

## **MINUTES OF BOARD OF DIRECTORS REGULAR MEETING**

**TUESDAY ~ MAY 4, 2010 ~ 6:00 P.M.**

### **FORT SMITH PUBLIC SCHOOLS SERVICE CENTER**

The meeting was called to order by Mayor Ray Baker, presiding. Invocation was given by Director Don Hutchings, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, Bill Maddox, Gary Campbell, Kevin Settle and Cole Goodman. The Mayor declared a quorum present.

Mayor Baker along with the Board, and Administration, presented a framed picture of the recently purchased bomb truck to Fire Chief Mike Richards. The picture was provided by Pierce Manufacturing. Chief Richards noted that the bomb truck was obtained exclusively from The Department of Homeland Security; therefore, the City incurred no financial expense for the purchase.

Administrator Kelly presented wristbands with the message "On the Hunt for a Cure" which are being sold to raise funds for City employee Scott Winstead. Scott has an unknown illness and will soon travel to Mayo Clinic for medical tests. Several fund raisers have been held and the wristbands are being sold for \$3 to assist with expenses incurred by Scott and his family.

Mayor Baker recognized members of the Citizens Academy who were in attendance.

The minutes of the April 20, 2010 regular meeting were presented for approval. Settle, seconded by Campbell, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

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With regard to the time limit policy for persons wishing to address the Board, Mayor Baker communicated that five (5) minutes per side would be extended on controversial items with three (3) minutes for rebuttal per side.

Mayor Baker announced that Item No. 1 had been withdrawn.

The Mayor further announced that this was the time and place set for a public hearing regarding the submission of an application for CDBG Disaster Assistance Funds from the State of Arkansas for damage related to the wind and storm damage in March and April 2008 and for other purposes. Notice of the public hearing had been duly published as required by law. Following the public hearing, consideration of a resolution authorizing same would be given (Item No. 2).

Director of Development Services Wally Bailey briefed the Board on the item advising the City of Fort Smith received notice from the State of Arkansas that CDBG Disaster Assistance funds were available relating to declared disasters within the state in 2008. The Arkansas Economic Development Commission (AEDC), who is overseeing the distribution of said funds, has invited the City of Fort Smith to submit a full application. The City is requesting \$258,404.00 which could assist 29 property owners with a maximum of \$8,500 per house. The program requires that there can be no duplication of benefits, so the homeowner must prove that FEMA assistance or insurance proceeds are the first to be spent and each homeowner must also sign a "Duplication of Benefits Affidavit". Upon approval of funding to the City, the Housing Assistance Board will approve grants for homes that meet the criteria whereby Neighborhood Services Division has identified multiple homes who preliminarily meet the criteria.

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Director Good questioned how staff will determine if the homes receiving assistance were actually damaged by the 2008 storms.

Mr. Bailey advised the City has identified multiple storm damaged homes and clarified that the funding is recommended, but not limited to, homes damaged in the 2008 storms. With regard to criteria or ranking, the homes selected will be first come, first served.

There being no individual present to address the Board, the Mayor declared the public hearing closed.

Campbell, seconded by Good, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given number R-84-10.

Item No. 3 was an ordinance authorizing the Mayor to enter into a services agreement with the Fort Smith Classic

Administrator Kelly briefed the Board on the item advising the Fort Smith Classic golf tournament is scheduled for June 14 - 20. The recommended total funding of \$50,000 includes \$33,590 in cash and \$16,410 in-kind services, i.e. Police, Sanitation and Parks and Recreation services. The proposed amount was approved in the 2010 General Fund Budget.

Hutchings, seconded by Campbell, moved adoption of the ordinance. The members voted as follows: ayes - Tyler, Good, Hutchings, Campbell, Settle and Goodman; nays - Maddox. The Mayor declared the motion carried and the ordinance was adopted and given No. 19-10.

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Item No. 4 was an ordinance authorizing the Mayor to enter into a services agreement with the Juneteenth Planning Commission, Inc. (JPCI)

Director of Finance Kara Bushkuhl briefed the Board on the item advising the proposed agreement authorizes an amount not to exceed \$15,000. The amount includes \$5,163 for in-kind services for park usage, staffing and sanitation fees. A portion of consulting fees was transferred from the Finance Department budget to the General Fund to accommodate the proposed funding.

Director Good requested a brief explanation of the in-kind services provided by the Parks and Recreation Department.

Director of Parks and Recreation Mike Alsup advised the majority of the in-kind services is the waiver of \$3,300 in park rental fees and additional staffing.

Director Maddox expressed concern with the item citing the Outside Agency Review Panel did not recommend funding.

Director Settle noted that an error was made and alleged JPCI is the only organization denied funding.

Tracy Winchell, Office of Economic Development, clarified that multiple organizations were denied funding due to various reasons, i.e. clerical errors or the requests were beyond the scope of program. She conceded that an error was discovered with regard to the JPCI request; however, after the discovery, the Outside Agency Review Panel reconsidered their request and unanimously determined that they would not have recommended the funding in the initial consideration.

Director Campbell conveyed no objection to funding the Juneteenth Celebration;

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however, he expressed much concern with amending the recommendations of various board and commissions. Such action basically discounts the time and effort of those serving on the boards, commissions or review panels.

Director Good noted that the Juneteenth Celebration recognizes other ethnicity's whereby multiple groups such as the Irish, Laotian, Hispanic, Native American and others participate and perform at the Juneteenth Celebration. The event is not coordinated as an African-American event, but a celebration of freedom for all ethnic groups. He further conveyed much discontent that the JPCP has applied for funding for nine (9) years and has received funding only once due to an approved group not utilizing their funding and returning the funds. Although no funding has been recommended, he conveyed much appreciation to the work and amount of hours expended by the Outside Agency Review Panel.

Mayor Baker clarified that the Advertising and Promotion Commission (A & P) has provided funding to the JPCI for the event for several years.

Director Tyler again inquired as to the reason funding was not recommended for the Juneteenth Celebration.

Ms. Winchell advised the applications submitted by other groups contained very specific information as to the intended use of the funding whereas the application submitted by the JPCI did not. The Outside Agency Review Panel has discussed scheduling workshops for applicants during the 2011 funding cycle; therefore, she feels such instances will not be an issue in the future.

Settle, seconded by Hutchings, moved adoption of the ordinance with an

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amendment for \$9,800 cash; \$5,200 in-kind services and that both shall be utilized for the Juneteenth Festival and audit expenses only. The members voted as follows: ayes - Tyler, Hutchings, Campbell, Settle, Goodman; nays - Maddox; abstention - Good. The Mayor declared the motion carried and the ordinance was adopted and given No. 20-10.

Item No. 5 was an ordinance repealing and replacing Article II of Chapter 2, Sections 2-26 through 2-47 of the Fort Smith Municipal Code

Administrator Kelly advised that due to concern with certain language regarding protocol procedures of the Internal Auditor, he requested the matter be postponed to the May 18, 2010 regular meeting to allow clarification and/or direction from the Board.

Director Settle spoke in opposition to postponing consideration citing the proposed ordinance contains matters of much importance with regard to citizen input at board meetings. Due to such, he recommended adoption of the ordinance as is and if an amendment is warranted, the matter can be presented at a later date. He further recommended the issue regarding the Internal Auditor be scheduled for the next study session.

Campbell, seconded by Maddox, moved to table consideration of the item to the May 18, 2010 regular meeting. The members voted as follows: ayes - Tyler, Good, Hutchings, Maddox, Campbell and Goodman; nays - Settle. The Mayor declared the motion carried.

Item No. 6 was an ordinance amending Chapter 14, Article II of the Fort Smith Code of Ordinances regulating the discharge of firearms; and, authorizing indoor shooting galleries

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Police Chief Kevin Lindsey briefed the Board advising an application for an indoor shooting range was recently submitted to the Planning Commission. Prior to their approval, the Planning Commission recommended the anticipated operations of the facility be reviewed by the Police Department. Such prompted a review of the existing ordinances regarding the discharge of firearms within the city and it was discovered that no provision currently exists in the Fort Smith Municipal Code regarding the installation and operation of indoor "shooting galleries". Minor wording amendments to the existing code are included within the proposed ordinance, along with the addition of a section which accommodates the following:

- ▶ Provide authority to the Chief of Police to issue permits for indoor "shooting galleries"
- ▶ Establishes a process for application, review and reapplication
- ▶ Establishes requirements for supervision by the proprietor

Director Settle questioned the affect the proposed regulations will have on Umarex, who manufactures firearms and maintains a 'shooting gallery' at their facility to test their product.

Chief Lindsey advised the proposed amendments address retail facilities and will not affect current practices of Umarex.

Director Hutchings noted than an issue discussed at the Planning Commission meeting was the age requirement for supervision at the proposed facility; therefore, he questioned if the matter was considered.

Chief Lindsey noted that individuals must be 21 years of age and the owners of such facilities must be a certified firearm instructor. With regard to other facilities such as

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archery, paintball, etc., the age is 18 years of age.

Campbell, seconded by Settle, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Good, moved adoption of the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 21-10.

Mayor Baker announced that Item No. 7A of the consent agenda contained an emergency clause; therefore, requested the item be removed from the consent agenda and voted on as a separate item.

Maddox, seconded by Hutchings, moved to remove the item from the consent agenda and consider as a separate item. The members all voting affirmatively, the Mayor declared the motion carried and Item No. 7A was introduced for consideration.

Item No. 7A was an ordinance authorizing software acquisition and maintenance contract with Microsoft Leasing, GP

Director of Information Technology Russell Gibson briefed the Board on the item advising the proposed ordinance essentially continues the existing agreement for one centralized license to use Microsoft software for each product in use by the City. The original agreement approved in 2007 was for \$141,000 per year; however, ITS negotiated with Microsoft to bring down the cost to \$90,674 per year, as cost savings of approximately \$150,000. The proposed agreement is for a period of three (3) years (2010 - 2012).

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Director Good questioned if it is a common practice to compare costs for various software purchases whereby Mr. Gibson responded that is and clarified that such is done when there is competing software. No cost comparison was initiated for the proposed software as Microsoft is the sole provider.

Goodman, seconded by Maddox, moved adoption of the ordinance. The members all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Hutchings, moved adoption of Section 4 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 22-10.

The remaining Consent Agenda (Item No. 7) items were introduced for consideration, the items being as follows:

- B. Resolution accepting completion of and authorizing final payment to Creative Design Pools, LLC for the Creekmore Pools PVC Membrane Lining System, Project No. 09-03 (\$14,397.19)
- C. Ordinance authorizing the Chief of Police to establish a fee for fingerprinting services provided to individuals by the Fort Smith Police Department
- D. Resolution authorizing the settlement of just compensation issues with Jerry D. Mayberry and Krey Mayberry for real property acquired for "P" Street Wet Weather Improvements Project, Project No. 15-14-C1 (\$15,000.00)
- E. Resolution authorizing amendment of payment to Arkansas Oklahoma Gas Corporation for utility relocation associated with the Midland Boulevard 30 inch water transmission line (\$60,519.75)

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- F. Resolution authorizing Change Order Number One with Insituform Technologies, Inc. for the Walnut Street 30-Inch Sewer Rehabilitation (\$180,250.00)

Regarding Item No. 7B, Director Good noted the change order was for a very small amount of concrete; therefore, he requested a brief explanation.

Director of Parks and Recreation Mike Alsup noted that such was to simply adjust the upper grade of the pool to allow water to flow back into the pool properly.

With regard to Item No. 7C, Director Settle questioned if the fingerprinting of children was considered.

Police Chief Lindsey noted that the proposed fees are for fingerprinting services for job related services such as taxicab drivers, etc.

Regarding Item No. 7D, Mayor Baker inquired if the Mayberrys are satisfied with the proposed settlement and Director of Utilities Steve Parke responded that they are.

Director Good questioned the legal costs associated with the settlement.

City Attorney Jerry Canfield noted that such information was not readily available, but, he would forward the information at a later date.

With regard to Item No. 7F, Mayor Baker questioned if the project was initiated due to the collapse of a sewer line.

Mr. Parke advised the project was initiated for such; however, the proposed change order is due to an additional collapse that occurred during construction.

Settle, seconded by Campbell, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and ordinance and resolutions were adopted with the ordinance given No. 23-10 and the resolutions

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numbered R-85-10 through R-88-10 respectively.

Item No. 8 was a resolution accepting the resignation of Ward 4 City Director

City Attorney Jerry Canfield briefed the Board on the item advising Director Maddox has indicated his intent to resign in a timely manner to ensure the vacancy can be considered at the upcoming general election, essentially saving the City the cost of a special election. According to the State of Arkansas election provisions and upon approval of the proposed resolution, such will accommodate Director Maddox's intent.

Upon approval, Director Maddox announced his willingness and desire to be appointed to fill the unexpired term until a new director is elected (reference Item No. 9).

Settle, seconded by Campbell, moved adoption of the resolution. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-89-10.

Mayor Baker opened the Directors Forum with the following directors wishing to comment:

▶ Director Campbell

Re: Expressed much appreciation to Director Maddox for his service to the citizens of Fort Smith and Ward 4, and his intent to save the City the cost of a special election.

▶ Director Settle

Re: Announced that Forbes Magazine recently ranked Fort Smith 85 out 200 "Best Place to do Business and Careers" and provided detailed statistical information which prompted the ranking.

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▶ **Director Good**

- Re:
1. Expressed much appreciation to the Chamber of Commerce for hosting the Honors Banquet last evening. The host and guest speaker was Mr. Phillip Murray, who spoke highly of upcoming graduates and encouraged the students to receive their college degrees and return to Fort Smith.
  2. Requested the City create a task force to provide citizen input regarding the Maybranch and Town Branch drainage projects.

Director Goodman posed no objection to the request; however, he expressed concern with doing so at this time since the EPA could potentially require the City proceed with other projects they deem as a higher priority.

The Mayor offered the floor to Administrator Kelly for the City Administrator's Report whereby Mr. Kelly announced the distribution to each member of the Board of a letter from the Historic Preservation Alliance of Arkansas. Such announced that the Mallalieu building at 800 North 9<sup>th</sup> Street has been nominated and selected for inclusion on their 2010 list of Arkansas's Most Endangered Historic Places.

At the invitation of Director Good, Mr. Monte Wilson, who is working to obtain funding to renovate the structure, addressed the Board alleging the designation will be a valued tool to assist in obtaining necessary funding for the project.

Mayor Baker conveyed the following:

1. Questioned if the City has done everything possible to ensure an accurate census for Fort Smith

Administrator Kelly conveyed much assurance that the City has done all that could be done.

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2. Commented on the budget crisis in Fayetteville, and steps taken to reduce work hours for their employees, and questioned if the City of Fort Smith's budget is in tact.

Administrator Kelly confirmed such; however, revenues are being watched closely and the budget will be reviewed in mid-summer to determine if additional budget cuts are necessary.

An executive session was held and after reconvening, the Mayor announced the following appointment nominations:

**WARD 4 DIRECTOR**

Bill Maddox

*(to fill the unexpired term of Ward 4 Director who resigned)*

Term expires upon election of new director

(See Item No. 9)

**ADVERTISING AND PROMOTIONS COMMISSION**

Director Bill Maddox (reappointment)

*(to fill the unexpired term of Ward 4 Director who resigned)*

Term expires December 31, 2012

Item No. 9 was a resolution declaring vacancy in Ward 4 City Director position and making appointment to fill said vacancy

Campbell, seconded by Goodman, moved adoption of Item No. 9 with the appointment of Mr. Bill Maddox to fill the vacancy until a new director is declared elected. The motion was offered by acclamation; however, Mayor Baker requested a roll call vote on the motion. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-90-10.

Goodman, seconded by Hutchings, moved acceptance of the appointment nomination to the Advertising and Promotions Commission. The members all voting affirmatively, the Mayor declared the motion carried.

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There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Hutchings and the members all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned.

APPROVED:



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MAYOR

ATTEST:



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CITY CLERK