

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
November 20, 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 6:30 p.m. Roll Call was taken by the City Clerk. Mayor Pro-Tem Baldwin was as absent. Deputy Clerk Barraza announced there was a quorum present. Invocation was given by Pastor Gilloth and the Pledge of Allegiance was led by Commissioner Hernandez.

APPROVAL OF AGENDA

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

PRESENTATIONS

1. Proclamation for American Diabetes Month. (*Richard Boss, Mayor*)
Mayor Boss presented a Proclamation for American Diabetes Month.

PUBLIC COMMENT

None.

CITY MANAGER'S REPORT

City Manager Paluch made the following remarks:

1. She announced more trash cans have been installed at the Bark Park. She also announced that porta-potties will be put at the bark park.
2. She stated the FY 18 Annual Report is now online for the public. You can visit the City Managers page to read the report.
3. She said Kid's Zone will open for the public tomorrow, and the Grand Opening will be on November 30, 2018.
4. She said the City received no significant deficiencies in our Sanitary Survey for the domestic water system from the New Mexico Environmental Department. She said the complete review of the operations and managerial documents of the water system and all files were in order, and our system passed all inspections. She gave kudos to the Water Shop for all their hard work.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

He wished everyone a Happy Thanksgiving. He asked about his request for a budget report for anything over \$5,000 from the budget hearings. He asked when the last time an evaluation was done for the City Manager. He said it is typical of the Commission to do it every year. He said he thinks the Commission should look at doing that after the first of the year.

Mayor Boss said that is something they should consider. He thought it was at the City Manager's discretion. Commissioner Payne thought they need a consensus from the Commission. Mayor Boss stated that is what he thinks also.

Commissioner Rardin asked for the evaluation. Mayor Boss asked City Manager Paluch if she could give them her thoughts at the next meeting and they could decide whether or not they want to do that. City Manager Paluch said she has no problems with that, but that would need a consensus of the Commission. Commissioner Rardin said actually it doesn't, if you read in her contract it states that it will be done every year. City Manager Paluch said the timeframe needs a consensus.

CONSENT AGENDA

2. Approve the minutes for the November 6, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*

3. Consider, and act upon, final publication of Ordinance No. 1579, Case: Z-2018-0004(A), 1451 Galway Dr., Rath Tara Estates 1 & 3, Replat B, Block 4, Lot 7B, to change zoning from R-1 Single Family Dwelling District to R-4 Multiple Family Dwelling District. *(City Planner, Stella Rael)* (Roll Call Vote Required)

4. Consider, and act upon, final publication of Ordinance No. 1580, Case: Z-2018-0005 (A), 1395 E. First Street, Wesley Subdivision, Lot 1B, to change zoning from R-1 Single Family Dwelling District to C-3 Business District. *(City Planner, Stella Rael)* (Roll Call Vote Required)

5. Approve the agreement with the New Mexico Economic Development District, Non-Metro Area Agency on Aging (NMAAA) for the Nutrition Service Incentive Program (NSIP). *(Magdalena Morales, Senior Center Manager)*

Commissioner Hernandez moved to approve the consent calendar.

Commissioner Wright seconded the motion.

Roll Call vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

None.

NEW BUSINESS

6. Consider, and act upon, the approval of an amendment to Resolution No 2018-33 approved by Commission on July 30, 2018. *(Evelyn Huff, Interim Finance Director and Katie Josselyn, HR Director and previous Acting Finance Director)* (Roll Call Vote Required)

Interim Finance Director Huff said this is the Resolution that was presented to the Commission on July 30, 2018. She said there were several errors identified on this Resolution. She said the Commission was given a timeline document to hopefully explain what had happened. She reviewed some of the items on the timeline document.

Mayor Boss commented that Interim Finance Director Huff and Former Acting Finance Director Josselyn put a lot of work into this and he thanked them for that.

Commissioner Rardin asked how much of fund 49 are they having to transfer in to balance the budget. Interim Finance Director Huff answered the transfers that are budgeted in there are \$6.5 million. She said for fund 49, the amounts that were originally budgeted for the transfers out were \$1.7 million, the carryovers for that fund are \$4.1 million and revision 6 is a budgeted transfer of \$666,892 to fund 11 for contingencies. She said fund 49 was not used to balance any other fund.

Commissioner Rardin asked Interim Finance Director Huff if she felt comfortable when they send this to the Department of Finance and Administration (DFA) that it will pass. Interim Finance Director Huff answered yes.

Commissioner Payne moved to approve.

Commissioner Wright seconded the motion.

Roll Call vote was taken.

Motion carried with a vote of 5-1-0. Commissioner Rardin voted nay.

7. Consider, and act upon, the State grant for Glider Staging Area. (*Jim Talbert, Airport Manager*)

Airport Manager Talbert said they are looking to increase safety in the Glider operation at the Airport. He described the proposed Glider staging area. He said the whole point is to get the gliders out of the runway safety area. He said the grant is a 90/10 grant, which means the State will give them \$100,000 and it will cost the City \$10,000.

City Attorney Schreiber asked to table the item until the grant application can be brought before the public for the sake of the Open Meeting Act and transparency. City Manager Paluch recommended to table this item.

Commissioner Hernandez said that was kind of the direction he was going to go because applying for the grant is one thing, but it is tied funding and he has a problem with that today. He said he would not be able to support it tonight without further information. He said he would rather table it and have the ability to bring it back.

Mayor Boss asked if they were committed if they apply for the grant. Airport Manager Talbert answered no, he is just asking for permission to apply for the grant.

Mayor Boss asked if this was approving the \$10,000 funding that the City has to give. City Manager Paluch said the way that this reads are that the \$10,000 would be transferred from fund 11 to fund 91. She said it does not read of an application of a grant. It is not clear in the agenda report. She said we just need to table this, and staff can bring this back the next meeting.

Commissioner Hernandez moved to table.

Commissioner Payne seconded the motion.

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

8. Consider, and act upon, ordinance 1583 for first publication, amending Chapter 11 of the Code of Ordinances to add harassment to the Criminal Chapter. (*Dustin Johnson, Assistant City Attorney*) (Roll Call Vote Required)

Assistant City Attorney Johnson said the thing about Municipal Court and City Ordinances is they don't exactly mirror all statutes so sometimes they have stop gap. He said at the Patrol level they have had some Officers inquire about harassment. He said right now, in the context of what is going on you have the District Attorney's (DA) Office that on a case by case basis is deciding on whether or not to take certain charges into the Magistrate Court. He said one of those charges that the City Attorney's Office is seeing that they are not covering is harassment. He said the most important thing about adding this to our Ordinance is to make sure that essentially changing this it doesn't change the authority of our Officers, their charging capabilities or authority. This is something they are already charging, but right now they are only charging it in Magistrate Court. What we are doing by adding this is empowering them where they can bring into Municipal Court because currently the City Attorney is prosecuting this matter in the Magistrate Court and essentially, we see a stop gap opportunity. He said it is just one of those things that the City Attorneys Office is seeing with the current landscape of funding at the DA level, and some of the things that they are not taking on, and an opportunity for them to bring into Municipal Court. He said it is going to change from a penalty perspective in the fact that essentially in

Magistrate Court right now, he believes the penalty is up to \$1,000 and up to a maximum of a year in jail. At the Municipal level you are looking at \$0 to \$500 and no more than 90 days should a Judge sentence that. He said he knows there have been questions as to why they did not adopt the whole Harassment and Stalking Act. He said Stalking is not something that has been identified by the City Attorney as a stop gap requiring them, or something they want to bring to the Municipal level. He said again it is there for the Magistrate Court, but right now you are looking at the City Attorney's Office and staff covering that in relation to funding from the DA as one of the things that they are not covering. He said that is part of the reason they only adopted just the harassment subsections. The other thing that has arisen is people are wondering why they did not encompass or capture the exceptions to it. He said the exceptions have to do with picketing and public demonstrations. Those are things our Officers are not charging and do not plan on charging. We certainly don't plan on harassment being used in the context of social media, reporting, Commissioners and things like that. He said this is literally things that they are seeing is a situation arising where the City Attorney's Office has been covering this so why not give the opportunity an option to bring it down to Municipal Court as city staff is already covering it at a Magistrate level and not seeing any funding from that.

Commissioner Hernandez asked Assistant City Attorney Johnson if he could give him a definition of a reasonable person. He answered gave Commissioner Hernandez a definition. Commissioner Hernandez gave an example of somebody with a broken heart. He said because someone drives by their house to go to work, they could consider that harassment. Assistant City Attorney Johnson said he would not consider that harassment. Commissioner Hernandez said he does not have a problem with the Ordinance, he thinks that they have a standard of what they consider a reasonable person. Assistant City Attorney Johnson said it's not changing anything that the Officers are already out there citing. He said in hypothetical that Commissioner Hernandez just posed before him, he does not think it is unreasonable. He said that's not an unreasonable person or situation, so there is also a stop gap that's always been in place, nothing is going to change operational wise for the City Attorney's Office. Commissioner Hernandez said it sticks out to him Assistant City Attorney Johnson said he thinks the focus is knowingly pursuing a pattern of conduct that is intended to annoy seriously alarm or terrorize another person serving unlawful purpose. He said they just look at reasonable person, in layman's terms, to not get bogged down in legal analysis of Civil, criminal and that position. Commissioner Hernandez shared a past experience that he felt was unreasonable. He said he wants to make sure that everybody is on the same page with this.

City Attorney Schreiber said she is seeing these cases in the Magistrate Court and it's only being used when there is a serious pattern of conduct. She said there is no legal definition of what a reasonable person is. She said there is case law and there are jury instructions, but this really boils down to the Officer really investigating and having that discretion. She said the Police Department does a phenomenal job with this, it is not being overly charged, they are using their discretion appropriately she believes.

Commissioner Hernandez said he believes they are, but he just wanted to have the conversation and make sure that it was open and out there and everybody understands that they are doing their job accordingly.

Mayor Boss asked if our Police Officers are not going to be doing anything different. He said they are making the charges, it is just a matter of going into Municipal Court. City Attorney Schreiber said it is just a change of venue. Assistant City Attorney Johnson said it is a very valid concern and this is the forum to suss this out and see if we are all comfortable in taking on.

Commissioner Payne asked what the difference between stalking and harassment is. Assistant City Attorney Johnson read the definition from Statute. She asked if that would be different. Assistant City Attorney Johnson said you are looking at two different patterns of conduct. She asked if stalking would be more serious. He answered it is.

Commissioner Sikes asked for clarification if they are just mirroring a State Statute. Assistant City

Attorney Johnson said we are in terms of two subsections capturing harassment. He said there is an entire Stalking and Harassment Act, they have only chosen to take on the Harassment piece. Commissioner Sikes thought it's very subjective. She said she hopes that people are very well trained and can make the determination as to what is serious and what isn't. She hopes that they use this properly and that people that are elected might be able to take this to the point that she would like to see it taken too.

Assistant City Attorney Johnson said he does not want to set the expectation. He said how this came to be and how it is in front of the Commission essentially, it is not regarding those things. He said this is really stemming more from domestic situations.

Commissioner Rardin asked how many cases a year they are talking about. Assistant City Attorney Johnson said he did not have the statistics. Commissioner Rardin said he did a little research prior to this and he contacted the DA's Office and they said in fiscal year 16 they did eight cases, and fiscal year 17 they did three and those are just the ones that the DA's Office was involved in. City Attorney Schreiber said this year, there are currently three pending cases that she is representing the Alamogordo Police Department on, and they are the only three cases that she has not been able to resolve. She said her current Magistrate case load is 10 to 15 cases at any given time, she is able to resolve a lot of those through plea agreements, but currently her three harassment cases are set for Jury Trial. Commissioner Rardin said the problem he has with this is right now is the City has two Attorneys and a paralegal, the DA's Office lost their funding and we were supposed to have our Officers attend training so that they can self-prosecute. Then the DA or the City Attorney's Office would then step in and help with special cases that needed an Attorney present for the prosecution of those. He said it appears that we are taking on a lot more of a work load when it all used to fall on the DA's office. He said where he kind of sees this heading is next year, they are going to put in the budget for a third Attorney, and the following year for a fourth Attorney and another paralegal because of the work load. He said that is his concern on it is how much it is going to cost us by us moving it to Municipal Court. He said Municipal Court will generate a little bit more revenue, but it is going to create some additional expense on the City side. The City does not have a whole lot of money right now because the budget is really tight. He said if it is not a whole lot of cases, he doesn't see why they just won't leave it alone and let the Magistrate handle it. He said if they decide to bring it in, why don't they adopt the whole Act rather than just one little section of it.

City Attorney Schreiber said one of the things the City Manager has tasked them with is an ongoing review of their budget, and as the person responsible for her budget there will be no requests next year for additional staff for the City Attorney's Office. She said actually putting this in will actually reduce the amount of time and the cost to her Office to go and prosecute these cases. Additionally, she spends a lot of time putting together a training program for the Alamogordo Police Department to get them to start prosecuting their own cases. She said it is a pretty monumental task to train every Officer in how to be an Attorney in a day. She said the reason why her office agreed to handle this is they were given about ten days' notice from the District Attorney's Office that they were going to go ahead and train our Officers in one day. She said they gave them one day of training opportunities and the police department still had to man the streets and keep the citizens safe. Her office said they would go ahead and take it on and there has not been that many cases, but because she does employ Assistant City Attorney Johnson, whose number one job duty is to prosecute in Municipal Court, he does that every week. She said putting these cases into Municipal Court will actually save the city money because they already have somebody doing this. She said right now, she is taking time away from the Office, she is prepping the cases and she goes to Magistrate Court and handles these. She said that is something Assistant City Attorney Johnson is doing because they are often set the same days that his own cases are set. She said as far as why the entire Act was adopted, we are here today because over five Officers approached them asking them to adopt this harassment Statute and get this codified in our Ordinances. She has not had a request for stalking.

Commissioner Rardin asked if Magistrate Court is set up for Jury trials. City Attorney Schreiber answered no we are not, and the Magistrate Court has that jurisdiction, so it would happen in the

Magistrate Court. Commissioner Rardin asked even if it cites Municipal, if it goes to Jury trial then it has to go over to Magistrate. City Attorney Schreiber said let me back up. She explained that State Law in New Mexico, the Constitution only allows a jury trial for offenses that have a maximum penalty of up to a year. She said but because our jurisdiction in Municipal Court is zero to ninety days, these are not eligible for a jury trial. We have sections in our ordinances that say the most anyone can be fined or imprisoned for in the Municipal Court is a maximum fine of \$500 or ninety days in jail.

Commissioner Rardin asked if it would have been beneficial to allow some Officers to go to the training that was offered by the DA's Office back in June. City Attorney Schreiber said she is sure that it would have been. She said at the time, the discussions that she had with the Police Department were about short staff, people already coming in on their days off, working overtime, what it looks like when an Officer who gets off at 7:00 a.m. and then have to sit through an 8-hour class and then expected to go back and work at 7:00 p.m., what that does to the mental health, how they need days off when they are overworked, so her office went ahead and took on that burden. She said there has not been that many cases, they are not significantly overworked. She said it does take time though because the Magistrate Court is not setup to send her office the notices. She said the notices are being sent to the Officers. She said her staff is combing through daily every citation, every arrest warrant, every booking report to see cases that they may have to represent on. She said it does take staff time to get it done, but because they have missed a case and she don't ever want to do that again to an Officer. She said she has the training complete, it is just a matter of dates, times and manning to when she can get that done.

Commissioner Rardin asked if the DA's Office helps them at all. City Attorney Schreiber answered they do not. Commissioner Rardin said he has a copy of his letter, and it says on a case by case basis they will upon written request. City Attorney Schreiber said every single time she gets one of these citations, they ask whether they will handle it or if the City Attorney's Office will need to handle it. So far, she has gotten back every single time that this will be the City Attorney's case and they will not represent on it. She said there is quite an extensive paper trail. Commissioner Rardin asked if that is just on the Harassment issues. She said no, they ask them on every case. She said all the cases that the DA Office does not want to prosecute, she will take on. She said there are different reasons why they file things in a Magistrate Court confidences, what not, but they email every single time.

Commissioner Rardin said he thinks it is tying up a lot of staff time. City Attorney Schreiber agreed and said getting this in our Ordinances and allowing Assistant City Attorney Johnson to prosecute would save a lot of time and money. Commissioner Rardin said he thinks they should expedite the training of the Officers to do a portion of it on the ones that are very simple, they could take that over. The ones that are going to be difficult or a little bit of a challenge is when the City Attorney's Office or the DA could step in.

Commissioner Payne moved to approve.

Commissioner Sikes seconded the motion.

Roll call vote was taken.

Motion carried with a vote of 5-1-0. Commissioner Rardin voted nay.

9. Consider, and act upon, Memorandum of Understanding (MOU) between the City and County in regard to a 1997 Ford Dump Truck. (Larry Garner, Public Works Director)

(Commissioner Rardin stepped out of the meeting at 7:26 p.m.)

Public Works Garner described the Memorandum of Understanding with the County. He said as part of the Memorandum a deal was worked out with the County to provide chip sealing between the City limits and Scenic.

Commissioner Hernandez moved to approve.

Commissioner Wright seconded the motion.

Motion carried with a vote of 5-0-0. Commissioner Rardin was absent for vote.

EXECUTIVE SESSION (Roll Call Vote Required)

10. Adjourn into Closed Session in compliance with Section 10-15-1(H), NMSA 1978 (as amended), to discuss Threatened or Pending Litigation; City of Alamogordo vs. Taxation and Revenue Department. (Roll Call Vote Required)

(Commissioner Rardin re-joined the meeting at 7:29 p.m.)

Commissioner Payne moved to adjourn into Executive Session at 7:29 p.m.

Commissioner Hernandez seconded the motion.

Roll call vote was taken.

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

ADJOURNMENT




City Clerk Rachel Hughes


Mayor Richard Boss

(Prepared by Eric Barraza, Deputy Clerk)

Approved at the Regular Meeting held on December 4, 2018.