

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
JANUARY 11, 2010
5:30 P.M.

The Council of the City of Ruidoso Downs met in regular session on January 11, 2010. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Jay Smith 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 Holman

Councilor Williams
Councilor Olivo

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

Also present:

Carol Virden, City Clerk/Treasurer
Jay Smith, Museum Director
Steve Dunigan, Planning & Zoning Director
Cleatus Richards, Public Works Director
Terri Mosley, Finance 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 said there were two items under New Business, Item A and Item B that he would like to pull from the agenda because Dan Austin was unable to attend this evening.

Mayor Armstrong entertained a motion to approve the agenda will pulling Item A and Item B under New Business.

Councilor Williams moved to approve the agenda with pulling Item A and Item B under New Business. Seconded by Councilor Hood.

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

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

APPROVAL OF MINUTES OF SPECIAL MEETING OF DECEMBER 7, 2009.

Motion was made by Councilor Hood to approve the Minutes of Special Meeting of December 7, 2009. Seconded by Councilor Olivo.

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

APPROVAL OF MINUTES OF REGULAR MEETING OF DECEMBER 14, 2009.

Motion was made by Councilor Hood to approve the Minutes of Regular Meeting of December 14, 2009. Seconded by Councilor Olivo.

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 Hood and seconded by Councilor Olivo 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 Hood and seconded by Councilor Olivo 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 Hood and seconded by Councilor Olivo 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 asked if there was any Other Business?

Councilor Olivo said in one of the previous meetings the employee manual was discussed and suggested by one of the Councilors that they would check into it and see if they wanted the Councilors to be drug tested. He said three Councilors were in favor and one was against. He said they were going to check if this was legal and he wanted to verify that?

Zach Cook, City Attorney said they were elected officials and not employed by the City. If they wanted to make themselves subject to the personnel policy that was up to them. They could be drug tested if they decided that as a board. He said the personnel policy manual does not apply to Councilors.

Councilor Olivo asked that it be put on the next agenda to be voted on.

Mayor Armstrong said it would not be a voting situation.

Councilor Olivo said that Zach Cook said if the Council voted to come under the personnel policy manual.

Carol Virden, City Clerk/Treasurer said there was a provision under the amended personnel manual that states that for drug and alcohol testing is anyone that does drive a City vehicle. If they choose to drive a City vehicle she said she would think they would fall under that provision.

Councilor Hood said if they did have an accident in a City vehicle they would be drug tested anyway because they would call mutual Police Department in and tell them they would have to go take a drug test. He said it wouldn't matter if they put it in the manual or not.

Mayor Armstrong said if he or one of the Councilors drove a City vehicle then that would be the only place in the personnel manual they would be affected.

Councilor Olivo said they represent the employees and if they are up for random testing then they should be too.

Councilor Holman said they have two situations and said he would like to add a third. He said he was not second-guessing the City Attorney but sometimes attorneys were wrong. We had a descending vote by one of the Councilors who will not do the drug testing. That same Councilor in a recent council meeting made the statement that he had called the New Mexico Municipal League and talked to an attorney and stated that the League Attorney had said that he, Councilor Holman, may very well be correct in the assumption that Councilors were City employees. He said if they were City employees then they can do the voting that Councilor Olivo was suggesting. If they were employees then they automatically fall under the ruling of drug testing. They would then not need to vote.

Mayor Armstrong they will do a lot more during the next meeting.

Carol Virden, City Clerk/Treasurer said the issue was not tabled or postponed until the next council meeting so therefore there is no Unfinished Business. She told Councilor Holman they were elected officials and not employees. The Personnel Policy was developed for the employees of departments. There was a stipulation within the drug and alcohol policy that anyone who was authorized to drive a City vehicle was subject to the random drug testing. She said the "safety sensitive" term was very broad and they amended that part of the policy to include other than those who drive vehicles but those that handle money, police officers, fire department, and so on.

Councilor Holman said they were only getting part of the definition of an employee. He said all four councilors recently voted to accept the City policy and the definition in that policy says, "anyone accepting pay from the City is an employee." He said they were employees and fall under that rule.

Mayor Armstrong asked Councilor Holman to give them a chance to go further into this issue and they would come back to it and bring it back to council.

Councilor Holman said he just wanted to be sure it didn't get dropped.

Councilor Williams said the irrational statements made by the other two councilors over there were unbelievable. He said he wanted to clarify an issue that was going on in the City and rumors being passed on about his alleged drug use and in particular marijuana. He said not only had it been heard in the City but also in his neighborhood. He said he resents the implications of that because there was no proof to bear that. He said if anyone disagreed with him in meetings over what his decisions may be including this issue with random drug testing then fine but he said not to attack his character or his integrity. He said he did not have an issue with people discussing the problems they may have and he was willing to listen but when they start going behind his back and attack him personally he resented it and would not tolerate it. He said he knew who the person was and was calling him a coward tonight. He said he didn't appreciate this and that he represented the City of Ruidoso Downs and they voted him in and trusted him to make the decisions he makes. He said if they believe he was using drugs they need to prove it. He said he did not have to prove anything. He said he does not want the drug testing because it is an issue of being an elected official and being trusted by the citizens of this community. He said if they were drug tested then there was a suspicion that they may be involved with drugs and you cannot have that as a representative of this community.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was New Business-Consider Approving Stream Dynamics Contract for River Health and Recreation Projects.

Mayor Armstrong entertained a motion to approve Stream Dynamics contract for River Health and Recreation Projects.

Councilor Williams moved to approve Stream Dynamics contract for River Health and Recreation Projects. Seconded by Councilor Hood.

Cleatus Richards, Public Works Director said this is part of the Settlement Agreement with the Forest Guardians. We are required to make improvements for the benefit of the river health and recreation. The committee is comprised of five members with delegates from the Downs, the Village, and the forestry, and Game & Fish as Forest Guardians. They are to set standards and project criteria. The projects are to accomplish river health and recreation. He said RFP's were worked out over a period of time with some involvement with the Forest Guardian representatives and some objections on their part but finally put out and on July 24th they had four firms responding to the RFP that had specific criteria for that project. He said that was shortened down to two firms. They were interviewed and that was Stream Dynamics and New Mexico Parametrix. He said the selection committee comprised of the Restoration Committee, himself, and one Councilor from Ruidoso, Michelle Rebstock made the decision of Stream Dynamics. It has been approved by the River Restoration Committee and was now required that both Ruidoso and Ruidoso Downs approve it and the Joint Use Board. Ruidoso City Council will meet tomorrow

night will have similar items on their agenda to approve and so will the Joint Use Board when they have their meeting schedule.

Councilor Holman said he recalled there were negotiations on our behalf to see if the Riverside Park would fit into the category because there was "x" amount of money that had to be contributed and we were in the process of looking at the possibility of the money we had invested in Riverside Park as taking care of our obligation.

Cleatus Richards, Public Works Director said \$150,000 of the required investment had to be from the City of Ruidoso Downs. He said he had proposed to the Restoration Committee the Riverside Park and the consultants have been provided a copy of the program and budget and scheduling and be considered as the work process and we will continue to pursue that as our project.

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 Personnel Recommendation-Department LCT-Position-Part Time/On Call Driver.

Mayor Armstrong entertained a motion to approve Personnel Recommendation-Department LCT-Position-Part Time/On Call Driver.

Councilor Olivo moved to approve Personnel Recommendation-Department LCT-Position-Part Time/On Call Driver. Seconded by Councilor Williams.

Councilor Holman said we are assuming that this position is needed. He said he got an email some time ago and didn't have the capability to print it then but he said he printed this on a regular piece of paper and it was from Mickie Compton from August 2006 from a desirable candidate and had to do with an evaluation of our transit. The findings seemed to be very positive. He said under roman numeral I. Were the report of findings from the NMDOT on-sight technical assistance and the second part item #24 a question was posed in the findings as "are agency vehicles stored in an area secured by fencing, locked gate, and /or surveillance equipment and is the area well lit? The answer from the transit was that yes the vehicles were stored in a locked fence area. He said back to the question he said he always has concerns and wants to keep the money in Ruidoso Downs if possible. He said he did not want them to move and had asked months ago for Mickie to give him the quote from the federal government stating that it had to be a fenced and locked area. He said she would and that's been nearly a year ago. He said it's another one of those things that doesn't happen and he said he gets stressed when they don't get what they ask for or only get partial answers.

Mayor Armstrong said to Councilor Holman that they were getting away from the agenda.

Councilor Holman said he would come back to that at the next meeting because he wanted that answered.

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 Personnel Recommendation-Department HMAW-Position-Curator of Education.

Mayor Armstrong entertained a motion to approve Personnel Recommendation for the Hubbard Museum of the American West position of Curator of Education.

Councilor Hood moved to approve Personnel Recommendation for the Hubbard Museum of the American West position of Curator of Education. Seconded by Councilor Williams.

Councilor Hood asked if this was for the Education Department for the Cope Center?

Jay Smith, Museum Director said it was for the Education Department the museum as a whole. He said this was not a new position but a position that was formerly held by Patty Jackson who left in October 2009. The Curator of Education is considered one of their most important positions and was a vital component of museum services. It is programming conducted for adults, school groups, tour groups, and in the near future for distance learning in the Cope Center. He said Ms. Isom comes extraordinarily qualified and she had worked for us for a short time as a VSR. He said they went through a regional and national search process and there were 63 applicants. They went through two and a half months narrowing the search and conducted 6 formal interviews.

Councilor Holman said they have a lot of talent in the museum in their staff in putting on the special events and they probably don't get enough thanks for what they do. He said they probably need to be more diligent in letting them know we appreciate the hard work that they do. He said he has heard very positive comments about what an asset it is to our area. He said the people he hears this from overwhelmingly are not spending money on it. They are not contributing. He said what worries him is that we are in bad economic times. He said we should cut costs where we can and follow suit with what the state is doing.

Jay Smith, Museum Director attempted to make comment on the concerns of Councilor Holman regarding the budget.

Mayor Armstrong said they should follow the item on the agenda and that he understood Jay Smith's concern and reason for wishing to clarify and explain the reason for budget items but that there would be a time later to answer questions that are out there.

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 Wastewater Treatment Plant Operating Invoice for November 2009.

Mayor Armstrong entertained a motion to approve Wastewater Treatment Plant Operating Invoice for November 2009.

Councilor Williams moved to approve Wastewater Treatment Plant Operating Invoice for November 2009. Seconded by Councilor Olivo.

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.

Wayne Williams said he would like to make a suggestion and a comment to the governing body. He said the State of New Mexico said they came out with a statement that they were releasing \$7 million dollars and that he agreed with Councilor Holman that our governing body needed to be really conservative in their views for the next year or so until they get this economic thing straightened out. He said as the self-appointed watchdog for the City of Ruidoso Downs he had an opinion. He said he wanted to know a lot of things about the people controlling the money from the Downs because it is partly his money. He said he would like to know if they were all of good character. He would like to know if they have gambling problems or drinking problems or a drug problem. He said he knew those questions couldn't be answered without getting into a personality conflict but as a citizen he would like to know if drug testing was a reasonable thing if a person occasionally drinks too much or does drugs too much. He said he would like to know that his city councilors and law enforcement and anyone else who works for the City that they are in full faculties and their decisions were not tainted by drugs or alcohol or if they were raising up money to take care of their gambling debts. He said as a simple gesture to the employees and to the citizens a volunteer drug testing for the City Councilors would make him feel a lot better.

Joyce Gustafson said regarding the personnel manual Councilor Williams said something that opened her eyes. She said an employee working 20 hours per week was like a part-time employee eligible for benefits approved by the governing body. How many places that are municipalities that one can come on at 20 hours a week with benefits? She said she thought it was 32 hours even with insurance and someday she said she would like an answer to that. As a resident and taxpayer she asked when they, as the governing body were going to trim some of the fat off the fiscal budget and hopefully for the fiscal year 2010/2011. She said a museum is a wonderful business to have in our City but as we all know museums are not known for making money. We have 11 full-time employees and 3 part-time employees working at the museum. Can our City really afford this type of employment with benefits? The people that were part of our City government when R.D. Hubbard entered into a contract with our City have taken the rewards and gone on leaving the taxpayers of our City to pay for something we cannot afford. We have spent a minimum of \$150,000.00 the past six months just on the operations and this does not include wages and benefits which far surpass that amount. Please explain to us why the Hubbard Museum of the American West could not cut back to three to four days a week and operate on a more limited budget. It makes sense to me less employees, less utilities, and less of our taxpayers dollars that could be used in areas of our City that is in need of attention.

EXECUTIVE SESSION

Discussion of all threatening and/or pending litigation pursuant to Open Meetings Act: Section 10-15-1 Subparagraph (H) 7: Storm Ditch

Mayor Armstrong entertained a motion to go into Executive Session for the discussion of all threatening and/or pending litigation pursuant to Open Meetings Act: Section 10-15-1 Subparagraph (H) 7: Storm Ditch.

Councilor Williams moved to go into Executive Session for the discussion of all threatening and/or pending litigation pursuant to Open Meetings Act: Section 10-15-1 Subparagraph (H) 7: Storm Ditch. Seconded by Councilor Holman.

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

Mayor Armstrong closed the regular meeting at 6:13 p.m. and invited Zach Cook, City Attorney, Carol Virden, City Clerk/Treasurer, and Cleatus Richards, Public Works Director and called for a five minute recess.

Mayor Armstrong called the regular meeting back to order at 6:25 p.m. and asked that a member of the City Council attest to the fact that the only items discussed in Executive Sessions were that of

discussion of threatened and/or pending litigation Section 10-15-1 Subparagraph (H) 7 Storm Ditch. Councilor Olivo attested to the fact and no action was taken.

Councilor Williams moved to go back into open session. Seconded by Councilor Holman.

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

Mayor Armstrong entertained a motion to approve the extension of the brief until March 2010.

Councilor Hood moved to approve the extension of the brief until March 12, 2010. Seconded by Councilor Williams.

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

ADJOURNMENT

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

Councilor Holman moved to adjourn at 6:26 p.m. Seconded by Councilor Olivo.

All were in favor and motion passed.

Tom E. Armstrong, Mayor

ATTEST:

Carol Virden, City Clerk/Treasurer