CITY OF EUREKA SPRINGS
COUNCIL MEETING
Thursday, August 18, 2011 6 p.m.

AGENDA **amended 8/20/11**

CALL TO ORDER
ROLL CALL, ESTABLISH QUORUM
PLEDGE OF ALLEGIANCE TO THE FLAG
APPROVAL OF THE AGENDA
APPROVAL OF THE MINUTES: August 4, 2011. Special meetings: July 26 and August 2, 2011

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Planning --
CAPC – Position 7 – expires 6/30/14. Vote on Charles Ragsdell
Hospital – vote on Robert Walling
Parks – Position 5 – expires 5/1/14
HDC – Position 4 – expired 11/30/10
Cemetery
Yellow Bag Research Committee
Parks – Commission update

PUBLIC COMMENTS:

UNFINISHED BUSINESS:

1. FOIA Workshop Date – Mayor Pate
2. Deer hunt – Resolution regarding rules – Mayor Pate
3. Dog control update -- Mayor Pate
4. Vacation of Palo Pinto – Postponed until September 1
5. Non-conforming Off-Premise Signs – Postponed until Code references are corrected
6. Update on Alcohol Beverage Tax/CAPC right to collect – Mayor Pate
7. Operations Manual for Finance Department – Ms. Ballance and Dr. Kirkpatrick
8. New Accounting Software for Finance Department – Postponed until September 1/New Finance Director is hired
9. Date for Council Goals Workshop with Chief Hyatt weighing in on Police Hiring – Ms. Ballance and Mr. Pownall
10. Wal Mart Update – Mayor Pate
11. Discussion of Parks ordinance – Mr. Raphael, Ms. Ballance, Dr. Kirkpatrick

NEW BUSINESS:

1. U.S. Mayors Climate Protection Agreement – Mayor Pate (was item #8)
2. Discussion of Moratorium on Capital Improvements to City Parks – Ms. Ballance and Dr. Kirkpatrick (was item #6)
3. Multi-Family Dwellings Appendix Ordinance – Planning—postponed from July 7 meeting
4. Date for mid-year Budget Review – Ms. Ballance and Dr. Kirkpatrick
5. Discussion of Independent Forensic Audit – Ms. Ballance and Dr. Kirkpatrick
6. Extension of Digital/Electronic Sign Moratorium – Ms. Ballance and Mr. Pownall
7. Discussion of Requirements for Finance Director – Ms. Ballance and Dr. Kirkpatrick
8. Discussion of Hospital Commission/Hospital – Mr. Pownall and Ms. Ballance

AGENDA SETTING
CITY COUNCIL COMMENTS
MAYOR'S COMMENTS
ADJOURNMENT

CITY OF EUREKA SPRINGS **amended 9/3/11**
CITY COUNCIL
REGULAR MEETING **THURSDAY** **AUGUST 18, 2011**

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, August 18, 2011 in the jury room on the second floor of the Western District Carroll County Courthouse.

PRESENT: Mayor Morris Pate, Aldermen Butch Berry, Ken Pownall, Lany Ballance, Parker Raphael, City Attorney Tim Weaver, City Clerk/Treasurer Ann Armstrong
ABSENT: Dean Kirkpatrick and James DeVito

PLEDGE OF ALLEGIANCE TO THE FLAG:

Mayor Pate led the Pledge of Allegiance to the Flag.

APPROVAL OF THE AGENDA:

Mr. Berry moved to approve the agenda. Mr. Pownall seconded. He then moved to postpone Unfinished Business item #7. Mr. Raphael seconded.

Motion carried 4/0/0.

(Later in the meeting, Nick Brown's presentation on the U.S. Mayors Climate Protection Agreement was added, and then moved to New Business item #1).

APPROVAL OF THE MINUTES: August 4, 2011

Mr. Pownall moved to approve the minutes from the August 4, 2011 Council meeting. Ms. Ballance seconded. Mayor Pate said he wanted the reference to malfeasance and illegal exaction included in the discussion of "Donation of Vehicle to the Carroll County Airport" and Ms. Ballance's apology in Council Comments. Ms. Ballance noted the apology was for the delivery (of her comment), not the content. Mayor Pate asked if there was anything further. Ms. Ballance opted to approve the amended minutes after reading them. Mr. Pownall said there was a motion on the floor.

Mayor Pate interpreted the (only motion) as a motion and second to approve (as amended). A voice vote followed: 3/1/0, with Ms. Ballance voting "No". Ms. Armstrong asked for clarification. Mr. Pownall said his motion was for the amendments (although this is not on the recording).

Mayor Pate repeated the changes and asked for another vote. Following the same results, Mayor Pate added his "Yes", thus changing the outcome to 4/1/0 for the amended minutes.

Mr. Berry moved to approve the minutes from the **Special Meeting on July 26, 2011**. Mr. Raphael seconded.

Motion carried 4/0/0.

Mr. Berry moved to approve the minutes from the **Special Meeting on August 2, 2011**. Mr. Raphael seconded. Mayor Pate said he wanted comments from Ms. Ballance added. Ms. Armstrong objected, noting it is not appropriate to include demeaning comments. She said she will do so "only under duress". Further discussion included recording key points. Mr. Berry said he believed one of the reasons the (City lost on the cell tower issue) was inadequate minutes and noted the need for minutes to reflect all elements of discussion. A vote on the amended version failed: 2/1/1, with Ms. Ballance voting "No" and Mr. Pownall abstaining because he was not present. Ms. Ballance motioned to approve the August 2 minutes as written. Mr. Raphael seconded.

Motion carried 4/0/1, with Mr. Pownall abstaining and Mayor Pate voting "Yes" to carry.

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Planning – none

CAPC – Mr. Pownall motioned to discuss. Mr. Berry seconded. Mr. Pownall questioned whether a vote can be taken at the same time an application is received. Mr. Weaver opined in the affirmative. Mr. Pownall noted the newspaper recorded Mr. Ragsdell as "already seated" prior to Council's vote. Mr. Pownall moved to approve Mr. Ragsdell for Position 7. Mr. Berry seconded. Motion carried 4/0/1, with Ms. Ballance abstaining and Mayor Pate voting "Yes" to carry.

Mr. Ragsdell said he submitted his application about a month ago, and he did try to make clear at the workshop that his nomination was still subject to the approval of the Council.

Hospital -- Mr. Pownall moved to discuss. Mr. Berry seconded. Mr. Pownall moved to approve Mr. Walling for Position 7 on the Hospital Commission. Mr. Raphael seconded. Discussion followed regarding the application and it was agreed that Hospital Commissioners need not live within City limits.

Motion carried 4/0/1, with Ms. Ballance voting "Present" and Mayor Pate voting "Yes" to carry.

Parks -- Mayor Pate nominated Jan Grinnell for Parks Position 5.

HDC – none

Cemetery – none

Yellow Bag Research Committee – Ms. Ballance noted that container and tag requirements for commercial customers as defined in the contract are not being followed. Mr. Berry read from the Municipal Code, which differs from the contract. He believes it is for the Mayor, City Attorney, and the contractor to solve. Mr. Berry suggested (the Mayor) bring a proposed correction to the table. Mayor Pate agreed to do so.

Parks Director Bruce Levine spoke about the energy saving grant (Nick Brown) is working on. Eleven post-top lights will be replaced with LEDs. Five new skirted fixtures will be fitted with 100 watt LEDs as opposed to 400 watt bulbs. Mr. Levine also received a call from John Beneke regarding a grant from Game and Fish funds to promote youth wildlife observation and access to hunting and fishing. Parks has until October 28 to apply for funds for fishing platforms, trail repair and wild life viewing areas. Mr. Levine said the cabins and camping area have been reserved by an architectural firm for War Eagle weekend. He then noted the surety bonds Mr. Pownall asked about earlier ($55,000 for each commissioner) have been obtained. He then handed the certified mid-year Parks budget to the City Clerk. Mr. Levine suggested an ordinance to follow up on the voters' approval to remove the ¼ cent tax sunset clause.

Mayor Pate then said he wanted to add an item to the approved agenda- Nick Brown's presentation regarding the U.S. Mayor's Climate Protection Agreement. Mr. Pownall moved to suspend the rules and add New Business item #8. Mr. Raphael seconded. A roll call vote followed: Mr. Raphael, Ms. Ballance, Mr. Berry, and Mr. Pownall – "Yes".

Motion carried 4/0/0.

In response to Mr. Pownall's request, Mayor Pate said interviews were finished for Transit, and there are no "good applicants for the Finance Director's job. It's either issues with some stuff going on in town or money, mostly money."

PUBLIC COMMENTS:

Dianne Stull, 55 Center St., expressed several concerns regarding the proposed deer hunt, including (actual hunting skill levels, rules being followed, knowledge of property lines) and the original intent of the voters.

Melissa Greene, 17 Bridge St., spoke about her efforts toward releasing regulations on fencing to keep deer out. She also worked for the ban on deer feeding. Ms. Greene said when she reluctantly voted for the deer hunt, she was told the hunt would be conducted by (Game and Fish). She is concerned about the current direction the hunt is taking and is planning to leave her home for the five days which coincide with the Christmas festival.

Jasmine Stanley, 50 Dickey St., said she believes the whole deer hunt is a mishap and that she can't believe "this is how we are proposing to take care of a problem in this town." Ms. Stanley feels the issue was misconstrued at the voting polls and "it's time to reconsider this massive slaughter".

UNFINISHED BUSINESS:

1. **FOIA Workshop Date**

Mr. Pownall moved to discuss. Mr. Berry seconded. Mayor Pate said Municipal League Attorney Mark Hayes will try to get back with him next week. He will announce the date.

2. **Deer Hunt**

Mr. Pownall moved to discuss. Mr. Parker seconded. Mayor Pate said he reread the archery portion of

the Arkansas Game and Fish rules online. Crossbows are included. Urban Archery Deer Season Orientation forms from Heber Springs were then distributed by Mr. Berry. Mr. Berry said (Council) can determine what kinds of bows are used. He noted that Heber Springs requires hunters to take and pass the International Bow Hunters Education Course, attend an urban hunt orientation, pass the shooting proficiency test, possess a valid bow hunting permit, and use a long, recurve, or compound bow. Discussion followed regarding publicizing properties available for the hunt, the possibility of having waived tort immunity, the (online) requirement to shoot from a blind above the ground, shooting no closer than 150 ft. from a dwelling, and maybe postponing the whole thing.

After numerous motions and withdrawals, Mr. Pownall motioned (for the Mayor) to check first with the Arkansas Bow Hunters Association to see if they have anyone who could come up and possibly help (the City) meet requirements in the handout Mr. Berry provided and recommended. Mr. Berry seconded.

Motion carried carried 4/0/1, with Ms. Ballance voting "Present" and Mayor Pate adding his "Yes".

3. Dog Control update

Mr. Pownall made a motion to discuss. Mr. Raphael seconded. Mr. Pownall motioned to be allowed to set a workshop date, coordinate with Animal Control Officer Jim Evans, notify the City Clerk/Treasurer so she can notify Council and the press. Mr. Raphael seconded.

Motion carried 4/0/0.

4. Vacation of Palo Pinto

Postponed until September 1

5. Non-Conforming Off-Premise Signs

Postponed until Code references are corrected

6. Update on Alcohol Beverage Tax/CAPC right to collect

Mr. Pownall motioned to discuss. Mr. Berry seconded. Mr. Weaver said Mr. Schoen has asked for additional information before he can help to clarify the situation.

7. Operations Manual for Finance Department

Postponed during Agenda Setting

8. New Accounting Software for Finance Department

Postponed until September 1/New Finance Director is hired

9. Date for Council Goals Workshop with Chief Hyatt weighing in on Police Hiring

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Pownall will compile the list of suggestions from the last workshop and forward them to the City Clerk for Council. The date was set for Monday, September 12 at 11:00 a.m. in the Jury Room. Mayor Pate will notify Earl Hyatt. Ms. Ballance emphasized the portion in which she welcomes Chief Hyatt's input is about State Statute.

10. Wal Mart update

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mayor Pate read a letter from Mike Bishop with the Chamber of Commerce (attached). Letters from Mayors in towns where Wal Mart Expresses have been built will be made available to Council. Mr. Pownall said he wanted to go on record: "Until the proper process is followed and the order is followed as far as bringing this through, (he feels) very uncomfortable even discussing Wal Mart at this table." And, for a point of clarification, he noted that it's the Board of Zoning Adjustment that will hold the Public Hearing.

Ms. Ballance moved to take a 10 minute recess. Mr. Raphael seconded.

Motion carried 4/0/0.

11. Discussion of Parks Ordinance

Mr. Pownall motioned to discuss. Mr. Raphael seconded. Mr. Parker motioned to postpone indefinitely unless someone else had something to discuss. Mr. Berry seconded. Ms. Ballance moved to amend the motion to postpone until the next meeting. Mr. Raphael objected. Ms. Ballance moved to postpone until two meetings from now. Mr. Raphael agreed. Mr. Berry opted to not remove his second to the original motion. Mr. Pownall called for the question. Consulting Roberts Rules resulted in an understanding that, because of the nature of the original motion ("indefinitely"), the original motion stands. A roll call vote followed: Mr. Pownall and Ms. Ballance – "No". Mr. Parker and Mr. Berry – "Yes".

Motion failed 2/2/0.

Ms. Ballance moved to postpone the item of business until two meetings from now (September 15). Mr. Pownall seconded.

Motion carried 4/1/0, with Mr. Berry voting "No" and Mayor Pate voting "Yes" to carry.

NEW BUSINESS: Mr. Berry moved to suspend the rules and move New Business item #8 to first place. Mr. Pownall seconded. A roll call vote carried the motion: Mr. Pownall, Ms. Ballance, Mr. Raphael and Mr. Berry – "Yes".

1. U.S. Mayor's Climate Protection Agreement

Mr. Berry motioned to discuss. Ms. Ballance seconded. Nick Brown, President of the Climate Energy Environment Group, made a power-point presentation of the Greenhouse Gas Emissions Inventory of Eureka Springs. The Climate Action Plan will build on this information and offer solutions for reducing, eliminating, and offsetting the greenhouses gases identified.

One of two completed inventories was for emissions related to municipal operations. The second was an inventory of all the emissions created city-wide. Mr. Brown will send a pdf to City Hall for posting on the web site. He'll also make a public presentation on August 25 at 7 p.m. in the Jury Room. It was noted funds for this project are from the Energy Efficiency Community Block Grant Program (Federal money which came through the Arkansas Department of Energy).

At Bruce Levine's request, Mayor Pate suggested moving New Business item #6 to next place. Mr. Berry moved to suspend the rules. Ms. Ballance seconded. A roll call vote carried the motion: Ms. Ballance, Mr. Pownall, Mr. Raphael, and Mr. Berry – "Yes".

2. Discussion of Moratorium on Capital Improvements to City Parks

Mr. Pownall moved to discuss. Ms. Ballance seconded. Ms. Ballance moved to postpone until the next meeting since the co-sponsor (Dr. Kirkpatrick) was absent. Mr. Raphael seconded.

Motion carried 4/1/0, with Mr. Berry voting "No" and Mayor Pate voting "Yes".

3. Multi-Family Dwellings Appendix Ordinance

Mr. Pownall moved to discuss. Ms. Ballance seconded.

Motion carried 4/0/0.

Mr. Berry motioned to assign the Ordinance a number and place it on its first reading. Mr. Pownall seconded.

Motion carried 4/0/0.

Ms. Armstrong read **ORDINANCE NO. 2142 AN ORDINANCE CLARIFYING THE QUALIFYING LEGALLY NON-CONFORMING MULTI-FAMILY DWELLINGS IN R-1 ZONE AS OF THE PASSING OF THIS ORDINANCE.** Ms. Ballance said she was contacted by citizens who have concerns about a property that was (perhaps illegally) expanded to three (apartments) and may have an occupied travel trailer. Mr. Pownall expressed concern about allowing this without having the dwellings go through the CUP process. Mr. Berry noted these were in existence before regulations were established in 2000. If the owner cannot prove the (dwellings) were there prior to 2000, that will have to be clarified.

Mr. Pownall said there needs to be a procedure for (these properties) to make sure they're safe. He also spoke about business licenses. Mr. Berry observed that making them legally non-conforming is what will allow enforcement of Building Codes. Mr. Pownall moved to approve Ordinance 2142 on its first reading. Mr. Berry seconded.

Motion carried 4/0/1, with Ms. Ballance voting "Present" and Mayor Pate voting "Yes" to carry.

4. Date for mid-year Budget Review

Ms. Ballance moved to discuss. Mr. Pownall seconded. Mr. Pownall expressed great concern for the delay. It was noted the June report is available. A tentative date was set for Monday, August 29 at 10:00 a.m.

5. Discussion of Independent Forensic Audit

Mr. Pownall moved to discuss. Ms. Ballance seconded. Ms. Ballance spoke about researching the cost, where the money will come from, and who will do the audit. Mr. Berry said he would "like to know why?" He said the State will do an independent audit if (the City) will show them a misappropriation of money. Ms. Ballance said there are year end balance sheets that don't balance. She was concerned about the Police Department been written up for several years. Ms. Ballance asked if parking meters have any mechanism to track money deposited- chips, tape? Mayor Pate responded he can't talk about it since there's an active law suit. Ms. Ballance's position is that, if (an audit) shows there is no problem, then everyone should welcome this. "Nothing is wrong here" would be a comfort.

Mr. Pownall asked his "colleague from the third ward" to research the cost, for discussion during the mid-year budget review. Ms. Ballance agreed to do so. Mr. Pownall moved to postpone until the mid-year budget review set for August 29. Mr. Berry seconded.

Motion carried 4/0/0.

6. Digital/Electronic Sign Moratorium

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Weaver noted the resolution Mr. Pownall had would stop all sign permits, not just digital signs. Mr. Pownall explained his reasoning, based on the goal of cleaning up the existing sign ordinance before issuing any more permits. Following discussion which included Mr. Pownall's noting the moratorium on digital/electronic signs expired, Ms. Ballance moved to place a moratorium on digital/electronic signs until January 1, 2012, or until the new ordinance is in place to cover this, whichever comes first. She added this would be by written resolution. Mr. Berry seconded. Discussion followed. Ms. Ballance withdrew her motion.

Mr. Pownall motioned to assign a number and read the resolution for the proposed moratorium for signage, for discussion purposes. Mr. Pownall then changed the motion to read for discussion purposes only, without a number. Ms. Ballance seconded. Mr. Berry said he didn't see a need for a six month moratorium on all signs.

Motion carried 4/1/0, with Mr. Berry voting "No" and Mayor Pate adding his "Yes" to carry.

Ms. Armstrong read **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS, DECLARING A MORATORIUM ON APPROVAL OF ANY NEW SIGNAGE AS IT PERTAINS TO TITLE 7, SIGNS OF THE MUNICIPAL CODE.** Mr. Berry moved to discuss. Mr. Raphael seconded. Mr. Berry said he had not seen this resolution until now and he doesn't see an emergency for a moratorium on all signs. Mr. Pownall withdrew his motion for the Agenda item.

Ms. Ballance moved to place a moratorium on digital, electronic, and LED signs until January 1, 2012. Mr. Raphael seconded. Mr. Weaver encouraged writing a resolution. Ms. Ballance withdrew her motion and Mr. Berry withdrew his second. Language in the first resolution was modified to "digital/electronic signs". Mr. Weaver reviewed it. Mr. Berry moved to assign a number and read the resolution for discussion. Ms. Armstrong read **RESOLUTION 585 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS, DECLARING A MORATORIUM ON APPROVAL OF ANY NEW DIGITAL/ELECTRONIC SIGNS AS IT PERTAINS TO TITLE 7, SIGNS OF THE MUNICIPAL CODE.** Following discussion, Ms. Ballance moved to amend, striking the word "new" in two places in Resolution 585. Mr. Pownall seconded.

Motion carried 4/0/0.

Mr. Berry moved to approve Resolution No. 585 as amended. Mr. Pownall seconded. A roll call vote followed and motion carried: Mr. Raphael, Mr. Pownall, Ms. Ballance, and Mr. Berry – "Yes".

7. Discussion of Requirements for Finance Director

Ms. Ballance moved to discuss. Mr. Raphael seconded. Mayor Pate said Ordinance 2004 is used as a guideline for the Finance Director's position. One man interviewed was offered $40,000 including an allowance and could not afford the pay cut. Questions regarding qualifications were met with Mr. Weaver saying that is an administrative area. Mayor Pate answered Mr. Raphael's question regarding money with, "I can't justify paying the person coming in what the previous Finance Director was making with the years she had in service."

Mr. Pownall spoke about the need to press forward and get a Finance Director. He moved to postpone until the mid-year budget review on August 29. Mr. Raphael seconded.

Motion carried 4/0/0.

8. Discussion of Hospital Commission/Hospital

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to postpone until September 1. Mr. Berry seconded.

Motion carried 4/0/0.

AGENDA SETTING:

Mr. Pownall moved to discuss. Ms. Ballance seconded.

Mr. Pownall would like to see a list of the surety bonds required of City officials. Ms. Ballance seconded.

CITY COUNCIL COMMENTS:

Mr. Pownall said the question asked most is about Wal Mart. Noting that he gave up his personal agenda on January 1, he wants to see that each of the steps (is) followed. Follow the Code.

Mr. Raphael thanked everyone who called and yelled and talked this week.

Ms. Ballance said, "Happy Birthday JR, wherever you are."

MAYOR'S COMMENTS:

Mayor Pate sent out Best Wishes for Dr. Kirkpatrick. He thanked Council for their efforts on the Grand (Ave.)/Spring St. slide. Gentlemen from FEMA, the State, and the Corps of Engineers said there may be reimbursements. They also looked at Black Bass Dam. The two ambulances are in. He then read a list of upcoming events.

ADJOURNMENT:

Mr. Berry moved to adjourn. Mr. Pownall seconded.

Motion passed 4/0/0. The meeting ended at 10:10 p.m.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Thursday, August 18, 2011.

ATTEST:

Ann Armstrong

City Clerk/Treasurer Ann Armstrong

APPROVED:

Mayor Morris Pate