

CITY COMMISSION MEETING MINUTES  
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
CITY COMMISSION CHAMBERS, 405 W. 3<sup>RD</sup> St.  
WEDNESDAY, JANUARY 29, 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, Interim 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. Kathy Clark, Mayor Pro-Tem  
Hon. Rolf Hechler, Commissioner  
Hon. Paul Baca, Commissioner  
Hon. George Szigeti, Commissioner

Also Present: Morris Madrid, City Manager  
Angela A. Torres, Interim 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 and to keep the family friends of the 88 year old woman who went missing in your thoughts and prayers.

**3. PLEDGE OF ALLEGIANCE:**

Mayor Whitehead led the Pledge of Allegiance.

**4. APPROVAL OF AGENDA:**

Commissioner Szigeti asked why we moved item D1 a step ahead of the Public Utility Advisory Board recommendation. It has been the practice of this Commission to wait until we have recommendations from the Public Utility Advisory Board.

City Manager Madrid explained that he requested this item be on the agenda so we can move forward with it. There is a Special Public Utility Advisory Board Meeting scheduled for Monday, and their Regular Meeting is scheduled for February 18, 2020. We also

have a Commission Meeting during the publication period. He has scheduled at least five Town Hall Meetings/Public Hearings so the community can be involved in this process. Since this item is only for publication, he recommends that we keep this on the agenda.

**Mayor Pro-Tem Clark made a motion to move item E.1 in place of item C1 and move items C & D to D & E. Commissioner Hechler seconded the motion. Motion carried unanimously.**

**C. ORDINANCES/RESOLUTIONS/ZONING:**

- 1. Discussion/Action: Publication of Ordinance No. 712 amending the City of Truth or Consequences Municipal Code of Ordinances, by amending Section 14-38 of the Code pertaining to water rates. City Manager Madrid:**

City Manager Madrid stated that this starts the process of review, adjustment, and increase of the water rates. This is not a final action. The beginning process was the presentation by our rate analyst at the last meeting, and this is a continuation of that. We will open the process for city staff, our consultants, and engineers to provide information to the public. This will not be on our next meeting's agenda. The period will be longer than that. The earliest it could come back would be our second meeting in February, so there will be plenty of time and opportunity to consider what was presented to us. We will have that information available to the public, and he would like the approval to start this process.

Mayor Pro-Tem Clark stated that she is a bit disappointed about the information that was presented to them at the last meeting. She is trusting that this goes directly to the Public Utility Advisory Board so they can look at the information and hopefully see the same discrepancies that she sees. She also feels that it is extremely important to have public input because this is a large increase if you look at it on a percentage basis. Also, the fact that they are not relegated to the information that was given to them at the last meeting, she would be okay having this published provided that there is that surety that it does go in front of the Public Utility Advisory Board, and that we do get public input so we can change these figures if we need to.

**Mayor Whitehead moved to approve Publication of Ordinance No. 712 amending the City of Truth or Consequences Municipal Code of Ordinances, by amending Section 14-38 of the Code pertaining to water rates. Commissioner Hechler seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.**

**D. PUBLIC HEARINGS:**

- 1. Public Hearing/Discussion/Action: Final Adoption of Ordinance No. 711 from the Verified Initiative Petition calling for "An Ordinance imposing a ten-year (10) moratorium prohibiting the acquisition, installation, or maintenance of smart meter technology (AMI or Other Real-Time) within Truth or Consequences' Utility jurisdiction." City Manager Madrid and City Attorney Rubin:**

**Mayor Whitehead opened the Public Hearing.**

**Proponents:**

Carole Borsello is a proponent of Ordinance No. 771 because she feels that smart meters cause serious health issues and the technology is expensive.

Martin Mijal is a proponent of Ordinance No. 771 because he against the smart meters. He feels that fiber optic lines would be a better option. He also feels that the money could be better spent to repair our electric leaks. Also, the slick salesman who sold us this expensive unit said that within 5-7 years it will be obsolete, and they would support it for 20 years, but in 5-7 years the devices will be cheaper, faster and better.

Sophia Peron is a proponent of Ordinance No. 771 because she feels that the Electric Department could read the meters. We need what is broken to be fixed before we spend any extra money.

Ingo Hoepfner is a proponent of Ordinance No. 771 because he is all for modernizing our infrastructure, but he also believes that everything has to be in time. We should prioritize how we do things, and it should be in the most cost efficient way.

Jack Noel is a proponent of Ordinance No. 771. He keeps hearing a lot about the Public Utility Advisory Board, and he feels that in our system we have public bodies that come together to discuss the issues, and then to expatiate and to save you all time they come and report to you. He is curious on how an Advisory Board can do the same thing that a Commission does. He is upset that the Public Utility Advisory Board only allows the public to speak for 3 minutes. The composition of the board should represent the people, not the electric company. He contacted the individuals who submitted the RFP's for this project and they had some very interesting stories which makes him believe this was a set up from the beginning, and that is why they specified AMI Meters in the petition, because there are multiple alternatives that do not involve smart meters. The number two bid for this project mentioned that he would have recommended other solutions. He knew what they wanted, and he had hoped that they wouldn't go with this because the data requirements were far too advanced for what we have, and it is not what we needed.

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Jonathan Cartland is a proponent of Ordinance No. 771 because he worked in the technology industry, and he feels there are many different ways of collecting the data from the meters. He also doesn't like the fact that we are taking away jobs from the meter readers. He would like to see everything that happens in Truth or Consequences to be developed locally.

Ron Fenn is a proponent of Ordinance No. 771 because he is the initiator of the petition and the author of this Moratorium. He feels that city staff should have more respect in regards to the operation of the Initiative. This is the right of the people to produce documents of this type to oppose what is being done in their behalf. We didn't have the information that was needed before a decision was made, and he feels that we are a target for scam artists. The only reason there is government is to take care of the people, not to take care of businesses or corporations. He also feels that this issue should have been put on the March 3<sup>rd</sup> ballot, and we should have opted in to the Local Election Act because then we would not have to pay for the cost of any future elections.

Susan Crow is a proponent of Ordinance No. 771 because she is against the smart meters and is agreement with the people who have previously spoken. She would like the Commission, before approving anything for the city, to consider if what they are approving is going to support the healing and drawing power of bringing people to the city.

Mary Kininger is a proponent of Ordinance No. 771 because she is against the smart meters and wants the best for the city.

Diana Tittle approached the Commission to express her feelings regarding the City Clerk's Office properly running elections.

Gary Blanchard is a proponent of Ordinance No. 771 because he feels that there are many other things that we can spend the money on. He also doesn't like the process.

Stanley Rickert is a proponent of Ordinance No. 771 because he feels that the people should be more involved in decisions made by the Commission.

Ariel Dougherty approached the Commission to express that she feels repetition has some virtue. This is an unnecessary cost at the potential real human health cost. She also feels that there are many issues regarding infrastructure that need to be dealt with in the electrical system. For decades the city has been taking the excess charges for our electrical bills and transferring those moneys to the General Fund to pay for salaries and Commissioner Fees. We need to re-evaluate whether this process should continue, or if that money could be used to improve the electrical system itself. She urged the Commission to approve Ordinance 711.

**Opponents:**

Jay Avelar is an opponent of Ordinance No. 771 because the process of the smart meters is necessary. We need to step into the present century. He also understands that we will be losing a meter reader, but it is hard to get a reliable meter reader anymore so we really need to read these meters electronically.

Edward Williams is an opponent of Ordinance No. 771 because it hogties the city for anything they may want to do in the future. Technology has improved in the last 10-15 years. In the beginning, there were a lot of points of contention as far as fires and health risks. However, the RF spectrum where they operate is the same as where all of your household stuff operates. There may be certain health risks, but those are usually in individuals whose health is highly compromised. He believes the city needs to move forward, and from what he has heard here, people do not understand the city's budget. This money cannot be spent on anything else, its electric money. The money that is moved to the General Fund is separate from what we are talking about. And as he understands it, the meter readers will have the opportunity to be absorbed by a department if they wish. He also wanted to address the comments regarding PNM. PNM shot down smart meters because they wanted to raise rates and get \$5 million dollars to pay for the system, and then they had a \$42 opt-out fee. The main contention with that is they wanted to raise rates. We are not raising rates or doing any of that.

**Mayor Whitehead closed the Public Hearings.**

City Manager Madrid knows what a large topic this has been. It requires a lot of homework. He is the City's Chief Administrative Officer, and he works for the public. He has extensive education and experience, and it is up to him to do the research that is needed to present all of the information to the Commissioners. He is one of you and if he weren't sitting up here, he would be sitting in the audience. One of the things he looks for when making any decision is having the best information possible. With this Ordinance, there are some inaccuracies within the public, and he has received reports of people generating and distributing bad information, and also trying to bully people into signing this petition.

He then addressed the following facts regarding Smart Meters:

- He mentioned the report regarding the Public Regulatory Commission denying smart meters in Santa Fe, Albuquerque and all over the State. The denial was due to a rate increase. The Public Regulatory Commission does not regulate smart meters. PNM has them all over in other places. It's not that they were unsafe. The Public Regulatory Commission said that they didn't make a case that was good enough to increase rates, and the smart meters were part of that package. The rate increase is not going to be an issue here. If smart meters are implemented here in Truth or Consequences, there will be no rate increase.
- He understands the concerns of the health and safety so he went to many different sources because he understands the concept of radio frequencies. He

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went to the American Cancer Society's website and they have a discussion on radio frequency interference in smart meters. That discussion showed that they couldn't conclude that smart meters are a danger.

- The Federal Communications Commission approved the meters, and they don't just hand out permission to do anything you want.
- He is a regular citizen and he has some people in Washington and Santa Fe that he may not trust, we all have that, but he trusts our Government in general. He believes in our Federal Government and our system. He also believes in our State Government and he believes that they take care of us with the best information and with the best of intentions.
- One of the main points that has been brought up is that the community was not involved in this decision. He has been here for a year, and there are some members that get involved, and some who don't. He has had people come up to him and ask how they can help, but in this case he cannot believe that the community was not aware when this process started back in March of 2015. There were so many meetings held that were published where public comment was invited.

Grant/Projects Coordinator & Designated Zoning Official Burnette reviewed the following timeline of when the Smart Meters were discussed.

- 3/16/2015: PUAB Meeting
- 3/24/2015: City Commission Meeting
- 4/28/2015: Workshop
- 5/26/2015: City Commission Meeting
- June/July/August Internal Research
- 9/18/2015: City Commission Meeting
- 9/21/2015: PUAB Meeting
- 10/13/2015: City Commission Meeting /PUAB Joint Workshop
- 12/21/2015: PUAB Meeting
- 1/12/2016: City Commission Meeting
- 2/9/2016: City Commission Meeting
- 3/21/2016: PUAB Meeting
- 4/12/2016: City Commission Meeting
- 4/18/2016: PUAB Meeting
- 5/16/2016: PUAB Meeting
- 5/24/2016: City Commission Meeting
- 6/14/2016: City Commission Meeting
- 8/23/2016: City Commission Meeting
- 10/1/2016: Water Meter Testing - Electric Meter Testing
- Oct 2016 - June 2017: Staff meetings to discuss prelim findings, research/interview various vendors.
- 6/28/2017: Workshop
- 7/17/2017: PUAB Meeting
- 8/21/2017: PUAB Meeting



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- 10/25/2017: City Commission Meeting
- 11/20/2017: PUAB Meeting
- 12/13/2017: City Commission Meeting
- 2/28/2018: City Commission Meeting
- 3/2018 - 7/2018: Internal Research
- 8/20/2018: PUAB Meeting
- 12/12/2018: PUAB Meeting
- 5/10/2019: RFP Advertisement 5/10-6/11
- 7/24/2019: Commission Meeting
- 8/27/2019: Comm RFP Award
- 9/16/2019: Contract Signed
- 12/16/2019: PUAB Meeting

City Manager Madrid stated the other thing that has not been part of the discussion in regard to the smart meters is the way it allows the city to manage the system itself. In real time, especially in the event of an emergency, our emergency management would be centralized and we would have real time information.

City Manager Madrid then asked Electric Department Director Easley to give an update on how this is meant to be an upgrade and to improve our efficiency.

Electric Department Director Easley explained the difficulties a meter reader encounters while reading meters which included:

- The meters readers have to deal with aggressive dogs.
- 6ft fences built around properties, and vegetation growing during the summer time so it is hard for them to access some of the meters.
- Some meters are being enclosed on back porches.
- Some people have locked gates so they have to deal with multiple keys to get into some yards to read meters.
- Some customers do not want meter readers on their property.
- Our meter readers read an average of 200 plus meters a day, and holiday seasons require more meters to be read to get ahead of schedule.
- It is extra work for meter readers if another meter reader is on vacation or sick.
- A meter reader will walk 6 miles a day on a daily basis, which will equal 108 miles a month walked by each meter reader.
- The meter readers are also exposed to injuries while reading meters.
- The benefits to our AMI meter reading system is that the Utility Office will have the ability to read meters in a shorter time period.
- We won't be exposed to hazards.
- There will be less walking and driving for the meter readers.
- This will free up a meter reader to go back to the Electric or Water Department crew.
- The Utility Office will have accurate readings and more accurate billing cycles.
- It will also benefit us when we have power outages because we will then know where the outage is located, and the power outages can be restored quicker.

City Attorney Rubin announced that there is a central fact that is very crucial to this that has not been discussed, and that fact is that the city has already entered into a Master AMI Agreement. There has been several years of discussion on the issues. On July 24, 2019 the Commission approved staff to proceed forward with negotiations of the Award and bring it back to the Commission. On September 16, 2019 the contract was signed. There is a fundamental principal of contractual law when two entities enter into a binding, legally enforceable contract. Once the contract is signed one of the entities cannot just suddenly say "we're going to drop out of this" and void the deal. That's the problem he has with the discussion of the proposed Ordinance. The termination clause in the contract reads:

***The contractor shall be compensated for deliverables and services satisfactorily performed through and up to the effective date of termination in accordance with the contract rates. The city may not cancel an equipment order accepted by contractor that is less than 12 weeks from scheduled delivery.***

With that being said, if we were to at this point try and terminate this contract, it would be cost prohibited to the city because we are under the 12 weeks. We have this document before us in which the Commission needs to decide whether you want to approve this Ordinance or not. He explained that the proposed ordinance for a future Referendum right after 10 years is not allowed under New Mexico Law, and again, it ties the hands of future Commissioners. We have specific laws of when you can call Referendums and how they are done. In this case it is not appropriate to say you have to have a Referendum 10 years from now on this issue.

Mayor Pro-Tem asked City Attorney Rubin what would happen if the Commission does not act on this item.

City Attorney Rubin responded if you do nothing then it would be the same as rejecting the Ordinance.

**After due consideration the Commission failed to act on the Final Adoption of Ordinance No. 711 from the Verified Initiative Petition calling for "An Ordinance imposing a ten-year (10) moratorium prohibiting the acquisition, installation, or maintenance of smart meter technology (AMI or Other Real-Time) within Truth or Consequences' Utility jurisdiction."**

#### **E. NEW BUSINESS:**

- 1. Discussion/Action: Resolution No. 28 19/20 proclaiming to call for a Special Election to be held on Tuesday, March 24th, 2020 related to the verification of the petition for an Ordinance imposing a ten-year (10) moratorium prohibiting the acquisition, installation, or maintenance of smart meter technology (AMI or Other Real-Time) within Truth or Consequences' Utility jurisdiction." City Manager Madrid:**



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Interim City Clerk Torres gave an estimate of how much a Special Election would cost the city and citizens of Truth or Consequences.

City Manager Madrid stated if we did proceed with the Election, and it did pass, that would not affect the contract that we have in place or the project that we are engaged in already, so with that being said he recommends that you reject this item.

City Attorney Rubin read section 3-14-18 which reads:

***If the commission:(1) fails to act; (2) acts adversely; or (3) amends the proposed measure, the commission shall, within ten days of the expiration of the thirty day period, adopt an election resolution calling for the holding of a special election within ninety days of the expiration of the thirty day period for the purpose of submitting the measure to the electorate.***

City Attorney Rubin continued, in this case we have failed to act. In preparing for this he contacted City Attorney John Appel and Randy Van Vleck of the New Mexico Municipal League. They both made him aware of a case called *Johnson vs. the City of Alamogordo* which was decided in 1996. That case is a little different from what we have here because in that situation, the city did pass an Ordinance and the citizens went through with signatures for a Referendum to have a Special Election, but the city objected to it. What the court determined was that it was not required that they had to give a Special Election, because the action that the Commission took was an administrative matter to do certain things, and the court determined when you have an administrative action, as opposed to a legislative action, a Special Election is not required. You can argue that in this particular situation that the City Commission directed staff to negotiate the contract, and the contract was negotiated and approved by staff. In fact the contract wasn't brought back to the Commission.

**Commissioner Szigeti made a motion based upon the recent testimony of our City Attorney, and City Manager, that we reject Resolution No. 28 19/20 based on the fact that even if it passed it would be unenforceable. Commissioner Hechler seconded the motion.** Commissioner Szigeti wanted to point out that this action which occurs here is not done in defiance of the concerns of our citizens. We as a Commission are bound by laws and rules on how and what they can act on. **Motion carried unanimously.**

### **M. ADJOURNMENT:**

**Commissioner Hechler moved to adjourn at 10:53 a.m. Commissioner Szigeti seconded the motion. Motion carried unanimously.**

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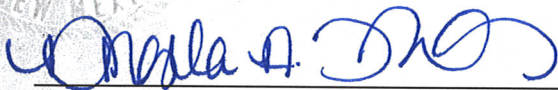
**Passed and Approved** this **26th** day of **February**, 2020.



Sandra Whitehead, Mayor



ATTEST:



Angela A. Torres, CMC, Interim City Clerk