

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
October 11, 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. Commissioner Melton was absent. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Joe Cantu and the Pledge of Allegiance was led by Commissioner Burnett.

APPROVAL OF AGENDA

Commissioner McDonald moved to approve the agenda.
Mayor Pro-Tem Wright seconded the motion.
Motion carried with a vote of 6-0-0.

PRESENTATIONS

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

Mayor Payne proclaimed the month of October 2022 as "Domestic Violence Awareness Month" and urged all citizens to actively participate in the domestic violence awareness events sponsored by the Center of Protective Environment (COPE). She presented the proclamation to Veronica Gutierrez, the Executive Director of COPE, and Linda Carr, the Board President.

PUBLIC COMMENT

Michael Gallegos said had a concern with the Water Department. He said on August 28th, he was helping his wife shampoo the carpet. He went out to the front to wash the bowl out, and he noticed that right underneath the faucet it was wet there. He said they shut off the water. He dug a hole and found a pipe that was leaking at the time. He said he called his brother over, and they were repairing the leak. The next day on the 29th, he said he received a courtesy notice from the City that he was using excessive water, which he said he understood. He said what can't understand is his last billing; it goes to the 14th of each month, so this last bill was from 7/14 to 8/14, this was as the leak was continuing. Fifteen days later, he said he gets this from the City. It took the City fifteen days to notify him that he was using excessive water. He said they gave him this, which tells you what your water is being used, how much, and if you do have a leak, they will text you to let you know you are using too much water. He said what he can't figure out is why does the City have this. Why didn't they notify him on the 14th that he was having a leak, instead of waiting fifteen days. In other words, this leak was continuous leaking from the 14th until he got his notice. He said he used a total, in two months, of 115,724 gallons of water; that is a lot of water to go underneath the house. He said he is lucky the house didn't sink. He said his first bill was for \$435.03. So, he came down to the City Water Department, and he told him that he received this bill. He said they had him fill out a form, and he filled out the form; they said they would let him know within a week or two if the City could help him pay the

water bill. He said he has always been on tier one, when he went from tier one to tier two, why wasn't he notified, or two to three, or three to four, or four to five. He was never notified. He went from tier one to tier five without the City notifying him. They want us to use water on even days of watering, but yet, when he uses 115,000 gallons of water, they won't let him know. This month's bill was \$535. Between the two, he has used 115,000 gallons of water, and he has an over \$1000 water bill. He said he knows the City is helping him, but what he is more concerning about is why doesn't the City notify. We have a system out there that they can check everybody's water, because they give you a bill, so they know that your water is being used, they know what tier you are in, but yet, they never notified him. He asked them over there when he went to the Water Department, why didn't they notify him, why they took fifteen days. They said it was because of the service of the Water Department. So, he would just like that to be noted, if we could figure out some way of working with the Water Department so people can be notified, because a lot of people do have leaks.

Mayor Payne asked if City Manager Cesar or City Attorney Smith were aware of this or if this is the first they have heard of it. They shook their heads no. Mr. Gallegos said he already talked to Karl about it, he is a great commissioner, and he likes the guy, he is right there to help him out and he has done a lot to help him. Mayor Payne addressed staff and said but he didn't make either one of you aware, okay, maybe what we can do is check into that, and find out what happened. She said they are nodding their heads back there. She said she thinks that normally, if she is not mistaken, we should catch something like that right, with this new system. Mr. Gallegos said it is not just for his sake, but it is for the City's sake. Mayor Payne said she agreed with him.

City Manager Cesar said it depends on the leak. Without looking at the account he does not know if it was continuous use, or if was it a small leak. A leak doesn't normally start as a full-blown leak, it will start small pinholes that will get larger.

Mayor Payne said maybe what we can do is get his information so we can look into that, and then somebody can call him tomorrow. Mayor Payne asked Finance Director Huff to take his information.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:

1. He said he is available for questions from the commission.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

He said the patch on Cuba he asked about the last meeting, have we gotten any information on that yet. He said it is sinking there, he didn't know if we did it, or a contractor did it. City Manager Cesar said he did pass that on, but he didn't remember getting any information back, so he will find out tomorrow morning and send it out.

He said he heard some rumors around town about the F4 that we purchased from Holloman. Originally, we were going to put it at the corner of Indian Wells and White Sands, he said he was hearing it was going to be placed out on Highway 54 & 70 now. City Manager Cesar said there was never a definite site to place the F4. Originally, when Airport Manager Jim Talbert brought that forward to a totally different commission over four years ago when he acquired the F4, his original plan was to have it right next to Airborne Park. You had at least two, maybe three individuals that represented the Airborne Park that were not happy with the placement as it was the wrong era plane and not for people that parachuted during the war. It has been discussed, but there have never been any plans put together. Possibly at Indian Wells and White Sands, where the old gas station was, it could be placed there. A

group has come forward that wants to fundraise, and have it placed into the State right-of-way, that is in the corner of 54 & 70, by the old Walmart/Showtime Video; it is a very huge area, and they would like to have it placed there in a veteran's memorial type of park. He said they have approached the State, and they have agreed that if we supply plans for final approval, then yes, we could use that right-of-way; but we don't have any finalized plans for that location either, so it hasn't come back to commission for approval. We don't have a budget for the project, etcetera. Commissioner Rardin said that in his personal opinion, that right-of-way we are talking about, with as many water breaks we have there, would be a dumb place to put a park. City Manager Cesar said we had a discussion months back. Commissioner Rardin said about replacing that line. City Manager Cesar said yes that line is under design, but he is not sure where we are with that at this point. It is going to be phased as that line needs to be replaced all the way from roughly the Three Flowers Trailer Park area all the way around and down to Airport Road. Regardless if anything goes there or not, that line scheduled to be replaced once we have the engineering done and the funding in place; the waterline construction is not funded at this point because we don't know what that is going to cost. Commissioner Rardin said so we are a couple of years down the road then. City Manager Cesar said it is all planned. Commissioner Rardin said he heard when we originally obtained that airplane was that it was supposed to down here at Indian Wells and White Sands. City Manager Cesar said in the commission meeting, the only area that was really talked about was next to Airborne Park; some other locations were thrown out once there was objection to the site next to Airborne Park. Commissioner Rardin said we ought to research that and make sure.

Mayor Payne said she was thinking it was White Sands and 10th. Commissioner Rardin said the way he learned originally was that they said White Sands and 10th, but they also said White Sands and Indian Wells; we've got time, we've got a year or two to research it and make sure.

CONSENT AGENDA

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)*

Commissioner Rardin removed item 3 from the Consent Agenda

Commissioner Rardin moved to approve the Consent Agenda as amended.

Commissioner Burnett seconded the motion.

Motion carried with a vote of 6-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

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)*

Commissioner Rardin asked Community Services Director Ortega if this being awarded to C.E.D., Consolidated Electrical Distributors was a typo. She said she did not know. Commissioner Rardin said C.E.D. is an electrical supply store, they are not a contractor. Engineering Manager Johnson said this bid is strictly materials for the electrical materials for the electrical upgrades at Alameda Park. The

actual work will be done by the Facility Maintenance team. That is why C.E.D. is listed, as they had the lowest responsive bid for the materials.

Commissioner Rardin moved to approve.

Mayor Pro-Tem Wright seconded the motion.

Motion carried with a vote of 6-0-0.

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)

Engineering Manager Johnson introduced Project Manager Casebolt, and said he joined the engineering team about six months ago as Project Manager. He said that Project Manager Casebolt will be the project manager for this project, it is one of several he has been assigned to. Engineering Manager Johnson said staff is recommending approval of the award. He said the work consists of construction of the new concrete sidewalks, curb and gutters, ADA complaint ramps, driveways, alley entrances, and asphalt patching. There will be limited demolition of the existing concrete flatwork, which is sidewalk. Some vegetation trimming, asphalt pavement required to complete construction. Limited utility adjustments will be required to include valve box adjustments, new concrete collars, water meter can adjustments, and manhole adjustments with concrete collars. Substantial traffic control will be required to maintain access to area residents and businesses, as well as guidance for the travelling public, both vehicular and pedestrian. He said we advertised the project on July 24th and 31st, we reopened bids on August 24th. The engineer's award recommendation and bid tabulation are attached. The requirements of any CDBG project are that the pre-bid conference be mandatory. We had approximately six bidders attend that mandatory conference, four of which were properly licensed. Two of those four submitted bids. We had one that makes sense, and one that does not. J29 out of Las Cruces submitted the bid that is about double what it should be, they are primarily a utility contractor, and they are licensed to do concrete work. They only bid one other project in the City of Alamogordo several years ago, and they were not a successful bidder then. We have no explanation as to why their costs are about double.

Mayor Payne asked what mobilization CIP is. Engineering Manager Johnson is said that mobilization CIP is constructed in place, it is just an acronym that we use. Mobilization is the cost where the contractor is going to mobilize all the equipment, their materials, and their manpower. It also usually includes their general requirements for bonding, profit overhead, things along those lines. It is typically spread out over the life of the project, and this project is nine months long. It will encompass a large area between 2nd and 8th, between New York and Florida.

Mayor Payne said she was just wondering because it is \$400,000 more than anybody else. Engineering Manager Johnson said this is a CDBG grant, the grant is \$500,000, and the City's match is \$50,000, and the rest is all City funds.

Mayor Pro-Tem Wright said that in full disclosure, he has no ties to General Hydronics Concrete as that is a sister company, but he will abstain from voting today.

Commissioner Rardin moved to approve.

Commissioner McDonald seconded the motion.

Motion carried with a vote of 5-0-1. Mayor Pro-Tem Wright abstained.

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)

Engineering Manager Johnson said staff is recommending approval of the amendment to Smith Engineering's contract. They are the engineer of record for this project. CDBG required that we formally request qualification-based proposals to secure the services of an engineer. Smith Engineering won that award, however, the requirements of the CDBG prevented us from adding in construction phase services. The original contract was strictly for the design and estimate. This amendment incorporates the construction phase requirements that we have used on some of our larger projects, which will include site observations twice a month over the nine-month duration, reporting the in-place quantities, verifying those quantities, reviewing the payment applications, proving that materials submittals responding to any RFI's and field orders, and any change order request that might come up. They will assist with the substantial completion and projection closeout documentation. As part of this, which is a little unusual, we've incorporated the quality control material testing that will be sub-consulted to Wood Environmental. We have an active direct contract with wood, however, CDBG would not allow us to use that agreement. The next best step was to incorporate the testing under the engineer's contract. We really did not have any alternative in that matter. That is the total cost. Smith Engineering's part is firm fixed price, Wood Environmental's is time and materials only, so they only bill us for actual services rendered.

Mayor Payne said in full disclosure, she does not know this Rusty Payne and they are not related in any way.

Commissioner Paul moved to approve.

Commissioner McDonald seconded the motion.

Motion carried with a vote of 6-0-0.

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)

This ordinance is to amend Chapter 17 titled Licenses and Miscellaneous Business Regulations. The major changes are as follows, the Chapter name to Business Regulations and Business Licenses, streamline the application process, timeframe of receiving business a registration or license from the city clerk, adding a per month late fee and inactivation of business for non-compliance of renewal, the appeal of denial shall go to the city manager, moving some licenses to registrations, removing some licenses altogether, 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, therefore 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.

City Clerk Hughs said she would like to make one change to the ordinance being presented today, in Article 17.01-.035 titled Application Process – the 3rd sentence that states license, it needs to read registration.

Douglas Dalton signed up for public comment on this item. He said is the owner of a farm in Tularosa, and also the project manager and partner with S & H Life here in Alamogordo. He said there is a lot of language that was taken off. He said the reason why he thinks there is an issue with this is that we

are taking away the power of the City Commission, and we are giving it all to one person, and that has to review and revocation of licensing. In order to do that, to him, that should be a democracy. That should be voted upon a bunch of people in order dictate whether our licenses are revoked or renewed. Based on that, taking it unto one person causes conflict of interest. That person becomes a very powerful person in that position. He said that the other issue he has is everything is down to a \$35 business license. You guys have alcohol at \$250. He said he is not a multi-billion company making a lot of money. He said he sold his house, sold his truck, pulled out his retirement to start this, and you are labeling me at a \$500 business registration. You are considering me making more money than the alcohol companies. For you to start off at \$500 sets precedence for the future. He said he is going to be looking at \$1000 next year, \$5000 ten years from now, you can't label him, and segregate him, as part of being a cannabis entity, especially as a startup. We are just starting, and we are broke right now, and here is with another \$500 fee. He said he is already paying fees to the State, fees to multiple companies that have got in bed with the State to even be in operation. For one man to dictate his license and reputation is wrong. Classifying him as a \$500 license, above everybody, is wrong. We are not making a lot of money right now. As far as he is concerned, a lot of this language that was taken out creates a whole lot of issues. It is taking your commission votes out, now you guys are no longer able to vote on whether he maintains his license, whether it is for health, the welfare of the public, it is all dictated on one-person's opinion, and it should not be like that.

City Manager Cesar said to clarify what was brought up, first for the Cannabis License, that is under the Cannabis Ordinance, so that has been passed and it was passed quite several meetings ago back in around April. That is a license fee, that is not an annual business registration, it is an annual license just like there is an alcohol license. The business registration is \$35. As to the City Manager, it is not one person who decides whether or not a business is revoked. This has nothing to do with revocation of business registrations. The process, if this is passed, now would be that if you a potential business owner that wanted to open a business in Alamogordo, you would pick up a packet or pull it online. It has basically three steps. You need to have the Fire Department inspect the building, they will give you an approval or tell you what you need to do with the building. The Planning and Zoning Department will make sure the business is placed in the proper zone, because certain businesses can only be in certain zones. The third step is to turn in that, which is a one page document, and that goes to the City Clerk. They review it and make sure those approvals are in place, they place your business information into the system, and it is a \$35 fee. Within two business days, you have a business registration. If your building is non-compliant and you don't have the proper sprinkler system, or fire extinguishers, or exits, you are not going to make it to the City Clerk's area. If it is in the wrong zone, you are not going to make it to the City Clerk's area for a business registration. If you get past those two steps, and in the entire time he has worked with the City, and he checked with Rachel too and she has worked with the City for ten years, there has never been a business registration that was denied. If you actually read the ordinance, the City Clerk is the first to deny for the health, safety, and welfare of the community. The appeal process is to the City Manager, and in his thirty years, we haven't had that as an issue that he has ever seen go before Commission. If you all want it to go before Commission, that can be changed, that can be added in, and it can be an extended process to open the business. For renewals, that is an annual process, if nothing has changed with the business, it is a \$35 fee and you have your business registration once again.

Mayor Payne said since January, since she has taken office as Mayor, she has had multiple incidents where she has said this is ridiculous. We are not being business-friendly, we are just not. We are making it way more difficult than it needs to be, and it shouldn't be like that. It should be what Brian just explained. It should be a simple process. It shouldn't be take it to the Clerk and then it goes here, then it goes back to the Clerk, then it goes there, and then it goes back again to the Clerk, and it goes here. What she has asked for, and what we are seeing now, is, you should be able to go online. You should be able to figure out what it needs. She said she thinks the best example is food trucks. We

get a lot of food trucks that come up from El Paso or Las Cruces or other areas, and they come into the City. El Paso is probably the best example because it is Texas, and of course Texas requirements may be different than New Mexico. What we see is a lot of them coming up from Texas, and then not meeting our requirements. That in itself is different, but if they had a way, before they drove up from Texas, to say okay, I know I need to do X, Y, and Z, and this is what the Fire Department is going to look for, and this is what the City is going to look for, so that by the time it gets to the Clerk, she should be able to just sign off on it. She said to her, that makes more sense. She said she does understand what Mr. Dalton was saying, but now that you mentioned it, that \$500 is not a business registration, it is really a license for cannabis in our City, just like you would have an alcohol license. She said we obviously passed that back when we passed the Cannabis Ordinance. She was going to say exactly what City Manager Cesar said, she couldn't remember one time ever that we have not given somebody a business license. As long as you know, you can't be within so many feet of a school, that kind of thing.

City Manager Cesar said as to all the language, because there is quite a lot of language that is stricken, a lot of what we did, we the City, did in the past. If you have a barbershop, you have to have a State license. Any number of businesses, you have to have State licensing. We were being the police for the State, we needed to see your license. We duplicated a lot of the processes that is actually a State function. Mayor Payne said that didn't make sense. City Manager Cesar said there was no reason for us to repeat those steps, all we were doing was adding time and frustration when someone would put in for a new business in Alamogordo. Mayor Payne said her daughter is a cosmetologist, and she had to get her business license, and they wanted to see her cosmetology license, and she was like, why does the City care whether she has a cosmetology license as that is between her and the State. Those are the things were that kind of just holds things up, we shouldn't be policing those things. Our goal as the City is to make sure we grow business, not hinder business. Some people don't believe that, but it is true.

Commissioner Burnett said he had a question. It says that Marijuana, regulated by Chapter 34 per year, \$250, and \$500. City Clerk Hughs said that we have the retailers for Cannabis, our ordinance actually calls it Marijuana; the retail and the production is \$250 each, where the manufacturer is the \$500, and that is just because it takes a lot more for that license, where there is combustibles and that type of thing.

Mayor Payne said could we just explain why we arrived at those fees. They are not arbitrary, she said she knows there was a reason. City Manager Cesar said he did not remember the discussion; we had a limited amount of time. If you remember correctly, this was passed by the State, and municipalities and counties could not restrict or ban the production, sale, etcetera of cannabis products. Through the discussion of two commission meetings, we modeled the ordinance, and we had to make a few changes along the way, because the State was still giving guidance to all the municipalities and counties. We based what we presented for cannabis off of what we had at that time, for the liquor licenses. That is where the fees came from. He said he did not remember there being any comments from the public, but that was quite a few meetings ago. Mayor Payne said she did not remember that either. Commissioner Rardin said if you could look back at it and let us know, because he did not remember either. City Manager Cesar said for the fees, we based a lot of the ordinance and fee structure off of our existing liquor license portion of our ordinance, because there wasn't anything that came from the State in the way of guidance regarding legislation. The Municipal League did not have anything to provide us guidance, so that is what we presented to Commission, and that was ultimately what was passed. Commissioner Rardin said that was a whole separate ordinance anyway, but if we wanted to look at that, we could always bring that back. Mayor Payne said she does remember that they passed the law, and made it legal to sell cannabis, and we had a very short window of time to get it done. She said she was sure and some time they may bring it back and look at it again, but, we did

kind of go with what we had at the time, and because it was brand new, we had nothing. A lot of times when we do these things, we can look at other municipalities and see what they are doing, but we couldn't do that. It is basically new territory for everybody.

Commissioner Rardin said as far as the late fees go, it says \$25 per month. He said it used to be \$10, and he said he was historically late on his business registration, so he usually has to pay \$45, but it is \$25 per month instead of the \$10 late fee like it used to be. City Clerk Hughs said that is correct. Commissioner Rardin said that seems a little excessive for wanting us to be business friendly. City Clerk Hughs said right now, the ordinance as it stands, not the one we are presenting in front of you, the business registrations are due by January 31st. We start pushing out the renewal letters in November. When that renewal time comes, people are late. We are now into April and people still haven't paid. So we start making the phone calls, the emails, the letters, sending Code out, we are spending so much time trying to get one business to come and renew, that we finally start inactivating them in May, maybe even June. Then comes July and people come in and say they want to renew their business, but they have been inactivated. So now we are just charging them \$10, and we are constantly doing this work for months. So that is why we are capping at the three months, right after that, we are just going to inactivate your business. We are still going to try to send Code out, knock on those commercial buildings. Commissioner Rardin said he thinks \$25 a month is a little excessive, the entire license and registration is only \$35, if you are one day late, we are going to charge you \$25 over and above the \$35, so your license just went to \$60. City Clerk Hughs said the way the ordinance right now, which she believes is poorly written, is that your expiration date is December 31st. However, we let you continue to do business, and your renewal is in January 31st, so in a sense, the City has been allowing 31 days for you to continue doing business into the new year. Commissioner Rardin said from the business standpoint, us smaller guys that do a lot of different hats, January is a very busy month for us. You have got end of the year stuff, you have got other things, a little \$10 fee or registration for a piece of paper from the City allowing him to do business, that is one of those things that kind of just slips your mind, because you have many other things that you have to worry about, that you have to get done for you to stay in business. City Manager Cesar said the renewal for a business registration, it is no longer going to be in the month of January. It is going to be one year from the date that you applied for a business registration. If you did it last week, October 8th, you will not renew in January. You are going to renew the following October; you will get the notices prior to that. We could take out the late payment altogether and treat it like a water account; after 30 days or 60 days we inactivate your business registration, and if you want to continue doing business, you just go through the process now that is user friendly. You can pay your \$35 three months later. Commissioner Rardin said are you going to look back from 2003, when he first started his business. City Manager Cesar said we really didn't talk about this, but right now, our entire software system is being updated to include the City Clerk's area. With the system we are under right now, that is why everyone has January for business registration, that is when we have to do it. With the new system that is going in place, the company that is doing the new software and importing all the old data like business registrations will either go back to when you first registered your business, or they are going to spread that out and assign new dates. For anyone that has a current business registration, where traditionally you would have to renew in January, we are actually going to be suspending that. Any business that needs for reporting purposes, letters will go out to every business, but any business that needs to have a temporary registration, maybe reporting it, we will issue, at no charge, a temporary registration to take you through to whatever your new date is going to be, and then that is when you will do your annual renewal. He said he could not tell Commissioner Rardin right now what his date would be. City Manager Cesar said that if you did your original paperwork in 2003 and it was in October, if the company is not able to easily pull out that information, then they are going to take and spread those somewhat evenly across the calendar year. It is not part of the business registration at this point, but we have the tie-in with the annual inspection with Fire Services, they do the annual fire inspections for the buildings and whatnot, that will also tie with that. If you normally have Fire Services come by to

inspect your business, that will coincide with your renewal date. Commissioner Rardin said it sounds pretty confusing on ya'lls end.

Mayor Payne said what it comes down to is, instead of being swamped at City Hall with everybody renewing in January, it will now be spread out. She said she thinks it will make a lot more sense, and things will get processed quicker. Commissioner Rardin asked how many business registrations do we have currently. City Clerk Hughs said we currently have about 1500. Mayor Payne said if you have to process 1500, on top of your other jobs, that is quite a bit. Commissioner Rardin said he just thinks that it will get cumbersome and overwhelming. Mayor Payne addressed Commissioner Rardin and said like you said, you can't remember to renew it because you have all these other things going on. Commissioner Rardin said that January is a busy month. Mayor Payne said maybe if we spread it out on an anniversary date, maybe that will make it easier for everybody.

Commissioner Rardin said his second question is why does the City even have to have a business registration for us, for the businesses. He said that if was to go down to El Paso, just across the State in Texas, he does not have to have a contractor's license, he can just get his ID numbers and go to work. Here in New Mexico, you have to have a license to do it, and then he has to come in and apply for a registration to the City to be in business. Why do we even need a business registration, is there a State law that requires us to have that. He said he kind of see it for Fire, doing inspections and stuff like that so we know where those businesses are, but that would be the only that he would even see needing registrations. City Manager said that is the only way that you are going to be able to regulate the various zones, but other than that, we would have absolutely no idea where, for example, Bryan's Smoke Shop is, and is it in the correct zone. He said does not know of a State law, and that is more Rachel's area. Commissioner Rardin said it was just a question, is it something we have to have. Mayor Payne said maybe certain businesses for sure. City Rardin said certain businesses yes, but he said he guessed if we do it for one, we need to do it for all. He said those are just some of the questions he had on it. He said he thinks the \$25 per month is very excessive. Commissioner Rardin said it if was due January 31st, and you slip in on the 1st of February and pay your bills, your registration just went from \$35 to \$60 dollars.

Commissioner Paul said he agreed and thinks that \$25 is pretty steep. Commissioner Rardin said it is \$25 per month. Commissioner Paul said there needs to be something charged so that people make sure they are getting on that, but you know, \$15 sounds more reasonable to him than \$25. Commissioner Rardin said and give them a three month, you know, hey, if you are not in here by say April 1st to get your registration, then it is cancelled, or something along those lines. Mayor Payne said she agrees with Commissioner Rardin. Commissioner Rardin said you know \$35, if it was a \$500 license, then \$25 a month would be okay, but on a \$35 registration. Mayor Payne said she thinks that the purpose of a penalty, or charging the citizens for something like that, is number one it is an incentive to renew on time, but, it is also because it is more work on the City. She said if it is late, she gets that it would be a little more work on the Clerk's Office, but if we are spreading those out over twelve months, it is not quite as much work. If it is late, there should be something, and she said she was thinking it should be \$5 a month herself, but \$25 a month seems excessive when the whole business registration itself is only \$35.

Commissioner Rardin said how about we do, like you stated, the \$10 late fee, and then, after say April 1st. City Manager Cesar said you can't do April 1st. Commissioner Rardin said why not. City Manager Cesar said it because it is by anniversary date, so not everyone is going to be April 1st. Commissioner Rardin said how about after say, three months of non-renewal, then it is double the fee or something as an incentive to get them to register. City Manager Cesar said he would prefer if you did not make it overly complicated. If everyone is happy with \$10, then it is \$10 a month for three months. You guys get to make the decision. After three months it is inactivated. Commissioner Rardin said how about a

one-time \$10 late fee, and then after the three months it is null and void, it is inactivated. City Manager Cesar said you guys make the decision; it is however how you want to word it. Commissioner Rardin said he will be one to admit that he pays \$45 for his business registration almost every year, because he is always a day or two late. He said Rachel calls him and says hey come pay your business registration. Mayor Payne told City Clerk Hughs she can't believe you call people, you are way too nice.

Commissioner Rardin said we should just strike the \$25 and leave it at \$10. Mayor Pro-Tem Wright said he was good with that. Commissioner Burnett said he would agree with that. Commissioner Paul said he thinks \$10 is fair. Commissioner McDonald said well they make more than \$10 an hour, so they should at least get more than \$10. Commissioner Rardin said it doesn't go to them though. Commissioner McDonald said but it is their time. Commissioner Rardin said they are already compensated for their time though. Commissioner McDonald said that was her opinion. Commissioner Paul said he would be in favor of it being monthly for that period of time, simply because what Sharon said is that they, our staff, is we are paying them yes, but that is recouping some of that lost cost by them spending time doing that, versus doing something else. Commissioner Rardin said so \$10 per month, up to three months, then after that point it is inactivated. Commissioner Paul said at a certain point, businesses need to be responsible too. Commissioner Rardin said he was okay with that. Mayor Payne said that a surcharge will be assessed at \$10, right. Commissioner Burnett said per month. Commissioner Rardin said that Commissioner Paul had mentioned that \$10 per month. Mayor Payne said then a business will be inactivated after 3 months of nonrenewal. We are going to change that to \$10.

Commissioner Burnett said on the food vendor's license, do they have to follow the same business registration as far as the Planning and Zoning. City Clerk Hughs said that on the food trucks, if this ordinance is approved, then after adoption, there are only three licenses. That is going to be our food trucks, our cannabis or marijuana, and alcoholic beverages. She said that all three will also follow the same process as the business registrations. Commissioner Burnett said from other food truck vendors, how long is the process. City Clerk Hughs said that depends on when they can get their food truck to the Fire Department for inspection. City Manager Cesar said if the person is taking their food truck trailer, whatever the case may be, and Fire has inspected and said yes it passes and signs off on the form, then it is up to two business days at the City Clerk's area. Ideally the person would walk in, has the approval from Fire already, pay your fee and go. Commissioner Burnett said when he did his, that went from the City Clerk to the Fire Department, he was told they were going to call him, and it sat there for twelve days. City Manager said that is why we are trying to streamline the process. He said he is sorry but with food trucks, he forgot, but the document the food truck vendor people would need is where they have gone through the New Mexico Environment Department, which the City doesn't control. Mayor Payne said so it will all be done before it goes to the Clerk. Commissioner Burnett said that was fine. He said he thinks the process before was it went to the Clerk, you pay, then it goes back to the Clerk. City Manager Cesar says then it went out to Fire, and then it came back to the Clerk, and then out to the Police Department, came back, and yes. Commissioner Burnett said you are sitting there wondering where your license is at. Mayor Payne said now it will be up to the business owner to get that stuff done, then it goes to the Clerk. City Manager Cesar said if you had a food truck, food trailer, contact the Fire Department, the information for who you need to contact is on that one page form. You would call or go down there, they would say bring it on in and we can inspect it today, or we need you to come in on two days, or maybe the person applying is not ready for two weeks. Schedule the day and the time, you would go in and have inspected. If there is deficiencies, they would say what those are. If there aren't any deficiencies, they would sign off on it. You would get the license or whatever from the Environment Department, and bring your paperwork to City Hall, scan it, email it, whatever the case may be. No more than two business days later, here is your registration.

Commissioner Burnett said to piggyback on your comment, as far as people from El Paso coming, and they have to follow this same process, if he remembers right, he said he believes Alamogordo and Albuquerque are the only two cities in that State that require you to have a City license to operate. Commissioner Burnett said he can go to Cruces and just go in, there is no questions asked. He said he thinks that is where people get mixed up, as far as people from Cruces trying to come over here, or El Paso trying to come over here. Mayor Payne said she thinks we have gone back and forth about that too, but she would be concerned. She said there was a food truck that came up for the Music Festival, and had to be inspected, and she got a phone call and was like okay, can we do something to help this guy out, so Brian said well, I will send him back out and if he is within where everybody else is, we can give him a waiver, that kind of thing. Well they went out there and he had no fire suppression system. Commissioner Burnett said that is different. Mayor Payne said she didn't want a food truck coming in to Alamogordo and frying up churros, and not having a fire suppression system, because that is just dangerous for all of our citizens. She said if a kid is standing at this truck, waiting for food, and something goes wrong, and it is because we didn't inspect it, she still says the City is liable. If Las Cruces wants to take that chance, that is great, but for her, that scares her a little bit, because we could say well, it may or may not happen, but she didn't want to take that chance. What if it is her grandkid, or your kid, or something. She said she did think that if they are going to bring a food truck into our City and do business, she does think it should be inspected, and she thinks we should know about it. Ultimately, if something happens, where is first place you are going to go, back to the City, and why did the City let this happen. Commissioner Burnett said the State still inspects all that beforehand, even if you have a fryer, you still have to have the fire suppression. Mayor Payne said they do, but like that guy is from El Paso. Commissioner Burnett said that is a different story, but as far as Cruces guys coming here to operate here, they still have to have the State inspection done. Mayor Payne said just making sure they actually did have that. She said she knows that they have to, but did they, that is the question. She said she can see both sides of it, it is a tough one. She said she is with you where she is just like can we just let these people do business, this is getting crazy, but on other hand, there is sometimes when we really have to just make sure. We are seeing more and more of food truck vendors and that kind of thing, and she is super excited about that, but at the same time, she just wants to make sure we are covered as a City.

City Clerk Hughs said for clarification, on the late fee, you want it to stay at \$10, \$10 each month for three months, and then inactivate it, is that correct. Commissioner Rardin said correct; Mayor Payne said yes.

Commissioner Rardin moved to approve Ordinance 1661, with the late fee being amended to \$10 per month instead of \$25, the rest will remain the same.

Commissioner Wright seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

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)

City Clerk Hughs said this ordinance is to repeal the entire chapter. If you look at Chapter 27, it is very small, because in the last three years a lot of it was cut out. This is for the same reason we are wanting to repeal, as Vehicle for Hire is regulated by the State. The licensing will be moved under business registrations.

City Manager Cesar explained this is no different than any other business in the City. In the earlier ordinance that was struck out, we had certain areas like vehicles for hire, that would have a lot of

steps, that we redid and relooked at everything the State looks at. So that is why this one is going away in its entirety.

Mayor Pro-Tem Wright moved to approve.

Commissioner Burnett seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

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)

City Manager Cesar said was the item that was brought to you at the last meeting just for discussion. As we talked about in the last meeting, a code of conduct was recommended by the New Mexico Municipal League for Alamogordo. They recommended it for all the various municipalities they represent. This not only adds a layer of protection for the citizens of Alamogordo, but also protects you as individual commission members. This is the actual ordinance. Just like the last couple of ordinances we talked about where you all discussed and voted on, if there are any changes, as long as they are not substantial, those can be made tonight, and it can be passed for first publication. If they are substantial, then we would have to bring it back again for first publication.

Commissioner Rardin said in your one from last week, we have the restrictions on the governing body administration, of the personal system management section. He said he didn't see it in the one we have. Commissioner Rardin said it is on page nine of this one. Mayor Pro-Tem Dusty Wright said page 78 on the PDF. Commissioner Rardin said there it is. He said he kind of has a little bit of issue with that statement, section Q, it says, "The governing body shall not perform", and shall is a pretty strong word, "collectively or individually", so it sounds like it is kind of tying the Commission's hands. "The paragraph shall not apply to matters of policy", okay, so it has got a few things in there. City Manager Cesar said this is straight out of the Charter, not word for word, but if you read the Charter, and the Charter says basically the same thing. Commissioner Rardin said basically or does say the same thing. Commissioner Rardin said he didn't have the Charter here with him. City Manager Cesar said he doesn't have it in front of him either. Commissioner Rardin said the one he read right here, it doesn't say, he said he guessed it did say, "this paragraph shall not apply to matter of policy". He said most of us know not to overstep that bound; if we need to slap somebody around, we take you around back and slap you around, and say hey, get this under control. He said he thinks that kind of ties our hands right there, he said he did not know why that needs to be in there. Commissioner McDonald said you said slap. Commissioner Rardin said figure of speech. Commissioner Rardin said he had not read the Charter in a while, so if that is in there, okay. City Manager Cesar said City Attorney Smith is pulling it up and it will take just a second, because he does not have a computer in front of him. City Manager Cesar read out of the Charter, "City Manager shall be appointed solely on the basis of his or her qualifications for an indefinite term. His or her selection shall not be limited by reason of former residence. His or her salary shall be fixed by the Commission. The appointment or removal of City Manager shall require the affirmative votes of no fewer than four Commissioners, or three Commissioners and the Mayor. City Manager is the Chief Executive Officer of the City here. He or she shall have a seat but no vote at every meeting of the Commission. The City Manager shall enforce and carry out all ordinances, rules, and regulations adopted the Commission, and shall employ or discharge employees of the City, shall prepare and submit an annual budget to the Commission, shall make recommendations to the Commission concerning the welfare of the City, or his or her designated agent shall be the person for the purpose of civil process." City Manager Cesar said again, if you want it struck, strike it. Commissioner Rardin said that is the only section, the rest of it is kind of cut and dry. Essentially this code of conduct is a slap on the wrist for us, unless it is something major. He said it is

hard to police us up here, because we are all equal. In the past when we had one, that was the issue he had with it before, was that we had no authority to reprimand one of our own. City Manager Cesar said that what this is designed for, and what it would be used for, is if something happened and it was substantiated. This gives, as you know, a number of you have been Commissioners long enough now, things escalate and build until there is eventually a lawsuit. This is designed to correct those actions. We have a code of conduct for City personnel. There is a code of conduct for your daughter in school. Most places have a code of conduct that has to be followed. For the City employees, for our code of conduct, violation of it results in discipline up to and including termination. Commissioner Rardin said we can't do that. City Manager Cesar said the citizens can recall, but no, this doesn't give the power to the Board to do anything like that. This is designed more to correct actions, if they can be corrected. If not, then when and if something rises to the level a lawsuit and we have the Municipal League attorneys defending the City of Alamogordo and its citizens against this lawsuit, they are able to show that yes, the City took every step they could to correct the actions of one or more Commissioners. He said he knew this a concern that was raised because the old code of conduct that was in place is nothing like what you have in front of you today. That was designed for a specific purpose, and we don't need to get into ancient history unless you want to. The old code of conduct was used on a few occasions to pick on certain Commissioners. Commissioner Rardin said that is exactly right. City Manager Cesar said that in this code of conduct, if someone from the outside is using it and now has targeted you, for whatever reason they are upset with Commissioner Rardin and they are going to continue to file a code of conduct violation for everything they can think of, this Panel that is formed, not that they can punish a member, you know fine someone from the outside, but they can come back, and in the public hearing and report to Commission and say this has now risen to the level of harassment. There has been so many complaints that are unsubstantiated, and as such, we are not considering anything else from this person. You as a Commissioner could then take that, if you so choose and hire your own attorney, and go after that person or persons that are harassing you. City Manager Cesar said there is a little protection both ways, but primarily this is designed to protect the City of Alamogordo and the citizens. Not that there is anything that we are waiting for, and you pass this, and pass it for the second reading, and five days later, now we have a stack waiting for you. There is no secret agenda.

Mayor Payne said that our form of government is commission manager. We have a City Manager for a reason, and he is our only employee. She said she had to read it three times to make sure she understood it right. Commissioner Rardin said that originally, he had just seen the governing body to approve and or budget, he had forgotten that the rest of that was in there, the matter and policies. Mayor Payne said it makes sense, our City Manager runs day to day operations, and we are the government oversight. Commissioner Rardin said we are the representatives of the people, if a constituent is having a problem with a member of staff, we still need the ability to come in and say this needs to be taken care of. This staff member is belligerent with the citizens. He said he just did not want to limit us. Mayor Payne said she thinks that the key, that is what we should do, we should go to the City Manager and he should handle it. Commissioner Rardin said the majority of us do, but if it already states something to this very similar to this in our Charter, it is already there. Mayor Payne said it would be inappropriate for us to go straight to an employee. Commissioner Rardin said if it is in the Charter, he didn't see why it needs to be in there, it is already written. That is the only one he had any issue with. We've got the penalties as stiff as they can be, as far as a violation of it, public censor or up to a \$500 fine. That is all we can do, we can't go any more than that. Mayor Payne said it would have to be pretty serious for that. Commissioner Rardin said if you get anything above that, then the Governmental Conduct Act takes over, and it kind of goes from there anyway.

Commissioner McDonald moved to approve.
Commissioner Burnett seconded the motion.
Roll Call Vote was taken.

Motion carried with a vote of 6-0-0.

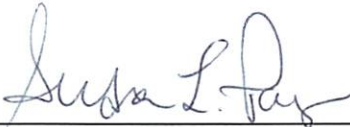
9. Consider, and act upon, first publication of Ordinance 1659, amending chapter 2 of the Alamogordo Code of Ordinances, by adding 02-050 "City Commission Use of Social Media".
(Brian Cesar, City Manager) (Roll Call Vote Required)

City Manager Cesar said that this is the ordinance that did come at the last meeting, it was tabled because it tied to a code of conduct. So, we said we would bring it back at this meeting. You passed the other one for first publication.

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

Commissioner Rardin moved to adjourn at 7:57 p.m.
Commissioner Burnett seconded the motion.
Motion carried with a vote of 6-0-0.

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 25, 2022.