

Minutes of the Regular Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec, at 7:00 p.m. on Tuesday, April 26, 2011.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

Mayor: Jackie McKinney

Councilors: Mike Enfield  
Cecil Garcia  
Allan Landavazo  
E. Bryan Wall

Also present: R. David Pederson, City Manager &  
City Attorney

The Mayor and Councilors presented Proclamations declaring April 30, 2011 as Comcast Cares Day and April 2011 as Fair Housing Month.

Mayor McKinney certified for the record that the matters discussed during the closed session held on Monday, April 25, 2011 at 2:30 p.m. were limited personnel matters; specifically, the hiring of a City Manager. Mayor McKinney also certified for the record that no official action was taken during the closed session. The certification by Mayor McKinney is made pursuant to Section 10-15-1-J of the Open Meetings Act, NMSA 1978.

Mayor McKinney read the following statement into the record:

The Assessment Center's Committees' specific opinions and documentation are not subject to public information. The assessment data is a personnel issue and therefore not subject to public disclosure. We met as a Council on Monday (April 25, 2011) afternoon with input from the New Mexico Municipal League and arrived at a consensus among Council. A thorough review was given to the input from the Community Team, the Technical Team and the Council Committees of the Assessment Center. We then started negotiations with the Council's selection of Dan Dible our leading candidate. Mr. Dible has signed our negotiated contract and we will call a special meeting with the Council for Friday (April 29, 2011) at 9:00 a.m. for formal approval.

Presented to the Mayor and Councilors were the Minutes of the Work Session and Regular Session of April 12, 2011.

Councilor Wall made the motion to approve the aforementioned Minutes. Seconded by

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by Councilor Enfield. Roll call: Councilors Wall, Enfield, Landavazo, and Mayor McKinney all voted aye. Councilor Garcia abstained from voting since he was not present during the Work Session and Regular Session of April 12, 2011.

Presented to the Mayor and Councilors were the following Consent Agenda Items:

1. Resolution No. R2011-12; A Resolution Declaring the Intent of the City Council of the City of Gallup to Consider for Adoption an Ordinance Authorizing Issuance and Sale of Up to \$4,500,000 Northwest New Mexico Regional Solid Waste Authority Improvement and Refunding Revenue Bonds, Series 2011 – Chris Muirhead, Modrall Sperling Law Firm

Resolution No. R2011-12 was presented and discussed during the previous Work Session.

2. Appointment of Councilor Allan Landavazo as Mayor Pro Tempore – Mayor Jackie McKinney

Mayor McKinney asked for the Councilors' ratification to appoint Councilor Landavazo as Mayor Pro Tempore for the duration of Mayor McKinney's term as Mayor.

3. Request for Street Closures for the Third Annual Route 66 Freedom Ride and Flight to be Held May 21-22, 2011 – Bill Lee, Executive Director, Gallup-McKinley County Chamber of Commerce

Mr. Lee presented the request as well as an overview of the annual event.

4. Request for Street Closures for the Run for the Wall Event to be Held on May 19, 2011 – Ben Welch, Executive Director, Recreation and Special Projects Division

Mr. Welch presented the request as well as an overview of the annual event.

Mayor McKinney said the National 9-11 Memorial Flag from New York will be in Gallup for the event. He said Gallup was selected as the only city in the state to host a re-stitching ceremony for the flag that was flying at the twin towers at the World Trade Center when the towers collapsed on September 11, 2001.

5. Resolution No. R2011-13; Fair Housing Act of the City of Gallup – Stan Henderson, Executive Director, Public Works Division

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6. Resolution No. R2011-14; A Resolution Reaffirming the City of Gallup's Citizen Participation Plan – Stan Henderson, Executive Director, Public Works Division
7. Resolution No. R2011-15; A Resolution Reaffirming the City of Gallup's Anti-Displacement and Relocation Plan – Stan Henderson, Executive Director, Public Works Division

Mr. Henderson said the annual adoption of the City's Fair Housing Act, Fair Housing Proclamation, Citizen Participation Plan and Anti-Displacement and Relocation Plan are required to participate in the State of New Mexico's Small Cities Community Development Block Grant Program to receive funding for Phase II of the Sky City Roadway Project.

8. Resolution No. R2011-17; A Resolution Naming City of Gallup Representatives to the Northwest New Mexico Regional Solid Waste Authority Board of Directors – Lance Allgood, Executive Director, Gallup Joint Utilities Division

Mr. Henderson presented the proposed Resolution on behalf of Mr. Allgood which would substitute Councilor Garcia as one of the City's representatives to the Board of Directors in place of former Councilor John J. Azua. The remaining City representatives to the Board of Directors will continue to be the Executive Director of the Gallup Joint Utilities Division and the Solid Waste Superintendent will serve as an alternate.

Councilor Landavazo made the motion to approve Consent Agenda Items 1-8. Seconded by Councilor Wall. Roll call: Councilors Landavazo, Wall, Enfield, Garcia and Mayor McKinney all voted aye.

Presented to the Mayor and Councilors were the following Discussion/Action Topics:

9. Resolution No. R2011-18; A Resolution Authorizing Gallup Joint Utilities to Enter Into Net Metering Agreements with Other Governmental Agencies for Interconnected Renewable Energy Generation Systems – Lance Allgood, Executive Director, Gallup Joint Utilities Division

Mr. Henderson presented the proposed Resolution on behalf of Mr. Allgood which would allow the City to enter into net metering agreements with governmental agencies with interconnected renewable energy generation systems of up to 75 kW.

Councilor Enfield made the motion to approve Resolution R2011-18. Seconded by

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Councilor Wall. Roll call: Councilors Enfield, Wall, Landavazo, Garcia and Mayor McKinney all voted aye.

### 10. Fiscal Year 2012 Budget Presentation – Judi Starkovich, Executive Director, Administrative Services Division

Mrs. Starkovich presented a power point presentation on the proposed budget for the next fiscal year which focuses mainly on the general fund. A copy of the power point presentation and the 2012 Budget Message attached hereto and made an official part of these official Minutes. Overall, \$2,801,740 of the City's residual cash will be used to balance the budget.

Councilor Enfield asked if the use of residual cash will allow the City to maintain a cash reserve of 11%. Mrs. Starkovich responded yes as long as the City's revenue projections hold out for the remainder of the current fiscal year. If revenue projections do not hold out, then cuts will need to be made to the budget.

Discussion followed concerning an appropriate date for the Mayor and Councilors to approve the Fiscal Year 2012 Budget. Mrs. Starkovich preferred that the Mayor and Councilors approve the new budget at the first regular meeting in May which would allow time for staff to work the numbers in accordance with the reporting format as required by the State Department of Finance and Administration and to be able to submit the budget to the State by the June 1<sup>st</sup> deadline. Mayor McKinney asked if changes could be made to the budget after the Budget Resolution is adopted on May 10<sup>th</sup> up until the submission deadline of June 1<sup>st</sup>. Mrs. Starkovich said yes as long as the changes to the budget are minor.

### 11. Resolution No. R2011-16; Fiscal Year 2011 Budget Revision #3 – Judi Starkovich, Executive Director, Administrative Services Division

Mrs. Starkovich said the budget revision encompasses all changes processed through March 31, 2011. The budget changes are as follows: there is an increase in general fund expenditures and transfers out of \$222,080; however, there is a corresponding increase to the general fund revenues of \$933,540. Overall, the general fund total budget for expenditures plus transfers out is \$31,472,601 and revenues plus transfers in amount to \$29,650,182. As a result, the net use of cash is \$1,822,419, which is a net decrease of \$711,460 in comparison with budget revision #2.

Councilor Wall made the motion to approve Resolution R2011-16. Seconded by Councilor Enfield. Roll call: Councilors Wall, Enfield, Landavazo, Garcia and Mayor McKinney all voted aye.

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12. Resolution R2011-11; A Resolution Affirming, Reversing or Modifying the Decision of the Gallup Planning and Zoning Commission to Approve a Request by Ted Sowers Sr. for a Conditional Use Permit to Operate an Automotive Servicing and Mechanical Repair Shop at 406 NM Highway 564 – Clyde (C.B.) Strain, Planning Director

Mr. Strain said the Land Development Standards requires that all automotive/truck servicing and mechanical repair shops in the General Commercial (C-2B) District be regarded as a conditional use due to the use and disposal of solvents, oils, grease, mechanical parts and the presence of exhaust fumes from vehicles that may have potential affects upon the business itself, adjacent properties or City facilities, if not regulated. The request for a Conditional Use Permit to operate an automotive servicing and mechanical repair shop at 406 NM 564 was unanimously approved by the Planning and Zoning Commission on March 9, 2011. Veronica Rigby Lee, the adjacent property owner of two, one acre lots to the south of the property at 406 NM 564, is now appealing the Planning and Zoning Commission's decision to the City Council based on her belief that the use of an automotive services and mechanical repair shop at 406 NM 564 will have an adverse affect to her properties, reduce the property values of her lots and will hinder her efforts to sell the lots for residential development. The conditions for granting approval of the Conditional Use Permit by the Planning and Zoning Commission consist of compliance with the requirements of the International Building Code pertaining to repair garages; the Wastewater Department is requiring the installation of a grease/oil trap which must be verified by the Wastewater Department prior to operation; Type A Opaque Screening between the C-2B and RS-2 zoning districts at the southern boundary line need to be installed; landscaping shall consist 2,375 square feet of ground cover, five fifteen gallon trees and twenty-four five gallon shrubs need to be installed; a total of ten off street parking spaces needs to be provided consisting of nine standard spaces and one handicap van accessible space; all vehicles waiting for service or repair shall be kept in the fenced yard located on the property and shall be screened from NM 564 and adjacent properties by installing solid slats in the existing chain link fence creating an opaque screen; and all required building and site improvements shall be installed prior to the business operation and license approval. Mr. Strain said the reason that the City requires a Conditional Use Permit for automotive services and mechanical repair shops is to take measures to prevent any adverse affects to the adjacent properties. Mr. Strain said staff recommends approval of the Condition Use Permit contingent upon compliance with the conditions set-forth in Resolution No. RP2011-2 as approved by the Planning and Zoning Commission on March 9, 2011. Mr. Strain offered the following options to the Mayor and Councilors for their consideration: 1.) affirm the Planning and Zoning Commission's decision approving the request for a Conditional Use Permit to operate an automotive servicing and mechanical repair shop within the C-2B General Commercial District; 2.) reverse

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the Planning and Zoning Commission's decision thereby denying the request for a Conditional Use Permit to operate an automotive servicing and mechanical repair shop within the C-2B General Commercial District; or 3.) modify the Planning and Zoning Commission's decision with additional conditions. Mr. Pederson said the previous occupant at 406 NM 564, Trans Western Pipeline Company, previously used the facility to service their own vehicles. Mr. Pederson also said Mr. Sowers, the new tenant, will operate a commercial business at the location in a similar manner, but with the additional conditions and improvements as imposed by the Planning and Zoning Commission.

Phillip Lee, son of Veronica Rigby Lee, said his mother is worried about the contaminants from Mr. Sowers' business operation affecting the adjacent properties due to the water runoff after a rain or snow fall. If there is wall erected on the commercial property, the runoff would go into the grease trap which is required by the City. Mr. Lee also said since the previous tenant was self-regulated, his mother expressed concerns with possible existing contaminants from the previous business operation since there was no grease trap installed. If there are existing contaminants, he asked if the previous tenant would be responsible for the cleanup of contaminants.

Ted Sowers, Sr., owner of Foreign Automotive Specialty Service, said Mr. Lee was correct by stating that the previous tenants at his proposed business location were self regulating. Mr. Sowers said that all of the water runoff at the proposed business location runs to the north and to west and that the water never runs south toward Ms. Lee's properties. He said if the water runoff ran towards the south of the property, the runoff would drain into the ravine located behind the proposed business location. Mr. Sowers said the grease trap has an inspection station for the unit and the drains located in the bays will be capped-off with concrete. In complying with the requirements to install opaque screening and slats in the existing chain link fence, Mr. Sowers said there is just enough room to install the screening before reaching ridge behind his proposed business location, which is about 45 to 50 feet from the back of the fence to the center of the electrical lines. According to the City's Zoning requirements, Mr. Sowers said there is another 15 feet on the other side of the electrical lines before Ms. Lee is permitted to construct anything.

Mayor McKinney asked if the capping of the drains in the bays is part of the requirements for the Conditional Use Permit. Mr. Strain said the requirements for the Conditional Use Permit pertain to the existing conditions currently on site at the property. Mr. Strain said since there are drains in the bays, Mr. Sowers is required to install grease traps in the drains. Mr. Strain also said if Mr. Sowers decides to fill and cap the drains with concrete, Mr. Sowers will be exceeding the requirements for the Conditional Use Permit. Mr. Strain said the inspection station for the grease trap, as

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mentioned by Mr. Sowers, is a sampling manhole which gives City personnel access to take samples of the discharge in checking for contaminants.

Councilor Garcia asked how long the previous business was in operation. Mr. Strain estimated that the building was constructed by the Trans Western Pipeline Company about 15 years ago. Councilor Garcia asked if soil samples are required prior to issuing a license to Mr. Sowers. Mr. Strain said the taking of soil samples would be the responsibility of the private property owner as there is currently no evidence of any contamination at the property and the property is currently very clean. Mr. Strain said there has to be heavy saturation of oils and solvents for many years to have an adverse affect on the property. As with any parking lot in town, Mr. Strain said there will always be unavoidable situations with vehicles leaking oil and other solvents onto the ground. Mr. Strain said if there are any violations of the conditions imposed under the Conditional Use Permit, the City has the authority to revoke the permit at any time. Councilor Garcia asked if a decision has been made on type of buffer that will be placed between the properties. Mr. Strain said if the Mayor and Councilors uphold the decision of the Planning and Zoning Commission, Mr. Sowers will need to submit an application for a building permit, which will entail the submission of a landscaping plan, parking plan and plans for the requirements imposed under the Conditional Use Permit. All of the plans submitted will need to meet the City's minimum code requirements. Councilor Garcia asked if the City will monitor the provisions of the Conditional Use Permit. Mr. Strain responded yes as the City's Code Enforcement Officers will monitor the conditions of the property.

Councilor Landavazo asked if a Certificate of Occupancy for the location will be issued once the conditions of the Conditional Use Permit has been completed. Mr. Strain said a Certificate of Completion will be issued since there will not be a large amount of construction taking place at the location.

Councilor Landavazo made the motion to approve Resolution No. R2011-11 and to affirm the decision made by the Planning and Zoning Commission to approve a request by Ted Sowers, Sr. for a Conditional Use Permit. Seconded by Councilor Garcia. Roll call: Councilors Landavazo, Garcia, Enfield, Wall and Mayor McKinney all voted aye.

13. Ordinance No. C2011-3; An Ordinance Adopting the 2009 New Mexico Administrative Code Title 14 NMAC Chapters 5-10 Regarding Building for the City of Gallup – Clyde (C.B.) Strain, Planning Director

Mr. Strain said the City updates its building code every three years in accordance with state law. By adopting the 2009 New Mexico Administrative Code Title 14, Chapters 5-10, the State Construction Industries Division reviewed and adopted by reference the

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2009 International Building, Residential and Existing Building Codes and the 2009 International Energy Conservation Code. In reviewing said Codes, the Construction Industries Division made certain amendments to the Codes that will suit New Mexico communities. State law requires all municipalities to adopt codes at least equal to the State's Administrative Code.

Councilor Wall made the motion to adopt Ordinance No. C2011-3. Seconded by Councilor Enfield. Roll call Councilors Wall, Enfield, Landavazo, Garcia and Mayor McKinney all voted aye.

14. Ordinance C2011-4; An Ordinance Adopting the 2009 International Property Maintenance Code Regarding Property Maintenance Codes for the City of Gallup – Clyde (C.B.) Strain – Planning Director

As with the Building Code, Mr. Strain said the Property Maintenance Code is updated every three years. The Property Maintenance Code covers all aspects of property maintenance such as unsafe structures and equipment, exterior property areas, exteriors and interiors of structures, rubbish and garbage accumulation on properties, pest control, etc. Mr. Strain presented an overview of the few changes made to the code and recommended approval of the updated version of the code.

Councilor Garcia asked if the updated code will have more teeth in comparison to the older code. Mr. Strain said the 2009 Code will give the City more authority to go onto private property, to issue notices to property owners and to file a complaint in Municipal Court against the property owner. Mr. Strain explained the code enforcement procedures of his department which becomes difficult at times since the City only has two Code Enforcement Officers to cover the entire city. Councilor Garcia asked why there is only two Code Enforcement Officers as compared to having four Code Enforcement Officers a few years ago for each District. Mr. Strain said he did not know the reason for the cutting the positions a few years ago under the previous Planning Director; however, he recommended hiring additional Code Enforcement Officers in the future to address the problem properties in town.

Mr. Pederson said the City will incorporate concepts from the new Building Code, Property Maintenance Code and Fire Code into the City's Nuisance Ordinance which also needs to be updated.

Following discussion, Councilor Landavazo made the motion to adopt Ordinance No. C2011-4. Seconded by Councilor Garcia. Roll call: Councilors Landavazo, Garcia, Wall, Enfield and Mayor McKinney all voted aye.

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15. Ordinance No. C2011-5; An Ordinance Adopting the International Fire Code 2009 as the Official Fire Code of the City of Gallup – Raymond Ross, Acting Chief, Gallup Fire Department

Jesus Morales, Fire Inspector, presented the proposed Ordinance on behalf of Acting Chief Ross. Inspector Morales said the proposed Ordinance would adopt the International Fire Code 2009 with amendments and would repeal the current Fire Prevention Code. The International Fire Code is applicable to the design and construction of new buildings or to buildings when a change of use or occupancy occurs. Inspector Morales presented an overview of the changes made to the code and recommended approval of the proposed Ordinance.

Councilor Enfield asked about enforcement of the new Fire Code for structures that are protected by the Historic Preservation Act. Mr. Strain said the existing Building Code has provisions that coincide with the Fire Code that address historic buildings and existing buildings. Mr. Strain said the Building Code has a term called “technically infeasible”, meaning that if conditions exist that prevent a building from meeting the current code requirements, then conditions must be met to become “technically feasible” by becoming as close as possible to meeting the current code requirements.

Discussion followed concerning the application of existing codes to historical buildings such as El Morro Theater and the application of new and existing codes to various building use scenarios.

Following discussion, Councilor Enfield made the motion to adopt Ordinance No. C2011-5. Seconded by Councilor Wall. Roll call: Councilors Enfield, Wall, Landavazo, Garcia and Mayor McKinney all voted aye.

### **Comments by Public on Non-Agenda Items**

Tim Hagaman, Region I Community Development Representative, New Mexico Economic Development Department, reminded the Mayor and Councilors of the New Mexico Rural Economic Development Conference, which will take place in Gallup beginning Wednesday, April 27, 2011. He presented a summary of the meetings and events that will take place during the conference.

### **Comments by Mayor and City Councilors**

Councilor Enfield commended Mr. Strain for his earlier presentation on the Lee Appeal of the decision of Planning and Zoning Commission. Councilor Enfield said it was nice to support the start-up of a new business. Mayor McKinney said it was also nice to support the Planning and Zoning Commission for the efforts they have already put into the matter.

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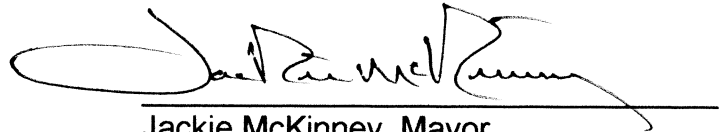
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**Comments by City Manager**

Mr. Pederson said he received notification from the State Parks Division advising that the City's application for the Federal Land and Water Conversion has been sent to the National Parks Service. Mr. Pederson also said he will be in Albuquerque on Friday, April 29, 2011 to attend a State Bar meeting.

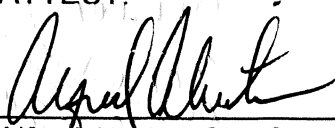
There being no further business, Councilor Enfield made the motion to adjourn the meeting. Seconded by Councilor Garcia. Roll call: Councilors Enfield, Garcia, Landavazo, Wall and Mayor McKinney all voted aye.



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Jackie McKinney, Mayor

ATTEST:



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Alfred Abeita, City Clerk

Approved 5/10/2011