

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION SPECIAL MEETING MINUTES
3:00 P.M., COMMISSION CHAMBERS
March 18, 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 3:00 p.m. Roll Call was taken by the City Clerk. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Torres and the Pledge of Allegiance was led by Commissioner Payne.

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

Pastor Anthony Torres commented on the following:

He said they are praying for the Commission and they 100 percent support them. He asked what they can do as faith-based leaders to help at this time. Mayor Boss said just continue to pray for them.

Jennifer Tomcraay commented on the following:

She said she appreciated the prayer and the pledge, but she does not see the words in the prayer or the allegiance helping her with her water issue. She said for her to find a leak that she has had since December it is going to be between \$12,000 and \$15,000. She had asked the City, in December, why her bill was higher and was told that she would be notified in a few days. She received a tag on January 14, 2020 on her trash can. Mayor Boss said there is no discussion at this time, but he wanted to let her know that any leak that is not on City property the City is not responsible. She said her main issue is that the bill she owes right now is over \$1700. Mayor Boss asked if it was mostly because of the leak. She said it is mostly because of the leak and the delay of getting back to her. She said she would be glad to make payments on the part that she is truly responsible for, but if she would have been notified when she was told she was going to be notified, which was 2 and ½ weeks earlier it could have saved maybe \$1000 to \$1200 of that bill. She said she would like to try and locate the leak but trying to get that kind of money together is ridiculous. She said Mr. Cesar did send a crew out to dig holes because when they put the pipeline across her neighbor's property, they put a fence up to keep people from going in. Mayor Boss interrupted, and Commissioner Payne advised that they could not do this right now because it was not on the agenda.

City Manager Cesar said he has met with Ms. Tomcraay and he can meet with her again. He said once the leak has been found, the City Ordinance allows staff to go back and adjust, to include the time where she did not include timely notification. He said he did have a City crew go up to make sure the City did not damage her side of the service line when that fencing was put in. There was no damage, so that leak still needs to be addressed. He said her past bill was put on hold as they are working through the process. It is incomplete at this time.

Mayor Boss advised Ms. Tomcraay that she could come back to the Commission after she has met with the City Manager.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. He said they have been receiving guidance from Governor's Office, the CDC, the Health Department and Federal Government. He read the Governor's instructions to close certain type of businesses and restrictions on other businesses until April 10th. He said the City is looking at sending a number of City employees' home to telecommute or work from home. He said the City does have essential services that they provide to the community. He is sending people home on an on-call status. He said Police and the Fire Department have to a minimum staffing level that they must keep. He can't let the firefighters go because they do assist with AMR requests, and he needs firefighters to be there for emergency services. The Police Department is looking at their area of responsibility to see what they can limit and minimize interactions. If any employee that is sent home and had scheduled time-off, they will be charged leave. He said a Public Service Announcement will be coming out on Friday, announcing City Hall will be closing the doors to the public. There will be numbers to call and then they will be routed to the appropriate person. He said that if someone needs to come in City Hall it will need to be by appointment. If business can be conducted by phone that is how it will be conducted.

Assistant City Manager Hernandez said they do have a website where they are keeping all the PSAs, and it will be updated regularly.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Payne made the following comments:

She thanked the staff in this time. She thanked Pastor Torres and asked him to keep praying for the Officers. She said this is really a tough time.

Commissioner Rardin made the following comments:

He asked Pastor Torres if they could keep an eye on the elderly, that's something the church leaders can do to help. Pastor Torres said on their Facebook page, anyone can email him or his associate, and they could go shopping for them or if they have groceries somewhere, they could send staff to go and pick it up for them. Assistant City Manager Hernandez said the elderly could also call the City's Community Services Department.

Mayor Boss made the following comments:

He said they have to be sympathetic to restaurants and try to order out to help them. A lot of businesses will be affected.

CONSENT AGENDA

1. Consider, and act upon, Resolution 2020-19 to apply for the New Mexico Department of Tourism's Clean and Beautiful Grant for FY 21 for funding for the Keep Alamogordo Beautiful program. (*Joshua Sides, Keep Alamogordo Beautiful Program Coordinator*) (Roll Call Vote Required)
2. Consider, and act upon, Resolution No. 2020-20 Approving first amendment to the agreement between the City of Alamogordo, New Mexico (City) and Valli Information Systems, Inc. dba Postal Pros Southwest (Contractor) dated December 16, 2019. (*Mark Threadgill, Customer Service Manager*) (Roll Call Vote Required)
3. Consider, and act upon, Resolution 2020-22 Ratifying the actions of the City Manager regarding the suspension of late fees, delinquency fees, and termination for nonpayment for city utility bills and authorizing the City Manager to reimpose the fees and termination at his discretion. (*Mark Threadgill, Customer Service Manager*) (Roll Call Vote Required)

Assistant City Manager Hernandez asked to pull Item # 3 from the Consent Calendar.

Commissioner Rardin moved to approve item 1 and 2 of the consent calendar.

Commissioner Baldwin seconded the motion.

Roll Call Vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

3. Consider, and act upon, Resolution 2020-22 Ratifying the actions of the City Manager regarding the suspension of late fees, delinquency fees, and termination for nonpayment for city utility bills and authorizing the City Manager to reimpose the fees and termination at his discretion. (Mark Threadgill, Customer Service Manager) (Roll Call Vote Required)

Customer Service Manager Threadgill said this was pulled off because of a typo, the resolution number on the Resolution attachments should be 2020-22.

Commissioner Baldwin said there was no end date on this Resolution. Customer Service Manager Threadgill said there was no end time because they don't know when this will end, but the Resolution does give the City Manager authority to reimpose those fees.

Mayor Pro-Tem Sikes asked if this would apply to the library or is it specific to Utility Billing. Customer Service Manager Threadgill said this is specific to Utility Bills. Mayor Pro-Tem Sikes asked if they could amend it to include the Library. Assistant City Manager Hernandez said it has already been discussed and the City will have to waive some of the library late fees.

Mayor Boss asked for clarification on the Resolution number. Customer Service Manager Threadgill said it is 2020-22, it is correct on the Agenda Report but not on the Resolution itself.

Commissioner Baldwin moved to approve.

Commissioner Rardin seconded the motion.

Roll Call Vote taken.

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

NEW BUSINESS

4. Consider, and act upon, approval of Change Order no. 6, Public Works Bid no. 2017-009, to Smithco Construction, Inc. related to the Bonito Lake Restoration project in an amount not to exceed \$9,437,903.38, including NMGRT. (Bob Johnson, Engineering Manager)

Engineering Manager Johnson said back on January 14th, the Commission approved Change Order number 5 to keep the project moving forward while the City, FEMA and the contracted engineering firm kept on a dialogue relative to the contractor's change order which was approximately \$3 million. He said FEMA initially denied the contractor's change order but there was the ability for the City to appeal that decision. On March 9, 2020, FEMA informed them that they were going to approve the change order. The City's cost share of this FEMA sub-grant amendment is \$380,904.15. The amendment is like the sub-grant itself where the City's share is 12.5 percent, the State has a 12.5 percent share and the federal government will fund 75 percent. He explained the details of the change order. He said once the sub-grant is received and City Manager Cesar executes it, Homeland Security will sign off on it then. Once it is completely executed the City will be eligible for 50 percent of the federal and the State share as an interim disbursement. About \$2 million will come back to the City very quickly after the amendment has been executed.

Mayor Boss said this is a really big deal for the City, it is a win-win for the City.

Engineering Manager Johnson said it is. He also mentioned that since 2012, when the disaster was first declared, FEMA had issued grants in the amount of a little over \$20 million including the sub-grant amendment that is in play right now. The City's share of all that, over a span of nine years, is about \$2.6 million.

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

5. Consider, and act upon, approval of Change Order no. 7, RFQ no. 2014-005, to Bohannan Huston, Inc. related to the engineering and design of the Bonito Lake Restoration project in an amount not to exceed \$144,055.63, including NMGRT. (Bob Johnson, Engineering Manager)

Engineering Manager Johnson said the item before them is commensurate with the previous item. This is more from the consultant standpoint with the extension of the project for one year. The consultant will have an increase in their design fees relative to the funding agency coordination, construction administration and construction observation.

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

6. Consider and act, upon, Ordinance 1615 for first publication amending 02-01-040 of Alamogordo Code of Ordinance. (Stephanie Hernandez, Assistant City Manager and Evelyn Huff, Finance Director). (Roll Call Vote Required)

Assistant City Manager Hernandez said back when they had a discussion on the hold harmless tax increase, it was brought to their attention that there is an ordinance in place that they could not start a new tax or increase a new tax. This ordinance was established in 1988. She said this basically takes that out of the ordinance, repealing that portion of 2-1-040.

Commissioner Rardin asked City Manager Cesar if they can repeal this Ordinance, because this was brought forward by the people, that would not allow the City to pass any additional taxes without vote of the people. He asked if that is the one they are talking about. City Manager Cesar said that is the one he is talking about, but Ordinances are meant to change over time. He said the past Legislative session, Municipalities and Counties were given authority by the State to implement the Hold Harmless Tax. He said that went directly against this Ordinance. He said this gives the Commission the ability, because in this Legislative session, the Governor and the Legislature corrected what was done in past Legislation. He said the one-eighth, the Commission passed was never implemented because they changed the rules in previous legislation. He said they need this now because their gross receipts taxes are tanking with businesses being closed. This does not prohibit the Commission from having public input if they are wanting to rededicate an existing tax for another purpose. There are some taxes they have the ability to redirect and use for another purpose. If a majority of the Commission decides for whatever reason if they want this to go out to the voters, the Commission has the authority to do that.

Commissioner Rardin said the reason he is bringing it up was because this was brought forward by the people. City Manager Cesar said pretty much every Ordinance or changes to Ordinances they have on the books come from the people. He said Ordinances change all the time and change with what is happening. He said ultimately this is up to the Commission if they want to approve or not approve this. Commissioner Rardin said when they originally did the hold harmless fix, they said it was without referendum. This means the Commission could pass it regardless of it. He asked if they changed it a few years later. City Manager Cesar it was changed the last legislative session. It was changed so that municipalities and counties that didn't implement any portion of it, they lost the ability to do it at that time. He said they were not the only municipality that was hit by that.

City Attorney Bengoechea said the State can tell them that it could pass without referendum, but they have further restricted themselves with this ordinance. Commissioner Rardin said the Commission at the time did it because the voters brought it forward and wanted it in the past.

City Manager Cesar said in the mid 90's there was an ordinance on the books at that time that said water and sewer rates could not be raised unless the citizens voted and approved an increase in water and sewer rates. He said that was changed in 1994 or 1995, but that was brought forward by the people. This is a similar situation. He said if they are going to wait for an odd year for the Commission to put out to the voters to approve the one-eighth, they will be out for an extended period of time. He said if the City does not see this for a year or a year and a half then they will be in a situation that staff brought to the Commission the last budgetary process to where they have to look at what services to scale back on or shutting down.

Commissioner Baldwin thanked Commissioner Rardin for bringing this up. He said he has made some of his decisions after his first year being elected based on that Ordinance that was put in by the public. He said when they had questions in reference to changing things, it was a pretty powerful statement, even though they still made decisions afterwards, so rectifying it is the right thing to do. He has always been a big fan of redirecting some of the taxes if it was allowable by law. He said he understands it and will support it, but he recommends that this have two readings. Assistant City Manager Hernandez said it goes for first publication and then final publication. Commissioner Baldwin said as long as it is that process it is still holding true to putting it out and letting people come in and voice their opinion and then dealing with it after that.

City Manager Cesar reminded them that this will not come out at the next Commission meeting, because the next two Commission meetings have been cancelled.

Commissioner Rardin said they can tweak the ordinance to allow this three-eighths to be passed without voter approval. This will give the Commission the ability to pass any tax without the vote of the people. He thinks there are few smaller increments that are additional gross receipts tax that they can pass. This Commission would put a lot of thought into it, but if they repeal this future Commissions could pass whatever they want as far as taxes go.

Assistant City Manager Hernandez said last legislative session they restricted the total amount of taxes a municipality can pass. She said the City will never get to 10 percent; they can only go up to 2.5 percent. They cannot just pass taxes, there is some wiggle room to pass the three-eighths but other than that, they are maxed out. Commissioner Rardin asked, after the three-eighths what will be left. Assistant City Manager Hernandez said there will be one-sixteenth left.

Mayor Boss moved to approve.

Mayor Pro-Tem Sikes seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-1-0. Commissioner Rardin voted nay.

7. Consider, and act upon, Resolution 2020-21 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 March 18, 2020. (Evelyn Huff, Budget Analyst) (Roll Call Vote Required)

Finance Director Huff said the resolution number on the attachment is incorrect, it should be 2020-21. She explained the budget revision includes the Bonito Lake grant with the change orders they just approved, and the money they will be receiving from FEMA. The other revision is to add some special event sponsorship money. This sponsorship money needed to be put on here so they can refund it back.

**Mayor Pro-Tem Sikes moved to approve.
Commissioner Payne seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0.**

8. Consider, and act upon, Ordinance 1601 for first publication adopting a municipal gross receipts tax and repealing ordinance 1594. (Stephanie Hernandez, Assistant City Manager and Evelyn Huff, Finance Director). (Roll Call Vote Required)

Assistant City Manager Hernandez said last legislative session House Bill 419 regarding the Hold Harmless. She said because the City's Ordinance did not go into effect until July 3rd, they could no longer call it the Hold Harmless. They waited until now to bring it back because they were told by the New Mexico Municipal League that there was still confusion and clean up language that needed to happen in this session. It was just signed by the Governor on March 11th. The clean-up did not affect this part of it, so now they are bringing it back. It is basically replacing the Hold Harmless, the one-eighth, to the unrestricted Municipal Growth Tax and changing the effective date to July 1, 2020.

**Mayor Pro-Tem Sikes moved to approve.
Commissioner Baldwin seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-1-0. Commissioner Rardin voted nay.**

Mayor Boss said everyone should respect social distancing. This is the reason they will not have the next two Commission meeting. If any business comes up that requires the Commission, they will call a special meeting.

**Commissioner Rardin moved to adjourn at 4:01 p.m.
Commissioner Wright seconded the motion.
Motion carried with a vote of 7-0-0**

ADJOURNMENT



Richard Boss

Mayor Richard Boss

Rachel Haggis

City Clerk Rachel Haggis

(Prepared by Eric Barraza, Deputy Clerk)
Approved at the Special Meeting held on April 23, 2020.