

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, May 3, 2011 at 7:00 p.m. in City Council Chambers at City Hall.

There were present: Mayor Garduno, presiding
Councilmembers Aragon, Pando, Rino, Shew

Also present: City Manager Gil de Rubio
City Attorney Beatty
City Clerk Garrett

Absent: Councilmembers Toupal, Velasquez

The pledge of allegiance was recited.

READING OF THE MINUTES. A motion to approve the minutes of the regular meeting of April 19, 2011, as submitted was made by Councilmember Shew and seconded by Councilmember Aragon. The motion carried unanimously.

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. None.

REPORT BY CITY MANAGER. ARPA bill. City Manager Gil de Rubio called to Council's attention at their seating places a copy of the April ARPA bill dated May 4, 2011, and the financial reports and reminded them of the executive session later in the meeting. He noted that the energy cost adjustment for April is down to 5.6 mills, resulting in a considerable amount of savings as compared to the December bill which was over \$600,000. He said when he reviews the Power & Light Fund financial report they will see how significant that savings is. He added that there is supposed to be a special ARPA meeting in La Junta, if not this week, two weeks from now, regarding personnel matters probably in executive session. They should learn when the meeting is set in the next day or two.

Financial Reports (month end March, 2011). City Manager Gil de Rubio reviewed with Council the financial reports. He pointed to the General Fund and said that even though there have been significant savings with respect to expenditures, and through March expenditures should be around 25%, they came in at 3.2% under that mark. However, revenues are down 2% below the anticipated 25% mark, resulting in a negative fund balance of \$122,236. He said the General Fund is holding its own which is a good place to be at this time of the year, and we are still shooting to break even to balance this budget. City Manager Gil de Rubio then called their attention to the Power & Light Fund and pointed out that the fund finished out March \$50,000 in the negative. He said it is starting to level off, reminding Council that the City had to refund the rate payers a significant amount in January and February. Power & Light's net cash is \$946,701. If the ECA stays low and the City can keep the ARPA bill in the \$400,000 to \$500,000 range, he said he thought the fund will start climbing out of the hole. Councilmember Rino asked why the Power Plant operating expenses are at 44% three months into the year. City Manager Gil de Rubio said he would find out and get an answer to him. He then pointed to the Gas Fund and said that the accounting started to include the deferred gas cost, which has climbed to \$780,599 which is resulting in a negative balance of \$289,531 through the end of March. Net cash is at about \$1.5 million. Mike Dixon, the City's auditor, will address Council in executive session about the fund. City Manager Gil de Rubio reviewed the Water Fund with Council, stating that the fund has a positive \$142,483 balance for March. The net balance is currently a little over \$6 million, having climbed about \$150,000 for the month. The Sewer Fund yielded a negative balance at month end of \$224,560 and an overall net cash balance of negative \$366,061. City Manager Gil de Rubio advised that he has included the financial statements for the CIP budget, Lottery Fund, and Tourism Fund. He added that Council is now getting a summary of the budget on a monthly basis and should a question arise he can pull the history and answer it.

REPORT BY CITY ATTORNEY. Legislative update. City Attorney Beatty provided a legislative update. He reminded Council that he had informed them of two bills pending, Senate Bill 11-194 to allow full-strength beer sales in convenience stores, and House Bill 11-1284 to allow for its sale in convenience store and grocery stores. He advised that both bills have already been killed.

City legislative proposals. City Attorney Beatty advised that there are a number of City legislative proposals in the queue. The building codes adoption ordinance is finalized and will be re-presented at next Tuesday's work session, with an anticipated first reading on May 17th. He said the April 26th orientation session with the contractors was very well attended, with about 35 people appearing, and they have incorporated some revisions with the feedback provided. Additionally, he said staff met with local plumbers and clarified that this ordinance doesn't seek to replace the state inspections for plumbing or electrical work. The state will still handle those. Councilmember Rino asked how the orientation session was. City Attorney Beatty reiterated that it was well attended and noted that he attended it in the morning only because there was work session that afternoon. He also reminded Council that Mr. Rossmiller from Colorado Code Consultants assisted the City with the session. Councilmember Rino asked if there was any opposition. City Attorney Beatty said they received feedback concerning the International Residential Code's requirement for the placement of carbon monoxide detectors. The concern was if there was work being done on the exterior of a residence, it invoke the requirement for the detectors to be installed. Consequently the language in the ordinance was amended to exclude the requirement when roofing or siding work on a residence is being done, in which case it would only be optional. If the work is only exterior it would not invoke that requirement of the code. Councilmember Rino asked if as a whole the contractors agreed with the code's adoption. City Attorney Beatty said during the morning session he didn't encounter much negative feedback. The local plumbers were concerned with the City taking over inspections from the state. It was explained to them that it is a separate issue. Our adoption of the codes would not make that happen automatically. City staff agrees not to seek inspection oversight. City Manager Gil de Rubio added that he met with those plumbers this afternoon and the City is backing off. The state will continue to do inspections. Councilmember Pando said he knows the regulations are not yet approved but may be, and asked if they are already being enforced. City Attorney Beatty said they are not until they are approved by City Council.

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Councilmember Pando said he had heard from a person renovating a building that they were told to meet certain code requirements even though they weren't actually approved yet because they were possibly going to be approved. He added that he didn't know if that assertion was true. City Attorney Beatty suggested he may have been speaking of a party seeking a variance from the 2003 International Building Code currently in effect. Additionally, he reported that Planning Director Louis Fineberg is fine-tuning an ordinance regarding revisions to the zone district regulations for the downtown district. He said he has been working on the ordinance for some time with the Planning Commission and they will meet once more on May 10th before it is presented to Council at a work session on May 24th. He also reported that he and City Clerk Garrett have been working with Tami Tanoue, CIRSA's general counsel, regarding possible revisions to the City's Home Rule Charter; however they are not yet finalized. Ms. Tanoue's visit has been postponed to June 14th or 28th. Finally, he advised that as City Manager Gil de Rubio mentioned, staff will very likely be coming forth with a gas supply charge ordinance for Council's consideration in June and July.

Recycling. City Attorney Beatty said that ReGroup recently held another very successfully recycling event whereby citizens filled nearly six recycling bins with recyclables.

Comcast Cares Day. City Attorney Beatty reported that the Comcast Cares Day was also successful and that Mayor Garduno was part of the opening ceremonies.

Annual leave. City Attorney Beatty informed Council that he intends to take Friday off because his mother is coming to Trinidad to visit him.

Recycling. Councilmember Shew noted that he learned that Raton is doing recycling all of the time at their landfill and that they purchased a compactor through a grant. He asked if the City could contact Raton. Planning Director Fineberg said that he's already been in touch with them and they've talked about Trinidad taking its recyclables to Raton. He said he would keep Council apprised.

COMMITTEE REPORTS. None.

UNFINISHED BUSINESS. None.

MISCELLANEOUS BUSINESS. Appointments (2) to the Board of Appeals. Councilmember Rino moved for the re-appointment of Wayne Pritchard and the appointment of Sam Coker. The motion was seconded by Councilmember Aragon and carried by a unanimous roll call vote of Council members. Councilmember Rino asked the status of the Planning Commission with respect to vacancies. City Clerk Garrett answered that the Commission is lacking one member.

Resolution regarding proposed amendments to the National Public Gas Agency's Amended and Restated Interlocal Agreement. Utilities Supt. Fernandez addressed Council. He said that he and City Attorney Beatty have spoken to NPGA's attorney regarding the proposed amendment to the agreement and recommended the City approve it. City Attorney Beatty reminded Council that as of last Tuesday they had been in touch with NPGA's general counsel who informed them that they already had received responses for 12 members, 11 of whom voted in favor of the amendment. Therefore, it is going to pass regardless of how Trinidad acts. He suggested that Trinidad should provide a response to NPGA. He added that the City got clarification from NPGA that if they were to terminate, expel, etc. Trinidad as a member of NPGA, the terms of the gas supply agreement would not be affected such that we would still be provided gas for the three years. That was a concern with this proposed amendment that was alleviated through their discussions with NPGA. Councilmember Aragon made a motion to adopt the resolution and the motion was seconded by Councilmember Shew. Roll call was taken on the motion, which carried unanimously.

Consideration of professional services bids for preparation of North Lake Emergency Action Plan. Utilities Supt. Fernandez advised Council that two bids were received to prepare the plan. He recommended Council accept the low bid received from W. W. Wheeler in the amount of \$27,000. Councilmember Rino asked why we are dealing specifically with North Lake and not Monument Lake, and asked if it is because of North Lake's condition. Supt. Fernandez answered that the City will need one for Monument Lake as well. He explained that the requirement for the plan is coming from the State. Their focus is on North Lake now because of the condition of the North Lake dam. Sooner or later the City will need a plan for Monument Lake also. Councilmember Aragon made a motion to accept the low bid from W. W. Wheeler in the amount of \$27,000. The motion was seconded by Councilmember Shew and carried by a unanimous roll call vote.

Intergovernmental agreement between the City and Trinidad Ambulance District for the placement of automated external defibrillators. City Attorney Beatty addressed Council and advised that there've been a few changes since the work session. He pointed out Brandon Chambers, Executive Director of the Trinidad Ambulance District, in the audience to answer any questions. City Attorney Beatty continued that the agreement was revised with the addition of a few provisions and specific language regarding the useful life of the units. A new provision was also included to specify that the IGA has a one year term and shall renew automatically in one year increments, however either party may terminate the agreement subject to a 30-day advance notice. He advised that the agreement has a new indemnification clause which the City's insurer, CIRSA, has deemed acceptable. He said he'd like to see the arbitration provision removed, but it is not a deal-breaker. He's seeking its removal and a new severability provision. City Attorney Beatty provided clarification from the work session with respect to the cost associated with training classes by the District. He explained that he misstated the cost during the work session because he was reading from the for-profit rates of \$150 for six people. He corrected that Trinidad Ambulance District will provide the training free of charge except for the current \$4 per person cost of the American Heart Association student completion card, which is a minimal cost, but may increase or decrease going forward. Some of the City's personnel have already received the CPR training and City Manager Gil de Rubio is in the process of scheduling for most all of the personnel to acquire that training. Those courses will include defibrillator operation training. Councilmember Rino asked if the units are battery operated, if they are checked throughout the year to ensure they are operational, and when will it be done, because batteries can go dead. Brandon Chambers answered that these AEDs were purchased specifically for this purpose – they are public accessible AEDs, not generally used by health care providers. He explained that the AEDs have a big open area for the expiration date for the pads. That's one thing that can go wrong. The gel in the pads of the units can dry up or with heat and cold can break down. With respect to the battery life, the unit cycles

each day and has a green light on it. If the green light goes out the unit emits a beeping sound that someone will hear. He added that according to the provisions of the contract, the District will be notified quarterly of inspection items. The City must change the pads and batteries as needed. The pads have an expiration date that provides a good time line, however battery life is unpredictable, but he thought they should last a substantial period of time. He said he believes shelf-life is five years. Councilmember Pando asked City Attorney Beatty if he understood correctly that there will be no training costs. City Attorney Beatty reiterated that the only cost is for the student completion cards at \$4 per student. He also told Council that the City would be required to provide written reports regarding maintenance of the units. The District will ensure the units are operable and are being monitored. Mayor Garduno asked about #8, the indemnification and hold harmless clause for possible damages sustained to the AED unit during its operation. She asked if the City has liability for failure of the AED. City Attorney Beatty said the manufacturer of the unit would indemnify the City for its operation, and CIRSA has accepted the indemnification provision. In addition the City enjoys governmental immunity, therefore if the City or its employees are acting in good faith it would be difficult to hold us liable. Mayor Garduno asked if Council should vote on this without confirmation of whether the arbitration clause is removed. Mr. Chambers said for its removal he would have to take it back to their legal counsel and the back to the Ambulance District Board of Directors. Mayor Garduno asked if Council should table action then. City Attorney Beatty reiterated that it is not a deal breaker and recommended Council proceed with the agreement because the only reason he wanted it removed is because both parties to the agreement are governmental and arbitrators are sometimes known to disregard the Governmental Immunity Act. After additional deliberation, City Attorney Beatty said the clause is not a deal breaker and he'd like to see the units available in the City's facilities and the agreement doesn't have to be conditional. A motion to approve the IGA was made by Councilmember Rino and the motion was seconded by Councilmember Aragon. Roll call was taken and the motion carried by a unanimous roll call vote.

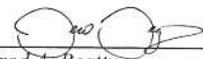
BILLS. A motion to approve the bills was made by Councilmember Rino. The motion was seconded by Councilmember Aragon. Roll call was taken on the motion. The motion carried unanimously.

PAYROLL, April 16, 2011 through April 29, 2011. A motion to approve the payroll was made by Councilmember Pando and seconded by Councilmember Shew. 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 a Gas Cost Adjustment for the Trinidad Municipal Natural Gas Department. A motion to enter into executive session for the stated purpose was made by Councilmember Shew and seconded by Councilmember Aragon. The motion carried unanimously by a roll call vote of Council and the executive session ensued at 7:36 p.m.

I, Jerod A. Beatty, City Attorney for the City of Trinidad, do hereby attest that the executive session held on this 3rd day of May, 2011, was permissible under CRS Section 24-6-402 (4)(b).

As City Attorney, it is my opinion that the discussion of the matter announced in the motion to enter into executive session constituted a privileged attorney-client communication. Therefore, it is my recommendation that no further record be kept of this executive session.



 Jerod A. Beatty
 City Attorney

Upon conclusion of executive session at 8:33 p.m., Councilmember Rino moved to resume the regular meeting. Councilmember Shew seconded the motion which carried unanimously.

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 Shew. The meeting was adjourned by unanimous vote of Council.

ATTEST:

 JENNIE GARDUNO, Mayor

 AUDRA GARRETT, City Clerk