

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

**CITY OF EUREKA SPRINGS
COUNCIL MEETING
Thursday, November 3, 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: October 20, 2011

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

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

CAPC

Hospital

Cemetery

Parks – Position 5 – expires 5/1/14

HDC – Position 4 – expired 11/30/10

Yellow Bag Research Committee – update on forming Advisory Committee

PUBLIC COMMENTS:

UNFINISHED BUSINESS:

1. Aerial photography demonstration – 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. Update on Alcohol Beverage Tax/CAPC right to collect – Postponed until November 3 -- Mayor Pate
5. Third reading of Ordinance #2143 to codify Parks ¼ cent tax
6. Update on Hospital Commission/Hospital lease – Mr. Pownall and Ms. Ballance
7. Discussion of a Resolution for a Tree-cut Moratorium – Ms. Ballance and Mr. Raphael
8. Resolution regarding extending water and sewer beyond City limits – Mr. DeVito and Mr. Raphael
9. Auditorium Commission Ordinance review – Mr. Berry and Mr. DeVito
10. Mr. Weaver's research on options for access to City property (Rock House Cave) – Ms. Ballance and Mr. Raphael

NEW BUSINESS:

1. Ray Dotson's Animal Drawn Franchise Application – Mayor Pate
2. Kelly Walker's broken window – Ms. Ballance and Mr. Pownall
3. Mid-year Budget Resolution – Postponed until November 3 -- Mayor Pate
4. Ordinance to list Taxis, Limousines, and Hotel/Motel shuttles as separate business licenses – Mayor Pate
5. Resolution for Art Wall and North Main parking lot – Mayor Pate
6. Climate Protection update – Mr. Pownall and Mr. Raphael
7. Workshop for 2011 and 2012 Council Goals in November – Mr. Pownall and Ms. Ballance
8. Discussion of Resolution 511 – Mayor's reports on bids – Mr. Pownall and Ms. Ballance
- 9.. Discussion of State law 14-235-206 – Mr. Pownall and Ms. Ballance
10. Procedure for appointing Commission vacancies – Ms. Ballance and Mr. Pownall
11. Discussion of the grant process – Ms. Ballance and Mr. Raphael

AGENDA SETTING

CITY COUNCIL COMMENTS

MAYOR'S COMMENTS

ADJOURNMENT

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

amended 12/1/11

THURSDAY

NOVEMBER 3, 2011

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, November 3, 2011 in the jury room on the second floor of the Western District Carroll County Courthouse.

PRESENT: Mayor Morris Pate, Aldermen James DeVito, Butch Berry, Ken Pownall, Lany Ballance, Parker Raphael, 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.

SPECIAL PRESENTATION:

Mayor Pate read a letter commending Boy Scout Hendrick Pot for his professional response to an accident involving an elderly lady who was hurt by falling on Spring St. He was presented a certificate in recognition and given a round of applause.

APPROVAL OF THE AGENDA:

Mr. Berry moved to approve the agenda. Mr. DeVito seconded. Ms. Ballance moved to postpone Unfinished Business item #9. Mr. DeVito moved to approve the agenda as amended. Dr. Kirkpatrick seconded.

Motion carried 6/0/0.

APPROVAL OF THE MINUTES: October 20, 2011

Mr. DeVito moved to approve the minutes from the October 20, 2011 Council meeting. Mr. Berry 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 noted a proposal for changes in handicap parking regulations was forwarded to Council. She said most of the language came from State law and she requested this item for the next agenda. Planning is still seeking funding for the zoning map.

CAPC – none

Hospital – Financials were made available.

Cemetery – Mary Ann Pownall presented the 3rd quarter financials. Ms. Pownall noted that only emergency maintenance has been performed since the Cemetery Commission's budget was taken away and she requested that Council consider funding for 2012.

Parks – Position 5 – expires 5/1/14. No report.

HDC – Position 4 – expired 11/30/10

Yellow Bag Research Committee –

Mayor Pate noted he has a meeting with Phil Jackson scheduled for next week.

PUBLIC COMMENTS:

Dawn Harden, owner of Eureka Springs Tree Houses, said she'd received notice about a tree cutting moratorium. Ms. Harden received permission from Planning in 2006 for a two-phase project

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and objected to (the possibility) of being blocked from building the second ten units.

Sue Glave spoke about the 3rd annual Veteran's Day Parade scheduled for Friday, November 11 at 10.00 a.m. Mayor Pate was asked to carry the P.O.W. flag. A Meet and Greet will follow in the Aud and there will be a Veterans art show at Chelsea's.

UNFINISHED BUSINESS:

1. Aerial photography demonstration

Mr. DeVito moved to discuss. Mr. Berry seconded. Mayor Pate said County Tax Assessor Jo Ann Harris set up a November 9 meeting with the company Pictometry. The public is welcome to attend the 10:00 a.m demonstration at the Berryville Community Center.

2. Dog control update/recommended Code changes

Mr. Pownall moved to discuss. Mr. DeVito seconded. City Attorney Tim Weaver reported that he is putting together the information forwarded to him and will try to have it for the next meeting.

3. Non-conforming Off-Premise Signs

Postponed until Code references are corrected

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

Mr. Weaver has been discussing the issue with the Alcoholic Beverage Control (attorneys) to confirm that the City isn't doing anything improper.

5. Third reading of Ordinance #2143 to codify Parks ¼ cent tax

Mr. DeVito moved to discuss. Mr. Berry seconded. Mr. DeVito moved to suspend the rules and place Ordinance #2143 on its third reading by title only. Mr. Berry seconded. A roll call vote followed and all voted "Aye".

Motion carried 6/0/0. Ms. Armstrong read **ORDINANCE 2143 – AN ORDINANCE CONFIRMING THE ADOPTION OF THE INITIATIVE ORDINANCE APPROVED BY THE ELECTORATE OF THE CITY OF EUREKA SPRINGS ON NOVEMBER 7, 2006 REGARDING AMENDING ORDINANCE NO 1906 AND ASSIGNING IT A NUMBER.** Mr. DeVito moved to approve Ordinance #2143 on its third reading. Mr. Berry seconded. A roll call vote followed. All voted "Aye".

Motion carried 6/0/0.

6. Update on Hospital Commission/Hospital lease

Mr. Pownall moved to discuss. Ms. Ballance seconded. Following confirmation from a Hospital Commissioner of the intent to present an audit report at the next meeting, Mr. Pownall moved to postpone until December 1. Mr. Berry seconded.

Motion carried 6/0/0.

7. Discussion of a Resolution for a Tree-cut Moratorium

Ms. Ballance moved to discuss. Mr. Raphael seconded. Ms. Ballance noted for the record this is not for the purpose of preventing the cutting of any trees in Eureka Springs. Referencing Code section 7.56.03, Ms. Ballance noted the Building Official would still be able to permit tree cuts within his authority. The purpose is to assure protection of the natural environment that supports tourism. Mr. DeVito spoke about the number of emails opposing the moratorium and stepping on private property rights. Mr. Pownall favored having the Board of Zoning Adjustment continue review of applications.

Planning Chair Beverly Blankenship noted the ordinance repealing the Harbin Plan, and the 2010 Urban Forestry report indicating the 50-60% canopy cover in Eureka Springs. She read a portion suggesting a thorough thinning and reduction process. Ms. Blankenship said new recommendations from Planning would probably include relaxing requirements on private land.

Ms. Ballance moved to postpone discussion regarding clear-cuts and cutting antique trees. Motion failed for lack of a second.

8. Resolution regarding extending water and sewer beyond City limits

Mr. DeVito moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to read the resolution for discussion purposes only. Mr. DeVito seconded. A voice vote followed.

Motion carried 5/0/1, with Ms. Ballance abstaining due to not having the paperwork. Ms. Armstrong read **A RESOLUTION IN OPPOSITION TO THE CITY WATER AND SEWER SERVICES BEYOND CORPORATE CITY LIMITS**. Mr. DeVito addressed concerns about issues within the City limits and spoke about annexing (future) properties that are connected to services. Mr. Berry noted the wording would not prevent private individuals from paying the City to extend water or sewer. Following Mr. Pownall's suggestion to remove "to not expend any funds", Mr. Weaver opined the (resolution) would then be directing Public Works operations rather than the expenditure of funds. It could be (reworded) to prevent the building of a system and then a request to tie in.

Mr. Pownall moved to assign a number and approve as read. Mr. DeVito seconded. A roll call vote followed. All voted "Aye".

Motion carried 6/0/0. The Resolution was assigned the number **588**.

9. Auditorium Commission Ordinance review

Postponed during approval of the agenda

10. Mr. Weaver's research on options for access to City property (Rock House Cave)

Ms. Ballance moved to discuss. Mr. Raphael seconded. Mr. Weaver reported his research and indicated that direct access from the street would be very difficult and would not comply with the Americans with Disabilities Act. Therefore, negotiations with one of the adjoining land owners or seeking to condemn a piece of property nearby are the options. He noted that limited access granted by a property owner could be viewed as fostering one person's (gain). Mr. Berry noted the stairs prevent (ADA compliance).

NEW BUSINESS:

1. Ray Dotson's Animal Drawn Franchise Application

Mr. DeVito moved to discuss. Mr. Raphael seconded. In response to Mr. DeVito's asking if the application is complete, Ms. Armstrong said there are some things missing. Specific pick up and drop off points have to be listed. She asked if "seven days a week" qualifies as a list of business hours and does "up to \$30" qualify as a schedule of rates. Ms. Armstrong noted there is no address listed for the (only) point of departure-Dairy Hollow. There are areas that overlap an existing franchise.

Mr. DeVito noted an entirely new route would be contrary to the ordinance which established the three franchises that are available. Mr. Pownall said he saw approving a route as an issue separate from approving a franchise.

Mr. Dotson gave his interpretations of the ordinance. He said if he's denied, he will "go after the other routes in existence". Mr. Dotson expressed his intention to use loading zones on the state highway as his only points for pick up and drop off. Ms. Ballance read from Chief Hyatt's letter wherein he said he did not think that "Dairy Hollow Road from Clear Spring School to Pivot Rock was a safe route, as with Armstrong from Main Street to Judah Street."

Mr. Dotson said (Council) is "forcing him to go onto 62", that he has permission to unload by the Lumberyard, and that he will file an injunction if there is to be a feasibility study.

Discussion included a workshop to consider the need for three franchises, the incomplete application, duty to follow the ordinances and laws, uncertainty as to whether Chief Hyatt signed off on the route, his letter of concern, and a resolution to negotiate with the State Highway Department to impose regulations. Mr. Weaver opined Council could remove areas of concern other than state highways.

Mr. DeVito moved to remove portions of the route as stipulated by Chief Hyatt's letter dated

October 27, 2011. Mr. Raphael seconded. Mr. Weaver suggested including language “not in regard to the highways, but only the surface streets that are the City’s”. Mr. DeVito amended the motion as such. Mr. Raphael seconded the amended motion. Mr. Berry amended the motion to include the exclusionary portion as shown on the map Earl Hyatt approved on 10/13- Magnetic Spring to Passion Play Road. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/1, with Ms. Ballance recusing. Mayor Pate then called for a vote on the motion to remove the portions mentioned in Chief Hyatt’s letter and excluding state highways. Ms. Ballance recused and left the room. A roll call vote followed. Mr. DeVito, Mr. Berry, Dr. Kirkpatrick, and Mr. Raphael – “Aye”. Mr. Pownall – “No”.

Motion to approve the route carried 4/1/0.

Mr. DeVito moved to approve the application for the Animal Drawn Vehicle Franchise by Mr. Ray Dotson. Dr. Kirkpatrick seconded. A roll call vote followed. Mr. DeVito, Mr. Berry, Dr. Kirkpatrick – “Aye”. Mr. Pownall and Mr. Raphael – “No”.

The motion appeared to have failed 3/2/0. (It was later determined Mayor Pate’s “Aye” carried the motion 4/2/0.)

Ms. Ballance returned to the table.

2. Kelly Walker’s broken window

Mr. Pownall moved to discuss. Mr. Berry seconded. Ms. Walker recapped her experience wherein her window was broken by a City worker using a weedeater and she got no help from the City insurance. Following brief discussion, Mr. Berry motioned to approve the expenditure of \$262.89 to repair Ms. Walker’s window as per her report. Mr. Raphael seconded. Mr. Berry amended his motion to specify the funds will come from the General Fund. Mr. Raphael seconded the amended motion.

Motion carried 6/0/0.

Ten minute recess

3. Mid-year Budget Resolution

Mr. Raphael motioned to discuss. Mr. DeVito seconded. Mr. DeVito motioned to read the resolution for discussion purposes only. Dr. Kirkpatrick seconded.

Motion carried 6/0/0.

Ms. Armstrong read **A RESOLUTION AMENDING THE ADOPTED 2011 BUDGETS FOR THE CITY OF EUREKA SPRINGS, ARKANSAS, AS A RESULT OF THE MID-YEAR BUDGET REVIEW PROCESS.**

Ms. Ballance asked if there were funds for the Cemetery. Mayor Pate said he is looking into getting a voluntary Cemetery contribution on the next ballot. Ms. Ballance objected to the General Fund line item for retirement. Mr. Pownall objected to voting without someone from Finance to answer questions. Ms. Ballance moved to postpone. Dr. Kirkpatrick seconded.

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

4. Ordinance to list Taxis, Limousines, and Hotel/Motel shuttles as separate business licenses

Ms. Ballance moved to discuss. Mr. Pownall seconded. Ms. Armstrong recapped the problem with having taxis and limousines listed together and noted that shuttles have been licensed as “other” with the same fee (\$50) listed on the resolution. Discussion followed regarding writing an ordinance for limousines, previous Councils’ inaction, eliminating the charge for hotel/motel shuttles, and enforcement of law regarding seating capacity. Dr. Kirkpatrick motioned to take Section 2 out. Mr. DeVito seconded.

Motion carried 5/1/0, with Ms. Ballance voting “No”.

Mr. Pownall moved to remove the emergency clause. Mr. Berry seconded.

Motion carried 6/0/0.

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

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Further discussion included enforcement, clarifying what a license holder is buying, and writing an ordinance regulating limousines. A roll call vote followed.

Dr. Kirkpatrick, Mr. Raphael, and Ms. Ballance – “Aye”. Mr. DeVito, Mr. Berry, and Mr. Pownall – “No”.

Motion failed 3/3/0.

Mr. DeVito motioned to introduce an ordinance regulating limousines. Mr. Pownall seconded. Mr. Pownall favored review of Ordinance #2051 that was rejected by the voters. Mr. DeVito amended the motion to instruct the City Attorney to adopt an ordinance regulating limousine service within the City limits of Eureka Springs. Mr. Pownall seconded.

Motion carried 6/0/0.

5. Resolution for Art Wall and North Main parking lot

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall moved to read the resolution for discussion purposes only. Mr. Berry seconded.

Motion carried 6/0/0.

Ms. Armstrong read **A RESOLUTION IN SUPPORT OF THE USE OF CERTAIN CITY PROPERTY FOR THE PUBLIC DISPLAY OF ART**. Mr. Pownall suggested (the period of use as) two years from the date of passage. After brief discussion, Mr. Pownall moved to assign a resolution number and approve as amended. Mr. DeVito seconded. The resolution was assigned the number **589**. A roll call vote followed. All voted “Aye”.

Motion carried 6/0/0.

6. Climate Protection update

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall requested clarification. Mayoral Assistant Diane Wilkerson confirmed that Nick Brown intends to (write) guidelines and that he has moved to Arizona. Mr. Berry noted installation of the solar hot water heater for Transit and lights for the Parks. Grant funds for the Auditorium storm windows cover about half the cost. Replacement of (an estimated \$6000) heating coil in the Auditorium may be allowed instead.

Mr. Pownall moved to take this item off the agenda. Mr. DeVito seconded.

7. Workshop for 2011 and 2012 Council Goals in November

Mr. Pownall moved to discuss. Mr. DeVito seconded. Following discussion, Mr. Pownall motioned for a workshop on November 10 at 6:00 p.m. No second was recorded.

Motion carried 6/0/0.

8. Discussion of Resolution 511

Mr. Pownall moved to discuss. Dr. Kirkpatrick seconded. Mr. Pownall said he happened to find the Resolution and it wasn't any kind of hunt. He asked how long a resolution lasts requiring the Mayor to report projects to be bid prior to development, and reporting to Council. Mr. Weaver confirmed it's still in effect. Mayor Pate stated his belief that bids are reported.

9. Discussion of State law 14-235-206 Sewer Committee

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Pownall read from State law the requirement for the appointment of a Sewer Committee. He provided an example from Fayetteville Code. Mr. Berry moved to defer until the next meeting. Mr. Pownall seconded.

Motion carried 6/0/0.

10. Procedure for appointing Commission vacancies

Ms. Ballance moved to discuss. Mr. Pownall seconded. Ms. Ballance noted the procedure used now comes from City Code and is not in State law. She moved to change the enabling ordinances for HDC and the Planning Commission so the applications go to the City Clerk to disseminate all the information to Council and the Mayor. Any Council member or the Mayor may nominate, and the Mayor could then appoint with Council's approval. Mr. Raphael seconded.

Discussion followed regarding democratic process, and ways to inform Council and Commissioners those applications have been submitted. Mr. DeVito called the question. Mr. Berry seconded. A roll call vote followed.

Mr. DeVito, Mr. Berry, Dr. Kirkpatrick, Mr. Raphael – “Aye”. Mr. Pownall and Ms. Ballance – “No”.

Motion carried 4/2/0.

Following review of the first motion, Mr. DeVito moved to defer to the next meeting. Dr. Kirkpatrick seconded. (Ms. Ballance withdrew the first motion. Mr. Raphael withdrew his second.)

Motion carried 6/0/0.

11. Discussion of the grant process

Ms. Ballance moved to discuss. Mr. Raphael seconded. Ms. Ballance asked for clarification on the grant process. Mayor Pate stated that Glenna Booth writes the grant (applications) and suggested talking with her. Mr. Raphael suggested including grants for infrastructure improvements and Mayor Pate said he would check on that.

AGENDA SETTING: none

COUNCIL COMMENTS:

Mr. Pownall encouraged everyone to come out for the November 11 Veterans Day parade. Mr. DeVito noted October as one of the best in people’s memories.

MAYOR’S COMMENTS:

Mayor Pate announced he has hired a gentleman for the Finance Director’s job. He is a 20+ year CPA. He read a list of upcoming events.

ADJOURNMENT:

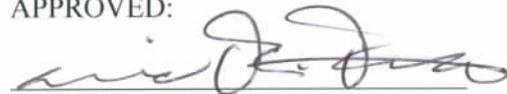
Mr. DeVito moved to adjourn. Mr. Pownall seconded. The time was 9:35 p.m.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Thursday, November 3, 2011.

ATTEST:


City Clerk/Treasurer Ann Armstrong

APPROVED:


Mayor Morris Pate