

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, August 2, 2011 at 7:00 p.m. in City Council Chambers at City Hall.

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| There were present: | Mayor | Garduno, presiding |
| | Councilmembers | Aragon, Pando, Rino, Shew, Toupal, Velasquez |
| Also present: | City Manager | Gil de Rubio |
| | City Attorney | Beatty |
| | City Clerk | Garrett |

The pledge of allegiance was recited.

READING OF THE MINUTES. Regular Meeting of July 19, 2011. Mayor Garduno asked if there were any corrections or additions to the minutes. There being none, a motion to approve the minutes as submitted was made by Councilmember Pando and seconded by Councilmember Shew. The motion carried unanimously, excepting those Councilmembers who were absent from that meeting, Councilmembers Aragon, Toupal and Velasquez.

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. Bernadette Baca-Gonzalez signed up to speak on one of the agenda items and was recognized during that item.

REPORT BY CITY MANAGER. Ordinances. City Manager Gil de Rubio reminded Council that he had mentioned at their last meeting that staff is working on an ordinance regarding marketing and the tourism committee and it may be ready for their next work session. Additionally, the City Attorney, City Planner, Code Enforcement Officer and he have been looking at ordinances regarding junk vehicles and other issues, as he has been getting a fair amount of complaints. They are looking at the existing code to see if it needs to be revamped.

ARPA. City Manager Gil de Rubio reported that the monthly ARPA meeting took place last Thursday. He said it was an interesting meeting. Within ARPA's financials they have budgeted a \$1.2 million dollar net loss, but it looks like it will actually be \$1.4 to \$1.6 million. Rick Rigel, the new General Manager, did a cash flow projection for January, 2011 through December, 2011, and ARPA is looking at a loss of between \$1.4 and \$1.5 million, mostly attributable to the Lamar Repowering Project. ARPA is looking at meeting with several providers for an outside power purchase contract. He promised to keep Council apprised. Councilmember Rino asked if the power plant is operating or if it is still being tested. City Manager Gil de Rubio answered that it is still being tested. They are operating it on gas at 30% and will gradually ramp it up. He said he thought that they would go to coal use once it is operating at 80%. He reiterated that the plant is generating at 30% and said that power is going into the grid.

Financial Report. City Manager Gil de Rubio called to Council's attention at their seating places the financial reports for the City's funds through June 30, 2011. He reported good news for the General Fund, with it having finished the first half of the year \$6,000 in the black, reminding Council that there had been a million dollar shortfall budgeted. Revenues are coming in a little over the 50% mark, however sales tax is a little under the 50%. He added that the sales tax report will come in on the 10th of the month and he'll report on it at that ensuing work session. The expenses in the General Fund are under budget by about 5%. The Power & Light Fund is starting to re-cooperate some money lost over the winter. Revenue over expenses is approximately \$43,000 and the fund has a net cash balance of about \$1.1 million. It is starting to climb out of the hole. City Manager Gil de Rubio told Council that the Water Fund is always the most healthy, yielding a net increase of \$205,000 for the first half of 2011. Revenues collected over expenses are at \$217,000. The fund has a cash balance of \$1.4 million and an unrestricted cash reserve of \$4.7 million for a total of \$6.1 million in the fund. He continued that the Gas Fund is also starting to turn. It had almost \$700,000 in revenue over expense but when you factor in payroll and deferred gas cost that results in a net revenue of \$267,000. He said the fund is starting to climb out with the new gas rates. He concluded that the Gas Fund has a net cash balance of \$1.8 million. City Manager Gil de Rubio pointed to the Sewer Fund and said it continues to lose money. The Lottery Fund has an estimated undesignated balance of \$52,000, taking into consideration \$173,000 in committed projects. The Tourism Fund was reported to also be a healthy fund, with a \$216,000 actual fund balance less funding for committed projects, which brings it down to an undesignated balance of \$197,000. Finally he reported that the CIP Fund has an actual fund balance of \$1.8 million, \$707,000 in estimated uncollected revenue, less committed funds for projects leaves \$320,000 in undesignated money in the fund.

ISO Rating. City Manager Gil de Rubio pointed out the letter from ISO advising of the good news that the City's ISO rating has been returned to 4. He extended his appreciation to City Attorney Beatty and Building Inspector Chris Kelley for submitting a comprehensive letter to ISO officials that resulted in the continuing rate.

Annual Leave. City Manager Gil de Rubio informed Council of his upcoming vacation from August 10th through August 22nd.

Gas Contract. Councilmember Rino asked if the City is tied into a three year contract to MEAN for gas. City Manager Gil de Rubio answered affirmatively, and said he thought there was two years left in the contract. Councilmember Rino asked City Attorney Beatty if the City were to find gas elsewhere could we get out of the contract. City Attorney Beatty answered that the contract can be terminated at any time, however there's a three-year notice requirement under the terms of the contract. City Manager Gil de Rubio interjected that after having been to the MEAN meeting he feels the City has a very good deal with MEAN. They've tied in some winter rates at a low rate and he feels they are doing an excellent job. We'd be hard pressed to find cheaper rates. Mayor Garduno said she thought the contract extended until 2015. City Manager Gil de Rubio said he thought it was until 2013, but would research it. Councilmember Rino suggested the City open dialogue with the local gas companies. City Manager Gil de Rubio agreed, but reminded that MEAN buys a lot of gas

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from big providers. He said staff will prepare a presentation for Council.

Junk vehicles. Councilmember Rino inquired about a bus parked in the back of Lucky Monkey that he thought to have been hauled from Elm Street. He described it as dysfunctional altogether and asked that Code Enforcement look at it. City Manager Gil de Rubio said he would and pointed out that if the tires have air in them there's not much that can be done and code enforcement has to be able to see the bus from the property line to not get a warrant, but assured that it will be looked at. Councilmember Rino said the bus is not licensed. City Manager Gil de Rubio said that's something that they are looking at with the ordinance and will present the game plans to Council. Councilmember Pando said he'd like to move ahead quickly on the ordinances and see tougher enforcement. City Manager Gil de Rubio said that he's noticed more people coming forward with complaints, especially since the City crews have gotten out to clean up the alleyways. He added that Sergeant Haddow and Building Inspector Chris Kelley do a great job with the ordinances we have, but technicalities tie their hands with those ordinances. They had a meeting last week and the Planner will present draft issues to staff and they hope to get something to Council very quickly.

REPORT BY CITY ATTORNEY. None. City Attorney Beatty advised that he had nothing to report this evening and offered to answer any questions Council had. There were none.

COMMITTEE REPORTS. None.

UNFINISHED BUSINESS. None.

MISCELLANEOUS BUSINESS. Consideration of extension of Water Works Plus, LLC extraterritorial water tap authorization. Councilmember Rino moved to extend the authorization for an additional nine months, as a result of their conversation at work session. Fred Baros addressed Council and said that he checked with City staff and in no instance was Water Works Plus culpable in locking up the Valdez water system. He said that as City Manager Gil de Rubio suggested, they are building their relations with the other Valdez customers by his instructing his staff that as those other customers drive up they are allowing them to fill up. He said he feels like that has already gone a long ways. He said another thought he had in easing the pressure at the Valdez station is if the City would be willing to issue a meter to him, such as what is done with contractors for use at a fire hydrant, instead of Water Works Plus using the Valdez station. He said it would totally alleviate that pressure. City Manager Gil de Rubio commented that the initial item causing frustration is the Gas Boy mechanism used at the station. He said the City will be purchasing a new metering system. This new system is fairly reasonable and will have a code system. He added that once installed he thought it will eliminate that frustration with it locking up during the weekend when the City doesn't have staff on duty to re-set it. Mr. Baros asked to leave the possibility open of his contractor meter suggestion should the new system not be done soon. City Attorney Beatty commented that the water re-sale permit issued to Mr. Baros contemplated the construction of his own water station, not to fill at the Valdez station. Mr. Baros agreed but said it was for a commercial water tap. He said that if after his station is built it is closer for him to fill at the Valdez station to service a customer rather than his own, he'd like to think he can do so, although it is his intent to use their own station. He concluded that his written request for an extension of the water tap for six months at the request of Supt. Fernandez, however because of the financial situation a year would be more appropriate, but left it to Council's discretion. Councilmember Rino advised that his motion to approve the extension for nine months stands. The motion was seconded by Councilmember Toupal and carried by a unanimous roll call vote of Council.

Consideration of an Assignment and Amendment of Agreement to Provide Untreated Water for Cougar Canyon. City Attorney Beatty pointed out that he has provided a cover memorandum for this item. He also pointed out the presence of Mr. Colarelli in the audience with counsel and suggested he might provide an update regarding this proposed transaction and potentially the status of the bankruptcy action for Trinidad Golf, LLC. If City Council finds the terms of the Assignment and Amendment of the Agreement acceptable, he said he recommends a motion to authorize Mayor Garduno to execute the agreement in accordance with the terms of the Escrow Document Transmittal Letter. That Escrow Document Transmittal Letter provides that executed Assignment and Amendment would have no effect unless the U. S. Bankruptcy court issues an Order Granting Debtor's Motion to Approve Compromise of the Controversy between Debtor and Colarelli Construction and Dismiss Adversary Proceeding. Lee Jolivet addressed Council. She identified herself as being with the firm hired by Colarelli Construction to help with the transaction documents which led to the settlement. She explained that their actions have allowed the golf course to open this weekend. The documents for this from all sides are in escrow, including the water agreement they are asking the City to sign. All that they are talking about here is the assignment of that water agreement. The bankruptcy date for objections has passed and there were no objections filed. They are just waiting for the judge to finalize the order that's been submitted for approval. All other sides have signed the water agreement and they are looking just for the transfer so the rest of the settlement can be implemented. She offered to run through the benefits to the City with this Assignment and Amendment of Agreement. She noted that City Attorney Beatty and the City's water counsel suggested the Amendment as part of the transfer. She said the benefits include that Agreement will clarify who the parties are to the transfer because there have been several previous transfers to this point; it acknowledges the adequacy of the City's notice of default that had been given previously; and, the Agreement provides for one consolidated notice in anticipation of payment being made one time, rather than the current agreement which provided for two 90-day periods, one for turn off if payment is not made and an additional 90 days to terminate. The agreement would be established directly with the new owner of the course and the City and additionally Colarelli will pay the legal fees to the City up to \$2,500. Councilmember Rino asked if the payment due on August 15th will be made or if they are asking for a 90-day extension. Ms. Jolivet answered that the payment has to be made by August 15th, the approximate \$116,000 payment. If it is not paid this deal ends there. She reiterated that under the current agreement there would be an additional 90 days before it would terminate. She further clarified that this amendment waives that additional 90 day out. Councilmember Rino moved to approve the Assignment and Amendment of Agreement to Provide Untreated Water for Cougar Canyon as submitted. City Attorney Beatty asked Mr. Colarelli for an update on the golf course operation. Vince Colarelli, Colarelli Construction, addressed Council and informed them that they executed a settlement agreement on Thursday of this past week. He said he executed an agreement with an outside firm to begin operating the golf course and as of this past Friday, four days ago, the course has been open. Councilmember Pando seconded the motion, which carried unanimously upon roll call vote.

Consideration of an Estoppel Certificate regarding the Annexation and Development Agreement dated April 18, 2001, for Stone Ridge (a/k/a "Cougar Canyon"). City Attorney Beatty told Council that this pertains to the Annexation and

Development Agreement established between the City and the original developers of Stone Ridge/Cougar Canyon Subdivision. It provides that to the best of the City's knowledge, the Annexation and Development Agreement remain in full force and effect and it pertains to the property in the attached legal description marked Exhibit A, encompassing the hotel and golf course tract and the easement between them for public access. Staff recommends approval. A motion to approve the Estoppel Certificate was made by Councilmember Rino and seconded by Councilmember Shew. Councilmember Rino asked if it also includes the existing temporary clubhouse building in addition to the golf course and hotel. City Attorney Beatty said the Annexation and Development Agreement applies to all three of those parcels. The legal description set forth within the attachment actually only pertain to the golf course and hotel property. The motion carried unanimously by roll call vote.

First reading of an ordinance submitting proposed Home Rule Charter amendments regarding elections, elected officials, City Council procedure, and definitions to the registered electors of the City at the Regular Municipal Election to be held on November 1, 2011, and setting a hearing date for consideration of said ordinance. Mayor Garduno announced a hearing date of August 16th for the ordinance. City Attorney Beatty pointed out that Bernadette Gonzalez signed up to speak on this item. He noted that in the Council packets he provided the long version ordinance that City Council has been contemplating for the past several weeks, which set forth four ballot questions. In speaking to City Council members and members of the public, staff was left with the impression that it may be too much at once for the voters' consideration. In furtherance of a reduction in the number of ballot questions for the November ballot, City Attorney Beatty said he prepared a short-version ordinance which only addresses questions 3 and 4 of the original long-version ordinance. He said he wants to follow Council's direction on what they want to present to the voters in November and said he thought the original ordinance presented may have been more than what City Council initially desired. He reiterated that he wanted to make it address Council's desires. Bernadette Baca-Gonzalez addressed Council. She expressed her appreciation to the City Manager, City Attorney, City Council and Ms. Tami Tanoue from CIRSA for their hard work in reviewing the ordinances and taking feedback from the public and seriously analyzing that feedback. She added that she's pleased to hear that consideration is being given to shortening the issues placed before citizens. The modified ordinance she said she felt cut to the chase and would be minimize confusion to voters. Ms. Gonzalez said she believes the voters would likely vote no otherwise, which would be a serious waste of resources and time. She concluded by thanking Council for their serious consideration and for respecting that the voters might need to take smaller bites on changes. Mayor Garduno commented that she read both versions several times to make sure what they were going to vote on and she found that she like the short version most. It is very easy to understand. Councilmember Rino suggested that if it is the consensus of Council they should read the short version and submit it if approved, noting they may hear additional input at the public hearing on second reading. City Attorney Beatty provided that procedurally a Councilmember should introduce the short version if they'd like to proceed with that ordinance. He noted for the record two errors in that short version, whereby in Section 2 it provides "That the following question is hereby adopted for submitting the changes set forth in Section 6 above..." and it should read "in Section 1 above." Also, Section 4 provides "That the following question is hereby adopted for submitting the changes set forth in Section 8 above..." and it should read "in Section 3 above..." He thanked Bernadette Gonzalez, noting that she is an attorney, for providing her input and attending meetings about the Charter. The short version ordinance was introduced by Councilmember Toupal and then read aloud in its entirety with the corrections by City Attorney Beatty read into the text correctly. Councilmember Shew moved to approve the ordinance on first reading and consider it further at a public hearing on August 16th at 7:00 p.m. City Attorney Beatty pointed to two additional small necessary revisions. He identified that in Section 2 the ballot question should be "Proposed Charter Amendment No. 1" rather than 3, and in Section 4 the ballot question should be "Proposed Charter Amendment No. 2" rather than 4. Also within that question it should read in the last clause "All as set forth in Trinidad City Ordinance No..." inserting the word 'City.' Councilmember Shew amended his motion to approve to also include those revisions. The motion was seconded by Councilmember Velasquez and carried by a unanimous roll call vote.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, SUBMITTING PROPOSED HOME RULE CHARTER AMENDMENTS REGARDING ELECTED OFFICIALS' CANDIDACY AND TERM LIMITATIONS TO THE REGISTERED ELECTORS OF THE CITY AT THE REGULAR MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 1, 2011

Consideration of bid results for Chestnut Street repairs. Public Works Director Mike Valentine addressed Council and stated that he solicited bids for work to repair Chestnut Street between Main and Elm Streets. Five contractors obtained bid specifications and a mandatory pre-bid meeting was held on July 18, at which only two contractors attended. On July 21st the bid opening was held and only one bid was received and it was included in the Council packet as well as the engineer's estimate. The funding for this project comes from the Street & Bridge department line items for construction materials and storm drainage, he said. PWD Valentine concluded that the low and lone bid was received in the amount of \$33,763 from Purgatoire Valley Construction and being very close to the engineer's estimate, he recommended approval. Councilmember Rino asked PWD Valentine if he included the section going east on Elm Street that he inquired about at work session. PWD Valentine said he looked at it turning that corner a point, but there's a bigger issue with the arroyo and structure that may mean it would have to be torn out later. He said having line item and cost per unit prices, he'll take the work as far as he can. Mayor Garduno asked if he had any idea why there was only one bidder and not more. PWD Valentine said he does not, adding that not only was it in the paper but he also sent it out to all contractors licensed to do this kind of work. He said he sees no reason whatsoever. In fact, with this project because it was so small he didn't require a bid or performance and payment bonds. Councilmember Rino suggested that it may be because Purgatoire Valley Construction has their crew here. Mostly like someone else would have to come in. Either it's too large or too small. City Manager Gil de Rubio said that overall the City's been getting good bid results, good response. Mayor Garduno asked the start date and completion date. PWD Valentine said if the bid is approved the initial part of the work will be done by City crews, the brick removal. The contractor will be contacted tomorrow. Councilmember Pando moved to accept the low bid submitted by Purgatoire Valley Construction in the amount of \$33,763. The motion was seconded by Councilmember Shew and carried unanimously upon roll call vote.

BILLS. Councilmember Rino questioned on page 4 payments to certain schools, such as Hoehne and HTA, for

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concessions. City Manager Gil de Rubio said that represents the revenue earned from concessions over the summer donated to the schools through Chief Glorioso. Police Chief Glorioso clarified that effort is done through the Youth Council. The City provides the product and the students provide the labor and get the profit. The arrangement is first come, first serve with respect to the scheduling. Councilmember Rino asked about a bicycle purchase for \$1,200 for the bike patrol and another \$150 to service the bikes. Chief Glorioso confirmed that it's for the other bikes used for the bike patrol to re-gear them and for tires, etc. Councilmember Rino asked about a payment from the Electric Department for jackets and shirts in the amount of \$4,500 and questioned how many employees that was for. City Manager Gil de Rubio said that was for the purchase of flame-retardant shirts and jackets for all of the department and it should have been done 10 to 15 years ago. It's being done now as part of the City's safety program. A motion to approve the bills was made by Councilmember Rino. The motion was seconded by Councilmember Shew. Roll call was taken on the motion. The motion carried unanimously.

PAYROLL, July 23, 2011 through August 5, 2011. A motion to approve the payroll was made by Councilmember Toupal and seconded by Councilmember Shew. The motion carried unanimously.

ADJOURNMENT. There being no further business to come before Council, a motion to adjourn the regular meeting was made by Councilmember Aragon and seconded by Councilmember Velasquez. The meeting was adjourned by unanimous vote of Council.

ATTEST:

JENNIE GARDUNO, Mayor

AUDRA GARRETT, City Clerk