

Mayor Kathy Harrison called the regular City Council meeting to order at 6 p.m. Monday, July 24, 2006, in the jury room of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Kathy Harrison, Aldermen Robert "Butch" Berry, Penny Carroll, Terry McClung, Rick Rojek, Lori Weaver, City Attorney Tim Weaver, Parks Director Bruce Levine and City Clerk-Treasurer Mary Jean Sell.

**PLEDGE OF ALLEGIANCE:**

Mayor Harrison led the Pledge of Allegiance to the Flag.

**APPROVAL OF THE AGENDA:**

Mr. McClung moved to approve the agenda. Mr. Rojek seconded.

Mayor Harrison asked to move the discussion of closing Spring St. for the Big Time Festival to the Department and Commission reports.

She added a discussion of the Greenlee/Sunday Market lawsuit as New Business Item #1.

All voted aye to approve the agenda as amended. Motion passed 6/0/0

**APPROVAL OF THE MINUTES:** July 10, 2006

Mr. McClung moved to approve the minutes of the regular meeting of July 10. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

**COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:**

Historic District Commission – 1 Position

**CAPC** – 1 Position – Mayor Harrison said she has received an opinion from the Municipal League that appointed members of city boards or commissions do not hold over/continue when their terms have expired. Therefore, there are actually two positions open on the CAPC. (Copy of opinion from Municipal League Attorney David Schoen attached to minutes.)

**Planning Commission** – 1 Position – Mayor Harrison said a potential candidate for the Commission has withdrawn the application.

**DEPARTMENT & COMMISSION REPORTS:**

CAPC, Fire/EMS, Cemetery, Planning, Parks, Financials

**CAPC** – Director Lynn Berry was unable to attend the meeting. Festival Coordinator Sally Thackery asked about the possibility of closing Spring St. from Main to Mountain St., except for trolleys, from noon to 5 p.m. Saturday, Sept. 16, for the Big Time Festival. She is particularly concerned about the possible number of fans coming for the Little Feat concert Saturday afternoon and that the Basin Park may not be big enough to hold all of them. She said she could have people "manning the barricades" at Main and Mountain streets.

Mr. Weaver against closing the street to traffic, saying the Council could be sued for blocking a thoroughfare.

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Mr. McClung moved to continue the discussion during the next regular meeting, Aug. 14. Ms. Blankenship seconded.

Council members asked Ms. Thackery to talk with merchants along Spring St. about closing the street for the festival.

Mr. Weaver said he would talk with the Planning Commission about amending existing ordinances to allow for festival activities.

On the motion to continue the discussion, all voted aye. Motion passed 6/0/0

**Fire/EMS** – Mayor Harrison read the report aloud. She said testing of the soil at the construction site at 144 E. Van Buren is underway before construction can go forward.

**Building** – Mayor Harrison read the Building Department report aloud.

**Planning** – Ms. Sell read aloud the report from Chairman Leah Karnes.

**Parks** – Mr. Levine said there will be a grand opening at noon Sunday, Aug. 6, for the new playground in Harmon Park. The equipment cost \$42,000 an approximately \$8,000 to \$10,000 in labor was volunteered by Chuck Schmidt to prepare the area and put the equipment together.

Work in the Community Building is 95 percent complete and he is requesting an additional \$2,900 added to the budget to finish the project. Ms. Blankenship said the request is part of the mid-year budget adjustments to be considered later in the meeting.

Parks and Recreation Commission Chairman Bill Featherstone asked about the arrangement between Parks and Public Works Department for someone to maintain the city's flower garden areas. He said the Parks could not afford to hire the additional personnel and he understood funds would be available from Public Works.

**Financials** – Mayor Harrison said the city sales tax revenues are up over last year at 4.26 percent. She said she has gotten a notice from the Carroll County Assessor of property taxes due on the Planer Hill Park and Ride Lot property at the intersection of Highway 62 and 23/Main St. She will talk to the County Equalization Board about the bill.

## **OLD BUSINESS:**

### **1. Discussion of Ordinance 2019 raising Mayor's salary to \$12,000 Jan. 1, 2007, (3rd reading)**

Ms. Blankenship moved to suspend the rules and place Ordinance 2019 on its third reading by title only. Mr. Rojek seconded. By roll call, four voted aye. Mr. Berry and Mr. McClung voted no. Motion passed 4/2/0

Mayor Harrison read the title of Ordinance 2019 aloud.

Ms. Carroll moved to approve the reading of Ordinance 2019 by title only. Ms. Blankenship seconded.

After some discussion, Ms. Carroll moved to amend Ordinance 2019 to raise the amount of the salary to \$18,000 per year. Mr. Rojek seconded. Ms. Blankenship, Mr. Rojek and Ms. Carroll voted aye. Mr. Berry, Mr. McClung and Ms. Weaver voted no. Mayor Harrison voted aye. Motion approved 4/3/0.

On the motion to approve Ordinance 2019 on its third reading as amended, Ms. Blankenship, Mr. Rojek and Ms. Carroll voted aye. Mr. Berry, Mr. McClung and Ms. Weaver voted no. Mayor Harrison voted aye. Motion approved 4/3/0.

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### **2. Discussion of Ordinance 2021, rezoning Carroll House Apartments, 71**

**Pivot Rock Road, and Swiss Villa Apartments, 62 Pivot Rock Road, from R-2 to R-3, Multiple Family. (2<sup>nd</sup> reading)**

Ms. Blankenship moved to suspend the rules and place Ordinance 2021 on its second reading by title only. Mr. Berry seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the title of Ordinance 2021 aloud.

Ms. Blankenship moved to approve Ordinance 2021 on its second reading by title only. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

Mayor Harrison called for a short break at 7:27 p.m. All voted aye. The meeting resumed at 7:37 p.m.

### **3. Discussion of Ordinance 2022, regarding mid-year budget adjustments. (2<sup>nd</sup> reading)**

Ordinance 2022 was give its first reading during the regular meeting of Monday, July 10, but not voted on. The vote was tabled to this meeting.

Mayor Harrison called for a vote. There were no ayes. All voted nay. Motion failed 0/6/0

Ms. Blankenship moved to read Resolution 533 as the mid-year budget adjustments. Mr. Rojek seconded.

Ms. Blankenship reviewed additional changes in the figures included in the budget.

There was additional discussion about whether or not a resolution could be used to amend an ordinance. Mr. Weaver says an ordinance should be used to amend an ordinance, a resolution to amend a resolution, and that resolutions should not be used to amend ordinances.

On the motion to read Resolution 533, all voted aye. Motion passed 6/0/0

Ms. Sell read Resolution 533 aloud.

#### **4. Discussion of Ordinance 2023, regulating group tour franchises. (2<sup>nd</sup> reading)**

Jerry Ballinger, owner of the Greater Eureka Springs Tour Co., said the four franchise owners had met on Friday with Transit Director Lamont Richie and had gone over the proposed changes in Ordinance 2023. He said they are in favor of the changes as proposed.

Ms. Blankenship said the franchises should be transferable, should a business be sold.

Joe Gunnels, owner of Joe Gunnels Tours and Guide Service, said he would have preferred that the franchise owners had been contacted before the changes were presented to the Council. He supports the changes and the city/private enterprise partnership in the ordinance. Mr. McClung moved to suspend the rules and place Ordinance 2023 on its second reading by title only. Mr. Rojek seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Harrison read the title of Ordinance 2023 aloud.

Mr. Berry moved to amend Ordinance 2023 to include "Franchise shall be transferable" as the last sentence in the first paragraph of Sec. 54-182 Grant of Authority. Ms. Carroll seconded. All voted aye. Motion passed 6/0/0

Mr. McClung moved to approve Ordinance 2023 on its second reading by title only as amended. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

#### **5. Discussion of sign ordinance**

Ms. Sell said the Planning Commission will hold a workshop at 5 p.m. Thursday, July 27,

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on the proposed sign ordinance changes.

There was some discussion of a moratorium on enforcement of the existing sign ordinance.

Mr. Weaver said a moratorium would affect a sign ordinance case currently awaiting prosecution.

Mr. McClung suggested a vote of encouragement to the Planning Commission to get the sign ordinance work finished and to the Council as quickly as possible.

#### **NEW BUSINESS:**

##### **1. Discussion of the Greenlee-Rogers/Sunday Market lawsuit.**

Mr. Weaver advised the Council to answer the lawsuit as a whole, even though they are being sued as individuals. He said they have the option to use him as the city's attorney or to see if Municipal League attorneys would be interested in taking the case.

Mr. McClung moved to submit the paperwork to the Municipal League to see if their attorneys would take the case. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

#### **CITY COUNCIL COMMENTS:**

**Mr. McClung** urged everyone to buy tickets to the upcoming Bluegrass, Big Time and Ozark Folk Festivals.

**Ms. Blankenship** extended her sympathies to Pat Fitzsimmons on the loss of the All Seasons Inn and Daffodil Cottage to a fire Monday, July 17, and to those property owners who lost trees or had damage during the microburst storm Thursday afternoon, July 20. She thanked the Eureka Springs Fire Department, Police Department, Parks Department and volunteers who responded to both situations.

**Mr. Rojek** said the Fire Department, Police Department and SWEPCO employees did a fabulous job in restoring service and clearing the streets after the microburst storm.

**MAYOR'S COMMENTS:**

Mayor Harrison read aloud information about the "Your Town Citizens' Institute on Rural Design" to be held here Aug. 13-15. The city is able to sponsor the Institute with one of four National Endowment for the Arts (NEA) grant awarded this year.

**ADJOURNMENT:**

Mr. Berry moved to adjourn at 8:55 p.m. Mr. Rojek seconded. All voted aye. Motion passed 6/0/0

This is the signature page for the minutes of the regular City Council meeting of Monday, July 24, 2006.

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Mayor Kathy Harrison

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City Clerk-Treasurer Mary Jean Sell

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Attachment to regular Eureka Springs City Council minutes of July 24, 2006

July 24, 2006

From Mayor Kathy Harrison to Municipal League Attorney David Schoen:

The question for me: whether or not an *appointed* official such as an A&P Commissioner has the right of color to remain in the position, keeping other nominees from taking the gift shop seat on our commission?

From Mr. Schoen to Mayor Harrison:

In my opinion, the answer is "no." An appointee whose term has expired has no personal right to continue in that office. AG Opinion 99-024 does recognize that they may serve as "de facto" officials, which simply means that any votes or actions taken will not be held invalid by the court. But serving as a "de facto" official means by definition that one is not currently entitled to hold the office and is thus "removable."

The term "color of right" in this regard means that there is some potential legitimacy to staying in the office – for example, "I was validly appointed to begin with and no one was appointed to replace me when my term expired" – but it does not mean that one is lawfully holding the office as a matter of law. In such a case it is understandable and perhaps socially useful for the commissioner to continue to serve. It does not, however, imply that the commissioner has a right to avoid replacement.

But let's assume for the sake of argument that the constitutional "hold over" position does apply, and the terms "elected and qualified" in the Constitution apply to the "appointment" of a commissioner. In that case, a commissioner whose term had expired would continue to legally hold office only until his or her "successor" is appointed as set forth in the A&P statute.

