

**LINKED MINUTES OF REGULAR MEETING OF THE CITY COUNCIL OF THE
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE MUNICIPAL BUILDING
ON AUGUST 11, 2009 AT 6:00 P.M.**

Present:	Bob Forrest	Mayor
	Paul C. Aguilar	Councilor
	Wesley Carter	Councilor
	Brad Day	Councilor
	Jeff Diamond	Councilor
	Ned Z. Elkins	Councilor
	Sandra Nunley	Councilor
	Nick G. Salcido	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.

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

0:00:00 **Invocation - Pledge of Allegiance**

0:00:32 **1. APPROVAL OF AGENDA**

0:00:37 **Motion to approve August 11, 2009 Agenda**

The motion was made by Councilman Day and seconded by Councilman Aguilar to approve the August 11, 2009 Agenda.

0:00:42 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:00:55 **2. BUDGET REVIEW AS OF JUNE 30, 2009**

0:01:03 **A) Remove from Table**

0:01:03 **Motion to remove Budget Review from the Table**

The motion was made by Councilman Salcido and seconded by Councilman Diamond to remove the Budget Review from the table.

0:01:08 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:01:20 **Budget Review as of June 30, 2009**

Mr. Burgess reviewed the revenues and expenditures as of June 30, 2009 for the General Fund and selected Enterprise and Special Funds contained within the City Budget.

0:08:08 **Councilman Diamond explained that the gross receipts tax for FY 2008-09 rose 11.8 percent demonstrating the healthy business climate in Carlsbad**

0:09:28 **B) Consider approval**

0:09:33 **Motion to approve Budget Review**

The motion was made by Councilwoman Nunley and seconded by Councilman Salcido to approve the Budget Review as of June 30, 2009.

0:09:40 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:09:53 **3. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of Regular City Council meeting held July 28, 2009
- B. City Personnel Report
- C. Contracts and Agreements:
 - 1) Consider approval of Memorandum of Agreement between the City of Carlsbad and the Mid-Region Council of Governments for funding assistance for transportation services for the Section 5316 program for FY 2010-2011 in the amount of \$6,510.
 - 2) Consider approval of Memorandum of Agreement between the City of Carlsbad and the Mid-Region Council of Governments for funding assistance for transportation services for the Section 5316 program for FY 2010-2011 in the amount of \$30,690.00
 - 3) Consider approval of Assignment of Ground Space Lease at the Cavern City Air Terminal from Marbob Energy Corporation to Chandler Aviation, LLC
 - 4) Consider approval of Memorandum of Agreement between the City of Carlsbad and the New Mexico Department of Health for 2010 Trauma System Fund Appropriations
- D. Miscellaneous Requests:

- 1) Consider request from Carlsbad Medical Center to use City roads/trails for a 5k Walk/Run and 2 mile Walk on Saturday, October 17, 2009.
 - 2) Consider approval of Carlsbad Public Library/Museum Rules of Patron Conduct
- E. City of Carlsbad Department Monthly Reports:
- 1) Personnel Department Report for July 2009
 - 2) Utilities Department Report for July 2009

0:10:00 **Motion to approve Routine and Regular Business**

The motion was made by Councilman Diamond and seconded by Councilman Aguilar to approve the Routine and Regular Business.

0:10:06 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:10:19 **Mayor Forrest announced to the audience that all of the Routine and Regular Business had been approved**

0:10:43 **4. CONSIDER AWARD OF THE FOLLOWING BIDS FOR THE PURCHASE OF VEHICLES**

- A. Bid No. 2009-31, Two (2) Single Cab, Two-Wheel Drive Pickup Trucks for License/Permits Department
- B. Bid No. 2009-32, One (1) Compact 4 Door Sedan (Ford Focus) for License/Permits Department
- C. Bid No. 2009-33, One (1) 12 passenger Van for City of Carlsbad Fire Department
- D. Bid No. 2009-34, Two (2) $\frac{3}{4}$ Ton 4 X 4 Crew Cab Pickup Trucks for City of Carlsbad Fire Department
- E. Bid No. 2009-35, Two (2) $\frac{3}{4}$ Ton 2 X 4 Crew Cab Pickup Trucks for City of Carlsbad Fire Department
- F. Bid No. 2009-36, One (1) 4 X 4 SUV for City of Carlsbad Fire Department
- G. Bid No. 2009-37, Ten (10) Dodge Charger (V6) Police Units for City of Carlsbad Police Department
- H. Bid No. 2009-38, One (1) $\frac{1}{2}$ Ton Pickup Truck for Cavern City Air Terminal

0:11:00 **Mr. Burgess**

Mr. Burgess explained in prior years it had been Council's interest to give local vendors the opportunity to service the City in these types of purchases and rather than going straight to the Statewide Pricing Agreement he asked the various departments to go through the bid process in order to gain a better idea of what can and can not be done locally. He explained that the statewide pricing agreement goes through a bid process. He explained his recommendations for purchase of the vehicles.

0:14:59 **Motion to award bids**

The motion was made by Councilman Diamond and seconded by Councilman Carter to approve the purchase of the vehicles as per the recommendations made by the Administrator which were as follows: Bid No. 2009-31 purchase from State Pricing Agreement, Bid No. 2009-32 award bid to Carlsbad Motor Company in the amount of \$14,033.01, Bid No. 2009-33 purchase from State Pricing Agreement, Bid No. 2009-34 purchase from State Pricing Agreement, Bid No. 2009-35 purchase from State Pricing Agreement, Bid No. 2009-36 purchase from State Pricing Agreement, Bid No. 2009-37 award to Jack Key Motors for \$226,010.00, Bid No. 2009-38 and award bid to Rich Ford in the amount of \$17,709.00

0:15:09 **Councilman Diamond**

Councilman Diamond explained that reasonable efforts were made to solicit bids from local dealerships and that because Council knew a lot of vehicles were going to be purchased he contacted the three local dealerships and urged them to contact Mr. Burgess. He explained that the dealerships stated that the State Contract was tough to compete against.

0:16:03 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:16:15 **5. CONSIDER APPROVAL OF RESOLUTION NO. 2009-29, SUPPORTING RECONSTRUCTION OF GREENE STREET FROM CANAL STREET TO MOORE DRIVE AND ACCEPTANCE AND APPROVAL OF COOPERATIVE AGREEMENT (PROJECT NO. ECO-5272 (1)35) IN THE AMOUNT OF \$831,489 FOR REHAB OF CURB AND GUTTER, SIDEWALK, UPGRADE ADA FACILITIES AND IMPROVE DRAINAGE STRUCTURES**

0:16:52 **Motion to approve Resolution No. 2009-29**

The motion was made by Councilman Elkins and seconded by Councilman Aguilar to approve Resolution No. 2009-29, supporting reconstruction of Greene Street from Canal Street to Moore Drive and acceptance and approval of Cooperative Agreement (Project No. ECO-5272 (1)(35) in the amount of \$831,489 for rehab of curb and gutter, sidewalk, upgrade ADA facilities and improve drainage structures.

0:16:57 **Councilman Elkins and Mayor Forrest**

Councilman Elkins inquired about completing the project for the amount of money that was listed. **Mayor Forrest** explained that it would take about \$1.4 million to complete this project and that the remaining WIPP funding could be used to complete the cost.

0:18:26 **Councilman Diamond commended the Mayor, Tom Carlson and Stephanie Shumsky for attending the SERPO meeting and obtaining the necessary funding**

0:19:15 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:19:28 **6. CONSIDER APPROVAL OF RESOLUTION NO. 2009- 30, AUTHORIZING THE MAYOR TO EXECUTE AN APPLICATION FOR GRANT FUNDING AND ACCEPTING THE GRANT BY THE FEDERAL AVIATION ADMINISTRATION FOR INSTALLATION OF ANIMAL CONTROL FENCING AT THE CAVERN CITY AIR TERMINAL**

0:19:48 **Motion to approve Resolution No. 2009-30**

The motion was made by Councilman Diamond and seconded by Councilwoman Nunley to approve Resolution No. 2009-30 authorizing the Mayor to execute an application for Grant funding and accepting the Grant by the Federal Aviation Administration for installation of Animal Control Fencing at the Cavern City Air Terminal.

0:19:58 **Discussion regarding matching funds for the project**

0:21:16 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:21:29 **7. APPOINT JIM GRANTNER TO REPLACE COUNCILOR NATHAN MCDONALD, WARD 4, CARLSBAD CITY COUNCIL**

0:21:42 **Motion to appoint Jim Grantner**

The motion was made by Councilman Day and seconded by Councilman Salcido to appoint Jim Grantner to replace Nathan McDonald, Ward 4, Carlsbad City Council.

0:21:47 **Councilman Diamond and Mayor Forrest recognized all of Mr. Grantner's involvement in the community**

0:22:33 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:23:03 **Mr. Jim Grantner expressed his gratitude to the Mayor and Councilors and stated that he planned to do his best for the citizens of the City of Carlsbad**

0:23:29 **8. CONSIDER RESCINDING STAGE 1 WATER RESTRICTIONS**
Mr. Burgess explained that we have had some significant rain events in the past few weeks and for the past two months have been under stage one water restrictions in

which time staff has been monitoring the water well levels and the chloride levels. He reviewed the well monitoring sheets. He explained that after reviewing the ordinance and comparing it with the well monitoring sheets, meeting with staff and talking with the contracted hydrologist out of Albuquerque whom also reviewed the data and stated that our water supply is stable and the chlorides are low, therefore; we are not in danger of having problems should we lift the water restrictions. He explained that the hydrologist also wrote him a letter explaining how we might progress from here in renewing our ordinance. He explained some of the deficiencies with the current ordinance. He explained his recommendation of revising the ordinance based on the data that Mr. Balleau, the hydrologist, can provide based on comments made by staff and the community. He explained that he would like for the water restrictions to be lifted until the ordinance can be redrafted to address the current deficiencies but that the community be solicited to continue with the voluntary compliance.

0:31:07 Councilman Elkins expressed concerns about the amount of time it would take to develop recommendations

0:32:36 Mayor Forrest stated that he wanted to appoint a committee and have Councilman Elkins serve as Chairman

0:32:54 Mayor Forrest explained that implementing water restrictions sends a wrong message concerning water rights. He explained the efforts that are being made to bring more water into the city and the importance of addressing drought conditions.

0:34:24 Councilman Diamond explained that the City of Carlsbad has some of the lowest water rates in the State and how it is limiting us in terms of financing to upgrade the system, therefore; conservation helps keep the cost of water down.

0:35:08 Councilman Day expressed concerns regarding communication with the community in terms of changing out of a water restriction then implementing the new ordinance and re-implementing water restrictions. He explained the reasons that he was opposed to moving away from water restrictions.

0:38:09 Discussion regarding the requirements of the ordinance

0:40:20 Motion to rescind water restrictions

The motion was made by Councilman Elkins and seconded by Councilman Aguilar to rescind the Stage 1 Water Restrictions.

0:40:27 Vote

The vote was as follows: Yes - Salcido, Aguilar, Carter, Elkins; No - Day, Nunley, Diamond; Absent - None. The motion carried.

0:40:56 **9. CONSIDER ORDINANCE NO. 2009-12, AMENDING
ORDINANCE NO. 2006-03 AND SECTION 44-38 OF THE CARLSBAD CITY CODE
REGARDING GARBAGE AND RUBBISH COLLECTION FEES**

A) Public Hearing

0:41:26 **Mr. Frank Medina Jr. inquired about the oilfield having water
restrictions on their use as well as the citizens**

0:42:56 **B) Consider Ordinance**

Mayor Forrest asked if anyone would like to speak regarding this issue. No one appeared and the Mayor declared the protest hearing closed and reconvened the Council in regular session.

0:43:02 **Motion to approve Ordinance No. 2009-12**

The motion was made by Councilman Aguilar and seconded by Councilman Diamond to approve Ordinance No. 2009-12 amending Ordinance No. 2006-03 and Section 44-38 of the Carlsbad City Code regarding Garbage and Rubbish Collection fees.

0:43:09 **Councilman Diamond explained the measures that the Council has
taken to avoid raising garbage and rubbish collection fees for several years**

0:44:10 **Councilman Elkins explained that the garbage rates in the City of
Carlsbad are among the lowest in the State. He explained that the twice a week pick
up schedule was worth the struggle to maintain.**

0:44:53 **Mayor Forrest encouraged everyone to participate in the recycling
program**

0:45:13 **Discussion regarding the recycling program**

0:53:57 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins;
No - None; Absent - None. The motion carried.

0:54:16 **10. CONSIDER ORDINANCE NO. 2009-13, INCREASING THE
JUDICIAL EDUCATION FEE TO THE STATE IMPOSED AMOUNT**

A) Public Hearing

0:54:32 **B) Consider Ordinance**

Mayor Forrest 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.

0:54:37 **Motion to approve Ordinance No. 2009-13**

The motion was made by Councilman Diamond and seconded by Councilman Carter to approve Ordinance No. 2009-13 increasing the Judicial Education Fee to the State imposed amount.

0:54:42 **Vote**

The vote was as follows: Yes - Salcido, Aguilar, Carter, Day, Nunley, Diamond, Elkins; No - None; Absent - None. The motion carried.

0:54:55 **11. DISCUSSION REGARDING THE SUNSET GARDENS CEMETERY**

Mayor Forrest gave a brief history of the involvement between the City and the County over the past several years to improve Sunset Gardens Cemetery. He explained that the City would like to take over the cemetery but will need the help of the County. He explained that he wanted to see the County set aside \$200,000 in their budget to devote to the cemetery. He explained that the City would run the cemetery, however; he would like for the City to enter into a joint powers agreement with the County where they would take on half of the payment of operating the cemetery similar to the arrangement that is in place concerning the Landfill. He explained that it would take about \$400,000 to get Sunset Gardens into shape. He explained the acreage and water rights. He explained that they have obtained an estimate from the Garden Mart for the initial clean up. He said the only missing link was finding out what the County would be willing to do to help the City in resolving this problem. He explained that the City cemetery will be up to capacity soon, therefore gaining possession of Sunset Gardens may be a blessing in disguise.

1:01:09 **Discussion regarding the Court Order to retrieve the records and clean up the property.**

1:02:38 **Councilman Elkins explained that in order for the City to be successful in this venture a strong partnership must exist with the County. He explained how far the City has come with its cemetery and they owe it to the community to bring Sunset Gardens up to standards.**

1:04:44 **Mr. Alan Sartin, Eddy County Manager explained what the Eddy County Board of Commissioners would like to do with the Carlsbad City Council with regard to Sunset Gardens.**

1:06:04 **Mr. Jack Valpato, Eddy County Commissioner stated that he looked forward to working with the City regarding Sunset Gardens. He explained that it was a moral issue within the community and could not be walked away from.**

1:06:51 **Mr. Guy Lutman, Eddy County Commission stated that the commission looked forward to sitting down with the City and sharing dialog over this daunting issue.**

1:07:18 Mr. Charles Gray explained the poor condition of the Veteran's Memorial at Sunset Gardens and that the plaques needed to be secured in a place where the veterans could be properly honored

1:09:21 Mr. Jerry Stanley

Mr. Stanley explained that the County lost sight of the mission in this case and that their decision was based on economics and this is not an economical issue, it is a moral and decency issue. He explained that the problem started 20 years ago when the Crouches purchased Sunset Gardens. He explained that they mistreated people and over time it progressively got worse. He thanked the Court for issuing the order for the City to remove the records and clean up the grounds. He also thanked John Heaton for all of his efforts in pursuing the legislative funds for the cemetery. He explained that everyone needs to look at this not as an economical issue but as a moral issue. He explained the study that he conducted while serving on the Carlsbad Cemetery Board regarding how many years it would take to fill up Carlsbad Cemetery and it came to the year 2016. He also explained some of the other results of his research and that there are thousands of potential gravesites at Sunset Gardens. He thanked the City and County upfront for their efforts.

1:16:27 Mr. Alan Wood, Denton-Wood Funeral Home

Mr. Wood explained that he receives many calls regarding Sunset Gardens and that he is thankful that the City and County are going to step forward to mitigate the situation. He inquired about what would happen if there were to be a death and the need for someone to be buried at Sunset Gardens arose. He said he would be willing to help in anyway he could.

1:18:23 Councilman Diamond explained that the City did a very good job when Santa Catarina was taken over and he had every confidence that the City can work through the issue with regard to the records

1:19:15 Ms. Glenda West explained that the tombstone had been removed from her brother and sister-in-law's graves and asked if the City could help them locate it and put it back

1:20:36 Mr. Tom Mathis explained that he hoped the newspaper misquoted the County Commissioners and he urged them to step in and work with the City on Sunset Gardens

1:21:46 Mayor Forrest stated that while no action could be taken at the current time, he had the administrative power to give Mr. Burgess the authority to spend \$6,000 and match funds with the County to start cleaning up Sunset Gardens Cemetery the following day

1:22:17 **12. DISCUSSION BY ERIC WEST REGARDING ADA ISSUES IN THE CITY OF CARLSBAD**

Mr. West explained that when he became handicapped one year ago he was really shocked to find out that ADA was not being honored in a lot of places. He explained that he may not have taken the best approach in addressing this issue. He explained that he had been working with Councilman Diamond who just got the Governor's Commission on Disability to come to Carlsbad and that it was the first time they had ever addressed a city. He thanked the City officials for attending the meetings. He explained that he followed the remodel of Trinity Hotel and to his disheartening it was not ADA compliant but they were issued a certificate of occupancy in 2009, 19 years after the start of ADA. He explained that he had screamed and yelled at the Code Enforcement Officer regarding the Trinity Hotel and the next day he received a door hanger stating that he needed to clean up his yard. He explained that he understood it was City Ordinance and he needed to follow it but he could not get the City to do anything with regard to ADA compliance so that he can go buy things to be compliant with the rules. He asked if that was fair to him. He explained that people are violating the ADA act because the City is not enforcing it. He said the City needed to change their policies. He explained the costs imposed on handicap persons for the equipment they must use if they want to be able to get around. He implored the City to adopt rules to prevent the happenings of the Trinity Hotel to happen again. He expressed concerns regarding handicap parking. He also explained that he was going to leave his handicap wheelchair and challenged the members of Council to use it for a day to understand what daily life is like for him.

1:30:55 **Discussion regarding the violation at the Trinity Hotel**

1:33:08 **Councilman Diamond**

Councilman Diamond explained that he resented the tirade at this point because the City hosted an ADA seminar and invited many of the neighboring communities. He explained that they were told that the enforcement of the ADA is under the jurisdiction of the Department of Justice and the Federal Courts and that is where it is supposed to take place. He explained that the City is making a good faith effort to comply with the ADA act. He explained all of the measures that have been taken by staff and Council with regard to ADA. He asked Mr. West to work with them instead of against them. He informed Mr. West that the City employees were entitled to be protected against threatening behavior. He explained to Mr. West that he and Council needed to move forward and take some positive steps and that Council and staff were motivated to do so.

1:35:21 **Discussion regarding changing code to benefit the handicap**

1:42:03 **Mr. Joaquin Balderrama thanked Council for their support on the quilt raffle for his grandson**

1:42:58 **Mr. Burgess asked Council to review the ICIP list and make changes if necessary. He said staff would like to bring it back to Council for their consideration the first meeting in September.**

1:43:30 **Mayor Forrest complimented Joey Gonzalez for a job well done as Interim Police Chief**

1:44:10 **Adjourn**

There being no further business, the meeting was adjourned at 7:43 p.m.

____/s/ Bob Forrest_____
Mayor

ATTEST:

____/s/ Amanda J. Asbury_____
City Clerk