

AGENDA

FORT SMITH BOARD OF DIRECTORS
STUDY SESSION

FEBRUARY 22, 2011 ~ 12:00 NOON

FORT SMITH PUBLIC LIBRARY
COMMUNITY ROOM
3201 ROGERS AVENUE

SPECIAL MEETING

ROLL CALL

1. Ordinance providing for the levy of a tax on the gross receipts or gross proceeds received by restaurants, cafes, catering cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption; to declare an emergency and prescribing other matters pertaining thereto ** *Second reading* **

ADJOURN

STUDY SESSION

1. Items relative to water and sewer rates and fees
 - A. Update regarding Water and Sewer Rate Study
 - B. Review water and sewer miscellaneous fees
2. Review of proposed ordinances regarding regulation of animals (*mandatory spay/neuter, licensing, no tethering and Animal Services Advisory Board*)
~ *Continued from the January 25, 2011 study session* ~
3. Review preliminary agenda for the March 1, 2011 regular meeting

MEMORANDUM

TO: Ray Gosack, City Administrator
FROM: Sherri Gard, City Clerk
DATE: February 18, 2011
RE: Special Meetings - February 22 and 24, 2011

At the February 15, 2011 regular meeting, Directors Tyler, Good, Weber and Merry called a special meeting for 12:00 Noon, Tuesday, February 22, 2011 at the Fort Smith Public Library Community Room to allow for the second reading of the following item:

- Ordinance providing for the levy of a tax on the gross receipts or gross proceeds received by restaurants, cafes, catering cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverage for on-premises or off-premises consumption; to declare an emergency and prescribing other matters pertaining thereto.

The previously scheduled study session will occur immediately following the special meeting.

At the February 15, 2011 regular meeting, Directors Tyler, Good, Weber and Merry also called a special meeting to allow for the third and final reading of the above noted ordinance. Said special meeting is scheduled for 6:00 p.m., Thursday, February 24, 2011, at the City of Fort Smith Planning Department Conference Room, 623 Garrison Avenue.

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE LEVY OF A TAX ON THE GROSS RECEIPTS OR GROSS PROCEEDS RECEIVED BY RESTAURANTS, CAFES, CATERING CAFETERIAS, DELICATESSENS, DRIVE-IN RESTAURANTS, CARRY-OUT RESTAURANTS, CONCESSION STANDS, CONVENIENCE STORES, AND GROCERY STORE-RESTAURANTS FROM THE SALE OF PREPARED FOOD AND BEVERAGES FOR ON-PREMISES OR OFF-PREMISES CONSUMPTION; TO DECLARE AN EMERGENCY AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

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

Section 1: As authorized by Act 185 of the 1965 Acts of Arkansas, as amended, specifically that portion of the Act codified at A.C.A. § 26-75-602(c)(2) (Supp. 2009), there is hereby levied a tax of one percent (1%) upon the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants or establishments of any kind or nature from the sale of prepared food and beverages for on-premises or off-premises consumption within the City of Fort Smith, Arkansas, said tax to be effective June 1, 2011.

(1) Prepared food and beverages, as used in this ordinance, shall have the same meaning as Prepared Food as defined and described by Emergency Rule 2007-3, in its entirety, promulgated by the Arkansas Department of Finance and Administration on May 11, 2007 (effective July 1, 2007), or as thereafter amended by the State of Arkansas.

(2) The tax levied by this subdivision of this Section shall not apply to gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3).

Section 2: All taxes, interest, penalties, and costs derived from the one percent (1%) tax levied by Section 1 of this Ordinance shall be deposited in the Fort Smith Advertising and Promotion Fund for purposes permitted by Act 185 of the 1965 Acts of Arkansas, as amended.

*Appraisal as to form
JSC
Publish 1 time*

Section 3: This Ordinance and the tax levied herein are subject to referendum in the manner prescribed in Amendment 7 to the Arkansas Constitution.

Section 4: If any provision of this Ordinance or the application thereof to any person, entity, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 5: The codifier of the Fort Smith Code of Ordinances is instructed to codify Sections 1 and 2 within Chapter 13, Article V, of the Fort Smith Code of Ordinances.

Section 6: It has been found, and it is hereby declared, that the ability to use and spend the funds credited to the City Advertising and Promotion Fund in accordance with the purposes prescribed herein is necessary to continue the development of the City and for the welfare of the inhabitants thereof. The immediate effectiveness of this Ordinance, therefore, is necessary for the preservation of the public peace, health and safety, and an emergency is declared to exist so that this Ordinance shall be in effect from and after June 1, 2011.

Section 7: The prepared food and beverages tax enacted by this Ordinance shall be reviewed by the Board of Directors no later than five (5) years after its enactment to determine if the tax shall continue, if the tax rate may be reduced, or if the tax should be otherwise modified as the board deems proper.

This Ordinance adopted this ____ day of _____, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator**DATE:** February 16, 2011**FROM:** Steve Parke, Director of Utilities**SUBJECT:** Water and Sewer Rate Study

Representatives from Burns & McDonnell and staff will update the Board on the water and sewer rate study now in progress at Tuesday's study session. Their rate work considers both the operating and capital requirements of the water and sewer systems. As you know, the Board adopted 5-percent water and sewer rate adjustments in December 2010 together with an additional \$1.1 million reduction in the operating budget to address the required 110-percent debt service coverage set out in our bond covenants. Those adjustments resulted in an ending fund balance reserve of about 12-percent. The Board's goal for the reserve fund balance is 15-percent. A debt service coverage of 1.35 is desired to issue additional bond financing.

Rate setting considerations include determining the desired methods of financing and levels of service delivery. We will discuss the rate impact for financing capital improvements structured under revenue and/or sales tax bonds with the Board. The timing for constructing major projects also influences rates. An example of this is the need to construct the new 48-inch water transmission line from Lake Fort Smith as presented at the April 2010 study session. The Lake Fort Smith water treatment plant is currently being expanded to treat up to 40 MGD. The water delivery capacity of the existing 27 and 36-inch transmission lines from that plant is limited to 34 MGD. In order to utilize the new plant capacity to meet system demand, the first 6.5 miles of the new transmission line must be in service in the Year 2012 time frame. I have highlighted that segment of line in green as shown on the attached exhibit from the April presentation. That 6.5 miles of transmission line is projected to cost about \$15 million. The line segment highlighted in blue on the exhibit must be in service before Year 2020. Construction of that segment must be initiated by Year 2015 if the city wants to insure that the environmental clearances to be issued are to remain in tact and avoid the imposition of potential new environmental conditions. The methods of financing and timing of construction are rate considerations.

Another water rate consideration is the financing of the neighborhood water system improvements. At the start of this improvement program, the city's system contained more than 70 miles of line 4-inch or smaller diameter lines. Almost 50 miles were 2-inch in diameter or smaller. These smaller lines do not support fire protection capabilities, and due to their age and deteriorated condition, they are also not providing satisfactory service. To date about 12 miles, or 17-percent, of these lines have been replaced. About 61 miles of this system remain in service. An exhibit showing the location of the smaller lines and which have been replaced or remain is attached. At the current funding level to replace around 2 to 2.5 miles of line each year, it will take between 24 and 30 years to work through the current inventory. Over this same time period there will also need to be other water line replacements to be addressed. The effect

on rates to continue to finance all of this work through debt or migrating some of the cost for this type work through rates will part of the presentation.

It is expected that the wet weather sewer improvements mandated by EPA will continue to be financed under sales tax bonds and will have a lesser impact on sewer rates. However, the continued use of sales tax requires the continuing approval of the voters. A rate scenario to show the rates required to fund that work through sewer system revenues will be discussed.

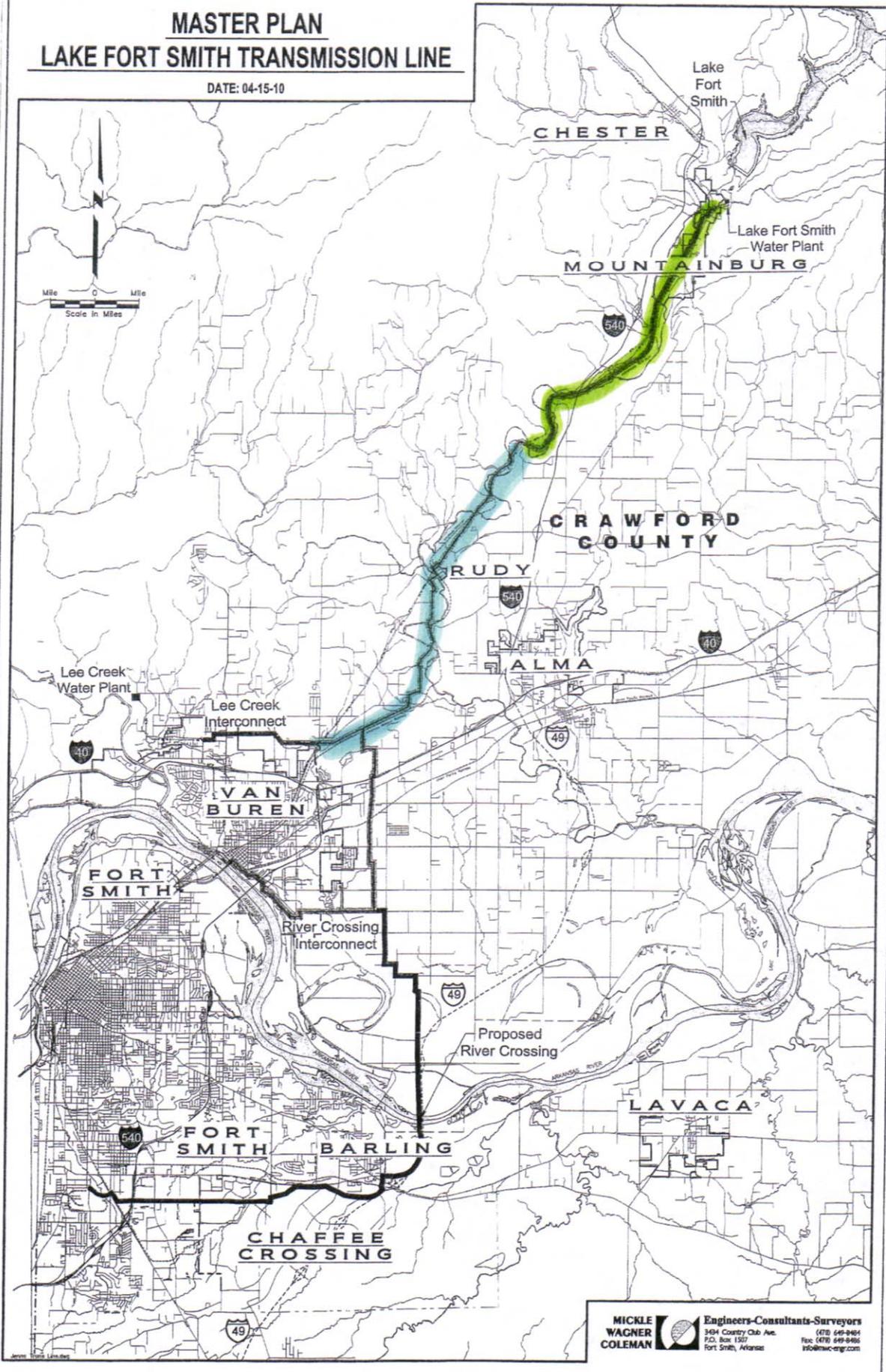
Expenses for personnel and operating are also rate setting considerations. To help develop customer assurance that the utility service levels currently provided are efficiently delivered, staff will be investigating bench marking programs that may help identify improved management practices. The American Water Works Association, whose main focus is on water system operations, offers this type of program. Other organizations may have similar programs such as the Water Environment Federation, whose main focus is the wastewater field, or the American Public Works Association which has a broader public works sector approach. Earlier water and sewer budgets anticipated seeking a consultant to conduct an efficiency study of its operations, but that task was not initiated due to budget shortfalls.

The Board's input on Tuesday's presentation will allow the rate development to be finalized and the appropriate rate ordinances to be prepared. If you or members of the Board have any questions or desire additional information, please let me know.

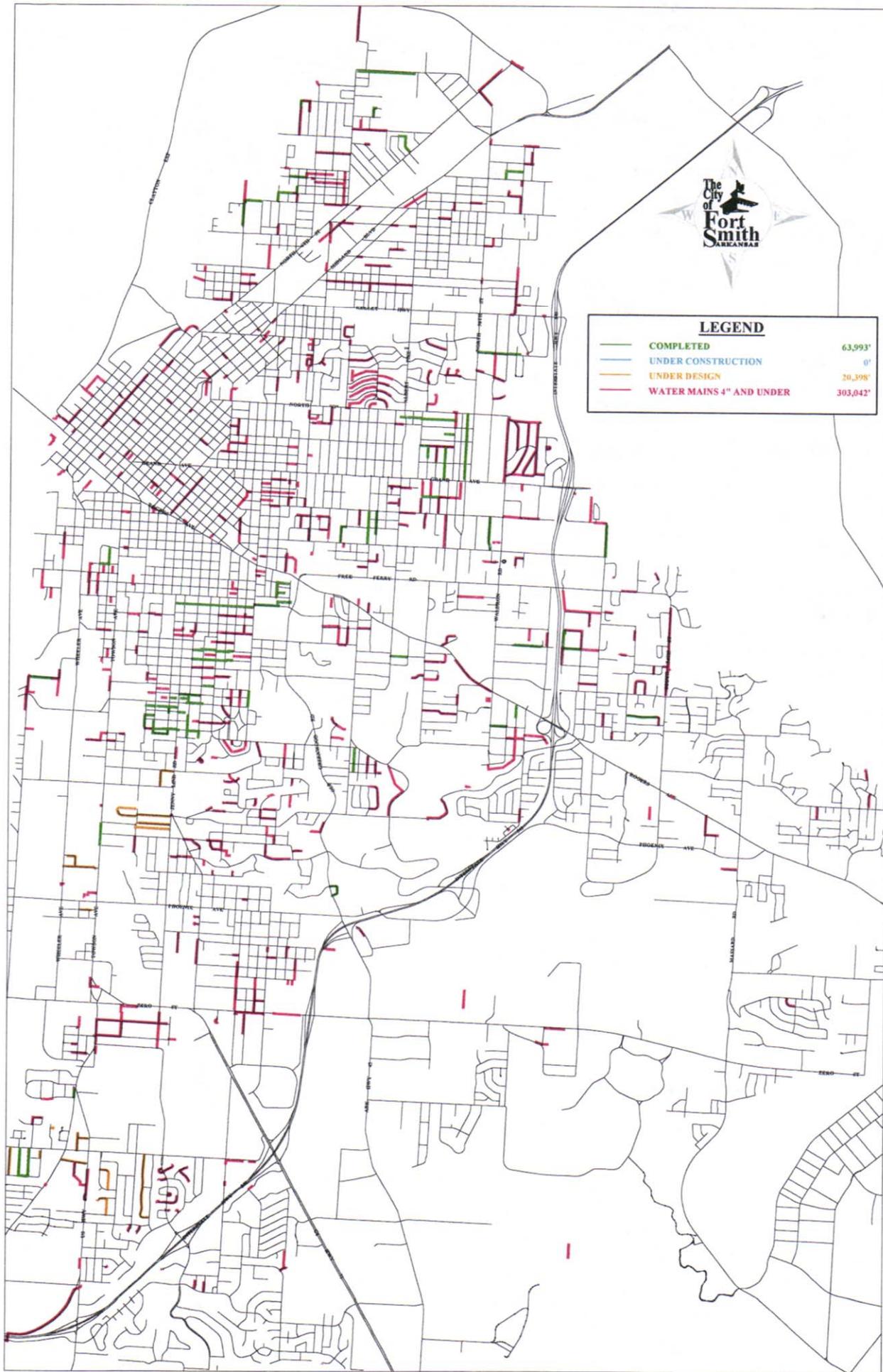
attachment

MASTER PLAN LAKE FORT SMITH TRANSMISSION LINE

DATE: 04-15-10



MICKLE WAGNER COLEMAN Engineers-Consultants-Surveyors
3401 Country Club Ave. P.O. Box 1507 Fort Smith, Arkansas
(479) 649-9941 Fax: (479) 649-9444 info@mwc-eng.com



INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: February 16, 2011

FROM: Steve Parke, Director of Utilities

SUBJECT: Water and Sewer Miscellaneous Fees

Water and Sewer Service Connection Charges

In 1984 the Utility Department began installing new water service connections of 5/8-inch through 2-inch meters and 4-inch sewer service connections. This work, between the time of mid-1930s and 1984, was performed by licensed plumbers hired by the individual seeking utility service. Beginning in the 1980s, the plumbing community no longer wanted to perform this work and petitioned the city to once again perform these installations. Between 1984 and 1987 there were a few adjustments to the city's charges, however, none have been made since that time. The city's current charges do not cover the cost of these new service installations. The cost of the waterworks materials alone exceed the current installation charges. Labor, equipment and street repair required for a service installation further widens the cost recovery gap.

To determine the actual cost to install new services, staff reviewed the cost of parts and materials as well as work order history to determine the average installation time and equipment used. The charges for on-side installations, those which do not require street crossings or affect pavement areas, are set as fixed charges as they are a more predictable expense. The charges for street crossings, either by cut or bore, vary depending on the width of street or amount of pavement repair involved. Estimated costs for street crossing installations provided to customers are adjusted to a final cost based upon actual field measurements once the work is completed. Attachment "A" shows the comparison of the current and proposed charges for water and sewer service installations for both on-side and street crossings based upon a 27-foot pavement width.

Pretreatment Program Charges

As part of the 1982 EPA Consent Decree enforcement action the city was required to establish a sewer pretreatment program. The requirements of a pretreatment program are to establish the appropriate wastewater strength limits for industrial discharges and to provide qualified personnel and resources to monitor and enforce compliance. It is also the intent of EPA's regulations that the pretreatment program would be self-sustaining through the imposition of appropriate fees to recover the program's cost from the regulated entities. The city's program was established in 1984. In 1986 the program's permit fees were adjusted slightly, but have remained unchanged since that time.

The pretreatment program is named Industrial Waste Monitoring - Program 5609 in the operating budget. The 2010 operating budget for that program was \$278,486; \$231,860 for personnel and \$46,626 for operating. During 2010 the permit charges and sampling fees generated \$78,337 in revenue, or about 28-percent of the industrial waste monitoring program's budget. Because the difference between the operating budget and current cost recovery is a significant amount, it is recommended to make an incremental adjustment to the program's charges and to move toward a

self-sustaining program over time. Attachment "B" shows the comparison of the current and proposed program charges. It is estimated the proposed charges will generate about \$187,425, or about 67% of the industrial waste monitoring program's budget. Changing from the fixed monthly sampling and analysis fee to an individual parameter fee structure directs the cost recovery to those requiring specific analyses for monitoring or resampling due to a noncompliant discharge of one or more parameters.

It is also recommended that the proposed fee adjustment eliminate the need for the independent services which industrial users now must use to determine charges for high strength BOD and TSS. That concept was established as part of the original industrial waste monitoring program to eliminate any industrial user's perception that the city's testing results could be manipulated to adjust a billing amount. That concern has been overcome and it is now recommended that the test results produced by the city's compliance monitoring and the user's self-monitoring be used to determine those charges. That has been discussed with several users and they are in agreement with this approach. As their outside monitoring costs are unknown, the amount of the savings to be realized with its elimination cannot be quantified.

The adjustment to the septic hauler's annual fee provides for the recovery of the wastewater volume sewer rate paid by a typical commercial account and based upon the average volume that haulers typically deliver to the treatment plant.

Conclusion

The revenue compared to expenses for new service connections and industrial waste monitoring will be reviewed on an ongoing basis to determine if and when additional adjustments should be considered. These proposed changes will generate about \$187,425 compared to the \$78,337 currently collected and will shift the recovery of these costs from all water and sewer users to those users who are creating the costs. If the Board concurs with the recommended charges, staff will prepare the necessary ordinances for a meeting in March.

If you or members of the Board have any questions about the information presented, please let me know.

attachment

Attachment "A"

Water and Sewer Service Installation Charges

Water Service Installations				
1-Inch Tap		Current	Proposed	Difference
	On-side	\$300.00	\$670.00	\$370.00
	Street crossing - cut	\$870.00	\$1,315.00	\$445.00
	Street crossing - bore (1)	\$400.00	\$1,405.00	\$1,005.00
	Pavement repair - minimum	none	\$95.00	\$95.00
	Pavement repair - each square foot	none	\$6.00	\$6.00
2-Inch Tap				
	On-side	\$960.00	\$1,440.00	\$480.00
	Street crossing - cut	\$1,650.00	\$2,020.00	\$370.00
	Street crossing - bore (1)	\$1,060.00	\$2,210.00	\$1,150.00
	Pavement repair - minimum	none	\$95.00	\$95.00
	Pavement repair - each square foot	none	\$6.00	\$6.00
Sewer Service Installations				
	On-side (2)	\$615.00	\$1,110.00	\$495.00
	Street crossing - cut (2)	\$1,300.00	\$1,800.00	\$500.00
	Pavement repair - minimum	none	\$95.00	\$95.00
	Pavement repair - each square foot	none	6.00	\$6.00

Notes:

- (1) Directional boring is performed under contract and actual cost for service will be made part of connection charges. An estimated amount of \$700.00 has been included in the calculation of proposed charges for comparison purposes.
- (2) Installation cost calculation includes \$350.00 sewer tie-on fee.

Attachment "B"

Monthly Industrial Waste Monitoring Program Charges

Item	Current	Proposed	Difference
Permit fee	\$82.00	\$82.00	\$0.00
Sampling and analysis fee	see table below	see table below	attachment "C"
High strength charge - BOD	\$0.1309/pound	\$0.1309/pound	\$0.00
High strength charge - TSS	\$0.0998/pound	\$0.0998/pound	\$0.00
High strength monitoring provided by customer's outside laboratory	customer selected	eliminate	unknown
Septic tank hauler fee	\$500.00/year	\$2,000.00/year	\$1,500.00/year

Parameter	Current	Proposed	Difference
Sampling & analysis fee	\$68.00	by parameter	attachment "C"
Metals digestion/sample	included	\$10.00	
Metals analysis/analyte	included	\$20.00	
BOD	included	\$30.00	
COD	included	\$20.00	
TSS	included	\$15.00	
Oil & grease (1)	included	actual cost	
Total Cyanide	included	\$40.00	
Flash point	included	\$40.00	
pH	included	\$9.00	
Grab collection	included	\$10.00	
Composite collection	included	\$100.00	
Resampling required by violation	\$0.00	as above	

Notes:

- (1) City uses outside contract laboratory for this analysis. Current testing cost for this parameter is \$35.00 and has been included in the Attachment "C" cost comparison.

Attachment "C"

Typical Industrial User Sampling Event

(See separate Excel spreadsheet named PT Fees cost comparison_parke.xls)

Attachment "C"

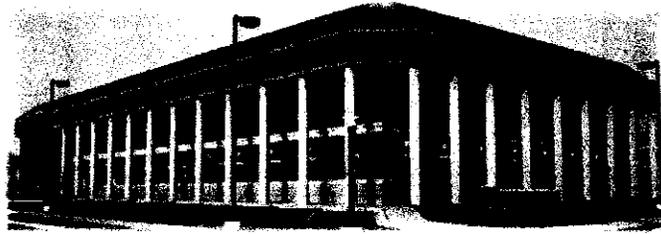
Examples of Monthly Industrial User Sampling Events

Conventional Pollutant - Typical Monthly Significant Industrial User Sampling Event

Current Pollutants:	Proposed Pollutants:	Difference
Composite Sampling Fee	Composite Sampling Fee	\$ 100.00
Biochemical Oxygen Demand (BOD)	Biochemical Oxygen Demand (BOD)	\$ 30.00
Total Suspended Solids (TSS)	Total Suspended Solids (TSS)	\$ 15.00
Oil & Grease	Oil & Grease	\$ 35.00
pH	pH	\$ 9.00
Total - Composite Sampling Event	Total - Composite Sampling Event	\$ 189.00
		\$ 121.00

Categorical Pollutant - Typical Monthly Significant Industrial User Sampling Event

Current Pollutants:	Proposed Pollutants:	Difference
Composite Sampling Fee	Composite Sampling Fee	\$ 100.00
Metals Digestion/Sample	Metals Digestion/Sample	\$ 10.00
Cadmium (Cd)	Cadmium (Cd)	\$ 20.00
Chromium (Cr)	Chromium (Cr)	\$ 20.00
Copper (Cu)	Copper (Cu)	\$ 20.00
Lead (Pb)	Lead (Pb)	\$ 20.00
Nickel (Ni)	Nickel (Ni)	\$ 20.00
Silver (Ag)	Silver (Ag)	\$ 20.00
Zinc (Zn)	Zinc (Zn)	\$ 20.00
Cyanide (Total)	Cyanide (Total)	\$ 40.00
Biochemical Oxygen Demand (BOD)	Biochemical Oxygen Demand (BOD)	\$ 30.00
Total Suspended Solids (TSS)	Total Suspended Solids (TSS)	\$ 15.00
Oil & Grease	Oil & Grease	\$ 35.00
pH	pH	\$ 9.00
Total - Composite Sampling Event	Total - Composite Sampling Event	\$ 379.00
		\$ 311.00



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: Animal Ordinance Changes

Date: February 17, 2011

The purpose of this memorandum is to present changes to the Animal Ordinance by amending Section 4-1 (Definitions), add Section 4-11 (Annual Registration for Dogs and Cats; Mandatory Spay / Neuter for Dogs and Cats; Hobbyist Permit for Dogs and Cats), add Section 4-120 (Tethering) of the Fort Smith Municipal Code, as requested by the Board of Directors at their January 25, 2011 Study Session. Each of the listed changes has come about in response to specific complaints brought before the Board. At the Board's request, research which was conducted by staff that included a review of the existing Animal Ordinance and the proposed changes in the City code.

A review of Section 4-1, Definitions, of the Fort Smith Municipal Code revealed the need to add definitions for the terms "spay", "neuter", "hobbyist" and "trolley system". It was also determined that the definition of "city pound" and "owner" found in Section 4-1 were in need of further clarification. 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.
- Change *Owner* to provide that this term is not applicable to veterinarians or kennel owners.
- Add *Hobbyist* which shall mean a person whose unsterilized dogs or cats are registered with the American Kennel Club (AKC), United Kennel Club (UKC), Cat Fanciers' Association (CFA), The International Cat Association (TICA) or similar group, and who competes or shows their animals at least annually. A 'hobbyist' is also

a person who holds a current Arkansas hunting license and uses his or her dogs to hunt at least annually.

- Add *trolley system* which is a method to confine a dog by tethering the dog to a cable that is no less than ten feet in length and elevated four to seven feet off the ground in a manner that allows the tether to move freely along the length of the cable.

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 an Ordinance which requires: annual registration for dogs and cats, mandatory spay / neuter of dogs and cats, and allows citizens to obtain a hobbyist permit for their dog or cat to remain intact if it meets certain requirements.

Annual registration for dogs or cats will be required for any person owning, keeping, harboring or having custody of a dog or cat six months old or older within the city limits for more than 30 consecutive days in a 12 month period. The cost of registering a dog or cat will be five (5) dollars annually or a license valid for the lifetime of the animal can be purchased for ten (10) dollars. This Ordinance provides exemptions for dogs that are trained and being used for law enforcement activities, search and rescue operations, and service animals. The ordinance also allows residents over the age of 65 to register up to two (2) pets without cost.

This ordinance will require any person owning, keeping, harboring, or having custody of any dog or cat six months of age or older to have said dog or cat spayed or neutered unless they hold a valid hobbyist permit. There are certain 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. This ordinance will also allow residents with a combined annual household income below the United States Health and Human Services Poverty Guidelines to apply for financial assistance to comply with the spaying and / or neutering requirements. The appeal for financial assistance may be made to the Animal Services Advisory Board which is to be proposed in a separate amendment.

The hobbyist permit will allow animals that are registered with a nationally recognized club or organization, animals which are considered "show" or, animals used for hunting to remain intact. To obtain a hobbyist permit for a dog or cat the owner or harbinger of said animal must produce evidence of the following: the dog or cat is registered with a nationally recognized organization; has competed in at least one dog show or sporting competition within the past 12 months sanctioned by a national or regional registry, or the owner or harbinger possesses a valid Arkansas hunting license. Anyone seeking to obtain a hobbyist permit will also be required to pay a fee of one hundred (\$100) dollars for the first dog and twenty-five (\$25) dollars for each additional dog or cat.

The Board of Directors also requested staff to conduct research into a change in the Animal Ordinance that would address restrictions on tethering dogs. After reviewing

ordinances from North Little Rock, Arkansas and Ashville, North Carolina, staff was able to draft an ordinance that addresses these restrictions. The proposed ordinance would restrict residents from tethering a dog to a stationary object as a permanent means of containment. It would allow a dog, when necessary, to be tethered to a stationary object for the time necessary to complete a temporary task, or to tether a dog to a trolley system for a period of time as long as this is not a permanent means of containment for the animal.

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.

Hobbyist means a person whose unsterilized dogs or cats are registered with the American Kennel Club (AKC), United Kennel Club (UKC), Cat Fanciers' Association (CFA), The International Cat Association (TICA) or similar group, and who competes or shows their animals at least annually. 'Hobbyist' is also a person who holds a current Arkansas hunting license and uses his or her dogs to hunt at least annually.

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 or her care, or acts as its custodian, or knowingly permits a dog or other animal to remain on or about any premises occupied by him or her, provided that this term should not apply to veterinarians, pet shops or kennel owners temporarily maintaining on their premises animals owned by others.

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 shall be 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, trolley system or temporary tether, 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.

Trolley system is a method to confine a dog by tethering the dog to a cable that is not less than ten feet in length and elevated four to seven feet off the ground in a manner that allows the tether to move freely along the length of the cable.

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 by that animal 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 by another human being or animal.

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. Annual Registration for Dogs and Cats; Mandatory Spay / Neuter for Dogs and Cats; Hobbyist Permit for Dogs and Cats

(a) Annual registration for dogs and cats. Any person owning, keeping, harboring or having custody of a dog or cat six months old or older within the city limits for more than thirty (30) consecutive days in a 12-month period is required to obtain a license tag for such dog by registering it with the designated license-collecting agent of the city. For each neutered male or spayed female over six months of age the levied fee shall be in the amount of five (\$5) dollars

annually, or a license valid for the life of the animal can be purchased in the amount of ten (\$10) dollars. An owner shall have thirty (30) days from the date the license expires to obtain a new license without penalty. Anyone failing to obtain a license within such period shall be required to pay an additional fee of ten (\$10) dollars.

(1) When initially registering a dog or cat, the owner shall produce documented proof of current rabies vaccination, and documented proof that the animal has been spayed or neutered, and shall thereafter forward documented proof of vaccination renewal to the designated license-collecting agent. Failure to maintain current rabies vaccination records with the city shall render the dog registration invalid.

(2) Every person owning, keeping, harboring or having custody of a dog or cat subject to the annual registration requirement is required to see that the license tag is valid and is securely fastened to the dog by collar or harness at all times.

(3) Working police dogs, police dogs in training, registered service dogs, and service dogs in training with credentials shall qualify for exemption from the annual registration fee by including on the license application the name and phone number of the responsible law enforcement agency and, in the case of service dogs, the individual registration number of the animal.

(4) City residents who are sixty-five (65) years of age or older can register up to 2 pets without cost.

(b) Spaying and neutering requirements. With the exception of those individuals listed below, any person owning, keeping, harboring, or having custody of any dog or cat six months of age or older is required to spay or neuter said animal unless said person holds a hobbyist permit issued by the designated license-collecting agent of the city:

(1) Persons who own, keep, harbor, or have custody of registered service dogs, search and rescue dogs or working police dogs;

(2) Individuals who are non-residents of the city and reside temporarily therein for a period not to exceed thirty (30) days within a 12-month period;

(3) Animal shelters, kennels, pet shops and veterinary hospitals;

(4) Persons who own, keep, harbor or have custody of a dog or cat and who are in possession of a certification signed by a licensed veterinarian stating that the animal is unfit to be spayed or neutered because the procedure would endanger the life of the animal;

(5) City residents with a combined annual household income below the United States Health and Human Services Poverty Guidelines may apply for financial assistance to comply with the spaying and/or neutering requirements.

(c) Hobbyist permit. Applicants must apply for a hobbyist permit with the designated license-collecting agent of the city if the dog or cat will remain intact. A citation will only be issued under this section if the owner is in violation of another provision of this chapter. A hobbyist may not allow his or her animals to produce more than one total litter annually regardless of the number of unsterilized animals owned. A second litter delivered within the city within a twelve month period shall invalidate the hobbyist's permit for twelve months.

(1) Levy and amount of permit. There is hereby levied and there shall be collected an annual permit fee in the amount hereinafter provided on each dog or cat owned or kept within the city for the purposes of breeding, competing, or hunting. Said permit fee shall be paid to the designated license-collecting agent of the city. For the first unneutered male or unspayed female over six months of age, the levied fee shall be in the amount of one hundred (\$100) dollars annually, and for each additional unneutered male or unspayed female, the levied fee shall be twenty-five (\$25) dollars annually.

(2) Issuance of permit and tag. The city designated license-collecting agent to whom the fee levied by subsection (1) above is paid shall issue a permit after documentation has been provided for the following requirements:

(A) Hobbyist permit application is filed with the designated license-collecting agent of the city stating the purpose for which the dog or cat is to be utilized, e.g., hunting, breeding, or show.

(B) Documentation for breeding purposes confirming that each applicable animal is registered with the AKC, UKC, CFA, or TICA as a purebred. The hobbyist holds membership within the past 12 months in a national, regional or local kennel club; provides a signed copy of the Code of Ethics for the breed club of which the hobbyist belongs; provides documentation of all necessary health clearances for breeding specific type of breed and health records for litter.

(C) For show dogs or dogs participating in sporting competitions, documentation confirming that each applicable animal has competed in at least one dog show or sporting competition sanctioned by a national or regional registry within the past 12 months. The hobbyist holds membership within the past 12 months in a national, regional or local kennel club.

(D) For hunting purposes, a hobbyist provides documentation holds a current state hunting license with the Arkansas Game and Fish Commission.

(3) A new permit shall be obtained each year by every hobbyist and a new fee paid. An owner shall have thirty (30) days from the date the license expires to obtain a new license without penalty. Any hobbyist failing to obtain a license within such period shall be required to pay an additional fee of \$10.00.

(4) Revocation of Permit. A permit may be revoked if the animal services division determines that any of the following conditions exist:

(A) The hobbyist has been convicted of, or has plead guilty or *nolo contendere* to the criminal offense of cruelty to animals; or

(B) The hobbyist has failed to comply with any of the conditions of the permit; or

(C) The hobbyist has violated the provisions of this Chapter twice in one permit year;

(5) Nothing in this section shall be construed to apply to any dog or cat under the age of six months or to dogs or cats brought to the city on a temporary basis for show or exhibition.

(d) This ordinance will go into effect on January 1, 2012. Licensing will be done by ward in the following prescribed manner:

(1) Residents living in Ward 1 shall license dogs and cats in the first month of the first quarter of the calendar year (January 1 to January 31) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

(2) Residents living in Ward 2 shall license dogs and cats in the first month of the second quarter of the calendar year (April 1 to April 30) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

(3) Residents living in Ward 3 shall license dogs and cats in the first month of the third quarter of the calendar year (July 1 to July 31) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

(4) Residents living in Ward 4 shall license dogs and cats in the first month of the fourth quarter of the calendar year (October 1 to October 31) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

4-120 - Tethering

- (a) No person shall tether, fasten, chain, tie, or restrain a dog, or cause any dog to be tethered, fastened, chained, tied, or restrained to a dog house, tree, fence, or any other stationary object with the intent that the tethering will be the animal's primary means of permanent containment.

- (b) Notwithstanding section (a), a person may do any of the following:
 - (1) Attach a dog to a trolley system as long as the trolley system is not intended as a means of permanent containment; or
 - (2) Tether, fasten, or tie a dog to a stationary object no longer than is necessary for the person responsible for the dog to complete a temporary task (e.g., cutting the grass, washing a car, gardening).

- (c) An acceptable trolley system is subject to the following requirements:
 - (1) The trolley system must be at least five times the length of the dog's body, as measured from the tip of the nose to the base of the tail; it must terminate at both ends with a swivel; it must not weigh more than one-eighth of the dog's weight; it must be free of tangles; and it must be attached at two permanent points elevated four to seven feet off the ground in a manner that allows the tether to move freely along the length of the cable; and
 - (2) The tether must be connected to the dog by a properly fitted, buckle-type collar or body harness of a size appropriate for the animal. A tether shall not be connected by means of a choke-type, pinch-type or prong type collar; and
 - (3) The dog must be tethered to a trolley system in such a manner as to prevent injury, strangulation, or entanglement; and
 - (4) The dog shall not be outside tethered to a trolley system during a period of extreme weather, including but not limited to, extreme heat or near-freezing temperatures, thunderstorms, or tornadoes; and
 - (5) The dog must have access to food, water, and shelter, or dry ground; and
 - (6) The dog must be at least six months of age; and

- (7) Except as indicated hereafter, no person shall tether any dog outside to a trolley system unless the animal has been spayed / neutered. However, it is permissible to tether an intact dog when under the direct visual observation of the owner / agent at all times the dog is tethered; it is also permissible to tether an intact dog if it is inside a completely fenced area that will prevent other dogs from coming into contact with the tethered intact dog; and
- (8) A trolley system may only be utilized between the hours of 8:00 p.m. and 6:00 a.m.;
and
- (9) No more than one dog at a time may be attached to a trolley system.



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: Animal Services Advisory Board

Date: February 17, 2011

At the direction of the Board of Directors, staff conducted research in regards to the creation of an Animal Services Advisory Board. It was specifically requested that we include information from Austin, TX and Fayetteville, AR in our research of this issue. Staff has completed the necessary research and our findings are included in this memo.

Staff found that creation of an Animal Services Advisory Board by both cities was very similar. In both Austin, TX and Fayetteville, AR, the Animal Services Advisory Board was created by city ordinance and / or resolution. More specifically, Fayetteville's board was created by resolution. The resolution / ordinance would outline the make-up of the board, how persons are nominated, how often the board will meet and what their responsibilities will include. The Austin, TX ordinance specifies that the board be comprised of one licensed veterinarian, one city official, one animal shelter representative, one animal welfare organization representative, one representative nominated by the county, and two other unspecified seats. Fayetteville's board is of a similar make-up but has a total of nine seats on the board. In Austin's ordinance the mayor and each city council member is to nominate a specific seat on the advisory board (i.e. one licensed veterinarian, nominated by the mayor; one city official, nominated by the Place 2 council member; etc...).

In speaking with Assistant City Attorney Rick Wade, it was determined that the City of Fort Smith should draft an ordinance to create an Animal Services Advisory Board. The Animal Services Advisory Board would be a permanent fixture, thus the need to utilize an ordinance for its creation. This is also consistent with current City code in relation to forming permanent boards and commissions.

The duties of an Animal Services Advisory Board may generally include:

- Promote collaboration between the City and private citizens, institutions and agencies interested in conducting activities relating to animal welfare in the City
- Identify proactive, creative approaches to engage and facilitate communication within the animal welfare community
- Foster and assist the development of animal welfare programs in the community
- Ensure that the programs, goals and objectives of the City are consistent with community needs and desires by stimulating and encouraging communication with all members of the community
- Oversee requests for financial assistance for low-cost spay / neuter
- The Animal Services Advisory Board will not be responsible for overseeing the day to day operations of the Animal Control Division of the Fort Smith Police Department

Assistant City Attorney Rick Wade requested that more specific language be added as to how the city will be providing financial assistance for low cost spay or neutering. One option would be to establish a Neuter Assistance and Education Fund. Fees and penalties collected from Section 4-11 could be used to establish such a fund. It might also be beneficial to put a limit on the dollar amount deposited into such a fund. For example, St. Louis, MO has established such a fund and has placed a limit of twenty thousand (\$20,000.00) dollars each fiscal year. Any fees or penalties collected over the established limit would be placed in the City's General Fund.

Should the Board of Directors choose the option of an Animal Services Advisory Board it would be necessary to create a board for this purpose. A review of current Boards and Commissions was completed and there are no existing Boards or Commissions, including the Sebastian County Humane Society, which might be suited for these tasks. The Sebastian County Humane Society is a separate entity which already does business with the City, thus creating a conflict of interest.

Subdivision I.? Animal Services Advisory Board

Section 4-12. Established.

There is hereby established in and for the city an animal services advisory board.

Section 4-13. Composition

The animal services advisory board shall be composed of nine (9) members. At least one (1) member shall be a licensed veterinarian. At least one (1) member shall be an owner, operator or employee of a business related to the production, sale, distribution or care of animals or livestock. Seven (7) members shall be residents of the City of Fort Smith, but need not have any specific affiliation or connection a business or entity.

Section 4-14. Appointment

Pursuant to A.C.A. § 14-48-117, the members shall be nominated by the city administrator and appointed by the board of directors.

Section 4-15. Terms.

The animal services advisory board members shall be appointed as follows: One (1) licensed veterinarian shall be appointed for a term of two (2) years; one (1) owner, operator or employee of a business related to the production, sale, distribution or care of animals or livestock shall be appointed for a term of one (1) year; two (2) members shall be appointed for a term of three (3) years; two (2) members shall be appointed for a term of two (2) years; and three (3) members shall be appointed for a term of one (1) year.

Section 4-16. Removal.

Any member of the animal services advisory board may be removed by the board of directors for cause or absence from more than two (2) consecutive meetings.

Section 4-17. Vacancies.

Any vacancy occurring in the membership of the animal services advisory board during a term shall be filled for the unexpired portion of the term.

Section 4-18 Compensation

The members of the animal services advisory board shall serve without compensation.

Section 4-19. Chairman.

The animal services advisory board shall select a chairman from its own membership.

Section 4-20. Rules, regulations.

The animal services advisory board shall establish such rules and regulations as are needed to govern its meetings and affairs.

Section 4-21. Records.

The animal services advisory board shall maintain minutes of its meetings and official transactions in records maintained in a place designated by the city administrator.

Section 4-22. Scope of service.

The animal services advisory board shall work in an advisory capacity to the Mayor and the Board of Directors in regards to topics that concern the care and safety of animals within the corporate limits of the City, and shall endeavor to stimulate and encourage communication with all members of the community to ensure that the programs, goals and objectives of the City relative to the care and safety of animals are consistent with community needs and desires. The animal services advisory board will also facilitate requests for financial assistance for low cost spay and neutering. The animal services advisory board will not be responsible for the day to day operations of the Animal Control Division of the Fort Smith Police Department.

AGENDA ~ *Summary* ~

**FORT SMITH BOARD OF DIRECTORS
STUDY SESSION**

FEBRUARY 22, 2011 ~ 12:00 NOON

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

SPECIAL MEETING

ROLL CALL

All Present

1. Ordinance providing for the levy of a tax on the gross receipts or gross proceeds received by restaurants, cafes, catering cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption; to declare an emergency and prescribing other matters pertaining thereto **** Second reading ****
City Clerk read the ordinance in its entirety for its second reading

ADJOURN

STUDY SESSION

1. Items relative to water and sewer rates and fees
 - A. Update regarding Water and Sewer Rate Study
Presentation by Ted Kelly with Burns and McDonnell Engineering. Weber, seconded by Merry, moved to have a 3rd party perform an efficiency study on the Utility Department and requested staff initiate the process to accomplish.
 - B. Review water and sewer miscellaneous fees
Tabled to the March 8, 2011 study session

2. Review of proposed ordinances regarding regulation of animals (*mandatory spay/neuter, licensing, no tethering and Animal Services Advisory Board*)
~ Continued from the January 25, 2011 study session ~
Tabled to the March 8, 2011 study session
3. Review preliminary agenda for the March 1, 2011 regular meeting

MINUTES OF BOARD OF DIRECTORS SPECIAL MEETING

TUESDAY ~ FEBRUARY 22, 2011 ~ 12:00 NOON

FORT SMITH PUBLIC LIBRARY COMMUNITY ROOM

The special meeting was called by Directors Tyler, Good, Weber and Merry at the February 15, 2011 regular meeting (to immediately precede the regularly scheduled study session) to allow for the second reading of the following item:

- Ordinance providing for the levy of a tax on the gross receipts or gross proceeds received by restaurants, cafes, catering cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants from the sale of prepared food and beverages for on-premises or off-premises consumption; to declare an emergency and prescribing other matters pertaining thereto ~ *second reading* ~

The special meeting was called to order by Mayor Sandy Sanders, presiding. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, George Catsavis, Pam Weber, Kevin Settle and Philip Merry. The Mayor declared a quorum present.

The City Clerk read the above noted ordinance in its entirety for its second reading.

The third and final reading of the ordinance will occur at a special meeting called for 6:00 p.m., Thursday, February 24, 2011 in the City of Fort Smith Planning Department Conference Room, 623 Garrison Avenue, Room 331. Said special meeting was called by Directors Tyler, Good, Weber and Merry at the February 15, 2011 regular meeting.

February 22, 2011 Special Meeting

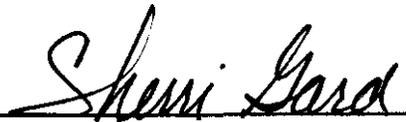
There being no further business to come before the Board, Tyler moved that the meeting adjourn. The motion was seconded by Good, and the members all voting aye, the Mayor declared the motion carried and the special meeting stood adjourned at 12:05 p.m.

APPROVED:



MAYOR

ATTEST:



CITY CLERK