

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
FEBRUARY 25, 2003**

MAYOR DON CARROLL

COMMISSIONER JOHN ROBERTSON

MAYOR PRO-TEM RON GRIGGS

CITY MANAGER PAT McCOURT

COMMISSIONER INEZ MONCADA

CITY ATTORNEY WILLIAM KIRSCHNER

COMMISSIONER DON COOPER

CHIEF DEPUTY CLK BETSY KIDWELL

COMMISSIONER ED COLE

Call Meeting to Order, Roll Call, Invocation, and Pledge of Allegiance.

The Meeting was called to order at 7:30 p.m. City Attorney William Kirschner was absent. The invocation was given by Rev. Rick Steele and the Pledge of Allegiance was led by Commissioner Moncada.

1. Appointment of Mr. Marion L. Ledford, Jr. to the position of District One City Commissioner.

Mayor Carroll explained this is in keeping with the City Charter for the vacancy created by Dr. Stephen Easley resigning from the Commission.

Commissioner Cooper moved to appoint Marion L. Ledford, Jr. to the position of District One City Commissioner. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a vote of 6-0-0.

2. Swearing in of Mr. Marion L. Ledford, Jr., District One City Commissioner.

Chief Deputy Clerk Betsy Kidwell administered the oath to Mr. Ledford. He thanked Commissioner Cole for nominating him to the Commission. He

expressed his appreciation to all of the Commission for their support. He then took his place on the Commission and participated in the meeting.

PRESENTATIONS:

3. Presentation to 1-800-FLOWERS for substantially exceeding expectations for the first "Job Creation Period" as per the agreement with the City.

Mayor Carroll explained that several years ago the voters passed an economic development gross receipts tax to allow the City the opportunity to go out and recruit businesses to our community. He said they spent a lot of time and were successful in recruiting 1-800-Flowers.com. He noted that they opened in November 2001. He explained that as part of our agreement with 1-800-Flowers they agreed to provide 300 full-time jobs and 624,000 hours of employment during their first year. The City agreed that if they were to exceed that goal they would be eligible for an additional bonus. Mayor Carroll said they not only met the goal, but they exceeded it substantially. This last year they had 459 employees and 752,881 paid hours. He introduced Tom Zeto, the Director of Service Center Operations, Denise Thompson, Human Resource Director, and Tony Taylor, Senior Manager in charge of Alamogordo operations. Mayor Carroll had Mr. Ed Carr, Executive Director of the Alamogordo Chamber of Commerce, assist him in making the presentation.

Mayor Carroll explained the bonus they were eligible to receive under our agreement was \$25,000. He said he was more than happy and proud to present it to them. He noted that 1-800-Flowers were good corporate citizens and he looks forward to presenting a bonus to them again next year. Ms. Thompson thanked the City of Alamogordo and Mr. Ed Carr on behalf of the company. She noted that Mr. Taylor drives from Las Cruces everyday and encouraged everyone to stop by and say hello.

Mr. Carr helped present the award and thanked the Commission for the support to get the optional gross receipts tax to create an economic development fund. He said this allowed us to recruit a quality company like 1-800-Flowers.com. He stressed that they have helped the economic situation here. He pointed out that their payroll is around \$3 million dollars a year. He added his appreciation to OCEDC. Mayor Carroll also recognized and thanked Larry Shulse who was in attendance and was the President of OCEDC when all of this happened.

4. Presentation by Denise Cooper, CPA/Partner of Clifford, Ross Raudenbush & Cooper, L.L.C. regarding the fiscal year 2001-2002 Annual Financial Report.

Ms. Cooper told the Commission that we got an unqualified opinion on our report. She noted that the Finance Department is doing an outstanding job and should be commended for the type of work they are doing.

Commissioner Cooper moved to accept the 2001-2002 Annual Financial Report. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a vote of 7-0-0.

CALL OF THE CONSENT CALENDAR:

Items on the Consent Calendar are considered routine and should not require further discussion. All items marked "CC" will be approved by a single motion unless removed at the request of a Commissioner, City staff, or a member of the public. Items removed from the Consent Calendar will be heard in the numbered sequence.

5. Minutes of Regular Meeting of February 11, 2003, and the Special Meeting of February 11, 2003.

Recommendation: Approve the minutes.

12. Statement regarding the Executive Session of February 11, 2003.

Recommendation: Approve the statement.

13. Issuance of 5-Year Utility Permit to Holloman Air Force Base for Bonito Pipeline Replacement Phase 7.

Recommendation: Approve the permit.

14. Award of bids:

(B) Bid No. 2003-04 for Uniforms and Linen Rental Services.

Recommendation: Award to American Linen Supply of Las Cruces for \$38,109.76 annually estimated.

16. Investment Report for the quarter ended December 31, 2002.

No Recommendation

Item Nos. 14A and 17 were removed from the consent calendar.

Commissioner Cooper moved to accept the Consent Calendar, which included Item Nos. 5, 12, 13, 14B, and 16. Commissioner Cole seconded the motion. All voted "aye." The motion carried by a vote of 7-0-0.

PLANNING ITEMS:

6. Consideration of Ordinance No. 1166 consenting to the annexation of 56.525 acres of land, petition initiated by West Source V [Case A-02-0057 (A), US Hwy 54/70 at US Hwy 82].

Recommendation: Approve the ordinance consenting to the annexation to the City of Alamogordo, 56.525 acres in Lot 15, Section 6, T16S, R10E, NMPM, and in the West half of Section 12, T16S, R9E, NMPM, for final publication with the Waiver of Protest Agreement and the Annexation Contract by the Petitioner, with the understanding that annexation of the property does not guarantee either the approval of any development plan or the availability of water and/or sewer services for such development. [Roll Call Vote Required]

Mayor Carroll explained the background on this item. He noted that the Petition was submitted a while back by West Source V and was only for a portion of the 55 acres that we are discussing tonight. He explained that the City Commission directed Staff to use that request to leverage in other properties. He noted that several of the properties within this area are owned by companies that sell fireworks. He explained that normally when we annex property in that has something on it, we bring them in unzoned District "A" or it comes in existing, non-conforming. He noted that the other businesses out there would be existing, non-conforming. He said that these would be existing, non-conforming as well. He explained that there is some debate on the fact that we have an ordinance that deals with fireworks within the City limits, if the stands were located within the City of Alamogordo some of the fireworks that they are currently permitted to sell while they are in the County would not be permitted within the City.

Commissioner Cooper said he feels we should approve the ordinance and then address the matter. Mayor Carroll said he shares that feeling. He said we can address the fireworks issue, but does not want to see it delay the annexation.

John Hakanson, attorney at law, came forward and stated that he represents Mr. Roger Fox, supervisor for Mr. W Fireworks, Inc. He said the reason for West Source V request for the annexation was that Home Depot was considering it as a site for a location. It is no longer a valid reason because it has moved to another location. Mayor Carroll explained that the Petitioner is still requesting the annexation. John Hakanson said they have objections to his client's property being annexed. He said that one of the reasons is the City's ordinance prohibits firework sales that are allowed by Otero County. He said they got a response from the City. He said that one of the lines in the response was in his opinion somewhat telling. He read that it says the annexation will not require any change of the current use of your land. Mr. Hakanson stated that is not true. He said it is like having a Chevrolet dealership one day and different rules come along and you have a Ford dealership the next day. He said the business is different, they have a different product, a different inventory, and the business is affected by that change even if you have no control over the change. He added that he does not know how many people protested besides his client, but he suspected there were others. He said that the Commission should consider that if they do the

annexation and it changes the business nature of Mr. W's Fireworks business, they have done a governmental taking. He recommended we check with our counsel on that issue. He added that the people that bought that property bought it for a specific purpose and made sure they were outside the City limits. He said now we are trying to involuntarily bring them and others into the City, and he hopes the Commission will consider not doing it to the people who protested. He said they do not have a problem if they annex in the original property requested.

Danny Bishop came forward and told the Commission that he owns a firework stand out there. He noted his objection to the annexation. Mayor Carroll asked if his objection was to being in the City or if it was because he felt it would limit his ability to sell his current line of products. Mr. Bishop replied that it would limit his ability to sell his current line of products and he has invested in sewers and wells on his own so he does not see where it would benefit the citizens of Alamogordo or himself. Mayor Carroll asked Mr. Fox the same question regarding his objection. Mr. Fox said it would be both in his case. (He does not want his property in the City and he would not be able to sell the current line of products that he currently can sell.)

Commissioner Robertson asked Mr. Fox how long he had owned that piece of property. Mr. Fox replied they had owned it close to 12 years. Commissioner Robertson asked if he was aware when he bought that property that being that close to the City limits he might be annexed into the City limits. Mr. Fox replied that he was not aware of this.

Mr. McCourt said they are allowed to do involuntary annexations in order to promote the normal, orderly, and reasonable growth of the City. He said we have followed the correct procedure in doing that with this annexation. He added that the City is allowed to ban certain types of fireworks within the City limits as a part of public safety and welfare. He referred the Commission to Chief Trujillo.

Chief Trujillo explained that he looked at this issue strictly from a public safety standpoint and not a business standpoint. He noted that our current law makes it unlawful for any person to sell, possess, transport, or discharge impermissible fireworks. He noted that permissible fireworks are basically those that do not go beyond 10 feet and are not louder than a cap gun. He believes the reason for the law is to protect our citizens from property damage and injuries caused from fireworks. He pointed out that nationally fireworks represent one of the highest risks of injury for any known consumer product. He said that 67% of the fireworks injuries nationwide are caused by the type of fireworks that we currently ban here in the City of Alamogordo. He said he is not familiar with any of the business owners and does not know if they reside here in Alamogordo or in the County or out of State. They may not be aware of the problems we have experienced here in Alamogordo. He stated that DPS averages over 200 complaints per year related to illegal fireworks. He noted that fire calls double in the month of July and the cost of this requires an extra 75 man hours every year and over \$1,000 worth

of overtime they have to expend. He said the cost due to injuries or property is difficult to measure. He said if we allow some businesses to sell illegal fireworks and not allow others we are allowing one business to violate the law and not allowing others to. He said our citizens end up paying in the form of citations that DPS issues for using these fireworks sold by these businesses. He does not recommend grandfathering these businesses in beyond our current Criminal Code.

Commissioner Robertson asked Mr. McCourt if we had a firework stand by the old Rocket bar this past year. Mr. McCourt replied affirmatively. Commissioner Robertson asked if there was a permit they could get to sell fireworks within the City as long as they do not sell the illegal fireworks. Mr. McCourt replied affirmatively. Chief Trujillo added that he recalls us having 8 businesses last year that sold permissible fireworks inside the City limits.

Mayor Carroll said that the concern is that a substantial amount of their business is from the sale of fireworks that are legal in the County, but illegal in the City. They would be adversely impacted by our ordinance limiting the products they could sell.

Commissioner Cooper said if we bypass those two properties we are back to spot zoning. Mayor Carroll clarified that it would not be spot zoning, but we would end up with chunks of the County in the City. He said he understands where Chief Trujillo is coming from. He added it would be his intent that if the Commission desired to change the fireworks ordinance to give an exception to these 3 pieces of property as long as the current people owned them. We would spell out that if they were licensed stands that had been grandfathered they could continue to sell the fireworks, but it would not be legal for any other business to sell them or for anyone to possess or use them other than licensed fireworks people. Commissioner Cooper said he does not think the other eight who sell fireworks would be too happy. Mayor Carroll agreed that could be a problem. Commissioner Moncada said she understands where Chief Trujillo is coming from. She added that the safety of people here in the City is very valuable, but she does not see where it is our duty to tell a business that he can no longer sell what he has been selling for 12 years. She said we have now changed his whole lifestyle. She said she does not know that grandfathering them is the solution because we are telling people they can go and buy a roman candle in City limits, but you cannot use them. Mayor Carroll said right now they cannot even possess them. Commissioner Moncada pointed out that the general public is not going to know what our ordinance specifically states and we are allowing them to be sold there.

Commissioner Robertson said if we were talking about a 12 months out of a year business it would be different, but we are not. He does not think we should change our ordinances to accommodate three people and leave the eight people out. Personally, he wished the County would ban the fireworks because he is

tired of picking up 500 bottle rockets out of his yard the 5th of every July. He stressed that he does not think we should change the fireworks ordinance and these businesses should get a permit and sell fireworks like the other businesses in town.

Mr. Fox said the difference between he and the eight other stands is that they chose to be inside the City limits. He stated he purposely went outside the City limits because he did not want to deal with the City problems. He said they use to have stands within City limits for 3 or 4 years. He said there were too many problems and too much red tape. That is why he bought that piece of property outside City limits so they could sell their product. He said when we talk about the other 8 we are talking about grocery stores or five and dime general stores. That is the difference. Fireworks are not their business or their livelihood, but it is with him. He said he does not sell anything else like milk or bread or clothes. He said that if we annex his property and he has to follow the guidelines he will just have to move outside. He said it will not solve the problem by annexing the property. He said those that chose to be outside the City limits are just going to move outside the City limits again and continue to operate. He said he understands Commissioner Robertson's comment about the bottle rockets in his yard, but whether they sell them where they are at or 200 feet down the road people are still going to bring them into town. He said the simplest way to solve the problem is to not annex the property being objected to being annexed. He said that if you want to annex the one property that is fine, but leave the other 7 or 8 pieces alone. He does not think it is right to get 8 pieces to get 1 piece. He said we would not have to worry about making any special provisions or grandfathering anyone if we did not annex the extra property in.

Mayor Pro-Tem Griggs said that we have several areas where the City and County skip around. He stated that orderly, normal growth is the City grows out. We have the golf course area, which is in the City, and there are several tracks of land between here and there that are in the County. He stated that it creates problems and it is better for it to be squared up. He suggested we amend the ordinance and allow all types of fireworks. He alternately suggested that if it creates a level of concern as the Chief expressed that we proceed as proposed because it is in the best interest of the City all though it is not in the best interest of these particular property owners.

Mr. McCourt agreed with Mayor Pro-Tem Griggs on the normal growth pattern. He added that you see items every year on accidents that occur that involve fireworks where people are seriously injured or killed. He said the red tape that Mr. Fox refers to is our way of minimizing injury. He discouraged grandfathering the properties in because it would almost be extortion to sell illegal fireworks to citizens. He said the most fair way would be to amend the ordinance.

Commissioner Cole moved to accept the 56.25 acres with no exceptions as written. Commissioner Robertson seconded the motion.

Mayor Carroll wanted to clarify what Commissioner Cole meant in his motion regarding no exceptions because of the other existing businesses.

Commissioner Moncada expressed that she could not support this because we are taking a business and making them do something different than they currently do.

Commissioner Cooper asked if there were 3 people out there selling fireworks. Mr. Fox said there was one other besides he and Mr. Bishop. American Promotional Events, which is under the name Gildner on this annexation because he recently sold out, is the third property. He said that American Promotional Events now owns the Gildner property. Commissioner Cooper said that between the 3 properties there are 5 acres. He said we do have 5-acre plots within the City that are County and if we did not annex those 3 properties, it would leave 46 acres to annex in.

Mayor Carroll said his concern is that the motion would not only affect the fireworks people, but the other properties as well. Commissioner Cole said that it is not explained in the materials.

Commissioner Moncada said she understands that we are trying to grow at a good pace, but stressed that it is not our responsibility to tell them we want you in the City limit but you cannot continue with your business as it is. Commissioner Cooper agreed with Commissioner Moncada.

Commissioner Moncada asked if the property owners could ask to be annexed in on their own a couple years down the road if the County does not allow those fireworks anymore.

Mr. Hakanson asked how many people protested. Mr. McCourt explained we received 1 letter (the one from Mr. Hakanson's client) and then Mr. Bishop just now. Mr. Hakanson asked if it should not be strongly considered if 3 out of the 8 property owners protested. Commissioner Robertson said the third stand was not objecting at all. They contacted Michael Shyne about leasing the property right across the street.

Ms. Few said that the owners of record last week with the County Assessor's office were the Gildners. She said the Gildners, the Phelps, and the UPS property owners contacted her office this past week. She said that all though they asked questions and details of property tax increases none of them indicated that they had any problem with the annexation. She said there are standing ordinances on our books regarding preexisting, non-conforming uses.

Commissioner Robertson asked if it would be proper to continue with annexation and direct Staff to work on getting the proper zoning on the businesses. Mayor Carroll said this is what the existing, nonconforming does. It allows them to

continue operations. Commissioner Robertson clarified that existing, nonconforming is in the motion right now. Ms. Few said it does not have to be.

Mayor Carroll said, as he understood the motion it was to annex this land with no exceptions. He said that may be contrary to State statute. Commissioner Cole said his motion was to annex it based on the recommendation written here in the recommendation by Staff. He noted that we do not want to get in an embarrassing situation again as a Commission and we (the Commission) asked Staff to go forward with this annexation because as a Commission we said we wanted it. He said he thinks we are looking for ways to make exceptions for this annexation. He clarified that his motion was exactly as worded in Staff's recommendation. He said he was not trying to delete anything from it or add anything to it.

Mayor Carroll clarified that the motion was as it was written in the recommendation. Commissioner Cole confirmed his motion. Commissioner Robertson confirmed his second to the motion.

Commissioner Moncada said she was still not clear. Mr. McCourt clarified that they can still operate a fireworks stand, but they cannot sell those types of fireworks that are in violation of the other ordinance. Commissioner Cooper said it would be violating our own ordinance. Commissioner Moncada said that what we did was ask Staff to check this out and tell us what was best. She said we told them to give us information without hearing the other side of the story. She said now we have both sides of the story and these other property owners definitely do not want to be annexed into the City.

Mayor Carroll said there are two things the Commission can do. We could annex the property and then look at the firework ordinance to see if we want to make any changes to the existing ordinance to accommodate the three businesses that are being directly affected by this annexation or to allow it citywide, or to not change it at all and restrict the range of merchandise that they can currently sell. He noted that could be a totally separate issue. Commissioner Moncada said that taking to heart what Chief Trujillo told them, she has to stick to her guns to how our ordinance is written.

John Hakanson asked the Commission to table what is before them until they address the fireworks ordinance.

Commissioner Robertson called for the vote on the previous motion.

Commissioner Cooper said if we do that we are going to be opposing the recommendations from our Director of Public Safety. Commissioner Robertson agreed. Mayor Carroll said it could be a separate issue apart from the annexation.

Commissioner Cooper asked what percentage of sales were to the City and what percentage where sales out to the County. Mr. Fox said there is no way to know. Mr. Fox also clarified that it was not the other property owner that had contacted Mr. Shyne; it was he who had leased the property. Commissioner Robertson asked Mr. Fox where his home office was located. Mr. Fox replied Silver Set, Texas. Commissioner Robertson said possibly it was him. He knew someone had contacted Mr. Shyne and leased the other property. He said he thought Mr. Fox lived here. Mr. Fox replied he did not say that. Commissioner Robertson clarified that Mr. Fox does not live here. He is coming up here once a year to make his living. Mr. Fox said this is his livelihood. He said he does not sell groceries, soup, and milk. He said he sells fireworks. That is it.

Mayor Carroll said he thinks it is important to annex this property in its entirety, but he asked that Mr. McCourt have possible language to amend the existing fireworks ordinance to reflect what we may be able to do to accommodate the 3 existing fireworks locations to sell what they currently sell at the next Commission meeting.

The vote was taken on the above motion. Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Cole, Commissioner Robertson, and Commissioner Ledford voted "aye." Commissioner Moncada and Commissioner Cooper voted "nay." The motion carried by a roll call vote of 5-2-0

7. Consideration of Ordinance No. 1170 for rezoning to District "D" (Business) requested by West Source V [Case Z-02-0619 (A), US Hwy 54/70 at US Hwy 82].

Recommendation: If Ordinance No. 1166 is approved (Case A-02-0057 (A)), approve Ordinance No. 1170 amending the official zoning map of the City of Alamogordo to change the zoning of subject property to District "D", with the condition that the zoning be limited to non-residential use, and to approve the ordinance on such for final publication. [Roll Call Vote Required] [Tabled from December 19, 2002 Meeting]

(Mr. McCourt explained that this item is a planning issue that Ms. Few could handle. He asked the Commission to excuse him for a few moments while he speaks to the fireworks stands property owners. Mayor Carroll excused Mr. McCourt.)

Ms. Few explained that this will only affect the property owned by West Source V that was just approved in the annexation.

Commissioner Cooper moved to approve Ordinance No. 1170 for rezoning to District "D" requested by West Source V for final publication. Commissioner Cole seconded the motion.

Commissioner Moncada stated that she had no problem with this property, but just did not think we were quite fair about the other properties being annexed.

She wanted to clarify she supported this item and had no problem with this property being annexed into the City.

The vote was taken on the above motion. All voted "aye." The motion carried by a roll call vote of 7-0-0.

The meeting was recessed at 8:30 p.m. and reconvened at 8:45 p.m.

8. Consideration of the final plat of FOOTHILLS SUBDIVISION, UNIT 3 for twelve (12) lots located within the City of Alamogordo, for S. Thomas Overstreet et al [Case S-02-0767 (A), S. Scenic Drive].

Recommendation: Approve the final plat with variances on the construction and installation of alleys, on the installation of sewer lines, on the construction of streets to City standards (curb and gutter) and from Section 22-01-140(b)(1) relating to drainage plans; with plat corrections, embankment stabilization, public land dedication, park development, and a Subdivider's Contract.

Mayor Pro-Tem Griggs said that he would like to state that a portion of the ownership is in his aunt and uncle's trust, but he has no personal interest and would vote on the item unless anyone objected.

Commissioner Cooper moved to accept the final plat of FOOTHILLS SUBDIVISION, UNIT 3 for twelve (12) lots. Commissioner Cole seconded the motion.

Klad Zimmerle said that the owners have a small rest area planned and one of the highest and best uses there presently is hiking and walking. They are proposing a half-acre park and rest area at the halfway mark. He said that Bar-M is going to build the first rest area in a southwestern stucco style indicative of the whole area. Commissioner Cole asked the name of the rest area. Debbie Martinez replied Adobe Ranch Park.

The vote was taken on the above motion. All voted "aye." The motion carried by a vote of 7-0-0.

ORDINANCES AND RESOLUTIONS:

9. Ordinance No. 1172 amending Article 17-08 of the Code of Ordinances prohibiting aggressive solicitation.

Recommendation: Approve the Ordinance for first publication. [Tabled from 02/11/03 Regular Mtg.]

Mr. McCourt explained that at the meeting of February 11, 2003 we had one item that was proposing to do two things. He explained that one thing was having to do with aggressive solicitation. It is not defined in our ordinance currently so we

are addressing that in this ordinance. He stressed that it is not a problem that we are currently having in our City. It does provide our police department some tools if we do have problems. Mr. McCourt provided some examples from large cities. He also stressed that this ordinance would not stop the activity of people sitting on benches with signs that say "Hungry. Homeless. Please help me."

Commissioner Cooper said that tonight on the news, there was a story about a man who asked a lady for a cigarette and when she could not produce one, he stabbed her. He added this enforces the need for this ordinance.

Commissioner Cole moved to approve Ordinance No. 1172 for first publication. Commissioner Cooper seconded the motion. All voted "aye." The motion carried by a vote of 7-0-0.

10. Ordinance No. 1173 amending Article 17-08 of the Code of Ordinances regarding licensing of nonresident and itinerant peddlers and solicitors.

Recommendation: Approve the Ordinance for first publication. [Tabled from 02/11/03 Regular Mtg.]

Mr. McCourt explained that this was the second part of the ordinance from February 11, 2003. He said it is an attempt to look at the additional costs and difficulties of the itinerant peddlers and solicitors incurred by the City. He said this ordinance attempts to adjust this and allow us to collect some additional fees from these types of merchants.

Commissioner Robertson asked if one of the local growers comes down with some of their fruit and sells fruit on the street is it proper for them to do so. Mr. McCourt replied it certainly is proper, but it would fall under this peddler type ordinance here. He noted there are some states that have an exception for the sale of agricultural goods. Commissioner Robertson asked if he had read that this ordinance only concerns the people that are nonresidents. Mr. McCourt replied it would be individuals who do not have a place of business here. Commissioner Robertson replied that if they are residents here they should be able to peddle on the streets. Mr. McCourt replied those are not the individuals we are concerned about. Commissioner Robertson said he is trying to clarify it for someone because their family sells fruit that they raise. Mr. McCourt said he needs to discuss this with the attorney, Mr. Kirschner who is ill this evening, because he is not 100% sure on the issue.

Commissioner Cole asked how this is enforced. Mr. McCourt said it is primarily enforced by our police department. He said that is one area where we pick up additional costs because they need to stop every time they see one of these vendors and check to see if they are properly licensed.

Commissioner Cooper moved to approve Ordinance 1173 for first publication. Commissioner Robertson seconded the motion.

Mayor Pro-Tem Griggs said there is one thing we need to consider when we go to final publication. He suggested maybe our initial fee is \$50 for each calendar year and then reduce it for any other times during the calendar year.

The vote was taken on the above motion. All voted "aye." The motion carried by a vote of 7-0-0.

11. Ordinance No. 1175 amending Section 28-03-035 of the Code of Ordinances regarding surcharges on water usage during Stage 2 and 3 water rationing.

Recommendation: Approve the Ordinance for first publication.

Mr. McCourt explained that this is in our rationing section. He noted that the only item proposed for change is Section 28-03-035 B 6 on the bottom of Page 3 and on to Page 4 of the proposed ordinance. He said that at our last meeting we discussed that the amounts proposed for surcharges were not large enough to make a difference in water use. The Commission asked that we bring back a proposal to make the surcharge equal to the commodity amount in each tier. He illustrated that in Tier 2 the commodity charge is \$1.25 per 100 cubic feet. If Stage Two rationing goes into effect, the commodity charge would become \$2.50 per 100 cubic feet. In Tier 3, the current rate is \$2.00. If Stage Two rationing went into effect, the rate would be \$4.00. In Tier 4, the current rate is \$3.30 and the rate would become \$6.60. In Tier 5 it is \$5.00 and would become \$10.00. He noted that last year it read that out-of-city users are charged double the in-city rates. He said this became a concern that the Commission addressed as we went through last year. He said this specifically makes the surcharge equal to the in-city rates so we do not get that affect of doubling the surcharge on those out-of-city accounts that we have.

Commissioner Cole moved to approve Ordinance 1175 for first publication. Commissioner Cooper seconded the motion.

Mayor Pro-Tem Griggs pointed out that back on Page 2, Item 5 there was a proofreading error in the last sentence. It says no lawns shall be newly seeded or sodded or trees or shrubs. There is nothing after trees or shrubs so it looks like we left out the end of the sentence. We need to add the wording "newly planted." after shrubs.

The vote was taken on the above motion. All voted aye. The motion carried by a vote of 7-0-0.

OTHER BUSINESS:

14. (A)PW Bid No. 2003-003 for Bonito Pipeline Replacement Phase 7.

Recommendation: Award to General Hydronics, Inc. for \$696,450 (including NMGRT).

Commissioner Robertson asked to have this item withdrawn from the Consent Calendar. He asked that Mr. McCourt explain where Phase 7 is on the project. He said they thought the military was replacing the pipeline and asked if this was the pipeline running from La Luz down to Florida. Mr. McCourt explained that the current pipeline runs down from Scenic and North Florida under the pavement of North Florida to Indian Wells. It then turns west and goes under the park paralleling Indian Wells down to White Sands. It then crosses White Sands and hooks into a line that we replaced just west of the Toy Train Depot. It is a line both the City and Holloman use to transport water both in the City and down to Holloman. He explained that we are moving the line to a new location because Florida is such a highly traveled road. It would be extremely disruptive to tear up that road. He explained that we looked into moving the line to a drainage easement and some rights-of-way to install the new line. This is the lower cost option and we will not have to do extensive repaving.

Commissioner Robertson asked if we are processing the water that goes to La Luz and Holloman. Mr. McCourt explained we are and it actually works to our advantage. The water from Bonito only has 300 tds and by mixing it in with our other water at the treatment plant we end up with a better quality of water. He noted that our surface water is over 800 tds and our wells get up around 1,200 tds.

Commissioner Cole moved to award PW Bid No. 2003-003 to General Hydronics, Inc. for \$696,450 (including NMGRT). Commissioner Cooper seconded the motion. All voted "aye." The motion carried by a vote of 7-0-0.

15. Select a member to represent the City of Alamogordo on the Otero County Solid Waste Authority (OCSWA).

Recommendation: Select a member to represent the City on the OCSWA.

Mayor Carroll explained that under the Joint Powers Agreement the City has 5 members on the board. We have an opening to replace Commissioner Easley. He noted that the current Alamogordo members are Commission Cole, Mr. McCourt, Mr. Heberle, and himself. We meet with other members of the Otero County Solid Waste Authority and then we meet with the Lincoln County Solid Waste Association on an annual basis to conduct business and approve the budget. Commissioner Robertson said if no one else wanted to, he would be happy to serve on the board. Mayor Carroll welcomed him to the board and informed him of the upcoming meeting.

17. Approve Budget Planning Calendar for Fiscal Year 2003-2004 Municipal Budget.

Recommendation: Approve the calendar.

Mayor Carroll explained that Commissioner Robertson said he would like to have more time to review the budget before the public hearings. Mayor Carroll said he met with Ms. Nichols about this. He suggested we modify the calendar so that the Commission will get the budget the 16th of April instead of the 21st. This will give the Commission 2 weekends to review the budget.

Commissioner Robertson moved to approve the Budget Planning Calendar as amended. Commissioner Cooper seconded the motion. All voted "aye." The motion carried by a vote of 7-0-0.

Commissioner Cole clarified that the budget hearings would not be at the library this year. Ms. Nichols confirmed that was correct.

18. (A) Appointments to Boards and Committees.

Appointments to Boards and Committees.

Airport Zoning Board. One vacancy.

City Charter Committee. Fourteen vacancies.

Nominated by:	Nominee	Nominee
Mayor Carroll	Ed Brabson	Larry Riordan
Mayor Pro-Tem Griggs	George Caruso	Harold O'Dell
Commissioner Moncada	Mike Leon	John Wheeler
Commissioner Cooper	Lonnie Clack	Angel Rivera
Commissioner Cole	Coy Hunt	Meron Wilson
Commissioner Robertson	Robert Coleman	Leroy Laughlin
Commissioner Ledford	Ron Baker	Robert Doughty, II

Community Development Advisory Committee. Two vacancies.

Mayor's Committee on Aging. One vacancy. Nominee: Ms. Opal Devenport.

Parks and Recreation Board. Two vacancies.

Mayor Carroll appointed Ms. Opal Devenport to the Mayor's Committee on Aging and appointed all the Commission nominees to the City Charter Committee. All remaining vacancies were rescheduled.

(B) Schedule first Charter Committee meeting.

Mayor Carroll asked if the Deputy Clerk had gotten a response from the majority of the members of the Charter Committee. She explained that she had not received a response from the majority of members yet. Mayor Carroll was concerned that many of the members may not be able to attend a meeting scheduled before 5:00 p.m. Ms. Kidwell asked that the meeting date be approved, but that the time be left open so that she could work with the members to coordinate the best time for the first meeting. Mayor Carroll agreed and scheduled the initial meeting for March 12, 2003.

UNSCHEDULED COMMUNICATIONS:

A. Chief Trujillo updated the Commission on the bus traffic on Maryland Ave.

Chief Trujillo informed the Commission that he had met with Mr. Brett Buttram, the owner of Alamo Bus Company concerning the problem with bus traffic on Maryland Avenue. Chief Trujillo said that Mr. Buttram was very willing to do what they could to help eliminate the problem. He explained that what they did was change the route of bus travel in the morning so they are no longer traveling down Maryland right now. He said they are sending them out to other residential areas and we may potentially have complaints from those neighborhoods. He added that they looked at some long-term goals, which involve coming out into the Wal-Mart parking lot and going to the light at the intersection. He noted that the Wal-Mart parking lot is private property so they met with Mr. Jay Schloboem from Wal-Mart. He understood the concerns and was very receptive to any ideas. Chief Trujillo explained that with both individuals cooperation the bus company is looking at putting a gate in the back of the bus parking lot and entering into the Wal-Mart parking lot. He stated that DPS is really happy with this because it eliminates any cross traffic on First Street and they are going to be at a protected intersection. He praised the two business owners for helping us to resolve this issue.

B. Commissioner Cole and Commissioner Cooper commended City Employees in the Public Works Department.

Commissioner Cole commended the Public Works employees for their efficient efforts on Friday, February 14th at a sewer that backed up in some residents' home that night about 8:30 p.m. He specifically mentioned Jaime Paz and Sam Sanchez from the Utility Maintenance Division.

Commissioner Cooper added that he reported an eruption he saw on Scenic where they had worked on the water lines. He commended both Utility Maintenance and Street Maintenance because they responded almost immediately and have since taken care of it.

C. Mayor Pro-Tem Griggs and Commissioner Robertson thanked Commissioner Ledford for his willingness to serve on the Commission.

Mayor Pro-Tem Griggs welcomed Commissioner Ledford and told him that he appreciates him stepping up to the responsibility. Commissioner Robertson echoed the comments.

D. Commissioner Ledford thanked everyone for his or her support.

Commissioner Ledford expressed his appreciation to Commissioner Cole for nominating him to the Commission and thanked everyone for his or her support. He said he is looking forward to serving on the Commission.

E. Mr. McCourt commented on several items.

Mr. McCourt thanked the Commission for the opportunity to attend Municipal Day. He clarified the watering schedule due to some confusion since the passing of Ordinance 1169. He explained that the current day and times for watering are Sunday from midnight until 8 a.m. and from 8 p.m. until midnight for odd numbered addresses and Saturday from midnight until 8 a.m. and from 8 p.m. until midnight for even numbered addresses. He explained that we are in better shape than we were a year ago as far as the water situation. He noted that our reservoirs are fuller than they were a year ago. He stated that the wells are off at this time. He said we have been able to accomplish this primarily because we have been on one day a week watering all winter. He said he is concerned that there is going to be a great deal of demand to loosen up the one day a week watering schedule. He had hoped we would be able to do that and he had talked to several members of the Commission regarding this. He informed the Commission that however, last week as we started to fill the North Reservoir we found significant leakage in the reservoir. He explained that we just finished covering the reservoir, but did not put a liner in it because it is the reservoir we use as a settlement basin. There is a lot of rocks and debris that settle in the bottom of it. He explained that consequently we have to periodically go in with the loader and scoop it out. He said you can see mounds of the debris located north of the existing reservoirs. The water level has continued to fall at a rate of about 210 gallons a minute, which is about 300,000 gallons a day. He stated that this is causing us a great deal of concern. He explained there were a couple different thoughts on this. One was that by drying the reservoir out the clay-lining shrinks up and cracks appear. Normally when it gets wet, those cracks disappear because the clay expands. We thought it might be a self-healing problem and that as it got wet it would seal itself off. Mr. McCourt noted that does not seem to

be the case. He continued that we have had scuba divers down into the reservoir with dye trying to see if they could locate any definitive leaks like a large crack or a seam or an area where there was a noticeable amount of water going out versus a general infiltration out everywhere. He said that so far we have not found that type of leak. It appears that it is a large diffusion area. He stated that this leads to the second school of thought and that is that it has always leaked, but we never noticed because we did not have a cover on it. We put a lot of water into it and we did not have leak monitors under it like we do on the large reservoir. If this is the case, we do not have a short-term solution. The solution would be that we are going to get as much water in it as fast as we can and then we would have it full. We will use it as the first reservoir that we use this summer and drain it so we can minimize the time that water leaks out of it. We will then look at ways to seal it up before next summer. He said we are still exploring the problem and do not have a final answer right now, but we are working on it. Commissioner Cole asked why we could not empty it right now by diverting the water coming in. Mr. McCourt explained that we do not have any place to divert the water to. The other two reservoirs are now full. We need to place the water we are getting now in there so we will have it to use during the summer months as our demand picks up.

Mr. McCourt explained that in the budget we have an amount set aside to do an economic development study. This is the money from the economic development tax. We thought that money was going to be used in conjunction with the development of an industrial park area by the City. We have not proceeded with that development at this time so the money has not been spent. He said that we have been asked to participate in a study on the impact of additional personnel coming to Holloman on the community. He explained the study looked at the impact on the area as far as job creation, infrastructure, housing, educational system, and so on. He said they are asking for us to put up \$10,000 for the study. He said we believe it would be beneficial for us to have in place. It would help support Holloman and the continuation of Holloman. Commissioner Robertson asked who was asking us to support the study. Mr. McCourt replied OCEDC is the lead agency. They are working with UTEP. Mayor Carroll added that the community belongs to the ARMS group, which is the Alliance for Regional Military Support. He said this project started out at Ft. Bliss who contracted with UTEP to do an economic study of the impact of Ft. Bliss on El Paso and the surrounding areas. They also studied the impact and needs to accommodate a growth at Ft. Bliss because they feel comfortable they will be a receiving base with the upcoming BRAC. He said they have already paid for the largest part of the study. He added that UTEP has agreed to do a similar study for White Sands and Las Cruces, and Alamogordo and Holloman at a reduced cost. They want to establish an outreach business for the university where they could take this model and use it for other communities. If the three communities each had this study done, there may be a way to meld the three together and get an overall area economic impact of potential increases or decreases of military strength. Commissioner Robertson asked if it would also help us to show we

could accommodate more missions and personnel here. Mayor Carroll responded that was absolutely correct. Commissioner Robertson said he sees no problem with it then. Commissioner Cooper asked if we had the funding. Mayor Carroll said we do have the cash available. Commissioner Cooper said he thinks we should go for it. Mr. McCourt noted that it is a little different use of the money than we had talked about at budget time so he wanted to bring it to their attention. Commissioner Cooper added it is still under economic development. Mr. McCourt agreed. Commissioner Cole said he supports it also and asked if the County was going to be involved also. Mr. McCourt said he has not heard.

Mr. McCourt noted that the construction at Home Depot and Lowe's is going very fast. They have been recently working 24 hours a day and we are getting residents' complaints about the noise during the night. He said we do want to work with the builders, but we have an obligation to our citizens so they can get a good night's sleep. He informed the Commission that Staff is going to work with the builders to see what we can set up that is reasonable. Commissioner Cooper said the only problem that has been brought to his attention is the gravel on Glacier where they pull in and out. He said he talked to Star Paving and they are now cleaning it up twice a day. He said they are working with us.

Mr. McCourt reminded everyone about the March 4 Comprehensive Plan Meeting at 3:00 p.m. He also informed them about a meeting regarding the Dark Skies Ordinance scheduled for February 27, 2003. Mr. McCourt said we have been in contact with the observatory. He said they have concerns about lighting at these two establishments (Home Depot and Lowe's). He noted that our Staff reviewed the proposed lighting as it was originally proposed. They would not have been in compliance, but this has been altered. The observatory still has some concerns with the amount of lumens in the reflection off the ground. We set up a meeting for this Thursday with the observatory, our Code Administration staff, and the builders to discuss the issue. Commissioner Cole asked if he could invite the chairperson for the astronomy club to the meeting. Mr. McCourt said he could.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss threatened litigation.

Commissioner Cooper moved to adjourn into Executive Session. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a roll call vote of 7-0-0. The meeting was adjourned at 9:35 p.m.

The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of February 25, 2003 was adjourned into executive session and the matters discussed in the closed meeting were limited only to those specified in the motion for closure.

Mayor Donald E. Carroll

ATTEST:

City Clerk Angie J. Rahn

(SEAL)

(Prepared by Chief Deputy Clerk Betsy C. Kidwell)

Approved at the City Commission Regular Meeting of March 11, 2003



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