

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ MAY 19, 2015 ~ 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 Pastor Ben Shure of Central Christian Church, followed by the Pledge of Allegiance.

On roll call the following members of the Board were present: Directors Keith Lau, Mike Lorenz, Tracy Pennartz, Kevin Settle and Don Hutchings; absent – Director George Catsavis. The Mayor declared a quorum present. Director Andre' Good arrived during presentation of Item No. 1.

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 May 5, 2015 regular meeting was presented for approval. Settle, seconded by Pennartz, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

Item No. 1 was a presentation of proclamations for Public Works Week (May 17-23, 2015); therefore, Mayor Sanders proclaimed this same week as "*Public Works Week in Fort Smith.*" This year's theme is: "*Community Begins Here*". The special week provides an opportunity to recognize the importance of street, water & sewer, sanitation, stormwater, parks, public transit, and capital project management. A public works employee appreciation picnic will be held on Wednesday, May 20th at the Riverfront Park from 11:00 a.m. to 1:00 p.m.

Mayor Sanders expressed gratitude to all public works employees for their valued service.

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Item No. 2 was an ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*regarding outdoor mobile vending*) ~ *Settle/Hutchings placed on agenda at the April 28, 2015 study session* ~ ♦ Future Fort Smith Item

Director of Development Services Wally Bailey briefed the Board on the item as discussed at the February 24 and April 28, 2015 study sessions. The proposed amendments address regulations regarding mobile food trucks downtown, which is an action item in the Future Fort Smith Comprehensive Plan, and were developed after extensive research and multiple Planning Commission meetings to gather public input. The proposed regulations include sections that allow temporary/mobile food vending in the downtown Commercial-6 zoning district and the public rights-of-way in said district; relocates sidewalk vending regulations from Chapter 22 to Chapter 27 of the Municipal Code to consolidate regulations related to temporary/mobile food vending; allows for mobile food courts; and, extends permit time limits from one hundred twenty (120) days to one (1) year. The proposed does not affect the existing allowance of temporary mobile food vending on private property. Upon approval, a six (6) month analysis will be conducted to allow staff to address any needed amendments prior to the issuance of permits or licenses in 2016. Findings will be reported to the Central Business Improvement District, Planning Commission and the Board of Directors. The Planning Commission held a special public hearing on April 27, 2015 whereby Mr. Mark Muhlenbruch, 722 South 22nd Street, expressed concern the cost of insurance may make it difficult for some potential vendors. The Planning Commission requested the ordinance be amended to add the words "*in a public right-of-way*" in the insurance requirements. The Planning Commission recommended the proposed amendments for Board consideration with seven (7) in favor and zero (0) opposed.

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Director Pennartz expressed gratitude to City staff and Planning Commission for their extensive time, efforts and research put forth regarding the proposed amendments. She further conveyed confidence that such will contribute to the quality of place for the city and spoke in favor of the inclusion of the six (6) month review period.

Director Settle advised many citizens have conveyed excitement with the proposed allowance of mobile food vending and requested clarification why mobile food vending is not allowed on Garrison Avenue.

Mr. Bailey advised Garrison Avenue is a state highway and state law prohibits such whereby Director Settle expressed desire for the City to appeal to state legislators to repeal said restriction.

Pennartz, 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 present all voting affirmatively, the Mayor declared the motion carried. Hutchings, seconded by Settle, moved adoption of Section 7 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 Ordinance No. 34-15.

Item No. 3 was a resolution adopting financial policies ~ *Discussed at the November 2014 budget hearings; January 6, 2015 regular meeting; March 10, 2015 study session; and, March 19, 2015 special study session ~*

Deputy Director of Finance Jennifer Walker briefed the board on the item as discussed at the above noted meetings. Upon approval, the proposed resolution adopts

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the Fiscal Performance Policies of the City of Fort Smith. The key changes to the existing financial policies are as follows:

- A reference to specific Water/ Sewer policies, pending adoption of those policies.
- An operational budget in which expenditures do not exceed revenues (structural budgeting method).
- Budget adoption on or before December 31.
- Debt service will not exceed 35% of total operating revenues.
- Fund reserve at 15% (Water & Sewer Fund at 20%).
- Revenues will be projected on a five (5) year basis rather than a two (2) year basis.
- Other minor points of clarification and/or grammar corrections.

Director's Settle, Lau and Lorenz expressed discontent with inclusion of a specified date for budget adoption by December 31st.

Director Settle offered a motion to remove said reference regarding the budget adoption deadline of December 31 from the Operating Expenditure/Expense Policies, Item No. 4, and Financial Reporting Policies, Item No. 5.

Prior to obtaining a second, Mayor Sanders advised inclusion of such date keeps the budgeting process from being pushed into the following year and feels the deadline should be adhered to.

Director Hutchings inquired how the proposed amendments would affect the budgeting process.

With regard to changing the currently used cyclical budget method to a structural budget method where expenditures do not exceed revenues, Mrs. Walker advised such would be a "*profound change.*" Such would require a multitude of adjustments to be made to rebuild the budget process citing staff would be required to provide more aggressive

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budget estimations. As previously stated, the City currently utilizes the cyclical budget method and in most years, the ending balance does not result in a deficit; however, due to fluctuations in the economy, there have been a few years where the fund reserve has been utilized to cover expenditures.

Director Pennartz requested clarification of the term 'aggressive'; questioned if aggressive estimations are more accurate; and, if the structural budget method is an inappropriate way to budget. She further inquired if the increase to thirty-five percent (35%) of total annual payments for debt service for the Water and Sewer Fund, as indicated in the Debt Policies, Item No. 7, is excessive.

With regard to the term 'aggressive', Mrs. Walker advised the accounting term means to estimate revenues as high as you can rather than the more conservative approach. Accuracy cannot be definitively determined before actual revenues and expenditures are finalized at year-end; therefore, conveyed disagreement that the structural budget method is more accurate citing such harbors more risk than the currently used cyclical budget method.

Administrator Gosack added there is a greater risk of over-estimating revenues during the budget process compared to actual results when the fiscal year ends. The current approach has been to be more conservative with projected revenues so there is less risk of actual revenues not meeting the estimated projection.

Regarding the thirty-five percent (35%) annual payment for debt service, Mrs. Walker advised such is appropriate especially due to upcoming consent decree requirements associated with the Water and Sewer Fund. Although departments review their individual budgets on a monthly basis, the Finance Department performs a quarterly review of the overall budget, which includes a close watch of the debt service ratio. The

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Finance Department also performs a very intrusive evaluation every six (6) months to ensure any potential issues are identified and appropriately addressed.

Director Lau alleged the debt service ratio is allowing more debt and conveyed his belief the proposed change in budget methods will more accurately identify potential issues faster.

Director Lorenz expressed gratitude to the Finance Department for their work and concurred with Director Lau that the proposed budget method change would allow a quicker response to issues and better serve the city.

Mayor Sanders noted the discussions regarding the budget have been good and brought up several important issues; however, changing the budget method is not in the best interest of the city at this time. The current budget method has an extensive history of being very effective with conservative projections that allow for expenditure changes as revenues are received. In the last sixteen (16) years, the year-end balance has ranged from \$2.6 million to over \$10 million and last year's ending balance was \$6.7 million. Percentages have met or exceeded the targeted fifteen percent (15%) reserve with the exception of 2014 whereby such ended at fourteen percent (14%). The current quarterly and six (6) month evaluation process has proven to identify potential issues. When issues have arisen in the past, spending reductions were made to ensure the year-end balance met projections. He reiterated now is not the appropriate time for such a momentous budget method change, especially considering the already significant changes that accompany the implementation of the consent decree.

The motion remaining on the floor to remove references regarding the budget adoption deadline of December 31 from the Operating Expenditure/Expense Policies, Item No. 4, and Financial Reporting Policies, Item No. 5, Director Lorenz seconded the motion.

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The members present voted as follows: ayes – Lau, Lorenz and Settle; nays – Good, Pennartz and Hutchings. The Mayor declared the motion defeated.

The City Clerk advised a delayed agenda item card had been submitted for a citizen to address the Board on the item; however, the Mayor announced the scheduled time frame for citizen input had expired.

Lau, seconded by Settle, moved to allow additional time for the citizen to address the Board. The members present all voting affirmatively, the Mayor declared the motion carried and the following individual addressed the Board:

- David Harris
Fort Smith, AR

Re: Conveyed concurrence with the Mayor's comments regarding the budget method alleging conservative projections allow for "*budgeting for the worst and hoping for the best.*" The proposed change would be "*budgeting for the best and hope the worst does not happen.*" Such would result in a lot of wasted time trying to react to the fluctuating economy.

Lau, seconded by Pennartz, moved adoption of the resolution. The members present voted as follows: ayes – Lau, Lorenz, Pennartz and Settle; nays – Good and Hutchings. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-88-15.

Item No. 4 consisted of the following items regarding Wastewater Consent Decree Implementation:

- A. Ordinance amending the fiscal year 2015 budget and appropriating funds to establish the sewer operations Consent Decree Initiation Program 5620 to provide year 2015 staffing associated with the consent decree (\$1,123,380.00 / Utility Department / Budgeted – Water and Sewer Fund) ♦ Future Fort Smith Item
- B. Resolution accepting the Utility Department supplemental staffing plan associated with the performance of the consent decree ♦ Future Fort Smith Item

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Director of Utilities Steve Parke briefed the Board on the items as discussed on several occasions. As the City moves forward to meet the Consent Decree's objective of achieving and maintaining full compliance with the requirements of the Clean Water Act, the Environmental Protection Agency (EPA) and Department of Justice (DOJ) have identified the city's inadequate levels of operation, maintenance resources and management support as major considerations leading up to the latest enforcement action. Staff utilized the Consent Decree, the 2013 Water and Sewer Operations Efficiency Study prepared by HDR Engineering, the 2015 Consent Decree Staffing Study prepared by Burns & McDonnell, and the Water Environment Research Foundation Benchmark profiles in preparing a supplemental staffing plan for the wastewater utility (Item 4B). The Consent Decree requires a significant enhancement of the city's current resources in operations, maintenance and management support in addition to the construction of system improvements. The necessity of the budget amendment is due to the Consent Decree not yet being lodged at the time of the 2015 budget development process. The proposed budget authorizes personnel additions and associated operating costs for the remaining period of 2015 by creating a single Sewer Operations Program 5620 (Item 4A). The remaining staffing additions associated with the Consent Decree will be accomplished and reflected within the 2016 budget.

Director Settle advised there is a lot of misinformation regarding the substantial work the City has already completed over the last several years to comply with the Clean Water Act; therefore, he requested Mr. Parke and administration ensure such accomplishments are accessible and available for citizen review. He questioned the necessity of seventy-seven (77) additional employees to accomplish the tasks required within the Consent Decree and recommended an evaluation be performed to determine if

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the additional tasks can be distributed to current staff. Once all requirements of the Consent Decree have been accomplished, he expressed concern that the additional positions will remain intact.

Director Hutchings conveyed disagreement with Director Settle regarding additional staffing and expressed support of the item citing, although the decision is not easy, it is necessary in order to move forward.

Director Lorenz also conveyed disagreement with Director Settle regarding additional staffing and clarified the proposed item does not authorize the total seventy-seven (77) employees needed, but merely the addition of twenty-eight (28) employees needed in 2015. No job is ever guaranteed to be indefinite; therefore, he conveyed no concern that the positions will not be extinguished once their necessity has been fulfilled. In order to move forward with the requirements of the Consent Decree, he conveyed no objection to the proposed item.

Director Good reiterated that the EPA and DOJ had already identified in 1989 that wastewater utility functions were inadequately staffed and such continues to be true. The Board has to rely on the facts from not only the EPA and DOJ, but also the professional opinion of HDR Engineering and Burns & McDonnell, who have concurred that inadequate staffing exists. He reiterated the Board should move forward citing adjustments can be made in the future as staffing needs change.

Since the proposed items address the additional employees for only six (6) months of 2015, Director Pennartz inquired if the staffing expenditure will double in future years and requested confirmation the subject staffing adjustments will be made when positions are found to be unnecessary.

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Administrator Gosack confirmed the personnel cost will double when implemented into the twelve (12) month calendar year for 2016.

Mr. Parke conveyed much assurance that staffing adjustments will be made as they become apparent.

Hutchings, seconded by Lorenz, moved adoption of Item No. 4A. 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 voted as follows: ayes – Lau, Good, Lorenz, Pennartz and Hutchings; nays – Settle. The Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 35-15.

Lorenz, seconded by Good, moved adoption of Item No. 4B. The members present voted as follows: ayes – Lau, Good, Lorenz and Hutchings; nays – Pennartz and Settle. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-88-15.

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

- A. Resolution authorizing a change order for the construction of 2014 Street Striping Replacement, Project No. 14-85-A (*\$358.48 & 8 days / Engineering Department / Budgeted – Sales Tax Program Fund*)
- B. Resolution to accept completion of and authorize final payment for the construction of 2014 Street Striping Replacement, Project No. 14-85-A (*\$51,815.34 / Engineering Department / Budgeted – Sales Tax Program Fund*)
- C. Resolution authorizing a time extension for the construction of Drainage Improvements, Project No. 12-06-C1 (*104 days*) ♦ Future Fort Smith Item

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- D. Resolution accepting completion of and authorizing final payment for the construction of Drainage Improvements, Project No. 12-06-C1 (\$6,178.99 / *Engineering Department / Budgeted – Sales Tax Program Fund*) ♦ Future Fort Smith Item
- E. Resolution to accept the bids and authorize contracts for the construction of McClure Drive Extension / Officer's Club Road Extension, Project No. 14-00-A, upon concurrence of the Fort Chaffee Redevelopment Authority (\$2,636,957.25 / *Engineering Department / Budgeted – Sales Tax Program Fund*) ♦ Future Fort Smith Item
- F. Resolution authorizing the Mayor to execute an agreement for a non-exclusive petroleum products pipeline permit with Magellan Pipeline Company, L.P.
- G. Resolution authorizing the Mayor to execute an amendment agreement with the River Valley Sports Complex adjusting performance payment schedule and the date of completion ~ *Lau/Good placed on agenda at the May 12, 2015 study session ~* ♦ Future Fort Smith Item
- H. Resolution approving the bid for purchase of a dump truck (\$43,199.40 / *Street Department / Budgeted – Street Department Sinking Fund*) ~ *deferred at the May 5, 2015 regular meeting ~*
- I. Resolution authorizing execution of lease agreement with Webster University for space on the lower level of the Convention Center Annex
- J. Resolution authorizing Amendment No. 2 to Authorization No. 2 with Hawkins-Weir Engineers, Inc. for engineering services for the Mill Creek Interceptor Improvements – Phase II (\$41,000.00 / *Utility Department / Budgeted – 2014 Sales and Use Tax Bonds*)
- K. Resolution authorizing the Mayor to execute an agreement granting the use of City-owned property (*located at Interstate 540 and Highway 271*)
- L. Resolution authorizing the Mayor to execute an agreement with Morrison-ShIPLEY Engineers, Inc. for engineering services associated with the Fort Smith Landfill Road Project (\$129,000.00 / *Sanitation Department / Budgeted – Landfill Sinking Fund*)

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- M. Ordinance authorizing execution of an amended contract for service between the City of Fort Smith, Arkansas and Bair Analytics, Inc. by which Bair Analytics, Inc. will provide crime analysts, technical personnel, analytical software and services for crime analyses for the Fort Smith Police Department
- N. Resolution approving Contract Addition No. 2 to the City's contract with Beshears Construction, Inc. for the construction of the Fire Training Tower (*\$18,951.50 / Fire Department / Budgeted – 4803-301 & Act 833 Funding*)
- O. Resolution accepting the construction of Fire Training Center as complete and authorizing final payment to Beshears Construction, Inc. (*\$60,270.23 / Fire Department / Budgeted – 4803-301 & Act 833 Funding*)

Regarding Item No. 5F, Director Pennartz requested confirmation that Magellan Pipeline Company will be responsible for any damage that may occur and inquired if the proposed agreement could potentially impose on personal property rights of citizens.

Director of Engineering Stan Snodgrass advised there is a \$1 million bond to cover any damage that may occur, as well as an insurance requirement that will be enforced throughout the term of the agreement. The proposed agreement only impacts the eight (8) specified City public rights-of-way locations and in no way will affect citizen personal property rights.

Regarding Item No. 5H, Director Settle requested a brief explanation why the matter was not rebid.

Director Lau questioned why Randall Ford was not selected because, even after a revised bid was submitted, they remained the lowest bidder.

Administrator Gosack advised the matter cannot be rebid unless the specifications are amended. If such was rebid without changing the specifications and because the other bids were opened and available, such would compromise the competitive bidding process. Accepting the changed low bid would set a precedent to

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future competitive bidding and such does not comply with the structure and intent to produce the lowest possible price while maintaining a fair and level playing field for bidders.

Mayor Sander's advised such would reflect a poor ethical practice as well as open up the potential for abuse of the competitive bidding process.

Mrs. Walker advised the Finance Department's recommendation supports a good, ethical practice and upholds the integrity of the procurement procedures.

Director Pennartz noted concurrence with the comments of Administrator Gosack and Mrs. Walker; therefore, she spoke in favor the item as recommended.

Pennartz, seconded by Hutchings, moved adoption of all consent agenda items. The members present all voting affirmatively, with the exception for Director Lau voting "no" on Item No. 5H. The Mayor declared the motion carried and the ordinance and resolutions were adopted with the ordinance given Ordinance No. 36-15 and the resolutions numbered Resolution No. R-90-15 through R-103-15 respectively.

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

➤ Mayor Sanders

- Re:
1. Announced the grand opening of Parrot Island Water Park will take place on Saturday, May 23rd and encouraged all to attend.
 2. Noted the Memorial Day Commemoration Ceremony will be held at 2:00 p.m., Sunday, May 24th at the National Cemetery.
 3. Reminded all that the Old Fort Days Rodeo begins Monday, May 25th at Kay Rodgers Park, with nightly performances throughout the week. He further encouraged all to attend the rodeo parade set for 10:00 a.m. on Garrison Avenue.

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➤ Director Settle

- Re:
1. Requested staff provide an update regarding the Sanitation Department scale house.
 2. Requested Director of Parks & Recreation Doug Reinert work with the Parks and Recreation Commission to update the Parks and Recreation CIP budget. Once completed, he requested such be reviewed at a joint meeting with the Board of Directors and the Parks and Recreation Commission and offered a motion authorizing same. Director Lorenz seconded the motion; therefore, since placement of an item on an upcoming agenda merely requires the concurrence of two (2) directors, Mayor Sanders announced the aforementioned joint meeting and discussion item will be scheduled as requested.
 3. Requested other insurance carrier options be reviewed and considered during the 2016 budget process.

➤ Director Pennartz

- Re: Requested the status of filling the recently approved Safety Risk Manager position.

Administrator Gosack advised the position has been advertised; however, the application period has not yet expired. The Human Resource Director has assembled an interview committee to aid with the selection process.

The Board entered into executive session at approximately 7:20 p.m. and after reconvening, the Mayor announced the following appointment nominations:

COMPREHENSIVE PLAN IMPLEMENTATION COMMITTEE

Kelsey Kelton

Term expires April 21, 2020

FORT SMITH MUNICIPAL BENEVOLENT FUND BOARD OF ADVISORS

Ronnie Rogers - Fire Department (reappointment)

Barbara Williams – Police Department (reappointment)

Terms expire June 30, 2018

TRANSIT ADVISORY COMMISSION

Dustin Perceful (reappointment)

Term expires June 15, 2018

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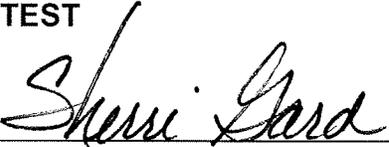
Hutchings, seconded by Pennartz, moved acceptance of the above named nominations. The members present all voting aye, the Mayor declared the motion carried.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Lorenz, and the members present all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:34 p.m.

APPROVED

MAYOR

ATTEST


CITY CLERK