

**CITY OF EUREKA SPRINGS**  
**COUNCIL MEETING**  
Monday, November 25, 2013 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 4, 2013

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

**Planning** – Pos. 4 – Jim Morris – expired 7/1/12. Pos. 5 – Melissa Greene – expired 1/1/13

**CAPC** – Pos. 2 – vacant – expires 6/30/14. Pos. 4 – vacant – expires 6/30/16

**Hospital** – Pos. 1 -- Anna Ahlman – expired 6/1/13

**Parks**

**HDC**

**Cemetery**

**PUBLIC COMMENTS:**

**UNFINISHED BUSINESS:**

1. Schedule workshop re: Ordinance No. 2189 Increase parking rate for special events –Mr. Purkeypile and Mr. DeVito
2. Amended Ordinance No. 2191 Additional Use in C-3 excluding the Library – Mr. Purkeypile and Mr. DeVito
3. Ordinance No. 2195 Land Bank – 2<sup>nd</sup> reading
4. Ordinance for business licenses for multi-family housing – Mr. Mitchell and Ms. Schneider
5. Ordinance No. 2196 rezoning 80 Mountain to C-3 – 3<sup>rd</sup> reading
6. Update on purchase of yellow trash bags with draw strings – Mayor Pate
7. Resolution or Proclamation designating first Sunday in November Bam Bam Day – Ms. Schneider and Mr. Mitchell

**NEW BUSINESS:**

1. Joe Gunnels' Group Tour application – Mayor Pate
2. Vacating request for portion of Hartman and McCune – Mayor Pate
3. Vacating 100 ft. of Palo Pinto – Mayor Pate
4. Vacating portion of Nut St. – Mayor Pate
5. Hours of operation and animals in C-3 – Mr. Mitchell and Mr. Purkeypile
6. Clean City Ordinance – Mr. Mitchell and Ms. Schneider
7. Conditional Use permit for farm animals – **pending Planning action** -- Mayor Pate
8. Schedule workshop re: downtown parking facility – Mr. Purkeypile and Mr. DeVito
9. Discussion of Planning Commission procedures for vacating property – Ms. Schneider and Mr. DeVito
10. Resolution for Art wall agreement renewal – Mayor Pate
11. Discussion of forming Auditorium Commission – Mr. DeVito and Mr. Mitchell

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR'S COMMENTS**

**ADJOURNMENT**

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

**MONDAY**

**NOVEMBER 25, 2013**

---

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, November 25, 2013, in the jury room in the Western District Carroll County Courthouse.

**PRESENT:** Mayor Morris Pate, Aldermen Joyce Zeller, Terry McClung, Dee Purkeypile, Mickey Schneider, James DeVito, David Mitchell, City Attorney Tim Weaver, and City Clerk/Treasurer Ann Armstrong

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

Mayor Pate led the Pledge of Allegiance.

**APPROVAL OF THE AGENDA:**

Mr. Mitchell moved to approve. Mr. Purkeypile seconded. Mr. Mitchell moved to place New Business #2 for the first item of discussion. He moved to table New Business items #5 and 6. Ms. Schneider seconded. Mr. McClung moved to table New Business #7. Ms. Schneider seconded. Mr. DeVito moved to place New Business #1 for the second item of discussion. Mr. Purkeypile seconded. Mayor Pate called for approval of the amended agenda

Motion carried 6/0/0.

**APPROVAL OF THE MINUTES: November 4, 2013**

Mr. DeVito moved to approve the November 4, 2013 minutes. Mr. Purkeypile seconded.  
Motion carried 6/0/0.

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

**Planning** – Chair Beverly Blankenship said the vacating request for McCune and Hartman was reviewed but the four Commissioners present could not decide the best action and tabled the item. Farm animals will be considered during a 2014 workshop. The budget request and proposed changes for vacating procedures were submitted.

**CAPC** – Mr. Purkeypile moved to discuss the application for Damon Henke. Mr. Mitchell seconded. Mr. DeVito noted the (CAPC) Commissioners nominate commissioners. Mr. Purkeypile moved to approve the application. Mr. DeVito seconded.

Motion carried 6/0/0.

**Hospital** – report provided

**Parks** – report provided

**HDC** – report provided

**Cemetery** – no report

Mr. McClung enquired about the new roof for the downtown fire station. Mayor Pate said the funds were found in the budget.

**PUBLIC COMMENTS:**

**Melissa Franklin Herndon** spoke about the property Parks proposes for a trail. When she lived (at 18 Chestnut) a portion of Hartman St. was maintained by a family member for access to Armstrong St. She noted that the bottom portion has been given away so a bike or hiking trail would “go to nowhere”.

**NEW BUSINESS:**

**2. Vacating request for portion of Hartman and McCune**

Mr. Mitchell moved to discuss. Mr. Purkeypile seconded. Jim Crouch, Attorney for James McEvoy and Lewis Gulledge, confirmed the request to close a portion of Hartman and a portion of McCune that are adjacent to the property. Parks approved closing the McCune portion and opposed closing the Hartman portion. Mr. Crouch said he did not know of a master plan for trails. He clarified the proposed street portions and the closed portion of Hartman that no longer goes through to Armstrong. A photo of the (Hartman) ravine

City Council                      11/25/13                      1

was provided. Mr. Crouch noted a trail would be impractical, expensive, and unsafe. Access to Mooney Spring could be gained via Cline St. He confirmed that the request to close an alley has been dropped.

Discussion followed regarding notification of neighbors, no expressed objection from the Mathews Trustees or Cross family heirs, and location of the house. Mr. McClung favored written agreement and a site visit. Further discussion included location of the circle drive, control of access, and no objections from Source Gas or (SWEPCO).

Neighboring property owner K.J. Zumwalt confirmed Amity St. becomes Cross St. Mr. Purkeypile expressed his preference for written agreement. Parks Director Bruce Levine proposed a trail that could be on the requested portion of Hartman, then on to Chestnut/Francis, connecting with Cline, then to Main St. Discussion included other options for looping trails, and the possibility of dropping the request for vacating the small portion of Hartman that intersects Cross and would prevent access to the back of the Zumwalt and Gorrell properties. Mr. Levine objected to closing any of Hartman.

Jim McEvoy, 18 Chestnut, spoke about the two-story drop from Chestnut to the Sleepy Hollow property on Main, the proposal for a trail encircling the home, and the 30-40\* grade. Mr. Mitchell proposed splitting the request, tabling the Hartman side, and dealing with the McCune side. Mr. Weaver noted the proposed ordinance would have to be modified. Mr. DeVito moved to table until the next meeting. Mr. Mitchell seconded.

Motion carried 6/0/0.

**1. Joe Gunnel's Group Tour application**

Mr. DeVito moved to discuss. Mr. Purkeypile seconded. Mr. Purkeypile moved to approve the application. Mr. McClung seconded.

Motion carried 6/0/0.

**UNFINISHED BUSINESS:**

**1. Schedule workshop re: Ordinance No. 2189 Increase parking rate for special events**

Ms. Schneider moved to discuss. Mr. Purkeypile seconded. Mr. Purkeypile motioned for a workshop on December 9 at 5:00 p.m. Ms. Schneider seconded.

Motion carried 6/0/0.

**2. Amended Ordinance No. 2191 Additional Use in C-3, excluding the Library**

Mr. Purkeypile moved to discuss. Mr. DeVito seconded. Mr. McClung moved to suspend the rules and to read Ordinance No. 2191 by title only. Mr. Purkeypile seconded. A roll call vote followed.

Motion carried 6/0/0. Ms. Armstrong read the Ordinance title. Mr. McClung made a motion to amend the Ordinance by adding the new Section 3 and changing the Section numbers below to 4 and 5. Mr. Purkeypile seconded. A roll call vote followed.

Motion carried 6/0/0. Ms. Armstrong read amended Section 3. Ms. Zeller moved to approve as amended. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0.

**3. Ordinance No. 2195 Land Bank – 2<sup>nd</sup> reading**

Mr. DeVito moved to discuss. Mr. Purkeypile seconded. Mr. DeVito moved to suspend the rules and place Ordinance No. 2195 on its second reading by title only. A roll call vote followed.

Motion carried 6/0/0. Ms. Armstrong read the Ordinance title. Mr. DeVito moved to approve Ordinance No. 2195 on its second reading. Mr. Purkeypile seconded. Mr. McClung reiterated his concern regarding inclusion of conforming spaces along with non-conforming. He also expressed his belief that the City should not charge for the vacating of properties within the original 320 deeded acres. He spoke about a processing fee instead, but for all properties vacated. Mr. Weaver spoke about actual ownership of the streets and alleys in the 320 deeded acres and noted Code would need to be changed also. Discussion followed regarding ownership, value of various properties, the process for vacating, and right to convey. Mr. DeVito called for the question. A voice vote followed.

Motion carried 5/1/0 with Ms. Schneider voting "No". A vote for approval on the second reading followed.

Motion failed 3/3/0 with Mr. Purkeypile, Mr. McClung and Ms. Schneider voting "No". Mr. Weaver

confirmed the Ordinance also failed and would require substantial change before consideration, not just a new number.

**4. Ordinance for business licenses for multi-family housing**

Mr. Mitchell moved to discuss. Ms. Schneider seconded. Mr. Weaver confirmed separate locations would require separate licenses. In response to Mr. Mitchell's enquiry as to whether the intent is to have multi-family up to at least the level of Tourist Lodging and B&Bs with review of certificates of occupancy, Mr. Leswig said that is true. Mr. Leswig said the majority of multi-family housing (Planning) was looking at is located in the R-1 district and stated they are a conditional use. Discussion followed regarding health, safety, and welfare, Constitutional rights against "search and seizure," and the issuance of certificates when there is a transfer of ownership. Mr. Leswig said the owner would have to invite the City to inspect. Discussion followed regarding smoke detectors, fire extinguishers, ingress/egress, the (International) Building Code, and possibly adding a requirement for fire escapes. Mr. Weaver suggested having the Building Official explain what's involved.

Mr. Mitchell made a motion to assign the ordinance a number and place it on the first reading. Mr. DeVito seconded. A voice vote followed.

Motion carried 5/1/0 with Mr. McClung voting "No". Ms. Armstrong read **ORDINANCE NO. 2198 AN ORDINANCE DEALING WITH MULTI-FAMILY DWELLINGS IN EUREKA SPRINGS**. Mr. Weaver noted the underlined portions of the proposed Ordinance are those he believes to be problematic with Code or State law. The italicized portion is his addition so as to have consistency in the Code. Mr. Weaver expressed concern with posting as "Uninhabitable" without a Court Order, under a taking, under the United States Constitution. He suggested approving on the first reading with the proviso that those portions now underlined would be removed and the italicized would be put as the official language, or modified.

Discussion followed regarding living spaces in peaked A-frames, language used in other Arkansas cities, deadline dates, personal notification versus notification via the newspaper, and making multi-family dwellings businesses.

Mr. DeVito made an amendment to Ordinance No. 2198 striking the underlined sentences in Section 6 and Section 7 and incorporating the italic Section 8. Mr. Mitchell seconded. A roll call vote followed.

Motion carried 5/1/0 with Mr. McClung voting "No". Mr. DeVito moved to approve Ordinance No. 2198 on its first reading as amended. Mr. Mitchell seconded. A voice vote followed.

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

Mr. DeVito moved for a five-minute recess. Ms. Schneider seconded. Motion carried 6/0/0.

**5. Ordinance No. 2196 rezoning 80 Mountain to C-3 – 3<sup>rd</sup> reading**

Mr. DeVito moved to suspend the rules and place Ordinance No. 2196 on its third reading by title only. Ms. Schneider seconded. A roll call vote followed.

Motion carried 6/0/0. Ms. Armstrong read the Ordinance title. Mr. DeVito moved to approve Ordinance No. 2196 on its third reading. Mr. Purkeypille seconded. A roll call vote followed.

Motion carried 6/0/0.

**6. Update on the purchase of yellow bags with draw strings**

Mr. Mitchell moved to discuss. Ms. Schneider seconded. Mayor Pate said the next purchase of yellow bags will be with draw strings.

**7. Resolution or Proclamation designating first Sunday in November Bam Bam Day**

Ms. Schneider moved to discuss. Mr. Mitchell seconded. Discussion followed regarding the (vote) to designate the first Sunday in November as Bam Bam Day. Ms. Schneider noted her intent that it be so every year. Mr. Weaver opined an ordinance would be required. Ms. Schneider indicated she would note the date for a proclamation in 2014.

**NEW BUSINESS:**

**3. Vacating 100 ft. of Palo Pinto**

Mr. DeVito moved to discuss. Mr. Purkeypille seconded. Mr. Weaver noted the ordinance contains property descriptions provided by the landowners and he makes no warranty as to accuracy. Mr. DeVito moved to assign the ordinance a number and place it on its first reading. Ms. Zeller seconded.

Motion carried 6/0/0. Ms. Armstrong read **ORDINANCE NO. 2199 AN ORDINANCE VACATING PORTIONS OF AN UNOPENED PORTION OF PALO PINTO AVENUE**. Mr. Weaver suggested entering the sum of \$1 per land owner if it is outside of the 320 deeded acres and he agreed to investigate the issue. Mr. DeVito moved to approve Ordinance No. 2199 on its first reading. Mr. Purkeypile seconded.

Motion carried 6/0/0.

**4. Vacating portion of Nut St.**

Mr. Purkeypile moved to discuss. Mr. Mitchell seconded. Mr. Weaver expressed concern about the legal description. Mr. Purkeypile moved to table until there is clarification. Mr. DeVito seconded.

Motion carried 6/0/0.

**5. Hours of operation and animals in C-3**

Tabled during approval of the agenda

**6. Clean City Ordinance**

Tabled during approval of the agenda

**7. Conditional Use permit for farm animals**

Tabled during approval of the agenda

**8. Schedule workshop re: downtown parking facility**

Mr. DeVito motioned to discuss. Mr. Purkeypile seconded. Mr. DeVito motioned to take this from the agenda for right now and place it back on next year. Mr. Purkeypile seconded.

Motion carried 6/0/0.

**9. Discussion of Planning Commission procedures for vacating property**

Ms. Schneider moved to discuss. Mr. DeVito seconded. Mr. Purkeypile moved to table until the next meeting when the Planning Chair is present. Mr. Mitchell seconded.

Motion carried 6/0/0.

**10. Resolution for Art Wall agreement renewal**

Mr. Purkeypile moved to discuss. Mr. Mitchell seconded. Mayoral Assistant Diane Wilkerson clarified the purpose for the resolution is the continued management of the Art Wall. Mr. Purkeypile moved to provide a number for the resolution and read it for approval. Mr. DeVito seconded.

Motion carried 6/0/0. Ms. Armstrong read **RESOLUTION NO. 630 A RESOLUTION IN SUPPORT OF THE CONTINUED USE OF CERTAIN CITY PROPERTY FOR THE PUBLIC DISPLAY OF ART.**

**11. Discussion of forming Auditorium Commission**

Mr. DeVito moved to discuss. Mr. Mitchell seconded. Mr. DeVito offered background information regarding the formation of a committee that studied what to do with the Auditorium. The unanimous vote was to form a commission. Since the Auditorium no longer has a manager, a committee was formed by the CAPC Commission Chair. He noted there are comprehensive State regulations. He moved to ask the City Attorney to write an ordinance to form an Auditorium commission. Mr. Mitchell seconded. Ms. Zeller recalled the problem with the previous commission not having funding from the City. Discussion followed regarding succinct State guidelines and the CAPC's disinterest in continuing responsibility for the Auditorium. Mr. Weaver agreed to provide copies of the ordinance prepared earlier. Further discussion included an additional sales tax to fund the Commission and the 2014 budget. A vote for writing the ordinance followed.

Motion carried 6/0/0.

**AGENDA SETTING:** no new items were added

**CITY COUNCIL COMMENTS:**

Mr. Mitchell noted the Noise Committee will be meeting December 4 and a draft ordinance is being prepared. It is not a motorcycle noise ordinance.

Mr. Purkeypile thanked Pat Lujan and the folks at Parks for putting up the Christmas decorations.

Ms. Schneider wished everyone a Happy Thanksgiving.

**MAYOR'S COMMENTS:**

Mayor Pate thanked God for giving him (this Council) and for his family. He read a list of upcoming events.

**ADJOURNMENT:**

Mr. Purkeypile moved to adjourn. Mr. McClung seconded.  
Motion carried 6/0/0. The meeting ended at 8:33 p.m.

**ATTEST:**

Ann Armstrong  
City Clerk/Treasurer Ann Armstrong

**APPROVED:**

Mayor Morris Pate  
Mayor Morris Pate