

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

**TUESDAY ~ APRIL 19, 2016 ~ 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 Bill Fink of Central Christian Church, followed by the Pledge of Allegiance.

On roll call the following members of the Board were present: Directors Keith Lau, Andre' Good, George Catsavis, Tracy Pennartz, Kevin Settle and Don Hutchings; absent - Director Mike Lorenz. The Mayor declared a quorum present.

Mayor Sanders recognized Sawyer Neil of Boy Scout Troop 2316, who was in attendance to earn his Citizenship in the Community badge.

The Mayor noted he advised the Board earlier today that Mr. Carl Geffken, who the Board offered the position of City Administrator on March 8, 2016, has provided a start date of May 9, 2016. The Board must take formal action to confirm the appointment and authorize the at-will employment agreement. Since a start date has now been provided, the Board may discuss the appointment including review of the at-will employment agreement in executive session and then consider a resolution authorizing same. If the Board so desires to add the aforementioned to the current meeting agenda, per the Fort Smith Municipal Code, such may be accomplished by unanimous consent of the Board members.

Mayor Sanders then inquired if any Board member had any item of business to present that was not already on the agenda.

Hutchings, seconded by Pennartz, moved to add the aforementioned items on the

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current agenda, i.e. appointment of City Administrator on the executive session and a resolution authorizing same along with authorization of an at-will employment agreement. The members present all voted affirmatively and as authorized per Section 2-31(5), Director Lorenz provided the below written consent to the City Clerk prior to the meeting:

*“As noted in Section 2-31 below, in my absence tonight, I am providing written concurrence with any request to add discussion of the incoming city administrator’s employment agreement to tonight’s board meeting agenda including an executive session for such discussion.”*

Due to such, the Mayor declared the motion carried and appointment of the City Administrator was added to the executive session and a resolution authorizing same along with authorization of an at-will employment agreement (Item No. 6) were added to the agenda.

The minutes of the April 5, 2016 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.

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, and two (2) minutes for comments only.

Item No. 1 was an ordinance amending Section 14-52(C) of the Fort Smith Municipal Code for the purpose of amending the requirements for parking and screening of vehicles on residentially zoned property ♦ *Future Fort Smith Item*

Director of Development Services Wally Bailey briefed the Board on the item advising the Fort Smith Municipal Code states, *“the improved area for parking vehicles in*

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*a front yard shall be limited to forty percent (40%) of the gross front or exterior side yard land area.*" Recently, the Property Owner Appeals Board (POAB) reviewed a variance request to allow a larger driveway for a single-family structure with a three (3) car garage located on a cul-de-sac lot. The variance was granted to increase the allowable improved area to fifty percent (50%). The aforementioned variance revealed an obvious unintended consequence with the current ordinance whereby driveways for single-family homes and duplexes constructed on the pie shaped lot of a cul-de-sac are difficult to make comply with the current requirement. Homebuilders have attempted to comply with the regulations by adjusting the shape of the driveway, which is promoting wheel ruts beside the driveway. The issue of providing special consideration for lots located on the radius of a cul-de-sac already exists in the Fort Smith Municipal Code. Section 27-404(c)(5) allows these lots to have a reduced front yard setback of twenty (20) feet regardless of the front yard setback for the specific zoning classification of the property. The POAB reviewed the proposed amendment at their April 11, 2016 meeting and unanimously recommended such to the Board of Directors for consideration. The Greater Fort Smith Association of Homebuilders have also reviewed the proposed amendment and submitted a letter of support for such.

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.

Prior to the vote, Director Pennartz advised a citizen contacted her and questioned the necessity of the emergency clause included within the proposed ordinance. She

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further inquired if the Planning Department presents any ordinances without an emergency clause.

Mr. Bailey advised the emergency clause states such is necessary for “...*the protection of the health, safety and welfare of the inhabitants of the city...*” Such allows the ordinance to become effective immediately upon passage. If no emergency clause is included, the ordinance would not become effective for thirty (30) days, which delays contractors from proceeding with construction projects. He conceded most zoning amendments include an emergency clause for the same purpose.

The motion remaining the floor and the members present all voting affirmatively, the Mayor declared the motion carried. Catsavis, seconded by Hutchings, moved adoption of Section 2 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. 25-16.

Item No. 2 was an ordinance ordering the owners of a certain dilapidated and substandard structure to demolish same, authorizing the City Administrator to cause the demolition of such structure to occur, and for other purposes (2910 Russell Street) ♦

*Future Fort Smith Item*

Building Official Jimmie Deer briefed the Board on the item advising the structure has been determined to be unsafe and detrimental to the public welfare; therefore, he recommended approval of the proposed ordinance. Upon approval, the property owner will have thirty (30) days to demolish the structure. If such is not accomplished by the property owner, the City will proceed with the demolition.

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Catsavis, seconded by Settle, 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 member present all voting affirmatively, the Mayor declared the motion carried. Settle, 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 the ordinance was given Ordinance No. 26-16.

Item No. 3 was an ordinance adopting the 2016 amendments to the sanitary sewer system pre-treatment regulations and permits ordinance codified in Division 2 of Article VI of Chapter 25 of the Fort Smith Code of Ordinances ♦ *Future Fort Smith Item*

Deputy Director of Utilities Lance McAvoy briefed the Board on the item advising the City is required to revise its pretreatment ordinance. As part of the National Pollutant Discharge Elimination System (NPDES) permits issued for the "P" Street and Massard wastewater treatment plants, the City is required to have an approved pretreatment program, which the program has been in existence since the mid 1980's. The program's main components include:

- Industrial User Pretreatment Ordinance (Ordinance)
- Standard Operating Procedures (SOP)
- Enforcement Response Plans (ERP)
- Industrial User Permits (Permits)
- Funding and resources to operate the required pretreatment program.

In 2005, the Environmental Protection Agency (EPA) published the Pretreatment Streamlining Rule, which requires cities to update the above noted main components of

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its programs and look again at the adequacy of funding and resources to operate the required pretreatment program. An ordinance was developed in coordination with the Arkansas Department of Environmental Quality (ADEQ) to meet the requirements of the Streamlining Rule and such was approved via Ordinance No. 80-11. In September 2015, ADEQ's Pretreatment Program audit then determined the City's current ordinance did not comply with the requirements of the EPA's Pretreatment Streamlining Rule. Staff drafted a new ordinance for ADEQ's review and approval. After addressing several comments from ADEQ's State Pretreatment Coordinator, ADEQ agreed that the draft ordinance met the Streamlining Rule requirements. On February 3, 2016, a copy of the proposed revisions were provided to the Board. Through additional reviews by the city attorney and ADEQ, the proposed amendments have been determined to meet both state and federal law, as well as all requirements of the Pretreatment Streamlining Rule. Some of the major changes addressed within the proposed ordinance are as follows:

- Removal of specific values for Technically Based Local Limits (TBLLs) for certain pollutants to give the City more flexibility and reduce the need to amend the Ordinance due to treatment plant upgrades.
- Allowing Best Management Practices to be utilized in place of certain costly pollutant testing, thus saving industries money.
- Incorporation of new federally required language for compliance.
- Allowing the use of general permits in certain circumstances.
- Clarification of permittee's rights and defense against permit violations.

As required, a public notice regarding the Board's consideration of the proposed

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ordinance was published in the Times Record on the March 19, 2016 and three (3) copies of such along with 2016 Amendments have been on file in the City Clerk's Office for public review. Staff also sent copies of the 2016 Amendments to all permitted industries for their review. As of this date, two (2) industries contacted staff for additional information and to obtain a better understanding of the ordinance. A meeting was conducted on Thursday, April 7, 2016 with one (1) of the aforementioned industries and, to staffs knowledge, all of the questions pertaining to the ordinance were adequately addressed. There have been no additional questions or comments received.

Catsavis, seconded by Hutchings, moved adoption of the ordinance. The motion including 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.

Prior to the vote, Director Settle conveyed multiple questions, i.e. the purpose of the proposed amendments, when the subject regulations were last updated and if staff met with interested parties regarding said amendments. He further noted that in the future, he would prefer to have a redlined copy so all changes can be easily identified. Upon approval, he requested staff gather at least ten (10) or fifteen (15) of the top discharging companies to review any potential impact to their companies and a report of such be provided to the Board. Director Pennartz noted concurrence of the aforementioned request.

Mr. McAvoy advised the proposed amendments are a direct result of an ADEQ audit of the City's Pretreatment Program, which was conducted in September 2015. The

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Pretreatment Program regulations were last updated in 2011, which were determined to be in compliance with all federal and state regulations at the time; however, the ADEQ audit in September 2015 determined otherwise. With regard to meeting with interested parties, City staff did not set a formal meeting with all pertinent industries; however, the proposed amendments were provided to all interested parties for their review and input.

Director Lau questioned if the verbiage within the proposed regulations is merely boilerplate language from the ADEQ and if the City included any additional, more restrictive requirements.

Mr. McAvoy confirmed the proposed amendments include some boilerplate verbiage from ADEQ, but also the EPA as well as state and federal law. With regard to more restrictive regulations, staff tried not to include any more restrictive language to ensure the City's regulations closely compare to other municipalities, which also ensures no municipality maintains any financial or competitive advantage.

Director Pennartz acknowledged the proposed reduces the frequency of testing for companies; however, she inquired if the proposed amendments are anticipated to result in any positive or negative financial impact to the City.

Mr. McAvoy advised there is no impact with regard to testing requirements. The only anticipated financial impact would be a potential loss in revenue due to less penalties being assessed.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried. Catsavis, seconded by Hutchings, moved adoption of Section 3 the emergency clause. The members present all voting affirmatively, the

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Mayor declared the motion carried and the ordinance and emergency clause were adopted and given Ordinance No. 27-16.

Item No. 4 was an ordinance amending Ordinance No. 10-96 as previously amended granting a non-exclusive franchise to Elva Stoufer, d/b/a Non-Ambulatory Transportation Service, Inc.

Acting City Administrator Jeff Dingman briefed the Board on the item advising the subject franchise was first granted in 1986 to David and Elva Stoufer to operate Non-Ambulatory Transportation Service, Inc., which serves handicapped and elderly persons living within Fort Smith. The non-exclusive franchise has been continued in five (5) year increments since 1986 and the existing franchise will expire April 30, 2016. Mr. Stoufer passed away several years; however, Ms. Stoufer submitted a letter requesting the franchise again be continued. As required by law, a public notice was published in the Times Record advising three (3) copies of the proposed ordinance has been on file in the City Clerk's Office for public inspection and review prior to Board consideration. Upon approval, the non-exclusive franchise will be continued for an additional five (5) years effective May 1, 2016.

Good, seconded by Catsavis, 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.

Prior to the vote, Director Pennartz inquired if there are any other franchise agreements granted for non-ambulatory services within the city of Fort Smith and if so,

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requested a list of such including the franchise duration. Director Settle noted concurrence to the aforementioned request.

City Clerk Sherri Gard advised there are very few, if any; however, she will obtain the information and provide as soon as possible.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Pennartz, moved adoption of Section 3 the emergency clause. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and the ordinance was given Ordinance No. 28-16.

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

- A. Resolution authorizing the Mayor to execute an amendment to the agreement with the River Valley Sports Complex adjusting the date of completion ~ *Settle/Good placed resolution on agenda at the April 12, 2016 study session ~ ♦ Future Fort Smith Item*
- B. Resolution accepting the bid and authorizing the Mayor to execute a contract with Advanced Workzone Service, LLC for the construction of the Blue Lion Bikeway - Sharrows (\$37,775.00 / Parks Department / Budgeted - 1/8 Cent Sales Tax) ♦ *Future Fort Smith Item*
- C. Resolution expressing the willingness of City of Fort Smith to utilize Federal-Aid Transportation Alternatives Program Funds ♦ *Future Fort Smith Item*
- D. Resolution expressing the willingness of City of Fort Smith to utilize Federal-Aid Recreational Trails Funds ♦ *Future Fort Smith Item*
- E. Resolution authorizing the Mayor to enter into an agreement with the Western Arkansas Tennis Association for operation of the Tennis Center at Creekmore Park

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Regarding Item No. 5A, the following individual was present to address the Board:

- Ed Ralston  
Fort Smith, Arkansas

Re: Spoke in opposition to the item and expressed multiple concerns with the project specifically identified in written information presented to the Mayor and Board prior to the meeting. He further questioned a potential conflict of interest with the city attorney regarding a lawsuit filed on behalf of Mr. Jake Files. He requested the Board table consideration of the proposed extension; the city attorney determine if all contractual obligations are being met; and, the Board establish a committee to review the status of the project and prepare and submit a report regarding same.

Hutchings, seconded by Settle, moved adoption of all consent agenda items.

Prior to the vote and regarding Item No. 5A, Director Catsavis conveyed multiple inquiries to Mr. Lee Webb regarding insurance for the facility, the River Valley Sports Complex (RVSC) organization's non-profit status, lien releases for contractors, and funding to complete the parking lot. He further requested a brief assessment of the project and expressed concern that the City will be required to expend additional taxpayer dollars to complete the project 'if' such is not completed with the allotted funds previously authorized.

Mr. Lee Webb, representing the RVSC organization, advised Mr. Alie Bahsoon, City of Fort Smith Purchasing Manager, is assisting the RVSC to work through issues relating to insurance. The RVSC intends to file with the Internal Revenue Service to obtain non-profit status as a 501(c)(3) organization. With regard to lien releases, the RVSC will obtain and provide to the City. Regarding completion of the parking lot, RVSC is talking with Sebastian County for possible assistance with asphaltting the parking lot. If the County cannot assist, such will at least be a gravel parking lot; however, he conveyed much

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assurance that RVSC *“will come through with the asphalt.”*

Director of Parks and Recreation Doug Reinert noted RVSC is making *“good progress”* citing he periodically goes out to the site and takes pictures to document that all performance indicators are being completed prior to disbursement of funds. He would like to see more progress, but anticipates substantial completion in ninety (90) days as noted.

Due to Mr. Ralston’s alleged conflict of interest, Director Pennartz questioned if the city attorney concurs that a potential conflict of interest exists. She questioned if it would be feasible to have the City’s auditor review the contract and performance indicators rather than the city attorney.

City Attorney Jerry Canfield advised no conflict of interest with reference to legal services provided to the City to date. If the Board requests services with reference to the requested review/investigation of the contract, the matter would require further evaluation.

Administrator Dingman conceded it would be plausible for staff to review the contract to ensure all contractual obligations are being met rather than the city attorney. With regard to performance indicators, he and Mr. Reinert, and sometimes engineering staff, review the progress to ensure the project is proceeding on schedule, as well as to ensure all performance indicators are completed prior to disbursing additional funds.

Director Lau spoke in opposition to Mr. Ralston’s requests to table consideration of the proposed item, city attorney review of the contract, and establishment of a committee citing the aforementioned would only further delay completion of the project. Regarding review of the contract to ensure all contractual obligations are being met, he stated such *“would be prudent”* for the City to do.

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Director Hutchings noted there have been some delays in the project due to weather; however, he inquired of any other reasons for delay.

Mr. Webb noted that although such is minor, the biggest delay has been having to wait for the disbursement of funds in order to proceed to the next phase of construction.

With regard to Item No. 5B, Director Catsavis noted the total cost of the project was estimated to be a little over \$70,000; however, he inquired the cost to the City of Fort Smith.

Mr. Reinert advised Arvest Bank donated \$50,000 for the project; therefore, once completed, the City of Fort Smith will be financially responsible for approximately \$21,000.

The motion remaining on the floor, the members present all voted affirmatively on all consent agenda items with the exception of Item No. 5A whereby Director Catsavis voted "no" and Director Pennartz abstained, and Item No. 5B whereby Director Catsavis abstained. The Mayor declared the motion carried and the resolutions were adopted and given Resolution No. R-53-16 through R-57-16 respectively.

Mayor Sanders opened the Officials Forum with the following wishing to comment:

■ Mayor Sanders

- Re:
1. Announced the Steel Horse Rally is scheduled for Friday and Saturday, April 29<sup>th</sup> & 30<sup>th</sup>, downtown Fort Smith, and invited all to attend.
  2. Noted the monument dedication for the General Darby Legacy Project will take place at 10:00 a.m., Saturday, April 30<sup>th</sup> at Cisterna Park (North 10<sup>th</sup> Street and Garrison Avenue).
  3. Reminded all the Fort Smith Citywide Cleanup is Saturday, April 23<sup>rd</sup>. Volunteers will gather at 9:00 a.m. at the Arvest Tower across from Central Mall. Arvest Bank will be cooking food for all volunteers involved in the cleanup.

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4. Announced Master Gardner Felder Rushing will speak at 7:00 p.m., Thursday, April 28<sup>th</sup> at the Fort Smith Convention Center. Such is hosted by the River Valley Master Gardeners, who invite all to attend.

■ Director Settle

Re: Regarding the upcoming Steel Horse Rally, he noted said event will bring many visitors to the city; therefore, he encouraged all to extend a Fort Smith welcome to all visitors and participants.

■ Administrator Dingman

Re: Introduced newly appointed Sanitation Director Mark Schlievert, who was in attendance.

The Board entered into executive session at approximately 6:50 p.m. and after reconvening, the Mayor announced the following appointment nominations:

**ADVERTISING AND PROMOTION COMMISSION**

Marion Driscoll

*(to fill the unexpired term of Sandi Snead)*

Term expires December 31, 2017

**PLANNING COMMISSION**

Joshua Kilgore

*(to fill the unexpired term of Michael Redd who resigned)*

Term expires April 30, 2017

Lau, seconded by Pennartz, moved acceptance of the above named nominations.

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

With regard to the City Administrator appointment ~ *added to the agenda by unanimous consent of the Board of Directors* ~, Mayor Sanders announced the appointment of Mr. Carl Geffken as City Administrator effective May 9, 2016 and acceptance of the proposed at-will employment agreement. A resolution authorizing same ~ *added to the agenda by unanimous*

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consent of the Board of Directors ~ (Item No. 6) was presented for approval. The Mayor further announced the Board concurred to authorize an amount not to exceed \$15,000 for moving and relocation expenses.

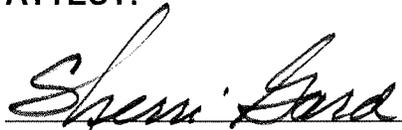
Hutchings, seconded by Good, moved adoption of the resolution. The members present all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-58-16.

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 present all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:07 p.m.

**APPROVED:**

  
\_\_\_\_\_  
VICE-MAYOR

**ATTEST:**

  
\_\_\_\_\_  
CITY CLERK