

Mayor Dani D. Joy called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, Sept. 28, 2009, in the jury room on the second floor of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Dani D. Joy, Aldermen Robert “Butch” Berry, Beverly Blankenship, Patrick Brammer, James DeVito, Mickey Schneider, Joyce Zeller, City Attorney Tim Weaver, Finance Director Yvonne Kline 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 read aloud a proclamation naming October as Arts and Humanities Month. She presented the document to local artists Zeek Taylor and Cynthia Moran.

**APPROVAL OF THE AGENDA:**

Mr. DeVito moved to approve the agenda. Mr. Brammer seconded.

Ms. Blankenship asked to add New Business item #7 as discussion of firefighters’ sick leave.

Mayor Joy said she would like to move the appeal for the cell tower to #2 of New Business.

On the motion to approve the agenda as amended, all voted aye. Motion passed 6/0/0

**APPROVAL OF THE MINUTES:** Aug. 24, 2009 Sept. 14, 2009

The minutes were not available.

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

Planning— Position 2 - expires 1/1/11 Position 7 – expires 1/1/12

HDC – Position 3 – expires 11/30/11 Position 6 – expires 3/07/11

**Hospital** – Position 7 – expires 9/7/10 Ms. Sell gave a report on a pending lawsuit with Allegiance Health Management (AHM), current operator of the Eureka Springs Hospital. There is a dispute over monies paid to the Commission by the company leasing the hospital’s license to operate a home health and hospice facility. AHM officials believe the monies should have come to them. The Commission does not. The Commission has filed a motion to have a declaratory judgment on the matter.

**Public Works** – Director Dwayne Allen reported on current road projects, potential work to be done on the dam and spillway for Black Bass Lake, and two locations in the “underground” that are going to collapse. He said the roof on the water standpipe at the intersection of Highway 62 and the Historic Loop has deteriorated and light can be seen through it.

**Parks** – Director Bruce Levine said the city has received a \$29,000 grant for pruning and removal of trees damaged in the Jan. 26, 2009, ice storm and for planning and planting of more trees. He asked the Council for clarification of the Parks’ allocation of \$50,000, setting \$37,500 for the Harmon Park Bathrooms and \$12,500 for culvert repair at the Leatherwood Baseball Fields.

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**PUBLIC COMMENTS:**

Nine citizens spoke - two were in favor of the communications tower; six were opposed to it and one wanted Dawson Road cleared of trees.

**NEW BUSINESS:**

**1. Appeal regarding denial of CUP for communication tower at 5 Judah St.**

(Note: The Eureka Springs Municipal Code allows towers in a C-2, Contemporary Commercial, zone with a conditional use permit (CUP) issued by the Planning Commission. The Planning Commission held a public hearing on the CUP application

during its regular meeting Thursday, Sept. 10, 2009. After the hearing, the Commission voted 4/1 to deny the CUP.)

Dave Reynolds of Smith Two-Way Radio in Fayetteville presented information regarding the proposed tower, its location, area it could serve and areas already being served by existing towers in Eureka Springs and the area.

After almost two hours of discussion, Ms. Schneider moved to deny the appeal to allow a communications tower on the Planer Hill site. Mr. Brammer seconded. By roll call, all voted aye to deny the appeal. Motion passed 6/0/0

## **OLD BUSINESS:**

### **1. Discussion of Ordinance 2108 setting real and personal property millage for 2010. 2<sup>nd</sup> reading**

Ms. Blankenship moved to suspend the rules and place Ordinance 2108 on its second reading by title only. Mr. Brammer seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Joy read the title of Ordinance 2108 aloud.

Ms. Blankenship moved to approve the second reading of Ordinance 2108 by title only. Mr. Brammer seconded. All voted aye. Motion passed 6/0/0

Mr. Brammer moved at 7:58 p.m. to take a ten minute recess. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0 The meeting resumed at 8:13 p.m.

### **2. Discussion of sidewalks**

Jim Mather, Director of Sources for Community Independent Living in Fayetteville and Rogers, and Sherry Priestaf, associate director, presented material regarding the Americans With Disabilities Act (ADA) and made some brief recommendations regarding accessibility to sidewalks and buildings.

Mr. Brammer moved to open discussion. Mr. DeVito seconded.

Mr. Berry moved to table further discussion to the next regular meeting Monday, Oct 12, 2009. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

## **NEW BUSINESS:**

### **1. Discussion of renewing group tour franchises.**

Mr. Berry moved to open discussion. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

Ms. Blankenship moved to approve the franchise for Joe Gunnels of Joe Gunnels Tours with the requirement that he produce a current occupation license. Mr. Brammer seconded. All voted aye. Motion passed 6/0/0

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Mr. Berry moved to approve the franchise for Sondra Torchia of Tours By Sondra. Mr. Brammer seconded.

Ms. Blankenship said the statement of activities and plans to develop group tour business had not been included with the franchise application.

Mr. Berry withdrew his motion. Mr. DeVito withdrew his second.

Mr. Berry moved to approve the franchise for Ms. Torchia on submittal of all required documents. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

### **2. Discussion of amending Municipal Code regarding fire dances**

Mr. DeVito moved to open the discussion. Ms. Zeller seconded. All voted aye. Motion passed 6/0/0

Assistant Fire Chief/Fire Marshal Jimmy Kelley said the city's municipal code does not currently allow for fire dancing because it prohibits the use of combustible materials. He said there are some guidelines in national fire safety codes that could be applied to the local issue.

Fire Chief Rhys Williams said he has met with Police Chief Earl Hyatt to develop some local guidelines for safety issues.

No action was taken.

### **3. Discussion of proposed ordinance raising City Clerk's salary**

Mr. DeVito moved to open discussion. Mr. Berry seconded. All voted aye. Motion passed

6/0/0

There was a brief discussion about the amount of the raise to be included in the ordinance. Mr. DeVito suggested \$30,500 for the annual salary. Ms. Zeller seconded. Five voted aye. Ms. Blankenship voted no. Motion passed 5/1/0

Mr. Brammer moved to give the ordinance a number (2109) and place the ordinance on its first reading. Mr. DeVito seconded. Five voted aye. Ms. Blankenship voted no. Motion passed 5/1/0

Ms. Sell read Ordinance 2109 aloud.

Mr. Brammer moved to approve Ordinance 2109 on its first reading. Mr. DeVito seconded. On the advice of Mr. Weaver, the motion was withdrawn.

Mr. Brammer moved to change the word "repealing" to "amending" in the title of the ordinance. Ms. Schneider seconded. All voted aye. Motion passed 6/0/0

Mr. Brammer moved to approve Ordinance 2109 on its first reading as amended. Mr. DeVito seconded. Five voted aye. Ms. Blankenship voted no. Motion passed 5/1/0

#### **4. Discussion of Resolution 472 giving Council responsibility for operations of City Auditorium.**

Mr. Berry moved to postpone discussion to the next regular meeting, Monday, Oct. 12. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

#### **5. Discussion of proposed ordinance requiring all businesses licensed in Eureka Springs to have a certificate on file naming a registered agent.**

Mr. Berry moved to open discussion. Mr. DeVito seconded.

Ms. Blankenship moved to give the ordinance a number (2110) and place Ordinance 2110 on its first reading. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

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Mayor Joy read Ordinance 2110 aloud.

Mr. Brammer moved to approve Ordinance 2110 on its first reading. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

Mr. Berry moved to suspend the rules and read Ordinance 2110 for the second time by title only. Mr. DeVito seconded. By roll call, all voted aye. Motion passed 6/0/0

Mayor Joy read the title of Ordinance 2110 aloud.

Mr. Brammer moved to approve the second reading of Ordinance 2110 by title only. Mr. Berry seconded. All voted aye. Motion passed 6/0/0

#### **6. Discussion of proposed ordinance regarding firefighters' sick leave accrual**

Ms. Kline explained the state law had been changed in August of 2005 regarding the amount of hours firefighters could accrue. As of today, the city owes \$27,088.60 to the firefighters who have resigned or retired from service.

Mr. DeVito moved to give the ordinance a number (2111) and place Ordinance 2111 on its first reading. Ms. Blankenship seconded. All voted aye. Motion passed 6/0/0

Ms. Sell read Ordinance 2111 aloud.

Mr. Brammer moved to approve Ordinance 2111 on its first reading. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

#### **ADJOURNMENT:**

Mr. Berry moved to adjourn at 9:33 p.m. Mr. DeVito seconded. All voted aye. Motion passed 6/0/0

This is the signature page for the regular Eureka Springs City Council meeting of Monday, Sept. 28, 2009.

APPROVED:

ATTEST:

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Mayor Dani D. Joy

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City Clerk-Treasurer Mary Jean Sell CMC

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