CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

Tuesday, May 9, 2006

REGULAR MEETING

Minutes

TIME & PLACE: The Mayor and the City Commission of the City of Truth or Consequences in the County of Sierra and State of New Mexico met in Regular Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Tuesday, May 9, 2006 at 6:00 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor Montgomery who presided and Mary B. Penner, City Clerk acted as Secretary of the meeting.

ATTENDANCE: Upon calling the roll the following Commissioners were reported present:

Hon. Lori S. Montgomery, Mayor
Hon. Jerry Stagner, Mayor Pro-temp
Hon. Jimmy Rainey, Commissioner
Hon. Evelyn B. Renfro, Commissioner
Hon. Freddie Torres, Commissioner

Also present:

Jaime R. Aguilera, City Manager
Jay Rubin, City Attorney
Mary B. Penner, City Clerk

QUORUM: There being a quorum present the Commission proceeded with the business at hand.

CEREMONY: Mayor Montgomery called for fifteen seconds of Silent Meditation.

Commissioner Torres called for the Pledge of Allegiance.

APPROVAL OF AGENDA: Mayor Montgomery called for approval of the Agenda.

"Commissioner Stagner moved approval of the Agenda as presented."

Seconded by Commissioner Renfro.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: None.

COMMENTS FROM THE PUBLIC: Ms. Dolly Larimore came before the Commission and stated she is a resident, a homeowner, and a taxpayer of T or C, and indicted she is one of the silent majority, however that ended this morning when she heard on our local radio station that a business person in our town has filed a suit in Federal Court to get an injunction to stop the construction of the Wal-Mart.
She stated she wants to say this to the business person, and any other business in town, and expressed if they offer quality products at a reasonable price, quality workmanship at a reasonable price, and offer quality customer service they shouldn’t have to worry about a “big box store.”

Ms. Larimore stated she tries to shop locally as much as possible however there are some things that are just not available, or not available at a reasonable price in this town. She indicated that she resents that her tax dollars are being wasted to fight a battle that she is not in agreement with, and therefore she would like to inform the City Council, the business community in this town, and the citizens in T or C that she will be boycotting this business as well as any other business that tends to join into this lawsuit, and is asking the rest of the silent majority to join her, and thanked the Commission for her 3 minutes.

Mr. Steve Green came before the Commission and as a board member he probably should not be doing this, but he thinks it should be done. He wanted to thank all the board members and volunteers of the Fiesta Committee for producing and working all year to do a great, great job, and stated it was well attended, and thinks it is what small town living is all about, and wanted to congratulate that board.

He stated he would like to thank the Commission for the pins that were purchased, and he hopes they will wear them proudly and often at all the public events, and would like to personally thank Mayor Montgomery for not enforcing the 3 minute rule at the NUF Party when he spoke.

Mr. Green stated about a month ago he talked about the idea of putting together a task force to look at the problem of barking, biting, yipping, howling dogs in our community as it is expanding. He indicated either the idea is the dumbest thing they have heard and left them speechless, or it was so brilliant that it left them speechless, and would like a response either way, and thanked the Commission.

Mr. Gerald Trumbull came before the Commission and handed out a flyer. He stated he is speaking tonight on behalf of the Informed Citizen Alliance and is here to invite everyone to their 2nd face to face “Meet the Candidates Night,” to be held at the Senior Rec. Center, Thursday, May 11th at 7:00 P.M.

He stated secondly let him correct the record if he may, the aforementioned lawsuit that was filed, and yes my name was on it on behalf of Informed Citizen Alliance, and indicated he is the only business person in their group, the only business person in their community that belongs to their organization.

Mr. Trumbull stated he did not file the suit on behalf of the businesses in this town he filed the suit in behalf of the community, and thanked the Commission.

Mr. John Davis a member of the Informed Citizen Alliance came before the Commission and speaking to a boycott, and indicated he is a registered nurse, and that people cannot very much boycott him, and stated if they need him they need him. He stated he does not work here locally in town, but did want to say that the Commission so far has been unresponsive to their concerns regarding Wal-Mart.
He stated that Wal-Mart is being rammed down their throats, and it is kind of a shame that the lawsuit had to be filed, but it is one of those things that they are given 3 minutes here, and sometimes of the papers charging money when they want to mention Wal-Mart.

Mr. Davis stated if they try to shut people up this could be the result, and that is all he has to say, and thanked the Commission.

The following are verbatim transcripts –

Mr. Charles Kuhne came before the Commission and stated he is an individual who picked up the paper this evening, and he is going to quote from the front page of the Sentinel, and Jay Hopkins is here it is his article, and he mentions from the ICA’s Group on line, and explained ICA is the Informed Citizen Alliance, and it quotes, “Whether or not to allow any potentially community destructive act to occur, and stated he is going to condense some of this unfortunately, but to correct him if he misses anything, or if he states something wrong, left up to a handful of unresponsive decision makers, I guess that’s you people from such economic and social violations. It goes on further to say that the ICA is not comprised of people who hide behind some blind official or a unknown agenda, and it’s intended to defeat or otherwise extract from office, etc., etc., etc.”

He stated this is unbelievable, I don’t know where or who writes your material... ICA, Informed Citizen Alliance, why don’t you just... instead of saying there is an unknown agenda here or blind officials why don’t you just come out and say what you are, you’re anti Wal-Mart.

Well when you speak about, let me just put it this way its altruistic idea, oh I love that word altruistic, and went on to explain the meaning... it means unselfish interest in the welfare of others, unselfish interest in the welfare of others. Do you think this ICA Group is truly that, and the others? You’re not looking out for my welfare, I’ll tell you if we do have a Wal-Mart and other stores that may come in we do know that it is going to increase the gross receipts tax.

Mr. Kuhne indicated he went through this once before, and what that means, it means they may be able to have more policeman, and means they can even pay those policeman better wages than what they had before, and means they’re not going to be short cops here, and they will have enough they can maybe deter some of the crime.

He stated he is real upset at this article and the way these guys presented it, is my 3 minutes up, Mayor, it’s very close. Mr. Kuhne looked out in the audience, and stated don’t point at your clock until you’re sure Jerry... Mr. Trumbull, I don’t wear a clock.

Mayor Montgomery, and I’m watching the clock, Mr. Kuhne, they’re watching my time too, and I’m just... I think jobs, more money in this town, and yes it might hurt some business like yours Jerry, but you even told me what you would do is go to work for them... Wal-Mart, you even told me you’d shave, and cut your hair to do it, and you said what you would do is go in there and unionize the place that’s fine by me, I don’t think any of us are against Wal-Mart paying more money to people, but please don’t hide behind a fancy name like ICA and pretend that you’re doing this for my welfare my benefit, you’re not.
Mr. Bill Loomis came before the Commission and stated he feels like if they take this and considers it an opportunity to have Wal-Mart here. He stated it is something their children will thank them for especially when they get to the point of saturation they are going to have here from all the things that are going to go on here.

He stated if they put their head in the sand and forget it the same people that are complaining now about Wal-Mart are going to be complaining that they can’t get anything or buy anything here, and they will have to leave town anyway, and he believes they need to look ahead and be like the rest of the world and have a nice Wal-Mart here that they can depend on to serve the community.

Mayor Montgomery stated they have three items on the Consent Calendar, Minutes of the Regular Meeting of April 25, 2006, Reimbursement Request - LDWI Grant April 2006, and Accounts Payable for April 2006.

"Commissioner Rainey moved approval of the Consent Calendar."

Seconded by Commissioner Renfro.
Motion carried unanimously.

Mayor Montgomery stated the following are draft minutes from various boards provided to the Commission and are for information only and are non-action items.

None.

City Manager Aguilera stated this issue came up at a recent staff meeting in which the Parks and Recreation Director brought it to his attention that the amount of graffiti and vandalism at the Ralph Edwards Park was absolutely out of control.

He stated one of the things he informed him of is that they need to have paint available at the site so that as soon as they go to the parks in the morning and paint out whatever is there, and indicated that is the best and most effective method of getting rid of the problem, but it still costs the City a lot of money and manpower.

City Manager Aguilera stated they looked as possibly strengthening the Graffiti Ordinance, and that it states it is essentially a misdemeanor when the police show up and if they happen to catch somebody red handed so to speak, and that a juvenile if it’s a juvenile and it usually is that juvenile is taken to juvenile court and slapped on the wrist and they go about their business.

He stated he asked our City Attorney to see if there was any way that they could go after the parents of the juvenile and maybe that way strengthen the ordinance, and what he found out was that, and he mentioned the City of Albuquerque to him because he heard that they had something to that effect.

City Manager Aguilera stated they found out from the City of Albuquerque is they do not have any stronger ordinance than they do. He stated what they rely on is an existing State Law which they were unaware of, and the State Law says that the City can hold civilly liable the parents of the offending juvenile as well as any other person, so they would be able to file a civil lawsuit and hold the parents liable for the amount of damages, and of course they
can quantify how much it takes them to repair the problem.

He explained the reason this is on the agenda is to inform them of what he plans to do is to have City Attorney Rubin file civil lawsuits against the parent of juveniles when they are caught when they have certainty that they have a culprit, and require restitution in the form of either monetary restitution or in-kind.

City Manager Aguilera stated the reason it was listed as an ordinance is that he thought they would have an ordinance to present to them but they do not, as there is already an existing State Law.

Commissioner Rainey believes this would be a good ordinance and would be able to re-claim up to $4,000 in restitution, but would also like to see not only the parents but the individual who did the graffiti, cleaning the graffiti and painting and doing community time supervised by the parents.

City Attorney Rubin stated he thinks the point of this discussion is what they found is that the City of Albuquerque does not have an ordinance that holds the parents criminally liable for the actions of their children when they commit acts of graffiti. He stated they are talking about civil liability, and indicated what the City of Albuquerque has been doing is that they have been relying upon a State Statutes that has passed known as §32A-2-27. Injury to person or destruction of property; liability; costs and attorneys' fees; restitution.

He read the first sentence of the paragraph... Any person, and by the way it can include a municipality, as it is very broadly interpreted, may recover damages not to exceed four thousand dollars ($4,000) in a civil action in a court or tribunal of competent jurisdiction from the parent, guardian, or custodian having custody and control of a child when the child has maliciously or willfully injured a person or damaged, destroyed or deprived use of property, real or personal, belonging to the person bringing the action. He stated that is the teeth they have to work with.

City Attorney Rubin stated he consulted with legal staff with the City of Albuquerque and they were very helpful, and that they were kind enough to forward a copy of a sample lawsuit that they have used in case we go in the same direction. He stated he is ready, willing, and able and prepared to go forward when the City Manager gives him the information on a particular case.

Commissioner Stagner stated he is in support of this.

Commissioner Renfro stated she was also supportive of this, and asked City Attorney Rubin if the Commission took action some years back to close Ralph Edwards Park at a certain time.

City Attorney Rubin stated that it sounds familiar, and thinks they passed an ordinance that said that.

Commissioner Renfro asked if they had anybody living at the Park, and City Manager Aguilera stated they have a city employee living in the trailer east of the Park however that does not seem to have deterred much of the crime.

He stated they put up a gate at the skateboard park, as that is what seems to be the attraction, and indicated apparently it is not the
skateboarders doing the crimes according to the police, but someone put a chain and tied it to the back of a truck and tore the gate off, and reported the gate has been replaced.

City Manager Aguilera stated he has asked our I.T. person to look into a set of cameras that they can transmit the images over to dispatch, but pointed out one of the problems is going to be the vandalism on the cameras. He stated that would give them the evidence that they need to take these people to court.

Commissioner Renfro stated painting over the graffiti right away they found that to be very effective.

Mayor Montgomery stated since this law is already on the books they could show their support for the City Manager by putting this in a form of a motion.

"Commissioner Stagner moved that they are in support of the City Manager to have our City Attorney file civil lawsuits against the parents of any juvenile for damages and to require that they pay restitution."

Seconded by Commissioners Renfro/Rainey.
Motion carried unanimously.

RESOLUTION
#24-05/06  AMENDING CC
PROCEDURE:

City Manager Aguilera stated they discussed this issue during a workshop on the rules of procedure for the City Commission.

At this time City Manager Aguilera went through the changes, on page 1, and stated the entire procedures manual has been changed in aspect, and indicated that it does not look the same, and also that the Table of Contents has changed because they took out one of the Rules of Procedure.

On page 1 they included the new meeting time and date, Tuesday at 6:00 P.M., on Rule 2. Page 3, Rule 9 at the end of the first paragraph the highlighted area... The Presiding Officer, two (2) City Commission members, or the City Manager may introduce a new item to the agenda.

City Manager Aguilera stated they did not discuss this particular item and could mean... and it’s in the wrong place he thinks, and he and Jay discussed this, and it could mean before an agenda is written that two members of the Commission could introduce or request that an item be introduced on the agenda, but because the context which its in... the sentence before is talking about the actual meeting and taking action at the meeting then that seems to refer that they could introduce a new item right here and now.

He stated they are going to amend that to read... 48 hours before the meeting the City Commission members may introduce a new item on the agenda, two City Commission members may introduce an item on the agenda, and he thinks they do not need to differentiate between the Presiding Officer and the Commission members, and also they don’t need to include the City Manager in that sentence since he already has that authority to this in another part of that paragraph.

City Attorney Rubin, if I can interrupt you on that, and you and I talked about that, and I guess my thought was he did not know if he really wanted to make it required to have two Commission members, and what I was thinking is if any one of them wanted to
have something listed on the agenda that you would be free to call the City Clerk and mention it, and if it is listed on the agenda and of course if the rest of the Commission doesn’t want to hear it, it can be voted off the agenda when they approve the agenda.

Commissioner Renfro, I think that would be better.

Commissioner Rainey, it would.

Mayor Montgomery, so it would read… the Presiding Officer or any City Commission member may introduce…

City Manager Aguilera, right 48 hours before a meeting.

He stated the last paragraph in Rule 9 was added.

Under Rule 10 they deleted the term Study Session and replaced it with the word Workshop.

On page 7, Rule 17 they deleted the reference to the Roberts Rule of Order, and they inserted the reference to this City Commission Rules of Procedure.

On page 8, Rule 19 they changed the order in which the items were listed on the agenda to reflect how they are actually doing it now. Under item (b) (4) where it begins with Note; they deleted the first sentence that was there, and on item (d) is a typo and that should read Rule 20 instead of Rule 10.

On page 10, Rule 20 and indicated that was reconfigured about how “Comments from the Public” are treated, and under item (a) the procedures for public hearing the requirement for the public to sign in was deleted.

On page 13, item (c) from the old rules and procedures was deleted, and that had to do with the creation of City Commission liaisons which the Commission did not wish to do any longer.

On page 16 they deleted Rule 29 and indicated it was Complaints and Suggestions to the Commission, and explained under the new Rule 29 they added cell phones to the list of electronic devices that could not be operated at a meeting.

On page 19 under Executive Sessions item (f) there was a specific amount of about $2,500 and they changed that to say and referred to the State Procurement Code as the rule on that. He stated as State Procurement Code changes then that amount will change, and that is the end of the changes.

“Commissioner Renfro moved adoption of Resolution # 24-05/06.”

Seconded by Commissioner Torres.
Motion carried unanimously.

Mayor Montgomery thanked the City Manager for all the hard work on this.

OLD BUSINESS: None.

REPORTS:

CITY MANAGER –

City Manager Aguilera stated at their last meeting he reported that
one of our city employees was using his artistic talents to create the metal sculptures that resemble cactus and desert animals. He indicated it was incorrectly reported in one of the local newspapers that they were going to hire somebody from Las Cruces to do that work and he received a lot of calls about that.

He stated that today he read a letter to the editor about why are they going to Las Cruces to hire when they have local talent, and indicated they do have local talent and they are utilizing him, and to correct that misconception they are using a local artist which happens to be a city employee to do this art work which will take place in the medians on Broadway.

City Manager Aguilera stated he would like to thank the Parks & Recreation Department, Police Department, Building/Maintenance Department, and the Electric Department specifically as well as the other employees who had a hand in the Fiesta which came off very well, and it was well attended and more people than the Fiesta Board anticipated.

He stated the Police Department reported less incidents with a quieter Fiesta than they had in recent memory according to Chief Peterson, and that people were well behaved, and the only bad incident that occurred was some kids with pellet guns or B-B guns, and the fact they had a vendor selling these air pellet guns which cost them some consternation, but everything went well.

City Manager Aguilera would also like to thank the Veteran's Center for loaning them a small ranger that they used for picking up trash in the park.

He mentioned that he has been receiving numerous calls and the fact that Marie Street remains unpaved on the section where the effluent line went in, and the reason it remains unpaved is because the are expecting to put in another line a fresh water line on Marie Street within the next 2-3 months.

City Manager Aguilera explained if they had patched Marie Street when they did the first line they would now have to go back and undo the patching in which was going to cost them a lot of money, so they would of wasted the patch as they would of torn it up again in the next 2 months. He reported that project has gone out to bid and they expect to award the bid soon and for the construction to begin, and once it is completed they will be digging another trench, and then the entire street will be paved properly, and they will end up with a better street.

He stated the City Clerk's Office has prepared per the Commissions request a booklet on the rules and regulations for the Vista Memory Gardens for the individuals who purchase lots, or have questions about the procedures at the cemetery, and also mentioned that the procedures manual was also prepared by the Clerk's Office, and thanked Hazel.

CITY ATTORNEY – No report.

COMMISSIONERS –

Commissioner Stagner – No report.

Commissioner Rainey – No report.
Commissioner Torres stated that he agrees with the City Manager and that it was a very quiet weekend. He stated they had some kids that tried to get in his place of business with false ID's, and reported they were turned over to the City detectives. He stated they would be doing that from now on, and anybody trying to use false ID's in his business will be turned in for investigation.

Commissioner Renfro stated she would like to thank the Fiesta Board for the work they did on putting together a very good Fiesta, and all the employees and everyone involved.

She also thanked Mayor Montgomery for making the arrangements for the Commissioners who wished to do so to ride in the parade.

Commissioner Renfro would like to congratulate Delmas Howe for winning this years Governors Award for "Excellence in Arts." She thinks they should feel much honored that they have some of his art work displayed at the Civic Center, and that it is really great... "Congratulations Delmas Howe!"

Mayor Montgomery would also like to thank the Fiesta Board, and that they did a great job. She knows as she has served on that board before, and that it is a lot of hard work and usually a lot of unappreciative work, and that it is a year long project, and expressed that they did a great job, and thanks to everybody and that the park was well maintained and a very nice atmosphere this year, and thanked everybody.

EXECUTIVE SESSION:

"Commissioner Rainey moved that the meeting be closed for Executive Session – Pending or Threatened Litigation 10-15-1H(7), Gerald Trumbull et al, for the Informed Citizens Alliance. Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), CMC Construction."

Seconded by Commissioner Renfro. All responded Yes to a Roll Call Vote. Motion carried unanimously.

OPEN MEETING:

"Mayor Montgomery stated that the Commission was now in Open Session."

CERTIFICATION

"Commissioner Rainey certified that only matters pertaining to Pending or Threatened Litigation 10-15-1H(7), Purchase, Acquisition or Disposal of Real Property or Water Rights 10-151H(8), were discussed in Executive Session, and no official action was taken."

Seconded by Commissioner Renfro. Motion carried unanimously.

"Commissioner Stagner moved that the City Attorney respond to the lawsuit and counter claim with sanctions, and request a list of members of the Informed Citizen Alliance."

Seconded by Commissioner Renfro. Motion carried unanimously.

"Commissioner Rainey moved that the City Manager investigate the selling of the property that they discussed."

Seconded by Commissioner Renfro. Motion carried unanimously.
ADJOURNMENT: There being no further business to come before the Commission the meeting was adjourned.

APPROVAL: PASSED AND APPROVED this 23rd day of May, 2006, on motion duly made by Commissioner [Signature], seconded by Commissioner [Signature], and carried.

LORI S. MONTGOMERY, MAYOR

ATTEST:

MARY B. PENNER
CITY CLERK