

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

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING  
Monday, February 13, 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:** 1/23/12 Coun. Mtg., 1/31/12 Spec. Mtg, and 2/9/12 Spec. Mtg

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

**Planning** – Pos. 1- Mickey Schneider – expired 7/1/11. Pos. 6 - vacant - 1/1/12. Pos. 7 – Deni Flaherty – expired 1/1/12

**CAPC** – Pos. 1- expired - 7/1/12. Pos. 3 - Lynn Bridwell – 6/30/11

**Hospital** – Pos. 4 – Pamela Crockett – expired 6/1/11

**Parks** – Pos. 5 – vacant - 5/1/11

**HDC** – Pos. 4 – expired 11/30/10 – vote on Doug Breitling nomination. Pos. 5 – expired 11/30/11 – vote on Greg Moon nomination

**Cemetery** – Pos. 1—June Westphal – will expire 2/15/12. Pos. 2 – Bennie Clark – will expire 2/15/12. Pos. 3 – will expire 2/15/12 – vote on Ken Fugate nomination

**Yellow Bag Research Committee – decision target date:**

**Deer Hunt Committee**

**PUBLIC COMMENTS:**

**UNFINISHED BUSINESS:**

1. Dog control ordinance -- Mayor Pate
2. Non-conforming Off-Premise Signs – Postponed until Code references are corrected – Planning Commission
3. Hospital Audit report/Hospital lease – written response -- Mr. Pownall and Ms. Ballance
4. Auditorium Commission ordinance review – Mr. Berry and Mr. DeVito
5. Ray Dotson’s list for loading and unloading passengers – Dr. Kirkpatrick and Ms. Ballance
6. Handicap parking regulations ordinance – 2<sup>nd</sup> reading -- Mayor Pate
7. Doug Milligan’s car damage – Mayor Pate

**NEW BUSINESS:**

1. Setting date for workshop to review/rewrite Animal Drawn Vehicle requirements – postponed until the second meeting in February -- Mr. DeVito, Ms. Ballance, Mr. Berry
2. Discussion of the emissions reduction plan – first meeting in February – Ms. Ballance and Mr. Raphael
3. Discussion of a license fee for apartment buildings – Mr. Berry and Mr. Pownall
4. Discussion of State and BKD audits (ACA 10-4-418) – Mr. Pownall and Ms. Ballance
5. Schedule Council goals workshop – Mr. Pownall and Mr. Raphael
6. Mayor’s Veto of January 23 motion regarding 2012 budget
7. Resolution for Zoning Map – Council
8. List of ordinances being prepared by City Attorney – Mr. Pownall and Mr. Raphael
9. Ordinance to regulate Limousines – workshop to be scheduled after completion of budget-- Mr. DeVito and Mr. Pownall
10. Quarterly financial report

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR’S COMMENTS**

**ADJOURNMENT**

**CITY OF EUREKA SPRINGS  
CITY COUNCIL**

**REGULAR MEETING**

**THURSDAY**

**FEBRUARY 13, 2012**

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Thursday, February 13, 2012, in the jury room on the second floor of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Morris Pate, Aldermen Butch Berry, Parker Raphael, Dean Kirkpatrick, James DeVito, Ken Pownall, City Attorney Tim Weaver, and City Clerk/Treasurer Ann Armstrong  
Alderman Lany Ballance arrived at 6:20 p.m.

**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. Mr. Pownall added approval of the minutes from the two special meetings on January 31 and February 9. Mr. Berry moved to approve the amended agenda. Mr. DeVito seconded. A voice vote followed.

Motion carried 5/0/0.

**APPROVAL OF THE MINUTES:**

Mr. DeVito moved to approve the minutes from the January 23 meeting. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

Mr. Pownall moved to approve the minutes from the January 31 special meeting. Mr. Berry seconded. A voice vote followed.

Motion carried 5/0/0.

Mr. Pownall moved to approve the minutes from the February 9 special meeting. Mr. DeVito seconded. Mr. Pownall requested time to read the minutes. Mr. Berry moved to approve the minutes. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

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

**Planning** – no new nominations

**CAPC** – Mayor Pate said Mr. Bridwell (may) reapply. Mr. McClung (may) apply.

**Hospital** – no new nominations

**Parks** – Mayor Pate said one position is open.

**HDC** – Mr. DeVito moved to approve Doug Breitling for Position 4. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

Mr. Parker moved to approve Greg Moon for Position 5. Mr. DeVito seconded. A voice vote followed.

Motion carried 5/0/0.

**Cemetery** – Mr. Raphael moved to approve Ken Fugate (Position 3). Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

**Yellow Bag Research Committee** – no new information

**Deer Hunt Committee** -- Mr. Berry reported contact with the State Bow Hunter's

**City Council** 2/13/12 1

Association. Maps for sites are (being prepared). The State agreed with the proposal and it will come back to Council for approval.

**PUBLIC COMMENTS:** none

**UNFINISHED BUSINESS:**

**1. Dog control ordinance**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall moved to assign a number and to put it on its first reading. Mr. Parker seconded. A roll call vote followed. Mr. Pownall, Mr. Berry, Dr. Kirkpatrick, Mr. Raphael, and Mr. DeVito – “Aye”.

Motion carried 5/0/0.

Ms. Armstrong and Mayor Pate read **Ordinance 2150 AN ORDINANCE TO AMEND CHAPTER 6.04 OF THE EUREKA SPRINGS MUNICIPAL CODE**. Mr. DeVito moved to approve Ordinance No. 2150 on its first reading. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

Ms. Ballance arrived at the table.

Noting the time involved in recrafting the ordinance, Mr. DeVito moved to suspend the rules and place Ordinance No. 2150 on its second reading by title only. Mr. Pownall seconded. A roll call vote followed: All voted “Aye”.

Motion carried 6/0/0.

Ms. Armstrong read the Ordinance title. Mr. DeVito moved to approve Ordinance No. 2150 on its second reading. Mr. Pownall seconded. Clarification of “trolley system” followed. A voice vote was taken.

Motion carried 6/0/0.

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

Postponed until Code references are corrected

**3. Hospital Audit report/Hospital lease**

Mayor Pate said Council members received an email from the Hospital Commission about efforts to have a meeting. A telephone conference is scheduled for Thursday, February 16. Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to postpone until the first meeting in March. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0.

**4. Auditorium Commission ordinance review**

Mr. Berry moved to discuss. Mr. DeVito seconded. Mr. Berry recalled that the Auditorium Committee recommended that a commission be established. Following brief discussion, Mr. DeVito requested that the City Clerk find an appropriate date in April for a workshop with Council and members of the Committee. Mr. Berry noted the time with least conflict is usually Sunday around 2 or 3 p.m. and suggested the presence of (at least) four Council members and five Committee members. He also mentioned consideration of a 1/8 or 1/4 cent sales tax for maintenance and a reserve for physical improvements. A voice vote followed.

Motion carried 6/0/0.

**5. Rav Dotson’s list for loading and unloading passengers**

Mr. DeVito moved to discuss. Mr. Berry seconded. Ms. Armstrong said there has been (no response). Mr. DeVito moved to postpone. Following Mr. Weaver’s comment regarding no breach until Mr. Dotson begins to operate, Mr. Berry amended the motion to ask that the City Clerk send a second certified request for response by the next meeting. Mr. Raphael seconded. A voice vote followed.

Motion carried 6/0/0.

**6. Handicap parking regulations ordinance -- 2<sup>nd</sup> reading**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall moved to suspend the rules and put Ordinance No. 2149 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 the title of Ordinance No. 2149. Mr. Pownall moved to approve on the second reading. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0.

**7. Doug Milligan's car damage**

Mr. Pownall moved to discuss. Mr. Raphael seconded. The figure of \$625.71 shown in paperwork submitted by Mr. Milligan was discussed. Mr. Pownall questioned approval for a payment already made by an insurance company. Mr. Weaver noted there is no fund set up by Council for such payments and it would (also) be in conflict with tort immunity. He opined the Council may be putting Mr. Milligan in a position where he could be sued by the insurance company for taking money that is not his if the insurance company has already paid. The paper submitted shows a payment with no deductible and no co-pay.

Mr. Pownall moved to take no further action. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0.

**NEW BUSINESS:**

**1. Setting date for workshop to review/rewrite Animal Drawn vehicle requirements**

Mr. DeVito moved to discuss. Mr. Berry seconded. Mr. Raphael moved to postpone until the second meeting in February. (There was no second.)

**2. Discussion of emissions reduction plan**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mayor Pate indicated he had a telephone conference with Mr. Landrum, Glenna (Booth), Diane (Wilkerson), and Nick Brown. One of the suggestions was to cover a portion of the wastewater treatment plant to capture the methane. Mayor Pate said he would ask Mr. Landrum to address Council. Mr. Pownall requested including an HDC Commission member.

Mr. Berry moved to postpone until the next meeting. Mr. Pownall seconded.

Motion carried 6/0/0.

**3. Discussion of a license fee for apartment buildings**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Berry indicated he would bring suggestions to the Council at the next meeting and motioned to defer. Mr. DeVito seconded. Mr. Pownall noted there are some government subsidized apartments and some are privately owned. A voice vote on the motion followed.

Motion carried 6/0/0.

**4. Discussion of State and BKD audits**

Mr. Pownall moved to discuss the State audit and postpone discussion of the BKD audit until the next meeting. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0.

Mr. Berry moved to discuss the State audit. Mr. DeVito seconded. Finance Director Lonnie Clark reviewed the September 27, 2011 management letter and noted no significant difficulties, correction of all misstatements, and no disagreements during the audit. Mr. Clark said it is typical that segregation of duties is a problem in small organizations with (minimal) personnel.

Mr. Pownall referenced the August 10, 2011 letter wherein not following accepted accounting principles was noted. Mr. Clark replied that City accounting is done on a cash basis

rather than on an accrual basis. In response to Mr. Pownall's concern regarding the missing financial statements, Mr. Clark said the Cemetery Commission, the Hospital Commission, and the Water and Wastewater Funds are audited separately. He agreed to contact the State auditors to find out what is needed.

Regarding the comment about the CAPC password control, Mr. Berry noted the Director who was on board then was fired and the new computers and server system addressed the problem.

Mr. Clark assured Council that the Mayor and Finance Director would have been called before the State Legislative Audit Committee if there were any significant deficiencies.

Ms. Ballance expressed concern about the comment regarding absence of internal controls. Mr. Clark said there is going to be that same basic problem because there are not enough people employed to segregate the duties. Corrections to noted problems will be addressed in the next audit.

**5. Schedule Council goals workshop**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall proposed another workshop at 5:00 p.m. before the February 27 meeting. Mr. Raphael seconded. A voice vote followed.

Motion carried 5/1/0 with Ms. Ballance voting "No" due to her (work schedule).

**6. Mayor's veto of January 23 motion regarding the 2012 budget**

Mayor Pate withdrew his veto. Mr. Berry motioned to withdraw the (January 23) motion to direct the Finance Director to reduce the budget by 20%. Mr. DeVito seconded. A roll call vote followed. Mr. Raphael, Mr. Berry, Mr. Pownall, Dr. Kirkpatrick, and Mr. DeVito – "Aye". Ms. Ballance – "No".

Motion carried 5/1/0.

**7. Resolution for Zoning Map**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall moved to assign the resolution a number and read for discussion. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0.

Ms. Armstrong read **Resolution 594 A RESOLUTION MAKING A 2012 BUDGET ADJUSTMENT.**

Mr. Pownall moved to approve as read. Mr. Raphael seconded. A roll call vote followed. All voted "Aye".

Motion carried 6/0/0.

**8. List of ordinances being prepared by the City Attorney**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Weaver said that, at this time, there are no ordinances being prepared. He favored a workshop on the limousine ordinance request.

**9. Ordinance to regulate Limousines – workshop to be scheduled after completion of the budget**

Mr. Berry moved to discuss. Mr. Pownall seconded. Mr. Weaver said he needs clarification from Council as to what (aspects) are to be regulated. Mr. DeVito's understanding was that the ordinance regulating taxis clarified that limousines are not to operate as taxis. Discussion followed regarding making one license fee for taxis and one fee for limousines. Mr. DeVito moved to have the City Attorney draft an ordinance separating taxis from limousines. Mr. Pownall seconded. Mr. Raphael favored a workshop. A voice vote followed.

Motion failed 1/5/0 with Mr. Berry, Mr. Raphael, Dr. Kirkpatrick, Mr. Pownall, and Ms. Ballance voting "No".

Mr. Pownall moved to have a workshop at 5:00 p.m. on March 12. Mr. Raphael seconded. A voice vote followed.

Motion failed 1/4/1, with Mr. Berry, Mr. Raphael, Dr. Kirkpatrick, and Mr. DeVito voting "No" and Ms. Ballance abstaining.

Mr. Parker stated he would agree with the motion if the time could be more agreeable with Ms. Ballance. Ms. Ballance confirmed she is available after 6:30. Mr. Pownall motioned to have a workshop on the limousine issue immediately after the (March 12) meeting. Mr. Raphael seconded.

Motion failed 1/5/0 with Mr. Berry, Dr. Kirkpatrick, Mr. Pownall, Ms. Ballance, and Mr. DeVito voting "No".

Mr. Berry moved to have a workshop on March 8 at 6:30 p.m. Mr. DeVito seconded. Motion carried 5/1/0 with Mr. Pownall voting "No".

**10. Quarterly financial report**

Mr. DeVito moved to discuss. Mr. Pownall seconded. Ms. Armstrong presented bank reconciliations, receipts for the last (quarter of 2011), the clearing and payroll accounts, and debt service. She said the materials will be available in the Clerk's office for one week. The assets list is being compiled. Ms. Ballance and Mr. Pownall requested copies.

**AGENDA SETTING:**

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

Mr. Pownall added discussion of Code chapter 3.32 City Attorney. Mr. Raphael seconded.

**COUNCIL COMMENTS:**

Ms. Ballance said she was contacted by several people regarding a Police and EMS budget petition that was passed at the public schools. Many who signed the petition do not live in Eureka Springs. She was told some signed under extreme duress. Ms. Ballance conveyed their objection to political pressure at the schools. Ms. Ballance also encouraged voting in the (February 14) special election. She wished her spouse of 21 years "Happy Anniversary".

Mr. Berry noted the EMS services out-of-town people.

Mr. DeVito encouraged everyone to celebrate Eureka Springs' birthday by getting out and exercising their Constitutional right to vote. He noted Teresa (DeVito) and he registered their Domestic Partnership on Valentines Day.

Mr. Pownall thanked the members of the table for finally reaching accord on the budget. He wished a Happy Valentines Day to everyone.

Mr. Raphael asked for feedback from the citizens on the Auditorium Commission and the possibility of a ¼ cent sales tax to support the Auditorium.

**MAYOR'S COMMENTS:**

Mayor Pate wished everyone a Happy Valentines Day and said to get out and vote tomorrow.

**ADJOURNMENT:**

Mr. Pownall moved to adjourn. Mr. DeVito seconded.

Motion carried 6/0/0. The meeting ended at 7:45 p.m.

This is the signature page for the minutes of the regular Eureka Springs City Council meeting of Monday, February 13, 2012.

ATTEST:

  
City Clerk/Treasurer Ann Armstrong

APPROVED:

  
Mayor Morris Pate

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