

**CITY OF EUREKA SPRINGS
COUNCIL MEETING
Monday – October 22, 2012 7 p.m.
AGENDA**

CALL TO ORDER

ROLL CALL, ESTABLISH QUORUM

PLEDGE OF ALLEGIANCE TO THE FLAG

APPROVAL OF THE AGENDA

APPROVAL OF THE MINUTES: October 8, 2012 and October 16, 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 – postponed until the sign ordinance is approved – Planning
2. Building permits, parking lots Ordinance No. 2161 – 2nd reading
3. “Weekly” dwelling units list – Planning
4. Update on the Taxi franchise workshop date – to be scheduled after budget workshops -- Mr. DeVito and Ms. Lindblad
5. Discussion of the Auditorium agreement for 2013 – Mr. Pownall and Mr. DeVito
6. Ordinance for Voting by ward – Ms. Lindblad and Mr. Pownall
7. Auditorium heating project report – Mayor Pate
8. Yellow Bag Committee recommendations – postponed until second meeting in October
9. Discussion of Code section 4.48, amending to “City-permitted” or “City-sanctioned” – Mr. Berry and Ms. Lindblad
10. Sign Ordinance No. 2162 – 3rd reading
11. Exploration of costs and issues for moving Council meetings to the Court Room – Mr. DeVito and Mr. Raphael
12. Budget Resolution Veto -- Mayor Pate
13. Council request for Police Chief Hyatt’s presence – Veto – Mayor Pate
14. Annual Levying of taxes Ordinance No. 2164 – 3rd reading

NEW BUSINESS:

1. 2012 Fixed Assets list – Mr. Pownall and Ms. Ballance
2. Eureka report – Mayor Pate
3. Ramifications of a voluntary tax for the Cemetery Commission – Mr. Berry and Mr. DeVito
4. Discussion of readjustment of vacation water rates – Ms. Lindblad and Ms. Ballance
5. Discussion regarding second meeting in December – Mr. Pownall and Ms. Ballance
6. Municipal League Attorney re: Nellie Clark’s case – Mayor Pate
7. Discussion w/Municipal League Attorney re: Misfeasance in Local Government – 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. Monday, October 22, 2012, in the jury room on the second floor of the Western District Carroll County Courthouse.

PRESENT: Mayor Morris Pate, Aldermen Parker Raphael, Karen Lindblad, Ken Pownall, 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. DeVito deleted Unfinished Business #4. Mr. Raphael seconded. Mr. DeVito deleted Unfinished Business #5. Mr. Berry seconded. Ms. Lindblad put Unfinished Business #5 back on the agenda. Mr. Pownall seconded. Mr. DeVito moved to place New Business #s 6 and 7 to follow Public Comments. Mr. Berry seconded. A voice vote for the amended agenda followed.

Motion carried 6/0/0.

APPROVAL OF THE MINUTES: October 8, 2012 and October 16, 2012

Mr. DeVito moved to approve the October 8, 2012 minutes. Mr. Berry seconded.

Motion carried 6/0/0.

Mr. DeVito moved to approve the October 16, 2012 (Special Meeting) minutes. Mr. Berry seconded.

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

COMMISSION, COMMITTEE, AUTHORITY REPORTS AND EXPIRED TERMS:

Planning – Chair Beverly Blankenship said the Planning Commission would like to have discussion of Outdoor Sales added to the next agenda. A Public Hearing for a setback variance at 24 Pine St. is scheduled for October 23. Planning is beginning to work on Time Shares.

CAPC – no report

Hospital – no report

Parks – Mayor Pate nominated Myrna Thaxton for Position 1. Ms. Lindblad, Ms. Ballance and Mr. Pownall were unable to contact Ms. Thaxton. Ms. Lindblad moved to postpone. Ms. Ballance seconded.

Motion carried 5/1/0 with Mr. DeVito voting “No”.

HDC – no report

Cemetery – no report

PUBLIC COMMENTS:

Jay Fusaro, 21 Owen St., voiced his support for the Police Chief and opposed any reduction in the amount of Police Officers or funding.

Mickey Schneider spoke about the Veterans Day cook-off on Friday, November 9. The parade is scheduled for Saturday, November 10 at 10 a.m. She offered some historical background on Veterans Day and noted the 21 gun salute will be on Sunday, November 11 at 11:11 a.m.

Sam Kirk, School Board member, provided information regarding safety issues at the corner of Greenwood Hollow Rd. and Lake Lucerne Rd. Moving a fire hydrant and widening Lake Lucerne Rd. are the issues for which placement on the next agenda and funding were requested.

Faryl Kaye, B&B owner, spoke about the variety of Bed and Breakfast options available and objected to attempts to regulate what food is served.

NEW BUSINESS:

6. Municipal League Attorney re: Nellie Clark's case

Attorney Chris Bradley recapped events resulting in Ms. Clark's home being inundated with sewage,

the filing of a lawsuit, A.C.A. 21-9-303 changes to tort immunity, and Judge Finch's decision to proceed to trial. Mr. Bradley noted a city can file an interlocutory appeal for a Supreme Court decision. If the case were lost, every city would be affected. Also, insurance would pay up to the limit of \$25,000.

Another option is for the Council to choose settlement with Ms. Clark. Settlement would involve notifying the Court that (the City of Eureka Springs) is withdrawing notice, advising the Judge the case has been settled, making payment, obtaining a release, and an order of dismissal signed by the Judge. Mr. Bradley/Mr. Weaver could negotiate a settlement or Council could choose one lead person to communicate with Ms. Clark's attorney.

Ms. Ballance moved to postpone until the next meeting. Mr. DeVito seconded.

Motion carried 6/0/0.

7. Discussion w/Municipal League Attorney re: Misfeasance in Local Government

Mr. Pownall made a motion to discuss. Ms. Lindblad seconded. Mr. Pownall asked about the correct procedure for filing a claim of misfeasance/malfeasance/nonfeasance. Noting malfeasance is the most serious, Mr. Bradley commented on the rarity of success in claims, problems due to the political nature of claims, and potential responses from prosecuting attorneys. He noted Legislative Audit review can initiate action if funds are involved; Council can approach the County Prosecutor; or a lawsuit can be filed, depending on the situation.

Ms. Ballance asked if a case of a person not authorized as a signatory but signing a check would be malfeasance. Mr. Bradley's response was termination of the employee by the department head or use of a grievance procedure if such is available. Discussion of specifics began and Mr. DeVito called point of order and expressed his belief this was not the place to discuss this item. Mr. Bradley suggested contacting the County Prosecutor or Legislative Auditors if "no traction" is gained.

UNFINISHED BUSINESS:

1. Non-conforming Off-Premise Signs

Postponed until the sign ordinance is approved

2. Building permits, parking lots, Ordinance No. 2161 – 2nd reading

Mr. Pownall moved to discuss. Ms. Lindblad seconded. Mr. Berry proposed removal of Planning review of "all City adopted building and/or construction codes" from Section 2 paragraph 1 due to qualifications of those reviewing. Mr. Pownall moved to suspend the rules and place Ordinance No. 2161 on its second reading by title only. Mr. DeVito seconded. A roll call vote followed.

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

Ms. Armstrong read the Ordinance title. Mr. Pownall moved to approve Ordinance No. 2161 on its second reading. Mr. DeVito seconded. Ms. Blankenship said the Ordinance came from the City Attorney, but the Planning Commission doesn't have a problem with removal of words (specified by Mr. Berry). Mr. DeVito made a motion to amend Ordinance No. 2161 by striking the words "all City adopted building and/or construction codes". Mr. Berry seconded. Mr. Weaver explained the Building Code was adopted by reference and suggested not approving the Ordinance if the words were removed. He noted that a different guideline for Planning could (be achieved) by removal of the whole portion of that paragraph. Discussion included suggestions for additional language and a concern about Section 1 paragraph 2.

A roll call vote was taken on Mr. DeVito's motion to amend by striking "all City adopted building and/or construction codes".

Motion failed 3/3/0. (Mayor Pate abstained from voting.)

A roll call vote followed on the original motion to approve Ordinance No. 2161 on its second reading.

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

3. "Weekly" dwelling units list

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to postpone due to having received new information a few hours before. Mr. DeVito seconded.

Motion carried 6/0/0.

4. Update on the Taxi franchise workshops

Deleted during Approval of the Agenda

5. Discussion of the Auditorium agreement for 2013

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mayor Pate read a letter from CAPC Chair Charles Ragsdell regarding the Auditorium management agreement renewal clause. In response to Mr.

Pownall's question regarding qualifiers, Mr. Weaver said he would like to have time to review the agreement and agreed to do so. Mr. DeVito moved to table until the next meeting. Mr. Raphael seconded.

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

6. Ordinance for voting by ward

Ms. Lindblad moved to discuss. Mr. Raphael seconded. Ms. Lindblad summarized the research done by Deputy Clerk Bethe Henley regarding polling places and the conclusion that voting could be done in one location as it is now. Ms. Lindblad moved to assign a number and proceed with the ordinance. Mr. DeVito restated his view that any change should go to the voting public. Discussion and several points of order followed. A roll call vote on Ms. Lindblad's motion was taken.

Motion carried 4/2/0 with Mr. Berry and Mr. DeVito voting "No". The Clerk read **ORDINANCE NO. 2166 AN ORDINANCE OF THE CITY OF EUREKA SPRINGS, ARKANSAS, PROVIDING FOR THE ELECTION OF ALDERMEN BY WARD BY VOTE OF THE QUALIFIED ELECTORS OF THE WARD IN WHICH THEY EACH ARE A CANDIDATE, WITH AN EMERGENCY CLAUSE.** Clarification of the Statute number (14-43-307 (b)(1)(A)), removal of references to an emergency clause, and discussion of a vote by the people followed.

Ms. Ballance moved to approve Ordinance No. 2166 on its first reading. Ms. Lindblad seconded.

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

Ms. Ballance moved to suspend the rules and place Ordinance No. 2166 on its second reading. Mr. Weaver noted the need to remove the emergency clause and Ms. Ballance retracted her motion. She moved to remove the emergency clause and reference in the title. Ms. Lindblad seconded. (This was not recognized.) Discussion followed regarding there not being a hurry.

Mayor Pate called for a ten minute recess. Mr. Raphael seconded.

Motion carried 6/0/0.

7. Auditorium heat coil project report

Ms. Lindblad moved to discuss. Mr. Raphael seconded. Ms. Lindblad asked what would happen with the scrap metal and Mayoral Assistant Diane Wilkerson confirmed the contract included MCC taking all the removed materials. The project timeline is 3-4 weeks for the equipment to come in and 5-6 weeks until completion.

8. Yellow Bag Committee recommendations

Ms. Ballance moved to postpone until the next meeting. Mr. DeVito seconded.

Motion carried 6/0/0.

9. Discussion of Code section 4.48, amending to "City-permitted" or "City-sanctioned"

Mr. Berry noted the Planning Chair requested for this item to be tabled until the next meeting. Mr. DeVito seconded.

Motion carried 6/0/0.

10. Sign Ordinance No. 2162 – 3rd reading

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to suspend the rules and put Ordinance No. 2162 on its third reading by title only. Mr. DeVito seconded. A roll call vote followed.

Motion carried 6/0/0. The Clerk read the Ordinance title.

Mr. Pownall moved that Ordinance No. 2162 be approved on its third reading. Mr. DeVito seconded. Ms. Ballance noted the need for a comma in the title. A roll call vote on approval followed.

Motion carried 6/0/0. Mr. Pownall moved to approve the emergency clause. Ms. Lindblad seconded. A voice voted followed.

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

Mr. Berry moved to approve the emergency clause. Mr. DeVito seconded. A roll call vote followed.

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

11. Exploration of costs and issues for moving Council meetings to the Court Room

Mr. DeVito moved to drop this from the agenda. Ms. Lindblad seconded.

Motion carried 6/0/0.

12. Budget Resolution Veto

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to override the veto. Ms. Lindblad seconded. Mr. Raphael asked if the City Attorney had read and confirmed (the accuracy) of information regarding Cemetery funds. Mr. Weaver said he had not. Mr. Berry asked for the Mayor to read the reason for the veto into the record. Mr. DeVito seconded.

Motion carried 4/1/1 with Ms. Lindblad voting "No" and Ms. Ballance abstaining.

Mayor Pate read the reasons for the veto of Resolution No. 607 regarding the 2012 Budget Review. (attached). Mr. Pownall cited State Statutes and expressed his view of the appropriateness of an override. Ms. Lindblad favored providing funds for this City property, trusting the memories of two respected citizens who say they read the original documents, and leaving (the CDs) for expansion and emergencies. Discussion followed regarding the condition of trees in the Cemetery, accuracy in record keeping, allocating funds in the 2013 budget, and the 6/0/0 vote for the Resolution. Mr. Pownall called for the question. Ms. Ballance seconded. Mayor Pate noted the phrase "call for the previous question". Ms. Lindblad called for the previous question. Mr. Pownall seconded. A roll call vote followed.

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

A roll call vote on overriding the veto followed.

Motion failed 3/3/0.

Mr. Pownall left the Council table at 9:25 to tend family matters.

13. Council request for Police Chief Hyatt's presence – Veto

Ms. Ballance moved to postpone until the next meeting. Mr. DeVito seconded. A voice vote followed.

Motion failed 3/2/0 with Mr. Raphael and Mr. Berry voting "No".

Mr. Berry moved to hear the notice of veto. Mr. DeVito seconded. A voice vote followed.

Motion carried 4/1/0 with Ms. Lindblad voting "No". Mayor Pate read the notice.

Mr. Berry motioned to move on to item #14. Mr. DeVito seconded. A voice vote was taken.

Motion carried 4/2/0 with Ms. Ballance and Ms. Lindblad voting "No" and Mayor Pate adding his "Aye" to carry.

14. Annual Levying of taxes Ordinance No. 2164 – 3rd reading

Mr. Berry moved to discuss. Mr. Raphael seconded. Mr. Berry moved to suspend the rules and place Ordinance No. 2164 on its third reading by title only. Mr. DeVito seconded. A roll call vote followed.

Motion carried 5/0/0. The Clerk read the Ordinance title.

Mr. Berry moved to approve Ordinance No. 2164 on its third reading. Mr. DeVito seconded. A voice voted followed.

Motion carried 5/0/0. Mr. Berry moved to read the emergency clause. Mr. DeVito seconded. (No vote was taken.) Ms. Armstrong read the emergency clause. Mr. Berry moved to approve. Mr. Raphael seconded. A roll call vote followed.

Motion carried 4/1/0 with Ms. Ballance voting "No".

NEW BUSINESS:

1. 2012 Fixed Assets list

Ms. Ballance moved to discuss. Mr. Raphael seconded. Finance Director Lonnie Clark provided the list. Ms. Ballance moved to postpone further discussion of the issue until the next meeting. Mr. DeVito seconded. A voice vote followed.

Motion carried 5/0/0.

2. Eureka report

Mr. Berry moved to discuss. Mr. Raphael seconded. Mayor Pate read from the special event application. There were 608 entrants and 139 parking spaces were rented for three days for \$465. Diane Wilkerson confirmed the daily rate of \$3 per space and noted there was a failed attempt to raise the rate to \$5.

Ms. Lindblad said it was not a good weekend for most businesses in town. She expressed concern for the weekend-long blocking of the fire lane behind City Hall and, so, the inability to access Spring St. Ms. Wilkerson noted other streets have been closed for events and the barrier could be easily moved if there were a fire.

Ms. Ballance noted a calculation of the parking fee for three days equals \$1251. Objecting to not having received the information, Ms. Ballance moved to postpone until the next meeting. Mr. DeVito seconded.

Motion carried 4/1/0 with Mr. Raphael voting "No". Mayor Pate agreed to provide the information.

3. Ramifications of a voluntary tax for the Cemetery Commission

Mr. Berry moved to discuss. Mr. Raphael seconded. Mr. Berry spoke about a 5 mil limit for City tax and noted Berryville uses part of their millage to help fund the Cemetery. He requested that Mr. Clark (look in

to) the legality of using up to .5 mils and how much money that might generate. Mr. Clark agreed to do so. Mr. Berry moved to defer until the next meeting. Mr. DeVito seconded. A voice vote followed.

Motion carried 5/0/0.

4. Discussion of readjustment of vacation water rates

Ms. Lindblad moved to discuss. Mr. Raphael seconded. Ms. Lindblad said she'd received complaints from citizens about paying for water they're not using. She recommended to at least defer the sewer usage rate but preferred no charge when water is turned off. Ms. Lindblad noted the \$25 fee to turn the water off and the \$25 fee to turn the water on. She motioned for the City Attorney to write an ordinance to eliminate the charge for meters "on vacation". Ms. Ballance seconded. Mr. Weaver asked for "vacation" to be defined.

Mr. Berry suggested three months as the definition and expressed concern for the cost to the City. He moved to defer until the next meeting and have more information. Mr. DeVito seconded. A roll call vote on deferral followed.

Motion carried 5/0/0.

5. Discussion regarding second meeting in December

Ms. Lindblad moved to postpone until the next meeting since Mr. Pownall was one of the people who put this on the agenda. Mr. DeVito seconded. A voice vote followed.

Motion carried 5/0/0.

AGENDA SETTING:

Ms. Ballance moved to discuss. Mr. Raphael seconded.

Mr. Raphael added discussion of Outdoor Sales. Mr. DeVito seconded.

Mr. Raphael added discussion of the school road situation. Mr. DeVito seconded.

Mr. Raphael added discussion of Nellie Clark's case. Mr. DeVito seconded.

Ms. Lindblad added discussion of page 3 in the Eureka Springs Personnel Policy Handbook that states the Mayor shall approve all department heads and hiring of all City employees and A.C.A.14-42-110. Ms. Ballance seconded.

Ms. Ballance added discussion of the State Statute that calls for City Council to decide the number of Police Officers by ordinance. Ms. Lindblad seconded.

CITY COUNCIL COMMENTS:

Ms. Lindblad noted the November 6 election and said everyone should get out and vote.

Mr. DeVito said people could vote tomorrow and to please vote for Butch Berry.

Ms. Ballance encouraged people to vote.

MAYOR'S COMMENTS:

Mayor Pate read a list of upcoming events. He noted a letter from the Arkansas Forestry Commission commending the Volunteer Fire Fighters. He asked Council to read through the information about the Cemetery Commission and Ordinance No. 1031.

ADJOURNMENT:

Mr. DeVito moved to adjourn. Mr. Berry seconded.

Motion carried 5/0/0.

ATTEST:


City Clerk/Treasurer Ann Armstrong

APPROVED:


Mayor Morris Pate