

ALAMOSA CITY COUNCIL
Wednesday, December 1, 2010
Minutes of the Meeting

The Regular Meeting of the Alamosa City Council was called to order on the above date by Mayor Kathy Rogers at 7:02 p.m. The Pledge of Allegiance was recited. Present at roll call: Mayor Rogers, Councilors Charles Griego, Rusty Johnson, Josef Lucero, Leland Romero, and Marcia Tuggle. Councilor Greg Gillaspie previously requested to be excused. A quorum was declared. Also present: City Manager Nathan Cherpeski, City Attorney Erich Schwiesow, and City Clerk Judy Egbert.

AGENDA APPROVAL. It was moved by Councilor Griego and seconded by Councilor Romero to approve the agenda as presented and to excuse Councilor Gillaspie. On the roll call the vote was ayes six, nays none. The motion carried.

CITIZEN COMMENT

A. Audience Comments

Margaret Jones asked about garage sale sign removal requirements, suggesting that community service people be assigned to take care of this.

Ruth Brown:

- Noted that there were twelve street lights out.
- Her store was robbed this summer and she was able to get the police report just this week. She objected to paying the copy fee for this report. She believes that nothing is being done to solve the robbery.
- Asked what is being done about increased crime.
- Asked why the County Fire District will be charged rent for the new facility.
- Said that the tree lighting ceremony used to be on the Friday after Thanksgiving and merchants were more involved in the event. Merchants did not know of it this year.

Leon Moyer:

- Noted that the percentages don't add up on the BTOP grant item.
- Asked who gets Parcel C in the property exchange, adding that the City should not give land away.
- Believes that page 3 of the Reynolds and Associates amendment has a contradiction, and opined that the City is paying too much for this amendment.
- Said that he was happy to see that the sponsorships requested are less than requested last year.
- Believes that Resolution No. 23 gives too much authority to the City Clerk.

B. Follow-Up

Mr. Cherpeski provided the following:

- He will look into the street lights if Ms. Brown will let him know the locations.
- The tree lighting ceremony has been the week prior to Thanksgiving in recent years. On discussion, it was explained that it was changed at the request of merchants. There were 300 to 400 people in attendance this year.
- The BTOP grant match is 10% of the total project, not the grant amount.
- The amendment to the Reynolds contract reflects a service not offered by the architect.

- He will look into the garage sale sign issue. Mr. Koskelin noted that several years ago staff proposed an ordinance that would require temporary signs to be removed after a certain period of time, but Council declined to act on this. Councilor Tuggle recommended that a garage sale be registered so that the City could track these.
- The Fire District has in the past made capital contributions toward shared facilities in lieu of rent. The proposal with the new facility is that of rent payment. The City pays all the costs associated with the buildings, including phone and internet. There are more fire calls in the County than in the City. There is an intergovernmental group working on this.

CONSENT CALENDAR A. It was moved by Councilor Lucero and seconded by Councilor Romero to approve Consent Calendar A as presented. On the roll call the vote was ayes six, nays none. The motion carried. Items:

- C. 4. a. Accept BTOP Grant for Library Computers and Infrastructure Improvements
- C. 7. a Minutes of Regular Meeting November 17, 2010

REGULAR BUSINESS

A. Presentations from Outside Agencies

1. Small Business Development Center, Donna Wehe

Ms. Wehe reviewed the written report included in the Council packet. The SBDC will be moving into the depot building, with the new office next door to the Chamber. She also mentioned upcoming training offered.

C. Business Brought Forward by City Staff

1. Public Works

a. Public Hearing Ordinance No. 17, 2010, An Ordinance Rezoning Lot 2, Mobile Century Subdivision Lying Generally East of State Avenue and North of 17th Street as Portrayed on the Attached Exhibit A, in the City of Alamosa, Colorado From Industrial (I) to Commercial Business (CB)

Councilor Romero stepped down due to a conflict of interest as the owner of the property.

Mayor Rogers opened the public hearing at 7:36 p.m. and asked for those wishing to speak on this ordinance.

Leon Moyer identified himself as a County resident and made the following statements:

- The information in Council's packet is not complete.
- Adjacent property owners were not notified.
- The sign posted barely meets the size requirements in the ordinance.
- Leland Romero didn't submit a complete list of adjacent property owners. The day care, Van's Machine Shop, and Valentino's were notified, but the vacant property owned by the deceased Gary Wuckert was not.
- He asked that Council not grant this request.
- Section 16-42 of the City's code requires sidewalks. He believes that sidewalks are not possible on this property, and that a building permit should not be issued because of this.

- The code says that a building permit shall not be issued unless a certificate of occupancy is issued at the same time, and this has not happened.
- The use of the building should be disclosed up front. Once a building is in place there is pressure on Council.
- Council recently approved a spot zoning on First Street, and Councilor Romero voted against it. This application is also spot zoning, with Councilor Romero as the applicant.
- Council should not make exceptions.
- The Building Inspector does not plan on enforcing the sidewalk requirement.
- This building is not attractive, and has no landscaping.

There being no one further wishing to speak, the hearing closed at 7:44 p.m.

Council and staff clarified the following:

- The building is already in place and occupied, so the building permit and sidewalk discussion is not an issue for this rezone.
- This is not spot zoning. It is adjusting an existing zone, and does not create an island. This change would bring this property into the same use as the surrounding area.
- A change to CB is less restrictive than Industrial.
- This is considered a gateway area, and is a first impression on visitors arriving from the airport. This change will be an improvement.
- The hearing notices were posted and published as required.

It was moved by Councilor Tuggle and seconded by Councilor Griego that Ordinance No. 17, 2010 be finally adopted. On the roll call the vote was ayes five, nays none. Councilor Romero was excused from voting due to a conflict of interest. The motion carried.

Councilor Romero returned to the dais at this time.

b. Public Hearing Ordinance No. 18, 2010, An Ordinance for the Regulation of Nuisance and Property Maintenance by the City of Alamosa, Colorado; Adopting by Reference the 2009 Edition of the "International Property Maintenance Code" Repealing All Ordinances in Conflict therewith; and Providing Penalties for Violation Thereof

Mayor Rogers opened the public hearing at 7:52 p.m. and asked for those wishing to speak on this ordinance.

Leon Moyer, previously identified as a County resident, offered the following:

- There is a misspelled word in the ordinance.
- Adopting this won't improve enforcement.
- The Code Enforcement Officer should report to Council on a regular basis, including what citations have been issued and clean-up completed.

There being no one further wishing to speak, the hearing closed at 7:54 p.m.

Council discussed the following:

- There was discussion about whether the noxious weed limit of one half acre was adequate, with a suggestion that it be changed to one acre. Mr. Koskelin described the size of a typical lot. Chief Jackson reported that a multitude of weed violation notices are issued and most resolved. The Code Enforcement Officer does a good job of following up on violations.
- Some weeds serve a good purpose on undeveloped property for dust control.

- Council further discussed the criteria for noxious weeds and how that relates to this ordinance, and supported the idea of an amendment that would make the ordinance applicable to noxious weeds as defined in state statute on all properties, developed or not.

Mayor Rogers re-opened the public hearing for comment in response to consideration of this amendment (8:11 p.m.)

Ruth Brown identified herself as a County resident who owns a business in the City, and suggested that a list of noxious weeds be developed, and that the list include Bindweed and Bouncing Betty. These can be eliminated with Round Up without damaging non-noxious plants.

Mr. Cherpeski displayed the list of noxious weeds in state statute.

Counselor Schwiesow read the amendment proposed. This is to be inserted in 14-2(b)(9)(c). *This section shall also apply to noxious weeds as defined in CRS § 35-5.5.103 irrespective of whether the property is or is not developed real property*

The list from state statute could be used, and if desired, the Tree Board could come up with additions to this list that could be adopted by Resolution. This change covers all noxious weeds regardless of height.

Leon Moyer, previously identified as a County resident, said that the U.S. Constitution preserved property rights and that Council did not have authority to regulate these rights.

Ms. Brown added that in addition to a fine, help should be offered to citizens to get rid of weeds, and suggested that the City implement such a program. Chief Jackson pointed out that the graffiti violators sentenced to community service included weed pulling as part of their service.

There being no one further wishing to speak, the hearing closed at 8:18 p.m.

It was moved by Councilor Romero and seconded by Councilor Johnson that Ordinance No. 18, 2010 be finally adopted as amended. On the roll call the vote was ayes six, nays none. The motion carried.

c. Property Acquisition

At one time Hunt Avenue was platted to continue north of 3rd Street through block 19, Addition No 1 to the City of Alamosa. Over time, the east approximately 65 feet of this right of way was granted to the adjacent owner of lots 6, 7, and 8 of Block 19. The west 8' was granted to the post office lot to the west. This leaves a 12' strip running north and south which still is platted as a right of way but which is too narrow to serve this purpose. This tract is identified as Parcel C on the attached plat. Lots 6, 7, and 8 form a triangle and adjoin Cole Park. The proposal is for the City to quit claim title to Parcel C to the owner of the adjacent lot to the west in exchange for receiving the tract identified as Parcel A

The initial reason this was considered as an improvement to the entrance to Cole Park. With the new City Hall/Library project, this has come to the surface again. The new configuration would increase available parking spaces.

The property being offered as exchange to Christine Caton is not of use to the City. The property the City would gain has useful value.

It was moved by Councilor Tuggle and seconded by Councilor Griego to approve the property exchange as requested. On the roll call the vote was ayes six, nays none. The motion carried.

8. City Manager/Legal

a. Contract Amendment with Reynolds and Associates

As part of the grant with DOLA, the City is seeking a Leadership in Energy and Environmental Design (LEED) certification for the new building. The certification process requires that a certified commissioning agent is hired to review the building prior to the City taking over. The commissioning agent reviews the energy model and does quality assurance work on the building. While there is an upfront cost it is typically made up for in energy efficiency savings over time. As part of the service for the construction, Reynolds and Associates will oversee the commissioning agent. Reynolds bid this to several of the certified agents and received bids from \$20,000 (includes reimbursable and travel) to more than \$60,000. They have elected to hire the \$20,000 firm. As that is a new requirement, beyond what we had originally planned an amendment to the contract is necessary. In addition, the delay necessitates an extension of the contract from its original 12/31/2010 completion date.

There are different levels of certification, and this amendment pursues the silver level. There may be opportunity to apply for the gold later, if it is determined that the expense involved pays off in energy savings. Some of the gold requirements are not meaningful cost savings, such as dedicated parking spaces for electric cars.

It was moved by Councilor Griego and seconded by Councilor Lucero to approve the contract amendment with Reynolds and Associates to include the LEED certified commissioning agent at an additional cost of up to \$20,000. On the roll call the vote was ayes six, nays none. The motion carried.

b. Public Hearing Ordinance No. 20, 2010, An Ordinance Amending Article VII of Chapter 11 of the Code of Ordinances of the City of Alamosa, Colorado, To Update Concealed Carry Portions of the Ordinance, Allow for the Discharge of Firearms on the Alamosa Ranch for Predator Control, and Allow for Air Guns and Others Discharged within the Confines of Private Residential Property

Mr. Cherpeski reviewed this ordinance, explaining that the only proposed area that firearms would be allowed in on the Ranch. Firearms will remain against the law on private property within the City. BB guns are not firearms by federal definition.

The Ranch property has been operational as a working ranch for many years. The lessee operates cattle on the ranch, and has need for predator control. This function has been in place historically, but the ordinance revision is necessary to bring this use into compliance subsequent to annexation of the property.

Division of Wildlife requirements must continue to be met. Law enforcement officers have need to discharge weapons in the course of their duty.

BB guns are often used within the City, and this ordinance would allow that to occur with the regulation and limitation to private property.

Predator control would require advance permission of both the City Manager and Chief of Police. This would be granted during specific times of year, such as calving season. Other uses within this ordinance could be a controlled hunt if one could be arranged that meets DOW

requirements. Current Code and this ordinance are silent on use of bows and arrows in general. A bow and arrow could be defined as a deadly weapon, and is prohibited if it is used with that intent.

Mayor Rogers opened the public hearing at 8:39 p.m. and asked for those wishing to speak on this ordinance.

Aileen Peek identified herself as a City resident and made the following statements:

- She opposes BB guns, paintball guns, bows and arrows, and other similar items.
- There is a possibility of animals or children being hurt accidentally, even if used only on private property.
- In her role with the SLV Animal Welfare Society, she has witnessed animals with such injuries.
- Coyotes should not be killed because doing so will increase the deer population.
- There are other non-lethal solutions to predators.
- People she talks to in Colorado Springs can't believe what goes on here.
- During the controlled deer hunt, she hit a deer with her vehicle because a herd ran into the road from the Ranch.
- People walk on the Ranch and there is risk that a person or their pet will be shot.

Pat Eland identified herself as a County resident, and made the following statements:

- She recently saw two kids with guns scare birds, then jump over her five-foot fence and run through her yard.
- She agrees with Ms. Peek's comments.
- Even though permission is needed to discharge a firearm on the Ranch, people will do it without permission.

Ben Reeves identified himself as a college student, and made the following statements:

- He started researching this ordinance when he learned of it. There are really two components to this ordinance – predator control on the Ranch, and BB guns on private property.
- The Ranch portion is reasonable, but the BB guns on private property does not make sense.
- He remembered as a kid trying to hit squirrels or birds with a BB gun, and fortunately was not a very good shot. Having this available on private property is a good intention, but there is a high likelihood of a projectile leaving the property if the target is missed.
- This second portion of the ordinance seems to be a potential cause of problems, and is not necessary.

Dan McCann identified himself as a City resident, and made the following statement:

- He opposes allowing BB guns in the City. He had the experience of an arrow nearly striking his dog when a neighbor missed the target.
- He support the predator control on the Ranch.

Leon Moyer, previously identified as a County resident, made the following statements:

- There is a typo in the third "whereas" clause.
- The ordinance is too broad.
- He said that he does a lot of legal work, and loves studying law.
- He opined that there is no true protection of the right to bear arms because he had that right taken away from him.
- He believes that it is easy to twist the language around, asking how do you prove intent.

- This gives law enforcement a blank check, requiring those arrested to prove their innocence.
- Words like “legitimate”, “sporting use”, and “instructional” are hard to define.
- This is not the way to legalize shooting coyotes on the Ranch, and makes life in the City worse.
- It is not appropriate for a city to interfere with the inalienable rights of free speech and the right to bear arms.
- Everyone should be armed, and those who commit crimes given the death penalty.

Ruth Roberts, previously identified as a County resident and City business owner, made the following statements:

- Today a customer who she did not know asked her about this ordinance, and said that he was afraid to come to the Council meeting. He told her that his kids and animals have already been tormented.
- She can't imagine a parent wanting to teach their child how to handle a gun in the City. Her kids practice at the archery range outside of town. Kids are not expert shots.
- She expressed mixed feelings on the deer issue.
- She credited Allen Simpson at being a responsible rancher, but questioned the accuracy of his shooting skills.
- Her family uses the trails at the Ranch.
- Her husband bought a gun to protect their dog from coyotes.
- She asked how permission could be granted for a specific time when the rancher does not necessarily know when the coyote will show up.

Margaret Jones identified herself as a County resident, with property adjacent to the Ranch.

- She echoed the previous comments.
- She did not allow hunting on their property for the same reasons.

Aileen Peek added:

- Children who commit violence to animals often progress to violence to people.
- BB guns can maim rather than kill, cause suffering.
- She suggested predator alternatives such as llamas.

Jean Maddux identified herself as having property adjacent to the Ranch and made the following statements:

- They used to not allow high powered rifles within one mile of the City Limits. The City Limits have now been extended.
- When Dr. Thomas owned the Ranch, he allowed hunting and she witnessed bullets whizzing by until Lloyd Jones put a stop to it.
- She has never seen a coyote there.

There being no one further wishing to speak, the hearing closed at 9:04 p.m.

When asked for his opinion, Chief Jackson said that there could be many unintended consequences. The Ranch lessee needs to have the ability to manage his cattle in a safe way. He opposes allowing BB guns, saying that it is unsafe for many reasons. Additionally it is difficult for a police officer to determine whether it is a BB gun or a firearm because they look very similar. If the private property were large enough and protected from stray projectiles, this might make sense. The reality is that this is not going to happen. There will be more criminal mischief, and the likelihood that someone is going to get hurt. It is difficult for law enforcement to determine what is happening and how to respond, given the similar appearance of the guns. This is not a second amendment issue. This is about the safety of people in the community.

Bows and arrows are a deadly weapon, probably as lethal as rifle. When questioned by Council, Chief Jackson said that the risk of injury is likely greater with a rifle than bow and arrow.

Council discussed requesting input from the Ranch Board on this issue, and soliciting more public input; and continued discussion regarding the historical use of firearms as predator control on the Ranch property. It was also suggested that the City's Animal Control Officer be trained to deal with predators.

Staff added that Division of Wildlife regulations need to be followed regardless of the City's ordinance. There are circumstances when trapping is not effective, such as in the current situation with the beaver near the golf course. Coyotes are generally a problem only during calving season. Mr. Cherpeski clarified that this is the general time when the request for permission is anticipated.

Jean Maddux noted that she is not concerned with Allen Simpson's action for predator control, but did not want others to be able to fire guns on the Ranch.

Councilor Tuggle reported that she has heard from about fifty citizens in favor of BB guns on private property, and encouraged this use in a responsible way.

It was moved by Councilor to finally adopt Ordinance No. 20, 2010 with an amendment to remove Section 4 and all references to any type of guns on private property. The motion died for lack of a second.

It was moved by Councilor Lucero to refer Ordinance No. 20, 2010 to the Ranch Board for suggestions for non-lethal options for predator control and to remove Section 4 and all references to any type of guns on private property. The motion died for lack of a second.

It was moved by Councilor Romero and seconded by Councilor Lucero to defeat Ordinance No. 20, 2010. On the roll call the vote was ayes two (Lucero, Romero), nays four (Johnson, Tuggle, Griego, Rogers). The motion failed.

It was moved by Councilor Lucero and seconded by Councilor Johnson to table Ordinance No. 20, 2010 to the second meeting in February and discuss this further with the Ranch board at the upcoming work session. On the roll call the vote was ayes four (Lucero, Romero, Johnson, Rogers), nays two (Tuggle, Griego). The motion carried.

c. First Reading Ordinance No. 21, 2010, An Ordinance Prohibiting Medical Marijuana Centers, Infused Project Manufacturers' Facilities, and optional Cultivation Operations Within the City of Alamosa Colorado.

At the last meeting, Council expressed interest in pursuing prohibition of medical marijuana facilities within the City. This ordinance would enact that prohibition. The current moratorium is due to expire December 31, 2010.

Council discussed options, including extending the moratorium, how this interacts or does not interact with the recent County vote, and the consideration that the product is available in the County for City residents who need this medication.

It was moved by Councilor Johnson and seconded by Councilor Romero to introduce Ordinance No. 21, 2010 on first reading and set a public hearing thereon for Wednesday December 15,

2010 at 7:00 p.m. or as soon thereafter as the matter may be heard. On the roll call the vote was ayes four (Romero, Johnson, Lucero, Rogers), nays two (Tuggle, Griego). The motion carried.

d. Request for Sponsorships

Mr. Cherpeski presented two requests for event sponsorships. Last year the City sponsored the Rodeo in an amount of \$10,000. Various levels of sponsorship are available, with an amount of \$7,500 proposed. Secondly, Alamosa Live Music Association (ALMA) has requested \$2,500 to support the Sundays at Six event series.

These entities have requested funding from the Marketing District also. Councilor Lucero noted that the Marketing District's budget has been put on hold due to litigation.

It was moved by Councilor Tuggle and seconded by Councilor Lucero to sponsor both events in the amounts proposed. On the roll call the vote was ayes six, nays none. The motion carried.

e. First Reading Ordinance No. 22, 2010, An Ordinance Amending the Established Pay Plan for Officers and Employees as Referred to in Section 15-22 of the Code of Ordinances, Concerning Personnel Rules and Regulations and Pay Plan for City Officers and Employees

This ordinance does not reflect any changes in positions or ranges from what is currently in place.

It was moved by Councilor Griego and seconded by Councilor Romero to introduce Ordinance No. 22, 2010 on first reading and set a public hearing thereon for Wednesday December 15, 2010 at 7:00 p.m. or as soon thereafter as the matter may be heard. On discussion, Mr. Cherpeski responded to questions by saying that this is a merit system, not a cost of living adjustment, and there may be some employees who did not earn the merit raise; and that the Personnel Board does not review this ordinance, as their function is to hear grievances. On the roll call the vote was ayes six, nays none. The motion carried.

E. Committee Reports

Councilor Lucero read a letter regarding economic statistics from Development Resources Group.

Councilor Griego will be attending the CML Policy Committee meeting December 7.

Councilor Tuggle announced the Senior Citizens bazaar on Saturday.

F. Staff Announcements

Mr. Cherpeski told Council of a proposal for an energy analysis on city facilities. The fire station demolition preparation is underway, with the building scheduled to come down on Monday.

Ms. Egbert told Council that the Judge and Prosecutor contracts are up for expiration. No changes in terms are requested, so Council asked that these be placed on the consent agenda of the next meeting.

Counselor Schwiesow reported the notice of claim regarding the officer-involved shooting. He believes that the City does not have any liability, and will provide more information as this case progresses.

LOCAL LIQUOR LICENSING AUTHORITY ACTIONS

B. Liquor Licensing Items

1. Resolution No. 23, 2010, A Resolution Adopting the Attached Policy Specifying Criteria for When a Modification of Premises Requires a Hearing to Determine the Reasonable Requirements of the Neighborhood and the Desires of the Adult Inhabitants of the Neighborhood.

Ms. Egbert presented the requested policy defining when a Modification of Premises application would trigger a needs and desires hearing. The proposed policy specifies an increase of 75% or more square footage, and specifically exempts anything that has already obtained planning and zoning approval.

She used the example of the addition of a drive-up window at a liquor store, which would not require a hearing under this policy.

It was moved by Councilor Johnson and seconded by Councilor Tuggle to adopt Resolution No. 23, 2010. On the roll call the vote was ayes five, nays none. Councilor Griego abstained as the wife of a liquor license holder. The motion carried.

COUNCIL COMMENT

Councilor Johnson and Romero both asked to be excused for the next meeting. Councilor Tuggle noted that she would be late for the work session, but arriving before the regular meeting time.

Councilor Lucero asked about the use of the former Aspen Office building, saying there are citizen concerns about parking needs for the Public Defender's office that is moving in there. Mr. Cherpeski said that no special parking considerations will be given.

Councilor Tuggle asked Mr. Cherpeski to research the sidewalk issue and report back to Council. She also asked that business incentives be added to the retreat agenda.

Mayor Rogers brought forward the idea of a Mayor and Council Award to recognize exemplary actions of citizens.

ADJOURNMENT. The meeting adjourned at 10:50 p.m.

Judy A. Egbert, City Clerk

Kathleen J. Rogers, Mayor