

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING
ON APRIL 13, 2010 AT 6:00 P.M.**

Present:	Dale Janway	Mayor
	Paul C. Aguilar	Councilor
	Nick G. Salcido	Councilor
	Sandra K. Nunley	Councilor
	Richard Graves, Jr.	Councilor
	Judith E. Waters	Councilor
	Wesley Carter	Councilor
	Richard Doss	Councilor
	Fred Woody	Councilor

Absent: None

Also Present:	Harry Burgess	City Administrator
	Eileen P. Riordan	City Attorney
	Amanda J. Asbury	City Clerk

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

0:00:02 **INVOCATION - PLEDGE OF ALLEGIANCE**

0:00:40 **1. APPROVAL OF AGENDA**

0:00:46 **Motion to approve Agenda**

The motion was made by Councilman Woody and seconded by Councilwoman Waters to approve the April 13, 2010 Amended Agenda.

0:01:02 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:01:22 **2. CONSIDER APPROVAL OF RESOLUTION NO. 2010-13,
A RESOLUTION REGARDING FOURTH-QUARTER BUDGET ADJUSTMENTS**

Mr. Burgess explained that the budget adjustments are due to changes in either revenue or unexpected expenditures in the budget. He reviewed the spreadsheet containing the budget adjustments.

0:04:29 **Motion to approve Resolution No. 2010- 13**

The motion was made by Councilman Carter and seconded by Councilman Graves to approve Resolution No. 2010-13 regarding fourth-quarter budget adjustments.

0:04:35 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:04:51 **ROUTINE AND REGULAR BUSINESS**

A. Minutes of City Council Meetings:

- 1) March 19, 2010 (special)
- 2) March 23, 2010 (regular)
- 3) March 26, 2010 (special)

B. City Personnel Report

C. Contracts & Agreements:

- 1) Consider approval of Resolution No. 2010-14, a Resolution approving and accepting the First Amendment to Cooperative Agreement Control No. HW2M200181 with the New Mexico State Department of Transportation (NMDOT) for Project No. SP-2-10 (911), in the amount of \$34,144.40
- 2) Consider approval of Agreement between the City of Carlsbad and Charles H. Jurva for Tennis Professional Services
- 3) Consider approval of Fifth Renewal of Agreement for Personal Services between the City of Carlsbad and Brad Molgaard

D. Miscellaneous Requests:

- 1) Consider approval of request from LULAC for use of the San Jose Plaza and park facilities for the annual Cinco de Mayo Fiesta beginning on Friday, May 7, through Sunday, May 9, 2010
- 2) Consider approval of request from LULAC for use of the San Jose Plaza and park facilities for the annual September 16th Fiesta beginning on Friday September 17, through Sunday, September 19, 2010
- 3) Consider approval of request from Assistance League of Carlsbad for assistance with the Annual Ducky Affair Race on Saturday, June 12, 2010
- 4) Consider approval of request from Intrepid Potash for use of the Beach Band Shell area on Saturday, September 25, 2010 from 11:00 a.m. to 3:00 p.m.
- 5) Consider approval of request from Richard L. Stephens for use of the Beach Band Shell area to host a "Carlsbad Military Appreciation Weekend" on Saturday, July 10, and Sunday, July 11, 2010

E. City of Carlsbad Department Monthly Reports:

- 1) Monthly report for Personnel Department for March 2010

F. Boards and Committee Appointments:

- 1) **Eddy County DWI Advisory Board**-Councilor Nick Salcido
- 2) **FY 2011 Budget Committee**-Councilor Fred Woody, Councilor Dick Doss, Councilor Paul Aguilar, Councilor Wes Carter
- 3) **Planning and Zoning Commission**-Karen Westall (2 year term)

- 4) **Carlsbad Riverwalk Recreation Complex Advisory Board**-Tony Baca (4 year term)
- 5) **Police Chief Selection Committee**-Councilor Nick Salcido, Councilor Richard Graves, Scot Bendixsen, Ernie White, Janell Whitlock, co-chairman, Tom Quintela, co-chairman, Judge Henry Castaneda, James Williams, Wanda Welch and Mickey Miller

G. Resolutions:

- 1) Consider approval of Resolution 2010-15, declaring certain City property to be obsolete and unusable (Public Works Department, Carlsbad Police Department and Carlsbad Fire Department)
- 2) Consider approval of Resolution 2010-16, a Resolution supporting the Eddy County Emergency Operation Plan

0:05:17 **Councilwoman Waters asked that item D. 5 be pulled for further discussion**

0:05:49 **Motion to approve the Routine and Regular Business**
The motion was made by Councilman Aguilar and seconded by Councilman Salcido to approve the Routine and Regular Business with the exception of item D. 5, which was pulled for further discussion.

0:06:01 **Vote**
The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:06:20 **D. 5. Consider approval of request from Richard L. Stephens for use of the Beach Band Shell area to host a "Carlsbad Military Appreciation Weekend" on Saturday, July 10, and Sunday, July 11, 2010**
Mr. Richard Lee Stephens explained the activities for the weekend and the military units that are going to be invited.

0:08:44 **Motion to approve request from Richard Stephens**
The motion was made by Councilman Graves and seconded by Councilman Doss to approve the request from Richard L. Stephens for use of the Beach Band Shell area to host a "Carlsbad Military Appreciation Weekend" on Saturday, July 10, and Sunday July 11, 2010.

0:08:53 **Vote**
The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:09:11 **4. REMOVE FROM TABLE AND CONSIDER APPROVAL OF SPECIAL LICENSE REQUEST FROM APX ALARM SECURITY**

**SOLUTIONS, INC. FOR DOOR-TO-DOOR SALES, SERVICE AND
INSTALLATION OF RESIDENTIAL SECURITY SYSTEMS**

Mr. Christopher Burgess of APX Alarm Security Solutions, Inc. explained that his company would like permission to conduct business in Carlsbad.

Discussion was held regarding the hours of operation.

0:10:54 **A. Remove from Table**

The motion was made by Councilman Aguilar and seconded by Councilman Salcido to remove the request from APX Alarm Security Solutions, Inc. from the table.

0:11:01 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:11:16 **B. Consider approval of Special License request**

Discussion was held regarding the installation and servicing of the equipment.

0:13:15 **Councilman Graves and Councilman Doss explained their objections to door-to-door sales and the disruptions it causes to the constituents of their respective wards**

0:14:09 **Motion to deny request**

The motion was made by Councilman Graves and seconded by Councilman Doss to deny the approval of Special License request from APX Alarm Security Solutions Inc. for door-to-door sales, service and installation of residential security systems.

0:14:27 **Discussion regarding APX calling people before going to their door**

Mr. Christopher Burgess explained that all of the employees are appropriately identified.

0:16:47 **Councilman Graves explained that many of the patrons in his ward work in the mines or the oil field and do not want to be bothered by door-to-door sales**

0:17:38 **Councilwoman Nunley explained that she had family members who purchased this product and are very satisfied with their purchase. She explained that people have the option to not answer the door.**

0:18:04 **Mr. C. Burgess explained that they do not go to every door they generally go to the corner lots. He also explained that the employees undergo police background checks before they are allowed to perform door-to-door sales**

0:19:10 **Councilwoman Waters explained that the Council needs to remain consistent with their decision to allow door-to-door sales**

0:19:34 **Councilman Aguilar stated that he agreed with Councilwoman Waters but was concerned about the hours of operation**

0:19:37 **Discussion regarding hours of operation**
Councilman Aguilar asked Mr. C. Burgess if they could limit their hours to 6:00 p.m. **Mr. C. Burgess** explained that if a representative from his company was there after 6:30 p.m. it was because a customer had made an appointment. He said they could limit it to 6:00 p.m. if that were the desire of the Council.

0:20:38 **Vote**
The vote was as follows: Yes - Doss, Graves, Woody; No - Aguilar, Carter, Nunley, Salcido, Waters; Absent - None. The motion was denied.

0:21:07 **Motion to approve request from APX Alarm Security Solutions, Inc.**
The motion was made by Councilman Aguilar and seconded by Councilwoman Waters to approve the Special License request from APX Alarm Security Solutions, Inc. for door-to-door sales, service and installation of residential security systems.

0:21:24 **Vote**
The vote was as follows: Yes - Aguilar, Carter, Nunley, Salcido, Waters; No - Doss, Graves, Woody; Absent - None. The motion carried.

0:21:48 **5. CONSIDER APPROVAL OF SPECIAL LICENSE REQUEST FROM FOSTY TREATS OF TEXAS, INC. FOR MOBILE SALES OF ICE CREAM ON CITY RIGHTS-OF-WAY**

No one was available to represent Frosty Treats of Texas, Inc.

0:22:21 **Motion to table request from Frosty Treats of Texas, Inc.**
The motion was made by Councilman Carter and seconded by Councilman Graves to table the request from Frosty Treats of Texas, Inc. for mobile sales of ice cream on City rights-of-way.

0:22:35 **Vote**
The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:22:50 **6. CONSIDER APPROVAL OF ANNUAL SPECIAL LICENSES. A) COURTESY SPORTING AND PAWN, 307 S. CANAL STREET. B) CAL'S CACTUS LANES, 1609 S. CANAL STREET**

Mr. Burgess explained that this was an annual process required by City Ordinance. He explained that Mexicana Pawn would appear before Council at a later date once they are able to provide the appropriate insurance bond to the City.

0:24:17 **Motion to approve Annual Special License**

The motion was made by Councilman Doss and seconded by Councilman Graves to approve the Annual Special Licenses A) Courtesy Sporting and Pawn, 307 S. Canal Street and B) Cal's Cactus Lanes, 1609 S. Canal Street.

0:24:26 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:24:40 **7. CONSIDER ISSUANCE OF STATE LIQUOR LICENSE APPLICATION A-627661, TO MICKENS UNION BUS DEPOT, INC. DBA: RAY'S MEXICAN GRILL, 1000 S. CANYON STREET, CARLSBAD, NM FOR A RESTAURANT (BEER AND WINE ONLY LICENSE)**

Mr. Burgess explained that a public hearing was held to consider comments in favor or against the said establishment obtaining a liquor license in which no one came forward to speak against the approval of the license.

0:25:45 **Motion to approve Liquor License**

The motion was made by Councilman Salcido and seconded by Councilman Aguilar to approve the issuance of State Liquor License Application A-627661 to Mickens Union Bus Depot, Inc., dba: Ray's Mexican Grill, 1000 S. Canyon Street, Carlsbad, NM for a restaurant (Beer and Wine ONLY license.)

0:25:54 **Discussion was held regarding the facility's compliance with ADA law and the current fire code**

0:32:15 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:32:41 **8. CONSIDER APPROVAL OF INTERIM LOAN AGREEMENT & INTERIM PROMISSORY NOTE FOR THE CLEAN WATER STATE REVOLVING LOAN FUND PROGRAM, CWSRF 010**

Mr. Burgess explained that this action was the second step toward obtaining \$18 Million for remodeling of the Waste Water Treatment Plant. He explained that the final agreement would come at a later date.

0:33:53 **Motion to approve loan agreement and interim promissory note**

The motion was made by Councilman Doss and seconded by Councilman Graves to approve the Interim Loan Agreement & Interim Promissory Note for the Clean Water State Revolving Loan Fund Program, CWSRF 010.

0:33:59 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

0:34:24 **Mayor Janway announced that the Council Committee Reports would be heard while they allowed Mr. Fierro time to arrive to give his presentation**

0:34:57 **10. COUNCIL COMMITTEE REPORTS**

0:35:01 **Councilwoman Nunley gave a presentation regarding High School Dropouts highlighting:**

- ❖ National Percentages
- ❖ Costs of dropping out
- ❖ New graduation rate calculations for Carlsbad High School
- ❖ CHS 4-year Cohort 2009 graduation rate
- ❖ Carlsbad Municipal School's Goal to reach 90 percent graduation rate by 2014

She invited everyone to attend the Carlsbad Graduation Summit.

0:47:23 **Councilman Graves expressed appreciation to Public Works, Carlsbad Police Department and Jim Grantner for jobs well done.**

0:49:43 **Ms. Rita Nelson of the Assistance League came forward and spoke about the Annual Ducky Affair and how the Assistance League helps the children in the community**

0:58:33 **9. PRESENTATION OF FY-09 AUDIT BY ED FIERRO OF FIERRO AND FIERRO, P. A.**

Mr. Ed Fierro apologized for being late, he explained that he had a blow out in El Paso. He explained the audit process in the State of New Mexico. He reviewed the independent auditors report. He reviewed the expenditures, revenues, enterprise funds and internal service fund. He went over the report regarding the financial statements and the small individual funds. He explained what are considered to be audit findings. He explained the report on compliance with each of the major programs within the Federal wards. He explained that the City has complied in all material respects with the requirements. He reviewed the audit findings.

1:21:40 **Discussion regarding the significance of the audit findings for Carlsbad in comparison to other municipalities**

Mr. Fierro explained that the largest challenge for the City was employing enough staff to be able to address and mitigate the findings. He explained that overall the City of Carlsbad's audit could be graded at a B- or a C+ when compared to the State's rules most municipalities in the State of New Mexico are not able to provide his firm with the information that Carlsbad is able to provide him every year.

1:26:15 **Mr. Fierro continued his presentation**

Mr. Fierro reviewed the City's grant management report and employee retirement reporting.

1:27:48 **Mr. Fierro said when compared to other municipalities in the State of New Mexico Carlsbad ranks between and A or B**

1:29:04 **Discussion regarding the audit's effect on bond rates**

1:30:07 **Motion to approve FY-09 Audit**

The motion was made by Councilman Aguilar and seconded by Councilman Graves to approve the FY-09 Audit by Ed Fierro of Fierro and Fierro, P.A.

1:30:16 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

1:30:33 **11. ADJOURN INTO CLOSED SESSION PURSUANT TO SECTION 10-15-1-H-(7), NMSA 1978 TO DISCUSS MATTERS REGARDING THREATENED/PENDING LITIGATION**

1:30:49 **Motion to adjourn into Closed Session**

The motion was made by Councilman Graves and seconded by Councilman Carter to adjourn into Closed Session pursuant to Section 10-15-1-H-(7), NMSA 1978 to discuss matters regarding threatened/pending litigation.

1:30:55 **Vote**

The vote was as follows: Yes - Aguilar, Carter, Doss, Graves, Nunley, Salcido, Waters, Woody; No - None; Absent - None. The motion carried.

1:31:14 **Adjourn**

There being no further business, the meeting was adjourned at 7:31 p.m.

___/s/ Dale Janway _____
Mayor

ATTEST:

___/s/ Amanda J. Asbury _____
City Clerk