

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

**TUESDAY ~ JULY 20, 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 Police Chief Kevin Lindsey, 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 and Kevin Settle; absent were Directors Gary Campbell and Cole Goodman. The Mayor declared a quorum present.

Mayor Baker inquired if any Board member had an item of business to present that was not already on the agenda. There was none presented.

The minutes of the July 6, 2010 regular meeting were presented for approval. Hutchings, seconded by Settle, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

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.

Item No. 1 consisted of the following presentations:

- ▶ Mayor Baker, the Board, and City Administration presented the Government Finance Officers Association (GFOA) Distinguished Budget Award for the 2009 City Budget, along with a red rose, to Director of Finance Kara Bushkuhl. Such is the 23<sup>rd</sup> consecutive year the City has received the award.
- ▶ Mayor Baker, the Board, and City Administration presented the "Good Neighbor Awards" along with a red rose and certificate to the following citizens of Fort Smith for helping to make their neighborhoods and the community a better place in which to live:

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- Charlie and Dottie Toon
- Don Mabry
- Owen Cogburn
- Ruby Gramlich
- Richard Fisk (*unable to attend*)
- Sam and Chris Ault (*unable to attend*)
- Frank and Kitty Hug (*unable to attend*)

Item No. 2 was an ordinance amending Chapter 20, Article II of the Fort Smith Code of Ordinances regarding alarm systems ~ *tabled at July 6, 2010 Regular Meeting* ~

Police Chief Lindsey briefed the Board on the item advising the ordinance presented at the July 6, 2010 regular meeting has been amended to preclude the fire and police departments from obtaining complete lists of clients from alarm companies. At the July 6 meeting, citizens also questioned the legality of the current and proposed false alarm ordinance alleging the ordinance was illegal and unenforceable. The City Attorney has submitted an opinion that the imposition of a fee for false alarms would be a valid exercise of the City's police powers. Also, it was recommended that the ordinance include the creation of an Alarm Advisory Board, as recommended by the False Alarm Reduction Association (FARA) and other various procedures. Staff feels such recommendations are not relevant or pertinent to the intent of the proposed ordinance; therefore, such recommendations have not been included.

Director Hutchings questioned if the Police Department is agreeable to the preclusion of obtaining complete lists of clients from alarm companies.

Chief Lindsey conveyed no objection to the preclusion citing the alarm companies have conveyed their assurances that client contact information will be provided upon the City's response to the scene of an alarm.

The following individuals were present to address the Board:

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- Eric Arthur  
815 North "B" Street

Re: Spoke in opposition to the proposed ordinance citing alarm companies should be held responsible for false alarms, not the property owner.

- Jerry Hamel  
4618 Wheeler

Re: Requested confirmation as to the responsible party for the false alarm fee, the property owner or the alarm company. He further questioned the legality and enforcement of imposing said fee.

Administrator Kelly advised the property owner will be charged the false alarm fee.

Chief Lindsey noted that the City Prosecuting Attorney has advised the City may prosecute according to Section 1-9 of the Fort Smith Code of Ordinances for failure to pay the false alarm fee.

- Walton Maurras  
2801 Charlotte Lane

Re: Advised he was opposed to the ordinance at the July 6, 2010 regular meeting; however, due to the revisions, he is now in favor of the proposed ordinance and recommended approval.

Director Good noted that two (2) alarm companies have indicated that if a false alarm is determined to be the fault of the alarm company, they would be responsible for the false alarm fee; therefore, he requested confirmation whereby Chief Lindsey provided such citing that was his understanding as well.

Maddox, seconded by Hutchings, 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

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for its readings and the members present all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 31-10.

Item No. 3 consisted of the following items regarding animal services:

- A. Resolution authorizing a contract between the Sebastian County Humane Society and the City of Fort Smith, Arkansas
- B. Ordinance amending Chapter 4, Article II, of the Fort Smith City Code of Ordinances regulating the impoundment of animals

Police Chief Lindsey briefed the Board on both items advising Item No. 3A represents a negotiated contract with the Sebastian County Humane Society (SCHS) whereby the compensation is calculated at a rate of \$15.00 per day per animal rather than a yearly fee as in previous years. Such will allow the City to take certain measures that may result in lowering the overall cost to the City such as lowering the number of days for which an animal may be kept from six (6) days to five (5) days, and lowering the hold time for felines (domestic: 3 days feral: 1 day). Regarding Item No. 3B, such is an amendment to the Code of Ordinances to change the number of days an animal can be held to coincide with the SCHS contract (Item No. 3A) and increasing the impoundment fee charged to the animal owner from \$10 to \$15 per day.

The following individuals were present to address the Board:

- JoAnn Barton, Executive Director  
Sebastian County Humane Society (SCHS)

Re: Spoke in favor of the proposed agreement (Item 3A) citing such could essentially save money for the City and remove a financial burden from the SCHS.

Director Maddox inquired if the SCHS checks all incoming animals for microchip implants whereby Ms. Barton responded "yes".

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- Philip Merry  
4103 South 35<sup>th</sup> Street

Re: Simply conveyed "Thank You" citing both proposed items will ensure a more efficient and accurate procedure for the care of animals in Fort Smith.

- Tammy Trouillon  
8000 Holly Avenue

Re: Questioned if owners are ticketed for having a dog running at large upon retrieval of their dog from the SCHS.

Chief Lindsey advised pet owners are ticketed only if the owner is determined at the time the dog is picked up, but not if the owner later retrieves the dog at the SCHS; however, such will be reviewed to determine if such is feasible.

Settle, seconded by Tyler, moved adoption of Item No. 3A. Prior to the vote, Director Good requested a study session be scheduled in the near future to discuss the probability of establishing a spay/neuter program for the City.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-136-10.

Good, seconded by Hutchings, moved adoption of Item No. 3B. 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 present all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given No. 32-10.

Regarding Section 4-36 of Item No. 3B, Director Maddox questioned if notifications to pet owners are forwarded via certified mail or by other means as well.

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Chief Lindsey advised notifications are forwarded via certified mail and confirmed that staff provides adequate time, up to five (5) days, for the pet owner to respond. If the pet owner can be identified at the time the dog is picked up, staff will also attempt other avenues to contact the owner.

Item No. 4 was an ordinance amending Chapter 18 Article III of the Fort Smith Municipal Code regarding park rules

Director of Parks and Recreation Mike Alsup briefed the Board on the item and reviewed each proposed amendment. Upon approval, such revises two (2) sections and adds four (4) new sections to the Code of Ordinances, which better defines issues experienced in the parks and trail system, and provides the ability to enforce the rules governing parks and other park facilities. The Parks and Recreation Commission has reviewed the proposed amendments and recommend approval.

Director Hutchings commented that tennis nets are currently requiring replacement on a weekly basis because of individuals utilizing the tennis courts for soccer. Due to such, he inquired which park is experiencing the damage and questioned who will enforce tennis only on tennis courts.

Mr. Alsup advised Tilles Park is where such is occurring and noted that the police department will be contacted for enforcement.

Tyler, seconded by Maddox, 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 present all voting affirmatively, the Mayor declared the motion

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carried and the ordinance was adopted and given No. 33-10.

Mayor Baker expressed discontent that park patrons are not utilizing the trash receptacles provided thereby creating excessive litter in various parks. Due to such, he inquired who cleans up the litter.

Mr. Alsup noted that two (2) cleanup crews are utilized during the summer months and one (1) crew in the winter months. He affirmed that such is a full time job to keep the parks free of litter.

Director Tyler noted that citizens have complained of excessive poison ivy in the dog park and requested such be addressed.

Mr. Alsup advised that staff has already addressed the issue and sprayed the poison ivy in the front section of the park, which is the most heavily utilized area.

Item No. 5 was an ordinance ordering the owners of certain dilapidated and substandard structures to demolish same, authorizing the City Administrator to cause the demolition of such structures to occur and for other purposes *(1101 North 15<sup>th</sup> Street, 717 North 34<sup>th</sup> Street, 1236 South 12<sup>th</sup> Street and 3211 North 28<sup>th</sup> Street)*

Building Official Jimmie Deer briefed the Board on the item advising the structures have been determined to be unsafe and detrimental to the public welfare; therefore, he recommended approval.

The following individuals were present to address the Board:

- Eric Arthur  
815 North "B" Street

Re: Alleged that many historical homes are allowed to remain in detrimental conditional for long periods of time thereby allowing further deterioration. Due to such,

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he recommended the City provide assistance to property owners before demolition is necessary.

- **Barney Hudson**  
3821 Presley Avenue, Apt. 4

Re: Advised he recently purchased the structure at 717 North 34<sup>th</sup> Street via owner financing and requested an extension to allow him to obtain a loan to make the necessary repairs. Although he has purchased the property, he is awaiting receipt of the deed from the previous owner, which is required for him to initiate the loan process.

Mr. Deer advised that Mr. Hudson previously indicated he does not currently maintain adequate funds to repair the structure and confirmed that the previous owner has indicated her intent to issue the required deed to allow Mr. Hudson to obtain the necessary funds.

Director Tyler questioned if Mr. Hudson currently maintains adequate funds to secure the property.

Mr. Hudson confirmed such and agreed to better secure the structure until financing for the repairs can be obtained.

There was continued discussion regarding legal ownership of the property; therefore, Mr. Deer recommended approval of the ordinance as proposed. Upon approval, the City will take no action for approximately 30 to 45 days. Such would allow adequate time for Mr. Hudson to provide the City with a written renovation plan, obtain the necessary proof of ownership and financing for the repairs. Upon receipt of such, staff may then present an amended ordinance to the Board for approval to cease demolition action on the structure.

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Good, seconded by Hutchings, 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 present all voting affirmatively, the Mayor declared the motion carried. Hutchings, seconded by Good, moved adoption of Section 5 the emergency clause. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 34-10.

Item No. 6 was an ordinance amending Chapter 2, Article IV, of the Fort Smith Code of Ordinances to create a nepotism policy relating to elected officials

Director Settle briefed the Board on the item, which was prepared at his request, advising upon approval such would prohibit family members of elected officials from being employed by the City and disallows former elected officials from working for or providing any type of contract services to the City for two (2) years after completion of their term.

The following individual was present to address the Board:

- Eric Arthur  
815 North "B" Street

Re: Recommended the ordinance be amended to specifically include consulting services and increase the two (2) year time period to five (5) years.

Director Good spoke in opposition to the proposed amendment citing consulting would be a contract service; therefore, such is not necessary.

Director Tyler advised he feels the City and State already maintain adequate policies to address the behavior and actions of elected officials; therefore, he spoke in

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opposition to the item and conveyed his intent to vote against the measure

Director Hutchings requested confirmation that existing policies adequately address nepotism issues and recommended consideration be tabled until such can be further discussed at the July 27 study session.

Administrator Kelly advised the City currently maintains multiple policies relating to nepotism; however, the main policy states that no employee may maintain a supervisory role over his/her relative.

Due to the absence of Directors Campbell and Goodman, Director Settle conveyed no objection to postponing consideration pending discussion at the July 27 study session.

Hutchings, seconded by Good, moved to table consideration of the item pending further discussion at the July 27 study session. Prior to the vote, Director Good requested Deputy Administrator Gosack advise of any issues that need to be covered prior to the study session.

Mr. Gosack advised of no issue and stated that such is a fundamental policy decision for the Board.

Director Maddox recommended the City's policy regarding fraternization also be included within the study session packet.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried.

Item No. 7 was an ordinance authorizing 2010 budget reductions

Director of Finance Kara Bushkuhl briefed the Board on the item as discussed at the July 13, 2010 study session.

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Director Hutchings advised that the budget amount for the vacancies is different from the original amount previously provided; therefore, he requested a brief explanation.

Ms. Bushkuhl noted that the difference is due to the clerk position in District Court. A portion of said position is paid by the City and the remaining portion by Sebastian County. The amount is \$15,600 less because the reimbursement from Sebastian County for the vacant position must be reduced from General Fund revenue, which was inadvertently not included in the previous amount.

The following individual was present to address the Board:

- Eric Arthur  
815 North "B" Street

Re: Recommended the City obtain the services of two (2) accountants and a forensic auditor to determine any additional monetary waste within the City.

Director Good advised that several individuals have expressed concern with utilizing the Health and Wellness Fund to cover budget shortfalls in the General Fund as such funds are contributions made by employees.

Mr. Bushkuhl advised that both the City and employees contribute to the Health and Wellness Fund with approximately 10% of the balance coming from employee contributions. She conveyed much assurance that the amount to be utilized to cover the budget shortfall will come solely from the City's portion of contributions, and confirmed that the fund contains a more than adequate account balance to utilize the fund for said purpose.

Maddox, seconded by Settle, moved adoption of the ordinance. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinance

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was adopted and given No. 35-10.

The Consent Agenda (Item No. 8) was introduced for consideration, the items being as follows:

- A. Resolution approving the designation of a new trustee for the Series 2004 City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (*Gerber Products Company Project*)
- B. Resolution accepting bids for the purchase of a four-wheel drive loader backhoe (\$58,141.24)
- C. Resolution approving the design and improvements to Cisterna Plaza
- D. Resolution authorizing partial payment to The Burgess Company, Inc. for the construction of Midland Boulevard 30-Inch Water Transmission Line (\$581,573.02)
- E. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$927,049.44)
- F. Resolution accepting the project as complete and authorizing final payment to Wilson Brothers Construction Company, Inc. for the Ramsey Tributary Basin MC05 Sewer Improvements (\$58,219.25)
- G. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Mid-America Environmental for Lee Creek Water Treatment Plan Residuals Lagoon Cleaning (\$189,000.00)
- H. Resolution authorizing Change Order Number One with Kraus Construction Company, LLC for construction of the Rye Hill Sewer Outfall Phase Two (\$31,430.50)
- I. Resolution authorizing acquisition of real property interests for the Rye Hill Sewer Outfall Phase IV Improvements Project (\$9,582.10)

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- J. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Wilson Brothers Construction Company, Inc. for the Rye Hill Sewer Outfall Phase IV (\$1,174,815.00)
- K. Resolution authorizing the Mayor to execute Amendment Number One to the agreement for engineering services with Mickle Wagner Coleman, Inc. for the Rye Hill Sewer Outfall Line Improvements (\$145,000.00)

Regarding Item No. 8I, Director of Utilities Steve Parke requested the resolution be amended to include language to accept the settlement offer by the property owners in the amount of \$11,200.

With regard to Item No. 8B and due to budget concerns, Mayor Baker questioned if the purchase of the backhoe was absolutely necessary or if the purchase could be postponed.

Director of Operations Bob Wright noted that the City could temporarily postpone the purchase; however, if the existing backhoe is kept for another year, it could prove to be very costly to the City as the trade-in value would drastically decrease. The funds are currently available to accommodate the purchase.

Ms. Bushkuhl clarified that the funds for the purchase will not come from the General Fund, but the Street Maintenance Fund.

Regarding Item No. 8K, Director Tyler inquired of the timeline for Phase 4 through Riley Farm Subdivision.

Mr. Parke noted that the timeline of the project is undetermined; however, the initial construction contract is expected to be completed and presented for approval in approximately thirty (30) days.

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Hutchings, seconded by Maddox, moved approval of all consent agenda items. The motion also included the aforementioned amendment to Item No. 8I to accept the settlement offer from the property owner. The members present all voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-137-10 through R-147-10 respectively.

Mayor Baker opened the Officials Forum with the following comments offered:

▶ **Director Settle**

Re: Requested Deputy Administrator Gosack convey the "good news" received today regarding Gerber Products.

Mr. Gosack advised that Gerber Products announced that they will be adding new lines to their operation which will create approximately fifty (50) new jobs and an estimated \$90 million investment.

▶ **Director Tyler**

Re: Noted he will not be present at the upcoming July 27 study session that will include discussion of outside agency funding. He spoke in favor of reducing the amount of funding to outside agencies and not eliminating such.

▶ **Director Good**

Re: Advised that Vaunda Nelson, author of "Bad News for Outlaws - The Remarkable Life of Bass Reeves" is assisting in fundraising efforts for the Bass Reeves statue and will be at the Fort Smith Public Library on July 21 at 2:00 p.m., and encouraged all to attend.

▶ **Administrator Kelly**

Re: The convention center has been receiving calls from individuals who have contracted to use the facility in the future and inquiring if the facility will be open next year. In order to "put doubts to rest", he conveyed much

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assurance that the City will honor all contracts executed for use of the facility.

An executive session was held and after reconvening, Mayor Baker advised that no action was taken with regard to the appointment to the Housing Assistance Board and announced the following appointment nominations:

**PARKS AND RECREATION COMMISSION**

Madeline Marquette

Term expires August 31, 2015

**TRANSIT ADVISORY COMMISSION**

Randy Burress (reappointment)

Charles Poole

Terms expire July 15, 2013

Good, seconded by Hutchings, moved acceptance of the appointment nominations.

The members present all voting aye, the Mayor declared the motion carried.

With regard to the time limit policy for persons wishing to address the Board in Citizens Forum, Mayor Baker communicated that two (2) minutes will be allotted to each person wishing to speak.

Mayor Baker opened the Citizens Forum with the following individuals present to address the Board:

- Janie Stamps  
4008 Logan Lane

Re: Advised the intersection of Waldron Road and Rogers Avenue is in very bad disrepair and requested resurfacing in that area.

- Louis Vincent  
(No address provided)

Re: Noted that the Fort Smith Police Department is dealing with motorcycle gangs in the city; however, he recommended all gang activity be addressed.

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- Tammy Trouillon  
8000 Holly Avenue

Re: Conveyed 2008, 2009 and 2010 statistics of dogs running at large in the city and reiterated her previous request for a fencing ordinance.

- Paul Speer  
Charleston, AR

Re: Questioned why the City is now contemplating a special election next Spring to consider the 1% prepared food tax rather than placing the matter on the November general election ballot.

At the request of Director Good, Deputy Administrator Gosack advised that the matter was reviewed by the City Clerk and determined that the cost difference is approximately \$4,000 more for a special election. The City shares in the cost of general elections and the more items the City has on the general election ballot, the higher cost to the City.

- John Hamel  
8811 Rogers Avenue

Re: 1. Questioned if ward directors hold meetings with constituents solely from their ward.

2. Spoke in opposition to the large automated trash cans citing such are hard to handle and not feasible for the elderly.

3. Regarding Item No. 2 on the agenda, he conveyed safety concerns that alarm system clients may opt to go to a false alarm rather than call the police for fear of a false alarm fee; therefore, he simply stated that the police should "serve and not be revenue getters".

- Jerry Hamel  
4618 Wheeler

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Re: Commended the Board for approving budget cuts and recommended the Board place the 1% prepared food tax on the general election ballot.

- Eric Arthur  
815 North "B" Street

- Re: 1. Alleged the City is paying for publication costs for variance applications when the applicant should be responsible.  
Mr. Gosack advised the new fee structure within the recently adopted Unified Development Ordinance was adjusted to cover required publication costs.
2. Recommended the City's new website include a centralized calendar of meetings so there's not an overlap in scheduling. This will allow individuals to attend all meetings if they so desire.

There being no further business to come before the Board, Maddox moved that the meeting adjourn. The motion was seconded by Good and the members present 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