

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 PM, DONALD E. CARROLL COMMISSION CHAMBERS
September 10, 2024**

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

**JOSHUA RARDIN, COMMISSIONER
MARK TAPLEY, COMMISSIONER
RICK HOLDEN, CITY MANAGER
ASHLEY SMITH, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

CALL TO ORDER & ROLL CALL

Mayor Payne called the meeting to order at 6:29 PM. Roll Call was taken by the Deputy City Clerk. Deputy City Clerk Aleshire announced there was a quorum present.

INVOCATION & PLEDGE OF ALLEGIANCE

The Invocation was given by Pastor James Forney of the Corinth Baptist Church, and the Pledge of Allegiance was led by Mayor Pro-Tem McDonald.

APPROVAL OF AGENDA

**Commissioner Burnett moved to approve the agenda.
Mayor Pro-Tem McDonald seconded the motion.
Motion Passed with a vote of 7 - 0 - 0.**

PRESENTATIONS

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

Mayor Payne proclaimed the week of September 17th through the 23rd as Constitution Week and urged all citizens to study the Constitution and reflect on the privilege of being an American with all the rights and responsibilities that privilege involves. She presented the proclamation to Cathe Prather and Suzan Garrison of the White Sands Chapter of the Daughters of the American Revolution.

PUBLIC COMMENT

None.

CITY MANAGER'S REPORT

None.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

None.

CONSENT AGENDA

2. Approve the minutes for the Regular Commission meeting on August 27, 2024. (*Rachel Hughs, City Clerk*)

3. Consider, and act upon, Resolution No. 2024-60 approving the submission of an application to the New Mexico Finance Authority Water Trust Board for project approval and financial assistance in the amount of \$3,035,050, with a \$455,258 City match, for the replacement of a reclaimed water pivot transmission pipeline. (*Debbie Osborne, Grant Coordinator*) (Roll Call Vote Required)

4. Consider, and act upon, Resolution No. 2024-61 approving the submission of an application to the New Mexico Finance Authority Water Trust Board for project approval and financial assistance in the amount of \$3,083,455, with a \$462,520 City match, for the replacement of a waterline in the Granada Hills area, Alamogordo, NM. (*Debbie Osborne, Grant Coordinator*) (Roll Call Vote Required)

5. Consider, an act upon, amended publication of Ordinance 1705, approving a loan from the New Mexico Finance Authority regarding the Yearout Contract and EPC project. (Evelyn Huff, Finance Director and Chris Muirhead) (Roll Call Vote Required)

**Commissioner Robinson moved to approve.
Commissioner Tapley seconded the motion.
Motion Passed with a vote of 7 - 0 - 0.**

ITEMS REMOVED FROM CONSENT AGENDA

None.

NEW BUSINESS

6. Presentations and Discussions: Understanding Transparency & Ethics Obligations for the City of Alamogordo. Effective Governance for the City of Alamogordo. (Geno Zamora, Ortiz & Zamora Law Firm)

Mr. Zamora gave his first presentation, Understanding Transparency & Ethics Obligations for the City of Alamogordo. Topics covered in this presentation were the New Mexico Open Meetings Act (OMA), § 10-15-1, et seq., the New Mexico Inspection of Public Records (IPRA), § 14-2-1, et seq., the New Mexico Governmental Conduct Act, § 10-16-1, et seq., and the City Commission Code of Conduct Ordinance 2-02-060.

Open Meetings Act (OMA) - Public Comment Period

Mr. Zamora said he recommended Public Comment at the top of the agenda. Some governing bodies put it at the bottom of the agenda as the last item, and that will open you to complaints that people can not stay until nine o'clock to get to the end. Sometimes, it is good to have people's perspectives at the beginning of the meeting because you will be voting on agenda items later. That way, they get to have their input prior to your vote. Commissioner Rardin said years ago we limited twenty-one minutes to it at the beginning of the meeting. We also allowed people to speak at the end if we went over twenty-one minutes. Is that good? Mr. Zamora said that was a good creative idea and understood the basis for it, but you would run into trouble when people start making complaints, whether to the City or Attorney's General's Office, that two individuals were treated differently. Commissioner Rardin asked if that would still be the case even if the agenda was published that way. Mr. Zamora said there is nothing in the statute that says you cannot do that, but I think it opens you up to the argument that someone was treated differently than another member of the public.

Mayor Payne said on our Public Comment sign-up sheet, the public can list what agenda item they want to speak on. I usually wait until that agenda item, then call them up to speak. Is that okay, or should we just do Public Comment at the beginning? Mr. Zamora said that can become a slippery slope. I think it is good to say this is your one opportunity to speak, and you can tell us what item you are speaking towards, but I would keep it in one. Mayor Payne asked if we should just have everyone speak at the beginning and not wait until the specific item. Mr. Zamora said unless the item requires public comment, like ordinance input. I think you have some that do require public input, like ordinances or sometimes appeals for things like land use. For things that, in your ordinance, do require public comment, you are going to put public comment on the agenda item in that agenda item. Mayor Payne asked if you would do that in resolution. Mr. Zamora said a resolution would not do it, and a normal action item like a contract would not do it, but maybe on the second reading of the adoption of an ordinance or the appeal of a zoning decision. Those may require it. I have seen other cities with ordinances that require public input on those items, and I would list it at the agenda item. Commissioner Rardin said that lately when people sign up for a specific item, it has been on a resolution condemning someone's property. The property owner will come in and want to speak on the item. Currently, the resolutions are being put on the Consent Agenda instead of New Business. If the person who owns the property comes in and signs up to speak on it, is that the same? I feel they should have the opportunity to address the Commission on that item. Mr. Zamora said the Chair has the discretion to take a party's input on an agenda item. When we are talking about the broader Public Comment, I would keep that in Public Comment. The Chair, here being the Mayor or Mayor Pro-Tem, has the opportunity and discretion to ask if the property owner was here to tell us. That is actually the board asking for input, not putting it up for general Public Comment. Commissioner Rardin said let's say they put up a resolution to condemn a property I own. I would want

to come and discuss it. As an elected official, I feel any member of the public has the right to come up and address that issue. If an individual had a resolution done, they had an appeal process with the Commission. They would come forward and sign up to speak on the appeal. Mr. Zamora said that is fine and proper meeting management, but I don't want to get overly technical when we are talking about the defined Public Comment, period. On individual agenda items, as a governing body, you are going to have the opportunity to ask the property owner or particular staff questions. Commissioner Rardin said so the property owner wouldn't need to sign up if we asked them to come up. Mr. Zamora said they do not, but if they want to guarantee they can make a particular statement, they should sign up for Public Comment.

Open Meetings Act (OMA) - Virtual Meetings

Mr. Zamora said regarding the Open Meetings Act and virtual meetings, everyone is supposed to be attending in person. Unusually, you can attend by phone or video, especially if an Open Meetings Act resolution gets passed every year. If you attend remotely, we sort of default back to Covid rules, meaning you have to be identifiable when you speak, and all votes must be by roll call vote. If the audio or video is interrupted, the Chair should suspend the discussion until it is operational again. I cannot tell you to which degree you continue the meeting if you cannot bring the member back. Mayor Payne said that is not really what we do. One of our Commissioners works out of town, and there have been times when he has been on the phone. We lost him, and then we continued the discussion. Are you saying that is a no? Mr. Zamora said this is not a statute, but best practice on the Covid rules of remote attendance from the Attorney General's Office regarding open meetings and attendance. In which they say that if the audio or video is interrupted, the Chair should suspend the discussion until it is operational again. Mayor Payne asked what if we could not get the Commissioner back. Commissioner Burnett said last time he was in Ruidoso and the phone calls kept dropping. Mayor Payne said she was trying to figure out at what point the meeting should continue if he does not have reception. Mr. Zamora said you will know it when you see it, but at some point in time you take a break to try to establish a connection. Then you would need to say on the record that we are unable to connect and that we are going to proceed. Direct the Clerk to note the time that the Commissioner exited the meeting. Mayor Payne asked if we needed to set up a policy or something similar where we made an attempt to get him back, but couldn't, and then we stated it and could continue. Mr. Zamora said correct. Commissioner Robinson said we just need to document it. Mr. Zamora said yes, just document it, and it will all be on the record. Commissioner Rardin said the night that happened, the Clerk noted that we lost Commissioner Burnett, and we continued with the meeting. Once we got him back, she stated he was back in. It happened around four to five times. The phone just kept dropping calls.

Prohibited Political Activities (§ 10-16-3.1)

Mr. Zamora said the biggest place to trip up on is prohibited political activities. No use of government property for non-authorized purposes. You cannot use a public works truck and put your personal campaign sign on it, and you cannot drive it up and down Mainstreet. Mayor Payne said we should not have any campaign or political signs on city property at all, right? Mr. Zamora said it depends. Most likely not. However, if this is a voting location, and signs are allowed outside one hundred feet on Election Day, that may be permissible. You should have ordinances or resolutions that address this specifically. Mayor Payne said what if someone set up a campaign sign in a truck and set the truck on White Sands Boulevard somewhere, like the Zoo? Would asking them to remove that be appropriate? Mr. Zamora said in a government entity up north, a candidate for the legislature, in a partisan campaign, bought the trailer portion of a tractor-trailer with their name on it and to vote for them and parked it on governmental property. I believe the Attorney General's Office intervened and demanded it to be removed. City Attorney Smith said we do have a City ordinance that talks about temporary signs and political campaign signs. It says it is not allowed on public property. Mr. Zamora said the ordinance is going to preside on that, and it is pretty clear. Let's say someone has a bumper sticker and comes here to check with the Clerk's Office in preparation for an election. They are here temporarily, but it will get to intent at some point in time. If something is parked there for three weeks at a time, it will look less and less unintentional. Commissioner Rardin asked what if the vehicle was moved every day. A lot of us use a magnetic sign that goes on the side of a truck. What if you park your truck in the parking lot and move it three or four hours later? Mr. Zamora said there are a lot of what-ifs. It depends. If it is an intentional violation, like moving from lot to lot and trying to make sure every city employee sees it, we are going to have issues. If I have a magnetic sign and I am only here for a meeting and then getting out, that may not be problematic. If you have things that are removable, and you are going to be here for a while, probably remove it so

nobody can complain about whether or not it is valid.

Prohibited Bidding if Participated in Preparation of Bid (§ 10-16-13)

Commissioner Rardin said he was in the construction business. If we bid on a project awarded to a firm that was CES, technically, we won't vote on it, but how do we disclose that conflict? Mr. Zamora said he did not know if he had an answer. When I was a city attorney, I had counselors come to me, disclose something like that, and ask what they should do. You should have a disclosure on record of which company you are working with so that people are aware. You can also say that I am just letting you know that this company is gaining this, and I am either not participating in the vote if it came to that, or making a disclosure that this does not personally affect me, and I am not taking action towards it. There is not an all-out prohibition, there is just a more detailed process. Work with your City Attorney on that. Commissioner Rardin said staff typically handles CES stuff, and it does not come before the Commission. We never see it. I want to avoid conflict, if there is one, there. Mr. Zamora said that may be a bigger broader discussion on CES contracts. If they are over \$60,000, there should be some information coming to the Commission. It is something to think about, but I won't get too deeply into it. Commissioner Rardin said it is just to avoid the appearance of anything going on and to try to keep it above board. Mayor Payne said you should also be allowed to make a living. Commissioner Rardin said you do, but it is a fine line. Mr. Zamora said that is why there is not an all-out prohibition, especially in smaller communities. There is a more detailed process to make sure anything isn't undue, and to document that there is no undue influence.

Mr. Zamora gave his second presentation, Effective Governance for the City of Alamogordo. Topics covered in this presentation were about the roles of the form of government, the Commission, the Mayor, the City Manager, and it also included effective leadership techniques and productive norms.

ADJOURNMENT

Commissioner Rardin moved to adjourn at 8:31 PM.

Mayor Pro-Tem McDonald seconded the motion.

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

ATTEST:


Mayor Susan Payne


City Clerk Rachel Hughs

(Prepared by Dylan Aleshire, Deputy Clerk)

Approved at the Regular Meeting held on September 24, 2024.

