

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

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING  
Thursday, October 20, 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 6, 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 – expires 5/1/14

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

**Cemetery**

**Yellow Bag Research Committee**

**PUBLIC COMMENTS:**

**UNFINISHED BUSINESS:**

1. Parks Resolution for grant – Mayor Pate
2. Aerial photography contribution – Mayor Pate
3. Dog control update -- Mayor Pate
4. Vacation of Palo Pinto – Postponed until November 3 -- Planning Commission
5. Non-conforming Off-Premise Signs – Postponed until Code references are corrected – Planning Commission
6. Update on Alcohol Beverage Tax/CAPC right to collect – Postponed until November 3 -- Mayor Pate
7. Second reading of Ordinance #2143 to codify Parks ¼ cent tax
8. Ray Dotson's carriage franchise application – postponed until November 3 -- Mayor Pate

**NEW BUSINESS:**

1. Procedure for passing resolutions – Mayor Pate
2. Discussion of Hospital Commission/Hospital – Mr. Pownall and Ms. Ballance
3. List of Surety Bonds required of City officials – Mr. Pownall and Ms. Ballance
4. Discussion of a Tree-cut Moratorium – Ms. Ballance and Mr. Raphael
5. Mid-year Budget Resolution – Mayor Pate
6. Discussion of extending water and sewer beyond City limits – Mr. DeVito and Mr. Raphael
7. Update on Auditorium Committee – Mr. Raphael and Ms. Ballance
8. Discussion of State Statute 14-52-201 (Number of subordinate police officers) – Ms. Ballance and Dr. Kirkpatrick
9. Discussion of access to City property (Rock House Cave) – Ms. Ballance and Mr. Raphael
10. Discussion of Outsourcing Finance – Ms. Ballance and Dr. Kirkpatrick
11. Resolution for additional funding for Zoning map w/lots and blocks – Mayor Pate
12. Ordinance for Property Taxes – Mayor Pate
13. Ordinance to list Taxi franchise, Limousines, and Hotel/Motel shuttles as separate business licenses – Mayor Pate
14. Quarterly financial report – State Statute 14-43-506 – Mayor Pate
15. Resolution for Art Wall and North Main parking lot – Mayor Pate
16. Discussion of Climate Protection meetings – Mr. Pownall

**AGENDA SETTING  
CITY COUNCIL COMMENTS  
MAYOR'S COMMENTS  
ADJOURNMENT**

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

**THURSDAY**

**OCTOBER 20, 2011**

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, October 20, 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, 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. Berry moved to approve the agenda. Mr. DeVito seconded. Dr. Kirkpatrick moved to postpone New Business item #8 (State Statute 14-52-201) until further notice and item #10 (Outsourcing Finance) until the November meeting. Mr. DeVito seconded. Mr. Pownall called for the addition of New Business #16 (Discussion of the Climate Protection meetings). Mr. Raphael seconded. Mayor Pate called for a motion to approve the agenda as amended. Mr. DeVito did so. Mr. Berry seconded.

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

**APPROVAL OF THE MINUTES: October 6, 2011**

Mr. Berry moved to approve the minutes from the October 6, 2011 Council meeting. Mr. Pownall seconded. There was no discussion. Mayor Pate said the minutes were approved.

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

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

Mayor Pate said there were no submissions for nominees at this time. Planning Chair Beverly Blankenship requested an additional \$4200 for the zoning map with the recommended addition of platted lot and block numbers. She noted a new requirement for maps to be scaled. A rough draft could be made in about four weeks following the go-ahead. Mr. DeVito confirmed the new figure total of \$6000.

**CAPC** – none

**Hospital** – none

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

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

**Cemetery**

Mr. Pownall spoke for the Secretary/Treasurer. He said a written report will be available at the next meeting.

**Yellow Bag Research Committee**

Ms. Ballance noted the Committee is waiting for the City to come into compliance with the ordinance. She referred to the requirement for the City to have a Solid Waste Advisory Committee. Ms. Ballance also spoke about the contract requirement for approved containers and tags.

Mr. Berry asked the Mayor to establish the committee. Mr. Pownall moved to add this to the agenda for the next meeting. Ms. Ballance seconded.

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

**City Council** 10/20/11 **1**

## **PUBLIC COMMENTS:**

**Perry Evans**, Carroll County Airport General Manager, thanked Council for the Tahoe that was donated. He said 99% of the pilots come and get rooms in Eureka Springs and he noted that personal cars have been loaned to accommodate people.

Ms. Ballance said she wanted it in the record that the car belonged to the citizens of Eureka Springs and it was given away without running it by the City Council first.

**Kelly Walker**, 11-year citizen, provided copies of paperwork regarding the September 26, 2011, incident in which her car window was broken by a rock from a weedeater operated by a Public Works employee. Reports were filed with police and with the Municipal Property Program. Ms. Walker was notified the Program does not cover weed eaters. She spoke about the injustice of the situation and suggested getting an insurance program that covers all the work the City does.

Ms. Ballance moved to put this on the next agenda. Mr. Pownall seconded.

Motion carried 6/0/0.

**Judith Leswig** said it is disgraceful for Council to turn down free money to improve Parks. She said Council should be expending their efforts making the City a better place instead of personal agendas.

**Mickey Schneider** said her son is home from Afghanistan. She explained her reasoning in listing her name ten times on the Public Comments sign-up sheet. Ms. Schneider said she had gone back through all of the 2011 minutes and she commented on two. She then went over the Council's Oath of Office and her understanding of its meaning.

After hearing from Ms. Schneider that she intended to (speak) for 30 minutes, Mr. Raphael left the room. It was 6:25 p.m.

Ms. Schneider then critiqued Council response to the proposed grant for Parks, Council concern for maintenance of Parks, representing the people, her perception of back-door politics, and efforts to "take over" the Police, Fire and Parks Departments. She commented on a proposed tree-cut moratorium, Wal Mart, yellow trash bags, down loading information on how to make a bomb, her belief that two-week old (draft) minutes should be available on the web site, the cell-tower law suit, and paraphrasing.

Mr. Raphael returned to the table.

## **UNFINISHED BUSINESS:**

### **1. Parks Resolution for grant**

Mr. Pownall moved to finish item #1 as voted on at the last meeting. Mr. DeVito seconded. Mayor Pate asked if there was any discussion. Ms. Ballance offered photographs of some Parks installations in need of maintenance. Mayor Pate then said there would be no discussion. Ms. Ballance objected to the procedure. Mr. Weaver spoke about the various ways resolutions have been handled. He said this one did not carry the stipulation to read and then discuss. Mr. Weaver repeated the steps taken during the last meeting.

Following extensive discussion, Ms. Ballance moved to temporarily lay aside the question, until such time (Council has) discussed the procedure for resolutions. Mr. Raphael seconded. A roll call vote followed. Ms. Ballance, Dr. Kirkpatrick, and Mr. Raphael – "Aye". Mr. Berry, Mr. DeVito, and Mr. Pownall – No".

Motion failed.

Reverting to the motion passed at the last meeting to assign a number and read the resolution, Ms. Armstrong read **Resolution 587- WHEREAS EUREKA SPRINGS, ARKANSAS, RECOGNIZES THE NEED TO PROVIDE OR IMPROVE PUBLIC ACCESS FOR THE OBSERVATION OF ARKANSAS WILDLIFE.**

**2. Aerial photography contribution**

Mr. DeVito moved to discuss. Mr. Berry seconded. Mayor Pate said County Tax Assessor Jo Ann Harris reported a change from contracting with Sanborn to working with Trent Evans for four inch/3D aerial photography. He said Mr. Evans could give Council a demonstration. Discussion followed regarding the expense and value of (a detailed) zoning map versus an aerial map. Mr. Berry spoke in favor of the demonstration and Mayor Pate agreed to make arrangements.

**3. Dog control update**

Mr. Berry moved to discuss. Mr. Raphael seconded. Mr. Pownall said the Animal Control Office Jim Evans has a contract for ten hours a week. Mr. Evans is working about two thirds more than (the contract defines). Since January 1, 2011, 34 tickets have been issued. Seventeen bonds were forfeited. Three people pled guilty and paid the fine, eight pled not guilty, and six tickets are recent.

Recommended (Code) changes are being forwarded to the City Attorney. Mr. Pownall suggested increasing the contract hours.

**4. Vacation of Palo Pinto**

Mr. Pownall moved to remove this from the agenda until the requesting party brings it back to the table. Mr. DeVito seconded.

Motion carried 6/0/0.

**5. Non-conforming Off-Premise Signs**

Postponed until Code references are corrected

**6. Update on Alcohol Beverage Tax/CAPC right to collect**

Postponed until November 3

**7. Second 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 second reading by title only. Mr. Pownall seconded. A roll call vote followed and all voted "Aye".

Motion carried 6/0/0. Ms. Armstrong read the title of **ORDINANCE 2143**. Mr. DeVito moved to approve the second reading of Ordinance #2143. Mr. Pownall seconded. A voice vote followed in which all voted "Aye".

Motion carried 6/0/0.

**8. Ray Dotson's carriage franchise application**

Mr. Pownall moved to remove this item from the agenda until such time as there is an appropriate application received. Mr. DeVito seconded. Mr. Weaver said he understood Mr. Dotson may make some corrections to one he submitted. Mr. DeVito noted the application would come before (Council) whether (Mr. Dotson) is amending the original application or making a new application. A voice vote on removal from the agenda followed. All voted "Aye".

Motion carried 6/0/0.

**NEW BUSINESS:**

**1. Procedure for passing resolutions**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Following discussion, Mr. Pownall motioned to have a two-step process in passing resolutions: 1) read and discuss, and 2) assign a number and approve as read or amended. Ms. Ballance seconded. A roll call vote followed in which all voted "Aye".

Motion carried 6/0/0.

**2. Discussion of Hospital Commission/Hospital**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Pownall has been researching

old minutes, City Code, files, and the 1995, 25-year lease agreement. He did not find the release to Washington Regional or any of its entities. Mr. Pownall said he's on a fact finding mission with the City Attorney to learn if the lease is still in effect and where the money has gone. He said the Commission reports through the State audit system and he expressed a concern for the absence of records.

Mr. Weaver said he believes the Hospital Commission has its own Counsel. Mr. Pownall noted the first sentence of the agreement says it's "between the City of Eureka Springs, Arkansas" and that brings the City Attorney 'into the fray' unless there's been a change since 1995."

Mayor Pate said he believes there is a Commission meeting scheduled for Monday night.

Dr. Kirkpatrick called for a ten minute recess. Ms. Ballance seconded.

Motion carried 6/0/0.

When the session resumed, Mr. Pownall motioned for someone from the Commission to address Council at the next meeting to answer the questions he's posed. Ms. Ballance seconded. A voice voted followed with all voting "Aye".

Motion carried 6/0/0.

### **3. List of Surety Bonds required of City officials**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Pownall asked for (confirmation that) the (coverage) is by position and not by name. Mr. Weaver opined in the affirmative with the exception of those required under State law to have their own bonding by name. Mr. Pownall said this can be taken off of the agenda.

### **4. Discussion of a Tree-cut Moratorium**

Ms. Ballance moved to discuss. Mr. Raphael seconded. Ms. Ballance read portions of the proposed resolution regarding the City's dependence upon trees and the natural environment. She noted that the Board of Zoning Adjustment (BOZA) has not denied a single tree-cut in ten years.

Mr. Pownall moved to read the resolution for discussion. Ms. Ballance seconded. Mr. Berry moved to defer until the next meeting as he had no copy of the resolution. Mr. DeVito seconded. A roll call vote followed: Mr. DeVito, Mr. Berry, Mr. Pownall, and Dr. Kirkpatrick – "Aye". Ms. Ballance and Mr. Raphael – "No".

Motion carried 4/2/0.

Ms. Ballance motioned to rename the item "Discussion of a resolution for a Tree-cut Moratorium". Mr. Raphael seconded. A voice vote followed with all voting "Aye".

Motion carried 6/0/0.

### **5. Mid-year Budget Resolution**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall noted the absence of anyone from Finance to answer questions. He motioned to delay until the next meeting. Ms. Ballance seconded. At Mr. Weaver's suggestion, a roll call vote was taken. All voted "Aye".

Motion carried 6/0/0.

### **6. Discussion of extending water and sewer beyond City limits**

Mr. DeVito moved to discuss. Mr. Raphael seconded. Mr. DeVito spoke in favor of annexing properties that are provided City water as those outside the corporate limits are apt to have septic tanks. He noted areas in town that have yet to be (connected to the sewer system). Dr. Kirkpatrick agreed, noting there are water leaks to be fixed. Mr. DeVito asked the City Attorney to write an ordinance saying the City will not extend water and sewer beyond the City limits. Mr. Raphael spoke in favor of a resolution until everyone is hooked onto sewer and the water leak rate is reduced to something like 25%. Mayor Pate entertained a motion for a resolution for the next meeting. Mr. DeVito moved to do so. Mr. Raphael seconded. A voice vote followed in which all voted "Aye".

Motion carried 6/0/0.

**7. Update on Auditorium Committee**

Mr. Berry moved to discuss. Mr. Raphael seconded. Mr. Berry offered an update from the monthly Committee meetings. The first meeting focused on technical aspects and infrastructure of the Auditorium. The following meetings covered various issues regarding running the Auditorium and the ultimate agreement that a commission is needed. Past failures were due to lack of funding. It is Mr. Berry's understanding that the total cost for utilities and costs related to productions totals between \$125-150,000 a year. In the last ten years, between \$750,000 and \$1,000,000 have gone into building repairs and improvements.

He said the committee's recommendation is to establish a commission as per State law and to have the City initiate a vote of the people for a ¼ cent sales tax dedicated strictly to the maintenance and operation of the facility. There would be a 5-year sunset clause. If the City were to lease the Auditorium, there may be loss of opportunity for local shows and civic events such as the High School graduation. He noted there are \$2-300,000 of deferred maintenance issues to be addressed.

Mr. Berry made a motion to have an Auditorium Commission ordinance prepared for review. Mr. DeVito seconded. A voice vote followed.

Motion carried 5/1/0 with Dr. Kirkpatrick voting "No".

**8. Discussion of State Statute 14-52-201**

Postponed during approval of the agenda until further notice

**9. Discussion of access to City property (Rock House Cave)**

Ms. Ballance moved to discuss. Mr. Raphael seconded. Ms. Ballance observed the lack of access to the cave and asked if the person who fenced it could gain ownership (by adverse possession). Mr. Weaver indicated adverse possession does not apply with government property. Because the property is land-locked the City could purchase access or bring a condemnation suit for access.

Mr. Pownall spoke in favor of having hours posted when the cave could be accessed by the public. Following discussion, Mr. Pownall moved to have the City Attorney research options and present them at the earliest possible time. Mr. Parker seconded. By voice vote all agreed.

Motion carried 6/0/0

**10. Discussion of Outsourcing Finance**

Postponed during approval of the agenda until November 3

**11. Resolution for additional funding for Zoning map w/lots and blocks**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall made a motion to postpone until the next meeting and after (Council) has done the mid-year budget review. Mr. DeVito seconded. Following a comment from Mr. Berry, Mr. Pownall withdrew his motion and Mr. DeVito withdrew his second. Mr. Berry motioned to postpone until the 2012 budget meeting. Mr. Pownall seconded. A roll call vote followed: Ms. Ballance, Mr. DeVito, Mr. Pownall, Dr. Kirkpatrick, and Mr. Berry – "Aye". Mr. Raphael – "No".

Motion carried 5/1/0.

**12. Ordinance for Property Taxes**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall motioned to assign a number and read the ordinance. Mr. Berry seconded. A voice vote followed.

Motion carried 6/0/0.

Ms. Armstrong read **Ordinance 2145 – AN ORDINANCE LEVYING A TAX ON ALL REAL AND PERSONAL PROPERTY IN THE CITY OF EUREKA SPRINGS, ARKANSAS**. Mr. DeVito moved to approve Ordinance #2145 on its first reading. Ms. Ballance seconded. Ms. Armstrong confirmed this is a yearly process and there has been no increase in the tax rate. A voice vote followed.

Motion carried 6/0/0.

Mr. Pownall moved to suspend the rules and to read Ordinance #2145 on its second reading

by title only. Mr. DeVito seconded. A roll call vote followed. All voted “Aye”.

Motion carried 6/0/0.

Ms. Armstrong read Ordinance #2145 by title only. Mr. Pownall moved to approve Ordinance #2145 on its second reading. Mr. Raphael seconded. A voice vote followed.

Motion carried 6/0/0.

Mr. Pownall moved to suspend the rules and read Ordinance #2145 on its third reading by title only. Mr. Berry seconded. A roll call vote followed: Mr. Berry, Mr. Pownall, Dr. Kirkpatrick, Mr. Raphael, and Mr. DeVito – “Aye”. Ms. Ballance – “No”.

Motion carried 5/1/0.

Ms. Armstrong read Ordinance #2145 by title only. Mr. DeVito moved to approve Ordinance #2145 on its third reading. Dr. Kirkpatrick seconded. A roll call vote followed. All voted “Aye”.

Motion carried 6/0/0.

Mr. DeVito moved to read the emergency clause. Mr. Pownall seconded. A roll call vote followed: Mr. Berry, Mr. Pownall, Dr. Kirkpatrick, Mr. Raphael, and Mr. DeVito – “Aye”. Ms. Ballance – “No”.

Motion carried 5/1/0.

Ms. Armstrong read the emergency clause.

**13. Ordinance to list Taxi franchise, Limousines, and Hotel/Motel shuttles as separate businesses**

Mr. DeVito moved to discuss. Mr. Berry seconded. Ms. Armstrong explained that licensing these businesses separately would prevent limousines from operating as taxis. State and Federal laws could then be followed. Hotel and motel shuttles would no longer be listed as “other” and would still be licensed at the rate they are now. Mr. Pownall moved to postpone until the next meeting, for further research. Ms. Ballance seconded. Following brief discussion, a voice vote followed.

Motion carried 4/3/0 with Mr. DeVito, Mr. Parker, and Dr. Kirkpatrick voting “No” and Mayor Pate adding his “Aye” to carry.

**14. Quarterly financial report**

Mr. Berry moved to discuss. Mr. Pownall seconded. Ms. Armstrong noted a list of reimbursements and grants plus a list of fixed assets had been provided. At the table, copies of the last three months clearing account, payroll, debt service and bank reconciliations were presented. Records will be available in the Clerk’s office for one week for Council review.

Ms. Armstrong expressed concern for the situation in which one person has carried the responsibilities and information for finance and accounts payable for four months. She requested a workshop as soon as possible so as to make a decision about the Finance Department.

**15. Resolution for Art Wall and North Main parking lot**

Mr. Berry moved to discuss. Mr. DeVito seconded. Mr. Berry moved to defer until the next meeting. Mr. Pownall seconded. A voice vote followed.

Motion carried 6/0/0.

**16. Climate Protection**

Mr. Pownall moved to discuss. Ms. Ballance seconded. To answer Mr. Pownall’s questions regarding updates, Mayoral Assistant Diane Wilkerson addressed Council. She noted there have been two meetings and Nick Brown has another scheduled. Department heads and Council will have an opportunity for review. The emissions inventory has been completed. The second part is to provide a plan the City will work by to reduce emissions by 2050. Mr. Pownall moved to put this on the next agenda. Mr. Raphael seconded. A voice vote followed.

Motion carried 6/0/0.

**AGENDA SETTING:**

Mr. Raphael added Vehicle Purchases process. Ms. Ballance seconded.

Mr. Raphael added Deer Committee report. Dr. Kirkpatrick seconded.

Mr. Raphael added Infrastructure. Ms. Ballance seconded.

Mr. Pownall added Workshop for Council Goals for 2011 and 2012, sometime in November, before the holidays. Ms. Ballance seconded.

Mr. Pownall added Discussion of Resolution 511 – Mayor reports on bids. Ms. Ballance seconded.

Mr. Pownall added Discussion of State law 14-235-206. Ms. Ballance seconded.

Ms. Ballance added Procedure for Appointing Commission Vacancies. Mr. Pownall seconded.

Ms. Ballance added Discussion of the Grant Process. Mr. Raphael seconded.

Mr. Berry spoke for a workshop on the Finance Director position. Mr. DeVito seconded.

**COUNCIL COMMENTS:**

Mr. Pownall spoke about City Code and State (law) requirements for reporting to (Council) and to the Mayor’s office. He thanked everyone for the phone calls and emails.

Mr. Parker said spoke about the need for (addressing) infrastructure and finance.

Ms. Ballance said people want streets and walls repaired. She appealed to the Mayor for a handrail on the sidewalk up Flint St., completion of the sidewalk on Flint St., repair of the handrails on the several sets of stairs from First St. to Armstrong, and a “yield” sign at the intersection by the Flint St. Foodbank. She thanked (citizens) for their support.

**MAYOR’S COMMENTS:**

Mayor Pate read a list of upcoming community events. He thanked all the City employees who participated in the Flint St. Foodbank food drive. Mayor Pate gave the date and time for flu shots at the Family Medical Clinic.

**ADJOURNMENT:**

Mr. DeVito moved to adjourn. Mr. Berry seconded.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Thursday, October 20, 2011.

ATTEST:

  
City Clerk/Treasurer Ann Armstrong

APPROVED:

  
Mayor Morris Pate