

CITY COMMISSION  
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO  
Tuesday, August 30, 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, August 30, 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. Steve Green, Commissioner  
Hon. Frances Luna, Commissioner  
Hon. Freddie Torres, Commissioner

Absent:

Hon. Evelyn B. Renfro, Commissioner

Also present:

Juan Fuentes, 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, and stated they have an amended agenda this evening.

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

Seconded by Commissioner Luna.  
Motion carried unanimously.

**RESPONSE TO PUBLIC COMMENT:** None.

COMMENTS  
FROM THE  
PUBLIC:

Mr. Rick Miller came before the Commission with comments, and presented a handout.

Ms. Kathy Clark came before the Commission with comments.

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

Mr. Bradley Grower came before the Commission with comments, and provided information for the record.

Ms. Sophia Peron came before the Commission with comments.

CONSENT  
CALENDAR:

Mayor Montgomery stated they have several items under the Consent Calendar – City Commission Meeting Minutes – Regular – August 9, 2011, Special Executive Session – August 12, & August 16, 2011, DAIC Monthly Report – July 2011.

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

Seconded by Commissioner Luna.

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:

Golf Course Advisory Board – Appointments & Re-appointments –

Mr. Fuentes Acting City Manager stated that the Golf Course Advisory Board is recommending the appointments of Mary Ann Weaver and Claudia Reames to be appointed to fill the vacancies left by Butch Bullock and Maureen Tooley, and indicated the appointments are for two-year terms, and also recommending the re-appointment of Imogene Stark, and stated they have a representative from the Golf Course Advisory Board, and will stand for any questions.

“Commissioner Luna moved the appointments as recommended by the Golf Course Advisory Board...Mary Ann Weaver and Claudia Reames to fill the vacancies, and the re-appointment of Imogene Stark.”

Seconded by Commissioner Green.

Motion carried unanimously.

PUBLIC  
HEARINGS:

Mr. Fuentes Acting City Manager stated that City Attorney Rubin will be presenting a brief summary of the following ordinances set for public hearing, and that he will be presenting each one individually, and that they will give the public an opportunity for public comment.

Mayor Montgomery stated the first one is Ordinance #607 - Amended by Revising Section 8-150 – Providing for the Prohibition

of smoking in City-Owned buildings and **vehicles**.

City Attorney Rubin stated that we already have an ordinance in the books prohibiting smoking in city-owned buildings, and stated what this does is extend it to prohibition in city owned **vehicles** as well.

Mayor Montgomery opened the Public Hearing and asked if there is anyone that would like to speak for the ordinance.

Mr. Bradley Grower came before the Commission and stated he approves of this idea, and thinks it is the right direction for the City to go, and indicated the Commissioners mentioned in prior discussion, and stated this is relevant because it affects the insurance rates that the City pays for health insurance, and if there is going to be a ban on smoking he would consider possibly extending this to all tobacco products during working hours by any city employee, and stated he thinks that would be equal, and that would be across the board rather than possibly be accused of special favors for one group.

Mayor Montgomery asked if there was anyone that wanted to speak against the ordinance, and no additional comments were received and the portion of the public hearing was closed.

Mayor Montgomery stated the following are final adoption of Ordinances # 608-619, amending or repealing certain sections of the Animal Control Ordinance.

City Attorney Rubin stated Ordinance # 608 – Amended by revising Section 3-3 – Providing for the **Repeal of the Definition of “Nuisance and AMENDING the Definition of “Public Nuisance” and “Kennel”**, and stated it amends 3 of the definitions in the definition section of our ordinance. And stated the first one deals with definition of a commercial kennel, and what I came up with is I understood how you want this to read.

**Kennel, commercial** means any premises on which **a total of five or more dogs or cats. In any combination thereof**, four months of age or older, are kept; and/or where the business of buying, selling, breeding, training or boarding of dogs and/or cats is conducted. And stated that is the change to the definition in commercial kennel.

City Attorney Rubin stated it is also proposed that we would repeal the definition of **“Nuisance”** for the simple reason that is actually covered in the public nuisance definition. He stated in the public nuisance definition we still had the four categories which are still set forth, and indicated they deleted two other categories because actually that would be covered by the vicious animal definition.

Mayor Montgomery asked if there was anyone that would like to speak for Ordinance #608.

Mr. Bradley Grower came before the Commission, and stated he did some research and found out in the past 6 years there has only been one resident of Truth or Consequences who has applied for, and obtained a kennel permit, and he knows for a fact that he has reported multiple owners with more than 4 dogs on their property, and that he supports this idea but without enforcement...without a commitment to make sure that the ordinances of this City aren't enforced you can pass any legislation, and it will do absolutely no good so I do support

this.

Ms. Sophia Peron came before the Commission and stated I recommend doing a proactive approach to this, and noticed during National Night Out dog licenses were not mentioned...nothing was promoted...we need to have some kind of promotional program to give people a certain amount of time to make sure that they have a safe place to bring their dogs or bring their information...do some kind of animal festival...I don't care what it is, and let people have an opportunity to license their pets and make a list of all the proper procedures that need to be followed in order to license your pet instead of just coming out because we know that enforcement is a problem...there is selective arbitrary and capricious enforcement in this town of animal laws and many other laws, and I would suggest a proactive approach that would entice people to do that.

Mayor Montgomery asked if there was anyone that wanted to speak against the ordinance, and no comments were received and the portion of the public hearing was closed.

Mayor Montgomery - Ordinance #609 is amended by revising Section 3-8.1 – Providing for **“Harboring of Pets”**.

City Attorney Rubin stated this goes hand in hand if you adopt the definition of a kennel, and stated this makes it...this section would be in violation for someone who has a kennel and doesn't have the proper permit...so we have that defined and discussed at the meeting two meetings ago, and in order to obtain a kennel permit you have to obtain a special use permit pursuant to procedures in Section 11-5-6 of our Planning and Zoning Code, and stated that is something I know you insisted we have it in there.

He stated we changed the fees to \$100.00 for a kennel permit, and a fee of \$25.00 for the renewals and that we changed the words... special permit to kennel permit.

Mayor Montgomery asked if there was anyone that would like to speak for Ordinance #609, and no comments were received.

Mayor Montgomery asked if there was anyone that would like to speak against Ordinance #609.

Mr. Bradley Grower came before the Commission, and he noticed in reading this that the kennel fee of \$100.00 covers all animals within that kennel...so I don't think it's a deterrent to people who have an overabundance of animals...in fact it's actually an incentive for people not to license their animals and to get a kennel permit instead, and especially if you are thinking about adding tiered increases for people with more than 2 dogs which was discussed prior that the 3<sup>rd</sup> and 4<sup>th</sup> were going to be more expensive...therefore someone who has 4 dogs who gets a kennel permit gets a pass...it avoids that mechanism for deterrence and over and above that...if people are in the business of breeding dogs...they should have no problem paying \$100.00 over their licenses for the animals that they have on property should be no problem for someone who is a professional, and \$25.00 a year for a renewal is far too little for someone who is breeding professionally.

No other comments were received.

Mayor Montgomery - Ordinance #610 – Amended by revising Section 3-8.2 – Providing for **“Spaying and Neutering of Dogs and Cats.”**

City Attorney Rubin stated under our current code...a person that picks up an animal at the animal control center that is un-spayed or un-neutered has 30 days to have that dog or cat spayed or neutered, and stated this would change that, and to have the spaying or neutering done at the time receiving the animal.

Mayor Montgomery asked if there was anyone that would like to speak for Ordinance #610, and no comments were received.

Mayor Montgomery asked if there was anyone that would like to speak against Ordinance #610.

Mr. Bradley Grower came before the Commission and stated in his reading of the draft of this it indicates that there is no requirement for owners who are obtaining animals that were seized to have those animals spayed or neutered, and that is problematic because anyone who has an un-neutered or un-spayed dog roaming through the city has created the possibility of breeding, and if that occurs it should be stopped immediately rather than allowed to continue...and that's initially why I brought the subject up at the workshop, and stated if we compel all people obtaining any animal from the animal shelter facility to have that animal spayed or neutered before leaving the premises or putting a deposit on until that surgical procedure is done...whichever as long as the neuter and spayed is required then we are authorized under State Law to do that, and it's the best thing we can do to keep dogs from getting loose and breeding because if your animal is tied up as we saw with the Labrador that was killed by the Pit Bull 2 months ago...the animal doesn't have any defense really.

He stated if one is restrained, and one is loose so the breeding of dogs when they're roaming is problematic.

No other comments received.

Mayor Montgomery – Ordinance #611 – Repeal of Section 3-9 (c) and (d) – Pertaining to “Enforcement” within the Animal Control Ordinance.

City Attorney Rubin stated if I might Madam Mayor I'd like to address #611, #612, and #613 together as it just makes sense as they all flow together. And stated what they decided to do is we changed our penalty schedule...as you know we had a long list in our code or ordinances which actually sets forth the specific fines for each violation of the animal control ordinance. And indicated what we did...we lumped it together, and if you look at Ordinance #613...we made it clear...any person who violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with section 1-10, with each conviction carrying a mandatory minimum fine of \$100.00.

He stated that basically covered everything...so if we look at these backwards and if you adopt Ordinance #613 then we would repeal Ordinance #611 and 612.

Mayor Montgomery stated they will look at Ordinance #611, 612 and 613, and asked if there was anybody for those ordinances.

Ms. Sophia Peron came before the Commission and stated in the case of her next door neighbor who's animal's eviscerated one of his other animals...I know that Dr. Cardwell performed at least \$500.00 worth of surgery on the animal which was not spayed, and returned without the person who owned the animal paying for it...therefore the tax payers of T or C paid to have his dog patched up and returned to him, and I think that is a sin...they should not be returned to anybody who allows animal cruelty to occur on their property.

Mr. Bradley Grower came before the Commission and stated he supports the increased fee structure, and thinks it is a good idea, but as Ms. Peron said we have issues with enforcement and collection of fees has to have priority...you don't give people their cars back from impound if they haven't paid their fees...it's the same thing if you're gonna consider an animal property if that's the way the law is gonna be written then we have to pursue the fees as well that are paid for the care that's given to the animal while it's in custody.

No other comments received.

Mayor Montgomery asked if they were anyone who would like to speak against Ordinances #611, 612 and 613, and no comments were received.

Mayor Montgomery – Ordinance #614 – Repeal of section 3-30 (e) and (f).

City Attorney Rubin stated this falls within section 3-30 the impounding of strays, records, redemption fees and notice, and stated sections e & f actually pertain to some record keeping requirements from the Animal Control Officer working with the Animal Control Center, and I believe we felt that we did not need these two sections because we have a separate contract with the Animal Control Center which governs these requirements so that is why we propose these be repealed.

Mayor Montgomery asked if there was anyone that would like to speak for Ordinance #614, and no comments were received.

Mayor Montgomery asked if there was anyone that would like to speak against Ordinance #614.

Mr. Bradley Grower came before the Commission and stated in trying to obtain records regarding animals in the custody of the animal shelter I have had great difficulty...records are minimal at best, and even when a broad request is presented to the City Clerk's Office asking for all documentation regarding all animals adopted from the animal shelter all I received initially was a list of names and the dates that they were adopted, and if that's all the records that the animal shelter is keeping on the animals then we need to keep our own records because obviously that's not consistent with having a thorough record of the animals, and we need to do that especially tracking dogs that are problems...we need to know where they live... what their prior history is...the vaccination records...all of that...that information is important, and stated if the contractor isn't taking care

of that function then to say we wash our hands of it, and it becomes their responsibility...it's always the responsibility of the contracting agent if it's a government entity.

Ms. Sophia Peron stated I would just like to bring up a point of order...I think during a public hearing the speakers who are addressing the Commissioners are supposed to be sworn in before the hearing begins.

City Attorney Rubin responded...I don't think that's necessary...this is not a quasi-judicial proceeding where you're taking testimony like you discuss at zoning codes...I don't think it's necessary.

Mayor Montgomery – Thank you Mr. Rubin...that's come up before.

No additional comments were received.

Mayor Montgomery – Ordinance #615 – Amended by revising Section 3-31 – Providing for **“Restraint of Animals”**.

City Attorney Rubin stated we already have an ordinance pertaining to restraint of animals, and indicated most of that will stay intact but at the workshop, and discussed this before it went to publication you asked me to add a couple of sentences, and read them...3-31 (a)... While restrained off the premises under the immediate control of the owner or responsible person, **no lead greater than 8 feet in length shall be used for animals weighing less than 35 pounds. For animals weighing greater than 35 pounds, no lead greater than 4 feet in length shall be used.**

And indicated we also added a sub-paragraph (d) that reads... **Voice commands are not an acceptable form of restraint.**

Mayor Montgomery asked if there was anyone that would like to speak for Ordinance #615, and no comments were received.

Mayor Montgomery asked if there was anyone that would like to speak against Ordinance #615.

Mr. Bradley Grower came before the Commission, and stated the section that wasn't read...I believe if I'm incorrect let me know regarding animals that are kept on leads within the property of the owner those are to be a minimum of 25' in length is that correct.

Mayor Montgomery – Correct.

City Attorney Rubin stated I didn't read that because that is not being changed...I just read the part that we are adding or amending.

Mr. Grower stated I think that should be changed rather than adopt it the way that it is written currently...there is either enforcement issues with people not properly enforcing animals that are on leads less than 25', or there is a misunderstanding somewhere in the animal control office because I think more important than the leashes at this point because that could be solved with just muzzling and animals...it really wouldn't matter what length of leash they had on...if they had a muzzle, but animals that are stuck in yards on 10 feet of log chain...I think that really should see some enforcement one way or the other, and if it is gonna be the way that it's written now that's fine

but it needs to be enforced...I think it should be re-written.

No other comments were received.

Mayor Montgomery – Ordinance #616 – Amended by revising Section 3-53 – Providing for **“Biting Dogs or Other Biting Animals”**.

City Attorney Rubin stated our current ordinance had the following sentence in Section 3-53 (a) 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.

He stated pursuant to your instruction we deleted the words **if necessary**.

Mayor Montgomery asked if there was anyone that would like to speak for Ordinance #616.

Mr. Bradley Grower came before the Commission and stated he supports the ordinance as it's written...once again back to enforcement, and this is relating to fees, and stated these people that are surrendering animals that have bitten they should not be able to absolve themselves of the cost that is incurred by the City for the impoundment of those animals just by surrendering the animal to animal control permanently...they shouldn't be able to walk away from that cost there should be a fee that they must pay.

No additional comments were received.

Mayor Montgomery asked if there was anyone that would like to speak against Ordinance #616, and no comments were received.

Mayor Montgomery – Ordinance #617 – Amended by revising Section 3-94 – Providing for **Vicious Animals (eliminating sentence #3)**.

City Attorney Rubin stated let me read the proposal –

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 turn such animal over to the Animal Control Officer.

He stated when we met last month we had a phrase in there on the last line...shall destroy humanely, or turn such animal over to the Animal Control Officer, and you advised me to delete that phrase, but it occurred to me that after I was reading this with Mr. Fuentes...I'm wondering if you want to put the section about destroy humanely after the words Animal Control Officer that we're giving Animal Control Officer directions to do this.

City Attorney Rubin stated he was sorry for bringing it up at this point but it is something I noticed when I was looking at this so I suppose you'll go through the public hearing anyway...but when we actually discuss this then maybe the recommendation to me is go back.



Mayor Montgomery asked if there was anyone who would like to speak for the ordinance, and no comments were received.

Mayor Montgomery asked if there was anyone who would like to speak against the ordinance.

Mr. Ronald Fenn came before the Commission and stated reading through this section that has been added...it is unlawful for any person to keep or harbor a vicious animal...any person attacked by a vicious animal...does not take into consideration or have any room for the fact that there are vicious people out there who provoke dogs, and stated if a person provokes a dog into biting them...it shouldn't be the dog that gets put to bed/death, and I think that anyone in law enforcement can tell you that there are people out there who are either mentally unbalanced enough, or just hate dogs in general to create a situation in which you don't like somebody's dog if you kick at it and do whatever, and then the dog bites...all of a sudden this animal defends itself, or its owner and that situation under this rule would be extremely unfair to the dog and the dog's owner, and I think that should be looked at in terms of some addendum added to this to cover situations like that if it can be proven by witnesses or whatever that a dog was provoked into biting.

Mayor Montgomery – Doesn't the judicial after the judicial determination...come into...

City Attorney Rubin – And I think what would also be helpful...we actually have a definition of vicious animal...I think which would if these...are not fully addressed...the concerns that Mr. Fenn just raised that does make an exception of an animal that is attacking or biting someone who is provoking it.

No additional comments were received.

Mayor Montgomery – Ordinance #618 – Amended by revising section 3-95 – Providing that **“Disturbing the Peace” be clarified.**

City Attorney Rubin stated we just added one phrase here...It is unlawful for any person to allow any animal to persistently or continuously bark, howl, or make noise common to its species or otherwise disturb the peace and quiet of the inhabitants of the City, and stated that already exists, and then they added the phrase...**for a continuous period in excess of ten (10) minutes.**

Mayor Montgomery asked if there was anyone that would like to speak for Ordinance #618, and no comments were received.

Mayor Montgomery asked if there was anyone that would like to speak against the ordinance.

Mr. Bradley Grower came before the Commission, and stated he thinks you're gonna have problems with this one because we have children that do the same thing for longer periods than 10 minutes, and nobody makes them be quiet, and those children they exacerbate the dogs that are nearby so it's not detached...there is a cause and effect...so I think maybe you might want to look at a longer period of time, or have some sort of way judging the cause of the disturbance that the dogs making and ruling that is something is reasonable...like a skunk in the yard or something like that...I don't know...but I think

there is problems with this.

No additional comments were received.

Mayor Montgomery – Ordinance #619 – Amended by revising 3-96  
– Providing for **Public Nuisance being classified as a violation.**

City Attorney Rubin stated assuming you adopt the definition of public nuisance what this does is makes the public nuisance a law... we need to have something in place now you defined it.

**It is unlawful for the owner of any animal to be in violation of the Public Nuisance definition and such violation will punished in accordance with Section 1-10.**

Mayor Montgomery asked if there was anyone who would like to speak for Ordinance #619, and no comments were received.

Mayor Montgomery asked if there was anybody who would like to speak against the ordinance.

Mr. Joe Kobosi came before the Commission and stated he would like to speak against the whole list of ordinances because...I believe this whole procedure is based upon what happened to Margie in April, and stated he is pretty sure we haven't got an indication of who was at fault or what the problems were or the circumstances were... and here we're making all the changes before we know what the problem really was...it seems to me that...I can't identify any of the changes that would of prevented the attack that happened in April.

Mr. Bradley Grower came before the Commission, and stated the failure to adopt any type of financial liability on the part of animal owners is short sided...and the average cost for someone who is a victim of a dog attack is \$25,000, and if we can't require \$25,000 worth of bonding from people that have dangerous dogs then somebody is gonna get hurt again and nobody is gonna pay for it.

No additional comments were received.

Mayor Montgomery stated this portion of the Public Hearing is closed.

ORDINANCE  
#607:

Mr. Juan Fuentes Acting City Manager stated the ordinance before you is the adoption of Ordinance #607 – Prohibiting smoking in City-Owned Buildings and **vehicles**, and that it amends Section 8-150 which – Smoking shall be prohibited within all City-Owned buildings and **vehicles**, and at this time will stand for any questions.

“Commissioner Green moved approval Ordinance #607.”

Seconded by Commissioner Luna.

Mayor Montgomery 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.

PROPOSED  
ORDINANCE –  
PROVIDING FOR  
DANGEROUS  
AND  
POTENTIALLY  
DANGEROUS  
DOGS:

Mr. Fuentes Acting City Manager stated the proposed ordinance amends Section 3-97 (e), sub-section 1, 2 & 4 (b), and that it adds additional language that reads as follows...**Court of Competent Jurisdiction** in all of these sections, and will stand for any questions.

“Commissioner Green moved approval of Proposed Ordinance for publication providing for dangerous and potentially dangerous dogs.”

Seconded by Commissioner Luna.  
Motion carried unanimously

PROPOSED  
ORDINANCE –  
PERTAINING TO  
DEADLY  
WEAPONS:

Mr. Fuentes Acting City Manager stated this proposed ordinance will amend Section 8-38 (c) and (d), and that it provides for additional language pertaining to Deadly Weapons on public facilities, and proposing that we amend the title, and indicated currently the title is Carrying Concealed Deadly Weapons, and that it would read...8-38 Deadly Weapons, and they are also proposing to strike out the sub-heading under Section c & d, and that the proposed ordinance deletes section 8-38 a sub-section 4 which contradicts what the new proposed sections for the ordinance, and with that will stand for any questions.

Mayor Montgomery asked Acting Manager Fuentes to read that section that we are adding.

Mr. Fuentes read the following Subsection 8-38 (c):

It is unlawful for anyone, except a law enforcement officer on duty in the proper performance of his/her duties to carry a deadly weapon as defined in this section, whether concealed or unconcealed, at an open meeting as defined in NMSA 10-15-1 (B) or on any premises under the control or ownership of the city.

Under Section (d):

It is unlawful for any person (With the exception of a law enforcement officer in the performance of his/her duties) to carry a deadly weapon concealed or unconcealed inside the City of Truth or Consequences’ municipal offices, buildings, facilities, or on any property owned or operated by the City of Truth or Consequences.

“Commissioner Green moved for publication of Proposed Ordinance pertaining to Deadly Weapons.”

Seconded by Commissioner Luna.  
Motion carried unanimously.

PROPOSED  
ORDINANCE  
UNIFORM  
TRAFFIC  
ORDINANCE:

Mr. Fuentes Acting City Manager stated the proposed ordinance before you is to amend Section 12-1-2.1 of the Uniform Traffic Code, and they are adding some additional language...definition of Access Aisle, and the language is the same for State Statute 66-1-4.1, and that there is the two words Access Aisle that is added to the last sentence of the section.

City Attorney Rubin stated they deleted parking space and changed it to Access Aisle, and indicated the legislature did it.

“Commissioner Green moved approval for publication Proposed Ordinance – Amended by revising Section 12-1-2.1 of the UTO.”

Seconded by Commissioner Luna.  
Motion carried unanimously.

AGREEMENT – Mr. Fuentes Acting City Manager stated the agreement before you is  
SCHOOL for a School Resource Officer, and indicated this agreement has been  
RESOURCE in place for several years, and they have been working with the  
OFFICER: superintendent of the schools. He stated it has been reviewed by the chief, and the superintendent of the schools.

He stated it calls for \$25,000 per year reimbursement to the police department for a police officer that will patrol all the school facilities, and Police Chief Gallagher is here for any questions.

City Attorney Rubin stated one thing Mr. Fuentes and I talked about is a minor change in paragraph 16, and omitting “one-year”.

“Commissioner Green moved approval of the School Resource Officer Agreement between the City of Truth or Consequences and the T or C Police Department, and the School District with the change that was noted in paragraph 16.”

Seconded by Commissioner Luna.  
Motion carried unanimously.

GRANT Mr. Fuentes Acting City Manager stated he will defer this item to  
APPLICATION Chief Gallagher.

FOR CDWI – Police Chief Gallagher came before the Commission and stated this  
POLICE is a grant that they became aware of...Community DWI Grant, and  
DEPARTMENT: that they have \$6,606.93 available, and stated they would like to apply for the funds.

He explained the funds are derived from the \$75.00 fee that is imposed upon each DUI conviction of drunk drivers, and stated it provides a little more flexibility than some of the other grants that we use in regards to DUI, and that it allows for overtime but does not need it for overtime, and explained what he would like to do with this grant if we are able to get it...is to use the funds for equipment related to DUI enforcement such as portable cameras that they wear for the officers to record the DUI arrest stops, and also purchase a vest for the compliance officer for DUI when they do visits on DUI offenders, and also for a traffic data recorder, and that is to place at different trouble spots throughout the city using radar technology.

“Commissioner Luna moved to authorize the chief to submit the grant application for the Community DWI Grant for the police department.”

Seconded by Commissioner Torres.  
Motion carried unanimously.

RATIFICATION Mr. Fuentes Acting City Manager stated he will defer this item to our  
OF City Attorney.

APPOINTMENT City Attorney Rubin stated they had a recent special meeting and  
OF ACTING went into closed session, and when they came out they voted to

CITY  
MANAGER:

appoint Mr. Fuentes the Acting City Manager, and indicated there has been a question...and that there was a question raised about the notice arising from that meeting so I called the Municipal League and they suggested to be on the safe side to put it on the agenda for ratification.

Mayor Montgomery stated she would hereby entertain a motion to ratify the decisions that were made at the last special meetings by the City Commission.

“Commissioner Luna moved the ratification of the decisions made by the Commission during the special meetings held.”

Seconded by Commissioner Green.  
Motion carried unanimously.

OLD BUSINESS:  
FINAL  
ADOPTION  
ORDINANCES –  
AMENDING OR  
REPEALING  
CERTAIN  
SECTIONS OF  
THE ACO:

Final Adoption – Ordinance #608 – Amended by revising Section 3-3 – the Repeal of the definition of “Nuisance” and Amending the definition of “Nuisance and Amending the definition of “Public Nuisance” and “Kennel”.

Mayor Montgomery asked Acting Manager Fuentes if he had any comments or questions or statements that he would like to make on that ordinance.

Acting Manager Fuentes indicated he did not unless there are any additional questions from the Commission.

Mayor Montgomery stated they heard the public comments with one against the ordinance.

“Commissioner Luna moved approval of Ordinance #608 – Amending by revising Section 3-3 – the Repeal of the definition of “Nuisance” and Amending the definition of “Nuisance and Amending the definition of “Public Nuisance” and “Kennel”.

Seconded by Commissioner Green.

Mayor Montgomery 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.

Final Adoption – Ordinance #609 – Amended by revising Section 3-8.1 – Providing for “Harboring of Pets”.

Mayor Montgomery asked Mr. Fuentes if he had any comments.

Acting Manager Fuentes stated there was a suggestion earlier during the public hearing that \$100.00 was not necessarily a deterrent, and I don’t know if that is something that the Commission would want to consider increasing or leaving it as is.

Mayor Montgomery stated with that comment is there other discussion that the Commission wants to take on that.

Commissioner Luna stated she noticed the comment about the \$25.00

annual fee...that's not the only fee, and stated they also have to maintain their business registration fee...and that doesn't...operating a kennel prevent them from having to register their animals...does it...you can have your private animals as well as operate a kennel... they would still have to license their dogs...Jay or cats.

City Attorney Rubin...would they have to license their dogs in addition to this you mean...is that your question.

Commissioner Luna...if they have...

City Attorney Rubin – yea.

Commissioner Luna – if they're operating a kennel that doesn't prevent them from also licensing their dogs...correct

City Attorney Rubin – I agree with that.

Commissioner Luna – So it's not just a \$25.00 fee...I didn't think it read that way.

City Attorney Rubin – a kennel is something different...you license your dogs, and then if you want to operate a kennel that's a special use permit then you have to pursue...you're correct.

Commissioner Luna – As well as the annual business registration and paying your gross receipts...and all the wonderful things that happens when you have a business.

City Attorney Rubin – Excellent point.

“Commissioner Luna moved approval of Ordinance #609 – Amended for Providing for Harboring of Pets.”

Seconded by Commissioner Green.

Mayor Montgomery 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.

Final Adoption – Ordinance #610 – Amended by revising Section 3-8.2 – Providing for “Spaying and Neutering of Dogs and Cats”.

Acting Manager Fuentes stated there was a comment from the public hearing...the requirement that the Animal Control Officer or the animals being spayed or neutered prior to the releasing of the animals.

Commissioner Luna stated she believes we had conversation that if a high dollar dog that was used for breeding purposes happened to get out and we spayed it...we could be up for a lawsuit...and that's the owners right...I mean as long as it is licensed...I think if they become a repeat offender, but that's not what we're looking at now.

“Commissioner Luna moved approval of Ordinance #610 – Amended for Providing for “Spaying or Neutering of Dogs and Cats.”.

Seconded by Commissioner Green.

Mayor Montgomery 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.

Final Adoption – Ordinance #611 – Repeal of Section 3-9 (c) and (d)  
– Pertaining to “Enforcement” within the ACO Ordinance.

Acting Manager Fuentes stated we heard the comments from the public, and with that I will stand for any questions.

“Commissioner Green moved approval of Ordinance #611 – Repeal of Section 3-9 (c) and (d) – Pertaining to “Enforcement” within the ACO Ordinance.”

Seconded by Commissioners Luna/Torres.

Mayor Montgomery 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.

Final Adoption – Ordinance #612 – Repeal of Section 3-10 –  
Pertaining to Fines and Fees within the ACO Ordinance.

Acting Manager Fuentes stated there was some additional information, and will stand for any additional questions from the Commission.

“Commissioner Green moved approval of Ordinance #612.”

Seconded by Commissioner Luna.

Mayor Montgomery 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.

Final Adoption – Ordinance #613 – Amended by revising Section 3-11 – Providing for Violations of the ACO Ordinance.

Acting Manager Fuentes stated we heard comments from the public, and will stand for any additional questions from the Commission.

Commissioner Luna stated she would like to make a statement, and thinks maybe the best thing they did by upping and making it a mandatory minimum, and thinks this might be the single most

deterrent of all of this paperwork and hard work they have put forth.

Mayor Montgomery – Good point.

“Commissioner Luna moved to approve Ordinance #613.”

Seconded by Commissioner Torres.

Mayor Montgomery 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.

Final Adoption – Ordinance #614 – Repeal of Section 3-30 (e) and (f).

Acting Manager Fuentes stated there is no additional information, and will stand for any questions from the Commission.

“Commissioner Green moved approval of Ordinance #614.”

Seconded by Commissioner Luna.

Commissioner Green stated he would like to point out, and he thought Mr. Grower had a pretty interesting point about what he perceived...and is going on what he said, and that he hasn't seen any of the records...that I think it is important that we have history of some of the animals, and we have good record keeping whether it be at the City's stand point or from Dr. Cardwell out of the shelter, but I think we need information.

Mayor Montgomery 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.

Final Adoption – Ordinance #615 – Amended by revising Section 3-31 – Providing for “Restraint of Animals”.

Acting Manager Fuentes stated they heard from the public, and stated there is no additional information from staff, and will stand for any questions.

Commissioner Luna stated she does agree in her travels there are lots of leads less than 25' where dogs are on their premises, and she thinks maybe ACO can address that now that it is being brought forth, and thinks this is a good ordinance.

“Commissioner Luna moved approval of Ordinance #615.”

Seconded by Commissioner Green.



Mayor Montgomery 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.

Final Adoption – Ordinance #616 – Amended by revising Section 3-53 – Providing for “Biting Dogs or Other Biting Animals”.

Acting Manager Fuentes stated they heard public comments, and that there is no additional information from staff, and will stand for questions from the Commission.

Commissioner Luna stated she had a comment, and that Mr. Grower addressed the issue of bonding for biting animals, and I think if they do bite someone...getting their money back for their hospital bills would become a civil matter...not a government matter, and so I think that we would be wrong to try and address such, because there is no way we could ever guarantee that the victim could be re-numerated their costs anyway, so I don't think this is the place for such of bonding.

“Commissioner Luna moved approval Ordinance #616.”

Seconded by Commissioner Green.

Mayor Montgomery 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.

Final Adoption – Ordinance #617 – Amended by revising Section 3-94 – Providing for Vicious Animal (eliminating sentence #3).

Acting Manager Fuentes stated this is the ordinance that Jay was referring to if the Commission wishes to add additional language at the end of the amended section to read...after a judicial determination that an animal is vicious the owner or keeper of such vicious animal shall turn such animal over to the Animal Control Officer who shall destroy it humanely.

City Attorney Rubin stated I think it makes more sense to say it that way because I think you leave it hanging if you just say it's turned over to the Animal Control Officer without giving him any guidance...so I agree with you.

Commissioner Luna – So we need to go back to publication.

City Attorney Rubin \_ I'm afraid I have to say that...if it's a minor change I could say you could amend it.

Mayor Montgomery – That's not a minor change.

City Attorney Rubin – I don't think it is either...so I think we have to

go back to publication.

“Commissioner Luna moved to take Ordinance #617 back to publication as amended.”

Commissioner Green stated he called Jay on this today...reasonable force...I'm not quite sure that serves our purpose in what we're trying to accomplish here...if you're being attacked by an animal... reasonable force is to get the animal off you, and to do anything you can within your power, and I thought that the reasonable force... where someone would turn around and sue someone else, and said they used excessive force...it's in the eyes of the judge...I mean to me if someone has you by the throat anything and everything it's okay to get that dog off you...so I'm not quite sure reasonable force.

Mayor Montgomery – Is there a reason to even have that sentence in there.

Commissioner Green – that's what I was talking to Jay about, and he said they would be bringing it up today because of some other parts of the ordinance that might be under question as well.

City Attorney Rubin – the thought about keeping the word reasonable, and basically that is up to the Commission. And I will tell you go through a lot of State Statutes the word reasonable pops up a lot, and it is a subjective question for the judge to determine, and this actually came from a related State Statute, but if you don't feel comfortable with it in there...I mean that's okay...you could take it out if you would like to.

Commissioner Green stated he would like to see it removed I don't think it brings anything to the table, and it doesn't enforce it and make it stronger, and thinks it leaves it open for interpretation by a judge who might think someone picking up a rock and smashing it against the head of a dog was not reasonable, and it was unreasonable force...and when you are in that position anything that works... you're gonna turn towards, and you should have that legal right to do that to defend yourself.

City Attorney Rubin – and I understand, and I guess the point I was trying to make is the judge is always called upon all the time to determine what is reasonable or isn't, but really it's your discretion.

Mayor Montgomery – And you're saying this reflects the State Statute.

City Attorney Rubin – I don't want to rest on that because the State Statute actually...anyway...so the word reasonable pops up in a couple of places in the State Statute not necessarily in this context though.

“Commissioner Luna stated she will amend her motion to include that additional change.”

Seconded by Commissioner Green.  
Motion carried unanimously.

Final Adoption – Ordinance #618 – Amended by revising Section 3-

95 – Providing that “Disturbing the Peace” be clarified.

Acting Manager Fuentes stated the only recommendation if staff needs to re-number this ordinance #617 since we are taking the other for re-publication. So this becomes **617**.

Mayor Montgomery stated the only thing I would add is the comment...we had some public comment on that one, but those 10 minutes was the recommendation from the ACO Officer.

Commissioner Luna – And even though the gentleman who had the comment has left it should be noted that Animal Control Officer said he goes...he sits in the neighborhood he sees if there is something causing the dog to bark, and if there is not just citing people.

“Commissioner Green moved approval of Ordinance #617.”

Seconded by Commissioner Luna.

Mayor Montgomery 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.

Final Adoption – Ordinance #618 – Amended by revising Section 3-96 – Providing for Public Nuisance being clarified as a violation.

Acting Manager Fuentes stated there is no additional information from staff, and will stand for any questions.

“Commissioner Green moved for approval of Ordinance #618.”

Seconded by Commissioner Luna.

Mayor Montgomery 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.

CONTRACT –  
COUNTY &  
TOURISM  
DIRECTOR:

Acting Manager Fuentes stated this contract was before the Commission sometime back, and indicated a couple of things that was brought to staff’s attention...one of course was no indication in the contract of what the contribution was going to be from the different entities contributing towards the Tourism Director for Sierra County.

He stated in their packet they have a letter dated August 8, 2011 from the Sierra County Manager that listed the contribution from each of the entities, and explained it is **not** in the agreement. And stated Ms. Carrejo was present earlier but had to attend another meeting, and they are hoping this will address the Commissioners concerns, and

will stand for any questions.

“Commissioner Green moved for approval of the Contract between the County of Sierra and Dianne Preisser Director of Tourism as it pertains to Truth or Consequences participation in that contract... financial participation.”

Seconded by Commissioner Luna.

Motion carried unanimously.

#### **ACTING CITY MANAGER –**

#### **REPORTS:**

Acting City Manager Fuentes stated in your packet you have a weekly roundup report, and I have two new items, and will stand for any questions on anything that I have listed.

He stated he provided copies for the public’s input a copy of the ICIP that will be before the Commission for public comment, and stated we welcome any input on the projects, and that copies are available next to the agenda’s.

Acting Manager Fuentes stated it was brought to our attention that the Commission appointed members to the SVHGB...Mr. James Hunt and Mr. Warren Cross. And indicated when they were appointed on August 9<sup>th</sup> apparently there were two positions that needed to be filled...one for a one-year term, and one for a two-year term, and it appears that it was not made clear as far as who was taking which position, and if the Commission wishes I can work with both of these gentlemen and assign them the terms if the Commission agrees.

Mayor Montgomery stated she thinks that is fine...that’s lingered out there for so long...I’m not surprised.

#### **CITY ATTORNEY –**

City Attorney Rubin stated on August 9<sup>th</sup> the City received a letter from HSLD whereby HSLD purported to exercise their option under the 2007 option agreement, and after I consulted with Mr. Fuentes and getting other advice I wrote a letter to Hot Spring’s Attorney yesterday, and I indicated that we have difference of opinion regarding the validity of the option exercise, and I spoke with Ms. Whitehead, and that she is here in the audience, and we agree to discuss that issue...but that’s where we stand right now.

He stated on a similar note Mr. Fuentes and I had a conference call with Hot Springs...their representatives and with the FAA, and BLM last week, and there was some concerns raised regarding the proposed lease agreement...so right now we have the project on hold, but again I will discuss it with Ms. Whitehead, and discussing this further, and probably bring something back to you at the next meeting.

#### **COMMISSIONERS –**

Commissioner Luna – No report.

Commissioner Green stated he wanted to congratulate SCEDO, and that they were a successful applicant in getting a \$49,000 Incubator

Grant from USDA...so good job on their part. Also good job...HS Tigers Football Team...great way to start a season and congratulations.

Commissioner Torres – No report.

Mayor Montgomery – No report...just one comment when you and I spoke the other day I really want to send Kudos to the staff members that came up with the plaza idea...when we tear down the youth center...I think that is absolutely a wonderful idea to be able to utilize that concrete slab that will be left and use it as a plaza for downtown.

Mr. Fuentes stated they will bring forth a proposal to the Commission for use of some of the rec funds.

Commissioner Torres stated there is a hot water well there...so we can use that as a water fall.

Acting Manger Fuentes – That’s correct...the well will be preserved.

None.

EXECUTIVE  
SESSION:

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

ADJOURNMENT  
:

PASSED AND APPROVED this \_\_\_\_\_ day of  
\_\_\_\_\_ 2011, on motion duly made by Commissioner  
\_\_\_\_\_, seconded by Commissioner  
\_\_\_\_\_, and carried.

APPROVAL:

\_\_\_\_\_  
LORI MONTGOMERY, MAYOR

ATTEST:

\_\_\_\_\_  
MARY PENNER  
CITY CLERK

