

**LINKED MINUTES OF SPECIAL MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING
ON FEBRUARY 9, 2016 AT 6:00 P.M.**

Present:	Dale Janway	Mayor
	Lisa A. Anaya Flores	Councilor
	Edward T. Rodriguez	Councilor
	Sandra K. Nunley	Councilor
	J. R. Doport	Councilor
	Wesley A. Carter	Councilor
	Richard Doss	Councilor
	Janell E. Whitlock	Councilor
Absent:	Jason Shirley	Councilor
Also Present:	Steve McCutcheon	City Administrator
	Stephanie Shumsky	Deputy City Administrator
	Eileen P. Riordan	City Attorney
	Annette Barrick	City Clerk
	Monica Harris	Finance Director
	Jeff Patterson	Planning, Eng., & Reg. Director
	Luis Camero	Public Works Utilities Director
	Thomas Carlson	Public Works Director
	Richard Lopez	Fire Chief
	Kent D. Waller	Police Chief
	Patsy Jackson-Christopher	Director of Arts & Culture
	Steve Hendley	Director of Parks & Recreation

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 **Call Meeting to Order**

0:00:01 Invocation - Pledge of Allegiance

0:00:37 **Mayor Janway asked Mr. McCutcheon to join him in presenting service awards honoring employees who have achieved 20, 25, and 30 years of service with the City of Carlsbad. Mayor Janway added the City of Carlsbad has outstanding employees and we are proud of each one of you.**

0:06:25 **Mayor Janway wished Mario Salinas a Happy Birthday.**

0:06:43 **1. APPROVAL OF AGENDA**

0:06:46 **Motion**

The motion was made by Councilor Doporto and seconded by Councilor Anaya Flores to approve the Agenda

0:06:54 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doporto, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

0:07:10 **2. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of Regular City Council meeting held January 26, 2016
- B. Minutes of the Special City Council Meeting held on February 4, 2016
- C. City Personnel Report
- D. Purchasing:
 - 1) Consider approval to Advertise RFP for Third Party Claims Administration Services
 - 2) Consider approval to Award RFP No. 2015-52, to Max Safety for Fire Extinguisher Maintenance Services
 - 3) Consider approval to Award Bid No. 2016-01, to Constructors, Inc., for the North Canal Street Resurfacing in the amount of \$750,979.86
 - 4) Consider approval to Award Bid No. 2016-02, to Bobcat of Albuquerque, for one (1) Skid Steer Loader in the amount of \$16,171.40
 - 5) Consider approval to Award Bid No. 2016-03, to Hall Brite Inc., for two (2) Runway Closure Markers in the amount of \$33,164.84
 - 6) Consider approval to Award Bid No. 2016-05, to GEFE Inc., for twenty-eight (28) Paperback Book Spinner Racks for the Carlsbad Library in the amount of \$20,772.80
 - 7) Consider approval to Award RFP No. 2014-51, to HDR Engineering Inc., for Engineering Services for the Effluent Reuse Phase 5B Project contingent upon NMED approval
 - 8) Consider approval of CES proposal, to MHat, LLC, for the Carlsbad Police Department Security Fence Project
- E. Contracts and Agreements:
 - 1) Consider approval of Cooperative Project Agreement with NMDOT for FY 2016 National Highway Performance Program, San Jose Boulevard Project
 - 2) Consider approval of Memorandum of Agreement between the City of Carlsbad and Eddy County for the use of a portion of the Loop Road Tower for the placement, operations and maintenance of a City Power Generator, building, and telecommunications equipment for simulcast radio antennas and equipment
 - 3) Consider approval of Memorandum of Understanding between the City of Carlsbad and Eddy County for the Justice Assistance Grant (JAG) Project #2015-H4212-NMDJ for funding to be used for School Related Events and the Wise Eyes Program
- F. Set Dates: (March 22, 2016)

1) An Ordinance Rezoning Part of "R-2" Residential District to "C-2" Commercial District for an approximately 0.632 acre property, located at 814 N. Canal Street, legally described as Lot 13, Block 108, North Carlsbad Subdivision, pursuant to Section 3-21-1 et. seq. NMSA 1978 and Sections 56-150(B) and 56-140(I), Carlsbad Code of Ordinances

G. Monthly Reports:

- 1) Personnel Department Monthly Report, January, 2016
- 2) Transportation and Facilities Monthly Report, December, 2015

0:07:31 **Mayor Janway asked Mr. McCutcheon to discuss Item D.3 Consider approval to Award Bid No. 2016-01, to Constructors, Inc., for the North Canal Street resurfacing in the amount of \$750,979.86 and Item D.8 Consider approval of CES proposal, to MHat, LLC, for the Carlsbad Police Department Security Fence Project. Mr. McCutcheon said Item D.3 is the award of the bid to Constructors for resurfacing North Canal. He explained this is a joint project with the County and is to be shared on a per foot basis. He said the County has a little more area, so their percentage will be higher. He said the project came in lower than the engineers estimate and staff expects to move forward with the project.**

0:08:22 **Councilor Whitlock asked if Item E.2 Consider approval of Memorandum of Agreement between the City of Carlsbad and Eddy County for the use of a portion of the Loop Road Tower for the placement, operations and maintenance of a City Power Generator, building, and telecommunications equipment for simulcast radio antennas and equipment could be removed from the Agenda.**

0:08:54 **Mr. McCutcheon explained Item D.8 is a new fence for the Carlsbad Police Department. He said the fence will keep the leased and stored vehicles. He explained MHat fencing is a CES approved contractor and also his son. He stated that he has no involvement with his sons business and added he has previously made disclosures to Council and to the Clerk regarding the relationship.**

0:09:48 **Motion**

The motion was made by Councilor Nunley and seconded by Councilor Doss to approve Routine and Regular Business and the removal of Item E.2

0:09:55 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doport, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

0:10:11 **3. CONSIDER APPROVAL OF APPEAL OF THE PLANNING AND ZONING COMMISSION'S DECISION TO DENY A VARIANCE REQUEST FROM SECTION 56-90(B) TO ALLOW A FRONT-YARD SETBACK VARIANCE OF 21', WHICH WOULD RESULT IN A 9' FRONT-YARD SETBACK AT 1803 SOLANA ST., R-1 RESIDENTIAL DISTRICT; APPELLANT: GARY HARDESTY**

Mr. Patterson said this item is a consideration of an appeal of a decision made by the Planning and Zoning Commission at the January 4, 2016 meeting. He explained the applicant, Mr. Hardesty, requested a variance to place a carport in the front set back. He explained the carport encroached 21 feet into the 30' setback and left 9 feet at the front of the property.

Councilor Whitlock said she understands there was no permit to build a carport. **Mr. Patterson** said yes, when Mr. Hardesty built the carport he did not pull a building permit or apply for a variance. He said the carport came to the attention of staff due to a complaint from a neighbor. **Councilor Nunley** asked if he has applied for a building permit. **Mr. Patterson** answered yes, he has applied for a permit. **Councilor Doss** asked how is a permit issued if the applicant is in violation of the restrictions. **Mr. Patterson** said, normally a permit is not issued but since it was already built he was issued a permit that can be revoked if variance is not granted.

0:13:58 **Mr. Hardesty** said it is true he did not get a permit. He explained he started the process a few years ago. He said there were so many hoops to jump through that he gave up on the project. He said last year he saw so many carports going up that he called the office of the building inspector and left messages with no return call. He said he spoke with people in the subdivision who had put up the carports, adding that most of them did not get building permits. He said he does not want to remove the carport. He added a lot of his neighbors have commented on how nice the carport looks. He said he would like to protect his vehicles.

Mayor Janway added Mr. Hardesty has a very nice, neat home and keeps the home up.

Councilor Carter asked who built the carport. **Mr. Hardesty** said he purchased the carport from Affordable Portables. **Councilor Carter** asked if Affordable Portables should have pulled the permit for the carport. He asked should they not be held accountable. **Mr. Patterson** said that he made contact with the individuals that sell these and other portables, informing them that they need to pull permits to install the carports. **Councilor Carter** asked should business licenses be pulled if these businesses continue to sell and install without permits.

Councilor Doporto said he would not mind changing the ordinance to allow carports. He said he would have a problem with enclosed carports, he added these types of carports do not obstruct views, they look nice, and people need carports to protect their vehicles.

Councilor Whitlock added she drove through the neighborhood and was shocked at how big the carport was.

0:19:15 **Mr. Hardesty** read a letter from his neighbor, Mr. Allen Pistole, who is in favor of the variance. He said if he has to remove his carport there will be a lot of people who are upset.

Councilor Nunley asked Mr. Hardesty if his home had a garage that has been enclosed. **Mr. Hardesty** said yes, a long time ago.

0:20:54 **Mayor Janway** asked if anyone would like to speak in favor or against the variance.

Mr. Buzz Sexton said these carports are everywhere around the State. He said people are going to buy them and install them with or without a permit. He explained he drove around and took pictures of 30 carports in about 1.5 hours. He said Mr. Hardesty has one of the neatest yards, houses, and carports he has ever seen. He explained the distributors are not state licensed contractors. He said he understands the want and need to protect vehicles. He asked Council to look at the Ordinance and possibly make some changes to allow carports. He said these carports do not block the view, are sturdy, and open on all sides.

Mr. Alan Tedford said there are probably over 150 of these carports around town. He said he feels the City should review the Ordinance. He said as long as it looks nice and is not trashy it should be allowed.

Mr. James Ballard explained he has lived across the street from Mr. Hardesty for over 30 years. He said the only problem he sees is that Mr. Hardesty did not get the variance and permit before the carport. He said the carport is very tastefully done. He added you cannot blame a man for trying to protect his vehicles. He asked Council to allow the variance and review the current Ordinance.

0:30:02 **Mr. McCutcheon** said Ms. Shumsky and Mr. Patterson are preparing a revision of several items in the zoning code. He added if Council is inclined to revise the Ordinance, now is the time. **Mayor Janway** added Ms. Shumsky has been asked to specifically look at this particular Ordinance.

0:30:53 **Councilor Carter** asked how this issue was brought to the attention of the planning department. **Mr. Patterson** said the department received a complaint.

Councilor Nunley asked Chief Lopez if he has had any trouble with these carports. **Chief Lopez** answered no. He said the metal carports are not an issue and are rated properly.

Councilor Anaya Flores said she recalls a previous request that was not approved. She said she appreciates the beauty and function of the structure but feels Council needs to be even handed and fair.

0:33:13 **Motion**

The motion was made by Councilor Doporto to approve the Appeal of the Planning and Zoning Commission's decision to deny a variance request from Section 56-90(b) to allow a front-yard setback variance of 21', which would result in a 9' front-yard setback at 1803 Solana St., R-1 Residential District: Appellant: Gary Hardesty

0:33:30 *Motion dies due to lack of a second*

0:33:34 **Motion**

The motion was made by Councilor Doporto and seconded by Councilor Rodriguez to table appeal of the Planning and Zoning Commission's decision to deny a variance request from section 56-90(b) to allow a front-yard setback variance of 21', which would result in a 9' front-yard setback at 1803 Solana St., R-1 Residential District; Appellant; Gary Hardesty; to allow staff to review the Ordinance and make necessary changes

0:34:11 **Vote**

The vote was as follows: Yes - Carter, Doporto, Doss, Nunley, Rodriguez; No - Whitlock, Anaya Flores; Absent - Shirley; The motion carried.

Councilor Whitlock explained that because Mr. Hardesty knew he needed a permit and skirted the law, she has to vote no. **Councilor Anaya Flores** explained in all fairness she is voting no.

0:35:31 **Mayor Janway** asked Ms. Shumsky when she would be able to return to Council with a draft. **Ms. Shumsky** said staff has compiled all of the comments received over the last couple of years relating to the zoning code adopted in 2011. She explained staff has completed their review and she is compiling all the final comments. She said she could have it before Council within 60 days, which would be the first meeting of April.

0:36:38 **4. CONSIDER APPROVAL OF ORDINANCE NO. 2016-08, AN ORDINANCE CREATING SECTION 6-17 OF THE CODE OF ORDINANCES, CITY OF CARLSBAD, NEW MEXICO REGARDING PIGEON NUISANCES AND PROHIBITING THE HARBORAGE OR FEEDING OF FERAL PIGEONS**

Ms. Riordan explained there are several native species of pigeon, only one of which is known in the area and not typically found within the City of Carlsbad. She explained this does not address native pigeons; the Ordinance is addressing Feral Pigeons or Rock Doves. She said there have been some problems recently that have been brought to the city from a number of different business owners. She explained the business owners have large flocks of pigeons that have been using their empty or occupied buildings. She said problems are that pigeons nest and poop everywhere. She explained staff looked into the problems and different national health organizations recognize that pigeon droppings carry different forms of bacteria that can be dangerous to people. She said staff has researched the best ways to control pigeon populations and determined what controls there population is limiting their roosting spots and their feeding. She

said this Ordinance would make it illegal to feed feral pigeons. She explained this Ordinance would require people to clean up areas of their property that would provide pigeon harborage. She said the first step is public awareness and if the request is ignored the citizens could be cited with a petty misdemeanor in City Court.

Mr. McCutcheon said this is the first step to try to get the pigeon problem under control.

Mr. Rodriguez asked if the City is asking business owners to take on the expense of the removal of pigeons. **Ms. Riordan** said if the property is found to have an excessive amount of dead pigeons due to nesting, yes the City can request for the area to be cleaned up or removed.

0:42:08 **A. Public Hearing**

0:42:11 **Mayor Janway asked if anyone would like to speak in favor of the Ordinance.**

Mr. Gary Lanier, owner of Nichols Printing, explained over the past 15 to 20 years he has been addressing the problem of dead pigeons and carcasses on his building and the surrounding areas. He said there is a particular business near his business that feeds pigeons about 50 lbs of feed per day or every other day. He said he has questioned the business owner feeding the pigeons about feeding the birds and why, and was told a lot of the people who stay there like to BBQ them. He said the pigeons have become a complete nuisance and he has spent thousands of dollars trying to get rid of them. He said they are directly coming from the Executive Inn and have become very annoying. He said he appreciates that the City has taken the first step in solving the pigeon problem.

Mr. Allen Tedford, owner of Allen's Auto and Cycle Supply, said he brought the property in 2001 and has hired people to trap 400 or 500 pigeons on his roof. He said there is a big problem with the pigeon's downtown. He said he is glad Council is taking a step to begin to solve the pigeon problem.

Councilor Anaya Flores said the proprietors of the business that is feeding the pigeons are of East Indian decent and she is worried about religious freedoms. She said she is worried about infringing on their rights. **Ms. Riordan** explained the owner or his family have not alleged to staff or others that feeding the pigeons is for a religious purpose. She said if it were for a religious purpose there would have to be a balancing of interest. She said the right to practice your faith should not expose others to a health risk.

0:51:12 **Mayor Janway asked if anyone would like to speak against the Ordinance. No one appeared and the Mayor declared the public hearing closed and reconvened the Council in regular session.**

0:51:19 **B. Consider Ordinance No. 2016-08**

0:51:28 **Councilor Whitlock** said she supports the Ordinance, but has friends who feed birds and are concerned they will be required to stop. **Ms. Riordan** said the Ordinance does not prohibit people from having a bird feeder or feeding birds. She said if your feeding attracts pigeons, the behavior will need to be altered. She added the first step in the Ordinance is education and to inform the public.

0:53:27 **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Whitlock to approve Ordinance No. 2016-08, an Ordinance creating section 6-17 of the Code of Ordinances, City of Carlsbad, New Mexico regarding Pigeon Nuisances and Prohibiting the Harborage or Feeding of Feral Pigeons

0:53:34 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doport, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

0:54:00 **5. CONSIDER APPROVAL OF ORDINANCE NO. 2016-09 AN ORDINANCE AMENDING ORDINANCES NO 2011-01 AND 2012-10 REGARDING THE CITY OF CARLSBAD POLICE DEPARTMENT'S CITIZEN ADVISORY BOARD; DECREASING THE NUMBER OF MEMBERS OF THE BOARD FROM NINE TO SEVEN, AMENDING THE MEMBERS' RESIDENCY REQUIREMENTS, AND CHANGING THE FREQUENCY OF MEETINGS FROM MONTHLY TO QUARTERLY**

0:54:31 **A. Public Hearing**

0:54:33 **Chief Waller** explained since he became Chief two years ago; the Citizen Advisory Board has struggled with meeting due to no quorum. He said the Board is very active and are looking to enhance the Board and keep the engagement for the purpose of beginning the Board. He said the Board has made the following recommendations:

- Reduce the number of members
- Change meetings to quarterly
- Amending residency requirements

0:57:15 **Mayor Janway** asked if anyone would like to speak regarding this issue. **No one appeared and the Mayor declared the public hearing closed and reconvened the Council in regular session.**

0:57:36 **B. Consider Ordinance No. 2016-09**

0:57:42 **Motion**

The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve Ordinance No. 2016-09 an Ordinance Amending Ordinances No. 2011-01 and 2012-10, regarding the City of Carlsbad Police Department's Citizen Advisory Board; Decreasing the Number of Members of the Board from Nine to Seven, Amending the Members' Residency Requirements, and changing the Frequency of Meetings from Monthly to Quarterly

0:57:46 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doporto, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

0:58:00 **6. CONSIDER APPROVAL OF RESOLUTION NO. 2016-06, A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A WATER PROJECT FUND LOAN/GRANT AGREEMENT BETWEEN THE NEW MEXICO FINANCE AUTHORITY AND THE CITY OF CARLSBAD FOR THE CONSTRUCTION OF THE WASTEWATER EFFLUENT REUSE PHASE 5A PROJECT, WTB GRANT NO. 328**

Mr. McCutcheon said this has been before Council to authorize staff to apply for the loan, submit documents, and now in the form of Resolution to allow the Mayor and staff to execute the loan fund agreement. He said the agreement is for a \$1.5 million grant and \$1 million dollar loan to move forward on the Effluent Project Phase 5A.

0:59:14 **Motion**

The motion was made by Councilor Doss and seconded by Councilor Anaya Flores to approve Resolution No. 2016-06, a Resolution authorizing the execution and delivery of a Water Project Fund Loan/Grant Agreement between the New Mexico Finance Authority and the City of Carlsbad for the construction of the Wastewater Effluent Reuse Phase 5A Project, WTB Grant no. 328

0:59:20 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doporto, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

0:59:34 **7. CONSIDER APPROVAL OF RESOLUTION NO. 2016-09, A RESOLUTION AUTHORIZING THE PLAN, DESIGN, AND CONSTRUCTION IMPROVEMENTS TO CALLAWAY DRIVE, INCLUDING UTILITIES, LIGHTING, SIDEWALKS, AND PEDESTRIAN AMENITIES BETWEEN THE CITY OF CARLSBAD AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT)**

Mr. McCutcheon explained this is a grant that the City received last year from the legislature to help with Calloway Drive. He said Calloway Drive has been a struggle with the costs that have come in and this grant will help. He said the design will be complete in March with portions that staff can start on and complete with the money

available. He explained this Resolution allows the City to accept the grant funds from NMDOT.

1:01:05 **Motion**

The motion was made by Councilor Nunley and seconded by Councilor Rodriguez to approve Resolution No. 2016-09, a Resolution authorizing the Plan, Design, and Construction Improvements to Callaway Drive, including utilities, lighting, sidewalks, and pedestrian amenities between the City of Carlsbad and the New Mexico Department of Transportation

1:01:11 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doporto, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

1:01:22 **8. CONSIDER APPROVAL OF RESOLUTION NO. 2016-10, A RESOLUTION DECLARING CERTAIN CITY PROPERTY UNUSABLE OR OBSOLETE**

Mr. McCutcheon explained this is the standard Resolution for following statute to dispose of obsolete and unusable City property.

1:02:36 **Motion**

The motion was made by Councilor Nunley and seconded by Councilor Doporto to approve Resolution No. 2016-10, a Resolution declaring certain City Property unusable or obsolete

1:02:42 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doporto, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

1:02:56 **9. COUNCIL COMMITTEE REPORTS**

Mayor Janway asked for a report on the Bat Brigade. **Councilor Rodriguez** explained this was his first trip to the Bat Brigade and he felt it was a very fruitful venture. He said they met with key people such as the Governor and the Lt. Govenor, and Mr. Tom Church the Secretary of Transportation.

Councilor Nunley introduced Garret Carrasco, a member of the Mayor's Student Advisory Council who stayed for the Council meeting. She explained the Mayor's Student Advisory Council is made up of students nominated by the principals of schools who meet quarterly and talk about issues related to the youth of Carlsbad.

Mayor Janway thanked Councilor Nunley for the work she does with the Student Advisory Council.

1:05:50 **10. CONSIDER APPROVAL OF MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF CARLSBAD AND EDDY COUNTY FOR THE USE OF A PORTION OF THE LOOP ROAD TOWER FOR THE PLACEMENT, OPERATIONS AND MAINTENANCE OF A CITY POWER GENERATOR, BUILDING, AND TELECOMMUNICATION EQUIPMENT FOR SIMULCAST RADIO ANTENNAS AND EQUIPMENT**

Councilor Whitlock said she requested to pull item E.2 to amend the dates. She said the agreement dates start and end on the same date. She said the agreement should expire in 2026.

1:06:49 **Motion**

The motion was made by Councilor Whitlock and seconded by Councilor Doporto to approve Memorandum of Agreement between the City of Carlsbad and Eddy County for the use of a portion of the Loop Road Tower for the placement, operations and maintenance of a City Power generator, building, and telecommunication equipment for simulcast radio antennas and equipment with the dates amended

1:07:15 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doporto, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

1:07:27 **11. ADJOURN**

1:07:29 **Motion**

The motion was made by Councilor Whitlock and seconded by Councilor Rodriguez to Adjourn

1:07:39 **Vote**

The vote was as follows: Yes - Carter, Whitlock, Anaya Flores, Doporto, Doss, Nunley, Rodriguez; No - None; Absent - Shirley; The motion carried.

1:07:54 **Adjourn**

There being no further business, the meeting was adjourned at 7:11 p.m.

_____/s/Dale Janway_____
Mayor

ATTEST:

_____/s/Annette Barrick_____
City Clerk