

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., DONALD E. CARROLL COMMISSION CHAMBERS
January 9, 2024**

**SUSAN PAYNE, MAYOR
SHARON McDONALD, MAYOR PRO-TEM
NICHOLAS PAUL, COMMISSIONER
STEPHEN BURNETT, COMMISSIONER
WARREN ROBINSON, COMMISSIONER**

**JOSH RARDIN, COMMISSIONER
MARK TAPLEY, 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 City Clerk. City Clerk Hughs announced there was a quorum present. The invocation was given by Pastor Shelby Moon, and the Pledge of Allegiance was led by Commissioner Paul.

APPROVAL OF AGENDA

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

ADMINISTRATION OF THE OATH OF OFFICE FOR ELECTED OFFICIALS

**1. Ceremonial administration of the Oath of Office to the newly elected City Commissioners.
(David Overstreet, Municipal Judge)**

Judge Overstreet ceremonially administered the Oath of Office to Commissioners Nicholas Paul, Warren Robinson, Sharon McDonald, Mark Tapley.

REORGANIZATION OF THE COMMISSION

2. Selection of the Mayor Pro-Tem. (Rachel Hughs, City Clerk)

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

Commissioner McDonald took her seat next to Mayor Payne.

3. Selection of Seating Order. (Rachel Hughs, City Clerk)

The Commissioners chose to remain in their current seats.

4. Approve the Order of Business. (Rachel Hughs, City Clerk)

City Clerk Hughs said the current order we have is Call to Order & Roll Call, Invocation & Pledge of Allegiance, Approval of Agenda, Presentations, Public Comment, City Manager's Report, Remarks and Inquiries by the City Commission, Consent Agenda, Items removed from Consent Agenda, Public Hearings, New Business, Unfinished Business, Public Comment, Executive Closed Session, and Adjournment.

Commissioner Robinson moved to keep the same Order of Business.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 7-0-0.

PRESENTATION

5. Presentation of the Jill Robinson Award to the City of Alamogordo Code Enforcement Department, and the Presidential Certificate of Recognition to Joshua Sides, Code Enforcement Manager. (*Rick Holden, City Manager, and Nancy Beshaler, Public Works Director*)

City Manager Holden said each year, the Code Enforcement Officer Safety Foundation names a city that should be awarded the Jill Robinson honor for its efforts. Only one city in the United States gets this award, and we congratulate Code Enforcement for getting it. We also congratulate Code Enforcement Manager Sides for receiving the Presidential Certificate of Recognition. He presented the award to Code Enforcement and the certificate to Code Enforcement Manager Sides.

6. Swearing in of the Alamogordo Police Department's non-certified Officers Ian Beatrice, Aaron Ramirez, and Sam Roybal and of Animal Control Officer Frank Webb. (*David Overstreet, Municipal Court Judge*)

Judge Overstreet administered the swearing-in of the Alamogordo Police Officers and the Animal Control Officer.

7. Announce the Alamogordo Police Department promotions, Officer Mauricio Puente to Sergeant, Officer Christoph Wallenstein to Sergeant, Sergeant Ray Brown to Lieutenant, and Lieutenant Ryan Glidden to Deputy Chief. (*David Kunihiro, Police Chief*)

Police Chief Kunihiro announced the Alamogordo Police promotions and gave some information on their police backgrounds with the department.

PUBLIC COMMENT

Carol Hernandez said she cared about the pigeons and had suggestions for the Commission to consider. Regarding overpopulation, there is an expensive food that acts as a pigeon contraceptive, which would help reduce the pigeon population over time. There are measures to discourage pigeons from splatting on people's cars, the ground, or on people. She asked the Commission to consider these rather than denying people from feeding pigeons, which is a way to honor all life.

John Davis said he was here to ask the Commission to consider repealing or amending City Ordinance 07-05-30, which prohibits feeding feral pigeons. I would like to amend that to allow for religious exemption; my religion calls me to care for the Earth and all living creatures. I heard a lot of oaths taken today to uphold the US Constitution. The First Amendment of that Constitution guarantees me the right to practice my religion freely, and this ordinance circumvents that. I believe it is currently unconstitutional. He said City Attorney Smith stated that one of the City's concerns is that pigeons carry diseases. Indeed, they do, as do all living things. COVID did not prevent churches from practicing their religion. There has never been a documented or reported case in the State of New Mexico of the three diseases City Attorney Smith listed, which were Cryptococcosis, Histoplasmosis, or Psittacosis. The statute, as written, lists feral pigeons as a nuisance. Is this sufficient reason to deny me my religious freedom? Panhandlers and protestors can be a nuisance, but they have their First Amendment rights, as do I. I was denied being on tonight's agenda, so I would like to apply to be on the agenda for the meeting on the 23rd, and I asked Commissioner Rardin, as my Commissioner, to

second my request. I would like to do that so it is an action item, and I can address any questions or concerns you may have regarding the feeding of feral pigeons. I walked here tonight in subfreezing weather, and I have no intention of going away. This issue is important to me.

CITY MANAGER'S REPORT

City Manager Holden made the following remarks:

1. Assistant City Manager Hernandez and I have spent time with Mr. Davis, who is very passionate about the pigeon issue. We asked him to come tonight and speak during Public Comment, and we will take it from there if the Commission chooses.
2. Public Works Director Beshaler resigned effective January 15, 2024. Utilities Director Nunnally is Acting Public Works Director, and one of his primary objectives is street repairs. Some of the streets talked about last month have been fixed already. We will move directly to try to get things done there.
3. Troy Orr is the new Airport Manager as of last week.
4. The airport has an F4 project in the mill for six years. A committee has been assigned to take that F4 project, put together a program, and then recommend to the Commission to formally adopt it or not. The jet belongs to the City of Alamogordo through a donation.
5. I visited with Senators Burt and Griggs and Representative Block. We are privileged to have that level of leadership here in Alamogordo. They have our list of projects. Next week, they will resume the thirty-day session dealing with Capital Funding. I hope they will be able to notify us of awards on some of the projects.
6. I met with Attorney John Wheeler, who represented the Sacramento Mountains Foundation. They have the opportunity to spend some of the approximately \$250,000,000 in their fund. There were some things Mr. Wheeler was interested in pursuing, and we will run those through staff for due diligence. If the projects are deemed advisable, we will bring those to the Commission for consideration.
7. The 2024 Budget process is well underway. We will go through these line by line with our departments and directors. The Commission will later be involved in that process with Budget Hearings and Workshops.
8. We are looking at our water and sewer rates. We are looking at a simplified rate structure so people will understand what their bill means. Whether you use one gallon or five hundred thousand gallons, that water rate costs the same. It does not matter where you live or your age; the cost is still the same. We cannot discriminate in our rate package. We will put something together to allow us to maintain the existing system, grow in the future, and take care of the debt service. This will be a major project coming back in the next few months.
9. Tomorrow, I will be a guest of Mayor Pro-Tem McDonald at the Rotary Club and give a speech.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Rardin made the following comments:

On White Sands Boulevard, by the New Mexico School for the Blind and Visually Impaired, there is a storm drain. It looks like we have a depression forming in the road. The pipeline may be the Department of Transportation's or ours. City Manager Holden said we will be sure they have that. We have made contact and have a direct line. Commissioner Rardin clarified that it is between Indian Wells and Catalina with a depression forming.

Another is on Florida, between 12th and 13th. It is where we cut a hole and did a repair. City Manager Holden asked Commission Burnett if that was the one previously mentioned to him. Commissioner Burnett said no. Commissioner Rardin said it is by the old high school. It is closer to 12th Street than 13th Street. City Manager Holden said we will get Utilities Director Nunnally to take a look.

Commissioner Burnett made the following comments:

Where are we on road striping? City Manager Holden said he had not been briefed on that yet, but we moved some people from striping to help with other street issues. If you have something specific, I

would be happy to look at that. Commissioner Burnett said on Florida, from Indian Wells to 16th Street, there are essentially no lines whatsoever. City Manager Holden asked how long it had been like that. He said it has been like that for quite some time. City Manager Holden said we will add that to the list.

Commissioner Rardin said there are no lines on Lavelle Road from 1st Street to the old cookie factory when it is dark. City Manager Holden asked if there was electricity or overhead lines out there. Commissioner Rardin said there are poles and lights by the Convenience Center. City Manager Holden said we can see what the street light situation may be. Commissioner Rardin said there is no way to add lights out there; there is no infrastructure for that, but if we could put a stripe down the middle or along the edges, that would help. It's mainly for winter when it is dark in the morning and evening.

Commissioner Robinson made the following comments:

Commissioner Tapley and I went to Santa Fe for the Newly Elected Officials training. It is important to be involved in government. Alamogordo looked good with what we had done and the improvements we are making. We were proud to represent Alamogordo.

Mayor Payne made the following comments:

She congratulated the Alamogordo Police Department and Code Enforcement. I will do a State of the City Address at the next meeting and go to Otero County Days next week. I have received a lot of positive comments about City Manager Holden.

CONSENT AGENDA

8. Approve the minutes for the Regular Commission meeting on December 5, 2023. (Rachel Hughs, City Clerk)

9. Consider, and act upon Resolution No. 2024-02, updating the makeup of the Senior Volunteer Programs Advisory Council membership from eleven members down to a minimum of five and a maximum of eight members, with one member representing either the Foster Grandparent or Senior Companion programs. (Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director) (Roll Call Vote Required)

10. Consider, and act upon, the award of RFP 2023-006 Uniform and Linen Services to Unifirst Corporation. (Evelyn Huff, Finance Director)

11. Consider, and act upon, an emergency funds appropriation of \$23,958.09 through the Capital Outlay Bureau with the Aging & Long-Term Services Department for the purchase and installation of a gas convection oven for the Senior Center kitchen. (Magdalena Morales, ASC Manager and Veronica Ortega, Community Services Director)

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

13. Consider, and act upon, Ordinance 1690, for final publication and adoption 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)

14. Consider, and act upon, Resolution 2024-03 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 January 9, 2024. *(Evelyn Huff, Finance Director)* (Roll Call Vote Required)

Commissioner Paul moved to approve the Consent Agenda.

Mayor Pro-Tem McDonald seconded the motion.

Roll Call Vote was taken.

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

NEW BUSINESS

15. Consider, and act upon, Resolution 2024-04, declaring 311 Virginia Avenue to be so ruined, damaged, and dilapidated that it is a menace to 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 condemnation and abatement. He said that Mr. Avery, the property owner, is here tonight. We have communicated, and Mr. Avery hired a contractor to redo the roof. I walked Mr. Avery through the steps, and he knows that if the Commission decides to condemn, it is not the end of the world; it just holds him to a timeline. We are working together.

Commissioner Paul moved to approve.

Mayor Pro-Tem McDonald seconded the motion.

Roll Call Vote was taken.

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

16. Consider, and act upon, Resolution 2024-05 declaring 800 Virginia Avenue to be so ruined, damaged, and dilapidated that it is a menace to 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 condemnation and abatement.

Commissioner Burnett asked what year the house was built. Code Enforcement Manager Sides said he did not know.

Mayor Payne asked if staff had gotten in contact with the owner. Code Enforcement Manager Sides said no; I tried mailing an International Property Maintenance Code letter and a copy of the search warrant, but they came back. I sent an officer to the address in town, and we could not make contact with the property owner.

Commissioner Robinson moved to approve.

Mayor Pro-Tem McDonald seconded the motion.

Roll Call Vote was taken.

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

17. Consider, and act upon, Resolution 2024-06 declaring 1110 Uranus Dr. to be so ruined, damaged, and dilapidated that it is a menace to public comfort, health, peace, or safety, and ordering its abatement. *(Josh Sides, Code Enforcement Manager)* (Roll Call Vote Required)

Code Enforcement Manager Sides said that in the interest of cross-training, Code Enforcement Officer April Payan will give this presentation. She gave the presentation and recommended approving and ordering the property's condemnation and abatement.

Commissioner Burnett asked if anyone lived there. Code Enforcement Manager Sides said there were four occupants at the time. The property owner is deceased. A personal representative who lives in North Carolina was mailed the letter, and nothing was returned. The letter I sent to the property owner at the actual residence was returned. A letter was posted on the front door. Mayor Payne asked if someone had been living there after the fire. He said there were four. We were told that people were living in the residence after the fire, and nothing was done. When I went out there at night, I made contact with next-door neighbors and gave them my card, and I asked them to let me know if anyone came back so I could talk to them. There is a descendant of the property owner who does live there, whom I have not been able to contact. They were renting out the shed and rooms. There was a suspected arson at this residence due to the two ignition points: the couch and the pile of trash by the refrigerator. Mayor Payne asked if this was deliberate arson. He said the Fire Department was unsure.

Commissioner Rardin asked if there was a mortgage or insurance company involved. Code Enforcement Manager Sides said there was no homeowner's insurance, and the house is not under mortgage to my knowledge. Commissioner Rardin asked if the fire was contained to surface damage or if there was structural damage. Code Enforcement Manager Sides said the fire was mainly in the living room and kitchen, with some flame damage beyond charring in a bedroom in the converted garage. The Fire Department also had to fight the fire in the attic, which destroyed the ceiling throughout the house. So, they have to get new electrical. Commissioner Rardin said this was conceivably fixable. Code Enforcement Manager Sides said conceivably if the next of kin who lives there makes an effort to get this up to code. With no homeowner's insurance, this will be rough on them.

Commissioner Burnett moved to approve.

Commissioner Robinson seconded the motion.

Roll Call Vote was taken.

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

18. Consider, and act upon, Case SP-2023-0008(A), property owner Steven Valdez is requesting to be granted a special permit to allow his son to continue residing within a Recreation Vehicle (RV) on the property located at 795 Post Ave. (Stella Rael, City Planner)

City Planner Rael said Code Enforcement was patrolling and came across an RV within a zoning district that does not allow habitation in RVs. The Code Enforcement Officer left his card and asked the property owners to contact Planning and Zoning. I spoke with the property owner, Mr. Valdez, and discussed his options. Mr. Valdez is requesting a special permit to allow his son to continue living in the recreational vehicle on the property. The RV is thirty-two feet by twelve feet with the slide closed and thirty-two feet by sixteen feet with the slide opened. The property owners live next door at 785. It is within an MH-1 Manufactured Housing Subdivision. We were obligated to notify surrounding property owners within two hundred feet and sent out seventeen letters within that protest area. As of today, no letters were returned undeliverable, and I received three phone calls from property owners stating they favor Mr. Valdez to be allowed to continue living in the RV. The property owners stated that Mr. Valdez kept the lot clear of debris and was a pleasant neighbor. No letters or phone calls of opposition were received. Staff recommend denial per Ordinance 25-01-020, as a hardship is not defined. She said that Mr. Valdez said his son can only afford an RV on the property and is saving money for a down payment on a mobile home.

Mayor Payne asked if there was enough property for a mobile home. City Planner Rael said yes, there are two separate properties. Mayor Payne said so it would be okay to put a mobile home but not an RV. City Planner Rael said RVs are only allowed within our Manufactured Housing Park zoning areas. This is a Manufactured Housing Subdivision. Mayor Payne said so this is not set up to where Mr. Valdez is on the lawn. City Planner Rael no ma'am, this is a vacant property. Mayor Payne asked if this was clean and hooked up properly. City Planner Rael said it was clean, and yes, it was. Code

Enforcement Officer Otero only came across it due to regular inspection, not because of debris. It is a matter of complying with our current ordinance. Mayor Payne asked if we were redoing that ordinance. City Planner Rael said yes. Commissioner Rardin asked if we were rewriting the zoning. City Planner Rael said she was in the process of a few of them. We are working on Chapter 29 Zoning and Chapter 22 Subdivision. Unfortunately, this is not part of either of those; it is separate. I am working towards amending this one and bringing it to you for approval. Commissioner Rardin asked if MH-1 fell under the zoning portion. City Planner Rael said it does under Chapter 29. Commissioner Rardin asked if Manufactured Housing fell under zoning. City Planner Rael said it does fall under there to a certain extent, but this ordinance under Chapter 25 is separate from Chapter 29. When it was created, there were different sections. Commissioner Rardin asked what MH-2 was. A place formerly called the Rocket has mobile homes on one side and another section with RVs. City Planner Rael said you are talking about White Sands Community. Commissioner Rardin said he does not see much of a difference between this and that. City Planner Rael said the difference is White Sands Community is within MH-2 Manufactured Housing Parks, which allows manufactured homes and RVs. MH-1 is Manufactured Housing Subdivision, which has separate lots. If the special permit is approved, it is good for a year, and they can come back and ask for another year's extension.

Commissioner Burnett asked what the timeline was for Mr. Valdez to purchase. Mr. Valdez said he was Steven Valdez's father, and they have lived there since the subdivision was built in 1986. As soon as the property was available, we bought it because I wanted to give my son a place where he could be on his own. All my son could afford was an RV. We are trying to find a cheap mobile home now, but as you know, housing has gone through the roof. It does not matter if it's an RV, a mobile home, or a house, which has put us in a dilemma. We bought the property for him, and he is paying us back. He paid off the RV. Do we have to pay another fee for that extension to get another year? City Planner Rael said yes. Commissioner Robinson asked what the fee would be. She said the fee for special permit is \$250. Mrs. Teresa Valdez, Steven's mother, asked why they would have to pay a fee again. City Planner Rael said per ordinance, they would have to pay an additional \$250 to go through the same process again. The \$250 pays for administrative costs, publication in the paper, and the mailings. I explained to Mr. Valdez over the phone that the fee is nonrefundable if the permit was denied because we have those costs.

Mayor Payne said I know what ordinance says, and City Planner Rael is right, but I do not have an issue with this. If they were to find a mobile home built in 1975 that passed our code, what is the difference? They have it hooked up to septic legally, so the only issue is this is a travel trailer and not a mobile home. City Planner Rael said it is not hooked up to septic. It is hooked up to city utilities, which is the sewer. Mayor Payne asked if it was hooked up correctly without running extension cords. City Planner Rael said no extension cords. Mr. Valdez said his son is not hooked up to gas; he is on propane. City Planner Rael said her job is to uphold the ordinance.

Mayor Payne asked the property owners if they were actively trying to save up money for a mobile home. Mrs. Valdez said yes. Mayor Payne asked what a year from now looked like, as far as that goes. Mr. Valdez said he had been looking and could buy a piece of junk, but with the market now, it may be a 1972, and that would be worse than what my son is living in now.

Mayor Pro-Tem McDonald said she had been out to the site and talked to one of the neighbors. The neighbor said Mr. Valdez's son adds to the neighborhood and ensures it is protected. The property is immaculate. In light of what we are experiencing in the city with people not being able to get affordable housing, the neighbor saying she had no problem, and you say you have a timeline on that, well, I do not know if housing or mobile home pricing is going down. It does not look like you are violating anything. I hope you can get something he can afford. Mr. Valdez said we will have to fall on a deal and be the first ones. It isn't that we are not looking.

Commissioner Rardin asked what the zoning map's colors meant. The property is the corner one in the light grey area, correct? City Planner Rael said yes. Darker grey is Manufactured Housing Parks, and blue is Single Family Dwelling. Commissioner Rardin said instead of doing a special permit, can we just rezone this to MH-2 until the time they get the mobile home, then rezone it back? That way, they do not have to continually come back. Normally, that would be spot zoning, but MH-2 is right across the street. City Planner Rael said I could not. It would cost them about \$700, and we would have to notify surrounding property owners. The main thing is the ordinances are strict about Manufacturing Housing Parks; you cannot have them smaller than two acres. There is no way I could bring it before you for rezoning.

City Manager Holden said the Commission has the privilege to help people out when it sees the need to do so. The special use permit is just that, special. Normally, in any zoning category, you could not put a travel trailer on a piece of property and live in it, period. It is not allowed except within a park as City Planner Rael described, or in this case, a special use permit. So, under the circumstances, why not approve the special use permit and allow them to come back after a year and see how things are looking? They may find something between now and then, get it set up, and the issue would be gone.

Mayor Payne said in our current climate, especially in Alamogordo with our housing shortage, in this case, how do you say no? Commissioner Burnett said we had already approved two of them. City Planner Rael said it is my job to enforce the ordinances, but I agree with you as a planner. The property is immaculately maintained, along with the parent's lot. There is fencing surrounding the entire area. If those gates were closed, you probably would not even see it. All property owners within the surrounding area had nothing but good to say about the Valdez family. Mayor Payne said we need to be consistent but consider special circumstances. Kudos to City Planner Rael for doing her job.

City Manager Holden said they could have that there for up to two years, and I think if you extend it for the additional year, there would not be a need for an additional fee because we do not have to send out notices to the property owners within two hundred feet or publish anything. I think you should do a year, look at it next year, and if they want to extend it another year at that point and it is justified, you should be able to do that with a motion of the Commission. Mayor Payne said if this passes, can we make a note of that? City Manager Holden said there is no circumstance that allows you to keep one of those for more than two years and live in it, period.

Commissioner Burnett asked if we needed to add in the second year. Commissioner Rardin said they would have to come back in a year. Commissioner Burnett said to waive the fee. City Manager Holden said if your intent is to do it for a year and allow it to come back for consideration of a second year, there would not be a fee for that. Commissioner Robinson said that is part of his motion.

Commissioner Robinson moved to approve the special permit for a year, and if it comes back for consideration for a second year, to not have a fee for that.

Commissioner Burnett seconded the motion.

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

19. Consider, and act upon, Ordinance 1692 for first publication to amend sections of Chapter 2 of the Code of Ordinances concerning the City Commission Districts and Mayor Selection; term to be aligned with the City Charter amendment made in 2012. (Rachel Hughs, City Clerk) (Roll Call Vote Required)

City Clerk Hughs said an amendment to the city charter was passed by the voters in the election of March 2012 to go from seven commissioners with seven districts to six commissioners with six districts, and a mayor at-large. While the amendment was made to the city charter, Chapter 2 in the code of ordinances was not amended to align with the change. This ordinance is to clean up that language.

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

20. Consider, and act upon, Ordinance 1693 for first publication to add Chapter 11, Article 06, Section 330 concerning Obstructing, Impeding Movement, or Camping in Public Rights-of-way. (Ashley Smith, City Attorney) (Roll Call Vote Required)

City Attorney Smith said there were a few incidents of people camping in public right-of-way. This is a safety issue for our citizens and people traveling on our streets. This ordinance would make it unlawful for any person to obstruct or impede movement of any persons passing along any street, sidewalk, median, crosswalk, or any other public way, including a setback area. Additionally, it would make it unlawful for any person to camp on any part of a public right-of-way, including a setback area.

Commissioner Rardin asked if staff checked what other communities are doing. City Attorney Smith said this is almost identical to what Albuquerque has because they have been having a lot of the same issues. He asked if this was to basically deal with people setting up tents on sidewalks. She said correct, we have had instances of them being in the public right-of-way. Maybe there was not a sidewalk, but it was public right-of-way and in the line of sight for traffic. Commissioner Rardin said if they are sleeping on the sidewalk instead of setting up a tent, do they have every right to use that sidewalk as anyone in this room does? City Attorney Smith said we have a definition of camping, which is the setting up of any tent, shack, or permanent or temporary structure or shelter, or preparing a sleeping bed or other bedding material for use in a public right-of-way. So, if you are actually making a bed, that would classify as camping. Commissioner Rardin said he sees violations of this almost every morning while driving down White Sands Boulevard. There are multiple areas where people sleep on the sidewalk or where there used to be park benches. I just want to make sure we won't have the ACLU come in and sue us over this. City Attorney Smith said this was one they had not been touching. There was an issue concerning getting rid of some of the encampments in Albuquerque, and it was pending litigation. There has not been any litigation concerning this, specifically with the camping. What is happening in Albuquerque is that you cannot take away people's property.

Chief Kunihiro said the ordinance would restrict the camping, but you can never block the sidewalks for people's right-of-way. Like in protesting and things of that nature, the sidewalk is for people's right-of-way to go back and forth. So, it would be unlawful at some point if you ever restricted someone's right to walk down the sidewalk. Commissioner Rardin said they have the right to use the sidewalk as well. For example, a lady stood at the corner of 9th and White Sands Boulevard. She was in the public right-of-way, and we had no authority to remove her because she was just standing there. Chief Kunihiro said if someone is hypothetically standing on the sidewalk and flying a sign, it becomes illegal once they step into the roadway. If the person flying the sign allows someone to walk by and they are not blocking, then it is perfectly legal. Mayor Payne said if they are lying on the sidewalk and you have to walk over them, they are impeding. Commissioner Rardin asked if it was still legal if they were lying where you could still pass them. Chief Kunihiro said he did not think it would fall under the definition of camping for this ordinance, but they are probably going to be called on it. The intent is just to keep them out of the public right-of-way. It is not for sleeping; that is not the normal use. Sidewalks are built for people to walk back and forth, not being stationary and setting up shop.

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

21. Consider, and act upon, Ordinance 1694 for first publication to amend Chapter 19, Article 04, Section 010 concerning Parks Closure Hours. (Ashley Smith, City Attorney) (Roll Call Vote Required)

City Attorney Smith said we are amending our current park closure hours and adding Section B to them. That section says, no person under the age of eighteen years of age, unaccompanied by an adult, shall congregate or be in any park between the hours of 8 a.m. and 4 p.m. while school is in session as outlined by the Alamogordo Public Schools calendar. Juveniles, minors under the age of eighteen, shall be issued a Criminal Trespass under New Mexico Statutes Annotated §30-14-1. Juveniles shall be referred to the Juvenile Probation Office (JPO). This section shall not apply to minors with emancipation documentation.

Commissioner Burnett asked how this would pertain to home-schooled kids. City Attorney Smith said it would still apply universally, so whether you are home-schooled or public-schooled, it all applies the same. We cannot discriminate, so we are making it the same for everyone. Commissioner Burnett said there are a lot of home-schooled kids under the age of eighteen that are old enough to be at, for instance, Kids Kingdom at these hours. I am guessing the Court has some discretion as far as the outcome of it. She said that is why it says juveniles shall be referred to the Juvenile Probation Office. JPO has a lot of discretion on whether they take the case to the courts. We issue a citation and refer them to JPO, and then JPO has discretion on how they want to handle the situation. I do not know how JPO would handle it, but if someone was a constant issue, they would probably handle that differently versus someone there one time. Mayor Payne said this was tough because there are a lot of homeschoolers. How do you distinguish that? Commissioner Burnett said he understood the premise, but are we just causing more paperwork for people unnecessarily? I agree something does need to be done because of the kids running around.

Commissioner Rardin said this stems down to Oregon and Washington Parks, mainly by the high school. Can we limit this just to that area to see how it works? I do not want to see a home-schooled kid at Kids Kingdom getting referred to JPO when they are good kids. We are punishing everybody because of the actions of a few. You see that in schools a lot, one or two kids act up, and they punish the entire class rather than deal with the ones causing problems. Can we limit this to just Washington Park and the section of Oregon from here to 1st Street? Mayor Payne said what if it is at Kids Zone? Commissioner Rardin said there are kids there without parents during the day, or the parents are sitting in the car or parking lot and not paying attention. Are they technically unsupervised? Mayor Payne said if the parents are there, then they are not unsupervised. That is the point. Commissioner Rardin said that the parents are not paying attention in the car or are on their phones in the parking lot. Mayor Payne said but they know where their kids are. This is really about kids that should be at school, parents that assume their kids are in school, and kids that are not in school, and how do you control that? Chief Kunihiro said regarding isolating it; we could potentially just be moving the problem and shifting it to another part. One suggestion I have thought about is putting language in there that discusses a warning, giving officers the discretion to either give the warning or take it one step further and refer to JPO. We are talking about fifteen to twenty students, the majority of school-age children under the age of eighteen are probably going to be in school. I do not think we are affecting a large number of students. I would not recommend doing it at one specific park because we will push the problem around. I recommend adding language to give us discretion. This currently says we do not have discretion, so if we find them in the park, we shall refer them to the JPO. Mayor Payne asked if the warning would include contacting their parents. Chief Kunihiro said yes, it is a warning for a delinquent act. So, the delinquent act or crime that the juvenile would commit is trespassing. They would be given a warning, it would be documented, and then their parent or guardian would be told. We hope they learn from the warning and do not do it again. Mayor Payne said this is a good way for the City of Alamogordo to work with those parents because they may not know. We have single moms or both parents working, and they may just assume their children are in school. The assumption is these parents do not care, and that may not be true. They may just not know. None of the home-school

families I talked to about this seem to have an issue with this. Chief Kunihiro said I would mirror the last sentence of Subsection A, the section shall not apply to those who, without delay. I would add language to B but take away the artificial lighting because this will most likely be during the day. That way, it also puts the ability if the fifteen-year-old is walking through the park to another place, they are using the paths, and that movement would not be restricted.

Commissioner Rardin asked how criminal trespass was cited on public property. Everybody has the right to use that park. I understand we are setting time and age limits. Chief Kunihiro said the City owns the property and has the right. Commissioner Rardin said the City is we the people though. Mayor Payne said we just did this for the ditches, it's the same thing. Commissioner Rardin said there was a safety issue there. There are fifteen to twenty kids creating the problem, so we are punishing everybody. That is where I have the issue. I understand the intent if they are over there fighting or with a gun. Chief Kunihiro said right now, we have zero teeth to do anything. Maybe we can figure out an appropriate way the Commission would like to write this, and we can do it where there is discretion, so not everyone is referred for criminal trespass, but more so warned. The repeat violators are punished accordingly. We had a stakeholder meeting that JPO was a part of, and they supported this type of ordinance. Mayor Payne said we have been talking about this for months, and everyone knows about it. I have not received any opposition, but I have had inquiries about how we are going to handle home-school or kids getting out early. Well, they just cannot be in the park after four. This is a rule, everybody is going to follow it.

Commissioner Warren asked if they could add that language to the motion. City Attorney Smith said it would read, no person under the age of eighteen years of age, unaccompanied by an adult, shall congregate or be in any park between the hours of 8 a.m. and 4 p.m. while school is in session as outlined by the Alamogordo Public Schools calendars. For the first offense, a juvenile shall be issued a warning. Upon a subsequent offense, the juvenile shall be issued a Criminal Trespass under New Mexico Statutes Annotated §30-14-1 and shall be referred to the Juvenile Probation Office. This section shall not apply to minors with emancipation documentation. This section shall not apply to those who, without delay, are traveling upon those established walks, paths, and parkways.

Commissioner Robinson moved to approve with the new language the City Attorney read.

Commissioner Paul seconded the motion.

Roll Call Vote was taken.

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

22. Consider, and act upon, Ordinance 1695, Z-2023-0008(A) for first publication, a map amendment to change the current zoning of the property located at 2405 Holly Ave from MH-1 Manufactured Housing Subdivision District to R-4 Multi-Family Dwelling District. (Stella Rael, City Planner) (Roll Call Vote Required)

City Planner Rael said the property owner is requesting to place two separate sets of duplexes, so four apartments total. The property owner, John C. Pacheco, is out of Alvin, Texas, and unable to be here this evening. However, Mr. Pacheco has multiple rental properties within Alamogordo, and he is just trying to help with the housing shortage. The legal ad was placed in the Alamogordo Daily News, and eight letters were mailed by certified return receipt to all property owners of record within two hundred feet from the property, excluding public right-of-way. As of today, there have been no letters returned undeliverable, and I have not received any letters or phone calls of opposition. The property in question was rezoned from R-1 to MH-1 back in 2002. This area was annexed back in 1959, and everything comes in R-1 Single Family Dwelling. Since then, surrounding this property, I have Light Industrial, Manufactured Housing Park, Commercial, Residential Estates, and R-4. It is a big mixture of different zoning types. Taking into consideration the shortage of housing in Alamogordo, staff recommends approval of the rezoning.

Commissioner Rardin asked what the colors on the map were. City Planner Rael said brown was C-3 Business District, blue was Residential Estates, green was R-4, light blue was R-1 Single Family Dwelling. There are more Manufactured Housing Subdivision and Light Industrial at the end of Holly. She said Mr. Pacheco had spoken to the property owners with manufactured homes on the two adjacent lots, and they did not have issues with him bringing apartments to that area. All the surrounding parcels have never been developed since it was annexed.

Commissioner Rardin asked if Mr. Pacheco had the intent of buying the rest of those and building. City Planner Rael said he had not said any intention. City Manager Holden said anything new built out there is an improvement to that area. At this point, you are only asking about the zoning issue. When and if Mr. Pacheco decides he wants to build, there will probably be issues with regard to the roadway, paving, fire hydrants, and other things like any other development. When it happens, we will have to deal with those things at the staff level. The main question is, would you allow this to be rezoned for that classification? City Planner Rael said City Manager Holden is correct, and Mr. Pacheco must comply with our Technical Standards.

Commissioner Burnett asked if there were utilities already out there. City Planner Rael said there were utilities, and Mr. Pacheco met with Utilities Director Nunnally out there about where to tie in. So, Mr. Pacheco is on top of things and doing them correctly. The problem is, he was not in the right zone.

Commissioner Paul moved to approve.

Commissioner Robinson seconded the motion.

Roll Call Vote was taken.

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

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

Item was tabled by Mayor Payne due to computer issues.

Mayor Pro-Tem McDonald moved to adjourn at 8:56 p.m.

Commissioner Rardin seconded the motion.

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

ADJOURNMENT



ATTEST:



City Clerk Rachel Hughes



Mayor Susan L. Payne

(Prepared by Dylan Aleshire, Deputy City Clerk)

Approved at the Regular Meeting held on January 23, 2024.