

CITY OF EUREKA SPRINGS  
COUNCIL MEETING  
Monday, January 23, 2012 6 p.m.

AGENDA

Amended 1/24/12

CALL TO ORDER

ROLL CALL, ESTABLISH QUORUM

PLEDGE OF ALLEGIANCE TO THE FLAG

MAYOR'S STATE OF THE CITY ADDRESS

APPROVAL OF THE AGENDA

APPROVAL OF THE MINUTES: January 5, 2012

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 – vacant – 7/1/12. Pos. 3 – Lynn Bridwell – expired 6/30/11

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

Parks – Pos. 5 – vacant – 5/1/11

HDC – Pos. 4 – Doug Breitling – expired 11/30/10. Pos. 5 – Greg Moon – expired 11/30/11

Cemetery

Yellow Bag Research Committee – decision target date

Deer Hunt Committee

PUBLIC COMMENTS:

UNFINISHED BUSINESS:

1. Dog control update/recommended Code changes – 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 – tabled until agreement with CAPC is reached – Mr. Berry and Mr. DeVito
5. Ray Dotson's list for loading and unloading passengers – Municipal League opinion – Dr Kirkpatrick and Ms. Ballance
6. Handicap parking regulations ordinance – Mayor Pate for the Planning Commission
7. Petition for the right to regulate on State Highways in Eureka Springs – Municipal League opinion – Mr. DeVito and Ms. Ballance

NEW BUSINESS:

1. Joe Gunnels Tours – Mayor Pate
2. Council approval of destruction of 2006 records – Mayor Pate
3. B&B license fee discussion and ordinance – Mayor Pate
4. Ordinance to regulate Limousines – Mr. Weaver will notify Mayor when ready – Mr. DeVito and Mr. Pownall
5. Setting date for workshop to review/rewrite Animal Drawn Vehicle requirements – postponed until the second meeting in February – Mr. DeVito, Ms. Ballance, Mr. Berry
6. Parking lot lease resolution – Mayor Pate
7. Pro tem for 2012 – Mayor Pate
8. Discussion of emissions reduction plan – first meeting in February – Ms. Ballance and Mr. Raphael
9. Discussion of a license fee for apartment buildings – Mr. Berry and Mr. Pownall
10. Auditorium Management Agreement – Mayor Pate
11. Proposed date for 2011 clean-up resolution – Mr. Pownall and Mr. DeVito
12. Discussion of 2012 budget – Mr. Pownall and Dr. Kirkpatrick

AGENDA SETTING

CITY COUNCIL COMMENTS

MAYOR'S COMMENTS

ADJOURNMENT

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

**MONDAY**

**JANUARY 23, 2012**

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

**PRESENT:** Mayor Morris Pate, Aldermen Parker Raphael, Dean Kirkpatrick, James DeVito, Butch Berry, Ken Pownall, City Attorney Tim Weaver, and City Clerk/Treasurer Ann Armstrong. Lany Ballance arrived at 7:17 p.m.

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

Mayor Pate led the Pledge of Allegiance to the Flag.

**MAYOR'S STATE OF THE CITY ADDRESS:**

Mayor Pate recapped the highlights of 2011 as well as department and commission goals for 2012. He also spoke about Arts Council projects, awards received by the City and the Historic District Commission, and upcoming events. Mayor Pate noted 2012 is an election year and encouraged everyone to vote.

**APPROVAL OF THE AGENDA:**

Mr. DeVito moved to approve the agenda. Mr. Berry seconded. Mr. DeVito suggested moving New Business item #10 to go with Unfinished Business item #4. Mr. Berry seconded. Dr. Kirkpatrick moved to postpone both items until after February 14. Mr. Raphael seconded. A roll call vote followed. Mr. Pownall, Dr. Kirkpatrick, Mr. Raphael – "Aye". Mr. Berry and Mr. DeVito – "No".

Motion failed 3/2/0.

Discussion followed regarding necessity for the vote and about the number of votes required from the total of elected members. Mr. Berry moved for a five-minute recess for research. Dr. Kirkpatrick seconded. A voice vote followed.

Motion carried 5/0/0.

Mr. Weaver said Roberts Rules require a majority of the whole body to postpone an agenda item. He stated State law supports this.

Mr. Pownall added New Business #11. Mr. DeVito seconded. Mr. Pownall added New Business #12. Dr. Kirkpatrick seconded. Mr. Pownall also requested a list of ordinances that are in the hands of City Attorney Weaver, for the next meeting. Mayor Pate called for a vote on the amended agenda. A voice vote followed.

Motion carried 5/0/0.

**APPROVAL OF THE MINUTES: January 5, 2012**

Mr. DeVito moved to discuss the minutes from the January 5, 2012 meeting. Mr. Berry seconded. Mr. Pownall noted two typing errors. A voice vote followed.

Motion carried 5/0/0.

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

**Planning** – Position 1 – Mickey Schneider – expired 7/1/11. Position 6 – vacant -- expired 1/1/12. Position 7 – Deni Flaherty -- expired 1/1/12. Mayor Pate said he would keep Ms. Flaherty there if she so desires.

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Planning Chair Beverly Blankenship said Ms. Flaherty does not want to renew (her position). She noted that the ordinance on handicap parking is from State code. Chief Hyatt has also reviewed it. Ms. Blankenship spoke about the request for a change in the B&B license (fee structure).

**CAPC** – Position 1 – vacant – expires 7/1/12. Commission Chair Charles Ragsdell reported on December and January, and requested renewal of the agreement for operating the Auditorium on behalf of the City. He offered a breakdown of the \$94,735 budget and noted four events have been cancelled because there is not an agreement. Mr. Ragsdell described the process which resulted in the request to form an Auditorium Commission.

**Hospital** -- none

**Parks** – Position 5 – expired 5/1/11.

**HDC** – Position 4 – Doug Breitling -- expired 11/30/10. Position 5 – Greg Moon – expired 11/30/11. Mayor Pate submitted applications for approval for both positions.

**Cemetery** – Position 4 – Ken Fugate – expires 2/15/12. Mr. Fugate has submitted an application.

Discussion on voting resulted in delaying until the next meeting.

**Yellow Bag Research Committee** – none

**Deer Hunt Committee** – A meeting is scheduled for Thursday, January 26, 2012.

#### **PUBLIC COMMENTS:**

**Dee Purkeypille**, 229 N. Main, encouraged Council to vote for the contract with the CAPC.

**Joe Gunnels** asked Council to revoke the franchise for Making Memories Tours. He felt there were inequities with division of profits from (walk-up) ticket sales in the past. Mr. Gunnels was also concerned about Mr. Varner's Washburn address.

**Mike Bishop**, Chamber of Commerce President, encouraged Council to (follow) the suggestions from the Auditorium Committee to extend the contract with the CAPC.

**Charles Ragsdell** said he would like the opportunity to answer questions about the contract with the CAPC.

**Beverly Blankenship** offered background on the previous Auditorium Commission and funds expended by the CAPC for the Auditorium. She favored allowing the CAPC to go forward for the good of the town.

Alderman Ballance arrived.

**Tom Tharp** asked Council to give the CAPC a chance to operate the Auditorium. He indicated he's available to answer questions about carriage franchises when the item comes up for discussion.

#### **UNFINISHED BUSINESS:**

##### **1. Dog control update/recommended Code changes**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to assign a number and read the ordinance. Since several Council members had not had time to review the ordinance, Mr. Pownall proposed to postpone. Mr. Raphael seconded. A voice vote followed.

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 answers to questions have not come back. Mr. Pownall moved to carry this over to the next meeting. Mr. DeVito seconded.

Motion carried 6/0/0.

#### **4. Auditorium Management Agreement/Commission ordinance review**

Mr. Pownall moved to discuss (former New Business) item #10 first. Mr. DeVito seconded. Mr. Pownall said Council had “gotten some very harsh comments in the last hour” and went on record saying Council did not get a copy of the agreement until prior to this meeting. Mr. DeVito noted that if Council reaches an agreement, there would be a year to figure out what to do with the Auditorium.

Mr. Pownall questioned the portion concerning holding the CAPC harmless for any State or Federally mandated shortages in the facility. Mr. Ragsdell said that (the City) owns and maintains the building and would be responsible for anything the CAPC is required to do to continue operating the building on (the City’s) behalf. Mr. Pownall requested that this be written more clearly. Mr. Ragsdell clarified that the funds budgeted for the phone and fire alarm lines are not the alarm system itself or the sprinkler system.

Discussion included concern about funding utilities, history of the CAPC’s role, the return of profits to the operating fund for the Auditorium, and benefits to the community. Mr. Pownall motioned to add language to the agreement concerning return of profits. Mr. Berry seconded. Mr. Pownall moved for a five-minute recess. Dr. Kirkpatrick seconded.

Motion carried 6/0/0.

When the session resumed, Mayor Pate read the added phrase regarding return of profits after expenses budgeted as \$94,735. Mr. Pownall favored adjusting the language in Section 2(M). He then moved to authorize the Mayor to sign the agreement as amended. Mr. DeVito seconded. A roll call vote followed. Mr. DeVito, Mr. Raphael, Mr. Berry, and Mr. Pownall – “Aye”. Ms. Ballance and Dr. Kirkpatrick – “No”.

Motion carried 4/2/0.

Mr. Pownall moved to discuss the Auditorium Commission ordinance. Mr. Berry seconded. Mr. DeVito moved to postpone. Dr. Kirkpatrick seconded. A voice vote followed.

Motion carried 6/0/0.

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

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mayor Pate read the emails from Arkansas State Highway Assistant Chief Engineer Frank Vozel and Municipal League Attorney David Schoen. Mr. Schoen supported the City’s right to regulate commerce on State highways within the City. Mr. DeVito then clarified the requirement for franchisees to abide by all the regulations attendant to that agreement.

Mr. Pownall made a motion to set a date for a hearing. Mr. Weaver advised waiting until something occurs that is a violation of the contract. Mr. Pownall withdrew his motion. Ms. Armstrong agreed to send Mr. Dotson a letter requesting that he fulfill the requirement to provide a list of places for loading and unloading passengers.

#### **6. Handicap parking regulations ordinance**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall motioned to assign a number to the ordinance and place it on its first reading. Dr. Kirkpatrick seconded. A voice vote followed.

Motion carried 6/0/0.

Ms. Armstrong read **Ordinance No. 2149 AN ORDINANCE TO AMEND CHAPTER 8 OF THE EUREKA SPRINGS MUNICIPAL CODE**. Mr. DeVito moved to approve Ordinance No. 2149 on its first reading. Mr. Pownall seconded. Mr. Weaver confirmed that this is in line with State law and that the Parking Enforcement Officers are also permitted to ticket. A voice vote followed.

Motion carried 6/0/0.

**7. Petition for right to regulate on State Highways**

Mr. DeVito moved to discuss. Mr. Pownall seconded. Mr. DeVito commented that the most recent Municipal League opinion should suffice and moved to strike this item. Dr. Kirkpatrick seconded. A voice vote followed.

Motion carried 6/0/0.

**NEW BUSINESS:**

**1. Joe Gunnels Tours**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. DeVito moved to have Mr. Gunnels address the Council. Mr. Raphael seconded.

Motion carried 6/0/0.

Mr. Gunnels restated his request to rescind Mr. Varner's application. He questioned whether a second franchise was warranted with the current economic situation. Mr. Weaver opined that Council's vote indicated the need. In response to Mr. Gunnels' question regarding the definition of a local address, Mr. Weaver said Council is the determining body. In response to the question regarding activities and efforts during the previous three years to develop group tour business, Mr. Weaver agreed with (Transit Director Ken Smith) in interpretation of 4.20.06H. He cautioned against breach of contract.

It is Mr. Gunnels' understanding that Mr. Varner could bring no business and still receive 50% of the (individual walk-up) tour income.

**2. Council approval of destruction of 2006 records**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Berry confirmed the standard procedure that occurs each year. Dr. Kirkpatrick motioned to (approve to) destroy the 2006 records. Mr. DeVito seconded. A voice vote was taken.

Motion carried 6/0/0.

**3. B&B license fee discussion and ordinance**

Mr. Pownall moved to postpone until the City Attorney has written an ordinance. Dr. Kirkpatrick seconded. Mr. Weaver questioned whether an ordinance is in line. Ms. Armstrong showed an example of a business license which says the (holder) has a right to run a business with one to ten units. This is contrary to (Ordinance 1816). Following extensive discussion, Dr. Kirkpatrick made a motion to leave it alone. Mr. DeVito seconded. A voice vote followed. Motion carried 6/0/0.

**4. Ordinance to regulate limousines**

Mr. Berry moved to open discussion. Mr. DeVito seconded. Mr. Weaver requested direction from Council. Ms. Armstrong summarized some of the information regarding State law on Taxi Franchises and information on limousines. Mr. Pownall made a motion to set a workshop to address this. Dr. Kirkpatrick seconded.

Motion carried 6/0/0. Ms. Ballance requested that Ms. Armstrong arrange a time for a workshop after the budget workshops are completed.

**5. Setting date for workshop to review/rewrite Animal Drawn Vehicle requirements**

Postponed until the second meeting in February

**6. Parking lot lease resolution**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Dr. Kirkpatrick motioned to accept the Parking Lot Lease resolution. Mr. DeVito seconded. A roll call voted followed. Ms. Ballance, Mr. Berry, Mr. Raphael, Dr. Kirkpatrick, and Mr. DeVito – "Aye". Mr. Pownall – "Abstain".

Motion carried 5/0/1. Mr. Berry moved to give the resolution a number and read for discussion. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0.

Ms. Armstrong read **Resolution No. 592 A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK/TREASURER OF THE CITY OF EUREKA SPRINGS, ARKANSAS, TO EXECUTE THAT CERTAIN INSTRUMENT CONSISTING OF TWO (2) TYPEWRITTEN SHEETS AND DENOMINATED AS "CARROLL COUNTY, WESTERN DISTRICT COURTHOUSE PARKING LOT LEASE AGREEMENT" BY AND BETWEEN THE COUNTY JUDGE OF CARROLL COUNTY, ARKANSAS, AS "LESSOR", AND THE CITY OF EUREKA SPRINGS, ARKANSAS, AS "LESSEE"**. A roll call vote followed. All voted "Aye".

Motion carried 6/0/0.

**7. Pro tem for 2012**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mayor Pate stated Mr. Berry is the Pro tem for 2012. Discussion following regarding State Statute 14-43-501.

**8. Discussion of the emissions reduction plan**

Postponed until the first meeting in February

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

Mr. DeVito moved to discuss. Mr. Pownall seconded. Mr. Pownall moved to postpone until the first meeting in February. Mr. Raphael seconded. It was suggested that a list of fees (for tourist lodging and B&Bs) presented earlier in the meeting be used as a comparative.

Motion carried 6/0/0.

**10. Auditorium Management Agreement**

Combined during agenda setting with Unfinished Business #4

**11. Proposed date for 2011 Budget Clean-up resolution workshop**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall requested that a date be set. Following discussion, Mr. Berry motioned for (the Finance Director) to provide the information for a clean-up budget resolution by the second week in February so Council can review and discuss it at the second meeting in February. Mr. Pownall seconded. A voice vote followed.

Motion carried 6/0/0.

**12. Discussion of 2012 budget**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall made a motion that the Mayor request the Finance Director to prepare a 2012 budget resolution based on the approved 2011 budget and reduce all budget lines 20%. Furthermore, include a statement that there will be no 2012 raises for any department that is requesting them. No capital improvement projects or equipment or vehicle purchases will be made until a review of the first quarter budget has been accomplished—no later than 15 April, 2012. To be included in the budget will be the requested Cemetery budget request less 20% and the Planning Commission requested full amount for the zoning map. Any excess (is) to be placed into a reserve account to be redistributed at the first budget review in April. Mr. Raphael seconded.

Mr. DeVito said this is an item that should be discussed in a budget workshop. Mr. Pownall stated that (Council) can have a special meeting no later than 31 January to approve a resolution. He said (Council) still has four departments to hear from. Mr. Pownall said the 20% cut is "strictly through the first 90 days, and that being reviewed in the motion by no later than the 15<sup>th</sup> of April to look at the revenues and see where the spending is to readjust at that point in time". Mr. Berry expressed his concern that 20% for the Fire and Police would mean laying off personnel and he favored a budget workshop.

Dr. Kirkpatrick motioned for a budget workshop at 6 p.m. in one week. Noting the motion on the floor, Ms. Ballance called the question. Mr. Raphael seconded. A roll call vote followed. Ms. Ballance, Mr. Berry, Dr. Kirkpatrick, Mr. DeVito, and Mr. Raphael – "Aye". Mr. Pownall – "No".

Motion to end discussion passed 5/0/1.

A roll call vote on Mr. Pownall's motion followed. Mr. Raphael, Dr. Kirkpatrick, Mr. Pownall, and Ms. Ballance – "Aye". Mr. Berry and Mr. DeVito – "No".

Motion carried 4/2/0.  
Mayor Pate then notified Council of his intent to veto.

**AGENDA SETTING:**

Mr. Pownall moved to discuss. Mr. Berry seconded.  
Mr. Pownall added discussion of the State audits by BKD in accordance with ACA 10-4-418.  
Ms. Ballance seconded.  
Mr. Pownall added setting a Goals workshop prior to the 13 February meeting at 5:00. Mr. Raphael seconded.

**COUNCIL COMMENTS:**

Ms. Ballance said the number one question asked of her at Municipal League, “Is Eureka Springs really considering voting on changing their form of government?” She asked that people seriously consider who was sitting at the table when the (idea began).  
Mr. Berry said it’s unfortunate that (Council) gets personalities in place of principles and (Council) is not trying to work together sometimes. He expressed disappointment in not being able to get a workshop for the budget. Mr. Berry did not think the 20% cut was the solution.  
Mr. DeVito said what (the public) saw was reason to look at the only other alternative form of government offered by the State. He then gave his views on the City Administrator form.  
Mr. Pownall expressed his appreciation for the opportunity to attend the Municipal League conference. He said the innuendos make it appear that everything that is wrong with the City happened in the last year. Mr. Pownall said that if a department head cannot operate for 90 days with 80% of his budget, there is no intent to infer that departments should start laying people off. Council has not been given all the materials needed to make an adequate decision.

**MAYOR’S COMMENTS:**

Mayor Pate said Council has had a copy of the 2011 budget for most of the year. Mr. Clark is waiting for people to come ask questions. Mayor Pate has been contacted again by Mr. Milligan who wants to know why his request is not on the agenda.

**ADJOURNMENT:**

Mr. DeVito moved to adjourn. Mr. Berry seconded.  
Motion carried 6/0/0.

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

ATTEST:

  
City Clerk/Treasurer Ann Armstrong

APPROVED:  
  
Mayor Morris Pate