

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
December 5, 2023**

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

**DUSTY WRIGHT, MAYOR PRO-TEM
KARL MELTON, COMMISSIONER
RICK HOLDEN, 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 Tyler Grace, 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. Presentation of plaques for outgoing Commissioners. (Susan L. Payne, Mayor)

Mayor Payne presented plaques to Commissioner Melton and Mayor Pro-Tem Dusty Wright in recognition and appreciation of their service to the community.

Mayor Pro-Tem Wright said that in his time, he has seen many projects finish up, and it has been awesome to be part of that. He is taking time to step back and wants to be there for his kids. He enjoyed this and wanted to thank everyone. He challenged everyone to keep this going and steer everything in the right direction.

Mayor Payne introduced City Manager Holden and welcomed him to his first meeting.

PUBLIC COMMENT

Denatra Thomas spoke in regard to Ordinance 1689. She said is out here with these children, broken homes, drug addicts, and domestic violence. The parents have told her about the \$250 to \$500 fines. Alamogordo is a town of prosperity and poverty. The parents cannot afford that. It is punishing the parents because their kids are making mistakes. We have to give children hope that they will be someone one day. She said her kids were raised here and went to high school. They smoked weed and drank because they had nothing else to do. Why can't we get an old building and remodel it for kids to do culinary arts, swim, or get help? There are so many kids in high school who can barely read and are ashamed to ask for help. It is our job to know our community. The people in Alamogordo are suffering. Enforcing a \$250 or \$500 fine if kids go out is wrong. You also have to think about people with children moving to Alamogordo. These fines will stop people from wanting to come to Alamogordo. This community is beautiful and loving. We have to take the time to do what is right for the people.

Let's make sure these kids have somewhere to go. If we make a project about them, we are giving them hope.

Courtney McCary Squyres said she is here to represent a grassroots organization in Alamogordo called With Many Hands. We are a community-based nonprofit organization focused on uniting working-class people to accomplish positive change in our community. We are focused on addressing the issue of food sovereignty, helping eliminate the concern of food insecurity, increasing access to locally grown produce, and helping to strengthen Alamogordo's local food economy. We have been working on a campaign known as Public Land for Food for the better part of a year. In that time, we assembled a leadership team, amassed over five hundred signatures of support, and cultivated a Facebook community of over three hundred residents. Several supporters of the campaign are in attendance today to express our gratitude. The campaign's premise was to request that the City of Alamogordo designate several parcels of vacant land, primarily empty residential lots transferred to the City's possession after abatement, as community gardens. Our organization requested access to the City-owned properties to regenerate them and make them activated spaces to benefit the population of Alamogordo. Our goal is to install free-to-the-public community gardens where With Many Hands can offer fresh, locally grown produce to the community free of charge. Our intention will be to host free community classes on how to grow, harvest, cook, and preserve the produce from these gardens. These properties will fall under the jurisdiction of the Parks and Recreation Department so that the general public will have access to this land in the same manner as any public park in Alamogordo. I am here to express gratitude for the official completion, signing, and filing of the memorandum of understanding between the City of Alamogordo and With Many Hands. This memorandum will allow our organization to install our first garden at 601 Maryland Avenue and utilize the Dudley School Facility to host various relevant classes.

Ryan Sauers said senior citizens are having issues getting to their doctor's appointments because they are out of town. Some are afraid of driving at night or unable to drive that far or that long due to medical issues. Maybe there could be coordination with the VFW or the American Legion to have something come together, maybe as a sort of shuttle bus or assistance. Even if they have to pay \$5 to \$10 per ride, if there is something to help them out, they would appreciate it. Since I started volunteering with the Zoo, I have seen a struggle with getting the animals a wide variety of food. They are getting the basics like vegetables and proteins, but they need variety. I don't have a solution other than to suggest an organization like Misfit Foods or Imperfect Produce, who will go around to local groceries and take the produce we don't like because it does not look right. They will take them in, give them to food banks, or sell them to people like us. We could do that to support the Zoo.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Payne moved Remarks and Inquiries by the City Commission to come before the City Manager's Report.

Mayor Payne made the following comments:

She presented Assistant City Manager Stephanie Hernandez with the Mayor's Commendation in recognition of her unwavering commitment to the citizens of Alamogordo under extraordinary circumstances.

Commissioner Burnett made the following comments:

He said on Florida & Dewey, turning east onto Dewey, there was a water break. We need to refill the dirt because it is creating a crater. Also, on Indiana, between 13th and 14th.

Commissioner Rardin made the following comments:

I have had calls on patches and water leaks in the past couple of weeks. Over the last year, the time it has taken us to patch these water breaks is increasing. I do not know if you would be able to compile

a list. I have heard upwards of almost five hundred holes that we have in the road that have not been patched. Maybe we could have a reason why it is taking so long; is it a staffing issue, a material supply issue, or whatever is contributing to that. Mayor Pro-Tem Wright said I had the same question and spoke with Assistant City Manager Hernandez last week. A couple of months back, we looked into putting it out into an RFP to catch up on all of our asphalt patches because we had fallen behind. I think that RFP is out. Assistant City Manager Hernandez said we were working on it. She asked City Manager Holden if he had approved the RFP, and he said yes. Commissioner Rardin said we have been talking about doing that RFP for about eight months. City Manager Holden said he signed it, so it should be in the middle right now. Commissioner Rardin asked if we were getting ourselves caught up. City Manager Holden said yes sir.

Commissioner Rardin said on Florida and 10th Street, between John Wheeler's Office and the old Save-o-mat, we had a water leak at the curb. For the longest time, it was just filled with base course. They finally went in there and patched it, but it still had a bunch of waves, and the curb was sinking. City Manager Holden said we could look at that. I have been briefed on some of our street issues and have driven on some of the same streets you are talking about. That will become one of our priorities. We will get on those and get back a report appropriately to the Commission and Mayor.

CITY MANAGER'S REPORT

City Manager Holden made the following remarks:

1. I officially started on November 27th, but I have been coming in on a regular basis since September. I have been participating in meetings, learning about the community, and figuring out what was going on. I hit the ground running on the 27th. We began with an early morning staff meeting and went into department visits from there. Part of my goal is to be a visible City Manager in our community; I am going to the employees and meeting them. I have learned a tremendous amount about this community, its needs, and what is going on from Assistant City Manager Hernandez.
2. I met with Finance Director Huff about the budget before tonight's meeting. Our budget process is one of the best I have seen in any city. As we become involved in this process throughout the early summer, we will be very busy.
3. On my first day, I presided over a personnel hearing involving a number of terminated people appealing that decision.
4. On my fifth day, we inherited a bowling recreation center. We secured it, took possession of it, and are now working with City Attorney Smith to appropriately notify the respondent of the defaults and the action we must take as a community to get that center back in the hands of something productive for our community. That is a vital part of our community we now own. We will work with the community and Commission to get this resolved.
5. We have development issues in the community I wish to address with the Commission soon, such as drainage issues and partially done streets. When we plat properties, we need to follow those guidelines and ensure we put things in like they need to be so we protect our citizens from flooding and over things we have control over.
6. We also have substandard buildings; I walked through a building downtown that I would encourage no one to walk into until we take action to get that resolved.
7. Last Saturday night, I attended the MainStreet Festival downtown. It showcased our downtown and its history. I am surprised at the vast history and the amount of work done down there.
8. I will be a judge in the Christmas Parade.
9. My office is an open one. Unless I am in a meeting or have the door shut, Executive Assistant to the City Manager Gutierrez has been instructed to allow you to come into my office. I want to hear the things going on in this community that affect you. Can I fix them all? No, I cannot. In the Commission-Manager form of government, my job is to operate the day-to-day operation of this community. In order to do so effectively, I need to know the things going on, and I have heard a lot in a week's time. I feel certain we will be highly visible and busy. Thank you for the opportunity to serve this community; I look forward to it.

CONSENT AGENDA

2. Approve the minutes for the Regular Commission meeting on November 14, 2023. (Rachel Hughs, City Clerk)
3. Consider, and act upon, the award of IFB 2023-04 Bromaine Tablets to RK Water, LLC. (Barbara Pyeatt, Purchasing Manager)
4. Consider, and act upon, the receipt of \$10,352.38 in State Grants-in-Aid funding from the NM State Library for the Alamogordo Public Library. (Kimberly Underwood, Library Manager)
5. Consider, and act upon, Resolution 2023-54 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 December 5, 2023. (Evelyn Huff, Finance Director) (Roll Call Vote Required)
6. Consider, and act upon, Ordinance 1685, for final publication amending Chapter 24, Article 01, Section 010, Schedule of Penalty Assessments. (Ashley Smith, City Attorney) (Roll Call Vote Required)
7. Consider, and act upon, approval of CDBG Amendment No. 5, to extend the length of the agreement from December 31, 2023 to March 15, 2024 and revise Exhibit 1-B, Project Schedule, to reflect this change. (Debbie Osborne, Grant Coordinator)
8. Consider, and act upon, approval of a Binding Commitment Letter to NMFA committing to a \$12,000,000 DWSRF loan for construction on Phase 1 of the Well Transmission line. (Debbie Osborne, Grant Coordinator)
9. Consider, and act upon, approval of Resolution No. 2023-56 Certifying the City of Alamogordo Fixed Asset Inventory Count for FY 2023. (Evelyn Huff, Finance Director) (Roll Call Vote Required)
10. Consider, and act upon, Resolution 2023-57 relating to a rate increase of 3.50% effective January 1, 2024 for residential solid waste collection through Southwest Disposal. (Evelyn Huff, Finance Director) (Roll Call Vote Required)
11. Consider, and act upon, the Investment Report for the quarter ending September 30, 2023 in accordance with the City of Alamogordo Investment Ordinance. (Sue Ashe, Accounting Manager)
12. Consider, and act upon, award of Public Works Bid No. 2023-002, to D&R Tank Company related to the Foothills & Lower Heights Tank Rehab Project in an amount not to exceed \$5,000,000. (Patrick Riele, Project Manager)

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 7-0-0.

NEW BUSINESS

13. Consider, and act upon, prioritizing dilapidated structures. (Josh Sides, Code Enforcement Manager and Stephanie Hernandez, Assistant City Manager)

Code Enforcement Manager Sides gave his presentation and asked the Commission for direction.

Commissioner Rardin said we should wait on this because the new Commission will be seated in January. It is a little unfair.

Commissioner Paul asked Code Enforcement Manager Sides what his recommendation was. Do you think there is a mesh or meld between these different programs? Is it better to focus on one specific one? Code Enforcement Manager Sides said these were just the highlights of several different programs I have seen. The highest-ranking ones are administrative fees and rehab over demolition. We are not going to do wrong with those. It is starting to let the community know we take their public health, safety, and comfort seriously. Up to nine-point-two percent of value can be lost within five hundred feet of a dilapidated structure, so if you have a \$100,000 house, there goes \$9,200.

Commissioner Burnett said he agreed with Commissioner Rardin. We should wait before we take any action. Commissioner Rardin said this will be a heated topic because our ideas of what is dilapidated all vary. Again, we are losing Commissioner Melton and Mayor Pro-Tem Wright, with two coming on board. Letting the new Commission decide how we want to proceed would be fair.

Commissioner McDonald said this has been ongoing and is not anything new. I believe the new Commissioners will want to clean up things in their districts. We all experienced what Code Enforcement Manager Sides said about the value in District Five. As far as health and safety, we have a couple of places infested with mice. We have one where the roaches, mice, and other things were going to a house that can be valued at \$100,000. You have people waiting for a decision to be made, and I do not think the two new Commissioners will be changing anything that has been developed. I am just speaking for District Five. Out of all the districts, we lack a lot of help in the community with abandoned buildings. I have previously expressed that we have a lot of single-parent homes, widows, and women living in the homes. When you have an abandoned house, and a squatter moves in next door and takes over the house, that creates danger for people living next door. I would hate to tell the people in my district that we are going to wait another couple of months. We have been putting off a lot of the things that could happen to people living there. They pay taxes and want to be protected. It is not fair for people in District Five to continue to wait for decisions to be made. A house in the 800 block has been sitting there for years, and I do not know how much longer it has to sit there. Some houses have been in that condition for over twenty years. The summers we have here dry out the wood, which could easily be a fire. They were building fires in the house taken down on the 3rd block of Texas. We were at the same place we were last winter, where people were moving into the house, setting fires, and then the Fire Department had to come and put out the fire. They were using buckets and things like that, but it could turn over in the house and burn it down with the people in it. Mayor Payne said there was a camper fire today down on Maryland. I thought someone squatted in the house and started a fire.

Commissioner Paul said as Commissioner McDonald said, these items have been continued to be brought before the Commission. I do not see why there is any difference between waiting for the new Commissioners to be seated or discussing and getting some form of direction. I do not see the point in waiting until January to address it when we have seven able-bodied people here to do that right now.

Commissioner Rardin said regarding protective coatings on the outside, every house in Alamogordo has peeling paint on it. Where are we going to draw the line? How are we going to stop that? Commissioner Paul said if somebody's house has flaking paint, I do not feel we are going to go and cite them for violation. Commissioner Rardin said we could. Code Enforcement Manager Sides said

that is why he included the definitions of hazardous, dangerous, and unsafe for human occupancy and read them aloud to you, so we all know what code defines as dilapidation. That way, we do not have fifteen different opinions on what dilapidation is. Do I go based on peeling paint? No. Like Commissioner Rardin said, and he has a point, there is peeling paint everywhere. However, when it is that bad, it catches my eye. I am not going to send a violation letter condemning a house because you have paint peeling. If it is unsafe, dilapidated, and deteriorated to the point it is a public nuisance where it could potentially have criminal activity within it, like we often see and even today's fire. I am going to do something about it.

Mayor Payne asked the other Commissioners if they had received calls about abandoned properties and dilapidated structures. Commissioner Rardin said he usually did not. Commissioner Burnett said he had not. Mayor Payne said I get them all the time for both of your districts. Commissioner Rardin said they were not calling him. The next time you get called, could you tell them to call me directly, so I know about it? Mayor Payne said I have. I document everything with names and addresses. I typically pass that on directly to Code Enforcement Manager Sides, and he can verify I call quite often with issues on properties. There are a lot of them. I agree with Commissioner Rardin that we have had this discussion in the past and have different ideas about it, but we both own several properties. My husband and I fix up properties and sell them. When we are looking at properties, we look at properties around them because if the ones around them are bad, we will have a hard time selling them. One had mice and roaches. When you take the time to care for your property and invest in it, you do not want to live next door to garbage. I heard what Commissioner Rardin said about waiting, and if we are going to wait until the first meeting in January, I am okay with it. However, if we are kicking the can down the road, I am not okay with that. We have to clean the city up. You cannot live somewhere else and own a dilapidated structure in Alamogordo that you have no attachment to and expect the rest of the taxpayers to put up with that.

Commissioner Rardin said none of us have a problem with buildings that cannot be rehabilitated. We all know people who live in run-down homes and may not be able to afford to fix them but are still in livable condition by their standards. That is where I have the issue. Commissioner McDonald said nobody is moving anyone out of the home. Commissioner Rardin said we have not yet, but that was always the discussion years ago with these. We agree we need to clean Alamogordo up, but there are hundreds of uninhabited structures we could look at going after. Sooner or later, we will get to ones that have people living in them. They may not meet our criteria of what is livable, but it meets theirs, and we need to protect their interest as well. Commissioner McDonald said we are protecting the interest because the definition has been read. Nothing I saw said anything about going into a home where people are living, where it is their standard, and they are keeping things up. Mayor Payne said not only that but what is their standard? We had a house on Michigan that we declared dilapidated where a man was living in it, the owner was living behind him, and there was dog feces all over the place. That is nobody's standard, and it is inhumane. Shame on us if we allow that to happen. Commissioner Rardin said that once he closes that door, it is none of our business what he does inside the house. Mayor Payne said except for the neighbors who smell it and live with mice, roaches, and other stuff. Then it becomes our business. Commissioner Rardin said we are going to agree to disagree on this one. Where do we draw the line of where we should get involved and where we should not? Mayor Payne said I believe in individual property rights, but when those rights infringe on my property rights, I have an issue with it. Commissioner Paul said there are certain expectations when you move into a city. You are living within a community. Commissioner Rardin said we have fifty years of dilapidated buildings we need to get caught up on. Commissioner Paul said so, where is the issue in trying to move this forward? We are not going to go and take people out of their homes. We do not know how many years it will take us to get to that point. So, let's take action today or at the first meeting in January to move this forward and start cleaning up our city. Commissioner Rardin said we only authorize \$250,000 a year for cleanups. Commissioner Paul said there is more reason to start moving and take action. Commissioner Rardin said that Code Enforcement Manager Sides said they were around \$50,000 each, so bring four to five a year. That is all the money we have budgeted to start

tearing these down. Commissioner Paul said unless you started putting things into place. Let's start assessing fees to people. Put the onus on them to keep their properties up. Why do we want to set our standards low here in Alamogordo? At the end of the day, that does not serve anybody well.

Commissioner Burnett asked if Las Cruces had any programs to help with fixing up or rehabilitation. Code Enforcement Manager Sides said they started a rehab program pre-COVID, but it never got off the ground because of COVID. Albuquerque and Las Cruces had programs where they had all the paperwork, and everything was ready to go, but COVID hit. Commissioner Burnett asked if they had any intentions of moving forward. Code Enforcement Manager Sides said they never got feet underneath them again. Commissioner Rardin said we started the Revolving Loan Fund for sidewalks years ago. We were forcing people to install sidewalks on the front of the house, but a lot of people could not afford it. We started a low-interest loan where it was tied to your water bill or something, but I do not remember exactly. Maybe we can look into a program like that where we can help people get their homes brought up to standard instead of condemning and taking. There are a lot in Commissioner McDonald's district that are too far gone and cannot be fixed. Commissioner McDonald asked why we could not start with those; why not take those out instead of waiting for two more people to come on board who will probably agree? We have people moving into those homes.

Mayor Pro-Tem Wright said he agreed with cleaning up the city of dilapidated structures but would abstain from voting tonight because the item is to give direction on this. I would agree with the first meeting in January and have the Commission give direction. We have been condemning these structures, and there are a couple of items tonight that I may or may not vote on, but that is because it is something we already have in motion.

Mayor Payne said when we condemn it, if it is not boarded up, the homeowner has two years to make those repairs before anything is done. That is the law. It is not like we condemn them and then go out the next day to tear them down. Two years is plenty of time to clean your property up. All this does is ensure the City has done something, we can keep an eye on it, and we have checks and balances in place. If we let it go and decide to revisit it in six months, and then we revisit it, and they have done nothing, that is six more months wasted. I don't see the problem with protecting our city and giving them two years to take care of it.

Commissioner Burnett asked if we have any upcoming demolitions on houses. Code Enforcement Manager Sides said he will meet with a contractor on Thursday to look at 1218 Post, which has been condemned. Commissioner Burnett asked him if that was the burnt one. He answered yes. Commissioner Burnett asked him how long they had. He said has no contact with anyone there. The last address is 1218 Post. Commissioner Burnett asked if we did that one earlier this year. Code Enforcement Manager Sides said yes. Commissioner Burnett asked him if we still had two years before we could do anything. Code Enforcement Manager Sides said not necessarily. By resolution, they have ten days to commence. I take that as, hey, you called the contractor, or you have called me and said it is going to take a little while because the property is in probate. You have called me, and we are talking about it. Take your time, let me know, and keep me informed. Our goal is to work with people. We do not want to go tearing things down, but that is ultimately where we have to go sometimes. I have identified sixty-two dilapidated structures in Alamogordo as of today. The ones you have seen are the worst. I rank them by three, two, and one. Threes are the worst where they have had fires or a bunch of junk. All the ones I have brought to you are clearly dilapidated structures, and we need to do something about them.

Commissioner Melton said dilapidated structures are probably the most frequent calls I get behind weeds and roads. This is an issue in District Three, and I want them to have a voice, so I will vote. We need to address this today, but in the worst case, push this to the first meeting in January. We have been delaying this long enough, and the people want action on this.

City Manager Holden said that by virtue of ordinances and the property code, Code Enforcement Manager Sides and the inspectors can still go out. They are not being stopped from identifying these structures. Going forward, there are real issues. These are policy decisions that different commissions and councils around the country have different ideas about how it should work. You have the authorities already in place to continue. Some budgeted funds are already available to destroy some properties that have gone through a lengthy process where nobody has done or is willing to do anything. The properties need to be demolished because they cannot be brought up to standard anytime soon. The problem we have, as we always will have, is there are more properties that need to be demolished than money you can spend to tear them down. While we have liens, and we file those appropriately, you may or may not ever collect money on them, so you are out money from our General Operating Fund to pay for those improvements to the community. It is a difficult proposition. There are a couple of very large buildings that need to be destroyed, but because of asbestos abatement and other things required, you could spend upwards of eight or nine years of the normally allocated funds, and we would not have money left to do anything. We have outgoing commissioners and new ones coming in, and it is probably a good opportunity to get the vision of that newly seated Commission of how they want to move forward. This is not a new topic or one with new revolutionary ways to fix it, but we can continue to identify these properties. The goal is to get people to fix the ones that are not so bad. The goal is not to tear down properties, but you have people living next door. These are primarily abandoned structures and not homes anybody lives in or would live in. None of you would live in or expect anyone to live in some of the homes I have seen and looked at. From plumbing to electrical, many of those are accidents waiting to happen. From a staff standpoint, we will continue to move forward and identify these. We will bring this back in January if you choose to do so. With regards to the fee structure and other things Code Enforcement Manager Sides brought up, we cannot arbitrarily set a fee structure because we have to determine by ordinance what fees we are going to change for various services and what we are going to do if someone does not pay those fees. There are also a number of ordinance issues we need to address if you consider this in January. Feel free to come by my office if we need to clarify and arrive at an understanding, but somehow, you have to give something to Code Enforcement, so they know what their goals and expectations are from the community and the Commission's standpoint. We do not set the policies; you do. We administrate the policies you bring to us.

Commissioner Rardin made a motion to table this until January 9th.

Commissioner Burnett seconded the motion.

Motion carried with a vote of 6-0-1. Mayor Pro-Tem Wright abstained.

14. Consider and act upon Resolution 2023-58, declaring 923 N. New York Ave. 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. There is a structural beam supporting the second floor, and because of the elements and rain, it has compressed in on itself and twisted. A wall on the first floor and above it on the second floor are starting to compound on each other and convexing out. They are protruding, meaning the middle of this building is falling in. Commissioner Rardin asked if this was on the addition or the actual main structure. He answered the actual main structure. If you go through the museum and hang a left through another door, it is right there. None of the properties I have brought to you so far have kept me up at night, but this one has. With as much traffic as that neighborhood has, this structure's potential for collapse is very real.

Assistant City Manager Hernandez said it had worsened significantly since 2019 when staff last went into it. Fire pulled up the pictures. I brought this to the attention of Code Enforcement Manager Sides because I would like you to consider a few things when voting on this item. We were working with Fire to change ordinances, sides, and setbacks, which is where I started really thinking about this. Nothing

separates this building from that side of the main street if something happens to it. All of those shops are going to go down. The second thing that was a huge concern was the start of the Great Blocks. With the structural integrity of this building, and when they start tearing up the streets and drilling for the infrastructure underneath, I am afraid of this imploding and potentially something that could happen. I spoke with the Executive Director of MainStreet, Nolan Ojeda, about this because it is in his area. He is willing to work with the owners of it if there is anything that can be done. We are not trying to tear this down, but it may go down that road. We really need to secure this before the Great Blocks program gets up and running.

Commissioner Burnett asked where the intentions were if you did not want to tear it down. Assistant City Manager Hernandez said it was not her decision to tear it down. It is one of those we will try to work with. I do not know if Mr. Ojeda has any additional resources he can help with. I want it to be structurally sound when we go into the Great Blocks project. We spoke to the occupants of the building, and they have safety concerns as well. Mayor Payne said you want it secured and the owner to do something to secure it. Assistant City Manager Hernandez said yes, something needs to be done with the building. Mayor Payne said so, not the City, the owner. From the City's standpoint, what is our alternative if the owner is unwilling or cannot do something? To tear it down? Code Enforcement Manager Sides said that based on his training, he does not see it as if it comes down; it is when. With the amount of pedestrian and motorist traffic and businesses on this block, you are looking at a total catastrophe. Not only great bodily injury but how many deaths will occur when this building comes down. Mayor Payne asked him if that could be effectively done without touching the other buildings. We know they are all attached. He said it would be up to the contractor looking at that for demo. District Court staff use the 100 block to get to Walgreens, not to mention all the patrons there just this last weekend.

Public Comment

Louis Vazquez said the building is historical and was made back when Alamogordo was just starting. The walls on the outside look good. It's the inside structure. Back in those days, they did not have concrete, so they did wooden floors for everything, which gave them access to plumbing and electrical. The building is beautiful, but they let the roof go, so the damage started from the top down. We ought to get knowledgeable repair people to rebuild the inside but leave the outside wall, as that is what makes it look historical. Mayor Payne asked Mr. Vazquez if he was the owner. He said he was not. Code Enforcement Manager Sides said when this property came to his attention, he looked into code and the national and state registries. This building is not registered as a historic building. It does not fall under any historical codes, and even then, the codes say it has to be maintained to code. It may be historic to Alamogordo, but it is not as historic as it needs to be. City Manager Holden said the goal is not to remove or tear the building down. We want to give the owners the opportunity to have it checked out from a structural integrity standpoint through an architectural engineer certified to do that. Contrary to what we heard, one of those outside walls is bowed out. It is not a matter of if. It will if something is not done. The appropriate people can come in and assist folks who have an interest in the building, and they can find out what they have to do to bring the building up to minimum code. As Code Enforcement Manager Sides said, it is not a historic building; it is an old building that needs to be restored. Mayor Payne said that it would be up to the owners to do that. City Manager Holden said absolutely. We are not an advocate of us going in there and trying to bring it up to standards ourselves or even demolish it until someone can categorically say they cannot afford to bring the building up to code and make it safe. As it sits now, it is a very dangerous building in the downtown area.

Connie Garcia said the building is owned by a nonprofit. The board of it is not any one person. At the moment, I am the president of the board, and I am the one who showed them the building. The building became deteriorated when we were not the owners. The owners were Pedro and Rosie Montoya. They gifted it to us three years ago when it was already in bad shape. We knew the roof was leaking, and I have photographs showing people putting whitewash on so it would stop leaking. The strong

winds have blown the roofing paper and waterproof stuff off. We have been trying to raise money to redo the roof. We figured that was the first thing we needed to do. We also know we need to put heating and cooling in there. We have a proposal from Anderson that was going to do one. We also have a proposal from a roofing company, Bishop, in Law Cruces. We took down the ceiling panels and the middle wall to rebuild it. When we saw that it was twisted, I called the board and said we needed to have an emergency meeting because we did not know that was underneath the sheet rock. We had boards we painted to look like windows with people looking out, but we wanted to put them up when we got all the building materials up there. We do not make a lot of money. We bring thousands of people to Alamogordo to see the Shroud of Turin. We know that from access to our webpage. We make somewhere from \$100 to \$300 a week, which is enough to keep us in business and keep our utilities going. We planned to fix the roof, then the heating and cooling, and the next thing would be the floor and the interior walls. The area we use is in great shape. We discovered the other stuff when we tore down the walls in the back. The roof has always been an issue. We have only been the owners of the building for about three years. We didn't know about all the uncovered stuff when we knocked down the walls in the middle. We knocked them down to put up new ones. When Code came in to see, we had purposely knocked stuff down already. Mayor Payne said to be clear, a nonprofit owns the building. Ms. Garcia said yes, and it was gifted to us in that bad shape. We were told the center wall was not a load-bearing wall. Mayor Payne asked if Ms. Garcia felt safe in the building. She said I always felt safe until I saw that twisted board. We called in a building man who said all that could be replaced. I do not know how this will go over with the timing you all have and tearing up the road. We had intended to restore it; we were not ignoring the damage.

Peter Schumacher said most of the situations with the building can be addressed, but it will take an investment. Ms. Garcia is good at getting grants, but those things take time. The timeline we have from Code Enforcement Manager Sides gives thirty days for this and fifteen days for that. Those are not possible things to do. I hope Code Enforcement Manager Sides will work with us on that. I am not on the board of directors but founded the museum fifteen years ago. We have brought tens of thousands of people to Alamogordo over that time to research the Shroud of Turin. There is a connection between New Mexico's history and the Shroud's history. It is part of the largest scientific investigation ever launched to study a single artifact. That began in New Mexico because of the discovery at Sandia Laboratories in Albuquerque. It is a big part of New Mexico's history and our community in terms of what it brings here for dollars. We have people from Florida, Panama, Italy, France, and Canada who sometimes come and spend weeks at a time helping us out and doing research. My purpose today is to try to ensure that continues, whether in that building or another. We need time, patience, and help to find resources.

Mayor Payne asked Ms. Garcia if the building was insured. Ms. Garcia said yes, but I do not think it insures the building. I think we have a liability like it insures liability if people get hurt there, but the building itself is not insured. We have liability insurance that insures the patrons that visit there and the property we have in there. Mayor Payne said so if someone comes in and that building comes crashing down and kills somebody, are you guys insured? Ms. Garcia said the liability would cover our patrons. If the building catches fire, it will not pay for the building. Mayor Payne said if someone is in the building, and the building catches fire, and the fire jumps over to the next building, are you insured for that? Ms. Garcia said she was not sure but could look it up and call their insurance. Mayor Payne said that is a huge concern. It is critically important that everybody is protected; that is why I am asking the question. It is clearly not on the City, though I would suggest if that building came down and injured someone on the sidewalk, we would probably see a lawsuit. You do not have control over that part. It is critically important that you find out if you are insured. From what I am hearing, it seems like that is a huge liability. If that happens, as a board of directors, you should have directors' and operators' insurance, which it does not sound like you do.

Assistant City Manager Hernandez said when we start the Great Blocks and that building falls down, the City is now responsible for that building. We need to keep all of this in perspective. The historic

and sentimental value is there, and it would be a shame, but we have to protect the City and its liability. This is one hundred percent where all this is coming from. We really need to be careful and take a look at that because the city will get sued if something happens and falls on the street. We are named in everything that happens. Commissioner Rardin asked when we were starting the Great Blocks. Mr. Ojeda said it would probably be late summer. Commissioner Rardin said so we have a couple of months. Assistant City Manager Hernandez said yes, but passing the resolution ensures they will continue to make progress on this. That is where the City needs to protect ourselves. I am not saying they won't; I am saying we really need to be careful because this will be a huge liability for the City. City Attorney Smith said she agreed with Assistant City Manager Hernandez. If and when this building comes down, and someone is killed or severely injured, not only will we be named in the lawsuit, but we are going to be held liable if we do not take any action. Mayor Payne said especially now that we know about it. City Attorney Smith agreed.

Commissioner Burnett asked Ms. Garcia if they had spoken to any contractors and had an estimated cost. Ms. Garcia said we did not know about that twisted wall until we removed the sheetrock, but we had a roofer in there and a proposal from him. We had a meeting when we saw the wall, and the board decided not to cover it up because it was a liability. Commissioner Burnett asked what the estimate of the roof was. Ms. Garcia said \$55,000. The heating and cooling were \$12,000. Commissioner Burnett said when you make \$300 a week, you have to look at that. Ms. Garcia said they were not collecting money to fix the roof because the building was not ours. We were just being loaned that one room. The person who gave us the building did not vacate it. We had to pressure them to come and vacate the building one piece at a time. When Code was coming out, he barely took stuff out that day. I told them the barbershop was a mess. He came and took the good stuff and left his trash there. We did not have access to the barbershop until the day he took his stuff. He had put the building in our name three years ago but did not vacate it, so we did not have access to a lot of stuff to see what it was like. The rubbish he is talking about is on the second floor and barbershop. What we could access, we cleaned.

Mayor Payne said if we do this, what is the next step? Commissioner Rardin said we should give them thirty days to get with a contractor to come in, look at this, and give them an opinion on structural integrity. The building has been standing there for one hundred and twenty-two years. I do not see it coming down tomorrow. Commissioner Melton said anything could happen in thirty days. Commissioner Rardin said an airplane could crash through this building in thirty days. Anything can happen. If we condemn this, what is to say that their insurance company cancels their policy tomorrow morning? Mayor Payne said they do not have insurance; they have a liability policy. That's it. Commissioner Rardin said they have liability for the use of that floor of that building. If it is as bad as you say, I am surprised that the roofer gave them a bid to be up on that roof. We should give them the opportunity to fix their building, not just declare it dilapidated. In thirty or forty-five days from now, if they have not done anything, then yes, we should. This one will create issues because it is so old and in the downtown district. We have time before the Great Blocks start. Give them time to get an opinion from a contractor.

Code Enforcement Manager Sides said should the resolution be passed, they would have ten days to commence demolition or rehabilitation. So, within ten days, they can call a contractor. Once they called one contractor in the ten days, that satisfies their ten-day mark, and now they have two years. They get more than thirty days; they get two years. Commissioner Rardin said so the liability does not expire on us if they get to the two-year mark? We are worried about the City's liability because we know of the issue, but if they call a contractor within ten days and assess it, they have fulfilled what they need to do now and have two years. Code Enforcement Manager Sides said for the ten-day mark. City Attorney Smith said he is talking about the liability. As the City has taken action, we have a defense. Legally and statutorily, we have to give two years. At least we did the action, limiting our liability and making it less because we have a defense. We can say that as soon as the City found out how bad it was, we took action and followed state statute as to the process. If we take action, our liability goes

down. If the Commission decides not to take action or deny it, our liability increases. Commissioner Rardin said even though it is private property. She said even though it is private property, we knew how bad it was, and we have a duty to the citizens and the public.

Commissioner Paul said he had a meeting with a local who really appreciated the architecture of that building. They would love to see it remain in the community. To the board members here, regardless of how the Commission votes, if it is worthwhile, I could get you in contact with that person. I do not know if you would have interest in renting space from them, but they have the means and ability to come in and restore that potentially in a short period of time. I will be around after the meeting if you want that contact info. Commissioner Rardin said he felt that was a better option. Mayor Payne said if we do this tonight, you can get with that person or a contractor within ten days, then that satisfies the ten days, and you have two years.

Commissioner Burnett said if we condemn this, do they have to leave the building? Code Enforcement Manager Sides said they cannot occupy that space unless they are there to correct the violations. Commissioner Burnett said so the museum goes away. Code Enforcement Manager Sides said its occupancy is prohibited.

Peter Schumacher said that Commissioner Paul mentioned that the person may have something they could move the museum into. Commissioner Paul said you would have to have a conversation with them. I know they are interested in that building for a venture they want to do and be part of. I do not know if that would entail being able to stay there or not; that would be a conversation between you and them. Mr. Schumacher said he believed there would be concern if the building was already condemned, but the occupancy is for repair, so that is not a major issue. City Attorney Smith said it was mentioned that if we condemn it, they cannot occupy it. That is per statute. The reason behind that is to limit liability. If something is this bad, it is a way for the government to limit liability as much as it physically can by taking people out of that building. It is another defense. If something were to happen, we could say we did everything we could and tried to limit the people being in there. I just wanted to put down the reason and thought process for condemning stuff when the State legislature was thinking this out.

Mayor Payne said her issue is there is no insurance on this building. Liability insurance only counts if someone trips and falls in the building. If this building crashes down and someone is walking on the sidewalk and gets killed, the only people they have to go back on is the City because you do not have anything. Now, we are on public record, and we know about this. The liability is just too great for our City and citizens. Commissioner Rardin said we have known about this since 2019. Mayor Payne said she had not known much about it. I did not know they did not have insurance. Commissioner Rardin said she said she may have the insurance on that, but she was not one hundred percent certain. Commissioner Rardin said he would like to explore what Commissioner Paul mentioned if they have an investor willing to help or purchase and renovate the building. Commissioner Melton said they could do that while we pass this.

Commissioner Paul moved to approve.

Commissioner Melton seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 6-1-0. Commissioner Rardin voted nay.

Commissioner Rardin stepped out at 8:44 p.m.

**15. Consider, and, act upon canceling the December 19, 2023, regular commission meeting.
(Susan L. Payne, Mayor)**

Mayor Payne said we typically do this for the last meeting every year. It is normally later than this December 19th timeframe.

Commissioner Burnett moved to approve.

Commissioner McDonald seconded the motion.

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

A break was called at 8:46 p.m. with the session to resume at 8:55 p.m.

16. Consider, and act upon, Ordinance 1687, for first publication amending Chapter 11, Article 7, Sections 010-060, Alcoholic Beverage Regulations. (Ashley Smith, City Attorney) (Roll Call Vote Required)

City Attorney Smith said we had this ordinance on the books under permits and business licenses. I believe we struck that ordinance sometime last year. We are only bringing it back under the Criminal Code because the part of selling to minors was more appropriate there.

Commissioner Rardin said 11-07-20, location regulations, states public dance halls, pool rooms, and bowling alleys. Is that going to affect us when we get ours back up and running? Are we allowed to sell alcohol in our own facilities? Assistant City Manager Hernandez said not to minors. Commissioner Rardin said that it is not for minors. That is under location regulations. Same thing with our golf course. Are we going to limit ourselves to whether we can sell alcohol? That is a public space as well. Lieutenant Glidden said location regulations say except public places having a license to dispense alcoholic beverages. Commissioner Rardin said okay, I wanted to make sure we are not limiting ourselves on that.

Commissioner Burnett asked if the temporary alcohol beverage permits were being struck out. City Attorney Smith said this was the licensure. That used to be under City Clerk Hughs. Assistant City Manager Hernandez said in the effort to clean up the ordinances, this was under the business licenses and regulations. We are trying to get everything aligned into the appropriate place. This belongs in the Criminal Code so that the Alamogordo Police Department can enforce it. I do not believe we do Temporary Alcoholic Beverage Dispenser Licenses anymore. Deputy City Clerk Aleshire said we no longer do the temporaries.

Commissioner Rardin asked if the minors allowing self to be served was in state law, in the selling or giving of alcohol. Lieutenant Glidden said it was. Commissioner Rardin said so you can cite it already in court under state law. Lieutenant Glidden said yes, we can cite it under the Municipal Court. Commissioner Rardin said so we will send them to our court instead of the Magistrate. Lieutenant Glidden said in Magistrate Court, officers have to do self-prosecution. If we cite it here locally, we have a counsel who can help us through the process to have better conviction rates. Commissioner Rardin asked if there was a higher penalty through us than the Magistrate. City Attorney Smith said it was the same. The Municipal Court only does City ordinances. We cannot really enforce state statutes. Depending on the level, that has to go to either the Magistrate or District Court. The State and Municipal would be equivalent; there is no higher punishment.

Commissioner Burnett said under the temporaries, like when Bill does stuff for the Flickinger Center, is that just going to be allowed through the State now? Assistant City Manager Hernandez said that Deputy City Clerk Aleshire could better explain that process. Deputy City Clerk Aleshire said the way it works now is that the City Clerk's Office does not do any sort of temporaries. What we do see come through are the Public Celebration Permits. That paperwork goes through the State, but what they need from us is local governing body approval and sometimes approval of property owner. We do not keep a copy of that. We give it to them to move forward to the State; we do not do that on their behalf. Assistant City Manager Hernandez said there was a lot of holdups back at the Balloon Fest, where

they were unable to get the Temporary Liquor License from us, and it had to be within two weeks, and there were two weeks from the State. We took that out because the State already regulates it, so we removed the Temporary Licenses. Commissioner Burnett said that makes sense.

Commissioner Rardin asked if Fourth Fridays would be exempt. Assistant City Manager Hernandez said we have the liquor license. Commissioner Rardin said it does have "public places" here. Assistant City Manager Hernandez said we have our liquor license and that establishment on the back build of Griggs Field. Lieutenant Glidden said any establishment that has a liquor license will be exempt. This is basically for people drinking at Walmart, in parking lots, at liquor establishments, and things like that. Commissioner Rardin asked if any organized events should be exempt. Lieutenant Glidden said those should be covered.

Commissioner Burnett moved to approve.

Commissioner McDonald seconded the motion.

Roll Call Vote was taken.

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

17. Consider, and act upon, Ordinance 1686, for first publication amending Chapter 11, Article 8, Sections 010-040, Peddler and Solicitor Regulations. (Ashley Smith, City Attorney) (Roll Call Vote Required)

City Attorney Smith said this was like the previous ordinance where it was under City Clerk Hughs, and we are moving it to the Criminal Code because we feel it is a better fit.

Commissioner Burnett asked if this was for the people standing on the side of the roads. City Attorney Smith said correct. Mayor Payne said or going door to door. I am glad to see this back because I was never in favor of getting rid of it. I get quite a few calls about this. Commissioner Melton asked if registered businesses could still go door to door, like the solar people. Commissioner Rardin said he has the biggest problems with the solar guys, and they get aggressive. They will come to my door, and I will tell them I am not interested, and it is rebuttal after rebuttal. Commissioner Melton said they annoy him, too, but they have a right to make a living. Commissioner Rardin said they do, but once you tell them I am not interested, thank you? Assistant City Manager Hernandez said this is where if you have no trespassing or no soliciting posted, then they cannot go onto your property. That allows people to give APD a call to get them removed from their property. One of the biggest complaints we get is about the solar companies. Commissioner Melton asked if they could knock on other doors that do not have no soliciting. Assistant City Manager Hernandez said yes. The reason this was under City Clerk Hughs was because we required them to have a solicitation permit, but we took that away. We do not have a solicitation permit. We probably started cleaning this up in March. I do not think this allows them to do that.

Commissioner Melton asked about Boy and Girl Scouts, or anybody going door to door selling something. Assistant City Manager Hernandez said that juveniles are exempt from this. Commissioner Melton said he did not like taking someone's means to provide for themselves. Commissioner Rardin said he understood the aggressive part of solicitation but agreed. Even the young kids selling candy bars for school. What section says that juveniles are exempt? Assistant City Manager Hernandez said peddlers shall not include persons exempt from licensing under Section 23-1 of NMSA. City Attorney Smith said it seems to have guidelines. The first part, 020, solicitation is prohibited as follows: aggressive manner in a public area, within fifteen feet of the entrance or exit of a bank. It sets parameters. Assistant City Manager Hernandez said right now, there is no authority for APD if someone is outside of Walmart and they step into our street; we really do not have that ordinance on the books that says you are obstructing traffic flow. There is really no ticketing or even anything to have them get off the street. Lieutenant Glidden said also people posting up in meetings. We had protestors over there on 10th Street in the medians. Commissioner Rardin said in the section with the

minors, is that 17-08-020 A, but it is struck out. Is that what you are thinking? So, anyone under the age of eighteen are exempt from licensing requirements. Assistant City Manager Hernandez said yes, I think that is where I was thinking. Commissioner Rardin said that is struck out, though. Assistant City Manager Hernandez said that just means they do not need the City license. That means that kids can pop up lemonade stands. We used to get calls that kids were selling lemonade without a business license. City Attorney Smith said this does not prohibit someone from coming and knocking on your door. However, in the one section, it does say it is prohibited on private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property or has posted a sign fairly indicated solicitation are not welcome on the property. So if someone knocks on your door, and you say I do not want to hear you, and they refuse, you can call the cops, and they can cite them under this now. It does not prevent them from initially starting. Commissioner Rardin said yes. They are allowed to come knock on the door and sell their product, but once they are asked to leave, they need to leave. City Attorney Smith said that is correct.

Commissioner Rardin said he would like to see a deal in there saying that minors are excluded. We all agree with that and know it, but have it in writing the minors are exempt. Not that many kids go door to door anymore. City Attorney Smith asked where Commissioner Rardin would like that, under a 11-08-020 Subsection C that says exemptions? Commissioner Rardin said if you just added "A" back in there and maybe take out the license requirements. Say they are exempt from the article except for when they are acting as agents of adults. 17-08-020 A says the intent. Maybe take out the license requirements portion of it in the event they are selling Girl Scout cookies or candy bars or whatever fundraisers they do. We are not arresting children. Assistant City Manager Hernandez said if she is understood Commissioner Rardin correctly, minors under the age of eighteen participating in solicitation activities are exempt from this article except when they are acting as agents of adults covered by this article? Commissioner Rardin asked if that made sense to everybody. That way, it is in writing, and there is no question. What about the foreign exchange students selling books? Will they be exempt from this? Assistant City Manager Hernandez said if they are under eighteen. City Attorney Smith said the next thing we have is what was 17-08-071, which is where we really get into what was prohibited. It really just sets guidelines like no aggressive manner in public areas, not within fifteen feet of banks or private property if you say you want them to leave. It does not prohibit them from knocking on your door, but if they are asked to leave, they have to leave, also, from any occupant of a motor vehicle that is traffic. So if you are on White Sands, they cannot come up to your car. What was 17-08-072, no solicitation on or near a street or highway, again, they cannot walk into the street and interrupt the flow of traffic. Commissioner Rardin asked if we were trying to regulate the panhandlers down on White Sands Boulevard with this portion. Assistant City Manager Hernandez said this was still there; we always had obstruction of flow. So, I don't think it is specific. Protestors or even people with car wash signs, it is not necessarily just for panhandlers. It is for anybody in that area who is obstructing the flow. Commissioner Rardin asked if the car wash people would be potentially cited. Assistant City Manager Hernandez said they would not be cited; they just cannot obstruct the flow. City Attorney Smith said they could be on the sidewalks, but they cannot be in the streets. Commissioner Melton said so they cannot impede traffic. Assistant City Manager Hernandez said yes. City Attorney Smith said nothing in this stops someone from actually going door to door, necessarily approaching people per se; they just have a certain way they have to do it. That is what this is saying. Commissioner McDonald said you said this does not affect people over at Walmart if they are stepping out of the curb. City Attorney Smith said if they are stepping out on the curb, it would. Assistant City Manager Hernandez said if they are stepping off the curb and into our streets, whereas obstruction or impeding the flow, yes, this is what that pertains to. Lieutenant Glidden said the thing about Walmart is that the majority of it is private property. If they are stepping out, say, just south of 1st Street. Commissioner McDonald said that is at the light and they are impeding traffic. Assistant City Manager Hernandez said it is not between Walmart and Margos, correct? It is if they come out onto 1st Street. Lieutenant Glidden said if they come out onto 1st Street, yes. The driver is responsible as well. So the driver is stopping the flow of traffic in order to hand money or whatever. They can be cited for this as well. I cannot remember ever citing a driver for being charitable in the past, but that is an option.

Commissioner Rardin asked if we need an exemption in there. The firefighters used to do Pass the Boot or Fill the Boot. They impede the flow of traffic when they do that. I have not seen one in ten years or so, and I do not know if they still do that. Mayor Payne said if you put an exemption like that in there, you are opening up another can of worms. Then you will have someone else asking why they are exempt, and we are not. City Attorney Smith said officers have some discretion if we do a fundraiser like that. Commissioner Burnett said a church does something similar to that.

Commissioner Melton said going back to door-to-door salespeople, to be clear, if the police get a call that there is some guy in the neighborhood knocking on doors trying to sell, and he was acting aggressive, and then you get there, and he is five houses down, you do not have anyone's word. Are we going to take these people off the street and not let them do their business? Lieutenant Glidden said we have to have probable cause to cite. A lot of people have ring doorbells. If you show me your ring doorbells, show me this guy was being aggressive, and you told him to leave multiple times. Not only do we have a soliciting ordinance to fall on, but we also have possible trespassing as well. If they are aggressive, there is a lot of different aggressive behavior listed here. We could cite for that and potentially trespassing. In order for us to arrest on it, we would have to actually see it happen. In order to take action and cite them, all we need is probable cause and any sort of proof. Video camera, or maybe we see them having a conversation with the neighbor across the street, and we are five doors down. We can keep an eye on him or something like that, or we are getting multiple calls. It depends. Commissioner Melton said he is worried. The first thing you learn in sales is never stop at the first no. That is the number one rule. There will be people coming into town who will continue to push after the first no. That does not mean they should, but that is sales. Commissioner Rardin said he usually gets three or four rebuttals from them. Commissioner Melton said they usually stop at two or three, but I have never met a single salesperson who stops at no. That is not in their DNA.

Commissioner Rardin said he knows this is trying to go after the panhandlers when they step out into the road and impede traffic, but unless you actually see them do that, how are we going to enforce that part of it? You need to see them for us to cite them, correct? Lieutenant Glidden said yes. We get a call, we can park and observe it. Commissioner Rardin asked if we get a lot of calls for that. Lieutenant Glidden said we get a few calls over at Walmart. A guy over there is pretty aggressive, but he likes to float on private property. Part of this says if the business puts up no soliciting or trespassing signs, we can enforce that, but it has to be the business restricting them from the property. Mayor Payne said therein lies the issue.

City Attorney Smith asked if the Commission wanted to add an exemption in here or are we good with the language as it is? Commissioner Rardin said he would like the minors to be exempted in writing, just so there is no question about it. Lieutenant Glidden said if we exempt them, are we exempting them from the whole thing? Commissioner Rardin said no, you know what I mean, just the school fundraisers, the candy bars, they do cakes, that kind of stuff, or the Girl Scouts selling cookies. Lieutenant Glidden said we are not restricting anybody at this point, so if everybody can do it, I do not see why we would exempt them. Commissioner Melton said do you mean exempting them from the no soliciting sign? Commissioner Burnett said we really cannot do that. City Attorney Smith said pursuant to this, we are not saying they cannot. We are saying that if you are going to do this, you have to follow certain things. That is why I wanted clarification. Do you guys want me to add something in there or bring this back? Commissioner Rardin said just leave it the way it is. I just do not want to see arresting children for selling candy bars. We would make front-page news. Lieutenant Glidden said technically, we cannot cite juveniles in this report either. So, it would not really be enforceable.

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

18. Consider, and act upon, Ordinance 1690, for first publication amending Chapter 11, Article 06, Section 160, Unauthorized presence in drainage channels, arroyos and irrigation channels. (Susan L. Payne, Mayor and Ashley Smith, City Attorney) (Roll Call Vote Required)

City Attorney Smith said this is one of several ordinances we are bringing forth as a result of the City's work with other agencies coming from the juvenile shooting at our parks. On meeting with the DA's Office, Scott Key, the Police Department, Assistant City Manager Hernandez, the Mayor, and myself, we were all trying to figure out what we could do concerning some of the issues we have seen, especially with juveniles. One of the things brought up is that juveniles and others have been going into our ditches and vandalizing. They have been graffitiing stuff and hanging out there. The original ordinance, as you see, only involved people who were driving vehicles in our ditches and arroyos, whereas the new ordinance encompasses more. It is unlawful for any person to enter or remain in a water convenience system. We define what a water convenience system is in the definitions; irrigation channels, engineered and natural channels intending to transport water including an arroyo, drainage canal, irrigation canal, or piping. People cannot just be going in our canals unless they are authorized. Additionally, we will be posting no trespass signs throughout those areas. It will be a trespassable offense. After speaking with multiple agencies, there is language we would like to change or add. Section F says the penalties set forth in Section 1-01-100 shall apply for violation of the section. We would like to add language that says, the officer shall issue a criminal trespass citation to a person for violating this section. This just clarifies it for our police officers if they see someone in our canals. They are not authorized to be there. They need to be trespassing them. This is also a safety thing too. If we have a big rainstorm, or if there is rain up the mountains, water comes through, and we do not want anyone hurt. Additionally, we would like to add Section G. This deals more specifically with juveniles. We would like to add this section, which was recommended by the Juvenile Probation Office. Adding, minors under eighteen years of age in violation of this ordinance shall be issued a criminal trespass under New Mexico Statutes Annotated Section 30-14-1. Juveniles shall be referred to the Juvenile Probation Office. What this does is, as mentioned before, we cannot cite juveniles into Municipal Court. We have to cite them under state statute. Listing the state statute helps our officers because then they are not searching for the statute. Should that statute ever change, like their definitions of criminal trespass, it is still covered for the juveniles, and we will still be citing the juveniles under that criminal trespass. Referring it to the Juvenile Probation Office is the standard requirement when you are citing a juvenile. Again, I am just making it clear to our officers that this is the process we want to be handled when they catch any juveniles in these water channels.

Commissioner Rardin said when he was a kid, we would use to play in that ditch over in Washington Street when it rained. I understand the intent of what we are trying to do here; it is mainly down the by high school, but if the officers see kids playing rainwater in the ditch, are we going to have some sort of leeway in this, or will we just start sending a bunch of kids over to Junior Probation? City Attorney Smith said one of things is that we are going to have the signage. A part of criminal trespass is that they should know or have known they were not permitted to be there. The way we get around that is by having the signs. If there are no signs, they are going to have a defense. We are putting signs on the big canal over here. Commissioner Rardin said yes, the Corps project. Say this ditch here on Washington Street. I lived on 17th Street when I was a kid and I rode my bicycle by the tennis courts, went over the hill, and across the ditch to 18th Street. You catch me in the ditch, just crossing it. Are we going to be cited into the Juvenile Probation Office? City Attorney Smith said that technically, the way the ordinance is written as it is, you would not be able to ride your bicycle. That could be considered a vehicle. Commissioner Rardin said it is not a motorized vehicle, though. Do you understand where I am going with that? I do not want to penalize good kids just for playing and having a good time. They may be in a drainage ditch or on the edge of it. She said that is what a lot of Juvenile Probation Office, or JPO, does. They assess all that stuff. Commissioner Rardin said but do we really need to be sending them to JPO? I know you guys would use discretion to some extent. I am not worried about the ones we have now but in the future. Assistant City Manager Hernandez said this was at the request of both Chief Kunihiro and the JPO. This is not something we just put in there. We

had a collaborative effort with them and the District Attorney. If a kid is playing in a ditch, they should not be playing in a ditch because we could have, as you remember, the flooding that happened on Florida. We got the calls that it was flooding even though it was sunny skies, and they were right. Technically, they should not be playing in a ditch because it is unsafe. Is Lieutenant Glidden going to go in and arrest every kid? No, there is still officer discretion in that. Commissioner Rardin said our intent here is to deal with the issue at the high school for the most part. Assistant City Manager Hernandez said our intent is this came as a result of Chief Kunihiro asking us if we could look at the ditches ordinance. They are getting calls not just about the juveniles in the ditch. They are getting homeless people and other people in there. They are getting calls, and there is nothing they can do right now. This is going to take care of issues where even our School Resource Officer was out there saying they had to go in and look in ditches for kids to make sure they were not smoking pot. That is one side of it. The other is, that there are other people in the ditches, and they do not have the authority to do anything about it. Mayor Payne said this applies to everybody; that is what I like about it. That is another thing we need to get a handle on. Commissioner Rardin said he did not know it was such a problem. Mayor Payne said it is an absolutely huge problem. Commissioner Rardin said he was guilty of riding his four-wheeler in the ditch. Mayor Payne said no, people are pitching tents in the ditch, sleeping in them, and living in them. It will get worse if we do not get a handle on it. Commissioner Rardin asked if we had locations and knew where in town. He said there is one on Lavelle Road. It is a tent on the big drainage ditch. It may be a large tumbleweed, but it looks like a tent. Mayor Payne said there is one by the high school. Another one I get calls about is by Walmart. They tell me they do not like to stand outside because people congregate in that ditch. It is an issue at Oregon Park; that ditch there is an issue. Commissioner McDonald said the BBQ place on White Sands has a couple of places there because you can see their stuff. Mayor Payne said the one up by Foothills Park is pretty bad too. There is a property that was just traded, and there are people living there. They have their tent and all their stuff. White Sands is a major thoroughfare, and people are coming into our town and that is what they have to see. Commissioner Rardin said that is private property though. Mayor Payne said it is still an issue. Commissioner Burnett said we were looking at the property boundaries, and you can see where Murphy's ends and the City begins. Mayor Payne said she understood that, but even with private property, it is not a campground, and it is not safe either. I get a lot of calls about these ditches, and this is not just for juveniles. Things are not the same as when you were a kid. They are not even close, and I do not think it is safe anymore. Commissioner Rardin said I took my daughter to the park that was Kid's Kingdom, and some kids walk across Washington and through the ditch to come to the park. They are not doing anything wrong; they are just taking a shortcut. Hopefully, our officers will use discretion on that and won't cite them for that. Lieutenant Glidden said he did not think any of our officers would cite for something like that. Commissioner Rardin said if you have one sitting down there smoking a doobie and causing trouble, then yes. Lieutenant Glidden said we have discretion, and so does JPO. Commissioner Rardin said the trauma of a good kid getting cited into JPO, well, I do not want to see them go down that road. Lieutenant Glidden said I see this mainly being enforced by the high school. Kids are going down there to smoke pot, fight, and do whatever. Commissioner Rardin said that is what we did when we were in high school. Lieutenant Glidden said now they have guns. Mayor Payne said and they use them. It does not seem to stop as an adult, either.

City Attorney Smith said I am asking you to pass this with the proposed changes verbally outlined. Additionally, I emailed them to you all the other night too.

Commissioner McDonald moved to approve with the stated changes.

Commissioner Paul seconded the motion.

Roll Call Vote was taken.

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

19. Consider, and act upon, Ordinance 1689, for first publication amending Chapter 11, Article 03, Section 040, Curfew. (Susan L. Payne, Mayor and Ashley Smith, City Attorney) (Roll Call Vote Required)

City Attorney Smith said this was another ordinance we are bringing in response to the juvenile crime that has been happening. We already have a curfew ordinance on the books. We are simply amending this and only changing a few things. There are some changes I would like to make verbally to this based on conversations we had yesterday at the joint meeting with several agencies throughout the City. In Section A, the only thing we are changing is it was sixteen years of age, and we are changing it to eighteen years of age. Under Section B, the exceptions, we are adding: or a minor with emancipated documentation. If you have that documentation, you are no longer really considered a minor. In Section C, right now, it states: it shall be the duty of peace officers to apprehend and take into custody. I would like to strike out the language that says apprehend and take into custody and add language that says: detain and investigate. The reason behind that is we cannot take juveniles into custody anymore, especially based on this. So stop the juvenile, and the officers can investigate to find out why they are out past the curfew. Additionally, on Section D towards the end, it says: the proper juvenile authorities. I would like to strike that language and change it to: Child, Youth, and Families Department. Commissioner Rardin asked if we were going to send them to CYFD. City Attorney Smith said that is the proper juvenile authority. We had this conversation during our meeting yesterday where JPO was involved. JPO's concern was they are not the appropriate authority because this deals with procedure when parent or guardian cannot be located. We are not going to call JPO when a parent cannot be located. If we cannot locate a parent, the appropriate person to call is CYFD, and then they will try to find the parents or figure out the situation going on. We wanted to make that clear again, so there are no misunderstandings with our officers or anything.

Commissioner Melton said he was looking at what Santa Fe and Albuquerque do, and they also have the \$500 fine, but that is on each violation. It does not build up to that. Is there a reason why we started at \$250? City Attorney Smith said we felt that for the first violation, we would give people a little slack, and hopefully, things get resolved with the first violation. The second violation is the maximum we can do, which is \$500. Mayor Payne asked if we decided to keep the warning. I think we were supposed to take that out. Commissioner Rardin said he agreed with the warning on the first one. City Attorney Smith said the warning we took out dealt with the ditches. Mayor Payne said we decided the signs were the warning. City Attorney Smith said correct. We decided that for the first offense, you may have a reason. There may be a little bit more flexibility. Our officers will have discretion. We do have exceptions in here if they are going to and from work. There might be an emergency situation where I guarantee our officers will not be citing people for this. The first offense is a warning, the second offense is a \$250 fine, and the third offense is the maximum our courts can do, which is the \$500 fine. We are cutting people some slack the first time, but the second time will be a tougher punishment, especially on the parents. In our minds, there is very little excuse for the third offense. Commissioner Melton said he felt that may lead to confusion. People think they get fined \$250, okay, they do it again, \$500, they will think we just changed it on them. They are not going to read the ordinance. City Attorney Smith said we have progressive penalties for other things, too. Mayor Payne asked if officers would tell them that. They are getting a warning the first time. Will they tell them what the progression is, as far as the penalty, if it continues? Do they do that or not? Lieutenant Glidden said usually not. Usually, the courthouse records how many times they have been cited, unless that particular officer has dealt with that parent several times and knows you are on your third strike. Mayor Payne said if they give them a warning the first time, they would not necessarily say to them, we are just giving you a warning this time, but the next time, there will be a \$250 fine or something like that. Lieutenant Glidden said we typically say next time you are going to be cited. This is going to be a non-traffic, so it will go to court. We do not assign the penalty assessment; the judge does. So we will have knowledge of what the fine amount is. City Attorney Smith said this is basically going to be a penalty assessment. There will be a \$250 fine on the second violation. The way I think of it is it is like our DWI's. Your first DWI, it is like seven days incarceration max. The second DWI goes up to ninety days. The third offense is

getting into felony territory. When it comes to me, as a prosecutor, if it is your third offense and you maybe have a good reason, I can plea you down to a second offense. I have the authority to do that at my discretion. If we are saying it is the third offense, and they are charged, found guilty, and convicted of a third offense, then it shall be a \$500 fine. Commissioner Melton said that is too lenient compared to what other cities are doing.

Commissioner Rardin asked what our current curfew ordinance was. Mayor Payne said this is it. They are just striking some things off. City Attorney Smith asked Commissioner Rardin if he was talking about for the violations. Commissioner Rardin asked if it was exactly word per word. City Attorney Smith said yes, it is what I struck out. So for the violation of this section, the minor shall be released to the custody of his parent or guardian or other person having care custody of the minor upon written promise that such parent or guardian will assume the responsibility. That said, the child will comply with the provisions of this section. The juvenile authority shall make a written report, and there is no juvenile authorities, and shall keep a record of each violation. Any parent, guardian, or other adult person having the care and custody of a minor violating this section shall be punished in accordance with section 11-01-050. That is what is on the books right now. Commissioner Rardin said that is correct. City Attorney Smith said yes, I have struck that, and have added where I am basically saying, this is first offense, warning. Second offense, \$250 fine. Third offense, \$500 fine. That is the max we can even do.

Commissioner Burnett asked if this fell under school hours. City Attorney Smith said no, but it says it is from weekdays, which is Sunday through Thursday, from 11 p.m. to 6 a.m., so your school nights. On weekends from twelve midnight to 6 a.m. We will bring a Parks ordinance dealing with juveniles during school, which may address some of your concerns.

Mayor Payne said a few weeks ago, she thought we should rethink this, but then we had five juveniles tear up our City. They did tens of thousands of dollars in damage. I heard what Ms. Thomas said earlier, but I do not agree with it. I do not think it is our job to provide childcare. There are a lot of things to do within the City other than knock over motorcycles, crash cars, and break people's windows. Commissioner Burnett said my sister-in-law's car was stolen, so I completely get it. Commissioner Melton said this goes to his point. Why issue a warning? This is a serious issue that is already victimizing people. Commissioner Rardin asked how many times in the past few years have we enforced our current curfew? Do we have the numbers on that? Lieutenant Glidden said he did not know of any. We may have picked up kids and brought them home, but as far as citing parents, I do not recall any. City Attorney Smith said under the current ordinance we cannot cite parents. It really is not punishable. We mentioned the juvenile authorities doing a written report, but we no longer have juvenile authorities. This ordinance was done in 1960, and it definitely needs to be brought back.

Commissioner Burnett asked if the fines were going towards the children or parents. City Attorney Smith said we cannot fine the kids. The only person we can go to is the parents. We are saying parents or legal guardians, you are responsible for your kids. In the eyes of the court, they are responsible for their kids and always have been. We are going after the parents for this.

Mayor Payne said through this process, I learned that in the state of New Mexico, there are four juvenile facilities. For example, the kids that were caught the other night. I asked Chief Kunihiro about their reaction when they were caught, and he said they laughed at him. They did not have beds for five kids, so all of those kids got to go home to their parents. Will their parents be held liable? Probably, as far as paying for the damage, but they do have the money for it? The kids tore up not just our City, Tularosa, and everything in between, and they are laughing at our officers and getting to go home to their parents. What have we taught them? Commissioner Rardin said that's you; I would have rather gone to a juvenile facility than go home. Mayor Payne said why are thirteen-year-olds running our streets unsupervised at 3 o'clock in the morning? Commissioner Rardin said it is their parents. Mayor Payne said yes. They all went home to their parents, so we know they have parents.

City Attorney Smith said I hear Commissioner Melton and his concern is the progression. Do we want to do away with that? A warning for the first violation, and then the second violation is a \$500 fine? Do we like the progression? I can change this if you want. Commissioner Melton said we have established this is common sense. The parents have to care for their children. We are not babysitters. Commissioner Rardin said he felt like a warning on the first offense. Commissioner Melton said this is why they laugh when they get away. We are not serious, and this is serious. Commissioner Burnett said it depends on what they are doing. If they are just out and about roaming, or if they are destroying someone's property. Commissioner Melton said this is getting worse year by year. Commissioner Rardin asked if we could put that in the ordinance. If you are out tearing up people's property and breaking windows, can we fine you automatically on the first offense? But if you are just out wandering around, not creating any big issue, can we do that? City Attorney Smith said that would make it a lot more complicated. In that situation where they are vandalizing, stealing, breaking into cars, they are going to be cited by the officers. The kids are going to be punished that route. The question is, what is going to happen to the parents? I will say, from experience, if the juveniles are getting a criminal course in juvenile court, the parents are going to have to go to court. Most of the judges will make the parents a party of the case. Commissioner Rardin said I think we should leave the warning in there for the first offense. Commissioner Melton said they could always come before the Commission and make a case if it truly was a misunderstanding. Commissioner Rardin said he knew kids that would sneak out of the house when mom and dad were asleep. They may not even know their kids were out. Mayor Payne said they would find out real quick, wouldn't they? Commissioner Rardin said you do, but kids are going to be kids. City Attorney Smith said in that situation, I have prosecutorial discretion too. If it is a one-off, yeah, if it is a second time, we need to figure something out. What is going on with the parents? What do you guys need to figure out? It might be something where I have to refer some families to CYFD because they have resources. This is not a cure-all and will not fix everything. In yesterday's meeting, we had JPO, the County, the school board, and some commissioners. We all have to work together in order to accomplish our general goal, which is to fix the juveniles running rampant through the City. Commissioner Rardin said it is sad that the government has to get involved in that. City Attorney Smith said it is, but unfortunately, that is where we are at. Assistant City Manager Hernandez said this was a request from Chief Kunihiro, to give them some authority they do not currently have.

Commissioner Burnett said he would like to change the second time to a \$500 fine. You got your warning, and now you have to pay up. Mayor Payne said she was good with that. Commissioner Rardin said just strike \$250. Commissioner Melton said that works. City Attorney Smith said she would just put a \$500 on each subsequent violation. Commissioner Rardin said so a warning for the first one, and then \$500 after. City Attorney Smith said yes. It will read: parents, legal guardians, or any other person having care or custody of a minor under the age of eighteen years who violate this section will be given a warning on the first violation and a \$500 fine on each subsequent violation. Commissioner Melton asked if it was a warning per parent or child, like if they have multiple teenagers? Mayor Payne said I say per child. City Attorney Smith said that we have custody of a minor right now. Mayor Payne said that covers the kid sneaking out the window.

Commissioner Burnett moved to approve as amended.

Commissioner Melton seconded the motion.

Roll Call Vote was taken.

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

20. Consider, and act upon, Ordinance 1688, for first publication adding Chapter 11, Article 06, Section 160, Truancy. (Susan L. Payne, Mayor and Ashley Smith, City Attorney) (Roll Call Vote Required)

Mayor Payne said we are going to table this. We had a stakeholders meeting here in the Commission Chambers yesterday with various law enforcement agencies, the public schools, and juvenile probation. Commissioners Paul and McDonald also came. Based on that conversation, we decided to table the truancy ordinance and will be bringing it back up in the parks ordinance. The idea behind this is that it was misleading because people thought we were going to be regulating truancy, which was not the purpose. The purpose of this was if nobody is going to regulate truancy, and apparently, based on state law, it is nearly impossible, then we need to limit the City's liability. We will keep them out of our parks during times when they should be in school. We will add a section to our parks ordinance that, if juveniles are in our parks during the day, during times when they should be in school, and they follow the APS calendar, they will be cited for trespassing. Under the way we had it, it could not really refer them to Juvenile Probation. They could not really be cited, but they could call their parents and tell them to come get them. So if we bring it back under a parks ordinance where they can be cited for trespassing, then they have to go to court, and they can be referred to Juvenile Probation. Obviously, we did not have time to do that, but I believe City Attorney Smith emailed everyone a copy of what we were thinking. We are going to bring that back on January 9th. Commissioner Melton asked if that addressed homeschool kids. City Attorney Smith said it would be any. Mayor Payne said the key is unsupervised. If you are a kid in the park with your parents because you are homeschooled, that is fine. We do not have the ordinance yet, but it will be similar to that. If you are a kid in the park during the day unsupervised at a time when you should be in school, you are probably going to be cited. There is no way to distinguish. You really cannot do that. Commissioner Burnett said my daughter goes to school for two hours a day. Mayor Payne said we can talk about this in January, but keep in mind the operative word is unsupervised.

Commissioner Rardin moved to table.

Commissioner Burnett seconded the motion.

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

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

Mayor Payne appointed Antonio G. Castro to the Mayor's Committee on Aging and Rose Mary Gomez-Meade to the Airport Zoning Board. No one was opposed.

Commissioner Rardin moved to adjourn at 10:02 p.m.

Commissioner McDonald seconded the motion.

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

ADJOURNMENT



City Clerk Rachel Hughes

Mayor Susan L. Payne

(Prepared by Dylan Aleshire, Deputy City Clerk)

Approved at the Regular Meeting held on January 9, 2024.