

MINUTES OF THE CITY COUNCIL
OF THE CITY OF RUIDOSO DOWNS
CITY COUNCIL CHAMBERS
REGULAR MEETING
MARCH 28, 2011
5:30 P.M.

The Council of the City of Ruidoso Downs met in regular session on March 28, 2011. Mayor Armstrong called the meeting to order at 5:30 p.m. and asked Doug Babcock, Chief of Police 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:

H. John Underwood, City Attorney
Carol Virden, City Clerk/Treasurer
Terri Mosley, Finance Director
Doug Babcock, Chief of Police
Steve Dunigan, Planning & Zoning Director
Cleatus Richards, Public Works Director
Jim Kofakis, Museum Director

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.

Councilor Williams asked that the Beautification Committee report be removed from the Consent Agenda in order to be discussed.

Mayor Armstrong also noted that the new Chief has signed the Monthly Reports and asked the Chief if he was okay with that signature on there?

Chief Babcock said he had Officer Bailey's signature on the February reports because he was the active supervisor at the time. He said he did look over it after Officer Bailey did.

Councilor Williams said just to advise the council that the request was made on February 4th and these reports were initiated before the Chief was sworn in this month and actually came before the supervisor that was on at that time.

Mayor Armstrong said he would pull that report and get him to sign off on that.

Chief Babcock said he had a copy of that and had them do another set in case they wanted that change.

Carol Virden, City Clerk/Treasurer said she believed what Chief Babcock was saying was that he was going to replace his signature with Officer Joseph Bailey to read in the minutes. So, if they would pass that on here they would make a note in the minutes.

Councilor Williams said he wanted to be sure that when these became actual legal documents there would be no question about who signed it and when.

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

APPROVAL OF MINUTES OF REGULAR MEETING OF MARCH 14, 2011.

Councilor Hood moved to approve Minutes of Regular Meeting of March 14, 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.

APPROVAL OF MONTHLY REPORTS

Councilor Hood moved to approve Monthly Reports. Seconded by Councilor Williams.

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

APPROVAL OF COMMITTEE REPORTS

Councilor Hood moved to approve Committee Reports. Seconded by Councilor Williams.

Councilor Williams said the Beautification Committee has a "Liberty Gardens" dedication scheduled for April 9th over in the park. He said they would like to thank the Public Works Department who participated in building the structure. When this dedication takes place the actual organic material will be planted in there so you will see the results of the action the committee has taken. He said he would appreciate anyone that could be there that day to come by around 8:00 because it's happening on the same day as the cleanup. He said they were also in the planning stages of the Easter Egg Hunt and they were going to have a meeting this week and would clarify that. He said the committee would also like to thank the Parks Department for accepting the five trees from them and that they would be planted around the flagpole and "Liberty Gardens." Councilor Williams said it would be an attraction to people coming through and bring interest to bringing them into our park.

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.

There was no Other Business.

NEW BUSINESS

Mayor Armstrong stated next item on the agenda was - Consider Approving Resolution No. 2011-03 Fire Restrictions.

Kenny Ellard, City of Ruidoso Downs Firefighter, said according to different weather stations between here and Mescalero and Mayhill we were in the 90 percentile. He said with the latest winds and the lack of drainage from the lack of winter it was very dry right now and said in fact he had just gotten off a fire in Ruidoso for mutual aid. He said if they would look on the chart that the red was for the max that was for 1990-2010 that the stations had taken in data.

He said we were the blue right above the max and that we needed to look at going into Level II Fire Restrictions. He said we had been in a very high fire danger since Monday of last week.

Mayor Armstrong asked if there were any questions?

Councilor Williams asked if Kenny had seen any long-range forecasts for the area?

Kenny Ellard, Firefighter said the ten-day forecast is starting tomorrow was going to be nice, Wednesday would turn windy, and the rest of the week would be high temps with very little wind. He said they have had three weeks of high winds though and they responded to a fire last night and one that morning at 12:40. He said it was going through the grass pretty fast.

Councilor Holman said as he recalled that we compliment Ruidoso and they do us and that we have identical fire restrictions.

Kenny Ellard said that was correct and they try to keep them even so there is less confusion. He said they had a pretty big grass fire just before the big spring break weekend.

Councilor Hood asked if any other communities were going to Level II?

Kenny Ellard said Ruidoso was and the County was going week by week with a no-burn ban. The County really didn't follow what Ruidoso and Ruidoso Downs did with fire restrictions but they did it from Tuesday to Tuesday every week as to whether they were going to let people burn or not.

Mayor Armstrong entertained a motion to approve Resolution No. 2011-03 Fire Restrictions.

Councilor Hood moved to approve Resolution No. 2011-03 Fire Restrictions. 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 Special Dispenser Permit-Ruidoso Downs Racetrack-Event "Billy the Kid Chute Out" Bull Riding-June 3 and 4, 2011.

Mayor Armstrong entertained a motion to approve Special Dispenser Permit-Ruidoso Downs Racetrack-Event "Billy the Kid Chute Out" Bull Riding-June 3 and 4, 2011.

Councilor Olivo moved to approve Special Dispenser Permit-Ruidoso Downs Racetrack-Event "Billy the Kid Chute Out" Bull Riding-June 3 and 4, 2011. Seconded by Councilor Williams.

Councilor Williams asked if there was anyone present to talk about the event? He said he thought this was a first time event and would like more information on what this consisted of before voting on it.

Chief Babcock said he understood it was going to be a bull-riding event and would be held at 100 Joe Welch at the Sale Barn.

Councilor Holman said he was seeing the same thing on TV and it's probably the same thing and they were doing it in Albuquerque too.

Mayor Armstrong asked Councilor Williams if that was enough information?

Councilor Williams said yes and that it was good to have an event like that here in the city.

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 - Discussion and Review of Special Audit.

H. John Underwood, City Attorney said before they got started he wanted to cover the letter they got from the State Auditor. He said they sent the Special Audit to the State Auditor's office as required by law and they received faxed to them today as of 2:40 p.m. a letter from Hector Balderas, State Auditor acknowledging receipt of that Special Report conducted by Dan Austin regarding the Ruidoso Downs Police Department received on November 29, 2010. He read briefly from a letter that: The State Auditor review of the Audit Report required by Section 12-6-5 NMSA 1978 Comp and 2.2.215 NMAC has been completed. The Special Report does not become public record until five days after the date of this letter. The City of Ruidoso Downs may waive this five-day waiting period and may link this public report with written request as of March 24, 2011. It is ultimately the responsibility of the governing body of the agency to take corrective action on all findings and comments. Be advised that pursuant to 12-6-6 NMSA 1978 Comp in Sub-Section K of 2.2.10 of New Mexico Administrative Code your agency and independent auditor must notify the State Auditor's office upon discovery of any violation of the criminal statute in connection with financial affairs to the proper prosecuting officer and furnish that office with the information.

H. John Underwood, City Attorney said pursuant to this letter they were authorized to allow this report to be made public.

Dan Austin CPA said he would read from the report:

Dear Sirs,

I was engaged by the City of Ruidoso Downs to investigate possible fraudulent activity concerning the City of Ruidoso Downs Police Department. The following is the

procedures performed and the subsequent findings.

Background: On August 21, 2010 I received a telephone call and subsequent letter from the office of the State Auditor referring to a report prepared by staff of the City of Ruidoso Downs knowing that they had over-billed the Village of Ruidoso who is the fiscal agent for the Lincoln County DWI grant. I subsequently met with the staff of the City of Ruidoso Downs and reviewed the report submitted to the State Auditor and discussed those with City staff and their concerns. I subsequently met in closed session with the city council to review the concerns of the staff. The council agreed to enter into and with the office of the State Auditor to approve the contracting with an independent public accountant to investigate their concerns. The office of the State Auditor approved the agreement with our firm to complete that engagement.

Scope of Methodology: The City of Ruidoso Downs has no formal timekeeping system in place. The police officers maintain their time and enter it into a time sheet and is subsequently signed as accurate by the officer and reviewed and proofed by the supervisor of the department. The control system relies on the supervising official to have knowledge of the employees schedule and the time he was actually on the job. The City of Ruidoso Downs does maintain a dispatch system to communicate with officers while they are on duty. Officers are required to call the dispatch employee to report that they are on or off duty as well as report various situations that occur during a working day. The records of daily activity for a call sheet are the only records available to test the accuracy of the time sheets submitted to the Personnel Department. We selected three police officers call sheets and recalculated the daily time on duty based upon the notations on the call sheets and compared that with the time to hours reported on the officer's time sheets. The period of review was from December 27, 2009 to August 21, 2010. We were provided at the beginning of the examination and inquiry a confidential memo from one officer according to the City personnel officer that they had been instructed by supervisors to falsify time sheets in order to report DWI grant overtime. The officer refused to falsify records as noted in the memo.

Summary of Findings: We examined the internal report submitted to the office of the State Auditor and concur with the findings of the staff of the City of Ruidoso Downs that the grant was incorrectly billed for the time, which had been billed to the DWI grant. Our tests, which are attached to the report of the time sheets and dispatch call sheets raises serious concerns about the accuracy of the time sheets presented to the Personnel Department of the City for payment, however we caution the City that the call sheets tested may not be an accurate reflection of the time worked. In a test we noted the following:

- numerous instances of time discrepancies between the call sheets and time sheets
- instances where the officers were reported off and call reports noted

the officers were on duty

- instances where the officer called in sick on their time sheets but were reported as worked on the time sheet and the officer reported as sick time
- current policy requires an officer to be paid overtime after working 80 hours in a time period and overtime was incorrectly calculated resulting in possible overpayment
- the results of the tests notes that the current system of supervisor reviews does not result in accurate time worked and relies on the integrity of the supervisor
- I would encourage the City of Ruidoso Downs to implement some form of time or computer based time keeping system to more accurately reflect the time worked by all employees
- I would encourage the City to review its policy concerning its pay of overtime to Police and Fire employees

This report was prepared for the mayor and the city council and the office of the State Auditor of the State of New Mexico. (dated November 22, 2010)

Councilor Holman said in his opinion this summary is greatly downplayed. He said he didn't think it was complete. This should not be a reflection on the other officers. ~~The other two officers~~ All but two were in a bad situation and probably had a difficult time in knowing what to do. They probably were stressed wondering what some of the implications might be that might cause them some problems later. He said he would like to emphasize what Chief Babcock has said in that the officers we have on board at this time are good officers and have done a good job. He said he would hate to see any reflection on them. The report was incomplete and left out some serious things and are more serious than what has been stated.

Councilor Williams asked Dan Austin if he had the amount that the Village was overbilled?

Dan Austin said it was roughly \$1,600.00.

Councilor Williams said on these tests the call sheets had a call sheet total and then there is a total time sheet number. The difference between those, is that where the discrepancy was?

Dan Austin said when you went through the time sheets there was no correlation between the time sheets and call sheets whatsoever. One reason he said he cautioned the City about time and one thing he mentioned in Closed Session was that he could see instances where officers

that worked more than what was reported on the time sheet and less. I also was concerned that these officers weren't being compensated for time actually worked.

Councilor Williams asked Chief Babcock if the recommendation that Dan Austin made to the City regarding timekeeping had been set up yet?

Chief Babcock said basically when an officer starts his tour of duty he will radio in and it will be recorded and will be entered into the CAD program, which is a computer dispatch. It keeps track of all of the calls during that shift and it will show when they come into work and whatever they do during the day. When they go off duty they will radio back in and they are then signed off in the CAD as off duty.

Councilor Williams asked if they were working off of any grants at this time?

Chief Babcock said there was a DWI grant still in place but he didn't think they were working any of it though.

Councilor Williams asked H. John Underwood, City Attorney if because of the findings of this report if there were going to be any legal actions taken against the parties that might have been involved with this?

H. John Underwood, City Attorney said in review of the letter they received from the State Auditor two parts of this that were important. First of all it's ultimately the responsibility of the governing body to take the corrective action on all findings and comments. This body knows there has been corrective action taken. It is the State Auditors obligation to report any violation that they feel might be a violation to the proper prosecuting officer. It is up to us to do any internal controls to place or make changes. In regard to the future and timekeeping issues he said he would think that some of the findings that officers wouldn't call or they would forget he told Chief Babcock that he might want to at some time sit down at an appropriate time with the auditor and take any suggestions he may have to make sure that we have something we can count on and any agency that we bill for grants that they can count on.

Councilor Williams asked Councilor Holman what the issues were that he had with this report?

Councilor Holman said there have been more serious infractions and they have not been mentioned here.

Councilor Williams asked if he thought those needed to be added to this report?

Councilor Holman said he didn't know if they could.

Dan Austin DPA said his report was only about the time sheet issues and billings. If there were other issues they weren't disclosed to him.

Councilor Holman said he wasn't aware of that but was not holding him at fault.

Dan Austin CPA said if there were more serious issues he would encourage them to contact the District Attorney.

H. John Underwood, City Attorney said the letter from the office of the State Auditor referred to items in the Special Audit. If there were other issues that council wanted to discuss in Closed Session they could then forward those on to the District Attorney. They could also forward this report to the District Attorney.

Councilor Hood asked Chief Babcock if he anticipated having this same problem and if he thought they needed to put in a new timekeeping system?

Chief Babcock said they system they have will work if the information is put in properly.

Dan Austin CPA said in a previous special session the previous Chief admitted they hadn't been looking at those timekeeping issues at all.

Chief Babcock said in Ruidoso they also have that system and have been keeping check on theirs. If it starts flashing they will call the officer.

Mayor Armstrong asked Chief Babcock if they system we have now will work?

Chief Babcock said yes but if they wanted to put in a time clock that would be fine too.

H. John Underwood, City Attorney thanked Dan Austin for his cooperation. He said the report was entitled to be public information now.

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 say that police officers have the most unappreciated job in this country. They deal with drunks on a daily basis, spousal abuse, every conceivable dark and dirty thing that comes along. They work holidays and special events and don't get to spend time with their families, are underpaid however that being said that still does not give that police officer or any elected official the right to break the law that they are sworn to uphold. If we do have some officers in this City that have broken laws they need to be

prosecuted. They don't need to be slapped on the wrist and say you don't have a job anymore, they need to be prosecuted. You need to show proper respect and that you can't allow anyone within the City as an employee and not allow them to break the law. You need to prosecute and they need to be put in jail or pay some kind of a fine, they need to be punished in some way. He said as City council if they didn't do something they were slacking.

Joyce Gustafson said she would like to suggest that they put in place an evaluation system starting with the mayor to directors on down to the City employee and then to the citizens that elect them and will do the evaluation on them. It would then be put in their permanent files and there would be a better tracking system. She asked if there was any kind of evaluation system in place now on the employees?

Mayor Armstrong said yes.

Joyce Gustafson asked how they were done?

Carol Virden, City Clerk/Treasurer said the procedure for evaluations is based when they were hired and they have four evaluations on a quarterly basis which tells the director if they are doing what they are supposed to do or if they are exceeding what was asked of them prior to that first year. If they don't meet the process allows the director to make a decision and recommend not hiring the employee. That is the only evaluation system in place at this time.

Joyce Gustafson asked once they was employed for one year they were not evaluated again?

Carol Virden, City Clerk/Treasurer said the director can do one but it was not a process in the Personnel Policy.

Mayor Armstrong said he was overstepping the process of Public Input and that she had approximately 46 seconds.

Joyce Gustafson asked if it was a possibility if they could be evaluated after a year's time?

Mayor Armstrong said they could but it wasn't a part of their policy.

H. John Underwood, City Attorney said he wanted to make clear that the City did not have the right to prosecute anybody. The District Attorney was the prosecuting arm of the State. The fact that the state Auditor is sending this report to the District Attorney who handles this issue, he said he had no problem in recommending that this governing body forward the report to the District Attorney for review. It would be their determination for what action to take.

ADJOURNMENT

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

Councilor Hood moved to adjourn at 6:16 p.m. Seconded by Councilor Williams.

All were in favor and motion passed.



ATTEST:

Carol Virden
Carol Virden, City Clerk/Treasurer

Tom E. Armstrong
Tom E. Armstrong, Mayor