

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, JULY 8, 2020

A. CALL TO ORDER:

The meeting was called to order by Mayor Sandra Whitehead at 9:00 a.m., who presided and Angela A. Torres, City Clerk-Treasurer, acted as Secretary of the meeting.

B. INTRODUCTION

1. ROLL CALL

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

Hon. Sandra Whitehead, Mayor
Hon. Brendan Tolley, Mayor Pro-Tem
Hon. Paul Baca, Commissioner
Hon. Randall Aragon, Commissioner
Hon. Amanda Forrister, Commissioner

Also Present: Morris Madrid, City Manager
Angela A. Torres, City Clerk-Treasurer

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

2. SILENT MEDITATION:

Mayor Whitehead called for fifteen seconds of silent meditation.

3. PLEDGE OF ALLEGIANCE:

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

4. APPROVAL OF AGENDA:

City Manager Madrid requested that item F1 be removed from this agenda and added to next month's agenda.

Mayor Pro-Tem Tolley moved to approve the agenda as amended with removal of item F1. Commissioner Forrister seconded the motion. Motion carried unanimously.

C. COMMENTS FROM THE PUBLIC:

Ron Pacourek addressed the Commission with comments related to:

- 1) He was happy to not see any jet ski's on the river this past weekend.
- 2) He expressed his concerns regarding brush and overgrowth across from the river that can possibly cause a fire.
- 3) He wants the city to be more pro-active.
- 4) He thinks the city should start an employee suggestion program.

City Manager Madrid read comments submitted by Lillis Urban.
(Complete copy attached hereto and made a part hereof).

Hans Townsend addressed the Commission with comments related to changing the meetings to evenings.

D. RESPONSE TO PUBLIC COMMENTS:

Commissioner Aragon responded to Hans Townsend comments regarding the meetings being held in the evenings. He suggested that the city send out a survey to the citizens to receive input on whether or not they should change the meetings to the evenings or keep them as is.

Mayor Whitehead also addressed the comment from Hans Townsend regarding the meetings being held in the evenings.

Commissioner Forrister also addressed Mr. Townsend's comments regarding the meetings being held in the evenings. She agreed with Commissioner Aragon's comments regarding having a survey done by the public.

Commissioner Baca also commented on Mr. Townsend's comments regarding the meetings being held in the evenings. He feels it's better to keep them in the mornings.

City Manager Madrid also addressed Mr. Townsend's comments of changing the meetings to the evenings. We need to make sure people are going to attend the meetings in the evenings if we decide to make that change.

City Attorney Rubin reminded the Commission that it had been agreed by the Commission not to make a decision to change the meetings until the pandemic has subsided.

D. CONSENT CALENDAR:

1. **City Commission Regular Minutes, June 24, 2020**
2. **Acknowledge Special Planning & Zoning Commission Minutes, May 12, 2020**
3. **Acknowledge Regular Planning & Zoning Commission Minutes, June 10, 2020**
4. **Accounts Payable, June 2020**

Commissioner Forrister moved to approve the consent calendar as submitted. Commissioner Baca seconded the motion. Motion carried unanimously.

E. PUBLIC HEARINGS:

1. **Discussion/Action: Final Adoption of Ordinance No. 709 amending the Code of Ordinances by adding a Section related to Sale of Real Property pursuant to §NMSA 1978 3-54-1:**

This item was removed from the agenda.

F. ORDINANCES/RESOLUTIONS/ZONING:

1. **Discussion/Action: Resolution No. 01 20/21 Open Meetings Act and reasonable notice of meetings:**

City Manager Madrid explained that this is a Resolution that is required to be brought forth to the Commission the first meeting of every fiscal year.

Commissioner Aragon pointed out that subsection C, line 3 of the Resolution is redundant and should be removed.

City Manager Madrid agreed.

Mayor Pro-Tem Tolley moved to approve Resolution No. 01 20/21 Open Meetings Act and reasonable notice of meetings with the removal of subsection C. Commissioner Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. **Discussion/Action: Resolution 02 20/21 Authorizing participation in local government road fund program administered by New Mexico Department of Transportation:**

City Manager Madrid explained every year we apply for Local Government Road Funding. The amount offered is a total of \$82,651. The amount being funded by the New Mexico Department of Transportation is \$61,988. The Local Government Road Fund requires a 25% match and in this case it is \$20,663. The Resolution is required to

guarantee the match is available, and to show that the Governing Body supports the project.

Mayor Pro-Tem Tolley asked if we have made provisions in our current budget for the portion the city will be matching.

City Manager Madrid responded by saying the match should come from the Local Road Fund in the final budget.

Commissioner Forrister moved to approve Resolution 02 20/21 Authorizing participation in local government road fund program administered by New Mexico Department of Transportation. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Resolution No. 03 20/21 Animal Shelter Fees:

City Manager Madrid explained that this item is a request to change the current fees at the Animal Shelter. Some of the fees are increased in order to stabilize and increase our revenues. It will also insure that animals that are adopted are 100% ready to be adopted. In prior cases, we allowed for animals to be adopted and then get spayed or neutered after they were already adopted, but in a lot of cases we couldn't confirm that was being followed through. This will insure that all of the things that are required including shots, and spay/neutering will happen before any adoption is completed. We will be responsible for collecting the fees, and we will make sure that the animals are in good enough health to be adopted.

Commissioner Forrister pointed out that the Resolution states that prices can increase by \$25 if not sterilized.

City Manager Madrid explained in some cases the animal may have a physical condition that will not allow it to have that procedure done and that would be one of the basic exceptions.

City Attorney Rubin pointed out that the amount on the resolution should be changed to \$59.67.

Commissioner Baca moved to approve Resolution No. 03 20/21 Animal Shelter Fees with correction of the amount \$59.67 as stated by City Attorney Rubin. Mayor Pro-Tem Tolley seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

G. OLD BUSINESS:

1. Discussion/Action: Consideration of amendments to Resolution 33 19/20 pertaining to a back to work plan for the City of Truth or Consequences:

City Manager Madrid explained that this is a recurring item that will continue to be on the agenda until this pandemic is over. The only comment he has is that there has been a directive given by the Governor that there be a stricter promotion of wearing masks.

Commissioner Aragon explained that a petty misdemeanor in the amount of a \$100 fine can be cited for not wearing a mask. We can either leave the plan the way it is or make a mandate or official document stating that we support the Governor. We have no choice. She is saying that we have to enforce it. Several citizens have reached out to him with concerns regarding this matter. Therefore, he feels we need to do something.

Commissioner Forrister stated that people from out of State are still coming to our community and shopping in our stores, staying in our motels, and floating the river because they can no longer go to the lake. She feels that we should put in a concern saying that closing of the lake is causing bigger congregations in our city.

Commissioner Aragon stated it could be as simple as the City Manager apprising the Police Department on complying with it so they know what to do.

City Manager Madrid has concerns regarding the enforcement portion of this because how do you regulate irresponsible behavior? The people we need to deal with are those who don't respect the rules. Is it worth putting our Police Department at a higher risk by having them constantly approach people who are not wearing masks when we don't have the ability to replace officers if they get sick? That is the disadvantage of being a small department. The other thing is the heavy-handedness of it all is disturbing, and he thinks that our Police in general get attacked enough already. He can literally picture a person not wearing a mask who is approached by an officer asking them to please put a mask, giving the Police Officer a finger in the face with a vulgar remark. If we can get our local business to participate in promoting the use of masks that would be very helpful.

Commissioner Forrister stated that she doesn't think we need to get into the legal implications of HIPA and why someone is refusing to wear a mask. She thinks that would open up a big problem for our Police Department.

Mayor Whitehead stated that we have received this directive by our Governor. Whether you like the Governor or not, we have to wear masks, and we should wear masks. She respects the people who don't want to wear a mask, and she respects the people that do wear the mask. She wears a mask because she wants to protect the public from whatever she might have, and she has people in her family who are very vulnerable to the COVID virus, so she is going to double protect them. She understands if you don't

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want to wear a mask, but if you go into a place where the mask is required, either respectfully put the mask on and go in and do your business, or don't go in at all. There are several options out there that give the opportunity to shop without going into the store. She has heard several people say that they are livid by the amount of people who refuse to wear a mask. Again, we are looking at our economy staying open and people are fussing all of the time saying we can't survive if our economy closes down again. There is the opportunity that we could be shut down again in 7-10 days because our numbers continue to spike. She is trying to keep us safe and is asking that everyone please wear their masks. Not only for yourself, but for the public as well.

Commissioner Aragon recommended that we come up with something for the Police Officers to tell the people who refuse to follow the Governor's order.

City Manager Madrid does not think that the Commission needs to take any action today. It may be a good approach to either participate in the referral to the state level or ask someone to wear a mask, and if needed we can provide it. It is a fine line in the enforcement area, and one thing that he will say is if we have someone who is being foolish and spitting on someone and saying they have the virus then yes, we would absolutely respond as if that were an assault call. However, our police force has the same right to be protected as the general public.

City Attorney Rubin stated that the directive from the Governor's Office states the New Mexico Department of Health June 30, 2020 Public Health Emergency Order requires all individuals to wear a mask or cloth face covering in public except when eating, drinking, or exercising, or unless a Health Care Provider instructs otherwise. The second paragraph reads clear and willful violations of masks/face coverings shall be cited of violations of the PHA under Section 24-1-21. The third paragraph is the enforcement provision and it talks about the criteria for enforcement.

Police Chief Apodaca responded by saying that his interpretation of that statute is that we give local governments the authority to pass an Ordinance because there is a specific reason why the State Police are the only ones enforcing the Department of Health's statute. He feels that our local businesses should refuse service to anyone not wearing a mask, and if that person refuses, then at that time the Police Department is called and that person could be charged with trespassing.

Mayor Whitehead asked that City Attorney Rubin and Police Chief Apodaca look at the order to see what kind of direction we can go in because she feels this is a future item will need to be addressed.

Mayor Pro-Tem Tolley explained that the last sentence if the first paragraph in the directive states that they are instructing state and local law enforcement authorities to enforce the mask and face covering requirements. It is not a suggestion, they are instructing local law enforcement to enforce that.

No action was taken on this item.

2. Discussion/Action: Approval of amendment to Tower Lease Agreement between the City of Truth or Consequences and CommNet Cellular Inc., dba Verizon Wireless:

City Manager Madrid stated that this is an item that had been referred from a prior meeting. Mayor Pro-Tem Tolley had a few concerns. He then asked Mayor Pro-Tem Tolley if those concerns had been addressed adequately.

Mayor Pro-Tem Tolley responded by saying he had several issues that needed to be addressed, and they were addressed by City Attorney Rubin and City Manager Madrid. One of the concerns that was pointed out by Fire Chief Tooley was the interruption of emergency communications, and that portion was addressed. There was also a question about the boundaries, and that has been addressed by using an updated legal description rather than an old one. His concern at the last meeting about the city being locked into the contract for 30 years was explained to him, and even though he does not like it, he now understands it.

City Attorney Rubin reviewed the changes that need to be made to the agreement which was:

Exhibit A. The Parties may subsequently substitute an updated Legal Description with an updated Survey

Paragraph 20 Interference. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses ~~on the Leased Premises~~ within the City at the Effective Date of this Amendment.

Mayor Pro-Tem Tolley moved to approve Approval of amendment to Tower Lease Agreement between the City of Truth or Consequences and CommNet Cellular Inc., dba Verizon Wireless with amendments mentioned by City Attorney Rubin. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

I. NEW BUSINESS:

1. Discussion/Action: Final Approval of request for a Special Use Permit to do a live/work Retail Store/Art Gallery at 320 Broadway, Truth or Consequences, NM:

City Manager Madrid explained that the Planning & Zoning Commission has had a couple of meetings. The first meeting was a basic orientation to define their purpose and determine their roles and responsibilities as a Commission. The second meeting was to address the next three items on our agenda. The Public Hearings were held at that Commission level and they approved all three items and these items are on the agenda for final approval.

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City Attorney Rubin explained that the Battershell Process was previously held here at the Commission level when we did not have a Planning & Commission. Now that we have a Planning & Zoning Commission, the Battershell Process will be conducted at the Planning & Zoning level. The Planning & Zoning Commission, after hearing the testimony approved the live/work permit. An issue that has come up many times over the last few years is the concern where we grant a live/work permit, and what would happen if somehow the owner doesn't operate their business anymore. We have talked about the possibility of putting conditions on the live/work permit, but in this case the Planning & Zoning Commission decided that they didn't need to do that.

City Manager Madrid explained that these three items have been approved by the Planning & Zoning Commission. However, in the future we may have items that require a Battershell Hearing if the Planning & Zoning Commission denies something and the applicant appeals to the City Commission.

Mayor Pro-Tem Tolley feels there should be some conditions added to some of the live/work permits.

City Manager Madrid recommended that the Commission approve these items with a provision that they will be subject to a one year approval. The permit would be good for one year, and if the conditions are still in place then it is subject to renewal. In this particular case it is not an issue, but in the future we could have those types of issues where we need the Commission's authority to address them.

Commissioner Forrister asked about the letter submitted by Eddie Russ.

City Attorney Rubin stated that Mr. Russ was an opponent and his concern was addressed at the Planning & Zoning level.

Mayor Pro-Tem Tolley moved to approve Final Approval of request for a Special Use Permit to do a live/work Retail Store/Art Gallery at 320 Broadway, Truth or Consequences, NM with subject of a 1 year approval. Commissioner Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

- 2. Discussion/Action: Final Approval of request for a Summary Plat Amendment and Variance at 408 Main Street, 410 Main Street, and 412 Main Street, Truth or Consequences, NM pursuant to Chapter 15, Sec. 15-17., Amendment of plats:**

City Manager Madrid explained that this is another item that was approved by the Planning & Zoning Commission. It is a fairly simple item involving a re-drawing of a boundary.

Commissioner Forrister moved to approve Final Approval of request for a Summary Plat Amendment and Variance at 408 Main Street, 410 Main Street and 412 Main Street, Truth or Consequences, NM pursuant to Chapter 15, Sec. 15-17., Amendment of plats. Motion seconded by Commissioner Aragon. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Final Approval of request for a Summary Plat Amendment and Variance Request at 323 W. Riverside Drive, Truth or Consequences, NM pursuant to Chapter 15, Sec. 15-17., Amendment of plats:

City Manager Madrid explained that this is another re-drawing of a boundary. The city requirements have been met, and the questions and concerns by Planning & Zoning have been addressed.

Mayor Pro-Tem Tolley asked about bringing the sidewalks up to code, which was stated in the Planning & Zoning Commission minutes.

Grant/Projects Coordinator/Zoning Official Alvarez responded by saying the request is for a variance, and our Municipal Code states that anytime you amend a plat you have to bring it to a certain standard which would be putting in a sidewalk, curb and gutter. In this case, it would be a hardship on the property owner to put in a sidewalk, curb, and gutter over the entire street just to amend their property line.

Commissioner Baca moved to approve Final Approval of request for a Summary Plat Amendment and Variance Request at 323 W. Riverside Drive, Truth or Consequences, NM pursuant to Chapter 15, Sec. 15-17., Amendment of plats. Motion seconded by Commissioner Forrister. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Authority to negotiate price agreement for the Clean Water State Revolving Loan Fund RFP's:

City Manager Madrid stated that we have been offered funding from the Clean Water State Revolving Loan Fund for Vacuum Station Improvements and Processing and moving Wastewater. There is a strict procurement process that needs to be followed. The procurement code requires that all terms, conditions, and discussions be kept confidential until negotiations are complete. He can't discuss the specifics, but he can discuss the process. We did a request for proposals and we used a standard grading criteria based on the proposal documents. We also conducted personal interviews with the three firms that submitted proposals. Normally that presents a clear winner in the race of three, but in this case it has not. He is requesting your approval to negotiate price with each one of the different firms that applied and bring back one for final

approval after the negotiations take place. All three firms are very qualified, so no matter who we select, we are going to get a good firm. The three potential candidates are Smith Engineering, Bohannon Huston, and Wilson & Company.

Mayor Pro-Tem Tolley moved to approve to give City Manager Madrid authority to negotiate price agreement for the Clean Water State Revolving Loan Fund RFP's. Motion seconded by Commissioner Forrister. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

The Commission agreed to let Commissioner Aragon give his reports prior to items I5 and I6 due to the facts that he has to recuse himself from those items.

Commissioner Aragon reported the following:

- He commented on item I5 by saying Policies & Procedures are very important and Section 10-4 of our ordinance states that rules and regulations have to be approved by the Governing Body. However, this is the first Municipality where he has worked, where the Commission has to approve the Policies & Procedures for the Police Department. He thinks the Chief of Police has the authority to approve them on his own. The Commission doesn't need to micromanage what the Police Department does unless it's a radical issue.
- As for item I6, he believes that the Chief of Police also has the authority to determine who gets training.

City Manager Madrid stated the ordinance requires that out of state travel be approved by the Commission.

Commissioner Aragon continued to report the following:

- He is the President of the Rotary Club. He commended Mr. Madrid for following up on his concern relating to removing the graffiti and cleaning up the park.
- 11-2-2 in the code is the finding and facts for recommendations and decisions for the Planning & Zoning Commission. There are seven key things they need to think about on every P & Z issue. He asked that the city consider forming a check list of the Planning & Zoning Commission's facts & findings.
- He suggested that a survey be sent out in the utility bills on whether or not the public wishes to change the City Commission Meetings to the evenings or keep them as is.
- He feels we should consider dedicating a segment of animal control fines to be deposited into a special budget account that would be used specifically to fund sterilizations; consequently, citizens that adopt a dog or cat would not have to fund the sterilization payment for this procedure as the funds in the special account would go towards sterilization. This protocol was adopted via an ordinance in a municipality that I served and it lowered the cost for citizens desiring to adopt a pet.
- He commented on correspondence he received from citizens asking that the Police Department be de-funded.

Commissioner Aragon then recused himself from the remainder of the meeting.

5. Discussion/Action: Police Department Policy & Procedures:

Police Chief Apodaca stated, with our present policy, and the proposed policy, the Chief of Police's directives are a part of that policy. However, we are changing the entire policy. The present policy was implemented 16 years ago, and needless to say a lot of aspects in Law Enforcement has changed. He noted that the changes to the policy has been reviewed and approved by our City Attorney.

Mayor Pro-Tem Tolley does not feel comfortable approving a document that he has not reviewed.

Commissioner Forrister stated that the Commission is only voting to give Police Chief Apodaca the authority to move forward with implementing new Policy & Procedures for the Police Department.

Commissioner Forrister made a motion to approve Police Chief Apodaca to move forward with implementing the Police Department Policy & Procedures. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer.

**Hon. Brendan Tolley, Mayor Pro-Tem voted nay
Hon. Amanda Forrister, Commissioner voted aye
Hon. Paul Baca, Commissioner voted aye
Hon. Sandra Whitehead, Mayor voted aye
Hon. Randall Aragon, Commissioner recused himself from this item.**

Motion carried with a 3-1 vote and one abstained.

6. Discussion/Action: Out of State training approval for Deputy Chief Baker:

City Manager Madrid stated that he had a conversation with Chief Apodaca about our crime rate, and for the calendar year of 2019, Truth or Consequences is ranked the 11th safest place out of 106 cities. He congratulated Chief Apodaca and the Police Department for their hard work and service. He continued by saying, we have a department that is not broken and does not need to be fixed or de-funded. He explained that the Police Department in Las Vegas was de-funded and the homicide rate went from 1 a year, to 5 in 4 months. The FBI had to step in to take back the community from drug use. We are in a High Intensity Drug Trafficking Area from the corridor of I-25 from

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El Paso to Denver. His son is a Police Officer in Las Vegas, and when I asked why we don't have the same meth and heroin problem here as they do up there, his son responded, it's because you haven't let them in the door, don't let them in the door. As you can see from the operations in the last couple of weeks, our department has not let them in the door, and the only way to keep them from coming in is to support our Police Department. The Police Department always has his complete support.

Police Chief Apodaca stated that Deputy Chief Baker has requested to attend the FBI National Academy which is located in Quantico, Virginia. The entire trip is funded except for her travel expenses. He needs the Commission's approval since the training is out of state.

Mayor Pro-Tem Tolley moved to approve Out of State training approval for Deputy Chief Baker. Mayor Whitehead seconded the motion. Roll call was taken by the Clerk-Treasurer.

Hon. Sandra Whitehead, Mayor voted aye
Hon. Brendan Tolley, Mayor Pro-Tem voted aye
Hon. Paul Baca, Commissioner voted aye
Hon. Amanda Forrister, Commissioner voted aye
Hon. Randall Aragon, Commissioner recused himself from this item.

Motion carried with a 4-0 vote with one recusal.

E. REPORTS:

City Manager Madrid reported the following:

- He announced that he will be out of the office the week of July 15th. Police Chief Apodaca will be in charge during his absence.
- He announced that they received a used backup trash truck from Albuquerque.
- He received requests in regards to charging stations for electric cars in the downtown area. He and Electric Department Director Easley are looking into that.
- They have a call this afternoon with USDA regarding our Water System Improvement Projects.

Mayor Pro-Tem Tolley reported the following:

- He thanked Police Chief Apodaca and Deputy Chief Baker for everything they do.
- He addressed the parking along the river at the Ralph Edwards Park. He would like for the city to explore alternative parking areas.

City Manager Madrid responded by saying there will not be any parking near the river.

Commissioner Forrister reported the following:

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- She also received concerns regarding parking along the river at the Ralph Edwards Park.

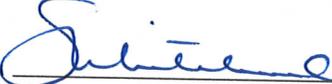
Mayor Whitehead reported the following:

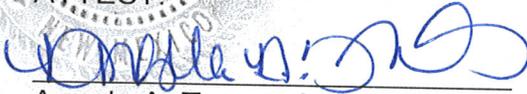
- She too has also received emails for us to de-fund the T or C Police Department.

M. ADJOURNMENT:

Commissioner Forrister moved to adjourn at 10:56 a.m. Mayor Pro-Tem Tolley seconded the motion. Motion carried unanimously.

Passed and approved this 22nd day of July 2020.


Sandra Whitehead, Mayor



Angela A. Torres, CMC, City Clerk