

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION EMERGENCY MEETING MINUTES  
5:30 P.M., COMMISSION CHAMBERS  
SEPTEMBER 12, 2007**

**MAYOR DON CARROLL  
MAYOR PRO-TEM RON GRIGGS  
COMMISSIONER INEZ MONCADA  
COMMISSIONER ED COLE  
COMMISSIONER MARION LEDFORD**

**COMMISSIONER CHRIS LUJAN  
COMMISSIONER STEVE BROCKETT  
CITY MANAGER PAT McCOURT  
CITY ATTORNEY WILLIAM BROGAN  
CITY CLERK RENEE CANTIN**

**CALL MEETING TO ORDER AND ROLL CALL**

Mayor Don Carroll called the meeting to order at 5:30 p.m. Roll call was taken, and both Commissioner Inez Moncada and Chris Lujan were absent.

1. Considering whatever steps or actions may be necessary to solve the immediate problem of a lack of an electrical inspector and electrical inspections for the City of Alamogordo.

*Recommendation:* Direct staff on how to proceed.

Mayor Don Carroll gave a brief background of the issue, explaining that the city has lost their electrical inspector. The inspector has agreed to work through the rest of the week, and the Mayor is hoping to reach an agreement with him that would have him continuing to do inspections on permits that have already been issued. However, this would only solve a short-term problem and would provide no solution for the long-range issue.

The state has had issues with the cities of Alamogordo, Clovis, Las Cruces, Silver City and Los Alamos, which have adopted codes that are different from the state code, using the International Building Code family of codes, rather than the state-preferred blended codes. Alamogordo has also adopted the state electrical code, but kept the International Building Code administrative procedures along with that. The concern of the state is they want everyone in the state to be uniform and doing things their way. However, state statute says a municipality can adopt codes as long as they are at least as stringent as the state code.

The proposal to the state thus far has been they would enter into an agreement where the state would provide the new electrical inspection permitting, and they would notify the communities that have the different codes and they would at that point have to prove that their codes were at least as stringent as the state codes, and if not they would have to change the codes to comply with the minimum state codes. The City of Alamogordo has agreed to enter into a Joint Powers agreement, if that is what the state requires, that would have the state inspect to the state electrical code, and if there are any discrepancies between the state code and the city code, that the state code would prevail. Furthermore, if they are inspecting to the state electrical code and there is a conflict between the state electrical code and the city mechanical or plumbing code, that the state code would prevail.

That is the proposal that is on the table, and in the short-term, if they will agree to that, the city has agreed to go back through the codes and prove that they are at least as stringent as the state code, and if not, they will be brought up to compliance.

Unfortunately negotiations seem to have stalled, and Mayor Carroll believes this is due to the state wanting the city to walk away from all of their codes and totally adopt the state codes across the board. The City of Alamogordo went to the International Building Code because they feel it better serves the citizens of Alamogordo and it better serves the construction industry. Mayor Carroll stated that he is reluctant at this point just to sign a JPA that says they will walk away from all the codes and go with the state code, until all pros and cons and possible ramifications have been considered. There is another call scheduled with CID in the morning, and if it can be agreed that the state will do the electrical permitting and inspection on new permits in the short-term, to give the city

an opportunity to go back and review the other codes, the City of Alamogordo will sign on to that. If they are not willing to do that, the Governor will be asked to intercede and require CID to work with the city and not force them to totally walk away from their codes through the JPA that they have been insisting on.

There seems to be no good solution to this situation. The CID is moving in a direction that at some point in time they are attempting to require complete control, and the city may not be able to prevent that, but the concern is that the city will be forced into conforming without being able to give it any thought as to what the long-range ramifications are, and whether it is really the best thing for the citizens, for the construction industry, and for the people who work in it.

**Commissioner Moncada joined the meeting at 5:40 p.m.**

City Manager Pat McCourt provided some additional background, in that the state has stepped in during the past in an exact same situation before. They stepped up and did the electrical inspections until the city could get their new inspector on board, and then the state stepped back again. The state also does inspections in communities that have the same codes as Alamogordo.

Lora Nelson added that the City of Alamogordo is using the 2003 International Codes and the 2002 National Electrical Codes with the updates to the electrical codes. The state is using the 2005 electrical codes, but with the updates those are technically virtually identical.

City Manager McCourt explained that the state has the clear cut authority to come in under this situation and issue permits and do inspections, according to state law. When that question has been asked directly of the state, their attorney changed the subject. Stop gap measures have been looked at, and Clinton, the outgoing electrical inspector, has agreed to help the city on a short-term basis.

Mayor Pro-Tem Griggs spoke up, regarding the fact that he has been involved in 3 or 4 meetings so far, and at each meeting there seems to be willingness to work this out, although that never has come through at the end. The state continues to go back to the same premise, which is that the city code should be that of the state. The state needs to come in and assist the city in this time of need, and they are unwilling to do that without a commitment to change the code. It is a strong-arm tactic, unreasonable, and wrong, but that is their approach, and unless there is a major change of heart, there doesn't seem to be any real option but to approach the Governor for assistance in mediating the discussion.

City Manager McCourt mentioned that the Insurance Service Organization has given the City of Alamogordo a very good rating based on their code. The rating is far superior to the areas covered under the state codes, implying that if they move away from the existing codes, the ISO rating will drop, resulting in higher costs to the community.

Mayor Carroll reiterated the fact that short of falling in line and walking away from the existing codes, the city has offered to do almost anything that they need to do to get the state to come in and do the electrical on an interim basis. The city is willing to work with the state to resolve these issues, but we need some short-term relief in the meantime, and the state seems to be inflexible and unwilling to do that. Alamogordo was the first community in the state to deviate from the state codes and it may not be verbalized, but this may be a payback move on their behalf. At this point, there is another meeting in the morning, and if that doesn't work, the option is to proceed in asking the governor for short-term relief.

Commissioner Brockett asked City Attorney Bill Brogan about other communities that are having similar issues, including Las Cruces, and Mr. Brogan confirmed that CID intends to go after every municipality in the state, forcing them to adopt the state codes. It was felt that it might be helpful to get all of the affected community leaders together in a phone conference to discuss it jointly.

Mayor Carroll commented that is why the Municipal League has suggested that in the short-term the state would help Alamogordo and it would give everyone an opportunity to see how this gets worked out. If the state intends to go after every city, they should back up and send Alamogordo the same letter they are sending everyone else. In the meantime, they should do the electrical inspections in the City of Alamogordo.

Commissioner Brockett brought up the issue of hiring a replacement in this position, and City Manager Pat McCourt confirmed that there will be a newspaper ad starting Sunday. There is an anticipated month minimum in getting the new employee selected and hired, after which time it remains to be seen if CID will certify that person.

Mayor Carroll has assured them that this person will be certified to the state code, but the State is still wanting to link all of the codes to the electrical code and pressing the city to change all of the codes to come back into compliance with all of the state codes, even though there may be absolutely no connection between the state electrical code and city plumbing and mechanical codes.

Mr. Patrick Vandergriff, a former billing official and former director of construction industries, pointed out that the administrative provisions that the city has are the same as what the state accomplishes through rules and regulations. All of the other codes refer to the adopted electrical code, wherever it is referenced. There is only one real electrical code in the entire nation, and that is the National Electrical Code.

Mayor Carroll asked the Commission what direction they would like to give to staff in how to proceed with this issue. If they could work something out to authorize a JPA, go ahead and do it, or if that is not working, then the next step would be to contact the Governor's office and ask his office to intercede and make sure that the city gets electrical inspections in the meantime.

Commissioner Cole agreed it was a good idea, and he has no problem with giving authority and responsibility to the City Manager or Mayor Pro-Tem for the procedure at the time it is necessary to achieve it. Commissioner Cole then asked for clarification in understanding the difference between a Memorandum of Understanding and a JPA.

City Attorney Bill Brogan explained that a Memorandum of Understanding is a very informal agreement between two parties. It is a very simple thing. A Joint Powers Agreement is defined in the statute, there are numerous clauses that are required by the statute, and the Joint Powers Agreement, because it is an agreement between two state agencies and it has to go before the Department of Finance and Administration for their review and their approval. City Manager McCourt also agreed that it would probably take more time to go through the Department of Finance and other agencies.

Mayor Carroll stated that it has been alleged that the state has the ability to expedite this through the DFA and they could do it in 24 hours, and indicated they also had the willingness. At this point in time the Mayor doesn't have the authority to sign or commit the city to anything, and in these negotiations, if an agreement can be reached that staff is comfortable with and in the best interest of the city, which gives the Mayor the authority to sign into an agreement without having to bring it back through the commission process, it would save time and avoid having to call a meeting every step of the way throughout the negotiation.

Commissioner Cole voiced his approval of this plan, especially given the time crunch.

City Manager Pat McCourt stated he would be honored to represent the city in this matter as well.

Commissioner Ledford had a comment regarding the immediate issue at hand, which is getting the electrical inspection process available to the city. This is not about addressing how the current situation came about, but it is the intent of the commission that these things never happen again. To that point, Commissioner Ledford questioned why there was no backup plan for a scenario like this.

The backup plan seemed to be in relying on the State to step in, as they did in 2001 and 2002 to provide that service. Long-term down the road there needs to be a reliable backup plan. The commission is not ready to sign their total rights away, but the agreement will only be limited to the electrical code. There is no problem in signing a Joint Powers Agreement, if that is what it takes, but not the one currently on the table, and one that only deals with the electrical code. If an agreement with the CID doesn't happen, plan B is a direct communication with the Governor's office.

Commissioner Moncada had a question regarding challenging the state and the possible ramifications of doing so. Mayor Carroll answered that the problem is in attempting to get heavy handed with the state, the city will be forced to sign the JPA. The building community may have to pay if this is politicized and people are made even more angry than they already are. Hopefully it can be worked out where it is in everyone's best interest for them to provide the inspections in the short-term and for the city to work to minimize and correct wherever they can any problems that exist between the two codes that are real and not just imagined. At this point in time, no one has really sat down and compared the codes to see if they are in fact less stringent than the state code or if they are that much better than the state code. It may be more simple to adopt the state code. The majority of the inspections that get done statewide are done by municipalities. There is no requirement under state statutes to do inspections. The state is required to do inspections. Over the years municipalities have gotten into it to assist the state, because as the demands grew the state was unable to be as responsive as communities needed. The short-term problem needs to be solved and then focus on what to do long-term to make sure that this problem does not come back again.

Commissioner Brockett addressed the fact that the Mayor, the Mayor Pro-Tem and the City Manager have all three been participating in the conference calls and negotiations, and asked whether they considered bringing someone in from the outside. Mayor Carroll stated that he saw no benefit of bringing someone in from the outside, because the CID is aware that this problem has the potential to cause great economic damage to the City of Alamogordo.

Levi Williamson, President of BCAOC, spoke to the commission regarding the act that may take place in 2009, which is currently a bill that has been passed, and is not a 'maybe' scenario. Mayor Carroll interjected and stated that the 'maybe' is in how that bill will be implemented. The negotiation was supposed to be taking place between the Municipal League and CID to see how it gets implemented. Mr. Williamson pointed out that if there is a possibility of being run by the state in 2009, they might lose their ISO in 2009 anyway. If this is the case, it might just be easier to adopt the state codes. The contractors have been asking for help for the last five years or so, and they wouldn't mind the state coming and taking over, but at the same time they would much rather have their money go to the City of Alamogordo.

Mr. Dominic Silva, a lobbyist with the New Mexico Homebuilders Association, stated he would be willing to help out in assisting any talks with the governor's office, as it is essential to visit with the Chief of Staff, James Jimenez, to try and get this resolved. He also mentioned that during the Municipal League conference, Lisa Martinez made a presentation and she did say she was going to start allowing JPA agreements between cities. She should be required to live up to that statement. Mr. Silva said he would leave his contact information with the City Manager and he would be willing to assist with the governor's office.

Mayor Carroll also heard the presentation by Ms. Martinez, and she made a number of statements that seem to be at odds with what is going on now. Mayor Carroll expressed his appreciation for Mr. Silva's comments, and agreed that he may very well be of assistance.

Mr. Harris Blankenship, from National Construction, addressed the commission and expressed that some of the specific issues brought to the commission in the past were concerns over the department not functioning, partially due to the fact of having no depth, and it was pointed out that when somebody went on vacation or took sick leave, it shut down. The construction industry is greatly at risk and will be the ones to pay for this, and they manage it better than the city has been managing it as far as timeliness, getting the inspections, and being a positive part of the process. Those involved

in the construction industry have been asking for and trying to have input into how the process might be streamlined so it does work better. Everyone understands the benefits and would like to see the city have that, because it could be a positive thing to have it locally, but right now it is not working to anyone's advantage. Mr. Blankenship said that until the city gets to a point where they can efficiently run the division, he would be in favor of turning it over to the state, without question, if they would handle it well.

Mayor Carroll interjected that he suspected if it gets turned over to the state, there will be pressure to bring it back in a few years, but if that is what the building community wants, for the city to walk away from the whole thing, that is something that the governing body can consider. Mr. Blankenship stated he feels the majority does feel that way, that the way it is running right now, they would be better off to have it managed by the state.

Mr. Jim French wished to expand on Mr. Blankenship's comments. He said the reason they were at the meeting was about a backup plan. A backup plan is not a plan unless it is written, and three months ago the commission, city staff, and six or eight builders met for a work session and at the time it was quite productive. The problem was after that work session, it dropped through the cracks and it went away. There is a process issue. There is a breakdown in the process, with no backup plan. His suggestion was that the body has the authority to direct staff, with a timeframe, to create a plan so this doesn't happen again. The backup plan must be in writing and it must be a real plan. There must be a comprehensive Code Enforcement Department that functions under guidelines and with accountabilities. In the prior meeting between city staff and builders, there was mention of a single document, a planned review checklist, for the builders to review on June 16<sup>th</sup> and they would get together on June 20<sup>th</sup> or thereabouts. The meetings were cancelled, postponed, cancelled again, and now cancelled indefinitely. It seemed there was good progress, and all of a sudden it is not even on the back burner, but it is gone. The builders need a commitment and a directive in writing to help solve the problem.

Commissioner Ledford agreed with both Mr. French and Mr. Blankenship. The meeting was called back in June because the Commission knew there was a problem and agreed that if this can't be fixed locally, they need to get out of it. The Commission recognized that and it was the intent, but it hasn't been done. There was a promise from that meeting to get to the contractors this checklist and get something done, and the Commission has failed. It was brought up at the meeting last night and it is clear to staff that this is serious, and it is not done yet, but they have been put on notice again to get something done and hopefully that will get done to address the issue.

Mr. French added that every builder and every electrician operates on a strict schedule. He asked that the Commission do set timeframes and benchmarks and milestones so that there is assurance that the directives are actually followed. If there are no timeframes, things will slip and people get busy, and people work hard but if they are sidetracked, it will be put off. Then there will still be no backup plan and everyone will be in the same position, with their businesses in threat of being shut down. The contractors will work with the city to develop a plan that is fair, but at the same time there must be timeframes.

Commissioner Ledford stated that the special meeting was called back in June because it was special, and they expected special results and here it is September and nothing has been done. Commissioner Ledford took the blame, because he thought it would get done, and he realized for the first time last week that it was not done yet. Staff has got a clear message and hopefully some more specifics will be reached.

Mr. French reiterated one more time that it becomes real clear when there are written timelines and milestones, it is easy to measure progress and it is easier to measure if there has been no progress made.

Commissioner Brockett addressed Commissioner Ledford and said that it wasn't until he was approached two weeks ago that he found out about it, and he requested the first available

opportunity, which was the following Tuesday, the day after Labor Day, that it be put on the agenda. He hadn't heard anything about it until then. He took fault for not being proactive and he hadn't heard anything, but there is a respect issue and a disrespect issue, in that this was not followed up on. He reaffirmed that the Commission takes this very seriously and they want to see some results. It is essential and absolutely mandatory that this be asked for in writing.

Mr. French replied that he doesn't expect this to all be done at once, but again, a timeframe with benchmarks and milestones is necessary so staff knows when it must be done, when they must report the results, and the builders and contractors can know when to expect results.

Mayor Carroll stated that he thinks everyone understands what the short-term and long-term problems are, and asked what the Commission would like to do as far as the short-term direction on working out the issue with the electrical inspector.

**Commissioner Brockett moved to direct staff to proceed and give them the authority to sign the agreement if they can get one that staff is comfortable with, in the best interest of the city, without bringing it back to the Commission for approval. And in the event where this doesn't work out, the Governor's office will be contacted.**

**Commissioner Cole seconded the motion. Motion carried with a vote of 6-0-0.**

Mayor Carroll thanked Representative Gloria Vaughn for making time to attend the emergency meeting. Representative Vaughn then addressed the Commission briefly, thanking them for their interest in coming together again. She said she appreciates the time that they give to listen to the constituency. She hopes they can work things out because they are people who need help now, not yesterday, not tomorrow, but now. Representative Vaughn offered her services to help with the Governor. She stated that she is not in construction, but she is pro business in that it brings jobs, and the Governor has stated many times that he is pro business as well.

## **ADJOURNMENT**

**Commissioner Brockett moved to adjourn.**

**Commissioner Cole seconded the motion. The meeting was adjourned at 6:40 p.m.**

*/s/Donald E. Carroll*

---

Mayor Donald E. Carroll

(SEAL)

ATTEST:

*/s/Reneé L. Cantin*

---

City Clerk Reneé L. Cantin

(Prepared by Ubiquis Reporting)

Approved at the Regular Meeting held on Wednesday, September 25, 2007