

MINUTES OF THE CITY COUNCIL
REGULAR MEETING
OF THE CITY OF RUIDOSO DOWNS
APRIL 24, 2006

The Council of the City of Ruidoso Downs met in a regular session on April 24, 2006. Mayor Miller called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance. Upon roll call, the following were present:

Councilor Hood	Councilor Miller
Councilor Holman	Councilor Garrett

Administrator Waters informed Mayor Miller there was a quorum.

Also present:

Dan Bryant, City Attorney
John P. Waters, City Administrator
Carol Virden, City Clerk/Treasurer
Tom Armstrong, Licensing, Planning & Permitting Supervisor
Jay Smith, Museum Director

APPROVAL OF AGENDA

Mayor Miller entertained a motion to approve the Agenda. Councilor Hood moved to approve the Agenda. Seconded by Councilor Miller. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

APPROVAL OF CONSENT AGENDA

Mayor Miller entertained a motion to approve the Consent Agenda. Councilor Miller moved to approve the Consent Agenda. Seconded by Councilor Garrett. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

APPROVAL OF MINUTES OF APRIL 10, 2006 REGULAR MEETING

Motion was made by Councilor Miller and seconded by Councilor Garrett to approve the Minutes of the April 10, 2006 Regular meeting. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

ACCOUNTS PAYABLE

Motion was made by Councilor Miller and seconded by Councilor Garrett to approve the Accounts Payable. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

MONTHLY REPORTS

Motion was made by Councilor Miller and seconded by Councilor Garrett to approve the following reports:

Fire Report	Animal Control Report	Museum Report
Court Report	Code Enforcement Report	Public Works Report
DPS Report	Permits/Licensing Report	

Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

UNFINISHED BUSINESS

None

Mayor Miller stated next item on the agenda, update on Group Work Camp; consider allowing use of solid waste disposal program, Kathy Anderson and Elisa Davis. Ms. Anderson and Ms. Davis were not in attendance.

Administrator Waters said the Southeast New Mexico Community Action Corporation contacted us with regards to the projects they are going to be doing within the City of Ruidoso Downs. Currently they number over thirty homes that are going to be fixed over this summer, particularly the dates of July 3rd through July 8th. They will be doing basic household repairs. They may be doing some demolition-type work and we do pay for a roll-off for people to take their old materials to dump. What they are asking for is the ability to do that and to continue paying for it the way we currently pay for it for our citizens at the Lincoln County Solid Waste Authority. In addition, there is a possibility that they can move one of those roll-offs to the site. They did tell us this was only for the citizens of the City of Ruidoso Downs. This would increase the cost a little bit but it will also help to fix some homes up all across town. They are just asking us to waive the disposal fees.

Councilor Garrett moved to approve the use of solid waste disposal to the Group Work Camp. Seconded by Councilor Hood. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

PUBLIC HEARINGS

Mayor Miller stated next item on the agenda, Public Hearings for Ordinance No. 2006-01 and Ordinance No. 2006-02.

ORDINANCE NO. 2006-01

**STORMWATER POLLUTION PREVENTION
PROGRAM- PHOSPHORUS ESTABLISHING
REGULATIONS FOR LAWN FERTILIZER,
APPLICATION & SALE**

ENACTING AN ORDINANCE UNDER CHAPTER 4 TITLED
"DEPARTMENTS" ENACTING NEW ARTICLE 8 TITLED
"STORMWATER POLLUTION PREVENTION PROGRAM-
PHOSPHORUS ESTABLISHING REGULATIONS FOR LAWN
FERTILIZER APPLICATION & SALE" SECTIONS 1
THROUGH 11 OF THE CITY OF RUIDOSO DOWNS CODE OF
ORDINANCES

ORDINANCE NO. 2006-02

**AN ORDINANCE ENACTING A NEW CHAPTER 11
TITLED "ENVIRONMENTAL PROTECTION" ARTICLE 1
TITLED " PHOSPHORUS DETERGENT RESTRICTION"
SECTIONS 11-1-1 THROUGH 11-1-4 OF THE CITY OF
RUIDOSO DOWNS CODE OF ORDINANCES**

Mayor Miller stated I hereby open the Public Hearing for comments and will be accepted in the following order, interested persons will approach the podium, one at a time, state their name and present their testimony.

Are there any persons here to speak in opposition of the action?

Attorney Bryant said this is the second in a series of three Public Hearings on the question of adopting these ordinances. To provide you with a little background, about three years ago the public officials who are members of the Joint Use Advisory Board which is the governing board that controls the operations of the wastewater treatment plant learned that the phosphorus limit in the Rio Ruidoso had been altered by prior action of the Environmental Protection Agency based on New Mexico's Water Quality Control Commission action that sets the phosphate limit on the reach of the Rio Ruidoso that goes through the communities at .1 milligrams per liter. Once we learned that we started investigating how does the community produce wastewater that is compliant with the .1 phosphorus standard. In addition to the phosphorus treatment issues, we also knew that we had a plant that was approaching thirty years old, that was approaching its capacity in terms of the volume that it could treat and that we were going to need to rebuild, update and upgrade to bring it to current standards. As it sits today, the plant works well and it does the job it was designed and built to do. The regulations have changed; the

rules have changed and now it is time for the communities to invest in the infrastructure and the operation necessary to meet the new rules. As part of all of that we started looking at how do we treat influent into the wastewater stream to reduce phosphorus. Are there non-point sources that we can go to reduce phosphorus in the stream system. We conducted a long-term monitoring project that is just today three years old sighting eighteen monitoring sites along the Rio Ruidoso. The highest altitude site is located just this side of the ski area near the top of the mountain and the site that is the furthest east is about four miles east of town and there are sites everywhere we have a tributary to the Rio Ruidoso in between those two locations. In addition, there were a couple of other sites that were of interest just because of the nature of things going on in the community so we put monitoring sites on those locations as well. We investigated a phosphate trading program, which would have allowed the community to invest less capital and less operational dollars in the plant itself and invest those dollars instead in direct stream modifications and watershed upgrades to try to reduce phosphorus levels in the Rio Ruidoso. The outcome of that study was basically although there are significant phosphorus levels in the Rio Ruidoso both above and below the plant that are not related to plant affluent. There wasn't enough of that to make a trading program work. It is a pretty complex formula. We came to that conclusion about sixteen months ago. From that time forward, we have been working hard at direct reduction to phosphorus in the stream system. These two ordinances are designed to reduce the amount of phosphorus coming into the plant essentially from three sources, fertilizers, laundry detergents and automatic dishwashing detergents. We conducted a public hearing last month. The community took a look at Spokane, Washington. We looked at a program in Minnesota. We took those ordinances and tried to draft those making sense of what is on the ground in our community in terms of what kind of business do we have, what is our seasonal outlook like. The draft ordinances are the result of those efforts. Essentially, the communities are under a requirement from both the EPA and a private citizens lawsuit against the two communities by the Forest Guardian and some other residents in the area requiring us to get the affluent to the .1 milligrams per liter permitted phosphorus level at the earliest possible moment which includes what we are calling interim phosphorus measures between now and the time we can get a new plant online what can we do to reduce phosphorus levels in the affluent and permanent measures to design and build, treat and remove phosphorus from the stream system. These ordinances are one small step in that process. What we would like to do tonight is to take comments from people who oppose the ordinances. Ruidoso is looking at draft ordinances and starting the publication process in the near future. For all intensive purposes, you are talking to both of us. This is not an exercise in personal attacks are criticisms. This is an exercise in American government at its finest giving an opportunity to the public to step up to the podium. I know that the industry, particularly the automatic dishwashing detergent industry has been real good at providing me with information.

Administrator Waters said if you are here to comment on the Village of Ruidoso' ordinances, remember the public process with them is identical to the public process with us. To get your comments officially included with the Village of Ruidoso, you would have to attend their public hearings as well. We certainly will make the information available to the Village of Ruidoso.

Mayor Miller asked is there anyone who wants to speak in opposition.

Carl Kelley, Jr. of Carl Kelley Construction of Ruidoso. I want to thank the City of Ruidoso Downs for taking the lead in helping get the new sewer plant built on a more timely fashion. I understand you are doing a design built contract and this will take four or five years off of getting a new sewer plant built and online. Also the funding that you have available with the Corp of Engineers, they weren't able to fund the plant in its entirety so it wouldn't work with the design built scenario. You can phase that where you can actually start on getting old plant into compliance within just a few months after you go out for your RFP. There is funding available to get the old plant pretty much compliant with that permit that will take it a long way to that .1 phosphorus level. With that in mind, there are about four or five contractors that want to bid on the design build scenario or what you are calling a RFP. I want to say they are one in the same. Three of those contractors we have contacted also know of ways to get that phosphorus level way down on an interim basis and fairly quick too. I think this is kind of going the wrong direction on trying to get a moratorium or band on phosphorus. It is going to be a hardship on everybody as far as trying to get the phosphorus level down. I know what you are trying to do. Also, we know of some regulations coming up in a very short time that they are going to force the new plant to go to a one level on the nitrate. When they do that taking this phosphorus out is going to be extremely easy. There are two reasons why you don't need this ordinance on getting this phosphorus removed.

Administrator Waters said I want to clarify a point that we are hearing two ordinances. This first one is 2006-01, which is over the fertilizer. The second one, 2006-02 will actually be over the detergents.

Dennis Griesing said it is a pleasure to be back. I hoped to have the interim two weeks to honor most of the promises I made to this Council. I believe we have. We have made significant progress as Mr. Bryant indicated. We have been sharing information attempting to get our arms around the actual impact of the automatic dishwashing detergent contribution to the area. With me today is a gentleman I promised the last time. This is Mr. Patrick Hayes of the Proctor & Gamble Company who is also a wastewater engineer by trade.

Mr. Hayes said I am here today to talk about the impact this ordinance would have on consumers and marketplace. In mainstream manufacturers there are no non-P products out there today. You can ask yourself, Proctor & Gamble manufacture Cascade. If this was an easy thing to do we would be doing it. In fact we spent over

\$200 million trying to come up with a no-P product. The reason that we don't sell no-P products is that the consumers won't accept it. See Exhibit 1.

Attorney Bryant said I think you are hear in part because at the last hearing, I tried to ask a question. How much phosphate is in average home dishwashing detergents? Can you enlighten the record about what the answer to that inquiry is and how that might work in the greater scheme of things. The statute that exists across the country today is 8.7 percent. It is a little misleading because depending on the product form whether it is a powder form, liquid, liquid gel or even a tablet, the percentage can be misleading on the total number of grams that are actually in the wash. The powders seem to have a little bit more on a percent basis but the gram is pretty similar to the liquid form but percentage is lower. On a compact product, the little tablets, they are very dense because they have a very high percentage but they have very much lower grams of phosphorus in the actual product as it goes into the wash. Not to be confusing, it depends on the product form and the density of those products.

Mr. Griesing said we have to measure product by statute and the statutes across the country require us to have a standard measurement provision, which is the weight of the phosphorus as just phosphorus, not part of the compound versus the weight of the product. That leads to some of the anomalies because the water or the gel is heavier than the powder as a medium to carry the phosphorus, the percentage comes out lower. That is just a matter of statute and we can't get around that.

Mr. Hayes said so they vary anywhere from about 8.1 percent down to about 4 percent.

Attorney Bryant said in our discussion with the plaintiffs it is a lawsuit over the P level in the plant's affluent. In looking at our interim solutions and how do we measure the progress that the communities are making toward reducing phosphorus in the system, we worked around a zillion different formulas and ways to calculate it. Basically we have backed down to know we are looking at pounds of phosphorus in the system annually, monthly, weekly. We are looking at different seasons because we are a tourist economy and we have big weekends and low weekends. If we are going to do a meaningful determination of what the effect of the ordinance is, how many pounds of phosphorus are we going to eliminate from the system. Do we need to focus on gram size of the calculation from automatic dishwashing detergents and ignore the percent and work towards the grams. If I understood the spreadsheet correctly, I think you were trying to give it to us that way so we were essentially looking at the pounds of phosphorus that would be contributed to the system by automatic dishwashers.

Mr. Griesing said we needed a mass measure and that was the grams. The number that we used, the .9 is our best information on the current average covering the

spectrum of products that we currently have. Mr. Hayes said it is weighted average based on market share but we could break that out into more finite indicators.

Attorney Bryant said another issue Mr. Waters identified while we were on the spreadsheet is on the population side of the formula because we are so seasonal, for example, we called Lori McKnight of Ruidoso to get some idea of what she thinks the population of Ruidoso is the first two weeks of July when we have the 4th of July weekend, she estimated 32,000 people. If I understood the spreadsheet correctly, if we went back into the calculations and we broke those down into shorter timeframes, modify the population numbers, we could then capture some of that seasonal effect. I am just trying to get a working hypothesis.

Mr. Griesing said I think we can help you with that.

Mayor Miller asked are there any more questions. Mr. Griesing said I just want to thank you for being so open.

Joe Blaney said I will put this in terms we can all understand. If our step-parents in Ruidoso don't have an ordinance the same as this one and include Mescalero with it, it is not going to do Ruidoso Downs any good. For us taking the lead on this that is great but if Ruidoso doesn't step in here, all we are doing is penalizing business operations in our town. We are not hurting anybody else and I just don't think that is quite right.

Steven Baumgarn said I am with the New Mexico Environment Department Service Water Quality Bureau of Point Source Regulation Section. What I would to do is I have a letter here from the department that I would like to read and have it put in the record. See Exhibit 2.

Attorney Bryant said if we learn in the process in the next month that there is in fact no product available that will reliably wash dishes in the hard water conditions we have in this community, does the department have anybody that has expertise in what is happening out there technologically. I just heard for the first time tonight that the State of Washington has built in a timeline on automatic dishwashers in 2010. Does the department have folks that have expertise that could help us develop a suitable timeline that will actually line up with the technology and products that are available so we are not asking our citizens to do something that can't purchase here or anywhere. Mr. Baumgarn said to my knowledge we don't. However, I will go out and look for somebody and try to provide that information to Mr. Waters. The effort is being made to reduce the phosphorus level in both detergents and in the fertilizer. If this level technologically cannot be achieved, it can't be achieved but the phosphorus will have to come out one way or another either going into the collection system or going back out to the river. We endorsed years ago a holistic watershed effort to remove the phosphorus and that is what we are supporting. The

decision of the Council may determine technologically that can't be done. We will understand that but it will have to come out one place or another.

Attorney Bryant said on that subject, I wanted to stress that the two communities have literally removed hundreds of septic systems from the watershed and put them into the treatment plant over the last three years so we are making an effort in that regard.

Paul van Gulick said I am a citizen of Ruidoso Downs and I do want to speak in favor of these ordinances. They may need to be some tweaking of the ordinances but in my opinion time is of the essence. I think the ordinances are inevitable. See Exhibit 3.

Jackie Powell said I am resident of the valley and I would just like to say thank you for stepping up to try to take care of our watershed. Mr. Baumgarn and several others came down from the New Mexico Environment Department a couple of months ago and did some intensive testing all around our septic tanks and wells. In the valley we are receiving this problem as the tests proved. We only have one watershed and this watershed is in very bad shape. Whatever you can do and I appreciate you stepping up to the plate. As far as this ordinance goes, if this is what it takes to clean up our watershed, we all need to work a little harder.

Wanda Mulke said I am a resident of Ruidoso Downs. I felt like I have tried to be a conscientious consumer and my comments only relate to that aspect of what I think we can do as individuals about the issue. I am not familiar with the fertilizer problem because quite frankly I am not interested in having a green lawn. As far as what I can do as a consumer, I can purchase products very easily that are environmentally friendly with regard to laundry detergent and dishwashing soap. When I read this article in the newspaper recently, I happened to check the product labels of three different laundry detergents. None of them contained phosphorus so it is very easy to buy products that accommodate the situation and also dish detergents as well. I might add that none of them were made by Proctor & Gamble. I don't think the public would have a problem as far as individuals complying with your regulations and I am supportive of you passing this.

Councilor Garrett said I use Proctor & Gamble products and they are phosphate free. I do remember when other areas around the Great Lakes lowered the phosphate level for laundry detergent. I remember all of us said our clothes are not clean. My clothes are clean and they are zero phosphate. I think we can do it but I think the industry is going to have to work at it. I don't know if September gives the industry enough time but I see it as people will accept the change. Of course, none of us want to change.

Mr. Hayes said I said before it is in our best interest not to be in phosphate for our products from a business standpoint. The reason is that all of our products except

automatic dishwashing detergents are phosphate free. So we are having to support a phosphate product here which is very costly and inefficient to do that. If our automatic dishwashing detergents were phosphate free, it would be a lot more efficient and cost effective for us to do that. From a business standpoint, we have been trying to move that way. We spent over \$200 million trying to do that so very clearly we are trying to do that. I am trying to impress we can't do it today and provide a product that consumers will accept that meets their needs for cleaning over a wide range of conditions. We reduced our phosphates by over 30 percent and we continue to look for ways to do that. From a September timing standpoint, that would not at all be feasible when you have to look at reformulation, manufacturing capacity, trying to secure raw material. We have heard from our supplier of sodium citrate, which is one of the key primary ingredients in a non-phosphate product, that if this were to go into effect, it would take them three years to develop the product. We are talking a lengthy time line.

Attorney Bryant said I have a letter from Brad Treptow, Executive Director of the Ruidoso Valley Chamber of Commerce and I will read it into the record. See Exhibit 4.

Attorney Bryant said if someone could get a message to Carl Kelley, I know he has an idea about a design built plant that will treat phosphorus. The number I am trying to get to between now and the end of May using his system, what will it cost to treat and remove a pound of phosphorus from the affluent at the plant because I need that number to compare to the cost of removing a pound of phosphorus before it gets to the plant which is where these ordinances are designed to have their impact. We are asking the engineers that have been hired by the Joint Use Advisory Board to get those numbers for the kinds of treatment they are envisioning in their view of how the plant should be designed and built so that we can compare those numbers. The quintessential duty of a public official is to do a cost benefit analysis on a situation and then our job is to implement those things will get us the most bang for our buck. If we can remove phosphorus at the beginning of our system less costly at the end of the system, we need to try to do that. If on the other hand we cannot or the technology, the products the ability to do that are not here then we need to put in place a system that allows our great economy to develop the products and the technology that will do that for us. Dennis, if you know the timeframe in the Washington approach and if you know the reason behind that timeframe, why did they pick 2010, what is the benchmark, what was not possible to do now, what is the industry committing to do between now and 2010, I would love to have that information for the public hearing before we get to our meeting at the end of May. What I have heard tonight is the laundry detergents are there but no one wants to talk about fertilizers and there have been some significant concerns addressed about whether or not automatic dishwashing detergents can do this. You need to understand as we go forward we need to clarify those issues. If some of you know about automatic dishwashing detergents that work in your home or if you are here from a restaurant or commercial business please come tell us about what that

detergent is what do you do to make it work. Does it make a difference in the phosphate level if the dishes are scraped first? If there is information out there that those processes makes a difference, come in and share in this public record and get that information out to the community because we can do a whole lot without government telling us we have to. I would appreciate that information.

Mr. Baumgarn said as a result of all of this information we have been pulling together over the last five years, phosphorus has intrigued me as far as what is in the collection system. One of things I looked at is how close are you to the Mexican border because Mexico still sells phosphorus-based laundry detergents. We collected some samples from Southern New Mexico all the way up to Taos Ski Valley. The concentration of phosphorus south to north was substantially different. Taos Ski Valley's concentration was about 10 milligrams per liter going into the wastewater treatment plant. Ruidoso is somewhere between 20 and 25 going into the wastewater treatment plant. Anthony is around 50. This is a reality that everybody is facing right now. The state of Iowa is dealing with phosphorus and nitrogen problems from agricultural runoff. Right now Iowa is the most polluted state in the nation because of that problem and also the bacterial problem from animal operations. The EPA is put more and more emphasis on nutrient removal either through non-point or point sources actions and it is not going to get any better. We have four or five other communities they are starting to look at in New Mexico for the same types of nitrogen and phosphorus removal that you are going through right now. The problem is out there and it is not going to get any better. We will do what we can do but we still want to see those numbers. I have heard several times the EPA will fine us ultimately in the end. The EPA has been very cooperative in this whole effort because the lines of communication are staying open between the communities and the state and the EPA and I want that to continue. They realize after the last permit was issued, you cannot take a three million gallon per day wastewater treatment plant and convert it to a phosphorus removal system especially one that is thirty years old in three years. So, they are leaning back. I just don't want them to be in a position of taking the bit and start running with it. We are working very hard to make sure they don't do that.

Attorney Bryant as the last piece of information that I have, in the course of our efforts of the phosphorus issue, we have located an expert in Utah, Dr. Dan Parkhurst. We had a telephone conference with Dr. Parkhurst this morning in conjunction with the plaintiff's attorneys who are handling the Forest Guardian's lawsuit so we were getting the same information at the same time. We wanted this expert to share his opinion in an unvarnished atmosphere with both the plaintiff's lawyers and our lawyers present. The thing that Dr. Parkhurst is trying to stress to the two communities is we have to recognize exactly what Mr. Baumgarn just said. Phosphorus is not a toxic waste in a wastewater stream. Phosphorus is a naturally occurring nutrient in a stream system that helps things like weed and algae to grow. When they grow at nuisance levels, they die in the stream and they stink when they die, they decay and decompose and your watershed is a consequence of that. Dr.

Parkhurst tried to stress that point to us and in order to be healthy the stream system has to have some phosphorus in it because you need things to grow along stream systems because fish eats the plants and that makes for a healthy ecosystem.

Administrator Waters said I think it is important to not think of this as some type of toxicity. We have a system that is out of balance.

Mayor Miller closed the Public Hearing.

OTHER BUSINESS

Councilor Miller said we had a cleanup this weekend, which was very beneficial for the City. I could see a difference. We had 42 people sign up to help. We collected 60 bags and Solid Waste said we filled three dumpsters. I want to thank everybody that participated.

NEW BUSINESS

Mayor Miller stated next item on the agenda, Ruidoso Public Library, Phyllis Reed, Scott Roser and Dr. Tate.

Phyllis Reed said I am the Library Director in Ruidoso Public Library. I would like to introduce Dr. Tate, Sandra Scarborough who is the President of our Library Board and Carmen Chisholm. Scott Roser was with us but he had to leave. Ms. Reed and Dr. Tate gave an update on the library and asked for monetary help to hire an additional employee for the library.

Councilor Miller thanked them for the children's program. Museum Director Smith thanked them for sharing with the museum.

Mayor Miller stated next item on the agenda, consider approving salary increase for Municipal Courts part-time Clerk.

Judge Mansell said the part-time clerk has received \$7.50 an hour with zero benefits. That is the way it has been set up not to exceed the budget that we ask for each year. We are in a different situation now that the full time clerk is out. She is taking vacation time right now. I am keeping the part-time clerk as much as I can part-time. I am within three minutes of here so the ladies up front and the police department have been kind enough to call me on the cell phone. I am asking to increase her salary to \$10.00 because she does have a full-time job and she is working here part-time filling in for the full-time. She does make \$10.00 an hour at the job she has. She is putting in enough hours that she is taking a substantial loss from what she is making here. At the time when we are back to normal, we will revert back to the \$7.50. I am asking that you make it retroactive to when she came. I don't think there are that many hours. The part-time clerk normally takes care of vacation, sick leave and every Friday.

Attorney Bryant said he questioned doing anything retroactive. There are a number of provisions that once you have made a contract that is the contract until you change the contract. You can't go back and change it retroactively. I am about ninety percent sure that it applies to city staff as well as elected officials.

Councilor Hood moved to approve salary increase prospectively for Municipal Court Part-time Clerk. Seconded by Councilor Miller. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, consider approving personnel recommendation, Museum Department, move from seasonal to part-time classification, Patricia Valdez.

Museum Director Smith said Patricia Valdez is the type of employee anyone would like to have. She is a diligent worker and the kind of person you can count on no matter what. She has worked for us seasonally since the City was given the museum. She has proved time and again that she is one of our most valuable employees. I recommend moving her to part-time status to get some of the benefits that part-time employees enjoy like holidays. I am not recommending a raise at this particular time as we are in the midst of budget season. I can assure you this is the type of move you would be proud of to keep Patricia happy. Dan Gens tried to steal her and I kept her so that ought to tell you something.

Councilor Garrett moved to approve Personnel Recommendation, Museum Department, move form seasonal to part-time classification for Patricia Valdez. Seconded by Councilor Hood. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, discussion and consider amending Ordinance No. 2002-11 Chapter 1 Section 1(C) titled "Compensation" for Public Hearing process.

Administrator Waters said one of the issues we have is consider amending the ordinance. That obviously cannot be done at this time. It is considering starting the process. We still have publications and it a point of order that we cannot consider tonight.

Councilor Hood said I asked for it to be put on the agenda because the way the constitution of the State of New Mexico reads. I never did find an ordinance that appeals the four meetings per month. I would like to have some kind of ruling on this from a higher authority. If you go through the ordinances back to 1953, in the ordinances back in that time period say we can only be paid for four meetings per month. In the past, there have been times where there were more than four

meetings per month. I want us to look at it and see which way we are headed or if we were breaking the law or not. I want us to know exactly where we are at on this.

Attorney Bryant said this is the issue I have been digging into. I think the question came up about a week ago that there was renewed interest in looking at how we compensate city council members and does the constitution prohibit it or not. I can tell you what I have learned so far somebody needs to settle on a concrete proposal. Let me take that to the Attorney General's opinion and to the case law and measure the actual words used in the proposal to determine if we are violating any provisions in either the statutes or the constitution if we do a particular thing. Part of that is do we have a four meeting a month limit in our existing ordinance structure. Archival records in this municipality are a problem; they are not good. My recollection is subsequent to me being the city attorney an amendment was made to the ordinance that eliminated that four meeting per month limit but I can't find that document yet. We are working on that question. I know somebody has been discussing idea a salary that is divided by twelve months and paid the same amount each month. That may or may not be a change in salary. That may be prohibited but we need a concrete proposal to work from.

Councilor Hood moved to table the process to amend Ordinance No. 2002-11. Seconded by Councilor Garrett. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda, consider approving temporary appointment, Interim Deputy Director of Public Works, Steve Dunigan.

Administrator Waters said we have space of time where we are choosing a new public works director. We have received some good candidates in the mail from areas as close as Texas. It was advertised in Texas, New Mexico, Colorado and Arizona, I believe, and the New Mexico Municipal League bulletin. In the meantime, we have a department to operate during our busiest time of the year. We have some street projects going and we have some drainage projects going. Mr. Dunigan has certainly been familiar with the department. He worked for the public works department for a significant amount of time before he was promoted to his current position of Personnel/Payroll/Loss Control Manager. He has proved himself as a capable employee and manager. Certainly he is on top of a lot of things that are going on in that department anyway because he is also over the safety and the safety aspects of the projects. At this time in talking with the mayor, the interim salary we are proposing is \$21.00 an hour which is above the rate Mr. Armstrong makes but below the rate of Mr. Gens. The position does have a substantial amount of supervision involved with the employees. We expect this will be about six weeks. I will let you know Mr. Dunigan did not want to receive any extra money or compensation for this position which would not be fair to him. Mr. Dunigan is also performing the duties of his payroll/personnel.

Councilor Hood moved to approve the temporary appointment of Steve Dunigan Interim Deputy Director of Public Works. Seconded by Councilor Holman. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

PUBLIC INPUT

Ellen Bizzell said it looks like you had a really nice cleanup this weekend. I do have one negative thing to say. I also do the Keep Ruidoso Beautiful program and I talked to Dan Gens probably two months ago trying to arrange a consensus that one group would work on one weekend which was April 29th for the Downs so Ruidoso was going to take the 22nd. All of a sudden we were doing it the same day. The reason I am pointing this out is we are often talking about doing things together. This was a legitimate handshake. I was hoping I could come out and help clean this town because I live here.

Councilor Miller said I am part of the Beautification Committee here. That message was never relayed to the committee at all about the 29th. It was a miscommunication on Dan Gen's part to the Beautification Committee here as I explained to Joe. The reason we went on the 22nd is Debra Ingle called and said she wished we would have our cleanup on the 22nd because they wanted to be open that day. Our date was set at our March meeting so it was set a whole month before our cleanup but Dan Gens didn't come to that meeting.

Ms. Bizzell said I delivered all of the supplies to Mr. Gens. Councilor Miller said I know; I heard that and I wish you had communicated with us. I apologized to Joe that it was the same date. We do want to work together.

Administrator Waters suggested appointing a member of Lincoln County Solid Waste as an ex-officio member of the Ruidoso Downs Beautification Committee.

EXECUTIVE SESSION

Mayor Miller entertained a motion to go into Executive Session for the discussion of Threatening and or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)7, Forest Guardian and Terlecky case and Real Property and Water Rights pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)8.

Councilor Miller moved to go into Executive Session for the discussion of Threatening and or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)7 and Real Property and Water Rights pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)8. Seconded by Councilor Garrett. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller closed the regular meeting at 7:44 p.m. and invited City Attorney Dan Bryant, City Administrator John Waters and City Clerk Carol Virden to attend the Executive Session and called for a five minute recess to clear the Council chambers.

Motion was made by Councilor Garrett and seconded by Councilor Miller to go back into regular session. Mayor Miller called the regular meeting back to order at 8:33 p.m. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Councilor Garrett attested that the only item discussed in Executive Session was Threatening and or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H)7 and Real Property and Water Rights pursuant to the Open Meetings Act, Section 10-15-1 Subparagraph (H) 8 and no action was taken.

Mayor Miller entertained a motion to adjourn.

Motion was made by Councilor Miller and seconded by Councilor Hood to adjourn at 8:33 p.m. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer