

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
November 1, 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 City Clerk Hughs and the Pledge of Allegiance was led by Commissioner McDonald.

APPROVAL OF AGENDA

Mayor Pro-Tem Wright moved to approve the agenda.
Commissioner Melton seconded the motion.
Motion carried with a vote of 7-0-0.

PRESENTATIONS

1. Extra Mile Day Proclamation. (Susan L. Payne, Mayor)

Mayor Payne proclaimed November 1, 2022, as Extra Mile Day in recognition of people that go the extra mile to include the non-profits in our city.

PUBLIC COMMENT

None.

CITY MANAGER'S REPORT

City Manager Cesar made the following remarks:
None.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Melton made the following comments:

He asked City Manager Cesar if there was an update on police retention. It was an issue we talked about a few weeks ago. We mentioned possibly utilizing marijuana taxation for that. City Manager Cesar said that had been sent out to the entire Commission, and he asked Police Chief Denton to approach the podium and explain it.

Police Chief Denton said the marijuana money was supplemented with some funds from the City Manager. He said he was able to come up with a proposal for City Manager Cesar, and they came up with an agreement. His guys have already received their first retention portion. They are going to do that every quarter, so the last pay period for the City was their first paycheck. Mayor Payne said we have some new police officers. Chief Denton said we will have a bunch in here for the next Commission

meeting; it is already on the Agenda to have them sworn in. Mayor Payne said that was exciting and thought what we were doing was working.

Commissioner Melton said so to confirm; there are no next steps. We have pretty much tackled it all. City Manager Cesar said yes, it is already in effect for the officers. It is a sliding scale based on years of service. It is subject to approval every fiscal year, assuming that the Commission, through the budgetary process, approves the amount we will request every year. As the Chief explained, a large portion of it is the Gross Receipts Tax that we receive from the sale of cannabis, but it is supplemented by General Fund money. On an annual basis, whoever is the Chief will be presenting a plan to whoever is the City Manager. We foresee that this will continue past our time in the City. It does not have to be used strictly as it is being used this year and it can change as times and needs do.

Commissioner Paul made the following comments:

He said he had the pleasure of being a judge for the Zoo Boo Costume Contest, and he just wanted to thank the City staff that put that event on. It was amazing; what they do to accommodate four thousand families, kids, everyone through there, and all the businesses that locally donate to make that happen. It had been years since he had gone to it, but it was a cool event.

Mayor Payne made the following comments:

She said this weekend is the Veteran's Day Parade. If you get a chance, go out and support our veterans. They brought Gus Macker back, which is pretty exciting, and it starts at 7 o'clock. Dudley School is having a work day on Saturday. The Day of Hope will be an outreach on Saturday to the homeless or those on the verge of homelessness. There will be a lot of different organizations out there providing resources and information. They will be offering free legal services, and they will have a veterinarian out there. Love, Inc. will be giving out blankets and food bags. Kitty City will have pet food. The public schools will be out there. It will be at Mountain View Church from ten to two.

CONSENT AGENDA

2. Consider, and act upon, the adoption and final 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)
3. Consider, and act upon, the adoption and final 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)
4. Consider, and act upon, the adoption and final 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)
5. Consider, and act upon, the adoption and final 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)
6. Consider, and act upon, approval for Alamogordo Fire Department to accept a \$25,000 stipend award from the New Mexico Department of Homeland Security. (Richard Adler, Chief, Alamogordo Fire Department)

7. Consider, and act upon, approval of Resolution 2022-45 authorizing the submission of a grant application for the purpose of rebuilding the circulatory roads at the Bonito Lake Recreational Area. (Debbie Osborne, Grant Coordinator) (Roll Call Vote Required)

8. Consider, and act upon, acceptance of a grant agreement from the New Mexico Economic Development Department in the amount of \$99,000 to repave a section of the walking path on Indian Wells Rd. (Veronica Ortega, Community Services Director)

City Clerk Hughs removed Item 3 from the Consent Agenda. Commissioner Rardin removed Item 4 from the Consent Agenda.

Commissioner McDonald moved to approve the Consent Agenda as amended.

Commissioner Burnett seconded the motion.

Roll Call Vote was taken.

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

ITEMS REMOVED FROM CONSENT AGENDA

3. Consider, and act upon, the adoption and final 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)

City Clerk Hughs said the reason she pulled the ordinance was because per State Statute, licenses that are being denied or revoked must come before the Commission. If after the information comes to the City Manager, which we had added that language, of the potential denial or revocation of a license, then if the City Manager agrees that it is not in the interest of the public's welfare or safety, or if a violation of an ordinance has occurred, a hearing will be set forth for the applicant or business owner to come before the Commission. They can present in front of the Commission. This only applies to the licenses, not the business registrations. Therefore, she said she will have to bring back the Alcoholic Beverage Dispenser's chapter passed at the last Commission meeting because it will have the exact same wording.

Commissioner Rardin moved to approve as amended.

Mayor Pro-Tem Wright seconded the motion.

Roll Call Vote was taken.

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

4. Consider, and act upon, the adoption and final 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)

Commissioner Rardin said that in Section Q, the word "collectively" needs to be removed or further defined. It is not so much for this Commission and upper management we have now, it is for future Commissions. He said that we now understand how it all works, but he has been there when we have not had decent management or when the Commission had to step in behind the scenes and recommend or urge something that needs to be done. Commissioner Melton said he agreed and thought this would tie their hands, as no one can predict what is going to be happening in the future.

Mayor Payne said she sees what he is saying, except that it does say, "delegated to the City Manager, including administration of the personnel system". We do not have any oversight of personnel other

than the City Manager. That is not going to change with a new City Manager. Our form of government is not set up that way.

Commissioner Rardin said he has been here when they did not have a City Manager. He has been here where the Commission kind of had to run things behind the scenes, because we didn't have anybody here to do it. He said he is just putting it out there.

City Manager Cesar said this just applies to the City Manager. He said he is fine with whatever change you all want to make. Just remember that this is also in the Charter, and you have a Charter Review Committee coming up. Commissioner Rardin said we looked at it, and the City Charter does not specifically say we cannot, just that we will delegate it to you. City Manager Cesar said right, and this is saying that, individually or collectively, the Commission is not going to go to whoever is the City Manager and say, "The Chief of Police, you need to fire him." It does not prevent one or all of you from saying "Hey, we have some serious concerns". Mayor Payne said that has also been done in the past. City Manager Cesar said change it as you see fit.

Commissioner Rardin said either remove "collectively" or further define it. He said that he has been here through some bad City Managers, and one of them happened to be an attorney, he would have taken that and probably run with it. He would have manipulated every little aspect of how this was written. The Charter is a little more broad than this statement is, there is a little more room for interpretation. Mayor Payne said she gets what you are saying, but she did not think it was going to happen in the next three years. Commissioner Rardin said he is going to be the first one that says I told you so.

Commissioner McDonald said that since Commissioner Rardin wanted to add meaning to the word "collectively", can't we get an example in there and refer back to that instead of changing it completely. Commissioner Rardin said we are either just removing the word "collectively", or putting a definition further defining it. Commissioner Melton said he felt that if we try to define it, it is going to violate the Open Meetings Act. If we say we need four Commissioners or something, we are just asking for trouble, unless this takes place in a Commission meeting. Commissioner McDonald said that Commissioner Rardin said examples, can't we refer to an example. Commissioner Rardin said there are numerous examples, but City Manager Cesar was here and he remembers some of those. City Manager Cesar said when you are saying "collectively", and again you can take out the word, define the word, or leave the word in; as you do it "collectively", then you are either doing it in an open meeting, or you are doing it in an Executive Session. That is the only way you can do that. You can't get together as a group, come visit the City Manager, and say hey we really want you to take care of that Richie problem.

Mayor Payne said to Commission Rardin you do not like the word "collectively", but, "the governing body shall not perform, collectively or individually, general executive management functions in the administration of City government." Commissioner Rardin said he had been here at times when we had to do that. Mayor Payne asked "collectively". Commissioner Rardin said they were behind the scenes running it because we did not have any upper level staff. Mayor Payne said if we do that behind the scenes "collectively", are we not violating the Open Meetings Act. Commissioner Rardin said to a point, basically we would have the City Manager or whoever we had in the position at the time, he said he thought it was the City Attorney at the time that was running things. City Manager Cesar said this applies, as it does in the Charter, to the City Manager. Not if you fired me and put Richie in my place, he would not be the City Manager, but he could be the Acting City Manager, until such time as he becomes the City Manager. Mayor Payne said to Commission Rardin you are saying we did not have a City Manager or Assistant City Manager, are you saying we did not have any of that. Commissioner Rardin said we had an attorney here. City Manager Cesar asked if Commissioner Rardin was talking

about Becky Ehler. Commissioner Rardin said no, it was in the Suzie era. Mayor Payne said that had to be Stephen Thies. Commissioner Rardin said that Stephen was around, but he believed that Stephen was running things for a short period of time. City Manager Cesar said he was not the one that was Acting, we had Matt McNeil who was the Acting. Commissioner Rardin said so it would have been Matt. City Manager Cesar said we had a Chief of Police who was Acting at one point, we had a contract City Manager. Mayor Payne said if it was Matt McNeil, he was an Assistant City Manager. Commissioner Rardin said so we had a Police Chief running things at one time. City Manager Cesar said which would take a greater level of oversight by the Commission. Commissioner Rardin said that is what he means by that, we were not really running anything, but the Commission as a whole was having to, as the City Manager stated, oversight, to make sure everything was going smoothly. Mayor Payne said that is not general executive management functions then. Commissioner Melton said that is a vague term, anyone can make the case. City Manager Cesar said that for you all to do it collectively, you would have to do it in an open meeting, or an Executive Session, and there is only certain things that can be discussed in an Executive Session. Mayor Payne said if we don't do it in an open meeting, then we are violating the Open Meetings Act, that is what it boils down to. There is no way that the Commission legally, collectively, perform general management functions behind the scenes. There is no way that can happen legally.

Commissioner Paul said can we just define exactly how that is going to read then. We are just going to be removing "collectively". Commissioner Melton said we have to get rid of the "or" as well. Mayor Payne said it would say, "shall not perform individually". That is all it would say. City Attorney Smith said that you could take out "collectively or individually", you could take out both of those, and then it would just be, "the governing body shall not perform general executive management functions". Mayor Payne said she liked that. Commissioner Melton said aren't we in the same place though, we are still limited. It doesn't change anything. Commissioner Rardin said we are limited by the Charter, but it is not as stringent as this. It says yeah we have to do this, but it doesn't say we can't do it either. Our Charter is very difficult to change. Mayor Payne said she is more uncomfortable with the idea that if we say "individually", then the assumption is collectively, we can perform general administrative management functions. She said she doesn't see us as being able to do that. Commissioner Melton said why don't we add a clause, if there is a shortage of senior level staff, something in that case. Mayor Payne said our City is in trouble if we are in that big of a shortage. Commissioner Rardin said he has been there before. Commissioner Melton asked Commissioner Rardin if that is what he was going at. Commissioner Rardin said he thinks it ties the Commission's hands in certain cases. We all know that we are not going to come in here behind the scenes and try to run the City, we can't do that. He said he just thinks that in certain cases. Mayor Payne said it is back to that same argument, we are not, but what if a future Commission does. Commissioner Rardin said a future Commissioner or City Manager. Mayor Payne said especially if they do not understand what their role is. Commissioner Rardin said at least this document can be changed in thirty days. In the Charter, it has to go to a vote of the people and it is very difficult to change.

City Manager Cesar asked Commissioner Rardin what was his motion now. Commissioner Rardin said his motion is still the same, where we will remove "collectively or individually". Mayor Payne said and just say "shall not perform executive management functions". Commissioner Rardin said yes. Mayor Payne asked City Clerk Hughs if she got all that, we are taking out "collectively or individually". We are striking it completely. Mayor Payne asked the Commission if that was right, and Commissioner Rardin said yes.

Commissioner Rardin moved to approve Item 4, Ordinance 1660, Section Q, to state "the governing body shall not perform general executive management functions".

Commissioner McDonald seconded the motion.

Roll Call Vote was taken.

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

Commissioner Rardin moved to adjourn at 7:02 p.m.

Mayor Pro-Tem Wright seconded the motion.

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

ADJOURNMENT



Mayor Susan L. Payne

ATTEST:




City Clerk Rachel Hughes

(Prepared by Dylan Aleshire, Deputy City Clerk)

Approved at the Regular Meeting held on November 15, 2022.