

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
May 8, 2018**

**RICHARD BOSS, MAYOR
AL HERNANDEZ, COMMISSIONER
NADIA SIKES, COMMISSIONER
JOSH RARDIN, COMMISSIONER
SUSAN PAYNE, COMMISSIONER**

**JASON BALDWIN, MAYOR PRO-TEM
DUSTY WRIGHT, COMMISSIONER
MAGGIE PALUCH, CITY MANAGER
PETRIA SCHREIBER, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

CALL TO ORDER / ROLL CALL / INVOCATION / PLEDGE OF ALLEGIANCE

Mayor Boss called the meeting to order at 6:31 p.m. Roll Call was taken by the City Clerk. Commissioner Wright was as absent. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Swanson and the Pledge of Allegiance was led by Commissioner Hernandez.

APPROVAL OF AGENDA

City Clerk Hughs said the wording on item 18 should read Recess into Executive Session.

Mayor Pro-Tem Baldwin moved to amend the agenda.

Commissioner Rardin seconded the motion. Motion carried with a vote of 6-0-0.

PRESENTATIONS

**1. Presentation on Light Attack Experiment, Phase II exercise events near or over Alamogordo.
(Col. Mike Pietrucha)**

Colonel Pietrucha talked about the Light Attack Experiment, Phase II. He said one of their primary objectives is restoring their readiness. He said they are looking for opportunities to add a low-cost attack aircraft to help improve the readiness. This is a three-month event at Holloman Air Force Base to gather additional information on the capabilities of the aircraft prior to a possible decision to procure a fleet for the Air Force. He said realistic local training is essential to them to demonstrate those capabilities. He said experiment planners think that Alamogordo is an ideal surrogate for urban operations. He talked about the details of the experiment, scheduling times of the operations and safety precautions. He said they would like to plan in advance with the Police Department so that they have the public safety connection.

Commissioner Sikes asked when this exercise would take place. Colonel Pietrucha said this is a June time frame thing with the possibility of the first week in July. He said as they get closer and they can nail down times they'll communicate the specific times.

2. Presentation of OCEDC quarterly report. (Laurie Anderson, Business Development Director)

Ms. Anderson explained a little about what she does with Otero County Economic Development Council (OCEDC). She discussed her goals for this year. She gave OCEDC's quarterly report update and discussed some of the challenges they have faced.

Chairman of the PR Task Force, Mr. Martinez said the PR Task Force is there to promote Alamogordo business-wise, getting people to move here and making people want to stay. He gave an update of where the PR Task Force is at. He talked about a branding integration training which is to educate all individuals in companies, in government and everywhere they can so that we all have the same voice, same positive image of Alamogordo.

Mayor Pro-Tem Baldwin commented that G & L Golf Inc. and Desert Lakes Golf Course believe in that branding integration training so much that they are actually signed up for tomorrow afternoon.

Commissioner Rardin asked staff to look at the various funds to try to help these guys.

City Manager Paluch said she has been working with the PR Task Force. She said they have already had preliminary discussions about funding. She said you will see options at the budget hearings next week and the PR Task Force is coming to the budget hearings to give their full presentation.

OCEDC Chairman Buick gave a brief overview of the makeup of OCEDC. He talked about their strategic plan and an RFP for their FY17 Audit.

Commissioner Payne said she knows they have been working hard and she appreciates all their efforts. OCEDC Chairman said another thing they want to focus on is the GRT tax renewal.

Mayor Boss thanked everyone. He specifically thanked Mr. Buick and Tularosa Basin Telephone for providing a grill for the Fireman's Appreciation Day.

PUBLIC COMMENT

Henry Bartenbach commented on the following:

He had questions on the Kids Kingdom design from the April Commission meeting. He said he liked the disability design but would like to see this design in Alameda Park. He asked the Commission to re-think the design to something similar of the old Kids Kingdom. He asked if the City can put a poll on Facebook for people that do not attend the Commission meetings.

Rich Merrick commented on the following:

He said this is not the first time Commissioner Sikes has had a complaint against her because of the things she has said about our citizens and the things she has done to our citizens in a disparaging way. He said just because you get frustrated does not give you the right to lash out against a citizen. He feels at this point; this Commission no longer wants to hear from a citizen. He said he wants to be heard.

Jodi Nichols commented on the following:

She said she wanted to reiterate to her code of conduct complaint against Commissioner Sikes. She asked the Commission to do something and reconsider the no cause findings.

Commissioner Payne clarified that anyone could sign up to speak on any particular issue.

CITY MANAGER'S REPORT

City Manager Paluch made the following remarks:

1. She said the New Mexico State Library Bookmobile will be visiting Alamogordo on Monday, May 14th. They will have an Open House from 4:00 to 5:00 p.m. on the north side of the City Hall parking lot. She said the public is free to attend.
2. She said the Pupfish season kicks-off on May 18, 2018. She said host families are still needed. If anyone is interested in hosting a Pupfish, please call the City Clerk's Office. She said the Pupfish Booster Club decided that they will be sponsoring special days and one of those days will be an employee day on July 6th, where employees of the City of Alamogordo will get into the game at half price at \$3.00.
3. She said there are three new flagpoles that have been ordered for the Civic Center. She said Facility Maintenance will install those poles in a triangle pattern.

4. She said on May 12th, from 9:00 a.m. to 4:00 p.m. at the Zoo, is the Red, White and Blue you, Military Appreciation event. She said the bar will be open and there will be a band playing some classic rock tunes. She said it is a free event.
5. She said regarding the Griggs detention basin project, the project was advertised for bidding on April 29, 2018. The Pre-Bid conference is scheduled for May 9, 2018 at 1:30 p.m., and bids are due at 2:00 p.m. on May 31st.
6. She announced the City has been awarded two ICIP Grants from the State of New Mexico for FY19. She said the first grant is for \$100,000 for police vehicles, and the second grant is \$240,000 for playground shade structures. She said once the City receives the agreements from the State of New Mexico and those agreements are approved by the City Commission, staff will be able to begin the purchasing process.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Hernandez made the following comments:

He said in his position with the hospital, they have to pay for trash dumping fees, as do other businesses. He said businesses pay for water, convenience fees and if they opt out of the trash, they must provide their own containers. He said they pay about \$300 to \$1,200 a month for containers. He said what they are finding is a lot of businesses that don't have containers are using their containers. He said it has become a pretty big problem. He would like to see if the City can't do something in that to where businesses are made to either have containers or show how they are disposing of their trash. He said this was his opinion. He said the other thing is he would like to get a realistic updated report for the Sahara Apartments.

CONSENT AGENDA

3. Approve the minutes for the April 24, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*
4. Approve the DFA Quarterly Report for the period ending March 31, 2018. *(Julianne Hall, Finance Director)*
5. Approve the Investment Report for the quarter ending March 31, 2018, in accordance with the City of Alamogordo Investment Ordinance. *(Julianne Hall, Finance Director)*
6. Approve the award of RFP No. 2018-003 Audit Services for the City of Alamogordo, to the overall highest rated proposal, Hinkle + Landers, PC. *(Julianne Hall, Finance Director)*
7. Consider, and act upon, final publication of Ordinance 1565 regarding changes to the registration and cost of keeping bees within City limits. *(Petria Schreiber, City Attorney and Darron Williams, City Planner)* (Roll Call Vote Required)
8. Consider, and act upon, Resolution 2018-24 approving the Crisis Intervention Training Model Site grant application to Policy Research Associates, Inc. for the Alamogordo Police Department. *(Debbie Osborne, Grant Coordinator)* (Roll Call Vote Required)

Commissioner Rardin asked to remove Item #7 from the Consent Calendar.

Commissioner Hernandez asked to remove Item #8 from the Consent Calendar.

Commissioner Hernandez moved to approve items 3, 4, 5, 6 of the consent calendar.

Mayor Pro-Tem Baldwin seconded the motion.

Roll call vote was taken.

Motion carried with a vote of 6-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

7. Consider, and act upon, final publication of Ordinance 1565 regarding changes to the registration and cost of keeping bees within City limits. (*Petria Schreiber, City Attorney and Darron Williams, City Planner*) (Roll Call Vote Required)

City Attorney Schreiber said she knows there were some concerns the last time the Commission was here and saw the \$50 fee. She said her department spent a little more time researching this. She said she spoke with Mr. Bleakley, the bee keeper who teaches class. She said they pulled the New Mexico State Bee Act, which has a different fee structure than what we are proposing. She said they propose they charge per apiary. She said an apiary can have any amount of colonies in it, and they charge \$5 per apiary, no more than \$200 in any particular year. They do have an inspection and if your colony is diseased and requires an inspection it is an automatic \$50 fee. She said Mr. Bleakley, in hearing of Mr. Williams's justification for the planning and zoning department's \$50 charge, he thought our thought process was sound. Mr. Bleakley thought we needed to look at is how many visits it will take to check compliance. She said Mr. Bleakley thought that maybe perhaps setting it up the same as our business registrations or \$35 which is set by State Statute would be a good compromise.

Commissioner Rardin said the only reason he pulled this item was to vote against it.

Commissioner Payne asked if they can change the fee to \$35 or do they need to vote first.

City Attorney Schreiber said you would make a motion to approve it with an amendment of changing it to \$35, just make that clear in the motion.

Commissioner Payne moved to approve as amended.

Commissioner Sikes seconded the motion.

Roll call vote was taken.

Motion failed with a vote of 3-3-0.

Mayor Pro-Tem Baldwin, Commissioners Rardin and Hernandez voted nay.

Mayor Pro-Tem Baldwin commented he is sure that this reflects everyone that voted nay, it has nothing to do with the bee keeping Ordinance and keeping bees in the city, it's just a fee.

Commissioner Rardin concurred with that statement.

Commissioner Payne asked City Planner Williams what the City has to do that justifies a fee. He answered first of all, it is additional work load on a department that is not designed to handle this workload. He said the task is between 20 and 30 minutes of staff time, and that is without any kind of site visit or any follow up to the applicant. That is strictly to accept the application and process it after we create a new form for it because we don't have one. If what he understood from City Attorney Schreiber, from speaking with the experts, then we are going to have to do site visits, then we are going to have to determine whose office and who is going to be qualified, who is going to pay for that training, etc. He said again we are adding more work load and more tasks that are not currently covered in our current process. He said the original fee was based off of is we are currently using the Ordinance review process which is what we have already established fees on. He said that is based on 45 minutes to an hour worth of time for new construction, new residents and commercial goes a different route, so we chose the residential review process, that fee is currently \$100, but basically that is based off the standard computation for how you come up with the expense of labor. It is normally twice times

the employee doing the work plus 25 percent overhead. He said just using simple math is how we came up with the fee.

Commissioner Sikes asked City Attorney Schreiber if this ordinance is dead. She answered yes. Commissioner Sikes asked what happens to the previous bee Ordinance that we had. City Attorney Schreiber said this was only a change to the ordinance, so the ordinance still stands as was. She said the ordinance reads that fees approved from time to time by Resolution of the City Commission. She said it continues to be ambiguous.

Commissioner Sikes said the continued ambiguity is only going to cause confusion in the future, based on the fact that the gentleman that you spoke with has been training people to maintain apiary/apiaries. She said when we had the discussion initially, the main concern was the potential danger. So, now we have had one person apply, we made sure the ordinance was as safe as possible, guaranteeing that the applicant had to have at least a 2,500 square foot lot and the proper house for bees. She said we have done as much as we can up to that point, but now we have no way to inspect it.

City Attorney Schreiber said we do, the ordinance stands, with the inspection, where it would stay with code enforcement. She said we do have a form that Mr. Bleakley put together himself with the information that he believes we need to be safe about this. She said Mr. Bleakley has been very generous with his time and information with the City. She thanked Mr. Bleakley. She said we will continue to use that application. She said she will work with Code Enforcement to make sure that they understand the parameters and the fee will stay at zero, since the City has never set a fee of it.

Commissioner Payne asked if we still have the one applicant. City Attorney Schreiber said no. Mr. Bleakley taught a class of about 30 and he said that he had about 14 that were in the City limits, but it is still an on-going process, so we are going to continue to get applications and classes will continue to happen.

Commissioner Payne said we have potentially 14 new applicants. City Attorney Schreiber said and maybe more, Mr. Bleakley thinks. Commissioner Payne asked inside the City limits. City Attorney Schreiber answered correct, and most are County residents but there are some inside the City limits.

8. Consider, and act upon, Resolution 2018-24 approving the Crisis Intervention Training Model Site grant application to Policy Research Associates, Inc. for the Alamogordo Police Department. (Debbie Osborne, Grant Coordinator) (Roll Call Vote Required)

Commissioner Hernandez said the reason he pulled this item off is to thank staff for bringing this forward.

Commissioner Hernandez moved to approve.
Mayor Pro-Tem Baldwin seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 6-0-0.

PUBLIC HEARINGS

9. Consider, and act upon, granting Brewer Oil Co. DBA 70 West, Application No.1052170 a Transfer of Ownership of Liquor License No. 0112, located at 1445 US HWY 70 W., Alamogordo, NM (Rachel Hughs, City Clerk)

City Clerk Hughs said this and item 10 are both a transfer of ownership of the liquor license. She said they are both the same owner but different stockholders.

Commissioner Rardin moved to approve.
Commissioner Hernandez seconded the motion.
Motion carried with a vote of 6-0-0.

10. Consider, and act upon, granting Brewer Oil Co. DBA Midtown Shell, Application No. 1052225 a Transfer of Ownership of Liquor License No. 0862, located at 723 N. White Sands Blvd, Alamogordo, NM. (*Rachel Hughs, City Clerk*)

No discussion.

Commissioner Rardin moved to approve.
Commissioner Hernandez seconded the motion.
Motion carried with a vote of 6-0-0.

NEW BUSINESS

11. Consider, and act upon, transfer Airport Land Lease E11A, E3A and E3B from Trabon LLC to Rabon Investment Group. (*Jim Talbert, Airport Manager*)

Airport Manager Talbert said this is transferring the land lease that is in existence from one company to another.

Commissioner Hernandez moved to approve.
Mayor Pro-Tem Baldwin seconded the motion.
Motion carried with a vote of 6-0-0.

12. Discussion on F4 Static Display Location. (*Armando Quinones, Airborne Memorial Representative, Brian Cesar, Assistant City Manager and Jim Talbert, Airport Manager*)

Airborne Memorial Representative Quinones said the issue he was going to discuss, was resolved upon coming to the Commission meeting. He said they are in full support and offer their assistance, those of us who work with the Alamogordo Airborne Monument, to help in any way they can to help the Airport Manager Talbert in his mission to bring an F-4 display for Alamogordo. He said there was never any issue about not helping, it was simply a question of congruity, since that has been resolved, we are done.

No action taken.

13. Consider, and act upon, Change Order No. 3, Public Works Bid No. 2017-009, to Smithco Construction, Inc. related to the Bonito Lake Restoration project, in an amount not to exceed \$71,795.70, including NMGR. (*Bob Johnson, Engineering Manager*)

Engineering Manager Johnson said this change order is for two items, approximately one-third of the change order amount has been requested by the New Mexico Department of Transportation. He said when the design was completed it included a certain amount of traffic signage for the haul route between the lake and the disposal site. He said however, since the award the contractor was required to submit his traffic control plan to NMDOT. He said at that time they decided to increase the amount of signage along the haul route for additional safety. He said the larger of the two items, the design of the temporary coffer dam was that the sheet piles be driven to a depth of 20 feet based upon structural load and based upon the design of a five-year event as far as the amount of water this thing is designed to hold back. He said during the drilling of the coffer dam, they encountered some underground obstructions. He said a lot of the coffer dam elements could not be driven to the design depth of 20 feet, therefore the consultant structural engineering team came up with a series of designed anchors, Deadman anchoring and additional bracing to off-set the fact that the depth could not be achieved.

Mayor Boss asked if we are still within our reserve. Engineering Manager Johnson answered correct, we have a reserve of \$1.169 million remaining. Mayor Boss asked what percentage of completion on that project you would say as far as a timeline. Engineering Manager Johnson said we are on time, we are on schedule. Mayor Boss asked where on the schedule/timeline are we looking at as far as a percentage of completion. Engineering Manager Johnson said it is roughly in the 25 percent range. He said the largest aspect of this is the removal and the hauling and as far as mother nature holds, we anticipate that to happen within about 60 days.

Mayor Boss said we have a dilemma, we need Mother Nature to happen, but we don't need water in the lake.

Commissioner Hernandez asked Engineering Manager Johnson if the Deadman anchoring was temporary or permanent. He said that is a difficult question to answer. He said it is designed temporary at this point. He said staff had initially liked the idea of this being permanent, I'm sorry the coffer dam structure being permanent, however, when we approached the Army Corp of Engineers, who has jurisdiction over this body of water, they indicated in order to make this coffer dam permanent it would result in a substantial cost.

Commissioner Hernandez asked what they are going to use. Engineering Manager Johnson answered it is a combination of cabling, metal bracing and concrete embedment.

Commissioner Hernandez asked if Engineering Manager Johnson if he knew the distance from the tie to anchor. He said he did not have that information. Commissioner Hernandez said the only reason he is asking is because he is concerned about people being around it or getting hung. Engineering Manager Johnson said this is not in any area that the public is going to access.

Commissioner Hernandez asked if it was gated off. Engineering Manager Johnson answered yes.

Commissioner Hernandez moved to approve.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 6-0-0.

14. Consider, and act upon, first publication of Ordinance 1569 updating Chapter 13 of the Alamogordo Code of Ordinances to comply with Federal requirements. (Nancy Beshaler, Project Manager) (Roll Call Vote Required)

Project Manager Beshaler said the City of Alamogordo participates in the National Flood Insurance program. She said that makes us eligible for federal disaster assistance and makes us eligible for things like the Corps of Engineers flood control project. She said it also makes flood insurance to the citizens of the community. She said the Federal Emergency Agency oversees our administration of the National Flood Insurance Program. She said Chapter 13 is our flood damage prevention Ordinance which covers how we administer the program. She said we periodically have reviews from FEMA. She said they came in March of this year and they looked over the community and made sure that our process for permitting followed the program. She said they review our ordinance and they have a checklist, there are certain things we have to include in our ordinance based on the CFR and we were missing two items. She said this amendment to the Ordinance adds in those two items. One of them covers what we require for construction in the AE zone, which is one of the designated flood zones, somehow that was left out of the ordinance. There was another stipulation that subdivisions that are developed with 50 lots or over 5 acres, that are in a flood zone that doesn't have base flood elevations determined, the developers are requiring to develop those base flood elevations. We are required to have these in order to be compliant with the program.

**Mayor Pro-Tem Baldwin moved to approve.
Commissioner Hernandez seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 6-0-0.**

15. Consider, and act upon, first publication of Ordinance 1570 updating portions of Chapter 17 of the Alamogordo Code of Ordinances regarding Pawnbrokers and Secondhand Dealers to add reporting procedures. (Petria Schreiber, City Attorney and Brian Peete, Chief of Police) (Roll Call Vote Required)

City Attorney Schreiber said one of the main concerns is that we are going to end up hurting local thrift stores. She said if you look at Section 17-5-120, entitled Exclusions. She said it talks about exclusions for non-profit or charitable, second-hand goods or thrift shops. It also talks about exclusions of consignment stores and garage sales. She pointed out that this right in line with State Law, and the State Law. It also gives us the power to go ahead to adopt rules and regulations as necessary to administer this Act.

Chief Peete explained a program called leads online. He said it's a program that is free for the pawnshop brokers. He said when individual's homes are broken into, bikes are stolen more often than not, the perpetrators are going to go to a pawnshop to pawn the items. He said what this ordinance allows us to do is, electronically the pawn shops can record all the information that comes in. He explained how the program would work and what they are using now. He said because our personnel power is pretty low, that would help us tremendously to moving quickly to apprehend individuals who we suspect.

City Attorney Schreiber said it is important that Commission know that these records are being kept now, the only additional thing that we are adding is that photographs are taken, and it is put in the system. They are required to keep these records now in our Ordinance and in State Law, this is not a new thing that we are requiring, we are adding the photo requirement and that it is uploaded on to this free service. The record keeping has been something that has been law.

Commissioner Rardin asked if these rules just govern pawn shops. City Attorney Schreiber answered correct, that is entitled the Pawnbrokers Act.

Commissioner Rardin said he did not have a problem regulating the pawn shops because that is where a lot of stolen merchandise is pawned for money. He said the problem he has here is thrift stores. He thinks they really should not be regulating our thrift stores. City Attorney Schreiber said they are not. She said that is one of the exclusions in the Ordinance 17-5-120 (F), it says thrift shops specifically. They are absolutely excluded from this.

Commissioner Payne said but that is non-profit thrift stores. City Attorney Schreiber said no, it's or thrift shops.

Commissioner Hernandez said he wanted to make staff aware of page eight, item number one, on how often garage sales can be held. He said he has seen people bringing truckloads of crap and setting it up at the fairgrounds and they are allowed to do that. He said they are just starting to pop up. He said as we are adding and changing Ordinances, we need to make sure that we enforce the ones that we have.

City Attorney Schreiber said sure and that ordinance on garage sales actually is something we declined to touch or edit at that point. She said that is current law, so that is something that she could work with Chief Peete to identify.

Commissioner Hernandez said he thinks that falls under Code Enforcement. Commissioner Payne agreed.

Commissioner Hernandez said the one that was set up at the fairgrounds, there were 3 trucks of stuff. He said he knows that they did not have permission because he knows City Manager Paluch would not have given them permission to do that.

Commissioner Hernandez moved to approve.

Commissioner Rardin seconded the motion.

Roll call vote was taken.

Motion carried with a vote of 6-0-0.

16. Consider, and act upon, complaint submitted by Jodie Nichols concerning Commissioner Sikes. (no cause findings) (*Petria Schreiber, City Attorney*)

City Attorney Schreiber said she tried to make this as easy as she could for the sitting Commission, since we have a difference in cause and no cause findings. She said as you know the City did receive a code of conduct complaint from Ms. Jodie Nichols, who spoke earlier, against Commissioner Sikes. She said in the agenda packet is the full complaint, as well as the response. She said we have the three allegations. She said allegation numbered one and three were no cause findings by the preliminary review committee. She said that means that two out of the three members found no cause there. She said on this first agenda item that is all we are going to handle. The Commission, if we look at the agenda book, can now take one of three courses of action tonight. She said the Commission can take no action which will result in the two no cause allegations being concluded this evening, they will be done. She said the Commission could entertain a motion to consider the complaint, which if the Commission does do that, it would take affirmative vote of five commissioners. She said Commissioner Sikes will obviously recuse herself from that vote, or you can entertain a motion to sustain the no cause finding, by the preliminary review committee. She said if you chose to do that it will allow for discussion, but essentially it just takes four Commissioners to just sustain that no cause finding. She said if that no cause finding is sustained, then again, these two allegations are concluded. She said there is a second that we will deal with on the next agenda item, which was a cause finding. She said if the Commission has any questions, she has the Ordinance there and can answer anything they like.

Mayor Boss asked City Attorney Schreiber on two of the items, where there is no cause, unless we decide to change that as a complete body, do we need to do anything.

City Attorney Schreiber said one of the options is the Commission can take no action and you can vote to take no action on it today. Mayor Boss said on the two items that the Senior Commissioners determined there was no cause. He said and then we address this separate one where cause was found.

City Attorney Schreiber said correct, so there are three courses of action on agenda item 16. She said you can vote to take no action, that does not allow for any discussion, so you just take no action and that would be the vote, it just takes a majority vote and it concludes those two matters. She said you can also entertain a motion to sustain the complaint, five commissioners will have to vote yes in order to do that. She said so everyone up there other than Commissioner Sikes, obviously, would have to vote in the affirmative to do that. She said otherwise you can also entertain a motion to sustain the no cause finding and discuss, if you would like to do that.

City Attorney Schreiber said this is very confusing so if there are any questions. She said you are going to see some changes in the ordinance, even just to make the numbers align very quickly.

Commissioner Rardin said it says here, item one is take no action which results in two no cause allegations, or two is entertain a motion to consider the complaint and then entertain a motion to sustain, what does that mean. City Attorney Schreiber said that means essentially you are voting to support the no cause finding. She said you are saying that we are going to go with the no cause finding. Mayor Boss said that would be a motion to that effect. City Attorney Schreiber said right, then

once that motion is made the Commission is free to discuss. Mayor Boss said then we look at the item where the Senior Commissioners found cause. City Attorney Schreiber said correct.

Commissioner Rardin said it has been a while since he read the Ordinance pertaining to this code of conduct. He asked what were, in the actual ordinance itself, the repercussions that we can take as a governing body. City Attorney Schreiber said in Section two it talks about violations. She said you can issue a warning which is the least severe form of action. She said the warning warns the Commissioner that his or her conduct violated the code of conduct. The warning cautions the Commissioner that further violations could lead to a more severe action. She said there is a sanction, this is the next most severe form of action. The sanction would be directed to a particular member of the City Commission based on a particular action or set of actions that is determined to be in violation of the code of conduct but is considered by the Commission to be not sufficiently serious to require censure. A sanction is distinguished from censure in that it is not a punishment. Censure is the most severe form of action contemplated in this policy. Censure is a formal statement of the City Commission officially reprimanding one of its members. It is a punitive action which serves as a penalty and pose for wrong doing. Censure should be used for cases in which the Commission determines that the violation of the code of conduct is a serious offense in order to protect the overriding principle of freedom of speech. The City Commission should not impose censure on any its members for the exercise of his or her first amendment rights, no matter how distasteful the expression was to the Commission and the City, however, nothing herein should be construed to prohibit the City Commission from collectively condemning and expressing their strong misappropriation of such remarks. She said this is quickly become clear why we need to amend this. She said that is in violation of Section 2A, later in the ordinance, it discusses additional things that can be done. She apologized to the Commission and said this is a very confusing Ordinance. She said if you today were to vote to open the complaint with five members and conduct a formal hearing. She said after that formal hearing, if you have found the violation, the next sections say you can issue a warning, even sanction, censure and it gives different option censuring. She said censuring means due to the loss of City related travel privileges for specified time period, a civil fine, a demand for non-monetary restitution, which would be something like a public apology, the return of gifts and/or demand for reimbursement of administrative, legal and/or investigation costs and expenses incurred and investigating, prosecuting the violation of the code of conduct. She said it does say in here that the amount of any civil fine imposed by the Commission shall not exceed the fine which may be imposed for a Municipal Code violation which is \$500. She said again, I apologize for the confusion, it is in two separate sections of this ordinance.

Commissioner Rardin asked City Attorney Schreiber how many times in the past has the Commission actually had to address these kinds of issues. Mayor-Pro-Tem Baldwin said three. Mayor Boss said it was 2014, am I correct. City Attorney Schreiber said she does not know. Commissioner Rardin said okay, Mayor Pro-Tem Baldwin is saying three different times. Mayor Pro-Tem Baldwin said at least three times.

Mayor Pro-Tem Baldwin said not all against Commissioner Sikes. Commissioner Rardin said they were all against the former Mayor, weren't they. Mayor Pro-Tem Baldwin said yes, there were two and another one involving Commissioner Sikes.

Mayor Pro-Tem Baldwin said this is about a serious of a subject as they can probably deal with and that is why it was created. He thanked City Attorney Schreiber for walking the Commission through the process. He said the three Senior members of this Commission reviewed and found no cause for one and three. Commissioner Payne said two of the Senior members did, just to clarify. Mayor Pro-Tem Baldwin said to clarify yes, but as it sits there is no cause for one and three. He made a motion for no action and to move forward to the next item. Commissioner Hernandez seconded the motion.

Commissioner Rardin asked if Mayor Pro-Tem Baldwin's motion of no cause, just addresses items one and three and they still need to address item two. Mayor Boss said yes. City Attorney Schreiber said correct, we will address that in agenda item 17. He asked if the review committee consists of

Commissioner Payne, Baldwin and Hernandez. City Attorney Schreiber answered correct. Commissioner Rardin asked the committee how they came to the conclusion of no cause on those items, for his own personal knowledge.

City Attorney Schreiber said if I could just interrupt for a second, if we are going to entertain a motion to take no action, that actually does not allow for discussion. She said if you look at the agenda report, we would have to entertain a motion to sustain the no cause finding to actually discuss and open up discussion of the complaint itself in the allegations. She said if the motion on the table is to take no action, so that will have to be voted on and then if we want to discuss that it would have to be defeated.

Mayor Pro-Tem Baldwin moved to take no action.

Commissioner Hernandez seconded the motion.

Motion carried with a vote of 3-2-1.

Commissioner Rardin and Commissioner Payne voted nay. Commissioner Sikes could not vote.

17. Consider, and act upon, complaint submitted by Jodie Nichols concerning Commissioner Sikes. (cause finding) (*Petria Schreiber, City Attorney*)

City Attorney Schreiber said this is the one allegation that cause was found on, so now we can consider one of the following course of actions. She said if the commission determines there is no cause, the matter would be concluded, that would be done with a vote, we can entertain a motion to consider the complaint if the motion to consider the complaint passes, the commission has some options at that point. She said the Commission can conduct a formal hearing at a later date, that would mean that you direct the City Manager to open an investigation, she would work with the City Manager on that to appoint special legal counsel to conduct an investigation and they would provide you with a written report. At that formal hearing, Commissioner Sikes could have legal representation. She would be able to file a written answer, appear at the hearing, she can submit testimony and examine and cross-examine any witnesses at that point in time. She said the second option if you decide to entertain a motion to consider the complaint would be to issue her a warning, if a warning is issued she does still retain the right to request that formal hearing, it is a due process right, but if she does not request it, that would conclude the matter. She said again, this is for conduct of members. City Attorney Schreiber said she was asked to read this actual part for the Commission, it is 3(c) Conduct of Members, the professional and personal conduct of Commissioners must be above reproach and avoid even the appearance of impropriety. Commissioners shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Commission, City staff or the public.

Mayor Pro-Tem Baldwin said the Senior members found cause, and asked City Attorney Schreiber if at this point if he wanted to make a motion, we move to find cause to formally recognize it and then after that we have discussion of potential. She answered what you would want to do is make a motion to consider the complaint, if that motion passes then we will move to discussion and the Commission will have to decide if they want a formal hearing or to issue a warning and that will be a decision we will make tonight. Mayor Pro-Tem Baldwin said he'll make that motion to find cause and then have discussion. Mayor Boss clarified if the motion is to find cause. Commissioner Rardin said your motion is to consider the complaint. City Attorney Schreiber said procedurally the motion is to consider the complaint.

Mayor Pro-Tem Baldwin moved to consider the complaint.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 4-1-1.

Commissioner Hernandez voted nay. Commissioner Sikes could not vote.

Mayor Boss said now we will move. City Attorney Schreiber said we are still on this item Mayor, the Commission will need to make a decision about what the appropriate next step is. She said the Commission will decide whether they like to conduct a formal hearing on the matter at a

later date or issue Commissioner Sikes a warning this evening. Mayor Boss said he understands, so we need discussion.

Mayor Pro-Tem Baldwin said this is obviously not a position for a peer to be in. He recognized Ms. Nichols for bringing this to their attention. He said one of the things he realized going through this process was according to our ordinance, we are not allowed to contact Ms. Nichols ahead of time, so the senior members that had to go through this process, there was a reason why we did not contact you personally. He said in fact he was sitting with the City Attorney and he stated that he was on his way to contact Ms. Nichols and she said please don't, so he feels bad that he did not get to see anything from Ms. Nichols side of the story other than the information that Ms. Nichols provided. He said he understands that there was a lot more to the situation that those texts or files didn't get. He said that being said, he could also not talk to his colleague about what happened, which he felt bad. He said making this decision is not easy, however, we sat down as a Commission and we are dealing with internal problems, one of things that we realized was that trying to keep the Commission under control or not stepping out of our procedural abilities, it opens us up to complaints like this, formal complaints. He said he thinks it was a good thing and he thinks why the Commission went through the process. He said we also wrote it with a caveat and those that will remember the idea was as a Commission, we try to handle these things internal, that if we felt like somebody was doing something wrong, we would do anything we could to talk to them personally and get them to stop doing those things. He said secondly, if that didn't work, then this more formal form of complaint would come forward so that we can open it up to the public. He said the intent there was once the public is aware of what is happening, that should formally make the Commissioner aware of what is going on and hopefully guilt them into or correct those actions based on the public being aware of it. He said the punishments or the potential forms of reprimand and/or censure ship that we have in there, as you can see, do not really have a whole lot of teeth to it because as a Commission we can't do too much to an Elected Official. He said they are in a position, as the City Attorney addressed, their first amendment issues. He said there is really not a lot they can do, it is a difficult process with not a lot of bang to it. He said the idea is that we make it public, we make it to where there is nothing that wouldn't come out in the open, so everybody understood everybody's situation. He said he thinks that is where we are right now. He said he is stumbling on his words because this is really difficult for him because he knows the project for the Sahara Apartments would not have been moved forward if it weren't for Commissioner Sikes effort. He said she and I have had a couple of private conversations about conduct and she knows that my standard for us, as a Commission, is we are never not Commissioners. He said everything we say and do, we are held to a completely different standard. He said it was difficult for him to find cause in this situation, but for item two, he wanted to explain that he did because no matter what happens is what was stated by a couple of our speakers earlier, it is the one thing that we cannot do as a City Commissioner and that's to fight back at the people, who are our constituents, citizens of Alamogordo. He said it is a difficult position, but he also comes from a life of retail, which everyone knows the golden rule of retail, the customer is always right, so my bottom lip has always been pretty fat because he has to bite it quite often. He said it does not mean that the customer is always right, but there are just certain things that we can't do as City Commissioners. He said he has had a conversation in reference to this, prior to this allegation, coming toward Commissioner Sikes and he knows that she truly believes that. He said he just wanted to say his reasoning, a little bit of reasoning behind the ordinance that we have, his frustration with the way it is written, he thinks the City Attorney had addressed some of those issues, the fact that we couldn't visit with the person making the complaint. He just wanted to let everyone know.

Mayor Boss said he can really appreciate both sides. He said Ms. Nichols he understands her feelings and also Commissioner Sikes, probably more so than anybody up here because he just went through an election process, as did Commissioner Sikes. He said there were so many untrue things posted about him, and he did not look at Commissioner Sikes but he suspects it was very much the same with her, in fact there was very few bits of truth in social media regarding his election. He said he did see some where the whole City was being criticized for not moving Sahara Apartments ahead. He said we tried, we did everything we could do, that was purely a legal matter. He said he can tell you that every Commissioner up here has been very concerned, and we recognize the plague we have with Sahara

Apartments, but we can't buck the legal system. He said he has seen Commissioner Sikes and heard her speak to both City Manager Paluch and City Attorney Schreiber specifically, requesting information on that and then being frustrated because of the delay. He said he is just saying that he can understand a state of mind, he is not condoning the remark, but he can understand the state of mind where he could have done that because of the circumstances, the pressures and the mis-statements that were made by so many people on social media during that election. He said it was totally false as far as blaming the City of Alamogordo for that blight over there. He said he knows that we have done all that we can do. He knows in the last two years and he suspects before that too.

Commissioner Payne told Mayor Boss she does not disagree with him very often and she has the utmost respect for him, but this had nothing to do with the Sahara Apartments. She said this has to do with conduct. Mayor Boss said he recognizes that. Commissioner Payne said she really does like Commissioner Sikes and if you worked with her you would understand, we all get along great. She said this about choosing your battles and her issue is, she will tell you right now she voted for cause on all three of them, because her issue is you have to choose your battles. She said you can't get baited by every person out there that is going to do their best to bait you and we have been in this position before. She said this is not the first time we've been in this position and she remembers when she was first elected, and we talked about this, and she told Commissioner Sikes that she understands Commissioner Sikes' passion. Commissioner Payne said she understands her passion, because she is a very passionate person, but her heart sunk when she heard Ms. Nichols say "When you say those things, you represent all of us". Commissioner Payne wanted to make it clear that she does not look down on anybody, she does not care where they live, she does not care what neighborhood they live in, her whole reason for being, the last nine years, is to help those regardless of what socio economic class they are in and she is pretty disturbed by the comments because it shouldn't matter, that shouldn't make a difference where you bought your house and whether you said those things because you meant them or you said them out of frustration. She said the fact is you said them. She said that is heart breaking, that is distressing to her because that is not how we should be acting as Commissioners. She said we do represent all people. She said she got an email today from someone that actually lives in Commissioner Hernandez's district and she was polite and respectful, and she got an answer and she got back to them. She said she doesn't care what district they are in or who they are and when we start saying those kinds of things to people, we are not building them up, we are tearing them down. She said whether we are doing it out of frustration or not and she was equally disappointed at Commissioner Sikes' response. Commissioner Payne said of all things Facebook and private messaging, she thinks that we should have all learned a lesson, she learned a lesson before she was even elected. She said you just don't do it and you know that. Commissioner Payne said I know that you know that, and I know that you did it out of frustration, I understand that, but nonetheless this is the second time we have been here, and she cannot get passed that. She said she cannot get passed how many more times are we going to do this, how many more times are we going to go down this road because you get frustrated. She said you cannot let people suck you in like that, you've got to ignore that and it was election time and she read that post over and over again, and all she read was somebody that was supporting your opponent and she can't get past it and that it's a tough one for her because really we all do get along, we seem to, so she wants to be clear about that. She said she does not think this about the Sahara Apartments, this is about conduct and how we should act as Commissioners. She said she has been frustrated, there are a few people that really frustrate her. She said she has even typed out posts, and she has looked at it and she has said forget it and she has erased it because you just got to breath and you've got to let it go because if you don't, you are representing all of us and you did represent all of us when you said that, and she is sorry, but she just can't get past that. She said that is just her feelings on it.

Commissioner Hernandez said he knows that one of their past constituents brought up a thing as a private citizen. He asked so if as a private citizen, can he talk all the crap he wants, say anything he wants, do anything he wants. City Attorney Schreiber asked if he was asking her. Commissioner Hernandez said yes. City Attorney Schreiber said she does not file code of conduct complaints because they come through her office, but she believes that even if you put as a private citizen you could be brought up on a code of conduct complaint, whether or not the preliminary review committee

would find cause would be up to you all, she certainly does not pretend to know how the Commission is going to vote before you vote.

Mayor Boss said that challenges Freedom of Speech in my opinion. He said if he speaks as an individual and he makes it very clear that it is him talking and no other Commissioner, he could say what he wants. He said the United States Government gives him that right, not the City of Alamogordo. He said if he tells you and speaks with you, he says he is one of seven, but he's not speaking for anybody other than himself, don't look at me as a Commissioner. He said if you tell me that he cannot do that, you are breaking my freedom of speech. City Attorney Schreiber said she would never tell you not to do that, she would just tell you that anyone other than herself, can file a code of conduct complaint. Mayor Boss said they could file it, but. City Attorney Schreiber said again, it would be up to the preliminary review committee to find cause or no cause. Mayor Boss said then he would bring his Attorney.

Commissioner Hernandez said basically what he is saying is that they are elected officials, he does not know that your opinion would be different as an elected official or a private citizen. He said so we have to be very careful in what we say and what we do, especially when we say it in public and it is recorded or on Facebook or whatever, and that is one of the reasons he does not do Facebook. He said it is very easy for me to be lured into something like that. He said he has several instances where constituents have come to him, kind of like this one, where they call him every day. He said he did everything he could, talked to staff, did whatever he could, and it became harassment. He said at the same time he did not call the police and file harassment charges, he just blew it off. He said it is very difficult and he agrees with Commissioner Payne that this is the second time, but again sitting in this seat is a lot different than sitting in the audience. He said it is very difficult, at sometimes it is very challenging.

Mayor Pro-Tem Baldwin said he wanted to make something clear to the Commission. He said it is the second time, but the first time was no cause so it should not be a check two. He said this is the first-time cause has been found against Commissioner Sikes. He said it was written up that way to address allegations that if we did not find merit, we did not find merit period then they are done and off the books, so it is not a check two, this is the first-time cause has been found so we are addressing it as the first time that we found cause with the situation.

City Attorney Schreiber said our ordinance actually speaks to that Mayor Pro-Tem, it says that no cause is found but the matter should be concluded and finalized and done.

Commissioner Rardin said they are elected officials and they are held to a higher standard, it is just like our police department. He said we would probably reprimand them for doing something similar to that because of the fact of who they are and the position they are in. He said he does not condone this type of behavior and he has had constituents, for a lack of a better word, that have pissed him off, but you kind of ignore them, you cool off and you try to help them the best you can but sometimes you can't. He said there are sometimes it is not in the best interest of the City or the people to do certain things. He said he was going to ask the question, but Mayor Pro-Tem Baldwin answered it and said the first time around there was no cause.

Mayor Pro-Tem Baldwin told Ms. Nichols by no way are they insinuating that she baited or harassed. He said he has been listening to the comments and watching the body language a little bit. He said they are not implying that she did anything wrong in this situation except were the recipient of what happened. He apologized for that.

Mayor Pro-Tem Baldwin said so we have a couple of options in front of them. City Attorney Schreiber said correct, you can either issue a warning or request a formal hearing to be held at a later date.

**Mayor Pro-Tem Baldwin motioned to issue a warning.
Commissioner Hernandez seconded the motion**

Motion carried with a vote 4-1-1.

Commissioner Payne voted nay. Commissioner Sikes could not vote.

Commissioner Sikes asked City Attorney Schreiber if the warning will be in writing. City Attorney Schreiber said that will have to be determined as our ordinance isn't specific, but she can take a look at it tomorrow, in addition, Commissioner Sikes you do still retain the due process right to request a formal hearing at this point if you like. Commissioner Sikes asked with a time limit or not. City Attorney Schreiber said she would ask, just for her own office, that she notify her within fourteen days, if everyone feels that's fair.

Commissioner Sikes said under any circumstances when somebody is elected to an office, we like to use the words, we are above reproach. She said the fact of the matter is when you are harassed consistently and when disingenuous things are said about any of us, about the City, a department, an employee she does believe it needs to be defended. She said she does not think in this day and age you should allow things to be out there that are incorrect. She said we are trying to be transparent. She said if all somebody does is follow social media, then all they see about a person is negativity, that isn't fair. She thinks we all have first amendment rights, she thinks they should be allowed to defend ourselves. She said they are not elected to become doormats. She understands being above reproach, but you reach a limit where she thinks things need to be corrected.

Mayor Pro-Tem Baldwin asked Commissioner Sikes because you felt the need to say that, can he ask just one question. She said certainly. Mayor Pro-Tem Baldwin asked if she thought it was defended properly.

Commissioner Sikes said in the event that she would have the opportunity to do it over, she would do it more publicly. She said and second, they are elected, Commissioner Hernandez brought this point forward, we are all elected, and people know they are elected. She said whether they say they are speaking as a private citizen or not, we are elected. She said in her response when she said it has no significance for her to claim private citizen, because we know she is a Commissioner, so it doesn't matter. She said whatever she says is going to be examined as a Commissioner. She said throughout the past, she felt she had to deal with a little bit of harassment through the past few years, and she has seen things on social media about her colleagues or her colleagues saying they are private citizens, but at least she respects them enough to not come forward with a complaint when she knows they are defending the truth. She said if they are defending the truth and they are speaking as a private citizen she is not going to call it a complaint because she respects their first amendment rights period.

Mayor Boss asked Commissioner Sikes, if she was able to do it over again, you would certainly not use the same terminology though. She said she thinks she threw language back at people, but she probably wouldn't, she probably would have cut off the relationship much more quickly. She said three years of her parroting the same thing over and over without somebody understanding what she was saying. She said she should have cut it off earlier, you are correct.

Mayor Boss said some of things said were not really appropriate. Commissioner Sikes said they were a little harsh. She apologized for harsh language and said but at the same time she will stand behind bringing the truth forward. She said it is all part of transparency.

Commissioner Payne said her argument to that would be, if you were trying to be transparent you probably should have posted it instead private messaging. She said that is her thoughts on that. She said second, she knows what Commissioner Sikes is getting at, because she does this. She said she puts personal thoughts, private citizen. She said you know the private citizen she is really kind of joking to be honest with you. She said she does make sure that she puts her personal thoughts, and she makes sure people understand that it is her personal thoughts. She said it is not about defending yourself, because you are right she has defended herself plenty of times. She said it is about calling a particular neighborhood in your district deplorable. She said it is telling a constituent lose my number. She said those are the things that, we can't do that. She said you represent everybody in your district,

it doesn't matter who it is. She said do they harass you, I don't know so much about that. She said she has a guy in her district that calls her just about every other day about his street. She said she picks up the phone every single time and she hears the same story over and over and she still keeps picking up the phone. She said she does not know what to do for him other than, because I can't get his street fixed. She said to be perfectly honest if we are talking about transparency, you had a choice to send a private or to not send a private message and you chose to do it. She said and how you could not have anticipated that would end up on Facebook, she has no idea. She said she thinks we need to be a little real about it. She said it's not for me about you defending yourself. Mayor Boss said he thinks that they do not need to discuss this all night. Commissioner Payne said you defending yourself is fine. She said it is things you said, the disparaging comments you made about a neighborhood and why somebody would choose to live there. She said she has a real hard time with that.

Commissioner Rardin asked the City Clerk and City Attorney that the minutes be put in some sort of a file, so if this happens again that we have record of it. He said there is no process of all this. He said he doesn't know if she has an employee file that we can put these minutes with these remarks in there so that we could come back to them in the future if this happens again.

City Attorney Schreiber said the minutes are always kept and maintained pursuant to State Law. She said so we have them forever. Commissioner Rardin asked if there is a file specifically for this issue. City Attorney Schreiber said she does not know, and she does not know if it would be appropriate for a personnel file or something that would expose the City to some liability, but she will look into it and she assured Commissioner Rardin that the minutes will be maintained by the City Clerk's Office as they are. Commissioner Rardin said this is his personal opinion, based off the remarks that were made after the issue was discussed, if it happens again, he would be more in favor a little stricter punishment. He told Commissioner Sikes that they should talk to constituents that way. He said he knows they get frustrated and they get mad, but they should not talk to constituent that way.

EXECUTIVE SESSION

18. Recess into Executive Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss the possible disposal (requested donation) of real property located at Fairgrounds and White Sands Blvd to Otero County.

Mayor Pro-Tem Baldwin moved to recess into Executive Session at 8:43 pm.

Commissioner Rardin seconded the motion.

Roll call vote was taken.

Motion carried with a vote of 6-0-0.

RECONVENE INTO OPEN SESSION

Mayor Pro-Tem Baldwin made the motion to reconvene at 8:58 pm.

Commissioner Hernandez seconded the motion.

Motion carried with a vote of 6-0-0.

19. Consider, and act upon, the possible donation of real property located at Fairgrounds and White Sands Blvd to Otero County.

Mayor Pro-Tem Baldwin moved to deny the request.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 6-0-0.

Mayor Pro-Tem Baldwin said he wanted to make sure on the record that the City Commission is interested in talking to the County about doing something productive with this piece of property. He said however, with the value of the land, it seemed like an unreasonable request from the County. He

said hopefully we can talk to them and work something out for the better good of our communities.

Commissioner Rardin moved to adjourn at 9:00 p.m.

Commissioner Payne seconded the motion.

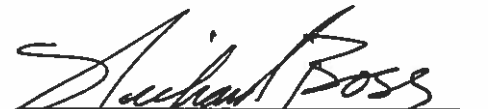
Motion carried with a vote of 6-0-0.

ADJOURNMENT



ATTEST:


City Clerk Rachel Hughes


Mayor Richard Boss

(Prepared by Eric Barraza, Deputy Clerk)

Approved at the Regular Meeting held on May 22, 2018.