

**MINUTES OF BOARD OF DIRECTORS REGULAR MEETING**

**TUESDAY ~ MARCH 20, 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 Father Michael Lager of St. John's Episcopal 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 urged all who wish to address the Board of Directors during the meeting, and have not already done so, to swiftly complete a speakers card and provide to the City Clerk.

The Mayor 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 March 6, 2012 regular meeting was presented for approval. Hutchings, seconded by Good, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

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. Two (2) minutes will be allotted for consent agenda items and for those participating in the citizens forum.

Item No. 1 was an ordinance granting to CoxCom, LLC, a Delaware Limited Liability Company, the right, privilege and franchise to use and occupy the streets, avenues, alleys, roads, highways, and other public places of the city for the purpose of erecting,

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construction, owning, leasing, or otherwise acquiring, maintaining, or operating its video service system solely for the providing of video services within the corporate limits of the city of Fort Smith, providing that CoxCom, LLC shall pay to the City of Fort Smith a municipal franchise fee, and for other purposes

Deputy Administrator Jeff Dingman briefed the Board on the item advising the existing franchise (*authorized per Ordinance No. 53-03, adopted July 2003*) expires March 31, 2012. The proposed franchise maintains many of the same requirements as the previous franchise, such as the 4% franchise fee; coordination with the City of Fort Smith to locate, construct or maintain facilities in public rights-of-way; maintaining a local office open to the public; providing a government access channel; and, incorporates Federal Communications Commission (FCC) rules and regulations on customer service standards, etc. The proposed franchise is for a five (5) year term and will expire on December 31, 2016.

Director Settle announced a family member works for AT&T; therefore, in order to avoid any conflict of interest, he advised of his intent to abstain from voting on Items No. 1 and 2.

Merry, seconded by Good, moved adoption of Item No. 1. 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, with the exception of Director Settle who abstained, the Mayor declared the motion carried. Hutchings, seconded by Weber, moved adoption of Section 17 the emergency clause. The members all voting affirmatively, with the exception of Director Settle who abstained, the Mayor declared the motion carried and

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the ordinance and emergency clause were adopted and given No. 27-12.

Item No. 2 was an ordinance authorizing the Mayor to execute an agreement with Southwestern Bell Telephone Company for use of the city rights-of-way to provide IP-enabled video services within the corporate limits of the city of Fort Smith, Arkansas; and for other purposes.

Mr. Dingman briefed the Board advising the item essentially authorizes the same requirements as included in Item No. 1; however, such applies solely to the provision of IP-enabled video programming services (such as U-Verse).

Merry, seconded by Tyler, moved adoption of Item No. 2. 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, with the exception of Director Settle who abstained, the Mayor declared the motion carried. Good, seconded by Weber, moved adoption of Section 4 the emergency clause. The members all voting affirmatively, with the exception of Director Settle who abstained, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 28-12.

Director Good conveyed much appreciation to representatives from CoxCom and AT&T Arkansas for being in attendance, as well as their partnerships with the City of Fort Smith.

Item No. 3 was a resolution authorizing the offering of sales and use tax bonds to finance capital improvements and to refund outstanding sales and use tax bonds; and prescribing other matters relating thereto

City Administrator Ray Gosack briefed the Board on the item advising such

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authorizes the offering of Sales and Use Tax Bonds to fund projects authorized at the March 13, 2012 special election, which are as follows:

- ▶ Refinancing existing sales tax bonds (\$55,380,000)
- ▶ Wastewater Improvements (\$71,070,000)
- ▶ Water Improvements (\$28,120,000)
- ▶ Firefighting Improvements (\$9,110,000)
- ▶ Aquatic Center Improvements (\$4,260,000)

Stephens, Inc. will underwrite 80% of the bonds and collect the transaction management fees, and Morgan Keegan & Company, Inc. will underwrite the remaining 20%. Upon approval, such authorizes staff to initiate the process to proceed with the offering of the above noted bonds. An ordinance to formally issue the bonds is scheduled for consideration at the April 17, 2012 regular meeting.

Director Hutchings declared, *"it's a good day for Fort Smith."*

Director Settle advised of a typographical error on Page 1 of the ordinance whereby the amount is noted as 44,260,000; however, it should be \$4,260,000.

Settle, seconded by Hutchings, moved adoption of the resolution and included an amendment to correct above noted typographical error. The members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given No. R-60-12.

Item No. 4 was a resolution approving priorities for the 2013 session of the Arkansas General Assembly

Administrator Gosack briefed the Board on the item advising the proposed legislative priorities will be included in the Arkansas Municipal League's legislative package, which will give the itemized priorities a better chance of being adopted in the 2013 session. The proposed legislative changes are as follows:

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- **Filing Period for City Offices**

Currently, election law requires the City Clerk to certify candidates for mayor or director to the Election Commission on the same day as the filing deadline. If a candidate waits to file at the last possible moment, such leaves only hours for the City Clerk to verify the sufficiency of the candidate filing. The proposed legislative change will reduce the filing period from twenty (20) days to fifteen (15) days thereby allowing adequate time for the City Clerk to verify the sufficiency of the candidate filing before the certification is required.

- **Sales Tax Bond Election Ballot Questions**

Currently, state law requires that if more than one capital improvement project is proposed, each project shall be stated separately on the ballot even though the same funding source/sales tax will be utilized for the projects. The proposed legislative change would give cities and counties the option to present each purpose/project either separately or combined.

- **Attorney's Fees on Properties Acquired for Water Supplies**

Historically, municipalities acquiring property interests for water supply purposes have not had to pay a property owner's attorney fees in the event the case went to trial. In 2005, the Arkansas Supreme Court held that water supply operators can be responsible for paying the land owner's legal fees in an eminent domain proceeding. The proposed legislative change will amend A.C.A. 18-15-401(c) to make it clear that A.C.A. 18-15-6 shall not be applicable to proceedings initiated under 18-15-401(c).

The above noted legislative priorities may be amended in the future if the Board so desires; however, any additions will not be a part of the Municipal League's package for 2013 legislative consideration.

The following individual was present to address the Board:

- **David Harris**  
Fort Smith, Arkansas

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Re: Regarding the proposed amendment relative to sales tax bond elections, he spoke in opposition to such citing it's a "bad ideal".

With regard to the sales tax bond election priority, Director Tyler requested confirmation that the Board would maintain discretion to separate ballot issues if they so desire. He further inquired if other cities are in favor of the proposed amendment.

Mr. Gosack provided the requested confirmation advising the Board may separate each project on the ballot if they so desire. Such amendment merely provides the option. Regarding acceptance of the proposed amendment by other cities, once the priority is submitted to the Municipal League, they will gather input from other cities. If favorable responses are received, there's a greater likelihood that such will be included in their legislative package.

Settle, seconded by Hutchings, moved adoption of the resolution. The members voted as follows: ayes - Tyler, Good, Hutchings, Weber, Settle, Merry; nays - Catsavis. The Mayor declared the motion carried and the resolution was adopted and given No. R-61-12.

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

- A. Resolution accepting completion of and authorizing final payment for the construction of drainage improvements, Phase II, Project No. 10-06-D (\$26,172.22 / *Engineering Department / Budgeted - Sales Tax Program Fund*)
- B. Resolution authorizing the acquisition of real property interests for Jenny Lind Road and Ingersoll Avenue Widening, Project No. 07-01-A, AHTD Job No. 040471 ~ Tracts 7, 8, 13 & 16 (\$249,900.00 / *Engineering Department / Budgeted - Sales Tax Program Fund*)

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- C. Resolution approving an amendment to the industrial services agreement between the City of Fort Smith, Sebastian County, and the Fort Chaffee Redevelopment Authority for the Mars Petcare Project at Chaffee Crossing
- D. Resolution approving an amendment to the industrial services agreement between the City of Fort Smith, Sebastian County, and the Fort Chaffee Redevelopment Authority for the Umarex USA Project at Chaffee Crossing
- E. Resolution accepting bid for the purchase of an Ion Chromatograph/HPLC (IC/HPLC) (\$85,000 / *Utility Department / Budgeted - Capital Outlay Fund Line Item 5605-301*)
- F. Resolution accepting bid for the purchase of an automated side loader (\$270,000 / *Sanitation Department / Budgeted - Capital Outlay Fund Line Item 6302-301*)
- G. Resolution accepting bid for the purchase of roll-off trucks (\$340,000 / *Sanitation Department / Budgeted - Sinking Fund*)
- H. Resolution authorizing the Mayor to execute Amendment No. 1 to Authorization No. 2 with Philip J. Leraris, P.E., L.S. for engineering services associated with the Consolidation of Lift Stations 7 & 14 (\$6,580.00 / *Utility Department / Budgeted 2008 Revenue Bonds*)
- I. Resolution authorizing Change Order No. 1 with Goodwin & Goodwin, Inc. for the Consolidation of Lift Station 7 & 14 (\$12,607.00 / *Utility Department / Budgeted 2008 Revenue Bonds*)
- J. Resolution authorizing the Mayor to execute an agreement with EDM Consultants, Inc. for design of the Riverfront Development Water & Sewer Extensions (\$180,000.00 / *Utility Department / Budgeted - 6505 Capital Improvement Project Fund*)

Regarding Item No. 5E, Director Catsavis merely questioned the necessity of the purchase.

Environmental Manager Randy Easley advised the original equipment was purchased in 1997. Typically, the lifespan for such is only five (5) to seven (7) years;

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however, the existing equipment was in operation for over thirteen (13) years. Since the equipment has not been operational, the City has expended approximately \$66,000 a year to outsource the required testing to another laboratory.

Merry, seconded by Good, moved adoption of all consent agenda items. The members all voting affirmatively, the Mayor declared the motion carried and the resolutions were adopted and numbered R-62-12 through R-71-12 respectively.

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

▶ Mayor Sanders

Re: Regarding the March 13, 2012 special election, he extended a heartfelt “thank you” to the voters of Fort Smith for their overwhelming support to continue the existing 1% sales tax.

▶ Director Weber

Re: 1. Although a joint meeting with the Parks and Recreation Commission is already scheduled for the fall, due to the continuance of the 1/4% tax at the March 13, 2012 special election, she requested a preliminary meeting be held in order to prioritize park projects. She offered a motion to call a joint study session and requested such be scheduled for the near future. Director Tyler seconded the motion; therefore, with Board concurrence, Mayor Sanders noted such will be scheduled as requested.

2. Reminded all that Beautify Fort Smith will participate in the Great Arkansas Cleanup on April 21. She further noted that Beautify Fort Smith will meet on at 12:00 Noon, Thursday, March 29 at Creekmore Park and encouraged all interested parties to attend.

▶ Director Settle

Re: 1. Regarding the March 13, 2012 special election,

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he, too, extended much appreciation to Fort Smith voters for approval of all ballot issues citing the youth of the city will reap the benefit of such.

2. Recognized Times Record Reporter Ben Boulden for his recently published book, *"The Hidden History of Fort Smith"*. He further noted that Ben will soon be moving to Little Rock; therefore, stated Ben will be *"greatly missed."*

▶ Administrator Gosack

- Re:
1. Also acknowledged Ben Boulden citing he has done an *"exceptional job"* in providing fair and balanced coverage of City government for the last several years.
  2. Announced that Fort Smith Police Sergeant Anthony Bowers and Corporal Mike Warren have recently earned certifications as forensic examiners. Such certification is relative to the examination of computers when such are used in the commission of crimes.

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

**HOUSING ASSISTANCE BOARD**

Karen Wuthrich (reappointment)  
Jim Harris (reappointment)  
Sara Edmiston  
Terms expire April 30, 2014

**PARKING AUTHORITY**

Kyle Gillian  
Term expires December 31, 2017

**PLANNING COMMISSION**

Jennifer Parks (reappointment)  
Salvatore Salamone (reappointment)  
Brandon Cox  
Terms expire April 30, 2015

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

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

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

- E. A. Mayo  
Fort Smith, Arkansas

Re: Commented on multiple issues and stated she provided her I.Q. at the March 6, 2012 because *“one of us is stupid”* and such was done *“so you would know it wasn’t me.”*

Director Hutchings asserted a point of order and inquired if Ms. Mayo is implying the Board is stupid.

Per Section 2-35(b) of the Fort Smith Municipal Code, *“The Chairman (Mayor) may enforce the point of order or submit same to a vote of the Board of Directors.”* The Mayor deferred by calling for a second to the point of order whereby Director Weber offered such. The members voted as follows: ayes - Tyler, Hutchings, Weber and Settle; nays - Good, Catsavis and Merry. The Mayor declared the motion carried; therefore, the affirmative vote required Ms. Mayo to cease her presentation before the Board.

- The following individuals spoke in favor of automated sanitation collection service and conveyed multiple benefits of such. They expressed concern that the Board’s recent decision could jeopardize other residents from maintaining their automated sanitation collection.
  - ▶ Bradley Hancock  
Fort Smith, Arkansas - Park Hill East

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- ▶ Brian and Roneka Grooms  
Fort Smith, Arkansas
  
- ▶ Zue Ella Gray  
Fort Smith, Arkansas

Director Good expressed concern that the Board's recent decision has set a precedent; however, he clarified that no other neighborhood will lose their automated sanitation collection serves, unless the neighborhood requests consideration for such.

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 at 6:51p.m.

**APPROVED:**

  
**MAYOR**

**ATTEST:**

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**CITY CLERK**