



COUNCIL MEETING
Wednesday, September 20, 2017
103 Water St. Elephant Butte, NM 87935
ACTION MINUTES

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Kent called the Meeting to order at 2:00pm, and Mayor Pro Tem Skinner led the Pledge of Allegiance.

ROLL CALL

Clerk Rieth called the roll.

Mayor Kent, Mayor Pro Tem Skinner, Councilor Lafont, Councilor Rogers, and Councilor Trager were all present.

Clerk Rieth declared a quorum was present.

STATEMENT OF OPEN MEETINGS RESOLUTION AND THREE MINUTE LIMIT PER SPEAKER ON ALL ISSUES

PUBLIC COMMENT

No public comment at this time

APPROVAL OF AGENDA –

Councilor Rogers made a motion to approve the Agenda

Councilor Lafont seconded.

Roll Call Vote was held:

Councilor Lafont voted yes.

Councilor Rogers voted yes.

Councilor Trager voted yes.

Mayor Pro Tem Skinner voted yes.

Motion carried.

MAYOR AND COUNCIL REPORT

Mayor Pro Tem Skinner reported attending the Rural Econ Development Meeting at Spaceport America. The Spaceport staff did an amazing job in their presentation. Mayor Pro Tem Skinner also attended The Fire Information from the PRC.

Councilor Lafont stated attending the South Central Regional Transit Department which meets in Las Cruces in which Councilor Lafont has been attending this does not affect the City of Elephant Butte much at this time but may possibly affect the City in the future this last meeting was on roads and railroad crossings.

Councilor Rogers reported attending the monthly SCRDA Board meeting the biggest issues have been with the backup with Mesilla Valley Regional Dispatch and with serving as a backup for Socorro. Another issue that has been going on for a couple of years is the possible relocation for our dispatch into a larger space. Board had decided to look at existing buildings around town with reasonable cost for renovation. SCRDA Board can utilize GRT for remodel but not to rebuild a new building. SCRDA will not be moving into the Armory.

Councilor Trager reported attending SCCOG Meeting next Friday in Hatch. Councilor Trager also attended PRC with Mayor Pro Tem Skinner and Fire Chief. Sandy Jones chairperson reported on budget being swept and fire departments are hesitant of make any purchases mainly because funds will be distributed quarterly instead of annually. Chairperson Jones advised Fire Chiefs to make the purchases necessary and if there are any questions Chairperson Jones will do his best to answer. The main challenge has been that there has not been a Fire Marshall for some time but interviews are being held this could eliminate the lacking of leadership.

Mayor Kent Stated that Sandy Jones heard from Chiefs from around the County and neighboring Counties who attended and gave input and get some answers.

Mayor Kent also reported 2017 Elephant Days held September 8-10 was a little slower this year but the carnival did fairly well. Mayor Kent has received good feedback; people are wanting to continue with this event. Planning was already begun for the 20th Anniversary for the City; the theme will be Roaring 20's. First Responders was considered but that theme had already been done.

Mayor Kent reported attending Mayor's Summit in Albuquerque. One speaker representing the State Police Mayor Kent held a Conversation with State Police Representative because businesses were complaining of overkill of coverage during Labor Day Weekend; we don't want to scare the tourists with stopping everyone. The Representative is calling meeting with Mayor and Sheriff Hamilton and the Local State Police Office to come up with a way to still patrol but not scare off tourists. Bill Fulginiti with the Municipal League gave a presentation on House Bills and Senate Bills that the NMML not happy that Government vetoed a lot of House Bills that would help Municipalities with Capital Outlay. Mayors from around the State were concerned because plans for Infrastructure cannot be done without the monies from Capital Outlay. The Mayors had a Round Table Discussion to give input to Fulginiti. The other issue being looked into by NM Tax and Rev is GRT not being received there are some lawsuits pending. Mayor Kent wanted to thank Fire Chief for putting together the 9/11 Ceremony. Mayor Kent stated she will be attending Chief Elected Officials meeting for Workforce Solution on Friday.

BOARDS AND COMMITTEE REPORTS AND APPOINTMENTS

**Councilor Rogers made a motion to Reappoint Planning and Zoning Commissioner Sheridan Fuss
Councilor Lafont seconded.**

A Roll Call Vote was held:

Councilor Trager voted yes.

Councilor Rogers voted yes

Councilor Lafont voted yes.

Mayor Pro Tem Skinner voted yes.

Motion carried.

**Councilor Rogers made a motion to Reappoint Planning and Zoning Commissioner Rick Harrison
Councilor Lafont seconded.**

A Roll Call Vote was held:

Councilor Trager voted yes.

Councilor Rogers voted yes

Councilor Lafont voted yes.

Mayor Pro Tem Skinner voted yes.

Motion carried.

MANAGER'S REPORT

Manager Lucero reported speaking with Randy Van Vleck about Code Enforcement Ordinance getting rid of nuisance we can pass as resolution 3-18.5 State Statute Once the Resolution is passed the violator is given the resolution and then have 10 days to start cleaning mess the violator an appeal to Governing Body and if the violator then has the right to Court the Appeal in District Court. This Ordinance Repeal will be discussed with Planning and Zoning on the 3rd and bring Resolution to Council on October 4th to Repeal Ordinance by following all procedures of publicizing and having a Public Hearing

Manager Lucero has a request to Submit Financials in different Format so Manager Lucero did on Excel Spreadsheet and request feedback from council and will start including weekly reports only did one department has been completed to show what will be presented in the future with any changes that the Council would like

to see. Mayor Pro Tem Skinner would like to see percentages. Councilor Trager would like to see the Projected Budget. And Mayor Kent would like to see the last column to be percentages for the Fiscal Year. Liquor License Transfer is in Effect as of September 20, 2017 according to Jerry Hamm. Manager Lucero did inventory last night. The Restaurant and Bar are now under Smokin Turtle and the Golf Course in under the City of Elephant Butte. There is a clean Split with the exception of Utility Metering which is being looked into. NMFA has been sent the estimates from loan on Annex and once the credit analysis is complete NMFA will send numbers with 20 year to 30 year terms Manager Lucero will send updated numbers as soon as they are received. Manager Lucero will be attending the Zoning Officials Conference in Ruidoso the next two days.

CODE ENFORCEMENT REPORT

Chief Boone reported that to date has been 88 complaints in which action has been taken, 56 animals at large which T or C Animal Control has responded to those issues. Also, following up with some of the ongoing issues: 307 Nambe Loop has been cited into Court for failure to act, 205 Calle del Sol has new owners that are requesting 30 days to do a remodel of the trailer and property. 208 or 212 also has a new owner of the trailer and will be moving in 2 weeks .210 Ocotillo and 202 Chama has been cited for failure to act and now it's been over 60 days, 101 Northern was given 30 days to remove weeds and abandoned vehicle as well as tires with is a health hazard. Chief Boone will be working with Manager Lucero and The Planning and Zoning Commission to revise a Nuisance Ordinances. In the past week 6 Zoning Permits have been issued which brings a total of 42 issued permits. Councilor Rogers asked to look at property on Camino Cuatro and Del Pardo, Chief Boone stated that photographs were taken on September 13th have been taken and noted so Notice of Violations are being issued.

PUBLIC WORKS REPORT ON MAINTENANCE YARD

Public Works Director Cole presenting a plan for Maintenance Expansion, there is a dire need of some facilities for maintenance and utility fleet. There is 5 large pieces of equipment that are just randomly parked and stacked around City Hall. Public Works also needs a facility with electricity and cooling for the guys to perform work. In short the Public Works has outgrown the shed; maintenance stuff is now overflowing into the Annex. Minimum size facility would need to have at least a unisex restroom, 2 small offices with internet and electricity, a large storage area and a pull through garage to maintain vehicles, and to also load up any tools that in the inside the storage area. Right now all the tools are spread out between 5 locations; there are some in the shed, some in Public Works Office, and in the Water Office and the Wastewater Office. If the facility could be centralized it would streamline the process and allow preplanning by knowing what is available, and would also allow room to stockpile some known parts by giving them a home. In order to accommodate Public Works Director Cole would need about a ¾ acre lot a full acre lot would be ideal for growth. Public Works Director Cole also asked for permission to start looking at potential properties to suit these needs. The obvious choice would be the fenced lot across the street from City Hall, but it is believed to be preserved for future growth of proposed City Center.

CLERK-TREASURER'S REPORT

Clerk Rieth reported a Request for Bid for IFB 17-18-003 City Hall Annex Retaining Wall Rebid, there will be an optional pre-bid meeting 10/5 at 9:00AM. Bids will be accepted until 2:00PM on November 9. Bid Packets are available through the Clerk's Office. Clerk Rieth also reported that at the last NMCFOA Meeting it was voted to form a committee to create a uniform record retention program. This is a result of the State changing the retention schedule to include substantially more permanent records. Many of the smaller municipalities simply do not have the resources or room to accommodate the new schedule. The committee is working with Council from Randy Van Vleck, attorney for the NMML and will meet on September 29 in Albuquerque, so Clerk Rieth will be out of Office to attend that meeting.

CONSENT ITEMS

**Councilor Rogers made a motion to approve the Consent Items:
Approval of Regular Meeting Minutes, September 6, 2017; and Approval of Special Meeting Minutes,
September 13, 2017
Councilor Lafont seconded.**

A Roll Call Vote was held:
Councilor Trager voted yes.
Councilor Rogers voted yes
Councilor Lafont voted yes.
Mayor Pro Tem Skinner voted yes.
Motion carried.

THIS PORTION OF THE MINUTES IS VERBATIM DUE TO QUASI-JUDICIAL PROCEEDINGS

Public Hearing

Public Hearing for Joy Dean 400 San Pedro Loop Vs. City of Elephant Butte

At 2:58pm Mayor Kent opened the public hearing for Joy Dean 400 San Pedro Loop vs. City of Elephant Butte.

Clerk Rieth: Madam Mayor, per our Code of Ordinances there is a process that we follow if there is a disagreement between bills Ms. Joy Dean, (cough) excuse me, has followed that process. She sent notice to the City Manager; the manager denied a waiver of Wastewater fees for the property at 400 San Pedro Loop. Ms. Dean appealed by requesting a hearing before Council. This will be a Quasi-judicial hearing, meaning that all parties that are going to testify will have to be sworn in.

The issue is Whether the City Manager followed the City Ordinance in denying a waiver of wastewater fees to Ms. Joy Dean.

A little bit of background: Ms. Joy Dean of 400 San Pedro Loop receives water service from New Mexico Water and has had that service shut off. Ms. Dean feels that since she has no water running through the system, she is not currently utilizing the wastewater service, and therefore should not be subject to wastewater fees from the City of Elephant Butte.

She requested a waiver of fees from the Utility Clerk and City Clerk, and was denied. Um she appealed to the City manager and was denied. Pursuant to 51.40 she is now requesting a hearing before council. The Procedure for a Quasi-judicial hearing is the decisions from the Council are limited to findings of fact. All parties wishing to testify must be sworn in. Only evidence previously presented may be testified to; no new evidence may be presented, and only parties directly involved in the dispute may testify. Both parties are afforded the opportunity to cross-examine the other's testimony.

If based on testimony presented and cross-examinations during the appeal hearing, Council finds that the City Manager followed City Ordinance in denying a waiver of wastewater fees to Ms. Joy Dean; Council must affirm the City Manager's action.

If based on testimony presented and cross-examination during the appeal hearing, Council finds that the City manager failed to follow City Ordinance in denying a waiver of wastewater fees to Ms. Joy Dean; the Council has the power to revise the decision made by the City Manager.

Mayor Kent: Ok Thank You, Ok with that I think we will start with having you swear in our City Manager and Ms. Dean. Ms. Dean yes ok so if you will swear them both in.

Clerk Rieth Administered the Oath to Manager Lucero and Ms. Joy Dean

Mayor Kent: Ok so we will start with Ms. Dean would you like to state your name (Ms. Joy Dean) Joy Dean, and not include any new information just what has been taken place before now.

Ms. Dean: She said it all

Mayor Kent: Ok thank you.

Ms. Dean: I really think it's just unfair that I have to pay for sewer when I am not using it. If I had water going there then I could use it but I'm not. I have all the intention of all the time that I am going to do something with the place I just haven't done it. I haven't had water service since December 16 of 2013. It's cost me \$1,039.50 or nothing. I am not getting any service and I don't think it is fair.

Mayor Kent: Ok.....Any questions for Ms. Dean? No.

Ms. Dean: I am even willing to sign an affidavit that if I turn the water on then I'm responsible or whatever.

Mayor Kent: Ok

Ms. Dean: There has to be some way through computers and the the technology that you could check with the water company when somebody turns the water off.

Mayor Kent: Ok thank you. Did you want to say anything else? City Manager would you like to give your portion?

Manager Lucero: Yes and and everything that she said is correct. She does have water through New Mexico water, so we don't know when she turns on services and when they don't and there is nothing in our Ordinance that allows me to waive a wastewater payment fee for anybody.

If there was something in here that would allow me to waive it , I would, but there isn't and I am afraid that if I was to do that, how many other people were going to come and want the same thing so I we let you guys decide.

Mayor Kent: Ok, Any questions? And the Ordinance does state....

Manager Lucero: The Ordinance does state that properties being served by the Sierra County Wastewater Treatment System shall be subject to fees set by City Ordinance. The flat rate fees at the time of the dispute were \$23.10 per month and as of September 1, 2017, monthly flat rate sewer was increased to to \$32.55 a monthly.

51.32 says that free services are prohibited no free wastewater services shall be allowed. Uh 54 I mean 51.44 says it is the liability of the property owner. The owner of the premises where wastewater services are furnished by the City, whether or not the owner is the user or consumer of the utility service, shall be liable for the payment of all rates and charges thereof. And then 54 I mean 51.44 The Enforcement of the Procedures There is a chapter penalty for violating this chapter.

Any person or entity convicted of a violation of this chapter shall be fined a sum not to exceed \$500 for any one offense, and the person may be confined in the County Jail for a period on not more than 90 days for each violation.

Ms. Dean's water services are provided by New Mexico Water Services and the City of Elephant Butte has no way of metering those wastewater services and therefore I cannot determine when the service is being utilized, and when it is not.

The reasoning behind flat rate fees is for all property owners to pay wastewater where services are available.

That is why in vacant lots have to pay standby fee even if they don't use the service. They still pay the standby fee so there is nothing in here that allows me to waive her wastewater fees.

Mayor Kent: Ok...now let me give a clarification here, The Ordinance does say Standby Fee because I was thinking, is her situation a Standby Fee because....you know she is not using it...so let's read the stand by fee and what I am looking at here is G Do you want to read that do you have that

Manager Lucero: I don't think I have that

Mayor Kent: It says that any vacant properties so and your property is you do have a building a structure they so your property is not vacant so that doesn't qualify. Or an occupied dwelling or building adjacent to a designated sewer availability will be assessed a standby fee so would this fall into that?

Clerk Rieth: Madam Mayor, based on the definition um we can't put her on standby because we only allow vacant lots to be on standby. Once a property or a a dwelling exists on the property we have no way of knowing when wastewater is being utilized. It is the same situation is we have weekend homes we have no idea if they come in and are using it on the weekend or not. We have no way of knowing when the water is on and when is the water off. So it has been the policy of the City that we do not allow standby if there is a dwelling or a building on the property once they are hooked up to the City Sewer.

Mayor Kent: Ok. So this does not Qualify for Standby is what I am hearing.

Clerk Rieth: Yes Ma'am

Mayor Kent: Ok...Um do you have questions? Councilor Rogers

Councilor Rogers: No

Mayor Kent: Councilor Trager?

Councilor Trager: No

Mayor Kent: Any Question from Councilor Skinner or Lafont?

Councilor Skinner: Well uh just to reiterate; Karen, we are making a determination on whether Yo responded correctly on Ordinance that is our determination is that not correct?

Clerk Rieth: That is correct

Councilor Skinner: That is exactly what she read to us so whether or not we're we're making a determination whether or not Yo did her job based on what is currently City Ordinance.

Mayor Kent: She did

Councilor Skinner: so what this is about is if Yo's response was correct with City Ordinance

Mayor Kent: Yeah So any comments or questions? Ok. Councilor Lafont?

Councilor Lafont: No

Mayor Kent: So now the next item and what we need to do...Is there any other testimony from either of you? Ok, so as a result of that then Um I am going to ask the council for their affirmation. Do you affirm that the City Manager followed the Ordinance? Councilor Skinner?

Councilor Skinner: Um yeah based on the evidence presented and the based on the current ordinance um I feel like Manager Yovanne Lucero responded based on what our current ordinances are.

Mayor Kent: Councilor Lafont?

Councilor Lafont: Yes

Mayor Kent: Councilor Trager?

Councilor Trager: Yes

Mayor Kent: Councilor Rogers?

Councilor Rogers: Yes, Our Ordinance is very specific and I don't see any way that we can revise the decision that follows our ordinance.

Mayor Kent: Right.Ok...So as a result of that and uh and the Councilors affirm that um that City Manager did follow the ordinance and the City and to explain to you that the City, this is why the City has Ordinances because we have to set policy and we expect the staff to follow policy.

In this case, the City Manager did follow the policy for the City and the Ordinance. So our decision will stand.

Ms. Dean: Why can't you get with the New Mexico Water Service when people don't use it it is unfair.

Mayor Kent: New Mexico Water is a separate entity and they set their own Policies and Procedures. Thank you.

What we will do now is close the Public Hearing uh that is on record.

Public Hearing Closed at 3:10PM

THIS CONCLUDES THE VERBATIM PORTION OF THE MINUTES.

REGULAR ITEMS

Discussion/Possible Action; 2018 Elephant Days Theme-The Roaring 20's.

Manager Lucero stated that in discussions with the group that puts together Elephant Days agreed that Roaring 20's would get really festive. Council was asked their opinions and they all agreed it sounds fun and festive. Councilor Rogers does not see the connection between the 20's and the 20th anniversary. Councilor Rogers will say that any years that are popular eras many people have participated.

EXECUTIVE SESSION

At 3:14pm, Mayor Pro Tem Skinner made a motion to go into Executive Session to discuss NMSA1978 10-15-1(H) (2) Limited personnel matters; Code Enforcement

Councilor Rogers seconded.

A Roll Call Vote was held:

Mayor Pro-Tem Skinner voted yes.

Councilor Lafont voted yes.

Councilor Rogers voted yes.

Councilor Trager voted yes.

Motion carried.

Council came out of executive session at 4:10pm.

Councilor Lafont certified that only matters on the agenda had been discussed, no decisions had been made, and no action had been taken.

Discussion/Possible Action; Hiring of Part-Time Code Enforcement

Mayor Pro Tem Skinner made a motion to place an ad in the paper advertising for a Part-time Code Enforcement Officer for 3 days a week at \$12.00 an hour. For the record the Interview Committee will include Fire Chief Boone, City Manager Lucero, and Councilor Trager.

Councilor Rogers seconded.

A Roll Call Vote was held:
Mayor Pro-Tem Skinner voted yes.
Councilor Lafont voted yes.
Councilor Rogers voted yes.
Councilor Trager voted yes.

ADJOURNMENT:

Councilor Lafont made a motion to adjourn.
Councilor Rogers seconded.

Meeting adjourned at 4:12pm.

Minutes approved and adopted at the Regular meeting of the City Council on:

October 4, 2017



Melissa Anderson, Deputy Clerk



Attest:



Karen Rieth, CMC
Clerk-Treasurer