



Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

October 11, 2022 - 6:30 PM
City Hall, City Commission Chambers
1376 E. Ninth St.

Susan L. Payne Mayor
Dusty Wright Mayor Pro -Tem, District 6
Nick Paul District 1
Stephen Burnett District 2
Karl Melton District 3
Josh Rardin District 4
Sharon McDonald District 5

Brian Cesar City Manager
Ashley Smith 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 of 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

PRESENTATIONS

1. Domestic Violence Awareness Month Proclamation. (Susan L. Payne, Mayor)

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.

2. Approve the minutes for the September 27, 2022, Regular meeting. *(Rachel Hughs, City Clerk)*

3. Consider, and act upon, the award of IFB 2022-09 Alameda Park Electrical Upgrades to Consolidated Electrical Distributors, inc. in the amount of \$149,550.30, including NMGR. *(Veronica Ortega, Community Services Director)*

ITEMS REMOVED FROM CONSENT AGENDA

NEW BUSINESS

4. Consider, and act upon, award of Public Works Bid No. 2022-004, CDBG Project No. 19-C-NR-I-01-G-18, to General Hydronics Concrete, LLC related to the Alamogordo ADA Compliant Sidewalk Improvements project in an amount not to exceed \$1,391,076.72, including NMGR. *(Bob Johnson, Engineering Manager and Jason Casebolt, Project Manager)*

5. Consider, and act upon, approval of Amendment No. 1, CDBG Project No. 19-C-NR-I-01-G-18, to Smith Engineering Company, related to the engineering and design of the Alamogordo ADA Compliant Sidewalk Improvements project in an amount not to exceed \$85,871.66, including NMGR. *(Bob Johnson, Engineering Manager and Jason Casebolt, Project Manager)*

6. Consider, and act upon, first publication of Ordinance 1661, amending Chapter 17 of the Alamogordo Code of Ordinances concerning Licenses and Miscellaneous Business Regulations. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

7. Consider, and act upon, first publication of Ordinance 1663, repealing Chapter 27 of the Alamogordo Code of Ordinances concerning Vehicles for Hire. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

8. Consider, and act upon, the first publication of Ordinance 1662, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-060 "Code of Conduct." *(Brian Cesar, City Manager)* **(Roll Call Vote Required)**.

9. Consider, and act upon, first publication of Ordinance 1659, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media". *(Brian Cesar, City Manager)* **(Roll Call Vote Required)**.

ADJOURNMENT

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date:

Report No: 1.

Submitted By: Rachel Hughs

Subject: Domestic Violence Awareness Month Proclamation. (*Susan L. Payne, Mayor*)

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Presentation only.

Background:

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date: 10/05/2022

Report No: 2.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the September 27, 2022, 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
6:30 P.M., COMMISSION CHAMBERS
September 27, 2022**

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

**DUSTY WRIGHT, MAYOR PRO-TEM
KARL MELTON, COMMISSIONER
BRIAN CESAR, CITY MANAGER
ASHLEY SMITH, 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 Mayor Payne, and the Pledge of Allegiance was led by Commissioner Rardin.

APPROVAL OF AGENDA

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

PRESENTATIONS

1. Honor Flight Mission presentation. (Scott Fredrick, US Veterans MC NM State Chapter Treasurer)

Mr. Fredrick said this was an opportunity for the community to come together and celebrate something we can all get our arms around and appreciate, which is our veterans. He said Saturday at roughly 8 PM, weather dependent, we should be arriving back with two local veterans, hopefully a van provided by Holloman Air Force Base, seven to ten motorcycles, a Patriot Guard Rider's truck, and hopefully an escort provided by some of our law enforcement. He said the plan is to turn right slowly up White Sands, turn right on 10th, turn left onto New York, and then pull right in front of the County Courthouse, which has lots of room for people to stand there and welcome our veterans back. He said he wanted to thank Downtown, they have offered the Gardens on New York. He said we will have a gathering, a small reception, where the public can meet the veterans, talk to them, ask questions, and say thank you for your service and welcome home. Mr. Frederick proceeded to show a video for this presentation.

Mayor Payne said she will certainly be there.

2. Alamogordo Public School behind the scenes presentation. (Chuck Andreas, Citizen)

Mr. Andreas said he gave a presentation to the School Board on May 18th; and gave them about fifteen days' notice to respond to his questions and facts based on IPRA's and documents provided by New Mexico PED. He said silence, crickets. He said he gave a presentation to the County in June and same thing; he got a response from the County and citizens, but not from the schools. So, if it is fact, or is false, open it up for questioning, let's interrogate it. If it is the truth, it will stand the test no matter what. So tonight, this presentation is going to be a rapid-fire PowerPoint on Alamogordo Public Schools and it is going to be behind-the-scenes. Mr. Andreas proceeded to present the PowerPoint.

PUBLIC COMMENT

Gloria Killian said her parents, her grandparents, and her great-grandparents are all buried over at Monte Vista Cemetery in the old section. She said she would like to challenge all of you to drive through Monte Vista Cemetery in the old section, it is a disgrace to the community, the tumbleweeds are as tall as she is. She said we need to not wait for the Big Give Program, the volunteers from Holloman Airmen to come and clean it up like they did last year in October. They use weed eaters, and the stems on those weeds are not going to be cut down with a weed eater. It is awful. She said she understands that Gene, the Sexton, we are very happy to have him working there, he is a good worker, but he only has one other person. There are two people that maintain the Cemetery and her understanding is they are only allowed to maintain each side of the Cemetery, but they are not supposed to work in the older section. She said she would like to think that someone would be allowed to spray for weeds before they totally get out of hand, so it doesn't look like it does. She said she was told by someone that those are family plots, like where her parents and grandparents are, and that family is supposed to keep it up. She said there is no way that family members are going to go out and take care of family plots; she said she would like to see the City hire more people to work under the Parks and Recreation division and maybe help take care of it before it gets so out of hand.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. The area that is being talked about is the non-perpetual care, that is up to the family members to maintain that area. He said that on October 8th, Honored Past, along with Keep Alamogordo Beautiful will be doing a cleanup, cutting the weeds, etcetera. The way the Monte Vista Cemetery was set up, that area is not maintained by City staff. Keep Alamogordo Beautiful is a federally funded program and is designed for these types of cleanups, but it is not the only thing that Keep Alamogordo Beautiful does. She is exactly right, the weeds are very tall. It has been a challenging year, not just for City staff, but for the citizens in trying to keep up with the weeds.
2. From the State's Economic Development Outdoor Recreation Department, the City of Alamogordo was one of twenty communities around New Mexico that received a grant; ours was in the amount of \$99,000. That money is going to be used as part of outdoor recreation. The Community Services Department will be working with the Engineering Department on rehabilitating the walking trail on Indian Wells from Washington towards White Sands. They will go as far as the \$99,000 will take them. If we are a little bit short, we will be coming back to Commission through a budget resolution so that we are not stopping mid-block, but we need to have that costed out and bids-in first.
3. The other thing that has gone out on our social media accounts, the City is applying for a grant through the Land and Water Conservation Fund. The restoration project at Bonito Lake has been going on since the Little Bear Fire in 2012; the lake has been cleaned out and that project is complete. We are doing the final closeout documents and payments on that. At the tail-end of that project, we also received money to finally address the water dam refacing and the intake tower. That project, barring weather delays, will be wrapping up at the mid-part of next month. What we are looking at with this grant application is a 50/50 match, so we are applying for \$250,000 and the City match will be \$250,000. The first project we will be looking to fund is the actual roadway; the City of Alamogordo owns the roadway just below the dam, and then around to the West Lake Campground. That road is not in good condition at this point, it has had very little maintenance because of all the construction activities since 2012. As part of this grant application, and this is the information that went out on social media, one of the things we have to do in this grant is solicit public participation in a very short survey that has to do with outdoor recreation. Senator Ben Ray Lujan is encouraging the City to apply for this grant and will do what he can do to help let us be successful in obtaining that grant.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

He addressed City Manager Cesar and said that over on Cuba Avenue, between 10th and 11th Street, he said he did not know if the City did this patch or if it was a contractor, but it is settling again. He said he didn't know if we could have staff look at that and get it redone. It has a good depression in it.

Later on the agenda we have a street maintenance program bid coming up; he said when he was on the Commission before, we used to utilize the Cutler process. If we could take a look at utilizing maybe Cutler again and try to get more bang for our buck for these roads when we are fixing them, instead of doing the old pulverize-and-pave and putting all brand-new down. City Manager Cesar said we went away from that maybe somewhere around 2013-2014; the City used to piggyback off the New Mexico DOT portion of the State contract. In that year, they changed the way they bid that out, which didn't allow for municipalities or other entities to piggyback off it. Once we have the Street Assessment, the Water and Sewer Assessment, everything is brought together and we are coming back before Commission to give the proposed projects and timelines to complete those; whether it is Cutler, it won't be like what you remember from the traditional Street Maintenance Program. We will be looking to get the most bang for the buck and use the most appropriate treatment on the various roadways. Commissioner Rardin said back in the day when they used to that, we would get ten or fifteen years out of those roads using that process, it is fairly quick and simple, and gives a very nice driving surface that you don't bounce down all the time. Maybe if we can get enough roads together, we can have them bid it directly to us rather through the State contractor.

Mayor Payne made the following comments:

Pastor Matt Celoria was assaulted, and she would just ask that you keep him in your prayers. It is a pretty sad day when a pastor of a local church is assaulted. There was an incident up in Albuquerque recently at Calvary Church, a security on-staff there was shot and killed. This is getting to be too much, and we need to pray for our churches.

CONSENT AGENDA

3. Approve the minutes for the September 13, 2022, Regular meeting. (Rachel Hughs, City Clerk)

4. Consider, and act upon, the award of RFQ 2022-07 Professional Services for Development of Master Plan for Community Services to Consensus Planning, Inc. (Veronica Ortega, Community Services Director)

5. Consider, and act upon, approval of Resolution No. 2022-42 requesting approval for the establishment of a new special revenue fund for the Cannabis Regulation Act funds totaling an estimated \$204,000. (Evelyn Huff, Finance Director) (Roll Call Vote Required)

6. Consider, and act upon, Resolution 2022-44 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 September 27, 2022. (Evelyn Huff, Finance Director) (Roll Call Vote Required)

7. Consider, and act upon, adoption and final publication of Ordinance 1658 Case Z-2022-0003(A), a map amendment to change the zoning of two parcels located south of Airport Rd. and west of Business Center Blvd. better known as Parcel Numbers 01N4052098330195 and

01N4052098462198 from R-1 Single Family Dwelling to M-2 Industrial Dwelling. (Stella Rael, City Planner) (Roll Call Vote Required)

8. Consider, and act upon, the intergovernmental agreement between Otero County and the City of Alamogordo Police Department for the City to receive \$150,000 annually to provide services from the Alamogordo Police Department Mobile Crisis Response Team to all of Otero County. (Richard Denton, Chief of Police, and Jeannette Borunda, Mobile Crisis Response Team Clinical Director)

Commissioner McDonald moved to approve the Consent Agenda.

Commissioner Paul seconded the motion.

Roll Call Vote was taken.

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

NEW BUSINESS

9. Consider, and act upon, Resolution 2022-43 naming the commission chambers the Donald E. Carroll Commission Chambers. (Commission) (Roll Call Vote Required)

City Clerk Hughs said she was asked to put the resolution on to be able to name this commission chambers the Donald E. Carroll Commission Chambers in honor of his serving 25 years of service. He served 12 straight years in the position of Mayor from March 1996 to March 2008.

Commissioner Rardin said he believed Donald was the longest serving Mayor in Alamogordo's history.

Mayor Payne said it looks like Community Services Director Ortega may have some information for us. Community Services Director Ortega said she understands that this was a request from Senator Ron Griggs, to have the chambers named after Donald E. Carroll who was our longest-standing Mayor for the City. With that, we are approaching the Commission to ask to have the approval to have this chamber named on his behalf.

Commissioner Rardin asked where we would put the plaque, outside or in here. Community Services Director Ortega said there would be a plaque outside. City Manager Cesar said a plaque just outside the door, named above the doorway, and then on the exterior the building also. Community Services Director Ortega said we would ask to do a dedication ceremony later with the family if it is approved.

Mayor Payne shared a story of former Mayor Don Carroll.

Commissioner Rardin moved to approve.

Mayor Pro-Tem Wright seconded the motion.

Roll Call Vote was taken.

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

10. Consider, and act upon, award of Public Works Bid No. 2022-006, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgcrest Drive project in an amount not to exceed \$384,519.19, including NMGRT. (Bob Johnson, Engineering Manager)

Engineering Manager Johnson said the work consists of installing new six-inch water main valves, connections, and water services to about 50 residences. Fire hydrants, removal and replacement of concrete sidewalk, curb gutter, construction of one new driveway apron, earthwork, milling, paving, patchwork, and traffic control. We did advertise the project on August 14th and 21st, we opened bids

on September 14th, and we had three bidders. The recommendation to award by the engineer is also attached to your packet, along with bid tabulation. The performance period is about ninety days once we issue notice to proceed.

Mayor Payne asked if that was how long it will take. Engineering Manager Johnson said once we issues notice to proceed, but there are some items that have a substantial lead time

Commissioner Rardin asked Engineering Manager Johnson if there was a reason why we have one bid that is substantially higher than the engineer's estimate; we've got two that are consider lower, is there a reason for that. Engineering Manager Johnson said the engineer's estimate was based upon the ridiculous fluctuation in material prices that have been going on for the last year and continues to go. He said that they erred on the side of caution. Commissioner Rardin said that is why their estimate is considerably higher. Engineering Manager Johnson said it is about 25% higher than La Luz Dirt and Paving, although between the first and second bidders there is about an 11% spread, so they are not too far apart. Commissioner Rardin said yeah, they are not too far off.

Mayor Payne said it seems like in the past, this particular company has been on the lower end of the bids, but she could be wrong. Engineering Manager Johnson said La Luz Dirt and Paving is a smaller company, but they do good work.

Mayor Pro-Tem Wright moved to approve.

Commission Rardin seconded the motion.

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

11. Consider and act upon the first publication of ordinance 1660, amending Chapter 5 "Alcoholic Beverages" of the Alamogordo Code of Ordinances. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

City Clerk Hughs said we did an amendment not too long ago on Chapter 5 for Alcoholic Beverages. These further amendments are staff recommendations to remove duplicate State language, and in doing so, if he State changes their language, we don't have to change our ordinance. The other amendment is to remove Temporary Alcoholic Beverage Dispensers Permits, however the City Clerk's Office will continue to sign the approval or disapproval for the State's Public Celebration Permits, or the Special Dispenser's Permit applications that an applicant would bring into our office.

Commissioner Rardin said it appears we are trying to be business friendly when it comes to this, so that is a good thing. Commissioner Rardin asked City Manager Cesar do you really think we can get this done in one day. City Manager Cesar said if you had a liquor license and you are going to participate in some temporary event, because you hold the license, but the City of Alamogordo controls the property, you would have to come in, and we have one portion we have to sign off on saying that where you are wanting to sell the alcohol meets our ordinances or zoning. So really, what we are checking is to make sure that the property is away from schools, churches, etcetera. The only reason we are saying one business day is because the City Clerk might not be right there available as you come in, but for the most part, the person should be walking out on the same day either with our signature on it saying to the State that yes we are approving, and it is upon the applicant to supply all the other information that the State looks at, to determine whether or not they will issue the temporary license. If we are disapproving it, or not signing off on it, we will be giving the applicant the reason, which primarily would be well, you are too close to school or church, in the wrong zoning or a residential area, so one business day should more than enough for us to say yes it is okay or it is not okay.

Commissioner Rardin moved to approve.

Commissioner Burnette seconded the motion.

Roll Call Vote was taken.

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

12. Consider and act upon the first publication of ordinance 1659, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media". (Brian Cesar, City Manager) (Roll Call Vote Required).

City Manager Cesar said that this is something that has been a topic of discussion for years. As the Commission is aware, we do get records request on a very frequent basis, and for the most part, the records that are being requested are in the City's control. If someone requests information on your City emails, or staff members emails, the City Clerk has the ability to put in a work order and have all emails pulled. What we don't have control over is personal social media accounts and this has caused issues for many years now. So basically, what this is saying is that you as City Commissioners recognize the official City of Alamogordo pages if you want to conduct City business as a Commissioner. On a social media platform, you will use the official City of Alamogordo social media accounts, you will submit that to a staff member, and they will get it posted on whichever platform it is. This isn't taking away from any of the Commissioners ability to use their personal Facebook accounts. What you are seeing in this is that you will not conduct City business, and that doesn't mean that you can't take a post that we have up, for example, the City of Alamogordo put out that is sign-up time for the Summer activities at the REC Center; you can repost or post all day long about that, it is just conducting official City business, that you are saying you won't do on your accounts. What this does for the City is, if we have all the official communications from the various Commissioners, the Mayor, and the Mayor Pro-Tem, and we get those records requests, we can quickly pull off the information that is being requested. The other that it does is give us somewhat of a buffer if there are complaints, lawsuits, etcetera; for a number of Commissioners we have had those over the years. Through the Municipal League, the City of Alamogordo, ultimately the citizens have paid for those settlement agreements in the past. This does not restrict you all from doing Facebook, Twitter, etcetera, it is really saying that in your official capacity, you will only use our recognized, City-created, government accounts.

Commissioner Rardin said in the ordinance, down there at the bottom, it says violation of this ordinance is subject to steps outlined in the Alamogordo Code of Conduct for elected and appointed officials. Since that doesn't exist yet, and is only up for discussion tonight, do we want to change that in there, up to such time as that actually exists.

City Attorney Smith said she would agree actually, that section we might need to revisit, or take out for now, and then add it once we do have that Code of Conduct outlined. When we get to the Code of Conduct section, you will see that it does talk about social media and stuff like that. She said as the City Manager explained, this is really supposed to try to limit our liability when it comes to these suits. She said when she looked at the case law concerning this, the big thing was city business, are you conducting city business on your personal page. If you are conducting city business on your personal page, then it can be IPRA'd. So we are basically putting this, so that we are saying, if you wish to conduct City business on Facebook, do it through our approved accounts, that way we are not having to get your private accounts.

Mayor Payne said what would we put there, if we are not going to include that. Commissioner Rardin said just strike that for now, and add it back in amended later, since that document doesn't exist yet. Mayor Payne said she did not have a problem with that but was a little curious. We are going to look at this Code of Conduct next, and what if we decide not to move forward with it, what would be an example of something you put there. Commissioner Rardin said State Law or Governmental Conduct

Act. Mayor Payne said violation of this ordinance, because there has to be a consequence for violating it, right. City Attorney Smith said we could try to reference the State Statutes. Commissioner Rardin said not to kick the can down the road, but depending on what Item 13 is, you are going to bring that back possibly at the next meeting, could we possibly table this one until that meeting, and then that way we don't have to bring it back and publish it again twice. Not that he didn't want to pass it, he was all for it. City Attorney Smith said if you want to consider the Code of Conduct first, you can table it if you choose. Commissioner Rardin said just do it all in the same meeting one week, because that other one is just a discussion only. Mayor Payne said it is not an action item, right. Commissioner Rardin said he just did not want to have to pass this, then turn around six weeks from now and bring it back. City Manager Cesar said you can table this item to the next meeting, dependent on the discussion on the next item, it is staff's intention after the discussion is to bring the Code of Conduct in ordinance format for first publication at the next meeting. Commissioner Rardin said wouldn't it make sense to just do it all, all in one.

Commissioner Melton said before we move on, he did have one clarifying question. He said you know Brian, we had a discussion about this, but the line between City business and personal business, that is really for Number 5 here, that is when you interact with a constituent, correct. That is when you identify as a Commissioner, and they ask for something and you reply back. City Attorney Smith said exactly, kind of like what you just said. The case law basically explains City business as, say on your private site, a citizen comes and says we need to fix this pothole. If you then reply oh yes, I will get that fixed, then that is conducting City business. She said her suggestion is to refer any such thing to the official channels. If you have a general comment referring them, like this is my personal page, please refer any City business to the proper channels.

Commissioner Rardin said so we are just going to table this until the next meeting, depending on the outcome of Item 13. City Manager Cesar said you will have to make a motion.

Commissioner Rardin moved to table the item.

Commissioner Burnett seconded the motion.

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

13. Discuss possible new ordinance on the Code of Conduct for Elected and Appointed Officials. (Brian Cesar, City Manager).

Citizens made the following comments.

Ronda Merrick said she is grateful that you have took on a Code of Conduct policy. She said she only hopes that it does not become the joke it was last time that we tried. She said she does believe in the putting the past behind us, and moving forward. She said she only hopes this time, if you are going to have the Code of Conduct for the Commissioners, you follow the policies. She said her wish for the City is to be a City who straightens the crown of each other without telling them it was crooked.

Richard Merrick said a couple of you were here on this dais when we took the City Code of Conduct away. He said he believe that Mayor Payne was here and serving, and he believed that Commissioner Rardin was too. He said he first wanted to commend City Manager Cesar and the City Attorney's Office for putting together a well thought-out ordinance. He said he took time to read it, and it is much better than what we had before. As we know in the past, the Code of Conduct really had no teeth, as the Commission was judging their peers, and hence the reason the Code of Conduct was removed, because citizens did not feel they were being taken seriously. So having an Ethics Panel outside of the influence of City Hall is an absolutely beautiful and wonderful idea. He said it takes it away from you guys to have judge each other, and it puts it in an independent panel that is going to look at the

facts, and there is no outside influence. He said he would like to see one change made in the code concerning the Ethics Panel. Right now, what is written, it is a three member panel, and he would urge you to consider to change it to consist of a Chair, and one citizen from each District for a total of seven members. Let's get the citizens and your constituents involved in this Panel. We can accomplish this in a similar manner as we already use our Boards and Committees, you know, people that are interested in being on the panel would submit some kind of application, and we would look at it the same way we look at our Boards, and each one of the panels members and the Chair, would serve for one year. At the end of the year, review the selections, and if there is other people that may want to be on the Panel, we put them in, we take those out. Maybe there is people that don't want to do it anymore. Hopefully we never have to convene an Ethics Panel, but that would in the perfect world. He said he thinks by bringing somebody from each District, just like you guys represent the City, the Ethics Panel is going to represent the entire City if something was to happen with a Commissioner. He said he thinks that would open the transparency and understanding of what goes on. Other than that, most of it is really the rules and regulations that the Commission is supposed to follow are the same as they were before, but the thing that changed was that Ethics Panel. The Chairperson should be somebody with some kind of law background to help the common citizen to be able to understand where and what we are deciding on.

Kathy Ramsey said she is here to really celebrate this Code, she is really impressed. She said she had the opportunity over her career to work on a lot of policy in regards to ethics, and this is very well-written. There is nothing that is more important to her in government than ethics and integrity. She said she thinks this where you build public trust, that is where you build people's willingness to work together, and on the other side of it, unethical behavior, or misconduct, or any dishonesty in leadership will really destroy trust. She said that one of things she really likes about this policy, this Code, is that it also speaks without regulation, but it speaks to the appearance of unethical behavior. She said she thinks that can be just as damaging to a government as actual. She said she likes that this heightens everybody's awareness, that it is not only doing what is right, but paying attention to how what you are doing is perceived by others. That is a really important thing. She said she really wants to ask for your support of this. She said she has looked over it very carefully, and she thinks it would be a huge contribution to the City, not only in effective governing, but she thinks it is very proactive, and it will keep you out of trouble, both individually and as a body, in terms of claims of unethical behavior. She said she also thinks that it really underscores that public is really about public interest, in that we come in with a nonpartisan place. She said she loves that it addresses conflicts of interest, transparency, and accountability. This kind of a code is very much in place in most municipalities, this is not new to the world. She said she does not have the history of the town as to where you have been with codes before, she said she really feels strongly that this is a good one. She said she likes there is a process of response to violations, and she likes the notion of an Ethics Panel, and the connection to the judiciary system that is named here, but she said she thinks bottom line, is that when you create a culture of ethics within an organization, it is a process. It doesn't happen overnight necessarily, but you have to have a foundation, and this code seems like a really good place to have a foundation. You can always adjust it as you learn from it. She said she knew that you will deal with it as an ordinance, but it also needs to become a part of orientation for new people, and she said she thinks good ethics programs often incorporate continuing education, perhaps once a year where you are reminded about ethical issues and could bring in expertise, because these are hard issues sometimes, and you can kind of fall into them without any intent, but you can create a lot of havoc. She said she thinks this really could protect the City.

Commissioner Melton said his understanding is that a good portion of this is already covered by State Statute Laws, and the portions that are not covered, just the few that he has read, they are vague. Vague in a way that citizens can misinterpret it, mold it, shape it, and make accusations, just looking at page 88 of our packet, the Nonpartisanship Clause. Decisions shall be made objectively without

party or partisanship considerations, and without facts that are not directly or properly related to the matter requiring action. He said there are two things wrong with that in his view, one, you can't enforce it unless the Commissioner straight out says they are voting this way, because of partisan politics, and two, it will open up the City staff to spend more time fielding complaints from people who think oh, a decision to increase the pay of police is a partisan issue, and they are breaking this. Just two clauses down that are public trust, 3-C, elected or appointed officials shall not provide to the public any information that they reasonably know to be untrue, inaccurate, or misleading. He said again, he did not know how you can enforce that, no one is going to admit that what they think they said is misleading, but just with the partisan nature of the world we live in today, it is just going to open all of us up to complaints that we were being misleading, when all we were doing is stating the facts. In short, he said he thinks we do have a good foundation of ethics here in the City, and the State statute and the Municipal League, they do provide training and guidelines. He said he is not really seeing the point of this.

Mayor Payne said there is a governmental code of conduct at the State level, and it has been her experience, and she thinks the City Manager can probably attest to this, that it is not acted upon. She said she wasn't sure if it was really used. Commissioner Rardin said it is, he knows it is. Mayor Payne said you were kind of made an example out of. Commissioner Rardin said it was abused. Mayor Payne said more recently, she said we have had a couple of employees that there were some complaints filed against, and nothing was ever done on that. She said she has certainly never seen it used; they have created an Ethics Commission, and she thinks that at the State level, if she remembers correctly, she said they were kind of waiting on this governmental code of conduct, until this Ethics Commission was created, to see how that would all tie in. She said she has not followed up since and does not know. She said she could take it very personally too, but obviously she has had a code of conduct filed against her. She said she thinks we are all adults, and we should act like adults, but it is a little uncomfortable when comments are made, and the City as a whole is lumped into it. How do we fix that; she said she does not know. Particularly when it comes to social media, she does not know how we fix that. It is unfortunate that we even have to have this conversation. She said she does not know how everybody else feels about it.

Commissioner Rardin asked for staff to print out a copy of it, and all of us, in the next two weeks, we just read through it, bring it back, and say yea or nay. A good portion of it is in the Governmental Conduct Act, which is State law, but that requires you to do something very illegal in order for that to come into play. Mayor Payne said it does. Commissioner Rardin said it does have 10-3, 10-4, those sections in there are the punishments and the remedies if you violate certain things, but this gives us the ability to try to remedy a problem before it becomes a bigger problem. The City can say, hey, look, we did what we could do, and then it kind of limits our liability a little bit.

Mayor Payne asked how was this written, obviously you must have looked at other cities, or compiled it from others. City Manager Cesar said the Assistant City Manager did the heavy lifting, and this was pulled from a number of communities around New Mexico, larger communities, language obviously tailored a little more towards Alamogordo. Different municipalities have a different structure for their government than we do. What is included in the last item, and this item, now changed a little bit because you all are elected or appointed officials. Our employee manual obviously doesn't apply to elected officials. So if you are asking specifically what portions came from what community, he said he is not going to be able to answer that. Mayor Payne said no, obviously you had to take examples from other places, right. City Manager Cesar said primarily from Rio Rancho, that is in speaking with the New Mexico Municipal League, their attorneys are the ones that do represent the City of Alamogordo in these types of situations, they recommended looking close at Rio Rancho and other communities also, but Rio Rancho as a very good starting point for us. Mayor Payne said her point is that there are several other municipalities that have a code of conduct. City Manager Cesar said most

municipalities. Mayor Payne said so this is not something that would be unique to Alamogordo, this is something that sounds to her like something that is actually fairly standard among many municipalities. She said she thinks the problem with the one that we had was it was truly used as a weapon against Commissioners that individuals may have been upset with. It put the Commission as a whole in an uncomfortable position, because nobody wants to have to judge their peers like that; we all have to work together. She said she thinks the difference with this is that it takes it out of the hands of the Commission and puts it in the hands of a third party. She said what she likes about it is the Chair would be somebody in the legal field, and hopefully with that, we would get non-biased representation. She said the reason she is comfortable with it is because this is pretty standard for most municipalities. If we are all doing what we are supposed to, then it shouldn't be a problem. She said she gets the whole, no matter what you do somebody will be mad at you. She said she would like to think if you found an outside attorney or something to Chair this Commission, they would uphold their canon of ethics and do the right thing for the right reasons. She said she did not know how everybody else feels about it. She said this was recommended by the Municipal League.

Commissioner Rardin said to City Manager Caesar that under the City Ethics Panel, it does say that the City Manager will appoint the chair. He said he thought when we discussed it, the City Attorney would be appointing the Chair, is that correct. City Manager Cesar said it is, however, he is the only one that answers to City Commission, and he would hate to put a target on any staff member at this point. Commissioner Rardin said you see the concern there though, and this is due to past experience with poor City Managers; there is room to utilize it for retaliation. City Manager Cesar said that is why it was brought to you all as a discussion item at this point. A person had to be put in there, there are any number of ways that it could be done.

City Attorney Smith said we have met a lot about this. It would not be appropriate for her to appoint a Chair, because essentially when the complaints come in, she is going to look at it like any case she does from the Municipal Court; does it have merit, does it not, what do we need to do with it. Then she actually presents that case before the Panel, and so if she is then appointing the Chair, that is an ethical conundrum that it would be better for her to not get into.

Commissioner Rardin said that is where he has a little bit of an issue with it. Like the Mayor has stated, it is awkward when you have to judge your peers, and that is the way the old one was set up. He said he sees room for abuse as well.

City Manager Cesar said it was a member of the public brought it up earlier, that we could solicit from the legal field here in Alamogordo; people that would like to Chair such a Committee, and it could be an item that comes before Commission, and the majority of the Commission, prior to having any ethics complaints, this person would sit as Chair for a period that you all determine, then that Chair would form the Panel as needed, if there were complaints that rose to that level. Commissioner Rardin said it would be a preset Committee, one that is already appointed. City Manager Cesar said a preset Chair. The Chair could form the Committee; the Chair is selected by a majority of the Commission. Commissioner Rardin asked how Rio Rancho is doing that portion of it, is this in their ordinance as well. City Manager Cesar said that in Rio Rancho, the Commission actually selects the chair. There is a term in Rio Rancho of possibly up to three years. Commissioner Rardin asked if we could get answers for those questions, and assuming everyone else wants to bring it back at the next meeting, we can have that information; could you also see the larger communities so we can know exactly who has one and who does not, like Las Cruces, Clovis, and Artesia.

City Attorney Smith said she looked at Rio Rancho. In Rio Rancho, the Commission actually does the Panel, they get all the members of the Panel, then the Ethics Panel selects one person to be the Chair. We thought it would be easier and better for us to just have one Chair, preferably a member of the

12th Judicial Bar, that is our attorney bar here. An attorney or former judge, someone like that, could be the Chair, and then have the Panel around them. Mayor Payne said she is most comfortable with that, somebody from the 12th Judicial Bar.

Commissioner Rardin said we have two weeks to figure out how we want to set that up. City Manager Cesar said we could change that language to reflect certain discussions that just happened, and we would then bring this back at the next meeting in or normal ordinance format. We could clean it up and have an ordinance number, etcetera.

Mayor Payne said just so she is clear, what are we deciding to do here. We are going to bring it back for discussion again in two weeks. Commissioner Rardin said a discussion or possible action, because tonight is just a discussion only. Mayor Payne said in two weeks, we are going to put it as a possible action as well. City Manager Cesar said that would be what we are recommending from a staff level, and we will change the order so that this will be the first ordinance that you would consider for first publication, the code of conduct. Then the second would be social media.

Commissioner Rardin said when you guys email this out, include Rio Rancho's actual ordinance too, so we can read through that. City Attorney Smith said she has a cheat-sheet back in her office that she pulled and copy/pasted, so she will get that send to all of you. Mayor Payne said it is your assertion that, not all, but most municipalities have some type of kind of code of conduct, is that correct. City Attorney Smith said yes. Commissioner Rardin said he would just like to know which communities do, and which don't; he is assuming they do. Mayor Payne said if it is easier just to tell us who does not, that would be okay. Commissioner Rardin said that is probably going to be the smaller communities. Rio Rancho is considerably larger than we are.

Commissioner McDonald said we are just looking at the code of conduct only in State of New Mexico and the municipalities here, nobody else. Mayor Payne said we are looking at municipalities within the State, yes. City Manager Cesar said that was right.

Commissioner Melton said while we have an opportunity to look through this in detail, we should take that opportunity and look at anything that is vague, look at anything that could be applied, and we don't need to vote on it in the next meeting, we can take the two weeks, come back, and share our feedback.

Commissioner Rardin said if we decide at the next meeting that we don't feel comfortable with it, or we need more discussion, we just table it until the following meeting, or however long it takes. Mayor Payne said she agrees with that, she just doesn't want to kick the can down the road. Commissioner Rardin said we kick the can two weeks, and we can take action, or we can table it. Mayor Payne said as long as it is not two years, she is good. If we are going to do nothing, we should just say we are going to do nothing. Commissioner Rardin said a lot of this is already in play with the Governmental Conduct Act, the only thing this does is gives us a little bit that we can do here. Mayor Payne said she doesn't mind doing some research herself, but if there is a way to find out, she would like to find out how many times the Governmental Conduct Act has been actually enforced or acted upon. Commissioner Rardin said our former Secretary of State. City Manager Cesar said you are talking about if that was by the State correct, not by the individual municipality. Mayor Payne said no, by the State, because she personally doesn't believe that they do anything. Commissioner Rardin said it would surprise you; the way it works is you have to send a complaint to the Secretary of State's Office, and then they do an ethics deal, and look at it, and then disclose whether it is or isn't. Then they forward it to either the DA's office, or to the AG's office. Mayor Payne said do you think that would be easy to find out. Commissioner Rardin said it should be, you can probably get on the Secretary of State's website and look it up.

No action required.

Commissioner Rardin moved to adjourn at 8:11 p.m.

Commissioner McDonald seconded the motion.

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

ADJOURNMENT

Mayor Susan L. Payne

ATTEST:

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy City Clerk)

Approved at the Regular Meeting held on October 11, 2022.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date: 09/28/2022

Report No: 3.

Submitted By: Barbara Pyeatt

Subject: Consider, and act upon, the award of IFB 2022-09 Alameda Park Electrical Upgrades to Consolidated Electrical Distributors, inc. in the amount of \$149,550.30, including NMGR. (*Veronica Ortega, Community Services Director*)

Fiscal Impact: 149,550.30

Amount Budgeted: \$200,000

Fund: 032-6206-410-6001

Additional Fiscal Impact:

Recommendation: Approve the Award

Background: IFB was advertised on September 4th 2022 in the Alamogordo Daily News. The project is for the upgrading of the electrical at Alameda Park. Two (2) bids were received at the Purchasing Department on September 21, 2022. Only one bid was deemed responsive.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date:

Report No: 4.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the October 11, 2022, 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
6:30 P.M., COMMISSION CHAMBERS
September 27, 2022**

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

**DUSTY WRIGHT, MAYOR PRO-TEM
KARL MELTON, COMMISSIONER
BRIAN CESAR, CITY MANAGER
ASHLEY SMITH, 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 Mayor Payne, and the Pledge of Allegiance was led by Commissioner Rardin.

APPROVAL OF AGENDA

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

PRESENTATIONS

1. Honor Flight Mission presentation. (Scott Fredrick, US Veterans MC NM State Chapter Treasurer)

Mr. Fredrick said this was an opportunity for the community to come together and celebrate something we can all get our arms around and appreciate, which is our veterans. He said Saturday at roughly 8 PM, weather dependent, we should be arriving back with two local veterans, hopefully a van provided by Holloman Air Force Base, seven to ten motorcycles, a Patriot Guard Rider's truck, and hopefully an escort provided by some of our law enforcement. He said the plan is to turn right slowly up White Sands, turn right on 10th, turn left onto New York, and then pull right in front of the County Courthouse, which has lots of room for people to stand there and welcome our veterans back. He said he wanted to thank Downtown, they have offered the Gardens on New York. He said we will have a gathering, a small reception, where the public can meet the veterans, talk to them, ask questions, and say thank you for your service and welcome home. Mr. Frederick proceeded to show a video for this presentation.

Mayor Payne said she will certainly be there.

2. Alamogordo Public School behind the scenes presentation. (Chuck Andreas, Citizen)

Mr. Andreas said he gave a presentation to the School Board on May 18th; and gave them about fifteen days' notice to respond to his questions and facts based on IPRA's and documents provided by New Mexico PED. He said silence, crickets. He said he gave a presentation to the County in June and same thing; he got a response from the County and citizens, but not from the schools. So, if it is fact, or is false, open it up for questioning, let's interrogate it. If it is the truth, it will stand the test no matter what. So tonight, this presentation is going to be a rapid-fire PowerPoint on Alamogordo Public Schools and it is going to be behind-the-scenes. Mr. Andreas proceeded to present the PowerPoint.

PUBLIC COMMENT

Gloria Killian said her parents, her grandparents, and her great-grandparents are all buried over at Monte Vista Cemetery in the old section. She said she would like to challenge all of you to drive through Monte Vista Cemetery in the old section, it is a disgrace to the community, the tumbleweeds are as tall as she is. She said we need to not wait for the Big Give Program, the volunteers from Holloman Airmen to come and clean it up like they did last year in October. They use weed eaters, and the stems on those weeds are not going to be cut down with a weed eater. It is awful. She said she understands that Gene, the Sexton, we are very happy to have him working there, he is a good worker, but he only has one other person. There are two people that maintain the Cemetery and her understanding is they are only allowed to maintain each side of the Cemetery, but they are not supposed to work in the older section. She said she would like to think that someone would be allowed to spray for weeds before they totally get out of hand, so it doesn't look like it does. She said she was told by someone that those are family plots, like where her parents and grandparents are, and that family is supposed to keep it up. She said there is no way that family members are going to go out and take care of family plots; she said she would like to see the City hire more people to work under the Parks and Recreation division and maybe help take care of it before it gets so out of hand.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. The area that is being talked about is the non-perpetual care, that is up to the family members to maintain that area. He said that on October 8th, Honored Past, along with Keep Alamogordo Beautiful will be doing a cleanup, cutting the weeds, etcetera. The way the Monte Vista Cemetery was set up, that area is not maintained by City staff. Keep Alamogordo Beautiful is a federally funded program and is designed for these types of cleanups, but it is not the only thing that Keep Alamogordo Beautiful does. She is exactly right, the weeds are very tall. It has been a challenging year, not just for City staff, but for the citizens in trying to keep up with the weeds.
2. From the State's Economic Development Outdoor Recreation Department, the City of Alamogordo was one of twenty communities around New Mexico that received a grant; ours was in the amount of \$99,000. That money is going to be used as part of outdoor recreation. The Community Services Department will be working with the Engineering Department on rehabilitating the walking trail on Indian Wells from Washington towards White Sands. They will go as far as the \$99,000 will take them. If we are a little bit short, we will be coming back to Commission through a budget resolution so that we are not stopping mid-block, but we need to have that costed out and bids-in first.
3. The other thing that has gone out on our social media accounts, the City is applying for a grant through the Land and Water Conservation Fund. The restoration project at Bonito Lake has been going on since the Little Bear Fire in 2012; the lake has been cleaned out and that project is complete. We are doing the final closeout documents and payments on that. At the tail-end of that project, we also received money to finally address the water dam refacing and the intake tower. That project, barring weather delays, will be wrapping up at the mid-part of next month. What we are looking at with this grant application is a 50/50 match, so we are applying for \$250,000 and the City match will be \$250,000. The first project we will be looking to fund is the actual roadway; the City of Alamogordo owns the roadway just below the dam, and then around to the West Lake Campground. That road is not in good condition at this point, it has had very little maintenance because of all the construction activities since 2012. As part of this grant application, and this is the information that went out on social media, one of the things we have to do in this grant is solicit public participation in a very short survey that has to do with outdoor recreation. Senator Ben Ray Lujan is encouraging the City to apply for this grant and will do what he can do to help let us be successful in obtaining that grant.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

He addressed City Manager Cesar and said that over on Cuba Avenue, between 10th and 11th Street, he said he did not know if the City did this patch or if it was a contractor, but it is settling again. He said he didn't know if we could have staff look at that and get it redone. It has a good depression in it.

Later on the agenda we have a street maintenance program bid coming up; he said when he was on the Commission before, we used to utilize the Cutler process. If we could take a look at utilizing maybe Cutler again and try to get more bang for our buck for these roads when we are fixing them, instead of doing the old pulverize-and-pave and putting all brand-new down. City Manager Cesar said we went away from that maybe somewhere around 2013-2014; the City used to piggyback off the New Mexico DOT portion of the State contract. In that year, they changed the way they bid that out, which didn't allow for municipalities or other entities to piggyback off it. Once we have the Street Assessment, the Water and Sewer Assessment, everything is brought together and we are coming back before Commission to give the proposed projects and timelines to complete those; whether it is Cutler, it won't be like what you remember from the traditional Street Maintenance Program. We will be looking to get the most bang for the buck and use the most appropriate treatment on the various roadways. Commissioner Rardin said back in the day when they used to that, we would get ten or fifteen years out of those roads using that process, it is fairly quick and simple, and gives a very nice driving surface that you don't bounce down all the time. Maybe if we can get enough roads together, we can have them bid it directly to us rather through the State contractor.

Mayor Payne made the following comments:

Pastor Matt Celoria was assaulted, and she would just ask that you keep him in your prayers. It is a pretty sad day when a pastor of a local church is assaulted. There was an incident up in Albuquerque recently at Calvary Church, a security on-staff there was shot and killed. This is getting to be too much, and we need to pray for our churches.

CONSENT AGENDA

3. Approve the minutes for the September 13, 2022, Regular meeting. (Rachel Hughs, City Clerk)

4. Consider, and act upon, the award of RFQ 2022-07 Professional Services for Development of Master Plan for Community Services to Consensus Planning, Inc. (Veronica Ortega, Community Services Director)

5. Consider, and act upon, approval of Resolution No. 2022-42 requesting approval for the establishment of a new special revenue fund for the Cannabis Regulation Act funds totaling an estimated \$204,000. (Evelyn Huff, Finance Director) (Roll Call Vote Required)

6. Consider, and act upon, Resolution 2022-44 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 September 27, 2022. (Evelyn Huff, Finance Director) (Roll Call Vote Required)

7. Consider, and act upon, adoption and final publication of Ordinance 1658 Case Z-2022-0003(A), a map amendment to change the zoning of two parcels located south of Airport Rd. and west of Business Center Blvd. better known as Parcel Numbers 01N4052098330195 and

01N4052098462198 from R-1 Single Family Dwelling to M-2 Industrial Dwelling. (Stella Rael, City Planner) (Roll Call Vote Required)

8. Consider, and act upon, the intergovernmental agreement between Otero County and the City of Alamogordo Police Department for the City to receive \$150,000 annually to provide services from the Alamogordo Police Department Mobile Crisis Response Team to all of Otero County. (Richard Denton, Chief of Police, and Jeannette Borunda, Mobile Crisis Response Team Clinical Director)

Commissioner McDonald moved to approve the Consent Agenda.

Commissioner Paul seconded the motion.

Roll Call Vote was taken.

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

NEW BUSINESS

9. Consider, and act upon, Resolution 2022-43 naming the commission chambers the Donald E. Carroll Commission Chambers. (Commission) (Roll Call Vote Required)

City Clerk Hughs said she was asked to put the resolution on to be able to name this commission chambers the Donald E. Carroll Commission Chambers in honor of his serving 25 years of service. He served 12 straight years in the position of Mayor from March 1996 to March 2008.

Commissioner Rardin said he believed Donald was the longest serving Mayor in Alamogordo's history.

Mayor Payne said it looks like Community Services Director Ortega may have some information for us. Community Services Director Ortega said she understands that this was a request from Senator Ron Griggs, to have the chambers named after Donald E. Carroll who was our longest-standing Mayor for the City. With that, we are approaching the Commission to ask to have the approval to have this chamber named on his behalf.

Commissioner Rardin asked where we would put the plaque, outside or in here. Community Services Director Ortega said there would be a plaque outside. City Manager Cesar said a plaque just outside the door, named above the doorway, and then on the exterior the building also. Community Services Director Ortega said we would ask to do a dedication ceremony later with the family if it is approved.

Mayor Payne shared a story of former Mayor Don Carroll.

Commissioner Rardin moved to approve.

Mayor Pro-Tem Wright seconded the motion.

Roll Call Vote was taken.

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

10. Consider, and act upon, award of Public Works Bid No. 2022-006, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgcrest Drive project in an amount not to exceed \$384,519.19, including NMGRT. (Bob Johnson, Engineering Manager)

Engineering Manager Johnson said the work consists of installing new six-inch water main valves, connections, and water services to about 50 residences. Fire hydrants, removal and replacement of concrete sidewalk, curb gutter, construction of one new driveway apron, earthwork, milling, paving, patchwork, and traffic control. We did advertise the project on August 14th and 21st, we opened bids

on September 14th, and we had three bidders. The recommendation to award by the engineer is also attached to your packet, along with bid tabulation. The performance period is about ninety days once we issue notice to proceed.

Mayor Payne asked if that was how long it will take. Engineering Manager Johnson said once we issues notice to proceed, but there are some items that have a substantial lead time

Commissioner Rardin asked Engineering Manager Johnson if there was a reason why we have one bid that is substantially higher than the engineer's estimate; we've got two that are consider lower, is there a reason for that. Engineering Manager Johnson said the engineer's estimate was based upon the ridiculous fluctuation in material prices that have been going on for the last year and continues to go. He said that they erred on the side of caution. Commissioner Rardin said that is why their estimate is considerably higher. Engineering Manager Johnson said it is about 25% higher than La Luz Dirt and Paving, although between the first and second bidders there is about an 11% spread, so they are not too far apart. Commissioner Rardin said yeah, they are not too far off.

Mayor Payne said it seems like in the past, this particular company has been on the lower end of the bids, but she could be wrong. Engineering Manager Johnson said La Luz Dirt and Paving is a smaller company, but they do good work.

Mayor Pro-Tem Wright moved to approve.

Commission Rardin seconded the motion.

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

11. Consider and act upon the first publication of ordinance 1660, amending Chapter 5 "Alcoholic Beverages" of the Alamogordo Code of Ordinances. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

City Clerk Hughs said we did an amendment not too long ago on Chapter 5 for Alcoholic Beverages. These further amendments are staff recommendations to remove duplicate State language, and in doing so, if he State changes their language, we don't have to change our ordinance. The other amendment is to remove Temporary Alcoholic Beverage Dispensers Permits, however the City Clerk's Office will continue to sign the approval or disapproval for the State's Public Celebration Permits, or the Special Dispenser's Permit applications that an applicant would bring into our office.

Commissioner Rardin said it appears we are trying to be business friendly when it comes to this, so that is a good thing. Commissioner Rardin asked City Manager Cesar do you really think we can get this done in one day. City Manager Cesar said if you had a liquor license and you are going to participate in some temporary event, because you hold the license, but the City of Alamogordo controls the property, you would have to come in, and we have one portion we have to sign off on saying that where you are wanting to sell the alcohol meets our ordinances or zoning. So really, what we are checking is to make sure that the property is away from schools, churches, etcetera. The only reason we are saying one business day is because the City Clerk might not be right there available as you come in, but for the most part, the person should be walking out on the same day either with our signature on it saying to the State that yes we are approving, and it is upon the applicant to supply all the other information that the State looks at, to determine whether or not they will issue the temporary license. If we are disapproving it, or not signing off on it, we will be giving the applicant the reason, which primarily would be well, you are too close to school or church, in the wrong zoning or a residential area, so one business day should more than enough for us to say yes it is okay or it is not okay.

Commissioner Rardin moved to approve.

Commissioner Burnette seconded the motion.

Roll Call Vote was taken.

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

12. Consider and act upon the first publication of ordinance 1659, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media". (Brian Cesar, City Manager) (Roll Call Vote Required).

City Manager Cesar said that this is something that has been a topic of discussion for years. As the Commission is aware, we do get records request on a very frequent basis, and for the most part, the records that are being requested are in the City's control. If someone requests information on your City emails, or staff members emails, the City Clerk has the ability to put in a work order and have all emails pulled. What we don't have control over is personal social media accounts and this has caused issues for many years now. So basically, what this is saying is that you as City Commissioners recognize the official City of Alamogordo pages if you want to conduct City business as a Commissioner. On a social media platform, you will use the official City of Alamogordo social media accounts, you will submit that to a staff member, and they will get it posted on whichever platform it is. This isn't taking away from any of the Commissioners ability to use their personal Facebook accounts. What you are seeing in this is that you will not conduct City business, and that doesn't mean that you can't take a post that we have up, for example, the City of Alamogordo put out that is sign-up time for the Summer activities at the REC Center; you can repost or post all day long about that, it is just conducting official City business, that you are saying you won't do on your accounts. What this does for the City is, if we have all the official communications from the various Commissioners, the Mayor, and the Mayor Pro-Tem, and we get those records requests, we can quickly pull off the information that is being requested. The other that it does is give us somewhat of a buffer if there are complaints, lawsuits, etcetera; for a number of Commissioners we have had those over the years. Through the Municipal League, the City of Alamogordo, ultimately the citizens have paid for those settlement agreements in the past. This does not restrict you all from doing Facebook, Twitter, etcetera, it is really saying that in your official capacity, you will only use our recognized, City-created, government accounts.

Commissioner Rardin said in the ordinance, down there at the bottom, it says violation of this ordinance is subject to steps outlined in the Alamogordo Code of Conduct for elected and appointed officials. Since that doesn't exist yet, and is only up for discussion tonight, do we want to change that in there, up to such time as that actually exists.

City Attorney Smith said she would agree actually, that section we might need to revisit, or take out for now, and then add it once we do have that Code of Conduct outlined. When we get to the Code of Conduct section, you will see that it does talk about social media and stuff like that. She said as the City Manager explained, this is really supposed to try to limit our liability when it comes to these suits. She said when she looked at the case law concerning this, the big thing was city business, are you conducting city business on your personal page. If you are conducting city business on your personal page, then it can be IPRA'd. So we are basically putting this, so that we are saying, if you wish to conduct City business on Facebook, do it through our approved accounts, that way we are not having to get your private accounts.

Mayor Payne said what would we put there, if we are not going to include that. Commissioner Rardin said just strike that for now, and add it back in amended later, since that document doesn't exist yet. Mayor Payne said she did not have a problem with that but was a little curious. We are going to look at this Code of Conduct next, and what if we decide not to move forward with it, what would be an example of something you put there. Commissioner Rardin said State Law or Governmental Conduct

Act. Mayor Payne said violation of this ordinance, because there has to be a consequence for violating it, right. City Attorney Smith said we could try to reference the State Statutes. Commissioner Rardin said not to kick the can down the road, but depending on what Item 13 is, you are going to bring that back possibly at the next meeting, could we possibly table this one until that meeting, and then that way we don't have to bring it back and publish it again twice. Not that he didn't want to pass it, he was all for it. City Attorney Smith said if you want to consider the Code of Conduct first, you can table it if you choose. Commissioner Rardin said just do it all in the same meeting one week, because that other one is just a discussion only. Mayor Payne said it is not an action item, right. Commissioner Rardin said he just did not want to have to pass this, then turn around six weeks from now and bring it back. City Manager Cesar said you can table this item to the next meeting, dependent on the discussion on the next item, it is staff's intention after the discussion is to bring the Code of Conduct in ordinance format for first publication at the next meeting. Commissioner Rardin said wouldn't it make sense to just do it all, all in one.

Commissioner Melton said before we move on, he did have one clarifying question. He said you know Brian, we had a discussion about this, but the line between City business and personal business, that is really for Number 5 here, that is when you interact with a constituent, correct. That is when you identify as a Commissioner, and they ask for something and you reply back. City Attorney Smith said exactly, kind of like what you just said. The case law basically explains City business as, say on your private site, a citizen comes and says we need to fix this pothole. If you then reply oh yes, I will get that fixed, then that is conducting City business. She said her suggestion is to refer any such thing to the official channels. If you have a general comment referring them, like this is my personal page, please refer any City business to the proper channels.

Commissioner Rardin said so we are just going to table this until the next meeting, depending on the outcome of Item 13. City Manager Cesar said you will have to make a motion.

Commissioner Rardin moved to table the item.

Commissioner Burnett seconded the motion.

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

13. Discuss possible new ordinance on the Code of Conduct for Elected and Appointed Officials. (Brian Cesar, City Manager).

Citizens made the following comments.

Ronda Merrick said she is grateful that you have took on a Code of Conduct policy. She said she only hopes that it does not become the joke it was last time that we tried. She said she does believe in the putting the past behind us, and moving forward. She said she only hopes this time, if you are going to have the Code of Conduct for the Commissioners, you follow the policies. She said her wish for the City is to be a City who straightens the crown of each other without telling them it was crooked.

Richard Merrick said a couple of you were here on this dais when we took the City Code of Conduct away. He said he believe that Mayor Payne was here and serving, and he believed that Commissioner Rardin was too. He said he first wanted to commend City Manager Cesar and the City Attorney's Office for putting together a well thought-out ordinance. He said he took time to read it, and it is much better than what we had before. As we know in the past, the Code of Conduct really had no teeth, as the Commission was judging their peers, and hence the reason the Code of Conduct was removed, because citizens did not feel they were being taken seriously. So having an Ethics Panel outside of the influence of City Hall is an absolutely beautiful and wonderful idea. He said it takes it away from you guys to have judge each other, and it puts it in an independent panel that is going to look at the

facts, and there is no outside influence. He said he would like to see one change made in the code concerning the Ethics Panel. Right now, what is written, it is a three member panel, and he would urge you to consider to change it to consist of a Chair, and one citizen from each District for a total of seven members. Let's get the citizens and your constituents involved in this Panel. We can accomplish this in a similar manner as we already use our Boards and Committees, you know, people that are interested in being on the panel would submit some kind of application, and we would look at it the same way we look at our Boards, and each one of the panels members and the Chair, would serve for one year. At the end of the year, review the selections, and if there is other people that may want to be on the Panel, we put them in, we take those out. Maybe there is people that don't want to do it anymore. Hopefully we never have to convene an Ethics Panel, but that would in the perfect world. He said he thinks by bringing somebody from each District, just like you guys represent the City, the Ethics Panel is going to represent the entire City if something was to happen with a Commissioner. He said he thinks that would open the transparency and understanding of what goes on. Other than that, most of it is really the rules and regulations that the Commission is supposed to follow are the same as they were before, but the thing that changed was that Ethics Panel. The Chairperson should be somebody with some kind of law background to help the common citizen to be able to understand where and what we are deciding on.

Kathy Ramsey said she is here to really celebrate this Code, she is really impressed. She said she had the opportunity over her career to work on a lot of policy in regards to ethics, and this is very well-written. There is nothing that is more important to her in government than ethics and integrity. She said she thinks this where you build public trust, that is where you build people's willingness to work together, and on the other side of it, unethical behavior, or misconduct, or any dishonesty in leadership will really destroy trust. She said that one of things she really likes about this policy, this Code, is that it also speaks without regulation, but it speaks to the appearance of unethical behavior. She said she thinks that can be just as damaging to a government as actual. She said she likes that this heightens everybody's awareness, that it is not only doing what is right, but paying attention to how what you are doing is perceived by others. That is a really important thing. She said she really wants to ask for your support of this. She said she has looked over it very carefully, and she thinks it would be a huge contribution to the City, not only in effective governing, but she thinks it is very proactive, and it will keep you out of trouble, both individually and as a body, in terms of claims of unethical behavior. She said she also thinks that it really underscores that public is really about public interest, in that we come in with a nonpartisan place. She said she loves that it addresses conflicts of interest, transparency, and accountability. This kind of a code is very much in place in most municipalities, this is not new to the world. She said she does not have the history of the town as to where you have been with codes before, she said she really feels strongly that this is a good one. She said she likes there is a process of response to violations, and she likes the notion of an Ethics Panel, and the connection to the judiciary system that is named here, but she said she thinks bottom line, is that when you create a culture of ethics within an organization, it is a process. It doesn't happen overnight necessarily, but you have to have a foundation, and this code seems like a really good place to have a foundation. You can always adjust it as you learn from it. She said she knew that you will deal with it as an ordinance, but it also needs to become a part of orientation for new people, and she said she thinks good ethics programs often incorporate continuing education, perhaps once a year where you are reminded about ethical issues and could bring in expertise, because these are hard issues sometimes, and you can kind of fall into them without any intent, but you can create a lot of havoc. She said she thinks this really could protect the City.

Commissioner Melton said his understanding is that a good portion of this is already covered by State Statute Laws, and the portions that are not covered, just the few that he has read, they are vague. Vague in a way that citizens can misinterpret it, mold it, shape it, and make accusations, just looking at page 88 of our packet, the Nonpartisanship Clause. Decisions shall be made objectively without

party or partisanship considerations, and without facts that are not directly or properly related to the matter requiring action. He said there are two things wrong with that in his view, one, you can't enforce it unless the Commissioner straight out says they are voting this way, because of partisan politics, and two, it will open up the City staff to spend more time fielding complaints from people who think oh, a decision to increase the pay of police is a partisan issue, and they are breaking this. Just two clauses down that are public trust, 3-C, elected or appointed officials shall not provide to the public any information that they reasonably know to be untrue, inaccurate, or misleading. He said again, he did not know how you can enforce that, no one is going to admit that what they think they said is misleading, but just with the partisan nature of the world we live in today, it is just going to open all of us up to complaints that we were being misleading, when all we were doing is stating the facts. In short, he said he thinks we do have a good foundation of ethics here in the City, and the State statute and the Municipal League, they do provide training and guidelines. He said he is not really seeing the point of this.

Mayor Payne said there is a governmental code of conduct at the State level, and it has been her experience, and she thinks the City Manager can probably attest to this, that it is not acted upon. She said she wasn't sure if it was really used. Commissioner Rardin said it is, he knows it is. Mayor Payne said you were kind of made an example out of. Commissioner Rardin said it was abused. Mayor Payne said more recently, she said we have had a couple of employees that there were some complaints filed against, and nothing was ever done on that. She said she has certainly never seen it used; they have created an Ethics Commission, and she thinks that at the State level, if she remembers correctly, she said they were kind of waiting on this governmental code of conduct, until this Ethics Commission was created, to see how that would all tie in. She said she has not followed up since and does not know. She said she could take it very personally too, but obviously she has had a code of conduct filed against her. She said she thinks we are all adults, and we should act like adults, but it is a little uncomfortable when comments are made, and the City as a whole is lumped into it. How do we fix that; she said she does not know. Particularly when it comes to social media, she does not know how we fix that. It is unfortunate that we even have to have this conversation. She said she does not know how everybody else feels about it.

Commissioner Rardin asked for staff to print out a copy of it, and all of us, in the next two weeks, we just read through it, bring it back, and say yea or nay. A good portion of it is in the Governmental Conduct Act, which is State law, but that requires you to do something very illegal in order for that to come into play. Mayor Payne said it does. Commissioner Rardin said it does have 10-3, 10-4, those sections in there are the punishments and the remedies if you violate certain things, but this gives us the ability to try to remedy a problem before it becomes a bigger problem. The City can say, hey, look, we did what we could do, and then it kind of limits our liability a little bit.

Mayor Payne asked how was this written, obviously you must have looked at other cities, or compiled it from others. City Manager Cesar said the Assistant City Manager did the heavy lifting, and this was pulled from a number of communities around New Mexico, larger communities, language obviously tailored a little more towards Alamogordo. Different municipalities have a different structure for their government than we do. What is included in the last item, and this item, now changed a little bit because you all are elected or appointed officials. Our employee manual obviously doesn't apply to elected officials. So if you are asking specifically what portions came from what community, he said he is not going to be able to answer that. Mayor Payne said no, obviously you had to take examples from other places, right. City Manager Cesar said primarily from Rio Rancho, that is in speaking with the New Mexico Municipal League, their attorneys are the ones that do represent the City of Alamogordo in these types of situations, they recommended looking close at Rio Rancho and other communities also, but Rio Rancho as a very good starting point for us. Mayor Payne said her point is that there are several other municipalities that have a code of conduct. City Manager Cesar said most

municipalities. Mayor Payne said so this is not something that would be unique to Alamogordo, this is something that sounds to her like something that is actually fairly standard among many municipalities. She said she thinks the problem with the one that we had was it was truly used as a weapon against Commissioners that individuals may have been upset with. It put the Commission as a whole in an uncomfortable position, because nobody wants to have to judge their peers like that; we all have to work together. She said she thinks the difference with this is that it takes it out of the hands of the Commission and puts it in the hands of a third party. She said what she likes about it is the Chair would be somebody in the legal field, and hopefully with that, we would get non-biased representation. She said the reason she is comfortable with it is because this is pretty standard for most municipalities. If we are all doing what we are supposed to, then it shouldn't be a problem. She said she gets the whole, no matter what you do somebody will be mad at you. She said she would like to think if you found an outside attorney or something to Chair this Commission, they would uphold their canon of ethics and do the right thing for the right reasons. She said she did not know how everybody else feels about it. She said this was recommended by the Municipal League.

Commissioner Rardin said to City Manager Caesar that under the City Ethics Panel, it does say that the City Manager will appoint the chair. He said he thought when we discussed it, the City Attorney would be appointing the Chair, is that correct. City Manager Cesar said it is, however, he is the only one that answers to City Commission, and he would hate to put a target on any staff member at this point. Commissioner Rardin said you see the concern there though, and this is due to past experience with poor City Managers; there is room to utilize it for retaliation. City Manager Cesar said that is why it was brought to you all as a discussion item at this point. A person had to be put in there, there are any number of ways that it could be done.

City Attorney Smith said we have met a lot about this. It would not be appropriate for her to appoint a Chair, because essentially when the complaints come in, she is going to look at it like any case she does from the Municipal Court; does it have merit, does it not, what do we need to do with it. Then she actually presents that case before the Panel, and so if she is then appointing the Chair, that is an ethical conundrum that it would be better for her to not get into.

Commissioner Rardin said that is where he has a little bit of an issue with it. Like the Mayor has stated, it is awkward when you have to judge your peers, and that is the way the old one was set up. He said he sees room for abuse as well.

City Manager Cesar said it was a member of the public brought it up earlier, that we could solicit from the legal field here in Alamogordo; people that would like to Chair such a Committee, and it could be an item that comes before Commission, and the majority of the Commission, prior to having any ethics complaints, this person would sit as Chair for a period that you all determine, then that Chair would form the Panel as needed, if there were complaints that rose to that level. Commissioner Rardin said it would be a preset Committee, one that is already appointed. City Manager Cesar said a preset Chair. The Chair could form the Committee; the Chair is selected by a majority of the Commission. Commissioner Rardin asked how Rio Rancho is doing that portion of it, is this in their ordinance as well. City Manager Cesar said that in Rio Rancho, the Commission actually selects the chair. There is a term in Rio Rancho of possibly up to three years. Commissioner Rardin asked if we could get answers for those questions, and assuming everyone else wants to bring it back at the next meeting, we can have that information; could you also see the larger communities so we can know exactly who has one and who does not, like Las Cruces, Clovis, and Artesia.

City Attorney Smith said she looked at Rio Rancho. In Rio Rancho, the Commission actually does the Panel, they get all the members of the Panel, then the Ethics Panel selects one person to be the Chair. We thought it would be easier and better for us to just have one Chair, preferably a member of the

12th Judicial Bar, that is our attorney bar here. An attorney or former judge, someone like that, could be the Chair, and then have the Panel around them. Mayor Payne said she is most comfortable with that, somebody from the 12th Judicial Bar.

Commissioner Rardin said we have two weeks to figure out how we want to set that up. City Manager Cesar said we could change that language to reflect certain discussions that just happened, and we would then bring this back at the next meeting in or normal ordinance format. We could clean it up and have an ordinance number, etcetera.

Mayor Payne said just so she is clear, what are we deciding to do here. We are going to bring it back for discussion again in two weeks. Commissioner Rardin said a discussion or possible action, because tonight is just a discussion only. Mayor Payne said in two weeks, we are going to put it as a possible action as well. City Manager Cesar said that would be what we are recommending from a staff level, and we will change the order so that this will be the first ordinance that you would consider for first publication, the code of conduct. Then the second would be social media.

Commissioner Rardin said when you guys email this out, include Rio Rancho's actual ordinance too, so we can read through that. City Attorney Smith said she has a cheat-sheet back in her office that she pulled and copy/pasted, so she will get that send to all of you. Mayor Payne said it is your assertion that, not all, but most municipalities have some type of kind of code of conduct, is that correct. City Attorney Smith said yes. Commissioner Rardin said he would just like to know which communities do, and which don't; he is assuming they do. Mayor Payne said if it is easier just to tell us who does not, that would be okay. Commissioner Rardin said that is probably going to be the smaller communities. Rio Rancho is considerably larger than we are.

Commissioner McDonald said we are just looking at the code of conduct only in State of New Mexico and the municipalities here, nobody else. Mayor Payne said we are looking at municipalities within the State, yes. City Manager Cesar said that was right.

Commissioner Melton said while we have an opportunity to look through this in detail, we should take that opportunity and look at anything that is vague, look at anything that could be applied, and we don't need to vote on it in the next meeting, we can take the two weeks, come back, and share our feedback.

Commissioner Rardin said if we decide at the next meeting that we don't feel comfortable with it, or we need more discussion, we just table it until the following meeting, or however long it takes. Mayor Payne said she agrees with that, she just doesn't want to kick the can down the road. Commissioner Rardin said we kick the can two weeks, and we can take action, or we can table it. Mayor Payne said as long as it is not two years, she is good. If we are going to do nothing, we should just say we are going to do nothing. Commissioner Rardin said a lot of this is already in play with the Governmental Conduct Act, the only thing this does is gives us a little bit that we can do here. Mayor Payne said she doesn't mind doing some research herself, but if there is a way to find out, she would like to find out how many times the Governmental Conduct Act has been actually enforced or acted upon. Commissioner Rardin said our former Secretary of State. City Manager Cesar said you are talking about if that was by the State correct, not by the individual municipality. Mayor Payne said no, by the State, because she personally doesn't believe that they do anything. Commissioner Rardin said it would surprise you; the way it works is you have to send a complaint to the Secretary of State's Office, and then they do an ethics deal, and look at it, and then disclose whether it is or isn't. Then they forward it to either the DA's office, or to the AG's office. Mayor Payne said do you think that would be easy to find out. Commissioner Rardin said it should be, you can probably get on the Secretary of State's website and look it up.

No action required.

**Commissioner Rardin moved to adjourn at 8:11 p.m.
Commissioner McDonald seconded the motion.
Motion carried with a vote of 7-0-0.**

ADJOURNMENT

Mayor Susan L. Payne

ATTEST:

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy City Clerk)
Approved at the Regular Meeting held on October 11, 2022.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date: 10/04/2022

Report No: 5.

Submitted By: Bob Johnson

Subject: Consider, and act upon, award of Public Works Bid No. 2022-004, CDBG Project No. 19-C-NR-I-01-G-18, to General Hydronics Concrete, LLC related to the Alamogordo ADA Compliant Sidewalk Improvements project in an amount not to exceed \$1,391,076.72, including NMGR. *(Bob Johnson, Engineering Manager and Jason Casebolt, Project Manager)*

Fiscal Impact: \$1,391,076.72

Amount Budgeted: \$2,073,968

Fund: 048-0207-463.61-62 and 048-0207-463.61-29, GC2004

Additional Fiscal Impact: \$1,556,305.00 available and unencumbered.

Recommendation: Approve the award.

Background: The work consists of construction of new concrete sidewalks, concrete curb and gutter, ADA compliant ramps, concrete driveways (residential and all entrances), and asphalt patching. Limited demolition of concrete flat work, vegetation trimming, and asphalt pavement will be required to complete construction. Limited utility adjustments will be required to include valve box adjustments with new concrete collars, water meter can adjustments, and manhole adjustments with new concrete collars. Traffic control will also be required to maintain access to area residents and businesses as well as guidance for the traveling public (vehicular and pedestrian). The project was advertised on July 24 and 31, 2022. Bids were opened on August 24, 2022. The engineer's award recommendation and bid tabulation are attached.



August 25, 2022

Jason Casebolt, Project Manager
City of Alamogordo
1376 E. Ninth Street
Alamogordo, New Mexico 88310

**Re: Project No. 19-C-NR-I-01-G-18
Public Works Bid No. 2022-004
Community Development Block Grant
CDBG Alamogordo ADA Compliant Sidewalk Improvements
SEC# 821202**

Dear Mr. Casebolt:

Bids were opened for the above referenced project on Wednesday, August 24, 2022, at 2:00 PM mountain standard time. Bids were submitted and received by General Hydronics Concrete, LLC and J29 Enterprises, LLC. The bid amounts are summarized on the attached bid tabulation sheet. The lowest, responsive bid was submitted by General Hydronics Concrete, LLC of Alamogordo, New Mexico in the amount of \$1,288,034.00 plus gross receipts tax.

General Hydronics Concrete, LLC is a registered Contractor in the State of New Mexico with active classifications GA01, GA02, GA03, GB98, GF04 and operating under License Number 388890. The bid submitted by General Hydronics Concrete, LLC listed the subcontractors that will work on the project. Each is licensed in the State of New Mexico with the appropriate classification to perform their nature of work. The Surety for the five percent (5%) Bid Bond included in the bid submitted by General Hydronics Concrete, LLC is United Fire & Casualty Company.

The basis of award for this project is the lowest, complete, and responsive bid submitted by a qualified licensed Contractor in the State of New Mexico. Therefore, after reviewing the submitted bids, Smith Engineering Company recommends the contract be awarded to General Hydronics Concrete, LLC of Alamogordo, New Mexico in the amount of \$1,288,034.00 plus gross receipts tax. Award of this Contract is contingent upon approval of this recommendation by the City of Alamogordo Commission and the New Mexico Department of Finance (DFA).

Please feel free to call with any questions or comments.

Mr. Jason Casebolt, PM

Page 2 of 2

August 25, 2022

Sincerely,
Smith Engineering Company

A handwritten signature in black ink, appearing to read "Rusty Payne".

Rusty Payne, PE
Project Engineer

cc: Bob Johnson, Alamogordo Engineering Manager

Attach: Bid Tabulation

BID TABULATION
ALAMOGORDO ADA COMPLIANT SIDEWALK IMPROVEMENTS
PUBLIC WORKS BID NO. 2022-004
CDBG NO. 19-C-NR-I-01-G-18
AUGUST 24, 2022 at 2:00 PM MST

ITEM NO.	UNIT	ESTIMATED QUANTITY	ITEM DESCRIPTION	ENGINEER'S ESTIMATE OF PROBABLE CONSTRUCTION COSTS (EOPC)		GENERAL HYDRONICS CONCRETE, LLC 388890		J29 ENTERPRISES, LLC 392033	
				UNIT COST	ITEM COST	UNIT COST	ITEM COST	UNIT COST	ITEM COST
1	L.S.	1	CLEARING & GRUBBING; CIP	\$5,000.00	\$5,000.00	\$9,200.00	\$9,200.00	\$29,115.00	\$29,115.00
2	L.S.	1	MOBILIZATION; CIP	\$126,000.00	\$126,000.00	\$105,015.00	\$105,015.00	\$530,100.00	\$530,100.00
3	L.S.	1	FURNISH, PROVIDE, & MAINTAIN MUTCD PLAN; CIP	\$14,000.00	\$14,000.00	\$15,800.00	\$15,800.00	\$34,345.00	\$34,345.00
4	L.S.	1	CONSTRUCTION STAKING & SURVEYING BY THE CONTRACTOR; CIP	\$14,000.00	\$14,000.00	\$10,800.00	\$10,800.00	\$28,945.00	\$28,945.00
5	SY	2,030	12" SUBGRADE PREPARATION; CIP	\$3.00	\$6,090.00	\$5.00	\$10,150.00	\$30.80	\$62,524.00
6	SY	2,030	8" BASE COURSE; CIP	\$20.00	\$40,600.00	\$20.00	\$40,600.00	\$28.80	\$58,464.00
7	SY	2,030	PRIME COAT MATERIAL, CIP	\$1.00	\$2,030.00	\$1.00	\$2,030.00	\$2.20	\$4,466.00
8	SY	2,030	HMA SP-IV 3" THICK; CIP	\$50.00	\$101,500.00	\$34.00	\$69,020.00	\$53.10	\$107,793.00
9	SF	1,120	TACTILE WARNING SURFACE; CIP	\$25.00	\$28,000.00	\$24.20	\$27,104.00	\$33.75	\$37,800.00
10	SY	7,620	4" THICK CONCRETE; CIP	\$70.00	\$533,400.00	\$50.00	\$381,000.00	\$68.80	\$524,256.00
11	SY	3,020	6" THICK CONCRETE; CIP	\$100.00	\$302,000.00	\$84.75	\$255,945.00	\$189.00	\$570,780.00
12	LF	7,800	CURB & GUTTER (ALL TYPES); CIP	\$20.00	\$156,000.00	\$31.90	\$248,820.00	\$34.58	\$269,724.00
13	EA	27	REMOVE & RESET EXISTING SINGLE POLE SIGN; CIP	\$250.00	\$6,750.00	\$50.00	\$1,350.00	\$145.00	\$3,915.00
14	EA	6	ADJUST EXISTING MANHOLE TO GRADE; CIP	\$1,000.00	\$6,000.00	\$500.00	\$3,000.00	\$1,011.00	\$6,066.00
15	EA	11	ADJUST EXISTING WATER METER BOX TO GRADE; CIP	\$500.00	\$5,500.00	\$100.00	\$1,100.00	\$386.00	\$4,246.00
16	EA	8	ADJUST EXISTING VALVE BOX TO GRADE; CIP	\$500.00	\$4,000.00	\$400.00	\$3,200.00	\$442.00	\$3,536.00
17	EA	4	REMOVE & RESET EXISTING MAILBOX; CIP	\$500.00	\$2,000.00	\$100.00	\$400.00	\$139.00	\$556.00
18	L.S.	1	VEGETATION TRIMMING AND LIMBING; CIP	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$29,115.00	\$29,115.00
19	LF	7,800	REMOVE & DISPOSE CONCRETE CURB; CIP	\$2.00	\$15,600.00	\$6.00	\$46,800.00	\$18.80	\$146,640.00
20	SY	2,140	REMOVE & DISPOSE OF 4" TO 6" THICK CONCRETE; CIP	\$5.00	\$10,700.00	\$20.00	\$42,800.00	\$26.80	\$57,352.00
21	SY	1,780	REMOVE & DISPOSE OF ASPHALT PAVEMENT; CIP	\$4.00	\$7,120.00	\$5.00	\$8,900.00	\$18.10	\$32,218.00
BASE BID SUBTOTAL:				\$1,391,290.00		\$1,288,034.00		\$2,541,956.00	
NMGR (8.0000%):				\$111,303.20		\$103,042.72		\$203,356.48	
TOTAL BASE BID:				\$1,502,593.20		\$1,391,076.72		\$2,745,312.48	
						GENERAL HYDRONICS CONCRETE, LLC 388890		J29 ENTERPRISES, LLC 392033	

CONTINGENCY 5%:	\$75,129.66	\$69,553.84
REQUIRED BUDGET:	\$1,577,722.86	\$1,460,630.56
MATERIALS TESTING:	\$36,245.00	\$36,245.00
CONSTRUCTION PHASE SERVICES:	\$43,128.00	\$43,128.00
	<u>\$1,657,095.86</u>	<u>\$1,540,003.56</u>

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date: 10/04/2022

Report No: 6.

Submitted By: Bob Johnson

Subject: Consider, and act upon, approval of Amendment No. 1, CDBG Project No. 19-C-NR-I-01-G-18, to Smith Engineering Company, related to the engineering and design of the Alamogordo ADA Compliant Sidewalk Improvements project in an amount not to exceed \$85,871.66, including NMGRT. *(Bob Johnson, Engineering Manager and Jason Casebolt, Project Manager)*

Fiscal Impact: \$85,871.66

Amount Budgeted: \$85,871.66

Fund:

Additional Fiscal Impact:

Recommendation: Approve the amendment.

Background: At staff's request, Smith Engineering Company prepared a proposal for:

1. Construction phase services to include bi-weekly site observations for the 9-month project duration, reporting, and in-place quantity verification; material submittal reviews; responses to RFI's, field orders, and change order requests (COR's); substantial completion and project closeout documentation assistance; and
2. Materials testing/quality control services.

**AMENDMENT #1 TO
AGREEMENT BETWEEN OWNER AND ENGINEER
FOR ALAMOGORDO ADA COMPLIANT SIDEWALK IMPROVEMENTS
CDBG PROJECT NO. 19-C-NR-I-01-G-18**

THIS 1st AMENDMENT made on this ____ day of October, 2022 between the City of Alamogordo, a New Mexico municipal corporation (the "Owner"), and Smith Engineering Company (the "Engineer").

The parties hereby agree that the Agreement, dated May 27, 2021 between the Owner and Engineer hereby amended as follows:

3. COMPENSATION

Professional services fees for this Amendment #1 will be in accordance with the rates and charges as stipulated in the Agreement dated May 27, 2021, with an additional lump sum amount for the Construction Phase Services of \$46,659.10, including NMGR, and an additional time and materials amount for the Materials Testing of \$39,212.56, including NMGR.

Except as set forth in this Amendment, the original Agreement, dated May 27, 2021 shall remain in full force and effect.

IN WITNESS WHEREOF, City and Consultant have executed this amendment on the date set opposite their signatures.

SMITH ENGINEERING COMPANY

Date: 09/16/2022

By: 
Rusty Payne, PE Vice President

OWNER
CITY OF ALAMOGORDO, NEW MEXICO
A New Mexico municipal corporation

Date: _____

By: _____
Brian Cesar, City Manager

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, City Clerk

Ashley Smith, City Attorney



9/16/2022

Jason Casebolt, Project Manger
City of Alamogordo – Engineering
1376 Ninth Street
Alamogordo, New Mexico 88310

Re: **Community Development Block Grant (CDBG)
Alamogordo ADA Complaint Sidewalk Improvements
Amendment Request #1 – Engineering Services During the Construction Phase**
Project No. 19-C-NR-I-01-G-18
SEC# 821202

Dear Mr. Casebolt:

Please utilize this letter and attachments for consideration of an amendment to the existing Contract for Engineering Services During the Construction Phase. All Section A – General Provisions shall remain in effect.

Attached hereto you will find Exhibit C detailing our proposed construction phase services.

Additionally, Attachment III is included to provide a detailed estimate of the Engineering Services during the Construction Phase. Our services are estimated to run concurrent with the Construction Contract Time (270 Days). Materials testing services have been included in this proposal on a time and materials basis. We have estimated the number of total testing services to verify the Contractor's preparation and finished product meets the requirements of the Construction Plans and Contract Documents.

In summary, we estimate the Engineering Services during the Construction Phase to be completed for the sum of \$85,871.66 which includes the applicable gross receipts tax (8.1875%). If you have any questions or comments regarding this request for amendment, please let me know at rustyp@smithengineering.pro or by telephone at 575-523-2395.

Sincerely,
Smith Engineering Company


Rusty Payne, PE
Project Engineer

cc: Bob Johnson, Engineering Manager



EXHIBIT C – CONSTRUCTION SERVICES SCOPE OF WORK

Scope of Services:

The City of Alamogordo is interested in procuring Construction Phase Services for the Community Development Block Grant (CDBG) Alamogordo ADA Compliant Sidewalk Improvements project. Below is our understanding of the Construction Phase Services required as part of this project and delineation of services to be provided by Smith.

CDBG Documentation for Construction Administration:

The following documents were downloaded from the New Mexico Department of Finance & Administration (NMDFA) Website; our interpretation of responsibility is as listed below:

Exhibits – Chapter 4:

Exhibit 4-A Bidding and Contract Documents: **Completed under the Initial Project**

Exhibit 4-B Request for State Wage Determination: **Completed under the Initial Project**

Exhibit 4-C Request for Federal Wage Determination/10 Day Call – **Completed under the Initial Project**

Exhibit 4-D Architect's & Engineers Certification Compliance with Minimum Standards for Accessibility by the Physically Handicapped – **Completed under the Initial Project**

Exhibit 4-E Minutes of Bid Opening – **To Be Completed under the Initial Project**

Exhibit 4-G Notice of Contract Award – **City of Alamogordo**

Exhibit 4-H Notice to All Employees – **To be Delivered at Preconstruction Meeting**

Exhibit 4-I **To be Delivered at Preconstruction Meeting**

Exhibit 4-J Equal Opportunity is the Law Poster – **To be Delivered at Preconstruction Meeting**

Exhibit 4-K Commonly Asked Questions Concerning Equal Employment Opportunity – **To be Delivered at Preconstruction Meeting**

Exhibit 4-L CDBG Preconstruction Conference Minutes with Required Elements – **City of Alamogordo**

Exhibit 4-M Notice to Proceed – **City of Alamogordo**

Exhibit 4-N Appointment of Labor Standards Officer – **City of Alamogordo**

Exhibit 4-O Record of Employee Interview – **City of Alamogordo**

Exhibit 4-P Certified Payroll – **City of Alamogordo**

Exhibit 4-Q Overtime Violations Report – **City of Alamogordo**

Exhibit 4-R Final Wage Compliance Report – **City of Alamogordo**

Exhibit 4-R-1 Employee's Restitution Receipt – **City of Alamogordo**

Exhibit 4-R-2 Employee Restitution Summary – **City of Alamogordo**

Exhibit 4-S A Listing of the Duties, Responsibilities, and Limitations of Authority of the Resident Project Representative – **This Contract by Smith**

Exhibit 4-T Construction Contract Checklist – **City of Alamogordo**

Exhibit 4-U Payroll Review Worksheet – **City of Alamogordo**

Exhibit 4-V Force Account Work – **City of Alamogordo**

EXHIBIT C

Smith Construction Phase Services:

Preconstruction Meeting: Smith will attend the Preconstruction Meeting to assist the City with Contractor coordination and any technical project matters discussed.

Resident Project Representation: Smith will complete bi-weekly (every two weeks) site observations to document project progress and general conformance with the Contract Documents. The construction duration is scheduled for 270 calendar days which is approximately 36 weeks. Therefore, we anticipate 18 site observations visits. The mid-month site visit will observe the construction progress and provide a Site Observation Report to the Owner. The end of month site observation will verify Contractor quantities placed during the work period in anticipation of the month's pay application.

Submittals: Smith will receive, review, and recommend acceptance of construction materials, via the formal submittal process, in conformance with the Construction Documents and City Technical Standards. We anticipate submittals for concrete, asphalt materials, base course, and the Project Sign.

Requests for Information (RFI) and Field Orders: Should the design intent or construction plans not be clear to the Contractor, Smith will assist the City in clarifying the design intent through the formal RFI process. Should design drawings be required to further clarify the scope of work, Smith will issue additional materials through the form Field Order/Change process.

Contractor Pay Applications: Smith will assist the City in the review and verification of monthly pay applications. Commensurate with the site observations the quantities will be checked against the claimed monthly quantities on each pay application.

Change Orders: Should the Contractor scope of work change, construction time be impacted outside the Contractor's control, or for final Contract quantity balancing; Smith will assist the City with the preparation of Contract Change Order(s) to be received, reviewed, and accepted by the City and the Funding Agency.

Substantial Completion: Once the Contractor has notified the City that construction has been substantially completed, Smith in conjunction with the City and Funding Agency will schedule a construction walk through to verify the construction is in fact substantially complete in accordance with the Construction Documents. A punch list of remaining construction activities to be completed ahead of project acceptance and Final Pay Application will be generated and distributed to all project parties.

Closeout Document Assistance: Should the City request assistance with construction related closeout documentation we have included some time for these activities; 20 hours have been allocated for this coordination. The required closeout documentation and delivery to the funding agency shall be the responsibility of the City of Alamogordo.

Materials Testing Services: Smith will subcontract Wood Environmental & Infrastructure Solutions, Inc (Wood) to provide materials testing services on this project. These services shall

EXHIBIT C

include earthwork observation and testing, concrete testing, and asphalt testing. Wood's detailed scope of work can be found at the end of this Exhibit for further detail. The potential number of tests required have been estimated, but the actual number of tests completed will be invoiced on a Time and Materials basis at the Unit Rates provided in Wood's proposal.

<u>Proposed Fee Schedule:</u>	<u>Type</u>	<u>Fee Amount</u>
Construction Phase Services:	Lump Sum	\$43,128.00
Materials Testing:	Time & Materials	\$36,245.00
	Subtotal Fee	\$79,373.00
	<u>NMGRT (8.1875%)</u>	<u>\$6,498.66</u>
	Total Fee	\$85,871.66



Wood Environment & Infrastructure Solutions, Inc.
2507 North Telshor Blvd, Suite D
Las Cruces, New Mexico, USA
T: 575-888-3505
T: 915-585-2472
www.woodplc.com

August 23, 2022
Wood Proposal 22-07-20E

Smith Engineering Company
201 N. Church Street, Suite 200A
Las Cruces, New Mexico 88001

Attn.: Mr. Rusty W. Payne, P.E.

**Re: Materials Testing Services
ADA Compliant Sidewalk Improvements
Alamogordo, New Mexico**

Dear Mr. Payne:

Wood Environment & Infrastructure Solutions, Inc. (Wood) is pleased to present this proposal for Materials Testing Services for the above referenced project. This proposal presents the scope of services anticipated and schedule of fees for materials testing services.

1.0 SCOPE OF SERVICES

It is our understanding that the project will consist of the construction of new concrete sidewalks, concrete curb and gutter, ADA compliant ramps, concrete driveways and asphalt pavement patching. The following services are anticipated for the project.

Earthwork Observation and Testing

This will include the following:

- Observation and testing of subgrade materials and structural fill, including compaction testing and moisture content as per project specifications.
- Laboratory testing for maximum density, optimum moisture content, and soil classification relative to project specifications.

Concrete Testing

Our services will include the following:

- Testing of concrete for slump, temperature, air content, and casting of compressive strength cylinders and compressive strength of grout and mortar as per project specifications.

Asphalt Testing

Our services will include the following:

- Sampling and laboratory testing of delivered asphalt material. Laboratory testing will include asphalt content, gradation, maximum theoretical specific gravity, and bulk specific gravity as per project specifications.
- Field density testing of compacted asphalt paving, as per project specifications.



The safety of our employees is of paramount concern to Wood. You will be notified if the location of your project represents a potential safety concern to our employees. Wood personnel will not direct, lay out, or supervise the construction operations for the project, nor will we alter or change the project plans, specifications, or reports.

2.0 PROJECT SCOPE & FEES

Specified services will be performed on **a time and materials basis** in accordance with our existing on-call contract. We have included our proposed units and estimated quantities in the **attached Table 1**. Should our estimated quantities vary from actual quantities required, Wood will bill at standard contract unit rates, regardless of estimates provided in this document. All unit rates presented in this proposal are based on our negotiated fee structure.

Test failures are not included in our estimated cost for the project. Test failures will be billed at the rates provided in Table 1.

All travel, stand-by or nonstandard testing will be billed at hourly rate of \$50.00/hr. Overtime hours worked (in excess of 8 hours per day or work on Saturday or Sunday) are subject to an increase of listed hourly rates in accordance with our contract.

3.0 SCHEDULING

We request that our office be contacted (575-888-3505 or 915-585-2472) at least 1 working day prior to the time our quality control services are needed to allow for scheduling. **Prior to the start of our services, we will require one (1) set of the approved project specifications.**

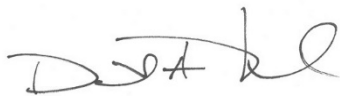
4.0 AUTHORIZATION

We appreciate the opportunity of submitting this proposal and are available to discuss the details of this proposal with you. If there are any questions regarding the proposed scope of work, or if you require modifications to this proposal, please contact us at (915) 585-2472.

Respectfully submitted,

Wood Environment & Infrastructure Solutions, Inc.

Reviewed by:



David A. Varela, P.E.
Senior Engineer



David Valles
Laboratory Manager

# of Units	Unit Rate	Unit		Total
Soil Inspection and Testing				
0	\$50.00	Hour	Engineering Technician (Standby or cancellations)	\$0.00
390	\$40.00	Each	Field Density Test (minimum 3 per visit)	\$15,600.00
7	\$90.00	Each	Soil Sampling	\$630.00
7	\$140.00	Each	Subgrade and Base Proctor	\$980.00
7	\$70.00	Each	Sieve Analysis	\$490.00
7	\$70.00	Each	Plasticity Index	\$490.00
			Subtotal	\$18,190.00
Concrete testing				
0	\$50.00	Hour	Engineering Technician (Standby or cancellations)	\$0.00
85	\$160.00	Set	Concrete Cylinders (4 Cylinders/set)	\$13,600.00
			Subtotal	\$13,600.00
Asphalt Testing				
0	\$50.00	Hour	Engineering Technician (Standby or cancellations)	\$0.00
2	\$120.00	Each	Asphalt Sampling	\$240.00
2	\$180.00	Each	Marshall/Gyratory Properties	\$360.00
2	\$180.00	Each	Extraction/Gradation	\$360.00
2	\$100.00	Each	Theoretical Density (Rice)	\$200.00
			Subtotal	\$1,160.00
			Estimated Total Project Cost, plus applicable taxes	\$32,950.00
Wood will only bill for services/testing completed for the project.				

SMITH ENGINEERING COMPANY

ATTACHMENT III - COMPENSATION FOR ENGINEERING SERVICES DURING CONSTRUCTION

PROPOSED CONSTRUCTION PHASE FEE SCHEDULE

Alamogordo ADA Compliant Sidewalk Improvements Project							Subconsultants	Reimbursables	Copies and Repro
TASK	Project Work Items	Engineer III	Field Tech IV	Civil Designer II	Hours	Labor	Wood, Inc	Mileage	Print
							Materials Testing	0.585	1.00
		Hourly rate	\$175.00	\$125.00					
SUBCONSULTANTS	SUBCONSULTANTS						1.10		
	Materials Testing Services (Time & Materials Basis)	\$0.00		\$0.00	0	\$0	\$32,950.00		
	Construction Phase Services								
CONST. PHASE	Attend Pre-Construction Meeting	4		4	8	\$1,180		140	
	Submittal Review (Base Course, HMA, Concrete, Project Sign)	4		4	8	\$1,180			
	Bi-Weekly Site Visits (9 Mid-Month Site Visits 2Hrs Travel/2Hrs Observed) (9 Site Visits for Monthly Pay Application Quantities 2 Hrs Travel/4 Hours Observation and Measurements)	54		90	144	\$20,250		2,520	
	Pay Application Review (Anticipate 9)	20		10	30	\$4,700			
	Site Observation Reports (18 Anticipated)	6		36	42	\$5,370			
	Punch-List Walk Through	8		8	16	\$2,360		140	
	RFIs & General Contractor Correspondence	10		10	20	\$2,950			
	Closeout Assistance/Documentation	20		0	20	\$3,500			
		126	0	162	288	\$41,490			
	Subtotal Hours / Units:	126	0	162	288	-	\$32,950.00	2,800	\$ -
Subtotal Labor Amounts:		\$ 22,050	\$ -	\$ 19,440	-	\$41,490	\$36,245.00	\$ 1,638.00	\$ -
Subtotal Direct Costs:						\$37,883.00			
Total Project Fee:						\$79,373			

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date: 10/07/2022

Report No: 7.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, first publication of Ordinance 1661, amending Chapter 17 of the Alamogordo Code of Ordinances concerning Licenses and Miscellaneous Business Regulations. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve the ordinance for first publication.

Background:

Changes

- streamline the application process
- timeframe of receiving a business registration or license
- adding per month late fee and inactivation of business after 3 months of non renewal
- the appeal of denial shall go to the city manager
- moving some licenses to registrations
- removing some licenses
- removing some requirements for food vendors
- removing garage and yard sales, it will be added to a different chapter
- removing peddlers and solicitors, licenses are no longer issued, so it will be added to the traffic ordinance
- most registrations and licenses will be on a 12-month renewal and not a calendar year renewal

ORDINANCE NO. 1661

AN ORDINANCE AMENDING CHAPTER 17 OF THE ALAMOGORDO CODE OF ORDINANCES CONCERNING LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that businesses and occupations provide valuable services to the citizens of Alamogordo; and,

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that streamlining the current process would be favorable when requesting business registrations and licenses; and,

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, recognizes some licenses would be better suited under business registrations; and,

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, considers it necessary to amend sections of Chapter 17 of the Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico, that Chapter 17 of the Code of Ordinances be amended to read as follows:

CHAPTER 17 ~~LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS~~ AND LICENSES

ARTICLE 17-01. GENERAL PROVISIONS AND BUSINESS REGISTRATION

17-01-010. Applicability.

The provisions of this article shall apply to all persons doing business in the city, except persons paying license fees under other articles of this chapter or other chapters of this Code ~~and artists who made less than one thousand dollars during the previous calendar year need not pay the registration fee required by section 17-01-030.~~

17-01-020. Definitions.

Unless the context clearly indicates that a different meaning is intended, the words and phrases used in this chapter shall have the following meanings:

Amusement hall: ~~Any arcade, building or premises having as its primary business the providing of mechanical or electronic amusement devices, including but not limited to the following: Pinball machines, electronic or video games of skill or chance, claw or scoop machines, jukeboxes or coin-operated table games.~~

Business: Any profession, trade or occupation and all and every kind of calling, whether or not carried on for profit, except those organizations exempt from the federal income tax pursuant to Section 501(c)(3) of the United States Internal Revenue Code, as amended or renumbered; provided, however, "business" shall include an "unrelated trade or business" of such organizations as the latter terms are defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

Conduct, carry on: To engage in, carry on, own, maintain, manage, or operate any business, trade, art, profession, calling, employment, occupation or any commercial, industrial, or professional pursuit, vocation, or enterprise in this city.

Outdoor displays and sales: ~~The display or sale of goods or merchandise not in or from an enclosed permanent building. This term shall not apply to:~~

(1) ~~Special sales, not more than two (2) days in duration, conducted by a merchant from or adjacent to the building which is its normal place of business; or~~

(2) ~~Sales at fairs, fiestas, art shows and similar events sponsored by civic or charitable organizations.~~

~~These sales shall nevertheless be subject to registration, as provided in section 17-01-030.~~

Place of business: Any location within the Alamogordo city limits, building or portion thereof, or premises in which or from which a business is carried on. The term includes, but is not limited to, an office, warehouse, yard, location where books and records are kept, or the location from which business is solicited.

17-025. Required.

All business registrations and business licenses with the City of Alamogordo are required to maintain any applicable Local, State, Federal, and other licensing to do business in the city.

17-01-026. Prerequisite for application.

(a) Applicant shall provide a copy the Planning and Zoning Department's approved form.

(b) Applicant shall provide a copy the Alamogordo Fire Department's approved form.

17-01-030. Business registration fee.

(a) A business registration fee is hereby charged on each place of business conducted within the municipality which is not otherwise licensed by the municipality. The business registration fee shall be thirty-five dollars (\$35.00).

(b) Prior to engaging in any business, a person the applicant shall pay to the city the business registration fee, which may not be prorated for businesses conducted for a portion of the year. Prior to January 31 of each year the expiration date of business registration any person engaging in business within the municipality shall apply for renewal of any applicable the business registration, if the person is not otherwise subject to licensing by the municipality, and shall include with his the application the business registration fee and his current New Mexico revenue division taxpayer identification number, or evidence of application for a current revenue division taxpayer identification number.

17-01-035. Application process.

Upon the receipt of an application for a business registration and approval forms, the city clerk's department shall review application, and if approved, within 2 (two) business days a business license certificate will be issued.

If, as a result of the review, it is determined that the issuance of a business registration is not in the interest of the health, safety and general welfare of the public, the applicant shall be given notice of denial. The applicant may present to the city manager reason for obtaining a registration. If the city manager determines that issuance of the registration is not in the best interest of the public health, safety, or welfare, the denial shall stand.

17-01-040. Late registration or renewal; surcharge.

If any person fails to obtain the appropriate registration or license pursuant to the terms of this chapter, or fails to renew such registration or license before January 31 of the year of renewal the expiration date of business registration, a surcharge will be assessed in the amount of ten twenty-five dollars (\$40.00 25.00) per month. The business will be inactivated after three months of non-compliance of renewal. This surcharge may

be imposed in addition to the penalties provided in section 17-01-100. The same process as new business registrations will be followed by the applicant for any renewals with a change of business.

17-01-050. Forms

Applications for business registration and licenses shall be made in writing to the city clerk, who shall prescribe the form required for such applications. The clerk may require the applicant to shall provide all information considered necessary to process the application and to determine that the policies of this chapter are complied with.

17-01-060. Transfer of registration or license.

No registration or license issued pursuant to this chapter shall be transferable from one business to another. Registrations and licenses issued pursuant to section 17-01-030 shall not be transferable from one person conducting a business to a succeeding person conducting the same business; however, licenses issued pursuant to Article I-A of this chapter may be transferred to a succeeding operator of the same business, upon the payment of a ten dollar (\$10.00) transfer fee.

17-01-070. Display of registration or license.

The city clerk shall provide a suitable certificate of registration or license to each place of business coming within the terms of this chapter, which shall be prominently conspicuously displayed at the place of business for which the registration or license is issued. A duplicate certificate of registration or license may be issued by the city clerk to replace a lost or destroyed certificate, upon the payment of a filing fee of ten dollars (\$10.00).

17-01-080. Proper business location.

No license or registration shall be issued pursuant to this chapter, unless the facilities and buildings at the location of the proposed business meet all applicable building code, fire code and zoning restrictions currently in force in the city. If all such codes are complied with, and if ten (10) days' notice is given to the clerk, the location of a business may be changed within the city.

17-01-090. State licenses.

No license or registration pursuant to this chapter shall be issued to any business where a license required for such business by the State of New Mexico, has not been obtained.

17-01-100 90. Offenses; nuisances; procedures nonexclusive.

- (a) It is unlawful for any person to engage in, conduct or carry on any business or occupation within the City of Alamogordo without first registering the same or obtaining a license therefor, and without first paying the fees in compliance with the provisions of this chapter.
- (b) It is unlawful for any person to knowingly file an application for issuance or renewal of any business registration or business license, upon which any of the information required by the application has been falsified.
- (c) It is unlawful for any person to engage in, conduct or carry on any business within the City of Alamogordo without obtaining any license that may be required for it by the State of New Mexico. This prohibition includes, but is not limited to, engaging in the business of contracting of a type for which the owner is not licensed, even though the owner may be licensed for another type of contracting.

- (d) Any person violating the provisions of this section shall be punished as provided in section 1-01-100 of the Alamogordo Municipal Code.
- (e) No business registration or license issued pursuant to this chapter shall be construed to permit the operation of the business as a nuisance.
- (f) The remedies provided in this section are nonexclusive. If a person engages in business in the city, without obtaining the required registration or license, the city may proceed in any manner authorized by law, including specifically, but not limited to, the procedures set forth in sections 3-38-5 and 3-38-6, N.M.S.A., 1978 as the same may be amended or superseded from time to time.
- (g) In addition to other remedies provided in this section, the city may enforce the requirements of sections 3-38-1 through 3-38-6, N.M.S.A., 1978, as amended or superseded, by an appropriate action in a court of competent jurisdiction any time up to four (4) years after the violation.

ARTICLE 17-01A. BUSINESSES TO BE LICENSED

17-01A-010. Purpose.

The governing body of the City of Alamogordo does find and declare that the licensing and regulation of the businesses enumerated in this article and subsequent articles in this chapter is conducive to the promotion of the health, general welfare, and safety of the public.

17-01A-020. Applicability.

The provisions of this article shall apply, in addition to the businesses listed, to the businesses required to be licensed under later articles in this chapter and elsewhere in this Code. If there is a conflict, the provisions of the later article or elsewhere in this Code shall control.

17-01A-025. Prerequisite for application.

- (a) Applicant shall provide a copy the Planning and Zoning Department's approved form.
- (b) Applicant shall provide a copy the Alamogordo Fire Department's approved form.

17-01A-030. Investigation of applicant.

Upon the receipt of an application for a business license, the clerk shall require an investigation of the applicant, to protect the public health, safety and welfare, and refer the application to the appropriate investigating officer. The investigating officer shall make a report on the application, favorable or unfavorable, within ten (10) days of receiving the application. If, as a result of the investigation, the city clerk determines that the issuance of a business license is not in the interest of the health, safety and general welfare of the public, the application shall be referred to the city commission for hearing and issuance or denial of a license. Before the hearing, the applicant shall be given notice and at the hearing shall have an opportunity to be heard before the city commission. The city commission may also hear any other evidence presented on the matter. If, upon hearing, a majority of the city commission present at the hearing determine that issuance of the license is not in the best interest of the public health, safety or welfare, the license may be refused.

Upon the receipt of an application for a business license and letters of approval, the city clerk's department shall review application, and if approved, within 2 (two) business days a business license certificate will be issued.

If, as a result of the review, it is determined that the issuance of a business license is not in the interest of the health, safety and general welfare of the public, the applicant shall be given notice of denial. The applicant

may present to the city manager reason for obtaining a license. If the city manager determines that issuance of the license is not in the best interest of the public health, safety, or welfare, the denial shall stand.

17-01A-040. Revocation of license.

The city ~~commission~~ **manager or their designee** may revoke a license issued pursuant to this article or a later article in this chapter, where the license holder has been adjudged guilty of a violation of this chapter, or whenever the public health, safety or welfare requires revocation. Before revocation, the city clerk shall notify the holder of the license, in writing, of the proposed revocation, specifying the nature of the charges for which revocation is sought, and specifying a date for a hearing not less than ten (10) days after the issuance of the notice. The licensee shall have the right to ~~appear at such hearing in person or by counsel, and present evidence~~ **appeal to the city manager** why the license should not be revoked. If, ~~upon hearing, a majority of the city commission~~ **manager** determines that revocation of the license is in the best interest of the public health, safety and welfare, the license shall be revoked, and an order shall be entered revoking the license and stating the **reasons to the applicant.** ~~for the action of the city commission.~~

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 1st day of January of~~ expiration of the license 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

Alcohol regulated by Chapter 5, per year \$250

Food vendors, per year \$35.00

Marijuana regulated by Chapter 34, per year \$250 and \$500

Vehicles for hire regulated by Chapter 27 35.00

ARTICLE 17-02. FIREARMS DEALERS

17-02-010. Records to be kept.

Each person or firm in the city engaged in the business of purchasing, selling or lending money on secondhand or used firearms shall keep records on the transactions involving the firearms as follows:

- (1) ~~The make, caliber, description and serial number of each firearm purchased or sold or on which money is lent;~~
- (2) ~~The name and address of the person or firm from whom purchased, to whom sold or to whom money is lent; and~~

~~(3) The date of each transaction.~~

~~17-02-020. Exceptions to chapter.~~

~~Regularly established businesses within the city engaged in the business of selling, at retail, new firearms which have been procured at wholesale from a manufacturer or jobber shall not be subject to the provisions of this article.~~

~~17-02-030. Time of retaining records.~~

~~The records required to be kept hereunder shall be preserved and maintained for at least five (5) years from the date of each such transaction and shall be made available at any time upon request to law enforcement agencies.~~

~~17-02-040. Transactions with minors.~~

~~It shall be the responsibility of each person or firm who buys, sells or loans money on secondhand or used firearms to ascertain whether or not the person with whom the transaction is consummated is a minor under the age of twenty-one (21) years and to report to the director of public safety of the city any transaction with such minor.~~

ARTICLE 17-03. LODGING VENDORS

~~17-03-010. License—Required.~~

~~No vendor shall engage in the business of providing lodging in the city who has not first obtained a license as provided in this article.~~

~~17-03-020. Same—Application.~~

~~Applicants for a vendor's license required by section 17-03-010 shall submit an application to the city manager stating:~~

- ~~(1) The name of the vendor including identification of any person, as defined in this chapter, who owns or operates or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof.~~
- ~~(2) A description of the facilities, including the number of rooms and the usual schedule of rates therefor.~~
- ~~(3) A description of other facilities provided by the vendor or others to users of the lodgings such as ——— restaurant, bar, cleaning, laundry, courtesy car, stenographic, tailor or others, and a statement ——— identifying the license issued, to whom issued, the authority issuing, and the period for which issued, if applicable, and the identification number provided by the bureau of revenue of the state.~~
- ~~(4) The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodgers' tax.~~
- ~~(5) Other information reasonably necessary to effect a determination of eligibility for such license.~~

~~17-03-030. Same—Review of application; issuance.~~

~~The city manager shall review applications for a license required by section 17-03-010 within ten (10) days of receipt thereof and grant the license in due course if he finds the applicant is doing business subject to the lodgers' tax.~~

~~17-03-040. Same—Denial of application; notice.~~

- ~~(a) If the city manager finds that the applicant for a license required by section 17-03-010 is not qualified to do business subject to the lodgers' tax, he shall not more than ten (10) days after receipt of the application, advise the applicant of his decision and give the reasons therefor. The notice of such action shall be given by registered mail, postage prepaid, addressed to the applicant at the address given on the application, deposited in the post office at Alamogordo on the date thereof.~~
- ~~(b) If the city manager finds the applicant not exempt under the terms of the lodgers' tax ordinance he shall not more than ten (10) days after receipt of the application advise the applicant of his decision and give the reasons therefor.~~

~~17-03-050. Same—Appeal from denial.~~

~~An applicant who is dissatisfied with the decision of the city manager on his application for a license required by section 17-03-010 may appeal the decision to the city commission by written notice to the city manager of such appeal to be made within fifteen (15) days of the date of the decision of the city manager on the application. The matter shall be referred to the city commission for hearing at a regular or special meeting in the usual course of business. The decision of the city commission made thereof shall be expressed in writing and be communicated in the same manner as the decision of the city manager is transmitted. The action of the city commission shall be final.~~

~~17-03-060. Same—Action after appeal.~~

~~If the city commission finds for the applicant upon an appeal as provided for in section 17-03-050, the city manager shall issue the appropriate license or other notice conforming to the decision made by the commission.~~

ARTICLE 17-04. PUBLIC AUCTIONS

~~17-04-010. Definitions.~~

~~When used in this article, the following terms and words shall have the meaning and effect as follows:~~

~~*Auctioneer* shall mean any person conducting a sale by public auction of personal property or real property of his own or as agent for another.~~

~~*Property* includes all goods, wares, merchandise, commodities, compounds, things, chattels, jewelry, and all other property of whatsoever form or nature, exceeding an aggregate retail value of one thousand dollars (\$1,000.00) but does not include choices in action or real property.~~

~~*Public auction* includes any public offer to sell personal property or real property to the highest bidder or to the person offering to pay the highest prices therefor, and shall be without qualifications or reservations, unless at the time of the offer of each article or parcel and before any bids are asked thereon a minimum price therefore be publicly stated. The term shall not include judicial sales, sales on account of executors or administrators, sales by trustees under deed of assignment or lienors, sales by public officers, and sales by bona fide religious or charitable organizations conducting auctions on premises regularly occupied or used by those organizations for their activities.~~

~~*Real Property* shall mean the land, together with the improvements thereon and attached thereto.~~

~~17-04-020. Auctioneer's license—Required.~~

~~The sale of any personal or real property at public auction shall be unlawful unless such sale is directly conducted by an auctioneer licensed pursuant to the provisions of this article. It shall be unlawful for any license to be granted to any minor or to any person not of good reputation and moral character. Licensing of auctions of jewelry shall be pursuant to section 61-16-3 et seq., N.M.S.A., 1978.~~

17-04-030. Same—Application.

Every applicant for an auctioneer's license pursuant to this article shall present to the clerk a written application signed and duly verified by him, which application shall state the following:

- (1) His full name, age, residence by street, number and place, present occupation;
- (2) That he is a citizen of the United States and a resident of the state or a foreign corporation authorized to do business in the state;
- (3) Place where he intends to conduct the business of auctioneer in the city;
- (4) A summary of his qualifications;
- (5) Where and when he was previously licensed as auctioneer; and
- (6) Whether any previous license as auctioneer was cancelled for cause.

17-04-040. Same—Bond.

The applicant shall present to the clerk, with his application, a bond issued by a duly authorized surety company, in a penal sum of five thousand dollars (\$5,000.00), conditioned on the faithful observance of the laws of New Mexico and ordinances of the city, for the performance of all duties, the renditions of all accounts and the payment of all monies required by law to be paid, and for the payment to the city for and on behalf of any person who is defrauded or suffers loss by reason of the auctioneer's violation of any state law or city ordinance. The bond must be approved as to form and compliance with this chapter by the city attorney.

17-04-050. Same—Clerk's records.

The clerk shall preserve each application for an auctioneer's license as a public record of his office and shall make a notation of each application in a book to be kept for that purpose, properly indexed, showing the name of the applicant, the effective date and the duration and number of any license issued on such application.

17-04-060. Same—Fee; issuance; term.

Auctioneers shall pay a business license fee in an amount equal to that levied in Section 17-01-030 as it may be amended.

17-04-070. Prohibited acts.

The following acts, omissions and practices in connection with the sales of goods, wares and merchandise at auction are hereby prohibited:

- (1) The use of deceit, fraud or misrepresentation in the sale or offering for sale of any article or articles.
- (2) The substitution of any article in the place of an article bid upon at auction.
- (3) The bidding in or withdrawal from sale of any article after receiving a second bid therefor, or receiving any bid from a person not a bona fide bidder at such sale, or any person acting as a "capper," "booster" or "shiller."
- (4) The use of bells, buzzers, ballyhoo or any variety of mechanical or excessive vocal sound to attract attention in connection with sales at auction.
- (5) The conduct of a sale where entertainment is provided on the premises where the sale is conducted for the prospective bidders.
- (6) The substitution of an unlicensed person in place of a licensed auctioneer
- (7) The use of any false or misleading advertising matter, whether relating to the kind or quality of the goods or to other past history, present status or otherwise.

- ~~(8) The failure to exhibit an auctioneer's license to conduct such sale to any police officer upon demand at the place where an auction is being conducted.~~
- ~~(9) The receipt for sale by auction or the sale by auction by any licensed auctioneer of any goods, wares or merchandise from any minor, knowing him to be such.~~
- ~~(10) The opening of any public auction sale until all the provisions of this article have been complied with or the conduct of any such sale in a manner contrary to any of the provisions of this article.~~

ARTICLE 17-05. PAWNBROKERS AND SECONDHAND DEALERS

~~17-05-010. Short title.~~

~~This article shall be known as and may be cited as the "Pawnbrokers and Secondhand Dealers Ordinance."~~

~~17-05-020. Purpose.~~

~~The purpose of this article is to regulate those businesses which primarily purchase or receive through pawn transaction merchandise from the general public for the purpose of resale.~~

~~17-05-030. Definitions~~

~~For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~*Firearm* as defined in 18 United States Code Section 921.~~

~~*Item*, in addition to meaning an individual item, shall include a coherent unit, such as a tool set with a tool box, for purposes of the reporting requirements of this article, provided that the contents of such units are reasonably described therein.~~

~~*Pawnbroker* shall mean a person who:~~

- ~~(1) Engages in the business of lending money on the deposit or pledge of personal property;~~
- ~~(2) Purchases personal property with the expressed or implied agreement or understanding to sell it back at a stipulated price; or~~
- ~~(3) Engages in the business of purchasing items of gold, silver, platinum or other precious metal or gems and reselling the product.~~

~~*Secondhand dealer* shall mean a person engaged in the business of purchasing, trading, bartering or exchanging secondhand goods.~~

~~*Secondhand goods* shall mean any item of personal property which is not purchased or sold as new. Secondhand goods do not include property purchased by one (1) license holder in the normal course of business from another license holder. Secondhand goods include, but are not limited to the following items:~~

- ~~(1) Jewelry of any kind and of any metal;~~
- ~~(2) Gold, silver, and/or other precious metals in whatever form except coins or bullion;~~
- ~~(3) Any precious stone;~~
- ~~(4) Consumer electronics intended for everyday use, most often in the entertainment, communications and office productivity area to include personal computers, telephones, MP3 players, audio equipment, televisions, calculators, GPS automotive electronics, digital cameras and recorders using video media such as DVDs, VCRs or camcorders, and;~~
- ~~(5) Hand tools, power tools and gardening tools.~~

~~License holder shall mean a person to whom a license has been issued pursuant to this article including such person's agents and employees.~~

~~Person shall mean any individual, partnership, corporation, firm or association.~~

~~17-05-040. Licenses required; revocation; provisions; penalty.~~

~~The business license requirements, revocations, provisions and penalties shall be as set forth in Chapter 17, Article 01, General Provisions and Business Registration and Chapter 17, Article 01A, Businesses to be Licensed.~~

~~17-05-050. Applicability of other laws.~~

~~The license provided for in this article does not constitute a waiver of any requirement or provision contained in any other city ordinance or state or federal law.~~

~~17-05-060. Bond required.~~

~~No person shall engage in the business of being a pawnbroker without having executed and delivered a bond to the city, in the sum of ten thousand dollars (\$10,000.00), with a corporate surety qualified to do business in the state. The bond shall be in a form approved by the city attorney's office and shall be conditioned upon the conduct of such pawnbroker's business according to the provisions of this article, and other city ordinances and state and federal law. Such bond shall be for the benefit of each and every person damaged by a breach of any condition set forth in the bond. Every pawnbroker shall provide the city attorney's office with thirty (30) days written notice of cancellation of bond.~~

~~17-05-070. Reporting requirements; violation.~~

- ~~(a) Every pawnbroker/secondhand dealer shall each day accurately complete a report of all used property of every kind received or purchased during the preceding business day on a form approved by the police department. A photo identification card shall be required of each person pawning or selling merchandise to a pawnbroker or secondhand dealer. Each item received shall be listed on a separate report form. The report shall include the following:

 - ~~(1) Name of item.~~
 - ~~(2) Descriptions and photographs of item including make, model number and serial number, if any.~~
 - ~~(3) Date, time and type of transaction.~~
 - ~~(4) Name and address of person offering form.~~
 - ~~(5) Description of the person offering the item including sex, complexion, hair color, approximate height and weight, and date of birth.~~
 - ~~(6) Type of identification used by person offering item and identifying number of the identification. If the person presents a driver's license, the report shall also indicate the state of issuance.~~~~
- ~~(b) All reports required by this article shall be completed accurately and be made available by 12:00 noon of the day following the day that the property was received or purchased and said reports shall be made available for pickup by the police department within three (3) days of the receipt or purchase of the property.~~
- ~~(c) Used personal property purchased directly from another license holder regulated by this article who has already reported the item pursuant to this section is exempt from the requirements of this section.~~
- ~~(d) Persistent or frequent erroneous or incomplete entries in or delays in submitting the above required reports shall constitute a violation of this section.~~
- ~~(e) All persons required to file reports as provided for in this article shall maintain a copy of each report for at least six (6) months from the date the reported transaction occurred.~~

- (f) ~~All required reports shall be submitted daily by the license holder to LeadsOnline, an online investigative system that links law enforcement agencies and businesses through web-based electronic reporting.~~

~~17-05-080. Inspection.~~

~~The reports of the license holder required by this article shall be available for inspection by the chief of police or any sworn member of the police department at all reasonable time.~~

~~17-05-090. Disposition of pawned property and secondhand goods.~~

- (a) ~~Pawned property shall not be sold or disposed of, except by redemption, by a pawnbroker within one hundred twenty (120) days from the date said personal property was pawned with the pawnbroker or within ninety (90) days after the indebtedness becomes due, whichever is later.~~
- (b) ~~Secondhand goods shall not be sold or disposed of by a secondhand dealer within fifteen (15) days from the date said item was received by the license holder.~~

~~17-05-100. Used merchandise tags.~~

~~Each item pawned or purchased or received by the license holder for which a report is required shall have attached thereto a tag with an alphabetic and/or numeric identification system matching the item with a corresponding report and record.~~

~~17-05-110. Purchase and receipt limitations.~~

~~No license holder shall purchase or receive any item from the following;~~

- (1) ~~Any person under the age of eighteen (18); or~~
- (2) ~~Any person under the apparent influence of intoxicating liquor or drugs.~~

~~17-05-120. Exclusions.~~

~~This article does not apply to persons who are exclusively involved in the following businesses or transactions:~~

- (1) ~~Junk dealer who deals in old metal, glass, paper, cordage, rags, rubber or other waste which may be treated so as to be used again in some form; vehicles or machines which are worn out and intended for scrapping; or any item considered to be junk for the purpose of trade. Junk does not include secondhand items or parts of secondhand items which are still usable for the purpose for which they were originally intended and are sold with a view to such further original use;~~
- (2) ~~Used motor vehicle dealers;~~
- (3) ~~Antique dealers who deal in paintings, furniture, china or other item painted or made more than fifty (50) years ago and which are valuable primarily by reason of age, scarcity or the skill and craftsmanship of the artists or artisans. Antiques shall not include family heirlooms made of gold and silver or other precious metals;~~
- (4) ~~Coin and bullion collectors and dealers. This exclusion does not exempt such collectors or dealers from compliance with the regulations as herein provided in relation to any gold, silver, platinum or other precious metal or jewelry which they may purchase, trade, barter or exchange in addition to the coin and bullion operations;~~
- (5) ~~Individuals who sell and purchase items at neighborhood garage sales and who are not in the business of reselling these items;~~
- (6) ~~Nonprofit or charitable secondhand goods or thrift shops;~~

- (7) ~~Licensed gun dealers. This exclusion does not exempt such dealers from compliance with the regulations as herein provided in relation to any gold, silver, platinum, or other precious metal or jewelry which they may purchase, sell, trade, barter or exchange in addition to their gun business;~~
- (8) ~~Consignment stores where a consignor transfers possession of personal property but not ownership to a consignor for sale with the understanding that the consignee pays the consignor a portion of the sale proceeds.~~

17-05-130. Unlawful transactions.

No license holder shall purchase or receive any item:

- (1) ~~From which the manufacturer's name plate, serial number or distinguishing number or identification mark has been obviously defaced, altered, covered or destroyed; or~~
- (2) ~~Which the license holder knows or should have known is not lawfully owned by the person offering the same.~~

ARTICLE 17-06. GARAGE AND YARD SALES

17.06.010. [In general.]

- (a) ~~*Applicability of chapter.* Garage and yard sales, as defined below, need not be licensed or registered under the provisions of this chapter, but shall be subject to the enforcement provisions of section 17-01-100.~~
- (b) ~~*Definition; conduct of sales.* Garage or yard sales are sales in which personal property and or used merchandise is offered for sale, which are conducted on residential premises by one (1) or more members of the family or families who live there, and to which the public is invited. Garage and yard sales are permitted within the city provided that:~~
 - (1) ~~Garage and yard sales shall only be held between the hours of 8:00 a.m. and 8:00 p.m. and shall not exceed three (3) consecutive days' duration. No more than three (3) sales shall be held at a given residence in any twelve-month period. No more than two (2) garage or yard sales shall be conducted at the same location within ninety (90) days of another such sale at such location by the same person(s).~~
 - (2) ~~Garage and yard sales are intended for the sale of items normally accumulated by a household. No items shall be sold at a garage or yard sale which were specifically purchased for the purpose of resale.~~
 - (3) ~~Signs may be erected no earlier than 6:00 a.m. on the first day of the sale and shall be removed by 9:00 p.m. on the last day upon which the sale is held. Signs may not be placed in the city's right-of-way or attached to utility poles as provided in sections 3-01-15 and 11-06-200 of these ordinances.~~
 - (4) ~~No garage or yard sale shall be conducted in such a manner as to create a nuisance or hazard.~~
- (c) ~~*Exemptions.* These provisions shall not apply to or affect the following:~~
 - (1) ~~Persons acting pursuant to an order or process of a court of competent jurisdiction.~~
 - (2) ~~Persons acting in accordance with their powers and duties as public officials.~~

ARTICLE 17-07. SECURITY AGENCIES

17-07-010. Definitions.

For the purpose of this article the following words and terms shall have the meaning ascribed to them by this section:

Private detective. A private detective is hereby defined to be a person, not in uniform, who, within the city, engages in the detective business for hire, and does not employ or use any employees, assistants, clerks, bookkeepers or operatives.

Private detective agency. Any person engaged in the detective business, for hire, who employs one or more persons, not in uniform, as his employees, assistants, clerks, bookkeepers or operatives in his business.

Special police agency. A special police agency is hereby defined to be any person who, within the city, engages in police service for hire and who employs one or more persons, in uniform, to give such police service.

Special policeman. Any person in uniform who, for hire or reward, shall guard or protect any building, premises, person or property within the city; provided, however, this shall not apply to the regular appointed police officers of the city or any sheriff or deputy sheriff of the county, state or federal officers. A special policeman, as used herein, shall include all private guards, private patrols, patrol system and services.

17-07-020. License—Required.

It shall be unlawful for any person to engage in the business of or to represent himself to be a special policeman, private detective or to conduct or operate a special police agency or private detective agency within the city without first procuring and maintaining in full force and effect a license to do so as provided for in this article.

17-07-030. Same—Application; issuance or denial; appeal from denial; qualifications of applicant; examination; examination fee.

- (a) Any person desiring a license required by section 17-07-020 shall make application to the director of public safety of the city for a license to perform the duties of a special policeman or private detective or to operate a special police agency or private detective agency, either as an employee or as an owner and/or operator.
- (b) The director shall accept applications and recommend issuance or rejection of such license within thirty (30) days to the city manager. If application for such license is rejected by the city manager, applicant may appeal to the city commission.
- (c) Such applicant shall possess the following qualifications: He shall be an American citizen, twenty-one (21) or more years of age and be of good moral character. No person having been convicted of a felony or any offense involving moral turpitude, or dismissed for cause involving reprehensible conduct as a police officer by any law enforcement agency, within the past ten (10) years, shall be appointed as such special policeman or private detective, nor shall he be permitted to operate a special police agency or private detective agency.
- (d) Such applicant shall present himself to the director for examination as to his qualifications and shall well and truthfully answer all questions contained in such application, including his name and address and, in the case of a firm or corporation, the name and address of the president and secretary thereof, in the case of a partnership, the name and address of all the members thereof together with the trade name under which they intend to operate. The examination fee shall be three dollars (\$3.00) and no part of such fee shall be refunded because of the failure of the applicant to qualify for a license. The director shall keep a record of all fees so received and shall pay the same to the city and be credited to the general fund of the city; provided, however, that, no fee shall be charged when the application for the appointment is made by the director of any city department of the city for service to be rendered the city.

17-07-040. Same—Fees.

- (a) The annual license fee for special policemen, special police agencies, private detectives or private detective agencies, shall be in accordance with the following schedule and all such licenses shall expire on December thirty-first following the date of issue:
 - (1) Special policeman, twenty-five dollars (\$25.00) per annum.

- ~~(2) Private detective, twenty-five dollars (\$25.00) per annum.~~
- ~~(3) Private detective agency, one hundred dollars (\$100.00) per annum.~~
- ~~(4) Special police agency, one hundred dollars (\$100.00) per annum.~~
- ~~(b) All fees shall be payable unto the city and credited to the general fund.~~

~~17-07-050. Same — Exemptions.~~

~~No license required by section 17-07-020 shall be required of any person while protecting persons, passengers or property being transported in interstate or intrastate common carriers; provided, however, that, special policemen or private detectives whose employment is limited to only one corporation, company or person for the exclusive protection of its or their own property or product and whose activities are strictly confined to its or their own property, shall be exempt from payment of the license fee, but shall be subject to all other provisions of this article.~~

~~17-07-060. Same — Transferability.~~

~~No license required by section 17-07-020 shall be transferable.~~

~~17-07-070. Same — State license prerequisite to issuance.~~

~~Before the license required by section 17-07-020 is issued, the applicant shall furnish the director of public safety with satisfactory evidence that the applicant has been duly licensed under the private investigators act of the state to the extent required by such act to conduct the services authorized by this license. The applicant shall furnish to the director a duplicate copy of all licenses he has from the state under such act. Suspension or revocation of the state license required herein shall automatically suspend the license of the applicant under this article until such suspension or revocation has been removed by the state.~~

~~17-07-080. Same — Revocation; grounds for.~~

~~The city commission, upon recommendation of the director of public safety, or upon its own motion, shall have the right and authority, to revoke, for cause, any license issued under the provisions of this article, after notice and opportunity to be heard before the city commission. Just cause shall include, but not be limited to the following:~~

- ~~(1) If such licensee has wilfully violated any of the provisions of this article.~~
- ~~(2) If any employee of such licensee shall have violated any of the provisions of this article with the permission or instructions of such licensee to do so.~~
- ~~(3) Conviction of any felony or any offense involving moral turpitude. (Excepting minor traffic violations.)~~
- ~~(4) Violation of the rules and regulations of the police department of the city so far as the same may be applicable.~~

~~17-07-090. Reports to be filed with director of public safety.~~

- ~~(a) It is required that every special police agency or private detective agency shall submit a semiannual report not later than January seventh and July seventh of each year to the police department as to the identity of all employees hired and/or discharged during the preceding six-month period.~~
- ~~(b) Any property found or recovered by any special policeman or private detective shall be reported to the director of public safety as soon as practicable under the circumstances.~~
- ~~(c) Failure to comply with the submission of any information as provided for herein shall be deemed a violation of this Code and considered as just cause to revoke the license of such person or agency.~~

17-07-100. Powers and duties of licensees.

The powers and duties of all persons licensed under the provisions of this article shall consist of:

- (1) Obeying the orders of the director of public safety insofar as the duties and responsibilities of a special policeman or private detective are concerned.
- (2) Being permitted to carry arms only when on duty and in compliance with the requirements established by the director.
- (3) Obeying and complying with all the rules and regulations of the police department of the city so far as same may be applicable.
- (4) A special policeman when on patrol or guard duty must wear proper uniform. Such uniforms shall all be identical and shall be of a different color than those worn by the police department; provided, however, plant guards and those employees who are engaged in the protection of any employer's own property or products may wear a uniform of their own choice, color or design. Badges must be different than those of city, county or state police officers.
- (5) Any special policeman or private detective having knowledge of a felony shall immediately notify the police department and the county sheriff's office and stand by until regular police officers arrive. At no time shall he conduct any investigation before calling the police department. During an investigation of any crime, the police department reserves the right to stop a special policeman or private detective, whether local or foreign, from interfering in any way with the police department.

ARTICLE 17-08. PEDDLERS AND SOLICITORS

17-08-010. Definitions.

For the purposes of this article, the terms used herein are defined as follows:

Aggressive manner means and includes:

- (1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
- (2) Following the person being solicited, if that conduct is:
 - a. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - b. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (3) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is:
 - a. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or
 - b. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;

It is prima facie evidence of an intention to cause a reasonable person fear of imminent bodily harm, if the person continues to solicit from a person who has asked him/her to stop.

- (4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a business registration issued pursuant to chapter 17 of this Code, shall not constitute obstruction of pedestrian or vehicular traffic;

- (5) ~~Intentionally using obscene or abusive language or gestures:~~
 - a. ~~Intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~
 - b. ~~Words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or~~
- (6) ~~Approaching the person being solicited in a manner that:~~
 - a. ~~Is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or~~
 - b. ~~Intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.~~

Automated teller machine means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments.

Automated teller machine facility means the area comprising one (1) or more automatic teller machines, and any adjacent space which is made available to banking customers after regular banking hours

Bank means any banking corporation as defined under the laws of the state.

Check cashing business means any business which represents itself to the public as engaged in the business of cashing checks, drafts or money orders for consideration

Peddler means any person who goes from house to house, place to place, or from street to street carrying, conveying, or transporting foods, wares, or merchandise, meats, fish, vegetables, fruits, garden truck, farm products, or provisions, offering or exposing such for sale or making sales and delivering articles to purchasers. The term "peddler" shall include the terms "hawker, huckster, transient merchant and itinerant vendor." Peddler shall not include any persons exempt from licensing under Section 7-23-1, NMSA 1978.

Public area means an area to which the public or a substantial group of persons has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

Solicit means to request an immediate payment, donation of money or other thing of value, including an order or promise of future payment, from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.

Solicitation activities shall mean the practices of solicitors as listed in (1) and (2) under the definition of "solicitor" as well as the practice of peddling.

Solicitor shall mean any person, including an employee or agent of another, traveling either by foot, automobile, truck or other type of conveyance, who engages in the practice of going door-to-door, house-to-house or along any streets within the city:

- (1) ~~Selling or taking orders for or offering to sell or take orders for goods, merchandise, wares or other items of value for future delivery or for services to be performed in the future for commercial purposes; or~~
- (2) ~~Requesting contribution of funds, property or anything of value or of the pledge of any type of future donation or selling or offering for sale any type of property, including but not limited to goods, tickets, books and pamphlets, for political, charitable, religious or other noncommercial purposes.~~

~~17-08-072. Solicitation on or near street or highway.~~

- ~~(a) The purpose of this section is to prevent dangers to persons and property, to prevent traffic delays, and to avoid interference with traffic flow. Roadways that have center medians often are designed to handle specific traffic flow problems. Any delay or distraction may interfere with traffic planning. Sometimes persons stand near intersections and near traffic lights to contact drivers or passengers in cars that are passing or that are stopped temporarily due to traffic lights.~~
- ~~(b) It shall be unlawful for any person to solicit employment, business, contributions, or sales of any kind, or collect monies for the same, from the occupant of any vehicle traveling upon any street or highway when the solicitation or collection:~~
 - ~~(1) Causes the person performing the activity to enter onto the traveled portion of a street or highway.~~
 - ~~(2) Involves the person performing the activity to be located upon any median area which separates traffic lanes for vehicular travel in opposite directions.~~
 - ~~(3) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely conduct the transaction.~~
- ~~(c) For purposes of this section, the traveled portion of the street or highway shall mean that portion of the road normally used by moving motor vehicle traffic.~~

~~17-08-110. Penalties.~~

~~Any person who violates any provision of this article shall be subject to the penalty provisions contained in section 1-01-100 through 1-01-120, inclusive, of this code.~~

~~ARTICLE 17-09. CONTROLS AND REGULATIONS FOR ALARM USERS~~

~~17-09-010. Short title.~~

~~This ordinance shall be known and may be cited as the "Alamogordo Alarm System Ordinance."~~

~~17-09-020. Purpose.~~

~~The purpose of this ordinance is to provide minimum standards and regulations applicable to fire, burglar and holdup alarm systems, alarm businesses, alarm agents, and alarm users as defined in this ordinance.~~

~~17-09-030. Definitions.~~

- ~~(a) The term "alarm system business" means the business of any individual, partnership, corporation, or other entity engaged in selling, leasing, maintaining, servicing, repairing, alerting, replacing, monitoring, installing any alarm system, or in causing any alarm system to be sold, leased, maintained, serviced, repaired, altered, replaced, monitored or installed in any building, structure, or facility.~~
- ~~(b) The term "alarm system" means any mechanical or electrical device which is designed primarily for the detection of a fire or an unauthorized entry into a building, structure, facility, or of the commission of a robbery within a building, structure, or both; and which emits a sound or transmits a signal or message when actuated, which causes notification to be made to the Department of Public Safety. The representation in the ordinary course of business by a person selling or leasing a device that the device is sold or leased for the purpose of such detection shall create a presumption that the device is an alarm system. For the purposes of this definition, an "alarm system" shall not include:~~
 - ~~1. A device installed on a motor vehicle, except for the provisions of section 17-09-070(c);~~
 - ~~2. Devices which are not designed or used to register alarms that are audible, visible, or perceptible outside of the protected building, structure, or facility; or devices installed in buildings, structure, or facilities controlled by the Federal government, the state or any of their agencies, institutions or political subdivisions.~~

3. — A device for alerting others of a medical emergency situation.

- (c) — The term "alarm user" means the person listed on the alarm registration as being responsible for the alarm system identified in the registration whether individually or as part of the alarm system monitored by an alarm system business.
- (d) — The term "automatic dialing device" refers to an alarm system which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.
- (e) — The term "central station" means that part of alarm business which intercepts signals indicating the activation of an alarm device and which relays this information by live voice to the department of public safety.
- (f) — The term "direct line" means a telephone line leading directly from a central station to the communication center of the department of public safety that is for use only to report emergency signals on a person-to-person basis.
- (g) — The term "false alarm" means the activation of any alarm system which was not the result of an emergency or threat of emergency of the kind for which the alarm system was designed to give notice. False alarms shall not include alarms caused by lightning, electrical interruptions, floods or other natural disasters.
- (h) — The term "hearing officer" means the city manager or a person designated by the city manager to act as an impartial arbitrator at hearings related to the enforcement of this ordinance.
- (i) — The term "interconnect" means to connect an alarm system to a voice grade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.
- (j) — The term "local alarm system" refers to a signaling system which when activated causes an audible and visual signaling device, or both, to be activated in or on the premises within which the system is installed.
- (k) — The term "person" means any individual, firm, partnership, association, corporation, company, or organization of any kind.
- (l) — The term "public safety director" means the current director of the department of public safety or a designated representative.
- (m) — The term "primary trunk line" means a telephone line leading directly into the communications center of the department of public safety that is for the purpose of handling emergency calls on a person-to-person basis, and which is identified as such by a specific number included among the emergency numbers listed in the telephone directory issued by telephone company and covering the service area within the department's jurisdiction. The "911" emergency number is a primary trunk line.

17-09-040. Alarm user registration.

- (a) — It shall be a violation of this ordinance for any person to operate an alarm system that has not been properly registered with the department of public safety.
- (b) — No person shall operate or permit the operation of an alarm system which was installed on the person's property prior to the effective date of this ordinance unless it has been properly registered with the department of public safety. Within sixty (60) days of the effective date, the alarm user or the alarm system business for alarms monitored by an alarm system business, shall register the alarm with the department of public safety pursuant to section 17-09-050.
- (c) — Within thirty (30) days of the installation of an alarm system after the effective date of this ordinance, the alarm user or the alarm system business for alarms monitored by an alarm system business shall register the alarm pursuant to section 17-09-050.

17-09-050. Alarm user registration application.

- (a) Application for the registration of an alarm system that will not be monitored by an alarm system business shall be made by the alarm user. Such application shall be in writing to the director of public safety on a form designated by the city for that purpose. On such application the applicant shall set forth:
 - 1. The name, address, and telephone number of the alarm user.
 - 2. The street address of the premises on which the alarm system is to be installed and operated.
 - 3. Any business name used for the premises on which the alarm system is to be installed and operated.
 - 4. The type of alarm system or systems and the purpose for which they are designed.
 - 5. The names and telephone numbers of two (2) persons who are able and who, if contacted, at any time will come to the alarm site within forty-five (45) minutes after receiving a request from a member of the department of public safety to do so and grant access to the alarm site and to deactivate the alarm system if such becomes necessary.
- (b) The director of public safety shall register the alarm in the name of the alarm user upon submission of an application therefore in accordance with this section, unless any statement made in the application was incomplete or false.
- (c) Whenever the name or telephone number of the alarm user or any other information in subsection (a) changes, the alarm user shall file an amendment to the permit application within thirty (30) days of such change.
- (d) Registration of alarms that are monitored by an alarm system business shall be the responsibility of the alarm system business. The alarm system business shall provide the director of public safety with the same information required in subsection (a) for all alarms monitored in the city. It shall be the responsibility of the alarm system business to keep this information updated on at least a thirty-day basis. Any person that has an alarm system monitored by an alarm system business will be responsible for any user fees charges pursuant to this ordinance. Failure on the part of an alarm system business to maintain a current listing of the persons responsible for the alarm systems they monitor will subject the alarm system business for any user fees that would be charged to the alarm user.

17-09-060. Alarm system businesses.

- (a) Any person whose business it is to repair or install an alarm system must possess a valid license issued by the Construction Industries Division of the Regulation and Licensing Department of the State of New Mexico and a current business registration from the city. Any alarm system business that employs technicians to perform any of the functions of such business under the authority of said valid license shall issue such employees an identification card that clearly identifies them as employees of the licensed business. Said license or identification card must be presented to a public safety officer, the city manager or a designated representative, upon request.
- (b) Whenever an alarm system business agrees with any person to maintain or service any alarm system, such business shall:
 - (1) Ensure that personnel of such business who are able to render effective assistance arrive at such alarm site within seventy-two (72) hours of a request by a member of the department of public safety for assistance if such alarm system business has agreed with any person to maintain or service such alarm system.
 - (2) Keep a written record of the date and time of repair and a description of the specific repair which was performed on any alarm system when such repair was made in response to notification by the person responsible for the alarm system or a member of the department of public safety that such alarm system was in need of repair. Such written records shall be maintained for at least twelve (12) months and shall be made available for inspection and duplication upon request by the city manager

or a member of the department of public safety at the office of the alarm system business within two (2) hours of the request during regular business hours.

- (c) ~~Any alarm system business which operates a central station and any telephone answering service shall:~~
 - (1) ~~Have sufficient personnel trained in the procedures to be followed in receiving and relaying notice of the activation of any alarm system on duty at all times to ensure that emergency messages or alarm signals received by such business can be relayed immediately to the department of public safety.~~
 - (2) ~~Notify the appropriate person of the activation of the alarm system within twenty-four (24) hours of the time the alarm was activated by telephone or by placing such notice in the mail, addressed to the person in control of the property. In the case of a local alarm where the alarm system business was not notified of such activation, the alarm system business shall be exempt from the requirements of this subsection.~~
- (d) ~~Alarm system businesses shall additionally keep a written record of the date and time each notification of the activation of an alarm system is received and the date, time and method by which the appropriate person was notified. Such records shall be retained for at least twelve (12) months and shall be made available for inspection and duplication upon request by the city manager or a member of the department of public safety at the office of the alarm system business or telephone answering service within two (2) hours of the request during regular business hours.~~
- (e) ~~Whenever the ownership or management of the alarm system business changes, the new operator shall notify the director of public safety of the names, address and telephone numbers of the new owners or managers and each address serviced by that business within thirty (30) days of the change.~~

17-09-070. Automatic dialing service and audible alarms.

- (a) ~~No automatic dialing service shall be interconnected to a primary trunk line, direct line, or regular telephone line to the department of public safety unless it is an alarm for a governmental building or a financial institution approved by the director of public safety and in compliance with the regulations in subsection (a).~~
- (b) ~~Any alarm system which emits a sound that can be heard outside of the protected structure or property shall be equipped with no greater than a fifteen (15) minute automatic time out.~~

17-09-080. Non-emergency activation.

~~No person shall activate an alarm system for any purpose other than an emergency or threat of emergency of the kind for which the alarm system was designed to give notice; provided, however, it shall be an affirmative defense to prosecution under this section that the alarm system was sounded solely for the purpose of testing the alarm and the person who tested the alarm took reasonable precautions to avoid any request being made to the department of public safety to respond to such alarm.~~

17-09-090. User fees.

~~The department of public safety may respond to proper notification of activation of an alarm system without charge except that the following fees shall be charged to the alarm user for each response by the department of public safety to notification of activation of an alarm system in excess of five (5) alarms from the same alarm location within a calendar year.~~

- (a) ~~Twenty-five dollars (\$25.00) for each response to notification of activation of an alarm system at a single location in excess of five (5) alarms but not more than ten (10) alarms within a calendar year.~~
- (b) ~~Forty dollars (\$40.00) for each response to notification of activation of an alarm system at a single location in excess of ten (10) alarms within a calendar year.~~
- (c) ~~Provided, however, no notification of the activation of an alarm system shall be considered in determining the fees set out above, nor shall any fee be charged if the alarm user shows that the~~

activation was not a false alarm, and any response by the department of public safety to notification of activation of an alarm system will not be included in determining the fees set out above if the alarm user shows that such activation was not a false alarm. For purposes of determining the fees set out above, the burden shall be on the alarm user to prove that the activation of the alarm system was not a false alarm.

- (d) ~~The person responsible for the alarm system shall be given written notice of any fees chargeable under this section. Such fees shall be paid to the city within thirty (30) calendar days of the date of the notice of fees due, unless the alarm user requests a hearing pursuant to section 17-09-110, in which event the payment of the fees shall be suspended pending the decision of the hearing officer.~~
- (e) ~~There shall be no fees imposed for a false alarm occurring within thirty (30) days after the fifth false alarm provided that the false alarms were caused by mechanical defect and the alarm user is making a good faith effort to repair the defect. The director of public safety may extend the thirty-day period for a reasonable time if the alarm user shows that the defect could not be repaired within thirty (30) days because of circumstances beyond the user's control. Nothing in this subsection shall be construed to prevent a false alarm from being used to compute the amount due pursuant to subsections (a) and (b) of the section.~~

17-09-100. Violations—Suspensions and revocations of alarm registrations.

- (a) ~~If the city manager has probable cause to believe that the person responsible for an alarm system has:~~
 - 1. ~~Violated any provision of the ordinance.~~
 - 2. ~~Made fraudulent, misrepresentative, or false statements in the application for an alarm user permit.~~
 - 3. ~~Has had an excessive number of false alarms and has failed, after notice from the director of public safety, to correct the problems causing the alarms.~~

~~The city manager shall give the alarm user written notice by first class mail of a hearing to be held within thirty (30) calendar days before the hearing officer to determine whether or not the registration should be suspended or revoked. This notice must contain a statement of the facts upon which the city manager acted.~~

- (b) ~~Any alarm registration may be suspended or revoked if the alarm user has been found, following notice and hearing, to have violated the provisions of section 17-09-100(a) of this ordinance.~~
- (c) ~~Any person whose alarm registration has been revoked shall not be permitted to apply for another alarm user's permit for one (1) year after the filing of a written statement by the hearing officer revoking the alarm registration, unless the hearing officer deems that proper corrective measures have been taken by the alarm user.~~

17-09-110. Hearings.

- (a) ~~Upon receipt of a notice of fees due, as set forth in section 17-09-090 or of a violation of section 17-09-100, of this ordinance, the alarm user may request a hearing before the hearing officer to show cause why the alarm user should not be charged the fees specified in the notice or have the registration suspended or revoked. Such requests must be filed in writing with the city manager within thirty (30) calendar days of the notice of fees due. The alarm user shall be given written notice by first class mail of the hearing at least ten (10) calendar days before the hearing.~~
- (b) ~~An applicant may request a hearing before the hearing officer to show cause why the alarm should be registered pursuant to section 17-09-050. Such requests must be filed in writing with the city manager within thirty (30) calendar days of the notice to the applicant that the alarm registration will not be approved. The applicant shall be given written notice by first class mail of the hearing at least ten (10) calendar days before the hearing.~~

- (c) ~~All hearings shall be open to the public and shall be held only after notice is given to the applicant, permit holder or alarm user as provided in this ordinance. Notice of the hearing shall be posted in the lobby of city hall at least twenty-four (24) hours prior to the time of hearing.~~
- (d) ~~Hearing procedure shall be as follows:~~
 - (1) ~~The hearing shall be conducted by the hearing officer.~~
 - (2) ~~Formal rules of evidence shall not apply to the conduct of the hearing.~~
 - (3) ~~Cross-questioning is neither prohibited nor encouraged. The hearing officer has full discretion whether to allow it.~~
 - (4) ~~The hearing officer may hear testimony from any expert witness.~~
 - (5) ~~After calling the meeting to order, the hearing officer shall outline the procedure to be followed in the conduct of the hearing.~~
 - (6) ~~The hearing may be recessed or adjourned to another time and place, or both, upon the discretion of the hearing officer.~~
- (e) ~~The decision of the hearing officer is the final step in the administrative procedures and is conclusive upon the applicant, or alarm user and shall be considered to have exhausted all administrative remedies that are available to an applicant or alarm user. Decisions of the hearing officer may be appealed to the district court within thirty (30) days of receipt of the decision of the hearing officer.~~

17-09-120. Administration of this ordinance and applicability of other law.

~~The city manager shall adopt such rules and regulations as necessary for the safe and equitable administration of this ordinance. Violations of regulations pursuant to this ordinance will be considered a violation of this ordinance and subject the person, entity or organization doing so to the penalties specified in the ordinance. The registration of an alarm does not constitute a waiver of any requirement or provision contained in any ordinance of the City of Alamogordo or state or federal law.~~

17-09-130. Severability clause.

~~The provisions of this ordinance are severable, and if any provisions of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provisions or applications.~~

ARTICLE 17-10. SPICE ORDINANCE

17-10-010. Short title.

~~This article shall be known and may be cited as the "spice ordinance."~~

17-10-020. Purpose and intent.

- (a) ~~A product commonly referred to as "spice" is sold by local businesses. Spice typically appears as a packaged dried plant product or leaves, and is sold at gas stations, liquor stores, convenience stores, smoke shops and other outlets. While spice sometimes has a label warning against human consumption, that is its intended use. Businesses that sell spice openly solicit the product by claiming that, when smoked, spice causes a marijuana-like high. Spice is a green leafy product sprayed with synthetic substances that mimic the effects of marijuana when smoked. Spice is marketed under numerous brand names, including Spice, Spice Silver, Spice Gold, Spice Diamond, Spice Tropical Synergy, Spice Arctic Synergy, Spice Gold Spirit, PEP Spice, PEPpourri, K2, Genie, Yucatan Fire, Dream, Ex-ses, Blaze, Spike 99, Spark, Fusion, Magma, Hard Core, and Deliverance, as well as other names.~~
- (b) ~~Distribution of spice and spice like products is a violation of state law. However, the manufacturers and vendors of spice products change the names, labeling, or chemical composition of the products to avoid~~

prosecution. Consumers, including minors, quickly learn the name of the new mock substance by word of mouth or on the internet. Businesses that distribute spice create a public nuisance in the city as defined by state law and city ordinances.

- (c) While spice and natural marijuana act on the body's natural cannabinoid receptors, spice is not marijuana. Research and anecdotal reports show that spice produces dangerous symptoms not normally associated with marijuana. Spice may be combined with other toxic substances. Emergency room physicians report that users of these products experience serious side effects, including convulsions, anxiety, dangerously elevated heart rates, increased blood pressure, vomiting, and disorientation. According to February 8, 2012 data from the American Association of Poison Control Centers, in one (1) year there has been a greater than two-fold increase in the number of calls about exposure to spice.
- (d) Field testing technology is inadequate in many cases and the products being sold to the public have to be seized from the vendor and lab tested. Lab testing is costly and time consuming. If a particular brand name product is determined to be an illegal substance, that substance will often be repackaged or relabeled by the time the police return to the business. This subterfuge wastes police resources and further endangers the public.
- (e) Spice and spice-like products tend to avoid drug testing methods used to determine whether a person has consumed a controlled substance. Some of the most dangerous consumers, those prohibited from consumption of illicit drugs or alcohol by court orders or terms of probation, gravitate toward spice because it is difficult to detect or undetectable.
- (g) Spice and spice-like products endanger the health and safety of the community. This article is a remedial ordinance promulgated pursuant to the city's home rule authority.

17-10-030. Definitions.

Business. The premises, whether it be a main business location or an outlet, branch or other location thereof, temporary or otherwise, to which the public is expressly or impliedly invited for the purpose of transacting business. The term "business" includes the sales persons on site.

Business day. Regular business hours Monday through Friday. The day the business receives a cease and desist order and notice of violation does not count as a business day. If the business has irregular hours or the hours are not posted, a business day shall be the next two (2) full twenty-four hour week days after receipt of a cease and desist order and notice of violation.

Business operator. The person or persons on site at the business in actual or apparent control of the business during business hours.

Cease and desist order and notice of violation. Documentation delivered to the business operator ordering the business closed for inspection and testing. The cease and desist order and notice of violation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The cease and desist order and notice of violation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

Enforcement officer. Enforcement officer shall mean any officer or employee with the authority to enforce the City of Alamogordo Municipal Code. This includes city public safety officers.

Person. An individual, proprietorship, partnership, corporation, association, or other legal entity.

Place of business. Any location, building or portion thereof, or premises in which or from which a business is carried on. The term includes, but is not limited to, an office, warehouse, yard, location where books and records are kept, or the location from which business is solicited.

Sales person. Any agent or independent contractor of the business employed or engaged to transact business with the public on the premises.

Spice. A synthetic cannabinoid as defined by NMSA 1978, § 30-31-6 (2011) as amended from time to time.

Transfer of ownership or control of a business.

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

17-10-040. Violation.

It is a violation of this article for a business to manufacture, stock, sell, distribute, dispense, possess, purchase, advertise for sale, publicly display for sale, give, trade, offer to sell, order, or offer to order spice.

17-10-050. Responsibility.

Any person engaging in business within the city shall be responsible for the actions of their employees with respect to the manufacturing, stocking, selling, distributing, dispensing, possessing, purchasing, advertising for sale, publicly displaying for sale, giving, trading, offering to sell, ordering, or offering to order spice.

17-10-060. Enforcement.

- (a) If an enforcement officer has probable cause to believe a violation of this article has occurred, the enforcement officer shall obtain a sample of the substance believed to be spice. The sample shall be tested by methods commonly utilized by law enforcement labs to determine whether a substance is a controlled substance under state law. If the test determines that the substance is spice, the director of public safety shall have the authority to issue a cease and desist order and notice of violation to the business operator. Thereafter, an enforcement officer shall serve the cease and desist order and notice of violation upon the business operator and seize the entire inventory of spice from the business. The cease and desist order shall be filed with the city clerk. When the cease and desist order and notice of violation is delivered to the business, if a enforcement officer has probable cause to believe that the spice has been relabeled, repackaged or incorporated into other substances, those substances shall also be seized and tested. If the test is negative, the inventory shall be returned to the business. The transfer of ownership or control of the business does not avoid the seizure authorized by this paragraph.
 - (b) Upon receipt of the cease and desist order and notice of violation by the business operator, the business shall immediately allow and not interfere with the seizure of the inventory which is spice or is reasonably believed to be spice that has been relabeled, repackaged or incorporated into other substances. Any interference with the seizure is a violation of this article punishable pursuant to § 1-01-100 of Alamogordo Municipal Code, and not subject to appeal to a hearing officer.
 - (c) If the business receives a second cease and desist order and notice of violation in a period of five (5) years from receipt of the first cease and desist order and notice of violation, the business shall close and cease transacting business with the public for the next ten (10) full twenty-four-hour calendar days during which time an enforcement officer, in cooperation with other agencies if required, shall inspect the premises and seize and destroy the spice or any relabeled, repackaged or reincorporated spice substances. The transfer of ownership or control of the business does not avoid the closure and inspection authorized by this paragraph.
- No inventory, merchandise, personal property, chattel property or other property shall be received by or taken off the business premises during closure unless authorized by an enforcement officer.
- (d) Upon a third or subsequent violation of this article within five (5) years from receipt of the second cease and desist order and notice of violation, the city clerk shall refuse to renew or grant a business

registration under article 17-01 to the business for a period of one (1) year from the date of the receipt of the third or subsequent cease and desist order and notice of violation or decision of the hearing officer against the business if a hearing takes place. The transfer of ownership or control of the business does not avoid the operation of this paragraph.

- (e) ~~The city shall have the authority to seek an injunction to compel compliance with this article on grounds that the business is causing irreparable harm to the community by distributing spice.~~

17-10-070. Appeal.

- (a) ~~Upon delivery of a cease and desist order and notice of violation, the business has the right to request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the delivery of a cease and desist order and notice of violation and delivered to the city clerk. Failure to request a hearing within ten (10) business days of the delivery of a cease and desist order and notice of violation will terminate the right to a hearing. The filing of an appeal under this section stays actions except seizure of the spice.~~
- (b) ~~Upon receipt of such a request, the city clerk shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the business at least ten (10) business days prior to the hearing.~~
- (c) ~~An appeal shall be heard by a hearing officer. The hearing officer must be an impartial person designated by the city manager to conduct the hearing. The burden of proof shall be on the city to prove the violation.~~
- (d) ~~A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation shall be recorded in writing, a copy of which shall be provided to the city and the business by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred, those findings shall be recorded and a copy provided to the city and the business by in person delivery or mail as soon as practicable.~~
- (e) ~~The decision of the hearing officer is final. Any appeal of the decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within ten (10) business days.~~

ARTICLE 17-11. FOOD VENDORS

ARTICLE 7-44 2. GENERAL

17-442. 010. Purpose.

The purpose of this article is to regulate food vendors, whether mobile and/or temporary food vending activities in order to protect public health, safety, and welfare, ~~while accommodating commercial uses that generally promote an active and social pedestrian environment within the appropriate areas of the city. This article is also written with specific consideration given to the continued successful operation of existing brick and mortar restaurant establishments in recognition of the investments they make, and tax revenue they generate within the city. The overall goal of this article is to provide a business climate that offers fair opportunities for all food vendor operations and permanent restaurants in order to provide residents and visitors with a variety of food options that promote a vibrant food selection within our community.~~

17-11-020. Scope.

This article shall apply to all food vendor establishments operating within the city, regardless of type.

17-11-030. Definitions.

~~City official means city manager, city attorney, fire department command staff, police department command staff, code enforcement supervisor and officers.~~

Food vendor means a food establishment where food is served or sold from a mobile food truck, mobile food trailer, mobile sidewalk cart, temporary food booth, tent and/or stand.

Ice cream truck means a mobile food establishment that sells either frozen dessert servings that are prepackaged/enclosed in a wrapper or container having been manufactured, prepared, or wrapped in a licensed food establishment or ice cream that is not pre-packaged.

Licensee means a food vendor that holds a city food vendor license.

Mobile food trailer means a trailer specifically designed and used for cooking, keeping, storing, or warming food or beverage which are for sale by a vendor, which does not move under its own power, but may be towed by a vehicle.

Mobile food truck means a vehicle specifically designed and used for cooking, keeping, storing, or warming food or beverage which are for sale by a vendor, which may move under its own power.

Mobile food vendor means a vendor selling from a mobile food establishment.

Mobile sidewalk cart means a bicycle cart or a wheeled pushcart, specifically designed and used for keeping, storing, or warming food or beverage which are for sale by a vendor, which may be moved by one (1) person without the assistance of a motor. Each sidewalk cart shall be non-motorized and capable of being moved and kept under control by one (1) person.

Temporary farm stand means a booth, tent, or stand which exclusively sells non-processed raw agricultural products.

Temporary food booth, tent, or stand means a booth, tent, or stand vending type unit which sells food or beverages.

17-11-035. Prerequisite for application.

(a) Applicant shall provide a copy the New Mexico Environment Department approved documents for the food vendor to operate, if applicable.

(b) Applicant shall provide a copy the Alamogordo Fire Department's approved form.

17-11-040. Licensing requirements for food vendors.

It shall be unlawful for any food vendor to engage in sales activities in the city without first obtaining a business license from the city.

(a) *License application.* Each food vendor ~~owner that wishes to operate within the city~~ shall file annually for an application for a city food vendor ~~operator's~~ license with the city clerk or ~~his/her~~ their designee on forms provided by the city. Each applicant shall pay ~~an established~~ an annual license fee of \$35 at the time application is submitted. ~~before a license is issued, and be subject to an annual fire inspection that will be conducted by the Alamogordo Fire Department. All food vendors will be inspected according to the International Fire Code adopted, and according to the standards outlined in the National Fire Code (NFC).~~ The application form provided shall require the following information from the applicant:

- (1) The Applicant name, address, telephone number, ~~of the person,~~ and name of business firm, association or corporation that owns the unit and their New Mexico Tax ID number;
- (2) New Mexico tax identification number for the business.

- ~~(2) The length of time for which the right to conduct business is desired;~~
 - ~~(3) The make, model and license number of any vehicle or trailer to be used in the food vendor operation;~~
 - ~~(4) The location or locations from which the applicant desires to operate the unit;~~
 - ~~(5) A copy of the applicant's application, Priority II letter and/or permit issued by the State of New Mexico Environmental Department; and~~
 - ~~(6) A letter of written permission to operate on private property if applicable.~~
- (b) *License approval process.* Upon receipt of proper documentation and payment of an application for a license, the city clerk or his/her ~~their~~ designee will start the license approval process, and will refer the application to planning and zoning, the fire chief, or his/her designee, the police chief, or his/her designee, and the city manager or his/her designee in order to complete the application process review the application. All applications will be processed within ~~ten (10)~~ two (2) business days. Upon completion, the permit license will be issued unless the city clerk determines any of the following:
- ~~(1) The applicant made a false statement on the application.~~
 - ~~(2) The applicant is under eighteen (18) years old. This is only applicable to operators of mobile food establishments which requires a CDL License.~~
 - ~~(3)(1) The application is incomplete, or~~
 - ~~(4)(2) The application and/or its contents do does not meet the criteria of any city ordinances, and/or policy adopted by the city.~~
- (c) *Appeal process for licensed vendors.* Any decision of the city clerk or his/her ~~their~~ designee in respect to the issuance or refusal to issue a permit license or the revocation of a permit license may be appealed to the city manager by written notice. The decision of the city manager shall be made in writing and shall be final.
- (d) *License revocation or suspension for licensed vendors.* A license may be suspended or revoked by the city clerk, the fire chief, the chief of police and/or the city manager, or their designee if it is found at any time that the license holder made any material omission or inaccurate statements in the license application, or if the license holder is found to be in violation of any ordinance or statutory violation directly related to the licensed activity. A "notice of suspension or revocation" will be served on the applicant and will include a statement of violations. The appeal process is addressed in section 17-11-040(c).
- (e) *Operational requirements.* Operational requirements for all food vendors shall be consistent with section 17-11-08070 of this article.

17-11-050. Food vendors operating at special events and block parties.

All food vendors operating at special events and/or block parties are required to be fully permitted through the New Mexico Environmental Department, the city, and be subject to a fire inspection conducted by the Alamogordo Fire Department as stated above. The city will require all special event and block party organizers submit a list of vendor operator names ten (10) business days prior to the event for the purpose of verifying that all vendors have meet the criteria set forth by the city. Note: Additional fees may be required by the organizer of such events that are not part of the annual license fee.

17-11-060 050. Non-profit operators. Exemption from license.

All non-profit temporary food vendors covered by this article shall provide a copy of their 501(C)(3) documents to the, before operating at special events and/or block parties are required to be fully permitted through the New Mexico Environmental Department and be subject to a fire inspection conducted by the Alamogordo Fire Department, with the exception of mMinor's under the age of eighteen (18) who participate in food vendor activities are exempt from the licensing requirements of this article except when they are acting as agents of adults. Please refer to section 17-08-030 titled "exemptions." Non-profit groups may operate on private property if granted permission, provided that public health, safety and welfare is not compromised.

~~Non-profit groups may vend in public places designated by the city adhering to all conditions required by the city, which such conditions may address compensation for use of city property as well as limitations on hours of operation and specific places of operation. As stated above, non-profits groups may also operate in conjunction with special events.~~

17-11-0760. Farm stand operators.

~~Temporary farm stands food vendors operating are required to be fully permitted through the New Mexico Environmental Department if slicing or cutting products in any way for public consumption, the city, and be subject to a fire inspection conducted by the Alamogordo Fire Department. Farm stand operators may operate on private property if granted permission, provided that public health, safety and welfare is not compromised. Temporary farm stands may vend in public places designated by the city adhering to all conditions required by the city, which such conditions may address compensation for use of city property as well as limitations on hours of operation and specific places of operation. Temporary farm stands may also operate in conjunction in with special events. A group of temporary farm stands may operate under one (1) organizer for a specific location.~~

17-11-08070. General operating requirements.

(a) *Operations.*

~~(1) The licensee or the licensee's employee or agent shall be present within the vending site during all times in which items are sold.~~

~~(2)~~(1) Food vendor display of license and proper documentation:

- ~~a. Each license issued or required under this article shall be displayed in a conspicuous location which is visible to the public.~~
- ~~b. Each licensee shall display the copy of the applicant's Priority II letter and/or permit issued by the State of New Mexico Environmental Department in a conspicuous location which is visible to the public.~~
- ~~c. If operating on private property, the vendor must keep written permission from the property owner within the vending unit at all times.~~
- ~~d. If operating on a route, the vendor must keep the outlined route map that was provided to the city clerk within the vending unit at all times.~~

~~(3)~~(2) Temporary free-standing signs associated with mobile food vendors shall be prohibited unless allowed by the sign ordinance. Please refer to 3-01-015 titled "Temporary signs."

~~(4)~~(3) No mobile food vendors shall use bells or lights, ~~noise-makers~~ **noisemakers**, including music, to attract customers. "Ice cream/dessert vendors" are exempt from this restriction. Any noise originating from a mobile food vendor operation shall comply with the city noise ordinance.

~~(5)~~(4) Mobile food vendors are prohibited from using city water, electricity, or other utilities in the course of its operations unless explicitly provided permission from the city with an arrangement made for compensation.

~~(b) Required insurance. Food vendors licensed by the city operating on city property shall provide proof of liability insurance for any single accident and for any property damage in the amount required by the "State of New Mexico Tort Claims Act." Such liability insurance shall be in effect at all times the vendor is licensed in accordance with this section. A certificate of insurance shall list the city as certificate holder for such coverage and shall be delivered to the event coordinator prior to the event. If such insurance coverage is cancelled, not renewed, or changed, the insurer and licensee shall immediately provide notice to the event coordinator. Failure to maintain such insurance may result in the suspension or revocation of the license.~~

~~(c) Vehicle regulations.~~

- ~~(1) Each food vendor platform or vehicle shall be designed and constructed specifically for the purpose of vending the product or products to be sold.~~
- ~~(2) Each food vendor platform or vehicle shall have valid license plates and registration as required by the State of New Mexico Department of Motor Vehicles Division.~~
- ~~(3) Each food vendor platform or vehicle shall be in compliance with all Federal, State and local laws or regulations which govern motor vehicles, including, but not limited to, vehicle size requirements.~~
- ~~(4) Each food vendor platform or vehicle shall be kept in a safe, operable condition with no visible signs of rust or other deterioration or unsightly condition.~~

~~(d)~~**(b)** *Garbage requirements.*

- (4) The licensee and ~~his/her~~ **their** employee(s) shall be responsible at all times for the removal of all refuse resulting from ~~his/her~~ **their** business or customers use of ~~his/her~~ **their** business. Such refuse shall be placed solely in the mobile food establishment's waste bins. All such containers shall be kept covered with a tight-fitting lid. No food vendor establishments shall discharge any material onto the street, sidewalk, gutters, storm drain or the property of another, including, but not limited to, public property. All operators are responsible for ensuring that all waste is disposed of in accordance with city ordinances and/or maintaining all areas used for food vending and customer activity in a safe and clean condition.
- ~~(2) All food vendors shall deploy at least two (2) leak-proof, thirty (30) gallon trash containers accessible to the public.~~
- ~~(3) All mobile sidewalk carts shall be equipped with at least one (1) appropriately sized leak-proof garbage container.~~

~~(e)~~**(c)** *Specified locations of operation.*

- (1) No food vendor may conduct businesses located on city-owned or controlled location unless permitted by the city.
- ~~(2) All food vendors shall be located on a paved surface at all times, unless expressly allowed by the city.~~
- ~~(3)~~**(2)** All food vendor business activity taking place in the public right-of-way shall be conducted from the curbside of the vehicle at all times, unless expressly approved by the city.
- ~~(4)~~**(3)** No food vendor shall operate in a way that impedes pedestrian or vehicle circulation.
- ~~(5) Food vendor parking on designated city owned or controlled property will be allowed to operate on a "first come first served" basis within designated vending locations identified by the city. Parking spaces may be occupied by non-vendors. Designated vending locations will be in effect at all times unless otherwise expressly approved by the city and/or permitted in conjunction with a special event.~~
- ~~(f) Distance restriction from restaurants generally. Food vendors are prohibited from conducting business within two hundred (200) feet of a public entrance of any business which is a licensed or permitted restaurant by the New Mexico Environmental Department, and the city during the hours the subject business is open to the public. If a food vendor wishes to operate within the two hundred (200) foot threshold, written permission must be granted by the business owner, all food vendors shall keep the written permission on site for review purposes.~~
- ~~(g) Distance restriction from restaurants during special events. During permitted special events, food vendors may not operate within one hundred (100) feet of any business selling the same or similar type products unless written permission is granted by the business.~~

- ~~(h) *Distance restriction from permitted special events.* Food vendors shall not conduct business within five hundred (500) feet of any city permitted special event unless the vendor has obtained written permission from the event organizer or permittee.~~
- ~~(i) *Operating on private property.* Food vendors shall be prohibited from conducting business on any private property without written permission from the property owner. A copy of the written permission shall be kept in the food vendor unit at all times. The food vendor shall comply if asked to leave the private property by the property owner or a city official.~~
- ~~(j)~~ **(d)** *Operating in residential zones.* Food vendors are prohibited from operating in residentially zoned districts or residential property uses. "Mobile ice cream/dessert vendors" may conduct business within R-1, R-2, and R-3 residential zoned districts from the public right-of-way, while adhering to all other operational regulations of this article.
- ~~(k)~~ **(e)** *Designated hours of operation.*
- (1) Sunday through Saturday: 6:00 a.m. to 10:00 p.m.
 - (2) Food vendors may operate in designated locations/areas for the duration of designated times of operation and are not required to move during those times.
 - (3) Day and time of operation restrictions shall be in effect for food vendors in all designated vending locations, unless operating in conjunction with special events.
 - (4) In addition to those times listed in (1) of this section, licensed ice cream/dessert vendors may operate from the public right-of-way within the R-1, R-2, and R-3 residential districts Sunday through Saturday, 11:00 a.m. to a half hour before sunset but no later than 8:00 p.m. Ice cream/dessert vendors may not conduct business at a location longer than fifteen (15) continuous minutes in residential zoned districts, meaning the vendor must move not less than two hundred fifty (250) feet every fifteen (15) minutes.
- ~~(5) Food vendors may operate at a special events during approved hours of the event.~~

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2022.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney



City of Alamogordo

Business Registration Form

Step 1 Planning & Zoning

Step 2: Fire Inspection

Step 3: City Clerk

You must bring the completed application and business registration payment to the city clerk's office. If you submitted payment online, please provide proof of payment.

For questions regarding zoning requirements or fire inspections, refer to the Alamogordo Code of ordinances located at

library.municode.com/nm/alamogordo/codes/code_of_ordinances

CONTACT INFORMATION

PLANNING & ZONING

PHONE: (575) 439-4220

ADDRESS: 1376 E. Ninth Street
Alamogordo, NM 88310

WEBSITE:
ci.alamogordo.nm.us/162/Planning-Zoning

EMAIL: pnz@ci.alamogordo.nm.us

ALAMOGORDO FIRE DEPT.

PHONE: (575) 439-4298
(575) 439-4119

ADDRESS: 619 Texas Avenue
Alamogordo, NM 88310

WEBSITE:
<https://ci.alamogordo.nm.us/475/Fire-Department>

EMAIL: armstrongj@ci.alamogordo.nm.us

BUSINESS INFORMATION

Date: _____

Business Name: _____

Business Address (Location): _____

Business Owner Name(s): _____

Business Owner Phone # _____

Business Owner Email # _____

FOR OFFICIAL USE: P&Z

Type of Zoning (District): _____

Approved _____ **Disapproved** _____

Comments: _____

Signature

Date

Name (Printed)

Title

FOR OFFICIAL USE: FIRE DEPT

Approved _____ **Disapproved** _____

Comments: _____

Signature

Date

Name (Printed)

Title



City of Alamogordo

Annual Application for Food Vendor's License

Owner/Applicant Name: _____

Owner's Address: _____

Business Name: _____

NM Tax ID: _____

Physical Address: _____

Mailing Address: _____

Email Address: _____

Phone #: _____

How is the business operated? Select your answer below:

- | | |
|--|---|
| ☐ Mobile Food Trailer | ☐ Temporary Farm Stand |
| ☐ Mobile Food Truck | ☐ Temporary Food Booth, |
| ☐ Mobile Sidewalk Cart | Tent, or Stand |
| ☐ Ice Cream Truck | ☐ Other |

I certify that the above information is true and correct. Per Ordinance 17-11-30 Licensing for Food Vendors, I understand that I shall file annually for a Food Vendor's License.

Print Name of Owner/Applicant

Signature of Owner/Applicant

Below is for City Clerk's Department and Finance Department Use Only

License #: _____

AR Code: WL

Fee: \$35

Receipt #: _____

Date Paid: _____



City of Alamogordo

Frequently asked Questions for Food Vendor's License

1. Where do I get a New Mexico Tax I.D. Number?

The New Mexico Taxation & Revenue Department.

Address: 1200 South St. France Drive, Santa Fe NM 87505

Phone: 1-866-285-2996

Website: <https://tap.state.nm.us/>

2. Where do I get a Food Permit, Priority II Letter, or a Temporary Food Permit?

The New Mexico Environment Department.

Address: 811 E. First Street, Suite D, Alamogordo, NM 88310

Phone: (575) 437-7115

Email: Alamogordo.ehb.state.nm.us

3. My permit from the New Mexico Environment Department expires before the Food Vendor's License does. Do you need a copy of the updated permit?

Yes. Please send us new permits as you receive them.

4. Where do I get the Alamogordo Fire Department's letter of approval to operate?

The Alamogordo Fire Department, Fire Station 1.

Address: 619 Texas Avenue, Alamogordo, NM 88310

Phone: 575-439-4298

5. How long is the Food Vendor's License good for?

Licenses are only valid until the end of the issued calendar year.



City of Alamogordo
Alamogordo Fire Department
619 Texas Avenue, Alamogordo, New Mexico 88310
Administration 575-439-4298



Food Vendor Inspection

This document is Identify that an Annual Food Vendor Inspection was completed by the Alamogordo Fire Department. The Alamogordo Fire Department inspects food vendors in compliance with 2015 International Fire Code Standards as adopted.

NOTE: Vendors/Operators will not be allowed to start an event until a final inspection and all applicable fees have been paid to the City of Alamogordo. Failure to comply with this requirement will result in a Stop Work Order.

Name of Mobile Food Vehicle: _____

Owner Name: _____

Mailing Address: _____

Phone Number: _____ **Email:** _____

Secondary Phone Number: _____

Vin Number: _____

License Plate#: _____ **Date Inspected:** _____

Type of Operation: Van () Vehicle () Trailer () Pushcart () Tent () Specify: _____

Inspector Signature: _____ **Print:** _____

Summary of Inspection -

☐ Approved – No violations

☐ Approved to Operate – Violations must be corrected - (Add Comments)

Comments/Limitations

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date: 10/07/2022

Report No: 8.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, first publication of Ordinance 1663, repealing Chapter 27 of the Alamogordo Code of Ordinances concerning Vehicles for Hire. *(Rachel Hughs, City Clerk)* **(Roll Call Vote Required)**

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approve for first publication.

Background:

Repealing Chapter 27 as the State regulates vehicles for hire.

ORDINANCE NO. 1663**AN ORDINANCE REPEALING CHAPTER 27 OF
THE ALAMOGORDO CODE OF ORDINANCES
CONCERNING VEHICLES FOR HIRE**

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that Vehicles for Hire are regulated by State Statute; and,

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, recognizes that Vehicle for Hire licenses would be moved under business registrations.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, considers it necessary to repeal Chapter 27 of the Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico, that Chapter 27 of the Code of Ordinances be repealed.

Chapter 27 VEHICLES FOR HIRE**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.

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.

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.~~

~~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~~

~~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.~~

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2022.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date: 10/07/2022

Report No: 9.

Submitted By:

Subject: Consider, and act upon, the first publication of Ordinance 1662, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-060 "Code of Conduct." (*Brian Cesar, City Manager*) (**Roll Call Vote Required**).

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact:

Recommendation: Approved for First Publication

Background:

ORDINANCE NO. 1662

ALAMOGORDO CODE OF ORDINANCES ELECTED AND APPOINTED OFFICIAL'S CODE OF CONDUCT

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, recognizes that elected or appointed officials of the city are bound to uphold the Constitution of the United States, the New Mexico Constitution, and federal, state, and local laws.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that elected or appointed officials adhere to the highest standards in the exercise of powers and duties of the office.

WHEREAS the City Commission of the City of Alamogordo, New Mexico, recognizes that elected or appointed officials must impartially carry out their duties regardless of personal considerations

WHEREAS the City Commission of the City of Alamogordo, New Mexico, recognizes that public interest is their primary objective.

BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 2 of the *code of ordinances* is amended to include 02-060 "*Code of Conduct*" and shall read as follows

02-02-060 CODE OF CONDUCT

(a) Purpose

The City of Alamogordo seeks to foster and maintain transparency while conducting city business, creating policy, and undertaking the day-to-day operation of the city. This chapter establishes minimum standards of ethical behavior of elected and appointed officials. It sets forth explicit standards of conduct by requiring elected or appointed officials to disclose personal interests, financial or otherwise, in matters of the city and to remove themselves from decision-making when such interests exist.

(b) Definitions

- (1) *Administrative Action*. Action is based upon the application or interpretation of a city ordinance, state statute, or a proceeding involving a license permit, franchise, or development use.
- (2) *Anything of Value*. As defined in NMSA §8-8-19 (D).
- (3) *Appointed Official*. A person who is not an elected official and has been appointed by the Governing Body.
- (4) *Governing Body of City Commission*. The Governing Body of the City of Alamogordo.
- (5) *Confidential Information*. Information that has been classified confidential by law.

- (6) *Conflict of Interest*. A situation in which a person exercising a duty has an interest, financial or otherwise, that potentially conflicts with the exercise of the duty or that may be perceived as conflicting with the exercise of the duty.
- (7) *Contract*. An agreement between two or more parties, whether express or arising by operation of law.
- (8) *Ethics Official*. The City Attorney, or another attorney designated by the City Manager, will act as the ethics official, performing reviews of complaints, conducting investing actions, gathering information, and making recommendations to this chapter.
- (9) *Elected Official*. A Governing Body includes a City Commissioner or the Mayor.
- (10) *Ex-Parte Communication*. Direct or indirect communication with a party or the party's representative outside the presence of the other parties concerning a pending adjudication that deals with substantive matters or issues on the merits of the proceedings. Ex-parte communications do not include statements that are limited to providing publicly available information about a pending adjudication or solely related to the status of the proceeding.
- (11) *Family*. An individual's spouse, domestic partner, parent, child, sibling, and like in-laws, by consanguinity or affinity, or persons, related or unrelated, living within the household.
- (12) *Financial Interest*. Any interest of an elected official or an appointed official that is:
 - a. an ownership interest or other interest in any contract or prospective contract with the city;
 - b. an interest in the sale of real or personal property to or from the city;
 - c. a financial relationship with a person or business whose interests may be affected by the city;
 - d. any employment or prospective employment for which negotiations have already begun where the prospective employer has an interest in the sale of real or personal property from the city; or
 - e. any other interest that may be affected by the city.

For this chapter, interest shall be one either as owner, part owner, partner, or shareholder, in which such individual owns more than two percent of the outstanding stock or more than two percent of the ownership interest of any other business that is doing business with the city in an amount in excess of \$7,500 annually. An interest held by the elected Official's spouse or minor children shall be considered the interest of the Elected or appointed officials for the purposes of this chapter.

- (13) *Frivolous*. A determination is made by the Ethics Panel when two or more complaints made by an individual or entity have been determined to be unsubstantiated and contain allegations that are found to have no factual basis.
- (14) *Harassment*. Harassment consists of knowingly pursuing a pattern of conduct intended to annoy, alarm, bully or intimidate another person and that serves no lawful purpose. The behavior must be such that it would cause a reasonable person to suffer substantial emotional distress.

- (15) *Non-Public Information*. Information that is obtained during an elected official's, appointed official's, or employee's duties and is subject to public inspection under state law, but that, because of its nature, is not readily accessible to the public; and if used or disclosed, a personal benefit or advantage is likely to result.
- (16) *Party*. A person who has submitted to the city an application seeking affirmative relief; a person who has filed a formal complaint or protest; a person who is the subject of a formal complaint or investigation; and members of the general public who participate in a pending adjudication.
- (17) *Pending Adjudication*. Any application, petition, complaint, protest, investigation, or other administrative adjudicatory proceeding requiring a decision or action by the Governing Body.
- (18) *Personal Benefit*. The obtaining or promise of obtaining anything of value.
- (19) *Substantiated Claim*. Competent facts verify a violation of this chapter, and substantial evidence exists to support it.
- (20) *Unsubstantiated Claim*. A claim that is not supported by competent facts or substantial evidence or existent of facts or an allegation that is not a per se violation of this chapter.
- (21) *Non-Partisanship*. All actions, decisions, and votes on matters relating to city government shall be on the merits. Decisions shall be made objectively, without party or partisanship considerations, and without facts that are not directly and properly related to the matter requiring action.

(c) *Public Trust*

- (1) Elected or appointed officials shall act according to the highest principles of representative democracy to ensure that city government is worthy of public respect, trust, and support.
- (2) Elected or appointed officials shall not engage in conduct that they know or reasonably should know is likely to create in the minds of reasonable, objective, fair-minded observers the perception that they have misused their public positions unethically or otherwise have not conducted themselves in accordance with the standards of conduct of this chapter.
- (3) Elected or appointed officials shall not provide or disseminate to the public any information or data that they should reasonably know to be untrue, inaccurate, or misleading. It is incumbent upon elected or appointed officials to correct such information as quickly as reasonably possible.
- (4) It is a violation of this chapter for elected officials and appointed officials to knowingly violate their own rules of procedure or any other law or ordinance.

(d) *Conduct Avoiding Impropriety*

- (1) Elected or appointed officials shall avoid conduct that creates the appearance of impropriety or that is otherwise unbefitting a public official. An impropriety can mean misconduct or behavior demonstrating an unethical process or improper influence.
- (2) Elected or appointed officials shall not knowingly engage in conduct that violates the rights of others to be treated fairly.

(3) Elected or appointed officials shall refrain from engaging in conduct, even if lawful, where personal gain or advantage is involved in a way that creates a reasonable inference that such office has been used for personal benefit.

(e) Prohibited Financial Interest in City Business

(1) No elected or appointed officials may have a financial interest if the elected or appointed official is in a decision-making capacity concerning the financial interest.

(2) Elected or appointed officials with any financial interest shall disclose such interest in writing to the City Attorney's office or by making an official record at a commission meeting. By filing a disclosure of interest with the City of Attorney or recording into the record at a commission meeting, the elected or appointed official shall be disqualified from participating in any debate, decision, or vote relating thereto.

(f) Conflict of Interest, Disclosure

(1) Elected or appointed officials shall strictly avoid transactions and relationships that create a conflict of interest. Where a conflict of interest is unavoidable, the elected or appointed official shall disclose the conflict of interest and shall subordinate the conflicting interest to the public interest. The Clerk shall record the disclosure as part of the minutes of the meeting at which the disclosure is made.

(2) Elected or appointed officials shall exercise their duties, powers, and prerogatives without prejudice or favoritism to hire, promote, or reward family members, relatives, friends, or political supporters, or to hinder or punish enemies and opponents.

(3) Elected or appointed officials shall assure that constituents and others who may be affected by decisions of the city have a fair and reasonable opportunity to express their concerns, grievances, and ideas without regard to their willingness or ability to provide benefits or political support to the elected or appointed official.

(4) Elected or appointed officials shall not engage in any conduct that could create in the mind of a reasonable observer the belief that persons will receive better or different services if gifts, personal benefits, or political or charitable contributions are provided.

(5) Elected or appointed officials shall not solicit or receive gifts, personal benefits, favors, gratuities or political or charitable contributions, or anything of value under circumstances that create a reasonable belief that special access, services, favors, or official or unofficial actions will be provided as a result. Nor may anything of value be solicited or received from a person or business doing business with the city, contracting with the city, regulated by the city, has an application pending before the city, or whose interests may be affected by the city.

(6) Elected or appointed officials shall not accept anything of value from a person, business, or other entity when the elected or appointed official or employee knows or reasonably should know that said person, business, or entity does any business with the city, desires to do business with the city, contracts with the city, is regulated by the city, has an application pending before the city, or whose interests may be affected by the city.

(g) Confidential Information and Misuse of Non-Public Confidential Information

No elected official or appointed official shall disclose or use confidential information maintained by the city without proper authorization. No elected or appointed official shall

use confidential information for personal benefit. Such information shall not be used to advance said person's financial or other private interests.

(h) Use of Position to Obtain Information

No elected or appointed official shall use their position to obtain information from another entity or individual for personal benefit. Nor shall an elected or appointed official to obtain, or attempt to obtain, information from an individual or entity on behalf of the city when the information will be used for their personal interest or benefit.

(i) Misuse of City Property and Resources for Private Gain or Personal Advantage

(1) An elected or appointed official shall not use public property for any private or nongovernmental purpose except as expressly provided by law. Public property includes public funds, staff time, facilities, property, equipment, mailing lists, computer data, services, or any other governmental asset or resource. This section does not prohibit reserving or renting city property designated as either public or meeting space and is otherwise made available to all members of the public.

(2) Unless authorized by the City of Alamogordo employee manual, no city employee shall be asked or permitted to perform personal services for an elected or appointed official. An elected or appointed official shall not require a city employee to perform personal services or assist in a private activity.

(j) Misuse of City Property or Resources for Political Purposes

No municipal resources, including funds, facilities, and personnel, may be used for political campaign purposes or to influence an election; provided that this shall not prohibit the use of public resources proposed for the limited purpose of educating voters about the details of a ballot question placed on the ballot as authorized by the City of Alamogordo Governing Body pursuant to Section 1-16-3 NMSA 1978 (as amended). An elected official shall not use or authorize municipal funds, time, facilities, equipment, mailing lists, computer data, social media platforms, resources, services, or other government assets for political fundraising, campaigning, or influencing an election.

(k) Use of Confidential Information for Private Gain

An elected, appointed, or former elected official who terminated city service within one year shall not use or disclose confidential information to obtain a benefit for any person.

This section does not allow the disclosure of information made confidential by law.

(l) Misuse of Title or Prestige of Office for Private Gain or Personal Advantage

(1) An elected or appointed official shall not use, induce, cause, or encourage others to use the authority, title, official letterhead, or prestige of the elected or appointed official for private gain or personal advantage.

(2) An elected or appointed official shall not solicit or accept anything of value under terms and conditions where the compensation is not commensurate with the services performed or where a reasonable person would believe that the authority, title, or prestige of office had been exploited.

(m) Political Activity

(1) No elected or appointed officials shall compel, coerce or intimidate any elected or appointed officials to make, or refrain from making, any political contribution. No elected or appointed officials shall solicit or obtain any political contribution from

employees by coercion. Nothing in this subsection shall be interpreted to provide that an elected or appointed official is precluded from voluntarily making a contribution or receiving a voluntary contribution.

(2) No elected officer of the city shall hold any other elected office or be employed by the city during the term for which the member was elected.

(3) Nothing in this section shall be construed to prohibit the Governing Body from selecting any current, former mayor or city commissioner to represent the city before any other governmental entity.

(4) An elected or appointed official shall not require an employee to perform political activity:

- a. as part of the employee's duties;
- b. as a condition of city employment; or
- c. during any time off that is compensated by the city.

(5) No elected or appointed official shall engage in any conduct that would, to an objective third party, constitute an undue threat to an employee's continued employment.

(6) The city shall employ no former mayor or city Commissioner until one year after the expiration of the term for which the member was elected.

(n) Coercion

(1) An elected or appointed official shall not, directly or by authorizing another to act on their behalf, state or imply that the elected official's willingness to meet with a person or organization is dependent on the person or organization making a campaign contribution, donating to a cause favored by the official, or providing anything of value to the official.

(2) An elected official shall not directly or by authorizing another to act on the elected official's behalf:

(3) Agree or threaten to take or withhold any city governmental action as a result of a person's decision to provide or not provide a political contribution; or

(4) State or imply that the elected official will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution; or

(5) Agree to or participate in a scheme or plan intended to evade the requirements of any applicable state ethics statutes, this chapter, or another financial disclosure provision of state or city law; or

(6) Knowingly accept a contribution given or offered in violation of any applicable state ethics statutes or this chapter.

(o) Ex-Parte Communications

(1) Ex parte communications prohibited.

(2) An elected official or appointed official designated to hear an administrative adjudicatory matter pursuant to city ordinance shall not initiate, permit or consider a communication directly or indirectly with a party or the party's representative outside of the hearing and outside of the presence of all other interested parties concerning the pending matter.

(3) An administrative adjudicatory matter involves the use of a discretionary standard, as specified by code or other city ordinance, to an application for discretionary approval.

(4) Notwithstanding the provisions of subsection (A)(1) of this section, ex parte communications for procedural or administrative purposes, during emergencies, or that do not deal with the merits of the application shall not be prohibited if the elected official or appointed official reasonably believes that no party will gain an advantage as a result of the ex parte communication and promptly notifies all other parties of the substance of the ex parte communication.

(5) An elected or appointed official who receives or who makes or knowingly causes to have communication prohibited by this chapter shall disclose the communication to all parties and allow other parties to respond.

(p) Recusal.

(1) An elected official or appointed official shall recuse themselves in any pending administrative adjudicatory matter in which the official is unable to make a fair and impartial decision or in which there is reasonable doubt about whether the official can make a fair and impartial decision, including:

- a. When the official has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact. For the purposes of this paragraph, "personal bias or prejudice" means the predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial, or other intimate relationship, that renders the official unable to exercise their functions impartially; or
- b. When the official has a pecuniary or financial interest in the outcome of the proceeding; or
- c. When, during the previous employment, the official served as an attorney, advisor, consultant, or witness in the matter of controversy (previous employment is employment during the previous 12 months); or
- d. When the official announced how they would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

(2) An elected or appointed official shall not be required to recuse themselves in any pending administrative adjudicatory matter merely because the official possesses and discusses general viewpoints on public policy that an application may raise. Similarly, an elected official shall not be required to recuse themselves in any pending administrative adjudicatory matter merely because the elected official made representations during a political campaign on viewpoints on public policy that an application may raise.

(3) The elected or appointed official recusing themselves shall disclose the reason for recusal.

(4) If, before the hearing, an elected official or appointed official fails to recuse themselves when it appears that grounds exist, a party shall promptly notify the elected official or appointed official of the grounds for recusal. If the elected or appointed official declines to recuse themselves upon request of a party, the official shall provide a complete explanation as to why they refuse

(5) If during the hearing, an elected official or appointed official fails to recuse themselves when it appears that grounds exist, a party shall promptly notify the Mayor of the grounds for recusal. If the elected official or appointed official declines to recuse themselves, the Chair may entertain a motion to excuse the official from further participation in the matter. If the motion is successful, the official shall be excused from further participation in the matter.

(q) Restrictions on the Governing Body; Personnel System and Management

The Governing Body shall not perform, collectively or individually, general executive management functions in the administration of city government; these functions shall be delegated to the City Manager, including administration of the personnel system. This paragraph shall not apply to matters of policy, the responsibility, and the authority of the Governing Body to approve the annual budget.

(r) Reporting, Investigating, and Determination of Violations Pertaining to this Chapter

(1) Any elected or appointed official, employee, entity, or member of the public may submit a complaint of unethical conduct to the City Attorney's office, a complaint alleging facts which, if true, would constitute a violation of this chapter. If the City Attorney is not appointed as the Ethics Official, the City Attorney shall forward the complaint to Ethics Official.

(2) Ethics Official shall investigate all applicable complaints forwarded to them and make one of the following recommendations regarding the complaint:

- a. Unsubstantiated claim under this chapter; or
- b. Substantiated claim under this chapter.

(3) If an unsubstantiated claim is a recommendation made by the Ethics Official, this ethics official shall produce a report reflecting their findings and details of the investigation. An unsubstantiated claim shall not be forwarded to the Ethics Panel unless necessary to determine a frivolous claim.

(4) Upon the completion of an investigation, the Ethics Official may determine that a claim is substantiated. At such time, the Ethics Official will produce a report which contains their findings and recommendations. The Ethics Panel shall conduct a public hearing of all substantiated claims and shall decide, by majority vote, if a provision(s) under this chapter has been violated. Penalties shall be determined according to this chapter. The Ethics Official shall be present at the public hearing to respond to questions from the Ethics Panel regarding their findings and recommendations. The complaining party and the respondent to the complaint shall be notified via certified mail to all hearings. The respondent or a legal representative hired by the respondent shall be allowed to respond to the complaint at a public hearing.

(5) If an individual or entity files two or more unsubstantiated complaints directed at the same individual for harassment or to cause the individual public shame or embarrassment, the Ethics Official may recommend a public hearing to the Ethics Panel.

- a. Notice shall be provided to the complaining party no later than 14 calendar days before the scheduled public hearing.

- b. The Ethics Panel shall conduct a public hearing to determine if the complaints are frivolous and if the complaints were intended to annoy, harass or otherwise cause the targeted individual public shame or embarrassment.
- c. If the Ethics Panel determines by majority vote that the complaints are frivolous and intended to annoy, harass, or cause the targeted individual shame or embarrassment, they may prescribe a penalty under this chapter.
- d. If the complaining party disagrees, that may be appealed to the Twelfth Judicial District Court.

(s) City Ethics Panel

- (1) If the Ethics Official substantiates a complaint, an ethics panel shall be created.
- (2) A City of Alamogordo Ethics Panel shall be created that shall consist of three members plus one alternate.
 - a. The City Manager will appoint the Chair of the Ethics Panel. The Chair preferably shall be a lawyer, former judicial official, or former law enforcement.
 - b. The remaining two members and alternate shall be appointed by the Ethics Panel Chair.
- (3) All ethics panel members shall not be affiliated with the city government in any capacity. This includes, but is not limited to, employment, employment for which the salary is in any way funded by or through the city, appointment, or election. The members of the Ethics Panel may not hold elected public office or office with any political party within the city.
- (4) The jurisdiction of the Ethics Panel is limited to acting within the scope of matters covered by this chapter but may periodically review and recommend amendments to this chapter.
- (5) The Ethics Panel shall adopt rules of procedure for conducting hearings pursuant to this chapter. The rules of procedure shall be consistent with the rules for conducting administrative hearings in Alamogordo and shall be reviewed by the City Attorney.
- (6) The Ethics Panel shall have the power to issue administrative subpoenas compelling attendance of witnesses at hearings and the production of documents and the authority to seek enforcement of those subpoenas by the Twelfth Judicial District Court.
- (7) If the Ethics Panel finds, by a preponderance of evidence and upon a majority vote, that the elected or appointed official has violated this chapter, the Ethics Panel may impose any of the following penalties after the written findings of fact and conclusions of law:
 - a. A civil fine not to exceed \$500; or
 - b. A written finding of censure; or
 - c. A referral to the District Attorney or appropriate governmental office for commencement of criminal or other proceedings; or
 - d. A recommendation to the District Attorney that proceedings to remove the person from elected office be commenced pursuant to NMSA 1978 § 10-4-1 et seq. (as amended).
- (8) No action may be taken by the Ethics Official or Ethics Panel on any complaint filed later than one year after a violation of this chapter is alleged to have occurred, or that is

filed more than six months from the date of the discovery of the alleged violation upon due diligence by the complaining party of facts constituting a violation, whichever event occurs later.

(9) The Ethics Panel may also provide advisory opinions regarding the applicability or interpretation of the provisions of this chapter upon the request of any elected official or appointed official.

(10) Members of the Ethics Panel shall not receive any salary or compensation for services.

(t) Right of Appeal

Any decision of the Ethics Panel finding a violation of this chapter may be appealed to the Twelfth Judicial District Court pursuant to NMSA 1978 § 39-3-1.1 (1998, as amended).

Should the respondent appeal and wish to have legal representation, it is their responsibility to hire said representation.

(u) Non-Retaliation

The Governing Body does not tolerate retaliation, workforce discrimination, or harassment of any kind against any person who has reported a violation of this chapter. This non-retaliation provision applies whether the complaint is ultimately determined to be unsubstantiated or substantiated. All elected or appointed officials are specifically prohibited from taking any adverse employment action, engaging in workplace discrimination or harassment of any kind, or other retaliatory action against anyone for reporting a claim of violation. Anyone who believes that they have been subject to workplace discrimination or harassment of any kind or that has been retaliated against in violation of this chapter should submit a complaint of unethical conduct to the Ethics Panel by delivering a complaint to the City Attorney's office.

AGENDA REPORT

CITY OF ALAMOGORDO

CITY COMMISSION

Meeting Date: 10/11/2022

Report Date: 10/07/2022

Report No: 10.

Submitted By:

Subject: Consider, and act upon, first publication of Ordinance 1659, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media". (*Brian Cesar, City Manager*) **(Roll Call Vote Required)**.

Fiscal Impact:

Amount Budgeted:

Fund:

Additional Fiscal Impact: Minimize risk for Litigation.

Recommendation: Approval first publication of Ordinance 1659

Background:

ORDINANCE NO. 1659

ALAMOGORDO CODE OF ORDINANCES GOVERNING ELECTED AND APPOINTED OFFICIALS USE OF SOCIAL MEDIA

WHEREAS, the City Commission of the City of Alamogordo, New Mexico recognizes social media as a form of notification to the citizens concerning information, alerts, and city business.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, has an important interest in assuring the accuracy and consistency of information provided to the citizens

WHEREAS the City Commission of the City of Alamogordo, New Mexico, believe that honest, civil, and productive discussions provide the best environment for citizens to understand the work of their government.

BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo, New Mexico, that Chapter 2 of the *code of ordinances* is amended to include the following

2-02-050 City Commission Use of Social Media

1. These terms and conditions apply to all our current and future official City of Alamogordo social media sites.
2. Elected or appointed officials shall request to publish or post information under the City's official social media platforms.
3. Elected or appointed officials should know that social media posts, comments, and replies to those posts and any direct or private messages sent to us may be public records subject to applicable public records release.
4. The City of Alamogordo's social media accounts are not monitored 24/7. Automatic replies will be set up, asking citizens to use official communications, such as city email or phone, to contact city staff or report a complaint.
5. Elected or appointed officials are prohibited from conducting city business on their private pages.

Violation of this ordinance is subject to steps outlined in "*The City of Alamogordo Code of Conduct for Elected and Appointed Officials*."

PASSED, APPROVED AND ADOPTED this _____ day of
_____, 2022.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Ashley Smith, City Attorney