

**CITY OF EUREKA SPRINGS**  
**COUNCIL MEETING**  
Wednesday, May 28, 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:** May 12, 2014

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

**Planning** – Pos. 2 – vacant – expires 1/1/17. Pos. 5 – Melissa Greene – expired 1/1/13. Pos. 7 – vacant – expires 1/1/15

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

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

**Parks** –

**HDC** – Pos. 6 – Richard Grinnell – expired 3/7/14. Pos. 7 – Susie Allen – expired 3/7/14.

**Cemetery** – Pos. 2 – vacant – expires 2/15/15. Pos. 4 – Henry Romanski – expired 2/15/14.

**PUBLIC COMMENTS:**

**UNFINISHED BUSINESS:**

1. Ordinance No. 2208 Film industry tax incentive – 3<sup>rd</sup> reading -- Mr. Purkeypile and Mr. DeVito
2. Ordinance No. 2201 Clean City – amended -- Mr. Mitchell and Mr. DeVito
3. Discussion of collapsing parking lot by Auditorium – Mr. Purkeypile and Mr. DeVito
4. Ordinance No. 2209 Noise – 2<sup>nd</sup> reading -- Mr. Mitchell and Mr. DeVito
5. Ordinance No. 2210 Vacating a portion of Sweeney Alley – 2<sup>nd</sup> reading – Mr. DeVito and Mr. Purkeypile

**NEW BUSINESS:**

1. Ordinance vacating a portion of an un-named street/Rock St. – Mr. Purkeypile and Mr. Mitchell
2. Discussion of notice for scheduled water shut downs – Mr. Mitchell and Ms. Schneider
3. Discussion of Taxi Ordinance – Ms. Zeller and Ms. Schneider
4. Summary of workshop on water and sewer rates – Mr. Mitchell and Mr. McClung
5. Summary of workshop on disposal of yard waste – Mr. Mitchell and Mr. McClung
6. Summary of Hospital Commission meeting – Mr. Mitchell and Mr. Purkeypile
7. Resolution for replacing a tram engine – Mayor Pate

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR'S COMMENTS**

**ADJOURNMENT**

Mayor Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Wednesday, May 28, 2014, in the jury room in the Western District Carroll County Courthouse.

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

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

Mayor Pate led the Pledge.

**APPROVAL OF THE AGENDA:**

Mr. Mitchell moved to approve. Mr. Purkeypile seconded. Mayor Pate added a resolution for replacing a tram engine. Mr. Purkeypile removed discussion of the collapsing parking lot by the Auditorium until the water drainage tunnel has been evaluated. Mayor Pate called for a vote on the amended agenda.

Motion carried 6/0/0.

**APPROVAL OF THE MINUTES: May 12, 2014**

Mr. DeVito moved to approve the May 12, 2014 minutes. Mr. Mitchell seconded.

Motion carried 6/0/0.

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

**Planning** – no report

**CAPC** – no report

**Hospital** – no report

**Parks** – Commission Chair Bill Featherstone spoke about the Town Meeting for the Master Trails Plan. He requested a workshop with Council and the Trails Committee.

**HDC** – no report

**Cemetery** – no report

**PUBLIC COMMENTS:**

**Daniel Jackson**, Vice Chair of the Parks Commission, spoke about popularity of trails systems with tourists and said locals could benefit by not having to park downtown. He spoke about historic use of public property as trails.

**Wade Williams** spoke in behalf of the owners of Marble Flats and said no one has come to him with proposals regarding the vacating request. He expressed his belief the application is defective, that 15 City-owned lots would become land-locked and vacating is not in the best interests of the City.

**Jay Bender**, resident since 2009, spoke against vacating properties that could be used for trails. He said privacy and crime issues can be mitigated and trails improve property values.

**Lynn Eaton** spoke in favor of connecting the trails. She said if she had the choice, she would always choose to buy a house on a trail. Ms. Eaton said walking is the future of tourism in Eureka Springs.

**UNFINISHED BUSINESS:**

**1. Ordinance No. 2208 Film industry tax incentive – 3<sup>rd</sup> reading**

Mr. Purkeypile moved to discuss. Mr. Mitchell seconded. Mr. DeVito moved to suspend the rules and place Ordinance No. 2208 on its third reading by title only. Mr. Purkeypile seconded. A roll call vote followed.

Motion carried 6/0/0. Ms. Armstrong read the Ordinance title. Mr. DeVito moved to approve Ordinance No. 2208 on its third reading. Mr. Purkeypile seconded. A roll call vote followed.

Motion carried 6/0/0.

**2. Ordinance 2201 Clean City -- amended**

Mr. Mitchell moved to discuss. Mr. Purkeypile seconded. Mr. Mitchell confirmed the Ordinance was

approved on the third reading but changes were omitted. He read from an amended section and moved to make the change to Ordinance No. 2201 as amended. Mr. Purkeypile seconded. Following Mr. Weaver's recommendation for process, Mr. Mitchell withdrew his motion. He then made a motion to reconsider Ordinance No. 2201 on its third reading with all amended items as noted. Mr. Purkeypile seconded. A roll call vote followed.

Motion carried 5/1/0 with Ms. Schneider voting "No". Mr. Mitchell motioned to amend Ordinance No. 2201 Section 5.04.07(f) as noted and read the amendment. He read from the amended Section 5.04.07(g). Mr. DeVito seconded. A roll call vote followed.

Motion carried 5/1/0 with Ms. Schneider voting "No". Mr. Mitchell motioned to approve Ordinance No. 2201 on its third reading as amended. Mr. DeVito seconded. A roll call vote followed.

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

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

Removed from the agenda during approval of the agenda

**4. Ordinance No. 2209 Noise – 2<sup>nd</sup> reading**

Mr. DeVito moved to discuss. Mr. Mitchell seconded. Mr. DeVito moved to suspend the rules and place Ordinance No. 2209 on its second reading by title only. Mr. Mitchell seconded. A roll call vote followed.

Motion carried 6/0/0. Ms. Armstrong read the Ordinance title. Mr. DeVito motioned to approve Ordinance No. 2209 on its second reading. Mr. Mitchell seconded. It was agreed to leave the word "injure". Discussion followed about amplified sound permits, approved festivals, and activities of a temporary duration that do not require a permit. Further discussion included current regulations as sufficient and music-related festivals.

Ms. Schneider called point of order. She said the discussion was about an addition of a chapter to an established and standing Ordinance, and this Ordinance is adding a chapter that does not deal with music. Following discussion regarding amplified sound permits, Mr. Mitchell noted another grammar change. Limiting time to weed-eat was addressed and no change was made. Further discussion included perception of "unreasonable noise", noise in general as opposed to motorcycle noise, distribution of fines to the State and City, and noise during the carving festival. A voice vote on the motion to approve the second reading followed.

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

**5. Ordinance No. 2210 Vacating a portion of Sweeney Alley – 2<sup>nd</sup> reading**

Mr. Mitchell motioned to discuss. Mr. Purkeypile seconded. Mr. Purkeypile motioned to suspend the rules and read Ordinance No. 2210 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. 2210 on its second reading. Mr. Purkeypile seconded.

Motion carried 6/0/0.

**NEW BUSINESS:**

**1. Ordinance vacating a portion of an unnamed street/Rock St.**

Mr. Mitchell moved to discuss. Mr. Purkeypile seconded. Rachel Brix noted one of the proposed ordinances included a utilities easement and one did not. She said the application to vacate was never withdrawn, and quoted Mr. Featherstone in saying all procedures were correctly followed. Ms. Brix said the motion made during a Parks meeting to deny the vacation request was not seconded nor was a motion to table. She read from the August 2012 minutes a quote from Mr. Weaver indicating that legitimacy of access is not clearly known. Further comments included easement versus ownership, the ground not being used or maintained by the City in 120+ years, the general public not having used the property, utilities having signed off on need, and a recap of efforts to "reach across the table" to the owners of Marble Flats.

Mr. Purkeypile offered his impression that the owners of Marble Flats might want the easement for utilities, mainly sewage. He added clearly they did not agree that would be all that they would want. Matt Bishop, representing the Brixes, noted additional access points for Marble Flats and did not agree the City-owned lots would be land-locked. Mr. Weaver said the courts in Arkansas have upheld, even though there is other access, (the City) is liable for the damage, by jury verdict, for how much that cut-off access is worth. Mr. Bishop opined that law applies for abutting properties and the requested portion does not abut any of the referenced lots.

Mr. DeVito motioned to assign a number to the ordinance version with an easement and place it on its first reading. Mr. Mitchell seconded. Mr. McClung noted water lines are most efficient when looped and favored an easement at least wide enough for both water and sewer. Mr. Williams agreed to provide the proposed ordinances to his clients. A voice vote on assigning a number and reading followed.

Motion carried 4/2/0 with Ms. Schneider and Mr. McClung voting "No". Ms. Armstrong read **ORDINANCE NO. 2211 AN ORDINANCE VACATING AN UNNAMED, UNOPENED STREET LOCATED BETWEEN BLOCKS 1 AND 2 OF THE MAGNETIC BAYS SURVEY AS PLATTED ON THE RILEY & ARMSTRONG PLAT OF 1893, CARROLL COUNTY, ARKANSAS.** Mr. DeVito moved to approve Ordinance No. 2211 on its first reading. Mr. Mitchell seconded. Mr. McClung favored changing the language to say the City is retaining the easement. Mr. Weaver concurred. Mr. Bishop opined the original easement did not provide for utilities.

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

Mr. DeVito called for a five minute recess. Mr. Mitchell seconded.

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

**2. Discussion of notice for scheduled water shut downs**

Mr. Mitchell moved to not discuss. Mr. DeVito seconded.

Motion carried 6/0/0.

**3. Discussion of Taxi Ordinance**

Ms. Zeller moved to discuss. Ms. Schneider seconded. Ms. Zeller recapped her understanding of past and current regulations for taxis and taxi franchises. She favored an ordinance to describe and defend cabs with a fine-only franchise ordinance for two franchises. Ms. Zeller called for a motion to direct the City Attorney to write a taxi franchise ordinance and provided State statutes. It was noted the 1979 Code book had the franchise language and the 2005 Code book referenced a 1978 franchise ordinance. Ms. Zeller favored updating with current cab definitions. Mr. DeVito proposed postponement until the pertinent information is collected. Mr. Weaver noted the required Certificate of Public Convenience and Necessity is approved by Council. Discussion followed regarding tour vehicles, rides offered for donations and enforcement. No further action was taken.

**4. Summary of workshop on water and sewer rates**

Mr. Mitchell moved to discuss. Mr. Purkeypile seconded. Mr. Mitchell noted a proposed ordinance and motioned to assign a number and have the first reading. Ms. Schneider seconded.

Motion carried 6/0/0. Ms. Armstrong read **ORDINANCE NO. 2212 AN ORDINANCE FOR THE PURCHASE AND INSTALLATION OF WATER METERS FOR THE PUBLIC WATER SYSTEM OF THE CITY OF EUREKA SPRINGS, ARKANSAS.** Mr. Purkeypile motioned to approve Ordinance No. 2212 on its first reading. Ms. Schneider seconded. It was confirmed the water tanks have been tested. Workshop estimates were a 59% loss between what the City purchases and sells, and a four year payback period for Phase I of the plan. Mr. McClung expressed concern that the +/- 6% installation estimate was low. Mr. Mitchell noted Finance Director Lonnie Clark said this would put the City back in compliance with the bond issue. Revenues will increase with efficient meters showing accurate usage and resulting higher bills.

Motion carried 6/0/0.

**5. Summary of workshop on disposal of yard waste**

Mr. DeVito moved to discuss. Ms. Schneider seconded. Ms. Schneider recapped discussion with Judge Sam Barr regarding scheduled burns since dumping is not legal. She agreed to bring more information after an upcoming meeting.

**6. Summary of Hospital Commission meeting**

Mr. Mitchell moved to discuss. Mr. Purkeypile seconded. Mayor Pate summarized the meeting discussion regarding a proposal to build a hospital on the ridge by the old Miles Mountain Musical Museum. Building is contingent upon the City constructing a new sewer line from Pivot Rock Rd. to the location. A preliminary estimate from McClelland Engineering for updated plans would be \$5,000 and would require a commitment from the City. Figures from the 2008 estimate were \$1,287,500 for the main line along Hwy. 62. Lines for Dogwood Ridge were estimated in 2008 at \$522,500. Adequate water supply will be investigated.

Mr. Mitchell enquired whether the City would invest upwards of \$2,500,000 to get a new hospital. He noted the issue is one of timing since Allegiance filed with the Centers for Medicare and Medicaid Services a petition for the ability to move the hospital out. A requirement for a critical care hospital is being 15 miles

from another hospital and the distance from the Berryville hospital to the Eureka Springs Hospital is 14.3 miles.

Mr. Mitchell noted the new Affordable Care Act includes cost savings by reducing the number of critical care hospitals. The 24-bed hospital with a "shelled-in," potential 10-bed ward for expansion of either geriatric psychiatric or general psychiatric treatment is to be finished and open by April of 2016. Physical therapy and a helicopter landing pad are planned and Allegiance is waiting for a commitment from the City.

Ms. Schneider favored a contract of intent to ensure repayment for the water/sewer lines if Allegiance decides to not build the hospital. It is the Hospital Commission's understanding that funds held by them are to be used for direct patient care. Mr. DeVito proposed dissolving the Commission. In response to his question about whether the funds could revert back to the General Fund, Mr. Mitchell said the estimated \$1,745,000 are, by State statute, earmarked for health care. Some of the funds are now earmarked for a new ambulance and equipment. Ms. Schneider favored keeping the Commission for experienced oversight. Mr. Mitchell noted an answer for the \$20,000,000 hospital is needed by the second (Council) meeting in July.

Mr. Purkeypile motioned to engage McClelland Engineering to update the cost estimates, up to \$5,000. Mr. McClung seconded. Mr. DeVito objected to spending the \$5,000 before knowing if Commission funds would be available. Mr. Weaver noted that, if the Commission were dissolved, there would be no more funds coming in. Also, previous enquiry about the funds appeared to indicate that at least some of the money would have to be turned over to a critical care hospital in the region. A voice vote on Mr. Purkeypile's motion followed.

Motion carried 6/0/0.

**7. Resolution for replacing a tram engine**

Mr. Mitchell motioned to discuss. Mr. Purkeypile seconded. Mayor Pate said the propane engine in one of the City-owned trams has "given up the ghost". The plan is to install a gas-powered engine and tank for \$3,000. Mr. Mitchell motioned to assign the resolution a number and read it for passage. Mr. DeVito seconded.

Motion carried 6/0/0. Ms. Armstrong read **RESOLUTION NO. 640 A RESOLUTION AMENDING THE ADOPTED 2014 BUDGET FOR THE CITY OF EUREKA SPRINGS, ARKANSAS.**

**AGENDA SETTING:**

Mr. DeVito added the topic of a parking garage. Mr. Mitchell seconded.

**CITY COUNCIL COMMENTS:**

Mr. DeVito said he's looking forward to a good year.

Mr. McClung spoke about numerous complaints regarding the condition of the Cemetery.

Ms. Schneider spoke about the Rural Arkansas conference. She noted the run-off elections are on June 10.

Ms. Zeller expressed concern about the loss of trees due to strangling vines and encouraged cutting vines at ground level. She favored having a committee to address urban forest issues.

**MAYOR'S COMMENTS:**

Mayor Pate spoke about the success of the North Main stage. The base for the new flag pole at the top of Planer Hill has been poured.

Mayor Pate read a list of upcoming Community events.

**ADJOURNMENT:**

Mr. DeVito moved to adjourn. Mr. McClung seconded.

Motion carried 6/0/0. The meeting ended at 8:55 p.m.

**ATTEST:**

  
Clerk/Treasurer Ann Armstrong

**APPROVED:**

  
Mayor Morris Pate