

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
NOVEMBER 23, 2009

The Council of the City of Ruidoso Downs met in regular session on November 23, 2009. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Paul van Gulick to lead the Pledge of Allegiance. Mayor Armstrong asked Carol Virden, City Clerk/Treasurer to take roll call. The following were present:

Councilor Hood	Councilor Williams
Councilor Holman	Councilor Olivo

Carol Virden, City Clerk/Treasurer informed Mayor Armstrong there was a quorum.

Also present:

Carol Virden, City Clerk/Treasurer
Terri Mosley, Finance/Procurement Director
Jay Smith, Museum Director
Steve Dunigan, Planning & Zoning Director
Cleatus Richards, Public Works Director
A.C. Ortiz, Chief of Police
Justin Shaw, Fire Chief
Zach Cook, City Attorney

APPROVAL OF AGENDA

Mayor Armstrong stated next item on the agenda was approval of the agenda.

Mayor Armstrong entertained a motion to approve the agenda.

Councilor Olivo moved to approve the agenda. Seconded by Councilor Holman.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

APPROVAL OF CONSENT AGENDA

Mayor Armstrong stated next item on the agenda was approval of the Consent Agenda.

Mayor Armstrong entertained a motion to approve the Consent Agenda.

Councilor Williams moved to approve the Consent Agenda. Seconded by Councilor Hood.

Councilor Williams said on the Committee Reports for the Beautification Committee that he wanted to report that they had the final tally for Trek for Trash. There were 38 bags of trash

picked up from the city, which amounted to about 760 pounds of trash. The Beautification Committee has adopted Highway 261 to 263 and that is approximately from K-Bob's to Zia Gas. They also had the Proclamation at the last meeting for America Recycles Day and said he wanted to thank everybody that participated in that. He said they are going to be involved with All American Christmas in the Park next month.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

APPROVAL OF MINUTES OF REGULAR MEETING OF NOVEMBER 9, 2009.

Motion was made by Councilor Williams to approve the Minutes of Regular Meeting of November 9, 2009 and seconded by Councilor Hood.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

APPROVAL OF ACCOUNTS PAYABLES

Motion was made by Councilor Williams and seconded by Councilor Hood to approve Accounts Payables.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

APPROVAL OF MONTHLY REPORTS

Motion was made by Councilor Williams and seconded by Councilor Hood to approve Monthly Reports.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

COMMITTEE REPORTS

Motion was made by Councilor Williams and seconded by Councilor Hood to approve Committee Reports.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

UNFINISHED BUSINESS

Mayor Armstrong stated next item on the agenda was to Unfinished Business.

There was no Unfinished Business.

OTHER BUSINESS (items are for discussion only-no action will be taken)

Mayor Armstrong stated next item on the agenda was Other Business and no action would be taken.

Mayor Armstrong said the next item was Employee of the 3rd Quarter July 209 through September 2009-Joe Jarvis-Public Works Department. He said Joe is pretty much over handling of the sewer and water. He said he was not here tonight due to an obligation he had with family.

Cleatus Richards, Public Works Director said Joe does very well handling the sewer and water projects and takes care of business

Mayor Armstrong stated the next item on the agenda was Report on Ruidoso Downs Racetrack.

H. John Underwood, City Attorney said he attended on behalf of the City of Ruidoso Downs the meeting of the Racing Commission this past Thursday. Ruidoso Downs Racing announced they would be filing an application with the State Racing Commission to move the track to Dona Ana County in the vicinity of Las Cruces. In that presentation they were represented by Mr. Blackburn who is an attorney in Albuquerque and has represented Ruidoso Downs Racing for quite some time and also Ann McGovern the local CEO for Ruidoso Downs Racing. They explained that because of the fact that they were losing money and are in close position to two Indian casinos, one of which was 2 ½ miles away. They were asking for the same sort of tax structure that the Native Americans were granted in the compact with the State. That is a tax structure that allows a lower rate of tax or the rate of tax is based upon the amount of gross receipts of the casino as opposed to the flat rate. The casino license provides for a flat rate of 26% and the Native American tax rate is a graduated tax rate. He said legislation in one form or another has attempted to be passed for the last four years. Each year it has failed for one reason or another. This coming year with the State facing what it expects to be somewhere in the neighborhood of a \$600 million dollar deficit. They have failed in the past and they feel their backs are against the wall. H. John Underwood said on behalf of the city he expressed that we felt our back was against the wall also. He said he made the statement that he firmly believed that moving the track from the current location is who we are and what we are about. It is the cornerstone. When he moved here in 1963 there wasn't any digital cameras that ran these films and he would sit under the large platform on the ¾ turn and wait for a bucket to be passed down to him with that film and then he would run across the track and deliver it to the stewards room. At that point in time the track was growing in popularity and it is estimated by the Ruidoso Valley Chamber of Commerce and Economic Development Corporation that the cut to this area would be more than \$40 million dollars per year and the hit to the State if they pass the Tax Equity Act would be approximately \$750,000 per year. He said our position is that we feel that whatever it takes we need to make the legislators aware of the fact that if we are unable to get the Tax Equity for Ruidoso Downs it would economically devastating to the entire area. He said he has also spoken to the lobbyist that was hired by the Ruidoso Downs Jockey Club. The Chamber of Commerce has received funds today from Lodgers' Tax to employ a lobbyist on their behalf.

H. John Underwood, City Attorney said he suggests that the municipality's involved need to meet and discuss what tax incentives they have available and may be able to provide to Ruidoso Downs Racing. The legislature looks at communities that try to help themselves with much more favor.

He said he would suggest to the mayor to make those contacts with the other municipalities and see if there is some way to help ourselves to retain Ruidoso Downs Racetrack.

Councilor Holman said in one of the chamber meetings they just had someone made a comment that this Wastewater Treatment Plant that cost so much money and was the standard dollar amount may be the most taxing anywhere in the United States. They said when we do visit with the legislators to be sure to let them know we appreciate that. People associate racing with Ruidoso Downs.

Councilor Hood asked what the possibilities were of them getting it transferred?

H. John Underwood said the legislative issues here and then if we want to be successful in the legislative issues then it would go to the Racing Commission to allow the transfer. He said as most of them may know Eddie Fowler, a local citizen sits on the Racing Commission and Marty Cope who is the chairman of the Racing Commission and Greg Willis also sits on the Racing Commission and so we have a lot of friends on the Racing Commission. He said his fear is that if we weren't successful in getting some sort of a tax parody one way or another, a local initiative or state initiative, and if the Racing Commission denied their move out, then Mr. Hubbard would have the option of closing the track.

Mayor Armstrong stated next item on the agenda was to have Chief Ortiz speak.

Chief Ortiz said early this month they had the honor of having one of their dispatchers Angela Ortega graduate from the New Mexico Department of Public Safety Telecommunications class. He said she couldn't be here tonight because she is dispatching but he wanted to let them know that she successfully completed all the requirements set forth by the state to be a telecommunications operator.

Chief Ortiz said he regrets that Corporal Olshaskie has submitted his resignation effective this 27th due to health issues he has had with cancer and was hospitalized for a very long time. He has since been under recovery but does not feel he can come back. He has served approximately 12 years with the City of Ruidoso Downs and has been a law enforcement officer for well over 30 years.

Councilor Olivo said he was on the council in the past and now and he asked the mayor if the duties of the councilors have changed? He said he was asking staff to think about it and bring in what happened in 2004 when one of the councilors brought in personnel from the Municipal League in Santa Fe to lecture them on how a meeting was to be held. He said he was putting in a request to bring down an attorney from the Municipal League to remind the councilors what their duties are. He said he understands some of our councilors are getting out of hand and they are doing things they aren't supposed to be and are going beyond their duties.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was New Business-Consider Approving Resolution No. 2009-25 Amendments to City of Ruidoso Downs Personnel Policy Manual.

Mayor Armstrong entertained a motion to approve Resolution No. 2009-25 Amendments to City of Ruidoso downs Personnel Policy Manual.

Councilor Williams moved to postpone the discussion and approval of Resolution No. 2009-25 until the resolution itself is cleaned up. Seconded by Councilor Hood.

Councilor Williams said in reviewing the resolution he noticed quite a few omissions and mistakes and misspellings, language that's been repetitive and a lot of the terminology not explained within the resolution. He said it was important and it is their obligation as councilors within the realm of their responsibility to approve a document that represents the spirit of the document and the authority behind it once it is approved. The way it is worded and identified right now he would feel more comfortable if they could look into it. He said he had several pages to look at. He said he would like to postpone this until the next meeting possibly so they could review it and get it into position where when it is approved by council there is no question about the legality of it and the language would be specified. This is a very important document.

Councilor Holman said at this point he tends to agree with Councilor Williams. He said he hasn't had time enough to look through it as he wished he had and wasn't so sure they didn't need a special meeting just for this. He said they don't want to make mistakes and overlook some things.

Councilor Hood said he agreed they need to have a special council meeting about it and that would be appropriate. He said they need to pass a good Personnel Policy for the people who work for Ruidoso Downs.

Mayor Armstrong said he was trying to set up a meeting a week ago and they all need to be there because it is important. He thought it would take longer than one meeting with all of the issues.

Mayor Armstrong said all of the directors came on board with this policy too.

Zach Cook, City Attorney said he could meet with any of them or all of them to go over the concerns.

Councilor Williams said one of the things that was missing is Chapter 7, which is Promotions, Transfers, and Demotions. That would be the main one.

Carol Virden, City Clerk/Treasurer said she didn't think that was in there because they didn't make any changes to that.

Councilor Holman said he would like the council to consider on a voluntary basis of what was left out was the mandatory random drug testing. He said he would like to have the councilors volunteer to be part of that program because he didn't see why they should be required as city employees and not the councilors. He said if there are any objections to that he would like to hear them and why. In the regulations it says they are city employees on page 3 item 204.

Councilor Hood said he agreed with Councilor Holman. He said they have a drug testing policy with the county and it's not voluntary.

Councilor Holman said they are making decisions that involve millions of taxpayers, federal, and state. He said he would like the mayor to appoint somebody to initiate and include in this next meeting what he has just said.

Mayor Armstrong said he would direct our attorney to look into the legality of this because of the elected officials.

Councilor Holman said it would be voluntary and if there was anyone not willing he would like to hear why.

Councilor Williams said under the Drug and Alcohol Chapter 14 the explanation states the person who performs services for the municipality in return for earned wages. That right away excludes them.

Councilor Holman said it doesn't.

Councilor Williams said they don't earn wages and that is the key word.

Mayor Armstrong said that is why the attorney needs to look into it.

Councilor Holman said he hears himself and one other councilor without a problem with this.

Councilor Hood said he didn't have a problem with that.

Councilor Williams said he objected. Citizens of this community elected him to be a responsible representation of this city. For him to admit that he needs to take a drug test to prove that is unrealistic. He said to go back in his history he did 35 years as a firefighter and did random drug testing. He said drug testing is important for employees of the city that provide services for the citizens of this community. He said he would take this if it was required under state statutes but didn't have to say he would do it voluntarily.

Mayor Armstrong said they would have further discussion in the Special Meeting and entertained a motion to postpone until that Special Meeting.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Consider Approving and Adopting Resolution No. 2009-26 Calling for 2010 Municipal Election (English and Spanish).

Mayor Armstrong entertained a motion to approve Adopting Resolution No. 2009-26 Calling for 2010 Municipal Election (English and Spanish).

Councilor Williams moved to approve Adopting Resolution No. 2009-26 Calling for 2010 Municipal Election (English and Spanish). Seconded by Councilor Hood.

Councilor Williams asked if the wording of "municipal" could be changed to "city?"

Carol Virden, City Clerk/Treasurer said that was by state statute, the regular municipal election. It is an election resolution, City of Ruidoso Downs Resolution 2009 where it says "Be it resolved by the governing body of the City of Ruidoso Downs that a regular municipal election."

Councilor Williams said he would like where it says "governing body" capitalized.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Carol Virden, City Clerk/Treasurer said since our governing body has approved our resolution calling for an election on Tuesday, March 2, 2010, there will be a potential candidate packet available after November 27, 2009.

Mayor Armstrong stated next item on the agenda was Consider Approving Personnel Recommendation-Position- (1) PT/On Call Driver-Lincoln County Transit.

Mayor Armstrong entertained a motion to approve Personnel Recommendation-Position (1) PT/One Call Driver-Lincoln County Transit.

Councilor Olivo moved to approve Personnel Recommendation-Position (1) PT/On Call Driver-Lincoln County Transit. Seconded by Councilor Williams.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

Mayor Armstrong stated next item on the agenda was Consider Approving Salary w/benefits for Newly Created Position-Lincoln County Transit Manager.

Mayor Armstrong entertained a motion to approve Salary w/benefits for Newly Created Position-Lincoln County Transit Manager.

Councilor Williams moved to approve Salary w/benefits for Newly Created Position-Lincoln County Transit Manager. Seconded by Councilor Olivo.

Councilor Hood said it says in here divided by three entities. He asked if the other two entities know about this, that they are going to have to split the cost?

Carol Virden, City Clerk/Treasurer said the cost would be divided amongst the three entities that have committed funds for this out of the \$28,000 from each municipality.

Carol Virden, City Clerk/Treasurer said at the last council meeting there was a motion made and seconded that further information come before this governing body to explain the salary for the newly created position of Lincoln County Transit Manager. She said they were currently under the old agreement with CMC paying \$35,000 per year, which is \$2,900 per month. She said council did put CMC on a month-to-month basis. With the \$35,000 with FICA, Medicare, PERA, Worker's Comp, Insurance, Clothing Allowance, Safety Longevity pay, and the Worker's Comp premium there is approximately 80% for a total of \$52,292.42. With that, under the grant it's an 80/20 match. The 80% will be \$28,000 and the 20% will be \$7,000 divided by the three entities and that would be \$2,333.33. That is without any benefits. With benefits the 80% of the \$52,292.42 would be \$41,833.97 and 20% would be \$10,458.49 divided by the three entities making Ruidoso Downs responsibility \$3,486.16.

Councilor Holman said if he understood this is not exactly like the term positions that they had before. This will be an employee. However, as he understood it the situation will be that it will be term in a way because if the transit goes away there won't be a position for this person.

Carol Virden, City Clerk/Treasurer said it would be classified under a term employee under the Personnel Policy of the City of Ruidoso Downs.

Councilor Williams said to Carol Virden that the term position outlined to be approved eventually in the policy manual is the same language that they approved at the council. Being that it is not in the policy manual does it affect it even though we have approved that language as being a term position?

Carol Virden, City Clerk/Treasurer said the term position was approved by council under the recommendation of Mickie Compton for the full time dispatchers in transit because if we no longer received any grant from the New Mexico Department of Transit and Railroad Division the position goes away.

Councilor Williams said even though it's not in our policy manual does it affect the implementation of it?

Carol Virden, City Clerk/Treasurer said it will be in the policy manual.

Roll call votes: Councilor Hood, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Olivo, Aye. Motion carried.

PUBLIC INPUT

(All concerns to be addressed only to the Governing Body as a Whole with a 3-minute Time Limit)

Mayor Armstrong stated next item on the agenda was Public Input.

There was no Public Input.

ADJOURNMENT

There being no further business to attend to Mayor Armstrong entertained a motion to adjourn.

Councilor Williams moved to adjourn at 6:31 p.m. Seconded by Councilor Holman.

All were in favor and motion passed.

Tom E. Armstrong, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer