

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
April 11, 2023**

**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 Deputy City Clerk. Deputy City Clerk Aleshire announced there was a quorum present. The Invocation was given by Mayor Payne, and the Pledge of Allegiance was led by Commissioner Nick Paul.

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. Purple Up Day for the Military Child Proclamation. (Susan Payne, Mayor)

Mayor Payne proclaimed Friday, April 21, 2023, as Purple Up for Military Kids Day and urged all citizens to wear purple in its observance.

PUBLIC COMMENT

No public comment.

CITY MANAGER'S REPORT

Assistant City Manager Hernandez made the following remarks:

1. She introduced the City's new Parks and Recreation Director, Belinda Bass.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner McDonald made the following comments:

She said she went to Bonito Lake last week to view the facilities. She met with Water Operations Director Nunnelley and Water Production Maintenance Foreman Foster there. Together, they toured the facilities, and it was a beautiful sight with the Lake being full. She said the labeling standards for the utilities would be the standard for all facilities. She said the overflow from the Lake made nice waterfalls at this time of the year. The Utilities Department did a beautiful job.

On April 8th, she said she went to the clean-up day at Dudley School. They are mostly working on the outside now, like pulling weeds and getting shrubs and trees out of the way. They also have a crew in there for plumbing and electrical. The bin for the trash was filled. They are on target to get that project done by mid-summer.

On Saturday, July 15, 2023, from seven to noon, District 5 has scheduled a cleanup and will be working with the Center of Commerce. Unfortunately, shredding will not be available due to the sale of the company Total Destruction to another company in El Paso and subsequent price increases.

Commissioner Burnett made the following comments:

He said that the Flickinger Center wanted to know about their faded handicap sign, specifically if it was our duty or their duty to change it. Assistant City Manager Hernandez said she would check into it and let him know tomorrow. Commissioner Burnett continued that there was also a homeless guy sleeping in the trashcan at the Flickinger and an abundance of people living in the burnt-down house behind the Flickinger. Mayor Payne said that at some point, we need to take a critical look at that issue. Commissioner Burnett said their concern is that kids are practicing for The Lion King.

CONSENT AGENDA

2. Approve the minutes for the March 28, 2023, Regular Commission meeting. (*Rachel Hughs, City Clerk*)

3. Consider, and act upon, the award of IFB 2023-02 Dry Barrel Fire Hydrants to Morrison Supply Company in the amount of \$258,049.76 excluding tax. (*Barbara Pyeatt, Purchasing Manager*)

4. Consider, and act upon, acceptance of a grant agreement from the New Mexico Economic Development Department in the amount of \$1,900,000.00 for the Alamogordo MainStreet Great Blocks Project. (*Debbie Osborne, Grant Coordinator*)

5. Consider, and act upon, approval of Resolution No. 2023-13, Requesting Approval from NMDFA, LGD, for the Disposition of Alamogordo Police Department Vehicle Unit 1884, a 2021 Ford Explorer, by Way of Auction as Salvage. (*Richard Denton, Police Chief*) (*Roll Call Vote Required*)

6. Consider, and act upon, Resolution 2023-14 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 April 11, 2023. (*Evelyn Huff, Finance Director*) (*Roll Call Vote Required*)

7. Consider, and act upon, an amendment to the grant funding from the Non-Metro Area Agency on Aging FY23 contract, specifically for the Evidence-based Health program. The purpose of the amendment is to revise the original contract amount from \$484,825.86 to \$472,343.46, thereby decreasing the total dollar amount by \$12,482.40. (*Magdalena Morales, ASC Manager / Veronica Ortega, Community Services Director*)

Commissioner McDonald moved to approve the Consent Agenda.

Mayor Pro-Tem Wright seconded the motion.

Roll Call Vote was taken.

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

NEW BUSINESS

8. Consider, and act upon, Golf Course Fee Update. (*Grant Dalpes, G&L Golf Pro*)

G&L Golf Pro Dalpes said he had done this for thirty years and knew where they were in the market. Things are tight in the golf market, but we are on the lower end of it right now. He said the raise is a good deal, and we will stay within the bounds of where we need to be, so we are competitive. We raised two more items than normal; we do a survey with this every other year and were low on green fees. It is hard to judge annual passes because few other golf courses have them. The military and COA rate will go up more because it is already a very low rate. The play from the military has exploded, which is great, and they will not bat an eye at it going up sixty or seventy-five cents.

Mayor Pro-Tem Wright moved to approve.

Commissioner Burnett seconded the motion.

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

**9. Consider, and act upon, the proposed recommendations by the City Charter Committee.
(Benjamin Luna Jr., Chairman of the City Charter Committee)**

Chairman Luna Jr. said the version before you has highlighted new material, and the deleted material crossed out. He said they either made it resemble state statutes or made it more strict and less broad. He said he would go through each change individually.

Article V. Section 1. Candidate-at-Large

Candidates-at-Large must reside within the city for twelve months prior to candidacy.

Article V. Section 2. Candidates for District Offices

Candidates for District Offices must reside in the District they seek to represent for twelve months prior to candidacy.

Commissioner Rardin said we used to have something like that in the Charter before, but they had to remove it. He did not remember the reason why. Mayor Payne said that a former City Attorney suggested that it was unconstitutional. Commissioner Rardin said it wasn't; it had something to do with state law. He said he thought it used to be sixty or ninety days. City Attorney Smith said she was aware that a previous City Attorney had issues with that and had looked into the statute statutes and constitutionality. She said there is not a constitutional issue, and we are well within our grounds to do it.

Article VI. Section 2. Elections

In Part A, in the regular City election for the Mayor at-Large and Commissioners, the candidate receiving the greatest number of votes in each district represented is elected. Chairman Luna Jr. said that they removed the old Part B. He continued that City Clerk Hughs asked the County Clerk about this, and only three cities did a runoff: Bernalillo, Albuquerque, and Santa Fe. The cost of a runoff election is about \$15,000 to \$20,000. The bigger cities can afford and need it with multiple candidates running for the same position. We took that out because it was not needed. He said the County Clerk said that Otero County has never had a runoff election. The new Part B states that if a tie exists after the certification of the results of any election, the determination as to which of the tied candidates is elected shall be determined by lot. He read from the City Charter minutes concerning "by lot", and "The County Clerk determines what the lot is, like rolling a die, drawing the biggest stick, etcetera. So that section should stay in case of a tie."

Commissioner Rardin asked if that was like drawing straws. Chairman Luna Jr. said not necessarily. City Clerk Hughs said that the County Clerk would be the one to say how we would cast that lot. If there is a tie, we could roll dice, draw the biggest stick, or by numbers. Mayor Payne said she would be shocked if there was a tie.

Article VII. Section 3. Term of Office

Chairman Luna Jr. said we deleted sections that applied to past dates and past terms. The wording we added allows it to work for all future elections and terms. The term of office for all commissioners, including the mayor, shall be four (4) years. Elections shall be held on a staggered basis on the first Tuesday after the first Monday in November of each odd-numbered year.

Commissioner Rardin asked if the Charter Committee looked into term limits. He said that a City Attorney in the past stated that it was not legal for us to have term limits on these offices because we are non-partisan. He said he did not know if that was something we wanted to look at. Chairman Luna Jr. said they found that within the state statute, it should be every four years for your positions. City Attorney Smith said she did not recall if they looked into this, and she personally did not look into it. She said she could look into it by the next meeting. Chairman Luna Jr. said we could look into this if you wanted. Commissioner Rardin said he was asking questions but believed in term limits. Mayor Payne said she also believed in term limits, and the County has them. Commissioner Rardin said yes, but they are partisan. State representatives like Senators do not have term limits, but the County Commission, Sheriff, and Assessor's Office all do. Mayor Payne said she would not mind looking into it.

Article X. Sections 1, 2, & 3. Initiative, Referendum, Recall

Chairman Luna Jr. said they basically copied and pasted the state statute for the City Charter. Anything in there is wording to reflect what the state statute says rather than having conflicting words. He asked City Charter Committee Members Barela and Schulze to come to the podium to elaborate on this section. Member Barela said that was to clarify the wording because what we had was not clear.

Commissioner Rardin said that in Section 2, we had previously had an issue with a referendum on a resolution. It does not look like we took that out. The issue is whether someone is allowed to do a referendum on a resolution. For example, if we were to adopt a budget resolution tonight that someone did not agree with, they could do a referendum on it. A resolution is just a statement, unlike an ordinance that has teeth. He said he did not understand why the public should be able to do a referendum on a resolution. He said that might be a question for the City Attorney, and we may be unable to pull it out. Member Barela said that was not in the state statute; all we did was clear things up. Commissioner Rardin said when that happened previously, we were looking at three different sets of rules, the Local Election Act, state law, and reading the Charter. That is where we made a lot of people mad because we were not sure which section to follow. City Attorney Smith said that was before she got here, but she caught the tail-end of it. Member Barela said that the state statute did not touch on it from what they found. We decided not to remove it completely; that way, if people had an issue with a resolution, they could still do it. The wording changes were to clarify what they needed to do to have you pull your resolution. Commissioner Rardin said we have a process. Member Barela said yes. Mayor Payne asked how we reconcile the difference between budget resolutions and other resolutions; that way, nobody decides to a referendum on our budget resolution. How would we distinguish between the two? Commissioner Rardin said even our election resolutions. With ordinances where we can cite or fine you, he was all for it. For budget or election resolutions, if they wanted to do that, they could. Commissioner Melton said especially since it could cost \$30,000. Commissioner Rardin said correct. If their petition had been legitimate, we would have had to do a special election to have them pull our resolution back. City Attorney Smith said that is another thing she will put on her list to look into more and see how we can differentiate. Assistant City Manager Hernandez asked Commissioner Rardin if he was looking for the resolution piece to be taken completely out of it or are you just asking for the differentiation. Commissioner Rardin said it did not need to be pulled out, but it needs to be clarified. He was okay with ordinances but did not think they

needed to do referendums for resolutions. Mayor Payne asked if a referendum is on a resolution in state statute. City Clerk Hughs said that is found in the Election Code. Regarding referendum, it does talk about an ordinance and resolution. However, as Commissioner Rardin says, a resolution is nonbinding, while an ordinance is binding. Commissioner Rardin said yes, a resolution is just a statement. Mayor Payne said when we make a budget resolution, why do we call it a budget resolution; if a resolution is just a statement, we are just saying we passed this budget. Maybe we do need clarification on that. Chairman Luna Jr. asked if this was only in the election portion of the referendum because it is talking about that in special elections. Commissioner Rardin said these issues came up when we adopted the Local Election Act; it confused everybody when it all happened. City Attorney Smith said that the Committee did look at the Election Code to resolve some of those issues we were having between the City Charter and the Election Code. Still, she will look at those again to make sure we do not have conflicting language. Mayor Payne said the Committee could not have known that a budget resolution could have been a potential conflict. Commissioner Rardin said he is not saying that someone would do that, but if they wanted to, they could.

Chairman Luna Jr. asked if the Commission was good on the other Sections. Commissioner Rardin asked if they were only allowed to recall Commissioners once a term. Chairman Luna Jr. said correct; before, it was sixty days or something similar. City Attorney Smith said that is per state statute.

Commissioner Melton asked if the twenty percent number is in state statute. Chairman Luna Jr. said he believed so. City Attorney Smith asked which section Commissioner Melton was referring to, and Commissioner Melton said this was going back to Referendum. He said that he thought twenty percent was also to petition for recall. City Attorney Smith said her understanding is that it is pursuant to the Referendum Section because they could not find anything necessarily with the state statute that is more from the Election Code. Commissioner Melton asked if that twenty percent number was mandated, or did we come up with it? City Attorney Smith said that comes from Section 1, which also mentions twenty percent, and that is from the state statute. She said she thought we followed that to make it uniform.

Mayor Payne asked why we are a Commission and not a Council. City Attorney Smith said she believed that we adopted it, at some point, to be a Commission-City Manager style of government pursuant to state statute. We have it because we adopted that style. Mayor Payne said she looked at municipalities that are Councils, and there are still Council-Manager forms of government, so she was curious. Deming and Las Cruces are those styles. City Attorney Smith said that when the state statute said we could go to a Mayor-Commissioner style of government, a clause allowed cities to opt out of that type of government. Those municipalities may have done that. Commissioner Rardin said it involves home rule because we are a home rule community, and Las Cruces is not. Mayor Payne said she thought that too but could not find anything. She said she is asking because the County is a County Commission, and often we get mixed with them. She said if we were a Council, that might not happen. She said it was not a big deal; she was simply curious.

Commissioner Rardin said that many things the Committee brought forward were just bringing our City Charter in compliance with state law. City Attorney Smith said that is correct. Commissioner Rardin said these were changes that needed to happen, but all of these changes had to go on the ballot. What happens if the electorate does not pass the amendments? City Attorney Smith said that is a tricky situation because no matter what, we must follow state statutes. If it is not elected, we will still have to follow state statute because state statute is over the City Charter. City Attorney Smith said that, hopefully, the citizens understand that we are trying to make it so that it is not conflicting, so there is no question about what they follow. If it is all the same, it is easy to follow.

Commissioner Rardin said that in the Local Election Act, the legislature gave us the authority to change the Charter by ordinance to comply with state law. Could we take the Committee's recommendations and have the Commission pass them by ordinance? The ones not pertaining to the Local Election Act could go to the ballot as questions. City Attorney Smith said she would have to look into that more, especially considering deadlines. Commissioner Rardin said we had issues right after we adopted it because we were going from elections in March to November, and then we had issues about whether we made the terms longer or shorter. They had that stipulation in the Local Election Act as to where we could do it by ordinance to make us in compliance.

Article XII. Section 3. Amendment or Repeal; Periodic Review.

Chairman Luna Jr. said we just added their final written recommendations under Section B. We thought it was a little too broad. He also said that the last highlighted part on the last page, "Amended April 25, 2023," would change.

Commissioner Rardin said that March 26, 2019, is when we amended it by ordinance. That may give some information on where to look. Mayor Payne said she did not remember why. Commissioner Rardin said it was because of the Local Election Act. City Clerk Hughs said that last part, where it says, "Amended April 25, 2023", Municode comes up with those dates, so it may not be that date. It is the date that we amended that we are going to send to them. They will take that date off and add a date, so it may not be the date you see here.

Mayor Payne asked Chairman Benjamin Luna Jr. to introduce the City Charter Committee. Members Elise Barela, Marjorie L. Schulze, Vesta S. Edmond, and Vice Chairman Shannan Wright stood up and introduced themselves. Members Tim Mills and Vincent Jones were absent. Mayor Payne thanked them for their work.

Commissioner Rardin asked if the City Charter Committee needed to meet one more time. City Attorney Smith said that she is going to be out from April 12, 2023, to April 18, 2023. She would be back on April 19, 2023. She said she knew we were supposed to have a City Charter Committee this Thursday, and asked if they could push that back to when she gets back, so she can help answer questions that the Commission had. City Clerk Hughs said that if they wanted to do another Regular Meeting, they would need to give a ten-day notice. They could also have a Special Meeting that only requires a five-day notice. Both will work. City Attorney Smith said that is something for the City Charter Committee to consider if they want her to be there. Chairman Luna Jr. said they would discuss it.

Commissioner Rardin asked if we just needed to table this. Mayor Payne said yes, we need to table it until the changes are made. City Attorney Smith said you could table this until we get more answers and bring this back. Then you can go from there. Mayor Payne said we vote on it then. City Attorney Smith said yes.

City Clerk Hughs asked if the Committee were meeting to make changes or just for clarifications to give them so they could return to Commission. City Attorney Smith said she thought the meeting, because there are things the Commission would like them to look into, especially when it comes to the referendum. There may be changes made once we look into that issue. We need to focus on that section to see if there are more changes we would like to recommend, based on the Commission's guidance, to look into that issue more.

Assistant City Manager Hernandez asked City Clerk Hughs when this was all due to the County. City Clerk Hughs said her goal was to give it to the County Clerk no later than the second or third week in May. Commissioner Rardin asked why we had to have it there so early; the election is not until November. City Clerk Hughs said there is a timeframe that we must give it to them by. Commissioner

Rardin asked why they needed it four months early. City Clerk Hughs said she did not have the dates with her, but she still needed to bring it back as a resolution so the Commission could adopt it. Once it is adopted, then she must send it to the County. Commissioner Rardin said let's table this to the next meeting. If they need more time, we can table it again.

Commissioner Rardin moved to table this item until the next meeting.

Commissioner Melton seconded the motion.

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

EXECUTIVE SESSION

10. Adjourn into Executive Session in compliance with 10-15-1(H)(2) NMSA (as amended) to discuss limited personnel matters: City Manager Evaluation. (*Susan Payne, Mayor*) (Roll Call Vote Required)

Mayor Pro-Tem Wright moved to adjourn at 7:20 p.m.

Commissioner Rardin seconded the motion.

Roll Call Vote was taken.

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

ADJOURNMENT



ATTEST:



City Clerk Rachel Hughs



Mayor Susan L. Payne

(Prepared by Dylan Aleshire, Deputy City Clerk)
Approved at the Regular Meeting held on April 25, 2023.