

# ***AGENDA***

**FORT SMITH BOARD OF DIRECTORS  
STUDY SESSION**

***SEPTEMBER 28, 2010 ~ 12:00 NOON***

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

1. Presentation of the proposed five-year Capital Improvements Program, and Year 2011 Sidewalk Program
2. Update on Year 2011 Budget including departmental service objectives and correlation with city-wide goals
3. Review of proposed ordinance amending Chapter 4, Article I, of the Fort Smith Code of Ordinances regulating animals ~ mandatory spay/neuter ordinance ~
4. Review proposed ordinance amending Chapter 4, Article V, Section 4-116 of the Fort Smith Code of Ordinances regulating animals ~ fencing requirement for dogs ~
5. Review preliminary agenda for October 5, 2010 regular meeting

**MEMORANDUM**

**To:** Dennis Kelly, City Administrator

**From:** Stan Snodgrass, P.E., Director of Engineering *SS*

**Subject:** Five Year Capital Improvement Program (2011-2015)  
Streets, Bridges and Drainage Sales Tax Funds  
and 2011 Sidewalk Program

**Date:** September 23, 2010

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Attached is a summary of the 5-Year Capital Improvement Program for the street, bridge and drainage sales tax funds and the 2011 Sidewalk Program. This is transmitted for review and discussion with the Board of Directors prior to submittal to the Board for approval. The funding for the streets, bridges and drainage program is provided by the one-cent sales tax. Funding for the sidewalk program is generated from building permit assessment fees. Determination of projects is based on numerous factors including citizen input, interdepartmental requests, pavement rating of streets, rating of sidewalks and input from the Board of Directors.

The proposed program includes a combination of neighborhood street improvements, ongoing major street projects, local and basin wide drainage improvements, traffic signals, sidewalks and commitments made to the Fort Chaffee Redevelopment Authority. The program totals \$24.8 million for the year 2011 and \$116 million for the five year period from 2011 to 2015. Federal and state grants along with private development participation are anticipated to assist in the overall program.

The attached spreadsheet outlines the anticipated revenues and expenditures for the various projects. A narrative description of some of the projects shown on the spreadsheet is included. Project lists and exhibits are included which show the neighborhood street overlay and reconstruction projects, drainage projects, traffic signal projects and sidewalk projects which have been prioritized on a city wide basis.

Enclosure

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**CITY OF FORT SMITH**

**Five-Year Capital Improvement Program for Streets Bridges and Drainage (2011-2015) and Sidewalk Program (2011)**

9/23/10

|  | 2010              | 2011              | 2012              | 2013              | 2014              | 2015              |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>Beginning Balance</b>                   | 19,748,974        | 8,942,930         | 3,819,392         | 6,349,639         | 958,074           | 1,519,597         |
| Current Year Revenues                      |                   |                   |                   |                   |                   |                   |
| Sales Tax                                  | 18,575,000        | 18,853,625        | 19,230,698        | 19,615,311        | 20,105,694        | 20,608,337        |
| Grants/Other Participation                 | 1,176,919         | 785,000           | 7,400,000         | 1,150,000         | 150,000           | 150,000           |
| Interest                                   | 28,663            | 12,750            | 25,359            | 18,224            | 6,179             | 5,164             |
| Total - Current Year Revenues              | 19,780,582        | 19,651,375        | 26,656,057        | 20,783,535        | 20,261,873        | 20,763,501        |
| <b>Total Funds Available</b>               | <b>39,529,556</b> | <b>28,594,304</b> | <b>30,475,449</b> | <b>27,133,174</b> | <b>21,219,947</b> | <b>22,283,098</b> |
| 1 Neighborhood Overlays & Reconstruction   | 11,280,586        | 8,081,174         | 7,000,000         | 7,000,000         | 7,000,000         | 7,000,000         |
| 2 Neighborhood Drainage Improvements       | 662,549           | 2,030,538         | 720,000           | 1,000,000         | 1,000,000         | 1,000,000         |
| 3 Town Branch / Carnall Drainage           | 559,436           | 850,000           | 700,000           | 0                 | 0                 | 0                 |
| 4 Mill Creek Drainage / 28th Street        | 2,757,080         | 1,000,000         | 0                 | 0                 | 0                 | 0                 |
| 5 Intersection and Signal Improvements     | 229,530           | 780,000           | 300,000           | 300,000           | 300,000           | 300,000           |
| 6 Hwy 45 - Phoenix to Zero                 | 5,800,000         | 0                 | 0                 | 0                 | 0                 | 0                 |
| 7 Jenny Lind - Zero to Cavanaugh           | 1,000,000         | 2,000,000         | 7,000,000         | 9,600,000         | 1,500,000         | 0                 |
| 8 Greenwood Ave. - Country Club to Midland | 1,000,362         | 0                 | 0                 | 0                 | 0                 | 0                 |
| 9 Spradling Ave. - Clayton Expwy. eastward | 0                 | 0                 | 0                 | 0                 | 500,000           | 700,000           |
| 10 Arterial Street Overlays                | 875,864           | 0                 | 1,200,000         | 1,200,000         | 1,200,000         | 1,200,000         |
| 11 May Branch Drainage Project             | 100,000           | 1,000,000         | 1,000,000         | 3,000,000         | 4,000,000         | 7,200,000         |
| 12 Levee Certification & Repair            | 391,500           | 550,000           | 2,250,000         | 0                 | 0                 | 0                 |
| 13 Garrison Avenue Streetscape             | 145,830           | 2,500,000         | 0                 | 0                 | 0                 | 0                 |
| 14 Texas Road - Cavanaugh to south         | 1,567,817         | 0                 | 0                 | 0                 | 0                 | 0                 |
| 15 North Pointe (FSHA) Street & Drainage   | 514,497           | 0                 | 0                 | 0                 | 0                 | 0                 |
| 16 Overlays by Street Department           | 150,000           | 150,000           | 150,000           | 150,000           | 150,000           | 150,000           |
| 17 Traffic Studies                         | 2,306             | 20,000            | 20,000            | 20,000            | 20,000            | 20,000            |
| 18 Sidewalk Program                        | 1,097,720         | 341,000           | 200,000           | 200,000           | 200,000           | 200,000           |
| 19 FCRA Development                        | 340,279           | 3,000,000         | 1,000,000         | 1,000,000         | 1,000,000         | 1,000,000         |

**CITY OF FORT SMITH  
Five-Year Capital Improvement Program for Streets Bridges and Drainage (2011-2015) and  
Sidewalk Program (2011)**

|                                       | 2010              | 2011              | 2012              | 2013              | 2014              | 2015              |
|---------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| 20 Engineering Dept. and Other Depts. | 2,111,250         | 2,272,200         | 2,385,810         | 2,505,100         | 2,630,350         | 2,761,860         |
| 21 Contingency                        | 0                 | 200,000           | 200,000           | 200,000           | 200,000           | 200,000           |
| <b>TOTAL</b>                          | <b>30,586,626</b> | <b>24,774,912</b> | <b>24,125,810</b> | <b>26,175,100</b> | <b>19,700,350</b> | <b>21,731,860</b> |
| <b>Ending Balance</b>                 | <b>8,942,930</b>  | <b>3,819,392</b>  | <b>6,349,639</b>  | <b>958,074</b>    | <b>1,519,597</b>  | <b>551,238</b>    |

**Grants/Other Participation**

|                                    |                  |                |                  |                  |                |                |
|------------------------------------|------------------|----------------|------------------|------------------|----------------|----------------|
| Jenny Lind Road                    | 300,000          | 300,000        | 5,300,000        | 1,000,000        | 0              | 0              |
| Texas Road Payback - Developer     | 123,443          | 0              | 0                | 0                | 0              | 0              |
| Garrison Avenue Streetscape        | 0                | 0              | 1,950,000        | 0                | 0              | 0              |
| Car Mart Drainage Culvert          | 189,476          | 0              | 0                | 0                | 0              | 0              |
| CDBG-R Sidewalk - Stimulus         | 211,943          | 0              | 0                | 0                | 0              | 0              |
| Building Permit Fees for Sidewalks | 352,057          | 485,000        | 150,000          | 150,000          | 150,000        | 150,000        |
| <b>TOTAL</b>                       | <b>1,176,919</b> | <b>785,000</b> | <b>7,400,000</b> | <b>1,150,000</b> | <b>150,000</b> | <b>150,000</b> |

**Five Year Capital Improvement Program (2011-2015)  
Streets, Bridges and Drainage Sales Tax Funds  
and 2011 Sidewalk Program**

**Descriptions of Selected Projects  
September 23, 2010**

**1. Overlays and Reconstruction.** The proposed 2011 projects are shown on the attached list and exhibits. The total length of streets to be improved is approximately 11.8 miles. The estimate for the 2011 street overlays and reconstruction projects totals \$6.8 million. The total cost shown in 2011 is \$8.0 million, which includes \$1.2 million in ongoing construction for the 2010 projects. (See pages 4-7)

**2. Drainage Improvements.** The projects identified in the 2011 drainage program include neighborhood drainage improvements in the areas shown on the attached list and exhibits. The total estimated cost for this work is \$920,000 and includes 4 different locations. The projects are associated with structure flooding or severe maintenance issues. The total cost shown for the neighborhood drainage projects in 2011 is \$2.0 million which includes \$1.8 million in ongoing construction projects. The design for the 2011 drainage projects will be completed next year followed by construction beginning in late 2011. (See pages 8-10)

**3. Town Branch - Carnall Drainage.** This project is associated with the flooding that occurs in the downtown area and areas just north of downtown. The Town Branch area is a subbasin to the May Branch watershed. In 2010 we are completing a study of the existing storm drainage system and are proposing some solutions to reduce the frequency of flooding in these areas. We anticipate three upcoming projects: heavy cleaning of approximately 1500 feet of storm sewer which will be completed in 2010; relocation of a sanitary sewer line in 2011 which is crossing and causing blockage within the Carnall Avenue storm sewer; and development of stormwater detention basins south of Rogers Avenue in 2011 and 2012 to better utilize the Carnall storm sewer outfall. (See page 11)

**4. Mill Creek Drainage / 28<sup>th</sup> Street.** This multi-year project includes the rechannelization of Mill Creek from Cavanaugh Road north to South 28<sup>th</sup> Street. The project also includes replacement of the bridges at both Cavanaugh Road and South 28<sup>th</sup> Street. South 28<sup>th</sup> Street is being realigned with Hwy 71 and a traffic signal is being installed at the intersection. Work is ongoing and scheduled for completion in early 2011. (See page 12)

**5. Intersection and Signal Improvements.** The 2011 work includes replacement of the traffic signal poles at the intersections of North 11<sup>th</sup> Street with both North "A" and "B" Streets. A traffic signal interconnect system is also proposed along Zero Street which will include the intersections of Highway 271, Jenny Lind Road, South 24<sup>th</sup>, South 31<sup>st</sup> and the South 36<sup>th</sup> / I-540 interchange. This will allow coordination of these signals to help improve the traffic flow. (See page 13)

6. **Hwy 45 - Phoenix to Zero.** This project includes widening along Hwy 45 from the Phoenix Avenue intersection to the Zero Street intersection including replacement of the bridge over I-540. The design and construction are by the Arkansas Highway and Transportation Department (AHTD). The estimated project cost is \$13.4 million with the City's share at \$7.6 million. The AHTD estimates the construction contract will be let in November. The construction is estimated to last 18 to 24 months. (See page 14)

7. **Jenny Lind Road - Zero to Cavanaugh Road.** This project includes improvements to Jenny Lind Road between Zero and Cavanaugh Road. It also includes improvements to Ingersoll Avenue from U.S. Hwy 271 to Jenny Lind and the extension of Ingersoll Avenue from Jenny Lind to U.S. Highway 71B. Preliminary plans are complete and the right of way acquisition process is just beginning. Construction is expected to begin in 2012. Federal funding in the amount of \$7.2 million will benefit this project. (See page 15)

10. **Arterial Street Overlays.** This item addresses the resurfacing of some of the major arterial streets. The 2010 projects include the section of Grand Avenue from North 11<sup>th</sup> Street to just east of North 16<sup>th</sup> Street which was completed this summer. Also included as a 2010 project is the section of Waldron Road from Rogers Avenue to just north of Gordon Lane. Work on this section is scheduled to begin in the next two to three weeks. Although no arterial street overlays are proposed for 2011, we anticipate additional sections on both Grand Avenue and Waldron Road will require resurfacing in the upcoming years. (See page 16)

11. **May Branch Drainage Project.** This project is to reduce flooding along May Branch from the Arkansas River to Park Avenue. It consists of constructing a drainage channel to replace the existing deteriorated and hydraulically inadequate concrete pipe. The project is currently being designed by the Corps of Engineers. The City is lobbying for federal funding to assist with the project as the total cost is in excess of \$30 million. We are currently in communication with the Corps of Engineers to determine if the most downstream section of the project (from approximately N. 7<sup>th</sup> Street to the river) can be constructed entirely with City funds with the agreement that the City's cost would be credited towards the future cost sharing on the project when federal funds become available. Construction of the lower section would reduce flooding for both the lower May Branch area and the Town Branch sub basin. (See page 11)

12. **Levee Certification and Repair.** This project includes items associated with the levee certification evaluation in accordance with federal design criteria. This includes items to repair the washed out section on the Rice Carden levee, replacement and repair of the floodwall, construction of street closure devices, installation of embankment protection, repair of outlet culverts and pump station repairs. (See page 17)

**13. Garrison Avenue Streetscape.** This project is continuation of the Garrison Avenue Streetscape along both sides from 9<sup>th</sup> to Rogers Avenue. It also includes replacement of the traffic signal at Garrison Avenue and Towson Avenue. Construction is expected to begin in early 2011. Federal grants in the amount of \$1.95 million will benefit this project. This project will complete the streetscaping along the entire length of Garrison Avenue. (See page 18)

**18. Sidewalk Program.** The 2011 sidewalk program includes repairing the sidewalks in the locations shown on the attached exhibits. The majority of these locations are in close proximity schools. (See pages 19)

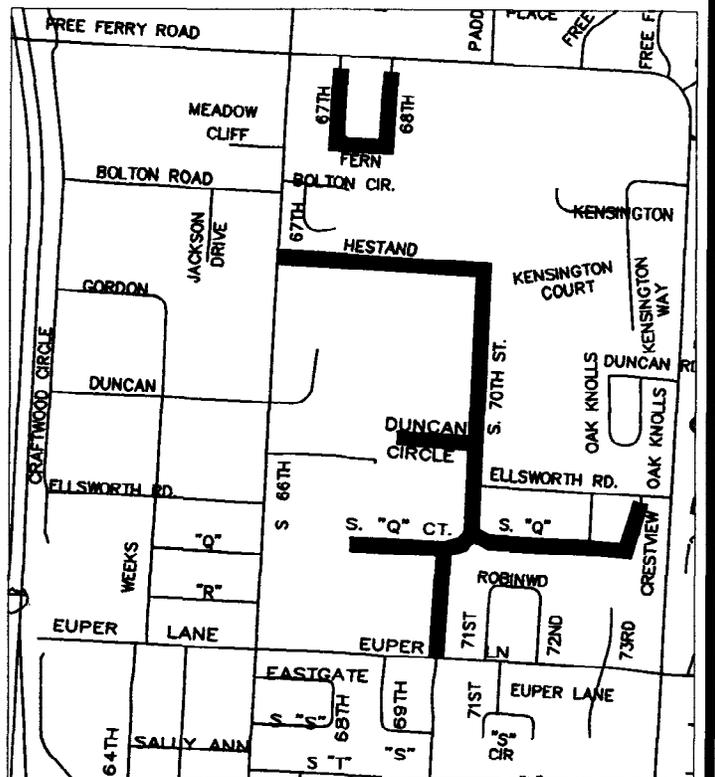
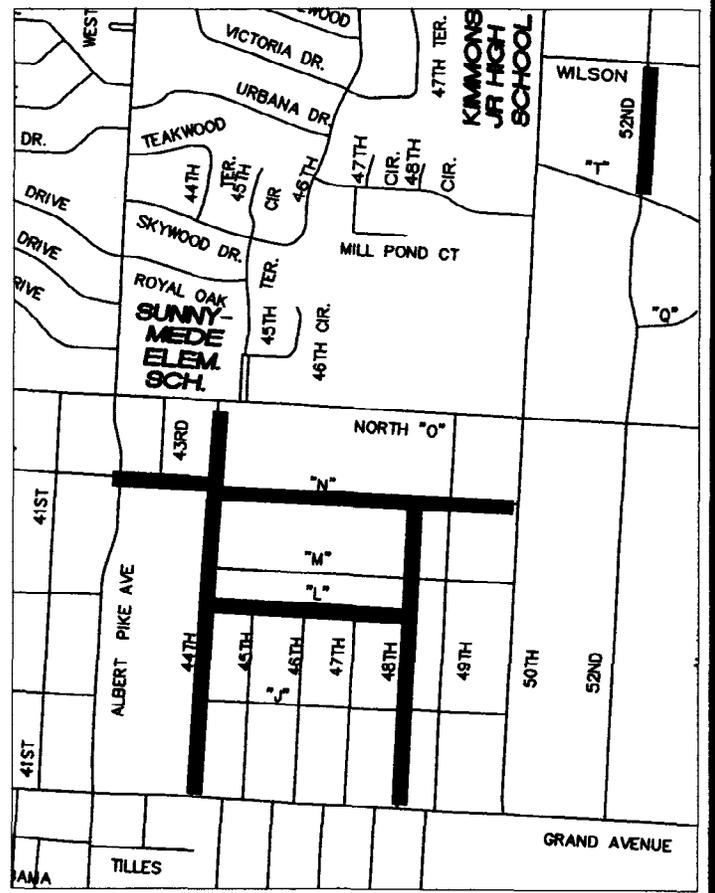
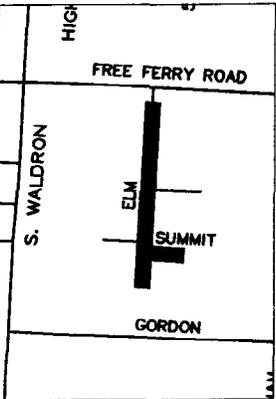
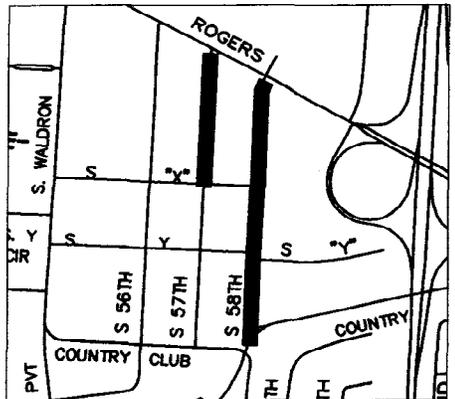
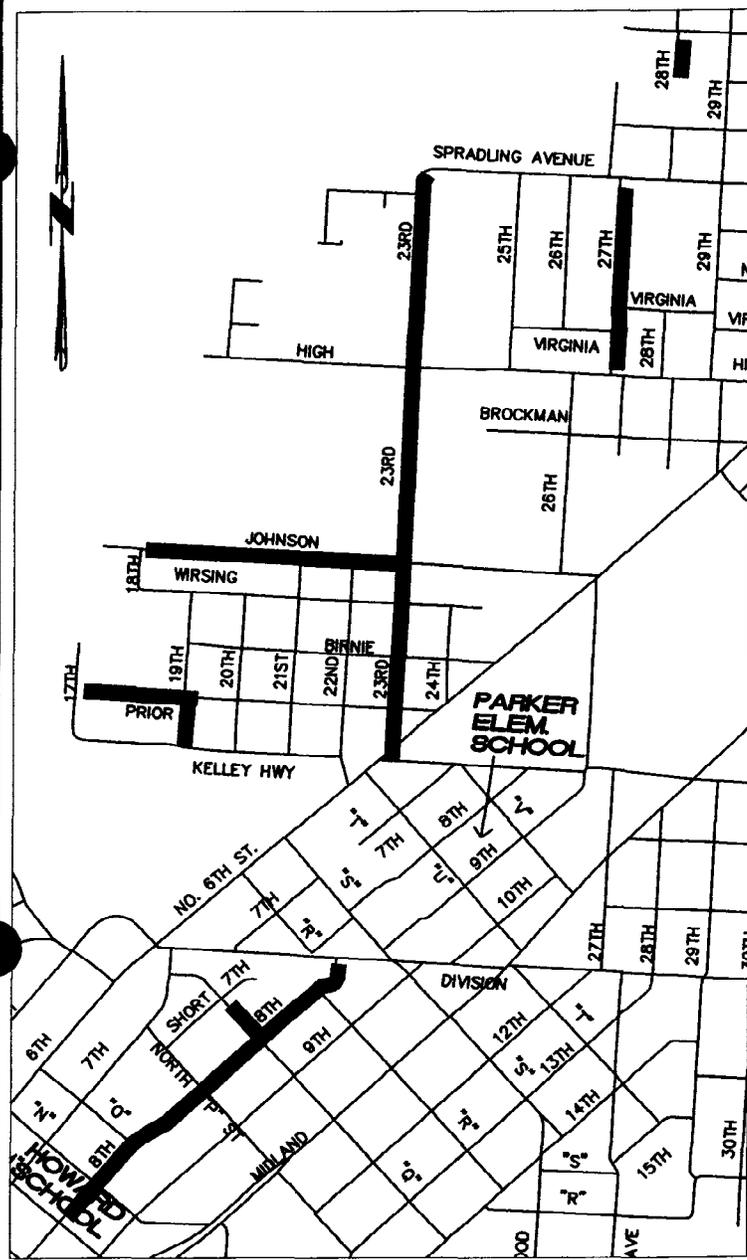
**19. FCRA Development.** This item includes the extension of Chad Colley Boulevard to Custer Boulevard, associated drainage work and radius improvements at Frontier Road committed as part of the memorandum of agreement for the Mitsubishi Wind Turbine plant. Also proposed is the approximately 2000 foot extension of Chad Colley Boulevard between Custer Boulevard and Massard Road. This final extension will provide a direct route along Chad Colley Boulevard extending over 3 ½ miles from its intersection with Rye Hill Road to Zero Street. (See page 20)

**2011 CAPITAL IMPROVEMENTS PROGRAM  
STREET OVERLAYS/RECONSTRUCTION**

| STREET                  | FROM              | TO                | LENGTH | COST         |
|-------------------------|-------------------|-------------------|--------|--------------|
| 19TH ST.                | KELLEY HWY.       | PRYOR AVE.        | 334    | \$30,060.00  |
| PRYOR AVE.              | 17TH ST.          | 19TH ST.          | 700    | \$59,500.00  |
| 28TH ST.                | END OF ROAD       | NEIS ST.          | 301    | \$22,575.00  |
| 5TH ST.                 | SOUTH I ST.       | END OF ROAD       | 597    | \$59,700.00  |
| SOUTH H ST.             | 4TH ST.           | 5TH ST.           | 341    | \$27,280.00  |
| ROBERTS BLVD.           | AHTD ROW          | CEMETERY DRIVEWAY | 2505   | \$375,750.00 |
| JOLIET AVE.             | 32ND TER.         | 35TH TER.         | 1142   | \$154,170.00 |
| JACKSON ST.             | END OF ROAD       | MASSARD RD.       | 550    | \$74,250.00  |
| BURROUGH RD.            | US HWY. 71        | ST HWY. 45        | 2514   | \$477,660.00 |
| JOHNSON ST.             | 18TH ST.          | 23RD ST.          | 1678   | \$137,220.00 |
| 8TH ST.                 | NORTH M ST.       | DIVISION ST.      | 2564   | \$333,765.00 |
| 9TH ST.                 | DODSON AVE.       | SOUTH I ST.       | 920    | \$73,600.00  |
| 23RD ST.                | 6TH ST.           | SPRADLING AVE.    | 4085   | \$413,365.00 |
| 5TH ST.                 | SOUTH B ST.       | SOUTH E ST.       | 1051   | \$110,355.00 |
| 67TH LN.                | FERN ST.          | FREE FERRY RD.    | 601    | \$81,135.00  |
| 68TH LN.                | FERN ST.          | FREE FERRY RD.    | 596    | \$80,460.00  |
| FERN ST.                | 67TH LN.          | 68TH LN.          | 186    | \$25,110.00  |
| 44TH ST.                | GRAND AVE.        | NORTH O ST.       | 2667   | \$240,030.00 |
| 48TH ST.                | GRAND AVE.        | NORTH N ST.       | 2067   | \$180,700.00 |
| NORTH N ST.             | ALBERT PIKE AVE.  | 50TH ST.          | 2656   | \$258,720.00 |
| NORTH L ST.             | 44TH ST.          | 48TH ST.          | 1317   | \$118,530.00 |
| NORTH D ST.             | 25TH ST.          | BELLE AVE.        | 349    | \$47,115.00  |
| 12TH ST.                | DODSON AVE.       | SOUTH S ST.       | 2980   | \$277,660.00 |
| 21ST ST.                | PHOENIX AVE.      | LOUISVILLE ST.    | 1311   | \$137,655.00 |
| SOUTH S ST.             | GREENWOOD AVE.    | OLD GREENWOOD RD. | 1412   | \$137,280.00 |
| 27TH ST.                | HIGH ST.          | SPRADLING ST.     | 1327   | \$119,430.00 |
| 32ND ST.                | SAVANNAH ST.      | QUINCY ST.        | 597    | \$65,670.00  |
| SOUTH W ST.             | 17TH ST.          | JENNY LIND RD.    | 881    | \$87,225.00  |
| SOUTH X ST.             | 16TH ST.          | JENNY LIND RD.    | 1227   | \$110,430.00 |
| SOUTH Y ST.             | 16TH ST.          | 17TH ST.          | 349    | \$31,410.00  |
| SOUTH Z ST.             | 16TH ST.          | 17TH ST.          | 351    | \$31,590.00  |
| 16TH ST.                | BOSTON ST.        | SOUTH W ST.       | 2100   | \$178,540.00 |
| 16TH ST.                | DODSON AVE.       | SOUTH I ST.       | 702    | \$70,200.00  |
| ELM ST.                 | FREE FERRY RD.    | END OF ROAD       | 1316   | \$105,280.00 |
| SUMMIT ST.              | ELM ST.           | END OF ROAD       | 265    | \$21,200.00  |
| UTICA ST.               | 28TH ST.          | END OF ROAD       | 747    | \$67,230.00  |
| 52ND ST.                | NORTH T ST.       | WILSON RD.        | 901    | \$108,120.00 |
| HESTAND LN.             | 66TH ST.          | 70TH ST.          | 1338   | \$120,420.00 |
| 70TH ST.                | EUPER LN.         | HESTAND LN.       | 2548   | \$343,980.00 |
| DUNCAN CR.              | 70TH ST.          | END OF ROAD       | 536    | \$72,360.00  |
| SOUTH Q CT.             | 70TH ST.          | END OF ROAD       | 825    | \$111,375.00 |
| SOUTH Q ST.             | 70TH ST.          | CRESTVIEW LN.     | 778    | \$105,030.00 |
| CRESTVIEW LN.           | SOUTH Q ST.       | ELLSWORTH RD.     | 319    | \$43,065.00  |
| NORTH Q ST.             | SHORT 7TH ST.     | 8TH ST.           | 352    | \$24,640.00  |
| 57TH ST.                | SOUTH X ST.       | ROGERS AVE.       | 899    | \$80,910.00  |
| 58TH ST.                | COUNTRY CLUB AVE. | ROGERS AVE.       | 1796   | \$232,790.00 |
| KELLEY BALLFIELDS DRIVE | SOUTH O ST.       | SOUTH S ST.       | 1304   | \$169,520.00 |
| CAVANAUGH RD.           | JENNY LIND RD.    | US HWY. 71        | 3769   | \$433,435.00 |
| 41ST ST.                | ROGERS AVE.       | MILLER LN.        | 410    | \$30,750.00  |
| MILLER LN.              | ALBERT PIKE AVE.  | END OF ROAD       | 738    | \$55,350.00  |
| FREE FERRY LN.          | ALBERT PIKE AVE.  | END OF ROAD       | 591    | \$79,785.00  |

**TOTAL FOR 2011 STREET OVERLAYS/RECONSTRUCTION PROGRAM** \$6,833,380.00

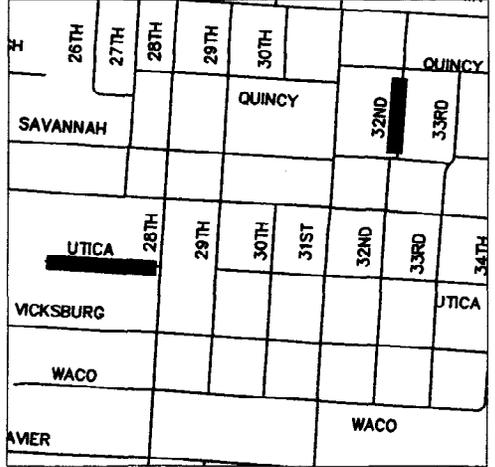
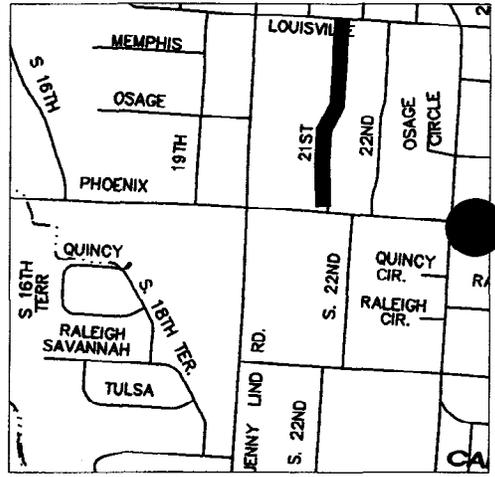
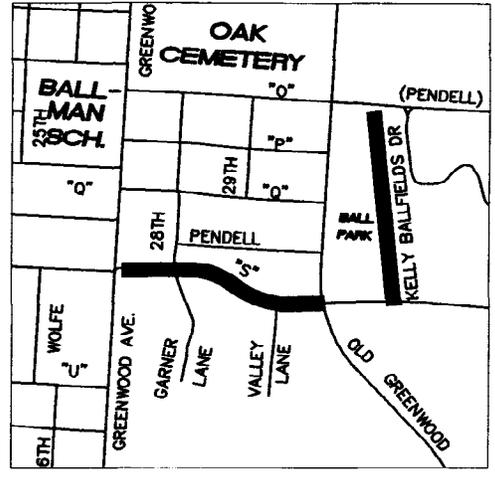
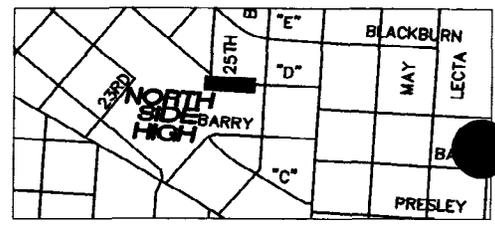
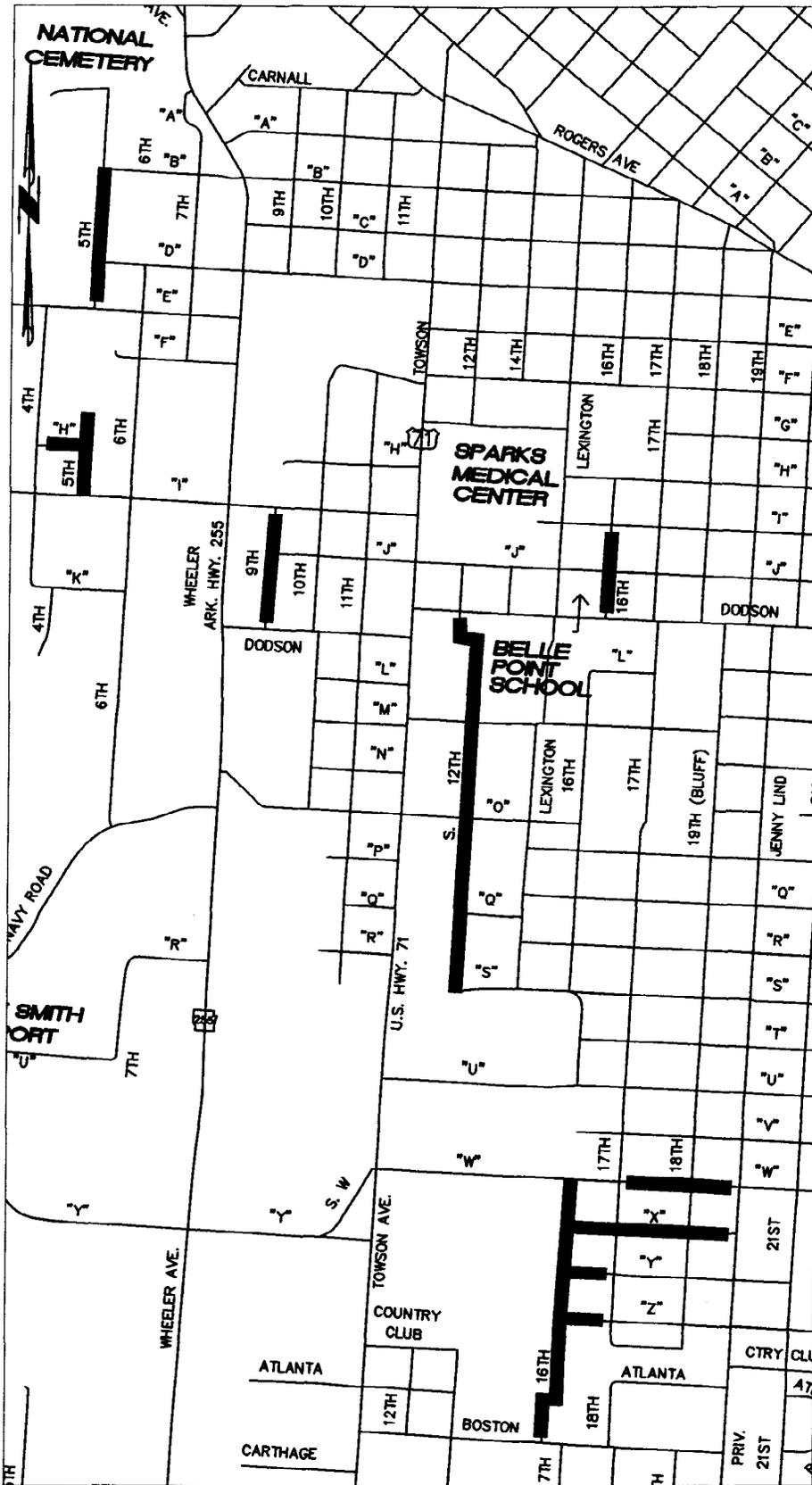
**BALANCE OF 2010 PROJECTS CURRENTLY UNDERCONSTRUCTION** \$1,247,794.00



2011 CAPITAL IMPROVEMENTS PROGRAM  
STREET OVERLAYS/RECONSTRUCTION



|           |               |
|-----------|---------------|
| Project:  | 2011 OVERLAYS |
| Date:     | SEPT. 2010    |
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2011 CAPITAL IMPROVEMENTS PROGRAM  
STREET OVERLAYS/RECONSTRUCTION



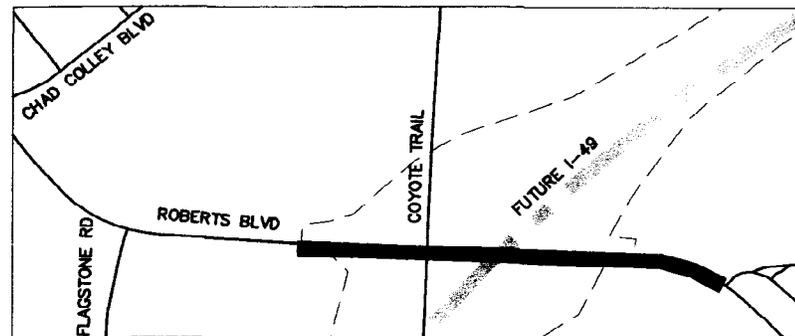
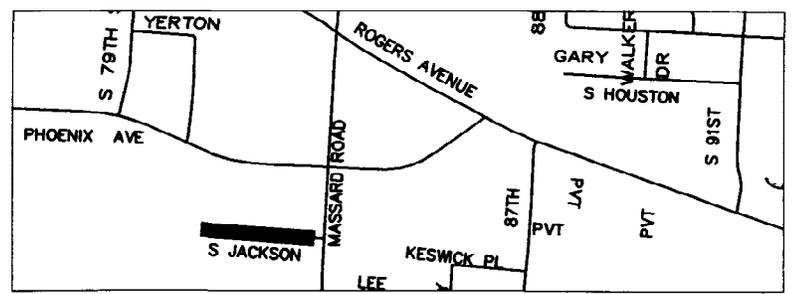
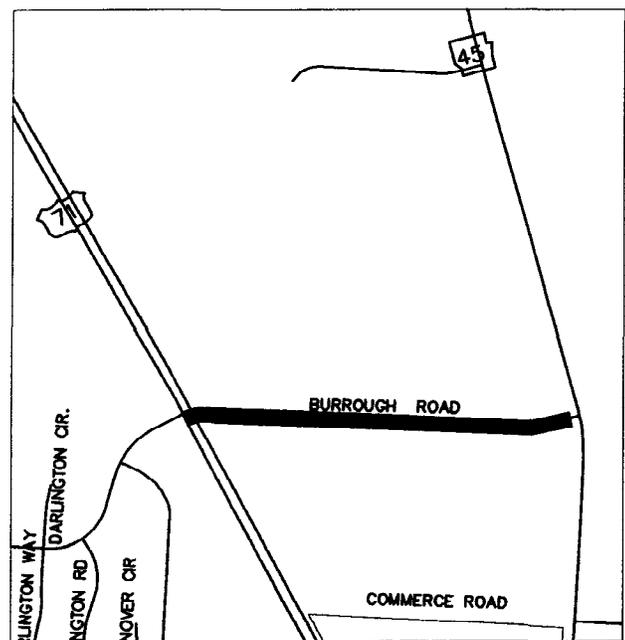
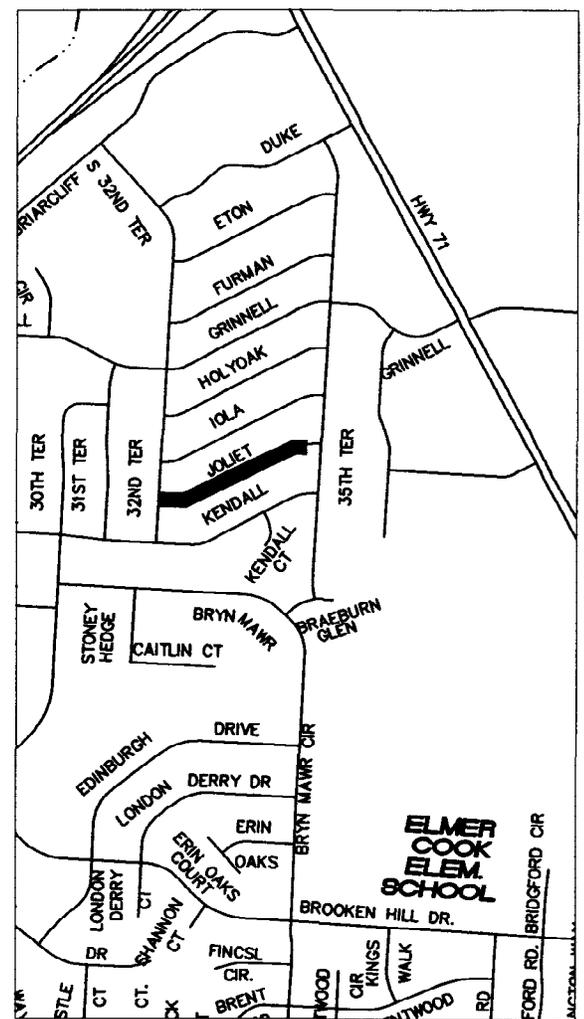
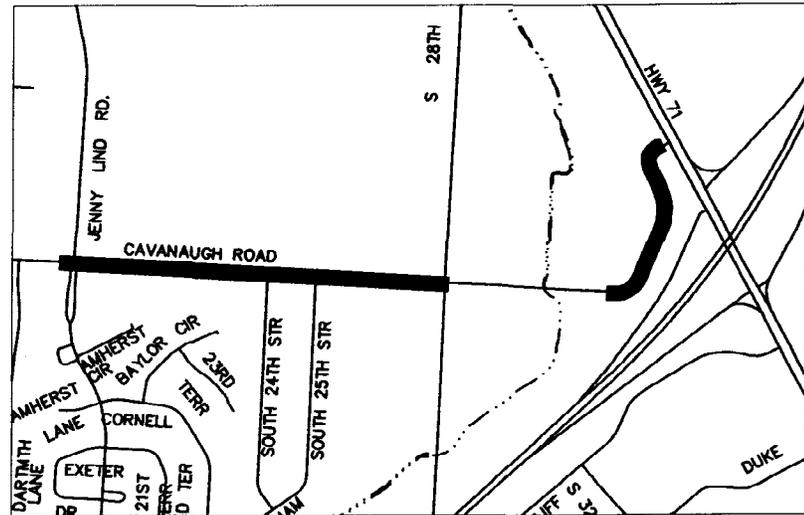
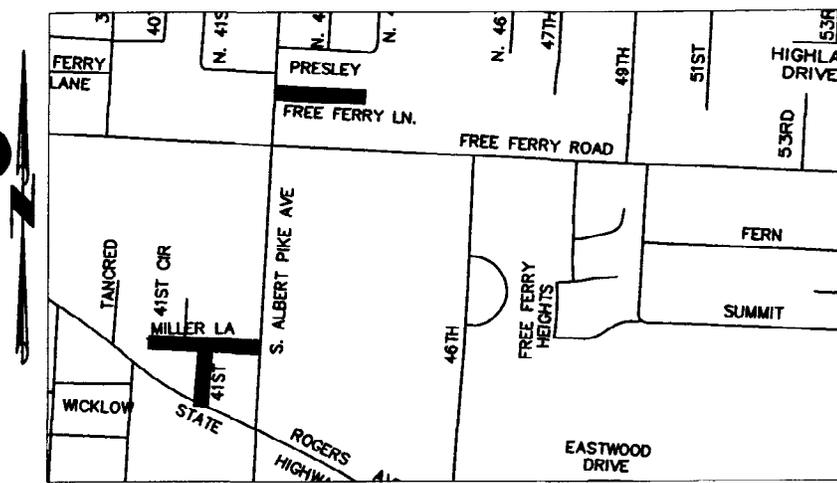
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Date: SEPT. 2010

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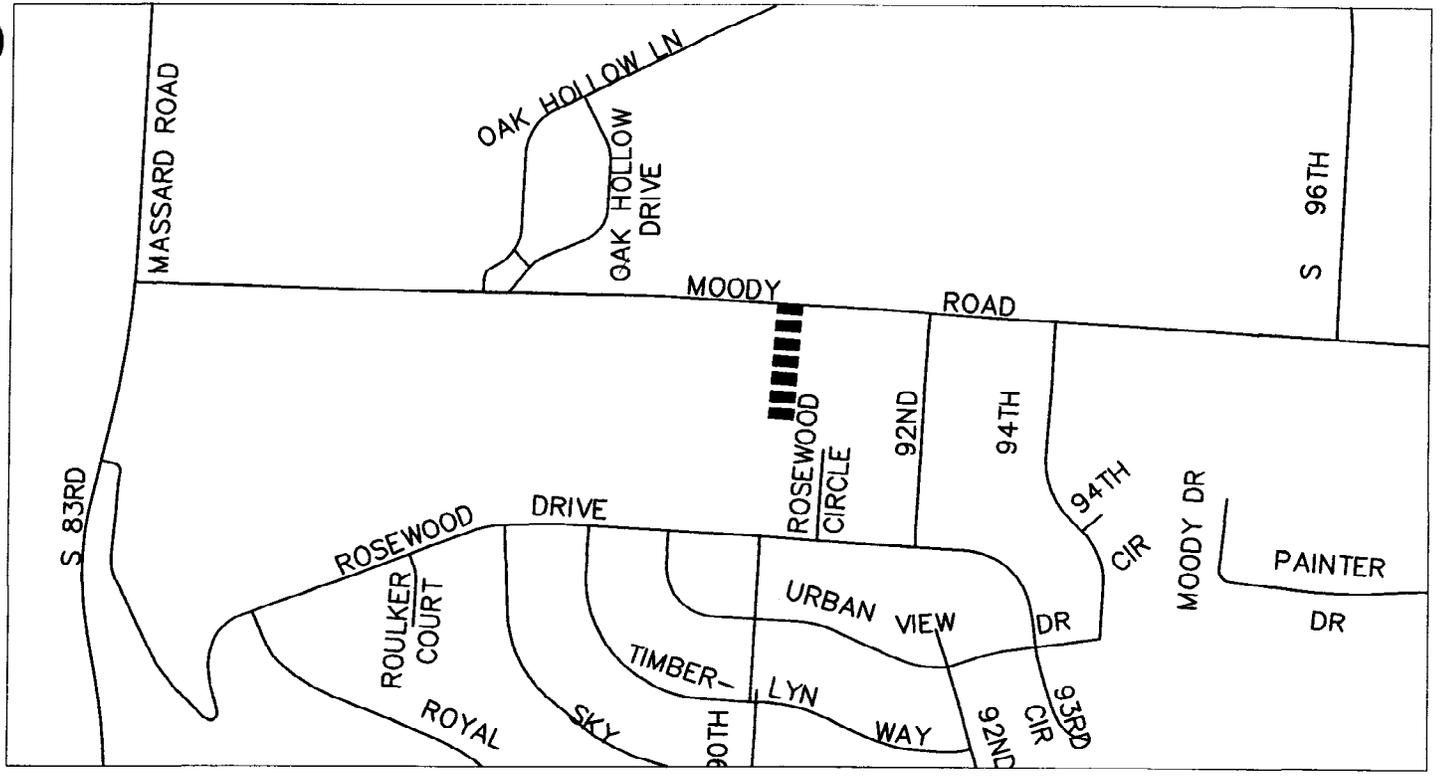
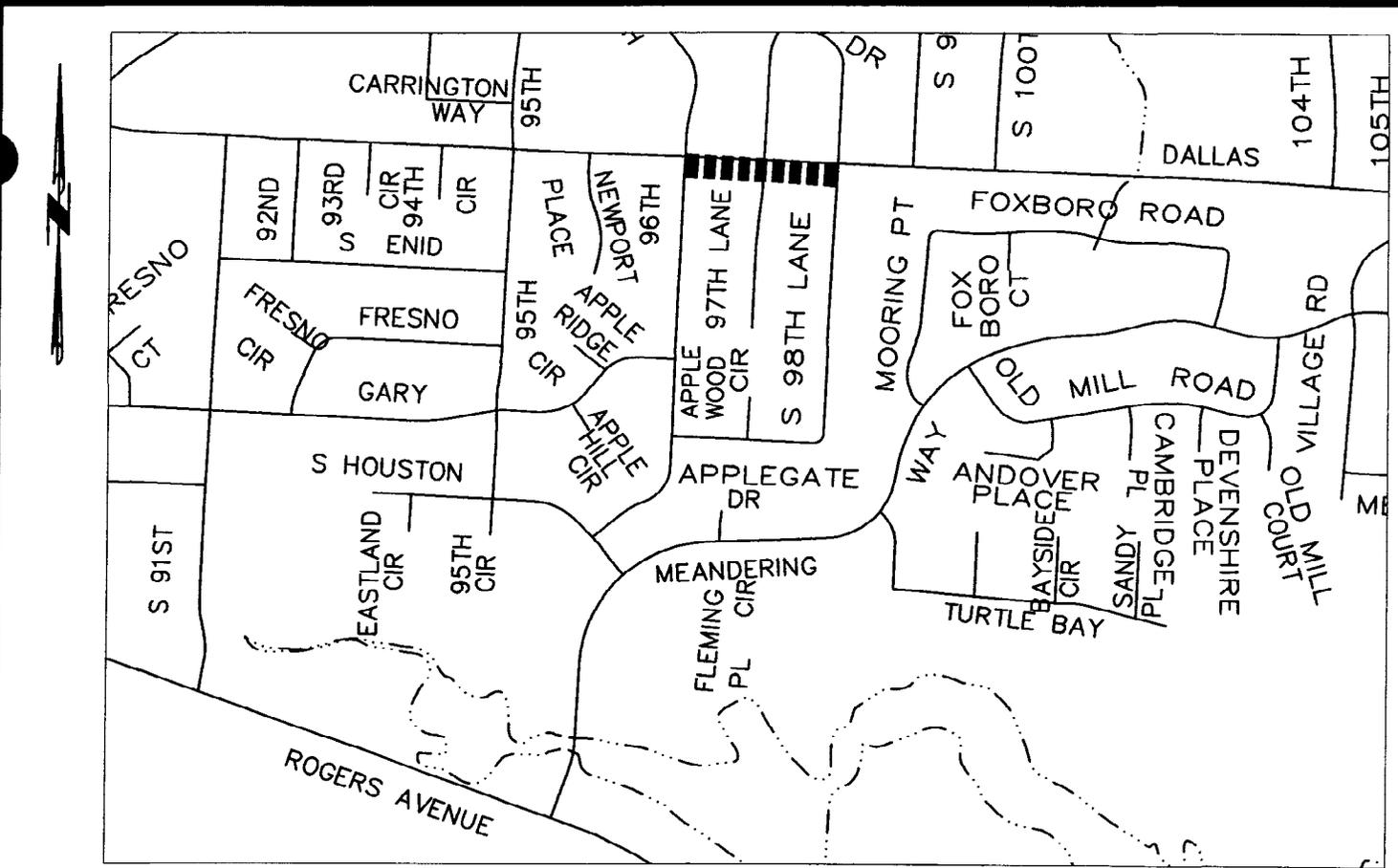
2011 CAPITAL IMPROVEMENTS PROGRAM  
STREET OVERLAYS/RECONSTRUCTION



|           |               |
|-----------|---------------|
| Project:  | 2011 OVERLAYS |
| Date:     | SEPT. 2010    |
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## 2011 Neighborhood Drainage Projects

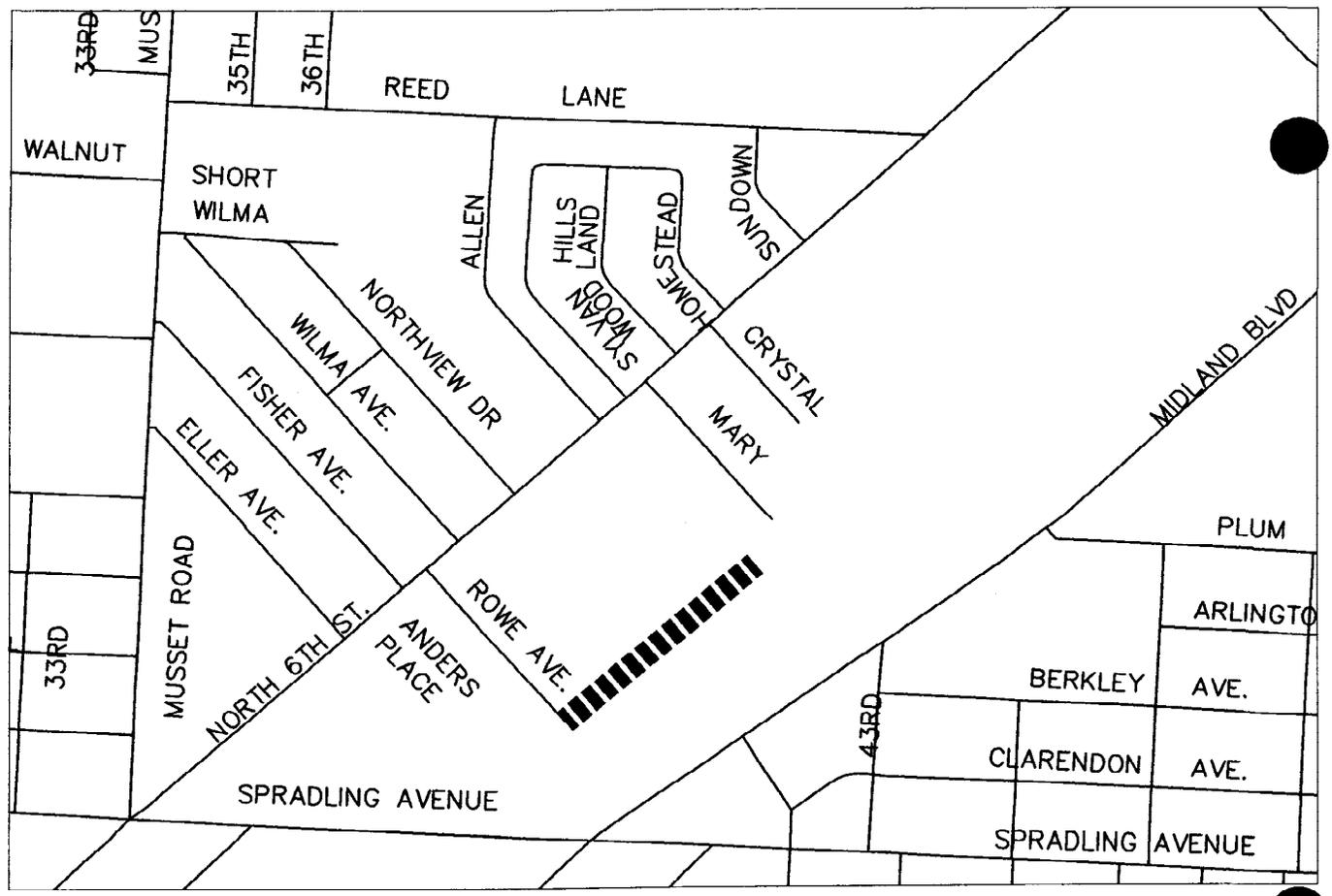
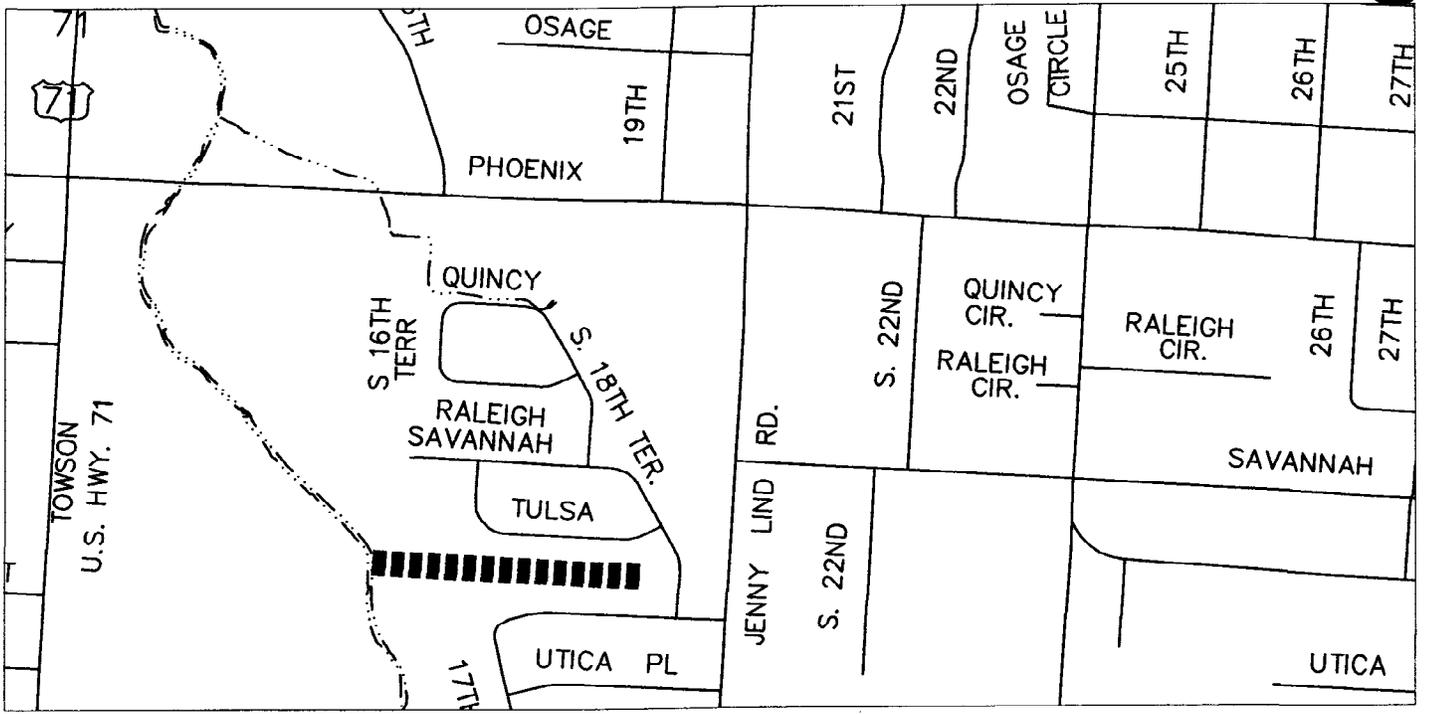
| Project   | Estimated Cost      |
|---|---------------------|
| <b>South Dallas 96th to 98th Street</b><br>This project will pipe some large ditches along Dallas Street to fill in the gap left by two other recent projects. The ditches currently hold water and we have received numerous complaints about the deteriorated condition of the ditches.   | \$100,000.00        |
| <b>9014 Moody Road</b><br>This project will add pipe and a concrete channel to connect a gap between existing public drainage facilities. The residence experiences severe yard flooding and it is a threat to flooding his house.  | \$70,000.00         |
| <b>Channel between Utica and Tulsa Streets</b><br>This project will replace a badly eroded channel with some box culvert and channel with stabilized sides. Fences and structures along the channel are starting to fall into the channel due to erosion.   | \$500,000.00        |
| <b>Rowe Ave.</b><br>One house is experiencing flooding and others are threatened by the floodwaters due to an undersized pipe under the railroad tracks. The drainage needs to be diverted to a channel further north down the tracks. In order to build the necessary channel the acquisition of the structure that floods may be necessary. | \$250,000.00        |
| <b>Total</b>  | <b>\$920,000.00</b> |



2011 CAPITAL IMPROVEMENTS PROGRAM  
DRAINAGE IMPROVEMENTS



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2011 CAPITAL IMPROVEMENTS PROGRAM  
DRAINAGE IMPROVEMENTS



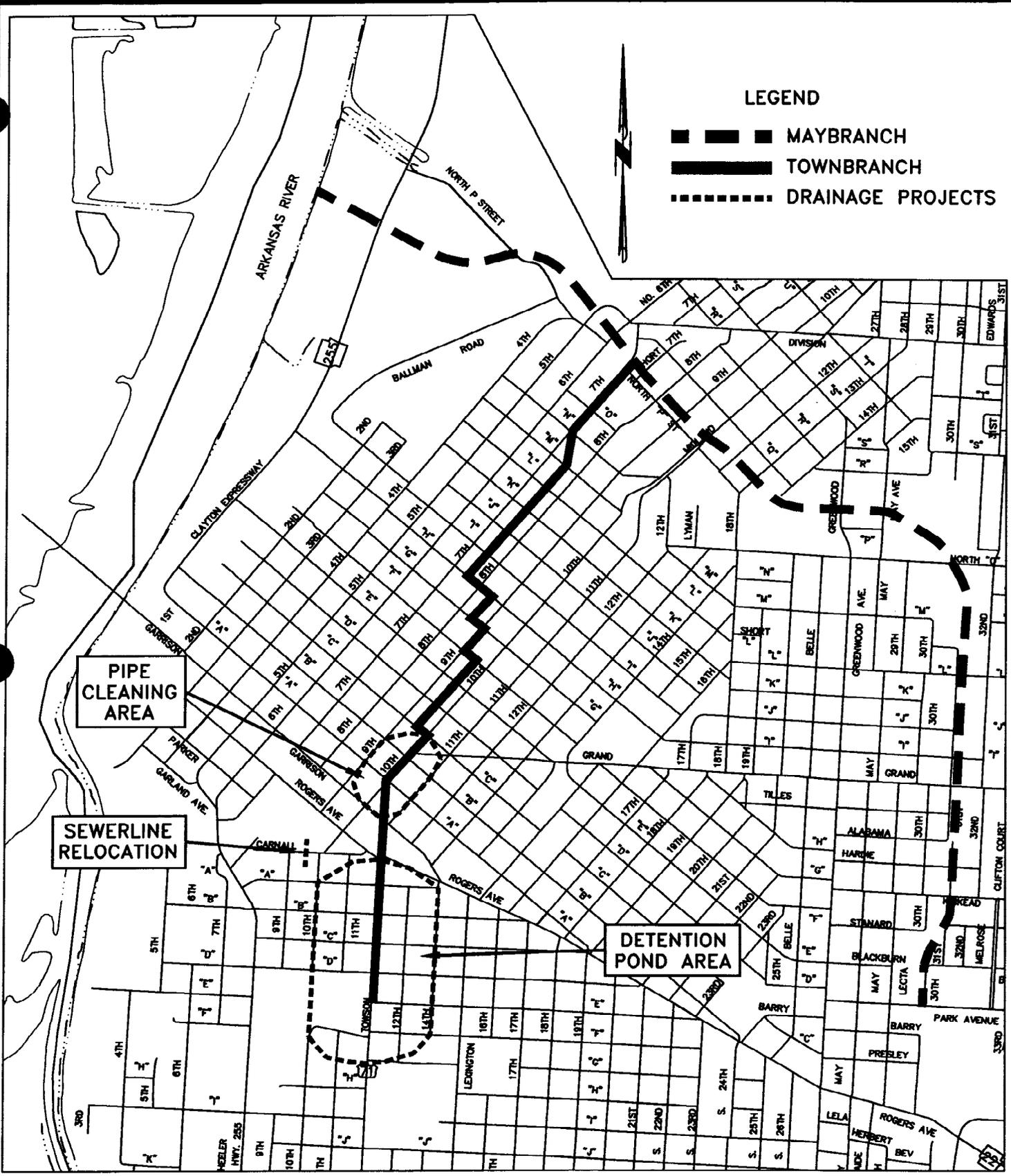
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Date: SEPT. 2010

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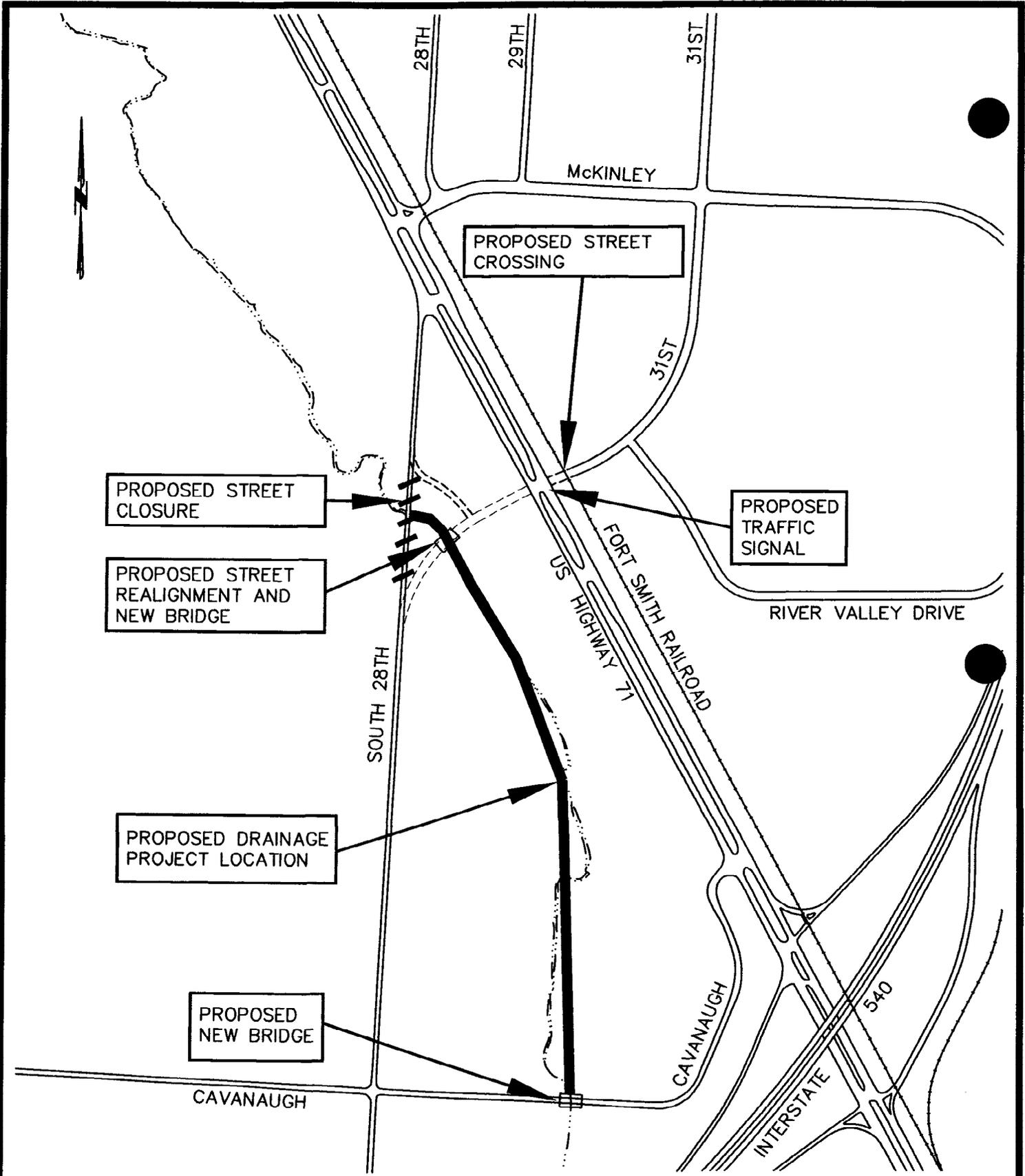


2011 CAPITAL IMPROVEMENTS PROGRAM  
 DRAINAGE IMPROVEMENTS  
 MAYBRANCH & TOWN BRANCH



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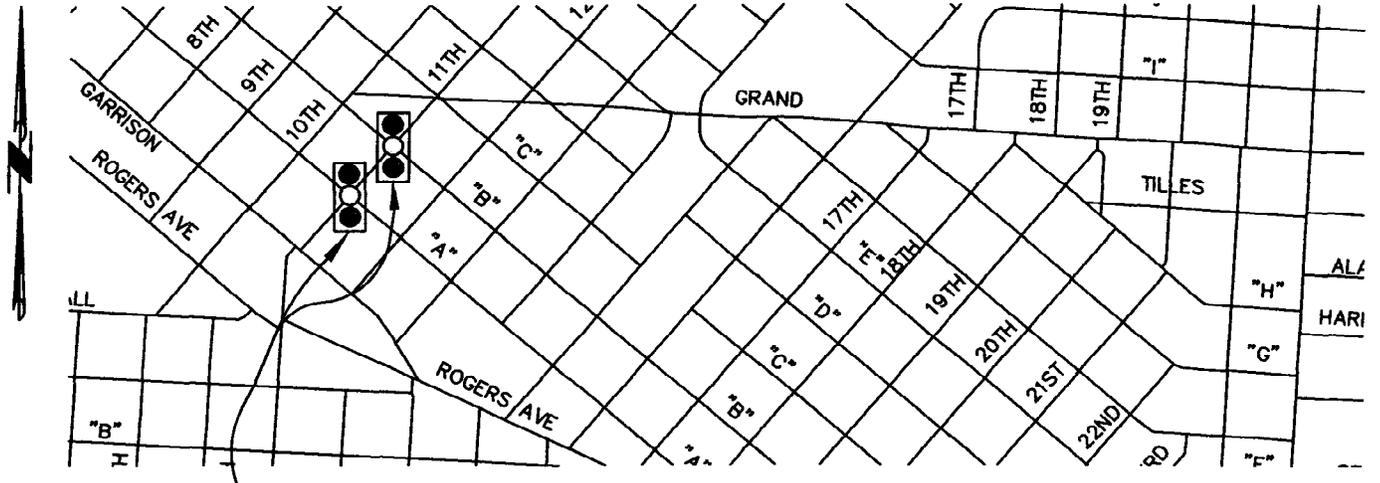


2011 CAPITAL IMPROVEMENTS PROGRAM  
 MILL CREEK/28TH ST.  
 DRAINAGE IMPROVEMENTS

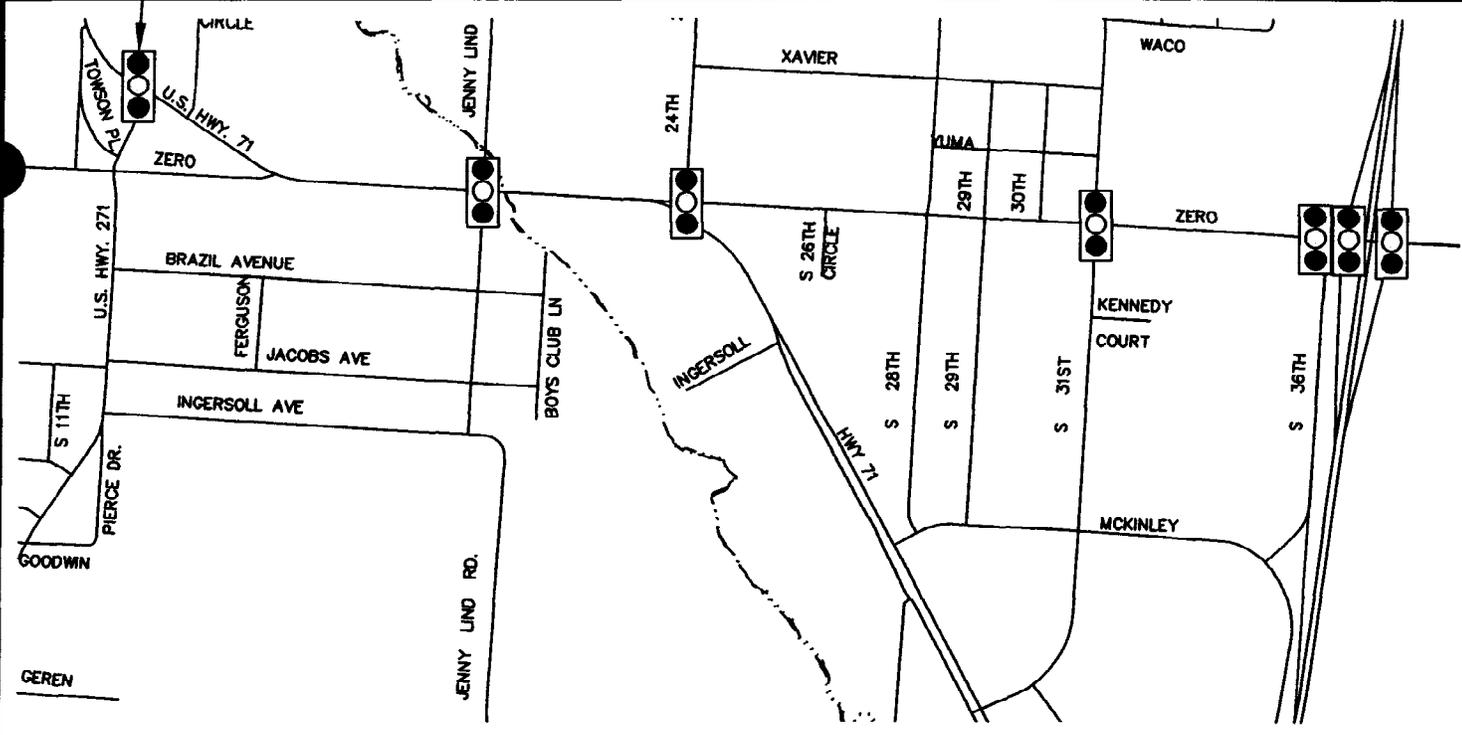


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PROPOSED SIGNAL REPLACEMENT



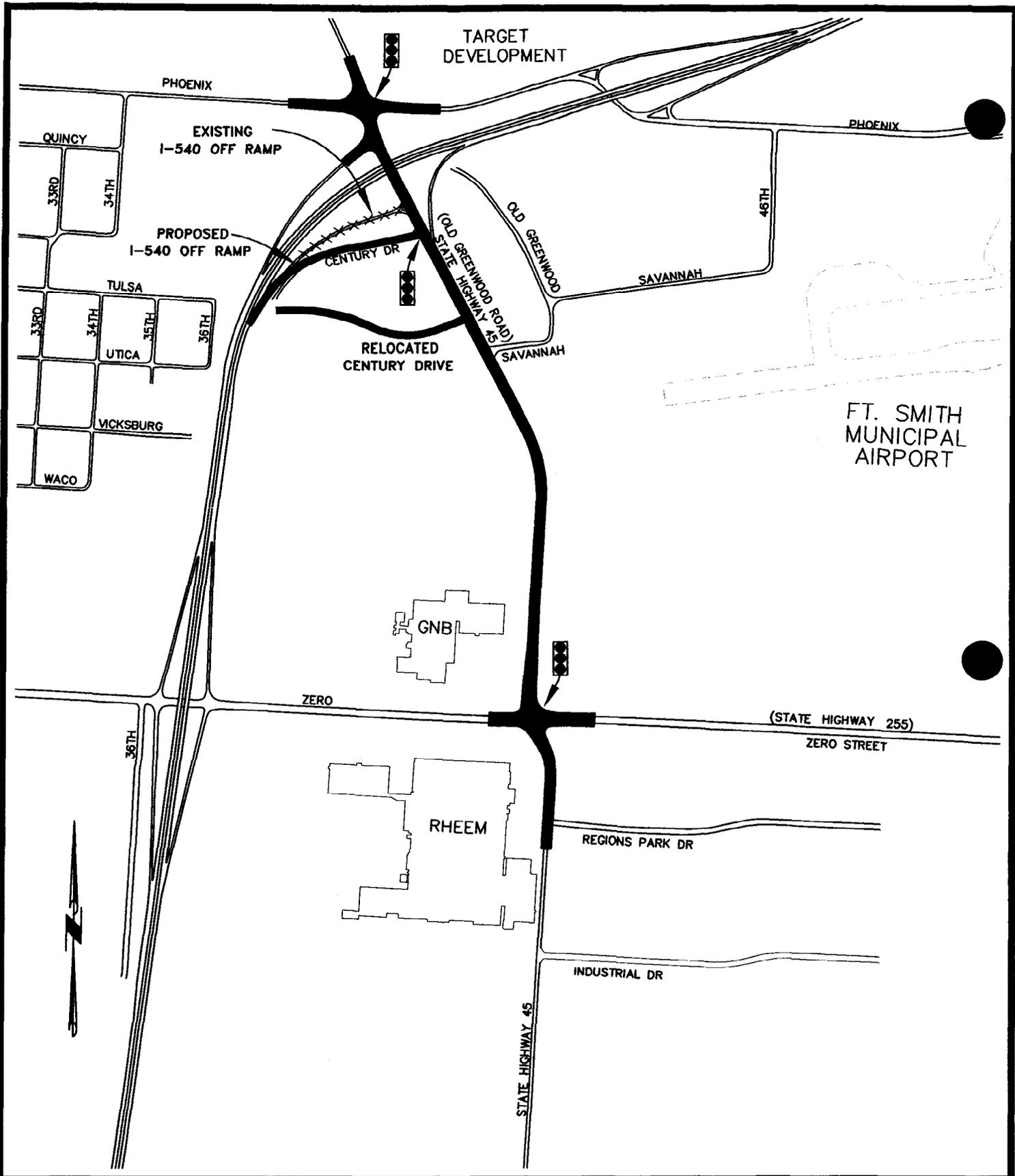
PROPOSED SIGNAL INTERCONNECT

2011 CAPITAL IMPROVEMENTS PROGRAM  
SIGNAL IMPROVEMENTS



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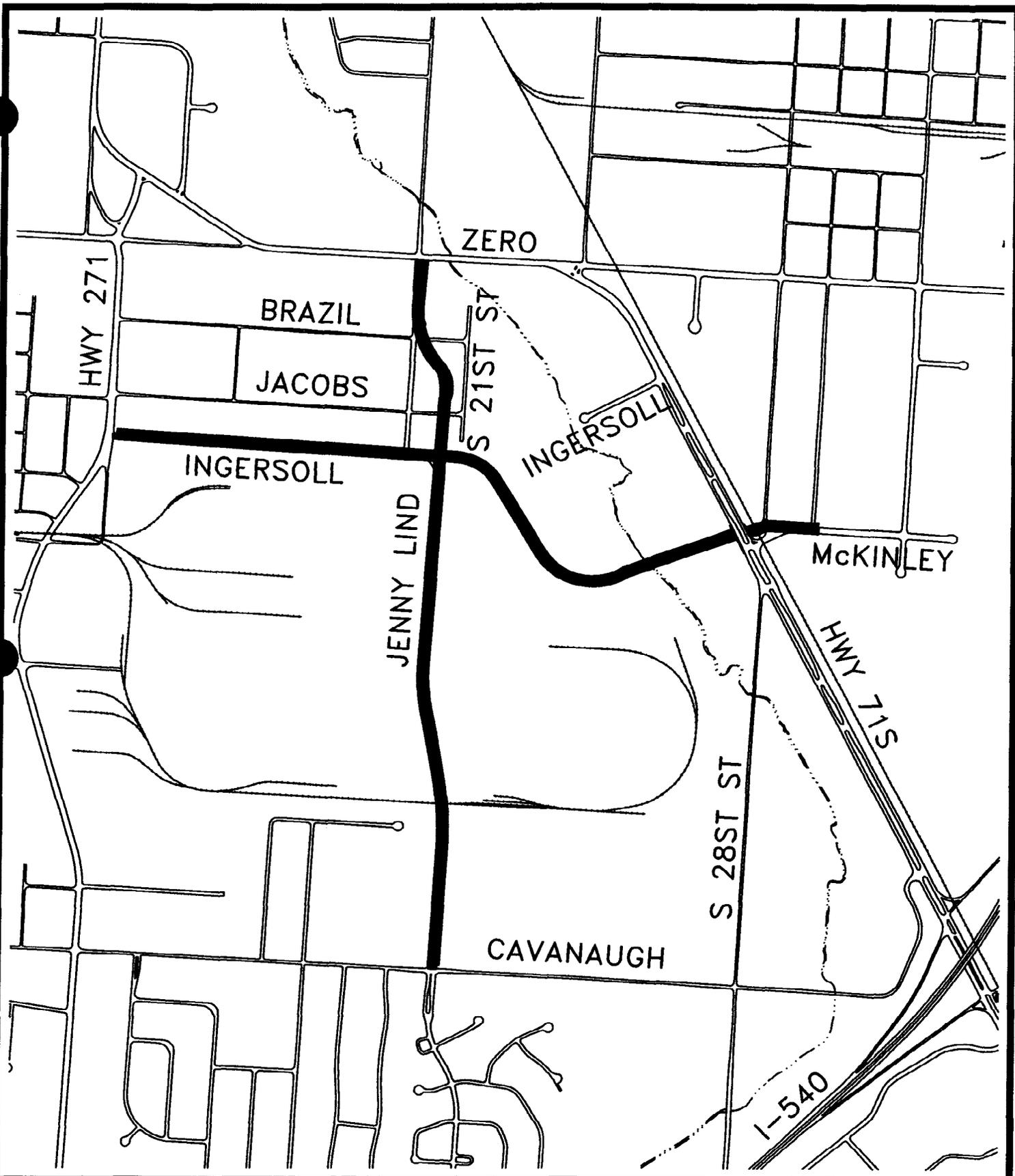


2011 CAPITAL IMPROVEMENTS PROGRAM  
 AHTD PROJECT 040238  
 ARKANSAS HWY 45  
 FORT SMITH, ARKANSAS



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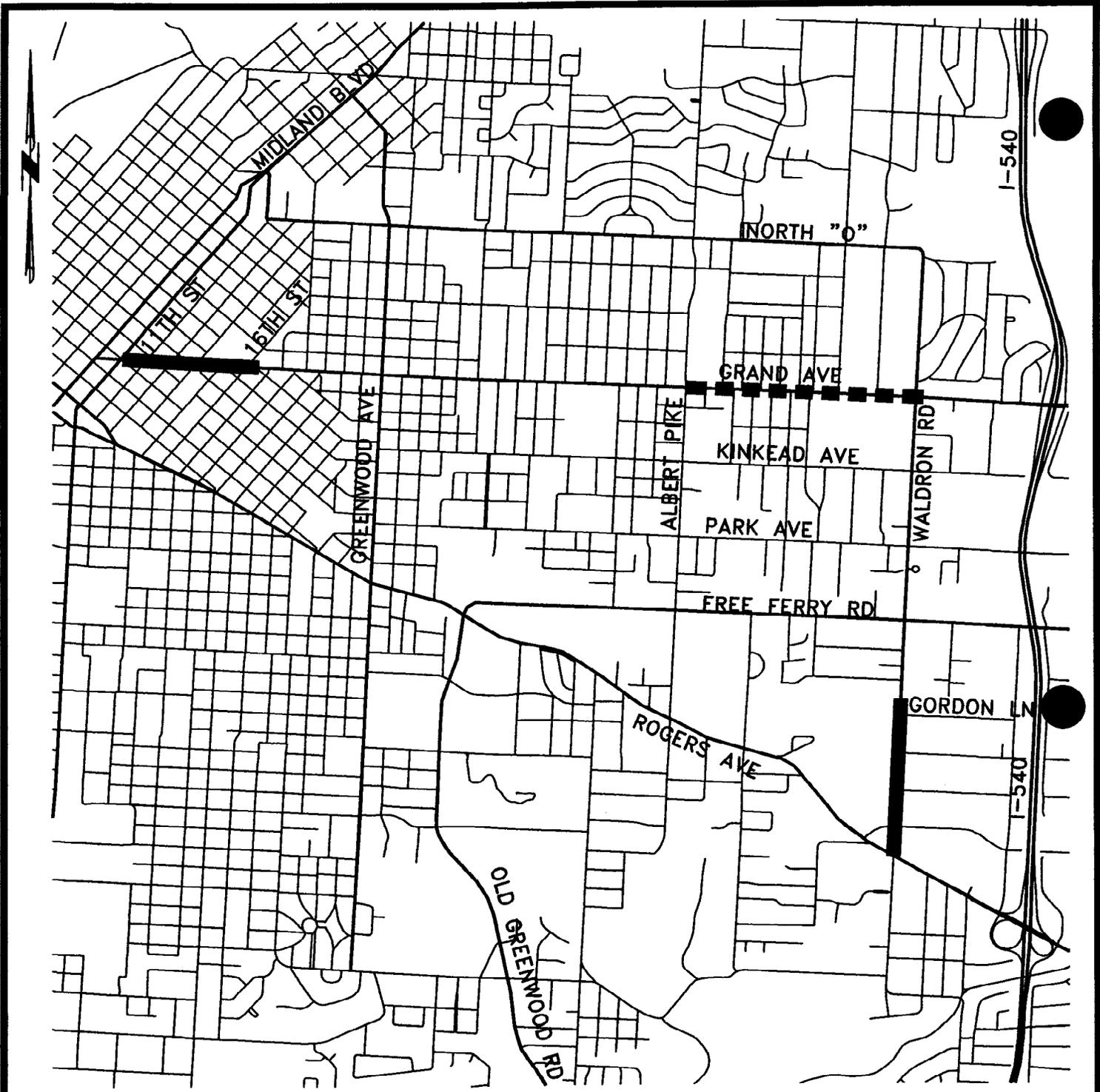
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2011 CAPITAL IMPROVEMENTS PROGRAM  
 JENNY LIND  
 ZERO STREET TO CAVANAUGH ROAD



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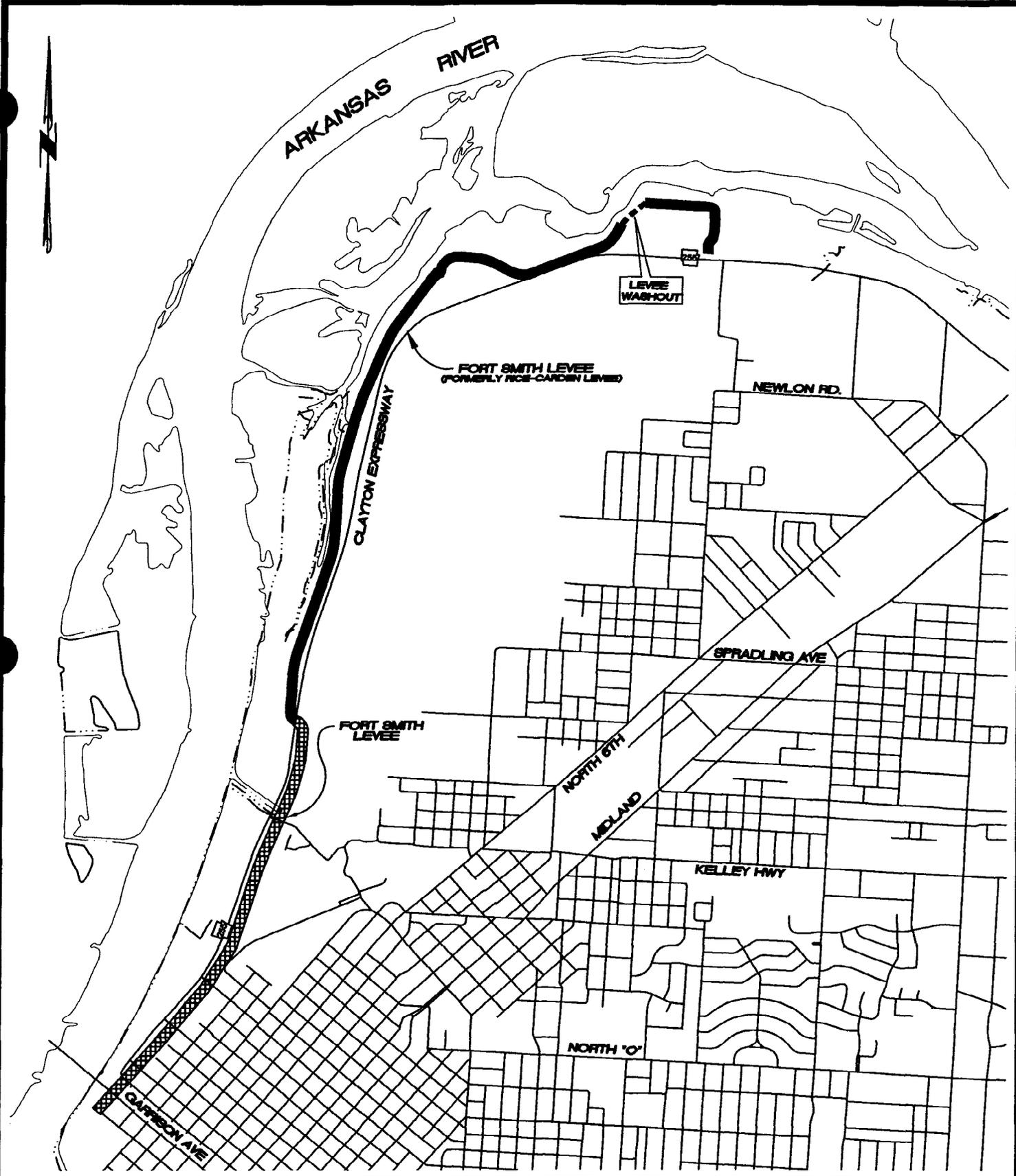
COMPLETED  
 2010 PROJECTS

2011 CAPITAL IMPROVEMENTS PROGRAM  
 ARTERIAL OVERLAYS/RECONSTRUCTION



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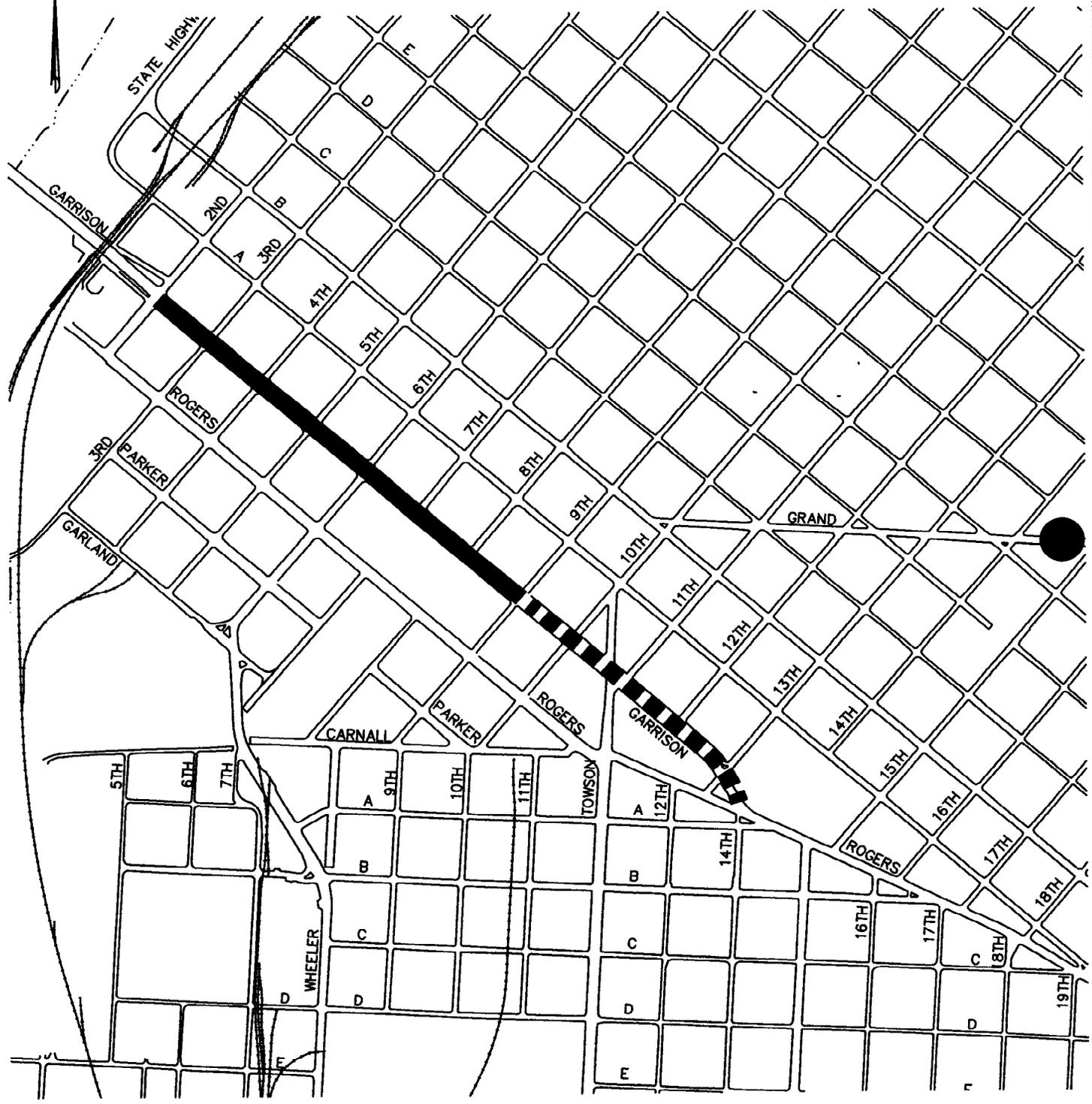


2011 CAPITAL IMPROVEMENTS PROGRAM  
 LEVEE CERTIFICATION & REPAIR  
 FORT SMITH, ARKANSAS



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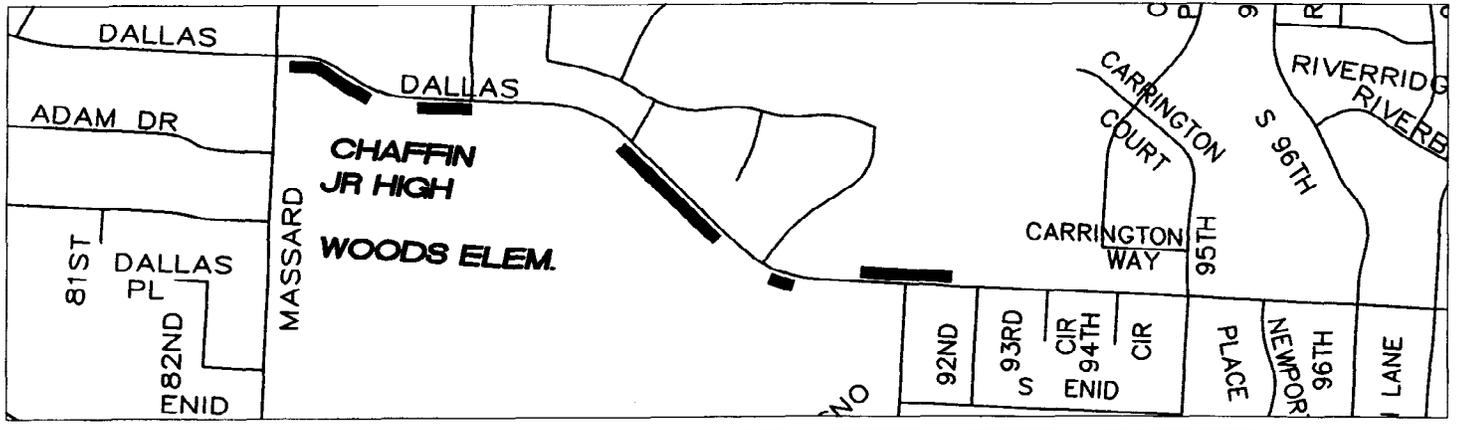
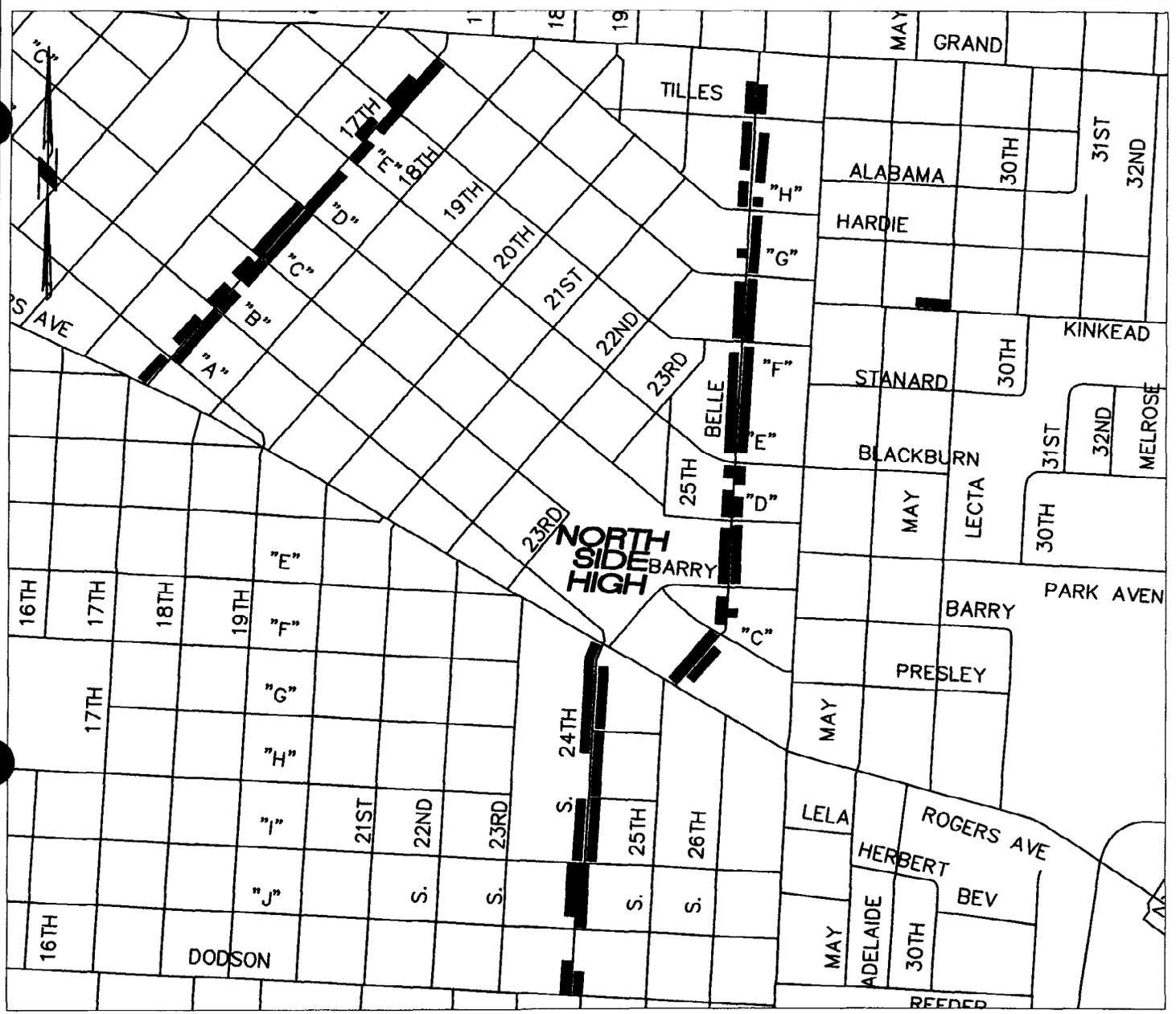


2011 CAPITAL IMPROVEMENTS PROGRAM  
GARRISON STREETScape  
FORT SMITH, ARKANSAS



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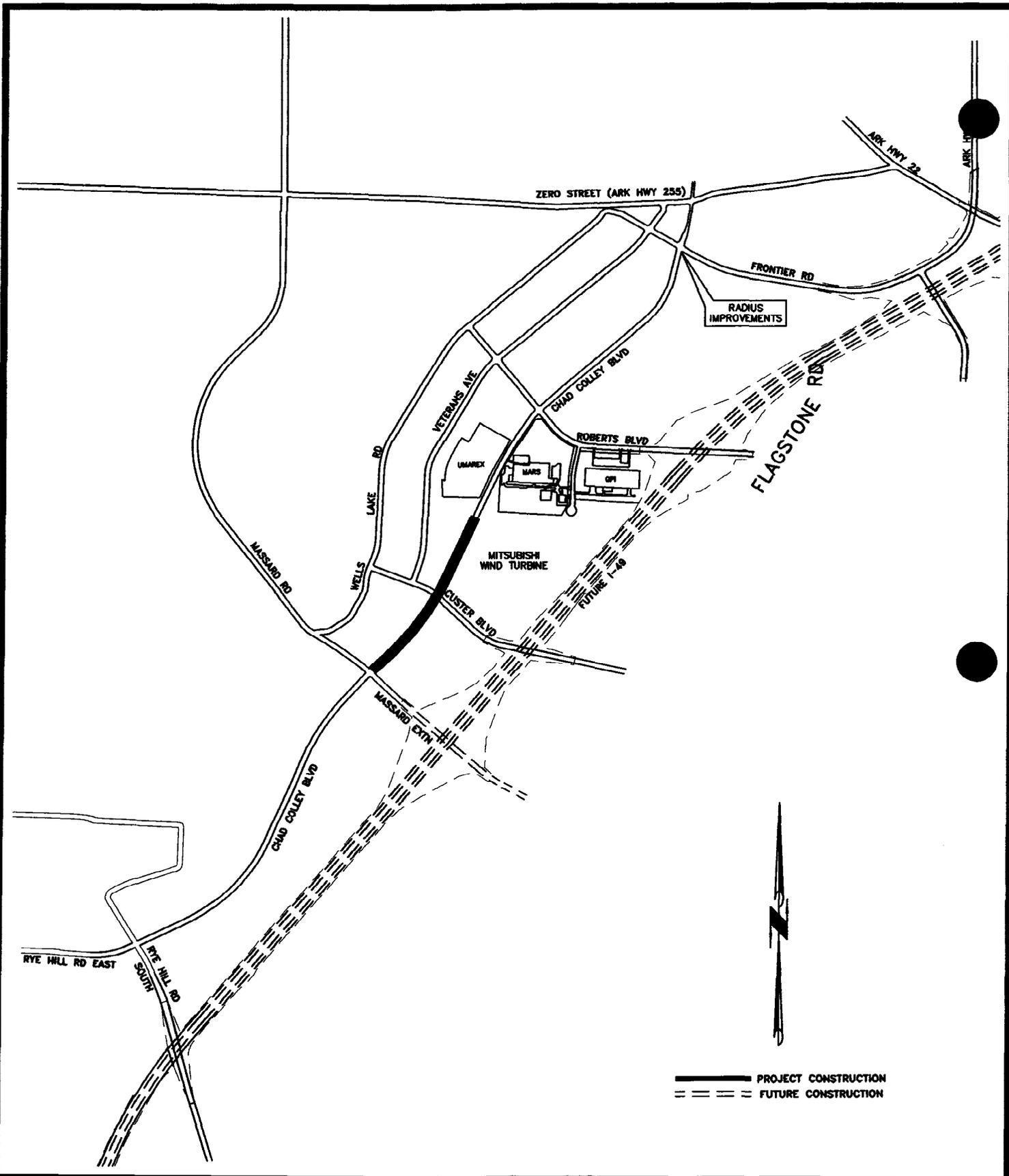
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2011 CAPITAL IMPROVEMENTS PROGRAM  
 SIDEWALK IMPROVEMENTS



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| Project:  | 2011 SIDEWALKS |
| Date:     | SEPT. 2010     |
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| Page:     | 19             |



FCRA DEVELOPMENT  
 CHAD COLLEY EXTENSION  
 FORT SMITH, ARKANSAS



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| Project:  | 10-00-A      |
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2.

## MEMORANDUM

September 23, 2010

**TO:** Dennis Kelly, City Administrator

**FROM:** Kara Bushkuhl, Director of Finance *Kara*

**SUBJECT:** 2011 Budget Update and 2011 Departmental Service Objectives

During the September 28, 2010 study session, I will provide a brief update of the 2011 Budget. The status will be given orally in order to include any major adjustments during the final round of departmental review sessions that will be held Monday September 27, 2010.

The 2011 departmental service objectives and 2010 service objectives/outcomes report was distributed to the Board electronically on August 19, 2010 and as a paper copy on August 27, 2010. The document is 73 pages, therefore an additional copy is not being provided in this week's packet unless requested by a board member.

A few of the 2011 departmental service objectives that correlate to the 2011 citywide goals are listed as follows:

1. Initiate and develop economic growth strategies to increase the job market with higher paying jobs as well as support the construction of the regional intermodal freight facilities and Interstate 49.

### Economic Development

Develop & implement aggressive and innovative ideas for communicating with the public about economic development and quality of place related issues in collaboration with community partners.

Tell Fort Smith's story to broader – regional and national – audiences and, when appropriate, assisting other departments and community partners in this regard.

Downtown Development

Improve the effort for branding the Downtown area as a Live, Work, and Play environment. Create additional marketing tools to promote the urban option with various corporate and business leaders regionally. In partnership with the Advertising and Promotion department we will continue to market the Park at West End in all of our promotional pieces.

Engineering

Encourage economic development and enhance traffic flow by contracting and completing thoroughfare projects as follows.

- Chad Colley Boulevard Extension in 2010-2011
- Jenny Lind Road (Zero to Cavanaugh) in 2010-2012

Information and Technology Services

Continue to provide GIS support to the Fort Smith Regional Chamber of Commerce. This support will enhance the Chamber's ability to pursue their economic development goals using GIS and mapping technology. This goal includes the continued maintenance and support of the online Economic Development properties GIS.

Utilities

Plan for water and wastewater services to support growth and better serve neighborhoods. Replace all two-inch neighborhood water lines by 2014.

- Initiate design for initial section of 48-inch water transmission line replacement for the Lake Fort Smith water treatment plant to allow delivery of 40 MGD capacity.
- Develop agreement with the city of Barling for wastewater treatment services to accept flow contributions from Fort Smith's southern growth area through 2014.
- Improve water service and upgraded fire protection through line replacement projects within older residential areas.

Convention and Visitors Bureau

Take a leading role in the Fort Smith economic development efforts through interface with those involved in development efforts, particularly on a regional level in surrounding counties in both Arkansas and Oklahoma.

2. Present voters with a solution for ongoing convention center funding.

City Clerk

Conduct special election on the question of a prepared food tax.

3. Continue the “green initiative” by developing strategies to reduce energy consumption and other costs in City facilities.

Finance

Expand the use of online bid solicitation and cooperative buying programs to achieve measureable savings and true-market value.

Development Services

Continue to research green building and development ordinances. Implement green practices around the office. Discuss with the development and construction community about possible implementation of green codes and standards.

Police

The Department will optimize budget expenditures through use of external funding sources and incorporate enhanced monitoring of relevant data to leverage maximum use of available resources. The Department will contribute to the City’s GO GREEN program to assist in achieving cost and energy savings for department facilities. The Department will continue to provide cost effective services to citizens that are efficient and enhance communication between our citizens and the department.

Streets and Traffic Control

Insure the safety of the traveling public by repairing and/or replacing traffic signs and signal lights in a timely matter. Perform preventative maintenance on all signal lights, replacing light bulbs with more dependable and longer lasting LED traffic signal lamps and study the history of traffic accidents in the City.

Utilities

Use innovation and improved uses of technology to better utilize resources for serving the community. Continue the "green initiatives" in planning for utility system and building projects.

- Continue planning, design and construction practices that assure reliability and lower operations cost.

Convention Center

Improve environmental performance by optimizing recycling and “green” purchasing.

4. Select preferred approach for funding wet weather sanitary sewer work after 2011.

Utilities

Cost effective execution of the Wastewater Management Plan to meet EPA required implementation schedule for wet weather wastewater treatment and collection system improvements.

- Initiate construction of wet weather improvements in Zero Street drainage basin consisting of pump station capacity, equalization storage, relief sewers and collection system improvements.
- Evaluate equalization storage and force main options and complete preliminary design for the Mill Creek pump station.
- Development of technical positions related to negotiations with Department of Justice and EPA for resolution of draft Consent Decree.

5. Identify a new revenue source and/or identifying savings in the General Fund to provide funds for construction, staffing, and equipping Fire Station 11 in Chaffee Crossing; future downtown development; and parks projects.

Downtown Development

Continue to work with elected officials on a local and state level to lobby for votes on the State Tax Credit Bill for CBID's throughout Arkansas. This will continue to be a statewide effort to provide additional financial incentives for redevelopment in the core business districts in Arkansas.

Fire

Improve public and firefighter safety and assist in holding down consumer's property insurance costs by beginning construction of a new fire station and Chaffee Crossing.

Parks

Implement management strategies to monitor receivables, inventories, and operations

- Evaluate existing services and programs for effectiveness and usefulness
- Minimize the affect of reduced services and programs to citizens
- Provide citizens quality facilities and programs

- Maintain parks, playgrounds, and facilities to provide a safe environment
6. Strengthen the budgeting process by improving revenue forecasts.

Finance

Provide more budget analysis and trend reporting as necessary.

Sanitation

Review the sanitation rates established/updated in 2007

7. Improve the provision of services to the homeless by providing a full-time staff position for the Old Fort Homeless Coalition.

Development Services

Continue to work with the Old Fort Homeless Coalition to implement the recommendations of the Homelessness Task Force and the Board of Directors.

Transit

Work closely with the Homeless Coalition to reduce transportation barriers for the homeless seeking to re-enter the job market.

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

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE I, OF THE FORT SMITH  
CITY CODE OF ORDINANCES REGULATING ANIMALS

---

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

Chapter 4, Article I, Section 4-1, of the Fort Smith Municipal Code is amended to change the definition of "City pound," and to add two new definitions ("Neuter" and "Spay") set forth below; also, said Chapter is amended to add Section 4-11:

Sec. 4-1. Definitions.

The following words and phrases shall, for the purpose of this chapter, have the following meanings:

*City pound* shall mean the place specified by the City of Fort Smith Board of Directors for the impounding of dogs and other animals.

*Neuter* shall mean to render a male dog or cat unable to reproduce.

*Spay* shall mean to remove the ovaries of a female dog or cat in order to render the animal unable to reproduce.

Sec. 4-11. Mandatory Spay/Neuter for Dogs and Cats

(a) When a dog is seized under the provisions of Chapter 4, Article V, Section 4-116, of the Fort Smith Municipal Code (Running at Large), it shall become mandatory for the owner or harbinger of said animal, if known, to cause the animal, at the owner or harbinger's expense, to be spayed or neutered as a condition of the release of the animal to the owner or harbinger.

(b) When a cat is seized under the provisions of Chapter 4, Article VI, of the Fort Smith Municipal Code, it shall become mandatory for the owner or harbinger of said animal, if known, to cause the animal, at the owner or harbinger's expense, to be spayed or neutered as a condition of the release of the animal to the owner or harbinger.

(c) If it is not immediately obvious that the animal has been spayed or neutered, the owner or harbinger shall be required to provide a letter or certificate to the animal warden, signed by a licensed veterinarian, certifying that the animal has been spayed or neutered.

(d) In the event that the animal was not spayed or neutered at the time of the seizure, the owner or harbinger of the animal will be given thirty (30) days to have the animal spayed or neutered and to provide proof to the animal warden of such procedure in the form of a letter or certificate of spay or neuter signed by a licensed veterinarian.

(e) If no proof has been provided within the thirty (30) day period, the owner or harbinger of the animal may be found in violation of this ordinance and will, upon conviction, be subject to a fine in accordance with Section 1-9 of the Fort Smith Municipal Code.

(f) The following animals are exempt from the mandatory spay/neuter provision:

- (1) Dogs documented as having been appropriately trained and actually being used by public law enforcement agencies for law enforcement activities;
- (2) Dogs documented as having been appropriately trained and actually being used by search and rescue agencies for search and rescue activities;
- (3) Dogs documented as having been appropriately trained and actually being used as a service animal (e.g., seeing eye dog); and
- (4) Dogs or cats whose owner is in possession of a certification signed by a licensed veterinarian stating that such animal is unfit to be spayed or neutered because such procedure would endanger the life of such animal.

(g) Notice of Spay / Neuter requirements shall be in writing and shall be served on the owner or harbinger personally, or by certified mail to the owner's or harbinger's last known address.

(h) Appeal of determination. Any person who has received notice that he/she must comply with the subsections set forth above, and whose animal(s) does not meet the exemptions set forth in subsection (f) above, may appeal such decision to the Animal Control Supervisor. The appeal must be in writing and made within five (5) business days of the day the notice was provided in accordance with this section.

- (1) The supervisor shall schedule and hold a hearing, within five (5) business days after receiving the written appeal, to determine whether the animal will be Spayed / Neutered. The supervisor's decision shall be considered the final decision of the city as to whether the animal will be Spayed / Neutered.
- (2) If the initial requirement is not appealed or if the right to appeal is waived, the initial requirement shall be considered the final decision of the city as to whether the animal will be Spayed / Neutered.
- (3) An appeal from the decision of the supervisor may only be made to a court of competent jurisdiction.

This Ordinance adopted this \_\_\_\_ day of \_\_\_\_\_, 2010.

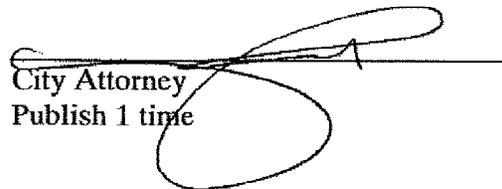
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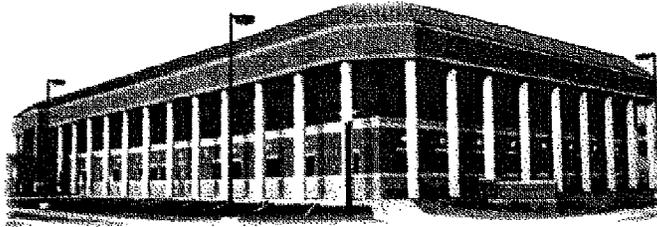
\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney  
Publish 1 time



## Fort Smith Police Department

Kevin Lindsey, Chief of Police

### INTERDEPARTMENTAL MEMORANDUM

**To:** Dennis Kelly, City Administrator

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

**Subject:** Spay/Neuter Ordinance

**Date:** September 17, 2010

#### **Attachments:**

The purpose of this memorandum is to propose changes to the Animal Ordinance, by amending Section 4-1 of the Fort Smith Municipal Code and adding Section 4-11, Mandatory Spay/Neuter for Dogs and Cats. The Board directed staff to prepare an ordinance for their review at the August 10, 2010 Board of Director Study Session. Research was conducted by staff in reference to the plausibility of drafting a Spay / Neuter Ordinance for dogs and cats. A review of the Fort Smith Municipal Code was also conducted to determine how this Ordinance might affect the existing code.

A review of Section 4-1, Definitions, of the Fort Smith Municipal Code revealed the need to add definitions for the terms "spay" and "neuter". It was also determined that the definition of "city pound" found in Section 4-1 was inaccurate. The following changes to Section 4-1 are proposed:

- Add *Spay* which shall mean to remove the ovaries of a female dog or cat in order to render the animal unable to reproduce.
- Add *Neuter* which shall mean to render a male dog or cat unable to reproduce.
- Change *City pound* to identify the place specified by the City of Fort Smith Board of Directors for the impounding of dogs and other animals.

In reviewing Spay / Neuter Ordinances, staff determined that a majority of Ordinances included provisions for licensing animals, issuing "intact" permits and licensing of breeders of animals. Staff concluded that the best course of action would be to enact a Spay / Neuter Ordinance which could be enforced when a dog or a cat is picked up for violating ordinances already in existence. If a dog is seized in violation of Section 4-116 (Running at Large) of the Fort Smith Municipal Code, the owner or harbinger of the dog will be required to have the animal spayed or neutered within thirty (30) days or face a

fine, unless the owner or harbinger can provide proof that the animal has already been spayed or neutered, or meets the exemptions set forth in the Ordinance. The same will apply for cats seized in violation of Chapter 4, Article VI, of the Fort Smith Municipal Code. This Ordinance provides exemptions for dogs that are trained and being used for law enforcement activities, search and rescue operations, service animals and dogs or cats certified by a licensed veterinarian as being unfit for being spayed or neutered due to health reasons.

There are also other concerns to consider with a mandatory Spay / Neuter Ordinance. Some of those considerations should include animal owners who may want to breed their animal for the following reasons: animals that are registered with a nationally recognized club or organization, animals bred for hunting, or animals bred for other purposes. The draft ordinance offers an appeals process and, if necessary, determinations as to whether an animal will be allowed to remain intact could be made on a case by case basis.

The intention of this Ordinance is to promote responsible pet ownership. Animals which have not been spayed or neutered and allowed to run at large present a risk to public safety and an unnecessary monetary burden to the City of Fort Smith.

**Article I. In General**  
**Sec. 4-1. Definitions.**

The following words and phrases shall, for the purpose of this chapter, have the following meanings:

*Animal* shall mean any animal which may be affected by rabies.

*Animal warden* shall mean the person who shall be, from time to time, duly authorized by the board of directors as the agent of the city for the purpose of providing the services and fulfilling the responsibilities of the animal warden as herein set out.

*Cat* shall mean animals of all ages, both female and male, which are members of the feline, or cat family.

*City pound* shall mean the place specified by the City of Fort Smith Board of Directors and operated by the animal warden for the impounding of dogs and other animals.

*Dangerous dog* means any dog which displays or has a tendency, disposition or propensity to:

(1) Bare its teeth or approach in a menacing manner a person or domestic animal that is not provoking the dog, or

(2) Attack, chase, charge or bite a person or domestic animal in a menacing manner, or attempt to do so.

*Dog* shall mean animals of all ages, both female and male, which are members of the canine or dog family.

*Has been bitten* shall mean that a person has been seized with teeth or jaws by an animal, so that the skin of the person or things seized has been nipped or gripped, or has been wounded or pierced and includes contact of saliva with any break or abrasion of the skin.

*Licensed veterinarian* shall mean a practitioner of veterinary medicine who holds a valid license to practice his profession.

*Muzzle*, when required, shall mean an apparatus of appropriate material with sufficient strength to restrain the dog from biting; provided, that no such muzzle employed shall be made from any material or maintained on the dog in any manner so as to cut or injure the dog.

*Neuter* shall mean to render a male dog or cat unable to reproduce.

*Owner* shall mean every person having a right of property in a dog or other animal or who keeps or harbors a dog or other animal, or has it in his care, or acts as its custodian, or knowingly permits a dog or other animal to remain on or about any premises occupied by him.

*Pen* shall mean an enclosure for domestic animals meeting the following requirements:

(1) The minimum pen size shall be four (4) feet by six (6) feet or twenty-four (24) square feet for one dog under fifty (50) lbs. For dogs over fifty (50) lbs., the minimum pen size shall be five (5) feet by ten (10) feet or fifty (50) square feet.

(2) In all pens, each dog housed therein shall have room to stand, lie down, turn around and sit normally away from its own waste; this requires a minimum of four (4) feet by six (6) feet. A pen five (5) feet by ten (10) feet shall hold no more than one (1) large, or two (2) medium, or three (3) small breed dogs.

(3) All pens shall be a minimum of six (6) feet in height.

(4) All pens surrounded on all sides and top by chainlink fencing of at least no. 9 gauge, with steel ties, maximum two and one-half-inch mesh, with concrete or similar flooring or with side fencing buried eighteen (18) inches into the ground, and with gates padlocked.

*Run at large* shall mean the state of freedom of any dog not confined on the premises of the owner within an enclosure, house or other building, or not restrained on the premises of the owner by a leash sufficiently strong to prevent the dog from escaping and restricting the dog to the premises, or not confined by leash or confined within an automobile when away from the premises of the owner. In relation to unspayed female dogs while in season, "run at large" shall further be defined as the state of freedom of any such dog not confined inside an enclosure of such a substantial construction so as to prevent such dog from attracting other dogs to the near vicinity of the confined dog.

*Spay* shall mean to remove the ovaries of a female dog or cat in order to render the animal unable to reproduce.

*Vaccination* shall mean the injection, subcutaneously or otherwise, of canine antirabic vaccine, as approved by the United States Department of Agriculture or the state veterinarian and administered by a licensed veterinarian.

*Vaccination certificate* shall mean a written or printed certificate showing on its face that the owner described thereon has received an inoculation or antirabic vaccine in an amount sufficient to produce immunity in the described animal and bearing the signature of a licensed veterinarian.

*Vicious animal* shall mean any animal which:

(1) When unprovoked, approaches in a manner of attack any person upon the streets, sidewalks, or any other public ground or place;

(2) Has a known propensity, tendency or disposition to attack, without provocation, human beings or domestic animals;

(3) Without provocation, bites or attacks a human being or domestic animal on public or private property;

(4) Is owned or harbored primarily or in part for the purpose of animal fighting or is an animal trained for animal fighting.

Notwithstanding the above definition, no animal shall be declared vicious if the person attacked or bitten by the animal was teasing, tormenting, abusing, or assaulting the animal, or was committing or attempting to commit a crime. Furthermore, no animal shall be declared vicious if a domestic animal which was bitten or attacked was teasing, tormenting, abusing, or assaulting the animal. Additionally, no animal shall be declared vicious if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.

*Vicious dog* means any dog which has:

(1) Caused a life-threatening injury, broken bone, multiple sutures, or any injury requiring medical attention to a person or domestic animal, without provocation, on public or private property; or

(2) Killed a domestic animal, without provocation, on public or private property; or

(3) Is owned or harbored primarily or in part for the purpose of dog fighting or is a dog trained for fighting.

## **Article I. In General**

### **Sec. 4-11. Mandatory Spay/Neuter for Dogs and Cats**

(a) When a dog is seized under the provisions of Chapter 4, Article V, Section 4-116, of the Fort Smith Municipal Code (Running at Large), it shall become mandatory for the owner or harbored of said animal, if known, to cause the animal, at the owner or harbored's expense, to be spayed or neutered as a condition of the release of the animal to the owner or harbored.

(b) When a cat is seized under the provisions of Chapter 4, Article VI, of the Fort Smith Municipal Code, it shall become mandatory for the owner or harbored of said animal, if known, to cause the animal, at the owner or harbored's expense, to be spayed or neutered as a condition of the release of the animal to the owner or harbored.

(c) If it is not immediately obvious that the animal has been spayed or neutered, the owner or harbored shall be required to provide a letter or certificate to the animal warden, signed by a licensed veterinarian, certifying that the animal has been spayed or neutered.

(d) In the event that the animal was not spayed or neutered at the time of the seizure, the owner or harbored of the animal will be given thirty (30) days to have the animal spayed or

neutered to provide proof to the animal warden of such procedure in the form of a letter or certificate of spay or neuter signed by a licensed veterinarian.

(e) If no proof has been provided within the thirty (30) day period, the owner or harborer of the animal may be found in violation of this ordinance and will, upon conviction, be subject to a fine in accordance with Section 1-9 of the Fort Smith Municipal Code.

(f) Certain dogs that are exempt from the mandatory spay/neuter ordinance include the following:

- (1) Dogs documented as having been appropriately trained and actually being used by public law enforcement agencies for law enforcement activities;
- (2) Dogs documented as having been appropriately trained and actually being used by search and rescue agencies for search and rescue activities;
- (3) Dogs documented as having been appropriately trained and actually being used as a service animal (e.g., seeing eye dog); and
- (4) Dogs or cats whose owner is in possession of a certification signed by a licensed veterinarian stating that such animal is unfit to be spayed or neutered because such procedure would endanger the life of such animal.

(g) Notice of Spay / Neuter requirements shall be in writing and shall be served on the owner or harborer personally, or by certified mail to the owner's or harborer's last known address.

(h) Appeal of determination. Any person who has received notice that he/she must comply with the subsections set forth above, and whose animal(s) does not meet the exemptions set forth in subsection (f) above, may appeal such decision to the Animal Control Supervisor. The appeal must be in writing and made within five (5) business days of the day the notice was provided in accordance with this section.

- (1) The supervisor shall schedule and hold a hearing, within five (5) business days after receiving the written appeal, to determine whether the animal will be Spayed / Neutered. The supervisor's decision shall be considered the final decision of the city as to whether the animal will be Spayed / Neutered.
- (2) If the initial requirement is not appealed or if the right to appeal is waived, the initial requirement shall be considered the final decision of the city as to whether the animal will be Spayed / Neutered.

- (3) An appeal from the decision of the supervisor may only be made to a court of competent jurisdiction.

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

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE V, SECTION 4-116, OF THE FORT SMITH CITY CODE OF ORDINANCES REGULATING ANIMALS

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

Chapter 4, Article V, Section 4-116, of the Fort Smith Municipal Code is amended to read as follows:

Sec. 4-116. Running at large.

(a) It shall be unlawful for any dog owner or harborer knowingly to allow such dog to run at large within the corporate limits of the city.

(b) An animal warden, upon identifying the owner or harborer of a dog running at large, is authorized to inspect the yard or fence or pen, if any, whereat the dog is maintained to determine how the dog may have left the confines of the premises. If there is sufficient evidence that the dog climbed over, jumped over, or crawled under an existing fence, or there is sufficient evidence to indicate that the means by which the animal was maintained on the premises is deemed inadequate, the owner or harborer of the dog, at the discretion of the Animal Control Supervisor, shall be required to:

- 1) Add on to an existing fence, or construct a fence, if one does not exist, so that the fenced enclosure is at least six (6) feet in height if there is sufficient evidence the dog climbed over an existing fence or left the confines of a yard where no fence exists; or
- 2) Construct a pen as defined in Chapter 4, Article I, Section 4-1 of the Fort Smith Municipal Code if there is sufficient evidence the dog climbed over an existing fence of six (6) feet or more in height; or
- 3) Add on to, or construct fencing so that the fence is buried a minimum of eighteen (18) inches into the ground if there is sufficient evidence the dog left the confines of the premises by crawling under or digging under an existing fence; or
- 4) Repair any existing fencing or gates that may be deemed inadequate.

(c) Notice of the inadequacy of the means by which an animal is maintained on the premises, and of any requirements related to fencing or other enclosure, shall be in writing and shall be served on the owner or harborer personally, or by certified mail to the owner's or harborer's last known address.

(d) Appeal of determination. Any person who has received notice that he/she must comply with one or more of the requirements set forth in subsection (b) above may appeal such decision to the Animal Control Supervisor. The appeal must be in writing and made within five (5) business days of the day the notice was provided in accordance with this section.

- (1) The supervisor shall schedule and hold a hearing, within five (5) business days after receiving the written appeal, to review the initial requirement(s). The supervisor's decision shall be considered the final decision of the city as to whether additional fencing or enclosure requirements are necessary.
- (2) If the initial requirement(s) is not appealed or if the right to appeal is waived, the initial requirement(s) shall be considered the final decision of the city as to whether additional fencing or enclosure requirements are necessary.
- (3) An appeal from the decision of the supervisor may only be made to a court of competent jurisdiction.

(e) All other provisions of this article notwithstanding, any vicious dog, for which an order of compliance has been issued, but which is thereafter found outside the walls of the owner's or harborer's home or pen, shall be humanely destroyed five (5) days from the time of notification of the owner or harborer as set forth in section 4-7 of the Fort Smith Municipal Code.

This Ordinance adopted this \_\_\_\_ day of \_\_\_\_\_, 2010.

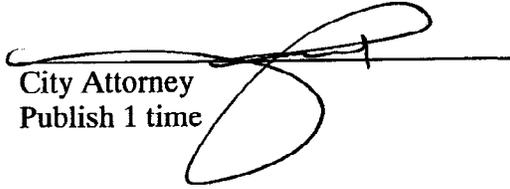
APPROVED:

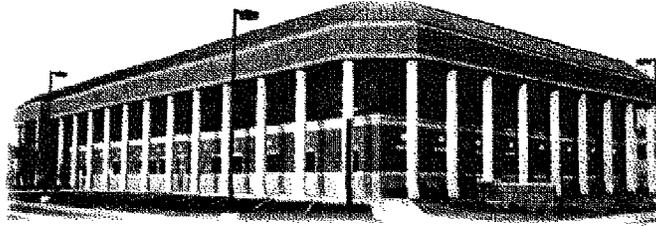
\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney  
Publish 1 time



## **Fort Smith Police Department**

Kevin Lindsey, Chief of Police

### **INTERDEPARTMENTAL MEMORANDUM**

**To: Dennis Kelly, City Administrator**

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

**Subject: Running At Large Ordinance Amendment**

**Date: September 17, 2010**

The purpose of this memorandum is to present changes to the Animal Ordinance, Section 4-116 of the Fort Smith Municipal Code, to the Board of Directors. The proposed changes are the result of a citizen's request to implement fencing requirements for dog owners whose animals are found to be running at large. Research was conducted by staff in reference to the plausibility of adding fencing requirements to Section 4-116 (Running at Large) of the Fort Smith Municipal Code for citizens whose dogs are seized under the provisions of this ordinance. The revisions to the Running at Large ordinance would target problem animals in lieu of a mandatory fencing requirement for all dog owners.

In order to enforce any fencing requirements under the Running at Large ordinance, the owner or harbinger of a dog which is seized must first be identified. Secondly, there must be sufficient evidence that the dog climbed over or under existing fencing, or by some other means left the confines of the premises. A third party who witnesses a dog leave the owner's or harbinger's premises would be considered as sufficient evidence to require additional fencing. Without a witness present, it would become necessary for an animal warden to inspect the premises in order to determine if there is sufficient evidence to require additional fencing requirements.

In researching the legal aspects of fencing requirements for dog owners or harborers in violation of the Running at Large ordinance it was determined that there may be Constitutional considerations in authorizing an animal warden to inspect a fence. Assistant City Attorney Rick Wade brought to light the possible infringements on a property owner's Fourth Amendment rights when an animal warden, absent consent by the property owner or a search warrant, enters the confines of the property to inspect a fence.

City Prosecuting Attorney John Settle also acknowledged the same concerns. In speaking further with Mr. Settle it was determined that absent a search warrant or consent to search the property, it would be reasonable for an animal warden to visually inspect the fence from any vantage point where the animal warden has a lawful right to be. This would include alleys, sidewalks or streets, or even adjacent properties with the permission of a property owner. Mr. Settle suggested in-service training for animal wardens, making them aware of Fourth Amendment considerations when enforcing this ordinance.

Assistant City Attorney Rick Wade also expressed concerns in regards to addressing instances where the owner or harborer of a dog does not own the property but is merely a tenant at said property. There are concerns as to who will be responsible for the addition to, or repairing of, fencing. This may be a concern in which Directors should address and clarify.

Owners or harborers of dogs in violation of the Running at Large Ordinance, at the discretion of the Animal Control Supervisor, are required to:

- Add on to, or construct, a fence so that the fenced enclosure is at least six (6) feet in height if there is sufficient evidence the dog climbed over an existing fence; or
- Construct a pen as defined in Chapter 4, Article I, Section 4-1 of the Fort Smith Municipal Code if there is sufficient evidence the dog climbed over an existing fence of six (6) feet or more in height; or
- Add on to, or construct fencing so that the fence is buried a minimum of eighteen (18) inches into the ground if there is sufficient evidence the dog left the confines of the premises by crawling under or digging under an existing fence; or
- Repair any existing fencing or gates that may be deemed inadequate.

This amendment to the existing Running at Large ordinance may improve public safety by targeting problem animals and owners of said animals, without enacting arbitrary regulations on all pet owners.

## Article V. Dogs

### Sec. 4-116. Running at large.

(a) It shall be unlawful for any dog owner or harborer knowingly to allow such dog to run at large within the corporate limits of the city.

(b) An animal warden, upon identifying the owner or harborer of a dog running at large, is authorized to inspect the yard or fence or pen, if any, whereat the dog is maintained to determine how the dog may have left the confines of the premises. If there is sufficient evidence that the dog climbed over, jumped over, or crawled under an existing fence, or there is sufficient evidence to indicate that the means by which the animal was maintained on the premises is deemed inadequate, the owner or harborer of the dog, at the discretion of the Animal Control Supervisor, shall be required to:

- 1) Add on to an existing fence, or construct a fence, if one does not exist, so that the fenced enclosure is at least six (6) feet in height if there is sufficient evidence the dog climbed over an existing fence or left the confines of a yard where no fence exists; or
- 2) Construct a pen as defined in Chapter 4, Article I, Section 4-1 of the Fort Smith Municipal Code if there is sufficient evidence the dog climbed over an existing fence of six (6) feet or more in height; or
- 3) Add on to, or construct fencing so that the fence is buried a minimum of eighteen (18) inches into the ground if there is sufficient evidence the dog left the confines of the premises by crawling under or digging under an existing fence; or
- 4) Repair any existing fencing or gates that may be deemed inadequate.

(c) Notice of the inadequacy of the means by which an animal is maintained on the premises, and of any requirements related to fencing or other enclosure, shall be in writing and shall be served on the owner or harborer personally, or by certified mail to the owner's or harborer's last known address.

(d) Appeal of determination. Any person who has received notice that he/she must comply with one or more of the requirements set forth in subsection (b) above may appeal such decision to the Animal Control Supervisor. The appeal must be in writing and made within five (5) business days of the day the notice was provided in accordance with this section.

- 1) The supervisor shall schedule and hold a hearing, within five (5) business days after receiving the written appeal, to review the initial requirement(s). The supervisor's decision shall be considered the final decision of the city as to whether additional fencing or enclosure requirements are necessary.

- (2) If the initial requirement(s) is not appealed or if the right to appeal is waived, the initial requirement(s) shall be considered the final decision of the city as to whether additional fencing or enclosure requirements are necessary.
- (3) An appeal from the decision of the supervisor may only be made to a court of competent jurisdiction.

(e) All other provisions of this article notwithstanding, any vicious dog, for which an order of compliance has been issued, but which is thereafter found outside the walls of the owner's or harborer's home or pen, shall be humanely destroyed five (5) days from the time of notification of the owner or harborer as set forth in section 4-7 of the Fort Smith Municipal Code.

# ***AGENDA*** ~ ***Summary***

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

***SEPTEMBER 28, 2010 ~ 12:00 NOON***

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

1. Presentation of the proposed five-year Capital Improvements Program, and Year 2011 Sidewalk Program  
*Presentation by Director of Engineering Stan Snodgrass. Resolution placed on October 5, 2010 regular meeting agenda.*
2. Update on Year 2011 Budget including departmental service objectives and correlation with city-wide goals  
*Presentation by Director of Finance Kara Bushkuhl - update only.*
3. Review of proposed ordinance amending Chapter 4, Article I, of the Fort Smith Code of Ordinances regulating animals ~ mandatory spay/neuter ordinance ~  
*The Board requested additional information with regard to what other cities are doing and further legal review concerning the constitutionality of the proposed ordinance. The Board concurred to review at a future study session.*
4. Review proposed ordinance amending Chapter 4, Article V, Section 4-116 of the Fort Smith Code of Ordinances regulating animals ~ fencing requirement for dogs ~  
*The Board requested further legal review with regard to the constitutionality of the proposed ordinance. The Board concurred to review at a future study session.*
5. Review preliminary agenda for October 5, 2010 regular meeting