

**CITY OF CHEROKEE VILLAGE, ARKANSAS**

**City Council Minutes**

**January 15, 2004**

The monthly meeting was called to order at 7:00 PM Thursday, January 15, 2004 by Mayor Ray Maynard. The meeting was held at City Hall. The Pledge of Allegiance was recited.

**ROLL CALL:**

Answer Roll Call: Charles Bartlett, Russ Stokes, Wally Schultz, Scott Paul, Jim Fenton, Tom Thompson, and Ray Torbit

Also Present: Ray Maynard, Mayor, Susan Maynard, City Clerk/Treasurer, and R. T. Starken

**MINUTES:** Mayor Maynard asked if there were any changes/corrections to the December 18, 2003 minutes. Mrs. Maynard noted a change on page two to correct spelling of the name Creps to Krepps. Motion to approve the minutes as corrected was made by Mr. Torbit and seconded by Mr. Schultz. With a voice vote of seven ayes, 0 nays, motion carried unanimously.

Mr. Torbit called attention to the Mayor that Mr. Hagerman had not been sworn in as Alderman. Mr. Schultz made a motion to allow Mr. Hagerman to set on Council but not vote. Mr. Thompson seconded. With a voice vote of seven ayes, 0 nays, motion carried unanimously.

**TREASURER'S REPORT:** Mrs. Maynard presented the financial statement and answered several questions. She noted that she had not received the L.O.P.F.I. dividend and CD interest; therefore, they are not included in the financials. Also, she noted that the State has determined that cities are making too much money off L.O.P.F.I. and the turn back funds will no longer be sent to cities. The State will keep the funds in an account for the City and when our L.O.P.F.I. funds are depleted the State will deposit funds to cover usage. Mr. Bartlett questioned the fringe benefits on page two of the report. He questioned whether the Mayor was full-time or part-time and if he should have fringe benefits. Mr. Bartlett noted that the Council never gave approval for the Mayor to have fringe benefits. Mayor Maynard noted that this issue had been discussed in a prior council meeting. Barb Blough mentioned that this issue was discussed in either November or December. Mrs. Maynard will check and get copy for Chuck. Motion to accept the report as presented was made by Mr. Thompson and seconded by Mr. Fenton. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll:

Chuck Bartlett, no; Jim Fenton, yes; Russ Stokes, yes; Wally Schultz, yes; Tom Thompson, yes; Ray Torbit, no; and Scott Paul, yes. With a vote of five ayes, two nays motion carried.

**CORRESPONDENCE:**

Mrs. Maynard read a letter from Tom Garner resigning his position as City Attorney.

**COMMITTEE REPORTS:**

Mayor noted that the Police and Road reports were in the agenda packet.

**HOMELAND SECURITY:** Bill Racette reported that today (1/15/03) we received the Attorney General of Arkansas' approval for the interlocal agreement between the county and S.I.D. that allows him to order the \$135,000 worth of equipment delineated in the grant for the Cherokee

Village Fire Department. The grant money is for developing our own hazardous material and decontamination capabilities. Currently, we have to call other agencies that take hours to get here to help in HAZMAT situations. Most of the equipment we will be buying will serve as dual functions for both general fire-fighting and enhance our local efforts to provide fire services for our citizens. (NOTE: The equipment will be used to support the cities in Sharp County as well as all Sharp county residents and the contiguous counties.)

**MUNICIPAL PLANNING AND DEVELOPMENT:** Mr. Fenton reported that they are continuing to work on the Sr. Citizen Center. They have many volunteers to help with the renovation and collecting funds and materials for the center. He noted that we started with an estimated budget of \$20,000 but it appears they will not need that much. They are working on the final plans for the Milwaukee Trade Show. Mr. Torbit asked if the City was paying for the volunteers to go to the trade show. Mr. Fenton noted that several of them had family there and would be staying with them.

**PLANNING & ZONING:** Mr. Thompson reported that P&Z has started to enforce the septic ordinance and the City will be active in inspecting any new/repared systems.

**OLD BUSINESS:**

Phantom Property - Mayor Maynard asked Mr. Starken if the road (Hwy 62/412) constitutes the property by Wee Care to be a part of Cherokee Village. It was originally part of Cherokee Village but is now an island. Mr. Starken stated that it appears to fall within the corporate confines of Cherokee Village. He stated that prior correspondence between Mr. Garner and Judge King does not dispute that it is in Cherokee Village. Mr. Schultz questioned if we could annex the part belonging to the State. Mr. Fenton asked if the businesses in the phantom property collected Highland sales tax. Mayor Maynard noted that has far as he knew they did. Mayor Maynard stated that he would get with the Mayor of Highland to see if they can resolve the issue.

Ash Flat Sign – Mr. Fenton made a motion that we give Ash Flat the courtesy to leave the sign there. Mr. Paul seconded. Mr. Schultz noted that Mayor Maynard had written a letter to the Mayor of Ash Flat stating same. Mr. Thompson stated that he didn't think we should vote on the matter until we received acknowledgment of Mayor Maynard's letter from Ash Flat. Mr. Torbit asked if the letter to Ash Flat was sent registered. Mayor Maynard stated that it was not but he had called and verified the letter had been received. Mayor Maynard asked Mr. Fenton if he would like to withdraw his motion or vote. Mr. Fenton said vote. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll:

Chuck Bartlett, yes; Jim Fenton, yes; Russ Stokes, yes; Wally Schultz, no; Tom Thompson, no; Ray Torbit, no; and Scott Paul, yes. With a vote of four ayes, three nays motion carried.

Mayor Maynard noted that the Senior Citizen Center Funding should not have been on the agenda.

Mr. Bartlett noted that he wasn't here for the December meeting and when he read the minutes he noticed there were only four aldermen present and when he looked at the Municipal League it says that a majority of the whole number of aldermen shall be necessary to constitute a quorum. Mrs. Maynard stated that we had checked with the Municipal League and they stated that it was a quorum of the remaining council members. Mr. Bartlett stated that he had another opinion from Mr. Starken dated 11/17/03 that it is necessary that at least a quorum of the whole number of the

City Council should remain to fill a vacancy. He stated that according to 14-43-501(2)(A) (*A majority of the whole number of aldermen shall be necessary to constitute a quorum for the transaction of business.*) the whole number means the eight aldermen that were suppose to be elected. Mr. Starken stated that 14-43-501(2)(B) (*The mayor shall have a voted to establish a quorum of the city council at any regular meeting of the city council and when his vote is needed to pass any ordinance, bylaw, resolution, order, or motion.*) the Mayor could also be counted to constitute a quorum or when necessary to break a tie. (NOTE: See Section 14-43-411 – Whenever a vacancy shall occur, for any reason, in the office of alderman in ah city of the first class, at any regular meeting after the occurrence of the vacancy, the city council shall proceed to elect by a majority vote of the remaining members elected to the council an alderman to serve for the unexpired term. Provided, however, it is necessary that at least a quorum of the whole number (for CV that would be five) of the city council shall remain in order to fill a vacancy. Also, see Section 14-42-103.)

Ordinance amending the Technical Codes – Mrs. Maynard read the second reading of **An Ordinance to Amend Cherokee Village Ordinance 99-3 Adopting Various Technical Codes Relating to Inspection and Enforcement of Building Provisions as Provided in Said Codes Within Cherokee Village, Fulton and Sharp Counties Adopted February 15, 1999.** Mr. Thompson made a motion to adopt the ordinance. Mr. Stokes seconded. Discussion. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll: Chuck Bartlett, yes; Wally Schultz, yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of seven ayes, 0 nays, motion carried.

Ordinance Establishing the Office of Mayor - Mayor Maynard asked Mrs. Maynard to read the third reading of **an Ordinance Establishing the Office, Duties and Compensation of Mayor for the City of Cherokee Village, Arkansas.** Mr. Fenton made a motion to accept the Ordinance. Mr. Stokes seconded the motion. Discussion – Mr. Bartlett made a motion to strike last sentence of Section 4. No second, motion failed. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll: Chuck Bartlett, no; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of six ayes, one nay, motion carried. Ordinance will be **2004-1.**

Ordinance Establishing the Office of City Clerk/Treasurer - Mayor Maynard asked Mrs. Maynard to read the third reading of **an Ordinance Establishing the Office of City Clerk and Treasurer for the City of Cherokee Village, Arkansas.** Mr. Stokes made a motion to accept the Ordinance. Mr. Fenton seconded the motion. Discussion. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll: Chuck Bartlett, yes; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of seven ayes, 0 nays, motion carried. Ordinance will be **2004-2.**

Budget - Mayor Maynard noted that we only have \$2500 budgeted for Animal Control and that we have an Ordinance stating that the City will take care of the animals. We need a study to determine what kind of budget is needed for Animal Control. We will have to have a public hearing for the budget but will probably not have the Animal Control figures before that hearing. We will have to amend the budget later with the Animal Control amounts. Mr. Schultz made a motion to establish a specific date for a public hearing and finalize the budget. Mr. Paul seconded. After much discussion about the date and how much notice was required to hold a public hearing for the budget

Mr. Schultz revised his motion to establish January 22, 2004 for a public hearing to finalize the 2004 budget. Mr. Paul seconded. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll:

Chuck Bartlett, yes; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of seven ayes, 0 nays, motion carried

Mr. Torbit noted that in November 2003 the Council voted to change the meeting date and time and questioned whether we need to amend the Resolution which established the date and time of the meetings. Mr. Starken stated that if the meeting date and time had been established by a Resolution it would be preferable to amend that Resolution. Mr. Schultz made a motion to amend the Resolution for date and time of the Council meetings. Mr. Stokes seconded. With a voice vote of seven ayes, 0 nays, motion carried.

Mayor Maynard mentioned that discussion that went on during the executive session to appoint the replacement of the open council position has been talked about outside the session and is asking that this be stopped.

Mr. Martin questioned the executive session in which Mr. Hagerman was appointed to the Council. Mayor Maynard stated that this was done by the advice of the Municipal League (ML). Mr. Martin stated that the ML didn't have lawyers to make that determination. Mayor Maynard informed Mr. Martin that the ML did have lawyers and that is what they were there for - to interpret the State law.

Mr. Schultz made a motion that we acknowledge the Cherokee Village Mayor as a full-time position. Mr. Paul seconded. Mr. Bartlett stated that he thought it would be a grave error to pass a motion to that effect. He stated that he did not think the council should recognize the Mayor of Cherokee Village as a full-time position. Mr. Fenton stated that the previous Mayor, Marge Rogers, and Mayor Maynard both have worked full-time in the position. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll:

Chuck Bartlett, no; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of six ayes, 1 nay, motion carried

#### **NEW BUSINESS:**

Cable Ordinance - Mayor Maynard asked Mrs. Maynard to read the first of an emergency reading of **an Ordinance Granting to Falcon Telecable, a California Limited Partnership, Doing Business as Charter Communications, Permission to Construct, Operate and Maintain a Cable System Upon, Along, Across, Over, and Under the Streets and Public Rights of Way of the City of Cherokee Village, Arkansas.** Mr. Schultz made a motion to accept the Ordinance. Mr. Paul seconded the motion. Mr. Stokes asked if the City Attorney had reviewed the Ordinance. Mr. Starken stated that he had reviewed the Ordinance but not as the City Attorney; Mayor Maynard had asked that he look at the contract to see if it appears to be the same as other cities in the area. Mayor Maynard was asked if the Cable Corporate Office had provided a copy of the contract with the Developer. The Mayor stated that they had not that the contract with the Developer was a private contract and he was told by Mr. Daggett that he would not give a copy of the contract to the City. Mayor Maynard stated that he had researched this issue in depth and the FCC required the cable company to have a franchise with the municipality in order to provide service. There was discussion that we should make sure the cable company provides a public access station for broadcasting council meetings, ball games, etc., and if we would be obligated to run cable to Fulton County residents. Mr. Schultz made a motion to modify Section 1, paragraph A to include one or more access channels. Mr. Paul seconded. With a voice vote of seven ayes, 0

nays, motion carried. Mayor Maynard asked for a roll call vote on the motion to accept the first reading of the Ordinance: The Clerk/Treasurer called the roll:

Chuck Bartlett, yes; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of seven ayes, 0 nays, motion carried

Mayor Maynard asked for a motion to waive the rules and place the Ordinance on its second reading, title only. Mr. Schultz made a motion to waive the rules and place the Ordinance on its second reading. Mr. Fenton seconded the motion. Discussion. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll:

Chuck Bartlett, yes; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of seven ayes, 0 nays, motion carried

Mrs. Maynard read the Ordinance, title only, for the second time. Mr. Stokes made a motion to accept the Ordinance. Mr. Thompson seconded the motion. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll:

Chuck Bartlett, yes; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of seven ayes, 0 nays, motion carried

Mayor Maynard asked for a motion to waive the rules and place the Ordinance on its third and final reading, title only. Mr. Torbit made a motion to waive the rules and place the Ordinance on its third reading. Mr. Schultz seconded the motion. Discussion. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll:

Chuck Bartlett, yes; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of seven ayes, 0 nays, motion carried

Mrs. Maynard read the Ordinance, title only, for the third time. Mr. Schultz made a motion to accept the Ordinance. Mr. Fenton seconded the motion. Mayor Maynard asked for a roll call vote: The Clerk/Treasurer called the roll:

Chuck Bartlett, yes; Wally Schultz; yes; Russ Stokes, yes; Jim Fenton, yes; Tom Thompson, yes; Ray Torbit, yes; and Scott Paul, yes. With a vote of seven ayes, 0 nays, motion carried. Having been read three times, this Ordinance is declared passed. It will be **Ordinance 2004-3**.

Mr. Bartlett made a motion to accept the resignation of Tom Garner as City Attorney. Mr. Fenton seconded. With a voice vote of seven ayes, 0 nays, motion carried. Mayor asked the thoughts of the council on a replacement for the remainder of the year and then anyone interested would have to file for the position and run in the 2004 election. Mr. Fenton made a motion to advertise for a City Attorney. Mr. Stokes seconded. With a voice vote of seven ayes, 0 nays, motion carried.

#### **PUBLIC COMMENTS:**

Mr. Weisman asked what we are going to do with Animal Control until we get a shelter. Mayor Maynard commented that the Police Department is issuing citations to owners who violate the City Ordinance; it's the strays that we are having problems with. He also noted that it came out in the Town Hall Meeting that the vets and animal shelter may be able to help us again and we will be in contact with them to see what they can offer.

Mr. Weisman asked if it would be cheaper for the City if the Mayor and City Clerk/Treasurer to have family insurance coverage. Mrs. Maynard stated that the family policy would cost \$640 a month where the combined individual policies cost \$560 a month.

Mr. Martin commented that in the next few months or so the Water Department will be cutting up the streets and we need to have a City Ordinance to address domain of the City. Mayor Maynard commented that we have had discussion with the Water Department and Mr. Schultz is drafting an Ordinance to address this issue; the draft should be ready by the next regular council meeting.

On behalf of 15 senior citizen couples, Mr. Caputo asked the council to consider changing the council meeting to a daytime meeting. Mayor Maynard stated that the council had changed the meeting to allow those who worked during the day to be able to come to the meetings. Mr. Caputo stated that maybe they could alternate and have one meeting during the day and the next during evening.

**ANNOUNCEMENTS:**

Monday, January 19, 2004; Martin Luther King, Jr. Day – Offices Closed  
Monday, February 2, 1:00 PM - Planning & Zoning Meeting, City Hall  
Wednesday, February 4, 3:00 PM - CV Road Committee Meeting, City Hall  
Monday, February 9, 1:00 PM - Historical Society  
Monday, February 9, 6:00 PM – Sharp County Quorum Court  
Monday, February 9, 7:00 PM - Fulton Co. Quorum Court, Salem Courthouse  
Thursday, February 12, 9:00 AM - District Court, City Hall  
Thursday, February 12, 4:00 PM - Municipal Planning & Development, City Hall  
Monday, February 16, 2004; Presidents' Day – Offices Closed  
Thursday, February 19, 7:00 PM - City Council Meeting, City Hall

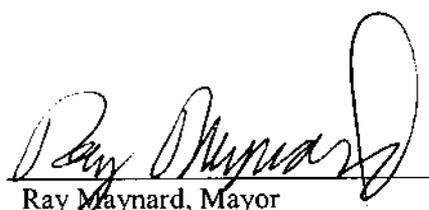
Senior Citizens Center open, every Monday and Wednesday, 11 – 3,  
unless otherwise noted; lunch at 11:30 AM, T-bird Center  
Re-cycling open every Tuesday 9:00 – Noon, weather permitting, City Hall Parking Lot

**ADJOURNMENT:**

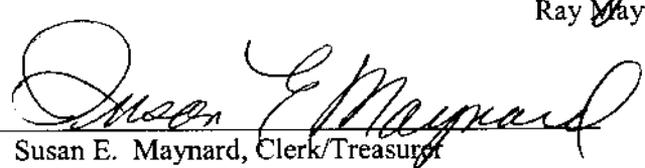
Motion to adjourn was made by Mr. Thompson and seconded by Mr. Stokes. With a voice vote of seven ayes, 0 nays, motion carried unanimously. Meeting adjourned at 9:35 PM.

DATE: February 19, 2004

APPROVED: \_\_\_\_\_

  
Ray Maynard, Mayor

ATTEST: \_\_\_\_\_

  
Susan E. Maynard, Clerk/Treasurer