

Mayor Dani Joy called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, April 28, 2008, in the jury room on the third floor of the Western District Carroll County Courthouse.

PRESENT: Mayor Dani D. Joy, Aldermen Patrick Brammer, Rae Hahn, Kathy Harrison, Eric Scheunemann, Joyce Zeller, City Attorney Tim Weaver, Finance Director Yvonne Kline, Building Official Marion Chrysler, Parks Director Bruce Levine and City Clerk-Treasurer Mary Jean Sell CMC.

PLEDGE OF ALLEGIANCE TO THE FLAG:

Mayor Joy led the Pledge of Allegiance to the Flag.

Mayor Joy began the meeting reading a proclamation recognizing May as Mental Health Month. Jane Guyton, executive vice-president of the Foundation for the Ozark Guidance Center, was on hand to receive the document.

Mayor Joy also recognized Fire Captain Billy Summers, Assistant Fire Chief Jimmy Kelley, Firefighter Cody Harp, Holiday Island Fire Chief Jack Deaton and Police Chief Early Hyatt for their efforts in rescuing two youths who had climbed the water storage tower at the intersection of Highway 62 and Kingshighway, across from the high school, Thursday, April 24.

APPROVAL OF THE AGENDA:

Mr. Brammer moved to approve the agenda. Ms. Harrison seconded.

Ms. Harrison wanted to know why the requested executive session was not on the agenda. Mr. Weaver explained the Council lacks the ability to discipline the individuals involved in the incident to be discussed. Ms. Hahn said she wanted a copy of any written recommendation or disciplinary action taken.

On the motion to approve the agenda, all voted aye. Motion passed 5/0/0

APPROVAL OF THE MINUTES: April 14, 2008

Mr. Brammer moved to approve the minutes of the April 14, 2008, regular City Council meeting. Ms. Zeller seconded.

Mr. Brammer said Mike Armstrong actually goes by Mikey and asked that the name be changed in the minutes.

Ms. Hahn said she wanted "*as approved by the Council at the March 31 meeting*" included in the motion regarding public comments on page two.

On the motion to approve the minutes as amended, all voted aye. Motion passed 5/0/0

DEPARTMENT HEAD AND COMMISSION REPORTS:

Police - Chief Hyatt explained the need for a resolution agreeing to appropriate \$450 from the city's general fund to match a \$4,500 grant from the Edward Byrne Memorial Justice Assistance Grant Program, if it is awarded to the city. The funds will be used to purchase an auxiliary generator for the Transit Department to serve as a secondary emergency communication center.

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Mr. Brammer moved to give the resolution a number. Ms. Harrison seconded. Four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0 Number 554 was assigned.

Mr. Brammer moved to add the reading of Resolution 554 as New Business Item 2 on the agenda. Ms. Harrison seconded. Four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

CAPC – Chairman Richard Grinnell presented the nomination of James DeVito to the CAPC in the restaurant position to replace K.J. Zumwalt.

Building – Ms. Chrysler said Arkansas Gov. Mike Beebe has proclaimed May 5-11 as Building Safety Week. She will be participating in the Homebuilders Show in Berryville May 9 and 10. Spring Clean Up has been rescheduled for May

Parks – Mr. Levine said parks facilities had survived the recent flooding in good condition. Work started this past Saturday on the Black Bass Lake Trail parking area. The next proposed project is a trail from Hilton Street to Kansas Street to Sweet Spring. Economic Development Coordinator Glenna Booth has gotten an \$8,300 grant from Arkansas Heritage for the project.

Black Bass Dam Committee – Ms. Hahn said there had been a meeting last week with Steve Grant of television station KY 3 in Springfield, Mo., and Carroll County Judge Richard Williams. (*Added by Ms. Hahn May 12: Judge Williams did not notify her of the meeting.*) She received last minute notification of the *April 4* meeting and was not able to attend. She wants more advance notice of any further meetings.

PUBLIC COMMENTS: None

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Historic District Commission – Position 6 – expires 3/7/08 – Nominee Vicki Webster Mr. Brammer moved to approve the nomination of Vicki Webster. Ms. Zeller seconded. Mr. Brammer voted aye. Ms. Harrison, Ms. Zeller, Ms. Hahn voted no. Mr. Scheunemann did not vote. Motion failed 1/4/0

Parks and Recreation Commission – Position 6 – expires 5/01/09

Planning Commission – Position 2 - expires 1/1/11

OLD BUSINESS:

1. **Discussion of raising city water and sewer rates** (Mayor Joy)

(Note: A proposal to raise the city water and sewer rates has been made as a solution to the city's inability to make full payments on the 2002, 2005 and 2007 bond issues.)

Ms. Hahn moved to discuss raising of the rates. Mr. Scheunemann seconded.

Mayor Joy read aloud a statement regarding the current divisions of the one cent city sales tax established in May of 1981.

Excerpts: "The tax proceeds were to be distributed into three special accounts: 50% to be used exclusively for water and sewer improvements; 40% to be used exclusively for street construction, maintenance and drainage; and 10% to be used exclusively for purchase, repair and maintenance of fire and police equipment. The voters, in a special election, approved Ordinance 1120.

In 1988 (Ordinance 1319), and again in 1989 (Ordinance 1337), and then twice in 1990, (Ordinances 1382 and 1426), the City Council altered that allocation. The last one, Ordinance 1426, was adopted on December 14, 1990, and established the current 60%-40% split between general funds and the street department. Each of these four ordinances was adopted with an emergency clause.

In the last few days, we have been studying the *Maas vs. Mountain Home* case (a situation very similar to ours); we have visited with the Municipal League; and we have consulted with our bond counsel and financial advisor.

It is our opinion that the following actions are necessary, sooner rather than later, and certainly before May 1:

The distribution of the proceeds from the 1981 sales tax shall revert immediately to the allocation formula set forth in Ordinance 1120, namely, 50% to be used exclusively for water and sewer improvements; 40% to be used exclusively for street construction, maintenance and drainage; and 10% to be used exclusively for purchase, repair and maintenance of fire and police equipment.

For the time being, we are recommending that the City's second 1% sales tax be used to supplement the General Operating Funds. In 2001, the state law under which this tax was created was amended. Language was added that the collections under that statute could be used for any purpose for which the general fund may be used. Currently these funds are being used to satisfy our obligation under the Sales Tax Revenue Bonds that were issued last year to provide funds to complete our waste water treatment plant. The balance is going into the General Capital Fund.

It is our proposal that the funds remaining after our monthly bond obligation is met be transferred into the City's General Operating Funds to allow for continuity of municipal services; and Ordinances 1319, 1337, 1382 and 1426 (all of which altered the distribution schedule set forth in Ordinance 1120) must be repealed, with three readings and an emergency

clause.”

Ms. Zeller moved to place Ordinance 2082 repealing Ordinance 1426 as adopted December 11, 1990, Ordinance 1382 as adopted January 30, 1990, Ordinance 1337 as adopted February 14, 1989, and Ordinance 1319 as adopted October 4, 1988, and readopting Ordinance 1120 as adopted May 21, 1981, on its first reading. Mr. Brammer seconded. By roll call, Mr. Brammer, Ms. Hahn and Ms. Zeller voted aye. Ms. Harrison voted no. Mr. Scheunemann did not vote. Mayor Joy voted aye to approve placing Ordinance 2082 on its first reading. Motion passed 4/2/0

Mayor Joy read Ordinance 2082 aloud.

Mr. Brammer moved to approve the first reading of Ordinance 2082. Ms. Zeller seconded. By roll call, Mr. Brammer, Ms. Hahn and Ms. Zeller voted aye. Ms. Harrison voted no. Mr. Scheunemann did not vote. Mayor Joy voted aye to approve Ordinance 2082 on its first reading. Motion passed 4/2/0

Ms. Zeller moved to suspend the rules and place Ordinance 2082 on its second reading by title only. Mr. Brammer seconded. By roll call, Mr. Brammer, Ms. Hahn and Ms. Zeller voted aye. Ms. Harrison voted no. Mr. Scheunemann did not vote. Mayor Joy voted aye to place Ordinance 2082 on its second reading by title only. Motion passed 4/2/0

Mayor Joy read the title of Ordinance 2082 aloud.

Mr. Brammer moved to approve Ordinance 2082 on its second reading by title only. Ms. Zeller seconded. By roll call, Mr. Brammer, Ms. Hahn and Ms. Zeller voted aye. Ms. Harrison voted no. Mr. Scheunemann did not vote. Mayor Joy voted aye to approve Ordinance 2082 on its second reading by title only. Motion passed 4/2/0

Mr. Brammer moved to suspend the rules and place Ordinance 2082 on its third reading

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by title only. Ms. Zeller seconded. By roll call, Mr. Brammer, Ms. Hahn and Ms. Zeller voted aye. Ms. Harrison voted no. Mr. Scheunemann did not vote. Mayor Joy voted aye to approve placing Ordinance 2082 on its third reading by title only. Motion passed 4/2/0

Mayor Joy read the title of Ordinance 2082 aloud.

Mr. Brammer moved to approve Ordinance 2082 on its third reading by title only. Ms. Zeller seconded. By roll call, Mr. Brammer, Ms. Hahn and Ms. Zeller voted aye. Ms. Harrison voted no. Mr. Scheunemann did not vote. Mayor Joy voted aye to approve Ordinance 2082 on its third reading by title only. Motion passed 4/2/0

Mr. Brammer moved to read the emergency clause. Ms. Zeller seconded. By roll call, Mr. Brammer, Ms. Hahn and Ms. Zeller voted aye. Ms. Harrison voted no. Mr. Scheunemann did not vote. Mayor Joy voted aye to read the emergency clause. Motion passed 4/2/0

Mayor Joy read the emergency clause for Ordinance 2082 aloud.

Mr. Brammer moved to take a 10 minute recess at 7:30 p.m. Ms. Harrison seconded. Four voted aye. Ms. Hahn voted no. Motion passed 4/1/0 Meeting resumed at 7:46 p.m.

Discussion continued on proposed water and sewer rate increases. Comments were taken from Joe McClung Sr.

Mr. Scheunemann moved to hold a special meeting on the rates to allow for citizen input. Motion failed for lack of a second.

Comments were taken from Amanda Banaszek and Joseph Joy.

Ms. Zeller moved to place Ordinance 2080 to increase the sewer rates on its first reading. Mr. Brammer seconded. Ms. Zeller and Mr. Brammer voted aye. Ms. Harrison and Ms. Hahn voted no. Mr. Scheunemann did not vote. Motion failed 2/3/0

Mayor Joy asked for input on when to schedule a special meeting to address the raising of the rates. The Council agreed on 8:30 a.m. Friday, May 2, to discuss the water rates and 9 a.m. Friday, May 2, to discuss the sewer rates.

2. Discussion of staggered, four-year City Council terms. (Harrison, Scheunemann)

Ms. Harrison asked to postpone the discussion. Mr. Brammer seconded. Four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

3. **Discussion of proposed ordinance to adopt subdivision regulations** (Hahn, Harrison)

Ms. Hahn moved to discuss the issue. Mr. Brammer seconded. Four voted aye. Ms. Zeller voted no. Motion passed 4/1/0

Mr. Brammer moved to take a 10 minute recess at 8:55 p.m. Ms. Harrison seconded. All voted aye. Motion passed 5/0/0 Meeting resumed at 9:10 p.m.

Mr. Brammer moved to place Ordinance 2079 adopting Title 15 Subdivisions of the Eureka Springs Municipal Code as amended through April 19, 2000, on its first reading. Ms. Harrison seconded. By roll call, four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

Ms. Sell read Ordinance 2079 aloud.

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Mr. Brammer moved to approve Ordinance 2079 on its first reading. Ms. Hahn seconded. By roll call, four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

Mr. Brammer moved to suspend the rules and place Ordinance 2079 adopting Title 15 Subdivisions of the Eureka Springs Municipal Code as amended through April 19, 2000, on its second reading by title only. Ms. Hahn seconded. By roll call, four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

Ms. Sell read the title of Ordinance 2079 aloud.

Mr. Brammer moved to approve Ordinance 2079 on its second reading by title only. Ms. Hahn seconded. By roll call, four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

Mr. Brammer moved to suspend the rules and place Ordinance 2079 adopting Title 15 Subdivisions of the Eureka Springs Municipal Code as amended through April 19, 2000, on its third reading by title only. Ms. Hahn seconded. By roll call, four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

Ms. Sell read the title of Ordinance 2079 aloud.

Mr. Brammer moved to approve Ordinance 2079 on its third reading by title only. Ms. Harrison seconded. By roll call, four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

Mr. Brammer moved to read the emergency clause for Ordinance 2079. Ms. Harrison seconded. By roll call, four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

Ms. Sell read the emergency clause aloud.

NEW BUSINESS:

1. **Joe McClung's Property** (Harrison, Hahn)

Ms. Hahn moved to open discussion. Ms. Harrison seconded. All voted aye. Motion passed 5/0/0

Mr. McClung presented information regarding his property at 2 Spring St. and the construction of a building at 2½ Spring Street. He claims the adjoining property owner has encroached on his property and no one in the city has been of help to him.

Mr. Weaver cautioned the Council members about discussing the issue at this time, because if a lawsuit is filed, their comments could be used in court.

2. **Reading of Resolution 554 to appropriate \$450 from the city's general fund to Match a \$4,500 grant from the Edward Byrne Memorial Justice Assistance Grant Program.**

Mr. Brammer moved to read Resolution 554 aloud. Ms. Zeller seconded. Four voted aye. Mr. Scheunemann did not vote. Motion passed 4/1/0

Mayor Joy read Resolution 554 aloud.

AGENDA SETTING:

Ms. Hahn said she wants a report from the Annexation and Impact Fee Committee on the agenda. She said the committee will meet at noon on Thursday, May 1. She had distributed copies of a proposed ordinance regarding the

swimming pool sewer charge and she wants that discussion on the next agenda. Ms. Harrison seconded.

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PUBLIC COMMENTS:

Enid Swartz had comments regarding the placement of public comments on the agenda, outdated and misleading signage, highway litter, and Mr. Scheunemann's picking and choosing which items he will vote on.

Amanda Banaszek said she was disappointed that the Council did not make decisions on the water and sewer rates this evening.

ADJOURNMENT:

Ms. Hahn moved to adjourn at 10:10 p.m. Mr. Brammer seconded. All voted aye. Motion passed 5/0/0

This is the signature page for the minutes of the April 28, 2008, regular Eureka Springs City Council meeting.

APPROVED:

Mayor Dani D. Joy

ATTEST:

City Clerk-Treas. Mary Jean Sell CMC

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