

Mayor Kathy Harrison called the regular meeting of the City Council to order at 6:05 p.m. Monday, Dec. 13, in the jury room of the Western District Carroll County Courthouse.

PRESENT: Mayor Kathy Harrison, Aldermen Robert “Butch” Berry, Aaron Falotico, Karen Lindblad, Gayle Money, Bill Ott and Earl “Bud” Umland, City Attorney Tim Weaver, Mayor’s Assistant Brenda Spencer, Aldermen-elect Beverly Blankenship, Terry McClung, Rick Rojek, Lori Weaver and City Clerk Mary Jean Sell, Carroll County Judge Mike Botelho, Carroll County Sheriff Chuck Medford, Justice of the Peace Ken Drezenski, Carroll County Solid Waste Director Roger Miner.

PLEDGE OF ALLEGIANCE TO THE FLAG:

Mayor Harrison led the Pledge of Allegiance to the Flag.

APPROVAL OF THE AGENDA:

Ms. Money moved to approve the agenda. Mr. Umland seconded.

Ms. Money moved to add the reading of the Nov. 30 minutes to the agenda.

The agenda was accepted as amended by a vote of 6/0/0

APPROVAL OF THE MINUTES: November 22, 2004 November 30, 2004

Mr. Falotico moved to approve the Nov. 22 minutes. Ms. Money seconded.

Mr. Berry noted a correction on Item #4 of Old Business, that the motion to approve Ordinance 1972 on its second reading by title only was approved. Mr. Falotico moved to approve the reading. Mr. Berry seconded. All voted aye. Motion passed 4/0/0

Ms. Money moved to approve the Nov. 22 minutes as amended. Mr. Berry and Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

Ms. Money moved to approve the Nov. 30 minutes as presented. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Planning Commission – Position 6 – Expired 1/1/06

Planning Commission – Position 2 - Expires 1/1/09 – Leah Karnes

Mayor Harrison nominated Leah Karnes for re-instatement to the position.

Historic District Commission – Position 1 – Expires 11/30/06

Historic District Commission – Position 4 – Expires 11/30/07 – re-instate Ray Dilfield

Ms. Money moved to suspend the rules regarding the two-week waiting period on commission nominees so the Council could vote on Mr. Dilfield’s nomination. Mr. Berry seconded. All voted aye. Motion passed 6/0/0

Ms. Money moved to nominate Mr. Dilfield for re-instatement to the Historic

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District Commission. Mr. Umland seconded. Mr. Umland and Ms. Sell spoke in support of Mr. Dilfield. All voted aye. Motion passed 6/0/0

COMMITTEE REPORTS: None

OLD BUSINESS:

1. Discussion of Ordinance #1941, an ordinance to amend Chapters 114-4(c)(6) and 70-4 of the Eureka Springs Municipal Code, regarding manufactured homes (3rd reading)

Mr. Umland asked to defer this item until the end of the meeting. Mr. Ott seconded. All voted aye. Motion passed 6/0/0

2. Applicants' appeal to Council regarding CUP request denied by Planning Commission to 46 Hillside, Angel at Rose Hall.

Attorney Tom Kieklak spoke to the issue for the city. He gave a brief history of the legal situation of the property in that it has operated without a conditional use permit (CUP) as a bed and breakfast for several years, although current owner Sandy Latimer does have a CUP to operate a wedding establishment. There have been several court cases in the matter and one is currently pending.

The application for a bed and breakfast CUP before the Planning Commission was presented by Susan Missavage, a potential buyer for the property.

Mr. Ott moved to defer any consideration of this appeal until the current lawsuit is settled. Ms. Lindblad seconded.

After discussion, Mr. Ott moved to call the question to halt the discussion. Ms. Money seconded. Mr. Falotico, Ms. Money, Ms. Lindblad and Mr. Umland voted in favor of calling the question. Mr. Berry and Mr. Ott voted against. Motion passed 4/2/0

On the motion to defer, Mr. Ott, Mr. Falotico and Ms. Lindblad voted to defer. Mr. Berry, Mr. Umland and Ms. Money voted against. The motion failed 3/3/0

Mr. Umland moved to overturn the Planning Commission's denial of the application and to give Ms. Missavage a CUP. Ms. Money seconded.

There was discussion regarding the practice of applying for a CUP as a condition of property purchase; the possible waiver of the prohibition in the Municipal Code of operation of similar businesses with 200 feet of each other in the R-1 residential zone; and the possibility of court decisions in the matter.

Mr. Ott called for the question to halt discussion. There was no second.

There was additional discussion. Ms. Lindblad called for the question. Mr. Ott seconded. Mr. Ott, Ms. Lindblad and Mr. Berry voted aye. Mr. Falotico, Ms. Money and Mr. Umland voted no. Mayor Harrison voted aye to call the question. Motion passed 4/3/0

On the motion to overturn the Planning Commission's denial of the application and to give Ms. Missavage a CUP, Ms. Money, Mr. Falotico, Mr. Berry and Mr. Umland voted aye. Ms. Lindblad and Mr. Ott voted nay. Motion passed 4/2/0

Mr. Berry moved for a roll call vote. Mr. Umland seconded. By roll call, Ms. Money, Mr. Falotico, Mr. Umland and Mr. Berry voted aye. Mr. Ott and Ms. Lindblad voted nay. Motion passed 4/2/0

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Council members agreed to a break at 7:26 p.m. Meeting resumed at 7:42 p.m.

Ms. Money moved to suspend the agenda to discuss Old Business Item #3 then move to New Business Items #1 and #2. Mr. Umland seconded. All voted aye. Motion passed 6/0/0

3. Discussion of Ordinance 1971, an ordinance for the city to regain Corley Street right of way from Parks and Recreation Department (3rd reading)

Ms. Money moved to suspend the rules and place Ordinance 1971 on its third reading by title only. Mr. Umland seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the title of the ordinance aloud.

Ms. Money moved to approve Ordinance 1971 on its third reading by title only. Mr. Umland seconded.

Mildred Krebbs, 39 Steel St., asked the council to have an Arkansas-licensed civil engineer look at the property before any development is allowed.

Maureen Bettman, 31 Steel, asked for an environmental impact study before any development is allowed.

On the motion to approve the ordinance, all voted aye. Motion passed 6/0/0

NEW BUSINESS:

1. Discussion of the county cost of housing prisoners.

County Judge Botelho presented information regarding the charging of fees to cities in Carroll County for prisoner incarceration in the county jail in Berryville. He said former County Judge Phil Jackson had made arrangements with Eureka Springs, Berryville and Green Forest to not charge for prisoner care in the new jail in return for passage of the tax issue to build the new county jail, currently under construction. Once the jail is up and running, cities no longer have an obligation. Judge Botelho wants to get a document reflecting that arrangement approved and signed by the mayors of the cities.

Mayor Harrison said the city is being charged \$12,437 for prisoner care to date, an amount not in the 2004 budget. Judge Botelho said the amount includes charges back to 2001. She said it could be included in the 2005 budget and paid when that budget is approved. The Police Department has money from court fees to pay the amount owed.

2. Discussion of increases in the rates for Carroll County Solid Waste – Roger Miner.

Mr. Miner gave a brief history of CCSW and its operation. In 2004, he had asked the City Council for an 8 percent rate increase, as allowed in the management contract. The Council agreed to a 4 percent increase and asked him to make another presentation this year for the other half of the increase.

He said the increase would help cover the increased costs of fuel and maintenance of vehicles. The basic residential rate charge will go from \$10.28 per month to \$10.69. Commercial pick up charges depend on the frequency of service and amount.

Ms. Money moved to review the information provided and to consider the request

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at the Dec. 27 meeting. Mr. Umland seconded. All voted aye. Motion passed 6/0/0

OLD BUSINESS:

4. Discussion of Ordinance 1978, an ordinance regulating special events. (3rd reading)

Ms. Money noted corrections had not been made to the ordinance regarding definition of the office of mayor.

Mr. Ott moved to defer consideration of the ordinance until the corrections have been made. Mr. Umland seconded.

All voted aye. Motion passed 6/0/0

5. Discussion of Ordinance 1972, noise ordinance (3rd reading)

Ms. Money moved to suspend the rules and place Ordinance 1972 on its third reading by title only. Mr. Umland seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the title of the ordinance aloud.

Ms. Money moved to approve Ordinance 1972 on its third reading by title only. Mr. Umland seconded. All voted aye. Motion passed 6/0/0

6. Discussion of Ordinance 1976, an ordinance establishing the duties and salary of the City Clerk-Treasurer. (3rd reading)

Mr. Umland moved to table the reading to the Dec. 27 meeting. Ms. Money seconded. Ms. Money, Mr. Umland, Mr. Berry, Mr. Ott voted aye. Ms. Lindblad and Mr. Falotico voted nay. Motion passed 4/2/0

7. Discussion of the CAPC gift tax – recommendations from the City Advertising and Promotion Commission (CAPC)

A draft of Ordinance #1983 was presented to Council members.

Mr. Weaver said the change in this ordinance is that businesses are allowed to designate themselves as to what type of shop they are, depending on 50 percent or more of sales.

Mr. Ott moved to place Ordinance 1983 on its first reading.

Mr. Falotico objected, saying the form of the ordinance has not substantially changed and it cannot be presented

again. He quoted an attorney general's opinion to that fact.

Mr. Weaver said that without substantial changes, an ordinance should not be brought forward again.

Mr. Umland and Mr. Berry seconded the motion.

There was additional discussion about bringing the ordinance forward.

The Council took a break at 8:40 p.m. to give Mayor Harrison time to consult with Mr. Weaver on the matter. The meeting resumed at 9 p.m.

Mayor Harrison said the ordinance could be presented.

On the motion to place the ordinance on its first reading, Ms. Money, Mr. Umland, Mr. Berry and Mr. Ott voted aye. Mr. Falotico and Ms. Lindblad voted nay. Motion passed 4/2/0

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Mayor Harrison, Ms. Money and Mr. Umland read the ordinance aloud.

Mr. Ott moved to approve Ordinance 1983 on its first reading. Mr. Umland seconded.

Discussion continued on the differences in this ordinance and #1981.

Mr. Ott moved to suspend the rules and allow #1983 to stand on its first reading. Ms. Money seconded. Ms. Money, Mr. Umland, Mr. Ott and Mr. Berry voted aye. Ms. Lindblad and Mr. Falotico voted nay. Motion passed 4/2/0

On the motion to approve the ordinance on its first reading, Ms. Money, Mr. Umland, Mr. Ott and Mr. Berry voted aye. Ms. Lindblad and Mr. Falotico voted nay. Motion passed 4/2/0

Ms. Lindblad asked for a roll call vote. By roll call, Ms. Money, Mr. Umland, Mr. Ott and Mr. Berry voted aye. Ms. Lindblad and Mr. Falotico voted nay. Motion passed 4/2/0

Mr. Ott moved to suspend the rules and place Ordinance 1983 on its second reading by title only. Ms. Money seconded. Mr. Berry, Mr. Ott, Mr. Umland and Ms. Money voted aye. Mr. Falotico and Ms. Lindblad voted nay. Motion passed 4/2/0

Mayor Harrison read the title of the ordinance aloud.

Ms. Money moved to approve Ordinance 1983 on its second reading by title only. Mr. Ott seconded.

There was discussion as to whether or not this ordinance expanded the tax collectors or clarified them.

On the motion to approve the ordinance, Mr. Berry, Mr. Ott, Mr. Umland and Ms. Money voted aye. Mr. Falotico and Ms. Lindblad voted nay. Motion passed 4/2/0

Mr. Ott moved to suspend the rules and place Ordinance 1983 on its third reading by title only. Ms. Money seconded. Mr. Berry, Mr. Ott, Mr. Umland and Ms. Money voted aye. Mr. Falotico and Ms. Lindblad voted nay. Motion passed 4/2/0

Mayor Harrison read the title of the ordinance aloud.

Mr. Ott moved to approve Ordinance 1983 on its third reading by title only. Ms. Money seconded.

Mr. Falotico moved to table approval of the ordinance. Ms. Lindblad seconded. Ms. Lindblad and Mr. Falotico voted aye, Mr. Berry, Mr. Ott, Mr. Umland and Ms. Money voted nay. Motion failed 2/4/0

On the motion to approve Ordinance 1983 on its third reading, Ms. Money seconded. Mr. Berry, Mr. Ott, Mr. Umland and Ms. Money voted aye. Mr. Falotico and Ms. Lindblad voted nay. Motion passed 4/2/0

Mr. Ott moved to read the emergency clause. Mr. Umland seconded. By roll call, Mr. Berry, Mr. Ott, Mr. Umland and Ms. Money voted aye. Mr. Falotico and Ms. Lindblad voted nay. Motion passed 4/2/0

Mayor Harrison read the emergency clause aloud.

8. Discussion of Ordinance #1977, an ordinance to approve the mid-year budget. (2nd reading)

Mr. Ott moved to suspend the rules and place Ordinance 1977 on its second reading by title only. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison read the title of the ordinance aloud.

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Ms. Money moved to amend the ordinance to include "as per attached document entitled "City of Eureka Springs 2004 Mid-Year Revisions"" at the end of Section 1. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

Mr. Ott moved to add an emergency clause, Ms. Money seconded. Five voted aye, Ms. Lindblad opposed. Motion passed 5/1/0

Mayor Harrison read the title of the ordinance aloud.

Mr. Ott moved to approve Ordinance 1977 on its second reading by title only. Mr. Berry seconded. All voted aye.

Motion passed 6/0/0

Mr. Ott moved to place Ordinance 1977 on its third reading by title only. Mr. Berry seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the title of the ordinance aloud.

Ms. Money moved to approve Ordinance 1977 on its third reading by title only. Mr. Ott seconded. All voted aye.

Motion passed 6/0/0

Mr. Ott moved to read the emergency clause. Mr. Falotico seconded.

Mayor Harrison read the emergency clause aloud.

NEW BUSINESS:

3. Discussion of Ordinance 1975, an ordinance to prohibit the feeding of deer within the city limits.

Mr. Ott moved to defer the discussion to the next meeting. Mr. Falotico seconded.

All voted aye. Motion passed 6/0/0

4. Discussion of Ordinance 1982, an ordinance amending the Zoning Code Chapters 114-4(c)(3)b and Chapters 114-4(c)(4)b, regarding manufactured homes in R-3 zones.

Mr. Ott moved to defer the discussion to the next meeting. Ms. Money seconded.

All voted aye. Motion passed 6/0/0

5. Discussion of Ordinance 1982, regarding the addition of the words “dwelling (units) contained in a commercial building” to Chapter 114-4(c)(3)b and (4)b.

Mr. Ott moved to place Ordinance 1982 on its first reading. Ms. Money seconded.

All voted aye. Motion passed 6/0/0

Mayor Harrison read the ordinance aloud.

Mr. Ott moved to approve Ordinance 1982 on its first reading. Ms. Money seconded. All voted aye. Motion passed 6/0/0

6. Discussion of Ordinance 1941, now amended to become Ordinance 1984, regarding placement of manufactured homes in an R-3 zone.

Mr. Ott moved to place the reading of Ordinance 1984 under new business at the next meeting. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

Mr. Ott asked if the next scheduled meeting, Dec. 27, would be held. Mr. Umland said he thought the Council should finish the year. Ms. Money and Mr. Berry said they would not be able to attend.

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The group agreed to hold a budget workshop for capital expenditures and the administrative budget for 6:30 p.m. Tuesday, Dec. 21.

COUNCIL COMMENTS

Mr. Ott said he appreciated the Council supporting the tourism industry by voting for the CAPC ordinance.

Mr. Berry reminded everyone of the “Eureka Home for Christmas” program in the auditorium on Friday evening and the premier showing of the movie *Mr. Christmas* Saturday evening.

Ms. Lindblad said she is proud to live in a democracy but this type of government does not work if the public doesn't participate. She is appalled that ordinances were passed tonight without input from the public.

Mr. Falotico wants to form a committee to study the CAPC and its operations. He and Mr. Umland have asked for

all city department heads to prepare budgets showing a 5 percent cut across the board and they have not been presented to him.

MAYOR'S COMMENTS

Mayor Harrison reported on the reception for city commissioners and that it was well attended. She said it has been an honor to serve with this Council and she will miss them.

ADJOURNMENT

Ms. Money moved to adjourn at 10:20 p.m. Mr. Falotico seconded. All voted aye. Motion passed 6/0/0

This is the signature page for the City Council minutes of the regular meeting Dec. 13. 2004.

Mayor Kathy Harrison

City Clerk Mary Jean Sell