

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, July 26, 2011

WORKSHOP

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 a Workshop Session in full conformity with the law and ordinances of said Commission in the Commission Chambers of said City, on Tuesday, July 26, 2011 at 5:00 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.

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 – Arrived at 5:15 P.M.

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.

Mayor Montgomery stated the purpose of the Workshop is to discuss the Final budget for FY 2011/2012.

Mr. Juan Fuentes, Finance Director presented the Quarterly Financial Report to the Commission, and went through Final Budget for Fiscal Year 2011-12, and went through the summary of changes in the different funds, and for the Commission to consider a 3% cost of living adjustment for non-probationary employees except Public Safety. (Complete copy available at the Clerk's Office.)

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, July 26, 2011 at 6:00 P. M.

PRESIDING The meeting was called to order by Mayor Montgomery who

OFFICER: presided and Mary B. Penner, City Clerk acted as Secretary of the meeting.

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

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, and indicated they have one correction this evening, and that they will be removing H-6...appointment of SVHGB, and stated that has been postponed until the August meeting.

“Commissioner Green moved approval of the amended agenda.”

Seconded by Commissioner Luna.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: Acting City Manager Lindsey stated at previous meetings Mr. Grower has expressed concerns about access to TV for T or C, and stated she has discussed this with the City Attorney and with John Kauffman from TV for T or C, and that they believe access is granted through the cable television channel and through submission of DVD's.

COMMENTS FROM THE PUBLIC: Mr. John Mulcahy Executive Director with SCEDO came before the Commission with comments.

Mr. Cary “Jagger” Gustin came before the Commission with comments.

Mr. Ronald Fenn came before the Commission and read a prepared statement, and provided information for the record.

Ms. January Roberts came before the Commission with comments.

Ms. Deborah Toomey came before the Commission with comments, and provided information for the record.

Ms. Sophia Peron came before the Commission with comments, and provided information for the record.

Mr. Bradley Grower came before the Commission with comments.

CONSENT CALENDAR: Mayor Montgomery stated they have two items under the Consent Calendar – City Commission Meeting Minutes – Workshop – July 6, 2011 & Regular – July 12, 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.

BOARD & COMMITTEE REPORTS: None.

PUBLIC HEARINGS: None.

NEW WEBSITE – PROMOTING FILM: Mr. Cary “Jagger” Gustin Film Liaison for the State Film Office came before the Commission to present his film report. He reported that the NM Film Office has a new director.

He stated he recently attended the Annual Liaison meeting in Albuquerque, and also toured the massive Albuquerque Studios facility.

Mr. Gustin stated that the NM incentive package to film companies has changed under much wrangling in Santa Fe, and that currently a production can get up to 25% tax credit on allowed expenses with a cap. And stated the web site lists the exact amounts and latest parameters, and indicated he has included some printed information in their packets from the Santa Fe New Mexican paper that cover details.

He stated he recently had a request from Ms. Mary Eilts from Shooting Star Media and Last Shot Films...a British Columbia Studio requested pictures and information about Elephant Butte Lake as well as Cibola National Forest.

Mr. Gustin stated the best news tonight is that they have a new website promoting Film here in the city and county, and indicated it is www.filmsierracounty.com, and that it is user friendly with tons of information, and that it is cutting edge and that other areas would be envious of how effective it will be for us. And he would like to thank Jon Mulcahy for his hard work, and presented a short power point demonstration.

RESOLUTION #03-11/12 – FINAL BUDGET for FY 11/12: Acting Manager Lindsey stated they had a workshop earlier, and that this resolution allows them to adopt the changes that were made, and indicated Mr. Fuentes is here and they will stand for any questions.

Mayor Montgomery stated she would remind the Commission if they are so inclined to do the 3% COLA adjustment for staff and non-probationary employees that they need to include that in the motion.

“Commissioner Renfro moved they go ahead with the 3% increase for the city employees, and adoption of Resolution #03-11/12.”

Seconded by Commissioners Green/Luna/Torres.
Motion carried unanimously.

CONTRACT –
DIRECTOR OF
TOURISM:

Acting Manager Lindsey stated this is the contract between Sierra County and Dianne Preisser for Director of Tourism. And stated the City is a party to this contract through funding of the salary, and that they budgeted \$25,300 under Lodger's Tax Professional Services which is slightly less than our actual expenditure for last year.

She stated when she was discussing this with City Attorney Rubin they had a little bit of a concern with #18 – Appropriations, and stated while the City contributes to the salary...we don't really have any say if they disagree with how the tourism director is promoting the city, and stated there was some wording they went through, and that they were going to add in there...if any entity of the aforesaid do not contribute it shall not constitute a breach of contract by that entity...in that regard it is understood that these other entities are not parties to the contract.

City Attorney Rubin stated he was concerned and going to paragraph 2-B...it contemplates us giving compensation in an undisclosed/unspecified amount, and then here we are we're saying that, and then we are signature to this contract, but we're not a party to this contract...we're kinda in a strange position with this, and that he wants to make it clear that if we decide we are not going to expend any money...we're not a breach to the contract...we're not a party to the contract, and therefore we have some leeway here...if that makes any sense.

He referred to paragraph 2-B...Compensation is subject to contributions from Sierra County, City of Elephant butte, the Village of Williamsburg, and the City of Truth or Consequences... it doesn't say anything about how much...then the concern is we're signing this contract...an unspecified amount, and we're not a party to this contract...we're not if you look at a contract between...we really don't have a say so about how this contract is supposed to be operated...so that was my concern, and that he wants to have a couple of sentences in there that if you decide you're not happy with the way the contract is being performed then you with hold payment under paragraph 18...and then that would not be a breach.

Commissioner Renfro – And what about the amount that we're gonna be contributing towards the salary or whatever...do we know what amount that is.

Acting Manger Lindsey stated the amount of \$2,675 is what the tourism director is paid monthly through the contributions from all the entities, and stated the city contributes \$25,275.00 annually which is actually 78% of her annual salary, and our concern is we really don't have any say on what she does.

City Attorney Rubin stated the contract between the County of Sierra and Dianne Preisser Director of Tourism...we're not even a party to the contract, and yet we're expected to expend these monies, and if something goes wrong...we don't like how the contract is being employed...where does that leave us, so that is

why I want to have some language in there that if we decide not to spend the money...we're not going to be held in breach of contract.

Commissioner Renfro – I think the amount should be in there...the amount that we contribute.

Mayor Montgomery – Each entity should be outlined what they are paying or percentage wise of what the total is.

Commissioner Renfro – And then definitely like I said if the City is not happy with the way it is being done or whatever...the City should be able to withhold payment.

Commissioner Green – Stated and you do have a City Commissioner that sits on that board, and the City Manager sits on that board as well so there are two vocal people who are looking out for the interest of Truth or Consequences, and I agree with you 100% Commissioner Renfro since we bear the lion's share of the revenue we should perceive the lion's share of the desserts.

Commissioner Renfro – Stated there isn't a signature for the attorney...it doesn't even allow for it.

Commissioner Luna – Would it not be more appropriate for us to have the contract because the County is only paying for travel expenses limited to \$2,500 annually...which is 10% of what we pay annually...so why isn't the contract with us, and we oversee this.

Commissioner Green – Stated he thinks we didn't want to be the fiscal agent because there was a situation of a contractor versus employee, and internal revenue came in at that particular time since the City was giving Gina Kelly at the time a desk in a city owned building that they claimed she wasn't a contractor that she was actually an employee...that we had control over her, and I think this is why when Mr. Weiser was here shunned this off to the County so we don't have to deal with any tax implications that way.

Mayor Montgomery – And I think it was also because it is Sierra County Tourism Board...not the City of T or C Tourism Board... and we talked about that previously too. She stated I think we need to send it back to them with your suggestions, and I think everybody's contribution needs to be lined out in the contract, and with that percent of what that contribution is.

“Commissioner Renfro moved to send this back with the suggested language and the contributions be lined out from each entity.”

Seconded by Commissioners Torres/Luna.
Motion carried unanimously.

RESOLUTION
#04-11/12:

Acting Manager Lindsey stated in this resolution pursuant to Section 4-453...a fee shall be assessed also pursuant to that the City Manager may waive up to 90% of fees upon appeal, and then the ordinance talks about a hardship...the remaining fee that is not waived by the City Manager maybe paid in monthly installments to be assessed through the utility billing system, and in Section 4-453 it does call for 2 years, and I would recommend that we put in

number 3 that it is assessed with the utility billing system over a 2 year period so there is a definite period of time that those remaining fees need to be repaid.

And stated the resolution shall be in effect for 3 years, and the City Manager shall provide an annual review to the City Commission.

Commissioner Green stated a lot of these points were said by people who took advantage of the 3 minute public comment, and stated our infrastructure is fragile and out dated, and in need of major repairs and improvements. He stated these fees go towards maintenance and upgrade of our ailing infrastructure.

He referred to the \$150.00 per fixture unit, and if someone puts up a million dollar complex with 10 units which averages \$1,500.00 per unit...\$15,000.00 on a million dollar project...it's 1 ½% of the total cost...better in our pocket than theirs. If someone is coming in possibly a 60 unit hotel...twenty two million seven hundred thousand dollars projected cost...if you work this thing out at \$1,500 per room rental unit...60 units...\$90,000.00 3.4% of total cost, and I don't believe in a downed economy, and with our ailing infrastructure, and Jesus who is in charge of our wastewater treatment plant talking about we have a facility that is 10 years over-due for upgrades that we can afford to give away a dime, however with that said I want to make sure that developers and builders feel comfortable in spending their dollars in our community...I want them to know that we are pro-business...that we are not a new community...we are an old community, and this money will go to give them the infrastructure that they need to be a successful developer...I would like to suggest that we take #2 and drop it, and leave #3, #4, and #1 as it is.

Commissioner Green stated he believes the City Manager should have a little bit of wiggle room to use where someone is coming in, and it is a little financial hardship...whatever it might be that they can say okay 50% now, and the 50% we'll take over 24 months... so we have some type of mechanism in place where we can encourage new business...new construction...work with them, but not give away the ranch.

City Attorney Rubin and asked don't we already have an ordinance giving the City Manager authority to waive the fees...I thought the ordinance in 2007 already specified you could do this.

Acting Manager Lindsey – It does. Yes...yes we do.

City Attorney Rubin – So I'm not sure why we need a resolution if the ordinance already spells it out.

City Attorney Rubin – Ordinance #571, but I'm not sure of the codification, and what is interesting I was asking whether we even had the authority to do this, and was thinking about some of the comments that were made. And stated there is a State Statute that does allow a municipality to reduce fees provided it is in accordance with your appropriate planning documents, and that the ordinance that was passed in 2007 went through the whole process of considering the recommendation from the Capital Improvement Advisory Committee, and stated there was testimony that was presented from staff and the public, and then this ordinance was

drafted which does have an appeal provision for someone to ask for reduction in fees.

Acting Manager Lindsey – Stated it is this Section 4-453.

Commissioner Green – And if I remember correctly that particular section doesn't have the language that says the City Manager may waive up to 90% of fees upon appeal.

Acting Manager Lindsey – It does not.

Commissioner Green – That is the new language that is being considered.

Mayor Montgomery – Stated I don't think it should be on the impact fees...in my opinion I don't think the discretion should be on the impact fees. And stated the impact fees were put into place because we had a need. She stated she thinks as discussion they've had before is that the City should look at other incentives to provide for businesses but not when they are related to expanding or correcting our infrastructure.

Commissioner Luna stated in talking to the realtors, builders, developers right now all of the desires in Elephant Buttes is because they don't have anything, and so right now we're not collecting a dime because we have them, and I would rather collect \$15.00 than zero dollars, or if we set it at 50% I think something that says yes we are business friendly...we are in a hard time we want to help people come to T or C...we want to help you build, and I don't think we should waive it all.

She stated we need to do what we can to bring development and business into T or C, and that you don't want to shoot yourself in the foot but it's the double edge sword...do you leave the rates the way they are...and we get no business...or do you negotiate the rates and have business come in, and I'm sorry I think Sierra County needs job and new money, and it needs growth. And it mentions to provide an annual review...so if in a year from now things are better and we can lift it...I think we do it, but I think right now there is no new development.

Commissioner Torres – Then really we're not losing nothing.

Commissioner Luna – No we're not losing...and we're not gaining.

Mayor Montgomery – Except for those individuals that have had to pay it.

Commissioner Luna – Well I'm sorry if I go and buy a TV today, and it goes on sale tomorrow...I am out of luck.

Mayor Montgomery – I agree with you but we're talking about something a little bit bigger than a TV what I'm saying is that...I don't know how we can compare a sewer system to buying a TV... it is something everybody has to pay for and it should be shared across the board...not just to certain individuals.

She stated there should be a review of the fees of how much we are charging for the impact fees, and possibly that is a starting point,

SMOKING –
CITY
VEHICLES”

but then I think we also need to look at other incentive packages that businesses could be offered to entice them to come to T or C, and not Elephant Butte.

Commissioner Green stated he would like to suggest putting together things that economic development...that the manager has to work with developers and do a workshop, and since we have something in the books right now, and if a developer comes in... can we spread out the payments to make it easier...that mechanism is in place right now so the manger would be good to go, and would like to table this and put this in conjunction with that workshop.

Mayor Montgomery stated she thinks there are a lot of options out there that they can offer individuals that are either building homes or building businesses, and we need to look at package deals for those individuals based on how many employees they have, and take those into consideration.

Commissioner Green referred to the current ordinance Section 8-150 – Prohibition of smoking in City-owned buildings, and stated he would like to see that amended to read...and add **vehicles**, and the supporting documentation to that is...it is obvious...if we pass this not to have in a city-owned building...why would we allow someone to drive a vehicle after someone has smoked...and they don't have a choice because that's their vehicle...whether it be a patrol car or a piece of equipment, and reported some facts.

Commissioner Torres – How many complaints have we had from other employees.

Acting Manager Lindsey – Mr. McDonald from the service center.

Commissioner Renfro – He's the one that has always...he complained once before...I guess his complaint is...when the vehicles go in. I don't know he/himself does that much work on the vehicles...but that was his complaint was that the vehicles stunk or whatever when they went in for repairs.

She stated she is against taking that right away from the employees...and I think...there is a difference. In the buildings we have the public going in...in the vehicles...it's the city employees...if anything leave it up to the department heads, and does not think it is a big problem to her.

Commissioner Torres – Stated he is a non-smoker, and is in the liquor business, and I think taking away from a city employee...too many rules and regulations...too much government in your business, and I don't feel like we need to tell them not to smoke. And I think Commissioner Renfro is right, and I think it ought to be up to the department head, and I'm not for taking something away from them.

Commissioner Renfro – And if you all pass it what kind of punishment are you going to want brought down on the employee if somebody is caught smoking in a vehicle.

Commissioner Green – What is the punishment now.

Mayor Montgomery – Probably progressive discipline I would

assume...so it would be the same.

And stated I will repeat the same thing I repeated when I brought this up several years ago...when the State adopted the Dee Johnson Clean Air Act and they went to...and this is where you have the not smoking within 50 feet of a doorway or any place the public has to go through to get to some place my contentions years ago was that these vehicles belong to the public...they are not ours...they are not mine...they are not the city employees...they belong to the public...the public paid for them, and therefore I feel as I did before that there should not be any smoking in anything that belongs to the citizens...buildings, vehicles, carts whatever you want to call it, and indicated it is the same thing the State adopted years, and years ago, and the discipline policy is such...if you don't comply and you are caught you lose your right to drive that vehicle, and stated that is the policy that I adopted at the Veterans Home.

Commissioner Luna – And I agree that I don't think they should... the building...you're punishing the people who work in the buildings by making them go outside to smoke, and giving the people who drive cars or vehicles all day a luxury that the office staff doesn't have, and I saw 2 sanitation drivers sitting at Fast Stop smoking during a break...so I'm sure they get a break, and I think if they take their break...I think they can have their cigarette during that break...and they need to work they don't need to be smoking a cigarette, and I'm not a smoker and never been a smoker...it's gross.

Commissioner Torres - It's the same thing as smokeless tobacco... you talk about gross.

Commissioner Renfro – I'd just kinda leave it up to the department heads...and then they could, and I think if they had a problem if somebody...and that they don't like the smoke I think the department head could address it and take care of it.

Mayor Montgomery – I'm afraid that you're picking and choosing who will and who won't...and that's not fair either.

Commissioner Luna – And that's my fear because somebody could file a complaint, and think if you make it straight across the board, and it is government owned property. And stated the office staff shouldn't be punished while the people who drive the cars all day aren't.

“Commissioner Green moved that Section 8-150 be amended to read...Prohibition of smoking in City-owned buildings and vehicles.”

Seconded by Commissioner Luna.

All in favor – Aye, Commissioner Luna,
Green/Mayor Montgomery

Opposed – Commissioners Torres/Renfro.

Motion carried.

OLD BUSINESS: Consider amending and/or repealing numerous Animal Control Ordinances –

Section 3-3. Definitions -

Acting Manager Lindsey stated they adjusted the definition of a **Kennel**, and that they brought the number of dogs down, and stated there was a discrepancy between 4 & 8, and brought the number down to 5 or more dogs, and /or 5 or more cats.

City Attorney Rubin stated it is the same exact definition we just changed 8 to 5.

Acting Manager Lindsay stated on the **Nuisance** definition we are recommending repealing that.

Mayor Montgomery stated she liked Ms. Robert's comments about notifying the neighbors if a kennel is...in a home someplace I think that is very justifiable.

City Attorney Rubin stated however I would not put that in this section...this is only definitions. I would put that where they talk about harboring pets.

Acting Manager Lindsey stated in the definitions we have a definition of nuisance and also a definition of public nuisance so we are recommending repealing the nuisance definition...changing public nuisance.

City Attorney Rubin stated the nuisance definition is already contained in public nuisance so you don't need it twice, so that is why we thought we could repeal nuisance, and stated public nuisance in the old ordinance you have 1-6, and we felt that 1 & 2 would be necessary because actually that would be included...we already have that covered in the vicious animal definition. And stated they can take out #1 & 2, and move 3-6 up to 1-4.

Commissioner Green referred to **public nuisance**...where an animal owner fails to prevent its animal from defecation, and stated no one is going to stop their dog from doing what it wants to do, and suggest how about picking up after the animal...and its responsibility of the owner, and thinks they should hold the owner of the dog responsible. and not the dog responsible.

City Attorney Rubin stated this is the definition section, and that later on in the ordinance and the last one is **public nuisance**, and they are talking about someone who violates the definition.

Commissioner Luna – Couldn't you change it to **public nuisance** means where an owner fails to clean up after its animal from defecation...and stated its possible to prevent, but it is not possible to clean up, and just say clean-up, and move the word prevent before disturbing the peace.

Mayor Montgomery – I don't understand why we don't leave the original definition because all it does is defining what **public nuisance** is. So nuisance is defecation, disturbing the peace, emitting noxious odors or otherwise endangering or offending the well-being of the inhabitants of the City...and just leave that alone, and then change the other in the appropriate section about cleaning up after.

City Attorney Rubin – Actually you bring up a point, and stated this is the old definition, and the old definition doesn't say that is actually...that we're talking about animals here...it should say **public nuisance** means worthy where an animal is not limited to animals defecating, urinating and so forth. And so the word animal should be inserted...animal's defecation, urination, etc.

Mayor Montgomery – So everything should be ing instead of...so animal defecating, urinating, disturbing the peace, noxious odors or otherwise.

Acting Manager Lindsey – So then 1, 2, 3, & 4 would stay the same. And all other definitions in this section would remain the same.

City Attorney Rubin stated if they want to take these one at a time, and if they are satisfied with what they talked about. And with people listening in, and indicated this is not the final hearing, and stated what they are doing tonight the Commission would vote to go to publication on these, and I think I need a separate motion for each one when you discuss them.

“Commissioner Luna moved approval amending by revising Section 3.3 definitions, and with the changes that were made.”

Seconded by Commissioner Green.
Motion carried unanimously.

Section 3-8.1 Harboring of Pets –

Acting Manager Lindsey stated this covers **kennel permits**, and in (b) they inserted if the said person obtains a **kennel** permit, and where it says special permit that they changed it to **kennel permit**.

City Attorney Rubin stated that they increased the fees.

Commissioner Luna stated if their workshop they discussed that they were a licensed business, and does not see that in here, and stated they need to add the variance to this.

Acting Manager Lindsey – So it must be a licensed business and before they put in the **pen** they need to notify the neighbors that they are doing that.

City Attorney Rubin – So that would be a special use permit.

Commissioner Renfro – And I thought we were going to say...limit that to dogs...it says more than 4 pets...it doesn't just say dogs...in any combination of pets.

City Manager Lindsey – So do you want that to be more specific in the definition?

City Attorney Rubin – So we're talking about...a special use permit, and dogs or cats.

Mayor Montgomery – So let me recap that...so you want it to say what...no more than 4 dogs, and no more than 4 cats.

City Attorney Rubin – And I’m thinking since they already defined kennel...being dogs and/or cats that they should probably be consistent here and say more than 4 dogs and/or cats.

Mayor Montgomery – So we’re adding a special use permit required, and prior notification of the neighbors which would come with a special use permit.

Commissioner Luna – Jay you said 4 or more dogs and/or cats... but isn’t that...that’s not the total...you’re just saying you can have 4 dogs and 4 cats...not...say dogs or cats in any combination.

Mayor Montgomery – So it’s just a total...they can only have 4 animals.

Acting Manager Lindsey – They can only have 4 animals in any combination.

Commissioner Luna –But I think that someone is going to take that, and say no...it means I can have 8.

City Attorney Rubin – Yea I agree...so I think in any combination is a good phrase to put in there, and should probably say that in the **kennel** definition also.

“Commissioner Luna moved approval amending by revising Section 3-8.1 Harboring of Pets as amended.”

Seconded by Commissioner Green.

Mayor Montgomery stated also amended the **kennel** definitions to reflect the same language as 3-8.1.

“Commissioner Luna moved approval amending by revising Section 3-8.1 Harboring of Pets as amended, and to amend the **kennel** definition to reflect the same language as 3-8.1.”

Seconded by Commissioner Green.
Motion carried unanimously.

Section 3-8.2 – “Spaying and Neutering of Dogs and Cats.” –

Acting Manager Lindsey stated in section (a) It shall be the responsibility of the person obtaining an adult dog or cat from the Animal Control Center to have the dog or cat spayed or neutered prior to receiving the animal.

She stated Ms. Robert’s had a recommendation on that one.

Commissioner Luna stated can they add the word **financial**...it shall be the **financial responsibility** of the person obtaining...

Commissioner Green stated just to play the devil’s advocate...what happens if someone goes into the shelter...adopts an animal but has their own Vet, and wants to take the animal out of the premise to be spayed or neutered...according to this right now they couldn’t do that because it has to be spayed or neutered prior to receiving the animal.

Commissioner Luna stated I think they currently can do that but they have to bring proof back or something.

Mayor Montgomery stated the old section gave those 30 days to do that so you would have the option to take them to a different Vet if you wanted to.

Commissioner Renfro stated...well how are we going to know if they had it done afterwards...so to me I think it should stay the same.

“Commissioner Luna moved approval amending by revising Section 3-8.2 Spaying and Neutering of Dogs and Cats with financially included.”

Seconded by Commissioner Green.
Motion carried unanimously.

City Attorney Rubin stated for the minutes every time they approve one of these I’m always assuming for the minutes we’re talking about for publication.

Commission replied “yes.”

Repeal Section 3-9 (c) and (d) – Pertaining to “Enforcement” within the Animal Control Ordinance –

City Attorney Rubin stated they have Section 3-9 “Enforcement” and we have (a) and (b) which would stay in place, and they felt (c) and (d) were really not necessary, and that it talks about procedures following in Municipal Court which...I remember discussing this in the workshop, and didn’t think it was appropriate for us to tell Municipal Court about how many days they had to bring people in, and how they want to hold somebody in contempt of court.

“Commissioner Luna moved approval for the repeal of Section 3-9 (c) and (d).”

Seconded by Commissioners Green/Renfro.
Motion carried unanimously.

Repeal Section 3-10 – Pertaining to Fines and Fees within the Animal Control Ordinance –

Acting Manager Lindsey stated Section 3-10 – Pertaining to fines and fees, and that they are recommending that it be repealed and declared null and void, and indicated in Section 3-11 they have addressed the issue of the fines, and stated it was redundant with our changes to have both of these sections.

“Commissioner Green moved approval for the Repeal of Section 3-10.”

Seconded by Commissioners Luna/Renfro.
Motion carried unanimously.

Section 3-11 – Penalties for Violations of the Animal Control Ordinance –

Acting Manager Lindsey stated in this section they changed the first paragraph, and stated in section 1-10 they already have fines and fees set out, and indicated they are making a mandatory minimum of \$100.00, and then allowing Municipal Court to refer to our section 1-10 which allows for a fine up to \$500.00/90-days in jail.

City Attorney Rubin stated this represents a major change...under the old 3-11 they had listed 20 separate violations, and the fines attached to that, and stated they are getting rid of that. And saying for any violation under the Animal Control Ordinance, and looking at section 1-10 which is the general public provision, and looking at a minimum of \$100.00 fine.

He stated in section 1-10 it does cover...it does give the Municipal Judge authority to imprison someone for 90-days if she feels it is appropriate.

“Commissioner Luna moved approval amending by revising Section 3-11 – Penalties for Violation of the chapter,”

Seconded by Commissioner Green.
Motion carried unanimously.

Repeal Section 3-11 (e) and (f) –

Acting Manager Lindsey stated this is on the impounding of strays.

City Attorney Rubin stated when you and I discussed this they felt it was appropriate to delete this because actually our contract with the Animal Shelter it actually covers these fees, and stated they discussed this, and not appropriate to have this in the ordinance.

“Commissioner Green moved for the repeal of Section 3-30 (e) and (f).”

Seconded by Commissioner Renfro.
Motion carried unanimously.

Section 3-31 – Restraint of Animals –

Acting Manager Lindsey stated they changed the lead length from 12 feet to 8 feet, and Ms. Robert’s also wanted them to consider taking that down further from 8 feet to 4 or 5 feet.

Commissioner Renfro stated she liked that I think 4 feet would seem more appropriate.

Commissioner Torres stated he agreed but brought up a point and possibly word it...if they are close to any other dogs or people that they have to be restrained closer.

Commissioner Luna stated she thought Ms. Robert’s point was about the larger dogs...at that distance you have no control over them...so could we add a dog larger...weighing more than 30 pounds or 35 pounds, and stated she was looking at dogs parks after their workshop, and a lot of them have bid dog areas for 30-35 pounds and above, and under...so maybe they can make it depending on the size.

Acting Manger Lindsey – No greater than 8 feet in length shall be used for dogs under 35 pounds, and no greater than 4 feet for dogs 35 pounds and over.

“Commissioner Green moved approval amending by revising Section 3-31 as presented by the City Manager.”

Acting Manager Lindsey stated they did add section (d) about voice commands are not an acceptable form of restraint.

Seconded by Commissioner Luna.
Motion carried unanimously.

Section 3-53 – “Biting Dogs or Other Biting Animals” –

Acting Manger Lindsey stated in this section...in section (a) after the first sentence they changed that to say...The owner of an animal that bites a person shall surrender the animal to an animal control officer to impound such animal for a period of observation.

Mayor Montgomery – So you just took out if necessary.

City Attorney Rubin stated we’re not talking about a vicious dog now because that is covered separately, and stated this is basically a dog that does a legal bite...defending your owner...defending your property.

“Commissioner Luna moved approval amending by revising Section 3-53 “Biting Dogs or Other Biting Animals.”

Seconded by Commissioner Green.
Motion carried unanimously.

Section 3-94 – Vicious Animals (Eliminating sentence #3). –

Acting Manager Lindsey stated in this section they took out the one free bite clause. And to say...It is unlawful for any person to keep or harbor a vicious animal in the City. Any person attacked by a vicious animal may use reasonable force to repel said attack. After a judicial determination that an animal is vicious, the owner or keeper of such vicious animal shall destroy it humanely or turn such animal over to the Animal Control Officer.

Commissioner Luna – For destruction, and how are they going to prove that it is destroyed.

City Attorney Rubin – That’s how the current ordinance reads... actually that sentence.

Commissioner Luna – I just wonder...how are we gonna know... can’t we just...once it’s deemed vicious we take possession of it and then...that’s my thought on it.

Acting Manager Lindsey – So you’re saying not to give the owner or the keeper the option to destroy the animal themselves.

Commissioner Luna – Because how do we know that they are gonna do it.

Mayor Montgomery – You get rid of **destroy humanely or**.

“Commissioner Luna moved approval amending by revising Section 3-94 Vicious Animals as amended.”

Seconded by Commissioners Green/Renfro.

City Attorney Rubin stated this represents one of the biggest changes, and that it was one of the largest concerns from the community...what happens when you have an attack, and thinks this makes it a lot tougher than what we had before, and thinks this is a big step for us.

Motion carried unanimously.

Section 3-95 “Disturbing the Peace” be clarified. –

Acting Manager Lindsey stated in this section they added the wording...**for a continuous period in excess of ten (10) minutes**.

Mayor Montgomery stated which the recommendation of the Animal Control Officer was.

“Commissioner Renfro moved approval amending by revising Section 3-95.”

Seconded by Commissioner Luna.

Motion carried unanimously.

Section 3-96 Public Nuisance being classified as a violation –

Acting Manager Lindsey stated they changed this section to match our definition because they took away the **nuisance** definition, and left in **public nuisance**, and stated this one follows our definition and also talks about the punishment in accordance with section 1-10.

“Commissioner Luna moved approval amending by revising Section 3-96.”

Seconded by Commissioner Green.

Motion carried unanimously.

REPORTS:

ACTING CITY MANAGER –

Acting Manger Lindsey reported that the City went to closing with HSLD last Friday, and stated their account was fully funded. And stated as soon as FAA re-opens they will notify them of the closing.

CITY ATTORNEY –

City Attorney Rubin stated in that regard he wanted to publicly compliment our City Clerk, and that Mary found a couple of issues that could have arisen during the course of the closing process, and

stated things went very smoothly. And thanked her.

COMMISSIONERS –

Commissioner Luna – No report.

Commissioner Green – Stated he would like to thank Main Street of Truth or Consequences and The Boys ‘N’ Girls Club for painting the benches at the Evelyn Renfro Park, and the benches around the police station.

Commissioner Torres – No report.

Commissioner Renfro – No report.

Mayor Montgomery – Stated they had a gentleman that came to the Commission several months ago regarding riding bicycles and getting signage up, and that he was going to address the Department of Transportation regarding the signage on the State Highway, and that she would like us to follow-up on that issue from the City’s stand point, and do some type of education with the public on the responsibilities of the bike riders.

Chief Gallagher stated he had the Department of Transportation down about a week ago, and that he needs to send them a letter on a few things, and that one of them was the signage for the bicycles.

Mayor Montgomery stated one of the things she sees a lot is people riding their bikes on the sidewalks wrong way, and doing a lot of things, and does not want us to get like whatever City it was that gave the people a ticket for...it was in Albuquerque that they ran the stop sign, and they got a ticket, and stated it goes on your driving record, and that people don’t know that. She stated she does not want us to get that stringent, but would like for us to educate the public on the proper way to do that...so if we can look at that in the future.

**EXECUTIVE
SESSION:**

“Commissioner Luna moved that the meeting be closed for Executive Session – Personnel 10-15-1H(2); City Manager.”

Seconded by Commissioner Green.

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.”

**CERTIFICATIO
N**

“Commission Green certified that only matters pertaining to Personnel 10-15-1H(2); City Manager was discussed in Executive Session, and discussion ensued, and no vote was taken.”

Seconded by Commissioner Renfro.

Motion carried unanimously.

“Commissioner Renfro moved that we proceed with a contract with Ellen Lindsey for the position of City Manager to be negotiated at their next meeting.”

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 PENNER
CITY CLERK