

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION SPECIAL MEETING MINUTES  
MUNICIPAL BUILDING, 1376 E. NINTH STREET  
2:00 P.M., COMMISSION CHAMBERS  
JUNE 24, 2004**

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

**COMMISSIONER JOHN ROBERTSON  
COMMISSIONER MARION LEDFORD  
CITY MANAGER PAT McCOURT  
CITY ATTORNEY KEN McDANIEL  
CITY CLERK ANGIE RAHN-BROYLES**

Call Meeting to Order and Roll Call.

The Meeting was called to order at 2:00 p.m. Commissioner Inez Moncada and Commissioner John Robertson were absent. Staff members present were Assistant City Manager/Community Services Director Matt McNeile; Personnel Manager/ Safety Officer Betsy Keller; Public Housing Authority Director Cheryl Town; Public Works Director Jose Miramontes; Utility Maintenance Manager Brian Cesar; Finance Director LeeAnn Nichols; Community Development Director Brian McGuire; Personnel Specialist Catalina Hood; Engineer Dean Hunt; and David Guzman representing AFSCME.

- A. Consider declaring a state of emergency regarding the collapsed sewer line on the west end of town, and allow City Staff to by-pass the sealed bid process and proceed with repairing the sewer line.

*Recommendation:* Declare a state of emergency and allow the sealed bid process to be bypassed.

Mr. McCourt said at this time there was flow going through the old line. He presented a map to the Commission which showed the current line, as well as the immediate collapse. He explained that the whole line was in the same state. They had previously replaced up to Indian Wells, and east on Indian Wells all the way to Pecan Drive. They'd also done some lining going north up the alley behind Pecan up to 25th Street. The area going south had also been replaced up to Fifth Street. This collapsed area essentially served everything north of Sixteenth Street. Our analysis indicated that there was virtually no pipe structure left in the ground there.

Mr. McCourt said staff had looked at a few options. One was to just do an immediate band-aid type repair right where the collapse had occurred. They would trench and replace the pipe a little east of where it was so it would no longer be underneath the building it was currently located under. That was the lowest cost option, but was not an option staff recommended because they felt it would just continue to have similar problems.

Mr. McCourt said another option was to replace the section of line from Fifth Street up to and including the crossing under the tracks. That would also satisfy the requirements and would do what we needed in order to keep our service successfully running.

Mr. McCourt said the option staff would like the Commission to consider was to move the crossing slightly to the north and then go up the Sixteenth Street right-of-way, go to the Relief Route, and lay a new line all the way down to intercept the City's collector. That would require another small line on Eighth Street and some smaller lines in that area.

Mr. McCourt said at this point staff had secured four sources of funding that were available. They were all loans. Two of them were from private sources which said they would arrange the funding, and two were from public sources. One of those public sources was the New Mexico Finance Authority who had indicated it would be 4 percent money, and the other was from the Clean Water Act. That one would be 3 percent money, but would take longer to secure the funds. We did not have an interest cost from the private sources. The New Mexico Finance Authority also indicated that they could arrange \$100,000 to help address this. Staff estimated the cost of the preferred option at \$1.5 million. At 4 percent on a 15-year payback, it was \$134,900 per year. At 3 percent it would be \$125,650. The other options would be less expensive, obviously.

Mayor Carroll asked how many linear feet they were talking about? Mr. McCourt said he believed it was about two miles in the larger option, and just over a mile in the smaller area option. Mayor Carroll said we didn't even know how much pipe we were talking about at this point. Were they just estimating the length of the projects? Mr. McCourt said yes, they'd just measured it on the map to make the estimates. The minimal solution was estimated at 1,600 feet.

Commissioner Cooper said if we were going to do it, then let's do it right. Let's not start nickel and diming it.

Mayor Carroll said he had a little concern of what we were talking about here. We were talking about declaring an emergency to do a massive long term project. If we were going to declare an emergency, then we ought to declare the emergency because we were bypassing a lot of procedures to do this. We ought to declare the emergency to fix the immediate problem. If we started replacing it all the way down, then we would have right-of-way acquisition possibly, environmental issues to be dealt with, and it would become something that we weren't going to get done in a short period of time. So what did we need to do to get this line back safely functioning? To him, that seemed the emergency. Mr. McCourt said the lowest cost option was the one in black on the map. That would replace the immediate section of line that didn't exist. Probably the entire blue section on the map didn't exist, but should be done as well. However, the immediate problem was indicated in black on the map. Mr. McGuire said, however, that this band-aid fix might only get us through the next two weeks before there would be another problem. Mayor Carroll agreed and felt he would support replacing the large project indicated in blue because the problem may just keep moving down the road. However, he was not comfortable in saying this was an emergency, and by the way, we want to reroute all these lines and add existing capability to the system while we're doing it. He didn't see that as an emergency. The smaller one may be a two week project, and the larger one may be a six month project. So if it took six months to do it, then how did you justify an emergency? Mr. McCourt said regardless, we would need to move quickly on this. From the staff's standpoint, we would recommend the red option. Staff felt it could be implemented quickly and would use a contractor under the GSA Contract, so we would be using a cooperative purchasing contract. Also, for design we would be using a GSA cooperative purchasing contract.

Commissioner Ledford asked if we had any money in the budget for this work? Mr. McCourt said we had a very limited amount of money in the budget. We had started developing an emergency fund in the Water/Sewer Fund and had started collecting money for that two years ago. Commissioner Ledford asked what kind of a rate adjustment we would be talking about so that we could pay for it through a sewer rate adjustment? Mr. McCourt anticipated that we

would plan for making that payment out of the Water and Sewer Fund and that we would build it into our rate structure next year.

Commissioner Cooper felt we should address the issue at hand, which was an emergency that we needed to address right now. If we went ahead and alleviated the problem, and then went on and continued with the option outlined in red, then we would reduce the same thing from happening again in the very near future. Mr. McCourt said if we replaced the entire option outlined in blue, then we would minimize that, but we would need to invest a lot of money. We were going to have to build what was in red one of these days in any case, and so it was staff's feeling that it would be most efficient to get that done at this time.

Mayor Pro-Tem Griggs said on that particular point, if we went in and replaced the blue, then we would have to replace it with a bigger line if we didn't do the red. If we did the red, then we were going to come in and slip-line a little 8 inch pipe. Mr. McCourt said as Mayor Pro-Tem Griggs mentioned, this was a 24 inch line that was going down through there versus a little 8 inch line.

Commissioner Cole asked if we had to declare an emergency to use the GSA Contract? Mr. McCourt said no. Commissioner Cole asked if we could band-aid this blue or black area long enough to somewhere in the six to eight month timeline, and then go ahead and do the red portion? Could we just keep the blue and black options functioning temporarily, and still get the loans at that rate of percent mentioned? Mr. McCourt said he wasn't sure on that. Commissioner Cole said he really hated to spend too much money on the blue and black options for a short term fix when we could go ahead and do the red option. He thought we had nearly \$400,000 in the emergency fund. Mr. McCourt said a year from now we estimated we would have collected \$400,000. Commissioner Cole asked if the City could use that money since it was part of the Water Department? Mr. McCourt said yes. Mayor Carroll said as he recalled, the Commission had made a decision to cut back on the amount of funding that went into the emergency fund.

Mayor Pro-Tem Griggs asked how much the payments would be on the million dollars annually? Mr. McCourt said on the \$1.5 million at 4 percent, the annual payments would be approximately \$135,000. Mayor Pro-Tem Griggs said what we were putting into that fund came very close to making the payment on borrowing the money. There would still be emergency money left because they had the money that was in there currently, but they would just be using what was gained from now on to pay the note.

Mayor Carroll said his concern was not with declaring an emergency; his concern was what we were going to do after we declared it. What had we done with the 1,000 feet that had failed? Mr. McGuire said at the present time it was being monitored. He understood the only thing that was keeping it moving was the fact that the volume of that one-third of our City was keeping the underground cave going. At any point a portion of that could fall down in, and our only option would be to go in and dig it out and then cover it to keep it protected from the citizens. Our biggest worry was that when it happened last Wednesday, three or four manholes clear back over into Alameda Park were backed up. So we had to keep monitoring it. If we had a complete failure, he understood we would have to get an emergency pump in there, and the difficulty was that it would have to be sump-pumped across the tracks and we couldn't stop the trains from going. We had too big of a volume to dam it up and hold it for 20 minutes. Mr. McCourt explained that the crews had a router which they had been able to use to successfully break this loose to block it. Mr. McGuire said our biggest worry about using that router was that when we got in there, all we were doing was increasing the cavity underground and increasing the possibility of future cave-ins.

Commissioner Cole felt if we were concerned about what was going to take place under the emergency and what could take place under the GSA, we would not have to declare the emergency. We could go ahead and get the optional type of solution, and then in the meantime we could do the band-aid approach if it did happen. Commissioner Ledford said we could proceed with the red option, and not even worry about the blue option as long as it held up. Commissioner Cooper said the problem with the City right now was that everything was band-aided. Commissioner Cole said he was only saying we band-aid it for six to eight months for the time to do the job in order that we could get the best job for the money in the long term.

Mr. McGuire said we built the emergency pipelines that came up from the Prather wells last summer. It was almost 7,000 feet of pipe, and we'd gotten that entire project done, including the wells and everything, in less than four months. So staff believed we had the capability of laying that amount of pipe in the red option in two months at the most. Mayor Carroll asked how much cost they would be looking at to replace the 1,000 feet? Mr. McGuire said about \$530,000. Mr. McCourt said all of the options would involve boring under the railroad, and that was a big cost.

Commissioner Cooper said we were here to declare an emergency.

**Commissioner Cooper moved that we declare a state of emergency giving full authority to the City Manager and direct his crews as to what is best for the City.**

Mayor Carroll asked if there was a second to the motion? Mayor Pro-Tem Griggs said not without more discussion. Commissioner Cooper cursed.

**The motion failed for lack of a second.**

Mayor Pro-Tem Griggs asked if the loans were available without a declaration of emergency? Mr. McCourt said he didn't believe so. Commissioner Ledford asked if the 2 percent loan would be available? Mr. McCourt said that loan would be through the same agency, but a different process. Staff had asked if we could use that or move it from our previously stated purpose to this, and they had said no. Mayor Carroll asked what time frame we were looking at for either one of these loans, the Finance Authority or the Clean Water? Mr. McCourt said the Finance Authority had indicated that they were willing to consider this at their meeting next Thursday. The Clean Water Act was about five months away before we could get an answer on that. The only way that would have made sense was if we could have raised some monies from one of the private entities and used it as a bridge loan until we could secure this.

Mayor Carroll said there was obviously an emergency, and the concern was how to address it. The risk we ran in the longer term part of the project was that the line would continue to fail. Were we comfortable that if the line continued to fail, we could continue to address the temporary solution? (Inaudible) Mr. Cesar said yes; it could be covered by the City's crews.

Commissioner Ledford said if we did the red option, would we be looking at keeping the blue option open? Mayor Pro-Tem Griggs said if we could build the red, then we were talking about the blue being an 8 inch line just stuck along the route. The question to Mr. McGuire was if it was going to take us two months to build the red, could we keep the blue open for two months while we were getting the red built? If Mr. McGuire said we could, then he felt that was the solution. Mayor Carroll agreed that it made sense to go that way. Commissioner Cole asked if it was estimated to take six to eight weeks or six to eight months? Mayor Carroll said both—that

was a swag right now. Mr. McCourt said relatively speaking it was an easy job, and pretty straightforward. Mayor Carroll said, however, we didn't know how long it was going to take us to get a hold of somebody from the railroad to tell us we could bore under the tracks. Mr. McCourt said Mr. Hunt had been successful in making contact with them, especially because it raised their interest a little bit when they were concerned that their bed may be undermined and they may be facing a major derailment. We felt they were going to pay a little more attention and be a little more responsive than they had been on other occasions. Mayor Carroll asked if we'd contacted the State regarding the right-of-way along the Relief Route? Mr. McCourt said we'd talked with the Highway Department in the past regarding this concept and they'd given us a verbal assurance that this was okay with them. He had not talked with them specifically right now, but we had discussed this concept and routing plan because it was part of the ICIP. They had indicated that they were receptive to it.

Mayor Carroll suggested that we go ahead and declare the state of emergency and direct the City staff to work toward replacing it as outlined on the red provided they were comfortable they could get it done in a reasonable time frame and that we were not putting unnecessary risks by prolonging the use of the blue, the current existing pipe.

**Commissioner Cooper moved to declare a state of emergency and directed City Staff to work toward replacing the sewer line as outlined on the red option, if they are comfortable that they can get it done in a reasonable time frame, and if we are not putting unnecessary risk by prolonging the use of the (blue) current existing pipe. Seconded by Commissioner Cole. All voted "aye". The motion carried by a vote of 5-0-0.**

Mr. McCourt said staff had only done preliminary reviews at this time. Obviously, items may change, but they would continue to keep the Commission informed.

1. Review the proposed Personnel Manual and consider Ordinance No. 1205 amending Chapter 2-03 of the Code of Ordinances relating to the Personnel Manual.

*Recommendation:* Approve the Ordinance for first publication.

Mr. McCourt said this was a project we'd been on for about two and a half years. It was a fairly extensive project. Our personnel rules were old, there were areas that were outdated, and some areas where inconsistencies had developed over the years through modification and adoptions. The Personnel Department and the Directors had sat down and reviewed these changes. Staff had a recommendation and wished to go over this with the Commission so they would be familiar with what the personnel rules were, even if they ultimately decided they didn't wish to change any of the existing ones. Ms. Keller said some typographical errors and other minor changes had been made since the revised manual was initially put together.

Ms. Keller reviewed the "Summary of Significant Changes to the Personnel Manual" which was distributed to the Commission. The major section changes were as follows. Section 1, "Objectives and Scope" was moved to the beginning of the manual. It really, clearly stated what the purpose was. In the very first paragraph it stated that, "This manual is intended to be the means whereby the City will accomplish this objective", and the City Attorney had recommended that it be changed to state, "This manual is intended to be one of the means whereby the City will accomplish this objective". They'd also made a change under Section 1.030, second sentence to read, "It is not the purpose of this manual to create an express or implied contract of employment in any way". That made it more legally defensible. Also, on page two under "Amendments", the second sentence stated, "Such changes shall become

effective when adopted by Ordinance". That was not true, as the changes actually became effective when the Ordinance became effective. Therefore, that sentence would be changed to read, "Such changes shall become effective when the Ordinance amending becomes effective".

Ms. Keller said Section 2.010 "Administration of the Personnel System and Manual" was a combination of previous sections 1.100 and 1.101. They'd cleared up the definition of At-Will employees. They used to specify specific job titles for At-Will employees, but found they weren't the most efficient operations for the City, Therefore, they had defined At-Will in more general terms.

Ms. Keller said under Part 3 a new section was added which had actually been discussed and was now part of one of the labor agreements with the AFSCME Union. It was an eligibility for hire roster. If a labor vacancy occurred, we would create an eligibility for hire roster off of that one vacancy, and fill from that same recruitment pool for other like vacancies, instead of going out and spending the funds and the time to re-recruit the same people.

Commissioner Ledford asked how come "At Will" was not included in the glossary under Part 2? Ms. Keller said the definition for "At-Will" would be added to the glossary.

Ms. Keller said in Section 3.090 "Interview Panels", the very last section stated, "A majority of any panel will generally consist of personnel who have expertise with the position". However, when certain positions were hired, such as City Attorney, we didn't have a lot of Attorneys on staff to sit on the panel so basically we would use the best resources we had available. Therefore, that sentence would be struck, and instead it would say, "The Personnel Department will coordinate the selection of panel members". That was a practice which would be used internally to make sure they would have knowledge related to the position. All of these changes would be in the final draft which came to the Commission for adoption.

Ms. Keller said in Part 4 "Procedures for Hiring", there were some title and index errors which would be corrected before adoption. In general, they had changed the probationary period to become the introductory period. There was previously a classification in there for temporary employees, but that had been deleted and a seasonal classification had been added. The temporary description was outdated and no longer compliant with PERA rules.

Mr. McCourt said regarding the category of "Acting" employment, he understood what was meant, but he was concerned about the word "incumbent". The incumbent was usually the person who already held the position. Ms. Keller said it should be changed to "current employee". Also, when a position became vacated, they sometimes knew they wouldn't be able to fill it within thirty days. An example of that was the Library Director vacancy. So the Manager may appoint somebody to those duties immediately and compensate them from the beginning of their appointment. Therefore, they were adding wording to clarify that the City Manager may appoint an acting employee and compensate them from the beginning. Mr. McCourt said that may typically happen when we have a position such as City Attorney or Finance Director, a position which took us longer time to recruit.

Commissioner Ledford asked why the definition for "part-time" employee was different in the glossary than in this section. Ms. Keller said they shouldn't be, and it would be made consistent.

Ms. Keller said under Section 4.080 part-time employees would now be given a preference. Sometimes we had long term part-time employees who were trying to advance, and we would

like to give them a preference over someone who didn't have any City experience. Also, on the third line where it addressed percent preference, they were deleting the word "examination" because a lot of our processes did require a written test. We didn't want to give them credit on their test score. Also on the next to last line the word "evaluations" was being deleted because where City employees were the only applicants, they wouldn't look at just their "evaluations" but to their past performance. Mr. McCourt suggested just putting a comma in after the words "past performance" because we didn't want to exclude the ability to look at evaluations.

Ms. Keller said under Section 4.090, third paragraph, next to last line, the word "that" needed to be inserted in so the sentence read, "...with the understanding that leave requests must..."

Ms. Keller said Section 4.100 (A) will be amended to read, "Paid Time Off for documented illnesses as defined in that section". Also, a section had been added which basically said employees would be charged for lost or replacement cards. That had been an on-going issue. Under Section 4.120, the first paragraph following (D) would be amended to read "Where business necessity requires the limitation of employment opportunity of relatives, we will consider the affected party's desires, but the decision will be made in the best interest of the City and public service." Mayor Carroll thought that "business necessity" needed to be defined. The business necessity of who—the City. That would make it clear that the concern we have here is for the City and not for the employee. Mr. McCourt said we had added to this section also, as item (D) was new. In the past we had a nepotism section, but because Personnel essentially dealt with all the departments it was an exceptional area of the City where we would have additional concerns about nepotism.

Ms. Keller said the major change in Section 5 was an added option under employee evaluations and the timing they were done, that a department could adopt a universal date every year to have all of their evaluations. Also, in the first sentence of Section 5.010, the word "objective" would be taken out because there was not really an allowance for an objective performance appraisal.

Ms. Keller said they took the definitions from the glossary for transfers and promotions and moved them into Section 6. They weren't clearly defined in Section 6 previously. Also, the previous section for qualification for promotion had been deleted because it was repetitive of the information covered in the recruitment and selection process. Also, under the third paragraph in Section 6.010, the term "annual leave" had been changed to "applicable leave".

Ms. Keller said under Section 7, a four-week resignation notice clause was added for retirees since the City had to plan pre-retirement leave and service coverage. Also, PERA required at least sixty days' notice to process retirement. Therefore, it would benefit the employees for them to get us that much notice so we could help them with their PERA paperwork, and also to help the City replace them in a timely manner. Also under Section 7.010, the words "or designee" were added after department director. Under Section 7.050, the last sentence was being re-worded to read, "Employees with the least amount of seniority within their position shall be laid off first". If we got into a layoff situation, we may feel we need to lay off a certain program or service the City offered. Under Section 7.080, the last sentence of the first paragraph was amended to read "The department director is responsible for providing the Department Clearance Checklist, and for seasonal employees the employee's permanent mailing address..."

Mr. McCourt said regarding layoffs, the City worked with two Labor Unions. When we entered into an agreement with them, those contracts as they stipulated conditions pre-empted our

personnel rules. The two Unions may have different requirements in their contracts regarding layoffs for union members, and he was wondering if we might want to strike this as it might cause confusion in the City implementing its policy especially if there were different layoff provisions in the different contracts. Ms. Keller thought that would be fine. Mr. McCourt suggested striking that second paragraph. The labor contracts did pre-empt the personnel rules.

Ms. Keller said regarding Section 7.070 "Abandonment", there had been comments received from staff. Therefore, this section would need to be discussed a little further in a group with the Directors and brought back to the Commission for a possible change. It would be an amendment to the manual once it was adopted. Mr. McCourt asked if the Attorney was comfortable with it the way it was currently written? Ms. Keller said no, but she was not comfortable with his recommendation either; they hadn't come to a medium on it. His concern was if somebody was unconscious in the hospital in Mexico and couldn't get back from vacation for two days. Staff had experienced very little problems with this policy. Generally, this policy had come into play when an employee was in jail and couldn't contact us, or where they had walked off the job and didn't give any notice. If they could come back and give the City Manager a viable reason why they didn't call or report to work, he would reinstate them. If someone walked off the job today and didn't report for two days, it would probably take staff a minimum of seven to ten days to get their replacement on board. So the person could make contact within the next week to ten days, but in the meantime this just wouldn't hold us up from our process. Mr. McCourt said actually the reading of this paragraph was a little difficult for him. He suggested striking the words "without the required pre-approved personnel action to be on leave" from that first sentence. Ms. Keller said she had actually changed it to read, "...two consecutive work days or shifts without their supervisor's permission, have abandoned their job". Mayor Carroll asked if the Attorney's problem was in the wording saying they had in fact abandoned their job? Mr. McDaniel said that was his question. Of course, the other thing was if you got sick it didn't really require a pre-approval, so they might want to have an exception for that. Most places were using three days just because you didn't quite catch up so many people. He understood Personnel's issue with it like, for example, the summer employees. He looked at this as a person without family who might have an accident while on vacation, and there might not be anybody to contact the City if they were unconscious. Mayor Carroll suggested instead of saying "have abandoned", it may be better to say, "considered to have abandoned their job". Mr. McCourt said he didn't feel comfortable with that because they had the clause "the employee may apply for reinstatement". He thought that was kind of a safeguard to deal with unusual situations as Mr. McDaniel had suggested. Ms. Keller said if an employee was on vacation and didn't return as expected, she felt their supervisors would be interested in contacting the individual. There was a process in notifying the employee that they were being terminated for abandonment and offering them the ability to reinstate through the City Manager. It wasn't like it was just done without notice. Mayor Pro-Tem Griggs clarified that the wording stated the employee may "re-apply for reinstatement", where it should simply state "apply for reinstatement".

Ms. Keller said in Section 8 they took out the travel expense policy. It was a separate policy and it was a financial policy that was maintained by the Finance Department. The weapons policy was removed and moved into the newly-added workplace violence policy, the harassment policy had been updated, the wage garnishments policy was moved to the compensation section, and the former disciplinary action procedure section and the grievance procedure section were moved to separate individual sections. Also, in Section 8.050, staff was in the middle of writing a separate policy regarding cell phone usage, charges, plans, etc. It was being mentioned in here that it was to be used similar to a City telephone and not to be abused for

personal use, but they were working on a separate policy just regarding cellular phone usage and plans. Under Section 8.100 in the very last sentence, it was being changed to read, "Such contact shall not interfere with the normal duties of the employee, and the employee must make sure it is understood that the employee does not represent the City's position on the matter in question". Mayor Pro-Tem Griggs suggested that be put in as two sentences, and not run on in one sentence.

Commissioner Ledford asked for clarification on policies where employees were required to use communication equipment. Ms. Keller said actually the City had various operational policies which were approved by the City Manager. With the pending cell phone policy, anyone who currently had a cell phone would be required to sign off on receipt for that new policy. Commissioner Cole asked how that was policed? Ms. Keller said as part of the policy they were reviewing, they were looking at doing it through the billings. Ms. Nichols had worked with them to make sure the department directors were reviewing the billings to check against abuse and to assure they were using the most economic plan for the business use of the phone. That was all part of the research they were doing on that policy now.

Mayor Carroll thought that Section 8.280 "Work Safety" was the only reference to safety in this whole Personnel Manual. Mayor Carroll thought there needed to be reference in here to the Safety Manual. Ms. Keller said on the next page it did state that to regulate this policy the City had adopted a Safety Program and Manual. The Personnel Manual, the Alcohol and Drug Abuse Policy, and the Safety Manual were all issued to employees, and they signed a receipt for all three copies. Mayor Carroll clarified that the Safety Manual included language which stated that failure to follow these procedures could lead to termination? Ms. Keller said yes. Also, after this project, one of the next projects was the Safety Manual update.

Ms. Keller said in Section 8.310 the first sentence would be amended to read, "Any item issued to employees or in the employee's responsibility...". This would make it in third person to be consistent with the rest of the book.

Mayor Pro-Tem Griggs said under Section 8.020 it stated that an employee "shall arrive promptly and be prepared to work". What did that mean? Ms. Keller said for example, if an employee arrived drunk or if a police officer arrived not mentally prepared to work with their mind on something else, then they would not be prepared to work. Mayor Pro-Tem Griggs asked if it meant that someone came in at 8:00 a.m. and they decided to get their coffee and wander around and visit, were they prepared to work or were they at work? Ms. Keller said if their job was to socialize, that may be okay, but she didn't think they had any jobs like that. Commissioner Cooper said that was usually why people should show up ten minutes prior to work, so that by 8:00 they were ready to go to work. Mr. McCourt said a person would not necessarily have to be drunk; they could be ill or deficient of sleep. They may feel they were capable or working, but there may be circumstances where it may be unsafe for the public or their co-workers. Mayor Pro-Tem Griggs said his comment was more related to a person who got to work on time, but they were not ready to work. Mayor Carroll said they were prepared to, but they just weren't ready.

Ms. Keller clarified that regarding the separate policies which employees received and signed for, such as the cell phone policy, what they signed off on was the understanding that they had received the policy and that they had to abide by it even if they had chosen not to read it word for word. It was kind of like ignorance of the law was no defense; they had received it and were bound to it. If the City Manager issued that policy, they could put in the wording that failure to comply with the policy was grounds for corrective action up to and including termination.

Therefore, under Section 8.220 "Investigations and Audits", she recommended the wording be changed to state "The City reserves the right to conduct appropriate investigations or audits for the purpose of monitoring the adherence of all City employees to all policies and procedures". Mr. McCourt said any policies staff wrote had to be in compliance with the personnel rules. They couldn't carve out new territory.

Ms. Keller said Section 8.8320 would be renumbered as 8.320.

Ms. Keller said the entire of Part 9 used to be the disciplinary action procedure, which was previously Section 7.737. It was now broken down into its own section and subsections for easier clarification. This proposed process allowed for the City Manager to remain impartial until he or she heard the final appeal, and it implemented a uniform time frame of seven calendar days for all aspects of the predetermination hearing. It used to be the City employee had seven calendar days, and then the department director had five working days, and there were just different time frames throughout the entire policy. They had tried to make it consistent throughout to be seven calendar days, and then they had a clause that any time frame could be told upon agreement of the parties or for just cause. Also, on page 40 under Section 9.130, section (B) clarification was made by adding to that sentence, "... but not an attorney". Mayor Carroll suggested taking the word "lay" out to simply state "person or conferee". Ms. Keller said she would take out the words "lay person or", so it would simply read "...a conferee present at a pre-disciplinary hearing, but not an attorney". Under Section (A), fourth line, the word "exhausted" was changed to "exhaustive". Under Section (C), the word "or" was changed to "... nor any attempt made" in the last sentence.

Mr. McCourt said under Section 9.120 "Informal Appeals", in the third line it stated "Department Head" instead of "Department Director". Was there a reason for that? Ms. Keller said no, and it would be changed to "Director". Mr. McCourt also suggested taking the word "who" out of that same sentence. Ms. Keller said she would make this two sentences to read, "...within seven (7) calendar days of the disciplinary action. The Department Director shall attempt to resolve the matter...".

Mr. McDaniel said under Section 8.330 "Workplace Violence", staff had a discussion on weapons and he thought had reached a consensus that they didn't want people bringing them to work in City Hall. He didn't recall if they had reached a consensus on whether people could have them with them while traveling. Ms. Keller said they had and it was covered in the fifth bullet down. For example, if an employee was on a road trip for City business, they may want to take their weapon in their personal vehicle for their own personal security, so they would have to get permission from the City Manager in order to do that. Mayor Carroll said in that same sentence, should it state "which is used as a weapon", or should it state, "which may be used as a weapon"? Ms. Keller said they'd stuck with this language because just about anything could be used as a weapon, but she believed their intention was anything that was commonly identified as a weapon. It was almost an after the fact policy; once someone used it as a weapon, then it would be said they had violated the policy.

Ms. Keller said under Section 10.100, Step 2, Section (A), the word "not" would be added in so as to read, "...to the Department Director will not be considered in an appeal to the City Manager". They had to present it in their appeal to the Department Director before they could present it to the City Manager. This came up frequently. Mr. McCourt said the thought here was that if there was a misunderstanding or a problem, they wanted to try and resolve it at the lowest level in the organization with the people working together. So we wanted them to get the issues out and attempt to resolve them. What occasionally happened was that we started

talking about one thing and then it came up to another level and suddenly we had a whole different discussion going on. So we tried to resolve issues at the working level as frequently as possible, and to do that, you had to get them out and discuss them. Ms. Keller said the only other major change to Section 10 was the uniform time frame of seven calendar days, which was being implemented in this section as well.

Ms. Keller said in Part 11, the very first change was in the list of policies again. Section 11.180 "Merit Pay" was initially added, but it was one they had decided to do as a separate practice internal policy because it changed based on our Union Contracts and on the budget. So it was an internal practice and we would just have it as a separate policy. We had not had it in the manual in the past.

Mayor Carroll suggested in Section 11.100 "Work Week", that it would be better to read "...through midnight Sunday", as opposed to "Sunday at 12:00 a.m.". Ms. Keller said that change would be fine.

Ms. Keller said in Section 11.090 "Pay Days", at the end of that second sentence the words "or to the end of a shift in progress at that time" would be inserted. It said that the pay period went through midnight, but there were a lot of shifts still in progress at that time, and we didn't break up that last working shift between paydays. They were just paid through the end of their shift on the next pay day. Mr. McCourt thought perhaps it could be worded to say, "Paychecks shall be issued bi-weekly". Then they could take the words "or as designated by the City Manager", and move them to the end of the second sentence in order to accomplish that shift coverage. Ms. Keller said that would work. We actually couldn't go more than sixteen days in New Mexico without issuing payment.

Ms. Keller said under Section 11.110, second line, the word "to" would be placed after the word "not", so it would read, "...not to exceed...".

Ms. Keller said under compensation, one of the other things they'd changed was to add in the City Manager's ability to limit the number of hours of comp time an employee may accrue. We did that because it was a liability and we limited the number of hours; it was also limited by law. Also, the payroll officer reference was deleted, and the administration of payroll was regulated and managed by the Finance Department. The section on call back and stand by time was deleted as it was covered under the overtime/compensatory time policy and the applicable labor contracts. All the anniversary dates were moved into the evaluation section. The section on payroll deductions was deleted as it was outdated and varied by employee and status. Also, the wage garnishments and assignments had been moved into this chapter from Chapter 8.

Ms. Keller said under Section 11.140 "Time Clock Policy", the previous policy allowed employees to clock in and clock out seven minutes early or seven minutes late because the time clock rounded to the nearest fifteen minute increment. That was not really what we wanted to enforce, and the policy really was for employees to arrive on time. We would still pay people if they were clocked in and working and the time clock would still round to the fifteen minute increments, but our policy was that employees would clock in and clock out at their scheduled time and not within a seven-minute window before or after. If an employee clocked in ten minutes early, then it was cause for discipline.

Ms. Keller said in Section 11.150 "Pay Upon Promotion", the words "or will receive a 6% salary increase unless otherwise" were deleted, and wording inserted so it would read, "...said employee will enter the new grade/position at the entry level of the new position, except as

approved by the City Manager". So it was worded that way if the Manager felt it justified a six percent pay increase. Mr. McCourt said it still offered protection by the following sentence which limited him from offering to pay a ridiculous amount.

Mr. McCourt referred to 11.160 and asked if the words "on a temporary basis" in the second line was the same as an acting position? Ms. Keller said yes. Mr. McCourt asked if it would make sense to bring it into conformance with that? Ms. Keller said that had been discussed, and it could be coincided to be acting in a temporary assignment.

Ms. Keller said under Section 12, minor changes were made to include an added provision for classifying positions that are extraordinary. Under 12.010 (D), it stated "Positions that are extraordinary for reasons such as market demand will be classified according to reasonable market standards". If we did our classification system on our MIS job it may show that it only paid \$8 per hour and we couldn't hire someone because there was such a high demand for those types of positions. Mayor Pro-Tem Griggs suggested we look for a different word than "extraordinary". They weren't really talking about the job, but more the situation. Commissioner Cole suggested using the words "high demand".

Ms. Keller said Section 13 for benefits was updated to note the City would pay a portion of the benefit as approved by the City Commission in lieu of a specific percentage. A section was added for the mandatory Retiree Health Care benefit. Regarding tuition reimbursement, a clause was added that employees will be required to serve a predetermined tenure of service upon completion of a course or would be responsible for paying the City back on a prorated basis for the educational reimbursement received for the course. Mayor Carroll said the way this read, it was only for the last course they took. Ms. Keller said actually it was per course. Mayor Carroll said if he took a three hour course at the college, was he committing to stay another two years, or if the City sent me over time to get a degree... Ms. Keller said when they initially looked at this, they wrote that for every course hour the employee would give so many months of credit. However, one course may cost significantly less than another. So staff decided not to specify it down to a certain amount, but would say that for each course they'd come up with a specific time line for each dollar amount. An employee could take a three-hour course for \$100 or they could take one for \$1,200, so it wouldn't be equitable.

Ms. Keller said under Section 13.090, "Employee Assistance Program", the City currently offered this benefit, but it had just never been spelled out in the manual. This didn't guarantee that we would continue to offer it, but just said that based on funding the City may offer it.

Ms. Keller said in Section 14.040 "PTO Accrual", the very last sentence of the paragraph stated that, "Employees will not earn PTO hours for hours worked in excess of 2,080 per plan year". Staff was working on defining that a little better and it would be in the final draft. They were looking at something in excess of 2,080 per 12-month period, or something to define exactly what was meant so that there were no loopholes. Mr. McCourt said there were a couple of unique classes of employees, such as the fire equipment operators and the police, who worked on a different schedule than the 2,080. So he was wondering if rather than lock ourselves into this 2,080, we could find some other way to describe that. Ms. Keller said staff would work something into this before the final draft which would show what they would use to calculate to make it clear that they couldn't earn it on overtime basically. Mayor Carroll asked how the days accumulated had all wound up with the .5 designation? Ms. Keller said this policy originally came out through the Union negotiations. The Commission actually already adopted this once as an amendment to the Personnel Manual. They had basically given up some of their injury leave rights to earn an extra half day of leave. We were instituting an even greater reduction in

injury leave benefits in this policy actually. The City had an ongoing battle with the New Mexico Self-Insurer's Fund about our injury leave policy. The Self-Insurer's Fund hated it and got mad every time we said we'd paid the employee for the first seven days or that we made up the difference. It wound up where we had a lot of employees who were making a lot of money staying home on Worker's Comp. The ideal was to compensate the employee so they could get by, but to encourage them to return to work. Under Section 14.100 "Injury Leave", it was a proposed policy which still allowed an employee to use their own personal accrued time for the first seven days that they may be off due to an injury, but it was not saying that the City was going to carry them for that period any longer. It also clarified that the employee on leave had to make payment arrangements with payroll for their portion of any benefits. In the past they could do that upon return to work, but for example, we had one employee who was out for six months and collecting a check similar to what they were making at work and not having to pay insurance because the City was fronting it for them until they could get back to work. Mr. McCourt said the whole concept here was to keep the employee whole during that period, but not give them more. Ms. Keller said the Worker's Compensation Act allowed them to draw 66 2/3rds of their average salary for the six month period prior to injury, and that money was tax free. If they started looking at the benefits we took out and the taxes, in some cases what they were getting from Worker's Comp was as much as what they made working with all their deductions coming. So this allowed them to use their own leave time for time that they would not have been compensated for at all. The first seven days lost they were not compensated for at all by the insurer, so this would allow them to use their own accrued leave for that waiting period. Staff had worked with other cities and our insurer as to what their policies were, and this was the common policy for injury leave.

Mayor Carroll felt under 14.130 "Voting Leave", the words "registered and eligible" should be reversed. If you were registered, then by definition you were eligible.

Mayor Pro-Tem Griggs asked for the definition of 24 hours under Section 14.090 "Bereavement Leave". Ms. Keller said the old section said three days, but this was 24 hours of worked time. For example, for an 8-hour worker it was three 8-hour shifts. For a 17.25 worker, it was one shift and 6.75 hours towards the next shift. If we gave a fire equipment operator three work days off, it would be nine calendar days because they worked one on and two off. When they went to specific hours, it was assuring the same benefit to all types of employees. Mayor Pro-Tem Griggs said he understood it, but felt it needed more clarification. Ms. Keller suggested that they could say 24 working hours of paid bereavement leave, or something like that.

Mayor Pro-Tem Griggs questioned why under Section 14.050 it stated that the PTO hours could not be taken in increments less than fifteen minutes? Mr. McCourt said we chose fifteen minutes because it was how our current time system tracked time.

Mr. McCourt said under that same Section 14.050, the very last sentence stated "Any time taken without pay will decrease PTO accruals for the year". He wasn't 100 percent clear on what that meant. He thought it meant that PTO would not accrue while you were on leave without pay. Ms. Keller said that was correct, and she would clarify it somehow.

Ms. Keller said regarding the seven-minute window, she had run an audit on one payroll and if she calculated that out over a year, the City was losing enough to pay for one whole position just by people abusing that seven-minute window. The old policy was still not in the employee's favor; it stated that an employee could not clock in more than seven minutes early but said nothing about clocking in late being okay. It was confusing to the employees as well. Basically what this policy did was to protect the City from someone who frequently clocked in at 7:07

every morning. It was up to the Directors to approve leave. If an employee was frequently getting a 15-minute late leave slip, then they could deny it and it would be leave without pay. Mr. McCourt said it might be okay with the Director to allow an employee to use PTO, but the Director controlled that. Commissioner Cooper said he always encouraged employees to get to work ten minutes early so they would be ready to go to work, and at 8:00 a.m. they could punch in. Ms. Keller said unfortunately with labor laws, we could not make employees be present ten minutes early. Commissioner Cooper said not make them, but ask them. Ms. Keller said if it was her request that someone be present ten minutes early, she could still not permit them to work or to cause them to be at work without being willing to pay them.

Ms. Keller said under Section 14, the Family and Medical Leaves section was updated to be compliant with the Family and Medical Leave Act. Also, the reasons for administrative leave were added, and a definition for an unauthorized absence was added.

Ms. Keller said in Section 15 regarding "Personnel Records", the content was updated to more broadly define, rather than an itemized listing of what may be in there. We better defined what constituted the official personnel file, and deleted the section on removal of material from the personnel record. Material could only be removed in accordance with the records and retention policy of the State of New Mexico. The definition for medical records was amended to indicate and define confidential auxiliary records that may be kept. There were certain records we kept which were confidential, but still not medical. Commissioner Cooper asked how long these records were kept? Ms. Keller said 55 years beyond termination.

Ms. Keller said the employees could access their own records, but they needed to go through Personnel to do it. They were limiting them because there were some things that even a Department Director couldn't see, like an old Worker's Comp report.

Ms. Keller said Section 16 was updated for compliance with the Americans with Disabilities Act. Section 17 was updated for compliance with the EEOC regulations. Also, the glossary of terms had some minor corrections which would be implemented. Mr. McCourt suggested that the term "Annual Leave" be re-worded to say, "See Paid Time Off (PTO)". Ms. Keller said "temporary appointment" had also been updated because they'd updated it in the manual for seasonal employees. It was just changed to "Seasonals" instead of "Temporary Employment", and it was changed from 12 months to 9 months.

Mayor Carroll asked if these manuals would be done in loose-leaf binder form? Ms. Keller said yes, just for ease of supplement updating. Any major revisions or major policy changes would require staff training.

**Commissioner Cooper moved to approve Ordinance 1205 amending Chapter 2-03 of the Code of Ordinances relating to the Personnel Manual for first publication. Seconded by Mayor Pro-Tem Griggs. All voted "aye". The motion carried by a vote of 4-0-0. (Commissioner Marion Ledford left the meeting before the vote was taken.)**

The Meeting was adjourned at 4:19 p.m.

*/s/Donald E. Carroll*

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Mayor Donald E. Carroll

ATTEST:

*/s/Angie Rahn-Broyles*

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City Clerk Angie J. Rahn-Broyles  
(SEAL)

(Prepared by Teresa Y. Gutierrez)  
Approved at the City Commission Regular Meeting of July 13, 2004.