

BENTON CITY COUNCIL MEETING

OCTOBER 10, 2016

7:00 PM



AGENDA MEETING 6:30 PM



BENTON MUNICIPAL COMPLEX
114 SOUTH EAST STREET
COUNCIL CHAMBERS

DAVID MATTINGLY, MAYOR

REGULAR SESSION
October 10, 2016
7:00 PM
AGENDA

- | | | |
|--------------|--|---|
| I. | Call to Order | Mayor Mattingly |
| II. | Invocation | |
| III. | Pledge of Allegiance | Alderman Murphy |
| IV. | Roll Call | City Clerk |
| V. | Approval of Minutes | September 26, 2016
<i>Regular Meeting</i> |
| VI. | Proclamation
<i>Benton Utilities 100th Anniversary</i> | Mayor Mattingly |
| VII. | Youth of the Month
<i>Hannah Bariola, September 2016</i> | Amber Heath |
| VIII. | COMMITTEE REPORTS & MOTIONS | |
| | 1. Finance Committee | Alderman Ponder |
| | ORDINANCE NO. 49 OF 2016
<i>AN ORDINANCE AMENDING THE 2016 BUDGET FOR THE GENERAL FUND AS ADOPTED IN ORDINANCE 64 OF 2015; TRANSFERRING FUNDS FROM THE SAFETY AND STABILITY FUND; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES</i> | |
| | 2. Community Services/Animal Control | Alderwoman Reed |
| | ORDINANCE NO. 50 OF 2016
<i>AN ORDINANCE WAIVING CONSTRUCTION RELATED FEES FOR THE CONSTRUCTION OF THE HIGHWAY 5 FIRE AND POLICE SUBSTATION; AND FOR OTHER PURPOSES</i> | |
| | 3. Streets & Drainage Committee | Alderman Cunningham |
| | 4. Personnel/Health & Safety Committee | Alderman Donnor |
| | 5. Parks Committee | Alderman Lee |
| | A.) RESOLUTION NO. 59 OF 2016
<i>A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH CBJ VENDING TO PROVIDE VENDING SERVICES FOR THE PARKS DEPARTMENT; AND FOR OTHER PURPOSES</i> | |
| | B.) RESOLUTION NO. 60 OF 2016
<i>A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH THE BOYS & GIRLS CLUB OF SALINE COUNTY, INC. FOR PROVIDING CERTAIN RECREATIONAL SERVICES TO THE YOUTH OF BENTON; AND FOR OTHER PURPOSES</i> | |
| | 6. Public Utilities Commission | Alderman Herzfeld |
| | 7. A & P Commission | Alderman Donnor/Ponder |
| | A.) RESOLUTION NO. 61 OF 2016
<i>A RESOLUTION RATIFYING AND CONFIRMING THE REAPPOINTMENT OF LUKE MOODY AS COMMISSIONER TO THE BENTON A&P COMMISSION; AND FOR OTHER PURPOSES</i> | |

B.) RESOLUTION NO. 62 OF 2016

*A RESOLUTION RATIFYING AND CONFIRMING THE REAPPOINTMENT OF
BILL ELDRIDGE AS COMMISSIONER TO THE BENTON A&P
COMMISSION; AND FOR OTHER PURPOSES*

- IX. Unfinished Business**
- X. New Business**
- XI. Old Business**
- XII. Announcements**
- XIII. Adjourn**

MINUTES OF THE BENTON CITY COUNCIL
Regular Session
September 26, 2016
Benton Municipal Complex

The Benton City Council was called to order for a regular session at 7:00 pm.

The Mayor gave the invocation.

Alderman Murphy led the pledge of allegiance.

Roll was called.

The following persons were in attendance:

Alderman Frank Baptist	Alderman Kerry Murphy
Alderman Charles Cunningham	Alderman Evelyn Reed
Alderman Bill Donnor	Alderman Jerry Ponder
Alderman James Herzfeld	Alderman Steve Lee
Brent Houston, City Attorney	Cindy Stracener, City Clerk
David Mattingly, Mayor	

When roll was called eight (8) council members were present. Alderman Lori Terrell and Alderman Judd Hart were absent. A quorum was declared.

The Mayor requested approval for the September 12, 2016 city council meeting minutes. Alderman Herzfeld made a motion to approve the minutes, seconded by Alderman Lee. The Mayor called for a voice vote on the approval of the minutes. All aldermen present replied in the affirmative. The minutes for the September 12, 2016 council meeting were approved with 8 affirmative votes and 2 absent.

The 2016/2017 Mayor's Youth Advisory Council were presented and the group recited their pledge.

Mason Woolbright was honored as the September Youth of the Month by MYAC.

James Helton was recognized as the August employee of the month.

Brent Houston read a proclamation declaring October 7, 2016 as "Go Pink for the Cure Day" in Benton". See attached.

Alderman Reed made a motion to adopt Resolution 57 of 2016 – A Resolution Ratifying and Confirming the Appointment of Alissa Turner as a Commissioner to the Benton Historic District Commission; and For Other Purposes. Seconded by Alderman Lee. The resolution was read by the city clerk. The Mayor introduced Alissa Turner. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Resolution 57 of 2016 was adopted with 8 affirmative and 2 absent votes.

The next item on the agenda was committee reports and motions. Alderman Ponder was recognized for the Finance Committee report. Alderman Ponder asked for the first reading

of Ordinance 44 of 2016 – An Ordinance Increasing the Salary for the Office of Mayor; Declaring an Emergency; and For Other Purposes. Seconded by Alderman Herzfeld. The ordinance was read by the city clerk. The Mayor asked for any comments. None. Alderman Ponder made a motion to suspend the rules. Seconded by Alderman Lee. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Motion to suspend was approved with 8 affirmative and 2 absent votes. Alderman Ponder made a motion to adopt Ordinance 44 of 2016 on its second and third readings. Seconded by Alderman Herzfeld. The ordinance was read by title only. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Ordinance 44 of 2016 was adopted with 8 affirmative and 2 absent votes. Alderman Ponder made a motion to adopt the emergency clause. Seconded by Alderman Reed. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. The emergency clause was adopted with 8 affirmative and 2 absent votes.

Alderman Ponder asked for the first reading of Ordinance 45 of 2016 – An Ordinance Amending the 2016 Budget for the General Fund as Adopted in Ordinance 64 of 2015; Transferring Funds From the Safety and Stability Fund; Waiving Competitive Bidding; Declaring an Emergency; and For Other Purposes. Seconded by Alderman Baptist. The ordinance was read by the city clerk. This ordinance was for the emergency repairs at city hall for water intrusion. The Mayor asked for any comments. None. Alderman Ponder made a motion to suspend the rules. Seconded by Alderman Herzfeld. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. The motion to suspend was approved with 8 affirmative and 2 absent votes. Alderman Ponder made a motion to adopt Ordinance 45 of 2016 on its second and third readings. Seconded by Alderman Herzfeld. The ordinance was read by title only. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Roll call resulted in 8 affirmative and 2 absent votes, Ordinance 45 of 2016 was adopted. Alderman Ponder made a motion to adopt the emergency clause. Seconded by Alderman Donnor. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. The emergency clause was adopted with 8 affirmative and 2 absent votes.

Alderman Reed was recognized for a report from the Community Service/Animal Control Committee. Alderman Reed made a motion to suspend the rules for the second and third readings of Ordinance 41 of 2016 – An Ordinance Rezoning Certain Land in the City of Benton, Saline County, Arkansas, Declaring an Emergency; and For Other Purposes. Seconded by Alderman Cunningham. The request was made by SBDI Builders and Corriente Ridge, LLC for property located on Neeley and Reed Street. They want to rezone

the property from Single Family Residential R1-7.5 to Multi-Family Residential District R1.5. The Mayor asked that the roll be called on the motion to suspend the rules. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Motion to suspend the rules was approved with 8 affirmative and 2 absent votes. Alderman Reed made a motion to adopt Ordinance 41 of 2016 on its second and third readings. Seconded by Alderman Cunningham. The Mayor asked for any comments. Bob Beam stated that he resided at 1110 Neeley Street and he was here in opposition to this ordinance. He presented a petition to the council against the rezoning. See attached. Alderman Donnor stated that he has been to Mr. Beam's property and house; it is a nice single residential house and will be completely surrounded by apartments. That is not what Mr. Beam signed on for; if he wanted to live in multi-family he would have moved into multi-family. This area would be able to hold 350 apartments on 14 acres. I will not support this rezoning and will vote no. The ordinance was read by title only. The Mayor asked for anymore comments. None. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist no, Alderman Murphy no, Alderman Cunningham yes, Alderman Reed no, Alderman Donnor no, Alderman Ponder no, Alderman Hart absent, Alderman Herzfeld no, Alderman Lee no, and Alderman Terrell absent. Ordinance 41 of 2016 failed with 1 affirmative, 7 negative and 2 absent votes.

Alderman Reed asked for the first reading of Ordinance 46 of 2016 – An Ordinance Annexing Certain Territory into the Corporate Limits of the City of Benton, Saline County, Arkansas; Declaring an Emergency; and For Other Purposes. Seconded by Alderman Ponder. The ordinance was read by the city clerk. This annexation was requested by the Duke Family Limited Partnership LLP for property located along I-30 and Hwy 67. The Mayor asked for any comments. None. Alderman Reed made a motion to suspend the rules for the second and third readings. Seconded by Alderman Donnor. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Motion to suspend was approved with 8 affirmative and 2 absent votes. Alderman Reed made a motion to adopt Ordinance 46 of 2016 on its second and third readings by title only. Seconded by Alderman Donnor. The ordinance was read by title only. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Ordinance 46 of 2016 was adopted with 8 affirmative and 2 absent votes. Alderman Reed made a motion to adopt the emergency clause. Seconded by Alderman Ponder. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. The emergency clause was adopted with 8 affirmative and 2 absent votes.

Alderman Reed asked for the first reading of Ordinance 47 of 2016 – An Ordinance Rezoning Certain Land in the City of Benton, Saline County, Arkansas, Declaring an Emergency; and For Other Purposes. Seconded by Alderman Cunningham. The ordinance was read by the city clerk. This rezoning was requested by Randy Wright for property located at 723 Gaunt from RM 3.75 to RM 1.8. The Mayor asked for any comments. None. Alderman Reed made a motion to suspend the rules. Seconded by Alderman Donnor. The

Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Motion to suspend was approved with 8 affirmative and 2 absent votes. Alderman Reed made a motion to adopt Ordinance 47 of 2016 on its second and third readings by title only. Seconded by Alderman Donnor. The ordinance was read by title only. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Ordinance 47 of 2016 was adopted with 8 affirmative and 2 absent votes. Alderman Reed made a motion to adopt the emergency clause. Seconded by Alderman Donnor. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. The emergency clause was adopted with 8 affirmative and 2 absent votes.

Alderman Reed asked for the first reading of Ordinance 48 of 2016 – An Ordinance Rezoning Certain Land in the City of Benton, Saline County, Arkansas, Declaring an Emergency; and For Other Purposes. Seconded by Alderman Donnor. The ordinance was read by the city clerk. The request was made by Norris Terrell Woodall Jr for property located at 1822 Bennett Road. They want to rezone the property from AG agricultural to one Family Residential R1-7.5. The Mayor asked for any comments. None. Alderman Reed made a motion to suspend the rules for the second and third readings. Seconded by Alderman Donnor. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Motion to suspend was approved with 8 affirmative and 2 absent votes. Alderman Reed made a motion to adopt Ordinance 48 of 2016 on its second and third readings by title only. Seconded by Alderman Lee. The ordinance was read by title only. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Ordinance 48 of 2016 was adopted with 8 affirmative and 2 absent votes. Alderman Reed made a motion to adopt the emergency clause. Seconded by Alderman Donnor. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. The emergency clause was adopted with 8 affirmative and 2 absent votes.

Alderman Cunningham was recognized for the Streets and Drainage Committee report. He stated that he had nothing to report.

Alderman Donnor was recognized for a report from Personnel/Health & Safety Committee. He stated that he had nothing to report.

Alderman Lee was recognized for a report from the Parks Committee. He stated that the committee will meet this Thursday at 6:00 pm.

Alderman Herzfeld was recognized for a report from the Public Utility Commission. Alderman Herzfeld made a motion to approve Resolution 58 of 2016 – A Resolution Authorizing the Manager of the Sewer Department to Make Certain Sewer Connections Outside the Corporate Limits of the City of Benton, Arkansas; and For Other Purposes. Seconded by Alderman Ponder. The resolution was read by the city clerk. This is along Alcoa Road for Almatris. The Mayor asked for any comments. Randy Hawkins stated Almatris approached the PUC a couple of months ago and it was decided that it would be advantageous to attach only the domestic waste from the breakrooms. They have approximately 100 employees. They will be installing a lift station and force main at their expense and maintaining it at their expense. They will be simply discharging into our manhole and we would be receiving approximately 8,000 to 10,000 gallons a day. The Mayor asked that the roll be called. Roll called resulted in Alderman Baptist yes, Alderman Murphy yes, Alderman Cunningham yes, Alderman Reed yes, Alderman Donnor yes, Alderman Ponder yes, Alderman Hart absent, Alderman Herzfeld yes, Alderman Lee yes, and Alderman Terrell absent. Resolution 58 of 2016 was adopted with 8 affirmative and 2 absent votes.

Alderman Ponder was recognized for the Advertising and Promotion Commission report. He stated that he had nothing to report, but gave the city clerk the minutes from the previous commission meeting to be included in the packets. See attached.

There was not any unfinished, new or old business.

The Mayor stated that there is a groundbreaking ceremony Wednesday for McLarty Nissan. Savor the Flavor is October 6th. Old Fashioned Day is October 8th. The Fire Station bids are due in next week. The negotiation for the Boys & Girls Club lease is coming along. Danny Ketchum is now doing all the building maintenance issues. The Mayor introduced Tim Tennant as the new Community Development Director. The new website should be online by the end of October.

The meeting adjourned at 7:34 pm.

Cindy Stracener, City Clerk

David Mattingly, Mayor

PROCLAMATION

WHEREAS, The Pink Ribbon reminds us that breast cancer is the most common cause of cancer and the second most common cause of cancer deaths in the United States. However, when breast cancer is detected in its earliest stages, there can be a 95 percent survival rate; and

WHEREAS, According to the Arkansas Affiliate of Susan G. Komen Breast Cancer Foundation, one in three counties in Arkansas does not have a fixed mammography facility and this creates a barrier for many women to easily access mammography, thereby possibly increasing their mortality rate; and

WHEREAS, It is estimated that in the United States, 206,126 women and 3,268 men will be diagnosed with breast cancer during 2016, and approximately 47,541 women and 826 men will die of the disease. In Arkansas this year, an estimated 2,984 new cases will be detected and will result in 725 deaths; and

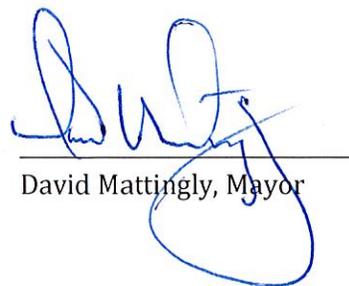
WHEREAS, October is National Breast Cancer Awareness Month, and the Arkansas Affiliate of Susan G. Komen is designating October 7th as Go Pink for the Cure Day to bring about awareness of the importance of mammography and to renew its commitment to removing obstacles that prevent women from seeking mammograms.

NOW THEREFORE, I DAVID MATTINGLY, acting under my authority as Mayor of the City of Benton, Arkansas, do hereby proclaim October 7, 2016, as

GO PINK FOR THE CURE DAY

in the City of Benton, and urge my fellow citizens to join me in helping to promote efforts for the prevention and treatment of this deadly disease. In testimony whereof, I have hereunto set my hand and caused the Seal of the City of Benton, Arkansas, to be affixed at City Hall this 26th day of September in the year of our Lord, two thousand and sixteen.




David Mattingly, Mayor

	A	B	C	D
1		PETITION		
2				
3	Re: Rezone request for Neely Street SBDI property From R1 - 7.5 to RM - 1.6			
4	Community Services/Animal Control	Aldermoman Reed		
5				
6	ORDINANCE NO. 41 OF 2016			
7	AN ORDINANCE REZONING CERTAIN LAND IN THE CITY OF BENTON, SALINE			
8	COUNTY, ARKANSAS, DECLARING AN EMERGENCY, AND FOR OTHER PURPOSES			
9				
10	Signature	Print Name	Address	Date
11	<i>[Signature]</i>	Bob	1110 Neely	9-23-16
12	<i>[Signature]</i>	Roy W. Haddock	912 Reed St.	9-23-16
13	<i>[Signature]</i>	Tom Allen	920 Reed	9-23-16
14	<i>[Signature]</i>	Shanequa Lewis	926 Reed St	9-23-16
15	<i>[Signature]</i>	L.O.S. Hambrey	1306 Reed St.	9-23-16
16	<i>[Signature]</i>	Tricka Bradshaw	1317 Concord St	9-23-16
17	<i>[Signature]</i>	Chaslett Peterson	1119 Reed St	9-23-16
18	<i>[Signature]</i>	Debrae Lounica	1119 Reed St	9-23-16
19	<i>[Signature]</i>	Johnny W. Thom	1119 Reed St	9-23-16
20	<i>[Signature]</i>	Taimalcolm Morgan	1307 Reed St.	9-23-16
21	<i>[Signature]</i>	Cassandra Winters	1207 Reed St.	9-23-16
22	<i>[Signature]</i>	Karen L. Huie	1251 Apostles Cove	9-23-16
23	<i>[Signature]</i>	Brenda Clay	1115 Central	9-23-16
24	<i>[Signature]</i>	Kimberly Dwyer	901 Ridge Rd.	9-23-16
25	<i>[Signature]</i>	SPIND KORDIN	903 Ridge Rd	9-23-16
26	<i>[Signature]</i>	STEPHIE LAVENDUSKY	907 Ridge Road	9-23-16
27	<i>[Signature]</i>	Michael Yaw	913 Ridge Rd	9-23-16
28	<i>[Signature]</i>	Tina Walker	1422 Crest Benton	9-23-16
29	<i>[Signature]</i>	MAK DAVIS	291 Ridge Road	9-23-16
30	<i>[Signature]</i>	MIDNIGHT SWIMMERS	1298 Ridge Rd	9-23-16
31	<i>[Signature]</i>	Richard Finkler	305 S 3rd St Benton	9-23-16
32	<i>[Signature]</i>	Margaret Howard	1297 Ridge Rd	9-23-16
33				

	A	B	C	D
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2				
3	Re: Rezone request for Neely Street SBDI property From R1 - 7.5 to RM - 1.6			
4	Community Services/Animal Control	Aldernwoman Reed		
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7	AN ORDINANCE REZONING CERTAIN LAND IN THE CITY OF BENTON, SALINE			
8	COUNTY, ARKANSAS, DECLARING AN EMERGENCY, AND FOR OTHER PURPOSES			
9				
10	Signature	Print Name	Address	Date
11		LeRoy Bylesby	111 Henry Benton	9-26
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BENTON ADVERTISING & PROMOTION COMMISSION

Minutes

September 15, 2016

I. CALL TO ORDER

Chairman Mark Fikes called the regularly scheduled meeting of the Benton Advertising & Promotion Commission to order on September 15, 2016 at 4:03 pm in the boardroom of the Benton Area Chamber of Commerce.

II. ROLL CALL

Commissioners in attendance included: Alison Burch, Bill Donner, Bill Eldridge, Jerry Ponder, Mark Fikes, Elgin Hamner IV, and Luke Moody.

III. MINUTES

Luke Moody made a motion to approve the amended minutes of the May 19, 2016 meeting. Elgin Hamner IV seconded. Motion carried.

Luke Moody made a motion to approve the minutes of the August 18, 2016 meeting. Bill Eldridge seconded. Motion carried.

IV. REPORT FROM BENTON EVENT CENTER

Director Nikki Chumley reported that Rhea Lana has just moved out. During the last month we have had several education and CHI St. Vincent meetings. There were 1600 women in the building over the weekend for a Ladies' Retreat.

V. OLD BUSINESS

A. *Update on Compensation and Job Description for Collector*

Jerry Ponder reported that he had spoken with both the City Attorney and the City Clerk about those businesses who are operating outside the law by not paying A&P taxes. It is the City Attorney's opinion that the A&P Chairman should send a certified letter informing the business owner that he has 10 days to come into compliance. If the business does not respond positively, the City Attorney will file for non-compliance.

He spoke with the City Clerk and the City Attorney about the possibility of tying the Privilege License with the A&P Permit for the hospitality businesses. The City Attorney will check into this.

The commissioners felt the letter should be drafted by the City Attorney.

B. *Election of Commissioners*

We have received two letters expressing interest in the two positions that will become vacant on the Commission on October 10. Jerry Ponder made the motion that Bill Eldridge's name be submitted for the At-Large position and that Luke Moody's name be submitted for the Hospitality position to the City Council. Bill Donnor seconded. Motion carried.

VI. NEW BUSINESS

Event Center Nikki Chumley presented a suggested Outside Rental & Replacement Schedule for Event Center items. After discussion, Jerry Ponder made the motion to implement the pricing schedule for items taken off site. Elgin Hamner IV seconded. Motion carried.

VII. FUNDING REQUESTS

A funding request for Old Fashion Day was presented for its first reading.

VIII. ADMINISTRATIVE

None

IX. FINANCIAL REPORTS

The financial reports were presented by Gary James. Both the Commission and the Event Center are above budget for the year. A&P shows a net income of \$7,971.19 for the year and the Event Center shows a net income of \$138,187.14 for the year.

X. OTHER BUSINESS

None

XI. ADJOURNMENT

The meeting was adjourned on the motion of Luke Moody at 4:45 pm.

Mark Fikes
Chairman

Jerry Beaty
Recording Secretary

PROCLAMATION

WHEREAS: The City of Benton Lights and Waterworks (Benton Utilities) was created in 1916 by the citizens of Benton; and

WHEREAS: Today, one hundred years later, our utilities directed by the Public Utilities Commission, continue to work to serve the great City of Benton employing sound business practices designed to ensure the best possible service with the highest quality of product; and

WHEREAS: The utility services provided by the Benton Utilities have helped the community develop into a thriving "City of Excellence"; and

WHEREAS: Benton Electric provides a valuable community asset that contributes to the well-being of the community with reliable, efficient, and cost-effective electricity; and

WHEREAS: Benton Water provides pure water, the most basic and essential resource needed by every living creature, through safe drinking water and water source protection; and

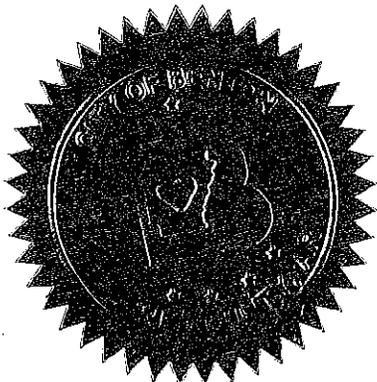
WHEREAS: Benton Wastewater provides a valuable community asset that contributes to the well-being of the community; and works to eliminate disease-causing bacteria and to protect the environment for human and aquatic life; and

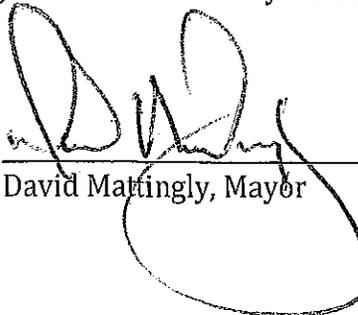
WHEREAS: The mission of the Public Utility Commission and Benton Utilities is to "provide its customers with efficiently managed and operated electric, water, and wastewater services at competitive rates and to methodically establish and maintain a strategy for not only meeting current needs, but address the future demands the City's anticipated growth may place on the system"; and

WHEREAS: Dependable electric, water and wastewater services are provided to over fourteen thousand homes and businesses; now

THEREFORE: I, David Mattingly, Mayor of the City of Benton, do hereby recognize Benton Utilities on the occasion of its 100th anniversary and call the observance to the attention of our citizens.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Executive Department, to be affixed this ____ day of October in the year of our Lord two thousand and sixteen.





David Mattingly, Mayor

ORDINANCE NO. 49 OF 2016

AN ORDINANCE AMENDING THE 2016 BUDGET FOR THE GENERAL FUND AS ADOPTED IN ORDINANCE 64 OF 2015; TRANSFERRING FUNDS FROM THE SAFETY AND STABILITY FUND; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES

WHEREAS, the city has determined it should transfer funds from the Safety and Stability Fund, which holds excess unpledged funds, to the General Fund to account for repairs which will be made to the Palace Theater that are of an urgent nature and are needed to stabilize the structure; and

WHEREAS, the City Council needs to amend the 2016 Budget to account for this transfer and this expenditure.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENTON, ARKANSAS:

SECTION 1: Pursuant to the authority granted in A.C.A. 14-58-202 and 14-58-203 the City Council does hereby amend the FY2016 City of Benton Budget as adopted in Ordinance 64 of 2015. The revised expenditures for the operations of the city are attached hereto as Exhibit "1" to this ordinance and are more fully described therein. The adoption of this amendment shall be deemed as an appropriation pursuant to the foregoing statutes as well as any other applicable ordinance of the city.

SECTION 2: The Mayor is hereby authorized to pay the cost of the repairs to the Palace Theater once the project has been bid and the project let to the lowest acceptable bidder.

SECTION 3: It is hereby found and determined that there is an immediate need to amend the budget to transfer funds to the General Fund from the Safety and Stability Fund to secure funding to make urgent repairs to the Palace Theater. Therefore, an emergency exists and this ordinance is necessary for the preservation of the public peace, health and safety. It shall be in full force and effect immediately from and after its passage and approval.

PASSED AND APPROVED this the _____ day of October, 2016.

David Mattingly, Mayor

Cindy Stracener, City Clerk

NOT DESIGNATED FOR PUBLICATION



EXHIBIT "1"

FY2016 Operating Budget

The Finance Committee of the City of Benton does hereby submit for approval a budget amendment for the Fiscal Year 2016. This submittal includes a revision for the General Fund.

Section 1 defines the dollar amount of the amendments contained in this exhibit.

Section 2 is a detailed explanation of the amended Funding and Disbursements that make up this Fiscal Year 2016 budget amendment.

Section 1: Amended Appropriations – Fiscal Year 2016

General Fund

	Beg Approved Amt	Amendment	End Revised Amt
Receipts	\$16,107,285	-0-	\$16,107,285
Personnel	\$11,844,552	-0-	\$11,844,552
Operations & Maintenance	\$3,101,582	\$175,000	\$3,276,582
Capital Items	\$1,326,333	-0-	\$1,326,333

Section 2: Funding & Disbursements - Fiscal Year 2016

General Fund

Source of Funding

Resolution 39 of 2016 approved for up to \$175,000.00 to be transferred from the restricted Financial Stability fund (131.920.10.00) to the General Operating fund (130.320.10.00) for renovation and stabilization costs for the Palace Theater.

O&M

This budget amendment allows for the renovation and stabilization expenditures for the Palace Theater in the amount of \$175,000.00 (740.410.11.01) in the Elected Officials Department.

ORDINANCE NO. 50 OF 2016

AN ORDINANCE WAIVING CONSTRUCTION RELATED FEES FOR THE CONSTRUCTION OF THE HIGHWAY 5 FIRE AND POLICE SUBSTATION; AND FOR OTHER PURPOSES.

WHEREAS, the City Council of the City of Benton, Arkansas has assessed certain fees which are to be charged for the issuance of building permits, conducting inspections, and storm-water fees which are associated with the construction of buildings; and

WHEREAS, the City of Benton has been saving funds from the collection of the Public Safety Tax for the construction of a new fire and police substation on Highway 5 and is now ready to proceed with this project; and

WHEREAS, the City Council, in order to reduce the cost of the construction, desires to waive the hereto for stated fees which are associated with this project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENTON, ARKANSAS:

SECTION 1. All building permit fees, inspection fees, and storm-water fees for the construction of the fire and police substation on Highway 5 are hereby waived.

SECTION 2. All other ordinances in conflict with this Ordinance are hereby repealed to the extent that such a conflict exists, but not otherwise.

PASSED and APPROVED this the _____ day of _____, 2016.

David J. Mattingly
Mayor

Attest:

Cindy Stracener
City Clerk

RESOLUTION NO. 59 OF 2016

A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH CBJ VENDING TO PROVIDE VENDING SERVICES FOR THE PARKS DEPARTMENT; AND FOR OTHER PURPOSES

WHEREAS, the City of Benton published a Request for Proposal for vending services for the Benton Parks and Recreation Department; and

WHEREAS, the RFP stated the services would be provided for one year at which point the services could be extended for an additional four one year periods; and

WHEREAS, the City wishes to enter into a one (1) year agreement with CBJ Vending to provide vending services for the Parks and Recreation Department.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benton, Arkansas, that:

SECTION 1: The Mayor and City Clerk are hereby authorized to execute, on behalf of the City of Benton, a one (1) year contract with CBJ Vending for providing vending services for the Parks Department as stated in the RFP. The City Attorney will approve the contract before the execution.

PASSED AND APPROVED this the _____ day of October, 2016.

David J. Mattingly, Mayor

Cindy Stracener, City Clerk

City of Benton

Parks and Recreation

Purchasing Department

114 S. East Street

Benton, AR 72015

Vending Machine Proposal

Submitted by:

CBJ Vending

605 Miller Cove

Benton, AR 72019

501-249-0265

Razrbax58@sbcglobal.net

September 28, 2016

City Of Benton
Purchasing Department
114 S. East Street
Benton, AR 72015

RE: Vending Services Proposal

Selection Committee: Brent Davis

I appreciate the opportunity to offer you a proposal for vending services. As we discussed CBJ Vending is a locally owned and operated vending company that specializes in customer service. I believe we can offer you a quick response and personalized service that is unmatched by the large vending companies.

Included in this proposal is an equipment listing as well as pricing information. I am committing that our pricing structure will remain the same for at least one year. We will not increase prices without meeting with you or your representative and receiving approval before any increases would go into effect.

I'm sure you know how much we appreciate this opportunity but allow me to reassure you of how hard we will work to earn your business and provide you and your associates with quality service.

If you have any questions regarding this proposal please call me at (501) 249-0265.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Baxley', is written over the 'Sincerely,' text.

CBJ Vending
David Baxley, President
605 Miller Cove
Benton, AR 72019
Razrbax58@sbcglobal.net
501-249-0265

FIRMS QUALIFICATIONS

CBJ Vending currently provides vending services to 85 locations mostly comprised of customers located within Saline and Pulaski County. We serve customers at schools, trucking companies, banks, physicians' offices, retirement homes as well as numerous other types of locations. The owner of CBJ Vending has been in the industry since 1978 and has performed every job associated with vending pertaining to snack and drink services. We also have approximately 50 years of combined service with our other service and support staff. CBJ Vending has been in business for over 25 years but has been owned and operated by David and Theresa Baxley for the past ten years. We are located in Benton and plan to remain in this market since this allows us the luxury of being able to respond quickly to our local customers.

EXPERIENCE AND REFERENCES

David Baxley, Owner and President of CBJ Vending has worked exclusively in the vending industry since 1978. He started out as a route person and rose through the ranks as a Service Manager, General Manager and Vice President. He was responsible for approximately 150 employees, business across four (4) states and numerous acquisitions of other vending companies.

Theresa Baxley has worked 35 years within and outside the vending industry, she handles all administrative duties as well as customer service. She holds a bachelor's degree in Business Administration from the University of Arkansas at Little Rock.

We currently provide services to numerous types of customers including City of Little Rock, Bishop Park, St. Vincent Clinics, Arvest Banks, First Security Banks, Arkansas Barber College, Landers Auto Dealerships, Hilbilt, Scott Equipment and many others.

REFERENCES

City of Little Rock
Rick Warfield, Parks and Recreation
501-993-8513

Provide snack machine services to city golf courses, fitness center and all-purpose building.

Drumco
Dan Hodson – Plant Manager
501-860-3005

Provide snack, drink and cold food machine services to their manufacturing facility.

Landers Auto Dealerships
Rodney Plack – Area Vice President
Cheryl Cook – Executive Assistant
501-517-6219
Provide snack and drink machine services to their facilities.

Equipment

River Center 1 Snack Machine

Youth Softball Complex 1 Snack Machine

- Gene Moss Building 1 Snack Machine
- Splash Pad @ Tyndall Park 1 Snack Machine
 - Others as negotiated
- Denotes locations that we will be willing to negotiate placement of machines if all requirements are met and satisfactory to both parties.

I our look forward to working closely with you to provide the best solution for your vending needs.

PRICING/COMPENSTION

CBJ Vending suggests the following pricing structure to ensure fair pricing to all employees.

PRODUCT	PRICE
Chips Large	\$0.85
Chips (Small)	\$0.65
Crackers	\$0.65
Candy	\$1.00
Pastry	\$1.00
Cookies	\$0.85
Gum & Mints	\$0.50
Popcorn	\$0.85

Compensation

CBJ Vending proposes a 20% commission return to the City of Benton.

Commission will be paid on all net sales. Net sales are defined as gross sales minus all applicable sales tax. Commissions can be paid monthly or quarterly, a statement will be provided with each payment to ensure accountability of all locations.

Scope of Work

**CBJ Vending has examined the scope of work and agrees to meet all conditions
and requirements as described within the:**

RFP#: Sealed RFP - Vending Machine – Snack

TITLE: Vending Machine Services

DATE: September 18, 2016

RESOLUTION NO. 60 OF 2016

A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH THE BOYS & GIRLS CLUB OF SALINE COUNTY, INC. FOR PROVIDING CERTAIN RECREATIONAL SERVICES TO THE YOUTH OF BENTON; AND FOR OTHER PURPOSES

WHEREAS, the City Council of the City of Benton, Arkansas has as a function of city government an obligation to provide appropriate recreational services for the young people in our community; and

WHEREAS, the Boys & Girls Club of Saline County, Inc. is a non-profit corporation which has provided youth recreational services in the Benton community since 1969; and

WHEREAS, the City of Benton desires to enter into a program agreement with the Boys and Girls Club of Saline County, Inc. for providing these types of services to the youth in Benton for the years 2016 through 2018.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benton, Arkansas, that:

SECTION 1: The Mayor and City Clerk are hereby authorized to execute, on behalf of the City of Benton, the Program Agreement with the Boys & Girls Club of Saline County, Inc. The contract is attached hereto as Exhibit "1" and is incorporated now by reference as if stated word for word.

PASSED AND APPROVED this the _____ day of October, 2016.

David J. Mattingly, Mayor

Cindy Stracener, City Clerk

**Benton Parks Department
2016-2018 Program Agreement**

THIS AGREEMENT made and entered into on _____, ___, 2016 by and between the CITY OF BENTON, (hereinafter called "THE CITY"), and the Boys & Girls Clubs of Saline County, Inc., a non-profit corporation, D/B/A the Benton Boys and Girls Club, 105 Cox Street, Benton, Arkansas 72015 (hereinafter called "BBGC").

WITNESSETH

WHEREAS, THE CITY owns property at Riverside Park in Benton, Arkansas;

WHEREAS, the use of a portion of said property for the purpose of a youth program has been considered the best use of this property to better serve the citizens of Benton, Arkansas which property includes particularly, without limitation, the 52,172 square feet, more or less, of separate building space designated as for use as the Boys and Girls Club (the "BBGC Space");

WHEREAS, THE CITY in addition to the BBGC Space designated above, owns or leases certain soccer fields within the city park system, to which BBGC shall also be granted use and access. This shall include but shall not be limited to, Riverside Park and C.W. Lewis Stadium (the "Soccer Fields");

WHEREAS, THE CITY provides RECREATIONAL facilities in Benton;

WHEREAS, BBGC provides program administration and operation of a youth program in Benton;

WHEREAS, providing recreational activities and services for the youth of THE CITY is an appropriate governmental function;

WHEREAS, the BBGC access to the BBGC Space to provide youth services on behalf of the City of Benton is an appropriate and beneficial use of that space and facilities to further the City's youth programs;

WHEREAS, the BBGC Space provided for under this Program Agreement will be for a period of three years, and covers the remaining term of fiscal year 2016, covers 2016, 2017 and 2018;

WHEREAS, it is anticipated that youth services will be needed within the City of Benton beyond fiscal year 2018, and assuming that THE CITY has a need to provide recreational youth services and assuming that the use of the BBGC Space by the BBGC is in the best interest of THE CITY

at the end of the three year term, it is anticipated that this Program Agreement be renewed by Resolution duly passed by the City Council during fiscal 2018;

WHEREAS, Benton City Council anticipates needing Youth Services within the City of Benton and anticipates reviewing the provision of those services by the BBGC on at least an every three year term hereafter; and

WHEREAS, the BBGC and the City's utilization and maximization of the BBGC Space benefits the City by maximizing youth access and youth activities with the least economic costs to the City.

NOW, THEREFORE, in consideration of mutual covenants and promises set forth herein, the parties agree as follows:

THE CITY agrees to grant use of the BBGC Space as outlined herein to BBGC for the operation of youth services. The BBGC Space will be used by BBGC for programs and events provided for youth of THE CITY.

I. Areas allowed for BBGC use, Terms affecting such use and Relationship of the Parties:

1. BBGC shall be permitted to use, upon payment of an annual fee of \$1.00 which does not cover the cost of monthly utilities (i.e. electricity and water/sewer expense), said facilities in sole consideration for the programs and services BBGC provides to the City's youth. Such programs and services shall be operated in accordance with such guidelines as shall be deemed appropriate. THE CITY will provide maintenance of the BBGC Space in like manner and consistent with the support extended to other associations operating on City property, including normal wear and tear. The City agrees to allow BBGC use of the BBGC Space. Building maintenance by the City does not include repairs for property damage caused by BBGC or its members. Regular maintenance for items that break due to normal wear will be replaced or repaired by the City, but if the damage is created or caused by abuse, neglect, or other human activity by the members or volunteers of the BBGC, the BBGC will be responsible for the costs of such repairs or replacement. Improvements made or installed by the BBGC are the BBGC responsibility to maintain, repair and/or replace.

2. The parties agree that THE CITY shall have no authority to direct the day-to-day activities of any BBGC's employees, shall have no authority over BBGC's personnel decision, or the day-to-day conduct of the services and programs provided to the youth of Benton.

3. It is agreed that THE CITY has no financial interest in the business of BBGC and shall not be liable for any debts or obligations incurred by BBGC, nor shall THE CITY be deemed or construed to be a partner, joint venture or otherwise interested in the assets of the BBGC, or profits earned or derived by the BBGC, nor shall BBGC at any time or times use the name or credit of THE CITY in purchasing or attempting to purchase any equipment, supplies, or other thing or things whatsoever.

4. BBGC, in the performance of its operation and obligations hereunder, shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense as THE CITY may from time to time request to indicate that BBGC is an independent contractor. THE CITY does not and will not assume any responsibility for the means by which or manner in which by BBGC shall be wholly responsible therefore.

5. THE CITY shall have the right to use the BBGC Space at its discretion upon ninety (90) days notification to BBGC. Any request of THE CITY to use the BBGC Space with less than a ninety (90) day notice shall be at the discretion of BBGC to grant. THE CITY does however agree that because of the entertainment booking requirements necessary for the BBGC annual fund raising event, THE CITY will not exercise its ability to use the BBGC Space the week of this event so long as THE CITY has not previously notified BBGC of the right to use the BBGC Space.

6. The BBGC Space shall be open to the public and access to the recreational services provided herein shall be restricted only in ways THE CITY might if it were providing the services itself.

7. BBGC will operate programs in accordance to nondiscrimination and requirements of Title VI of the 1964 Civil Rights Act. BBGC will comply with all federal, state and local laws, including but not limited to the Arkansas Nonprofit Act of 1993. BBGC will also abide by the rules and regulations which are adopted or may be adopted by The City for its parks and recreation areas.

8. It is agreed that the program for which this agreement is written must be made available to the general public to join and participate in and shall be restricted only in ways THE CITY might if it were providing the services itself. It is also agreed that the party sponsoring any community recreation program will furnish and supply all expendable materials necessary for conducting the program.

9. It is further agreed that program personnel must adhere to all provisions of the Americans with Disabilities Act (ADA) that apply to a particular program.

10. Program personnel and participants agree to abide by all Federal, State, and Local laws in addition to the policies of THE CITY pertaining to parks and facilities.

11. It is agreed that the BBGC Space may not be assigned, sub-leased, rented, reserved or loaned to any other group, business, individual, or entity by BBGC. However, without the prior approval of THE CITY, BBGC may rent the BBGC Space on an hourly basis, in blocks of time which shall not exceed eight (8) consecutive hours. The rate charged by BBGC must be no less than the hourly rate charged by THE CITY for comparable space within Riverside Park. All hourly rentals shall be the sole property of BBGC.

12. No alterations, changes, or modifications to change the intended use may be made to facilities by BBGC, without first receiving written approval from THE CITY. The BBGC must submit a detailed request in writing to THE CITY.

13. BBGC must inspect facilities prior to each use. If damage is discovered to equipment of the facility that poses an immediate hazard or danger then BBGC must immediately notify THE CITY. Damaged equipment or facility that does not pose a danger or hazard should be discussed with THE CITY. BBGC must report any vandalism or theft to THE CITY within 24 (twenty-four) hours or next business day.

14. BBGC will control all litter by picking up litter their program creates. The litter must be placed in the proper receptacle by BBGC and then be removed on a regular basis by a contracted trash service. If excessive litter must be picked up after 24 hours of the program by THE CITY, BBGC will be charged \$10 for each individual man hour worked.

15. BBGC is responsible for costs of repair and/or replacement of facilities or infrastructure due to weather damage to water lines, pumps, etc. if the BBGC requests that the water be turned on before THE CITY deems acceptable due to weather conditions.

16. At the request of CITY, BBGC will remove all their equipment that is not a fixture to the premises, at the termination of this agreement. The Parties may agree to extend the time for removal of non-fixture type items by separate written instrument.

17. Two keys to the BBGC Space will be given to the Director of the BBGC. Duplicate keys shall only be given to employees.

18. Permanent improvements to facilities will become property of THE CITY. Permanent fixtures include, but are not limited to all: concrete work, fences, underground installations, sprinkler heads, structural work, lighting fixtures, and drinking fountains.

1. BBGC shall maintain insurance in amounts required by federal or state laws and hereby agrees to indemnify and hold harmless The City from any claims, lawsuits, judgments, or settlements brought as a result of the performance of this Agreement or BBGC's provision of services hereunder. The City hereby agrees to indemnify and hold harmless BBGC from any claims, lawsuits, judgments, or settlements brought as a result of the performance of this Agreement.

2. BBGC assumes full responsibility and liability for damage caused by participants of their programs. Any damage caused will be fixed by BBGC. If the repair is neglected for a long period of time THE CITY will make the necessary repairs and bill BBGC.

3. It is understood that THE CITY will not be liable for any injuries incurred by participants who are participating in activities on or in the BBGC Space. BBGC shall indemnify and hold THE CITY, the City of Benton, and all of its employees harmless against losses, claims, causes of action, and liabilities on account of damage to property or injury to or death of persons arising out of negligent acts by BBGC, its agents, employees, or programs participants.

IV. Severability, Authorization, and Enforceability:

1. In the event any clause, phrase, provision, sentence or part of this Contract or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Use Agreement as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional.

2. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

3. THE CITY may terminate this agreement with 90 days' notice upon a finding, by a 2/3 vote by City Council, that the consideration provided by BBGC in regards to provision of youth services is not being adequately fulfilled, adequately met, or otherwise adequately accomplishing the goals of this program agreement. To effectuate this paragraph's provision, the City Council shall during a regular or special meeting adopt a Resolution of Intent to terminate this program agreement by a 2/3 vote of the Council. The City agrees that any such vote must occur before the 90 day written notice can be submitted. The City agrees that for the City Council to take such an action, all notice provisions under Arkansas Law for regular or special meetings must be complied with prior to any such meeting calling for such Resolution to exercise this paragraph's provision. Further, the City shall notify, via the notification provisions within this agreement, the Director of the BBGC of the Resolution of Intent to terminate this

program agreement at least 48 hours before any Council Meeting to vote on such Resolution of Intent to terminate.

4. In the event that BBGC violates any provision of this agreement, this agreement may be terminated with 30 days' notice; however the City reserves the right to provide 30 days for BBGC to correct the violation at the City's reasonable discretion. In the event that City funds or facilities are used fraudulently, fraudulently accounted for, fraudulently spent, or otherwise illegally disposed of, the City may terminate this agreement with 30 days' notice. The City reserves the right to provide BBGC 30 days to remedy the illegal or fraudulent use of City funds, but the City has no obligation to allow such remedy period. Any termination or opportunity to remedy under this paragraph shall occur after the City Council votes to terminate or allow remedy of the violation. Any Council action will be at a regular or special called meeting and only after appropriate notice of such Council meeting is provided for under Arkansas Code and City Resolutions governing the calling of meetings.

5. This Program Agreement will be in effect from its date of execution through the remaining fiscal 2016 year, covering fiscal 2016, 2017 and 2018 and terminating on December 31, 2018. Assuming that THE CITY has a need to provide youth services and assuming that the use of the BBGC Space by the BBGC is in the best interest of THE CITY at the end of a three year term, it is anticipated that the Program Agreement will be renewed for an additional three year term by Resolution of the City Council to continue allowing the BBGC to provide youth services in THE CITY through utilization of the BBGC Space as defined herein. Nothing herein shall be construed as legally obligating THE CITY to renew the Program Agreement for an additional three-year term.

6. Any changes in programs or uses by BBGC will be provided to THE CITY via a written notice provided at least 30 days prior to any such change in program or use of the facilities governed under this Use Agreement.

7. Any amendment, alteration or change in this agreement, other than as provided for in paragraph IV.(3) and (4) above will only be effective by the mutual assent of both parties and will be effective when reduced to writing signed by both parties and attached to this original agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in their behalf and supersede any and/or all previous agreements, contracts, or leases.

Dated this ____ day of _____, 2016.

City of Benton,
A municipal Corporation, First Party,

_____, Mayor David J. Mattingly
Attest:

_____, City Clerk, Cindy Stracener

[SEAL]

Boys & Girls Club of Saline County, Inc.
User Organization, Second Party,

_____, Jasen Kelly/Executive Director

MEMORANDUM

TO: Brent Houston
FROM: J. Shepherd Russell, III
DATE: February 20, 2014

If a city desires to lease facilities to a nonprofit corporation, such as a Boys and Girls Club or a senior adult group, the following should be considered when drafting the lease between the city and the nonprofit corporation (the "Lease"):

1. Term of Lease. Article 12, Section 5 of the Arkansas Constitution prohibits a city from donating facilities to a private, nonprofit corporation. Consequently, the term of the Lease should be short. If the Lease term is short, then it is more difficult to argue that the facilities have been given to the nonprofit corporation. A short Lease term also allows the city to reclaim the bond-financed facilities from the nonprofit corporation and provide the services itself if it chooses to do so in the future. The Lease cannot be viewed as a donation of public assets.

2. Consideration. Article 12, Section 5 of the Arkansas Constitution also prohibits a city from contributing to a nonprofit corporation. However, a city can contract with a nonprofit corporation so long as the contract is supported by adequate consideration and serves a proper governmental end. The only consideration for the Lease should be the services that the nonprofit corporation will provide. Attorney General Opinion No. 2001-135 (the "Opinion") states that "[t]o the extent, then, that the provision of recreational services for young people is an appropriate governmental function, the [governmental entity] might contract for its performance by say, a Girls' Club or Boys' Club."

The City should make an express finding in the Lease or the ordinance approving the Lease that the services provided by the nonprofit corporation (e.g., recreational services for young people, services for senior adults, etc.) are an appropriate governmental function.

The Opinion also states that a contract between a city and a nonprofit corporation can restrict access to services only in ways the city might if it were providing the services itself. The Opinion stresses that "public access" is necessary and all youth of the City should have access to the facilities.

3. Use by City. A city should be able to use the facilities leased to the nonprofit corporation for meetings or other events. Again, the Lease should not be a donation of public assets.

In my opinion, the answer to your first question is "no." The answer to your second question will depend on the precise terms of the proposed "joint operational and use agreement." The crucial issue will be whether the agreement is supported by adequate consideration. As a general proposition, absent sufficient consideration, I do not believe the city may expend public funds to provide a particular benefit to the members of a private, nonprofit corporation. With respect to your third question, I believe providing recreational services exclusively to a private club's members is constitutionally suspect, regardless of whether that membership is broadened by the granting of publicly funded scholarships. Accordingly, I believe that any contract of the sort you propose should definitely require "other types of public access."

Question 1: Can the City of Fayetteville appropriate 2 mills for two years (approximately 2.3 million dollars) and give this money to the Fayetteville Boys and Girls Club, Inc. (an independent, [*3] non-profit corporation) for their use to assist in the construction of a new facility on their land?

No. Mr. Williams indicates in his correspondence that he has reviewed the enclosed Ark. Op. Att'y Gen. No. 1999-408, in which I discuss in some detail the history of the Arkansas Supreme Court's pronouncements on the issue of municipal donations to private organizations. As I noted in that opinion, the leading case of *Halbert v. Helena-West Helena Industrial Development Corp.*, 226 Ark. 620, 625-26, 291 S.W.2d 802 (1956) "establishes beyond all question that a municipality cannot contribute to a private, nonprofit corporation regardless of whether the corporation serves a 'public purpose.'" The court in *Halbert* based this conclusion on Ark. Const. art. 12, § 5, which provides in pertinent part: "No county, city, town or other municipal corporation shall . . . appropriate money for, or loan its credit to, any corporation, association, institution or individual." Applying *Halbert*, I concluded in my previous opinion that A.C.A. § 23-111-509(e)(2)(C) is unconstitutional in providing [*4] that specified public funds "shall be made available to and used by the Girls' Club and Boys' Club or similar nonprofit charitable organizations . . ." I believe this same conclusion would apply to any city ordinance levying a tax for the benefit of the Fayetteville Boys' and Girls' Club, Inc.

Question 2: Can the City of Fayetteville build on its own land adjoining the new Boys and Girls Club, a parking lot and playing fields and enter into a joint operational and use agreement with the Boys and Girls Club for access to the parking lot and playing fields?

I cannot answer this question without knowing the terms of the proposed "joint operational and use agreement." As a general proposition, answering this question will entail applying the principles I summarized at the conclusion of Ark. Op. Att'y Gen. No. 1999-408:

Nothing in the constitution precludes the county from contracting with a private nonprofit charity, so long as the contract is supported by adequate consideration and serves a proper governmental end. Cities and counties clearly can enter into contracts that are supported by valid consideration. *See* Ops. Att'y Gen. No. 98-025 and 97-250; A.C.A. § 14-54-101(2) [*5] ; *City of Ft. Smith v. Bates*, 260 Ark. 777, 544 S.W.2d 525 (1976); *City of Harrison v. Boone County*, 238 Ark. 113, 378 S.W.2d 665 (1964). Moreover, this authority includes the power to contract with nonprofit organizations. *See Woodruff v. Shockey*, 297 Ark. 595, 764 S.W.2d 431 (1989). Such contracts have been upheld as not being in violation of Article 12, § 5. *See Arkansas Uniform & Linen Supply v. Institutional Services Corp.*, 287 Ark. 370, 700 S.W.2d 358 (1985). To the extent, then, that the provision of recreational services for young people is an appropriate governmental function, the county might contract for its performance by, say, a Girls' Club or Boys' Club. Again, the decision to undertake such a contract would necessarily be based on factual considerations I am unprepared and unauthorized to review. I advise you to consult with local counsel regarding such matters.

With respect to the issue of consideration, it is well established that a municipal corporation may convey public property [*6] or an interest therein based upon consideration other than money. *See, e.g., City of Blytheville v. Parks*,

221 Ark. 734, 255 S.W.2d 962 (1953) and *Little Rock Chamber of Commerce v. Pulaski County*, 113 Ark. 439, 168 S.W. 848 (1914). As my predecessor noted in Ark. Op. Att'y Gen. No. 96-351:

The Arkansas Supreme Court has held that even non-monetary consideration can be adequate if a "public advantage" will result from the lease. In *City of Blytheville v. Parks*, 221 Ark. 734, 255 S.W.2d 962 (1953), the Arkansas Supreme Court upheld a bond issue used to finance the purchase of land which was immediately thereafter conveyed to the federal government without money consideration. The court held that "public advantage" constituted consideration. The court held that there was not a true "donation" of the land, because 1) there were many benefits which the city would receive in terms of increases in business and population, and 2) the city included a reverter clause in the deed which required that the land be returned to the city (greatly improved) [*7] if it ceased to be used for the purposes of the grant.

I am neither authorized nor equipped to opine whether the "joint operational and use agreement" referenced in your request would be supported by adequate consideration under this standard. Only a finder of fact could make this determination based upon a close review of the agreement itself. However, I believe the agreement might well be constitutionally suspect if it merely provided that the city, in exchange for nominal consideration, would construct facilities to which dues-paying members of the Boys' and Girls' Club would have some privileged access. In my opinion, a finder of fact might well interpret such an agreement as a disguised, impermissible donation of public assets to a private charitable organization. Given the apparent absence of an actual draft agreement, I can offer no more on this issue.

*Question 3: Can the City contractually agree with the Boys and Girls Club to provide operating funds for its recreational programs even if access to this facility and the Boys and Girls Club organization requires membership dues? Should our monetary support require "public" access to the facility by funding scholarships [*8] for Fayetteville youths or requiring other types of public access?*

Again, determining the enforceability of any such contractual agreement will entail a factual inquiry I neither can nor may undertake. However, I am struck by the fact that the first of your two questions recites no consideration flowing from the Boys' and Girls' Club to the city. If you are asking whether the city can simply provide a private, nonprofit charitable corporation with operating funds to conduct recreational programs for its paying members, I believe the clear answer is "no." In my estimation, any such agreement would be tantamount to an impermissible donation of public money. Moreover, I strongly doubt the constitutional infirmity of any such agreement could be remedied by "funding scholarships for Fayetteville youths" - at least not if eligibility for the scholarships were restricted to any meaningful extent.

I agree with your implied concession that "public access" would be a crucial consideration in an agreement of the sort contemplated. In this regard, I feel obliged to repeat one sentence from the previous opinion excerpted above: "*To the extent . . . that the provision of recreational [*9] services for young people is an appropriate governmental function, the county [or city] might contract for its performance by, say, a Girls' Club or Boys' Club.*" Ark. Op. Att'y Gen. No. 1999-408 (emphasis added). On its face, it would generally appear that providing youth recreational services is a laudable goal well within the city's discretion. As a theoretical proposition, providing recreational services to a limited group of the city's youth - say, at-risk minority children - might further be permissible, although determining as much will necessarily involve a factual analysis. However, in the wake of *Halbert*, I can opine that providing recreational services exclusively to a private club's members is not an "appropriate governmental function," regardless of whether that membership is broadened by the granting of publicly funded scholarships. In short, I believe that if the city were to contract with Boys' and Girls' Club, Inc. to provide recreational services to the city's youth, the contract could restrict access to those services only in ways the city might if it were providing the services itself. Accordingly, my response to the second part of your question is that [*10] the city should most definitely require "other types of public access" if it contracts with Boys' and Girls' Club, Inc.

Assistant Attorney General Jack Druff prepared the foregoing, which I hereby approve.

Legal Topics:

For related research and practice materials, see the following legal topics:

GovernmentsLocal GovernmentsFinancePublic Contracts LawTypes of ContractsLocal Contracts GenerallyReal
Property LawEstatesFuture InterestsReverter & Reversions

RESOLUTION NO. 61 OF 2016

**A RESOLUTION RATIFYING AND CONFIRMING THE
REAPPOINTMENT OF LUKE MOODY AS COMMISSIONER TO THE
BENTON A&P COMMISSION; AND FOR OTHER PURPOSES**

WHEREAS, the City of Benton created the City of Benton A&P COMMISSION by Ordinance 46 of 2005; and

WHEREAS, in accordance with A.C.A. §26-75-605(d) the Commission desires to reappoint Luke Moody to his term of office which expired October 10, 2016. The new term of office shall be for a term of four years and will expire October 10, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENTON, ARKANSAS:

SECTION 1. Luke Moody is hereby confirmed as a member of the City of Benton A&P COMMISSION. His term of office will expire October 10, 2020.

PASSED AND APPROVED this the _____ day of October, 2016.

David J. Mattingly, Mayor

Cindy Stracener, City Clerk

RESOLUTION NO. 62 OF 2016

**A RESOLUTION RATIFYING AND CONFIRMING THE
REAPPOINTMENT OF BILL ELDRIDGE AS COMMISSIONER TO THE
BENTON A&P COMMISSION; AND FOR OTHER PURPOSES**

WHEREAS, the City of Benton created the City of Benton A&P COMMISSION by Ordinance 46 of 2005; and

WHEREAS, in accordance with A.C.A. §26-75-605(d) the Commission desires to reappoint Bill Eldridge to his term of office, which expired October 10, 2016. The new term of office shall be for a term of four years and will expire October 10, 2020.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENTON, ARKANSAS:

SECTION 1. Bill Eldridge is hereby confirmed as a member of the City of Benton A&P COMMISSION. His term of office will expire October 10, 2020.

PASSED AND APPROVED this the _____ day of October, 2016.

David J. Mattingly, Mayor

Cindy Stracener, City Clerk