
MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

Conway, Arkansas
Tuesday 6:30 pm
May 27, 2014

On this date the City Council of the City of Conway, Arkansas met in regular session. The following members being a quorum were present and acting: Alderman Hawkins, Alderman Pruitt, Alderman Grimes, Alderman Ledbetter, Alderwoman Smith, and Alderman Jones, and Alderwoman Whitmore. Also, present and acting: Mayor Tab Townsell, City Clerk Michael Garrett and City Attorney Michael Murphy. Alderwoman Mehl was not in attendance.

Call to Order: Mayor Tab Townsell

Roll Call: City Clerk/Michael O. Garrett

Minutes Approval: May 13, 2014

Alderwoman Whitmore motioned to approve the May 13, 2014 minutes as submitted. Alderwoman Smith seconded the motion. There was no further discussion. The motion passed 7 -0.

Employee Service Awards

10 Years

Steven Griffin - Sanitation Dept.

15 Years

Corliss Adams - District Court

Shawn Schichtl - Police Dept.

20 Years

Chris Kalz - Police Dept.

William Keller - Police Dept.

Alderwoman Smith motioned to suspend the rules to add an item to the agenda. Alderwoman Whitmore seconded the motion. The motion passed 7-0.

Resolution endorsing Snap-On Equipment to participate in tax back program.

R-14-12

Brad Lacy, Conway Development Corp., plans to invest \$1.5 million in remodeling efforts at their facility in Conway. Alderwoman Whitmore motioned to adopt the resolution. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 7-0.

1. Report of Standing Committees:

- A. Community Development Committee (Planning, Zoning, Permits, Community Development, Historic District, Streets, & Conway Housing Authority)**

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- 1. Resolution authorizing the Mayor to sign an amendment to the operating agreement for Conway Corporation.**

R-14-13

Richie Arnold, CEO Conway Corp, explained the city of Conway owns 2% White Bluff Steam Electric Station, which is operated by Entergy Arkansas, and stated this will extend the life of the operating agreement as long as the units are in service. Alderwoman Smith motioned to adopt the resolution. Alderwoman Whitmore seconded the motion. There was no discussion. The motion passed 7-0.

- 2. Resolution authorizing the Mayor to accept a grant from the Federal Aviation Administration.**

R-14-14

Mayor Townsell explained this should be the last items needed to complete the development of the relocated Conway Airport; the grant may have funds available up to \$2,261,568.00. Mayor Townsell stated the city is eligible for 90% reimbursement from the FAA, 5% from the state, and the remaining 5% has been built into the proceeds from the sale of the old airport. Alderwoman Smith motioned to adopt the resolution. Alderwoman Whitmore seconded the motion.

- 3. Consideration of a conditional use permit for Maurice McClure to allow an auto body shop for property that is located at 2955 Dave Ward Drive.**

Maurice McClure was present to answer questions. Alderman Hawkins motioned to approve the conditional use permit request. Alderwoman Smith seconded the motion. After some discussion Alderman Pruitt motioned to add a condition that would not allow parking of vehicles in the front of the shop. Mr. McClure had no objection. Alderwoman Smith seconded the motion. There was no further discussion. The motion passed 7-0. The conditions set forth are listed below:

- 1) The conditional use permit is applicable to Maurice McClure only. The permit may not be transferred to another business owner or auto body operation at this location.
- 2) Hours of operation are 8:00 am to 6:00 pm, Monday through Saturday.
- 3) Dave Ward Drive street frontage shall be upgraded to meet development review landscaping standards.
- 4) No outdoor sound system allowed.
- 5) No work allowed outside the building.
- 6) No vehicular storage in front of the structure.

- 4. Ordinance to rezone property located at the northeast corner of Deerbrook Drive and Old Military Road from A-1 to R-1.**

O-14-43

Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 7-0. Alderwoman Whitmore motioned to

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adopt the ordinance. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Grimes, Alderman Hawkins, Alderman Pruitt, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion passed 7-0.

B. Public Safety Committee (Police, Fire, District Court, CEOC, Information Technology, City Attorney, & Animal Welfare)

1. Ordinance appropriating grant funds from the Arkansas State Highway Safety Program to District Court.

O-14-44

Susan Weaver, District Court Judge, was present to answer questions. Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 7-0. Alderwoman Smith motioned to adopt the ordinance. Alderman Jones seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Grimes, Alderman Hawkins, Alderman Pruitt, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion passed 7-0.

C. Finance

1. Consideration to approve the monthly financials ending April 30th, 2014.

Tyler Winningham, CFO, explained we have recently receipted beverage taxes for January - March 2014, but the general fund revenues and expenses do not reflect this as this; our expenditures are where we expected and once we are current with the beverage and property taxes our bottom line will look better. Mayor Townsell stated our performance is poor as far as revenue projections go at the moment, but reminded council the \$500,000.00 transfer to the reserve fund is for the most part not covered by revenue, it will come out of cash flow. Mr. Winningham stated the airport vendors are fully paid by the general fund, and then 3-5 days later we are reimbursed by the FAA 90%; the remaining 10% is covered by the general fund until we are reimbursed by the state, or not reimbursed such as in the case where the city approved additional concrete thickness of the runway. Mr. Winningham stated to date we have grants open for 2011, 2012, and 2013, of which the city has fronted approximately \$1.4 million; 10% will be reimbursed by the state, less the additional concrete thickness. Mr. Winningham stated this scenario is putting the city in a bind from month to month and explained we are in a similar situation now as were prior to 2012 as we struggled to make it through the last third to fourth week of each month prior to receiving sales tax revenues. Mr. Winningham stated the main contributing factor is the FAA as is contributes to the reserve fund and cash flow; as the Mayor mentioned these contributions are essentially coming out of cash flow. Mr. Winningham stated in 2013 we had approximately \$600,000.00 more expenses than revenue, in 2012 we had approximately \$1.6 million that we added to our fund balance; since then we have moved \$1 million to the reserve fund, along with the \$1.4 million fronted to the FAA which is causing some cash flow issues. Mr. Winningham asked if council would be in favor of us utilizing the cash reserve, on a monthly basis, to get us through these times. Alderman Hawkins asked how often this would occur. Mr. Winningham stated it will be to some degree every month and stated the 2011 grant is due to close out early this summer, which will give us approximately \$330,000.00 which will help quite a bit. Alderman Hawkins

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stated he does not mind using the reserve as long as the funds are returned. Mayor Townsell stated the correct way to think about this is we have basically taken the cash operating to cash reserve, if we did have the cash reserve, our cash operating would be increased by \$1 million dollars, if we do not use the reserve then we need somewhere to go for cash flow, and the only option is sanitation funds, but we really do not want to do that. Mayor Townsell stated we have started doing this in order to make payroll, but we want to make sure council is in agreement because we will have the same issue for next payroll, and in August we will have 3 payrolls. Alderman Jones asked if money has already been taken from the reserve fund. Mayor Townsell stated we did it this past payroll and if we do not want to use it, that is fine but we have to get funds somewhere and will need council's approval. Alderwoman Smith stated she does not want to make a habit of dipping into the reserve fund. Mayor Townsell stated until we have the funds in cash operating, the best thing it can do for us is cover cash flow. Alderman Jones asked how much is payroll. Mr. Winningham stated general fund payroll is approximately \$1 million per pay period and explained we borrowed \$500,000.00 from the reserve fund to cover last week's payroll and sales tax came in the same day, so we were able to transfer that money back to the reserve fund. Mayor Townsell stated Alderman Grimes was notified as Chairman of the Finance Committee, but we can notify all council members if you would like and we would like council to sign off on this tonight or not; if not we need direction on where to get the additional funds needed. Alderwoman Smith stated she would like all council members to be notified first. Mayor Townsell stated we will notify everyone but you can anticipate this notice coming every 2 weeks. Alderman Grimes asked if it would be re-paid immediately once sales tax come in. Mayor Townsell stated yes. Alderwoman Smith asked if it would be paid in full. Mr. Winningham stated yes. Alderman Jones asked how long we can expect to have to borrow from the reserve fund. Mr. Winningham stated it depends on when the grants close out and believes the 2012 and 2013 grants will close out sometime after the new airport opens. Mayor Townsell stated Ronnie Hall could better answer the questions regarding the FAA grants. Alderman Grimes stated we are basically at the mercy of the FAA. Mayor Townsell stated we need to closely watch each month where we stand on the cash operating and cash reserve added together. Mr. Winningham went onto say the street fund and sanitation funds are doing well at this time. Alderwoman Smith motioned to approve the April 2014 financial reports. Alderman Hawkins seconded the motion. There was no further discussion. The motion passed 7-0.

D. Old Business

2. Ordinance amending City of Conway Sign Ordinance to lower or prohibit billboards.

O-14-46

Mayor Townsell stated our current sign ordinance has a cap of 33 on billboards, and with one recently falling this leaves room for another billboard to be erected, if council decides to leave the cap at 33. Mayor Townsell stated since we are trying to make our interstate corridor look nicer we need to decide if we want the billboards there; if we do nothing our moratorium will end tonight; or we can ban them all together which would allow them to be maintained, but once they are gone, they are gone which is what Mayor Townsell suggested doing. Mayor Townsell went onto say that there is language in the proposed ordinance that expands this option to the territorial jurisdiction which presents a twist on this possibility, as it does not currently exist. Bryan Patrick, Planning Director, stated in a way it does, especially in the TJ Zone which does not allow billboards, and encompasses an area of Hwy 64/Interstate out to

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Cadron Creek; our ordinance defines a cap of 33 billboards within our interstate zone, a billboard cannot be placed by de facto outside this zone. Mr. Patrick stated the TJ Zone is the territorial jurisdiction zone and is an area where we enforce zoning outside the city limits, which exists up Hwy 65 N almost to Pickles Gap Village and out Hwy 64 W to Cadron Creek. Mayor Townsell stated expanding the TJ Zone, to include more areas around the city, is not on the agenda tonight and is separate issue. Jasper Burton, Curden Sign Co, reminded everyone that 5 public hearings were held regarding this issue back in 2005/2006 in which 250 local businesses were present and gave input. Mr. Burton stated nothing has really changed in Conway, the streets are nicer, our billboards are nicer, and our population has increased; businesses rely on billboards because they are the most effective and efficient way of advertising their business to customers that are driving by. Mr. Burton explained council and the sign companies all agreed the billboard cap would be 33 and it frustrates him that he is back before council speaking to this issue again; if the city makes changes now it will be unfair as we worked hard to accommodate the city and if you change it you cannot be trusted and does not feel that council should make any changes. Greg Criner, Lamar Advertising Co, explained we have a sign that is currently on the corner of Oak and Harkrider which will be removed in order for CVS Pharmacy to develop the property sooner; this sign is not a part of the cap and our corporation voluntarily signed an early lease termination. Mr. Criner stated that number comes out of the total number of billboards in Conway, but it would not give a reduction in the cap, meaning it will not have another availability for another unit to be placed on the interstate. Mr. Criner stated we are highly regulated by the Arkansas Highway Dept. (AHTD) and Lamar Advertising's billboards throughout Conway operate at an occupancy level between 90-100%, which indicates that our product is powerful, cost effective, and is in high demand; a reduction in the cap would hurt our advertisers. Mr. Criner stated a prohibition would not allow us to ever relocate a sign which would affect the current advertisers who have built their marketing plan of which is one component to that plan. Mr. Criner stated the land owner who have had this stream of income will lose that income if a prohibition is put in place and he is totally against a prohibition. Mr. Criner stated tourism is the second largest industry in the state and our billboards are a powerful tool that reaches the travelers that drive through Conway, they stay at your motels and they generate tax dollars for Conway and he does not see how a prohibition would be a positive move for our industry. Mr. Criner stated lastly our industry spoke to how the billboards look, and currently there is new development coming down the pipeline; our signs are being retrofitted to accommodate new developments, we are moving toward more efficient LED lighting, and all the vinyl billboards are now 100% recyclable. Mr. Criner stated if a national company opens here Lamar provides national advertising support and we were recently voted by Forbes as one of America's top 100 most trust worthy companies and asked council to not make any changes to the ordinance. An unnamed individual stated he appreciates that you are trying to beautify the city in requiring everyone to go to monopole structures, eliminating stacked structures, going from 500 ft. spacing to 1,000 ft. spacing on I-40 and then at one point a moratorium was put on billboards in the city, except for the interstate. He then stated approximately 12 years ago when he purchased permits and land to build billboards on I-40 he had to spend the extra money to of which he spend \$160,000.00 to build 3 structures and if you make those non-conforming he will be out of business and this is not fair after you passed laws to conform to a different quality structure. Mayor Townsell explained that if we do prohibit billboards all existing structures will be grandfathered in and can stay as long as they conform. Alderman Grimes, Mayor Townsell, and Alderman Pruitt are all in favor of putting a prohibition on billboards; Alderman Jones is not in favor of the prohibition. Alderman Grimes motioned to amend our ordinance to prohibit any new billboards being erected in the place of any that

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come down in the interstate zone. Mayor Townsell pointed out that is the second ordinance in the packet. Alderman Pruitt seconded the motion. Alderman Hawkins asked if this ordinance would allow the owners of the billboard to re-enforce current structures. Mayor Townsell stated yes. Mr. Patrick stated structures can be maintained but a wooden structure cannot be upgraded to a metal structure. Alderman Pruitt asked if something could be done if any billboards were destroyed by a natural disaster. Alderman Grimes stated if this did occur the city council at that time could amend the ordinance to address this issue. There was no further discussion. Mayor Townsell stated this ordinance will grandfather in existing billboards in the interstate zone and prohibit any expansion. The clerk called the roll for O-14-45 with the following voting "Aye": Alderman Grimes, Alderman Hawkins, and Alderman Pruitt. The motion failed 4-3; ordinance number O-14-45 failed. Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones voted in opposition. Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones voted in opposition. Alderman Grimes motioned to lower the cap from 33 to 32. Alderman Pruitt seconded the motion. City Clerk Michael Garrett stated the next ordinance number will be O-14-46. Mayor Townsell explained the same rules will apply as they do now, this just lowers the cap to 32, and will not allow the downed billboard to be replaced. There was no further discussion. The clerk called the roll with the following voting "Aye": Alderman Grimes, Alderman Hawkins, Alderman Pruitt, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion passed 6-1. Alderman Ledbetter voted in opposition.

E. New Business

1. Ordinance repealing Ordinances No. O-76-09 & Ordinance No. O-87-04.

O-14-47

Mayor Townsell explained we recently found out that we had some older ordinances that dealt with placing items on the agenda, that had no regard for regular meetings or special meetings, and they had timelines attached that made it difficult for us to respond to emergencies or emerging situations. Mayor Townsell stated this ordinance will repeal the old ordinances, O-76-09 and O-87-04, and we will now follow state law, which requires us to give a 2 hour notice of any council meeting, and its agenda, to the public and to the media. Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderman Grimes seconded the motion. The motion passed 7-0. Alderman Hawkins motioned to adopt the ordinance. Alderwoman Whitmore seconded the motion. Alderman Hawkins asked if state law would supersede a city law. City Attorney Michael Murphy stated no, in 1967 under the FOIA law that sets up notice requirements for public meetings, the legislature said "not less than 2 hours", which would by implication, a council could do more, and apparently back in 1976 the Conway City Council did that, although no one knew it; by eliminating these ordinances you eliminate any confusion. An unnamed individual asked what media is used for notification. Mr. Murphy stated he believes the statutes says notification can be done by telephone or whatever is customarily used; the proposed ordinance states we will simply comply with state law. Mr. Murphy went onto say as long as you let the Mayor's office know how you would like to be contacted you can be notified in that manner. Mr. Murphy advised that having 2-3 methods of notification would be a good idea to make sure you receive notification. There was no further discussion. The clerk called the roll with the following

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voting "Aye": Alderman Grimes, Alderman Hawkins, Alderman Pruitt, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion passed 7-0.

2. Discussion of an adjustment request from Haynie Companies (KFC) from the Conway Sanitation Department.

Mayor Townsell stated this issue stems from a problem with the sanitation billing for Haynie Companies in Conway; we did inform representatives from Haynie Companies that Cheryl Harrington, Sanitation Director, was unable to attend this evening's meeting. Mayor Townsell stated we can let them speak tonight but we will be dealing with this issue at our next council meeting. Scott Swearingen, representing Haynie Companies, stated the issue here is whether or not the KFC location in Conway has been serviced 4 times weekly (Monday, Wednesday, Friday, and Saturday), or 2 times weekly (Monday and Friday) going back 10 years. Mr. Swearingen stated he did send out an email which contained background information regarding how we got to this point, along with an adjustment amount of \$40,904.67 that we feel justified in asking for. Mr. Swearingen stated he had a conversation with a CSR in January 2014 which led him to believe that there might be a discrepancy because she mentioned one area she was looking showed KFC was to be serviced 4 times a week and another area showed 2 times per week, at which point she asked me if I knew which one it was. Mr. Swearingen contacted his manager to inquire about the pickup days and she stated the trash was picked up on Monday's and Friday's. Dane Westin, Haynie Companies, stated he has worked with this company since May 2012 and the trash has only been picked up on Monday and Friday's; on occasion he has had to push trash down in the dumpster in order to make more room for more trash, it has only been within the past few months that the trash has been picked up 3 times per week. Mr. Swearingen stated he also spoke to a manager at the Sanitation Dept. and on several instances he confirmed to me, that our restaurant was actually serviced 2 times per week and we were entitled to a refund. Mr. Swearingen stated the manager indicated we would be able to obtain a refund for a period of 6 months, and anything beyond that we would need to go before the city council, at which time we sent our refund request to the city and there was some objection from the Sanitation Dept. City Attorney Michael Murphy stated the Haynie Company has retained legal counsel and has threatened the city with litigation so council should be aware your comments will be used in any subsequent lawsuit; basically my perspective on this is twofold, first he wants to know, from the Sanitation Dept., if they picked up 2 times or 4 times per week; the Sanitation truck log reports indicate there were 4 pickups per week, if this is correct then there would be no basis for a refund. Mr. Murphy stated secondly if the records indicate there were 2 pickups, but KFC was adamant that for 10 years we know there was only 2 pickups, then his inquiry would be do the billings indicate that they were for 4 pickups instead of 2 pickups, if this is correct then the principal of voluntary payment would arise and he would advise the city not to give a refund because the principal of voluntary payment is that a government entity, county or city, erroneously overcharges and this goes on for an extended period of time, then there is a public policy against a compilation of many, many overcharged bills. Mr. Murphy stated what you do is make the correction at the time it becomes known to all parties. Mr. Murphy stated his understanding from Ms. Harrington is that their log truck records indicate that there were 4 pickups per week. Mr. Swearingen questioned the voluntary payment issue by pointing out there is no indication on the invoices, other than a sanitation charge line item, the level of service you are paying for; if the invoice stated it was for 4 pickups per week, and only being picked up 2 times per week, but there was continuance to pay, that may come into play, but the way the invoices are laid out it is difficult to determine what you are paying for. Mr. Murphy stated then there would

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be an inquiry of what the public records in terms of the ordinance and the rates, if they are out there, they are out there. Mayor Townsell stated we can have more of a full discussion when Ms. Harrington is present as there are operational questions and we need to make sure everyone is understanding what is taking place; there are operational records and billing records, and they are not the same thing nor the same standards. Mayor Townsell stated KFC deserves what is right and to a degree we can give it; we are the stewards that holds the monies and there are legal issues that say you should not pay this, we cannot pay that. Mayor Townsell went onto say there is also statutes of limitations that state you cannot pay beyond a certain period of time, then we as good stewards of the public's money cannot willingly go beyond that without not being stewards with the public's money, with this being said if we only picked the trash up 2 times weekly and charged them for 4 times weekly there is an amount of justice they deserve that we should be willing to pay. Mayor Townsell stated the issue to discuss at the next council meeting, is what basis we have with factual assurance, one way or the other, and as Mr. Murphy stated with some of the issues already being raised, this could well end up in court. Mayor Townsell stated it is nothing against KFC, our hands are tied and can only pay what we can prove, and we are willing to do that, but it must be proven.

Adjournment

PASSED this 27th day of May 2014

APPROVED:

Mayor Tab Townsell

City Clerk Michael O. Garrett