

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, August 23, 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: Dan Dible, City Manager  
R. David Pederson, City Attorney

The Mayor and Councilors continued discussion on the following item from the previous Work Session:

1. Proposed Closure of Harold Runnels Pool – Joan Erben

Betta Duncan said Harold Runnels Pool is one of the best designed pools in the area as it is used for therapy by persons diagnosed with fibromyalgia and severe arthritic problems. She suggested obtaining grants from local businesses, such as Giant, Home Depot and Wal-Mart to be used towards the operational costs of Harold Runnels Pool. She recommended a coupon program with local businesses, a lottery for a free year of swimming, selling advertisement spaces in fliers and lockers at the pool. She also recommended contracting for the usage of the pool with the BIA Schools, Rehoboth McKinley Christian Hospital and Gallup Indian Medical Center. To generate revenue, she said the pool could host swimming competitions, diving contests and pool parties. She said money can be generated to keep the pool open as people need the pool to address their own personal health concerns.

Councilor Enfield said he doubts there is anyone in the audience supporting the closure of the pool. He recommended postponing the closure of Harold Runnels Pool until October 2011 and until then he recommended holding a Work Session with volunteers to discuss ways of financially supporting the pool.

Councilor Landavazo agreed with Councilor Enfield and by postponing the closure of Harold Runnels Pool, it would provide additional time to find ways of keeping the pool open.

Mayor McKinney said the attendance of the supporters of Harold Runnels Pool is very important as he and the Councilors have struggled with matters in balancing the City's

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budget. He said the Council will work harder by trying to find ways of making the City's approved budget work for the next couple of months and will leave the pool open until October 2011. He asked the supporters of the pool for their ideas and recommendations for funding opportunities in keeping the pool open.

### 2. Odor Issue at the Wastewater Treatment Plant – Dave Gentry and Dennis Wing, Severn Trent Environmental Services (STES)

Mr. Gentry introduced the members of the technical services group of STES. He presented copies of the Initial Odor Assessment and Control Plan which was completed in July 2010. In accordance with the Plan, STES reviewed the following areas of the plant where odor issues may exist: the collection system, the processing system and the application fields for the sludge. STES has completed all of the action items in the Plan by addressing the process controls, lowering the solids inventory, disposed of the sludge in an alternate manner and performed hydrogen sulfide monitoring in the collection system and at the plant. STES previously installed a weather station for the purpose of obtaining information concerning atmospheric conditions to address odor complaints. Since STES has not received any odor complaints the weather station has not been used. STES has been moving forward under the false impression that everything that had been done by their company in a satisfactory manner acceptable to the City and STES. As a result of the recent complaints, STES's technical services group will review any remaining issues that can be addressed to mitigate the odor problem. Mr. Gentry asked for the public's assistance to obtain detailed information concerning the odor problems, such as the time of day and the type of smell. He proposed establishing a telephone line reserved for odor complaints in order to obtain information concerning the odor so STES personnel will know how to address the problem.

Mayor McKinney asked if STES could provide a telephone number for the public to call concerning odor complaints. Mr. Gentry said he would like to discuss the matter with Lance Allgood, Executive Director, Gallup Joint Utilities Division, about possible solutions to obtain information from the public concerning the odors. Mayor McKinney said since the odor problem is a timing issue for STES, he recommended establishing a telephone number for the public to report the odor and to be able to get a response from STES regarding the complaint. Mayor McKinney said the telephone number could be provided to the public through the media and circulated on customer utility bills.

Councilor Garcia said his constituents have continually complained about the odor problem for a long period of time. He said people going to restaurants and staying in hotels on the west side of Gallup have to tolerate the odor from the plant. He asked Mr. Gentry and the representatives from STES to address the odor problem.

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Councilor Wall said during a previous presentation by STES, it was stated that there should not be an odor at the plant by mid-summer. He also received many complaints about the odor at the plant and was disappointed that the problem still exists at the plant. He asked Mr. Gentry about STES's attempts to remove the odor and if Mr. Gentry agrees that there should not be an odor at the plant. Mr. Gentry said there will always be some type of odor at the plant but the odor should not be excessive. Councilor Wall said some cities have their recreational facilities located in close proximity of their sewer plants as the odor from their plants is not excessive. Mr. Gentry said he was not going to speculate about the problem since the odor can originate from many different areas. Mr. Gentry also said there were large amounts of hydrogen sulfide found in the collection system, as a possible solution would be to enclose the head-works station and to install an odor scrubber. Mr. Gentry said his company wants to review its operational processes and will report to the Mayor and Councilors its company's findings concerning the problem.

Councilor Landavazo asked if the current equipment at the plant is working properly. Mr. Wing said part of the original plan is to refrain from applying and disking-in the dry solids into the ground. Alternatively, an injector truck is used to inject the solids into the subsurface of the ground; however, due to a recent problem, the solids have not been injected deep enough into the ground. Mr. Allgood approved the purchase of a plow to break-up the ground to be able to inject the solids to a deeper level. During the last several weeks STES had to rely on a belt press to release the dry solids, rather than injecting the solids in liquid form into the ground, which resulted in the release of odors. Councilor Landavazo asked if all of the employees at the plant have been properly trained and certified. Mr. Wing responded yes as all of the employees have been certified at the minimum required level.

Mayor McKinney thanked the representatives from STES for their attendance. He asked for a progress report of the situation at a later time and to recommended setting up a hotline to receive odor complaints from the public.

### 3. Presentation of Findings Concerning Utility Service Terminations and Evictions – Clyde "C.B." Strain, Community Planner

As previously directed by the Mayor and Councilors, Mr. Strain said staff contacted several municipalities across the state to inquire about policies and procedures for evicting residents from their properties when utility services are disconnected for non-payment. The only city with such procedures is the City of Santa Fe, whereby a property is red tagged for substandard living conditions when the utilities are disconnected and a police officer will evict the residents immediately. The remaining cities that were contacted do not have policies and procedures for evicting residents for

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substandard living conditions and currently has to face the same problem the City of Gallup has. Cities will handle each situation on a case by case basis depending on the safety factors involved. He provided an overview of the utility assistance programs offered by the Southwest Indian Foundation and the Low Income Home Energy Assistance Program. From the City's code enforcement standpoint, he recommended handling each situation on a case by case basis to be based on the complaints received and due to health, safety and welfare concerns.

Mr. Dible said in reviewing ways to address this problem, staff resorted to the direction received by the Mayor and Councilors concerning the illegal parking of vehicles in residential districts and to enforce the Ordinance with discretion. He recommended enforcing the City's Ordinance requiring utility services for all occupied structures in a similar manner, with discretion on a case by case basis.

Councilor Wall asked if the landlords are contacted for utility shut-offs on their properties. Mr. Strain said state law provides regulations concerning the responsibilities of both the landlord and the tenant and if the responsibility of either party is breached it usually results in a civil matter between both parties. Mr. Strain said most of the time the landlord will evict the tenant for the non-payment of utilities. Councilor Wall said there are situations where the landlord is not aware that the tenant is still living on the property even though the tenant has been previously evicted. Mr. Strain said there are many landlords that reside out-of-town and as long as the landlords are receiving the rent payments from their tenants, the landlords will not follow up on their tenants and properties. Councilor Wall said if the landlords could be contacted on the utility shut-offs of their tenants, the responsibility for evicting the tenants could fall with the landlord rather than the City. Councilor Wall also suggested offering an option to all customers where they could donate funds with their utility payments to help other customers that are having difficulties paying their utility bills. Mr. Strain said the City previously had a program, called "Gallup Cares," where customers could donate money to assist other customers in need; however, the program was unsuccessful since the City had to cover the costs of the program which exceeded the amount of donations received from customers.

Councilor Garcia asked if there have been any 14-day notices issued by the City for the lack of utility services. Mr. Strain said there have not been any 14-day notices issued pending completion of staff's research of the matter. Councilor Garcia expressed his concerns with continuing to allow people to occupy their homes and to live in unsafe conditions. Mr. Strain said a determination needs to be made on how firm the City should be in enforcing the Ordinance. Councilor Wall said the City could be liable for allowing people to live in unsafe and substandard living conditions. Mr. Strain said City staff currently addresses the most hazardous conditions on a case by case basis. Mr.

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Strain also said the matter is difficult to address since other cities are also trying to find a solution to the problem. Councilor Wall suggested proceeding with the City Manager's recommendation. Councilor Enfield agreed. Mayor McKinney said if certain living conditions affect the health, welfare and the safety of the residents, the residents should be evicted.

#### 4. Carnival License Fees – Clyde "C.B." Strain, Community Planner

Mr. Strain said the City currently charges \$2,000 per day for the operation of carnivals in accordance with an Ordinance enacted in 1983. Other jurisdictions charge \$100 to \$150 per day for carnivals as some carnival operators will obtain a county license to operate their carnivals right outside of the city limits. Officials from Rio West Mall have expressed their concerns with the excessive license fees since the operator of their annual carnival advised that the carnival may not return due to the excessive fees imposed by the City.

Councilor Landavazo said he contacted about 15 business owners from all types of businesses to obtain their input concerning the fees. Based on his conversations with the business owners, he could not find any support for reducing the license fees since a majority of the owners feel that carnivals are detrimental to the local economy. Many business owners stated that their business activity decreases anywhere from 15% to 20% as carnivals extract money out of the local economy. He recommended encouraging the County to raise their carnival license fees to coincide with the City's license fees.

Alfred Abeita, City Clerk, said he obtained the City Council Meeting Minutes from 1983 when the Ordinance was considered to raise the license fees from \$100 per day to \$2,000 per day. He said some of the comments from the Council members at the time are similar to the comments expressed by Councilor Landavazo.

Councilor Enfield also said he obtained the input from various residents on the matter. He said many people were not in support of carnivals and agreed with Councilor Landavazo.

Mr. Strain also said carnivals are required to obtain a Conditional Use Permit (CUP) through the Planning and Zoning Commission to ensure the location is safe and has adequate sanitary facilities and parking spaces. He said the CUP requirements have not been enforced since the process requires a 1½ month advanced notice for a public hearing before the Planning and Zoning Commission. He recommended enforcing the City's CUP requirements for all carnivals.

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Councilor Wall said he views carnivals as a form of local entertainment. He compared carnivals to hosting a concert by a famous singer which will draw many people to Gallup to dine in local restaurants and purchase gas at local gas stations. He proposed the Ordinance amendment in 2009 to reduce the carnival license fees for charity, religious and civic groups for fundraising purposes. He recommended reducing the carnival license fees for commercial activity from \$2,000 per day to \$1,500 per day.

Mayor McKinney said five people were killed when the concert facility blew down in Indianapolis, Indiana two weeks ago. He recommended the enforcement of the City's CUP requirements for all carnivals and to ensure that the carnival operators meet the City's criteria for public safety.

The Mayor and Councilors presented a proclamation to John J. Azua, Executive Director, Na'Nizhoozhi Center, Inc., declaring Monday, September 12, 2011 as Multicultural Red Ribbon Relay Run Day.

Mr. Abeita administered the Oath of Office to the newly appointed Fire Chief, Johnny Greene.

Presented to the Mayor and Councilors were the Minutes of the Work Session and Regular Session of August 9, 2011.

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

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

1. **Public Hearing:** Proposed Issuance of a Restaurant (Beer and Wine) License to Nick Digiallonardo d/b/a Ranch Kitchen, 3001 West Highway 66 – R. David Pederson, City Attorney

Mr. Pederson said the New Mexico Alcohol and Gaming Division has given its preliminary approval and presented the information relative to the proposed issuance of the license. The proposed location for the license is in compliance with the City's zoning regulations and does not violate the distance requirements set forth by the State Liquor Control Act. Mr. Pederson recommended approval of the license.

Councilor Enfield made the motion to approve the issuance of a Restaurant (Beer and Wine) License to Nick Digiallonardo d/b/a Ranch Kitchen, 3001 West Highway 66.

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

2. Action Concerning the Continued Employment of the City Attorney – Mayor Jackie McKinney

Councilor Garcia made the motion to terminate the employment of R. David Pederson as City Attorney of the City of Gallup effective immediately and the motion is contingent upon the payment of one month's severance pay plus the payment of accrued vacation leave. Seconded by Councilor Landavazo. Roll call: Councilors Garcia, Landavazo, Wall, Enfield and Mayor McKinney all voted aye.

3. Ordinance No. S2011-2; Authorizing the Execution and Delivery of a Loan Agreement and Intercept Agreement for the Northwest New Mexico Regional Solid Waste Authority – Chris Muirhead, Modrall, Sperling, Roehl, Harris & Sisk, P.A.

Mayor McKinney said the matter needs to be addressed by the New Mexico Finance Authority and recommended that the Ordinance be tabled until further notice.

Councilor Wall made the motion to table Ordinance No. S2011-2. Seconded by Councilor Garcia. Roll call: Councilors Wall, Garcia, Landavazo, Enfield and Mayor McKinney all voted aye.

4. Appointments of Tommy Haws, Rick Murphy, Tony Tanner, Frank Mraz, Bob Rosebrough, Tony Gonzales and Yogash Kumar to the Board of Directors of the Economic Development Corporation – Mayor Jackie McKinney

Mayor McKinney presented his recommendation of appointments to serve on the Board of Directors of the Economic Development Corporation.

Councilor Landavazo made the motion to approve the appointments of Tommy Haws, Rick Murphy, Tony Tanner, Frank Mraz, Bob Rosebrough, Tony Gonzales and Yogash Kumar to the Board of Directors of the Economic Development Corporation. Seconded by Councilor Enfield. Roll call: Councilors Landavazo, Enfield, Wall, Garcia and Mayor McKinney all voted aye.

5. Construction Contract Award for the Second Street Pedestrian Safety Project – Stan Henderson, Executive Director, Public Works Division

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Mr. Henderson said the project is designed to install curb, gutter and sidewalks along Second Street from the Third Street by-pass (Logan Avenue) to Nizhoni Boulevard. New sidewalks and drive-pads will be installed on the east side of the roadway as the sidewalks and drive-pads along the west side of the roadway will be reconstructed. The project also allows for the construction of a northbound turning lane onto Second Street from the westbound lane on Nizhoni Boulevard and an offset bus stop for Gallup Express. The bids for the project, which were opened on July 12, 2011, have exceeded the project budget by \$418,000 for the base bid only or \$541,000 for the base bid with alternatives. He provided an overview of the factors that attributed to the budget overrun. From the three options submitted to the Mayor and Councilors for their consideration, he recommended option 3, which would require additional funds in the amount of \$541,000 to be budgeted and to award the contract for the base bid plus the alternatives to H O Construction in the total amount of \$1,701,572.66.

Mayor McKinney asked about the State's share of funds for the project. Mr. Henderson said the State will provide \$91,000 towards the project. Mayor McKinney asked if the project was previously included in the City's budget. Mr. Dible said when the budget was prepared, City staff deliberately kept funds in reserve for capital projects, cost overruns, etc. Judi Starkovich, Executive Director, Administrative Services Division, said the City's infrastructure gross receipts tax and/or the last gross receipts tax increment imposed a few years ago for infrastructure improvements can be used for the budget overrun of the project. Mr. Dible said funds from the City's reserves will need to be allocated for the project which will require a budget amendment to be approved by the Mayor and Councilors.

Councilor Wall made the motion to approve the construction contract award for the Second Street Pedestrian Safety Project as recommended by Mr. Henderson. Seconded by Councilor Enfield. Roll call: Councilors Wall, Enfield, Landavazo, Garcia, and Mayor McKinney all voted aye.

### 6. Fiscal Year 2012 Lodgers' Tax Appropriations – Judi Starkovich, Executive Director, Administrative Services Division

Mrs. Starkovich said the Lodgers' Tax Committee allocates lodgers' tax funds to outside agencies for the promotion of citywide events on an annual basis. Out of the \$250,000 available for allocation, the Committee is proposing the allocation of \$172,000. There are additional funds available for new events during the year and due to some organizations not submitting applications for funding for unknown reasons.

Councilor Landavazo asked if the City received updated information from the Southwest Indian Foundation concerning their matching funds for the proposed Code Talkers'

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Museum. Mrs. Starkovich responded no. Councilor Landavazo asked about the two separate line items for the Summer Dance Program. Mrs. Starkovich said the two line items are due to the timing of the program since part of the program is budgeted in one fiscal year and the other part is budgeted in the following fiscal year. Councilor Landavazo asked about the allocation for the Fire Ball Run. Mrs. Starkovich said the City received a letter from Bill Lee, Executive Director, Gallup-McKinley County Chamber of Commerce, stating that the City owed an outstanding balance for the event. Mrs. Starkovich said she will look into the matter. Councilor Landavazo asked about the appropriation for Teach for America. Mrs. Starkovich said the Teach for America program is a welcoming and orientation program for new teachers coming to Gallup. Councilor Landavazo asked about the allocation for the NMEMA Conference. Mrs. Starkovich said the New Mexico Emergency Management Association Conference is a new event that will be held in Gallup next month. Councilor Landavazo asked about the \$8,000 appropriation for Knifewing. Mrs. Starkovich said the allocation is for a new series of events consisting of performances by various bands and entertainers at El Morro Theater and the Court House Square. Councilor Landavazo recommended the following lodgers' tax funding allocations: Gallup Lions Club, \$15,000 and Red Rock Team Roping to be funded at last year's level. Councilor Landavazo questioned the low amount of funds allocated for the Gallup Film Office. Mrs. Starkovich said the allocation for the Gallup Film Office is for the printing of the Scout Book.

Councilor Garcia said the previous administration allocated funds for the El Morro Theater bathrooms. Mrs. Starkovich said the allocation is included in this fiscal year's recommendations. Councilor Garcia questioned the appropriation of only \$4,000 for Wild Thing Bull Riding when the event has a large impact on the city. Mrs. Starkovich said Wild Thing Bull Riding receives a second lodgers' tax allocation through Gallup Christian School in the amount of \$5,000.

Based on the additional recommendations requested by Councilor Landavazo, Mayor McKinney recommended tabling the proposed lodgers' tax appropriations for Fiscal Year 2012 to provide additional time to refine the overall allocations for funding.

Councilor Enfield made the motion to table the Fiscal Year 2012 lodgers' tax appropriations. Seconded by Councilor Wall. Roll call: Councilors Enfield, Wall, Landavazo, Garcia and Mayor McKinney all voted aye.

7. Adoption of Settlement Agreement with L & J Investments, Inc. – Dan Dible, City Manager

Mr. Dible said the litigation has existed for about 12 years and involves a parcel of land owned by L & J Enterprises which is bounded by Aztec Avenue, Patton Drive and Boyd

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Avenue. L & J Enterprises claimed that damage to their property was caused by a nearby City construction and building project. Based on mediation proceedings two weeks ago, the New Mexico Self Insurer's Fund has authorized \$100,000 towards the settlement of the case as the City will need to allocate an additional \$30,000 for the settlement.

Councilor Enfield made the motion to approve the Settlement Agreement with L & J Investments, Inc. Seconded by Councilor Landavazo. Roll call: Councilors Enfield, Landavazo, Garcia, Wall and Mayor McKinney all voted aye.

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

Chuck Wade expressed his concerns with the City's current Sign Ordinance and the requirements for a City Sign Permit for his 2' X 3' sign posted for the Annual UFO Film Festival. He recommended an exemption from the City's Ordinance or an amendment to the Ordinance to allow signs to be mounted as small as his 2' X 3' sign. He invited the Mayor and Councilors to attend the UFO Film Festival which will take place on October 27, 2011.

**Comments by Mayor and City Councilors**

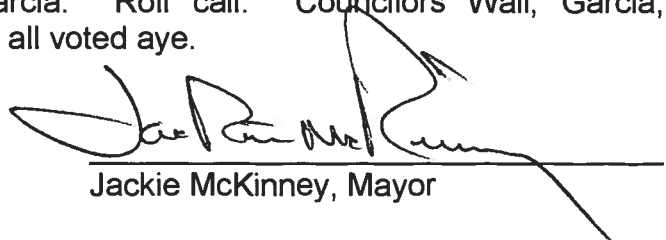
Councilor Landavazo commended Chief Greene and the personnel of the Fire and Police Departments for their handling of the tragic tanker accident that occurred last week. Councilor Landavazo also encouraged citizens to "buy Gallup, believe Gallup."

Mayor McKinney also reiterated the comments expressed by Councilor Landavazo concerning the tanker accident. Mayor McKinney asked everyone to remember the families affected by the accident.

**Comments by City Manager**

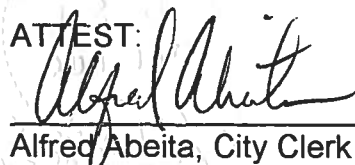
None

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



Jackie McKinney, Mayor

ATTEST:



Alfred Abeita, City Clerk

Approved 9/13/2011