

PLEASE TURN OFF ALL ELECTRONIC DEVICES AS THEY INTERFERE WITH RECORDING EQUIPMENT

**CITY OF EUREKA SPRINGS
COUNCIL MEETING
Thursday, December 1, 2011 6 p.m.**

AGENDA

CALL TO ORDER

ROLL CALL, ESTABLISH QUORUM

PLEDGE OF ALLEGIANCE TO THE FLAG

APPROVAL OF THE AGENDA

APPROVAL OF THE MINUTES: November 3, 2011

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Planning – Position 6 – expires 1/1/12. Position 1 – expired 7/1/11

CAPC

Hospital

Parks – Position 5 – expired 5/1/11

HDC – Position 4 – expired 11/30/10

Cemetery

Yellow Bag Research Committee – Mayor Pate’s report from meeting with Phil Jackson

Deer Hunt Committee

PUBLIC COMMENTS:

UNFINISHED BUSINESS:

1. Council vote on new Finance Director – Mayor Pate
2. Dog control update/recommended Code changes -- Mayor Pate
3. Non-conforming Off-Premise Signs – Postponed until Code references are corrected – Planning Commission
4. Hospital Audit report/Hospital lease – Mr. Pownall and Ms. Ballance
5. Auditorium Commission Ordinance review – Mr. Berry and Mr. DeVito
6. Discussion of State law 14-235-206 Sewer Committee– Mr. Pownall and Ms. Ballance
7. Discussion of the grants for infrastructure improvements – Mayor Pate
8. Reconsideration of Ray Dotson’s franchise – Dr. Kirkpatrick and Ms. Ballance

NEW BUSINESS:

1. Mid-year Budget Resolution – Postponed until December 1 -- Mayor Pate
2. Ordinance to regulate Limousines – Mr. DeVito and Mr. Pownall
3. Procedure for appointing Commission vacancies – Ms. Ballance and Mr. Pownall
4. Handicap parking regulations – Mayor Pate for Planning Commission
5. Setting date for workshop to review/rewrite Animal Drawn Vehicle requirements – Mr. DeVito, Ms. Ballance, Mr. Berry
6. Petition for right to regulate on State Highways in Eureka Springs – Mr. DeVito, Ms. Ballance, Mr. Berry
7. Ordinance for Group Tour Franchise – Mayor Pate
8. Resolution for free parking in December – Ms. Ballance and Mr. DeVito

AGENDA SETTING

CITY COUNCIL COMMENTS

MAYOR’S COMMENTS

ADJOURNMENT

**CITY OF EUREKA SPRINGS
CITY COUNCIL
REGULAR MEETING**

THURSDAY

DECEMBER 1, 2011

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, December 1, 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, and 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. DeVito moved to approve the agenda. Mr. Berry seconded. Dr. Kirkpatrick added Reconsideration of Ray Dotson's carriage franchise. Ms. Ballance seconded.

Motion carried 5/1/0, with Mr. DeVito voting "No".

Mr. Pownall moved to delete item #1 under Unfinished Business. Ms. Ballance seconded. Motion carried 6/0/0.

Ms. Balance moved to delete #8 under New Business. Mr. Raphael seconded.

Motion carried 6/0/0.

Ms. Ballance moved to add Free Parking for December under New Business. Mr. DeVito seconded.

Motion carried 6/0/0.

Mr. DeVito moved to approve as amended. Mr. Raphael seconded.

Motion carried 6/0/0.

APPROVAL OF THE MINUTES: November 3, 2011

Mr. Berry moved to discuss the minutes from the November 3, 2011 Council meeting. Mr. Pownall seconded. Ms. Ballance added a phrase under New Business item #10- "and any Council member or the Mayor may nominate". Mr. Pownall noted Commission vacancies not listed on the agenda. He moved to approve the minutes as amended. Dr. Kirkpatrick seconded.

Motion carried 6/0/0.

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

Planning – Position 6 – expires 1/1/12. Position 1 – expired 7/1/11.

Planning Chair Beverly Blankenship said Planning is working on a booklet of development standards so as to simplify understanding of requirements. She noted Planning denied an application for a 6th room in a B&B at 60 Hillside since six units or more is a hotel. Referencing Non-conforming Off-Premise signs on the agenda, Ms. Blankenship gave an update on progress in clarifying the Code book. She said that Planning goals will be based on what is funded in the 2012 budget.

CAPC

Hospital

Parks – Position 5 – expired 5/1/11. A written report was submitted.

HDC – Position 4 – expired 11/30/10

Cemetery

Yellow Bag Research Committee – Mayor Pate noted he has requested a list of questions from Council members for the meeting on December 9.

Deer Hunt Committee – The first meeting is scheduled for Friday, December 2 at 2:00 p.m.

PUBLIC COMMENTS:

Judie Lockhart, owner of Angels Among Us Wedding Chapel and Main Street Inn, spoke about her carriage franchise which was limited to Mill Hollow Rd. and about ongoing phone calls from Ray Dotson.

Joe Gunnels provided his written comments to Council and agreed to address them during discussion of Group Tour Franchises.

Jerry Varner, owner of Making Memories Tours, spoke about his interest in the Group Tour Franchise.

Tom Tharp provided approximately 75 signatures opposing non-approved animal drawn vehicles on Main St. and the incomplete and inaccurate application (from Ray Dotson). The impromptu petition included a request to revoke the franchise. He said he had affidavits from all parking lot owners from the train station to the Pied Piper saying Ray Dotson is not allowed on their property. Mr. Tharp said they will be provided to the Police and the Sheriff.

UNFINISHED BUSINESS:

1. Council vote on new Finance Director

Deleted during Agenda Setting

2. Dog control update/recommended Code changes

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall noted there were 34 tickets issued from January through October. The (dog attack) that prompted (current action) will go to a bench trial in February 2012. Mr. Pownall will continue work on Code recommendations.

3. Non-conforming Off-Premise Signs

Postponed until Code references are corrected

4. Hospital Audit report/Hospital lease

Mr. Berry moved to discuss. Mr. Pownall seconded. Hospital Commission Vice-Chair Michael Merry answered Mr. DeVito's question regarding legal fees of \$196,714. He said these were incurred when the Commission filed suit against Allegiance Health Care, the organization currently running the hospital. The first payment on the \$163,000 annual lease from Home Health had been kept by Allegiance. This prompted the suit. An arbitrated agreement was reached in Federal Court in 2008. Allegiance was allowed to keep the funds but was to submit subsequent payments to the Hospital Commission.

Mr. Merry noted the \$44,237 listed under Liabilities reflects fees accumulated by Allegiance Health Care partially representing their own audit figures created in 2010. As a result of the arbitrated agreement, a letter from the Commission attorneys regarding those funds was sent to Allegiance. There has been no response.

Mr. Pownall expressed concern for the absence in City Hall of a legal agreement. He motioned to postpone until the next meeting or a special meeting. Dr. Kirkpatrick seconded.

Following a question from Mr. Berry, Mr. Pownall asked about the legality of the Commission contracting out hospital operations. Mr. Weaver advised directing the question to the Commission's legal counsel. Mayor Pate suggested that Council send him questions by Friday, December 9, and he'll forward them to Mr. Merry.

Mr. Merry confirmed the Commission meets on the third Monday of the month at 6:00 p.m. and the location varies.

Mr. Pownall withdrew his motion.

Mr. Merry said the Commission has been trying to meet with Allegiance to discuss renewal of the contract. The lead administrator at the hospital has been replaced and a meeting date has not been set.

5. Auditorium Commission Ordinance review

Mr. DeVito moved to discuss. Mr. Berry seconded. Mr. Berry said the Auditorium Committee favors forming a commission to handle activities. Mayor Pate understood from Director Mike Maloney that the CAPC would prefer to not return responsibility for the Aud to the City. Mr. DeVito noted the 145 nights already scheduled for 2012 including the CICA Festival which draws international visitors. He suggested a hybrid arrangement with a commission and the CAPC.

Mr. Berry moved to defer until the next meeting in January. Mr. DeVito seconded.

Motion carried 6/0/0.

6. Discussion of State law 14-253-206

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall said he had provided a draft ordinance for Mr. Weaver's review because of non-compliance with Arkansas law. Mr. Weaver agreed to review the information. Mr. DeVito moved to postpone until the next meeting. Mr. Raphael seconded. Mr. Pownall amended the motion to include 14-234-116, 14-235-207 and/or any other applicable codes. Mr. Raphael seconded.

Motion carried 6/0/0. A roll call vote on the motion to postpone followed. All voted "Aye".

Motion carried 6/0/0.

7. Discussion of the grants for infrastructure improvements

Mayor Pate said the only grant application out is for sidewalks to school. The grant has not been awarded yet. He noted \$70,000 came in from FEMA for part of the landslide.

8. Reconsideration of Ray Dotson's franchise

Dr. Kirkpatrick moved to discuss. Mr. Raphael seconded. Dr. Kirkpatrick said he spoke with the owners of the Lumberyard. They don't know (Mr. Dotson). Dr. Kirkpatrick said he wanted to rescind his vote. Mr. Weaver cautioned the vote established the franchise and to rescind at this point may be violating a contract. Discussion followed regarding false pretenses and absence of notice to Mr. Dotson regarding this discussion. Dr. Kirkpatrick motioned to ask Mr. Dotson appear at the next meeting and show in writing where he'll load and unload. Ms. Ballance seconded.

Motion carried 5/1/0, with Mr. DeVito voting "No".

Ms. Ballance moved to take a five minute recess. Dr. Kirkpatrick seconded.

Motion carried 6/0/0.

NEW BUSINESS:

1. Mid-year Budget Resolution

Deleted during Agenda Setting

2. Ordinance to regulate Limousines

Mr. DeVito moved to discuss. Mr. Berry seconded. Mr. Weaver is reviewing several documents and said it may be two meetings before information is ready. Dr. Kirkpatrick motioned for Mr. Weaver to notify the Mayor when he'd like this on the agenda. Mr. Pownall seconded.

Motion carried 6/0/0.

3. Procedure for appointing Commission vacancies

Ms. Ballance moved to discuss. Mr. Pownall seconded. Ms. Ballance said she would like to see applications go to the City Clerk or Receptionist and then to (all Council members and the Mayor). Then Council or the Mayor could nominate, a vote could be taken, and the Mayor could proceed with appointing. Mr. DeVito rejected the premise that there is a "bottleneck" and saw no reason to change. Discussion followed regarding applications submitted and not brought to the table, applicants notifying Council of submissions, and State law allowing Council to nominate

Planning Commissioners. Ms. Ballance moved to instruct the City Attorney to change enabling ordinances for the Planning Commission and the HDC to allow nominations at large from the Mayor or any member of the City Council. Mr. Raphael seconded.

Motion failed 3/3/0, with Mr. Pownall, Mr. DeVito, and Mr. Berry voting "No".

Mr. Pownall reviewed City web site listings of commission vacancies. He called for consistency in listing contact information. Mr. Berry noted Mr. Bridwell would like to stay on the CAPC.

4. Handicap parking regulations

Mr. Pownall moved to discuss. Mr. DeVito seconded. Ms. Blankenship said State Statute 27-15-305 and 306 are the sources for proposed changes. She noted wording requested by Chief Hyatt regarding "Law Enforcement or Parking Enforcement Officials". Ms. Blankenship said this is meant to deter able-bodied individuals from parking in the few handicap parking spaces available.

Mr. DeVito moved to send the request from the Planning Commission regarding handicap parking to the City Attorney to draft an ordinance. Mr. Pownall seconded.

Motion carried 6/0/0.

5. Setting date for workshop to review/rewrite Animal Drawn Vehicle requirements

Mr. DeVito moved to discuss. Mr. Pownall seconded. Dr. Kirkpatrick moved to postpone setting a workshop date until the first meeting in February. Mr. DeVito seconded.

Motion carried 6/0/0.

6. Petition for right to regulate on State Highways in Eureka Springs

Mr. DeVito moved to discuss. Mr. Raphael seconded. Mr. Weaver said he believes the Highway Commission will vigorously defend their right to regulate and the City's request would have to be specific. Ms. Ballance referenced an Attorney General's opinion regarding the City's right to regulate business even on State highways. She moved to postpone until the next meeting. Mr. Berry said he spoke with Assistant to the Director Frank Vozel who said the City cannot stop people from using the State highway. Mayor Pate also spoke with Mr. Vozel who said if it becomes a safety issue, it needs to be referred to the State Police. Dr. Kirkpatrick seconded the motion.

Motion carried 6/0/0.

7. Ordinance for Group Tour Franchise

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Weaver said the ordinance could be read to say it expires December 21, 2011 or that the rights and privileges of the franchise holders expire on that date. He suggested a new group tour franchise ordinance with a term of years for the franchises. Mr. DeVito gave background information on the current ordinance and the purchase of trams for tours. He suggested that multiple franchises could endanger livelihoods due to the decline in motorcoach traffic. Mr. Pownall moved to have a workshop to rework the Group Tour Franchise ordinance. Mr. DeVito seconded.

Motion carried 6/0/0. Extensive discussion followed regarding tours already scheduled, public perception of availability, restrictions on vehicle length, and life expectancy of the trams. Dr. Kirkpatrick moved to have the ordinance rewritten in conjunction with a workshop to be held on December 6 at 5:30. A special meeting can be scheduled for passage. Mr. Raphael seconded.

Motion carried 6/0/0.

8. Resolution for free parking in December

Dr. Kirkpatrick moved to discuss. Ms. Ballance seconded. Mr. Pownall moved to take last year's resolution and rework it. Dr. Kirkpatrick seconded. Following brief discussion, Dr. Kirkpatrick withdrew his second and Mr. Pownall withdrew his motion. Mr. Pownall moved to read the proposed resolution for the purpose of discussion. Mr. DeVito seconded.

Motion carried 6/0/0.

Mr. Weaver read **A RESOLUTION REMOVING THE REQUIREMENT OF PAYING THE PARKING METERS ON SPRING STEET AND MAIN STREET AND ESTABLISHING FREE PARKING ON SPRING STREET AND MAIN STREET FROM DECEMBER 1 THROUGH DECEMBER 31, 2011.** Following discussion, Mr. Pownall motioned to change the starting date to December 2. Dr. Kirkpatrick seconded.

Motion carried 6/0/0. Mr. Pownall moved to assign a number and approve as amended. Mr. Berry seconded.

Motion carried 6/0/0. The resolution was given the number **590.**

AGENDA SETTING:

Mayor Pate noted the information provided by Doug Milligan regarding damage to his vehicle. Mr. DeVito added the item to the agenda. Mr. Pownall seconded.

Mr. Pownall added a workshop sometime this year for 2012 Council goals. Mr. Berry suggested setting the date at the first meeting in January. Mr. DeVito seconded.

Mr. Berry added changing Council meeting dates to the 2nd and 4th Thursdays. Mr. DeVito seconded.

COUNCIL COMMENTS:

Mr. Pownall said he hopes (Council) can do a better job supporting the City in 2012 and wished everyone a Merry Christmas.

Mr. Berry wished everyone a Merry Christmas and a Happy New Year.

Mr. DeVito offered Holiday Greetings and Best Wishes for next year.

Dr. Kirkpatrick wished everyone a Nice Holiday.

Ms. Ballance said Happy Holidays.

MAYOR'S COMMENTS:

Mayor Pate introduced Finance Director Lonnie Clark. He also wished everyone Merry Christmas and Happy Holidays. Mayor Pate noted the "Yield" sign Ms. Ballance requested has (been painted) at the bottom of Douglas St. He said upcoming sewer and water lines repairs will posted on Channel 21. He encouraged everyone to get in on the Polar Plunge in January.

In response to Mr. Pownall's inquiry, Mayor Pate said bids for roof repairs for Public Works and the fire station were opened. A decision has not been made.

ADJOURNMENT:

Mr. DeVito moved to adjourn. Mr. Pownall seconded.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Thursday, December 1, 2011.

ATTEST:


City Clerk/Treasurer Ann Armstrong

APPROVED:


Mayor Morris Pate