

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING**

Thursday, July 21, 2011 6 p.m.

amended 7/22/11

**AGENDA**

*Grand Ave. site visit: 5:15 p.m*

**CALL TO ORDER**

**ROLL CALL, ESTABLISH QUORUM**

**PLEDGE OF ALLEGIANCE TO THE FLAG**

**APPROVAL OF THE AGENDA**

**APPROVAL OF THE MINUTES:** July 7, 2011

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

**Planning** -- Position 7 – expires 1/1/12

**CAPC** – Position 7 – expires 6/30/14

**Parks** –Position 5 – expires 5/1/14

**HDC** – Position 4 – expired 11/30/10

**Cemetery** – Lawnmower prices

**PUBLIC COMMENTS**

**NEW BUSINESS:**

1. Grand Ave landslide ordinance to waive competitive bidding – Mayor Pate

**UNFINISHED BUSINESS:**

1. Second reading of Domestic Fowl Ordinance #2139
2. Proposed ordinance for backflow valves/check valves – Mayor Pate and Planning Commission
3. Deer hunt – Decision regarding November date – City Council
4. Discussion of Mun. Code 2.36.04 – Operations manual for the Finance Dept. – Ms. Ballance and Dr. Kirkpatrick
5. Discussion of new accounting software program for Finance Department – Ms. Ballance and Dr. Kirkpatrick
6. Dog control workshop – new date -- Mayor Pate
7. Second reading of Land bank Ordinance #2140 – Postponed until mid-year budget review
8. Discussion of Procurement of a Mower for the Cemetery – Ms. Ballance and Mr. Pownall
9. Date for a workshop on the Freedom of Information Act (FOIA) – Mayor Pate
10. Vacation of Palo Pinto – Planning Commission
11. Resolution for Zoning Map appropriation – Ms. Ballance and Dr. Kirkpatrick

**NEW BUSINESS:**

2. Discussion of Employee Handbook – Ms. Ballance and Mayor Pate
3. Discussion of Alcohol Beverage Tax – Mayor Pate
4. Office space in the Court House – Ms. Ballance and Mr. Pownall
5. Legalizing the Donation of a Vehicle to the Carroll County Airport – Mr. Pownall and Ms. Ballance
6. Council meetings on Mondays – Mr. DeVito and Mayor Pate
7. Procedure for Filling Vacant Council Seat – Mr. DeVito and Mayor Pate
8. Resolution for engineering fees for the sidewalk – Mayor Pate – Posponed until mid-year budget review

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR'S COMMENTS**

**ADJOURNMENT**

Mayor Pro-tem Butch Berry called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, July 21, 2011 in the jury room on the second floor of the Western District Carroll County Courthouse.

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

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

Mayor Pro-tem Berry led the Pledge of Allegiance to the Flag.

**APPROVAL OF THE AGENDA:**

Mr. Pownall moved to approve the agenda. Mr. DeVito seconded. Dr. Kirkpatrick moved to defer Unfinished Business item #7 (second reading of the Landbank Ordinance) until the mid-year budget review. Ms. Ballance seconded.

Motion carried 4/1/0 with Mr. DeVito voting No

Discussion followed regarding Council requests for agenda items sent to the City Clerk and seconded by the Mayor. Mr. Weaver confirmed that the Mayor can add items. Mr. Pownall then said New Business #6 (Council meetings on Mondays) should be deleted due to the vote setting Thursdays for meetings. Ms. Ballance seconded. Mr. DeVito stated Council does have the authority to change the day.

Motion carried 4/1/0 with Mr. DeVito voting No.

Mayor Pro-tem Berry deferred New Business item #8 (Engineering fees for the sidewalk) until the mid-year budget review. Dr. Kirkpatrick seconded.

Motion carried 5/0/0

Mayor Pro-tem Berry recommended moving New Business item #5 (Grand Ave. landslide ordinance) to the first order of business, after Public Comments. Mr. Pownall seconded.

Motion carried 5/0/0

Mr. Pownall moved to approve the Agenda as amended. Mr. DeVito seconded.

Motion carried 5/0/0

**APPROVAL OF THE MINUTES: July 7, 2011**

Mr. Pownall moved to approve the minutes from the July 7, 2011 Council meeting. Ms. Ballance seconded.

Motion carried 5/0/0

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

**Planning** – Position 6 – expires 1/1/12. A nomination for Denys Flaherty was submitted by the Mayor Pro-tem for Mayor Pate.

**CAPC** – No report

**Parks** – Position 5 – expires 5/1/14

**HDC** – Position 4 – expired 11/30/10

**Cemetery** – Secretary/Treasurer Mary Ann Pownall provided the second quarter financial report and recapped the actual state of the finances. She showed photographs of one of the fallen trees that has lifted an older headstone and spoke of the need for funds for new signage. Commissioner Ken Fugate spoke about the annual need for funds to remove downed trees and the plan for replacement with hardwoods.

Caretaker Tom Rennels reported estimates for rebuilt mowers and noted a local dealership has a new, no-frills gasoline-powered, air-cooled mower with a 3-year warranty for \$4999.00. None of the rebuilt mowers he located comes with a warranty.

#### **PUBLIC COMMENTS:**

**Mickey Schneider** stated her understanding of the vote for a Deer Hunt was “one time” rather than “one day”, and that Arkansas Game and Fish would be (supervising) the hunt. She spoke in favor of allowing all presenters to (address Council) at the beginning of meetings. Ms. Schneider also said there is no need for appraisals for alleys and (unopened) streets the City vacates.

#### **NEW BUSINESS:**

##### **1. Grand Avenue landslide ordinance**

Mr. Pownall moved to discuss. Dr. Kirkpatrick seconded.

Motion carried 5/0/0

Public Works Director Dwayne Allen offered a brief overview of the project and confirmed the hillside continues to slide. McClelland Engineer Daniel Barnes noted that Spring St. has been stabilized and that the groundwater flow has changed course. One of the options is to capture and (redirect) the water by installing a key-way trench and French drain approximately half way between Grand Ave. and Spring St. The hillside (immediately above) Grand Ave. can be stabilized by removing soil and installing rock. Dee Purkepile described the continuing effect of the groundwater. His understanding is that the 8” water main (will shift) if the groundwater is not redirected. Discussion followed regarding the need for an emergency ordinance to waive bidding.

Mr. DeVito moved to assign the ordinance a number and place it on its first reading. Dr. Kirkpatrick seconded.

Motion carried 4/1/1 with Mr. Pownall voting “No” and Ms. Ballance abstaining. Mayor Pro-tem Berry added his “Aye”.

Ms. Armstrong read **Ordinance No. 2141 AN ORDINANCE TO WAIVE COMPETITIVE BIDDING FOR THE STABILIZATION WORK REGARDING SUPPORT AND REPAIR OF GRAND AVE. AND DECLARING AN EMERGENCY**

Mr. DeVito moved to approve Ordinance No. 2141 on its first reading. Mr. Raphael seconded.

Motion carried 4/1/1 with Mr. Pownall voting “No” and Ms. Ballance abstaining. Mayor Pro-tem Berry added his “Aye”.

Mr. DeVito moved to suspend the rules and place Ordinance No. 2141 on its second reading by title only. Mr. Raphael seconded. A roll call voted followed: Dr. Kirkpatrick, Mr. DeVito, Mr. Raphael – “Aye”. Ms. Ballance and Mr. Pownall – “No”. Mayor Pro-tem Berry added his “Aye”

Motion carried 4/2/0

Ms. Armstrong read Ordinance No. 2141 by title only. Mr. DeVito moved to approve Ordinance No. 2141 on its second reading. Mr. Raphael seconded.

Motion carried 4/2/0 with Mr. Pownall and Ms. Ballance voting “No” and Mayor Pro-tem Berry adding his “Aye”.

Mr. DeVito moved to suspend the rules and place Ordinance No. 2141 on its third reading by title only. Mr. Raphael seconded. A roll call vote followed: Mr. Raphael, Mr. DeVito, Dr. Kirkpatrick, – “Aye”. Mr. Pownall and Ms. Ballance – “No”. Mayor Pro-tem Berry added his “Aye”

Motion carried 4/2/0

Ms. Armstrong read Ordinance No. 2141 by title only. Mr. DeVito moved to approve Ordinance No. 2141 on its third reading. Mr. Raphael seconded.

Motion carried 4/2/0 with Ms. Ballance and Mr. Pownall voting “No” and Mayor Pro-tem Berry adding his “Aye”

Mr. DeVito motioned to read the emergency clause. Mr. Raphael seconded. A roll call vote

followed: Dr. Kirkpatrick, Mr. DeVito, Mr. Raphael – “Aye”. Ms. Ballance and Mr. Pownall – “No”. Mayor Pro-tem Berry added his “Aye”.

Motion carried 4/2/0

Ms. Armstrong read the emergency clause.

#### **UNFINISHED BUSINESS:**

##### **1. Second Reading of Domestic Fowl Ordinance**

Mr. DeVito moved to suspend the rules and place Ordinance No. 2139 on its second reading by title only. Mr. Pownall seconded. A roll call vote followed: Mr. Pownall, Ms. Ballance, Mr. Raphael, Mr. DeVito, and Dr. Kirkpatrick – “Aye”

Motion carried 5/0/0

Ms. Armstrong read Ordinance 2139 by title only. Mr. DeVito moved to approve Ordinance No. 2139 on its second reading. Mr. Pownall seconded.

Motion carried 5/0/0

##### **2. Proposed ordinance for backflow valves/check valves (“pop-off” valves)**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Raphael recapped his discussion with (Public Works Director) Dwayne Allen and the perception that there may be 15-20 situations which might (require valves). He suggested asking Dwayne to compile a list of the lines that need to be fixed. Mr. Pownall favored a list of potential problems. Discussion followed regarding valve failure and whether it’s appropriate to be passing the ordinance. Mr. Pownall requested that this be taken off the table and to have Public Works write proper procedure for notification of (such issues). Mr. DeVito seconded.

Motion carried 5/0/0

##### **3. Deer hunt update**

Mr. Pownall made a motion to discuss. Mr. DeVito seconded. Mayor Pro-tem Berry suggested deferring this item until the next meeting. Mr. Pownall moved to do so. Mr. DeVito seconded.

Motion carried 5/0/0

##### **4. Discussion of Mun. Code 2.36.04 – Operations Manual for Finance Department**

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

Motion carried 5/0/0

Ms. Ballance addressed several items requiring clarification and corrections in grammar. Mr. Pownall made a motion to defer this to the new Finance Director for the first meeting in August. Ms. Ballance seconded.

Motion carried 5/0/0

Dr. Kirkpatrick motioned for a break. Ms. Balance seconded.

Motion carried 5/0/0

##### **5. Discussion of new accounting software program for Finance Department**

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

Motion carried 5/0/0

Mr. Pownall moved to postpone until the August 4 meeting with the new Finance Director. Ms. Ballance seconded.

Motion carried 5/0/0

##### **6. Dog control workshop**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mayor Pro-tem Berry relayed Mayor Pate’s suggestion that Mr. Pownall set a date and chair the workshop. Mr. Pownall suggested July 28 at 4:30 p.m.

##### **7. Second reading of Landbank ordinance**

Deferred, during Approval of the Agenda, until mid-year budget workshop

## **8. Discussion of the Procurement of a Mower for the Cemetery**

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

Motion carried 5/0/0

Ms. Ballance asked for clarification as to what is included in the \$4499.00 quote Mr. Rennels brought to the table, and spoke in favor of (funding the purchase). Mr. DeVito favored including this in the mid-year budget review. Mr. Pownall motioned to (draw) \$6,000 from the General Fund for the purchase of a mower with a one-year service contract. Ms. Ballance amended the motion to instruct Mr. Weaver to write a resolution immediately so as to amend the budget by resolution as required. Mr. Pownall seconded. Following discussion, Mr. Pownall amended his motion to approve \$5,000 from Capital Improvements based on a resolution written by the (City) Attorney. Ms. Ballance seconded.

Motion carried 5/0/0

Mr. Pownall motioned for a break to allow time for Mr. Weaver to write the resolution. Ms. Ballance seconded.

Motion carried 4/1/0 with Mr. DeVito voting "No"

Mr. Weaver did bring a written resolution to the table and cautioned neither he nor the City Clerk are sure of the (fund from which the money would be drawn). Mr. Pownall then moved to (reconvene) and bring this back to the table. Ms. Ballance seconded.

Motion carried 5/0/0

Mr. Pownall motioned to assign a number and read for discussion only. Ms. Ballance seconded.

Motion carried 4/1/0 with Mr. DeVito voting No

Ms. Armstrong read **Resolution 583 A RESOLUTION MAKING A 2011 BUDGET ADJUSTMENT**. Mr. Pownall suggested changing "removed" to "moved" and a clarification that, upon passage, all changes be approved by the (Council). Mr. Weaver expressed concern for saying from which fund the money would come, and into which fund the money would be moved, without consulting someone from the Finance Department. Mayor Pro-tem Berry suggested waiting until the appropriate funds are known, and then having a special meeting. Discussion followed regarding possible changes in wording. Dr. Kirkpatrick motioned to postpone until Tuesday (tentatively at 5:00), confirm the (appropriate) funds, and have a special meeting. Ms. Ballance seconded. A roll call vote followed: Dr. Kirkpatrick, Mr. Raphael, Mr. Pownall, Mr. DeVito, Ms. Ballance – "Aye".

Motion carried 5/0/0

## **9. Setting a date for a workshop on the Freedom of Information Act (FOIA)**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mayoral Assistance Diane Wilkerson confirmed that Mark Hayes, from the Municipal League, is willing to hold a workshop. In response to his question regarding topics, Mr. Pownall suggested anything "that applies to municipal government, whether it's commissions, councils, or elected officials". A date approximately one month away will be set and everyone will be notified.

## **10. Vacation of Palo Pinto**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall motioned to postpone until the August 4 meeting, with notification to the two parties. Mr. DeVito seconded.

Motion carried 5/0/0

## **11. Resolution for Zoning Map appropriation**

Mr. Pownall moved to discuss. Mr. Raphael seconded.

Motion carried 5/0/0

Ms. Ballance questioned whether the resolution has the same issues as (the resolution for the lawnmower appropriation). Mr. Weaver agreed. Mr. Pownall moved to defer until the August 4 meeting. Dr. Kirkpatrick seconded.

Motion carried 5/0/0

## **NEW BUSINESS:**

### **2. Discussion of the Employee Handbook**

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

Motion carried 5/0/0

Ms. Ballance spoke about section 2.48.01 in an earlier Municipal Code wherein the Council prescribes the number of Police Officers, appointment (will be) by the Mayor, and confirmation (will be) by the City Council. She then noted (supporting) State Statute 14-52-201. Ms. Ballance said she understood that the City cannot make laws less strict than State law. Ms. Ballance moved to reestablish 2.48.01. Mr. Raphael seconded. Discussion followed regarding the difference between general ordinances and budget (resolutions), conferring with the Chief of Police, drafting an ordinance, and the long-requested workshop for Council Goals. Ms. Ballance rescinded her motion. Mr. Raphael rescinded his second.

Ms. Ballance moved to add 2.48.01, Police Department personnel, to the Goals workshops on (July 28). Mr. Pownall seconded.

Motion carried 5/0/0

### **3. Discussion of Alcohol Beverage Tax**

Mr. Pownall moved to discuss. Mr. DeVito seconded.

Motion carried 5/0/0

Ms. Armstrong and Mr. Weaver described three problem areas with interpretation of Code regarding the collection of the 10% supplemental tax. The first problem could be addressed by adding "not beer, not wine" to the section defining collection of the tax (7.08.10).

The second issue, establishments which have not been collecting and paying tax on "hard liquor", was discussed. Mr. DeVito spoke about an earlier unsuccessful attempt to collect a Federal tax retroactively.

The third issue is whether to refund taxes paid on beer and wine. Further discussion included the ABC as the enforcement arm, absence of a (legal) method to confirm sales, and the ABC printouts of establishments serving beer and wine and those serving mixed drinks. Mr. DeVito suggested sending letters clarifying the law to those with City Alcohol licenses. Mr. Weaver noted the potential for legal action with either the decision to (collect retroactively) or the decision to (accept tax payments from this point forward). He suggested taking time to consider the issues carefully.

Dr. Kirkpatrick left the meeting.

Regarding those who have not been paying the tax as required, Mr. Pownall moved to postpone until the August 4 meeting and (compile as many facts as possible). Mr. DeVito seconded.

Regarding those who have paid tax on beer and wine, Mr. DeVito moved to not reimburse. Mr. Pownall seconded.

Motion carried 4/0/1, with Ms. Ballance abstaining and Mayor Pro-tem Berry voting "Aye".

### **4. Office space in the Court House**

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

Motion failed 3/1/0 with Mr. DeVito voting "No"

### **5. Legalizing the Donation of a Vehicle to the Carroll County Airport**

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

Motion failed 3/1/0 with Mr. DeVito voting "No". Mr. Pownall moved to postpone until Mayor Pate is at the table. Mr. DeVito rescinded his vote and agreed to discuss (then). Mr. Raphael seconded.

Motion carried 4/0/0

### **6. Council meetings on Mondays**

Deleted during Approval of the Agenda

**7. Procedure for Filling Vacant Council Seat**

Mr. DeVito motioned to table until the next meeting. Mr. Pownall seconded.

Motion carried 4/1/0 with Ms. Ballance voting "No" and Mayor Pro-tem Berry voting "Aye".

**8. Resolution for engineering fees for the sidewalk (23N to 23S)**

Deferred during Approval of the Agenda until the mid-year budget review

**AGENDA SETTING:**

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

It was agreed to have a workshop on the Taxi franchise and on Limousines toward the end of August or the beginning of September.

Ms. Ballance added Roll Call Votes. Mr. Raphael seconded.

**CITY COUNCIL COMMENTS:**

Mr. Pownall stated that he would not have voted for Mr. Raphael if he had known (Mr. Raphael) was the plaintiff in a lawsuit against the City. He noted Mr. Raphael's comments at the table were knowledgeable and well thought-out.

Ms. Ballance also welcomed Mr. Raphael to the table. She noted there are petitions to possibly change the form of government and added that a City Manager form is possible. Additionally, Ms. Ballance said becoming a City of the Second Class would allow the election of a City Marshal who would be responsible to the voters.

Mr. DeVito noted he will be at Harts on Saturday and Sunday seeking signatures from registered voters in the City who would like to chart a new course for the City, with a City Administrator form of government. He stated being a City of the First Class provides many benefits and "empowering the voters is what it's all about".

Mr. Raphael said he believes people come to the table with their minds made up and he will not be involved in a great deal of discussion. He encouraged voters to contact him.

**MAYOR PRO-TEM'S COMMENTS:**

Mr. Berry welcomed Mr. Raphael. He then read announcements of upcoming events. Mr. Berry noted that since some citizens began using the free prescription discount cards, \$1848 were saved. The cards are for people who do not have insurance and they can be obtained at City Hall. Sixty one people have signed up so far.

**ADJOURNMENT:**

Mr. DeVito moved to adjourn. Ms. Ballance seconded.

Motion carried 4/0/0

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Thursday, July 21, 2011.

APPROVED:

  
\_\_\_\_\_  
Mayor Morris Pate

ATTEST:

  
\_\_\_\_\_  
City Clerk/Treasurer Ann Armstrong