CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., VIRTUAL MEETING
May 11, 2021

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 BENGOECHEA, 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. City Clerk Hughs announced there was a quorum present. The Invocation was given by City Clerk Hughs, and the Pledge of Allegiance was led by Commissioner Baldwin.

APPROVAL OF AGENDA

Commissioner Payne moved to approve the agenda.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 7-0-0.

CITY MANAGER'S REPORT

City Manager Cesar made the following comments:

1. City Manager Cesar said just yesterday it was announced that 60 percent of the residents of our State had received their first vaccination. The Governor had announced previously that once 60 percent of the residents had received their second dose, that she would be reopening everything in the State. Originally staff had planned that tonight would have been the last night the Commission was in their current setup and then they would be moved to the main area in the Civic Center. However, in looking at the calendar, it appeared there would be no more than two or three meetings before the State was fully opened. Therefore, he would like those who wished to, continue meeting in their current setting while staff was finalizing the work in the Commission Chambers to improve the audio-visual system. In the past most outside presenters would make in-person appearances before the Commission. However, things had changed and probably we were not going to be going back as before. So, in the future, presenters would not necessarily be in person, but would attend virtually. Also in the past, there had been times where a Commissioner or staff member could not attend personally but had wanted to vote on an item or make a presentation. With the current upgrades to the audio-visual system being implemented into the Chambers, they would now be able to be brought in virtually to attend. His recommendation was that we just continue as we currently were set up, and hopefully the Governor would be opening up the State within the next 26 to 27 days.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Boss made the following comments:

Mayor Boss noted that May 9th through15th was proclaimed as National Police Week, and May 15th was Peace Officers' Memorial Day in memory of all fallen Officers, and he would be presenting an official Proclamation in recognition of this. He encouraged everyone to take a moment to thank our Police Officers. There was a lot of pressure across our country and our Police Officers deserved our total respect and admiration.

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 April 27, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

2. Approve the statements related to the Executive Closed Session held on April 27, 2021. *(Rachel Hughs, City Clerk)*

3. Consider, and act upon, a request related to the Alamogordo Fire Department applying for the Firehouse Subs Public Safety Foundation Grant. *(Richard Adler, Fire Chief)*

Commissioner Wright moved to approve.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 7-0-0.

NEW BUSINESS

4. Consider, and act upon, approval of the FY22 - FY25 Alamogordo Public Safety Officers Association (APSOA), contract for FY2022 - FY2025. *(Kim Torres, Deputy Human Resources Director)*

Deputy Human Resources Director Torres said the major changes to the APSOA Contract were associated costs. It was becoming more difficult to recruit employees and then retain them once they were here. The contract was one to address those issues and then retain the employees to create an experienced and well-trained work force, thereby reducing the costs associated with constant turnover and vacant positions. Negotiations took longer than expected due to Covid and the inability to coordinate schedules at times. However, she believed the Contract was mutually beneficial and everyone walked away pleased with the final product as everyone had the same objective, being recruitment and retention.

Commissioner Payne moved to approve.
Commissioner Wright seconded the motion.
Motion carried with a vote of 7-0-0

5. Consider, and act upon, Resolution 2021-15 for the acceptance and approval of the FY20 Audit. *(Alan D. "A.J." Bowers, CRI - Carr, Riggs & Ingram)* (Roll Call Vote Required)

Mr. Alan D. "A.J." Bowers of Carr, Riggs & Ingram, gave a PowerPoint presentation (the PowerPoint and all financials were included in agenda packet backup).

Mayor Boss noted that the findings from last year had been addressed, and for this year we had only two very small findings. He wanted to thank our financial staff because he felt that was a fantastic job. Mr. Bowers felt it was an extremely clean audit, especially given the fact that we all were working in changing environments over the past year. So, for the team to clean things up and then to improve was not the common that he had seen. Commissioner Payne echoed Mayor Boss's sentiments.

Commissioner Payne moved to approve.
Commissioner Wright seconded the motion.
Roll Call vote was taken.
Motion carried with a vote of 7-0-0.

6. Consider, and act upon, Resolution No. 2021-16 requesting interim approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico, to adopt the Preliminary 2021-2022 Budget as of May 11, 2021. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

Finance Director Huff said this was the same budget presented to the Commission last week at our budget workshops. Staff was now requesting approval to submit it in a preliminary phase to the Department of Finance & Administration, which needed to be achieved prior to May 31st. The preliminary budget would be in effect for about 30 days from July 1st to July 31st as staff got the balances finalized. On July 27th they would present the final budget which had the cash balances, carryovers, corrections, and the final payroll projections.

Commissioner Rardin noted in the Legal Department's budget in the General Fund for FY2020-21, there was an Assistant City Attorney position budgeted for that year. He said in FY 2021-22 there was no Assistant City Attorney, so where had the extra money gone in there. City Attorney Bengoechea said because we only had one Attorney, they had beefed up a couple of the other lines. Municipal prosecution had been outsourced. Also, additional money had been added into the contract services line. That line was usually almost all given back to the City and was more of a "just in case" if we needed legal opinions. She could never predict at the beginning of the year what legal opinions the Commission was going to ask for. Commissioner Rardin said it was still listed under salaries and benefits. Finance Director Huff said in FY21 the position was included but was included only as a non-funded position. The last time a salaries and benefits budget were attached to that position was in FY20. There was no salaries and benefits budgeted to that budget last year. Commissioner Rardin questioned why they had not seen a decrease in the salaries and benefits, and whether they would be hiring another Assistant City Attorney. City Attorney Bengoechea said at this point in time she was not requesting that position be reinstated. Right now, the department was running fine, and she had absolutely no plans for the next year to request that position be funded.

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.

Mayor Boss said he appreciated the way the budget was presented to the Commission. Staff had done a really good job in presenting it this year, and there were some suggestions for them to improve it even better for next year.

7. Consider, and act upon, funding $30,000 for fireworks display for July 4th of 2021 and provide direction to staff on how Commission wants to proceed for future years in the MOU. *(Josh Rardin, Commissioner)*

Commissioner Rardin said he had received numerous phone calls on this issue over the past two months. He wanted to make sure that the Commission acted on this to guarantee it for this year, and then an agreement could be worked out for future years. He felt the show was a value to the community. On the other hand, they had to look at it from a safety standpoint with people using fireworks on their own.

City Manager Cesar said this was a concern last year. The Space Hall Foundation was not a part of the State. He had asked them for a copy of their Contract or Memorandum of Understanding (MOU) between the City and the Foundation which allowed for the expenditure of taxpayer funds, transferring those funds to the Foundation, and having them do the procurement of the fireworks for their annual display. It was very last-minute last year, and they were not able to find anything. City staff had searched all our records as well and we did not have a record of an MOU or Contract going all the way back to at least 1994. For what the Foundation was providing to the City, it was actually a violation of the State Procurement Rules. We could not shift money over to another entity and allow them to go out and do the procurement for the City. We were looking into coming up with an MOU with the Foundation. We would have to self-report to the Attorney General, but it was always better to self-report in order that you could show how this was cured. In meeting with Johnny Powell and Cliff Hudson from the Foundation, they had hashed out a preliminary MOU through the discussion. One of the things that kept coming up was what a value this show was not only to the community of Alamogordo, but also to the County. What was proposed to them was that after this year, every year the City's contribution would go down by $5,000 until it reached $15,000 in 2024. They left his office with that proposal not being an issue. Once word got around, that was when phone calls started happening and Commissioner Rardin had contacted him. There were lengthy discussions on not only how staff felt this violated State Procurement Rules, but also the Anti-Donation Clause because the Foundation did use the City's fireworks as a fundraiser for what they did at the Space Hall. To be sure that City staff was correct, he had asked the City Attorney to get an outside legal opinion and we had been told that this entire time we had been violating the State Procurement Rules. They were surprised the auditors had not picked up on it, but as the auditor had stated earlier in his presentation tonight, they did not look at every single transaction. So, this was one that had just gotten by every auditor for the past several years. Once we had that opinion, we brainstormed here at City Hall and came up with a new MOU between the City and the Space Hall Foundation. Basically, it stated that the City would procure a vendor following the State Procurement Rules. We would have to put on some kind of 4th of July event which was separate from the Foundation's, and we were requesting that the Foundation allow our vendor to fire the fireworks from the traditional location. However, there was a little hiccup with that as well. The Foundation did not and had not had permission from the State of New Mexico to use the property for their fundraising event. What they told him last week was that they thought they would be allowed to have at least one year to lease the property. He had let them know that time was of the essence because we had to go out to bid and one of the things the vendor needed to know was where they could launch the fireworks from. If the Foundation was unable to secure an agreement with the State of New Mexico, then the City would relocate and possibly launch from the detention basin in the Public Works yard. It was stated in the legal opinion obtained that the City would have to put on an event based around the fireworks. We would have an event at Griggs Field, and the details on that would be brought forward at the Commission Meeting of May 25th. Special Events Coordinator Josh Sides and Community Services Director Veronica Ortega would be presenting that at the next meeting. In speaking with Cliff Hudson and Johnny Powell, they stated that they could call an emergency meeting and have the MOU signed, but he had informed them that it did not do the City any good to have a signed MOU without a copy of their agreement with the State allowing for them to allow us to fire from the traditional location. Regardless of that, we would still be able to have a firework show, but it would just not be able to be launched from the traditional site.

Commissioner Rardin said it seemed far fetched that in 20 years no one had picked up on us not having an MOU in place. Under NMAC Section 1.4.1.17 Section (B) it stated that anything under $60,000 did not need to go to a competitive sealed bid. City Manager Cesar said he did not say it would go to a competitive sealed bid. We had budgeted $30,000 for next fiscal year. At that threshold we had to have three written quotes. We could not have the Space Hall Foundation do that for us; it had to be the City obtaining those bids. Commissioner Rardin questioned whether we had in the past sent the money to them and they bid it, or did they give the invoice to the City and then we paid it. City Manager Cesar said they had given the invoice to the City, and the City had paid it direct. He understood also what had happened in previous years was that the City had paid a portion of the service up front which was also something that was not allowed. It had to be sealed bids and we were going out like we would on a typical construction bid. We had to have three written quotes. Commissioner Rardin said we were not giving the money to the Foundation; they were giving the City the invoice and we were paying it. City Manager Cesar said the issue with that was that the City was not involved in selecting the vendor for the fireworks. The Foundation was selecting someone and negotiating with them and then receiving a bill from that company and then turning their bill in as an invoice to the City to pay. The City did not have anything in writing which allowed for that nor was there anything that allowed them to do it that way because they were circumventing the State's Procurement Ordinance. Commissioner Rardin said if we were getting written quotes, he did not see how that would be circumventing this. City Manager Cesar said it was because we had never received any quotes. To his knowledge, they had not gone out competitively. He knew it had been the same vendor for the past several years that he remembered, and probably even longer than that. He was not saying there was anything wrong with that company or that the Foundation or City staff was trying to do something underhanded. This was just the way it had always been done, and it had been done incorrectly. These were the things we had to correct, and it would be a finding in next year's audit because we would need to report it to them.

Mayor Boss clarified that there was a legal opinion which had been given on this. City Attorney Bengoechea said yes, and staff had also spoken to the auditors about it and they had a major issue with it as well. She had spoken with Charles Rennig who was an expert in governmental municipal law. He also said this was a big problem and that we needed to immediately self-report. Hopefully, we could work this so that Alamogordo still got its fireworks. City Manager Cesar said he did not see a downside in this latest MOU. Assuming the Foundation could get permission from the State, the fireworks would be launched from their usual site. The City would follow the State's procurement code and would secure the lowest bidder. In the MOU they would allow the Alamogordo Fire Department to be present where the fireworks were being launched from, and the City would get one more small event at the Griggs Field for a 4th of July celebration. Also, the Commission would have the opportunity of approving the exact amount they wanted to see funded for the fireworks. With this, the Foundation did not lose anything, the City came into compliance, we did the self-reporting, corrected the issue, and we could all move on. The first MOU in the backup material had actually been thrown out already. That was staff's first stab at correcting this issue, but it would not work. The second MOU was absolutely okay because it stated that the City would follow the procurement rules and secure the bid, the Space Hall Foundation would give us written permission to launch from the original site assuming they got the proper permission from the State, and if not, then we would launch elsewhere. This agreement would not be executed unless the Foundation had the agreement in hand from the State.

Commissioner Rardin said he found it hard to believe that after 20 years and numerous City Attorneys and City Managers that no one had caught this before. He questioned whether we would report to the State Auditor instead of the Attorney General's office. City Attorney Bengoechea clarified that we would need to report to both agencies because the anti-donation issue was an Attorney General issue. She had a legal opinion in writing stating that this was an issue violating the Anti-Donation Clause, and she must report. Ethically, we must report.

City Manager Cesar said we now had it set up to where we could have the event regardless of what happened with the Space Hall Foundation and their negotiations with the State of New Mexico. Commissioner Rardin wondered why in 20 years no one had caught that they were launching from State lands. City Manager Cesar said basically just because no one had asked the question; it was something that had always been done. The City Clerk's office and the City Attorney's offices had both searched through the records and could not find any MOU or other record like that with the Space Hall Foundation. The Foundation also dug back through their records and they did not have anything. The State of New Mexico had looked back through their records, and they also did not have anything. This was what had created the issue. The auditors had not pulled any invoices for fireworks over the past 20 years as well. As our auditor had explained earlier tonight, auditors did not pull every single invoice. Normally they were looking at our larger transactions. For the next audit, we would remind the auditors that we had this issue and also how we had corrected it. While it was still a finding, it was better if we self-reported it to them.

Mayor Pro-Tem Sikes said she loved the tradition of the fireworks and felt it was a beneficial event to the City and the surrounding areas as well. As far as signing the second MOU which had been presented, she understood we had to wait for the Foundation to get approval from the State before we could sign. City Manager Cesar said that was correct. Mayor Pro-Tem Sikes said we could not sign anything tonight because we had to wait for the Foundation to get that permission first. Therefore, she felt this item should be eradicated from the agenda because the Commission was being coerced into potentially doing something which was illegal. We could not table it, but just needed to get rid of the item. Commissioner Rardin recommended tabling it indefinitely. Mayor Pro-Tem Sikes said tabling it indefinitely would mean that it was still part of our record and what we were potentially doing was something illegal. Commissioner Rardin said the item was brought forward, we discussed it, and we had to act on it somehow. So, we could just table it indefinitely. Then we could bring the item back once the Foundation got their permission from the State. City Attorney Bengoechea said staff had made two changes to this MOU past the agenda deadline which just had to do with insurance coverage that we were requiring of the fireworks vendor. Therefore, we would have to bring it back with the two new items. Those items did not materially affect the City at all, but just protected us from liability and were items also requested by the Foundation. Tonight, no action was fine, or tabling it was fine.

Commissioner Payne said she was concerned about this item for a number of reasons. She had received only one call on this issue regarding the possibility of cancelling the fireworks. Commissioner Rardin said he had received numerous calls. Commissioner Payne thanked anyone who had called on it because it opened the issue and now, we were taking action to clean it all up. It was concerning to her that in the past we had run government that way. We had cleaned up a lot of things since her time on the Commission and she hoped this was the last of it. She was excited about this new direction with us participating more in the events.

Mayor Pro-Tem Sikes moved to table item No. 7.
Commissioner Payne seconded the motion.
Motion carried with a vote of 7-0-0.

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

Mayor Boss read the openings. He stated that if anyone was interested in serving on a board or committee, they may apply with the City Clerk's office, or online at the City's website.

EXECUTIVE SESSON (Roll Call Vote Required)

9. Adjourn into Executive Session in compliance with 10151(h)(7) NMSA (as amended) to discuss threatened or pending litigation: update on TRD lawsuit and possible KOA lawsuit regarding encroachment on City property. (Roll Call Vote Required)

Commissioner Payne moved to adjourn into Executive Closed Session at 7:46 p.m.
Commissioner Wright seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0

ADJOURNMENT

Mayor Richard Boss

ATTEST:

City Clerk Rachel Hughs

(Prepared by Teresa Gutierrez, Deputy Clerk)
Approved at the Regular Meeting held on May 25, 2021.