

Searcy City Council – Regular Session
Tuesday, December 12, 2017 6:00 p.m.
Minutes

A public hearing had been advertised to be held at 6:00 p.m. on December 12, 2017. The purpose for this public hearing was for the consideration of any public input in determining the amounts of liens to be certified to the White County Tax Collector against certain properties as a result of grass cutting expenses and the abatement of other nuisances that have been incurred by the City of Searcy. Mayor David Morris opened the public hearing. No person requested to speak. Mayor Morris closed the public hearing.

Mayor David Morris called to order the Regular Session of the Searcy City Council. Karl McLarty, representing the White County Ministerial Alliance, gave the Invocation, with the Pledge of Allegiance following, led by Danny Bennett. City Clerk/Treasurer Jerry Morris called the roll with the following Council members answering “present”: Logan Cothorn, Mary Ann Arnett, J. R. Howard, Steve Sterling, Dale English, Don Raney, Dale Brewer and Mike Chalenburg. Also present was City Attorney Buck Gibson.

Item (3) on the agenda was for a motion to suspend the rules and amend the agenda to add items: (21-1-l) budget ordinance appropriation for the receipt and use of donations for the Searcy Swim Center, (21-1-m) budget ordinance appropriation for the receipt of the November 2017 distribution of the 0.25% County Fire Sales Tax, (21-2-j) budget ordinance authorization to expend funds for a traffic signal control assembly box (Beebe Capps Expressway and Main Street) that was damaged in a traffic accident. A motion was made by Mr. Brewer and seconded by Mr. Chalenburg to suspend the rules and amend the agenda to add the items. Motion carried with the following voting “yes”: Arnett, Howard, Sterling, English, Raney, Brewer, Chalenburg, and Cothorn.

The minutes of the regular November 14, 2017 meeting of the Council were presented for approval. A motion was made by Mr. Cothorn and seconded by Mrs. Arnett to approve the minutes. The following voted to approve: Howard, Sterling, English, Raney, Brewer, Chalenburg, Cothorn, and Arnett.

Clerk/Treasurer Jerry Morris presented and read the Treasurer’s Report which lists the following balances as of 11-30-17: General Fund: \$1,566,311.47; Street Fund \$1,404,697.73; Capital Equipment Fund \$66,334.64; LOPFI Fund \$283,806.81; Act 833 Fund \$96,860.30; Airport Fund \$55,044.02; Special Highway Connector Route Tax Fund \$4,140,127.22; 2014 Eight Year Plan Fund \$6,579,986.99; Information Technology Projects Fund \$14,155.57; Special Projects Fund \$2,526.40; 0.25% Fire Protection Services Tax Fund \$89,334.86. He also reported a total of \$5,876,038.17 year-to-date in City and County Sales Tax revenues received, which is up \$280,738.58 from the same time in 2016. The total of all funds (excluding the Special Highway Connector Route Tax Fund, the 2014 Eight Year Plan Fund, the Information Technology Projects Fund, the Special Projects Fund and the 0.25% Fire Protection Services Tax Fund) is \$3,473,054.97.

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Item (6) on the agenda was the quarterly report from the Searcy Regional Chamber of Commerce and the Searcy Regional Economic Development Corporation presented by Buck Layne of the Searcy Regional Chamber of Commerce.

Item (7) was for the reappointment of Reynie Rutledge to a 5-year term on the Searcy Board of Public Utilities, as recommended by the Searcy Board of Public Utilities, with the term set to expire on December 31, 2022. A motion was made by Mr. Howard, seconded by Mr. Raney, to reappoint Reynie Rutledge to a 5-year term on the Searcy Board of Public Utilities, with the term set to expire on December 31, 2022. Motion carried with the following voting "yes": Sterling, English, Raney, Brewer, Chalenburg, Cothorn, Arnett, and Howard.

Item (8) on the agenda was for the review, discussion, and action regarding the calendar year 2016 Legislative Audit Report. Mayor Morris noted that each of the Council members have received a copy of the report. The first item for discussion was credit card purchases in the amount of \$204,966 from January 1, 2013 through March 17, 2017 by the former Information Technology Director David Sawyers from vendors that were not legitimate. From these vendors, direct deposits were made into his personal bank accounts. Mr. Sawyers' employment with the City of Searcy was terminated on March 17, 2017. This matter was investigated by the Arkansas State Police and the Seventeenth Judicial District Prosecuting Attorney. Sawyers was arrested on July 12, 2017. A guilty plea was entered October 31, 2017 in Division 3 of the Seventeenth Judicial District Circuit Court and Sawyers was sentenced to six years in the Arkansas Department of Corrections and ordered to pay restitution of \$2,500 to the City of Searcy. The next item for discussion was for the review of retirement benefits paid to three individuals, specifically three former mayors (Jack Wiseman, David Evans, and Belinda LaForce) that are paid under the old city retirement system. The audit finding for the retirement paid to the former mayors indicates the city did not adhere to Arkansas Code Annotated §§ 24-12-121, -123 when calculating benefit amounts. Mayor Morris noted that the city is now under the Arkansas Public Employee Retirement System (APERS) and that no others will qualify under the old retirement system. Mayor Morris noted that he, the City Clerk, the City Attorney, and the District Court Clerk did appear before the Joint Legislative Audit Committee on December 8, 2017 where the findings were presented. At this appearance, only one question was asked and that question was regarding the waiving of competitive bidding on the two overhead Sanitation trucks. It was pointed out that it was an emergency situation in which the city was down to one operational truck due to one being destroyed by fire and the other being disabled. The retirement calculations being paid for the three former mayors do not agree with the calculations done by legislative audit. City Attorney Gibson explained that there are two legal issues regarding this matter. First, there is an issue regarding how the benefits are calculated for Mr. Wiseman and Mr. Evans. Mr. Gibson explained that Mr. Wiseman has been receiving retirement benefits since 1987 and that it has never been an issue. Mr. Gibson explained that there are two opposing Attorney General opinions (2005 and 2009) regarding how these retirement benefits should be calculated. The 2005 opinion supports how the city has calculated the benefits using the rate of pay when the individual was mayor and the 2009 opinion says the benefits should be calculated using the rate of pay

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for the mayor's position at the time the individual becomes eligible for retirement which typically comes at a later date. Mr. Gibson also noted that the 2009 opinion also specified that a legislative solution should be made to clarify this matter, but that none has been forthcoming. The other issue involves the ability of Mrs. LaForce to obtain retirement benefits. He explained the Mrs. LaForce was a city employee for close to 30 years with over 20 years of service as an elected official, both as a City Clerk/Treasurer and as Mayor. The question is how the amount of time is accrued that would be available to her to receive retirement benefits. He noted that there are separate sections regarding this issue for both the clerk/treasurer position and the mayor position. Mrs. LaForce began receiving benefits in 2011. Legislative audit does not agree with the calculation of the benefits that have been paid. An Attorney General Opinion has been requested but has yet to be received. Mr. Gibson noted that in the event that this opinion is not favorable to the City of Searcy, he said that the possibly the only remedy would be to seek declaratory relief in the Circuit Court to answer both questions: the issue of statute clarity on the calculation of benefits at the pay level when the individual mayor served or the pay level for the mayor's position at the time of eligibility for benefits and the issue regarding how the years of service are to accrued. He stated that once the requested Attorney General Opinion has been received, he will present it to the Council to determine whether further action, such as seeking declaratory relief, will be taken. Mr. Raney stated that he doesn't understand why this has become an issue when these benefits have been in place for years. He further stated that he agreed with seeking declaratory judgement action in Circuit Court seeking a judicial review of these questions and these legal opinions to get a court order that addresses the issues. Mr. Gibson stated that this is necessary in order to resolve this issue and prevent this from being a continuing finding. He stated that this Council needs answers, the citizens need an answer, and that these former public servants deserve an answer. Mr. Cothorn stated that he also agrees with seeking declaratory judgement action in Circuit Court seeking a judicial review of these questions. The next item for discussion regarding the audit report was the issue on the White County District Clerk Searcy Department and the continued finding regarding the calculation of fines and fees and the identification of these funds brought about by the conversion to differing software systems. Mr. Gibson noted that the hope had been that the most recent conversion to the Contexte system would alleviate the issue but that it has not completely. Mr. Gibson explained that he is working with the District Court Clerk, Judge Mark Pate, and the State Administrative Office of the Courts to resolve this issue. The next item for discussion was the issue concerning the accumulation and payout of accumulated sick leave upon death or retirement as being in conflict with state law. The Searcy City Council adopted Ordinance 2017-09 amending this policy and Ordinance 2017-34 further clarifying this policy so as not to be in conflict with state law. Mr. Gibson further stated that he is currently working on resolving the issue regarding the overpayment of unused sick leave to certain police officers and firefighters upon retirement from 2007 until 2017. The next item for discussion was regarding related party transactions and conducting business with various appointed members of city commissions, boards, and/or committees. The Searcy City Council adopted Ordinance 2017-21 approving these related party transactions and will adopt additional ordinances as needed when members of the boards, commissions, or committees that may have reason to do business with the city changes.

Item (9) was a presentation of a budget proposal for operations of the City for the year 2018. Mayor Morris stated that at this time the City Council should refer to the 2017 budget as shown in the financials included in the monthly meeting documents packet and the original 2017 budget adopted in January of 2017 as a starting point for the 2018 budget. He further noted that the same process that has been used in the past few years will be used again this year. This process begins with the departments presenting proposals to the city administration after which meetings will be held with the department heads for any possible changes needed. After this a proposed budget will then be presented to the Council and then a series of meetings will be had with any department heads that wish to address the Council regarding the proposed budget. Mayor Morris asked if the process is agreeable with the Council. No objection to this process was voiced.

Item (10) on the agenda was for the continued discussion regarding a proposed annexation for the City of Searcy. At the pre-council agenda meeting held on December 7, 2017, various city departments, including Code Enforcement, Police, Fire, Sanitation, as well as the Searcy Water Utilities, were asked to present estimated costs for proposed annexation. These costs varied in the amounts, from minimal for the Police other than added fuel and vehicle maintenance to extremely large for the Searcy Water Utilities (tens of millions of dollars). Mayor Morris stated that the three maps with the different proposed annexation areas are being reproduced that will include the proposed acreage, estimated number of households, and the estimated population of the areas. These maps will be distributed to the Council when completed. Mr. Brewer noted that his concern is the costs and where the revenue would come from to fund these costs. Mayor Morris noted that the people living in the proposed areas are probably already doing their shopping and business in the city, so there would probably not be any significant change in sales tax revenue. He also pointed out that any property tax gained would be used to fund the LOPFI obligation as is now structured. Mr. Sterling and Mr. Raney both reiterated what was stated at the pre-council agenda meeting and that they believed that the city should proceed slowly with any proposed annexation due to the high cost of providing services to any annexed area.

Item (11) was for the authorization to implement the 2% Cost of Living Adjustment (COLA) beginning with the pay period that begins on December 24, 2017, due to the January 1, 2018 date being in the middle of this pay period. A motion was made by Mr. Raney and seconded by Mr. English to authorize the implementation of the 2% Cost of Living Adjustment (COLA) beginning with the pay period that begins on December 24, 2017. Motion carried with the following voting "yes": English, Raney, Brewer, Chalenburg, Cothorn, Arnett, Howard, and Sterling.

Item (12) on the agenda was the presentation of proposals that have been received regarding the continued operation of the Rialto Theater. Proposals were presented to the Council by Mr. Phillip Pratt (representing Julee Pratt) and Mr. Matt Smith (Theater Group Inc.) regarding the continued operation of the Rialto Theater. Mr. Steven Gifford had previously presented a proposal to the Council regarding this item. Mayor Morris

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also noted that the idea had been looked into concerning the possibility of incorporating the operation of the Rialto Theater into the city under the Parks and Recreation Department. He suggested that a special meeting be called to give time to have some cost estimations put together as well as an operational proposal from the Parks and Recreation Department. It was decided to call a special Council meeting for Thursday, December 14, 2017 at 5:00 p.m. to hear the proposal from the Parks and Recreation Department for the continued operation of the Rialto Theater and the selection of an entity to continue the operation of the Rialto Theater.

Item (13) was for the possible selection of a group/entity regarding the continued operation of the Rialto Theater. Due to the setting of a special Council meeting for December 14, 2017 for the purpose of hearing a proposal from the Parks and Recreation Department and the selection of the entity for the operation of the Rialto Theater, this item on the agenda was tabled.

Item (14) was a resolution authorizing and directing the sale of certain real property described as Lot 23, Block 8 of the Stoneybrook Subdivision and directing a reservation of a right of way. Mr. Gibson read the resolution in full. A motion was made by Mr. Sterling and seconded by Mrs. Arnett to approve the resolution authorizing and directing the sale of certain real property described as Lot 23, Block 8 of the Stoneybrook Subdivision and directing a reservation of a right of way. Motion carried with the following voting “yes”: Raney, Brewer, Chalenburg, Cothorn, Arnett, Howard, Sterling, and English. **Resolution 2017-58**

Item (15) was a resolution authorizing the abandonment of fully utilized assets assigned to the Searcy Police Department, described as follows:

- 1987 Kawasaki Patrol Motorcycle _ VIN JKBNAD10VA060867
- 1987 Kawasaki Patrol Motorcycle _ VIN JKBNAD17VA069064

Mr. Gibson read the resolution in full. Motion was made by Mr. Howard and seconded by Mr. Cothorn to pass the resolution. Motion carried with the following voting “yes”: Brewer, Chalenburg, Cothorn, Arnett, Howard, Sterling, English, and Raney.

Resolution 2017-59

Item (16) was a resolution to approve the amounts of liens to be certified to the White County Tax Collector against certain properties as a result of grass cutting expenses and abatement of other nuisances. Mr. Gibson read the resolution in full. A motion was made by Mr. Brewer and seconded by Mr. Chalenburg to approve the resolution to approve the amounts of liens to be certified to the White County Tax Collector against certain properties as a result of grass cutting expenses and abatement of other nuisances. Motion carried with the following voting “yes”: Chalenburg, Cothorn, Arnett, Howard, Sterling, English, Raney, and Brewer.

Resolution 2017-60

Item (17) was a resolution for authorization to enter into a contract for professional services with Hoffmann Architectural, Inc. regarding the assessment of the condition of the Rialto Theater. Mr. Gibson read the resolution in full. Motion was made by Mr.

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Cothorn and seconded by Mr. Sterling to pass the resolution. Motion carried with the following voting “yes”: Cothorn, Arnett, Howard, Sterling, English, Raney, Brewer, and Chalenburg. **Resolution 2017-61**

Item (18) on the agenda was an ordinance amending the Searcy Employee Handbook. A motion was made by Mr. Sterling, seconded by Mr. Chalenburg, to suspend the rules and allow reading of the ordinance by title only. Motion carried with the following voting “yes”: Arnett, Howard, Sterling, English, Raney, Brewer, Chalenburg, and Cothorn. Mr. Gibson read the ordinance by title only. A motion was then made by Mr. Chalenburg, seconded by Mrs. Arnett, to adopt the ordinance. The ordinance passed with the following voting “yes”: Howard, Sterling, English, Raney, Brewer, Chalenburg, Cothorn, and Arnett. Mr. Gibson then read the emergency clause of the ordinance. Motion was made by Mr. Cothorn, seconded by Mrs. Arnett, to adopt the emergency clause, with the following voting “yes”: Sterling, English, Raney, Brewer, Chalenburg, Cothorn, Arnett, and Howard. **Ordinance 2017-34**

Item (19) on the agenda was an ordinance for the authorization to conduct business with certain individuals who serve as members of various commissions, boards, or committees of the City of Searcy, specifically Grant Pryor, serving on the Parks and Recreation Advisory Board. A motion was made by Mr. Raney, seconded by Mr. Howard, to suspend the rules and allow reading of the ordinance by title only. Motion carried with the following voting “yes”: English, Raney, Brewer, Chalenburg, Cothorn, Arnett, Howard, and Sterling. Mr. Gibson read the ordinance by title only. A motion was then made by Mr. Chalenburg, seconded by Mrs. Arnett, to adopt the ordinance. The ordinance passed with the following voting “yes”: Raney, Brewer, Chalenburg, Cothorn, Arnett, Howard, Sterling, and English. Mr. Gibson then read the emergency clause of the ordinance. Motion was made by Mr. Sterling, seconded by Mr. Cothorn, to adopt the emergency clause, with the following voting “yes”: Brewer, Chalenburg, Cothorn, Arnett, Howard, Sterling, English, and Raney. **Ordinance 2017-35**

Item (20) on the agenda was an ordinance authorizing the financing of the E-One Pumper Fire Truck, the fire truck acquisition project. A recommendation was made by Mr. Gibson to table this ordinance until the called special Council meeting in order for him and Regions Bank to carry out further work on this ordinance. A motion was made by Mr. Raney, seconded by Mr. Sterling, to table the ordinance until the December 14, 2017 special Council meeting. Motion carried with the following voting “yes”: Chalenburg, Cothorn, Arnett, Howard, Sterling, English, Raney, and Brewer.

Item (21) on the agenda was a budget ordinance to:

Section 1. The budget for the City of Searcy, Arkansas, is amended in the following manner:

- a. Appropriate \$25,299.65 to the 0.25% Fire Sales Tax Fund ‘0.25% FIRE SALES TAX REVENUE’ revenue account (#18 4-000-10-01) for the receipt of tax revenue for the month of October 2017;

- b. Transfer \$3,000.00 from Parks and Recreation Department Sports Complex 'BUILDING MAINTENANCE/REPAIRS' expenditure account (#01 5-085-02-01) to Parks and Recreation Department 'SUPPLIES' expenditure account (#01 5-080-02-08);
- c. Appropriate \$3,945.00 to the Airport Fund 'SALE OF EQUIPMENT' revenue account (#12 4-000-60-09) and appropriate \$3,945.00 to the Airport Fund 'VEHICLE PURCHASE' expenditure account (#12 5-040-53-01) for purchasing a crew car to be used at the Searcy Municipal Airport. These funds are what was received from the sale of two vehicles and one mower authorized by Resolution 2017-48;
- d. Appropriate \$6,005.33 from 2014 Eight Year Plan Fund unappropriated reserves to 'SWIM POOL COMPLEX LOAN PAYMENT' expenditure account (#14 5-085-05-01) for payment of interest expense on the Swimming Pool Complex construction loan;
- e. Appropriate \$9,039.35 from 2014 Eight Year Plan Fund unappropriated reserves to 'ROLLING MEADOWS/CLOVERDALE DRAINAGE' expenditure account (#14 5-130-05-02) for Rolling Meadows/Cloverdale Addition drainage improvement project engineering services;
- f. Appropriate \$2,457.54 from 2014 Eight Year Plan Fund unappropriated reserves to 'WILLIAMS ADDITION DRAINAGE' expenditure account (#14 5-130-05-01) for Williams Addition (Chrisp Avenue) drainage engineering services;
- g. Appropriate \$369.17 from 2014 Eight Year Plan Fund unappropriated reserves to 'JANET DRIVE/ANCILLARY IMPROVEMENTS' expenditure account (#14 5-900-54-03) for density testing services for the Janet Drive and ancillary streets public infrastructure improvements;
- h. Appropriate \$62,177.22 from 2014 Eight Year Plan Fund unappropriated reserves to 'JANET DRIVE/ANCILLARY IMPROVEMENTS' expenditure account (#14 5-900-54-03) for engineering services for Janet Drive, ancillary streets, public infrastructure improvements;
- i. Appropriate \$518,918.40 from 2014 Eight Year Plan Fund unappropriated

reserves to 'JANET DRIVE/ANCILLARY IMPROVEMENTS' expenditure account (#14 5-900-54-03) for construction services for Janet Drive, ancillary streets, public infrastructure improvements;

- j. Appropriate \$3,018.13 from 2014 Eight Year Plan Fund unappropriated reserves to 'DOWNTOWN BEAUTIFICATION PHASE 2 SCHEDULE 2' expenditure account (#14 5-500-05-26) for Fall landscaping change out (flowers) for the Downtown Beautification Phase 2 Schedule 1 landscaping project;
- k. Appropriate \$7,795.25 from 2014 Eight Year Plan Fund unappropriated reserves to 'SOFTBALL PRESSBOX/CONCESSION/RESTROOM' expenditure account (#14 5-085-54-03) for architectural/design services on the construction of the new softball pressbox/concession/restroom facility;
- l. Appropriate \$2,584.00 to the General Fund 'SWIM CENTER DONATIONS' revenue account (#01 4-000-90-28) and appropriate \$2,584.00 to the Searcy Swim Center 'SWIM CENTER DONATIONS EXPENSED' expenditure account (#01 5-082-05-02) for the receipt and use of donations to the Searcy Swim Center;
- m. Appropriate \$26,587.70 to the 0.25% Fire Protection County Sales Tax Fund '0.25% COUNTY FIRE TAX REVENUE' revenue account (#18 4-000-10-01) for the receipt of the November distribution of the 0.25% County Fire Sales Tax;

Section 2. The Mayor and City Clerk are authorized to expend the following sums:

- a. \$48,211.77 to Cline Construction Group for construction services on the Fire Station 2 relocation (#14 5-070-54-01);
- b. \$6,005.33 to Regions Bank for payment of interest expense on the Swimming Pool Complex construction loan (#14 5-085-05-01);
- c. \$9,039.35 to Morrison – Shipley Engineers Inc. for Rolling Meadows/Cloverdale Addition drainage improvement project engineering services (#14 5-130-05-02);

- d. \$2,457.54 to Morrison – Shipley Engineers Inc. for Williams Addition (Chrisp Avenue) drainage engineering services (#14 5-130-05-01);
- e. \$369.17 to Materials Testing of AR, Inc. for density testing services for the Janet Drive and ancillary streets public infrastructure improvements (#14 5-900-54-03);
- f. \$62,177.22 to Whitlow Engineering Services for engineering services for Janet Drive, ancillary streets, public infrastructure improvements (#14 5-900-54-03);
- g. \$518,918.40 to Johnny Brock Excavating & Landscaping, Inc. for construction services for Janet Drive, ancillary streets, public infrastructure improvements (#14 5-900-54-03);
- h. \$3,018.13 to Vest Exteriors Inc. for Fall flower change out for the Downtown Beautification Phase 2 Schedule 1 landscaping project (#14 5-500-05-26);
- i. \$7,795.25 to Hoffmann Architectural Inc. for architectural/design services for the new softball pressbox/concession/restroom facility (#14 5-085-54-03);
- j. \$20,419.00 to Temple, Inc. for the purchase of a traffic signal control cabinet assembly box that was damaged in a traffic accident at the intersection of Beebe Capps Expressway and Main Street. This control cabinet will be paid (reimbursed) for by insurance once the claim is settled (#01 5-190-02-11);

A motion was made by Mr. Raney, seconded by Mr. Brewer, to suspend the rules and allow reading of the ordinance by title only. Motion carried with the following voting “yes”: Cothorn, Arnett, Howard, Sterling, English, Raney, Brewer, and Chalenburg. Mr. Gibson read the ordinance by title only. A motion was then made by Mr. Brewer, seconded by Mr. Chalenburg, to adopt the ordinance. The ordinance passed with the following voting “yes”: Arnett, Howard, Sterling, English, Raney, Brewer, Chalenburg, and Cothorn. Mr. Gibson then read the emergency clause of the ordinance. Motion was made by Mr. Howard, seconded by Mr. Brewer, to adopt the emergency clause, with the following voting “yes”: Howard, Sterling, English, Raney, Brewer, Chalenburg, Cothorn, and Arnett. **Ordinance 2017-36**

The Mayor announced:

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- City offices will be closed for the Christmas Holiday, Monday, December 25 and Tuesday, December 26, 2017
- The Beats and Eats New Year's Bash will be Sunday, December 31, 2017 beginning at 6:00 p.m.
- City offices will closed for the New Year Holiday, Monday, January 1, 2018

A motion was made and seconded to adjourn.

Minutes Approved: January 9, 2018

/s/ David Morris
MAYOR OF SEARCY

ATTEST:

/s/ Jerry Morris
CITY CLERK

Seal