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MINUTES OF THE CITY COUNCIL, CITY OF CONWAY, ARKANSAS

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Conway, Arkansas  
Tuesday 6:30 pm  
March 25, 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, Alderwoman Mehl, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. Also, present and acting: Mayor Tab Townsell, City Clerk Michael Garrett, and City Attorney Michael Murphy.

**Call to Order: Mayor Tab Townsell**

**Roll Call: City Clerk/Michael O. Garrett**

**Employee Service Awards:**

**5 Years**

Andrew Burningham - Police Dept.  
Joshua Fulbright - Police Dept.  
Jeremy Holliman - Police Dept.  
Lee Wood - Police Dept.  
Roy Droste - Fire Dept.

**15 Years**

Kathy Hatcher - Police Dept.

**20 Years**

Bill Keathley - Fire Dept.  
Pam Sweeney - Police Dept.

**1. Report of Standing Committees:**

**A. Public Hearing:**

- 1. PH/Ordinance closing four - 15' feet utility easements located at Tommy Lewis Addition Phase 2.**

**O-14-29**

Mayor Townsell opened the public hearing. There was no one present to speak. Mayor Townsell closed the public hearing. Alderwoman Smith motioned to waive the readings of the ordinance. Alderwoman Whitmore seconded the motion. The motion passed 6-0. Alderwoman Smith motioned to adopt the ordinance. Alderwoman Whitmore seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderwoman Mehl, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion passed 6-0.

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

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**1. Consideration to award the Community Hangar at the new Conway Municipal Airport.**

Ronnie Hall, City Engineer, explained this is for a 100 ft. X 100 ft. hangar which will allow transient traffic to park overnight at the airport, and can also be used for large aircraft rental if needed. Mr. Hall explained the bid included deductive alternates which are: 1) epoxy floor coating, 2) elimination of the finish panels on walls/ceilings, and 3) elimination of special paint that matches terminal building. Mr. Hall stated the Airport Advisory Committee recommended awarding the bid to Pick-It Construction in the amount of \$649,902.25 with all alternates included. Alderwoman Smith motioned to accept the low bid from Pick-It Construction. Alderwoman Whitmore seconded the motion. After some discussion regarding the waterfowl habitat in the airport area the motion passed 6-0.

**2. Ordinance waiving bids & appropriating funds for the purchase of furniture and interior finishes for the terminal at the New Conway Municipal Airport.**

**O-14-30**

Jack Bell, Chief of Staff, explained Georg Andersen, Georg Andersen Associates, was engaged to assist the city, with the furnishings and finishes of the airport terminal; this is Mr. Andersen's recommendation. Mr. Bell stated our other option would have been to amend the budget to allow Coreco to furnish the terminal, but they would have added that cost on; Mr. Andersen believes he can purchase these items at a better price, than the contractor. Mr. Bell stated approximately one-half the items he specified were Virco products; Virco has cut the price in half, and donated the other half of the cost. Alderwoman Mehl asked if this was within the budget. Mr. Bell stated yes. Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 6-0. Alderwoman Smith motioned to adopt the ordinance. Alderman Hawkins seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderwoman Mehl, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion passed 6-0.

**3. Consideration of a request from Gladys Sullivan for a conditional use permit to allow a child care for property that is located at 705 Donaghey Avenue.**

Alderman Hawkins motioned to approve the conditional use permit request with the recommended conditions. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 6-0. The conditions are as follows:

- External Sound System - No external sound systems are permitted due the site's proximity to other residences.
- Conditional Use Permit shall be limited to the applicant only. It cannot be passed on to another owner of the property and does not "run with the land".
- Signage - Signage is limited to a non-illuminated 4 foot by 4 foot (16 square foot area) maximum wall sign affixed to the south corner of the building.
- Hours of operation are 6:00 a.m. to 6:00 p.m., Monday - Saturday.

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**4. Consideration of a request from Robinson & Center Church of Christ for a conditional use permit to allow religious activities for property that is located at 620 and 622 Center Street.**

Alderman Hawkins motioned to approve the conditional use permit request with the recommended conditions. Alderwoman Smith seconded the motion. There was no discussion. The motion passed 6-0. The conditions are as follows:

- Installation of 6 foot high vinyl privacy fence with vinyl post at 8 foot intervals, where development abuts private property. Permit 1312 shall also be modified to match.
- Lighting shall be inward, downward, and shrouded.
- City Engineer approval of all civil work to insure ne new drainage issues.
- Buffering and landscaping shall be generally as shown on the submitted proposed site plan.

**New Business:**

**1. Ordinance appropriating reimbursement funds for the Administration Department.**

**O-14-31**

Mayor Townsell explained the city has received \$2,145.96 for reimbursement of travel expenses etc., the city incurred, to send him to the National League of Cities conference. Alderwoman Whitmore motioned to waive the readings of the ordinance. Alderwoman Smith seconded the motion. The motion passed 6-0. Alderwoman Whitmore motioned to adopt the ordinance. Alderwoman Smith seconded the motion. There was no discussion. The clerk called the roll with the following voting "Aye": Alderman Hawkins, Alderwoman Mehl, Alderman Ledbetter, Alderwoman Smith, Alderwoman Whitmore, and Alderman Jones. The motion passed 6-0.

**2. Ordinance to amend the sign ordinance prohibiting billboards or lowering the cap on billboards.**

Mayor Townsell explained billboards are grandfathered in throughout the city, they cannot be expanded upon and if they go away, or are destroyed, they cannot be replaced. Mayor Townsell stated they are allowed to stay and can be repaired, the exception here are the billboards by the interstate. Mayor Townsell stated a few years back, when we amended the sign ordinance which allowed a cap of 33 billboards to remain, and if one had to be relocated it could be. Mayor Townsell explained the city was notified last week, by a sign contractor, that a sign had in some way collapsed; this billboard is gone, it has lost its permit through the highway department, it no longer has its lease, and explained there is now a space for one billboard under our cap. Mayor Townsell explained the sign contractor will likely pull a permit at some location that meets the highway dept. and the cities requirements. Mayor Townsell went onto say, we as a city, have the opportunity to beautify the interstate corridor and explained we are spending millions of dollars to clean up the interstate area; we think it behooves us to rethink whether we should have billboards along our interstate frontage, and what does that do to contribute to the city, or not. Mayor Townsell stated we have presented 2 options to council, one would permanently reduce the

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cap from 33 to 32, and the other would eliminate the cap altogether; as long as the signs are there and maintained they can stay as long as they want to, but once they are gone, they are gone. Mayor Townsell suggested holding these ordinances in committee and then instruct the planning department; in the e Mayor asked council to pass a temporary moratorium so we will know to hold any requests for permits until we can deal with this issue. Alderwoman Smith motioned to hold this item in committee. Alderman Hawkins seconded the motion. Alderman Ledbetter stated the billboard that is down was on a telephone pole, newer billboards are on steel structures and will last much longer. Alderwoman Smith asked what happens to a billboard now if a tornado takes one down. Mayor Townsell stated under our current ordinance, along the interstate, they can be replaced according to the rules up to 33. Alderwoman Mehl asked if the original cap required a downed billboard to be placed back in the same place. Mayor Townsell stated, no, not that he is aware of. There was no further discussion. The motion passed 6-0. Alderwoman Whitmore motioned to suspend the rules to discuss the moratorium. Alderwoman Smith seconded the motion. There motion passed 6-0. Alderwoman Whitmore motioned to place a moratorium on billboard permits for a period of no more than 60 days. Alderwoman Smith seconded the motion. Alderwoman Smith asked if we will allow public input. Mayor Townsell stated we always allow the public to speak on issues. Mayor Townsell confirmed the moratorium begins tonight. Council concurred. There was no further discussion. The motion passed 6-0.

**3. Ordinance amending Ordinance No. O-87-20; providing for City employees & City Council members to do business with the City of Conway.**

City Attorney Michael Murphy explained there is an old ordinance that is likely in violation with state law where there is a general prohibition, of city employees, or officials having business concerns with the city; at one time it was called self-dealing. Mr. Murphy stated the common law rule states "that there is no dealing with the employer or official within this copy". Mr. Murphy explained the legislature carved out an exception that states if the city is going to allow this, you must have a very specific ordinance, because ordinances or statutes, in derogation of the common law, are to be strictly construed. Mr. Murphy went onto say in light of the fact the 1987 ordinance (Ord. No. O-87-20) was likely too broad and suggested we could repeal this ordinance and do nothing, which would in respect line us with the state law of a general prohibition or, consider the proposed ordinance of a very restrictive exception. Chief Mike Winter explained this came up when we had timing issues, with a business in town, the city has a contract with; we have a current firefighter that has his license in the field of pest control, and this employee was able to take care of our immediate problem, with no reimbursement for his chemicals etc. Chief Winter explained we tried to add him as a vendor into the system, but was told by Tyler Winningham, CFO, that we could not do this, as it is illegal. Chief Winter went onto say there are numerous city employees, who have been hired by the city to do business. Mr. Murphy researched this issue and developed the ordinance before you tonight. Mayor Townsell asked if this draft is for consideration or comment, and inquired what else does this do other than resend the previous ordinance. Mr. Murphy explained it should be for comment/input, as you can see there is room for specific information to be added; the Attorney General (A.G.) has addressed this and the statute states, if an ordinance is passed, there is debate as to pass a "one size fits all" ordinance, or an ordinance for each individual case. Mr. Murphy went onto say the A.G. has only reviewed this matter on a case by case basis and does not exclude a general ordinance, but he stated the better practice would be to have a specific ordinance

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for each instance that a different type of transaction occurs. Mayor Townsell asked hypothetically, if a particular city employee bid, and was awarded a contract for pest control services at the new fire station, would the same employee have to get another specific ordinance passed if the employee bid, and was awarded, the pest control services at the police dept. Mr. Murphy stated he believes a different ordinance would be needed. Mayor Townsell stated this seems obtuse. Mr. Murphy stated it is a different transaction, and state law is a general prohibition, with an exception; if you have an exception to common law, which this would be, then you have to make it very restrictive. Mr. Murphy went onto say from his point of view, we want to be specific and move away from a "one size fits all" ordinance. Mayor Townsell suggested what if we were to say the employee, city council member, etc. could only do business with the city on a gratis basis, or a hard bid basis, where an objective is clear, and there would be no sole source. Mr. Murphy stated this draft contemplates, they would be governed by the same requirements, including bidding laws if they are applicable. Mayor Townsell stated bidding laws include the waiving of bids. Mr. Murphy stated this would be the area to add more stringent requirements. Alderwoman Smith asked if we could get into trouble if we approve one employee, but not another employee. Mr. Murphy stated you cannot be arbitrary or capricious, in the manner of which you treated their proposal, you would need to treat everyone the same in how you consider the proposal. Alderwoman Mehl asked if it assumed, if an employee won a bid, this work would be performed outside city work hours. Mr. Murphy stated this ordinance does not address that. Mayor Townsell stated that could be added; we can amend this draft or come back with individual ordinances for each individual employee that would like to do business with the city. Alderwoman Mehl asked if we have contracts now that need to be addressed. Mayor Townsell stated we do not have the ability to do that tonight but we will try to cover them all at once. Alderman Ledbetter stated in years past we saved the city a lot of money by allowing employees to do this; he installed floor covering for just about cost and asked if this would eliminate this. Mayor Townsell stated it will not eliminate it, but according to Mr. Murphy, we have to pass a specific exception each time; it may be we accept all bids, and if the bid is won by an employee or city official contractor, then we would pass an ordinance to allow that bid to be accepted. Alderwoman Mehl stated we shall allow them bid. Mr. Murphy stated Section 4 contemplates this; first the employee/official would make application and explain the reasons for consideration of an ordinance, the city would then pass an ordinance, that meets all the parameters, and we will allow the employee/official, under state law, with the exception to participate. Mayor Townsell stated Section 4 could be applied before or after; just because they win the bid does not mean they are doing business with the city until the city accepts that bid and an ordinance is passed. Alderwoman Mehl asked if they are a qualified bidder if they are not authorized to do business with the city. Mayor Townsell stated we can do it concurrently. Alderwoman Mehl asked if we can accept a bid from someone who is not authorized to do business with the city. Mayor Townsell a bid is not accepted until council approves that bid. Alderwoman Mehl stated we have rejected bids because it did not meet certain specifications, and if the employee does not have the authorization to bid, how are they qualified to bid. Mr. Murphy explained one can write in the bid specs, that the bidder is an employee/official, and then council can approve an ordinance referencing Arkansas code, which will authorize their participation in that transaction. Alderwoman Mehl stated she would prefer to see it up front. Alderman Jones concurred. Mayor Townsell stated we will have ordinances every time someone wants to bid which may be more of a hassle to deal with than our employees getting a chance to bid, which will be more work on everyone. Mayor Townsell went onto say if we want to do employee bids we can do that easily.

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Alderwoman Mehl stated no. Mayor Townsell stated why the city would not accept a bid from an employee if it is the low bid. Alderwoman Mehl stated she is trying to address the issue of the old ordinance while adhering to state law. Mayor Townsell explained the bid is not rejected until council rejects it. After a brief discussion Mr. Murphy read an excerpt from the A.G.: "A public office is a public trust and the holder thereof may not use it directly, or indirectly for personal profit, or to further his own interests since it is the policy of law to keep an official so far from temptation as to ensure his unselfish devotion to the public interest. Officers are not permitted to place themselves in a position in which personal interests may come into conflict with the duties which they owe to the public, and where a conflict of interest arises, the office holder is a qualified to act in the particular matter and must withdraw." Mr. Murphy stated that is why this exception has to be very specific. Alderman Hawkins asked if the ordinance would be passed the same night as the acceptance of the bid. Mayor Townsell stated if we do not get the ordinance on the front end, then we would have to pass the ordinance the night of when the bid is accepted. Alderwoman Mehl would like to make sure newly hired employees are aware of this. Alderman Ledbetter stated he personally feels that elected officials should be able to business with the city at all, because we are the governing body. Mayor Townsell stated if council desires that can be captured in the ordinances that will be drafted. There was no further discussion on this item.

Mayor Townsell stated the Airport Advisory Committee (ADC) has already had council approve a lease for corporate aircraft hangars, but in thinking ahead the ADC does not want one to lease the ground to someone who is not going to build a hangar. Mayor Townsell stated we have a waiting list of individuals who want to build hangars; if a hangar is built, the plane will likely be stored there and gas will be purchased, which is going to fund the operations of the airport. Mayor Townsell stated what we would like to do is add a sentence into the contract that says "construction will commence within 90 days of lessors approval of the plans and to be completed within 180 days of lessors approval of the plans". Alderman Jones asked if this is an urgent matter. Mayor Townsell stated dependent upon what council decides tonight, we will not be able to sign a lease until the language has been changed. Alderman Jones stated he wishes to be transparent and this item was not on the agenda. Jack Bell, Chief of Staff, stated we have asked that the lease agreements be turned in by the end of March and we do not want to ask them to sign another contract. Alderwoman Smith motioned to suspend the rules and vote on this issue tonight. Alderman Ledbetter seconded the motion. The motion passed 6-0. Council was provided a copy of the amended lease agreement. Mayor Townsell stated the addition of the language is on page 5, Section C within the last 2 sentences. Mayor Townsell stated the FAA requires that airport leases/hangars can only be used to house aviation items only; if other items are stored the FAA will cease to fund the airport. There was no further discussion. Alderwoman Smith motioned to approve the change in the lease agreement. Alderman Hawkins seconded the motion. There was no discussion. The motion passed 6-0.

### **Special Announcement:**

- ❖ **City Council Workshop Meeting - April 1<sup>st</sup>, 2014 @ 5:30pm - CPD/Upstairs Community Room.**

### **Adjournment**

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**PASSED this 25<sup>th</sup> day of March 2014**

**APPROVED:**

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**Mayor Tab Townsell**

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**City Clerk Michael O. Garrett**