

**CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, SEPTEMBER 8, 2021**

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. Amanda Forrister, Mayor Pro-Tem
Hon. Paul Baca, Commissioner
Hon. Randall Aragon, Commissioner
Hon. Frances Luna, Commissioner

Also Present: Bruce Swingle, 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:

Mayor Pro-Tem Forrister moved to approve the agenda as submitted. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

C. PUBLIC COMMENT (3 Minute Rule Applies):

Rick Dumiak addressed the Commission with comments related to:

- (1) He feels that the Commission needs to appeal Resolution No. 05 21/22.
- (2) He asked about a rumor he heard of a portion of Rotary Park being purchased.
- (3) He asked that the Commission respond to public comment so that the public knows that they have been recognized.

Ron Pacourek addressed the Commission with comments related to:

- (1) Weeds he has seen throughout the community that he feels may be a fire hazard.

Audon Trujillo addressed the Commission with comments related to:

- (1) How he is proposed of the new Personnel Policy being adopted.
- (2) He feels that the public needs to have more time during public comment.
- (3) He reported on Commissioner Luna's frequent absence.
- (4) The time frame for appropriating funds for the Golf Course.

Sophia Peron addressed the Commission with comments related to:

- (1) The letter that was sent out to the customers who have utilities regarding the electricity outage on October 11th and October 22nd.

Ron Fenn addressed the Commission with various comments related to:

- (1) The advertisement that went out in regards to the meetings pertaining to the AMI meters.

Steve Bauers addressed the Commission with comments related to:

- (1) Recommendations on how we can help our electric system.
- (2) He feels that we all should work together because the whole us and them attitude is not going to get us anywhere.

Ariel Dougherty addressed the Commission with comments related to:

- (1) Her concern of a billboard located next to the thrift shop that has misinformation about the Election.

D. CONSENT CALENDAR:

1. **City Commission Regular Minutes, August 25, 2021:**

Mayor Pro-Tem Forrister moved to approve the Consent Calendar as submitted. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

Good morning Madame Mayor, commissioners, Mr. Swindle I stand before my representative with a concern about all the weeds or over growth of vegetation in our community. I would think that our code enforcement officer would be working overtime to keep up with all the violations in our city limits. I have a real concern with the area across from Rotary Park, River Bend Spa, Ralph Edwards Park, and all along the River both sides. Please take a drive on East Riverside Dr and look across the river. Someone should be responsible for all that over grown of vegetation and to control it. We have had some real lightning/rain storms in the near pass and if that area get struck by lightning (god bless our fire department) but I not sure they could handle a fire like that over across the river. There is no water source over there, the river is down and the wind usually comes from the south/southwest. I 'm hoping our city would be proactive rather than being reactive to this situation.

I have not forgotten about a No Wake ordinance on the Rio Grande in the city limits of TorC I'm waiting for some action.

FYI I received a letter from UNMH HOSPITAL that they have been hacked and some of my medical record have been compromised .

Thanks Ron Pacourek

Appellant Dougherty Comments during Appeal – Before TorC Commission – September 08, 2021

AT THE START: If any of you feel you can not be impartial in considering my appeal, I urge you to recuse yourself. Further, you must deliberate the substantive issues I raise. Otherwise you violate my due process rights under the Fourteenth Amendment.

I raise eleven points in my written appeal submitted August 2nd with four Exhibits. You only yesterday received my 5 page Supplement. Regretably the public has been deprived this material. The Supplement includes City Minutes and references to various laws, census data and a recent judicial decision. You must consider both submissions and key points I now discuss.

ONE: In City Code Sec 14-45 what does “**providing the availability of service**” that carries a customer charge of \$8 actually mean? (Supplement, pg 4, No1.) What specifically does it cover in terms of the tasks the City charges to customers? Combined the City collects over \$30,000 a month and more than \$365,000 a year under “availability of service”. As citizens we have a right to know what our fees provide and how these funds are allocated.

In over 250 billing cycles my water and electric meters were read by two different individuals. Never did a bill have any line item charge for meter readers so **THEIR FEES MUST** have been incorporated into this \$8 “availability of service” charge. Two questions I seek answered: One, why do you still charge the entire customer base the same amount since meter reading is now theoretically automated? And Two, since you have not dropped or altered this \$8 fee for me why do you think you can charge me **TWICE** for the same service?

TWO: NM is a leader in equity and environmental justice in crafting state energy policies. Resolution 5 21/22 now makes T or C the highest charging public body in the country for opt out fees for smart meters. Close to 30% of our population live in poverty. 37.4% of the population are seniors. Many of us live on fixed incomes. And 41.7% of adults in poverty also have disabilities. (chart, page 5, Supplement). The \$50 fee is egregious and capricious. It is why 250 citizens readily signed petition you rejected. Most seriously Resolution 5 21/22 defies state law, NM Stat § 62-8-1. Please answer, why you think this Commission *especially given our community economic composition* is exempt from adhering to this state statute?

THREE: December 18, 2020 I appealed under Sec 13-30(e) the installation of a smart meter. At the time and when my appeal was heard before this Commission (and *de facto* approved) this past January, there existed no penalty in the City Code for the exemption under which I appealed. It is long

established practice in making laws desiring to *post facto* collect fees on prior actions that language be written in the law that specifically addresses a retroactive fee process. No such language exists in Resolution 5 21/22. My Public Comments before you on October 9, 2019 (attached) warned of some public opposition to smart meters. I lamented then you were “proceeding with no official public input” – ie Public Hearings that officiate public views. Some 275 people signed a petition that Fall. Your primary obligation is to protect the public welfare. Exactly how is Resolution 5 21/22 fair to me and protects my welfare?

RELIF SOUGHT: Resolution 5 21/22 has caused an undue, unjust and harmful cost to me. For these reasons I seek the following relief: the removal from my utility bill of the 2nd “EL TOTAL CHARGE” of \$50 since July 2021 and going forward on all future utility bills. In approving my appeal you have the opportunity to show your commitment to the public's welfare.

E. PUBLIC HEARINGS:

- 1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 719 relating to Administration adopting a Personnel Policy setting forth Personnel Rules and Regulations, and establishing consistent basic policies, practices, professionalism, and expectations concerning relations between the City of Truth or Consequences and its employees:**

City Manager Swingle explained that there were two copies provided in the packet. One is the redline version, and the other is the final version. This policy is a new document. It is not a revision of the existing policy. Senior staff has reviewed the policy, and has made a number of changes to the document over the last two months. It has also been reviewed by our City Attorney. We have made some changes to the nepotism section, which is 9.6. It was changed to the 4th and 5th level of relationship to be more consistent with what nepotism policies have which is typically the 3rd degree of relationship. There were also changes to the leave portion. Initially, he had put the employees that are employed the day that this document is adopted would stay grandfathered in at their existing rate, and new employees would start at the new accrual rate. The change was how they were listed. The Commission has been very generous with the benefits that they have given the employees, and we don't want to take away benefits from the employees that were already given. Therefore, we will grandfather those employees with their current rate.

Mayor Whitehead opened the Public Hearing.

Proponents:

Audon Trujillo gave his recommendations of some additions/amendments he feels the policy needs before being adopted. (Complete copy attached hereto, and made a part hereof).

Ariel Dougherty stated that she wanted to follow up after Mr. Trujillo because he has a tremendous amount of involvement, investment, and ideas to contribute. He has also followed this issue with the Commission, and the City for a long time. He sent everyone a notice this morning saying that that we should continue the hearing today, but the action should be postponed until some of the ideas that he has presented could be incorporated into it. She would also like to see a citizens committee who can review it, and polish off the procedures. She commented on the two versions of the policy that were provided in the packet. She would have liked for them to be specifically labeled, because she only looked at the first version. Guiding the public how to view 300-400 pages of material might be helpful in the future. She supports what Mr. Trujillo is trying to do and hopes when citizens have valuable contributions to make to the Commission that there is a way in which you will collaborate with us.

OBSERVATIONS ON DRAFT T OR C PERSONNEL POLICY - Audon Trujillo, Jr. September 6, 2021

The City is about to make a decision on what personnel policies will govern the administration of City decision making with regards to personnel. The draft personnel policies before the City Commission via Ordinance No. 719 should not, in my opinion, be accepted in its' current form. While the majority of language in the draft document can be seen as an improvement to the City's current Personnel Policies (i.e., City's 2011 Edition), there are sections which rewording would benefit the city.

The City is to be applauded for updating its Personnel Policies which are in need of updating. The City at this junction needs to determine whether it is satisfied with things as they are or whether they indeed seek to select the best candidate for positions, provide their employees with fair work objectives and annual evaluations that will be fair, reasonable and resonate with those intent on seeking excellence in our workforce.

While I have not thoroughly reviewed the complete draft Personnel Policies among the key contents of the draft personnel policies that should be questioned by the City Commission prior to approval of this document are:

DEFINITION: TEMPORARY EMPLOYEE: Currently the time for a temporary employee is six (6) months. There should be very few instances that the City cannot complete competition and fill a vacant employee within three (3) months of a position becoming vacant. This is especially try of positions who are electing to retire. Moreover, but for the rarest of circumstances employees should provide the city with two (2) weeks of their vacating their position should they seek employment outside the city.

1.41 TEMPORARY EMPLOYEE: Language in the Personnel Policy needs to clarify that an individual (City employee or outside applicant) hired to fill a temporary position will have all the required knowledge, skills, education and abilities required for the "temporary vacancy" or of a new position. Moreover, such temporary positions should be announced for a minimum of two weeks on the bulletin boards of all City Departments. Should there be a need to go outside the City to fill a new position language in the City will advertise the position for a minimum of two (2) weeks.

1.43 UNCLASSIFIED EMPLOYEE: What state regulation allows the City to terminate any employee without being entitled to grievance procedures? If there is a state regulation state the regulation and insert the specific regulation.

Emergency Hires eliminated

SECTION II: EMPLOYMENT STATUS

2.1 Position Specifications: Language need to specify that all required knowledge, skills, education and abilities required of the position to be filled by outside applicants shall also apply to any employee transferred to a vacancy or new position.

F. Unclassified Employee: What state regulation allows the City to terminate any employee without being entitled to grievance procedures? If there is a state regulation state the regulation and insert the specific regulation.

SECTION III. GENERAL PROVISIONS

3.3. Amendment of Rules and Regulations ... Add the following language ...

"A copy shall e given to the employee and the original shall be maintained by HR in the employees personnel file."

ADD THE FOLLOWING LANGUAGE:

3.6.1 Administration by the City's Department Chief of Human Resources: The Department Chief of Human Resources shall be responsible for ensuring that selection boards are educated about and follow all Equal Opportunity Rules & Regulations to ensure that there is no discrimination related to race, age, religion, color, national origin, ancestry, sex, marital status, physical or mental handicap, medical conditions, sexual orientation or gender identity. The Chief of Human Resources shall not be a voting member of any selection panel except for those positions in Human Resources. The Chief of Human Resources (or her/his HR designee) shall be present at all selection panel meetings with applicants to ensure that no violations occur and to ensure that each selection panel member is scoring applicants during the individual applicant interview. At the conclusion of each individual interview the Human Resource Chief shall collect the individual scoring sheets of applicants.

The Chief of Human Resources shall ensure that weighted selection criteria are developed prior to the advertisement of each vacant position. The Chief of Human Resources shall enlist subject matter experts to develop selection criteria and determine the selection criteria's respective weight. Importantly, election criteria and their weights shall be publicized in the position announcement in all advertisements for the position. [Doing this ensure that the City obtains qualified individuals to apply as it will encourage those fitting the sought qualifications to apply and discourage those who do not have the qualifications to not apply.]

4.2 Recruitment of Applicants: Language needs to describe the role of the Chief Financial Officer as being responsible for ensuring that adequate funds for the position are in place (i.e., available) from a funding line item that is in keeping with the position.

4.3. Temporarily Filling Vacant Positions: Suggest changing language from six (6) months to three (3) months. Add that individuals filling a vacant position must meet the requirements established for the vacant position.

4.4. Best Qualified & Best-Suited Applicant Determination: [NOTE: The language as currently written seems to indicate that Irrespective of the scoring of applicants that the Department Head and Human Resource Manager can select whoever they wish to employ regardless of the qualifications of the applicants.]

Suggest eliminating the following language

"The best qualified and best suited applicant is determined by the department director, in conjunction with the Huan Resources Manager" and instead insert

"A selection panel of 3 to 5 members shall rate each candidate interviewed for the position. The Head of the Department of the position being filled shall be a member of the selection panel. A majority of the selection panel should be subject matter experts in the field of the position being filled. The selection panel will determine the best qualified and best suited applicant. This will be done by the selection panel's comparative scoring on a) selection criteria, b) response to interview questions and c) any tests that may be required of candidates. Test may be given as a pass fail and/or can be part of the selection criteria scoring of candidates. The only way the selection panel's determination can be invalidated is for

the background check to reveal strong negative factors (e.g., past felonies, reference checks revealing unacceptable past poor performance, pre-employment drug and alcohol screening, medical test). "

SECTION V: CHANGES IN EMPLOYMENT STATUS

5.1 Promotion: Add:

"The City will base employee promotions on individual merit aligned with annual evaluations recommendations and availability of funding."

5.2 Evaluation Period: Add:

The standard evaluation period shall be a 12 month period beginning for all City employees on [INSERT DATE] and ending on [INSERT DATE]. Employees beginning after the start date of their rating period shall be their employment start date and [INSERT DATE]. Department Heads shall be responsible for establishing measurable work objectives for the employees evaluation period. Care shall be taken to ensure that the work objectives are in line with the position, are measurable and are attainable. The draft written objectives shall be shared with the employee within two weeks of the start of the evaluation period. The employee shall have one week to provide suggested changes to the Department Head and these shall be discussed within two work days after providing the suggested changes. The final work objectives will completed one month after the start of the rating period and shall be signed by both the employee and Department Head. A copy of these shall be provided to the Human Resource Manager and the employee. The Department Head shall be responsible for maintaining the original copy of the work objectives.

5.4 Transfers: Add the following language for subsection A, B and C:

"Employees transferred from one position to another shall meet all the requirements of the position that they are being transferred. "

5.5 Resignation: Suggest adding language to read:

" One week after receiving a resignation letter the Department Director and Human Resources Manager shall provide the employee with a written acceptance or rejection of the resignation. Failure to provide the employee with such a letter shall allow the employee to curtail his/her employment on the date his/her resignation specified or allow him/her to continue employment with no break in employment. This decision will be solely at the employee's discretion."

SECTION VI: CONDITIONS OF EMPLOYMENT

6.2 Temporary Employee Hired to a Regular Position: Suggest adding the following language:

Temporary Employees shall not be hired to a Regular Position without advertising the position. [The City needs to ensure that it does not "sole source" filling Regular Positions by hiring Temporary Employees as Temporary Employees were not fully competed.]

6.4 through 6.5. Correct Capitalization at start of subsections to coincide with the rest of the draft document.

9.9 Fringe Benefits & 15.5 City Vehicles:

VEHICLE LOGS:

These draft Personnel Policies do not mention anything regarding the use of vehicles or any responsibilities employees have for logging vehicle use, or the process for checking out a City vehicle for occasional use. Recommend having a statement added regarding establishing a Vehicle Log, the employees responsibility to fill in a Vehicle Log each time they use a Vehicle, Responsibility of Department Heads to ensure Vehicle Logs are in each vehicle and checking the logs on a weekly basis to ensure vehicles are utilized for official business.

There is no statement as to under what circumstances a vehicle can be kept at home. Many City employees seem to be granted the privilege of taking a City owned vehicle home. Is there a City policy on employees reimbursing the City for milage on office to home & home to office use? Is there a master log of Vehicles and which employee has been assigned the vehicle and is allowed to take the vehicle to his residence on a regular basis? Is the specific residential address of the employee noted?

No language on how often a City owned vehicle is to be serviced.

OTHER OBSERVATIONS:

PURCHASES:

There is no mention in the Personnel Policies on what practices are to be followed by employees (i.e., including Department Heads) when they require materials/goods or services. If such policies/processes exist, at the very least the existing policy/process for requesting these should be referred to (e.g., T or C City Policy & Process for requesting services, materials/goods).

The State of New Mexico has specific requirements regarding the procurement of goods and services. In some instances the State has ongoing contracts that the City is required to utilize in order to obtain specific goods and services.

Similarly there is no mention of any required "in-house" training on procurement practices that are violations of the State Procurement Policy and which must be avoided (e.g., committing the City to pay for goods or services after the employee has already procured them and submitting receipts for reimbursement).

END OF DOCUMENT

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Ron Fenn stated that he is generally pleased with the fact that the city is looking at doing something that has been necessary for a long time. It will certainly not cure things in the short term. That may take generations before all of this comes into fruition. His one suggestion would be to add something that established the relationship of City employees and the public, because the only place that references the public is under the code of ethics. The reference in the proposed policy states that "*they shall use the powers, and resources of public office to advocate the public interest, and it is related to the ethical conduct of City Employees and Officials.*" City Government cannot function efficiently without the confidence of the public. Our contact with citizens, and performance results in often the basis for which Government is judged. This doesn't really address the fact that the people are the city. They are not just residents. Without the people, there is no City so that needs to be a little more emphasized. The paradigm right now is that we work for the City, not recognizing that the people are the City, and what's best for the people is maybe not the same thing that is best for employees. There has been very little accountability for work that is done in the city. There has been very little responsibility in the past, and he thinks that this document may help forge some future betterment. He thinks that there needs to be something in the preamble or in the beginning of it that really punches home the fact that all of you are here for our benefit, not the other way around. That is one of the problems with what has been going on in the city for so long, and why our population under our last census shows about a 20% loss of population.

Mayor Pro-Tem asked Mr. Fenn if he has a suggestion of what the policy should say to make it better.

Ron Fenn responded if they bring this back up, he will write something for the Commission. He always proposes solutions to problems. He doesn't just complain without solutions. He believes in this community, and he will die here, but as long as he is here, he will fight for the benefit of the people of this community.

Opponents:

None.

Comments from the Commission:

Commissioner Aragon stated that he likes how the performance evaluation section reads because you need to have goals when you set the performance evaluations. That is important, and he noticed that we didn't have that. Sometimes you might have to hurt people's feelings so there needs to be something in there of you need to tell it like it is or you are not really developing the person. That is really important to develop our people to do things right the first time. He agrees with a review committee, but there needs to be experts on it because this is not something you just want to let someone who has no knowledge on personnel matters be on.

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Mayor Pro-Tem Forrister feels like we are moving in the right direction to try and change this personnel policy, and she feels like we should take some of these valuable solutions into consideration.

Commissioner Baca agreed that we should take the public's input into consideration.

Commissioner Luna asked by tabling this item when it comes up for approval, what does that do to our publication process, and how does that affect the changes for approval.

City Attorney Rubin stated if we make changes to what we have here, we may have to start the publication process again. He complimented City Manager Swingle for doing a wonderful job by putting this together. He was very honored to be able to go through it, and make some suggested changes. Nevertheless, it is always important to get input from the public, and he is in favor of looking at the suggestions we received today.

Commissioner Aragon stated that Mr. Fenn made the comment about feelings between the employees and the citizens. He thinks that is a good idea. He feels that the employees should serve as an ambassador for the city.

Mayor Whitehead closed the public hearing.

Mayor Pro-Tem Forrister made a motion to table Ordinance No. 719 so they can look at the suggestions given by the public. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

F. ORDINANCES/RESOLUTIONS/ZONING:

- 1. Discussion/Action: Resolution No. 20 21/22 Declaring Surplus Property for an online Auction through J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers to be held on October 5, 2021:**

City Clerk Torres explained that the Streets Department has various vehicles, a flatbed trailer, and a John Deer Loader that they want to sell in an online auction. Included in the packet is the Resolution, and a list of the surplus property which includes the current value of each item. The auction is through J.J. Kane Auctioneers, and it is scheduled for October 5, 2021.

Mayor Pro-Tem Forrister moved to approve Resolution No. 20 21/22 Declaring Surplus Property for an online Auction through J.J. Kane Associates, Inc. dba J.J. Kane Auctioneers to be held on October 5, 2021. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Resolution No. 21 21/22 Budget Adjustment Resolution:

Assistant City Manager Alvarez reviewed the budget adjustments submitted in the agenda packet.

Commissioner Baca moved to approve Resolution No. 21 21/22 Budget Adjustment Resolution. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Resolution No. 22 21/22 Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority (NMFA):

City Manager Swingle explained that we have submitted a shell of an application to the New Mexico Finance Authority for a loan to purchase a Transformer for the Substation. The loan is a little over \$1 million dollars. It is the complete cost of the Transformer, as well as the gross receipts tax, and other costs that are associated with this new equipment. The city is in dire need of this Transformer, and fortunately the Electric Department is one of the utilities that does not have a lot of debt. They have one other outstanding loan right now, but it is a fairly small loan comparatively speaking so they are in good financial shape to cover the cost of loan payments. Should the Commission approve the Resolution, we would ask that the Mayor sign off on the formal application, and then we would start submitting all of the documents that NMFA needs to execute the loan process.

Mayor Pro-Tem Forrister moved to approve Resolution No. 22 21/22 Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority (NMFA). Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

G. NEW BUSINESS:

1. Discussion/Action: Ariel Dougherty Public Appeal in regards to Resolution No. 05 21/22 imposing a \$50 monthly trip fee to customers desiring to retain their digital meters:

City Attorney Rubin explained that he was asked the question whether or not we need to have this hearing. He knows that we have had Public Appeals before from Mr. Fenn, and Ms. Dougherty regarding the issue of the AMI Meters. However, that issue was dealt with the question of whether or not they would be required to have an AMI Meter, and this is a different issue that talks about the \$50 trip fee which was imposed during the January

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27th meeting, and Resolution was drafted later on. Therefore, his advice was that they would have the right to have an appeal.

Ariel Dougherty, Appellant explained that she sent additional information to the City Clerk on August 18th, but it was not sent to the Commission until September 7, 2021.

City Manager Swingle asked the Commission if they have all had a chance to review the information that was sent to them that the Clerk provided to them yesterday.

The Commissioners responded yes.

City Attorney Rubin asked Ms. Dougherty how the document that was submitted to the City Clerk pertains to Resolution No. 05 21/22. (Complete copy attached hereto, and made a part hereof).

Ariel Dougherty, Appellant stated if you hear her presentation, it will clarify things. 51:51

Mayor Pro-Tem Forrister explained that she is confused as to why they did not receive what was just read instead of the minutes that were submitted on August 18th.

Ariel Dougherty, Appellant stated that the minutes are an accumulation of history that address concerns about the smart meters that affect city workers. There is no comment what so ever in them about the public welfare.

Mayor Whitehead stated that they are not talking about the meters.

Ariel Dougherty, Appellant stated that she asked a question of how the Commission addresses public welfare in this Resolution.

Mayor Pro-Tem Forrister stated that this appeal is for the \$50 trip fee, not about anything else.

Ariel Dougherty, Appellant stated that the Commission needs to address the \$8 fee, because that has never been addressed in all of these discussions. She contends that you have been paying the Electric Meter readers out of the budget that the \$8 goes into. She feels that she is being charged twice for meter reading.

Mayor Pro-Tem Forrister asked where Ms. Dougherty got the \$8 charge from.

Ariel Dougherty, Appellant stated that it is listed in the code.

Mayor Whitehead stated that the appeals before them today are based on the \$50 trip fee. We are not appealing the \$8 fee today.

Mayor Pro-Tem Forrister stated that she is reading that the \$8 fee is for abiding the availability of service. It has nothing to do with the trip charge.

Public Comment – City of Truth Or Consequences Commission
Ariel Dougherty, October 9, 2019

Greetings Commissioners,

I am vehemently opposed to the smart metering that the Commission is proposing. You appear to be proceeding with no official public input. My reasons are three:

- 1) It is far too expensive – with an ongoing unknown expense down the road. Especially as present meters are not broken – like the water mains, or downtown drainage – what problems that might exist can be addressed in other ways.
- 2) It is a health hazard of gigantic proportions waiting to happen. Think Tobacco Industry.
- 3) Such a large expense locks us further into the death spiral of fossil fuels. We all have a collective moral obligation to reach zero emissions. Let's address this instead.

You must provide evidence that smart metering is safe. Your action to proceed makes us all guinea pigs. It violates your obligation to protect the public welfare. For many of us this increase of radio frequency levels will be only feet away from where we spend large proportions of our time. There is ample evidence about the effects of elevated radio frequency hampering people's health. It is a possible class B2 carcinogen.

Legal cases against smart metering have already been settled on behalf of plaintiffs in Maine, California and Hawaii. One lead plaintiff stated: “We understand that the horse is out of the barn in terms of the meters being in, but they should've vetted these smart meters for safety before they were deployed instead of waiting until they're deployed to see that there's well-known biological effects.”

Here the horse is not yet out of the barn. You have a civic and legal obligation to ensure our safety, the public welfare. I deplore you to Whoa; not proceed.

Under the Americans for Disability Act Title II even municipal utilities must comply. For those of us who qualify with a disability the City can not smart meter our homes upon request. Many of our citizens have ADA concerns and can submit requests to keep their analog meters. The 26% of our citizens who live in poverty especially cannot afford this gross, unhealthy action of yours. In the future you may be obligated to pay for the health consequences.

If you do not want to err on the side of public welfare and safety – and keep our expenses down and recognize the climate disaster we are all face – legal actions may be the only remedy.

Please seriously consider the issues I bring to your attention before you make any more movements on this matter. Thank you.

Supplement A – City Minutes of August 27, 2019 -- Item F2: Award RFP for Advanced Meter Infrastructure (AMI) Project (3 pages)

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Superintendent of Truth or Consequences Schools District Randy Piper introduced Dr Renee Garcia and Stephanie Brownfield to provide additional information

Dr. Renee Garcia explained the main benefit of the JJAC Agreement is the collaboration that takes place. They usually have a Joint JJAC meeting with the Office of Substance Abuse Prevention and it brings together stakeholders in the community. Their goal in collaboration with THE CLUB is to make sure that our students are safe, are in school, and are working at the highest level possible. They cannot share a lot of sensitive information with outside agencies so having it within the schools will enable them to address those issues in a very timely manner so they can triage and find the support that the students need.

Ms. Stephanie Brownfield added they have been working on finding a Coordinator and Jaylah Pendleton is a possible candidate for the position. She will be able to travel and work with the students. One of the things they will be working on at the High School is working with students who have missed a few days of school. If they start counseling early, then they can possibly prevent it from going to a 10-day truancy to where the students are out on the street and doing things they maybe shouldn't be doing. Ms. Pendleton also has a Diversion Program where she does individual sessions, a Mentoring Program and a Needs Assessment Program. Judge Sanders has gone to their meetings and they had a table with all of the Principals involved as well as with Ms. Pendleton. The next meeting will be on the 3rd and they will have stakeholders such as Mercedes Murphy, Bobbie Sanders, Rita Kraken, Carl Weidman, and all of the Stakeholders that will assist us in helping our students, because we want them to succeed.

Mayor Pro-Tem Clark confirmed this is just a pass-through of the city.

City Manager Madrid recommended that the motion include with the language to be clarified by both parties and he will then work with City Attorney Rubin to clarify that language, and they will make sure they agree on it with Superintendent Piper. At that time they will fully execute the agreement.

Mayor Pro-Tem Clark moved to approve the concept of Sub-Contractor Agreement with Truth or Consequences Municipal School District for the 2019-2020 Juvenile Justice Advisory Council (JJAC) through Children, Youth, and Families Division (CYFD) to the city and the schools and authorize City manager Madrid to make the necessary changes to the contract. Commissioner Baca and Commissioner Szigeti seconded the motion. Motion carried unanimously.



2. Discussion/Action: Award RFP No. 18-19-007 for Advanced Meter Infrastructure (AMI) Project to LNG City Manager Madrid:

Electric Department Director Easley showed the presentation that was previously given regarding the need for this project. The presentation included:

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- Obstacles encountered while reading meters include dogs; fences; vegetation and locked gates.
- 220 meters are read a day on average.
- Holiday Seasons require more meters read a day to stay on schedule.
- It causes extra work if a meter reader is on vacation or sick.
- Meter readers average 6 walking miles a day, which adds up to 108 miles a month.
- Meter readers are exposed to injuries while reading.

Benefits of the system:

- The ability to read meters in a much quicker time.
- The ability to read the meters accurately.
- The system is compatible with the Cities billing software and it logs data on the customer's usage on a points basis.
- The installation would take approximately 6 months.
- Every Meter will fit into residential meters. The only issues they will have will be with a few commercial meters and those meters will be read manually. There will be only 40-50 meters at the most that will have to be read manually.
- The City will take the appropriate steps to make the meters compatible with the AMI System. Customers will not need to re-wire their buildings by any means.
- The meters will have a theft device on them and if the meter is tampered with it will send a red flag back to the Utility Office.

City Manager Madrid explained the RFP process to the Commission stating that they worked with experts to develop the proposals and they were published and sent out. They had a pre-proposal conference for questions from the providers and then the proposals were submitted and evaluated by a committee on a point's basis. The committee met to review the results of the evaluations and those evaluations were done individually and privately, then the committee met as a group to decide on the 3 final candidates. The 3 final candidates were then called in for interviews and presentations before the committee. After that the committee met a final time to determine the recommendation to select a provider. At the last meeting the Commission approved a negotiation with an appropriate provider and those negotiations have taken place. During the negotiation the provider agreed to reduce the price by 8 ½ % which is the amount we would have had to pay in Gross Receipts Tax and that brought the price under the budgeted amount of \$1 million dollars.

City manager Madrid then listed a few highlights of the system which included:

- The system will provide a visual map of where the meters are located.
- It will also pinpoint the location when service is out so power outages will be addressed much quicker.
- The readings will be digital, more accurate, and are real time.
- We will also have the capability to activate and deactivate service without sending anyone out into the field.

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- It will also give us the ability to provide customers with better information. For example, if there is a dispute with the consumption, we can pinpoint the exact time of consumption.
- There will be a cost savings that will be generated by not having the meter readers out in the field all of the time because meter readers don't just cost their salary, they cost in benefits, retirement, and insurance that we have to match.
- These savings are permanent so the system will more than pay for itself over a period of time.
- This is also something that our providers will soon be moving to, so had we chosen to delay this, the Sierra Electric Cooperative may have mandated this in a few years anyway.
- The last criteria we set in the selection of the provider, was the future capability to incorporate the same concept for water meters and the reading of those meters.

Commissioner Szigeti moved to approve the Award RFP No. 18-19-007 for Advanced Meter Infrastructure (AMI) Project to LNG. Mayor Pro-Tem Clark seconded the motion. Motion carried unanimously.

G. REPORTS:

City Manager Madrid reported the following:

- Our new phone systems were set up last week and the conversion was successful. We are now in the process of adapting and setting up groups. We will probably be in this learning process for a couple of weeks. You may encounter not being able to leave a voicemail for another couple of days, but for the most part, the phone calls are going exactly to where they need to go.
- We brought in an Engineer to take a look at the possible use of the inflatable dome at the Swimming Pool and there were some concerns with the placement of the electrical outlets and the safety of the use of that dome during the winter. The engineer didn't like the way the design was set up and he deemed it unsafe to use. With that Bo Easley contacted the Electrical Inspector from the Construction Industries Division and asked him to take a look at it as well. Unfortunately, we didn't get a favorable review from him either so it does not look like we will be able to use that dome. However, we are looking into alternative designs and we can use some of the funds from the New Mexico Finance Authority that has already been approved. We found a few designs from companies that have done this in Canada, and it is not overly expensive. The cost of a new pool is something that we cannot afford right now, but it is something we should plan for in the future. Those designs will be reviewed by an architect and from there we will develop cost estimates on a few different ideas to enclose the pool in the future.
- He invited everyone to meet with him tonight at 6:00 p.m. here in the Chambers as part of our Public Input Process.

City Attorney Rubin reported the following:

- None.

Supplement B -- City Ordinances, State Law, the US Constitution, Census Data, and Litigation Compelling the FCC to revisit Radiofrequency Radiation Guidelines in Consideration of this Appeal

1) From the City's Municipal Code

Sec. 14-45. - Electrical rates.

Customer charge means a flat charge for providing the availability of service.

(d) Residential

(2) New rate per month or part thereof for each service location.

Customer charge, per month: \$8.00

2) From New Mexico State Statute

Chapter 62 - Electric, Gas and Water Utilities

Article 8 - Duties and Restrictions Imposed Upon Public Utilities

Section 62-8-1 - Rates.

Every rate made, demanded or received by any public utility shall be just and reasonable.

3) From Preamble of the US Constitution:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

As well as Constitutional Amendments 8, 9 and 10 Under the Bill of Rights.

4) *Due Process*

A. 635 (1940) requirements of procedural due process in administrative proceedings:

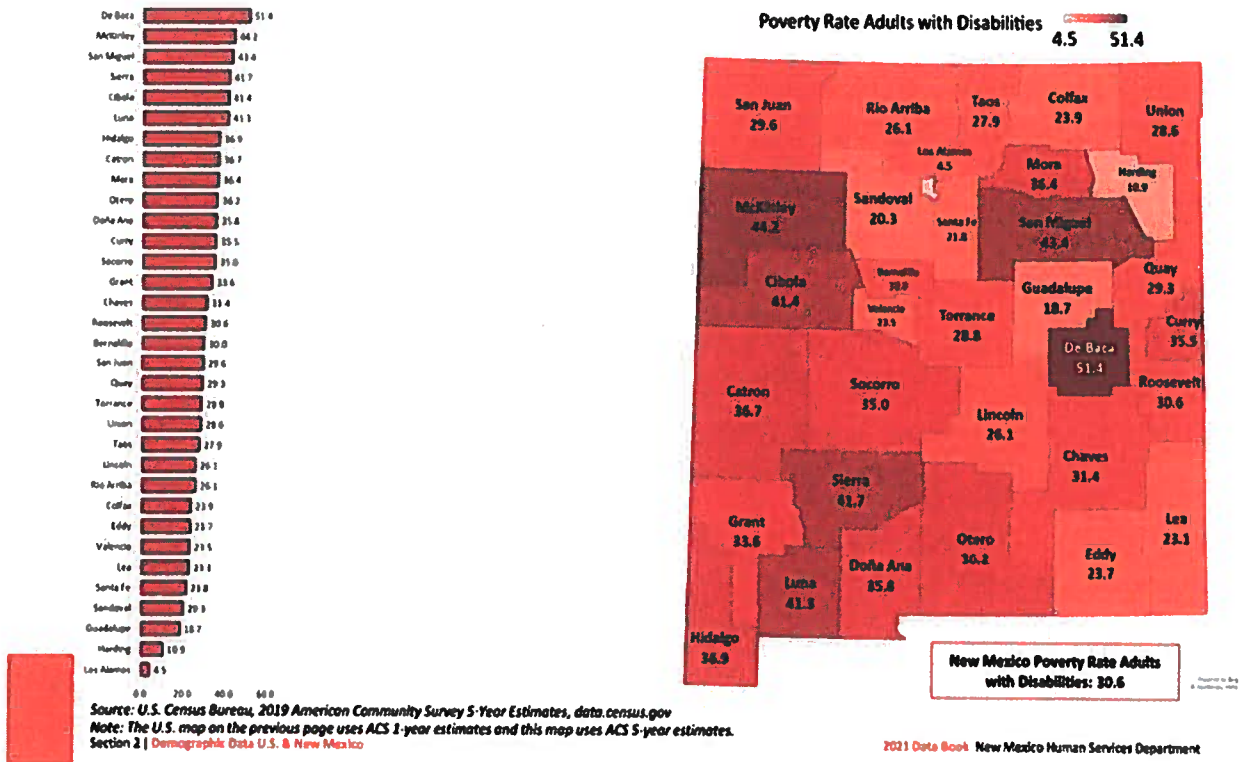
- 1) The right to a hearing and to submit evidence
- 2) Tribunal must consider the evidence presented
- 3) The tribunal must be impartial

B. Due process under the Fifth and Fourteenth Amendments can be broken down into two categories: procedural due process and substantive due process.

5) Sierra County Ranks 4th in New Mexico Poverty Rate Adults (18+ Years) with Disabilities by County as of 2019

The following chart is on page 63 of the fuller document, "U.S. and N.M. Data Maps, Section Two", available here: <https://www.hsd.state.nm.us/wp-content/uploads/2021-Data-Book-US-NM-Demographics-3.pdf>

New Mexico Poverty Rate Adults (18+ Years) with Disabilities by County as of 2019



6) 08/13/21 BIG TECH › NEWS

‘Historic Win’: CHD Wins Case Against FCC on Safety Guidelines for 5G and Wireless

The U.S. Court of Appeals for the D.C. Circuit court ruled the Federal Communications Commission failed to provide a reasoned explanation for its determination that its current guidelines adequately protect against harmful effects of exposure to radiofrequency radiation.

This historic case was filed by CHD on Feb. 2, 2020. The case challenged the agency’s decision not to review its 25-year-old radio-frequency emissions (RF) guidelines which regulate the radiation emitted by wireless technology devices (such as cell phones and iPads) and infrastructure (cell towers, Wi-Fi and smart-meters), and to promulgate biologically and evidence-based guidelines that adequately protect public health.

Read whole article: <https://childrenshealthdefense.org/defender/chd-wins-case-fcc-safety-guidelines-5g-wireless/>

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Ariel Dougherty, Appellant stated that she contends that part of the budget that the \$8 fee goes into goes to paying the meter readers.

Mayor Pro-Tem Forrister stated that it is her understanding that the \$8 charge is for having a meter... period.

Commissioner Luna stated that the \$50 fee was established for those who wanted a special meter because it was a special process. There is a fee when you want to do something different than everybody else so regardless of what the normal fee or \$8 fee is, the fee being appealed is the \$50 trip fee. She simply cannot excuse the fact that Ms. Dougherty wants a special meter. Therefore, she needs to pay for that, as does anybody else who wants that service.

Commissioner Luna made a motion to deny Ariel Dougherty's appeal of Resolution No. 05 21/22 and keep the \$50 monthly trip fee. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Ron Fenn Public Appeal in regards to Resolution No. 05 21/22 imposing a \$50 monthly trip fee to customers desiring to retain their digital meters:

Ron Fenn, Appellant stated that his appeal is in the packet along with the Commission's signed oath of office to uphold the constitution and the laws of the State of New Mexico. (Complete copy of appeal attached hereto, and made a part hereof).

Mayor Pro-Tem Forrister made a motion to deny Ron Fenn's appeal of Resolution No. 05 21/22 and keep the \$50 monthly trip fee. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

3. Discussion/Action: Approval of NM Workforce Connection Building Lease:

City Manager Swingle explained that this is a lease with NM Workforce Connections. Their current lease has expired, and we have negotiated a new lease with them. The lease that they have been operating under for the last couple of years gave them the ability to sub-lease the space to whomever they chose to and collect the revenue, and keep it for themselves. The leasable space is about 5900 square feet. We have taken that mechanism out. The city will lease that space and will retain rent for that. This agreement is for the NM Workforce Connection to have 1560 square feet of the building, and the lease is a 60-month lease. The fee for rear one is \$1,000. We currently charge \$900 per month. The lease will increase \$100 per year after that.

Commissioner Baca moved to approve the NM Workforce Connection Building Lease. Commissioner Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

4. Discussion/Action: Agreement to Provide GIS Addressing Services between the County of Sierra and the City of Truth or Consequences:

City Manager Swingle explained the City of Truth or Consequences, the City of Elephant Butte, and the Village of Williamsburg does not have GIS capabilities or staff that provide that service. Sierra County has an individual who is doing GIS. It is not financially feasible for all entities to hire their own individuals and pay them to provide the service so the County stepped up to the plate, and offered to extend the GIS services to all of the governmental entities for that service. The fee is \$50 per hour, which is the individual's salary and benefits. We need a lot of improvement with our plating and mapping, and the only way to get that done is to hire someone to do that full time or hire a company to come in and do it for us. The most feasible solution for us is to partner with the County, and utilize their services.

Mayor Pro-Tem Forrister moved to approve the agreement to Provide GIS Addressing Services between the County of Sierra and the City of Truth or Consequences. Commissioner Aragon seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. Discussion/Action: Review and approval of the 2021 Holiday Schedule for the employees of the City of Truth or Consequences:

City Manager Swingle explained that he realizes that this is coming to the Commission late in the year. However, it was just brought to his attention that the Holiday Schedules for the employees of the City of Truth or Consequences have been approved by the City Manager and not the Commission. The City Commission should approve the holiday's whether they are federal holidays or important to the community. In December, you will see the entire Holiday schedule for 2022.

Mayor Pro-Tem Forrister moved to approve the 2021 employee Holiday Schedule for the remainder of 2021. Commissioner Baca seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

H. REPORTS:

City Manager Swingle reported the following:

- We recently had a meeting with the Sierra County Animal Rescue Society and they have volunteered to cover 100% of the spade and neutering of all cats in the facilities if there is an intent to release them out or have them adopted. They also agreed to authorize spade and neutering of 1 dog per month. They are also looking into other options including fundraising to see if they can increase that for the dogs as well. We really appreciate them for stepping up to the plate.
- He gave kudos to the Water Department. The Water employees were out all last weekend to make sure that the lift station was operating properly.
- He gave kudos to Ruby Otero in the Finance Department for assisting some ladies who were lost in the community. She went above and beyond to help them, and that is exactly what we want our employees to do.
- There will be a special Hospital Board meeting tomorrow at 1:30 p.m. and the regular meeting is on September 21, 2021 at 12:00 p.m.
- We have an auditor entrance meeting today at 1:30 p.m. to start the process of our audit.
- Every employee is attending the professionalism training which is a 3-hour block of training and education. Our last class is scheduled for tomorrow. However, we will have an additional class for those who were not able to attend the other classes. Supervision and leadership trainings will be held after the professionalism trainings are completed.
- The water rates are set to increase based on the ordinance that was approved by the Commission. The ordinance states that the increases will be done in July. However, we have to do the annual CIP rate, and they are based on whatever the overall CIP rate is. The rates will be shown on the bills in September.

City Attorney Rubin had no report.

City Commission Reports:

Commissioner Luna reported the following:

- Today we heard comments about this Commission's education and intelligence, and that we are here for them. She couldn't disagree more because we are here to represent all of the people. That doesn't mean that we represent the vocal minority. We represent everyone. Those who are afraid to come to these meetings and speak up, but they call us privately. Our neighbors, and our constituents who send them text messages, and emails, and visit with them regularly. Those who don't get to be heard during these meetings because they count on the Commission to represent them so, please do not think we are here to represent you alone. We are here to represent all of our constituents, their families, business owners, tourists to our community, and those who have not moved here yet. We are here to weigh out the facts, hear those sides, and not represent one person or one side. She realizes that doesn't play to the favor of

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those who attend these meetings regularly, but it is our job to look to the future of our community, watch our budget, and pay attention to the growth. She thinks it was clear today during the public hearing that when ideas are brought to the table without attacks, we are eager to consider them. However, making these attacks on this Commission, our staff, and our leadership is no way to work together, and if we truly want to see progress within our community, she asks that we all do just that. Let's work together in a positive way with positive ideas. Let's move past the attacks and the negativity, and lets finally help our community to grow.

Commissioner Baca reported the following:

- He agreed with Commissioner Luna. That was well said.
- The petition of Resolution No. 05 21/22 was brought up again today, and yes 200 plus people signed it, but he thinks that a lot of them were mis-informed. The \$50 fee is only for the people who opted-out.

Mayor Pro-Tem Forrister reported the following:

- She feels like Commissioner Luna summed it up really well. She also appreciated Mr. Bauer's comment. We do want to encourage those valuable solutions. We are here to listen to the solutions, but the attacks on them, and the city employees does not get anybody anywhere.
- The 911 memorial unveiling event will be held at the village of Williamsburg.

Mayor Whitehead reported the following:

- She concurs with her fellow Commissioners. We seem to be attacked all of the time in one way or another. It's not only towards the Commission, but it's also towards the employees and department heads, and even sometimes towards the City Manager. We need to all work together, and City Manager Swingle is more than willing to sit down and discuss things with the public. A lot of things that are coming before them in public comment can easily be talked to through administration. That is what the City Manager is here for, and if he cannot address something, he brings it to the Commission.
- She knows that Commissioner Luna has not been present for a few meetings, but she has participated telephonically. There are times that we have lost her due to the connection, but today she has been on the phone throughout the who meeting, and she has been participating.

Commissioner Aragon reported the following:

- He asked City Manager Swingle to look into the matter of Rotary Park being purchased that was brought up by Mr. Dumiak.
- He asked City Manager Swingle to look into the billboard that was mentioned by Ms. Dougherty.
- He asked about the overgrowth of vegetation that was mentioned by Ron Pacourek.

Rotary Park response:

City Manager Swingle stated that he will absolutely look into it. However, it is not unusual for property to be bought and sold all of the time. He doesn't understand what the significance of land out there is to anyone other than the land owner. We are not selling our land, and the only other land that he knows of in that area belongs to the Bureau of Reclamation. If it is a private resident selling land, he doesn't understand the issue.

Billboard response:

City Manager Swingle stated that the billboard mentioned in public comment is not our billboard. He will however, look into getting the Election Information accessible to the public.

Overgrowth of vegetation:

City Manager Swingle stated that Code Enforcement has been out, and has been citing and working with a lot of property owners. However, he will be more than happy to have Code Enforcement take a look at it to see what the situation is.

I. EXECUTIVE SESSION:

1. Threatened & Pending Litigation (Clover Leaf Water Rights Case) pursuant to 10-15-1(H.7):

Commissioner Baca made a motion to go into executive session at 10:55 a.m. to discuss Threatened & Pending Litigation (Clover Leaf Water Rights Case) pursuant to 10-15-1(H.7). Mayor Pro-Tem Forrister seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.

Mayor Whitehead reconvened the meeting in open session at 11:13 a.m.

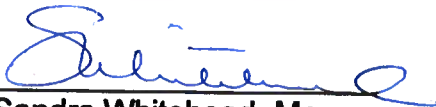
Mayor Pro-Tem Forrister certified that only matters pertaining to Threatened & Pending Litigation (Clover Leaf Water Rights Case) pursuant to 10-15-1(H.7) was discussed in Executive Session and no action was taken.

J. ADJOURNMENT:

Commissioner Baca moved to adjourn at 11:14 a.m. Mayor Pro-Tem Forrister seconded the motion. Motion carried unanimously.

Passed and Approved this 22nd day of September, 2021.

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Sandra Whitehead, Mayor

ATTEST:

Angela A. Torres, CMC, City Clerk