



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

February 11, 2020 - 6:00 PM
City Hall, City Commission Chambers
1376 E. Ninth St.

Richard Boss Mayor
Nadia Sikes Mayor Pro-Tem, District 2
Jason Baldwin District 1
Susan Payne District 3
Josh Rardin District 4
Sharon McDonald District 5
Dusty Wright District 6

Brian Cesar City Manager
Petria Bengoechea City Attorney
Rachel Hughs City Clerk

MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.

The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.

We are committed to the long-term financial stability and responsible growth of the City and all decisions will be driven by our commitment to provide the best services possible in a financially sound and responsible manner given the economic realities facing the City.

In accordance with Section 10-15-1.D, NMSA 1978 (2010 Cumulative Supplement), this agenda has been posted on the bulletin board located in the east/west lobby of the City Hall and in the glass case located outside the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: <http://ci.alamogordo.nm.us> within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: <http://ci.alamogordo.nm.us>

The Mayor and City Commission request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Commission Chambers to respond to or to conduct a phone conversation. The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4100.

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PUBLIC COMMENT

Residents must sign up with the City Clerk to address the City Commission. Comments are limited to 3 Minutes, and there will be a maximum of 21 Minutes allowed for Public Comment.

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

CONSENT AGENDA (Roll Call Vote Required for an Ordinance or Resolution)

All matters listed under the Consent Agenda are considered to be routine by the City Commission and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

1. Approve the minutes for the January 28, 2020 Regular meeting. *(Rachel Hughs, City Clerk)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

2. Consider and act upon Resolution 2020, authorizing execution of a gross receipts investment program (GRIP) agreement between the City of Alamogordo and WSCI, LLC. *(Petria Bengoechea, City Attorney)*
(Roll Call Vote Required)
3. Consider, and act upon, first publication of Ordinance 1611, repealing certain sections of Article 27 Vehicle for Hire and amending section 17-01A-050 regarding license fees for certain businesses.
(Rachel Hughs, City Clerk) **(Roll Call Vote Required)**
4. Consider, and act upon, first publication of Ordinance 1612, amending Chapter 2, Section 15 of the City of Alamogordo Code of Ordinances regarding the Gross Receipts Investment Program ("GRIP").
(Petria Bengoechea, City Attorney) **(Roll Call Vote required)**
5. Appointments to Boards and Committees. *(Richard Boss, Mayor)*

EXECUTIVE SESSION (Roll Call Vote Required)

6. Adjourn into Executive Session in compliance with 10-15-1(h)(7), NMSA 1978 (as amended) to discuss threatened or pending litigation; All lawsuit activity over the past year with the self-insurers fund.

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/11/2020

Report Date: 2/6/2020

Report No: 1.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the January 28, 2020 Regular meeting. *(Rachel Hughs, City Clerk)*

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:00 P.M., COMMISSION CHAMBERS
January 28, 2020**

**RICHARD BOSS, MAYOR
SHARON McDONALD, COMMISSIONER
JOSH RARDIN, COMMISSIONER
DUSTY WRIGHT, COMMISSIONER
SUSAN PAYNE, COMMISSIONER**

**NADIA SIKES, MAYOR PRO-TEM
JASON BALDWIN, COMMISSIONER
BRIAN CESAR, CITY MANAGER
PETRIA BENGOCHEA, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

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

Mayor Boss called the meeting to order at 6:00 p.m. Roll Call was taken by the City Clerk. City Manager Cesar was absent. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Timothy Green and the Pledge of Allegiance was led by Commissioner McDonald.

APPROVAL OF AGENDA

**Mayor Pro-Tem Sikes moved to approve the agenda.
Commissioner Payne seconded the motion. Motion carried with a vote of 7-0-0.**

PUBLIC COMMENT

Eugene Downer commented on the following:

He said Mayor Boss has been the finest Mayor the City has had in the past fifteen years. He encouraged the City to focus on Indian Wells and consider various trees on the street. He encouraged the City to work with the County to improve the entrances to the City.

CITY MANAGER'S REPORT

None.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Boss made the following comments:

He said he was invited to go to the Aristocrat, where Dr. Oscar Marquardt was given an award. He read what was said that evening to include, he was the first eye doctor in Alamogordo. He also became a civic leader and focused his efforts on helping children struggling in school due to vision impairments. In recognition of a lifetime of helping kid's brains and learning, the Dr. Oscar Marquardt Vision Therapy Research Fellowship Endowment was established at the Southern College of Optometry. Dr. Marquardt served his community for over 60 years working with the Lion's Club where he averaged serving over 18 to 25 students each month. He was honored with the Melvin Jones Fellow, which is Lion's Club number one award.

Mayor Pro-Tem Sikes made the following comments:

She spoke of Iris June Reed Harwell, past Alamogordo Librarian, who passed away on December 18, 2019. When Ms. Harwell retired, the then City Commission named her Librarian Emerita, which means that she was able to retain her title all these years as an Honor. In 1990, Ms. Harwell was nominated as an Otero Woman of Merit. She leaves behind 4 children, 10 grandchildren, 16 great grandchildren, 2 nieces and 2 nephews. She stated a service in her honor is tentatively scheduled for March 14, 2020 at 2 pm at the Alamogordo Funeral Home.

Commissioner Rardin made the following comments:

He said there is a little bit of the quality of life funds left, and he asked staff to see how much it would cost to have a lion at the zoo. He remembers, as a child, hearing that lion roar every single morning.

CONSENT AGENDA

1. Approve the minutes for the January 14, 2020 Regular meeting. *(Rachel Hughs, City Clerk)*
2. Consider, and act upon, Resolution No. 2020-02 adopting the required Community Development Block Grant (CDBG) Annual Certifications and Commitments. *(Debbie Osborne, Grant Coordinator)* (Roll Call Vote Required)
3. Consider, and act upon, Resolution No. 2020-05 supporting the request for appropriation of funds for the New Mexico Outdoor Recreation Division from the New Mexico Legislature. *(Michelle Brideaux, Communications & Marketing Administrator)* (Roll Call Vote Required)
4. Consider, and act upon, Resolution 2020-06 requesting written approval from the Local Government Division of the Department of Finance and Administration, State of NM for the revised budget numbers computed as of January 28, 2020. *(Evelyn Huff, Budget Analyst)* (Roll Call Vote Required)
5. Consider, and act upon, transfer of the airport lease, E8-A from Dr. Robert Hurd (deceased) to his daughter, Ms. Susan Hurd. *(Jim Talbert, Airport Manager)*
6. Consider, and act upon, acceptance of the FY 2020 New Mexico Fire Protection Grant award in the amount of \$88,012.80. *(Jim LeClair, Fire Chief)*

Commissioner Rardin moved to approve all of the items on the consent calendar.

Mayor Pro-Tem Sikes seconded the motion.

Roll Call vote was taken.

Motion carried with a vote of 7-0-0.

NEW BUSINESS

7. Consider, and act upon, Change Order No. 1, Public Works Bid No. 2019-002, to Mesa Verde Enterprises, Inc., related to Street Maintenance Program FY 2018 (EN1803), in an amount not to exceed \$59,486.68, excludes NMGRT. *(Edward Balderrama, Project Manager/ADA Coordinator)*

Project Manager Balderrama explained the 3 items that are a part of this change order: Installation of the turn down footings, accessible parking area to the Washington Avenue Walking Trail and a paved parking lot at the Bark Park. He said staff recommends approval of Change Order number 1.

Mayor Boss said he would have argued about the amount of parking's at the Bark Park, but recently he and his wife have been driving by there and noticing how many people utilize this park.

Commissioner Baldwin moved to approve.

Commissioner Wright seconded the motion.

Motion carried with a vote of 7-0-0.

8. Consider, and act upon, Ordinance 1607, amending certain sections and adding new sections to Chapter 4 of the Code of Ordinances concerning the Alamogordo White Sands Regional Airport. *(Jim Talbert, Airport Manager)* (Roll Call Vote Required)

Airport Manager Talbert gave a brief history of the Ordinance. He stated that they tried to make this ordinance enforceable, realistic and up to date. He also wanted to make this a standalone document, so that people are not referring to 4 or 5 other ordinances. He spoke on some items that will be updated in the ordinance.

Mayor Boss asked if this has been reviewed by City Attorney Bengoechea. She answered absolutely.

Commissioner Rardin said this says personnel on duty will be from 7 a.m. and they are changing it to 5 p.m. Airport Manager Talbert said that is the hours that Exile maintains all year long. Commissioner Rardin asked from 7 to 5. Airport Manager Talbert said yes, they can get fuel 24 hours a day, but they just have a callout service in event they are closed. He said that is published in other airfield's directories.

Mayor Pro-Tem Sikes moved to approve.

Commissioner Rardin seconded the motion.

Roll Call vote was taken.

Motion carried with a vote of 7-0-0.

9. Consider, and act upon, installation of lighting to be completed in house for the Futsal Court at Washington Park in an amount not to exceed \$40,000. (Veronica Ortega, Community Services Director)

Community Services Director Ortega explained they had spoken of this at the last Commission meeting, but she inadvertently left off the cost of the lights when they approved the Futsal Court, so she is there to ask for the amount.

Commissioner Payne asked if this was included the last time. Mayor Boss said they discussed it, but it was not included in the amount.

Commissioner Rardin asked how much money would be left in the quality of life bond. Community Services Director Ortega said roughly about \$105,000.

Mayor Boss asked if the other option would be to operate this during the daytime. Community Services Director Ortega answered yes. Commissioner Rardin asked if this will be used a lot during the night. Community Services Director Ortega said they typically do use it at night.

Mayor Pro-Tem Sikes said based on the information they received at the last meeting from the three coaches, when they talked about the impact of possible tourism because of tournaments that could be at night, it would almost be ludicrous to build a court and not add the lighting. She said she would support this. Community Services Director said Albuquerque has already contacted them to have Alamogordo host a tournament.

Commissioner Wright moved to approve.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 7-0-0.

10. Consider, and act upon, Resolution 2020-04, authorizing execution of a gross receipts investment program (GRIP) agreement between the City of Alamogordo and Gerald Champion Regional Medical Center. (Petria Bengoechea, City Attorney) (Roll Call Vote Required)

City Attorney Bengoechea said this was already authorized previously. She said what has happened is City Manager Cesar sat down with the hospital and negotiated with them for a \$250,000 per year payments over 4 years. The first payment would be due after the Finance and Administration approves our budget in the fall, in Fiscal Year 21. She said the hospital is willing to work with the City however they can. She said this resolution and agreement lays all that out, it also talks about if the City has

budget difficulties and cannot meet this payment, that the City will work with the hospital to put it off or find an alternate resolution for that fiscal year.

Commissioner Wright abstained from voting.

Commissioner Rardin moved to approve.

Commissioner Baldwin seconded the motion.

Roll Call vote was taken.

Motion carried with a vote of 6-0-1. Commissioner Wright abstained from vote.

11. Consider, and act upon, first publication of Ordinance 1610, an ordinance amending section 2-02-030 meeting days and times of Regular Commission Meetings. (*Rachel Hughs, City Clerk*) (Roll Call Vote Required)

City Clerk Hughs explained this has not been updated in more than 25 years. She said they are looking to change 2nd and 4th Tuesday to "reasonable days and times", which we can add to our yearly calendar that the Commission approves. We are also taking off the location when it was over at the school where the Commission was meeting. She also pointed out that the City Charter Section 5 that it states regular meetings shall take place twice a monthly, but it does not specify the place and time.

Mayor Pro-Tem Sikes asked if they were not going to change that portion of this particular Resolution and maintain two meetings in November and December. City Attorney Bengoechea said that is in the City Charter, they would have to convene a Charter Committee and go through that process. It is not something they could do by Ordinance. She said they are looking into, but they will have to undo the action that they have done to just have one meeting in December, but they will bring that to a future meeting.

City Clerk Hughs said they can also bring the other two meetings in November and December in order to comply with the City Charter. She said the next City Charter Committee will not be formed until 2025.

Commissioner Rardin asked if they have to convene a Charter Review Committee after each Census. City Clerk Hughs explained that there was one in 2011, but according to the minutes of 2015, it stated that it wasn't the full 10 years in 2011, therefore they did not acknowledge it as the full ten years and why they did it in 2015 again.

City Attorney Bengoechea said Section 3B of the City Charter says that every 10 years the Commission should appoint a committee to review the effectiveness of this Charter and make written recommendations to the Commission within 60 days of appointment.

Mayor Pro-Tem Sikes moved to approve.

Commissioner Rardin seconded the motion.

Roll Call vote was taken.

Motion carried with a vote of 7-0-0.

Mayor Boss commended staff for updating old resolutions.

12. Consider, and act upon, a Memorandum of Understanding between the City and the County regarding the City's use of the County's Spillman Technology for police operations. (*Petria Bengoechea, City Attorney and Richard Denton, Acting Chief of Police*)

City Attorney Bengoechea said the amount of cooperation between the Alamogordo Police Department and the Otero County Sheriff's Department has been unprecedented in this County. She said Spillman Technology will be the Police Department's reporting software. She said the County did purchase this technology, costing approximately \$1.2 million. This Memorandum of Understanding (MOU) will allow the City to utilize this technology at a cost of between \$34,000 and \$62,000 a year. This would be the

City's annual maintenance fee. She said if you look at the MOU, the City is agreeing that they will give the County some of the radio consoles and voice logging recorders in exchange. She also said that if PSAP never happens, then the City will still be able to use this technology. This is a true partnership between the Sheriff and the Police Department. The information sharing is unprecedented here.

Acting Police Chief Denton explained it was a huge data base with many modules that can be added. He explained the different modules and how each module will affect the maintenance cost. He said the major module would be the data collection, with the information coming in they are going to be able to get accurate information out such as their statistical data. All of this information will be at their fingertips versus having to manually research the information. He said the biggest thing is the information sharing between the law enforcement agencies.

Commissioner Payne asked if this would hold all statistical information on crime data and if all the other law enforcement agencies are on board with this. Acting Police Chief Denton answered yes. He also mentioned that the County will be paying Tularosa and Cloudcroft's portion on this, but they will have to pay for each of their modules each year. He said this has nothing to do with PSAP, this is an expensive software program. City Attorney Bengoechea said it is worth noting that their annual maintenance is going to be cheaper than their current antiquated system.

Mayor Pro-Tem Sikes asked when it will be implemented. Acting Police Chief Denton answered it will go live in August.

Mayor Pro-Tem Sikes moved to approve.
Commissioner Wright seconded the motion.
Motion carried with a vote of 7-0-0.

Commissioner Baldwin asked if they could add to the request of Commissioner Rardin' s of the lion, to see if there are any other projects that were left unfinished and/or if there are any other projects on the horizon that they could potentially use that money for. He also said it is kind of ashamed that they have to talk about how well the City and County are working together now, when they weren't working well before. He said decisions were being made on personalities and history between two governmental agencies and it wasn't what was the best for the citizens of Alamogordo. He reminded citizens that they have a choice in who you put in a lot of those positions and the decisions they make. He said sometimes those decisions are based on their personal issues and not what is best for the community. He said it is about time that personal issues are being put aside.

Commissioner Rardin moved to adjourn at 6:55 p.m.
Mayor Pro-Tem Sikes seconded the motion.
Motion carried with a vote of 7-0-0

ADJOURNMENT

Mayor Richard Boss

ATTEST:

City Clerk Rachel Hughs

(Prepared by Eric Barraza, Deputy Clerk)
Approved at the Regular Meeting held on February 11, 2020.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/11/2020

Report Date: 1/23/2020

Report No: 2.

Submitted By: Petria Bengoechea

Subject: Consider and act upon Resolution 2020, authorizing execution of a gross receipts investment program (GRIP) agreement between the City of Alamogordo and WSCI, LLC. (*Petria Bengoechea, City Attorney*) (**Roll Call Vote Required**)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: This agreement authorizes re-payment of approximately \$20,700 in GRT received by the City for the new construction at 423 White Sands to hold a Fatwood Barbeque and a New Mexico Financial Corporation. The approximate cost of construction is \$1,200,000.

RESOLUTION NO. 2020-07

A RESOLUTION AUTHORIZING EXECUTION OF A GROSS RECEIPTS INVESTMENT PROGRAM ("GRIP") AGREEMENT BETWEEN THE CITY OF ALAMOGORDO AND WSCI, LLC

BE IT RESOLVED by the City Commission of the City of Alamogordo, New Mexico as follows:

1. That the form and substance of a certain Gross Receipts Investment Program Agreement (the "Agreement"), between the City of Alamogordo (the "City") and WSCI, LLC (the "Developer"), as set forth in the form of the Agreement submitted to this meeting, is hereby approved.
2. That the City Manager is hereby authorized and directed for and on behalf of the City to execute the Agreement substantially in the form approved in the foregoing paragraph of this Resolution.
3. That WSCI, LLC shall be refunded the portion of gross receipts tax and municipal gross receipts tax paid to the City of Alamogordo for the construction of a 3200 square foot retail facility at 423 S White Sands Blvd, Alamogordo, New Mexico in an amount to be determined by submission of invoices on which gross receipts taxes were paid to the State of New Mexico to be credited to the City of Alamogordo and in compliance with Article 2, Section 15 of the Alamogordo Code of Ordinances.
4. That the proper officials, agents and employees of the City are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the City in accordance with the provisions of the Agreement.

DONE this _____ day of _____, 2020.

CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, City Clerk

Petria Bengoechea, City Attorney

GROSS RECEIPTS INVESTMENT PROGRAM (“GRIP”) AGREEMENT

THIS AGREEMENT made on this _____ day of _____, 2020, between the City of Alamogordo, a New Mexico municipal corporation (“City”), and WSCI, LLC, a New Mexico corporation, whose address is 1700 N 10th St, Alamogordo, NM 88310 (“Developer”).

WHEREAS, pursuant to Ordinance No. 1379, effective on October 12, 2010, and extended by Ordinance No. 1505, effective on December 11, 2015, the City is authorized to enter into “Gross Receipts Investment Program” (“GRIP”) Agreements with qualified applicants for eligible projects, as defined in said Ordinance, in order to provide new job opportunities within the City, promote the economic growth and welfare of the City, and to improve the City through new construction and or the rehabilitation of existing commercial or industrial property; and,

WHEREAS, Developer owns certain real property within the City located at 423 S White Sands Blvd, Alamogordo, NM 88310, and legally described in Exhibit “A” attached hereto, City of Alamogordo, Otero County, New Mexico; and,

WHEREAS, Developer has made application (attached hereto as Exhibit “B”) for reimbursement of certain gross receipts taxes directly attributable to construction activities associated with the project as described in the application; and,

WHEREAS, in said application, the Developer makes the good faith projection that the total cost of the Project will be approximately one million, two hundred thousand dollars (\$1,200,000); and

WHEREAS, after having considered the application, the City Commission has concluded that the economic and other benefits of the Project to the City will be substantial, that it is desirable and necessary at this time to authorize the City to enter into the Agreement, and that the City’s provision of the assistance contemplated by the Agreement will foster, promote and enhance the economic growth and welfare of the City, and improve the City through new construction and or the rehabilitation of existing commercial or industrial property; and,

WHEREAS, by Resolution 2020-07, the City Commission has authorized the City Manager to execute this GRIP Agreement with the Developer.

NOW THEREFORE the parties hereto do mutually agree as follows:

1. General Terms.

- (a) The Project consists of construction of A 3200 square foot retail center, of which 1200 square feet will be leased to New Mexico Financial Corporation, and 2000 square feet will be leased to Fatwood Barbeque. Developer, after receipt of the promises and inducements contained herein, agrees to develop the Project in accordance with plans and specifications approved by the Construction Industries Division of the New Mexico Regulation and Licensing Department. The estimated cost of the construction is 1,200,000 exclusive of gross receipts tax.

- (b) The parties hereto acknowledge, and the Developer represents and warrants, that: (i) the Project involves the building of a structure, or the expansion of an existing structure, for use by a commercial activity whose services are partially subject to gross receipts tax, said structure to have a value in excess of \$50,000; (ii) the Developer has, or will establish, and maintain a physical presence in the City sufficient to subject the Project to Local Option Gross Receipts Tax; and (iii) the Developer will give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency.
- (c) For purposes of this Agreement, the use of the terms “gross receipts tax” and “gross receipts tax revenue” shall be construed to refer to that net portion of the tax imposed by the State of New Mexico for distribution to the City pursuant to the Gross Receipts and Compensating Tax Act and which are collected by the State of New Mexico and distributed to the City (current rate = 1.225%), and all revenue derived from such taxes, and that portion of the tax imposed by the City pursuant to the Municipal Gross Receipts Tax Act (current rate = 0.5%), and all revenue derived from such taxes. It is expressly understood that if a governmental or legislative body other than the City enacts any law or statute which results or which may result in any material changes or amendments to the foregoing provisions, which changes or amendments prohibit the City from complying with this Agreement or which adversely affect the City’s ability to comply herewith, then the City and the Developer shall reevaluate this Agreement and the incentives provided hereunder and may mutually agree to restructure the Agreement. If a restructured agreement cannot be agreed to by both parties within a reasonable period of time not more than sixty (60) days from the effective date of the law or statute which has materially affected the City’s compliance herewith, then this Agreement shall automatically terminate releasing both parties from their obligations hereunder.
- (d) For purposes of this agreement it is understood by both parties that if sufficient funds are not derived from the Gross Receipts Tax to cover this obligation, that it shall be extinguished. It is further understood by both parties that this is subject to the Governmental budgeting process, and if the City does not have sufficient funds to pay this agreement, it will provide notice to WSCI, LLC in writing, along with official documentation that it is unable to fulfill this contract due to budgeting shortfalls.

2. Municipal Gross Receipts Tax Payment. The City agrees to set aside and thereafter rebate to the Developer the municipal gross receipts tax revenues directly attributable to construction of the Project. It is estimated that approximately \$20,700 in gross receipt tax

revenues will be abated pursuant to this Agreement (*\$1,200,000 estimated construction costs x 1.7250%*). The City and the Developer hereby acknowledge that this estimate is only an approximation, and that the actual abatement may be for a greater or lesser amount depending upon the actual amount of such taxes levied. Payment shall be made to the Developer within ninety (90) days after the City is presented with copies of each invoice associated with the Project. In the event that any invoices that have been submitted to the City are amended, the Developer shall promptly forward a photocopy of such amended invoice to the City, clearly identifying them as an amendment of an amendment previously submitted to the City.

3. No General Obligation/Special Fund. It is an overriding consideration and determination of the City that existing sources of its gross receipts tax revenues shall not be used, impaired or otherwise affected by this Agreement. The amount due pursuant to this Agreement shall not be a general obligation of the City. The City shall not have an obligation to pay any amounts to Developer except an amount equal to the City's share of the tax imposed by the State of New Mexico for distribution to the City pursuant to the Gross Receipts and Compensating Tax Act (current rate = 1.225%), and that portion of the tax imposed by the City pursuant to the Municipal Gross Receipts Tax Act (current rate = 0.5%).

4. Term. The term of this Agreement shall be thirty-six (36) months from the date of issuance of a building permit for the Project. Upon receipt of the maximum rebate amount by Developer in accordance with this Agreement, the City's obligation to rebate gross receipts tax revenue to Developer shall terminate, but all other provisions of this Agreement shall remain in full force and effect through the end of the thirty-six (36) month term. Upon expiration of the term of this Agreement, the parties' obligations hereunder shall terminate, whether or not the maximum amount of gross receipts tax revenue rebate has been reached.

5. Escrow. The parties agree that in the event of any legal challenge to this Agreement, the City shall place any and all funds to which the Developer would have a claim under the terms of this Agreement in an interest bearing account, capable of separate identification, during the pendency of the legal challenge. Upon any final decision upholding the enforceability of this Agreement, all amounts in such account, including principal and accrued interest, shall be paid forthwith to the Developer. If this Agreement is determined to be invalid or unenforceable, all amounts in such account, including principal and accrued interest, shall be deposited by the City into its general fund and the Developer shall have no further claim thereto. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement, and the parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party.

6. Approval and Modification. This Agreement shall take effect only upon approval by the Alamogordo City Commission at a regular or special City Commission meeting. No modification of this Agreement shall be valid or binding unless the same is in writing and approved by the City Commission at a regular or special meeting.

7. Assignment. This Agreement shall be binding upon and inure to the benefit of the Developer and the City. The City's commitment to make the payments hereunder are made for the benefit of the Developer, and shall be enforceable by the Developer or any affiliate of the Developer or other party who is a successor-in-title to Developer's interest in the Project and has

assumed in writing the duties and obligations of the Developer, provided that nothing shall require the Developer to assign the benefits of this Agreement to any successor-in-title to Developer's interest in the Project and the City agrees that the Developer may transfer title to the Project while retaining the benefits of this Agreement. The Developer shall also have the right to assign this Agreement, and the City's obligation to make payment of the gross receipts tax revenues, to a third party independent of a transfer of title to the Project, including, but not limited to, any assignment, pledge or encumbrance of the Developer's rights under this Agreement in favor of any lender or other person providing financing for construction and development of the Project. The term "affiliate" shall mean an entity or individual which directly or indirectly controls, is controlled by, or is under common control with any identified person and, as to natural persons, shall also include the immediate family of such persons. Except as authorized in this Paragraph, this Agreement is personal to the Developer. This Agreement shall not run with the land.

8. Controlling Law and Venue. This Agreement shall be construed pursuant to the laws of the State of New Mexico. Exclusive jurisdiction for the resolution of any dispute relating to this Agreement is hereby vested in the Otero County District Court or the United States District Court of New Mexico.

9. Contingency; No Debt. The City's financial obligations under this Agreement are specifically contingent upon annual appropriation of funds sufficient to perform such obligation. This Agreement shall never constitute a debt or obligation of the City within any statutory or constitutional provision. Each year, the City shall include in the budget presented to the City Council a proposed appropriation for the rebate of the gross receipts tax revenues to which Developer is entitled under this Agreement, if any. The decision of the City Council not to appropriate funds in any given year shall not affect, impair or invalidate any of the remaining provisions of this Agreement in future years, and the failure of the City in any year to appropriate the gross receipts tax revenues otherwise due Developer shall cause the term of this Agreement to be extended by one year. Without contradiction of the preceding sentence, the City does hereby state that it is the present intent and expectation of the parties that the City will make all of the payments contemplated by this Agreement.

10. No Joint Venture. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this Agreement, and the City shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

11. No Third-Party Beneficiaries. Except as may be expressly provided herein, there are no intended third-party beneficiaries to this Agreement.

12. Force Majeure. The time of performance of any duty or obligation of Developer or the City hereunder shall be extended for the period during which performance was delayed or impeded by reason of riots, insurrections, war, fire, casualty, earthquake, acts of God, or other reasons of a like nature not the fault of the party performing such duty or obligation.

CITY OF ALAMOGORDO, NEW MEXICO

a New Mexico municipal corporation

By: _____
Brian Cesar, City Manager

WSCI, LLC

By: _____
Dennis Crimmins

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/11/2020

Report Date: 2/3/2020

Report No: 3.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, first publication of Ordinance 1611, repealing certain sections of Article 27 Vehicle for Hire and amending section 17-01A-050 regarding license fees for certain businesses.
(Rachel Hughs, City Clerk) **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve ordinance 1611 for first publication.

Background: The City has not regulated ambulances for more than 25 years, therefore this section needs to be repealed.

Z-Trans informed the City the drivers already do all the paperwork for the State, causing duplicate work. Drivers are covered by State Law of the Motor Carrier Act. The driver's FBI background check can take up to 90 days, sometimes even longer. The fee for a driver's application is \$15 payable to the City and the FBI background check is \$18 payable to the FBI.

ORDINANCE NO. 1611

AN ORDINANCE REPEALING CERTAIN SECTIONS OF ARTICLE 27 VEHICLE FOR HIRE AND AMENDING SECTION 17-01A-050 REGARDING LICENSE FEES FOR CERTAIN BUSINESSES

WHEREAS, the Code of Ordinances of the City of Alamogordo, New Mexico provides for certain businesses and occupations to be licensed and pay the required fees through the City Clerk's office; and,

WHEREAS, Drivers are covered by State Law under the Motor Carrier Act; and,

WHEREAS, Ambulance drivers and vehicles have not been regulated by the city since approximately 1992; and,

WHEREAS, city staff deems it necessary to clean up sections of the City Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the city commission of the city of Alamogordo that Article 27-02 of the Code of Ordinances is hereby repealed in its entirety.

BE IT FURTHER ORDAINED that Section 27-01-040 is repealed and Section 17-01A-050, be amended to read as follows:

17-01A-050. - License fees for certain businesses.

All persons, firms, corporations or associations engaged in any of the following pursuits, businesses and occupations shall, before commencing business, and on or before the 16th day of March of each year thereafter, secure a license from the city clerk and pay the listed fee instead of the business registration required by article I of this chapter:

Amusement halls, per year \$ 35.00

Boxing, sparring, wrestling or martial arts contest, per day 35.00

Carnivals and circuses, per day 35.00

Commercial solicitors (in addition to other license and business registration fees), per year 35.00

Drive-in restaurants, per year 35.00

Outdoor concerts, exhibitions and amusements for profit, per day 35.00

Outdoor displays and sales, per year 35.00

Pawnbrokers, per year 35.00

Public dances, per day 35.00

Route food vendors (see section 21-01-020(d)), per year 35.00

Vehicles for hire regulated by Chapter 27 35.00

~~Drivers of vehicles for hire if required by section 27-01-040, per year 15.00~~

27-01-040. -- Drivers.

- ~~(a) The owner of each vehicle for hire shall notify the department of public safety of the name, age, and New Mexico driver's license number of each driver employed, immediately upon the employment of that driver.~~
- ~~(b) Each driver shall obtain a license from the city before operating any vehicle for hire. The license shall be on a form prescribed by the city clerk.~~
- ~~(c) No driver shall be issued a license to operate a vehicle for hire where:

 - ~~(1) The driver does not have a current valid New Mexico driver's license of appropriate class which has not been suspended or revoked;~~
 - ~~(2) The driver has been convicted of driving under the influence of an alcoholic beverage or any drug, or has accumulated more than six (6) driving points, within the preceding year.~~
 - ~~(3) The driver has been convicted of a felony within five (5) years preceding his/her employment.~~~~
- ~~(d) If any driver does not continue to meet the conditions specified in subsection (b), that driver's license to operate a vehicle for hire shall be revoked as specified in section 17-01A-040.~~

Article 27-02 is hereby repealed in its entirety.

ARTICLE 27-02 — AMBULANCES

27-02-010. -- Definitions.

The following definitions are applicable to this article:

Base rate shall mean the initial charge, which includes the first mile or any parts thereof.

Corpse shall mean a human body declared legally dead.

Destination shall mean the point at which the patient or corpse is ultimately delivered or accepted and the vehicle released. The destination may be a hospital, mortuary, home or any other place where the patient or corpse is permanently removed from the vehicle and the vehicle released. A stop enroute for the purpose of certification as to the death of a patient or in an attempt to gain admittance to a hospital shall not be construed as the destination under this article.

Loaded mile shall mean the total miles the vehicle is operated to perform the requested services.

Patient shall mean a person, alive or dead, or dying in route, for whom a vehicle is ordered from the city and who knowingly or unknowingly accepts or receives the transportation services of such vehicle.

27-02-050. -- License application; bearing.

(a) — No license to operate a business of carrying persons for hire in a motor vehicle commonly known as an ambulance, and hereinafter so referred to, shall be granted until there has been filed an application for such license with the city manager.

(b) — The owner, proprietor, or the person in interest of such ambulance business, hereinafter referred to as "operator" shall so file the application, such application to contain the name and address of the operator, the place or places from which the business is to be conducted, the number of vehicles to be operated, and such other pertinent information as the city manager may require.

(c) — Such application shall be in a form to be prescribed by the city manager and shall be accompanied by a fee of fifty dollars (\$50.00).

(d) — Upon receipt of such application, it shall be presented to the city commission at its next regular meeting. At such meeting the commission shall set a time for the hearing on the application, at which hearing the board shall determine that there is a compelling need for the issuance of such license, such need to be determined by the public convenience and necessity. No such license shall be issued unless the commission determines it to be in the interest of the public convenience and necessity.

(e) — The time of hearing shall be not less than fifteen (15) days after the regular meeting at which the application is presented. The city manager shall duly publish notice of such hearing, such publication to be made not less than ten (10) days before the date of such hearing. Upon the setting of such time and place for hearing, the applicant for license shall notify all other operators of ambulance businesses who shall be operating their vehicles within the corporate limits of the city, such notification setting forth the notice of the hearing, together with the time and place thereof. Such notice shall be sent to all other operators by registered mail, with return receipt requested. At such holding of the hearing, the applicant shall produce the registry receipts and the signed return receipts to evidence compliance with this provision.

(f) — Upon the hearing provided for in this section the city commission shall hear all interested persons and upon conclusion of the hearing, shall either grant or deny the license, as above provided for, being governed by the evidence heard as to the public convenience and necessity involved.

(Code 1960, § 5-7-5)

27-02-060. -- Identification of vehicles.

All vehicles operated under an ambulance license, shall have displayed in a prominent place on the exterior surface of such vehicles the name of the operator, or the name under which such operator conducts his business.

27-02-070. -- Trip records to be maintained.

~~The operator of each ambulance licensed to operate shall maintain a complete written record of all trips made by each vehicle. The record shall contain the number of the vehicle, time of each trip made, and the point of origin and termination of each trip. Such record shall be preserved by the operator and shall be kept available for inspection at all times by all duly qualified law enforcement officers, the city manager and the city commission.~~

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2020.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney

Chapter 27 - VEHICLES FOR HIRE^{[1](#)}

Footnotes:

--- (1) ---

Cross reference— Outdoor automotive storage, § 11-154; licenses and miscellaneous business regulations, Ch. 17; streets, sidewalks and public places, Ch. 21; traffic, Ch. 24.

State Law reference— Authority to provide for public health, safety and welfare, N.M.S.A. § 3-6-1B; authority to regulate use of the streets, N.M.S.A. § 3-49-1A.

ARTICLE 27-01. - IN GENERAL

27-01-010. - Definitions.

As used in this article:

Driver is any person who operates a vehicle for hire.

Limousine is a vehicle for hire for the transportation of persons for which consideration is paid on an hourly, daily, or destination basis, but not on a mileage or zone basis.

Taxicab is a vehicle for hire for the transportation of persons or property where a consideration is paid on a mileage, zone, or destination basis.

Vehicle for hire is any vehicle and driver carrying passengers or property, for the convenience of the public, and for consideration, but the term does not include ambulances, or vehicles for the transportation of property only which are subject to the provisions of the New Mexico Motor Carrier Act.

(Ord. No. 680, § 2, 7-10-84)

State Law reference— Motor Carrier Act, N.M.S.A. § 65-2-1 et seq.

27-01-020. - License required.

It is unlawful to operate any vehicle for hire in the city unless the owner has applied for and obtained a license as required by Chapter 17, Article I-A of this Code, provided, however, that this requirement shall not apply to interstate bus companies or other vehicles for hire which do not transport passengers from one point to another within the city.

(Ord. No. 680, § 2, 7-10-84; Ord. No. 759 § 1, 6-13-89)

27-01-030. - Contents of license application.

In addition to the normal requirements of a business license application, the applicant for a license for a vehicle for hire shall submit the following information:

- (a) The make, model, license number and vehicle identification number (VIN) of each vehicle to be used for hire;
- (b) The name, age and New Mexico driver's license number of each driver employed;
- (c) The area proposed to be served by the business; and
- (d) A description of the nature of all services offered.

(Ord. No. 680, § 2, 7-10-84; Ord. No. 759, § 2, 6-13-89)

27-01-040. - Drivers.

- (a) The owner of each vehicle for hire shall notify the department of public safety of the name, age, and New Mexico driver's license number of each driver employed, immediately upon the employment of that driver.
- (b) Each driver shall obtain a license from the city before operating any vehicle for hire. The license shall be on a form prescribed by the city clerk.
- (c) No driver shall be issued a license to operate a vehicle for hire where:
 - (1) The driver does not have a current valid New Mexico driver's license of appropriate class which has not been suspended or revoked;
 - (2) The driver has been convicted of driving under the influence of an alcoholic beverage or any drug, or has accumulated more than six (6) driving points, within the preceding year.
 - (3) The driver has been convicted of a felony within five (5) years preceding his/her employment.
- (d) If any driver does not continue to meet the conditions specified in subsection (b), that driver's license to operate a vehicle for hire shall be revoked as specified in section 17-01A-040.

(Ord. No. 680, § 2, 7-10-84; Ord. No. 759, § 3, 6-13-89)

27-01-050. - Safety inspection of vehicles.

Section 27-01-050 is hereby repealed.

(Ord. No. 680, § 2, 7-10-84; Ord. No. 956, § 1, 8-8-95)

27-01-060. - Bond or insurance.

- (a) The owner or operator of every vehicle for hire shall, before obtaining a license, file with the city clerk either a surety bond or a policy of insurance issued by a company authorized to do business in this state as specified in this section. This bond or policy of insurance shall be maintained and renewed as long as the license is in effect, and failure to do so will result in revocation of the license.
- (b) The bond or policy of insurance shall be conditioned to pay all losses and damages for bodily injury, death, or property damage resulting from the negligent operation, maintenance or use of any vehicle for hire, or for any loss or damage to property of shippers or consignees carried by such vehicle for hire.
- (c) The surety bond or policy of insurance shall not be subject to cancellation, except after ten (10) days notice in writing to the city clerk by the issuing company.
- (d) The minimum limits of liability of the surety bond or policy of insurance are as follows:
 - (1) For damage to or destruction of property in a single occurrence, other than cargo \$100,000.00
 - (2) For bodily injury or death to any person for any number of claims arising out of a single occurrence 300,000.00
 - (3) All claims arising out of a single occurrence 500,000.00

(Ord. No. 680, § 2, 7-10-84; Ord. No. 759, § 4, 6-13-89)

27-01-070. - Identification of vehicles.

Each vehicle for hire shall be conspicuously identified with the name of the person or company operating it on the exterior of the vehicle, except limousine identification need not be conspicuous and may be on the interior of the vehicle. The name of the driver and the business license for the vehicle shall be posted in the interior of each vehicle.

(Ord. No. 680, § 2, 7-10-84)

27-01-080. - Fares and rates.

The schedule of fares and zone rates for taxicabs shall be posted conspicuously in the interior of the vehicle. Zone maps need not be posted, but must be carried in the cab. The schedule of rates and fares for limousines and other vehicles for hire shall be available within the vehicle for inspection at all times.

(Ord. No. 680, § 2, 7-10-84)

ARTICLE 27-02. - AMBULANCES^[2]

Footnotes:

--- (2) ---

Cross reference— Health and sanitation, Ch. 15.

State Law reference— Ambulance Standards Act, N.M.S.A. § 65-6-1 et seq.

27-02-010. - Definitions.

The following definitions are applicable to this article:

Base rate shall mean the initial charge, which includes the first mile or any parts thereof.

Corpse shall mean a human body declared legally dead.

Destination shall mean the point at which the patient or corpse is ultimately delivered or accepted and the vehicle released. The destination may be a hospital, mortuary, home or any other place where the patient or corpse is permanently removed from the vehicle and the vehicle released. A stop enroute for the purpose of certification as to the death of a patient or in an attempt to gain admittance to a hospital shall not be construed as the destination under this article.

Loaded mile shall mean the total miles the vehicle is operated to perform the requested services.

Patient shall mean a person, alive or dead, or dying in route, for whom a vehicle is ordered from the city and who knowingly or unknowingly accepts or receives the transportation services of such vehicle.

(Code 1960, § 5-7-2)

Cross reference— Rules of construction and definitions generally, § 1-2.

27-02-030. - Rates.

Section 27-02-030 is hereby repealed.

(Code 1960, § 5-7-3; Ord. No: 383, 11-9-66; Ord. No. 443, 4-14-70; Ord. No. 956, § 3, 8-8-95)

27-02-040. - City not liable for inability to provide service.

Section 27-02-040 is hereby repealed.

(Code 1960, § 5-7-4; Ord. No. 383, 11-9-66; Ord. No. 956, § 4, 8-8-95)

27-02-050. - License application; bearing.

- (a) No license to operate a business of carrying persons for hire in a motor vehicle commonly known as an ambulance, and hereinafter so referred to, shall be granted until there has been filed an application for such license with the city manager.
- (b) The owner, proprietor, or the person in interest of such ambulance business, hereinafter referred to as "operator" shall so file the application, such application to contain the name and address of the operator, the place or places from which the business is to be conducted, the number of vehicles to be operated, and such other pertinent information as the city manager may require.
- (c) Such application shall be in a form to be prescribed by the city manager and shall be accompanied by a fee of fifty dollars (\$50.00).
- (d) Upon receipt of such application, it shall be presented to the city commission at its next regular meeting. At such meeting the commission shall set a time for the hearing on the application, at which hearing the board shall determine that there is a compelling need for the issuance of such license, such need to be determined by the public convenience and necessity. No such license shall be issued unless the commission determines it to be in the interest of the public convenience and necessity.
- (e) The time of hearing shall be not less than fifteen (15) days after the regular meeting at which the application is presented. The city manager shall duly publish notice of such hearing, such publication to be made not less than ten (10) days before the date of such hearing. Upon the setting of such time and place for hearing, the applicant for license shall notify all other operators of ambulance businesses who shall be operating their vehicles within the corporate limits of the city, such notification setting forth the notice of the hearing, together with the time and place thereof. Such notice shall be sent to all other operators by registered mail, with return receipt requested. At such holding of the hearing, the applicant shall produce the registry receipts and the signed return receipts to evidence compliance with this provision.
- (f) Upon the hearing provided for in this section the city commission shall hear all interested persons and upon conclusion of the hearing, shall either grant or deny the license, as above provided for, being governed by the evidence heard as to the public convenience and necessity involved.

(Code 1960, § 5-7-5)

27-02-060. - Identification of vehicles.

All vehicles operated under an ambulance license, shall have displayed in a prominent place on the exterior surface of such vehicles the name of the operator, or the name under which such operator conducts his business.

(Code 1960, § 5-7-6)

27-02-070. - Trip records to be maintained.

The operator of each ambulance licensed to operate shall maintain a complete written record of all trips made by each vehicle. The record shall contain the number of the vehicle, time of each trip made, and the point of origin and termination of each trip. Such record shall be preserved by the operator and shall be kept available for inspection at all times by all duly qualified law enforcement officers, the city manager and the city commission.

(Code 1960, § 5-7-7)

27-02-080. - Safety inspection of vehicles.

Section 27-02-080 is hereby repealed.

(Code 1960, § 5-7-8; Ord. No. 956, § 5, 8-8-95)

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/11/2020

Report Date: 2/4/2020

Report No: 4.

Submitted By: Petria Bengoechea

Subject: Consider, and act upon, first publication of Ordinance 1612, amending Chapter 2, Section 15 of the City of Alamogordo Code of Ordinances regarding the Gross Receipts Investment Program ("GRIP"). (*Petria Bengoechea, City Attorney*) (**Roll Call Vote required**)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve for first publication.

Background: Ordinance 1612 amends the Gross Receipts Investment Program ("GRIP") ordinance to require businesses to turn in their GRIP application before either ground is broken on their project, or before a remodel begins. This will allow the City to appropriately budget the GRIP fund and allow for easier financial planning for the City.

**ORDINANCE 1612, AMENDING CHAPTER 2, SECTION 15 OF THE CITY OF
ALAMOGORDO CODE OF ORDINANCES**

WHEREAS, the City of Alamogordo, New Mexico and its commissioners recognize that the City's water supply is of upmost important to the citizens of Alamogordo;

WHEREAS, the City Commission wishes to clarify the requirements for the GRIP program;

WHEREAS, the City Commission wishes to be able to fiscally plan the needs of the GRIP program during budget;

BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 2-15 of the *Code of Ordinances* be amended as follows:

ARTICLE 2-15. - GROSS RECEIPTS INVESTMENT PROGRAM ("GRIP")

2-15-010. - Title.

This article shall be entitled the "Gross Receipts Investment Program" ("GRIP"), and shall hereafter be referred to and known under such title. This article is established pursuant to the authority granted to a home rule municipality by Article X, Section 6 of the New Mexico Constitution and the Municipal Charter Act, NMSA 1978, §§ 3-15-1 to 3-15-16 (1971, as amended).

(Ord. No. 1379, § 1, 10-12-10)

2-15-020. - Purpose.

There is hereby established a gross receipts investment program within the city intended to attract new businesses, including retail, or commercial activities or to encourage the expansion of an existing business, including retail, or commercial activity whose gross receipts are subject to the imposition of gross receipts tax, thereby creating new job opportunities for the citizens of the city while promoting the economic growth and welfare of the city, and to improve the city through new construction or the rehabilitation of existing commercial or industrial property, thereby encouraging the revitalization of the city while enhancing the area by increasing land values and providing an overall aesthetic improvement. To accomplish this purpose, the city, by written agreement, may reimburse certain gross receipts taxes directly attributable to construction activities associated with the construction or expansion of a business or commercial activity and the purchase of tangible personal property that will become an ingredient or component part of such a construction project, where the reimbursement thereof is instrumental in bringing the business or commercial activity to the city or retaining its presence within the city.

(Ord. No. 1379, § 2, 10-12-10)

2-15-030. - Definitions.

As used in the gross receipts investment program:

Applicant means a landowner or developer, as hereinafter defined, who has filed an application for reimbursement pursuant to the GRIP.

Building means any structure on a lot, having a roof supported by columns or walls and designed and/or intended for the shelter, housing or enclosure of an eligible entity.

Business owner means a sole proprietor, corporation, partnership, limited liability company, or some other legal entity that owns or owns and manages either a place of business or other establishment that is engaged in selling goods directly to the consumer, where such goods are generally available for immediate purchase and removal from the premises by the purchaser, and whose receipts are all or partially subject to gross receipts tax, or a commercial activity whose services are all or partially subject to gross receipts tax, and who has a proprietary interest in land.

Contractor means any person who accepts orders or contracts from the owner of property or the property owner's duly authorized agent to assume authority or control, or to supervise, manage, or direct the work of others, or who is delegated authority by the owner to do so, whether at a fixed price or on a cost-plus basis, for doing any work.

Developer means any landowner, agent of such landowner, business owner, or tenant with the permission of such landowner, who makes or causes to be made a Development.

Development means any of the following activities on real property located within the corporate boundaries of the city:

- (1) The new construction of a facility for use by an establishment or place of business primarily engaged in selling goods directly to the consumer, where such goods are generally available for immediate purchase and removal from the premises by the purchaser, and whose receipts are partially subject to gross receipts tax, or a commercial activity whose services are partially subject to gross receipts tax; or
- (2) The substantial expansion of an existing facility being used by an establishment or place of business primarily engaged in selling goods directly to the consumer, where such goods are generally available for immediate purchase and removal from the premises by the purchaser, and whose receipts are partially subject to gross receipts tax, or a commercial activity whose services are partially subject to gross receipts tax. For purposes of this program, it shall not be necessary to meet any specified level or percentage of receipts that are subject to gross receipts tax. An establishment, place of business or a commercial activity need only show that a portion of its receipts are subject to gross receipts tax.

Eligible entity means an establishment or place of business primarily engaged in selling goods directly to the consumer, where such goods are generally available for immediate purchase and removal from the premises by the purchaser, and whose receipts are partially subject to gross receipts tax, or a commercial activity whose services are partially subject to gross receipts tax. An entity is not required to meet any specified percentage of taxable receipts in order to be considered an eligible entity. Instead, the entity only needs to show that a portion of its receipts are subject to gross receipts tax.

Eligible project means a development that meets the requirements of section 2-15-040.

Facility means a building or structure that allows or makes possible a person to engage in some type of business or commercial activity.

Landowner means the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

Local employment means those laborers or skilled craftsmen who are residents of the County of Otero, New Mexico.

Local option gross receipts tax means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax.

Local subcontractors means only those located or having a principal office in Otero County.

Local vendors and suppliers means only those vendors or suppliers who are located or have a principal office in Otero County.

Structure means anything constructed or erected on the ground or attached to the ground.

(Ord. No. 1379, § 3, 10-12-10)

2-15-040. - Eligibility.

In order for a development to qualify for reimbursement under the GRIP, it must:

- (1) Demonstrate that the development involves the building of a structure, or the expansion or rehabilitation of an existing structure, for use by an eligible entity with a value in excess of fifty thousand dollars (\$50,000.00);
- (2) The contractor must have, or establish, and maintain a physical presence in the city sufficient to subject the development to local option gross receipts tax; and
- (3) The contractor must give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency. For purposes of determining eligibility, the value of the project shall be equal to the valuation assigned to a project by the construction industries division of the state regulation and licensing department pursuant to 14.5.5.10 NMAC for purposes of establishing a building permit fee.
- (4) Submit the application prior to either breaking ground, or the beginning of a remodel of an eligible project.

(Ord. No. 1379, § 4, 10-12-10; Ord. No. [1561](#), § 1, 1-30-18)

2-15-050. - Application procedure.

- (a) All GRIP reimbursement requests shall be made in writing on a form prescribed by the city. The applicant must show that the reimbursement is a deciding factor in the decision to

establish or expand the eligible entity in the city. All applications must be received prior to the project either breaking ground or the start of the remodel to be eligible for reimbursement.

- (b) Prior to entering into a GRIP agreement, the city commission shall receive and consider a recommendation from the city manager, or designee, said recommendation being based on the factors listed in section 2-15-060.
- (c) If the GRIP application is approved, the commission shall approve the agreement with the developer providing for the GRIP reimbursement payments by resolution.

(Ord. No. 1379, § 5, 10-12-10; Ord. No. [1561](#), § 2, 1-30-18; Ord. No. [1571](#), § 1, 7-17-18)

2-15-060. - Factors considered by city commission when considering reimbursement requests.

The following non-exclusive factors may be considered in determining whether to enter into a reimbursement agreement with an applicant, and if so, the percentage of value to be abated:

- (1) The extent to which local labor, local subcontractors and local vendors and suppliers will be used in the project;
- (2) The amount of local gross receipt taxes to be generated by the project;
- (3) The amount the property tax base valuation that will be increased as a result of the project;
- (4) The potential economic impact the project will provide to the local community;
- (5) The costs to be incurred by the city to provide facilities or services necessary to complete the project;

Each application for tax reimbursement shall be reviewed on its merits utilizing the factors provided above. After such review, a reimbursement request may be denied entirely or may be granted to the extent deemed appropriate after evaluation.

(Ord. No. 1379, § 6, 10-12-10)

2-15-070. - GRIP agreement.

Upon a finding that the development qualifies as a eligible project under the GRIP and is in the public interest, the city and the applicant shall enter into an agreement wherein the city will pay to the applicant up to one hundred (100) percent of the city's share of total gross receipts taxes directly attributable to the eligible project, less any amount dedicated to other special purposes, received by the city during the term of the agreement. The GRIP agreement shall include at least the following terms:

- (1) The applicant must report and pay gross receipts taxes on all receipts associated with the development that are subject to the gross receipts tax;
- (2) The applicant shall agree that its only recourse for payment of the GRIP reimbursement payments are those invoices submitted by the applicant which prove gross receipts taxes have been paid to the State of New Mexico for payment to the city

and that the city has no other liability of whatever kind, whether in law or equity, to the applicant;

- (3) A provision requiring the applicant, on at least a quarterly basis, and at applicant's cost, to allow the full examination by city or its designated representative(s) of all documents necessary for city to assure that best efforts have been used by applicant to utilize local labor, subcontractors, vendors and suppliers. The city will also require that such contracts contain provisions binding the engineering/construction firms utilized as general contractors on the project to the terms of the GRIP agreement; and
- (4) The applicant shall agree to an acceptable means by which the city can administer compliance with the agreement, including any necessary audits of the applicant's books, accounts and financial transactions associated with the development.

(Ord. No. 1379, § 7, 10-12-10; Ord. No. [1571](#), § 2, 7-17-18)

2-15-080. - Payment.

All invoices associated with the project shall be submitted to the city finance department, who will evaluate the invoices and create a calculation form to be delivered to the applicant for review. Funds determined to be due to applicant shall be paid as follows:

- (1) For projects in which the expected reimbursement is anticipated to be in excess of ten thousand dollars (\$10,000.00) and less than one hundred thousand dollars (\$100,000.00), following approval of the GRIP agreement, applicant shall submit invoices paid in full on a monthly or quarterly basis, along with an invoice from applicant. The city shall have thirty (30) days to present a calculation to applicant for review. Following approval of the calculation, by both parties, the city shall have ten (10) business days to pay each submission.
- (2) For projects in which the expected reimbursement is anticipated to be less than ten thousand dollars (\$10,000.00) the applicant may either submit on a monthly or quarterly basis as above, or submit all invoices at the completion of the project. The timeline shall be the same as in 2-15-080(1).
- (3) For projects in which the expected reimbursement is anticipated to be in excess of one hundred thousand dollars (\$100,000.00), following approval of the GRIP application, the city manager and city attorney shall work with the applicant to come up with payment terms that are agreeable to both parties. Such agreement will still be passed by commission, and shall specify the time period to submit invoices, along with how and when payment is to be made to the applicant by the city.

(Ord. No. [1571](#), § 3, 7-17-18; Ord. No. [1595](#), 7-12-19)

Editor's note— Ord. No. [1571](#), § 3, adopted July 17, 2018, in effect, repealed § 2-15-080 and enacted a new § 2-15-080 as set out herein. Former § 2-15-080 pertained to special fund and derived from Ord. No. 1379, adopted October 12, 2010.

2-15-090. - Sunset clause.

The gross receipts investment program shall expire October 31, 2025.

(Ord. No. 1379, § 9, 10-12-10; Ord. No. [1505](#), 12-11-15; Ord. No. [1595](#), 7-12-19)

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/11/2020

Report Date:

Report No: 5.

Submitted By: April Jones

Subject: Appointments to Boards and Committees. (*Richard Boss, Mayor*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Appoint to the Alamogordo Library Board.

Background: Alamogordo Library Board. One (1) city vacancy. Vacancy due to expiring term of Roque Rosales. Staff Liaison - Melissa Garcia.

The following individual is interested in being appointed:

Richard Warren - If appointed this will be his first term.

Housing Authority Advisory Board. One (1) two year vacancy, and one (1) three year vacancy. Staff Liaison - Marissa Ruiz. The three year vacancy is due to the expiring term of Leroy Copeland. No applications received.

Planning and Zoning Commission. One (1) vacancy. Staff Liaison - Stella Rael. This vacancy is due to the expiring term of Pamela Lee. No applications received.

If anyone is interested in serving on a board or committee you may apply with the City Clerk's office.

City of Alamogordo
APPLICATION TO SERVE ON A
CITY BOARD/COMMITTEE

RECEIVED
JAN 24 2020
CITY CLERK

Name: RICHARD WARREN
Home Phone: _____ Work Phone: _____
Cell Phone: 541-551-5209 Fax No: _____
E-mail address: RICKWART98@YAHOO.COM
Physical Address: UNDERSCORE 1508 WALNUT DR
Is the above address within City limits? Yes X No _____
Mailing Address: SAME AS ABOVE
Present Employer: RETIRED Job Title: —

Board/Committee you wish to serve on:

First choice: LIBRARY BOARD
Second choice: _____

Are you related to anyone who is presently employed by the City of Alamogordo?

Yes _____ No X If so, what is their relation to you? _____

Are you related to any Elected Official of the City of Alamogordo?

Yes _____ No X If so, what is their relation to you? _____

Experience and education relating to the Board/Committee: _____

COUNTY LIBRARY COMMISSION - CITY LIBRARY
COMMISSION - OWNER BOOKSTORE - CITY COUNCIL
A MAYOR IN OTHER STATES.

Please indicate your interest in serving on a City Board/ Committee: PREVIOUS

EXPERIENCE LOVE LIBRARY AND SERVICES
NEW IN TOWN WANT TO CONTRIBUTE TO
COMMUNITY.

Please return completed application to:

City Clerk's Office
1376 E. Ninth Street
Alamogordo, NM 88310
PHONE: (575)439-4100
FAX: (575)439-4396

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 2/11/2020

Report Date: 2/4/2020

Report No: 6.

Submitted By: Petria Bengoechea

Subject: Adjourn into Executive Session in compliance with 10-15-1(h)(7), NMSA 1978 (as amended) to discuss threatened or pending litigation; All lawsuit activity over the past year with the self-insurers fund.

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation:

Background: