CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, June 26, 2007

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, June 26, 2007 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-tem
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, and stated they would delete item (F) under other business.

"Commissioner Renfro moved approval of the Agenda as amended."

Seconded by Commissioner Rainey.

Motion carried unanimously.

Certificate of Appreciation – Mr. Charlie Hibler

City Manager Aguilera indicated that Mr. Hibler contributed several years on the Public Utility Board and that he has done a great number of things for the City during the time he has served on the board.

He stated the Utility Board recognized Mr. Hibler at their meeting, and at this time Mayor Montgomery presented Mr. Hibler with a "Certificate of Appreciation" for his service on the board.
Mayor Montgomery stated they have two items under the Consent Calendar – Minutes of the Regular City Commission Meeting – June 12, 2007, and DWI Reimbursement Request – May 2007.

She stated City Attorney Rubin pointed out a typo on page 6, 2nd paragraph from the bottom...where it reads Mayor Montgomery thanked all on the Media Day.

“Commissioner Stagner moved approval of the Consent Calendar with the one correction.”

Seconded by Commissioner Rainey.

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.

Public Utility Advisory Board –

City Manager Aguiler indicated that the Utility Board would like to continue to count on Mr. Hibler’s expertise and involvement on the board, and pointed out he would not have voting powers as an ex-officio member but would be able to partake in discussions, and they have recommended that the Commission consider appointing him as an ex-officio member as he has a lot of expertise and knowledge to share with the board and staff.

“Commissioner Renfro moved approval of the recommendation to appoint Mr. Hibler as ex-officio member of the Utility Board, and asked of City Attorney Rubin if they would need to change the ordinance.”

City Attorney Rubin stated he would not think so as he would not be voting, and would only be serving in an ex-officio capacity, and my gut reaction would be no, but if they want to take action he will double check, and if he has a different recommendation he will let them know.

Seconded by Commissioner Torres.

Motion carried unanimously.

Appts./Re-Appts. – Expiration of terms 6/30/07 for following boards –

Airport Advisory Board –

The Airport Advisory Board is recommending the re-appointments of David Senn, Richard Jones, and Dick Woodsum.

“Commissioner Renfro moved approval the re-appointments of David Senn, Richard Jones, and Dick Woodsum to the Airport Advisory Board.”
Seconded by Commissioner Torres.
Motion carried unanimously.

Golf Course Advisory Board –

The Golf Course Advisory Board is recommending the re-appointments of Butch Bullock, Imogene Stark, and Maureen Tooley.

"Commissioner Stagner moved approval the re-appointments of Butch Bullock, Imogene Stark, and Maureen Tooley to the Golf Course Advisory Board."

Seconded by Commissioners Rainey/Renfro.
Motion carried unanimously.

Planning & Zoning Commission –

The Planning & Zoning Commission is recommending the re-appointments of Adam Polley & Viola Bonner, and the appointment of Joey Perry to fill the position that was vacated by Yolanda Sepulveda.

"Commissioner Stagner moved approval the re-appointments of Adam Polley & Viola Bonner and the appointment of Joey Perry to the Planning & Zoning Commission."

Seconded by Commissioner Renfro.
Motion carried unanimously.

Public Utility Advisory Board –

The Public Utility Advisory Board is recommending the re-appointment of James Hunt to the Public Utility Advisory Board, and Mr. Charles Hibler has declined reappointment to the board, and to re-advertise for the position.

"Commissioner Stagner moved the re-appointment of James Hunt to the Public Utility Advisory Board, and to re-advertise the position."

Seconded by Commissioner Renfro.
Motion carried unanimously.

SJOA Board –

City Manager Aguilera stated they have two recommendations from the SJOA Board to fill the vacancy left by Ms. Carol Woods.

He indicated they have a recommendation of Ms. Ginny Jones and Ms. Rita Johnston, and they feel Ms. Johnston would not be in the best interest of the organization as they believe she may have a conflict of interest due to her employment with the Housing Authority, and they feel Ms. Jones has legislative lobbying experience which they feel would be invaluable to their organization.

Mayor Montgomery stated based on the letter from the SJOA they are recommending the appointment of Ms. Jones, and indicated they have two letters from the board.

Commissioner Stagner stated he has known Ms. Johnston for 4-5
years and that she does a really good job and would like to see Ms. Johnson appointed to that position.

Commissioner Rainey stated they have two outstanding candidates, and he does not see any conflict of interest, and that the board is recommending one over the other one and thinks that has to carry some weight.

"Commissioner Rainey moved to appoint Ms. Jones to the SJOA Board."

City Attorney Rubin stated legally he agrees with Commissioner Rainey and that he said it exactly right.

Seconded by Commissioner Renfro.
Commissioners Rainey/Renfro voted aye.
Mayor Montgomery voted against.

"Commissioner Stagner moved to appoint Rita Johnston to the SJOA Board."

Seconded by Commissioner Torres.
Commissioner Stagner/Torres & Mayor Montgomery voted aye.
Commissioner Rainey opposed.
Motion carried.

PUBLIC HEARINGS: Final Adoption – Ordinance #572 – Amending the Effluent Water Fees –

City Manager Aguilera stated the ordinance has been published, and explained what this ordinance does it changes the rate for effluent water rates from $1.84 per thousand gallons to $1.35 per thousand gallons, and recommendation is for approval.

Mayor Montgomery opened the Public Hearing and asked if there was anyone who would like to speak for or against the Ordinance #572, and no comments were received and the Public Hearing was closed.

FINAL ADOPTION ORDINANCE #572: Mayor Montgomery stated they held a Public Hearing on Final Adoption of Ordinance #572, and no comments were received.

City Manager Aguilera stated recommendation is for approval of Ordinance #572.

"Commissioner Renfro moved approval Final Adoption of Ordinance #572 – Amending the Effluent Water Fees."

Seconded by Commissioner Stagner.
Motion carried unanimously.

PUBLIC DEFENDER CONTRACTS: City Manager Aguilera stated the Municipal Court has submitted three applications for contract services for the court. He stated these are based on a new contract amount of $500.00 which was approved in the budget by the City Commission, and recommendation is for approval.

"Commissioner Renfro moved approval the Public Defender Contracts for Isabel Jerabek, Steven Sage and Stephen Kortemeier for Municipal Court for FY 2007/2008."
Seconded by Commissioner Rainey.
Motion carried unanimously.

City Manager Aguilera stated they have been discussing these contracts with Ms. Nola Kent. He indicated the first concern that they approached are these individuals City contractors or not, and stated that it hasn’t been very clear, and they know the City’s role is they are the administrator of the finances for the program.

He stated the way the contracts have been worded have led people to believe the contractors are City contractors and they are trying to get the language clearer about the fact they are not City contractors.

City Manager Aguilera stated Ms. Kent contacted DFA who gave her some options about changing the contract because these are approved by DFA. He stated they did change some of the language, and stated it is clear that they are independent contractors working for the DWI Program.

He stated he spoke with Ms. Kent today and that DFA has approved some change in the language in which they very clearly state the person is not a contractor or an employee…and right now it indicates the person is not an employee of the City…it will clearly state with an amendment to the contract that the person is not a contractor of the City of T or C.

City Manager Aguilera stated he spoke with City Attorney Rubin about these contracts and the bottom line is possibly they can make some more improvements, but explained these contracts need to be approved by July 1st. He indicated City Attorney Rubin will continue to work on the contracts to see if there is any other changes that need to be made, and recommendation is approval of the contracts with the change in section 6 – Status of Contractor on page 3…wording added that indicates that the person is not an employees of the City or a contractor, and also some added language about requirements of drug testing and subject themselves to random drug testing as the City’s policy is, and subjected to the drug screening prior to enactment of this agreement.

He stated in discussing this with Ms. Kent she indicated she did not have money in her budget for drug testing, and he stated the City would pick that up for this year.

City Attorney Rubin stated if there are going to have a provision in the contract regarding the drug screening…they can still have a provision that indicates despite the fact that the contractor is agreeing to under go the drug screen that he still acknowledges by doing so he’s not being conferred upon him any additional employee rights or contractor rights, and they can still spell that out.

He stated on paragraph 20 where it reads on the second line…cause by the negligent, also insert the phrase or intentional. In another words if a contractor commits a negligent or intentional act to a third party they are still going to be held harmless, and he thinks that is extremely important.

City Attorney Rubin stated this contract is a bigger improvement than what they had before and gives them more protection from a liability sense because they have paragraph 6, and they have clarified what the status is of the contractor, and in paragraph 20 they have it where they are being held harmless from any
contractors negligent or intentional acts to third parties, and if they have this language in there that they are talking about the drug screen. they are going to have the additional language that he suggested.

Commissioner Renfro asked if they had job descriptions for these positions, and Ms. Kent stated yes it is included in the Prevention and Youth Center, but not in the other positions.

Commissioner Renfro indicated that maybe it could be included in the job description.

Mayor Montgomery asked if they did that screening prior to the contract signing, and Ms. Kent stated for the Youth Center and Prevention it is after they sign the contract and contingent upon them passing.

“Commissioner Stagner moved approval the DWI Contracts for Klarene Rich, Sandra Segura, Will Frazier, and Val Lucas with the three changes they discussed tonight in paragraphs 6 & 20, and the paragraph regarding the drug screening, and the typo correction.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

AUDIT CONTRACT FOR FY-07/08: City Manager Aguilera indicated this is the fourth year for the Accounting & Consulting Group for the City’s Audit Contract. He stated this will be their last year by State law, and the City in the future will RFP for audit services, and recommendation is for approval.

“Commissioner Stagner moved approval the Audit Contract for FY 2007/2008 – Accounting & Consulting Group.”

Seconded by Commissioner Rainey.
Motion carried unanimously.

RESO. #41-06/07: City Manager Aguilera stated every year by Resolution the City Manager is directed to set aside at least 25% of the funds required by Section 2-95 and Section 14-35, Capital Improvement Accounts within the Joint Utility Fund, and recommendation is for approval.

“Commissioner Rainey moved approval Resolution #41-06/07 – C.I. Accounts within the Joint Utility Fund for FY 2008.”

Seconded by Commissioner Torres.
Commissioners Rainey/Torres/Stagner & Mayor Montgomery voted for with Commissioner Renfro abstaining.
Motion carried.

OLD BUSINESS: None.

REPORTS: CITY MANAGER –

City Manager Aguilera reported that Mr. Richard Garcia is leaving, and stated he has received a call from a golf pro that is retired from Belen and has done a lot of work throughout the State of New Mexico and other States.

He indicated he has been in contact with the PGA Association of New Mexico who has volunteered at no cost to the City to advertise
advertise the City’s position to advertise the City’s position within their PGA Magazine and members.

City Manager Aguilera stated he also spoke with another gentleman from Douglas, Arizona who is interested. He indicated he had a meeting with Imogene Stark and Gary Whitehead about a different alternative that will be presented to the Commission with the possibility of the Golf Association taking over the operations of the Golf Course, and stated there are different avenues out there for the replacement of the Golf Pro.

He stated they are in the process of entering into a separate agreement with Yoli and Santiago, and indicated when Richard leaves they are still going to need someone to take care of the golf course and the pro shop and maintain status quo for the next several months until they hire someone.

City Manager Aguilera stated they will be meeting on Thursday with gentlemen that are involved in the Racetrack and the Airport Industrial Park. He indicated they will be bringing some investors and others who are getting more involved, and the latest word is that BLM transfer to the State seems to be on track possibly occurring in September.

CITY ATTORNEY – No report.

COMMISSIONERS –

Commissioner Stagner – No report.

Commissioner Rainey – No report.

Commissioner Torres – No report.

Commissioner Renfro would like to congratulate Robert Newsom for 5 years of service with the City of T or C.

Mayor Montgomery reported that she attended a NMML Meeting this last Saturday along with Mary & City Manager Aguilera regarding all the resolutions that the NMML was bringing forward to the next legislative session.

She indicted next year is only a financial session...the short session, and stated only one resolution is going forward from the NMML and that would be a request of funding for the libraries in the State of NM, and stated she has also been appointed to the Resolutions Committee and will be attending a meeting in July to look at the resolutions for the following year.

EXECUTIVE SESSION: “Commissioner Rainey moved that the meeting be closed for Executive Session – Personnel 10-15-1H(2), 1. Consider request for hearing from Robert Bustos, and 2. City Manager.”

Seconded by Commissioners Stagner/Renfro.
All 5 responded 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 Personnel 10-15-1H(2), were discussed in Executive Session.”
Seconded by Commissioner Stagner.
Motion carried unanimously.

"Commissioner Rainey moved that they acknowledge a hearing date for Robert Bustos to be rescheduled for July 25, 2007 at 5:00 P.M., and that Mr. Bustos has asked that said meeting be an open meeting."

Seconded by Commissioner Renfro.
Motion carried unanimously.

"Commissioner Stagner moved that Mayor Montgomery and City Attorney Rubin schedule to meet with City Manager Aguilera on items 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 10th day of July, 2007, on motion duly made by Commissioner [Rainey], seconded by Commissioner [Renfro], and carried.

MAYOR Pro-tem

LORI S. MONTGOMERY

ATTEST:

MARY B. PENNER, CITY CLERK