

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING  
Monday, January 27, 2014 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:** January 13, 2014

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

- Planning** – Pos. 2 – vacant – expires 1/1/17. Pos. 4 – Jim Morris – expired 7/1/12.
- Pos. 5 – Melissa Greene – expired 1/1/13
- CAPC** – Pos. 2 – vacant – expires 6/30/14.
- Hospital** – Pos. 1 -- Anna Ahlman – expired 6/1/13
- Parks**
- HDC** – Pos. 2 – Dee Bright -- expired 11/30/13. Pos. 4 – Doug Breitling – expired 11/30/13.
- Pos. 5 – vacant – expires 11/30/14
- Cemetery**

**PUBLIC COMMENTS:**

**UNFINISHED BUSINESS:**

1. Vacating request for portion of Hartman and McCune – Mr. DeVito and Mr. Mitchell
2. Ordinance No. 2198 Business Licenses for Multi-family – 2<sup>nd</sup> reading/City Attorney's opinion re: Cert. of Occ. for residential – Mr. Purkeypile and Mr. McClung
3. Ordinance No. 2200 Vacating portion of Nut St. – 3<sup>rd</sup> reading
4. Auditorium Commission ordinance – Mr. DeVito and Mr. Mitchell
5. Cottage at 1 Magnetic – update from City Attorney **by February 10** – Mr. McClung and Ms. Schneider
6. Ordinance for procedures for vacating property, with processing fee – Mr. McClung and Ms. Schneider
7. Film Industry tax incentive update – Mr. Purkeypile and Ms. Schneider
8. Resolution for 531 Spring St. – Mr. Purkeypile and Ms. Schneider

**NEW BUSINESS:**

1. Infrastructure repair plan, with Dwayne Allen – Mr. Purkeypile and Mr. Mitchell
2. 2014 budget – Ms. Schneider and Mr. Purkeypile
3. Hours of operation and animals in C-3 – Mr. Mitchell and Mr. Purkeypile
4. Clean City Ordinance – Mr. Mitchell and Ms. Schneider
5. Conditional Use permit for farm animals – **postponed pending Planning action** -- Mayor Pate
6. Workshop date for parking rate increase for special events – Mr. Purkeypile and Ms. Schneider
7. Discussion of collapsing parking lot by Auditorium – Ms. Schneider and Mr. Purkeypile
8. Discussion of increasing water and sewer rates – Mr. Purkeypile and Ms. Schneider
9. Discussion of vehicles used as limousines – Mr. Purkeypile and Ms. Schneider
10. Vacating Sweeney Alley – Mayor Pate

**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, January 27, 2014, in the jury room in the Western District Carroll County Courthouse.

**PRESENT:** Mayor Morris Pate, Aldermen David Mitchell, Joyce Zeller, Terry McClung, Mickey Schneider, James DeVito, Dee Purkeypile, 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. DeVito moved to approve. Mr. Purkeypile seconded. Mr. DeVito moved to have Unfinished Business #7 as the first item for discussion. Ms. Schneider seconded. Mr. DeVito moved to have New Business #10 as the second item for discussion. Ms. Schneider seconded. Mr. Purkeypile moved to delete New Business #1. Mr. Mitchell seconded. Mr. Purkeypile moved to postpone New Business #6. Mr. DeVito seconded. Mr. Mitchell moved to delete New Business #5. Mr. DeVito seconded. Mayor Pate called for a vote on the amended agenda.

Motion carried 6/0/0.

**APPROVAL OF THE MINUTES: January 13, 2014**

Mr. McClung moved to approve the January 13, 2014 minutes. Mr. DeVito seconded.

Motion carried 6/0/0.

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

**Planning** – Mayor Pate nominated Jim Morris for re-appointment to Position 4. Ms. Schneider moved to accept the application. Mr. DeVito seconded.

Motion carried 6/0/0.

**CAPC** – no report

**Hospital** – no report

**Parks** – no report

**HDC** – no report

**Cemetery** – no report

**PUBLIC COMMENTS:**

**Jim Girkin** expressed his concern regarding the proposed multi-family residence ordinance. To him, it appears to be discriminatory in that single units and duplexes would not pay a fee. He noted he has one license to operate his rental business and objected to having separate licenses for each building he rents.

**UNFINISHED BUSINESS:**

**7. Film Industry tax incentive update**

Sandy Martin spoke about CAPC agreement to move forward on the plan. Christopher Crane, Executive Director of the Arkansas Film Commission, will meet with attorneys to develop a skeleton ordinance that will be presented for Council consideration. Ms. Schneider made a motion for Sandy to go and start the verbal and paper footwork. Mr. Mitchell seconded.

Motion carried 6/0/0.

**NEW BUSINESS:**

**10. Vacating Sweeney Alley**

Bruce Levine spoke about the proposed vacating of Sweeney Alley as it runs from Douglas St. to Water St. He said both Parks and Planning recommended vacating and the adjacent property owners offered an 8 ft. easement for pedestrian traffic. It is just outside the 320 acres deeded to the City. Jeff Franco

confirmed his ownership of lots on both sides of Sweeney Alley.

Mr. McClung made a motion for the City Attorney to prepare an ordinance to vacate that portion of Sweeney Alley as requested. Mr. DeVito seconded. Mr. McClung then amended his motion to have the City Attorney draft an ordinance to remove it from Parks' jurisdiction. Ms. Schneider seconded.

Motion carried 6/0/0.

#### **UNFINISHED BUSINESS:**

##### **1. Vacating request for portion of Hartman and McCune**

Mr. DeVito moved to discuss. Mr. McClung seconded. Jim Crouch, attorney for James McEvoy and Lewis Gulledge, noted that the owners of Block 151 (Cross Family Heirs and Mathews Grandchildren Trust) did not object to vacating. Mr. Crouch said there was some objection to closing the portion of Hartman that is south of Cross St. He provided copies of 1987, 1996 and 2008 surveys showing the fence line of the Zumwalt property in the middle of Hartman St. They also show the beginning of the circle drive as being in Cross St.

The preferred request was to close McCune, and Hartman on both sides of Cross. The alternate request was to close McCune, and Hartman north of Cross. Discussion included roughness of terrain, possible access to Mooney Reservation via the un-named alley (south of Block 123), objections to closing Hartman south of Cross, and removal of the McEvoy property line markers. Further discussion included the possible location of a gate for the driveway, installation of a short reinforced concrete wall, and the five meetings attended by Mr. Crouch and Mr. McEvoy regarding this subject.

Mr. DeVito made a motion for the City Attorney to prepare an ordinance removing control of McCune St. adjoining Blocks 122 and 123 and the portion of Hartman St. adjoining Blocks 122 and 123 not passing south of the corner of Block 151 adjoining Cross St. Ms. Zeller seconded. Ms. Schneider enquired about the possibility of waiting until Parks can suggest an alternate trail route. Mr. DeVito called point of order. He said the terrain is not germane to the motion that is on the table. Following a suggestion from Mr. Weaver concerning confirmation of ownership of Block 151 if there is further action involving that property, a vote on the motion was taken.

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

##### **2. Ordinance No. 2198 Business Licenses for Multi-family – 2<sup>nd</sup> reading/City Attorney's opinion re: Certificate of Occupation for residential**

Mr. Mitchell moved to discuss. Mr. Purkeypille seconded. Mr. Mitchell moved to postpone. Mr. DeVito seconded.

Motion carried 6/0/0.

##### **3. Ordinance No. 2200 Vacating portion of Nut St. – 3<sup>rd</sup> reading**

Mr. McClung moved to discuss. Mr. Purkeypille seconded. Mr. McClung motioned to suspend the rules and to read Ordinance No. 2200 by title only for its third and final reading. Mr. DeVito seconded. A roll call vote followed.

Motion carried 6/0/0. Ms. Armstrong read the Ordinance title. Mr. DeVito moved to approve Ordinance No. 2200 on its third reading. Mr. Purkeypille seconded. A roll call vote followed.

Motion carried 6/0/0.

##### **4. Auditorium Commission ordinance**

Mr. DeVito moved to strike this item from the agenda as per the workshop held last week and the sentiments of Council to not address an Auditorium Commission at this time. Mr. Mitchell seconded. There was no vote.

Mr. DeVito moved to take a ten minute recess. Ms. Schneider seconded.

Motion carried 6/0/0.

##### **5. Cottage at 1 Magnetic – update from the City Attorney by February 10**

##### **6. Ordinance for procedures for vacating property, with processing fee**

Mr. DeVito moved to discuss. Mr. McClung seconded. Mr. McClung moved to postpone until the next meeting. Mr. DeVito seconded.

Motion carried 6/0/0.

**8. Resolution for 531 Spring St.**

Mr. Purkeypile moved to discuss. Mr. DeVito seconded. Mr. Purkeypile moved to give the resolution a number and read it. Mr. DeVito called point of order and said the normal procedure is to read for passage. Otherwise, there would have to be a discussion after the reading. Mr. Purkeypile restated his motion to say "give it a number and read the resolution". Mr. DeVito seconded. Ms. Schneider recalled the property was deeded for the use of children.

Motion carried 6/0/0. Ms. Armstrong read **RESOLUTION NO. 633 A RESOLUTION ALLOCATING AUTHORITY OVER 531 SPRING STREET.** There was no specific motion regarding approval.

**NEW BUSINESS:**

**1. Infrastructure repair plan, with Dwayne Allen**

Deleted during approval of the agenda

**2. 2014 budget**

Mr. DeVito moved to discuss. Mr. Mitchell seconded. Mr. Mitchell expressed concern regarding the closing gap between revenue and expenses. Mr. DeVito moved to assign the resolution a number and read it for passage. Mr. Mitchell seconded.

Motion carried 6/0/0. Ms. Armstrong read **RESOLUTION 634 A RESOLUTION PROVIDING FOR AND ADOPTING BUDGETS FOR THE CITY OF EUREKA SPRINGS, ARKANSAS, FOR THE TWELVE-MONTH PERIOD BEGINNING JANUARY 1, 2014, AND ENDING DECEMBER 31, 2014; APPROPRIATING MONEY FOR EACH AND EVERY ITEM OF EXPENDITURE THEREIN PROVIDED FOR.**

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

Mr. Mitchell motioned to discuss. Mr. Purkeypile seconded. Mr. Mitchell referenced the C-3 requirement to close by 9 p.m. He said even though they stop serving at Ermilio's at 9 o'clock, in fact there are a lot of people still in there eating and it probably goes on until 10:00. So, not only was the Gavioli Chapel/theater not meeting the 9 p.m. closing time, but neither was Ermilio's. He said there was also discussion of the fact that, sometimes in theaters, there is the use of a small animal under 25 lbs. He considered the possibility of making the closing time 10:00 and allowing animals under 25 lbs. Discussion included government intrusion, amending the intimate theater definition, and animals used for performance in C-3.

Mr. Mitchell made a motion to "strike #9 'animals' from the list on Quiet Use Commercial that qualifies as 'Quiet Use the business must not involve', strike #9 'animals' out, over 25 lbs." He added "amend the Ordinance". Mr. DeVito seconded. Discussion continued regarding personal pets versus performance animals. Mr. Mitchell clarified his motion to "prohibit animals over 25 lbs., in performances."

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

**4. Clean City Ordinance**

Mr. Mitchell moved to discuss. Mr. DeVito seconded. Mr. Mitchell offered background on the proposed ordinance. Mr. DeVito moved to assign the ordinance a number and place it on its first reading. Mr. Mitchell seconded. Ms. Schneider enquired, "Where do we draw the line?"

Motion carried 6/0/0. Ms. Armstrong read **ORDINANCE NO. 2201 AN ORDINANCE REPEALING AND REPLACING MUNICIPAL CODE SECTIONS 5.04.01-5.04.09 AND REPLACING IT WITH CODE SECTIONS 5.04.01 - 5.04.11.** Mr. DeVito made a motion to approve Ordinance No. 2201 on its first reading. Mr. Purkeypile seconded. Mr. McClung sought clarification of Sections 5.04.04 and 5.04.10. Mr. Weaver offered his interpretation of the language. Ms. Schneider made a motion to remove the words "someone or" from Section 5.04.10(2). Mr. DeVito seconded. A vote on the second motion followed.

Motion carried 6/0/0. Discussion followed regarding bamboo, birdbaths, swimming pools, the Ice House on Main St., abandoned versus vacant, and what constitutes a nuisance or annoyance. A vote on the motion to approve the first reading followed.

Motion carried 5/1/0 with Ms. Zeller voting "No". Ms. Schneider made a motion to schedule a workshop to go over this in great detail, before the next meeting. Mr. Purkeypile seconded.

Motion carried 4/2/0 with Mr. Mitchell and Mr. McClung voting "No".

**5. Conditional Use permit for farm animals – postponed pending Planning action**

Deleted during approval of the agenda

**6. Workshop date for parking rate increase for special events**

Postponed during approval of the agenda

**7. Discussion of collapsing parking lot by the Auditorium**

Ms. Schneider moved to discuss. Mr. Purkeypile seconded. Ms. Schneider spoke about the two parking spaces by the Auditorium that are blocked off and her understanding that the Quorum Court is responsible for the (subsurface). She noted the City agreed to pay the County \$23,000 annually for lot rental and there has been no adjustment for the loss of revenue for the two parking spots. Ms. Zeller inquired about an insurance policy and Mayor Pate expressed his belief the County has tort immunity. Further discussion included awareness of the problem, asking the Mayor to demand action, and this item as a “non-issue”. Mr. Purkeypile motioned to table until the next meeting and asked to see the engineering report. Mr. DeVito seconded.

Motion carried 6/0/0.

**8. Discussion of increasing water and sewer rates**

Mr. DeVito moved to discuss. Mr. Purkeypile seconded. Mr. Purkeypile read from a letter written by Public Works Director Dwayne Allen. Mr. Allen wrote that a 4% water rate increase and a 9% sewer increase would allow completion of some projects while maintaining a reserve. Finance Director Lonnie Clark noted the bond covenants say the City will have net revenue of 120% of the annual principal and interest payments on the bonds. He referenced a note from the BKD auditors regarding 2012 funds which said the City is not in compliance with the covenant. A waiver has not been obtained from the bond trustee. At that time, the City was at 82%. Mr. Clark said he received a call from the SEC (Securities and Exchange Commission). It is Mr. Clark’s understanding that, if the Council does not take action to correct this, the SEC will adjust the rates. He said Council can raise water rates without public hearings. To raise wastewater rates, there must be a public hearing. Mr. Clark said the Finance Director can, by Code, raise water rates a maximum of 3% and this year, he could raise it 1.9%.

Mr. McClung asked for the amount of the current bond debt for water and sewer. Mr. Clark responded that the principal and interest payments are \$244,824 annually. The debt on the Series 2010 principal and interest was \$1,772,690, as of December 31, 2012. The Series 2008 debt was \$1,899,670. Mr. McClung referenced the list of accounts and Certificates of Deposit (CDs). Mr. Clark confirmed these are excess funds that have been invested and are managed by the Bond intermediary. He said Bond payments have been being made from current revenues. Mr. McClung asked about the \$350,000 in the water and sewer depreciation fund. Mr. Clark indicated this is a set-aside for maintenance of the facilities and could be used for infrastructure issues.

Ms. Zeller asked how much water and sewer rates would have to be raised to meet the 120%. Mr. Clark agreed it would be in the neighborhood of 8-10%.

Mr. DeVito moved for Mr. Clark to research the information so Council can make an informed decision. He also cautioned Council against encumbering the business community with any more rates over and above what is necessary just to get to the 120%, and addressing infrastructure as a separate issue. Mr. DeVito motioned for postponement until the next meeting. Mr. McClung seconded.

Motion carried 6/0/0.

**9. Discussion of vehicles used as limousines**

Mr. DeVito moved to postpone until the next meeting. Mr. Purkeypile seconded.

Motion carried 6/0/0.

**AGENDA SETTING:**

Mr. Purkeypile added discussion of turning over control of Black Bass Dam to Parks. Mr. Mitchell seconded.

Ms. Schneider added a discussion of the Court House lease. Ms. Zeller seconded.

**CITY COUNCIL COMMENTS:**

Mr. DeVito commended Sandy Martin, Teresa DeVito, and all who came and enjoyed the unqualified success of the Indie Film Festival.

Mr. Mitchell offered an update on the Noise Committee. He assured everyone it is not an attack on motorcycles or any particular segment of the tourist population.

Ms. Schneider spoke about the success of the Polar Plunge.

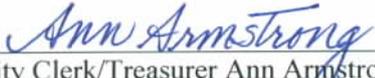
**MAYOR'S COMMENTS:**

Mayor Pate gave his thanks to Sandy Martin and Teresa DeVito for their work on the Indie Film Festival. He noted the official opening of the restrooms on North Main.

**ADJOURNMENT:**

Mr. DeVito moved to adjourn. Mr. McClung seconded.  
Motion carried 6/0/0. The meeting ended at 8:45 p.m.

**ATTEST:**

  
City Clerk/Treasurer Ann Armstrong

**APPROVED:**

  
Mayor Morris Pate

City Council                      1/27/14                      5