

**CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
MONDAY, NOVEMBER 23, 2015**

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 November 23, 2015, with the meeting starting at 9:00 A.M.

A. CALL TO ORDER

Mayor Whitehead called the meeting to order at 9:00 a.m.

B. INTRODUCTION

1. ROLL CALL

Upon calling the roll, the following Commissioners were reported present.

Hon. Sandra Whitehead, Mayor
Hon. Steve Green, Mayor Pro-Tem
Hon. Jeff Richter, Commissioner absent
Hon. Kathy Clark, Commissioner
Hon. Russ Peterson, Commissioner

Others present: Juan Fuentes, City Manager
 Jay Rubin, City Attorney
 Renee Cantin, City Clerk-Treasurer

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

2. SILENT MEDITATION

Mayor Sandra Whitehead called for fifteen seconds of Silent Meditation.

3. PLEDGE OF ALLEGIANCE

Mayor Sandra Whitehead called for Commissioner Clark to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA

Mayor Pro-Tem Green moved to approve the agenda. Commissioner Peterson seconded the motion.

Discussion. Commissioner Clark asked Chief Alirez and Manager Fuentes about the Police Department grants. His name was on the agenda and she asked if there was something he wanted to say about it. He said no but he can answer any questions there may be.

Motion carried unanimously.

C. COMMENTS FROM THE PUBLIC (3 Minute Rule Applies)

Mayor Sandra Whitehead called for Public Comment, asking them to please remember the three minute rule.

None.

D. RESPONSE TO PUBLIC COMMENTS

None.

E. CONSENT CALENDAR

1. City Commission Public Hearing and Regular Minutes, September 29, 2015
2. City Commission Regular Minutes, October 13, 2015
3. City Commission Regular Minutes, October 27, 2015
4. Public Utility Advisory Board Minutes, September 21, 2015
5. Public Arts Advisory Board Minutes, September 21, 2015
6. Accounts Payable – October 2015
7. Grant Agreement #15-0865 with the State of New Mexico to plan, design, construct, equip, and furnish an Animal Shelter in the amount of \$150,000.
8. Grant Agreement #15-0866 with the State of New Mexico to construct, purchase and install a granite wall of names, including framing at the Veterans Memorial Park and Museum in the amount of \$100,000.
9. Grant Agreement with the New Mexico Dept. of Transportation for End Driving While Impaired; Buckle Up; and 100 Days & Nights of Summer. Lee Alirez, Police Chief

Mayor Whitehead read the items on the consent calendar.

Commissioner Richter joined the meeting at 9:03 p.m.

Mayor Pro-Tem Green moved to approve the consent calendar. Commissioner Clark seconded the motion. Motion carried unanimously 5-0.

F. NEW BUSINESS

1. **Discussion/Action: Award Bid #TOC 2015.1 for the Landfill Cover Construction. Pat Wood, CPO**

Pat Wood addressed the Commission and the recommendation was to award to Mountain States Construction for \$295,292.46 with tax.

Mayor Pro-Tem Green noticed Aztec Rating came in lower. And asked if we got a bad report on a job they did.

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Ms. Wood responded based on the evaluations they didn't have the New Mexico Resident Certificate so 5% is not given in the evaluation.

Mayor Pro-Tem Green moved to approve Award Bid #TOC 2015.1 for the Landfill Cover Construction to Mountain States Constructor's. Commissioner Peterson seconded the motion. Motion carried unanimously.

2. Discussion/Action: Resolution No. 12 15/16 approving the closing of the Colonias Grant No. 3364-CIF. Lori Montgomery, Finance Director

Finance Director Montgomery stated before you, you have the Phase 2 of the Wastewater Treatment Grant. In January this project was approved and now the closing documents have come in. There are two Resolutions as well as, authorization for staff to sign the closing documents.

Mayor Pro-Tem Green moved to approve Resolution No. 12 15/16 approving the closing of the Colonias Grant No. 3364-CIF. Commissioner Peterson seconded the motion. Roll call was taken by the Clerk. Motion carried unanimously.

3. Discussion/Action: Resolution No. 13 15/16 finding the Property at 1708 Glenn St. to be dangerous and unsafe structure. Robbie Travis, Building Inspector

Building Inspector Travis said this is a property we have been talking about for a while. The neighbors have been upset for the last year or so, and we've been trying to get the property owner to clean this up. There is an old abandoned mobile home there and the owner was going to clean it up but we haven't heard from him since. This Resolution is before you to go ahead and clean up the property and remove the mobile home and dangerous conditions. You have the Commission Action Form, the certified letter, receipt, owner information, and a picture.

Commissioner Richter asked if we find this as a dangerous structure do they still have time. Building Inspector Travis confirmed.

City Attorney Rubin said we will follow the procedure here as we have done in other cases. Assuming you pass the Resolution, we have to attempt to give notice to the property owner. In this case, since they are absent, he anticipates a publication in the Newspaper and a posting on the property. The property owners would have the right to an objection and we would hold a hearing before the Commission. If there are no objections, then we have the right to go on the property and clean it up.

Building Inspector Travis says it has helped. It seems to get their attention if they want to clean it up. They will normally move once we get this going. If they open up the letter, they will hopefully respond.

Mayor Pro-Tem Green had a question for City Attorney Rubin, we are dealing with three properties and the recommendation is we go through the process and move the building and he inquired if we then put a lien on the property. City Attorney Rubin confirmed that's correct. Commissioner Green went on to say if they are not responding why should the city keep

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throwing good money after bad. Can we legally go after property they own in Texas and put a lien on that piece of property to cover the cost here in New Mexico?

City Attorney Rubin said first the procedure is after we remove the structure here in Truth or Consequences we put a lien on the property. If we decide to proceed further we can then file an action with District Court asking to foreclose the lien here in Sierra County. If we prevail, and the court awards us a judgment of foreclosure, we could put a lien on the property in Texas if we go through that process.

Commissioner Green said his only concern is that as we continue with this process we may be big land owners that cost us a lot of money and how do we get that money back.

City Attorney Rubin said you probably don't want to go forward with the Lien in Texas. Once there is a foreclosure, there can be a sale and we can get money from the sale.

City Manager Fuentes recommended approval of Resolution No. 13 15/16.

Mayor Pro-Tem Green moved to approve Resolution No. 13 15/16 finding the Property at 1708 Glenn St. to be dangerous and unsafe structure. Commissioner Richter seconded the motion. Roll call was taken by the Clerk. Motion carried unanimously.

4. Discussion/Action: Resolution No. 14 15/16 finding the Property at 309 Birch St. to be dangerous and unsafe structure. Robbie Travis, Building Inspector

Building Inspector Travis said this property is similar. It has been abandoned and the owner is in his 80's and we sent certified letters and finally sent a non-certified letter and the caretaker responded. He was supposed to come down and take a look at the property the summer of 2015. Now they cannot get in touch with them and the neighbors are complaining.

City Manager Fuentes recommended approval of Resolution No. 14 15/16.

Mayor Pro-Tem Green moved to approve Resolution No. 14 15/16 finding the Property at 309 Birch St. to be dangerous and unsafe structure. Commissioner Richter seconded the motion. Roll call was taken by the Clerk. Motion carried unanimously.

5. Discussion/Action: Resolution No. 15 15/16 finding the Property at 213 Pine St. to be dangerous and unsafe structure. Robbie Travis, Building Inspector

Building Inspector Travis said this property is also similar. It's a newer property that we've looked at when we first started three years ago. We had J & S on the property to clean it up. We want to clean it up and be done with it.

Commissioner Clark has a few questions. It looks like there is a new roof, some new windows, and in the recent future somebody tried to clean it up and cared. You're not getting a response but this is one of those buildings on a foundation. Do we know the condition of the building and the plumbing and everything inside of the building?

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Building Inspector Travis responded he hasn't been in the building. He's been to the property behind the property and raccoons are coming in and out of the house and out of the attic. We don't want to tear down houses, we just want to bring it up to code. The two on Maple and Gold Street on both we have tried to get people to clean it up and nobody has authority to do anything with the property. We found the daughter and she told us to just go ahead and do what we have to do, she doesn't have the money to clean it up. So we do work with people on trying to get it cleaned up before we do anything. This resolution is to getting people moving. We work with anyone to help get it cleaned up.

Commissioner Clark said one of the questions is, can we force a sale. City Attorney Rubin responded we can remove the dangerous condition and put a lien on the property.

Commissioner Clark said what looks dangerous is the carport. Building Inspector Travis agreed.

City Attorney Rubin referred to the Resolution packet where Mr. Travis has an inspection report dated October 26th which is pretty specific. Maybe the Commission just wants to hear Mr. Travis confirm all seven conditions listed are a problem. Building Inspector Travis did confirm, but the problem is he can't go inside the house but from the outside, that's all he can base his report on.

City Manager Fuentes added to the comments and referred to the picture of the carport where you can see it's dangerous and needs to be taken down. The rest of the structure may be able to be fixed or cleaned up. The same thing happened with the property at Maple and when we saw if it could be cleaned up, there was no way.

Commissioner Clark asked if we can scale it down to the carport.

City Attorney Rubin said legally you can limit it, as long as you remove what you feel to be the dangerous condition.

Building Inspector Travis would not recommend just doing the carport because then we will be back here again in three months doing it all over again. Commissioner Peterson has asked him why we haven't torn these houses down. That's not what we want to do, we want the property owner to take care of their property and fix it up.

Commissioner Clark asked what it would take to tear down a house with that. Building Inspector Travis estimated between \$5,000-\$10,000 because we don't have a Landfill, they have to haul it to Socorro or Las Cruces.

Commissioner Clark then asked how much we have to do all of the houses. Assistant City Manager Slettom responded we have \$17,000 for the year.

Commissioner Richter asked who has authority to enter these houses to go inside and take a peak like the Fire Marshall or Law Enforcement. Police Chief Alirez responded in order for them to go in, they have to have probable cause for a search warrant. The Building Inspector or Code Enforcement has more latitude to go in there to ascertain the damage. It's not just the

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safety of the structure, it could be the electric or gas or a number of public safety issues. We want to make sure they neighbors are not in danger. We will go with them and document it, but actually they have more latitude than we do.

Commissioner Richter said he would think if there are rodents and vermin it's a public health issue. Building Inspector Travis responded our code actually says he can go in if he sees that condition. They have just relied on our Legal Counsel because we don't want to get in any trouble.

City Attorney Rubin has been conservative with that advice because he prefers we don't go into the property but when we have a dangerous condition that's a threat to the safety of the neighborhood then yes, you have to.

Police Chief Alirez said the rat infestation is absolutely one of them because they spread disease and rabies, etc. The state really clamps down on Law Enforcement for search and seizure issues.

Commissioner Richter said it's been a really bad rodent season so there is probably more than raccoons in there.

Building Inspector Travis said they do take the Chief with them and are deputized. That helps with Fire hazards and such.

Commissioner Peterson said if the health and safety is there we can go in, if it isn't we cannot. If he doesn't the lawsuits can come after us for not protecting the city from health hazards.

Mayor Pro-Tem Green said on Commissioner Clark's comment, it looks like it's just the carport but we should include whole litany for inspection to bring it up to code

Building Inspector Travis said we need to get their attention.

City Manager Fuentes recommended approval for Resolution 15 15/16.

Mayor Pro-Tem Green moved to approve Resolution No. 15 15/16 finding the Property at 213 Pine St. to be dangerous and unsafe structure. Commissioner Richter seconded the motion. Roll call was taken by the Clerk. Motion carried 4-1-0. Commissioner Clark voted nay.

6. Discussion/Action: Resolution No. 16 15/16 Calling the Regular Municipal Election for March 1, 2016. Renee Cantin, City Clerk-Treasurer

City Clerk Cantin addressed the Commission stating the Resolution is the requirement for the Regular Election to be held on March 1, 2016. According to state statute the Resolution must be passed between 112-84 days prior to the election. Upon researching the current expiration of terms, the position that will be included on the ballot will be Position II (4 year term); Position III (2 year term); Position IV (4 year term); Position V (4 year term); and One Municipal Judge (4 year term). The Resolution is included in both English and Spanish and we request your approval.

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City Manager Fuentes recommended approval for Resolution 16 15/16.

Mayor Pro-Tem Green moved to approve Resolution No. 16 15/16 Calling the Regular Municipal Election for March 1, 2016. Commissioner Richter seconded the motion. Roll call was taken by the Clerk. Motion carried unanimously.

7. Discussion/Action: Resolution No. 18 15/16 approving the submission of an application for funding assistance to New Mexico Finance Authority Water Trust Board. Bill Slettom CDD/ACM

Assistant City Manager Slettom notified we have now entered another round of applications to the New Mexico Finance Authority Water Trust Board. This is an application for a Water Project, and is a follow on to the PER and the AMP you adopted earlier this year. This is the Phase 1, the Cook Street 300,000 Gallon Tank and the new Disinfection System. Estimated cost for this project is \$1,047,052. The way applications to the Water Trust Board work is you make your application, they go through the review and look at all of the projects and then they determine if you are going to get a grant program award. The loan program would be no less than 10% and no more than 40%. We do not know what that will be until the Legislature makes its determination of how much to put in that fund and how the Water Trust Board is going to evaluate them. The Loan is 0% and it has a .25% administrative fee.

Mayor Pro-Tem Green thanked staff for being aggressive and going for money we never went for in the past. He noted the difference from page 1 & 2 amounts. Assistant City Manager Slettom clarified the resolution is correct.

Commissioner Clark commented she understands this is the number one issue to address and the second area is the downtown area. Assistant City Manager Slettom confirmed that is correct. The follow on phases that came out of the PER are replacement of critical water lines in the downtown area; Phase 2 would be 10,000 feet of line; and we will be going back to the Water Trust Board and USDA for more funding as those projects come up.

Commissioner Clark asked if we will know from the Trust Board what part will be funded prior to having to making next year's budget so we can include it.

Assistant City Manager Slettom responded this application closes today at 3:00 p.m. and the Water Trust Board meeting is December 2nd. That is our opportunity to go before them and give them a three minute explanation. On January 7th they are sending recommended list to the Legislature of projects for funding. This is extremely accelerated. In previous years, that's taken four months. During the session, they will consider authorizations. At that time, they will be asked to supply all of the readiness to proceed documents which will be brought to the commission by resolution. At that time, we will need to decide if it's a 40% loan or a 10% loan. These funds should be ready by the end of May.

City Manager Fuentes recommend approval of Resolution No. 18 15/16.

Mayor Pro-Tem Green moved to approve Resolution No. 18 15/16 approving the submission of an application for funding assistance to New Mexico Finance Authority

Water Trust Board for water system improvements. Commissioner Richter seconded the motion. Roll call was taken by the Clerk. Motion carried unanimously.

8. Discussion/Action: Resolution No. 19 15/16 approving an application for Colonias for Phase 2B Wastewater System. Bill Sletton, CDD/ACM

Traci Burnette presented the item. She is here to request the signing of the resolution. This will authorize submission of an application to NMFA Colonias Infrastructure Fund for the 2016 Funding cycle and is due December 18th. If accepted and approved the funding will be a grant/loan combination with a local cash match. The funding would be for Phase 2B of the Wastewater Treatment Plant upgrades. Phase 2 Engineers estimate including design and construction documents, construction, tax and contingency is \$2,410,818.00. The loan portion will be 10%, local cash match 10%, and the interest will be 0% with a .25% Administration Fee. The WWTP upgrades were broken down into four phases including: Phase 1, Phase 2a, Phase 2b, and Phase 3. Phase 1 and Phase 2a have been funded through USDA and two Colonias funding amounts in a combination of a grant/loan match. Phase 2b will address the digester basin oxidation oval rehab, emergency overflow piping, and electrical components.

City Manager Fuentes commended staff Traci, Bill, Lori, and Water Department for doing an amazing job and he recommended approval of Resolution No. 19 15/16.

Mayor Pro-Tem Green moved to approve Resolution No. 19 15/16 approving an application for Colonias for Phase 2B Wastewater System. Commissioner Peterson seconded the motion. Roll call was taken by the Clerk. Motion carried unanimously.

9. Contract Extension for Legal Services with Jay Rubin to January 2016. Juan A. Fuentes

City Manager Fuentes said the temporary before you is not actually an extension of the agreement it's an agreement under the state procurement code for small purchase. Even though it was listed on the agenda with different wording, he did consult with John Appel and he was in agreement that the Commission does have the flexibility to make those clarifications and corrections at the meeting. So with that, the contract before you is for small purchase for legal services to run until January 31st, 2016. Staff is still working on the RFP for Legal Services and that will come at a later date. Staff is recommending authorization for the agreement for temporary legal services.

Commissioner Peterson thanked those involved in the question he had about an article in a newspaper clipping. He was surprised at the speed of reply and the factual answering of the question. Not only the "yes" or "no" but the in-depth responses and he deeply appreciates the staff and the Municipal League as well.

Commissioner Clark looked into this a little bit and she likes the idea of using small purchase contract. She would like to take the word contract extension out of this so we won't have a problem with that 13.1.1.50 and it's her understanding the small purchases we have a \$25,000 limit that can be an entirely different agreement. She also saw a provision in the legislature that says you can extend a contract for legal services if you are currently involved in litigation,

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so we are covered either way. She likes the idea of using the word small purchasing contract as opposed to a contract extension.

City Manager Fuentes recommended approval of the small purchase contract for legal services with Jay Rubin.

Mayor Pro-Tem Green moved to approve the small purchase contract for temporary legal services with Jay Rubin. Commissioner Peterson seconded the motion.

Commissioner Clark asked for clarification if it was through January 2016. City Manager Juan Fuentes clarified it was through it.

Mayor Pro-Tem Green said there was an email sent by a citizen. He asked staff to respond to the complaint, so this doesn't turn into another explosion or put any fuel to the fire. **Motion carried unanimously.**

10. Discussion/Action: Setting the December Commission meeting date. Juan A. Fuentes, City Manager

City Manager Fuentes said this was an issue discussed to consolidate the December meetings into one meeting on the second week in December. We just wanted to throw it out there so if the Commission wanted to do so, staff could make the appropriate notifications and publications in the coming week.

Commissioner Richter asked its one date in December. Mayor Whitehead confirmed and added it will be on December 15th which is a Tuesday and we will be having a workshop. Commissioner Richter said he's available.

Commissioner Peterson said he's available.

Mayor Pro-Tem Green feels it's excellent.

Commissioner Clark said it works for her.

Mayor Pro-Tem Green moved to approve changing the December meetings to hold only one meeting on December 15, 2015 at 6:00 p.m. but possibly a workshop before the meeting. Commissioner Richter seconded the motion. Roll call was taken by the Clerk. Motion carried unanimously.

Mayor Whitehead announced the next meeting will be on Tuesday, December 15th.

G. REPORTS

1. City Manager

City Manager Fuentes wished everybody a happy holiday week.

2. City Attorney

None.

3. City Commission

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Commissioner Peterson thanked staff for responding so promptly to a question he had and he deeply appreciates that.

Commissioner Clark visited with a couple of people in the community and she wants to complement both of them. One is the gentleman who opened up the Point Blanc Winery and the other is the one who is running Follow the Sun Tours who is also putting in a meal cart. She appreciates the efforts that are putting businesses together who hire people in our community. When we have ten five employee businesses, it's easier than one 50 employee business.

Mayor Whitehead wished everyone a Happy Thanksgiving. And she reminded everyone on Saturday, Dec. 5th we have the Free Fall Clean up.

Commissioner Peterson asked if that includes people who can't dump stuff off where there is a pickup. Mayor Whitehead responded no, everyone will have to take their stuff or make arrangements. Commissioner Peterson has a neighbors he is helping to get their stuff done but they have no way of getting it up there. Commissioner Green announced City Hall has a list of handymen who have a license and can help. You may

1) **Mayor Pro-Tem Green** said city hall has a list of handymen who have a business license and may be able to help. The dumping is free, he and the recycle center will have people to help unload.

2) Wished his fellow Commissioners, City Manager Juan Fuentes and his family, and staff a Happy Thanksgiving.

3) First LEDA meeting with Christine Logan who is the Southern Representative for the NM Economic Development Department. She was incredibly insightful and very forthcoming with ideas and he believes we will see the first idea possibly as an Agenda item in December.

4) December 11, Christmas Tree lighting at Evelyn Renfro Park. It's the Old Fashioned Christmas and downtown should be lit and lively, and a lot of fun. This is a MainStreet Project and he's not going to steal the Mayor's Thunder because she came to one of the meetings and Mayor Whitehead said we would look at having a light parade with city fire trucks and anyone who would like to decorate, or bring their boats, possible caroling, we will have the luminarias up and down Broadway, Main Street, & Foch and the businesses will be open.

H. EXECUTIVE SESSION

Pursuant to 10-15-1 (H)(7)

1. Threatened or Pending Litigation (Augustine Plains Ranch, LLC vs. State Engineer et.al.)

Mayor Pro-Tem Green moved to approve going into Executive Session at: 9:58 a.m. to discuss Threatened or Pending Litigation (Augustine Plains Ranch, LLC vs. State Engineer et al.) Commissioner Richter seconded the motion. Roll call was taken by the Clerk. Motion carried unanimously.

Mayor Whitehead stated that the Commission was now in Open Session at 10:20 a.m.

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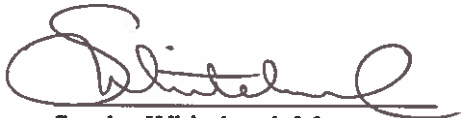
Mayor Pro-Tem Green certified that only matters pertaining to Threatened or Pending Litigation (Augustine Plains Ranch, LLC vs. State Engineer et al.) was discussed in Executive Session and no vote was taken.

Commissioner Clark moved to approve directing staff if San Augustine Plains does file another application with the State Engineer, staff can proceed with a formal protest. Mayor Pro-Tem Green seconded the motion. Motion carried unanimously.

I. ADJOURNMENT

Commissioner Richter moved to adjourn at 10:21 a.m. Commissioner Peterson seconded the motion. Motion carried unanimously.

PASSED and APPROVED this 15th day of December, 2015.



Sandra Whitehead, Mayor



ATTEST:

Renee L. Cantin, CMC, City Clerk