

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

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING  
Monday, April 23, 2012 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:** March 26 and April 9, 2012 meetings

**COMMISSION, COMMITTEE, AUTHORITY REPORTS AND EXPIRED TERMS:**

- Planning** – Pos. 1 – Mickey Schneider – expired 7/1/11. Pos. 5 – vacant – 1/1/13. **Pos. 6 – vote on Ken Rundel** – expires 1/1/15. Pos. 7 – Deni Flaherty – expired 1/1/12
- CAPC** – Pos. 1 – vacant – 7/1/12. Pos. 3 – Lynn Bridwell – expired 6/30/11
- Hospital** – Pos. 4 – Pamela Crockett – expired 6/1/11. Pos. 6 – **vote on John Dolce** -- 9/7/15
- Parks** – Pos. 5 – vacant – 5/1/11
- HDC** – Pos. 3 – vacant – 11/30/14. Pos. 7 – vacant – 3/7/14
- Cemetery** – Pos. 1 – June Westphal – expired 2/15/12. Pos. 2 – Bennie Clark – expired 2/15/11
- Yellow Bag Research Committee**
- Deer Hunt Committee**

**PUBLIC COMMENTS**

**UNFINISHED BUSINESS:**

1. Non-conforming Off-Premise Signs – Planning Commission
2. Hospital Audit report/Hospital lease – Mr. Pownall and Ms. Ballance
3. Auditorium Commission ordinance review – update on April 22 workshop -- Mr. Berry and Mr. DeVito
4. Proposed Animal Drawn Vehicle requirements – Mr. DeVito, Ms. Ballance, Mr. Berry
5. Emissions reduction plan workshop date – Mayor Pate
6. Ordinance to regulate Limousines – Mr. DeVito and Mr. Pownall
7. Ordinance 2151- 2<sup>nd</sup> reading – Mr. Pownall and Mr. Raphael
8. Discussion of water rate increase – postponed until review is completed -- Mr. Raphael and Ms. Ballance
9. Discussion of minimum monthly billing on garden meters – postponed until review is completed -- Mr. Raphael and Ms. Ballance

**NEW BUSINESS:**

1. Discussion of budget overspending/mis/malfeasance – Ms. Ballance and Mr. Raphael
2. Resolution for potential refunding of Series 2007 Sales and Use Tax Bonds – Mayor Pate

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR'S COMMENTS**

**ADJOURNMENT**

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, April 23, 2012, in the jury room on the second floor of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Morris Pate, Aldermen James DeVito, Lany Ballance, Parker Raphael, Dean Kirkpatrick, Ken Pownall, Butch Berry, 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. DeVito moved to approve the agenda. Mr. Pownall seconded. Mr. Pownall moved to postpone the vote for Dr. John Dolce until the first meeting in May. Ms. Ballance seconded. Mayor Pate called for a vote on the amended agenda.

Motion carried 6/0/0.

**APPROVAL OF THE MINUTES:**

Mr. Pownall moved to discuss the March 26 minutes. Mr. DeVito seconded. Mr. Pownall moved to approve the minutes. Mr. DeVito seconded.

Motion carried 5/0/1 with Ms. Ballance abstaining due to absence.

Mr. DeVito moved to discuss the April 9 minutes. Mr. Berry seconded. Mr. Raphael moved to approve the minutes. Mr. Berry seconded.

Motion carried 4/0/3 with Mr. Pownall, Dr. Kirkpatrick, and Mr. DeVito abstaining due to absence and Mayor Pate adding his nod.

**COMMISSION, COMMITTEE, AUTHORITY REPORTS AND EXPIRED TERMS:**

**Planning** – Mr. Pownall moved to approve Ken Rundel for Position 6. Mr. Raphael seconded. Ms. Ballance moved to amend the motion to approve Mr. Rundel for Position 1. Mr. Raphael seconded. Discussion followed regarding authority to amend nominations. Mr. Weaver said case law (supports the Mayor’s authority). Ms. Ballance moved to table until Mr. Weaver could present the information. There was no second. The motion to approve Mr. Rundel for Position 6 followed.

Motion carried 5/0/1 with Ms. Ballance abstaining.

**CAPC** – no report

**Hospital** – The vote for John Dolce was postponed during agenda setting.

**Parks** – no report

**HDC** – Mayor Pate nominated Dan Hebert for Position 3 and Susie Allen for Position 4.

**Cemetery** – no report

**Yellow Bag Research Committee** – Ms. Ballance noted yellow bags bring in approximately \$20,000 a year from residents. To remove the burden, she moved to do away with yellow bags. Mr. Raphael seconded. Discussion followed regarding recycling, reducing the cost of the bags, expanding recycling requirements for restaurants, and the pending expiration of the contract with the Solid Waste Authority. A voice vote followed.

Motion failed 3/3/0 with Mr. Berry, Mr. DeVito and Mr. Pownall voting “No”.

**Deer Hunt Committee** – Mayor Pate said the hunt will be handled as if (sponsored) by a hunt club. Hunters will be chosen and placed. Game and Fish will assist in supervising.

**PUBLIC COMMENTS:**

**Bob Raupers**, owner of Allure Limousine, expressed his belief that limousines would go out of business if they have to charge an hourly rate. He spoke about the (Eureka Taxi) franchise and his belief that taxis are to have meters, drivers are to be D.O.T. (Department of Transportation) certified, and the owner is to be paying Workman’s Compensation.

**Becky Gillette**, representing the Occupy Eureka Springs group, asked that Eureka Springs be the first city in Arkansas to adopt and support the Move to Amend efforts to overcome the Supreme Court decision giving corporations unlimited ability to influence campaigns.

**Rand Cullen**, of Occupy Eureka, encouraged joining the 69 cities and counties who support the Move to Amend resolution to (offset) recognizing corporations as people.

**Jerry Landrum** provided a case summary for “Avoiding Dangerous Climate Change to Protect Young People and Nature”. Written by James Hansen, NASA’s chief climatologist, and other scientists, it says an annual 6% reduction of green house gases is essential to prevent the earth from becoming uninhabitable.

**Steven Campbell**, a member of the Occupy group, spoke about corporate efforts to prevent a reduction in green house gases via money for political campaigns. He, too, wants Eureka Springs to be the first city in Arkansas to pass a resolution to (restore the First Amendment).

**UNFINISHED BUSINESS:**

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

Mr. Berry moved to discuss. Mr. Raphael seconded. Mr. Pownall indicated the Code corrections have not been made.

**2. Hospital Audit report/Hospital lease**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Michael Merry updated Council on the assignment of a new CEO for the hospital. He offered a prepared statement regarding the lease agreement and noted Mr. Windle, the accountant, plans to meet with the Council on May 14. Mr. Merry said Seth Ward, the Allegiance Management attorney, could appear then and his fees would likely exceed \$3,000.

Mr. Merry reviewed the 2006 decision to lease the hospital and the 2007 disagreement regarding the \$163,000 lease value of the Home Health license contract payment. A 2010 arbitrated agreement resulted in Allegiance receiving the Home Health lease payments and a contract change which released Allegiance from the obligation to build a hospital. The hospital lease was increased from \$5,000 to \$15,000 per month. Allegiance has agreed to renew the contract for a second five-year term.

Mr. Merry noted the Allegiance proposal to build a hospital which it would own solely. However, the State Constitution clarifies that it would be illegal to appropriate money. He noted the Home Health and hospital lease income has resulted in over \$1 million in the Commission account.

Mr. Pownall expressed his concern about the legality of a lease agreement with a (for-profit entity) and the absence of notification of Commission meetings. He made a motion for the Mayor, within the next 72 hours, to appoint a committee (comprised of) the Finance Director and two Council members to oversee the operation of the Hospital Commission in receiving copies of all expenditures, lease agreements, and anything that has to do with Commission operations of the hospital. Ms. Ballance seconded. Mr. Weaver questioned Council’s authority to supplant the Hospital Commission. Following extensive discussion, Dr. Kirkpatrick called the question. Ms. Ballance seconded.

Mayor Pate then asked for Mr. Weaver's opinion. Ms. Ballance called "point of order" several times. Mr. Weaver said he would look into the matter and give his best judgment. Mr. Pownall restated his motion, adding "within the last year and for the term of the committee". Following a suggestion from Ms. Ballance, Mr. Pownall amended his motion to say "three Council members". Ms. Ballance seconded. Discussion ensued regarding the necessity of withdrawing the calling of the question. Since discussion had continued despite the motion to end it, the vote on Mr. Pownall's amended motion for three Council members followed. It was by roll call.

Motion failed 2/4/0 with Mr. Berry, Dr. Kirkpatrick, Mr. Raphael, and Mr. DeVito voting "No".

A roll call vote on the original motion to have the committee with two Council members followed.

Motion failed 2/4/0 with Mr. DeVito, Mr. Raphael, Mr. Berry, and Dr. Kirkpatrick voting "No".

Ms. Ballance called for a seven minute recess. Mr. Pownall seconded.

Motion carried 5/1/0 with Mr. Berry voting "No".

### **3. Auditorium Commission ordinance review**

Mr. Berry moved to discuss. Mr. DeVito seconded. Mr. Berry offered an overview of the previous day's workshop. The consensus was to reestablish an Auditorium Commission with a ¼ cent sales tax to be approved during the November election. There would be a five year sunset clause. Funds would be used for utilities, maintenance, and operation. Additional tax revenues would fund capital improvements. Mr. Berry motioned for Mr. Weaver to draft an ordinance for a referendum for a ¼ cent sales tax with a sunset clause of five years. It would be strictly for operations, maintenance, and infrastructure. Mr. DeVito seconded. A roll call vote followed.

Motion carried 4/2/0 with Ms. Ballance and Dr. Kirkpatrick voting "No".

### **4. Proposed Animal Drawn Vehicle requirements**

Mr. DeVito moved to discuss. Mr. Berry seconded. Mr. Weaver expressed concern for the portion restricting use of State highways. Following discussion, Mr. DeVito moved to approve drafting an ordinance with the changes to the Animal Drawn Vehicle franchise requirements and deleting items "S" and "T". Mr. Raphael seconded. A voice vote followed.

Motion carried 6/0/0.

### **5. Emissions reduction plan workshop date**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Ms. Ballance suggested May 22 at 6:30 p.m. Following a request from Mr. Pownall, Ms. Ballance amended her motion to add a Council Goals workshop immediately following. Mr. Pownall seconded. A voice vote followed. Motion carried 6/0/0.

### **6. Ordinance to regulate Limousines**

Mr. DeVito moved to discuss. Mr. Pownall seconded. Mr. Raphael made a motion to adopt the limousine portion of the Hot Springs transportation code. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0. Mr. Raphael moved to have the Hot Springs regulations "Eurekanized" and handed Mr. Weaver the information for preparing an ordinance. Ms. Ballance seconded.

Motion carried 6/0/0.

### **7. Ordinance 2151 – 2<sup>nd</sup> reading**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to suspend the rules and place Ordinance 2151 on its second reading by title only. Mr. DeVito seconded.

Motion carried 6/0/0. Ms. Armstrong read the title: **Ordinance 2151 AN ORDINANCE AMENDING TITLE 6 TO CLARIFY CONTACT INITIATED BY VARIOUS CITY PERSONNEL WITH THE CITY ATTORNEY.**

Mr. Pownall moved to approve Ordinance 2151 on its second reading. Mr. DeVito seconded. A roll call vote followed.

Motion carried 6/0/0 with all voting "Aye."

**8. Discussion of water rate increase**

Ms. Ballance moved to discuss. Mr. Raphael seconded. Ms. Ballance suggested asking Mr. Clark to figure the effect of a flat rate on all gallons of usage. Mr. DeVito spoke in opposition. Mr. Clark agreed to do his best to provide the requested information. He offered an update on work with the Community Resource Group in assessing rates and usage.

**9. Discussion of minimum monthly billing on garden meters**

Mr. Raphael moved to (discuss). Ms. Ballance seconded. Mr. Raphael moved to direct the City Attorney to write an ordinance (removing) the stand-by charge on garden meters. Ms. Ballance seconded. A voice vote followed.

Motion carried 6/0/0.

**NEW BUSINESS:**

**1. Discussion of budget overspending/mis/malfeasance**

Ms. Ballance moved to discuss. Mr. Raphael seconded. Ms. Ballance referenced the City financial report in the *Carroll County News*. She also reviewed the 2011 budget report and noted \$249,316 overspending in four areas. Ms. Ballance requested an explanation. Mr. Clark reviewed the 2011 report and noted a receipt of a \$179,389 Federal grant that was not budgeted. Thus, General Fund revenues exceeded expenses. Mr. Clark noted the absence of a 2011 review and adjustment of the budget ("clean up"). Mr. Pownall noted unbudgeted expenditures in departments unrelated to the grant. He noted State Code 14-77-103 does not allow overspending of the budget.

Extensive discussion followed about responsibility, procedures, absence of communication regarding pending budget shortfalls, and the upcoming mid-year budget review.

In response to the Mayor's comment regarding few questions from Council to the Finance Director, Mr. Pownall expressed his response to (being monitored by the Mayor's Assistant) when he has come in.

Mayor Pate stated emphatically that Council members are not welcome at Department Head meetings.

**2. Resolution for potential refunding of Series 2007 Sales and Use Tax Bonds**

Mr. Berry moved to discuss. Mr. DeVito seconded. Mayor Pate noted the representatives from Stephens gave their report after the last Council meeting, at his request. Mr. Clark recapped the information. Mr. Raphael moved to give the resolution a number and read for discussion. Mr. DeVito seconded. A roll call vote followed.

Motion carried 5/0/1 with Mr. Berry, Mr. Pownall, Dr. Kirkpatrick, Mr. DeVito, and Mr. Raphael voting "Aye" and Ms. Ballance abstaining.

Ms. Armstrong read **Resolution No. 596 A RESOLUTION AUTHORIZING STEPHENS INC. AND FRIDAY, ELDREDGE AND CLARK, LLP TO PROCEED WITH A BOND ISSUE TO REFUND THE CITY'S SALES AND USE TAX REFUNDING AND IMPROVEMENT BONDS, SERIES 2007.**

Mr. DeVito moved to signify approval by reading Resolution No. 596. Mr. Raphael seconded.

Motion carried 5/0/1 with Mr. Berry, Mr. Raphael, Dr. Kirkpatrick, Mr. Pownall, and Mr. DeVito voting "Aye" and Ms. Ballance abstaining.

**AGENDA SETTING:**

Mr. Berry added discussion with the Hospital CEO and Accountant. Mr. Raphael seconded. Mr. Raphael added discussion of the Move to Amend resolution. Ms. Ballance seconded. Mr. Raphael added the mid-year budget review. Mr. Berry seconded. Ms. Ballance added discussion of writing a resolution to let the State know (Eureka Springs) is not in favor of having the water fluoridated. Mr. Pownall seconded. Mr. Pownall added action toward non-participating Commissioners on several commissions. Ms. Ballance seconded.

**COUNCIL COMMENTS:**

Mr. Pownall said he's "glad to be back, kind of".

**MAYOR'S COMMENTS:**

Mayor Pate read a list of upcoming events and gave an update on recent Arbor Day events.

**ADJOURNMENT:**

Mr. DeVito moved to adjourn. Dr. Kirkpatrick seconded. Motion carried 6/0/0. The meeting ended at approximately 8:30 p.m.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Monday, April 23, 2012.

ATTEST:

  
City Clerk/Treasurer Ann Armstrong

APPROVED:

  
Mayor Morris Pate