the implementation of the ordinance being held in abeyance pending the outcome of the current referendum process; and,

WHEREAS, A.C.A. § 14-55-301(b) (Repl. 1998) permits a governing body to refer an ordinance to its electors for their acceptance or rejection, if done so at the time of adoption of an ordinance, or within thirty (30) days of the adoption of an ordinance; and,

WHEREAS, one of the purposes of this Ordinance is to repeal Ordinance 14-11 and then to submit to the electors of the City the question of approving or rejecting the levy of a one percent (1%) sales and use tax on the gross receipts or gross proceeds from the sale of prepared food and beverages, as levied by the Board of Directors in Section 2 below.

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

Section 1: Ordinance 14-11 is repealed effective immediately.

Section 2: (a) As authorized by A.C.A. § 26-75-602(c)(2) (Supp. 2009), and subject to

*Approved as to form  
JSL  
Publish 1 time*

the further provisions of this Ordinance, there is hereby levied a tax at the rate of one percent (1%) upon the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption within the City of Fort Smith, Arkansas.

(b) Prepared food and beverages, as used in this ordinance, shall have the same meaning as Prepared Food as defined and described by Emergency Rule 2007-3, in its entirety, promulgated by the Arkansas Department of Finance and Administration on May 11, 2007 (effective July 1, 2007), or as thereafter amended by the State of Arkansas. Furthermore, the tax levied in Section 2 shall not apply to gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3).

Section 3: This Ordinance adopting the tax levy described in Section 2 above is hereby referred to the electors of the City of Fort Smith pursuant to A.C.A. § 14-55-301(b) (Repl. 1998).

Section 4: A special election is hereby called to be held on November 8, 2011, at which election there shall be submitted to the electors of the City the question of approving or rejecting the levy of a tax on prepared food and beverages, as levied by Section 2 of this Ordinance, in the amount of one percent (1%) to be used for all lawful purposes.

Section 5: The ballot presentation of the issue to be presented in such election shall be substantially in the following form:

ISSUE

TAX ON PREPARED FOOD AND BEVERAGES

---

Vote by placing an X in the square opposite your choice.

---

FOR the approval of a tax, as levied by Ordinance No. 51-11, of one percent (1%) of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, or grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption for use for all lawful purposes. ....

AGAINST the approval of a tax, as levied by Ordinance No. 51-11, of one percent (1%) of the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession

stands, convenience stores, or grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption for use for all lawful purposes .....

**Section 6:** The election shall be held and conducted and the vote canvassed and the results declared under the law and in the manner now provided for municipal elections and only qualified voters of the City shall have the right to vote at the election.

**Section 7:** The results of the election shall be proclaimed by the Mayor, and his Proclamation shall be published one time in a newspaper having a general circulation in the City, which Proclamation shall advise that the results as proclaimed shall be conclusive unless attacked in the courts within thirty days after the date of publication.

**Section 8:** A copy of this Ordinance shall be given to the Sebastian County Board of Election Commissioners so that the necessary election officials and supplies may be provided. A certified copy of this Ordinance shall also be provided to the Commissioner of Revenues of the State of Arkansas as soon as practical.

**Section 9:** The Mayor and City Clerk, for and on behalf of the City, be and they are hereby authorized and directed to do any and all things necessary to call and hold the special election as herein provided and, if the levying of a prepared food and beverages tax is approved by the electors, to cause the prepared food taxes to be collected in accordance with the authorizing legislation, and to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

**Section 10:** The provisions of this Ordinance are hereby declared to be severable and, if any provision shall for any reason be held to be illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

**Section 11:** All ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**Section 12:** The provisions of this Ordinance shall not be codified by the codifier of the City's ordinances.

**Section 13:** It is hereby ascertained and declared that there is an immediate need to provide a source for the maintenance and operation of the Fort Smith Convention Center in order to promote and protect the health, safety and welfare of the City and its inhabitants. It is therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of public peace, health and safety shall be in force and take effect immediately from and after its passage.

Section 14: The prepared food and beverages tax enacted by this Ordinance shall be reviewed by the Board of Directors no later than five (5) years after its enactment to determine if the tax shall continue, if the tax rate may be reduced, or if the tax should be otherwise modified as the board deems proper.

This Ordinance adopted this 28<sup>th</sup> day of July, 2011.

APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:

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

RESOLUTION \_\_\_\_\_

**A RESOLUTION AUTHORIZING A TIME EXTENSION  
FOR THE CONSTRUCTION OF  
DRAINAGE IMPROVEMENTS, PHASE I  
PROJECT NO. 10-06-B**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: A time extension with Brothers Construction, Inc., for Drainage Improvements, Phase I, Project 10-06-B, which increases the contract time by 52 calendar days, is hereby approved.

This resolution adopted this \_\_\_\_\_ day of October, 2011.

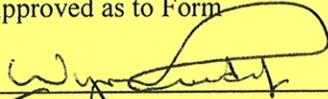
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form

  
\_\_\_\_\_  
 No Publication Required  
 Publish \_\_\_\_\_ Times

RESOLUTION \_\_\_\_\_

**A RESOLUTION ACCEPTING COMPLETION OF AND  
AUTHORIZING FINAL PAYMENT FOR THE CONSTRUCTION OF  
DRAINAGE IMPROVEMENTS, PHASE I  
PROJECT NO. 10-06-B**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The City of Fort Smith hereby accepts the construction of Drainage Improvements, Phase I, Project 10-06-B, as complete.

SECTION 2: Final payment is hereby authorized in the amount of \$24,185.68 to the contractor, Brothers Construction, Inc., for Drainage Improvements, Phase I, Project 10-06-B.

This resolution adopted this \_\_\_\_\_ day of October, 2011.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form

- \_\_\_\_\_  
 No Publication Required  
 Publish \_\_\_\_ Times

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**FROM:** Stan Snodgrass, P.E., Director of Engineering 

**DATE:** October 11, 2011

**SUBJECT:** Drainage Improvements, Phase I  
Project No. 10-06-B

This project consisted of drainage improvements in four locations to alleviate flooding concerns and correct some severe maintenance issues. The project was approved by the Board of Directors as part of the 2010 Capital Improvements Program. The locations of the improvements are shown on the attached exhibit.

The project was substantially complete on August 18, 2011. The contractor requested 52 additional days beyond the June 27, 2011 contract completion date due to weather and additional work items. Staff concurs that the 37 days are warranted for weather delays during the heavy spring rains and 15 days are warranted for additional work items.

Attached are the Resolutions to authorize a time extension, accept the project as complete and authorize final payment to the contractor. I recommend that these Resolutions be accepted by the Board of Directors at the next regular meeting.

Enclosures

# SUMMARY SHEET

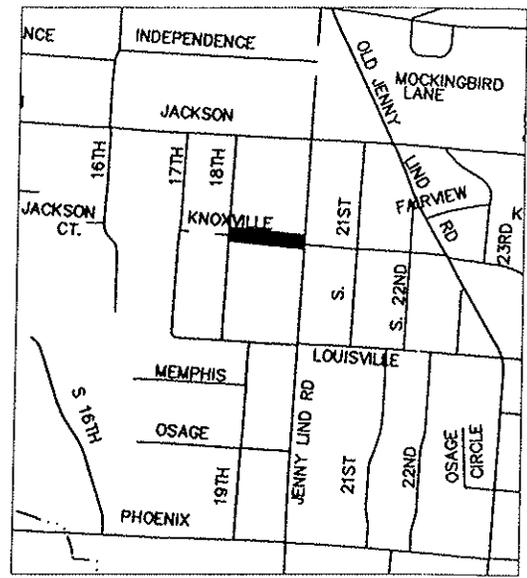
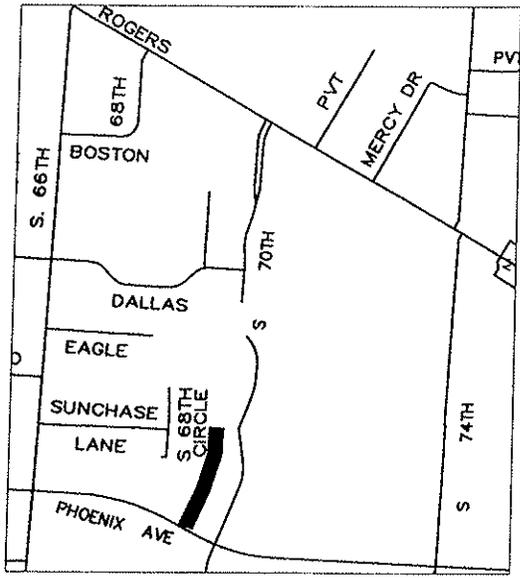
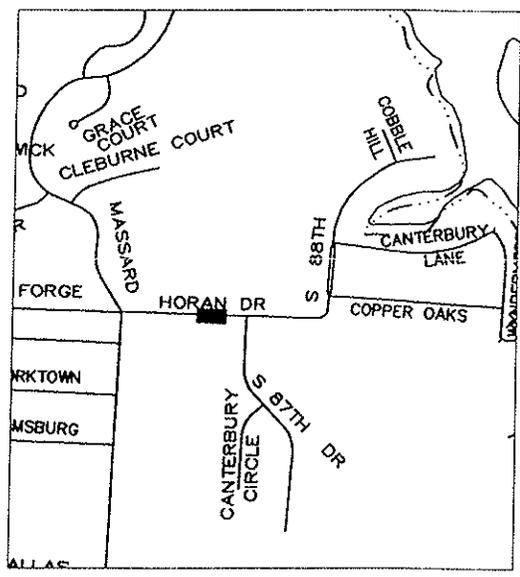
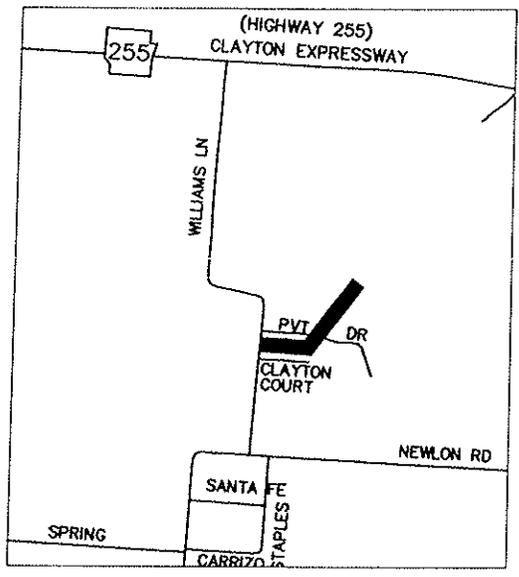
City of Fort Smith  
Project Status: Complete  
Today's Date: 10/5/2011  
Staff contact name: Stan Snodgrass  
Staff contact phone: 784-2225  
Contract time (no of days): 210  
Notice to proceed issued: 11/29/2010

Project Name: 2010 Drainage Improvements  
Project Number: 10-06-B  
Consultant Engineer: Leraris Engineering  
Project Contractor: Brothers Construction

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$678,400.25	10/12/2010	6/27/2011
Contract Revisions:			
1	Time Extension - 52 days		
2			
3			
Adjusted contract amount	<u>\$678,400.25</u>		
Payments to date (as negative):	\$614,934.60		
Amount of this payment	\$24,185.68		
Contract balance remaining	\$39,279.97		
Retainage held	0%		
Final payment	\$24,185.68		
Amount under original as a percentage	5.8%		

## Final Comments:

The project was substantially complete on August 18, 2011. The contractor requested 52 additional days beyond the June 27, 2011 contract completion date due to weather and additional work items. Staff concurs that the 37 days are warranted for weather delays during the heavy spring rains and 15 days are warranted for additional work items.



2010 CAPITAL IMPROVEMENTS PROGRAM  
 DRAINAGE IMPROVEMENTS  
 PHASE 1



Project:	10-06-B
Date:	OCT. 2010
Scale:	NONE
Drawn By:	RBR

RESOLUTION \_\_\_\_\_

**A RESOLUTION AUTHORIZING A CHANGE ORDER  
FOR THE CONSTRUCTION OF  
CARNALL SANITARY SEWER RELOCATION  
PROJECT NO. 11-06-C**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Change Order No. 1 with Goodwin & Goodwin, Inc., for the Carnall Sanitary Sewer Relocation, Project No. 11-06-C, which increases the contract amount by \$15,598.20 to an adjusted contract amount of \$299,690.20, is hereby approved.

This resolution adopted this \_\_\_\_\_ day of October, 2011.

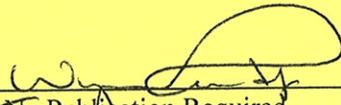
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form

  
\_\_\_\_\_  
 No Publication Required  
 Publish \_\_\_ Times

RESOLUTION \_\_\_\_\_

**A RESOLUTION ACCEPTING COMPLETION OF AND  
AUTHORIZING FINAL PAYMENT  
FOR THE CONSTRUCTION OF  
CARNALL SANITARY SEWER RELOCATION  
PROJECT NO. 11-06-C**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The City of Fort Smith hereby accepts the construction of Carnall Sanitary Sewer Relocation, Project No. 11-06-C, as complete.

SECTION 2: Final payment is hereby authorized in the amount of \$34,345.72 to the contractor, Goodwin & Goodwin, Inc., for the Carnall Sanitary Sewer Relocation, Project No. 11-06-C.

This resolution adopted this \_\_\_\_\_ day of October, 2011.

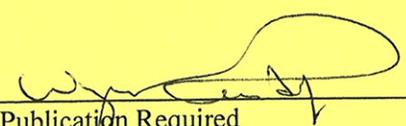
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form

  
\_\_\_\_\_  
 No Publication Required  
 Publish \_\_\_\_\_ Times

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**FROM:** Stan Snodgrass, P.E., Director of Engineering 

**DATE:** October 11, 2011

**SUBJECT:** Carnall Avenue Sanitary Sewer Relocation  
Project No. 11-06-C

The CDM drainage study of the Town Branch and Carnall storm sewer systems identified a significant blockage within the Carnall outfall. The blockage of the 60 inch Carnall outfall was caused by a 15 inch sanitary sewer line which crossed through the lower half of the culvert. Relocation of the 15 inch sanitary sewer line was identified by CDM as one of the first priorities to help reduce the flooding in the Town Branch and downtown areas.

Change Order No. 1 increases the contract amount by \$15,598.20 (5.5%) to an adjusted total contract amount of \$299,690.20. The increase in the contract amount is due to the removal of two unknown rock foundations approximately 14 feet deep that were encountered during horizontal directional drilling and the replacement of an unknown storm drain and inlet that were uncovered during construction.

Attached are Resolutions to approve Change Order No. 1, accept the project as complete and authorize final payment to the contractor. I recommend that these Resolutions be accepted by the Board at the next regular meeting.

# SUMMARY SHEET

City of Fort Smith  
 Project Status: Complete  
 Today's Date: 10/11/2011  
 Staff contact name: Stan Snodgrass  
 Staff contact phone: 784-2225  
 Contract time (no of days): 90  
 Notice to proceed issued: 7/11/2011

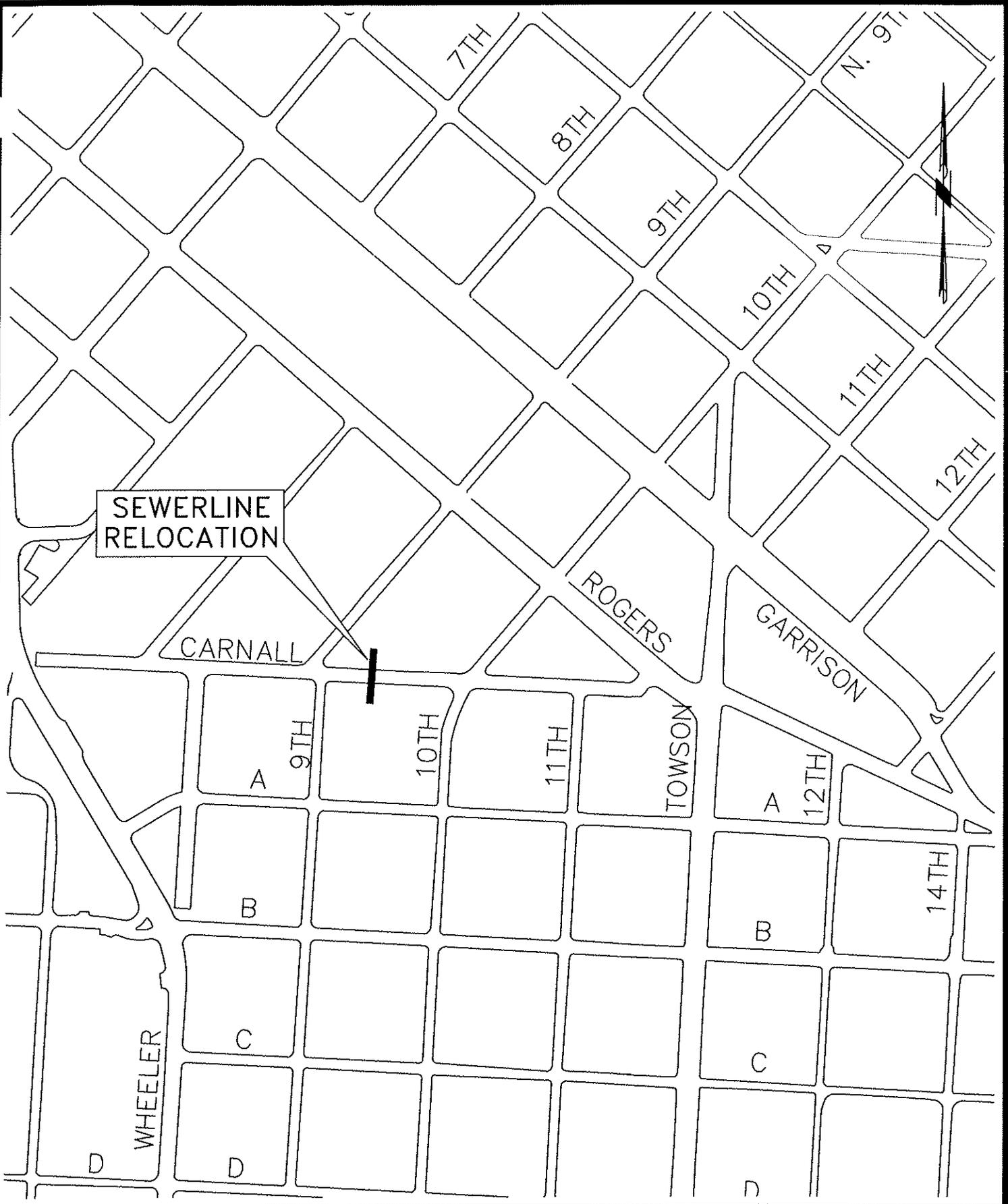
Project Name: Carnall Sanitary Sewer Relocation  
 Project Number: 11-06-C  
 Consultant Engineer: Hawkins-Weir Engineers, Inc.  
 Project Contractor: Goodwin & Goodwin

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$284,092.00	4/19/2011	10/9/2011
Contract Revisions:			
1 Change Order No. 1	\$15,598.20		
2			
3			
Adjusted contract amount	\$299,690.20		
Payments to date (as negative):	\$265,344.48		
Amount of this payment	\$34,345.72		
Contract balance remaining	\$0.00		
Retainage held	0%		
Final payment	\$34,345.72		
Amount over original as a percentage	5.5%		

**Final Comments:**

Change Order No. 1 increases the contract amount by \$15,598.20 (5.5%) to an adjusted total contract amount of \$299,690.20. The increase in the contract amount is due to the removal of two unknown rock foundations approximately 14 feet deep that were encountered during horizontal directional drilling and the replacement of an unknown storm drain and inlet that were uncovered during construction.

C:\DRAWING\7\00-00\_CIPALL\2012\DRAINAGE\2012\_Drnng.dwg 9/12/11-16:36 RBR CARNALL



2012 CAPITAL IMPROVEMENTS PROGRAM  
 CARNALL AVENUE  
 SANITARY SEWER RELOCATION



Project:	11-06-C
Date:	OCT. 2011
Scale:	NONE
Drawn By:	RBR

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AFFIRMING SUPPORT FOR THE PASSAGE OF THE  
2011 INTERSTATE REHABILITATION PROGRAM AND URGING  
ARKANSAS VOTERS TO VOTE FOR THE BALLOT ISSUE AT THE  
SPECIAL ELECTION CALLED FOR TUESDAY, NOVEMBER 8, 2011

---

WHEREAS, in 1999, Arkansans voted overwhelmingly, by a 4-to-1 margin, for the adoption of an Interstate Rehabilitation Program; and

WHEREAS, the Interstate Rehabilitation Program was financed through federally funded GARVEE Bonds and a 4¢ state diesel tax passed for that purpose; and

WHEREAS, the Interstate Rehabilitation Program modernized over 350 miles of Interstate highways in Arkansas; and

WHEREAS, Arkansas now has over 650 miles of Interstates, with more re-construction and modernization left to be completed, thus finishing the job started by the 1999 program; and

WHEREAS, a new Interstate Rehabilitation Program ballot issue will be placed on a special election ballot, Tuesday, November 8, 2011; and

WHEREAS, Arkansas voters at the special election must approve and authorize the Arkansas Highway Commission to issue a new round of GARVEE Bonds for the purpose of financing a 2011 Interstate Rehabilitation Program designed to address the immediate needs of nearly 300 miles of Interstates; and

WHEREAS, the issuance of GARVEE Bonds will not require any new taxes, or any increase in existing taxes, but will be funded by future federal revenue and the existing 4¢ state diesel tax; and

WHEREAS, all of Arkansas will benefit from the 2011 Interstate Rehabilitation Program because the Interstate system makes up the backbone of the state's road and highway network; and

WHEREAS, the 2011 Interstate Rehabilitation Program will meet the needs of nearly \$1 billion in Interstate rehabilitation, creating over 27,000 jobs, and freeing other revenue for local state highway maintenance, all without raising taxes; and

WHEREAS, modern Interstates will increase Arkansas's opportunity for more economic development from business, industry and tourism.

NOW, THEREFORE, BE IT RESOLVED, That we, the Board of Directors for the City of Fort Smith, Arkansas, affirm our support for the passage of the 2011 Interstate Rehabilitation

Program, and call on all Arkansas voters to vote FOR the ballot issue at the special election called for Tuesday, November 8, 2011.

This Resolution adopted this \_\_\_\_ day of October, 2011

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form:

  
\_\_\_\_\_  
City Attorney  
*No publication required*

# Memo



**To:** Ray Gosack, City Administrator  
**From:** Jeff Dingman, Deputy City Administrator  
**Date:** 10/12/2011  
**Re:** Resolution Supporting the passage of the 2011 Interstate Rehabilitation Program

---

Representatives of the Arkansas Municipal League and an organization called "Move Arkansas Forward" have asked for the City of Fort Smith's support of the initiative on the November 8, 2011 statewide Special Election supporting the 2011 Interstate Rehabilitation Program. A Resolution urging Arkansas voters to vote for the measure is included on the agenda for October 18.

If the state electorate approves the measure, the Arkansas Highway Commission will be able to issue bonds in order to rehabilitate 300 miles of Interstate Highways in Arkansas. The bond issue will not require any new or increased taxes, and will be repaid by future federal funds and the existing 4-cent state diesel fuel tax passed in 1999 for this purpose.

I have attached a fact sheet distributed by "Move Arkansas Forward" that provides more information about the success of the Interstate Rehabilitation Program since its inception in 1999 and how the newly authorized funds would be used to further that initiative. Also attached is a map showing the progress made since 1999, and the proposed sections of Interstate that remain to be improved upon continuation of the funding source. You will notice that areas to be improved include sections of I-540 in the vicinity of Fort Smith.

Please contact me if you have general questions regarding this agenda item.



## 2011 Interstate Rehabilitation Program FACT SHEET

1. The 2011 Interstate Rehabilitation Program will be subject to approval by Arkansas voters at a special election to be called by the Governor. The special election will be held Tuesday, November 8, 2011.
2. No new or increased taxes are required for the 2011 program. Only future federal revenue and an existing 4¢ state diesel tax passed in 1999 will be used to help retire the bonds.
3. The program will finish the job of the 1999 Interstate Rehabilitation Program passed 4-to-1 by Arkansas voters, which reconstructed over 350 miles of Arkansas Interstates. Arkansas now has over 650 miles of Interstate highways. Reconstruction of nearly 300 miles of Interstate highways will be addressed by the new program.
4. With voter approval, the Arkansas Highway Commission will be authorized to issue up to \$575 million in GARVEE bonds to help finance continued modernization of our Interstate highway system. The bonds will support a nearly \$1 billion rehabilitation program.
5. GARVEE bonds (Grant Anticipation Revenue Vehicles) provide revenue from bonds that can be retired with future federal funds, combined with state revenue from the existing 4¢ state diesel tax passed in 1999. No new taxes are required.
6. The existing 4¢ diesel tax provides the Arkansas Highway and Transportation Department approximately \$16.2 million annually, with cities and counties each receiving about \$3.5 million a year.
7. New bonds totaling up to \$575 million will be issued in series, and must be issued by December 31, 2015.
8. The program will help meet Interstate needs of \$1 billion, with construction work supporting over 27,000 jobs, and freeing other revenue for local highway maintenance.
9. The 2011 Interstate Rehabilitation Program will further modernize Arkansas Interstates, thus increasing the opportunity for economic development from business, industry and tourism – without raising taxes.



This message is brought to you in the public interest by the Arkansas Good Roads/Transportation Council. Find us on the web at [www.agrtc.com](http://www.agrtc.com) (<http://www.agrtc.com>)

Green: Interstates modernized by 1999 program.  
Red: Interstate miles needing work.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING PARTIAL PAYMENT TO  
CROSSLAND HEAVY CONTRACTORS, FOR CONSTRUCTION OF THE  
LAKE FORT SMITH WATER TREATMENT PLANT - CONTRACT 3

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT  
SMITH, ARKANSAS, that:

Partial payment number twenty-five to Crossland Heavy Contractors, Inc., in the amount  
of \$852,862.77, for construction of the Lake Fort Smith Water Treatment Plant - Contract 3,  
Project Number 07-09-C3, is hereby approved.

This Resolution adopted this \_\_\_\_\_ day of October 2011.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

TO: Ray Gosack, City Administrator

DATE: October 6, 2011

FROM: Steve Parke, Director of Utilities

SUBJECT: Lake Fort Smith Water Treatment Plant Improvements - Contract 3  
Project Number 07-09-C3  
Partial Payment to Crossland

Crossland Heavy Contractors, Inc., has submitted partial pay request number twenty-five in the amount of \$852,862.77 for work completed on the Lake Fort Smith Water Treatment Plant Improvements - Contract 3. A project summary sheet covering work completed to date is attached for your information. Major items of work completed during the time period covered by this pay request and overall progress status for those items of work are as follows:

- Demolition (67% complete)
- Site Electrical (84% complete)
- West Filter Building (76% complete)
- East Filter Building (97% complete)
- Finished Water Pump Station (93% complete)

The attached Resolution authorizes payment to Crossland. Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

## Project Summary

Project status: Underway

Project name: Lake Fort Smith Water Treatment Plant  
Improvements - Contract 3

Today's date: October 6, 2011

Project number: **07-09-C3**

Staff contact name: Steve Parke

Project engineer: Burns & McDonnell, Inc.

Staff contact phone: 784-2231

Project contractor: Crossland Heavy Contractors, Inc.

Notice to proceed issued: August 31, 2009

Final completion date: April 4, 2012

	Dollar Amount	Contract Time (Days)
Original contract	\$31,641,000.00	785
Change orders:		
Change Order No. 1	\$22,902.00	14
Change Order No. 2	\$89,078.00	49
Change Order No. 3	\$-19,174.00	
Change Order No. 4	\$70,237.00	
Change Order No. 5	\$62,859.00	<u>9</u>
Change Order No. 6	\$155,516.00	45
Total change orders	\$381,418.00	<u>117</u>
Adjusted contract	<u>\$32,022,418.00</u>	<u>902</u>
Payments to date (as negative):	\$-26,521,495.75	
Amount of this payment (as negative)	\$-852,862.77	
Retainage held	\$1,601,120.90	
Contract balance remaining	\$3,046,938.58	
Amount over as a percentage	1.01%	

Final comments:

RESOLUTION NO. \_\_\_\_\_

RESOLUTION ACCEPTING THE PROJECT AS COMPLETE AND AUTHORIZING  
FINAL PAYMENT TO TERRA RENEWAL, LLC, FOR THE LEE CREEK  
WATER TREATMENT PLANT RESIDUALS LAGOONS CLEANING

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT  
SMITH, ARKANSAS, that:

SECTION 1: The construction of the Lee Creek Water Treatment Plant Residuals  
Lagoons Cleaning, Project Number 11-03-C1, is accepted as complete.

SECTION 2: Final payment to the contractor, Terra Renewal, LLC, in the amount of  
\$320,120.00, is hereby approved.

This Resolution adopted this \_\_\_\_\_ day of October 2011.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Ray Gosack, City Administrator

**DATE:** October 10, 2011

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Lee Creek Water Treatment Plant Residuals Lagoons Cleaning  
Project Number 11-03-C1

This project consisted of removing and disposing of water treatment plant residuals from lagoon number 3 at the Lee Creek water treatment plant. The project is now complete and was performed at the contract amount and within the contract time. A project summary sheet is attached for your information.

A Resolution is attached to accept the project as complete and authorizing final payment to Terra Renewal, LLC, in the amount of \$320,120.00. It is my recommendation that the project be accepted as complete, and the final payment be approved.

Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

## Project Summary

Today's date: October 10, 2011

Project name: Lee Creek Water Treatment Plant  
Residuals Lagoons Cleaning

Staff contact name: Steve Parke

Project number: **11-03-C1**

Staff contact phone: 784-2231

Project engineer: Jimmie B. Johnson, P.E.

Notice to proceed issued: October 2, 1011

Project contractor: Terra Renewal, LLC

	Dollar Amount	Contract Time (Days)
Original contract	\$320,120.00	70
Change orders:		
 Total change orders	 \$0.00	 <u>0</u>
Adjusted contract	\$320,120.00	<u><u>70</u></u>
Payments to date (as negative):	\$ 0.00	0.0%
Amount of this payment (as negative)	\$ (320,120.00)	100.0%
Retainage held	\$0.00	
Contract balance remaining	\$0.00	0.0%
Amount over (under) as a percentage		0.0%

Final comments:

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING PARTIAL PAYMENT TO BRANCO ENTERPRISES, INC., FOR CONSTRUCTION OF THE PHASE II "P" STREET WASTEWATER TREATMENT PLANT WET WEATHER IMPROVEMENTS - SCHEDULE 2

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

Partial payment number Thirty-seven to Branco Enterprises, Inc., in the amount of \$1,330,901.00 for the construction of the Phase II "P" Street Wastewater Treatment Plant Wet Weather Improvements - Schedule 2, Project Number 05-14-C1, is hereby approved.

This Resolution adopted this \_\_\_\_\_ day of October 2011.

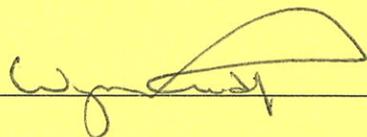
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_ npr

**INTER-OFFICE MEMO**

**TO:** Ray Gosack, City Administrator

**DATE:** October 11, 2011

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Phase II "P" Street Wastewater Treatment Plant  
Wet Weather Improvements - Schedule 2  
Project Number 05-14-C1

Branco Enterprises, Inc., has submitted partial pay request number thirty-seven in the amount of \$1,330,901.00 for work completed on the Phase II "P" Street Wastewater Treatment Plant Wet Weather Improvements - Schedule 2. A project summary sheet is attached for your information.

Branco has completed construction of the project. The only outstanding issues are performance of some pumps and flow meters. The bulk of this payment is a reduction of retainage from five-percent of the contract to an amount sufficient to cover outstanding issues and potential assessment of liquidated damages.

The attached Resolution authorizes payment to Branco Enterprises, Inc. Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

## Project Summary

Today's date: October 11, 2011

Project name: Wet Weather Improvements, "P" Street  
Wastewater Treatment Plant Phase II -  
Schedule 2

Staff contact name: Steve Parke

Project number: **05-14-C1**

Staff contact phone: 784-2231

Project engineer: Hawkins-Weir Engineers, Inc.

Notice to proceed issued: July 21, 2008

Project contractor: Branco Enterprises, Inc.

Completion date: September 25, 2010

	Dollar Amount	Contract Time (Days)
Original contract	\$31,840,000.00	750
Change orders:		
Number One	\$48,626.00	31
Number Two	\$36,561.14	35
Total change orders	\$85,187.14	<u>66</u>
Adjusted contract	<u>\$31,925,187.14</u>	<u>816</u>
Payments to date (as negative):	\$ (30,218,849.85)	94.7%
Amount of this payment (as negative)	\$ (1,330,901.00)	4.2%
Retainage held	\$1,592,000.00	
Contract balance remaining	\$375,436.29	1.2%
Amount over (under)- as a percentage		0.3%

Final comments:



MEMORANDUM

TO: Mayor and Board of Directors  
FROM: Wendy Beshears, Administrative Assistant  
DATE: October 14, 2011  
SUBJECT: Fire Code Board of Appeals and Adjustments

The term of Mr. Philip Wear of the Fire Code Board of Appeals and Adjustments will expire October 31, 2011. No information has been received from Mr. Wear.

The applicant available at this time is:

C. Leo Patterson                      3518 South O Street

Appointments are **by the Board of Directors**. One appointment is needed; the term will expire October 31, 2015.



MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Beshears, Administrative Assistant *WB*

DATE: October 14, 2011

SUBJECT: Oak Cemetery Commission

The terms of Ms. Phanita Williams, Mr. Gary Petersen and Ms. Barbara Coleman of the Oak Cemetery Commission will expire November 30, 2011. Ms. Williams and Ms. Coleman would like to be reappointed at this time. Mr. Petersen does not wish to be reappointed to the commission.

There are no other applicants available at this time.

Appointments are **by the Board of Directors**. Two appointments are needed; the terms will expire November 30, 2014.

## **MEMORANDUM**

**To:** Mayor and Board of Directors

**From:** Sherri Gard, City Clerk

**Date:** October 14, 2011

**Re:** Voting Delegates to National League of Cities Conference

Once delegates are chosen, I will complete the attached credentials form and fax to the NLC, as well as provide copies to the designated delegates. Fort Smith has two (2) votes.



**CREDENTIALS FORM**

**NATIONAL LEAGUE OF CITIES · 2011 CONGRESS OF CITIES · PHOENIX, ARIZONA**

At the Annual Business Meeting on Saturday, November 12, 2011, from 2:30 to 4:30pm, each direct member city of NLC is entitled to cast from one to 20 votes based upon the city's population per the 2000 census, through its designated voting delegate. Please indicate below your city and state, voting delegate and alternate(s), and sign and date the form. The form should be faxed to NLC at 202-626-3109, by the October 28, 2011, deadline.

The official voting delegate and alternate(s) for the city/town of:

**City of Fort Smith AR 80,268 (2)**

\_\_\_\_\_  
*(Name of your city/town/village, state, pop & vote)*

**VOTING DELEGATE:**

1. NAME \_\_\_\_\_

TITLE \_\_\_\_\_

<b>FOR OFFICE USE ONLY</b> <b>(DO NOT WRITE IN THIS SPACE)</b>	
Voting card issued to:	
_____	(signature)
Votes: _____	
1 _____ 2 _____ 3 _____	

**ALTERNATE VOTING DELEGATE(S):**

2. NAME \_\_\_\_\_ TITLE \_\_\_\_\_

3. NAME \_\_\_\_\_ TITLE \_\_\_\_\_

**PLEASE SIGN AND FAX THIS FORM TO NLC BY OCTOBER 28, 2011**  
**ATTENTION: TATA SIDIBE, MEMBERSHIP RELATIONS ASSISTANT**  
**FAX: 202-626-3109**

Signature (city representative): \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_



**NATIONAL LEAGUE OF CITIES  
2011 CONGRESS OF CITIES  
PHOENIX, ARIZONA**

**Number of Votes – Annual Business Meeting**

**Direct Member Cities**

Article IV, Section 2 of the National League of Cities bylaws specifies the number of votes that each NLC direct member city is entitled to cast at the Annual Business Meeting at the Congress of Cities. Member cities are required by the bylaws to cast unanimous votes.

CITY POPULATION (per 2000 Census)	NUMBER OF VOTES
Under 50,000	1 vote
50,000 – 99,999	2 votes
100,000 – 199,999	4 votes
200,000 – 299,999	6 votes
300,000 – 399,999	8 votes
400,000 – 499,999	10 votes
500,000 – 599,999	12 votes
600,000 – 699,999	14 votes
700,000 – 799,999	16 votes
800,000 – 899,999	18 votes
900,000 and above	20 votes



October 7, 2011

TO: Members of the Board of Directors  
Members of the Airport Commission

RE: Appointments:

Mr. Ryan Carter of the Airport Commission has resigned effective October 4, 2011. In accordance with Ordinance No. 2926 nominations for this prospective vacancy are now being received.

Please submit nominations to the city administrators office no later than the close of business on October 31, 2011. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to [www.fortsmithar.gov](http://www.fortsmithar.gov) and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive style.

Ray Gosack  
City Administrator

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(479) 785-2801  
Administrative Offices FAX (479) 784-2430



October 11, 2011

TO: Members of the Board of Directors  
Members of the Parking Authority

RE: Appointments:

The terms of Mr. Joseph S. Wald and Dr. Boyd M. Saviers of the Parking Authority will expire effective December 31, 2011. In accordance with Ordinance No. 2926 nominations for this prospective vacancy are now being received.

Please submit nominations to the city administrators office no later than the close of business on November 9, 2011. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to [www.fortsmithar.gov](http://www.fortsmithar.gov) and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive style.

Ray Gosack  
City Administrator



October 12, 2011

TO: Members of the Board of Directors  
Members of the Building Board of Adjustment and Appeals

RE: Appointments:

The term of Mr. Chip Johnson of the Building Board of Adjustment and Appeals will expire effective November 30, 2011. In accordance with Ordinance No. 2926 nominations for this prospective vacancy are now being received.

Please submit nominations to the city administrators office no later than the close of business on November 9, 2011. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to [www.fortsmithar.gov](http://www.fortsmithar.gov) and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive style with a large, prominent "R" and "G".

Ray Gosack  
City Administrator