

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, May 1, 2012 at 7:00 p.m. at Sebastiani Gymnasium, 206 N. Animas Street.

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.

**READING OF THE MINUTES.** Regular Meeting of April 17, 2012 and Special Meeting Minutes of April 17, 2012 and April 24, 2012. A motion to approve the minutes as submitted was made by Councilmember Bolton and seconded by Councilmember Velasquez. The motion carried by a unanimous roll call vote.

**PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN.** Ted Martinez addressed Council. He told them that his family dates back before Trinidad was incorporated, George Simpson on his mother's side and Carpio Fresquez on his father's side who came here from Mora, New Mexico, as farmers, sheep herders and miners. Mr. Martinez said there are two members on Council who obviously know little about Trinidad, and we know even less about them, except they are creating a division in our community that it is a disgrace to this Council, our town and themselves. He posed one question – Did Mr. Gil de Rubio ever threaten to sue the City if he did not get his way on public review of his performance?

Carmen Sandoval addressed Council and thanked them for allowing him to say a few words. He told Council that he has been a resident of Trinidad for 46 years and is not a 'Johnny come lately.' When he relocated to Trinidad 46 years ago he said he liked the town, and liked the people, people were friendly, he had good neighbors, so he chose to stay and make Trinidad his home. Unfortunately things have changed and this is not the case any longer. He asked Council to not be fearful or intimidated by the agitators who are trying to take over our City. He stated that the majority of this community supports their actions and that it is silly to think that Mr. Gil de Rubio could stay on and be an effective City Manager after what's happened. He burned his bridges with the help of his friends. He burned his bridges by being dishonest and arrogant. This is not the first community where he has instigated political upheaval for his own self-serving reasons and walked away with a financial settlement, noting that this information can be found on the computer. Mr. Sandoval concluded that the many reasons that Council has given Mr. Gil de Rubio that were published in the paper were more than enough reasons for Council to terminate him.

Terry Sears addressed Council. Mr. Sears commented that change is difficult, ask the east coast Indians. He addressed the four City Council members who he opined seemed bent on terminating the City Manager. He asked that they ask themselves if they are willing to bet their family's finances on the insurance company's lawyer's report on their investigation about whether they are going to protect both the City and the Council member individually from wrongful termination punitive damages before voting tonight. He suggested they better be willing to bet that. Mr. Sears said he had with him an employer's legal rights management advice document that shows that 70% of all cases that go to jury trial of wrongful termination go in favor of the employee. For the employer it says that if they go to court there's a good chance you are going to lose. The three primary reasons for this is 1) the jury is compassionate to the employee; 2) the managing staff, which he likened to Council, failed to properly document in writing to the employee the things they wanted them to do or change, such as notification about small projects under \$30,000, even though he has the authority to do it; and 3) an employer will often lose a wrongful dismissal suit because they fire for illegal and dumb reasons, which he thought applied to this group of four. He continued that although this is an at-will state, if you commit federal law violations the at-will thing goes out the window. The courts have been more friendly to the employee in the last seven years in at-will states. He said he believes that four federal laws have been broken by the four who want to terminate the employee, including bad-faith negotiations by not documenting the problems they had with the employee, they created a hostile work environment for the employee, we have clear cut evidence that two of the Council members are engaging in retaliation, and he said he believes the one thing that hasn't been brought up is that he feels it could be brought up that retaliation could be brought up against the federal whistle blower law for Mr. Gil de Rubio's actions in accordance with the health and safety of the electric employee matters when he spent money on the safety review and getting uniforms and safety materials for those employees whose lives had been risked before that was brought to his attention. He added that Mr. Gil de Rubio did notify Council that he was having that report done, contrary to what the Council persons listed in their report. Mr. Sears told Mayor Rino that he thought in his defense when this goes to court if they go ahead with their plans, it would show that the Mayor at the last minute showed a sense of fiduciary responsibility to the City if he postponed this vote until Ms. Velasquez's legal matters are resolved. It is going to be very clear for any attorney to show retaliation.

Larry Carnes addressed Council. He said it is kind of a coincidence that his wife is reading "A Tale of Two Cities". Mr. Carnes said that since he's lived in Trinidad he has seen the best of times and perhaps what we are experiencing right now is the worst of times. He continued that he would be called a 'Johnny come lately' having lived and worked in six states for the government at the state and federal level. He moved here six years ago and has been a resident ever since. Mr. Carnes told Council that he was before them tonight as a concerned citizen, not on behalf of any organization, but out of concern for the best interest of the City and not of any personal concern. He added that he comes with respect for the offices that Council holds as representatives of all the people of Trinidad. Mr. Carnes continued that he has been impressed by the actions of Mr. Gil de Rubio since he's been in his office and that he's been disturbed by the actions of certain members of Council to take actions to remove him. He appealed and asked Council in good faith to reconsider their actions and reinstate Mr. Gil de Rubio. He said deserves a formal evaluation and an opportunity to reconcile differences that Council might have with him. Some time ago an offer of mediation was made by the Trinidad Community Foundation. He said he didn't know if the door was still open to do that but mediation is one means to work through the difference they may

have with him. He added that it disturbs him greatly that the actions of this Council have resulted in neighbor turning against neighbor, and people saying and doing things to each other that he doesn't think are what our maker had in mind. The Good Book says 'love your neighbor as yourself' and he said he hoped we can all think about that and give it its due. He thanked Council for the opportunity to speak and said he hoped they would honor the will of the people.

Joe Reorda (former Mayor) addressed Council and thanked them for allowing him to speak. He said he was before Council in regard to the article in the Chronicle News and the Trinidad Independent Times regarding our City Attorney. He said he thought the article was poorly timed. He explained that Mr. Beatty was chosen to be the City Attorney by a vote of seven to zero. He was sworn in and given a copy of the Charter. Two days later Mr. Beatty came to him in his capacity as Mayor and the then City Manager, Mr. Jim Soltis, and said there was something wrong. He told them that he didn't qualify for the number of years he should have had in order to become the City Attorney. Mr. Reorda told those present that he taught United States history for 15 to 20 years and the framers of the Constitution were intelligent enough to put in an elastic clause so that if you felt something was necessary to change you could change it. He said that he made an executive decision and told Mr. Beatty that as far as he was concerned two months wasn't going to make him a better lawyer, adding that he knows of some lawyers who have been practicing for 50 years that couldn't carry his shoes. Mr. Reorda added that he thinks Mr. Beatty is very qualified, has integrity and honesty by the fact that he brought it to their attention. He further pointed out that Mayor Rino and Councilmember Linda Velasquez did not know about this matter and provided the media with no comment accordingly. He added that he thought that they've had enough flack and that it's time that we quit nit picking and get to the basics. We are all one City, one of the greatest in the country and one he said he'd defend to the end. He further clarified that he made the decision, not Mr. Beatty. When he was appointed to serve in the Manager's absence, and the City Manager knowing this, he asked City Manager Gil de Rubio why he appointed him. It doesn't make sense. He told Mr. Gil de Rubio that now he is accusing Mr. Beatty of being unethical and said he thought it to be unethical for him to bring this article at this time when he's known for a year.

Peggy Westmoreland addressed Council and said she had a few questions for them. To Councilmember Velasquez she said that in her written reasons for the City Manager's dismissal she stated clothing allowance approved in the 2011 budget was \$926. A total of \$4,782 was spent without Council knowledge. She asked what was meant by clothes. Mayor Rino told Ms. Westmoreland to make her comments as Council is not there to answer questions. Ms. Westmoreland re-asked what she meant by clothes. Councilmember Velasquez advised that she was not answering the question. Ms. Westmoreland asked if she's aware of the federal Whistle-Blower Protection Act. No answer was provided. Ms. Westmoreland asked if she was aware of the OSHA Act of 1970. No answer was provided. Ms. Westmoreland asked if Councilmember Velasquez at any time went to the City Attorney and asked him regarding the legality of her letter stating to fire the City Manager over clothes. Councilmember Velasquez answered that she didn't know what she was talking about. Ms. Westmoreland asked Acting City Manager Beatty if he at any time discussed the legalities of the complaints with any of the Council members. Acting City Manager Beatty answered that he respectfully declined to answer any questions. Ms. Westmoreland asked Councilmember Bonato when his displeasure with the City Manager was discussed with the entirety of the Council. Councilmember Bonato responded that he did not need to answer. Ms. Westmoreland concluded that the reason she was asking was because they have already been in contact with the FBI for conspiracy.

Orlando Baca, Vietnam Veteran of the 101<sup>st</sup> Air Borne Division, addressed Council. He said he fought nine and one-half months in the jungles and he belongs here in Trinidad and deserves his citizenship. As a citizen of Trinidad he said he is concerned about what has taken place. He said he feels Mr. Gil de Rubio was put out of office for a good reason, but there are other reasons that are somewhat questionable. The reasons he said he felt Mr. Gil de Rubio cannot be trusted include because he has something to do with the Bolton mob, he comes to Trinidad virtually unknown, and he has had his record sealed. He questioned why and said to him it was a red light. He questioned what he has done at all the other places where he's worked that his record needs to be sealed. Mr. Baca said he's sure that if the citizens had known, he wouldn't have been given that position. He also questioned his bidding process and said on all major projects around the City, the Flag Project, and the golf course project, are very questionable. Amongst others, it seems that Purgatoire Valley Construction gets all of the high-dollar bids. The person who spoke at Sebastiani Gym last time spoke very highly of Mr. Gil de Rubio and Mr. Baca said he would have also with a couple million dollar contracts on the table. The golf course roof has passed the \$300,000 limit. They claim there was \$130,000 for asbestos removal. Mr. Baca said he lived in Los Angeles for 30 years and has seen them remove asbestos. They go in with the maximum thing. These guys go in there and had it out in two days. He said he imagined it was like a 10'x10' heater or something. Mr. Baca said he went to see Mr. Gil de Rubio and he asked him why it was so expensive, it was only about 40 squares of roofing. Mr. Gil de Rubio told him the reason was that he had to replace some of the logs which were very costly. Mr. Baca said he actually believed him and kept thinking about it. At that time Mr. Baca said he had been golfing almost every day and never saw any large beams removed on it or in the dumpster. He said he thought about it more and remembers having seen some on the back porch that were very rotten, at least three to four foot in depth, large enough to almost put your arm into them. Mr. Baca said when he left Mr. Gil de Rubio's office he went to the golf course to look around. Sure enough there were about 12 to 13 logs. Mayor Rino advised that the three minutes allotted were up.

Geoff Peterson addressed Council. He said he is a citizen of Trinidad and a relative new-comer. His grandparents are here that were here many years ago. Mr. Peterson said here we are again for another City Council meeting where four members will pretend like they are here to listen to their constituents and pretend they don't have a pre-determined outcome. He continued that we have four Council members who will pretend like they are following due process, and like they've obeyed open meeting laws. They will pretend the accusations against Mr. Gil de Rubio are truthful and with merit when quite the opposite is the truth. Mr. Peterson said he wasn't going to waste his time talking to the four Council members who are pretending to be listening right now, but rather he wanted to address the Trinidad voters and the supporters of Mr. Gil de Rubio. He said very shortly there will be a four-to-three vote to fire our City Manager, Ed Gil de Rubio, and he said he for one would be extremely disappointed and disheartened about their inability to stop the four cronies from acting out on their plan. He clarified that cronies means close friends. Mr. Peterson asked if they know what is in store for their right, honorable Mayor and his friends. This process doesn't end tonight. This isn't an end to a process but a beginning to a process. They are hoping we go away after tonight, after they get rid of Ed. Mr. Peterson said they are not going away. They are starting with the removal of Mr. Pando in a recall effort and there will be more recall efforts on the way. Imagine this process after they replace Pando and Velasquez with two competent and reasonable individuals. Won't this be a lot more fun when we can get Mr. Bonato to join the effort for progress in Trinidad leaving our right, honorable Mayor looking

square in the face of a Council majority that won't let him rule by decree? Mayor Rino is going to have a miserable time of it soon enough. But it takes the will of the people to make this happen. We can't give up this fight tonight because they won this battle. There's a group of citizens, county and city, getting together to help them get more and better information about who is running for office. Mr. Peterson concluded that we need to be proud, not embarrassed, of our elected officials. He encouraged those present to not give up the fight and to stay involved.

Ted Martinez interjected that he didn't think this meeting was conducted to have threats against Council.

Michael Griego, life-long resident of Trinidad, addressed Council. He said that he served on City Council for approximately 10 years in the past. Mr. Griego said he has been very saddened by the recent turmoil in the City and equally saddened by the instability and intimidating aspects of what has transpired before City Council these past three months. He told Mayor Rino that the City has not been well served by our law enforcement garrison. Our chief has sat through many Council meetings and tolerated repeated violations of law. Citizens who threaten members of Council with retaliation of any sort over a vote should be arrested and charged with criminal conduct. He said he wanted him to ask his law enforcement garrison to take action to stop this instability and intimidation. If they aren't willing to do so, by resolution or ordinance they can create and fund a security garrison. By resolution they could direct the City Manager and Chief of Police to provide security during the Council meetings. Citizens' comment is protected by the First Amendment with certain well-documented exceptions. Citizens may not interrupt government proceedings with unruly behavior – that is a crime. He continued that citizens may not threaten Council persons over a vote as has been done this evening – that is a crime. Speech likely to provoke a fight is not protected speech. A citizen who says 'change your vote or you will be recalled' or 'if you vote a certain way I will sue you' is no different than saying 'paybacks are a bitch, and you will get yours'. They should be arrested and charged with a felony. Somebody has to put a stop to this criminal behavior. He concluded that they please understand that he is a part of a large group of citizens within this community that are very understandably upset and angry due to this blatant attempt by another segment of this community who are embarrassing the City of Trinidad. We are now a laughing stock on the internet. This has been originated by this City Manager and his utter arrogance and encouraged and supported by the local print media who are co-collaborators by refusing to report all of the pertinent data from both entities involved in this dispute. Shame on all of them for their complete and utter disdain for the efforts of those of us who have spent the vast majority of our lives attempting to uplift our beloved community. Mr. Griego added that he also wished to refute the allegations from representatives of the other group that various City employees have been threatened or intimidated or that any private property or individuals have been threatened or physically harmed.

Mayor Rino commented that most generally everybody was given an opportunity to speak but the outrage that some people have been given tonight is uncalled for. He asked those present to act like adults and listen to people and applaud but not to outburst negative comments.

**REPORT BY CITY MANAGER.** Acting City Manager Beatty called to Council at their seating places an update memorandum regarding the Arkansas River Power Authority and a red-line copy of the water lease agreement with Trinidad School District No. 1, agenda item 7e. He noted that the red-line is the same as that provided at the work session last Tuesday. He asked Council's consideration of approval of the agreement with those red-line revisions incorporated.

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

**COMMITTEE REPORTS.** None.

**UNFINISHED BUSINESS.** Public hearing for consideration of an ordinance amending Chapter VII ("Finance and Taxation"), Section 7-47.1, of the Code of the City of Trinidad, Colorado, for the purpose of revising requirements of membership in the Tourism Board of the City of Trinidad, Colorado. Mayor Rino declared the hearing open and called for public comment. There being none, the hearing was closed.

Second reading of an ordinance amending Chapter VII ("Finance and Taxation"), Section 7-47.1, of the Code of the City of Trinidad, Colorado, for the purpose of revising requirements of membership in the Tourism Board of the City of Trinidad, Colorado. The ordinance title was read aloud. A motion to approve the ordinance on second reading was made by Councilmember Shew. The motion was seconded by Councilmember Pando and carried by a unanimous roll call vote and will become effective on May 11, 2012.

#### ORDINANCE NO. 1927

AN ORDINANCE AMENDING CHAPTER VII ("FINANCE AND TAXATION"), SECTION 7-47.1, OF THE CODE OF THE CITY OF TRINIDAD, COLORADO, FOR THE PURPOSE OF REVISING REQUIREMENTS OF MEMBERSHIP IN THE TOURISM BOARD OF THE CITY OF TRINIDAD, COLORADO  
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**MISCELLANEOUS BUSINESS.** 3.2% Beer Retail (Off-Premises) renewal request by Safeway Stores, Inc. d/b/a Safeway Store #722 at 457 W. Main Street. Councilmember Bolton moved for the approval of the renewal and the motion was seconded by Councilmember Bonato. Roll call was taken on the motion, which carried with all Council members voting aye, except Councilmember Velasquez who abstained.

Special events permit request (malt, vinous and spirituous) by Mount Carmel Health, Wellness & Community Center at 911 Robinson Avenue for May 13, 2012. Councilmember Bolton moved to grant the permit and Councilmember Shew seconded the motion. Upon roll call vote, the motion carried unanimously.

Retail liquor store license renewal request and Report of Changes by Opera House Wine & Spirits, LLC d/b/a Tire Shop Wine & Spirits at 601 W. Main Street. Councilmember Bolton made a motion to approve the license renewal request and report of changes. Councilmember Bonato seconded the motion. Roll call was taken on the motion, which carried unanimously.

Consideration of Water Lease Agreement between the City of Trinidad and Ken Torres. A motion to approve the agreement was made by Councilmember Pando and seconded by Councilmember Velasquez. The motion carried unanimously upon roll call vote.

Consideration of renewal of Water Lease Agreement between the City of Trinidad and Trinidad School District No. 1. Councilmember Shew made a motion to approve the agreement with the red-line changes as recommended by Acting City Manager Beatty. Councilmember Bonato seconded the motion. Upon roll call vote, the motion carried unanimously.

Consideration of letter of authorization relative to Trout Unlimited's River Improvement Demonstration Project. Howard Lackey addressed Council and told them of the successful fish stocking done today. He said they've heard a lot of good comments about what is going on at the river and their future plans for recreational opportunities. Mr. Lackey said he appreciates all that the City has done to help them get to this point. He concluded that they look forward to lots of years of enjoyment for the citizens of Trinidad. Councilmember Bolton moved to approve the letter and the motion was seconded by Councilmember Shew. The motion carried by a unanimous roll call vote.

City Manager Gil de Rubio's opportunity to be heard publicly on the written statements of reasons alleged for his removal, pursuant to Chapter VI, Section 6.2 of the Home Rule Charter for the City of Trinidad, Colorado. Mayor Rino reminded that Mr. Gil de Rubio has the opportunity to address Council and noted his presence and that of his attorney, Mr. Malone. He declared the hearing open. He announced that the parameters are that they deal with nothing but the reasons that have been presented by Council. Mayor Rino called for comments by any of the Council members. Councilmember Baca Gonzalez called for point of order. She asked who was giving City Council legal advice tonight, noting that Mr. Beatty and Mr. Dawes from CIRSA were present. Acting City Manager Beatty answered that he was joined and assisted by Steven Dawes from the law firm of Kelley, Light & Dawes, PC. Mr. Dawes is appointed counsel by the City's insurer. Councilmember Baca Gonzalez asked what matters or issues Mr. Dawes will be expected to furnish advice on. Mr. Dawes answered that if there are some questions he would be glad to make his recommendation. He clarified upon further inquiry that he is attorney for the City on this matter in connection with Mr. Gil de Rubio's specific issues. Councilmember Baca Gonzalez asked if he would be giving any advice on any non-insurance issues tonight. Mr. Dawes answered that he is retained by CIRSA, the City's insurer, to represent the City. He clarified that he is not here to give advice about insurance, but rather to give advice about Mr. Gil de Rubio's request for hearing. Councilmember Baca Gonzalez asked if she's correct in that if they have questions concerning the proceeding on Mr. Gil de Rubio they should be directed to Mr. Dawes. Mr. Dawes confirmed that he would entertain those questions. Councilmember Baca Gonzalez asked what subject matters Acting City Manager Beatty would address. Acting City Manager Beatty answered that as always as City Attorney he was here to respond to any questions they may have that are of a legal nature. Councilmember Baca Gonzalez said the reason she was asking the questions is because she believes the pending ethics complaints raise an issue as to whether or not they have a city counselor or even an Acting City Manager. She added that she thought it would be ill-advised for Council to proceed tonight until the City Council can obtain special counsel to evaluate those ethics complaints and the possible legal problems that will flow from it. If a Charter provision is violated, she said she believes the actions are null and void and she's concerned because the ethics complaints directly name Mayor Rino and Councilmember Velasquez and if they take action there's a potential for allegations being made of retaliation and she would certainly hate to see the City put in a position where it is at a legal disadvantage. Councilmember Baca Gonzalez added that she doesn't know what the rush is if they have to wait a couple of weeks to allow special counsel to investigate the ethics complaints she thought it would be prudent. Mr. Dawes asked if her question is whether they should proceed tonight or not. Councilmember Baca Gonzalez confirmed. Mr. Dawes answered that the ethics complaints that have been filed and are not the subject of an agenda item tonight. It can be if Council wants to take it up at some future time they can, but it is not appropriate at this point to take it up. Councilmember Baca Gonzalez asked Acting City Manager Beatty if based on the concerns she has expressed did he believe Council should continue tonight. Acting City Manager Beatty answered that the City Council may proceed with this agenda. Councilmember Baca Gonzalez stated that during her entire career she had never seen a proceeding where an individual is terminated that doesn't at least rise to the level of a quasi-judicial proceeding. She asked if Mr. Gil de Rubio is being afforded all of the due process rights to which he is entitled. Mr. Dawes said his opinion was that Mr. Gil de Rubio has the opportunity under the Charter to present his hearing today. It is an administrative proceeding and not a quasi-judicial proceeding. Councilmember Baca Gonzalez asked if he's saying it is administrative but that Mr. Gil de Rubio is receiving all of the due process to which he is entitled. Mr. Dawes answered that he was not going to make a judgment and that some judge could tell them in the future. The Charter simply says he has the right for a hearing and that's why we are here. Councilmember Baca Gonzalez asked Acting City Manager Beatty if he would concur that Mr. Gil de Rubio is being afforded all of the due process procedures to which he is entitled. Acting City Manager Beatty responded affirmatively. Councilmember Baca Gonzalez said she has served as a hearing officer in the past and that it is very common in those circumstances to ask the individuals who are participating and passing judgment if they have any personal interest to report to the board or City Council regarding the questions they are to consider prior to a vote. She said she believes that is required by our ordinance and the Charter and she respectfully asked that each Council member be advised and share any disclosures that would indicate that they may have a direct or indirect interest or purpose in the termination of Mr. Ed Gil de Rubio. Councilmember Baca Gonzalez announced that she has none. Councilmember Shew advised that he had none. Councilmember Bolton answered that she had none. Councilmember Pando advised that he was not responding and that he didn't feel that he needed to. Councilmember Velasquez also advised that she would not be responding. Councilmember Bonato said he has no comments. Mayor Rino said he thought what they are saying is that they want to continue with the hearing. Councilmember Baca Gonzalez pointed to Section 5.3 of the Charter regarding voting which specifies that 'no member of the Council shall vote on any question on which he/she has a substantial personal or financial interest,' and continues on 'or on any question concerning his/her own conduct, and in said instances the member shall disclose this interest to the Council.' She said given the content of the ethics complaints she thought there clearly was a question concerning the conduct of Ms. Velasquez and Mayor Rino and that they obviously failed to disclose. She re-urged that she did not see how they could proceed on a vote tonight with these pending issues concerning the ethics complaint. She added that she's not trying to be difficult; it is just that she has the best interest of the City and the taxpayers. Mayor Rino said he didn't think the alleged ethics violations have anything to do with this hearing tonight. When it is presented to Council she could request an investigator, but they are going to continue tonight and not delay it. He added that he didn't think the issue right now is with the ethics violation - it is with the hearing with Mr. Gil de Rubio. Councilmember Baca Gonzalez said she sees the existence of the ethics complaints hanging out there over the City as constituting reasons for him and Councilmember Velasquez to be the targets of claims of retaliation against Mr. Gil de Rubio. She opined that she didn't

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think either of them should participate in any vote and strongly recommended that Council retain special counsel, and that the ethics complaints be evaluated and in a week, or two or three weeks after they get the appropriate feedback they can reconvene this particular matter. Mayor Rino said he thought she was talking about partiality a little bit and he thought partiality was shown by Councilmember Bolton and Councilmember Baca Gonzalez by showing up at the Quality Inn in support of Mr. Gil de Rubio and is probably just as wrong. Councilmember Velasquez stated that she is a part of this Council and she will be voting tonight. Councilmember Baca Gonzalez said she has the right to do that but her concern is that the City is going to be subjected to serious potential legal liability. She pointed out that her appearing at a hotel does not raise substantive legal issues of retaliation based on any vote. Dennis Malone, attorney for Mr. Gil de Rubio, advised that he would like to have Mr. Gil de Rubio give his presentation. He said there is a handout for all City Council members and the City Clerk. At that point he would then talk to Council. He said he wanted to know, since they will be talking about reasons and a vote and whether that vote is properly taken and the proper participants. He said it is an issue and cannot be separated from the reasons themselves. Mr. Malone said he will be addressing that issue and it will go beyond the subject of reasons. It will go into who can vote. He suggested it might be best to discuss that now to see if that's something Council is going to listen to. Mayor Rino said as long as it is part of the reasons for dismissal that's fine but he didn't think it should go beyond that. Mr. Malone asked if he's correct that at the tail end of the reasons somebody will vote. Mayor Rino said he thought that would be up to Council to see if a motion will be made. Mr. Malone said assuming there's a vote the question is who the proper participants in the vote are. Mayor Rino said he thought all Council members will be participants. Mr. Malone said his plan is to address the fact that some Council members should not. He asked if that would not be a topic they will bring up tonight. Mayor Rino said he didn't think there's any reason why any Council members should not participate. Mr. Malone said he understands his position and said he is going to address that. He asked if he would be allowed to do that. Mayor Rino answered that he would not be. Mr. Malone said he wanted to make it clear that they were not going to be talking about who should properly be part of a vote regarding Mr. Gil de Rubio's employment. That is an off-limits topic for the evening. Mr. Dawes interjected that this is an opportunity for Mr. Gil de Rubio and Mr. Malone to present whatever they want at the hearing. They can raise whatever issue they want, including that issue. If they want to make an objection he could address the Council and make his point. Ed Gil de Rubio addressed City Council. He first stated that his last name is Gil de Rubio. He continued that he has been working for the City going on two years and it is about time members of Council learn his last name. He said he would begin by addressing the concerns of the allegations of Council members that were presented to him on March 6, 2012. Before he did so, he reviewed with Council the powers and duties, reading excerpts from the City's Charter. Mr. Gil de Rubio addressed each Council member's alleged reasons provided him separately. *The handout provided contains the statements provided by Mr. Gil de Rubio and is a part of this official record. A copy of his statement is attached. The entire handout is to be considered part of this record and is on file with the official minutes of the City Council's proceedings.* Upon conclusion of Mr. Gil de Rubio's address, Mr. Malone addressed Council. He asked that the notebook binders provided to Council and the City Clerk be part of the record. Mr. Malone said he was before them to address voting, not reasons particularly. He said he is concerned as he was sure others were as well, to make sure the vote is done correctly. In particular he said he was concerned with votes that might be cast this evening against Mr. Gil de Rubio that he thought should not be cast at all. He opined that two people on this Council should not be voting, Mayor Rino and Councilperson Velasquez. Mr. Malone pointed to a letter dated this date requesting recusal of Mayor John Rino and Councilmember Linda Velasquez. He said that is a formal request that the recusal occur. He then read aloud a couple of verified affidavits contained in the notebook binders, one by Mr. Ed Gil de Rubio, signed under oath and the other by Jim Jolly. *The handout provided contains the letter and verified affidavits and is a part of this official record. Said documents are attached. The entire handout is to be considered part of this record and is on file with the official minutes of the City Council's proceedings.* Mr. Malone said with that being the background he wanted to read a short statement of laws, noting that there are many that would be thrown out at a hearing such as this, some being proper and some not, but some have some basics we need to know and need to hear. This particular one he said is made about a legislator's vote because we are talking about votes. The point is that the power of a legislator to vote is not personal to a legislator, but belongs to the people. The legislator has no personal right, no personal right to it. The legislator casts his vote as trustee to his constituents, not as prerogative of personal power. He submitted that both Mayor Rino and Councilmember Velasquez have shown that they have a personal interest in getting rid of Mr. Gil de Rubio. It is supported by the affidavits. Additionally, he submitted that Councilmember Velasquez has a financial interest, one or many possibilities of financial interest. She knew that he supported the Chief and that the investigation had been approved by Mr. Gil de Rubio, but she also knew that because of the Charter she couldn't get to the Chief if Mr. Gil de Rubio was still there. There was an obvious financial affect on Ms. Velasquez's business after the raid. First, she had criminal charges because of the raid and there was a cost of paying for a competent and experienced Pueblo lawyer to defend her. That was new financial needs on her part as a result Mr. Gil de Rubio's decisions. She also lost income as a result of the Gino's suspension. Future losses could result in the loss of Gino's license and/or forced elimination from the license if she is found guilty. She also could have, if she's found guilty of a felony, the loss of income from her Council position, noting that she receives a monthly payment and it is not much, but they are payments and it would be economic/financial interest lost. He continued that they have talked about the ethics complaints and how they affect this evening. He said his slant on it is that the complaint has been filed, it has not yet been investigated, the facts in the complaint are fairly simple, and based on the last investigation this Council undertook could be completed quickly. Mr. Malone said there's no question that sitting before them asking them to vote for or against Mr. Gil de Rubio at a point when he has alleged ethical problems with their behavior, anyone could conclude that they might have an edge or may not really want to favor him at this time. Just that makes them prime suspect from withdrawing from the process and not voting. He said they can do that and should do that. He said that he believed the law supports the fact that if they proceed and have these deficiencies and these facts that exist and still move to vote that there may be some repercussions. He said that it is logically and reasonably that we can conclude that Mayor Rino and Councilmember Velasquez may be affected by the pending ethics charges. They both logically and reasonably have reason to vote against Mr. Gil de Rubio on the other reasons provided for in the affidavits, no matter the ethics charges. He suggested both Mayor Rino and Councilmember Velasquez decline to vote tonight and said they would be watching for what they do. He concluded those to be his reasons to support that they not vote. Upon confirmation that the presentation was concluded, Mayor Rino closed the hearing.

Consideration of City Manager Gil de Rubio's removal. Mayor Rino called for a motion to retain or dismiss Ed Gil de Rubio as City Manager. Councilmember Pando moved that City Manager Gil de Rubio be removed immediately from his position. Councilmember Bonato seconded the motion. Councilmember Baca Gonzalez commented that our City employees, our community and our voters are watching what they do tonight. Citizens know that it is no small thing to cast aside a leader and to take away a person's livelihood. Citizens will ask what was gained by destroying this man. Will

citizens trust elected officials whose impulse is to punish? Who will benefit from this action? Citizens will wonder who may be next in line for this appalling treatment. As for her, she said she thinks Holocaust survivor Elie Wiesel said it best, 'there may be time when we are powerless to prevent injustice, but there must never be a time when we fail to protest.' Roll call was taken and the following votes were cast:

Aye – Bonato, Pando, Velasquez, Rino  
Nay – Baca Gonzalez, Bolton, Shew

The motion carried by majority.

**BILLS.** A motion to approve the bills as presented was made by Councilmember Velasquez. The motion was seconded by Councilmember Bonato. The motion carried unanimously.

**PAYROLL,** April 14, 2012 through April 27, 2012. A motion to approve the payroll was made by Councilmember Velasquez and seconded by Councilmember Pando. 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 Velasquez and seconded by Councilmember Bonato. The meeting was adjourned by unanimous vote of Council.

ATTEST:

\_\_\_\_\_  
JOHN RINO, Mayor

\_\_\_\_\_  
AUDRA GARRETT, City Clerk

The City Charter - Excerpts

**6.5 Powers and Duties of the City Manager. The City Manager shall be the chief administrative officer of the City. He/she shall be responsible to the Council for all City affairs placed in his/her charge by this Charter, the City Council, or by law. He/she shall have the following powers and duties:**

- (a) Be responsible for the enforcement of the laws and ordinances for the City;
- (b) Hire, suspend, transfer and remove City employees for cause, except as otherwise provided in this Charter;
- (c) Make appointments on the basis of executive and administrative ability, training and experience related to the work which they are to perform;
- (d) Cause a proposed budget to be prepared annually and submit it to the Council and be responsible for the administration of the budget after its adoption;
- (e) Prepare and submit to the Council as of the end of the fiscal year a complete report on finances and administrative activities of the City for the preceding year, and upon request of the Council make written and verbal reports at any time concerning the affairs of the City;

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- (f) Keep the Council advised of the financial condition and future needs of the City and make such recommendations to the Council for adoption as he/she may deem necessary or expedient;
- (g) Exercise supervision and control over all executive and administrative departments, and recommend to the Council any proposals he/she thinks advisable to establish, consolidate or abolish administrative departments;
- (h) Be responsible for the enforcement of all terms and conditions imposed in favor of the City in any contract or public utility franchise, and upon knowledge of any violation thereof, report the same to the Council for such action and proceedings as may be necessary to enforce the same;
- (i) Attend Council meetings and participate in discussions with the Council in an advisory capacity;
- (j) Establish a system of accounting and auditing for the City which shall reflect, in accordance with generally accepted accounting principles, the financial condition and financial operation of the City;
- (k) Establish, subject to approval by the City Council, appropriate personnel rules and regulations governing officers and employees of the City; and
- (l) Perform such other duties as may be prescribed by this Charter, or by ordinance, or required of him/her by City Council which are not inconsistent with this Charter.

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**6.6 Council Not to Interfere With Administrative Functions.** Neither the Mayor nor any member of City Council shall dictate or interfere with the appointment of, or the duties of any officer or employee of the City, except as expressly provided in this Charter, nor shall any member of the City Council prevent or interfere with any officer or employee of the City in the exercise of his/her judgment in the performance of his/her assigned municipal responsibilities. The Mayor, City Council and its members shall deal with the administrative services of the City solely through the City Manager, and neither the Mayor, Council nor its members shall give orders or reprimands to any employee or subordinate of the City Manager. The City Manager shall be held accountable to the Mayor and City Council for his/her actions and those of his/her subordinates, and the Mayor and City Council retain the prerogative of requiring the City Manager to make verbal or written reports concerning his/her activities, those of his/her subordinates, and the administrative service under his/her charge.

**Mayor John Rino**

Mr. Rino has created a hostile work environment by continually and directly discussing with one of my Department Heads - the Finance Director - ways to find fault with me. This occurred both at City Hall and in public settings. Mr. Rino has mentioned to numerous members

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of the community and to one other council member, Frank Shew, that he was going to fire me. Mr. Rino has directly threatened me with loss of my job and shortly thereafter some of my Department heads similarly warned me to change my friends, especially the Murphys. Mr. Rino tried to coerce me to discuss health issues about one of my department heads who he does not like. I am prohibited from discussing the health records of any City employee both by the City's Confidentiality and Conflict of Interest Agreement, and by federal health privacy laws (HIPAA). In addition Mr. Rino failed to evaluate me this past September - an evaluation that was to have taken place in June, 2011.

The following replies are numbered according to Mr. Rino's statement.

**Reason #1: Regarding Mr. Rino's complaint about me not sharing budgetary materials:** I regularly initiate monthly budget reports and updates to the City Council. Before my arrival, former city managers did not do this, Council was given less information about finances, but I consider it essential. Council members have reviewed all expenditures and payroll warrants (which is a list of checks) with only one or two objections. I cannot understand this complaint as they almost always approved these items.

The "Flags on the Riverwalk" was a project started by former City Manager Jim Soltis. It was a project sponsored admirably by

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Councilman Shew. Council approved this project several times during the budget process, including the final budget. The Council then approved the project when a contractor was selected. The Council also approved the purchase of the flagpoles two separate times.

**Reason #2: LED Lighting Project.** I never purchased the LED lights. The method of procurement for this project was approved several times by the City Attorney. Mr. Beatty, bowing to political pressure and his inability to make a decision, has changed his mind regarding this potential purchase on several occasions. To date, the Council has never voted the project down. Instead, Council has instructed me to issue a Request for Proposal for the purchase of said LED lights. I was preparing to do so when council began termination proceedings.

**Reason #3: Colorado Avenue Project re Tree Mitigation.** I did NOT move money out of the capital improvement budget. The changes to the Capital Improvement Budget as outlined by Mr. Rino have been unanimously approved by City Council.

The North Lake Dam issue has been in existence for approximately ten or more years. Construction drawings have been completed, the city has recently received a major grant and this project is scheduled to be completed by the end of 2012. Additionally, I have instructed the

engineering firm to perform a feasibility study for the potential use of installing a hydroelectric facility at the North Lake Dam complex.

**Reason #4:** I never reprimanded Attorney Beatty. Apparently this complaint came from Attorney Beatty. According to the City Charter, the City Attorney is appointed by the City Council and provides legal services for the City Council, the Mayor, the City Manager and other officers of the City. My reason for moving Mr. Beatty was to stop Mr. Beatty from constantly eavesdropping on my telephone conversations and because I needed the space for a small conference room. Strategically speaking Mr. Beatty's new office is ideally located across from the Clerk of the Court's office.

**Reason #5:** The City Charter gives the City Manager full authority to appointment city personnel. It gives Council no power whatsoever regarding city personnel. My qualifications regarding the supervision of the Power and Light Department are as follows: I have supervised three (3) municipal power and light departments with a combined experience of nine (9) years; I have directly supervised a major hydroelectric upgrade, I have directly supervised a major upgrade for the distribution system in the community of Northfield, VT; I have negotiated power purchase contracts, I have been a member of the Vermont Public Power Supply Authority, and the New England Public Power Association, I have completed a five (5) year apprentice program

for electrical services and I held a Master electrical license in the state of Vermont.

#### **Council Member Velasquez**

Ms. Velasquez has retaliated against me because of my involvement in the Gino's gambling raid. My involvement included approving the CBI investigation of illegal gambling at Gino's Sports Bar. She is a liquor license holder in Gino's. That investigation eventually resulted in suspension of the Gino's liquor license by the City and State Department of Revenue. Ms. Velasquez knew of my involvement and of the involvement of Police Chief Glorioso. She has made statements that can only be construed as wanting to get rid of Chief Glorioso. She cannot get rid of any Department heads as only the City Manager can do that. It is no secret that I strongly approve of Chief Glorioso's performance, and I am one of his strong supporters. Until I am gone, and another more Council-compliant Manager is hired, Ms. Velasquez will not be able to get rid of Chief Glorioso. I stand in her way. Further, Ms. Velasquez did not evaluate me last September nor did she attend either of the two strategic Council planning meetings that were held this past January and February.

Since Ms. Velasquez did not number her reasons, my response as follows corresponds to Ms. Velasquez's statement.

- The bid process regarding the carpet project at the Library was undertaken before the Library became a city department. The Library Board had full jurisdiction over this project. The procurement was legal and there were no objections by the City Finance Director, the City Attorney or the City Auditors.
- The purchase of fire retardant clothing for the Power and Light crew was strictly for safety reasons. This type of clothing was highly recommended for obvious reasons when working with electricity. The Light Department crew recognized the value of the fire retardant clothing and helped to offset the \$4,782 purchase by selling scrap metal in the amount of approximately \$10,000.
- With respect to hiring a consultant for the implementation of performance evaluations, the Code gives the authority to the City Manager to make all purchases under \$30,000. The Finance Director, the City Attorney and the City Auditors APPROVED this purchase. Additionally, COUNCIL NEVER VOICED ANY OBJECTION regarding the hiring of this consultant.
- LED lighting. The funding plan has always been to have the Power & Light Department borrow and repay the loan through utility funds.

## Councilmember Bonato

- The hiring of consultants to do a safety audit for the Light Department was conducted within the Charter provisions and the city's Procurement Ordinance. Again, the Finance Director, the City Attorney and the City Auditors were aware of this project. COUNCIL NEVER OBJECTED to hiring this consulting firm.

The improvements for the Library were approved by the City Council. Certain items were privately paid for by the Friends of the Library so did not involve City funds.

- Council approved a 2% pay increase in the 2012 budget for all city employees. Pay raises to the Line Foreman and the Assistant Line Foreman were due to additional duties and WERE WITHIN THE BUDGET.
- The Power and Light Department received a fine due to deliberate malfeasance by a city employee. The employee was properly reprimanded and that employee paid the fine. Due to the timely manner in which the city responded to this incident, the fine was reduced from \$1,200 to \$160, an 85% reduction.

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maintaining order at Council meetings, this is not the job of the City Manager.

3. The City Attorney on several occasions has expressed that there was no violation of the city's procurement policy regarding the Manager's method of obtaining pricing for the LED light bulbs.

## Councilmember Pando

Mr. Pando has violated the Charter and in so doing created a hostile work environment by approaching department heads directly and asking if I had reprimanded them, seeking to find dirt so to speak. He questioned one Department head in particular about procurement issues. This is especially true regarding the Library where he used his official position to threaten the librarian with the loss of her job. Mr. Pando did not evaluate me. Mr. Pando has also threatened my job because of my choice of personal friends.

- Power and Light Superintendent: As City Manager I have decided that the City Council does not have the authority to demand a personnel appointment. Many of the issues we face here tonight are a direct result of certain Council members' efforts to micro-manage the City Manager in violation of the Charter and the Code.

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Council Member Bonato has been on council since January. I met with him on several occasions both before and after his election to help him "ramp up" on issues by giving him documents and copies of the budget, and talking about current City issues. I offered to give him pending City issue updates and review the budget line item by line item, but he never did take me up on these offers. At no time has Mr. Bonato mentioned to me that he was not receiving adequate information. Mr. Bonato did attend our strategic planning meetings and had many opportunities to voice his concerns.

I have numbered my responses according to Mr. Bonato's statement.

1. Council has received more than adequate information to make their decisions, see above. Additionally, Council members generally have consistently failed to follow-up with requests for supplemental information and seldom forwarded their questions to me.
2. As I have expressed to the Council, certain council members have issues with their constituents. The responsibility to bridge differences with the public falls on the shoulders of the elected official not the City Manager. The Mayor is responsible for

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- Manager's Evaluation: I have every right to request a public evaluation. Jerod Beatty agrees that I have this right. I offered that Council evaluate me individually, on a one on one basis in a private setting. Council unanimously agreed to this evaluation procedure. Despite their approval of the evaluation procedure, and despite the fact that three Council members did evaluate me, Council persons Velasquez, Pando, Rino and then-Mayor Garduno did not comply with their own directive.
- Regarding the GOCO Grant for a new soccer field, this was an initial idea, by which the school district was going to attempt to secure funding. The plan was to have a joint effort or partnership including the City, the junior college and the school district to file the grant.
- The LED project was conducted legitimately and within the confines of city policies. Currently, there is a Federal mandate that has a 2014 compliance date. Funding for the enforcement of this mandate has been temporarily suspended by Congress for the federal fiscal year of 2012.
- Any atmosphere of chaos and distrust on Council is created by the Council members themselves, not by the City Manager. The

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atmosphere of mistrust among council members that Mr. Pando refers to has been in place for many years. If anyone doubts this, simply review the available video tapes of council meetings prior to my arrival. You will find constant bickering, rampant arguments and absolute discord among council members on many occasions.

#### **Extraordinary Efforts to Improve the City**

Much has changed for the good in Trinidad since I began in September, 2010. There are two more items that I need to highlight.

First, The City's auditors have approved the two annual budgets since I have been here. Therefore, any concerns by Council about the budget and how it is put together are not based on fact.

Second, I wrote and presented a white paper for the Council that projected 12 goals and more than 90 objectives for the City for the next year to five years. Essentially it set out my vision for growth and development of the City. Council and I used this white paper as the basis of discussion in two council workshops earlier this year. I challenged each council member to write down and submit their own goals so that we could find consensus on our mutual objectives. I was encouraged by the enthusiasm of the council members working together

for a common purpose. We prepared a spreadsheet to track the status of our progress in achieving the goals and objectives. Colorado Municipal League executive director, Sam Mamet, called the white paper exceptional and cautioned me that it may not be accepted at the local level. That was just 3 short months ago.

In summary, in performance of my duties as City Manager I have abided by the City Charter and Ordinances. I have initiated numerous projects to secure increased funding and bring new business to the City. All of the reasons for my dismissal that were given by council members Rino, Pando, Bonato and Velasquez are either the results of their efforts to micro-manage and encroach on the duties of the City Manager, or are obvious pretexts to cover underlying personal biases. That concludes my response.

**DENNIS MICHAEL MALONE, P.C.**

*Attorney and Counselor At Law*

First National Bank Bldg.

100 E. Main Street, Suite 209

Trinidad, Colorado 81082-2789

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TELEPHONE: 719. 846 . 4428 EXT 1 DENNIS MICHAEL MALONE, ESQ. EMAIL: dennis@colocounsel.com  
FAX: 719. 846.7917 WEB SITE: www.colocounsel.com

Hand Delivered

May 1, 2012

Honorable Mayor and Council  
City of Trinidad  
Trinidad, CO 81082

**RE: Request for Recusal  
Regular Meeting of May 1, 2012 Regarding Removal of City Manager**

I write on behalf of my client, City Manager Ed Gil de Rubio, regarding his proposed removal as City Manager by City Council with the support of the City Mayor.

Mr. Gil de Rubio requests that Mayor John Rino and Council Member Linda Velasquez recuse themselves from voting on the matter of his dismissal. Based on several previous events described in the two affidavits submitted with this letter; Mr. Rino and Ms. Velasquez possess personal biases against him that are not related to the common public interest and he therefore cannot expect to face an impartial tribunal at the vote for his termination.

Sincerely,



Dennis M. Malone

DMM/ms

