

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
7:00 P.M., COMMISSION CHAMBERS  
AUGUST 12, 2014**

**SUSIE GALEA, MAYOR  
JASON BALDWIN, COMMISSIONER  
NADIA SIKES, COMMISSIONER  
JENNY TURNBULL, COMMISSIONER  
AL HERNANDEZ, COMMISSIONER**

**ROBERT RENTSCHLER, MAYOR PRO-TEM  
DR. GEORGE STRAFACE, COMMISSIONER  
JIM STAHL, CITY MANAGER  
STEPHEN THIES, CITY ATTORNEY  
RENEE CANTIN, CITY CLERK**

**CALL TO ORDER, ROLL CALL, INVOCATION & PLEDGE OF ALLEGIANCE**

Mayor Galea called the meeting to order at 7:00 p.m. Roll Call was taken by the City Clerk. Clerk Cantin announced there was a quorum present. Invocation by Reverend Tom Arrowsmith-Lowe and the Pledge of Allegiance was led by Commissioner Straface.

Mayor Galea asked City Clerk Cantin if the Court Room could be opened up since there was an overflow crowd in attendance. City Clerk Cantin told her the speakers were being turned on in the foyer so all could hear.

**APPROVAL OF AGENDA**

**Mayor Pro-Tem Rentschler moved to approve adding the Addendum item to the agenda. Commissioner Baldwin seconded the motion. Motion carried with a vote of 7-0-0.**

**Commissioner Straface moved to approve the agenda as amended. Commissioner Hernandez seconded the motion. Motion carried with a vote of 7-0-0.**

**PRESENTATIONS**

- 1. German Air Force will be presenting a check to the City of Alamogordo for the sponsorship program at the Alamogordo Family Recreation Center.**

First Lt. Christian Matlok from the German Air Force Flying Training Center presented the check for \$500 to Shannon Petsche, Recreation Center Manager. First Lt. Christian Matlok noted he brought two comrades along to help with the presentation and to take pictures. He noted they had started a fundraiser in April in order to support the scholastic program. It was very important to them to support sports at the Recreation Center. He appreciated being here tonight and hoped the Commission appreciated what the GAF could contribute. Mayor Galea said the Commission appreciated what they could give and were grateful for all their efforts. Pictures were taken of the check presentation to Shannon Petsche and also with the Commission.

Mayor Galea stated she was grateful for the spirit of community created by this presentation from the GAF.

- 2. Presentation related to puppy sales in the City of Alamogordo. (*Sunny Aris, Animal Village*)**

Ms. Sunny Aris addressed the commission. She brought a dog with her. She read a Face Book post she had received on April 25, 2014: "Dear Animal Village – I am writing asking if you can help in the placing of four pit bulls. My friend died this morning and his family is asking for my help to find them homes or they will be taken to the pound." (Ms. Aris passed over some of the message) She continued reading, "I originally (and Ms. Aris said this is the salient point) bred the dogs, all of them.

They comprised four and they were from champion lines, but I'm just trying to do my friend a favor." (Ms. Aris passed over some of the message). "They are one blue male - three years old, one blue female - three years old, one brindle male - ten months old, and a fawn male. By the way, the female is about a month pregnant by the blue male, and any help...." (Ms. Aris passed over some of the message). "My name is Chuck Mitchell and my phone number is..." (Ms. Aris passed over the rest of the message). Ms. Aris then told the commission she did not know anything about puppy mills in Alamogordo at that time, she said she was clueless. That is what led her to, and she then introduced her dog, Isis, who she explained is the little girl of whom she spoke. When Ms. Aris got her she was pregnant with ten puppies and she was bred here in Alamogordo. Now, this is why she brought the dog with her. Ms. Aris then read a letter sent in response to her stated concerns as she went down this journey and found out about puppy mills here. It was sent, she believed, by Jim Stahle to many members, and she felt sure many had received this letter dated June 19<sup>th</sup>. This is when she realized no one else realized what was going on, either. Officer Martinez, the Animal Control Director, listed the sections that do and don't apply to puppy sales. The salient point for her is the second to the last paragraph, and City Attorney Thies writes, "I believe you are aware of the purpose for enacting section 7-04-010. The City decided to enact this provision to deal with those people who sell dogs or cats from a street corner or from a commercial parking lot. In the past, I understand this was a problem in that many of the animals sold were unhealthy or had other genetic defects which resulted in the buyer incurring substantial costs or having to have the animal put down. The enactment of the ordinance gave Animal Control the tool to stop this practice, (Ms. Aris interjected this was the part she was most not fond of), which appears to have worked in that you seldom see anyone selling dogs or cats in this manner." So, Mr. Thies was of the opinion that just the passage this ordinance had corrected the problem. This is why I brought Isis here. Isis is living proof, breeding proof that nothing changed and to this date, as of last week, you got your first breeding permit filed in the City of Alamogordo. The law was enacted and has been on the books since 2003, that breeders, and I'm going to quote from your law, Alamogordo Code of Ordinances, Chapter 17, Chapter 7-4, to which Mr. Thies had alluded in this emailed letter, "The fee to sell a single litter of dogs or cats within a year shall be \$50.00. The fee for a license to sell more than a single litter of dogs within a year shall be \$150.00. All licenses expire on the first day of January of each year." Now, the way I understand this, if you breed more than one litter, which by the way, in the same ordinance is prohibited, you are not supposed to breed one dog more than once a year. But, in my spreadsheet I have here you will find there are breeders who have at this moment \$25,000 to \$50,000 in inventory at this moment in puppies, that they sell from between \$2,500 to \$3,000, and you can design your puppy and that is on Unicorn Lane in Alamogordo. What is really important to me, what you see is a pretty healthy looking, sweet little mommy dog here, when I got her she looked like a water buffalo and was pregnant with ten puppies which she delivered within three days. And over the course of several weeks and you heard me read that Mr. Thies had alluded to the people who either have to have them put down or spend inordinate amounts, and I'm paraphrasing, on the birth defects, the congenital defects that are supposed to be mitigated by the health certificates a breeder is supposed to provide a buyer or an adopter of their puppies. You also heard me say that as of last week you finally got your first breeding permit. So, they are not complying. In fact, if you want to buy a purebred puppy in the City of Alamogordo it is like buying drugs. They act like drug dealers. They will not let you see their operations, you can't go and see the conditions under which these puppies are being bred and in which the breeding parents are living. In fact, they will meet you at the Lowe's parking lot, they'll meet you at Alamogordo Park, they'll drive down in an ATV holding the puppy you've chosen, you give them the cash and they leave. And you never see where they live; why? I don't know. I can show you pictures that have been emailed to me; people wanting me to take their cast-off puppies once they are past the magical age of eight weeks, and I can show you the filth in which they are living and the proof because they send it to me. They are that blatant and want to get rid of the puppies. You'll see them; the Animal Control officers see them all the time. She asked Animal Control Manager Martinez and Animal Control employee Vicki Gathe if this was correct, if they didn't get the cast-offs, the ones that are too old to sell, all the time. Maybe they get adopted and maybe they don't. But guess who pays for this, everybody in the City of Alamogordo pays for this. I'll tell you, just based on a little bit of research we did, and by the way, Mr. Mitchell, the man I alluded to in the beginning, this is his website and it doesn't look so good, but if you look on your computer at [desertdogs.net](http://desertdogs.net), he'll say he doesn't have any puppies. I emailed Mr. Mitchell under a different name, and Mr. Mitchell says he does have

puppies. Now, the day I brought all of this up on my Face Book page at Animal Village that we were going to address, talk to the City about these puppy mills, Mr. Mitchell took down his website that he had up for years, assiduously maintained; you have to keep putting the new pictures of the new puppies, right? It is a very expensive procedure, and he doesn't mind paying for his website, he doesn't mind paying for his online advertising or his ads in the paper. He doesn't want to pay your breeding permits so he took his website down. It came back up a couple of weeks ago. My inference is because no one did anything. All these breeders went underground, their Face Book pages disappeared and suddenly there was a new 'Alamogordo for Sale' Face Book page, but you couldn't get on it unless they accepted you. At the top it says 'No Cat Fishers'; I didn't know what Cat Fishers were, but apparently it's people who pretend to be somebody to elicit information. This is what they did; these puppy mill dealers, these puppy breeders who act like drug dealers in your city, who give out, sell puppies who have congenital defects that your law limits; your law that was lobbied for by people who wanted to see this stopped, puppies with cleft palates, intestines on the outside of their bodies, little tiny lungs so they couldn't breath, and she said she, as would have been the buyers of these puppies had they survived longer, was paying the vet bills. I was driving them back and forth from the vet as they were dying, I was paying for their surgeries and none of them lived. Now, Mr. Thies also seems to think he knows what the purport was of the people who lobbied for this law to be enacted. Linda was one of those people, so Ms. Aris thought maybe the commission would like to hear it directly from her. Was it just people giving puppies away at the Wal-Mart parking lot?

Linda Rardin thanked the commission for letting her speak and remarked that during the summer and into October or November of 2003, she was chairman of a mayor's committee organized to re-evaluate and rewrite the ordinances in Alamogordo having to do with animals. It took us about six months to get that done and toward the end of the year the police department, Mayor Carroll and us sat down and we agreed on what was going to pass through the city commissions' voting and they passed. One of those was not carrying dogs in the back of pickups improperly restrained so they couldn't jump out or fall out. We didn't want them hung or dragged, so they had to be properly constrained; that passed. Another one that passed was what Sunny mentioned, the \$150 dollar per year breeders license. Back then, we were very concerned as a Humane Society about the unwanted dogs and cats in Alamogordo. We were very serious about our spay/neuter programs and this was one of our efforts to stop the unwanted puppies and kittens. One thing that did pass that you all are enforcing, and she thanked them for all these years they have done that, is no animal from the City Animal Control can leave without being spayed or neutered. That passed the ordinance and you all are enforcing that, and that's helped. That was one of our main concerns to stop the unwanted puppies and kittens. Just maybe two or three weeks ago there was a truck load of puppies in Wal-Mart parking lot, by the way. So, it hasn't stopped and seems to have even gotten worse with the breeders that are making a lot of money off of selling these dogs. The ordinances are out there, I appreciate that you put it in the Profile this last time. It has gotten out to the public now and the public should be aware that these laws are out there, and what we'd like now is to see what will be done to enforce these.

Sunny Aris continued with her presentation. She showed photos of some of the litters she has had to deal with that do have congenital defects that are supposed to be mitigated by the breeders who are supposed to be getting health certificates on every puppy; they're not. This is what I get at Animal Village. All of these puppies died. This is the puppy to whom she alluded with the intestines born on the outside of the body, had surgery and lived about nine hours. Cleft palates, this baby died who had no lung, just a little tiny bit of a lung, (moved away from microphone and not picked up), because the laws are not being enforced. I tell you what, you drive to the vet with a puppy like this and it seems like you are driving for hours and it is just a few minutes. Then, when they die in your arms, but that's not what I'm here to talk about; if you go in like a bleeding heart, nothing happens, right? Let's talk fiscal. The business license fees, and some of these folks proudly proclaim that they have ten breeding bitches at all times, so they have year-around puppies. But, just what I have on this spreadsheet, and I apologize for not having handouts. I was only told early yesterday afternoon that if I was to give you any handouts it would have had to been by yesterday, so that wasn't on the website or anywhere else so I didn't know, so I don't have handouts for you. I do have them in case you want them. \$200 dollars, we are figuring a breeder has only two breeding bitches, breeds just two litters a

year, that's not what they are doing but let's just assume that, let's be real conservative. I've got them here on the spreadsheet. \$200 dollars times 59 breeders, now not all of those are in Alamogordo, we did not have a lot of time to do research, but I think I got 14 or 15, the high end ones, not talking about the \$100 dollar puppies, I'm talking about \$600, \$800, \$1,500, \$2,500, \$3,000, if you want a black mask on your puppy; you can design it. Just 59 breeders at \$200, just two litters a year is \$11,800 in revenue being lost by the City of Alamogordo. They are out there; just look on Face Book, the Park Benches, look in the newspaper, the classifieds, look in the Thrifty Nickel. They are there, they are waving at you and saying, "We are doing business. Come and buy our puppies!" It's just that you are not going and saying caching, caching, where's my breeding permit, where's my fee? Now, here's the difference between a Code Enforcement call on Mr. Straface who let's say has a porch that is falling in and you send out Code Enforcement who says, "Mr. Straface, I'm sorry, but your porch is unsafe. We'd like you to fix it and here's a little corrective ticket." No money. Now that costs the City of Alamogordo \$17.50 for them to make a one hour call, because their base pay is \$10.92 and I verified this with Kim at the City, \$10.92 is the base pay, but then I said, "Wait, there's got to be more. What about their vacation pay, insurance, benefits, sick pay." Ok, Sunny, add 40% and that will give you the \$17.50. We just spent that to go to Mr. Straface and get his porch fixed. How much money did the City of Alamogordo make? Nothing; you spent \$17.50. But, if you go out on these calls and you collect \$200, you're to the good about \$190; you just turned that into a cash register call. So, why aren't you doing it? Here are some of the things you could spend this \$11,800 on – vaccinations at \$3.00 per shot so these folks could give parvo/distemper shots to the dogs when they come in at intake and mitigate the risk of parvo/distemper by 50%; how about letting them do that because it is \$3.00 per shot in the bulk like they buy it. That would be 4,000 shots. She asked Animal Control Manager Martinez how many dogs they get every year. He told her up to about 1,000. Ms. Aris said every dog that comes in is now caching, caching covered and you still have \$10,000, or \$9,000 something. How about hiring more Code Enforcement officers, how about hiring another Animal Control officer to give these guys a little bit of rest? They do a week of euthanasia and she asked them if they alternate, one does it one week and then another the next week. She was told there were only three of them that are able to do that at this point, so they take turns each week. Ms. Aris said knowing what she does about Vickie and Dwayne, they do not go in on Monday morning excited about killing puppies and dogs and kittens and cats; they don't want to do it. But you guys won't give them the money to give a \$3.00 shot to an animal; you don't vaccinate the cats. Here's a way to be able to afford that. Let's give them a break and not make them kill anybody, ok? Let's let Animal Village mitigate the risk and take more pets from Animal Control, because now I'm not looking at a \$3,000 dollar bill to save a parvo puppy. How 'bout that? How about getting uniforms for the Sheriff's Department, the DPS, how about Reserve officers, how about hiring more Code Enforcement, how about giving these people a little bit of slack? How about buying some new equipment; does the City need any new equipment? This is just based on about one hour of research and I got you \$11,800 dollars. Why don't you go knock on the door, and I talked to Dwain about it, and he said this is what the City thinks. The City thinks we are going to walk up to the door, say are you breeding puppies, they are going to say no, and they are going to shut the door. She asked Animal Control Manager Martinez if this is what he had said. He told her that if they walk up to a door and ask to see their puppy mill, they will shut the door and he has no recourse. Ms Aris said she was here as a result of going up the chain. I started at the City and asked City Clerk Cantin how this was happening. If people are following your laws, why am I doing this? Where are they coming from? She said we don't have any, we don't have any way of collecting them. I asked her who has the authority and was told probably Animal Control, and you heard what Dwain just said. So, I went to the Police Department and was told they don't have the authority to collect any money and maybe the Fire Department does. She was told nobody had the authority to do it. Mayor Galea said we don't have a policy to implement our law, am I quoting you pretty accurately?

Mayor Galea said halfway, and Ms. Aris asked her what part she did not get. Mayor Galea told her we don't have a policy so that we have staff patrolling the internet for home and yard sales, or Face Book, or web pages to search out breeders who might be outside of Otero county, coming into Otero County to include Alamogordo. We really don't send our Code Enforcement or our Policy officers outside the city limits. Ms. Aris said she was just talking about Alamogordo. Mayor Galea said we cannot look for breeders in Roswell coming into the City of Alamogordo, and she believed the Staff could attest that

they have utilized the list Ms. Aris had brought forward and had followed up on all the leads. She thought they would have a report on that.

Ms. Aris said she had a new one; she had about 15 breeders in Alamogordo and one of them works for the City of Alamogordo. So, she didn't know how more blatant it gets, she didn't know how much more your ordinances can be ignored, but she said she was here to help. If you would go out and collect these fees you will make this a better town, you are going to make this a better Animal Control department. These guys are fantastic and they will go to the end of the earth to help save a life, but you aren't giving them the tools. Here's the money to get the tools, and at Animal Village we take up to 35 a day, 15 a day; but the last time I took that many from Animal Control it cost me \$3,800 because out of the 13 I took, five had parvo and two lived. My bill for them to fight for their lives in intensive care was \$3,800, and I can't do it. I'm just asking you to enforce your own laws for the betterment of everybody in this room, and the betterment of the City of Alamogordo.

City Manager Stahle said as we discussed with her we have put a full-court press on trying to make the public aware of what our rules and regulations are. We actually did have the one application. The one thing he pointed out was that it was difficult for the City, any city, to knock on a door and assume that we know what is going to happen in the future. If we witness or we see animal breeding and recognize they don't have a permit, we can do something about it. The question he had was at what point is the law actually broken, and that's something we are going to have to work out legally. Ms. Aris told him she understood and was ready to offer this new list; at what point is the law broken; when you breed your dog with the intent to sell the puppies.

City Manager Stahle wasn't sure intent to sell is necessarily the right measure. If you are going to sell it and you do sell it in Alamogordo, clearly that's a violation. So, there are some issues that are legal that we'll have to contend with.

Ms. Sunny Aris said her rejoinder would be, rather than to anticipate non-compliance on the other end of the door, walk up with the ad in the paper, with the screen shot of the website, which we have talked to them, taken pictures, been in their homes, we know they are there. Everyone on line and everyone in the newspaper don't mind paying for the advertising. If it were me, sir, and you came to my door and you had a picture of the puppies I'm advertising and paying for the advertisements to sell, and you said, "Hey, Sunny. Is this you holding these puppies? Is this you asking for \$900 for these puppies?" She didn't really think she would be in a position to say no and slam the door, and I don't feel like anyone here deserves the anticipation of non-compliance to be the reason you don't take action. She appreciated the fact you put it in the little notice, but she didn't read the notice and then asked if anyone did. Mayor Galea interrupted to say decorum is mandatory here and she needed to address the commission. Ms. Aris wondered how effective that was as opposed to walking up and knocking on the door.

Mayor Galea hoped she would continue to help the City through the City Clerk's office with the print-offs of web pages and Face Book pages. The City Clerk along with the City Manager and Animal Control will continue to follow-up on those leads. Like the city manager said, we cannot judge intent, only God can do that. Should my dog end up pregnant, it was not because she intentionally allowed it to happen, so if she would have to sell those puppies, certainly she would abide by the ordinances. No one can judge the intent in which someone's dog became pregnant. Ms. Aris answered that if she was asking for \$900, then her intent is that she is going to make money. Mayor Galea said she had a well-bred, good chocolate lab she would sell for high dollar.

## **PUBLIC COMMENT**

Mayor Galea noted each person would have three minutes for comments and there were ten people signed up to speak.

**A. Martha Trujillo commented on the following:**

1) Ms. Trujillo said she represented Quality Paint and Body and White Sands Towing. She remarked that if the ordinance was passed, the city attorney has advised all towing companies that we must carry at least one million dollars in insurance coverage, which means that simply because the City decided to pass an ordinance and get their own towing yard, now all towing companies are going to have to bear the cost of about \$1,100 to get that coverage. He said he cannot tell each company how many tows we will receive from that, it will just be an additional cost for doing the exact same work we are currently doing, simply because the City decided to pass an ordinance. All towing companies are currently towing for the City, State and Sheriffs. She pointed out page 14, Ordinance 24-3-30 states, 'Whenever any vehicle shall be impounded or towed, it shall be taken to the City tow yard.' This means all arrests, accidents and breakdowns. As a collision center, because of the financial state of Alamogordo, we have been found to have to help some of our customers by covering some of their deductibles and some of their towing fee or all of their towing fee. Should we in addition to that have to assist our customers in paying storage fees, which the City plans to charge a higher storage fee than any towing company is currently allowed by NMPRC rules to charge, that's going to prevent us as any repair facility to assist our customers in the financial help they need. Also, keep in mind that a lot of repairs are out-of-pocket expenses due to different circumstances people might be in, causing them to have an additional storage fee that will prevent them from doing additional repairs such as cosmetic work. You will end up having a lot of vehicles driving around in Alamogordo missing fenders, bumpers, hoods and maybe not painted, and if your intent with this ordinance was to create a better Alamogordo, you are fighting against yourselves. Also, please keep in mind that some towing fees in addition to this storage fee could total some peoples' vehicles. Keep in mind, most insurance companies currently only cover two tows per accident. If you pass this ordinance, you will have tow number one – accident to City tow yard, tow number two – City tow yard to repair facility. If you have a vehicle that is five years newer, sometimes a repair facility must take your vehicle to the dealership to have recoding done or you'll be driving down the road and get hit with an airbag. There is at that time no coverage for that, seeing the insurance companies only cover the two tows. If you are currently liable for a deductible, you will be liable for the third towing fee. If you have a Mercedes or anything that is not in town, you are looking at probably a \$500 round trip to El Paso.

**B. J.J. Lyons, President of AFSCME commented on the following:**

1) Mr. Lyons told the commission that it looked like your staff has been painting a pretty bad picture of AFSCME. According to the city attorney, AFSCME is being accused of having a hit list on certain people and their jobs. The only thing AFSCME is doing is asking for public records requests and getting information. If that information we get shows people are continually doing things wrong, that's not harassment; we would like to think that we would be commended for it, not be made targets. Our public records requests started when we sat down with Matt McNeile about one of our members being harassed by the Customer Service Manager. Matt stated he would look into this issue and at our next meeting we were told they had no findings of harassment. We put in a public records request for emails to help verify their claim. We made that request on June 9<sup>th</sup> and conveniently the email system crashed on June 10<sup>th</sup>, and that pretty much quashed our investigation. Through another public records request we received the report from the company that investigated the unpaid water bills. That report states that all salary increases for the H.R. Manager and the Customer Service Manager were properly authorized. Now those increases may have been technically authorized, but that doesn't make them right. One of the salary increases included a reclassification for the Customer Service Manager. That report failed to mention that the H.R. Manager used a different process for determining the reclassification of the Customer Service Manager which came out in his favor. That has cost the citizens of Alamogordo over \$9,000 to date and will continue costing us. Even though this costly error has been brought to managements' attention, a recent promotion has been given to the H.R. Manager which includes 100% paid insurance. In our public records request, we also made a request for the contract for the financial consultant who is now the Finance Director. What we received was the financial consulting agreement effective March 3, 2014, and that terminated June 27, 2014. This agreement was then amended on June 23<sup>rd</sup> to a \$50,000 dollar limit. However, the same person then signed an employment agreement on June 9<sup>th</sup>, which was to be effective June 23<sup>rd</sup>. Then a second employment agreement was signed June 25<sup>th</sup> to be effective July 1<sup>st</sup>. More importantly, through our requests, we discovered her business license with the City of Alamogordo

expired May 23, 2014. This sounds like really bad business to me. It is also important to note we made a request on July 28<sup>th</sup> for the bond and this has still not been given to us. The issues we have with the City go beyond the public records requests. The City simply refuses to show any of our workers the respect we deserve. There was a more recent harassment claim against the Customer Service Manager and that was swept under the rug despite there being witnesses to the harassment. Through an email it looks like the City actually gave the Customer Service copies of all the complaints while he was still under investigation. We even have an email that shows the Finance Director felt this request was not supposed to be allowed, yet did so on advice of the company hired to investigate him. Madam Mayor, Commissioners, all we are trying to do is make a living wage and have some respect, and if you have any further questions, I have all the documents here and would be glad to get with you guys at any time.

**C. Anthony Backey, Vice President of AFSCME commented on the following:**

1) Mr. Backey read the first two subsections of Section 10 from the Ruidoso adopted budget for this year. The first priority for them is to continue to ensure the delivery of basic core services in the efficient and effective way. Their second priority is to invest in our employees who are our greatest asset. Protecting the personnel infrastructure is the key to ensure the Village's goals can be achieved. A change in insurance benefits was implemented to avoid a 10% increase and provide a better way. Mr. Backey said it is with honesty and respect for what is right that I make this following statement: In no way am I, J.J. Lyons or any other member of AFSCME manipulating any employee or citizen of the City of Alamogordo. Any comment or rumors stated to that affect can only be made in an attempt to mislead or redirect the Commission away from that person's own actions. I missed all the recent activity and considering the many variables that currently exist, there has been one constant, your employees. We are still waiting for the distribution of funds that was allocated for us. I can only blame this on an antiquated and completely biased ordinance between the City of Alamogordo and the bargaining unit. With the grievance procedure that is the City Manager, this puts zero pressure on management to come to a fair and timely agreement. What is the point of arbitration if the City of Alamogordo can overturn any arbitrator's decision? Upon hiring a city manager, you put faith in that individual to make the best decisions for everyone involved, but who is to say that person will choose what is right and what is just. How can favoritism ever be eliminated with the bargaining units hands completely tied? What will it take for the City of Alamogordo to understand that at some point someone besides ourselves is going to have to take a stand for us and recognize that we are just as important and deserving of a respectable wage as management. That being said, I would also like to thank the city manager and city attorney for showing the citizens of Alamogordo and its employees just how much management can get away with and still be employed. It makes one think that if the same leniency wasn't shown to any other subordinate employee or member of the bargaining unit that the City of Alamogordo could find themselves in a very actionable position. And seeing how effective recent EEOC complaints have been, I'm surprised that the number of them isn't astronomical, as well. In closing, I want to be crystal clear. AFSCME's one and only mission is and will continue to be that it's members are treated with respect and given an equal opportunity to better their quality of lives. Continually rewarding management is preposterous considering that without the employees their decisions and direction could never be put into effect. The fact that this is consistently ignored shows the citizens, myself and the rest of the subordinate employees exactly where you stand. Respectfully, Anthony Backey, Vice-President, AFSCME Local 38 A2.

**D. Amy Barela, Owner of 54 Towing commented on the following:**

1) Ms. Barela told the Commission she owned 54 Towing and what she wanted to address were a couple of articles of the ordinance. She thanked all the commissioners who returned her phone calls and met with her; she appreciated the time they spent to understand how this is impacting our business. Under 24-02-050, Letter F: 'If a vehicle is determined by the Police Department to be so seriously damaged that it cannot be driven without extensive repairs and if the vehicle is not impounded as evidence, the Police Department may have the vehicle towed to a private towing company lot. The owner of the vehicle may recover the vehicle by a payment of \$270 to the Police Department and payment of any towing and storage charges to the private towing company. In the alternative, the owner may convey his or her interest to the vehicle to the Police Department and the owner shall not be charged any fees. If an owner does not choose either of these two options within

30 days of impoundment, the vehicle shall be deemed impounded and shall be disposed of by the Police Department.' Ms. Barela said she didn't understand where this came from. We are highly regulated by the Public Regulation Commission on how we do everything; what we charge, our equipment, our storage facility, how we have our storage facility, and everything. The \$270 dollars from the City she does not understand. Earlier in the ordinance it talks about \$25 for an impound storage; we are regulated on that fee of \$15. She didn't see how this was a justice to the community or consumers anywhere. The PRC protects our consumers, it regulates our fees and services, and people have a place to go to in order to complain when we do something wrong; overcharge, undercharge, or even missing items. We are responsible for that vehicle from the time we touch it until the time it leaves our lot, and how it leaves our lots. She also wanted to talk about the City going in to competition with our local services. We do have five legal towing companies in Alamogordo that currently provide the services for states, DPS and Sheriff's departments. I've done it for 20 years with my current business for four year. We provide the service and she didn't think the City needs to go overboard. She read something out of the statutes that was established: 'It bears noting that unlike city-run hotels, parking garages or campgrounds where private industry is able to compete with a government business rival, government run storage lots exclude private competitors. The private towing industry has not independent source for the lucrative, non-consensual law enforcement impounds. Those towings are controlled by the same government entity that is feeding its own storage lots.' Ms. Barela said that by the City of Alamogordo creating its own impound lots, her business personally will lose 8% total.

**E. Dori Inge, commented on the following:**

1) Ms. Inge addressed the commission. Her first and foremost concern actually, not seeing all this here tonight, is that she didn't think that of New Mexico as being a poverty state, and being \$15,000 as our average income, that the fees she came to look at had to do with the Interlock program. We service Interlocks at our business and it is not our main business, but is inside our business. She believed we are taking the people who have made a mistake, which there is not any justification for drinking and driving, and she believed we were handicapping them worse by inflating the fees in the ordinances she had read. She thought that as a poverty state, we should do more to offer those people something more to help than to fine them. They can barely pay what they pay now. We charge \$58.97 per month and there is a gentleman here from the other company called Smart Starts; she didn't know what they charged but it was a little more than hers. They have an indigent fund through the State of New Mexico that sometimes allows supplements to be paid to these people who have bought alcohol, but yet they get supplements to pay for their blow-n-go. Now the City wants to come in and charge them when they can't even pay us what we are hardly charging them, which is hardly anything. Very often, single moms or first time DWI's, we give them lenience and give a little extra time, and from what I read in here, you are ready to take their vehicle and then we as tax payers will be hyping ourselves up to support more people not to work. She didn't believe it was any benefit or any way to make something in this state and community higher than what they already can't afford now. She thought as human beings, person to person, there wasn't one person she knew in the room who didn't have somebody close to them, whether one person away or three people away, that hasn't made a mistake in their life that one choice, one wrong decision, hasn't cost them a large amount of money. We are in a community that she believed was very friendly and very caring and giving, as shown by the presentation tonight by the GAF, and we should keep that. Helping people get on their feet than making it harder to bail out of their mistake. As a supporter and having been in the community for a long time and loving this community for a long time, and her mom living in this community for a long time, your business owners here tonight and the fact their income and livelihood and how hard they work. She knew Amy Barela and herself answer their phones 24 hours a day, seven days a week, 365 days a year. If people are jeopardizing that, it really breaks our spirit to want to serve humanity.

**F. Joseph Herrera commented on the following:**

1) Mr. Herrera said he does the same thing as Dory; he does an Ignition Interlock Service center here. By you all wanting to go ahead and do that, it isn't right. First of all, there are processes we had to go through to become an Ignition Interlock Service, like being certified through the State, and finding a provider that is State approved. We've done everything we can to do things the right way

and then all of a sudden it's like this is going to happen. I work hard, six to seven days a week, live at my shop, I'm married to it more than my wife. When you work as hard as we do and then all of a sudden somebody else wants to come in and take it over..... I spoke with Jolynn Sanchez who is the head of the State of New Mexico Ignition Interlock, and she said if you wanted to call her, I could give you her number. There is a statute that protects it. He was happy to speak to the commission in order to voice his concerns. He said he owned Alamo Tint and Auto Accessories and this was an added on feature to his business. He supports Show Time, the Boys and Girls Club and does his part for the community. He just found out about this today and had never been to a commission meeting before. He said he was nervous and didn't know what he was saying, but it was just that he worked hard for everything he had. If the City takes it in, the only thing they are going to do if they can't make a payment is issue a warrant, add more money and fill our jails up with criminals. With us, we have leniency to work with them and understand our clients make mistakes. We are the front of what is for me Smart Start; I deal with clients on a day-to-day basis on Monday – Friday, Saturdays and voice mails on Sundays. We are here for the community and would like for the community to be here for us.

**G. Susan Payne commented on the following:**

1) Ms. Payne addressed the Utility Billing issue. She knew everyone knew what she did, and they do a lot. She is the executive director at LOVE, INC of Otero County and one of the things they do is help people pay their bills. They are very careful and use a structured process. They are limited on what they do because they are privately funded without any federal funds to do that. Last year they paid over \$11,000 to help people with rent, utilities, hotel rooms, and those kinds of things. That's just the financial part of it; in addition we paid money for things like food and that kind of thing. Part of my job is to negotiate with utility companies, one of them being the Water Company. She said she had been before the commission before, so those of you know I have this thing about the commission not recognizing people who live in poverty in this town. Otero County has, last time she checked, about a 21% poverty rate with the City of Alamogordo about 14-15%. That's huge. She gets people in her building every day that have had disconnects, that have children, have been laid off work and can't pay their bills, and I have to help them. Whether it was irresponsibility or that they got laid off, and she said it was generally because they had been laid off, how do I turn them away and say I'm sorry you don't have electricity or water, and I'm sorry you have children to take care of. How do I turn them away? I was on vacation for a week and the first thing my staff said was if I had heard about what happened at the Utility Billing Department. I really like the Utility Billing Manager, but I don't like what he did and I'm very disappointed because I don't think it was handled properly. It is not fair that I have to get on the phone and negotiate, beg and plead and try to figure out how I'm going to help people pay their bills, and then other people have an unfair advantage. These people live in poverty. I don't know if you understand when I say poverty, I'm talking about people who are living on \$700 - \$900 a month because they are disabled or whatever. For those of you who may not be aware of it, do you know what happens when you live in the Housing Authority and you get your water shut off? You get evicted; the first thing they do is send that shut-off notice to the Housing Authority and you have a day or two. If you don't get that water turned back on they evict you. Do you think I'm going to let someone get evicted from the Housing Authority? Do you understand how long it takes to get into the Housing Authority – sometimes 18 months. When I heard this I was blown away. You aren't going to do this for the average person who lives in poverty every single day, but you are going to allow this to stand for people who probably didn't even need it. That is unfortunate and I'm disappointed in the way it was handled and that not more was done to resolve it.

**CONSENT AGENDA** (Roll Call Vote Required for items No. 10, 11, 12, 13, 14 & 15)

3. **Approve Minutes of the July 22, 2014 Regular Meeting of the Alamogordo City Commission.** (*Renee Cantin, City Clerk*)
4. **Approve statement related to the Executive Session of July 22, 2014.** (*Renee Cantin, City Clerk*)
5. **Accept the Investment Report for the quarter ending June 30, 2014, in accordance with the City of Alamogordo Investment Ordinance.** (*LeeAnn Nichols, Finance Director*)

6. **Approve a Collective Bargaining Agreement between the City of Alamogordo and the Alamogordo Public Safety Officers Association (APSOA).** *(Stephen Thies, City Attorney)*
7. **Approve an Easement Modification Agreement with NM Gas Company related to the White Sands Regional Airport Runway Extension Project.** *(Nancy Beshaler, Project Manager & Stephen Thies, City Attorney)*
8. **Approve a Special Dispenser Permit Application and a Temporary Alcoholic Beverage Dispenser's License for Carino's Italian for the Cottonwood Festival from August 29<sup>th</sup> to August 31<sup>st</sup> at Alameda Park.** *(Renee Cantin, City Clerk)*
9. **Approve the Public Celebration Permit Applications and a Temporary Alcoholic Beverage Dispenser's License for the Tularosa Basin Wine & Music Fest from September 20<sup>th</sup> to September 21<sup>st</sup>, 2014 at Alameda Park.** *(Renee Cantin, City Clerk)*
10. **Approve Resolution No. 2014-37 authorizing the City Manager to sign any documents and agreements with the New Mexico Non-Metro Area Agency on Aging and the Alamo Senior Center for FY 2014-2015. [Roll call vote required]** *(Veronica Ortega, Alamogordo Senior Center Manager)*
11. **Approve Resolution No. 2014-38 amending the Convenience Center rates. [Roll call vote required]** *(Brian Cesar, Public Works Director)*
12. **Approve Resolution No. 2014-39 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised budget figures computed as of August 12th, 2014. [Roll call vote required]** *(LeeAnn Nichols, Finance Director)*
13. **Approve Resolution No. 2014-40 authorizing the Mayor to execute the agreement for membership in the Southeastern New Mexico Economic Development District/Council of Governments (SNMEDD/COG). [Roll call vote required]** *(Renee Cantin, City Clerk)*
16. **Approve the Award of RFQ No. 2014-04 to Engineers, Inc. for Engineering Services related to Florida Avenue Realignment at First Street and approve negotiation of the professional Engineering Design Services Agreement.** *(Nancy Beshaler, Project Manager)*
17. **Approve the award of RFQ No. 2014-07 to Bohannon-Huston, Inc. for Engineering Services for the Reclaimed Water Line Looping project and approve negotiation of the professional Engineering Design Services Agreement.** *(Nancy Beshaler, Project Manager)*
18. **Approve a request from the Otero County United Way to waive the fees at the convenience center for anyone to dispose of their unwanted waste on September 5, 2014 for the Day of Caring.**

Commissioner Hernandez asked to remove Item # 14 and Mayor Galea asked to remove Item #15 from the consent calendar.

Commissioner Hernandez moved to approve items # 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18 of the consent calendar. He also noted Item No. 6 was represented for approval. Commissioner Baldwin seconded the motion. Roll call was taken for items #10, 11, 12, 13. Motion carried with a vote of 7-0-0.

#### **ITEMS REMOVED FROM CONSENT AGENDA**

14. **Approve the final publication of Ordinance No. 1468 amending the Alamogordo Code of Ordinances to add a new section in Chapter 24 concerning vehicle forfeiture. [Roll call vote required]** (*Stephen Thies, City Attorney*)

Commissioner Hernandez stated that when the commission first voted on this item two weeks ago, he had several concerns. He supported it in order to get to this point and hopefully get citizens out here to voice their concerns. He has several issues with the ordinance as written and cannot support it as such.

**Mayor Pro-Tem Rentschler moved to table the item and ask the city to remove the section on private property and impound lot and mention of towing and then bring it back to the commission. Commissioner Straface seconded the motion.**

Commissioner Sikes asked for clarification. She asked if they meant only the towing from private property, and Mayor Pro-Tem Rentschler said he meant the private property section, wholly. He said we currently have an ordinance that covers that and there really is no reason for us to go over it again. To remove the private property section is inherent to what we need to do here, as well as the impound lot and the other justification we have for towing, or whatever, that involves additional city employees or city funding.

Commissioner Sikes asked to make a comment before voting. She appreciated everyone who came this evening and thought it was a real eye opener to see how much attention an ordinance that had a very simple original intent could get. She knew she had explained the original intent of the ordinance at the last meeting, and that was to be able to condense the time to remove property from public right-of-ways that annoyed people; for example, a car that might have been abandoned in front of a house because somebody was arrested for DWI, or a stolen vehicle parked in front of a house on public property, but we want it removed more quickly than our ordinance allowed. So, that was the original intent. She wanted to applaud and give accolades to our Code Enforcement Dept. because they worked extremely hard on trying to improve Alamogordo, basically. We get a lot of pressure from both sides, people who want to beautify Alamogordo as well as those who like Alamogordo the way it looks. We get a lot of people who say it is only the newcomers who want it improved, it's only the people who move here, look around and don't like the way it looks. But the people who've been here for years kind of like the way Alamogordo looks and don't want it to grow. Commissioner Sikes said she could not tell them how many times she had heard that. In the meantime, she appreciated the fact we can't support the ordinance the way it is now because people like Amy Barela and John Paul Barela brought to our attention the fact that we were essentially competing with private business. We do not want to do that and it was never our intent to do that. She wanted to make sure everybody understood the original intent was to condense some time; the Code Enforcement Dept. simply wanted to do a few things that would more than likely improve the way Alamogordo looked. This is an example for those of you who may not have read the entire ordinance, currently if someone is a hobbyist and wants to work on a vehicle in their driveway, they pay \$60 and they have two months to complete the project. Code Enforcement allowed you to pay the same \$60 but gave you 18 months to complete the project. A lot of the ordinance was actually making it a little easier on the citizens of Alamogordo. The Code Enforcement Department really wants everyone to understand that they are not out there trying to be punitive. They are simply trying to clean up the city. They get a lot of complaints that they don't do things in a uniform fashion, but weeds don't necessarily grow in a uniform fashion so she wanted to be on record that they looked at the ordinance and were simply trying to do something to make their jobs more efficient. Understand, we are going to send it back with the direction that we don't want to interfere with private property rights when they are private property rights we want to protect. She wanted them to understand, too, that she has private property rights as do all of you. If you are looking across the street at a pile of junk in your neighbor's driveway, you have property rights. You want to keep up the standard of your neighborhood, you want things to look good, and you have rights, too; not just the person with 18 junk vehicles in their driveway. We all have private property rights and we all want to maintain a standard for our neighborhood, and we all want to make sure our property values are maintained. So, as we send it back to staff we want to make sure that those things are taken into consideration, that we are

condensing the time frame for removal of vehicles that people don't want in front of their homes if they are on public right-of-way, and we certainly under no circumstances want to compete with the private businesses. The last thing Alamogordo needs is fewer jobs and businesses to go out of business. She thanked everyone who participated in helping the commission learn.

Mayor Galea said she appreciated the motion where we are removing an essential with this tabled item, the impound lot and the city towing not to compete with any other businesses in the city. She wanted to discuss the private property section. It is not to impede on any private property owners, but to go along with what Commissioner Sikes says to allow everyone property rights. Right now there are over 1,016 houses for sale in Otero County, which she learned today in the Business Impact/Government Relations class hosted by the Chamber of Commerce this morning. Last month only 24 houses sold in the City of Alamogordo, most of them new houses in a new development. It is challenging in this environment in which many are working to sell their homes, to sell a home next to someone who wants to accumulate a junk yard because it is their private property and they have a right to do it. Certainly everyone has the right to their own private property so that their property can be sold. The Mayor didn't think it was fair to anyone to live next to someone that accumulates junk. Of course, one man's trash is another man's treasure, she understood that; beauty is in the eye of the beholder. She would not be in favor of removing the private property section because she saw it as a benefit for those who have private property. Those who are hobbyists have an extended amount of time, up to 18 months, to tear apart a car and put it back together, and it provides greater opportunities for those on private property to remodel their vehicles. It creates greater flexibility for those who are auto hobbyists.

Commissioner Hernandez asked why the fee was \$60 to rebuild your own vehicle. For him, that would probably impede on people coming in to fill out a request. The problem he had on a vehicle vs. weeds for instance, was that where he lived there was a combination of both and it was a common problem. If he goes to pull a permit or not pull a permit, they are going to tag me right away and it will be taken care of instantaneously. For weeds, he's still waiting six months later for the guy across the alley for everything to go through the process of getting him to cut his weeds. How is that fair when all I have to do is buy a \$60 dollar permit? Can we issue \$60 permits for weeds, too, so I can grow weeds in my yard?

Mayor Galea thought that was a very good point. She asked Commissioner Hernandez if he would think it most fair that there be no fee for a permit to be able to abide by the ordinance. Commissioner Hernandez said that or a minimal fee, because these guys are driving by anyway checking weeds and everything else. They know addresses and whether they have a permit or not so there should be a minimal charge, but not \$60. In 18 months, and he didn't know how many had rebuilt a car, but the last one he did took him six years to do it right. He could do it half-assed in a couple of days, but to do it right took him six years.

Mayor Galea said the ordinance did allow for renewal of the permit, and Commissioner Hernandez said he didn't have a problem with that, but he did with \$60 to renew the permit. What if I forget and I come home and my car is gone. Mayor Galea agreed that \$60 did seem like a very large amount of money.

Commissioner Hernandez said that another problem he had with this section of the ordinance is he counted his cars this weekend, and he has nine titled, insured and registered vehicles. There is no way I can drive them or do drive them, and that's why it is lucky he has a garage to keep them in. If I didn't have the garage to keep them in, he would be in violation of the private property rights on the ordinance. He said he did not disagree with it and he wanted to clean up the community and he appreciated what Staff had done, but there were some problems with it.

Mayor Galea said the ordinance allowed for those that do not have garage space, to keep the cars in their back yard and in the front in a limited space with a proper covering. Commissioner Hernandez asked her if she had heard what he said – nine cars. Car covers for a corvette are not inexpensive and the wind blows here in New Mexico. The car cover dances around on the car and takes off the

paint. He didn't care if it was the best car cover in the world, that is what will happen. He said he did not agree with this because he was a car guy and it's tough.

Commissioner Turnbull wanted us to start from scratch because she felt there was a lot of overreach, and too much coming into my property, their property.

Mayor Pro-Tem Rentschler asked the city attorney if we didn't already have an ordinance that covered junk cars on private property. City Attorney Thies said you are looking at the ordinance that addresses junk cars on property. He went on to say the ordinance that currently deals with junk cars on private property is the ordinance that is before you. There have just been some changes made to it that provides additional definitions to streamline the process for removing the vehicle.

Mayor Pro-Tem Rentschler said this is a modification of our current process, correct? City Attorney Thies told him that was correct. The ordinance that deals with junk property has been amended. If you go through the first portion of this particular ordinance, the highlighted text is the new text of provisions that have been added. The current ordinance does allow the city when they find a junk vehicle on private property to cite an individual. Currently, we do not have a mechanism to remove the vehicle. That particular provision was included because about a year and a half ago we had a situation where the city was receiving numerous phone calls on a foreclosed house. They could not find the owner of the vehicle that was sitting in front of the house. An option at that time, there wasn't anyone to cite and we had to leave it there because we could not tow it off the property. That's why this particular provision was included where we could go on the property and tow it away if the owner of the property could not remove the vehicle. Otherwise, currently, we do prohibit junk vehicles from being stored on property. If it is brought to the attention of Code Enforcement, they will give the individual notice to remove the vehicle. If they do not remove the vehicle, they will be cited and it will go to Municipal Court. Speaking with the judge and the process he handles, if the person will come in and depending on whether they plead guilty or not, or if found guilty, they will be given approximately 30 days to remove the vehicle. They will be given a form verified by Code Enforcement that the vehicle has been removed. If it is removed within that time period, he will waive the fine and only impose the surcharges.

Mayor Pro-Tem Rentschler said she just told me we have a remedy. City Attorney Thies said we will cite them into Municipal Court, yes. That is the current remedy we utilize. This first section of the ordinance only adds the provision that allows us to remove the vehicle. Mayor Pro-Tem Rentschler said what he could tell him about that was long before he had even considered being a city commissioner, he gave up a '65 Chevrolet Malibu that one of you guys has in your lot somewhere and he wants it back. He said he did it because he got cited and didn't have any place to put the car, and he gave it to one of the impound lots out here. It worked in his case and he couldn't imagine it not working in anybody's case, and what we have now works and he thought the citations and fines were enough. He said he had gone before the city magistrate twice with that vehicle before he got vicious with me, so he did what he had to do because he didn't have time. He still wished he had that car and felt what we have now works and he didn't see a reason to really go after it. The things we are talking about are public right-of-way and he'd tighten that up to 72 hours public right-of-way. If someone gets a DWI in front of your house and leaves their vehicle there, just like the State Police or Sheriff we should put the orange sticker on it and 72 hours later it will be gone; that's when it is towable. That's something we need to do. If you have someone whose car breaks down in front of your house, what can you do? You can call DPS and they'll come put a sticker on it for 72 hours, and he thought that reasonable. When it comes to private property, we need to really, really tread very carefully, and he didn't believe we need more than we already have.

Mayor Galea said that on the same topic as the Malibu, she thought the point was well taken that we do have something in place that works; that you can be cited and face a magistrate judge and lose your car. Under the new ordinance, there is an opportunity the Malibu could have stayed had you applied for a permit at a lesser fee than \$60 for 18 months and restored the car. If it wasn't restored in 18 months you could reapply for the permit. She thought it was something that allowed for more freedom on private property rights when you are working to restore a vehicle you love.

Mayor Pro-Tem Rentschler said the truth is he has a '67 Chevrolet Impala that he's had for 30 years and it still doesn't run, but he might get to it one of these days.

Commissioner Straface commented the motion was to table this to give Staff a chance to look at it based on the testimony heard tonight and our feelings, and come back with a revised ordinance. Is that correct?

Mayor Galea said no, the motion and the second is in addition to tabling this item until it can be improved, is to also remove the all private property rights section from the ordinance, and to also remove the impound lot and mention of city towing.

Mayor Pro-Tem Rentschler remarked he would say the new private property rights since this is an existing ordinance.

Commissioner Straface said he wasn't clear on that when he seconded it, and would like to withdraw his second based on what you just said. Mayor Galea stated Commissioner Straface has withdrawn his second.

Mayor Galea said she had a motion by Mayor Pro-Tem Rentschler to table this item and also remove new private property rights section as well as the impound lot and city towing mentioned in the ordinance. She asked for a second.

**Commissioner Hernandez made a second motion to totally dispose of this ordinance and work with Staff to bring back another ordinance at a future time. Commissioner Turnbull seconded the motion.**

Commissioner Sikes asked for clarification and point of order. She thought we have to do something with the first motion, and Mayor Galea said it died for lack of a second.

Commissioner Sikes said with regard to discussion as far as directing Staff, she had one more comment. She appreciated what Commissioner Hernandez had just said and really did think we all learned a lot, which is essentially what this process is for. Bring an ordinance forward, discuss it, have a public meeting and then discuss it further before we pass it. What we are going to do now is direct Staff to re-write an ordinance, but she wanted Staff to keep in mind when re-writing the ordinance the portion where somebody actually came and spoke to us about the DWI part of it, those who have to get breathalyzer equipment. An analogy was made that we are all probably a couple of steps away from being connected or disconnected from people who may have made a mistake and had a DWI. Now they have to be penalized by paying a price for a breathalyzer. She had another analogy of people connected by one or two steps from someone who died, got maimed or had their life ruined because of somebody who was driving under the influence of alcohol. It doesn't leave me, and she didn't know about anyone else, a lot of room for sympathy. If we want to get people in this room to testify about that, all we have to do is make people aware of the fact that we are attempting to be sympathetic to a \$58 dollar price for a breathalyzer. She was sorry, but couldn't work up a lot of sympathy for that. She hoped Staff would take that into consideration.

Commissioner Straface said what was missing in the discussion he had heard was that we now have ordinances that allow us to cite things that need to be moved, but we don't have a mechanism by which we can accomplish that. That needs to be included in this, and what is not acceptable was we are going to enter into the towing business ourselves and a private lot. There has to be some mechanism by which we can involve citizens and say yes, we've cited, the appropriate time is gone and now we need to have the car removed. That system needs to be included in the ordinance.

City Attorney Thies asked for clarification. The second segment of this ordinance, the DWI forfeiture, when the ordinance is redrafted, is that to be included or not in the redraft of the ordinance? The ordinance is in three sections; the first deals with junk vehicles, abandoned vehicles on public and

private property; the second section deals with DWI forfeitures; and the third section deals with the establishment of impound lots. He is asking for direction when he brings back a redrafted ordinance. Should it include a provision, a section about DWI forfeitures?

Commissioner Baldwin suggested that with the complexity of this actual ordinance, it seems like there is a lot of information on a lot of different things. He suggested splitting it into two ordinances or three separate ordinances.

City Attorney Thies responded the reason it was put all together was because they do tie somewhat. If we start seeking to forfeit vehicles for DWI, we have to have someplace to take them where we are not having to pay storage costs, because if the court would order the return of the vehicle, it goes to a private lot. We would then have to pay that private lot for the storage fees, and that is why this impound lot was included in this ordinance; to avoid that potential cost when vehicles are ordered to be returned. It all ties together. It is conceptual that if we stripped the impound lot provision out, naturally the impound lot doesn't mandate that it be a city-run lot, it just says the city will designate a city impound lot; it could be privately run. We could always strip it out and work out something with the private lot owners where we can deal with the potential fees if the vehicle is ordered to be returned. We can kick that around and bring something back.

Commissioner Hernandez said along with what the City Attorney Thies is saying, could we go into contract with the towing companies with the knowledge that they may not receive payment for storage of that vehicle if the court so deems it. He didn't know if that was possible or how he wanted to do that, but that would take us directly out of competition and give them the option. Whether they get paid or not is going to be up to the court.

Mayor Galea said the city is already doing that with the Police Department when a salvage is needed at an accident site or other site. What the city does is on a rotating basis contact the licensed salvage companies.

Commissioner Hernandez said a second thing was that it sounds like staff is wanting to bring it back in two weeks, and he didn't know if that was the necessary rule for this. He wondered if each commissioner could email them your problems and issues you have with the ordinance, and then let them re-jiggle and fine-tune it and send it back to us.

Commissioner Baldwin said not just our issues with it, but it was his understanding a lot of private owners, too. Their issues need to be taken into consideration as well, and Commissioner Hernandez agreed.

Mayor Galea said as she understands it, we would like to see this come back in about a month's time, that should be enough to work out the challenges with this. She understood it would be best if it was in two places. Section 1 and Section 2 both apply to Section 3, with Section 1 dealing with private property. There wouldn't have to be a dismantler's license and that would be different than salvage. DUI would have a part of salvage in that same ordinance of that section of salvage. She understood it could easily be two ordinances instead of one.

Commissioner Straface believes with the information Staff has, they should come back with what their ideas are how they would solve these issues, and allow them to do their work.

City Manager Stahle didn't want them to expect it in two weeks or even 30 days. We are going to have to take this seriously and try to get it right; maybe give you some options when we bring it back. We'll have a discussion about it before we ever start advertising for an ordinance.

Mayor Galea asked him when he would advertise that this ordinance would be back on the City Commission agenda so members of the public would know about it ahead of time. City Manager Stahle said it would be on the agenda which is published. We won't advertise the ordinance until after you have had the conversation, and we could invite the folks who made comments tonight to that

and make them aware. That's how he would prefer to work it, so that everybody who does have an interest in this is aware of what we are up to.

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

Commissioner Hernandez told the audience he was very good at passing out emails, so if they would send him email addresses he would make sure they get it when this comes out.

**15. Approve the final publication of Ordinance No. 1472 creating new Article 7-05 in the Code of Ordinances concerning Pigeon Nuisance and Abatement. [Roll call vote required] (Stephen Thies, City Attorney)**

Mayor Galea told the commission she had removed this item for further discussion. She commented she agreed that in many places and concentrated areas throughout the City of Alamogordo there may be incidences of a nuisance with pigeons, but she did not see evidence it was a city-wide issue. She did not feel this ordinance was enforceable the way it is written. She did not think those with bird feeders in their yards that had pigeons feeding by chance could be cited. This is the only problem she had with the ordinance, and thought if there was a pigeon nuisance it could be addressed by the commission in an ordinance when there is a complaint. She felt there was an opportunity for trapping.

Mayor Pro-Tem Rentschler said there were people who intentionally feed pigeons and this is where the ordinance is directed. If someone like my neighbors across the alley are feeding sparrows and some of the bird seed falls, we won't go after them because they accidentally fed a pigeon. We all accidentally feed pigeons when we eat at one of the outdoor hamburger joints and drop a french fry. He thought it could be delivered with some common sense and the very reason for this is so you have the opportunity when those people are spotted doing it to go say this is a warning and you will be cited next time we see you doing it. He didn't think it would go a lot further than that, but it would at least get the people who are intentionally doing it by buying pounds of bird feed and scattering it around.

Mayor Galea said she did look for facts and figures and had contacted the Fish and Wildlife Service out of Las Cruces who serve Alamogordo through a contract with Otero County. Otero County opted not to renew that contract so they were not able to provide a report to us in regards to any data showing pigeons as a nuisance city-wide. She could not support it for that reason.

Commissioner Hernandez remarked he understood what she was saying but felt our staff had enough discretion to decide whether birds are being fed from a bird feeder or somebody is feeding pigeons. He noted three places that are very visible where the guys do it at the same time all the time. One is at Aspen and Washington right behind the apartments where a guy feeds the pigeons right there. Right across from the House of Prayer there is a guy who feeds the pigeons right there. Another is Wal Mart where somebody goes and dumps probably three to four loaves of bread to feed the pigeons. Those three right there are totally enforceable and if you live in my neighborhood you understand it is a nuisance.

Mayor Galea said she understood and knew when there are those particular instances that complaints can be filed with Code Enforcement and they can take action, but she didn't think it was a city-wide nuisance.

Commissioner Straface commented that he had voted no when this came around for the first reading. When he looks at 7-05-030 in the ordinance it really does define the unlawful acts, and it exempts out bird feeders, etc. He would support it now with the understanding of what is in the ordinance, and it really is directed to those people intentionally feeding pigeons and causing that nuisance. It gives room for our staff to be able to make those judgments.

**Commissioner Hernandez moved to approve the final publication of Ordinance No. 1472 creating new Article 7-05 in the Code of Ordinances concerning Pigeon Nuisance and**

**Abatement.** Mayor Pro-Tem Rentschler seconded the motion. Roll Call vote was taken. Motion carried with a vote of 7-0-0.

Mayor Galea recessed the meeting at 8:30 and reconvened at 8:45 p.m.

### **PUBLIC HEARINGS**

19. **Public Hearing, consider, and act upon, Application No. 911558 to grant a transfer of Ownership and Location for Liquor License #0283 from Meridian Investments, LLC to Allsup's Convenience Stores, Inc. d/b/a Allsup's Store No. 95, located at 822 N. Scenic Dr., Alamogordo, NM. (Renee Cantin, City Clerk)**

City Clerk Cantin told the commission this item was a transfer of a current liquor license that is already in the city. The owner is Meridian Investments which was formally Shooters and was recently annexed into the property further down on Scenic by Plateau Espresso. What she had failed to include and found out since the agenda had been posted was that they will also need a waiver. She pointed out on the map where the Allsup's was in relation to the Church of the Nazarene; it was barely within the 300 foot radius of a church. We did have that issue before and so she contacted the pastor yesterday and he was in no means opposed to this license because it is package sales and not a bar setting. We do have that approval, but the pastor did not have time to attend this evening. He asked I relay that information to you. This is just a general transfer.

Mayor Pro-Tem Rentschler asked the Clerk about the church again. She said the Church of the Nazarene pastor was not opposed to approval. They are in favor of this license and are not worried about it because it is not a bar setting, but instead package sales.

Commissioner Straface asked her if the pastor had provided this to her in writing and she said he has not. Commissioner Straface thought she needed to have that, and City Clerk Cantin said the pastor had some meetings to attend and could not do it at that time. Commissioner Straface remarked that down the road somebody will come and say you made an exception if you don't have it in writing. He felt the faintest ink was better than the best memory.

Commissioner Hernandez was concerned that the current pastor was saying he didn't have a problem with it, and there are several congregations that will change pastors. This one may not, but the next one may. Also, he guessed they incurred the cost of having the survey done through Alamotero Land Service; it doesn't say who provided this but he guessed the church did. It was a cost to them to do this and show it was within 300 feet. It is in our package and doesn't say who provided it, but he guessed the church did. City Clerk Cantin told him the applicant provides that with their application to Alcohol and Gaming.

Commissioner Hernandez said the other problem he had was with the application. The first one they put in said 353 feet and was crossed out and said 300 feet. The actual survey shows less than 300 feet. That circle goes into the property by 50 to 60 feet so that would make it 240 feet to the actual church property. The property is probably a lot less than that. He couldn't support this because of that, only because today's pastor is ok with it but tomorrow's pastor may have a serious problem with it and then we would have a problem.

Commissioner Turnbull agreed with Commissioner Hernandez.

Mayor Galea invited Allsup's representatives or any of the public to comment. There were no comments made.

Mayor Pro-Tem Rentschler commented he would like to see something in writing from the church on church letterhead, than he could support it. As we saw at the last liquor license application we had here, as soon as the church was readily aware of it, two churches showed up to oppose it. He thought we probably don't want to set this precedence by doing it based upon second hand

information. We would rather they be here in person to be on the record, and/or short of that have something in writing from the church so that when the second pastor does come down the road they can come back to us and say you guys said it was ok.

Commissioner Hernandez said short of violating the Open Meetings Act and asking them to do that, because we don't know what the consensus of the commission is at this time, he moved we do not approve this, take a vote, and if the consensus of the commission is to approve it then come back with a letter.

**Commissioner Hernandez moved to deny Application No. 911558 to grant a transfer of Ownership and Location for Liquor License #0283 from Meridian Investments, LLC to Allsup's Convenience Stores, Inc. d/b/a Allsup's Store No. 95, located at 822 N. Scenic Dr., Alamogordo, NM, based on the 300 foot rule. Commissioner Straface seconded the motion.**

Mayor Galea said she agreed with Mayor Pro-Tem Rentschler and other commissioners that have stated we would like to see it in writing. She did believe everything the city clerk had told them, but felt Commissioner Straface was right to protect the city's interests far into the future when there is a turnover with staff within that congregation. It is important to have something in writing to the city indicating that, so there would not be any challenges in the future in regards to the city's interests and liability.

City Clerk Cantin said she did request that but the pastor was out of town and not able to even email anything to her.

Mayor Galea asked if there would be an amendment to table this item until there is written correspondence.

Commissioner Hernandez said the only reason he suggested that was because if we table it and there are still four commissioners who do not approve of it, than we are wasting the time of the Staff, Allsup's and the church's time. If there are three people who vote to not approve it, then it dies. Then staff kind of knows where it is and we'll let them bring it back to us. He said that was his reasoning for it.

Mayor Galea said she could not support the motion because she would like to see this come back to the commission in lieu of the written statement from the church that they would support package liquor sales and the transfer of this liquor license, as the city clerk says, and the mayor stated she has great integrity and would not tell us anything false. The mayor thought there was an opportunity for a win-win where the church is in a closer proximity than 300 feet and for the Allsup's to transfer the liquor license.

Commissioner Hernandez said as long as they don't have false hope that it will pass, because he couldn't read the commission at this time and did not know if they have the support to pass it with or without that letter.

Commissioner Baldwin said he would like to wait and see, and was not for voting for or against it; we simply need to have that information in front of us and that letter is pretty key.

Mayor Galea said the motion is to not approve it and it would not come back to us in the future, with or without a letter.

Commissioner Straface asked if you voted no, it would mean you are not approving that motion. Mayor Galea said it means you are not approving which means it will not come back to us for a future vote with or without a letter of approval from the church. The motion was to not grant the transfer of ownership of the liquor license. Commissioner Straface said to vote yes would mean it does not come back. Mayor Galea said yes. Commissioner Straface said to vote no to that amendment says we'll wait to see it in writing.

Mayor Pro-Tem Rentschler asked if we would then go on to table it, and the mayor affirmed.

Commissioner Sikes reminded everyone the Church of the Nazarene at that location used to be a bar and restaurant. City Clerk Cantin said that had been brought up to her, also.

Mayor Galea clarified the motion stated by Commissioner Hernandez and seconded by Commissioner Straface to not approve the transfer of liquor license, to vote no would bring the item back under a tabled motion and a vote of yes to not grant the transfer of ownership would not bring the item back; it would kill the item indefinitely.

City Manager Stahle clarified voting yes will deny the application, voting no leaves open for you to make another motion to table it for two weeks. Mayor Galea said yes.

**Roll Call vote was taken. Motion was denied with a vote of 2-5-0. Commissioner Baldwin, Commissioner Sikes, Commissioner Straface, Mayor Pro-Tem Rentschler and Mayor Galea voted nay.**

**Mayor Pro-Tem Rentschler moved to table this item for two weeks in order to obtain a letter in writing from the church. Commissioner Baldwin seconded the motion. Motion carried with a vote of 5-2-0. Commissioner Hernandez and Commissioner Turnbull voted nay.**

Commissioner Baldwin said Commissioner Hernandez brought up the fact the actual property and the structure of the church were two different things. He asked how that could happen because if it is the property it should be the parking lot. It is a little misleading because it looks like it is 25 feet across the street, and that makes a big difference.

Commissioner Hernandez said it is a property and they had the same issue on Cuba and Indian Wells when they wanted to put the liquor license there, because the church is way over there but their property is all the way to the corner. They go off the property lines because the church at any time could expand into that area. It would impede on them which he didn't think was fair, but is how it is written.

Commissioner Baldwin would like in the future to see however this process is followed, that it not be so misleading. The picture looks one way but the property, realistically, is right across the street and that makes a big difference.

## **UNFINISHED BUSINESS**

- 20. Consider, and act upon, the award of Public Works Bid No. 2014-013 related to Indian Wells Road and Pecan Drive/Washington Avenue Right Turn Lanes. (Brian Cesar, Public Works Director)**

Public Works Director Cesar told the commission that at the last meeting they had asked for additional information on the possibility of utilizing city staff to complete this project which was bid out by the Engineering Department; that is provided at the end of this agenda report. There were a number of items the commission asked for further clarification. One was what projects we are currently working on and what projects do we have scheduled in the relatively near future. In the agenda report, we are completing the walking trail from Tenth St. to Indian Wells along the Washington Ditch. Along with the Pontiac utility line replacement, ADA improvement and repaving project, we do have a number of pending projects such as the construction of the warehouse addition at the Central Receiving Warehouse area along with the La Luz and Fresnal Springs area rehabilitation. When Public Works looked at this project, and he pointed out the drawing sheet from the project which he wasn't sure the commission had seen, there are a number of areas that when we do contract out a project, we don't have city staff that can perform the services such as the surveying and staking. When we bid out a project that is up to the contractor to do, we do not have anyone on staff who can provide that service for us so we have to contract it out. The testing – normally we have

the contractor pay for the cylinder testing for the concrete and the density testing we don't have ability in-house to do that portion. In looking at this project and the new turning radii, we can go out and purchase the forms to do the forming ourselves, but in this case in our opinion, it will be more cost effective if we contract out just that portion of the contract. Those costs are broken down in your agenda report; \$3,000 for the survey and staking, \$15,000 for the concrete forming and placement, \$2,000 for testing, and we've estimated material costs based on the quantities in the bid package at \$39,000. The total estimated cost for this project if we do it partially in-house, with the exception of the three areas he just mentioned, would be approximately \$59,000. The commission also asked for time for completion of the project and we are looking at about 120 days to complete that. With the projects we are working on currently, the walking trail and Pontiac, and we request to finish off these projects, that would bump his date out one and a half weeks with the recent issues of flooding and clean up. By the time the agenda report was done, we were looking at a start date of October 20<sup>th</sup> and a completion date of March 1<sup>st</sup>.

Mayor Pro-Tem Rentschler said you aren't saying this will stop these other projects you are doing currently. Public Works Director Cesar said we would like to complete the walking trail which will obviously take people I would normally use to do the demolition and the hot-mix type of work, along with the Pontiac project which is very near completion. Both those projects are projected to be completed by October 20<sup>th</sup>. Those projects should be wrapped up and we wouldn't start the warehouse addition or the springs rehab; we would go right into this work, do the demolition and turn the contractor loose to do the concrete forming and placement. During that time I would probably shift some of my forces off to start the other projects and then bring them back in once the concrete was formed and placed and then do the turn lane, the paving.

Commissioner Straface said that's the reason why your dates say it will take about four months to complete this because you will be pulling people off of other projects. Public Works Director Cesar said yes, and we did build in time for things like the flooding we had. There will be things that come up and I'll have to pull resources off for; we could have a series of water breaks on White Sands. People he would have doing this type of work would have to be pulled off to take care of those emergency issues.

Commissioner Straface said if you didn't have them it would be completed before March 1<sup>st</sup>, and Public Works Director Cesar told him that was correct.

Mayor Galea said if this were approved it would be a partially contracted project. How will you contract that out; it's under procurement code, \$20,000 total for what you will contract out. How do you award that?

Public Works Director Cesar said for each of these, right now we have an on-call services contract for the testing portion with Terra-Con. Surveying and staking at \$3,000, we would obtain three quotes and for the concrete forming and placement since it is under that threshold, and we could do the same thing of going out on quote.

Mayor Galea said she would like to see this money put to different use, such as having pot holes filled instead of newly constructed intersections being reconstructed to increase the turning radius. She felt that would be a better use of the tax payer's dollars to fill the numerous pot holes throughout the city.

**Mayor Pro-Tem Rentschler moved to allow Public Works to proceed as outlined here. Commissioner Hernandez seconded the motion.**

Commissioner Turnbull asked if there was a way to table it and bring it back later just because of the cost. Mayor Galea said if you proposed an amendment we would have to vote on the amendment. Mayor Galea said she understood this would be the lowest cost to do it in-house, partially funded and contracted, so she didn't know if tabling for cost would make any improvement in the cost of the project.

**Motion carried with a vote of 6-1-0. Mayor Galea voted nay.**

### **NEW BUSINESS**

- 21. Consider, and act upon a request by Darryl & Josephine Gallent for an abatement of a utility bill for 300 24th Street.** (*LeeAnn Nichols, Finance Director and Nichole Sierra, Utility Billing Supervisor*)

Mr. & Mrs. Gallent came forward to address the commission. Mr. Gallent said they were requesting abatement for the bill they received recently for an unpaid water bill at the property address of 300 24<sup>th</sup> St. here in Alamogordo. The water bill was not in our name, we did not request the water service, we sold the property prior to the water service being turned on at that location, the water was turned on by the buyer of the property and she ran up a high water bill of almost \$1,400. That incurred during the time she owned the property. We sold it to her under an installment sale, what is called a real estate contract, a real estate installment sale. She was making payments for a period of time and during that time she ran up the water bill and did not pay the City. She ended up defaulting on the contract to us so we had to take legal means to take possession of the property. We took possession of the property after the water bill had been incurred and run up to a high amount of almost \$1,400. We took legal possession of the property back and that was almost a year ago in August of 2013, and had no idea there was an issue with the water. We took possession back and had to do some work to the house because it was kind of trashed. Since that time we have been renting out the home and recently we got a certified letter from the City stating we are responsible for the water bill that was incurred by the previous owner, the lady we sold the house to. His position is we don't feel it is fair to us to have to pay a water bill incurred by a previous owner or a property that we had nothing to do with. We were not the owner of the property and simply renting it to this lady, she was not our tenant. She legally bought the house from us and we had a closing at Pioneer Title here in town. He had the closing documents with him proving he had sold the property to her. He was trying to find out why the City is trying to make us responsible for this bill.

Mayor Galea asked the city attorney to redirect this. She noticed Carolyn Fallon was noticed on the claim to Darryl and Josephine Gallent and was pointed out to be the tenant, but she was the owner and held a title until July 29<sup>th</sup>, and the Gallents did not take ownership until the month prior. Why would the Gallents be charged for fees they did not accrue?

City Attorney Thies told her this particular matter was similar to mortgage foreclosures. A lot of times the person who is in foreclosure proceedings will not pay their last months or last couple of months utility bills, and then they will vacate the property. The standard process is to send whoever is named on the account a letter advising them of the unpaid charges from where they used to reside, and ask them to make payments. After a number of months, if we are unable to get payments from that individual we will then start the process of filing a lien. Sometimes, when we file the lien, the mortgage company may have already taken possession, other times it is in the process of taking possession. None the less, we will file the lien and the mortgage company will then be liable. We have to collect unpaid utility accounts against the person who used the services or against the actual property. As soon as you turn on your tap and begin running water through your tap the lien actually arises at that point in time and then if the utility charges go unpaid when we file the lien, it has the same status as unpaid property taxes where you try to cover the unpaid utility charges. An installment contract is similar to a mortgage where the mortgage company ends up having to pay it.

Mayor Galea thanked him for the explanation and asked City Attorney Thies if a city policy can legally be implemented so the city will not file a lien on the property, but instead pursue collections from the person who incurred the charges.

City Attorney Thies said if you elected not to pursue your lien remedies, unless the user of the services was actually residing on the property, then you would adopt a policy and Staff would no longer pursue their lien revenue.

It was discussed whether Item 22 could be included in this discussion, and it was decided not to.

Mayor Pro-Tem Rentschler said to Mr. Gallent it was his understanding they sold this property by real estate contract. Mr. Gallent said that was correct and they had sold it in 2011, and the lady they sold it to was in the property for almost two and a half years. In July 2013, she defaulted on the contract to him. She was making her installment payments to Pioneer Title and Escrow and they had all the original documents held in escrow at Pioneer. This wasn't some kind of a shady, kitchen table type of closing, it was legally done and the proper documents recorded. She was making payments for over two years to that escrow company and then defaulted again in the summer of 2013. He simply took legal possession on the company back and he had no knowledge of any issues with the city concerning water bills. He had never been notified by anyone until about a month ago when he was notified by the city that he was responsible for this bill. He and his wife have been living in Alamogordo for about 17 years and have had some rental properties over the years, so he understood that if a tenant runs up a water bill in a property he owns, he could ultimately be responsible for that. He remarked they had paid several thousand dollars to the city over the years in water bills incurred by our tenants as well as lost rent from the tenants. He has never complained or objected about that, or asked for abatement. He paid them because he was the property owner with certain responsibilities, but the letter he received from the city used the word tenant in reference to the lady he sold the property to. It says she was a tenant of his and as the property owner he is responsible for the tenant's actions, the bill. He called the city Water Billing Department and explained she was not his tenant and thought this was a simple misunderstanding. He explained he was not the landlord, he wasn't renting the property, this was not a lease-option or lease-purchase agreement, and that he legally sold the property to her in 2011. He thought this would be a simple matter of showing proof he had sold the property and the city would abate the bill, but the city has taken the position that I am responsible regardless of whether I own the property or not. He wanted all the commissioners to think about that if he and his wife were going to be held responsible for a bill incurred by a previous property owner.....

Mayor Pro-Tem Rentschler told him the utility bill followed the property, whether he owned it or she owned it. When this property transfers, the bill would transfer with it. The fact is you received payments on this property and then took the house back at full value. Again, the utility bill will follow the property and so we will put a lien against the property. The end result of that is we have to foreclose on it within a certain amount of time.

Mr. Gallent gave Mayor Pro-Tem Rentschler the hypothetical example that he buys a property and you have a closing at a title company here in town. You buy it with the understanding there are no liens on the property, and Mayor Pro-Tem Rentschler interrupted to say this has come to us before exactly like this. Mr. Gallent continued to say then the city sends you notice a couple of years later saying there is a lien. Mayor Pro-Tem Rentschler repeated what he had just said.

Mr. Gallent asked the legal authority that gave the city the right to do that. He knew they were saying the city has done this, but his question was does the city have the legal authority to do that. He didn't see anything in the law that gives the city that legal authority. He gave some legal opinions, one of which was the State Attorney General saying whether the city has the right to place a lien on a property for none payment of a bill. The New Mexico State Attorney General said a municipality does not have the right to do that. Obviously, that was his opinion. The only information Mr. Gallent had received from the City of Alamogordo stating what gives them the legal authority to place this lien is they quoted NM Statute 3-23-6. If you read it, it is not very clear the city has the right to do that. It says, "Any charge imposed by ordinance for service rendered by a municipal utility shall be payable by the owner personally at the time the charges accrued and becomes due." Mr. Gallent reiterated he was not the owner at the time the charge was accrued and the time the bill became due. Had he been the owner and she had been his tenant, he would not be here tonight. It goes on to say that in a case of an individual vs. City of Las Cruces, one of the justices said, "The ordinary and usual meaning attributable to the words 'payable by owner' is not such that they may be expanded to include subsequent owners." Mr. Gallent says case law says if it is going to be payable by the owner, you can't make that attributable to subsequent owners, and I was a subsequent owner.

Mayor Galea thanked him for researching the case law and in the future she would like for the commission to review the policy so that the bill does not follow the property, but follows the person who incurred the bill.

**Mayor Galea moved to provide abatement to the title owner at 300 24<sup>th</sup> St., Darryl and Josephine Gallent, and provide direction to staff to pursue collections through formal process from Carolyn Fallon who incurred the charges. Commissioner Turnbull seconded the motion.**

Commissioner Hernandez said so at this time we are giving the water away until we can find this other person? Mayor Galea said we aren't giving the water away. Ms. Carolyn Fallon, from 12/2011 to 07/2013, incurred these charges and the mayor's motion includes a formal process for the city staff to pursue collections from her, not the property owner.

Commissioner Hernandez asked how the water was turned on, as an owner or as a tenant. That is very important. The second thing was that the current owner, Mr. Gallent has said he has always remained the property owner. Until the property is paid off, he owns that property. Mr. Gallent said that with all due respect, that is incorrect.

Mayor Galea understood Carolyn Fallon had title to the property, and Commissioner Straface asked if that was true.

Mr. Gallent said he had paperwork that completely disputes what Commissioner Hernandez had said. There is a recent case before the NM Appellate Courts: State of NM vs. Wyatt Earp, and many people here probably know that name because he is a resident of Alamogordo. He was criminally charged because he was buying a property on a real estate contract, an installment sale, and he defaulted on that contract to the seller. After he defaulted and after the seller started to take back possession of the property, Wyatt Earp took some property out of the house. He removed some belongings and was criminally charged for stealing property he didn't own. A lower court ruled he was criminally responsible, and it went before NM Appellate Court and was recently ruled on. It overturned the lower court saying Wyatt Earp was the property owner and, to quote from the ruling, "It has long been established by NM courts that under a real estate contract, a purchaser acquires an equitable interest in the property and is treated as the owner of the land. The State Property Tax Code defines an owner as the holder of any title. The purchaser under a real estate contract is an owner under the Code." The Appellate Court ruled Wyatt Earp was the owner, and as the owner he could not be criminally charged. The State Court of Appeals has said someone buying a property under a real estate contract is an owner of the property. They have what is called an equitable ownership in the property, but that is considered the owner of the real property, and the seller has legal title; basically a personal property interest and are receiving payments, but not the owner of the property.

Mrs. Gallent added if you sell a property in a real estate contract the buyer is now the owner of record with the city, and they pay the taxes. Mr. Gallent said if someone buying a property under a real estate contract is not considered the owner, why are they responsible for paying property taxes?

Commissioner Hernandez isn't saying they are not the owner, he is saying you are still the owner; you are still partially the owner. Mr. Gallent reiterated if he is the owner, why is the county sending the tax bill to the buyer? The county lists them as the owner of record and holds them responsible for the property taxes. Commissioner Hernandez said he never said they are not the owner, he is saying you are still the owner. Mr. Gallent asked if he was saying they are both the owner?

Mayor Galea wanted to provide clarity so everyone understands. Mr. Gallent was not the owner at the time Ms. Carolyn Fallon incurred the charges between December 1, 2011 and July 29, 2013. The Gallents were not the owners and now they are.

Mr. Gallent said Ms. Fallon requested water in her name, he didn't. He simply sold her a property and didn't care if she had water or not. She came to the city and requested water which the city granted, and she ran up a \$1,400 water bill. Mr. Gallent then asked why the city allowed her to run up such a

high bill before terminating the service. It could have been a leak, he didn't know the circumstances. She ran up a \$1,400 water bill while she owned the property, and once he took it back he received a bill a year later from the city that included a \$200 administrative fee because a lien had been placed on the property. He talked to the city attorney who told him he was not actually being held responsible for this debt; the city is simply placing a lien on the property since the bill was not paid. The bottom line is, if I do not pay that bill and a lien is placed on that property, if he ever goes to sell it he will have to satisfy that lien which will be higher because of interest accrued during that time. His choice is to either pay the bill or have a lien placed on the property. He didn't feel that was fair. What if you sold a car to someone and they then wrecked it. Will it be fair for them to hold you responsible for that wreck? It is the same thing, the city is holding me responsible for something I didn't have anything to do with. There is a time when people need to be held responsible for their own actions. I've always paid my own bills and in 17 years have never missed a water bill.

Commissioner Straface said right now the situation is this gentleman carried the loan on the property. Would the same thing be true if a bank carried the paper and the person defaulted? City Attorney Thies said yes.

Commissioner Hernandez asked if that was our current ordinance and policies and the city attorney said yes. Commissioner Hernandez said by voting to go different would be going against our current policies and ordinance.

Mayor Galea asked if our current ordinance and policies had statutory authority within the State. City Attorney Thies said yes; it is State Statute 3-23-6. It allows us to go after the owner of the property and at the same time put a lien on the property. The lien is independent of who may own the property at the time the lien is placed.

Mayor Galea said it also talks about it is payable by owner at the time charges were accrued. Why do we go after the owner after charges are accrued? City Attorney Thies said it is because of the fact a lien attaches the minute the water is consumed on a property. The case Mr. Gallent referenced stands for the proposition that we cannot withhold service from whoever happens to own the property. If that is the person who did not consume the water it goes on to say our remedy is to pursue under this particular State Statute.

Commissioner Baldwin said I think what we are tip-toeing around here is setting precedence. It is obvious we have had situations in the past when the same situation has come to us. The precedence is if we abate this we may be setting precedence for the title holders and the banks that have this happen. He saw it as an unusual situation and stated he was on Mr. Gallent's side on this. He asked Staff how often a lien is attached on a default of a mortgage that a bank actually pays off. How often does it happen in a calendar year?

City Attorney Thies wasn't sure but guessed six to twelve times in the last year on mortgage foreclosures. He can get those numbers if the commission desires. City Clerk Cantin remarked that since she signs off on the liens, she agreed with the numbers City Attorney Thies stated.

Commissioner Baldwin said even though this is a different set of circumstances as far as him selling the property and it coming back to him, this does happen on a regular basis, so we are opening up the door to deal with all the mortgage companies and banks that hold title with a lien attached to it for something very similar to this. Another property owner had it, ran the bill up, lien was placed, and now they are taking it back and have to satisfy the lien before they can sell the property. City Attorney Thies said that is correct. The mortgage companies routinely contact us to determine if there are any outstanding liens.

Commissioner Baldwin said he guessed the mayor made a request that we review this, and he thought it was something we should review. If the lien is a substantial amount we can't ignore it, but if the liens are in the \$500 to \$600 or \$2,000 to \$3,000 range a year, we should take a look at it. It seems like it is punishing people or businesses that shouldn't be punished.

Mayor Galea said in her mind it looked like the property owners who come after the charges are accrued are punishable by the saying 'low hanging fruit'. She asked the city attorney if it was more challenging to go after the person who accrued the charges after they have left the city to go through that formal process of collections.

The city attorney told her sometimes that is correct. It is easier to go after whoever currently owns the property than to go after the person who incurred the charges. The first step is to always go after the person who used the water service.

Mr. Gallent responded to the question Commissioner Baldwin asked him concerning the liens. Mr. Gallent didn't believe the roughly twelve times a year they sited, that liens are satisfied when a property is foreclosed on and a bank takes possession. They are saying liens are paid off roughly twelve times a year, and the city clerk responded it was six to twelve. Mr. Gallent asked City Clerk Cantin if the liens were already placed on the property at the time the bank took possession, or were they placed on the property after the bank took possession and had already paid anything off.

City Attorney Thies said he would answer that. It varies; sometimes the lien is placed on the property after the bank has acquired possession of the property through the legal processes and other times it is placed on the property prior to the bank acquiring legal title. Foreclosure processes can drag on for quite some time and liens can be filed either before or after.

Mr. Gallent asked for a response from the city clerk concerning those twelve or so cases she had sited. On those cases, how many would you say the liens were placed before the bank took legal possession of the property? What he is saying is the bank went ahead and paid those liens, but how many times did they do so before they took possession of the property. City Clerk Cantin said she didn't have that information, but could research it. Mr. Gallent asked if she might have an educated guess and she said she did not. Mayor Galea said the staff did not have time to research that information.

Mr. Gallent said the reason he asked that was because it is a big difference if a lien is placed on a property before the bank takes possession. If the city had placed a lien on the property before he took possession of it, he would have paid the lien because he wouldn't have had a choice. His point was if the lien is placed after possession of the property is taken back, that is a totally different circumstance. He was curious how many times the city has gone after a bank after the bank has taken possession and paid any liens they were aware of, listed it with a real estate agent for sale, and then the next thing they know they get a certified letter that they still have to pay an unpaid water bill. He had never heard of that happening and would like some proof of it. If this commission is going to rule on this, that is very important. That is the situation he was in; there were no liens on the property for him to satisfy. The city waited a year before notifying him and if they want to wait a year before they notify a bank, he was shocked at how business was conducted. He wanted to know how many cases were like that out of those twelve. What if it happened only one time out of those twelve? Then we don't have a precedence that it happened twelve times in a year.

Mayor Galea felt his question was valid and she supported her original motion, and would be ok with setting this kind of precedence. To ask him to pay a year later what this person had incurred was bad business.

Mr. Gallent said if the city is going to hold him responsible for this debt, somebody else's water bill and establish a precedent, then everyone in Alamogordo who purchases a home over the next year or two and moves into it could be subject two or three years later to getting a \$1,400 bill from a previous owner. If that's going to happen, then people are going to be scared to buy a home.

**Mayor Galea restated the motion to provide abatement to the title owner at 300 24<sup>th</sup> St., Darryl and Josephine Gallent, and provide direction to staff to pursue collections through formal process from Carolyn Fallon who incurred the charges.**

Mayor Pro-Tem Rentschler remarked it was a very messy motion; the 'and' did not need to be there. Mayor Galea said the staff had asked for direction. Mayor Pro-Tem Rentschler said it was a messy motion and he could not support it like that.

**Motion carried with a vote of 4-3-0. Commissioner Hernandez, Commissioner Straface, and Mayor Pro-Tem Rentschler voted nay.**

**22. Consider, and act upon a request by Darryl & Josephine Gallent for an abatement of a utility bill for 1601 Memory Lane. (LeeAnn Nichols, Finance Director and Nichole Sierra, Utility Billing Supervisor)**

Mr. Gallent told the commission he had been long winded on the last item because he felt it was unfair, and he thanked the commission for passing the abatement on the previous request. He went on to say on this one he wasn't really complaining. He had thrown it in with the other request. On this one, he was the property owner at 1601 Memory Lane. He had a tenant in 2009-2011 who had water service. That tenant ran up a \$365 bill that was left unpaid, and Mr. Gallent had recently received a letter from the city saying he was responsible for this bill. He said he is willing to pay this bill because he is the property owner. He requested since the bill was such a long time ago (2010-2011, three to four years ago), he didn't even remember the tenant's name. The city said he ran up a bill and Mr. Gallent is responsible for it. He understood he was responsible, but since it was three to four years ago, he felt the fair thing to do was to pay only half of it and let the city incur the other half, but if the city wants him to pay the whole thing, he will. He was willing to do whatever the city thought fair.

Mayor Galea told him that in the future, when there is turnover with tenants, all property owners have the opportunity to contact the Utility Billing Department in order to find out what bills are outstanding before they dismiss the tenant. He said he would remember that for the future.

Commissioner Hernandez had a question for the city attorney. When we have home owners who rent property and the renter moves out without paying the water bill, is the owner of the property responsible for that? City Attorney Thies said yes, unless the owner of the property files a form with the city advising us that prior to the tenant moving in to the property, the tenant will be responsible and the owner will not.

Commissioner Hernandez said we tag them by charging their renter a higher deposit fee, and the city attorney said that is correct in order to offset the potential we won't collect the money. It is a higher deposit. Commissioner Hernandez said in turn that can make it tougher for them to rent their properties, and the city attorney said he was not in the rental business so not in the position to answer that question.

Mr. Gallent asked them to look into why the water department is allowing these bills to run up so large. In other words, this bill is \$365 and that is obviously over and above whatever deposit the tenant paid. He was sure the tenant paid at least \$200 at the time he requested water service. So, he used up that deposit and on top of that incurred an additional \$365 bill. Mr. Gallent thought the total bill was in the neighborhood of \$560 to \$570, and he asked why the city allowed someone to run up such a large bill before terminating service. He looked at it as the city saying they don't have to worry about running up such a large bill because they can get the property owner to pay it or a lien will be filed. He thought that unfair. He thought the City should be more prudent and not allow these water bills to run up so high. If it was a \$50, \$75, or \$100 water bill, he didn't think too many property owners would complain. He has had water bills incurred by his tenants that were \$500, \$600 and \$700 in the past. He would like the City to try and better monitor the water and if it runs past the deposit amount, it should be terminated.

Mayor Galea asked the Utility Billing Supervisor Nichole Sierra or any other appropriate staff member to answer why bills are allowed to run up beyond a certain point, and why it takes so long to notify the owner many years after the fact.

**Mayor Pro-Tem Rentschler moved to deny the request. Commissioner Hernandez seconded the motion.**

Mayor Galea still wanted the staff to answer her question. City Manager Stahle said he did not have the answer, but different property owners have different water bills. The city manager had no idea how much one property owner may incur in terms of water expense on a monthly basis; some water the heck out of everything and their bills may be well above their deposit amounts. He did not have the answer to that.

Mayor Galea asked the city manager if he had the answer to when the service date ended in June 2011, why it took almost three years for the city to notify him of the outstanding balance.

City Manager Stahle said he did not have that but would be checking into it, because it interested him greatly.

**Motion carried with a vote of 4-3-0. Commissioner Sikes, Commissioner Baldwin, and Commissioner Turnbull voted nay.**

**23. Consider, and act upon, a request to approve to pay a \$750 One-Time Longevity payment to current Non Represented Regular Full Time Employees, and a \$750 prorated One Time Longevity payment to Non-Represented Regular Part-Time employees; with a hire date no later than July 1, 2013, as approved during FY 2015 Budget Hearings. (Katie Josselyn, Human Resources Manager)**

HR Manager Josselyn told the commission that during the budget hearings the commission appropriated funds to give regular status employees a one time \$750 payment. She was requesting an official approval to make that payment to the non-represented employees and to define the criteria that will be followed to make that payment. The APSOA union had their agreement on the consent agenda tonight and their payment will be managed in the same manner we have described for the non-represented employees. We are in hopes to get an agreement with the AFSCME union soon so those well-deserving employees can get this payment as well. She had come up with an approximate amount after applying the one year service year requirement you instructed us to impose on the criteria. With that criteria considered we can do this for all three groups of employees within the amount you appropriated in budget.

Commissioner Turnbull asked to clarify that there was no conflict of interest, because she has a relative working for the city and has been told as long as they did not benefit monetarily she could vote; she would benefit monetarily from this. City Attorney Thies told her it would not be a conflict. The motion, assuming it is approved, would not be directed to one individual; it would be a class of employees. You are not going to benefit by your actions.

Mayor Galea wondered if the commission would like to take more time and table this item to consider other opportunities to pay out the \$750. She had heard it would better serve staff if they received this over a year's time in their paychecks versus one lump sum. She understood the reason this was passed was to make staff whole; the additional insurance costs through the Affordable Care Act (ACA). She understood when you receive a \$750 lump sum payment and you are making \$8 to \$9 per hour, the lump sum payment doesn't stay with you throughout the year as it was intended to do in order to offset the additional cost in every single paycheck. Would the commission like to consider a better way to pay this out?

Commissioner Hernandez thought what staff is asking us to do is release this \$750. The staff would work with and distribute it as they feel it was needed. All we are doing is release it.

City Manager Stahle said spreading it out over time will cost more to the city, but a lump sum check is quick and simple and gets it in the pockets of the employees faster in case they want to invest it and

get whatever interest they can. Right now it's not much, but they can keep it themselves. He was also concerned on how we are going to handle the APSOA contract since it was already approved. It was his understanding that was to be paid out all at once. The suggestion made him a little uncomfortable.

**Mayor Pro-Tem Rentschler moved to approve to pay a \$750 One-Time Longevity payment to current Non Represented Regular Full Time Employees, and a \$750 pro-rated One Time Longevity payment to Non-Represented Regular Part-Time employees; with a hire date no later than July 1, 2013, as approved during FY 2015 Budget Hearings. Commissioner Straface seconded the motion. Motion carried with a vote of 7-0-0.**

- 24. Consider, and act upon, the first publication of Ordinance No. 1474 adopting the 2013 amendments to the Uniform Traffic Ordinance with certain amendments thereto.**  
*(Stephen Thies, City Attorney)*

City Attorney Thies explained to the commission that routinely the NM State Legislature will make amendments to the Uniform Traffic Code. Because we have a Municipal Court, we enact those provisions into our local traffic ordinances which come before you on an annual basis. Most of the time it is rather routine, and because it is an amendment for first time it comes on the regular agenda and when it comes back for passage is put on the Consent agenda. This particular year he wanted to point out one of the provisions of the Uniform Traffic Code given some of the recent issues we had regarding texting and driving. State Statute of the Uniform Traffic Code amended a provision to make it unlawful for someone to text and drive a motor vehicle. The ordinance presented to you would incorporate that into our local traffic ordinances. Even if you opted not to include that in our local traffic ordinances, it would still be on the books and the police could still enforce it, but instead of going to Municipal Court it would go to Magistrate Court. There is no way for us to get around it, it is simply where it will go if they do cite an individual.

**Mayor Pro-Tem Rentschler moved to approve first publication of Ordinance No. 1474 adopting the 2013 amendments to the Uniform Traffic Ordinance with certain amendments thereto. Commissioner Sikes seconded the motion. Motion carried with a vote of 7-0-0.**

- 25. Request for participation in the Extra Mile Day.** *(Susie Galea, Mayor)*

Mayor Galea said she had asked for this to be placed on the agenda because she thought it best if we are all working as a commission on this. She requested their assistance in providing names of people in our community who deserve to be recognized. She gave background information saying there are 444 mayors and city leaders that joined September 1<sup>st</sup> as Extra Mile Day. It is a nationally recognized opportunity to recognize people with a proclamation. If we pass this tonight, she will move forward with the proclamation, but what she wanted to do is make this proclamation at the Cottonwood Festival opening. In order to celebrate Extra Mile Day we will need to as a commission adopt the top 10 or top 20 nominees of those who go the extra mile on the last October agenda meeting. She will recognize them along the commission with a plaque she will personally furnish as she did in 2012, and that will hang in City Hall. The commission will decide which top five nominations will be sharing their story on the national website corresponding with Extra Mile Day. This is important to her as the mayor, because there are people living and working in our city everyday who perform seemingly small acts and services of kindness that go unnoticed and unrecognized because of their modest nature. She was excited about recognizing our unsung heroes because they are who greatly help to transform our city and who continue striving to make us better as a whole.

Commissioner Baldwin said he would.

**Commissioner Baldwin moved to approve supporting the mayor in this process. Commissioner Straface seconded the motion. Motion carried with a vote of 7-0-0.**

Mayor Galea said the Governor will also be at the presentation ceremony.

- 26. Consider, and act upon, selecting a Voting Delegate and Alternate Delegate for the New Mexico Municipal League Annual Conference Business Meeting being held August 26th – 29th, 2014 in Albuquerque, NM. (Renee Cantin, City Clerk)**

The Mayor said she, Commissioner Straface, Commissioner Sikes and Mayor Pro-Tem Rentschler will be attending the NMML Annual Conference.

**Commissioner Sikes moved to approve Mayor Pro-Tem Rentschler as the Voting delegate. Mayor Pro-Tem Rentschler nominated Commissioner Sikes as the Alternate. By consensus the Commission agreed to these nominations.**

- 27. Appointments to Boards & Committees. (Susie Galea, Mayor)**

Mayor Galea announced the Boards and Committees with current vacancies and re-appointed Eldon E. Hoover to the Senior Volunteer Programs Advisory Board.

### **PUBLIC COMMENT**

**A. J. J. Lyons commented on the following:**

Mr. Lyons, AFSCME union president said the commission awarded the \$750 to help with the rising cost of insurance. He wondered why employees with 100% insurance are receiving this.

Mayor Galea understood those with at-will contracts were not receiving this. Mr. Lyons remarked it said unrepresented employees, and at-will employees fall under this. Mayor Galea was corrected by Staff that they will be receiving the money.

Mr. Lyons said this money was allotted for the rising cost of insurance, and if they have 100% insurance, why are they receiving it.

Mayor Galea said to the city manager that when we discussed this item, she was of the understanding those with at-will contracts were not included.

City Manager Stahle said he didn't believe that was the direction we had received, but we can certainly do it that way if that is your direction. One of the reasons stated as to why the \$750 was being offered was, indeed, to offset some of the insurance costs, but it wasn't necessarily the only unless you guys correct me and that's up to you.

Mayor Pro-Tem Rentschler said he would agree with that. He didn't think the offset of the insurance costs was the only reason for this at all.

Mr. Lyons said that was his understanding and he found it very bothersome. He thanked them for their time.

Commissioner Hernandez said on his part it was just a good will gesture as far as commission doing something versus nothing. That was his reason for it.

**B. Eliza Fernandez, Citizen, Employee, and APSOA President commented on the following:**

Ms. Fernandez wanted to bring something back up and wasn't planning on speaking this evening at all. Regarding the abatement of the utility bill addressed earlier, she was concerned this was still an issue in 2014. In April 2009, she came before the commission at that time. She had bought her own home in October 2006, and in March 2009 applied for a lower interest rate on her home. Low and behold, she found a lien on her home placed by the City of Alamogordo. She only found out about this lien on her residence because she was re-financing her home and a title search was done. She

had not received any notice from the city that a lien had been placed on her home; it was a bill incurred by the previous homeowner. If he had an outstanding bill, it should have come out in the title search. It wasn't an issue and the lien was placed on my home 18 months, almost two years after she had purchased the home. In that case, she ended up paying the water bill and the commission only approved waiving the lien fees that were applied. Her concern was that this is an ongoing issue where liens are being placed on homes when a bill was incurred by the previous homeowner. It was not a mortgage and was not foreclosed on. She had the concern that five years later we still have this issue that has not been addressed. The bill was not sent to my house, and the gentleman that was here received a certified letter, but I did not. She had been paying her water bill on a regular basis for that two and a half years, and she wanted to express her concern that Water Billing five years down the line....it is in the minutes of April 2009 that I came before that commission and addressed this specific issue, because I began to work for the City in 2009 and didn't want it to be an issue going to work for my employer. It delayed me being able to refinance my home by about three to four months, and it cost me money in addition to paying a water bill that did not belong to me. Her concern was this has not been addressed in five years and is an ongoing issue. She had pulled up on her phone the ordinance that was cited and didn't necessarily agree with the interpretation given today by the commission. She thought it was still a major issue affecting people. \$1,400 is a very large bill and in her case it was much lower, so to her it was easier to just take care of it and be done with it.

**C. Kurt Blevins commented on the following:**

He asked how far back can you go, how many years can you go, because this gentleman said it was four years. Do you go back 20 or 30 years?

Mayor Galea told him the City has a policy to write off bad debts every four years.

He said ok, that is what he wanted to know; how many years it was allowed to incur before someone gets the information. He thought it was something to be addressed because it was taking years for these people to find out they have these bills.

**D. Sharis Lyons commented on the following:**

Mrs. Lyons remarked she was a resident as well as an employee of the City of Alamogordo. I'm here with the concerns of a harassment that was filed by me, by the customer service, and, ah, asking for emails for harassment. They were applied one day, the next day the system went down. Then there was another harassment complaint filed against the same gentleman, swept under the rug, and all I know the claim has been closed, no further investigation has gone on and he now was suspended for 30 days for water bills that he allowed to occur over multiple years, family and friends, and he's still employed. I find that to be very, very, extremely disturbing on my behalf as a person that is trying to protect myself and to protect other people that work for this gentleman, and he's still employed. And he's still employed due to the fact that having these water bills occur thousands of dollars and all that happened to him was a 30 day suspension? That was it? So, about me or the others that have been, you know, harassed and, by this gentleman. But he is allowed to keep his job and still have, and me still have to deal with having to see him here? I don't find that very fair on my part and I don't find that very fair to the people who have complained about it and also filed their complaints. And this gentleman is only getting suspended for 30 days, for water bills that were unpaid from his families and his friends for two years, and other people have been fired for less, fired for less commitment, for less things they have done to the City, and they got fired like this (snapped her fingers) and this gentleman only gets 30 days. So, by keeping this man here, an employee, gives us the right as other city employees to be able to say, well, you know what, we can do whatever we want, that we're beginning to have that feeling, cause they can't fire us. This gentleman's allowed to do whatever he wants and he's still employed, he only gets 30 days suspension and still keeps his title and still keeps his pay which has been raised. He got, you know, a raise in it; it's been noted that, ah, his position has been approved and got a raise for it, and wasn't, you know, done correctly. So, a gentleman that's allowed to do all these faults is getting ahead in, head in the city, and here I am as an employee doing my job the way I should be doing it only making not close to \$11 an hour, and asking for a raise and can't get it. You know, I want to be a good employee, I want to be able to work for my city and I want to be able to represent my city in a good way. But how can I do that if another gentleman is allowed to be

corrupt and still be allowed to sit in his position and still receive the money that he's receiving. And I just find that very unfair, I don't find that fair at all. I was trying to fight for my rights and my rights keep on getting pushed under the rug and I don't appreciate it. And I would like to have this looked at more deeply and more in depth for not only me, but for the rest these employees that are working for you, that are doing their part and doing their job. And I just want to hope that you take that into consideration. I appreciate your time.

### **CITY MANAGER'S REPORT**

1) City Manager Stahle said on the point just raised, he would look into very carefully the harassment complaint. He was, frankly, unaware you had made one. So, we'll talk.

2) He said the City recently completed an investigation into the irregularities within the Customer Service section of the Finance Department. We hired experts to carefully and thoroughly look into this situation, and there were multiple complaints. Harassment was one of them, as well as taking money that otherwise should have come to the City. The result that we found was that there certainly were some issues associated with that department. The Finance Director has already begun making changes to procedures so it never happens again. We have held staff accountable. I recognize that it's not to everybody's level of satisfaction. This has been an incredibly painful experience for this city, this community, and he wanted to apologize to the community for that. It is awful and we will absolutely try our darndest to do much better.

3) He then said that on August 1<sup>st</sup>, we all experienced a rather significant rain in a short period of time; primarily focused on the watershed that drains into the north end of the city. Many homes, businesses and public facilities were impacted. He was very proud of work done by the staff to address that problem, and he recognized a lot of folks are still cleaning up and still dealing with the problem. As a result, the City will have a Special Meeting of this Commission on the 21<sup>st</sup> of this month from 6:00 pm to 8:00 pm. We will present first the amount spent to date by the City and the Corps of Engineers, which is tens of millions of dollars to address the flooding problems. As most of you know, it started on the south end and is working its way north. We have a number of studies that have been paid for by the city to address the flooding issues on the north end and, frankly, it is a matter of expense and getting the money and doing it. We are focused on getting it done and it is taking a long time. The tens of millions we have already spent have been dealt with over the last ten years so it's not a quick fix. He did want everybody to come to the meeting on the 21<sup>st</sup> to learn about what investments we've already made in flood control, what we plan to make in the future, and to basically voice their opinions and concerns about flooding. So, I would encourage each of you to tell as many people about that meeting as you can.

Commissioner Straface asked where it would be held and the city manager said it would be here in this room. We'll have maps showing the flood planes of the city. Proximity to the mountains, of course, exacerbates the issue because it doesn't take long for water in that watershed to reach the city. It comes in copious quantities, as we learned on August 1<sup>st</sup>.

4) He reminded all that school is back in session and he reminded drivers to be even more careful than usual and to please obey the school zone speed limits. There are a lot of them all over the city so help protect the students.

5) Finally, he hoped everyone could get out and enjoy the 75<sup>th</sup> Annual Otero County Fair. He and his wife, Heather, went to the parade and he was very impressed. Frankly, it reminded him how lucky we are to live in a community that participates and really does enjoy the cultures of this area. He thought it was pretty cool and looked forward to going to others.

### **REMARKS AND INQUIRIES BY THE CITY COMMISSION**

**Mayor Galea commented on the following:**

1) She thanked the staff that worked together on the flood challenges that were throughout the city on August 1<sup>st</sup>. She knew there were a lot of the members of our law enforcement and also other law enforcement agencies such as the Sheriff's Department and the Otero County Fireman volunteers

that were in uniform and vests that were knee-deep in water at many places. She was grateful for that service.

2) The mayor thanked the staff for all they do to put on our community projects such as supporting the Fair parade.

3) On behalf of the citizens that discuss claims of corruption that they be looked into, she said that on behalf of the citizens she will continue to work with the commission and the city manager to focus on how we can best serve the citizens. When the commission establishes a budget with your tax dollars, we are working to provide the best possible service with those tax dollars. We know that the best possible service won't be provided by employees lacking integrity, and we take pride in our employees that are committed to excellence. We take pride in you and are thankful for all that our staff does for our citizens under the budget that we as a commission work hard to establish.

Someone from the audience asked to make a comment but was not close enough to the microphone to be understood. Mayor Galea said this was out of the ordinary and asked the person if they could wait until after the meeting. She thanked the individual and said we would never deny public the opportunity to speak, but Public Comment is long gone.

**EXECUTIVE SESSION** (Roll Call Vote Required)

Adjourn into Closed Session in compliance with Section 10-15-1.H, NMSA 1978 (2010 Cumulative Supplement), to discuss:

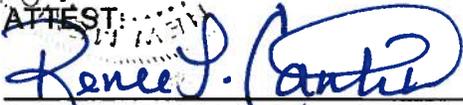
- **Limited Personnel Matters (City Manager Evaluation)**

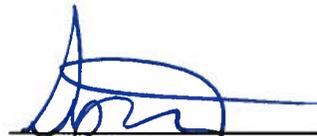
Commissioner Hernandez moved to adjourn into Executive Session to discuss limited personnel matters at 10:24 p.m. Commissioner Straface seconded the motion. Roll call vote was taken. Motion carried with a vote of 7-0-0.

Mayor Galea told the media they would be available after the Executive Session.

**ADJOURNMENT**



ATTEST:  
  
 City Clerk Renee L. Cantin

  
 Mayor Susie Galea

(Prepared by Nancy Jacobs, Deputy Clerk)  
Approved at the Regular Meeting held on August 25, 2014..