

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
MUNICIPAL BUILDING, 1376 E. NINTH STREET  
7:30 P.M., COMMISSION CHAMBERS  
MARCH 8, 2005**

**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 7:30 p.m. The Invocation was given by Rev. James Forney, and the Pledge of Allegiance was led by Commissioner Marion Ledford.

Mayor Carroll mentioned the event last Thursday of an armed individual in the area of Sacramento School, and to which our DPS had responded. It was a long standoff, but was resolved peacefully and no one was hurt. He felt it reflected great credit on DPS, and was just about a textbook example of how a situation like that should be handled. He congratulated Chief Trujillo and all the members of his department that were involved, as well as the members of the School administration, the neighbors, and the merchants who brought warm food for the Officers that were out there for an extended period of time. It was a great example of cooperation from everyone involved, and thankfully came to a peaceful and uneventful resolution.

Mayor Pro-Tem Griggs said there was another event which occurred in our community last Saturday night, and that was the Chamber of Commerce Annual Banquet. Selected as Citizen of the Year for 2004 was Mayor Carroll, which was a great honor for him and well deserved. Mayor Carroll said it was certainly a humbling experience, and something he was very grateful for. He'd joined the list of some very outstanding citizens who had been recognized in the past, and he thanked the Chamber for that.

Mayor Carroll noted that item No. 7 had been withdrawn from the agenda.

**CALL OF THE CONSENT CALENDAR:**

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

1. Minutes of Regular Meeting of February 22, 2005.

*Recommendation:* Approve the minutes.

4. Resolution No. 2005-12 supporting a Grant application to the NM Energy, Minerals, and Natural Resources Division – Recreational Trails Program, to request funding assistance for the development of Abbott Trail.

*Recommendation:* Approve the Resolution.

5. Statement regarding the Executive Session of February 22, 2005.

*Recommendation:* Approve the statement.

Item No. 3 was removed from the Consent Calendar.

**Commissioner Cooper moved to approve items 1, 4, and 5 on the Consent Calendar. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a roll call vote of 7-0-0.**

**PLANNING ITEMS:**

2. Consideration of the final plat of PALO DURO SUBDIVISION, UNIT 1, for Tool Box, LLC [Case S-05-0864(A)].

*Recommendation:* Approve the final plat of Palo Duro Subdivision, Unit 1, with a Subdivider's Contract and a Park Land Agreement. [Tabled at February 22, 2005 Meeting]

Mayor Carroll said in the agenda packet was a copy of the Public Land Dedication Development Agreement, and he understood that the developer was asking for a change to this agreement under item No. 3, changing the transfer of the Deed of the public land within one year of the date of the agreement to three years. He also understood that staff had no problem with that.

Commissioner Cooper clarified that everything the Commission had previously questioned had been taken care of. Mayor Carroll said yes, it appeared that all the concerns had been addressed and all of the proper documentation had been provided by the developer.

**Commissioner Cooper moved to accept consideration of the final plat of Palo Duro Subdivision, Unit 1, for Tool Box, LLC, with the Subdivider's Contract and the Park Land Agreement as changed from one year to three years. Seconded by Mayor Pro-Tem Griggs.**

Commissioner Robertson said he'd had quite a few people contact him regarding the size of houses which would be put on these lots. Mr. Klad Zimmerle, Alamotero Land Surveys, said the houses would average 1,700 or 1,800 square feet up to about 2,400 square feet. Mr. McCourt asked if there was a maximum size lot coverage which would be controlled by Ordinance? Ms. Few said no. There was a minimum lot size of 6,000 square feet, and these lots were 7,200 square feet. Mr. McCourt clarified that the size of the homes was up to the developer.

Mayor Pro-Tem Griggs asked if there was an estimated sales price per lot? Mr. Zimmerle said he didn't have the lot sale price, but the construction price was normally about \$9,000 to \$12,000 per lot.

Ms. Sherry Langwell, 2804 Birdie Loop, asked what was going on behind her house? Mr. Zimmerle said this was a subdivision which they had been working with the City on for about the past year and a half. Their first phase would be 68 lots, and the minimum lot size was 70 feet by 120 feet. Mr. Randy Burroughs, Attorney for the applicant, clarified that Ms. Langwell's property did not back up to this subdivision. Mayor Pro-Tem Griggs said if they looked at Birdie Loop, that was pretty much where the future subdivision was. Ms. Langwell asked what they were doing with the arroyo out back there now, because it was a big mess. Mr. Zimmerle said

part of the project in the first phase was to clean that out. Ms. Langwell said the problem was the water going down Birdie Loop when it rained. Mr. Zimmerle said the ditch would be improved from the intersection all the way up to Hamilton Road. Commissioner Robertson asked if they were getting overflow from the drainage ditch now over onto Birdie Loop? Ms. Langwell said not at all. Commissioner Robertson thought the way they would be doing this, there wouldn't be any overflow. Ms. Langwell said when they did Sedona Ridge, they said "we think there will be no problem". The drain the City put in on the north side did not meet up properly with the drain which was already in on the south side. Mayor Pro-Tem Griggs said when the water came down by their end of Birdie Loop, it hit the grate and went into the ditch. That was a whole different subdivider and subdivision than this gentleman's. Ms. Langwell said she just didn't want something like that to end up by her. Mayor Carroll said the subdivider would be required to provide drainage plans that ensured that they wouldn't be adding any additional water to any adjacent property. Ms. Langwell said if the arroyo was 25 feet wide now, would it be 25 feet wide when they got done? Mr. Zimmerle said yes; there would be a 20 foot bank on top for the street crews to access. Mayor Pro-Tem Griggs said it would be kind of like a 20 foot alley or right-of-way that ran behind their homes, and then any drainage would probably kick off back to the south.

Commissioner Robertson asked if these houses would be in the \$180,000 range and above? Mr. Zimmerle said he didn't know the exact cost of prices, but it would be very comparable to other Tool Belt houses in the area. They did an excellent job of building and they were very quality, and this would be in a situation to match what was going on at Desert Hills. It might not be the \$200,000 homes, but he didn't think they would be something to be ashamed of. Mayor Pro-Tem Griggs said some of the houses at the Golf Course were pretty expensive, but he didn't think this development would compete with some of those. The new homes out there were probably 2,400 square feet and up, and if these were at 1,800 to 2,000 square feet—they would be somewhat restricted by the width of the lot. Mr. Zimmerle said actually the 70 foot width was above average. Mayor Pro-Tem Griggs did not think the value of the Golf Course properties would be negatively impacted at all by these homes.

Mayor Carroll called for the vote on the motion. **All voted "aye". The motion carried by a vote of 7-0-0.**

### **ORDINANCES AND RESOLUTIONS:**

3. Ordinance No. 1233 relating to HazMat Transportation.

*Recommendation:* Approve the Ordinance for final adoption.

Mayor Carroll said there was a revised Ordinance on this item. The reason he'd pulled it from the Consent Calendar was to get the opinion of our Attorney as to whether the proposed changes were significant enough to require the re-publication of this Ordinance. Mr. McDaniel said he did not believe so. These Ordinances were published by summary, and this was still well within the summary. What happened here was an intention by the Fire Department to be a distinction drawn between trucks over 3,500 gallons, such as gasoline tankers that went to filling stations versus trucks under 3,500 gallons, such as fuel oil and propane trucks that made residential deliveries. Somehow or other it got dropped out of the draft and we needed to put it back in. Otherwise it didn't make sense because we had one paragraph saying "you must" and the other saying "you may". Once you put the 3,500 gallon distinction back in, then it made sense. Commissioner Cooper clarified that the revision brought it up to date. Mayor Carroll said yes, and so it was ready for final approval if the Commission desired.

**Commissioner Cooper moved for final approval of Ordinance No. 1233 relating to HazMat Transportation, as revised. Seconded by Commissioner Robertson. All voted “aye”. The motion carried by a roll call vote of 7-0-0.**

**SCHEDULED COMMUNICATIONS FROM THE PUBLIC:**

6. Request of Mrs. Donna Clark, 303B Canal Street, for credit/refund regarding water meter removal fees.

*Recommendation:* Deny the request.

Mrs. Clark said she and her husband had a business at 303 Canal Street, and there used to be two water meters at the location. Over seven years ago they had a water leak on the one side and they stopped using the one meter. Then in October she all of a sudden started getting charged for that one meter again. She paid the fee for three months, and then called to say she wanted the water meter removed, and she was told it would cost her \$411 to do so, which was like two years' worth of billing. So instead of just throwing good money after bad, she went ahead and paid it. Then after the next Commission Meeting she read that some other residents had the same problem, and they had their fees waived and they didn't have to pay to have their water meters removed. Therefore, she was requesting her money back because she hadn't used the water meter and she didn't feel she should have had to pay that amount of money to have it taken out.

Mayor Carroll said the other request that Mrs. Clark was referencing was a different situation than what she had. She had a meter which had been in use and had not been used, but it was just turned off. Mrs. Clark said she hadn't used it in over seven years. Mayor Carroll said the other item the Commission took care of was one where neither meter had been connected to the system for as far back as our records showed. The whole policy change we made was either to encourage people to stay on the system so that the water would be available to them, or if they chose not to, then to remove the meter at a cost of what would be an equivalent of two years' basic billing for water and sewer. She chose initially to stay connected to the system. Mrs. Clark said she wasn't connected to the system—the water meter was there, but she was not connected to the system. Mayor Carroll said the water meter was not turned on, but she was still connected to the system. Mrs. Clark said no, it wasn't even connected—it was just there. They'd had a water line break out on the property. The water meter was not even connected to anything, but was just there on her building.

Commissioner Robertson said this was identical to Mr. Tidwell's request. Mr. Tidwell wasn't connected either, and the Clarks weren't connected with a water line. He'd asked when this was first brought up to go revisit this Ordinance we'd put in to make all these charges on these people, because there were some other people in the same situation which Mrs. Clark and Mr. Tidwell were in. If we let Mr. Tidwell get by without paying, then we ought to give Mr. and Mrs. Clark their money back, or give them credit for that amount of money. They were not connected to the system either for over seven years.

Mrs. Clark said the water pipe broke in the driveway, and they never fixed it. Commissioner Robertson said they'd disconnected it and hooked that side of the building onto the other meter, so they were running both sides off of the same meter. Mrs. Clark said this meter had been dormant for over seven years.

Mr. McCourt said this was directly as in the Ordinance. As they would recall from last spring, dormant meters would be charged a fixed base fee for the water and sewer. As originally set up, there was no charge for disconnects, but people would pay a fee when they joined onto the system. After input from the public, the Commission changed that so that there was a charge on the disconnect side. There was discussion on setting that at a fixed dollar amount, again with input from the public and a public discussion. That was recommended to be changed to an amount to reflect two years of the base fee, and it was adopted. Everyone was sent a notice back in June that the policy was going into effect, and there were letters sent out on all the accounts. Anyone who disconnected in the first period could do so at no charge. We had other people paying the fixed monthly fee to have the meters remain in the ground at this time.

Commissioner Robertson said we did pass that Ordinance, but at that time we were unaware all of these meters setting there which had been disconnected years ago would be charged all of these charges against that time. On the ones Mr. McCourt was talking about which had only been turned off five or six months, we should go ahead and charge the fees. That was why he wanted to revisit this Ordinance, because it was totally incorrect for people that had not been on the water system for five, six, seven, or eight years. It was not right for us to go back and charge these people to get off of a system that they hadn't even used for several years.

Commissioner Ledford said it seemed to him when this was visited, we had talked about inactive accounts and ones that weren't being used for water delivery, or whatever. We knew there were a lot of meters out there that had not been used for several years, and we used the 24-month base. He thought everyone was sent a letter back in June so that they could be disconnected. As he read the Ordinance, it did not allow for us to give relief just because someone hadn't used the meter for years. We could revisit the Ordinance if we wanted to change. The way he understood the Tidwell situation, however, was that he had submitted a letter and it was a disagreement on what that letter meant. He stated that he felt the letter meant that he wanted to be disconnected, but staff didn't agree with that, so there was a disagreement and that was why they recommended denial. When Mr. Tidwell came before us, he had voted for it because there was a misunderstanding on what the letter meant, and because we didn't notify Mr. Tidwell within the fifteen days which would give remedy to the situation. In this case, Mrs. Clark was also notified. Mrs. Clark said, though, that she wasn't connected to have to say that she wanted to be disconnected, and that was where the confusion was. Because she wasn't connected, why would she have to tell the City to disconnect her? If she wanted to be disconnected, then she would have to notify the City that she wanted that—but she wasn't connected. Commissioner Ledford said she was talking about a disconnect from service. The way he understood it, there was a line which went to the meter from both sides, and it was hooked up. Mrs. Clark said no. Commissioner Ledford asked if there were no lines to the meter at all? Mrs. Clark said no. Commissioner Ledford said he understood her to say there was a break in the line down the way and she just didn't use it, so she hooked it up to the other meter. Mrs. Clark said no. Commissioner Ledford asked if the meter was already disconnected? Mr. McCourt said there was a line from the main to the meter which was in existence. She was saying that she was not using it on her side of the meter and that was where the break was. Mrs. Clark said the break was in the property and the line was not connected from the street to the meter. So why should she tell the City she wanted to disconnect the meter that was not connected? Commissioner Ledford clarified that the line was broken on her side of the meter. Mrs. Clark said there were two meters. One had a break in the line, so they just ran the water to the other meter because there were two businesses. So they had just one meter running, and they just left the other meter disconnected. Commissioner Ledford said it wasn't disconnected, it was just broken. The line was broken on her side of the meter.

Mayor Carroll said following the break, they did not repair the break but instead just rerouted the line from their side of the meter to another meter on the same property. Commissioner Ledford said if that was to happen to anybody, if they shut the water off they would still pay the base charge. Mayor Carroll said that was correct. Mrs. Clark said she hadn't been billed on that meter for over seven years. Commissioner Ledford said that was why the letter was sent out, so if she didn't want to be billed monthly she could have it disconnected.

Commissioner Robertson said it was pretty evident if a bill wasn't sent out for over seven years, then the meter was not being used so it might as well not be on the service, and she should not be charged to be disconnected from it. Or anyone shouldn't be charged under those conditions. Just because it was hooked onto the main line, the meter belonged to the City and so did the line. It was up to the City to go pull the thing out if it wasn't being used, and not her. Mrs. Clark thought maybe there was a misunderstanding on her part. How could she be disconnected from something that she wasn't connected to? Commissioner Ledford said the City had sent out a letter saying this was what would happen and that there was an option. Mrs. Clark said if you were connected, but she wasn't connected.

Mayor Pro-Tem Griggs said there were two businesses, and the meters were to service each business. Mrs. Clark said that was right. Mayor Pro-Tem Griggs clarified that on one the line broke, so they then used the water in the one line to service both businesses. Mrs. Clark said they were paying the water bill on both anyway, and they just never fixed the break. Commissioner Robertson asked if she had notified the City that she wasn't going to be using that meter and for them to cut it off seven or eight years ago? Mrs. Clark said she was sure she had because they stopped getting bills. Commissioner Robertson said she would have had to or the City would still be billing her. Commissioner Ledford said the City sent out a letter saying that inactive account property owners were responsible... Commissioner Robertson said it was for the people that were connected and who had been using the meters recently, and not seven or eight years ago. Commissioner Ledford said we didn't say that in the letter. The letter stated that inactive account property owners were responsible to notify the City so they could make that decision—it didn't say recently. He felt the reason the word "inactive" was used was because some hadn't been used for a long time. Commissioner Robertson asked if he thought that over seven years it was pretty obvious that it was not a very good meter and they weren't using it? Commissioner Ledford said it was pretty inactive.

Mayor Pro-Tem Griggs said one of the things that concerned him was that here we had two businesses being served by one meter. Everyone's house was served by one meter, and it was like the situation we ran into with the apartment complexes where we had one meter and water going to twenty or thirty apartments which was unfair for the guy who had his one meter and was paying the flat fee. So Mrs. Clark's business wasn't paying the flat fee side even though it was supposed to have been initially. Mrs. Clark said they were both her businesses, though. Mayor Pro-Tem Griggs said that was like saying she had two houses hooked up to one meter, and most of the time you didn't do that either. Commissioner Robertson asked if the other business on the other side was just an office space? Mrs. Clark said yes. Commissioner Robertson said it was just an office space and it wasn't like they had another restaurant on the other side or whatever.

Mr. McCourt said we did have a special exception in our policy for residents when there were multiple residents on a single meter. They could actually make a choice between paying the base fee and using the tiers for the single meter, or they could option to choose a fixed base rate for each residential unit hooked up and the tiers for each of the residential units hooked up.

That depended on the particular property owner, which made more sense for them and would work for them. On the business side we didn't make that distinction, and never had. He knew an apartment complex was a business, but in this case we classified them as residential. So it was not uncommon to have multiple businesses operating off a single meter, like the mall, for example.

Ms. Teresa Guilez, Water Billing Manager, said she wanted to clarify that seven years ago somebody turned the water off, and we didn't send a bill. So if nobody came in and signed up for it again, we wouldn't have billed it. However, once we sent that letter asking them if they wanted to be disconnected or to stay on the system, for the ones that didn't answer we just activated them and started sending them a bill. Commissioner Robertson clarified that was after this Ordinance was passed.

Commissioner Moncada said after the Ordinance was passed, she was under the impression that the one reason we had to do it this way was because our meter readers had to literally go to each meter and read it. We were trying to eliminate that from happening, and that was why we had sent out the letters. At that point, did they still read this particular meter? Mayor Carroll said until Mrs. Clark paid to have it disconnected. Mr. Armando Ortega, Utility Billing Supervisor, said they still read every meter. Commissioner Moncada clarified that was because we hadn't pulled the meter can out completely. Mr. Ortega said it was just habit right now. We did still read these meters. He had to go help read last month, and even though it didn't show up on the hand-held, it was just habit going and lifting the meter can to make sure everything was disconnected and why it wasn't on the system, and when he got back to the office he checked it. So eventually we would know which ones were disconnected from the system and we would bypass them.

Commissioner Robertson said if Mrs. Clark had called and requested the water be turned off seven years ago, why during that seven years didn't we pull the meter out instead of just leaving it in there, to start with? Mr. Ortega said that was not policy. That meter was an available service and at that point in time it wasn't policy. Commissioner Ledford didn't think it was policy now. Just because you didn't have a bill or turned the water off, it didn't mean that you wanted to pull the meter. You may want to turn it back on the next day. Mr. Ortega said that was correct. Commissioner Ledford said we had discussed that. He agreed with Commissioner Robertson that we may want to revisit this, but he felt that was considered. Seven years was a long time, but we didn't put a minimum on how long they hadn't used it. In fact, the letter that was sent stated "those properties with water meters in place, but not in use", and that was put in there for the reason that we would have some meters that hadn't been used in a long time. We didn't put a time of one year, ten years, or whatever. So we gave them the option to be disconnected or continue paying the base rate. In fact, it said fifteen days, but he thought we actually gave them longer than that to notify the City if they wanted to be disconnected. Mr. Ortega said they were notified in June, but we didn't activate this particular account until August. That showed the time period it took for staff to process all of these. Commissioner Ledford said if he'd received this letter and it said he had a water meter that was in place but was not in use, he would be wanting to call and find out what that meant if he didn't understand it. There was always going to be ambiguity in any kind of written document, but the way he read the Ordinance was that it wasn't an issue of how long they'd been using the service, but the fact that the meter was connected. He thought the whole point was that it was available. In fact, he assumed the meter was available to be hooked up for service now, except for the broken line. But if the line was fixed, she could have service by a phone call, which was different than having it disconnected and the meter pulled.

Commissioner Robertson said after seven years, the meter should have been pulled a long time ago. If he'd been Mrs. Clark and he'd received that letter, he probably wouldn't have answered it either. Mayor Carroll clarified that we had no policy for the past seven years about pulling meters, and this policy we had adopted was not one that we really wanted to encourage people to do. We would prefer that they stayed hooked to the system. Commissioner Robertson said but for the policy that we adopted, we did not discuss...he was unaware there were people out there who had been disconnected for that number of years or he would have never voted for that thing to start with because he felt they should have had a chance to disconnect. He knew what the letter said, but when they did go into disconnect, the City would charge them two years' worth to disconnect, and that was not right, right off the bat. If those meters had been used in the last six to eight months, then by all means charge them. However, when these meters had not been used in that period of time, it was pretty obvious that those meters were dead meters. Commissioner Ledford said in the minutes we didn't say seven years specifically, but we did discuss that a lot of those meters weren't in use. There were 1,100 inactive meters, and maybe we didn't realize exactly what was going on, but we did talk about the fact that there were a lot of them that hadn't been used for a long time. The whole point of the fee was to pay for the ability of the service that they weren't paying, which other people were paying just because they were getting water. So by disconnecting, they were not hooked up to the system. So we gave them that option to either pay two years' worth—and he thought we had come up with that figure based on what we figured it would cost to disconnect, which was a fair rate for the disconnect. Commissioner Robertson said we still had the same situation as we had for Mr. Tidwell. Commissioner Ledford said he didn't agree because Mr. Tidwell did issue a letter in response to our letter. He stated that his intent was to have it disconnected, and staff felt the letter didn't say that. Maybe it didn't, but we had a tendency to side with the citizens when they said one thing and we said something else. That was what had happened with Mr. Tidwell and that was why he voted for that one. Mr. Tidwell had stated that was the intent of his letter, and he had sent a letter within a week of when we sent out our letter. So that was the difference. Commissioner Robertson asked if he was saying that it would be a totally different ball game if Mrs. Clark had sent a letter saying that she was disconnected? Commissioner Ledford said the letter we sent out asked for people to respond within fifteen days if they did want to be disconnected, and Mr. Tidwell had done that. Commissioner Robertson said Mrs. Clark was under the impression that she had been disconnected. The lady stood here tonight and said she had been disconnected. She was under that impression, so why answer the letter? He wouldn't have answered it either.

Commissioner Cooper asked Mrs. Clark how she had discovered the break in the line? Commissioner Robertson asked what that mattered? Commissioner Cooper said it meant a lot. If you had a break in the line, there had to be leakage which would show up. Wasn't that correct? Mr. Ortega said that was correct. Commissioner Cooper said if you discovered a broken line and you chose not to fix it—how long was it before she decided that she wasn't going to fix that line but would just run it around to the other meter and hook it up to have service on the one meter? How long after she discovered the break was it before that happened? Mrs. Clark said immediately because they couldn't use it. Her husband had handled it. Commissioner Cooper said those lines were underground and if there was a break in the line, then there had to be some evidence of a leak there. Commissioner Robertson said she'd stated that they had called to disconnect the service. Commissioner Cooper asked when, though? Commissioner Robertson said when they had the water break, seven years ago.

Commissioner Cole said it seemed to him that the time span in there for the seven years, as an individual he would have thought he was already disconnected. Seven years was a long time and he didn't know whether the City was responsible or the owner of the property because of

the amount of time. Mayor Carroll said when she talked about disconnected, in actuality, the meter was turned off. The meter was still connected to the City's water system. The fact that they bypassed it on their side of the meter didn't mean that it was disconnected as far as the City was concerned. It was an inactive meter. We had no way of knowing that they had bypassed it. Mrs. Clark asked what disconnected meant versus inactive? Mayor Carroll said in our Ordinance it meant to be removed from the system—taken out of the line to where there was no direct connection between the City's water line and the water line on the property. What she had was a meter which was turned off, but it was still connected to the City's water system. We had no way to distinguish between an inactive meter, a dead meter, or one which she had bypassed. In essence what she had done was to bypass the meter by hooking to another one. Commissioner Robertson said when she called and said they were disconnecting, that was when the City should have pulled the meter. Commissioner Moncada asked why the City would do that? Commissioner Robertson said because they weren't going to be using it anymore. It wasn't her fault the City didn't go out there and disconnect the meter. They disconnected from their side over seven years ago, so it was pretty obvious to him that they weren't going to use it.

Commissioner Ledford said if he called up and said he wanted his meter disconnected, what would City staff do? Mr. Ortega said right now he would make him aware of the current Ordinance. Commissioner Ledford asked if that meant he would explain the difference between it being pulled or disconnected? Mr. Ortega said absolutely. He would explain the current Ordinance and let the customer know that they would have to pay the monthly minimum distribution charge. Commissioner Ledford said if someone called seven years ago and said they didn't want to pay and to turn it off, would we have just turned it off but left the meter still there? Mr. Ortega said yes. Commissioner Ledford asked if that was called an inactive account? Mr. Ortega said yes, back then. Commissioner Ledford said the letter referred to "inactive accounts", and he felt that terminology was used so that we could make the people aware that if they thought they were disconnected, they were actually inactive. If it was inactive, then the letter stated a choice. He supposed everybody out there that was inactive would fall under the same argument that Mrs. Clark of wanting to be disconnected. The fact that she had seven years was an issue obviously, but he didn't know what the difference between seven years inactive and two months inactive was. If the water was turned off, that was it. Mrs. Clark said she didn't know she was inactive, as she thought she was disconnected. It must all be in the terminology. When she called and asked to disconnect something, she didn't feel that she was saying that she wanted it inactive.

Commissioner Robertson asked if seven years ago when the City went out and turned the water off, could the people turn it back on themselves? Mr. Ortega said yes. We didn't have locks on all of the meters. If someone had turned their meter back on, we would have caught it the very next month and then we would have proceeded with actually pulling the meter. Commissioner Robertson asked if Mr. Ortega worked here seven years ago? Mr. Ortega said yes. Commissioner Robertson asked why they didn't take the meter out when Mrs. Clark had asked? Mr. Ortega said that he could not remember seven years ago for one thing. Second, our policy was just to terminate the account on the system. Commissioner Robertson said as far as Mrs. Clark was concerned, "terminate the account" meant that the system was turned off. Mr. Ortega said that "terminate" was a status that our system used... Commissioner Robertson asked if this was another play on words? Mr. Ortega said he wasn't going to get into that. We had a "terminated" status in our system. That status prompted a work order, prompted a final read, and then the meter stayed in the ground and it went to a final status. Commissioner Robertson said it was the City's decision to leave that meter there. Mayor Carroll said it was City policy at the time. Commissioner Robertson said it was City policy to leave it there, so it was not her fault that it was not disconnected. However, she thought it was disconnected. Mr. Ortega said

he could not speak to what she thought. Commissioner Robertson said she had already testified to that tonight several times that she thought she was disconnected. She didn't pay much attention to the letter and she went and paid the bills when she received them. He was like her, and he probably wouldn't have paid much attention to that letter either if he thought the meter was cut off. In fact, he might not have even thought about that meter.

Commissioner Ledford asked how we should interpret Ordinance No. 1210? Commissioner Robertson thought we needed to go back and completely revisit it. Commissioner Ledford said he didn't have a problem with that, but today it was law. So how did we interpret it? Did it apply to anybody? Seven years was a long time, no doubt about it. But what if it had only been a year? Would he still feel the same? Commissioner Robertson felt we ought to go back and put a year on this thing. Even if they'd been turned off three or four years, it was pretty obvious that they were dead meters. They were not using them and probably were not going to use them. If the City was inquisitive enough, when they went out and read the meter, why didn't they look to see why the person wasn't using the meter? If they were on another meter, the building was there, and the meter was dead, then pull the meter out and go use it somewhere else instead of letting a perfectly good meter sit in the ground for seven years. Mr. Ortega said we did have people come in and sign up for accounts that had been terminated for over five years. We did have that. The meter was in place. Commissioner Robertson said his question was why we would leave a meter in the ground seven years when you could be using it somewhere else? If they came in and re-signed up, then put another meter in. But after a few years when it was not being used, why leave a perfectly good meter in the ground? Mr. Ortega said we did not re-use our meters like that for the fact that they tended to read slow after a period of time. Also, our record system and our billing system recognized serial numbers, so it wouldn't allow a meter to be used twice.

Mayor Pro-Tem Griggs asked if we would use that meter anyway now due to the fact that when we went to other places needing a meter, we were requiring the backflow preventers? Mr. Ortega said we would turn on the meter at that time, but we were implementing a meter replacement program and that was an issue which was being brought up. Mayor Pro-Tem Griggs said if we pulled this meter out and took it over to Palo Duro Subdivision, would we still use it even though we were going to use backflow preventers out there? Mr. Ortega said it would still fit. Commissioner Robertson said he'd stated that it would get slow, so would it still be usable and correct? Mr. Ortega said after a period of time, all meters registered slow for the fact of how they were engineered. They got caliche inside them and the turbines didn't turn as fast. Commissioner Robertson said under all the circumstances, maybe we should not necessarily give Mrs. Clark her money back. However, he did believe that we should give her credit for that amount to be applied to her other meter over a period of time.

Mayor Pro-Tem Griggs said he sympathized with that, but he also looked at the fact that we did initiate an Ordinance to do exactly what it was doing. It was saying that if you had an inactive meter sitting out there that was not in use, you needed to notify us within a period of time. He can't say why that didn't occur and whether Mrs. Clark indeed thought it was disconnected and shouldn't say anything, or that she just ignored it or for whatever reason. However, the approach of the letter was that if you had a meter that was inactive or not in use, that you needed to disconnect it and it would have been done so for free if they'd notified the City within that first period of time. Whether Mrs. Clark just didn't think about it the other way or not, she decided to just pay the monthly charge, which she did for three months, and then she decided to disconnect. He had to look at what the law said, and she had started abiding by the law, and then she decided that she didn't want to continue paying it because she was never going to use it again. She decided to disconnect, and at that time the fee was there. Mrs. Clark said she had

a meter on her building that she hadn't paid for. So when she started paying, she called and requested that it be taken off. That was when she was told it would cost \$411 to remove it. Mayor Pro-Tem Griggs clarified at that time it would have cost her.

Commissioner Robertson said this was back to the situation with Mr. Tidwell, because he also had two meters. One of them they found, and the other one they didn't know whether it was hooked up or not because they never found it, or so they said. Most likely that one was still hooked up to the City's system, so we still had the same situation. If we did it for one, we needed to do it for the other. Mr. McCourt clarified that we did locate both of those meters and had no difficulty doing it. Commissioner Robertson said the night we voted on that, we did not know about both of them. Mr. McCourt said that was not correct. We had located them well before that time. He personally had gone out with Mr. Ortega and looked at both of those meters.

Commissioner Cole said due to the circumstances of the seven years, he wished there could be a way the City could work with this family. If nothing else, perhaps a credit. He felt there were some areas in this Ordinance which were problem areas and were now being flushed out. He felt sympathetic and that we ought to work with the people of our community. When we enacted an Ordinance and found areas we may have not considered, then there ought to be a little leeway. He did think we ought to go back and revisit this and see if there was a period of time that should be in there for meters in the ground that could still be turned on and be active versus meters that were in the ground less than a year. Maybe we could get this information out a little bit better to the people in the community. He was going to vote against this tonight—he was going to be on the side of the homeowner, however the motion was stated, either for a credit or however the City Manager would like to work it out with the family. He did not want to penalize because of the ambiguity that existed with the seven years.

Commissioner Moncada asked how much it cost for the City to literally go to the property and pull out a meter? Mr. Ortega said he couldn't really give an exact number. Staff came up with the 24 months' base rate because each case would be different depending on what they had to deal with, whether they had to tear up the street, tear up the sidewalk, new asphalt, etc. Commissioner Moncada asked what it would take to pull this particular meter out? Mr. Ortega said that particular meter was on the corner of Lawrence and Canal in a big meter can. Perhaps the Public Works Director could give a better estimate on what it would take his crews to disconnect it. Commissioner Moncada clarified that this person had meter "A" and meter "B", but was not using meter "B" anymore. However, the City still had to still go and read meter "B" each month just because it was still connected to our system, as to where we had no clue or idea that she had rerouted her water to go directly into meter "A". That was why we were still having to go back and read meter "B" all the time. Mr. Ortega said that was correct. Commissioner Moncada said, therefore, that we still had to maintain it. Mr. Ortega said Mrs. Clark had already paid for the disconnect, so there had already been a work order issued to disconnect it.

Commissioner Robertson said whenever Mrs. Clark called and had the water disconnected, that should have stopped the meter reading monthly, technically. Mr. Ortega said seven years ago it stopped the billing, but it never stopped the meter reading. Commissioner Robertson said it was up to the City to stop the reading, and it didn't have anything to do with her. Commissioner Moncada said no. Commissioner Robertson said it did, because it was up to the City to stop reading the meter. Commissioner Moncada said the City still had to read a meter just in case somebody... Mayor Carroll said as long as the meter was there it had to be read, because you didn't know whether it had been turned on after it had been requested to be turned off. We

used the terminology in years past of a “disconnect”, but it was really a misnomer. A “disconnect” was merely to turn off the meter and not to disconnect anything from the system. It was called a “disconnect” and in reality, it was really just a “turn off” from the system. That was why the meters had to continue to be read whether they were being actively billed or not, to make sure that they did in fact stay turned off.

Mayor Pro-Tem Griggs asked how many accounts we had that were five years or older? Mr. Ortega said there were a lot of accounts in the Chihuahua district, and a lot of those people had come forward and had those meters disconnected when they got the letter. Commissioner Robertson asked if they had been charged? Mr. Ortega said according to Ordinance 1208, they had fifteen days from the letter to either disconnect or to pay the monthly charges. They acknowledged the disconnect, so it did not cost them anything. Mayor Pro-Tem Griggs said the distinction being with them and with Tidwell as well, was that they had responded. He wished he could say that Mrs. Clark had responded, but he didn't see anything where she did. If he did and there was confusion about that, then there would be a point. But there was no confusion about the response because there wasn't one. Mrs. Clark said the Mayor had just said that back then when the water was turned off, it was a disconnect. Mayor Carroll said no, the term was “disconnect”, but it was only turned off. So that was the only thing the City had to go by, was that the water was turned off. Commissioner Robertson said now we were back on the play of words—back then she wanted it disconnected and not just turned off. Mr. Ortega said back then we also used the terms “finaled”, “disconnect” and “turn the water off”. Mrs. Clark asked if all this time the meter was being read and since there was no activity, she did not receive a bill? Mayor Carroll said that was correct.

Commissioner Cooper thought it was a little over three years ago that he'd noticed a suppression right there at the corner of Canal and Lawrence, and he'd turned it over to the Public Works Department. He had Mr. Vandergriff from Code Enforcement go over and look at it, and he also notified the Public Works Department. As a result, there was a leak there and they had to redo the entire corner at Lawrence and Canal. Mr. Jose Miramontes, Public Works Director, said he recalled having a sewer settling problem around a sewer manhole, but he did not recall a water meter. Commissioner Cooper said there was a depression that was occurring there. Mr. Miramontes said Commissioner Cooper may be correct, but he just didn't recall it. Commissioner Cooper said he recalled it very vividly. Mr. Miramontes said he assumed it was fixed. Commissioner Cooper said yes, because he and Mr. Vandergriff had picked up Mr. Miramontes and took him over to the problem to view it. Then it was fixed thereafter. Mr. Miramontes said the problem Mrs. Clark was talking about was on her side of the meter. Commissioner Cooper said yes, and what he was saying was that there was a leak there which had created that depression. Mr. Miramontes said the original leak was on the Clark's side, but if there was something on the City's side, we fixed it.

Mayor Carroll said we had pretty much heard all the sides and issues on this, and the question became whether it was the desire of the Commission to provide relief or not.

**Commissioner Robertson moved that we give them (the Clarks) some relief on this, and give their money back in the form of a credit. Seconded by Commissioner Cole. Commissioner Cole and Commissioner Robertson voted “aye”. Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Moncada, Commissioner Cooper, and Commissioner Ledford voted “nay”. The motion failed by a vote of 2-5-0.**

Mayor Carroll clarified that the request for the refund was denied.

7. Mr. Fred Meiners, 2407 Tenth Street, would like to discuss the water/sewer rates.

*Recommendation:* No action should be taken because billing is being performed in accordance with the Ordinance.

**The item was withdrawn from the agenda.**

**UNSCHEDULED COMMUNICATIONS:**

A. Comments by Commissioner Cole regarding the local unit of the National Guard.

Commissioner Cole said he would like to talk about something which he felt was very inspirational. He and Commissioner Moncada had the opportunity of attending the deactivation of about 200 members of the National Guard from this area at White Sands this past Monday morning. They had both been introduced to everyone, and they had also mentioned the different communities that were represented there that day. Incidentally, some of these members were on their way to Afghanistan in the near future because they had volunteered for service there for security purposes. On behalf of the Commission, he would like to give them a vote of thanks for the two years they had served in this area.

Commissioner Moncada said the reason why the National Guard had been called to both Holloman AFB and White Sands, was when most of the personnel from those two bases got activated to go to Iraq, the National Guard had stepped in and secured their buildings and gates. They went through a transition of two years, and after the two years both Holloman and White Sands had now privatized to secure their gates. Most of the men there were either in Iraq or somewhere else in other parts of the country. The National Guard had done an excellent job of helping White Sands and Holloman by stepping in, and now they were training some of those in Iraq and Afghanistan to do guard duty. That was why some of the men would be going as volunteers, and if they reached a point where they didn't have enough volunteers again, then the entire Guard would be reactivated again.

Commissioner Cole believed this was the last one in the nation to be deactivated, so they had served the longest. On behalf of the Commission, he wondered if we could send a letter from the City Manager's Office to their Commander thanking them for their service? Mayor Carroll felt that would be very appropriate. Mr. McCourt said his office could draft the letter, but it would be more appropriate sending it under the Mayor's signature. Mayor Carroll said he would be more than pleased to sign such a letter.

B. Comments by Commissioner Robertson regarding Animal Control.

Commissioner Robertson said several months ago we'd had a subject come before the Commission on dogs and Animal Control. He knew we hadn't done anything about it then and had left it to the courts and our Police Officers to judge the loudness of some dogs barking and whatever. He'd received a letter, which he wanted to read. He'd spoken with Animal Control Manager Lewis Thompson about this case, and Mr. Thompson told him that this family was a fraud. The letter read, "The people at 1104 are related to the residents at 1102. The aunt works at Allsup's. Her nephew who lives next door came in her store and stole merchandise". Commissioner Robertson said he didn't know what that had to do with Animal Control, but anyway, the letter continued, "At one time the residents at 1104 had eleven and twelve dogs. Now they have six. Diane Cano was cited on February 1<sup>st</sup> for 'Animal Nuisance Prohibited' and 'Cruelty to Animals'. She appeared at Municipal Court on February 7, 2005, and pleaded guilty

on both charges. Both charges were deferred". In other words, she was not even fined for the citations.

Mayor Carroll said okay, but what were the conditions of the deferment? Commissioner Robertson said he did not know, but this had struck him odd that this would happen, especially since the Police Department had been taking such good care of this dog control thing. He wanted some input on this and to see why our courts were not doing their job. Mr. McCourt said the Police Chief was not going to be able to answer for the courts. Chief Trujillo asked if the letter was from somebody in Washington or Virginia? Commissioner Robertson said he did not know—it was just signed by "Dorothy". It was an e-mail which was sent to him here at City Hall. Chief Trujillo said he knew the residence being talked about. We did get a complaint regarding the animals at that residence. He believed the original complaint was from an anonymous source. We responded, saw some violations, and issued some citations that sent the occupants to the court. About a week after that he had received an e-mail similar to the one Commissioner Robertson had just read, and it was from the owner of the residence that was currently renting it, and that owner lived in another state. We contacted the owner to let him know that we received the e-mail, and that we had already received a complaint at that residence, and that we had issued some citations. He was very pleased with how the situation had been handled. Commissioner Robertson said the people who received the citations were James and Diane Cano. He was just wondering why the charges had been deferred, and under what circumstances? Mayor Carroll said the Chief was not in a position to speak for the court. However, he believed that on occasion, Judge Lee would defer a sentence or a fine conditioned on the person doing what they were directed to do to remedy the situation. In this particular case he didn't know what that might have been. Commissioner Robertson said that was why he was asking. Mayor Carroll said he was suspecting that the answer would be with Judge Lee and what conditions were set on the deferment, because if those conditions were not met then he was sure the original fine or punishment would be reinstated. Chief Trujillo said a deferment was not a dismissal, so there were conditions attached to a deferment. Normally there were some type of conditions, such as 90 days to pay a fine before it would be dismissed, or it could be that a violation would need to be corrected within a certain time.

C. Comments by Commissioner Moncada regarding Library Election.

Commissioner Moncada reminded everyone about the upcoming Library Election on March 15<sup>th</sup>, and asked everyone to please exercise their right to vote.

D. Comments by City Manager regarding award from the New Mexico Department of Finance and Administration; water report; status of R.O. test well drilling and Golf Course well drilling; and letter of concern from Mrs. Linda Madron.

Mr. McCourt said he had received a letter from the Department of Finance and Administration congratulating us on winning an award on our 2004-2005 budget, as well as some pictures where we had actually received the award. He wished to thank Finance Director LeeAnn Nichols for winning us the award.

Mr. McCourt said we were doing well with the water situation, and in fact, better than we had for years and years. He also had an opportunity to be interviewed by the *Alamogordo Daily News* and they had done a very nice story on it. He wished to thank them for that, as he felt it got a lot of information out to the public on what was going on in our community relative to water. We were so thankful for the additional precipitation, but we were also facing some problems due to that, such as potholes, weeds, and anticipated insect problems.

Mr. McCourt said we were drilling some test wells on the property north on the new proposed R.O. well field, and he would like Community Services Director Brian McGuire to give a report on them. Mr. McGuire said two meetings ago the contract was awarded for the test wells. They had finished drilling on Test Well No. 8, which was about three-quarters of a mile south of the High Nogal Ranch. The original hole was to go to 1,000 feet, but at 1,000 feet we were still in water bearing strata and we had the ability to go a little further before we had to start preparing for putting the casing in the well. We actually went down to 2 feet short of 1,100 feet. They did not hit bedrock, and at about 400 feet they started getting into really good water bearing gravel. All the way down to about 1,100 feet they stayed in gravel or a sandy-clay water bearing aquifer. Last Friday they had pulled an electronic instrument up to determine the quality of the water and the materials they were in, and the Hydrologist from Schumaker & Associates said this was the best well he'd seen in this part of the State. We found that we had not run into bedrock at 1,100 feet, and also, the water we expected to be there was. This was a test well of about a five or six inch diameter, and we were in the process of putting in the screens and the casing. Over the next week we would be pumping the well, and then we would be able to tell what the actual quality of the water and its pump volume were. Right now they predicted it could produce probably in excess of 600 gallons per minute.

Commissioner Ledford asked if we could tell from the well test how much water was actually out there? From more test wells would we be able to tell exactly how much water was in this area? Mr. McGuire said once we got the wells in and the screens in and we did the actual test pumping, we could test the actual volume that was predicable. Up until now that had been a theory, but now this would give us actual fact on how the well produced, recovered, etc. Mr. McCourt said it also gave us geology information on what was down there. The models predicted that we would hit bedrock at 1,000 in that particular area. We actually got down to 1,100 feet and had not hit it yet, but were restricted by budget so we could not keep drilling.

Mayor Carroll asked if the 600 gallons per minute was what they were looking at which might come from a production size well, or from the well as drilled? Mr. McGuire said it was just the well as drilled. Even though this was a monitoring well, we were told that it had the potential of producing that. They did say to remember that was just the prediction from the electronic gadget they used to draw up through there. What they had done now was to begin putting in the actual 5 inch casing, they would fill it with a gravel pack, and then they would develop the well by pumping it and surging it to pull all the mud off the side of the hole. Once they got good, clean water with no driller mud in it, then they would be able to tell the quality of the water and the total dissolved solids. Then as they pumped it, they would be able to check the drawdown and be able to predict the recharge of it. Commissioner Ledford clarified that the drawdown was what would tell us how much volume we had in that aquifer. Mr. McGuire said yes. Part of the reason we were drilling those wells was to be able to assure ourselves that the theoretical geology we had on the models were actually in fact there below the surface. Mayor Carroll clarified that when this one was no longer used as a test well, it would be used as a monitoring well for the well field. Mr. McGuire said that was correct.

Mayor Pro-Tem Griggs asked about the Golf Course well? Mr. McGuire said all he knew was that it was around 500 feet or slightly beyond that. He understood they were to start putting the casing in and developing that well first because the equipment they were using at the Golf Course well would next be going up to the test well to finish the final testing. Mayor Pro-Tem Griggs asked how deep the old well was that this one replaced? Public Works Director Jose Miramontes said nobody even knew. Mr. McCourt said the other well on Desert Lakes Road was about 200 feet deep, and typically we drilled them shallower back in those days.

Commissioner Robertson asked the static level on the new well? Mr. Miramontes said he did not know; there would be testing on it as well.

Mr. McCourt said a few days ago we'd received a letter from Mrs. Linda Madron regarding some concerns on her account, and he'd passed out some materials to the Commission regarding that.

E. Comments by Mayor Carroll regarding Library Election.

Mayor Carroll said he would like to follow up on Commissioner Moncada's comments and to encourage everyone to get out and exercise their right to vote on the Library Bond issue. Early voting would continue through 5:00 p.m. this Friday.

**EXECUTIVE SESSION:** Adjourn into Executive Session to discuss threatened and/or pending litigation and/or acquisition of water rights.

**Commissioner Cooper moved to adjourn into Executive Session to discuss threatened and/or pending litigation and/or acquisition of water rights. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a roll call vote of 7-0-0. The Meeting was adjourned at 8:53 p.m.**

***"The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of March 8, 2005 was called into executive session and the matters discussed in the closed meeting were limited only to those specified in the motion for closure."***

*/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 March 22, 2005.