CITY OF EUREKA SPRINGS
COUNCIL MEETING
Thursday, August 4, 2011 6 p.m.

AGENDA **corrected 8/5/11**

CALL TO ORDER
ROLL CALL, ESTABLISH QUORUM
PLEDGE OF ALLEGIANCE TO THE FLAG
APPROVAL OF THE AGENDA
APPROVAL OF THE MINUTES: July 21, 2011

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Planning -- Position 7 – expires 1/1/12. Vote on Denys Flaherty nomination
CAPC – Position 7 – expires 6/30/14
Parks –Position 5 – expires 5/1/14
HDC – Position 4 – expired 11/30/10
Cemetery
Hospital – Nomination of Robert Walling

PUBLIC COMMENTS:
NEW BUSINESS:

1. Discussion of Art in North Main Parking Lot and on Art Wall on First Street – Mayor Pate

UNFINISHED BUSINESS:

1. Third reading of Domestic Fowl Ordinance #2139
2. Deer hunt – Decision regarding November date – City Council
3. Dog control workshop update -- Mayor Pate
4. Vacation of Palo Pinto – Planning Commission
5. Resolution for Zoning Map appropriation – Ms. Ballance and Dr. Kirkpatrick
6. Discussion of Alcohol Beverage Tax – Mayor Pate
7. Operations Manual for Finance Department – Ms. Ballance and Dr. Kirkpatrick
8. New Accounting Software for Finance Department – Ms. Ballance and Dr. Kirkpatrick
9. Police Hiring/Personnel Manual (Employee Handbook) – Ms. Ballance and Mayor Pate
10. Discussion of Donation of Vehicle to the Carroll County Airport – Mr. Pownall and Ms. Ballance

NEW BUSINESS:

2. Multi-Family Dwellings – Planning—postponed from July 7 meeting
3. Wal Mart – Mayor Pate
4. Roll Call votes – Ms. Ballance and Mr. Raphael
5. Discussion of Parks ordinance – Mr. Raphael, Ms. Ballance, Dr. Kirkpatrick
6. Discussion of a Citizen Advisory Panel – Dr. Kirkpatrick, Mr. Raphael, Ms. Ballance

AGENDA SETTING
CITY COUNCIL COMMENTS
MAYOR'S COMMENTS
ADJOURNMENT

CITY OF EUREKA SPRINGS **amended 8/24/11**
CITY COUNCIL
REGULAR MEETING **THURSDAY** **AUGUST 4, 2011**

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, August 4, 2011 in the jury room on the second floor of the Western District Carroll County Courthouse.

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

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. DeVito seconded. Mayor Pate added Wal Mart resolutions as New Business item #2 (later became #3). Mr. Pownall added items remaining from previous meetings: Operations Manual for Finance, New Accounting Software (both were postponed), Police Hiring/Personnel Manual, and Donation of Vehicle to the Carroll County Airport. Mr. Berry postponed Vacation of Palo Pinto until September 1, at the request of one property owner, Jan Grinnell. Dr. Kirkpatrick moved to approve the agenda as amended. Mr. DeVito seconded.

Motion carried 5/1/0 with Ms. Ballance voting "No".

(New Business item #4 was later moved to first place for discussion.)

APPROVAL OF THE MINUTES: July 21, 2011

Mr. DeVito moved to approve the minutes from the July 21, 2011 Council meeting. Mr. Berry seconded. Mr. Pownall noted an incorrect date on the last page.

Motion carried 6/0/0.

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Planning – Position 6 – expires 1/1/12

Planning Chair Beverly Blankenship said the Backflow valves issue was sent to Planning by the Mayor. Later, Council requested Public Works to establish procedures and policies. She said Council does not have that authority. Ms. Blankenship also noted "Digital/Electronic signs" has been removed from the agenda, but Council still does have that to work on. She said Planning held a Public Hearing on Legally Non-Conforming/Off Premise Signs/Billboards and offered Council written recommendations. Mr. Pownall and Mr. Leswig are correcting codification errors in the sign portion of the Code. Ms. Blankenship requested direction from Council as Planning attempts to look forward. She presented suggestions for the second step in correcting the Code when the new Domestic Fowl ordinance is passed, and noted Planning is also working on Handicap Parking.

Mr. Berry moved to approve the nomination of Denys Flaherty for Planning position 7. Dr. Kirkpatrick seconded.

Motion carried 6/0/0.

CAPC – Mayor Pate said he received a letter from the CAPC saying the Position at Large was filled by Charles Ragsdell. Mr. DeVito rephrased as "a recommendation". No application was available.

Parks – Position 5 – expires 5/1/14

HDC – Position 4 – expired 11/30/10

Cemetery – none

Hospital – Mayor Pate nominated Robert Walling for Position 7.

Mr. Pownall said he understood there were three resignations from the Commission.

PUBLIC COMMENTS:

Jo Evans, from Northwest Arkansas Emergency Preparedness, invited everyone to attend the 5th annual Fair to be held in Bentonville on August 27. She handed out flyers for the free 9:00 a.m.-2:00 p.m. event designed to inform all communities of a wide variety of preparedness issues ranging from family emergency plans and storm shelters to water purification and storage. Phone (479) 640-1981 for details.

NEW BUSINESS:

1. **Discussion of Art in North Main Parking Lot and of the Art Wall on First Street**

Mr. Pownall moved to suspend the rules and move New Business item #4 to the top of the list. Mr. Berry seconded. A roll call vote followed: Mr. Raphael, Dr. Kirkpatrick, Ms. Ballance, Mr. DeVito, Mr. Berry, and Mr. Pownall – "Aye".

Motion carried 6/0/0.

Sandy Martin, representing the Mayor's Arts Council, asked for Council's blessing for continuation of the project developed by Charlotte Buchanan and formerly known as "The Artery". The new name is the "Eureka Springs Art Park" and will display two-dimensional art. Guidelines will be in writing and reviewed by the City Attorney. Ms. Martin stated another goal is to install three-dimensional art in the North Main parking area to be known as "Off the Wall".

Mr. Weaver encouraged Council to familiarize themselves with the previous contract. Mr. DeVito moved to ask the City Attorney to begin negotiations with the Arts Council to develop an agreement. Dr. Kirkpatrick seconded. Ms. Martin said a Memorandum of Understanding would inform and protect against liability and provide 70% of the return to the artists and 30% to the City.

Motion carried 6/0/0. (pg. 4 New Business continues)

UNFINISHED BUSINESS:

1. **Third reading of Domestic Fowl Ordinance #2139**

Mr. DeVito moved to suspend the rules and place Ordinance #2139 on its third reading by title only. Mr. Berry seconded. A roll call vote followed: Mr. Raphael, Dr. Kirkpatrick, Ms. Ballance, Mr. DeVito, Mr. Berry, and Mr. Pownall – "Aye".

Motion carried 6/0/0.

Ms. Armstrong read Ordinance #2139 by title only. Mr. DeVito moved to approve Ordinance #2139 on its third reading. Mr. Berry seconded. A brief discussion followed regarding the right of the Animal Control Officer to enter private property.

Motion carried 5/1/0, with Ms. Ballance casting a "No" vote.

2. **Deer hunt – Decision regarding November date**

Mr. DeVito motioned to discuss. Mr. Berry seconded. Mr. DeVito spoke about the safety issue of waiting until leaves are off the trees. Mr. Berry recalled a citizen's question regarding the definition of "one day" as opposed to "one time" and proposed November 28 – December 2. Mayor Pate confirmed that "private property within the City is equal to 'within the areas prescribed by Arkansas Game and Fish Commission'" as long as the property owners give permission.

Mr. Berry made a motion to establish a one-time long bow (*not* crossbow) hunt starting November 28 and through December 2 as per Arkansas Game and Fish regulations. Mr. Pownall suggested writing a resolution clarifying specific rules and seconded Mr. Berry's motion.

Motion carried 4/1/1 with Mr. DeVito voting "No" and Ms. Ballance voting "Present".

3. **Dog Control Workshop update**

Mr. Pownall said the July 28 workshop was attended by two Council members and two citizens concerned about enforcement. Mr. Weaver said there have been violations prosecuted and convictions

issued. Mr. Raphael spoke about vicious dogs returned to the City. Dogs on leashes, rather than controlled by voice commands, will be added to regulations. This item will remain on Unfinished Business. Mr. Weaver confirmed that the County Clerk maintains the docket, and that he does not participate in the process until plea discovery.

4. Vacation of Palo Pinto

Postponed during agenda setting, until September 1

5. Resolution for Zoning Map appropriation

Ms. Ballance moved to discuss. Dr. Kirkpatrick seconded. Following discussion, Ms. Ballance motioned to use the three-section resolution and to change "removed" to "moved" in Section 2. Mr. Pownall seconded.

Motion carried 6/0/0.

Mr. Pownall made a motion to assign a number and read the resolution for a budget adjustment, as amended. Ms. Ballance seconded.

Motion carried 6/0/0.

Ms. Armstrong read **Resolution No. 584 A RESOLUTION MAKING A 2011 BUDGET ADJUSTMENT.**

6. Discussion of Alcohol Beverage Tax

Ms. Armstrong offered an overview of progress, including new information regarding the CAPC collection of tax on beer and wine. Mr. Weaver agreed to delve into the CAPC information. He stated he believes the City can collect on beer and wine with another tax structure, and he will report back. Mayor Pate said he was notified by a local hotel manager that the State has (expanded Sunday sales hours) to 10:00 a.m. until midnight. By ordinance, City Code 7.08.08 will be changed accordingly.

7. Operations Manual for the Finance Department

Postponed during agenda setting, until the next meeting

8. New Accounting Software for Finance Department

Mr. Pownall moved to postpone this item and #7 until there is a new Finance Director, tentatively September 1. Ms. Ballance seconded. (There was no vote.)

9. Police Hiring/Personnel Manual

Ms. Ballance moved to discuss. Mr. Pownall seconded. Mr. DeVito favored having the Chief of Police present for the discussion. Ms. Ballance referenced State Statute 14.52.201 wherein Council is to direct the number of subordinate Police Officers to be appointed. She noted the Municipal Code supports this. Ms. Ballance expressed her understanding that a Personnel Manual cannot override State and Municipal law. Mr. DeVito moved to postpone until the next meeting. Mr. Berry seconded. Discussion included Mr. Pownall's suggestion to continue discussion in a Council Goals workshop. Mr. DeVito withdrew his motion (if there is to be another workshop, with the Chief present). Mr. Berry withdrew his second. Mayor Pate interpreted Mr. Pownall's suggestion as a motion to withdraw the item from the agenda and (include) it in a workshop. Mr. DeVito seconded.

Motion carried 5/0/1, with Ms. Ballance voting "Present".

10. Discussion of Donation of Vehicle to the Carroll County Airport

Mr. Pownall made a motion to discuss. Ms. Ballance seconded. Mr. Pownall stated there is a conflict in the State law regarding disposition of City property. He said he would like to see an up-to-date list of City equipment. Ms. Ballance referenced Code section 3.08.01 saying property can be sold or exchanged. Since Code does not say "give away", Ms. Ballance said, "We're probably looking at illegal exaction and malfeasance because City Code can be stronger than State Code." Mr. Pownall motioned to remove this item from the agenda. Dr. Kirkpatrick seconded. Motion carried 5/0/1, with Ms. Ballance voting "Present".

Ms. Ballance moved to take a 15 minute break. Dr. Kirkpatrick seconded.

Motion carried 4/2/0, with Mr. DeVito and Mr. Berry voting "No".

When Council resumed, Mayor Pate asked Mr. Weaver for his opinion regarding ordinances as

more stringent or less stringent than State law. Mr. Weaver opined that "State law preempts certain fields and does not allow us to legislate in those. When it does, we cannot change what the Statutes make. But the State, in its wisdom, has allowed local ordinances to be adopted which, in certain instances, can change or modify what otherwise is State law. And, typically, we cannot make something non-criminal or non-enforceable that is in State law. But we have the right to restrict something further unless the State has preempted that area. And there are areas the State says you can't stringently make it…You can make some things stronger. You can't make other things stronger. So there's not really a bright line..." When asked how (Council can) know, Mr. Weaver answered, "By looking at the State Statutes to see what they have preempted. You cannot, for instance, restrict freedom of speech… there are certain restrictions you cannot prescribe against billboards that are protected not only by the State law but by Federal law."

NEW BUSINESS:

2. Multi-Family Dwellings

Ms. Blankenship recapped the process Planning used in compiling the list of Legally Non-Conforming Multi-Family Dwellings in R-1 to be included in the Code as an appendix. When Ordinance #1816 was adopted in 2000, a list of existing Multi-Family units was not made. Mr. DeVito motioned to instruct the City Attorney to include these units as per the Planning Commission instructions, as an ordinance. Mr. Raphael seconded. The definition of Legally Non-Conforming was clarified and it was noted that if dwellings on this list were to expand, they would have to get a CUP. If they were to become vacant for six months, the dwellings would revert to one or two family residences.

Motion carried 6/0/0.

Ms. Blankenship noted the list of business licenses does not include apartment house owners.

3. Wal Mart

Stephen Giles, representing Wal Mart, asked Council to authorize the Mayor to execute an easement for a sewer line for a Wal Mart Express on 62E between Lighting Rd. and Thunder Ridge Rd. The procedure was clarified. The request must first go to the Building Inspector and be submitted to the (BOZA)/Planning Commission for review. The request for a permanent sewer line easement would then come before Council.

Mr. Berry made a motion to discuss the "resolution directing the Mayor to execute the right to inspect and enter agreement". Mr. DeVito seconded. (There was no vote.) The right to inspect and enter could be authorized by the Mayor, according to Mr. Weaver. Ms. Ballance expressed reluctance to sign anything without (careful consideration).

4. Discussion of Roll Call votes

Ms. Ballance moved to discuss. Dr. Kirkpatrick seconded. Ms. Ballance suggested roll call votes for final decisions so citizens know (how Council voted). Mr. Pownall and Mr. Raphael favored listing the votes on ordinances and resolutions. Ms. Ballance moved to have roll call votes on resolutions and final votes on ordinances, and for those votes to be recorded on the resolutions and ordinances. Dr. Kirkpatrick seconded.

Motion carried 4/2/0, with Mr. DeVito and Mr. Berry voting "No".

5. Discussion of Parks ordinance

Mr. Raphael moved to discuss. Ms. Ballance seconded. Mr. Raphael said this proposed amendment to Ordinance 1906 is for visibility and accountability by providing oversight of Parks by the City Council. Mr. DeVito noted the emergency clause. Mr. Berry said Parks "is an autonomous commission, under State Statutes". Mr. Pownall expressed concern that the public vote to remove the sunset clause on the ¼ cent for Parks wasn't codified, and the proposed ordinance incorrectly references Ordinance 1906. Ms. Ballance moved to postpone discussion until the next meeting. Mr. Weaver said the proposed ordinance would basically do away with the Parks Commission, and agreed with Mr. Pownall's assessment. Dr. Kirkpatrick seconded the motion to postpone. Director Bruce Levine referenced State Statute 14.69.201. Mr. Pownall said he believes City Code already prevents Parks from buying, selling, or trading City property.

Motion to postpone carried 4/2/0 with Mr. Berry and Mr. DeVito voting "No".
Ms. Ballance moved to place a moratorium on Capital Improvements to the City Parks for six months. (No further action was taken.)

6. Discussion of a Citizen Advisory Board

Dr. Kirkpatrick moved to discuss. Ms. Ballance seconded. Dr. Kirkpatrick said this is to get people to help (Council). The (Board) would have no power beyond making recommendations to Council. When asked by Mr. Berry who would select the members and how would they operate, Dr. Kirkpatrick answered he would like to see each Councilman pick two members. Mr. Pownall said this is well intended, but he would prefer to just press forward. Mr. Raphael supported citizen input during Public Comments.

AGENDA SETTING:

Ms. Ballance moved to discuss. Dr. Kirkpatrick seconded.

Ms. Ballance added Discussion of Mid-year Budget Review. Dr. Kirkpatrick seconded.

Ms. Ballance said she will be ready to give Council a YBRC (Yellow Bag Research Committee) update at the next meeting.

Ms. Ballance added Discussion of an Independent Forensic/Investigative Audit. Dr. Kirkpatrick seconded.

Ms. Ballance added Digital/Electronic Sign Moratorium. Mr. Pownall seconded.

Ms. Ballance added Requirements for the Finance Director. Dr. Kirkpatrick seconded.

Ms. Ballance added Discussion of Moratorium on Capital Improvements to the City Parks. Dr. Kirkpatrick seconded.

Mr. Pownall added Discussion of the Hospital Commission/Hospital. Ms. Ballance seconded.

CITY COUNCIL COMMENTS:

Mr. Pownall requested help from Citizens, (preferably) before meetings.

Mr. DeVito expressed his dislike for items "dropped on us in the form of an emergency". He said the public must be vigilant with what is happening at the table. Mr. DeVito spoke again regarding his belief in a City Administrator form of government.

Mr. Raphael agreed that it is time for the citizens to speak up.

Dr. Kirkpatrick encouraged phone calls before Council action.

Mr. DeVito left the meeting at 9:05 p.m.

Ms. Ballance apologized to the Mayor for "getting a little heated". (During amendment of these minutes, Ms. Ballance noted her apology was for her delivery, not the content of her comments.)
Ms. Ballance then thanked the public for their support and asked that they continue to call, even if they don't agree.

MAYOR'S COMMENTS:

Mayor Pate spoke briefly about his vacation (6125+ mile ride) and the opportunities to invite people to visit Eureka. He said the (Grand Ave.) project is (almost complete). He said he has some concerns about micromanagement.

Mayor Pate then read a list of upcoming events.

ADJOURNMENT:

Dr. Kirkpatrick motioned to adjourn. Mr. Pownall seconded.

Motion passed 5/0/0. The meeting ended at 9:10 p.m.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Thursday, August 4, 2011.

APPROVED:

Mayor Morris Pate

ATTEST:

Ann Armstrong

City Clerk/Treasurer Ann Armstrong