Alamogordo City Commission

NOTICE OF MEETING

Regular Meeting Agenda

October 10, 2023 - 6:30 PM
Donald E. Carroll City Commission Chambers
City Hall, 1376 E. Ninth Street

Susan L. Payne ..... Mayor
Dusty Wright ..... Mayor Pro -Tem, District 6
Nick Paul .....District 1
Stephen Burnett ..... District 2
Karl Melton .....District 3
Josh Rardin .....District 4
Sharon McDonald ..... District 5

Stephanie Hernandez ..... Acting City Manager
Ashley Smith .....City Attorney
Rachel Hughs .....City Clerk

MISSION STATEMENT as Adopted by the City Commission on March 24, 1995.
The City of Alamogordo is a Municipal Corporation that exists solely for the purpose of providing the best possible services to our customers, the citizens of Alamogordo. We are committed to providing these services with honesty, integrity, compassion, fairness, and a commitment to excellence.

We are committed to the long-term financial stability and responsible growth of the City and all decisions will be driven by our commitment to provide the best services possible in a financially sound and responsible manner given the economic realities facing the City.

In accordance with Section 10-15-1.D, NMSA 1978 (2010 Cumulative Supplement), this agenda has been posted on the bulletin board located in the east/west lobby of the City Hall and in the glass case located outside of the north entrance of the City Hall, distributed to the appropriate news media, and posted on the City website: http://ci.alamogordo.nm.us within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Alamogordo website: http://ci.alamogordo.nm.us

The Mayor and City Commission request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Commission Chambers to respond to or to conduct a phone conversation. The Alamogordo Commission Chambers is wheelchair accessible. Other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 575-439-4100.

CALL TO ORDER & ROLL CALL

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PRESENTATIONS

1. Presentation on asking the city to support the efforts to help New Mexico obtain coverage under the Radiation Exposure Compensation Act. *(Mary White, Steering Committee Member)*

2. Presentation on the current affordable housing crisis and how current zoning and setbacks are outdated. *(Kevin Jewell, French Brothers Home President)*

PUBLIC COMMENT

Residents must sign up with the City Clerk to address the City Commission. The standard allotted time is 3 minutes, but the Mayor reserves the right to change depending on the number of public comments.

CITY MANAGER'S REPORT

REMARKS AND INQUIRIES BY THE CITY COMMISSION

CONSENT AGENDA (Roll Call Vote Required for an Ordinance or Resolution)

All matters listed under the Consent Agenda are considered to be routine by the City Commission and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

3. Approve the minutes for the Regular Commission meeting on September 26, 2023. *(Rachel Hughs, City Clerk)*

4. Consider, and act upon, Ordinance 1681, Z-2023-0005(A) for adoption and final publication, a map amendment to change the current zoning of the property with the legal description of S: 8 T: 16 R: 10 TR IN N1/2SE1/4 from R-1 Single-Family Dwelling District, to R-4 Multi-Family Dwelling District. *(Sean McGranaghan, Assistant City Planner)* **(Roll Call Vote Required)**

5. Consider, and act upon, Ordinance 1682 for adoption and final publication amending Chapter 26, Article 03, Sections 010 Definitions, 030 Unlawful growth or accumulation on lots, and 040 Unlawful growth or accumulation on tracts. *(Josh Sides, Code Enforcement Manager)* **(Roll Call Vote Required)**

6. Consider, and act upon, granting a Permanent Easement for Facilities/Equipment on a tract of land located on West Twelfth Street for the Mescalero Apache Telephone 12th Street ReGen Site. *(Nancy Beshaler, Public Works Director)*

7. Consider, and act upon, grant funding from the North Central New Mexico Economic Development District (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA) for the American Rescue Plan Sub-Award. The total amount budgeted is $73,637.12. *(Magdalena Morales, ASC Manager, and Veronica Ortega, Community Services Director)*

8. Consider, and act upon, correcting the number Resolution 2023-33 to Resolution 2023-41 to the past agenda item "Encourage citizens to contact Governor Lujan-Grisham and request pre-trial detention reform be placed on the agenda for the upcoming 30-day session". There was already a resolution with that number. *(Stephanie Hernandez, Acting City Manager)*

ITEMS REMOVED FROM CONSENT AGENDA

PUBLIC HEARINGS

9. Consider, and act upon, all evidence for and against the removal of approved Resolution 2023-20, due to the written objection by the property owner. The Commission will determine if the resolution should be enforced or rescinded. Resolution 2023-20 was to declare 308 N. White Sands Blvd. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. **(Roll Call Vote Required)**

NEW BUSINESS

10. Consider, and act upon, Ordinance 1683, Z-2023-0006(A) for first publication, a map amendment to change the current zoning of the property at 1111 US Hwy 70 W, from C-3 Business District, to M-1 Light Industrial District *(Stella Rael, City Planner)* **(Roll Call Vote Required)**

11. Consider and act upon Resolution 2023-44, declaring 2001 Dewey Lane to be so ruined, damaged,

and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. *(Josh Sides, Code Enforcement Manager)* **(Roll Call Vote Required)**

12. Discussion on allowing handouts at commission meetings. *(Josh Rardin, Commissioner)*

13. Discussion with possible action regarding setting up an infill development district, *(Josh Rardin, Commissioner)*

14. Appointments to Boards and Committees. *(Susan Payne, Mayor)*

EXECUTIVE SESSION (Roll Call Vote Required)

15. Adjourn into Executive Closed Session in compliance with 10-15-1(H)(2) and (7) NMSA (as amended) to discuss: Limited Personnel Matters (City Manager) and Threatened Litigation.

ADJOURNMENT

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** **Report No:** 1.

Submitted By:

Subject: Presentation on asking the city to support the efforts to help New Mexico obtain coverage under the Radiation Exposure Compensation Act. *(Mary White, Steering Committee Member)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background:

March 10, 2022

The Honorable Dick Durbin
Chair
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chair Durbin and Ranking Member Grassley:

On behalf of Western Governors, we write to express our support for S. 2798, the Radiation Exposure Compensation Act Amendments of 2021. This bipartisan legislation has been introduced by Senators Mike Crapo (R-ID) and Ben Ray Lujan (D-NM), and currently has 16 bipartisan cosponsors.

From 1945 to 1992, the United States conducted over 1,000 nuclear weapons tests, nearly 200 of which were atmospheric tests. The vast majority of these tests were conducted in western states or the Pacific islands. Sites for such testing included Alaska, Colorado, Nevada, New Mexico, Guam and the Northern Mariana Islands. The uranium ore mining and milling activities that provided the feedstock for these weapons tests and the nation's nuclear weapons arsenal also occurred primarily in the American West.

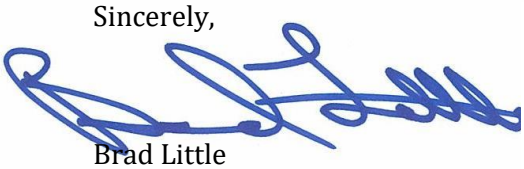
The residents of western states and U.S. territories were the individuals primarily affected by these national security activities. Such individuals include employees of the nuclear weapons complex, miners and mill workers, and the general public. Known as "downwinders," these individuals suffered exposure to the fallout from atmospheric testing. In recognition of their exposure to deadly risks in order to advance our national security, Congress passed the Radiation Exposure Compensation Act (RECA, Pub. L. 101-426). This legislation offers compensation to individuals who contracted certain cancers and other serious diseases following exposure to radiation released from above-ground atmospheric nuclear weapons tests or following occupational exposure to radiation while employed in the uranium industry.

The RECA Amendments of 2021 would update the current statute to recognize the broader scope of populations and activities negatively affected by the nuclear weapons program. Importantly, it would expand the definition of "affected area" for downwind states to include Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Guam, all of which have been shown to have been affected by downwind contamination.

The bill would also extend the Radiation Exposure Compensation Trust Fund for 19 years and increase the amount of compensation an individual filing a claim may receive to $150,000, up from between $50,000-$100,000 under the current statute. Without this extension, the ability of an individual to apply for a claim under the Act would expire on July 10, 2022. It also includes provisions to address the radiation exposures of the uranium mine and mill employees who worked to advance our national security. The bill would retain statutory requirements that ensure individuals file claims with the U.S. Attorney General and meet the law's standards for qualification before any compensation is allocated.

We encourage you to expeditiously consider and approve this important legislation, which acknowledges that nuclear weapons production and testing has had much broader effects than currently recognized by statute.

Sincerely,



Brad Little
Governor of Idaho
Chair, Western Governors' Association



Jared Polis
Governor of Colorado
Vice Chair, Western Governors' Association

cc: The Honorable Mike Crapo
The Honorable Ben Ray Lujan

HOUSE MEMORIAL 36

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Brian F. Egolf, Jr.

A MEMORIAL

REQUESTING THE NEW MEXICO CONGRESSIONAL DELEGATION TO SUPPORT AMENDMENTS TO EXPAND COMPENSATION UNDER THE FEDERAL RADIATION EXPOSURE COMPENSATION ACT FOR INDIVIDUALS EXPOSED TO RADIATION.

WHEREAS, from 1945 to 1962, the United States government implemented a massive program of conducting hundreds of atmospheric nuclear weapons development tests; and

WHEREAS, to provide uranium for the atmospheric nuclear testing being carried out, the United States undertook uranium mining and processing in many areas, especially in New Mexico, Arizona, Colorado, Montana, Nevada and Utah; and

WHEREAS, individuals in New Mexico, Arizona, Colorado, Montana, Nevada, Utah and elsewhere were hired to work in the uranium mines and in uranium processing; and

WHEREAS, large uranium deposits were found on or near the

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Navajo Nation, and many Navajo people were employed to work in the mines; and

WHEREAS, many thousands of individuals have been exposed to radiation in large doses through atmospheric nuclear weapons testing or through employment in uranium mining and processing; and

WHEREAS, radiation exposure has been linked to a number of serious illnesses in exposed individuals, including cancers; gastrointestinal, neurological and blood disorders; and other conditions leading to the debilitation or death of individuals exposed to radiation; and

WHEREAS, in 1990, the United States congress passed the Radiation Exposure Compensation Act; and

WHEREAS, the Radiation Exposure Compensation Act was designed to provide some compensation to those exposed to radiation through certain atmospheric nuclear weapons tests and uranium mining and processing operations; and

WHEREAS, the Radiation Exposure Compensation Act designated certain areas of Arizona and Utah that were deemed to have been downwind of atmospheric nuclear weapons testing as official downwind areas for which compensation would be provided; and

WHEREAS, the Radiation Exposure Compensation Act limited compensation for uranium miners, millers and haulers to those workers whom the uranium industry employed before January 1,

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1972; and

WHEREAS, the amount of Radiation Exposure Compensation Act monetary compensation widely differs according to whether an individual was exposed due to being in a downwind area or according to the type of uranium industry-related work the individual performed; and

WHEREAS, under the strict guidelines of the Radiation Exposure Compensation Act, many individuals who have lived downwind from test sites outside of Arizona, Nevada and Utah or who worked in the uranium industry have been left with no remedy for their radiation exposure; and

WHEREAS, United States Representative Ben R. Lujan and United States Senator Tom Udall have introduced House Bill 1645 and Senate Bill 773, respectively, to extend compensation to uranium workers who were exposed from 1972 to 1990; and

WHEREAS, House Bill 1645 and Senate Bill 773 also expand the list of eligible workers to include uranium core drillers, in addition to uranium miners, millers and ore transporters, as employees potentially eligible for Radiation Exposure Compensation Act compensation; and

WHEREAS, House Bill 1645 and Senate Bill 773 would add to the list of downwind areas in New Mexico, Arizona, Colorado, Idaho, Montana, Nevada and Utah, as well as in the United States territory of Guam; and

WHEREAS, House Bill 1645 and Senate Bill 773 would make

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all qualifying claims eligible for one hundred fifty thousand dollars ($150,000) of compensation, regardless of whether the claimants were exposed as miners, millers, ore transporters, on-site employees or individuals living in a downwind area; and

WHEREAS, House Bill 1645 and Senate Bill 773 would expand the types of medical conditions rendering claimants eligible for Radiation Exposure Compensation Act compensation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the New Mexico congressional delegation be requested to support the provisions of United States House Bill 1645 and United States Senate Bill 773; and

BE IT FURTHER RESOLVED that United States Representative Ben R. Lujan and United States Senator Tom Udall be congratulated for their vision in introducing legislation to expand, under the Radiation Exposure Compensation Act, the rights of individuals exposed to radiation; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to members of the New Mexico congressional delegation.

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SENATE MEMORIAL 67

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Howie C. Morales

A MEMORIAL

REQUESTING THE NEW MEXICO CONGRESSIONAL DELEGATION TO SUPPORT AMENDMENTS TO EXPAND COMPENSATION UNDER THE FEDERAL RADIATION EXPOSURE COMPENSATION ACT FOR INDIVIDUALS EXPOSED TO RADIATION.

WHEREAS, from 1945 to 1962, the United States government implemented a massive program of conducting hundreds of atmospheric nuclear weapons development tests; and

WHEREAS, to provide uranium for the atmospheric nuclear testing being carried out, the United States undertook uranium mining and processing in many areas, especially in New Mexico, Arizona, Colorado, Montana, Nevada and Utah; and

WHEREAS, individuals in New Mexico, Arizona, Colorado, Montana, Nevada, Utah and elsewhere were hired to work in the uranium mines and in uranium processing; and

WHEREAS, large uranium deposits were found on or near the

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Navajo Nation, and many Navajo people were employed to work in the mines; and

WHEREAS, many thousands of individuals have been exposed to radiation in large doses through atmospheric nuclear weapons testing or through employment in uranium mining and processing; and

WHEREAS, radiation exposure has been linked to a number of serious illnesses in exposed individuals, including cancers; gastrointestinal, neurological and blood disorders; and other conditions leading to the debilitation or death of individuals exposed to radiation; and

WHEREAS, in 1990, the United States congress passed the Radiation Exposure Compensation Act; and

WHEREAS, the Radiation Exposure Compensation Act was designed to provide some compensation to those exposed to radiation through certain atmospheric nuclear weapons tests and uranium mining and processing operations; and

WHEREAS, the Radiation Exposure Compensation Act designated certain areas of Arizona and Utah that were deemed to have been downwind of atmospheric nuclear weapons testing as official downwind areas for which compensation would be provided; and

WHEREAS, the Radiation Exposure Compensation Act limited compensation for uranium miners, millers and haulers to those workers whom the uranium industry employed before January 1,

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1972; and

WHEREAS, the amount of Radiation Exposure Compensation Act monetary compensation widely differs according to whether an individual was exposed due to being in a downwind area or according to the type of uranium industry-related work the individual performed; and

WHEREAS, under the strict guidelines of the Radiation Exposure Compensation Act, many individuals who have lived downwind from test sites outside of Arizona, Nevada and Utah or who worked in the uranium industry have been left with no remedy for their radiation exposure; and

WHEREAS, United States Representative Ben R. Lujan introduced House Bill 994, which was then cosponsored by United States Representatives Michelle Lujan Grisham and Steve Pearce, and United States Senators Tom Udall and Martin Heinrich have cosponsored Senate Bill 331, both of which would extend compensation to uranium workers who were exposed from 1972 to 1990; and

WHEREAS, House Bill 994 and Senate Bill 331 also expand the list of eligible workers to include uranium core drillers, in addition to uranium miners, millers and ore transporters, as employees potentially eligible for Radiation Exposure Compensation Act compensation; and

WHEREAS, House Bill 994 and Senate Bill 331 would add to the list of downwind areas in New Mexico, Arizona, Colorado,

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Idaho, Montana, Nevada and Utah, as well as in the United States territory of Guam; and

WHEREAS, House Bill 994 and Senate Bill 331 would make all qualifying claims eligible for one hundred fifty thousand dollars ($150,000) of compensation, regardless of whether the claimants were exposed as miners, millers, ore transporters, on-site employees or individuals living in a downwind area; and

WHEREAS, House Bill 994 and Senate Bill 331 would expand the types of medical conditions rendering claimants eligible for Radiation Exposure Compensation Act compensation;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NEW MEXICO that the New Mexico congressional delegation be requested to support the provisions of United States House Bill 994 and United States Senate Bill 331; and

BE IT FURTHER RESOLVED that United States Representatives Ben R. Lujan, Michelle Lujan Grisham and Steve Pearce and United States Senators Tom Udall and Martin Heinrich be congratulated for their vision in cosponsoring legislation to expand, under the Radiation Exposure Compensation Act, the rights of individuals exposed to radiation; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to members of the New Mexico congressional delegation.

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Proclamation

WHEREAS, *the world's first atomic bomb was tested in New Mexico on July 16, 1945, and the U.S. conducted 1,038 atomic tests in the Nevada Test Site, 215 of which were above ground tests; and*

WHEREAS, *in 1990 the U.S. passed the Radiation Exposure Compensation Act (RECA) to pay restitution and medical care to people that were exposed to radiation from these nuclear tests; and*

WHEREAS, *the U.S. government has been compensating the "Downsiders" in other states but the "Downsiders" in New Mexico have never been included although they were the first to be exposed to nuclear radioactivity via the Trinity atomic test; and*

WHEREAS, *there were some 500,000 families that lived within a 150-mile radius and as close as 12 miles from the Trinity test and the radioactive fallout caused cancerous diseases, such as Leukemia, Multiple Myeloma, and Lymphomas; and*

WHEREAS, *the RECA is scheduled to expire on June 10, 2024, so current congressional bills to extend and expand RECA have been introduced, including Senate Bill 1751 and House Resolution 4426 that would include the "Downsiders" of New Mexico for the first time; and*

WHEREAS, *the U.S. has approved a $50 billion budget per year for the last 33 years (total of $1,650 billion) to maintain its current nuclear arsenals but in the same period, less than one percent of that amount has been paid to those adversely affected by radioactive atomic tests.*

NOW, THEREFORE, WE, *the Mayor and City Council of Las Cruces, New Mexico, do hereby support the health, welfare, and safety of the residents of the City of Las Cruces by proclaiming the month of September as:*

"Proclamation in Support of the Extension and Expansion of the Radiation Exposure Compensation Act"

Ken D. Miyagishima, Mayor

TULAROSA BASIN DOWNWINDERS CONSORTIUM SEEKING TO HAVE NEW MEXICO INCLUDED IN RECA

NEW MEXICO IS A STATE OF PATRIOTS INCLUDING THE HEROES OF THE BAATAN DEATH MARCH AND CODE TALKERS. MORE NEW MEXICANS SERVED IN WWII THAN ANY OTHER STATE. WE HAVE SIX MILITARY INSTALLATIONS INCLUDING ONE OF THE LARGEST LAND BASES IN THE WORLD; WHITE SANDS MISSILE RANGE

TYPES OF CANCERS COVERED BY RECA

INSURANCE PLUS A ONE TIME COMPASSIONATE PAYMENT OF $150,000
WHICH IS THE AVERAGE COST TO FIGHT CANCER
THERE IS NO EFFORT TO SUE THE FEDERAL GOVERNMENT RATHER TO BE RECOGNIZED UNDER LEGISLATION ALREADY AFFORDED TO OTHER STATES THAT CAN HELP RESTORE PEOPLE TO PRODUCTIVE LIVES

Compensable Diseases for Onsite Participants and Downwinders			
Leukemia (but not chronic lymphocytic leukemia)		Multiple myeloma	Lymphomas (other than Hodgkin's disease)
Primary cancers of the:			
Thyroid	Male or female breast	Esophagus	Stomach
Pharynx	Small intestine	Pancreas	Bile ducts
Gall bladder	Salivary gland	Urinary bladder	Brain
Colon	Ovary	Liver (except if cirrhosis or hepatitis B is indicated)	Lung

HELP PASS HOUSE RESOLUTION 4426, AMENDMENT 1058 TO THE NATIONAL DEFENSE AUTHORIZATION ACT

- IN 1945 THERE WERE APPROXIMATELY 500,000 PEOPLE LIVING WITHIN A 150-MILE RADIUS OF THE TRINITY ATOMIC BOMB, AND RANCHES WITHIN 12 MILES. THERE WERE 21 TOWNS AND 110 RANCHES, FARMS OR CAMPS WITHIN 40 MILES ACCORDING TO FIGURE 10-15 OF THE LOS ALAMOS HISTORIC DOCUMENT RETRIEVAL ARCHIVE.
- THE TRINITY BOMB WAS PACKED WITH 13 POUNDS OF PLUTONIUM BUT ONLY 3 POUNDS FISSIONED. THE MUSHROOM CLOUD PENETRATED THE STRATOSPHERE, RISING SOME 40,000 FEET HIGH. BY CONTRAST, MOUNT SAINT HELEN WENT 8,000 FEET HIGH. 10 POUNDS OF PLUTONIUM CONTAMINATED THE AIR, WATER, SOIL, ANIMALS, PLANTS, AND FAMILIES IN NEW MEXICO. PLUTONIUM HAS A HALF-LIFE OF MORE THAN 24,000 YEARS
- IN 1945 MOST COMMUNITIES INSIDE A 50 MILE RADIUS OF THE TRINITY BOMB SITE DID NOT HAVE RUNNING WATER IN THEIR HOMES. THE WATER SOURCES WERE RAINWATER, 55-GALLON DRUMS, CISTERNS, STREAMS, LAKES, HOLDING PONDS, HAND DUG WELLS AND DITCHES. AS A RESULT OF THE FALLOUT THE WATER SOURCES WERE CONTAMINATED.
- IN 1945 THERE WERE NO GROCERY STORES IN THE TOWNS SURROUNDING THE TRINITY SITE. THE MEAT, DAIRY AND CROPS WERE PRODUCED LOCALLY. THESE TOO WERE CONTAMINATED.

- INCREASE IN INFANT MORTALITY FOLLOWING TRINITY IN 1945:
- THE NATIONAL INFANT DEATH RATE WAS 38.3 DEATHS PER THOUSAND LIVE BIRTHS.
- THE AVERAGE IN NEW MEXICO WAS 100.8 DEATHS PER THOUSAND! THIS WAS THE HIGHEST IN THE NATION. SEE PUBLISHED PAPER BY TUCKER/ALVAREZ IN 2019, TITLED TRINITY: "THE MOST SIGNIFICANT HAZARD OF THE ENTIRE MANHATTAN PROJECT".
- IN NEARBY CARRIZOZO'S ST. RITA CHURCH, ONLY 2 INFANTS DIED IN 1944, BUT 9 DIED IN 1945!
- IN 1990 GEORGE HERBERT BUSH SIGNED RECA INTO LAW AS A "COMPASSIONATE" MEASURE.
- $2.5 BILLION DOLLARS PAID IN 34 YEARS.
- $50 BILLION PER YEAR TO MAINTAIN THE CURRENT NUCLEAR ARCINAL.
- NEW MEXICO HAS BEEN CONSPICUOUSLY LEFT OUT ALTHOUGH WE WERE THE FIRST PEOPLE IN THE WORLD TO SUFFER THE EFFECTS OF A NUCLEAR BOMB.

NUCLEAR BOMBS IN NEW MEXICO

- ONE TON TEST: MAY 7, 1945 WAS A REHEARSAL TEST SPIKED WITH RADIOACTIVE ISOTOPES
- THE TRINITY BOMB: JULY 16, 1945
- GAS BUGGY: DECEMBER 10, 1967 IN RIO ARIBA COUNTY WAS A 29-KILOTON-YIELD NUCLEAR DEVICE
- PROJECT GNOME: DECEMBER 10,1961 DETONATED 0.6214 MILES SOUTHEAST OF CARLSBAD, NEW MEXICO
- NEW MEXICANS WERE ALSO DOWNWIND OF THE 1,032 ATOMIC TESTS CONDUCTED AT THE NEVADA TEST SITE UNTIL 1992
- WWW.TRINITYDOWNWINDERS.COM
- CALL OR EMAIL YOUR US HOUSE MEMBERS AND ASK THEM TO SUPPORT AMENDMENT 1058 OF THE NATIONAL DEFENSE AUTHORIZATION ACT THAT ARE FOUND IN HOUSE RESOLUTION 4426. THESE AMENDMENTS HAVE BROAD BIPARTISAN SUPPORT.
- WWW.HOUSE-GOV/REPRESENTATIVES/FIND-YOUR-REPRESENTATIVE
- WWW.SENATE.GOV/SENATORS

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** **Report No:** 2.

Submitted By:

Subject: Presentation on the current affordable housing crisis and how current zoning and setbacks are outdated. *(Kevin Jewell, French Brothers Home President)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background:

City of Alamogordo City Commission Meeting
AGENDA REQUEST FORM

Today's Date: September 20, 2023

Request Date of Meeting: October 10th, 2023.

Name and Title: Kevin Jewell - President - French Brothers Homes

Address: 1010 Zuni Dr - Corporate office

Alamogordo, NM **ZIP** 88310

Phone Number: 575-437-7134

E-Mail Address: maggie@frenchbrothers.com, kevin@frenchbrothers.com

Item requested will be for Information only

Brief description of topic to be discussed:
Please attach one original of any documents pertaining to the topic -
We do not allow handouts at the meeting

The current Affordable housing crisis in Alamogordo, and how current Zoning and setbacks are outdated.

Signature: Kevin Jewell

Please return to: Rachel Hughs, CMC, City Clerk
City of Alamogordo
1376 E. 9th Street
Alamogordo, NM 88310

Phone: (575) 439-4100 **Fax: (575) 439-4396** **E-mail: rhughs@ci.alamogordo.nm.us**



The Housing Affordability Crisis

Kevin Jewell – President
French Brothers Homes

Median Income in Alamogordo vs. New Housing Prices

Median Income in 2020
$45,032

Median Income in 2023
$50,207

Average New Housing Price in 2023 -
$365,700



Alamogordo Construction

Factors and Averages that affect our area



Local average of 33 single-family starts per year.

- Over a 10-year timeframe
- Starts have decreased by 50% in the last 18 months.



Interest Rates are at a 22-year high

- National Average is 7.59%



Military Housing Allowance Rates have decreased in recent years

- Rates reduced by a set dollar amount based on a national average, not a specific location
- Largest Segment of New Home Buyers in Alamogordo

MLS Data for Alamogordo

Last 2 years - Alamogordo Area

- Homes sold between $225,000 - $275,000 – 227
- Homes sold between $276,000 - $375,000 – 162
- Homes sold between $376,000 - $425,000 – 126

The Target Price is an Average Sales Price of $250,000

$115,000 lower than the current median sales price



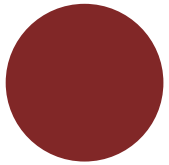
HOW DOES NEW HOME CONSTRUCTION IMPACT ALAMOGORDO?

Just by building 10 new homes, we add positively to the economic impact of our community.

According to data from the National Association of Homebuilders (NAHB)

	10 New Homes	20 New Homes	30 New Homes
Local Income	$2,800,000	$5,600,000	$8,400,000
Local Taxes/Revenue	$360,000	$720,000	$1,080,000
Jobs Created (avg)	39	78	117

WHERE DOES ALAMOGORDO DIFFER?



IT'S 8% MORE EXPENSIVE TO BUILD A HOME IN ALAMOGORDO THAN IT IS IN LAS CRUCES.

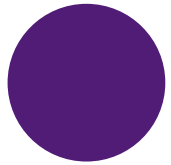


MAIN CONTRIBUTING FACTORS:

LAND COSTS

LOT SIZE REQUIREMENTS

LABOR COSTS



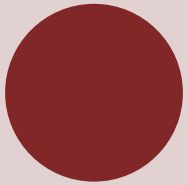
ALAMOGORDO'S CODE FOR LOT SIZES AND SETBACKS IS VASTLY DIFFERENT THAN OTHER CITIES WITHIN THE STATE

	Alamo R-1	Alamo R-2	Las Cruces R-1a	Las Cruces R-1b	Las Cruces U3	Las Cruces U4	ABQ R-2	Alamo Ideal R-2
Front	20'	20'	20'	15'	12'	12'	20'	12'
Garage	20'	20'	20'	15'	20'	20'	20'	15'
Side	5'	5'	5'	5'	5'	5'	5'	5'
Side 2 Story	7.5'	7.5'	No Distinctio n	No Distinction	No Distinctio n	No Distinction	No Distinction	No Distinction
Side corner	15'	15'	15'	15'	10'	10'	10'	15'
Rear	30' or 20% lot depth	10'	5'	5'	10'	10'	15'	10'
Unit Size	No min	No min	No min	No min	No min	No min	No min	No min
Lot Size	6,000 sq ft	4,000 sq ft	5,000 sqft	3,500 sq ft	No min	No min	4,000 sq ft	No min
Lot min Width	60'	35'	50'	40'	No min	No min	24'	25'
Lot min Depth	No min	No min	70'	70'	No min	No min	No min	No min
Parking		2 offstree t9'x20'			2 off street	2 total (incl driveway)	2 total (incl driveway)	2 total (incl driveway)
	Unenclosed porches don't count				Porches can encroach 3' into front setback and 7' into back setback			

WHAT IS THE DIFFERENCE? AND HOW DO WE START TO ADDRESS IT?

We start by putting Alamogordo builders and developers on an even playing field with Las Cruces, which means following the same codes and requirements. This starts by addressing lot sizes better suited for smaller homes.

The table here shows the immediate difference between the two cities and Albuquerque for reference. Assuming a $6.50 sq. ft. price, the minimum lot size between Alamogordo and Las Cruces is 1,000 sq ft. That cost difference comes to a $6,500 minimum, just in land alone. We then have to consider additional costs such as landscaping, fencing, city sidewalks, etc., that are incurred by requiring larger lots. These additional costs can be upwards of $4,500 per lot.



This leads to a $11,000 per lot cost difference, a substantial difference in cost for the same product.

Specific Changes to look at



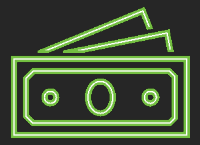
Adjust Lot Sizes to match Las Cruces (Metro Verde)

- Lot width minimums
  - R1-50'
  - R2-25’
- Lot depth minimum
  - R-1 & R-2 70’
- Lot size minimums
  - R1-5,000 sq. ft.
  - R2-3,500 sq. ft.

Adjust Setbacks to match Las Cruces (Metro Verde)

- Front setbacks
  - R1-15' to the front of house, 20’ to front of garage.
  - R-2-12' to front of house, 20’ to front of garage.
  - Minimum of 2 off-street parking spaces.
- Rear setbacks
  - R-1 & R-2 10’
- Corner setbacks
  - R-1 & R-2 10’ while maintaining clear site triangle.
- 2-Story side setbacks
  - No differentiation from single-story house.

How do these codes apply to lowering the cost of a new home?



Zoning adjustments can attract new home buyers, stimulate construction activity, and create jobs in the construction and related industries. This boosts the local economy.



Smaller minimum lot sizes encourage higher-density developments, which can result in more affordable housing options, and can create a tighter-knit community.



Adjusting zoning regulations to allow for smaller lot sizes or higher-density developments can increase the overall housing supply, helping to address housing shortages and reduce price pressures.

What Municipal Codes do we need to look at?

29-03-030. – Side Yards – R-1

“There shall be a side yard on each of the one-story portions of buildings having a width of not less than five (5) feet and a side yard on each side of the two-story portions of buildings have a width of not less than seven and one-half (7½) feet.”

29-03-110. – Side Yards – R-2

“Townhouses, by definition, do not have side yards and are exempt from side yard setback requirements as long as adequate provisions are made for fire- and soundproofing in common walls between connected units composing one (1) structural entity.”



What does State Code Say? 14.7.3.11 A. (1) states:

Section R302.1 Exterior. See this section of the IRC except as follows: Add the following exception: Exception 6. Exterior walls will read as follows: Where zoning or perpetual, platted, and recorded easements create a non-buildable minimum fire separation distance of at least 10 feet between structures on adjacent properties.

(3) Table R302.1(2) Exterior walls – Dwellings with Fire Sprinklers. Delete the title of this table in the IRC and substitute with following: Table R302.1 (1) Exterior walls.

TABLE R302.1(1) EXTERIOR WALLS

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour—tested in accordance with ASTM E119, UL 263 or Section 703.3 of the *International Building Code* with exposure from both sides	0 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Projections	Not allowed	NA	< 2 feet
	Fire-resistance rated	1 hour on the underside, or heavy timber, or fire-retardant-treated wood[a, b]	≥ 2 feet to < 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Openings in walls	Not allowed	NA	< 3 feet
	25% maximum of wall area	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet

For SI: 1 foot = 304.8 mm.
NA = Not Applicable.

a. The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave overhang if fireblocking is provided from the wall top plate to the underside of the roof sheathing.
b. The fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the rake overhang where gable vent openings are not installed.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 09/28/2023 **Report No:** 3.

Submitted By: Rachel Hughs

Subject: Approve the minutes for the Regular Commission meeting on September 26, 2023. *(Rachel Hughs, City Clerk)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the minutes.

Background: This is required by the Open Meetings Act.

CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
September 26, 2023

SUSAN PAYNE, MAYOR	**DUSTY WRIGHT, MAYOR PRO-TEM**
SHARON McDONALD, COMMISSIONER	**KARL MELTON, COMMISSIONER**
JOSH RARDIN, COMMISSIONER	**STEPHANIE HERNANDEZ, ACTING CITY MANAGER**
STEPHEN BURNETT, COMMISSIONER	**ASHLEY SMITH, CITY ATTORNEY**
NICHOLAS PAUL, COMMISSIONER	**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. City Attorney Smith was absent. Invocation was given by President of the Alamogordo Area Ministerial Alliance Stan Richardson, and the Pledge of Allegiance was led by Commissioner Nick Paul.

APPROVAL OF AGENDA

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

PRESENTATIONS

1. Swearing in of Code Enforcement Manager Josh Sides and Officers Jeremy Otero, Rocky Chavez, April Payan, and John Romero. ***(David Overstreet, Municipal Judge)***

Judge Overstreet administered the Oath to Code Enforcement Manager Josh Sides and Code Enforcement Officers Jeremy Otero, Rocky Chavez, April Payan, and John Romero.

PUBLIC COMMENT

Michael Guebara said he wanted to talk about the condemnation of properties downtown. He had handouts from Pat Vandergriff of Vandergriff Code Consulting, who was the head of Code Enforcement here in Alamogordo for an extended period of time. Acting City Manager Hernandez said we do not allow handouts at the Commission meeting because it is both policy and for the protection of the Commission. We ensure that nothing corrupt is happening and is not available to citizens. If you want to email this to them, you are more than welcome to do so, and it would then become a public record. Mr. Guebara asked if he could get a copy of the Commissioner's email addresses before the meeting was over. Acting City Manager Hernandez said yes. Mayor Payne said they are on the website as well.

Mayor Payne asked Mr. Guebara if he would speak in general or on Item 9. Mr. Guebara said he would speak in general and on Item 9 about the policies and the fact that the City of Alamogordo does not have a qualified person to determine these violations when it comes to condemnation. He said he was going to refer to the handouts, but if you all do not have them, it will be hard for them to understand what he is saying. Some of you had ample opportunity to read it before the meeting if you got that far. The City does not have anybody qualified to make the decision. The City no longer has a Buildings Department, and without a building official, there is nobody qualified to make that. They would have

to be ICC Certified, and you do not have one at the City. The only person who is certified to make something along that line is Otero County's Patrick Vandergriff, who this letter came from. He used to be the head of Code Enforcement here and of Construction Industries Division in Albuquerque for many years. This letter basically says it is time to stop and get somebody certified before you move on to doing these things. You need to let people know what is going on. He said he would address the notification process on Item 9, which would become an issue. People are not being notified properly of the condemnation of their properties. He said he would address what the stipulations are for notifying someone properly. He said he agreed that we need to clean up Alamogordo, but we need a plan to clean up the necessary ones. Some are not necessary and are being condemned or threatened with condemnation. We need to readdress this and rewrite the whole deal. He said he did not want to see the City involved in a big lawsuit because the taxpayers end up paying these fines. He said he would rather err on the side of caution. We should halt any condemnations, and the City and Commission need to look at this and table this thing to a later date and get more informed before you move along with the vote.

CITY MANAGER'S REPORT

Acting City Manager Hernandez made the following remarks:
None.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

None.

CONSENT AGENDA

2. Approve the minutes for the Regular Commission meeting on September 12, 2023. *(Rachel Hughs, City Clerk)*

3. Consider, and act upon, the award of RFP 2023-004 Custodial Services to SMI Facility Services. *(Evelyn Huff, Finance Director)*

4. Consider, and act upon, approval of Change Order 2 in the amount of $69,617.56, including NMGRT, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgecrest Drive project. *(Patrick Riele, Project Manager)*

5. Consider, and act upon, acceptance of FY24 capital outlay grant agreements from the NM Department of Finance totaling $2,937,000.00. *(Debbie Osborne, Grant Coordinator)*

6. Consider, and act upon, approval of the At-Will Contract for Ricky D. Holden, as City Manager. *(Kim Torres, Human Resources Director)*

Item 4 was removed from the Consent Agenda by Commissioner Paul.

Commissioner Melton moved to approve the Consent Agenda as amended.
Commissioner Paul seconded the motion.
Motion carried with a vote of 7-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

4. Consider, and act upon, approval of Change Order 2 in the amount of $69,617.56, including NMGRT, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgecrest Drive project. ***(Patrick Riele, Project Manager)***

Commissioner Paul said he was reviewing the contract change order, and the text here states that it will ensure three inches of asphalt is installed per City Technical Standards. Below is a graph with an item description that lists two inches. Is that a typo? Project Manager Riele said the two inches were the original, and that is what we are trying to upgrade to. Commissioner Paul asked if it needed to read three inches. He said he may be misreading this, but on the screenshot, the change order amount is $64,535, but it has two inches. Do we need three inches? Project Manager Riele said yes, we are going to three inches. Mayor Payne said the change order was written up wrong. Commissioner Paul said we need to correct that.

Commissioner Rardin asked if this project was bid on before adopting the Technical Standards. That is almost a $70,000 increase for the rules we changed about a year ago. Project Manager Riele said yes, it was. Commissioner Rardin said so, the old standards were in place when this project was bid on. Project Manager Riele said yes sir. Commissioner Rardin said he felt we should abide by the old standards because that is how it was bid instead of costing the taxpayers an additional $70,000. That is up to the Commission as a whole.

Mayor Payne said there was a reason why they changed it from two inches to three inches. Commissioner Rardin said the industry standard was always two inches on most of these roads. I guess we changed it to three inches thick. Project Manager Riele said yes. Commissioner Melton said if it has anything to do with durability, he would say to keep it a three. Ridgecrest is long overdue. Commissioner Rardin said he does not think it makes much of a difference in our climate. There are six inches of asphalt on west 10th Street, and it is failing; it is between the railroad tracks and the bypass.

Mayor Payne said she was trying to remember how they funded this. Mayor Pro-Tem Wright said he thought it was regular SMP. Acting City Manager Hernandez said Fund 109 is the Street Fund. Mayor Payne said so the money is there.

Commissioner Rardin said we are essentially adding an inch of asphalt across the entire project. Project Manager Riele said yes.

Commissioner Melton moved to approve.
Commissioner McDonald seconded the motion.
Motion carried with a vote of 6-1-0. Commissioner Rardin voted nay.

Commissioner Rardin asked Acting City Manager Hernandez if we had any other bids based on the old Technical Standards. Acting City Manager Hernandez said she did not know. Project Manager Riele said no. Commissioner Rardin said that would be the last one, okay.

NEW BUSINESS

7. Consider, and act upon, the final plat for Case S-2023-0024(A), Replat B Pruitt Subdivision of Lot 1A Pruitt Subdivision. ***(Stella Rael, City Planner)***

City Planner Rael said the property owner is requesting the City approve a five-lot subdivision for the property at 3190 Hamilton Road. The summary plat procedure is allowed as an administrative approval

as long as the number of total lots does not increase by more than two. In this case, it is going from one to five. Therefore, our ordinance says it must come before the Commission for approval or denial. We took this in front of the Technical Review Committee to ensure that it did not create any problems with Utilities or Fire, and everyone was fine with it. This property is just barely sitting within City limits. Staff recommends approval of the summary plat.

Commissioner Rardin said he thought City limits stopped at or just past Martin Luther Drive. City Planner Rael said according to our GIS map, that is where they end. Commissioner Rardin said just past Martin Luther Drive is in City limits according to the signs out there. City Planner Rael said she would have to get with GIS and see if the map was incorrect. Commissioner Rardin said a house on the map there belongs to Abe Moore, who is outside City limits. City Planner Rael said that Mr. Moore is inside City limits. She said she knew that from when we went through the review process for his new home out there. Commissioner Rardin said he believed we had some say, even outside City limits. City Planner Rael said within five miles.

Mayor Payne asked if the Stagners were here tonight. City Planner Rael said she never met them. She had only met their representative, Steve Sandoval from Construction Surveying Services, who was not here. Commissioner Rardin asked what their plans were out there. City Planner Rael said her understanding from the surveyor is they are just splitting up the lots to divide them for their children. There are no plans submitted at this time for any type of construction. Mayor Payne said they own Home Furniture, is that right? Commissioner Rardin said he thought so. Mayor Payne said in full disclosure her husband used to work for her brother. She said she knew them, but not really. She said she wanted to be totally transparent in case anyone has a problem with her voting on this. He has been retired for three years.

City Planner Rael said that once you pass this, she would take the plat to Acting City Manager Hernandez to sign it.

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

8. Consider, and act upon, Resolution 2023-48 requesting written approval from the Local Government Division of the Department of Finance and Administration, State of NM for the revised budget numbers computed as of September 26, 2023. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

Finance Director Huff said this is our monthly budget revision. It was put under New Business instead of the Consent Agenda because she had been asked to highlight any revisions affecting salaries and benefits in the past. This one has a couple on there.

Revision #1 is a correction to the salary and benefits for Community Services. When bringing the carryovers to the new software, we went overboard and doubled one of the entries. This is just correcting that to actual amounts.

Revision #9 accounts for the GRT increment that was passed and the salary increases for the Police Department that were part of the GRT increment. That has the revenues that will begin in March and the salary and benefit expenses that have already begun.

Revision #20 adds the New Mexico Transportation Department's Clean and Beautiful Grant. This is the KAB, the Keep Alamogordo Beautiful, grant. They have a small salary and benefit component

because they do request to hire a part-time summer intern. This is adding that grant revenue and a little bit of salary and benefit expense.

Finance Director Huff said there are seventeen other revisions there.

Commissioner Burnett moved to approve.
Commissioner Melton seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0.

9. Consider, and act upon, Resolution 2023-46, declaring 801 Virginia Avenue to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. *(Josh Sides, Code Enforcement Manager)* (Roll Call Vote Required)

Code Enforcement Manager Sides gave his presentation and recommended approving and ordering the property's abatement.

Public Comment

Ms. Cruz Morales said the property was not abandoned, and she planned to demolish and rebuild it. She had someone contracted, but they left. She said she never got any letters. There is the post lane, and she gets letters for the water bill she pays every month. She said she needs a year to get it down and get someone who will do the job and not run away with her money.

Mayor Payne asked if she ever got a letter. Ms. Morales said no, she never did. She works 24/7; she goes to work at 9:30, gets off work at 9, and then goes to her second job. She said she had someone who cleans the property for her. That person got rid of the weeds and the cat living underneath the hole. The little shingles on the top and the holes on the roof were how she bought it. Mayor Payne asked if she bought the property like this. Ms. Morales said it was a teardown. There is no way to fix that. Mayor Payne said but you bought it like this. Ms. Morales said yes. It is not a fixer upper. The first person that she got to get it done left. She said she is learning and trying to do things the right way.

Commissioner Burnett asked what her timeframe was. Ms. Morales said at least a year. She learned that she needed to ask for a permit for a teardown. She cannot just hire somebody here to do it. She did not know that before.

Mayor Payne asked what the plan for the property was. Ms. Morales said it was to build a small house. This is not a home that will be built for resale; this will be for her, her mom, and her children. This is not for a business; it is for a home.

Commissioner Burnett asked if we knew the address to which the letter was supposedly sent. Ms. Morales said that is the thing. What was posted on the house has her address. She lives in Tularosa. Mayor Payne said she would assume that the letter was sent certified and all that. Code Enforcement Manager Sides said he did. Mayor Payne asked if he had that card returned. Code Enforcement Manager Sides said yes. Mayor Payne said there is proof that he mailed you, and he does have the card back from the Post Office that says you never signed for it. Ms. Morales said when it comes to Tularosa, and she does not mean to speak badly about it, but her marriage license got sent to a neighbor across the street. Mayor Payne said just so we are clear, Code Enforcement Manager Sides did try to contact you, and he does have proof. Ms. Morales said that regular mail would make it to her door. Mayor Payne said we cannot do that; he has to send it certified, and you have to sign for it.

Otherwise, there is no proof you ever got a letter. Ms. Morales said there was no proof that she ever got a thing, too. Mayor Payne said no, he does have proof. He has proof he tried to mail it to you. He has the card where it was returned unsigned. Ms. Morales said she never got the little slip. Mayor Payne said that is between her and the Post Office. Apparently, the Post Office says they tried to mail it, right? He did what she would do. She would have sent it certified return receipt requested. That is the only way to ensure that he tried to deliver it. It sounds like he did it. If you are very sincere about tearing this down and wanting to build on it, we need to talk about that. You can understand that it is unsightly for everybody around you. Ms. Morales said it is. Mayor Payne said and dangerous, too. At the vacant building next door to her office, someone kicked in the front door, smoked a bunch of fentanyl, went out into the street, and passed out. Last she heard; they did not think he was going to make it. She was telling Ms. Morales this because that is what is going on right now. She won't speak for the rest of the Commission, but for her, she has no hidden agenda other than she does not like drug addicts kicking in doors of vacant buildings, going in there, and OD'ing on our streets. This is an issue that needs to be addressed. Ms. Morales said there was a padlock. Mayor Payne said that does not really stop them, unfortunately. She commends Ms. Morales for wanting to tear this down and rebuild, which would be great for the neighborhood. Just understand that these kinds of things are going on all the time in our community now. We have got to do something. Ms. Morales said yes, but you cannot just take something she worked hard to get. Mayor Payne said she understood that and does not think we are just trying to take it. We are just trying to clean it up. Mayor Payne asked the other Commissioners if we could come to a compromise. To her, a year is a long time to wait. Does anybody have any suggestions?

Commissioner Burnett asked Ms. Morales if she had been in contact with a contractor since. Ms. Morales said right now, she is trying to build up the cash because it will be $5,000 to $10,000 to get it done. To be honest, she would do it herself, but she does not have the time or the proper permit. She said she wanted to do this the right way. Commissioner Burnett asked Code Enforcement Manager Sides if it is two years that Ms. Morales has. Code Enforcement Manager Sides said per the International Property Maintenance Code, if the building is boarded up, so there are boards on windows and doors, the property owner has one year to rehab or demolish. If it is not boarded up on the windows and doors, they have two years to rehab or demolish. Mayor Payne said that is if we pass this tonight, is that what you saying? Code Enforcement Manager Sides said if it is passed tonight, two years because there are no boards on the windows and doors. Mayor Payne said what Code Enforcement Manager Sides is saying is if the Commission passes this tonight and declares this dilapidated, Ms. Morales would still have two years to take care of this. If you had boards on the windows, you would only have a year, but if you did not have boards on the windows, and I am assuming you do not, then you would still have two years. We are saying it is not like we pass this and go out tomorrow and demolish your building. That is not going to happen. It is never the City's intent to take somebody's property just to be malicious. We have to think about the safety and health of the citizens around us. Ms. Morales asked how she would go about getting the right paperwork. Mayor Payne said so you were telling us you need a year. We are telling you; you have two. If said to you, we give you a year or two, and there is no accountability, then two years could go by with you doing nothing. Ms. Morales said she barely bought the property last year. Mayor Payne said right, but the two years start tonight, right? What it would do for the City is hold you accountable. Ms. Morales said okay, I got you. Mayor Payne said she would not speak for anyone else, but her experience is that if a property owner comes to us and they have a plan, she did not think we would want to tear down their buildings, stuff, and property. To her, they would be irresponsible not to address these issues. About seventy-five percent of the calls she gets are Code calls. Somebody is complaining about somebody's property, or there is trash or something. If we ignored everybody, nothing would ever get done right. What they are saying is, to be clear, even if we pass this tonight, you have two years to fix it. Ms. Morales asked how much she has to pay. Mayor Payne said you do not have to pay us anything. It is whatever it costs to tear it down, and you said you were going to tear it down, right? Ms. Morales

said yes, but don't I have to pay something because you are passing it? Mayor Payne said no. You just have to pay a contractor to tear it down and get your permits, just like you were talking about.

Mayor Payne asked Mr. Guebara if he wanted to say something. Mr. Guebara said he just wanted to make sure they had notification. Ms. Morales was not notified. He said he would read the notification process quickly so everyone knows the same thing. The notification will be in writing, and a copy will be delivered personally, or it could be copies sent by certified or registered mail address to the owner at the last known address, return receipt requested, or in any manner as prescribed by local law. He said he was just concerned that some people are not being notified. Ms. Morales had no clue that her property was going to be voted on tonight to be condemned. Mayor Payne said that is because she did not sign for the certified letter. Mr. Guebara said Ms. Morales said she never received it. Mayor Payne said right, but we have proof that it was sent. Mr. Guebara said his concern was people want to be notified properly because it happens sometimes. It falls through the cracks. In this case, she says she was not notified when he spoke to her. She received nothing, so she had no knowledge. He said he just wanted her to be informed and thinks people need to be informed. You cannot go and lead everybody by the hand up here to talk to the Commission. However, it is just important we follow the guidelines of proper notification to all parties involved. This is their house, their property, and you do not want to take the property in a wrongful manner where it ends up becoming a legal issue with the City. That is all he is concerned about.

Commissioner Rardin said the resolution needs to be corrected in section two. It has the wrong name. It has the name from the last one. Staff can change it. Mayor Payne said she did not know who does the resolutions, but you are right.

Mayor Payne asked Code Enforcement Manager Sides to email a copy of the card that says it was returned unsigned. Code Enforcement Manager Sides asked who she would like him to email. Mayor Payne said she would like a copy. Would anyone else? Commissioner Paul said sure. Mayor Payne asked Code Enforcement Manager Sides to email it to the Commission so we can verify you did. She said she had no doubt he did. Commissioner Melton said let's not let this imply that we do not trust Code Enforcement Manager Sides. Mayor Payne said she trusts him.

Commissioner Burnett asked if we just send the letter out one time. Code Enforcement Manager Sides said he certified mails the International Property Maintenance Code Letter. What was not read was that it was then posted. If it is returned, you then post it. That is part of the notification. Commissioner Burnett asked if that was on the house on the property. Code Enforcement Manager Sides said yes, that is part of the notification process. You either hand deliver it, certify mail it, or it could be posted. All of those are ors. They are not ands. Mayor Payne said okay, and you choose certified mail. Code Enforcement Manager Sides said that how we handle all of them we certified mail all of them. Mayor Payne said that makes sense to her.

Commissioner Rardin said that if the Post Office does not deliver the notice that they had the certified letter, and it gets returned, how does the property owner know that? Code Enforcement Manager Sides said he posted it on the front door of the property. Commissioner Rardin said he has rentals all over, and he does not go by them every day or month. Code Enforcement Manager Sides said the International Property Maintenance Code does not dictate. It just says you will hand deliver it or you will mail it. Or, well, there are a few different things in there. The other one is or if it is returned, you will post it. Commissioner Rardin said maybe we need to look at our policy and try twice. Mayor Payne asked Commissioner Rardin if his rentals were occupied. Commissioner Rardin said some of them, sometimes. Sometimes they are empty and sometimes they are not. We need to give the constituents the benefit of the doubt. Maybe send it twice. If it gets picked up, cool, if it doesn't, well. He said he has had certified letters and he gets one notice and forgets about it. He never gets a follow-up notice,

and then it gets returned. Commissioner Melton said he did not know what difference that would make with the dozens of similar situations we have seen in the last couple of years. It has been because they have just been in Texas or out of state. Sending it again to the same address when they are not going to visit it the first time, well. Commissioner Rardin said it is funny that she gets a water bill at that address from us every month, but she did not get the certified letter. Mayor Payne said she does not have to sign for the water bill. She had to sign for the certified letter. That is the difference. Commissioner Rardin said he is sure that everyone has had problems with the mail; he knows he has before. Something you mail to Las Cruces takes nine days to get over there. You have to give them the benefit of the doubt.

Code Enforcement Manager Sides said regarding the timeline, there were a few around this time that were interesting. On the timeline, if you noticed, I mailed it on June 28th and got it back on July 28th. He said he did not know if they tried multiple times to deliver it or why there was a month. He said he has never had a certified letter returned take a month. Mayor Payne asked Commissioner Rardin if he had said they tried three times. Commissioner Rardin said they try three times. They will deliver it with one notice, then wait a week, then give you a second notice, and then a final notice, and it is returned. Mayor Payne said isn't that the equivalent of trying twice? Commissioner Rardin said no, that is the same letter three different times. That mailperson is responsible for giving that person the notice. If the mailperson does not do their job and provide the notice three times, then they return it. Mayor Payne said so then the suggestion is they did not provide the notice three times. Commissioner Rardin said it could very well be. He has had it happen. Sometimes insurance companies send us notices certified, and we will get one notice, and that is it, and it gets returned. Commissioner McDonald said when the postman delivers it the first time, they leave a message that you have a letter at the post office. Commissioner Rardin said how many times have we had utility bills come before us where people did not even know they owed the money? Commissioner Burnett said they get their bill after the due date.

Mayor Pro-Tem Wright said that earlier, a comment was mentioned that we at the City do not have anyone certified to condemn these properties. Can you clarify that or confirm if we do or do not? Code Enforcement Manager Sides said he has been through the International Property Maintenance Code, through legal aspects of Code Enforcement, and is about three-quarters of the way through a very large book of International Residential Code. In none of those books has he found anywhere where it says that you have to be certified on any of this. Our ordinance says that the code official is appointed by the City Manager. In none of those three books, which are required for a certified code enforcement officer, has he been able to locate that. To anybody else who poses that question, he would genuinely ask them, if you can find it, please let me know so I can look at it. He has not had anybody bring it to him or find it. He said he had looked when that question first came up. To answer the second part of that, do we have anybody? Yes, we do. Facility Maintenance Manager Paul Bennett goes on every search warrant I do. Acting City Manager Hernandez said that Facility Maintenance Manager Bennett has his Property Maintenance and Housing Inspector certifications. Commissioner Rardin asked if he was a structural engineer. Acting City Manager Hernandez said no. Mayor Pro-Tem Wright asked Commissioner Rardin if that called for a structural engineer. Commissioner Rardin said if you go in and say a property is not structurally sound, and if you had to go to court and defend that, the only one that a judge would listen to would be a structural engineer. He said they would not take his opinion over the structural engineer even with his thirty years of experience in the trade and being a GB98 for twenty years. We need to be careful with these. When we used to do these eight or nine years ago, we notified them multiple times and made sure the property owner knew that we were looking at your property and you needed to get it cleaned up. That way, if it went to court, we could say we documented it and did it here, here, and here. Mayor Payne said she has been on the Commission for seven years, and in that time, she could not think of any time that she knew of that where we condemned a property, and somebody has come back and sued us for it. Do we know how many

times that has happened? Acting City Manager Hernadez said the Telles house, she could remember that one. Commissioner Rardin said the apartments took nine years. Acting City Manager Hernandez said the Sierra Apartments took nine years. Telles took a while. We still ended up winning those two. The frustration among staff is that we are told that beautification and tearing down dilapidated houses was the priority. We are doing everything we can by the rules we see, and when we say we are following the rules, we still get hammered. She said if we continue down this road, and if the objective is still tearing down these homes, there needs to be a separate discussion if you want us to follow the IPMC, which, as Code Enforcement Manager says, does not have that. Facility Maintenance Manager Bennett is not a structural engineer; nobody does it. If we require it when we get to that point, then that is when a structural engineer at the court would have to come in. There is frustration. We are trying to do what the Commission says, but we are always getting hammered and being told we are not doing the right thing. Maybe this is a separate discussion.

Commissioner Melton said he knows we are doing due diligence by asking these questions, but it is coming across as accusatory. He said that Code Enforcement Manager Sides has been doing a great job. We get one handout, and we are suddenly asking these questions. It casts the illusion that we do not trust staff. He and the Mayor have said this, but beautification and getting rid of derelict buildings is the top priority. He said he gets the appeal of sending it a second time, but that is just taking up more staff time. We have so many buildings we need to address. He said he did not see the logic in it.

Commissioner Rardin said we do not have to do it all overnight. We only allocate $250,000 a year for demolition of buildings. Five houses are going to eat that up. Our budget last year was just for the hotel, where we spent $250,000. What is the rush to condemn all of these when we know we only have $250,000 to clean them up? We have spent several million dollars cleaning houses up in the last six or seven years. In the one that was sold on the courthouse steps, we made $9000. Commissioner Melton said the point of this is not to make money. Commissioner Rardin asked how that was a benefit to the community. Commissioner Melton said it is a benefit to the neighbors that buy and for property values. Commissioner Rardin said it is cleaning the City up, and he is not against that, but where do we draw the line of spending a million dollars to make $9000? It is not a matter of making money, but what is the full benefit to the community? Mayor Payne said it is quality of life. Commission Paul said the objective is this lady has two years to remedy this issue. If we do not take action now and give her another year, we are back potentially in the same place we are today, and she now has two years from that point. If we keep kicking the can down the road, the number one thing you hear from people who come through Alamogordo is, man, you guys have a ton of dilapidated structures as you come through White Sands Boulevard. If we want the outlook of our community to change and be able to attract people to our City, we have to do it community-wide. You can't just pick a certain section of town and say hey, we are only going after these people. The standards have to be the same for all. Mayor Payne said we are not doing it in just one district. Commissioner Rardin said the majority of this is all in one district. Acting City Manager Hernandez said in all fairness to the district question, it is the oldest district in the City.

Commissioner Rardin said he is just being the devil's advocate; we do not want to get the City in a huge lawsuit. It will just take one person. We are way off-topic; this is a whole separate discussion. Commissioner Paul said if our concern is that, let's task staff with the City Attorney to look into any legal ramifications from this and have her provide us some type of commentary. Commissioner Rardin said we would have to bring that back as a separate item because that is not the action item. Commissioner Paul said yes, we can go from there. Commissioner Rardin said we need a logical approach to how we are going to handle all of these.

Commissioner Melton moved to approve.

Commissioner McDonald seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 5-2-0. Commissioners Burnett and Rardin voted nay.

10. Consider, and act upon, Resolution 2023-49 supporting the second amendment of the United States Constitution and Opposing Governor Michelle Lujan Grisham's Executive Order 2023-130 ordering a public health emergency. *(Susan Payne, Mayor)* (Roll Call Vote Required)

Acting City Manager Hernandez said she just wanted to let the Commission know that through this, we took some of the County's resolution and looked through our old resolution passed in 2019. To be consistent with the conversations we are having, therefore, let it be ordained. We are tying it back to the conversations with Officer Ferguson, where we need bail reform, pretrial services, and monitoring. She just wanted to let everyone know we are still keeping the conversation going, and we are still asking for the same.

Mayor Payne said this is an important resolution, and she is glad Acting City Manager Hernandez added that to it because that solidifies our commitment to ensure that the death of our officer stays in the limelight. We are working hard and diligently to do everything we can so that the constitutional amendment is hopefully overturned.

Mayor Pro-Tem Wright moved to approve.
Commissioner Burnett seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0.

11. Appointments to Boards and Committees. (Susan Payne, Mayor)

Mayor Payne read the openings and appointed Lara Bentley and Shonna Lawson to the Senior Volunteer Programs Advisory Council. No one was opposed.

Commissioner Burnett moved to adjourn at 7:33 p.m.
Commissioner Paul seconded the motion.
Motion carried with a vote of 7-0-0.

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 10, 2023.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** **Report No:** 4.

Submitted By: Sean McGranaghan

Subject: Consider, and act upon, Ordinance 1681, Z-2023-0005(A) for adoption and final publication, a map amendment to change the current zoning of the property with the legal description of S: 8 T: 16 R: 10 TR IN N1/2SE1/4 from R-1 Single-Family Dwelling District, to R-4 Multi-Family Dwelling District. *(Sean McGranaghan, Assistant City Planner)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Adopt the Ordinance

Background: Consider, and act upon, Ordinance 1681, Z-2023-0005(A) for adoption and final publication, a map amendment to change the current zoning of the property with the legal description of S: 8 T: 16 R: 10 TR IN N1/2SE1/4 from R-1 Single-Family Dwelling District, to R-4 Multi-Family Dwelling District.

ORDINANCE No. 1681

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF A CERTAIN PROPERTY WITH THE LEGAL DESCRIPTION OF S: 8 T: 16 R:10 TR IN N1/2SE1/4, FROM ITS PRESENT DESIGNATION AND ZONING DISTRICT: R-1 SINGLE-FAMILY DWELLING TO: R-4 MULTIPLE-FAMILY DWELLING WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, Sean & Margret Little (hereinafter referred to as "the Owners") are the owners of certain real property legally described below (herein after referred to as "the Property") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

S: 8 T: 16 R:10 TR IN N1/2SE1/4

WHEREAS, an application has been filed in the Owner's name under Case No.

Z-2023-0005(A) to change the zoning of the Property, and

WHEREAS, the City Commission, after notice and hearing, finds and determines that the application for the re-zoning of the Property is in the public interest and is consistent with the proper development of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION, THAT the zoning of the Property, which is more fully described below:

S: 8 T: 16 R:10 TR IN N1/2SE1/4

Is hereby changed from R-1 Single-Family Dwelling Zoning District to R-4 Multiple-Family Dwelling Zoning District; and the official zoning map and comprehensive plan of the City are hereby amended to reflect this change.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2023.

CITY OF ALAMOGORDO, NEW MEXICO a New Mexico municipal corporation

By: _____
Susan L. Payne Mayor

ATTEST:

_____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

_____
Ashley Smith, City Attorney

City of Alamogordo

City Commission

Z-2023-0005(A)

Sean McGranaghan, Assistant City Planner
September 12, 2023

Zoning Request Case: Z-2023-0005(A)

Request:

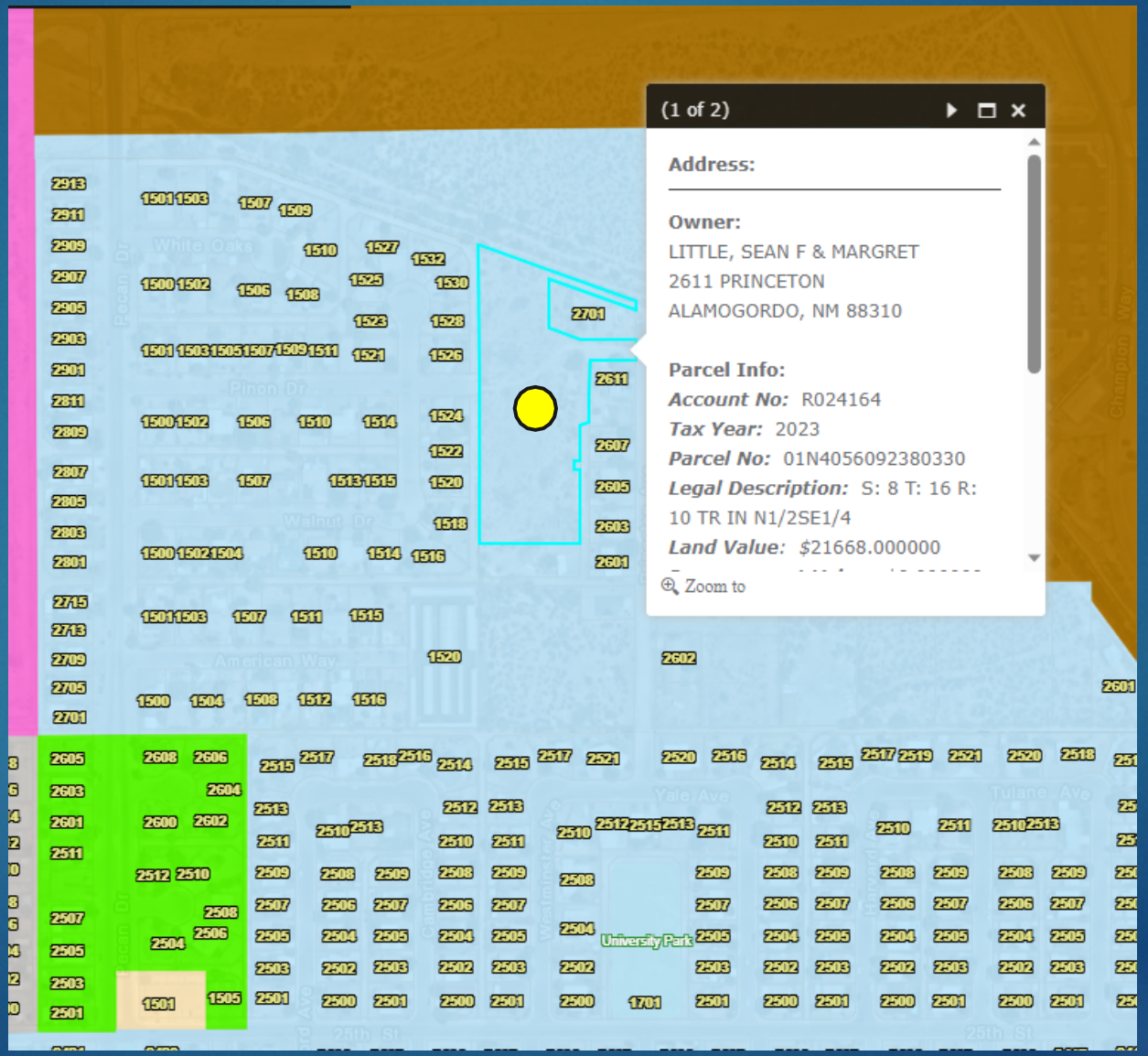
The property owner is requesting for a map amendment to change the zoning of the property with the legal description of S: 8 T: 16 R: 10 TR IN N1/2SE1/4, from R-1 Single-Family Dwelling District to R-4 Multiple-Family Dwelling District

Sean & Margret Little

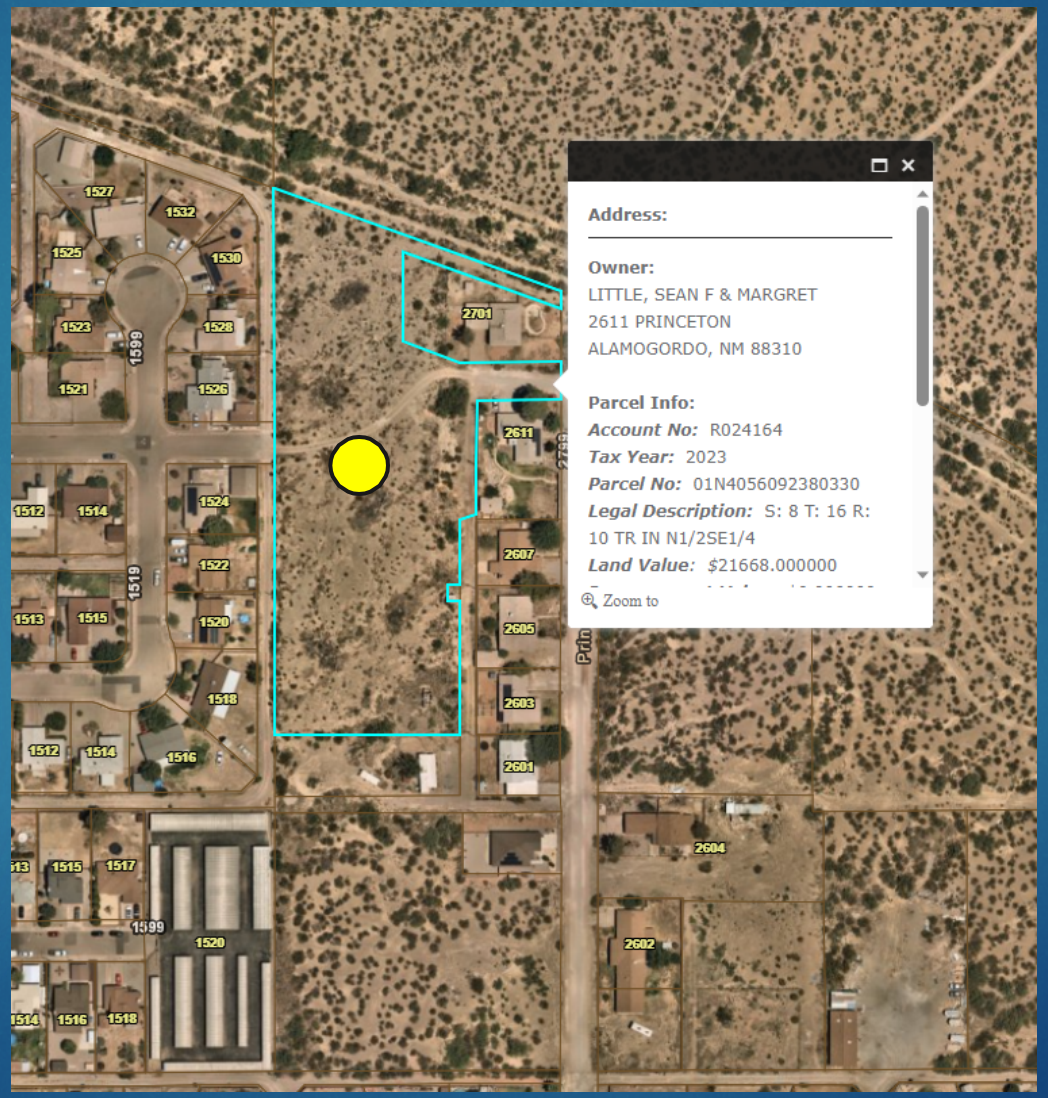
2611 Princeton Ave

Alamogordo, NM 88310

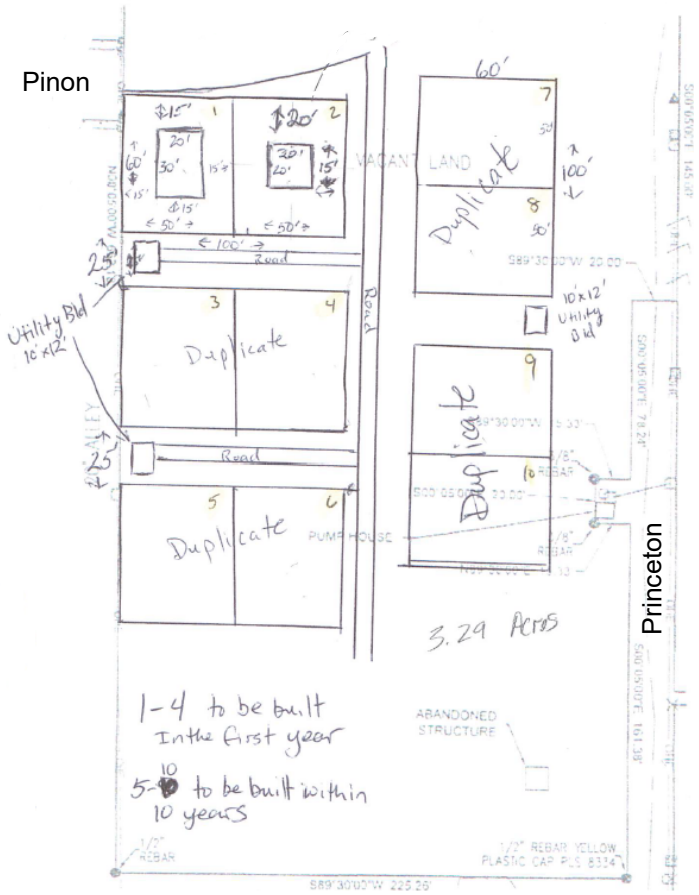
Zoning Map


(1 of 2)
Address:
Owner:
LITTLE, SEAN F & MARGRET
2611 PRINCETON
ALAMOGORDO, NM 88310
Parcel Info:
Account No: R024164
Tax Year: 2023
Parcel No: 01N4056092380330
Legal Description: S: 8 T: 16 R: 10 TR IN N1/2SE1/4
Land Value: $21668.000000
Zoom to
White Oaks
Pinon Dr
Walnut Dr
American Way
Yale Ave
Tulane Ave
University Park
25th St

AERIAL


Address:
Owner:
LITTLE, SEAN F & MARGRET
2611 PRINCETON
ALAMOGORDO, NM 88310
Parcel Info:
Account No: R024164
Tax Year: 2023
Parcel No: 01N4056092380330
Legal Description: S: 8 T: 16 R:
10 TR IN N1/2SE1/4
Land Value: $21668.000000
Zoom to
1527
1532
1525
1530
1523
1528
1599
1521
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2701
2611
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1518

Proposed Site Plan



Protest Area Map



Z-2023-0005(A)

Findings of Fact

- 1. The application was filed and all fees were paid.
- 2. Legal ad was placed in the Alamogordo Daily News
- 3. Twenty-Eight (28) letters were mailed by certified/returned receipt mail to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the property.
- 4. As of September 5th, 2023, there have been 0 letters returned undeliverable, and I have not received any letters or phone calls of opposition.

Z-2023-0005(A)

- 7. Staff recommends approval.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 09/28/2023 **Report No:** 5.

Submitted By: Josh Sides

Subject: Consider, and act upon, Ordinance 1682 for adoption and final publication amending Chapter 26, Article 03, Sections 010 Definitions, 030 Unlawful growth or accumulation on lots, and 040 Unlawful growth or accumulation on tracts. *(Josh Sides, Code Enforcement Manager)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve for final publication.

Background: Ordinance 1682 was passed for first publication on September 12, 2023, and is now proposed for final publication and adoption.

New Material ~~Deleted Material~~

ORDINANCE NO. 1682

**AN ORDINANCE AMENDING CHAPTER 26
OF THE ALAMOGORDO CODE OF ORDINANCES
CONCERNING VEGETATION**

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that businesses and occupations provide valuable services to the citizens of Alamogordo.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, acknowledges that the process for denial or revoked licenses must come before the City Commission.

WHEREAS, the City Commission of the City of Alamogordo, New Mexico, considers it necessary to amend sections of Chapter 26 of the Code of Ordinances; and

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico, to amend sections 26-03-010, 26-03-030 and 26-03-040 of Chapter 26 of the Code of Ordinances to read as follows:

Chapter 26 VEGITATION

ARTICLE 26-03. WEEDS

26-03-010. - Definitions.

As used in this section:

Interested parties means a property owner, resident, tenant, or person in possession or in control of the property.

Lot shall mean any occupied or unoccupied piece of land of one-half (½) acre or less which is located within one-quarter (¼) of a mile of an occupied structure.

Notice means any method of communication reasonably calculated to inform interested parties that a violation of ordinance is observed and includes, but is not limited to: in-person notification, posting a notice on property and notification via U.S. Mail.

Property owners mean the record holder of legal title as shown by the official records of the County of Otero unless there exists a contract purchaser of record, in which case it means the contract purchaser.

Tract shall mean any piece of occupied or unoccupied land with an area of more than one-half (½) acre.

Weeds shall mean all rank, noxious, poisonous, harmful, unhealthful vegetation, or any growth whatsoever of an offensive or unsightly nature, or which is deleterious to health, and shall include but is not limited to the following named plants **or any other species of weeds as identified by the New Mexico State University (NMSU) Department of Agriculture:**

~~Pigusweed (Amaranthus retroflexus)~~

~~Russian Thistle (Salsola pestifer)~~

~~Ragweeds (Ambrosia ssp.)~~

~~Lambsquarter (Kenopodium spp.)~~

~~Kochia~~

African Rue (Peganum Harmala)
Arundo (Arundo Donax)
Black Henbane (Hyoscyamus Niger)
Bull Thistle (Cirsium Vulgare)
Camelthorn (Alhagi Maurorum)
Canada Thistle (Cirsiom Arvense)
Cheatgrass (Bromus Tectorum)
Crimson Fountaingrass (Pennisetum Setaceum)
Dalmatian Toadflax (Linaria Dalmatica)
Diffuse Knapweed (Centaurea Diffusa)
Dryers Woad (Isatis Tinctoria)
Eurasian Watermilfoil (Myriophyllum Spicatum)
Field Bind Weed (Convolvulus arvensis)
Flix Weed (Descurainia sophia).
Giant Salvinia (Salvina Molesta)
Green Foxtail (Setaria Viridis).
Halogeton (Halogeton Glomeratus)
Hoary Cress. (Caldaria Spp.)
Hydrillia (Hydrilla Verticillata)
Kochia (Kochia scoparia)
Lambsquarter. (Kenopodium spp.)
Leafy Spurge (Euphorbia Esula)
Locoweed (Astragalus spp.)
London Rocket (Sisymbrium irio)
Malta Starthistle (Centaurea Melitensis)
Meadow Knapweed (Centaurea Pratensis)
Musk Thistle (Carduus Nutans)
Onionweed (Asphodelus Fistulosus)
Oxeye Daisy (Leucanthemum Vulgare)
Parrotfeather (Myriophyllum Aquaticum)
Perennial Pepperweed (Lepidium Latifolium)
Pigweed (Amaranthus spp.)
Poison Hemlock (Conium Maculatum)
Puncture Vine. (Tribulus Terrestris)
Purple Loosestrife (Lythrum Salicaria)
Purple Starthistle (Lythrum Salicaria)
Purslane (Portulaca oleracea)
Quackgrass (Elytrigia Repens)
Ragweeds (Ambrosia spp.)
Russian Knapweed (Acroptilon Repens)
Russian Olive (Elaeagnus Angustifolia L.)

Russian Thistle (Salsola pestifer).

Sahara Mustard (Brassica Tournefortii)
Salt Cedar (Tamarix Spp.)
Scotch Thistle (Onoprodum Acanthium)
Siberian Elm (Ulmus Pumila)
Silverleaf Nightshade (Solanum elaeagnifolium).

Spotted Knapweed (Centaurea Biebersteinii)
Spurge (Euphorbia esula)

Tansy Mustard (Descurainia pinnata)

Tree of Heaven (Ailanthus altissima)

Yellow Foxtail (Setaria glauca)

Yellow Starthistle (Centaurea Solstitialis)
Yellow Toadflax (Linaria Vulgaris)

26-03-030. - Unlawful growth or accumulation on lots.

(a) It shall be unlawful for any owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant, having charge or control of any lot within the city to permit or maintain on any such lot, including the area located between the property line and the middle of the alley adjacent to the property, and the area located between the property line and the curb, and the area located ten (10) feet outside the property line where there is no curb, any growth of weeds to a greater height**, width, or spread** than six (6) inches, or any other accumulation of weeds. It shall also be unlawful for a person having charge or control of any tract within the city to allow any growth of weeds to a greater height**, width, or spread** than six (6) inches on curbs and sidewalks located on their property as well as the area adjacent to and five (5) feet back of the curbs, sidewalks and streets. **Any accumulation of weeds, which in the opinion of the Code Official is a fire hazard**.

(b) For the purposes of this ordinance, weeds shall be defined as:
all rank, noxious, poisonous, harmful, unhealthful vegetation, or any growth whatsoever of an offensive or unsightly nature, or which is deleterious to health, and shall include but is not limited to the following named plants or any other species of weeds as identified by the New Mexico State University (NMSU) Department of Agriculture:

1) **African Rue (Peganum Harmala)**
2) **Arundo (Arundo Donax)**
3) **Black Henbane (Hyoscyamus Niger)**
4) **Bull Thistle (Cirsium Vulgare)**
5) **Camelthorn (Alhagi Maurorum)**
6) **Canada Thistle (Cirsiom Arvense)**
7) **Cheatgrass (Bromus Tectorum)**
8) **Crimson Fountaingrass (Pennisetum Setaceum)**
9) **Dalmatian Toadflax (Linaria Dalmatica)**
10) **Diffuse Knapweed (Centaurea Diffusa)**
11) **Dryers Woad (Isatis Tinctoria)**
12) **Eurasian Watermilfoil (Myriophyllum Spicatum)**
13) **Field Bind Weed (Convolvulus arvensis).**

14) Flix Weed (Descurainia sophia).
15) Giant Salvinia (Salvina Molesta)
16) Green Foxtail (Setaria Viridis).
17) Halogeton (Halogeton Glomeratus)
18) Hoary Cress. (Caldaria Spp.)
19) Hydrillia (Hydrilla Verticillata)
20) Kochia (Kochia scoparia)
21) Lambsquarter. (Kenopodium spp.)
22) Leafy Spurge (Euphorbia Esula)
23) Locoweed (Astragalus spp.)
24) London Rocket (Sisymbrium irio)
25) Malta Starthistle (Centaurea Melitensis)
26) Meadow Knapweed (Centaurea Pratensis)
27) Musk Thistle (Carduus Nutans)
28) Onionweed (Asphodelus Fistulosus)
29) Oxeye Daisy (Leucanthemum Vulgare)
30) Parrotfeather (Myriophyllum Aquaticum)
31) Perennial Pepperweed (Lepidium Latifolium)
32) Pigweed (Amaranthus spp.)
33) Poison Hemlock (Conium Maculatum)
34) Puncture Vine. (Tribulus Terrestris)
35) Purple Loosestrife (Lythrum Salicaria)
36) Purple Starthistle (Lythrum Salicaria)
37) Purslane (Portulaca oleracea)
38) Quackgrass (Elytrigia Repens)
39) Ragweeds (Ambrosia spp.)
40) Russian Knapweed (Acroptilon Repens)
41) Russian Olive (Elaeagnus Angustifolia L.)
42) Russian Thistle (Salsola pestifer).
43) Sahara Mustard (Brassica Tournefortii)
44) Salt Cedar (Tamarix Spp.)
45) Scotch Thistle (Onoprodum Acanthium)
46) Siberian Elm (Ulmus Pumila)
47) Silverleaf Nightshade (Solanum elaeagnifolium).
48) Spotted Knapweed (Centaurea Biebersteinii)
49) Spurge (Euphorbia esula)
50) Tansy Mustard (Descurainia pinnata)
51) Tree of Heaven (Ailanthus altissima)
52) Yellow Foxtail (Setaria glauca)
53) Yellow Starthistle (Centaurea Solstitialis)
54) Yellow Toadflax (Linaria Vulgaris)

26-03-040. - Unlawful growth or accumulation on tracts.

(a) It shall be unlawful for any owner, lessee or occupant or any agent, servant, representative or employee of any such owner, lessee or occupant having charge or control of any tract within the city to permit or maintain on any such tract, including the area located between the property line and the middle of the alley adjacent to the property line and curb and the area located ten (10) feet

outside the property line where there is no curb, any accumulation of weeds, which in the opinion of the ~~code enforcement supervisor~~ **Code Official** is a fire hazard; it shall also be unlawful for a person having charge or control of any tract within the city to allow any growth of weeds to a greater height**, width, or spread** than six (6) inches on curbs and sidewalks located on their property as well as the area adjacent to and five (5) feet back of the curbs, sidewalks and streets and from all property lines. If a tract has been completely cleared, it must be kept in the same condition as a lot thereafter.

(b) For the purposes of this ordinance, weeds shall be defined as:
all rank, noxious, poisonous, harmful, unhealthful vegetation, or any growth whatsoever of an offensive or unsightly nature, or which is deleterious to health, and shall include but is not limited to the following named plants or any other species of weeds as identified by the New Mexico State University (NMSU) Department of Agriculture:

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19) **Hydrillia (Hydrilla Verticillata)**
20) **Kochia (Kochia scoparia)**
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28) **Onionweed (Asphodelus Fistulosus)**
29) **Oxeye Daisy (Leucanthemum Vulgare)**
30) **Parrotfeather (Myriophyllum Aquaticum)**
31) **Perennial Pepperweed (Lepidium Latifolium)**
32) **Pigweed (Amaranthus spp.)**
33) **Poison Hemlock (Conium Maculatum)**
34) **Puncture Vine. (Tribulus Terrestris)**
35) **Purple Loosestrife (Lythrum Salicaria)**
36) **Purple Starthistle (Lythrum Salicaria)**
37) **Purslane (Portulaca oleracea)**

38) Quackgrass (Elytrigia Repens)
39) Ragweeds (Ambrosia spp.)
40) Russian Knapweed (Acroptilon Repens)
41) Russian Olive (Elaeagnus Angustifolia L.)
42) Russian Thistle (Salsola pestifer).
43) Sahara Mustard (Brassica Tournefortii)
44) Salt Cedar (Tamarix Spp.)
45) Scotch Thistle (Onoprodum Acanthium)
46) Siberian Elm (Ulmus Pumila)
47) Silverleaf Nightshade (Solanum elaeagnifolium).
48) Spotted Knapweed (Centaurea Biebersteinii)
49) Spurge (Euphorbia esula)
50) Tansy Mustard (Descurainia pinnata)
51) Tree of Heaven (Ailanthus altissima)
52) Yellow Foxtail (Setaria glauca)
53) Yellow Starthistle (Centaurea Solstitialis)
54) Yellow Toadflax (Linaria Vulgaris)

PASSED, APPROVED AND ADOPTED this___ day of _____, 2023.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

_____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

_____
Ashley Smith, City Attorney

FILED
12th JUDICIAL DISTRICT COURT
Otero County
7/24/2023 3:10 PM
AUDREY HUKARI
CLERK OF THE COURT
Susan Diane Medina

STATE OF NEW MEXICO
COUNTY OF OTERO
TWELFTH JUDICIAL DISTRICT

STATE OF NEW MEXICO
Plaintiff,
vs.

CARL L. CANTRELL,
Defendant

Cause No. D-1215-LR-2022-00009
Judge Angie K. Schneider

ORDER FINDING DEFENDANT NOT GUILTY AS TO COUNT I; UNLAWFUL GROWTH OR ACCUMULATION ON LOTS, COA 26-03-030; GUILTY AS TO COUNT II; ACCUMULATION OF GARBAGE, REFUSE AND DEBRIS, REMOVAL, COA 14-01-020, AND DECLARING CITY OF ALAMOGORDO ORDINANCE 26-03-030 UNCONSTITUTIONAL AND VOID FOR VAUGENESS

This case having come before the Court on Defendant's appeal *de novo* from the Municipal Court of the City of Alamogordo, New Mexico and having been adjudicated guilty in the lower court as to Count I: Unlawful Growth or Accumulation on Lots in violation of 26-03-030 (*Weeds*); guilty as to Count II: Accumulation of Garbage, Refuse and Debris, Removal in violation of 14-01-020 (*Debris*); the City of Alamogordo (COA) being represented by City Attorney Ashley Smith appearing by video; the Defendant appearing by video *pro se*; the matter having proceeded to bench trial; and the parties having filed their written closing arguments: the court **FINDS AND CONCLUDES:**

PROCEDURAL HISTORY

1. Defendant was charged in Municipal Court on August 15, 2022, via criminal complaint, for Count I; Unlawful growth or accumulation on lots, COA 26-03-030 (*Weeds*); Count II: Accumulation of garbage, refuse and debris, removal, COA 14-01-020 (*Debris*).
2. On October 5, 2022, defendant was found guilty in municipal court on both counts.

3. On October 7, 2022 defendant properly filed *Notice of Appeal* in the 12th Judicial District of New Mexico.
4. On March 22, 2023, a bench trial was held in District Court with the defendant appearing *pro se.*
5. Subsequent to trial, the court found the defendant guilty of Count II: Accumulation of garbage, refuse and debris, removal, in violation of COA 14-01-020.
6. The court reserved ruling on Count I pending written closing arguments to be filed by the parties.
7. The COA filed a written closing argument on March 23, 2023.
8. The defendant filed a written closing argument on April 26, 2023.

STATEMENT OF FACTS

In May of 2022, COA Code Enforcement Officer (CEO) Jeremy Otero inspected the property of Defendant located at 1217 and 1219 Brooks Ave. Alamogordo, NM and determined Defendant was in violation *Weeds* and *Debris*. At trial, Code Enforcement Officer (CEO) Otero testified there was an overgrowth of weeds on Defendant's property and further described anything over six-inches (6"), as in city code, would be in violation of *Weeds*. *See Record* at 1:50:37. CEO Otero took photographs of the alleged violations. The photographs were entered into the COA database and a compliance letter was sent to Defendant. *Id.* at 1:51:00. No response was received from Defendant. *Id.* At a later date, CEO Otero returned to Defendant's property and observed the violations were not remedied. *Id.* at 1:51:31. Defendant was charged with violating the *Weeds* and *Debris* ordinances. The court admitted into evidence the COA's five (5) photographs of Defendant's property. *Infra.*

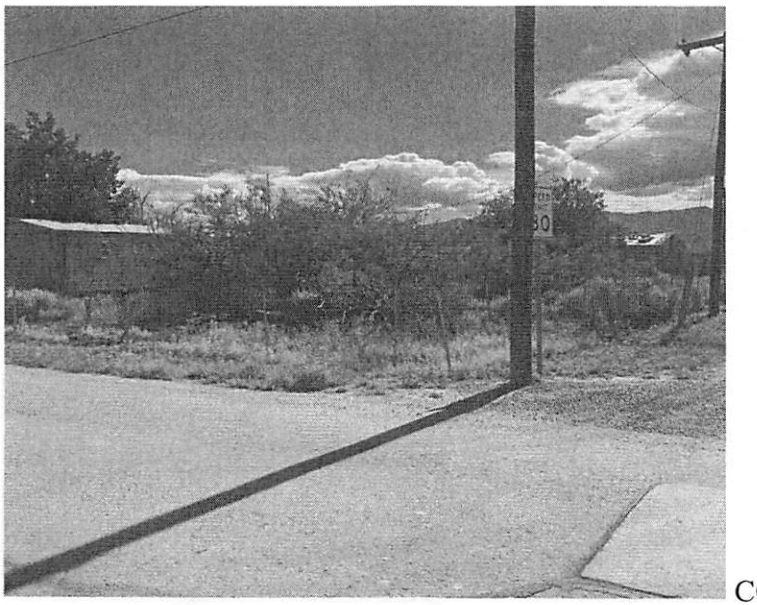


EXHIBIT 1

COA Exhibit 1

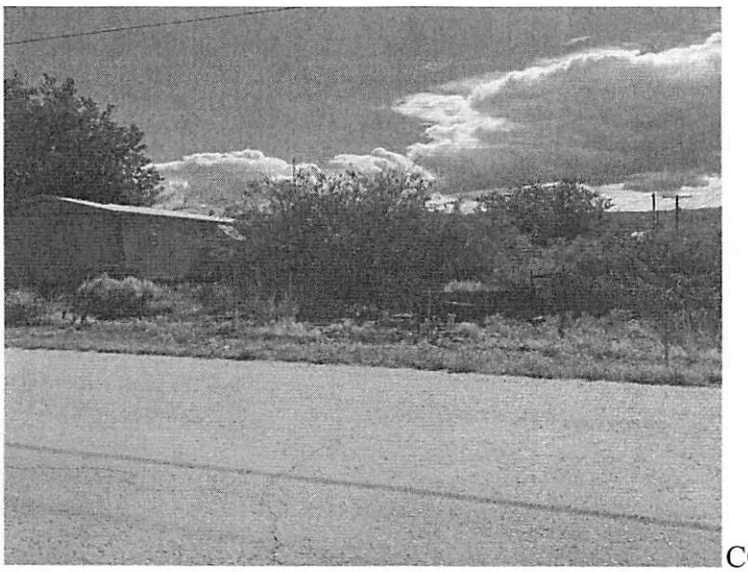
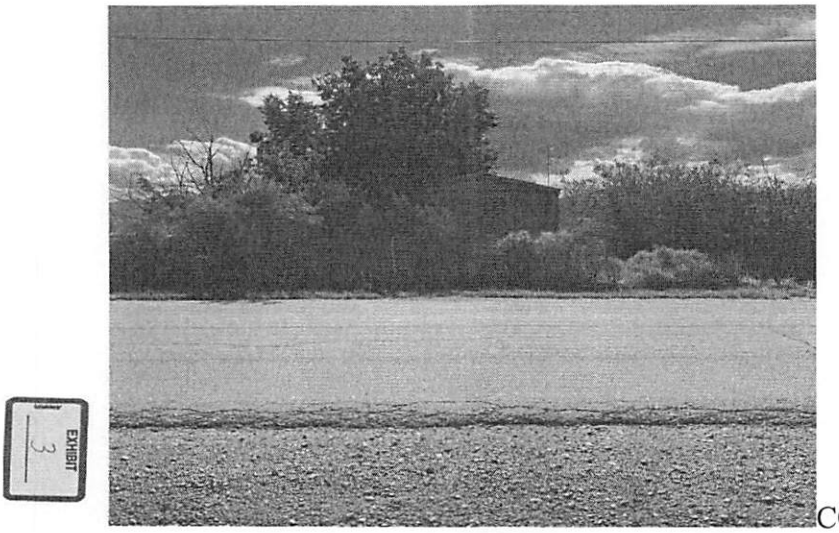


EXHIBIT 2

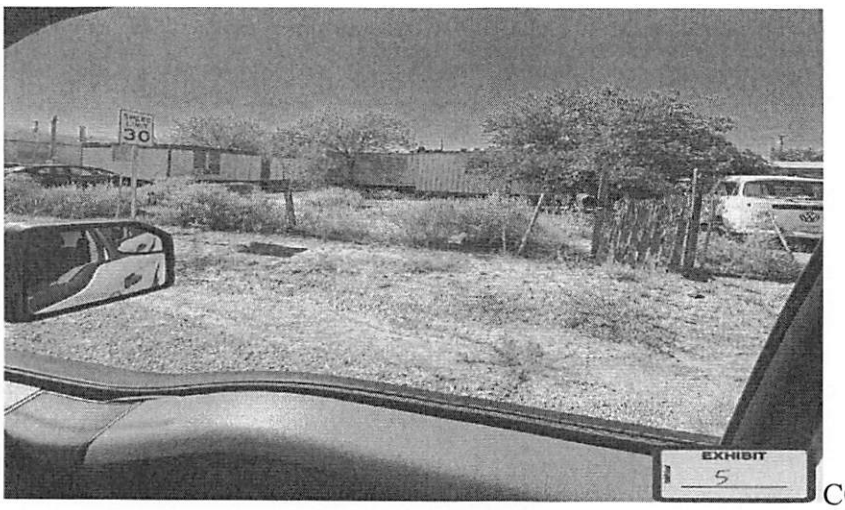
COA Exhibit 2



COA Exhibit 3



COA Exhibit 4



COA Exhibit 5

The "weeds" described by CEO Otero were at least one-foot (12") in height. In addition to the described overgrowth, the violation also consisted of "tumbleweeds piled up". *Id.* at 2:06:11. The "weeds", at the time of trial, were two-feet (2') tall. *Id.* at 2:01:39. There is also debris on the property consisting of "scrap wood and bricks laying around in the yard". *Id.* at 2:05:30. The court observed noticeable debris in the photographs which appear to be the remnants of a burned structure. The court declared the remaining sections of the building to be debris and made a finding that the Defendant had in fact violated the COA *debris* ordinance. This leaves only the *Weeds* violation at issue.

Defendant challenges COA 26-03-030 as unconstitutionally vague as applied to his conduct in this case. *Id.* at 2:35:37. Defendant describes the "weeds" as indigenous plants, necessary for ground cover, and part of his "New Mexico Garden". *Id.* at 2:29:19; 2:31:06; and 2:48:58. The COA relies on the ordinance's definition of weeds to establish a *per se* violation. *Id.* at 3:25:07. The court admitted the language of COA 26-03-030 into evidence.

ISSUE

The issue presented before the Court, is whether COA Ordinance 26-03-030 (*Weeds*) is constitutional on its face. The short answer is no, COA 26-03-030 is unconstitutional, as a matter of law, and as a result void for vagueness. As described below, *Weeds* is, as a matter of law, violative of any Defendant's right to Due Process.

ANALYSIS

As a matter of law, a "[s]trong presumption of constitutionality underlies each legislative enactment, and the party challenging constitutionality has the burden of proving a statute is unconstitutional beyond all reasonable doubt. *See State v. Duttle*, 2017-NMCA-001, ¶ 13. Here, Defendant has the burden of establishing *Weeds* is unconstitutional beyond all reasonable doubt because he is the challenging party. The presumption is *Weeds* is constitutional. *Duttle* at ¶ 13. Viewing the entirety of the testimony and evidence presented at trial, Defendant has satisfied his burden beyond all reasonable doubt.

Although not recognized as an expert, Defendant was permitted, without objection, to explain how the ordinance "defied science" *See record* at 2:28:17. Defendant also presented evidence, through testimony which was not objected to, that the weeds in question were indigenous plants. *Id.* at 2:29:19. Defendant testified the "weeds" were part of his "New Mexico garden". *Id.* at 2:41:26. While the above testimony does not support proof beyond a reasonable doubt, more than sufficient evidence was admitted through the state's recalling of CEO Otero which requires this court to declare COA 26-03-030 unconstitutional for vagueness.

I. Defendant's right to due process is violated by vague terminology within COA 26-03-010.

A statute denies constitutional due process if it is so vague that persons of common intelligence must necessarily guess at its meaning. U.S.C.A. Const. Amend. 14. *See also Duttle*, 2017-NMCA-001, ¶ 12. Vagueness doctrine is based on the principle of fair notice in that no one may be held criminally responsible and subject to criminal sanctions for conduct without fair warning as to the nature of the proscribed activity. *Id.* at ¶ 12. Here, the definition of weeds within

26-03-010, as discussed *infra*, impermissibly requires a person of common intelligence to necessarily guess at its meaning.

Courts "have a duty to construe a statute in such a manner that it is not void for vagueness if a **reasonable and practical** construction can be given to its language" (emphasis added). *Duttle* at ¶ 13 (*citing State v. Segotta*, 1983–NMSC–092, ¶ 5). The Court's "ultimate goal in statutory construction is to ascertain and give effect to the intent of the [governing body]." *See State v. Smith*, 2004–NMSC–032, ¶ 8 (internal quotation marks and citation omitted). The court begins "by looking first to the words chosen by the [governing body] and the plain meaning of [their] language." *State v. Davis*, 2003–NMSC–022, ¶ 6. (internal quotation marks and citation omitted). "When a statute contains language which is clear and unambiguous, [the court] must give effect to that language and refrain from further statutory interpretation". *State v. Johnson*, 2001–NMSC–001, ¶ 6.

COA 26-03-030 reads as follows:

> "*It shall be unlawful for any owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant, having charge or control of any lot within the city to permit or maintain on any such lot, including the area located between the property line and the middle of the alley adjacent to the property, and the area located between the property line and the curb, and the area located ten (10) feet outside the property line where there is no curb,* ***any growth of weeds*** *to a greater height than six (6) inches,* ***or any other accumulation of weeds.*** *It shall also be unlawful for a person having charge or control of any tract within the city to allow* ***any growth of weeds*** *to a greater height than six (6) inches on curbs and sidewalks located on their property as well as the area adjacent to and five (5) feet back of the curbs, sidewalks and streets.* COA 26-03-030 (emphasis added).

Here, the *Weeds* ordinance cannot be given reasonable and practical construction as required under *Duttle* because as is also required under *Johnson*, the language describing the definition of weeds is far from clear and unambiguous. In many cases, courts have upheld weed laws as satisfying the test for vagueness based on the law's definition of "weed". Where the term

"weed" is statutorily defined, it is that definition, and not the relative common definition that applies. Bret Rappaport, AS NATURAL LANDSCAPING TAKES ROOT WE MUST WEED OUT THE BAD LAWS –HOW NATURAL LANDSCAPING AND LEOPOLDS'S LAND ETHIC COLLIDE WITH UNENLIGHTENED WEED LAWS AND WHAT MUST BE DONE ABOUT IT, Vol. 26 J. Marshall L. Rev. 865, 1993. Under COA 26-03-010 weeds are defined as:

> *"Weeds shall mean all rank, noxious, poisonous, harmful, unhealthful vegetation, or* ***any growth whatsoever of an offensive or unsightly nature****, or which is deleterious to health, and shall include but is not limited to the following named plants: Pigusweed (Amaranthus retroflexus) Russian thistle (Salsola pestifer) Ragweeds (Ambrosia ssp.) Lambsquarter (Kenopodium spp.) Kochia".* COA 26-03-010 *(*emphasis added*).*

In giving the ordinance its plain meaning, the court finds it helpful to utilize the common definition of *offensive* and *unsightly*. According to Merriam-Webster, "offensive" includes the following meanings; (a) making attack; aggressive, (b) of relating to, or designed for attack, (c) of or relating to an attempt to score in a game or contest, (e) of or relating to a team in possession of the ball or puck, (f) giving painful or unpleasant sensations, (g) causing displeasure or resentment. *Offensive,* MERRIAM-WEBSTER DICTIONARY ONLINE, https://www.merriam-webster.com/dictionary/offensive, 11Ed. 2023. Unsightly means "not pleasing to the sight; not comely". *Unsightly*, MERRIAM-WEBSTER DICTIONARY ONLINE, https://www.merriam-webster.com/dictionary/unsightly, 11Ed. 2023. Of the possible relevant definitions for offensive, the only plausible uses of the words within the ordinance are either "giving painful or unpleasant sensations", or "causing displeasure or resentment". *Supra.*

When analyzing a vagueness challenge to the constitutionality of a statute, the court applies a two-part test. *See State v. Tsosie*, 2011–NMCA–115, ¶ 31. The court considers whether the statute "(1) fails to provide persons of ordinary intelligence using ordinary common sense a fair

opportunity to determine whether their conduct is prohibited, or (2) fails to create minimum guidelines for ... enforcement ... and thus encourages subjective and *ad hoc* application of the law." *Id.* Notably, the test for vagueness is disjunctive; the ordinance can fail under either part of the two-part test. The *Weeds* ordinance fails under both parts.

II. The Weeds ordinance fails to provide persons of ordinary intelligence using ordinary common sense a fair opportunity to determine whether their conduct is prohibited

In this case, Defendant describes his "weeds" as being part of his "New Mexico" garden. Regardless of the weight the court gives that testimony, the fallacy of the ordinance is made clear. What one considers to be a garden, others consider to be weeds, indigenous or otherwise. In fact, that is precisely what occurred in this instance. Defendant apparently has a fond liking to New Mexico indigenous plants and CEO Otero views the indigenous plants to be offensive and unsightly especially given their height. Just like in *Arlington Heights*, discussed *infra.*, the determination of a violation is wholly dependent upon who is viewing the plant in question.

There is not much in the way of case law in New Mexico which addresses the matter before the court. However, in reviewing weed ordinances, the court notes that other courts disfavor subjective standards. For example, in *Arlington Heights*, the court struck down the city's weed ordinance because improper growth was overgeneralized as all weeds or grasses over twelve-inches in height from the ground. *Arlington Heights v. Schroeder* 328 N.E. 2d 74, 76 (Ill. Ct. App. 1975). There, the court used an insightful analogy by observing that under the city ordinance "an asparagus growing in a rose garden or in a corn field could be considered a weed". J. Marshall L. Rev at 915, fn. 153. In *Newark v. Garfield Development Corp.*, the court struck down an ordinance that stated "all areas shall be kept free from weeds or plant growth which are noxious or detrimental to public health and welfare or a public nuisance defined in article 2". *Newark v. Garfield*

Development Corp., 495 N.E.2d 480, 484 (Ohio Misc. 1986).[1] Even though, 26-03-010 includes a list of particular prohibited vegetation, the language contained in the definition of weeds is a bridge to far.

Similar to *Arlington Heights*, the *Weed* ordinance impermissibly includes any growth whatsoever, of an offensive or unsightly nature. But contrary to *Arlington Heights*, the COA's tolerance level is much less; six-inches (6") as opposed to twelve-inches (12"). And just as in *Arlington Heights*, the court finds this terminology to be an overgeneralization resulting in overbroad language prohibiting a person of ordinary intelligence using ordinary common sense a fair opportunity to determine whether their conduct is prohibited.

III. The Weeds ordinance fails to create minimum guidelines for enforcement and thus encourages subjective and ad hoc application of the law.

In searching for cases pertaining to weed ordinances, the court agrees that the authority given to weed enforcers is broad and places great responsibility upon their supervisors. They must exercise caution and discretion in the use of such authority in order to afford protection to themselves as public officers and to the landowners whose property is affected. *See* Opinion of the Attorney general No. 466, (MT. 1942), p.80

The *Weed* ordinance is absent guidelines necessary to assist a CEO in determining unsightliness. Without an exact definition of what type of vegetation is prohibited (any growth), weed laws violate due process because they allow law enforcement officials and judges to rely on their own notions of what is right and wrong. *See* J. Marshall L. Rev at 916 (citing *Kolender v. Lawson*, 461 U.S. 352 358 (1983). Additionally, the CEO lacks sufficient training to perform the

[1] The Newark court held that which appears to be contained without exception in all weed control legislation but which is lacking in the ordinance in question is the *definition of the particular vegetation which is sought to be controlled or a mechanism by which the particular vegetation is designated to be noxious* and therefore subject to government control. *Id.* at 483 (emphasis added).

necessary function of weed enforcement. For example, CEO Otero testified that any growth over 6" would be violative of the COA ordinance. *See Record* at 1:50:07. While this is true under a strict reading of the ordinance, any growth arbitrarily brings many landowners into potential litigation at the whim of any CEO. Moreover, CEO Otero was unable to identify the "weeds" central to this dispute. *Id.* at 3:38:41. This clearly demonstrates the vagueness created by the definition. Even though CEO Otero could not determine the identity of the "weeds", he deemed them unsightly vegetation exceeding a height of over six-inches 6". This forces the court to surmise, if CEO Otero were also to view oleanders, rose buses, or perhaps cacti to be unsightly, then those plants would also be subject to enforcement once their height reached six-inches (6").

The sole guideline in the *Weed* ordinance, helpful in determining the overgrowth of weeds, merely states "any growth of weeds to a greater height than six (6) inches". And as described above, the portion of the ordinance stating "any growth whatsoever of an offensive or unsightly nature" is an overgeneralization.

Thus, the overgeneralization and lack of clearly defined standards in the *Weed* ordinance impermissibly encourages subjective and *ad hoc* application of the law. *See Duttle* ¶ 13 (holding minimum guidelines for enforcement is the second part of the two-part test under vagueness); *See also State ex rel. Children, Youth & Families Dep't v. Shawna C.*, 2005–NMCA–066, ¶ 32, 137 N.M. 687, 114 P.3d 367 (noting that due process also requires that the statute not encourage arbitrary or discriminatory enforcement).

IT IS THE FINDING OF THE COURT that Defendant is GUILTY as to Count II: *Debris*; the City of Alamogordo Ordinance 26-03-030 is unconstitutional and void for vagueness; the Defendant is NOT GUILTY as to Count I: *Weeds.*

IT IS THEREFORE ORDERED the matter is remanded to the Municipal Court of Alamogordo for imposition of a final judgement consistent with this order.

Angie K. Schneider
District Court Judge, Division IV

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 09/28/2023 **Report No:** 6.

Submitted By: Nancy Beshaler

Subject: Consider, and act upon, granting a Permanent Easement for Facilities/Equipment on a tract of land located on West Twelfth Street for the Mescalero Apache Telephone 12th Street ReGen Site. *(Nancy Beshaler, Public Works Director)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve the Permanent Easement for Facilities/Equipment.

Background: Mescalero Apache Telecom (MATI) is requesting the City grant them a permanent communications facilities easement on a tract of land located on West Twelfth Street, east of the Charlie T. Lee Memorial Relief Route. The purpose of the easement is for (1) the right of ingress and egress to and from the easement by reasonable routes across City property; and (2) the right to place on or below the surface of the easement handholes, cable, conduit, connector terminals, testing terminals, route markers, etc. A copy of the easement and the surveyor's vicinity map are attached. The easement document has been reviewed and approved by the City Attorney.

Easement # 1 Executed: / / 2023
Job# 22-277

PERMANENT EASEMENT FOR FACILITIES/EQUIPMENT

THIS EASEMENT, entered into by **The City of Alamogordo New Mexico, 2600 N. Florida Avenue, Alamogordo, New Mexico 88310,** the undersigned**,** hereinafter referred to as GRANTOR, and **MESCALERO APACHE TRIBE USA**, **P.O. Box 227, Mescalero, New Mexico 88340,** hereinafter referred to as GRANTEE, wherein GRANTOR, in consideration of the sum of TEN and 00/100 DOLLARS ($10.00), and/or other valuable consideration, receipt of which is hereby acknowledged, do by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto GRANTEE, its affiliates, its respective successors, assigns and licensees, a permanent perpetual easement to construct, reconstruct, install, modify, supplement, maintain, repair, replace, operate and/or remove facilities for the transmission of signals used in the provision of communication, video and/or information services and/or any other services or uses for which such facilities may be used including, but not limited to shelters, fences, gates, conduit, ducts and handholes, equipment cables, wires, fiber optic cables, marker posts and signs, and other related or useful equipment, fixtures, appurtenances, improvements and facilities, together with the right to have commercial electrical and natural gas service extended in, under, over, upon and across land situated in Otero County, State of New Mexico and which is part of GRANTOR's land described as follows:

A communications facilities easement on a tract of land located on West Twelfth Street, Alamogordo, Otero County, New Mexico, East of the Charlie T. Lee Memorial Relief Route within Section 25, Township 16 South, Range 9 East, NMPM, being more particularly described as follows:

SEE ATTACHMENT "A"

TO HAVE AND TO HOLD same, with all rights and appurtenances to the same belonging, unto GRANTEE, its successors, assigns and licensees, until the use of the easement is relinquished or abandoned, including (1) the right of ingress and egress to and from the easement by reasonable routes across Grantor's property; (2) the right to place on or below the surface of the easement handholes, cable, conduit, connector terminals, testing terminals, route marker, etc.

GRANTEE, its successors, assigns and licensees shall promptly repair and restore the property following construction and maintenance work. Further, GRANTOR reserves the right to use and enjoy its interests in the easement area insofar as the exercise thereof does not endanger or interfere with the construction, installation, repair, operation, maintenance and removal of said facilities**.**

GRANTOR warrants that it is the owner of the land here conveyed and has the right to make this conveyance and receive the payment therefor, and GRANTOR covenants that GRANTEE, its successors, assigns and licensees, may quietly enjoy the premises for the uses herein stated. GRANTOR warrants that it has no knowledge of environmental hazards affecting the easement, except those disclosed to GRANTEE; GRANTOR agrees to hold GRANTEE harmless from liability arising from such undisclosed hazards.

Signed and executed this _____ day of _____ 2023.

THE CITY OF ALAMOGORDO NEW MEXICO

_____ _____

SIGN Susan L. Payne **TITLE** Mayor

ACKNOWLEDGEMENT

STATE OF NEW MEXICO

COUNTY OF OTERO

BEFORE ME, the undersigned authority, on this day personally appeared Susan L. Payne, known to me to be the person whose name is subscribed to the foregoing Easement and who acknowledged to me that he/she is the Mayor of the Commission of the City of Alamogordo and said Easement was signed and sealed on behalf of said City by authority of its Board for the uses, purposes and considerations therein expressed for and on behalf of said City.

Given under my hand and seal of office this the_____day of _____ 2023.

_____

Notary Public of the State of New Mexico.

My Commission Expires _____.

ATTACHMENT "A"

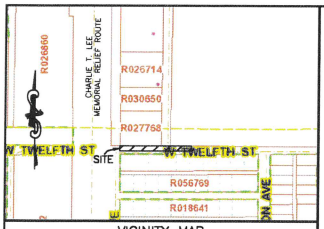
The Property: Twelfth Street

The following described real property in the Section 25, Township 16 South, Range 9 East, N.M.P.M. of the U.S.G.L.O Survey all in Alamogordo, Otero County, New Mexico.

THE EASEMENT: A TEN (10.00) FOOT WIDE UTILITY EASEMENT

BEGINNING AT THE NORTHWEST CORNER OF THE UTILITY EASEMENT DESCRIBED HEREWITH, SAID CORNER HAVING A NORTH LATITUDE OF 32°54'09.558" AND A WEST LONGITUDE OF 105°58'11.389", THENCE: RUNNING FROM SAID POINT OF BEGINNING, N89°35'03"E, 375.00' TO THE NORTHEAST CORNER, THENCE: S00°24'57"E, 10.00' TO THE SOUTHEAST CORNER, THENCE: S89°35'03"W, 375.00' TO THE SOUTHWEST CORNER, THENCE: N00°11'20"W, 10.00' TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 3,750 SQUARE FEET OF LAND MORE OR LESS. (0.086 ACRES MORE OR LESS)



VICINITY MAP

ACCEPTANCE BY THE CITY OF ALAMOGORDO

COUNTY OF OTERO SS

STATE OF NEW MEXICO

THIS DEDICATION OF EASEMENT WITHIN THE BOUNDS OF WEST TWELFTH STREET FOR AN UTILITY EASEMENT IS ACCEPTED BY THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO IS ON THIS

_____ DAY OF _____, 20_____ SUBMITTED AND APPROVED.

_____
CITY MANAGER

ATTEST: _____
CITY CLERK

COUNTY OF OTERO

SS

STATE OF NEW MEXICO

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED

FOR RECORD ON THE _____ DAY OF _____

A.D. 202____, AT _____ O'CLOCK _____ AND WAS

DULY RECORDED AS INSTRUMENT NO. _____

IN BOOK _____, PAGE _____ OF THE RECORDS

OF OTERO COUNTY, NEW MEXICO.

WITNESS MY HAND AND SEAL OF OFFICE
ROBYN HOLMES
COUNTY CLERK, OTERO COUNTY, NEW MEXICO

_____
DEPUTY

DEDICATION AND AFFIDAVIT:

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNER(S) HAVE CAUSED TO BE DEDICATED THOSE EASEMENTS AS SHOWN HEREON. THIS DEDICATION IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE WISHES AND DESIRES OF SAID OWNER(S).
UTILITY COMPANIES ARE GRANTED EASEMENTS AS SHOWN AND FOR EXISTING UTILITIES. OTHER EASEMENTS ARE GRANTED IF SHOWN.

THIS DIVISION CONTAINS 3,750 SQUARE FEET MORE OR LESS, 0.086 ACRES OF LAND MORE OR LESS AND LIES WITHIN THE PLANNING AND PLATTING JURISDICTION OF
THE COUNTY OF OTERO AND THE STATE OF NEW MEXICO.

_____
CITY OF ALAMOGORDO, REPRESENTATIVE

COUNTY OF _____

SS

STATE OF _____

THE FOREGOING INSTRUMENT WAS SWORN, ACKNOWLEDGED AND

SUBSCRIBED BEFORE ME BY _____

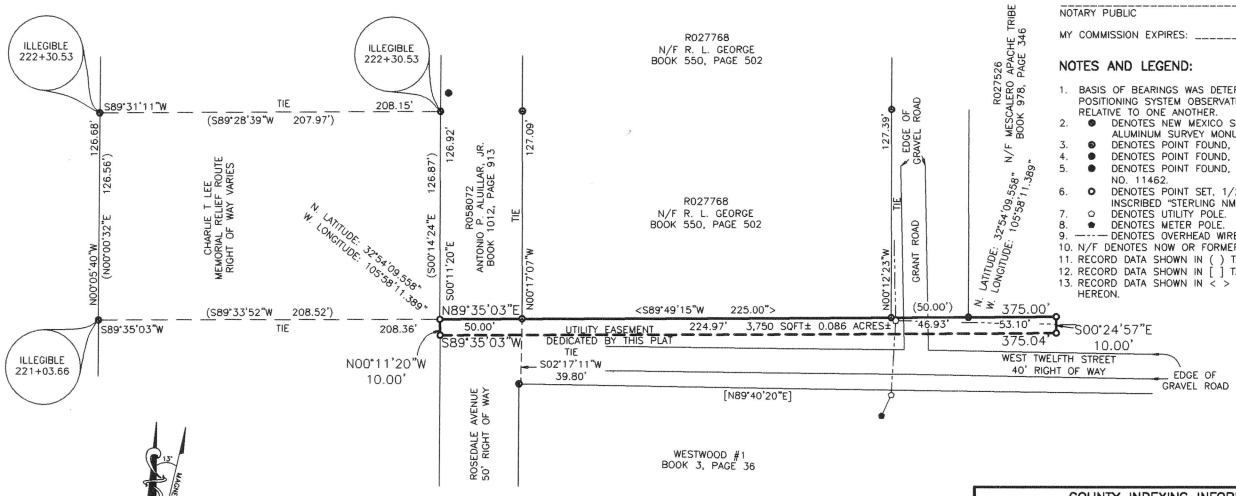
THIS _____ DAY OF _____, 202_____.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

PLAT REFERENCES:

1. "NEW MEXICO STATE HIGHWAY COMMISSION RIGHT OF WAY MAP NEW MEXICO PROJECT NO. SP-ST-4916(201) PHASE 3" BY RUAN S. BACIGALUPA, NMPS NO. 11462, DATED APRIL 08, 1998.
2. "WESTWOOD SUBDIVISION UNIT 1" BY QUINTON E. DANIEL, NMPE AND LS NO. 1359. FILED IN THE OFFICE OF THE OTERO COUNTY CLERK AS RECEPTION NO. 22515, IN BOOK 3, PAGE 36.



GRAPHIC SCALE

20 0 20 40 80

(IN FEET)
1 INCH = 40 FEET

NOTES AND LEGEND:

1. BASIS OF BEARINGS WAS DETERMINED FROM (GPS) GLOBAL POSITIONING SYSTEM OBSERVATIONS. ALL BEARINGS SHOWN ARE RELATIVE TO ONE ANOTHER.
2. ● DENOTES NEW MEXICO STATE HIGHWAY COMMISSION ALUMINUM SURVEY MONUMENT FOUND.
3. ● DENOTES POINT FOUND, 1" IRON PIPE.
4. ● DENOTES POINT FOUND, 3/4" IRON PIPE.
5. ● DENOTES POINT FOUND, 5/8" REBAR WITH ALUMINUM TAG NO. 11462.
6. O DENOTES POINT SET, 1/2" REBAR WITH SURVEY CAP INSCRIBED "STERLING NMPS 11010".
7. ○ DENOTES UTILITY POLE.
8. ● DENOTES METER POLE.
9. ——— DENOTES OVERHEAD WIRES.
10. N/F DENOTES NOW OR FORMERLY.
11. RECORD DATA SHOWN IN ( ) TAKEN FROM PLAT REFERENCE NO. 1.
12. RECORD DATA SHOWN IN [ ] TAKEN FROM PLAT REFERENCE NO. 2.
13. RECORD DATA SHOWN IN < > TAKEN FROM DEEDS SHOWN HEREON.

SURVEYOR'S CERTIFICATE:

I, LARRY L. STERLING, A REGISTERED PROFESSIONAL SURVEYOR, DO HEREBY CERTIFY THAT ON AUGUST 21, 2023 AN ON THE GROUND FIELD SURVEY OF THIS TRACT OF LAND WAS CONDUCTED BY ME OR UNDER MY DIRECT SUPERVISION, THAT I AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THIS SURVEY AND PLAT MEET OR EXCEED THE MINIMUM STANDARDS FOR SURVEYING IN THE STATE OF NEW MEXICO. I FURTHER CERTIFY THAT THIS SURVEY IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT.

_____
LARRY L. STERLING, PROFESSIONAL SURVEYOR
NEW MEXICO REGISTRATION NO. 11010

COUNTY INDEXING INFORMATION & TITLE BLOCK

RECORD OWNER(S): CITY OF ALAMOGORDO, SEE PLAT REFERENCE NO. 2

LOCATION: LOCATION: WEST TWELFTH STREET, ALAMOGORDO, OTERO COUNTY, NEW MEXICO, EAST OF THE CHARLIE T. LEE MEMORIAL RELIEF ROUTE. WITHIN SECTION 25, TOWNSHIP 16 SOUTH, RANGE 9 EAST, NMPM.

ALAMOTERO
LAND SURVEYORS, LLC
P.O BOX 1749 • 1101 N FLORIDA
ALAMOGORDO, NM 88311-1749
OFFICE • (575) 437-7074
FAX • (575) 437-7075

DEDICATION OF EASEMENT SURVEY
NOT A SUBDIVISION
FOR
MESCALERO APACHE TELECOM, INC.

Date: SEPTEMBER 2023	PAGE 1 OF 1
Drawn By: O.COLE	Plat No. 23168

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 09/29/2023 **Report No:** 7.

Submitted By: Britney Ybarra

Subject: Consider, and act upon, grant funding from the North Central New Mexico Economic Development District (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA) for the American Rescue Plan Sub-Award. The total amount budgeted is $73,637.12. *(Magdalena Morales, ASC Manager, and Veronica Ortega, Community Services Director)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:
The aggregate amount of $73,637.12 is to be derived from the following sources:
IIIB (Transportation): Contract Amount: $48,344.00
III-C1 (Congregate Meals): Contract Amount: $6,144.80
III-C2 (Homebound Meals): $19,148.32

Recommendation: Approve the grant funding.

Background: The American Rescue Plan Sub-Award (ARPA) is a three-year grant. ALTSD/AAA contracts on an annual basis. A new contract will be issued with the remaining balance each new fiscal year until the contract expires through 2024.

Contract No. 2023-24-64012-ARP

North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging

AMERICAN RESCUE PLAN SUB-AWARD

This Agreement is made and entered into this 1st day of October 2023, by and between the North Central New Mexico Economic Development District (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as the "Agency" and City of Alamogordo, hereinafter referred to as the "Subrecipient Contractor."

The Agency's Senior Citizens Services program is designed to promote the development of a comprehensive and coordinated service delivery system to meet the needs of older individuals (age 60 and older). This agreement provides a mechanism for the creation of an individualized network of community resources on a client-by-client basis through the Older Americans Act, as amended, the State of New Mexico Aging and Long-Term Services Department, and the Agency.

1. SCOPE OF SERVICES

A. Services. The Subrecipient Contractor agrees to provide service(s) to eligible consumers as identified in accordance with the Subrecipient Contractor application or Service Delivery Plan, all required assurances, licenses, and certifications, as applicable.

B. Service Area: The Subrecipient Contractor agrees to provide service(s) to eligible consumers in the service area as identified in the Subrecipient Contractor application or Service Delivery Plan attached by reference.

C. Deliverables. The Subrecipient Contractor shall provide services based on the assessed need of the community and individuals receiving services under this Agreement and as identified in the Subrecipient Contractor application or Service Delivery Plan and attached by reference. The service units and consumers detailed in the Service Delivery Plan and Budget sections are estimates. Budgeted services are to be provided in accordance with the Aging and Long-Term Services Department (ALTSD) Units of Service Definitions; to be monitored through the Subrecipient Contractor's submission of monthly WellSky data, activity reports, and through Agency monitoring reviews. Final determination of service units and consumer performance measures shall be established by the ALTSD, and should the Contractor not meet the established units, reimbursement requests should reflect the same.

D. Targeting: Target populations include persons aged 60 or older and their spouses of any age, younger disabled persons who reside with persons aged 60 or older, caregivers of any age who care for persons aged 60 or older, caregivers aged 60 or older who care for children or younger disabled persons, and the recipients of their care.

Per the Older Americans Act, an effort must be given to serving eligible persons with the greatest social or economic need, with particular attention to minority individuals with low incomes. Efforts must also be given to targeting individuals residing in rural and frontier areas, individuals with limited English proficiency, and individuals with Alzheimer's disease and related disorders, with severe disabilities or at-risk of institutionalization and their caregivers.

E. Payment for Services: For the services determined by the Agency to be satisfactorily provided by Subrecipient Contractor hereunder, the Agency shall pay the Subrecipient Contractor, during the term, an aggregate amount, including gross receipts tax, not to exceed **$73,637.12**. Said aggregate amount is to be derived from the following sources.

    1. **$48,344.00** from ARP Title III-B of the OAA [Assistance Listing Number 93.044].

    2. **$6,144.80** from ARP Title III-C1 of the OAA [Assistance Listing Number: 93.045].

    3. **$19,148.32** from ARP Title III-C2 of the OAA [Assistance Listing Number: 93.045].

    4. **$0.00** from ARP Title III-D of the OAA [Assistance Listing Number: 93.043].

    5. **$0.00** from ARP Title III-E of the OAA [Assistance Listing Number: 93.052]; and

F. Payment for services shall be consistent with all applicable federal and state laws and regulations.

G. Payments to the Subrecipient Contractor will be made after receipt of funds by the Agency. Any expenditure made prior to the receipt of funds or pending the Agency's approval shall be made at the Subrecipient Contractor's own risk, and the Agency shall not be liable for such expenditures.

H. Payments to the Subrecipient Contractor may be withheld or denied by the Agency for expenditures which are not authorized by, or are in excess of, the regulations, terms and conditions contained in this Agreement or for expenditures which are not properly documented or substantiated by the Subrecipient Contractor. The Subrecipient Contractor agrees to hold the Agency harmless against all audit exceptions arising from the Subrecipient Contractor's violation and shall make restitution to the Agency of such amounts of money due to the Subrecipient Contractor's non-compliance.

I. Subrecipient Contractor must submit a detailed statement accounting for all services performed and expenses incurred. Reimbursements shall be made by the Agency on a monthly basis upon receipt of monthly expenditures and reports furnished by the Subrecipient Contractor. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Subrecipient Contractor that payment is requested, it shall provide the Subrecipient Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Subrecipient Contractor may take to provide remedial action. Upon certification by the Agency that the services have been provided and accepted, payment shall be tendered to the Subrecipient Contractor within thirty days after the date of acceptance.

J. Payments to the Subrecipient Contractor will be made electronically through the Automated Clearing House (ACH) Network.

K. Subrecipient Contractor shall track and report all information needed for the State Program Report for Administration for Community Living (ACL) through the Older Americans Act Performance System (OAAPS). Subrecipient Contractor shall adopt the standard universal consumer assessment instrument provided by the Aging & Long-Term Services Department to capture information for all data fields on the tool, as required by OAAPS and state and federal reporting requirements.

2. TERMS OF AGREEMENT

In addition to the other provisions contained in this Agreement, the parties agree to the following:

A. The Subrecipient Contractor agrees to:

1. Provide services in accordance with current or revised Agency and State of New Mexico Aging and Long-Term Services Department policies and the OAA.
2. Target services to older individuals with greatest economic and social need, including low-income individual, low-income minorities, older individuals at risk of institutional placement, individuals with limited English proficiency, and older individuals residing in rural areas, as applicable.
3. Record timely and accurate consumer service delivery into WellSky Aging & Disabilities Database. Data should be recorded daily.
4. Submit timely and accurate consumer/client assessment and reassessment documentation (including transmittals), on the day conducted.
5. Ensure consumer contact and demographic information is accurate in WellSky Aging & Disabilities database.
6. Encourage client contributions (program income) on a voluntary and confidential basis. Such contributions will be properly safeguarded and accurately accounted for as receipts and expenditures on its financial reports, if they are not required to be forwarded to the Agency. Client contributions (program income) will be reported fully and in the service category where generated, as required, to the Agency. Subrecipient Contractor agrees to

expend all program income to expand or enhance the program/service under which it is earned.

7. Maintain communication and correspondence with the Agency concerning clients' status, emergency situations, and program operations.
8. Submit contingency plan to address unforeseen circumstances when service delivery is threatened.
9. Submit timely and accurate information necessary for reimbursement.
    a. All service performance data should be verified and reconciled by the Subrecipient Contractor prior to submitting the Verification Statement and the Agency Summary Report (ASR) to the Non-Metro AAA office by the 5th business day of the month. The Agency Summary Report (ASR) is the official document used to initiate reimbursement of services provided by the Subrecipient Contractor and must be reviewed and certified by the Agency each month.
    b. Subrecipient Contractors shall invoice the Agency on or before the 5th business day of the month for prior month expenditures. The Agency may extend these dates on a case-by-case basis if the Subrecipient Contractor reports a hardship. However, the Agency will not accept, process, or pay invoices submitted fifteen (15) days or more after the deadline(s) until the next reimbursement cycle if within the fiscal year. The Subrecipient Contractor shall submit to the Agency utilizing OAA-SYS system provided by the Agency.
    c. Supporting documentation to validate reported expenses to include general ledger, purchase orders, and invoices.
    d. Quarterly financial reports, to include approved budget, year-to-date expenses, year-to-date revenue, are due by the 15th business day of the month following the end of the quarter.
    e. Quarterly program narrative reports by the 15th business day of the month following the end of the quarter.
10. This agreement does not guarantee a total level of reimbursement other than for individual units/services authorized, contingent upon availability of Federal funds.
11. Subrecipient Contractor employees shall not solicit nor accept gifts or favors of monetary value by or on behalf of clients as a gift, reward, or payment.

B. The Agency further abides to:

1. Review and process consumer intake and assessment documents completed by the Subrecipient Contractor, as applicable, to determine eligibility for service provision.
2. Maintain communication and correspondence concerning consumers' status.
3. Provide timely consultation and technical assistance to the Subrecipient Contractor as requested and as available.

4. Conduct quality-assurance procedures, which may include on-site visits, monitoring, and/or compliance assessments to ensure health, safety, and quality services are being provided.
5. Provide written policy, procedures and standard documents concerning client authorization to release information (both a general and medical/health related release), ability to contribute to the cost of services provided, quality survey instrument, and complaints/grievances and appeals to all consumers.
6. Employ a full-time manager and financial individual to oversee funds contracted through Non-Metro AAA.

3. ASSURANCES

A. *Americans with Disabilities Act of 1990 –*

The Subrecipient Contractor shall comply with the requirements, established under the Americans with Disabilities Act, in meeting statutory deadlines under the Act as they pertain to operation for employment, public accommodations, transportation, state and local government operations and telecommunications.

B. *Section 504 of the Rehabilitation Act of 1973 –*

The Subrecipient Contractor shall provide that each program activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities in keeping with 45 CFR, Part 84.11, etc. Seq., and as provided for in Section 504 of the Rehabilitation Act of 1974, as amended. When structural changes are required, these changes shall be in keeping with 45 CFR, Part 74. The Subrecipient Contractor shall ensure that benefits and services available under the agreement are provided in a non-discriminatory manner as required by Title VI of the Civil Rights Act of 1964, as amended.

C. *Age Discrimination in Employment Act of 1967 –*

The Subrecipient Contractor shall comply with the Age Discrimination in Employment Act of 1967 (29 USC 621, etc. Seq.).

D. *Drug Free Workplace*

The Subrecipient Contractor shall comply with the Drug-Free Workplace Act of 1988.

E. *Certification Regarding Debarment*

The Subrecipient Contractor shall certify annually that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.

F. *Financial Management*

The Subrecipient Contractor must implement financial management standards in accordance with the Federal standards outlined in the United States Department

of Health and Human Services Federal Regulation 45 CFR Part 75, 2 CFR Uniform Grants Guidance Part 200 and New Mexico Fiscal Requirements.

G. *Budget Adjustment*

The Subrecipient Contractor shall submit to the Agency, as necessary, any budget adjustment request(s) for review and approval. Under no circumstances may budget adjustment request(s) be submitted to the Agency later than March 15th unless authorized by the Agency in writing. The Agency shall review and approve or deny budget adjustment request(s) at its sole discretion.

H. *Incentive Compensation*

Use of federal and state funds for incentive compensation to employees based on cost reduction, efficient performance, suggestion awards, safety awards, etc. is un-allowable and will not be recognized by the Agency as a reimbursable expense. The use of federal or state funds for staff recognition or employee gifts is also unallowable.

I. *Independent Audit*

The Subrecipient contractor shall provide a financial and compliance audit report(s) to the Agency covering the period of October 1, 2023, through June 30, 2024. The Subrecipient Contractor is considered an independent contractor and is subject to audit requirements under Title 2, Subtitle A, Chapter II, Part 200 of Code of Federal Regulations and Government Audit Standards, regardless of the amount of federal funding the Subrecipient Contractor receives.

1. The Audit report(s) provided to the Agency must include a copy of the Auditor's management letter.
2. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-1, Title IIIC-2, Title IIID, Title IIIE, NSIP, etc.), which facilitates a reconciliation of audited costs to the final report.
3. Submittal of the audit report for government entities shall be within ten (10) working days after release by the New Mexico State Auditor's Office. For non-governmental entities, the audit report is due four (4) months after the end of the entity's fiscal year.

J. *Equal Opportunity Compliance*

The Subrecipient Contractor agrees to abide by all federal and state laws, rules, regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Subrecipient Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be

otherwise subjected to discrimination under any program or activity performed under this Agreement. If Subrecipient Contractor is found not to be in compliance with these requirements during the life of this Agreement, Subrecipient Contractor agrees to take appropriate steps to correct these deficiencies.

K. *Compliance with Aging and Long-Term Services Department Functions.*
The Subrecipient Contractor shall perform in accordance with the Federal Older Americans Act (OAA) and directives of the U.S. Administration on Aging; Rules, regulations, State Plan, policies and procedures established by the Aging and Long-Term Services Department, for the provision of services, and administration of programs funded under the OAA and the New Mexico State Legislature; New Mexico Administrative Code, Title 9, Chapter 2, Parts 1-24; The Aging & Long-Term Services Act, NMSA 1978, Sections 9-23-1 et seq.; The New Mexico Environment Department Food Establishment Rules and Regulations; Dietary Guidelines for Americans; Dietary Reference Intakes (DRIs); the approved Agency Area Plan, Agency Policy and Procedures; the approved Service Plan; State and Federal emergencies and public health/emergency orders enacted by the Governor of the State of New Mexico; Title II Part 200 of the Code of Federal Regulations; and the terms and conditions of this Agreement.

L. *Non-Discrimination Service Delivery.*
The Subrecipient Contractor, in determining (a) the services or other benefits provided under this Agreement, (b) the class of individuals to whom, or situation in which such services or other benefits will be provided under this program, or (c) the class of individuals to be afforded an opportunity to participate in the program, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program in respect to individuals of a particular race, religion, color, national origin, ancestry, sex, sexual preferences, age or handicap.

M. *Targeting and Outreach*.
The Subrecipient Contractor shall engage in targeting and outreach activities, as required by the OAA, to all potential recipients of services as referenced in section 2.A.2. The Subrecipient Contractor shall conduct ongoing community outreach to assess needs and inform potential recipients of available services. The Subrecipient Contractor shall report all activities in its quarterly program reports submitted to the Agency.

N. *Consumer Feedback*.
The Subrecipient Contractor shall utilize the standardized survey instrument to obtain and evaluate consumer opinions of the quality of services received.

O. *Emergency Preparedness Requirements*.

The Subrecipient Contractor shall monitor and notify the Agency of any situation which has the potential to be an emergency in which older adults or adults with disabilities may be adversely affected.

a. Subrecipient Contractor shall complete and submit the Agency's Contingency & Emergency Preparedness Response Plan annually.
b. Subrecipient Contractor shall provide and update emergency contact information for all emergency management personnel in a format provided by the Agency; currently contained within the Contingency & Emergency Preparedness Response Plan.
c. Subrecipient Contractor agrees to notify the Agency of service modifications in the event of a holiday, emergency, or other situation as soon as those service modifications are known.
d. Subrecipient Contractor agrees to notify the Agency of emergency situations and events as soon as they are known, regardless of service modification.
e. Subrecipient Contractor shall ensure continuation of services during emergency events to the extent possible and will request assistance from the Agency in the event it cannot perform this requirement.
f. Subrecipient Contractor agrees to perform well-check calls to consumers during emergency events, regardless of the open or closed status of facilities and services. Subrecipient Contractor agrees to utilize well-check call scripts and systems provided by the Agency in this process. Subrecipient Contractor will request assistance from the Agency in the event it cannot perform this requirement.

4. TERM

This Agreement shall begin on October 1, 2023, and terminate on June 30, 2024, unless terminated pursuant to Paragraph 5, below or for any other reason allowed by law.

5. TERMINATION

A. This Agreement may be terminated by the Agency without cause upon written notice delivered to the Subrecipient Contractor at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance prior to the date of termination. This Agreement may be terminated immediately, upon written notice to the Subrecipient Contractor, if the Subrecipient Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Subrecipient Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein, or if the Subrecipient Contractor fails to comply with any of the terms contained herein or is in breach of this Agreement as set forth in Paragraph 6, below. This provision is not exclusive and does not waive the Agency's

other legal rights and remedies caused by the Subrecipient Contractor's default or breach of this Agreement. This Agreement may also be terminated by the Subrecipient Contractor upon thirty (30) days written notice to the Agency.

B. Termination Management. Immediately upon receipt of notice of termination of this Agreement by either the Agency or the Subrecipient Contractor, the Subrecipient Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and client records generated under this Agreement and any non-expendable personal property or equipment purchased by the Subrecipient Contractor with contract funds shall become property of the Agency upon termination. On the date the notice of termination is received, the Subrecipient Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Subrecipient Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Subrecipient Contractor under the paragraph of this Agreement regarding financial records.

6. BREACH OF AGREEMENT BY SUBRECIPIENT CONTRACTOR

A. In addition to the breach of any term, provision, covenant, agreement, or obligation of Subrecipient Contractor contained in this Agreement, the following constitute a breach of Subrecipient Contractor's obligations and duties hereunder:

1. The Subrecipient Contractor's failure to provide proof of insurance coverage sufficient to meet the requirements of this Agreement or any applicable federal, state, or local laws, rules, or regulations.
2. The Subrecipient Contractor's failure to adequately safeguard its assets in such a manner that would adversely impact the interests of the intended recipients of the
services to be performed, hereunder, and jeopardize their receipt of such services.
3. Unless otherwise duly authorized in writing by the Agency, the Subrecipient Contractor's failure to meet line-item budgetary ceilings set forth in its approved budget for delivering the services contemplated hereunder.

B. Upon a determination by the Agency that the Subrecipient Contractor shall be in breach of this Agreement, the Agency shall provide written notice to the Subrecipient Contractor specifying the facts and circumstances constituting the breach(es) and advising the Subrecipient Contractor that such breach(es) must be cured to the Agency's satisfaction within thirty (30) days from the date of such written notice. If

such cure is not timely made, then the Agency may elect to implement one or more of the following intermediate sanctions:

1. The Agency may install a program monitor for a specified time period to closely observe the Subrecipient Contractor's efforts to comply with obligations remaining under this Agreement. Unless otherwise deemed confidential under applicable law, such monitor shall have authority to review any or all the Subrecipient Contractor's records, policies, procedures, and financial records germane to the Subrecipient Contractor's delivery of the services contemplated by this Agreement. Such monitor may also serve as a consultant to the Subrecipient Contractor to advise on the correction of the determined deficiencies. All costs associated with the Agency's selection and installation of such monitor shall be paid from the state and federal funds awarded to the Subrecipient Contractor hereunder.
2. The Agency may appoint a temporary manager who shall have primary responsibility to oversee the operation of the Subrecipient Contractor's services contemplated by this Agreement. All costs associated with the Agency's selection and installation of such a temporary manager shall be paid from the compensation awarded to the Subrecipient Contractor.
3. The Agency may deem the Subrecipient Contractor ineligible for the receipt of any additional funds to be paid to Subrecipient Contractor hereunder.
4. The Agency may cancel, terminate, or suspend this Agreement in whole or in part.
5. In addition to other remedies available to the Agency hereunder, the Agency may, in its discretion, establish a period of probation with specific objectives to be accomplished by the Subrecipient Contractor hereunder, or to be in compliance with applicable policies, procedures, laws, and regulations.
6. The Agency may pursue any other remedy as may be provided under applicable law.

7. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and utilized by the Agency for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Subrecipient Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Subrecipient Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Subrecipient Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

8. STATUS OF SUBRECIPIENT CONTRACTOR

The Subrecipient Contractor, its agents, and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Subrecipient Contractor, its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Agency vehicles, or any other benefits afforded to employees of the Agency as a result of this Agreement. The Subrecipient Contractor acknowledges that all sums received hereunder are reportable for income tax purposes.

9. ASSIGNMENT

The Subrecipient Contractor shall not assign or transfer any interest in this Agreement, assign any claims for money due, or to become due under this Agreement, without the prior written approval of the Agency.

10. SUBCONTRACTING

The Subrecipient Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

11. RELEASE

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations, whatsoever arising from or under this Agreement. The Subrecipient Contractor agrees not to purport to bind the Agency to any obligation not assumed herein unless the Subrecipient Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. CONFIDENTIALITY

Any information provided to or developed by the Subrecipient Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization, by the Subrecipient Contractor without the prior written approval of the Agency. Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal laws or regulations. Subrecipient Contractor shall establish a method to guarantee the confidentiality of all information relating to clients in accordance with applicable federal, state and local laws, rules and regulations, as well as the terms of this Agreement. However, this provision shall not be construed as limiting the rights of the Agency or any other federal or state authorized representative to access client case records or other information relating to clients served under this Agreement.

13. PRODUCT OF SERVICE – COPYRIGHT

All materials developed or acquired, by the Subrecipient Contractor, under this Agreement, shall become the property of the Agency and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Subrecipient Contractor, under this Agreement, shall be the subject of an application for copyright or other claim of ownership, by or on behalf, of the Subrecipient Contractor.

14. CONFLICT OF INTEREST

The Subrecipient Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree, with the performance or services required under the Agreement. The Subrecipient Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

15. AMENDMENT

This Agreement shall not be altered, changed or amended, except by instrument in writing, executed by the parties hereto.

16. MERGER

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto, concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

18. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Subrecipient Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. WORKERS COMPENSATION

The Subrecipient Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Subrecipient Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

20. RECORDS AND FINANCIAL AUDIT

The Subrecipient Contractor shall maintain detailed time and expenditure records, including, but not limited to, client records, books, supporting documents pertaining to services provided, that indicate the date. time, nature and cost of services rendered during the Agreement's term and

effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments. If, pursuant to this Agreement, the Subrecipient Contractor receives federal funds subject to the Single Audit Act, the Subrecipient Contractor shall submit to the Agency an audit conducted by a certified public accountant in compliance with the Single Audit Act.

21. INDEMNIFICATION

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

22. INTERNAL DISPUTE MEDIATION

The Subrecipient Contractor shall attempt to resolve all disputes with participants by negotiation in good faith and with such mediators as may be acceptable to the parties involved. The Subrecipient Contractor shall implement an internal grievance policy with procedures in place to effectively and fairly negotiate and resolve disputes with participants. The Subrecipient Contractor must provide all participants with notice, at the commencement of the contract year, that disputes may be resolved in this manner. If negotiation and mediation through the grievance procedure fail, any party may submit the dispute to the ALTSD in accordance with the following provisions:

1. In any dispute submitted, the Agency and the Subrecipient Contractor hereby agree and consent to the ALTSD mediation of the dispute.
2. Mediation may only be instituted by written request, which request shall include a statement of the matter in controversy.
3. Initial contacts and negotiations shall be conducted by the appropriate Agency staff.
4. Any resolution of the matter shall be binding and final on the Subrecipient Contractor and the Subrecipient Contractor hereby agrees to be bound by said resolution.
5. Failure of the Subrecipient Contractor to resolve any dispute pursuant to the procedures set forth herein or to comply with a resolution ordered by the ALTSD shall amount to a material breach of Agreement.
6. Internal Dispute Mediation does not supersede the appeal hearing policies and procedures.

23. PARTICIPANT GRIEVANCE

The Subrecipient Contractor will establish a system through which applicants for, and recipients of services, may present grievances about the operation of the service program. The Subrecipient Contractor will advise applicants and recipients of their right to appeal denial of service and their right to a fair hearing of these respects. The Subrecipient Contractor shall notify the Agency of termination of services, to a client, as part of a monthly service report, on any

services funded by this Agreement. The Agency reserves the right to perform follow-up investigations with the client to determine adequate performance and adherence to due process.

24. KEY PERSONNEL

The Agency shall be notified of changes in, and must concur with the selection process for, Key Personnel. The Agency considers the following positions as Key Personnel:

1. Program Director
2. Financial Manager

The Subrecipient Contractor will maintain full-time Key Personnel throughout the term of this agreement.

25. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

26. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

27. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

AGENCY:
NCNMEDD Non-Metro AAA
Neil Segotta, AAA Director
3900 Paseo Del Sol
Santa Fe, NM 87507

SUBRECIPIENT CONTRACTOR:
City of Alamogordo
_____
_____
_____

28. INSURANCE

The Subrecipient Contractor shall secure and maintain, during the term of this Agreement, at its own expense, comprehensive and general public liability insurance and/or other types of insurance as the Agency may require. The Subrecipient Contractor shall secure and maintain, during the term of this Agreement, at its own expense, workers' compensation insurance in the amounts required by the applicable laws of the State of New Mexico covering the Subrecipient Contractor's employees. All policies of liability insurance that Subrecipient Contractor is obligated to maintain, according to this Agreement, except for any policy of workers' compensation insurance, shall name Agency as an additional insured. The Subrecipient Contractor shall furnish to the Agency, directly from its insurance carrier, a memorandum or certification of all insurance carried before the payment of any monies as consideration for the

services rendered hereunder shall be made. Upon such certificates and/or memoranda being furnished to the Agency, the same shall be annexed to this Agreement and by reference made a part hereof.

29. AUTHORITY

The individual(s) signing this Agreement on behalf of Subrecipient Contractor represents and warrants that he or she has the power and authority to bind Subrecipient Contractor, and that no further action, resolution, or approval from Subrecipient Contractor is necessary to enter into a binding contract.

30. SIGNATURES

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective October 1, 2023.

City of Alamogordo	NCNMEDD Non-Metro Area Agency on Aging
Legal Name of Subrecipient Contractor	*Name of Area Agency on Aging*
	Monica Abeita
Signature	*Signature*
	Monica Abeita, Executive Director
Printed/Typed Name of Signatory	*Printed/Typed Name of Signatory*
	October 1, 2023
Date	*Date*

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 10/02/2023 **Report No:** 8.

Submitted By:

Subject: Consider, and act upon, correcting the number Resolution 2023-33 to Resolution 2023-41 to the past agenda item "Encourage citizens to contact Governor Lujan-Grisham and request pre-trial detention reform be placed on the agenda for the upcoming 30-day session". There was already a resolution with that number. *(Stephanie Hernandez, Acting City Manager)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Change the resolution number to 2023-41.

Background:
Resolution 2023-33, Encouraging citizens to contact Governor Lujan-Grisham and request pre-trial detention reform be placed on the agenda for the upcoming 30-day session should have been numbered as Resolution 2023-41.

Resolution number 2023-33 already existed as Requesting State Officials to review the bond rules Implemented in 2017 in response to the amendment of the State of New Mexico Constitution regarding conditions of release for criminal offenders.

Both resolutions are attached.

RESOLUTION NO. 2023-33

A RESOLUTION REQUESTING STATE OFFICIALS TO REVIEW THE BOND RULES IMPLEMENTED IN 2017 IN RESPONSE TO THE AMENDMENT OF THE STATE OF NEW MEXICO CONSTITUTION REGARDING CONDITIONS OF RELEASE FOR CRIMINAL OFFENDERS.

WHEREAS on January 29th 2023, the city of Alamogordo Police Department was involved in an officer-involved shooting, in which the suspect went to jail and was held for violating conditions of release in a prior criminal case.

WHEREAS, on June 16, 2023, the alleged defendant was released on Conditions of Release set by the Court and was ordered to be placed back on pre-trial services.

WHEREAS, on July 15, 2023, officers attempted to conduct a traffic stop on a vehicle. The Vehicle did not stop for Officers and attempted to flee. Officers did not pursue the vehicle. Soon after, Officers located the same vehicle involved in a crash. Officers observed a male subject fleeing the scene on foot. Officers gave chase, in which shots were fired. As a result of the gunfire, Officer Ferguson was injured and later succumbed to his injuries.

WHEREAS, in 2016, the State of New Mexico Constitution was amended concerning bail for Criminal Offenders.

WHEREAS, in 2017, new bond rules were implemented in response to the amendments to the Constitution.

WHEREAS, in 2020, the rules were amended to allow the court to schedule a detention hearing on their own under certain circumstances as listed.

WHEREAS, in 2022, amendments were created to fix grammatical errors in the rules.

BE IT RESOLVED, the Commission of the City of Alamogordo Requests the State Senators, State Representatives, Attorney General, and the New Mexico Governor to work together with local attorneys and judges to review and modify pre-trial services program and to revisit House Bill 5 from the 2022 legislative session in response to Officer Anthony Ferguson's ultimate sacrifice in the line of Duty.

PASSED, APPROVED, AND ADOPTED this 28th day of July, 2023.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

_____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

_____
Ashley Smith, City Attorney

RESOLUTION NO. 2023-33

A RESOLUTION ENCOURAGING CITIZENS TO CONTACT GOVERNOR LUJAN GRISHAM AND REQUEST PRE-TRIAL DETENTION REFORM BE PLACED ON THE AGENDA FOR THE UPCOMING 30-DAY SESSION

WHEREAS on July 15, 2023, officers attempted to conduct a traffic stop on a vehicle. The vehicle did not stop for officers and attempted to flee. Officers did not pursue the vehicle. Soon after, officers located the same vehicle involved in a crash. Officers observed a male subject fleeing the scene on foot. Officers gave chase, in which shots were fired. As a result of the gunfire, Officer Anthony Ferguson was injured and succumbed to his injuries the following day.

WHEREAS, in the weeks following Officer Ferguson's death, a review of the alleged defendant's criminal history was under scrutiny.

WHEREAS, it was determined that the court discharged the alleged defendant on conditions of release following a previous January 29, 2023, Alamogordo officer-involved shooting.

WHEREAS, the alleged defendant violated his conditions of release.

WHEREAS, in recent years, various pretrial detention reform bills have been introduced but not passed by the state legislature.

THEREFOR BE IT RESOLVED, the Commission, in partnership with our state legislators, encourages the citizens of Alamogordo and Otero County to contact Governor Michelle Lujan Grisham by telephone at (505) 476-2200 or by mail at 490 Old Santa Fe Trail Room 400, Santa Fe, NM, to request that pretrial detention reform be placed on the legislative agenda for the upcoming 30-day session in response to Officer Anthony Ferguson's ultimate sacrifice in the line of duty.

PASSED, APPROVED, AND ADOPTED this 22 day of August, 2023.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Susan L. Payne, Mayor

ATTEST:

_____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

_____
Ashley Smith, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 10/06/2023 **Report No:** 9.

Submitted By: Rachel Hughs

Subject: Consider, and act upon, all evidence for and against the removal of approved Resolution 2023-20, due to the written objection by the property owner. The Commission will determine if the resolution should be enforced or rescinded. Resolution 2023-20 was to declare 308 N. White Sands Blvd. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background:
The purpose of the public hearing is to consider all evidence for and against the removal of approved Resolution 2023-20, due to the written objection by property owner Cristopher Douglass. The Commission will determine if the resolution should be enforced or rescinded. Resolution 2023-20 was to declare 308 N. White Sands Blvd. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement.

- On June 13, 2023, Resolution 2023-20 was first brought to the commission. The item was tabled for 90 days, to be brought back on September 12, 2023, with expectations of progress made on the building by property owner Cristopher Douglass.
- On September 12, 2023, the commission approved Resolution 2023-20 by a vote of 5-2, Commissioners Rardin and Burnett voted nay. Mr. Douglass was not present at the commission meeting.
- Attached are the minutes from June 13, 2023, and September 12, 2023.
- The initial Code Enforcement PowerPoint and documents from June 13, 2023, are attached

<u>Attachments from Mr. Douglass</u>
Initial letter of objection submitted on September 14, 2023
Amended letter with the correct property address submitted on September 18, 2023
Pictures of the property submitted on October 3, 2023

CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
June 13, 2023

SUSAN PAYNE, MAYOR — **DUSTY WRIGHT, MAYOR PRO-TEM**
SHARON McDONALD, COMMISSIONER — **KARL MELTON, COMMISSIONER**
JOSH RARDIN, COMMISSIONER — **STEPHANIE HERNANDEZ, ACTING CITY MANAGER**
STEPHEN BURNETT, COMMISSIONER — **ASHLEY SMITH, CITY ATTORNEY**
NICHOLAS PAUL, COMMISSIONER — **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. Commissioners Melton and Paul were absent. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor Hank Charles and the Pledge of Allegiance was led by Commissioner Sharon McDonald.

APPROVAL OF AGENDA

Commissioner McDonald moved to approve the agenda.
Commissioner Burnett seconded the motion.
Motion carried with a vote of 5-0-0.

PRESENTATIONS

1. Presentation on the renewal of the Alamogordo/Alliance of Regional Military Support agreement. (John Baily, Alliance for Regional Military Support)

John Baily and Lance Lehr of the Alliance for Regional Military Support gave their presentation.

Mayor Payne asked how long we have had this contract. Mr. Lehr said this is the first review of the contract, so for two years now. Mayor Payne asked how much Las Cruces contributes. Mr. Baily said they are at the same level. El Paso and El Paso County are higher, but all of our counties in New Mexico are at $10,000 a year.

Mayor Payne asked them to elaborate on "Develop City of Alamogordo priority list as it relates to Holloman Air Force Base". Mr. Baily said they get understanding and information from MainGate and some other folks here, but we have not been able to get Alamogordo's participation in our meetings. That is what we are looking for, so we understand what the City of Alamogordo is looking for concerning Holloman. We talk with the Commander at Holloman and get their priority list, then we bounce it against the City of Alamogordo priority list to make sure we are working in conjunction and all trying to take care of it. An example is off-post housing. One of the biggest issues with stationing new airmen at Holloman is if they have off-post housing. Can we accommodate those? We make sure the City knows those so they can be addressed outside the gates. Mayor Payne said she has been on a few of those calls, and she didn't find them to be super productive in terms of the City of Alamogordo. She said if she were to support the renewal of this, she would expect a lot more for what we get. She said she needed it to be relevant for us, or she could not take the time to do it.

Mayor Payne asked them to elaborate on "Advocate for defense contractors to use Alamogordo facilities for training and testing." Mr. Baily said they meet with the defense industry on a regular basis. They work with them to understand who is at Holloman already and if they have a presence here. If

they do not, they will work with them to develop a presence and figure out training or testing they could use Holloman for. That way, they can start putting more people into this location. Mayor Payne said both of those are important. She said she if we did this, we would expect a lot more of that, and she is good at accountability. We need housing desperately here. Acting City Manager Hernandez said she has been working with this contract. We are wrapping up the 3rd year. It was originally written at $10,000 a year for three years. She redid the contract for accountability. It will not be $10,000 upfront; it will be quarterly payments based on the report. She said she told them she would like to be involved in the meetings at first so she could understand, and then maybe have a sit-down or bring back to Commission what she was told, discuss the Commission's priorities, and what she could communicate with them. Mayor Payne said she felt better about that. If we are to do this, we need something. She said she has jumped on these meetings before and wished they were structured so everyone could chime in. Now that we have done this for a few years, going forward, maybe now we all understand what our expectations are. Mr. Baily asked for somebody from Alamogordo to be dedicated to being part of this. That way, we can reach out to them and discuss what they were hearing from Holloman and how it affected Alamogordo. A bit of the issue is they have not gotten the responses needed from folks here. He said that Lance and himself have not been engaged with Holloman as much as they should be, but they need the commitment from Alamogordo to ensure that we have the right person. If it is Acting City Manager Hernandez, that would be great because she has been fabulous to work with to get this set up. Many times, we get a phone call about something people are hearing, and we just need the right person to call and ask what that means for Alamogordo, and how we help with the next step of that. Mayor Payne asked what the next step regarding this contract was. Acting City Manager Hernandez said it is a presentation, so as long as we have your approval to move forward and continue to work with them. It will be a $10,000 contract instead of a $30,000 contract, which is within our authority. Mayor Payne said that sounds good. Commissioner Rardin asked if that would be brought back as an action item or if they were just giving direction to staff. Acting City Manager Hernandez said you will see it on a budget resolution. If you wanted, we could highlight it. Commissioner Rardin said we did it differently in the past, where it was brought back as an action item. Acting City Manager Hernandez said we have a lot of contracts that we do not bring forward, but if you want us to bring it forward at the next Commission meeting, we can. Mayor Pro-Tem Wright said if they brought it back as an action item, it would just take a few minutes. Acting City Manager Hernandez said she would bring it back as an action item.

2. Presentation and overview of how Alamogordo MainStreet works with the City per the MOU and Contract changes, plus initiatives undertaken during FY23 and future projects in FY24. (Nolan Ojeda, Executive Director Alamogordo MainStreet)

Executive Director of Alamogordo MainStreet, Nolan Ojeda, gave his presentation along with the Organizational Specialist of New Mexico MainStreet, Mr. Edwardo.

Commissioner Burnett asked how much of the $1,900,000 in Capital Outlay comes to Alamogordo MainStreet. Mr. Ojeda said the way that works is, as the City proceeds with the construction project, they will actually send all of that to the State, and the State will reimburse them for money spent on the contractors.

Mayor Payne asked when the expected completion was. Mr. Ojeda said he did not know. The last he heard from the Engineering Manager for a start is January 2024. The grant period ends in October 2023. Realistically, we will probably have to apply for an extension on that grant.

PUBLIC COMMENT

Robert Sedillo said he lived in the Panorama Circle area and saw some time ago that they were planning to close some parks around town. He said he put a small comment on Facebook, and over one hundred and eighty people in the area commented on the closure of a park. It is a very small park and requires little maintenance. There is not even a trashcan there; it is a picnic table and barbecue grill. Mayor Payne asked if he saw this on social media. Mr. Sedillo said he posted it on social media. He said he saw the children in the neighborhood visit and play there, mothers reading to children, and others sitting there and enjoying it. He said he got a verbal commitment from Gonzalez Lawn that they would take over the maintenance at no cost to the City. He said he saw the City come out two or three times a year and would see City employees go out there and take breaks during lunch. He said this small area might not be important to the City or this Commission, but it is part of the community and has been there for years. We are just trying to save one small part, which means a lot to the people of that area. He said he posted it on Alamogordo City Watch, and they asked him to speak to the Commission on behalf of those who made the comments.

Mayor Payne asked Acting City Manager Hernandez if she knew of any plan to get rid of this park. Acting City Manager Hernandez said she saw the same comments on Facebook regarding the Panorama Park. She couldn't find it on the map, so she asked Parks and Recreation Director Bass what Park it was, and they both went out there that day to look. She said they had no plans to close it and did not know where that rumor originated. She said Parks and Recreation Director Bass and herself cleaned it up because there were bottles and coke stains. She said they asked Parks Supervisor Erik Marion to put a trashcan out there because there wasn't one. She said it is on a weekly rotation for Parks.

Mayor Payne asked Mr. Sedillo where he heard about the rumor that the park would be closed. He said it was posted from the City on Facebook. Mayor Payne said Facebook is not a reputable news source. She said she encouraged everyone listening tonight and the two hundred posters to call or ask if they have a question. Verify the information because it is from somebody on Facebook, it is probably not true. It is an unfounded rumor; your park is safe and has a trashcan now.

CITY MANAGER'S REPORT

Acting City Manager Hernandez made the following remarks:
None.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner McDonald made the following comments:
She thanked Communications and Marketing Specialist Sabrina Padilla and Librarian Rashal McElderry, who helped give out information in regard to the cleanup. If anyone wants to help with the cleanup as a volunteer or knows of somebody elderly, sick, or in the military, there is a form that needs to be filled out for us to come onto the property. You can go to her email address and do that form, and it will go directly to her. The cleanup is on July 15th from seven to twelve. We are getting properties to clean up, but we lack volunteers. If anyone would like to volunteer, please do so. We may have someone that can do the shredding and may be able to reinstate that.

They still need volunteers for the Dudley School. All the contractors were out today to get everything set up. They want to get a completion date by the end of August. The 1st and 2nd of September are the scheduled days that the school will have an opening celebration. The painting will happen in the next two weeks, and they will need volunteers. She asked anyone that wanted to participate to talk to her or anyone on the Commission.

Commissioner Rardin made the following comments:
Regarding the Street Maintenance program that will hopefully come before us soon, Ridgecrest and Desert Lakes were mentioned. For the last five years, he was told that Oregon Avenue would be on that. He wanted to know where we are at with that. He said they have been telling people in his district that for the last five years, that Oregon Avenue, from basically 1st Street to Indian Wells, was going to be repaired and replaced. Acting City Manager Hernandez said that the budget was very expensive at $5,000,000. Commissioner Rardin asked if staff could get it to him in an email. It has been on the Street Maintenance rotation since between 2009 and 2014. It was on the Five-Year Plan, and now it looks like we will bump it or do it in phases. Phases are okay because he understood that money is an issue. She said the $5,000,000 was pre-COVID, so she didn't know where it would be now. Commissioner Rardin asked for an update on where Oregon Avenue is in the rotation, because that road has not been touched since the mid 80's. Acting City Manager Hernandez said she spoke with Public Works Director Beshaler. Public Works Director Beshaler will send an email sometime during the month with the raw data and some issues she has. The consultant is working on it. Commissioner Rardin said as it gets closer, the Commission needs to be briefed on what we will start, how we will look at it, and what we are doing. He said he understood that we have a plentiful amount of roads that need to be fixed, and Public Works needs to pick and choose. Acting City Manager Hernandez said that Public Works would not be deciding; it would be the two consultants on the utilities and the streets coming together to determine where the highest priority needs are.

Commissioner Rardin said that in the past, we used to get a weekly report from staff to the Commission. Sometime during COVID or earlier, that went by the wayside. He said he would like to bring back the City Manager's weekly report to the Commission until we hire the new City Manager. Acting City Manager Hernandez said she has been responsive to Commissioner Rardin's questions. Commission Rardin said it would eliminate a lot of questions, such as with the park on Panorama. It is just a brief overview of what everybody is working on so the Commission is aware of what is going on. Acting City Manager Hernandez said she is doing two jobs; she is more than happy to address any issues they have, but she does not have the time. Commissioner Rardin said he would like to see a report, and it does not have to be anything in detail. Before, the Department heads would put it together and then give it to the City Manager. They gave it to us once a week. She said that is going back to picking and choosing what the Directors feel is important, as opposed to what the Commission feels is important. That is why she sent an email to the Commission asking them what they wanted updates on. That way, she could give them meaningful information on the record. Commissioner Rardin said there are many things that have happened that they may not know about. How do we know to ask if we do not know about it? There is a new fence around the Cemetery, but he did not remember hearing a word about that. Acting City Manager Hernandez said that was on the ICIP that you all approved, and it came twice to the Commission. He said he did not remember seeing that on there. We do not live and breathe this like you guys do. He said he does not know how the rest of the Commission feels and may just be being picky. It would help alleviate some questions and concerns, especially if we had been doing that all along with the previous City Manager.

CONSENT AGENDA

3. Approve the minutes for the May 23, 2023, Regular Commission meeting. (Rachel Hughs, City Clerk)

4. Consider, and act upon, Resolution 2023-22, giving notice to the Otero County Clerk of the local government positions to be filled at the next Regular Local Election on November 7, 2023. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

5. Consider, and act upon, Resolution 2023-24 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 June 13, 2023. (Evelyn Huff, Finance Director) (Roll Call Vote Required)

Mayor Pro-Tem Wright moved to approve the Consent Agenda.
Commissioner McDonald seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 5-0-0

NEW BUSINESS

6. Consider and act upon Resolution 2023-20, declaring 308 N. White Sands Blvd. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

Code Enforcement Manager Sides gave his presentation. He said he talked to the property owner Mr. Christopher Douglas, who is here tonight and wishes to rehabilitate this building. He told Mr. Douglas that should the Commission pass this resolution, once it is signed, the property owner would have ten days to start doing something with this building. He said Mr. Douglas had already started with this building. After that, he has a year to complete it; it does not mean that if he has made substantial progress on this building, that does not mean we are going to go through and tear it down.

Mayor Payne said with all due respect, this building has been awful for a very long time. She said she found it curious that they executed an administrative search warrant, and now the owner is ready to rehabilitate it. She said she is concerned about that, how that happened, and what this will look like.

Commissioner Rardin asked if the previous owner passed away not long ago. Mr. Douglas said that this was his father's building, who used it to do antique cars, and yes, he neglected it tremendously. Mr. Douglas said he was not going to do that. It is ugly, but it is coming back. We need space for businesses in Alamogordo, and an out-of-state gentleman is buying up the entire block. Any proceeds from that will leave New Mexico and Alamogordo. He said he wanted to keep the money here and has done a great deal of work on the building. The first thing he needs to do is shore the roof to prevent more damage. He said he had done that and got the front of it stripped. There are holes now because he has not replaced some of the wood, but he has ordered the material to reroof the front of the structure. He will use a membrane roof that will last thirty years. He said he has memories of his dad and working with him in the building. His father was taken to the hospital this morning, and we do not know what is going to happen. He said this building was dumped on him because one of his brothers was supposed to take care of it, but he got tired of it, and they gave it to him. He said he is a teacher in Deming, so he has two days every week to come to Alamogordo, visit his family, and work on the building. As soon as he got the letter, he started working on it, and has made progress. He has a plan on how to get it done. He said he didn't want the building condemned and would have it taken care of. He said he would like some faith from the Mayor and City Commission in his ability to get it done. He would give them a timeline and tell them what he is doing. He said he is not going back to teaching until this is resolved. His career is in STEM, and he teaches 8th grade Science. He just wants time to allow him to get this done to either get a tenant or get it into shape where he can get some value out of it. His building was damaged by the dilapidated and burned-out structure next door. A diseased tree fell on the corner of that building. It was previously damaged, but that increased the damage. He said he went to talk to the owner, and he didn't think she had any way to compensate or pay for any of the damage. The tree also took out the electricity, and that was $3000. He was willing to spend the money,

but that also slowed down the rehab because he has no power. He said he borrowed a generator and is using electrical tools. He is getting ready to paint it and has already purchased the paint. He said they are going to clean up that side. He said he would like to put up a mural to greet people through Alamogordo. Maybe they would stop and spend some money here. He said he did not have a business, but that neighborhood has dispensaries and things. It is not in a good part of town; he has witnessed drug dealings and was accosted. Exiting the building with a flashlight, he saw a gentleman closing the door to his car. We need to address these drug issues and enforcement.

Mayor Payne asked Code Enforcement Manager Sides if he had seen progress on the building. He said there had been some progress, but as far as it being safe, no, it is not safe. By passing this resolution and condemning it, condemned placards would go up only, allowing City staff, contractors, or the property owner to go in to do maintenance only. That way, if this building were to collapse, the assumed casualty rate would be minimal.

Mayor Payne asked City Attorney Smith what they did last time with a property like this. Commissioner Rardin said they gave them six months. It is not like the building is open to the public. Mayor Payne said that is questionable. Commissioner Rardin said if they are in there illegally, and the building collapses and kills them, that is on them, especially if the property owner puts up no trespassing signs. Mayor Payne asked City Attorney Smith asked how they could pass this and give him time or what they could do. City Attorney Smith said they could give him a timeframe. They have done that in the past. For example, we want this or that done by however long. Mayor Payne said getting back to Commissioner Rardin's comment, if someone were to take up residence in there or seek shelter in there, and the building collapsed, or someone was hurt, is there any liability on the City? She said she thought there was probably going to be some. City Attorney Smith said it would be on the property owner because it is not City property. Mayor Payne said so there is no liability on us, even if we gave him an extension. City Attorney Smith said correct, yes. Mayor Payne said so we are not putting the City at risk. City Attorney Smith said no. Commissioner McDonald said that the previous one on 3rd was not extended; she got it done in time. Commissioner Rardin said with that lady it was a classic example. Usually, the property owner does not come and talk to us. In that lady's case, she talked to us, and we gave her an extension, and she did what she said she would do. We did not have to spend taxpayer money removing the structure. This gentleman came to us and is asking for an extension. The building has been standing for probably the better part of a hundred years, and he said he did not see it coming down anytime soon. Again, if they break in illegally, and they are in there and get hurt, it is on them. They could probably sue him, but they should not be in there. Mayor Payne said she understood that, but she wanted to be sure that if someone gets hurt in there, we are not liable. Now we have all been made aware, and she was fine with it as long as we are not. Commissioner Rardin asked if the building was secure for normal, law-abiding citizens. The property owner said yes. When they inspected it, they put the City lock on it. The day we took the City lock off, there was paperwork taped to the window and it basically invited people in. They took a survey stake from that parking lot, punched a hole in the wooden door, and entered the structure. He said he did not find out about that until Monday. The gentleman buying up the block called him on Monday and said he was there Saturday, and his building was full of transients. He would have loved to have known that on Saturday. He said he was able to recover quite a bit of the stuff taken out, which was put into the yard of 310. That diseased tree came down again, and he had to cut his way through to get into the building. He said he has talked to Ms. Fisk about it, and she says fifteen people are interested in that lot. If there is any way possible, he will purchase the lot because that thing is so ugly, he will never be able to get any revenue off that building if he rents it until that is taken care of. If it takes him buying the property to tear down the structure, so be it. There is not much room between the buildings, and that guy attached his roofing to his building, which has caused more erosion. He said he could not fix that side of that building until that structure was removed.

Commissioner Rardin said the next item is the building next door. If we declare that and remove that, are we going to compromise the structure of his building by removing the other building? Mr. Douglas said no, but there is no way you can do anything with four inches of space between the buildings. Commissioner Rardin asked if the roofs were connected. Mr. Douglas said he was roofing on it earlier, and his roofing material was actually attached to my building.

Mayor Payne asked Mr. Douglas if he was going to be able to fix the cracks where the cinderblock is. Mr. Douglas said yes, he has a firm plan for repairing them.

Commissioner Rardin said we should table this item for six months to give Mr. Douglas time. In the event he does not get this done in six months or does not have a substantial amount of repair done, then we continue with what we were going to do. Mayor Payne said the only way she supports that is with a firm date, very specific items such as the building needs to be safe. Mr. Douglas suggested the end of the year. Commissioner Rardin said he didn't really think we could stipulate his schedule. We just say we can give him x amount of time, and if we don't see substantial improvement, then you know. It is not our property, and we cannot dictate that. Commission Rardin said he would rather give the property owner the opportunity rather than having us spend taxpayer money. Mayor Payne said she wanted to know a specific date and what we could do. Mr. Douglas said he could meet with Code Enforcement Manager Sides on a regular basis and give him updates. Acting City Manager Hernandez said if you prefer to give it teeth, you pass the resolution with a six-month extension. That is what we did for 3rd Street. Commissioner Rardin said he thought we tabled that and brought it back. Acting City Manager Hernandez said no, because if the property owner had not made progress, and it was already deemed unsafe and a hazard, so after that specific time period, the City could go in. Mayor Payne asked if that is one where she cleared it? Acting City Manager Hernandez said yes. Commissioner Rardin repeated that we tabled that. Mayor Payne said we did not; we gave her a specific extension date. Commissioner Burnett said we gave her sixty or ninety days to start. Commissioner Rardin said he did not remember passing the resolution first. Mayor Payne asked if we would do this by passing a resolution with an extension. Acting City Manager Hernandez said a resolution as amended with the date or six-month extension. Mayor Payne asked what we would say in that timeframe. Acting City Manager Hernandez said that would be a Commission decision. What specific progress are you looking for? The other one was pretty straightforward; the building was going to come down. It was very specific. Mayor Payne said it is basically a menace to public safety. Commissioner Burnett asked Mr. Douglas what his plan was regarding the structure. Mr. Douglas said he planned to rebuild that corner, cut the foundation, repour that corner, and then put new cinder blocks up. The roof is going on, and he said before that he decided to go with a membrane roof. It has to be shipped from back east, and it should be here within a week, and then the roof will be done. He said he wanted to paint it prior to doing that corner. He said he is devoted to this and will get this done. He said he would appreciate putting this back six months. He said he was concerned that if it was condemned, what would happen when it was time to sell or about getting a tenant. He said he did not know how to get it uncondemned and wanted a chance. Mayor Payne said that six months from today's date is December 13th. Could we say December 13th? City Attorney Smith said we could. We can either table it or pass this. We could have Code Enforcement Manager Sides do a presentation in three months to update the Commission on improvements he has seen. Mayor Payne said so we can pass the resolution, give him six months with an update in three months. Could we do that? City Attorney Smith said yes. Commissioner Rardin said if we pass the resolution tonight declaring it dilapidated, and then he gets it back into useable condition, do we have to go back and resend our resolution? It would be cleaner if we just tabled it, staff kept an eye on it, we gave him six months, and in three months, if Code Enforcement Manager Sides comes back and says no progress was made, we call the owner and say we are putting this back on the agenda because you did not keep your end of the bargain. We are going to go ahead and declare it. Like Mr. Douglas said, if he gets it back into useable shape and we have already declared it dilapidated and ruined, then well. Acting City Manager Hernandez said we

could do another resolution to undeclare it or table it. Doing a resolution gives you teeth now to make sure it gets done, but it is the Commission's choice. Commissioner Burnett said we could bring back the resolution in ninety days if he had not done anything. Commission Rardin said that or at least some progress. If we do not have something substantial showing that he is making an effort in ninety days, we bring this resolution back. We can table it for tonight. If he has done things, we give him six months, or if he needs additional time, we can give him that. This building has looked this way for forty years, and Mr. Douglas was not the one in control of it; it was his father. Mayor Payne said that is the whole problem. Commission Rardin said we have more buildings like that on White Sands than we do useable buildings. Mayor Payne said she understood that, but we need to clean those up. Mr. Douglas said that it is the oldest part of town. Mayor Payne said she got that, but we are doing a lot on MainStreet, as you heard earlier. Mr. Douglas asked how far MainStreet went, and he was within five blocks of it. Could he get assistance? Acting City Manager Hernandez said the boundaries do not go that far. Mr. Douglas said the City has fenced the Fisk property to keep people out of it. Acting City Manager Hernandez said to keep this going, we should agree to table this and bring it back. Mayor Payne said she agreed and that we need to move on. We need a motion to table this for ninety days. If, within ninety days, he has made progress, we still need to continue monitoring that. Commissioner Rardin said we would table it again in December. If he has not made substantial progress, we will bring it back. Code Enforcement Manager Sides asked the Commission meant by substantial progress; what violations need to be cleared to be considered substantial progress? Commissioner Burnett said he did not know if we could stipulate that. Commissioner Rardin said he did not know if we had the current breakdown. Acting City Manager Hernandez said you have the current breakdown of what is wrong with it, so she would guess it is how much of that was taken care of. Commissioner Rardin said there was a building four doors down from him with a similar situation. They went in with steel plates and secured the corner. Mr. Douglas explained his plan for the building. Mayor Payne said she would like to see it safe. What you are doing now with that building is putting the public at risk. Homeless, transients, and even drug people are part of our population, and their lives matter regardless of what they are doing. We need to make sure that nobody is at risk. She would say, in ninety days, can we demonstrate that we have made progress, so the building is made safe, and so we would feel comfortable knowing that people are not going to get hurt. Mr. Douglas asked if the Commission could provide a fence like they did for the Fisk house, so that way he would not have to do it. Mayor Payne said she does not know about that, but you can talk to the City. Acting City Manager Hernandez said we are concerned because if we do this, then he does not show significant progress according to the Commission, it would be difficult for us to get another warrant to go through that process. Commissioner Rardin asked if we needed another warrant to go through this process. City Attorney Smith said to access the building or go onto the property, we would have to. Commissioner Rardin said we already have photos of everything. Acting City Manager Hernandez said but to show he has made improvements. Commissioner Rardin said the gentleman is here and he will let us in. He said was he was sure that Mr. Douglas would allow us in to show us what he has done. Mr. Douglas said he would be more than happy to do a PowerPoint presentation in ninety days to show what he has done. Commissioner McDonald said it is not six months now; it is three months. Commissioner Rardin said it is ninety days. Commissioner Burnett said it is ninety days to show progress. Commissioner McDonald asked if we were going to indicate what needed to be done. Mayor Pro-Tem Wright said we cannot stipulate exactly what has to be done. We can say it needs to be made safe and secure. Mayor Payne said she needs a date, what is ninety days. Acting City Manager Hernandez said September 13th. Commissioner Rardin asked if we had a Commission meeting around there. Commissioner Burnett said on the 12th. Mr. Douglas said he could present on the 12th.

Mayor Pro-Tem Wright move to table for 90 days, by September 12th with the expectation of progress made on the building.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 5-0-0.

7. Consider and act upon Resolution 2023-21, declaring 310 N. White Sands Blvd. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. (Josh Sides, Code Enforcement Manager) (Roll Call Vote Required)

Code Enforcement Manager Sides gave his presentation.

Mayor Payne asked if we had the property owner here. Code Enforcement Manager Sides said no. Mayor Payne said you mentioned it was in probate. Code Enforcement Manager Sides said yes, he met with the property owner's relative, who said it was in probate and they would like to demolish the building. Code Enforcement Manager Sides said he told them it was already in this process. They want to demolish it, and this process would give them a timeline to do it.

Commissioner Rardin asked City Attorney Smith if we could we legally tear that down since it is in probate. He said he did not think we could because they are trying to decide the ownership of it right now when it is in probate. If we go in and demolish it, are we liable for damaging what is left of their structure? He said he agreed that this needs to come down, and this is the second time this house burnt. It burned once before, and they repaired it. There was a gentleman that lived in it, and then it burned that time. He said he thought he had passed away since then. The dilemma is that it is in probate, and he has seen that drag out for ten years. Mayor Payne said that is what she is questioning too, and that is why she mentioned it. We have been down this road with one before. City Attorney Smith said she is not sure and would need to research to see how quickly we would be able to do that. We can pass it, but how quickly we can demolish it is the question. It also depends on how many people or parties are in the probate. Code Enforcement Manager Sides said fifteen. City Attorney Smith said that is going to drag that out longer. She wanted to do research to confirm, but as long as notify all the parties, they would be on notice. One of the questions would be, were all of them notified? Commissioner Rardin said we could reach out to the probate judge and ask her. City Attorney Smith said she would send an email out to her. Commissioner Rardin said he thought this was going to throw a wrench in the plans.

Commissioner Burnett moved to approve.
Commissioner Rardin seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 5-0-0.

8. Consider, and act upon, Resolution 2023-23, giving notice to the Otero County Clerk of a Ballot Question to be submitted to the Qualified Voters during the next Regular Local Election to propose amendments to the City Charter. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

City Clerk Hughs said this is a resolution giving notice to the Otero County Clerk of the ballot question to be submitted to the voters at the next Regular Local Election in November. These recommendations were brought to you by the Charter Committee. The question will consist of the candidate with the most votes running for mayor to be elected, thereby removing run-off elections for the mayor we have on our current charter. We are also adding the language of "their final" to the charter committee submitting their written recommendations to the commission. Right now, it is not clear; it just says "written recommendations", and they wanted to add "final". Those are the only two going before the voters, but it will just be one question.

Commissioner Rardin moved to approve.

Commissioner Burnett seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 5-0-0.

9. Consider, and act upon, first publication of Ordinance 1678 to amend sections of the City Charter to mirror State Statutes and the New Mexico Election Code. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

City Clerk Hughs said this is an ordinance with the rest of the recommendations the Charter Committee brought before you in May. In Article 8, we are just adding the language of November elections, which the Commission opted-in back in 2018. The amendments in Article 10 are to mirror State Statutes and the New Mexico Election Code. There are also a few grammatical errors in the charter that will be corrected.

Commissioner Rardin asked City Attorney Smith if we made that, are allowed to do this ordinance? He said he knew the Local Election Act allowed us to make changes when we initially adopted it, but he wanted to make sure we do not need to put these on the ballot for changes. Are we okay to do this by ordinance? Does this still give us the authority? City Attorney Smith said she looked into that, and we are good to go with just the ordinance. The Act still gave us the authority to be able to do that. We are just basically making all the languages the same, versus contracting language; like if you go to the Charter it says one thing, etc. We are just trying to make it uniform, that way, if someone looks at the Charter it is one hundred percent accurate, and they will not have to go and then look elsewhere.

Mayor Payne said there were questions about term limits, and we were sent information. She asked City Attorney Smith if she sent that information to the Municipal League. City Attorney Smith said she did; she sent two different emails and called. They never responded to her. She said they reached out to other municipalities and got a lot of responses from them. Additionally, she read the case law several times, more specifically *Cottrell v. Santillanes*, which she sent to the Commission. That basically says that home rule municipalities cannot do term limits. Mayor Payne said she thought that had something to do with an omission in the State constitution. Is that what they based it on? City Attorney Smith said the case was based on the Home Rule Act. They said the Act did not give home rule municipalities the authority to do term limits. Mayor Payne said she thought that could be challenged. City Attorney Smith said it is a 1995 case; she looked into this in-depth because she found it interesting, because a lot of other governments can do term limits. As it stands, with the case law as it is, unless this issue goes before the Supreme Court again, this is what the courts will rule with until it is overturned. Mayor Payne asked if we could stay on the Municipal League about that because she would challenge that. She said she would be in favor of pushing that. Most of the time, with the home rule, it would be the opposite, where we are allowed to do something that other municipalities that are not home rule cannot. This case is an interesting ruling. She said she is not a lawyer, but that is disappointing because she favors term limits. She said she thought it was a good idea. City Attorney Smith said she would continue to reach out to the Municipal League. As she put in the email to the Commission, she thought that the Municipal League would be the appropriate ones to push back on this and start advocating for legislature change. If the legislature changes, this case would no longer be good case law because the law changes. That is something we can continue to try to reach out to the Municipal League and other municipalities, to see if we can get more of a consensus and have all of us push back on it. The only way to get this overturned would be to go that route, to have the legislature try to change it. Mayor Payne said she would be following that. Commissioner Rardin said that was weird because it governs the Governor, Secretary of State, and all of those offices, and also the Otero County offices, but it has nothing to do with State Legislature or us. Our State Reps and Senators do not have term limits either. Yet our higher-up and elected County officials do. In a way, elections are

term limits as long as you get voters out to vote. Mayor Payne said as long as there is not a lot of voter apathy, which, unfortunately we have.

Commissioner Rardin moved to approve.
Mayor Pro-Tem Wright seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 5-0-0.

10. Consider, and act upon the first publication of Ordinance 1679 adopting a municipal gross receipts tax. (Stephanie Hernandez, Acting City Manager & Richard Denton, Police Chief) (Roll Call Vote Required)

Acting City Manager Hernandez asked the Commission to increase the City's GRT by .125%, or an eighth of a percentage. Everyone is aware of the issues APD has continued to face with retention and recruitment. She said she is not bringing this forward lightheartedly and believes in fiscal responsibility. Every dollar spent should be purposeful and for the benefit of the City. Additionally, she said that tax revenue should be implemented to provide essential and quality-of-life services for all of our citizens. She said she struggled with raising the tax but believes we did our due diligence in looking at everything, including policies and incentives. She said it was a good time not only for officers but our citizens too. The State has reduced its tax by .125%, and we are requesting an increase of the same, so it is not an additional hardship on our community. She said she knew there was a lot of concern that the City was getting into a bidding war with other law enforcement agencies. She had that concern herself and had to step back to take a look at the bigger picture. She said her financial background helped her see it was almost like basic supply and demand. There is a limited supply of officers, and we all have the demand and need the officers. In essence, it is basic economics. The other part is if you look at the officers here, the men and women are tired. They are facing burnout. When the Chief leaves, they will be at thirty-seven officers. We are twenty officers down right now. With the exception of a handful, these people are in charge of patrolling one hundred and ninety-one miles of City streets and over thirty thousand citizens. We need to do something to help and get that number back up. Chief Denton, Finance Director Huff, Human Resources Director Torres, City Attorney Smith, and herself have been going over this, and it has been a conversation for the past eighteen to twenty-four months. We are at a point where she personally felt it was needed and felt comfortable bringing this to Commission.

Police Chief Denton gave his presentation.

Commissioner Rardin said he looked at and agreed with the sign-on bonuses for new officers to some extent, but what are we doing to retain the existing officers we have? Is there anything we have in the plan? Police Chief Denton said right now, they would all receive a significant pay raise. Some wouldn't be very much, maybe $2-3 dollars an hour. If you take the budgeted positions out and just figure out what they are at, we have got $846,000 up there. That is quite a bit of money going to that many positions. He could get the average number for you by tomorrow. Commissioner Rardin said since he has been in office, we have had a problem retaining officers. It goes up and down and varies and is a nationwide problem. He said he believed the sign-on bonuses were a good idea to attract new candidates, but we have good employees. $2-3 an hour is a good little increase, even $5-6, getting $10,000 as soon as you are hired and then another $10,000 after your probation is over is a good chunk of money. Police Chief Denton said he did not disagree with Commissioner Rardin, but he did disagree with one thing. You said there is a shortage across the nation, and you are correct, but the percentage of our staffing level is much shorter than many departments. Is there a shortage of five to six officers in many departments? Absolutely, but you don't hear twenty in cities comparable to ours. Albuquerque is three hundred and fifty officers short, so there is a difference, but if you need to figure

out the percentages of where we are at. It is no secret that I disagreed with sign-on bonuses. They have tried retention incentives, and this is the only thing that we can think of. We have got to do something large and try it. It worked in Las Cruces; they put large hiring incentives and upped their pay scale. Look at their staff now. Commissioner Rardin asked how long ago they did that. Police Chief Denton said it was shortly after our Compensation Study went into effect. Commissioner Rardin said he did not know their criteria was, or how much they did, but in a year and a half or two, after that sign-on bonus is met, are they going to see a decrease in staff when they are allowed to leave? Police Chief Denton said he did not know but was sure they had some sort of commitment. That is why we have a three or five year commitment with this. At five years, you are invested. He is not saying that people do not leave after five years. Mayor Payne said so this is not a one-time thing, this is an ongoing program. Commissioner Rardin said until staffing levels are full. Police Chief Denton said yes, until we reach a full staffing level. Mayor Payne said if you reach staffing levels, and you drop off five officers, are we still offering this? Acting City Manager Hernandez said we will offer it until we are fully staffed. If we get fully staffed, and we drop off, we will look at it at that point. City Attorney Smith said she went on the Las Cruces website, and they require a three-year commitment. Commissioner Rardin asked if Las Cruces had a minimum they had to serve and if it was prorated at that point? City Attorney Smith said she did not know, and it does not say on the website. Commissioner Rardin said we just did the salary study not long ago. City Attorney Smith said that we decided on something a little unique. Say that someone does the three-year commitment. You would have to serve eighteen months for the prorated stuff to kick in. If you leave in month seventeen, you have to pay back that whole $20,000. We broke it down to quarterly, and each quarter it gets deducted down $2000 or something like that, depending on which contract they choose. It is also determined by whether you are certified or uncertified. If you leave between quarters, it reverts back to the last quarter you met. Commissioner Rardin said you mentioned uncertified officers. What happens when you get one that takes the $10,000 bonus, they go to the Academy, and they do not cut it? Do they have to pay all that back to us? Police Chief Denton said absolutely. Acting City Manager Hernandez said voluntary or involuntary termination. Police Chief Denton said he had to get rid of some for their personal conduct. He said he did not recall terminating anyone for work ethic; they were all for personal conduct. He said that some of it is our hiring. We are kind of to the point where if you walk through the door with a heartbeat and you do not have any felony arrests, hey put a uniform on. Some of them wash out over time.

Commissioner Rardin said you stated that an eighth of a percent would generate $1,200,000. About ten years ago, an eighth of a percent used to generate around $750,000 in the City of Alamogordo. If we have an economic downturn, which it looks like we are heading for in terms of the worldwide economy, we will be able to sustain this pay increase based off of this tax we are looking at passing to fund this? We have to look at the large picture, not just this piece of it, if that makes sense. Acting City Manager Hernandez said if there is an economic downturn, we will do as we have always done. Step back, pivot, and start looking at every area, including looking at anything funded from the General Fund. She said she wanted to emphasize that with the sign-on bonuses, it is a lot of money. We will definitely go after it if you do not meet your commitment to the City of Alamogordo. It is not just invoicing them, we will file with the court, and you will have to pay us back, or we will garnish your checks in future employment.

Commissioner Rardin asked if we knew how much the cannabis money was and where we were at. Acting City Manager Hernandez said it has been steady at about $17,000 a month. He asked what they equated to a year. She said about $300,000. Commissioner Rardin asked if that was all we are generating off the twenty cannabis stores in Alamogordo. Acting City Manager Hernandez said as we have discussed numerous times, just because you a store does not mean we are all going to hop to it. You are fighting for the same consumers. At this moment, it has been pretty consistent at $17,000. Mayor Payne said maybe the problem is that we have twenty cannabis stores. Commissioner Rardin asked if it was the State that remitted that back to us. Acting City Manager Hernandez said yes.

Commissioner Rardin asked if we knew if we were getting our fair share of the cannabis money. Acting City Manager Hernandez said that is always the question. Mayor Payne said we are not. Commissioner Rardin said he could guarantee that we are at more than $17,000 a month in tax money. Mayor Payne said with all due respect, there is a lot of cash business there. He said he had seen the way those guys have to get permits and document everything, and there is not a way for them to siphon cash out of that business. The State has made it very difficult. He said he worried about us being able to sustain that wage. Acting City Manager Hernandez said we always worry about sustaining anything. Mayor Payne said if the County can do it, we can certainly do it. Commissioner Rardin said they have a larger budget than we do. Police Chief Denton said let's say this works. We can take this cannabis money, turn it over, and put it towards the salaries to assist. We would not do the sign-on bonuses anymore if the staffing level could stay up. Those would go away, and you could use that money to assist with the salaries.

Commissioner Rardin said that you said we are generating $1.1 to $1.2 million, then we are going out and spending $847,000 of it. What are we doing with that additional revenue? Acting City Manager Hernandez said that as mentioned, we have eleven vacant budgeted positions, but we have ten additional non-budgeted positions. The $849,000 only includes the eleven, not the additional ten. In a perfect world, and we get that additional ten, that would cover those additional ten positions. Commissioner Rardin asked if that was another $250,000. She said no; we have also talked about should we have excess, we would have to put it towards PSAP, because PSAP has been a big money suck. It is for the greater good, and it is beneficial to our citizens, but we are paying more than we did with having our own dispatch. We recently went to the budget, and we had the board meeting approve the budget, and it is about $250,000 more than what we are paying now, and that is just year one. The contract clearly states that it will go off call volume. Mayor Payne said they wanted more than that, and that is what they got. Acting City Manager Hernandez said that if we go off of call volume, that money is going to go up. The priority is officer pay. Commissioner Rardin said this is on PSAP, but have they been contributing at the State and giving us the money for PSAP that we were promised? Acting City Manager Hernandez said the County is the fiscal agent, and she said she believed they have been giving it to the County. Our part is just what we agree to pay to put into PSAP. Commissioner Rardin said because we knew it was going to cost more than what we were currently spending before we went there. Acting City Manager Hernandez said correct.

Commissioner Rardin said this was a huge deal. We just dropped an eighth of a percent, getting our tax rate back down. When he started in office, we were at around seven and a half, and here we are at eight, eight, and eight. We just got it down an eighth, and now we are bumping it right back up. Acting City Manager Hernandez said she agreed. Earlier, Finance Director Huff and herself stood before the Commission against the Lodger's Tax. We do not like taxes and do not take them lightheartedly. Commissioner Rardin said that in the event we get into some trouble and need to pass something, we only have another additional eighth to pass, correct? Acting City Manager Hernandez said as of today, we have .2375% that the Commission can pass without going to voters and an additional .3125% that we can take to referendum. He said so we have an additional eighth that we can pass after this. Acting City Manager Hernandez said that the Commission could pass, and then we have an additional that we can take to referendum. Commissioner Rardin said so we have roughly three-eighths that we can take to the voters. How come we did not mention this in budget hearings? She said because this has been a conversation for about two years, and we have not brought anything to Commission. The County just did a three-dollar increase, they might be getting six additional positions, and they might be having three people retiring. We are at a point where it feels necessary and the right time because of the State taking it down that one-eighth percent. We have not hidden the fact that we have been having trouble; that is what the whole incentive was. Police Chief Denton did not put up the proposal during the cannabis tax because we were still in discussions at that time with former City Manager Cesar.

Commissioner Rardin asked if this would mainly affect the lower-level staff. Police Chief Denton said this is what you see across the country. Everybody is frontloading everything to get people in. You can call it a bidding war if you want, and that might be what it is. With no disrespect to anybody, this is a cheap thing. You are talking $1,000,000 to pay these people and get staffing in here. Commissioner Rardin said hopefully. Acting City Manager Hernandez said no disrespect to the County, and she understood why they were increasing, but she has asked Police Chief Denton over and over what happens when they take all our officers. It feels like they are sabotaging us. She said she knew that was not true, but it is what it feels like from our perspective. We are either going to pay our officers or pay the County their wage rate. They will help us for a period of time because we are in the County, but they are not going to do it for free. Commissioner Rardin said they are obligated to. Police Chief Denton said they are not obligated to. The Sheriff can charge the City by contract and make the City pay. Commissioner Rardin said we are still Otero County. Police Chief Denton said we are. Mayor Payne said it is not free though. Commissioner Rardin said he disagreed. Police Chief Denton said he has had this conversation with the Sheriff. In Tularosa, the Sheriff provided Tularosa with a number because they also went to him. It is not just because they are in Otero County; he is helping them out right now.

Commissioner Rardin asked how this would bring our wages up in comparison to what the Border Patrol is paying. Police Chief Denton said it is not even close. Commissioner Rardin asked if that is where we have lost a lot of people as well. Police Chief Denton said no, we have lost people all over the place. We have lost thirteen police officers to the Sheriff's Department alone. We have lost to other agencies and Holloman Air Force Base. Commissioner Rardin asked if they had given reasons on their exit interviews. Is it all money? Police Chief Denton said in their exit interviews, a few have put money down. Some of it is quality of life or family; it varies. It is all over the place. Mayor Payne said that all ties in because we are down officers, and she assumes they are working a lot of overtime. Police Chief Denton said that if you pay people where they cannot afford to leave, they are not going to go. They are going to stay here. Commissioner Rardin said we have to look at the bigger picture. When the economic downturn does come, can we sustain this? Once we give it, we cannot take it away. That is where it puts us in a difficult situation where we have to be careful. In 2008, when that hit us, he was here in 2009 and 2010 when it finally hit Alamogordo. It was very difficult; it sucks to have to go in and furlough people. Police Chief Denton said he was here. Commissioner Rardin said it was very difficult for the Commission and staff on the upper levels as far as budgeting goes. He said he is not against this and agrees that they need to be paid for their service. Right now, many businesses are overworking their employees because we do not have enough. That is the case here with DPS, Fire, Public Works, all of them. Mayor Payne said if you look at our budget, we are in a better position now. Commissioner Rardin said we will see. Mayor Payne said fiscally, we are more responsible now with what we have. Acting City Manager Hernandez said we are also very conservative. Mayor Payne said incredibly conservative, and she loves that. The County is increasing, and if an economic downturn is going to happen, it is going to happen to both the County and the City, and so they will feel what we feel. It was important enough for them to do that, regardless of the risk. When she looks at those numbers, we are fifty, sixty, or seventy percent more in some cases for calls and arrests and crashes compared to the Sheriff's Department. We should all be alarmed about that. She said her concern is burnout, that is why she mentioned all the overtime, if that is what it takes just to make enough money. She said that when she was first elected, she had commissioners that said well, if you look at benefits, they really make more money. However, you cannot take your benefits and make a house or car payment. You need money to do that. She said she thought it was twisted a little in the past when they looked at everything. She said we have tried everything else, we need to do something, and this is a good time to do it because it is a wash. In the grand scheme of things, that one-eighth of a percent is not that big of a deal, not for something like this.

Acting City Manager Hernandez said she wanted to add that the County has talked in open meetings about increasing the tax because the governor has done it. If that do that and keep raising the taxes on the officers, it will be catastrophic for our department. Commissioner Rardin said they cannot raise theirs; they have already taken all of their three-eighths. She said that we do not do eighths anymore. The State has changed that. He said they took all of theirs all at one time. Acting City Manager Hernandez said the State has unrestricted some of these, so they do have the ability to pass them. They just did a House Bill in 2019 where they redid the whole tax structure; they gave a max that the commissions can do without going to voters, and they changed the whole one-eighth amount.

Commissioner Burnett moved to approve.
Commissioner McDonald seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 5-0-0.

11. Appointments to Boards and Committees. (Susan Payne, Mayor)

Mayor Payne read the openings and appointed Shirley Dakin to the Mayor's Committee on Aging, Adam Montorio to the Parks and Recreation Board, and John W. Davis to the Alamogordo Public Library Board. No one was opposed.

EXECUTIVE SESSION

12. Adjourn into Executive Closed Session in compliance with 10151(h)(8), NMSA (as amended) to discuss a possible land swap of real property located at 1402 College Ave. (Roll Call Vote Required)

Commissioner Rardin moved to adjourn at 8:55 p.m.
Mayor Pro-Tem Wright seconded the motion.
Roll Call Vote Taken
Motion carried with a vote of 5-0-0.

ADJOURNMENT

Mayor Susan L. Payne

ATTEST:

City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy City Clerk)
Approved at the Regular Meeting held on June 27, 2023.

CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
September 12, 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 Deputy City Clerk. Deputy City Clerk Aleshire announced there was a quorum present. Invocation was given by Pastor Don Hoffman, and the Pledge of Allegiance was led by Mayor Pro-Tem Dusty Wright.

APPROVAL OF AGENDA

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

PRESENTATIONS

1. Swearing in of Certified Police Officer Emilio Alonzo, Police Service Aides Don Brockett and Audie Swing, and Animal Control Officer Steven Howe. ***(David Kunihiro, Chief of Police, and David Overstreet, Municipal Court Judge)***

Judge Overstreet swore in Animal Control Officer Steven Howe, Police Service Aide Gerardo Parra, Police Service Aide Audie Swing, Police Service Aide Don Brockett, and Police Officer Emilio Alonzo.

2. Constitution Week Proclamation. ***(Susan L. Payne, Mayor)***

Mayor Payne proclaimed the week of September 17th through the 23rd as Constitution Week and presented the proclamation to Kathy Prater of the White Sands Chapter of the Daughters of the American Revolution.

PUBLIC COMMENT

Gary Stevens signed up to speak under Item 11.

CITY MANAGER'S REPORT

Acting City Manager Hernandez made the following remarks:
1. No report; a comprehensive City Manager's Report is sent every week.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Payne made the following comments:

She said we should consider a resolution confirming our support for the Constitution and disapproval of the Governor's order this week. The County is doing something. We did not have time to get it on this agenda, but we need to consider it for the next meeting. Commissioner Rardin said he agreed; we need to get a copy of the County's resolution and maybe mirror it for the next meeting. Maybe we could authorize the Police Chief to put a letter out saying he will not enforce it either. Mayor Payne said the Attorney General put out a statement today saying he would not enforce it either. It is obviously very unenforceable, but when it comes to violating the Constitution, we need to take a stand and put out something that makes a strong statement. This is nonsense. Acting City Manager Hernandez asked if this was for the next meeting or a special meeting. Mayor Payne, Mayor Pro-Tem Wright, and Commission Rardin all said at the next meeting. Commissioner Rardin said he thought that Otero County already had a resolution drafted; maybe we could reach out to them and take theirs and get it to work. Mayor Payne said we should tweak it and affirm our support. Acting City Manager Hernandez said we technically had one ready because we saw it coming, but we will look at theirs and see if it is different. Commissioner Rardin asked if we could go a step further and make a resolution in favor of John Block's impeachment actions. He said he did not know if everyone would support that or not. Mayor Payne said we needed to be in solidarity on that, and we may not be.

Mayor Payne said Commissioner McDonald was working on the Dudley School, and it looked productive. Commissioner McDonald said it was.

CONSENT AGENDA

3. Approve the minutes for the Special Commission meetings on August 21, 2023, and August 28, 2023, and the Regular Commission meeting on August 22, 2023. ***(Rachel Hughs, City Clerk)***

4. Approve the statements related to the Executive Closed Sessions held on August 21, 2023, and August 28, 2023. ***(Rachel Hughs, City Clerk)***

5. Approve the weekly City Manager Reports for 8/18/2023, 8/25/2023, and 09/1/2023. ***(Stephanie Hernandez, Acting City Manager)***

6. Consider, and act upon, agreement with Otero County for receipt of the $50,000 reimbursable grant award for the Alamogordo Public Library services to County residents. ***(Kim Underwood, Library Manager)***

7. Consider, and act upon, approval of Change Order No. 1 in the amount of $61,054.45, including NMGRT, to La Luz Dirt & Paving, LLC related to the FY21 Street Maintenance Program - Ridgecrest Drive project. ***(Patrick Riele, Project Manager)***

8. Consider, and act upon, acceptance of the FY24 New Mexico Department of Tourism's Clean and Beautiful grant award in the amount of $25,495.84. ***(Sven Sears, Parks & Recreation Executive Assistant/KAB)***

9. Approve Resolution 2023-42 designating the Administrative Manager as the Custodian of Records for the Alamogordo Police Department and including the method of destruction of City records as witnessed shredding. ***(David Kunihiro, Chief of Police)*** **(Roll Call Vote Required)**

Deputy City Clerk Aleshire removed Item 3 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. Approve the minutes for the Special Commission meetings on August 21, 2023, and August 28, 2023, and the Regular Commission meeting on August 22, 2023. ***(Rachel Hughs, City Clerk)***

Deputy City Clerk Aleshire said an amendment needed to be made to the August 28, 2023, Special Meeting Minutes. He said he put that Commissioner McDonald was absent from the meeting, and that was not correct. Commission McDonald was late but present for the Executive Session, and that wording needed to be added.

Mayor Pro-Tem Wright moved to approve Item 3 as amended.
Commissioner Paul seconded the motion.
Motion carried with a vote of 7-0-0.

UNFINISHED BUSINESS

10. Consider and act upon Resolution 2023-20, declaring 308 N. White Sands Blvd. to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. ***(Josh Sides, Code Enforcement Manager)*** **(Roll Call Vote Required)**

Code Enforcement Manager Sides said he brought this property before the Commission in June, and it had been tabled until today. He said he was unsuccessful in contacting Mr. Douglas after that meeting and had left business cards at his residence. He could not make contact to go back inside the property at 308 White Sands. He said that he saw Mr. Douglas working on the roof throughout the summer and observed from the public rights-of-way that Mr. Douglas did work on the southwest corner. It looked like he patched where the cracks were, but no work was done on the northeast corner, where it is displaced by four to six inches, making it still structurally unsound.

Commissioner Rardin said that this gentleman put a brand-new roof on this building and had done a substantial amount of repairs to it. We gave him three months to see where he would go, and he has improved the face and the south side. Mayor Payne asked if Commissioner Rardin meant since then. Commissioner Rardin said yes. Commissioner Burnett said he drove by it today, and the west and south sides have been repaired, but the east side has not. Mr. Douglas has put work into this place. Commissioner Melton said but did we ask Mr. Douglas to put in work or to fix the structure and code violations. Commissioner Burnett said Mr. Douglas has been fixing what we asked him to start fixing, which was the roof and the cracks. Mayor Payne asked why Mr. Douglas was not returning calls or communicating. Commissioner Rardin said he had not seen Mr. Douglas down there in a couple of weeks, but right after we gave him the three months, Mr. Douglas was down there about every day working on this. There were ladders, buckets, and tar. He put a new roof on it.

Code Enforcement Manager Sides said that by passing the resolution, per the International Property Maintenance Code, that gives him two years to bring it back up to code. By passing it, it does not mean we are going to demolish it tomorrow. Per the International Property Maintenance Code, because the windows are not boarded, he has two years to correct the rest should the resolution pass.

Mayor Payne said he has not communicated. Commissioner Rardin said he was a schoolteacher, so that may be why we are not able to get in contact with him. Mayor Payne said we were clear about how critical it was to communicate, tell us what was going on, and get some of these items corrected.

Acting City Manager Hernandez said we discussed this, and by passing this resolution, it gives the City a little more teeth to reach out to him so that he has to reach out to us. As Code Enforcement Manager Sides said, Mr. Douglas has two years, but he has to be in communication. By not passing this, then by next month, he can just stop doing anything. This gives the City some wiggle room to contact. Mayor Payne said she agreed.

Commissioner Rardin asked if we contacted Mr. Douglas to let him know this was on the agenda. Did we try? Code Enforcement Manager Sides said he tried going by his residence in the City on Princeton and was not able to contact him at all. Commissioner Rardin said that Mr. Douglas has made substantial progress in his eyes. Mayor Payne said she did not want this to sit there for two more years and do nothing because all that progress goes down the tubes if he does. Commissioner Melton said that progress is half of it; the other half is communicating with us since this was a mutually arranged decision. Mayor Payne said her concern was that people do not think we are serious. Commissioner Rardin asked if we knew if Mr. Douglas's father passed away. Code Enforcement Manager Sides said he believed so and has come to understand that he did. Commissioner Rardin said he was the original owner of this building, and Mr. Douglas was the son that has control. There is another son somewhere. Code Enforcement Manager Sides said he believed that back in June, Mr. Douglas said that the building was left to his brother, and his brother let it dilapidate that bad, and now he has taken back control of it and is taking care of it. He said he spoke with Mr. Douglas after the Commission meeting in June and told him that he would need to meet with him again to sign the consent to enter form so we can go in there, and Mr. Douglas had said it was not a problem, and he would be by that week, but there has been nothing since.

Mayor Payne said her concern is that this will go another two to three years if we do not do something. If we pass a resolution, that gives us control over how far we can go with it. She said that she personally was not willing to let this go because it is another building on White Sands Boulevard that is falling apart. If Mr. Douglas does not get it fixed, it is just going to get worse. It is not fair to everybody else, such as property owners that invest and take care of their properties, people that live around or do business there, and quite frankly, it is not fair to us as a community when we have military driving through for the first time and that is what they see.

Commissioner Paul moved to approve.
Commissioner McDonald seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 5-0-2. Commissioners Rardin and Burnett voted nay.

NEW BUSINESS

11. Consider, and act upon, Ordinance 1681, Z-2023-0005(A) for first publication, a map amendment to change the current zoning of the property with the legal description of S: 8 T: 16 R: 10 TR IN N1/2SE1/4 from R-1 Single-Family Dwelling District, to R-4 Multi-Family Dwelling District. *(Sean McGranaghan, Assistant City Planner)* (Roll Call Vote Required)

Assistant City Planner McGranaghan gave his presentation and recommended approval of the rezoning. He said they sent out protest area mailings. Twenty-eight letters were sent out, four letters were returned undeliverable, and we received five letters of opposition.

Commissioner Burnett said there was not a sewer line there, correct? Assistant City Planner McGranaghan said a sewer line was on Walnut, the cul-de-sac street. We talked with Utilities Director Nunnelley, and he said they could tie into that. The cost of extending it to the property would be on the property owner. Commissioner Rardin asked if it was on Walnut or Pinon. Assistant City Planner McGranaghan said that Pinon was the street that ties into it. Commissioner Rardin asked if the sewer was on Pinon or if it stopped on Walnut. Assistant City Planner McGranaghan said he thought it was on Walnut. Commissioner Rardin asked Assistant City Planner McGranaghan if there was City water on it. Assistant City Planner McGranaghan said they could tie into City water, but the expense would be on the owner. Commissioner Burnett said there should be one on Princeton. Commissioner Rardin said it was recently County property back in 2010 or somewhere around there. Commissioner Rardin asked if the protest letters were from residents who lived on Walnut. Assistant City Planner McGranaghan said that within the two-hundred-foot buffer, there were three residents on Walnut and two on Pinon.

Commissioner Burnett asked if we knew where they were coming in to have access. Was it Pinon? Assistant City Planner McGranaghan said there is not a road but a driveway that connects Pinon to Princeton.

Mayor Payne asked the property owners to come up and explain what they wanted to do. Property owner Sean Little said he purchased this land a couple of months back to develop it. It is currently completely undeveloped and almost an eyesore part of town. He said he wanted to completely clean the entire thing, beautify that area, and then build permanent mini homes with the intent of short-term rentals targeting military and traveling nurses. If other people want to rent, then they can. He said he was retired military and understood how much of a challenge it was to move with a family, and he was trying to set up an affordable temporary place close to the base. He said he had friends who were traveling nurses complaining how hard it is to find someplace. You could hit the hospital with a rock from where he lives if you threw it hard enough. He said it is an investment plan for him. Mayor Payne asked if it would be similar to what is on Florida? Are you familiar with the tiny homes? He said he thought she knew what she was talking about, and somewhat, yes. They are going to be more spread out and not so tightly together. Mayor Payne asked if it would be those sizes. He said yes, between four and six hundred square feet and one-to-two-bedroom units. He said he wanted to start with four of them now and, over the next fifteen years, expand with time if business goes well. He said he had three and a half acres to work with and only planned on using half of it.

Commissioner Burnett said he believed the houses on Princeton were on septic, correct? Mr. Little said yes, and he lived on Princeton. He had a well and septic on his property, but he could tap into the City's water and sewer from the Pecan addition, which was his intention.

Assistant City Planner McGranaghan asked the Commission if they received the letters of opposition. Mayor Payne said yes. Commissioner Rardin asked if there were five total. Assistant City Planner McGranaghan said yes, there were five in total. Commissioner Melton said two complaints were about existing infrastructure capacity; is that going to be an issue? Assistant City Planner McGranaghan said that regarding drainage, which was a concern they had, when the property is developed, it would be addressed in the review process. In the Technical Standards, it would call for a detention pond, but he would need to talk with Public Works Director Beshaler because she makes the final decisions. The post-development flow can increase from pre-developed, that way, they address the drainage. Concerning utilities, he had spoken with Utilities Director Nunnelley, and he said that they could connect. Regarding the increase in the number of houses, he would have to check with Utilities Director Nunnelley again, but when we get to the development process, that will also be addressed. As far as increased traffic and congestion, he said he was not sure if there was a way to address that because people are driving there regardless. Concerning the housing density, the property owner

plans to spread them out. The property owner is also planning that if this is subdivided, it can be individual lots. Concerning views of the mountains, there is a height limit, and they cannot do over two stories. The property owner is planning on doing one story.

Commissioner Rardin asked if there was a possibility in the future for Mr. Little to allow those guys to attach to your sewer if you put in a main in? All those houses on Princeton do not have City sewer. Mr. Little said his septic is inside his property at 2611, as was his neighbor's. He said he was not planning on immediately bringing sewer into the property because the alley has a sewer. He can run a six-inch pipe or whatever the City requires directly into it, so there will be minimal sewage on his property. If he does expand closer, then absolutely, there are sewer lines people can tie into. Commissioner Rardin said that was an issue with all those houses. In one house, a tank was failing. At that time, the City looked at acquiring an easement and running a line across 2611 to get to Pinon, but it never came to light. All those homes have septic tanks, and it would be in the City's best interest to get them off septic. Mr. Little said he would love to work with the City to make that happen. As a septic owner, he understood that it has benefits but definite setbacks, and it would be nice not to have to worry about it. When that time came, if we pushed that way with City water and sewage, it was something he was willing to work with the City on. Commissioner Rardin asked if they were on City water at Princeton. Mr. Little said no, he was on a well. The City water ends at the corner of Pinon and Walnut, and then down at 26th and Princeton is where all the City water ends. It does not come any closer.

Public Comment

Mr. Gary Stevens said he lived at 1523 Walnut. When this lot was sold a couple of months ago, he was looking forward to getting construction done and getting a lot taken care of. It is three point two acres. He said he did not know how many acres Mr. Little would use up on this first section. If you are going to build a whole lot of homes, first of all, Princeton is gravel with no sidewalks or curbs. So, if you wash your car on Saturday, you are not using Princeton. You are heading down one street, which is Pinon. Pinon cannot have cars parked on both sides and have two cars drive down. It is a secondary street in Alamogordo and not wide enough. He said he was concerned with kids and everyone else in the neighborhood. He said he almost smacked one a while back because he was using his driveway as a runway in the middle of the street and did not see him, but luckily, he drove slowly. He said if people drive fast down there, someone will get hurt. Waterlines in the area now are the old poly; they are digging up streets there regularly, fixing the lines. He said he was concerned about traffic. If Mr. Little would limit it to ten houses, he would be happy, but if there are follow-ons, we do not know if we have the infrastructure. The sewer has been pumped twice in the last six years by the City. He respects Mr. Little's wanting to build and looks forward to it but wants to come to an agreement that there will not be thirty or forty mini homes back there. That is his concern.

Acting City Manager Hernandez said this is just the zoning part of it. Anything else would go through TRC, and they will look at traffic, drainage, and all of that. If it is not suitable, we will not sign off on it. Mayor Payne said she was just thinking that if it is not possible, it is not possible. She did not know if that was even a concern. Acting City Manager Hernandez said as far as parking, perhaps the owner can address if the lot is big enough to have parking on it instead of the side of the street. Mayor Pro-Tem Wright said tonight is just the zoning change, and after this, Mr. Little will have to coordinate with the City to develop the drawings and make sure they are improved with the infrastructure and setbacks. It would have to meet our new Tech Standards to be even possibly built on this land. Mr. Stevens said his concern was how many homes were going in back there and if we could afford the traffic. Mayor Payne said that if we do not rezone this, we are limited to single-family homes, which does not seem practical for a three-acre lot. What else would Mr. Stevens do with it? Mr. Stevens said if it was R-1, you could build houses and whatever you wanted. He just did not want forty mini-homes

in there. Once it turns R-4, there is no control, and the City cannot stop anybody if he sells the property down the road. Mayor Payne said that if we do not rezone to R-4, Mr. Little is very limited in what he can do, which does not make sense. Mr. Stevens said he understands what Mr. Little is doing and looks forward to it, but if we are going to get a large number of mini homes, well, Princeton has no infrastructure. We are on a dirt road and developing a lot without developing the area. That means there will be one street going down, and who is going to drive down a gravel road or paved road, which is Pinon. We already opened up the bridge at Pecan, and from 25th Street to Fairgrounds is the front stretch of the Coca-Cola 600. You have people flying down and passing you at seventy miles per hour. He said he has been passed numerous times down there at high speeds, and he does not want people on Pinon doing the same thing.

Commissioner Rardin said that on the zoning map, they usually give us a legend of the colors. Assistant City Planner McGranaghan said the blue on the map is R-1. Commission Rardin asked what the green and tan were. Assistant City Planner McGranaghan said the green is R-4, tan is C-3, pink is M-1, and light beige is C-1. Commissioner Rardin asked if the brown was County, and if we annexed that or not. Assistant City Planner McGranaghan said it is City. Commissioner Rardin said we are spot zoning that one piece to R-4. Assistant City Planner McGranaghan said yes, but just south of it is a storage unit place. Commissioner Rardin said it should be C-1 right, or is that County back there? Assistant City Planner McGranaghan said the storage unit is zoned R-1 because when it was pulled from the County, everything automatically goes to R-1, so that would need to be fixed at some point, so it is in the proper zoning. So, it would be like an R-4 parcel and a C-1 neighborhood business parcel. Commissioner Rardin said that is right; it was built before it was annexed in.

Commissioner Melton moved to approve.
Commissioner McDonald seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0.

12. Consider, and act upon, Resolution 2023-29, declaring 311 New York Avenue to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. *(Josh Sides, Code Enforcement Manager)* (Roll Call Vote Required)

Code Enforcement Manager Sides gave his presentation and recommended approving and ordering the property's abatement.

Mayor Payne asked if the owner lived here. Code Enforcement Manager Sides said he is the same owner of 313 that I took a month ago.

Commissioner McDonald moved to approve.
Commissioner Paul seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0.

13. Consider, and act upon, Ordinance 1682 for first publication amending Chapter 26, Article 03, Sections 010 Definitions, 030 Unlawful growth or accumulation on lots, and 040 Unlawful growth or accumulation on tracts. *(Josh Sides, Code Enforcement Manager)* (Roll Call Vote Required)

Code Enforcement Manager Sides said that Code Enforcement had a property owner that they brought forth to Municipal Court. The Municipal Court rendered a guilty verdict on unlawful growth or

accumulation on lots. The defendant appealed to the District Court. District Court Judge Schneider ruled that our ordinance of unlawful growth or accumulation on lots is unconstitutional due to its vagueness. Nobody understood what the meaning of weeds would be, is what she said in her ruling.

Code Enforcement Manager Sides said he did a lot of research about other communities in New Mexico, and he did not change the verbiage much. He said that in definitions, we defined five weeds as weeds in the City of Alamogordo but allowed the City Manager to designate what were and were not weeds. Per ordinance, there were only five weeds on that definition. In definitions now, there are fifty-five weeds, which matches places like Albuquerque, Las Cruces, and Roswell that have those specific weeds as noxious. In definitions, it also includes whatever the New Mexico State University's Agricultural Department deems a noxious weed on their list because their list is over two hundred weeds long.

Code Enforcement Manager Sides said going on to unlawful growth or accumulation on lots, which is a parcel of land that is under half an acre, the only verbiage added was you could not have weeds that were over six inches tall. We are all from here and understand that goat heads will never grow six inches tall, so he added in width and spread to those six inches. So now, with this, you cannot have weeds that grow over six inches tall or a width or spread either to help get those goat heads on that list. He said there is also verbiage from our unlawful growth and accumulation on tracts, which is any parcel of land over half an acre, that states if the code official deems it a fire hazard, it shall be removed.

Commissioner Rardin asked if we wanted to add grass as well. Everything there is just weeds. Code Enforcement Manager Sides said that under the definition of weeds, grass is not on there, but there is verbiage that if it is very out of control, we can cite it under unlawful growth and accumulation. We can now, he did not add that, and it was already there. We don't, but it could be there. He said he is not going to go out there to measure if grass is over six inches. Commissioner Rardin asked if they were going to waste time going out there and measuring the spread of a weed. Code Enforcement Manager Sides said no. Commissioner Rardin asked if we were just going to go, eh, it is close enough. Code Enforcement Manager Sides said yes, none of his officers go out there with a tape measure to measure weeds. It is obvious if it is over two feet tall. Commissioner Rardin said our state building officials sometimes do check that.

Commissioner Melton said there is a line here that describes weeds as anything that is harmful, unhealthful, unsightly, or offensive. Are we worried those are vague, and someone with an allergy might claim it is unhealthful? Code Enforcement Manager Sides said that is verbiage that was already in there, and it is verbiage that is in a lot of the other ordinances throughout the other cities in the State of New Mexico. When it comes to complaints of weeds, prior to Judge Schnieder's ruling, we only really looked at five. Russian Thistle is a big one, that is the tumbleweeds. Silverleaf Nightshade is another one, and it has little purple flowers. We focus on those. If it is not a weed that we can enforce, then it is not a weed we can enforce. We this, it is not so much okay, I am allergic to it, and it is unhealthy and unsightly. It is more about what is deemed as a weed by the New Mexico State University Agricultural Department, by the people who study that and tell us they are weeds. Commissioner Melton said he just did not want feuding neighbors the ability to give someone's garden offensive. Code Enforcement Manager Sides said we have that all the time with weeds. City Attorney Smith said we pretty much deal with that on a daily basis.

Mayor Payne asked if they needed to take a test on these weeds. Code Enforcement Manager Sides said he did a lot of research, and if he saw a name on there he did not know, he Googled it. Mayor Payne asked if there was a picture book or something. Code Enforcement Manager Sides said he asked for someone from the New Mexico State University's Agricultural Department to come over and give our Code Enforcement officers a brief rundown of the list of weeds. He said that some of the

additions to the weeds list is like bamboo. That would be a weed now under this. Or the River Cane looking plants the Zoo has, that get out of control if you are not taking care of it. There are a few trees there, such as the Tree of Heaven, a noxious weed by Agricultural Department standards.

Commissioner Rardin said the County has been having problems with the African Rue. He said he did not mind that being on here, but he knew from his shop that if you kill that stuff with a weed eater, it comes back four times bigger. If you try to poison it, it does not work. He said he has found nothing that works on African Rue. That stuff is very noxious; even the County Extension Office had a deal with the County talking about that, and they did not have anything to kill it. Code Enforcement Manager Sides said that African Rue is a big problem statewide, and that is why he has tried to get the Agricultural Department to come over and educate us. Code Enforcement is enforcement through education. This is a weed, this is how you take care of it, and we are finding out firsthand how you take care of those kinds of things. Commissioner Rardin said that mechanically cutting just makes it spread more rather than kill it. Acting City Manager Hernandez said with NMSU involved, they also have an extensive program on how to kill some of these weeds, so it will be an overall education. We also have Belinda, a biologist who has done all of that, so she will be another resource we can use. Commissioner Rardin said if you find something that kills African Rue, please let him know. Acting City Manager Hernandez said absolutely, because we have some of that at the Airport. Mayor Payne said she remembered a big presentation on African Rue at the Airport and people saying that they could not get rid of it. Acting City Manager Hernandez said we could buy a bunch of goats. Commissioner Rardin said he thought it was noxious for animals too. City Attorney Smith said her goats like them. Mayor Payne said she felt like we would end up in court over that. Commissioner Rardin said the County was interested in it because it could kill cows.

Commissioner McDonald asked if Code Enforcement Manager Sides said that Silverleaf Nightshade was a weed. Commissioner McDonald said it is not on the list. Code Enforcement Manager Sides said it was. Commissioner Rardin asked what it looked like. Code Enforcement Manager Sides said it does not get very tall but will get over six inches and has purple flowers. He said he mainly saw it on sidewalks. Mayor Payne asked if it was on the original list. Code Enforcement Manager Sides said it was. Mayor Payne said she did not see it here either. This is a detailed list; thank you.

Mayor Pro-Tem Wright moved to approve.
Commissioner McDonald seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0.

14. Consider and act upon, selecting Rick Holden as City Manager and allowing Human Resources and City Attorney to begin contract negotiations. *(Stephanie Hernandez, Acting City Manager)* (Roll Call Vote)

Acting City Manager Hernandez said this is for the Commission to take official action and have your vote. Mr. Holden is here and would like to say a brief word.

Mr. Holden said this is a great honor. He said he has been here long enough tonight to realize he is at home already because we are going to rezone, deal with weeds, and tear down old buildings. He is where he needs to be. He said he appreciates the opportunity and vote of confidence from each of you, and he looks forward to being here on an ongoing basis. He said that Acting City Manager Hernandez spoke to him this morning about being in the audience, and she has a spot cleared out for him and a list of things a mile long. He said he has already begun to get his housing situation situated and will be here and ready to go once we get the contract taken care of. He said he would be available,

and as he has said before, the open door will be there, and he looks forward to it. Thank you very much again for the opportunity to serve.

Commissioner Paul moved to approve.
Mayor Pro-Tem Wright seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0.

15. Consider, and act upon approving 3 agenda items and 2 alternatives for the 10/31/2023 Joint City/County Commission Meeting. *(Stephanie Hernandez, Acting City Manager)*

Acting City Manager Hernandez said the potential item list of things to discuss came from the Commission with the exception of the last one. She said she put that on there to ask that the Commission consider securing the rocks in the pipeline off Highway 82. As you know, this is the second time the rocks fell and the second time we have had to replace our pipeline. Another thing not on here that she asked the Commission to consider was combining the EOC, the Emergency Operations Center.

Commissioner Rardin said that as far as securing the rocks and pipeline, is there anything we could do? That is NMDOT's area. Acting City Manager Hernandez said the County does go in there and do some. Commissioner Rardin said not on Highway 82. NMDOT will help in emergencies, but that last rockslide was right where they took all the rocks down to try and prevent another rockslide. Acting City Manager Hernandez said that in speaking with Utilities Director Nunnelley and Public Works Director Beshaler, we believe some coordination can happen.

Commissioner Rardin said that one of his big ones was the flooding on Scenic and Florida. That would be a perfect opportunity for Otero County and Alamogordo to get together. It is very important. Commission Burnett said the flooding in that area is the number one complaint he gets. Commissioner Rardin said that would be a joint effort that both of us would have to work on since they have part of it up in the canyon there, and we have part of it right there where the culverts and backups start. He said he wanted that one on there for sure as one of ours. Mayor Payne asked if anyone had an objection to that. Can we add that one?

Mayor Payne said that we need to work with the County to come up with some solutions to our housing crisis. It is just going to get worse. Maybe we could add that. Does anyone have any thoughts on that? Commissioner Melton said we definitely need more affordable housing, but we may be limiting ourselves to just focusing on the affordable part. We just need housing in general. Mayor Payne said she agreed, housing in general. Commissioner Rardin asked what steps the City or the County could take to help with that. We have looked at it in the past, and there is not a lot. We started our GRIP program and looked at property tax abatements, and even if we do those, it is not enough money to incentivize those builders to build. With GRIP, you spend $1,000,000 and you get $20,000 back. There is a big issue, but he did not know if there was anything we could do to help it. Maybe we could take all the properties we foreclosed on and give them at a rate to the builders or something. We have looked at how to incentivize it for the last twenty years, and there was just no good way for us to do it on our end, but he did not know about Otero County's side. He said he did not know if we could use capital outlay money or if there was a way to look at infield development programs. About thirty years ago in El Paso, they did some infield development where they took older areas, like his and Commissioner McDonald's. A government-sponsored program incentivizes builders to go into those areas and revitalize them. Acting City Manager Hernandez said we could look into that, absolutely. We could research it. Commissioner Rardin said we could look into that part of it. Mayor Payne said

let's set that aside for now. We need to make this productive, so if we do not think this will be productive, then let's not talk about it.

Mayor Payne said she was looking at efforts for mental health facilities to help with problems in our community. That is one area we can work together on, and they have something like health services. She said she thought that was more for helping with the financial side of it, but maybe we can talk about it and expand it. It is a huge issue for us and the County. Commissioner Melton said it is an issue, but his reservation is that it is controversial. People think if the government gets involved, it will involve taxpayer money. It is controversial compared to the other items on the list, like broadband. Mayor Payne said they have three they are going to pick, and she said she could guarantee that broadband will be at the top of Commissioner Barela's list. She is just looking at things that may not be on the County's list.

Commissioner McDonald said she suggested three, and those have already been discussed. She said she didn't talk about Scenic and flooding, but she plans to attend a conference for housing, period. It will be in October, before the meeting. She said she would like to see what they are saying because when she looked at the information, it talked about if we could not get housing, period, we are losing out on the working class of people coming into town. We do not have people to fill jobs. We need to look at housing, whether it is productive or not. We need a plan to see what we can do about it. She said she had counted the number of houses in District 5, between 1st and 10th, and we can come up with about seventy vacant houses. Mayor Payne asked if those were livable or not. Commissioner McDonald said some are livable and some are not. Commissioner Rardin said we could put this up as one of our alternatives. The problem is using taxpayer money to try to incentivize that is not real legal, I guess you could say. Mayor Payne said yes, but she has questioned that before. Other communities are doing something, so what are they doing? She said that she and Commissioner McDonald have been looking into that because we need to do something. We have people working here and living in Las Cruces and other areas. We are losing out on a huge tax base. For instance, Eddie Valencia is building in other areas and talking about other things we are doing. She said she understood that he builds in El Paso and we are in New Mexico. It is different, but new things do not start unless people create them. Maybe we need to get creative. Our State Representative is here, and he knows how critical it is. Maybe things need to start happening at the state level. We cannot stop talking about it. Affordable housing would be for purchase, but what about rentals? We just do not have enough affordable rentals in our community. We need to talk about this and keep it at the forefront, whether it is with the County or not.

Commissioner Melton asked Acting City Manager Hernandez if she recommended it too, that were off this list. Acting City Manager Hernandez said she recommended one that was off the list. She recommended securing the rocks and combining the EOC, Emergency Operations Center. She said to follow up on Eddie Valencia, we have been working with him, and we have another meeting scheduled at the end of this month. We are just trying to address Fire Code issues. She said she believed it was two hundred and twenty-two units. Mayor Payne said she apologized; she asked about everything but that.

Mayor Payne said that Mayor Pro-Tem Wright talked about homelessness prevention and support services, which she thinks goes along with mental health. Mayor Pro-Tem Wright said we have a list of Otero County items and City items. Is that what they suggested versus what we suggested? Acting City Manager Hernandez said that is the email Commissioner Barela sent us. She did not know if the County would end up with that. She said once the Commission makes its decision, she will reach out to County Manager Pamela Heltner to see where they are at.

Commissioner Rardin said he thought the animal control one would be good. They have a fairly nice facility and room to expand. If we can get a plan together to combine the two and get our State Representative to get us some capital outlay, then maybe we could get the County and City together. Typically, they give us half a million to six hundred thousand towards a project, but if the County gets some, and we get some, we get a larger pool of money and can make that happen. Same thing with solid waste. They have about ten facilities around the County, but we have one. Wouldn't it make sense for us to turn ours over to them and let them run it? Then we could just contribute the money. Commissioner Melton said with that, we also give up control. We have our own animal control ordinances, and they have theirs. How would that work under one? Commissioner Rardin said it would probably be structured simply, like our landfill. It is a little different because there are not as many ordinances and rules and laws, but basically, if the animal is picked in city limits, it follows one set of rules. The majority of animals in theirs come from Chaparral. That is stuff we would have to talk about it. Commissioner Melton said he did not know if their noise ordinances are the same as ours, what with Alamogordo being more dense. We can discuss and look into it, but that is his concern. Acting City Manager Hernandez said that as far as the Convenience Center, all our citizens get billed. She said she agreed with Commissioner Melton on that particular issue. Utilities Director Nunnelly would have a lot to say about that. Commissioner Rardin said the Convenience Center has always been an issue in Alamogordo. We have the County one and ours right next to each other. A lot of the resident complaints he has heard are that it is easier for them to just go to Otero County because they just let them dump their trash. We want to weigh you, put this in the computer, and then you have to come back around and get weighed again. There is no need for that. The County is just easier to deal with on solid waste. Acting City Manager Hernandez said they are also closed often. Commissioner Rardin said they are open all the time we are they close on Thursdays out in La Luz. Acting City Manager Hernandez said they close on Thursdays, but speaking with Utilities Director Nunnelley, they close often, and we have to take some of those citizens, which is unfair to our citizens because our citizens pay for it. Commissioner Rardin said that when this one is closed, what ends up happening is they go down the road in La Velle, and they go down Zuni or Mayflower, take it out in the desert, and dump it. It creates issues for the County as well. Mayor Payne said she did not know how comfortable she was combining that stuff. We are not the County; we are the City. We do things differently, and there is a reason why we do what we do.

Mayor Payne said we know we want the flooding for sure. Commissioner Burnett said that crime reduction and community safety are issues in his District and Commissioner Rardin's, especially between Indian Wells and Dexter. Acting City Manager Hernandez said that is the County's list. Commissioner Rardin said it goes hand-in-hand with the City and County. Commissioner Melton said they would select that. Commissioner Rardin said so, we will come up with three and two alternates. Acting City Manager Hernandez said yes sir. Commissioner Melton said they do not have broadband, though. We are the only ones. Commissioner Rardin said he thought they had that on there. Acting City Manager Hernandez said we have a committee that encompasses all the County already, so we are already working on the broadband issue. She said Commissioner McDonald has gone to several of those, which are already in the works. We may not want to put that on because we are already working on it.

Commissioner Rardin said that Senior Center improvements are on our end, but it is off the County's list, correct? Commissioner Melton said yes. Commissioner Rardin said that it is a pretty nice facility over there. Mayor Payne said she thought they were doing a great job over there and is unsure what that is.

Commissioner Rardin said maybe the mental health facility is one of ours. Mayor Pro-Tem Wright said we could combine homelessness and mental health. Commissioner Rardin said that is an issue, and a lot of people walk around Alamogordo talking to themselves. Commissioner Melton asked what the

solution to that was other than throwing money at it. That is what San Francisco does. Mayor Payne said we have CIT, which helps with the crime portion, but mental health and homelessness often go hand-in-hand. Commissioner Rardin said drug use. Mayor Payne said the issue is that they may not be committing a crime, but they are parked on our sidewalks, and there is no place we can take them. We have no facilities, nothing. It is worth a conversation with the County, so we are all on the same page. We need to figure out what to do. She said she works in this field with the homeless, and we are getting some interesting people coming in, and it is honestly a little bit scary. Some of our volunteers are older. It is not a crisis now, but it is going to be if we do not come up with a solution to deal with it. Commissioner Melton said we could include it on the list; he just has major reservations about it. There have been studies with cities showing that investing in homeless shelters and mental health facilities does not work. It does not improve anything. It just inflates the budget. Mayor Payne said she is not suggesting that we come up with a facility, but we need to talk about it to figure out how we handle it. How do you handle it? You cannot let it continue because it will grow exponentially if we do not do something. Commissioner Melton said work with churches and private charities. Keep the government out of it. Mayor Payne said there is not enough money. Commissioner Rardin asked if the one that Mr. Torres did was still open. Commissioner McDonald said yes. Commissioner Rardin said that maybe it is part of the discussion. The County and the City could pull money together to contribute and help that run. It may not be something we run, but a little bit to us is a lot to them. It is a private organization. Acting City Manager Hernandez said that one is just a men's facility, though. Commissioner McDonald said the issue is just even getting a cooling station set up. It would have taken a long time for the City to do it, but the Counseling Center was able to do it for a month. We do have some avenues, so those can be tweaked if we talk about them. Commissioner Rardin said that would be similar to COPE, wouldn't it? Mayor Payne said it is a domestic violence shelter, and they are full. They have people in hotels. Commissioner Rardin said maybe a 501(c)(3) such a COPE that we and the County could partner with. Acting City Manager Hernandez said we could put it as a combined effort if you all agree. We can have the flooding on Scenic and Florida, and have homelessness and mental health as one item. Mayor Payne said it was a good idea. Commissioner Melton said we could include it on the list. Mayor Payne said we just have to come up with a solution. It is getting worse. Commissioner Melton said it is a philosophical issue about the role of government and whether or not it should get involved. Mayor Payne said she is the last person that believes in handouts. Acting City Manager Hernandez said there may be opportunities for grants where either we or the County are fiscal agents on it. It may not necessarily be us putting money into it rather than us getting the money and pushing it out. Mayor Payne said it is worth talking about, but if it does not get anywhere, then it does not go anywhere.

Commissioner Rardin asked if Commissioner Paul had comments. Commissioner Paul said he was listening to everyone go back and forth. He felt housing and the Airport were important, but the Airport was not on the list. Things like that will grow the community and are worth discussing. Some of these things are good but not necessarily on-topic. Mayor Pro-Tem Wright said we kicked housing out of the way because there is not a lot we can do. Commissioners McDonald and Burnett said it is an alternative. Commissioner Rardin said we have to look at different programs. We could come in and have a big developer come in who wants to get industrial revenue bonds through us, but then we are on the hook for that. They have no feet in the fire on anything, and if it goes belly-up, they walk away, and we sit there holding the note. Mayor Payne said we have already looked into that, and that is not going to work. Commissioner Rardin said we have a few ways of doing that, but we are on the hook for it, not them. Regarding when the GRIP program was in place, they spent $60,000,000 at the hospital for a $1,000,000 rebate. In theirs, it is a big one, but you go spend $500,000. They did not end up getting it because we had to close it due to COVID. You spend $500,000 to get $50,000 back, and it is really not worth the paperwork. Mayor Payne said unless they are doing it anyway. The hospital was doing it anyway, and they were doing it regardless. Commissioner Rardin said we do not have the means to offer anything. That is all we have to offer. Mayor Payne said maybe not talk about

it at this meeting, but she agreed with Commissioner McDonald that we need to look into it and not give up on it. Commissioner Rardin said that one of the County Commissioners is a builder. Maybe he has some ideas. He has been in the industry for close to fifty years. Commissioner McDonald asked if that was Commissioner Matherly. Commissioner Rardin said Gerald, yes. He has been a homebuilder for a long time. Maybe he would have ideas. In order to get affordable homes, a lot of builders will not build smaller square footage of homes because there is not enough profit. They want to go out and build these twenty-five hundred to three thousand square foot houses to get the profit they need. Maybe we need to look at getting twelve to sixteen or twelve to eighteen hundred square foot homes and figure out how to get those moving. Mayor Payne said she remembered one of the builders coming before us about setbacks, and they said they wanted to do it to build affordable homes, but at the time, she had said define affordable. What is affordable? For a lot of people in this market, not even $200,000 is affordable. Commissioner Rardin said that those homes are going for double what they used to go for in areas like his, Commissioner Burnett's, and Commissioner McDonald's. They are in the $150,000 range for sixty-year-old homes.

Commissioner Melton said we could discuss catch and release. The County and the City are on the same page, but it may be useful to discuss joint lobbying strategies. That is not something we can do in private. It has to be in public.

Mayor Pro-Tem Wright said it is not on this list, but have we ever discussed economic development or tourism strategies with the County, especially since we have taken those both in-house here? Acting City Manager Hernandez said we have not, but she is down for those too. Commissioner Paul said that is highly worthwhile.

Mayor Payne said so let's narrow this down. We want flooding. She said she likes the economic development aspect; it is not on the list, but we can add that, right? Acting City Manager Hernandez said of course, yes. Commissioner Rardin said like what, a five-year plan on that. Mayor Payne said yes, how we can work together to create more business and industry. She said she is big on manufacturing, but a lot of that would have to be done outside city limits. Acting City Manager Hernandez said definitely working with the State and County. The State is really big on manufacturing in this part of the State. Hopefully it would bring the City and County into other efforts as well. Mayor Payne said okay, we can add that. Is everybody okay with that?

Mayor Payne said the third one is homelessness and mental health. Is everyone okay with that? Commissioner Rardin said everyone was cool with that. Commissioner Melton said he personally thought we should do catch and release. Mayor Payne said he was right, too. We can't pick four, right? Commissioner Melton said mental health is on their list, so there is a chance they will pick it. Acting City Manager Hernandez said we could put homelessness and mental health as an alternative and catch and release on number two. Commissioner Melton said we should specify the catch and release to discuss lobbying strategies. Commissioner Rardin said the mental health one would be a lengthy discussion. He agrees it is very important, but it could take up the meeting, which is only two or three hours. Mayor Pro-Tem Wright said three and a half. Acting City Manager Hernandez said she put it for four. Commissioner Melton said that would be a meeting in itself. Mayor Payne said it is an important meeting, so if we are not going to add that, just remember it is critical and getting worse by the day. It is incredibly stressful. Commissioner Rardin said he sees new homeless people standing on corners daily now.

Mayor Payne asked if we wanted to add catch and release. She said she was all for it. Commissioner Rardin said we are all already working on catch and release. The County is, and we are. Commissioner Melton said separately, though. We all plan to do something once the session starts, but we have not discussed it as a combined group. Acting City Manager Hernandez said she thought we had the

support for Representative Block's letter, which went up to the State. Right now, we have different calls from citizens who are sending letters or calling the Governor's Office. That is where we are right now. It would not be bad to put it on there because we have a meeting in October with the pretrial services.

Mayor Payne said okay, so yea or nay. Somebody give me some thoughts. Commissioner Burnett said we are doing the flooding. Mayor Payne said not the flooding, we have economic development. Mayor Pro-Tem Wright said and the catch and release. Commissioner Rardin said those are our alternates. Commissioner Burnett said housing. Mayor Payne said housing and mental health. We made a decision. Acting City Manager Hernandez said the flooding, the economic development, and catch and release.

Commissioner Rardin made a motion to approve the three items we finally discussed and two alternates.
Mayor Pro-Tem Wright seconded the motion.
Motion carried with a vote of 7-0-0.

16. Appointments to Boards and Committees. *(Susan Payne, Mayor)*

Mayor Payne read the openings and appointed Mark Alan Carter to the Mayor's Committee on Aging. No one was opposed.

Commissioner Rardin moved to adjourn at 8:03 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 Hughs

(Prepared by Dylan Aleshire, Deputy City Clerk)
Approved at the Regular Meeting held on September 26, 2023.

RESOLUTION NO. 2023-20

A RESOLUTION DECLARING THE BUILDING OR STRUCTURE, OR THE PREMISES LOCATED AT 308 NORTH WHITE SANDS BOULEVARD ALAMOGORDO, OTERO COUNTY, NEW MEXICO, TO BE RUINED, DAMAGED, AND DILAPIDATED TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY, AND ORDERING ITS ABATEMENT

WHEREAS, the governing body of the City of Alamogordo, New Mexico, finds that there is located within the City a certain building, structure, or premises at 308 North White Sands Boulevard, as more particularly described on the attached Exhibit 1 (the "Property"); and,

WHEREAS, the governing body does further find that the Code Enforcement Manager has investigated the condition of the Property and has found the same to be so ruined, damaged, and dilapidated, or covered with ruins, rubbish, wreckage, or debris, that it constitutes a menace to the public comfort, health, peace or safety so as to warrant abatement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION:

Section 1. That the findings of said Code Enforcement Manager, in regard to the Property, attached hereto as Exhibit 2, are hereby approved and adopted, and that the Property is found to be ruined, damaged, and dilapidated, so as to constitute a menace to the public comfort, health, peace or safety pursuant to Section 3-18-5, NMSA, 1978.

Section 2. That Mr. Christopher Douglass, the record owner of the Property, is hereby ordered to commence removal of the building or structure from the Property within ten (10) days after service of a copy of this Resolution, or within said ten (10) day period, file written objection to findings herein with the City Clerk of the City of Alamogordo, asking for a hearing before the City Commission.

Section 3. That if there is a failure of compliance with the provision of Section 2 herein, the City of Alamogordo shall proceed to remove said building or structure from the Property and abate said unsafe condition, at the cost and expense of said record, with said cost and expense constituting a lien against the building or structure so removed, and against the Property, as allowed by law.

Section 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word, or phrase of this resolution is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this resolution. The Commission hereby declares that it would have passed this resolution and each section, paragraph, sentence, clause, word, or phrase thereof, irrespective of any provisions being declared unconstitutional or otherwise invalid.

PASSED, APPROVED AND ADOPTED, this ____ day of September 2023.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:_____
Susan L. Payne, Mayor

ATTEST:

_____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

_____
Ashley Smith, City Attorney

- Account Search
- My Reports
- Help
- Logout Public

Exhibit "1"

Account: R010833

Location

Account Number R010833

Situs Address 308 N WHITE SANDS BLVD

Previous Parcel ID 01-01156

Parcel Sequence

Neighborhood C31 - Commercial White Sands

Tax Area 01_NR

Parcel Number 01N4055094095407

Legal Summary Subd: ALAMO BLOCKS Lot: 5, 6 Block: 8

Appraiser Ricardo Heredia

Owner Information

Owner Name DOUGLASS, CHRISTOPHER

Owner Address 2405 PRINCETON
ALAMOGORDO, NM 88310

Assessment History

Actual (2023) $47,527

Primary Taxable $15,842

Tax Area: 01_NR **Mill Levy**: 33.247000

Type	Actual	Assessed	Acres	SQFT
Non-Residential Land	$36,000	$12,000	0.138	
Non-Residential Improvement	$11,527	$3,842		4452.000

Transfers

Sale Date	Sale Price	Doc Description
		Deed
		Deed
		Deed
		Deed
		Warranty Deed

Tax History

Tax Year	Taxes
*2023	$526.68
2022	$524.16

* Estimated

Images

- Map
- Photo
- Sketch
- GIS

Focusing On: *308 N WHITE SANDS BLVD ALAMOGORDO 88310*



Exhibit "2"

Case #: 202300926
Case Date: 04/20/23
Address Number: 308
Street Name: N. White Sands Blvd
Complainant Phone: (575)439-4375
Description: Dilapidated Structure
Complainant Address: 2010 Oregon Ave.
Complainant Name: Sides
Reinspection: 05/12/2023
Compliance Inspection :
Property Owners : Christopher Douglass
Court case number:
DOB: 05/27/1966
ID #:
Court Date:
Status: Mailed IPMC Letter
Assigned To: JOSH SIDES

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
01N4055094095407	308 N WHITE SANDS BLVD	Subd: ALAMO BLOCKS Lot: 5, 6 Block: 8	DOUGLASS, CHRISTOPHER		

Activities

Date	Activity Type	Description	Employee	Status

04/20/2023	Inspection	On 04/20/2023, I, Code Enforcement Manager Josh Sides, was informed of a dilapidated structure at 308 N. White Sands Blvd., Alamogordo, Otero County, New Mexico. I met with Code Enforcement Officer Otero at the property to discuss it. Officer Otero took me to the east side of the property in the alleyway. He informed me that the large cracks in the northeast corner had grown exponentially in the past few weeks. The cracks ran from the ground to the top of the exterior wall and were approximately two inches wide in the most severe areas. There were also cinder blocks missing from the wall in some places. I observed there to be numerous amounts of graffiti on the back side of the building as well. The front side of the building had cracks in the exterior walls and graffiti on them. The south side of the building's exterior wall had numerous cracks and an abundance of graffiti. The facia on the building was pulled off in some areas and rusted. The electrical box had been pulled off the building and was hanging from the wiring inside the conduit. There was paint on some areas of the building, but in others, there was no paint or protective coating on the cinder block. I photographed the condition of the property. I requested help from Paul Bennett, Facility Maintenance Manager for the City of Alamogordo, to look at the property as he holds his General Contractors License. Paul stated that the cinder block structure is settled on the northeast and southwest corners and is separating/falling away, causing both corners of the building to be unstable. Paul stated the cracking on the northeast and southwest corners is causing a potential collapse hazard. On 04/24/2023, I met with the City of Alamogordo Attorney's Office, the City of Alamogordo Engineering Department, and the Public Works Director for the City of Alamogordo to discuss this property. I learned that in 2022, an Administrative Search Warrant was executed on the property. However, there was no documentation as to the condition of the property. It was determined that declaring the property as unsafe pursuant to the City of Alamogordo Code of Ordinances 8-03-170 will start from the beginning. On 04/24/2023, I drafted an International Property Maintenance Code Violation Letter to give to the Property owner, which through research of the Otero County Assessors Office, was identified as Mr. Christopher Douglass. I attempted to contact Mr. Douglas at his listed address on 04/25/2023 and again on 04/26/2023 but was unsuccessful. The letter was mailed certified to Mr. Douglas on 04/26/2023. The photographs I took of the property, a copy of the letter mailed, and copies of the certified letter envelope were uploaded to iWorQ.	JOSH SIDES	Non-Compliance
05/22/2023	Re-Inspection	On 05/22/2023,I, Code Enforcement Manager Josh Sides, applied for and was granted an Administrative Search Warrant by 12th Judicial District Court Judge Bryant for the property at 308 N. White Sands Blvd.	JOSH SIDES	Closed
05/23/2023	Re-Inspection	On 05/23/2023, I, Code Enforcement Manager Josh Sides, executed an Administrative Search Warrant on the property at 308 N. White Sands Blvd., Alamogordo, Otero County, New Mexico, at approximately 2:00 PM MST. Assisting me with the execution of the search warrant were: Paul Bennett- Facility Maintenance Manager (COA) Jeremy Otero- Code Enforcement Officer (COA) Rocky Chavez- Code Enforcement Officer (COA) Sgt. Brown (APD) Ofc. Puente (APD) Ofc. Buffington (APD) Nancy Beshaler- Public Works Director (COA). The front door of the property was locked with a padlock that was cut to allow us entry into the property's interior. Upon entry, APD officers made sure there were no people inside or obvious hazards to the rest	JOSH SIDES	Closed

		of the employees. Once APD officers declared the building safe, the rest of the employees made entry. I began to take photographs of the state of the interior of the building along with Code Officers Chavez and Otero, while Paul Bennett began to inspect the building., I observed there to be numerous hazards and violations of the International Property Maintenance Code associated with the building. The violations of the International Property Maintenance Code were 305.1.1 Unsafe Conditions, 304.7 Roofs and Drainage, 305.4 Stairs and Walking Surfaces, and 305.1 General. All the pictures taken were uploaded to iWorQ. I posted the Search Warrant on the window of the property and mailed a copy of the Search Warrant to the property owner.		

Violations

Date	Violation	Description	Notes	Status
04/20/2023	*8-03-080- International Property Maintenance Code Adopted	(a)With the exceptions and amendments set forth below, the city hereby adopts by reference the conditions, provisions, limitations and terms of the International Property Maintenance Code, 2006 Edition, published by the International Code Council, including any amendments thereto which are adopted by the state as of the date of or subsequent to the date of this section.(b)Except as specified within section 8-03-150 and 8-03-160 of this section appeals from orders, decisions or determinations of the code official relative to the application and interpretation of this code shall be submitted to the International Code Council for official interpretation. The official interpretation shall constitute the final decision on any appeal.	Several violations of the International Property Maintenance Code.	*Open
04/20/2023	IPMC 301.3 Vacant Structures and Land.	All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety	Building has not been maintained in a clean, safe, secure, and sanitary condition. Several cracks to walls and settling of the building.	*Open
04/20/2023	IPMC 302.9- Defacement of Property	No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to an approved state of maintenance and repair.	Several areas of graffiti on the building on all sides.	*Open
04/20/2023	IPMC 304.1 - General	The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.	The structure's exterior is not in good repair, structurally sound, or sanity and poses a threat to public health, safety, and welfare.	*Open
04/20/2023	IPMC 304.13 Window, skylight and door frames	Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.	Windows, doors, and frames are not in sound condition, good repair, or weather tight.	*Open
04/20/2023	IPMC 304.2 - Protective Treatment	Exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those	The exterior walls of the structure to include doors, window frames, and trim are not in good condition and are not protected from the elements with paint	*Open

		between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.	or other protective covering. Masonry joints are failing in some areas.	
04/20/2023	IPMC 304.4 - Structural Members	All structural members shall be maintained free from deterioration and shall be capable of safely supporting the imposed dead and live loads.	The northeast and southwest corners of the structure are exhibiting signs of settling and are posing a potential hazard for collapse.	*Open
04/20/2023	IPMC 304.6 - Exterior Walls	All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface-coated where required to prevent deterioration.	Exterior walls of the structure have breaks, cracks, and loose materials and are not weatherproof or properly surface-coated.	*Open
05/23/2023	IPMC 304.7 - Roofs and Drainage	The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.	Large hole in the roof over the northwest room that admits rain into the interior of the building.	*Open
05/23/2023	IPMC 305.1 - General	The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.	The Interior of the building is not in a sanitary condition.	*Open
05/23/2023	IPMC 305.1.1. - Unsafe Conditions	The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the International Building Code or the International Existing Building Code as required for existing buildings: 1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength. 2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects. 3. Structures or components thereof that have reached their limit state. 4. Structural members are incapable of supporting nominal loads and load effects. 5. Stairs, landings, balconies and all similar walking surfaces, including guards and handrails, are not structurally sound, not properly anchored or are anchored with connections not capable of supporting all nominal loads and resisting all load effects. 6. Foundation systems that are not firmly supported by footings are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects. Exceptions: 1. Where substantiated otherwise by an approved method.	Sheetrock in the northwest and southwest rooms have fallen from the rafters.	*Open

		2. Demolition of unsafe conditions shall be permitted where approved by the code official.		
05/23/2023	IPMC 305.4 - Stairs and Walking Surfaces	Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.	Carpet in northwest and southwest rooms are not maintained in sound condition or good repair.	*Open

Uploaded Files

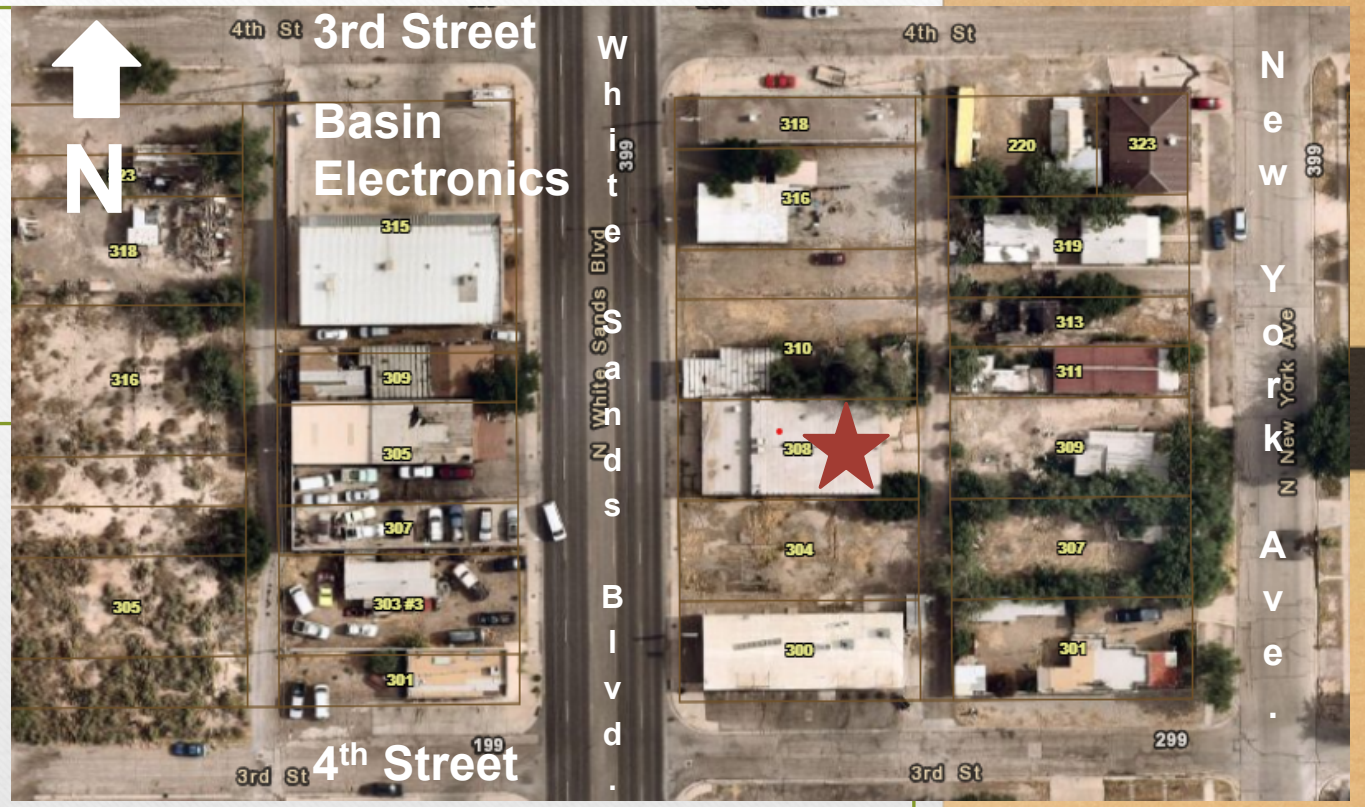
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05/24/2023	15527229-FILED Search Warrant 308 N White Sands Blvd.pdf
05/23/2023	15512899-White Sands N 308 search warrant signed & dated.pdf
05/02/2023	15226905-N White Sands 308 Certified mail label signed.pdf
04/26/2023	15176819-North Whitesands 308 IPMC paperwork.pdf
04/26/2023	15176793-N. White Sands 308 Certified label pre-mailing.pdf
04/26/2023	15176794-N. White Sands 308 Certified mail scan IPMC.pdf
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Dilapidated Structure

308 N. White Sands Blvd.




N
4th St
3rd Street
Basin Electronics
315
318
316
309
305
307
303 #3
301
199
3rd St
4th Street
White Sands Blvd
399
4th St
318
316
220
323
319
313
310
311
308
309
304
307
300
301
299
3rd St
New York Ave
399
New York Ave.

Timeline

308 N. White Sands Blvd.

- On 04/20/2023, I was made aware of a potentially dilapidated structure and conducted an investigation.
- On 04/21/2023, Paul Bennett, Facility Maintenance Manager, conducted a walk-around of the building and found the northeast and southwest corners unstable and at risk of potential collapse.
- On 04/24/2023, a certified International Property Maintenance Code (IPMC) letter was sent to the owner listing six violations of IPMC and how to correct them, as well as my contact information.
- On 05/11/2023, Code Enforcement received the certified mail receipt, which was signed, showing the property owner had received the letter.
- On 05/22/2023, 12th Judicial District Court Judge Bryant granted an Administrative Search Warrant.
- On 05/23/2023, the Administrative Search Warrant was executed on the property.

International Property Maintenance Code Violations

308 N. White Sands Blvd.

- 301.3- Vacant Structures and Land- Clean, safe, secure, and sanitary condition.
- 302.9- Defacement of Property- No marking, carving, or graffiti on exterior surfaces.
- 304.1- General- Exterior in good repair, structurally sound, and sanitary.
- 304.2- Protective Treatment- Paint or protective treatment to the exterior.
- 304.4- Structural Members- Maintained free from deterioration and support loads.
- 304.6- Exterior Walls- Free from holes, breaks, and loose materials.
- 304.13- Windows, Skylights, and Door Frames- Kept in sound condition, good repair, and weather tight

Condition of the Property at 308 N. White Sands Blvd.





Condition of the Property at 308 N. White Sands Blvd.





Condition of the Property at 308 N. White Sands Blvd.





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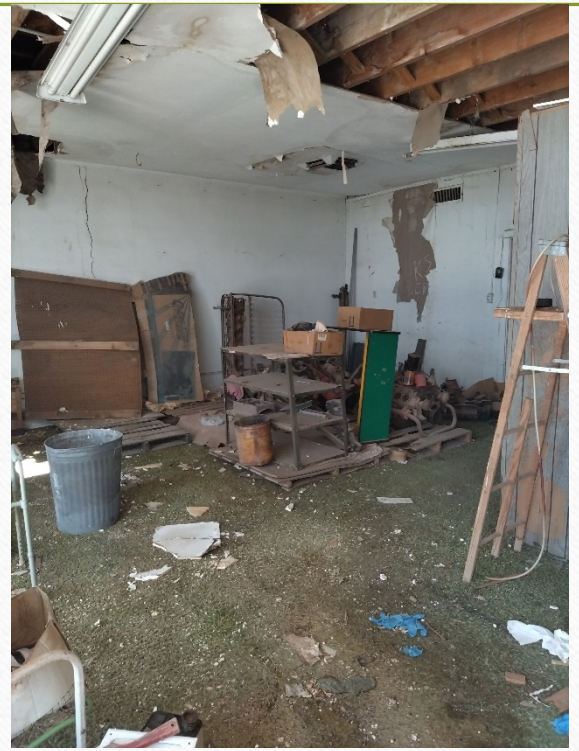


Condition of the Property at 308 N. White Sands Blvd.





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Condition of the Property at 308 N. White Sands Blvd.





Condition of the Property at 308 N. White Sands Blvd.





September 14th 2023

City of Alamogordo

1376 E. Ninth Street

Alamogordo , NM 88310

RECEIVED
SEP 14 2023
CITY CLERK

Cristopher Douglass

2405 Princeton Ave.

Alamogordo NM 88310

(512) 800-0667

Attention Rachel Hughs, CMC

City Clerk

My building at 306 N. White sands Blvd. was condemned at the City Commissar meeting on September 12th 2023. I was not informed of the proposed Condemning . This is a direct contradiction to the agreed time frame given to me in the City commissar meeting on June 12th 2023. I want to appeal the said action and the vote reseeded. I want to have my properly remove from any further action due to the outrageous action of the commission and City Major.

I'm a citizen of Alamogordo in good standing and strong moral character.

I have been lied to and deceived by the Major and the commission.

I'm a tax paying citizen of this community and should be treated with respect and understanding.

I am extremely disappointed in our elected officials and contracted employees of the City of Alamogordo. We deserve better.

Cristopher Douglass

09/14/2023

P.S. Please inform me of further actions taken or needed by mail and or phone Thank you.

Cristopherdouglass@gmail.com

September 14th 2023

City of Alamogordo

1376 E. Ninth Street

Alamogordo, NM 88310

RECEIVED
SEP 18 2023
CITY CLERK

Cristopher Douglass

2405 Princeton Ave.

Alamogordo, NM 88310

Cristopherdouglass@gmail.com

(512) 800-0667

Attention

Rachel Hughs, CMC

City Clerk

My building at 308 N. White Sands Blvd. was voted to be condemned at the City Commissioner meeting on September 12th 2023. I was not informed of the proposed condemning. This is a direct contradiction to the agreed time frame given to me at the City Commissioner meeting on June 12th 2023. I want to appeal the said actions and the vote reseeded. I want my property removed from any further action due to the outrageous and over stepped actions of the Mayor and the city commission.

I am a tax paying citizen of Alamogordo in good standings with strong moral character. I should be treated with respect and understanding by the Mayor and the Commission. My understanding is I have been lied to and deceived by the Major, Commission and employees of the City of Alamogordo.

I'm extremely disappointed in our elected officials and contracted employees of the City of Alamogordo.

As a citizen of Alamogordo the residents and I deserve better.

We should be treated with compassion and understanding and not be exposed to strong arm tactics.

Thank You

Cristopher Douglass

Ps. Please inform me of further actions taken or needed by mail or phone.

From: Cris
To: Rachel Hughs
Cc: cristopherdouglass@gmail.com
Subject: Douglass photos for Public Hearing
Date: Tuesday, October 3, 2023 2:37:19 PM

Email WARNING: This email may have originated external to the City of Alamogordo email system. Review the email sender address and NOT just the email username. Do not click on links or open attachments unless you are sure the content is Safe. If unsure, send an email to the BITS helpdesk for analysis.










Norbord
APA










AutoZone
MATTRESSES
Green Night Shop
PECOS VALLEY
PRODUCTION





TWELFTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF OTERO

In the Matter of Inspection
of 308 N. White Sands Blvd.,
Alamogordo, Otero, New Mexico

Cause No. _____
Division _____

ADMINISTRATIVE SEARCH WARRANT

Case No. _____

TO: Joshua R. Sides, Code Official

WHEREAS, the application for an order has been made pursuant to section 24-1-18, NMSA 1978, upon the verified application of Joshua R. Sides, a Code Official with the City of Alamogordo, New Mexico; and,

WHEREAS, sufficient probable cause exists pursuant to that level of probable cause appropriate to administrative cases as established by the United States Supreme Court in *Marshal v. Barlow's, Inc.*, 436 U.S. 307 (1978); and,

WHEREAS, the application to search the above-referenced premises is necessary to determine if International Property Maintenance Code violations exist.

NOW, THEREFORE, it is hereby ordered that based upon the application for an order, supporting memorandum, and affidavits, and pursuant to section 24-1-18, NMSA 1978, representatives of the City of Alamogordo are authorized to conduct an inspectorial search of the above-referenced property.

Joshua R. Sides is hereby commanded to search the aforesaid premises during regular working hours or other reasonable times within reasonable limits and in a reasonable manner after the code official or his or her representative has presented his or her credentials to the occupant of the premises for compliance with the International Property Maintenance. You are further commanded to seize any property reasonably believed to constitute evidence of an International Property Maintenance Code violation and dispose of said property as otherwise approved by law.

David A. Brut
DISTRICT COURT JUDGE
May 22 @ 2:39 PM









Sent from my iPhone

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 09/28/2023 **Report No:** 10.

Submitted By: Sean McGranaghan

Subject: Consider, and act upon, Ordinance 1683, Z-2023-0006(A) for first publication, a map amendment to change the current zoning of the property at 1111 US Hwy 70 W, from C-3 Business District, to M-1 Light Industrial District *(Stella Rael, City Planner)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact: N/A

Recommendation: Approve for first publication.

Background: Consider, and act upon, Ordinance 1683, Z-2023-0006(A) for first publication, a map amendment to change the current zoning of the property at 1111 US Hwy 70 W, from C-3 Business District, to M-1 Light Industrial District *(Stella Rael, City Planner)* **(Roll Call Vote Required)**

City of Alamogordo

City Commission

Z-2023-0006(A)

Stella Rael, City Planner
October 10, 2023

Zoning Request Case: Z-2023-0006(A)

Request:

The property owner is requesting for a map amendment to change the zoning of the property at 1111 US Hwy 70 W, from C-3 Business District to M-1 Light Industrial District.

Requestor/Tenant:
Stephanie Ortega & Brandi Blair
4345 Kachina Canyon
Las Cruces, NM 88011

Owner:
Alberto Cerna
1016 Mike Ct
Chaparral, NM 88081

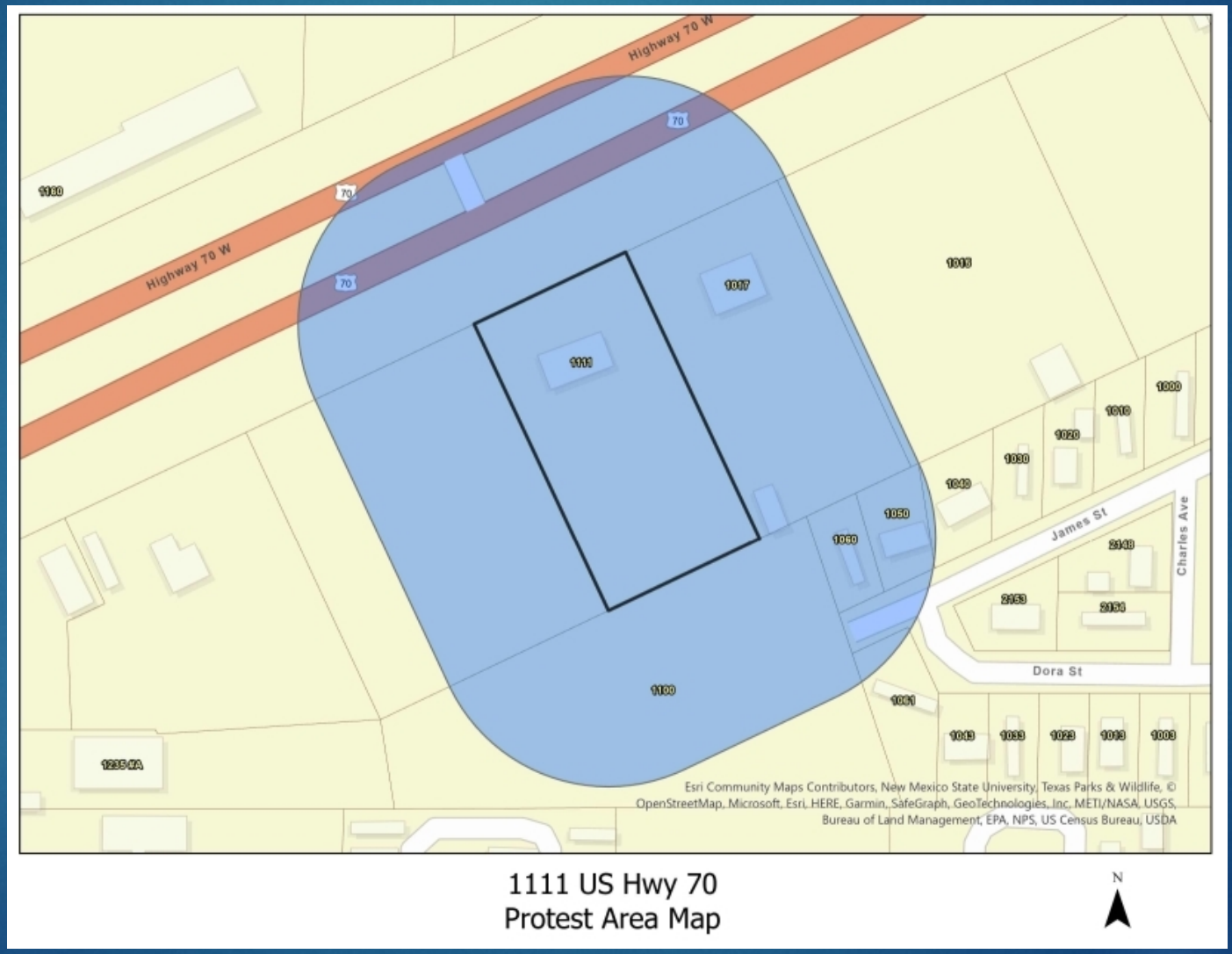
Zoning Map


Alamogordo General Map
Search for Address
Layers
Basemap gallery
Measure
Details
Bookmarks
Print
Share
Layers
Zoning Districts
Legend
Opacity
R-1 Single-Family Dwelling
R-2 Townhouse Dwelling
R-3 Two-Family Dwelling
R-4 Multiple-Family Dwelling
RE Residential Estates
MH-1 Manufactured Housing Subdivision
MH-2 Manufactured Housing Park
C-1 Neighborhood Business
C-3 Business
M-1 Light Industrial
US-70 W
US-70 E
Highway 70 W
Highway 70 W
US-70 E
Collins Ave
Charles Ave
Chantel Ave
Walker Ave
James St
Dora St
Dora St
Maxar, Microsoft | See web site for license constraints. | City of Alamogordo GIS | Esri, HERE, iPC

AERIAL



Protest Area Map



Z-2023-0006(A)

Findings of Fact

- 1. The application was filed and all fees were paid.
- 2. Legal ad was placed in the Alamogordo Daily News
- 3. Seven (7) letters were mailed by certified/returned receipt mail to all property owners of record within two hundred (200) feet from the property excluding public right-of-way, of the property.
- 4. As of September 28, 2023, there have been 0 letters returned undeliverable, and I have not received any letters or phone calls of opposition.

Z-2023-0006(A)

- 7. Staff recommends approval.

ORDINANCE No. 1683

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF ALAMOGORDO, CHANGING THE CLASSIFICATION OF A CERTAIN PROPERTY WITH THE LEGAL DESCRIPTION OF S: 2 T: 17 R: 9 TRACT LYING S H/W 70 FROM ITS PRESENT DESIGNATION AND ZONING DISTRICT: C-3 BUSINESS DISTRICT TO M-1 LIGHT INDUSTRIAL ZONING DISTRICT WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO.

WHEREAS, Alberto Cerna (hereinafter referred to as "the Owner") is the owner of certain real property legally described below (herein after referred to as "the Property") located within the corporate boundaries of the City of Alamogordo, New Mexico, (hereinafter referred to as "the City"); and

S: 2 T: 17 R: 9 TRACT LYING S H/W 70

WHEREAS, an application has been filed in the Owner's name under Case No. **Z-2023-0006(A)** to change the zoning of the Property, and

WHEREAS, the City Commission, after notice and hearing, finds and determines that the application for the re-zoning of the Property is in the public interest and is consistent with the proper development of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION, THAT the zoning of the Property, which is more fully described below:

S: 2 T: 17 R: 9 TRACT LYING S H/W 70

Is hereby changed from C-3 Business District to M-1 Light Industrial Zoning District; and the official zoning map and comprehensive plan of the City are hereby amended to reflect this change.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2023.

CITY OF ALAMOGORDO, NEW MEXICO a New Mexico municipal corporation

By: _____
Susan L. Payne Mayor

ATTEST:

_____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

_____
Ashley Smith, City Attorney

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 10/03/2023 **Report No:** 11.

Submitted By: Josh Sides

Subject: Consider and act upon Resolution 2023-44, declaring 2001 Dewey Lane to be so ruined, damaged, and dilapidated that it is a menace to the public comfort, health, peace, or safety and ordering its abatement. *(Josh Sides, Code Enforcement Manager)* **(Roll Call Vote Required)**

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Approve and order the property's abatement.

Background: 801 Virginia Ave. is so ruined and dilapidated that it is currently a risk to public health and safety.

Dilapidated Structure

2001 Dewey Lane




Indian Wells Rd
N
1930
2099
College Ave
2000
2100
1809
1901
1903
1905
1907
1909
1999
2003
2005
2007
2009
2101
2103
2000
E Dewey Ln
1808
1900
1902
1904
1906
1908
1999
2000
2002
2004
2006
2008
2100
2102
1809
1901
1903
1905
1907
1909
2001
2003
2005
2007
2009
2101
2103
2199
Snow Dr

Timeline
2001 Dewey Lane

- On 04/05/2023, I was made aware of a potentially dilapidated structure and conducted an investigation.
- On 06/28/2023, a certified International Property Maintenance Code (IPMC) letter was sent to the owner listing violations of IPMC and how to correct them, as well as my contact information.
- On 07/20/2023, Code Enforcement received the certified mail back unclaimed, the letter was then posted in a conspicuous place on the residence.
- On 07/28/2023, an Administrative Search Warrant.
- On 07/31/2023, the Administrative Search Warrant was executed on the property.

Property Owner Contact Timeline
2001 Dewey Lane

- On 06/26/2023, Attempted contact at the front door of the residence. No answer at the door.
- On 06/28/2023, Mailed an International Property Maintenance Code letter certified to the property owner as identified by the Otero County Assessor's website.
- Attempted to locate the property owner at another address in Otero County using the Otero County Assessor's website but could not find another address.
- Tried to locate another property the property owner may be staying at through the Utility Billing Department of the City of Alamogordo but was unsuccessful.
- Contacted probate to see if the property owner was deceased and if there was a next of kin. Probate did not have anything for the property owner.
- Utilized Google to search to see if the property owner may have passed in another location in New Mexico and outside the state but was unsuccessful.
- Having exhausted all other reasonable avenues to contact the property owner, the International Property Maintenance Code letter was posted on the residence in a conspicuous place.

International Property Maintenance Code Violations

2001 Dewey Lane

- 302.7- Accessory Structures- Shall be maintained structurally sound and in good repair to include fences and walls.
- 302.8- Motor Vehicles- inoperative or unlicensed motor vehicles shall not be parked, kept, or stored on the premises.
- 304.1- General- Exterior in good repair, structurally sound, and sanitary.
- 304.2- Protective Treatment- Paint or protective treatment to the exterior.
- 304.7- Roofs and Drainage- Shall be sound, tight, and not have defects that admit rain.

International Property Maintenance Code Violations (Continued)

2001 Dewey Lane

- 308.1 Accumulation of Rubbish or Garbage- Exterior and interior of property shall be free from any accumulation of rubbish or garbage
- 308.2.2- Refrigerators- Not in operation shall bot be discarded, abandoned, or stored on premises without removing the doors.
- 304.13- Windows, Skylights, and Door Frames- Kept in sound condition, good repair, and weather-tight
- 505.3- Supply- The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices, and appurtenances in sufficient volume.
- 604.3- Electrical System Hazards- Insufficient receptacle and lighting outlet defects shall be corrected to eliminate the hazard.

Condition of the Property at 2001 Dewey Lane





Condition of the Property at 2001 Dewey Lane





Condition of the Property at 2001 Dewey Lane





Condition of the Property at 2001 Dewey Lane





Condition of the Property at 2001 Dewey Lane





Condition of the Property at 2001 Dewey Lane





Condition of the Property at 2001 Dewey Lane





Condition of the Property at 2001 Dewey Lane





Condition of the Property at 2001 Dewey Lane





RESOLUTION NO. 2023-44

A RESOLUTION DECLARING THE BUILDING OR STRUCTURE, OR THE PREMISES LOCATED AT 2001 DEWEY LANE ALAMOGORDO, OTERO COUNTY, NEW MEXICO, TO BE RUINED, DAMAGED, AND DILAPIDATED TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY, AND ORDERING ITS ABATEMENT

WHEREAS, the governing body of the City of Alamogordo, New Mexico, finds that there is located within the City a certain building, structure, or premises at 2001 Dewey Lane, as more particularly described on the attached Exhibit 1 (the "Property"); and,

WHEREAS, the governing body does further find that the Code Enforcement Manager has investigated the condition of the Property and has found the same to be so ruined, damaged, and dilapidated, or covered with ruins, rubbish, wreckage, or debris, that it constitutes a menace to the public comfort, health, peace or safety so as to warrant abatement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION:

Section 1. That the findings of said Code Enforcement Manager, in regard to the Property, attached hereto as Exhibit 2, are hereby approved and adopted, and that the Property is found to be ruined, damaged, and dilapidated, so as to constitute a menace to the public comfort, health, peace or safety pursuant to Section 3-18-5, NMSA, 1978.

Section 2. That Mrs. Pauline Freeman, the record owner of the Property, is hereby ordered to commence removal of the building or structure from the Property within ten (10) days after service of a copy of this Resolution, or within said ten (10) day period, file written objection to findings herein with the City Clerk of the City of Alamogordo, asking for a hearing before the City Commission.

Section 3. That if there is a failure of compliance with the provision of Section 2 herein, the City of Alamogordo shall proceed to remove said building or structure from the Property and abate said unsafe condition, at the cost and expense of said record, with said cost and expense constituting a lien against the building or structure so removed, and against the Property, as allowed by law.

Section 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word, or phrase of this resolution is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this resolution. The Commission hereby declares that it would have passed this resolution and each section, paragraph, sentence, clause, word, or phrase thereof, irrespective of any provisions being declared unconstitutional or otherwise invalid.

PASSED, APPROVED AND ADOPTED, this ____ day of October 2023.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By:_____
Susan L. Payne, Mayor

ATTEST:

_____
Rachel Hughs, City Clerk

APPROVED AS TO FORM:

_____
Ashley Smith, City Attorney

- Account Search
- My Reports
- Help
- Logout Public

Exhibit "1"

Account: R011693

Location

Account Number R011693

Situs Address 2001 DEWEY LN

Previous Parcel ID 01-02063

Parcel Sequence

Neighborhood A8 - Alamo Estates

Tax Area 01_R

Parcel Number 01N4056093470190

Legal Summary Subd: ALAMOGORDO EST REPLAT A BLK 2,5,11,12,18 Lot: 1A Block: 4

Appraiser Other

Owner Information

Owner Name FREEMAN, PAULINE

Owner Address 2001 DEWEY LN
ALAMOGORDO, NM 88310

Assessment History

Actual (2023 - Residential Cap applied)	$63,220
Primary Taxable	$21,073
Exemption Adjustments:	
Head of Household	($2,000)
Adjusted Taxable Total	$19,073

Tax Area: 01_R **Mill Levy**: 25.844000

Type	Actual	Assessed	Acres	SQFT
Residential Land	$10,956	$3,652	0.190	
Residential Improvement	$52,264	$17,421		1196.000

Transfers

Sale Date	Sale Price	Doc Description
		Deed

Tax History

Tax Year	Taxes
2023	$544.60
2022	$532.56

Images

- Map
- Sketch
- GIS

Focusing On: *2001 DEWEY LN ALAMOGORDO 88310*

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Exhibit "2"

Case #: 202300769
Case Date: 04/05/23
Address Number: 2001
Street Name: DEWEY LN
Description: Dilapidated Structure
Complainant Phone: 575-439-4375
Complainant Address: 2010 OREGON
Complainant Name: ESTRADA
Reinspection: 04/21/2023
Property Owners : FREEMAN, PAULINE
Property Owner Phone Number: 0
DOB:
ID #:
Court case number:
Court Date:
Compliance Inspection :
Certified Mail #:
Status: Draft Resolution
Assigned To: JOSH SIDES

Property

Parcel #	Address	Legal Description	Owner Name	Owner Phone	Zoning
01N4056093470190	2001 DEWEY LN	Subd: ALAMOGORDO EST REPLAT A BLK 2,5,11,12,18 Lot: 1A Block: 4	FREEMAN, PAULINE		

Activities

Date	Activity Type	Description	Employee	Status
04/05/2023	Inspection	On 04/05/2023, I, Code Enforcement Officer Irving J. Estrada, was patrolling my district when I observed a Blue Ford Explorer missing a License plate on the North side of the property in the back yard at 2001 Dewey Ln., Alamogordo, New Mexico, county of Otero. Upon further investigation, I observed filled bags of trash, filled trash containers, broken lawn mowers, automotive parts on the North side of the property. On the driveway in the South side of the property I observed a Tan Ford Windstar van with flat tires and broken windows and tires as well. In the alley, I observed grass approximately between 7 inches and 36 inches tall. The items in the back yard, the trash and debris, the vehicles, and the tall grasses are contrary to City of Alamogordo Code of Ordinances 14-01-020, 14-01-140, 14-01-150, and 26-03-030. I photographed all the items and uploaded the photographs to iWorQ. I will mail a Notice of Violation letter to the property owner(s).	IRVING ESTRADA	Non-Compliance
04/05/2023	Supplement	On 04/05/2023, I, Code Enforcement Manager Josh Sides, was called by Officer Estrada to 2001 Dewey Ln., Alamogordo, Otero County, NEw Mexico. Upon arrival I met with Officer Estrada and began to look at this property with him. It was decided Officer Estrada would attempt to make contact with the property owner via a Notice of Violation letter and open lines of communication about the dilapidated nature of the residence. Upon Officer Estrada's departure from Code Enforcement, I took over this case. After failing to have any communication with the property owner, I drafted an International Property Maintenance Code Violation letter and mailed it certified to the property owner, Ms. Pauline Freeman. I received the International Property Maintenance Code Violation letter back as being unclaimed. I then posted the letter in a conspicuous place on the property.	JOSH SIDES	Non-Compliance

07/28/2023	Supplement	On 07/28/2023, I, Code Enforcement Manager Josh Sides, applied for and was granted an Administrative Search Warrant for 2001 Dewey Ln. On 07/31/2023, I, along with Facility Maintenance Manager Paul Bennett, Code Enforcement Officers Otero, Payan, and Romero, and APD Officer Silva and Sgt. Ashe executed the search warrant. Photographs were taken and uploaded to iWorq.	JOSH SIDES	Closed

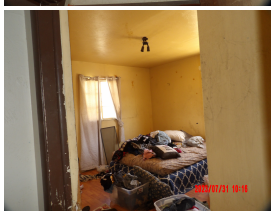
Violations

Date	Violation	Description	Notes	Status
04/05/2023	*14-01-020. - Accumulation of garbage, refuse and debris; removal.	(a)No person shall permit to accumulate upon premises owned, leased or occupied by him, any garbage or refuse, except in covered watertight containers made of metal or plastic.(b)No person shall throw, place, dump or dispose of any debris on any street, gutter, sidewalk or alley, nor shall any person allow the accumulation upon his property, of any debris for a longer period than five (5) days. Sites subject to an active building permit may accumulate these items for longer than five (5) days, but such items must be maintained in an orderly fashion so as not to impede on the property of others or create a hazard or attractive nuisance. Materials must be removed upon the completion of the permitted construction.(c)No person shall dump, deposit, place or dispose of any trash, debris, junk, or other matter on public property or upon the property of another without the written consent of the property owner.(d)No person shall cause or permit to remain upon any property, private or public, any dead animal, animal waste or vegetable or mineral matter or any composition or residue thereof which is in an unsanitary condition or is hazardous to public health.(e)Any unauthorized accumulation of garbage, refuse or debris is declared to be a nuisance and is prohibited.(f)No person shall cast, place, sweep or deposit anywhere within the city any garbage, refuse or debris in such a manner that it may be carried or deposited by the elements upon the street, sidewalk, alley, sewer, parkway or other public place, or into any occupied premises within the city.		*Open
04/05/2023	*14-01-140. - Generally—Outdoor automotive storage.	The presence of a dismantled, partially dismantled, or inoperable vehicle. or motor vehicle or parts thereof on any street, occupied or unoccupied land within the city limits in violation of the terms of this section is a public nuisance. And/or any motor vehicle which does not have lawfully affixed thereto an unexpired license plate or plates		*Open
04/05/2023	*14-01-150. - Outdoor storage.	Junk means any manufactured good, appliance, fixture, furniture, machinery, vehicle, personal property or any other thing or part thereof, whether of value or valueless, that is demolished, discarded, dismantled, or in such a condition as to be generally unusable and/or inoperable in its existing state. This shall include by way of illustration only and without limitation wood, used lumber, paper, glass, bottles, rags, rubber, scrap metal, tin cans, scrap material, waste, concrete, rubble, boxes, crates, building materials, or machinery parts. (b)Declared nuisance. The presence of junk on any street, occupied or unoccupied land within the city limits in violation of the terms of this section is a public nuisance. (c)Prohibited acts. It is unlawful for any person, firm, or corporation to store, or permit to be stored or placed, or allow to remain on any public or private property or street or highway within the city limits any junk unless such junk is in an enclosed fence or wall and such junk is not visible from adjoining or surrounding property or from the street or streets or public ways. It shall be unlawful for any person to allow any vehicle regardless of condition to be left unattended on jacks or blocks for any length of time. Such activity shall be considered a public nuisance and a danger to the public welfare.		*Open
04/05/2023	*26-03-030. - Unlawful growth or accumulation on lots.	It shall be unlawful for any owner, lessee or occupant, or any agent, servant, representative or employee of any such owner, lessee or occupant, having charge or control of any lot within the city to permit or maintain on any such lot, including the area located between the property line and the middle of the alley adjacent to the property, and the area located between the property line and the curb, and the area located ten (10) feet outside the property line where there is no curb, any growth of weeds to a greater height than six (6) inches, or any other accumulation of weeds.	Per 12th Judicial District Court case State on NM vs. Cantrell, 2023, Alamogordo Code Enforcement will no longer prosecute Unlawful Growth or Accumulation on Lots until further notice.	Closed
10/03/2023	IPMC 302.7 - Accessory Structures	Accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.	The cenderblock retaining wall has pieces loose and falling apart.	*Open
10/03/2023	IPMC 302.8. - Motor Vehicles	Except as provided for in other regulations, inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and vehicles shall not at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.	White Dodge Truck, Black Dodge Truck, Silver van, Blue sedan, and silver sedan are all inoperable and/or unlicensed.	*Open
10/03/2023	IPMC 304.1 - General	The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.	Exterior of the property shows signs of blight.	*Open
10/03/2023	IPMC 304.13 Window, skylight and door frames	Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.	Broken windows on the residence covered by wood.	*Open
10/03/2023	IPMC 304.2 - Protective Treatment	Exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.	Loose and pealing paint.	*Open
10/03/2023	IPMC 304.7 - Roofs and Drainage	The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.	Large areas of missing shingles on the roof exposing wood underlayment.	*Open
10/03/2023	IPMC 308.1 - Accumulation of Rubbish or Garbage	Exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.	rubbish and garbage in the back and side yards of the property.	*Open
10/03/2023	IPMC 308.2.2. - Refrigerators	Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on premises without first removing the doors.	A side-by-side refrigerator is stored in the side yard with doors intact.	*Open
10/03/2023	IPMC 505.3. - Supply	The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.	Water has been turned off to the residence by COA and has been straight piped to go around the lock.	*Open
10/03/2023	IPMC 604.3- Electrical System Hazards	Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of	Light fixture and other fixtures in the residence are missing	*Open

inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

faceplates and/or hanging from wires.

Uploaded Files

Date	File Name	
10/03/2023		
10/03/2023		
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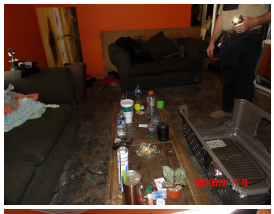
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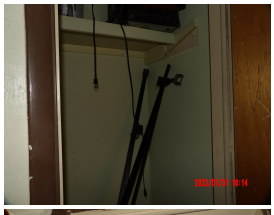
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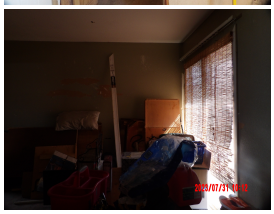
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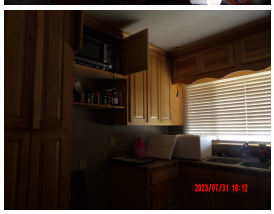
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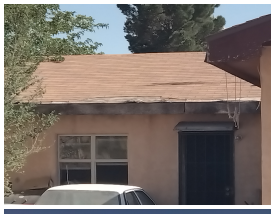
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AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** **Report No:** 12.

Submitted By:

Subject: Discussion on allowing handouts at commission meetings. *(Josh Rardin, Commissioner)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Provide direction to staff.

Background:

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 10/03/2023 **Report No:** 13.

Submitted By:

Subject: Discussion with possible action regarding setting up an infill development district, *(Josh Rardin, Commissioner)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background:

Discussion to start the process of how to set up an infill development district.

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** 10/04/2023 **Report No:** 14.

Submitted By: Beau Dylan Aleshire

Subject: Appointments to Boards and Committees. *(Susan Payne, Mayor)*

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation: Two applications were received. Staff recommends one appointment to the Senior Volunteer Programs Advisory Council. Unfortunately, one applicant will not be appointed due to a lack of available vacancies, but the City Clerk's Office will keep their application on file in case of another vacancy.

Background:

Senior Volunteer Programs Advisory Council

- One current vacancy. Applications by Brandi Ferebee and Sandra Purrington were received. Both would serve their 1st term if appointed. There are two applicants and only one vacancy. Brandi Ferebee's application was previously considered, and not selected, for the Senior Volunteer Programs Advisory Council at the 9/26/2023 Regular Commission Meeting.

Airport Zoning Board

- Three current vacancies.

If interested in serving on a Board or Committee, you may apply in person at the City Clerk's office, or online via the City website.
URL Link: https://ci.alamogordo.nm.us/353/Boards-Committees

Print

Application to Serve on a Board/Committee - Submission #6581

Date Submitted: 9/20/2023

City of ALAMOGORDO

City of Alamogordo Application to Serve on a City Board/Committee

First Name:*

Brandi

Last Name:*

Ferebee

Phone Number:*

2819084620

Email Address:*

brandilynnferebee@gmail.com

Physical Address:*

3031 El Dorado

City:*

Alamogordo

State:*

NM

Zip Code:*

88310

Is the above address within City Limits?*

- (●) Yes
- ( ) No

Mailing Address:*

3031 El Dorado

City:*

Alamogordo

State:*

NM

Zip Code:*

88310

Present Employer:*

USAF

Job Title:

Casualty Assistance Representative

Board/Committee you would like to serve on (1st choice):*

Senior Volunteer Programs Advisory Council

Board/Committee you would like to serve on (2nd choice):

Public Library Board

Are you related to anyone who is presently employed by the City of Alamogordo?*

- ○ Yes
- ◉ No

If so, what is their relation to you?

Are you related to an Elected Official of the City of Alamogordo?*

- ○ Yes
- ◉ No

Is so, what is their relation to you?

Experience and education relating to the Board/Committee:*

Served on 7 USAF Boards and 3 Top three committees while serving active duty.

Please indicate your interest in serving on a City Board/Committee:*

I moved to Alamogordo June 2019 and my family and I loved our county and would like to be part of the the City Board/Commitee. Thank you.

RECEIVED
SEP 28 2023
CITY CLERK

City of Alamogordo

APPLICATION TO SERVE ON A CITY BOARD/COMMITTEE

Name: Sandra Purrington

Home Phone: — Work Phone: —

Cell Phone: 505-670-4529 Fax No: —

E-mail address: sspurrington@aol.com

Physical Address: 2473 Desert Hills Drive Alamogordo 88310

Is the above address within City limits? Yes X No ____

Mailing Address: 2473 Desert Hills Drive Alamogordo 88310

Present Employer: retired school admins Job Title: principal

Board/Committee you wish to serve on:

First choice: Senior Volunteer Advisory

Second choice: Airport Zoning

Are you related to anyone who is presently employed by the City of Alamogordo?

Yes ____ No X If so, what is their relation to you? ____

Are you related to any Elected Official of the City of Alamogordo?

Yes ____ No X If so, what is their relation to you? ____

Experience and education relating to the Board/Committee:

please see attached resume

Please indicate your interest in serving on a City Board/ Committee: I am a newer resident enjoying this wonderful community in which I plan to grow old(er) To this end, I hope to contribute by participating in the work.

Please return completed application to:

City Clerk's Office
1376 E. Ninth Street
Alamogordo, NM 88310
PHONE: (575) 439-4100
FAX: (575) 439-4396

Sandra Sanchez Purrington
921 Camino Vista Rio
Bernalillo, New Mexico 87004

EDUCATION: Notre Dame College, Staten Island,, New York BA 1962
Hunter College, New York additional professional studies
Saint John's College, Santa Fe MA 1968

PROFESSIONAL EXPERIENCE: Teacher New York City Public Schools 1962-1967
Teacher Santa Fe Public Schools 1967 - 1990
Administrator Santa Fe Public Schools 1990-1995
Instructor Santa Fe Community College 1995-1997
Instructor Northern New Mexico Community College

PROFESSIONAL PUBLICATIONS: Five position papers *The Rockefeller Education Initiative*
Position paper Coalition for Arts Education
Curriculum grades 1-12 "Music, Words, Opera!" Opera America
Various articles on Educational Reform Aspen Institute

COMMUNITY SERVICE: Board Memberships:
Santa Fe Little Theatre
United Way of Northern New Mexico
Santa Fe Opera
Opera Southwest
Tanoan Homeowners Association
Bosque Encantado Homeowners Association Vice President
Commissions:
New Mexico Arts Commission
Santa Fe Arts Commission
Mayor's Commission on Education (Albuquerque)
Urban Enhancement Commission (Albuquerque)

HONORS and DISTINCTIONS: Who's Who in American Colleges
Outstanding Young Women of America
Who's Who in Education
Aspen Institute Fellow (2 appointments)
Teacher of the Year Santa Fe Public Schools
Outstanding Instructor Santa Fe Community College

LANGUAGES: English fluent
Spanish fluent
French reading

AGENDA REPORT
CITY OF ALAMOGORDO
CITY COMMISSION

Meeting Date: 10/10/2023 **Report Date:** **Report No:** 15.

Submitted By:

Subject: Adjourn into Executive Closed Session in compliance with 10-15-1(H)(2) and (7) NMSA (as amended) to discuss: Limited Personnel Matters (City Manager) and Threatened Litigation.

Fiscal Impact:
Amount Budgeted:
Fund:

Additional Fiscal Impact:

Recommendation:

Background: