

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE  
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING  
ON JULY 26, 2016 AT 6:00 P.M.**

Present:	Dale Janway	Mayor
	Lisa A. Anaya Flores	Councilor
	Edward T. Rodriguez	Councilor
	Leo B. Estrada	Councilor
	J. R. Doporto	Councilor
	Wesley A. Carter	Councilor
	Jason Shirley	Councilor
	Richard Doss	Councilor
	Janell E. Whitlock	Councilor

Absent:

Also Present:	Steve McCutcheon	City Administrator
	Eileen P. Riordan	City Attorney
	Annette Barrick	City Clerk
	LaVelta Jenkins	City Treasurer
	Sandy Gonzales	Budget Manager
	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**

0:00:04      Invocation - Pledge of Allegiance

0:00:37      **1. APPROVAL OF AGENDA**

**Mayor Janway** said he would like to move item #12 to become item #8 and renumber the items accordingly.

0:00:48      **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Carter to approve the Agenda

0:00:53        **Vote**

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

0:01:10        **2.        PRESENTATION OF THE JUNE 2016 FINANCIAL STATEMENTS**

**Ms. Jenkins** reviewed the revenues and expenditures as of June 30, 2016 for the General Fund and selected Enterprise and Special Funds contained within the City Budget.

0:02:42        **3.        CONSIDER APPROVAL OF RESOLUTION NO. 2016-32, A RESOLUTION ADOPTING THE FOURTH QUARTER FINANCIAL STATEMENTS**

**Ms. Gonzales** explained this is a quarterly report that is submitted every quarter. She explained when submitting the final budget, DFA has asked that the 4th quarter report and an approved Resolution also be submitted. She said the total revenues received were \$88,232,430, the expenditures were \$102,725,615 with an ending cash balance before investments of \$68,625,760.

0:03:42        **Motion**

The motion was made by Councilor Doss and seconded by Councilor Rodriguez to approve Resolution No. 2016-32, a Resolution adopting the Fourth Quarter Financial Statements

0:03:49        **Vote**

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

0:04:03        **4.        CONSIDER APPROVAL OF RESOLUTION NO. 2016-33, A RESOLUTION MAKING CERTAIN BUDGETARY ADJUSTMENTS TO THE 2015-2016 FISCAL YEAR BUDGET**

**Ms. Jenkins** reviewed the revenues and expenditures making certain Budgetary Adjustments to the 2015-2016 Fiscal Year Budget highlighting the Water & Sewer Fund, the 2002 Sales Tax Bond Fund, the Permanent Water & Sewer Fund, and the Health Insurance Fund.

0:05:41        **Motion**

The motion was made by Councilor Doss and seconded by Councilor Carter to approve Resolution No. 2016-33, a Resolution making certain Budgetary Adjustments to the 2015-2016 Fiscal Year Budget

0:05:51        **Vote**

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

0:06:06      **5. CONSIDER APPROVAL OF RESOLUTION NO. 2016-34, A RESOLUTION ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2016-2017**

**Mr. McCutcheon** explained staff is ready to submit the final budget with Councils approval. He said the final budget is very close to the interim budget with a minimum set of changes. He said the changes have been reviewed by the Budget Committee. He explained the cash position remains reasonably good with the revenues down about 7 million dollars. He said the budget is good and the City remains in sound Fiscal circumstance.

**Mayor Janway** thanked Councilor Doss for all of his work with the Budget Committee.

0:08:20      **Motion**

The motion was made by Councilor Doss and seconded by Councilor Doporto to approve Resolution No. 2016-34, a Resolution adopting the Final Budget for Fiscal Year 2015-2016

0:08:29      **Vote**

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

0:09:00      **6. CONSIDER APPROVAL OF RESOLUTION NO. 2016-35, A RESOLUTION CERTIFYING THE ANNUAL FIXED ASSET INVENTORY OF THE CITY OF CARLSBAD AS OF JUNE, 2016**

**Ms. Jenkins** said the fixed asset coordinator completed a physical inventory of any assets over \$5000. She said this inventory is required by the New Mexico Administrative Code.

0:10:28      **Motion**

The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve Resolution No. 2016-35, a Resolution certifying the Annual Fixed Asset Inventory of the City of Carlsbad as of June 2016

0:10:33      **Vote**

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

0:10:49      **7. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of the Regular City Council Meeting held on July 12, 2016
- B. City Personnel Report
- C. Check Register
- D. Purchasing
  - 1) Consider approval to Award Bid No. 2016-22, to Garden Mart, Inc. for the FY 2016-2017 for Tree Trimming Services

- 2) Consider approval to Award Bid No. 2016-20, to CSW Contractors, Inc., for the Double Eagle Well Improvements, Phase B
- E. Monthly Reports:
  - 1) Monthly Department Report, Arts and Culture, June 2016
  - 2) Monthly Department Report, Sports and Recreation, June 2016
  - 3) Monthly Department Report, Transportation, June 2016
  - 4) Monthly Department Report, Utilities, June 2016
- F. Contracts and Agreements:
  - 1) Consider approval for Infrastructure Reimbursement Agreement between the City of Carlsbad and Ken Thurston Development Corporation for qualifying Public Infrastructure at Spring Hollow Subdivision, Unit II, Phase 1
  - 2) Consider approval of LDWI Enforcement Allocation between the City of Carlsbad Police Department and the Eddy County DWI Program for DWI Enforcement
  - 3) Consider approval of Grant Agreement with NM Department of Finance and Administration for Project No. 17-E-28, the Enhanced 911 Act Grant Program
  - 4) Consider approval of Memorandum of Agreement between the City of Carlsbad and the NM Department of Transportation for the Section 5311 Program for assistance with Public Transportation
  - 5) Consider approval to enter into a three (3) year Lease Agreement with John Deere Credit for the Lease of John Deere 9009A mower

0:11:09      **Mayor Janway asked Mr. McCutcheon to discuss item F.4 Consider approval of Memorandum of Agreement between the City of Carlsbad and the NM Department of Transportation for the Section 5311 Program for assistance with Public Transportation**

**Mr. McCutcheon** explained Item F.4 is the grant from the Department of Transportation for the City's public transportation. He explained that for several years the Mayor has asked that a repair shop be built at Transit. He said the repairs have been an ongoing problem because of the complexity of working on the vehicles. He explained JoAnn Moore has worked hard on the grant. He said this grant contains the money to outfit the mechanic shop and to pay a mechanic to help keep the vans running and reliable.

0:12:11      **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Anaya Flores to approve Routine and Regular Business

0:12:16      **Vote**

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

0:12:31        **8.        CONSIDER APPROVAL OF ORDINANCE NO. 2016-18, AN ORDINANCE ADOPTING AMENDMENTS TO THE CARLSBAD CODE OF ORDINANCES, CHAPTER 56- ZONING ORDINANCE PURSUANT TO CODE OF ORDINANCES SECTION 56-150 AND SECTION 3-17-1 AND 3-18-1 NMSA 1978**

0:13:35        **A.        Public Hearing**

**Councilor Shirley** said there are still several unanswered questions. He said he appreciates the hard work of Mr. Patterson and his department, but he would hate to move forward before he knows the answers to the questions asked.

0:14:50        **B.        Consider Ordinance No. 2016-18**

0:14:51        **Motion to Table**

The motion was made by Councilor Shirley and seconded by Councilor Doporto to table Ordinance No. 2016-18, an Ordinance adopting Amendments to the Carlsbad Code of Ordinances, Chapter 56, Zoning Ordinance pursuant to Code of Ordinances Section 56-150 and Section 3-17-1 and 3-18-1 NMSA 1978

0:15:07        **Councilor Carter** said he thinks it would be prudent to allow the citizens who are present to give their input which could help with the decision.

0:16:27        **Vote**

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

0:17:25        **A.        Public Hearing**

**Mr. Patterson** explained the proposed amendments are a compilation of corrections, changes, and additions recommended by the public, staff, business owners, contractors, and developers since 2011 when the zoning ordinance was first passed.

**Mr. Patterson** explained some of the proposed changes:

- Definition for a dwelling unit multi-generational
- Definition for brewery, winery, distillery
- New uses, agricultural and livestock for R-1 zoning
- P & Z Commission recommends that the current carport process remain
- Planning staff recommends a new process that does not include getting an approval for a variance to place a carport in their front set back, but would have to receive a building permit
- New uses allow consentino wire around critical public facilities only
- Additional requirements for starting RV Parks
- Mobile food vendor language added to follow State requirements

**Mr. McCutcheon** asked for the regulation number on the food truck requirement.

**Mr. Patterson** said it is the current food code 7.6.2, which is the

NMED Regulation Administrative Code. He said the NMED also publishes the food code as a companion document which goes into further detail. He added the regulations staff were looking at were out of chapters 9 and 10 of the food code.

**Mr. McCutcheon** asked from a regulatory standpoint if the food code is included as information, not as something the City would regulate. **Mr. Patterson** said the food code is the Environment Departments Regulations. He said in order for people to do business in Carlsbad, the Planning Department, would like to certify that the business falls in line with all State requirements. He said the Planning Department does not plan on policing as far as the State requirements go.

**Councilor Doporto** asked if anything besides the State requirements were added. **Mr. Patterson** said staff does not want mobile food establishments connecting to City utilities permanently. **Mr. Hernandez** said some food vendors are currently connected to City water and using the garbage service. He said he spoke to Mr. Johnson with NMED and was told the mobile vendors cannot be permanently connected to City utilities.

0:23:55 **Councilor Doss** said he assumes the Council is not allowed to override any State regulations. **Mr. Patterson** said that is correct, the City is not allowed to pass an ordinance that is less restrictive than State Regulations. He said any ordinance the City passes has to be equal to or more restrictive than State regulations.

**Councilor Doporto** asked if mobile vendors are being charged when using City services. **Mr. Hernandez** answered yes.

**Councilor Whitlock** asked if the City adopts the regulations from the State Code for mobile vendors, wouldn't the City have to enforce the regulations. **Mr. Patterson** said yes, if adopted the City would be responsible for enforcing.

**Councilor Doporto** asked what the \$10 permit fee for vendors to vend is used for. **Mr. Patterson** said the permit is to ensure that the vendor has received permission from the property owner.

**Councilor Shirley** asked if the temporary use permit is online. **Mr. Patterson** said yes.

**Councilor Rodriguez** said the issue that he has seen is the two hour requirement and having to move. **Mr. Patterson** read chapter 9 part F; mobile food establishments shall be operated within 200 feet of toilet facilities as specified in food code 5-203.12 and 5-203.11 of the food code whenever the unit is stopped to operate for more than a 2 hour period. **Councilor Rodriguez** said it does not specifically say the mobile vendor has to move, it just states they have to have a restroom. **Mr. Patterson** said if they are going to operate for longer than 2 hours they need to be within 200 feet of a restroom.

**Councilor Rodriguez** said grease being flushed into the City's sewer system without a grease trap is a real concern for him. **Mr. Hernandez** said Mr. Aguilar has inspected some of the food trucks and they have internal grease traps.

**Councilor Rodriguez** asked if a rental agreement with the property owner covers their right to be on the property. **Mr. Patterson** said if a mobile vendor is on the same property daily and has an agreement with the owner, it would be acceptable to allow the owner to bring the document in and the temporary use permit could be waived.

**Councilor Doss** asked if a business license is purchased do the mobile vendors still need a temporary use permit. **Mr. Patterson** said yes the temporary use permit is required.

**Mr. McCutcheon** asked if the regulation Mr. Patterson read 5-203.12 is a new regulation and when it was adopted. **Mr. Patterson** said yes it was adopted in March 2016.

**Councilor Whitlock** said if the City is not going to enforce the regulations and they are State Regulations, won't the State monitor mobile vendors. **Mr. Patterson** said the regulations would give the City the avenue to pull the business registration if the business is not complying with the requirements. **Mr. Patterson** said if the regulation is not adopted the City would have to wait on the State to address the problem.

**Councilor Doss** asked how many State Inspectors are in this area. **Mr. Patterson** replied two for Eddy County; he added having this regulation referenced in our document would allow the City to send code enforcement to pull the business registration.

**Mr. McCutcheon** added that the practice has been when a business owner comes in; staff will certify that they are in compliance with all the State Codes.

0:37:25 **Mayor Janway asked if anyone present would like to speak against the Ordinance.**

**Mr. David Toothman**, owner of Papaw's Pit BBQ, said he and other food vendors are in agreement that they are complying with the State Code and have all been inspected by the State. He said he is willing to work with Mr. Patterson to come up with language that will satisfy needs from an enforcement perspective, will allow mobile vendors to continue doing business, and is in alignment with State Regulations. He said he believes there are discrepancies between the State Regulations and what has been drafted in the Ordinance. He said he believes all mobile food vendors including himself are permanent and do not see a need for the monthly temporary use permit. He said his interpretation of the State Code is that mobile vendors cannot operate for more than two hours without giving employees a restroom break, but should not have to physically move equipment offsite. He said he does not think it is fair to be required to have a lease agreement with property owners. He added that he agrees with Councilor

Rodriguez that the real gap with mobile food vendors is the grease trap not whether they can use City utilities.

0:40:31 **Mr. David Martin**, owner of Triple A Muffler, said he rents to a mobile vendor. He explained they use the bathroom at his business and have had an electric pole put in at their expense for their use. He said they use water from his property but do their own disposal. He said he is worried about them having to move every 2 hours and feels the Council should really reconsider.

0:42:58 **Ms. Epigmenia Mendez**, mobile vendor owner, said moving the truck every 2 hours would be a lot of work. She said the mobile vendors have employees and are creating jobs and pay taxes. She said she is asking for fairness for mobile vendors and their employees.

0:43:54 **Mr. David Guerrero**, mobile vendor owner, said if they have to move around every two hours it will make it nearly impossible to operate. He said he will find it difficult to stay in business and for his customers to find him. He explained he is not opposed to anything that is fair. He said he has added a grease trap to his food truck and to the building that he rents. He said he has tried to meet every demand the State requires. He is asking for fairness to allow his mobile business to continue working.

0:45:35 **Ms. Tiffany Wiyant**, owner of Milton's Brewing, asked if another business can provide the restrooms or if the food truck has to provide them. She said her business is thriving and one of the ways to bring in clientele is through food trucks. She also asked for clarification regarding the bathrooms for special events such as the Farmers Market and the Cavern Fest.

0:47:07 **Mr. Fred Toothman** said the State Inspectors also inspect the restaurants in the City. He said the City is not going to go into a business and inspect them and feels the City should not inspect the mobile vendors.

0:48:15 **Ms. Kimberly Thomison** said she is currently thinking about starting a mobile vending service. She asked if a porta potty on the property would qualify as a bathroom. She asked how the monthly fee would work if the truck had to move to several locations daily and monthly.

0:50:13 **Mayor Janway** asked if anyone would like to speak in favor of the Ordinance. No one appeared and the Mayor declared the public hearing closed and reconvened the Council in regular session.

0:50:25        **B.        Consider Ordinance No. 2016-18**

0:50:29        **Councilor Shirley** thanked everyone for attending tonight and for their comments. He said the City of Carlsbad is for business and wants each of these businesses to succeed. He asked if the employees can be rotated every two hours to take a break rather than move the vending truck.

**Councilor Whitlock** said her granddaughter recently attended a food truck festival and said it was fabulous. She asked if the vendors present would be interested in having a food truck festival.

**Councilor Doss** said the Ordinance was more than the mobile vending. He said there may be people present to discuss the carport issues.

0:53:04        **Mayor Janway asked if anyone present would like to discuss the carport issue tonight. No one appeared.**

0:53:33        **Motion to Table**

The motion was made by Councilor Doss and seconded by Councilor Doporto to table Ordinance No. 2016-18, an Ordinance adopting Amendments to the Carlsbad Code of Ordinances Section 56-150 and Section 3-17-1 and 3-18-1 NMSA 1978 until staff can research

0:54:26        **Vote**

The vote was as follows: Yes - Whitlock, Anaya Flores, Doporto, Doss, Estrada, Rodriguez, Shirley, Carter; No - None; Absent- None; The motion carried. Mayor Janway asked Mr. Patterson to hold a public town hall meeting when he completes the new draft.

0:56:31        **9.        CONSIDER APPROVAL OF REQUEST FROM JERRY FLORES FOR ALCOHOL SALES AT THE 2016 ANNUAL CHILI FESTIVAL AT THE BEACH BANDSHELL PARK AREA**

**Ms. Melissa West**, on behalf of Jerry Flores, said they are requesting approval for alcohol sales at the Chili cook off to bring more people into Carlsbad

**Councilor Doss** asked if the area will have security and be fenced off. **Ms. West** said yes.

**Councilor Doss** asked Chief Waller if there have been any problems in the past. **Chief Waller** said there have been no issues in the past.

0:58:17        **Motion**

The motion was made by Councilor Rodriguez and seconded by Councilor Carter to approve request from Jerry Flores for alcohol sales at the 2016 Annual Chili Festival at the Beach Bandshell Park Area

0:58:22        **Vote**

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

0:58:53        **10. CONSIDER APPROVAL OF A TRANSFER FOR INTER-LOCAL DISPENSER LIQUOR LICENSE, NO. 2789 FOR ON PREMISES CONSUMPTION ONLY WITH PATIO SERVICE FOR THE LUXE BAR AND NIGHTCLUB TO BE LOCATED AT 311 W. FOX STREET; APPLICANT: SUSIE SAAVADERA**

Mr. McCutcheon explained this license reopens the old Post Time location. He said the license represents a transfer of a liquor license from Albuquerque. He said the applicant stated the facility has been remodeled and will open soon. Mr. McCutcheon explained Luxe Bar and Nightclub has complied with the administrative process and requires Council approval to complete the process.

1:00:35        **Motion**

The motion was made by Councilor Whitlock and seconded by Councilor Doporto to approve Transfer for Inter-Local Dispenser Liquor License No. 2789 for on premises consumption only with patio service for Luxe Bar and Nightclub to be located at 311 W. Fox Street; Applicant: Susie Saavadera

1:01:20        **Vote**

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

1:01:35        **11. CONSIDER APPROVAL OF RESOLUTION NO. 2016-36, A RESOLUTION RATIFYING THE AGREEMENT BETWEEN THE CITY OF CARLSBAD AND THE SOUTHEASTERN NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT FOR FY 2016-2017 MEMBERSHIP**

Mr. McCutcheon explained this is an annual membership and the dues have been approved in the budget.

1:02:08        **Motion**

The motion was made by Councilor Shirley and seconded by Councilor Doporto to approve Resolution No. 2016-36, a Resolution ratifying the Agreement between the City of Carlsbad and the Southeastern New Mexico Economic Development District for FY 2016-2017 membership

1:02:12        **Vote**

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

1:02:27        **12. CONSIDER APPROVAL OF RESOLUTION NO. 2016-37, A RESOLUTION AUTHORIZING THE SUBMITTAL OF A TRANSPORTATION ALTERNATIVES PROGRAM (TAP) PROJECT FEASIBILITY FORM AND GRANT APPLICATION TO THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE TEXAS STREET RECONSTRUCTION PROJECT**

**Mr. McCutcheon** explained this is a project that staff has been working on for some time.

**Mr. Camero** said Ms. Shumsky put the application together. He explained the program will allow the City to put in sidewalks, bike paths, and ADA ramps along Texas Street. He said the City is requesting \$400,000 from NMDOT for the project. He said the City currently has \$100,000 received from the legislature. He explained staff is looking to resurface Texas Street from the CID canal to 12th street and add lighting. He said this will be step one in the process.

**Councilor Whitlock** asked if a public meeting will be held. **Mr. Camero** answered yes a public meeting will be held tomorrow July 27, 2016. He explained the public meeting is to present the overall project to the community.

1:07:27        **Motion**

The motion was made by Councilor Doporto and seconded by Councilor Shirley to approve Resolution No. 2016-37, a Resolution authorizing the submittal of a Transportation Alternatives Program (TAP) Project Feasibility Form and Grant Application to the New Mexico Department of Transportation for the Texas Street Reconstruction Project

1:07:37        **Vote**

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

1:07:51        **13. COUNCIL COMMITTEE REPORTS**

**Councilor Doss** said this past weekend there was a State Little League tournament and a Soccer Tournament at the Sports Complex. He said he received comments from coaches from Albuquerque that they would love to have a facility like the Sports Complex. He commended John Lowe and his crew on the excellent job that they do.

**Mr. John Lowe** said the Senior League Division won the State Tournament. He said in addition to Senior League, the Junior League also won State and will advance to the Regional Tournament in Rio Rancho on August 3, 4, & 5.

**Councilor Doporto** asked how difficult it would be to get the RV Dump Station fixed up and looking nice and neat. **Mr. Hernandez** said staff requested money in the budget to redesign the Station but the money was not approved. He said he spoke with Mr. Cass and they are going to visit the dump station at Brantley. He said they have some ideas in house that can be used to clean the area up. He added there is a bad homeless problem in the area.

1:11:02      **14. ADJOURN**

1:11:06      **Motion**

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

1:11:12      **Vote**

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

1:11:33      **Adjourn**

There being no further business, the meeting was adjourned at 7:14 p.m.

\_\_\_\_\_/s/Dale Janway\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_/a/Annette Barrick\_\_\_\_\_  
City Clerk