

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, March 20, 2012 at 7:00 p.m. in City Council Chambers at City Hall.

There were present:	Mayor	Rino, presiding
	Councilmembers	Baca Gonzalez, Bolton, Bonato, Pando, Shew, Velasquez
* Also present:	Acting City Manager/ City Attorney	Beatty
	City Clerk	Garrett

The pledge of allegiance was recited.

Proclamation – Trinidad High School Miner Girls' Basketball Team Celebration Day. Mayor Rino congratulated the team and their coaches and then read aloud the Proclamation naming March 21, 2012 as Trinidad High School Miner Girls' Basketball Team Celebration Day. On behalf of the entire community he expressed pride taken in their accomplishments.

READING OF THE MINUTES. Special and Regular Meeting of March 6, 2012 & Special Meeting of March 13, 2012. Councilmember Bolton made a correction to the Regular Meeting minutes of March 6, 2012 whereby under Unfinished Business on page two Mayor Rino is incorrectly identified as Mayor Reorda. Councilmember Baca Gonzalez proposed a clarification to the minutes of the same to reflect additional language that City Attorney Beatty's legal advice offered included considerable equivocation regarding the LED lighting project, such as was reflected in the minutes of January 17, 2012 where he agreed the reliance on the exception to bidding requirements found in Section 7-53 of the Municipal Code should hold, meaning you would expect it to prevail in a court of law. She said there is other documentation in those minutes regarding the equivocal advice Council was provided, and she said and that she wants it to go on the record. A motion to approve the minutes as corrected was made by Councilmember Shew and seconded by Councilmember Bolton. The motion carried by a unanimous roll call vote.

PUBLIC HEARING. New hotel and restaurant liquor license application filed by LMR, Inc. d/b/a Purgatoire & A Little Catering Company at 516 E. Elm Street. Mayor Rino declared the public hearing open. He announced that he will be presiding over the hearing and the procedures that will be followed for the same. He advised that the order of the hearing will be opening statements or remarks from the applicant, then from the City Attorney; second the applicant's evidence and testimony of witnesses and then those of the City; next, evidence and testimony of witnesses by parties of interest; thereafter, rebuttal evidence will be called for and finally closing arguments by the applicant, the City and parties of interest. The hearing will be closed and he will call for a motion. He further advised that an executive session may follow the hearing and that the authority may choose to postpone any decision on this matter for up to 30 days. Applicants Leona Falsetto, Mary Strange-Falsetto and Rick Collander addressed Council and identified themselves. Mary Strange-Falsetto distributed copies of menus and petitions to each Council member, the City Attorney and City Clerk. Leona Falsetto stated that they have opened Purgatoire on Elm and A Little Catering Company at 516 E. Elm Street. She said she and Mary Strange-Falsetto have been in business for the past seven years as A Little Catering Company and have recently ventured with Rick Collander into the depot building. She said they will be open Tuesday through Saturday. For lunch they will open from 11:30 a.m. to 2:00 p.m. and dinner will be from 5:00 p.m. to 9:00 p.m. There will be extended hours for the bar and she said they are planning on offering entertainment, including car shows, and a film festival in September. Mr. Collander added that they also want to put comedy acts on stage, improvisation, and have open mics, karaoke and a DJ. He said he has about nine bands who want to perform right now. He noted that they built a 12' x 16' stage with a sound system and lights and said they are looking forward to bringing entertainment to Trinidad in the form of a lot of difference genre. He said he has also spoken to SCRT about bringing some acts to the stage as well. Mary Strange-Falsetto told Council that another important aspect of their business is that they are able to employ people and if the license is approved they may have 20 jobs available. Currently they employ seven. She concluded it would add some employment to the area. Mayor Rino asked if they had any witnesses to provide testimony. Michelle Miles, Ash Street, addressed Council. She stated that she has known Leona Falsetto and Mary Strange-Falsetto for some time and she considers Leona a dear friend. She clarified that she knows all three applicants, but Leona and Mary the best. She said they are all honest and honorable people who she feels confident to have all of the qualities needed to become responsible and overall excellent licensees, opining as a liquor licensee herself. She concluded that she hoped Council would act in favor of their request. Mayor Rino asked if anyone else wished to testify. No one else did. Leona Falsetto stated that she was born and raised here and everyone pretty well knows her. She said she stayed in Trinidad and has worked here, worked hard and plans to continue to do so. Mayor Rino asked if any of the applicants had been in a bar or restaurant business before with liquor service. Leona Falsetto answered that she has, not as an owner, but has served before as a waitress for many years and bartender. Rick Collander stated that he was a General Manager of a restaurant called The Elusive Wapiti in Morrison, Colorado, for about a year and one-half. He said he placed alcohol orders, hired bands, and it was a full-fledged white tablecloth restaurant. Mayor Rino asked if they have been instructed in the rules and regulations of maintaining a bar. Mr. Collander answered that all three of them have their TIPS cards. Leona Falsetto added that most of their employees do as well. City Attorney Beatty commented that the introduction provided was very helpful. He confirmed with the applicants that Leona Falsetto and Mary Strange-Falsetto each are 33% owners of the corporation and that Rick Collander is a 34% owner. He noted that the materials the applicant provided this evening include a menu and additional information regarding the food service provided. He asked if the applicants could meet the requirements of a hotel and restaurant license which require regular meal service and that 25% of their gross income be derived of the same. Rick Collander answered affirmatively. He said they will offer a full lunch and dinner and the lunch menu will be available after dinner during their extended bar hours also. City Attorney Beatty asked if after 8:00 p.m. they will continue to serve at least light snacks and sandwiches. Leona Falsetto said they will provide their lunch menu offerings after dinner is over at 9:00 p.m. City Attorney Beatty asked if they have any current security plans. Mr. Collander said they have a security system in place and lights on outside until 2:00 a.m. City Attorney Beatty noted that as liquor license applicants they have the initial burden of showing that the reasonable requirements of the neighborhood and the desires of its inhabitants are not being satisfied by existing establishments. He pointed to the packets distributed to

Council at the onset of the hearing, including petition signatures which would be evidence that the need exists for such an establishment. He asked if they had any additional evidence to present. Mr. Collander answered that he thinks the entertainment that they will be providing will assist greatly in the desire for people to want to come to their location. It will have a white-tablecloth feel to it and he estimated that people will enjoy themselves. He continued that it will provide an outlet for people to come and see a few comedy acts and bands, etc. He clarified that the need is really for the entertainment which is an important facet of what they will be doing. Unfortunately people don't like to boogie unless they've had a couple of beers. The beer will help a little bit to bring them in and they will enjoy the entertainment at the same time. City Attorney Beatty stated that the liquor authority must determine if the grant of the new license would result in an undo concentration of liquor-serving restaurants in the neighborhood, thereby increasing the need for law enforcement resources. He asked the applicants if they believe their restaurant would result in an undo concentration. Mr. Collander, Ms. Falsetto, and Ms. Strange-Falsetto all answered that they do not believe that it would. City Attorney Beatty asked the liquor authority to take judicial notice of the letters of character reference provided for each of the three licensee corporate officers. City Attorney Beatty asked the applicants if the Building Inspector and Fire Chief have given inspection approvals. They advised that they have. He asked if he is correct that there are two separate outdoor patio areas identified to be part of the licensed premise for liquor service as well. The applicants responded affirmatively. Mayor Rino called for closing arguments and opened it up to the audience. There being none, the hearing was closed. Mayor Rino called for a motion to discuss, grant or deny the license, or postpone it for 30 days. He asked if the paperwork was in order. City Clerk Garrett advised that it is. Councilmember Baca Gonzalez moved for the approval of the license. Councilmember Bolton seconded the motion, which carried unanimously upon roll call vote.

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. Terry Sears addressed Council. He urged them to give financial support to the Amtrak request. He reminded that he has been a long-time active member of the National Association of Railroad Passengers and found Trinidad which he described as "this lovely town" riding around the country on the train. Mr. Sears said those of us who are involved in long-term train ideas are aware that Amtrak has vacation packages for certain destinations, and when they do that it helps all of the businesses in the area. Amtrak promotes and advertises those destinations. Those people involved in tourism and the railroad lobbying area are doing just that. He added that those who see long term views and see our country recovering and progressing one day are also trying to get the background done for a trail from Denver to Dallas, which would come right through Trinidad. But that won't happen if the Southwest Chief doesn't still come through Trinidad. He said he was very glad to see that initially Council looked like it would be responsive to that and he hoped they do donate to the other cities along the line that are trying to hire a lobbying firm. On the issue of the City Manager's termination, Mr. Sears suggested to the four Council members who have taken a strong vote that it is not too late to change their minds. Within the last week Mr. Sears said he's had about half of the businessmen who addressed Council last week come to him and express how disrespected they felt that Council didn't honor their request to go to mediation. They were very, very upset. Additionally, he said City employee after City employee has said their morale has never been better than this last year. They have never had the City Manager come and speak to every individual City employee and say 'what can I do to help make your job better?' 'what do you folks need to work more efficiently?' He said with the Blues Festival, the Triggers coming to town, the arts district, the ARPA negotiations are just a few reasons why Mr. Sears said he thinks it is really the wrong time to be discharging the City Manager for what he feels are very personal reasons. He continued that the written reasons some of the Council put in the newspaper show more about that Council member than they do about the City Manager. For example, Mr. Pando said the City Manager challenged their authority by not hiring the Superintendent. Mr. Sears countered that this Council doesn't have the authority to order a Manager to hire anyone. Council can make a recommendation, but to say he is disrespecting Council's authority - Council doesn't have that authority. He surmised that it is actually a false accusation. He can make the recommendation. Mr. Sears reminded that as a manager he had three superintendents retire and he gave a boost to the lead man in that department, that person reported directly to him, and he handled the relations of that job and that became part of his job review. He opined that is the way this should happen. The City Manager has been handling that position for a year and if Council didn't feel he was handling it adequately, they could make it part of the job review, however, Council voted six to one to do one on one review of the City Manager last year, and only three members had the courtesy to go in and actually do a review with him. He said he went to a law center and looked up on line 'punitive damages for wrongful termination of at-will employees'. Mr. Sears said there is substantial case law to show that the City's insurance policy will not cover punitive damages should the person be dismissed for bad faith, wrongful termination or retaliation. If that happens, the City's insurance policy will not cover it and there are even extenuating circumstances where the individual Council persons may be responsible for part of the legal fees involved. He suggested each of the four, if they decide to proceed with this route, check with their personal attorneys as they may be exposing themselves. Such things as raising the question that it should have been put on the agenda for items that are under \$30,000, in the City Charter the City Manager has the authority to do items up to \$30,000. He suggested if Council didn't feel properly informed, all they had to do was walk into his open door and ask for routine reports on expenditures, for example, between \$2,000 and \$30,000 in case someone asks, and he would have been happy to do that. He further suggested that Council saying they weren't informed is wrong and it just shows Council is not doing their job because every Friday Council is given an information packet about the work session or Council session. After looking at their packets over the weekend they could have come in on Monday or Tuesday and their questions could have been addressed. This Council really needs to re-think its position on this. He reiterated that it's not too late to change their minds. He said the Mayor's comment in the paper was that 'it is Council's responsibility to do the things that are for the very best of Trinidad', and Mr. Sears said he doesn't feel terminating this City Manager who has brought very positive things to this City is in the best interest of the City. He added that the major businessmen agree with him, the City employees agree with him and as we will find out soon with this special election, many, many other citizens agree with him too.

Tom Murphy addressed Council. He recalled that at the February 14th work session there was an agenda, but at the beginning of the meeting Mayor Rino allowed Mr. Leone to speak when he wasn't on the agenda. He asked him why he did that. Mayor Rino answered that he thought out of common courtesy he'd let him speak. Mr. Murphy stated that he's been coming here and filming since 2005 and he knows that people have been shut down if they are not on the agenda. He asked if it will be a new policy that those people who would like to speak can do so at work session. Mayor Rino answered no. Mr. Murphy asked if he just bent the rules. Mayor Rino said he didn't bend them; it doesn't say you have to be on the agenda to speak. Mr. Murphy asked if you don't have to be on the agenda. Mayor Rino said they'll put it on at the next meeting. Mr. Murphy said that the Blue Ribbon Panel was supposed to elect a chairman, but his understanding is that Mayor Rino went ahead and filled in Mr. Manzanera as the chairman himself, so they weren't allowed to elect their own

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chairman. He asked Mayor Rino why he did that. Mayor Rino said he just wanted someone to be in charge at the original meeting to conduct the meeting properly and maybe elect the chairman. He added that he thinks they did elect their own chairman. Mr. Murphy argued that they just continued with Mr. Manzanaras. Mayor Rino reiterated that he thought they did elect their own chairman. Mr. Murphy said he was there and has it on film. Mr. Murphy continued that with respect to the RFP for the golf course clubhouse, only one met the requirements but the Golf Association didn't and he said Mayor Rino was going to bend the rules to allow them to speak to Council anyway. He asked why he was going to do that. He said there seems to be a pattern and practice where Mayor Rino bends the rules whenever it's convenient for him. Mayor Rino said he didn't recall that. Mr. Murphy told Council that it has been brought to his attention that Mr. Manzanaras has stated publicly that our City Attorney is too young and inexperienced to advise Council, and he is now advising Council. He asked how many of the Council members have not received legal counsel from Mr. Manzanaras. Mayor Rino asked on what position. Mr. Murphy answered on City business. By show of hands Mr. Murphy counted four. He said that according to his sources there was a meeting Sunday night at Gino's at which Mr. Bonato, Ms. Velasquez, and Mr. Manzanaras were present. Also at that meeting was her husband, Carmen Sandoval, Captain (Robert) Sandoval, Engineer (David) Guara and his father Orlando Baca, the Leone family and Mickey Griego. So, he said apparently there's legal advice being given and the rest of Council is not being given it as well. Mr. Murphy suggested that if it is true when they go into executive session perhaps they could share whatever legal advice they are getting. Councilmember Bonato denied the allegation. To City Attorney Beatty, Mr. Murphy said that Mr. Manzanaras has stated this publicly. He asked City Attorney Beatty to share what role Mr. Manzanaras has, noting that he is not an elected official and is not paid by the City. What role is he providing City Attorney Beatty as legal counsel? City Attorney Beatty advised that he is not providing any role to him. Mr. Murphy reiterated that Mr. Manzanaras stated it publicly.

Peggy Westmoreland appeared before Council to address City Attorney Beatty. She said since Councilmember Alfredo Pando did not follow proper procedure asking City Council's permission to bid on carpeting at the library, which is City property, he is in violation of City Charter as a conflict of interest. In which case, Chapter 5, Section 5.3, states "No member of Council shall vote on any question on which he/she has a substantial personal or financial interest." She said that Councilmember Pando has in the last two Council meetings stated that a reason for firing the City Manager is that the City Manager did not accept his bid and the bid is mentioned in Councilmember Velasquez's stated 'Reasons for Dismissal'. This shows that Councilmember Pando has a great personal interest in the work status of Mr. Gil de Rubio and is therefore ineligible in the voting process in which the City Manager is a focal point for the vote. She continued that the same would hold true for Mayor Rino as he has a lawsuit pending with John Marchiol and Mr. Marchiol has a financial interest in the company Live Green which was to place the new LED lights in town. Mayor Rino should not have voted on the Live Green LED lighting issue and chose to ignore City Charter, Section 5.3 which states that Mayor Rino should have disclosed to City Council his personal affiliation with the Marchiols. According to Section 5.3 the Mayor's action should be considered misconduct in office, since Mayor Rino mentions his reasons for dismissal of the City Manager as being a direct result of Live Green and the LED lighting, this proves a personal and financial interest in the employment status of the City Manager. She concluded that the Mayor cannot be allowed to vote on any issue concerning the City Manager until this misconduct has been addressed by the City Council. Ms. Westmoreland requested City Attorney Beatty make sure that no action is taken on the issue of dismissal of the City Manager until the misconduct issue of Councilmember Pando and Mayor Rino has been reviewed and acted upon by the remaining City Council members.

REPORT BY CITY MANAGER. North Lake Dam Rehabilitation Project. Acting City Manager/City Attorney Beatty reported great news regarding the North Lake Dam Rehabilitation Project. He told Council that the Colorado Water Conservation Board unanimously approved the City's grant and loan application for the North Lake Dam Project. This afternoon the City was awarded a grant from the Statewide Water Supply Reserve Account in the amount of \$739,235, equal to 40% of the project's estimated cost. The City has also been awarded a loan from the Colorado Water Conservation Board in the amount of \$739,235, which is also 40% of the project's estimated cost. The City intends to use cash reserves to fund the remaining 20%. The one condition is that the loan funds will not be dispersed until the City receives a letter of conditional approval of a water conservation plan by the Colorado Water Conservation Board. City staff, and namely Supt. Fernandez, is working on such a plan. Acting City Manager Beatty said the City is greatly indebted to Supt. Fernandez for his efforts to secure this grant and loan. He added that Supt. Fernandez is still making his way back from Denver from that hearing.

Central Park Grandstands. Acting City Manager Beatty informed Council that the grandstands at Central Park are near completion with paint and stucco. Blue Diamond Builders anticipates that will be complete possibly this week, but definitely by the end of this month.

Flags along the Purgatoire Project. Council was advised that the Flags along the Purgatoire Project is proceeding on schedule as well.

Water Works Building. Acting City Manager Beatty pointed out that the roof on the Water Works Building is being installed. The roof is the final component of Phase 1 of the project.

Golf Course Clubhouse. Acting City Manager Beatty reminded that Council had been notified by Public Works Director Valentine's memo that the work is progressing on the clubhouse as scheduled. Select demolition has been completed, floors have been stabilized, new windows have replaced the old ones, and all of the electrical wiring has been roughed in except for the kitchen area, and the HVAC system is progressing. He noted that the memo outlines a proposed change order regarding the kitchen equipment. He explained that within the original contract the City was calling for the use of existing kitchen equipment that we were going to obtain from the Community Center, which would have been refurbished and installed. PWD Valentine has had discussions with the Health Inspector and a consultant regarding restaurant equipment. Upon the recommendation of the Health Department, staff recognizes changes will be necessary for the kitchen area. Those changes were deliberated with the contractor, Purgatoire Valley Construction, and it is estimated that the total cost for kitchen equipment will need to be in the area of \$40,187. Purgatoire Valley Construction has agreed to cover \$25,000 of the equipment within the parameters of the original contract. That leaves approximately \$15,000 for equipment and \$1,500 for additional electric and plumbing work for a total of \$16,644.79. He pointed out that PWD Valentine has outlined the change order for Council. He said he has conferred with the Finance Director and funds are available within the budget. Acting City Manager Beatty said the memo was provided primarily for information purposes and staff is hopeful

that Council will allow the project to proceed with the change order so there are no delays caused for the electrical subcontractor and prospective lessee. He said staff respectfully recommends that they be allowed to proceed without formal approval from Council on the change order. Pursuant to Section 2-8 of the City Code, the City Manager has authority to proceed with that change order.

Clubhouse operation. Acting City Manager Beatty informed Council that members of staff met with Tony Bueno and David Griego last Friday to review preliminary matters. PWD Valentine has arranged for the prospective lessees to come before City Council at the next work session to provide further information regarding their plans for the clubhouse.

Allendale Water Tank. Acting City Manager Beatty provided Council with an update regarding the Allendale Water Tank. He stated that the contract has been executed and the notice to proceed issued to the successful bidder, Eisler Demolition, Inc. That bidder will be required to obtain a contractor's license and demolition permit from the City. The notice to proceed provided for a commencement date on or before March 26th and requires completion within 120 days, which is July 24th.

Opera House. Council was advised by Acting City Manager Beatty that members of staff met with Steve Larson, the Opera House building owner, yesterday as he is in town. Mr. Larson told them that he is in discussions to form a new Limited Liability Company with undisclosed investors to assume ownership of the building. It is anticipated that Mr. Larson will be a member of that LLC. The LLC would be formed in furtherance of stabilizing and saving the Opera House, partly with use of Mr. Larson's insurance proceeds. He pointed out that the City's most immediate interest is to compel the ownership to provide adequate shoring of the unstable exterior walls of the building and to create a walkway so that it is safe for pedestrians. He said staff is continuing to lean on Mr. Larson to accomplish just that and he is in communication with a contractor. Construction of the covered walkway and shoring would enable the City to remove the barriers that are currently obstructing a lane of Main Street. He concluded that Mr. Larson is working with a contractor on plans for shoring in a walkway but is still somewhat reluctant to incur such an expense since it is just a band-aid for the building, but the City will continue to apply pressure.

Police vehicle acquisition. Acting City Manager Beatty reminded Council that at their prior work session Police Chief Glorioso presented bid results for vehicles for the police department and was working on formulating a lease-to-own contract for their procurement. The City has obtained a copy of the government obligation that would be required for the lease-to-own structure and have discovered that it requires a resolution from City Council. Therefore, Chief Glorioso has obtained an extension on the bid and the City is submitting the necessary documentation to obtain the final contract to present to Council. He concluded that he hoped to have it by their work session packets on Friday.

Clubhouse change order. Councilmember Baca Gonzalez, noting that Acting City Manager Beatty said funds are available within the budget for the change order, asked where the funds will be provided from to pay for the change order. Finance Director Blatnik answered that they had budgeted so much and the original bid came in under budget, so there are funds available. Part is coming out of the Lottery fund and part from Capital Projects.

Amtrak lobbying effort. Mayor Rino asked Finance Director Blatnik if she was able to find money available to assist with the Amtrak lobbying effort. Finance Director Blatnik said she felt the City could handle \$15,000 to \$20,000 from the City's reserves.

REPORT BY CITY ATTORNEY. City Attorney Beatty covered all items under the City Manager report.

COMMITTEE REPORTS. None.

UNFINISHED BUSINESS. None.

MISCELLANEOUS BUSINESS. Hotel and restaurant liquor license renewal request by Brix at 231 E. Main Street. Councilmember Bolton moved to approve the license renewal and Councilmember Shew seconded the motion. Upon roll call vote, the motion carried unanimously.

New 3.2% Beer Retail License (on-premises) request by Trinidad & Las Animas County Chamber of Commerce at 700 Smith Avenue. At the City Clerk's recommendation, Councilmember Bonato moved to set this request for public hearing on Tuesday, April 24, 2012 at a special meeting at 1:30 p.m. and to establish the tentative neighborhood boundary as the corporate City limits. The motion was seconded by Councilmember Bolton and carried by a unanimous roll call vote of Council.

Appointments to the Arts and Culture Advisory Commission. Councilmember Bolton moved for the appointments of Carol Potter and Deborah Bernhardt and the re-appointment of Tony Diego to the Commission. The motion was seconded by Councilmember Bonato. Roll call was taken, and the motion carried unanimously.

Appointment to the Library Advisory Board. Councilmember Shew made a motion to appoint Frank Hardy to the Library Advisory Board. Councilmember Baca Gonzalez seconded the motion. The motion carried unanimously upon roll call vote.

Consideration of allocation to lobby for the retention of Amtrak's Southwest Chief Passenger Rail Service. A motion to allocate \$20,000 to this effort was made by Councilmember Baca Gonzalez and seconded by Councilmember Bonato. Roll call was taken, and the motion carried unanimously.

Consideration of Fire Emergency Water Supply Agreements between the City and the Stonewall Fire Protection District. City Attorney Beatty pointed out that there are two agreements, one for North Lake and one for Monument Lake. Councilmember Bolton made a motion to approve the two agreements and the motion was seconded by Councilmember Shew. The motion carried unanimously upon roll call vote.

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Resolution of the City of Trinidad supporting a grant application to the Colorado Historical Fund for the funding necessary to develop construction documents for the preservation, rehabilitation and restoration of the Trinidad Power and Light building located at 127 Plum Street in the Corazon de Trinidad National Historic District for the purpose of housing the new Police Department headquarters. Councilmember Bolton made a motion to approve the resolution and the motion was seconded by Councilmember Baca Gonzalez. Mayor Rino raised concerns, reminding that 10 to 12 years ago the City along with the County supported a one-cent sales tax for the construction of the Justice Center which cost one or two million dollars. It was to house the Trinidad Police Department and the Sheriff's Department. He said the fact remains that the City has a Parks Department without a building for storage for their equipment. He expressed concern of moving the Police Department after the citizens of Trinidad spent money on the Justice Center building, and yet the City is lacking a facility for the Parks Department. He added that it doesn't seem fair for one department to have two buildings and the other department to have none. Planning Director Fineberg told Council that the City doesn't need to designate a use in the grant application. Councilmember Shew pointed out that the roof needs to be fixed on that building so it doesn't sustain further damage. Mayor Rino agreed that the building needs to be fixed, but reiterated his concern of relocating the Police Department after having spent the money on the Justice Center. Planner Fineberg said if there's a use in mind it would make for a stronger application, rather than just to renovate the building with no intended purpose. He suggested he could phrase the grant so that it is not being committed to any one use but propose several different uses that the City may be able to put the building to. Councilmember Bonato asked if the resolution should be tabled. Mayor Rino said the use doesn't have to be designated and Councilmember Bolton clarified that the language will just be changed. Councilmember Baca Gonzalez asked if the preference is to clarify the resolution to include diverse uses. Acting City Manager Beatty said that would be the preference as the deadline for the application is April 1st. He said the Planning Director seeks Council's formal consideration of the resolution this evening. He suggested the specific use cited within the resolution be stricken so that the title excludes "for the purpose of housing the new Police Department headquarters" and change the final whereas clause to read that rather than use as a new Police Department headquarters it state the building's use for a municipal purpose or something more general. Mayor Rino confirmed that the application wording will be changed accordingly. Roll call was taken and the motion carried unanimously.

RESOLUTION NO. 1384

RESOLUTION OF THE CITY OF TRINIDAD, COLORADO, SUPPORTING A GRANT APPLICATION TO THE COLORADO HISTORICAL FUND FOR THE FUNDING NECESSARY TO DEVELOP CONSTRUCTION DOCUMENTS FOR THE PRESERVATION, REHABILITATION AND RESTORATION OF THE TRINIDAD POWER AND LIGHT BUILDING LOCATED AT 127 PLUM STREET IN THE CORAZON DE TRINIDAD NATIONAL HISTORIC DISTRICT FOR MUNICIPAL PURPOSES

Authorize Mayor to execute a letter of support for a grant application for an archaeological assessment of the fish hatchery at Monument Lake. A motion to authorize the letter's execution was made by Councilmember Pando and seconded by Councilmember Bonato. The motion carried unanimously upon roll call vote.

Consideration of Second Amendment to Agreement to Provide Untreated Water by and among the City of Trinidad, Colarelli International Resorts & Fine Living, LLC, and National Servicing and Administration, LLC (NSA). Acting City Manager Beatty told Council that subsequent to delivery of Council packets on Friday afternoon, NSA representatives requested changes to the Second Amendment to Agreement. He pointed to the revised version at Council's seating places and a red-line version. He explained that the changes are minor and don't really change substance of what was being proposed. It still calls for a payment plan over a six-month period. He apologized for rushing but said he requested Council's consideration of the clean version of the Agreement. He further advised that Colarelli has already made the first payment under this Agreement. Councilmember Baca Gonzalez asked Acting City Manager Beatty if he reviewed and approved the Agreement as to form. He responded affirmatively. She asked him if in the future he could specifically indicate such on future contracts. Councilmember Baca Gonzalez moved approval of the Second Amendment as presented this evening by Jerod Beatty. The motion was seconded by Councilmember Bolton and carried by a unanimous roll call vote of Council.

Consideration of Settlement Agreement and Release between the City and Colarelli Construction, Inc., pertaining to municipal lien. Acting City Manager Beatty reminded that this is regarding a municipal lien that the City had filed against Cougar Canyon Golf Links for an unpaid utility bill related to a predecessor, Trinidad Golf, LLC. He said the City is seeking to settle it with Colarelli Construction. Councilmember Shew asked if he's correct in that it reduces the amount due by \$5,000. Beatty confirmed the reduction and said the amount due will be \$16,764.65. Councilmember Baca Gonzalez made a motion to approve the Settlement Agreement and Release between the City and Colarelli Construction, Inc., as presented. The motion was seconded by Councilmember Bolton and carried by a unanimous roll call vote.

Resolution of the City of Trinidad, Colorado, supporting the State of Colorado's reinstatement of the Hazardous Materials Transportation Act of 1987's "Petroleum Exemption" for State Highway 350 and U. S. Highway 160 in Southeastern Colorado. Acting City Manager Beatty advised Council that the State of Colorado Department of Transportation (CDOT) sought Trinidad's input regarding a request they received from the Colorado/Wyoming Petroleum Marketers' Association to re-evaluate restrictions on the transport of petroleum products on certain state highways in southeastern Colorado. CDOT is requesting in turn Trinidad's input regarding restrictions on State Highway 350 and U. S. Highway 160 in southeastern Colorado. Within the Colorado State Statutes there's the Hazardous Materials Transportation Act of 1987 which confers on the State Patrol the authority to designate which public roads will be used and which will not be used for motor vehicles transporting hazardous materials. Within that act and in furtherance of efficient commerce, there is a petroleum exemption for gasoline, diesel fuel and liquefied petroleum gas and the Colorado/Wyoming Petroleum Marketers' Association has requested that CDOT reinstate the petroleum exemption for State Highway 350 and U. S. Highway 160 in Southeastern Colorado. CDOT has expressed to the City that there are advantages to reinstatement including more efficient and less costly deliveries of motor fuels to the City of Trinidad. He pointed to the resolution for Council's consideration declaring support for reinstatement of the petroleum exemption for State Highway 350 and U. S. Highway 160, provided the City's truck routes continue to be observed. Councilmember Bolton moved to approve the

resolution. She corrected a typographical error in the next to last paragraph. Councilmember Baca Gonzalez seconded the motion. Roll call was taken and the motion carried unanimously.

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RESOLUTION NO. 1385

RESOLUTION OF THE CITY OF TRINIDAD, COLORADO, SUPPORTING THE STATE OF COLORADO'S REINSTATEMENT OF THE HAZARDOUS MATERIALS TRANSPORTATION ACT OF 1987'S "PETROLEUM EXEMPTION" FOR STATE HIGHWAY 350 AND U. S. HIGHWAY 160 IN SOUTHEASTERN COLORADO

BILLS. A motion to approve the bills as presented was made by Councilmember Baca Gonzalez. The motion was seconded by Councilmember Shew. The motion carried unanimously.

PAYROLL, March 3, 2012 through March 16, 2012. A motion to approve the payroll was made by Councilmember Pando and seconded by Councilmember Bonato. The motion carried unanimously.

EXECUTIVE SESSION – For a conference with legal counsel for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b), regarding legal procedures under Chapter VI, Section 6.2, of the Home Rule Charter for the City of Trinidad. Councilmember Pando moved to recess into executive session for the stated purpose. The motion was seconded by Councilmember Velasquez. Roll call was taken and the following votes were cast:

Aye – Bonato, Pando, Velasquez, Rino

Nay – Baca Gonzalez, Bolton, Shew

Councilmember Baca Gonzalez pointed out that a 2/3 majority is required by Charter to recess into executive session, or five votes and there were only four votes so they cannot go into executive session. She also voiced her concern of the nature of the posting of the executive session and comparing that with the memo Council received. She said she believed there were a number of topics that really can be discussed in open session. She recommended if there's a means by which those ministerial matters can be discussed in open session they do so. Acting City Manager Beatty advised that he had arranged for appointed legal counsel to be in appearance this evening to provide legal counsel and guidance to this governing body. He noted them waiting in the lobby and asked to be permitted to confer with them adding that they may be able to assist in responding to Councilmember Baca Gonzalez's questions. Acting City Manager Beatty returned and introduced Steven Dawes, from the law firm Kelly, Light & Dawes, and Andy Nathan from the law firm of Nathan, Bremer, Dunn, & Myers, both from Denver. He explained that they have appeared on the City's behalf to provide guidance in this matter. He asked Councilmember Baca Gonzalez to re-address her questions to legal counsel. Councilmember Baca Gonzalez said she was hoping they could publicly share information without implicating any attorney/client privilege. She said based on the memo Council received it seemed some of the things contemplated included selecting a date for the hearing affecting the City Manager, plus a few other matters that are inter-related, and was hoping there might be some information that they could share with Council without the necessity of executive session. Mr. Nathan answered that it depends on what specific information Council wants and whether or not it is privileged. He said that between himself and Mr. Dawes they have represented municipalities for over 75 years. He explained that the majority of Council can determine whether to waive attorney/client privilege. If the majority determines that, then the City's self-insurance pool, Colorado Intergovernmental Risk Sharing Agency (CIRSA), would then have to agree to waive it as well because they are paying their fees to provide the City Council with legal advice. At that point the issues could be discussed. He stated that he has never had this happen in his 40 years of practice and didn't believe Mr. Dawes had that happen in this 35. Mr. Nathan said there are things Council may be able to ask, such as who is paying them or other things they may be able to answer in a public session. He said if they have specific questions they can say whether the answer is attorney/client privilege. Councilmember Baca Gonzalez asked them to explain their role in this process. Mr. Nathan said their role is to provide advice to the City regarding complaints and issues received which will be investigated. Councilmember Baca Gonzalez asked Mr. Nathan if he will be the individual conducting the investigation. Mr. Nathan answered that he will not. Rather he will retain an investigator who is a former Chief of Police who has 30 years of experience in police work. Councilmember Baca Gonzalez asked if the investigation is linked in some respect with the circumstances affecting the City Manager. Mr. Nathan said they could be, but he doesn't know because he hasn't started the investigation yet. Councilmember Baca Gonzalez asked how long the investigation is anticipated to take. Mr. Nathan answered that he expects it to take three to four weeks. Councilmember Baca Gonzalez asked if it is safe to assume that until the investigation is completed it would be premature to move forward with any action that might affect the City Manager. Mr. Nathan advised that is attorney/client privileged information that would have to be provided in an executive session. Mr. Dawes agreed with Mr. Nathan's response. Mayor Rino asked if Council can set the hearing date tonight even though the investigation is on-going. Mr. Dawes said that calls for attorney/client privilege. Mr. Nathan added that it is an attorney/client privileged answer because it requires an opinion on the effect of that. Councilmember Pando said he's in the dark being asked to do something without knowing what the reasons are. He asked what investigation is being referred to. Mr. Nathan said that's typically and almost universally why City Councils go into an executive session, so they can tell Council things that are privileged so that Council can make rational decisions about whether they think they should be privileged. If they don't want them privileged then they can take a vote and CIRSA can agree or disagree and Council can discuss those. He suggested Council was putting the cart before the horse in that Council has a right to receive legal advice, they have been paid to provide it – if Council doesn't want to receive it, then they will continue their work with Acting City Manager Beatty as they are supposed to and Council will not get the legal advice they were going to provide. Mr. Nathan said it cannot be provided in any other setting besides an executive session because they would be violating their oath to provide only privileged information to their clients. Councilmember Baca Gonzalez shared a concern she had in that in a discussion of the investigation one or more of the members of Council if they are in executive session would be privy to the investigation plan which she thought would be a disadvantage for the one or more individuals who would be targets or participants in the investigation. Mr. Nathan answered that there's always a danger that they will be asked questioned and they will be answered in an executive session. However Mr. Nathan said he would not do anything or provide any information that will prejudice the investigations that he intends to have conducted. Steven Dawes stated he is also representing the City of Trinidad at the request of CIRSA with respect to the matter involving the City Manager and what procedures are involved. He clarified that he and Mr. Nathan are co-counsel in this matter. Mr. Nathan added that they are dealing with different issues and may end up having completely different roles. Mayor Rino suggested they are at a stand-still. Mr. Nathan said they are actually not because Council can

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vote to go into executive session to receive their legal advice or they can drive back to Denver. Mayor Rino said it was already voted on and they need 2/3rds majority. Mr. Nathan suggested they can re-vote in case anyone wants to change their mind based upon the information just provided Council. Councilmember Baca Gonzalez apologized stating she was not inclined to change her vote. Mayor Rino asked if the vote is unchanged would they communicate directly with Acting City Manager Beatty. Mr. Nathan said they will, as they have been. Mayor Rino asked how Council can get the information from Acting City Manager Beatty, could they go in one at a time. Councilmember Baca Gonzalez suggested Acting City Manager Beatty could craft a confidential memo to members with the advice/recommendations. Mr. Nathan agreed that Acting City Manager Beatty could or he or Mr. Dawes could in writing. He reminded that it would be a violation of Council's ethics and probably of the law for one person to violate the attorney/client privilege by disclosing that information, but it would have to be dealt with separately. Councilmember Baca Gonzalez suggested they put that caveat at the very beginning of the confidential advice and she is confident that members of Council are willing to abide by that information and that admonition. Mayor Rino apologized for them having come down to Trinidad.

MISCELLANEOUS BUSINESS (CONT.). Action on procedures for hearing requested by City Manager pursuant to Chapter VI, Section 6.2, of the Home Rule Charter for the City of Trinidad, including setting hearing date. Mayor Rino asked if legal counsel said it wasn't proper for Council to set the hearing date. Acting City Manager Beatty said it is on the agenda and could be addressed but he was hoping Council would receive legal advice before moving to this item. He recommended the item be tabled. Councilmember Pando disagreed and said he thinks it should be acted on. Mayor Rino suggested the hearing date could be set for April 3rd and if it becomes a problem with the attorneys it can be deleted. Councilmember Bolton asked if it wasn't just recommended that the hearing be set three to four weeks out - it would take that long for their investigation and the hearing should not be set earlier than three to four weeks out. After brief discussion, Councilmember Pando moved to set the hearing date for April 3rd on the dismissal of the City Manager. The motion was seconded by Councilmember Velasquez. Roll call was taken and the following votes were cast:

Aye - Pando, Velasquez, Rino

Nay - Baca Gonzalez, Bolton, Bonato, Shew

Councilmember Bonato in casting his vote said he felt that Council needed to take legal advice. He said he'd like to table this item to think about it more. He reiterated his opinion that they need legal advice. Mayor Rino said he was right but that Council is not going to get any legal advice this way. Councilmember Bonato said he doesn't see anything going forward but he doesn't want to see the City in a bind. He recommended they give this more time, not the three or four weeks though.

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

ATTEST:

JOHN RINO, Mayor

AUDRA GARRETT, City Clerk