

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING**

Thursday, July 7, 2011 6 p.m.

**AGENDA**

**amended 7/8/11**

**CALL TO ORDER**

**ROLL CALL, ESTABLISH QUORUM**

**PLEDGE OF ALLEGIANCE TO THE FLAG**

**APPROVAL OF THE AGENDA**

**APPROVAL OF THE MINUTES: June 2, 2011**

**WARD 3 VACANCY**

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

**Planning** -- Position 7 – expires 1/1/12. Zoning map update.

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

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

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

**Cemetery**

**Yellow Bag Research Committee**

**PUBLIC COMMENTS**

**UNFINISHED BUSINESS:**

1. Discussion of Domestic Fowl Ordinance – Planning Commission
2. Proposed ordinance for backflow valves/check valves – Mayor Pate and Planning Commission
3. Deer hunt – Announcement of Date -- Mayor Pate
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. Black Bass Dam update (FEMA comments) – Mayor Pate
7. Dog control workshop – new date -- Mayor Pate
8. Land bank ordinance (Mr. Weaver's review) – Mayor Pate
9. Discussion of Procurement of a Mower for the Cemetery – Ms. Ballance and Ms. Alexander
10. Setting a date for a workshop on the Freedom of Information Act (FOIA) – Mr. Pownall and Ms.  
Ballance
11. Vacation of Palo Pinto – Planning Commission
12. Digital/Electronic Signs Ordinance – Planning Commission

**NEW BUSINESS:**

1. Multi-Family Dwellings – Planning Commission
2. Discussion of the Beaver Bridge – Mr. Pownall and Ms. Alexander
3. Discussion of Ordinance 2051 regulating limousines – Ms. Alexander and Ms. Ballance
4. Discussion of the Sign Ordinance – Mr. Pownall and Ms. Ballance
5. Discussion of Letter of Discontent regarding fluoride – Ms. Ballance and Ms. Alexander
6. Discussion of Employee Handbook – Ms. Ballance and Mayor Pate
7. Discussion of Alcohol Beverage Tax –
8. Arkansas Highway and Transportation Grant
9. Executive Session

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR'S COMMENTS**

**ADJOURNMENT**

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

**THURSDAY**

**JULY 7, 2011**

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, July 7, 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, James DeVito, Dean Kirkpatrick, 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.

**ANNOUNCEMENT:**

Mayor Pate announced he hired two people, one for the Finance Director's job and one for the Transit Director's job. It would be discussed in Executive Session to protect their current employment.

**APPROVAL OF THE AGENDA:**

Mr. DeVito moved to approve the agenda. Mr. Pownall seconded. Ms. Ballance moved to add the vacancy in (Ward 3). Mr. Berry seconded. Ms. Ballance added an Executive Session at the end, before Agenda Setting. Mr. Pownall seconded. Mayor Pate called for approval of the amended Agenda. Motion carried 5/0/0.

Mayor Pate recommended adding discussion of the (Alcohol) Beverage Tax. Mr. Pownall moved to add that item as New Business #7. Ms. Ballance seconded. Mayor Pate called for a vote on the Amended Agenda.

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

Later in the meeting, Mayor Pate added a resolution from the Arkansas Highway and Transportation Commission for grant funds for a sidewalk from 23N to 23S. Mr. Pownall moved to add the item as New Business #8. Mr. DeVito seconded.

Motion carried 4/1/0 with Ms. Ballance voting No.

**APPROVAL OF THE MINUTES: June 2, 2011**

Mr. Pownall moved to approve the minutes from the June 2, 2011 Council meeting. Dr. Kirkpatrick seconded.

Motion carried 5/0/0

**WARD 3, POSITION 1 CITY COUNCIL VACANCY:**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. DeVito nominated Terry McClung. After Ms. Ballance called Point of Order, Mayor Pate read Janet Alexander's letter of resignation. Ms. Ballance moved to accept. Dr. Kirkpatrick seconded.

Motion carried 5/0/0. Mr. Pownall moved to open nominations for the vacant position. Mr. Berry seconded.

Motion carried 4/1/0 with Ms. Ballance voting No. Mr. DeVito nominated Terry McClung. Following discussion of Statute 14-43-411 regarding vacancies, Ms. Ballance moved to postpone. There was no second. Ms. Ballance moved to nominate Parker Raphael. Mr. Pownall seconded.

Motion carried 3/2/0. Mr. DeVito called Point of Order as he had the nomination of Terry McClung before the floor. Mr. Weaver asked if there was a second. Butch said he had seconded. (This was not heard by the Clerk or the Mayor; nor is it audible in the recording.) Mr. Pownall motioned to ask if there were other nominations. Mr. Weaver stated the vote for Mr. Raphael was taken out of

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order and therefore void. A vote for Mr. McClung followed.

Motion failed 2/3/0. Ms. Ballance moved to nominate Parker Raphael. Mr. Pownall seconded.

Motion carried 3/2/0

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

**Planning** – Position 6 – expires 1/1/12.

Planning Chair Beverly Blankenship requested applications for the open position. She noted Planning is working on Legally Non-Conforming/Off Premise Signs/Billboards. Ms. Blankenship said it appeared there was a codification error. She stated they are also looking at Handicapped Parking fines and bringing them up to State code. Ms. Blankenship addressed the Planning request for \$1500 for an updated Zoning map. Ms. Ballance moved to appropriate the \$1500. Mr. Pownall seconded.

Motion carried 5/0/0. Following discussion regarding procedure, it was agreed to add a resolution for the appropriation to the next agenda. Ms. Ballance moved to instruct the City Clerk to write a resolution for review by the City Attorney and presentation at the next meeting. Dr. Kirkpatrick seconded.

Motion carried 5/0/0

**CAPC** – none

**Parks** – Position 5 – expires 5/1/14. Parks Director Bruce Levine showed a photograph of Sweet Spring and the new bench donated by the Preservation Society. He presented a photograph of Grotto Spring prior to the landslide, one of new sod being installed at the baseball field, one of a benefit soccer game enjoyed by several hundred people, and one of the playground improvements at Harmon Park. Mr. Levine was pleased to announce the receipt of a \$36,500 grant for a handicap-accessible dock at Lake Leatherwood. He said Travis Holloway donated a dugout for the baseball field and the roof will be donated by A&M Roofing.

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

**Cemetery** – Secretary/Treasurer Mary Ann Pownall noted \$13,720.65 in the operating budget and \$4,451.93 in savings, explaining that \$25,391 is received from the City each January. The last sale of a burial plot was in April, and the interest from CDs is \$26.75 each month. From these funds, Tom Rennels' salary (monthly average: \$1,939.22), supplies, electricity, and water are paid.

Mr. DeVito quipped that since he doesn't plan on dying, he would like to donate his plot back to the Cemetery. Ms. Pownall graciously accepted. Mr. Berry suggested seeking donations of memorial benches.

Mr. Rennels is having to use a push mower and there continues to be a desperate need for a riding lawnmower. He is looking for a mower with a service contract and warranty, and asked for a (monetary) figure with which to negotiate. It was agreed that Mr. Rennels will seek three estimates, request a quote good for 30 days, and return to Council at the next meeting.

**Yellow Bag Research Committee** – Ms. Ballance said that, in reviewing the contract with the (Solid Waste Authority), it was noted that commercial customers shall use containers provided by the Authority or approved bags, tags, or containers provided by the City or City's designated agents. She suggested that commercial customers come into compliance. Review will continue.

## **PUBLIC COMMENTS:**

**Walter Burrell**, owner of the Gilded Lily, spoke about vacating Palo Pinto St. He explained that, because of where the two cottages were constructed, the vacation would need to allow (proportional division). His neighbor and he have agreed on the division line.

**Mark Hughes** – 161 Cushing St. – Mr. Hughes said the deer herd count in the neighborhood is approximately 18, with three fawns. When his dog attempted to run the deer off, a defensive doe attacked the dog to protect her fawn. He expressed concern for the possibility of this happening to a child. Mr. Hughes suggested strengthening the deer feeding ban by forbidding "enticement" rather than "feeding".

**Becky Gillette** – Ms. Gillette spoke about the City’s 10% population decline and proposed restoring private property rights through less restrictive HDC requirements and allowing modern building materials. Ms. Gillette also suggested the HDC follow open meeting laws, (refrain from) anti-environmental decisions, and publish guideline changes in the newspaper.

**UNFINISHED BUSINESS:**

**1. Discussion of Domestic Fowl Ordinance**

Beverly Blankenship noted the Ordinance read previously and approved on the first reading was an incorrect version. Mr. Weaver suggested striking two phrases. “Over the age of three months” was removed as well as restrictions to inspection by the Animal Control Officer. Mr. DeVito moved to make the suggested changes, give the Ordinance a number, and place it on its first reading. Dr. Kirkpatrick seconded.

Motion carried 5/0/0. Following Mr. Weaver’s suggestion as to how Council could clarify action, Mr. DeVito withdrew his motion. Ms. Ballance moved to suspend the rules, and place (incorrect) Ordinance 2135 on its second reading by title only. Mr. DeVito seconded. A roll call vote followed: Mr. Berry, Mr. DeVito, Mr. Pownall, Dr. Kirkpatrick, Ms. Ballance – Aye. Ms. Armstrong read Ordinance 2135 by title only. Mr. DeVito moved to approve Ordinance 2135 on its second reading. Mr. Pownall seconded.

Motion failed 5/0/0. Mr. DeVito moved to assign a number to the (correct) Ordinance and place it on its first reading. Mr. Pownall seconded.

Motion carried 5/0/0. Ms. Armstrong read **Ordinance 2139 – AN ORDINANCE REGULATING THE KEEPING OF DOMESTIC FOWL WITHIN THE CORPORATE LIMITS OF THE CITY OF EUREKA SPRINGS, ARKANSAS, AND AMENDING CHAPTERS OF TITLE 6 IN THE MUNICIPAL CODE OF THE CITY OF EUREKA SPRINGS, ARKANSAS, REGARDING KEEPING OF DOMESTIC FOWL**

Mr. DeVito moved to approve Ordinance 2139 on its first reading. Mr. Pownall seconded.

Motion carried 5/0/0

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

Mr. Pownall motioned to discuss. Mr. Berry seconded. Ms. Ballance moved to postpone until the next meeting so that (Mr. Raphael) can weigh in. Dr. Kirkpatrick seconded.

Motion carried 5/0/0

**3. Deer hunt update**

Mr. Pownall made a motion to discuss. Mr. Berry seconded.

Motion carried 5/0/0. Mayor Pate noted that archery season opens 10/1/11 and closes 2/29/12. Time limits are 30 minutes before sunrise and 30 minutes after sunset. The bag limit with archery tackle is four deer with two bucks. No dogs are to be used. Mayor Pate proposed October 3 for the one-day hunt. He said hunters must register at City Hall a week before and present signed permits from property owners. He noted it is illegal to shoot across or within 100 feet of the center line of any City, County, State, or Federally maintained road. Written permission must be obtained if hunting occurs within 50 yards of a residence.

Ms. Ballance called for a posting of properties to be hunted. Mr. Berry motioned to allow only long bows and compound bows. Ms. Ballance seconded.

Motion failed 2/3/0, with Mr. Pownall, Mr. DeVito, and Dr. Kirkpatrick voting No. Discussion regarding a date in November followed. Mayor Pate said if the deer leave the (permitted property), the hunter must have permission to (retrieve) from another’s property.

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

Mr. Pownall moved to discuss. Dr. Kirkpatrick seconded. Ms. Ballance is waiting for answers to opinions she is seeking and moved to postpone until the next meeting. Mr. DeVito seconded.

Motion carried 5/0/0

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

Ms. Ballance moved to discuss. Mr. Pownall seconded. Ms. Ballance summarized her inquiries

with Redwing and Centerpoint software representatives. She noted the cost of the system could be offset in about two years by the approximately \$8,000 currently expended per year to support the Main Street program. Ms. Ballance moved to purchase the Centerpoint program and to appropriate the funds during the mid-year budget review. There was no second.

Mr. Pownall said he has been told by several experts the present system does not support Standard Accounting Practices. Mr. Pownall, Mr. DeVito, and Mr. Berry favored having input from the new Finance Director. Mr. Weaver said the choice of programs is administrative. Mr. Pownall motioned to postpone until the next meeting. Ms. Ballance seconded.

Motion carried 5/0/0

**6. Black Bass Dam update (FEMA comments)**

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

Motion carried 5/0/0. Mayor Pate said FEMA has not made any comments since they were there the last time. The dam continues to get worse. He said that is going to continue to be his report, and it is up to Council what to do about it. Mayor Pate noted there is a "DO NOT ENTER" sign. Mr. Pownall motioned to postpone until there is an update. Ms. Ballance seconded for the sake of discussion. Mayor Pate agreed to check with Bruce (Levine) and Dwayne (Allen) to address safety issues, noting trespassing on posted public property can (result in jail time).

Motion carried 5/0/0

**7. Dog Control Workshop**

Mayor Pate said a new date has not been set. Mr. Pownall moved to postpone until the July 21 meeting. Ms. Ballance seconded.

Motion carried 5/0/0

**8. Land bank ordinance (Mr. Weaver's review)**

Mr. Berry moved to discuss. Mr. Pownall seconded. Mr. Weaver said he made one small change and does not see anything illegal or inappropriate. Mr. DeVito moved to assign the ordinance a number and place it on its first reading. Mr. Berry seconded.

Motion carried 5/0/0. Ms. Armstrong and Mayor Pate read **Ordinance 2140- AN ORDINANCE FOR THE CREATION OF A LANDBANK COMMITTEE FOR THE USE AND DISPOSING OF CERTAIN UNNEEDED PROPERTIES AND OBTAINING CERTAIN OTHER NEEDED PROPERTIES AND OTHER PURPOSES.** Mr. DeVito moved to approve Ordinance 2140 on its first reading. Mr. Berry seconded. Further discussion included definition of "no benefit to the City", existing legislation for vacating and purchasing property, assurance that expenditures will go before Council, protecting the springs, and means to assure funds from land sales would go to the Landbank. Mr. Pownall called for the question. Ms. Ballance seconded. A roll call vote followed: Mr. Berry, Dr. Kirkpatrick, Mr. Pownall, Ms. Ballance, – Aye. Mr. DeVito – No.

A voice vote on the motion to approve Ordinance 2140 on its first reading passed 4/1/0, with Dr. Kirkpatrick voting No.

**9. Discussion of the Procurement of a Mower for the Cemetery**

Mayor Pate said that, since Ms. Alexander is no longer on Council, Ms. Ballance would need a second. Mr. Pownall seconded. Mr. Pownall moved to postpone until the next meeting based on the agreement with the Cemetery Caretaker. Mr. Berry seconded.

Motion carried 5/0/0

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

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

Motion carried 5/0/0. Ms. Ballance noted Mark Hayes said the protocol on this is for the Mayor to call the Municipal League and make the request. Mr. Pownall motioned for the Mayor to do so. Ms. Ballance seconded.

Motion carried 5/0/0. It was agreed the workshop would be open to County and City officials, Commissioners, and to the public.

## **11. Vacation of Palo Pinto**

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

Motion carried 5/0/0. Beverly Blankenship said vacation of a portion of Palo Pinto has been reviewed by Planning. The Parks Commission held a public hearing and notified all the adjacent property owners. The petitioner has letters of agreement from the adjacent property owners. Planning voted unanimously to recommend the vacation to Council.

Ms. Ballance said the neighbor has requested that the property be divided at the time it is vacated. Mr. Weaver confirmed past requirements for surveys paid for by the adjoining property owners. Discussion followed regarding appraising as if this piece were vacant, accurate deeds at the time of conveyance so as to prevent liability, actual value of the property, and the need for two legal descriptions.

Mr. Berry motioned for the two property owners to get the survey as per requirement and present it to Council. Mr. DeVito seconded.

Motion carried 3/2, with Mr. Pownall and Ms. Ballance voting No. Mr. Pownall motioned to postpone until the next meeting and have the owners present their decision/agreement. Dr. Kirkpatrick seconded. Ms. Grinnell summarized her understanding of the requested action.

Mr. DeVito said he was not feeling well and left the meeting at 9:55 p.m.

Mr. Pownall withdrew his motion. Dr. Kirkpatrick withdrew his second. Mr. Pownall then moved to postpone until July 21 with the understanding that the two parties who requested the vacation decide if they're willing to "roll the dice" and live with what's decided at this table. Dr. Kirkpatrick seconded.

Motion carried 3/0/1, with Ms. Ballance abstaining.

## **12. Digital/Electronic Signs Ordinance**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Ms. Blankenship described some of the current technology and Planning's suggestions. She noted the information had gone to the City Attorney. Mr. Pownall noted that, in conversation with those who update the Code, he understood (the value of not referencing chapter numbers). He suggested correcting the existing Sign Ordinance administratively first. Mr. Pownall then motioned to postpone. Ms. Ballance seconded.

Motion carried 4/0/0

## **NEW BUSINESS:**

### **1. Multi-Family Dwellings**

Mr. Berry moved to discuss. Mr. Pownall seconded. Mr. Pownall motioned to postpone until the first meeting in August. Ms. Ballance seconded.

Motion carried 4/0/0

### **2. Discussion of the Beaver Bridge**

Mr. Pownall moved to withdraw discussion. Ms. Ballance seconded.

### **3. Discussion of Ordinance 2051**

Ms. Ballance moved to discuss. Mr. Pownall seconded. Ms. Ballance motioned to place a 90-day moratorium on Taxi and Limousine business licenses. Mr. Pownall seconded. Ms. Ballance amended to motion to specify October 1. Mr. Pownall seconded.

Motion carried 4/0/0

### **4. Discussion of the Sign Ordinance**

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

Motion carried 4/0/0. Mr. Pownall moved to postpone until the first meeting in August. Ms. Ballance seconded.

Motion carried 4/0/0

### **5. Discussion of Letter of Discontent regarding fluoride**

As Ms. Alexander was one sponsor of the topic and there was no second, this item was dropped.

**6. Discussion of Employee Handbook**

Ms. Ballance moved to postpone until the next meeting. Mr. Pownall seconded.  
Motion carried 4/0/0

**7. Discussion of Alcohol Beverage Tax**

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

Motion carried 4/0/0. Ms. Ballance moved to postpone until the next meeting. Mr. Pownall seconded.

Motion carried 4/0/0

**8. Arkansas Highway and Transportation Grant**

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

Motion carried 4/0/0. Mr. Pownall again expressed his concern about resolutions coming to the table (without notice). He requested discussion after reading and before approval. Mr. Weaver said he is not aware of anything preventing two votes, a new procedure. He said a motion could be made to read, and then a motion to assign a number could be made. Mr. Pownall made a motion to read the resolution. Mr. Berry seconded.

Motion carried 4/0/0. Mayor Pate read the model resolution from the packet, without a number. Mayoral Assistant Diane Wilkerson had modified the resolution with appropriate information. **A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY OF EUREKA SPRINGS TO USE FEDERAL-AID ENHANCEMENT FUNDS** for sidewalks between Hwy. 23N and Hwy. 23S.

Ms. Wilkerson confirmed the City's portion will be approximately \$67,000 and funds will come from Street Reserves. One account has approximately \$70,000 and another has approximately \$300,000. Mr. Pownall made a motion to assign a Resolution number and approve. Mr. Berry seconded.

A voice vote resulted in 3/0/1, with Ms. Ballance abstaining. Mayor Pate added his affirmative vote, carrying the motion with 4/0/1. Ms. Armstrong said the Resolution number will be **582**. Mr. Pownall moved to approve Resolution 582 as read. Mr. Berry seconded.

A voice vote followed: 3/0/1, with Ms. Ballance abstaining. Mayor Pate added his "Yes", carrying the motion with 4/0/1.

**9. Discussion of Personnel Decisions**

Mr. Pownall moved to go into Executive Session to discuss personnel. Mr. Berry seconded.

Motion carried 4/0/0. Following the Executive Session, Mayor Pate called for a motion to close. Mr. Pownall moved to do so and to return to Open Session. Dr. Kirkpatrick seconded.

Motion carried 4/0/0. Mr. Pownall motioned to take no action until further action is taken by the Mayor. Mr. Berry seconded.

A voice vote resulted in 3/0/1, with Ms. Ballance abstaining. Mr. Weaver could find no prohibition (in State Statutes) to the Mayor casting a vote. He said the vote would be based on 14-43-501 with the last subsection saying that the Mayor can vote to establish a quorum at the City Council at any regular meeting of the Council, and when his vote is needed to pass any ordinance, bylaw, resolution, order, or motion. Ms. Ballance chose to change her vote to an "Aye", thus resulting in 4/0/0.

Mayor Pate then said he has hired two people, one for the Finance Director's job and one for the Transit Director's job.

**AGENDA SETTING:**

Mr. Pownall moved to discuss. Mr. Berry seconded. Mr. Pownall moved to suspend the rules and be allowed to email to the City Clerk proposed additions to the next meeting agenda no later than Wednesday, July 13. Dr. Kirkpatrick seconded. Ms. Ballance asked how to get a second.

Mr. Weaver opined that to solicit a second, (a person) would be in violation of FOIA. Two Council members must add to the agenda unless (Council) changes that rule. Mr. Pownall withdrew his motion. Dr. Kirkpatrick withdrew his second.

Ms. Ballance added Office Space in the Court House. Mr. Pownall seconded.

Mr. Pownall added Legalizing the Donation of a Vehicle to the Carroll County Airport. Ms. Ballance seconded.

**CITY COUNCIL COMMENTS:**

Mr. Pownall thanked the Citizens for “sticking with us” and said, “this isn’t easy, but hopefully we can continue doing what we need to be doing. Thank you for the support, attention, and input.”

Ms. Ballance echoed Mr. Pownall’s statement. She congratulated Parker Raphael and wished him Good Luck.

**MAYOR’S COMMENTS:**

Mayor Pate said, “We’re trying to take care of business here, and everybody throws a rock in the way. It becomes very irritating for me, as the Mayor, to do what I’m supposed to do when I don’t get the support I need.” He then spoke about having given the (vehicle) to bring people to Eureka Springs, via an inter-governmental transfer.

Mayor Pate then read a list of upcoming events.

**ADJOURNMENT:**

Mr. Pownall motioned to adjourn. Mr. Berry seconded.

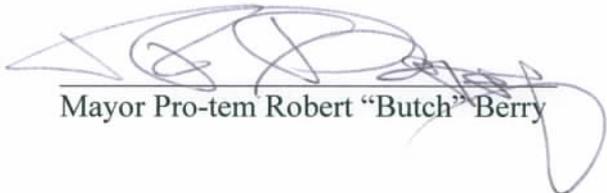
Motion passed 4/0/0. The meeting ended at 11:15 p.m.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Thursday, July 7, 2011.

APPROVED:

ATTEST:

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

  
\_\_\_\_\_  
Mayor Pro-tem Robert “Butch” Berry

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