

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION SPECIAL MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
July 28, 2023**

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

**DUSTY WRIGHT, MAYOR PRO-TEM
KARL MELTON, COMMISSIONER
STEPHANIE HERNANDEZ, ACTING CITY MANAGER
ASHLEY SMITH, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

CALL TO ORDER / ROLL CALL / INVOCATION / PLEDGE OF ALLEGIANCE

Mayor Payne called the meeting to order at 6:30 p.m. Roll Call was taken by the City Clerk. City Clerk Hughs announced there was a quorum present. Invocation was given by Mayor Payne, and the Pledge of Allegiance was led by Commissioner Melton.

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.

PUBLIC COMMENT

None.

NEW BUSINESS

1. Consider, and act upon, approving tourism funding. (Stephanie Hernandez, Acting City Manager)

Acting City Manager Hernandez said in front of you is the contract regarding the White Sands Balloon Invitational mentioned during Tuesday's regular meeting. It spells out what was previously presented to you regarding the \$20,000 asking amount, up to \$15,000 the first year and \$5,000 the next year. It lays out our expectations, such as the City of Alamogordo will be the main sponsor, and our logo will be on any advertisements going out. The rest of it is pretty general to contracts.

Commissioner Burnett moved to approve.
Commissioner McDonald seconded the motion.
Motion carried with a vote of 7-0-0.

2. Consider, and act upon, Resolution 2023-35 approving the DFA Quarterly Report for the period ending June 30, 2023. (Evelyn Huff, Finance Director) (Roll Call Vote Required)

Finance Director Huff said they are required to submit a quarterly financial report to DFA every quarter. However, for the fourth quarter of every fiscal year, DFA requires us to get a resolution. Two documents were sent out yesterday, one was the trial balance showing the revenues for the year, and the other was the trial balance showing the expenditures for the year. We will send this information to DFA as our fourth-quarter report.

Commissioner Rardin asked which tab the DFA was on. Mayor Payne said it was the first and second one after the agenda. Commissioner Rardin said that on page two of the expense one, regarding the

property tax admin fees and the state ones, does the County charge us an admin fee for collecting and remitting the property tax to us? Finance Director Huff said that is the state admin fee. Commissioner Rardin said it says here, "property tax admin fee" okay, so that actually goes to the State. Finance Director Huff said yes, because the County submits it all to the State, and the State submits it back to us minus the admin fee. Commissioner Rardin asked if the \$311,000 amount was for the GRT admin fee. Finance Director Huff said correct. Commissioner Rardin said that is money they charge us for basically nothing.

Commissioner McDonald moved to approve.

Commissioner Rardin seconded the motion.

Roll Call Vote was taken.

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

3. Consider, and act upon, the approval of Resolution No. 2023-34 amending the Preliminary FY 2023-2024 Budget with carry-over fund balances and adopting the Final Budget for 2023-2024. (Evelyn Huff, Finance Director) (Roll Call Vote required)

Finance Director Huff said the Commission approved the preliminary budget FY24 budget in May. We sent that to the State by May 31st, and then we are required to send what is labeled the final budget to the State by July 31st. This has the cash balances as of June 30th, which are updated from the budget approved in May. That was revision number one. Revision number two is revising the salary and benefits. When we do the initial salary and benefit projection in May, we have people that come and go, and salaries and insurances change. At that point, we do not know our worker's comp rate yet, so we always have a reconciling entry. Revision three is all of the carry overs; these are projects or purchase orders that are not completed in FY23, so we carry those over and the budgets with them. This is money that was approved in FY23 but is actually now going to be spent in FY24. There are a couple of little exceptions to the projects and purchase orders. The Law Enforcement Protection Fund gets carried over if they have any cash balance left over. The same thing with the Fire Protection Fund; per the State Fire Marshall, they are allowed to carry over all of their balances. Revision four is amending the contract between the City of Alamogordo and Alamogordo MainStreet to what the actual negotiated contract price was. Revision five is to handle an unexpected refund, the revenue and the expense. Revision six is to true up some numbers for the Senior Center, we will probably have to correct that, as there is a number that is incorrect there, but we have already published it at this point. Revision seven is to move some funding into the Community Affairs Division to do the City Profile; that money had originally lived in the City Manager's budget. Revision eight is to add funding to Five Placer software, which will help with economic development and tourism. Revision nine is to add funding and contract services for some repairs and to purchase equipment for the Civic Center; they need new carpet and desks. Revision ten is modifying the transfers-in that we had originally had in the preliminary budget to account for any differences caused by the carry overs or any of the new stuff.

Commissioner Rardin said regarding the pay raise we just gave DPS, does this reflect that? Finance Director Huff said that is not reflected here because when we put this together, we had not calculated the tax revenue we would have. We will bring that to you in August. Commissioner Rardin asked how that worked since we cannot implement the tax until January. What do we do for the rest of this fiscal year? Finance Director Huff said the rest of this fiscal year will come from the fund balance. Commissioner Rardin asked if that was until we could start collecting it. Finance Director Huff said until we start getting the revenue that will offset it. Commissioner Rardin said we gave those raises on the 24th, correct? Finance Director Huff said yes. The other option is the cannabis money which is currently unbudgeted. The Commission could also vote to transfer-in the cannabis money into the General Fund to offset that difference, which is something we may have talked about. Commissioner Rardin asked if that was until the end of the year, until the tax kicks in. Acting City Manager Hernandez

said the cannabis was going to be used by the sign-on bonus. Finance Director Huff said that it will still need to be transferred in. Commissioner Rardin said we are probably okay because we will be close to the end of the year by the time we get them hired and start paying them. Acting City Manager Hernandez said we had a bunch of salary savings from the Police that go back into the General Fund, so that is why we constant in putting in forward. Commissioner Rardin asked if it would balance out. Finance Director Huff said yes.

Commissioner Rardin said regarding the sidewalk on the revolving loan fund, didn't we do away with that a couple of budgets ago? Finance Director Huff said no, we left it in place partially because of the CDBG project that is going on right now. It has come back in discussion, so we wanted to leave it in case somebody needs it. There have been some questions. Commissioner Rardin said there is only \$114,000 in there, but do you remember what we used to allocate? Was it \$150,000 or \$250,000 a year? Finance Director Huff said initially, it was allocated at \$100,000, and she has not seen anywhere where it had been used. Commission Rardin said he did not think it had ever been used. Mayor Payne asked how much it was to replace the sidewalk. Commissioner Rardin said it depends on how much sidewalk. If you have to do all of a sixty-foot lot, you are probably talking \$10,000 to \$12,000, and it may even be more than that. Finance Director Huff said that she and Grant Coordinator Osborne researched it. We looked at the old policy and application because there have been questions for the people that either did not qualify for CDBG sidewalks or already had a sidewalk that the CDBG program could not replace. Commissioner Rardin said the sidewalk revolving loan is to help people if they can afford to fix certain repairs. Is there any way we can look at setting up another fund such as that for some of these homes that may not need to be torn down but do need to be repaired? We could have a solution for somebody that may only need \$10,000 or \$15,000 for repairs to their home. Finance Director Huff said that New Mexico MFA used to offer a program like that. There could be a possibility that we internally offer a similar program. It was called the Low-Income Small Housing Repair Program, and it was up to \$25,000. Commissioner Rardin said we could talk about that later.

Commissioner Rardin moved to approve.

Mayor Pro-Tem Wright seconded the motion.

Roll Call Vote was taken.

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

4. Consider, and act upon, Resolution 2023-33 requesting state officials to review the bond rules implemented in 2017 in response to the amendment of the State of New Mexico Constitution regarding bail for criminal offenders passed in 2016. (Stephanie Hernandez, Acting City Manager and Ashley Smith, City Attorney) (Roll Call Vote required)

Acting City Manager Hernandez said that as a result of Officer Ferguson's death, there are many questions, concerns, and anger about how the process broke down. How was this individual on the streets? How did this happen to our officer? As those conversations were happening, she and City Attorney Smith reached out to Scott Key and others. There is a big picture on bail bond reform. As we were discussing, that is a long-term goal, but there are many other little things that can happen before we get there. As we found out, it is not necessarily bail bond reform that we can take on at this moment and she has an update to the resolution she will elaborate on in a moment. We found out that the individual who killed Officer Ferguson was on pretrial services and had a history of escalating violence. Back in 2022, House Bill 5 was introduced but never got anywhere. That could have had an impact on what happened here. If that had passed, there were caveats in there where if a suspect would have shown a weapon, that could have been considered dangerous, and he would have been kept in jail. As we know, that is exactly what happened back in January. She said the changes she wanted to make on the resolution to properly represent what we are asking for are, on the title, where it says New Mexico Constitution regarding bail reform, is conditions of release. We want to start advocating

so that all our senators, representatives, and whoever will listen to us will start looking at conditions of release. On the second whereas, on June 16, 2023, the defendant was released on conditions of release set by the court and was ordered to be placed back on pretrial services; we want to add that in there. Be it resolved to move bail bond reform laws, and change that to pretrial services, and to revisit House Bill 5 from the 2022 Legislature. The reason we are doing this is we do not want to drop the conversation. We had so much support from everyone when this happened, and we do not want to lose that support. If they really want to support us and we think there are some laws, we are not naïve to think we can completely reduce risk to our officers, but there are steps to minimize that risk and get the more dangerous people off the streets so they are not continuous problems for law enforcement. City Attorney Smith will speak on pretrial services, what we are advocating for, and how House Bill 5 could have helped in this situation.

City Attorney Smith said that when we spoke to District Attorney Scott Key, we were able to get more information concerning the system and what we can do to try to make sure people are held more accountable when they are held on conditions of release. As you all know, the individual that committed the crime against Officer Ferguson was on conditions of release. He was on conditions of release for two different cases before his incident. One of the things he was placed on is called pretrial services. That is kind of like probation while you are on conditions of release. In theory, what is supposed to happen is the Pretrial Services Coordinator is supposed to meet with the defendant, usually weekly. He is supposed to make sure the defendant is abiding by conditions of release, such as making sure they not using drugs or alcohol and that he does not have any firearms. They do random urine analyses to make sure there is no drug use. They are supposed to make sure people abide by any curfews the court sets. What we have discovered, per her own experience as a Defense Council, but also from what Scott Key was saying from the point of the DA's Office, is that pretrial services are not quite working the way we would want them to be from the lack of resources. They do not have ankle monitors available to give to people when they are out on conditions of release. They do not have enough people to go out and check on people out on conditions of release to make sure they are abiding by the curfews or that they are staying at the places they are living at. One of the things that we spoke to Scott Key, and we all agreed about, was advocating for getting those resources to pretrial services so that pretrial services can make sure that people are abiding by the conditions of release. We agreed that bail reform needs to happen, but we have to attack it strategically. The New Mexico Constitution was amended in 2016, and that is where the whole bail reform started. We cannot just go in and attack the New Mexico Constitution; we have to go after and fix things we can fix. One of the things we can fix is the pretrial services program and making it have more accountability and making sure they are actually able to do their job appropriately. One of the conversations she will have with the new Pretrial Services Manager is to find out what his goals for the pretrial services are and maybe some of the things we can advocate to help him as well. Additionally, as far as House Bill 5, it addresses what we call a detention hearing, or as we call it in the legal field, a 5409. It is considered a dangerous hearing. Currently, the State has to prove that the individual is a danger to the community or to an individual in the community and that no conditions of release can guarantee safety. House Bill 5 has gone through the House twice and would shift the burden from the State proving a person is a danger, to the person automatically being assumed they are a danger based on certain circumstances, such as if the charges are 1st degree murder, 2nd degree felony human trafficking of a child, 1st degree felony abuse of a child, sexual exploitation of a child constituting at least a 2nd degree felony, or a serious violent offense, which is outlined in state statutes. In a case that has any of those charges, that person in a detention hearing would automatically be assumed that they are a danger if this house bill passed. Additionally, this house bill also mentions when a firearm is brandished. It says, "In a felony and other incidents where the person would be presumed to be a danger is when a felony offense occurred during which a firearm was brandished." That is where we say that this house bill, if it had been passed, could have prevented what happened to Officer Ferguson because the defendant in this case had brandished a firearm before. On the defendant's second case, he actually brandished a

firearm, pointed it at himself, and struggled with police officers with that firearm. Had the statute changed, had House Bill 5 passed, then that would have given the DA's Office more of an argument for a detention hearing in that second case, and we may have had the issues we have now. What happened to Officer Ferguson may not have occurred. That is why we are asking in the resolution for the state senators, state representatives, Attorney General, and the New Mexico Governor to work with local attorneys and judges to review House Bill 5, to bring it back on the table, and to review pretrial services to make it stronger.

Mayor Payne said just so everyone understands, there is a hearing on Monday, and they have to go in and argue that this man is dangerous and should not be released. This bill would prevent that argument. She said she thinks we all know he is dangerous and should not be released, but they still have to go and argue that in front of the judge. With House Bill 5, if it had been in place, then they would not have to go do that, or they would not have to go do that because of his last incident where he brandished a gun. That is why this bill and resolution are so important. There is no accountability right now when these people are let out on pretrial services. When we met with Scott, we even asked, how do you know if they are reoffending? If the pretrial services are such a breakdown and nobody is keeping track of these individuals, how do you know? She said that he literally said he reads the activity sheets, the same ones that we get. That is how they know if somebody released to pretrial services has reoffended. It is not a very effective way to keep an eye on somebody released into our community. We are all doing the same thing. It is twofold, really. House Bill 5 has somewhat to do with bail reform in some ways, at least looking at the condition of release. This resolution has to do with strengthening the conditions on which they are released, and making sure they are doing what they are supposed to.

Commissioner Rardin said they did a constitutional amendment in 2016. Could you get us that amendment? Acting City Manager Hernandez said she thought she put that in there. City Attorney Smith could give you a breakdown of it. This is just the initial step; we expect to bring more resolutions so we can inform the Commission. As we get more information and steps that we can do, we will bring those forward as a resolution as well, so we can show a unified message. This is our officer, and we expect the support to go beyond the services. This is not going to be the end of these resolutions until we can see some progress. Commissioner Rardin said that if they did that as a constitutional amendment and it changed this, that has to go to a vote to the people. Mayor Payne said it did. Commissioner Rardin said it is the way they word it sometimes. Mayor Payne said that is really important for people to understand. You see people saying it was this governor, or it was actually passed under that one. No, it was actually passed by the people of the state of New Mexico. That is where it lies if you want to call it a fault or burden. She said the bail bondsmen went around the state to lobby against that constitutional amendment. The voters of the state of New Mexico voted for this, not the governor, but the governor at the time did sign it. Acting City Manager Hernandez said they would send it out, but City Attorney Smith could break it down now. Acting Attorney Smith said she had the statutes. Commissioner Rardin said we do not have to do that tonight. Acting City Manager Hernandez said we would send it to you with a summary of the main points. Commissioner Rardin said the resolution is almost as good as the paper it is written on, but if we could start lobbying these guys to look at that and make the wording just as good as it was back in 2016. Acting City Manager Hernandez said that is really the end goal, but there are a lot of steps to get there. These are the first steps. She said she was glad that Commissioner Barela was here because the next step is to present it to the County Commission so they can get on board. This is in their county too. Commissioner Rardin said we have a joint meeting with them. Acting City Manager Hernandez said that is one of the agenda items, actually. Mayor Payne said it is important that we show solidarity with this. This is the second time in less than seven years this has happened. Commissioner Rardin said holding this guy in jail is common sense. Even with the way the law reads, he said she did not know why they could not still hold him because he is a danger to the community. Acting City Manager Hernandez said we have the

answer to how he got out. Commissioner Rardin said there was a gentleman that murdered a lady off of Florida. He busted in the door with an AR-15 and shot the boyfriend and her. His attorney got him out on pretrial for a short period of time, and then they put him back in. Acting City Manager Hernandez said what happened on this was the defense lawyers for the suspect said he was not a danger to anyone but himself. When he pulled the gun out on Scenic, he was not aiming at the officers. He was trying to shoot himself and got into a tussle with our officers. City Attorney Smith said that one of the issues was that he did not have a violent history. The second was that his first case was aggravated fleeing and DWI. Not considered violent. In the second case, the charges they cited him with are not considered violent offenses. A dangerousness hearing can be quite difficult for the State to prove. She said she knew that because she had done many of them from the other side. It is a high burden to prove that the person is a danger to the community. Even if they found he was a danger to the community, the question is, are there conditions of release that can guarantee safety? From a defense standpoint, you can make many arguments to show they are not a danger to the community, and that is what happened here. The State did what is called a 5403, which means it is a violation of conditions of release hearing. It was not a dangerousness hearing. Basically, what they argued was that he violated the conditions of release by picking up a new case. He was held on the 5403 for three months. The defense then did a motion to reconsider that 5403, and 5403s are easier to overturn than 5409s. Violating conditions of release is easier to reverse than if they are found to be a danger and being held on detention. In this case, three months after the conditions of release hearing, there was another release hearing, and basically, he argued that he was not getting proper medical care as well as other things. At that time, because he had already been in jail for three months, the judge then decided to release him on that 5403. That is what happened. 5409s are stronger, and when the State can implement them, the State can hold the person longer because it is hard to overturn them. 5403s are quite easy, and the more time passes when a person is on a 5403, the more likely it is to get overturned. She said she knew that from practice. The State in that case argued hard against his release. There was no proof he was not getting proper medical care, and the State argued against it. The State did a great job trying to keep him in, but at the end of the day, it was a discretionary decision, and the law allowed for him to be released. There was nothing legally we could point to that mandated for him to be incarcerated, unfortunately. Mayor Payne said that goes back to bail reform because he was released. It is a get-out-of-jail-free card, and there was no incentive. He should have never been out on the street.

Commissioner Melton said that going back to lobbying, are we thinking of hiring an outside lobbyist or sticking with the City? Acting City Manager Hernandez said it is just us. By doing a uniform decision by the City, we are reaching out to people and we are having individual meetings. As a Commission, you guys will probably want to do that. We are not hiring anybody; this is us doing this to make sure that they know where the City stands, and hopefully where the County stands. They need to take a real hard look at this. It is not so much as us paying somebody to do it, it is us advocating, being on the same page, and making sure we all give what our expectations are. Instead of giving seven different messages, we are trying to get a uniform message to get some change and impact on what can be done. Commissioner Melton asked if someone was going to be talking to every committee member that bill was going to be in. City Attorney Smith said we talked to Senator Burt today. The issue with the bill is that it has not been in the House, and it has been stopped by the 7th Judiciary. We are going to meet with Cervantes to find out his concerns with this bill. Additionally, Scott Key will reach out to DAs from around the State. She said she would try to reach out to attorneys as well; if we can get more attorneys on board with either House Bill 5 or a version of it, maybe a compromise to push through, then we are going to need more attorney support. She said she has been involved in a lot of these meetings and will continue to be so she can help and find out who we need to approach. She said that Acting City Manager Hernandez and herself were divvying a lot of that up. Acting City Manager Hernandez had contacts for Cervantes and would reach out to him. She said that she herself knew Don Al Bryant, who is now the Pretrial Services Manager, and was reaching out to him to set up

a meeting. After we speak to Cervantes, we are going to go out, and she will speak to more attorneys. We are doing a lot in-house, and we are trying to gather more support. We are trying to get local legislatures on board and have them try to help us push this.

Acting City Manager Hernandez asked the Commission that if they were having a meeting where they were discussing this, that City Attorney Smith or herself be involved. City Attorney Smith has a great legal background, which would help keep everyone informed on this. She said the Commission should have conversations, but we should know where we are all at. City Attorney Smith can break it down easily for all of us. She said she would reach out to other City Managers because it does not affect the City of Alamogordo. It is every police department. The more support we get as we get closer to our goal, the better it will be. City Attorney Smith said something that we have seen that was helpful, especially in her talks with Senator Burt, was that a lot of legislatures do not understand state statutes and how these things are being implemented. She said she has done these hearings and seen how they act here firsthand. She had made the arguments herself and heard the judges when they made their ruling. It helps because she can break it down for a lot of them too. So, if you are talking to someone and they do not understand how a 5409 works, feel free to tell them to reach out to me. I am more than willing to tell them this is how it works, how we have seen it in practice, and how it is going down here. She said that today she explained things that she would argue on conditions of release. These are all things she has advocated for clients. It helps the legislature to realize this is what is going on and how it is being practiced. Mayor Payne said the biggest thing is that the public needs to be educated, and we are in a good position right now to do that. There has been a spotlight on Otero County once again for an officer being killed. Right now, we are in a good position to educate the public. The general public does not understand bail reform or pretrial services. They just think that people are just letting them out or that the police are not doing their job. She said she had heard it all recently, and that is not true. They need to understand because the more we can educate the public, the more pressure can be applied in Santa Fe, which needs to happen now. We are in a good position to do it, and we need to keep that momentum. We previously had this happen back in 2016, and the ball kind of got dropped, unfortunately. We can now see this is a critical thing, and we know it can happen, and it just happened again. We all feel the same. We do not want to let this go. We want to make sure everyone understands that if we are going to affect change, it needs to start with our legislatures because they are the ones that have the power to do it. We have the power to use our voice collectively and get that message out and educate the public. They have got to understand why these things are happening because there are too many assumptions out there. We need to be organized and unified as a City and County together. We need to make sure we educate people, and they need to understand what is happening.

Commissioner Rardin said the hard part about this next session is that it is a thirty-day session. Mayor Payne said yes, and it is only five months away. Commissioner Rardin said they will only do budgetary, so we are looking at a year and five months. Acting City Manager Hernandez said they are forming committees right now, so that is why we are trying to get to the Judiciary Committee. Commissioner Rardin said that sometimes they will add it if it is a pressing issue. Acting City Manager Hernandez said that was one of the questions we asked, how can we push this to the top? She said she thought the best way was to have not just the City and County Commissions but senators and representatives. Having all that support is the best way for us to rise to the top and prioritize it. They will not make it a priority unless we make them, not just as a Commission but as citizens. We are doing a hard stance and trying to hurry up and get in with Cervantes and everyone we can. Commissioner Rardin said that Las Cruces had an officer shot a couple of weeks ago. We should see if we can get everyone together and write a joint letter to send to the Governor's Office to get her attention. She was there, she knows what happened, and she can add that to the agenda. Acting City Manager Hernandez said from everything we are gathering, there is bipartisan support, and the Governor is supporting it. There is something in this bill that the lawyers do not like. That is what we are trying to figure out. What can be

fixed, and how can we fix it? We need to keep the conversation going. We are not naïve enough to think we can take away all the risk, but we can help support them.

Commissioner McDonald 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.

ADJOURNMENT

Commissioner Rardin moved to adjourn at 7:18 p.m.

Mayor Pro-Tem Wright seconded the motion.

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



Mayor Susan L. Payne

ATTEST:



City Clerk Rachel Hughes

(Prepared by Dylan Aleshire, Deputy City Clerk)

Approved at the Regular Meeting held on August 8, 2023.