MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ AUGUST 20, 2013 ~ 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 Odell Curtis of God's House of Prayer, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Keith Lau, Andre' Good, Mike Lorenz, 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. There was none presented.

The minutes of the August 6, 2013 regular meeting were presented for approval. Good, seconded by Lorenz, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

Mayor Sanders, the Board, and City Administration presented a "Good Neighbor Award" to Jim *(unable to attend)* and Sharon Bell for helping to make their neighborhood and the community a better place in which to live (Item No. 1).

Item No. 2 was a resolution of the Board of Directors of the City of Fort Smith certifying local government endorsement of Business to participate in the Tax Back Program (as authorized by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003) *(Arkansas HMA Regional Service Center, LLC)*.

Deputy Administrator Jeff Dingman briefed the Board on the item advising such is per the request from the Arkansas Economic Development Commission and the Fort Smith Regional Chamber of Commerce on behalf of Arkansas HMA Regional Service Center, LLC, who plans to develop an office/administrative services facility located at 4600 Towson

Avenue. Such is an investment of $2 million and will bring 500 new jobs to the region. Participation in the Tax Back Program allows for new or expanding businesses to request refunds of sales taxes paid on building materials, new equipment and other eligible expenses incurred due to construction and/or expansion, and requires governmental endorsement. Participation requires approval from the governing body; therefore, he recommended approval of the proposed resolution.

Director Lorenz announced he's employed by Arkansas HMA Regional Service Center, LLC; therefore, recused himself from consideration of the item.

Merry, seconded by Weber, moved adoption of the resolution. The members all voted affirmatively, with the exception of Director Lorenz who abstained. The Mayor declared the motion carried. Settle, seconded by Weber, moved adoption of Section 3 the emergency clause. The members all voted affirmatively, with the exception of Director Lorenz who abstained. The Mayor declared the motion carried and the resolution and emergency clause were adopted and given No. R-122-13.

Item No. 3 was an ordinance rezoning identified property and amending the zoning map and repealing Ordinance 31-13 *(from Residential Estate One Acre (RE-1) to Residential Single Family Medium Density (RS-2) by classification located at 4101-4299 Cliff Drive)*.

Administrator Gosack briefed the Board on the item. Following the August 6, 2013 regular meeting, approval of Ordinance No. 31-13, staff discovered such contained an incorrect legal description. The proposed ordinance merely repeals Ordinance No. 31-13 and corrects the legal description. Upon approval, the subject property will be rezoned as originally presented at the August 6, 2013 regular meeting.

Settle, seconded by Lorenz, 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 and ordinance was adopted and given No. 34-13.

Item No. 4 was an ordinance delegating personnel authority to the City Administrator

~ Requested at the July 2013 Board Retreat ~

Administrator Gosack briefed the Board on the item advising the matter was requested during the recent Board Retreat on July 20th. The current ordinance provides that the appointment and removal of all department heads is recommended by the city administrator and approved by the board of directors. The proposed ordinance would place these responsibilities entirely with the city administrator. The city attorney has provided a legal opinion which cites the state law that supports the change. The aforementioned opinion also notes that a change in the Civil Service Commission's rules should be enacted by expressly stating the Board's determination that the appointment, discipline and removal of the fire and police chiefs are the city administrator's responsibility. The proposed ordinance exempts two (2) positions from the city administrator's authority, i.e. the position of internal auditor, who reports directly to the Board of Directors, and the district court clerk, which state law provides the district court judges appoint and remove the court clerk.

The following individuals were present to address the Board:

- David Harris
  Fort Smith, Arkansas

Re: Spoke in opposition to the proposed ordinance citing the City of Fort Smith is not a company with a CEO, but a governmental entity. He urged the Board of Directors to maintain authority to appoint or terminate department heads citing such actions should be conducted in public and stated, *"the system's not broke, so don't fix it."*

- Doug Skokos
  Fort Smith, Arkansas

  Re: Expressed concern with the item citing approval of such could put undo *"jeopardy"* or added pressure on the department heads and the city administrator. He conveyed assurance that Board involvement in the process is not micro-managing, but merely ensures the Board is a safeguard to *"prevent things from happening."*

- Joey McCutchen
  Fort Smith, Arkansas

  Re: Also spoke in opposition to the ordinance stating the issue is about trust and *"open government."* One (1) director can have a great amount of influence on a city administrator; therefore, he expressed great concern with matter and urged denial of the proposed ordinance.

There was lengthy discussion with several directors speaking in favor of the item citing such removes politics from personnel matters and places more accountability on the city administrator. Although the proposed ordinance grants authority for both appointment and termination solely on the city administrator, discussion focused on procedures and actions of recourse for dismissal, as well as the openness of personnel action. Multiple directors conveyed satisfaction with department heads and that due to the current atmosphere, if the Board so desires to approve the ordinance and grant subject authority to the city administrator, now is the time to accomplish such.

City Attorney Jerry Canfield clarified that all employed individuals are afforded the

same protections for wrongful termination. Upon approval of the proposed ordinance, all protections granted by the State of Arkansas, as well as those included within the City of Fort Smith personnel handbook, remain in tact. The only difference is that appointments and terminations of department heads will no longer require Board action in a public setting. He further noted that employment actions maintain some privacy regulations.

City Administrator Gosack also clarified that if any employee is terminated and he/she feels termination is unwarranted or dismissal action did not comply with required procedures, his/her recourse is to take legal action against the City of Fort Smith or contact the Equal Employment Opportunity Commission. The proposed ordinance does not prohibit terminated department heads from initiating same. He also provided a brief explanation of the City's procedure for termination for non-uniformed employees citing multiple individuals are involved, i.e. immediate supervisors, department heads, the Human Resources Department, before termination is accomplished. For department heads, fewer individuals are involved; however, the same employment practices must be adhered to nonetheless.

Director Settle read a prepared statement conveying much opposition to the proposed ordinance citing the citizens of the city of Fort Smith elected the Board of Directors with the subject responsibility and authority. Retaining such authority is a *"check and balance"* that a potentially, unwarranted termination of a department head can be appealed to the Board of Directors. The City of Fort Smith maintains multiple options for appeal for various other matters; therefore, he conveyed his intent to vote against the measure.

Lau, seconded by Good, 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 voted as follows: ayes - Lau, Good, Lorenz, Weber and Merry; nays - Catsavis and Settle. The Mayor declared the motion carried and the ordinance was adopted and given No. 35-13.

The Consent Agenda (Item No. 5) was introduced for consideration, the items being as follows:

A. Resolution to accept the bids and authorize a contract for the construction of Street Overlays/Reconstruction, Project No. 13-03-*A (*$*1,785,026.06 / Engineering Department / Budgeted - Sales Tax Program Fund)*

B. Resolution to accept the bids and authorize a contract for the construction of Drainage Improvements, Project No. 12-06-C1 *(*$*1,279,124.00 / Engineering Department / Budgeted - Sales Tax Program Fund)*

C. Resolution authorizing the Mayor to execute parks' trail easement to Sebastian County, Arkansas

D. Resolution authorizing execution of a memorandum of understanding between the City of Fort Smith, Arkansas, and the United States Secret Service regarding the reimbursement of certain overtime costs and other expenses

E. Resolution authorizing partial payment to Archer Western Construction, LLC, for the construction of Zero Street Pump Station Wet Weather Improvements - Pump Station and EQ Storage *(*$*1,183,172.02 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)*

F. Resolution authorizing final payment to Diamond Construction Company, Inc. for Chaffee Crossing Water Supply Improvements - Chad Colley and Custer Boulevard Water Lines *(*$*32,650.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)*

G. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for engineering services associated with Year 2013 Wastewater Collection System Flow Monitoring *($352,605.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)*

H. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding, appropriating funds and authorizing a contract with Crawford Construction Company for Sunnymede Pump Station Force Main Emergency Repair at Horan *Drive ($117,000.00 / Utility Department / Not Budgeted - Appropriated funds from Unobligated Water and Sewer Operating Funds)*

I. Ordinance accepting the bid for the lease-purchase of an Al-Jon compactor and authorizing the Mayor and City Administrator to negotiate and execute all necessary lease documents regarding said agreement *($900,775.00 / Sanitation Department / Budgeted - Sanitation Sinking Fund)*

Weber, seconded by Lorenz, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the ordinances and resolutions were adopted with the ordinances numbered 36-13 and 37-13, and the resolutions numbered R-123-13 through R-129-13 respectively.

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

- Mayor Sanders

  Re: 1. Noted the passing of former City Director Carter Hunt and extended condolences to his family.

  2. Recognized Littlefield Oil upon receiving the Pro Patria Award, which recognizes organizations for their support of National Guard and Reserve Members

  3. Noted the accomplishment of Gerdau upon attaining 1 million work hours with no loss time accidents, as noted by the Arkansas Department of Labor.

4. Advised of recent meeting with Fayetteville Mayor Lionel Jordon regarding establishment of a coalition in support of the River Channel Project.

5. Announced multiple new developments in Fort Smith, i.e. The Texas Roadhouse Restaurant, Phoenix Metals, My Dentist Office, and Umarex USA

5. Extended much appreciation to all organizations supporting and working with "Partners in Education", which supports schools, teachers, etc.

6. Encouraged participation in upcoming Citizens, Fire and Police Academies.

- Director Lorenz

  Re: Extended congratulations to Director Good in honor of his son being selected to play with NBA players in New York.

  Director Good explained that via video submission, his son was selected by Kevin Durant of OKC Thunder and granted an all expense paid trip to play basketball with NBA players in New York.

- Director Settle

  Re: Offered a motion to place an item on a future study session to discuss the Compressed Natural Gas (CNG) Vehicle Program for City vehicles. Such placement requires concurrence of two (2) directors; therefore, Director Catsavis seconded the motion. Due to such, Mayor Sanders announced the matter will be scheduled for an upcoming study session.

The Board entered into an executive session at approximately 6:47 p.m. and after reconvening, Mayor Sanders announced the following appointment nominations:

CENTRAL BUSINESS IMPROVEMENT DISTRICT
Bill Hanna (reappointment)
Jeff Pryor (reappointment)
Terms expire September 30, 2019

OUTSIDE AGENCY REVIEW PANEL
Scott McLain
Term expires August 20, 2014

WESTERN ARKANSAS PLANNING AND DEVELOPMENT DISTRICT
Mitchell Minnick
(to fill the unexpired term of Ken Pyle who resigned)
Term is indefinite

Catsavis, seconded by Merry, moved acceptance of all appointment nominations. The members all voting aye, the Mayor declared the motion carried.

There being no further business to come before the Board, Lau moved that the meeting adjourn. The motion was seconded by Lorenz and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 6:57 p.m.

APPROVED:

Sandy Sanders

MAYOR

ATTEST:

Sherri Gard

CITY CLERK