

MINUTES OF BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ JUNE 19, 2012 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Mayor Sandy Sanders, presiding. Invocation was given by Reverend George Barham of Westside Baptist Church, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, George Catsavis, Pam Weber, Kevin Settle and Philip H. Merry, Jr. The Mayor declared a quorum present.

Mayor Sanders inquired if any Board member had any item of business to present that was not already on the agenda. None was presented.

The minutes of the June 5, 2012 regular meeting was presented for approval. Settle, seconded by Weber, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Item No. 1 was a resolution recognizing the contributions of Bill Black to the Fort Smith National Historic Site and the city of Fort Smith.

Mayor Sanders, along with the Board, recognized Mr. Black for serving as Superintendent of the Fort Smith National Historic Site for twenty (20) years. The Mayor further conveyed many of his accomplishments.

Hutchings, seconded by Weber, 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-125-12.

The Mayor, along with the Board, then presented a framed copy of the resolution to Mr. Black, who extended much appreciation for the recognition citing such *"has been a great experience"* and he will always have a grateful and strong connection to the city of Fort Smith.

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

Item No. 2 was formal presentation of the 2011 Audit (*Comprehensive Annual Finance Report - CAFR*).

Director of Finance Kara Bushkuhl reviewed the information citing an electronic copy of the CAFR was previously provided to the Board, and a hard copy presented prior to the meeting. The audit report was prepared by BKD, LLC and has been reviewed by the Audit Advisory Committee (AAC); therefore, she also introduced Mr. George Moshner of the AAC.

Mr. Moshner addressed the Board advising the AAC reviewed the audit citing no significant issues were discovered and no adjustments recommended.

Ms. Bushkuhl reiterated there were no significant findings; however, BKD provided minor recommendations, which have been addressed and a detailed memorandum will be forwarded in the very near future regarding such. Much appreciation was extended to Directors Tyler, Hutchings, and Settle for their service on the AAC, as well as all other members, Ken Pyle, George Moshner and Lavon Morton.

Item No. 3 was an ordinance amending Chapter 18, Article III of the Fort Smith Municipal Code to amend Sections 18-66 and 18-77 regarding park rules and to add Section 18-81 regarding permits for public assembly or special events in city parks (*Tyler/Hutchings placed on agenda at the June 12, 2012 study session*)

Director of Parks and Recreation Mike Alsup briefed the Board on the item advising an ordinance to provide regulations for special events and public assemblies with

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anticipated attendance of over fifty (50) was submitted to the Board of Directors in November 2011; however, the Board tabled consideration of the ordinance and recommended review by the Arkansas Attorney General (AG). The AG reviewed the ordinance and provided an opinion that states, *"The proposed ordinance is clearly aimed at coordinating multiple uses of the city's public parks, ensuring the park facilities are preserved from damage, and ensuring that attendees are protected from dangerous or unlawful activity. The U.S. Supreme Court has declared these purposes are legitimate governmental interests. The proposed ordinance attempts to accomplish this set of goals by establishing a system for obtaining a permit or license for all "Public Assemblies" or "Special Events" that people plan to hold in a public park."* Some concerns were expressed in the opinion; therefore, revisions have been made to the proposed ordinance to address such. Gatherings with an anticipated attendance of less than fifty (50) are not affected. Also, circulation of a petition in a park would not be affected provided the activity does not disrupt other programs or patrons in the park.

Director Catsavis requested confirmation that anyone wishing to circulate a petition in a city park may do so. Regarding the \$500 deposit for special events with anticipated attendance of over fifty (50), he inquired if the \$500 deposit would be required if an event had attendance of more than fifty (50), but was booked for an anticipated attendance of less than fifty (50).

Mr. Alsup provided confirmation that petitions may be circulated provided it does not disrupt an ongoing activity or special event. With regard to the \$500 deposit, the Parks Department will most likely not charge the \$500; however, if event attendees are disruptive or damage is being done to any park facility, the Police Department will be contacted.

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The following individual was present to address the Board:

- Elizabeth Mayo
Fort Smith, Arkansas

Re: Spoke in opposition to the item citing such is
"unnecessary."

Settle, seconded by Tyler, 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 Hutchings, moved adoption of Section 3 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. 47-12.

The Consent Agenda (Item No. 4) was introduced for consideration, the items being as follows:

- A. Resolution accepting completion of and authorizing final payment for the construction of 2011 Sidewalk Program, Project No. 11-20-A (\$6,611.68 / *Engineering Department / Budgeted - Sidewalk Program Fund*)
- B. Resolution authorizing the Mayor to execute an agreement, along with Sebastian County, for design and construction oversight with Larkin Group, Inc. for the aquatic facility at Ben Geren Park (\$567,500.00 / *Parks Department / Budgeted - 2012 Sales Tax Bonds*)
- C. Resolution authorizing the utilization of the Construction Manager at Risk construction delivery method for Fire Station No. 11 at Chaffee Crossing (*Hutchings/Weber placed on agenda at the June 12, 2012 study session*)
- D. Resolution accepting bid for the purchase of fire apparatus (\$4,125,920.30 / *Fire Department / Budgeted - 2012 Sales Tax Bonds*)

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- E. Resolution accepting bid for the purchase of an asphalt roller (\$41,072.95 / Street Department / Budgeted - Sinking Fund)
- F. Resolution amending Resolution No. R-80-11 relative to the purchase of a skid steer loader (\$72,806.00 / Street Department / Not Budgeted - Sinking Fund)
- G. Resolution accepting bid for the purchase of a container carrier truck (\$94,937.62 / Sanitation Department / Budgeted - Sinking Fund)
- H. Resolution authorizing the execution of a memorandum of understanding concerning mobile data support between the City of Fort Smith, Arkansas and Sebastian County, Arkansas
- I. Resolution authorizing the Mayor to execute an agreement and Authorization Number One with RJN Group, Inc. for the design of the Basin 9 Collection System Improvements (\$197,930.00 / Utility Department / Budgeted - 2012 Sales Tax Bonds)
- J. Resolution authorizing the Mayor to execute an agreement and Authorization Number One with RJN Group, Inc. for engineering services for the Basin 17 Collection System Improvements (\$159,608.95 / Utility Department / Budgeted - 2012 Sales Tax Bonds)
- K. Resolution authorizing Amendment Number One to Authorization Number Two with RJN Group, Inc. for engineering services for the South 28th Street Sewer Replacement Project (\$20,184.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- L. Resolution authorizing Change Order Number Two with Forsgren, Inc. for the construction of the South 28th Street Sewer Replacement Project (*Days only*)
- M. Resolution accepting Consent Administrative Order (\$2,400.00 / Utility Department / Not Budgeted - to be reimbursed by contractor)
- N. Resolution authorizing the Mayor to execute Authorization Number Two to the agreement with Brixey Engineering & Land Surveying, Inc. for engineering services for the South 62nd Street Sewer Improvements - S001 (\$80,234.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)

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- O. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Forsgren, Inc. for the South 62nd Street Sewer Improvements - S001 (\$2,134,433.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- P. Resolution authorizing the Mayor to execute an Authorization Number Three to the agreement with Morrison Shipley Engineers, Inc. for engineering services for the Sunnymede Basin Neighborhood and Ramsey Tributary Sewer Improvements (\$120,930.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- Q. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Forsgren, Inc. for the Sunnymede Basin Neighborhood and Ramsey Tributary Sewer Improvements (\$2,187,107.50 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- R. Ordinance declaring an exceptional situation waiving the requirements of competitive bidding and authorizing final payment to the Burgess Company, Inc. for the South 24th Street Zero Street Emergency Sewer Repair - Z001 (\$29,599.00 / Utility Department / Budgeted - 2009 Sales Tax Bonds)
- S. Resolution authorizing the execution of a non-residential solid waste collection and disposal permit and agreement with LTC Resources, Inc.
- T. Resolution authorizing the execution of a non-residential solid waste collection and disposal permit and agreement with Wichita Waste Management

Regarding Item No. 4A, the following individual was present to address the Board:

- Pastor Lorenzo Lee
Fort Smith, Arkansas

Re: Advised he has requested sidewalks on the north side of the city in 2010 and 2011. He expressed discontent the requested sidewalks have not yet been installed.

Director Good noted the requested sidewalk location is on North "O" Street, south of Martin Luther King Jr. Park. Such requires the property owner provide the necessary easement in order for the City to install a sidewalk; therefore, he clarified the requested sidewalk

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has not been installed because the property owner did not grant the necessary right-of-way.

Regarding Item No. 4B, Director Settle noted such is the result of cooperation with Sebastian County and due to approval of Fort Smith voters; therefore, he conveyed much excitement the project is moving forward and will be brought to fruition in 2014.

With regard to Item No. 4C, Director Catsavis expressed concern the City will employ both a construction manager as well as a general contractor for the project; therefore, he requested clarification.

Fire Chief Mike Richards briefed the Board on the selection process and confirmed the selected general contractor will also serve as the construction manager.

Settle, seconded by Hutchings, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and resolutions were adopted with the ordinance given No. 48-12 and the resolutions numbered R-126-12 through R-144-12 respectively.

Item No. 5 was a resolution directing staff to solicit bid proposals for residential manual refuse collection in alleyways (*Placed on agenda by Directors Tyler, Catsavis, Weber and Merry on Thursday afternoon, June 14, 2012*).

City Administrator Ray Gosack briefed the Board on the item citing the proposed resolution directs staff to solicit bid proposals for areas with manual sanitation collection in alleyways to be served by a private contractor. The Department of Sanitation currently collects residential refuse throughout the city; however, the proposed option would affect approximately 4,100 households. Upon approval, staff will prepare a request for bids/proposals and review such with the Board at an upcoming study session. Staff will then solicit proposals from private sanitation collectors, evaluate the qualifications and

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determine which firm is best-qualified to serve these neighborhoods. Once determined, the Board would then need to approve a franchise agreement with the selected private collector.

The Board may also wish to consider the initiative effort to mandate automated service citywide. If the proposed initiative is successful and eventually approved by the voters, it could very likely influence the Board's desire to assign residential collection areas to a private contractor. The deadline for the initiative petition must be filed with the City Clerk by August 8. The sufficiency of the petition must be determined within thirty (30) days of the filing; therefore, placement on the general election ballot will be determined by early September.

The following individuals addressed the Board:

- Carolyn Plank
Fort Smith, Arkansas

Re: Although she is in favor of manual collection in alleyways, she spoke in opposition to the item citing satisfaction with the service provided by the Fort Smith Sanitation Department. She further noted utilizing a private contractor is *"not the solution."*

- Ruby Thurman
Fort Smith, Arkansas

Re: Spoke in favor of automated sanitation collection and advised of possible property maintenance violations near her residence.

- Gary Thurman
Fort Smith, Arkansas

Re: Spoke in favor of automated sanitation collection and inquired if those requesting participation in the troubleshooter program will be required to obtain a doctors statement.

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Mr. Gosack clarified no doctors statement is required; however, the Sanitation Department will visit with the resident, assess the matter and determine participation in the troubleshooter program.

- J. P. Bell
Fort Smith, Arkansas

Re: Extended much appreciation to the Board for their recent vote to maintain manual collection in alleyways in several neighborhoods, and commended Director of Sanitation Baridi Nkokheli; however, he noted many older neighborhoods were designed for alleyway sanitation collection. Due to such, he recommended the City explore a semi-automated program to address said neighborhoods.

- Phil White
Fort Smith, Arkansas

Re: Alleged the Board has chosen to micro-manage the Department of Sanitation and encouraged the Board to allow Mr. Nkokheli to proceed with citywide automated sanitation service. If not, he urged the Board to ensure those wishing to retain manual collection be required to pay a higher sanitation rate.

Director Merry extended an apology to the citizens of Fort Smith citing he failed to realize the most recent sanitation survey indicated seven (7) of the twenty (20) neighborhoods recently retained for manual alleyway collection service (*Resolution No. R-109-12, adopted June 5, 2012*) wished to be included the 2012 expansion area for automated sanitation collection. Due to such, he conveyed his desire for the Board to reconsider its recent decision to allow the seven (7) neighborhoods to be included the 2012 expansion area. Such neighborhoods were identified in the most recent sanitation survey as follows:

- ▶ Fitzgerald North
- ▶ Fitzgerald West
- ▶ The Heights
- ▶ Home
- ▶ Howard
- ▶ Sulfur Springs
- ▶ Undesignated areas

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Weber, seconded by Catsavis, moved to add a resolution to the agenda directing staff to expand the automated collection of residential solid waste to the above noted neighborhoods in 2012. The members all voting affirmatively, the Mayor declared the motion carried. Additions to the agenda requires unanimous vote of the Board ; therefore, the item was added to the agenda for consideration as Item No. 6.

Merry, seconded by Weber, moved adoption of Item No. 6. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-145-12.

Regarding Item No. 5, Director Settle questioned the affect a successful initiated matter on the general election ballot to mandate citywide automated sanitation service would have on a previously granted contract for manual sanitation collection with a third party provider.

City Attorney Jerry Canfield advised such would require legal research before he could provide a definitive answer.

Director Settle offered a motion to table the proposed resolution to the second regular meeting in November. Director Hutchings offered a second to the motion, but soon withdrew such to allow additional discussion.

Director Weber conveyed objection of the proposed delay to allow Director of Sanitation Baridi Nkokheli to review a tiered rate model similar to such utilized in Tulsa, Oklahoma and report back to the Board.

Mayor Sanders expressed concern with the proposed resolution citing such is "too vague" as it does not address compliance, employee appearance, etc. Also, due to the potential for the initiative petition drive and legal ramifications as inquired by Director Settle, he spoke in favor of deferring action on the item.

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Director of Sanitation Baridi Nkokheli advised he was familiar with the newly enacted tiered rate model; therefore, in the spirit of compromise, he posed no objection to gather information for the model to be utilized for the households who receive alleyway collection and present such to the Board at a later date.

After lengthy discussion, Director Settle withdrew his motion to table the matter to the second meeting in November.

Mayor Sanders then entertained a motion on the proposed resolution (Item No. 5). No motion was offered; therefore, the Mayor declared the resolution defeated for lack of a motion.

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

▶ Mayor Sanders

- Re: 1. Extended congratulations to the Young Actors Guild for a recent production.
2. Conveyed appreciation to those who attended the Ward 3 Meeting, which was held on June 14th.

▶ Director Settle

Re: Offered an apology for his absence at the recent Ward 3 Meeting citing his was out of town.

▶ Director Weber

Re: Announced Beautify Fort Smith will meet at 12:00 Noon on Thursday, June 21st at Creekmore Park and encouraged all to attend.

▶ Administrator Gosack

Re: Reminded the Board of the Mayor's Prayer Breakfast scheduled for 6:15 a.m. on Friday, June 22nd at the Holiday Inn City Center.

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

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ADVERTISING AND PROMOTION COMMISSION

Ronnie Townsend
Term expires December 31, 2014

HISTORIC DISTRICT COMMISSION

Joan Singleton (reappointed)
Scott Martin
Terms expire July 31, 2015

MECHANICAL BOARD OF ADJUSTMENTS AND APPEALS

Michael Blaylock (reappointed)
Term expires July 31, 2017

PLANNING COMMISSION

Richard Spearman
Term expires April 30, 2015

PORT AUTHORITY

Jeff Taake
Term expires July 31, 2017

Catsavis, seconded by Hutchings, moved acceptance all appointment nominations.

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

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Weber and the members all voting aye, the Mayor declared the motion carried, and the meeting stood adjourned at 7:53 p.m.

APPROVED:


MAYOR

ATTEST:


CITY CLERK