CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, November 24, 2009

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, November 24, 2009 at 5:30 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor Montgomery who presided and Ellen A. Lindsey, Deputy 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. Steve Green, Commissioner
Hon. Evelyn B. Renfro, Commissioner
Hon. Freddie Torres, Commissioner

Also present:

Mary B. Penner, Acting City Manager
Jay Rubin, City Attorney
Ellen A. Lindsey, Deputy 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.

Mayor Montgomery called for the Pledge of Allegiance.

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

"Commissioner Green moved for approval of the Amended Agenda as presented."

Seconded by Commissioner Stagner.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: Jay Rubin stated at the end of the last meeting Ms. Deborah Toomey referenced our Rules of Procedure in relation to public comment. Mr. Rubin talked to Roger Makin, New Mexico Municipal League and Randy Van Vleck, Staff Attorney. Both advised they are unaware of any legal requirements or statute that requires a Resolution to change our rules. A resolution would have been preferable but there is no state statute that says it is required. The Commission has the final say in how its meetings will be conducted. The last paragraph of Rule 23 seems to support this conclusion.

Mr. Rubin also stated page 2 of the November 10, 2009 minutes correctly identifies the Municipal League individual as Mr. Makin.
I mention this because the City Clerk’s office received a complaint intake form this week from Ms. Toomey regarding this.

Mr. Rubin stated that after speaking with Mr. Van Vleck it seems evident that we ultimately have to consider scrapping our public comment section completely. We had problems at the last meeting; there may be other issues that could come up at some point.

Mayor Montgomery stated there are six (6) requests for public comment. The first request is from Deborah Toomey on land use violation which was not approved by the Commission. The next request is from Deborah Toomey regarding final actions which require ordinance or resolution which was not approved by the Commission. Sophia Peron requested to speak on how to run a City Commission meeting workshop which was approved.

Commissioner Green stated the Commission might be in violation of our own rules of procedures in that the Commissioners can not do a closed ballot. Everything must be done by voice vote. Therefore, I would request that each Commissioner respond how they voted on Ms. Toomey’s requests.

Mr. Rubin agreed.

Mayor Montgomery stated Ms. Toomey would only receive three (3) minutes because her two requests act as one (1) and took a roll call vote on the requests from Ms. Toomey.

Commissioner Torres voted No.
Commissioner Renfro voted No and stated on land violations it stated that staff has not abated it. Staff has responded to this issue. For whatever reason the response was not satisfactory to Ms. Toomey and this is a dead issue at this point.
Commissioner Stagner voted No.
Commissioner Green voted Yes.

Sophia Peron spoke about the Open Meetings Act complaint she sent to the Attorney General’s Office in November 2008.

Mayor Montgomery stated the next request is from Ron Fenn on the interview process for City Manager.

Commissioner Torres voted No.
Commissioner Renfro voted No.
Commissioner Stagner voted Yes.
Commissioner Green voted Yes.
Mayor Montgomery voted Yes.

Ron Fenn spoke on the process for selecting the new City Manager.

Mayor Montgomery stated the next request from Lorraine Dougherty in support of City Commission and public comment.

Commissioner Torres voted No.
Commissioner Renfro voted Yes.
Commissioner Stagner voted Yes.
Commissioner Green voted Yes.

Lorraine Dougherty spoke in favor of the Commission and asked them to consider alternatives to reinstating the public forum.
Mayor Montgomery stated the last request is from Brad Grower regarding B-11 on the Agenda.

Commissioner Torres voted No.  
Commissioner Renfro voted No.  
Commissioner Stagner voted No.  
Commissioner Green voted Yes.  

CONSENT CALENDAR:  
Mayor Montgomery stated there are two items under the Consent Calendar – City Commission Minutes from November 10, 2009, and DAIC Monthly Report for October 2009.

"Commissioner Green moved for approval of the Consent Calendar as presented."

Seconded by Commissioner Stagner.  
Motion carried unanimously.

DRAFT MINUTES:  
Mayor Montgomery stated the following are draft minutes from various boards provided to the Commission for their information, and are non-action items: Golf Course Advisory Board – 9/9/09 and 10/14/09, SVH Governing Board – 10/19/09, Lodger’s Tax Board – 10/22/09, Recreation Board – 11/3/09, and Public Utility Advisory Board – 11/16/09.

BOARD & COMMITTEE REPORTS:  
None.

PUBLIC HEARINGS:  
None.

Resolution #16-09/10 Budget Adjustment #4  
Mary Penner, Acting City Manager, introduced Ina Wolfe the new Finance Officer and advised Helen Belis is here to present the resolution budget adjustment #4.

Helen Belis stated PD Donations expenditures and revenues increased $100 dollars. Joint Utility Solid Waste Department increased $21,966 dollars to drill the two wells and transfer stations. The previous budget adjustment decreased their budget $16,528 for savings in their insurance. Municipal Street Fund increased revenue and expenditures $8,926 dollars because of an increase in the state co-op share. State DWI revenue and expenditures increased $2,997 dollars because of an increase in the state grant. DWI UA revenue and expenditures increased $1,250 dollars.

"Commissioner Green moved for approval of Resolution #16-09/10 Budget Adjustment #4 as presented."

Seconded by Commissioner Renfro.  
Motion carried unanimously.

Proposed Scope of Work for Engineering Services re: Landfill  
Leonard Carrillo, Sanitation, stated Gordon Environmental has recommended two additional wells at the landfill for determining the percentage of moisture under the landfill and a testing well for geo-technical flow of water on the north end. This is a recommendation from the New Mexico Environment Department and Gordon Environmental in moving forward to close the landfill.

Commissioner Stagner asked what the water table level is.
Mr. Carrillo stated at the airport it is over 400 feet. These wells will give us the ground water suspension requirements. The wells will be drilled 45 feet.

Commissioner Green stated Task 3.1 states “upon City concurrence with our selection we will provide notice to proceed to the selected driller and the City”. Can we require them to post advertising for local well drillers as well as out of town drillers?

Mr. Carrillo stated he would ask Gordon Environmental to post both locally and out of town.

Commissioner Green stated Task 4.0 states “in the future the vadois well will need to be surveyed by qualified professional surveyor registered in the State of New Mexico”. Is that an annual survey, a one time survey, do we know?

Mr. Carrillo stated it depends on what type of testing needs to be done and he will find out the frequency and cost of the survey.

Commissioner Stagner asked what the surveyor has to do with testing the well.

Mr. Carrillo stated Gordon Environmental is looking for any change in how the water is running or anything different.

Commissioner Renfro asked if monies were budgeted for this.

Helen Belis stated monies have been budgeted for Gordon Environmental.

"Commissioner Stagner moved to accept the Proposed Scope of Work for Engineering Services with Gordon Environmental, Inc., re: Landfill."

Seconded by Commissioner Green
Motion carried unanimously.

JPA with SCRDA

Barbara Schalkofski, Administrator, stated the County Manager has expressed a desire to meet with the Governing Board to write a JPA to present to the SCRDA Board. The Village of Williamsburg has approved the JPA. The City of Elephant Butte and Sierra County did not approve the JPA. These two entities did not want to commit to the amount of funding and the yearly percentage increase.

Commissioner Renfro and Torres stated the City could not guarantee the yearly percentage increase.

Commissioner Green stated page 6, 5.2, indicates this request is for fiscal year 2010-2011 so they are funded through this current fiscal year. Since we will be interviewing for a new City Manager should this issue wait for the new Manager.

Barbara Schalkofski stated while SCRDA is funded through this fiscal year we are trying to budget for the next fiscal year and also do a projected budget for future years.

Commissioner Torres and Mayor Montgomery reiterated the City does not know how much gross receipts it will receive, we are in law suits etc.; it is hard to know where we will be.
Don Armijo stated he is the City representative on the SCRDA board and the budget has not increased for five or six years. We put the eight (8%) percent in the JPA as a starting point to get us to a point to be able to give a cost of living.

Commissioner Stagner stated we can probably give the $200,000 dollars in the next budget but not a guaranteed increase.

Mayor Montgomery stated the biggest problem is committing unknown funds.

Ms. Schalkofski asked if the eight (8%) percent was the only problem with the JPA.

Mayor Montgomery stated an increase is probably warranted but it should be based on something else and not a flat percentage. Maybe we could do an assessment and look at a cost of living increase each year.

Commissioner Renfro reiterated it is something that has to be determined during budget hearings depending on our revenues.

Ms. Schalkofski stated we would like to have a little increase each year. We want to be able to pay the employees more than minimum wage for the job they do.

Commissioner Renfro asked about the employees at minimum wage.

Ms. Schalkofski stated there are three employees making $7.50 per hour that have been working less than a year.

Gordon Mishler stated a governing board and an operating board system is not good business. The original JPA for SCRDA was written with all the city managers and mayor of Williamsburg, the Sheriff and Police Chief participating. If these individuals were attending these meetings we would not be in the situation we are in now. This should be pretty high on the priority list at budget time.

Mayor Montgomery stated we should look at something worded around a cost of living increase on a yearly basis as opposed to a flat percentage.

Commissioners Torres and Stagner suggested the Acting City Manager meet with the County and Elephant Butte to work on something we all can live with.

Commissioner Green reiterated the County and Elephant Butte had a problem with the eight (8%) percent but also the contribution amount requested. Will they at least give the same contribution they have this year?

Ms. Schalkofski stated Elephant Butte did not have an issue with their contribution; the County did not want to be held to an amount. I believe Ms. Carrejo would like to have further discussion on the amount of contribution.

Commissioner Renfro stated she can not see the County having a problem funding the same amount they have funded in the past.

Commissioner Stagner recommended the Acting City Manager discuss these two issues with the County Manager.
Mayor Montgomery directed the Acting City Manager to meet with the County Manager, Elephant Butte and Williamsburg to discuss wording on the JPA then report back to the Commission.

Mary Penner stated this is part of the election process for the upcoming 2010 Municipal Election. Recommendation is approval of the election resolution in English and Spanish.

"Commissioner Renfro moved to approve Election Resolution #15-09/10 in English and Spanish.

Seconded by Commissioner Torres.
Motion carried unanimously.

Commissioner Green stated the rocks behind the fishing pond have graffiti on them. This is an historical archeological site. I spoke with Acting City Manager Penner and City Attorney Rubin about possible penalties. The discussion is how the City protects itself against this vandalism.

Commissioner Renfro asked how long the graffiti has been on the rocks.

Commissioner Green stated this was brought to his attention about ten (10) days ago.

Commissioner Torres stated there used to be a graffiti crew that would clean up graffiti the next day.

Commissioner Renfro agreed immediate eradication is essential. The City crews used to clean up graffiti.

Commissioner Torres stated the Safety Officer used to be in charge of that. Someone needs to get this cleaned up tomorrow.

Mary Penner stated Ed Ragsdale went out yesterday and tried to remove the graffiti. They could not remove it.

Commissioner Green stated certain types of acid will split the rock and that is a problem because it is an archeological site. We need to find out what to use to remove the graffiti and also preserve the site. We also need to look at our codes; maybe they are not stringent enough; maybe a sign stating this is an archeological site.

Commissioner Torres stated Albuquerque has the same problem at the petroglyphs. At one time we talked about a spray paint ordinance.

Commissioner Renfro stated Mr. Ragsdale needs to find a way to clean up the graffiti now.

Jay Rubin stated he put a sample ordinance in the packet from Santa Fe regarding graffiti. We have talked about this before but never passed anything.

Commissioner Stagner stated we need to have an ordinance. The Acting City Manager should look at the cost of an additional camera in that area.

Patrick Gallagher, Police Chief, stated he has been to the site and Detective Lanford recovered some physical evidence and leads on
who may have been responsible for this. He is also working with Municipal Court to have violators required clean up the graffiti.

Jay Rubin stated he would work on a graffiti ordinance.

Mayor Montgomery stated there were two candidates interviewed this evening for the Sierra Vista Hospital Governing Board vacancies: Zenith Baker and Bobby Allen.

“Commissioner Stagner moved to appoint both Zenith Baker and Bobby Allen to the Sierra Vista Hospital Governing Board.”

Seconded by Commissioner Green.
Commissioner Torres abstained.
Motion carried unanimously with one abstention.

Jay Rubin stated the revised contract is similar. Changes were made to paragraph 3. Some other paragraphs were taken out which were not necessary for this type of contract.

Commissioner Stagner stated the signature page should only have titles.

Commissioner Green stated there is an attachment of eligible use of proceeds to the contract so there is no misunderstanding for the recipient on what is an eligible expense.

“Commissioner Stagner moved to approve the Lodger’s Tax Advertising & promotional Contract as revised.”

Seconded by Commissioner Green.
Motion carried unanimously.

Mary Penner stated today was the last day to receive resumes; there have been forty-two (42) applicants.

Commissioner Renfro stated in the past we have individually reviewed the applications and narrowed down the list. We then held a workshop and chose the applicants to be interviewed.

Commissioner Stagner suggested taking two (2) weeks to review the applications and schedule a workshop at the next Commission meeting.

Commissioner Green stated we should be thinking about interview questions so we have a uniform list of questions that each applicant is asked. It is a good idea to allow the public to submit to the Clerk’s Office questions that they think should be asked.

Mayor Montgomery stated an advertisement should be put in the paper that we will accept potential questions from the public until Friday, December 11 then we can set a meeting to go through the resumes. The next regular meeting will be December 22nd.

Jay Rubin stated we have always conducted our meetings in a fairly formal manner but after the last couple of meetings I have looked at our rules and there are some rules that we may want to modify, discard or look at more closely to make sure we are following our guidelines. I think it would be appropriate to schedule a workshop to review these rules of procedure.

The workshop was scheduled for Wednesday, December 2, 2009 at
Mary Penner stated the second meeting is December has usually been canceled because of the holidays. Pat Wood, Purchasing, indicated there must be a meeting which includes a bid award for the Broadway and Main Street paving and improvements project.

Commissioner Green and Jay Rubin both stated they would not be available for the meeting.

Mayor Montgomery stated we could have a meeting just for the bid award and anything else that we need to discuss. There would be no executive session since the City Attorney will not be present.

Commissioner Green explained this is an application for funding of wastewater treatment project from the Water Resources Development Act and we are applying for authorization for a project. Then we will look for congressional appropriations. The funding is a 75-25 match. The application must be submitted by Monday, November 30th. I suggest we apply for three items under one grant: ground storage tanks rehabilitation, replace existing water and wastewater lines in the older part of the City and to expand the capacity of the wastewater treatment plant.

"Commissioner Renfro moved to apply for the Water Resources Development Act grant and then proceed as required by the grant process."

Seconded by Commissioner Torres.
Motion carried unanimously.

OLD BUSINESS: None.

REPORTS: ACTING CITY MANAGER – Wished a Happy Thanksgiving to everyone.

CITY ATTORNEY – None.

COMMISSIONERS STAGNER – None.

COMMISSIONER GREEN – Wished everyone a happy holiday. Congratulations to Gina Kelley, staff, Joey Perry and volunteers for their efforts on 95 Years in Hot Water. All rooms in the downtown district were booked. The free spa tours were very successful.

COMMISSIONER TORRES – None.

COMMISSIONER RENFRO - Congratulated the School Board for the award they won – School Board of the Year. Happy Thanksgiving to all.

COMMISSIONER MONTGOMERY – Annual tree lighting ceremony Friday, December 11th at 6:00 pm in Evelyn Renfro Park.

EXECUTIVE SESSION: None.

ADJOURNMENT: There being no further business to come before the Commission the meeting was adjourned.
APPROVAL: PASSED AND APPROVED this 8th day of December, 2009, on motion duly made by Commissioner [Name], seconded by Commissioner [Name], and carried.

LORI S. MONTGOMERY
MAYOR

ATTEST:

ELLEN A. LINDSEY,
DEPUTY CITY CLERK