

CITY COMMISSION  
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
Tuesday, June 28, 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, June 28, 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, Mayor Pro-tem  
Hon. Steve Green, Commissioner  
Hon. Frances Luna, Commissioner  
Hon. Freddie Torres, Commissioner

Also present:

Ellen Lindsey, Acting 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.

Mayor Montgomery called for the Pledge of Allegiance.

**APPROVAL OF AGENDA:** Mayor Montgomery called for approval of the Agenda.

“Commissioner Green moved to approve the agenda as presented.”

Seconded by Commissioner Luna.  
Motion carried unanimously.

**RESPONSE TO PUBLIC COMMENT:** None.

**COMMENTS FROM THE PUBLIC:** Mr. Gary Salcedo came before the Commission with comments.  
Ms. Yvonne Taylor came before the Commission with comments, and asked for a letter of agreement for the SJOA Capital Outlay for 2012.

Mr. Ron Fenn came before the Commission with comments.

Ms. BethAnn Fenn came before the Commission with comments.

Mr. Bradley Grower came before the Commission with comments.

Commissioner Renfro stated she would like to respond regarding the statements made about the no citations regarding the dog attack, and that she thinks a number of us Commissioners are, and have been very upset about the fact that nothing has been done, however it is my understanding...and I will ask either the City Manager, our Chief of Police or our City Attorney and they can speak up, but it is my understanding that the City was advised by the District Attorney's Office here in town to not take any action until they have completed their investigation.

And she asked our Acting City Manager to contact Mr. Wellborn because I wanted to hear it directly from him in what manner the City issuing citations that could be forth coming to these people would affect the investigation, and to date she has been unable to get a hold of him...she has tried every single day. And so I want people to know that the Commissioners...our hands are tied, and like I said either she can speak up, or the Chief can speak up, or our City Attorney can speak up.

Chief Gallagher – I can tell I did speak to Mr. Clint Wellborn on several occasions...and the most recent was just a week or so ago, and he said the same thing...rather that we not issue any citations to Mr. Hardiman until the conclusion of the investigation.

City Attorney Rubin stated he would like to respond from a comment from Mr. Grower, and that he acknowledges the billing records of the City Attorney are public record, and always available by the City Clerk...I submit them at the end of every month, and I suspect what would be happening here is that I have not submitted by bill yet for the month of June...it's June 28<sup>th</sup>, and a lot of what we've talked about from the last meeting, and June has not been submitted to the City yet, and I will be bringing that down after June 30<sup>th</sup>.

CONSENT  
CALENDAR:

Mayor Montgomery stated they have two items under the Consent Calendar – City Commission Meeting Minutes – Regular – June 14, 2011, & DAIC Monthly Report – May 2011.

Commissioner Green referred to the DAIC Monthly Report, and stated there is a mathematical error...under hours of crisis intervention...that should be \$517.50, and that it should be corrected.

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

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.

BOARD &  
COMMITTEE  
REPORTS:

**Airport Advisory Board – Recommendation – Consider –  
Dedication of Pilot’s Airport Lounge in Memory of Mr.  
Richard (Dick) Woodsum -**

“Commissioner Renfro moved approval of the recommendation –  
The dedication of the Pilot’s Airport Lounge in Memory of Mr.  
Richard (Dick) Woodsum.”

Seconded by Commissioners Torres/Luna.  
Motion carried unanimously.

**Library Advisory Board – Reappointments –**

Acting City Manager Lindsey stated that the Library Advisory  
Board is recommending that we re-appoint Bonnye Warwick, Lois  
Reaver-Black, and Cary “Jagger” Gustin, and indicated that all  
three members have expressed a desire to serve an additional three-  
year term, and that staff recommends the re-appointments of all  
three members.

“Commissioner Renfro moved approval the re-appointments to the  
Library Advisory Board.”

Seconded by Commissioner Luna.  
Motion carried unanimously.

**Lodger’s Tax Advisory Board – Consider Lodger’s Tax Fund  
Allotments for FY 2011/2012 –**

Acting City Manager Lindsey stated this is a recommendation from  
the Lodger’s Tax Advisory Board for allotments for the FY, and  
stated she attended this meeting on May 26<sup>th</sup>, and that she doesn’t  
feel that the Lodger’s Tax Advisory Board was consistent in their  
justification for funding amounts.

She stated she has looked at this several times, and she finds it hard  
to understand some of the allotments...how some of the requests  
put heads on beds which is what the lodger’s tax...which is what  
this money is going for. And stated the advertising for some of the  
requests she felt just didn’t quite meet the criteria that I expected  
for these kinds of requests.

Acting City Manager Lindsey stated she didn’t make major  
changes as she thought she would, and that she has a couple of  
changes that she would like to recommend. On the request for  
H.E.R.O.S., her recommendation is that they only receive \$1,000,  
and stated this is a triathlon that takes place primarily in Elephant  
Butte, and stated they receive funding from other entities, and take  
the \$1732.00, and give \$1,000 to the Golf Course, and indicated all  
of the golf course advertising happens out of town, and the  
remaining \$732.00 to the Veteran’s Memorial Park.

Commissioner Green just a comment, and he would hope that...as  
we move forward that Acting Manager Lindsey work with the  
Lodger’s Tax Board to come up with something that is fair and  
doable so when they have the applicant’s come before them next  
year they can grade them...so many points for this and that...  
tracing accountability, and stated it’s a limited pool, and we have to

make sure that the City gets the biggest return on the \$72,000 investment.

Acting City Manager Lindsey stated she thought that was one of the things lacking was a tracking system, and didn't feel that the board was knowledgeable enough in how their advertising actually put heads on beds, and didn't feel there was a sufficient tracking system in place, and stated she will be working with the board on that.

"Commissioner Green moved for approval of the amended Lodger's Tax Allotments for FY 2011/2012."

Seconded by Commissioner Renfro.

Motion carried.

Commissioner Luna abstained.

PUBLIC HEARINGS: None.

SUMMARY – Police Chief Gallagher came before the Commission and stated he was asked by the City Manager and City Attorney to review the DANGEROUS DOG ORDINANCE: proposed ordinance for dangerous dogs that was submitted.

He stated there are 3 options here...and they can adopt the proposed ordinance that was submitted in its entirety, or adopt some aspects of it, or clarify and enhance the enforcement of the existing ordinance by also including some of the proposed ordinance in it.

Chief Gallagher provided a 6 page review of the proposed ordinance that has highlighted areas in color, and explained the yellow highlighted areas where the proposed ordinance differs from the current ordinance...the green areas that are highlighted are areas of the proposed ordinance where in the proposed ordinance contradicts itself, and in the red area from law enforcement perspective where I think requires further legal review, and stated that the city attorney has been helpful in that regard.

He referred to the first page of the proposed ordinance...the first difference I notice is the definition of potentially dangerous dog...it indicates a dog that inflicts a bite on a person, and that our current ordinance and state ordinance requires the bite to be of a serious injury, and they define serious injury as broken bones or a wound requiring sutures...so that's the first difference, and stated in addition what's been added is a section indicating public or private property...that does not exist in the current ordinance.

Part (c)...it also adds another definition to potentially dangerous dog where it says...is known or should reasonably have been known by its owner to have aggressively bitten, attacked, or endangered the safety of humans or domestic animals. And stated that is not in our current ordinance.

Section (2)...the definition of dangerous dog...again public or private property is highlighted because it's not in our current ordinance, and from c-i is added, and stated that is not currently in our existing ordinance for dangerous dogs, and he wanted them to

look at those. He referred to (e)...has harassed, tormented or caused concern, and thinks that should be more defined in a legal manner, and thinks that is vague, and the same for (f)...demonstrated a propensity, tendency or disposition...again vague terms without a legal definition included, and in (i) its definition includes a dog found to be a vicious dog under state law, and that he has looked, and the city attorney has looked, and stated they cannot really find a definition of a vicious dog under state law, and that is something that needs to be considered.

And referred to the bottom of the page...another difference is about a presumption of a dog having been permitted or allowed to run at large...and including that in the definition of dangerous dog, and stated that does not currently exist in the current ordinance.

Page 2 - #4...the definition of restraint differs from our current ordinance in section 3-31 of our current ordinance has specific lengths of restraint...25' leash...12' leash depending if he is on or off the owners property, and stated this does not have that...so that is another difference that you need to consider.

#5 is in green, and stated that is the first contradiction that I mentioned...it talks about the proper enclosure...it's not necessarily contradiction more than an omission, and #5 talks about the proper enclosure of a dangerous dog law, and a couple of pages later it talks about another proper enclosure which includes a minimum height of 8', and #5 does not include that minimum height...so it's probably just a matter of something that was cut and pasted, and not included in both definitions.

#8 & 15 are the other contradictions, and again it is two different definitions which could be easily fixed...it's the definition of an owner, and stated #15 is more like our current definition which includes what if somebody is under 18, and the ownership is kind of given to the parent or person who is legally responsible, and #8 fails to do that.

#12...definition of kennel, and that the current definition...specification that a kennel has to have 8 or more dogs or cats...again just another small difference that I noticed...as in #17...definition of pet...and in this statute differs from our current one because the current one is more inclusive including every type of pet, and this section just talks about domesticated animal, and that the City Ordinance is much more specific...turtle, fish, rodents...just another difference.

The definition of dangerous dog, and here is where I come into my first legal issue...it talks about seizure of a dangerous or potentially dangerous dog by the animal control authorities. And that in the proposed ordinance it gives the animal control authority the power to do it on their own...my read of the current State Statute, and the City Ordinance both require a court order to do this...so I'm not certain if that's something that power can be bestowed upon an animal control officer...that's something that the city attorney is looking into. In #2 it talks about dangerous dogs...it talks about prior to the authority issuing its final determination...the issue is what authority...is it going to be animal control officer, or is it going to be the court.

Also highlighted is a couple of differences of about how many days, and that is something I recommend that you get the court involved. On the bottom of the page it talks about the owner may appeal the authorities final determination that the dog is dangerous to the city commission...which an appeal should be in accordance with the provisions herein, and the pursuant to the procedures of the City Code, and stated currently...so basically what that is saying if somebody disagrees with the courts determination that a dog is dangerous they would appeal it to the commission...where the current State Statute, and the current City Ordinance have it all taken care of within the court system...so that's another difference in something they need to decide upon. And indicated the rest of that page is differences and nothing major.

Next page talks about...once a dog is declared dangerous or potentially dangerous certain requirements that the owner of the dog should comply with, and the two of them that I wonder about are number one is that the requirement that the owner of the dog have a surety bond in the amount of \$250,000 in order to have that dangerous dog registered, and it also indicates that the animal control officers will be responsible for determining the validity of that surety bond, and I don't know if that's something that the commission would like to impose upon the residents of T or C, and I'm not certain that the animal control authorities are or might have the capacity to determine the acceptability of a surety bond.

The same thing with the one underneath with the issue regards to the having \$250,000 of liability insurance, again do you want to place that additional restrictions on the dog owners, and again I'm not certain if animal control is the right people to determine the acceptability of such a document. And stated what is also missing from the requirement here I'm not sure if it is just an oversight in our current ordinance...if you're gonna register a dangerous dog you also have to ensure that he is properly licensed and vaccinated...that's missing from the proposed ordinance.

Another difference is to register a dangerous or potential dangerous dog is the fee required currently in our city ordinance calls for \$100.00 fee...the proposed ordinance calls for a \$200.00 fee.

The next issue is a legal issue which is something that needs to be clarified where it talks about every owner of a dangerous dog shall allow inspection of a required enclosure by the animal control authority immediately upon request...again I'm not certain that this is the power that can bestowed upon animal control officers to meet...to go upon somebody's private property without notice just to inspect that...perhaps it can it's...the interpretation of the city attorney to come in handy. And a couple of things that were left out of the proposed ordinance that are in the current ordinance...the current ordinance allows a dangerous dog designation to be revoked after three years of no problems...the proposed ordinance does not allow that...the proposed ordinance does not have requirements to notify the animal control authorities regarding the definition of a dangerous dog...the current ordinance does...the proposed ordinance does not have any allowance on how to transport a dangerous dog to make sure that the dog does not get out of a car and does not escape...there both clear that the dog should not be leaving the premise except for medical reasons, but there should be some provision as far if the dog does have to go to

the Vet...having to secure the dog in the vehicle to make sure the dog does not get out.

Chief Gallagher stated those are the main issues, and that he would like to return to the executive summary regarding the court, and that the proposed ordinance does not indicate court involvement while the State Statute does and the city ordinance does, and indicated this is something that the city attorney can chime in on because there is a contradiction where the State Statute says a court...in order to seize or declare a dog dangerous or potentially dangerous and seize it...it requires an order from a court of competent jurisdiction. And the City Ordinance reads...it requires the District Court to do so...and that in there lies a problem, and Jay do you have any comment on the differences between the two of them.

City Attorney Rubin stated the theory is they are talking about someone's dog...you're talking about civic action...you're talking about taking someone's property...that's the interpretation, and the question whether Municipal Court has the jurisdiction to do that, and that's why the ordinance says...District Court opposed to Municipal Court.

Chief Gallagher stated he made some calls and he did speak to a representative from the Supreme Court Law Library, and it was their interpretation of the State Statute that our Municipal Court would qualify as a court of competent jurisdiction in order to allow that to happen.

City Attorney Rubin stated that could be true and I'm actually giving you what I was told by the NMML, and stated it actually hasn't been challenged in court.

Chief Gallagher stated that is one issue...Muni Court or District Court, and that is one issue that should be clarified. And the other one is to possibly revoke or amend our current Vicious Animal Ordinance, and stated there is a Vicious Animal Ordinance, and a Dangerous Dog Ordinance, and stated mostly they are using the Vicious Animal Ordinance...mostly because the court of competent jurisdiction has been declared to be the District Court as ACO Officer's cannot, and do not file in District Court, and have been using the Vicious Animal Statute because they can deal with Municipal Court easier, and stated that is something I think you should consider, and if you decide to go with the Dangerous Dog Ordinance, and take part of the proposed ordinance is to consider using Municipal Court because it is a lot easier for the ACO Officer's to deal with.

And stated the other issue is the mechanism to register dangerous dogs if you decide you want to continue to allow people in the city to have dangerous dogs, but going to require them to be registered in the ordinance there needs to be a mechanism put in to place for that as far as who would be responsible for issuing these licenses... the fees and things like that.

Commissioner Torres – Why would anybody want a dangerous dog?

Chief Gallagher – That's a great question, and that is why you are

in this position...it's a tough position, and that you have to decide if you're going to...an example...I reached out to ACO authorities in Santa Fe, and stated what they did...they did not adopt the Dangerous Dog Ordinance as we did back in 2005...they changed...they have two definitions...there is a dangerous dog and there is a vicious dog, and in Santa Fe the dangerous dog is the lower type of classification, and stated if that dog happens to bite anybody...any type of a bite or approaches a person, and that person is required to take a defensive action from that dog by the Municipal Court can be declared dangerous.

And stated if that dog happens to bite somebody and cause a serious injury he is automatically declared vicious he is destroyed...there is no registration provisions...so that is an option that I think you should consider...do you want to allow people to harbor and license with the city's approval these dangerous dogs within the city or simply with court approval and court backing, and the court declares the dog such a vicious animal either destroy the dog or prove that the dog has been removed from town, and that is another issue I wanted to bring up.

He stated one of the other things that has to be addressed, and that it has to do with ACO authority, and what they can and can't do, and stated this is where I hear a lot of complaints about animal control is...a dog running at large, and the officer showed up and chased the dog home, but the problem is now that animal control does not have the authority to enter upon private property to seize that dog, and indicated Santa Fe wrote into their code that animal control does have that authority to enter upon private property...not your residence but your yard to seize the dog, and stating what is happening the dog is in their yard, and citing the owner or filing a criminal complaint, so this is another thing I suggest you consider is writing that into the ordinance...giving them the authority to enter upon private property to do that.

Chief Gallagher stated one other thing they had is voice command does not equal restraint, and he thinks that should be included in the ordinance...that is not restrained, and just a suggestion on his part. And stated Santa Fe worked on this for a while, and worked on it with a public safety committee, people from the community, law enforcement, animal control, animal activist, concerned citizens, and stated that is his recommendation, and the commission having a workshop in getting additional community input to see what the residents want, and thinks the simpler the better as far as from law enforcement perspective.

City Attorney Rubin stated recently he was willing to advise to you very careful in considering a vast modification of our ordinance, and stated the reason why is because the dangerous dog ordinance we currently have is basically the mere image of the State Statute 77-A-1-1, and that our ordinance that we have was patterned after the model ordinance that was sent to us by the NMML. And so my gut reaction is I really didn't want us to deviate from the uniform system clause that is basically promulgated throughout the State, and in addition to that we already...in addition to the dangerous dog ordinance we have a separate ordinance regarding vicious dogs which gives the animal control officer on how to proceed.

And stated this morning however things changed for me in my

thinking, and he called Randy Van Vleck from the NMML, and told him that we had this on the agenda tonight to consider a workshop, and he indicated a workshop would be wonderful, and if you get the community involved to discuss and hash out the separate issues, and to see what is best for the community, and he stated he would welcome an invitation to come down if they would like to do that, and asked him when it would be convenient for him, and indicated he could try and get away the next couple of weeks, and committing the last week of July or the first week of August, and thinks a workshop would be appropriate.

Commissioner Luna stated she does not want to delay this anymore, and thinks we need to do this right, and that we need to have a workshop and review what we have now...what works what doesn't work, and bring the court in like a panel, and that the chief has a lot of good comments from Santa Fe, and at the end of the workshop we can have a document we can approve.

Commissioner Renfro stated she agrees.

Commissioner Green stated he might want to speak with Randy Van Vleck and tell him this has been going on for a period of time, and the fact that the community doesn't sense that we're trying to move this rock up the hill as best we can...that maybe he can make an exception and come down within the next 2 weeks so we don't have to wait another month.

City Attorney Rubin stated fair enough...is there a day next week that we might try and do.

Mayor Montgomery stated she thinks they go forward with this. So what day next week? Wednesday, July 6<sup>th</sup> at 6:00 P. M.

City Attorney Rubin asked if they were going to allow public comment.

Mayor Montgomery stated I think we need to have all the documents available for the public in advance, and have them take a look at it, and then open it up for public comment, and then tweak it out.

Commissioner Green stated he would like to suggest that the paperwork be available to the public sometime this week.

#### REPORTS:

#### **ACTING CITY MANAGER –**

Acting Manager Lindsey reported she has an update from Leonard from Sanitation, and that he has emergency hires, and stated he has been rotating them around working them with the brush truck, and at the landfill, and where to use that manpower. She stated they have been working hard at the landfill, and that Leonard stated that all his crew has volunteered to work on Monday July 4<sup>th</sup>.

She stated they will be picking up cardboard, and that the wood chipping truck has been out twice a week, and on the Hub 'N' Spoke Grant that the new bailer will be delivered on July 13<sup>th</sup>, and

should be operating by July 18<sup>th</sup>, and that Leonard has been working hard to get the platform, and the electric service put together for that.

Acting Manager Lindsey stated she spoke with the County Manager about a prisoner work release program out at the landfill, and indicated that she was receptive to that, and that Leonard will work with the jail administrator.

She stated our pool work release prisoners will not be very great, and it will probably be one person at a time, and they require us to provide transportation to and from, and have eyes on supervision at all times, and stated Leonard was very receptive trying that, and that they will get that going in the next couple of weeks.

Acting City Manager Lindsey stated we were supposed to close with Hot Springs Land Development last Friday, and indicated there was an issue with some funding so we postponed it, and that City Attorney Rubin was talking with Ms. Lynn Whitehead this week and hopefully will have that put in place this Friday.

**CITY ATTORNEY** – No report.

**COMMISSIONERS** –

Commissioner Luna – No report.

Commissioner Green stated he wanted to register his dog, and took in the collar and not the paperwork, and stated he called Dr. Cardwell's office, and thinks since we are dealing with canines that it might be interesting to put this on our next agenda, and indicated we have less than 100 dogs that have permits, and that now they have rabies that last for 3 years, and that Dr. Cardwell sees over 5,000 animals, and as best as they can figure amount 60-70% are vaccinations and inoculations, and so we might decide on how we can better enforce...I don't think it's the public that's trying to save the \$5.00 bill...I just don't think they know, and I think that's encumbered upon us...because I think it is also a safety issue, and that's what we're really talking about, and not so much a revenue stream, but if they grab a dog that has done some damage to a human being or another animal...they don't know who it belongs to, so therefore I think it's important that we come up with some way that makes sense to get that information out to the community.

He stated he know they discussed this maybe last year or the year before about smoking in city owned vehicles, and indicated he saw a couple of people smoking in some of the city vehicles, and that he read an article about smoking, and that 75% of the public doesn't smoke, 25% smoke...and 2<sup>nd</sup> hand smoke does kill people, and he would like to put that on the agenda to discuss that for support, and come up with some type of ordinance to prevent smoking in city owned vehicles.

Commissioner Torres – No report.

Commissioner Renfro – No report, but I was going to ask the City Clerk and at one time the city took action allowing Dr. Cardwell to sell dog tags, and stated that would be the ideal place.

City Clerk Penner stated we used to do it, and thinks it was the animal shelter that decided they didn't want to do it anymore.

Acting Manager Lindsey stated she doesn't remember what the chain of events was on that, and indicated she does have an appointment with Dr. Cardwell on Thursday, and that she will bring this up.

EXECUTIVE SESSION: "Commissioner Green moved that the meeting be closed for Executive Session – Personnel 10-15-1H(2), 1. Personnel – Unemployment Benefits - Former City Manager, Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), 1. T or C Business Park located on S. Bdwy."

Seconded by Commissioner Luna.

Mayor 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 MEETING: "Mayor Montgomery stated that the Commission was now in Open Session."

CERTIFICATION "Commission Green certified that only matters pertaining to Personnel 10-15-1H(2), 1. Unemployment Benefits – Former City Manager, and Purchase, Acquisition or Disposal of Real Property or Water Rights 10-15-1H(8), 1. T or C Business Park located on S. Bdwy., was discussed in Executive Session, and discussion ensued, and no vote was taken."

Seconded by Commissioner Luna.

Motion carried unanimously.

"Commissioner Green stated on the unemployment benefits to advise staff to respond to the request for said benefits."

Seconded by Commissioner Luna.

Motion carried unanimously.

"Commissioner Renfro moved to direct the City Attorney and the City Manager to talk to the entities interested in the business park and bring back additional information to the Commission."

Seconded by Commissioner Green.

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.

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LORI S. MONTGOMERY  
MAYOR

ATTEST:

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MARY PENNER  
CITY CLERK