

Bentonville City Council

Meeting Minutes

July 14, 2020

The City Council of Bentonville, Arkansas, met in regular session Tuesday, July 14, 2020, at 6:00 p.m., at the Bentonville Community Center, 1101 Southwest Citizen's Circle, Bentonville, Arkansas.

Present were council members Cindy Acree, Chris Sooter, Aubrey Patterson, Bill Burckart, Octavio Sanchez and Jonathan Terlouw. Also present were Mayor Stephanie Orman, City Attorney George Spence, the press, city staff and the audience. Council Members Tim Robinson and Chad Goss attended remotely and participated by Zoom.

Due to the situation related to COVID-19, several members of the city staff and the public also attended remotely by Zoom. Mayor Orman reminded Council that all votes would be by roll call.

Mayor Orman announced that public comments on agenda items would be taken as we came to the item.

Mayor Orman called the meeting to order. The Mayor led everyone present in the Pledge of Allegiance followed by a moment of silence in support of our armed forces.

Motion was made by Council Member Sanchez to approve the minutes of the June 23, 2020 meeting as presented, second by Council Member Acree. There was no discussion. Motion carried (8-0).

Motion was made by Council Member Sooter to suspend the rules regarding the reading of all ordinances on three separate days and further that all ordinances and resolutions be read by title only, seconded by Council Member Sanchez. There was no discussion. Motion carried (8-0).

July 13, 2020 - Committee of the Whole Meeting:

1. Financial Update by Jake Harper, Finance Director.

July 14, 2020 - City Council Meeting:

2. July 2020 Residential Landscaping of the Month award.

Danielle Semsrott, Senior Planner, explained the background of the award and recognized Joe Don and Jennifer Joyce as the winners for the month of July, 2020.

3. Ordinance No. 2020-119: Ordinance providing for an alternative method to attest documents during the vacancy in the office of the City Clerk or any other time the Clerk is not available.

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

- 4a. Ordinance No. 2020-120: Ordinance accepting a property line adjustment of lots 29-30, Block 1 of Crabtree Addition to the City of Bentonville, Arkansas. (Project No. PLA20-0020)

[Applicant: Philip Cristofaro;

Location: NW B St.]

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

- 4b. Ordinance No. 2020-121: Ordinance accepting a property line adjustment of Lot 59 of Chardonay Subdivision to the City of Bentonville, Arkansas. (Project No. PLA20-0032)

[Applicant: Iqbal Singh Makkar;

Location: SW Chardonay Boulevard]

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

- 4c. Ordinance No. 2020-122: Ordinance accepting a property line adjustment of Lot 22, Block G of Orchard Addition to the City of Bentonville, Arkansas. (Project No. PLA20-0033)

[Applicant: Table at the Station, LLC;

Location: 409 SE 6th Street]

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

- 4d. Ordinance No. 2020-123: Ordinance accepting a property line adjustment of Lot 19, Block 2 of Lincoln & Rice Addition to the City of Bentonville, Arkansas. (Project No. LS20-0028)

[Applicant: Dwayne Lawler;

Location: 108 NE F Street]

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

- 4e. Ordinance No. 2020-124: Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of R-1, single family residential to R-O, Residential Office. (Project No. RZ20-0020)

[Applicant: Bentonvest Fund IV, LLC;

Location: SW 5th Street and SW F Street]

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

4f. Ordinance No. 2020-125: Ordinance changing real estate in the City of Bentonville, Arkansas, from its present zoning classification of R-1, single family residential to DN-1, Downtown Low-Density Residential. (Project No. RZ20-0019)

[Applicant: Bill Stuckey

Location: 107 SW F Street]

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

4g. Ordinance No. 2020-126: Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of C-2, General Commercial and PUD, Planned Unit Development to R-3, Medium Density Residential. (Project No. RZ20-0021)

[Applicant: KCG BV, LLC

Location: SW Buckeye Street and SW Juniper Avenue]

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Acree. There was no discussion. Motion carried (8-0).

4h. Ordinance No. 2020-127: Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of DN-2, Downtown Medium-Density Residential to PRD, Planned Residential Development. (Project No. PRD20-0001)

[Applicant: Tylluan, LLC

Location: Fillmore Street and Valley Street]

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

4i. Ordinance No. 2020-128: Ordinance accepting a final plat of Rolling Acres Phase III to the City of Bentonville, Arkansas. (Project No. FP20-0002)

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

Mayor Orman recognized members of the public in attendance at the meeting in person who signed up to speak to agenda item #5. Sean Collyge and Bob Stoker (who said he was also representing some neighbors) spoke against the item. Cindy K. Esslinger, one of the applicants spoke why their development met the Comprehensive Community Plan adopted in 2018 and advocated for the High Density Residential zoning.

5. Ordinance No. 2020-129: Ordinance changing real estate in the City of Bentonville, Arkansas from its present zoning classification of R-1, Single Family Residential to DN-3, Downtown High Density Residential. (Project No. RZ20-0011)

City Attorney Spence read the ordinance by title only. Council Member Patterson asked to make a comment. Council Member Patterson had spoken with several members of Planning Commission asking why they denied the rezone 5-1? Midblock location was mentioned and also Planning Commission offered a DN-2 zoning which the property owner declined. Council member Sanchez brought up some differences in DN-2 & DN-3 zoning. Council Member Burckart asked Ellen Norvell, Planning and Building Services Director to confirm Council Member Sanchez's comments regarding DN-2 & DN-3 zoning and asked her why she supported the development. Ms. Norvell confirmed Mr. Sanchez's comments were accurate and the reason that she and planning staff support the development is that it is in line with the land use plan and comprehensive plan. It is allowed, and it is good use for the properties and downtown densities and such. Council Member Burckart made some additional comments regarding DN-2 & DN-3 zoning ownership, and felt that some of the concerns could be addressed in the large scale development process.

Council Member Burckart made the motion to pass the ordinance and motion was second by Council Member Acree. Motion carried (7-1) with Council member Patterson voting against the motion.

6. Ordinance No. 2020-130: Ordinance approving the placement of tables, chairs and other items on City of Bentonville Public On-Street Parking Spaces adjacent to downtown business establishments through January 1, 2021 and declaring an emergency.

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

City Attorney Spence read the emergency clause of the ordinance. Motion to pass by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

7. Ordinance No. 2020-131: Ordinance vacating a utility easement located at lots 23, 24, and 25 of Chardonay Subdivision to the City of Bentonville, Arkansas, Benton County Arkansas. (VAC20-0010)

Mayor Orman declared a public hearing open for comments. There was no response so Mayor Orman declared the hearing closed.

City Attorney Spence read the ordinance by title only. Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

8. Resolution 7-14-20 A: Resolution setting a public hearing for July 28, 2020 for a Utility Easement Vacation requested for Lot 301 of Windwood Subdivision for Phase 6. (VAC20-0011)

City Attorney Spence read the resolution by title only.

Motion to pass by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

9. Resolution 7-14-20 B: Resolution setting a public hearing for July 28, 2020 for a Drainage Easement Vacation requested for Lot 2 of Silver Leaf Addition. (VAC20-0017)

City Attorney Spence read the resolution by title only.

Motion to pass by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

- 10a. Resolution 7-14-20 C: Resolution authorizing the Mayor to enter into an amended agreement with Crafton, Tull and Associates, Inc. for Professional Services for the Tributary 2 Phase 2 Project.

City Attorney Spence read the resolution by title only.

Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

- 10b. Approval of a budget adjustment for Amendment 3. The cost of the amendment is \$60,720.00, which \$30,360.00 will be paid from the Bond Account and the remaining \$30,360.00 will come from street reserves.

Motion to approve by Council Member Sanchez, second by Council Member Acree. There was no discussion. Motion carried (8-0).

- 11a. Approval to award Bid No. 20-53 to Decco Contractors in the amount of \$725,261.32 for the City's 2020 overlay program.

Motion to approve by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

- 11b. Approval of a budget adjustment in the amount of \$25,261.32 to Decco Contractors for the 2020 Overlay Program.

Motion to approve by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

12. Approval to award Bid No. 20-47 to Time Striping Inc. for street pavement markings at the unit prices listed in the bid document.

Motion to approve by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

13. Approval to award Bid No. 20-52 to Riggs Cat for the lease of (2) backhoes.

Motion to approve by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

14. Approval to award Bid No. 20-49 in the amount of \$457,070.00 to MHC Kenworth-Volvo for (2) Belly Plow Dump Trucks.
Motion to approve by Council Member Sanchez, second by Council Member Terlouw. There was no discussion. Motion carried (8-0).
15. Approval for the appointment of Daniel Hintz to the City of Bentonville's Advertising and Promotion Commission, said term to end on December 31, 2024.
Motion to approve by Council Member Burckart, second by Council Member Acree. There was no discussion. Motion carried (8-0).
16. Ordinance No. 2020-132: Ordinance authorizing the Mayor and the City Clerk to enter into an agreement with Roofing Systems, Inc. for the roofing of four (4) buildings per specifications and waiving the requirement of competitive bidding due to no response from bid solicitations.
Motion to pass by Council Member Acree, second by Council Member Sanchez. There was no discussion. Motion carried (8-0).
17. Ordinance No. 2020-133: Ordinance authorizing the Mayor and the City Clerk to enter into an agreement with Turn-Key Mobile for the certified installation, pairing, setup and configuration services associated with the purchase of body worn cameras for the Bentonville Police Department and waiving the requirement of competitive bidding.
Motion to pass by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).
18. Approval of a budget adjustment to accept and recognize 84 vehicle insurance settlements from Arkansas Municipal League (ARML) and apply these settlements totaling \$289,864.00 to the Police Department Vehicle Maintenance Account. This amount is after applicable deductibles and will cover the cost of all repairs and any loss of value related to the damages.
Motion to approve by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).
19. Approval of a budget adjustment in the amount of \$191,835.64 to allow for ten (10) custodian positions to be transferred from Public Works Maintenance to Parks and Recreation. This budget adjustment is only a transfer of funds, and there are no new funds being requested.

Motion to approve by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

20. Resolution 7-14-20 D: Resolution authorizing the Mayor and Clerk to enter into an agreement with Gallagher Benefit Services, Inc., for healthcare and benefit consulting services for the City of Bentonville.

Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

21. Ordinance No. 2020-134: Ordinance authorizing the Mayor and the City Clerk to extend the bid award agreement with Techline for the purchase of single phase transformers and waiving the requirement of competitive bidding.

Motion to pass by Council Member Burckart, second by Council Member Sanchez. There was no discussion. Motion carried (8-0).

22. Ordinance No. 2020-135: Ordinance authorizing the Mayor and the City Clerk to extend the bid award agreement with Techline for the purchase of three phase transformers and waiving the requirement of competitive bidding.

Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

23. Ordinance No. 2020-136: Ordinance authorizing the Mayor and the City Clerk to extend the bid award agreement with American Electric and Techline for the purchase of pole mounted transformers and waiving the requirement of competitive bidding.

Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

24. Resolution No. 7-14-20 E: Resolution authorizing the Mayor and Clerk to enter into a master development agreement with Walmart Inc. related to the global home office project.

Motion to pass by Council Member Sanchez, second by Council Member Burckart. There was no discussion. Motion carried (8-0).

25. Ordinance No. 2020-137: Ordinance by the City of Bentonville, Arkansas regarding the use of masks in relation to the COVID-19 Pandemic.

Mayor Orman recognized those in the room wishing to speak to item #25 would be allowed to speak first. Those speaking in regard to Item 25 were: Ani Marathe, Heather Wagner, Jeff Matkins, Daisy Bonilla, Blake Worthey, and Brittany Cole.

Mayor Orman then recognized those that were joining the meeting via zoom to speak. Those who spoke were: Issa Abboud, Beatrice Apple, Graham Cobb, Molly Darragh, Lisa Herschbach, Katie Howe, Anton Korolev, Linda Lovell, Matthew McClure, Erika Nelson, Sam Slaton, Carrie Sokol, Katie Steves, Carol Vella, Luke Wetzell, Robert Butler, and Sara Milford. Once all that had signed up to speak via zoom link were given the chance to speak, Mayor Orman gave the zoom participants the opportunity to raise their hand to speak. While we were waiting for on-line hand-raising to occur 2 members in the audience asked to speak. Mayor Orman advised them that it would be the pleasure of the council to allow them to speak. Council Member Burckart said they had been very patient waiting, and said he had no problem allowing these additional in-person attendees to speak. Council Member Sanchez agreed. Audience members Amy (last name not clear on recording) and Anna (last name not clear on recording) addressed the City Council members. No one raised their hand online to speak, so public comment was over.

Council Member Sanchez offered some comments on the ordinance, and referred to it as empty because it has no enforcement abilities, no fines/penalties. He recommended instead of an ordinance, that perhaps a resolution, proclamation, declaration would be more appropriate. He proposed deleting Section 3 (excluding outdoor activities), and renumber the sections in the ordinance. Mr. Sanchez also noted that the ordinance was good in the fact that it supports business' freedom to support what they want to enforce. Restaurants are regulated by State law. Citizens who do not want to abide by the businesses wishes, then business can call upon police to ask them to leave because of the nuisance.

Council Member Acree commented ordinance was weak to enforcement, but strengthens business' rights, but was hesitant to waive all application to large gatherings.

City Attorney Spence addressed resolution vs ordinance. Anything done by resolution can be done by ordinance. Two sides of similar coin. Looked for words similar to require; possibly calls for.

Council Member Acree commented about Council's ability to act. She thinks it is important that Council responds to this.

Council Member Burckart thanked everyone for coming and bringing the comments to the table. He added these additional comments. Arkansas Governor has done good job to keep jobs going and economy going. Commended all levels, and said it was hard to watch businesses go out of business during the pandemic. Admitted a lot of fear present. Commented on school resuming. Resolution/ordinance is Not a mandate, but affirmation of what companies have the right to do as a private business owner and the City endorses their rights. City of Bentonville is not passing a mask mandate. Ordinance supports a business if they choose, if they wish to enforce. Not giving up freedoms, and it does not take away freedoms. Understand we care, please wear a mask. We have your back.

Council Member Burckart made the motion to pass the ordinance as written, it is not a mask mandate, for freedom and personal rights, protect private property rights and show people we care without infringing on others rights. Council member Robinson second the motion.

City Attorney Spence advised that the ordinance needed to be read before motions were made.

City Council Sanchez presented a modification. Mayor Orman asked if everyone received the copy that was distributed today with last night's modifications. City Attorney Spence advised of the normal way we would pass the ordinance, then read the ordinance. Council member Goss motioned to approve, and Council Member Robinson second the motion. Council Member Sanchez called for a modification to the ordinance that was on the floor. Council member Sanchez proposed that in Section 1, Bentonville, Arkansas requires be changed to Bentonville, Arkansas recommends. Council member Burckart second the change

recommendation. Council Member Patterson pointed out that recommends was included in the resolution that was passed on June 23, 2020. Council Member Terlouw asked City Attorney Spence his take on recommends vs requires. He advised that either could be used, but requires shows a little more importance. Council Member Acree commented that the words called for could be used. Council Member Goss recommended keeping requires to show strength of our backing for all businesses. Council Member Sanchez said he was not removing his motion. Council Member Burckart reiterated that the two words (wish to/require) were inconsistent and not working well together and he second Council Member Sanchez change. City Attorney Spence asked if there was more discussion on this motion. Council Member Acree commented that she wants the language consistent. Roll was called on the motion to amend...motion failed (2-6 with Council Members Burckart and Sanchez voting for the motion).

Council Member Sanchez recommended removing Section 3 and renumbering. There was no second, so the amendment failed.

City Attorney Spence advised the Council that they were back to the main motion.

City Council Member Acree made a motion to amend. City Attorney Spence passed out a revised copy to City Council members for their review. City Council Member Goss commented that he thought they were overthinking this topic. City Council member Acree said they should overthink if they were going to make it law. Her revision gives a little more authority to businesses. City Council Members Burckart and Patterson offered some comments regarding requiring the businesses to post. Mayor Orman reiterated what was written in the revision. Council Member Sanchez thinks that new Section 2 is unnecessary. Council Member Patterson commented on the requirement to post. City Council Sanchez says it is inconsistent. Mayor Orman commented that her office will receive the calls...not to include items that there is an option for. It will cause a lot of confusion, and difficulty in managing. City Attorney Spence recommended that Council Member Acree be allowed to present and make her motion to amend. Council Member Acree moved to amend the ordinance to reemphasize the rights of the businesses to require the facial coverings and the obligation of the city to enforce those. Council Member Burckart applauded Council Member Acree on her efforts...but wanted to reiterate we are supporting

business rights and thought it would cause more confusion and he cannot agree in full. Motion did not receive a second, so it failed.

City Attorney Spence advised that they were back to the main motion that was the ordinance that was sent out today. Discussion is appropriate on main motion of original ordinance sent out today. City Council Member Sanchez called the question. Motion passed (8-0).

City Attorney Spence read the emergency clause of the ordinance. Motion to pass by Council Member Sanchez, second by Council Member Sooter. There was no discussion. Motion carried (8-0).

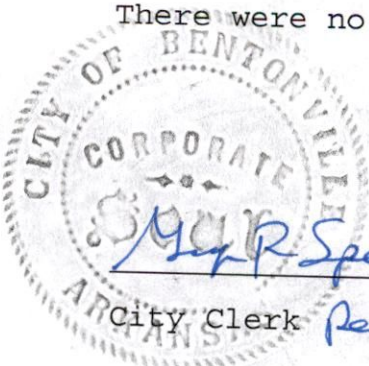
Mayor Orman clarified that the ordinance passed and is to support the rights of businesses to require a mask if they chose so in their business and how it will be enforced in the City. Clear on enforcement and how it will be handled in the City. It is on the business to require the mask if they choose to. If a citizen chooses to not put on a mask, and not keep 6' social distance, then business can call Police Department and they will treat as a trespass, not a mask mandate. Hoping the public will help properly communicate.

Without objection, Mayor Orman adjourned the meeting and turned to committee reviews.

Council members reported on committees and boards they participate in related to the City.

Mayor Orman reminded Council Members that the Municipal League Summer conference would be an on-line event this year and that we are asking each council member to be responsible for registering themselves since there is no cost to attend this year. The dates are August 19-21.

There were no public comments.



Step R Spence, City Attorney
City Clerk Per Ord # 0-2020-119

Stephanie Orman
Stephanie Orman, Mayor