

**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 - Ridgecrest Drive project in an amount not to exceed \$384,519.19, including NMGR. (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.

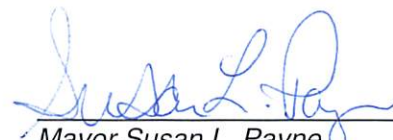
Motion carried with a vote of 7-0-0.

ADJOURNMENT



ATTEST:


City Clerk Rachel Hughes


Mayor Susan L. Payne

(Prepared by Dylan Aleshire, Deputy City Clerk)

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