

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION SPECIAL MEETING MINUTES  
7:00 A.M., COMMISSION CHAMBERS  
OCTOBER 15, 2013**

**SUSIE GALEA, MAYOR  
JASON BALDWIN, COMMISSIONER  
NADIA SIKES, COMMISSIONER  
ROBERT RENTSCHLER, COMMISSIONER  
JOSH RARDIN, COMMISSIONER**

**AL HERNANDEZ, MAYOR PRO-TEM  
JIM TALBERT, COMMISSIONER  
JIM STAHL, CITY MANAGER  
STEPHEN THIES, CITY ATTORNEY  
RENEE CANTIN, CITY CLERK**

**CALL TO ORDER AND ROLL CALL**

Mayor Galea called the meeting to order at 7:00 a.m. Roll Call was taken by the Acting City Clerk, Rachel Hughs. The Acting Clerk announced there was a quorum present.

**NEW BUSINESS**

**1. Consider, and act upon, the first publication of Ordinance No. 1454 repealing City Code Section 2-01-040 (Ordinance No. 736).**

Mayor Galea stated that this Special Meeting was being held to discuss the fiscal impact of Hold Harmless and the items as presented on the agenda. She had a discussion with the Commission about bringing a 1/8% gross receipt tax increase to the voters in response to public safety needs. She went on to say, that on February 22, 2013, Commissioner Sikes sent her an email regarding a municipal day in Santa Fe and documents pointing out the repeal of Hold Harmless. On February 26, 2013, the Mayor learned about some "Bad Bills" in the works to also include Hold Harmless, which would hurt Alamogordo. She then decided to ask the Commission to sign a letter with her opposing what would be considered harmful legislation to local governments. On March 18, 2013, the Commission received an email from the City Clerk through the New Mexico Municipal League regarding the repeal of the Hold Harmless provisions. The letter was then drafted to the Governor on March 19, 2013 and signed by the all of the Commissioners with the exception of Commissioner Rardin, who didn't sign to oppose legislation. We knew at the time that Hold Harmless would cost Alamogordo \$2.7 million in gross receipts tax revenue. On March 28, 2013, we learned Hold Harmless was passed by House Bill 641 dated March 16, 2013. On March 25, 2013, the Albuquerque Journal published, 'Tax hikes loom as subsidies are cut. Impact will depend on budget situations in smaller counties and cities.' On March 26, 2013, the letter drafted on March 19th which was to be sent to the Governor was not sent after all. The New Mexico Municipal League cautioned against sending it because the bill could not be line-item vetoed. The City Commission had done a month of advocacy throughout the community as well as other elected officials that were opposed to repeal Hold Harmless. Only now do we see a response from the community discussing a local tax increase in response to the legislation that passed in lieu of lack of proactively. The Mayor then read Item #1. She asked the City Manager if he had anything to say on this. City Manager Stahl said he did not and asked the City Attorney to brief the Commission on this.

City Attorney Thies said the reason the matter of Hold Harmless was being brought up at the present time was because there is a common perception in the community that our Charter provision prohibits an increase of taxes without being taken to the voters and that is incorrect. Our City Code does contain the provision and that particular section was adopted by initiative. Initiative is when the residents of the community put together a petition and adopt an ordinance. That initiative was adopted in 1988. Subsequent to the adoption of that ordinance which says you cannot enact any new tax without taking it to the voters, that issue was presented to the New Mexico Attorney General who concluded your taxing authorities are derived by state statute. As such, you are restricted by that. The people themselves can impose additional restrictions and he stated the example of the Hold Harmless Tax. The Hold Harmless Tax was enacted to give local governments the option to impose up to 3/8 of 1% of a tax without taking it to the voters for approval; that is your statutory authority.

Residents of the community can't modify that and you either have the right to enact that tax or you don't. This issue needs to be addressed in the event you would enact a Hold Harmless tax because you undoubtedly are going to hear about it. He stated we have a City Code that prohibits you from enacting a tax unless you take it to the voters. That is why it is being presented to you at this time, to repeal this particular ordinance.

Commissioner Baldwin restated it was in 1988 this was brought forth, and the city attorney affirmed. Commissioner Baldwin asked if it has operated under this since then and City Attorney Thies told him he hadn't done any review of taxes enacted since then to ascertain if they were all taken to the voters. He did not know if the Commission had complied with the particular ordinance.

Commissioner Talbert remarked the city attorney had said this was done by initiative of the citizens who said they wanted this. He thought that would set a dangerous precedent, no matter what the item is, for us voting to say they can't do that. City Attorney Thies said under our Charter, the citizens of the community have the right of initiative; to enact ordinances you may not enact. The fact they exercise that right is always subject to compliance with our state constitution and state statutes. If they enact an ordinance that runs afoul of even the federal constitution, statutes or regulations or the state statutes or constitution it doesn't mean you need to abide by or enforce it.

Commissioner Rardin stated he thought we had followed this ordinance on raising GRTs in the past. He remembered a lot of GRTs had been on the ballot. He wanted to write a letter to the Attorney General's office and ask for an interpretation before he would vote to repeal this. He felt the same way Commissioner Talbert did because the people enacted this and they thought it was unfair back then, so is it bright of us to repeal it when it was their will.

City Attorney Thies said in response to the Attorney General reviewing this matter, we do not have the authority to ask the Attorney General to review the validity of the statute. In 1990, our state representative made that request. Only certain elected officials have the ability to ask the Attorney General to review an ordinance to see if it complies with state law. As to the other point, it could be that on occasion we have taken GRTs to the voters for approval and that is because state statute says before you enact a particular tax you have to get voter approval. He told the Commission he could go back through records. If you approve this ordinance for first publication and it comes back for second approval, he will have an opportunity to review our past minutes and determine what taxes were enacted and taken to voters as well as if there were any taxes enacted without going to the voters. Commissioner Rardin felt the city attorney should have that information available. City Attorney Thies said he would have but we've been scrambling.

Commissioner Rentschler stated the ordinance has been in place and we use it in the economic development tax; it is about the sunset. He didn't think if this was actually enacted and continues to be on the books that we should repeal it in the middle of the night, so to speak. He asked how many members of the public were actually here. He felt it should be on a regular commission meeting if we were going to do it. He did not see doing it today.

**Commissioner Rentschler moved to not approve first publication of Ordinance No. 1454 repealing City Code Section 2-01-040 (Ordinance No. 736). Commissioner Rardin seconded the motion. Motion carried with a vote of 6-1-0. Mayor Galea voted nay.**

Mayor Galea said she could understand the Commission's hesitation to approve this item because it is something the City has done since 1988. She explained the reason it is before us today is because the County is having a meeting at 7:00 p.m. tonight to discuss the use of GRT. It's the 1/8% of the 3/8% enacted. The City has statutory authority to do the same thing but we cannot do that without bringing it to the voters, unless this ordinance was not in place.

Commissioner Rardin requested that the ordinance be placed on the next scheduled meeting for further discussion. The Mayor told him it should have been tabled, and she wondered why it was voted down. Commissioner Rardin said it was voted down because it doesn't need to be voted on

this morning. He felt it should have been put on the next regular meeting so that the public could give their input. Commissioner Rardin wanted to hear some public input and then bring this item back in the future. If the Attorney General's office says it is not enforceable, then we need to look at it. He thought they needed public input instead of putting it on a 7:00 a.m. meeting when people are sleeping or getting ready for work. The Mayor asked if he would like a Public Hearing and he told her if according to our attorney it needs to be repealed, then we need to look at it. He wanted to do this when the public was in attendance. He noted the press, a representative from the County and City Staff were the only ones attending this morning. He didn't think it did any good to do something like this when no one was present. The Mayor reiterated this meeting had only been prompted because the County had called a last minute meeting.

City Manager Stahle said the next meeting was a week from today and the city clerk was out all week, so we can put it on the following regular meeting, if it was alright with the Mayor. Commissioner Rardin interrupted to say we need a Public Hearing to discuss it with the people. The City Manager asked if he wanted a Public Hearing and Commissioner Rardin thought we should get voter input on it. The City Manager said we could do that, if you like. Commissioner Rardin said we could do it as a Public Hearing before the following regular meeting and make it an action item in the regular meeting if we need to repeal it or not.

Commissioner Baldwin said he thought we could all agree this is a very tricky situation. He pointed out in the last however many years you have been doing research on this, how many ordinances have been enacted by the people. City Attorney Thies told Commissioner Baldwin he didn't have the answer to that, but this could be the one and only he was aware of. Commissioner Baldwin noted their hesitation to get rid of it when it was enacted by the people of Alamogordo. He remarked that most people have probably forgotten about this since it was enacted in 1988, and he felt it needed due diligence. He thought Commissioner Rentschler had actually stated that even though we voted it down, he did want to bring it up at a later time. The Mayor said ok and it would be brought back as a Public Hearing for the first meeting in November.

**2. Consider, and act upon, the first publication of Ordinance No. 1455 adopting a Municipal hold Harmless Gross Receipts Tax.**

City Attorney Thies began by stating the Commissioners were aware of the repeal of the Hold Harmless provision. He felt most of them were aware of the history of this provision when food and medical services became non-taxable in order to lessen the financial impact on municipalities. The legislature at that time elected to make a distribution of money approximately equal to the amount the local governments would have received had food and medical services been taxable. He couldn't recall the year this was done, and Commissioner Rentschler remarked it was in 2004. City Attorney Thies continued saying as we have discussed earlier, the past legislative session was able to repeal the Hold Harmless provision and phase it out over 15 years. It will commence on July 1, 2015 which is our fiscal year 2016. As he had mentioned previously, to lessen the financial impact on municipalities and counties, this legislature granted the local governments the authority to enact what they called a Hold Harmless tax. That tax can be 1/8 of 1% up to a maximum of 3/8 of 1%. You have the ability to enact it and currently you do not have to wait until the actual Hold Harmless kicks-in in 2015. He told the commissioners they had before them an ordinance that was drafted to comply with a form provided by the Department of Taxation and Revenue. This ordinance has all three increments needed in the event you elected to impose a tax or if you decide not to impose all the way up to 3/8 of 1%; it starts at 1/8 of 1%, then 1/4 of 1%, then 3/8 of 1%.

Mayor Galea stated this Commission would like to cut taxes and not discuss increasing taxes. We will discuss the County potentially increasing taxes within the City limits; we will discuss how the County increase of taxes within the City limits will only benefit the County; we will discuss how the County will see a short-fall of \$26,475.00 beginning in 2016 from the Hold Harmless provisions. She felt enacting the tax within the City limits will gross them over \$1 million dollars. We will discuss the provisions of enacting 1/8% up to 3/8% within City limits only if needed to provide essential and perhaps wanted services; we will discuss the rumors of the 2014 Legislative Session that has led

mainly to the removal of the provision for local governments to enact a tax and the repelling of the 15 year gradual increase or phase-out process; we will discuss why cities such as Las Cruces have already enacted 3/8% tax; we will discuss why the County could potentially enact a tax while they are also discussing cutting to our library while a third of the library users are from outside the incorporated areas of the City. The bottom line is if the County were to enact up to 3/8% and the City were to enact 3/8%, hypothetically, it would increase taxes by 3/4%. Our tax rate is already 7.625% and she didn't know who would want to pay 8.375%. The City will work to collaborate tonight with the County to prevent an enactment of County taxes within City limits, and the City Commission will work together today to discuss what we could do to work with the County on a pro-active measure. She understood the County was struggling and perhaps there are some things we could do to work together with them. She asked the city manager to provide an overview of how the provisions affect the City of Alamogordo.

City Manager Stahle said we had distributed a packet of material containing four sheets to the Commissioners before the meeting. He told them these four sheets basically illustrate over the next 15 years what the actual, estimated impact of the reduced Hold Harmless would be. He addressed the first page and pointed out column F which illustrated the Hold harmless distribution without any losses. Column E estimates how much it will decrease over the next 15 years. He explained that column G was Effect on the General Fund; column H was Effect on Other Funds; and column I was Total loss of Revenue Each Year. City Manager Stahle told the Commissioners to keep in mind these numbers were based on today's dollars without inflation throughout the entire 15 year period. The bottom line was that in the first full fiscal year of impact (FY2016), the total loss in the General Fund would be \$100,184.00 and the other funds would lose \$90,751.00 for a total of \$190,935.00. In 2030, the General Fund would be down \$1,502,748.00, the other funds would be down \$1,361,265.00 and the total would be \$2,864,013.00. That illustrates what we are up against in the next several years, and of course, that is assuming there are no legislative amendments or inflation. The city manager moved on to page two and pointed out two additional columns that would equal the impact of adding 1/8% tax. Column K showed negative numbers beginning in the year 2019 with the effect, if we don't do anything, of \$22.9 million. If you did the 1/8% as of July 1, 2015, it would be a negative number of \$11,500,000.00. Page 2 [*sic*] simply does the same thing but uses the 2/8% (he corrected himself to say page 3). Schedule 3 illustrates the practical affect of doing 2/8% instead of 1/8%, and the negative would be only \$88,000.00. Of course, the first several years would be in the black and essentially the last half would be in the red and then on. City Manager Stahle showed the last page illustrated the 2/3 and would be in the black by \$11 million if you implemented it at least over the 15 year period. He told them to remember this is just an analysis over this reduction of the Hold Harmless, period. From then on you would have a little less, but you can see the practical affect of this. He said he would try to answer any questions.

Mayor Galea said this is why Las Cruces enacted the 3/8% so they could build up the reserve and stay in the black. City Manager Stahle added they did it in an emergency measure effective January 1<sup>st</sup> of next year.

Commissioner Rardin said it was too late for us to have it affective January 1<sup>st</sup> because he thought you had to do it three months in advance. City Manager Stahle told him that is why he had mentioned the dates. They seemed to believe that by making it an emergency measure on October 9<sup>th</sup>, it could be effective January 1<sup>st</sup>. Commissioner Rardin thought whether we pass it today or next March it still goes into effect on July 1<sup>st</sup> of next year. City Manager Stahle said if you wanted to you could make it effective July 1, 2015 not 2014, so it is up to you how to handle it. Commissioner Rardin remarked if we made it effective that far in the future, why pass it this morning. We need to have some public discussion and input as well as sit down with the County this evening to find out what their intentions and needs are versus ours.

Mayor Galea understood their needs were \$26,000 while we are looking at a shortfall of something much greater. In the first year we are looking at a shortfall of almost \$200,000 in 2015. Commissioner Rardin said they have a \$27 million dollar budget and we have a \$48 million dollar budget so to them that is about the same hit. He continued saying this has been going on since

February and we've known about it since February, so what is the rush to get it done. Just because the County is looking at it we suddenly have to have a Special Meeting to address it, and he didn't understand that. Mayor Galea said the rush was the County was going to enact a county-wide tax to include the incorporated areas of the City in which there would be no revenue to the City, and an increase in tax. Commissioner Rardin said that is the way the State set it up and there isn't anything we can do to change it. Mayor Galea thought perhaps there was something we could do to work with the County to help them through this challenge. Commissioner Rardin said we need to sit down with them and talk. He thought our portion on the GRTs was \$1.24 or \$2. something million and he would like to see a breakdown of all those taxes and what we use them for. There are probably one or two we could conceivably look at repealing since we don't use them anymore; he wanted to see a list of cuts to the General Fund the City could make rather than us having an increase. Maybe we could decrease services or get rid of special positions we don't need. He wanted this list brought back to the Commission at the first available meeting, and reiterated not to rush into this. Mayor Galea agreed we do not want to rush into it at all, but we needed to create some discussion of how we could work together with the County. She felt if any taxes were enacted within the City limits, it should be done by the City and not the County, and if the City were to enact a tax where the revenues go to provide services we could also help offset the County's expenses without them increasing taxes in the City, as well. Commissioner Rardin said the State is to blame for this and how the County's taxes affect us. It's the way they worded their bill and instead of it only affecting the outlying areas like it always has, the State has allowed them to increase their tax rate and that will affect us. Mayor Galea remarked she wasn't blaming the County; she was simply trying to find a way we could work with our County without there being an increase in taxes for which there aren't any revenue benefits to the City of Alamogordo for the services we provide. We are all having to deal with inflation and the overhead costs of providing services to citizens in the City and County.

Commissioner Rentschler said the legislature did this at the last minute – the 12<sup>th</sup> hour and 59<sup>th</sup> minute. They did it as a compromise to lower the corporate taxes within the State. When they put it together and sent it out, there wasn't any time to review it so we now find ourselves in a place where cities like Las Cruces and Corrales have done this. What they are really doing is sticking it to the people who vote for them. They knew that much of the language was bad and he felt they intended counties should be able to tax the county areas which would exclude them being able to tax the incorporated areas. This January and February, he expected we will see this taken up because the problems are in the legislature, and he felt they would correct some of the language in there. They knew they were going to have to do some correction of this two years later. He noted we are 20 months away from our first loss. That is a long time, so he didn't see the reason for this to happen the way it is happening. It is a knee-jerk reaction and the County will do what the County will do. Commissioner Rentschler doubted we would influence that and he didn't want to promise any of our revenue, our taxes, to the County for their things. We have watched them cut repeatedly and they are about to cut our library. He thought the County derived a lot of their taxes within the City limits and they should be doing something within the City limits, but they are not. Commissioner Rentschler thought the idea of this whole tax was to be implemented as needed. We don't lose a penny from them and we are losing money anyway because of the sequester and other things happening economically in Alamogordo. In this calendar year we are already down about \$345,000.00 and the idea of this tax was not to correct an economic downfall. The idea of this tax was to correct what the Legislature did in 2004 when our tax-cutting Governor cut this to help the poor people of the State. The problem was that most of the poor people of the State are on food stamps and don't pay this tax. The end result was in order to off-set that tax, they raised the rest of the gross receipts taxes the State collects by ½%, so the people targeted to be helped ended up paying ½% more for everything. He didn't think they would repeal that ½% but would probably absorb it. We need to look to the Legislature to correct what they have done. Commissioner Rentschler thought those in the Legislature expected the people governing in New Mexico, those on the city and county commissions and counsels would all be reasonable about this, and there wouldn't be someone trying to make \$1.2 million dollars incurring 50 years worth of loss the first year before it was even implemented. He felt we were ahead of ourselves.

**Commissioner Rentschler moved to not approve the first publication of Ordinance No. 1455 adopting a Municipal hold Harmless Gross Receipts Tax. Commissioner Baldwin seconded the motion.**

Commissioner Talbert expressed that in light of the first point, he didn't feel we could do the second point.

Commissioner Rardin questioned whether to kill this or simply table it until the time we may need to do this. Commissioner Rentschler said we may need to look at it in 20 months, and Commissioner Rardin said maybe 14-15 months from now.

Mayor Galea stated Commissioner Rentschler was correct in saying we would potentially have to look at doing this in 20 months if we don't make any cuts, but there is the potential in this legislative session that they will repeal the 15 years of gradual decrease; they may cut the Hold Harmless provisions 'cold-turkey'. Then we would see the full effect of a loss of \$2.8 million dollars up front in 2015. Commissioner Rentschler felt we would know that in time to do something about it, and she agreed.

Commissioner Sikes said she attended the County Commission meetings rather frequently and she felt that Commission would probably go forward tonight and pass this tax. What will we do tomorrow? Commissioner Baldwin expressed we would do our jobs and cut funds. Commissioner Sikes stated that as she understood it, once the County Commission passes this, that leaves the City out of being to able to take advantage of any of the GRT revenue.

City Attorney Thies told the Commissioners both the County and the City have the authority to enact a 3/8 of 1% tax. Commissioner Sikes confirmed we could do this tonight and then come back at another meeting if we need revenue, and the Mayor told her that was correct, potentially. She went on to say Commissioner Sikes was correct in expressing if the County enacts a tax within City limits, the City wouldn't see any revenue.

Commissioner Talbert said based on point #1, it would seem reasonable we would put this on the ballot in March of 2014 and thus would be following the will put out there. That way we would see what the people wanted to do and if they say no, we will deal with it; if they say yes, then we have that additional income. Mayor Galea replied that was precisely why in the last Commission meeting she had discussed the 1/8% to the voters in regard to public safety needs.

Commissioner Sikes thought we didn't have to do that because the Legislature passed a law where we do not have to take it to the people.

Commissioner Baldwin said one of the scariest things is it says repealed ordinance #736 is in the best interests of the public, now and therefore. He said that statement is what scared him about a lot of government things; imposing a tax on the people without them knowing is in the best interests. He understood where that came from since there is a time when a tax needs to be put in, but this is an interesting process for them all to be a part of. He thanked the Mayor for bringing this up and wasn't too upset that a meeting had been called for this morning and that we might be doing some work with the County this afternoon because that is good relations for both us and them. Trying to convince them to possibly not pass their tax in the incorporated area of Alamogordo is a good process, but when he was elected, one of the first things discussed was the Hold Harmless. Commissioner Baldwin was aware of it based on his work with Cloudcroft in 2004 when it was repealed and the scare when it happened. This has been on our radar since we were elected and he noted City Manager Stahle had made a comment about it shortly after he came to work here. He also knew the Staff has been working on this process. He remarked Commissioner Rardin had mentioned having more information in front of us such as possible plans, what departments could be cut, worst case scenario and best case scenario. We see what we could potentially generate in revenue, but we don't see anything we could cut in cost, as well. He thought that was important and reminded the Commission he had said several times he was adamantly against raising taxes. We are not

anywhere close to the economic climate now during this federal government shut-down, and we still have two wars trudging along with others looming. We don't have a real mission at HAFB except foreign missions and so this is not a good time to be talking about raising taxes in Alamogordo or the County. Hopefully, tonight we can impress that on the County, as well.

Mayor Galea said she knew that through the Department of Defense (DOD) they are looking at cutting funds to services if their federal budget is affected. That would mean cutting down the MWR and FSS programs. If they were to close down their pool and bowling alley and if the City would likewise follow suit to make amends with the restraints of the Hold Harmless provisions, there wouldn't be a pool any closer than El Paso, Las Cruces or Ruidoso. That would make for a poor quality of life for everyone residing in Alamogordo, including the military families who must be stationed here.

City Manager Stahle expressed he would be happy to put together some options for the Commissions consideration to comply with reductions to the expense side. He noted today's conversation was simply to bring them in tune with what the revenue side of the picture would be. It isn't just the General Fund and would affect more funds than that. The other thing he wanted to point out was we are not walking in the County's moccasins. The County has services they provide within the City, also. You need to make sure you consider where they are coming from and they will have a perfectly good reason why they act the way they do. They have a completely different set of conditions under which they operate, and since he had been in the county environment for 15 years he could appreciate the significant difference. He thought when we had a conversation with the elected officials of the County we need to be empathetic to their situation and plight. He was sure they would be concerned, as you all are, with any tax increases. He noted he had never met an official who wanted to raise taxes. Sometimes you simply have no choice, so be aware they will act in what they believe to be the best interests of the County, just as you are already acting in the best interests of the City.

Commissioner Rardin said tonight was a Public Hearing and doesn't necessarily mean they will take action to raise that tax. They are simply getting input from the citizens in case they do decide to raise it. He appreciated the city manager saying what he had because the County does have a tremendously different role than we do. He asked if Staff could bring back a break down of what the percentages are of our portion of 1.45 of the GRTs, whether it is 1/8 or 1/16 and then what each of those taxes goes to fund at this time. He knew there was one we could do away with because it is simply sitting there building up money in a fund we don't use; it was created to service a debt that is now gone. He didn't know if that money could be used for anything else. Then he wanted a list of cost-cutting measures to be considered, and he didn't think the pool would be the first to go since it is a highly utilized facility. He felt sure there were other areas besides the Rec. Center to be cut. Mayor Galea said she had mentioned that one because it was the most expensive and most supplemented. She didn't want to cut Animal Control and have wild dogs in the city.

Commissioner Rentschler said we need to be sure we don't do as the Federal Government has done and make this as painful as humanly possible by barricading Alameda Park by the Zoo. Let's make sure this is done reasonably, and if we end up cutting we don't want to cut the cream to make sure the public is responding to it. We want to make it as invisible to the public as is humanly possible. He didn't want to see anything that said we are shutting down the Rec. Center or the Zoo; bring us reasonable stuff. Commissioner Baldwin didn't want to see anything that said the Golf Course would be shut down.

There was no further discussion so Mayor Galea noted there was a motion and second on the floor and it was time to vote.

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

## **ADJOURNMENT**

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**Mayor Galea adjourned the meeting at 7:39 a.m.**



  
City Clerk Renee L. Cantin

  
Mayor Susie Galea

(Prepared by Nancy Jacobs, Deputy Clerk)  
Approved at the Regular Meeting held on November 5, 2013.