CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
January 11, 2022

SUSAN PAYNE, MAYOR
SHARON McDONALD, COMMISSIONER
JOSH RARDIN, COMMISSIONER
STEPHEN BURNETT, COMMISSIONER
NICK PAUL, COMMISSIONER

DUSTY WRIGHT, MAYOR PRO-TEM
VACANT, COMMISIONER
BRIAN CESAR, CITY MANAGER
PETRIA BENGOECHEA, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK

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

Mayor Payne 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. Invocation was given by Pastor Vaden and the Pledge of Allegiance was led by Commissioner Wright.

APPROVAL OF AGENDA

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

ADMINISTRATION OF THE OATH OF OFFICE FOR ELECTED OFFICIALS

1. **Ceremonial administration of the Oath of Office to the newly elected City Commissioners. *(David Overstreet, Municipal Judge)***

Judge Overstreet performed the ceremonial Oath of Office for Mayor Payne, Commissioner Burnett, and Commissioner Rardin.

REORGANIZATION OF THE COMMISSIONREORGANIZATION OF THE COMMISSION

2. **Selection of the Mayor Pro-Tem. *(Rachel Hughs, City Clerk)***

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

Mayor Pro-Tem Wright took his seat next to the Mayor.

3. **Selection of Seating Order. *(Rachel Hughs, City Clerk)***

The Commissioners all chose to remain in their current seats.

4. **Determine Order of Business - Rule 6, Rules of Conduct for City Commission Meetings. *(Rachel Hughs, City Clerk)***

Mayor Pro-Tem Wright moved to keep the order the same.
Commissioner Burnett seconded the motion.
Motion carried with a vote of 6-0-0.

PRESENTATIONS

None.

PUBLIC COMMENT

None.

CITY MANAGER'S REPORT

Assistant City Manager Hernandez made the following remarks:
1. The Annual Report is now on the City website.
2. Mayor Payne has a new Facebook where she will be giving updates.
3. In the next meetings the Commission will see three decapitated structures they will be voting on.
4. Starting Monday they will be restriping the crosswalks.
5. On Tuesday, the 18th they will start the closing of the 8th Street Railroad Crossing.
6. She welcomed back Susan Payne as Mayor and Commissioner Rardin. She also welcomed new Commissioners Burnett and Paul.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Payne made the following comments:
She thanked everyone for the support she got today, and she said she is looking forward to working with everybody.

CONSENT AGENDA

5. Approve the minutes for the December 14, 2021 Regular meeting. *(Rachel Hughs, City Clerk)*

6. Consider, and act upon, Resolution No. 2022-04, authorizing the Community Services Director to sign documents and agreements between the New Mexico Area Agency on Aging and the Alamo Senior Center related to the four-year plan. *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)* (Roll Call Vote Required)

7. Consider, and act upon, acceptance of a Purchase Agreement for Partial Vacation of an Easement at 501 Canal Street. *(Nancy Beshaler, Project Manager)*

8. Consider, and act upon, Contract No. 2021-22-64012, grant funding to expand access to COVID-19 vaccines (VAC5) for seniors 60 and above. The total amount budgeted is $6,000.00 *(Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director).*

9. Consider, and act upon, the award of IFB 2021-03 3/8" Minus Crushed Washed Rock to Aggregate Technologies, LLC in the estimated amount of $370,000. *(David Nunnelley, Acting Public Works Director)*

10. Consider, and act upon, Resolution 2022-03 relating to a rate increase of 3.50% effective February 1, 2022 for residential solid waste collection through Southwest Disposal. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

11. Consider, and act upon, the confirmation of Steven Lee as alternative Municipal Judge. *(Petria Bengoechea, City Attorney)*

12. Consider, and act upon, Resolution 2022-05 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 11, 2022. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

Commissioner Rardin pulled item 7 off the Consent Agenda.

Commissioner McDonald moved to approve the Consent Agenda as amended.
Commissioner Rardin seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

7. Consider, and act upon, acceptance of a Purchase Agreement for Partial Vacation of an Easement at 501 Canal Street. *(Nancy Beshaler, Project Manager)*

Commissioner Rardin said he pulled this item because he has a working relationship with all the parties involved, so he wanted to abstain but would like to participate in the discussion.

Commissioner Rardin said the piece of property they are looking to sell back to Mr. Macias, he purchased this property in 2019. The property they are talking about the City acquired for $1. Back in 1964, the gentleman that owned it quitclaim deeded it to the City for $1 and here they are selling it back to the gentleman for $4,658. He said they are a nonprofit; they do not need to make money off it. It would be better if they could utilize the property for what they needed it for, but he wanted to put it out there that they purchased it for a buck and here they are selling it back to him for $4,600.

Mayor Payne asked if they maintain that property. Project Manager Beshaler said this is an easement that was a road in utilities easement on Mr. Macias's property adjacent to the drainage easement for Dry Canyon for the arroyo.

Project Manager Beshaler explained they are doing exactly what they did with Canal Park owners and KOA. Mr. Macias accidently encroached on that 30-foot road and maintenance easement, and just like they did with KOA and Canal Park they were letting him but that back, so he doesn't have to move his fence because he has a block and chain link fence that is encroaching 21 feet on the easement. So, they are allowing him to buy that area back.

Mayor Payne asked Project Manager Beshaler if that is something they have had to do maintenance on it. She answered no.

City Attorney Bengoechea said when they handle something like this, they sell the property for the appraised value, so they are treating everyone one the same. They have it appraised and are required to have it appraised by ordinance. If they chose to change that, it would be problematic for the other contracts the Commission has approved because there is another landowner that bough the easement back for the appraised value. City Attorney Bengoechea said they did hire an attorney and the attorney is a good attorney and showed the records to the attorney, the advice of the attorney to the property owner was this is more than fair in the way the City should be doing things. The property owners were fighting this at first but have stopped fighting and have agreed to this. She stated she understands what Commissioner Rardin is saying, but she thinks if they do not approve this, they will have problems with the other property owner.

Commissioner Rardin said he is not voting on it because he is involved with both parties, the surveyor, and the property owner.

Mayor Payne said she agrees with City Attorney Bengoechea, she thinks it could be problematic.

Commissioner Rardin asked if they had a quitclaim deed from the other property owner for $1. City Attorney Bengoechea said she does not have that information in front of her. He said that was the only thing that popped off when he (property owner) showed it all to him, was the fact that he has been paying property taxes on the property. When they did it down there, they didn't divide it off his lot and so he has paid property taxes since he purchased it and the City only paid $1 for it, and they are turning around and selling it for almost $4,700.

Assistant City Manager Hernandez said it would also be an audit issue with giving it for $1 and being and anti-donation. Mayor Payne said that is what she was wondering about. Commissioner Rardin said they would get back what they paid for it. Mayor Payne stated she thought the problem is if they sell it back to him for $1, that could cause the City problems because of fair market value. City Attorney Bengoechea said it is required by State Law that they access the fair market value of the property before they dispose of it whether it is a sale or private or public bid.

Mayor Payne said she does not know if they could justify saying they bought it for $1 we sold it back for $1, and from 1960 to now is only $4,000 is reasonable.

Mayor Pro-Tem Wright asked City Attorney Bengoechea why there is another attorney involved. City Attorney Bengoechea said they just didn't understand and without getting to much into it, there was an issue with the survey that was done. This issue is that the City has an easement and they have encroached on it and the have done so with concrete and fencing. They can demand they get out of the City's easement but that is going to be more costly than $4,600, so they have taken the route of buying the easement back from us and we will change our plans. The City has worked with the property owners and explained it to the other attorney, and she understood and withdrew any objection. Mayor Pro-Tem Wright asked if they agreed with this, she answered yes.

Mayor Pro-Tem Wright moved to approve.
Commissioner McDonald seconded the motion.
Motion carried with a vote of 5-0-1. Commissioner Rardin abstained from voting.

PUBLIC HEARINGS

13. Consider, and act upon, whether or not the Alcoholic Beverage Control Division of the State of New Mexico should grant BW & Gas Convenience Retail, LLC, a Transfer of Ownership of

Dispenser Liquor License to License 0700, located at 820 US Hwy 70 W. *(Rachel Hughs, City Clerk)*

City Clerk Hughs said this is a transfer of liquor license, this store is going on highway 70 right next to Walker Road. Magner Don Eldered is present if the Commission had any questions of him. She did point out that there is a church called Gateway, but the church is outside the 300 radius feet so there are no churches or school right next to that property. Mayor Payne asked if anyone from that church was present. There was no one present.

Mayor Pro-Tem Wright asked City Attorney Bengoechea if as a contractor working on the project on this location have any conflict of interest. She said she does not believe he would benefit from the transfer in any way, if he would then he should abstain, but she does not see any reason why he would.

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

NEW BUSINESS

Assistant City Manager Hernandez pulled item 18 off the agenda. Consider and act upon first publication of Ordinance 1645.

14. Consider, and act upon, Resolution 2022-02 Declaring that a Vacancy Exists on the City Commission for District 3. *(Rachel Hughs, City Clerk)* (Roll Call Vote Required)

City Clerk Hughs explained the process for filling the vacancy and the timeline. She said the deadline for submitting all required documents to her is February 11th. All certified applicants will come before the Commission to appoint on February 22nd. If no appointment is made by the Commission, the Mayor will solely appoint on March 8th.

Mayor Pro-Tem Wright moved to approve.
Commissioner Paul seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

15. Consider, and act upon, award of Bid Lot 1 of Public Works Bid No. 2021-005 to National Construction, Inc. related to the Park Restrooms Project in an amount not to exceed $269,772.00, including NMGRT. *(Nancy Beshaler, Project Manager)*

Project Manager Beshaler said the project was related to DFA grant project. The initial project was meant to build two restrooms, one at the Balloon Park and one at the zoo, ADA compliant restroom. She said they received four bids; all the bids were over budget to build both bathrooms. They met internally and talked with DFA. Staff recommendation is for build Bid Lot 1 at the Balloon Park and the would be for the $269,772.

Mayor Payne asked why it was so high. Project Manager Beshaler explained it was a combination of materials and shortage of labor, everything is just expensive inflation.

Commissioner Rardin abstained from voting, he said he bid with one of the responsive bidders. He said one of the reasons is the roofing design system is a little odd and may have added to the cost of it. It had a lot of steel and that may one of the reasons they are so high on it.

Mayor Payne stated it looks like nothing came in the way Project Manager Beshaler thought. Project Manager Beshaler said if it was just one or two of the bidders, but they all came in and that was the lowest bid.

Commissioner Rardin said part of the problem is that you bid today with Public Works projects 98-150 days down the road, you have no idea what the material is going to be so you kind of have to pad it.

Project Manager Beshaler said another thing to note on this one is the wage rates in this contract expire in two days from now, so if they were to rebid or redesign the project, they would have to use newer wage rates. It would end up being more expensive. Commissioner Rardin asked Project Manager Beshaler if this was DHA grant money, she said yes. He asked if it wasn't coming out of City coffers, she answered no. She said they did get approval from them to award Bid Lot 1 based on the bids. Commissioner Rardin asked her where the extra money was going to come from, she said they have enough. She said unencumbered they have 276 so they have very little contingency, but they are under budget. Commissioner Rardin asked her if they anticipate any contingencies out there. She said with underground utilities, you never know, but they did a good job of what they were tying into and how the utilities were going to be constructed.

Mayor Pro-Tem Wright abstained from voting, he said it is the same issue as contractor that bid on the project.

Commissioner McDonald moved to approve.
Commissioner Paul seconded the motion.
Motion carried with a vote of 4-0-2. Commissioner Rardin and Mayor Pro-Tem Wright abstained from voting.

16. Consider, and act upon, termination of the Mission Square Deferred Compensation Plan formerly known as ICMA-Retirement Corporation. ***(Kim Torres, Human Resources Director)***

Human Resources Director Torres said this is a 457 plan the City has been paying a plan fee. It was created in 2002 and hasn't been used since approximately 2006 so they have been paying a $500 a year annual fee for that account. They want to close it, so they don't have that on the books anymore.

Commissioner McDonald asked Human Resources Director Torres if there was any money in the plan at all. She answered no.

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

17. Consider, and act upon, first publication of Ordinance 1644 amending Chapter 29, Section 01-090 of the Alamogordo Code of Ordinances regarding the regulation of special events. ***(Petria Bengoechea, City Attorney)*** **(Roll Call Vote Required)**

City Attorney Bengoechea said this was brought by Mayor Payne. Currently the City can administratively issue special events permits, as long as meet certain guidelines. One guideline is the event will occur no more than 12 times in one year, if the event will occur more than 12 times the applicant must seek City Commission approval. This is just to strike that; they can have events more than 12 times in a 12-month period, and it can be administratively approved by the City Manager. It will make it easier and more business-friendly down on New York Ave.

Mayor Payne said a few years ago this was a hot topic and she wanted to bring this back because she did not want people to be limited. It is good for our City and community; they are outdoor events, and they are good for business owners down there.

Mayor Pro-Tem Wright moved to approve.
Commissioner McDonald seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 6-0-0.

18. Consider, and act upon, the first publication of Ordinance 1645, revising the City of Alamogordo Employee Manual. *(Kim Torres, Human Resources Director)* (Roll Call Vote Required)

Item 18 was pulled off the agenda earlier in the meeting.

19. Appointments to Boards and Committees. *(Susan Payne, Mayor)*
Mayor Payne read the openings. She did not reappoint Gerald Dodd to the Planning & Zoning Commission. She said they will wait to see if they get more applications and those will be reviewed prior to the expiration of terms in February and March.

ADJOURNMENT

Commissioner Rardin moved to adjourn at 7:12 p.m.
Commissioner McDonald seconded the motion.
Motion carried with a vote of 6-0-0.

Susan L. Payne
Mayor Susan L. Payne

ATTEST:

Rachel Hughs
City Clerk Rachel Hughs

(Prepared by Rachel Hughs)
Approved at the Regular Meeting held on January 25, 2022.