

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
MARCH 14, 2011
5:30 P.M.

The Council of the City of Ruidoso Downs met in regular session on March 14, 2011. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Police Chief Doug Babcock 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
Terri Mosley, Finance Director
Steve Dunigan, Planning & Zoning Director
Cleatus Richards, Public Works Director
Jim Kofakis, 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 entertained a motion to approve the agenda.

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

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

APPROVAL OF MINUTES OF REGULAR MEETING OF FEBRUARY 28, 2011.

Councilor Hood moved to approve Minutes of Regular Meeting of February 28, 2011. Seconded by Councilor Williams.

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

APPROVAL OF ACCOUNTS PAYABLES

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

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

PUBLIC HEARING

A. ORDINANCE 2011-01 ADOPTING A MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX

- Section 1. Imposition of Tax
- Section 2. General Provisions
- Section 3. Specific Exemptions
- Section 4. Dedication
- Section 5. Effective Date

Mayor Armstrong asked Cleatus Richards, Public Works Director to explain why this tax was needed.

Cleatus Richards, Public Works Director said the tax was approved by the legislature with the assistance of past governors basically to help Ruidoso and Ruidoso Downs. He said the tax is only available on to these two communities and is to assist in the increased cost contributed to the Wastewater Treatment Plant and other improvements to sewer systems that are mandated under the EPA agreement for the sewer plant. The primary purpose will be for the additional cost to operate our new sewer plant. Utilities, particularly electrical will double for the next year and chemicals will be another large item. Utilities will increase from approximately \$384,000 to approximately \$768,000 because it is a much larger and more sophisticated plant. Lab expenses are also going to increase as well as equipment maintenance. Membrane replacement will occur within a 5-year period and the funds need to be set up. These costs are the best estimate at this point. The true operating costs won't be known until about after a year of operation. Hopefully by the end of March we will be on line with the operation of the plant. Under the EPA agreement we are also mandated to connect various parts of our

community that are not served by our current sewer system into that new sewer system. Agua Fria alone will cost approximately 3 million dollars to pay for all of the sewer expenses. Also the flood damage to the interceptor system in 2008 is estimated to cost 4.4 million dollars to repair. He said there is a need to start to generate reserve funds because the expenses are coming.

Mayor Armstrong said he hereby opened the Public Hearing at 5:34 p.m. and would be accepting comments in the following order. Interested persons must approach the podium one at a time, state their name, and present their testimony. A limit of 3 minutes will be allowed per person. He asked if there were any persons present to speak in opposition of the action?

There were no persons present to speak in opposition of the action.

Mayor Armstrong asked if there were any persons present to speak in support of the action?

There were no persons present to speak in support of the action.

Mayor Armstrong closed the Public Hearing at 5:36 p.m.

Mayor Armstrong entertained a motion to adopt Ordinance No. 2011-01 A MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX.

Councilor Holman moved to approve approve adopting Ordinance No. 2011-01 A MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX. Seconded by Councilor Olivo.

Councilor Williams said to Cleatus Richards, Public Works Director that he was talking about FEMA and that they might be providing funding. He asked if he had any discussion with them over a period of time or if he was continuing discussions with them and if he was getting a feel from them about where they are going with this?

Cleatus Richards, Public Works Director said he had been in contact with Ruidoso somewhat who was handling the funding for engineering of the environmental assessment. It's moving well and hopefully soon they will be moving into the final design and final costs on the project. At that point they will have a much better understanding of the full cost and the extent that FEMA will participate.

Councilor Williams said he mentioned preliminary engineering costs of 4.4 million and asked if that was the 85/15% split?

Cleatus Richards, Public Works Director said no and that it was the total cost. He said our share would be \$662,000.00.

Councilor Williams said he would like the Finance Director to identify the increase of the tax from where it is now to where it is going to be.

Terri Mosley, Finance Director said with the ½ percent our gross receipts tax will be 7.625% from 7.125%.

Councilor Williams said they had already been hit with the Business Retention Tax at the beginning of the year. He asked Cleatus Richards, Public Works Director is that was 15% of the 96,000.00?

Cleatus Richards, Public Works Director said that was correct.

Councilor Williams asked other than Agua Fria what other areas of the City needed sewer connections?

Cleatus Richards, Public Works Director said the end of North Parker, Wood Ln. had several pockets and those areas were listed in the EPA agreement.

Councilor Holman said some of the history on this was about four or five years ago they raised property taxes to supplement the Wastewater Treatment Plant. The council at that time was because they had a considerable amount of poverty level residents and they didn't want to raise the rates on the water and sewer. With this settlement plan they don't have any other option except to comply. He said he wouldn't want to see us do anything more to raise property taxes. He said they would be under the Village of Ruidoso tax rate which he would like to see us keep and perhaps affecting economic development or the housing industry. He said this is definitely the way to go.

Mayor Armstrong said their hands are really tied and are mandated.

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.

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.

Councilor Holman said this would be the appropriate time to say that now that we are getting a new police chief there are some things of concern to this community and at some point they need to know what the situation was that resulted with the special audit from the state. The citizens need to know the real reasons of those changes in the Police Department.

H. John Underwood, City Attorney said he had an opportunity to visit with the State Auditor during the past week and we can't make the audit public until we get a letter back from the State Auditor. He said the State Auditor said it would be approved tonight and that they would get the audit letter back to us within ten days.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was - Swearing in Newly Appointed Chief of Police.

Mayor Armstrong stated that Municipal Judge Mansell would swear in the newly appointed Chief of Police.

Municipal Judge Mansell did swear in the newly appointed Chief of Police Douglas K. Babcock.

Mayor Armstrong stated next item on the agenda was - Consider Approving Wastewater Treatment Plant Operating Invoice for February 2011.

Terri Mosley, Finance Director said there was one change she made and had handwritten in there but after that change the invoice was correct.

Mayor Armstrong entertained a motion to approve Wastewater Treatment Plant Operating Invoice for February 2011.

Councilor Williams moved to approve Wastewater Treatment Plant Operating Invoice for February 2011. Seconded by Councilor Olivo.

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 to Joint Use Board Member.

Mayor Armstrong said he was moving Cleatus Richards to the regular voting delegate and asking that Ken Mosley be the Alternate on the JUB. Cleatus will be taking Carol's place and Ken will be taking Cleatus place.

Mayor Armstrong entertained a motion to approve Mayor's appointment to Joint Use Board member.

Councilor Olivo moved to approve Mayor's appointment to Joint Use Board member. 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 - Part-Time/On Call Driver-Lincoln County Transit.

Mayor Armstrong entertained a motion to approve Personnel Recommendation - Position - Part-Time/On Call Driver-Lincoln County Transit.

Councilor Hood moved to approve Personnel Recommendation - Position - Part-Time/On Call Driver-Lincoln County Transit. 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 Agenda Briefing Memorandum-Surcharge for Same Day Service Request and Cost Increase-Lincoln County Transit.

Patty DeSoto, Transit Manager said when people call 24 hours ahead of time they can more efficiently schedule use of the bus. People have gotten accustomed to calling in on the same day. It is becoming inconvenient because they are getting more scattered and are a little less prepared rather than having notice in advance. She said they don't mind providing that service but are considering a \$5.00 surcharge or a \$3.00 discount if called in ahead of time. She referenced the Agenda Briefing Memorandum in that students or those with doctor's appointments would be an exception. She said with the increase of the cost of gas she would like the council to consider an increase in the cost for rides in the service areas. Currently it is \$1.00 per ride in Ruidoso and Ruidoso Downs and \$2.00 for Capitan and Carrizozo. She asked that they consider \$2.00 per ride in Ruidoso up to the Shell station on the north side and to Hale Cemetery on the south side and \$4.00 per ride in the Capitan and Carrizozo area or anything past the Shell station.

Councilor Williams asked if the surcharge and then if you take off the \$2.00 it would be \$3.00 for a same day rider?

Patty DeSoto said a same day rider would be \$5.00. If you called 24 hours in advance it would be \$2.00.

Councilor Williams asked what their percentage of same day riders was?

Patty DeSoto said it was about 30%.

Councilor Olivo asked if they had considered doing a fixed route?

Patty DeSoto said they were still mapping that out and would show it to council when completed.

Mayor Armstrong said Patty was working with it and would have results soon and maybe by next council meeting they would have something to look at.

Councilor Holman said he would assume that what they were trying to do was to balance this so that the transit would work and trying to factor in if they raise their rates will some of the passengers fall off. He said even with the rates being rates and if people will look at what it costs to own a vehicle its frightening if you include gas and insurance.

Mayor Armstrong entertained a motion to approve Agenda Briefing Memorandum-Surcharge for Same Day Service Request and Cost Increase-Lincoln County Transit.

Councilor Olivo moved to approve Agenda Briefing Memorandum-Surcharge for Same Day Service Request and Cost Increase-Lincoln County Transit. 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 First Amended Master Severance Pay Plan-Executive Designated Positions.

H. John Underwood, City Attorney said he had prepare what is called the "First Amended Master Severance Pay Plan" which amends the current master Severance Pay Plan that was previously approved by the council on April 14, 2008. The reason for that is to primarily put the new Police Chief on that plan. The amendment on that is that it takes out the provision that somebody has to be employed by the City for five years before becoming eligible. It implies that an appointed position is a key position. The other amendment also puts the provision that says that the City has determined that the service of this key employee is essential to the well being of the City. It will allow the new Chief of Police to be eligible for our Severance Pay Plan. He said the City Clerk was the only one that opted under the previous Severance Pay Plan and it is subject to her approval otherwise it would be a breach of our contract with her. So long as Ms. Virden signs off it could be approved.

Councilor Williams asked if this would only cover Ms. Virden and the new Chief of Police?

H. John Underwood, City Attorney said yes.

Councilor Williams asked why there was the removal of the 5 years?

H. John Underwood, City Attorney said so that the Police Chief could be eligible for it.

Councilor Williams said there were a couple of other mistakes that he would get with the City Clerk on.

Councilor Hood moved to approve First amended master Severance Pay Plan-Executive Designated Positions. Seconded by Councilor Olivo.

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

Mayor Armstrong stated they would take a 15-minute break. The time was 6:07 p.m.

Mayor Armstrong stated next item on the agenda was - Dan Austin, CPA-Presentation of City of Ruidoso Downs Audit 2009-2010.

Dan Austin said this was the third year that they have done this audit. He said he would like to call their attention to page 9 and that the total assets decreased from \$14,214,000.00 to \$13,718,000.00 on a government-wide set of financial statements. This consolidates all of the funds of the City into one set of financial statements. The change in the net assets was a decrease in the current assets in cash. Current assets decreased from \$3,935,000.00 to \$3,402,000.00. Current liabilities also decreased from \$1,132,000.00 to \$998,000.00. Net assets decreased from 11,726,000.00 to 11,402,000.00. He said on page 10 they would see the decrease in total revenues from 5,341,000.00 to 4,707,000.00. That was due to the decrease of operational grants from \$2,153,000.00 to 1,687,000.00. Total expenses were decreased from \$5,126,000.00 to 4,878,000.00. The net increase in net assets have increased from 2009 from \$11,726,000.00 to \$11,402,000.00. He said as seen at the bottom of page 10 under Business-Type Activities that it includes the Joint Water and Sewer and the Sanitation utility operations. These had an increase in net assets of \$3,913,000.00 for the year. The primary reason for the was due to the receipt of grants for capital improvement projects in the amount of \$3,921,000.00. Dan Austin said he would like to go over the General Fund on page 14. He said there was a cash total of \$1,354,000.00 at the end of the year and Taxes Receivable of \$446,000.00 and made a total for Assets of \$1,907,000.00. There were \$81,000.00 of total Liabilities which was composed of Accounts Payables of \$19,000.00, Accrued Payroll & Benefits of \$56,000.00 and Deferred Revenue of \$6,293.00. The total General Fund equity or fund balance was \$1,825,000.00. On page 16 the General Fund Revenues were \$3,043,790.00 and that was composed of taxes of \$1,530,000.00 and Intergovernmental of \$1,297,000.00 and various others for a total of \$3,043,000.00. The total expenses were \$3,142,000.00. The General Government expending of \$1,177,000.00 with Public Safety of \$1,245,000, Highway and Streets of \$503,000.00, Culture and Recreation of \$151,000, and Other of \$64,000.00. He said they ended up with a deficit for the end of the year of \$98,246.00. He said they also transferred out \$116,000 into various other funds, the Water Fund and the Museum. There was a net increase of \$214,898.00. He asked them to look at the net Budget on page 18. He said the Original Revenue projection was \$3,322,000.00 and they adjusted that during the year to \$3,403,000.00 they generated \$3,082,000.00 on a cash basis of budgeted revenues. The Expenditures were originally projected at \$3,339,000.00 and they were adjusted during the year to \$3,416,000.00 and the actual was \$3,038,000.00 with transfers of \$116,000.00 resulting in a net of \$3,155,217.00. He said they always do end of the year budget adjustments so that it brings them into compliance with regulations. Dan Austin said there were a lot of things going on with the museum and

asked them to look at page 19 and that it is one of the major funds in the Financial Statements. Revenues were projected at \$1,015,000.00 and there were only \$524,000.00 generated in Revenues. They expended \$886,000.00 and transferred \$169,000.00 in and they ended up with a net deficiency of \$199,417.00. He said page 20 was the Balance Sheet for the Water and Sewer Proprietary Funds and one of the things he wanted to point out was the investment in the Wastewater Treatment Plant was \$3,593,000.00. As far as the Revenues for the Utility Fund they would see on page 21 that they generated Operational Revenues in the Water and Sewer function of \$725,000.00 and expended \$851,400.00 including \$179,000.00 in Depreciation resulting in an Operating deficit of \$126,042.00. There were \$3,921,000.00 in Non-Operating Revenues and also received \$123,000.00 from the General Fund. They ended up at the year with a net change of \$3,901,000.00. The Sanitation Fund generated \$247,000.00 in Revenues and expended \$264,000.00 for deficit Operating Income of \$16,672.00. They also transferred in \$28,000.00 from other funds resulting in a net change of \$11,000.00. He said one other thing he wanted to point out was on page 30 regarding the Joint Powers Agreement that they receive a Federal Grant from the New Mexico Environment Department of \$2,900,000.00 and another \$1,085,000.00 of legislative appropriations that resulted in a net investment in the Wastewater Treatment Plant of \$3,593,000.00. He said last but not least he would like to go over the findings in the report and they would see the findings on page 74. He said there were five findings. The first one was "Auditor Prepared Financial Statements" that they were going to have every year as long as he prepares the Financial Statements. This would continue to be a finding due to the fact that the City did not employ personnel with adequate qualifications and training sufficient enough to prepare the financial statements. Dan Austin said the next one was a carry over from the previous year and that the staff was working on it. At the end of the year they noticed the museum was not taking an adequate inventory in the store. At that time they were looking at new software to take care of that. The third one was Payment of Overtime and was related to the Special Audit. He asked if they had any issues with him going over that? H. John Underwood, City Attorney said not at all. Dan Austin said the State Auditor noted inconsistencies in calculating overtime in the Police Department. He said he was asked to look into a special situation there resulting from some information that staff had received. He said the process was normally to rely on internal controls to look at and approve timesheets and approve and submit to payroll. Staff asked him to look into the situation where a certain officer had been asked to do something not necessarily legal. There was also a situation where they had over-billed a grant which was corrected prior to the audit but it raised some questions about how time was being calculated by the police officers. He said the only way he could figure out how to check this process was to obtain call records from the Dispatch Department and go through and do tests and try to determine if he felt the timesheets were correct. He said when he did that test it was very cumbersome and found there were numerous discrepancies in the time sheets the officers had prepared and the chief had approved or a supervisor had approved and the call records. There were instances where the officers were saying they were sick. H. John Underwood, City Attorney said as far as getting into specifics he would feel more comfortable in getting into specifics once they get the letter from the State Auditor. Dan Austin said okay, and leave it to say that they found many discrepancies there and as a result of that Special Audit, and it was a suggestion in that Special Audit to review those procedures and develop new procedures to make sure that the police officers time sheets were accurately prepared so they were sure the City was getting their

moneys worth. He said there was one other finding which was his fault. He said he submitted the report on time but they had a couple of issues with it that he had to subsequently correct and it kind of changed the rules so they considered the report late.

Dan Austin, CPA asked if they were going to want him to come back for the Special Audit?

H. John Underwood, City Attorney said more than likely.

Mayor Armstrong stated the next item on the agenda was - Consider approving City of Ruidoso Downs Audit 2009-2010.

Mayor Armstrong entertained a motion to approve City of Ruidoso Downs Audit 2009-2010.

Councilor Olivo moved to approve City of Ruidoso Downs Audit 2009-2010. Seconded by Councilor Hood.

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 he would like to renew his objection the way the transit system is being used. In the past he said it was direct competition with private enterprise and that Mr. Cook said because it wasn't an on-demand service that it was legal to do. Now it is an on-demand service and it should be like any other bus service that runs from bus stop "A" to bus stop "B" and "C" and back around to "A" again. He said running from door to door that he didn't care how you put it or what kind of a legal staff you have is going to say that it's legal. If he was in the taxi business he said he would be suing the City and the County and Ruidoso. He said the other thing he had a problem with was when this thing came up you all agreed that \$25,000 from each entity to be invested and if one of those people reneged the transit system would be out of business. He said he never did get an answer if Lincoln County was still going to be a part of this or whether or not he understood that Ruidoso put up \$25,000 and not \$28,000 and that was a question he would like answered. He said another thing he had was to the auditor here was before they start raising the gross receipts tax to the population and visitors to Ruidoso Downs that they might want to take a look at cutting out the waste and after hearing him there seems to be some big chunks that could be cut instead of putting funds in a lockbox for future expenditures you know how that works, it don't. He said he has never seen any city government, state government, or federal government that could save money for when they need it. They have money, they will spend it. He said not to try to pull that cloud over everyone's faces. He said they still need to look at this tax raise because it's the wrong thing to do and they also need to look at this transit system. If you go bus stop to bus stop he said he

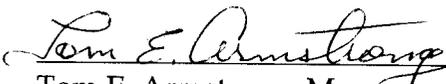
didn't see any problem with it even though it's still a drain on our City and it's something that we don't need because it doesn't service enough people. At least that would be legal but what they are doing now he cannot believe it's legal.

ADJOURNMENT

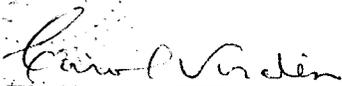
There being no further business, Mayor Armstrong entertained a motion for adjournment.

Councilor Hood moved to adjourn at 6:38 p.m. Seconded by Councilor Holman.

All were in favor and motion passed.


Tom E. Armstrong, Mayor

ATTEST:



Carol Virden, City Clerk/Treasurer