

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, May 10, 2011

REGULAR MEETING

Minutes

TIME & PLACE: The Mayor and the City Commission of the City of Truth or Consequences in the County of Sierra and State of New Mexico met in Regular Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Tuesday, May 10, 2011 at 6:00 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor Montgomery who presided and Mary B. Penner, City Clerk acted as Secretary of the meeting.

ATTENDANCE: Upon calling the roll the following Commissioners were reported present:

Hon. Lori S. Montgomery, Mayor
Hon. Evelyn B. Renfro, Commissioner
Hon. Steve Green, Commissioner
Hon. Frances Luna, Commissioner
Hon. Freddie Torres, Commissioner

Also present:

Dave Weiser, City Manager
Jay Rubin, City Attorney
Mary B. Penner, City Clerk

QUORUM: There being a quorum present the Commission proceeded with the business at hand.

CEREMONY: Mayor Montgomery called for fifteen seconds of Silent Meditation.

Commissioner Luna called for the Pledge of Allegiance.

APPROVAL OF AGENDA: Mayor Montgomery called for approval of the agenda, and stated they have one change – Under Other Business #9 will be first.

City Attorney Rubin stated when they get to Executive Session it might be appropriate to switch the order...and to take the last thing first and go that way.

“Commissioner Green moved approval of the agenda as amended.”

Seconded by Commissioners Luna/Renfro.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: City Manager Weiser read a letter he received today from the Assistant District Attorney in response to an inquiry that he made to her concerning the dog attack on April 24th.

COMMENTS Mr. John Mulcahy came before the Commission with comments.

FROM THE
PUBLIC:

Mr. Cary “Jagger” and Ms. Rebecca Speakes came before the Commission with comments, and provided the Commission with the new Sierra County Artist Directory.

Mr. Ron Fenn came before the Commission with comments, and provided information for the record.

Mr. William Gross came before the Commission with comments.

Mr. Bradley Grower came before the Commission with comments, and passed around a petition.

Ms. Eve Elting came before the Commission with comments.

CONSENT
CALENDAR:

Mayor Montgomery stated they have two items under the Consent Calendar – Minutes - City Commission Meeting – April 26, 2011 and Accounts Payable Report – April 2011.

“Commissioner Green moved approval of the Consent Calendar as presented.”

Seconded by Commissioner Renfro.

Motion carried unanimously.

DRAFT MINUTES:

Mayor Montgomery stated the following are draft minutes from various boards provided to the Commission for their information, and are non-action items.

Commissioner Green stated on the DWI Minutes where the City is the fiscal agent and legally responsible for the money...to get minutes of meetings that are 7 months old, 5 months old, and 3 months old does not serve us well at all, and I would suggest that the City Manager write a letter to DWI and tell them of our concern.

Commissioner Renfro stated that was also her concern when I saw they went all the way back to October...it was unbelievable.

BOARD &
COMMITTEE
REPORTS:

Lodger’s Tax Advisory Board –

City Manager Weiser stated they have a memo from the Lodger’s Tax Advisory Board, and they met to discuss the application’s for Lodger’s Tax, and indicated there were a number of requests from entities that the City had not funded in the past, and that there were a couple of entities that were asking for more money than what the City had funded them in the past.

He stated that the Lodger’s Tax Advisory Board was asking that Resolution #31-08/09 be repealed or re-worked to allow the Advisory Board more flexibility in their recommendations. And stated staff is looking for direction...do they wish to repeal this action, or do you wish them to come back with a replacement resolution.

Commissioner Green stated since he was the one responsible for that resolution, and stated there was a feeling that we were using City’s Lodger’s Tax to match up a NM Cooperative Marketing Grant, and it was the City’s Lodger’s Tax that was making the Sierra County Tourism Board viable in functioning, and if lodger’s tax was spent wisely and well that if we put a cap on it then the balance and the overflow would be money that directly

goes to Truth or Consequences, and would be money spent directly on marketing and advertising our city. And stated the 1% is almost negligible...it's for public art, and the 9% was for advertising and marketing...without T or C's Lodger's Tax and the ability to leverage that tax a lot of things would not be happening...that's #1, and #2...and in all due respect to the Commissioner to my right, and if we took a look at the lodger's tax that was spent locally that does not bring people into our community...doesn't put heads on beds...doesn't put them in restaurants...doesn't have them buying gas, and even buying newspapers because they're not here...yet I want all the event planners to advertise in the local newspapers...I think it's important that our citizens know what's going on so we hold them here...I just don't think lodger's tax is the appropriate vehicle to use for local advertising.

He stated if they put in...and I know that the horse is out of the barn already, but if we consider for next year maybe some type of a scale or reward with the more you send out 75 miles out of T or C, and the County the better you are scored, and the more money you keep in locally the less you are scored, and there is probably I would say between 5 or 6 thousand dollars floating around that could be put into that \$70,000 pool that Mr. Frankel refers to...to be able to satisfy more needs, and give more people more money or new people money so they can advertise appropriately to bring people into the community...that's the intent of lodger's tax...it was never intended to support local newspapers, but that is what it is, and I think in times of economic crunch and economic crisis...the lodgers tax board, and I hear they have done this have taken a look at money spent and value received back...what did T or C get back for the \$4,000 we gave to x organization...did they track it, how much money was spent...those are the things that we need, also I would like to encourage for next year that once their major lodgers tax recipients are awarded their money through this Commission that we have a meeting with Tourism, and a representative from each organizations...what are you doing...how are you going to spend your money...where are you going to spend it...can we coop, because we can deal with NM Tourism and that they have bulk buys...why are we going out individual organizations and buying an eighth and a quarter of a page...in Albuquerque Journal we're for nothing we get on their price rate, and stated we just deal with Audrey Herrera so there are avenues that we can think out of the box...try to make more people happy, but at the end of the day...we got to make T or C happy, and that's why I think that resolution should stay in place.

Commissioner Green stated the 2nd part it was our understanding...the question is about the entity...the word entities, and he believes that was meant to be all the applicants in the City...those are the entities that receive lodger's tax awards, and that it had nothing to do with the as possibly questioned...whether it has to do with Lodger's Tax Advisory Board...it has nothing to do with them...they advise us, and they do the interviews and they do the research, but that's what the original intent was...entities were applicant's they were only non-profits, and the City, and that was the split 60/40 after the hard line.

Mayor Montgomery stated the question that came out of this...and correct me if I'm wrong was that the Lodger's Tax Board was saying that if that's not defined that way then the entities referred to those individuals that receive lodger's tax in

2008, and only those would be eligible in the future.

Commissioner Green stated...and I think and I understand that and I can see...I don't see where that we freeze all allocations of Lodger's Tax to all entities, and I could see where it possibly could be misconstrued that the people who got the money in 2008 are the only people, and maybe we should clarify that...by the word entities we mean any and all applicant's that are eligible to apply for lodger's tax...which would be the non-profits.

City Attorney Rubin stated I think we should do that yes...I think it is ambiguous.

Commissioner Green stated that would clarify possibly some of the misunderstanding.

Commissioner Renfro stated she agrees, and that it should be cleared up, and that she does not think it would be right to just freeze it...

The Commission agreed that it was never the intent when it was done.

Commissioner Torres stated for example the Sheriff's Posse when they received money they advertised the rodeos through the newspapers, brochures, posters, and they took them out of town, and they just didn't advertise in town, and stated it really helped them when they received their money to advertise out of town.

Commissioner Green stated he agrees with you...Commissioner Torres...in fact the NM Tourism Department on our reimbursement they will not accept the Herald or Sentinel any bills of lodger's tax because they are local products, and I understand that some people move out of town but still want to see what is happening in T or C, and still subscribe to those newspapers and I applaud them for that, but if I want to go after the Albuquerque market...I would not advertise in a local newspaper that might have 50 or 60 papers going up to Albuquerque...I want our local citizens to know what is going on...I think it's important...I think rather going up to Socorro for a day stay in T or C because there is this event happening and you saw it in your local newspaper, and stated right now we are 50% out of town, and 50% in town, and that Elephant Butte is 60/40...now what's the other end of the coin...Santa Fe is zero...no local advertising by the use of lodger's tax...Silver City zero, and I'm suggesting that maybe the Commission for next year should begin a discussion at an appropriate time to see what is fair...what is reasonable, but what takes the lion share of the money, and gets it out of the community so we can bring more people into our community and help with GRT, and help with some of the problems that we have heard tonight.

Commissioner Renfro stated I don't have a problem with some of the things that are being advertised in the newspaper for instance when they show the schedule of events and times...because I know I myself have referred to the newspapers to see when something is taking place. And stated I think it is essential that the newspapers still get some of this money for advertising.

Commissioner Luna stated I think we all need to remember that the people here are our bread, and the people that come here are our butter, and you can't have one without the other. And stated

she thinks 50/50 is perfectly good, and she thinks that lodgers tax needs to look at that, and look at the applicant's and see how they are spending their money, and to see if they think it's wise, and see if they are getting a return on it...and let's go...so re-write I say.

Mayor Montgomery stated...so you're saying the resolution is fine except for definition of entities.

Commissioner Green stated I would like to have the definition entities better defined.

Mayor Montgomery so we can advise staff to proceed with the appropriate...

City Manager Weiser stated do you want the resolution to talk about the 50/50 split...

Commissioner Green stated I think no because that is not what they're talking about, and I think if we want to take a look at that...that is for next year.

Mayor Montgomery stated I think we need to look at the data before we make a decision.

Mayor Montgomery – so staff can prepare a resolution with the definition and bring it back to use.

PUBLIC
HEARINGS:

None.

DISCUSSION
DWI PROGRAM:

– City Manager Weiser stated in information that he provided to the City Attorney and to the Commission, and indicated he included a number of letters and e-mails that have gone back and forth between the City and DFA concerning the DWI Task Force. And stated there was a meeting in November between DFA, the Task Force, Judge Pestak and Judge Sanders, and stated in the meeting they discussed a couple of issues that were important to the two judges...one of them was the tracking of the ADE Assessments, and making sure that was followed through, and stated Nola spent quite a bit of time explaining what had happened and why they got behind, and what they have done to catch up.

He stated the other issue that was discussed was providing more funding for treatment, and so this is why we wanted to bring these issue up, and stated they changed money around so there was more money for treatment within that program. And stated there are issues that have to be overcome as far as the treatment, and that we are a small county, and stated DFA their rules and regulations they would like to see 65% of the funding go for treatment, and that they are willing to look at this rather than a county by county basis, but as a statewide basis, and stated as long as 65% of the money statewide is spent for treatment they're okay with that as long as each of the counties is spending what they can on treatment.

City Manager Weiser stated their discussions with Nola today, and his conversation with DFA they talked about setting aside more money for treatment, and working with the treatment providers to make sure they are providing as cost effective treatment as we can.

He stated when he spoke with DFA today, and told her what we had done, and that they were going to be discussing this during the preliminary budget tonight, and they asked after it was discussed that we provide her with the information that is generated here, and if the budget was accepted.

City Manager Weiser stated he will respond with any questions, and that Ms. Nola Kent is on hand to answer questions.

Commissioner Renfro stated she has a concern that we weren't aware of any of the issues that had been brought to the City's attention up until this week...I don't think it's even been a month since I found out about it, and that she also has a concern that they are going to hold the City responsible as the fiscal agent for any monies that might be misspent, and indicated she is glad to see that Mr. Fuentes is involved in the budget preparation for DWI, and you're satisfied with it.

Mr. Fuentes – yes ma'am, and stated Mr. Weiser reported that some of the revised budget that has been provided to you tonight addresses some of the key components that were raised by DFA.

Commissioner Renfro asked...are the screenings, treatments going to be taking place...what's being done on that.

City Manager Weiser stated that Nola has been in contact with three treatment providers, and indicated two of them have declined participation, and stated Sierra Vista Hospital has agreed to provide treatment, and that they need to satisfy the request to DFA, and need more concise listing of what that treatment would entail, and whether or not...and the question that was proposed to him today that he had not heard before they wanted to know if there was any thought of using group treatment techniques to lower some of the costs.

Commissioner Renfro stated it was her understanding that there should have been a sliding scale as far as the fees are concerned, and I thought we had been told at the last meeting that there was a sliding scale, and it's my understanding that somebody was referred to them by Magistrate Court, and they were turned away because they couldn't afford it...they didn't have the money, and that there was no funding, and nothing was said about a sliding scale, and stated this is where the problems are being created, and unless something is done to take care of these problems...I think that the State is not going to be happy.

City Manager Weiser stated I can't disagree with that I don't know when that...when that particular case was, and I do know that whether it was late October or November when DFA came down and spoke to the two judges, Nola and Nadine, and stated that sliding scale issue was discussed as well as the treatment...the need for setting aside funds for treatment, and that was one of the requests of the two judges, so I don't know if the incident you're talking about was before that or after.

Commissioner Renfro stated it was just recently.

Ms. Nola Kent DWI Coordinator came before the Commission, and stated we have never turned anyone away for screening...ever, and stated they do offer a sliding fee scale and always have in our office, and indicated before last year they had money set aside an indigency fund for Municipal Court offenders

if they needed it...it was never used, and stated they did take that money out of that indigency fund this last year...took it out of the budget and did set up a sliding fee scale, and that even DFA recommends the minimum for screening, and stated that is in the guidelines...the minimum is \$25.00, and it can go up from there...another words indigency fund...the minimum charge we still have to charge \$25.00 because it costs each individual...us \$25.00 to access that database and needs assessment, so that is what they charge us for, so that has always been the minimum. And stated what they do is they have several different ways they work with their offenders on that...either they pay us a little bit at a time or they pay us part of it, but we've never turned anyone away...so I don't know where that has come from...we've never turned anyone away for an ADE, and stated in this County there was two that we did not do last year...one was deported to Mexico, and the other one went back to Texas and could not make it back, and stated they ended up doing it over the phone...which we're not supposed to do but we did do one over the phone for the ADE, and stated that is not correct information. And stated she had to address that because we have never turned anyone away.

Commissioner Renfro stated that was what was reported to her...so I'm just passing it on.

Ms. Kent stated anything about the treatment that you were talking about, and that she has been in contact with the hospital again about maybe coming down on that, and stated they will not do groups, and that she has e-mailed Sierra Vista Counseling Center and has not heard back, and since our proposal to DFA for the \$20,000 for treatment, and that the person that was going to do it is no longer with them so I don't know at this point whether they have a licensed alcohol and drug abuse counselor, and stated she just found that out today. And stated until she can get with them to find out if they have a counselor that is licensed to do this, and she has checked with a couple of other counselors in town to see if there is anything else that we can work with, and stated they did set aside that money for that.

Commissioner Renfro asked when did the IRS Audit us.

City Manager Weiser stated they started in October, and believes they got the final report in late February or March.

Commissioner Renfro – and the Commission didn't get a copy.

City Manager Weiser – yes we discussed it.

Commissioner Renfro – no I am sorry but you never discussed it...not with me.

The rest of the Commission indicated they had not received anything.

Commissioner Renfro – I never heard anything about an IRS Audit until here lately, and I know I'm positive I have never seen anything...any of the findings or anything, and I have a major problem with that.

Commissioner Luna – I have a question of Juan...on the back page it says the \$70,000, and go all the way down to operating expenses...other contractual services...wouldn't that be treatment

services or is that on a different page, because you're talking about \$20,000 contractual services yet under this preliminary it's a zero amount, so how are we gonna do that.

Mr. Fuentes – Stated the budget that is before you were revised today...you're looking at the \$70,000 – 4804 for \$62,000 you will see under line item 4804-599 other contractual services, and that Ms. Kent has set aside \$15,000. And stated that is where the treatment services are budgeted.

Mayor Montgomery – So other contractual services for the preliminary budget on the \$62,000 grant is \$15,000.

Mr. Fuentes – That's the treatment services amount...yes.

Commissioner Luna – Are they doing away with their phones...because I think that would be an important thing.

Mr. Fuentes – Stated that is why it was important for use to bring it to your attention because you see in the correspondence the State does want to make sure that the Commission because we are the fiscal agents, and responsible for these funds that the Commission is fully aware of what is being budgeted, and what is being submitted, and stated Ms. Kent has shifted some of these operating expenditures between 4804 & 4803, and look at 4803 – and there is \$5,000, and that it is under utilities, and is supposed to be under telephone, and stated they set aside \$5,000 for that.

Commissioner Green – So what number should be for utilities?

Ms. Kent – Stated it is in 4804.

Commissioner Luna – No it's not.

Mr. Fuentes – Stated if you turn to the 3rd page under 4804, and look at the 2nd page, and that this is the budget on portrait is the one that was submitted, and stated they set aside \$547.50 for utilities.

Ms. Kent – Stated we only pay gas under utilities, and that is what we used this year...pretty close.

Mayor Montgomery – Stated so which one do we look at...you have the landscaped ones and the portrait ones that have...

Mr. Fuentes – Stated and the reason for that is the budget on the portrait, and when he transferred over the figures over to the City forms they were not adding up to the \$62,000, and that is why under the utilities if you notice it is \$547.50, but on the City form is actually \$537.50, and stated they needed to make sure that they stay within the \$62,000, and unfortunately I received these this afternoon, and did not have an opportunity for Nola and myself to sit down to make sure that all the figures added up.

Commissioner Green – To Mr. Fuentes...I think that inadvertently 4803-765, and 4803-770 have been inverted, and you have rent at \$755.00, and subscriptions at \$7,200.

Mr. Fuentes – We'll do that.

Commissioner Renfro – Stated I think this should be put aside until it comes back to us in the correct manner...with everything

corrected.

Mr. Fuentes – Stated that basically DFA and the State is asking to make sure that the Commission has reviewed the DWI Budget because obviously a contract cannot be drafted without the State knowing if this is the approved budget that the Commission has approved, and indicated that is why Nola has submitted a revised budget. And stated our forms which are the first two forms that you have before you, and just wanted to present those so that you are familiar since those are the forms that we've been using, however the figures will not change, and stated there is those small discrepancies being in the wrong line item, but the State does want to make sure that the Commission is aware, and have approved the budget. He stated if the Commission feels comfortable with the overall figure as to how it has been broken down, and that is why we asked Nola to be present to make sure that she goes over each of these line items to make sure you all are aware what is being budgeted for the DWI Program for next fiscal year.

He stated the final budget will not be before them until the end of July, and that the Grant Agreement will be drafted and submitted to the City before July 1st before the new fiscal year, and indicated that is why it was important to bring this particular item before them and addressed so they had an opportunity to ask any questions from Ms. Kent or myself.

Mayor Montgomery – So I guess my question would be if DFA is submitting letters of concern or questioned the City on various aspects of the DWI Program, and one of the things that DFA is looking for is the 65% return on the treatment portion of that grant...why would we not look at funding treatment at a minimum of 65% of whatever the grant is.

Ms. Nola Kent came before the Commission, and stated she thinks that Mr. Weiser brought it up earlier...what is recommended by the State of New Mexico is that 65% of the grant funding in the State goes to treatment.

Mayor Montgomery – I understand.

Ms. Kent – So what happens is because there are so many small communities that one can't afford 65% of the funding to go for treatment because they have other programs that they need to fund, and smaller communities even have less. And stated they take the overall State treatment funding...for instance San Juan County, McKinley County, Bernalillo County, and even Santa Fe County may take their treatment amounts that they spend on treatment...San Juan & McKinley County uses all of their grant money for treatment and most of their distribution, and stated they consider that the 65% so it will cover all of the smaller counties that can't afford or don't have treatment providers.

She stated if they were to take 65% of our funding and use it for treatment which we really don't have here as far as being able to provide that for DWI offenders because that is all we can provide it for is DWI offenders...not for drug offenders or drug court or any other...only DWI offenders, and stated most of that money would go to waste. And stated they have budgeted in the past for treatment and not even a quarter of it was used, so that has always been my concern is budgeting money for treatment and having it utilized because it's not being utilized, because most providers

initially have to treat...if they treat they have to charge certain insurance first before they charge us...if they have insurance.

Ms. Kent stated they are looking at certain offenders here that we have to ADE data base, and have over 100 a year, but most of those offenders do not reside in this county, and stated they can't pay for treatment outside of the county...so if they are ordered to treatment they may go back to Albuquerque, El Paso wherever they are from and do treatment there, and stated they don't pay for that.

Mayor Montgomery – Stated so then why would we accept a grant that we know we can't provide for.

Ms. Kent – Stated it's not...I think that is where the misunderstanding...in 9 years this is the first time that we have ever gotten a request from DFA...that they are requiring us to fund something for treatment, and stated that came directly from the meeting with the judges, and they stated they would like to see some money going to treatment, and that is where that came from and that they are pretty much making a decision for us that we never had to make before...because usually the Planning Council and the City Commission and people in the community decide what our funding is going to go for, and stated that is a request from DFA at this point that we do that. And that I will continue to search and research treatment programs.

Commissioner Green – If I can follow-up on that, and that in the letter it said that some money should be spent...did they spell out a percentage on the overall...

Ms. Kent – No.

Commissioner Green – On the overall grant...so how do they hold the recipient's feet to the fire then...if it's just so open ended like that.

Ms. Kent – That's a good question. I wish I had an answer, and in the 9 years that I have done this I have never had this issue, and none of the other counties have either...it's not been an issue on whether or not each individual county funds treatment...if they have it they can they do...if they don't have the money they don't...they've tried to work with other communities to see if there is a way their offenders can get in treatment. And stated even though the law states that an offender if they had so many DWI's has to go to outpatient treatment it doesn't necessarily say they have to go to outpatient treatment in this county...they can go anywhere they want...I could even put a contract with any of the treatment providers here, but I cannot tell a DWI offender to go there...that's against the law, so we could contract with several treatments, but I can't tell you if you were an offender and came into my office that you have to go to one of those treatments...

Commissioner Green – Stated the letter you received has the manager been copied on that letter.

Ms. Kent – Stated he received the letter...I did not.

Commissioner Luna – Stated that 73% of 4803 & 4804 go to salaries to fund 4 people's positions. And if you add the \$15,000 to the other 3 people besides you that's \$60,000 in treatment you

could be providing if you had 1 employee, and 1 treatment person...I think maybe that is why we all have concerns, because especially when the State is telling us that we need to make sure that there is 65% of the budget that goes to treatment, and yet 73% of both of these budgets are going to staff...and then there is no data to support it.

Ms. Kent – Stated we also have to under the guidelines of the grant we also have to have screening programs, and stated that is also under the law, and so we also have to provide screening, tracking on the ADE data base, so that is paid for...for 2 of us that do that...we do screening and tracking under the ADE data base. And stated they also have requested prevention money which is also allowed in the grant, and they have been requested this year to pick up 3 more classes at the high school and the middle school for our prevention programs, and stated they are doing prevention in all grades. And those people that you are talking about are all part-time, and there is one full time person...and that's me, and that she is spread over all the component's, and does work in every one of them, and that she does not do just one thing, and stated it's not like we have an exorbitant amount of people...most of that is a match, and if you notice that the money is allocated for any of those people...most of that is match which comes out of the grant where actual wages are only \$32,000 for 3 part time people.

Commissioner Luna – Stated 45,463 according to the paper we have.

Mayor Montgomery – Stated that's with benefits.

Mayor Montgomery – So you said you have been doing the program for 9 years...so I assume you have data over the last 9 years to show the success in each one of those areas.

Ms. Kent – Right.

Mayor Montgomery – Okay.

Ms. Kent – Yes I do.

Discussion only.

DWI GRANT
AGREEMENT NO.
11-D-J-G-28:

City Manager Weiser stated he will turn this over to Nola Kent to address this.

Nola Kent DWI Coordinator stated this is actually not a Grant Agreement, and that it was an amendment to the Grant Agreement for this fiscal year. And stated that it is to move monies out of travel which they did not need to expend because there are several different reasons, but in order to expend that money we are requesting that they move \$3,000 from travel into other areas to cover some other expenses that they need before the end of the year, and also so they can expend that money.

Commissioner Luna – Does this have DFA's blessing.

Ms. Kent – That's why we got it here, and stated she submitted it to DFA first...they sent it back for your approval, and then it goes back to them, and stated then they can make those line item adjustments.

Commissioner Green – Stated you are asking for an increase in supplies from \$253.00 increased by \$2,000.00, so where do you perceive that \$2,000...why do you need \$2,000.

Ms. Kent – Stated the money was moved into...one for educational supplies, and the other is for a new lap top that we use for presentations and when I travel, and other things we need to do at the DWI office.

“Commissioner Luna moved approval of the DWI Grant Agreement.”

Seconded by Commissioner Green.
Motion carried unanimously.

CONSIDER – Mr. Juan Fuentes Finance Director came before the Commission,
AUDIT AWARD: and stated a request for proposals was issued for a multi-year financial audit services contract, and indicated that the City for the past 3 years has contracted with Fierro & Fierro from Las Cruces, and stated that the State does require that after the 3rd year the City issue a new RFP which they have done, and stated they received 4 sealed bids for these services, and the selection committee reviewed the proposals, and they have recommended the Commission to award the annual financial audit services for FY 2011-2013 to Accounting & Consulting Group out of Albuquerque.

He stated they have done City audits before, and staff feels very confident with this recommendation.

Commissioner Green – Referred to the bottom...your engagement...with the option to renew the contract for two additional fiscal years at the same price, and referred to the back page and they have increased the price with GRT by \$3,070.00.

Mr. Fuentes – That’s correct.

Commissioner Green – And that’s correct and I’m right but their wrong...basically so they’re saying the price is the same...it should be \$4,750.00 every year, and not end up with \$49,400 plus the difference in GRT. So that was one question.

Mayor Montgomery – Okay...say that again.

Commissioner Green – It says that 2 additional fiscal years at the same price...so the 1st year is \$47,500, 2nd year is \$48,450, and the 3rd year is \$49,400. If you total the difference between a flat \$47,500 over 3 years, and the difference in the GRT...it’s a difference of \$3,070.00 approximately. And I think that has to be addressed.

Mr. Fuentes – Stated it will be addressed with the auditors, and certainly if the Commission decides to approve it with that condition I will certainly notify the accounting firm, and it doesn’t automatically...that we have to renew them for 2 additional years, and indicated it will still be an option next year, and still come before the Commission for renewal as well.

“Commissioner Renfro moved approval of the bid award of the annual financial services – FY ending 2011-1013 to the Accounting & Consulting Group, LLP.”

Seconded by Commissioner Luna.
Motion carried unanimously.

PROPOSED
ORDINANCE
MUNICIPAL
GRT:

– Mr. Juan Fuentes Finance Director came before the Commission and that the ordinance before them is a state template ordinance that allows municipalities to impose the gross receipts tax...the municipal gross receipts tax of one fourth of one percent.

He stated the City has imposed already several of these taxes, and that the remaining tax which is what is before them is the remaining point quarter percent. And stated currently the City tax rate is 7.625, however out of that the City's tax is 1.4375, and the counties tax is 1.0625, and with the proposed ordinance the tax would be...the total tax would be 7.875 with the City share being 1.6875, and the county would remain the same.

Mr. Fuentes stated as well as the ordinance he also provided them with information on the language on the Municipal Gross Receipts Tax as well as the schedule, and stated during our budget meetings there was a question about if we were to impose this when would it take effect. And indicated you can see in the schedule because of the time frame it is required to submit it to the Taxation & Revenue Department...this will not take effect if approved until January 1st.

He stated our collections of that tax will not occur...we will not start seeing it until March because we are 2 months behind.

Commissioner Green stated he thinks it is important that this is restricted money if this passes that it goes strictly for Public Safety, and cannot be used for anything else, and also that it is a quarter on \$100.00.

Mayor Montgomery stated she agrees.

“Commissioner Luna moved approval of the Proposed Ordinance for publication – Adopting a Municipal GRT in the amount of one-fourth of one percent (0.25%) for the purpose of Public Safety.”

Seconded by Commissioner Green.
Motion carried unanimously.

RESOLUTION #23-
10/11 PREL.
BUDGET:

– Mr. Juan Fuentes Finance Director came before the Commission, and stated he has updated the summary of changes pages, and indicated he would go over those summary changes from our Budget Workshop.

General Fund – He stated the Commissioners had some questions about certain line items...revenue line items:

Building Permits – April YTD is \$1700.00, and stated if you average that out which is how we developed with the estimated figures, and that the current average is \$2,000, and that our preliminary figures are \$1,900.00 so it is based on the activity, and the recommendation is to leave it as is...\$1,900.00

Rent of Public Facilities – April YTD is \$26,000.00, and they have reviewed at the detail, and stated it still shows that has been the current activity, and if you average that out it comes to \$31,449.00, and our preliminary budget is at \$31,200, and recommendation is to leave it at the current average.

Other Charges for Services – Stated that did decrease...April YTD activity was \$5,000.00, and the average came out to \$3,600, but however when we started looking at the detail there was a one-time deposit of \$2,600, and stated that was the dedication of the NM Runway that the City participated in, and they took that out so the average went down to \$3,700.

Communication Lease – And stated there was a question about the line item, and after looking at the current lease agreement, and next to the asterisk...KRQE lease agreement does have a fee amount, and that it should state **does not have a fee amount**. He stated the Commission approved a lease agreement with **no fee**, and in the previous fiscal years the City was receiving \$1,600, and we do not receive anything, and goes back to the current lease that has no amount of money.

Governing Body – And stated they have allocated the grants to sub-recipients.

Animal Control – Increase of \$1,000 for overtime.

Special Revenue Funds – LEPF moved estimated ending cash balance from line item 835 to 840 per request of the Police Chief.

Lodgers Tax – Revenue they did zero out the Village, EB, and County Contributions of \$14,500, and on the Expenditure for the revenue side...on the Expenditure they adjusted the budget for Advertising/Marketing to reflect the 9% (\$16,200) per the Resolution, and budgeted \$25,300 for Professional Services.

He stated as they discussed at the budget workshop staff has drafted a Sub-recipient Agreement that requires agencies to submit quarterly reports, and also when they submit a reimbursement to provide documentation and keeping track of that on what they have received and spent.

Street Fund – Decrease in estimated by \$98,000. Funds to be accounted for in the Debt Service Fund to pay principal and interest on the NMFA Street Loan. Decrease in Roadway Maintenance from \$104,000 to \$64,000. Deleted the proposed \$135,000 in Capital Outlay for the new loader. Adjusted expenditures to balance the fund.

Enterprise –

Electric Division 41-02 – Stated that Commission requested staff to look at line item 41-426 “Misc.” (Pole Rentals). And indicated after staff review the City does have an outstanding A/R for that line item, and stated staff has billed those customers, and the recommendation is to leave the figure as is, and in the final they will have the actual final amounts of the revenue for that line item.

Airport – Stated there was an inquiry about the credit card processing fee, and as reported at the meeting this is a service charge for the City for processing the credit cards through Ascent New York Account.

Joint Utility –

Mr. Fuentes stated Ms. Berna Garcia is present as well as the Public Works Director, and indicated they would like to address

the issue regarding the in-house billing.

Ms. Berna Garcia came before the Commission...and her question, and at the budget workshop when they discussed the line items for her office regarding the in-house billing, and wanted clarification, and if indeed the billing is going in-house, and that they did budget for it, but nobody said yes that's what they wanted to do.

Mayor Montgomery stated she thinks is she recalls correctly that the intent was to do the in-house billing, but I will defer to my fellow commissioners.

Commissioner Renfro – That was my understanding is that it was supposed to be done.

Commissioner Luna – Stated I know it says part-time, but in the actual documents it looks like that might have been budgeted for a full-time position...just because the number is rather large. Is it a part-clerk that you need...a full-time clerk?

Ms. Garcia – Stated a full-time is what we needed if we're going to do in-house billing.

Mr. Fuentes stated with those changes...and I did include some of the revised budget forms...the replacement pages for the Preliminary Budget, and the last item only for clarification is the DWI Budget, and asked discussed earlier if the Commission wishes they can go ahead and proceed with the budget as presented by Ms. Kent...the budget presented in portrait, and I apologize I take responsibility for transposing those numbers, and stated the bottom figures are the same.

Commissioner Green – Stated one thing...a concern for him. Under the Municipal Street Fund on the back...you talk about this \$2,600 to make it through the year for the next 30-year's...I don't quite understand that.

Mr. Fuentes – Stated they were comments submitted by the Director from the Street Department, and I am not sure what the director meant by that, and all I can tell you I can share his concerns which was obviously because now the intent when the City took out that loan was to use that dedicated GRT that goes to the street fund to pay that loan, and stated he did not realize when the City took out that loan...he didn't realize that is what the City was doing is using that dedicated GRT to the street department to pay for that loan. And after he realized and saw how it impacted his budget he had concerns...well not it's gonna affect me on my operating side, and it is there and you can see if went from \$104 from his roadway maintenance to \$64,000...that was his concern. And stated if GRT increases his share of GRT will go up.

Commissioner Renfro – Stated the Street Department is going to have to be subsidized by the General Fund...and that's the way it was at one time...subsidized by the General Fund, and the quarter percent was going generally to street maintenance. And at some time it was changed to where they were just relying on the quarter percent for the Street Department.

Mr. Fuentes – And stated the City is funding...the General Fund is funding the personnel and some operating expenditures out of the General Fund, and what they have before them under the

Municipal Street Fund...that's mainly just the operating expenditures...so the General Fund does fund their personnel for the street fund.

“Commissioner Green moved approval of Resolution #23-10/11 adopting the Preliminary 2011-2012 FY Revenue & Expenditure Budget for the City of Truth or Consequences with the minor adjustments.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

RESOLUTION
#24-10/11:

City Manager Weiser stated this Resolution is Approving Participation in the Program of the SCCOG for FY 2011-2012 & Selection of Representative & Alternate.

He stated the dollar amount for annual membership dues is the same as last year, and that they have been fortunate in the help they have received from the SCCOG concerning the CDBG Grant Application, and also for the Planning Grant.

Commissioner Green stated he would love to represent the City, and that Commissioner Torres has been the alternate.

Commissioner Luna stated that **Consequences...**the spelling needs to be corrected on the bottom of the page.

Commissioner Green stated that the Manager...once he has ascertained asset needs from different departments, and taken a look at our City in total have a meeting with Tony and Jay and tell them what we're looking for in relationship to grants, and since it looks like we don't have a grant writer budgeted for this year so they understand our needs and assessments...let them research the grants, and bring them back to the Commission and the City Manager's Office to see what is appropriate, and see what grants are out there that might satisfy and fill some of the shortfalls that we have, and then have them apply for us.

“Commissioner Green moved approval Resolution #24-10/11 – Participation in the Program of SCCOG for FY 11/12, and appointing Commissioner Green as their designated representative and Commissioner Torres as the alternate.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

RESOLUTION #25-
10/11:

Mr. Juan Fuentes Finance Director came before the Commission, and stated the Resolution before you is for budget adjustments, and explained the following adjustments:

Library Fund – And that they received additional state funds that were not expected. The request is to increase the revenue and expenditure by \$4,448.

Joint Utilities Fund – The Joint Utilities Fund serves as a pass through for the GRT collected from utility customers. In reviewing the year to date activity, the GRT payments to the state is expected to exceed the approved budget. The request is to increase the expenditure budget by \$79,100, and stated they have collected more on the revenue side.

General Fund (Transfer OUT) – Transfer and additional \$8,500 to

the Golf Course for purchased lawn mower. And indicated the lawn mower has been purchased early in the fiscal year, and by transferring that out of the General Fund they have to make the other adjustments in the Golf Course Budget.

Golf Course (Transfer IN) – Transfer from the General Fund for the lawn mower purchase.

Golf Course (Expenditures) – Increase in O&M for the lawn mower purchase.

General Fund – Police Department: Chief Gallagher is requesting an adjustment to the personnel budget to recover the budget amount expended on grant activities. Reimbursement has been received from state for \$5,358.00.

“Commissioner Luna moved approval of Resolution #25-10/11 – Budget Adjustments.”

Seconded by Commissioner Torres.
Motion carried unanimously.

PROPOSED
ORDINANCE –
VICIOUS DOG
ORDINANCE:

City Manager Weiser stated in their packet I included a proposed ordinance by Mr. Grower who has put together using information from other cities, and have also included our existing...a portion of our existing ordinance that deals with vicious dogs.

He stated the City Attorney and I spoke with Randy Van Vleck of the NMML talking about where our original ordinance came from, and the frame work for our ordinance, and what is in that ordinance is based on state law.

City Manager Weiser stated it was Mr. Van Vleck’s opinion that when, and if we do change our ordinance that we give them a copy so he can review it to make sure that we are not in conflict with state laws, and I think that you’ll see in your reading of this that what Mr. Grower is proposing basically a broader definition of vicious dog, and includes more possibilities.

He stated I know that some states are very specific on vicious dogs and are banning them, and I just don’t know from my conversation today that we can go there, but we can tighten up what our definitions are.

City Attorney Rubin stated let me elaborate a little bit about the...the ordinance you have isn’t something I drew up in 2005, and that this actually came from the NMML it was a model ordinance...it’s what they sent us. And stated with the mandate that the State Legislature told us that we had to pass this.

He stated if you compare this ordinance to Section 77A-1-1 you are going to see it tracks almost identically, and stated that’s an indication that the State Legislature was intending to pre-empt...they were trying to pre-empt the field with their legislation so another words it maybe...it may be difficult to try and change something which the State is attempting to pre-empt.

And stated let me give you an example...If you look at the last page...paragraph (2)...Whoever violates a provision of subsection (g)(1) shall be charged in the Magistrate Court in the county in which the animal is located with a violation of the State Dangerous Dog Act, and so it makes a reference to Magistrate Court which I would never put...if I was drafting...I would say

Municipal Court, and it talks about the State Dangerous Dog Act and not our code of ordinances. And stated he doesn't mean to shut down a conversation...I know this is a very serious topic and certainly you're welcome to discuss it and can figure out some changes you do want to propose, but I would suggest before we go to publication...you'd let me call Municipal League and see what they say about anything you want to change.

Mayor Montgomery – So there is no reason why the ordinance can't be stronger than the state it has to meet...it can be less but it can't be more.

City Attorney Rubin – The general rule...even in a situation like this I would still prefer if you propose something that's stronger I would still want to talk and run in pass the Municipal League...before we go to publication on it. Again because I worry about I hear the boards...pre-empting and almost sounds telling us that this is the law. I hear what you're saying, and you can certainly discuss if you want to change something we can discuss it but I want to send it to the Municipal League first.

Commissioner Luna – Stated first off I would like to thank Mr. Grower and anybody who helped you putting this together, and I know it was very time consuming, and I think you are to be commended for your work, and your passion for this. And stated I think we owe this...the time that it deserves, and think we should send the document to the NMML, and have our Attorney and the NMML look over it, and maybe we can schedule a workshop and have the two of them, and piece meal it and see what works, and see what doesn't, and have a workshop before we take it to publication. I don't mean to put it off that is not what I'm trying to do, but as you all know we have some codes and ordinances that have issues, and I'd like to make sure if we're gonna start re-doing them we need to do them right.

Commissioner Renfro – Agreed, and stated there is a lot of stuff in his that is in our existing ordinance, and that she doesn't have a problem with him.

City Attorney Rubin – And he also thanks Mr. Grower for this.

Mayor Montgomery – So is that the wish of the entire Commission to send it forward to the NMML, and so we will go ahead and send that both ours, and the proposed one, and after they hear back from the NMML we'll get something scheduled.

Commissioner Green – Is there a pretty quick turn-around I mean this is something that I don't think any of the Commissioners want to lose steam, and that we want to move forward, and I also congratulate and thank Mr. Grower for the energy and effort to do this so therefore I would request that Mr. Van Vleck realize that time is urgent and we are dealing with this on a daily basis and waiting for his response to us. And stated Mr. Grower on caging of dangerous dogs he's talking about that the sides must be in the ground...a minimum of 2 feet...now that is not in the State if we have copied the State Code...it's #5 – such pen or structure shall have secure sides extending into the ground a minimum distance...so my question is this...if State Law says that a dangerous animal must be in a confined area, etc., etc., but it doesn't mention anything about...because animals do crawl out of things that it doesn't have to be embedded in the ground 2 feet, and if we make that our part of our code is that acceptable to the

State because it's higher and more stringent than the State requirement.

City Attorney Rubin – And I think we covered it...the general rule is usually you can't be more restrictive than the State, however again an exception maybe if they decide to pre-empt the field in a particular topic so that's what we need to hash out.

And stated as far as the turn-around time in my usual efficient manner I'm going to send this out tomorrow., but I don't know how fast I'll get it back to you. And that I spoke to Mr. Van Vleck today and he has just returned from a week long seminar so I know he is up against it but I will impress upon that we want to get it fast.

COOP
MARKETING
GRANT
AGREEMENT:

City Manager Weiser stated as you recall we brought two amendments to the Commission decreasing the amount of funds that we would be receiving from the State Lodger's Tax Agreement, and indicated with several phone calls from Gina Kelley and Kim Skinner who at the time was Chairman of the Tourism Board and myself, and stated the State Tourism Marketing Board came back, and stated they found an additional \$5,000 so they want us to sign these two agreements acknowledging that increase back to us. And indicated that is about a third of what they took away.

Commissioner Green stated he would suggest on the 2nd one between the City of Truth or Consequences fiscal agent for...the organization is not T or C Main Street...the legal name of the organization is MainStreet Truth or Consequences, and they should change that.

“Commissioner Green moved approval the Cooperative Marketing Grant Agreement – Amendment No. 1.”

Seconded by Commissioner Renfro.
Motion carried unanimously.

OLD BUSINESS: None.

REPORTS: **CITY MANAGER –**

City Manager Weiser reported for our Solid Waste Collection and that we are down a couple of people in that department...a Solid Waste Collector 1, and 2. And they interviewed today for the Solid Waste Collector 1 position, and that what he intends to do is hire 2 additional Solid Waste Collector 1's on an emergency basis, and reported they have a tremendous back log, and they haven't been able to keep on schedule.

He stated Commissioner Renfro asked him at their last meeting concerns about the overlapping of seasons of our youth sports...specifically basketball which is ending, and soccer which is starting. And that he discussed this with Peter Baca, and he reminded me that the schedules are set by the associations themselves.

City Manager Weiser stated at the direction of the Commission the City of T or C, representatives from the County, and Williamsburg met a couple of times to discuss alternative sites for the Solid Waste Collection Station, and that they have identified 3-4 potential sites, and he and Gil Avelar have visited at least

three of them, and that he visited the 4th one.

He stated one of them that were suggested has housing within about 200-300 feet, and that site would not be appropriate, and the second one that was suggested is the old T or C Racetrack site, and stated Commissioner Renfro reminded me of the restrictions that were placed on that site as far as being for recreational purposes.

City Manager Weiser stated he will say that there are a number of letters, and sets of minutes where recreational use was discussed, and the fact that a racetrack was there, and indicated the deed does not say anything about limiting the use to recreational purposes but the supporting documents do.

CITY ATTORNEY – No report.

COMMISSIONERS –

Commissioner Luna – Stated first off thank you very much for speaking on the trash, and stated she has received numerous complaints of collection both in the dumpsters, and beside the dumpsters, and if they cannot find somebody who can drive around and collect the trash then maybe we need to authorize overtime because the wind is blowing everything, and that she has not driven down a road or an alley way that there is not someone's trash beside it, and that she has heard commercial customers that are paying an exorbitant amount for trash collection for services that aren't rendered...and I'm sorry but I think if people stop paying their trash bill because we're not collecting it there is not much we can do because we're not providing the services we're charging for...so we need to fix the problem, and if that includes authorizing over time we need to get on to it.

She stated she thinks they need to look at creating a list of Welcome to Our Community that can be mailed with the utility bill that lets people know of the requirements for city dog licenses, and would like to thank the 300 people who signed this because I think this is a great way that staff can check these names with the list of people who have dog licenses because there is this convenient thing that says do you own a dog so maybe all these people who do own dogs can go and gladly pay their dog registration fee, and maybe we can have the Clerk's office or someone get on to that because it looks like there is lots of revenue there.

Commissioner Green had a long list of thanks...the Fiesta Board, City Staff, and volunteers for a great weekend...Great Job. Thanks to Ms. Sadie Andregg for the candle light vigil held at Ralph Edwards Park to honor those that we have lost. And thanks to the Herald Publishing Company for the Spring Conference of NM Press Association to T or C, and thanks to the 240 elementary students who painted the mural that is up on Riverside Drive next to the Housing Authority, and Mr. Bill Jacka stated they would be re-painting around the mural, and that they are looking to light that up at night. And also had 80 students paint two murals that hang at the Elementary School.

Also thanks to MainStreet who did some clean-up for downtown before Fiesta, and thanks to the Sierra County Arts Council, and produced Art in the Park two week ago, and had over 400

students that participated, and thanks to Cindy Beleli who brought the local semi-finals of karaoke to Fiesta, and that he is proud to announce that out of the 5 males will be State Finalist, and the 4 females State Finalist from Fiesta, and that we have 6 out of 9 from T or C, and 3 from Elephant Butte. And stated they are trying to get the State Finals here next year, and that it was here in 2009, and they have begun negotiations for next year as this brings a lot of people here for 3 days.

Commissioner Green stated at the Tourism Board Meeting they discussed today that the initiative for the Welcome Center...Visitors Center, and that they are looking for information, and eventually there will be a community Town Hall meeting about the siting, and the overall of what we expect of a Welcome Center, and what we expect of a Visitors Center.

Commissioner Torres stated he has the same concerns that Commissioner Luna had, and that he has had a lot of phone calls about the trash along Riverside Drive, and that we have to do something about it, and reported that the rocks are still on Carrie Street, and expressed that somebody is going to get hurt.

Commissioner Renfro – No report, and agrees with the reports.

Mayor Montgomery – No report.

EXECUTIVE
SESSION:

“Commissioner Green moved that the meeting be closed for Executive Session pertaining to 1. Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8) – 1. HSLD – Airport property. 2. Pending of Threatened Litigation 10-15-1H(7) – Toomey vs. City of T or C. 3. Personnel 10-15-1H(2) – City Manager Contract.”

Seconded by Commissioner Luna.

Commissioner Montgomery responded Aye to a Roll Call Vote

Commissioner Renfro responded Aye to a Roll Call Vote.

Commissioner Green responded Aye to a Roll Call Vote.

Commissioner Luna responded Aye to a Roll Call Vote.

Commissioner Torres responded Aye to a Roll Call Vote.

Motion carried unanimously.

OPEN SESSION:

“Mayor Montgomery stated that the Commission was now in Open Session.”

CERTIFICATION

“Commissioner Green certified that only matters pertaining to Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), Pending or Threatened Litigation 10-15-1H(7), and Personnel 10-15-1H(2) were discussed in Executive Session discussion ensued, and no action was taken.”

Seconded by Commissioner Renfro.

Motion carried unanimously.

“Commissioner Green moved that the City Attorney proceed with a letter to HSLD to convey property back to the City of Truth or Consequences, and discuss lease negotiations.”

Seconded by Commissioner Renfro.

#2 – Toomey – No action.

“Commissioner Renfro moved to proceed with contract termination for the City Manager.”

Seconded by Commissioner Torres.
Motion carried unanimously.

ADJOURNMENT: There being no further business to come before the Commission the meeting was adjourned.

APPROVAL: PASSED AND APPROVED this _____ day of _____, 2011, on motion duly made by Commissioner _____, seconded by Commissioner _____, and carried.

LORI S. MONTGOMERY
MAYOR

ATTEST:

MARY B. PENNER, CITY CLERK