

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING  
Monday -- September 10, 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:** August 27, 2012

**EXECUTIVE SESSION**

**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. 3 – expires 6/30/15 **Vote for Lynn Bridwell**  
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 **Attorney's opinion regarding who re-nominates (from 8/13 meeting)**

**Parks** – Pos. 1 – vacant – expired 5/1/12. Pos. 5 – vacant – expired 5/1/11 **Vote on Rachel Brix**

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

**Cemetery** – Pos. 1 – June Westphal – expired 2/15/12

**Yellow Bag Research Committee**

**PUBLIC COMMENTS**

**UNFINISHED BUSINESS:**

1. Non-conforming Off-Premise Signs – postponed until the sign ordinance is approved – Planning
2. Ordinance No. 2155 Limousines – third reading – Mr. Raphael and Ms. Ballance
3. Action for non-participating Commissioners – Response from Commissions -- Mr. Pownall and Ms. Ballance
4. Building permits, parking lots, demolition and construction ordinance – Postponed until reviewed by the City Attorney – Planning
5. “Weekly” dwelling units list – Postponed until reviewed by the City Attorney -- Planning
6. Update on the Taxi franchise workshops -- Mr. DeVito and Ms. Lindblad
7. Discussion of the Auditorium agreement for 2013 – Mr. Pownall and Mr. DeVito
8. Ordinance for Voting by ward – postponed until the second meeting in September -- Ms. Lindblad and Mr. Pownall
9. Discussion of the proposed ordinance for Water/Sewer committee – Mr. Pownall and Ms. Ballance
10. Correction of title: Resolution No. 603
11. Auditorium heat coil report – first meeting in October – Mayor Pate
12. Yellow Bag Committee report – Mr. Pownall and Ms. Lindblad

**NEW BUSINESS:**

1. Proposed changes for the definition of Bed and Breakfast – Planning
2. Planning Commission research on structures encroaching on public property – Ms. Ballance and Ms. Lindblad
3. Update on the Zoning map – Mr. Raphael and Mr. Pownall for Planning
4. Discussion of sales at City festivals – Mr. Berry and Ms. Lindblad for Planning
5. Discussion of financial procedures – Mr. Pownall and Ms. Ballance
6. Discussion of Employee Handbook update – Mr. Pownall and Ms. Lindblad
7. Resolution for a Professional Services bond for Fire/EMS – Mayor Pate
8. Discussion of money the Cemetery Commission has in the bank – Mayor Pate
9. Discussion of the Sign ordinance – Mr. Pownall and Ms. Ballance

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR'S COMMENTS**

**ADJOURNMENT**

**CITY OF EUREKA SPRINGS  
CITY COUNCIL**

**REGULAR MEETING**

**MONDAY**

**SEPTEMBER 10, 2012**

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Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, September 10, 2012, in the jury room on the second floor of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Morris Pate, Aldermen Parker Raphael, Ken Pownall, Lany Ballance, James DeVito, Karen Lindblad, City Attorney Tim Weaver and City Clerk/Treasurer Ann Armstrong

**ABSENT:** Butch Berry

**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. Mayor Pate removed New Business item #8. Mr. DeVito seconded. Mayor Pate moved New Business #5 to first place for discussion. Mr. DeVito seconded. Mr. DeVito postponed New Business item #4 until the next meeting. Mr. Raphael seconded. Mr. Pownall moved to add discussion of the sign ordinance under New Business. Ms. Ballance seconded. Mr. Pownall added an Executive Session after Approval of the Minutes. Ms. Ballance seconded. Mr. Pownall added the Yellow Bag Committee (to Unfinished Business.) Ms. Lindblad seconded. Mayor Pate called for approval of the amended agenda.

Motion carried 5/0/0.

**APPROVAL OF THE MINUTES: August 27, 2012**

Mr. Pownall moved to approve the August 27, 2012 minutes. Mr. DeVito seconded.

Motion carried 5/0/0.

**EXECUTIVE SESSION:**

When the Council session resumed, Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall motioned for an Executive Session at the next meeting to discuss a Commission member's action. Mr. DeVito seconded.

Motion carried 5/0/0.

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

**Planning** – Chair Beverly Blankenship noted there will be a September 19 training session for Planning Commissioners. On August 28, Planning approved a tree cut on Mountain St. after an arborist's report on its condition. Ms. Blankenship confirmed items for postponement.

Mr. Pownall moved to suspend the rules and postpone New Business item #2. Mr. Raphael seconded. A roll vote followed.

Motion carried 5/0/0.

**CAPC** – Mr. DeVito moved to approve the re-nomination of Lynn Bridwell for Position 3. Mr. Raphael seconded.

Motion carried 4/1/1 with Ms. Lindblad voting "No", Ms. Ballance abstaining, and Mayor Pate adding his "Aye".

**Hospital** – Mr. Weaver confirmed the Mayor's right to nominate for the Hospital Commission.

**Parks** – Mr. Pownall moved to approve the nomination of Rachel Brix for Position 5. Mr. DeVito seconded.

Motion carried 4/1/1 with Ms. Lindblad voting "No", Ms. Ballance abstaining, and Mayor Pate voting "Aye".

**HDC** – no report

**Cemetery** – Mayor Pate re-nominated June Westphal (for Position 1). Chair Ken Fugate spoke about the need for 35 electrical fixtures, sockets and wire. Twelve yards of topsoil are needed as well as the removal of about 10 trees. Commissioner Gloria Stevens, the Beautification Committee, thanked Bear Creek, Hart's, Sunfest, Bob of the Farmer's Market, and Joanne from Between the Rivers Nursery for their donations.

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**PUBLIC COMMENTS:**

**Walter Burrell**, co-owner of Eureka Live, spoke in favor of the \$5 limo rides.

**Judith Leswig**, 30 Eureka, said she felt betrayed by Council in the deer hunt decision.

**Ed Leswig**, 30 Eureka, expressed his dissatisfaction with the three Council members who voted against the deer hunt. He said he believes they should submit their resignations.

**Steve Beacham**, 101 Owen Rd., spoke about the Committee's plan for the deer hunt and favored review after the hunt (to formulate) a management plan. He urged Council to not usurp the vote of the people.

**Barbara Kellogg**, 14 and 18 Nut St., said she is completely against the hunt.

**Mark Hughes**, 161 Cushing, said he has given up on gardening at his home and noted the two separate birthing seasons this summer. He offered background on the deer feeding ban and his support of the plan from the Deer Hunt Committee.

**Dianne Stull**, 55 Center St., spoke about the Mayor and Council's responsibility to (protect) the safety and well-being of the citizens. She does not feel safer with the plan for the deer hunt and noted the proposed hunt promises to wound the entire town.

**Karen Mills**, 29 Douglas, encouraged support for management of deer as soon as possible by this (Council).

**Pat Levine**, 41 Alexander, spoke about how tick fever is affecting her son's life and that of her neighbor. She noted the deer are damaging the hardwoods and spoke in favor of an urban forest management plan.

**Mickey Schneider** spoke about doing the will of the people. She instructed those at the table to show no response to comments and then excoriated Council for their decision regarding the deer hunt.

Noting the topic was not on the agenda for discussion, Mayor Pate introduced the issue of Mr. Weaver's opinion regarding the vote on the deer hunt. Mr. Weaver noted Council would need to ask for an oral version of what they've received in writing. They might then reverse the action taken at the last meeting. Mr. DeVito moved to suspend the rules and add the Attorney's opinion regarding the vote taken at the last meeting, to Unfinished Business. Mr. Raphael seconded. A roll call vote followed.

Motion carried 4/0/1 with Ms. Ballance abstaining.

**NEW BUSINESS:**

**5. Discussion of financial procedures**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to set up a workshop to discuss the financial parts of the City Code. Ms. Lindblad seconded. Mr. Raphael moved to add it to the budget workshop. Mr. DeVito seconded.

Motion carried 5/0/0.

**UNFINISHED BUSINESS:**

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

Postponed until the sign ordinance is approved

**2. Ordinance No. 2155 Limousines – third reading**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Following Mr. Weaver's opinion regarding the narrow scope of the present ordinance, Ms. Lindblad moved to suspend the rules and to place Ordinance No. 2155 on its third reading by title only. Mr. Raphael seconded. Mr. DeVito restated his position of preference for a two-hour wait time. A roll call vote followed.

Motion failed 3/2/0 with Mr. Pownall and Mr. DeVito voting "No".

Mr. Raphael motioned to approve Ordinance No. 2155. Ms. Ballance seconded. Following Mr. Weaver's recommendation to read the ordinance in full, Mr. Raphael amended his motion to include reading the ordinance. Ms. Lindblad seconded. A roll call vote followed.

Motion failed 3/2/0 with Mr. DeVito and Mr. Pownall voting "No". Mr. Weaver noted it has been Council's procedure that, when failing on the third vote, such an issue is dead until changed or brought back in another form.

**3. Action for non-participating Commissioners**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall referenced a list of commissions

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and procedures for removal of commissioners. He observed commissions are not following their own rules. Mr. Pownall moved to take the item off of the agenda. Mr. DeVito seconded.

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

**4. Building permits, parking lots, demolition and construction ordinance**

Postponed until reviewed by the City Attorney

**5. "Weekly" dwelling units list**

Postponed until reviewed by the City Attorney

**6. Update on the Taxi franchise workshops**

Mr. DeVito noted the meeting is being rescheduled. Mr. Pownall postponed until a date is set. Mr. DeVito seconded.

Motion carried 5/0/0.

**7. Discussion of the Auditorium agreement for 2013**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Ms. Lindblad expressed her concern about the requirement to purchase tickets online until right before a performance. She also favored the CAPC paying a larger share of maintenance and insurance for the Auditorium. Mr. DeVito noted the CAPC is paying over \$100,000 a year and expressed his belief that recent increased CAPC revenues indicates increased general revenues in the community. Mr. Raphael favored a discussion of how much the City is to invest. Mr. Pownall motioned to address (the CAPC responsibility to operate the facility on a daily basis, determining hours of operation and staffing) and (the CAPC will remit any profits generated above CAPC costs of \$94,735.00) before the proposed agreement is brought to the table. Ms. Lindblad seconded.

Motion carried 5/0/0.

Ms. Lindblad moved to take a ten minute break. Mr. Pownall seconded.

Motion carried 5/0/0.

**8. Ordinance for Voting by ward**

Postponed until second meeting in September

**9. Discussion of the proposed ordinance for Water/Sewer committee**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Raphael expressed concern regarding forming a committee of untrained people. Mr. Pownall called Point of Order and sought Mr. Weaver's opinion of the proposed ordinance. Mr. Weaver opined there was nothing technically wrong with the document.

Mr. Raphael referenced 1991 House Bill 1774. He also noted the existence of a Sanitary Board and a law saying it cannot be replaced as long as there is indebtedness. He supported an ordinance to deal with a specific project as well as a dialogue with the Public Works Director.

Ms. Ballance moved to assign the ordinance a number and (place) it on its first reading, for discussion. Mr. Pownall seconded. A voice vote followed.

Motion failed 2/3/0 with Ms. Lindblad, Mr. DeVito and Mr. Raphael voting "No".

Discussion followed regarding working with the Sanitary Board and a request for Mr. Weaver to look into the issue. Objecting to the ordinance not being read but discussion continuing, Mr. Pownall declared the issue dead.

**10. Correction of title: Resolution No. 603**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. DeVito moved to read Resolution No. 603 for discussion purposes. Mr. Pownall seconded.

Motion carried 5/0/0.

Mayor Pate then interjected with an estimate of the money that would not be collected if all of the meters were made (free two-hour). Ms. Lindblad expressed her belief that the revenues would be made up through increased sales taxes. Ms. Armstrong then read the current version of approved Resolution No. 603.

Ms. Ballance moved to change the Resolution title. Ms. Lindblad seconded. The new title was recommended : **RESOLUTION NO. 603 A RESOLUTION REMOVING THE REQUIREMENT OF PAYING THE CITY-OWNED METERED SPACES AND ESTABLISHING FREE TWO-HOUR PARKING FROM DECEMBER 1 THROUGH DECEMBER 31, 2012.**

Mr. Pownall moved to approve the title change. Mr. Raphael seconded. A roll call vote followed.

Motion carried 5/0/0.

**11. Auditorium heat coil report**

Postponed until the first meeting in October

## **12. Yellow Bag Committee**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall motioned for the Yellow Bag Committee to formulate recommended changes and bring them to the table no later than the second meeting in October for presentation to the waste disposal contractor. Mr. DeVito seconded.

Motion carried 4/1/0 with Mr. Raphael voting "No".

## **13. Deer Hunt – Mr. Weaver’s opinion regarding the vote**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. DeVito requested Mr. Weaver’s opinion. Mr. Weaver recapped the motion and August 13 vote on the deer hunt. He recalled the 4/2 vote approving the second set of dates and said that, at that point, Council lost the ability to “debate whether there was going to be or not a deer hunt”. He opined the August 27 vote was improper because it was not brought back up as a motion to reconsider the action, as required.

Discussion followed regarding readdressing the issue, public awareness of discussion, publication as an agenda item in a newspaper prior to being added at the table, and Mr. Berry’s request (via Mr. Weaver) to be present for further consideration of the issue. Further discussion included legal means for Council to repeal a vote of the citizenry, threats of bodily harm, and action on rules for the hunt. Wording of the ballot issue was reviewed as well as the Black’s Law Dictionary definition of the word “proscribed” (forbidden). Ordinance 2127 was reviewed briefly.

Ms. Ballance moved to take a ten-minute break. Ms. Lindblad seconded.  
Motion carried 4/1/0 with Mr. DeVito voting “No”.

## **NEW BUSINESS:**

### **1. Proposed changes for the definition of Bed and Breakfast**

Postponed until reviewed by the City Attorney

### **2. Planning Commission research on structures encroaching on public property**

Postponed during the Planning report

### **3. Update on the Zoning Map**

Mr. DeVito moved to discuss. Mr. Raphael seconded. Mr. DeVito moved to read the report into the record. Ms. Ballance seconded.

Motion carried 5/0/0. Ms. Armstrong read the report.

### **4. Discussion of sales at City Festivals**

Postponed during Agenda Setting, until the next meeting

### **6. Discussion of Employee Handbook update**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall brought this request to the table because the last review was done in 2007. He noted the absence of information regarding the granting of rights to Partnership Registry members and information regarding hiring and firing. Ms. Lindblad moved to have a workshop. Mr. Pownall seconded.

Motion carried 4/1/0 with Mr. Raphael voting “No”.

### **7. Resolution for Professional Services bond for Fire/EMS**

Postponed until the next meeting

### **8. Discussion of money the Cemetery Commission has in the bank**

Removed during Agenda Setting

### **9. Discussion of the Sign Ordinance**

Mr. Pownall moved to discuss. Ms. Lindblad seconded. Mr. Pownall said he sent the proposed ordinance to the City Attorney and Clerk. It required review of seven different ordinances.

## **AGENDA SETTING:**

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

Mr. Pownall added the Sign Ordinance. Ms. Ballance seconded.

Ms. Lindblad added reconsideration of the Deer Hunt. Ms. Ballance seconded.

Ms. Lindblad added the Sewer Commission ordinance. Mr. Pownall seconded.

Mr. DeVito added Exploration of costs and issues for moving Council meetings to the Court Room.

Mr. Raphael seconded.

**COUNCIL COMMENTS:**

Mr. DeVito noted the upcoming fundraising dinner for Butch Berry's campaign for State Representative.

Ms. Lindblad thanked those who donated to the Cemetery and noted they no longer have a budget. She noted the upcoming performance of Delfeayo Marsalis in the Aud.

Mr. Pownall spoke about the 38 people who'd contacted him with objections to the deer hunt and the 7 people who told him they are for it. He noted there has been no intent to usurp the voters.

Ms. Ballance wished her "Funny Valentine" a Happy Birthday.

**MAYOR'S COMMENTS:**

The Mayor read a list of upcoming events. He said prayers and thoughts go out for the family of Gary Hayhurst.

**ADJOURNMENT:**

Mr. DeVito moved to adjourn. Mr. Pownall seconded.  
Motion carried 5/0/0. The meeting ended at 9:15 p.m.

ATTEST:

  
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City Clerk/Treasurer Ann Armstrong

APPROVED:

  
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Mayor Morris Pate