

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

The Council of the City of Ruidoso Downs met in a regular session on July 24, 2006. Mayor Miller called the meeting to order at 5:30 p.m. and asked Jim Burrow to lead 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 Stewart, Public Works Director
Jay Smith, Museum Director
Steve Dunigan, Planning & Personnel Director
Richard Schwalm, DPS Acting Lieutenant

APPROVAL OF AGENDA

Mayor Miller entertained a motion to approve the Agenda. Councilor Miller moved to approve the Agenda. Seconded by Councilor Hood. 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 Holman 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 JULY 10, 2006 REGULAR MEETING

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

APPROVAL OF MINUTES OF MAY 27, 2006 BUDGET WORKSHOP

Motion was made by Councilor Holman and seconded by Councilor Garrett to approve the Minutes of the May 27, 2006 Budget Workshop. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

ACCOUNTS PAYABLE

Motion was made by Councilor Holman 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 Holman 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

PUBLIC HEARINGS

Mayor Miller stated next item on the agenda, Public Hearing for Ordinance No. 2006-05. Administrator Waters said the first public hearing is for an Ordinance relating to the New Mexico Uniform Traffic Ordinance adopted by The City of Ruidoso Downs; establishing a penalty assessment program; defining penalty assessment misdemeanors, establishing listed schedule of penalty assessments; and repealing all ordinances or parts of ordinances in conflict thereof.

This is simply adopting the new Uniform Traffic Code that has come out. We generally do this as the corrections come out on an annual basis.

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. A limit of three minutes will be allowed per person.

Are there any persons here to speak in opposition of the action? There was no one to speak in opposition of the ordinance.

Are there any persons here to speak in support of the action? There was no one to speak in support of the ordinance.

Mayor Miller closed the public hearing and entertained a motion to approve. Councilor Garrett moved to adopt Ordinance No. 2006-05. 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, Public Hearing for Ordinance No. 2006-06. Administrator Waters said again, this is another part of the Uniform Traffic Code regulations adopted by reference. It is amending the 2004 New Mexico Uniform Traffic Code of Regulations adopted by referenced by The City of Ruidoso Downs.

12-6-12.2 Operating a Motor Vehicle under the influence of
Intoxicating Liquor or Drugs; Penalties; /Sentencing; Fees
12-9-9 Parking in Designated Disabled Parking Spaces

It is important to point out that parking in designated disabled parking spots has actually been strengthened by the State legislature. Parking in disabled parking spaces in Ruidoso Downs is going to carry a stiffer and tougher response from our law enforcement agency if this ordinance is passed.

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. A limit of three minutes will be allowed per person.

Are there any persons here to speak in opposition of the action? There was no one to speak in opposition of the ordinance.

Are there any persons here to speak in support of the action? There was no one to speak in support of the ordinance.

Mayor Miller closed the public hearing and entertained a motion to approve. Councilor Hood moved to adopt, approve and pass Ordinance No. 2006-06. Seconded by Councilor Miller. Roll call votes: Councilor Hood, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller stated next item on the agenda is the City of Ruidoso Downs Final Budget Hearing for Fiscal Year 2006-2007.

Administrator Waters said as we talked about before we had a preliminary budget which was submitted at the end of May to the State. It was approved. It is time to submit the final budget now that we know what the numbers were at the end of last

year. I wish I could report that all the gross receipts had all been paid back but to date we have not received the payment from gross receipts for the mistakes made last year. We know of two months and a total of \$47,000 right now owed to the City. The work is still ongoing with Taxation and Revenue. They have assured me that they are at least going to be taking care of that portion on our next gross receipts tax check. The revenue projections stay unchanged with very little increase at all. There are some other minor changes primarily dealing with the ending cash balances of each particular fund. If the Council wishes to approve this you will have quarterly adjustments as well.

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. A limit of three minutes will be allowed per person.

Are there any persons here to speak in opposition of the action? There was no one to speak in opposition of the resolution.

Are there any persons here to speak in support of the action? There was no one to speak in support of the resolution.

Mayor Miller closed the public hearing and entertained a motion to approve.

Councilor Garrett moved to adopt Resolution No. 2006-06 City of Ruidoso Downs Final Budget for Fiscal Year 2006-2007. Seconded by Councilor Holman. Roll call votes: Councilor Hood, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

OTHER BUSINESS

Museum Director Smith said we do have some good news to report. In your Board packets we have included attendance breakdowns for the first six months of each year going back to 2002. I am very pleased to report that outside of the year 2004 when the dinosaurs came to town we are ahead of all attendance trends to date. I am not going to prognosticate anything at this time but just bring to your attention that the trends are very positive for us. In relation to that lets keep in mind what our goal is. Our goal isn't to get 25 or 30,000 in attendance. Our goal is to get 15 to 17,000 so we have a lot of work there to go but I think it is important that you know that we are on a positive uptake.

The really great news we have to report is the annual fundraiser was held on the evening of July 22nd. The annual fundraiser typically can bring in as much as 10 to 15 percent of the annual budget. It is an event that people start planning and working on in March and April. That planning has paid off for us. We don't have our final numbers to present to you yet but the preliminary numbers show that we netted more than \$145,000, which does represent for us 14.5 percent of the budget

that we projected for the year. It also represents something that I think everyone needs to be cognizant of is that Mr. and Mrs. Hubbard are still tremendous supporters of the museum facility. Their friends are tremendous supporters of the museum facility and had it not been for a birthday of a famous entertainer's in Texas, we might have been turning people away at the door. I would like to point out a couple of people and departments that need to be recognized. Tom Stewart and public works really came through for us in taking care of the monument area. Rich thank you for providing additional security. Thanks to city council members Sue Garrett and Tommy Hood who helped out with the event. Of course, Mayor Miller was there and helped us out as well. We also need to thank the Inn of the Mountain Gods for providing the casino activities, Sierra Blanca Motors for proving the Cadillac Escalade, Jack Daniel's National Distribution also provided incentive. The Ladies Auxiliary for the Hubbard Museum of the American West, and most specifically Joetta Cox deserves a lot of recognition for the role that they played in making this event happen. To be able to raise \$145,000 in four hours is a real accomplishment. I just wanted to thank everyone involved and to let citizens of Ruidoso Downs know that the museum is in good hands. It has a lot of good people supporting it. We are trying to make sure this transition from private ownership to municipal ownership is working and I think this is good evidence that with the right partnership together we can make very good things happen.

Administrator Waters said Jay and his staff are very modest. They have worked very hard on this as well and certainly need to be thanked. I am very pleased with the way the museum is headed and certainly the support the museum perceives. Back in the budget hearings we talked about how the museum was going to affect the city and what we needed to have happen. The one primary thing is we needed to make sure the fundraising was kept at a comparable level as to what was there before. This is fabulous and all the people involved have my thanks.

Councilor Garrett said I want to thank Janis Rowe. Without Janis this would be really difficult and she did a great job.

Mayor Miller said you just have to be there to feel the magnitude of 250 people and the bidding that goes on. The people are having the best times of their lives and the decorations were unreal. Director Jay Smith deserves all of the credit in the world.

Councilor Hood said I think their staff did an excellent job. One of the big keys to that evening was the Hubbard's were there and they still support the museum. Jay, how many people were actually there.

Mr. Smith said we had a little more than 300 people all total. It was quite an endeavor and I do thank you for praise for me. Quite honestly it was a team effort all the way. The staff we have at the museum is top notch.

NEW BUSINESS

Mayor Miller stated next item on the agenda, consider approving Resolution No. 2006-07 Final Budget Adjustments for Fiscal Year 2005-2006.

Administrator Waters said this is actually the close out for the final fiscal year cleanup of 2005-2006. This is what it actually takes to close the books for the year and cleans up all of the funds. We have line items in the fund that are maneuvered around. We came out okay for the year. The staff did hold their spending back toward the end of the year when the gross receipts started to get real squirrely. The staff deserves thanks. This is the final budget for the year and we are asking council to approve this.

Councilor Miller moved to approve Resolution No. 2006-07 Final Budget Adjustments for Fiscal Year 2005-2006. 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, consider approving Resolution No. 2006-08 SPA 06-1144 GF Ruidoso Downs Wastewater System Improvements.

Administrator Waters said we had applied last year for a Special Appropriations Grant from the legislature. We applied through our local representative, Mr. Dub Williams, Mr. Rod Adair, our state senator out of Roswell and of course we also went to the governor for some assistance not only for the wastewater plant but we also have some wastewater line problems. As you know from your ICIP's we had planned to start in Agua Fria this year. This \$100,000 along with the projects currently going in this year, which is installed with private money will help us extend the sanitary sewer system up Parkway and up into Griffith. I don't how far it will get us because it will depend on what the bids are but that is the plan. As you promised the residents of Agua Fria, we are starting on the sewer lines. This next year we are going to ask for more. This actually came from a general fund appropriations bill. Certainly thank Representative Williams, Senator Adair and Governor Richardson for this because it takes all of them to appropriate general fund money. We also received almost a million dollars as well for the Joint Use Wastewater Board. But, this resolution is required to say that you are going to spend this money on the project the state allocated it for. We still have planned for the North Parker road area. The problem is I have a quarter of a million dollar bridge that has to be paid for before I put the sewer lines in over there. We have had a project that was approved by the Department of Transportation for the GRIP II, which is Governor Richardson's investment partnership. It is a program the governor and the legislature have to try to improve the highways and streets throughout New Mexico. GRIP I actually took care of a lot of the highways and GRIP II is actually for local governments to help us replace necessary streets. This Parker Road bridge is very necessary.

Councilor Garrett moved to approve Resolution No. 2006-08 SPA 06-1144 GF Ruidoso Downs Wastewater System Improvements. 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 Agreement by and between Southeastern New Mexico Economic Development District/COG and the City of Ruidoso Downs.

Administrator Waters said currently we belong to the Southeastern New Mexico Economic Development District, which we call the local COG, the Council of Governments. Our area is centered in Roswell and basically includes all of the southeastern New Mexico counties. This organization has an executive director, which you have probably met before, Mr. Hubert Quintana. He also does quite of bit of lobbying for the municipality when we are in Santa Fe. He helps out and lets us know when our projects come before the capital outlay committee in the House. It is a very necessary part of our government and any small town needs to be a member because they are dedicated to helping a municipality out. The cost of the membership is based on the size of the municipality and ours is only \$636.00. It not only requires that the Council pass the Agreement but also a resolution.

Councilor Holman moved to approve Agreement by and between Southeastern New Mexico Economic Development District/COG and the City of Ruidoso Downs. 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, consider approving Resolution No. 2006-09 desiring the services of Southeastern New Mexico Economic Development District/COG.

Councilor Miller moved to approve Resolution No. 2006-09 Desiring the Services of Southeastern New Mexico Economic Development District/COG. 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 Third Renewal Agreement and Amendments to Agreement for Professional Services by Livingston & Associates.

Administrator Waters said you have seen this agreement before. However, it did go to the Ruidoso council and they subtracted some services and some costs off of the price of about \$20,000. One of the main changes is they took out some contingency funding. Essentially it allows for them to come in after any damages and approach the Board on a case by case basis. We do need to continue this study. We believe this study will provide a lot of background information that once we finish

upgrading our plant we can show what affect it is having on the stream system. We know already from the study that algae and phosphorus exists up and down the river. Even if we took the plant completely out of the river, the river would still not be in compliance. The more data we gather through this study the more chance we have of going back to the EPA when the next stream standard comes out and bring scientific data that this stuff is coming from someplace else because we have done everything we can to fix the problem.

Councilor Holman moved to approve Third Renewal Agreement and Amendments to Agreement for Professional Services by Livingston & Associates. 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, discussion of proposed ordinance in regards to G. O. Bond for possible Special Municipal Election December 2006.

Administrator Waters said we have talked before about starting funding for our wastewater plant. The City of Ruidoso Downs has approximately \$950,000 in G. O. bonding capacity. We would be required to have an election to use this bonding capacity to put towards our wastewater treatment plant construction costs. Obviously our share on the construction cost will be well in excess of one million dollars. We are pursuing grants. I am currently pursuing a Colonias grant for not only us but also to utilize the Mescalero Apache tribe as a contributing member of this facility. There is some indication from the Federal government through the USDA program that we actually qualify for some grant funding. How much is up to them but the Colonias funding will certainly come in handy. However, any way you look at it we are required to put in our fair share as a match. The bonding capacity is one of the ways we can show that we do also think this is an important project and that we will also sacrifice to get this project complete as much as we can. The window for this election would be in December.

Attorney Bryant said I would summarize it in that there is a lot of discussion in this community about different options. When it all boils down to the bottom line you are talking about millions of dollars in construction costs so it matters little what option is selected. Our bonding capacity is less than a million dollars. Every agency, every congressman, every senator, every state legislator, every state department head, the governor and every single one of his aide's that we have spoken to about funding and make our presentation the first words that come out of their mouth is how much do you have now. Getting the election scheduled, the election held and the success of the election is critical to the future of these communities.

Councilor Garrett said one thing that was evident when we went to Washington, D.C. they always asked us what are you doing for yourselves. If we don't pass this G.O. bond we are not showing our good faith effort as a community.

Mayor Miller stated next item on the agenda is Planning and Zoning, consider approving recommendation from P&Z Case No. 2006-05 Zoning District change from M-2 to C-1 for Lincoln County Solid Waste Authority.

Chairman of the P&Z Board, Paul van Gulick, said Planning and Zoning met to review this request from Lincoln County Solid Waste. It is a zoning change that they require in order to be able to sell the piece of property for a value that allows them to actually move out of the subdivision. All the neighbors were there and I think everyone agrees on certain points. One, they don't want the use to continue there and all of the neighbors were agreeable to a C-1 neighborhood commercial use in that area. The only thing that I am aware of that needs to be worked out is some letter from Lincoln County Solid Waste Authority essentially waiving any rights that they might have under continuing use or grandfathered use for that property.

Attorney Bryant said during the course of the discussion the only concern that I had because the concern of the neighbors was so great about the use of the property is this, we have a grandfather provision in our Planning and Zoning ordinance that allows an existing use to continue if it is abated as long as it starts up again within 90 days. That could put the neighborhood in a situation where they think they have a C-1 zone but somebody else comes in and decides my heavy machinery business would work here so I am going to do that and use the grandfather clause. I suggested during the Planning meeting that the zoning change be conditioned upon a waiver by the Solid Waste Authority of the grandfather provision so that any purchaser would be bound to the C-1 zoning immediately without the 90 day window. I believe Ms. Ingle agreed to that during the course of the meeting and the matter comes to you with a recommendation that the C-1 zoning be approved on the condition that we obtain that waiver.

Debra Ingle of Lincoln County Solid Waste said I spoke with our board chairman, Don Coleman. It is on our agenda for tomorrow and basically they agree to that waiver so after our meeting tomorrow you will have the letter.

Councilor Garrett moved to approve Case No. 2006-05 zoning district change from M-2 to C-1 for Lincoln County Solid Waste Authority along with a waiver signed by them giving up their right to the grandfather provision. 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 recommendation from Planning and Zoning Case No. 2006-06 hardship variance for Tommy Quinley at 465 Parker Drive.

Mr. van Gulick said this is a case where it is not a hardship under the Planning and Zoning ordinance. Hardships have a very specific meaning in that context in that it

has to be a land use hardship. This is a hardship from the Council's point of view however. It is my understanding in this case there is a friend of Tommy Quinley and he wants that person to be allowed to live on his property in a fifth-wheel trailer that is not permanently attached for a period of time. It is my understanding that if this was approved tonight this approval would have to be renewed every six months administratively.

Attorney Bryant said Mr. Waters has asked some questions about sewer and I know there was some discussion about sewer that night and the location of this fifth-wheel on the property and how it would be tied in.

Mr. van Gulick said I was not at that meeting but it is my understanding that the fifth-wheel would be located on a concrete pad that has a clean out that is directly attached to his septic tank.

Administrator Waters said one thing we might do is send Public Works Director, Mr. Stewart, to make sure the connection is one that is not going to leak. It is very close to the river and very concerned that we reduce all possible phosphorus getting into the river and raw sewage is full of it. I would say this hardship is something that would certainly help this gentleman out but I have to go into the environmental part of it. If it is the Council's wish to pursue this, I would ask that you do so with the contingency that Mr. Stewart approve the connection of the line to the clean out.

Councilor Garrett asked about the legality of the hookup in New Mexico.

Mr. van Gulick asked wouldn't the Environmental Department have to inspect the hookup. Administrator Waters said I believe they would want to and that may be where that question is answered from Councilor Garrett. We have to inspect it; that is part of the public work director's responsibility is to inspect all of the sewer connections whether it be a septic system or the sanitary system.

Jim Burrow of the Planning and Zoning Board said in that meeting if something happens to Bob Pior that the trailer they are going to move in will be moved out within ninety days by his family. His family lives in Fort Worth.

Attorney Bryant said I was present via telephone for the meeting and Mr. Burrow is correct. The contingency was placed on it. The mobile home would be disconnected from the system and moved off of the property within ninety days. The ninety-day timeframe was used because of the distance between here and Ft. Worth for the family to travel and make arrangements

Attorney Bryant said if the Council is inclined to approve, the motion would be to approve contingent upon inspections by our public works department and environment department with approval from both of those and the condition that

the fifth-wheel be moved off in ninety days and would be reviewed every six months.

Councilor Holman said I have known both of these men for quite some time. Both of them are very dependable and men of integrity. They will do what they say.

Councilor Holman moved to approve the motion with the conditions as outlined by Attorney Bryant. Seconded by Councilor Garrett.

Mr. van Gulick said, for the record and just so we don't set a precedent in the terms of this hardship variance, it is a hardship being considered by the Council and not a hardship under the planning and zoning ordinances.

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

PUBLIC INPUT

Debra Ingle of Lincoln County Solid Waste Authority said I was fortunate to meet with Governor Richardson on Friday. I was able to get all three members of the Ordorica family by phone that morning and with the four of us we met with him. He has agreed to give us \$400,000 of the \$800,000 that we requested. I just wanted to let you know we are continually working very hard to get the money we need to move out. I also have a meeting with Tim Jennings and also with the help of Flo Harris-Parker with Dub Williams and hopefully they can help us get the rest of the money we need and/or sell the property that was for approval tonight. The other big portion that everybody is concerned of the big transport trailers with all of the household trash that building has broke ground. We are looking at November to be able to take all of the bobtail trucks with the big transporters with the household waste off of the site. That portion is funded and is being built.

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.

Councilor Holman 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., Kinnick vs. City; Riddle vs. City; Forest Guardians vs. Ruidoso et al; Several Tort Claims Notices. Seconded by Councilor Hood. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller closed the regular meeting at 6:32 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 Miller and seconded by Councilor Garrett to go back into regular session. Roll call votes: Councilor Hood, Aye; Councilor Miller, Aye; Councilor Holman, Aye; Councilor Garrett, Aye. Motion carried.

Mayor Miller called the regular meeting back to order at 7:48 p.m.

Councilor Garrett attested that the only item discussed in Executive Session was Threatening and or Pending Litigation pursuant to Section 10-15-1 Subparagraph (H)7 and no action was taken.

Mayor Miller entertained a motion to adjourn.

Motion was made by Councilor Hood and seconded by Councilor Miller to adjourn at 7:50 p.m. Motion passed unanimously.

Bob A. Miller, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer