

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
AUGUST 10, 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, Roll Call, Invocation, and Pledge of Allegiance.

The Meeting was called to order at 7:36 p.m. The Invocation was given by Reverend Fred MacDonald and the Pledge of Allegiance was led by Mayor Pro-Tem Ron Griggs. City Manager Pat McCourt was absent. Assistant City Manager Matt McNeile was present.

A special presentation was given by Commissioner Cooper to some of the award winners from the 4th of July parade. The first award was for Best Float – Decorated Vehicle entered in the parade by 1-800 FLOWERS.com. The next award was for Best Musical Entertainment – Alamogordo Twirling Athletes in the 9-15 year-old category. The next award was for the Best Motorized NonFloat – Alamogordo Twirling Athletes in the 3-8 year-old category. The Best Fire Truck – Oro Vista Fire and Rescue Group was the final award presented.

1. Presentation to the City from the Youth Empowerment Association.

On behalf of the Youth Empowerment Association, Matt McNeile presented Mayor Carroll with a plaque in appreciation of the safety work for youth projects in our community. More specifically, this plaque of appreciation relates to the skateboard park. Mayor Carroll thanked the Youth Empowerment Association for the plaque and continued by stating the skateboard park was a community effort with a combination of funds from the City and monies raised by the skateboard people and by the local community.

2. Presentation by Dr. Dennis Soden regarding the findings in the UTEP Study No. Alamogordo/Holloman Economic Impact Study.

Mr. Carr explained the purpose of Dr. Dennis Soden's appearance at the meeting was to explain the second phase of a two-part study that speaks to the impact of gross scenarios at Holloman AFB, should that occur, and what the implications could be to the City and the County. Mr. Carr then introduced Dr. Dennis Soden.

Dr. Soden commented that UTEP has done three impact studies: White Sands, Holloman, and Ft. Bliss. They are doing three of the capacity studies as well. The idea is to consolidate these studies by region and what that means to Otero, Dona Ana, El Paso, and Socorro counties since they will be the ones most impacted. In Otero County, there is not a lot of data. It is a rural county and very spread out. Data is sometimes city data, sometimes county data, and sometimes you have to use state formulas to do some work with that data. What that means is that the report in front of the Commission is fairly accurate, but there are going to be times where interpretation is going to be a city vs. county issue so that must be kept in mind. We knew that going in since we have done rural work before, so we know that is a problem. Data

collection is a very expensive process. They felt getting a picture was more important at this time, than spending two years to make sure we had all the right kind of data. The report spells out when the data is city or when it is county.

The team that put the report together was Dr. David Schauer, Dr. Dennis Soden, Brent McCune, David Coronado, and Susan Moss working with Ed did most of the local data collection. Susan called the agencies and found out what their capacity was and how many units there were for a particular service. The team looked at three scenarios: 500, 750, and 1,000. Basically, they were trying to get the regional capacity. This is important because the government is very interested in communities like Alamogordo. They are looking to get the right kind of planning grants to communities so they can get ready for a reduction or an increase. There is federal money out there for either one. As a community, the Commission needs to think about this because if you look at what we provided you last December, with a military base you have a good return on your investment dollar. The federal government is handing out money right now to plan for base growth or base reductions. It is important to think about some of these scenarios because some of the items, such as schools and the like are expensive.

The areas of concern are the availability of single family residences, current construction rates, medical services, potable water, solid waste, educational facilities and teachers, and public safety emergency services. These are the areas the UTEP team focused on. Again, there are three identical studies - White Sands is currently being completed, Fort Bliss, and Holloman AFB. It is important to look at these studies because there may be some regional leveraging opportunities. When it comes to housing units, it appears the private sector can meet the need of additional housing. When we talk about 500, 750, or 1,000 airmen, they do not come to the area by themselves. Every 3.3 soldiers equates to one additional civilian that will also move into the area. Every soldier comes with a unit of 2.71; i.e., spouses and/or families. So when we are talking the high end of 1,000, which can easily turn into 3,000 to 4,000 individuals hitting your community. There are 3,800 military that have been announced coming from Fort Bliss recently, that amounts to 10,000 people coming to a community.

Right now, Alamogordo has an excess of hospital beds and can meet local demand. However, if there is no physician to service a bed, the bed won't get used. After comparing Alamogordo to El Paso, they found Alamogordo only needed to find four nurses as opposed to El Paso's 300-400 nurses.

The base is comfortable with its potable water. The team was told that the water demand could be met. He has also heard opinions contrary to that.

All of these issues are incrementally broken up in the report. There are three numbers provided. The baseline number is a forecast if everything remained constant with the current anticipated growth. The military number is the incremental demand. The last number is total demand.

If a new middle school is identified for construction to meet demand, staffing the school would follow. There would be a need for additional teachers overall to meet demands. There would also be a need for police officers and firefighters. Dr. Soden refers to numbers in the report that are based off state ratios. Also, the military comes with some amount of self-policing.

Mayor Carroll asked whether the numbers referred to in the report for police and fire are countywide numbers or are they local. Dr. Soden responded that they are countywide numbers,

so you might have Otero County Sheriffs picking up part of this. Dr. Soden continued that a problem with a rural jurisdiction like Alamogordo is consideration of Cloudcroft.

The reason this is important regionally to take into consideration is there are residents that live in Alamogordo but work at White Sands. There are also White Sands employees that live in El Paso and some live in Socorro.

Mark Goffman asked what about grade schools? Dr. Soden refers him to previous pages of the report.

Commissioner Ledford asked about the possible postponement of BRAC if John Kerry were elected President. Dr. Soden stated he doubts BRAC could be postponed. Recent studies indicate there will be a realignment of European positions which will have an impact on where troops will be stationed. Commissioner Ledford responded that any decision the President might make in preparation for growth will impact any community.

In closing, Mr. Carr indicated that this report provides informational value for planning the City's growth. Of the following three scenarios: 1) leave the troops where they are, 2) base some in Europe, or 3) bring everyone home; by far the low cost alternative is to bring everyone home. If the country decides to bring everyone home, they must have someplace to go. A study will be coming out in February or March prior to BRAC which should identify what is coming out. However, this study won't tell us where they are going, though we will have an idea of the Air Force and Army units that will be relocated.

Mayor Carroll stated that what the Commission has in their agenda book is a summary of the report. The complete report which goes into extensive detail on all the particular items mentioned in the presentation and summary is available in the Commission office.

CALL OF THE CONSENT CALENDAR:

3. Minutes of Regular Meeting of July 27, 2004.

Recommendation: Approve the minutes.

CONTRACTS AND AGREEMENTS:

4. Renewal of Traffic Signal Service Agreement with Otero County for the maintenance, repair, and servicing by the City of traffic signal devices and luminary lighting at several locations in the County.

Recommendation: Approve the Agreement.

5. Professional Services Agreement with Augustson Arms for the sale of certain firearms.

Recommendation: Approve the Agreement.

6. Memorandum of Understanding between the Bureau of Land Management and the Bureau of Reclamation for the Alamogordo Regional Water Supply Project Environmental Impact Statement.

Recommendation: Approve the Agreement.

ORDINANCES AND RESOLUTIONS:

7. Ordinance No. 1214 amending Section 4-02-020 of the Code of Ordinances permitting a maximum of two members on the Airport Advisory Board to reside outside the City Limits.

Recommendation: Approve the Ordinance for final adoption. [Roll Call Vote Required]

9. Resolution No. 2004-38 authorizing the City to enter into a grant agreement with the New Mexico Environment Department and to establish signatories for the grant for the design, purchase and installation of a reclaimed water system at the Griggs Sports Complex.

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

10. Resolution No. 2004-39 accepting several State of New Legislative Capital Outlay grants for the purpose of purchasing and renovating a building to be used by COPE as a domestic violence safe house.

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

11. Resolution No. 2004-40 approving and accepting the NM Department of Transportation (NMDOT) Second Supplemental Cooperative Severance Tax Agreement and Certification Project No. SP-GA-ST-4918(201) for sidewalks and ramps on First Street, at the cemetery and Washington Avenue, to comply with ADA.

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

OTHER BUSINESS:

13. "Resident Parking Only" signs:

A) 1005 Eighth Street - Mr. Mark Thompson

Recommendation: Approve the sign.

B) 1113 Catalina Lane – Ms. Barbara Robinson

Recommendation: Approve the sign.

14. Grant of Easement at 800 Azelia Street for Qwest Communications.

Recommendation: Approve the easement.

15. Bid No. 2004-06 Miscellaneous Foods, Dairy Products and Items for the Alamogordo Senior Center Nutrition Program.

Recommendation: Award forty-eight (48) items to Ben E. Keith for an estimated total of \$8,166.50; award seventy-seven (77) items to Southwest Distributing for an estimated total of \$14,309.40; award ninety-one (91) items to Shamrock Food Company for an estimated total of

\$19,059.32; award twenty (20) items to US Food Service for an estimated total of \$5,165.80; award six (6) items to Farmers Dairies for an estimated total of \$6,396.00; and award one (1) item to Prices Creameries for an estimated total of \$249.00.

Commissioner Cooper moved to accept items 3, 4, 5, 6, 7, 9, 10, 11, 13A, 13B, 14, and 15 on the Consent Calendar. Seconded by Mayor Pro-Tem Ron Griggs. All voted "aye". The motion carried by a roll call vote of 7-0-0.

8. Ordinance No. 1219 amending Section 3-01-015 of the Code of Ordinances limiting the time signs promoting temporary events may be displayed and tightening restrictions on the display of political signs.

Recommendation: Approve the Ordinance for first publication.

Mayor Carroll indicated that this is an item that has been before the Commission in the past and Commissioner Cooper has requested that the Commission consider it again. There was extensive discussion on this item about two years ago. Mayor Carroll stated he was under the impression that some changes at the federal level have taken place and he asked the City Attorney if he could provide the Commission with an update on these changes.

Ken McDaniel responded that he was not prepared to give an update on these changes, but in general, political expression is the most protected matter. With regard to the provision about removing signs between the primary and the general, that would be subject to challenge. As a practical matter, the major party candidates are likely to remove their yard signs because otherwise the people will punish them for making a littered looking landscape. A minor party candidate (i.e., Libertarian) who is not well known may feel he is better off leaving his yard signs up. Anyone else might also choose to leave them up. Mr. McDaniel continued that during the previous consideration of this issue, there was discussion about making a politician take his sign off a billboard. Once a billboard is up, it becomes permanent and will have something on it so what is the difference if it has George Bush or Ron Bell on it. In that case, you would be discriminating against political speech because anyone can rent a billboard whenever he wants to if he is willing to pay the price of the billboard and he can leave his message on it as long as he chooses. Mr. McDaniel stated that in general, he is uncomfortable with mandatory removal of political signs. He continued that in his opinion, he does not think there is a problem with the yard sale signs. Albuquerque has something similar to what is proposed here and they have not had a lot of criticism about it, but his impression is that the Commission would receive objections from the public here in Alamogordo. Mr. McDaniel indicated his impression is that even some of the politicians here would challenge this policy if the Commission tried to make it a matter of law rather than a matter of their best judgment in terms of presenting a good appearance to the public. If you rely on their judgment, they will not leave their sign up if it looks like it is creating more resentment of them than it is positive results and Mr. McDaniel believes that is what the Commission should use to police the political signs.

Mayor Carroll explained that the major concern was the proliferation of yard signs after an event has taken place, so that is why we included the five or seven day limit after the election to remove election signs. The ordinance did have a provision that in a primary a successful candidate could leave his sign up if he so chose. Mayor Carroll continued that the intent is after the event to take the signs down, because there are still some signs around from the 2000 and the 1996 election. Mr. McDaniel indicated that this is not likely to be a problem. The city won't receive a challenge after a general election by asking someone to take their sign down. If you have someone rich enough to keep his name up on a billboard, then the Commission would

have a harder time enforcing removal. Mayor Carroll stated that is a different kind of visual pollution. Commissioner Cooper stated that once the primary is over, half the signs will come down anyway because if you lost, you would not want to keep your sign up. Mr. McDaniel responded yes. Commissioner Cooper continued that he agrees that if a candidate wins, he/she should be allowed to keep their signs up but in good repair. Leaving up a ragged, wind blown sign is not acceptable, but if they have been refreshed and look clean, then they should be left up. Commissioner Cooper suggested upgrading a sign by putting a flag or balloons on the sign and after a candidate's victory they should be allowed to keep them up. However, after its all over what purpose does it serve. Mr. McDaniel stated if you are talking about the losing candidate in the primary or anyone in the general, you probably won't get a lot of flack for making someone take them down. But you do not want to be in the position of telling someone how far in advance of the election he can put up signs or telling him he cannot have them up between the primary and general if he is in the general.

Commissioner Cooper stated if you put signs up too early, they are going to become part of the landscape and the use is gone. However, if they upgrade them and keep them nice, Commissioner Cooper has no problem with that.

Commissioner Ledford stated when he looked at the minutes, everyone on the Commission now was on the Commission two years ago with the exception of himself. Commissioner Ledford asked the Commission and more specifically, Commissioner Cooper, what had changed since 2002 that would merit changing the minds of the other commissioners in favor of modifying the ordinance? Commissioner Cooper responded that former Commissioner Easley made the motion and the item was voted 7-0-0 for first publication. After another meeting and the voting ordinance Commissioner Easley proposed was shot down, Commissioner Easley, as head of the Democratic Party and one of the leaders of the Republican Party felt that the ordinance was trampling on the political signs. Thereafter, the ordinance failed for final publication. The man that nullified the ordinance was the man that proposed it for first publication. Commissioner Ledford stated he would like to hear from the other commissioners about their feeling on this item.

Commissioner Ledford asked a second question about the ordinance itself and whether it was the same ordinance as previously considered without the modifications that were agreed upon. In other words, it says two days after the event, patio or yard sale signs must be removed. Wasn't this changed to five days as a compromise? Commissioner Cooper responded yes, it was. Mayor Pro-Tem Ron Griggs stated since it did not pass, it looks like the five days will change this time should it pass. Commissioner Cooper confirmed this statement. Mayor Pro-Tem Ron Griggs continued that right now, the ordinance reads seven days and would go to five days if approved. Commissioner Cooper stated yes, because of the failure to go to final publication, the changes did not go any farther. Commissioner Robertson stated he has not changed his mind from two years ago and he was and still is against this. Commissioner Robertson continued that his main objection is with the following language: "It shall be unlawful for any person to post a temporary sign at any out-of-door location or private property anywhere in the City of Alamogordo for more than 60 days." Commissioner Robertson stated the Commission does not have the right to tell him that he can't put any kind of sign he wants on his property, as long as it's not vulgar. Commissioner Robertson continued that if he wants to put his picture on his sign on his property for the next 12 months, he has the right to do that.

Commissioner Robertson asked if there isn't a problem in the law allowing the Commission to pass an ordinance taking his rights away from putting signs on his property. Mr. McDaniel responded that when it deals with your political person, it becomes a bigger problem than when

it deals with your auto sales. Commissioner Ledford stated he is not talking about his auto sales. He is talking about personal property in general and if he owns property, he should have the right to put his signs up if he wants to. Commissioner Cooper asked if Commissioner Robertson voted against this, how come the vote for first publication was 7-0-0?

Mayor Carroll stated in reading through the minutes, the Commissioners felt they wanted to get public input and the way to do that was to pass it for first publication. Mayor Carroll continued that all of the Commission had some concerns regarding the ordinance. His major concern was then and continues to be the signs between the primary and the general for the successful candidate. Mayor Carroll stated he is assuming we are not talking about commercial signs. Commissioner Cooper responded absolutely not.

Commissioner Ledford asked if there is a safety or health issue involved or is there a problem with what we are currently doing. What is bringing this up? Mayor Carroll replied that the problem is a visual pollution matter. Commissioner Cooper stated there could also be a safety factor, too. If the sign is large enough, it could be blown down with some of the strong winds we get here. Commissioner Cooper continued that the sign could be blown out into the street or into a vehicle or into an individual. Commissioner Ledford stated that if that happened, the property owner could be cited. Commissioner Ledford indicated that the property owner has to be responsible for the sign staying on the property. Commissioner Cooper responded that's what he is saying, be responsible. He continued by stating that's all he is asking, a little responsibility and sensibility on this issue. Commissioner Cooper illustrated his point by asking the Commissioners to take a ride around town and look at the city with all these signs. They are on the lampposts and street signs everywhere. That is illegal. Commissioner Ledford responded that is illegal, so we could do something about that without this ordinance. However, the change here is changing the number of days for removal from private property. Commissioner Cooper stated yard sale signs are put up and left for a month, two months, six months, or even longer. Commissioner Robertson stated we have a city ordinance against yard sale signs on city property on the street and six or eight months ago, he asked the Chief of Police if we were doing anything about it and he was told he was going to publish it in the newspaper. Commissioner Robertson asked Chief of Police Sam Trujillo if he was able to get this done. Mr. Trujillo replied yes, sir. Mayor Carroll stated that has been in violation of the ordinance for years.

Mayor Carroll offered a possible solution to the Commission's concerns by eliminating "c" and reinstalling the language in "d" to state: "In cases where a general election follows a primary election, those signs for candidates whose names will appear on the ballot in the general election may be displayed during the interim period and up to *five (5) (changed from 7) days* after the general election." Commissioner Cooper stated he could agree with that. Commissioner Cooper explained that's the reason he brought it up again so we could get together on this. Commissioner Ledford asked with the exception of what the attorney said about political freedom of speech being a strong issue, what's the difference with any private property having any sign up? Mayor Carroll responded that there could be a challenge to that, but we are in a much stronger position to ask what is the valid reason for leaving a sign up after a yard sale or after the event. We are not denying anyone the right to put a political sign up nor are we denying the successful candidate in a primary to leave it up. Basically, what we are saying to the political candidates is when the election is over, we want the signs down.

Commissioner Robertson suggested taking private property out of section d also, because we could tell candidates to take their signs down on city property, but if an individual wants to leave his sign up on his property, he has the right to do that. Commissioner Robertson restated that

private property needs to be taken out of section d also. Commissioner Cooper stated it may be private property, but we have ordinances that regulate trash, litter, and grass. Commissioner Robertson replied so Commissioner Cooper thinks his picture is trash on his property. Mayor Carroll responded that the only property we would be addressing would be private property. There is no other property besides public property and private property and the signs are already illegal on public property. Commissioner Robertson indicated he does not believe we have the right to tell people they have to take those signs down. Mayor Carroll stated we are talking about temporary signs. Commissioner Robertson replied he knows what is being talked about. If it is his picture and he wants to leave it there, whether it is after an election or not, he should be able to leave it there.

Mayor Carroll clarified that they are talking about advertising an event and advertising or soliciting a vote for an election. If you want to put up a sign that says John Robertson lives here and is a nice guy, that's not a temporary sign. Commissioner Robertson explained this goes back to all the ordinances regulating one thing or another. As long as it is not a vulgar sign, he can put it up and leave it there forever. Commissioner Robertson continued that he could go along with it as long as it doesn't take anyone's rights away from them and that's what you're doing, you're trying to take my rights away from me. Mayor Pro-Tem Griggs stated that currently the ordinance requires that a sign come down within seven days. What Commissioner Cooper is proposing is to change that seven to five and to change the definition to add the signs announcing yard, garage, and patio sales as specific definitions and cutting the time limit on those to two days instead of seven days. Currently, the ordinance in section d says private property already.

Commissioner Robertson asked how long before an election can you put it up now? Mayor Carroll replied it doesn't say. Commissioner Robertson asked what difference does it make if it's seven days or five days then? Mayor Pro-Tem Griggs stated that is an arguable issue. Is five days significant or not? Commissioner Robertson stated if it is already seven days, what is the question about five or seven. Mayor Pro-Tem Griggs stated Commissioner Cooper's proposal is to change it to five. Mayor Carroll stated that gets the signs down the weekend following the election. Elections are on a Tuesday, so the signs need to be down by the end of that week.

Mayor Pro-Tem Griggs stated that changing the definitions is not a big deal and Commissioner Cooper replied no. Mayor Pro-Tem Griggs continued that what Commissioner Cooper is discussing is to leave the language designating the time between the primary and the general. Mayor Carroll stated that is correct, i.e., to delete the proposed section c and reinstate the proposed deleted language in section d. Mayor Pro-Tem Griggs stated he is not sure this will accomplish what Commissioner Cooper wants to accomplish. Commissioner Cooper stated that is basically it. First of all, a little responsibility and sensibility comes into play somewhere. If we agree with Commissioner Robertson, the community can put the signs up and leave them up year round, so if you run for re-election, they are already up providing they are in good shape.

Michael Smith, a citizen in the district of John Robertson, spoke to the Commission. Mr. Smith stated if the Commission is going to change the ordinance, then make stipulations as to city property. However, as far as private property, if he chooses to put a sign on his property that is not lewd or lascivious or offensive to the rest of the citizens of this city and he also chooses to put up a picture of John Robertson saying he's his commissioner and he wants him to run next time or George W. Bush or Steve Lee, he should have the right to do that and not be told by anyone in the city that he has to take it down in a certain number of days. Mayor Carroll stated

what the Commission is addressing is not to deprive you of your right to put a sign up. The Commission is saying if you put up a sign advertising a temporary event, within a certain amount of time after that event is over, you must take the sign down. If you want to put a sign up with your picture on it, someone else's picture on it, or a God Bless America sign, that is fine. What we are talking about are temporary events so that we do not have vote Al Gore for President signs for the next eight years all over town. Mayor Carroll continued when the elections are over or when the garage sale is over, take the sign down. If everyone would cooperate, we wouldn't need an ordinance. It is a question of individual rights versus the rights of the whole community. That is always the quandary that government finds itself in. Mr. Smith responded that he understands that as far as public property or the city's property. However, on his personal property, he should be allowed to put a sign up for John Robertson for Commissioner for any period of time that he chooses and not have a limitation on it. Commissioner Cooper stated if we did that, the city would become nothing but signs. Mr. Smith replied he doubts that seriously. Commissioner Cooper stated he does not doubt it.

Commissioner Robertson stated he is still convinced the reference to private property in the ordinance should be removed or if we change it at all, take the seven and five days completely out of it and give the private property owners their rights back. Commissioner Cooper stated they are not being deprived of rights. Commissioner Cooper indicated that any decision made by the Commission is made for the good of the city. Commissioner Cooper continued that to allow signs to be left up after an event is over is ludicrous, because it has no worth. Once an event is over, it's over. Commission Ledford asked if the current ordinance works? Do we have a litter problem or abuse of the ordinance here? Mayor Carroll responded that most people take the political signs down. What you find are, and this is something that the political parties should police themselves, signs for statewide candidates that were put up and do not come down. Mayor Carroll continued that there is still a sign on White Sands Blvd. from an election at least four years ago, maybe longer. There is also one out on Highway 70 that is two elections back. The primary change to the ordinance language was adding yard signs and patio sales, since those are the signs that tend to stay up or the box set out on the curb is not removed. Commissioner Ledford stated that the temporary signs were already in the ordinance, what the added language does is redefine what those are. Mayor Carroll stated yes, we are adding the definition of yard sales and patio sales and reducing the amount of time they can stay up after the event. Mayor Carroll continued that this started out as a major change but all we're doing is including yard sales and patio sales and changing the time from seven to five and two days for yard sales.

Commissioner Robertson stated he has no problem with the patio and yard sale signs and agreed with Commissioner Cooper 100% because on his street yard sale signs are never taken off the telephone poles. Commissioner Robertson continued that he does not agree with making residents take signs down that are on private property even if it is a yard sale sign that stays up year round, a man has a right to leave it there. Commissioner Cooper stated that a man has a right not to cut his grass, too. Commissioner Ledford asked how many yard or garage sales are allowed per year? Brian McGuire responded that a resident can have three garage sales under the current ordinance. Last year there were some residents on Scenic that were running yard/garage sales once a month and Code Enforcement notified them they had to stop. Commissioner Cooper stated those residents did not stop, they just moved their operation. In the first six months, residents are allowed two sales: a yard sale or a moving sale. Then the resident must wait six months for the last sale which can be a moving sale or a yard sale. Commissioner Cooper continued that there is no penalty clause there either.

Brian McGuire stated the signs we asked residents at the corner of 10th and Scenic to take down were removed. We notified these residents by letter and indicated we would cite them if they did not stop holding garage/yard sales every month and they stopped doing it. Commissioner Ledford asked if that was because it was more than three sales? Mr. McGuire replied yes. Commissioner Ledford stated his question is if the signs are there year round, how many times is that? Commissioner Ledford continued that this has not been addressed, because it is not even an issue. Mr. McGuire replied that's right, we have not taken any enforcement action on that sort of thing. As one commissioner stated, we don't enforce the ordinance very well as it is so changing it probably won't make that much difference.

Ken McDaniel addressed one of Commissioner Robertson's comments by explaining that if you are talking about residential real estate displaying a commercial sign, whether it be yard, garage, or patio sale, this becomes a zoning issue as to whether you are changing the character of the residential area to a commercial area when you allow people to continue to post a commercial sign. A political sign has nothing to do with commerce, it does not change the character of the residential area. If a resident wants to put up a tablet with the Ten Commandments, that does not change the character from a residential area. However, if you put up a sign in a residential area for your auto sales and you keep it up year round, you are changing the character of the area and that is a legitimate subject for regulation.

Mayor Pro-Tem Griggs stated the issue is enforcement of the ordinance we have today and speedy, prompt removal of signs that are not allowed to be there currently. Reducing the timeline is fine, however if we have a hard time enforcing the longer timeline, will we be able to enforce a shorter timeline? Mayor Carroll responded probably not. Mayor Pro-Tem Griggs continued by asking if we are really getting it done? Before going the ordinance route, we should publicize it more heavily in the newspaper and publish it more heavily in the City Profile, so people completely understand their obligations even though most of them do now and ignore it anyway. Mayor Pro-Tem Griggs stated he doesn't know whether the Commission will really accomplish what Commissioner Cooper wants to do.

Commissioner Cooper stated that almost every city in New Mexico including Albuquerque, Santa Fe, and Roswell has ordinances of this type because that's where we drew most of the information from. If we use Commissioner Robertson's reasoning, no one can go on his property and tell him he has to cut his grass even though there is no ordinance against it.

Mayor Carroll stated we have an ordinance in place now that could address the concerns so if there is no interest on the part of the Commission to do something, we just as well move on. Commissioner Cooper stated there was interest two years ago when it came on for first publication. Commissioner Cooper continued that the people that proposed and made the motion for it, turned around in retaliation and voted against it for the final publication. What purpose does it serve to keep a political sign up? All it does is create another eyesore. Commissioner Cooper stated he has no problem leaving them up after the election for a few days because its important to be proud of being a winner. However, to keep them up all the time whenever you want to, why do we have the ordinances on the books in the first place – because of the good of all people. Mayor Carroll responded that Commissioner Cooper made some good points. We already have an ordinance on the books. It may not be as broad as Commissioner Cooper would like but we already have something, so let's see if we can enforce what we have.

Commissioner Cole recommended the Commission follow-up on the Mayor's suggestion. He further stated he has no desire to approve this tonight.

Commissioner Cooper moved to approve Ordinance No. 1219 as presented. The motion failed for lack of a second.

12. Voting delegate and alternate delegate for the New Mexico Municipal League Annual Conference Business Meeting being held September 1-3, 2004 in Tucumcari, NM.

Recommendation: Select a voting delegate and alternate.

Mayor Carroll indicated that in the past the Mayor has been the voting delegate and either the Mayor Pro-Tem or another Commissioner who is planning to attend has been the alternate.

Commissioner Cole moved to select Mayor Carroll as the voting delegate. Seconded by Commissioner Robertson. The motion carried by a vote of 7-0-0. Commissioner Robertson moved to select Mayor Pro-Tem Griggs as alternate delegate. Seconded by Commissioner Ledford. The motion carried by a vote of 7-0-0.

16. Notification of vacancies on the Boards and Committees.

Mayor Carroll noted that there is still a vacancy on the RSVP Advisory Council and the Mayor's Committee on Aging.

SCHEDULED COMMUNICATIONS FROM THE PUBLIC:

17. Terry L. Coe - Surface water rights held by Bonito River Property Owners.

Mr. Coe introduces himself and states he is a native of the Bonito Lake area. He apologized to the Commission for being tardy last time he was on the Agenda. He then thanked the Commission for repairing the potholes on the Bonito Lake road. The City is the only entity that keeps up the road. He commended the City for choosing Keith Kessler as Manager of the lake, he does a really good job.

Mr. Coe's grandfather worked for Southern Pacific Railway in excess of 40 years. He purchased 160 acres on Bonito River in 1898 and we have had a water tap on the pipeline since around 1907. When he was a kid, there was always water in the stream constantly. It ran year round. He realizes that we have had some drought and the water has been pretty scarce lately, but Bonito Lake is basically the only lake in the state that doesn't let any water out at all downstream during these real dry periods for the fish to survive or any of the forest animals to get a drink. The creek below the lake is powder dry.

Mr. Coe built a restaurant last year and stocked what water he has with fish and he stocked it again this year. It's a real popular restaurant, but he has to turn people away because people like to sit on the water and eat their lunch or dinner and have the fish swimming by. He's lost a lot of fish because there is no water running into his private ponds.

Mr. Coe asked that the City consider releasing a small amount of water, maybe 100 gallons per minute. This would drop the lake maybe one foot a year and that's not asking that much for those of us that were raised there all of our life and where the water originates from. He stated he realizes the City is not getting its full quota of water rights. There are some of us downstream that have water rights also, but we're not getting any of our quota. The only water we get is whenever the lake runs over and it has run over the last two years and we're thankful

for that little bit of water. Keith Kessler let some water out this year to get rid of the sludge and that water sure helped a lot. He also let some water out in the wintertime to keep the pipes from freezing, but we're just asking for a small amount of water to be let out so the wildlife has a place to drink up and down the creek and those of us that have surface water rights would have a little bit of water to keep the creek alive.

There are thousands of people camping on the creek below his property and there is no water for those campers. Grindstone dam in Ruidoso is a manmade dam where there is no natural water running to it, they drain water from the upper canyon in the Grindstone and it has 200 gallons per minute coming out of it. That is Ruidoso's primary water supply. Also, the Mescalero Apache Indians have a dam there. They have about 500 gallons per minute coming out of it, but Bonito Lake has no water at all coming out of it. It leaks approximately 30 gallons per minute.

The residents at Bonito and below do not feel 100 gallons per minute is asking too much and they would like to see a little bit of water let out. Mr. Coe stated he knows it's the City's water and we can do what we want with it. However, he's been there a long time and that water originates in his backyard.

Mayor Carroll stated we understand Mr. Coe's dilemma, but it is a request the City of Alamogordo cannot honor. Over the years, there has been a lot of litigation concerning Bonito water before the City of Alamogordo acquired the rights and the lakes. In one of the court decrees, the City was prohibited from releasing water except what overflows over the dam. Mayor Carroll believes the case was Bloom Cattle Co. decision in 1934 that says the only water that can come out of Bonito is what goes over the spillway. We cannot release water out of that impoundment out of our share.

Mr. Coe stated over the years, he has seen a lot of water released out of Bonito Lake for one reason or another by different caretakers. Mr. Talley used to release water pretty regularly and his grandfather used to release water pretty regularly and he understands what the rules are. However, he thinks the Commissioners could actually do what they want to here. Mayor Carroll responded that was before many years of drought and before all the contentiousness that has gone on over water in the Bonito and Ruidoso area. We are in a position where we have to take every precaution we can to guard what water rights we do have and Mayor Carroll does not feel that the City can risk those water rights by violating the terms of any of the agreements we are operating under.

Mr. Coe asked about the people downstream that have surface water rights? Mayor Carroll responded there has been a lot of adjudication of that water and most of the surface water rights are far junior to anything that the City has in Bonito Lake. Unfortunately, the fact that someone has a stream that runs through their property does not necessarily entail a water right. You indicated that you have a tap on the Bonito pipeline, which gives you the opportunity to take water from the Bonito pipeline. Of course, it is not free. Mayor Carroll understands there is a charge for that. Mayor Carroll feels this needs to be the position of the City. It would be nice if we could do a lot of those things, but in today's environment regarding water and water rights, Mayor Carroll does not believe it is something the City can risk.

Mr. Coe asked what the City's position on the water he buys? He has been paying Alamogordo since 1959 every single month on this water we get from the pipeline and its undrinkable. It has been condemned by the EID. Mayor Carroll stated that at some point in time, we may be forced to terminate that. If we are able to continue to do it, the City's position is that we will honor those agreements. Mr. Coe stated it's a state law that once a municipality gives citizens water,

they cannot take it away as long as the water bill is paid. Mayor Carroll responded that if the state tells us we have to do it, then we have to do it. We're hoping it doesn't come to that, but that is a decision the state will make.

Mayor Carroll restated that the Commission does not have the option to do what Mr. Coe requests. Mayor Carroll continued by saying when you say 100 gallons per minute, that doesn't sound like much water, but that's more water in a day than the water right of Carrizozo or Fort Stanton. It is more water in a day than the average household in Alamogordo uses in a year.

UNSCHEDULED COMMUNICATIONS:

Michael Smith residing at 1801 Miracerros Lane spoke to the Commission. He is a citizen with concerns about the golf course. He understands the City is preparing to build a new clubhouse. He is concerned that we might be running into financial difficulties by doing this. He is requesting that the Commission appoint an independent third party or investigator to discuss the issues with anyone who has complaints about what is going on at the golf course.

Mayor Carroll suggested that if Mr. Smith has specific complaints, he contact Assistant City Manager, Matt McNeile. The golf course falls under Mr. McNeile's purview. If Mr. Smith cannot get those complaints resolved by talking to the pro, the Assistant City Manager would be the one to bring those complaints to. Mayor Carroll indicated that we have had more than one group or individual make presentations to us pointing out what they believe were shortcomings at the golf course, as well as the operation of the golf course. We have had plenty of input from people who are not happy with the golf course for one reason or another. Mayor Carroll went on to say that we have probably heard almost all the complaints that people can come up with for what they don't like about the golf course; how it's operated, the shape it's in, or the people that are operating it.

Mr. Smith asked if the Commission is aware of these complaints, what are they doing about them? Mayor Carroll responded that we are addressing the concerns that we can address as far as the condition of the golf course. Those are not always cheap to do or easy to do within the financial constraints that we have of the money to put into the everyday operation of the golf course. We don't have the resources to make the golf course look like Pebble Beach. There are some challenges with the golf course because of the effluent water we use to water the course. It has some characteristics that make it more difficult to keep the grass up and keep it growing. We are aware of some of those concerns and where we can, we do try to address them. That is one of the reasons we are contemplating a new clubhouse because of the concerns that were brought to the Commission and the examination that followed of the condition of the existing clubhouse. That is what is necessitating the building of a new clubhouse is the condition of the old one. That will be funded from the proceeds of a revenue bond we just recently reissued.

Mr. Smith asked how are we going to generate the revenue we need to pay for this bond or are we going to continue to rely on the taxpayers to pay for it as opposed to letting the golf course make itself viable. Mayor Carroll stated that is always an issue as the course does not support itself now. There is a resistance to charging more. The people that play out there feel they are paying too much now. It is a circular argument. If the course were in better shape, players might be willing to pay more. If the players paid more, the City could put the course in better shape.

Commissioner Ledford stated he's been here 11 years and the golf course is a lot better now than it's been since he's been here. We could do all you want to it and we won't make everybody happy. Who's a disinterested party, who would that be? Mr. Smith stated you could pick someone who doesn't play golf here but is a taxpayer in this particular instance. Commissioner Ledford stated he knows a lot of people like our golf course. Our rounds are at an all time high. We do pretty well here compared to what we used to do. Commissioner Ledford asked Mr. Smith if he has put his list of the issues together and presented them to Matt McNeile so he can look at them and address them? That would be a good start and that is what the Mayor is saying because Matt will do everything he can to make it work and if he can't make it work, to at least give you an explanation what the issue is. Commissioner Ledford is concerned that what is being discussed are opinions about the operation of the golf course and opinions differ from one individual to another.

Mayor Pro-Tem Griggs stated that he wanted Mr. Smith to clearly understand that the revenue the golf course generates is not responsible for the payback of this bond so if you believe that it's golf course revenue that's going to have to pay for this bond, that's incorrect. Mr. Smith responded that he may or may not understand that, but you have a faction of taxpayers in this City that didn't want the extra nine holes of the golf course when the City purchased it in the first place. Now we're going to tell them that we are fixing to do something else that they may or may not deem themselves responsible for so we should have a viable question for them. Mr. Smith stated he will get with Matt McNeile and find out what is going on and will also include his representative, Mr. Robertson.

Mayor Carroll stated we are attempting to accommodate the various wishes of the citizens by having a golf course. There are going to be people that wonder why we should even have a golf course, but since we do have one we need to maintain it and that's what we're attempting to do. Mr. Smith stated that it should be viable. Mayor Carroll responded that we believe it is. Mr. Smith stated he is inclined to disagree. In comparing Alamogordo's golf course to other golf courses in this area that Mr. Smith visits on a constant basis, our golf course is in decline as opposed to making it viable. Mayor Carroll stated he would like to have a list of those golf courses Mr. Smith is comparing us with to make sure he is comparing us with communities that we can compete with on a basis of providing a golf course.

Matt McNeile reported that the water is at 60% capacity in the reservoirs. That is about where we were last year at this same time. Currently, we are not running any of the wells in La Luz, only the Prather Wells are running. Bonito Lake is about 9 ½ feet below the spillway. Based upon the current information on inflows to the system, available storage, well production, and past usage patterns, there does not seem to be any need to take additional conservation or rationing steps at this time. Commissioner Robertson asked whether we have received a report from the South Prather Well that we were supposed to be monitoring. Do we have any pull down on those yet? Brian McGuire indicated that USGS has given us a report but he does not know what that is. Mr. McGuire's understanding is that they did some monitoring and we have a report. Mayor Carroll asked whether they gave it to us or to the County? Mr. McGuire responded he didn't know who they gave it to, but would run it down and have it available at the next meeting.

Brian McGuire updated the Commission on the sewer line project. The contractors should be off the Relief Route today or tomorrow, with the exception of when we go in and tie in the sewer on the south end. The contractors have laid over 7000' of sewer line in sixteen days. Last week, they ran into a problem with an unexpected amount of rainwater runoff and some time was lost. After the mud was cleaned out of the holes, they prevented water from getting into the

sewer line any further. They did utilize the time when it was so muddy out there they could not do anymore trenching. The contractors are waiting on some rebar (physically shown by Brian) before they can pour 10th Street. Tenth Street will be closed two more weeks. During the week of August 24, the sewer line will be tied in and operating. That is about 10 days before the Cottonwood Festival, so not only will the holes be filled in but it will be paved also. This is right about on schedule. The contractors had hoped to have it completed a week before that, but have been working 60 hour weeks on it to make it happen. The bore has been completed. The Canal ditch crosses Edie and goes into the area north of 16th Street. With the heavy rains that hit in the mountains, we got a substantial amount of water down there and created a debris dam forcing water onto 16th Street. All of the runoff ended up in the sewer project. Commissioner Ledford asked what is the estimated completion of 1st and Florida. Mr. McGuire responded that we have another two weeks before that project is completed.

Commissioner Cooper moved to adjourn. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0. The meeting was adjourned at 9:09 p.m.

/s/Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/Angie Rahn-Broyles

City Clerk Angie J. Rahn-Broyles

(SEAL)

(Prepared by Laura Sanchez)

Approved at the City Commission Regular Meeting of August 24, 2004