

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

CITY OF EUREKA SPRINGS
COUNCIL MEETING
Thursday, October 6, 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: September 15, 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:

NEW BUSINESS:

1. Aerial Photography – Mayor Pate

UNFINISHED BUSINESS:

1. Dog control update -- Postponed until October 6 -- Mayor Pate
2. Vacation of Palo Pinto – Postponed until November 3 --Planning Commission
3. Non-conforming Off-Premise Signs – Postponed until Code references are corrected
4. Update on Alcohol Beverage Tax/CAPC right to collect – Postponed until October 6 -- Mayor Pate
5. Operations Manual for Finance Department – Postponed until today/New Finance Director is hired -- Ms. Ballance and Dr. Kirkpatrick
6. New Accounting Software for Finance Department – Postponed until today/New Finance Director is hired -- Ms. Ballance and Dr. Kirkpatrick
7. Multi-Family Dwellings Appendix Ordinance #2142 – third reading
8. Ordinance to codify Parks ¼ cent tax – Mr. DeVito and Mr. Berry
9. Ray Dotson's carriages – Mr. Weaver's opinion -- Mayor Pate
10. Discussion of Forensic Audit – Ms. Ballance and Dr. Kirkpatrick

NEW BUSINESS:

2. Parks resolution for grant – Mayor Pate
3. Discussion of Hospital Commission/Hospital – Mr. Pownall and Ms. Ballance
4. List of Surety Bonds required of City officials – Mr. Pownall and Ms. Ballance
5. Discussion of a Tree-cut Moratorium – Ms. Ballance and Mr. Raphael
6. Mid-year Budget Resolution – Mayor Pate
7. Discussion of extending water and sewer beyond City limits – Mr. DeVito and Mr. Raphael
8. Update on Auditorium Committee – Mr. Raphael and Ms. Ballance
9. Discussion of State Statute 14-52-201 (Number of subordinate police officers) – Ms. Ballance and Dr. Kirkpatrick
10. Discussion of access to City property (Rock House Cave) – Ms. Ballance and Mr. Raphael
11. Discussion of Outsourcing Finance – Ms. Ballance and Dr. Kirkpatrick

AGENDA SETTING

CITY COUNCIL COMMENTS

MAYOR'S COMMENTS

ADJOURNMENT

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

THURSDAY

OCTOBER 6, 2011

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, October 6, 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, 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. Mayor Pate moved New Business item #6 to precede New Business. He called for a motion to approve the agenda as amended. Mr. DeVito did so. Mr. Pownall seconded.

Motion carried 6/0/0.

APPROVAL OF THE MINUTES: September 15, 2011

Mr. DeVito moved to approve the minutes from the September 15, 2011 Council meeting. Mr. Berry seconded.

Motion carried 5/0/1, with Mr. Pownall abstaining due to absence.

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND VACANCIES:

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

Planning Chair Beverly Blankenship said work on the zoning map is on hold while the cost of overlaying lot and block numbers with zones is (researched). Information was provided regarding the Sustainable Design Assessment Team Program (SDAT) application for a grant for assistance from a team of architects, planners, hydrologists, economists, attorneys and other professionals. They would help to assess the town and develop a vision plan as a step toward a master plan. Ms. Blankenship requested Council (consideration) for \$5,000 in January for the application submittal deadline of November 18, 2011.

Planning Commissioners are requesting an inter-commission meeting once or twice a year to exchange information and (coordinate projects).

Mayor Pate nominated Mickey Schneider to continue in Planning Position 1. Discussion followed regarding procedure for voting to fill commission seats. Mr. Berry moved to approve the nomination. Mr. DeVito seconded. Ms. Ballance objected. Mr. DeVito called point of order and said comments were not germane. Mayor Pate called for an end to discussion. Ms. Ballance appealed the decision of the Chair. A roll call vote for Ms. Ballance's right to continue followed: Ms. Ballance, Mr. Pownall, Mr. Raphael, and Dr. Kirkpatrick – "Aye". Mr. Berry and Mr. DeVito – "No".

Motion carried 4/2/0. Ms. Ballance and Mr. DeVito had differing memories of an opinion expressed by Ms. Schneider while she was on Council. A voice vote on the nomination followed: Motion failed 2/4/0, with Mr. Raphael, Dr. Kirkpatrick, Ms. Ballance, and Mr. Pownall voting "No".

CAPC – none

Hospital – none

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Parks – Position 5 – expires 5/1/14. none
HDC – Position 4 – expired 11/30/10. none
Cemetery – none
Yellow Bag Research Committee --

Ms. Ballance noted the contract calls for the City to have a Solid Waste Advisory Committee. She had spoken with Carroll County Solid Waste Director Phil Jackson and read from the 2008 contract. Ms. Ballance said an ordinance was passed which conflicts with the contract. Discussion followed regarding the use of bags, tags, and containers as outlined in the contract and methods for notifying and charging businesses when excess trash is picked up. Mr. Berry requested a copy of the contract.

PUBLIC COMMENTS:

Mila Floro, EAST Program Facilitator at the Eureka Springs High School, introduced students Travis Ramsey and Langley Wolfenbarger. Ms. Floro spoke briefly about the Robotics Team and the MIT InvenTeam. An MIT grant allowed the team to develop and present a blood pressure measuring device for the young. In 2010, the team received an award for a Life Capsule invention. MIT has offered another grant and the InvenTeam is seeking matching funds. Wallets were opened and \$150 were collected.

Mickey Schneider thanked those who gave singing fish (for shipment to her Marine son, Jeremy). She noted the upcoming Veterans Parade. Ms. Schneider then explained her comment that was discussed during the Planning Commission vote and expressed her displeasure.

Tom Tharp, owner of Olden Days Carriage, spoke about the ordinance for carriage franchises and the existing franchise which is available. He asked that everyone play by the rules.

Donna Foster, co-owner of 287 Spring St., spoke against including 285 Spring St. on the list of legally non-conforming multi-family dwellings. Ms. Foster said a letter was sent to Council identifying the Code sections neighbors and she believe disqualify this property. She also expressed concern regarding safety and financial impact.

Bob Howle, owner of 285 Spring St., spoke about the wording in Ordinance 2142 and said CUPs are not the issue. He said all three units are rented to good tenants and requested to be kept on the list.

Margie Anderson, co-owner of a downtown business, asked if any (Council members) had spoken with (Police Chief) Earl Hyatt about what budget cuts would do to that department. She asked about 24/7 protection of downtown businesses, someone to answer the telephone after 5 o'clock at night, and police officers at the elementary and middle schools. Ms. Anderson said she understood the budget may be cut for the Fire Department and spoke against outsourcing any part of the Finance Department. She does not favor making the Parks Commission a department.

NEW BUSINESS:

1. Aerial Photography

Mayor Pate gave an overview of Carroll County Tax Assessor's request for help with the cost of producing an aerial map of the county. A visual example of an image was shown and discussion followed regarding the potential use by EMS, the Police and Public Works Departments. Ms. Armstrong noted overlays of the plat map could be added after (City Hall) computers are upgraded. The money commitment is needed in November 2011, and she will confirm the pay-out would be in 2012. Discussion followed about who in the City would use the aerial map, the zoning map as a separate product, and when the 2012 budget will be prepared.

UNFINISHED BUSINESS:

1. Dog control update

Mr. Pownall said Animal Control Officer Jim Evans is spending two to three times more than the Police Department has budgeted for animal control. Concern for the length of time involved between citations being issued and action by the Court was expressed by Mr. Pownall. Mr. Weaver encouraged contacting the Court Clerk for an update on the Court schedule and spoke about the legal three-step process in Arkansas.

2. Vacation of Palo Pinto

Postponed until November 3

3. Non-conforming Off-Premise Signs

Postponed until Code references are corrected

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

Mr. DeVito moved to discuss. Mr. Berry seconded. Mr. Weaver said he will be talking again with (Alcohol Beverage Control attorneys) and forwarding information to David Shoen at the Municipal League. Mayor Pate called for postponement until November 3. Mr. DeVito moved to do so. Mr. Berry seconded.

Motion carried 6/0/0.

5. Operations Manual for the Finance Department and

6. New Accounting Software for Finance Department

Ms. Ballance said these were to have been postponed until a new Finance Director is hired. Mayor Pate responded he is not going to hire anyone until Council decides whether to outsource. Ms. Ballance moved to postpone until a new Finance Director is hired. Mr. Raphael seconded. Mr. DeVito said he saw no reason to have these on the agenda. A roll call vote followed: Mr. Raphael, Mr. Pownall, and Ms. Ballance – “Aye”. Dr. Kirkpatrick, Mr. DeVito, and Mr. Berry – “No”.

Motion failed 3/3/0. Mr. Berry moved to remove the two items from the agenda and to bring them back at a later date. Mr. DeVito seconded. A voice vote followed.

Motion passed 4/3/0, with Mayor Pate adding his “Yes” to carry.

7. Multi-Family Dwellings Appendix Ordinance #2142

Mr. Pownall moved to discuss. Mr. Berry seconded. Mr. DeVito moved to suspend the rules and place Ordinance #2142 on its third reading by title only. Mr. Raphael seconded. A roll call vote followed: All voted “Aye”.

Motion carried 6/0/0. Ms. Armstrong read **ORDINANCE 2142 – AN ORDINANCE CLARIFYING THE QUALIFYING LEGALLY NON-CONFORMING MULTI-FAMILY DWELLINGS IN R-1 ZONING AS OF THE PASSING OF THIS ORDINANCE.** Mr. DeVito moved to approve Ordinance #2142 on its third reading. Dr. Kirkpatrick seconded. Mr. Pownall addressed the issue of business licenses for tracking and enforcement purposes. Mr. DeVito spoke about the need for affordable housing. Ms. Blankenship said these were legal before the laws changed and the purpose was to identify them. A roll call vote followed: Dr. Kirkpatrick, Ms. Ballance, Mr. DeVito, Mr. Raphael, and Mr. Berry – “Aye”. Mr. Pownall – “No”.

Motion carried 5/1/0.

8. Ordinance to codify Parks ¼ cent tax

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Weaver said the purpose of the Ordinance is to confirm the vote of the people in 2006 and to give it a number so it can be put in the Code. It is a clean-up issue. Mr. DeVito moved to assign the ordinance a number and place it on its first reading. Mr. Pownall 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 first reading. Mr. Pownall seconded. By roll call, all agreed.
Motion carried 6/0/0.

Ms. Ballance moved for a ten minute break. Mr. Pownall seconded.
Motion carried 6/0/0.

9. Ray Dotson's carriages – Mr. Weaver's opinion

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Weaver has reviewed information from the State Highway Department, reviewed (Code), and been contacted by Mr. Dotson twice. "It's about as clear as mud". The Highway Department will defend their right to say who can use the highway. Mr. Weaver believes the Ordinance to be valid and that the City can enforce business licenses and depots not on the State Highway. He spoke about the possible need for a judicial determination.

Discussion followed regarding business licenses, regulating commerce within the City, possibly taking Hwy. 23 out of the route descriptions, and validity of the franchise ordinance. Ms. Ballance moved to postpone discussion until the next meeting. Mr. Pownall seconded. Mr. Berry saw no reason to defer. Mr. Pownall withdrew his second. Ms. Ballance withdrew her motion.

Mr. Weaver said Mr. Dotson believes he has made application, was refused a business license, and his money is still being held. Ms. Armstrong noted the 12/15/10 date on the application and that the previous Council decided that Mr. Tharp would have the franchise. A refund of \$350 was offered to Mr. Dotson and he did not want it.

Mr. Dotson addressed Council and agreed that the application on the table was for the second franchise, the one issued to Mr. Tharp. He said he came back the next week and applied for the third franchise. Mr. Dotson said the way the ordinance is set up is "the carriage company sets out the route he desires on his franchise". He said he believes the Clerk has that application and that the City can regulate anything about horse drawn carriages by ordinance. Mr. Dotson spoke further about State Highways and his belief that licenses from another town (are legal) as long as he doesn't have an established facility here.

Mr. DeVito suggested putting this on the agenda if it meets all the criteria of an application for the third franchise. Mr. Dotson said this issue began in 2004. Mr. DeVito moved the question of the third franchise, with the help of the City Attorney and the City Clerk in determining if it's a legitimate claim, and to place it on the next agenda. Mr. Berry seconded. A roll call vote followed: Dr. Kirkpatrick, Mr. Raphael, Mr. DeVito, and Mr. Berry – "Aye". Ms. Ballance and Mr. Pownall – "No".

Motion carried 4/2/0.

10. Discussion of Forensic Audit

Ms. Ballance moved to discuss. Dr. Kirkpatrick seconded. Ms. Ballance said she spoke with several CPAs who would like to (address Council). She moved to have a workshop on October 10 or October 17. Dr. Kirkpatrick seconded. Ms. Ballance amended her motion to October 17 at 2:00 in the jury room. Discussion followed regarding whether there are charges against the Finance Department, upcoming review of the (2010) audit, red flags from previous events, expense, and contacting the State Legislative Auditors for a more thorough report. Mr. Pownall spoke for review of the (2010) audit by the governing body. Ms. Ballance expressed concern for audits from five years. Mayor Pate called for a vote. A voice vote was called.

Motion failed 3/2/1, with Mr. Berry and Mr. DeVito voting "No" and Mr. Pownall abstaining.

NEW BUSINESS:

1. Parks resolution for grant

Mr. Pownall moved to discuss. Mr. DeVito seconded. Discussion followed regarding Parks as autonomous, the grant requirement for a resolution, and the resolution section regarding a 10-year commitment to provide the necessary resources to maintain this park and facilities. Mr. Levine recapped the application process and how the funds would be spent. It was confirmed this is a no-match grant for up to \$100,000. Further discussion included maintaining what Parks has now, the grant application deadline of October 28, and the mandated requirement for a master plan by next September.

Mr. DeVito moved to give the resolution a number and to read it. Mr. Berry seconded. A roll call vote followed: Mr. DeVito, Dr. Kirkpatrick, Mr. Pownall, and Mr. Berry – “Aye”. Ms. Ballance and Mr. Raphael -- “No”. It was confirmed that assigning a number and reading the resolution means it is passed. Dr. Kirkpatrick said he wanted to change his vote.

The 4/2 vote then became 3/3. Mayor Pate added his “Yes”.

Motion carried 4/3/0.

Mayor Pate asked for Mr. Berry to step in as Pro-tem and called for a vote. Mr. DeVito, Dr. Kirkpatrick, Mr. Berry – “Aye. Ms. Ballance – “No”. Mr. Pownall – “Abstain”. Mr. Raphael – “Present”.

The vote failed 3/1/2.

Mayor Pate added his “Yes”. Motion carried 4/1/2.

Speaking as a citizen, Mr. Pate said that anything with Parks is a problem, and he can't believe this is happening.

Mr. DeVito confirmed that the vote to assign a number and read the resolution passed. Mr. Weaver addressed Mr. Pownall's concern regarding an opportunity to discuss the resolution prior to approval.

Mayor Pro-tem Berry stepped down as Chair.

Discussion ensued regarding the procedure for passing the last three or four resolutions.

Ms. Ballance read from Roberts Rules regarding procedure when the Chair steps down.

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

Motion carried. The meeting ended at 8:50 p.m.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Thursday, October 6, 2011.

ATTEST:


City Clerk/Treasurer Ann Armstrong

APPROVED:


Mayor Morris Pate

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