

*Steven Green*  
*Mayor*

*Sandra Whitehead*  
*Mayor Pro-Tem*

*Kathy Clark*  
*Commissioner*



*Rolf Hechler*  
*Commissioner*

*Paul Baca*  
*Commissioner*

*Renee Cantin*  
*Interim City Manager*

*505 Sims St.*  
*Truth or Consequences, New Mexico 87901*  
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## REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, IS TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3<sup>RD</sup> ST., ON WEDNESDAY, SEPTEMBER 26, 2018; TO START AT 9:00 A.M.

### A. CALL TO ORDER

### B. INTRODUCTION

#### 1. ROLL CALL

Hon. Steve Green, Mayor  
Hon. Sandra Whitehead, Mayor Pro-Tem  
Hon. Rolf Hechler, Commissioner  
Hon. Kathy Clark, Commissioner  
Hon. Paul Baca, Commissioner

#### 2. SILENT MEDITATION

#### 3. PLEDGE OF ALLEGIANCE

#### 4. APPROVAL OF AGENDA

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

### D. RESPONSE TO PUBLIC COMMENTS

### E. PRESENTATIONS

1. Presentation and request to declare October 20, 2018 as Tiger Day in conjunction with the Tiger Day 2018 event. Jim Shiley, Requestor
2. Presentation: Selection of Landscaping Alternative for I-25 Business Loop (Date Street) Reconstruction Project. Andrew Gallegos, WHPacific Inc. and Robert Oberdorfer, Sites Southwest

#### F. CONSENT CALENDAR

1. City Commission Regular Minutes, August 8, 2018
2. Appointment of Harv Klienstiver to the Golf Course Advisory Board.

#### PUBLIC HEARINGS

1. Public Hearing: Special Use Permit for live/work retail at 520 N. Broadway, applicant is Lillis Urban. Susanna Diller, P & Z Coordinator

#### G. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 13 2018/2019 Approving support from City of Truth or Consequences for New Mexico Department of Transportation (NMDOT) I-25 Business Loop 11 (Date Street) Preferred alternative project, CN 1101230 and selection of Landscaping Alternative. Traci Burnette, Grants Coordinator
2. Discussion/Action: Resolution No. 14 2018/2019 Budget Adjustment. Melissa Torres, Finance Director
3. Discussion/Action: Resolution No. 15 2018/2019 approving the Pool Fees for the J.A. Hodges Municipal Pool. Tammy Gardner, Pool Manager
4. Discussion/Action: Ordinance No. 698 for publication amending the Uniform Traffic Ordinance. Jay Rubin, City Attorney
5. Discussion/Action: Special Use Permit for live/work retail at 520 N. Broadway, applicant is Lillis Urban. Susanna Diller, P & Z Coordinator

#### H. UNFINISHED BUSINESS

1. Discussion/Action: Approval for the Mud Mountain Tower Replacement. Melisaa Torres, Finance Director and Bo Easley, Electric Department Director
2. Discussion/Action: Approval the amendment to the Tower and Equipment Lease Agreement with KOB, KASA, and KRQE. Melisaa Torres, Finance Director and Bo Easley, Electric Department Director
3. Discussion/Action: Approval the amendment to the Tower and Equipment Lease Agreement with with KRWG PBS TV Regents of Las Cruces, New Mexico. Melisaa Torres, Finance Director and Bo Easley, Electric Department Director
4. Discussion/Action: Amendments to the City Commission Rules of Procedure. Renee Cantin, Interim City Manager

#### I. NEW BUSINESS

1. Discussion/Action: Approve Truth or Consequences Fuel Farm Schedule 3 Tender and Substitution Agreement. Tim Archibeque, Armstrong Consultants
2. Discussion/Action: Swimming Pool Heater Cost. Tammy Gardner, Interim Pool Manager
3. Discussion/Action: Final Budget pay increases clarification. Renee Cantin, Interim City Manager
4. Discussion/Action: Interim City Manager and Acting City Clerk compensation clarification. Renee Cantin, Interim City Manager
5. Discussion/Action: Approve the recommendations from the Public Arts Advisory Board for the City to take possession of the Reed Rocket Sculpture and issue final payment. Traci Burnette, Grant/Projects Coordinator
6. Discussion/Action: Personnel Board vacancies and duties. Steve Green, Mayor

J. REPORTS

1. City Manager
2. City Attorney
3. City Commission

K. EXECUTIVE SESSION

1. Limited Personnel Matters (Community Development), *Pursuant to 10-15-1,(H.2)*
2. Threatened or Pending Litigation (City vs. McGeachy), *Pursuant to 10-15-1.(H.7)*

L. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any.

M. ADJOURNMENT

**NEXT CITY COMMISSION MEETING OCTOBER 10, 2018**

## DIVISION 8. - PERSONNEL BOARD

### Sec. 2-351. - Creation.

There is hereby created a Personnel Board.

(Ord. No. 379, 3-25-91)

### Sec. 2-352. - Composition; appointment of members; terms of members.

The Personnel Board shall be composed of five regular members and two alternate members to be selected as follows:

- (1) Three regular members are to be appointed by the Mayor with the consent of the Commission. These initial Mayor-appointed members shall be appointed for periods of one, two and three years respectively; thereafter, members appointed to serve in these positions shall serve for a period of five years. One alternate member also is to be appointed by the Mayor with the consent of the City Commission. The alternate member shall serve for a term of five years and shall attend Board meetings in the event of an emergency absence of a regular Board member who had been appointed pursuant to this section. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.
- (2) The remaining two regular members and one alternate member shall be chosen by the employees covered by this division and shall consist of one employee below the level of supervisor and one employee at the supervisor level or higher, to exclude the Chief of Police, to serve initial terms of four and five years respectively. After the completion of these initial terms, the newly-elected employee and department head shall serve terms of five years each. These selected members shall serve only so long as they remain employees of the City and occupy positions in accordance with the provisions of their appointment. One alternate member also is to be appointed by the employees covered by this division. The alternate member shall serve for a term of five years and attend Personnel Board meetings in the event of an emergency absence of a regular Board member who had been appointed pursuant to this section.

(Ord. No. 379, 3-25-91; Ord. No. 456-97, § 1, 5-11-98)

### Sec. 2-353. - Filling vacancies.

Vacancies on the Personnel Board shall be filled by the appointing or selecting authority in the same manner as the original member in such position was appointed or selected to serve and such appointee or selectee shall serve either for the remainder of the term of the position vacated or for five years if the appointment or selection of the new member corresponds with the expiration of a previous term.

(Ord. No. 379, 3-25-91)

### Sec. 2-354. - Removal of members.

Any member of the Personnel Board may be removed by a majority vote of the Commission for cause after a public hearing and may be suspended immediately by the Mayor for cause pending such hearing.

(Ord. No. 379, 3-25-91)

Sec. 2-355. - Selection of officers; quorum.

- (a) The Personnel Board shall annually select a Chairman by majority vote of the full Personnel Board, such Chairman to be selected from the Mayor-appointees to the Board.
- (b) The Personnel Board shall annually select a Vice-Chairman by majority vote of the full board, such Vice-Chairman to be selected from the Mayor-appointees to the board.
- (c) A majority, being three members of the board, shall constitute a quorum of the Personnel Board.

(Ord. No. 379, 3-25-91)

Sec. 2-355.1. - Reserved.

**Editor's note**— Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-355.1, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.



E.1

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Presentation and request to declare October 20, 2018 as Tiger Day in conjunction with the Tiger Day 2018 event. Jim Shiley, Requestor.

**BACKGROUND:**

Mr. Jim Shiley is requesting the City to declare October 20, 2018 to be "Tiger Day". This is in conjunction with the event for Tiger Day 2018 described in the attached documents.

Mayor Green will be presenting the Proclamation.

**STAFF RECOMMENDATION:**

None. Presentation only.

**SUPPORT INFORMATION:**

Application for listing on the City Commission Agenda.  
Flyers and sign up sheet.



CITY OF TRUTH OR CONSEQUENCES

CITY CLERK'S OFFICE

505 SIMS STREET

TRUTH OR CONSEQUENCES, NEW MEXICO 87901

PHONE: (575) 894-6673 EXT#1301 FAX: (575) 894-7767

## APPLICATION FOR LISTING ON CITY COMMISSION AGENDA

DATE: 14 September 2018

DATE OF MEETING YOU ARE REQUESTING TO BE LISTED UNDER: \_\_\_\_\_

NAME OF APPLICANT/ORGANIZATION: Jim Shiley / We Are Tigers

ADDRESS: 204 Ash Street #14

PHONE: 269-251-4871 E-MAIL: Jimshiley@yahoo.com

REQUEST: (ATTACH WRITTEN REQUEST AND/OR DOCUMENTS IF AVAILABLE)

This is a request that the City of Truth or Consequences declare October 20, 2018 to be "Tiger Day". This in conjunction with the event "Tiger Day 2018" described in the attached documents.

WHAT RESOURCES DO YOU REQUIRE: None that I am aware of

ESTIMATED TIME FOR PRESENTATION: 5 minutes (not including questions, if any) SIGNATURE: Jim Shiley

### CITY MANAGER ACTION

APPROVED FOR COMMISSION AGENDA OF: \_\_\_\_\_

DENY - REASON FOR DENIAL: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IF YOUR REQUEST WAS DENIED AND YOU WISH TO APPEAL, YOU MAY:

- appear personally before the City Commission on the day of the meeting and during the "Comments from the Public" ask that the Commission place your item on the next available agenda (usually in 2 weeks); or,
- appeal directly to any one of the City Commissioner by contacting them (see reverse side for contact information). Any Commissioner may place your item on the agenda by notifying the City Clerk at least **7 days** prior to the Commission meeting.

Many Students.  
Many Schools.  
One Team.



Jim Shiley  
269-251-4871  
[jimshiley@yahoo.com](mailto:jimshiley@yahoo.com)

## TIGER DAY 2018

This is a call out to the entire community to join in Tiger Day 2018. Businesses large and small, governmental bodies and civic organizations of every type, all are invited to join in. Saturday, October 20 Tiger Stadium, at Hot Springs High School will be filled with activity. The sports teams, and all other student clubs and groups from the schools will be showcased in what is hoped to become an annual event.

Tiger Day 2018 will be a gathering of ALL Tigers, past and present. Our students will be putting their teams, their skills and their talents on display. It is a day to connect the entire community to show we are all Tigers!

You are invited to take the challenge and use this opportunity to be a sponsor of this event. We need YOU to help make this day become the amazing event that it can be. With YOUR help, Tiger Day will be a chance for the entire community to come together in the spirit of Tiger Pride.

We are asking for your donation, and your sponsorship, but more important, we are asking for your attendance. You are invited to have a booth at the event in which to distribute information and promotional materials that highlight your company or organization. Bring games or other interactive displays to engage the students and others in the community who will be in attendance. As with the challenge put to the student groups, the only limitation is your imagination.

We will be providing a free meal, cooked on site, and passing out a "We Are Tigers: Tiger Day 2018" tote bag to who attend.

Tiger Day 2018 will be a day of Tiger Pride. We need your help to make it happen. Please consider making a donation to make Tiger Day 2018 a reality. And please consider setting up a booth to help make Tiger Day a Roaring Success!



# **Tiger Day 2018**

## **Sign Me Up, I'm In!**

Booth/Booths (number) \_\_\_\_\_ Standard size 10x10, please bring tables & chairs

Games you plan, if any \_\_\_\_\_  
We'd like to space similar activities apart.

Special Needs: i.e. Electricity (limited number), or any other needed assistance.

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Your Donation is GREATLY Appreciated  
Checks payable to "WE ARE TIGERS"  
Checks can also be dropped off at the High School with Connie Cain

Donation \$ \_\_\_\_\_ In Kind \_\_\_\_\_

Paid \_\_\_\_\_ Pick up (date) \_\_\_\_\_

Name \_\_\_\_\_ Organization \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

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## **Donation Receipt**

Name \_\_\_\_\_ Date \_\_\_\_\_

Amount \_\_\_\_\_

Received By \_\_\_\_\_

**Thank You!**

Many Students.  
Many Schools.  
One Team.



Jim Shiley  
269-251-4871  
[jimshiley@yahoo.com](mailto:jimshiley@yahoo.com)

## TIGER DAY 2018

This is a call out to every student in every school in Sierra County. To all sports teams, every student group, organization or club. Everyone. I am inviting you all, urging, encouraging, and asking PLEASE come and participate in Tiger Day 2018 on Saturday, October 20. On that day Tiger Stadium, at Hot Springs High School will be filled with activity.

This is an opportunity to showcase your skills, talents and Tiger Heart. This is an opportunity to forge bonds with members of the community in a unique event designed to bring people together. This is an opportunity to build support for your team. It is an opportunity to show that we all, students, school staff, community; all are one team. We all are Tigers.

Tiger Day 2018 may be organized by "We Are Tigers," but it can only happen if YOU make it happen. It can only be a success if YOU take part. It is YOUR event. We need YOU to take up this challenge to help make this day become the amazing event that it can be. With YOUR help, Tiger Day will bring the entire community together in the spirit of Tiger Pride.

We are asking for you to plan a booth that displays your team or group. It can be directly related to what your team does, or something completely different, as long as it provides the opportunity to engage with the community and other students. Design games, interactive displays, or perform your skills and talents. Even the sky is not the limit.

A meal and a "We Are Tigers: Tiger Day 2018" tote bag will be given, free of charge, to EVERY person who attends.

Please consider having a booth and help make Tiger Day a Roaring Success!

The Only Limitation Is Your Imagination.

Thanks,

*Jim Shiley*

## **Tiger Day 2018**

### **Sign Me Up, I'm In!**

Team or Organization \_\_\_\_\_

Contact Person(s) \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

Booth/Booths (number) \_\_\_\_ Standard size 10x10, please bring tables & chairs.  
Plan to bring a shade awing if you can.

Brief Description of what you plan for your booth \_\_\_\_\_

Games you plan, if any \_\_\_\_\_

We'd like to space similar activities apart.

Special Needs: i.e. Electricity (limited number), or any other needed assistance.

From Students, Teams, Organizations NO Donation Needed. If You Know Of  
Anyone Wishing To Donate: Checks are payable to "WE ARE TIGERS"

Checks can be dropped off at the High School with Connie Cain

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**Thank You!**



**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM: DISCUSSION/ACTION:**

Presentation: Selection of Landscaping Alternative for I-25 Business Loop (Date Street) Reconstruction Project.

**BACKGROUND:**

The I-25 Business Loop Reconstruction Project on Date Street is currently in design and the project team is working towards a 60% Plan completion with Final Design scheduled for 2019. Funding for the project is scheduled for 2022 currently. The City is under contract with WHPacific and Sites Southwest to develop Preliminary Landscaping Plans for the project. A Landscaping kick-off and follow up meeting have been held with the City staff to discuss proposed landscape alternatives. Based on available federal funding, the project will construct a level of landscaping including irrigation infrastructure with the intent of the City constructing the landscaped areas in the future.

**SUPPORT INFORMATION:**

- Conceptual Landscaping Alternatives
- Preliminary Construction Costs (NMDOT vs. City)

**STAFF RECOMMENDATION:**

- Review of the Landscaping Alternatives for the Date Street Reconstruction Project, including requesting a Resolution for support of the project.

Name of Presenter:	Special Projects Coordinator	Meeting date 9/26/2018
Andrew Gallegos, WHPacific, Inc.	Phone: 505.348.5277	T or C Department Contact: Traci Burnette
Robert Oberdorfer, Sites Southwest	Phone: 505.228.1710	



F.1

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Approve the minutes of the City Commission Regular Meeting for August 8, 2018.

**BACKGROUND:**

None.

**STAFF RECOMMENDATION:**

Approve the minutes.

**SUPPORT INFORMATION:**

August 8, 2018 Minutes.

CITY COMMISSION MEETING MINUTES  
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
CITY COMMISSION CHAMBERS, 405 W. 3<sup>RD</sup> St.  
WEDNESDAY, AUGUST 8, 2018

**CALL TO ORDER:**

The meeting was called to order by Mayor Steve Green at 9:00 a.m., who presided and Renee Cantin, City Clerk-Treasurer, acted as Secretary of the meeting.

**INTRODUCTION**

**1. ROLL CALL:**

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

Hon. Steve Green  
Hon. Sandra Whitehead  
Hon. Kathy Clark, Commissioner  
Hon. Rolf Hechler, Commissioner  
Hon. Paul Baca, Commissioner

Also Present: Juan Fuentes, City Manager  
Renee Cantin, City Clerk-Treasurer

Mayor Green asked to please note for the record Mayor Pro-Tem Whitehead had an operation and is home recovering and will be excused.

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

**SILENT MEDITATION:**

Mayor Green called for fifteen seconds of Silent Meditation and asked us to keep our veterans in our thoughts and prayers.

**PLEDGE OF ALLEGIANCE:**

Mayor Green called for Commissioner Hechler to lead the Pledge of Allegiance.

**APPROVAL OF AGENDA:**

Mayor Green called for approval of the agenda.

**Commissioner Hechler requested to move the Presentation before Public Comments and Item I.2 for the MOU for SCRDA to after the consent calendar moved**

**to approve the agenda. Commissioner Baca seconded the motion. Motion carried unanimously.**

Presentation related to the pool. Tammy Gardner, Interim Pool Manager:

Interim Pool Manager Gardener began her presentation with an overview on hiring for their open positions. They had a couple of meetings with the Friends of the Pool to see if they can help with finding Lifeguards. The Recreation Board is requesting a workshop for August 16<sup>th</sup> at 6:00 p.m. to get more input from the Public on the Fees increase request.

Commissioner Hechler asked how many Lifeguards she needs at the pool at one time. Interim Pool Manager Gardener responded no less than two at a time. Commissioner Hechler asked if both have to be certified and would be for \$11 an hour and are the Friends willing to help at the Pool. Interim Pool Manager Gardener responded a minimum of 2. The national code does the ratio of 40-1 but the city policy shows 1-20 so we like to have no less than 2.

Commissioner Clark asked if she knows what the liability is to the city for a volunteer Lifeguard if we were to have one. City Manager Fuentes said there is a liability issue for a volunteer.

Mayor Green asked about the cost for certification and who bares that cost. Interim Pool Manager Gardener said the city pays the cost for the new hire. Mayor Green saw the document that came to City Hall from Destiny Mitchell and he asked if that list has been exhausted and have we checked with the Red Cross.

City Manager Fuentes wanted to commend Tammy and all of the information that has been past on to HR and they have even reached out to a Temp Agency to see if they can help find people. They have really been trying for recruiting and there is nothing short in the effort that they have given.

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

Mayor Green called for Public Comment, noting those wishing to comment would get three minutes, may only approach the podium once, and any material for the Commission was to be left in the black box by the podium.

Randy Ashbaugh addressed the Commission related to:

1) He would like his statement noted in the minutes. Well Mrs. Clark, its good to know that the Commissioners do not get special treatment. You've had water leak in front of your business downtown that has been running for weeks. Have you driven behind your business? Your alley is like a washboard. There are leaks running all over town. One is going one way and another going the other way. This is not the norm, and has not been for decades. As a retired City employee remarked "this is the way it's always was"... well that is... you know what. This is not the Water Departments fault. What few personnel

that are left cannot fix all the leaks in a timely fashion. This is the absolute fault of management. Over the years you train people to replace retiring people who leave, you give support to your employees so they can deal with their very difficult job. Absolutely no planning for personnel has been done, that is Mr. Fuentes' job. Also, where is the Water/Wastewater supervisor, what is he doing? I never see him checking anything out. The water and sewer departments are in total shambles. Believe me, the rest of the departments are in the same shape "you just can't see the water running."

2) Just an update for the Commission on the lawsuit with Ashbaugh Construction filed against the city on the Impact Fees, it moves forward. The main counts on the suit are intact, and the court ruled in the favor of Ashbaugh Construction. It is only going to get worse for the city from this point. Mr. Fuentes is also responsible for this city mess. In the court filing it states the motion for severing judgement to dismiss counts 1, 3 & 4 the main parts of the lawsuit to stay in their entirety, and the summary judgement is denied in bold letters. Mr. Fuentes, if you have any integrity at all, you will resign today.

John Hendry, 517 Austin addressed the Commission related to:

1) As somebody who doesn't live here on a full-time basis there are so many great things about this great town. He and Mayor Green worked together back when he brought the veterans wall down here and ended up purchasing it to the water rights for the Golf Course. He's sensing a change in this town and a move forward and they want to be part of that. One of the things he is having difficulty is finding the minutes for the Lodgers Tax Board. He asked for a lodgers tax grant they are calling Hopps & Hollywood they want to do over the veterans day weekend. It will be the 3<sup>rd</sup> iteration of the film festival they brought down here. His partner is going to talk about the advantage of film festivals. They don't only bring tourists, they bring economic activity in a long term basis.

2) He can't figure out how the Lodger's Tax Board works or where it is. One of the things he heard was that the Lodger's Tax Board was not interested in promoting new events which is great, because they are not a new event. They are a new applicant but they are not a new event so he thinks they will fit into this. Another thing with the Lodger's Tax Board he can't figure out is are you charging the maximum lodgers tax that you can charge because as far as he can see you are getting 4% lodgers tax and 2% for the convention center. He thinks that there is another point in there that you can get. You may have to petition the state to do it. Nobody has ever chosen a tourism destination based on 1% lodgers tax, everybody is significantly higher. Las Cruces, Albuquerque, Santa Fe and a lot of the smaller areas are significantly higher. Really look to make sure you are getting that maximum from the lodgers tax so you can do that economic development activity. He thinks the lodging community would support that since this money has to be dedicated to filling these rooms. He is here to ask is there is someway you can help us with the hopps and Hollywood over the veterans day weekend. I promise you a great event, it's a three day event, we will fill the town, we will bring in the movie stars like we did before and we will push T or C out as a filming destination around the state and around the country. He appreciates your time.

Lani Rivera addressed the Commission related to:

1) She has been visiting Truth or Consequences for over five years and she's been helping John Hendry with the Film Festival. She also works with many other film festivals



around the state. She has been working on marketing the film industry in the State of New Mexico and what they have found is there are times when there is a lot of business in Albuquerque and Santa Fe, and we see a lot of potential in other areas around the State of New Mexico. There is a lot of money in the film industry and they spend money on hotels, they spend money on restaurants they go to your shops and buy jewelry, buy art, and go out and have fun. One thing that film festivals do is they bring the film makers to the community. When we throw a film festival in Santa Fe they'll get over 100 film makers and a few of them always come back and filming in Santa Fe because they love it and that is what she would like to see happen here in Truth or Consequences. She thinks that this is a great area for film makers to come and make their movies and this is a way to bring them and show them what you guys have here.

2) Another thing that she is doing is in February she does the New Mexico Film and Television Hall of Fame awards which was really successful and it is also combined with other film festivals, the Santa Fe film festival especially because it's in Santa Fe, but they have the Las Cruces film festival, borderlands, telshorts and a few others around the state. What they like to do while they have those 10,000 people there in Santa Fe, in February, is they want to tell them about all the great places so they have a showcase for T or C film fiesta along with the others that she was talking about. So you get free marketing and promotion that she would be happy to match in that program and encourage them to come and check you out. Thank you so much for your time.

Ron Fenn addressed the Commission related to:

1) He resents the fact that you move public comment after presentations to pander to somebody else while making citizens for whom you work, sit there and have to listen to something that they might not want to have to listen to. You owe your allegiance to the people, and the people is item c...and c should come before any other item on any agenda.

2) Looking at your budget, 34.86% of the revenues come from the theft of Utility money. The Enterprise Utility's money is for the repair, upgrade and replacement of our essential services. It is not to cover shortfalls that Mr. Fuentes is unable to manage when the salaries in this city are 62% of the budget and only 28% is allocated for operating expense, there is something extremely wrong with the picture. In 7 years, Mr. Fuentes has not improved the financial status of this community one iota. It's time for a change, and it's time for Mr. Fuentes and Mayor Green to leave because Mayor Green you are the major backer of Mr. Fuentes and without your constant petting he might not last. This is ridiculous, this city is going nowhere, and its going nowhere fast.

Jenny Neely, President of the Tiger Sharks Swim Team addressed the Commission related to:

1) Said thank you to Interim Pool Manager Gardener she has done a great job this year. The pool staff has also been a pleasure to work with. They have been very polite and very professional. She had the cetified lifeguards, and junior lifeguards stand up and stated that most of the members are swim team members. They do take pride in their pool and community and they want their kids to be safe. Last year they were able to get a lot of their swim team members certified and the members that were too young, they got them jr. lifeguard certifications. They are happy to be here and they are very thankful for their

pool. Swimming appears to be a simple sport. All it requires is a body of water. If it was this simple, we would never get our kids out of the pool. Although we are blessed to have an adequate facility in our community our kids cant just jump right in any time they want. This year our anxious swimmers understandingly waited all winter for our newly resurfaced JA Hodges Municipal Pool to open this summer. Once it opened, the kids couldn't wait to began practices. They still needed to confirm a practice schedule with the pool manager, arrange for certified lifeguards during practices, schedule coaches, check chlorine levels and say a daily prayer for the afternoon lightening to leave us alone. If one of these elements is not in place, our tiger sharks are unable to practice. This years swim season was shortened due to the late opening date and our practice schedule was decreased from 5 days a week to 4. Even though our swimmers have less practice time this summer, they successfully made up for it with their determination. 10 out of 28 swimmers qualified in individual events for the sun dance championships where only the fastest swimmers in each district earn a spot. These swimmers did an encreadible job at representing our small but mighty town. Our unique organization of passionate kids and committed parents devote the majority of their summer to swimming. Our team also heavily relies on graciousness of local donations and a group of devoted vounteers. The large amount of recurring community support provides our swimmers an amazing opportunity to succeed and represent Truth or Consequences in a positive aspect each summer. We have an amazing community willing to support our kids and we are thankful for everyone believing in our swimmers and assisting along their journey. We would like to ask the City of T or C to please keep in mind our youth population and youth organizations when making decisions regarding the future of the JA Hodgers Municipal Pool. Thank you.

Cathy Eisen, from Water and Wastewater Department addressed the Commission related to:

- 1) She's a level 4 Water/Wastewater operator, she worked for the city since the end of January and she resigned a couple of weeks ago. She just wanted to let you all know that she really loves T or C, she worked out on the planes for a couple of years and she really fell in love with the area. She would have really liked to stay, but she found a lot of managerial issues. There was a complete lack of leadership and structure in the Water/Wastewater Department and the feeling she got from all of the city employees that it is a city wide issue. She would just like to encourage the Commission and the PUAB Board because she thinks that they were formed to oversee our operation and the function of the utilities and she feels that they have not been well informed and they haven't had the opportunity to support the employees, and to better the function of this city. There is a lot of failures, she would have loved to have stayed. If things change she would consider coming back. She has never gone in front of a Commission but she a lot of strong feelings and she is very disappointed. Thank you for your time.

Dennis Dunham addressed the Commission related to:

- 1) Recently moved here from Carrizozo which is a town of 900 people. They managed to get grants to turn the heating into solar heating and arranged for all kids to swim free all summer long. He has never seen a pool in New Mexico as classy as this one. They are willing to pay someone to do the grants. In order to do that the people who want to

give money need to know that the City Commission is behind it. He heard the City Commission has undermined the needs of the pool. There are so many people in this town who could use that pool, but they can't unless they get something really positive from the Commission that says you want it and you're willing to so your part particularly in terms if maintenance. He hopes they will get behind us.

Sara Frothingham addressed the Commission related to:

- 1) Invited the Commission to come to the pool. It's phenomenal what was done last fall to this pool. It is an outstanding pool. Mayor Green, she happens to know that you will heal yourself if you went swimming. The water quality has never been this good. The guards are phenomenal, the pool and everything is clean, it is gorgeous.
- 2) She doesn't want to go negative but when Don told her the heater in the pump house was going to be up and running last spring and it didn't happen. She was disappointed when she saw the cover that goes over the pool was left out while the stuccoing was being done. She was told the cover can go back up and can be repaired but without a heater we're kind of lost. The utter happiness of the children and seniors is phenomenal. In the morning there are 20-30 people paying between 9am-10am to do exercises and there is exercise classes in the afternoon. It's truly a pool of the community so thank you and please maintain it. The cover was how many hundreds of thousands of dollars and the plastic cover had two more years left in it and now its destroyed. Friends of the Pool are willing to work with the city on smaller projects but they do need a commitment that this is going to be done. Her suggestion is to get in that pool, you'll never want to leave it.

Tom Smith, 609 Kruger addressed the Commission related to:

- 1) In regards to the Pool, he moved here about 10-12 years ago. They need three things for the lifestyle, a pool, a bowling alley, and a theater. He has been to quite a few cities and he doesn't understand why we are having problems with the pool. What it does for the community, he would agree with everybody here, we all need to do what we can and get behind the program.

Hans Townsend, Desert View Inn and Chamber of Commerce addressed the Commission related to:

- 1) He put in an application to be on the agenda today and his application obviously didn't go through, because it is not on the agenda. He figured it was very important and you've already had talk about the movies, about the Hollywood and Hopps festival and the most important events that we have are the events that we have been doing for years because people already know about them and they already come to town because of them and to keep dropping them and trying to install new events is not the way to go. New events are nice if you can afford to do it, but they entail commencing the public that are not here in town that it is going to be worthwhile and that hasn't happened in a lot of places and he would mention the fact that the Hot Springs Festival has not been successful as far as out of towners are concerned. That was his weakest week at the hotel. On Memorial Day weekend he had 30 people calling for rooms after he was full. That shows him when people are in town. For the Hot Springs festival he had none calling and also the advertising was not put out until the weekend of the event and that was the same last year and some of the hot springs didn't even know what was going on. He feels that those

are the things we should be looking at. When people come into town, that's when they spend money.

2) He left information in the black box for the Commission to look at since his item was not on the agenda. The Lodgers Tax Commission squashed a rule that the non-profits could increase their amount of money and the request was for this Hopps n Hollywood which in past years was very successful. Another thing is that the city should be looking at the side effects of the mind, the advantages are unimaginable to us. Thank you.

Cary Vandevetter 1005 Kopra addressed the Commission related to:

1) The rumors are going around that the golf course manager is going to be leaving the 1<sup>st</sup> of September. We had a meeting with Juan and Rolf several months ago and we made the suggestion if it's going to take a new manager then start your search at least a few months ahead of time, not just a few weeks. If this rumor is true, then I urge you... when you go out for your new manager, please hire someone who is acquainted with golf courses, knows golf courses, knows what they need and how to do what they need because the one we've had for the last 4 years had no knowledge, he still doesn't have any knowledge and he has not been taking care of the golf course. That course has been set back 15 years since he has taken over 4 years ago. You can go up there and take a look. Just like the last few days, they had no water, we live in the middle of the desert, you have to have water if you are going to make anything work and for 2 days they had no water. Look at the greens and the rest of the golf course and you can see where there was no water involved there. He would like to know if the rumor is true that he is going to be leaving the 1<sup>st</sup> of September. Nobody seems to know anything, it's just talk among people.

Denise Addie addressed the Commission related to:

1) She will be going to Sierra County, Williamsburg and Elephant Butte to ask for their blessings and also join me in this little endeavor. She's hoping that you as a commission can help her out with her little or maybe not so little project. She would like to do a 911 Memorial at the Veterans Memorial Museum. She would hope that we all remember how we felt that dreadful day almost 17 years ago. The patriotism we had, the love and caring that we showed to each other, the compassion after 911 happened. It is time to make this community the best place in the world to live, full of love and kindness again instead of ugliness and tripe. She has spoken to Dianne Hamilton and Maggie Allen to get their blessings and they are both on board and will be there for the festivities. Just a little background, 19 men high jacked 4 fuel loaded US commercial airplanes bound for the west coast. A total of 2,977 people were killed in New York, Washington DC and outside Shanks Ville Pennsylvania. At the world trade center site in lower Manhattan, 2753 people were killed when the high jacked American Airline flight 11 and united flight 175 were intentionally crashed into the north and south towers or as the result of the crashes. Of those who perished during the initial attacks and collapses of the towers, 343 were New York City Firefighters, 23 were New York City Police Officers and 37 were Port Authority police officers. The victims ranged in age of 2 thru 85 years old. That's a huge range. That's our populatin here. We range from very young to very old. She is hoping that the JROTC will be on hand for the presentation of colors and the band to play the National Anthem which she will know later today when she meets with the High school

principal and the band. She is working on several other dignitaries to speak as well. At the end of the memorial she would like to give every participant a balloon that they will release together to remember those lives that were lost. So at the end of the memorial she is hoping this will be something this community will be proud of.

Colly Sue Lawson, 701 Poplar addressed the Commission related to:

1) Thanked Interim Pool Manager Gardener for the wonderful presentation. She has to agree with Ms. Neely that the pool and the lifeguards they have there have been phenomenal, they are very kind, very helpful and very respectful. The next question is when spoke of paying the Lifeguards \$11 per hour, does that mean they will have benefits or no benefits. She would like some clarification on that. She didn't know if they were staying at the other pay level and paying benefits depending on how they were classified.

2) Next she would like to know if the pool cover can't be on for the winter, if they are going to winterize the pool and what that entails and how they do that. She doesn't know if anybody has that answer but she would like for you all to investigate and get back to the friends of the pool. She wanted to give thanks for their lovely pool and for working with them. You all have been very kind to meet with us with any questions we've had. Thank you very much.

#### **D. RESPONSE TO PUBLIC COMMENTS:**

City Manager Fuentes started with the pay of Lifeguards and if they are fulltime they do get benefits. In regards to the pool cover, he doesn't know the answer right now. They are focusing on recruiting to help stay open. In regards to Mr. Vandetter and Mr. Taylor's contract, he's still out there and is willing to extend his contract if we need to. In regards to Mr. Fenn's question on the budget, he showed a graph showing the General Fund expenses and there is a gap between the revenue and the expenses. He thanked those who complimented our staff, Tammy has done a great job and the pool has never looked better. Do they still have issues, yes, and they will work that out.

Mayor Green wanted to expand on City Manager Fuentes's commented when he mentioned small city assistance, just to give you an idea on how we took a hit, in 2016 or check from Santa Fe was \$638,000, in 2017 it was \$131,000, in 2018 it was \$131,000, where does a small community make up a half a million dollars in their operating budget. It is really tough. He wants to echo City Manager Fuentes' kind remarks and justified remarks about our staff and the uses of our pool. He complimented our staff and during their budget hearings there was never one question about the money that was put into the pool budget. The issue now is staffing it to keep it open. He cannot speak for his fellow Commissioners but he is behind the pool 1000% and if they can get the people to keep it open he will always vote for it.

City Clerk Cantin reported in response to the Lodger's Tax Board and the Film Festival, the Lodger's Tax Board did review the guidelines which the Commission will need to approve. It was discovered the current Lodger's Tax funding recipients could not request to increase their funding per the current Guidelines. Unfortunately, their meeting was last Thursday night and we did not get both the guidelines and the Chambers request for the

increase for the Film Festival, but it will be included on the next agenda for Commission consideration.

Mayor Green had a meeting on Friday with a gentleman he respects who said the community is really upset that the Commission voted \$8,000 for you to go to California. Then on Sunday someone who lives here part time said the same thing, "Why is the Commission spending \$8,000 for you to go to California when we have so many pressing issues right here at home?" So he just wants to clear the air about that. Virgin Air is moving their staff and some of their support crew somewhere in Southern New Mexico. We know they are going to be operating out of Spaceport America. So they are going to live in Dona Ana County and/or Sierra County. He's working with a person in Las Cruces who is second in command for the relocation and this is at the wishes of the Commission. We delivered 40 relocation packages to Las Cruces and that person's boss is out in Mojave and will be coming here next month. He asked his fellow Commissioners if they would be comfortable with him and City Manager Fuentes going to Mojave to meet with them and have them look at our community. At that time the airfare was \$345 Roundtrip, car rental and room for the night maybe \$500, they are talking about maybe \$1,000. So he doesn't know where the \$8,000 came from. He then announced the budget for the Governing Body there was \$2,000 put aside for travel; there was \$2,450 put aside for travel for the City Manager. As it turns out, this person is coming to our community and he doesn't know if he's going to want them to go out to Mojave to meet with the families or not. He asked Clerk Cantin to print the minutes of that meeting and there is not one word mentioned about \$8,000, but he shared one line from the minutes which stated, "If we do nothing, we get nothing." If this community is going to wait for Ralph Edwards to come in and save it, that isn't going to happen. And we are in a fight for our lives to build back our community and get more GRT. We can't compete with Las Cruces, we are not in their league, but we are smart, we are aggressive, and we are going to go to that mountain. And that is one of the tasks that you have voted for these five Commissioners to serve you to make a quality of life for those dollars. Most of you who know him, knows if the Commission would have turned it down, he would've gone on his own dime. That's how important he feels it is for us to fight the battle and not just wait for people to drop gold in our laps.

Mayor Green also expressed disappointment in Mr. Townsends comment. They have an expression back east that goes, "It's not enough that I succeed, but my friends must fail." And he understands his position about the Hot Springs Festival, but to denigrate someone else's effort in public, he doesn't think is a valued exercise.

Commissioner Hechler asked City Manager Fuentes to give an update on the pool cover for the winter at the next meeting. Commissioner Clark agrees they would like to have an event every week. She commends Mr. Hendry for making an effort to put another event on the table. In comparison the off road vehicle event we had for Memorial Weekend was an extraordinary success and it was pulled off by some people she can see in the audience and with that being said, first time event can be extremely successful because that particular event did fill up a lot of hotels and rooms in town and brought a net of \$40,000 to our community.

She would also like to comment that one of her concerns has always been why our health insurance is so high and it's a big variable of why it's so high. If they could do something about it, she would work with City Manager Fuentes to do it as well as Ms. Torres.

Commissioner Baca is disappointed that Cathy Eisen resigned, she was a good employee. He thought for City Manager Fuentes, that when there is an emergency that the Supervisor should be there to help these guys out. From his knowledge and understanding, the Water Department Supervisor never shows up. The latest thing that he has told them was to just deal with it. Another thing he obtained information on is that Arnie is also taking the city vehicle home to Sunland Park and his fuel receipts are showing that he is putting a lot of miles in it. He could understand if he is taking a part to someone else to be dropped off, but with he would assume with his salary a little motor, he wouldn't think he would have to take a city truck taking a city vehicle home and not answering his phone to show up on these things.

City Manager Fuentes wanted to interrupt that this information is a Personnel Matter and this is the first time he's heard from these issues and he respectfully requested for us to have a meeting.

**E. PRESENTATIONS:**

1. Presentation related to an update on the Pool. Tammy Gardner, Interim Pool Manager

**Presented above.**

**F. CONSENT CALENDAR:**

1. City Commission Regular Minutes, July 11, 2018 (removed)
2. Lodger's Tax Advisory Board Minutes, May 10 and May 14, 2018
3. Accounts Payable, July 2018
4. 4th Quarter Reports for Lodger's Tax Grant recipients
5. 4th Quarter Reports for Subrecipient Grants
6. Amendment No. 1 to the Severance Tax Bond Project Grant for the Veterans Wall

**ITEMS REMOVED FROM THE CONSENT CALENDAR:**

F.1 City Commission Regular Minutes, July 11, 2018

**Commissioner Hechler moved to approve Items 2-6 of the Consent Calendar  
Commissioner Clark seconded the motion. Motion carried unanimously.**

**Commissioner Hechler moved to approve Item F.1. Commissioner Baca seconded the motion. Motion carried by a vote of 3-0-1. Commissioner Clark abstained because she did not attend the meeting.**

**I.2 Discussion/Action: MOU between Sierra County Regional Dispatch Center and the City of Truth or Consequences. Juan Fuentes, City Manager.**

City Manager Fuentes began with saying that the Chief emailed a proposed MOU between the city and the volunteer fire department and SCRDA. In reviewing the lease there were two provisions in that lease that he had questions on which were the liability and also the ability to oversee in the termination of the lease. In my opinion, that property is city property, so I felt maybe it would be appropriate for the city to be the actual entities to be in place of that. Subsequent to that, the fire chief did send out an email saying that he did not agree as well as the membership to that change. So I did forward all of that information as well as the email with the proposed changes to our legal counsel John Appel and he did revise it further and I have provided a copy to you all with his changes. And based on some of the comments I have received to try and get this thing moving along those changes are presented before you in the revised portions from Mr. Appel which also names the city as well in the paragraph under duration and under the liability insurance. I guess the question remains Mayor, and maybe this might be the opportunity for Chief Tooley to answer the question under section of the liability and insurance; it specifically states there that both SCRDA, the city of T or C Volunteer Firefighter insurance during all times of this MOU, have and keep enforced liability insurance in the amount being appropriate by the party. So the question Mayor, for clarification is, does the volunteer fire department have a separate liability insurance policy to cover the property and all the fire department stations?

Fire Chief Tooley responded what they pay for is Volunteer Fire insurance service. So anytime we're at the fire station or on a training or on a call or anything, we provide the insurance to protect our fire fighters, of course. And we understand that this is a city building, our deal that we came up with the MOU was between SCRDA, the city, and the fire department, so where this got off the rails was basically we were not necessarily pushed out, we understand that it's a city building and we even stated that in the MOU, but I think our concern is that we're the ones that have to make sure that what SCRDA does doesn't interfere with what we do for the fire side, so there were some issues that we needed to work through to make sure that doesn't happen; that we don't lose our funding for the main station and so forth. That's where is got a little sideways and the MOU was presented to all of the parties so that they could get their two cents into the MOU. We were taken off of the MOU. The last version was going to be without the fire department on the MOU, so my guys brought it up at our last business meeting, that is we're not part of the MOU then we don't want SCRDA there. We need to make sure that we protect everything. We're going to be the ones that are in that building making sure that everything runs properly as far as their operations separated from our operations and make sure that we can both work together.

Commissioner Clark: Chief Tooley, how are you feeling about this latest version?

Chief Tooley: we authored about 80% of this to make sure that everything is where it needs to be. I'm ok, I don't make the final decision in that department where, we're our own organization there. No matter what, I still have to take it back for business meeting



there at the fire department, to allow our guys to re-digest this. It took me a while to lay a lot of track to get them to commit that we could move SCRDA in that direction. After the last edit, they were pretty much up in arms.

Commissioner Clark: it does make sense to me that it is the city building, so we need to have our name on these MOU's, but I also appreciate the fact that the fire department would take a personal responsibility to make certain that dispatch is operating the way it needs to operate in that building; for not only the fire department but on behalf of the city. I think that says an awful lot about our fire department.

Chief Tooley: there are some things that we have to meet for our requirements for the State Fire Marshalls office as well, so we just need to make sure that those requirements are met.

Commissioner Clark: Attorney Ruben, are you quite confident that both the fire department and the city is covered with this MOU and how do we feel about the 10 year term of this?

City Attorney Rubin responded: I think the agreement looks pretty good. John Appel prepared this, but I went through this and I think it addresses some of the concerns that the chief has indicated and I think it also talks about our being a party to this which I think is something that is particularly very important to us. I think that the 10 year term is something that has been discussed before and maybe chief you can help me out with this, but didn't we agree that we need to have a longer term for some of the commitments?

Chief Tooley: the biggest commitment that we always have, is that you just can't pick up SCRDA and move them to another building. You've got 911 trunk lines that come in and there's a lot of infrastructure that has to go into the building and you just can't pick that up and move it overnight, so I think that long term was an agreement between both parties as to what the minimum would be.

Fire Chief Tooley: we have had it in there for 10 years.

City Attorney Rubin: a minimum of 10 years on the duration contract

Mayor Green: and after the expiration of the 10 years, the parties may renew the lease in 10 year increments.

City Attorney Rubin: yes, of course it's got to be by mutual consent.

Commissioner Clark: so basically Chief, that's protecting the infrastructure investment in moving SCRDA to that building because my understanding is that SCRDA puts a lot of that expense, is that not correct?

Fire Chief Tooley: SCRDA will pay the majority of that. The issue is that there is just a lot of infrastructure that needs to be moved. The trunk lines are huge because all 911 in

Sierra County has to go not over here, it has to go over here now, so that takes a lot of engineering and everything to get that all taken care of. And then by the time they put their radios in and communication back to the hill and getting everything done, it's a major undertaking just to get them in business, much less just move them somewhere.

City Attorney Rubin state that it does call for a 6 month termination clause if it doesn't work out, so that's the other thing.

Commissioner Hechler said the new MOU does look better. My disappointment comes with the process. It seems like we are up in arms on both sides because of the way things were handled and they shouldn't have been handled in that way. I would encourage our city manager and the fire chief in the future, if we have these differences to please sit down at the table first, discuss these issues, try to come to an agreement and bring it before the commission. I think we got upset on both sides and polarized some members of this community and those things shouldn't happen. So, I would just request your diligence in those areas in the future and let's work as a team and try to get these things done.

Mayor Green said they are all good comments. The city is the owner, the Fire Department is the Manager, and SCRDA is the tenant.

**Mayor Green moved to approve the MOU with the understanding it must be approved by the other parties. Commissioner Baca seconded the motion. Motion carried unanimously.**

#### **G. PUBLIC HEARING:**

1. Public Hearing: Infrastructure Capital Improvements Plan (ICIP) for Fiscal Year 2020-2024. Traci Burnette, Grant/Projects Coordinator

Grant/Projects Coordinator Burnette presented the Public Hearing: Infrastructure Capital Improvements Plan (ICIP) for Fiscal Year 2020-2024. Their ICIP Plan establishes priorities for future projects for the city. DFA encourages Municipal entities to annually review prioritize and adopt by resolution the new plan. Once the list is adopted by the Commission she will update the database online to reflect the approved projects and ranking. The deadline for updating this list is September 4, 2018.

Commissioner Clark stated that her concern is why the booster station was put below the water distribution line replacement. Is there a connection between the two and she asked if they are going to keep the boost station under the water distribution line.

Grant/Projects Coordinator Burnette responded the list you have in the rankings, is what the Commission agreed on last year. As for the booster station and the water distribution project, both of them are a big concern, but it all comes down to a shovel ready project. It is almost instantaneous with the water distribution line because they are just replacing existing lines so they don't have to go through a whole engineering or

environmental process. When it comes to the Morgan Street Booster Station Improvements, it may require a couple of phases.

City Manager Fuentes stated that the one big difference in this year's ICIP and priority project is the hospital renovation. He thinks that every entity in Sierra County is going to make that their #1 priority and for purposes of the legislator, this will be the only project that will be submitted. Which means even though the other projects are in our ICIP, for other funding purposes we need to leave them there but for legislative appropriation, the hospital will be the only appropriation.

Commissioner Hechler is concerned with the hospital. He would like to see Gold St. and 9th St. to be an important consideration because they lead to the multi million dollar facility. He would like to see those streets improved with an overlay of some sort so that you can get to the hospital in a safe matter, and the ambulances can get up and down those streets.

Commissioner Baca agreed.

City Manager Fuentes just for clarification, they want shovel ready kind of projects so if the Commissioners add that project to the list, then is the direction to staff to begin looking at internal funds to begin some sort of preliminary work to start working on those streets. He thinks that's part of the direction we need now, we need to have some kind of plan ready to say we're ready to go if you give us the money. He also wants to remind the Commission that they are going to be coming back with an update of the downtown streets that will require a significant amount of funds.

Commissioner Hechler would like to see it somewhere on our list.

Mayor Green closed the public hearing.

1. Public Hearing: Request for a Variance to make front set-backs 15' instead of 20' and rear set-backs 9' instead of 15' for a mobile home at 1005 Bosque, Truth or Consequences, NM. Applicant is Walter Pucci. Susanna Diller, P & Z Administrator.

City Attorney Rubin wanted to start by include a copy of the Code as it's related to a variance.

City Clerk Cantin did the swearing in for Planner/GIS Tech Diller and the applicant Mr. Walter Pucci.

**Planner/GIS Tech Diller presentation:**

Planner/GIS Tech Susanna Diller stated that Walter Pucci is requesting a Variance to allow the front set-backs 15' instead of 20' and rear set-backs 9' instead of 15' for his mobile home located at 1005 Bosque. She was concerned that though the applicant would undoubtedly take care of his lot, and would likely be an asset to that

neighborhood and improve the overall character of that neighborhood she is concerned that the Commission might set an overly permissive precedence by allowing this variance. People come up to them regularly with setbacks and because of that, staff is recommending a denial of the variance.

**Commission questions for staff:**

Commissioner Clark asked about a previous request for two mobile homes. She believes in that case they approved one request and the larger request they denied. So with that, it seems that they already established a precedence of not allowing these large variances.

Mayor Green is disappointed that the realtor didn't disclose this information when they sold him the property.

**Presentation by Applicant:**

Mr. Pucci said he would like to be a part of the community and help clean up the place.

**Commission questions to applicant:**

Commissioner Clark asked if he had moved the mobile home before. He responded one time in Texas.

**Staff had no further questions.**

**There were no proponents so Mayor Green closed the Public Hearing.**

City Manager Fuentes wanted to bring to his attention the process.

2. Public Hearing: Request for a Special Use Permit to do a live/work art café at 422 N. Broadway, Truth or Consequences, NM. Applicant is Ingo Hoepfner. Susanna Diller, P & Z Administrator.

City Clerk Cantin did the swearing in for Susanna Diller, Ingo Hoepfner, Jasmine & Galen Brown and Sid Bryan.

**Presentation by Staff:**

P & Z Administrator Diller presented the request for a Special Use Permit to do a live/work art café at 422 N. Broadway. Ingo Hoepfner is a recent resident of T or C and is hoping to open an art gallery and café space on Broadway. Living units along Broadway, Main and Date Streets require a Special Use Permit for approval. This is a situation where we would be approving the use so the certificate of occupancy would still need to come from the state to actually open the business. What the Commission is doing here is saying yes, we're okay with this space being used in this matter and this address has actually been used as a live/work space before by January Roberts. Staff recommends approval of this Special Use Permit.

**Questions to staff by Commission:**

Commissioner Clark said having been through this herself, for someone who wants to live here and open a business, we should give that to them. She hasn't see that being a problem as long as the business is open it's a contribution to the community. And where they live is none of their business.

**Applicants questions for staff: None.**

**Proponents:**

**Jasmine Brown is here on behalf of MainStreet.** They are in favor of this and believes it will increase the business in the downtown.

**Gaelen Brown is in favor of the business.** They think this is the kind of thing T or C could use more of.

**Ingo Hoeppner – Applicant.** Gave an overview of his background where he came to Alamogordo with the German Air Force. They are leaving and his time was up in April. He saw the potential and willingness to grow as a community and thought what better place to have a business. He also has a Non-Profit for youth.

**Sid Bryan –** wanted to give his support. When he came in and presented the project He also let them know how difficult the process is when dealing with the state now and not having our own building inspection.

**Mayor Green closed the Public Hearing.**

## **H. ORDINANCES, RESOLUTION, & ZONING**

1. Discussion/Action: Resolution No. 07 2018/2019 approving the ICIP for 2020-2024. Traci Burnette, Grant/Projects Coordinator.

Grant/Projects Coordinator Burnette presented the recommendation with saying at this time she would like to get a quick ranking on the projects and then stand for discussion and your approval if you accept them.

- Project #1 for 2020: Hospital Renovations.
- Project #1 for 2021: The Cook Street Water treatment Facility, however she would revise that to also include all of the downtown water lines as noted in our PER.
- Project #2 for 2021: The Water Distribution Water Line Replacement and that would be because we have a current application with drinking water.
- Project #3 for 2021: The Downtown MainStreet roadway improvements. They have a current pending appropriations on that.
- Project #4 for 2021: Would be for Morgan Street.
- Project for 2022: She would like to combine the downtown Storm and Surface Water Control and City Wide Storm Drain Improvements and maybe revise that request starting with planning since they want us to separate those down.

- Project for 2023: The Water Well North which is for looking at a possible extension of Water Wells to meet the Airport area. She will get with staff to discuss possible planning.
- Project #1 for 2024: Construction and Demolition Landfill.
- Project #2 for 2024: The Wastewater Treatment Plant which they already have funding for and that's why it is on her list but it is almost completed so we don't need to have it all the way up.

City Manager Fuentes asked City Manager Fuentes for the streets he mentioned. Commissioner Hechler said that would be Gold & 9<sup>th</sup> Streets. City Manager Fuentes said they can put that on 2023 and get the work done next year.

**Commissioner Clark moved to approve Resolution No. 07 2018/2019 approving the ICIP for 2020-2024. Commissioner Baca seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.**

2. Discussion/Action: Resolution No. 08 2018/2019 authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority. Traci Burnette, Grant/Projects Coordinator.

Grant/Projects Coordinator Burnette stated the forgiveness amount on that loan would be approximately \$500,000. We haven't received anything formal in writing. This was just given to us over the phone. The remainder amount of the loan which would be approximately \$658,797 we would be looking at 0% interest payback for the first \$600,000 and after that \$600,000 the interest rate would be roughly 1-2%. Part of the application process is approving the resolution for me to go ahead and submit the financials and the remaining application.

Mayor Green asked if he heard we are only paying interest on 50% of the grant.

**Commissioner Hechler moved to approve Resolution No. 08 2018/2019 authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority.**

**Commissioner Clark seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.**

Mayor Green thanked her for her efforts.

3. Discussion/Action: Request for a Variance to make front set-backs 15' instead of 20' and rear set-backs 9' instead of 15' for a mobile home at 1005 Bosque, Truth or Consequences, NM. Applicant is Walter Pucci. Susanna Diller, P & Z Administrator

Commissioner Clark stated that Mayor Green's comment was well made about the realtor not disclosing this information when they sold him the property. She's disappointed that Mr. Pucci purchased a piece of property and the realtor didn't tell him that he had to have the setbacks.

Mayor Green asked if it would be appropriate to have P & Z Administrator Diller get with the Sierra County Realtors and maybe make a presentation to them about the processes we have to follow.

P & Z Administrator Diller responded she speaks regularly with Realtor's about the requirements.

Mr. Pucci said when he went to visit the Realtor he told her he had a mobile home of this size and was told it's big enough.

Commissioner Hechler stated that the only concern he would have is there is a reason why we have setbacks. So he would like to know from Chief Tooley if they allowed the setback, what affect it would have on that trailer park in that area and if health and safety is compromised in any way. Lacking that information, he does not know if he can make a decision.

P & Z Administrator Diller can speak to that. The mobile home is not in a trailer park it's in a neighborhood area. It's not that it would be particularly close to another structure because there is a steep grade down to the alley behind his property so the rear setback isn't going to present a fire hazard in the way it might in other cases.

Commissioner Hechler said usually in cases like this we have testimony from neighbors. Is anyone effected negatively by this?

P & Z Administrator Diller stated that they were all notified by certified mail and notice was posted on the property within the 15 days.

Judy Hertzler stated that she has a rental home 2 doors down and she's here to get more information. She doesn't have a problem with it being set back further, She doesn't think that will be an issue because there is an 8 foot drop or whatever in the alley. So she doesn't think that will effect anybody behind him. Her only concern is how it would fit in with the neighborhood,

City Attorney Rubin said you might want to go into the public hearing again.

Commissioner Clark wonders if maybe we are not really equipped to make a good decision on this at this time. She is concerned that we have turned down a variance request in the past and if we approve this one, then we are not being consistent.

Mayor Green recalled that they turned down that other variance due to a safety issue of not being able to get a fire truck into the area and safely fight a fire. He asked if the Fire Chief was included in this discussion.

Commissioner Hechler added what is difficult for these things is taking the personal feelings out of this. They have to make decision on what is best for the community and the tenant.

P & Z Administrator Diller added the failure in this case is between the Applicant and the Realtor.

Mayor Green called for a motion to re-open the Public Hearing for the variance.

**Commissioner Hechler moved to approve opening the public hearing. Commissioner Clark seconded the motion. Motion carried unanimously.**

City Clerk Cantin did the swearing in for Judy Herstler and Joanne Ingram.

Ms. Hertzler stated that she thinks if he is going to have to put his mobile home back she doesn't think that is going to make any difference to anybody because there is like a 10 ft. drop behind the end of the property and it's just an alley way. She came today because she was wondering what was going on with the whole thing.

Ms. Joanne Ingram stated that she lives on corner of his property and she feels like having a nice mobile home or another structure would be nice.

**Mayor Green closed the Public Hearing.**

Commissioner Hechler asked City Attorney Rubin if they are in the position to approve this. City Attorney Rubin responded he thinks it's at their discretion. The Commission can make the determination it would be an unnecessary hardship to the owner.

Commissioner Clark asked if they could make a provision that they approved the variance with the provision that the Fire Chief take a look at it and if he had any questions it would come back to us with his concerns.

Attorney Rubin advised that if they have any questions for the Fire Chief that they speak with him before making a ruling,

Mayor Green he believes Ms. Diller did address that there is not going to be a safety issue here because if Mr. Pucci would place a trailer on the property, he would be in compliance of the 10ft. on either side.

**Mayor Green moved to approve the Request for a Variance to make front set-backs 15' instead of 20' and rear set-backs 9' instead of 15' for a mobile home at 1005 Bosque, Truth or Consequences, NM. With the exception that he have a 20 foot setback on the front and that would leave only 4 feet on the back. Commissioner Baca seconded the motion. Motion carried unanimously.**

Mayor Green welcomed Mr. Pucci to Truth or Consequences.



4. Discussion/Action: Request for a Special Use Permit to do a live/work art café at 422 N. Broadway, Truth or Consequences, NM. Applicant is Ingo Hoeppner. Susanna Diller, P & Z Administrator

P & Z Administrator Diller had nothing to add.

Commissioner Hechler heard the comment that he might want to add additional applicants. P & Z Administrator Diller said her understanding was to make sure you know he would not be turning it from a business to the permanence residence.

**Commissioner Clark moved to approve the Special Use Permit to do a live/work art café at 422 N. Broadway, Truth or Consequences, NM. For Ingo Hoeppner. Commissioner Baca seconded the motion. Motion carried unanimously.**

## **I. NEW BUSINESS**

1. Discussion/Action: Request from MainStreet Truth or Consequences for the Great Blocks Program. Linda DeMarino, Executive Director

**Commissioner Baca left the meeting at 11:42 p.m.**

Jasmine Brown presented the item. She will try to be as quick as possible. They tried to do this a couple of years ago and their designation of a three block area was not approved and this time they know more and have better information. It's a grant for a three block area of a city. This would provide us with shovel ready plans to implement improvements on Foch St. between Main and S. Broadway. This area was chosen because it's by the Healing Waters Plaza and it would be great to continue in that area. This is a planning project to work with the engineers or designers MainStreet would provide for us to make the area more appealing and more vibrant. They will need support from the city in the grant match for the amount of \$20,000.

Commissioner Clark asked if is just for design of that section on Foch Street or is there actually going to be some work done.

Ms. Brown said phase one is for planning and design.

City Manager Fuentes said the last project they did support the project. But to realize they are also competing with other projects.

Mayor Green asked City Attorney Rubin if there is any reason because he serves as the Ex-Officio that he could recuse himself. City Attorney Rubin said he doesn't see a reason I should be.

Commissioner Clark made some comments and asked if we do have the money.

City Manager Fuentes said there is money in the ending cash balance of the streets fund if the Commission wants to do it.

Commissioner Hechler said we have made great strides in the downtown area and he would like to see it move forward.

**Commissioner Hechler moved to approve Request from MainStreet Truth or Consequences for the Great Blocks Program up to \$20,000 for the match. Commissioner Clark seconded the motion. Motion carried unanimously.**

Mayor Green really appreciates the effort and the time his fellow Commissioners put in to learn about all of these things to do the very best we can for our community.

Discussion/Action: MOU between Sierra County Regional Dispatch Center and the City of Truth or Consequences. Juan Fuentes, City Manager.

Presented after response to public comment.

Discussion/Action: NMML Annual Conference Voting Delegate & Alternate. Renee Cantin, Clerk-Treasurer:

**Commissioner Hechler moved to approve City Clerk Cantin as the delegate and City Manager Fuentes as the alternate for the NMML. Commissioner Clark seconded the motion. Motion carried unanimously.**

## **I. REPORTS:**

### **City Manager:**

- Reported on the Water leaks and the efforts they have taken. Water/Wastewater Supervisor Castaneda said it's been difficult with staff. It seems like they fix one or two leaks and three or four pop up. Pipe should last about 20 years and these lines weren't replaced by their expectancy. They are trying to get funds to replace the water lines. As City Manager Fuentes mentioned they are trying to make internal changes to get the employees with experience out there and working on it. To get the experience that is required is difficult. City Manager Fuentes said they continue with their efforts.
- He will be presenting to the PUAB the status of the Sims and McAdoo water lines project.
- He reported on the Water System and Cook Station.
- Mud Mountain Tower project. He and Electric Department Director Easley met with BLM about the tower. The current structure needs to be replaced and instead of constructing a new tower which can be quite expensive they can use an existing tower that is still in good shape. So they will do an analysis to make sure that the tower can operate all of the users that are up there.
- The effluent sulfur water system has been installed and they are waiting on the chemicals.
- They are coordinating with NMDOT regarding the Roundabouts landscaping and an issue came up regarding relocating the water and sewer lines in the project area.

**City Attorney:**

None.

**City Commission:**

Mayor Green asked the Commission if they have anything to report.

**Commissioner Hechler:**

- Requested putting the City Manager evaluation on the next agenda where we know we will have five Commissioners here.

**Commissioner Clark:**

- Thanked everyone for holding down the fort while she was gone.

**Mayor Green:**

- Thanked Rebecca Dow, because when Joe McClintock was with SJOA he kept complaining that our program here was not ran by the city nor the county and a nonprofit was being penalized for the reimbursement of the State meals and transportation programs that they provided. Rebecca got the SJOA in town to be treated as if it were a municipal and or county organization therefore the funds have been doubled for the meals and transportation.
- He congratulated the Scat Cats for their 4<sup>th</sup> in the Nation finish in the Envirothon.
- He thanked Latitude 33 who partnered with the Brewery on a fundraiser for the Friends of the Pool. He understands they donated all of the food for the event
- He thanked the Brewery for making the space available.
- He asked that a report be made at the next meeting, if there is a plan the Parks Department have in moving forward on our Parks to address reseeding.

**K. EXECUTIVE SESSION:**

1. Threatened or Pending Litigation (City vs. McGeachy)  
*Pursuant to 10-15-1(H.7)*

**Commissioner Clark moved to approve going into executive session at 12:14 p.m. to discuss Threatened or Pending Litigation (City vs. McGeachy) *Pursuant to 10-15-1(H.7)*.**

**Commissioner Hechler seconded the motion. Roll call vote was taken by the Clerk-Treasurer. Motion carried unanimously.**

**Mayor Green reconvened the meeting in open session at 12:29 p.m.**

**Mayor Green certified that only matters pertaining to Threatened or Pending Litigation (City vs. McGeachy) *Pursuant to 10-15-1(H.7)* was discussed in Executive Session and no action was taken.**

**L. ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION, if any.  
ADJOURNMENT**

Commissioner Hechler moved in regards to the City vs McGeachy that the final agreement provided by the Mediator be accepted and if it's not we will go to court on the issue. Commissioner Clark seconded the motion.  
Motion carried unanimously.

**M. ADJOURNMENT**

Commissioner Clark moved to adjourn at 12:31 p.m.  
Commissioner Hechler seconded the motion. Motion carried unanimously.

Passed and Approved this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Steven Green, Mayor

ATTEST:

\_\_\_\_\_  
Angela A. Torres, CMC, Acting City Clerk



F.2

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Appoint Harv Kleinstiver to serve as a member on the Golf Course Advisory Board.

**BACKGROUND:**

The Board received an application from Harv Kleinstiver for the position vacated by Vivian Bonner. The Board has evaluated the application and feel that Harv would be a welcomed addition and bring different qualities to the Advisory Board with his longtime membership at the T or C Municipal Golf Course. The Board recommends that you approve Harv as a member of the Board.

**STAFF RECOMMENDATION:**

Appoint Harv Kleinstiver to the Golf Course Advisory Board.

**SUPPORT INFORMATION:**

Golf Course Advisory Board, Membership recommendation.

September 17, 2018

Re: Golf Course Advisory Board, Member recommendation

Honorable Mayor and Mayor Pro-Tem

Honorable Commissioners

City Manager

The Board has received an application from Harv Kleinstiver for the position vacated by Vivian Bonner. We have evaluated the application and feel that Harv would be a welcomed addition and bring different qualities to the Advisory Board with his longtime membership at the T or C Municipal Golf Course. The Board recommends that you approve Harv as a member of the Board.

If you have any questions, please feel free to contact me.

Respectively,

A handwritten signature in blue ink, appearing to read "Les Dufour". The signature is fluid and cursive, with the first name "Les" and last name "Dufour" clearly distinguishable.

Les Dufour

Chairperson

Name: Harv Kleinstiver

Address: 818 North Pershing

Phone: 894-8959

I am interested in serving as a member of the Golf Course Advisory Board.

My qualifications are as follows:

Playing golf at the City Municipal course since 1979.

Have active interest in the future of the course.

Retired USAF

Reason why you are interested in serving on this Board?

To work with the City and Contractor to improve the playability of the course and improve the financial aspect of the course.

Comments:

Hopefully I can assist the City with cooperation/support to accomplish improvements, improve playability, and conduct activities to improve financial aspects.

  
Signature: Harv Kleinstiver



# Public Hearing See G.5

## CITY OF TRUTH OR CONSEQUENCES COMMISSION ACTION FORM

### **ITEM:**

Public Hearing: Special Use Permit for live/work retail at 520 N. Broadway

### **BACKGROUND:**

Lillis Urban is a recent resident to T or C and is hoping to open an art gallery & retail space on Broadway. Living units along Broadway, Main, and Date Streets require a special use permit for approval.

### **STAFF RECOMMENDATION:**

Approve the Special Use Permit

### **SUPPORT INFORMATION:**

Special Use Permit application, shop layout, and letter from the applicant





**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM: DISCUSSION/ACTION:**

Selection of Landscaping Alternative for I-25 Business Loop (Date Street) Reconstruction Project and Resolution 13 18/19 for support of project.

**BACKGROUND:**

The I-25 Business Loop Reconstruction Project on Date Street is currently in design and the project team is working towards a 60% Plan completion with Final Design scheduled for 2019. Funding for the project is scheduled for 2022 currently. The City is under contract with WHPacific and Sites Southwest to develop Preliminary Landscaping Plans for the project. A Landscaping kick-off and follow up meeting have been held with the City staff to discuss proposed landscape alternatives. Based on available federal funding, the project will construct a level of landscaping including irrigation infrastructure with the intent of the City constructing the landscaped areas in the future.

**SUPPORT INFORMATION:**

- Conceptual Landscaping Alternatives
- Preliminary Construction Costs (NMDOT vs. City)

**STAFF RECOMMENDATION:**

- Review of the Landscaping Alternatives for the Date Street Reconstruction Project, including requesting a Resolution for support of the project.

Name of Presenter:	Special Projects Coordinator	Meeting date 9/26/2018
Andrew Gallegos, WHPacific, Inc.	Phone: 505.348.5277	T or C Department Contact: Traci Burnette
Robert Oberdorfer, Sites Southwest	Phone: 505.228.1710	



**RESOLUTION NO. 13 18/19**

**APPROVING SUPPORT FROM CITY OF TRUTH OR CONSEQUENCES FOR NEW MEXICO  
DEPARTMENT OF TRANSPORTATION (NMDOT) I-25 BUSINESS LOOP 11 (DATE STREET)  
PREFERRED ALTERNATIVE PROJECT, CN 1101230**

**The City Commission of the City of Truth or Consequences is informed that:**

**WHEREAS**, the NMDOT is currently in Phase C (Environmental Phase) of the I-25 Business Loop 11 (Date St.) Corridor Improvement Study; and

**WHEREAS**, the preferred alternative will include roundabouts at Smith Avenue, New School Road, NM 181 intersections, pedestrian facility upgrades, drainage and signing improvements, and landscaping; and

**WHEREAS**, as fiscal agent, NMDOT is requesting support of the project to complete Phase C and proceed into final design.

**NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES;**

That the City Commission of the City of Truth or Consequences supports aforementioned project.

**PASSED, APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Steve Green, Mayor

**ATTEST:**

\_\_\_\_\_  
Angela A. Torres, Acting City Clerk



G-2

CITY OF TRUTH OR CONSEQUENCES  
**COMMISSION ACTION FORM**

**ITEM:**

Resolution No. 14 18/19, Budget Adjustments transferred, as listed below

**BACKGROUND:**

Reconciling Budget Adjustments needed for pending year-end transactions

**STAFF RECOMMENDATION:**

Description	Amount	Recommendation
Electric- Expense Fund 503 503-3702-80805	\$75,000	Increase Capital Outlay Building & Structures (Mud Mountain Tower)
R&R Airport- Expense Fund 312 312-8403-60599	\$5,000	Increase Fuel Farm Grant (Fuel Farm Schedule 3)
R&R Airport- Transfer In Fund 312 312-8403-39935	\$25,000	Increase Transfer In (Fuel Farm Schedule 3)
General Fund - Revenue Fund 101 101-1099-34355	\$1,300	Increase Other Charges for Services
General Fund - Revenue Fund 101 101-1099-34377	\$7,500	Increase PD TorC Resource Officer
General Fund - Revenue Fund 101 101-1099-37380	\$16,200	Increase Miscellaneous Revenue
General Fund - Transfer Out Fund 101 101-1099-49930	\$25,000	Increase Transfer Out
Lodger's Tax - Expense Fund 214 214-2503-47406	\$2,300	Increase Promotional/Advertising

**SUPPORT INFORMATION:**

Finance Documents as presented.

Submitted by: Melissa Torres

Department: Finance Director

Meeting date: 9/26/2018



## **RESOLUTION NO. 14-18/19**

### **A RESOLUTION REQUESTING BUDGET ADJUSTMENTS IN THE REVENUE AND EXPENDITURE BUDGET FOR FISCAL YEAR 2018-2019.**

**WHEREAS**, the final budget for was approved by the City Commission of the City of Truth or Consequences, New Mexico, pursuant to Chapter 6, Article 76 NMSA 1978; and

**WHEREAS**, the City Commission resolve to request a budget adjustment in the 2018-2019 Fiscal Year Revenue and Expenditure Budget as per the Schedule of Budget Adjustments.

**NOW THEREFORE**, approval of the above is hereby requested of the New Mexico Department of Finance and Administration, Local Government Division.

**PASSED, ADOPTED AND APPROVED** this 26<sup>th</sup> day of September, 2018.

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Steven Green, Mayor

ATTEST:

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Angela A. Torres, CMC, Acting City Clerk

Department of Finance and Administration  
Local Government Division  
Financial Management Bureau  
SCHEDULE OF BUDGET ADJUSTMENTS

REVISÉ 12/08/06

ENTITY NAME:	<u>City of Truth or Consequences</u>
FISCAL YEAR:	<u>2018 / 2019</u>
DFA Resolution Number:	<u>14 18/19</u>

**For Local Government Division use only:**

[illegible]

**ATTEST:**  
**Angela A. Torres, CMC, Acting City Clerk**

9/26/2018  
(Date)

**Steve Green, Mayor**

9/26/2018  
(Date)



## CITY OF TRUTH OR CONSEQUENCES COMMISSION ACTION FORM

### ITEM:

Resolution No. 15 2018-2019 approving the Pool Fees for the J.A. Hodges Municipal Pool.

### BACKGROUND:

Price Changes at the J.A. Hodges Pool with Recreation Board approval and recommendations.

Old pricing structure:

Per Session Fees:		Monthly Passes (expire in 90 days)		Location and Phone
Youth	\$2.00	Youth (30)	\$45.00	775 Daniels Street TorC, NM 87901 575-894-6151 Find us on Facebook!!!
Adult/Senior	\$3.00	Adult (30)	\$60.00	
Non-Swimmer	\$2.00	Senior (30)	\$50.00	
Infant*	0/\$1.00	10 punch pass	\$20.00	
*First infant under 5 is free, each additional infant is \$1.00				



The staff recommends a slight price increase as outlined below:

### Truth or Consequences 2018 Pool Fees

Pool Address: 775 Daniels      Pool Phone: 575-894-6151

Per Session Passes	Price
Infant (0-2)	Free
Youth (3-17)	\$3.00
Adult (18-59)	\$4.00

<b>Senior (55+)</b>	\$3.00
<b>Non-Swimmer</b>	\$1.00
<b>Group Discount (6 or more customers)</b>	-\$1.00 per customer
<b>30-Punch Passes</b> (good for one (1) year from date of issue)	
<b>Youth/Senior</b>	\$50.00
<b>Adult</b>	\$65.00
<b>10 Punch Pass (good for 30 days)</b>	\$25.00
<b>Pool Rental</b>	
<b>Pool</b>	\$35.00/hr (2-hr minimum)
<b>Lifeguard</b>	\$12.50/hr
<b>Deposit</b>	\$50.00

#### **Pool Rental**

- Contact Pool Manager at 575-894-6151
- All fees and deposit must be paid for no less than one week prior to rental.
- Deposit check will be mailed to the address provided upon completion of pool party assuming all rules were obeyed and the facility was cleaned and not damaged.
- Minimum of two (2) lifeguards for up to 40 people. Additional people require additional lifeguards. Lifeguard fee to be paid prior to party.
- No glass bottles or other glass containers allowed in pool area.
- Refunds – The City of Truth or Consequences will refund money paid for pool rentals if the party was cancelled due to weather or facility maintenance. If an opening is available, the pool may be reserved for another day.
- Days available for parties are TBD. Complete list of rules to be discussed at the time reservation is made.

## **RESEARCH INFORMATION:**

### **Las Cruces Regional Aquatic Center**

<b>Per Session Passes</b>	<b>Price</b>
<b>Infant (0-2)</b>	Free
<b>Youth (3-17)</b>	\$3.00

<b>Adult (18-59)</b>	<b>\$4.00</b>
<b>Senior (60+)</b>	<b>\$3.00</b>
<b>Non-Swimmer</b>	<b>\$1.00</b>
<b>30-Punch Passes (does not expire)</b>	
<b>Youth/Senior</b>	<b>\$80.00</b>
<b>Adult</b>	<b>\$110.00</b>

### **LAABS and East Mesa Bataan Memorial Pool**

(outdoor, non-heated pools open Memorial weekend through Labor Day weekend)

<b>Per Session Passes</b>	<b>Price</b>
<b>Infant (0-2)</b>	<b>Free</b>
<b>Youth (3-17)</b>	<b>\$2.00</b>
<b>Adult (18-59)</b>	<b>\$2.00</b>
<b>Senior (60+)</b>	<b>\$1.00</b>
<b>Non-Swimmer</b>	<b>\$1.00</b>

### **STAFF RECOMMENDATION:**

Approve the resolution.

### **SUPPORT INFORMATION:**

Resolution No. 14 2018/2019 with Exhibit "A"

Submitted by: Tammy Gardner	Department: Municipal Pool	Meeting date: September 26, 2018
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**RESOLUTION NO. 15 18/19**

**A RESOLUTION ESTABLISHING SWIMMING POOL USER FEES  
FOR THE J.A. HODGES MUNICIPAL POOL**

**WHEREAS**, the City of Truth or Consequences offers City and Sierra County residents various recreational facilities a minimal cost; and

**WHEREAS**, the City operates the City pool during the summer season; and

**WHEREAS**, the last increase in fees was adopted by Resolution No. 21 13/14 on January 14, 2014; and

**WHEREAS**, the City Commission anticipates that the user fees will be insufficient to cover the operation and maintenance costs of the City pool; and

**WHEREAS**, the City staff has reviewed rates charge by other area swimming pools and also incorporated recommendations by the Parks & Recreation Advisory Board

**WHEREAS**, the City staff has determined the proposed Pool User Fees set forth on Exhibit A are reasonable to other pool user fees.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSIONERS OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO THAT:**

1. The swimming pool user fees as set forth in Exhibit "A", attached hereto and incorporated herein by this reference will be effective immediately upon adoption.
2. The City Commission may review the swimming pool fees set forth in Exhibit "A" annually.
3. The City Manager at his/her discretion may waive or reduce fee(s) on existing verbal or written agreements in effect upon adoption of this resolution.

**PASSED, APPROVED AND ADOPTED this 26<sup>th</sup> day of September, 2018.**

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Steve Green, Mayor

ATTEST:

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Angela A. Torres, Acting City Clerk

## EXHIBIT "A"

### Truth or Consequences 2018 Pool Fees

Pool Address: 775 Daniels

Pool Phone: 575-894-6151

Per Session Passes	Price
Infant (0-2)	Free
Youth (3-17)	\$3.00
Adult (18-59)	\$4.00
Senior (55+)	\$3.00
Non-Swimmer	\$1.00
<b>Group Discount (6 or more customers)</b>	<b>-\$1.00 per customer</b>
<b>30-Punch Passes</b> (good for one (1) year from date of issue)	
Youth/Senior	\$50.00
Adult	\$65.00
10 Punch Pass (good for 30 days)	\$25.00
<b>Pool Rental</b>	
Pool	\$35.00/hr (2-hr minimum)
Lifeguard	\$12.50/hr
Deposit	\$50.00

#### Pool Rental

- Contact Pool Manager at 575-894-6151
- All fees and deposit must be paid for no less than one week prior to rental.
- Deposit check will be mailed to the address provided upon completion of pool party assuming all rules were obeyed and the facility was cleaned and not damaged.
- Minimum of two (2) lifeguards for up to 40 people. Additional people require additional lifeguards. Lifeguard fee to be paid prior to party.
- No glass bottles or other glass containers allowed in pool area.
- Refunds – The City of Truth or Consequences will refund money paid for pool rentals if the party was cancelled due to weather or facility maintenance. If an opening is available, the pool may be reserved for another day.
- Days available for parties are TBD. Complete list of rules to be discussed at the time reservation is made.



G.4

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Ordinance No. 698 amending the Uniform Traffic Ordinance (UTO).

**BACKGROUND:**

The City has adopted the state's UTO with all amendments. The New Mexico Legislature has adopted amendments to its UTO, which the City is required to adopt.

**STAFF RECOMMENDATION:**

Proceed to publication on the amended UTO.

**SUPPORT INFORMATION:**

Ordinance No. 698, which shows all the proposed changes.

Name of Presenter: Jay Rubin	Department: City Attorney	Meeting date: 09/21/2018
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## ORDINANCE NO. 698

AN ORDINANCE OF THE CITY OF TRUTH OR CONSEQUENCES, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF TRUTH OR CONSEQUENCES, BE AMENDED BY AMENDING THE UNIFORM TRAFFIC ORDINANCE (UTO).

BE IT ORDAINED BY THE CITY COMMISSIONERS OF THE CITY OF TRUTH OR CONSEQUENCES:

*Section 1.* That the Uniform Traffic Ordinance is hereby amended and such ordinance shall read as follows:

### 12-1-5.1      AUTOCYCLE.

“Autocycle” means a three-wheeled motorcycle on which the driver and all passengers ride in a completely or partially enclosed, ~~[tandem]~~ seating area and is manufactured to comply with all applicable federal standards, regulations and laws and is equipped with:

- 1) ~~{federal motor vehicle safety standard glazing;}~~ non-straddle seating;
- 2) ~~{a roll cage;}~~ rollover protection;
- 3) safety belts for all occupants;
- 4) ~~{airbag protection;}~~
- 5) 4) antilock brakes;
- 6) 5) a steering wheel; and
- 7) 6) pedals. (66-1-4.1 NMSA 1978)

### 12-1-67      SCHOOL BUS.

“School Bus” means any motor vehicle operating under the jurisdiction of the state board of education or private school or parochial school interests which is used to transport children, students or teachers to and from schools or to and from any school activity, but not including any vehicle:

- 1) operated by a common carrier, subject to and meeting all requirements of the state corporation commission but not used exclusively for the transportation of students;
- 2) operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the state corporation commission but is not used exclusively for transportation of students; or
- 3) operated as a per capita feeder as defined in Section 22-16-6 NMSA 1978; or

- 4) that is a minimum six-passenger, full-size, extended-length, sport utility vehicle operated by a school district employee pursuant to Subsection D of Section 22-16-4 NMSA 1978.  
(66-1-4.16 NMSA 1978)

**12-6-7.4 OPERATION OF VEHICLE ON APPROACH OF MOVING AUTHORIZED EMERGENCY VEHICLE; OF ONCOMING VEHICLE-YIELD RIGHT OF WAY.**

- A. Upon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal by siren, ~~{exhaust whistle, or bell,}~~ the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the street clear of any intersection and shall stop and remain in that position, until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. (66-7-332 NMSA 1978)
- B. Upon approaching a stationary authorized emergency vehicle or a recovery or repair vehicle displaying flashing emergency or hazard lights, unless otherwise directed, the driver of the vehicle shall:
1. if reasonably safe to do so, drive in a lane not adjacent to ~~{where}~~ the ~~{authorized emergency}~~ stationary vehicle ~~{is stopped}~~, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances and proceed with caution; or
  2. if it is not reasonably safe to drive in a lane not adjacent to ~~{where}~~ the ~~{authorized emergency}~~ stationary vehicle ~~{is stopped}~~, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances, proceed with caution and be prepared to stop. (66-7-332 NMSA 1978)
- C. Upon the immediate approach of an oncoming vehicle overtaking or attempting to overtake a vehicle proceeding in the same direction, the driver of that vehicle shall yield the right of way and shall drive to a position to and as close as possible to the right hand edge or curb of the roadway and shall remain as close as possible to the right hand edge or curb of the roadway until the oncoming vehicle has passed. (66-7-332.1 NMSA 1978)
- D. This section shall not operate to relieve the driver of an authorized emergency vehicle or the driver of any other vehicle ~~{an oncoming vehicle}~~ from the duty to drive with due regard for the safety of all persons using the highway. (66-7-322 and 66-7-322.1 NMSA 1978)

12-7-9.2      ~~OPERATION OF OFF-HIGHWAY MOTOR VEHICLES ON STREETS OR HIGHWAYS PROHIBITED AREAS.~~

- ~~A. No person shall operate an off-highway motor vehicle on any limited access street at any time or any paved street or highway except as provided in Subsection B, C [or] D or E of this section.~~
- ~~B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the street. Off-highway motor vehicles shall yield the right-of-way to oncoming traffic and shall begin a crossing only when it can be executed safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.~~
- ~~C. If authorized by ordinance or resolution of a local authority or the State Transportation Commission, a recreational off-highway vehicle or an all-terrain vehicle may be operated on a paved street or highway owned and controlled by the authorizing authority if:~~
- ~~1) the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;~~
  - ~~2) the vehicle has brakes, mirrors and mufflers;~~
  - ~~3) the operator has [a] valid driver's [license, instruction permit or provisional license and off-highway motor vehicle safety permit] licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act;~~
  - ~~4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act; and~~
  - ~~5) the operator of the vehicle is [wearing eye] using eye protection [and a safety helmet] that comply with the Off-Highway Motor Vehicle Act; and~~
  - ~~6) if the operator is under eighteen years of age, the operator is wearing a safety helmet that complies with the Off-Highway Motor Vehicle Act.~~
- ~~D. Except for sections of the Motor Vehicle Code that are in conflict with the licensing and equipment requirements of the Off-Highway Motor Vehicle Act, any operator using an off-highway motor vehicle on a paved street or highway shall be subject to the requirements and penalties for operators of moving or parked vehicles under the Motor Vehicle Code.~~



~~E. By ordinance resolution, a local authority or the State Transportation Commission may establish separate speed limits and operating restrictions for off-highway vehicles where they are authorized to operate on paved streets or highways pursuant to Subsection C of this section.~~

~~F. A person shall not operate an off-highway motor vehicle on state game commission owned, controlled or administered land except as specifically allowed pursuant to Chapter 17, Article 6 NMSA 1978.~~

~~G. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the Energy, Minerals and Natural Resources Department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the secretary of Energy, Minerals and Natural Resources.~~

~~H. Unless authorized, a person shall not:~~

~~1) remove, deface or destroy and official sign installed by a state, federal, local or private land management agency; or~~

~~2) install any off-highway motor vehicle related sign. (66-3-1011 NMSA)~~

## **12-7-9.9 OPERATION AND EQUIPMENT - SAFETY REQUIREMENTS.**

A. A person shall not operate an off-highway motor vehicle:

- 1) in a careless, reckless or negligent manner so as to endanger the person or property of another;
- 2) while under the influence of intoxicating liquor or drugs as provided by Section 66-8-102 NMSA 1978;
- 3) while in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;
- 4) in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;
- 5) on or within an earthen tank or other structure meant to water livestock or wildlife, unless the off-highway motor vehicle is on a route designated by the landowner or land management agency as an off-highway motor vehicle route;

- 6) in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;
- 7) in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian or occupied dwelling, unless the person operates the vehicle on a closed course or tract or a public roadway;
- 8) unless in possession of the person's registration or certificate or nonresident permit;
- 9) unless the vehicle is equipped with a spark arrester approved by the United States Forest Service; provided that a snowmobile is exempt from this provision;
- 10) when conditions such as darkness limit visibility to five hundred feet or less, unless the vehicle is equipped with:
  - a) one or more headlights of sufficient candlepower to light objects at a distance of one hundred fifty feet; and
  - b) at least one taillight of sufficient intensity to exhibit a red or amber light at a distance of two hundred feet under normal atmospheric conditions;  
or
- 11) that produces noise that exceeds ninety-six decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287; or
- 12) where off-highway motor vehicle traffic is prohibited under local, state or federal rules or regulations.

B. A person under the age of eighteen shall not operate an off-highway motor vehicle:

- 1) or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear and that meets the standards established by the department;
- 2) without an off-highway motor vehicle safety permit; or
- 3) while carrying a passenger.



C. A person under the age of eighteen but at least ten years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of eighteen who has a valid driver's license. This subsection shall not apply to a person who is at least:

- 1) thirteen years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or
- 2) fifteen years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

D. A person under the age of ten shall not operate an off-highway motor vehicle unless:

- 1) the all-terrain vehicle or recreational off-highway vehicle is an age-appropriate size-fit vehicle established by rule of the department; and
- 2) the person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the department.

E. An off-highway motor vehicle may not be sold or offered for sale if the vehicle produces noise that exceeds ninety-six decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition. (66-3-1010.3 NMSA 1978)

**12-10-1.44 SPECIAL RESTRICTIONS ON LAMPS.**

A. Lighted lamps or illuminating devices upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and school bus warning lamps, that project a beam of light of an intensity greater than three hundred candle power shall be directed so that no part of the high-intensity portion of the beam strikes the level of the street on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

B. ~~[No]~~ A person shall not drive or move upon ~~{any street, any}~~ a highway a vehicle or equipment with a lamp or device ~~{thereon}~~ displaying a red light visible from directly in front of the center of the vehicle or equipment, ~~[This section does not apply to any vehicle upon which a red light visible from the front is]~~ except as expressly authorized or required by the New Mexico Motor Vehicle Code.

- C. Flashing lights are prohibited except as provided in ~~{Subsection D of}~~ this section and except on authorized emergency vehicles, school buses, snow-removal equipment and highway-marking equipment. Flashing red lights may be used as warning lights on disabled or parked vehicles and on any vehicle as a means of indicating turn.
- D. ~~{Tow-ears}~~ A recovery or repair vehicle standing on ~~{streets}~~ a highway for the purpose of removing, and actually engaged in removing, a disabled vehicle, and while engaged in towing any disabled vehicle, may display flashing lights in any color except red. This provision shall not be construed as permitting the use of flashing lights by ~~{tow-ears}~~ recovery or repair vehicles in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.
- E. Only fire department vehicles, law enforcement agency vehicles, ambulances and school buses ~~{shall}~~ may display flashing red lights visible from the front of the vehicle. All other vehicles authorized by the New Mexico Vehicle Code to display flashing lights visible from the front of the vehicle may use any other color of light that is visible. (66-3-835 NMSA 1978)

#### **12-5-7 PEDESTRIAN CONTROL SIGNALS.**

- A. Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk" are in place:
- 1) "walk" indicates that pedestrians facing the signal may proceed across the street in the direction of the signal and shall be given the right of way by drivers or all vehicles; and
  - 2) "don't walk" indicates that no pedestrian shall start to cross the street in the direction of the signal, but any pedestrian who has partially completed ~~{his}~~ the pedestrian's crossing on the walk signal shall proceed to a sidewalk or safety island while the "don't walk" signal is showing.
- B. A person who violates the provisions of this section is guilty of penalty assessment misdemeanor. (66-7-106 NMSA 1978)

#### **12-5-8 FLASHING SIGNALS.**

- A. Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:
- 1) flashing red (stop signal) – when a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at

an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign; or

- 2) flashing yellow (caution signal) – when a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

B. This section shall not apply at railroad grade crossings. Conduct of driver of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in Sections 12-6-7.5 – 12-6-7.8 of this ordinance.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-107 NMSA 1978)

#### **12-5-10      DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS.**

A. No person shall place, maintain, or display upon or in view of any street any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movements of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

B. Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the administrator is hereby empowered to remove the ~~{same}~~ sign, signal, marking or device or cause it to be removed without notice.

C. The provisions of this section shall not prohibit the erection of signs upon private property adjacent to streets if the signs give useful directional information and are of a type that cannot be mistaken for official signs. (\*)

D. A person who violates provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-108 NMSA 1978)

#### **12-6-12.11    RESTRICTION ON USE OF ~~{TELEVISION}~~ VIDEO IN MOTOR VEHICLES.**

A. It is unlawful to operate in this municipality any motor vehicle equipped with a ~~{television}~~ video screen, of whatever type, upon which images may be projected or shown, if the

screen is within the normal view of the driver of the motor vehicle unless the ~~{television}~~ video screen is solely used as an aid to the driver in the operation of the vehicle.

- B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.
- C. As used in this section "~~{television}~~ video screen" does not include closed circuit monitors or computer terminal monitors used by law enforcement agencies in law enforcement motor vehicles. (66-7-358 NMSA 1978)

#### **12-6-12.12 COASTING PROHIBITED.**

- A. The driver of any motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.
- B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-360 NMSA 1978)

#### **12-6-13.10 ANIMALS ON STREET.**

- A. It is unlawful for any person, during the hours of darkness to ride a horse or other animal upon the traveled portion of any street which is normally used by motor vehicles.
- B. It is unlawful for any person negligently to permit livestock to wander or graze upon any fenced street at any time or, during the hours of darkness, to drive livestock along or upon any street which is normally used by motor vehicles.
- C. Owners of livestock ranging in pastures through which unfenced roadways pass shall not be liable for damages by reason of injury or damage to persons or property occasioned by collisions of vehicles using said roadways and livestock or animals ranging in said pastures unless such owner of livestock is guilty of specific negligence other than allowing livestock to range in said pasture.
- D. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-363 NMSA 1978)

#### **12-6-13.11 DRIVING ON MOUNTAIN STREETS.**

- A. The driver of a motor vehicle traveling through defiles or canyons or on mountain streets shall hold such motor vehicle under control and as near the right-hand edge of the street as reasonably possible.

- B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-359 NMSA 1978)

**12-6-13.15 LITTERING**

- A. Littering consists of discarding refuse:

- 1) on public property in any manner other than by placing the refuse in a receptacle provided for the purpose by the responsible governmental authorities, or otherwise in accordance with lawful direction; or
- 2) on private property not owned or lawfully occupied or controlled by the person, except with the consent of the owner, lessee or occupant ~~{thereof. (30-8-4 NMSA-1978)}~~.

- B. Whoever commits littering is guilty of a petty misdemeanor, and notwithstanding the provisions of Section 31-9-1 NMSA 1978, shall be punished by a fine of fifty dollars (\$50.00). The use of uniform traffic citations is authorized for the enforcement of this section. The court may to the extent permitted by law, as a condition to suspension of any other penalty provided by law, require a person who commits littering to pick up and remove from any public place or any private property, with prior permission of the legal owner, any litter deposited thereon. (30-8-4 NMSA 1978)

- C. ~~Any jail sentence imposed pursuant to Subsection B of this section may be suspended, in the discretion of the magistrate or judge, upon conditions that the offender assist in litter clean up in the jurisdiction for a period not to exceed the length of the suspended sentence. (\*)~~

**12-6-14.2 PEDESTRIANS RIGHT OF WAY IN CROSSWALKS.**

- A. When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the street within a crosswalk when the pedestrian is in the crosswalk.
- B. ~~{No}~~ A pedestrian shall not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.
- C. Subsection A shall not apply under the conditions stated in Section 12-6-14.4.
- D. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the street, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

- E. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor (66-7-334 NMSA 1978)

**12-6-14.3**      **PEDESTRIANS TO USE RIGHT HALF OF CROSSWALK.**

- A. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.
- B. A person who violates provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-338 NMSA 1978)

**12-6-14.4**      **CROSSING AT OTHER THAN CROSSWALKS.**

- A. ~~{Every}~~ A pedestrian crossing a street at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the street.
- B. Any pedestrian crossing a street at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the street.
- C. Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.
- D. No pedestrian shall cross a street intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements. (\*)
- E. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor (66-7-335 NMSA 1978)

**12-6-14.5**      **PEDESTRIANS ON STREETS.**

- A. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent street.
- B. Where sidewalks are not provided any pedestrian walking along and upon a street shall when practicable walk only on the left side of the street or its shoulder facing traffic which may approach from the opposite direction.
- C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor (66-7-339 NMSA 1978)

**12-8-1**      **EFFECT OF REGULATIONS.**

- A. It is a penalty assessment misdemeanor for a person to do any act forbidden or fail to perform any act required by Sections 12-8-1 through 23 or the Uniform Traffic Ordinance.
- B. The parent of any child and the guardian of any ward shall not authorize or permit any such child or ward to violate any of the provisions of this ordinance.
- C. These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. (66-3-701 NMSA 1978)

#### **12-10-1.1 PROHIBITED ACTS.**

- A. Except as otherwise provided in this section, it is a penalty assessment misdemeanor for any person to drive or move, or for the owner to cause or permit to be driven or moved, on any street, any vehicle, or combination of vehicles, which is in such unsafe condition as to endanger any person, or which does not contain those parts, or is not at all times equipped with such lamps and other equipment, in proper condition and adjustment, as is required by Sections 12-10-1.1 through 12-10-1.51, or which is equipped in any manner that is in violation of those sections, or for any person to do any act forbidden, or fail to perform any act required under those sections.
- B. Nothing contained in Sections 12-10-1.1 through 12-10-1.51 shall be construed to prohibit the use of additional parts and accessories on any vehicle which are not inconsistent with the provisions of such sections.
- C. The provisions of Sections 12-10-1.1 through 12-10-1.51, with respect to equipment on vehicles, shall not apply to implements of husbandry, road machinery, road rollers or farm tractors, except as made applicable in those sections. (66-3-801 NMSA 1978)

#### **12-10-1.3 WHEN LIGHTED LAMPS ARE REQUIRED.**

- A. Every vehicle upon a street within this municipality at any time from a half-hour after sunset to a half-hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the street at a distance of five hundred feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.
- B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor (66-3-802 NMSA 1978)

#### **12-10-1.5 HEAD LAMPS ON MOTOR VEHICLES.**

- A. Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this ordinance.
- B. Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this ordinance.
- C. Every headlamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the headlamp of not more than fifty-four inches nor less than twenty inches to be measured as set forth in Section 12-10-1.4B. The provisions of this paragraph shall apply only to new motor vehicles sold after July 1, 1953. (66-3-804 NMSA 1978)
- D. For the purposes of Sections 12-10-1.1 through 12-10-1.5 parking lamps shall not be used in lieu of head lamps. (\*)
- E. No headlight shall emit a glaring or dazzling light. (66-3-828 NMSA 1978)
- F. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-3-804 NMSA 1978)

**12-10-1.7      TAIL LAMPS.**

- A. Every motor vehicle, trailer, semi-trailer, and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred feet to the rear; provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. And further, every such above mentioned vehicle, other than a truck tractor, registered in this state and manufactured or assembled after July 1, 1953, shall be equipped with at least two tail lamps mounted on the rear, which when lighted as herein required shall comply with the provisions of this section.
- B. Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two inches nor less than twenty inches.
- C. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for



illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted. (66-3-805 NMSA 1978)

D. No tail lamp shall emit a glaring or dazzling light. (66-3-828 NMSA 1978)

E. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-3-805 NMSA 1978)

**12-10-1.8      VEHICLES TO BE EQUIPPED WITH REFLECTORS.**

A. Every new motor vehicle hereafter sold and operated upon a street, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, two red reflectors, except that every motorcycle and every motor-driven cycle shall carry at least one reflector, meeting the requirements of this section.

B. Every such reflector shall be mounted on the vehicle at a height of not less than twenty inches nor more than sixty inches measured as set forth in Section 12-10-1.4B, and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred feet to fifty feet from such vehicle when directly in front of lawful upper beams of headlamps.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-3-806 NMSA 1978)

**12-10-1.12      WINDSHIELD MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS; WINDOWS MUST BE TRANSPARENT; EXCEPTIONS.**

A. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon or in the front windshield, windows to the immediate right and left of the driver or in the rear-most window if the latter is used for driving visibility except as provided in Section 12-10-1.12A. The rear-most window is not necessary for driving visibility where outside rear-view mirrors are attached to the vehicle.

B. The windshield on every motor vehicle, except a motorcycle, shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operate by the driver of the vehicle.

C. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

D. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-3-846 NMSA 1978)

**12-10-1.12A SUN SCREENING MATERIAL ON WINDSHIELDS AND WINDOWS; REQUIREMENTS; VIOLATION; PENALTY.**

- A. A person shall not operate on any street or highway a motor vehicle that is registered or required to be registered in this state if that motor vehicle has a sun screening material on the windshield or any window that does not comply with the requirements of this section.
- B. Except as otherwise provided in this section, a sun screening material:
- 1) when used in conjunction with the windshield, shall be non-reflective, shall not be red, yellow or amber in color and shall be used only along the top of the windshield, not extending downward beyond the ASI line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield; and
  - 2) when used in conjunction with the safety glazing materials of the side wings or the side windows located at the immediate right and left of the driver, the side windows behind the driver and the rearmost window shall be non-reflective, shall have a light transmission of not less than twenty percent and shall be used only on the windows of a motor vehicle equipped with one left outside rearview mirror.
- C. Each manufacturer shall:
- 1) certify to the division that a sun screening material used by that manufacturer is in compliance with the non-reflectivity and light transmission requirements of this section:
  - 2) provide a label not to exceed one and one-half square inches in size that:
    - a) is installed permanently and legibly between the sun screening material and each glazing surface to which it is applied;
    - b) contains the manufacturer's name, the date the sun screening material was manufactured and the percentage of light transmission; and
    - c) is placed in the left lower corner of each glazing surface when facing the motor vehicle from the outside; and
  - 3) include instructions with the sun screening material for proper installation, including the affixing of the label specified in this subsection.

D. No person shall:

- 1) offer for sale or for use any screening material for motor vehicle use not in compliance with this section; or
- 2) install any sun screening material on motor vehicles intended for operation on any street or highway without permanently affixing the label specified in subsection C of this section.

E. The provisions of this section do not apply to a motor vehicle registered in this state in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material that is in violation of this section. The affidavit shall be in the possession of the person with such a physical condition, or the person's legal guardian, at all times while being transported in the motor vehicle.

F. The light transmission requirement of this section does not apply to windows behind the driver on truck tractors, buses, recreational vehicles, multipurpose passenger vehicles and motor homes. The provisions of this section shall not apply to motor vehicle glazing which complies with federal motor vehicle standards.

G. The provisions of this section do not apply to motor vehicles that have sun screening material on the windshield or any window prior to July 1, 1997.

H. As used in this section:

- 1) "light transmission" means the ration of the amount of total light that passes through a product or material, expressed in percentages, to the amount of total light falling on the product or material;
- 2) "manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with motor vehicle glazing materials for the purpose of reducing the effects of the sun;
- 3) "non-reflective" means designed to absorb light rather than to reflect it; and

- 4) "sun screening material" means any film material, substance, device or product that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

- I. ~~{Any}~~ A person who violates ~~{any}~~ a provision of this section is guilty of a ~~{petty}~~ penalty assessment misdemeanor ~~{and upon conviction shall be punished by a fine of not more than seventy five dollars (\$75.00)}~~. (66-3-846.1 NMSA 1978)

**SECTION \_\_\_\_\_ PENALTY ASSESSMENT**

<u>COMMON NAME OF OFFENSE</u>	<u>SECTION VIOLATED</u>	<u>PENALTY ASSESSMENT</u>
PEDESTRIAN CONTROL SIGNALS	12-5-7	\$25.00
FLASHING SIGNALS	12-5-8	25.00
DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS	12-5-10	25.00
SPEED REGULATIONS	12-6-1	
(1) Up to and limited ten miles an hour over speed limit		25.00
(2) From eleven up to and including fifteen miles an hour over speed limit		30.00
(3) From sixteen up to and including twenty miles an hour over speed limit		65.00
(4) From twenty-one up to and including twenty- five miles an hour over speed limit		100.00
(5) From twenty-six up to and including thirty miles an hour over speed limit		125.00
(6) From thirty-one up to and including thirty five miles an hour over speed limit		150.00
(7) More than thirty-five miles per hour over the speed limit		200.00
MINIMUM SPEED REGULATIONS	12-6-1.5	25.00
OVERTAKING A VEHICLE ON THE LEFT	12-6-2.3	10.00

LIMITATIONS ON OVERTAKING ON THE LEFT	12-6-2.4	10.00
NO PASSING ZONES & RESTRICTIONS ON PASSING	12-2-2.7	25.00
FOLLOWING TOO CLOSELY	12-6-2.13	25.00
DRIVING ON DIVIDED STREETS	12-6-2.14	25.00
VEHICLE APPROACHING OR ENTERING INTERSECTION	12-6-4.1	25.00
VEHICLES TURNING LEFT AT INTERSECTION	12-6-4.2	25.00
VEHICLE ENTERING STOP OR YIELD INTERSECTION	12-6-4.3	25.00
LIMITATIONS ON TURNING AROUND	12-6-5.5	10.00
STARTING PARKED VEHICLE	12-6-5.7	10.00
TURNING & STOPPING MOVEMENTS AND REQUIRED SIGNALS	12-6-5.8	25.00
STOPPING, STANDING & PARKING	12-6-6	25.00
SPECIAL STOPS REQUIRED	12-6-7	25.00
STOPPING FOR SCHOOL BUS	12-6-7.3	100.00
OPERATORS & CHAUFFERS MUST BE LICENSED	12-6-12.5	25.00
LIMITATIONS ON BACKING	12-6-12.9	25.00
RESTRICTION ON USE OF VIDEO IN MOTOR VEHICLE	12-6-12.11	25.00
COASTING PROHIBITED	12-6-12.12	25.00
DESTRUCTIVE OR INJURIOUS MATERIAL ON ROADWAY	12-6-13.5	100.00
ANIMALS ON STREET	12-6-13.10	25.00
DRIVING ON MOUNTAIN STREETS	12-6-13.11	25.00
CHILD NOT IN RESTRAINT DEVICE OR SAFETLY BELT	12-6-13.12	25.00
MANDATORY USE OF SEAT BELTS	12-6-13.13	25.00
POSSESSION OR CONSUMPTION OF ALCOHOLIC		

BEVERAGES IN OPEN CONTAINERS- FIRST OFFENSE	12-6-13.14	25.00
LITTERING	12-6-13.15	50.00
PEDESTRIAN VIOLATION	12-6-14	10.00
PEDESTRIANS RIGHT-OF-WAY IN CROSSWALKS	12-6-14.2	25.00
PEDESTRIANS TO USE RIGHT HALF OF SIDEWALK	12-6-14.3	25.00
CROSSING AT OTHER THAN CROSSWALKS	12-6-14.4	25.00
PEDESTRIAN ON STREETS	12-6-14.5	25.00
DRIVERS TO EXERCISE DUE CARE	12-6-14.8	25.00
PARKING IN DESIGNATED DISABLED PARKING SPACES	12-9-9	250-500.00
PROHIBITED ACTS	12-10-1.1	25.00
WHEN LIGHTED LAMPS ARE REQUIRED	12-10-1.3	25.00
HEADLAMPS ON VEHICLES	12-10-1.5	25.00
DIMMING OF LIGHTS	12-10-1.6	10.00
TAIL LAMPS	12-10-1.7	25.00
VEHICLES TO BE EQUIPPED WITH REFLECTORS	12-10-1.8	25.00
MUFFLERS, PREVENTION OF NOISE	12-10-1.10	10.00
LAMP OR FLAG ON PROJECTING LOAD	12-10-1.11	10.00
WINDSHIELD MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS; WINDOWS MUST BE TRANSPARENT; EXECPTIONS	12-10-1.12	25.00
SUN SCREENING MATERIAL ON WINDSHIELDS AND WINDOWS; REQUIREMENTS; VIOLATIONS PENALTY	12-10-1.12A	25.00
DISPLAY OF CURRENT VALID REGISTRATION PLATE	12-10-4	25.00
EVIDENCE OF REGRISTRATION TO BE SIGNED AND EXHIBITED ON DEMAND	12-10-5	10.00

- A. The term "penalty assessment misdemeanor" does not include any violations which has caused or contributed to the cause of an accident resulting in injury or death to any person.
- B. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine imposed upon late conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor and no probation imposed upon a suspended or deferred sentence shall exceed ninety days.
- C. The penalty assessment for speeding in violation of Section 12-6-1.2 (4) of the Uniform Traffic Ordinance is twice the penalty assessment established in Subsection A of Section 2 of this ordinance for the equivalent miles per hour over the speed limit.
- D. In addition to the penalty assessment established for each penalty assessment misdemeanor pursuant to this section, there shall be assessed the following fees for each penalty assessment misdemeanor: a twenty dollar (\$20) Corrections Fee; a six dollar (\$6) Court Automations Fee; and a three dollar (\$3) Judicial Education Fee.

#### **SECTION 1. PENALTY ASSESSMENT MISDEMEANORS; OPTION; EFFECT**

- A. Unless a warning notice is given, at the time of making an arrest for any penalty assessment misdemeanor, the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offence stated in the notice, and payment of the prescribed penalty assessment is a complete satisfaction of violation.
- B. Payment of any penalty assessment must be made by mail to the Municipal Court, Traffic Violations Bureau, City of Truth or Consequences, New Mexico within \_\_\_\_ days from the date of arrest. Payments of penalty assessments are timely if postmarked within the time limits set from the date of arrest. The Traffic Violations Bureau shall issue a receipt when a penalty assessment is paid by currency, but checks rendered by the violator upon which payment is received is sufficient receipt.
- C. No record of any penalty assessment payment is admissible as evidence in any court in any civil action.

#### **SECTION 2. FAILURE TO PAY PENALTY ASSESSMENT**

- A. If a penalty assessment is not paid within \_\_\_\_ days from the date of arrest, the violator shall be prosecuted for the violation charge on the penalty assessment notice in a manner as if the penalty assessment notice has not been issued. Upon conviction in such prosecution, the court shall impose penalties as provided by the New Mexico Uniform Traffic Ordinance (Section 12-12-1.1), or other law relating to motor vehicles for the particular offense charged, and the scheduled penalty assessments shall not apply.

- B. In addition to the prosecution provided in Section 4A, it is a misdemeanor for any person who has elected to pay a penalty assessment to failure to do so within \_\_\_\_Days from the date of arrest.
- C. The Office of the Municipal Court shall notify the Motor Vehicle Division of the State of New Mexico when a person fails to pay a penalty assessment within the required period of time. The Motor Vehicle Division shall report the notice upon the driver's record and shall not renew the person's license to drive until the Municipal Court notifies the Motor Vehicle Division that the penalty assessment, or its equivalent, as well as any additional penalties imposed are properly disposed of.

### **SECTION 3. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or any portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions thereof.

### **SECTION 4. ORDINANCES REPEALED**

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

### **SECTION 5. EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

*Section 2.* All Ordinances or Resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This Repealer shall not be construed to revive any Ordinance or Resolution, or part thereof, heretofore repealed.

*Section 3.* This Ordinance shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.**

**CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO**

\_\_\_\_\_  
**Steve Green, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Renee L. Cantin, City Clerk**





G.5

## **CITY OF TRUTH OR CONSEQUENCES COMMISSION ACTION FORM**

### **ITEM:**

Special Use Permit for live/work retail at 520 N. Broadway

### **BACKGROUND:**

Lillis Urban is a recent resident to T or C and is hoping to open an art gallery & retail space on Broadway. Living units along Broadway, Main, and Date Streets require a special use permit for approval.

### **STAFF RECOMMENDATION:**

Approve the Special Use Permit

### **SUPPORT INFORMATION:**

Special Use Permit application, shop layout, and letter from the applicant



BUILDING/PLANNING DEPARTMENT  
Voice - (575) 894-6673 x 110 Fax - (575) 894-0363  
E-mail [Ritravis@lcrnm.org](mailto:Ritravis@lcrnm.org)  
505 Sims Street - Truth or Consequences, NM 87901

(Staff Use Only)  
Case No

Related Case(s)

## PLANNING APPLICATION FORM

The completeness of this application, which includes accompanying plans, shall be subject to the review of the Building/Planning Department. This application is used for a variety of application processes and not all items may apply to your project. If you feel a requirement is not applicable to your project, write "N/A." If you have any questions while completing this application please ask a member of the Planning Department for assistance. Incomplete applications will not be accepted (or the process may be delayed.) (PLEASE PRINT OR TYPE)

### CHECK APPLICATION TYPE(S) REQUESTED:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Master Plan (\$100 + \$200/lot)               | <input type="checkbox"/> Annexation (\$100 or \$10/ac. Max. \$250) | <input checked="" type="checkbox"/> CUP/SUP (\$25)                  |
| <input type="checkbox"/> Master Plan Amendment (\$200)                 | <input type="checkbox"/> Appeal (\$50)                             | <input type="checkbox"/> Prelim. Plat or Replat (\$100 + \$200/lot) |
| <input type="checkbox"/> Development Agreement (\$1,000)               | <input type="checkbox"/> Variance (\$25)                           | <input type="checkbox"/> Final Plat (\$50)                          |
| <input type="checkbox"/> Change of Zone (\$100 or \$10/ac. Max. \$250) | <input type="checkbox"/> Zone Ordinance Amendment (\$250)          | <input type="checkbox"/> Summary Plat (\$50)                        |
|  |  | <input type="checkbox"/> Plat Amendment (\$50)                      |

### PROJECT SUMMARY:

Project/Business Name (if any): "Love Shack" - SUP FOR RESIDENTIAL USE ON EXISTING COMMERCIAL LOT/BUILDING

Project Description (add extra page(s) if needed):

Property Address/Location: 520 N. Broadway, Town of Belisario, 81901  
Assessor's Parcel Number(s): Lot 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100  
Total Gross Lot Area: 0.206 acres Total Net Lot Area: \_\_\_\_\_  
Existing Master Plan/Comprehensive Plan Designation: \_\_\_\_\_ Existing Zoning Designation: \_\_\_\_\_  
Proposed Master Plan Designation (if applicable): \_\_\_\_\_ Proposed Zoning Designation: \_\_\_\_\_  
Existing Uses and/or Structures on Site: \_\_\_\_\_  
Surrounding Uses: North: Parking Lot South: RESIDENTIAL  
East: COMMERCIAL West: COMMERCIAL/RESIDENTIAL

APPLICANT/ REPRESENTATIVE Name: <u>MYERS MERRILL DICKS</u>		REPRESENTATIVE(S):	
Address: <u>55 PANDORA BLVD</u>		Telephone No.: <u>575-777-3958</u>	
City: <u>COSMILLA</u>		Fax No.: <u>N/A</u>	
Contact Person: <u>MYERS MERRILL DICKS</u>		State: <u>NEW MEXICO</u> Zip Code: <u>88524</u>	
E-mail Address: <u>gail57hoy@gmail.com</u>			
I certify under penalty of perjury that all the application information is true and correct:			
Applicant's Signature: <u>[Signature]</u>		Date: <u>7-22-18</u>	
PROPERTY OWNER/ AGENT Name: <u>LILLIS A. URBAN</u>		Telephone No.: <u>479 263 2024</u>	
Address: <u>431 BROWN ST.</u>		Fax No.: <u>N/A</u>	
City: <u>TADS</u>		State: <u>NEW MEXICO</u> Zip Code: <u>88521</u>	
Contact Person: <u>LILLIS A. URBAN</u>		E-mail Address: <u>lillisaurban@gmail.com</u>	
The City will provide the applicant with hearing notices and staff reports unless another party is identified:			
Date/Time Received:		Receipt No(s):	
Received By: _____		Amount Received: \$ _____	

## PLANNING APPLICATION FORM -page 2

I, ELLIS A. URGAN am the owner of the property described in this application and hereby authorize

Print Name

AYRES MERRILL DICKS to act on my behalf on matters pertaining to this application.

Name of applicant or representative

Property Owner's Signature: [Signature]

Date: 07/22/2018

Note: If more than one owner, a separate page must be attached listing the names and addresses of all persons (if a corporation, list officers, and principals) having interest in the property ownership.

ARCHITECT Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Address: \_\_\_\_\_ Fax No.: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

ENGINEER Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Address: \_\_\_\_\_ Fax No.: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

### APPLICANT'S AGREEMENT:

Processing of this application will not begin unless this application is complete and all signatures are provided: I, the undersigned as project Applicant or Representative of the project Applicant, hereby authorize the City of Truth or Consequences to review the submitted plans and specifications for this Application in accordance with the City of Truth or Consequences Municipal Code.

Applicant(s) acknowledge and agree that by filing this application City staff may enter upon the subject property and make examinations and surveys, provided that the entries, examinations and surveys do not unreasonably interfere with the use of the land by those persons lawfully entitled to the possession thereof.

Applicant(s) certify under penalty of perjury that I am the legal owner(s) (all individual owners must sign as they appear on the deed to the land), Corporate Officer(s) empowered to sign for the corporation, Owner's Legal Agent having power of Attorney (a notarized Power of Attorney document must accompany this application), or the owner's authorized representative (include a notarized consent form from the owner).

Applicant(s) acknowledge and agree that I have included all of the required items and understand that missing items may result in delaying the processing of my application.

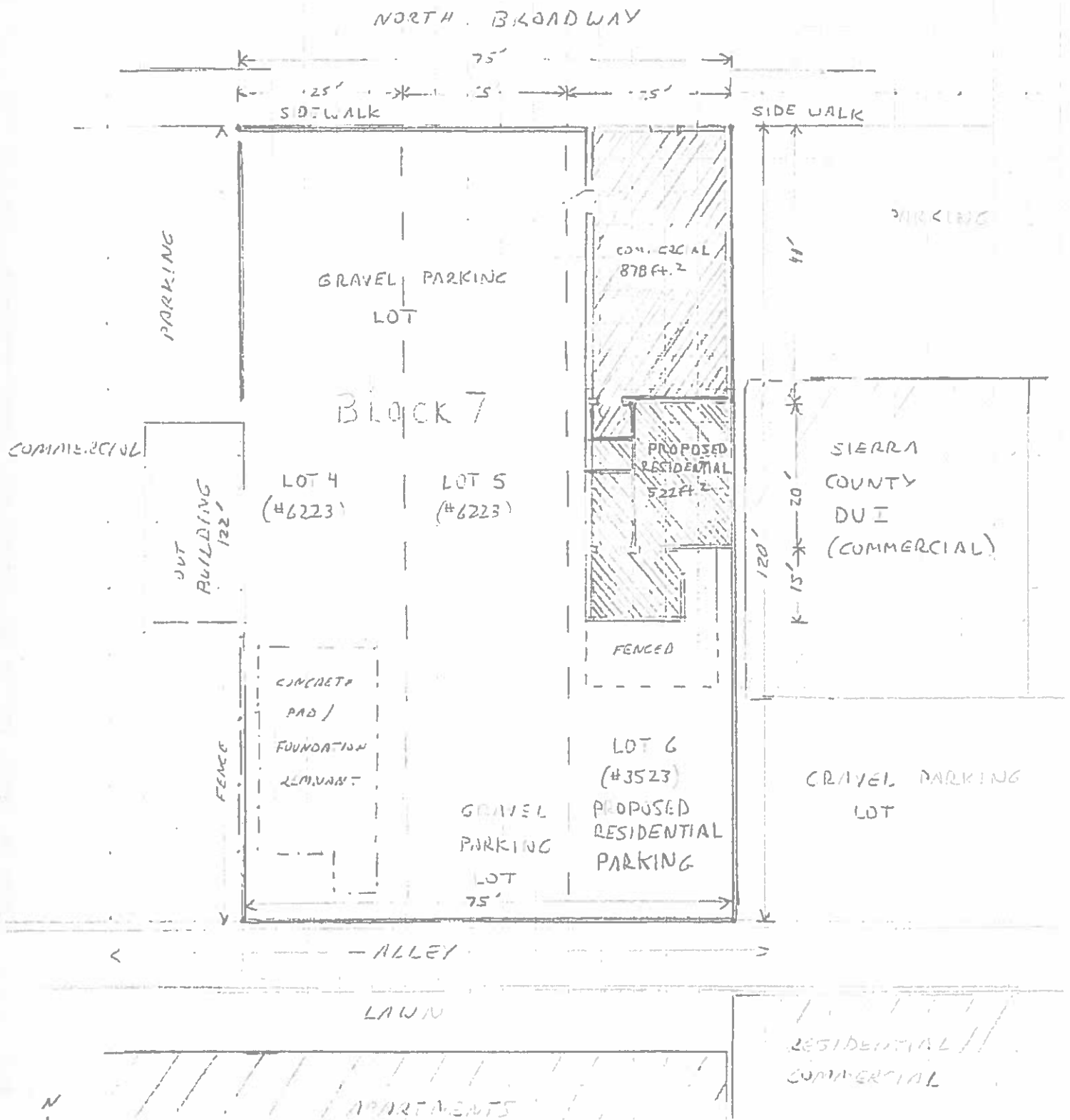
Applicants agree to defend, indemnify and hold harmless the City of Truth or Consequences ("City") and its agents, officers, consultants, independent contractors and employees ("City's Agents") from any and all claims, actions or proceedings against the City or the City's Agents to attack, set aside, void, or annul an approval by the City, or the City's Agents concerning the Project (collectively "Claim"). The City shall promptly notify the Applicant of any Claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the Applicant of any Claim or if the City fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City. Nothing in this paragraph shall obligate the City to defend any Claim and the City shall not be required to pay or perform any settlement arising from any such Claim not defended by the City, unless the settlement is approved in writing by the City. Nothing contained in this paragraph shall prohibit the City from independently defending any Claim, and if the City does decide to independently defend a Claim, the City shall bear its own attorney's fees, expenses of litigation and costs for that independent defense. The Applicant may agree to reimburse the City for attorney's fees, expenses of litigation and costs for that independent defense. Should the City decide to independently defend any Claim, the Applicant(s) shall not be required to pay or perform any settlement arising from any such Claim unless the settlement is approved by the Applicant.

IT IS SO AGREED:

[Signature]  
Applicant's Signature

7/22/18  
Date

Ayres Merrill Dicks  
Name of Applicant (Print)



SUP FOR RESIDENTIAL Use ON EXISTING COMMERCIAL LOTS BUILDING  
 520 N. BROADWAY, TRUTH OR CONSEQUENCES, NM 87901  
 LOTS 4, 5, 6 BLOCK 7 PILONAS HOT SPRINGS TOWNSITE

LETTER OF INTENT

July 22, 2018

RE: Special Use Permit Request for:

520 North Broadway, Truth or Consequences, NM

Lots 4, 5, and 6 Block 7 Palomas Hot Springs

Assessors # 6223: Lots 4 & 5; #3523: Lot 6

PROPOSED USE: REDESIGNATION OF A PORTION OF BUILDING AND  
PROPERTY TO ALLOW FOR SINGLE RESIDENTIAL/DOMESTIC USE

Owner of Property: Lillis A. Urban

In the interest of furthering commercial development in downtown Truth or Consequences, the property owner requests a Special Use Permit for an on-site residential use ("studio" apartment) within the existing commercial structure. The proposed use will be restricted to the rear portion of the existing commercial structure which encompasses a total of 1400 square feet. The front portion of the building, facing North Broadway, will be designated to commercial use (proposed retail/art gallery) and will occupy 878 sq. feet of the total building interior. The proposed studio apartment will occupy no more than 522 sq. ft in the rear of the building. Ample parking space is available at the rear of the property which is accessible from the adjacent alley way. I seek the City's support in this endeavor and look forward to supporting and participating in the economic revitalization and renewal of downtown Truth or Consequences. Thank you for your consideration of this proposal.

Lillis A. Urban

*Lillis A. Urban*



H.1

## CITY OF TRUTH OR CONSEQUENCES COMMISSION ACTION FORM

### ITEM:

**Discussion/Action:** Replacement of 40' self-supporting tower at Mud Mountain.

### BACKGROUND:

**May 2018:** New Mexico State University contacted us to let us know that the tower was structurally unsafe.

**August 8, 2018:** Upon inspection, the tower was deemed condemned by Advanced Tower Services. (Please see attached)

**July 10, 2018:** Received a proposal from Advanced Tower Services to replace the 40' self-supporting tower. (Please see attached)

### STAFF RECOMMENDATION:

- Staff recommends for Advanced Tower Services to install the new 40' self-supporting tower per BLM specifications. Once Advanced Tower Services replaces the new tower, they will then take down the old one.

**SUPPORT INFORMATION:** Budgeting Proposal, Current Tower Pictures

Name of Presenter(s): Melissa Torres; Bo Easley	Department(s): Finance; Electric	Meeting date: 09/26/2018
E-mail(s): <a href="mailto:mtorres@torcnm.org">mtorres@torcnm.org</a> <a href="mailto:beasley@torcnm.org">beasley@torcnm.org</a>	Phone: 894-6673 ext. 310 Phone: 894-6673 ext. 372	



Member of



Adrian Velarde  
NMSU / KRWG

September 20, 2018

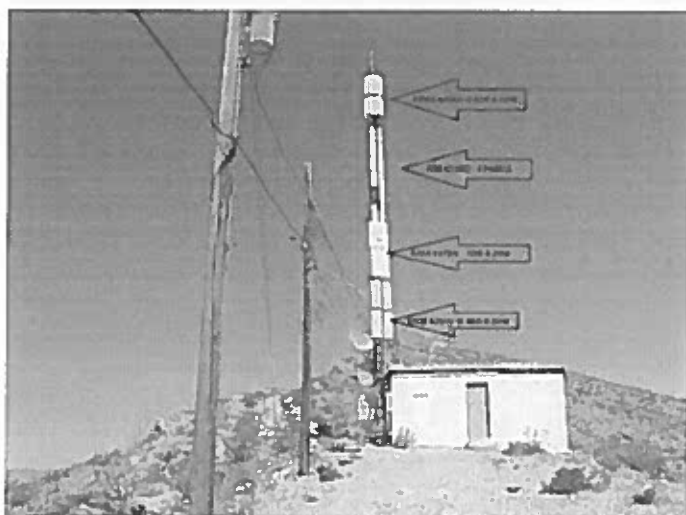
Bo Easley  
City of Truth or Consequences

Re: Mud Mountain Tower

It is my opinion that the existing tower at Mud Mountain is well beyond its useful service life and should be condemned. It has already been deemed unsafe to climb, partially due to the current overload condition and also a split in one of the pipe legs.

This particular type of tower structure was never intended to be used for a commercial application, in fact most of this style tower I have encountered were built for use at television receive antennas for residential purposes.

Most lattice type towers incorporate a combination of horizontal and diagonal bracing; you will notice in the photos below that this tower has only horizontal bracing, which makes it a very weak structure. The connections of the horizontal members to the vertical legs are welded connections, but given the fact the steel is all thin wall tubing (not actual pipe), this too contributes to a weak structure.





Best regards,

*Cliff Barbieri*

Cliff Barbieri  
President





**DANGER**

**TOWER  
CONDEMNED  
DO NOT CLIMB**











## BUDGETARY PROPOSAL

To: Bo Easley  
City of Truth or Consequences

From: Advanced Tower Services, Inc.  
2417 Baylor Drive SE  
Albuquerque, NM 87106  
505-244-3321  
505-244-3675 fax  
Cliff Barbieri  
[www.advtower.com](http://www.advtower.com)

Date: Jul. 10, 2018

Site: MCMDA

We are pleased to submit our proposal on the following scope of work;

Furnish labor and materials to construct replacement 40' self-supporting tower.

Item	Quantity	Description	Each	Extended
1	1	Sublet, PE stamped tower design and foundation plan.	\$2,500.00	\$2,500.00
2	1	Mobilization - crew and heavy equipment	\$800.00	\$800.00
3	1	Site prep and layout, includes construction staking, etc.	\$650.00	\$650.00
4	1	Demolition, of existing tower after new tower is constructed. Foundation to be abandoned in place.	\$2,950.00	\$2,950.00
5	1	Labor and materials to construct ice bridge to new tower.	\$1,650.00	\$1,650.00
6	1	Sabre 3600SRWD 40' self-supporting tower structure with safety climb cable, 5' air terminal, built in climbing ladder and built in waveguide ladder.	\$9,409.44	\$9,409.44
7	1	Tower foundations, assumes 9' x 9' x 3' mat poured on grade and pinned to existing rock with rebar dowels. Includes extensive formwork, rebar, concrete and helicopter. Also includes 3rd party concrete testing.	\$31,500.00	\$31,500.00
8	1	Tower erection, includes offload, section assembly, tower erection, installation of mounts and other tower appurtenances.	\$12,250.00	\$12,250.00
9	1	Site grounding per R56, includes new tower halo with connection to existing building ground.	\$1,810.00	\$1,810.00
10	1	Furnish and install new 4 port entry panel	\$460.00	\$460.00
11	1	PM/GC includes project coordination.	\$2,400.00	\$2,400.00
Subtotal				\$66,379.44
Gross Receipts Tax - T or C			8.5000%	\$5,642.25
Total				\$72,021.69

### Notes

- 1 This proposal is budgetary only, pending final engineering design.
- 2 FOB - Destination

- 3 Terms - Net 30, Subject to credit approval.
- 4 Warranty - 1 year on contractor furnished goods and labor.
- 5 Delivery - as required
- 6 Assumptions -
  - a. This proposal assumes a 9' x 9' x 3' concrete mat for budgetary purposes.
  - b. Proposal is based upon State Price Agreement 60-000-16-00048 Communications Site Construction and Upgrade
- 7 Exclusions -refer to page 3 of this proposal for a detailed list of exclusions.

Accepted By:

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

## Exclusions

The items checked below are excluded from our proposal unless specifically included in the scope of work above.

- ☒ Rock excavation
- ☐ Off site disposal of spoils
- ☐ Permits
- ☒ Zoning approvals
- ☐ Surveying or setting grades
- ☐ Shop drawings
- ☐ Engineering drawings
- ☒ Payment or performance bonds
- ☐ 3rd party inspection or testing fees
- ☐ State of NM Little Davis Bacon prevailing wages
- ☒ Antenna and line installations will be quoted upon request.
- ☐
- ☒ NEPA, etc.
- ☐ Relocation of antennas and lines from old tower to new.

## Easley, Bo

---

**From:** Stephanie Smith <Stephanie@ettower.com>  
**Sent:** Wednesday, September 19, 2018 4:29 PM  
**To:** Easley, Bo  
**Subject:** RE: Mud Mountain Tower

Hello again Bo,

Jeff asked me to let you know that due to our current workload, we will have to pass on providing an estimate. Our crews are booked into next year.

Thanks,

**Stephanie**



**Stephanie Smith**  
*PM Admin Assistant*  
**EasTex Tower, LLC**  
(719) 632-8822 |Office  
(719) 314-2985 |Direct  
(719) 632-6848 |Fax  
[Stephanie@ettower.com](mailto:Stephanie@ettower.com) | [www.ETTOWER.com](http://www.ETTOWER.com)  
7345 Templeton Gap Rd  
Colorado Springs, CO 80923



*Founding Member*  
National Association of Tower Erectors

---

**From:** Easley, Bo [<mailto:beasley@torcnm.org>]  
**Sent:** Wednesday, September 19, 2018 3:51 PM  
**To:** Stephanie Smith <Stephanie@ettower.com>  
**Subject:** RE: Mud Mountain Tower

Thank You

Bo Easley - Electric Department Director  
City of Truth or Consequences  
505 Sims Street  
Truth or Consequences, NM 87901  
Off: 575-894-6673 Ext. 372  
Cell: 575-740-3824  
[Beasley@torcnm.org](mailto:Beasley@torcnm.org)



**From:** Stephanie Smith [<mailto:Stephanie@ettower.com>]  
**Sent:** Wednesday, September 19, 2018 3:47 PM  
**To:** Easley, Bo  
**Subject:** RE: Mud Mountain Tower

Thanks Bo,

I received this and passed it along to our Senior Project Manager, Jeff. He will delegate it to the PM that will best suit this work.

Thanks,

**Stephanie**



**Stephanie Smith**  
*PM Admin Assistant*  
**EasTex Tower, LLC**  
(719) 632-8822 |Office  
(719) 314-2985 |Direct  
(719) 632-6848 |Fax  
[Stephanie@ettower.com](mailto:Stephanie@ettower.com) | [www.ETTower.com](http://www.ETTower.com)  
7345 Templeton Gap Rd  
Colorado Springs, CO 80923



**From:** Easley, Bo [<mailto:beasley@torcnm.org>]  
**Sent:** Wednesday, September 19, 2018 3:36 PM  
**To:** Stephanie Smith <[Stephanie@ettower.com](mailto:Stephanie@ettower.com)>  
**Subject:** FW: Mud Mountain Tower

Hi Stephanie,

See attached pictures and Est. The new tower will go on the North side of the building, The old tower is on the South side of building. If you need any more info or pictures just let me know.

Thank You

Bo Easley - Electric Department Director  
City of Truth or Consequences  
505 Sims Street  
Truth or Consequences, NM 87901  
Off: 575-894-6673 Ext. 372  
Cell: 575-740-3824



#2

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM: Discussion/Action:** Additions and adjustments to KOB, KASA, and KRQE Agreement for Tower and Equipment Lease.

**BACKGROUND:** The most recent Agreement for the Tower and Equipment Lease for KOB, KASA, and KRQE was executed on March 13, 2002 and expired January 12, 2012.

- o The City of Truth or Consequences leases out a tower located at Mud Mountain, which is the antenna site for Television Translator Station K51BQ.

**STAFF RECOMMENDATION:** Staff recommends the approval of the revised draft Agreement for KOB, KASA, and KRQE for the Tower and Equipment Lease, please see attached draft.

**SUPPORT INFORMATION:** Revised Draft Agreement for Tower and Equipment Lease.

Name of Presenter(s): Melissa Torres; Bo Easley	Department(s): Finance; Electric	Meeting date: 09/26/2018
E-mail(s): <a href="mailto:mtorres@torcnm.org">mtorres@torcnm.org</a> <a href="mailto:beasley@torcnm.org">beasley@torcnm.org</a>	Phone: 894-6673 ext. 310 Phone: 894-6673 ext. 372	



## **AGREEMENT FOR TOWER AND EQUIPMENT LEASE**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the **CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO** ("Lessor"), and **KOB – Albuquerque, KASA – Albuquerque and KRQE – Albuquerque** ("Lessees").

**WHEREAS**, Lessor is the owner of a tower located on Mud Mountain, which is the antenna site for Television Translator Station K5IBQ (the "Station") and is suitable for the mounting and supporting of additional antennas (the "Tower");

**WHEREAS**, Lessor is the owner of a building located on the foregoing real property which is used to house the transmitter for the Station; and

**WHEREAS**, Lessor and Lessees desire to enter into a written agreement setting forth the terms and conditions under which Lessees shall lease the Tower and necessary building space to operate the **their** Station located on the premises;

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants of the parties, and other good and valuable consideration, is hereby agreed as follows:

1. **LEASED SPACE.** Lessor hereby agrees to let and lease unto the Lessees space on the Tower to hold the Stations transmitting and receiving antennas and the necessary building space for operation of the Station.

2. **TERM.** The term hereof shall commence as of the date of this Lease and shall continue for a period of one **(1)** year and shall be renewed automatically on the anniversary of the date of this Lease for successive one-year terms, unless either party notifies the other, in writing, at least one hundred twenty (120) days prior to the expiration of the lease period, of its intent to terminate the Lease. **The original term plus all renewals shall not exceed five (5) years.**

3. **CONSIDERATION.** As consideration for this Lease, Lessees ~~will continue the operations of the Station in accordance with good engineering practices~~ shall pay the following amounts:

KOB \$ \_\_\_\_\_ KASA \$ \_\_\_\_\_ KRQE \$ \_\_\_\_\_

4. **UTILITIES.** Lessees shall be responsible for all electricity, water, heat, telephone and janitorial service for the transmitter building located on the premises.

5. **INSTALLATION AND MAINTENANCE ANTI-NUISANCE.** Both ~~Both~~ All parties hereto agree that they will not commit any nuisance on the property or allow any dangerous or combustible materials to be stored thereon.

6. **RADIO FREQUENCY RADIATION ("RF Radiation").** Lessor and Lessees shall each conduct its activities from the Tower in compliance with any existing or hereafter imposed standards or regulations regarding maximum RF radiation levels in non-ionizing bands.

7. Lessees warrant that they have obtained proper licenses from the Federal Communication Commission to operate the facility and television translators as above described.

a) Lessees shall not allow any workmen to climb on the Tower at any time while transmitting without first reducing power level to that acceptable regarding RF radiation levels. Lessor shall not allow any workmen to climb on Tower without prior notification to Lessees to power down to acceptable RF levels. Lessees agree to do so immediately that their workmen will only climb the Tower upon notification from the Lessor at for a designated time. ~~workmen are set to climb Tower.~~

b) Lessor shall cause all current and future tenants to comply with the Radio Frequency Radiation standards or regulations in general and in 67(a) specifically.

8. **BUSINESS INTERRUPTION.** Neither party hereto shall in any event be liable to the other for loss or damage sustained by reason of any business interruption suffered by reason of its act or omission or its violation of any of the terms, covenants or conditions of this

Agreement or any interruption resulting from a cause beyond its control, or for any future installations on Tower, or work on Tower by Lessee.

9. **ALTERATIONS.** Lessees shall not construct, demolish, or alter any improvements on the premises without the prior written consent of Lessor.

10. **USE OF PREMISES.** Lessees or its **their** agents may have free access to said premises for the purpose of operation, inspection, maintenance, and repair of the Station and its related equipment.

11. **SURRENDER.** On expiration or termination of this Agreement, Lessees shall surrender the premises in the same condition as at commencement of the term, subject to the reasonable wear and tear from ordinary use and damage by the elements.

12. **NOTICES.** Notices between the parties relating to this Agreement shall be in writing, effective when delivered, or if mailed, effective on the second day following mailing, postage prepaid, to the address for the party stated below or to such address as either party may specify by notice to the other.

If to Lessor:

~~Mary Penner,~~ **Renee Cantin,** Acting City Manager, Truth or  
Consequences  
505 Sims  
Truth or Consequences, New Mexico 87901

If to Lessee:

~~KOB-TV, LLC~~ **KOB - Albuquerque** \_\_\_\_\_  
~~3415 University Avenue~~ \_\_\_\_\_  
~~St. Paul, Minnesota 55114~~ \_\_\_\_\_  
~~Attention: Gary Macomber, Assistant Secretary~~

**KASA - Albuquerque** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**KRQE - Albuquerque** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. **SUCCESSORS.** This Agreement shall be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

14. **INTEGRATION.** This Agreement supersedes and replaces all prior oral or written agreements or understandings between the parties relating to the subject matter of this Agreement, and no representations or understandings not expressly set forth herein shall have any effect. Any modification to this Agreement must be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the date first written above.

**LESSOR:**

**CITY OF TRUTH OR CONSEQUENCES**

By: \_\_\_\_\_

~~Mary Penner~~, **Renee Cantin**, Acting City Manager

**LESSEE:**

~~KOB-TV, LLC~~

**KOB – Albuquerque**

By: \_\_\_\_\_

**LESSEE:**

~~KOB-TV, LLC~~

**KASA - Albuquerque**

By: \_\_\_\_\_

**LESSEE:**

~~KOB-TV, LLC~~

**KRQE – Albuquerque**

By: \_\_\_\_\_



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**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM: Discussion/Action:** Approval of draft Agreement for Tower and Equipment Lease between the City of Truth or Consequences, New Mexico and KRWG PBS TV Regents of Las Cruces, New Mexico.

**BACKGROUND:** Drafted a new Agreement for Tower and Equipment Lease between the City of Truth or Consequences, New Mexico and KRWG PBS TV Regents of Las Cruces, New Mexico.

- o The City of Truth or Consequences leases out a tower located at Mud Mountain, which is the antenna site for Television Translator Station K51BQ.

**STAFF RECOMMENDATION:** Staff recommends the approval of the new draft Agreement between the City of Truth or Consequences, New Mexico and KRWG PBS TV Regents of Las Cruces, New Mexico, please see attached draft.

**SUPPORT INFORMATION:** Draft Agreement for Tower and Equipment Lease for KRWG.

Name of Presenter(s): Melissa Torres; Bo Easley	Department(s): Finance; Electric	Meeting date: 09/26/2018
E-mail(s): <a href="mailto:mtorres@torcnm.org">mtorres@torcnm.org</a> <a href="mailto:beasley@torcnm.org">beasley@torcnm.org</a>	Phone: 894-6673 ext. 310 Phone: 894-6673 ext. 372	

## **AGREEMENT FOR TOWER AND EQUIPMENT LEASE**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the **CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO** ("Lessor"), and **~~KOB-TV, LLC~~ KRWG PBS TV REGENTS OF LAS CRUCES, NEW MEXICO** ("Lessee").

**WHEREAS**, Lessor is the owner of a tower located on Mud Mountain, which is the antenna site for Television Translator Station K5IBQ (the "Station") and is suitable for the mounting and supporting of additional antennas (the "Tower");

**WHEREAS**, Lessor is the owner of a building located on the foregoing real property which is used to house the transmitter for the Station; and

**WHEREAS**, Lessor and Lessee desire to enter into a written agreement setting forth the terms and conditions under which Lessee shall lease the Tower and necessary building space to operate the **its** Station located on the premises;

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants of the parties, and other good and valuable consideration, is hereby agreed as follows:

1. **LEASED SPACE.** Lessor hereby agrees to let and lease unto the Lessee space on the Tower to hold the Station's transmitting and receiving antennas and the necessary building space for operation of the Station.

2. **TERM.** The term hereof shall commence as of the date of this Lease and shall continue for a period of one **(1)** year and shall be renewed automatically on the anniversary of the date of this Lease for successive one-year terms, unless either party notifies the other, in writing, at least one hundred twenty (120) days prior to the expiration of the lease period, of its intent to terminate the Lease. **The original term plus all renewals shall not exceed five (5) years.**

3. **CONSIDERATION.** As consideration for this Lease, Lessee will ~~continue the operations of the Station in accordance with good engineering practices~~ **perform all required maintenance of the building, antenna and translator, in order to ensure that the building and equipment remain in good repair.**

4. **UTILITIES.** Lessee shall be responsible for all electricity, water, heat, telephone and janitorial service for the transmitter building located on the premises.

5. **INSTALLATION AND MAINTENANCE ANTI-NUISANCE.** Both parties hereto agree that they will not commit any nuisance on the property or allow any dangerous or combustible materials to be stored thereon.

6. **RADIO FREQUENCY RADIATION ("RF Radiation").** Lessor and Lessee shall each conduct its activities from the Tower in compliance with any existing or hereafter imposed standards or regulations regarding maximum RF radiation levels in non-ionizing bands.

7. **Lessee warrants that it has obtained proper licenses from the Federal Communication Commission to operate the facility and television translators as above described.**

a) Lessee shall not allow any workmen to climb on the Tower at any time while transmitting without first reducing power level to that acceptable regarding RF radiation levels. Lessor shall not allow any workmen to climb on Tower without prior notification to Lessee to power down to acceptable RF levels. Lessee agrees ~~to do so immediately~~ **that its workmen will only climb the Tower** upon notification from ~~the~~ Lessor at ~~for a~~ designated time. ~~workmen are set to climb Tower.~~

b) Lessor shall cause all current and future tenants to comply with the Radio Frequency Radiation standards or regulations in general and in ~~6~~**7**(a) specifically.

8. **BUSINESS INTERRUPTION.** Neither party hereto shall in any event be liable to the other for loss or damage sustained by reason of any business interruption suffered by reason of its act or omission or its violation of any of the terms, covenants or conditions of this

Agreement or any interruption resulting from a cause beyond its control, or for any future installations on Tower, or work on Tower by Lessee.

9. **ALTERATIONS.** Lessee shall not construct, demolish, or alter any improvements on the premises without the prior written consent of Lessor.

10. **USE OF PREMISES.** Lessee or its agents may have free access to said premises for the purpose of operation, inspection, maintenance, and repair of the Station and its related equipment.

11. **SURRENDER.** On expiration or termination of this Agreement, Lessee shall surrender the premises in the same condition as at commencement of the term, subject to the reasonable wear and tear from ordinary use and damage by the elements.

12. **NOTICES.** Notices between the parties relating to this Agreement shall be in writing, effective when delivered, or if mailed, effective on the second day following mailing, postage prepaid, to the address for the party stated below or to such address as either party may specify by notice to the other.

If to Lessor:

~~Mary Penner,~~ **Renee Cantin,** Acting City Manager, Truth or  
Consequences  
505 Sims  
Truth or Consequences, New Mexico 87901

If to Lessee:

~~KOB-TV, LLC~~ \_\_\_\_\_  
~~3415 University Avenue~~ \_\_\_\_\_  
~~St. Paul, Minnesota 55114~~ \_\_\_\_\_  
~~Attention: Gary Macomber, Assistant Secretary~~

13. **SUCCESSORS.** This Agreement shall be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

14. **INTEGRATION.** This Agreement supersedes and replaces all prior oral or written agreements or understandings between the parties relating to the subject matter of this



Agreement, and no representations or understandings not expressly set forth herein shall have any effect. Any modification to this Agreement must be in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Lease as of the date first written above.

**LESSOR:**

**CITY OF TRUTH OR CONSEQUENCES**

**By:**

Mary Penner, Renee Cantin, Acting City Manager

**LESSEE:**

**KOB-TV, LLC**

**KRWG PBS TV REGENTS OF LAS CRUCES, NEW MEXICO**

**By:**

\_\_\_\_\_



H.4

**CITY OF TRUTH OR CONSEQUENCES**  
COMMISSION ACTION FORM

**ITEM:**

City Commission Rules of Procedure.

**BACKGROUND:**

There was a recommendation to include more information on decorum to our Rules of Procedure. The highlighted additions in the proposed document have been added from the NMML sample of Rules of Procedure for Governing Bodies. That sample is also attached for your reference.

**STAFF RECOMMENDATION:**

Approve the proposed amendment.

Submitted by: Renee Cantin, City Clerk

Meeting date: 09-26-18

# **City of Truth or Consequences Commission RULES OF PROCEDURE**



**ADOPTED OCTOBER 24, 1994 – RESOLUTION NO. 10-94/95  
AMENDED MAY 9, 2006 – RESOLUTION NO. 24-06/07  
AMENDED JANUARY 26, 2010 – RESOLUTION NO. 19-09/10  
AMENDED MAY 8, 2012 – RESOLUTION NO. 33-11/12  
AMENDED SEPTEMBER 25, 2012 – RESOLUTION NO. 14-12/13  
AMENDED MARCH 22, 2016  
AMENDED APRIL 25, 2017  
AMENDED AUGUST 23, 2017  
AMENDED MARCH 14, 2018  
**PROPOSED SEPTEMBER 26, 2018****

# **CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE**

## **SECTION 1 – GENERAL PROVISIONS**

### **RULE 1. COMMISSION MEETING – LOCATION**

All regular, special, and emergency meetings of the City Commission shall be held at the City Commission Chambers, 405 West 3<sup>rd</sup> Street as specified in the Open Meetings Resolution. [Resolution No. 2-94/95] [Amended – Resolution No. 24-05/06]

### **RULE 2. COMMISSION MEETING – TIME**

The regular meetings of the City Commission shall be held Pursuant to the Open Meetings Act Resolution adopted annually. [Resolution No. 2-94/95] [Amended – Resolution No. 24-05/06] [Amended – Resolution No. 28 15/16]

### **RULE 3. COMMISSION MEETINGS – OPEN TO THE PUBLIC**

All meetings of the City Commission and of committees thereof held for the purpose of formulating public policy or for the purpose of taking any action within the authority of or the delegated authority are declared to be public meetings open to the public at all times, except as otherwise provided for in the state constitution or the Open Meetings Act (§10-15-1 et seq. NMSA 1978).

### **RULE 4. ELECTION OF OFFICERS**

Procedures for electing officers are as follows:

- (a) At the first organizational meeting of the new City Commission, the members thereof select one of its members to act as Mayor for two years. The Mayor has all the powers and duties of a Commissioner as well as the right to vote on all matters that come before the City Commission. (§3-14-10 NMSA 1978).
- (b) In conjunction with the above election, a Mayor Pro Tempore shall also be elected in a like manner.
- (c) The above elections shall be by affirmative motion.

### **RULE 5. PRESIDING OFFICER**

The Mayor shall preside at all meetings of the City Commission, and be recognized as the official head of the City for all ceremonial purposes, civil process and for military purposes (§3-14-10 NMSA 1978). The Mayor has no regular administrative or executive duties. In case of the Mayor's absence or temporary disability, the Mayor Pro Tempore shall act as Mayor during the continuance of the absence. In case of the absence or

## **CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE**

temporary disability of the Mayor and the Mayor Pro Tempore, a Mayor Pro Tempore selected by members of the City Commission shall act as Mayor during the continuance of the absences or disabilities. The Mayor or Mayor Pro Tempore are referred to as "Presiding Officer" from time to time in these Rules of Procedures. The Presiding Officer shall preserve order and decorum and have general direction of the meetings; Announce the business before the Body in the order in which it is to be acted upon; and Recognize the speakers entitled to the floor and guide and direct the proceedings of the body.

### **RULE 6. QUORUM**

A quorum is necessary for the governing body to conduct business at any meeting. A quorum is a simple majority of all the commissioners including the Mayor. A majority vote of all the members of the City Commission is required to adopt an ordinance or resolution and certain other actions as required by law or ordinance. (§3-17-3 NMSA 1978). The City Commission may adjourn from time to time, provided that written notice of said adjournment be posted on the exterior Chamber door and at the City Clerk's office. City Commission meetings adjourned under the previous provision shall be considered a regular meeting for all purposes.

### **RULE 7. ATTENDANCE, EXCUSED ABSENCES**

Members of the City Commission may be excused from attendance from a meeting by complying with this section. The member shall contact the City Manager or City Clerk prior to the meeting and state the reason for his/her inability to attend the meeting who shall convey the message to the Presiding Officer. The Presiding Officer shall inform the City Commission of the member's absence and excuse the member's absence. The Clerk will make an appropriate notation in the minutes.

### **RULE 8. SPECIAL AND EMERGENCY COMMISSION MEETINGS**

Procedures for setting a special meeting are as follows:

- (a) A special meeting may be called only by a majority of the members of the City Commission.
- (b) Notice of the special meeting shall be given with no less than seventy-two hours' notice before such meeting. The notice shall specify the business to be conducted and shall be broadcast over the radio, or in the alternative, be posted as set forth in the Open Meetings Resolution.

Procedures for setting an emergency meeting are as follows:

## **CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE**

- (a) An emergency meeting may be called only under circumstances that , if not addressed immediately by the City Commission, will likely result in injury or damage to persons or property or substantial financial loss to the City.
- (b) Emergency meetings may be called by the Mayor or a majority of the City Commission by giving whatever notice is possible and reasonable under the circumstances.

### **RULE 9. COMMISSION MEETING AGENDA**

The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare an agenda for the City Commission. A copy of the agenda and supporting materials shall be prepared for the City Commission members, the City Manager, the City Clerk, and the press at least five (5) days before a regular City Commission meeting. The City Commission shall have the option of deleting any item from the agenda or deferring an item on the agenda to a subsequent meeting. The Presiding Officer or any Commission member may introduce a new item to the agenda by Noon *seven (7) days* before a meeting.

Persons wishing to be placed on the agenda must submit complete written documentation to a member of the City Commission or City Manager who shall make the determination whether to forward to the City Clerk to be place on the agenda. All requests are due by noon, seven (7) days prior to the meeting. Requests, which do not include detailed information on the proposed subject matter, will not be placed on the agenda.

The City Commission deals with a variety of routine items that do not require individual action or discussion. These items include accounts payable, meeting minutes, etc. These types of items shall be listed on a "Consent Calendar" where one (1) action approves all items. However, if an individual Commissioner wishes to discuss a particular item, then that item shall be removed from the said "Consent Calendar" during the "Approval of the Agenda" portion of the meeting. (See Rule 16. E-3)

### **RULE 10. WORKSHOPS**

Special Workshops, or regular City Commission meetings that may be canceled by the Presiding Officer in accordance with law, may be designed as Workshops where no official action is contemplated. Workshops may be conducted informally so long as such informality is not in conflict with these rules. The City Clerk, under the direction of the City Manager, shall arrange a City Commission Workshop agenda for the Workshop. The Workshop agenda shall, for each item, contain the Workshop Item. After the proposed Workshop agenda has been approved by the City Manager, a copy of it along with any supporting materials shall be prepared for City Commission members, the City Manager, the City Clerk and the press at least *seventy-two (72) hours* before the City Commission Workshop. During the Workshop, the Presiding Officer may; 1) introduce

## **CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE**

the subject and give background information; 2) identify the eventual goal of the Workshop, and; 3) act as facilitator to keep the meeting discussion focused to the subject.

### **RULE 11. CITY MANAGER**

The City Manager, as the chief administrative, and executive officer and head of the executive branch of City government or his/her designee, shall attend all meetings unless excused by the Presiding Officer or City Commission. The City Manager may take part in the City Commissioner's discussion on all matters on the agenda, and otherwise concerning the welfare of the City. Except when clearly undesirable or unnecessary, the commission shall request the opinion of the manager on any proposed measure (§3-14-14 NMSA 1978). The City Manager has a seat at commission meetings, but does not have a vote. In the event that the City Manager is unable to attend a City Commission meeting, the City Manager shall appoint another qualified staff member to attend the meeting on behalf of city management.

### **RULE 12. CITY CLERK**

The City Clerk shall be ex-officio Clerk of the City Commission, and shall keep minutes and shall perform such other and further duties in the meeting as may be required by the City Commission, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager or the Clerk shall appoint another qualified staff member to act as Clerk.

### **RULE 13. FORMS OF ADDRESS**

The Mayor shall be addressed as "Mayor", "Your Honor", or "Mr. /Madam Mayor". The Mayor Pro-Tempore, when acting for the Mayor, shall be addressed as "Mayor". Members of the City Commission shall be addressed as "Commissioner".

### **RULE 14. APPEARANCE OF FAIRNESS DOCTRINE**

Appearance of Fairness Doctrine and its Application.

When public hearings give the public not only the right to attend, but the right to be heard as well, the hearings must not only be fair, but must appear to be so.

It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows; 1) Would a disinterested person, having been appraised of the totality of a board member's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist?

## **CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE**

If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided.

### **RULE 15. RULES OF ORDER**

The City Commission members shall be governed by the "City Commission Rules of Procedure".

### **RULE 16. ORDER OF BUSINESS**

The City Commission may use the following as a guideline for the business of all regular meetings of the City Commission. However the Presiding Officer may, during a City Commission meeting, re-arrange items in the agenda to conduct the business before the city Commission more expeditiously.

**(a) Call to Order** by the Presiding Officer

**(b) Introduction**

**(1) Roll Call** (See Rule 7 for procedure to excuse an absence).

**(2) Silent Meditation**

**(3) Pledge of Allegiance**

**(4) Approval of Agenda**

**(c) Comments from the Public** (for Items not on the agenda – see Rule 17 for procedural details.)

**(d) Response to Public Comments**

**(e) Consent Calendar**

**(1)** The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Calendar which have been; a) previously discussed by the City Commission, or; b) based on the information delivered to members of the City Commission by administration that can be reviewed by a Commission member without further explanation or; c) are so routine or technical in nature that passage is likely, or; d) as directed by the City Commission.

**(2)** The Presiding Officer shall read the Consent Calendar,



## **CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE**

including the titles of any resolutions contained therein.

- (3) Prior to the vote on the motion to adopt the Consent Calendar, the Presiding Officer shall inquire if any City Commission member wishes an item to be withdrawn from the Consent Calendar. If any matter is withdrawn, the Presiding Officer shall place the item at an appropriate place on the agenda for the current or a future meeting.

(f) **Public Hearings** (see Rule 17 for procedural details).

(g) **Ordinances, Resolutions, and Zoning**

(h) **Unfinished Business**

(i) **New Business**

(j) **Reports**

- i. City Manager
- ii. City Attorney
- iii. City Commissioners

(k) **Executive Session** ( Taken action as needed)

(l) **Return to regular Session** ( if applicable)

(m) **Adjournment**

### **RULE 17. ACTIONS FOR “COMMENTS FROM THE PUBLIC” OR A PUBLIC HEARING**

The procedures for “Comments from the Public” are as follows:

Any member of the public may request time to address the City Commission. The Presiding Officer in his/her discretion may then allow the comments, subject to a time limitation of three (3) minutes. Following such comments, the City Commission may place the matter on a future agenda, or refer the matter to the City Manager for investigation and report. After the close of all public comments, the City Commissioners may immediately respond to the public comments or respond to the public comments during the “Response to Public comment” section at the next regularly scheduled City Commission Meeting.

Prior to the start of “Comments from the Public”, all persons wishing to be heard shall give their names and addresses.

## CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE

The following rules of conduct shall apply to all public comment:

Decorum is mandatory. No derogatory or degrading comments directed at staff or the City Commission will be tolerated during public comment.

No comments shall be made from any other location than the podium and anyone making "out of order" comments as determined by the Presiding Officer may be subject to removal from the meeting. In that regard, a police officer may be present to enforce these rules of conduct.

There will be no demonstrations during, or at the conclusion, of anyone's presentation. No extensions of time shall be given to any speaker, and no sharing or passing of time to other speakers shall be permitted.

If it appears that a group of speakers desire to speak on a particular subject, that group shall delegate a spokesperson to speak for the entire group. This will prevent repetitious comments and prevent the wasting of time.

Any person making a public comment may also supplement their comment by submitting documents. Such documents, however, must be deposited into a receptacle that is designated by the chair. The speaker may not approach the Commissioners without the express consent of a majority vote of the Commission. At the close of the open portion of the City Commission meeting, the City Clerk shall collect the deposited documents from the receptacle.

Any person who violates the rules of conduct may be subject to having their speaking privileges removed at future City Commission Meetings or may be subject to removal from that particular meeting as determined by a majority vote of the City Commission.

The Procedures for a "Public Hearing" are as Follows:

(a) Prior to the start of a public hearing all persons wishing to be heard shall give their name and address and whether they wish to speak as a proponent, opponent, or otherwise. The time limit for each speaker shall be limited to five (5) minutes. In public hearings that are not of a quasi-judicial nature, the time limit for each speaker shall be limited to five (5) minutes. The Presiding Officer, subject to concurrence of the majority of the City Commission, may extend time limits and otherwise control presentation. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groups (i.e. proponents, opponents, adjacent owners, vested interests, etc.). However, the following shall be determined a reasonable guide.

(b) The Presiding Officer introduces the agenda item, opens the public hearing, and asks for comments for or against the item at hand.

(c) At the outset of each public hearing or meeting to consider a zoning amendment or

## CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE

zoning reclassification the Presiding Officer will announce the legal standards for zoning amendments and ask the parties to limit their presentations to information within the scope of the standards.

- (d) The Presiding Officer calls upon the City Manager to describe the matter under consideration.
- (e) The Presiding Officer calls for proponents.
- (f) The proponents now speak. (Note: If the City itself is the proponent, a member or members of the Administration shall be designated to give proponent and rebuttal testimony).
- (g) Opponents speak.
- (h) The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new materials. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.
- (i) The Presiding Officer inquires as to whether any City Commission members have any questions to ask the proponents, opponents, or administration. If any City Commission member has questions, the appropriate individual will be recalled to the podium.
- (j) The Presiding Officer closes the public hearing.

### **RULE 18. VOTING**

The votes during all meetings of the City Commission shall be transacted as follows:

- (a) Each Commissioner in attendance must vote for or against all measures before the Governing Body, unless there is a conflict of interest, for which abstention is recognized. (See 18.f)
- (b) Unless otherwise provided for by statute, a Roll call vote shall be taken for final adoption of ordinances, resolutions, and to adjourn into Executive Session by the Clerk.
- (c) In case of a tie in votes on any proposal, any Commissioner may request the item be put on the next agenda.
- (d) Every member who was in the City Commission chambers when the question was put, shall give their vote unless the City Commission, for special reasons, shall excuse the member by motion or unless the City Commission member is excused

## CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE

in accordance with Rule 7. A City Commission member who “abstains” will be recorded as neither an “aye” or “nay” vote.

- (e) A majority vote of all the members of the City Commission is required to adopt an ordinance or resolution and certain other actions as required by law or ordinance. (§3-17-3 NMSA 1978).
- (f) A member of the City Commission shall recuse himself/herself from participating in a particular item on the agenda when such member 1) has a conflict of interest as described in the Government Conduct Act, 10-16-1, et seq., or 2) the totality of circumstances would create a reasonable public perception that such member cannot participate in that particular item in a fair and impartial manner. In such event, the member shall explain his/her reasoning prior to the item being discussed by the City Commission. The recusing member shall then remove himself/herself from the City Commission chambers prior to the commencement of any discussion of that particular agenda item, and shall not vote on such item.

### **RULE 19. DECORUM**

- (a) Member of the City Commission shall confine their remarks to the question under discussion or debate, avoiding personal references or attacks on fellow members, staff members or members of the public. No member of the City Commission shall engage in private discourse or commit any other act tending to distract the attention of the Governing body from the business before it.
- (b) A member who resorts to persistent irrelevance or persistent repetition may be directed to discontinue his speech by the presiding officer.
- (c) Point of Order. A Commissioner may call attention to the violation of the rules or a mistake in procedure by rising a point of order. The presiding officer may permit a full explanation before ruling on the claim and may submit the question to the Governing Body for decision by a majority vote.

### **RULE 19-20. COMMITTEES**

The Committee structure of the City Commission and the procedures governing, all committees shall be as follows:

- (a) Special ad Hoc Citizen Advisory Committees:

Special as hoc citizen advisory committees may be created by the City Commission for a particular purpose. Committee members shall be appointed by the City Commission. The Presiding Officer shall appoint the chair of the Committee. Citizen study committee shall sunset at the end of their mission, but no later than the end of each calendar year unless specifically continued by the City Commission thereafter for a specified time period. One City Commission

## CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE

member, and one alternate City Commission member, may be appointed as a member and liaison of a Citizen advisory committee.

### **RULE ~~20~~ 21. ENACTED ORDINANCES, RESOLUTIONS AND MOTIONS**

An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. City Commission action shall be taken by ordinance when required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty.

An enacted resolution is an internal legislative act, which is a formal statement of policy concerning matters of special or temporary character. City Commission action shall be taken by resolution when required by law and in those instances where an expression of policy more formal than a motion is desired.

An enacted motion is a form of action taken by the City Commission to direct that a specific action be taken on behalf of the municipality. A motion, once approved and entered into the record, is the equivalent of a resolution in those instances where a resolution is not required by law.

### **RULE ~~21-22~~ 22. RESOLUTIONS**

A resolution may be put to its final passage on the same day on which it is introduced. The title of each resolution shall in all cases be read prior to its passage, provided, should a majority of the City Commission members present request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available to interested persons during normal and regular business hours of the City Clerk upon request and payment of a reasonable charge for reproduction.

### **RULE ~~22~~ 23. ORDINANCES**

The procedure for ordinances are as follows:

- (a) Notice by publication of the title and subject matter of any ordinance proposed for adoption by the City Commission must take place at least two weeks prior to consideration of final action upon the ordinance in open session. This does not apply to ordinances dealing with an emergency declared by the Mayor to be an immediate danger to the public health, safety and welfare of the City, or to ordinances, the subject matter of which is amending a city-zoning map. The title of each ordinance shall in all cases be read prior to its passage; provided, should a majority of the City Commission members present request that the entire ordinance or certain of its sections be read, such requests shall be granted. Printed copies shall be made available to interested persons during normal and regular business hours of the City Clerk

## **CITY OF TRUTH OR CONSEQUENCES COMMISSION RULES OF PROCEDURE**

upon request and payment of a reasonable charge beginning with the date of publication and continuing to the date of consideration by the City Commission.

- (b) If a Motion to pass an ordinance fails, any Commissioner may request the ordinance be put on a future agenda after six (6) months.
- (c) Any ordinance amending or repealing any portion of the City Code of Ordinances shall also amend or repeal the respective portions of any underlying ordinance(s).

### **RULE 234. PERMISSION REQUIRED TO ADDRESS THE COMMISSION**

Persons other than City Commission members and management may be permitted to address the City Commission upon recognition and introduction by the Presiding Officer or the chair of the appropriate City Commission committee.

### **RULE 245 COMMISSION RELATIONS WITH BOARDS, COMMISSIONS AND ADVISORY COMMITTEES**

All boards, commissions and City Commission citizen advisory bodies shall provide the City Commission with copies of any minutes taken of meetings. Communications from such boards, commissions and bodies to the City Commission shall be recorded in the minutes as follows.

Any such communication shall be officially acknowledged by the City Commission and receipt noted in the minutes.

### **RULE 256. PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE, TELEPHONE DEVICES – PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION**

No photographs, motion pictures, or video tapes that require the use of flash bulbs, electronic flashes, floodlights, or similar artificial illumination, or telephone devices shall be used at City Commission Meetings without the consent of the Presiding Officer or a majority of the City Commission. All cellular telephones shall be either turned off or placed on a non-audio setting. Reasonable effort shall be made to accommodate the use of audio and video recording devices.



*Sample*

## ARTICLE I GENERAL PROVISIONS

### 1.1 Meetings

- A. Meetings of the Governing Body shall be held in accordance with the Open Meetings Act, NMSA, 1978, §10-15-1 et. seq.
- B. All binding actions of the Governing Body shall be taken at regular meetings, special meetings, or emergency meetings.
- C. The Governing Body may recess and reconvene a meeting to a subsequent date provided that prior to recessing, the presiding officer specifies the date, time and place for continuation, and immediately posts notice of the date time and place for the reconvened meeting on or near the door of the \_\_\_\_\_ and \_\_\_\_\_. Only matters appearing on the agenda of the original meeting will be discussed at the reconvened meeting.
- D. Notice of all meetings shall be in accordance with the Open Meetings Resolution as adopted in accordance with the Open Meetings Act.
- E. Work Sessions. may be held for the purpose of examining issues, but no official action may be taken.

### 1.2 Attendance

- A. Members of the Governing Body are expected to attend all scheduled meetings.

### 1.3 Duties of the Presiding Officer

- A. The mayor shall possess the powers and perform the following duties:
  - 1. Preserve order and decorum and have general direction of the meetings.
  - 2. Announce the business before the Body in the order in which it is to be acted upon.
  - 3. Recognize the speakers entitled to the floor and guide and direct the proceedings of the body.
  - 4. Decide all points of order, subject to appeal, unless he prefers to submit the question to the decision of the Governing Body.
  - 5. Put to vote all questions that are regularly moved or otherwise arise in the course of the proceedings.

### 1.4 Adopted Rules

- A. Any matter not covered by these rules shall be governed by decision of the presiding officer, applying Robert's Rules of Order, Newly Revised Edition.
- B. Amendment of Rules. These rules or any part thereof may be amended, repealed, altered, or rescinded by a vote of a majority of the Governing Body, after notice of intended proposal. Such notice shall be presented by resolution at a regular meeting of the Governing Body.
- C. Suspension of Rules. Except for statutory or ordinance provisions, these rules, or any part thereof, may be temporarily suspended by a majority vote of councilors present. When the suspension of a rule is requested, and no objection is offered, the presiding officer shall announce the rule suspended, and the Governing Body may proceed accordingly.
- D. Violation of Rules. Violation of these rules does not invalidate action of the Governing Body.

**ARTICLE II  
PROCEDURES**

**2.1 Preparation and Distribution of Agendas**

- A. The \_\_\_\_\_ shall prepare the agenda for all Governing Body meetings.
1. Matters may be placed on the consent calendar which are routine or ministerial in nature.
2. The city clerk shall assure that scheduled public hearings have been duly advertised.
- B. All material to be presented to the Governing Body shall be submitted to the city clerk not later than \_\_\_\_\_ days prior to the meeting date.
- C. The agenda, along with introductions and related material, shall be available to each member of the Governing Body at least \_\_\_\_\_ days in advance of the meeting.

**2.2 Minutes**

- A. Minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted.
- B. Approval of the minutes shall be placed on the consent calendar. Unless a reading of the minutes is requested by a member, the minutes of previous meetings may be corrected and approved without reading.
- D. Previously approved minutes may be corrected whenever an error is noticed, although the time to reconsider the vote has elapsed in accordance with Article II, Section 10 of these rules.

**2.3 Order of Business**

- A. The order of business of the Governing Body shall be conducted in the following order; provided, however that the presiding officer may, during a meeting, rearrange items on the agenda to conduct the business before the Governing Body more efficiently:
- Call to order and Pledge of Allegiance
  - Public Forum
  - Consent Calendar. The consent calendar is approved by a single motion. Any member of the Governing Body may request an item to be withdrawn from the consent calendar without discussion or vote.
  - Staff Reports
  - Public Hearings
  - Ordinances
  - Action Items
  - Adjournment



2.4 Ordinances and Resolutions

A. Ordinances. An ordinance ranks highest in authority of all actions of the Governing Body. If duly enacted, an ordinance has the force of law within the municipality and may be enforced in municipal court.

1. Ordinances shall be adopted in accordance with section 3-17-1 *et.seq.*, NMSA, 1978.

2. Ordinances are open to amendment provided such amendment does not constitute a substantive change. Amendments shall be in accordance with Article II, Section 2.12 of these rules.

B. Resolutions. A resolution is an internal legislative act which is a formal statement of policy concerning matters of special or temporary character.

1. Resolutions are open to amendment provided such amendment does not constitute a substantive change. Amendments shall be in accordance with Article II, Section 2.12 of these rules.

2. Substantive amendments offered to resolutions may require the resolution to be postponed to a subsequent meeting.

C. Withdrawal of Ordinances and Resolutions

An ordinance or resolution which has been introduced is in the possession of the Governing Body and may be withdrawn only with the consent of the Governing Body.

D. Substitutes for Ordinances and Resolutions

A councilor may recommend that every clause in an ordinance or resolution be changed and that entirely new matter be substituted, so long as the new matter is relevant to the title and subject of the original measure.

2.5 Approvals

Approvals are the class of action in which the Governing Body shall make the final determination upon the recommendation of the mayor or the city manager. Those items requiring approval by the Governing Body shall include, but not be limited to:

1. Mayor's communications recommending appointments to boards and commissions;

2. Approval of contracts, administrative or departmental requests.

2.6 Appeals

Appeals to the Governing Body are the class of action mandated by statutory or ordinances provisions.

2.7 Proposals for Action

A. Proposals for action shall be presented to the Governing Body for its determination as a definite proposition in the form it is desired that the action be taken or question resolved.

. Proposals for action shall be in the format adopted by the Administration.

## 2.8 Motions

### Presentation of Motions

1. Main Motion. A main motion presents an ordinance, resolution, or other proposition for the passage, adoption, approval, or rejection. The question is usually stated in the positive form, "to pass", "to adopt", "to approve" "to confirm", to concur.
2. A main motion must be seconded before debate can take place and only one main motion may be on the floor at a time. A councilor may give brief explanatory comments before stating the motion, but must refrain from debate until the motion has been seconded. In the absence of a second, the motion fails. Main motions are debatable, amendable, and can be reconsidered after adoption.
3. Motions become the official recorded statement of an action taken by the Governing Body. A motion should therefore be worded in a concise, unambiguous, and complete form appropriate to such a purpose.
4. A motion should not be offered if its only effect is to propose that the body refrain from doing something since the same result can be accomplished by no motion at all.

## 2.9 Postponement of Action

- A. Postponement (to a definite time). The motion to postpone defers action on a pending question to some definite, day, or meeting. When a question has been postponed to a certain time, it becomes an order of the day for that time. When the time to which a question has been postponed arrives and the question is taken up, it can be postponed again if the additional delay will not interfere with the proper handling of the postponed question. The motion to postpone is debatable, amendable, and may be reconsidered.
- B. To Table. (postpone temporarily) Any measure before the Governing Body may be tabled temporarily at the same meeting. Items must be removed from the table and acted upon prior to adjournment. The motion to table is not debatable, not amendable, and cannot be reconsidered.
- C. To Remove from the Table. (Resume Consideration) The purpose is to bring before the Governing Body for action a question that has previously been laid on the table. The motion to remove from the table is not debatable, not amendable and cannot be reconsidered.

## 2.10 Reconsideration of Action.

The purpose is to permit the Governing Body to reconsider a vote on previous action. The reconsideration of a negative vote on final action is as proper as reconsideration of a favorable vote.

### A. Right of Reconsideration

The motion to reconsider may be made at the same meeting or a subsequent meeting. However, certain rules apply as appropriate under the circumstances.

1. The motion must be made by a member who voted on the prevailing side.
2. The motion to reconsider is inappropriate after the action taken has gone into effect or after it is too late for any reason, to reverse the action taken.

3. The determination of reconsideration is dependent on the passage or failure of the motion for reconsideration.
  4. Should the motion for reconsideration pass, the item is immediately before the Governing Body to be acted upon or scheduled for hearing at a subsequent meeting.
  5. Should the motion for reconsideration fail, the item remains as adopted.
  6. Either the motion to reconsider or notice of intent to reconsider must be made not later than the next regular meeting. A member of the Governing Body may indicate notice of intent to propose reconsideration either orally or in writing.
- B. Effect of Reconsideration.  
The effect of making the motion to reconsider, or of giving notice of the motion, is to suspend all action on the subject of the motion until the reconsideration is acted upon.
- C. Reconsideration at a subsequent meeting.
1. When notice is required for a question, the Governing Body shall comply with all rules requiring public notice.
  2. If reconsideration will be taken up at a subsequent meeting, notice of intent will be placed on the agenda. The determination of reconsideration is dependent on the passage or failure of the motion for reconsideration.
- D. Debate of Motion.  
Debate on the motion to reconsider will be limited to the merits of the reconsideration and not the merits of the question to be reconsidered.
- E. Vote.  
The passage of the motion to reconsider requires a majority vote, even if the measure to be reconsidered requires a two-thirds vote.

2.11 Appeal a decision of the presiding officer. An appeal must be made promptly before any debate or other business has intervened. When an appeal is taken, the presiding officer should clearly state the decision being appealed and may state his reasons for his decision. If there is no debate, or when debate is concluded, the presiding officer may put the question to the Governing Body. A majority vote of those present sustains a decision of the presiding officer.

2.12 Amendments

- A. Every amendment proposed must be relevant to the subject of the proposition.
- B. A proposed amendment takes precedence over the original motion out of which it arises and must be voted upon before the original motion.
- C. After an amendment is adopted, the question as amended must be put to a vote.
- D. Rejection of an amendment leaves the pending question worded as it was before the amendment was offered.

- 1 E. Form of amendments  
2 1. Amendments should be offered in a concise, unambiguous and in a  
3 complete form of a motion.  
4 2. In form, amendments should be divided into the following types:  
5 a. To add (that is to place at the end)  
6 b. To insert  
7 c. To strike out  
8 d. To strike out and insert  
9 F. Decision on amendments  
10 1. An amendment, once adopted, may not thereafter at the same  
11 meeting be changed or modified, except upon reconsideration of the  
12 vote by which it was adopted.  
13 2. When a proposed amendment has been defeated, the same  
14 amendment may not be proposed again without first reconsidering the  
15 vote by which the amendment lost.  
16 G. The presiding officer may require amendments to be submitted in writing.  
17 H. Withdrawing Amendments and Accepting Modification  
18 1. Amendments may be withdrawn before being seconded and stated by  
19 the presiding officer. After it is seconded and stated it is in the  
20 possession of the Governing Body and be withdrawn only with the  
21 consent of the Governing Body.  
22 2. A member may modify an amendment before it is seconded and  
23 stated by the presiding officer. After it is seconded and stated, it is in  
24 the possession of the Governing Body and can be modified only with  
25 the consent of the body. The presiding officer may put the question of  
26 modification without waiting for a motion, if there is no objection.  
27  
28

### 29 ARTICLE III 30 RULES OF ORDER

- 31  
32 3.1 Rules of Debate. Debate is the essential feature of a legislative body. It is the  
33 means by which the opinions of members are exchanged, questions deliberated and  
34 conclusions reached on the business before the body.  
35 A. To permit debate:  
36 1. There must be a debatable question before the body, and one  
37 member must have been recognized as entitled to speak.  
38 2. All debate must be addressed to the presiding officer, and not to the  
39 members.  
40 3. Debate must be confined to the question before the body.  
41 B. Time Limits. The presiding officer may set time limits in debate.  
42 C. Call the Question (Previous Question). Debate may be closed immediately  
43 by calling the question. The motion for the call for the question may motivate  
44 unanimous consent to ending debate. Before such a motion has been  
45 seconded, the chair may ask if there is any objection to closing debate. If  
46 there is no objection, the presiding officer shall immediately call the question.  
47 If one member objects, the presiding officer shall ask if there is a second to  
48 the motion. If there is a second to the call, he must immediately take a vote  
49 on whether to order the call for the question. The call for the question  
50 requires a two-thirds (2/3) vote before the vote on the question to which

1 applied. The call for the questions is neither amendable nor debatable and  
2 can be reconsidered.

3  
4 **3.2 Rules of Voting**

- 5 A. Each councilor in attendance must vote for or against all measures before  
6 the Governing Body, unless there is a conflict of interest, for which abstention  
7 is recognized. Such conflict of interest disclosure shall be recorded in the  
8 minutes.  
9 B. A member shall not explain his vote during voting, which would be the same  
10 as debate at such a time.  
11 C. Except for procedural matters, voting shall be by roll call and each councilor's  
12 vote shall be recorded in the minutes. Roll call votes shall be at random.  
13 Actions declared as procedural by the presiding officer may be decided by a  
14 show of hands or voice vote.  
15

16 **3.3 Decorum**

- 17 A. Members must address all remarks through the presiding officer.  
18 B. Members of the Governing Body shall confine their remarks to the question  
19 under discussion or debate, avoiding personal references or attacks on fellow  
20 members, staff members or members of the public. No member of the  
21 Governing Body shall engage in private discourse or commit any other act  
22 tending to distract the attention of the Governing body from the business  
23 before it.  
24 C. A member who resorts to persistent irrelevance or persistent repetition may  
25 be directed to discontinue his speech by the presiding officer.  
26 D. Point of Order A councilor may call attention to the violation of the rules or a  
27 mistake in procedure by rising to a point of order. The presiding officer may  
28 permit a full explanation before ruling on the claim and may submit the  
29 question to the Governing Body for decision by a majority vote. The  
30 presiding officer is not required to decide any point of order not directly  
31 presented in the proceedings of the body. Such an assertion does not  
32 require a second, is not debatable nor amendable and cannot be  
33 reconsidered.  
34 E. Question of Privilege Questions of privilege do not relate to pending  
35 business, but have to do with special matters of immediate and overriding  
36 importance which, without debate, should be allowed to interrupt the  
37 consideration of anything else. The presiding officer makes a ruling as to  
38 whether it is admitted as a question of privilege and whether it requires  
39 consideration before the pending business is resumed.

1  
2 3.4 Public Hearing Procedures

- 3 A. Reasonable efforts shall be made to give notice of public hearings to all  
4 interested people. Notice of public hearings shall state the subject, the time  
5 and place of the public hearing, the manner in which interested people may  
6 express their views and where interested people may obtain copies of the  
7 material that is the subject of the hearing.
- 8 B. At the beginning of the public hearing, the presiding officer shall require that  
9 all interested persons, who have an immediate, pecuniary or direct interest  
10 that will be substantially and specifically affected by the proceeding, and  
11 witnesses sponsored by such interested persons, wishing to address the  
12 Governing Body register with the City Clerk, giving their names and  
13 addresses, and whether they wish to speak as a proponent, opponent, or  
14 otherwise. Any person who fails to register shall not be permitted to speak  
15 until all those who signed in have spoken.
- 16 C. All interested persons offering testimony as parties to the proceeding and  
17 their witnesses will be sworn by the City Clerk and are subject to cross-  
18 examination by other parties, city staff or the Governing Body.
- 19 D. The presiding officer may change the order of speakers so that testimony is  
20 heard in the most logical groupings, e.g., proponents, opponents, adjacent  
21 owners, vested interests, etc.
- 22 E. The presiding officer will introduce the item, open the public hearing and call  
23 upon the staff to submit its report into evidence and request the proponent to  
24 describe the matter under consideration.
- 25 F. Interested persons shall have the opportunity to submit data, views or  
26 arguments orally or in writing. All written material must be marked as  
27 exhibits, submitted to the Clerk, and placed into evidence as part of the  
28 administrative record
- 29 G. The presiding officer may establish reasonable speaker time limits.
- 30 H. After the Governing Body has heard all the evidence, the presiding officer  
31 closes the public hearing and entertains a motion. Following the motion and  
32 its second, discussion occurs among the body.  
33



±.1

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Discussion/Action: Approve Truth or Consequences Fuel Farm Schedule 3 Tender and Substitution Agreement

**BACKGROUND:**

On September 19, 2017, the City of Truth or Consequences entered into an agreement with CSW Contractors, Inc. to construct Schedule 3 of the Aviation fuel farm construction. The contractor voluntarily defaulted on their contract and was therefore assigned to the Surety to complete pursuant to the terms of the performance bond; Whereas the Surety has identified a qualified, licensed contractor (Garrett Western Construction Co.) to complete the work required under the original contract. The Tender and Substitution Agreement has been presented to the City of Truth or Consequences to execute the contract to obligate the Surety and contractor to finalize the original contract. The agreement is presented herewith:

**STAFF RECOMMENDATION:**

Approve the agreement as presented

**SUPPORT INFORMATION:**

- Tender and Substitution Agreement

## TENDER AND SUBSTITUTION AGREEMENT

THIS AGREEMENT, dated the \_\_\_\_\_ day of August, 2018, is by and between CITY OF TRUTH OR CONSEQUENCES, New Mexico ("Obligee"), HARTFORD ACCIDENT AND INDEMNITY COMPANY ("Surety"), and Garrett Western Const. Co. Inc. ("GWCC") or Completion Contractor").

### RECITALS

- A. WHEREAS, the Obligee entered into a Contract dated September 19, 2017 (the "Contract") with CSW Construction, Inc. ("Principal") to perform certain work as described in the contract for the project identified as "Construct Aviation Fuel Farm- Schedule 3, AIP Project Number 3-35-0042-17-2017, NMDOT-AD Project No. TCS-17-04, City of Truth or Consequences ITB: 16-07-007" (hereinafter referred to as the "Project"). The Contract is incorporated into and made part of this Agreement; and
- B. WHEREAS, in connection with the Original Contract, Surety provided its Performance Bond and Payment Bond numbered 59BCSHQ4837 to Obligee, both in the penal sum of \$226,360.00; and
- C. WHEREAS, the Principal was placed in Receivership and, subsequently, Principal voluntarily defaulted on the Contract, the rights under the Contract are assigned to Surety to complete pursuant to the terms of the Performance Bond; and
- D. WHEREAS, Surety has identified a qualified, licensed contractor to complete the work required under the Original Contract ("Completion Contractor") to complete same for the price of \$126,862.10 (the "Completion Contractor Price"); and
- E. WHEREAS, to fulfill its Performance Bond obligations, Surety wishes to tender Completion Contractor to Obligee and arranges for Obligee to enter into the Completion Contract (as defined below) with Completion Contractor; and
- F. WHEREAS, the term "Completion Contract," as used in this Agreement, means this Agreement, the Original Contract and all modifications thereto, made between Obligee and Principal before the effective date of this Agreement which are incorporated by reference, and all modifications made under the terms and conditions of the Original Contract between Obligee and Completion Contractor, on or after the effective date of this Agreement; and



G. WHEREAS the Obligee holds the entire Original Contract funds to be used for the completion of the Project; and

H. WHEREAS it is expressly agreed that the entire contract funds shall be disbursed in accordance with this Agreement. The summary of contract funds as of the date of this Agreement are as follows:

1. Original Contract Price	\$ 226,360.00
2. Approved Change Orders	\$ 0.00
3. Total Contract Amount	\$ 226,360.00
4. Total Complete and Stored to Date	\$ 0.00
5. Amount Paid to CSW	\$ 0.00
6. Total Earned Less Paid	\$ 0.00
7. Retained Amount-5%	\$ 0.00
8. <u>Amount Due Surety</u>	\$ 99,497.90
a. <u>\$28,245.45 due upon signing of this Agreement</u>	
b. <u>\$71,702.45 due upon delivery of Fuel Tank</u>	
9. Contract Balance	\$ 126,862.10

I. WHEREAS, by virtue of this Agreement and the Contract, as modified, Completion Contractor assumes all obligations and liabilities of same; and

J. WHEREAS, Obligee hereby accepts Completion Contractor as the completing contractor to perform all work required to be performed under the Completion Contract and in so doing, agrees to discharge Surety from its obligations under the Bonds as set forth herein; and as set forth hereinafter:

NOW, THEREFORE, Obligee, Surety, and Completion Contractor hereby covenant and agree to the following:

1. The above recitals are contractual and form part of this Agreement.
2. Completion Contractor certifies that it has examined the Contract and is familiar with all of the Contract's terms and conditions. Completion Contractor considered all of the Contract documents, the existing jobsite conditions, and its own observations in reaching its Completion Contractor Price.
3. Under no circumstances shall the Surety's liability exceed the Penal Sum of the Bond.

a. Completion Contractor is tendered by Surety to Obligor as Completion Contractor and it agrees to enter into the Completion Contract (as defined above) with Obligor to fully perform all work under the Original Contract in accordance with this Agreement and/or Completion Contract requirements. This will include the as-builts and any close-out obligations of the project. Completion Contractor shall furnish to Obligor performance and payment bonds on forms designated by Obligor in an amount equal to the Completion Contractor's Price as provided in Recital D within five (5) calendar days of executing this Agreement and warrants all work performed under this Agreement and/or Completion Contract from the date of this Agreement forward according to the warranty terms of the Original Contract. Surety shall be named as a dual-obligor on said payment and performance bonds. The Completion Contractor Price as provided in the Recital D IS \$126,862.10.

4. Payment of Contract Balances

a. To Completion Contractor

- i. The Obligor agrees to pay to the order of the Completion Contractor, the Contract Balance found in Recital H Line 9 in the amount of \$126,862.10 when the monies are earned by the Completion Contractor on this Agreement. This amount is for completion of the Project under this Agreement and/or Completion Contract according to the payment terms of the Original Contract. Obligor agrees to look solely to Completion Contractor and its surety in connection with completion of all work remaining under this Agreement and/or the Completion Contract including any latent defects and/or warranty work for the Contract.

b. To Surety

- i. The Surety will be paid a total of \$99,947.90 (Recital H, Line 8)
  1. The Obligor agrees to pay to the order of the Surety the Amount Due Surety (Recital H, Line 8a) in the amount of \$28,245.45 within \_\_\_\_\_ days of the signing of this Agreement;

2. The Obligee agrees to pay to the order of the Surety, the Amount Due Surety (Recital H, Line 8b) in the amount of \$71,702.45 as "Payment for materials on hand" found in Specification Section 90-07 when the Fuel Tank is delivered on-site. Thereafter, the Surety will issue a Pay Application for the above listed amount. The Obligee agrees to pay said sum found in the submitted Pay Application within \_\_\_\_\_ days of approval of the Pay Application. The approval shall not be unreasonably withheld.

5. Completion Contractor shall comply with all insurance requirements in the Original Contract and shall maintain said insurance in the same amounts and types as set forth in the Original Contract. Completion Contractor shall provide evidence of insurance required by the Original Contract within five (5) days of executing this Agreement and Obligee, Surety and the Surety's Authorized Representative (listed below) shall be named as additional insureds under all required insurance policies. Certificates of Insurance alone are not sufficient and upon request the City and/or the Surety may require the actual policies.

6. Completion Contractor shall indemnify and hold harmless Surety, the Surety's Authorized Representative and Obligee and their respective officers, agents, employees, affiliates and subsidiaries ("Indemnitees") from any and all demands, claims and causes of action arising out of or relating to the execution or performance of Completion Contractor's Work or any entity engaged by the Completion Contractor for Work in this Agreement and Work in any Agreement with the Surety concerning this project related to this Tender Agreement.

7. Obligee agrees that the contractual substantial completion date for the Project is extended to 60 calendar days beyond the receipt of the written order of the Owner as long as the Obligee issues the Notice To Proceed no later than September 4<sup>th</sup>, 2018 so that work can start by no later than September 10, 2018. Obligee acknowledges that the effect of this paragraph prevents it from assessing liquidated damages for any time prior to this Agreement.

8. Completion Contractor agrees to look solely and exclusively to Oblige in the event of any breach or default by the Oblige under this Agreement and or the Completion Contract.

9. By the terms of this Agreement, Oblige releases and discharges Surety from any and all claims, demands, causes of action, damages, and/or expenses arising out of or related to the Original Contract and the Surety's Performance Bond, and its Performance Bond is hereby returned.

10. The foregoing notwithstanding, the validity of this Agreement is expressly made contingent on the Completion Contractor's timely execution of this Agreement and the provision of acceptable bonding and insurance as set forth in Paragraphs 4 and 5 of this Agreement. Execution of this Agreement and the provision of bonds and insurance shall occur no later than ten days after the last entity signs this Agreement. If Completion Contractor fails to provide Oblige with acceptable performance and payment bonds and insurance, all parties hereto acknowledge and agree that this Agreement may be terminated by Surety or Oblige and Completion Contractor shall be liable to Surety and Oblige for any and all damages relating to or arising from the Completion Contractor's termination.

11. Surety acknowledges that its Payment Bond previously furnished for the Project shall remain in full force and effect. The Payment Bond shall not apply to or cover Completion Contractor or any of its subcontractors and suppliers. Nothing in this Agreement shall be construed as enlarging or modifying the Surety's obligations thereunder.

12. This Agreement may be executed in any number of counterparts, each of which when executed and delivered, constitute together the executed Agreement.

13. Surety's actions under this Agreement and its Bonds shall be forever construed and considered as those of a surety and not a contractor.

14. This Agreement shall be governed by, construed, and enforced in accordance with, and subject to, the laws of the State of Arizona.

15. Any notices required under this Agreement shall be provided as follows:  
As to Obligee,

City Manager

As to Surety, with a copy via email to:

Rick L Levesque  
Director – Bond Claim  
Hartford Bond  
One Hartford Plaza – T-12-B  
Hartford, CT 06155  
253-853-2203  
[Rick.Levesque@thehartford.com](mailto:Rick.Levesque@thehartford.com)

And to the Surety's Authorized Representative:

Thomas J. Acchione  
Fasano Acchione & Associates, LLC  
520 Fellowship Road, Suite A-104  
Mount Laurel, NJ 08054  
Phone: (856) 273-0777  
Fax: (856) 273-6686  
Cell: (917) 807-7351  
Email: [tacchione@fasanoacchione.com](mailto:tacchione@fasanoacchione.com)

As to Completion Contractor, with a copy via email to:

Kerry Garrett, President  
Garrett-Western Const. Co. Inc.  
P.O. Box 3245  
Truth or Consequences, NM 87901  
Phone: (575) 644-1070  
Fax: (575) 894-1704  
Cell: (575) 740-2487  
[garrettwestern@windstream.net](mailto:garrettwestern@windstream.net)

DATED: August \_\_\_\_, 2018

CITY OF TRUTH OR CONSEQUENCES

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August \_\_\_\_, 2018

HARTFORD ACCIDENT AND INDEMNITY COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: August \_\_\_\_, 2018

GARRETT WESTERN CONST. CO.

By: \_\_\_\_\_

Its: \_\_\_\_\_

CSW Contractors, Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed name: \_\_\_\_\_

Acknowledged and Approved By:

\_\_\_\_\_ Date: \_\_\_\_\_

Keith Bierman, MCA Financial Group, Ltd.

Receiver for CSW Contractors, Inc.



I.2

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Pool heater replacement.

**BACKGROUND:**

To discuss with the commission about the pool heater in need of replacing and how to proceed with the purchase.

**STAFF RECOMMENDATION:**

Requesting to designate funds for new heater.

**SUPPORT INFORMATION:**

Work Order & Quotes



# I.A.B. MECHANICAL

P.O. Box 3160

Albuquerque, NM 87190

Phone: (505) 266-6904 • Fax: 881-2984

License # 89367



SALES AND SERVICE  
Commercial - Residential  
• AIR CONDITIONING  
• REFRIGERATION  
• HEATING  
• BOILERS  
• PLUMBING  
• AIR FILTERS  
• BACK FLOW TESTING  
AND REPAIR  
• POOL AND SPA  
• STEAM AND SAUNA

Bill To: Citrot Tac

Date: \_\_\_\_\_ Job# \_\_\_\_\_  
Service Rendered At: Pool Mechanical

MAKE	<u>Laars</u>
MODEL	<u>1430 IN O/C I P C JX</u>
SERIAL #	

1 N put 1,430,000 natural gas

HOURS	REG.	O.T.

Complete ☒

P.O. No.: \_\_\_\_\_ By: \_\_\_\_\_

Incomplete ☐

Date: \_\_\_\_\_ Title: \_\_\_\_\_

I authorize I.A.B. Mechanical to perform services and/or repairs described below on that payment for such services and/or repairs will be made in accordance with I.A.B. Standard terms and conditions, as noted on back of invoice. I further certify that I have the authority to order such services and/or repairs.

WORK REQUESTED: Service and repair of heater

WORK PERFORMED: Met with Tammy at pool. She showed me the sensor problem. I found the sensor well had been removed from the piping. The sensor well had holes in it therefore it would leak with the pump on. I installed new 1/2" well and reinstalled the sensor. Next tried to fire the heater for the pool. It would not even try to fire. Determined the ignition controller was defective. Used a Honeywell Universal Control. Completed wiring and now the heater will fire. Next I pulled the burner tray and draft hood assembly to inspect. Cleaned and vacuumed A LOT of debris from the heater and heat exchanger. See pics. This heater is operational now but is not in good condition overall. The heater must have valves set to maintain an inlet water temp of 100°-105°. Clearly this was not maintained. Therefore there is a lot of over-

QUANTITY	DESCRIPTION	SOURCE	PRICE	TOTAL
1	Sensor Well	150		
1	Honeywell ignition module			

I hereby certify that the work indicated herein was done and the materials listed were furnished.

Customer: Tammy Bradner

WHITE-Office

Serviceman: Siobhan

YELLOW-Invoice Copy



2022

I. A. B. MECHANICAL LLC

TECHNICIANS DAILY FIELD REPORT

JOB NAME:

City of Tor Pool

JOB NUMBER:

DATE:

of blockage in the heat exchanger due to heavy condensation in the heater. The heater also has a lot of rust & corrosion due to chemicals stored in the room with the boiler. These chemicals are drawn into the boiler when it is running and will damage the heater.

Completed cleaning and inspection of the heater. There is a lot of damage to the burner tray due to condensation. This has damaged the metal frame that supports the burners.

This will lead to the burners not staying in place and cause more damage. Also the "fire brick" or refractory is falling apart. This is the insulation for the metal cabinet in the burner area. As it falls on the burners it can create heat damage and incomplete combustion.

Possible Carbon Monoxide! This room should have a carbon monoxide detector in it.

This summer season should be the last for this heater. Due to age and overall condition it must be replaced. Overall condition does not merit repairs.

SIGNATURE

Scott B. Bly

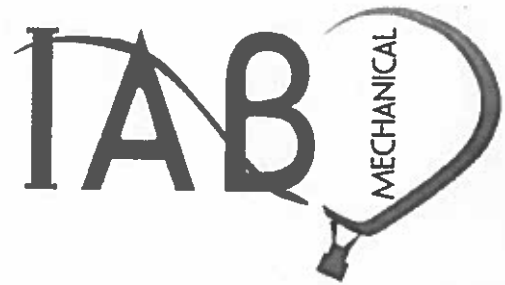
I.A.B. Mechanical  
505-266-6904

# I.A.B. Mechanical LLC

P.O. Box 3160

Albuquerque, NM 87190

(505) 266-6904



NAME / ADDRESS	
TRUTH OR CONSEQUENCES CITY POOL ATTN: ACCOUNTS PAYABLE 505 SIMS STREET TRUTH OR CONSEQUENCES, NM 87901	

## ESTIMATE

ESTIMATE #	DATE	P.O. NO.	TERMS	PROJECT
1633	7/24/2018		Net 30	

DESCRIPTION	TOTAL
IAB MECHANICAL WILL SUPPLY LABOR AND MATERIAL TO INSTALL A PENTAIR MEGATHERM 1430K BTU POOL HEATER. OUR PRICE INCLUDES ELECTRICAL, GAS, WATER PIPING AND REQUIRED STATE PERMIT. VENTING NOT INCLUDED; MAY REQUIRE REPLACEMENT, THIS WOULD NEED TO BE FIELD VERIFIED. STARTUP AND VERIFICATION OF PROPER OPERATION ALSO INCLUDED. ANY UNFORESEEN DEFICIENCY WILL BE BROUGHT TO MANAGERMENTS ATTENTION AT TIME OF INSTALLATION FOR FURTHER APPROVAL.	
ESTIMATED COST FOR ABOVE WORK	17,500.00T
TERMS: TBD	
GROSS RECEIPTS TAX	1,378.13
Proposal good for 30 days. Our price includes any salvage to be retained by IAB unless otherwise noted	<b>TOTAL</b> \$18,878.13

iabmech@aol.com

SIGNATURE DE 20180724 10:00:00 AM

**Gardner, Tammy**

---

**From:** iabmech@aol.com  
**Sent:** Thursday, August 2, 2018 8:54 AM  
**To:** Gardner, Tammy  
**Subject:** Re: Estimate 1633 from I.A.B. Mechanical LLC

Hi Tammy,  
sorry I don't have an official quote for the other options....once we started looking at them, there will be replumbing etc.....BUT I can give you a rough estimate. If they are interested, we can come and look so we can give better estimate.  
So here are the options, with some explanation:

Raypak Hi Delta (sealed combustion, 84% efficiency): approx. \$34,050

The above heater with Cold Water Run - this helps with condensation and prolongs the life of the heater): approx. \$39,363.

If you need any brochures for these boilers I could send them over to you also.

Thanks

Benita

IAB Mechanical LLC

-----Original Message-----

**From:** Gardner, Tammy <tgardner@torcnm.org>  
**To:** iabmech <iabmech@aol.com>  
**Sent:** Wed, Aug 1, 2018 3:31 pm  
**Subject:** RE: Estimate 1633 from I.A.B. Mechanical LLC

Good Afternoon,

Sorry to bother, but we have a meeting tomorrow and was hoping to have an update on where we are with the other estimates on a water heater for the pool. Please let me know when I can expect those please.

Thank You,

***Tammy Gardner***  
***City of Truth or Consequences***  
***Interim Pool Supervisor***  
***(575)894-6151***

---

**From:** [replyTo@intuit.com](mailto:replyTo@intuit.com) <[replyTo@intuit.com](mailto:replyTo@intuit.com)>  
**Sent:** Tuesday, July 24, 2018 10:30 AM



CITY OF TRUTH OR CONSEQUENCES  
**COMMISSION ACTION FORM**

**ITEM:**

Discussion/Action: Final Budget pay increases clarification.

**BACKGROUND:**

On September 12<sup>th</sup> Finance Director Torres informed me of a possible policy violation regarding FY19 COLA/Merit increases that may result in an audit finding.

The City Commission approved the final budget on 07/25/2018 but they were instructed to apply wage increases effective beginning 07/21/2018, four days prior to approval of the budget.

Per the City's Personnel Policy, Section 5: Pay Classification:

**5.3 Pay Changes, Effective Date.** Pay changes shall normally become effective on the first day of the pay period following approval of the change.

Finance Director Torres contacted our lead auditor for the City's external auditors, Patillo, Brown, & Hill, L.L.P., the State Auditor's Office, and our Internal Control Officer, Mr. Gary Gaylord. Each of these individuals concur, that the only way it would be acceptable to backdate the increase was if the Commission specifically included the effective date on their motion and approval. The Commission can make such a change as long as the effective date is specified during the Commission meeting and recorded on their official minutes. Their interpretation is that the word "normally" as used in the policy allows the Commission the opportunity to specify an effective date. As there was no such specification, the recommendation was to proceed with the increase on the first pay period after the Commission passed the action. In this case, that would be effective with the pay period beginning Saturday, September 15<sup>th</sup>.

In order to rectify the pay period in question, we are requesting the Commission to take action to ensure the COLA/Merit increases that were approved in the Fiscal Year 2018/2019 Budget Adoption to be effective as of 07/21/2018.

**STAFF RECOMMENDATION:**

Approve the COLA/Merit increases that were approved in the Fiscal Year 2018/2019 Final Budget Adoption to be effective as of 07/21/2018 which is the beginning of the pay period.



I.4

CITY OF TRUTH OR CONSEQUENCES  
**COMMISSION ACTION FORM**

**ITEM:**

Interim City Manager and Acting City Clerk compensation clarification.

**BACKGROUND:**

In light of the previous agenda item and the possible audit finding. We would like to request some clarification on the motion that was made at the August 22 meeting in relation to the 15% increase for serving as Interim.

The action taken after that Executive Session was:

**Commissioner Hechler moved to approve that anyone placed in an Interim/Acting role for this vacancy be given a 15% increase. Mayor Pro-Tem Whitehead seconded the motion. Motion carried unanimously.**

In order to rectify the interim pay to be paid from the date the Interim City Manager was appointed, we are requesting the Commission to take action to ensure the 15% increases that were acted upon at that meeting to be effective as of 08/28/2018. And we also need the Commission to clarify whether that included the Deputy Clerk while serving as the Interim City Clerk during this time.

**STAFF RECOMMENDATION:**

Approve the 15% increase for the Interim City Manager and Acting City Clerk to be effective as of 08/28/2018 which is the first day after the termination of the former City Manager.



±.5

**CITY OF TRUTH OR CONSEQUENCES  
COMMISSION ACTION FORM**

**ITEM:**

Discussion/Action – Approve the recommendations from the Public Arts Advisory Board for the City to take possession of the Reed Rocket Sculpture and issue final payment.

**BACKGROUND:**

At the Public Arts Advisory Board Meeting held 09/18/2018, board members made 2 motions for recommendations that were approved unanimously.

1. City take possession of the Reed Rocket
2. Issue Final payment to Jeff Barbour

**STAFF RECOMMENDATION:**

Approve the recommendations from the Public Arts Advisory Board



I.4

## **CITY OF TRUTH OR CONSEQUENCES COMMISSION ACTION FORM**

### **ITEM:**

Personnel Board vacancies and duties.

### **BACKGROUND:**

Mayor Green ask that this item be discussed related to the vacancies of the Personnel Board.

### **STAFF RECOMMENDATION:**

Review of section 10.0 – 10.29 of the Truth or Consequences Personal Rules and Regulations.

### **SUPPORT INFORMATION:**

Truth or Consequences Personal Rules and Regulations Section 10.0 – 10.29.

## DIVISION 8. - PERSONNEL BOARD

### Sec. 2-351. - Creation.

There is hereby created a Personnel Board.

(Ord. No. 379, 3-25-91)

### Sec. 2-352. - Composition; appointment of members; terms of members.

The Personnel Board shall be composed of five regular members and two alternate members to be selected as follows:

- (1) Three regular members are to be appointed by the Mayor with the consent of the Commission. These initial Mayor-appointed members shall be appointed for periods of one, two and three years respectively; thereafter, members appointed to serve in these positions shall serve for a period of five years. One alternate member also is to be appointed by the Mayor with the consent of the City Commission. The alternate member shall serve for a term of five years and shall attend Board meetings in the event of an emergency absence of a regular Board member who had been appointed pursuant to this section. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.
- (2) The remaining two regular members and one alternate member shall be chosen by the employees covered by this division and shall consist of one employee below the level of supervisor and one employee at the supervisor level or higher, to exclude the Chief of Police, to serve initial terms of four and five years respectively. After the completion of these initial terms, the newly-elected employee and department head shall serve terms of five years each. These selected members shall serve only so long as they remain employees of the City and occupy positions in accordance with the provisions of their appointment. One alternate member also is to be appointed by the employees covered by this division. The alternate member shall serve for a term of five years and attend Personnel Board meetings in the event of an emergency absence of a regular Board member who had been appointed pursuant to this section.

(Ord. No. 379, 3-25-91; Ord. No. 456-97, § 1, 5-11-98)

### Sec. 2-353. - Filling vacancies.

Vacancies on the Personnel Board shall be filled by the appointing or selecting authority in the same manner as the original member in such position was appointed or selected to serve and such appointee or selectee shall serve either for the remainder of the term of the position vacated or for five years if the appointment or selection of the new member corresponds with the expiration of a previous term.

(Ord. No. 379, 3-25-91)

### Sec. 2-354. - Removal of members.



Any member of the Personnel Board may be removed by a majority vote of the Commission for cause after a public hearing and may be suspended immediately by the Mayor for cause pending such hearing.

(Ord. No. 379, 3-25-91)

Sec. 2-355. - Selection of officers; quorum.

- (a) The Personnel Board shall annually select a Chairman by majority vote of the full Personnel Board, such Chairman to be selected from the Mayor-appointees to the Board.
- (b) The Personnel Board shall annually select a Vice-Chairman by majority vote of the full board, such Vice-Chairman to be selected from the Mayor-appointees to the board.
- (c) A majority, being three members of the board, shall constitute a quorum of the Personnel Board.

(Ord. No. 379, 3-25-91)

Sec. 2-355.1. - Reserved.

**Editor's note**— Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-355.1, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

## **SECTION 10: EMPLOYEE GRIEVANCES**

### **10.0 POLICY**

All classified employees in Truth or Consequences city service shall be treated equitably and fairly in all matters affecting their employment. Any employee shall be granted the right to present a grievance and shall be afforded the opportunity to understand and resolve matters without fear of reprisal.

10.01 Managerial Employees. Managerial employees serve at the convenience of management and do not enjoy recourse to the city employee grievance procedure. They may, however, request a hearing by the city commission if they feel they have been treated unjustly. The city commission shall hear any grievance by managerial employees no later than thirty days from the original date of its initiation. The city commission's decision shall be final, except for recourse to the Equal Employment Opportunity Commission, the New Mexico Human Rights Commission, and the District Court, which is available to all citizens.

### **10.1 INFORMAL RESOLUTION PROCEDURE**

Any employee with a problem in which he feels he has been treated unfairly, unequally, or unjustly shall first attempt to discuss and resolve the matter with his immediate supervisor and department head. Every effort shall be made to conciliate the matter in as expedient, reasonable and objective manner as possible.

10.11 Personnel Officer or Designee. If employee and supervision cannot resolve the matter the employee and /or supervisor can request the personnel officer to mediate the matter and offer his advice toward resolution. Every reasonable effort shall be made by management to resolve the matter reasonably and satisfy the employee. If no mutual resolution to the matter can be made, the employee may file a formal grievance.

### **10.2 FORMAL GRIEVANCE PROCEDURE**

10.21 Submittal of Formal Grievance to Department Head. Employee grievances unsuccessfully conciliated through the informal resolution procedure may submit a formal grievance to his department head within two (2) weeks from the initial date of the matter of grievance. The employees shall state

the nature of the alleged grievance and make a recommendation for remedial or corrective action to be taken in his behalf.

- 10.22 Personnel Officer or Designee. The department head shall forward the formal grievance to the personnel officer or designee, no more than one (1) week after initial receipt. The department head shall submit in writing his account of the grievance to the best of his knowledge, after informal resolution attempts and preliminary investigation of the matter have been made, and make a recommendation for resolution. The personnel officer or designee shall review the grievance and attempt to negotiate a satisfactory solution to the matter within no more than ten (10) days after initial receipt of the formal grievance. If his fails, the aggrieved shall have all or any of the following recourses of action available. The following actions will be coordinated by the personnel officer or designee.
- 10.23. City Manager. A formal meeting with the city manager to attempt a satisfactory resolution of the grievance to be fully documented within two (2) days of the initial receipt of the formal grievance.
- 10.24 Committee Hearings. A formal hearing with the Personnel Appeals Board to be fully documented within thirty (30) days of the initial receipt of the grievance. The following conditions shall apply:
  - 10.241 The aggrieved, the committee, and/or management may request the presence and/or testimony of persons with information relevant to the grievance.
  - 10.242 The aggrieved, the department head, and the supervisor (if applicable) and the City Manager shall be present at the hearing. **The aggrieved employee may, at his or her own cost, have legal representation present at the hearing provided said legal counsel gives written notice. In such event, City management may also have legal representation present.**
  - 10.243 The Board shall submit in writing its determinations to the aggrieved, the department head, and city manager within forty-eight (11 S) hours upon conclusion of the hearing to include whatever recommendations it deems proper to be initiated and followed. All determinations shall be substantiated and justified in writing, and shall require the final approval of the city manager.

- 10.25 Compliance Determination. The city manager shall submit a written Documented response to the aggrieved, the Board and the city commission within five (5) days after submittal by the Board. The city manager shall justify and substantiate his reasons for alteration or change to the Board's recommendations, or may approve the recommendations as written. The city manager's final determinations and recommendations shall be binding and the aggrieved shall comply with them, unless the aggrieved is granted a further hearing by the city commission as follows.
- 10.26 City Commission. If the aggrieved employee finds no satisfactory solution through the above procedures and actions, he may request in writing within \*ten (10) days\* from the date of the City Manager's final determination, a further review by the City Commission. It shall then be the City Commission's alternative to reject or grant the request as follows:
- 10.261        Reject the request and accept the City Manager's final determination and recommendations in full, as written, and notify the aggrieved and the City Manager of that action within thirty (30) days of initial request of the aggrieved.
- 10.262        Grant the aggrieved a further review. If further review is granted, the City Commission may utilize any of the following options for such a review:
1. Grant a full evidentiary hearing at a date determined by the City Commission.
  2. Limit the hearing to written briefs submitted by the employee and the City Manager and/or their legal representatives.
  3. Grant a further hearing only if the employee establishes the existence of such evidence that could not have been presented at the time.
  4. A review for the sole purpose of determining the appropriate penalty, whereby the City Commission is already satisfied that culpability has been established.

The aggrieved and City Manager shall be notified of the City Commission's actions within thirty (30) days of the initial request of the aggrieved.

- 10.27 Alternative Recourse for Satisfaction. In the event employee cannot obtain satisfaction for his grievance from the city grievance procedures available, he may file a grievance with the New Mexico Human Rights Commission, the District Court, or any other recourse available to all citizens. Management shall assist employee in his efforts for an alternative recourse of action by advising him of the formal procedures necessary to file such grievances.
- 10.28 Confidentiality. All information and documentation involved with the grievance procedure shall be strictly confidential.
- 10.29 Legal Assistance. Under no circumstances shall the city of Truth or Consequences be required to provide legal assistance to an aggrieved employee. However, the aggrieved or the city may obtain their own assistance.

**City of Truth or Consequences**

505 Sims Street  
Truth or Consequences, New Mexico 87901  
City: (575)894-6673 Fax: (575)894-7767

**REQUEST FOR GRIEVANCE HEARING**

I, THE UNDERSIGNED, HEREBY REQUEST A FORMAL GRIEVANCE HEARING BEFORE THE PERSONNEL APPEALS BOARD OF THE CITY OF TRUTH OR CONSEQUENCES.

I WISH FOR THIS HEARING TO BE (☐ OPEN) (☐ CLOSED) TO THE PUBLIC.

I (☐ WILL) (☐ WILL NOT) HAVE LEGAL COUNSEL PRESENT AT THE HEARING.

I (☐ DO) (☐ DO NOT) GIVE PERMISSION FOR MY PERSONNEL FILE TO BE REVIEWED BY THE PERSONNEL APPEALS BOARD AT THE HEARING.

THE FOLLOWING IS A BRIEF NARRATIVE OF THE NATURE OF Y GRIEVANCE AND THE REMEDY I AM SEEKING FROM THE BOARD:

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\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

\_\_\_\_\_  
DATE



## **RESOLUTION NO. 14-18/19**

### **A RESOLUTION REQUESTING BUDGET ADJUSTMENTS IN THE REVENUE AND EXPENDITURE BUDGET FOR FISCAL YEAR 2018-2019.**

**WHEREAS**, the final budget for was approved by the City Commission of the City of Truth or Consequences, New Mexico, pursuant to Chapter 6, Article 76 NMSA 1978; and

**WHEREAS**, the City Commission resolve to request a budget adjustment in the 2018-2019 Fiscal Year Revenue and Expenditure Budget as per the Schedule of Budget Adjustments.

**NOW THEREFORE**, approval of the above is hereby requested of the New Mexico Department of Finance and Administration, Local Government Division.

**PASSED, ADOPTED AND APPROVED** this 26<sup>th</sup> day of September, 2018.

---

Steven Green, Mayor

ATTEST:

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Angela A. Torres, CMC, Acting City Clerk