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 ~ Revised

Fort Smith Board of Directors

Regular Meeting

May 15, 2012 ~ 6:00 P.M.

Fort Smith Public Schools Service Center
3205 Jenny Lind Road

THIS MEETING IS BEING TELECAST LIVE ON THE GOVERNMENT 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 MAY 1, 2012 REGULAR MEETING

ITEMS OF BUSINESS:

1. Presentation: Proclamations for Public Works Week (May 20-26, 2012)

2. Ordinance repealing and replacing Section 25-268(b) of the Fort Smith Municipal Code *(placement and removal of trash containers) ~ Settle/Hutchings placed on agenda at the April 24, 2012 study session ~ **Second Reading***

3. Ordinance repealing the existing Chapter 14, Article IV, Division 5, Sections 14-141 through 14-166, of the Fort Smith Municipal Code and replacing them with new sections 14-141 through 14-166 and two new sections 14-167 and 14-168, redefining and classifying sexually oriented businesses; providing restrictions on the location of sexually oriented businesses; providing for the licensing of sexually oriented businesses and their employees; providing regulations concerning the operation of sexually oriented businesses; and providing penalties for violations *~ Settle/Good placed on the agenda at the May 8, 2012 study session ~*

4. Ordinance amending the 2009 Unified Development Ordinance *(Phoenix Avenue sign regulations) ~ Catsavis/Settle placed on the agenda at the May 1, 2012 regular meeting ~*

5. Consent Agenda

   A. Ordinance to abandon a portion of a public utility easement located in Jeffrey Way, an addition to the City of Fort Smith, Sebastian County, Arkansas *(63 Jeffrey Way / Phil Taylor, applicant)*

   B. Resolution authorizing the Mayor to submit a CDBG grant application from the State of Arkansas for the River Bend Industries Project

   C. Resolution authorizing the execution of a memorandum of understanding concerning mobile data support between the City of Fort Smith, Arkansas, and the City of Van Buren, Arkansas

   D. Resolution authorizing acquisition of real property interests for the Sunnymede Basin Sewer Improvements *($348.74 / Utility Department / Budgeted - 2009 Sales Tax Bond)*

   E. Resolution authorizing the City Administrator to accept offer made by property owner for the acquisition of real property interests for the Lake Fort Smith Water Supply *($12,500.00 / Utility Department / Budgeted - Capital Improvement Program Fund)*

   F. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Forsgren, Inc. for the Riverfront Development Water and Sewer Extensions *($364,615.85 / Utility Department / Budgeted - Capital Improvement Program Fund)*

   G. Resolution authorizing the Mayor to execute an agreement with Hawkins-Weir Engineering, Inc. for engineering services for the 2011 Sanitary Sewer Improvements *($150,000.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)*

   H. Resolution accepting the bid of and authorizing the Mayor to execute a contract with T-G Excavating, Inc. for the 2011 Sanitary Sewer Improvements, Phase 1 *($1,977,777.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)*

I. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Cummins Mid-South, LLC for the Wastewater Pump Station Standby Power Equipment *($1,341,404.00 / Utility Department / Budgeted – 2012 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

- Performance evaluation - City Administrator ~ *Six month review announced at the November 15, 2011 regular meeting* ~

- Appointments: Airport Commission (2), Community Development Advisory Commission (2), Fort Smith Municipal Employees Benevolent Fund Board of Advisors (2) and Transit Advisory Commission (2)

ADJOURN

The City of Fort Smith ARKANSAS

1

MEMORANDUM

May 11, 2012

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Public Works Week

May 20-26 is national public works week. Mayor Sanders will also be proclaiming this period as public works week in Fort Smith. This year's theme is

PUBLIC WORKS: CREATING A LASTING IMPRESSION

The proclamation provides an opportunity to recognize the importance of street, water and sewer, sanitation, stormwater, parks, public transit, and capital project management. The provision of essential public services relies on the dedication of the 400 employees in Fort Smith's public works departments. They help create the foundation for a stronger, more livable community.

A public works employee appreciation picnic will be held on Thursday, May 24th at Creekmore Park from 11:00 a.m. to 1:00 p.m. The mayor and board of directors are invited to attend.

Please join me in recognizing the 400 city employees who provide high-quality, essential public services 365 days a year.

-Ray

A PROCLAMATION FOR A SPECIAL WEEK

On the occasion of Public Works Week being observed in our City, State and Nation, this Proclamation is issued, ***FOR***

WHEREAS, *Public Works Week is being observed in our City, State and Nation the week of Sunday, May 20th through Saturday, May 26th, 2012, with the theme:* ***"Public Works: Creating a Lasting Impression;" AND***

WHEREAS, *public works services provided in Fort Smith, Arkansas are an integral part of citizens' everyday lives, making a stronger and more livable community and contributing to Fort Smith's quality of place;* ***AND***

WHEREAS, *the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water, wastewater, streets, parks, sanitation, stormwater, transit, and engineering;* ***AND***

WHEREAS, *the health, safety, and comfort of Fort Smith greatly depends on these facilities and services;* ***AND***

WHEREAS, *the quality and effectiveness of these facilities as well as their planning, design and construction are vitally dependent upon the efforts and skills of Public Works employees at all levels;* ***AND***

WHEREAS, *the efficiency of the qualified and dedicated personnel who staff Public Works Departments is materially influenced by the people's attitude and understanding of the importance of the work they perform,* ***SO***

NOW, THEREFORE, I, *Sandy Sanders, Mayor of the City of Fort Smith, Arkansas, do hereby proclaim the week of Sunday, May 20th through Saturday, May 26th, 2012 as*

PUBLIC WORKS WEEK

in Fort Smith, Arkansas. I call upon the citizens of this great community to recognize the importance of public works operations to the high quality of living in Fort Smith, Arkansas and thank each individual involved in the work of the Public Works Operations in the City of Fort Smith, Arkansas.

IN WITNESS WHEREOF, I *have hereunto set forth my hand and caused the Seal of the City of Fort Smith, Arkansas to be affixed this 15th day of May, 2012.*

Sandy Sanders, Mayor

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ORDINANCE NO. _____

AN ORDINANCE REPEALING AND REPLACING
SECTION 25-268(b) OF THE FORT SMITH MUNICIPAL CODE

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

SECTION 1: Section 25-268(b) of the Fort Smith Municipal Code is hereby amended to read as follows:

> For properties where the land use is residential, garbage cans, recycling containers, solid waste, and yard waste may not be placed at the public right-of-way, whether street or alley, for collection before 12:00 noon on the day before collection. Emptied garbage cans, recycle containers and uncollected material exceeding collection standards shall be removed from the public right-of-way not later than midnight the day of collection.

SECTION 2: Emergency Clause. The immediate effectiveness of this ordinance establishing property maintenance provisions for the City is required in the interest of the public's health and safety. Therefore, an emergency is declared, and this Ordinance shall be in full force and effect immediately upon its passage and approval.

PASSED and APPROVED this _____ day of May, 2012.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

JSC
_____
City Attorney
Publish 1 time

Memo

To: Ray Gosack, City Administrator

From: Jeff Dingman, Deputy City Administrator

Date: 4/26/2012

Re: Municipal Code revision – garbage/recycle container removal

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As requested by the Board of Directors at the April 24 study session, attached is a proposed ordinance for the Board's consideration that amends Section 25-268(b) of the Fort Smith Municipal Code related to the removal of garbage cans, recycling containers and uncollected waste from public rights-of-way, including alleyways.

The proposed ordinance is in response to the observation that waste deposited in the alleyways between collection days is prone to scattering about the alleyways before being collected. If left in the alleys between collection days, waste is susceptible to being strewn about by any number of causes, not the least of which are animals, wind/weather, and waste pilferers.

The proposed ordinance amends Section 25-268(b) by removing the last sentence, which served to specifically exclude alleyways from the general provision that applies citywide to street rights-of-way. In addition, the specific references to "street right-of-way" have been changed to reference the "public right-of-way" in order to incorporate the publicly owned alleyways, making the section uniformly applicable to the entire city.

The net impact of this amendment will be that households with alleyway refuse collection may no longer leave their waste/recycle cans in the alleyways between collection dates. Those residents will need to secure their containers on their private property, and then set them out in the right-of-way on collection day. Containers left in the alleyway will be subject to the enforcement action of the Neighborhood Services division.

Please contact me with any questions regarding this agenda item.

ORDINANCE NO. _____

AN ORDINANCE REPEALING THE EXISTING CHAPTER 14, ARTICLE IV, DIVISON 5, SECTIONS 14-141 THROUGH 14-166, OF THE FORT SMITH MUNICIPAL CODE AND REPLACING THEM WITH NEW SECTIONS 14-141 THROUGH 14-166 AND TWO NEW SECTIONS 14-167 AND 14-168, REDEFINING AND CLASSIFYING SEXUALLY ORIENTED BUSINESSES; PROVIDING RESTRICTIONS ON THE LOCATION OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR THE LICENSING OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES; PROVIDING REGULATIONS CONCERNING THE OPERATION OF SEXUALLY ORIENTED BUSINESSES; AND PROVIDING PENALTIES FOR VIOLATIONS

It is the finding of the Board of Directors of the City of Fort Smith, Arkansas, that:

1. Sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the communities where they locate; and,
2. Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and, the concern over sexually transmitted diseases is a legitimate health concern of the City of Fort Smith ("the City") that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and,
3. Licensing is a legitimate means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and,
4. There is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and,

5. It is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics and secondary impacts, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and,
6. The Board of Directors wants to prevent these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and,
7. It is not the intent of the Board of Directors to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and,
8. It is not the intent of the Board of Directors to condone or legitimize the distribution of obscene materials, and the Board of Directors recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the City of Fort Smith; therefore;

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:

SECTION 1: CONFLICTING ORDINANCES REPEALED.

Sections 14-141 through 14-166 of Chapter 14, Article IV, Division 5, of the Fort Smith Municipal Code are hereby repealed, and replaced as set forth below in Sections 14-141 through 14-168. However, neither Ordinance 16-97 nor Ordinance 17-97, nor any ordinance or codification specifically providing restrictions on public nudity and public "specified sexual activities" are repealed.

SECTION 2:

Sections 14-141 through 14-166 of Chapter 14, Article IV, Division 5, are repealed and replaced as follows; and two new sections, i.e., Sections 14-167 and 14-168 are added:

SECTION 14-141. Purpose.

It is the purpose of this division to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this division have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor the effect of this division to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene materials.

SECTION 14-142. Findings.

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in reports made to the Board of Directors, and on findings incorporated in the cases of *City of Erie* v. *Pap's A.M.,* (98-1161, March 29, 2000); *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41 (1986); *Young v. American Mini Theatres,* 427 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.,* 478 U.S. 697 (1986); *California v. LaRue,* 409 U.S. 109 (1972); *Iacobucci v. City of Newport, KY, 479* U.S. 92 (1986); *United States v. O'Brien,* 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga,* 107 F.3d 403 (6th Cir. 1997); *Kev, Inc. v. Kitsap County,* 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington,* 65 F.3d 1248 (5th Cir. 1995); and *South Florida Free Beaches, Inc. v. City of Miami,* 734 F.2d 608 (11th Cir. 1984), as well as studies conducted in other cities including, but not limited to: Oklahoma City, Oklahoma; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Cleveland, Ohio; Beaumont, Texas; and Seattle, Washington; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Board of Directors finds that:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.
2. Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. *See, e.g.,* studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.
3. Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. *See, e.g., California* v. *LaRue,* 409 U.S. 109, 111 (1972); *see also* Final Report of the Attorney General's Commission on Pornography (1986) at 377.
4. Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. *see, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
5. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. *See, e.g., Arcara v. Cloud Books, Inc.,* 478 U.S. 697, 698 (1986); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
6. At least fifty communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to: syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. *See, e.g.*, Study of Fort Myers, Florida.
7. For the period ending December 1996, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 581,429. *See, e.g.,* Statistics of the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention.

8. From 1983 through September 12, 1997, the cumulative number of HIV-positive persons reported in Arkansas was 3,811. Of that number, 2,300 met AIDS case definitions. Since 1983 and to the present, there have been an increasing cumulative number of persons testing positive for HIV antibody test in Arkansas. *See* Arkansas HIV/AIDS Report September 12, 1997.

9. The total number of cases of early (less than one year) syphilis in the United States reported during the ten years period 1985-1995 was 367,796. *See, e.g.,* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

10. The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,256,297 cases reported during the period 1993-1995. *See, e.g.,* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

11. The Surgeon General of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

12. According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. *See, e.g.,* Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

13. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 377.

14. Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 377.

15. Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. *See, e.g., Barnes v. Glen Theatre,* 501 U.S. 560, 583 (1991).

16. Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. *See, e.g., Kev, Inc. v. Kitsap County,* 793 F.2d 1053, 1056 (9th Cir. 1986).

17. The findings noted in paragraphs numbered (1) through (16) raise substantial governmental concerns.

18. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

19. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

20. Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.

21. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

22. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent or who are likely to be witnesses to such activity.

23. The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this division.

24. The barring of such individuals from operation or employment in sexually oriented businesses for a period of time for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

25. The general welfare, health, morals, and safety of the citizens of this City will be promoted by the enactment of this division.

SECTION 14-143. Definitions.

ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment that, as its principal business purpose, offers for sale or rental, for any form of consideration, any one or more of the following:

1. books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations, whether for viewing off-premises or on-premises, that depict or describe "specified sexual activities" or "specified anatomical areas," or
2. instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

The determination of the principal business purpose of an establishment is based on the visual inventory or commercial activity of the establishment; provided, there shall be a rebuttable presumption that any commercial establishment which utilizes more than ten percent (10%) of total display area for merchandise of any type described in this definition shall be deemed to be

engaged in the business of an *adult bookstore* or *adult video store* as its principal business purpose.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that presents:

1. persons who appear in a state of nudity or semi-nudity; or
2. live performances that are characterized by the display of any portion of the female breast or any portion of the human buttocks, or which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
3. films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT MOTEL means a hotel, motel, or similar commercial establishment that:

1. offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions, that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas", and has a sign visible from the public right of way that advertises the availability of this type of adult photographic reproductions; or
2. offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
3. allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

ADULT MOTION PICTURE THEATER means a commercial establishment where, as its principal business purpose, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly presented that are characterized by their emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity, semi-nudity, and/or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

CHIEF OF POLICE means the Chief of Police of the City of Fort Smith and his or her designee.

CLEAR AND CONVINCING means evidence so clear, direct and convincing as to enable the Director to come to a clear conviction as to the allegations sought to be established.

EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not such person is denominated an employee, independent contractor, agent, or otherwise, and whether or not such person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person on the premises solely for repair, maintenance, or cleaning of the premises or equipment on the premises, or for the delivery of goods to the premises; nor does "employee" include a person exclusively on the premises as a patron or customer.

ESCORT means a person who, for monetary, or other consideration, agrees or offers to act as a companion, guide, or date for another person, or who, for monetary or other consideration, agrees or offers to model lingerie or to engage in a "specified sexual activity" and/or perform in a state of nudity or semi-nudity for another person off the premises of a sexually oriented business.

ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish, escorts as one of its primary business purposes for a fee, tip, or other consideration.

ESTABLISHMENT means and includes any of the following:

1. the opening or commencement of any sexually oriented business as a new business;
2. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. the addition of any sexually oriented business to any other existing sexually oriented business; or
4. the relocation of any sexually oriented business.

INTENTIONALLY means that it was the conscious object of the person to engage in the conduct alleged, or to cause the result alleged.

KNOWINGLY means that the person was aware that his or her conduct was of the nature alleged, or that he or she was aware that it was practically certain that his or her conduct would

cause the result alleged, or that he or she consciously disregarded a substantial risk that his or her conduct would cause the result alleged, or that the result alleged would occur.

LICENSED DAY-CARE CENTER means a facility licensed by the State of Arkansas, whether situated within the City or not, that provides care, training, education, custody, treatment, or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage, or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

LICENSEE means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or semi-nudity, or who displays "specified anatomical areas", is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration, with the exception of those persons and places exempted by Section 14-166 of this division.

NUDITY or a STATE OF NUDITY means the showing of any "specified anatomical area."

OPERATOR means any person in a supervisory capacity over employees and/or contractors, excluding maintenance, delivery, or cleaning personnel, at the sexually oriented business, and any person responsible for security and/or any entrance/exit of the sexually oriented business.

PERSON means an individual, proprietorship, limited partnership, general partnership, corporation, association, limited liability company, or other legal entity.

PREMISES means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this division;

SEMI-NUDE OR SEMI-NUDITY means the appearance of any part of the female areola or nipple, or the showing of the perineum anal region, in anything less than a fully opaque covering.

SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.

SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS means:

1. the human male genitals in a discernibly turgid state, even if fully and opaquely covered;
2. less than completely and opaquely covered human genitals or anus.

SPECIFIED CRIMINAL ACTIVITY means carnal abuse, sexual abuse, violation of a minor, sexual misconduct, rape, sexual solicitation of a minor, sodomy, prostitution, promotion of prostitution, sale, distribution, or display of harmful material to a minor, sexual performance by a child, possession or distribution of child pornography, and/or patronizing prostitution; in the case of any such conviction, it will constitute specified criminal activity if:

(a) less than one (1) year has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

(b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense.

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant, with the exception of a *de novo* appeal from District Court to Circuit Court. In the case of a *de novo* appeal from District Court to Circuit Court, a disqualification is not effective until such time as there is a conviction in Circuit Court. Should a conviction be reversed on appeal, or in the case of a *de novo* appeal from District Court to Circuit Court, should the Circuit Court fail to convict, then there is no "conviction" for purposes of this division.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

1. Actual or simulated sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation or fondling of unclothed genitals, pubic region, buttock, or female breast; flagellation or torture in a sexual relationship; and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy, zooerasty;
2. Human genitals in the state of sexual stimulation, arousal, or tumescence;
3. Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus, or masturbation;
4. Fondling or touching of human genitals, pubic regions or pubic hair, buttocks, female breasts;
5. Situations involving persons, any of whom are nude, clad in undergarments, or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint of any such person;
6. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being;
7. Human excretion, urination, menstruation, vaginal or anal irrigation; or
8. Any combination of subsections (1) through (7) of this definition.

SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas exist on the effective date of this ordinance.

TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

1. the sale, lease, or sublease of the business;
2. the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
3. the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 14-144. Classification.

Sexually oriented businesses are classified as follows:

1. adult arcades;
2. adult bookstores or adult video stores;
3. adult cabarets;
4. adult motels;
5. adult motion picture theaters;
6. adult theaters;
7. escort agencies;
8. nude model studios; and
9. sexual encounter centers.

SECTION 14-145. License Required.

(A) It shall be unlawful:

1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Chief of Police pursuant to this division;
2. For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the Chief of Police pursuant to this division;
3. For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Chief of Police pursuant to this division.
4. It shall be a defense to subsections (2) and (3) of this Section if the employment is of limited duration and for the sole purpose of repair, maintenance and/or cleaning of machinery, equipment, or the premises.
5. Any person convicted of the violation of any provision within this subsection shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

(B) An application for a sexually oriented business license must be made on a form provided by the City. Except for a sexually oriented business lawfully operating on the

date this division is enacted, the application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Prior to issuance of a license, the premises must be inspected by the fire department and code enforcement department.

(C) An application for a sexually oriented business employee license must be made on a form provided by the City.

(D) All applicants for a license must be qualified according to the provisions of this division. The application may request, and the applicant shall provide, such information as to enable the City to determine whether the applicant meets the qualifications established under this division. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(E) If a person who wishes to own or operate a sexually oriented business is an individual, he or she must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, an authorized representative of the partnership, corporation, or limited liability company must sign the application for a business license as applicant.

(F) Applications for a business license, whether original or a renewal, must be made to the Chief of Police. Applications must be submitted to the Office of the Chief of Police during regular working hours. Application forms shall be supplied by the Chief of Police, and shall only request the following information:

1. The name, street address, and mailing address, if different, of the applicant(s);
2. A recent photograph of the individual or representative submitting the application form;
3. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;

4. The name under which the establishment is to be operated and a general description of the services to be provided; if the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business' fictitious name;
5. Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section 14-143, and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;
6. Whether the applicant has had a previous license under this division or other similar sexually oriented business ordinance from another city, county, or state or political subdivision denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation, and whether the applicant is, or has been, a partner in a partnership or an officer, director, or principal stockholder of a corporation, or a member of a limited liability company that is, or was, licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well as the date of denial, suspension, or revocation;
7. Whether the applicant holds any other licenses under this division or other similar sexually oriented business ordinance from another city or county in this or any other state and, if so, the names and locations of such other licensed businesses;
8. The single classification of license, as found in Section 14-144, for which the applicant is filing;
9. The telephone number of the establishment;
10. The address, and legal description of the tract of land on which the establishment is to be located;

11. If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

12. If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair, or remodeling work, or other cause of the expected delay, and a statement of the owner's time schedule and plan for accomplishing the same;

13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, or other video reproductions, which depict "specified sexual activities" or "specified anatomical areas", then the applicant shall comply with the application requirements set forth in Section 14-160.

(G) Each application for a business license shall be accompanied by the following:

1. Payment of the application fee in full;

2. If the establishment is an Arkansas corporation, limited liability company, or limited partnership, a certificate of good standing issued by the Office of the Secretary of State of Arkansas;

3. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state;

4. Except for a sexually oriented business lawfully operating on the date this division is enacted, a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the following types of property: child care facility, playground, public library, recreational area or facility, walking trail, the property lines of any established church or

other place of public worship; public or private elementary, secondary or post-secondary school; public park; hospital; licensed day care center; and entertainment business that is oriented primarily towards children within 1,000 feet of the property to be certified; and, the property lines of any established residential district within 1,000 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

5. Any of items (2) through (4) shall not be required for a renewal application if the sexually oriented business was lawfully operating at the time this division was enacted or the applicant states that the documents previously furnished the Chief of Police with the original application or previous renewals thereof remain correct and current.

(H) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Chief of Police by the person or a designated representative of the person to whom the employee license shall issue, except as otherwise provided in this division. Applications transmitted by facsimile will be accepted for this purpose. Each application for an employee license shall be accompanied by proof of payment of the application fee in full. A photocopy of the check or money order will be accepted for this purpose if transmitting the application by facsimile, so long as payment is actually received within five (5) working days. Application forms shall be supplied by the Chief of Police. Applications must be submitted to the Office of the Chief of Police. Each applicant shall be required to give only the following information on the application form:

1. The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
2. Age, and date and place of birth;
3. Height, weight, hair color, and eye color;
4. Present residence address and telephone number;
5. Present business address and telephone number;
6. Driver's license, or other state-issued identification card information, to include number, issuing state and expiration date;

7. Social Security number; and

8. Proof that the individual is at least eighteen (18) years old.

(I) Attached to the application form for an employee license to work and/or perform services in a sexually oriented business shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face. If application is made by facsimile, the photograph does not have to be a color photograph, but the color photograph shall be submitted within five (5) days.

2. A statement whether the applicant has been convicted of a "specified criminal activity" as defined in Section 14-143, and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each.

(J) Every application for a license shall contain a statement under oath that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the applicant is aware of the requirements of this division.

(K) A separate application and business license shall be required for each sexually oriented business classification as set forth in Section 14-144.

(L) The fact that a person possesses other types of state or City permits and/or licenses does not exempt him or her from the requirement of obtaining a sexually oriented business or employee license.

SECTION 14-146. Issuance of License.

(A) Upon the filing of an application for a sexually oriented business employee license, the Chief of Police shall issue a temporary license to said applicant. In the case of an application filed by facsimile transmission, proof of the facsimile transmittal shall suffice as a temporary license until the actual temporary license is issued. The application shall then be referred to the appropriate City departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the Chief of Police shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. The applicant and/or the applicant's representative has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
2. The applicant is under the age of eighteen (18) years;
3. The applicant has been convicted of a "specified criminal activity" as defined in Section 14-143;
4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this division; or
5. The applicant has had a sexually oriented business employee license revoked by the City within one (1) year of the date of the current application.

In the event that the Chief of Police determines preliminarily that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing as set forth in Section 14-167 by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within thirty (30) days of the receipt of the completed application by the Chief of Police. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this section and to reapply for a sexually oriented business employee license. After ten (10) days, the denial will become final unless there has been modification and reapplication made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this section, the Chief of Police may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Chief of Police, the Chief of Police shall issue an employee license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Chief of Police. If such determination is made by the Chief of Police, the Chief of Police again must give notice in writing as set forth in Section 14-167 by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.

A final denial, suspension, or revocation by the Chief of Police of a license issued pursuant to this Section shall be subject to the same rights as those set forth in subsection (I) of this Section.

(B) A license issued pursuant to subsection (A) of this Section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license available for inspection at the establishment upon lawful request at all times while engaged in employment or performing services on the sexually oriented business premises.

(C) A license issued pursuant to subsection (A) of this Section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Chief of Police that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The decision whether to renew an employee license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 14-147. The non-renewal of a license shall be subject to the same notice, modification, and reapplication, and appeal rights as set forth elsewhere in this Section.

(D) If application is made for a sexually oriented business license, the Chief of Police shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. The Chief of Police shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. An applicant has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
2. An applicant is under the age of eighteen (18) years;
3. An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. An applicant denied a license on this basis will have all rights

and remedies set forth in Section 14-146 (H) to attempt to remedy any such deficiency and reapply for a license;

4. An applicant has been convicted of a "specified criminal activity" as defined in Section 14-143;

5. Except for a sexually oriented business lawfully operating on the date this division is enacted, the premises to be used for the sexually oriented business do not comply with the location restrictions set forth in Section 14-155;

6. The premises to be used for the sexually oriented business have not been approved by the fire department and the code enforcement department as being in compliance with applicable laws and ordinances;

7. An applicant has been finally denied, after opportunity to exercise due process rights, a license by the City to operate a sexually oriented business for any of the above listed reasons within the preceding twelve (12) months, or his or her license to operate a sexually oriented business has been finally revoked, after opportunity to exercise due process rights, for any of the reasons listed in Sections 14-151 and 14-152 within the preceding twelve (12) months.

(E) A license issued pursuant to subsection (D) of this Section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the Section 14-144 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(F) The fire department and code enforcement department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Chief of Police. The certification shall be promptly presented to the Chief of Police.

(G) A sexually oriented business license shall issue for only one classification, as set forth in Section 14-144.

(H) In the event that the Chief of Police determines preliminarily that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in

writing by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within forty-five (45) days of the receipt of the completed application by the Chief of Police. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this section and to reapply for a sexually oriented business license. After ten (10) days, the denial will become final unless such required modifications and reapplication are made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this section, the Chief of Police may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication, the Chief of Police shall issue a license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial. If such determination is made, the Chief of Police again must give notice in writing by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.

(I) An applicant may appeal the decision regarding a final denial to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the applicant of the denial decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for the appeal and all arguments in support thereof. The Chief of Police may, within fifteen (15) days of service upon him or her of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the Board of Directors. After reviewing such memoranda, as well as the written decision of the Chief of Police, if any, and exhibits submitted to him or her, the Board of Directors shall vote either to uphold or overrule the decision to deny. Such vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of a denial by the Chief of Police and Board of Directors may be sought pursuant to Section 14-153 of this division. During the pendency of any appeal, the parties shall maintain the status quo, unless in the interim, a court issues an injunction pursuant to Section 14-168.

(J) A license issued pursuant to subsection (D) of this Section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by

a preponderance of the evidence by the Chief of Police that the applicant has not been convicted of any "specified criminal activity" as defined in this division, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a business license shall be made within forty-five (45) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 14-147.

Any determination by the Chief of Police with respect to the renewal of a sexually oriented business license must conform to the duties and rights set forth in Section 14-146 (H). Furthermore, the applicant for a renewal of a license shall have the same rights with respect to renewal as those set forth in Section 14-146 (I). During the pendency of any appeal, the parties shall maintain the status quo, unless in the interim, a court issues an injunction pursuant to Section 14-168.

SECTION 14-147. Fees.

The annual fee for a sexually oriented business license, whether new or a renewal, is Two Hundred Fifty ($250.00) Dollars. The annual fee for a sexually oriented business employee license, whether new or a renewal,, is Twenty-five ($25.00) dollars. These fees are to be used to pay for the cost of the administration and enforcement of this division.

SECTION 14-148. Inspection.

(A) An applicant or licensee shall allow representatives of the police department, fire department, code enforcement department, or other City or state departments or agencies, to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is open for business.

(B) No person who operates a sexually oriented business, nor his agents or employees, shall refuse to promptly permit such lawful inspection of the premises.

(C) A person convicted of violation of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-149. Expiration of License.

(A) Each business license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 14-145, and by payment of the fee set forth in Section 14-147. Upon filing of an application for renewal of a business license, the existing business license shall remain in effect until a final determination on the application for renewal is made as set forth in Section 14-146 (J).

(B) Each sexually oriented business employee license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 14-145, and by payment of the fee set forth in Section 14-147. Upon filing an application for renewal of a business employee license, the existing license shall remain in effect until a final determination on the application for renewal is made as set forth in Section 14-146 (J).

(C) The applicant shall not be issued a license for one year from the date of a final denial if such denial is not appealed, or for one year from the date of a final determination if the denial is appealed and is upheld.

Any determination with respect to the renewal of a license must conform to the duties and rights set forth in Section 14-146 of this division.

SECTION 14-150. Assessment of Administrative Penalty.

The Chief of Police shall assess an administrative penalty to a business licensee and/or any person who is an operator as the case may be, in the amount of Two Hundred Fifty Dollars ($250.00) for each offense where he determines by clear and convincing evidence that:

1. A business licensee or an individual operator knew or should have known of the possession, use, or sale of controlled substances in the establishment;
2. A business licensee or an individual operator knew or should have known of the sale, use, or consumption of alcoholic beverages in the establishment;
3. A business licensee or an individual operator knew or should have known of nudity or "specified sexual activities" occurring in the establishment; or

4. A business licensee or an individual operator knew or should have known of a person under eighteen (18) years of age entering the establishment.

It is not the intent of this division for the Chief of Police to impose an administrative penalty upon a business licensee for the occurrence of incidents outside the actual knowledge of the business licensee.

If the business licensee or the same individual operator of a sexually oriented business is assessed an administrative penalty (and such administrative penalty is upheld after judicial review pursuant to Section 14-153) for the same offense three times or more, and the dates of these offenses have occurred within a twelve (12) month period, the business licensee or the individual operator, as the case may be, shall be suspended in accordance with Section 14-151. For purposes of Sections 14-150, 14-151, and 14-152, multiple incidents of the same nature, which would constitute a violation of any of the provisions set forth in (1) through (4) above, shall be considered as only one (1) offense if they occur within the same business day.

In the event that the Chief of Police determines that one of the above described offenses has occurred and determines that the assessment of an administrative penalty against the business licensee or an individual operator is appropriate, the Chief of Police must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the assessment of a penalty, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Chief's investigation, whichever is earlier.

A licensee may appeal the decision of the Chief of Police regarding the assessment of an administrative penalty to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the assessment decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Chief of Police may, within fifteen (15) days of service upon him or her of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the Board of Directors. After reviewing such memoranda, as well as the Chief's written decision, if any, and exhibits submitted to the Chief of Police, the Board of Directors shall vote either to uphold or

overrule the decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of an administrative penalty by the Chief of Police and Board of Directors may be made pursuant to Section 14-153.

Furthermore, judicial review of a suspension affirmed by the Board of Directors may be made pursuant to Section 14-153. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division. This section in no way is intended to replace or substitute for criminal penalties which may apply under local, state, or federal law for any of the activities enumerated above.

SECTION 14-151. Suspension.

The Chief of Police shall suspend the license of a business licensee and/or any person who is an operator, as the case may be, for a period not to exceed thirty (30) days if he or she determines by clear and convincing evidence that:

1. A business licensee intentionally answered falsely a material question or request for information during the application process;
2. A business licensee or an individual operator is convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
3. A business licensee or an individual operator has, with knowledge, permitted prostitution on the premises;
4. A business licensee or an individual operator has been fined for the same offense, of those offenses listed in Section 14-150, three times or more, and the dates of those offenses occurred within a twelve (12) month period; or
5. A business licensee or an individual operator is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any business. A licensee found in violation in this regard will have all rights and remedies set forth in Section 14-146 (H) to attempt to remedy any such deficiency before any suspension of the license may occur.

If a business license is suspended by the Chief of Police more than one time in a twelve (12) month period, the license shall be revoked in accordance with Section 14-152.

In the event that the Chief of Police determines that one of the above described incidents has occurred, and determines that suspension of the business license is appropriate, he or she must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the suspension of the business license, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the investigation, whichever is earlier.

A licensee may appeal a decision regarding a suspension to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the decision of the Chief of Police. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Chief of Police may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the Board of Directors. After reviewing such memoranda, as well as the written decision of the Chief of Police, if any, and exhibits submitted to the Chief, the Board of Directors shall vote either to uphold or overrule the suspension decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a suspension by the Board of Directors may be made pursuant to Section 14-153. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division.

SECTION 14-152. Revocation.

The Chief of Police shall revoke a license for one (1) year from the date the revocation becomes effective if he or she determines that any of the grounds for suspension set forth in Section 14-151 is proven by clear and convincing evidence, and that the license has already been

suspended within the preceding twelve (12) months; or that the business operated while its license was suspended.

A licensee may appeal a decision regarding a revocation to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the revocation decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Chief of Police may, within fifteen (15) days of service upon him or her of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the Board of Directors. After reviewing such memoranda, as well as the Chief's written decision, if any, and exhibits submitted to the Chief, the Board of Directors shall vote either to uphold or overrule the revocation decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a revocation by the Board of Directors may be made pursuant to Section 14-153. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division.

SECTION 14-153. Judicial Review.

After denial of an initial or renewal application by the Chief of Police and by the Board of Directors, or upon an assessment of an administrative penalty, suspension, or revocation by the Chief of Police and by the Board of Directors, the applicant or licensee may seek judicial review in any court of competent jurisdiction. The rules and procedures for such appeal are modeled on Rule 9 of the Arkansas Inferior Court Rules. Those Rules provide as follows:

1. Time for taking appeal. All appeals from the Board of Directors to a court of competent jurisdiction must be filed in the Office of the Clerk of the particular court having jurisdiction of the appeal within thirty (30) days from the date of the vote by the Board of Directors.
2. How taken. An appeal from the Board of Directors to a court of competent jurisdiction shall be taken by filing the record of the findings and proceedings of the Chief of Police and the Board of Directors, to the

extent such a record is available. It shall be the duty of the City Clerk to prepare and certify such record when requested by the appellant, and upon payment of any fees authorized by law therefore. The appellant shall have the responsibility of filing such record in the Office of the Clerk of the Court of competent jurisdiction.

3. No record available. When the City Clerk neglects or refuses to prepare and certify a record for filing in a court of competent jurisdiction, the person desiring an appeal may perfect the appeal on or before the 30th day from the date of the vote by the Board of Directors by filing an Affidavit in the Office of the Clerk of the court of competent jurisdiction showing that he or she has requested the City Clerk to prepare and certify the records for purposes of appeal, and that the City Clerk has neglected to prepare and certify such records for purposes of appeal. A copy of such Affidavit shall be promptly served upon the City Clerk and upon the Chief of Police.

SECTION 14-154. No Transfer of License.

A licensee shall not transfer his or her license to any person who has not obtained a license, nor shall a business licensee operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application. This section is not intended to prevent a business licensee from being allowed to sell, assign, or transfer ownership or control of his or her business to another person already possessing a valid sexually oriented business license. It is intended only to prevent the sale, assignment, or transfer of ownership or control of a license by the licensee, or of the business to a non-licensee.

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 boundary of any residential district;
   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 boundary or a residential district, 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 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.

(B) A person shall not act as an escort or agree to act as an escort for any person under the age of eighteen (18) years.

(C) A person convicted of a violation of any provision of this Section shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-158. Additional Regulations For Nude Model Studios.

(A) A nude model studio shall not employ any person under the age of eighteen (18) years.

(B) A person under the age of eighteen (18) years shall not appear semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to the public view or visible by any other person.

(C) A person shall not appear in a state of nudity, or with knowledge, allow another to appear in a state of nudity, in an area of a nude model studio premises which can be viewed from the public right of way.

(D) A nude model studio shall not place or permit a bed or mattress in any room on the premises.

(E) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-159. Additional Regulations Concerning Public Nudity.

(A) A person shall not appear in person in a state of nudity or semi-nudity in a sexually oriented business.

(B) A person shall not engage in any "specified sexual activity" in a sexually oriented business.

(C) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-160. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred (150) square feet of floor space, a film, video cassette, or other video reproduction that depicts "specified sexual activities" or "specified anatomical areas," shall comply with the following requirements:

1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of all manager's stations, viewing rooms, restrooms, and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north, or to some designated street or object, and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a

diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police.
4. It is the duty of the owner(s) and operator(s) of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises, including the interior of each viewing room, to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment and/or two way mirrors. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
6. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) of this Section remains unobstructed by any doors, walls, merchandise, display racks, curtains, or other materials, at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (1) of this Section.
7. The interior of each booth shall be sufficiently illuminated so that the inside of the booth is visible from the manager's station as set forth in subsection (5) of this section.

8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.

9. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

10. There shall be no glass of any kind between booths, and booths shall not be designed, constructed, or configured in such a manner that the interior of any booth may be visible or made to be visible from any other booth.

11. No licensee or operator shall knowingly allow an opening of any kind to exist between viewing rooms or booths.

12. The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

13. The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

14. The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48") inches of the floor.

15. The operator of the sexually oriented business shall ensure that premises are clean and sanitary at all times. All walls, ceilings, floors, viewing booths, restrooms, and all physical facilities in each adult business shall be thoroughly cleaned at least once each day the sexually oriented business is in operation.

16. No viewing room may be occupied by more than one person at any time.

17. It shall be the duty of the operator, and of any agents or employees present on the premises, to ensure that no "specified sexual activities," as defined in Section 14-143, occur in or on the licensed premises.

(B) A person having a duty under Subsection (A) (1) through (A) (17) of this Section who is convicted of failing, with knowledge, to fulfill that duty, shall be subject to the general penalties as set out in section 1-9 of the Fort Smith Municipal Code.

SECTION 14-161. Exterior Portions of and Signage for Sexually Oriented Businesses.

(A) No owner or operator of a sexually oriented business shall allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(B) No owner or operator of a sexually oriented business shall allow the exterior portion of the sexually oriented business to have any photographs of any person in a state of nudity or engaging in any "specified sexual activity," nor shall such owner or operator allow the exterior portion of the sexually oriented business to have any pictorial or other representations of any kind of any person in a state of nudity or engaging in any "specified sexual activity."

(C) Notwithstanding any other City ordinance, code, or regulation to the contrary, the operator of any sexually oriented business or any other person shall not erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(D) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

1. conform with the City's sign code;
2. be a flat plane, rectangular in shape; and
3. not exceed seventy-five (75) square feet in area.

(E) Primary signs shall contain no photographs, and shall contain no pictorial or other representations of any kind of any person in a state of nudity or engaging in any "specified sexual activity."

(F) Secondary signs shall have no more than one (1) display surface. Such display surface shall:

1. conform with the City's sign code;

2. be a flat plane, rectangular in shape;

3. not exceed twenty (20) square feet in area;

4. not exceed five (5) feet in height and four (4) feet in width; and

5. be affixed or attached to any wall or door of the enterprise.

(G) The provisions of subsection (E) above shall also apply to secondary signs.

(H) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-162. Sale, Use or Consumption of Alcoholic Beverages Prohibited.

(A) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

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

SECTION 14-163. Persons Younger than Eighteen (18) Years Prohibited from Entry; Attendant Required.

(A) No person shall allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(B) It shall be the duty of the business licensee and/or operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance at all times during regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be a rebuttable presumption that a person knew a person was under the age of eighteen (18) unless the attendant asked for and was furnished:

1. a valid operator's, commercial operator's, or chauffeur's driver's license issued by any state reflecting that such person is eighteen (18) years of age or older; or

2. a valid personal identification certificate issued by any state reflecting that such person is eighteen (18) years of age or older.

(C) It shall be unlawful for any person under the age of eighteen (18) years to misrepresent such person's age for the purpose of entering the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(D) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-164. Massages or Baths.

It shall be unlawful for any business operating as a sexually oriented business to offer the services of a massage salon, massage parlor, or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex, or where any physical contact with the recipient of such services constitutes "specified sexual activities," regardless of the gender of the recipient or the provider of the service. A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-165. Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of five o'clock (5:00) a.m. and eleven o'clock (11:00) a.m.

SECTION 14-166. Exemptions.

It is a defense to prosecution under this division that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

1. by a proprietary school, licensed by the State of Arkansas, a college, junior college, or university supported entirely or partly by taxation;
2. by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

SECTION 14-167. Notices.

(A) Any notice required or permitted to be given by the Chief of Police or any other City office, division, department, or other agency under this division to any applicant, licensee

operator or owner of a sexually oriented business, must be given by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or in any subsequent notice of address change that has been received by the Chief of Police. Notices mailed as above shall be deemed given upon their receipt in the United States mail. In the event that any notice given by mail is returned by the postal service, the Chief of Police shall cause it to be posted at the principal entrance to the establishment, and notice will be considered received upon the date of such posting.

(B) A license may designate an agent for service and notify the Chief of Police of the identity and address of the agent for service. In such event, notices are subject to the requirement of Subsection (A) above, except that notice shall be made at the address of the designated agent for service.

(C) Any notice required or permitted to be given to the Chief of Police by any person under this division shall not be deemed given until and unless it is received in the Office of the Chief of Police.

(D) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Chief of Police in writing of any change of residence or mailing address.

Section 14-168. Injunction.

A person who operates, or causes to be operated, a sexually oriented business without a valid business license, or a business shown by clear and convincing evidence to be engaging in a regular pattern or practice of violations of this division, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates, or each day a person so acts in violation of a provision of this division, is to be considered a separate offense or violation.

SECTION 3: SEPARABILITY.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION 4: EMERGENCY CLAUSE.

It is hereby found and declared by the Board of Directors that an emergency situation exists with reference to those matters set forth herein, and that passage and immediate effect of this ordinance is necessary for the preservation of the health, safety, and welfare of the inhabitants of the City. This ordinance shall be of full force and effect upon and after the date of passage.

This Ordinance adopted this ____ day of _____, 2012.

APPROVED:

_____

Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

City Attorney

Publish 1 time

Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: **Ray Gosack, City Administrator**

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

Subject: **Sexually Oriented Business Ordinance Review**

Date: **May 8, 2012**

Attachments: **Ordinance Sexually Oriented Business SOB 051212**
Ordinance Sexually Oriented Business SOB Strikethrough 051512
A.C.A. § 14-1-303

Per direction from the Board at their May 8, 2012 Study Session, staff submits a revised sexually oriented business (SOB) ordinance for consideration and approval. The ordinance reflects changes requested and approved by the Board at their February 14, 2012 Study Session, including expanding the minimum distance from residences to 1,000 feet from 500 feet. One additional change was included on the advice of legal counsel to add "walking trail", "recreational area or facility", "public library", and "playground" as additional criteria under Section 14-155, Location Restrictions. This addition mirrors state statute A.C.A. § 14-1-303.

ORDINANCE NO._____ ~~18-00~~

AN ORDINANCE REPEALING THE EXISTING CHAPTER 14, ARTICLE IV, DIVISON 5, SECTIONS 14-141 THROUGH 14-166, OF THE FORT SMITH MUNICIPAL CODE AND REPLACING THEM WITH NEW SECTIONS 14-141 THROUGH 14-166 AND TWO NEW SECTIONS 14-167 AND 14-168, REDEFINING AND CLASSIFYING SEXUALLY ORIENTED BUSINESSES; PROVIDING RESTRICTIONS ON THE LOCATION OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR THE LICENSING OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES; PROVIDING REGULATIONS CONCERNING THE OPERATION OF SEXUALLY ORIENTED BUSINESSES; AND PROVIDING PENALTIES FOR VIOLATIONS

~~BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THECITY OF FORT SMITH, ARKANSAS:~~

It is the finding of the Board of Directors of the City of Fort Smith, Arkansas, that:

Sexually

1. ~~WHEREAS, sexually~~ oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the communities where they locate; and,
2. Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and, the concern over sexually transmitted diseases is a legitimate health concern of the City of Fort Smith ("the City") that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and,
3. Licensing is a legitimate means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and,

4. There~~WHEREAS, there~~ is convincing documented evidence that sexuallyoriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causingincreased crime and the downgrading of property values; and,

5. It~~WHEREAS, it~~ is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics and secondary impacts, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and,

6. The~~WHEREAS, the~~Board of Directors wants to prevent these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and,

7. It~~WHEREAS, it~~ is not the intent of the Board of Directors~~this ordinance~~ to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and,

8. It~~WHEREAS, it~~ is not the intent of the Board of Directors to condone or legitimize the distribution of obscene materials, and the Board of Directors recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the City of Fort Smith;~~,~~ therefore;

~~(A)~~BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THECITY OF FORT SMITH, ARKANSAS:

~~**SECTION 1:CONFLICTING ORDINANCES REPEALED.**~~

~~All ordinances or parts of ordinances in conflict with theprovisions of this ordinance are herebyrepealed, including thosein the Fort Smith Code of Ordinances. Likewise, all prior codifications in Chapter 14, Article IV, Division 5, Section 14-141 through 14-166168167 of the Fort SmithMunicipal Code are hereby repealed. Neither Ordinance 16-97 nor Ordinance 17-97,~~

~~nor any ordinance Ordinance or codification providingrestrictions on public nudity and public "specified sexual activities"are repealed hereby.~~

SECTION 1: CONFLICTING ORDINANCES REPEALED.

Sections 14-141 through 14-166 of Chapter 14, Article IV, Division 5, of the Fort Smith Municipal Code are hereby repealed, an replaced as set forth below in Sections 14-141 through 14-168. However, neither Ordinance 16-97 nor Ordinance 17-97, nor any ordinance or codification specifically providing restrictions on public nudity and public "specified sexual activities" are repealed.

~~**SECTION 2:CODIFICATION.**~~

~~The codifier shall codify the provisions of this ordinanceOrdinanceupon passage as Chapter 14, Article IV, Division 5, Section 14-141 through 14-168166 of the Fort Smith Municipal Code, replacing the prior codifications in the Fort SmithMunicipal Code with those designations repealed hereby.~~

SECTION 2:

Sections 14-141 through 14-166 of Chapter 14, Article IV, Division 5, are repealed and replaced as follows; and two new sections, i.e. Sections 14-167 and 14-168 are added.

SECTION14-141.Purpose.

It is the purpose of this ~~ordinance~~ division to regulatesexually oriented businesses and related activities to promote thehealth, safety, morals, and general welfare of the citizens of theCity,and to establish reasonable and uniform regulations toprevent the deleterious location and concentration of sexuallyoriented businesses within the City. The provisions of this ~~ordinance~~ division have neither the purpose nor effect of imposing alimitation or restriction on the content of any communicativematerials, including sexually oriented materials. Similarly, it isneither~~not~~ the intent nor theeffect of this ~~ordinance~~ division to restrict or denyaccess by adults

to sexually oriented materials protected by theFirst Amendment, or to deny access by the distributors andexhibitorsof sexually oriented entertainment to their intendedmarket. Neither is it the intent nor effect of this ordinance tocondone or legitimize the distribution of obscene materials.

SECTION14-142.~~(B)~~Findings.

Based on evidence concerning the adversesecondary effects of adult uses on the community presented inhearings and in reports made to the Board of Directors, and onfindings incorporated in the cases of *Cityof Eriev.Pap's A.M.*, (~~,~~(98-1161, March 29, 2000); *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S.50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991);*Arcara v. Cloud Books, Inc.,* 478 U.S. 697~~.~~ (1986); *California v.LaRue,* 409 U.S. 109 (1972); *Iacobucci v. City of Newport, KY~~Ky~~, 479*U.S. 92 (1986); *United States v. O'Brien,* 391 U.S. 367 (1968); *DLS,Inc. v. City of Chattanooga,* 107 F.3d 403 (6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc.v. City of Arlington,* 65 F.3d 1248 (5th Cir. 1995); and *SouthFlorida Free Beaches, Inc. v. City of Miami,* 734 F.2d 608 (11th Cir. 1984), as well as studies conducted in other cities including, but not limited to:~~,~~ Oklahoma City, Oklahoma; Phoenix, Arizona;Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California;Austin, Texas; Cleveland, Ohio; Beaumont, Texas; and Seattle, Washington; and findings reported inthe Final Report of theAttorney General's Commission on Pornography (1986), the Report ofthe Attorney General's Working Group on the Regulation of SexuallyOriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Boardof Directors finds that:

1. ~~(1)~~ Sexually oriented businesses lend themselves toancillary unlawful and unhealthy activities that are uncontrolledby the operators of the establishments. Further, there ispresently no mechanism to make owners of these establishmentsresponsible for the activities that occur on their premises.
2. ~~(2)~~ Crime statistics show that all types of crimes,especially sex-related crimes, occur with more frequency inneighborhoods where sexually oriented businesses

are located.*See, e.g.,* Studies~~Study~~ ofthe cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.~~.~~

3. ~~(3)~~Sexual acts, including masturbation, and oral andanal sex, occur at sexually orientedbusinesses, especially thosewhich provide private or semi-private booths or cubicles forviewing films, videos, or live sex shows. *See, e.g., California* v.*LaRue,* 409 U.S. 109, 111 (1972); *See also*Final Report of theAttorney General's Commission on Pornography (1986) at 377.

4. ~~(4)~~ Offering and providing such booths and/or cubiclesencourages such activities, which creates unhealthy conditions.*See, e.g.*, Final Report of the Attorney General's Commission onPornography (1986) at 376-77.

5. ~~(5)~~ Persons frequent certain adult theaters, adultarcades, and other sexually oriented businesses, for the purpose ofengaging in sex within the premises of such sexually orientedbusinesses. *See, e.g., Arcara v. Cloud Books, Inc.,*478 U.S. 697,698 (1986); *See also* Final Report of the Attorney General'sCommission on Pornography (1986) at 376-77.

6. At least fifty communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to: syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. *See, e.g.*, Study of Fort Myers, Florida.

7. ~~(6)~~ For the period ending December~~,~~ 1996, the total numberof reported cases of AIDS in the United States caused by theimmunodeficiency virus (HIV) was 581,429. *See, e.g.,* Statistics ofthe U.S. Department of Health and Human Services, Centers forDisease Control and Prevention.

8. ~~(7)~~ From 1983 through September 12, 1997, the cumulativenumber of HIV-positive persons reported in Arkansas is 3,811. Ofthat number, 2,300 meet AIDS case definitions.Since 1983 and tothe present, there has been an increasing cumulative number ofpersons testing positive for HIV antibody test in Arkansas. *See*Arkansas HIV/AIDS Report September 12, 1997.

9. ~~(8)~~ The total number of cases of early (less than oneyear) syphilis in the United States reported during the ten yearperiod 1985-1995 was 367,796. *See, e.g.,*

Statistics of the U.S.Department of Health and Human Services, Centers for DiseaseControl and Prevention.

10. ~~(9)~~ The number of cases of gonorrhea in the United Statesreported annually remains at a high level, with a total of1,256,297 cases reported during the period 1993-1995. *See, e.g.*, Statistics of the U.S. Department of Health and Human Services,Centers for Disease Control and Prevention.

11. ~~(10)~~ The Surgeon General~~surgeon general~~ of the United States~~states~~ in hisreport of October 22, 1986, advised the American public that AIDSand HIV infection may be transmitted through sexual contact,intravenous drug use, exposure to infected blood and bloodcomponents, and from an infected mother to her newborn.

12. ~~(11)~~ According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. *See, e.g.*, Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

13. ~~(12)~~ Sanitary conditions insome sexually orientedbusinesses are unhealthy, in part, because the activities conductedthere are unhealthy, and, in part, because of the unregulatednature of the activities and the failure of the owners and theoperators of the facilities to self-regulate those activities andmaintain those facilities. *See, e.g.,* Final Report of the AttorneyGeneral's Commission on Pornography (1986) at 377.

14. ~~(13)~~ Numerous studies and reports have~~shave~~ determined thatbodily fluids, including semen and urine, are found in the areas ofsexually oriented businesses where persons view "adult" orientedfilms. *See, e.g.,* Final Report of the Attorney General'sCommission on Pornography (1986) at 377.

15. ~~(14)~~ Nude dancing in adult establishments encouragesprostitution, increases sexual assaults, and attracts othercriminal activity. S*ee, e.g., Barnesv. Glen Theatre,* 501 U.S.560, 583 (1991).~~1991).~~

16. ~~(15)~~ Nude dancing inadult establishments increases thelikelihood of drug-dealing and drug use. *See, e.g., Kev, Inc.v.Kitsap County,* 793 F.2d 1053, 1056 (9th Cir. 1986).

17. ~~(16)~~ The findings noted in paragraphs numbered (1)through (16~~15~~) raise substantial governmental concerns.

18. ~~(17)~~ Sexually oriented businesses have operationalcharacteristics which should be reasonably regulated in order toprotect those substantial governmental concerns.

19. ~~(18)~~ A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

20. ~~(19)~~ Removal of doors on adult booths and requiringsufficient lighting on the premises with adult booths advances asubstantial governmental interest incurbing the illegal andunsanitary sexual activity occurring in adult establishments.

21. ~~(20)~~The disclosure of certain information by thosepersons ultimately responsible for the day-to-day operation andmaintenance of the sexually oriented business, where such information is substantially related to thesignificantgovernmental interest in the operation of such uses, will aid inpreventing the spread of sexually transmitted diseases and criminalactivity.

22. ~~(21)~~ It is desirable in the prevention of the spread ofcommunicable diseases to obtain a limited amount of informationregarding certain employees who may engage in the conduct thisordinance is designed to prevent or who are likely to be witnessesto such activity.

23. ~~(22)~~ The fact that an applicant for a sexually orientedbusiness license has been convicted of a sex-related crime leads tothe rational assumption that the applicant may engage in thatconduct in contravention to this ~~ordinance~~ division.

24. ~~(23)~~The barring of such individuals from operation oremployment in sexually oriented businesses for a period of time fora previous felony conviction serves as

a deterrent to and preventsconduct which leads to the transmission of sexually transmitteddiseases.

25. ~~(24)~~The general welfare, health, morals, and safety ofthe citizens of this City will be promoted by the enactment of thisordinance.

~~SECTION 3:SEXUALLY ORIENTED BUSINESSES.~~

SECTION~~Section~~ 14-143.~~141~~Definitions.

ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated orelectronically, electrically, or mechanically controlled still ormotion picture machines, projectors, or other image-producingdevices are maintained to showimages to five or fewer persons permachine at anyone time, and where the images so displayedaredistinguished or characterized by an emphasis on matter~~the~~depicting, ~~or~~ describing, or relating to ~~of~~"specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE or ADULT VIDEO STOREmeans a commercialestablishment that, as its principal business purpose, offers forsale or rental, for any form of consideration,anyone or more of thefollowing:

1. ~~(1)~~ books, magazines, periodicals, or other printedmatter, or photographs, films, motion pictures~~picture~~,video cassettes orvideoreproductions, slides, or other visual representations, whether for viewing off-premises or on-premises, thatdepict or describe "specified sexual activities" or "specifiedanatomical areas";~~areas";~~ or
2. ~~(2)~~ instruments, devices, or paraphernalia that aredesigned for use in connection with "specified sexual activities."

The determination of the principal business purpose of anestablishment is based on the visual inventory or commercialactivity of the establishment; provided, there shall be arebuttablepresumption that any commercial establishment whichutilizes more than ten percent (10%)~~%)~~ of total display area formerchandise of any type described inthis definition shall bedeemed to be engaged in the business of an *adult bookstore* or *adultvideo store* as its principal business purpose.

ADULT CABARET means a nightclub, bar, restaurant, or similarcommercial establishment that presents:

1. ~~(1)~~ persons who appear in a state of nudity or semi-nudity; or

2. ~~(2)~~ liveperformances that are characterized by the display of any portion of the female breast or any portion of the human buttocks, or which are characterized by the exposure of"specified anatomical areas" or by "specified sexual activities"; or

3. ~~(3)~~ films, motion pictures, video cassettes, slides, orother photographic reproductions that are characterized by thedepiction or description of "specified sexual activities" or"specified anatomical areas".

ADULT MOTEL means a hotel, motel, or similar commercialestablishment that:

1. ~~(1)~~ offers accommodation to the public for any form ofconsideration and provides patrons with closed-circuit televisiontransmissions, films, motion pictures, video cassettes, slides, orother photographic reproductions, that are characterized by thedepiction or description of "specified sexual activities" or"specified anatomical areas", and has a sign visible from thepublic right of way that advertises the availability of this typeof adult photographic reproductions; or

2. ~~(2)~~ offers a sleeping room for rent for a period of time thatis less than twenty-four (24) hours; or

3. ~~(3)~~ allows a tenant or occupant of a sleeping room to subrentthe room for a period of time that is less than twenty-four (24)hours.

ADULT MOTION PICTURE THEATER means a commercial establishmentwhere, as its principal business purpose, for any form ofconsideration, films, motion pictures, video cassettes, slides, orsimilar photographic reproductions are regularly presented that arecharacterized by their emphasis upon the depiction or description of "specified sexualactivities"~~activities"~~or "specified anatomical areas."

ADULT THEATER means a theater, concert hall, auditorium, orsimilar commercial establishment that regularly features personswho appear, in person, in a state of nudity, semi-nudity, and/or live performances that are characterized bythe exposure of"specified anatomical areas" or by "specified sexual activities."

CLEAR AND CONVINCING means evidence so clear, direct andconvincing as to enable the Director to come to a clear convictionas to the allegations sought to be established.

~~DIRECTOR~~ Chief of Police means the Chief of Police of the City of Fort Smith~~,~~ and his or her designee ~~such employee(s) of the police department as he may designateto perform the duties of the Director under this ordinance~~.

EMPLOYEE means a person who performs any service on thepremises of a sexually oriented business on a full time, part time,contract basis, or independent basis, whether or not ~~the~~ such person is denominated an employee, independent contractor, agent, orotherwise, and whether or not ~~the said~~ such person is paid a salary,wage, or other compensation by the operator of said business."Employee" does not include a person on the premises solely for repair,maintenance, or cleaning of the premises or equipment on thepremises, or for the delivery of goods to the premises, nor does"employee" include a person exclusively on the premises as a patronor customer.

ESCORT means a person who, for monetary or other consideration, agreesor offers to act as a companion, guide, or date for another person,or who, for monetary consideration, agrees or offers to modellingerie or to engage in a "specified sexual activity" and/or performin a state of nudity or semi-nudity for another person off thepremises of a sexually oriented business.

ESCORT AGENCY means a person or business association whofurnishes, offers to furnish, or advertises to furnish escorts asone of its primary business purposes for a fee, tip, or otherconsideration.

ESTABLISHMENT means and includes any of the following:

1. ~~(1)~~ the opening or commencement of any sexually orientedbusiness as a new business;
2. ~~(2)~~ the conversion of an existing business, whether ornot a sexually oriented business, to any sexually orientedbusiness;
3. ~~(3)~~ the addition~~additions~~ of any sexually oriented business toany other existing sexually oriented business; or
4. ~~(4)~~ the relocation of any sexually oriented business.

INTENTIONALLY means that it was the conscious object of theperson to engage in theconduct alleged, or to cause the resultalleged.

KNOWINGLY means that the person was aware that his or her conduct wasof the nature alleged, or that he or she was aware that it was practicallycertain that his or her conduct would

cause the result alleged, or that he or she consciously disregarded a substantial risk that his conduct wouldcause the result alleged, or that the result alleged would occur.

LICENSED DAY-CARE CENTER means a facility licensed by theState of Arkansas, whether situated within the City or not, thatprovides care, training, education, custody, treatment, orsupervision for more than twelve (12) children under fourteen (14)years of age, where suchchildren are not related by blood,marriage, or adoption to the owner or operator of the facility, forless than twenty-four (24) hours a day, regardless of whether ornot the facility is operated for a profit or charges for theservices it offers.

LICENSEE means a person in whose name a license has beenissued, as well as the individual listed as an applicant on theapplication for a license.

NUDE MODEL STUDIO means any place where a person who appearsin a state of nudity or semi-nudity, or who displays "specifiedanatomical areas", is provided to be observed, sketched, drawn,painted, sculptured, photographed, or similarly depicted by otherpersons for consideration, with the exception of those persons andplaces exempted by Section 14-166~~164~~of this ~~enactment~~division.

NUDITY or a STATEOF NUDITY means the showing of any "specifiedanatomical area.".

OPERATOR means any person in a supervisory capacity overemployees and/or contractors, excluding maintenance, delivery, orcleaning personnel, at the sexually oriented business, and anyperson responsible for security and/or any entrance/exit of thesexually oriented business.

PERSON means an individual, proprietorship, limitedpartnership, general partnership, corporation, association, limited liability company, or other legal entity.

PREMISES means the real property upon which the sexuallyoriented business is located, and all appurtenances thereto andbuildings thereon, including, but not limited to, the sexuallyoriented business, the grounds, private walkways, and parking lotsand/or parking garages adjacent thereto, under the ownership,control, or supervision of the licensee, as described in theapplication for a business license pursuant to Section IV of this~~ordinance~~division;

SEMI-NUDE OR SEMI-NUDITY means the appearance of any part ofthe female areola or nipple, or the showing of the perineum analregion, in anything less than a fully opaque covering.

SEXUAL ENCOUNTER CENTER means a business or commercialenterprise that, as one of its principal business purposes, offersfor any form of consideration:

1. ~~(1)~~ physical contact in the form of wrestling or tumblingbetween persons of the oppositesex; or

2. ~~(2)~~ activities between male and female persons and/orpersons of the~~'the~~ same sex when oneor more of the persons is in astate of nudity.

SEXUALLY ORIENTED BUSINESS means an adult arcade, adultbookstore or adult video store, adult cabaret, adult motel, adultmotion picture theater, adult theater, escort agency, nude modelstudio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS means:

1. ~~(1)~~ the human male genitals in a discernibly turgidstate, even if fully and opaquely covered;

2. ~~(2)~~ less than completely and opaquely covered humangenitals or anus.

SPECIFIED CRIMINAL ACTIVITY means carnal abuse,~~rape,~~ sexual abuse, violation of a minor, sexual misconduct,rape,sexualsolicitation of a minor, sodomy, prostitution, promotionofprostitution, sale, distribution, or display of harmful material toa minor, sexual performanceby a child, possession or distributionof child pornography, and/or patronizing prostitution; in thecaseof any such conviction, itwill constitute specified criminalactivity if:

(a) less than one (1) year has elapsed sincethe date of conviction or the date of releasefrom confinement imposed for the conviction,whichever is the later date, if the convictionis of a misdemeanor offense; or

(b) less than five (5) years have elapsedsince the date of conviction or the date ofreleasefrom confinement, whichever is thelater date, if the conviction is of a felonyoffense.

The fact that a conviction is being appealed shall have noeffect on the disqualification of the applicant, with the exceptionof a *de novo* appeal from ~~Municipal~~District to Circuit Court. In the case ofa *de novo* appeal from ~~Municipal~~District Court to Circuit Court, adisqualification is not effective until such time as there is aconviction in Circuit Court. Should a conviction be reversed onappeal, or in the case of a *de novo* appeal from ~~Municipal~~ District Court toCircuit Court, should the Circuit Court fail to convict, then thereisno "conviction" for purposes of this ~~ordinance~~division.

SPECIFIED SEXUAL ACTIVITIES means and includes any of thefollowing:

1. Actual or simulated sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation or fondling of unclothed genitals, pubic region, buttock, or female breast; flagellation or torture in a sexual relationship; and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy, zooerasty;
2. Human genitals in the state of sexual stimulation, arousal, or tumescence;
3. Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus, or masturbation;
4. Fondling or touching of human genitals, pubic regions or pubic hair, buttocks, female breasts;
5. Situations involving persons, any of whom are nude, clad in undergarments, or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint of any such person;
6. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being;
7. Human excretion, urination, menstruation, vaginal or anal irrigation; or

Any combination of subsections (1) through (7) of this definition.~~(1) any act of sexual gratification involving the touching by one person, either directly or through clothing, of the sex organs, or buttocks, or anus of another person;~~

~~(2) any act of sexual gratification involving the touching by one person, either directly or through clothing, of the female breast of another person;~~

~~(3) intercourse, oral copulation, or sodomy, whether actual or simulated;~~

~~(4) masturbation, actual or simulated; or~~

8. ~~(5) excretory functions as part of or in connection with any of the activities set forth in (1) through (4) above.~~

SUBSTANTIAL ENLARGEMENT of a sexually oriented business meansthe increase infloor areas occupied by the business by more thantwenty-five (25%) percent, as the floor areasexist on theeffective date of this ordinance.~~Ordinance.~~

TRANSFER OF OWNERSHIP OR CONTROL of a sexually orientedbusiness meansand includes any of the following:

1. ~~(1)~~ the sale, lease, or sublease of the business;
2. ~~(2)~~ the transfer of securities that form a controllinginterest in the business, whether bysale, exchange, or similar means; or
3. ~~(3)~~ the establishment of a trust, gift, or other similarlegal device that transfers the ownership or control of thebusiness, except for transfer by bequest or other operation of lawupon the death of the person possessing the ownership or control.

SECTION14-144.~~142~~Classification.

Sexually oriented businesses are classified as follows:

1. ~~(1)~~ adult arcades;
2. ~~(2)~~ adult bookstores or adult video stores;~~,~~
3. ~~(3)~~ adult cabarets;
4. ~~(4)~~ adult motels;
5. ~~(5)~~ adult motion picture theaters;
6. ~~(6)~~ adult theaters;
7. ~~(7)~~ escort agencies;
8. ~~(8)~~ nude model studios; and
9. ~~(9)~~ sexual encounter centers.

SECTION 14-145.~~143~~License Required.

(A) It shall be unlawful:

1. ~~(1)~~ For any person to operate a sexually orientedbusiness without a valid sexually oriented business license issuedby the ~~Director~~Chief of Police pursuant to this ordinance;
2. ~~(2)~~ For any person who operates a sexually orientedbusiness to employ a person to work and/or perform services on thepremises of the sexually oriented business, if such employee is notin possession of a valid sexually oriented business employeelicense issued to such employee by the ~~Director~~Chief of Police pursuant to thisordinance;

3. ~~(3)~~ For any person to obtain employment with a sexuallyoriented business if such person is not in possession of a validsexually oriented business employee license issued to such personby the ~~Director~~ Chief of Police pursuant to this ordinance.

4. ~~(4)~~ It shall be a defense to subsections (2) and (3) ofthis Section if the employment is of limited duration and for thesole purpose of repair, maintenance and/or cleaning of machinery,equipment, or the premises.

5. ~~(5)~~ Any person convicted of the violation of anyprovision within this subsection shall be subject to the generalpenalties as set out in Section 1-9of the Fort Smith MunicipalCode.

(B) An application for a sexually oriented business licensemust be made on a form provided by the City. Except for a sexuallyoriented business lawfully operating on the date this division isenacted, the application must be accompanied by a sketch or adiagram showing the configuration of the premises, including astatement of total floor space occupied by the business. Thesketch or diagram need not be professionally prepared, but must bedrawn to a designated scale or drawn with marked dimensions of theinterior of the premises to an accuracyof plus or minus six inches. Prior to issuance of a license, the premises must beinspected by the fire department and code enforcement department.

(C) An application for a sexually oriented business employeelicense must be made on a form provided by the City.

(D) All applicants for a license must be qualified accordingto the provisions of this ~~ordinance.~~division. The application may request,and the applicant shall provide, such information as to enable theCity to determine whether the applicant meets the qualificationsestablished under this ~~ordinance~~division. The applicant has an affirmativeduty to supplement an application with new information receivedsubsequent to the date the application was deemed completed.

(E) If a person who wishes to own or operate a sexuallyoriented business is an individual, he or she must sign the applicationfor a business license as applicant. If a person who wishes tooperate a sexually oriented business is other than an individual,an authorized representative of the partnership, corporation, or limited liability company must sign the application for a business licenseas applicant.

(F) Applications for a business license, whether original orrenewal, must be made to the ~~Director~~Chief of Police. Applications must besubmitted to the Office~~office~~ of the ~~Director,~~Chief of Police ~~the Director's designee,~~during regular working hours.Application forms shall be suppliedby the ~~Director~~Chief of Police, and shall only request the following information:

1. ~~(1)~~ The name, street address, ~~(~~and mailing address, if different,~~)~~ of the applicant(s);
2. ~~(2)~~ A recent photograph of the individual orrepresentative submitting the application form;
3. ~~(3)~~ The applicant's driver's license number, SocialSecurity number, and/or his/her state or federally issued taxidentification number;
4. ~~(4)~~ The name under which the establishment is to be operated and a general description of the services to be provided; ~~(a)~~ If the applicant intends to operate the sexually oriented business under a name other than that of the applicant,~~;~~ he or she must state the sexually oriented business'~~business's~~ fictitious name;
5. ~~(5)~~ Whether the applicant has been convicted, or isawaiting trial on pending charges, of a "specified criminalactivity" as defined in Section 14-143~~141~~, and, if so, the "specifiedcriminal activity" involved, the date, place, and jurisdiction ofeach;
6. ~~(6)~~ Whether the applicant has had a previous licenseunder this ~~ordinance~~division or other similar sexually oriented businessordinance from another city~~City~~, county, or state or politicalsubdivision~~susdivision~~ denied, suspended, or revoked, including the name andlocation of the sexually oriented business for which the businesslicense was denied, suspended, or revoked, as well as the date ofthe denial, suspension, or revocation, and whether the applicant is,or has been, a partner in a partnership or an officer, director, orprincipal stockholder of a corporation, or a member of a limitedliability company that is, or was, licensed under a sexually orientedbusiness ordinance whose business license has previously beendenied, suspended, or revoked, including the name and location ofthe

sexually oriented business for which the business license wasdenied, suspended, or revoked, as well as the date of denial,suspension, or-revocation;

7. ~~(7)~~ Whether the applicant holds any other licenses underthis ~~ordinance~~division or other similar sexually oriented businessordinance from another city~~City~~or county in this or any other stateand, if so, the names and locations of such other licensedbusinesses;

8. ~~(8)~~ The single classification of license, as found inSection 14-144~~142~~, for which the applicant is filing;

9. ~~(9)~~ The telephone number of the establishment;

10. ~~(10)~~ The address, and legal description of the tract ofland on which the establishment is to be located;

11. ~~(11)~~ If the establishment is in operation, the date onwhich the owner(s) acquired the establishment for which thebusiness license is sought, and the date on which the establishmentbegan operations as a sexually oriented business at the locationfor which the business license is sought;

12. ~~(12)~~ If the establishment is notin operation, theexpected startup date (which shall be expressed in number of daysfrom the date of issuance of the business license). If theexpected startup date is to be more than ten (10) days followingthe date of issuance ofthe business license, then a detailedexplanation of the construction, repair, or remodeling work, or othercause of the expected delay, and a statement of the owner's timeschedule and plan for accomplishing the same;

13. ~~(13)~~ If an applicant wishes to operate a sexuallyoriented business, other than an adult motel, which shall exhibiton the premises, in a viewing room or booth of less than onehundred fifty (150) square feet of floor space, films, videocassettes, or other video reproductions, which depict "specified sexual activities" or "specified anatomical areas", then the applicantshall comply with the application requirements set forth in Section 14-160~~158~~ ~~hereunder~~.

(G) Each application for a business license shall beaccompanied by the following:

1. ~~(1)~~ Payment of the application fee in full;

2. ~~(2)~~ If the establishment is an Arkansas corporation,limited liability company, orlimited partnership, a certificate of good standing issued by the Office~~office~~ of the Secretary of State ofArkansas;

3. ~~(3)~~ If the establishment is a foreign corporation, acertified copy of the certificate of authority to transact businessin this state;

4. ~~(4)~~ Except for a sexually oriented business lawfullyoperating on the date this division isenacted, a currentcertificate and straight-line drawing prepared within thirty(30)days prior to application by a registered land surveyor depictingthe property lines and the structures containing any existingsexually oriented businesses within 1,000 feet of the followingtypes of property: child care facility, playground, public library, recreational area or facility, walking trail, the property lines of any established church or other place of public worship;public or private elementary, secondary or post-secondary school;public park; hospital; licensed day care center; and entertainment businessthat is oriented primarily towards children within 1,000 feet ofthe property to be certified; and, the property lines of anyestablished residential district within 1,000~~500~~ feet of the property tobe certified. For purposes of this Section, a use shall beconsidered existing or established if it is in existence at thetime an application is submitted.

5. ~~(5)~~ Any of items (2) through (4) shall not be requiredfor a renewal application if the sexually oriented business waslawfully operating at the time this division was enacted or theapplicant states that the documents previously furnished the~~Director~~ Chief of Police with the original application or previous renewals thereofremain correct and current.

(H) Applications for an employee license to work and/orperform services in a sexually oriented business, whether originalor renewal, must be made to the ~~Director~~Chief of Police by theperson or adesignated representative of the person to whom the employeelicense shall issue, except as otherwise provided in this~~ordinance~~~~Ordinance~~division.Applications transmitted by facsimile will be acceptedfor

this purpose. Each application for an employee license shall beaccompanied by proof of payment of the application fee in full. Aphotocopy of the check or money order will be accepted for thispurpose if transmitting the application by facsimile, so long as payment is actually received within five (5) working days.Application forms shall be supplied by the ~~Director~~Chief of Police. Applications must be submitted to the Office~~office~~ of the ~~Director~~Chief of Police ~~or the Director'sdesignee~~. Each applicant shall be required to give only thefollowing information on the application form:

1. ~~(1)~~ The applicant's given name, and any other names bywhich the applicant is or has been known, including "stage" namesand/or aliases;
2. ~~(2)~~ Age, and date and place of birth;
3. ~~(3)~~ Height, weight, hair color, and eye color;
4. ~~(4)~~ Present residence address and telephone number;
5. ~~(5)~~ Present business address and telephone number;
6. Driver's~~(6) Date, issuing state, and number of driver's~~ license, or other state-issued identification card information, to include number, issuing state and expiration date;
7. ~~(7)~~ Social Security ~~N~~number; and
8. ~~(8)~~ Proof that the individual is at least eighteen (18)years old.

(I) Attached to the application form for an employee licenseto work and/or perform services in a sexually oriented businessshall be the following:

1. ~~(1)~~ A color photograph of the applicant clearly showingthe applicant's face. If application is made by facsimile, thephotograph does not have to be a color photograph, but the colorphotograph shall be submitted within five (5) days.
2. ~~(2)~~ A statement whether the applicant has been convictedof a "specified criminal activity" as defined in Section 14-143~~141~~,and, if so, the "specified criminal activity" involved, the date,place, and jurisdiction of each.

(J) Every application for a license shall contain a statementunder oath that the applicant has personal knowledge of theinformation contained in the application, that the

informationcontained therein ~~and furnished therewith~~ is true and correct, andthat the applicant is aware of the requirements of this ~~ordinance~~division.

(K) A separate application and business license shall berequired for each sexually oriented business classification as setforth in Section 14-144.~~142.~~

(L) The fact that a person possesses other types of state orCity permits and/or licenses does not exempt him from therequirement of obtaining a sexually oriented business or employeelicense.

SECTION14-146.~~144~~Issuance of License.

(A) Upon the filing of an application for a sexually orientedbusiness employee license, the ~~Director~~ Chief of Police shall issue a temporarylicense to said applicant. In the case of an application filed byfacsimile transmission, proof of the facsimile transmittalshallsuffice as a temporary license until the actual temporary licenseis issued. The application shall then be referred to theappropriate City departments for investigation to be made on theinformation contained in the application. The application processshall be completed within thirty (30) days from the date of thecompleted application. After the investigation, the ~~Director~~Chief of Police shallissue an employee license, unless itisdetermined by apreponderance of the evidence that one or more of the followingfindings is true:

1. ~~(1)~~ The applicant and/or the applicant's representativehas intentionally failed to provide the information reasonablynecessary for issuance of the license or has intentionally answeredfalsely a material question or request for information on theapplication form;
2. ~~(2)~~ The applicant isunder the age of eighteen (18)years;
3. ~~(3)~~ The applicant has been convicted of a "specifiedcriminal activity" as definedin Section 14-143~~141~~ of this ~~ordinance~~division;
4. ~~(4)~~ The sexually oriented business employee license is tobe used for employment in a business prohibited by local or statelaw, statute, rule, or regulation, orprohibited by a particularprovision of this ~~ordinance~~division; or

5. ~~(5)~~ The applicant has had a sexually oriented businessemployee license revokedby the City within one (1) year of thedate of the current application.

In the event that the ~~Director~~Chief of Police determines preliminarily thatan applicant is not eligible fora sexually oriented businessemployee license, the applicant shall be given notice in writing asset forth in §Section 14-167~~165~~ by certified mail, return receipt requested,of each of the above reasonswhich support such preliminary denialwithin thirty (30) days of the receipt of the completedapplicationby the ~~Director~~Chief of Police.The applicant shall have ten (10) days afterreceipt of the notice tomake modifications necessary for purposesof complying with this section and to reapply for a sexuallyoriented business employee license. After ten (10) days, thedenial will become final unless such modification and reapplicationis made by the applicant. However, if additional timeis shown bythe applicant to be reasonably necessary to comply with thissection, the ~~Director~~Chief of Police may grant an extension, not to exceed anadditional thirty (30) days.Upon receipt of modifications andreapplication by the ~~Director~~Chief of Police, the ~~Director~~Chief shall issue an employeelicense,unless it is determined by a preponderance of the evidencethat the modifications fail to remedythe original basis for thepreliminary denial by the ~~Director~~Chief.If such determination is madeby the ~~Director~~Chief, ~~the Director~~ then ~~again must give~~ notice in writing must be given again as set forth in §Section14-167~~165~~ by certified mail, return receipt requested,to the applicant of the reasons for the denial, and said denial isfinal and appealable.

A final denial, suspension, or revocation by the ~~Director~~Chief of Police of a license issued pursuant to this Section shall be subject to thesame rights as those set forth in subsection (I) of this Section.

(B) A license issued pursuant to subsection (A) of thisSection, if granted, shall state on its face the name of the personto whom it is granted, the expiration date, and the address of thesexually oriented business.The employee shall keep the licenseavailable for inspection at the establishment upon lawful requestat all times while engagedin employment or performing services onthe sexually oriented business premises.

(C) A license issued pursuant to subsection (A) of thisSection shall be subject to annual renewal upon the writtenapplication of the applicant and a written finding determined by apreponderance of the evidence by the ~~Director~~ Chief of Police that the applicant has not been convicted of any "specified criminal activity" asdefined in this ordinance, or committed any act during theexistence of the previous license, which would be grounds to denythe initial license application.The decision whether to renew anemployee license shall be made within thirty (30) days of thecompleted application. The renewal of a license shall be subject to the fee as set forth in§~~Section~~14-147~~145~~. The non-renewal of alicense shall be subject to the same notice, modification, andreapplication, and appeal rights as set forth elsewhere in thisSection.

(D) If application is made for a sexually oriented businesslicense, the ~~DirectorChief of Police~~ shallapprove or deny issuance of the licensewithin forty-five (45) days of receipt of the completedapplication. The ~~Director~~Chief of Police shall issue a license to an applicantunless it is determined by apreponderance of the evidence that oneor more of the following findings is true:

1. ~~(1)~~ An applicant has intentionally failed to provide theinformation reasonably necessary for issuance of the license or hasintentionally answered falsely a material question or request forinformation on the application form;
2. ~~(2)~~ An applicant is under the age of eighteen (18) years;
3. ~~(3)~~ An applicant is overdue in payment to the City oftaxes, fees, fines, orpenalties assessed against or imposed uponhim/her in relation to any business. An applicant denied a licenseon this basis will have all rights and remedies set forth inSection14-146~~144~~(H) to attempt to remedy any such deficiency and reapply for alicense;
4. ~~(4)~~ An applicant has been convicted of a "specifiedcriminal activity" as definedin Section 14-143;~~141;~~
5. ~~(5)~~ Except for a sexually oriented business lawfully operating onthe date this division isenacted, the premises to be used for thesexually oriented business do not comply withthe locationrestrictions set forth in Section 14-155;~~153;~~

6. ~~(6)~~ The premises to be used for the sexually orientedbusiness have not been approved by the fire department and the codeenforcement department as being in compliance with applicable lawsand ordinances;

7. ~~(7)~~ An applicant has been finally denied, afteropportunity to exercise due process rights, a license by the Cityto operate a sexually oriented business for any of the above listedreasons within the preceding twelve (12) months, or his or her license tooperate a sexually oriented business has been finally revoked,after opportunity to exercise due process rights, for any of thereasons listed in Sections 14-151~~149~~ and 14-152~~150~~ within the precedingtwelve (12) months.

(E) A license issued pursuant to subsection (D) of thisSection, if granted, shall state on its face the name of the personor persons to whom it is granted, the expiration date, the addressof the sexually oriented business, and the Section 14-144~~142~~ classification for which the license is issued. The license shallbe posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at anytime.

(F) The fire department and code enforcement department shallcomplete their certification that the premises are in compliance ornot in compliance within twenty (20) days of receipt of thecompleted application by the ~~Director~~Chief of Police. The certification shall bepromptlypresented to the ~~Director~~Chief of Police.

(G) A sexually oriented business license shall issue for onlyone classification, as set forth in Section 14-144.~~142.~~

(H) In the event that the ~~Director~~Chief of Police determines preliminarilythat an applicant is not eligible for a sexually oriented businesslicense, the applicant shall be given notice in writing bycertified mail, return receipt requested, of each of the abovereasons which support such preliminary denial within forty-five(45) days of the receipt of the completed application by the~~Director~~Chief of Police. The applicant shall have ten (10) days after receipt ofthe notice to make modifications necessary for purposes ofcomplying with this section and to reapply for a sexually orientedbusiness license.After ten (10) days, the denial will becomefinal unless such modification and reapplication is made by theapplicant. However, if additional time is shown by the applicantto be reasonably necessary to comply with this section, the~~Director~~Chief of Police may grant an extension,

not to exceed an additional thirty(30) days. Upon receipt of modifications and reapplication by the~~Director~~Chief of Police, ~~the Director~~ he or she shall issue a license, unless it isdetermined by a preponderance of the evidence that themodifications fail to remedy the original basis for the preliminarydenial by the ~~Director~~Chief of Police. If such determination is made ~~by theDirector~~, the ~~Director~~Chief of Police again must give notice in writing bycertified mail, return receipt requested, to the applicant of thereasons for the denial, and said denial is final and appealable.

(I) An applicant may appeal the decision of the ~~Director~~Chief of Police regarding a final denial to the Board of Directors by filing awritten notice of appeal with the City Clerk within fifteen (15)days after service of notice upon the applicant of the ~~Director's~~ denial decision. The notice of appeal shall be accompanied by amemorandum or other writing setting out fully the grounds for suchappeal and all arguments in support thereof. The ~~Director~~Chief of Police may,within fifteen (15) days of service upon him or her of the applicant'smemorandum, submit a memorandum in response to the memorandum filedby the applicant on appeal to the Board of Directors.Afterreviewing such memoranda, as well as the ~~Director's~~ writtendecision of the Chief of Police, if any, and exhibits submitted to ~~the Director~~him or her, the Boardof Directors shall vote either to uphold or overrule the ~~Director's~~decision to deny.Such vote shall be taken within twenty-one (21) calendardays after the date on which the City Clerk receives the notice ofappeal.Judicial review of a denial by the Director and Board ofDirectors may be ~~made~~sought pursuant to Section 14-153~~151~~ of this ~~ordinance~~division.During the pendency of any appeal, the parties shall maintain thestatus quo, unless in the interim, a court issues an injunctionpursuant to Section 14-168.~~166.~~

(J) A license issued pursuant to subsection (D) of thisSection shall be subject to annual renewal upon the writtenapplication of the applicant and a written finding determined by apreponderance of the evidence by the ~~Director~~Chief of Police that the applicanthas not been convicted of any "specified criminal activity" asdefined in this ~~ordinance~~division, or committed any act during theexistence of the previous license which would be grounds to denythe initial license application. The decision whether to renew abusiness license shall be made within forty-five (45) days of thecompleted application. The renewal of a license shall be subjectto the fee as set forth in Section 14-147.~~145.~~

Any determination by the ~~Director~~Chief of Police with respect to the renewalof a sexually oriented business license must conform to the dutiesand rights set forth in Section14-146~~144~~(H).Furthermore, the applicant fora renewal of a license shall have the same rights with respect torenewal as those set forth in Section 14-146(I). ~~144(1).~~During the pendency of anyappeal, the parties shall maintain the status quo, unless in theinterim, a court issues an injunction pursuant to ~~§~~Section14-168.~~166.~~

SECTION14-147.~~145~~Fees.

The annual fee for a sexually oriented business license,whether new or renewal, is Two Hundred Fifty ($250.00) Dollars.The annual fee for a sexually oriented business employee license,whether new or renewal, is Twenty-five ($25.00) dollars. Thesefees are to be used to pay for the cost of the administration andenforcement of this ~~ordinance~~division.

SECTION14-148.~~146~~Inspection.

(A) An applicant or licensee shall ~~permit~~ allow representatives ofthe police department, fire department, code enforcementdepartment,or other City or state departments or agencies, to inspect thepremises of a sexually oriented business for thepurpose of insuring compliance with the law, at any time it is openfor business.

(B) No person who operates a sexually oriented business, norhis agents or employees, shall refuse to promptly permit such lawfulinspection of the premises.

(C) A person convicted of violation of this Section shall be subject to the penalties as set out in Section 1-9 of the FortSmith Municipal Code.

SECTION14-149.~~147~~Expiration of License.

(A) Each business license shall expire one year from the dateof issuance and may be renewed only by making application asprovided in Section 14-145~~143~~, and by payment of the fee set forth inSection 14-147. ~~145.~~Upon filing of an application for renewal of abusiness license, the existing business license shall remain ineffect until a final determination on the application for renewalis made as set forth in Section 14-146~~144~~(J).

(B) Each sexually oriented business employee license shall expire one year from the date of issuance and may be renewed onlyby making application as provided in Section 14-145~~143~~, and by paymentof the fee set forth in Section 14-147. ~~145.~~Upon filing an applicationfor renewal of a business employee license, the existing licenseshall remain in effect until a final determination on theapplication for renewal is made as set forth in Section 14-146~~144~~(J).

(C) The applicant shall not be issued a license for one yearfrom the date of a final denial if such denial is not appealed, orfor one year from the date of a final determination ~~by theappropriate appeals tribunal~~ upon appeal if the denial is appealed and isupheld on that appeal.

Any determination with respect to the renewal of a licensemust conform to the duties and rights set forth in Section 14-146~~144~~of this division.

SECTION 14-150.~~148~~Assessment of ~~Fines~~Administrative Penalty.

The ~~Director~~Chief of Police shall ~~fine~~assess an administrative penalty to a business licensee and/or any personwho is an operator as the case may be, in the amount of Two HundredFifty Dollars ($250.00) for each offense where he determines byclear and convincing evidence that:

1. ~~1.~~ A business licensee or an individual operator knew orshould have known of the possession, use, or sale of controlledsubstances in the establishment;
2. ~~2.~~ A business licensee or an individual operator knew orshould have known of the sale, use, or consumption of alcoholicbeverages in the establishment;
3. ~~3.~~A business licensee or an individual operator knew orshould have known of nudity or "specified sexual activities"occurring in the establishment; or
4. ~~4.~~A business licensee or an individual operator knew orshould have known of a person under eighteen (18) years of ageentering the establishment.

It is not the intent of this ~~ordinance~~division for the ~~Director~~Chief of Police toimpose a fine upon a business licensee for the occurrence ofincidents outside the actual knowledge of the business licensee.

If the business licensee or the same individual operator of asexually oriented business is ~~fined~~assessed an administrative penalty (and such ~~fine(s) are~~ administrative penalty is upheldafter judicial review pursuant to Section 14-153~~151~~) for the sameoffense three times or more, and the dates of these offenses haveoccurred within a twelve (12) month period, the business licenseeor the individual operator, as the case may be, shall be suspendedin accordance with Section 14-151. ~~149.~~For purposes of Sections 14-150~~148~~,14-151~~149~~, and 14-152~~150~~, multiple incidents of the same nature, whichwould constitute a violation of any of the provisions set forth in(1~~)~~) through (4) above, shall be considered as only one (1) offenseif they occur within the same business day.

In the event that the ~~Director~~Chief of Police determines that one of theabove described offenses has occurred and determines that theassessment of an ~~fine~~administrative penalty against the business licensee or an individualoperator is appropriate, the ~~Director~~Chief of Police must give notice in writingby certified mail, return receipt requested, of each of the abovereasons which support the assessment of a ~~fine~~administrative penalty, including the date or dates when each such incident occurred.Such notice shall begiven within thirty (30) days of the incident or incidences forwhich the business is being cited, or within thirty (30) days ofthe conclusion of the ~~Director~~Chief's investigation, whicheverisearlier.

A licensee may appeal the decision ~~of the Director~~ regardingthe assessment of ~~a fine~~ an administrative penalty to the Board of Directors by filing awritten notice of appeal with the City Clerk within fifteen (15)days after service of notice upon the licensee of the ~~Director's~~assessment decision.The notice of appeal shall be accompanied by amemorandum or other writing setting out fully the grounds for suchappeal and all arguments in support thereof.The ~~Director~~Chief of Police may,within fifteen (15) days of service upon him or her of the licensee'smemorandum, submit a memorandum in response to the memorandum filedby the licensee on appeal to the Board of Directors.Afterreviewing such memoranda, as well as the ~~Director~~Chief's writtendecision, if any, and exhibits submitted to the ~~Director~~Chief of Police, the Boardof Directors shall vote either to uphold or overrule the ~~Director's~~decision. Such a vote shall be taken within twenty-one (21)calendar days after the date on which the City Clerk receives thenotice of

appeal. Judicial review of ~~a fine~~ an administrative penaltyby the Director andBoard of Directors may be made pursuant to Section 14-153~~151~~ ~~of thisordinance~~.

Furthermore, judicial review of a suspension affirmed by the ~~Directorand~~ Board of Directors may be made pursuant to Section 14-153~~151~~ ~~ofthis ordinance~~.During the pendency of the appeal, the status quoshall be maintained such that the licensee shall continue to beallowed to operate its business pursuant to its license andpursuant to this division. This section in no way is intended toreplace or substitute for ~~other~~ criminal penalties which may applyunder local, state, or federal law for any of the activitiesenumerated above.

SECTION 14-151.~~149~~Suspension.

The ~~Director~~Chief of Police shall suspend the license of a business licenseeand/or any person who is an operator, as the case may be, for aperiod not to exceed thirty (30) days if he or she determines by clear andconvincing evidence that:

1. A~~(1) a~~ business licensee intentionally answered falsely amaterial question or request for information during the applicationprocess;
2. A~~(2) a~~ business licensee or an individual operator isconvicted of a "specified criminal activity" on a charge that waspending prior to the issuance of the license;
3. A~~(3) a~~ business licensee or an individual operator has,with knowledge, permitted prostitution on the premises;
4. ~~(4)~~ A business licensee or an individual operator hasbeen fined for the same offense, of those offenses listed inSection 14-150~~148~~, three times or more, and the dates of thoseoffenses occurred within a twelve (12) month period; or
5. ~~(5)~~ A business licensee or an individual operator isoverdue in payment to the City of taxes, fees, fines, or penaltiesassessed against or imposed upon him~~/~~or her in relation to anybusiness. A licensee found in violation in this regard will haveall rights and remedies set forth in Section 14-146~~144~~(H) to attempt to remedyany such deficiency before any suspension of the license may occur.

If a business licensee is suspended by the ~~Director~~Chief of Police more thanone time in a twelve (12) month period, the license shall berevoked in accordance with Section 14-152.~~150.~~

In the event that the ~~Director~~Chief of Police determines that one of theabove described incidents has occurred, and determines thatsuspension of the business license is appropriate, the ~~Director~~ he or she must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support thesuspension of the business license, including the date or dateswhen each such incident occurred. Such notice shall be given withinthirty (30) days of the incident or incidences for which thebusiness is being cited, or within thirty (30) days of theconclusion of the ~~Director's~~ investigation, whichever is earlier.

A licensee may appeal ~~the~~a decision ~~of the Director~~ regardinga suspension to the Board of Directors by filing a written noticeof appeal with the City Clerk within fifteen (15) days afterservice of notice upon the licensee of the ~~Director's~~ decision of the Chief of Police.The notice of appeal shall be accompanied by a memorandum or otherwriting setting out fully the grounds for such appeal and allarguments in support thereof. The ~~Director~~Chief may, within fifteen(15) days of service upon him of the licensee's memorandum, submita memorandum in response to the memorandum filed by the licensee onappeal to the Board of Directors. After reviewing such memoranda,as well as the ~~Director's~~ written decision of the Chief of Police, if any, and exhibitssubmitted to the ~~Director~~Chief, the Board of Directors shall vote eitherto uphold or overrule the ~~Director's~~suspension decision.Such a vote shallbe taken within twenty-one (21) calendar days after the date onwhich the City Clerk receives the notice of appeal.

Judicial review of a suspension by the Director and Board ofDirectors may be made pursuant to Section 14-153~~151~~ of this ordinance.During the pendency of the appeal, the status quo shall bemaintained such that the licensee shall continue to be allowed tooperate its business pursuant to its license and pursuant to thisdivision.

SECTION 14-152.~~50~~Revocation.

The ~~Director~~ Chief of Policeshall revoke a license for one (1) year from thedate the revocation becomes effective if he or she determines that any ofthe grounds for suspension set forth in Section 14-151~~149~~ is proven byclear and convincing evidence, and that the license has

alreadybeen suspended within the precedingtwelve (12) months; or that thebusiness operatedwhile its license was suspended.

A licensee may appeal ~~the~~a decision ~~of the Director~~ regardinga revocation to the Board of Directors by filing a written noticeof appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the ~~Director's~~revocation decision.The notice of appeal shall be accompanied by a memorandum or otherwriting setting out fully the grounds for such appeal and allarguments insupport thereof. The ~~Director~~ Chief of Police may, within fifteen(15) days of service upon him or her of the licensee's memorandum, submita memorandum in response to the memorandum filed by the licensee onappeal to the Board of Directors. After reviewing such memoranda,as well as the ~~Director~~Chief's written decision, if any, and exhibitssubmitted to the Director, the Board of Directors shall vote eitherto uphold or overrule the ~~Director's~~revocation decision. Such a vote shallbe taken within twenty-one (21) calendar days after the date onwhich the City Clerk receives the notice of appeal.

Judicial review of a revocation by the ~~Director and~~ Board ofDirectors may be made pursuant to Section 14-153~~151~~ ~~of this ordinance~~.During the pendency of the appeal, the status quo shall bemaintained such that the licensee shall continue to be allowed tooperate its business pursuant to its license and pursuant to thisdivision.

SECTION 14-153.~~151.~~Judicial Review.

After denial of an initial or renewal application by the~~Director~~Chief of Police and by Board of Directors, or upon ~~a fine~~an assessment of administrative penalty, suspension, orrevocation by the ~~Director~~ Chief of Police and by Board of Directors, the applicant orlicensee may seek judicial review in any court of competentjurisdiction. The rules and procedures for such appeal are modeledon Rule 9 of the Arkansas Inferior Court Rules. Those Rules provideas follows:

1. ~~(1)~~Time for taking appeal. All appeals from the Board ofDirectors to a court of competent jurisdiction must be filed in theOffice~~office~~ of the Clerk of the particular ~~C~~court having jurisdiction ofthe appeal within thirty (30) days from the date of the vote by theBoard of Directors.
2. ~~(2)~~ How taken. An appeal from the Board of Directors to a ~~C~~court of competent jurisdiction shall be taken by filing the recordof the findings

and proceedings of the ~~Director~~Chief of Police and the Board ofDirectors, to the extent such a record is available. It shall bethe duty of the City Clerk to prepare and certify such record whenrequested by the appellant, and upon payment of any fees authorizedby law therefore. The appellant shall have the responsibility offiling such record in the Office~~office~~ of the Clerk of the Court ofcompetent jurisdiction.

3. ~~(3)~~ No record available. When the City Clerk neglects orrefuses to prepare and certify a record for filing in a ~~C~~court ofcompetent jurisdiction, the person desiring an appeal may perfectthe appeal on or before the 30th day from the date of the vote bythe Board of Directors by filing an Affidavit in the Office~~office~~ of theClerk of the Court of competent jurisdiction showing that he or she hasrequested the City Clerk to prepare and certify the records forpurposes of appeal, and that the City Clerk has neglected toprepare and certify such records for purposes of appeal.A copy ofsuch Affidavit shall be promptly served upon the City Clerk andupon the ~~adverse party~~Chief of Police.

SECTION 14-154.~~152~~ No Transfer of License.

A licensee shall not transfer his~~/~~or her license to any personwho has not obtained a license, nor shall a business licenseeoperate a sexually oriented business under the authority of asexually oriented business license at any place other than the address designated in theapplication. This section is notintended toprevent a business licensee from being allowed tosell,assign, or transfer ownership or control of his~~/~~orher business toanother person already possessing a valid sexually orientedbusiness license.It is intended only to prevent the sale,assignment, or transfer of ownership or control of a license by thelicensee, or of the business to a non-licensee.

SECTION14-155.~~153~~Location Restrictions.

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

1. The~~(1) the~~ sexually oriented business may not be operatedwithin:

   a. ~~(a)~~ 1,000 feet of a church or other place of public worship;~~;~~

   b. ~~(b)~~ 1,000 feet of a public or private elementary, secondary, or post-secondary school;

   c. ~~(c)~~ 1,000 feet of a public park;

   d. 1,000 feet of a hospital;

   e. ~~(d)~~ 1,000 feet of a licensed day-care center;

   f. ~~(e)~~ 1,000 feet of an entertainment business that isoriented primarily towards children;

   g. 1,000~~(f) SOD~~ feet of a boundary of any residential district;

   ~~a.~~h. ~~(g)~~ 1,000 feet of another sexually oriented business;

   ~~b.~~i. 1,000 feet of a playground;

   ~~c.~~j. 1,000 feet of a public library;

   ~~d.~~k. 1,000 feet of a recreational area or facility; or

   ~~e.~~l. 1,000 feet of a walking trail.

   ~~f.~~m. 1,000 feet of a child care facility

   These provisions, 1(a) through 1(h), shall not apply to a sexually oriented business already lawfully operating on the effective date of this division if ~~another sexually oriented business,~~ 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 boundary or a residential district, 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 with 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 change or new use is not caused by or is not the fault of the sexually oriented business.

3. ~~(2)~~ A sexually oriented business may not be operated in thesame building, structure, or portion thereof, containing anothersexually oriented business classified pursuant to Section 14-144.~~142.~~

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

SECTION 14-156.~~154~~Additional Regulations for Adult Motels.

~~(~~A) Evidence that a sleeping room in a hotel, motel, or asimilar commercial enterprise has been rented and vacated two ormore times in a period of time that is less than ten (10) hourscreates a rebuttable presumption that the enterprise is an adultmotel as that term is defined in this ~~chapter~~division.

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

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

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

SECTION 14-157.~~155~~Additional Regulations for Escort Agencies.

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

(B) A person shall not act as an escort or agree to act as anescort for any person under the age of eighteen (18) years.

(C) A person convicted of a violation of any provision of thisSection shall be subject to the general penalties as set out inSection 1-9 of the Fort Smith Municipal Code.

SECTION 14-158.~~156~~Additional Regulations For Nude Model Studios.

(A) A nude model studio shall not employ any person under theage of eighteen (18) years.

(B) A person under the age of eighteen (18) years shall not appear semi--nudeor in a state of nudity in or on the premises of a nude modelstudio. It is a defense to prosecution under this subsection ifthe person under eighteen (18) years was in a restroom not open to the publicview or visible by any other person.

(C)A person shall not appear in a state of nudity, or withknowledge, allow another to appear in a state of nudity, in an areaof a nude model studio premises which can be viewed from the publicright of way.

(D) A nude model studio shall not place or permit a bed ormattress in any room on the premises.

(E) A person convicted of the violation of any provision ofthis Section shall be subject to the penalties as set out inSection 1-9 of the Fort Smith Municipal Code.

SECTION 14-159.~~157~~Additional Regulations Concerning Public Nudity.

(A) A person shall not appear in person in a state of nudityor semi-nudity in a sexually oriented business.

(B) A person shall not engage in any "specified sexual activity"in a sexually oriented business.

(C) A person convicted of the violation of any provision ofthis Section shall be subject to the penalties as set out inSection 1-9 of the Fort Smith Municipal Code.

SECTION 14-160.~~158~~Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

(A) A person who operates or causes to be operated a sexuallyoriented business, other than an adult motel, which exhibits on thepremises in a viewing room of less than one hundred (150) squarefeet of floor space, a film, video cassette, or other videoreproduction that depicts "specified sexual activities" or "specifiedanatomical areas," shall comply with the following requirements:

1. ~~(1)~~ Upon application for a sexually oriented businesslicense, the application shall be accompanied by a diagram of thepremises showing a plan thereof specifying the location of all~~one or more~~ manager's stations, viewing rooms,restrooms,and the location of all overhead lightingfixtures and designating any portion of the premises in whichpatrons will not be permitted.A manager's station may not exceedthirty-two (32) square feet of floor area. The diagram shall alsodesignate the place at which the business license will beconspicuously posted, if granted. A professionally prepareddiagram in the nature of an engineer's or architect's blueprintshall not be required; however, each diagram should be oriented tothe north, or to some designated street or object, and should bedrawn to a designated scale or with marked dimensions sufficient toshow the various internal dimensions of all areas of the interiorof the premises to an accuracy of plus or minus six (6") inches.The ~~Director~~~~director~~Chief of Police may waive the foregoing diagram for renewalapplications if the applicant

adopts a diagram that was previouslysubmitted and certifies that the configuration of the premises hasnot been altered since it was prepared.

2. ~~(2)~~ The application shall be sworn to be true and correctby the applicant.

3. ~~(3)~~ No alteration in the configuration or location of amanager's station may be made without the prior approval of the~~Director or his designee~~Chief of Police.

4. ~~(4)~~ It is the duty of the owner(s)~~owners~~ and operator(s) of thepremisesto ensure that at least one employee is on duty andsituated in each manager's station at all times that any patron ispresent inside the premises.

5. ~~(5)~~ The interior of the premises shall be configured insuch a manner that there is an unobstructed view from a manager'sstation of the entire area of the premises, including the interior of each viewing room, to which any patron ispermitted access for any purpose, excluding restrooms. Restroomsmay not contain video reproduction equipment and/or two way mirrors~~mirror~~.If the premiseshas two or more manager's stations designated, thenthe interior of the premises shall be configured in such a mannerthat there is an unobstructed view of the entire area of thepremises to which any patron is permitted access for any purposefrom at least one of the manager's stations. The view required inthis subsection must be by direct line of sight from the manager'sstation.

6. ~~(6)~~ It shall be the duty of the operator, and it shallalsobe the duty of any agents and employees present in thepremises, to ensure that the view area specified in subsection (5)of this Section~~section~~ remains unobstructed by any doors, walls,merchandise, display racks, curtains, or other materials, at alltimes and to ensure that no patron is permitted access to any areaof the premises that has been designated as an area in whichpatrons will not be permitted, as designated in the applicationfiled pursuant to subsection (1) of this Section.~~section.~~

7. The interior of each booth shall be sufficiently illuminated so that the inside of the booth is visible from the manager's station as set forth in subsection (5) of this section.

~~(7) No viewing room may be occupied by more than one person at any time.~~

8. ~~(8)~~ The premises shall be equipped with overhead lightingfixtures of sufficient intensity to illuminate every place to whichpatrons are permitted access at an illumination of not less thanfive (5.0) foot-candles~~candle~~ as measured at the floor level.

9. ~~(9)~~ It shall be the duty of the operator, and it shallalso be the duty of any agents and employees present in thepremises, to ensure that the illumination described above ismaintained at all times that any patron is present in the premises.

10. There shall be no glass of any kind between booths, and booths shall not be designed, constructed, or configured in such a manner that the interior of any booth may be visible or made to be visible from any other booth.

11. ~~(10)~~ No licensee or operator shall knowingly allow anopening of any kind to exist between viewing rooms or booths.

12. ~~(11)~~ The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

13. ~~(12)~~ The operator of the sexually oriented business shallcause all floor coverings in viewing booths to be nonporous, easilycleanable surfaces, with no rugs or carpeting.

14. ~~(13)~~ The operator of the sexually oriented business shallcause all wall surfaces and ceiling surfaces in viewing booths tobe constructed of, or permanently covered by, nonporous, easilycleanable material. No~~no~~ wood, plywood, composition board or otherporous material shall be used within forty-eight (48") inches ofthe floor.

15. The operator of the sexually oriented business shall ensure that premises are clean and sanitary at all times.All walls, ceilings, floors, viewing booths, restrooms, and all physical facilities in each adult business shall be thoroughly cleaned at least once each day the sexually oriented business is in operation.

16. No viewing room may be occupied by more than oneperson at any time.

17. It shall be the duty of the operator, and of any agents or employees present on the premises, to ensure that no "specified sexual activities," as defined in Section 14-143, occur in or on the licensed premises.

(B) A person having a duty under Subsection (A) (1) through(A) (17~~14~~) of this Section who is convicted of failing, withknowledge, to fulfill that duty, shall be subject to the generalpenalties as set out in section~~Section~~ 1-9 of the Fort SmithMunicipalCode.

SECTION 14-161.~~159~~Exterior Portions of and Signage for SexuallyOriented Businesses.

(A) No owner or operator of a sexually oriented businessshall allow the merchandise or activities of the establishment tobe visible from a point outside the establishment.

(B) No owner or operator of a sexually oriented businessshall allow the exterior portion of the sexually oriented business to have any photographs of any person in a state of nudity orengaging in any "specified sexual activity," nor shall such owner oroperator allow the exterior portion of the sexually orientedbusiness to have any pictorial or other representations of any kindof any person in a state of nudity or engaging in any "specifiedsexual activity."~~.~~

(C) Notwithstanding any other City ordinance, code, orregulation to the contrary, the operator of any sexually orientedbusiness or any other person shall not erect, construct, ormaintain any sign for the sexually oriented business other than theone (1) primary sign and one (1) secondary sign, as providedherein.

(D) Primary signs shall have no more than two (2) displaysurfaces. Each such display surface shall:

1. ~~(1)~~conform with the City's~~city's~~ sign code;

2. ~~(2)~~ be a flat plane, rectangular in shape; and

3. ~~(3)~~ not exceed seventy-five (75) square feet in area.

(E) Primary signs shall contain no photographs, and shallcontain no pictorial or other representations of any kind of anyperson in a state of nudity or engaging in any "specified sexualactivity."~~.~~

(F) Secondary signs shall have no more than one (1) displaysurface. Such display surface shall:

1. ~~(1)~~ conform with the City's sign code;

2. ~~(2)~~ be a flat plane, rectangular in shape;

3. ~~(3)~~ not exceed twenty (20) square feet in area;

4. ~~(4)~~ not exceed five (5) feet in height and four (4) feetin width; and

5. ~~(5)~~ be affixed or attached to any wall or door of theenterprise.

(G) The provisions of subsection (E) above shall also apply tosecondary signs.

(H) A person convicted of the violation of any provision ofthis Section shall be subject to the penalties as set out inSection 1-9 of the Fort Smith Municipal Code.

SECTION 14-162.~~160~~Sale, Use~~use~~ or Consumption~~consumption~~ of Alcoholic Beverages Prohibited.~~alcoholic beverages prohibited.~~

(A) The sale, use, or consumption of alcoholic beverages on thepremises of a sexually oriented business is prohibited.

(B) A person convicted of the violation of this Section shallbe subject to the penalties as set out in Section 1-9 of the FortSmith Municipal Code.

SECTION 14-163.~~161~~Persons Younger than Eighteen (18) Years Prohibited fromEntry; Attendant Required.

(A) No person shall allow a person who is younger thaneighteen (18) years of age to enter or be on the premises of asexually oriented business at any time the sexually orientedbusiness is open for business.~~Business.~~

(B) It shall be the duty of the business licensee~~license~~ and/oroperator of each sexually oriented business to ensure that anattendant is stationed at each public entrance ~~to the sexually oriented business~~ at all times during ~~such sexually oriented businesses'~~ regular business hours.It shall be the duty of theattendant to prohibit any person under the age of eighteen (18)years from entering the sexually oriented business. It shall be arebuttable presumption that a person knew a person was under theage of eighteen (18) unless the attendant asked for and wasfurnished:

1. ~~(1)~~ a valid operator's, commercial operator's, orchauffeur's driver's license issued by any state reflecting thatsuch person is eighteen (18) years of age or older; or

2. ~~(2)~~ a valid personal identification certificate issued byany state reflecting that such person is eighteen (18) years of ageor older.

(C) It shall be unlawful for any person under the age ofeighteen (18) years to misrepresent such person's age for thepurpose of entering the premises of a sexually oriented business atany time the sexually oriented business is open for business.

(D) A person convicted of the violation of any provision ofthis Section shall be subject to the penalties as set out inSection 1-9 of the Fort Smith Municipal Code.

SECTION 14-164.~~162~~Massagesor Baths.

It shall be unlawful for any business operating as a sexually~~-51-~~oriented business to offer the services of a massage salon, massageparlor, or any similar type business where any physical contact withthe recipient of such services is provided by a person of theopposite sex, or where any physical contact with the recipient ofsuch services constitutes "specified sexual activities", regardlessof the gender of the recipient or the provider of the service. Aperson convicted of the violation of any provision of this Sectionshall be subject to the penalties as set out in Section 1-9 of theFort Smith Municipal Code.

SECTION 14-165.~~163~~Hours of Operation.

No sexually oriented business,except for an adult motel,mayremain open at any timebetween the hours of five o'clock (5:00)~~A.M.~~ a.m. and eleven o'clock (11:00) ~~A.M~~a.m.

SECTION 14-166.~~164~~Exemptions.

It is a defense to prosecution under this ~~ordinance~~ divisionthat aperson appearing in a state of nudity or semi-nudity did so in amodeling class operated:

1. ~~(1)~~ by a proprietary school, licensed by the State ofArkansas, a college, junior college, or university supportedentirely or partly by taxation;
2. ~~(2)~~ by a private college or university that maintains andoperates educational programs in which credits are transferable toa college, junior college, or university supported entirely orpartly by taxation.

SECTION 14-167.~~165~~Notices.

(A) Any notice required or permitted to be given by the~~Director~~Chief of Police or any other City office, division, department, or otheragency under this division to any applicant, licensee operator orowner of a sexually oriented business, must be given by certifiedUnited States mail, postage prepaid, return receipt requested,addressed to the most recent address as specified in theapplication for the license, or in any subsequent notice of addresschange that has been received by the ~~Director~~Chief of Police.Notices mailed asabove shall be deemed given upon their receipt in the United Statesmail.In the event that any notice given by mail is returned bythe postal service, the ~~Director~~Chief of Police, ~~or his designee,~~ shall cause it tobe posted at the principal entrance to the establishment, andnotice will be considered received upon the date of such posting.

(B)A license may designate an agent for service and notifythe ~~Director~~Chief of Police of the identity and address of the agent for service.In such event, notices are subject to the requirement of Subsection(A) above, except that notice shall be made at the address of thedesignated agent for service.

(C) Any notice required or permitted to be given to the~~Director~~Chief of Police by any person under this ordinance shall not be deemedgiven until and unless it is received in the Office~~office~~ of the~~Director~~Chief of Police.

(D) It shall be the duty of each owner who is designated onthe license application and each operator to furnish notice to theDirector in writing of any change of residence or mailing address.

Section 14-168.~~166~~Injunction.

A person who operates, or causes to be operated, a sexuallyoriented business without a valid business license, or a businessshown by clear and convincing evidence to be engaging in a regularpattern or practice of violations of this ~~ordinance~~division, is subject toa suit for injunction as well as prosecution for criminalviolations. Each day a sexually oriented business so operates, oreach day a person so acts in violation of a provision of this~~ordinance~~division, is to be considered a separate offense or violation.

SECTION 3: SEPARABILITY.

If any section, subsection, or clause of this ordinanceOrdinance shallbe deemed to be unconstitutional or otherwise invalid, the validityof the remaining sections, subsections, and clauses shall not beaffected thereby.

SECTION 4: EMERGENCY CLAUSE.

It is hereby found and declared by the Board of Directors thatan emergency situation exists with reference to those matters setforth herein, and that passage and immediate effect of thisordinanceOrdinance is necessary for the preservation of the health, safety,and welfare of the inhabitants of the City. This ordinanceOrdinance shall beof full force and effect upon and after the date of passage.

PASSED AND APPROVED THIS_____ day of _____, 2012_____. 2000.

_____APPROVED:

_____

_____MAYOR

ATTEST:

_____

CITY CLERK

A.C.A. § 14-1-303

Arkansas Code of 1987 Annotated Official Edition
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*** Legislation is current through the 2012 Fiscal Session and updates ***
*** received from the Arkansas Code Revision Commission through ***
*** April 24, 2012. ***

Title 14 Local Government
Subtitle 1. General Provisions
Chapter 1 General Provisions
Subchapter 3 -- Adult-Oriented Businesses in Proximity to Locations Frequented by Children

A.C.A. § **14-1-303** (2012)

14-1-303. Location of adult-oriented businesses.

(a) An adult-oriented business shall not be located within one thousand feet (1,000') of a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail.

(b) For the purposes of this section, the measurement required in subsection (a) of this section shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing an adult-oriented business to the nearest point on the property line of a parcel containing a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail.

(c) An adult-oriented business lawfully operating in conformity with this section is not in violation of this section if a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail subsequently locates within one thousand feet (1,000') of the adult-oriented business.

HISTORY: Acts 2007, No. 387, § 1.

3.

Memorandum

To: Ray Gosack, City Administrator

From: Wally Bailey, Director of Development Services

Date: 5/10/2012

Re: Adult-Oriented Business Map Analysis

Following the Board of Directors study session, we discovered a recent State Act governing the location of adult oriented businesses. After reviewing this information, we asked Russell Gibson to revise the maps which were presented to the Board at the study session.

The revised maps show the changes that include the 1,000 feet distance from residential districts requested by the Board (*which is now the requirement in the State Law*) and the distance from uses not previously identified in the city code but are now identified in the State Code. The additional uses include walking trails and libraries.

The revised map shows the available land for an adult-oriented business is reduced to 1.4%. The changes also affect the proposal to change the ordinance to limit the uses to Industrial zoning districts. The available land area would now be 13% using the Industrial zoning districts only.

Please contact me if you have any questions.

A.C.A. § 14-1-303
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*** Legislation is current through the 2012 Fiscal Session and updates ***
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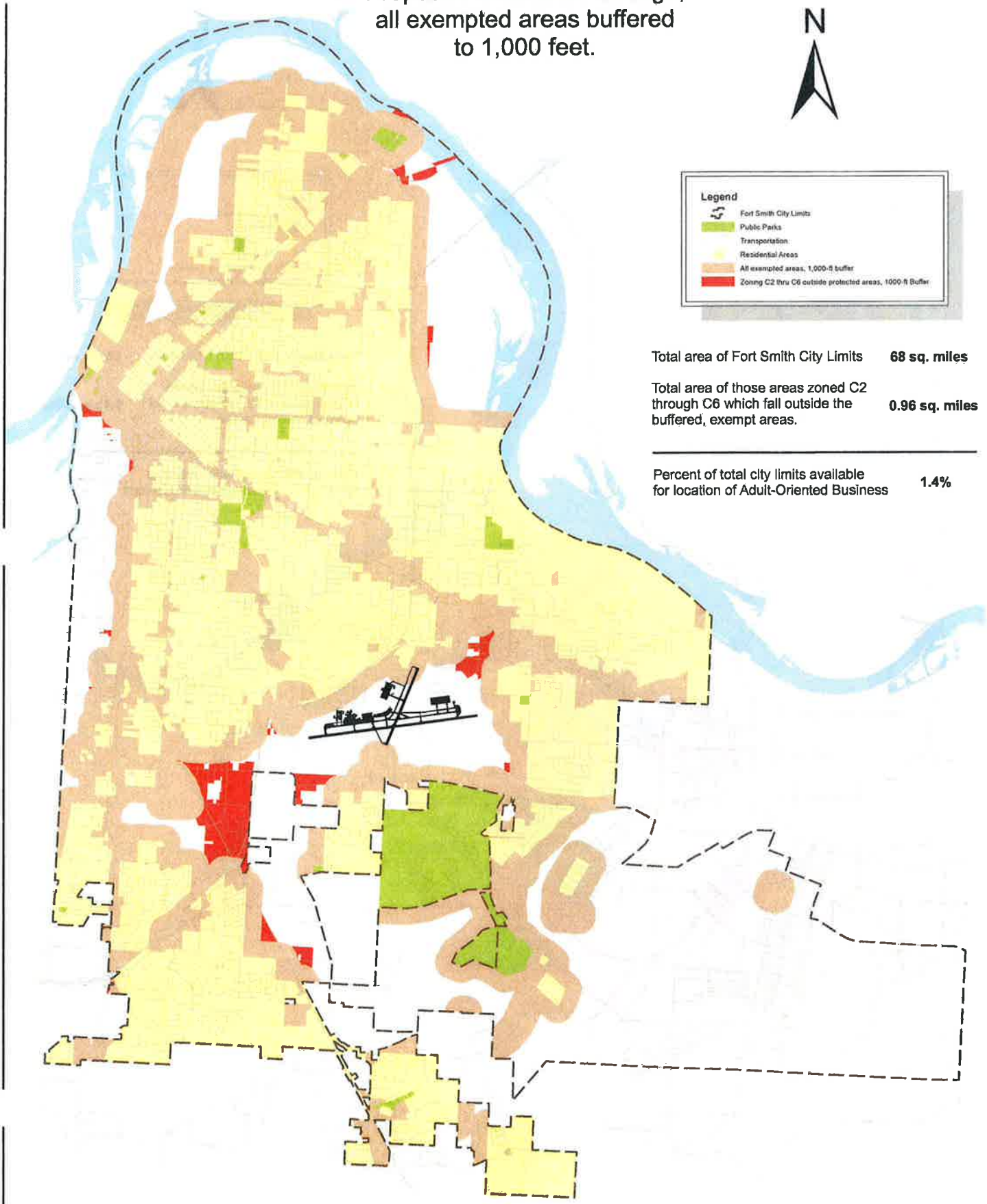
HISTORY: Acts 2007, No. 387, § 1.

A.C.A. § 14-1-303

Adult-Oriented Business Analysis

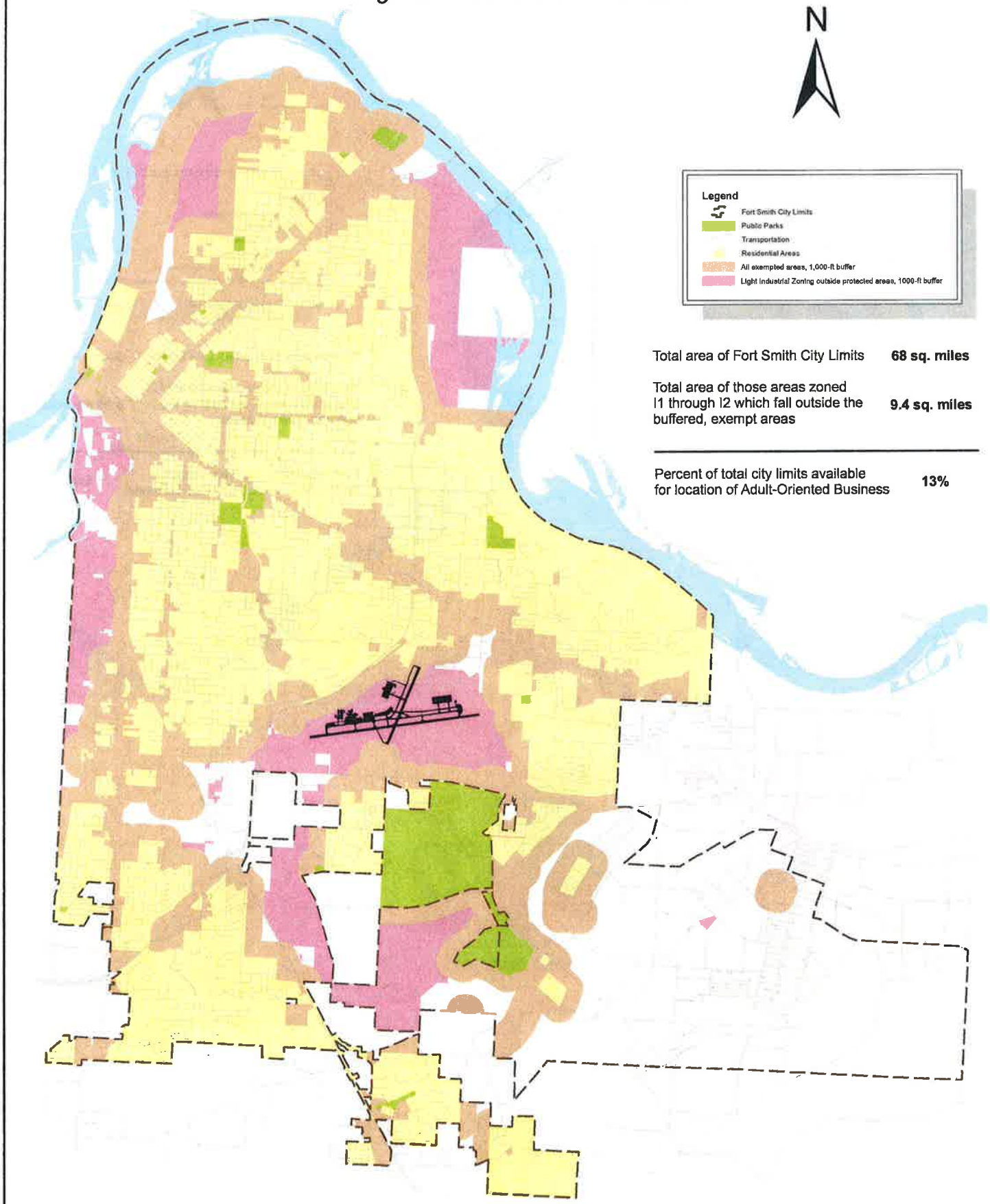
Areas available for location of Adult-Oriented Business
Proposed Ordinance Change,
all exempted areas buffered
to 1,000 feet.



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 Business
Light Industrial Areas Permitted



Total area of Fort Smith City Limits	**68 sq. miles**
Total area of those areas zoned I1 through I2 which fall outside the buffered, exempt areas	**9.4 sq. miles**
Percent of total city limits available for location of Adult-Oriented Business	**13%**

4.

ORDINANCE NO._____

AN ORDINANCE AMENDING THE 2009 UNIFIED DEVELOPMENT ORDINANCE OF THE CITY OF FORT SMITH

WHEREAS, the Planning Commission held a public hearing regarding the Phoenix Avenue Overlay Sign Regulation Amendments to the Unified Development Ordinance and recommended on April 10, 2012, that said changes be made; and,

WHEREAS, three (3) copies of the amendments to the Unified Development Ordinance have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance; and,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH THAT:

SECTION 1: The Phoenix Avenue Overlay Sign Regulation Amendments to the Unified Development Ordinance are hereby adopted.

SECTION 2: The codifier shall codify the amendments to the Unified Development Ordinance.

SECTION 3: It is hereby found and determined that the adoption of these amendments to the Unified Development Ordinance is necessary to alleviate an emergency created by the lack of regulation of uses of property within the City of Fort Smith so that the protection of the health, safety and welfare of the inhabitants of the City requires that the amendments be effective, and the amendment is hereby made effective, as of the date of approval of this Ordinance.

PASSED AND APPROVED THIS_____DAY OF _____, 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Publish Time

Memorandum

To: Ray Gosack, City Administrator

From: Wally Bailey, Director of Development Services

Date: 5/10/2012

Re: Phoenix Avenue Overlay District Signage Regulations

The Planning Commission recommended amendments to the sign regulations for the Phoenix Avenue overlay district at their February 14, 2012 meeting. The Board of Directors were briefed about their Febraury 28, 2012, study session. The Board then tabled the amendments at their business meeting on March 6, 2012. The Board has asked that these amendments be placed back on the agenda for the May 15, 2012 meeting.

The discussion concerning the Phoenix Avenue Signage Regulations evolved during the review of a variance application for the signage at the new Jam Mart/Dunkin Donuts development at South 74th street and Phoenix Avenue. One of the variance requests was about the number of signs permitted on the principal or accessory structure. The current code takes three (3) sections trying to describe what is allowed. These sections are difficult to understand and interpret so we proposed to simplify the code. As you can see from the proposed amendment the proposal is to allow signage to cover 20% of the wall surface for the principal structure and 5% of the wall surface of an accessory structure. The 20% and 5% requirements currently exists in the code. However, the current code limits the number of signs that are allowed. The proposal will not limit the number of signs permitted on the wall surface as long as the total number of signs per wall is equal to or less than the 20% or 5% requirement. For illustrative purposes, I have included some photographs of large single signs that are permitted by the current regulations and drawings showing the proposed Jam Mart/Dunkin Donut Signs that required variances. The Dollar General and Greg's Too signs are permitted by the current regulations because there is only one sign and the size is less than the 20% limit. The Dunkin Donut signage did not meet the current code because of the number of signs but the size was far below the 20% requirement.

It is important to note that these changes do not change the code requirement regarding the content of the wall signage. Content of wall signs is limited to the name and/or logo of the business(es) operating in the structure. The Planning Commission's intent was to address the issue of multiple tenants and multiple business located in a building. The current language is restrictive as to how many business/logo signs could be placed on a building.

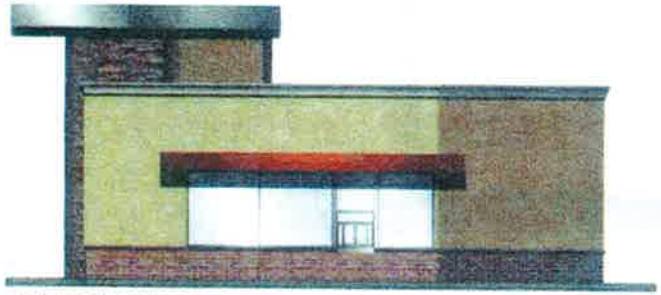
Another variance request this development needed was to allow for an internally illuminated sign. Currently the regulations do not permit internally illuminated monument signs. Wall signs are permitted to be internally illuminated but the monument signs are not allowed to be internally illuminated. The planning staff and planning commission agreed this section should be amended to allow internally illuminated monument signs.

The Planning Commission (PC) voted on these amendments at their February 14, 2012 regular meeting. The PC voted 8 in favor and 0 opposed to recommend the amendments to the Board of Directors.

DOLLAR GENERAL®
6711
We accept coupons
Reddyice
Reddyice
Reddyice
Coca-Cola
146 HKB
489F JY
02/24/2012

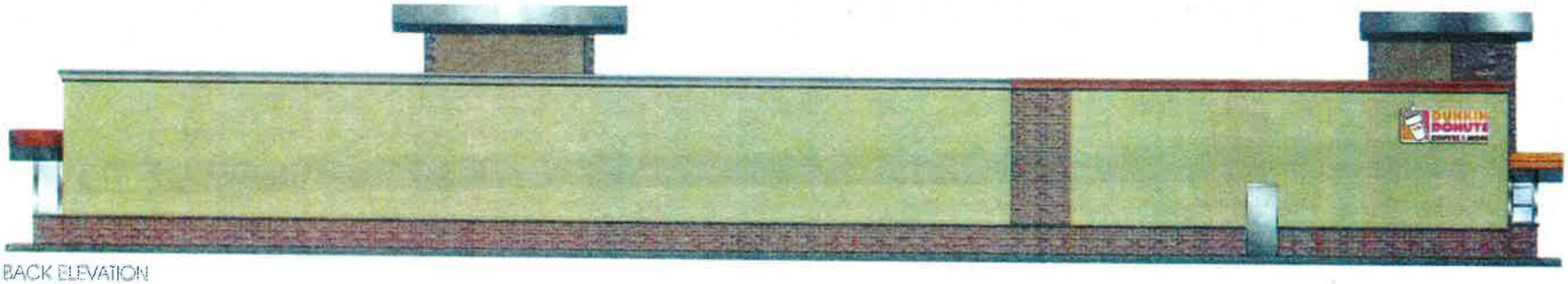
GREG'S TOO
CAR CARE CENTE
02/24/2012

FRONT ELEVATION



JAM MART ELEVATION

DUNKIN' DONUTS ELEVATION



BACK ELEVATION

Principal Structure

1 2

3 east side 4 west side

Accessory Structure

144"

Section 27-440 – Phoenix Avenue Overlay

1B-1

B. Signage regulations.

1. Monument sign defined. When used herein, "monument sign" shall refer to a ground mounted sign having no more than two (2) faces and being constructed of materials of the same type and in design similar to the principal structure located on the lot on which the sign is located.

2. Signage per lot. Each separately owned lot is allowed no more than one (1) monument sign; provided, any such lot having frontage on two (2) public streets, is allowed no more than two monument signs. In addition to the allowed monument sign(s), each such lot is allowed signs of a maximum total of six (6) square feet to provide traffic directions. No monument sign shall be installed closer than ten (10) feet to the property line of the lot.

3. Sign size. Each monument sign shall be a maximum of six (6) feet high (inclusive of the base and the display area) and shall not be more than one (1) square foot in area per linear foot of lot frontage with a maximum area of seventy-five (75) square feet in area per sign. As to the monument sign for a retail center or business park, as defined in zoning code section 27-200, the sign area and height may be increased by an additional twenty (20) percent if only identification of the name and/or logo of the retail center or business park (and not individual tenants) is used on the monument sign.

4. Wall sign allowance. ~~Each separately owned lot is allowed no more than one (1) wall sign for each separate structure on the lot.~~ The wall sign area for the principal structure shall not exceed twenty (20) percent of the wall area. ~~on which the sign is located.~~ The wall sign area for each accessory structure shall not exceed five (5) percent of the wall area on which the sign is located. ~~On any lot having frontage on two (2) public streets, each separate structure is allowed no more than two (2) wall signs.~~

~~5. A second wall sign is permitted on a principal structure with frontage on one (1) public street and, a third wall sign is permitted on a principal structure having frontage on two (2) public streets, and a fourth wall sign is permitted on a principal structure having frontage on three (3) public streets if the following conditions are met:~~

   ~~a. The sign is not facing property that is zoned or developed for residential purposes.~~

   ~~b. The sign is limited to a single logo or business symbol of a business operating in the structures.~~

   ~~c. The cumulative area of the second or third wall sign allowed with this condition and the wall sign on the first or second walls shall not~~

1B-2

~~exceed the twenty (20) percent wall area allowed for the first or second wall sign.~~

~~6. Additional to the permitted wall sign(s), directional information and building identification signs are permitted on the principal structure if the following conditions are met:~~

~~a. Not more than two (2) directional or building identification signs are permitted.~~

~~b. The cumulative area of all wall signs shall not exceed twenty (20) percent of the wall area on which the signs are located.~~

c. ~~The cumulative wall sign area of the directional or building identification signs is limited to twenty-five (25) percent of the wall sign area of the logo or business symbol sign and no directional or building identification sign shall exceed eighteen (18) square feet.~~

~~7. Illumination. Only ground mounted or spotlight (external only) lighting may be used for illumination of monument signs.~~

8. Sign content. Content of monument signs shall be such that no more than fifty (50) percent of the monument sign may be used for advertising. The remaining area of a monument sign is limited to the name and/or logo of the business(es) operating in the structure.

9. Content of wall signs for the principal structure shall be limited to the name and/or logo of the business(es) operating in the structure. Directional and information signs meeting the conditions of paragraph (4) above are permitted.

10. Content of wall signs for each accessory structure shall be limited to building identification, directional information and the name and/or logo of the business(es) operating in the structure.

11. Advertising shall not be permitted on the principal or accessory structure, wall sign or traffic direction sign.

12. Outdoor advertising (offsite) signs. Outdoor advertising (offsite) signs are prohibited in that portion of the area described in (a) above located between Leigh Avenue and four hundred (400) feet west of the Massard Road right-of-way.

13. Signs prohibited. Banners, marquees and changeable letter reader boards and portable signs are expressly prohibited. Changeable letters and/or numbers are permitted in the advertising portion of monument signs. Except as allowed by this section, no signs shall be installed in the area described in (a) above.

1B-3

14. Other sign ordinances. All signs allowed by these regulations shall comply with further sign regulations of the zoning code and the Code of Ordinances. In the event of a conflict of these regulations and the further sign regulations of the zoning code and the Code of Ordinances, these regulations will control.

15. Variance procedures. Administrative decisions applying the provisions of this section may be appealed to the board of zoning adjustment according to the procedure provided for in section 27-~~44~~-337of the Code of Ordinances.

1B-4

5A.

ORDINANCE NO. _____

AN ORDINANCE TO ABANDON A PORTION OF A PUBLIC UTILITY EASEMENT LOCATED IN JEFFREY WAY, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, THAT:

SECTION 1: The City of Fort Smith, Arkansas hereby releases, vacates and abandons all its rights together with the rights of the public generally to the public utility easement located in the hereinafter described real property:

Commencing at the Southeast corner of Unit 63, Lot 20, Jeffrey Way, and addition to the City of Fort Smith, Sebastian County, Arkansas; thence North 89 degrees 59' 27" West five (5) feet along the South property line of said Unit 63 of Lot 20, Jeffrey Way; thence North 02 degrees 27' 00" West ten (10) feet to the east edge of the retaining wall and the point of beginning; thence North 89 degrees 59' 27" West two and one-half (2.5) feet; thence North 02 degrees 27' 00" West and parallel to the East lot line of said Lot 20, forty (40) feet; thence South 89 degrees 59' 27" East four and one-half (4.5) feet and to the east line of the retaining wall; thence South and along the east line of the retaining wall (40) feet, more or less, and to the Point of Beginning, containing 139.87 square feet, more or less.

The portion of the public utility easement being released, vacated and abandoned is no longer required for municipal corporate purposes.

Approved as to form
JSL
No publication required

SECTION 2: A copy of the Ordinance duly certified by the City Clerk shall be filed with the Office of the Recorder of the County and recorded in the deed records of the County.

PASSED AND APPROVED THIS _____ DAY OF MAY 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Memo

To: Ray Gosack, City Administrator

From: Wally Bailey, Director of Development Services

Date: 5/10/2012

Re: Request for Abandonment of a Public Utility Easement
Jeffrey Way, Lot 20

We received a request from Phillip Taylor to abandon approximately 140 square feet of a fifteen (15) feet public utility easement in his rear yard at 63 Jeffrey Way. The abandonment will facilitate the expansion of an existing deck and porch at the Taylor residence.

In connection with this request, the Board of Zoning Adjustment recently approved a variance application submitted by Mr. Taylor for a rear-yard setback from 10 feet to 2.5 feet and 4.5 feet. Abandonment of a small portion of the easement is also needed to construct the deck and porch expansion.

The request to abandon a portion of the easement was reviewed by the franchise utility companies and applicable city departments. No objections were received.

Enclosed is a vicinity map, a map highlighting the area of the easement to be abandoned and Mr. Taylor's application.

An ordinance will be presented to the Board for their consideration.

Please contact me if you have any questions regarding this item.

Enc.

CITY OF FORT SMITH, ARKANSAS
REQUEST FOR ABANDONMENT OF PUBLIC RIGHT-OF-WAY, ALLEY OR PUBLIC EASEMENT

APPLICATION:

Indicate one contact person for application: XX Applicant _____ Representative

Applicant (owner)

Name: Phillip Taylor

Address: 63 Jeffrey Way, Fort Smith, Arkansas 72903

Telephone Number: 479-651-3784

E-Mail: Phillipjacktaylor@gmail.com

Representative (engineer, attorney, realtor, etc)

Name: _____

Address: _____

Telephone Number: _____

E-Mail: _____

Site Address/Location: 63 Jeffrey Way, Fort Smith, ARk. 72903

Legal Description of area to be vacated (attach separate sheet if necessary): See attached Exhibit "A"

Assessor's Parcel Number for Subject Property: 14130-0020-00000-01

Reason for Request: We want to enlarge our screened in porch and enjoy living in the outdoors more.

Current Status of Right-of-Way/Easement: The area being asked to be vacated does not have any utilities located therein. The area to be vacated is a small area located above the retaining wall. All the utilities are currently located below & east of the wall.

APPLICANT/REPRESENTATIVE: I certify under penalty of perjury that the foregoing statements and answers herein made, all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval.

I understand that if it is determined following review of the application by city staff that ongoing utility interests must be protected through easement dedications, the applicant or his authorized agent shall be required to develop and submit a fully executed easement. Additionally, I understand that the applicant or agent will be required to execute a Memorandum of Understanding regarding any right-of-way abandonments and understand that no action will be taken by the Board of Directors on an abandonment request until said utility easement, if determined by staff is necessary, and Memorandum of Understanding are on file with the city.

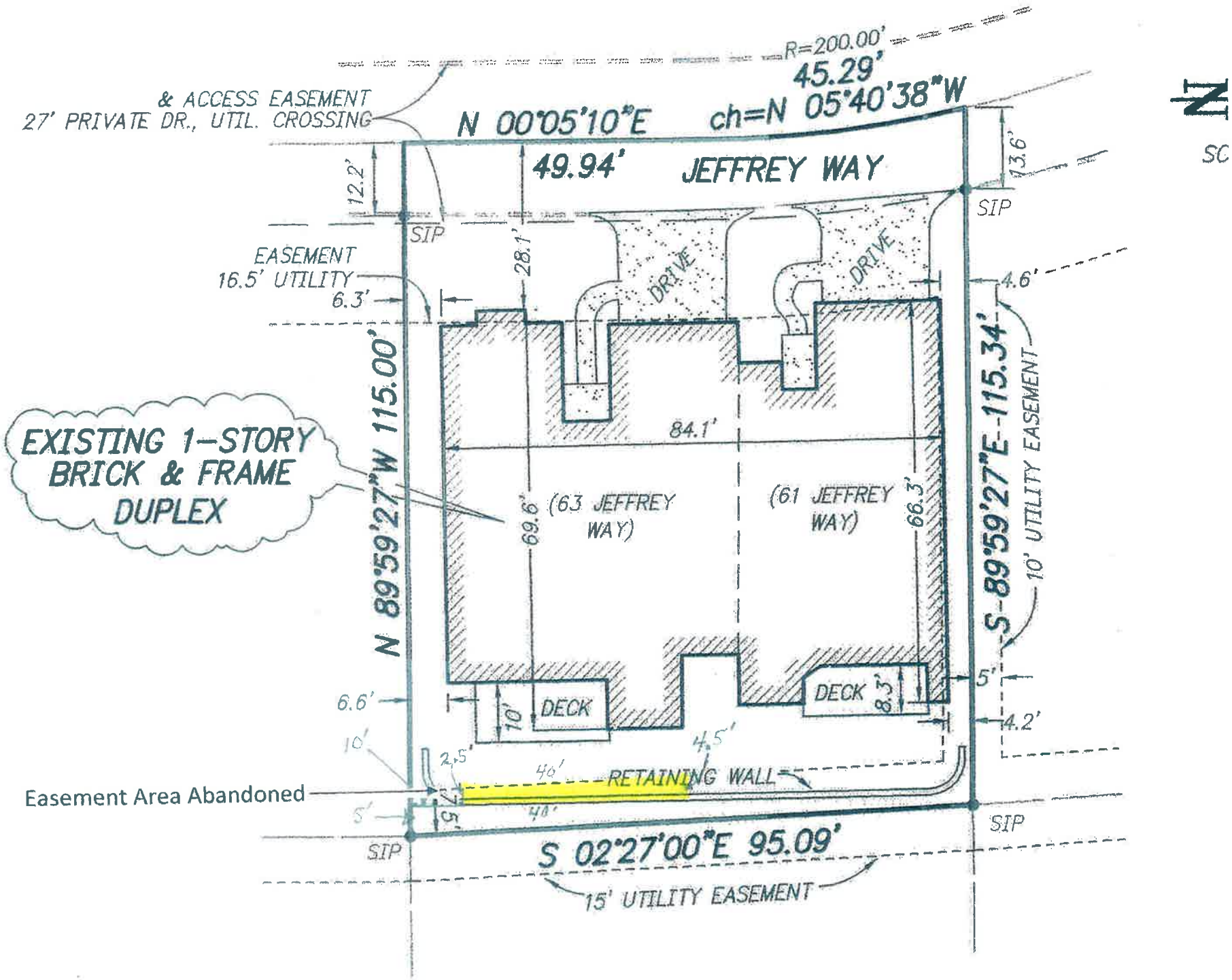
LEGAL DESCRIPTION-----EXHIBIT "A"

Commencing at the Southeast corner of Unit 63 of Lot 20, Jeffrey Way, an addition to the City of Fort Smith, Sebastian County, Arkansas; thence N 89 degrees 59' 27" W five (5) feet along the South property line of said Unit 63 of Lot 20, Jeffrey Way; thence N 02 degrees 27' 00" W ten (10) feet to the east edge of the retaining wall and the point of beginning; thence N 89 degrees 59' 27" W two and one-half (2.5) feet; thence N 02 degrees 27' 00" W and parallel to the East lot line of said Lot 20, forty (40) feet; thence S 89 degrees 59' 27" E four and one-half (4.5) feet and to the East line of the retaining wall; thence South and along the east line of the retaining wall forty (40) feet, more or less, and to the point of beginning.

Vicinity Map

63 Jeffrey Way

2009 City of Fort Smith, AR. Printed on Thu May 10 2012 03:14:19 PM.


R=200.00'
45.29'
ch=N 05°40'38"W
& ACCESS EASEMENT
27' PRIVATE DR., UTIL. CROSSING
N 00°05'10"E
49.94'
JEFFREY WAY
12.2'
13.6'
SIP
SIP
EASEMENT
16.5' UTILITY
6.3'
28.1'
DRIVE
DRIVE
4.6'
EXISTING 1-STORY
BRICK & FRAME
DUPLEX
N 89°59'27"W 115.00'
84.1'
(63 JEFFREY
WAY)
(61 JEFFREY
WAY)
69.6'
66.3'
S-89°59'27"E-115.34'
10' UTILITY EASEMENT
6.6'
10'
DECK
DECK
8.3'
5'
4.2'
10'
2.5'
40'
4.5'
RETAINING WALL
Easement Area Abandoned
5'
5'
40'
SIP
SIP
S 02°27'00"E 95.09'
15' UTILITY EASEMENT
N
SC

5.b.

CITY OF FORT SMITH

RESOLUTION NO._____

A RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT A CDBG GRANT APPLICATION TO THE STATE OF ARKANSAS FOR THE RIVER BEND INDUSTRIES PROJECT

WHEREAS, the City of Fort Smith is applying to the State of Arkansas for an Arkansas Economic Development Set-Aside Grant for Industry; and

WHEREAS, it is necessary that certain conditions be met as part of the application requirements; and

WHEREAS, the City of Fort Smith has conducted a public hearing as part of the application process to receive and consider comments on community development and housing needs and proposed activities; and

WHEREAS, as a result of the public hearing, the City of Fort Smith identified and prioritized the community development and housing needs.

THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH that the Mayor is hereby authorized on behalf of the City of Fort Smith to submit an application to the State of Arkansas for the purchase of equipment associated with the expansion of the River Bend Industries project and, if the grant is awarded, to implement the approved grant in coordination with the City Administrator.

RESOLVED THIS 15th day of May, 2012.

APPROVED:

_____
Sandy Sanders, Mayor

ATTEST:

_____
City Clerk

Approved as to form
JSP
No publication required

City of Fort Smith
Community Development Department

EQUAL HOUSING OPPORTUNITY

Memo

To: Ray Gosack, City Administrator

From: Matt Jennings, Director of Community Development

CC: Wally Bailey, Director of Development Services

Date: 5/10/2012

Re: River Bend Industries – State CDBG Grant

As you are aware, the staff was contacted last week by Ms. Sasha Grist, assistant executive director of Western Arkansas Planning and Development District about a State of Arkansas CDBG grant to assist with the purchase of equipment for River Bend Industries. Mr. Tim Allen chief operating officer of the Fort Smith Regional Chamber of Commerce informed Ms. Grist last week of the grant application and the need to complete the application for submission to the Arkansas Economic Development Commission.

I have attached the documents that I have received related to the proposed grant project.

A resolution is attached to authorize the Mayor to execute the application for the CDBG grant funding and for implementation of the grant, if awarded. I have attached the documents that I have received related to the proposed grant project. Ms. Grist will attend the board meeting to answer questions and Mr. Allen has been invited to attend.

It should be noted that this CDBG funding is from state sources and is not a part of the Fort Smith CDBG entitlement program.

Should you have any questions or comments, please let me know.

February 9, 2012

Ron Embree
President/CEO
River Bend Industries
3730 Wheeler Ave.
Fort Smith, AR 72901

Dear Mr. Embree:

Recognizing the importance of continued investment in Arkansas communities, the Arkansas Economic Development Commission (AEDC) is pleased to support the expansion of River Bend Industries (the Company) in Fort Smith, Arkansas. We are excited about the potential impact of this project and the economic benefit it will provide.

AEDC will commit up to $100,000 in a Community Development Block Grant (CDBG) Disaster funds to the City of Fort Smith to go towards the purchase of equipment associated with your cooler project. AEDC's commitment is contingent upon the Company retaining a minimum of 85 full-time positions at an average wage of $13.55/hour within 24 months of signing a grant agreement with AEDC.

If, 24 months from signing a grant agreement, the Company has fallen below 85 full-time positions, they will pay AEDC $1,176.47 for each position under the 85 minimum. Any amount owed will be immediately due and payable. Quarterly job creation reports will be required for two years.

To meet the CDBG regulations for job retention, the Company must complete an income survey of current employees. CDBG requires that 51% of existing positions are held by low-to-moderate income employees or are made available to a low-to-moderate income person upon turnover.

This grant is contingent upon the Fort Smith Chamber of Commerce and River Bend Industries being first money in with their combined $100K investment and that in no case will AEDC's grant be more than 50% of the total project cost.

This commitment is good for six months from the date of this letter. Please contact Sarah Clark at 501-682-1260 if you have any questions.

Sincerely,

Grant Tennille
Interim Executive Director

I accept the terms and conditions of this commitment letter dated February 9, 2012.

Ron Embree, President/CEO
River Bend Industries

2/13/12
Date

ARKANSAS ECONOMIC DEVELOPMENT COMMISSION

EXECUTIVE SUMMARY December 15, 2011

ACTION ITEM: CDBG Financing Approval for River Bend Industries (RBI).

BACKGROUND: RBI is a plastic injection molding company and a supplier to Whirlpool. RBI purchased Moll Industries in 2006 and currently employs 65 full-time employees in Ft. Smith. The company has been working proactively to secure additional contracts with other companies to offset the potential loss of Whirlpool's business. One contract they're working on is with Wal-Mart to manufacture a portable 5 gallon cooler. To secure the contract they need to purchase a $400,000 injection blow molder.

RBI has an operation in in Victor, Iowa that also does a substantial amount of business with Whirlpool. That business is expected to continue since Whirlpool has no plans to close that facility. Whirlpool accounts for about 80% of RBI's business in Arkansas, and with the closing of Whirlpool in Fort Smith, RBI is at risk of closure if it cannot offset this revenue loss. The company has been proactive and entrepreneurial in its attempts to find new business in order to retain their current workforce.

Comerica Bank has approved a $400,000 credit facility to finance the purchase of machinery and equipment for this project but has limited the expenditures to actual machinery costs and will not advance funds for moving and installation. The company estimates that moving and installation will account for approximately $200,000 of the $400,000 total cost. RBI is a profitable company, but with losses after start-up of initial operations (2006) the company still remains in a negative net worth position ($2.289 million). Current cash flow is good but will be strained as soon as the Whirlpool Ft. Smith business starts to move to Mexico.

PROJECT PARAMETERS:

- **Location:** Fort Smith, Sebastian County (Tier 1)
- **Jobs:** 20 (within 24 months)
- **Avg. hourly wage:** $13.55
- **Investment:** $400,000

REQUESTED INCENTIVE PACKAGE:

CDBG Disaster Loan $200,000

RECOMMENDATIONS/RESOLUTION: Business Development and Business Finance are recommending the above financing be approved with normal loan requirements for guarantees and restrictions on related party transactions. 3% @ 5 YR AMORTIZATION

Sarah K Clark
Project Manager

Business Development Director

Business Finance Director

Deputy Director of Global Business

Deputy Director Fin. & Admin

Interim Executive Director

RESOLUTION NO._____

A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING CONCERNING MOBILE DATA SUPPORT BETWEEN THE CITY OF FORT SMITH, ARKANSAS, AND THE CITY OF VAN BUREN, ARKANSAS

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

Section 1. The Memorandum of Understanding between the City of Fort Smith and the City of Van Buren, Arkansas, which shall be substantially in the form attached hereto, is hereby approved and provides for the terms, conditions, and mutual understandings for the operation of mobile data systems between the two parties.

Section 2. The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute this Memorandum of Understanding to which the City of Fort Smith is a party.

THIS RESOLUTION ADOPTED this _____ day of _____, 2012.

APPROVED:

_____

MAYOR

ATTEST:

_____

CITY CLERK

Approved as to form: _____ NPR

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF FORT SMITH, ARKANSAS AND

THE CITY OF VAN BUREN, POLICE DEPARTMENT

This agreement is made and entered into this _____day of _____, 2012, by and between the Van Buren Police Department, acting by and through its governing body, the City Council, hereinafter referred to as Van Buren PD, and the City of Fort Smith, acting by and through its governing body, the Board of Directors, hereinafter referred to as CITY, Sebastian County and Crawford County, State of Arkansas, witnesseth:

WHEREAS, the purpose of this Agreement is to define responsibilities of the Fort Smith Police Department, the Hosting Agency, Van Buren Police Department, the Van Buren PD, concerning use of Mobile Data Computers (MDC) connected to the Fort Smith Police Mobile Data network; and

WHEREAS, the Van Buren PD has entered into all necessary supporting contracts and / or Agreements to effectuate this agreement and will cooperate with any future requirements; and

WHEREAS, the Van Buren PD understands that entering into this agreement will result in certain recurring annual replacement costs and maintenance fees in support of the Mobile Data systems and network infrastructure and that those costs and fees shall be borne entirely by the Van Buren PD;

NOW, THEREFORE, the CITY and VAN BUREN PD agree as follows:

Section 1

Administration

1. The Hosting Agency will administer and maintain all MDC and network infrastructure used on the Hosting Agency Mobile Data Network;

2. The Hosting Agency Network Manager and staff will administer all MDC equipment and installation of software for the Van Buren PD;

3. All software installation and configuration activities for MDC equipment connected to the Hosting Agency Network Infrastructure will be performed under the direction of the Hosting Agency Network Manager and staff, except as specified below in Section 4 paragraph 1;

4. The Hosting Agency Mobile Data Network Manager will administer all MDC user security accounts for the Van Buren PD;

5. Van Buren PD enforcement personnel using the Hosting Agency Mobile Data Network will abide by all applicable Hosting Agency policies and IT Security Policies, including but not limited to, the Acceptable Use Policy of IT Resources;

6. The Van Buren PD will ensure that only authorized Law Enforcement personnel operate MDCs connected to the Hosting Agency Mobile Data Infrastructure;

7. The Van Buren PD will notify the Hosting Agency Network Manager within 24 hours of a status change concerning the eligibility of any Van Buren PD Law Enforcement personnel to operate a Van Buren PD MDC by reason of separation, suspension, or other status change under this agreement. The Hosting Agency Network Manager will immediately disable the member's MDC security account;

8. Either the Host Agency or the Van Buren PD can suspend connectivity pending resolution of any issue that may impact the confidentiality, integrity or availability of their respective systems;

9. In the event the Van Buren PD MDC equipment requires service, the Van Buren PD will contact and transport the equipment to the Hosting Agency Network Manager;

10. The Hosting Agency Network Manager will notify a member designated by the Van Buren PD of any planned or discovered un-planned interruption of the Mobile Data services.

Section 2

Arkansas Crime Information Center (ACIC)

1. The Van Buren PD will ensure that only Law Enforcement personnel or staff members currently certified by the Arkansas State Police or ACIC/NCIC access operate MDCs connected to the Hosting Agency Mobile Data Infrastructure;

2. Violation of ACIC/NCIC policies will result in immediate suspension of connectivity.

Section 3

Audits

1. At regular intervals, the Hosting Agency will conduct audits of mobile data message traffic to ensure member compliance with established use policies. Mobile Data message traffic from Van Buren PD Law Enforcement personnel or staff members is subject to review during these audits;

2. If a Van Buren PD member is identified as having violated established Hosting Agency use policies, the Host Agency Chief of Police, or his/her designee, will contact the Van Buren PD Chief of Police or his/her designee and make notification of the violation;

3. The Hosting Agency Chief of Police will provide the Van Buren PD Chief of Police or a designated member, upon request, audits of Van Buren PD Law Enforcement personnel mobile message traffic, and any other security logs available.

Section 4

Technology Upgrade

1. To maintain the operational efficiency of the Hosting Agency Mobile Data Network, the Hosting Agency Network Manager regularly updates server hardware and software on MDC equipment and network systems. The Van Buren PD agrees to access and install these hardware and software updates and to transport MDC equipment to the Hosting Agency Mobile Data Coordinator for update installation, in instances when updates cannot be efficiently transmitted to MDC equipment wirelessly;

2. To maintain the operational efficiency of the Hosting Agency Mobile Data Network, the Hosting Agency has established a five-year hardware refresh schedule for MDC equipment which includes Mobile Data servers, software, and supporting network equipment. The Van Buren PD agrees to provide to the Hosting Agency the installation date for all County MDC equipment. The Hosting Agency Network Manager will notify a member designated by the Van Buren PD, at least ninety days in advance, that the Van Buren PD equipment is approaching the obsolescence date. No connectivity will be permitted for MDC equipment beyond the equipment

obsolescence date. The Van Buren PD will be responsible for acquiring and funding replacement MDC equipment, servers, software and network equipment, specified by the Hosting Agency Network Manager.

Section 5

Regional Mobile Data Federal Grants

1. By accepting Regional Mobile Data equipment procured by Fort Smith Police department using Federal Grants the recipient agrees to and understands:

2. The equipment remains the property of the City of Fort Smith by the terms of the grant.

3. The recipient is responsible for proper care and maintenance of the equipment while it is in his or her possession. The recipient cannot modify or alter the equipment without express permission of the City of Fort Smith. This includes removal of any inventory or identification tags.

4. The recipient may not sale, barter, trade, pawn, loan, dispose of in any way, or otherwise encumber the equipment at any time. The equipment must be returned to the City of Ft. Smith for proper disposition.

5. The above requirements are the result of federal grant mandates. They are non-negotiable.

Section 6

Fees

1. Year 2010 total support fees: $6,480
   Terms:
   - FSPD will allow Van Buren PD to join the RVMD system at the lowest entry fees per MDT of $800 for Support and $240 for Internet for a total of $1,040 per MDT. Van Buren PD has a grant for $6,480 and would like to apply these funds towards the MOU fees in 2010. These fees would cover the support fees for a term of 12 months starting on the day the MOU has been approved
   - FSPD will allow Van Buren PD in 2010 to operate up to 9 MDT's on the system in 2010 for the support cost of 6.
   - FSPD agrees to allow continued use of four licenses until the Federal grant funding becomes available. Once the RVMD federal grant money becomes available FSPD will purchase Van Buren PD up to 10 mobile cop licenses.

Additional licensing requirements above 10 will be the responsible of VBPD to purchase and maintain the annual software fees.

- Van Buren PD understands any software or hardware purchased from the RVMD grant or within their budget that the annual maintenance fees thereafter will become their responsible.
- RSA Tokens – 2 factor authentication requirements from NCIC by September 2010. It is not known whether the Federal grant will be able to cover the RSA tokens for other agencies by the deadline of September 2010. If the grant will not cover this expense it will be the responsible of VBPD to purchase the required RSA tokens for each officer that uses the RVMD system by September 2010 to adhere to the NCIC security policy.

2. Year 2011 and each year thereafter total support fees for 9 MDC will total $9,360.00
   Terms:
   - The Van Buren PD has requested support for 9 MDC in 2011 and agrees to pay the Hosting Agency fees associated with the rendering of MDC service as follows:

   a. An internet usage fee of $240.00 per MDC unit per year totaling $2160.00
   b. A support fee of $800.00 per MDC unit per year totaling $7,200.00

   This equates to a total annual fee of $9,360.00

Section 6

Renewal

1. This agreement shall have a term of one year from the date of its enactment and shall be deemed to renew automatically on a yearly basis, provided all parties are in continued agreement. Either party not wishing to renew the agreement shall provide written notice to the respective Chief of Police, or their designee, at least ninety (90) days in advance of the termination date.

[REMAINER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

ROBERT FREEMAN, MAYOR

CITY OF VAN BUREN,

DATE:_____

SANDY SANDERS, Mayor

CITY OF FORT SMITH

DATE:_____

ATTEST:

_____

City Clerk

DATE:_____

APPROVED AS TO LEGAL FORM:

_____

APPROVED AS TO LEGAL FORM:

_____

City Attorney

Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: Memorandum of Understanding between the City of Fort Smith and City of Van Buren, Arkansas

Date: May 9, 2012

The Fort Smith Police Department continues its drive towards becoming a regional leader in communications and information dissemination. As part of this process the Department is able to supply the communication needs of other jurisdictions and receive compensation for those services. Monies received can then be reinvested in the technical infrastructure required to maintain the informational network thus benefiting not only the purchaser of services but also the citizens of Fort Smith.

The Department is proposing that the City renew a Memorandum of Understanding that would allow the Department to collect revenue from the City of Van Buren, Arkansas for Mobile Data services. This Memorandum of Understanding includes language that will automatically renew on a yearly basis, provided all parties are in continued agreement. If either party desires to discontinue this service they must provide written notice at least ninety days in advance of the termination date. This is one of many such agreements that the Department has been able to enter into and is an important step in continuing the development of the Departments IT and communications goals.

Please contact me if you have questions or need additional information.

"Pride and Progress"

5 D

RESOLUTION NO. _____

RESOLUTION AUTHORIZING ACQUISITION OF REAL PROPERTY
INTERESTS FOR THE SUNNYMEDE BASIN SEWER IMPROVEMENTS

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

The City Administrator and the City Attorney are hereby authorized to acquire by the exercise of the City's power of eminent domain, if necessary, a sanitary sewer easement on the following properties for the Sunnymede Basin-S001 Sewer Improvements, Project Number 09-05-E1:

Tract No.	Owner	Appraised Value
50-E	Jessie H. Grimes & Alayna Kay Grimes	$168.75
51	Dusti Miller Standridge & Scott Standridge	$179.99

Until acquisition by the City, authorization set forth in Property Acquisition Policy Resolution R-40-05 of May 17, 2005 is continued in effect in the event the property owner desires to agree to acquisition at the appraised value set forth in the Resolution.

This Resolution adopted this _____ day of May 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____ npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator **DATE:** May 11, 2012

FROM: Steve Parke, Director of Utilities

SUBJECT: Sunnymede Basin Sanitary Sewer Improvements
Project Number 09-05-E1

As part of the Sunnymede relief sewer improvements the city must construct a new sanitary sewer line to replace existing undersized sewer lines. The new lines will vary in diameter from 14 to 16-inches, and replace the old sewer line of varying diameter from 10 to 12-inches. This new line will be part of the collection system upgrades which will provide greater flow capacity to the new Sunnymede pump station and equalization basin. A vicinity map of the project area is attached.

The project required the acquisition of 20 sewer easements, 18 of which have been acquired for the appraised values established by Calmo Realty Services. To date, the 2 property owners listed on the Resolution have declined the city's offer, or otherwise not executed the needed easement. Exhibits for the two easement areas are attached.

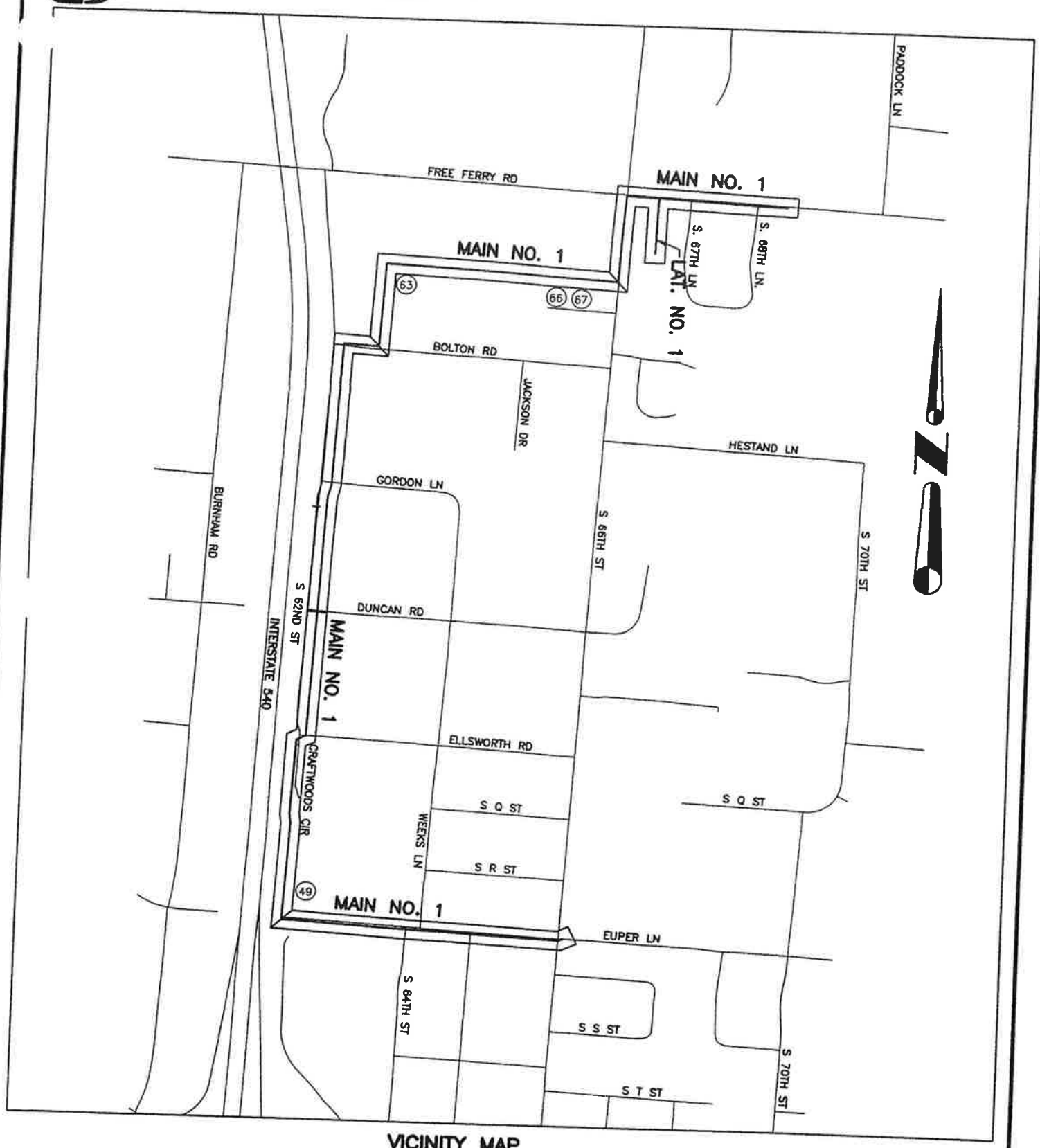
Because of the project's scheduling, staff recommends that this Resolution be submitted to the Board of Directors for their approval at their next scheduled meeting, authorizing the City Administrator and City Attorney to proceed with the eminent domain process to acquire the needed property interests. As always, representatives of the city will continue to negotiate with the property owners in an effort to reach a mutually agreeable settlement.

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

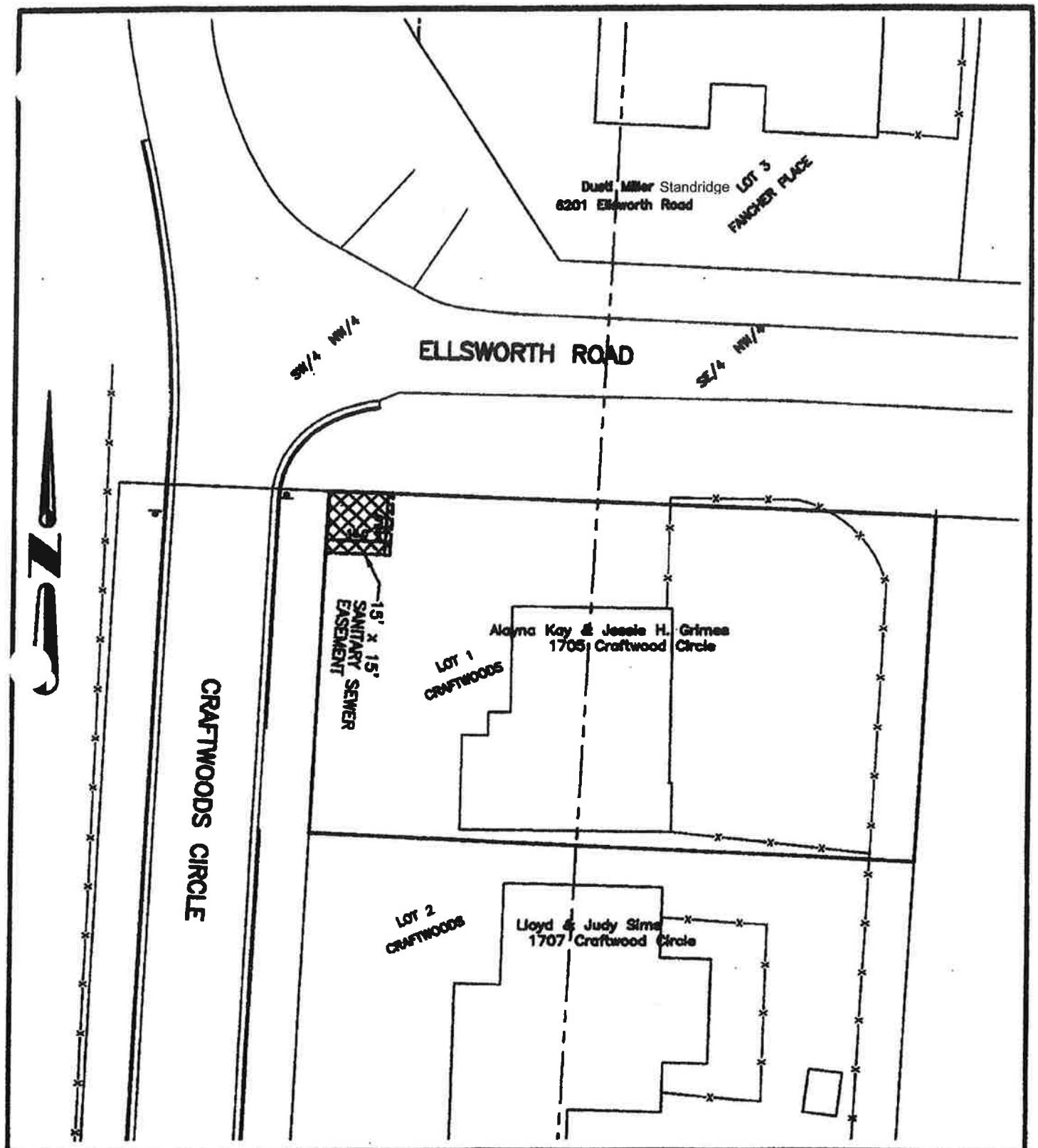
attachment

pc: Jeff Dingman

Brixey Engineering & Land Surveying, Inc.
Land Surveyors – Consulting Engineers
P.O. Box 6180 Ft. Smith, Ark. 72906 (479)646-6394



VICINITY MAP
SUNNYMEDE SEWER
PROJECT NO. 09-05-E1
FORT SMITH, ARKANSAS
Prepared For: City of Fort Smith



BRIXEY ENGINEERING & LAND SURVEYING, INC.

CONSULTING ENGINEERS — LAND SURVEYORS

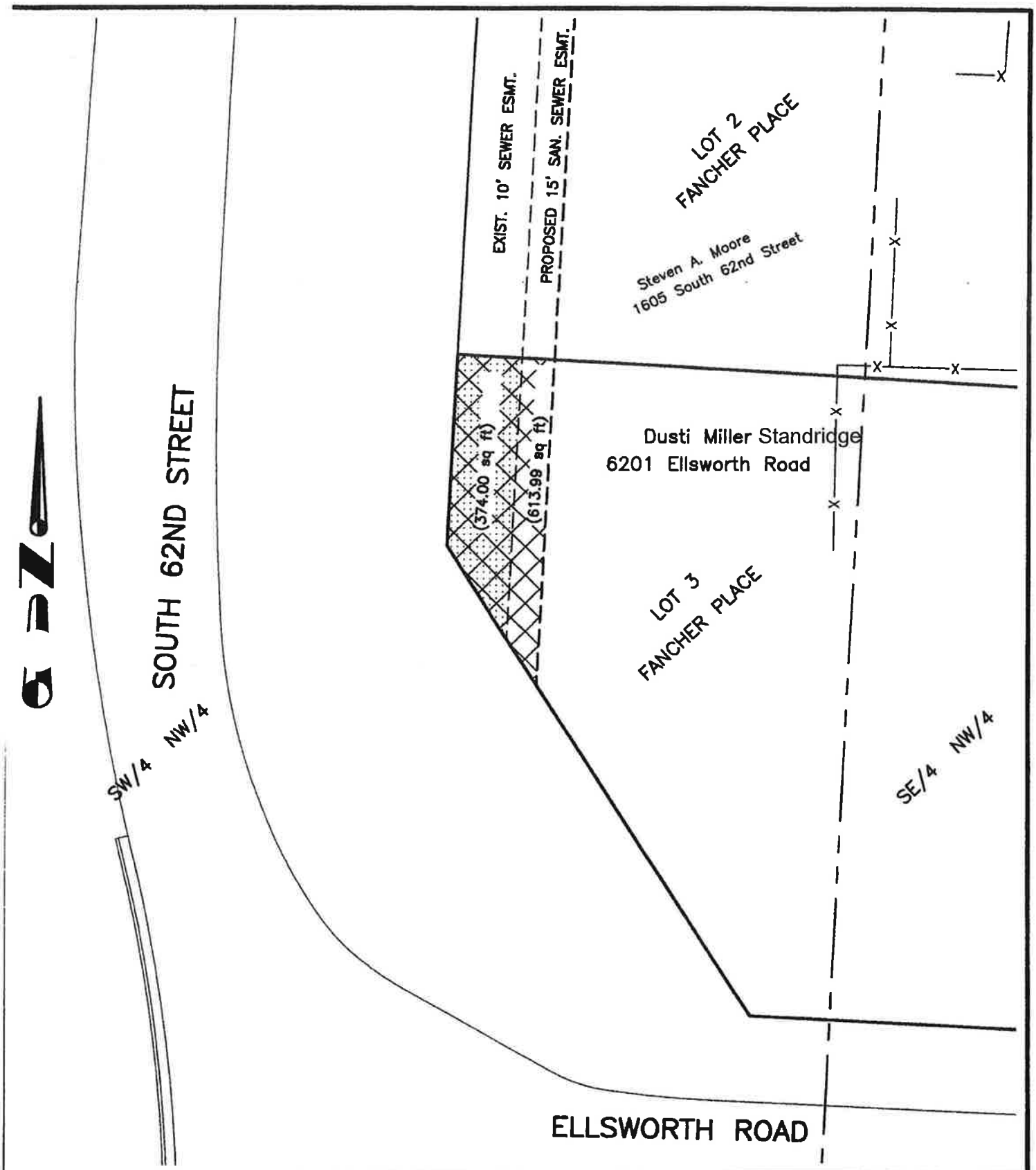
[illegible] East Highway 45 (479) 646-[illegible]

P.O. Box [illegible] Fort Smith, Arkansas 72[illegible]

EXHIBIT "A" — TRACT 50E
PROPOSED 15.0' SEWER EASEMENT
SUNNYMEDE BASIN — S01
PROJECT NO. 09-05-E1
FORT SMITH, ARKANSAS

Prepared For: City of Fort Smith

Scale: 1" = 30'
Date: 11/19/2010
Drawn By: RJH
Job No. 09-0319



BRIXEY ENGINEERING & LAND SURVEYING, INC.

CONSULTING ENGINEERS — LAND SURVEYORS

5223 East Highway 45 (479) 646-6364

P.O. Box 6180 Fort Smith, Arkansas 72906

EXHIBIT "A" — TRACT 51
PROPOSED 15.0' SEWER EASEMENT
SUNNYMEDE BASIN — S01
PROJECT NO. 09-05-E1
FORT SMITH, ARKANSAS

Prepared For: City of Fort Smith

Scale: 1" = 20'
Date: 02/09/2010
Drawn By: RJH
Job No. 09-0319

RESOLUTION NO._____ 5 E

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ACCEPT OFFER MADE BY PROPERTY OWNER FOR THE ACQUISITION OF REAL PROPERTY INTERESTS FOR THE LAKE FORT SMITH WATER SUPPLY

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

The City Administrator is hereby authorized to execute an offer and acceptance made by the following property owner:

Tract 17-4	David L.Bartlett & Louann Bartlett	$ 12,500.00

and make payment for same, and any applicable closing costs, in connection with the acquisition of the real property for the Lake Fort Smith Water Supply, Project Number 99-01, said property being located in Section 17, Township 12 North, Range 29 West, Crawford County, Arkansas.

This Resolution adopted this _____ day of May 2012.

APPROVED:

_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____ npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator **DATE:** April 27, 2012

FROM: Steve Parke, Director of Utilities

SUBJECT: Watershed Protection Acquisitions
Lake Fort Smith Water Supply

David L. Bartlett and Louann Bartlett, who currently reside in Fair Oaks Ranch, Texas, purchased this 10 acre parcel of property in 1986. The property is vacant, heavily wooded, and is located on the north and east side Lake Fort Smith.

The topography is suitable for one or more building sites, but the remainder of the property is generally very steep and drains directly into the lake. All of the property is part of the watershed boundary area around the lake that the city proposes to acquire for watershed protection, either by a watershed protection easement or by fee title acquisition. A location map of the property and a watershed boundary map are attached for your review.

City staff have been corresponding with Mr. Bartlett in an effort to purchase watershed restrictions on the property since May 2003. Mr. Bartlett purchased the property with plans to construct a recreational home with a view of the lake, but has decided not to build and wants to sell the property outright for $20,000.00.

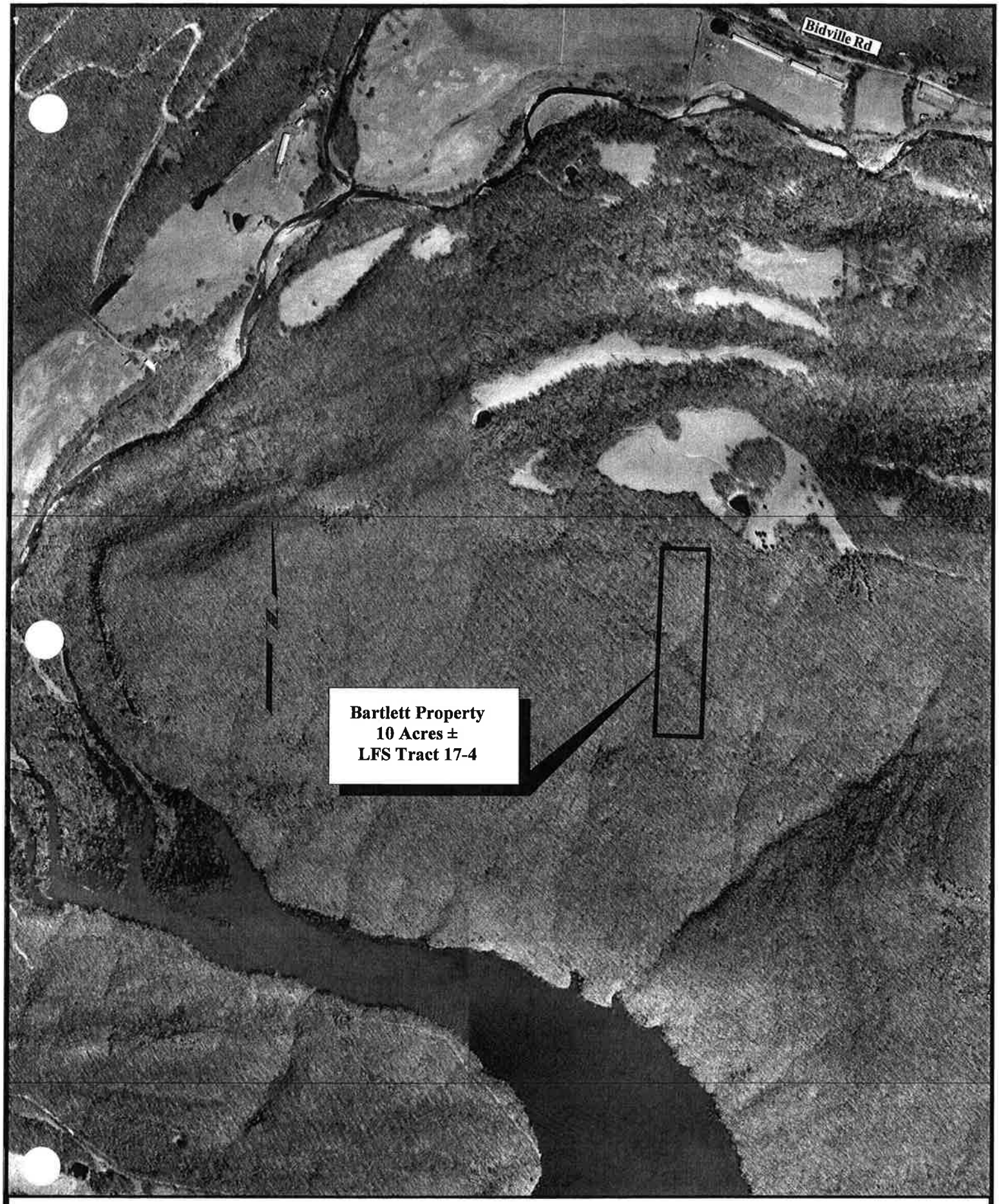
The city's appraiser, Matthews and Associates, appraised the property for $10,000.00, or $1,000.00 per acre. After further review and consideration, Mr. Bartlett reduced his asking price from $20,000.00 to $12,500.00,or $2,500.00 above the city's appraised value.

Staff believes that the owner's offer to sell the property in fee title to the city for $12,500.00 is reasonable and that the administrative costs associated with acquiring a watershed easement through other means is not the best alternative. Therefore, staff recommends that the Board approve this Resolution and accept the owner's offer at its next scheduled meeting.

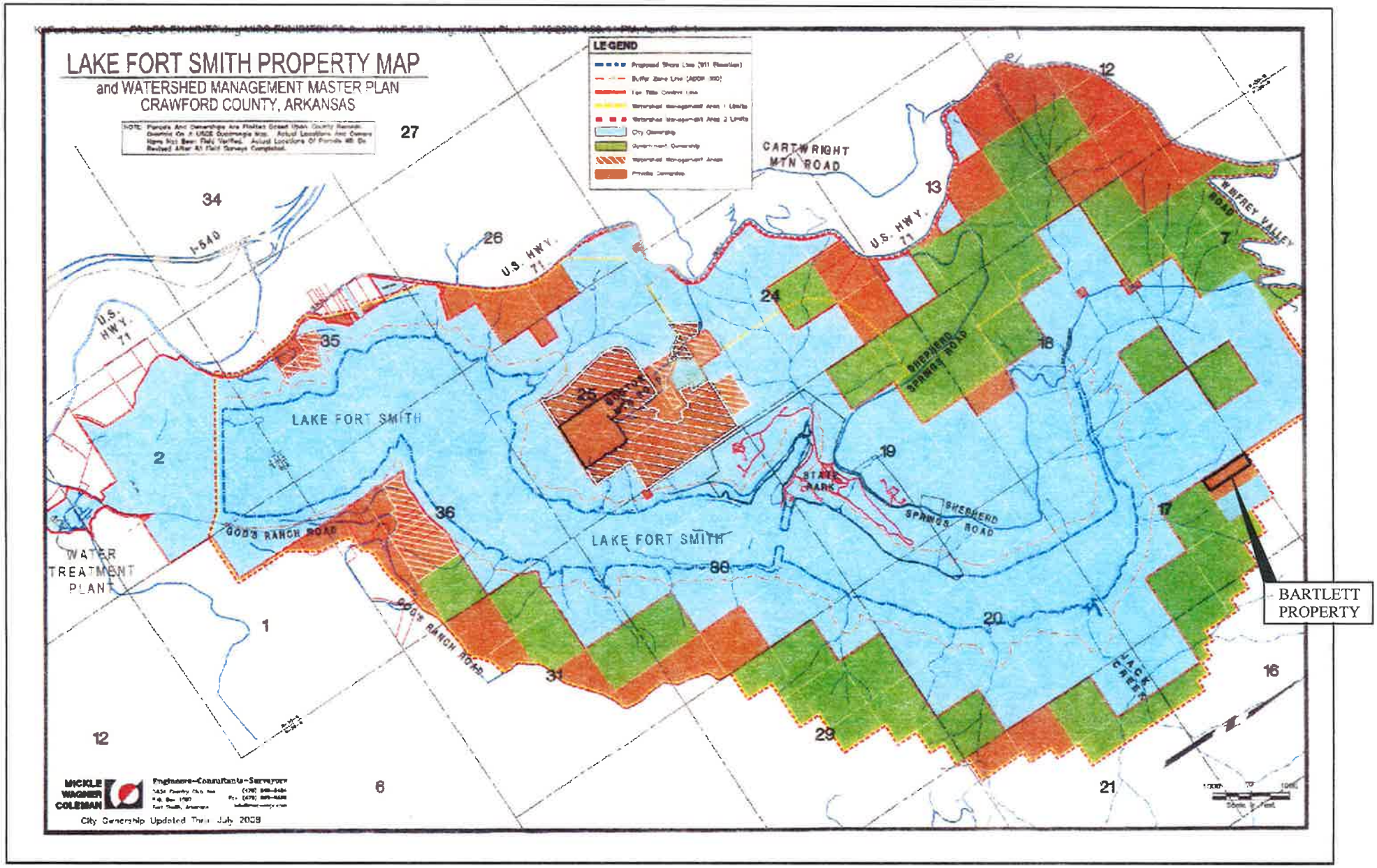
Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman



LAKE FORT SMITH WATER SUPPLY PROJECT NO 99-01
PROPOSED WATERSHED PROTECTION PURCHASE OF BARTLETT PROPERTY


LAKE FORT SMITH PROPERTY MAP
and WATERSHED MANAGEMENT MASTER PLAN
CRAWFORD COUNTY, ARKANSAS
LEGEND
CARTWRIGHT MTN ROAD
U.S. HWY. 71
I-540
LAKE FORT SMITH
GOD'S RANCH ROAD
WATER TREATMENT PLANT
SHEPHERD SPRINGS ROAD
STATE PARK
WHFREY VALLEY ROAD
BARTLETT PROPERTY
MICKLE WAGNER COLEMAN
Engineers-Consultants-Surveyors
City Ownership Updated Thru July 2009

5 F

RESOLUTION NO. _____

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH FORSGREN, INC., FOR THE RIVER FRONT DEVELOPMENT WATER AND SEWER EXTENSIONS

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

SECTION 1: The bid of Forsgren Inc., for the performance of the River Front Development Water and Sewer Extensions, Project Number 11-08-C1, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute a contract with Forsgren Inc., for an amount of $364,615.85, for performing said services.

This Resolution adopted this _____ day of May 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____ npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator **DATE:** May 4, 2012

FROM: Steve Parke, Director of Utilities

SUBJECT: River Front Development Water and Sewer Extensions
Project Number 11-08-C1

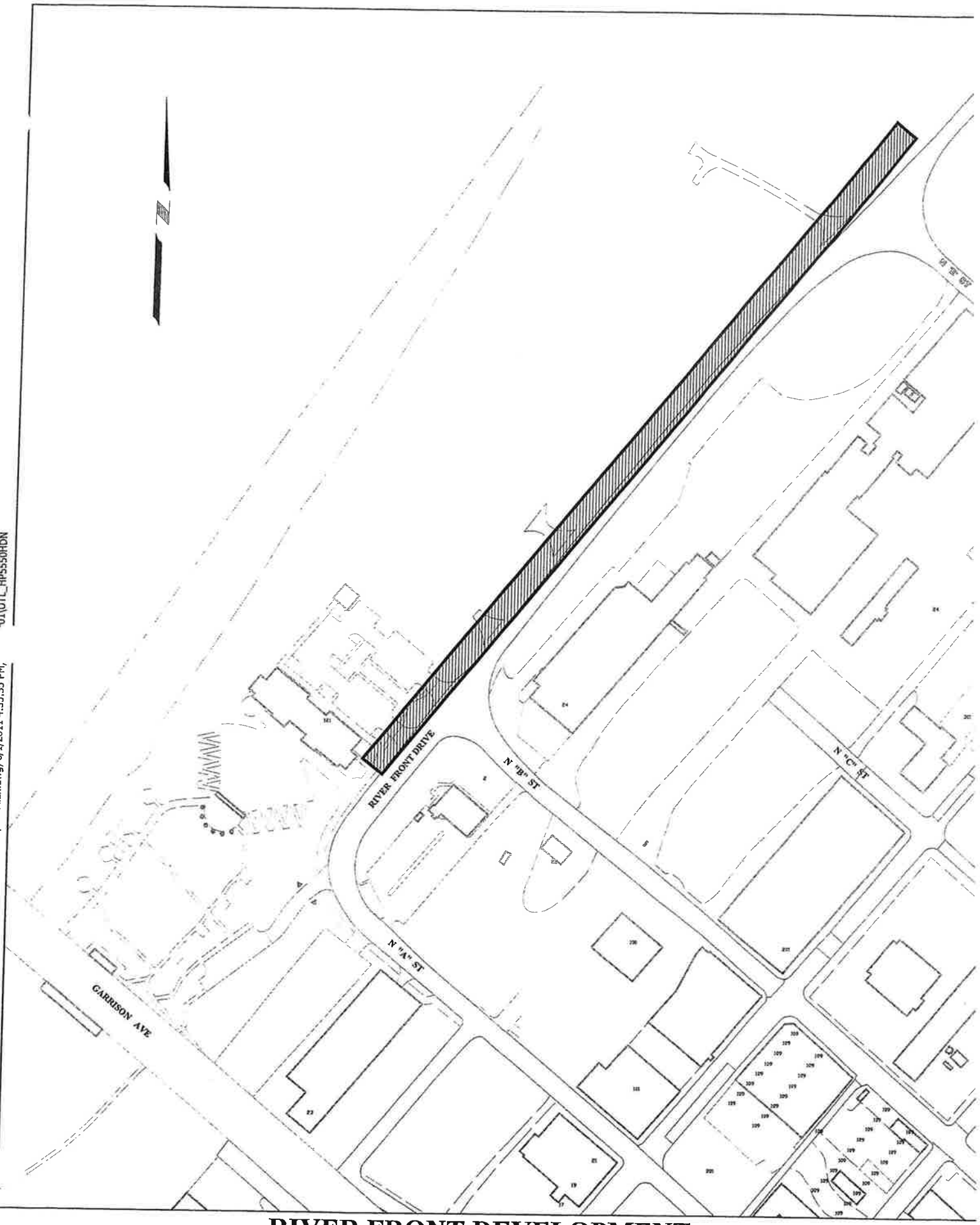
Over the past several years the Board has identified goals to stimulate development along the city's downtown river frontage which includes phased extensions of water and wastewater utilities. The specific area of attention is the land area along River Front Drive between North "A" Street and North "P" Street. The extensions are being accomplished in two phases. Phase I is from North "A" Street to North "H" Street and designed to provide water and sewer services to the Marshals Museum site. Phase II is from North "H" Street to North "P" Street and covers the remainder of the identified development area. The attached exhibit shows the project area for Phase I.

The low bid for Phase I construction of the water and sewer extensions was submitted by Forsgren Inc., in the amount of $364,615.85. A bid tabulation sheet showing the bidders and their bid amounts is attached for your information. I have also attached a Resolution accepting the bid of and authorizing a contract with Forsgren, Inc. A portion ($250,000.00) of the funding for this project will come from a CDBG grant through a congressional appropriation with the balance coming from the Water and Sewer Capital Improvement Fund.

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

attachment

pc: Jeff Dingman



RIVER FRONT DEVELOPMENT
WATER AND SEWER EXTENSIONS
11-08-C1

O:\UtilityDept_General\DWG DATA\Exhibits\JJ\11-08-E1 Riverfront Development Water and Sewer Ext\Site Plan.dwg, 6/1/2011 4:55:35 PM, -01\UTL_HP5550HDN

Tabulation of Bids Received

Project Name: River Front Development Water and Sewer Extensions

Project No: 11-08-C1

Bid Opening:
May 1, 2012
2:00 p.m.
Bids Received:

Forsgren, Inc. Fort Smith, Arkansas	$ 364,615.85
Crawford Construction Company Van Buren, Arkansas	$ 384,068.90
Brothers Construction Van Buren, Arkansas	$ 417,976.00
Goodwin & Goodwin Fort Smith, Arkansas	$ 427,435.00

RESOLUTION NO. _____ 5 G

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH HAWKINS-WEIR ENGINEERING, INC., FOR ENGINEERING SERVICES FOR THE 2011 SANITARY SEWER IMPROVEMENTS

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

SECTION 1: An Agreement with Hawkins-Weir Engineering, Inc., for engineering services associated with construction observation services for the 2011 Sanitary Sewer Improvements, Project Number 11-12-E2, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute an Agreement in the amount of $150,000.00, for performance of said services.

This Resolution adopted this _____ day of May 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____ npr

RESOLUTION NO. _____ 5 H

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH T-G EXCAVATING, INC., FOR THE 2011 SANITARY SEWER IMPROVEMENTS, PHASE I

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

SECTION 1: The bid of T-G Excavating Inc., for the construction of the 2011 Sanitary Sewer Improvements, Phase I, Project Number 11-12-C1, is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute a contract with T-G Excavating, Inc., in the amount of $1,977,777.00, for performing said construction.

This Resolution adopted this _____ day of May 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____ npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator **DATE:** May 15, 2012

FROM: Steve Parke, Director of Utilities

SUBJECT: 2011 Sanitary Sewer Improvements, Phase I
Project Number 11-12-C1

This project repairs approximately 11,000 feet of sanitary sewer main and associated manholes located at 31 separate sites north of Rogers Avenue. The attached exhibit shows the locations of the improvements.

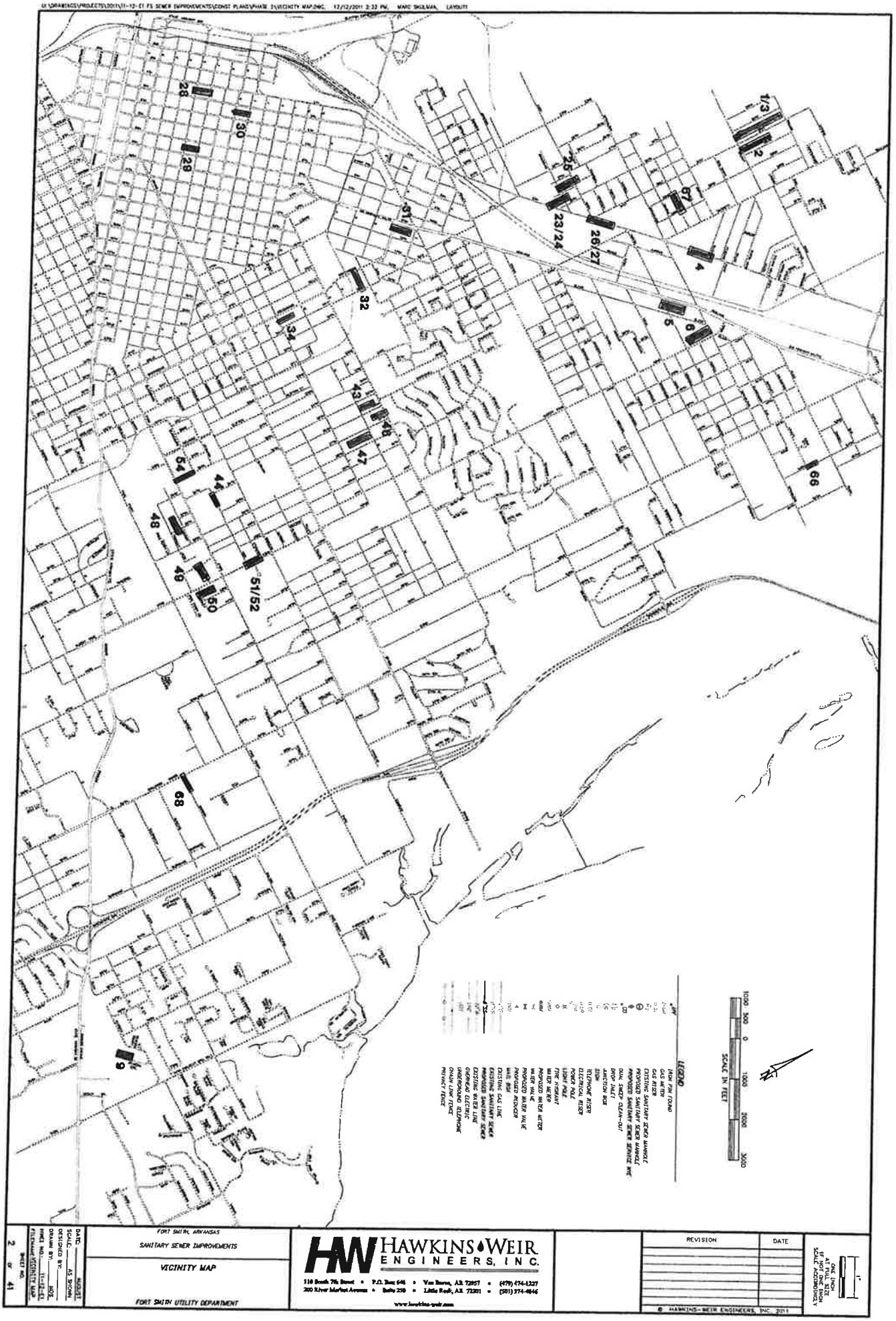
The low bid for the project was submitted by T-G Excavating, Inc., in the amount of $1,977,777.00. A bid tabulation showing the bidders and their bid amounts is attached. A Resolution accepting the bid of and authorizing a contract with T-G Excavating, Inc., is attached.

Also attached is a Resolution authorizing the Mayor to execute Authorization Number Two to the Agreement for engineering services with Hawkins-Weir Engineers, Inc., for construction observation in the amount of $150,000.00.

Funding for this work is available from the sales and use tax bonds issued for wet weather water and sewer improvements. Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman



Project Number 11-12-C1

Tabulation of Bids Received

Project Name:
2011 Sanitary Sewer Improvements Phase I
Project No:
11-12-C1
Bid Opening:
May 3, 2012
2:00 p.m.
Bids Received:

T-G Excavating Catoosa, Oklahoma	$ 1,977,777.00
Forsgren, Inc. Fort Smith, Arkansas	$ 2,493,287.50
Goodwin & Goodwin Fort Smith, Arkansas	$ 2,642,665.00
Building & Utility Contractors Redfield, Arkansas	$ 2,659,661.00

5 I

RESOLUTION NO. _____

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH CUMMINS MID-SOUTH, LLC, FOR THE WASTEWATER PUMP STATION STANDBY POWER EQUIPMENT

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

SECTION 1: The bid of Cummins Mid-South LLC, for the Wastewater Pump Station Standby Power Equipment, Project Number 11-14-C1, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute a contract with Cummins Mid-South LLC, for an amount of $1,341,404.00, for the procurement said equipment.

This Resolution adopted this _____ day of May 2012.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____ npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator **DATE:** May 9, 2012

FROM: Steve Parke, Director of Utilities

SUBJECT: Wastewater Pump Station Standby
Power Improvements Project No. 11-14-C1

As part of the EPA and Department of Justice review of the progress the city is making to improve its wastewater collection system, they have identified the lack of standby power systems for each of our wastewater pump stations as a proposed enforcement issue. Having standby power available allows the pump stations to remain operational during power outages and prevent system overflows and bypasses. The city has 23 wastewater pumping stations in its collection system. There are only four of those stations which currently have standby power systems. Two more pump stations are currently under design for wet weather improvements and the needed standby power systems will be included as part of those construction projects. This leaves 17 pump stations without provisions underway for standby power.

The Massard wastewater treatment plant is the largest facility requiring the addition of a standby power system. Its evaluation identified that the best option for providing standby power was for OG&E to extend a second electrical feeder and automatic transfer switch to serve the plant. That work is currently being addressed with OG&E. The remaining 16 pump station locations do not have a power demand large enough to make a second electrical feeder from OG&E cost effective and will require properly sized engine driven power generators.

Bids for 16 standby power generators and automatic transfer switches were received with Cummins Mid-South, LLC, submitting the low bid in the amount of $1,341,404.00. A bid tabulation showing the bidders and their bid amount is attached. Funding for this equipment purchase has been made part of the 2012 sales and use tax bond issue.

The attached Resolution authorizes the acceptance of the bid submitted by Cummins Mid-South, LLC. It is my recommendation that the Resolution is presented to the Board for their consideration at their next regularly scheduled meeting.

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

attachment

pc: Jeff Dingman

Table 1 - Bids Tabulation

Bidder	Bid Amount				Remark
	Engine/Generators	Portable Load Bank System	Automatic Transfer Switches	Total	
Automatic Power Solutions, LLC	$ 925,275.00	$ 86,763.00	$ 503,136.00	$ 1,515,174.00	
Cummins Mid South, LLC	$ 823,840.00	$ 455,957.00	$ 61,607.00	$ 1,341,404.00	Apparent low bidder
RP Power, LLC	$ 820,373.66	$ 54,101.51	$ 469,304.83	$ 1,343,780.00	

The City of Fort Smith ARKANSAS

May 8, 2012

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

RE: Appointments:

Mr. Salvatore Salamone of the Planning Commission has resigned his position effective May 1, 2012. In accordance with Ordinance No. 2926 applications for this prospective vacancy are now being received. Applicants must be residents and registered voters in the City of Fort Smith.

Please submit applications to the city administrators office no later than the close of business on June 5, 2012. 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 and click on boards and commissions.

Sincerely,

Ray Gosack

Ray Gosack
City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 785-2801
Administrative Offices FAX (501) 784-2407

Printed on 100% Recycled Paper

The City of Fort Smith ARKANSAS

MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Beshears, Administrative Assistant

DATE: May 10, 2012

SUBJECT: Airport Commission

The term of Mr. Rick Deramus of the Airport Commission will expire June 30, 2012. Mr. Deramus is not interested in being reappointed to this board.

The applicants available at this time are:

Brian Meadors	10712 Hunters Point Road
Chris Durkin	1240 North Albert Pike
John Huffman	8301 Clover Drive
Jim Kolettis	2732 Brooken Hill Drive
Randy Cates	4111 Cruce Hill Drive
Thomas Gage	1115 South Waldron
Jane Sanders	7008 Milan Way
Coby W. Logan	P.O. Box 10475
James E. Kelly, III M.D.	5500 Painter Lane

Appointments are **by the Mayor confirmed by the Board of Directors.** One appointment is needed; the terms will expire June 30, 2017.

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 785-2801
Administrative Offices FAX (501) 784-2407

Printed on 100% Recycled Paper

AIRPORT COMMISSION

The Airport Commission has the authority to manage, operate, improve, extend and maintain the Municipal Airport and its related properties and facilities, has the right to employ and supervise airport employees, and has authority to finance all improvements at the Airport, including construction of facilities and acquisition of property.

The Commission shall keep a record of all revenues and expenditures of the Airport and its related properties and facilities, and shall submit monthly reports and an annual report to the Board of Directors.

The Airport Commission is composed of seven citizens who are qualified electors of the City, one of which must be fully experienced in aviation and hold some type of pilot rating. The Airport Commissioners are appointed by the Mayor and Confirmed by a three-fourths vote of the Board of Directors for five-year terms. The commission meets on the Fourth Tuesday of each month at 5:30 p.m. in the airport conference room.

	DATE APPOINTED	TERM EXPIRES
Rick Deramus Deramus Travel, Inc. 7320 Rogers Avenue, Suite 5 (03) 478-1908 (w) Rick@deramustravel.com.	08/19/03	06/30/12
Jan Nordin 4319 South 35 Drive (03) 646-8348 (h) Olblue727@sbcglobal.net	03/18/09	06/30/12
Mac McGhee Systems Analyst 7123 Riviera Drive (03) 462-6399 (h) 648-5634 (w) mac_mcghee@yahoo.com	08/16/11	06/30/13
Wayne Haver Principal Southside 3 Glen Haven Drive (01) 785-1839 (h) 646-7371 (w) Whaver@fortsmithschools.org	09/21/04	06/30/14

M. Scott Archer Engineer 11709 Springridge Dr. (16) 649-8836 (h) 464-4965 (w) sarcher@hsaconsultants.com	06/28/05	06/30/15
Larry A. Devero Retired 100 North 53rd Street (03) 478-8333 (h) Larrydevero@sbcglobal.net	09/21/04	06/30/16
Larry Schiffner Retired 2313 Camelot Drive 479-6397 mooney6786@yahoo.com	11/15/11	06/30/16

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: March 31, 2012

Name: Brian Meadors

Home Telephone: 479-285-6809

Home Address: 10712 Hunters Pt Road

Work Telephone: 479-285-6809

Zip: 72903

Email: brian@meadorslawfirm.com

Occupation: Attorney
(If retired, please indicate former occupation or profession)

Education: B.S.E. Nuclear Engineering (University of Michigan)
J.D., *cum laude*, (Georgetown University)

Professional and/or Community Activities:
Fort Smith Rotary Club, 2002 – 2006; First Presbyterian Church, Elder, 2003 – 2006; Hobson Preschool, Board of Directors, 2003 - 2005.

Additional Pertinent Information/References:
References: George Catsavis and Phillip Merry

Are you a registered voter in the City of Fort Smith? Yes X No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.___
Drivers License_ [redacted] Date of Birth [redacted]
information will be [redacted] d check of all applicants).

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
(X) Airport Commission
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

BRIAN MEADORS

10712 Hunters Point Road, Fort Smith, AR 72903
479-285-6809, brian@meadorslawfirm.com

trial lawyer, professional engineer, and former nuclear submarine officer

EXPERIENCE AND QUALIFICATIONS

Seasoned trial lawyer practicing in Fort Smith, Arkansas **2002 to present**

Founder and partner of Meadors Law Firm PLLC (October 2010 to present). Clients include Area Agency on Aging, Frost Oil Co., Worksource, KISR-93 radio, and the Van Buren School District.

Partner in the Pryor firm of Fort Smith (March 2002 to October 2010). Practiced in the areas of insurance defense, commercial litigation, employment, and civil rights.

Noteworthy case: Huber v. Wal-Mart. Represented Pam Huber, a former Wal-Mart employee, in an Americans with Disabilities Act suit. We won at the federal district level, but Wal-Mart appealed to the the Eighth Circuit, and won a reversal. The Eighth Circuit denied my petition for rehearing *en banc*, but I drew four dissents. The United States Supreme Court granted *certiorari*. *See* SCT docket 07-480. Sadly, I did not get to argue before the Supreme Court; once *certiorari* was granted, Wal-Mart settled the case for a confidential amount.

Noteworthy case: Harry Potter. Represented the Counts family in their federal lawsuit against the Cedarville School District. We successfully challenged the school's ban of *Harry Potter* books from the school's library. The case received international press coverage.

Attorney, Nuclear Law Practice Group at Morgan Lewis **1999 to 2002**

Legal counsel for nuclear utilities and industrial organizations. Advised and represented clients in:

- federal statutory and regulatory compliance (*e.g.*, transfers of special nuclear material, spent fuel storage);
- complex commercial litigation (*e.g.*, the owner-operator litigation at Cooper Nuclear Station and the owner-operator litigation at Millstone Nuclear Power Station);
- Nuclear Regulatory Commission proceedings (*e.g.*, agency adjudications regarding plant licensing);
- Department of Labor proceedings (*e.g.*, whistleblower cases)

Nuclear Submarine Officer, United States Navy **June 1991 to August 1996**

Officer of the Watch. As the Captain's direct representative, headed a team of up to 37 technicians in everything from submerging and surfacing the submarine to providing continuous nuclear propulsion to a United States warship. Responsible for a crew of 130 and a nuclear submarine worth $600M. Possessed Top Secret/SCI security clearance.

Professional Civilian Licenses

Admitted to the Bars of Arkansas, Florida, Missouri, Nevada, Oklahoma, Virginia, and the District of Columbia. Licensing in AR, FL, NV, and VA required that I take each bar exam; thus, I have taken, and passed, the bar exam four times. MO, OK, and DC are by reciprocity.

Professional Engineer in Arkansas (#9524) and Virginia (#031641).

HONORS AND AWARDS

The Navy Achievement Medal, Two Awards

Two awards during my naval career for excellence in management and engineering.

The Navy Expeditionary Medal

Awarded for performance of special submarine operations.

Member of the Arkansas Board of Law Examiners, 2009 - present

Appointed by the Arkansas Supreme Court. The Board administers and grades the bar exam and determines applicant qualifications.

EDUCATION

Georgetown University Law Center, Juris Doctor, *cum laude* **1996-1999**

Navy Nuclear Officer Training **1992-1993**

University of Michigan, Ann Arbor, B.S.E., Nuclear Engineering **1987-1991**

COMMUNITY SERVICE

Fort Smith Rotary Club, Board of Directors, 2004 – 2006; First Presbyterian Church, Elder, 2003 – 2006; Hobson Preschool, Board of Directors, 2003 - 2005, and Board President '04-'05.

REFERENCES

Judge Harry A. Foltz, Sebastian County Circuit Judge (retired), 479-452-2698 (h), 479-629-1927 (c), hafoltz@gmail.com
Judge James O. Cox, Sebastian County Circuit Judge, 479-782-3035 (w), 479-883-0520 (c), jcox@co.sebastian.ar.gov
John Matthews, Attorney at Morgan Lewis, 202-739-5524 (w), jmatthews@morganlewis.com
Jay Gutierrez, Attorney at Morgan Lewis, 202-739-5466 (w), jgutierrez@morganlewis.com
Jim Medley, CEO of Area Agency for Aging of Western Arkansas & former representative in the Arkansas Legislature, 479-783-4500 (w), 479-651-4500 (c), jmedley@agingwest.org
Dr. Merle Dickerson, Superintendent of the Van Buren Public School District, 479-474-7942 (w), 479-651-0581 (c), mdickerson@vbsd.us

Airport Com.

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 2/27/2012

Name: Chris Durkin

Home Telephone: (479)561-0297

Home Address: 1240 No Albert Pike

Work Telephone: (479)561-0297

Zip: 72904

Email: _____

Occupation: Project tech at Sparks hospital
(If retired, please indicate former occupation or profession)

Education: High school

Professional and/or Community Activities: _____

Additional Pertinent Information/References: Dave smith, Community Development Offices 623 Garrison Ave, Fortsmith, AR, 72901(479)784-2217

Are you a registered voter in the City of Fort Smith? Yes___ No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?

Yes____ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from conside[redacted]

Drivers License_[redacted] Date of Birth [redacted]

information will b[redacted]ound check of all applicants).

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
(✓) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
(✓) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
(✓) Oak Cemetery Commission
(✓) Outside Agency Review Panel
( ) Parking Authority
(✓) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

Airport

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 2-17-12

Name: JOHN HUFFMAN

Home Telephone: 479-646-4271

Home Address: 8301 CLOVER DRIVE

Work Telephone: _____

Zip: 72908

Email: JACKETHELHUF@SBCGLOBAL.NET

Occupation: RETIRED - INDUSTRIAL ENGINEER
(If retired, please indicate former occupation or profession)

Education: BS AUBURN UNIVERSITY

Professional and/or Community Activities: SERVED AS DISASTER CHAIRMAN FOR RED CROSS, SERVED ON SEBASTIAN DISASTER TEAM

Additional Pertinent Information/References: _____

Are you a registered voter in the City of Fort Smith? Yes X No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.

Drivers License [redacted] Date of Birth [redacted]

information will [redacted] ground check of all applican

I am interested in serving on the (please check).

( ) Audit Committee
( ) Advertising & Promoting Commission
(X) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
(X) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
(X) Historic District Commission
( ) Housing Assistance Board
(X) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
(X) Parks & Recreation Commission
(X) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission

Airport

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: August 25, 2011

Name: Jim Kolettis

Home Telephone: 479-648-3449

Address: 2732 Brooken Hill Dr

Work Telephone: 479-410-2211

Zip: 72908

Email: jimk@cox.net

Occupation: Director Marketing & Sales at Mahar Manufacturing
(If retired, please indicate former occupation or profession)

Education: BA Mechanical Engineering

Professional and/or Community Activities and Additional Pertinent Information/References:

Previous Employment: Project Program Manager at Dept. of Defense/ Procurement Technical Assistance Center
Present Member of: The Fort Smith Convention Center Commission, City of Fort Smith Citizen's Academy Alumni, National School Supply and Equipment Association/NSSEA, School Supply Industry Group, emarketing Association Network, 280 Group: Product Management & Product Marketing, Christian Professionals, Education Marketing Professionals, eMarketing Association Network, For-Profit Education Industry Group, Future Trends, GreenBiz.com -- Green Business Professionals, Inbound Marketers - For Marketing Professionals, Innovative Marketing-PR-Sales-Word-of-Mouth & Buzz Innovators, International Business, Leadership Think Tank, LEED Accredited Professional, Managing a Multi-Generational Workforce, Marketing Communication, Marketing Executives Group, Sales Playbook!, SalesBlogcast.com, Social Media Marketing, TEN - Top Executives Net

Are you a registered voter in the City of Fort Smith? YES

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense? NO

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.

Drivers License [redacted] of Birth [redacted]
(This informati[redacted] back gr[redacted]

I am interested in serving on the (please check):

( ) Audit Committee
✓ Advertising & Promoting Commission
✓ Airport Commission
( ) Animal Services Task Force
✓ Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
✓ Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
✓ Parks & Recreation Commission
✓ Planning Commission
( ) Plumbing Advisory Board
✓ Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

Please return this form to Wendy Beshears, P.O. Box 1908, FSM, AR 72902

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: May 1st, 2012

Name: Randy Cates

Home Telephone: 479-646-9171

Home Address: 4111 Cruce Hill Dr

Work Telephone: 479-201-3351

Zip: 72901

Email: randycates@cox.net

Occupation: Vice President of Information Technology-Golden Living
(If retired, please indicate former occupation or profession)

Education: BSBA University of Arkansas Fayetteville

Professional and/or Community Activities: Servered on numerous senior living IT committees at national level.

Additional Pertinent Information/References: I grew up in Ft Smith attending Fairview, Ramsey and Southside High School.

Are you a registered voter in the City of Fort Smith? Yes X No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.____
Drivers License AI [redacted] Date of Birth [redacted]
information will be u [redacted] check of all applicants).

I am interested in serving on the (please check):

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( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: **5/7/2012**

Name: **Thomas Gage**

Home Telephone: **479-461-4191**

Home Address: 1115 South Waldron Suite 101

Work Telephone: **479-434-6650**

Zip: **72916**

Email: Metroplex_thomas@yaoo.com

Occupation: **Company Owner, Helicopter pilot**
(If retired, please indicate former occupation or profession)

Education: **Van Buren High, OSU**

Professional and/or Community Activities: **Life time member of the Art Center**

Additional Pertinent Information/References: **Commercial, Certified Flight Instructor, EMS Helicopter Pilot,** References: **Rickardo Vadez, Arkansas Seat cover 650-3903, Calvin Moye, 651-1738**

Are you a registered voter in the City of Fort Smith? Yes X No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X
If yes, please identify the offense and the approximate date. A "yes" answer will [redacted]
you from con[redacted]
Drivers Licen[redacted] Date of [redacted]
(This informa[redacted]l back ground check of all applicants).

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
(X) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
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( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

FAX TO WEAVT & MAYOR OFC

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: April 26, 2012

Name: Jane Sanders

Home Telephone: 479 484-1151

Home Address: 7008 Milan Way

~~Work~~ Cell Telephone: 479-806-8026

Zip: 72916

Email: jbsanders@sbcglobal.net

Occupation: Travel Agency Owner (25 years)
(If retired, please indicate former occupation or profession)

Education: BSE University of Arkansas

Professional and/or Community Activities: Former Board member: Reynolds Cancer Support House, Forum Club

Additional Pertinent Information/References: Interaction with all airlines for 25 years. / (Brother) Artie Berry was a member of airport commission for several years. RICK DERAMUS

Are you a registered voter in the City of Fort Smith? Yes ✓ No ___

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense? Yes ___ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration. ___ Date of Birth ___ Drivers License ___ information will be check of all applicants).

I am interested in serving on the (please check):

- ( ) Audit Committee
- ( ) Advertising & Promoting Commission
- (X) Airport Commission
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- ( ) Benevolent Fund Board
- ( ) Bldg. Bd. Of Adjustment and Appeals
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- ( ) Parks & Recreation Commission
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- ( ) Port Authority
- ( ) Property Owners Appeals Board
- ( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
- ( ) Sister Cities Committee
- ( ) Transit Advisory Commission
- ( ) Residential Housing Facilities Board

AS OUTGOING AIRPORT COMMISSION CHAIRMAN, I HIGHLY RECOMMEND JANE SANDERS TO REPLACE ME. REGARDS RICK DERAMUS

Airport

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 4/4/12

Name: Coby W. Logan

Home Telephone: _____

Home Address: PO Box 10475

Work Telephone: (479) 782-8813

Zip: 72917

Email: cloganerbsclaw.com

Occupation: Attorney
(If retired, please indicate former occupation or profession)

Education: Univ. of Ark. School of Law, Fayetteville

Professional and/or Community Activities: _____

Additional Pertinent Information/References: _____

Are you a registered voter in the City of Fort Smith? Yes X No ___
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes___ NO X
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from
consideration.___
Drivers License_ [redacted] Date of Birth_
information will be [redacted] check of all applicants). [redacted]

I am interested in serving on the (please check).

(✓) Audit Committee
( ) Advertising & Promoting Commission
(✓) Airport Commission
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
(✓) Central Business Improvement District
( ) Convention Center Commission
(✓) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
(✓) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
(✓) Port Authority
( ) Property Owners Appeals Board
(✓) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 5/10/12

Name: James E. Kelly, III, M.D.

Home Telephone: 479 452 4331

Home Address: 5500 Printer Lane

Work Telephone: 479 709 8395

Zip: 72903

Email: Kellyepm@aol.com

Occupation: Surgeon
(If retired, please indicate former occupation or profession)

Education: Masters Business Administration, Medical Doctor

Professional and/or Community Activities: Independent Plastic & Hand Surgeon (16 years Fort Smith), Sponsor Fort Smith Symphony, "Be A Shield" Salvation Army, Razorback Foundation

Additional Pertinent Information/References: Commercial Licensed pilot owner/operator private plane, tenant since 2004 @ TAC Air Fort Smith

Are you a registered voter in the City of Fort Smith? Yes X No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes ____ NO X

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration. N/A

Drivers License FL [redacted] Date of Birt[redacted]
information will be use to con[redacted]ll applican[redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
(X) Airport Commission
( ) Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: MAY 14 2012

Name: JAN NORDIN

Home Telephone: 646-8348

Home Address: 4319 S. 35th Dr

Work Telephone: _____

Zip: 72903

Email: OLBLUE727@SBCGLOBAL.NET

Occupation: AUCTIONEER
(If retired, please indicate former occupation or profession)

Education: ALMA HIGH SCHOOL, UNIVERSITY OF ARKANSAS, USAF PILOT TRAINING

Professional and/or Community Activities: FSM AIRPORT COMMISSION, COMMUNITY COUNCIL, ARKANSAS AUCTIONEERS ASSOCIATION, REALTOR, DIRECTOR ALLIED BANK

Additional Pertinent Information/References: _____

Are you a registered voter in the City of Fort Smith? Yes X No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.
Drivers Licens[redacted] Date of [redacted]
information wil[redacted]und check of all appli[redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
(X) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

The City of Fort Smith ARKANSAS

MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Beshears, Administrative Assistant

DATE: May 8, 2012

SUBJECT: Community Development Advisory Commission

The terms of Ms. Fran Hall and Ms. Cinda Rusin of the Community Development Advisory Commission will expire June 30, 2012. Ms. Hall and Ms. Rusin are interested in being reappointed to this 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 June 30, 2015.

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 785-2801
Administrative Offices FAX (501) 784-2407

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COMMUNITY DEVELOPMENT ADVISORY COMMITTEE

The purpose of the Community Development Advisory Committee is to serve in an advisory role in the planning, implementing, and assessing of the Community Development Program, and to ensure continuity of the involvement of citizens throughout all stages of the Community Development Program. The Community Development Advisory Committee is authorized to review and recommend to the Board of Directors projects to be considered for Community Development Block Grant Funding; to review and assess Community Development Program performance; to prepare and recommend a Citizen Participation Plan; to hold meetings and workshops to disseminate information to citizens and to receive views and opinions and relate these to the setting of priorities for the City.

The Community Development Advisory Committee consists of seven members, appointed by the Board of Directors. The committee shall contain substantial representation of low and moderate income families, members of minority groups, the elderly, the handicapped, the business community and civic groups. Initially four members will serve two-year terms and three will serve three-year terms, thereafter all terms will be three years or until the expiration of the Community Development Program. The committee meets on call.

	DATE APPOINTED	TERM EXPIRES
Cinda Rusin Self-employed P.O. Box 10063 (17) 452-5636 (h) 648-3351 (w)	06/20/06	06/30/12
Fran Hall Sebastian Co. Juvenile Detention 2125 So. W Street (01) 785-2883 (h) 783-3532 (w)	06/20/06	06/30/12
Yvonne Keaton Martin Retired Principal 1906 North 47 Street (04) 784-9386 (h) foxynana9@cox.neet	05/20/08	06/30/13

Kerri Norman T. Donaho Mgmt Co. 3415 South 29 Circle (01) 646-9602 (h) 783-1089 (w)	08/21/01	06/30/14
George W. Willis Banker 5112 Lovett Lane (04) 783-8963 (h) 494-1123 (w)	06/17/99	06/30/14
Genia Smith Credit Manager 2121 South W (01) 782-6810 (h) 646-4300 (w) GSmith822@aol.com	05/20/09	06/30/14
Joshua Carson Attorney 109 No. 3rd #516 (01) 782-7203 (w) jcarson@jmlaw.com	05/17/11	06/30/14

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 4/24/12

Name: Fran Hall

Home Telephone: 785-2883

Home Address: 2125 So. W St

Work Telephone: 7833532

Zip: 72901

Email: fhall@co.sebastian.ar.us

Occupation: Sebastian Co. Juvenile Detention Center
(If retired, please indicate former occupation or profession)

Education: Northside, West Ark

Professional and/or Community Activities: Fort Smith Rotary (assistant Governor) Clayton House Board, Girl Scout diamonds, Adult Ed. Advisory Cass job corp advisory,

Additional Pertinent Information/References: Sheriff Bill Hollenbeck, Judge Steven Faber, Judge Jim Spears

Are you a registered voter in the City of Fort Smith? Yes X No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?

Yes____ NO X

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consi[redacted]

Drivers License [redacted] n Date of B[redacted]

information will [redacted] round check of all applica[redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
(X) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 5/2/12

Name: Cinda Rusin

Home Telephone: 479-452-5636

Home Address: P.O. Box 10063

Work Telephone: 479-629-6825

Zip: 72917

Email: cindarusin@gmail.com

Occupation: OWNER / OPERATOR SPRAY-RITE INC
(If retired, please indicate former occupation or profession)

Education: AA PUBLIC RELATIONS

Professional and/or Community Activities: CITY OF F.S. STRATIC PLANNING CITY PLANNING COMMISSION, CDBG COMMITTEE, CHAMBER, ST EDWARD DEV. BOARD

Additional Pertinent Information/References: _____

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?

Yes ____ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration. [redacted] Date of Birth [redacted] Drivers Licens[redacted] check of all applicants [redacted] information will [redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
(✓) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

784-2442

MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Beshears, Administrative Assistant

DATE: May 10, 2012

SUBJECT: Fort Smith Municipal Employees Benevolent Fund Board of Advisors

The terms of Mr. Danny Baker (Police Department) and Mr. Chris Driggers (Fire Department) of the Fort Smith Municipal Employees Benevolent Fund Board of Advisors will expire June 30, 2012. Mr. Baker and Mr. Driggers are not interested in being reappointed to this board.

The applicants available at this time are:

Barbara Williams	7113 South T Street (Police)
Ronnie Rogers	1512 North 43 Street (Fire)

Appointments are **by the Board of Directors.** Two appointments are needed; the terms will expire June 30, 2015.

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P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 785-2801
Administrative Offices FAX (501) 784-2407

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FORT SMITH MUNICIPAL EMPLOYEES BENEVOLENT FUND BOARD OF ADVISORS

The Fort Smith Municipal Employee's Benevolent Fund was established December 23, 1991. The fund provides for a trust fund to be used to provide emergency assistance to the employees of the City of Fort Smith and their immediate families, including immediate families of deceased employees of the various city departments whenever such employees or their immediate families sustain extraordinary expenses (including, but not limited to: housing, clothing, food, educational, medical and dental expenses). Distributions from the fund shall be at the discretion
of the Board of Advisors of the fund.

The Board of Advisors consists of nine persons as follows: two members of the Police Department, two members of the Fire Department, two members of other city departments, and two other adults who are citizens of the City of Fort Smith. The Mayor serves as a member , ex-officio, and presides at meetings of the Board of Advisors. Members of the Board of Advisors are appointed by the Board of Directors. (Three year terms).

	DATE APPOINTED	TERM EXPIRES
Police Department Representatives:		
Danny Baker 38509 Christopher Ln Howe, OK 74940 918-647-7900 (h) 709-5137 (w)	10/22/08	06/30/12
Ricky Brooks 8223 Cypress Avenue (03) 646-6562 (h) 709-5124 (w)	06/19/01	06/30/13
Fire Department Representatives:		
Chris Driggers 8501 South 35 Terrace (08) 646-2394 (h) 783-4052 (w)	06/20/00	06/30/12

Mark Talley 1009 Vista Ridge Drive Alma, AR 72921 784-2370 (w)	01/07/92	06/30/13

Other City Department Representatives:

Garry Cathcart 3403 South 29th Circle (01) 648-1663 (h) 784-2357 (w) gcathcart@fortsmithar.gov	06/19/07	06/30/13
Sonya Elliott 604 Jessie Drive Lavaca, AR 72941 selliott@fortsmithar.gov	05/17/11	06/30/14

Citizen Representatives:

Mary C. Moore UAMS 3424 No. 27 Street (04) 424-3960 (w) 434-3658 (h) mcmoore@uams.edu	06/21/11	06/30/14
Larry Murry Esquire 3000 Blackburn (03) 783-8984 (w) 783-8858 (h)	08/20/02	06/30/14

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 5-9-12

Name: Ronnie Rogers

Home Telephone: 479-883-3131

Home Address: 1512 North 43rd Ft Smith

Work Telephone: 479-783-4052

Zip: 72904

Email: rrogers@fortsmitharkansas.gov

Occupation: Fire Marshal Ft Smith Fire Dept

(If retired, please indicate former occupation or profession)

Education: High School - Some college -

Professional and/or Community Activities: _____

Additional Pertinent Information/References: _____

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?

Yes____ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.

Driver [redacted] Arkansas Date of Birth 3 [redacted] information will be use to conduct a criminal back ground check of all applic[redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
✓ Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board ( )

Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 4-26-12

Name: Barbara Williams

Home Telephone: 479-414-3545

Home Address: 7113 So. T Street

Work Telephone: 479-709-5155

Zip: 72903

Email: bwilliams@fortsmithpd.org

Occupation: Detective Fort Smith Police
(If retired, please indicate former occupation or profession)

Education: AA, BA

Professional and/or Community Activities: FOP #39 Treasurer

Additional Pertinent Information/References: Previous Bank experience including loan making & review credit/need

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration [redacted]
Drivers Licer [redacted] Da [redacted]
information wi [redacted] ound check of all a [redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
( ) Arkansas Fair & Exhibition Facilities Bd
(X) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

The City of Fort Smith ARKANSAS

MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Beshears, Administrative Assistant

DATE: May 8, 2012

SUBJECT: Transit Advisory Commission

The terms of Mr. Ken O'Donnell and Ms. Pauline Novak of the Transit Advisory Commission will expire June 15, 2012. Mr. O'Donnell and Ms. Novak are interested in being reappointed to this commission.

The applicants available at this time are:

Lorie Robertson	3301 South 96 Street
Dustin L. Perceful	4615 South R Street
Virginia J. Bennett	5800 Grand Avenue # 721
Treopia Jordan	1014 Trenton Drive

Appointments are **by the Mayor confirmed by the Board of Directors.** Two appointments are needed; the terms will expire June 15, 2015.

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(501) 785-2801
Administrative Offices FAX (501) 784-2407

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TRANSIT ADVISORY COMMISSION

The Transit Advisory Commission is responsible for maintaining and improving public transit in Fort Smith and to direct efforts regarding marketing/advertising, shelters, special projects, bus zones, stops and routes as well as other related issues.

The commission was established April 7, 1998. The Transit Advisory Commission consists of five members appointed by the **Mayor, confirmed by the Board of Directors** and each serves three year terms. Meetings are quarterly at 3:00 p.m. in the Transit Department first floor at 6821 Jenny Lind Road.

	DATE APPOINTED	TERM EXPIRES
Ken O'Donnell 55 Hiland (01) 782-6663 (h) 785-2651 (w) kodonnell@wapdd.org	05/16/06	06/15/12
Pauline Novak 5200 Johnson Street (04) 783-1144 (h)	06/23/09	06/15/12
Randy Burress 4109 Marshall Drive (04) 785-3765 (h)	07/01/01	07/15/13
Charles Poole 8503 Ashberry Court (08) 478-6883 (h) cpoolec@cox.net	07/20/10	07/15/13
Charles Mills Retired 8900 Copper Oaks Ln (03) 452-4783 (h)	07/15/08	07/15/14

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 4/5/2012

Name: Ken O'Donnell

Home Telephone: 782 6663

Home Address: 55 Highland Dr

Work Telephone: same

Zip: 72901

Email: kodonnell@hotmail.com

Occupation: Director, Bi-State MPO
(If retired, please indicate former occupation or profession)

Education: BAE: Secondary Educ., Masters: Urban + Regional Planning

Professional and/or Community Activities: Member + Current Vice Chair Transit Advisory Commission: member since 2006

Additional Pertinent Information/References: Volunteer at Fort Smith Historic Site and F.S. Visitors Center

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?

Yes____ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consi[redacted]

Drivers License [redacted] Date of [redacted]

information will [redacted] round check of all applic[redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
(✓) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
(✓) Transit Advisory Commission
( ) Residential Housing Facilities Board

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 5-3-2012

Name: Aruline M. Novak Home Telephone: 783-1144

Home Address: 5200 Johnson St Work Telephone: 45-2-2882

Zip: 72904 Email: ——

Occupation: Domestic Semi-retire
(If retired, please indicate former occupation or profession)

Education: 12 years H. School 2 years Jr. Colledge Business

Professional and/or Community Activities: JCPd Donrey Cancer Support Blues fest. League women, citizens ac. police - fire - Fieldity Northside Booster, Journal of Champ. UFAS. volunteer -

Additional Pertinent Information/References: Susan Kelman Foundation - Sec. St. James Bapt. mission, citizens alumni - Golden circle, OES - Eastern Star #. 4, 5

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO ✓
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.
Drivers License —— Date of Birth
information will be use to conduct a criminal back ground check of all applicants)

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
(X) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
(X) Transit Advisory Commission
( ) Residential Housing Facilities Board

Transit

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 9-6-11

Name: LORIE ROBERTSON

Home Telephone: 479.452.6985

Address: 3301 S. 96th ST.
FORT SMITH, AR

Work Telephone: 479.242.2167

Zip: 72903

Email: LORIE@RIGHTMINDADS.COM

Occupation: ADVERTISING AGENCY (SALES + CREATIVE)
(If retired, please indicate former occupation or profession)

Education: UA FAY 85-87, UAFS - SPANISH CLASS

Professional and/or Community Activities: PAINT THE PARK PINK, AIR SHOW, AMERICAN ADVERTISING FEDERATION

Additional Pertinent Information/References: CITIZENS POLICE ACAD (2006) CITIZENS ACADEMY (2011)

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration. N/A

Drivers License [redacted] Date [redacted]
(This inform [redacted] back ground cl [redacted]

I am interested in serving on the (please [illegible]):

( ) Audit Committee
(✓) Advertising & Promoting Commission
( ) Airport Commission
( ) Animal Services Task Force
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
(✓) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
(✓) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
(✓) Transit Advisory Commission
( ) Residential Housing Facilities Board
✓ Efficiency Study Advisory Comm

Please return this form to Wendy Beshears, P.O. Box 1908, FSM, AR 72902

Lorie Robertson
9-7-11

Transit

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 3-20-12

Name: Dustin L. Perceful

Home Telephone: (479) 651-0865

Home Address: 4615 So. R St.

Work Telephone: (479) 471-3482

Zip: 72903

Email: Ke5sxm@gmail.com

Occupation: Senior Recruiter, USA Truck, Inc.
(If retired, please indicate former occupation or profession)

Education: B.S. Business Admin. University of Arkansas, Fayetteville, AR

Professional and/or Community Activities: Citizens Police Academy 09', Citizen's Academy 12' NW Technical Institute Truck Driving Advisory Board, Community Outreach Taskforce/USA Truck, Inc

Additional Pertinent Information/References: Life long resident of Fort Smith, Amateur Radio Operator: Federal CallSign - Ke5sxm, Tracy Winchell, Communications, (479) 784-1072

Are you a registered voter in the City of Fort Smith? Yes ✓ No ___

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes ___ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.

Drivers Licens [redacted] Date of F [redacted]
information will [redacted] d check of all applica [redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Board
( ) Housing Authority
(✓) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
(✓) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
(✓) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
(✓) Transit Advisory Commission
( ) Residential Housing Facilities Board

Transit

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

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Date: Feb. 23, 2012

Name: Virginia J. Bennett

Home Telephone: (479) 478-6769

Home Address: 5800 Grand Ave #721
Fort Smith, Ar.

Work Telephone: —

Zip: 72904

Email: —

Occupation: Retired, Dispatcher, Jailer at Booneville Police Dept, 1980 or
(If retired, please indicate former occupation or profession) Factory work, & cashier '87

Education: Some High School

Professional and/or Community Activities: —

Additional Pertinent Information/References:

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.

Drivers Licens [redacted] Date o
information will [redacted] und check of all appl [redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
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( ) Port Authority
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( ) Sister Cities Committee
(✓) Transit Advisory Commission
( ) Residential Housing Facilities Board

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

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Date: 4-13-2012

Name: Treopia Jordan Home Telephone: 479-434-4042

Home Address: 1014 Trenton Drive Work Telephone: _____

Zip: 72908 Email: treopia@SBCGlobal.net

Occupation: Retired/ Layoff from Whirlpool Corp
(If retired, please indicate former occupation or profession)

Education: Alma High School 1) UCA 1 years 2) UAFS 1 year

Professional and/or Community Activities: Attend Visionary Christian Church
Youth Director at Visionary Chr. Church

Additional Pertinent Information/References: _____

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO ✓
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from conside[redacted]
Drivers License_[redacted] Date o[redacted]
information will b[redacted]und check of all appl[redacted]

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Convention Center Commission
( ) Civil Service Commission
( ) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals & Appeals
( ) Fire Code Board of Appeals & Adjustments
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