

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
7:30 P.M., COMMISSION CHAMBERS  
MARCH 9, 2009**

**MAYOR STEVE BROCKETT  
MAYOR PRO-TEM CHRIS LUJAN  
COMMISSIONER RON GRIGGS  
COMMISSIONER ED COLE  
COMMISSIONER MARION LEDFORD**

**COMMISSIONER ERIC BREWER  
COMMISSIONER JOE FERGUSON  
INTERIM CITY MANAGER MATT McNEILE  
CITY ATTORNEY STEPHEN THIES  
CITY CLERK RENEE CANTIN**

**CALL MEETING TO ORDER, ROLL CALL, INVOCATION AND PLEDGE OF ALLEGIANCE**

Mayor Pro-tem Lujan called the meeting to order at 7:30 p.m., and roll call was taken. Mayor Steve Brockett was absent. The invocation was delivered by Commissioner Cole, and the Pledge of Allegiance was led by Interim City Manager Matt McNeile.

**CALL OF THE CONSENT CALENDAR:**

**MINUTES:**

1. Minutes of February 23, 2009 Regular Meeting.

*Recommendation:* Approve the minutes.

**CONTRACTS AND AGREEMENTS:**

3. Consider approval of an Intergovernmental Services agreement between the Alamogordo Municipal School District No. 1 and the City of Alamogordo.

*Recommendation:* Approve the agreement.

4. Consider approval of an application for participation in the Law Enforcement Protection Fund.

*Recommendation:* Approve the application.

**OTHER BUSINESS:**

7. Consider approval of Change Order No. 1 on Public Works Project No. 2006-11, Westside Booster Station Project.

*Recommendation:* Approve change order in the amount of \$140,988.86.

Item #7 was removed from the Consent Calendar and withdrawn from the agenda.

8. Statement regarding the Executive Session of February 23, 2009.

*Recommendation:* Approve the statement.

**Commissioner Ledford made a motion to approve Items 1, 3, 4 and 8 of the Consent Calendar. Commissioner Ferguson seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.**

**CONTRACTS AND AGREEMENTS:**

2. Consider approval of an agreement with Buena Vista Mobile Home Court to extend utility service outside city limits.

*Recommendation:* Approve the resolution.

Mayor Pro-tem Lujan read the item and the recommendation. Interim City Manager McNeile explained that the owner would like to increase the size of the meter that is serving the Mobile Home Court and upgrade the infrastructure.

Commissioner Ledford asked if there is a reason they couldn't go to a two-inch line. The owner pays for 21 units now, and he's not going to expand that. There are plumbing problems inside the Mobile Home Court, and they would like to modernize the infrastructure to address those problems. Interim City Manager McNeile explained the structure in that there is a master meter, and the individual units are fed off the master meter. Per City Ordinance, there is an option of doing this when each unit is not metered. The base pay is based on the number of units times the three-quarter-inch meter, and for multiple units the tier rate expands based on 1,500 times the number of units, which is the first tier. According to the Ordinance, it is charged at a three-quarter inch meter, and since this facility is outside the City limits, the owner is paying twice the amount that would be paid if the property were located inside the City limits. Commissioner Ledford said he didn't have a problem with it.

Commissioner Griggs asked what the charge would be for a two-inch meter, and Mr. McNeile stated that the base rate is \$23.80. That is multiplied times the number of units, which is 21. The fixed cost would be \$499.80 per month. The usage for the property is between 11,000 and 14,000 cubic feet. Commissioner Griggs explained that when the Commission established the tier rate system one of the issues they had to deal with was that of mobile home parks and apartment complexes, as there might be one meter and numerous units. They had to figure out a way to make that equitable.

**Commissioner Griggs made a motion to approve the agreement to extend utility service outside the City limits. Commissioner Cole seconded the motion.**

Discussion then took place, and the cost will be the responsibility of the property owner.

**A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.**

#### **ORDINANCES AND RESOLUTIONS:**

5. Consider Ordinance No. 1331 granting New Mexico Gas Company, Inc., a franchise to operate in the City of Alamogordo.

*Recommendation:* Approve the ordinance for first publication.

Mayor Pro-tem Lujan read the item and recommendation, and he then read the agenda report to provide background information. Mayor Pro-tem Lujan then asked City Attorney Thies if it was simply an approval that would allow them to go through the alleys and work on City property, and that was the case. It allows them to utilize the public rights-of-way to install the gas distribution system. It is an update to the prior franchise agreement, and the franchise fee went from 2% to 3%.

**Commissioner Cole made a motion to approve Ordinance No. 1331 for first publication, granting New Mexico Gas Company, Inc., a franchise to operate in the City of Alamogordo. Commissioner Brewer seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.**

#### **OTHER BUSINESS:**

6. Marvin Reifschneider is requesting to present his tort claims before the City Commission regarding sewer backups.

*Recommendation:* None.

Mr. Marvin Reifschneider stated that he lives at 1821 Arizona. They bought the house a year and a half ago, and they have had the sewer back up into their home three times. The first time it just went into the bathrooms, and the claim was turned into the City's insurance company. They were reimbursed for their labor. The second time was in November, and their bedroom was flooded, which was carpet that had been installed when they purchased the house. The most recent time pictures were taken, and the claim was turned over to Roadrunner in Las Cruces. The insurance company denied the claim, and he would like to be reimbursed for the carpet replacement. Benny Covarrubia went out and sopped up the water that was in the bedroom.

The problem is they have an eight-inch sewer going through the alley, which in his opinion really isn't big enough because when the city authorized houses to be built to the east of them, they also drain into the eight-inch pipe. There is a cement ditch between Mr. Reifschneider's property and his neighbor to the north, and the sewer has to go underneath that ditch. Even when the sewer is empty, it's full where he lives, and the City opened the two back-ups, which has resulted in it not coming into his home but running on to his backyard.

Mayor Pro-tem Lujan asked if the reimbursement that Mr. Reifschneider was asking for was \$941.70. The bill from the carpet cleaners was an actual bill for \$193.50, but the rest was an estimate for replacing the carpet. In his opinion, Mayor Pro-tem Lujan would need an actual bill to support the reimbursement, not an estimate.

Mr. Bill Boylan, Utility Maintenance Supervisor, brought a film, and he explained that as far as the ditch is concerned, he doesn't see a problem with it. The sewer is going to go under the ditch regardless. In addition, the tape shows that the eight-inch line is sufficient for the area.

Commissioner Griggs asked Mr. Boylan what he thought was causing the sewer to back up, and Mr. Boylan stated that the eight-inch main does clog. They found rocks and other debris that is considered "normal," but he's assuming grease was the major cause of the backup. They cleaned it out with a high-pressured jet rod, and that is done on a regular maintenance schedule. Mr. Boylan stated that it is likely to happen again unless they install a backflow preventer on the line, which would be the homeowner's responsibility. Whoever built the house was responsible for the tap, and that is where the problem is, not with the main. Commissioner Ledford asked Mr. Reifschneider if he had consulted a plumber, and he was told by the plumber that it was a problem that the City needed to correct. Mr. Boylan said that was because that was when the City was backed up, and that could be why the insurance paid the first claim and not the subsequent claim.

City Attorney Thies stated that when he spoke to Brian Cesar, Public Works Director, regarding the issue, he indicated to City Attorney Thies that the sewer line was slated for replacement in the near future. He suspects that at that time the owner could put in a new service line that would be appropriately angled. Mr. Reifschneider stated that it should be at least a ten-inch pipe, but in Mr. Boylan's opinion, the pipe is plenty big enough. Mayor Pro-tem Lujan said they need to bring the discussion back to the issue of reimbursement, as that is what the item was concerning, and that relates to who is at fault. Mr. Reifschneider stated that he had three statements from the City stating it was their fault. Mr. Boylan said that their work orders do show that the City was backed up.

Commissioner Cole asked what the Commission would have to do to get the problem fixed, and it would likely need a bid process and, of course, money. The City does not usually replace large sections of sewer line.

Commissioner Ferguson asked Mr. Reifschneider when the first claim was paid by insurance whether he was informed that their line was incorrectly connected to the City line, but he indicated that he was not told that.

Mayor Pro-tem Lujan asked if on the 19<sup>th</sup> any other houses got backed up, and since they didn't, it may indicate that the back up was due to a problem with the homeowner's connection to the line and therefore not the City's responsibility. Mr. Reifschneider's property is the only one that has backed up in that area.

Commissioner Ledford asked Mr. Reifschneider if the total claim was \$941, and that was the case. Commissioner Ledford told him that he needed either a backup preventer or to redo the line. He would not support continuing to pay claims. He could see, however, supporting this last time on the basis that the City perhaps fixed its problem and let it go at that without notifying the homeowners of the problem with their line.

City Attorney Thies had a copy of the letter that the adjuster sent to Mr. Reifschneider, and in that letter, they did indicate that the sewer tap was lower than it should be. They also indicated that some of the debris that was found in the sewer line was a result of work done by Baja Broadband though they didn't expand on that. Generally, the City is only at fault if it is negligent in the operation of the sewer system. Commissioner Ledford expanded on his comments in that he didn't want the City to get into a situation where it would have to pay for bad plumbing that is actually the homeowners' responsibility. Even if the City reimburses on the basis of the owner not knowing about the problem, that potentially opens up the City to people coming forward if they have defective hookups if they have a back up saying they weren't aware it was defective.

Commissioner Brewer commented that Mr. Reifschneider was notified because he received the denial letter in relation to the second claim, but it wouldn't have been until after the filing of the tort claim. Mayor Pro-tem Lujan stated that the reason he has a problem is that even if the homeowner had not been aware of the problem with his plumbing up to the point of the meeting, the City had notified him of what the problem was. That doesn't make the City liable for what is the homeowner's responsibility.

**Commissioner Cole made a motion to approve reimbursement in the amount of \$941.70, but the motion died for lack of a second.**

Commissioner Griggs stated that if they could show that it was the City's issue, they would certainly pay the claim. In this particular instance, however, it was probably not the City's issue but the angle of the pipe, which is the homeowner's responsibility.

Commissioner Brewer said that the problem for him is it's going to happen again until the backflow preventer is installed.

**Commissioner Ferguson made a motion to approve giving Mr. Reifschneider half of the reimbursement with the stipulation that the City was not responsible for the problem and that Mr. Reifschneider will not come back to the City if it happens again. Commissioner Griggs seconded the motion. The motion failed with a vote of 3-3-0. Commissioners Ledford, Commissioner Brewer and Mayor Pro-tem Lujan voted "nay."**

Mayor Pro-tem Lujan said he would love to help Mr. Reifschneider, but he doesn't see any evidence that it was the City's fault.

City Attorney Thies indicated that since they took no action, Mr. Reifschneider could ask that it be brought back to the Commission.

Commissioner Ledford asked if the City could pay half of the reimbursement without setting precedent by wording the motion in such a way that any subsequent requests could be evaluated based on their own merit.

City Attorney Thies said that in future requests if they find it is not the fault of the City, that would distinguish it from this case.

Mr. Bill Boylan said that this is the first video that he is aware of them doing, and there have been claims in the past where they have not video taped the sewer lines. The City doesn't have the actual equipment. Commissioner Ledford said they need to be cautious about paying claims without further investigation. Mr. Robert Blanton, the infrastructure maintenance manager, explained that part of the reason they don't video every line is they don't have a standard camera set up for taking a sewer system video. The camera they have is one that was built by the facility maintenance group. It takes two crews to do the video, and is very labor intensive. Mr. Boylan said that they have three, four or five backups a week throughout the city. Commissioner Griggs asked how many times it backs up into somebody's house, and that doesn't happen very often. Perhaps that is when they should do a video of the line. Commissioner Lujan asked if it is the City's responsibility, though, to find the problems that are the homeowner's responsibility. Commissioner Ledford asked if the camera shot was to determine whether it could be a problem that the City was responsible for. City Attorney Thies indicated that the letter from the adjuster indicated that there might have been a claim in 2003 for the same problem and then again in 1996, a similar claim. Arguably, the City should take additional steps to make sure it is not the City's problem instead of just paying the claims. Commissioner Ledford reiterated that the City should not say it is the City's fault and pay the claim unless that has been determined to be the case because then the homeowner was operating under the assumption that it was the City's fault, which may have affected whether the homeowner took action to correct the problem. Commissioner Lujan said that what he could support would still be the \$193.50, as that is all there is a bill for.

**Commissioner Ledford made a motion to approve paying half the claim based on the invoice submitted to the City for reimbursement for the proper invoice from Showcase carpet, because the City admitted fault the first time and did not put the homeowner on notice, and the second time he was relying on the representation that it was the City's fault. He will also be responsible to get the backflow preventer installed. Commissioner Cole seconded the motion. A vote was taken and all voted "aye." The motion carried with a vote of 6-0-0.**

9. Appointments to Boards and Committees.

There are currently two vacancies on the Senior Volunteer Programs Advisory Council; one vacancy on the Alamogordo Disability Council; two vacancies on the Airport Zoning Board; and one vacancy on the Public Library Board. If anyone is interested in serving on one of the boards, they should contact the City Clerk.

**UNSCHEDULED COMMUNICATIONS:**

**A. Mayor Pro-tem Lujan**

Mayor Pro-tem Lujan stated that Mayor Brockett was in Washington, DC on City business.

**B. Aaron Rance**

Mr. Rance stated that he was thoroughly embarrassed that the City Commission buried their heads and did not address the issue. He felt that Mr. Reifschneider deserved an apology in that he believed he was wronged. Mayor Pro-tem Lujan wanted the record to reflect that he had apologized numerous times.

**C. Interim City Manager McNeile**

The water report was distributed, and Mr. McNeile spoke with Severn Trent who stated that wells three and five should be back on-line soon.

Mayor Pro-tem Lujan announced that the next day from 7:00 a.m. to 7:00 p.m. was Election Day for the Special General Obligation Bond election. He encouraged everyone to get out and vote.

**ADJOURNMENT.**

**Commissioner Ledford made a motion to adjourn at 8:52 p.m. Commissioner Brewer seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.**

*/s/Mayor Steve Brockett*

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Mayor Steve Brockett

(SEAL)

ATTEST:

*/s/Reneé L. Cantin*

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City Clerk Reneé L. Cantin

*(Prepared by Ubiquis Reporting)*

*Approved at the Regular Meeting held on March 24, 2009.*