

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING  
Tuesday – November 27, 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: November 12, 2012**

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

**Planning** – Pos. 1 – Mickey Schneider – expired 7/1/11. Pos. 3 – vacant – expires 7/1/13.  
Pos. 4 – Jim Morris – expired 7/1/12

**CAPC** – Pos. 1 – vacant – expires 7/1/16. Pos. 4 – Bobbie Foster – expired 6/30/12

**Hospital** – Pos. 2 – vacant – expires 6/1/14. Pos. 5 – Jack Pritchard – expired 6/1/12. Pos. 6 – vacant – expires -- 9/7/15

**Parks** – Pos. 1 – vacant – expired 5/1/12. **Vote on Myrna Thaxton**

**HDC** – Pos. 1 – vacant – expires 11/30/12

**Cemetery**

**PUBLIC COMMENTS:**

**UNFINISHED BUSINESS:**

1. Non-conforming Off-Premise Signs – 2 ordinances -- Planning
2. Weekly dwelling units Ordinance No. 2167 – 2<sup>nd</sup> reading -- Planning
3. City Attorney's review of the Auditorium agreement for 2013 – Mr. Pownall and Mr. DeVito
4. Yellow Bag Committee recommendations – Ms. Ballance and Mr. Raphael
5. Discussion of Code section 4.48, amending to "City-permitted" or "City-sanctioned" – Mr. Berry and Ms. Lindblad
6. Voluntary tax for the Cemetery Commission/Mr. Clark's .6 mils estimate – Mr. Berry and Mr. DeVito
7. Discussion of readjustment of vacation water rates – Ms. Lindblad and Ms. Ballance
8. Lake Lucerne Rd. specification documents, ordinance, contractor, bid waiving, deeds – Mr. Berry, Mr. DeVito, Mayor Pate
9. Nellie Clark's case – Mr. Raphael and Mr. DeVito

**NEW BUSINESS:**

1. Discussion of Outdoor Sales – Mr. Raphael and Mr. DeVito
2. Pg. 3 Personnel Policy Handbook and A.C.A.14-42-110 – Ms. Lindblad and Ms. Ballance
3. State Statute re: Council to decide number of Police Officers – Ms. Ballance and Ms. Lindblad
4. 2012 Budget Adjustment Resolution – Mayor Pate
5. Check signatories – Mr. Pownall and Ms. Ballance

**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. Tuesday, November 27, 2012, in the jury room on the second floor of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Morris Pate, Aldermen Ken Pownall, Parker Raphael, Karen Lindblad, Butch Berry, Lany Ballance, James DeVito, 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. Berry seconded. Mr. Berry proposed discussion of waiving fees for the new High School. It was agreed to include this in Unfinished Business #8. Mr. Pownall moved to postpone the vote for Myrna Thaxton until the new Council is seated. Mr. Raphael seconded. A voice vote followed.

Motion failed 3/3/0 with Mr. DeVito, Ms. Lindblad and Mr. Berry voting "No". Ms. Lindblad moved to postpone due to not having learned whether Ms. Thaxton is a registered voter. Mayor Pate said she voted in the last election. Ms. Lindblad withdrew her motion.

Mr. Raphael postponed New Business #1 until the next meeting. Mr. Berry seconded. Ms. Lindblad moved to vote on the whole agenda as one. Ms. Ballance seconded. Ms. Lindblad postponed Unfinished Business # 7. Mr. DeVito seconded. Mr. Berry postponed Unfinished Business #5. Ms. Lindblad seconded. Mayor Pate called for a vote on the amended agenda.

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

**APPROVAL OF THE MINUTES: November 12, 2012**

Mr. DeVito moved to approve the November 12, 2012 minutes. Mr. Raphael seconded. Motion carried 5/0/1 with Ms. Ballance abstaining.

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

**Planning** – Chair Beverly Blankenship noted there will be a Conditional Use Permit hearing on December 11 for 23 Hillside. A SWEPCO representative will be at the meeting to discuss costs for burying utility lines for new construction. A list of year-end accomplishments was provided to Council. Ms. Blankenship mentioned the newspaper article about the Queen Anne Mansion plan for a private residence club and requested guidance for Planning.

**CAPC** – no report

**Hospital** – no report

**Parks** – Mr. DeVito moved to discuss the nomination of Myrna Thaxton for Position 1. Mr. Berry seconded. Mr. DeVito moved to approve. Mr. Berry seconded.

Motion carried 4/1/1 with Mr. Pownall voting "No" and Ms. Ballance voting "Present".

**HDC** – no report

**Cemetery** – Secretary/Treasurer Mary Ann Pownall thanked Council for help with the Commission and noted information regarding the CDs is still being (researched). She encouraged all to see the landscaping and Christmas decorating accomplished by Commissioner Gloria Stevens. Ms. Pownall thanked the Historic Museum Board for the contribution of \$900. She noted the approximately \$1,000 in the operating account and \$500 in savings. Ms. Pownall requested funding for Tom Rennel's workers compensation and surety bond.

**PUBLIC COMMENTS:**

**Robert Jasinski**, 46 Hillside, read from the zoning regulations and noted the absence of conflicts in Code. He noted that dwelling units are expressly permitted in C-1, C-2 and C-3 only. Mr. Jasinski spoke about Statutory Construction and the presumption that anything not listed is meant to be excluded. He also

noted, again, the Attorney General's opinion regarding CAPC tax collection on anything other than "hotel, motel, or short-term condominium rental accommodations".

**Gwen Bennett** recalled the Planning Commission request to change the definition of tourist lodging to "anything less than 30 days." She noted that tourist lodgings were specifically prohibited in R-1 by Ordinance 1880. Ms. Bennett relayed Bill King's observation that removal of the word "weekly" from the definition would outlaw all the legal tourist lodgings in C-1, C-2, C-3, R-3 and those in R-2 with Conditional Use Permits (CUPs). She favored not passing the proposed ordinance.

#### **UNFINISHED BUSINESS:**

##### **1. Non-conforming Off-Premise Signs – 2 ordinances**

Mr. DeVito moved to discuss. Mr. Berry seconded. Mr. Berry moved to assign the ordinance amending Code sub-section 7.52.03 a number and place it on the first reading. Mr. Raphael seconded.

Motion carried 6/0/0. Ms. Armstrong read **ORDINANCE NO. 2169 AN ORDINANCE AMENDING EUREKA SPRINGS MUNICIPAL CODE SUB-SECTION 7.52.03**. Mr. DeVito moved to approve Ordinance No. 2169 on its first reading. Mr. Raphael seconded. Following discussion, a voice vote was taken.

Motion carried 6/0/0. Mr. DeVito moved to suspend the rules and place Ordinance No. 2169 on its second reading by title only. Mr. Berry seconded. Following discussion, a roll call vote was taken.

Motion carried 4/2/0 with Ms. Lindblad and Ms. Ballance voting "No". Ms. Armstrong read the Ordinance title. Mr. DeVito moved to approve Ordinance No. 2169 on its second reading. Mr. Berry seconded. A voice vote followed.

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

Mr. DeVito moved to assign the second ordinance a number and place it on its first reading. Mr. Berry seconded. A voice vote followed.

Motion carried 6/0/0. Ms. Armstrong read **ORDINANCE NO. 2170 AN ORDINANCE AMENDING EUREKA SPRINGS MUNICIPAL CODE TITLE 7 APPENDIX 7(C) PROHIBITED SIGNS**. Mr. DeVito moved to approve Ordinance No. 2170 on its first reading. Mr. Berry seconded. Following discussion, Mr. Pownall recommended the addition of a comma and two "7"s. Mr. DeVito seconded the amendments. A voice vote followed.

Motion carried 6/0/0. Mr. DeVito moved to approve Ordinance No. 2170 on its first reading. Mr. Raphael seconded. A voice vote followed.

Motion carried 6/0/0. Mr. DeVito moved to suspend the rules and place Ordinance No. 2170 on its second reading by title only. Mr. Berry seconded. A roll call vote followed.

Motion carried 5/1/0 with Ms. Ballance voting "No". Ms. Armstrong read the Ordinance title. Mr. DeVito moved to approve Ordinance No. 2170 on its second reading. Mr. Berry seconded. A voice vote followed.

Motion carried 4/2/0 with Ms. Ballance and Ms. Lindblad voting "No". Discussion followed regarding either extending the moratorium or adding an emergency clause. Mr. DeVito moved to take a five-minute break in order for the City Attorney to write an emergency clause. Mr. Pownall seconded.

Motion carried 6/0/0.

Five minute break

When the session resumed, Mr. DeVito moved to suspend the rules and place Ordinance No. 2170 on its third reading by title only. Mr. Berry seconded. A roll call vote followed.

Motion carried 5/1/0 with Ms. Ballance voting "No". Ms. Armstrong read the Ordinance title. Mr. DeVito moved to approve Ordinance No. 2170 on its third reading. Mr. Raphael seconded. A roll call vote followed.

Motion carried 5/1/0 with Ms. Ballance voting "No". Mr. DeVito moved to suspend the rules and to invoke and read the emergency clause. Mr. Berry seconded. A roll call vote followed.

Motion carried 5/1/0 with Ms. Ballance voting "No". Ms. Armstrong read the emergency clause.

##### **2. Weekly dwelling units Ordinance No. 2167 – 2<sup>nd</sup> reading**

Mr. DeVito moved to discuss. Mr. Raphael seconded. Beverly Blankenship expressed her belief that an error was made in the original opinion. Discussion followed regarding seven day rentals as opposed to tourist lodging, landlord-tenant relationship, transient guest lodging rather than tourist lodging, possible additional reporting requirements, and Code enforcement.

Mr. DeVito moved to eliminate this (agenda item). Ms. Lindblad seconded. A voice vote followed. Motion carried 5/1/0 with Mr. Raphael voting "No". Mr. Raphael said he would like to acknowledge that the licenses were granted in error and to direct the City Clerk to not renew them. Ms. Lindblad seconded. Mr. Weaver opined that issuance was not in violation of Code as anyone has the right to a license since it is a tax rather than a permit. Mr. Jasinski favored refunds as he believes the licenses are invalid. Mr. Weaver disagreed. Mr. Raphael restated his motion.

Mr. DeVito amended his (preceding) motion to "instruct the Clerk to refund the permit fees to the ten parties who have paid them". Ms. Lindblad seconded. Discussion followed regarding refunds, misunderstanding due to the CAPC tax requirements, good faith efforts, nuances which have become clear, and a goodwill gesture on the City's part. Mr. Weaver reiterated that there is nothing in Code preventing a landlord-tenant relationship for a period of less than 30 days. Mr. Berry favored having the (permit holders) document in writing that they will be renting to transient guests and not for tourist lodging. Mr. Jasinski again noted this would be legal in only C-1, C-2 and C-3 zones. Mr. Weaver favored defining a minimum time period for renting property to tenants, as landlords, in R-1, R-2, and even R-3.

Ms. Armstrong read Mr. DeVito's amended motion and confirmed Mr. Berry's second. A voice vote followed.

Motion carried 4/1/1 with Mr. Raphael voting "No" and Ms. Ballance voting "Present". Mr. Weaver confirmed Council would need to vote to end the moratorium on license category 199.

Mr. Raphael again motioned to acknowledge that the licenses were granted in error and to direct the Clerk to not issue any more for the people listed in the (proposed) appendix. Mr. Weaver cautioned strongly against this action. No action was taken.

Ten minute recess

Mr. DeVito moved to remove (Ordinance No. 2167) from the agenda. Mr. Raphael seconded.

Motion carried 6/0/0.

### **3. City Attorney's review of the Auditorium agreement for 2013**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall asked for clarification of several items in the contract. Mr. Weaver spoke about the automatic renewal and noted the contract provides for changes by mutual agreement by the two parties. Mr. Pownall noted he had placed discussion on the agenda and objected to there suddenly being a renewed contract. Discussion followed regarding proper notice under the terms of the contract, the renewal for one year, and the \$94,000 in expenses as per term of contract.

### **4. Yellow Bag Committee recommendations**

Ms. Ballance moved to discuss. Mr. Raphael seconded. Ms. Ballance read from Code section 5.08.03 regarding proper receptacles in commercial areas and noted the absence of compliance. The first recommendation from the Committee was that requirements should be equal. The second was research of recyclable bags that break down in the landfill.

Mr. Pownall referenced the 2008 five-year contract requirement for an advisory committee and its purpose. Observing the contract will be coming up for renewal, he recommended following through with having one residential customer and one commercial customer nominated by the Mayor and approved by Council, as defined in the contract.

Ms. Ballance noted conflicts between Code and the contract, and the Committee's belief that residents are being discriminated against.

Mayor Pate read an email from Mr. Jackson wherein he said he was not aware of any communication issues or problems with enforcement.

Mr. Pownall motioned for the Mayor to pursue nominees for the residential and commercial customers to be approved by the City Council in accordance with the current contract. Ms. Lindblad seconded.

Motion carried 6/0/0.

### **5. Discussion of Code section 4.48, amending to "City-permitted" or "City-sanctioned"**

Postponed during agenda setting

### **6. Voluntary tax for the Cemetery Commission/Mr. Clark's .6 mils estimate**

Mr. Berry moved to discuss. Mr. Pownall seconded. Finance Director Lonnie Clark spoke about the two options. A voluntary tax is an issue that would have to go for a vote of the people. The second option, applying the available .6 mils on real and personal property, requires action from the Council before the October Quorum Court meeting. It could bring in an estimated \$35,315.

Discussion followed regarding multiple voluntary taxes, adding a line item back into the budget with a set amount, and previous agreement at the table for consideration of a line item. Noting he would prefer to have the next Council deal with the issue, Mr. Berry moved to defer until the first of the year. Mr. DeVito seconded. It was confirmed this would not prevent inclusion of a line item. A voice vote followed.

Motion carried 6/0/0.

**7. Discussion of readjustment of vacation water rates**

Postponed during agenda setting

**8. Lake Lucerne Rd. specification documents, ordinance, contractor, bid waiving, deeds**

(The November 21 Special meeting vote waived the bid process.) Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Berry noted the previous reference to an "impact fee" is the "sewer capacity fee". He spoke about a 2010 request from a previous Superintendent for waiving construction permit fees and denial of that request. It was noted the sewer capacity fee might be waived. It was believed, at that time, the road improvements would be taken care of by the school. Mr. Berry proposed to have the Building Inspector (calculate) the fee and submit it to the school. He confirmed fees were not collected for the existing school.

Discussion regarding payment for the difference between the old and the new impact followed. It was noted that impact fees are generally for new construction and are a one-time cost. The additional burdens on Eureka Springs taxpayers were noted. Mr. Berry made a motion to instruct the Building Inspector to estimate the cost for the sewer capacity fee and submit it to the school for collection. Ms. Lindblad seconded.

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

**9. Nellie Clark's case**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall made a motion to have the City Attorney do the proper paperwork to turn this over to the State Supreme Court. Ms. Lindblad seconded. Mr. Weaver said the Municipal League, representing the City, has filed an appeal with the Court of Appeals. He recapped the present options for continuing through the Court or short-circuiting by negotiating a settlement.

Mr. Pownall moved to take this off the agenda. Mr. DeVito seconded.

Motion carried 5/0/1 with Ms. Ballance voting "Present".

**NEW BUSINESS:**

**1. Discussion of Outdoor Sales**

Postponed during agenda setting until the next meeting

**2. Pg. 3 Personnel Policy Handbook and A.C.A.14-42-110**

Mr. Pownall moved to discuss. Ms. Lindblad seconded. Mr. DeVito moved to postpone. Mr. Raphael seconded.

Motion carried 6/0/0.

**3. State Statute re: Council to decide the number of Police Officers**

Mr. Pownall moved to discuss. Ms. Lindblad seconded. Mr. Pownall noted State Statute is being violated and favored carrying this forward to the new Council. He expressed his belief that saying it's being handled through the budget is a misnomer since it's "the number that drives the budget, not the budget that drives the number". Discussion followed regarding the requirement for a general ordinance, the Mayor's veto because of Council "telling" him to have the Police Chief come to the table, and disservice to the community by not following the law. Mr. DeVito expressed his opinion that each (Council member) is free to go and speak with the Chief of Police and bring the information to the table.

Ms. Ballance made a motion to ask the City Attorney to draw up an ordinance, leaving a blank where (Council) decides the number of subordinate police officers that can be hired. Ms. Lindblad seconded. Mr. Pownall favored including a method for attrition. Mr. Weaver agreed, noting the employee handbook could be considered a contract. Ms. Ballance seconded the addition of an attrition clause. Ms. Lindblad amended further and added having the ordinance at the next meeting, with an emergency clause. Ms. Ballance seconded. Mayor Pate stated (Council) knows he'll veto it. Ms. Lindblad and Mr. Berry called Point of Order.

In response to Mr. Berry's question regarding compliance, Mr. Weaver said he could not answer without more study of the issue. Discussion followed regarding passing the budget by ordinance, that not being the same as the required general ordinance, and the ability to repeal an ordinance.

A vote on Ms. Lindblad's amended motion to have the ordinance with an emergency clause for the next meeting followed.

Motion failed 3/3/0 with Mr. Pownall, Mr. Berry and Mr. DeVito voting "No". A vote was taken on

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on Mr. Pownall's amendment to include a period of attrition.

Motion carried 6/0/0. A voice vote was taken on the original motion to ask the City Attorney to write the ordinance, with the amendment.

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

Ms. Ballance moved to have the ordinance for the next meeting, without an emergency clause. Ms. Lindblad seconded.

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

**4. 2012 Budget Adjustment Resolution**

Mr. Pownall moved to postpone until the next meeting due to having received the information that day. Ms. Ballance seconded.

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

**5. Check signatories**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Pownall asked, "Who are the approved signatories for checks on City accounts?" Mayor Pate said they are the Mayor, the City Clerk, the Pro-tem and the Finance Director. Mr. Pownall moved to go into Executive Session to discuss a personnel matter. Ms. Ballance seconded.

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

Executive Session

When the regular session resumed, Mr. Pownall moved to take no action.

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

**AGENDA SETTING:**

Mr. Pownall added any unfinished business and no new business unless it's financial in nature. Mr. Berry seconded.

**CITY COUNCIL COMMENTS:**

Ms. Ballance left the table at 9:50 p.m.

Mr. Pownall thanked the people who "put him behind this table" and said he'd done his best to uphold what this office means. He thanked Mr. Boyette for his fair (news) coverage and wished the new Council the best.

Mr. DeVito reflected Mr. Pownall's comments in thanking Council for their service.

Mr. Berry concurred and said he appreciates the opportunity to serve on Council.

Mr. Parker said, "If you don't want to get involved with City government, at least pay attention."

**MAYOR'S COMMENTS:**

The run-off election results were 126 for Mickey Schneider and 55 for Jack Gentry. He read a list of upcoming events.

**ADJOURNMENT:**

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

Motion carried 5/0/0. The meeting ended at 9:55 p.m.

ATTEST:

  
City Clerk/Treasurer Ann Armstrong

APPROVED:

  
Mayor Morris Pate