

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
MUNICIPAL BUILDING, 1376 E. NINTH STREET  
7:30 P.M., COMMISSION CHAMBERS  
MARCH 11, 2003**

**MAYOR DON CARROLL**

**COMMISSIONER JOHN ROBERTSON**

**MAYOR PRO-TEM RON GRIGGS**

**COMMISSIONER MARION LEDFORD**

**COMMISSIONER INEZ MONCADA**

**CITY MANAGER PAT McCOURT**

**COMMISSIONER DON COOPER**

**CITY ATTORNEY WILLIAM KIRSCHNER**

**COMMISSIONER ED COLE**

**CITY CLERK ANGIE RAHN**

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

The meeting was called to order at 7:30 p.m. The Invocation was given by Father Scott Ruthven and the Pledge of Allegiance was led by Commissioner Ledford. Mayor Carroll led the Commission in singing Happy Birthday to Alamogordo Daily News Staff Writer, Meghan Musante.

**CALL OF THE CONSENT CALENDAR:** [Roll Call Vote Required - Item No. 3]

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.

**1. Minutes of Regular Meeting of February 25, 2003 and Special Meeting of March 4, 2003.**

Recommendation: Approve the minutes.

**2. Temporary Construction Easement Agreement from Farr Rental for the Alamogordo Flood Control Project – South Channel Phase 2.**

Recommendation: Approve the Agreement.

**3. Ordinance No. 1174 amending Article 14-01 of the Code of Ordinances adjusting the solid waste collection rates based on the CPI-U.**

Recommendation: Final adoption of Ordinance. [Roll Call Vote Required]

**8. Easement for Otero County Electric Cooperative located in the vicinity of Station 6+044 and 6+188 of the Sacramento River Road Project.**

Recommendation: Approve the easement.

**9. Award of Bids:**

**(A) PW Bid No. 2003-001, 2001 CDBG for Pavement Rehabilitation and Water and Sewer Improvements, Alta Vista Dr. and Seventh Street.**

Recommendation: Award to Diamond Construction, Inc. in the amount of \$445,109.90 (includes NMGRT).

**(B) PW Bid No. 2003-002, 2002 CDBG for Waterline Improvements at Plaza Hacienda Public Housing Complex.**

Recommendation: Award to Lane Plumbing in the amount of \$173,289.38 (includes NMGRT).

**(C) Bid No. 2003-03, Fire Hydrants.**

Recommendation: Award to Morrison Supply of Alamogordo, the lowest responsible bidder, for an estimated total of \$40,670.00.

**10. Statement regarding the Executive Session of February 25, 2003.**

Recommendation: Approve the statement.

**Items 4 and 5 were removed from the Consent Calendar.**

Commissioner Cooper moved to accept the balance of the Consent Calendar including Items 1, 2, 3, 8, 9, and 10. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a roll call vote of 7-0-0.

**4. Resolution No. 2003-06 allowing the Toy Train Depot to tastefully advertise.**

Recommendation: Approve the Resolution. [Roll Call Vote Required]

Commissioner Robertson asked to have this item removed from the Consent Calendar. He asked Mr. Kirschner about the property being donated. Mayor Carroll replied that the track and building may have been donated, but the property is part of Alameda Park and is City property. Mr. McCourt explained that the Toy Train Depot has an agreement with the City to operate the train. Commissioner Robertson said he has had a problem with the Toy Train Depot for quite a while because he was under the impression that it was part of the parks. He said there were various property donations to the City with the conditions that it was used for parks and recreation only. He said this is a private business down there and they are trying to advertise other businesses along with it. He said he understands why they are doing it and has no objections, but does not want it to jeopardize that piece of property. Mr. McCourt replied that he does not believe there are any concerns. He added that he believes this property is part of the original town plat in lieu of being donated separately. He believes it can be used for public purposes.

Commissioner Robertson moved to accept Resolution No. 2003-06 allowing the Toy Train Depot to tastefully advertise. Commissioner Cooper seconded the motion.

Commissioner Cooper asked if the advertisements would be on the trains. Mr. McCourt replied the permission would be a little broader than that. He said they could put things on their building. It would be similar to what we see at little league fields. He added that they may put them on the train as well. Mayor Carroll said the City allowed the construction of the track and the moving of the building in 1987 in return for a percentage of the gross receipts of the operation. He said that over the years the cost of their insurance to indemnify the City has gotten to a point where absent of them being able to raise some additional revenue, it is questionable if they could continue in business. He noted that this would give them an opportunity to raise more revenue to offset those costs. Commissioner Cooper said he recalls their insurance has tripled over the last seven years. Mr. McCourt noted that this came up last year and we are not permitted to give them money or to allow them to use our property free of charge.

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

##### **5. Resolution No. 2003-07 supporting an application to NMSHTD for assistance in resurfacing South Scenic.**

Recommendation: Approve the Resolution. [Roll Call Vote Required]

Commissioner Cole asked to have this item withdrawn from the Consent Calendar. He asked Mr. McCourt if this was just a request for these funds. Mr.

McCourt replied that was correct. Commissioner Cole asked if you have to specify in the application which street or streets the funds will be used for improving. Mr. McCourt replied yes we do because that is part of the rating process the State uses to rate projects. He explained that streets like South Scenic that are considered arterial roads get more points in the rating versus a connector street or a local street. Commissioner Cole asked which budget year would it be if this money is received. Mr. McCourt said he thinks it would be the 2004-05 budget year. Commissioner Cole said he drove South Scenic and it seems to him there are other arterial streets that could use the money more than this one. Commissioner Cole questioned if this was being considered as potentially being part of the bypass going to the highway. Mr. McCourt said we feel that eventually it will be a part of a road that connects all the way around to Highway 54, but our thought process was more along the lines that this is a major piece of roadway that we want to maintain and not let fall apart. He said it is to the point that it needs this preventative maintenance work done on it. He noted that we recognize in the public eyes the other streets get a lot more traffic. He said we thought this method of using mainly grant monies (75%) would be more favorably received by the public and then we can use our local money on the other streets. Commissioner Cole said that is debatable. He said in his observation while driving the street the part that is in the County needs repair more than the part in the City. Mr. McCourt replied that he thought this was for the entire roadway. Mr. Miramontes corrected that this was only for the part in the City. Commissioner Cole said he is glad we are repairing streets and he hopes we get this assistance from the State. He said he does not think the selection of South Scenic is the best use for the money at the moment. Mr. McCourt replied that we could change the application if that is the Commission's desire.

Commissioner Robertson asked if was the State's idea to do Scenic. Mayor Carroll replied it was not. Mr. McCourt said we selected South Scenic. Mayor Carroll reminded the Commission that when they first started talking about expending money to rehabilitate streets and keep them from deteriorating, South Scenic was the street used as an example of a street that if we expended the money on it now, we would extend the life of that street. He said he mentioned it at that time that it was one we would catch some flack about because there are streets that are in worse shape. He said we have the opportunity to extend the life of this street if we do it now. If we do not, that street will deteriorate to the point that it will have to be totally redone. He said this is a competition. It does not indicate that we are going to get this money. He explained that we will be vying for monies from the State. It has to go through the Regional Planning Organization in Roswell to see what kind of rating this project will get. If it comes out high enough then it has to go to the State level so there is no guarantee we will get the funds. Mayor Carroll continued that when we talk about going for State monies to rehabilitate streets, the classification of the street weighs heavily in the rating process. He said that some of the neighborhood streets that may need it worse than this one, would not fair high enough to even be considered. He added that a four-lane arterial destined street has a better chance of a higher

rating and possibly getting funding. Commissioner Cole replied that he understood this. He said that he was thinking of First Street where \$134,000 would do a significant amount of improvement, but would not go that far. He noted that when he drove Scenic both ways from Ocotillo to the batting cages and back the area that needs repairs is not in the City in his observation. He added that when he drives First Street it is different; however, it probably needs to be repaired before we would get the money. He said he was trying to make a comparison there, but his questions were answered. Mayor Carroll agreed and said First Street is a higher priority. He said that we need to come up with another funding source for First Street because we cannot count on this one. Commissioner Cole agreed.

Mr. Miramontes noted that there is no assurance that we will get any funding or that we will get the level of funding that we are requesting. He said that quite often it is considerably less on these co-operative grants. He added that part of Scenic is in the County and reminded Mr. McCourt that we planned on approaching the County to see if they would be interested in doing their section. Mayor Carroll added that they also have the opportunity to apply for a project and if they apply the same time we do, it may add some emphasis to both grant requests. Mayor Pro-Tem Griggs asked what process we would use when we talk about resurfacing this street. Mr. Miramontes replied they would use the Cutler process similar to what we saw on South Florida Avenue.

Commissioner Cooper said that South Scenic has been unattended and he knows we have done work on First Street since that arterial has been there. Mayor Carroll said it is ironic that part of what causes a street to deteriorate is not enough traffic on it. He stated that high traffic streets deteriorate and the ones that do not have high traffic deteriorate also. Commissioner Cooper said the constant traffic will actually kneed the asphalt together.

Commissioner Cole clarified that if we do receive the money it has to go to South Scenic. Mr. McCourt replied that was correct. Commissioner Cole referred to the money used on South Florida. He said there was money set aside for a particular project that ended up not working out exactly as we expected for timing purposes so we used it for South Florida. Mr. McCourt explained that there were appropriations to use at the railroad crossing that was going to expire. He said that was legislative appropriations. He said one of our legislators moved it from the rail crossing by the golf course over to South Florida. Commissioner Cole asked if there would be a possibility here that this one could change. Mr. McCourt answered that this one is actually a different funding source and it seems unlikely that it would change. Mayor Carroll added that the MAP program through the RPO is hesitant to allow you much leeway because there is so much competition for so few dollars. He said if we were to be funded for this and we were not able to use the money when it came time to do the project, we would lose the funding. He said that they would not allow us to start over and pick

another project. The money would probably go to whatever project was right behind ours because these will get rated over a number of years.

Commissioner Robertson said he takes it that it does not matter to the State when we apply for this whether it is in the City or the County. Mr. McCourt said they would expect the County to apply for roads in the County and the City to apply for ones in the City. Commissioner Robertson asked if they were supposed to apply along with us. Mayor Carroll said it is up to the County, but it would probably strengthen both the applications if they were to apply at the same time for the same project. Commissioner Robertson asked if this amount of money would do the entire Scenic project. Mayor Carroll corrected that it would not; it would only do the part in the City. Commissioner Cole suggested that Mr. McCourt talk to the County about their portion of the project. Mayor Carroll said the majority of it is in the City.

Commissioner Cooper moved to approve Resolution 2003-07. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a roll call vote of 7-0-0.

#### **OTHER BUSINESS:**

#### **6. Discussion and direction regarding modification to the Fireworks Ordinance (Article 12-04 of the Code of Ordinances).**

Recommendation: Provide direction on what changes to prepare.

Mayor Carroll noted that they had received a letter this evening from the law office of John Hakanson requesting that discussion on this item be postponed until the next meeting or in the alternative he be allowed to comment at the next meeting. He said basically what he believes is being asked is that we table the item. He stated that the Director of Public Safety is prepared to make a presentation on this issue. He asked what the Commission's desire was on this item.

Commissioner Cole moved to go with Staff's recommendation of Option 1 and 6. Commissioner Robertson seconded the motion.

Mayor Carroll clarified the motion included Options 1 and 6. Commissioner Cole confirmed and stated he understands this means the businesses have to abide by the current ordinance unless there is a court case. Mr. McCourt added that the Option 6 is that we would send a letter to Otero County requesting them to adopt an ordinance that mirrors the City's ordinance on fireworks not permitting the use of aerial types of firework sales. Mayor Carroll clarified that we would go with Option 1 not allowing them to sell those and additionally, we would ask the County to adopt a similar ordinance. Commissioner Cole affirmed. He said he did

talk to one of the County Commissioners today and one that was at the meeting tonight briefly. He reiterated his motion to go with Option 1 and 6.

Mayor Carroll asked Chief Trujillo if he still wanted to make his presentation. Chief Trujillo said his presentation was intended if the Commission chose to do other than go with the recommendation. Commissioner Robertson said that one sentence caught his eye in his agenda packet. He said if they do anything but 1 and 6 the Commission would be in danger of conflicting with the Equal Protection requirements of the federal and state laws. He said he thinks we need to take note there. Mayor Carroll said if we allowed some to sell and not others is one of the areas of concern.

Mayor Pro-Tem Griggs said he does not have an issue with Option 1. He added that if we were to do something different like grandfathering these in, he would recommend we would allow any to be sold, but not allow the use. He said he knows that Chief Trujillo is not keen on that. It is something we would have to revisit in a couple of years to see if he was right or if in changing the ordinance, we were right. He noted that he can support not letting anyone sell those aerial fireworks in town, but said if we look at anything, it needs to be letting everybody in town. Commissioner Cooper agreed with Mayor Pro-Tem Griggs. He said the ordinance on fireworks has been on the books for 15 to 20 years now. Chief Trujillo said it has been on the books since 1992. Commissioner Cooper said he does not think there is any change in order and we should go with the ordinance that we have now and enforce it.

Commissioner Moncada said that all though she voted against the annexation at the last meeting because she was not willing to change the fireworks ordinance and she felt we should have given the property owners a year's notice, she still feels we should not change the ordinance that we have.

Mayor Carroll said he understands the concerns of the Department of Public Safety and he understands what the other Commissioners are saying. He added that he thinks this is an issue of fairness. He stated that these people did not ask to be brought into the City. They were forcibly brought into the City as part of an annexation, which is within the City's right to do. He thinks if the Commission votes for Option 1, he thinks we will end up in some sort of litigation. He added that he is comfortable that the City will prevail in any litigation, but he is concerned about the fairness of the issue. He said he thinks a combination of Options 3 and 4 might give us an opportunity to be fair with the property owners we are bringing in and at the same time mitigate the problems that might exist from the sale of other fireworks. He said that basically we are not going to stop the sale of these fireworks; the best we will do is move these folks a quarter mile down the road. He said he will not support the motion all though he does not necessarily disagree with it either.

Commissioner Cooper asked if we were more or less putting pressure on the County to address this issue too. Mayor Carroll said he does not see it as putting pressure on the County because they are free to do whatever they choose to do. He said that at this point any kind of fireworks are still legal in the County. He said if we were to make them legal to sell in the City, but prohibit their use in the City they could still buy them and take them out in the County. He thinks it would be nice if the County went along with it and we were consistent throughout the County. He said it would make life easier for everyone, but he does not see it as putting pressure on the County.

Commissioner Ledford asked how long the businesses could sell aerial fireworks before they no longer could because of the annexation. Mayor Carroll explained that being in the City they could not sell any, but in the County they could. He added that being in the City they could only sell fireworks during certain periods of the year, but in the County they could sell them all year round. Commissioner Ledford said it seems to him that we should give them time to comply with this. He noted that if the County mirrors our rules, they will have to move out of the County or the State to sell aerial fireworks. Mayor Carroll confirmed that was correct. He said it would make life a lot easier for everyone if the County would sign on to the same restrictions that the City has. He noted that there is legislation introduced at the State level every year to regulate and further ban fireworks because there is a definite fire hazard. He said the ones that the State has allowed us to ban are the ones that have the potential for doing the most damage. He added that in times of severe drought even some of the others have the potential of starting a fire. Commissioner Ledford asked about whether Mr. Hakanson would be able to discuss this issue if we pass this item tonight. Mayor Carroll clarified he could still address the Commission.

Commissioner Robertson noted that we are not talking about a year round business. He said that all 3 of the firework stands out there seem to be temporary and could be relocated very easily. Commissioner Ledford said he thinks he can support the motion. He just had a few questions. Commissioner Moncada clarified that if we support this item with Option 6 in it, the County may still choose not to mirror our ordinance. Mayor Carroll affirmed. Mayor Pro-Tem Griggs asked Chief Trujillo if we really know how much real danger we are talking about if they allowed the firework stands to sell these aerial devices in the City. Chief Trujillo said the access would be more widespread than it is now. He said we would put the dangerous fireworks throughout the community for people to go buy. He said kids could get them at Wal-Mart, compared to where they have to go now to get them. He said this means the use will be more available. He explained that we are telling our community that you can buy these, but you cannot use them here. He said if we allow them to sell them here, it will give the impression that you can use them here. This will lead to the injuries and damage caused by them. He addressed the issue of gross receipts noting this is a limited business even for the sellers of fireworks in town. He reiterated the limited periods the fireworks could be sold. He noted that these stands can still sell

fireworks, but they just cannot sell the dangerous fireworks. Commissioner Cooper said some people do not understand the potencies of these fireworks. He said the roman candles and bottle rockets can travel well over 100 feet in the air and no one knows where they will land. He said he had some land on the roof and hit his front door and cause damage. He added that a M-80 has the capacity of about one-tenth of a stick of dynamite and the M-50 is about a quarter of a stick of dynamite. He stressed that is real potent fireworks to be exposed to and they can do major damage. Chief Trujillo asked if the Commission would like him to go through his presentation. They replied affirmatively. Commissioner Robertson asked Chief Trujillo what it costs the City to put out fires and respond to calls for fireworks. Chief Trujillo replied that it was included in his presentation.

Chief Trujillo presented his presentation to the Commission discussing why we have the fireworks ordinance to begin with. He explained that fireworks represent one of the highest risks for any known consumer product. He said that over 8,500 people are treated annually in emergency rooms for injuries caused by fireworks. He explained these are only the injuries that are severe enough to go to the emergency room. He added that 47% of those injuries involve children, 64% are hand injuries, and 67% are from the types of fireworks that we ban here in Alamogordo. Chief Trujillo showed a chart of the types of fireworks that cause the most injuries. He showed pictures of burn injuries from fireworks as part of the presentation. He said that over \$20 million in damage happens every year from fireworks in the United States. He added that fireworks cause more fires on the 4th of July than all other causes combined. He noted that public displays like the one we have at the Space Hall of Fame represent the lowest incident rate for firework use. He said that DPS averages over 200 complaints a year related to illegal fireworks. He reminded everyone of the limited time they are sold. He said they average 48 fire calls per month, however in the month of July they average over 92 fire calls. He stressed that it is double the normal situation. He added that our overtime hours for 4th of July alone represent 75 extra man-hours responding to fires. He said the cost of that overtime is over \$1,000. He stressed that this is only what we can track specifically related to fires and fireworks on the 4th of July. He said this does not include the overtime costs and man-hours of enforcement. Commissioner Robertson clarified that it did not include the cost of vehicles or anything, but only included overtime. Chief Trujillo confirmed. He said right now we do not allow any officers to take vacation or take off during July 4th because we know we are going to be overwhelmed. He read a section of our current ordinance and said that basically it is illegal to sell, possess, or transport illegal fireworks. He explained that illegal fireworks are ones that go beyond 10 feet or are louder than a cap pistol. He said the original ordinance was established in 1992 and before that we banned all fireworks inside the City Limits. He explained that the State adopted a law that prohibited municipalities from banning all fireworks. He said we could only ban the dangerous fireworks and that is what the City did. Commissioner Cole asked if that applied to the County. Chief Trujillo said that does apply to the County. He said they can adopt a similar ordinance where they ban the dangerous fireworks. Chief Trujillo

showed everyone a newspaper article from last summer where the Governor requested municipalities to ban all fireworks because of the drought conditions. He issued an executive order at that time asking all municipalities to ban them. He said that several municipalities around the State did ban all fireworks because of the drought conditions last year. He said based on what he has heard and seen so far we are going to experience the same type of conditions this summer as we did last year. He noted that there is a strong possibility that this situation would come up again.

Chief Trujillo reviewed the options presented to the Commission. He explained that Option 1 is what he is requesting, which is keep our existing ordinance in place. He said they feel comfortable that we are right on this issue because it is a public safety issue and we would prevail if any lawsuits were filed against the City in this particular area. He said that Option 2 was to permit existing sellers of fireworks on the annexed property to sell fireworks that are currently banned in the City. He said this creates a dual system and he does not support it. Option 3 was to permit the sale of any types of fireworks anywhere within City limits, but still prohibit their use. He explained that he does not support this because it does not address the public safety issue. He thinks it will create more access and will result in more damage and more injuries. He said if we consider this option, he highly recommends that we add specific wording to distinguish between the use and transporting of these fireworks. He stressed that he does not support this option. Option 4 provides for a dual licensing requirement. He noted that basically we would have a permit for individuals selling the current, permissible fireworks and one for those selling the dangerous fireworks. He said we would recommend increasing the fee for the permit for the dangerous fireworks to correspond to the amount of money the City is having to put out to enforce those particular violations. Option 5 is to request that the County permit the City's requirements be placed on the extraterritorial zoning jurisdiction. Chief Trujillo explained that our law would extend for 5 miles outside the City limits under this option. He said that Option 6 is request the County adopt a similar ordinance to the one the City has so that we are consistent. This would not allow the sell or use of these dangerous fireworks anywhere in Otero County. Chief Trujillo said this option (#6), along with Option 1 is what he strongly recommends. He stressed that he could not support any option except Option 1, alone or combined with Option 6 or 5.

Commissioner Ledford asked how many accidents were caused in Alamogordo by illegal fireworks. Chief Trujillo referred to the nationwide statistic of 8,500 injuries. He said that the chart they presented showed that over half of those injuries nationwide were caused by the illegal fireworks. Commissioner Ledford asked how much the complaints and accidents would be reduced by us passing Option 1, but it still being legal in the County. Chief Trujillo explained that is what we have now so the local statistics would not change. He said if the County would agree with the City's ordinance, he thinks there would be a significant reduction in the number of fires and injuries we are incurring here. Commissioner

Moncada said she is in favor of Option 1. She said that at the last meeting we sort of shoved this down these people's throat without giving them fair warning or notice. She said she really sticks to Option 1, but in fairness to them she thinks we should give their attorney an opportunity to talk to the Commission. Mayor Pro-Tem Griggs asked if most of the fires and injuries in Alamogordo now are caused by illegal fireworks that are being bought in the County and brought into the City. Chief Trujillo replied he could not tell exactly where they are being bought from, but they are the illegal fireworks not being sold in the City limits. Mayor Pro-Tem Griggs noted that if they were sold in town the concern would be the degree of increase in the amount of fires or injuries due to the easier access in town. He said he is troubled with the logic when you can go right outside City limits and buy a bottle rocket or roman candle that we would have a significant increase. He stated we may have an increase; he does not have a way to argue it. Chief Trujillo replied that this is why he thinks Option 6 is important. He said he does think we should apply pressure on the County because it is our citizens that end up suffering for it both in enforcement and in fires and injuries. Mayor Pro-Tem Griggs said he could support that. He questioned what other counties in the State are doing. Chief Trujillo replied that right now it is more difficult for a 10 year old child to jump on his bike and ride out to the City limits compared to jumping on his bike and riding to Wal-Mart. Mayor Pro-Tem Griggs asked if it was legal for anyone to purchase fireworks. Chief Trujillo replied affirmatively. Someone from the audience added that you have to be 16 years old to purchase fireworks or be accompanied by a parent.

County Commissioner Doug Moore said that when they address this issue in the County they are looking at other issues because of the forest. He said that past Commissions have monitored the weather conditions. He said that when they are going to consider these drought conditions in the summer they are looking at forest fire issues. He thinks it will be more far reaching than just fireworks. He explained that right now the County allows weed burning and open flame. He said if the conditions mirror and we took the same action the previous Commission did they will ban open flame in the County and there will be no weed burning, no campfires, no fires at all. He said he understands the desire for everyone to be on the same page, but whether they pass the ordinance or not, they cannot enforce it. He said they may stop the sale, but there is not enough deputies in the County to stop everybody from shooting off firecrackers. He said you can drive the streets anytime within a 2-week period and see bottle rockets and aerial stuff going up. He said they are looking into some safety training and possibly a safe place they can take families and let them shoot off fireworks if the weather and conditions allow. He said they would like to give them a safe place and the education to safely do it rather than invoke a bunch of laws that they cannot enforce. He said he understands the convenience of them mirroring the City's ordinance so that no fireworks can be bought close by town, but it does not solve the problem. He agreed it was high time they looked at it. He noted they were looking at their legal avenues. He stressed training people about the safety issues.

Commissioner Robertson said he knows it will be hard to enforce. He asked Commissioner Moore if he thought the vendors would sell the fireworks even if there were a law prohibiting them to do so. Commissioner Moore replied no that he did not. Commissioner Robertson replied that if they are not being sold then they cannot be brought into the City. He said that is what we are trying to address here. Commissioner Moore noted they could be bought other places. He said they could be bought in other states. Commissioner Robertson replied that it would be a minimal amount. Commissioner Moore agreed, but still thinks the celebration of Independence Day is cause to shoot off some firecrackers if it is safely done. He said the County would entertain and love to get the City's letter so they can expedite their decision. He reiterated that the ordinance is not going to stop the problem of illegal fireworks in the hands of people who are not safely handling them.

Chief Trujillo disagreed. He said the first week of July they fill up the courtroom with the enforcement they are doing. He added that they also spend that week doing inspections on the firework stands to be sure. He said they can show that these illegal fireworks are not coming from inside the City; they are coming from elsewhere. He stated that there is so much available right near town that they are bringing them in here so they are going to have to enforce it. He said there will be a lot more that they cannot get to, but if we limit the access to it we will be able to get to those that are using illegal fireworks. He stressed that he does think it has an impact.

Commissioner Robertson asked how many citations DPS gives for people shooting off illegal fireworks. Chief Trujillo replied that he thought we issued 65 non-traffic citations last 4th of July. He explained that was for use or possession of illegal fireworks. Commissioner Robertson replied if they came to his house they could write 3 times that many. Chief Trujillo said they are issuing them all over town. Commissioner Cooper said he does not like the idea of having to change ordinances every time something like this comes along. He said he understands the issue of fairness, but thinks we should maintain what we have for the safety of the citizens.

J.D. Klump, a member of the audience, asked Chief Trujillo about a blitz or roadblock like they do in El Paso as a more efficient way to get or keep these illegal fireworks out of the City. Chief Trujillo replied that we could do that. He said we could position a police car at the edge of City limits and when someone purchases illegal fireworks and drives into town they would pull them over, issue them citations and seize the fireworks. He said if it got to the point where we were having a lot of fires and injuries we would have to do something drastic. He stated that he hopes by the City doing Option 1 and 6 it would prevent him from having to do this. He explained that he does not like to operate this way. He would rather educate the public and get the County to understand this is dangerous than place a police car at the edge of City limits. He noted that El

Paso Police Department did have a problem with fireworks stands right outside the State line and positioned police cars at the State line.

Mayor Pro-Tem Griggs said it is ultimately more fair to allow the sell of legal fireworks than taking the approach that a week before the 4th of July banning all fireworks. He thinks that is not fair. He said the situation might demand that fireworks be limited or not allowed because of the fire danger, but at that point in time the vendor is getting ready to sell them and then cannot do so. He said if we take the approach that we allow legal fireworks it is more fair. He said he was ready to vote.

Chief Trujillo said that last year when the Governor asked all municipalities to ban fireworks we came across this situation. He explained that we had already allowed the permits to go for vendors to sell permissible fireworks so they had already ordered their stock. He said this was a consideration last year and we stuck with allowing them to sell the permissible fireworks. He said that is something that could potentially happen again this year if we get into those type of drought conditions. He agreed with Mayor Pro-Tem Griggs about allowing the legal fireworks so people could still celebrate. Mayor Carroll said the Governor was asking municipalities to do something they did not have the authority to do because he was not willing on his own to declare to an emergency, which would have allowed everyone to ban them.

Commissioner Moncada stressed that she supports Option 1, but noted that we still have time and would like to hear the other side. She said this would be fair since we are only hearing one side right now. Mayor Carroll noted that there was a motion and second on the floor and if they did not want to do that there would have to be a motion to table. Commissioner Ledford agreed, but added that public safety in the City is much more involved than public safety in the County when it comes to fireworks. He said he is in favor of safety in the City and supports Option 1. He said they voted on it last week. He said the group not being represented here tonight is the one that brought this about and have asked to be heard. He noted they have asked that we postpone it until next time just to be heard. He said they ought to be allowed to state their piece and make their argument. Mayor Carroll said tonight we are merely giving direction. He clarified that if the motion and second are passed we are doing nothing, which does not prohibit Mr. Hakanson and his clients from coming back at the next meeting and requesting us to do something. Mr. McCourt clarified that if the motion passes they would be directing us to send a letter to the County. Mayor Carroll said he thinks it is important enough to direct staff to do Option 6, all though he thinks we should be considering something else. He said he will support the motion this evening, but does not know if he will be able to support the motion if other options are presented.

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

## **7. Update on the Subdivision Ordinance.**

No action required.

Mr. McCourt explained that at the February 25th meeting the Commission was presented a proposal from a group of citizens concerning amending the existing subdivision ordinance. He said at that time the proposal was sent to Staff for review. He stated that Staff has actually had 3 half-day sessions concerning the proposal. He said they do not have the comments ready at this time. He added they anticipate more sessions and believe they will be done with their reviews by the end of April. He proposed meeting with the representatives who brought their proposal, reconciling any differences possible, and having a joint proposal to the Commission in June 2003. He said he will continue to provide reports to the Commission as they move through the process.

## **11. Appointments to Boards and Committees.**

Mayor Carroll appointed Richard Haskell and Carl Fox to the Parks and Recreation Board. All remaining vacancies were rescheduled.

### **UNSCHEDULED COMMUNICATIONS:**

#### **A. Saturn Noriega commented regarding Southwest Water Company's proposal.**

Mr. Saturn Noriega told the Commission he had a message from Los Angeles to the City of Alamogordo. He said Southwest Water Company stands ready, able, willing, and delighted to provide Alamogordo with a turnkey R.O. operation within the period designated in the RFP to which they responded. He said they feel it can be done without impairing on the City's ability to continue to seek and find sources of funding from the federal government and/or other arenas. He said they were delighted, but not surprised that they were the only respondent to a very challenging RFP. He said that early on he had indicated that for a company to respond to an RFP of that nature they would have to be well funded and have so many assets that they could make a commitment ranging from a \$20 - \$30 million dollar investment in a city. He said that Southwest Water Company is one of those. He said he had originally planned to go into water business himself with local investors and investors from Chicago. He said thank goodness he is not putting all his money out anyway. He said they look forward to working with the City and hopes they will invite them to discuss. He said he can bring experts from California at short notice and he is available at all times.

Mayor Carroll thanked Mr. Noriega. He explained that we did receive the response to the proposal. He stated that Engineering Staff will evaluate the proposal and bring the information to the Commission at some time.

## **B. Commissioner Cole inquired about the RFP and the proposal received from Southwest Water Company.**

Commissioner Cole asked Mr. McCourt if Friday (March 7) was the deadline to respond to the RFP. Mr. McCourt replied affirmatively. He clarified the timeline for the City's response to the proposal being 60 days. He said Mr. Noriega has talked to several of the Commissioners. He said an RFP means you can negotiate, as he understands it. Mr. McCourt stated he was reluctant to evaluate the proposal in this open format. Commissioner Cole said he is not trying to evaluate it; he was just asking if it would be possible to sit down with their staff and negotiate. Mayor Carroll stated there is a lot of flexibility in a RFP. Commissioner Cole asked if that would be ongoing during the sixty days. Mr. McCourt replied affirmatively. Commissioner Cole asked Mr. McCourt what his steps were going to be working with Staff and Southwest Water. Mr. McCourt told Commissioner Cole that they had an initial meeting proposed for this Friday with a group of staff members to discuss the proposal. Commissioner Cole confirmed that there may be discussion back and forth with Southwest Water during the sixty days. Mr. McCourt said there may be. He added they will evaluate what has been submitted first. He said there were some requirements we asked for and we have to see if those have been met. Commissioner Cole said if they are not we could go back and talk to Southwest about why or why not. Mr. McCourt replied if it is non-responsive and does not provide any means for accomplishing the goals we may talk with them, but there are other companies to talk with too. Commissioner Cole clarified the deadline was over and asked how that could be if we did not go back out for another RFP. Mr. McCourt replied that we actually received 3 responses. He said that we received 2 other letters that he is aware of relative to the RFP. Commissioner Cole said he would include those 2 also in his questions. Mr. McCourt replied those 2 said basically that they do not think they were going to respond to this. Mr. McCourt asked if we need to negotiate with them now also. Commissioner Cole said he would think so. Mr. McCourt replied that is the problem; you have to have something that is responsive that you have received. Mr. McCourt added they will certainly look at it. He clarified that the meeting was changed to Thursday to evaluate the responses. Mayor Carroll said there is some obligation on the City's part to follow whatever guidelines we laid out. Commissioner Cole said he expects that. Mr. McCourt said we do have flexibility in how we are going to proceed. Commissioner Cole stressed that Mr. Noriega has spoken to some of the Commission and Mr. McCourt and if they did present a good RFP in good faith, and this goes for the other 2 RFPs as well, he would hope we will negotiate and give each party an opportunity to respond.

Commissioner Cooper said he does not think this is the forum to try to discuss these RFPs. He feels it should be done with the staff from the company and the City.

**C. Commissioner Robertson commented on signage on the bypass, problems with animal waste in parks, and concerns regarding street lighting.**

Commissioner Robertson said he was on the bypass today and saw them putting up some of the signs that we have been asking for. He also noted some complaints he had received; one was regarding picking up after your dog when they make a mess in the parks or along Scenic. He said evidently it is getting to be a pretty bad problem. He said it is across from his house in the park. He said there are not enough signs or trashcans in the parks or along the roadways where they could pick the mess up and put it in the containers. He asked if it would be possible for the Commission to direct the Parks & Recreation area to look into this and possibly put up some more signs. He said he did contact the City maintenance and they said they had a few signs they would try to put up for us. He said he does not think a few signs will be enough. He would like Parks & Recreation to look into this problem. He noted another problem regarding street lighting. He said there are some streets that are poorly lit and we need to look into streetlights that are needed in some areas.

Commissioner Cooper said that Susan Flores had a program to place waste containers with plastic bags especially on the south side of town so that when people are walking their dogs they can pick up the waste. He said these would be designated primarily for that purpose. Chief Trujillo said they have addressed this in some areas of town and the Animal Control manager was looking into this.

**D. Mayor Pro-Tem Ron Griggs invited the Commissioners to attend a meeting discussing a spay and neuter program.**

Mayor Pro-Tem Griggs said Dr. Chris Staley, a local veterinarian, called him this morning inviting the Commission to attend a meeting this Thursday at noon at The Other Place Restaurant on the corner of Tenth and Alaska where a group from Houston will be discussing a spay and neuter program. He said they want to try to take care of the feral cats first and then they may want some help from the City.

**E. Mr. McCourt gave the water update and commented on several items.**

Mr. McCourt told the Commission they had their water report that he provides at each meeting. He said they have not been able to stop the leak on the North Reservoir. He said the more water they put in the worse it seems to become because of the hydrostatic pressure pushing it down. He said we have no wells running at this time. He said our goal would be to use that reservoir first and then go in and get it lined this summer after we empty it. He said Bonito Lake is still down pretty far, but it is starting to come up. He said we have had some good snows and that it is a hopeful sign. He noted it is down 6.5 feet below the spillway.

Mr. McCourt reminded the Commission about some special meetings coming up. He noted that the City Clerk had passed out a reminder sheet for these. He also reminded them regarding the New Mexico Municipal League District Meeting coming up that they received a notice on. He explained that after each legislative session they have meetings to update the elected officials on what occurred during the session. He said it is scheduled for April 10, 2003 in Tularosa for our area. He said it would be very beneficial if they could attend. He reminded the members of the Otero County Solid Waste Authority of the meeting next Tuesday, March 18, 2003 in Tularosa. He told them their packages are ready and should be picked up.

Mr. McCourt said he has received some calls on the watering. He said he is getting calls asking when we are going to allow more watering. He noted that on the daily water report usage is up on Saturday and Sunday because people are starting to water their vegetation. He said there is interest in having more watering days and plantings. He noted he would be talking about that tonight relative to a City program we have proposed. He said he has received calls regarding the hours of watering. He said there is still a great deal of concern that the hours are not convenient to water their lawns. He said he met with the Lions club and told them that is intentional. He said that many of our methods of conservation are economically based in rates. He said when we use that we come under attack that if you are rich enough you can do anything you want. He explained that by limiting and restricting the hours of watering from midnight to 8 a.m. and then from 8 p.m. to midnight, it is another way to conserve without being economically based. He said many of the calls are from senior citizens and it is more difficult for them to get out than others especially at this time of year when it is still getting dark pretty early. Mayor Carroll clarified the watering schedule and when it would change. Mr. McCourt replied that we will be under one day a week watering until the Commission takes some action to change that. He said he will continue to report to the Commission for this purpose. Commissioner Robertson asked if it would be possible to loosen up now so that people could use some of the water we are losing out of the leaking reservoir. Mr. McCourt explained that the water leaking out is going some where and we think it may be going to our Wells 2 and 5. He said we will probably go into the negative here pretty quickly. He said normally we hit the negative about April. He said that is when we have 3 day a week watering though. Commissioner Robertson said it would seem that it would last over a reasonable period of time then we could dry it out to put in the liner. Mayor Carroll asked Mr. Miramontes if we were still losing ground a little everyday even though we are not pumping the wells. Mr. Miramontes confirmed that we are getting in about what the usage is. Mr. McCourt said on the report in front of them today we did lose a little ground.

Mr. McCourt discussed a tree-planting project being proposed by the Keep Alamogordo Beautiful Committee. He said we have been doing some demonstration projects on how to landscape as part of our conservation program. He explained one of the projects involves planting some native trees. He referred

to a memo the Commission had received in their mailboxes regarding this. He noted there is some concern about this project. He said we knew that initially we would have to get the trees establish and we talked about using dry water or reclaimed water. He said the problem is that if you are an individual and you are only allowed to water 1 day a week it is almost impossible for you to do any extensive planting of trees and shrubbery. Citizens will question the fairness of the City telling them to conserve when they see us planting trees in the medians. He said they wanted to discuss this with the Commission and see if they want us to put this program on hold.

Commissioner Cole said he has talked to Mr. McCourt about this and has asked it be put on the agenda for the Keep Alamogordo Beautiful meeting on Thursday. He said it is apparent that the City has asked the community to conserve water and not plant too much. He said he has received two telephone calls and an email questioned what was going on when the City was asking them to conserve water and we were out planting trees. Commissioner Cole said he tried to explain to them because he is on the Keep Alamogordo Beautiful committee, but he could not rationally explain what we were doing. He said he explained it would be reclaimed water, it would be a gallon a day for so many days, and then it would decrease to a gallon a week as he recalls. Mr. McCourt added that eventually it would be no water. Commissioner Cole said they argued that was not the point. He said for appearances he could not satisfactorily explain it to them that it was grant money and a Keep Alamogordo Beautiful project. He said they said the point was we were using water. He said they see it as the City doing one thing and asking them to do differently.

Commissioner Don Cooper briefly explained how the tree-planting program would work. He said the trees would be planted and then adopted by different organizations, businesses, etc. He said those people are already inline. He said they are going to bring the water to the trees from their own sources. He said there is water being donated by someone as well. He said it is not going to be reclaimed water and it is not going to be sustained by City employees. He said there will be plaque with the name of who adopted it and they will take care of the trees. Commissioner Cole said he knows all that. He thinks it is a good project, but it is the appearance. It is taking water for planting and the City has asked the citizens to conserve.

Mayor Don Carroll mentioned that he also had some questions he needed answered regarding the tree-planting program. He said the memo says we are taking out what is there because of visibility and now we are going to plant 15-foot high trees. He asked what that does to the visibility along White Sands Boulevard. He recalled when we beautified the median on White Sands with volunteers once before and said the program sounds good in theory, but long-term it does not work. He said the City would have to be prepared to do the maintenance at some time. He said you also run into some of them not being kept up where every third tree is dead.

Commissioner Cooper said the simple solution is to take everything out and fill them up with concrete and paint them pink. Mayor Carroll said he is not sure the Keep Alamogordo Beautiful grant would allow this, but he does not disagree. Mr. John Garst suggested they plant cactus instead of trees. He said they grow around here and are up to 20 feet tall. Mayor Carroll replied the problem is the planting and watering because even cactus need some amount of water to get them up and started. He explained that this particular tree is one that once it is established no longer needs to be watered. Mr. Garst said it is a good idea because you can see around them and it is more southwestern. Mayor Carroll said we have some cactus in there now that they are talking about pulling out.

An unidentified man came forward and said "Expedite R.O."

Mr. McCourt asked if there was any direction from the Commission. Mayor Carroll asked where we were in the process. Mr. McCourt said to his knowledge the trees have not been purchased. Commissioner Cole said he did not know it was going to come up tonight, but it is going to be on the agenda for their meeting Thursday. Mr. McCourt suggested they talk about it some more at that meeting.

#### **F. Mayor Carroll commented on Highway 70.**

Mayor Carroll told everyone that he visited with Governor Richardson on Friday to discuss the 4-laning of Highway 70 through the Hondo Valley. He said the results of the meeting were that he is supportive of the project and it will go on as scheduled.

**EXECUTIVE SESSION:** Adjourn into Executive Session to discuss acquisition of real property and water rights.

Commissioner Cooper moved to adjourn into Executive Session to discuss acquisition of real property and water rights. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a roll call vote of 7-0-0.

The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of March 11, 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.

The meeting was adjourned at 9:31 p.m.

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Mayor Donald E. Carroll

ATTEST:

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City Clerk Angie J. Rahn

(SEAL)

(Prepared by Chief Deputy Clerk Betsy C. Kidwell)

Approved at the City Commission Regular Meeting of March 25, 2003



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