

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
JUNE 13, 2006**

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

**COMMISSIONER CHRIS LUJAN
COMMISSIONER STEVE BROCKETT
CITY MANAGER PAT McCOURT
INTERIM CITY ATTORNEY REBECCA EHLER
CITY CLERK RENÉE CANTIN**

CALL MEETING TO ORDER, ROLL CALL, INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Don Carroll called the meeting to order at 7:30 p.m. All commissioners were present. The Invocation was given by Mrs. Dotti West, and the Pledge of Allegiance was led by Commissioner Cole.

ANNOUNCEMENT

City Manager Pat McCourt announced that the City Commission indicated that they wanted to have a Town Hall meeting on water issues, and a presentation is being put together on that. It has been tentatively scheduled for Thursday, July 6th, at 7:00 p.m., at the Sergeant Willie Estrada Memorial Center. There will be notices in the paper, and it will also be publicized through the media.

CALL OF THE CONSENT CALENDAR:

Item Nos. 1, 4, 5, 6, 7, 8, 9, 10, and 11 were on the Consent Calendar. Item Nos. 5 and 6 were removed from the Consent Calendar.

MINUTES:

1. Minutes of May 23, 2006, Regular Meeting and Special Budget Meetings on May 15, May 16, May 17, and May 18, 2006.

Recommendation: Approve the minutes.

ORDINANCES AND RESOLUTIONS:

4. Consider Ordinance No. 1273 amending sections of the Code of Ordinances concerning purchasing and construction project administration.

Recommendation: Approve the ordinance for first publication.

7. Approval of Resolution No. 2006-39 supporting the New Mexico Department of Tourism Litter Control and Beautification grant.

Recommendation: Approve the resolution.

8. Approval of Resolution No. 2006-42 to write off outstanding accounts deemed as uncollectible in Utility Billing/Miscellaneous Accounts Receivable/Library Receivables.

Recommendation: Approve the resolution.

OTHER BUSINESS:

9. Consider award of Public Works Bid No. 2006-007, Alaska Ave. Sewer Line Replacement.

Recommendation: Award to General Hydronics, Inc. in the amount of \$221,737.66 (includes NMGRT).

10. Consider award of Public Works Bid No. 2006-008, Golf Course Sewer Line Replacement.

Recommendation: Award to General Hydronics, Inc. in the amount of \$335,944.54 (includes NMGRT).

11. Statement regarding the Executive Session of May 23, 2006.

Recommendation: Approve the statement.

Commissioner Ledford made a motion to approve items 1, 4, 7, 8, 9, 10, and 11 on the Consent Calendar. Seconded by Commissioner Brockett. A roll call vote was taken because of items 4, 7 and 8. Mayor Don Carroll, Mayor Pro-Tem Ron Griggs, Commissioner Inez Moncada, Commissioner Ed Cole, Commissioner Marion Ledford, Commissioner Chris Lujan and Commissioner Steven Brockett voted “aye.” The motion carried by a vote of 7-0-0.

CONTRACTS AND AGREEMENTS:

2. Approval of Commercial Lease “Boilerplate”/License at the Airport.

Recommendation: Approve the commercial license boilerplate.

City Manager McCourt said that this item came up a couple of weeks ago at which time the major point of discussion concerning it was the proposed term of the agreement to permit people to perform commercial business services out on the City land at the City Airport. The question at that time was that the Alamogordo Airport User’s Association wanted an extended term of up to 30 years. Staff was not in agreement with that. They had indicated that they were receptive to an initial term of five years with annual renewals. There were questions raised concerning the burden that would be placed on the business community in having to file for another license on an annual basis, and staff has proposed that it would be coordinated with the annual filing that’s necessary for a business license now so they could file at the same time on the same form for the commercial license at the airport also. Staff has also set it up so that the payments to be made under the commercial license would be made on the same schedule as the payments that they would make for their gross receipts payments to the State. In fact, they could actually use the same form for computation purposes to also ease the paperwork load on any of the commercial licensees out at the airport. Staff is recommending a one-year term, and there is no agreement between the staff and the Airport User’s Association on that point. They would like a much longer term. As indicated in the staff report, staff does not feel that is advisable. There have been too many cases where the City has given away the ability to control activities and use of land for activities. This would further reduce the City’s ability to respond to concerns at the airport, and there is no practical reason to do so. The City Attorney has also had an opportunity to meet with the legal representative from the Airport User’s Association on some other minor points within the proposed license agreement. On those points, there is concurrence. The last point has to do with the term of the license.

Mr. Kevin Dunshee from the Airport User’s Association said that they have been working under the knowledge that this was going to be a commercial lease. Changing the name of the skunk to Pepé Le Pew does not change its smell. A license is already issued by the City. It’s a business license. Having an additional license in a guise does not do anything for the City. It already has control by the issuance of the City business license. What the Airport User’s Association wants is a commercial lease, which is a contractual agreement between commercial activity at the airport and the City of Alamogordo. The one term that they really would like to stress is that the commercial lease should be tied to some sort of a land lease, sublet, or facility lease at the airport, and that way all of the items that have previously been discussed and brought before the Commission would apply.

What the Airport User's Association would like to see is not necessarily a term of one year but a term that is equal to whatever the sublet, land lease or facility lease is. It could be variable. It could be long-term. It could be short-term, but it would be in the interest of business, and it would tie to an existing lease. He doesn't like the idea of calling this a license because by calling it a license the City can now tack on additional fees, which will probably come up on another item that was pulled from the Consent Calendar. These fees are in addition to the fees that are in the original contract that was negotiated, and Mr. Dunshee doesn't think that there's any reason for them other than to cover the cost of the additional paperwork generated by calling it a license and having it processed every year in addition to the business license. Mr. Dunshee said that to him it adds a lot of paperwork, adds a lot of procedure, and adds a lot of extra nickel-and-diming to businesses. It is not attracting businesses to the City of Alamogordo, and he pointed out that if this Ordinance is passed, in conjunction with the commercial license every year when the person applies to get it renewed they have to pay an additional \$10. That is adding cost on top of cost, and another thing is the mention of 2% gross receipts, which is already mentioned in what the City wants to call a commercial boilerplate license or lease. Mr. McCourt is correct that they are in concurrence with just about everything in the commercial lease. The only thing they have an issue with is the term. This will confuse everyone--you mean I have to get a business license and the right to do commercial activity along with an airport license? They should use the word addendum. Tack on this permission to do a commercial activity to the land lease; let's call it an addendum. Then the addendum already reflects the 2% gross receipts. Mr. Dunshee said let's not keep on the redundancy of adding on extra taxes or extra fees when a lot of the users are willing to pay the \$250 processing fee. As far as the City giving away its authority or rights to legitimately go onto their own property, that's not true because the land lease actually covers the authority of the City to go in and inspect with yearly inspections. During other emergencies they can also go in there, and with the ordinances and business licenses there are also requirements that are attached with just the business license itself. Ms. Porter doesn't think that they need the redundancy of extra licenses for something that people are already applying to the City for to pretty much run their business.

Mayor Carroll said that it is his understanding that part of the reasoning behind the shorter term is that by granting a license, a lease, whatever you prefer to call it to do business there, the individual is stating that they are going to provide certain services at the airport. What the City needs is some control so that if in fact the services that are called for to be provided in the agreement are not provided, the City has some mechanism to cancel the ability to have that particular license or lease. That is the rationale that Mayor Carroll understands in terms of the initial time frame being such that the initial agreement is five years to get whatever business or whatever occupation the individual is applying for the license to do up and running but that the City doesn't give a license for something and then find that, A, the individual is not doing it, or, B, the individual is doing other things than what the original license or agreement calls for.

Mr. Dunshee said that is already covered in the contractual agreement with the lease so that if the regulations of the State or the federal government are not followed or any of the activities are not done, the lease is no longer valid and the commercial activity must stop. That can happen at any time. An inspection can be held at any time. The power of the City to terminate the business agreement can happen at any time. He doesn't see the need for the renewals, fees, and paperwork yearly to conduct the business.

City Manager McCourt had a few answers to the questions. First, the commercial license in paragraph 1B does in fact tie it back to the land lease, and it also provides that as long as the individual has a land lease they can continue to get extensions, which shall not be unreasonably withheld. That is in the agreement, and it does tie into it. Second, the 2% license is built into the City code because when it is built into the lease document, that is an individual contract between the City and individuals who have a lease as opposed to treating everybody fairly and equally, which is why it would be put in the City code. If the City Commission wishes to make a change, then it equally affects everybody that would have a lease. The City wouldn't have to go back with each individual

contract to handle it. It's an equity and fairness question, and that takes care of that because it equally and fairly treats everybody that has a business license or the commercial license.

The reason the commercial lease is separated from the land lease is that when they were incorporated together, in order to follow through as has been suggested, the land lease had to be voided. The land lease is frequently used as a basis for commercial loans and rents that are in the property that's there. The City doesn't want to jeopardize that particular concern. They want it to be very clear that the lending institution is not going to be jeopardized and then have to go to Court to fight that out, which would be an expensive and difficult proposition. If there's no taking and doing what has been indicated under the commercial lease, it's basically reviewed on an annual basis. It can be changed and modified and so on, but it doesn't jeopardize the underlying land lease, which is also tied to the commercial lease that may be held on the building. Those items are still secure regardless of what happens with the particular commercial lease. City Manager McCourt thinks a one-year term is very reasonable and not out of line. It fits in easily. It doesn't create extra paperwork for the individuals. It gives the City reasonable control, and having the ability to go in and see what's being done on the land doesn't give the City any ability to do something about it short of what has been suggested going in and declaring a default on the lease. That is the option, and then where will it be when there are bank lines tied up into it. That is why the City doesn't want to tie this commercial lease and have it incorporated into the land lease.

Ms. Porter asked if she could clarify a few things. She asked if when they said 2% license if what was meant was the 2% gross receipt tax. City Manager McCourt said it is actually 2% of the business operations. There is no \$250 fee on a commercial license. Ms. Porter said for the application in general \$250 is paid whether it is land, commercial or both. City Manager McCourt said there is not a \$250 fee on this also.

Ms. Porter clarified that she said initially when the application is submitted the individual pays \$250 up front just to have the application processed. City Manager McCourt said that is for the land lease. Ms. Porter said in order to get a commercial lease, the individual must have a land lease and/or a facility lease or some sort of sublease. The application is a reflection of what is actually wanted. The \$250 is initially paid so that the City knows exactly what is wanted, whether it is just a land lease, or a land lease and a commercial lease, which is what they are understanding.

City Manager McCourt said there is only one \$250 when applying for the land lease. There is no fee established for the commercial lease. That is what the later ordinance does. Ms. Porter said if the applicant puts on the application that they want a land and a commercial lease why should the person have to pay two separate fees when the application fee of \$250 should cover that. In addition, anyone who has a business license will have to pay \$35 to get it renewed. There is a redundancy of having to get a business license and then an airport license. What they really want is to tie the commercial activity to a land, facility or sub-lease. Why not since the terms are being applied of the already existing land lease? Why do all of the additional items have to be added when as far as the 2%, the commercial license already discusses it? City Manager McCourt said it doesn't. Ms. Porter said that on the license that was handed to her under Section C, Part 3.4, Payments and Estates, it talks about the 2% per month of any amount due. City Manager McCourt said that is a late fee. Ms. Porter said that it has been taken out because it initially said 2% gross receipts.

Mayor Carroll pointed out that that is what was the City Manager said. That has been moved to the Ordinance. It was removed from the boilerplate lease. City Manager McCourt said that everybody getting a license would be treated fairly and equally. What happens is frequently staff changes, people change, and there are long time changes that occur, which has led to some question of disparity in the treatment of individuals that are getting commercial licenses or permission to do commercial activity. Once it is put into the City ordinance, then it is the same for everybody. The only way that gets changed or modified is if the City Commission modifies the Ordinance.

Mr. Dunshee said he agrees with that. It would have been nice to have the changes before them. It seems like every time they come before the Commission they have paper work that doesn't agree,

and he doesn't really appreciate that. Mr. Dunshee said the main point is that they would like a commercial lease that ties to some sort of land lease and let the terms be whatever the land lease is, or the facility lease, or the sublet with all of the other terms as discussed in the lease.

City Manager McCourt pointed to Item 1B, and Mr. Dunshee said that does tie it. However, it only gives a one-year lease, and they don't agree with that. City Manager McCourt said as long as there is a sublet and as long as the applicant is maintaining the sublet or lease on ground, it can be continued and the City will not unduly withhold that.

Still, however, Mr. Dunshee pointed out that the City is saying the businesses need a license every year and have to file every year to continue the commercial activity when they already file for a business license. City Manager McCourt said that is correct that they have to file every year currently. Mr. Dunshee said that is correct for the business license, but asked why they have an additional license. City Manager McCourt said that is what goes to the airport fund and supports the airport fund.

Mr. Dunshee said that he thinks what the City is doing is changing the terms. They were negotiating for a commercial lease that gets tied with the other leases out at the airport. Now it is being called a license to confuse people and to change the terms. City Manager McCourt said that he thinks calling it a lease creates more confusion. Calling it a license actually makes it clear that what is being provided is a license to perform commercial operations at the airport. Mr. Dunshee said that they have several commercial leases out at the airport right now, and none of those have licenses other than their business license. City Manager McCourt said that the term of each of those will someday expire at which time everything will be brought into conformity. There certainly are land leases at the airport that are not the same as the new land leases, and they realize it will take time for everything to be converted to the common forms.

Commissioner Brockett pointed out that in the synopsis it says discussions with the banking community indicated five years is very liberal in most circumstances, and any problems or difficulties with a business show up within the first year of operation. He acknowledged that is true in his area of business where in the first five years about 92% of restaurants fail and about 50% of them fail in the first 18 months. In his opinion, no reasonable businessman would sign a lease that is a five-year deal and then one, one, one, one, one. It makes no sense. To him this is a potential industry that hasn't been tapped yet, and he would want to make this conducive for businesses to go to the airport. As Alamogordo grows, the airport will continue to get larger, and in a sense any time a landlord agrees to a lease, they do relinquish a certain amount of control. To him a one-year renewal is almost like micromanaging.

City Manager McCourt said that they actually would recommend that even the initial term be one year, which is where it started out. It was then broadened to five years, and that is still not acceptable. Commissioner Brockett asked why it couldn't go five, five, five, and five. City Manager McCourt said that then a business could have a commercial license that doesn't correspond with the underlying land lease, and they could be disposed of separately.

Mr. Dunshee said that in this case he agrees with Mr. McCourt in which case he would like to just make the term the same as whatever the lease is.

Commissioner Lujan asked if the main problem being addressed by the short leases is that the City wants to have more control so that if they're not abiding by the rules, it can be fixed. If the leases are longer and there is a problem it could take up to three years to get them out of here. Mr. McCourt said that is an accurate statement. Many of the commercial provisions are built in and incorporated with the land lease now, and the City's only recourse if the lessee is not performing their duties is to go for a default on their land lease. The City doesn't think that's a very reasonable thing to do particularly as it can be tied up with lending institutions. That is why they should be separated. The City of Alamogordo needs to be able to respond to problems and concerns that may come up, and this issue has to do with how long it will take to do so.

Commissioner Lujan asked if there was any way to redo the contract in such a way that the termination wouldn't take so long. Mr. McCourt said the longer the term of the contract, the greater it ties the hands of the City on how to do things. The Agreement contains default provisions, and those are the grounds that can be used. The City has to go through the legal process of going through the Courts to declare default. With a one-year term, that becomes a whole different scenario. The City Attorney has indicated that she couldn't recall where there has ever been a problem of continuing on with the license or agreements.

Commissioner Cole asked if the license of the flying service could be compared to this type of license. Mr. McCourt said that they have a facility lease. The City has dealt with the café in a very special circumstance because of the interest of both the airport users and the City in trying to encourage that operation at the airport and having food and beverages available. Some pretty special conditions were written around the restaurant, and the facility lease could very easily be more than one year.

Mr. Dunshee commented that the City used to pay a fee to help get that business going when another lady owned it. Now, the City's special provisions are she pays rent and 5% of her gross receipts to the City, and she makes all the improvements to the building whether they be the gas line or the hood. They are improvements to the facility, which is actually owned by the City, and paying under those special conditions is why she is having a hard time keeping the business running.

Mr. McCourt said that is not actually true in that the City put in the money to repair the hood since it's a fixed part of the building. The City has also done renovations to the restroom and the terminal building. The City does charge her for the gas that she uses for her operations, and the City is not subsidizing the operation of the business. If the City did, that would be a violation of the Anti-donation Clause of the New Mexico Constitution. The City would not do that.

Ms. Porter said that with regard to Commissioner Lujan's question about the default provisions, a year ago they went into negotiations with a model commercial lease and extensively described what would be default. She and City Attorney Ehler looked at what was negotiated in the old lease with regards to the City being able to tell a business that they're not conducting their business or the business is shut down, was there actually a provision in the old lease that indicated if the business was not run for a certain number of days, then the business is in default.

Commissioner Lujan said he appreciates that, but what he is trying to get at is how long the process takes to fix the problem and get a business out if they are in default. Is there a way that the process of getting a business removed could be faster?

Ms. Porter said the problem is once litigation is entered into, it is no longer just the two parties. The third party, whether it is magistrate or trial court, cannot be told to hurry up. It depends on where the case falls in the scheduling calendar. Under contract certain terms can be stipulated as long as they're not unconscionable and as long as one party is not being favored over another party to an extreme. However, as far as trying to minimize the length of time, it is a difficult thing to sort out when that third decision maker is involved.

City Manager McCourt said that as was pointed out, the City did lose control of the time element, and the time element then becomes the length of the agreement because one never knows how long it will take in Court. The second thing is to the best of his knowledge there is no activity going on at the airport that he thinks the public would not find acceptable. Come up with something and tell him what the public will in the future find unacceptable and come to the Commissioners to tell them to stop and control. The default only contains specific items that are considered default items, which has to be proven first of all. Then the City has to give them time to clear the default, and if they don't do so, then action can be initiated. He asked how many times the Commissioners have had citizens ask them to do things that can't be done because there is something blocking it such as a law or an agreement, which is prohibiting the Commission from responding to the community. That is what is

being given up. He agrees with Commissioner Brockett that any time a lease or contract is entered into part of the control is given up.

Commissioner Lujan said he agrees that the City needs to look out for the citizens and the City and the protection of it, but at the same time the worst thing that could happen, the airport failing, could take years and years. If somebody rents out apartments and one of the tenants doesn't pay their rent, it does take a while to get those people out, three months or so, but that's part of business. From his perspective, the airport is one of the major businesses in Alamogordo. Yes, the people should be protected along with protecting the City's security, but the airport is a big business. If they want the City to grow and they want to attract businesses he agrees that the five and one is not very attractive at all. Sometimes you have to take chances, and this isn't that big of a chance. If they want the airport to grow and business to go there, it would be attractive even if the City has to go through defaults three times a year or more. That's part of business. He just wishes something could be done to come together in a better way.

Mr. Dunshee pointed out that aviation is inherently risky, and most of the people at the airport have been in it for a long time. They know how to follow rules, and there are more rules in aviation than can be imagined. There is a resident who has had a business at the airport for 30 years, and how many times has he defaulted? Businesses will come and go, but if the City is going to attract businesses, it needs to be made more attractive and easier to come to Alamogordo.

Commissioner Cole asked Mr. Dunshee to explain again what their group is asking for.

Mr. Dunshee said that they are simply asking that the terms for the airport lease, or the commercial lease, called a license as of today, be the same as whatever the land lease, sublet or facility lease that has been entered into is. Commissioner Cole asked if that meant that the time would actually be the same.

Mr. Dunshee said the time would actually be different. If there is a facility lease where only a portion of the terminal was rented for one year, that's how long the commercial lease would be good for. It would be the same length. If the business had a hanger lease that's good for twenty years, this would be good for twenty years if the business wanted to run commercial activity out of it. Mr. Cole asked if the flying service license renewal is every year.

Mr. McCourt asked Commissioner Cole if he was asking if the existing commercial uses that are tied in with the existing land leases expire on an annual basis, and the answer is no. Commissioner Ledford asked for clarification if the issue is to try to match up the terms of the land lease as far as years or whatever is in there with the commercial lease. He asked what would happen if there was a twenty-year commercial lease but the activity ceased after a couple of years. The City would then forego the possible revenue from that commercial activity because it would just sit there. He said he supposes there could be a land lease for 20 years and there wouldn't have to be commercial activity.

The City would have to maximize revenue to the City or the airport, and that would be one way to do that. If they didn't want to have a commercial activity and wanted to have some empty hangars, they could do that. They could have a land lease. He said that it seems odd to him that there can't be some kind of inspection process such that within a commercial lease would allow the City to get rid of the bad guys in a way that protects the City and the airport users from whatever activities are not appropriate whether it is through a default mechanism or something else. As he understands it not having to worry about the litigation process, as attorneys can keep things tied up for a long time, with the license approach once the license expired it wouldn't have to be renewed. That would get rid of it. He would be concerned with a land lease and an operator about having the ability to terminate it and not renew it. He doesn't know that he would want to run a commercial operation either. He would like to have some protection. Commissioner Ledford said hopefully understanding both sides what he would like to be able to do is take care of the concerns of the City Manager, which include controlling it to the point where what is going on is protected in such a way that the City can act in a reasonable manner speed wise to correct a problem or terminate a lease. That is a legal question that he would have to have an answer to, and if that is the case, it seems to him that would take care

of a lot of the issues here allowing the commercial lease to have the same term as the land lease or as Commissioner Brockett suggested, five, five, five, and five. The City wants to invite business, but on the other hand the City takes seriously what goes on at the airport, and there has to be a mechanism or a legal way to correct a situation or terminate a lease. Commissioner Ledford said that he would like to get a clearer understanding of how they could do that, and then he would be in favor of trying to get the two to match up a little better as far as term. He went on to ask if besides the term everything else is okay.

Commissioner Ledford said another point is that on the commercial license it reads, "...shall not unreasonably deny." He asked what kind of legal term that is.

City Attorney Ehler responded that it basically means the City can't act arbitrarily and capriciously or with any bias.

Commissioner Ledford asked how enforceable that is. One says it's reasonable. One says it's not. There goes the lawyers again, and he doesn't want them involved.

Commissioner Brockett asked if there is a broad interpretation, and City Attorney Ehler said that it is broad. However, it has been through case law. It would be considered a term that has been defined by Courts all over the Country. One can pretty well take their set of facts and see if they can find a case that meets that set of facts to get an idea of how close one is to being unreasonable.

Ms. Porter said that's why she thinks the term part is very important because it gets away from that type of language. There is a lot of case law out there, and it just has to be pegged to a particular scenario, and the other side just has to peg it to their particular scenario and there you go. But if it says, okay, you have this many terms, as was in the old commercial lease having provisions in it so that as far as controlling a business and making sure the business was being operated as it was supposed to be. There were terms in the old commercial leases such that if the business was not being run for a certain period of time it was in default. There was even a section of Force Majeure because things happen that are out of the business owner's control. That said, there was a section that said if the business was not being operated with in a certain period of time the business is in default. That clause, however, was taken out.

Commissioner Ledford said his goal is to make sure that if there's a violation in a commercial lease something could be done about it almost as effectively as if it were a license that is annually renewed.

City Attorney Ehler said there isn't a business license. There is a business registration, and license implies that there is some judgment made. There are some businesses that are licensed, such as liquor establishments, fireworks establishments, carnivals, security agencies, cab companies and businesses where the City needs to make sure that they are in compliance with all of the ordinances and regulations as well as state requirements. With respect to the other licenses it is merely a business registration. All that is done is to make sure that they are in an area that is zoned for their particular type of business and that they don't require some kind of state licensing. Initially there may be a fire inspection, but that is all that is done.

Commissioner Ledford said that is correct because he has a business registration certificate that he is proud to put on his wall too. This would be a license or lease, going back to that term, but his point is in the legal sense the City could bring the commercial lease to the point where defaults can be remedied to take care of the issues that they feel they aren't able to do currently in the inspection process. He asked if that is a fair statement.

Ms. Ehler said perhaps not remedy them, but if the end of the term is reached without a significant plan to go forward, the City can just say this is over and now you have your 30 days to move out. Then the City is not in a fight with someone over whether the business really is in default or taking the adequate steps. Commissioner Ledford said that he understands that's what they are attempting to

do and what the annual renewal would allow them to do, but as a commercial operator he's not sure how much he would like that because that's what due process and litigation is all about. That doesn't make the City right. It would simply give the City the ability to terminate something even if the City is wrong. A commercial lease would continue on until the litigation process takes place. He would like to get the commercial lease to a point where these things could be satisfied. He is confident that the airport users want everybody to do what is supposed to be right, and the citizens and City should be protected in whatever agreement there is. He has to believe that a commercial lease that approximates the land lease could be done. Commissioner Lujan said the bottom line is it has to be attractive for potential business to come in.

Commissioner Cole asked if there is a possibility that the City Manager and staff with the airport users could go back to the negotiating table to see if they could work this out without the Commission trying to make a decision. Mr. McCourt said that all Commissioner Cole has to do is tell him to do so, and he would.

Commissioner Cole asked if he could make a motion for the City Manager to take this back to the table and try to work this out and then bring it back to the Commission for approval.

Mayor Carroll pointed out that as a point of order if that becomes a motion to table and gets seconded, then the discussion is over. Commissioner Cole acknowledged that is the case. Mayor Carroll said that he would suspect before the motion is entered into that it needs to be found out what the Commission would like them to go back and do.

Commissioner Ledford said he is not in favor of tabling anything. He is tired of this. It has been addressed every month for the twelve months, and it's now down to one item, the term. There doesn't seem to be much to negotiate, and he doesn't think they will be able to get there. He would like to see the Commission direct management to put a commercial lease together that more coincides with the land lease if that's what the Commission wants. It would be much more specific than what he understood the potential motion to be. Commissioner Cole said he has no problem with that.

Commissioner Moncada said what she is understanding is that the Airport User's don't like the one-year term because they want it to match the land lease. She is getting vibes that twenty is it and they will not agree to maybe five and twenty. Mr. Dunshee said they just don't want it to be arbitrary. It is not attractive. What they would like is something that mirrors the other leases that have been agreed on that make it attractive for businesses to match up with the facilities. The chance is the business will go out before the facility so the commercial lease would have to be re-issued to a new entity that rents the facility.

Mayor Carroll said that becomes part of the issue. When a business stops, they still have a commercial license for whatever term the land lease is. Mr. Dunshee said that is an attractive license that can be sold or sublet. It's not like a land lease where he can assume the hanger for the last ten years of the lease. It is a commercial activity and would need to be approved by the City for every new person that comes out. Commissioner Ledford asked if what he was saying is that in the process if a commercial operation changes its activity it would come back before the City. Mr. Dunshee said that is correct. If all of the sudden a commercial activity has a flight school and they want to change it to a shuttle service. To do so they have to go back and re-negotiate the lease with the City.

Commissioner Ledford said he could see where right now there is 20 and 10 on the land lease and that maybe to have the same thing on the commercial lease could be a little awkward so that maybe as Commissioner Brockett said four fives might be better than ones. It would be renewable so it will still go the twenty years. Commissioner Ledford would like to be able to look at the operation at least every five years. Mr. Dunshee pointed out that as it is right now the City Ordinance allow the airport manager to look at gross receipts with a 30-day notice, and he can do that as many times as he

wants to. That is already in the City Ordinance so the City has the ability to monitor any activity out at the airport.

City Manager McCourt asked what happens after it is monitored and found out that something is wrong. Mr. Dunshee said if there is something wrong, they tell the business they can't register their business. City Manager McCourt said, no, then the City has to go into the default clause. Mr. Dunshee asked how many businesses have been defaulted on at the airport. City Manager McCourt said the City hasn't and that is because of the land lease. Mr. Dunshee disagreed. There are commercial leases out there that have a ten-year term. City Manager McCourt said that is right, and there are commercial activities that have been allowed there that are not being done and yet there is no way to remove them, which becomes an impairment to another business coming in.

Ms. Porter said it is the same circular argument over and over again. Mr. Dunshee said he would like to take Mr. Cole's suggestion of working together, but he suggested perhaps that instead of AAUA working with the City Manager that the lawyers work together to come up with a suitable agreement. City Manager McCourt said he thinks that is a great idea since he will be gone the rest of the week and is really tied up on the water meeting.

Commissioner Ledford said he has a problem with that because the Commission needs to provide some direction. He doesn't know what is meant by working this out. Nothing is being worked out. There is one thing left as he understood it. If the Commission can agree that it would like to see some kind of commercial lease with terms that are agreeable and provide that direction to the attorneys, then they can go forward to see if they can work that out.

Mr. Dunshee agreed that the terms to match the land leases with some way for the City to monitor and case the business activity if it's not in compliance.

Mayor Carroll said that perhaps what Ms. Porter was saying such that if there is some provision that sets a timeframe that whatever activity the business owner has indicated they will do but then don't do it, the lease is automatically canceled without going into default, which triggers a lot of other things. It is simply canceled. The City Manager's concern, which to some extent Mayor Carroll shares, is that the City has to have some mechanism short of declaring default and going through expense to everyone to work it out rather than just having the ability to say the lease is canceled. You can start over with some other business or you can start over with something else, but this doesn't go on in the situation where the lease is for 20 years and the only cure that the City has is to call it into default. The Airport User's want a long-term license to do business as long as it is being done properly, and the City needs some mechanism to take action in the event that doesn't happen.

Ms. Porter said she believes that the original lease that they had negotiated a year ago had those mechanisms in place. Mayor Carroll acknowledged that may be the case.

Commissioner Lujan said the City can't give the world, but the City has to give something. The City won't grow if chances aren't taken, the City needs to give a little, but at the same time the security of the people can't be given up. He doesn't like the idea of it being moved on without the City Manager or the Assistant City Manager being informed. City Manager McCourt said he doesn't have a problem with it and that Ms. Ehler will keep him well informed of what is going on. He encouraged everyone to have the mindset of giving a little and not just going into it with the same arguments.

Ms. Porter said she thinks that they have given quite a bit and acquiesced to a lot of things to get to this point because the main goal is hopefully to see the airport grow. They are hoping by being selfless that a meeting of the minds can be reached with the one goal of seeing the airport grow, which would not only benefit the City but the constituency as well.

City Manager McCourt feels the City has been selfless too and kind of given away the store in a lot of cases.

Mayor Carroll said that is the nature of negotiations. Both sides feel they have given more than their share.

Commissioner Ledford said what he would like to see is that both sides come back with an agreement. He feels there should be a timeframe set on it.

Commissioner Cole made a motion to approve that the City Attorney, AAUA Attorney and City Manager negotiate the length of the commercial lease/license for the airport by the first meeting of next month, July 11, 2006. Commissioner Lujan seconded the motion. All voted "aye." The motion carried by a vote of 7-0-0.

City Manager McCourt said they have to be in agreement that the agreement will be effective as of July 1, 2006, and it will need to be retroactive.

3. Approval of Airport hangar lease agreements.
 - a. Charles N. & Frances Diehl
 - b. Mike Haymes

Recommendation: Approve the airport leases.

Commissioner Cole made a motion to approve the airport hanger lease agreements. Seconded by Mayor Pro-Tem Griggs. All voted "aye." The motion carried by a vote of 7-0-0.

ORDINANCES AND RESOLUTIONS:

5. Consider Ordinance No. 1274 approving Airport commercial fees section 4-06-060.

Recommendation: Approve the ordinance for first publication.

City Manager McCourt said he feels that this should be pursued tonight even with the lack of action above with regard to the commercial lease/license as this is simply the publication and will come back in July. He thinks there is agreement regarding the 2% being put into the City Ordinance. He doesn't believe it is an item of any disagreement with respect to it being put in City Code as opposed to individual documents.

What would be under consider when it comes back in July would be items E and F. At that time depending on the results of the negotiation they may need to be modified. Item G does say it will be effective July 1, 2006.

Mayor Carroll said it could be sent for publication so long as the amounts are not substantially increased, which is not anticipated. They could be decreased without requiring an additional action. City Attorney Ehler agreed.

Mr. Dunshee suggested that Items E, F, and G be taken out for consideration.

Mayor Carroll said if that is done and something needs to be in it, the process would have to be started all over. Mr. Dunshee suggested holding it until the process is complete then.

Mayor Carroll said that D needs to be in prior to that time, and the G also.

The recommendation is for publication, and the attorneys can look at this one at the same time they are looking at the commercial license/lease.

Mr. Dunshee said he understands that, but he finds it disheartening that it was snuck in without any reference to the AAUA before this meeting. He would encourage more openness about what is being proposed concerning leases.

Commissioner Cole made a motion to approve Ordinance 1274 for first publication. Seconded by Mayor Pro-Tem Griggs seconded the motion. Items D & G will need to become effective July 1, 200. All voted "aye." Motion carried by a vote of 7-0-0.

6. Consider Ordinance No. 1275 amending section 15-03-010 of the Code of Ordinances and prohibiting smoking in city facilities.

Recommendation: Approve the Ordinance for Publication.

Mayor Carroll explained that he asked this to be pulled because it had been discussed during the budget hearings. This is just to let the public know that the City is considering banning smoking in City-owned facilities. The only one that is currently banned by Ordinance is in City Hall. The other facilities are not codified in an Ordinance, and the intent would be to make all City-owned facilities smoke free.

Mayor Pro-Tem Griggs pointed out that by policy they are but by Ordinance they are not.

Mayor Pro-Tem Griggs made a motion to approve Ordinance No. 1275 for first publication. Seconded by Commissioner Brockett. All voted "aye." The motion carried by a vote of 7-0-0.

OTHER BUSINESS:

12. Appointments to Boards and Committees.

Mayor Carroll reappointed Mr. Arthur Wolford, Mr. Michael Murphy and Mr. Mark Goffman to the Alamogordo Disability Council, and he appointed Carol Powell to the Mayor's Committee on Aging. He asked that the clerk notify those individuals.

UNSCHEDULED COMMUNICATIONS:

- A. Mayor Pro-Tem Ron Griggs

Mayor Pro-Tem Griggs said that this past week Alamogordo hosted the Miss New Mexico pageant for the seventh consecutive year. Christina Hall from Albuquerque was crowned Miss New Mexico. He had the opportunity to welcome the contestants and commended them. They work very hard for the chance to be Miss New Mexico, and the winner will work very hard as well. It is one of the great things that Alamogordo is able to do in hosting a statewide event such as that.

Mayor Carroll appreciated Mayor Pro-Tem Griggs efforts and extended congratulations to the winner and all of the young ladies who competed.

- B. City Manager McCourt

City Manager McCourt said he supplied the regular water report as well as a supplemental report that was put in the budget. The projections for the summer months was included, and he wants everyone to understand that they are projections, the best estimates of what they think is going to happen as far as in-flows coming into the system, the available water, and use of that water. The consumption pattern from last year was used in making the projections, which everyone will recall included two-day-a-week watering during the summer. The flows from last year on all of the surface flows coming into the system were reduced as well as tremendously reducing the flows from Bonito Lake and minor reductions from canyon flow. They do recognize that two new wells are being brought on to help later in the year. They are anticipating that some rain will happen this summer. There is some security factor built in if the in-flow projections are off base. Based upon the estimates, City Manager McCourt would like to go to two day a week watering. It appears to him that there is sufficient water

in the reservoirs, and if the estimates are reasonably correct, there will be enough supply to get through the summer into the October and November period when usage usually drops off dramatically. His caution is that he knows there is a tremendous desire in the community and a tremendous desire on his own personal level to respond to the community's desire to increase their watering levels. He doesn't want to allow that desire to result in false information or projections. He has been over the projections with the Public Works Director, and they are in agreement that these are reasonable estimates. Based upon these, he is planning to go to two-day-a-week watering starting this coming Sunday, which will give them time to get out some public service announcements.

If the Commission doesn't feel comfortable with him going forward with that, he would like to know. He has some reluctance, but they have always promised the citizens that if they had the supplies, they would make them available for their use. The anticipation of rain is based upon traditional patterns. They looked at last year, which was a pretty dry summer, and based on that they reduced the flows into the system by about 5%. That is how they arrived at the projections on estimated amounts coming into the system. It is based on expecting roughly the same rainfall.

Commissioner Ledford said that he sure would like to see the Commission be able to do this, but this is a time of year that is really hot and dry. Hopefully the monsoons do come, but if people get used to two days of watering and then in a month if it goes back to one day, half of the Commission may get shot. He hopes that the projections are cautious, and he acknowledged that City Manager McCourt is typically very cautious when it comes to the water. If the rains don't come, obviously the recommendation would change, and that is something that would have to be evaluated. If the rains do come, the thinking is that this course could be maintained through the course of the year. Commissioner Ledford asked if Bonito Lake provides any water for the rest of the year now that it is down and the snows are gone. City Manager McCourt said that Bonito is at a very low level, which has been reported regularly. Last year during the month of June Bonito Lake provided about 95 million gallons of water. This year the estimate is that it will provide roughly 16 million. In July of 2005 it provided about 95 million, and July of 2006 is projected at 24 million. The projected flows from Bonito have been significantly reduced. When the rains come up there, it is a very immediate impact.

Commissioner Brockett said that personally he would feel more comfortable waiting until mid-July.

Commissioner Lujan said when it comes to business and growth he is okay with chancing it a little bit, but when it comes to the water he thinks the City should hold off a little bit longer. He would hate to give it to them and then have to take it back away.

Commissioner Ledford favors going back to two days a week.

Mr. Miramontes said that he put the numbers together, and one thing that is important for the Commission to realize is that he has managed it very conservatively because of the drought conditions. Normally, he would have started drawing water from storage three or four weeks ago, but he has not had to do that. The reservoirs are still full. In fact, the whole plan envisions that the levels of the reservoirs will be lowered. They have managed to keep the reservoirs full by pumping. At this point, he needs to start drawing them down to rest the wells and in anticipation that there will be some kind of rain in July and there will be somewhere to store that additional water. He thinks that it is a good plan, and he would strongly urge the Commission to go ahead with two days a week.

Commissioner Ledford said he agrees with that and pointed out that also the City makes more money selling water.

City Manager McCourt said there would then be more income into the water and sewer fund, which would be used for either operations or capital improvements of the system.

Mr. Miramontes said that it is conceivable, of course, that there won't be any rain in July and it could be a problem, but he thinks there is enough to be able to account for that.

Commissioner Brockett asked if the figures take into consideration going to two days a week, and they do.

City Manager McCourt reiterated that they used last year's use figures, and last year the City was on two-day-a-week watering.

Commissioner Lujan pointed out that there are a lot more houses being used now than last year, and the figures will change. If it's not a sure thing, wouldn't holding off one more month be better?

Mr. Miramontes said of course they cannot predict the water, but historically, it will rain in July and then in August it will start cooling off. He feels very comfortable with the recommendation, and if he did not, he would not be recommending it.

Commissioner Moncada asked how many total tanks there are. Mr. Miramontes said there are ten or twelve of them. The important figure is how much water can be stored, and the storage capacity is 22 million gallons. Commissioner Moncada said that City Manager McCourt and Mr. Miramontes have studied this long enough, and they know what they're doing. The Commission has always promised the general public that when there is enough water, they would be allowed to go back to two days. Commissioner Moncada does not doubt what they are saying because they are very, very strict about not abusing the water system. She thinks the two-day watering should be allowed as soon as possible. It is very hot out there, and the plants and shrubs are dying. The City is beginning to look dead. If the two-day watering can be provided now, they might just have a greener 4th of July.

Mr. Miramontes said there are things that could go wrong and have gone wrong in the past, and one of course is the weather. Quite often, also, there is major failure in the wells. They get hit by lightening, or there are mechanical failures. Those things can be a problem. There has been failure of one of the medium wells, but nobody even knew about it. They had it fixed, and it's back in service.

The fact that they have been using a lot of pump water up to this point kind of concerns him. He really would like to rest them a little bit. Regardless of what the Commission decides, the plan is really to start drawing the water for the reasons he gave them.

Commissioner Brockett asked what exactly it means when they rest the well. Mr. Miramontes explained that they simply stop it and don't pump, which allows for more recharge.

City Manager McCourt said that what happens typically is when they start pumping the wells, they can pump the water out faster than the water can flow through the ground to the well site. The longer and faster the wells are pumped, eventually there is a cone of depression where the water in the immediate vicinity of the well has been pulled down into a cone-shaped depression. The wells will start to capitate, and they have to be turned off. By pumping them heavily, that cone has begun to form, and by shutting them off that is allowed to recharge and the cone is reduced in size.

Mr. Miramontes said he would not want to be criticized if there is rain in July and it is allowed to run by because there is no place to put it.

Mayor Carroll said if it rains this summer and there is a nice snow pack this winter, everything is fine, but what if that doesn't happen? The wells would have to be pumped because of not getting the rain, and if there is no snow pack and the wells haven't been rested, what would be done next year?

Mr. Miramontes said that in October and November the demand will drop so he won't be pumping as much regardless. That is when they will rest for sure.

City Manager McCourt said the possibility does exist that there are no rains or snow pack and the flows continue to decrease from the current surface flows, which would force the City into using the

wells through the entire winter. Approaching next summer the City would be in a more dire situation, and that is why he is trying not to be too optimistic. That said, he thinks the projection of shutting down the wells in October or November totally and just depend on surface flows is realistic, but things could go wrong.

Mr. Miramontes said they could certainly wait two more weeks, but he would like to start drawing them down, which can be done whether the watering schedule is changed or not.

City Manager McCourt said he doesn't think two weeks is a significant enough period, and he thinks it is more important to deliver to the residents what the City indicated it would when there was sufficient water.

Mayor Carroll said he would be more comfortable to wait but to authorize the City Manager to go to two-day watering the first of July if he still feels comfortable.

Mayor Pro-Tem Griggs said he doesn't think two weeks makes a nickel's worth of difference.

City Manager McCourt said it does make a difference to the water users in the community.

Mayor Pro-Tem Griggs reminded the Commission that they have asked the residents to do a number of things, and they have done those things. If the water is believed to be there now, then it should be moved on today to let people know that they can start watering two days a week as soon as they can.

Commissioner Brockett asked what days it would be. City Manager McCourt said the days would be Sunday and Wednesday and Tuesday and Saturday.

City Manager McCourt said if he misses it, the Commission can lay the blame on his shoulders, and if he's right, they can take the credit. The wells will also get better.

Commissioner Lujan reiterated his concerns and said again that perhaps they should wait a little bit longer.

The consensus of the Commission is to move ahead with two-day-a-week watering, and it will be on the next agenda to be ratified by the Commission. An order will be issued tomorrow to allow the watering schedule.

City Manager McCourt also reported that he will be going to the New Mexico City managers' meeting Wednesday to Friday of this week, and he is on the New Mexico Municipal League Policy Committee on Saturday. Mr. Miramontes will be the acting City Manager during his absence.

C. Mayor Don Carroll

Mayor Carroll reported that the Air Force Junior ROTC at Alamogordo High School was selected to receive the 2005/2006 Air Force Junior ROTC Distinguished Unit Award, which recognizes Air Force Junior ROTC units that have performed above and beyond normal expectations and have distinguished themselves through outstanding service to their school and community while meeting the Air Force Junior ROTC mission of producing better citizens for America. On behalf of the City he extended congratulations to the young men and women of the Air Force Junior ROTC at Alamogordo High School.

He attended a U.S. Conference of Mayors annual conference over the last weekend, and he reported that there were a number of interesting programs and speakers. Senator John McCain was one of the speakers as were Governor Richardson and Transportation Secretary Norman Mineta. Some of the workshops that he was able to attend included a workshop on tasers. He will share that information with the chief. There were some workshops on energy and environment and climate change. There was a very interesting program on climate change that one of the professionals on

the weather channel conducted, and he also went into a program on green building. There is a process for getting buildings green certified, which means they are environmental friendly and use less energy, which is something that should be looked in as far as new construction of City buildings in Alamogordo. There was also a workshop on performed-based budgeting, which was very interesting. There was also some legislation before the Congress having to do with federal communication with wireless and telephone communication and the real danger that cities may lose their ability to control franchises for cable and cable-type activities and more importantly lose control over the city rights of way. Basically, various franchises are charged for the use of the public right of way, and if some of the legislation passes, the cities could lose control over that, which could pose serious problems for many communities.

One of the issues that has gotten a lot of national attention that the Commissioners may need to be more aware of is the preparedness for the pandemic flu problem that everyone seems to believe is not a question of if but of when. Along that same line, Sprint and Nextel gave an interesting presentation on America's cities' preparedness, first responders and those sorts of things. He thought it was a very informative conference. He brought back a lot of written material, which he will disseminate appropriately.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss threatened and pending litigation, limited personnel matters, and purchase or acquisition of water rights.

Mayor Pro-Tem Ron Griggs made a motion to adjourn into Executive Session. Seconded by Commissioner Cole. All voted "aye" in a roll call vote. The motion carried by a vote of 7-0-0. The Meeting was adjourned at 9: 18 p.m.

/s/Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/Renee Cantin

City Clerk Renee Cantin

(SEAL)

(Prepared by Ubiquis Reporting)
Approved at the Regular Meeting on June 27, 2006)