

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
AUGUST 09, 2010
5:30 P.M.

The Council of the City of Ruidoso Downs met in regular session on August 09, 2010. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Jim Kofakis to lead the Pledge of Allegiance. Mayor Armstrong asked Carol Virden, City Clerk/Treasurer to take roll call. The following were present:

Councilor Olivo
Councilor Holman

Councilor Williams
Councilor Hood

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

Also present:

Carol Virden, City Clerk/Treasurer
Steve Dunigan, Planning & Zoning Director
Cleatus Richards, Public Works Director
Jim Kofakis, Interim Museum Director
H. John Underwood, City Attorney

APPROVAL OF AGENDA

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

Mayor Armstrong said there were two changes. He said he was going to move Item G and Item H under 10 to become Item A and Item B under New Business. The second change under Closed Session would be postponed to August 23, 2010 because the Chief was in El Paso with his mom in the hospital.

Councilor Hood moved to approve the agenda with the changes. Seconded by Councilor Williams.

Roll call votes: Councilor Olivo, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Hood, 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 he would like to pull the minutes of the meeting of July 26, 2010. He said on page 13 it says Councilor Holman said he would amend his motion to postpone to August 9th and it was seconded by Councilor Hood.

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

APPROVAL OF ACCOUNTS PAYABLES

Councilor Williams moved to approve Accounts Payables. Seconded by Councilor Hood.

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

UNFINISHED BUSINESS

Mayor Armstrong stated next item on the agenda was to Unfinished Business-Consider Approving Amendments to the City of Ruidoso Downs Personnel Policy Manual Chapter 12, Rule 1215.

H. John Underwood, City Attorney said it would be his recommendation to the council that based on the proposed adoption of "G" and "H" which were now "A" and "B" that because they postponed it at the last meeting and it's back out and was moved and seconded somebody is going to have to move and second it for approval. Then you can't make a negative motion so you need to move and second it for approval and then it would be his recommendation to have some discussion. Legally when they adopt "G" and "H" the reason for "8A" would disappear because "G" would take its place. Technically the last thing adopted rules but here they don't have that situation so he recommended they move and second it for approval and then vote against it so that they would formally kill it and then deal with "A" and "B" which were "G" and "H."

Councilor Williams moved to approve. Seconded by Councilor Holman.

H. John Underwood said his only discussion that he would have would be that everyone vote against the motion to approve because they were going to adopt subsection "A" which basically takes care of the issues that were raised in "8A" so they need to vote this down and move on.

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

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 stated next item was Other Business-Employee of the 2nd Quarter for 2010-Celia Villarreal of Lincoln County Transit.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was New Business-Consider Approving the Second Amendment to the Personnel Policy Manual Chapter 3 Rule 300.

Mayor Armstrong entertained a motion to approve the Second Amendment to the Personnel Policy Manual Chapter 3 Rule 300. Seconded by Councilor Hood.

Councilor Williams said the changes that they see here which they voted on at the last meeting to adopt for Chapter 3 Rule 300 as it was read and now they had changes to update it to create another section.

Carol Virden, City Clerk/Treasurer said on July 28th there was some discussion on Rule 1215 and in doing some research 1215 on the maximum balance there was an oversight on another category which is called "Non-Exempt Administrative" positions which takes care of the people at the museum. When they went over the full Personnel Policy section by section all of the directors were involved with that and it was an oversight that was not brought forth until the last council meeting. In order to have Chapter 12 Rule 1215 comply they needed to create the "Non-Exempt Administrative" category for those positions at the museum.

Councilor Williams said he had a question about the "Executive" part of it even though it was "Non-Exempt Executive" there was a statement made in the minutes that they just approved tonight that had to deal with who was "Executive." When they talk about the addition of "Executive" and having the Department Heads as part of the "Non-Exempt Executive" when you read the 1215 new additions the hours for annual leave will change but said he wouldn't mention anything about that right now because they hadn't reached that point yet. The question he asked was about the "Executive" and they mentioned about going by state statute with the Chief, yourself, and the City Manager and/or the City Administrator. He asked how that would impact what they were trying to do with the "Non-Exempt Executive" and adding Department Heads as such?

Carol Virden, City Clerk/Treasurer said the "Non-Exempt Executive" Department Heads were not "At-Will" employees and did not fall in with the state statute. Also, the "Non-Exempt Administrative" were not "At-Will" employees. They were employees who were salary positions with no overtime.

Councilor Williams asked why they changed this at the last meeting that they approve Department Heads as a separate or was that just to add the "Non-Exempt Administrative" to and was that the only reason other than identifying the Department Heads as "Non-Exempt Executive?"

Carol Virden, City Clerk/Treasurer said they could probably call Randy Reynolds the person for Personnel and she could explain.

Councilor Williams said he wanted to inquire about the fact that as mentioned about "Executive" positions are appointed positions by state statute. Where are we in identifying the Department Heads as "Non-Exempt Executive?"

Randy Reynolds of Personnel said when they narrowed the division on the Personnel Policy they had taken those positions out of the appointed positions which would have been "Exempt Executive" and they should have been moved to a "Non-Exempt Executive" position. The "Non-Exempt Administrative" positions have been omitted and so they need to be put back into the Policy as a classification of employee.

Councilor Williams said the classification of Department Head was not sufficient enough?

Randy Reynolds said she believed that they needed to put them as "Non-Exempt Executive" positions because it shows that they fall under the Federal Labor Standards Act and not "At-Will" employee.

Councilor Williams said they won't be addressing the annual leave until the 1215 but having this in the "Executive" position as it is worded in 1215 puts them in an hours of leave above what they should be because as an "At-Will" or "Appointed" that's the reason for the hours that you are allowed to have accumulated. He said he was afraid that if they put the Department Heads in the "Executive" them having the same hours, they're not required to have those hours because they aren't appointed positions or "At-Will."

Carol Virden, City Clerk/Treasurer said the 1215 maximum balance has always been in the Personnel Policy since February 12, 2002 when it was adopted. The reason for that was the 240 hours was specifically for Department Heads and they inserted that for the museum people that came in 2005. The 600 hours were for the "Executive" and the Directors. The classified were the current accrual rate plus those 40 hours. With the research they did they found there was an omission and there were four museum people

that fell under the 240 hours. What they did was just clean it up to signify that the 240 was specifically for those people.

Councilor Williams said he would like to have under "Non-Exempt Administrative" the word "Public" put in there under "B" to make it "Public Works Foreman" instead of just "Works Foremen."

Councilor Williams said he would amend his motion and add under "Non-Exempt Administrative" and under "B" to make it "Public Works Foreman" instead of "Works Foreman." Councilor Hood agreed to the changed motion.

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

Mayor Armstrong stated next item on the agenda was Second Amendment to Personnel Policy Manual Chapter 12 Rule 1215.

Mayor Armstrong entertained a motion to approve Second Amendment to Personnel Policy Manual Chapter 12 Rule 1215.

Councilor Holman moved to approve Second Amendment to Personnel Policy Manual Chapter 12 Rule 1215. Seconded by Councilor Williams.

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

Mayor Armstrong stated next item on the agenda was Consider Ratifying Agreement Between the City of Ruidoso Downs and the Humane Society of Lincoln County to Provide Kennel Facilities and Humane Care for Animals.

Mayor Armstrong entertained a motion to approve Ratifying Agreement Between the City of Ruidoso Downs and the Humane Society of Lincoln County to Provide Kennel Facilities and Humane Care for Animals.

Councilor Williams moved to approve Ratifying Agreement Between the City of Ruidoso Downs and the Humane Society of Lincoln County to Provide Kennel Facilities and Humane Care for Animals. Seconded by Councilor Hood.

H. John Underwood said he would like to draw their attention to Section 8 as far as the allocation goes. He said in the first sentence, the change that was proposed, put a period after the word "apportion" in the first sentence and left out "to all Village, Municipal, and County business utilizing the services of the Animal Shelter at the time." He said today

when he was looking at this in the staff meeting without any allocation of the number, and this is all about allocating animals to the respective municipality with which the Humane Society has a contract. It says no allocation of the number of animals received after regular business hours for the purpose of accounting shall be made to the City unless all animals received are apportioned. He said it doesn't said as portioned pursuant to Section A, B, or C. It doesn't say how they are portioned. If you simply stopped at the word apportioned it doesn't give us any guidance on how it should be apportioned. He said it seemed to him that it made sense if the apportionment was then between the Village, a municipality, the County or whoever and the City so that the proper apportionment could take place. He said that was gone now and asked to tell him why it's gone and why it's better now.

Ms. Foist said they keep records of every animal received and where they are received from and do not apportion it. After hours the only ones that have keys is the Sheriff's Department to the locker. Any animals received other than those from the locker from the Sheriff's Department are not allocated to any municipality of the contract.

H. John Underwood said what this was saying was that there shall be no allocation of the strays that were received or the animals received after business hours for the purposes of accounting, shall be made to the City unless the animals are apportioned and what they were telling him was the animals weren't apportioned. He said what was trying to be done here was not to put any unnecessary burden upon any municipality unfairly for animals brought in after hours right? So, what it seems is that if they're not apportioned then they won't be assigned to any City.

Ms. Foist said Peggy doesn't bring animals in at night and unless the Sheriff's Department brought a stray in they have keys. The only ones that have keys are the Animal Control Officers for the Village, the County, and the City and there are two stray kennels and they are reported the next morning from the municipality that puts the dog in there. Cats generally they find in boxes on the front doorstep and they just become a stray.]

H. John Underwood, City Attorney said when they took out the language that said are apportioned to all Village, Municipal, and County businesses utilizing the services of the Animal Shelter at the time, what changed by taking that language away from that sentence?

Ms. Foist said it was difference between an accountant and a legal.

H. John Underwood said then it goes on to say when animals are received during business hours by members of the general public the Humane Society shall require these members, and this is where they have apportioned based upon if you say Ruidoso, the County, or Ruidoso Downs, they then assign that animal to that governmental agency.

Ms. Foist said the City brought in 25 animals in July and that was all that was charged. She said they had public stray numbers without a municipality and that was 123 last month. They had 216 animals turned over to them and they do not assign public strays to anybody in terms of fees.

H. John Underwood said he was just trying to figure it out because it said, "there shall not be any allocation to the City unless all animals received are apportioned," so what they were really telling him was that at leaving it apportioned is that it simply means there won't be any assigned to the City.

M. Foist said that was correct.

H. John Underwood said if they decided next week to apportion it there was no rule as to how to apportion it by leaving that language out right?

Ms. Foist said currently yes.

H. John Underwood said he guessed the old language, "are apportioned to the governmental agency utilizing the services of the animal shelter at the time" then that would cover everybody right? He said his concern was that if they decided to apportion then it doesn't say how they would apportion and his concern was that they do it fairly and not put it all on the City. He asked Ms. Foist if she would have any objection to have the wording amended to say "apportioned to the governmental agency utilizing the services of the animal shelter?"

Ms. Foist said she had no objection to that.

H. John Underwood said from a legal point of view it made more sense. He said his recommendation would be that after the word "apportioned" on the third line "to the respective governmental agency utilizing the services of the animal shelter at the time." He said actually he doesn't even need "at the time."

Councilor Holman said he had a circle around the word "apportioned" with a question mark. Either the route that he was going or the statement was made that our Animal Control Officer doesn't bring them after hours. So, therefore just a period after received and just omit "unless animals received or apportioned" since we're not going to be doing that.

H. John Underwood said his only concern with what Councilor Holman said was that the policy could change six months from now and they might find a need to take an animal to the shelter after hours.

Peggy LuJane said she did bring animals in after hours but if she did she did the paperwork.

Councilor Williams said he made the motion and would have to amend his motion to identify under #8 allocation of animals for accounting purposes the sentence that he was discussing as to apportion to the appropriate government agency utilizing the services of the animal shelter facility." Councilor Hood seconded the amendment to the original motion.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Mayor's Appointment of Interim Museum Director-James Kofakis.

Mayor Armstrong entertained a motion to approve Mayor's Appointment of Interim Museum Director-James Kofakis.

Councilor Williams moved to approve Interim Museum Director-James Kofakis. Seconded by Councilor Hood.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Mayor's Appointment-Lincoln County Film Commission-Harold Oakes.

Mayor Armstrong entertained a motion to approve Mayor's Appointment-Lincoln County Film Commission-Harold Oakes.

Councilor Olivo moved to approve Mayor's Appointment-Lincoln County Film Commission-Harold Oakes. Seconded by Councilor Williams.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Mayor's Appointment-Lodgers' Tax Committee-Judy VanWinkle.

Mayor Armstrong entertained a motion to approve Mayor's Appointment-Lodgers' Tax Committee-Judy VanWinkle.

Councilor Hood moved to approve Mayor's Appointment-Lodgers' Tax Committee-Judy VanWinkle. Seconded by Councilor Williams.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Personnel Recommendation-Position-Communication Detention Officer-Ruidoso Downs Police Department-Judy Kern.

Mayor Armstrong entertained a motion to approve Personnel Recommendation-Position-Communication Detention Officer-Ruidoso Downs Police Department-Judy Kern.

Councilor Williams moved to approve Personnel Recommendation-Position-Communication Detention Officer-Ruidoso Downs Police Department-Judy Kern. Seconded by Councilor Hood.

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

Mayor Armstrong stated next item on the agenda was Consider Approving Personnel Recommendation-Promotion-Park Maintenance Foremen-Frankie Gonzales.

Mayor Armstrong entertained a motion to approve Personnel Recommendation-Promotion-Park Maintenance Foreman-Frankie Gonzales.

Councilor Holman moved to approve Personnel Recommendation-Promotion-park Maintenance Foreman-Frankie Gonzales. Seconded by Councilor Olivo.

Roll call votes: Councilor Olivo, Aye; Councilor Williams, Aye; Councilor Holman, Aye; Councilor Hood, 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 after reading the information he was presenting to them they might want to reconsider the advice given to them by the Underwood Law Firm. Your support of a possible illegal enterprise is covered under the RICO Act and he said you can be held liable for the financial support as elected officials. He said before they decide what to do they might want to consider another law firm other than the Underwood for no other reason the appearance of vested interest in what's going on. One is a spokesman for this retention tax and the other one is a State Representative who voted to allow the County to do. He said he was going to pass them this information and this information was all over the Internet. He said what they copied down was just a portion of what's out there. It is something they might really want to consider who they are voting to support. He said it was not what you think it is.

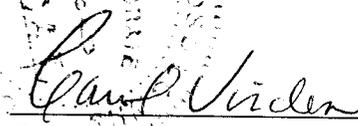
Jim Burrow said he didn't know who would be responsible for that but he would like to have somebody look into the feedback on the mics.

ADJOURNMENT

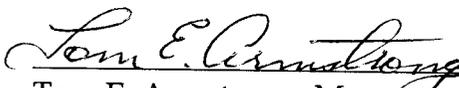
They're being no further business to attend to Mayor Armstrong entertained a motion to adjourn.

Councilor Williams moved to adjourn at 6:08 p.m. Seconded by Councilor Olivo.

All were in favor and motion passed.


ATTEST


Carol Virden, City Clerk/Treasurer



Tom E. Armstrong, Mayor