

JUNE 7, 2011

CITY OF TRINIDAD
TRINIDAD, COLORADO

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

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

The pledge of allegiance was recited.

READING OF THE MINUTES. Mayor Garduno asked if there were any additions or corrections to the minutes of May 17th or May 24th. Councilmember Rino said he had a question. He said he read in the minutes about the carpet bid for the library, and asked if the Library is a department of the City now. City Manager Gil de Rubio responded affirmatively. Councilmember Rino said that department heads typically come to Council at a work session with recommendations on bid results. He asked why that didn't happen this time. Councilmember Aragon said at that time they weren't a City department yet. City Manager Gil de Rubio added that the Library Board of Trustees considered the bids. Councilmember Rino suggested that had it come to Council they could have alleviated problems. City Attorney Beatty pointed out that the City has a bid threshold of \$30,000 whereby if the item is below that amount it would not necessitate City Council action. Councilmember Rino asked why they solicited bids then. A motion to approve the minutes of the regular meeting of May 17, 2011, and special meeting minutes of May 24, 2011, as submitted, was made by Councilmember Shew and seconded by Councilmember Aragon. The motion carried unanimously, excepting Council members Pando and Velasquez who abstained from the minutes of May 24th and Councilmember Rino who abstained altogether due to their respective absences from those meeting.

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. VFW Post Commander Robert Ling addressed Council to introduce VFW Post Commander-Elect John Rios. He advised that Mr. Rios will assume the position on July 1st. Mr. Ling said he will be around and thanked the City for help extended to them in the past. He offered his future assistance should it be needed. Mr. Rios told Council that he will try to work his heart out as much as Mr. Ling did. He added that he'll ask for the City's help once in a while and hopes to work together with the City.

Ken Fletcher addressed the City regarding the Library. He said he was before Council to talk about the Library and what has happened to the Sarah Murphy History Room. He claimed that hooligans devastated the history room during its recently closure and that it is completely spoiled the function of the room. They laid waste to the book shelving unit, filing cabinets and the card filing cabinet and displaced the microfilm printer/reader, in addition to other damaging mischief. He continued that he supposedly doesn't know anything and has been treated as such for quite some time, however read a letter presented to him on 11/17/2006 addressed to him on behalf of the Board of Trustees. The letter said that his extraordinary efforts on behalf of the history room are noticed and appreciated. The letter noted several other areas of his assistance and thanked Mr. Fletcher for his help, adding that his contributions have been invaluable and was signed by Lori Holdread for the Board. Mr. Fletcher said he has not changed anything in the history room since 2000 when he first entered it. It was in good shape for people looking for their roots or other information available in that room. Now it is a shambles and will continue to be. He pointed out that he has not named anyone responsible and will not. Regarding the golf course clubhouse, he apologized to Councilmember Rino and said it is not worth anything now, where once it had been one of the most individual buildings in this State, it is now ruined.

Erin Emmons addressed Council regarding the Colorado Welcome Center. She told Council that she had worked at the Colorado Welcome Center since June, 2010, having started as Dianne Bunn's assistant. She said she has been the Interim Manager since April 1, 2011, when Ms. Bunn's resignation became official. She said she along with 29 others applied for the position of Manager when the notice was placed with the Colorado Workforce Center on or about March 11, 2011. Applications were taken for the position until Friday, March 25, 2011 at 5:00 p.m. Ms. Emmons said she was the top candidate submitted to City Manager Gil de Rubio by the Welcome Center Volunteers Committee after they interviewed the candidates. On Friday, May 27, 2011 at approximately 4:00 p.m. City Manager Gil de Rubio called to inform her that he had hired someone else. At that time he asked her to stay on as the Assistant Manager. Ms. Emmons said she told him they would have to discuss her pay situation and he said they'd talk about it the next week. On Wednesday, June 1, 2011, at approximately 10:15 a.m. City Manager Gil de Rubio fired her and told her to collect her items and get out. She continued that as Council knew by now, this decision has caused an uproar. On Wednesday, June 1, 2011, during a 2:00 p.m. meeting that the volunteers had requested take place before any changes in management were made, City Manager Gil de Rubio stated that his decision to not hire her for the position of Colorado Welcome Center Manager was based on references and talking to the prior director. She said City Manager Gil de Rubio is quoted in the Friday, June 3, 2011 edition of the Trinidad Times Independent as saying that he started reviewing all the circumstances involved, including references, including talking to the past director, and made his decision accordingly and that was all he was going to say. He also was quoted as having said "Let's get something straight. I made the decision late last Thursday afternoon. I had been going through references. The volunteers were part of the process. I was told that is why it took so long because they had to be involved." Ms. Emmons distributed envelopes to Council and explained that she has provided them letters from her references stating that they were none ever contacted regarding her. She said she also provided Council with a letter from the former director, Dianne Bunn, which states that the only time she spoke to City Manager Gil de Rubio regarding her was when she turned in her letter of resignation. During that time Ms. Emmons said Ms. Bunn recommended her and told the City Manager that she had been training Ms. Emmons for the position for months. Ms. Emmons continued, saying that City Manager Gil de Rubio clearly stated he based his decision not to hire her due to her references and a conversation with

Dianne Bunn, however she showed that he never contacted her references nor spoke to Ms. Bunn. She asserted that City Manager Gil de Rubio has sullied her reputation and said she wants to know what is going to be done about it. She added that City Manager Gil de Rubio also stated he "did not feel Emmons was fully qualified for the position" and said she'd like to know why he feels that way. Ms. Emmons told Council that in their packets she provided a letter of recommendation from Kelly Barbello, Industry Relations and Welcome Center Program Manager at the Colorado Tourism Office stating that she firmly believes that she has the skill and understanding of the position in order to be successful in this role. Ms. Barbello added that "Dianne has been working to train Erin in this role for several months and has made it clear that she favors Erin as her replacement." Ms. Emmons told Council that she also had the highest score in the rankings placed by the Welcome Center Volunteer Committee that interviewed the applicants. The City Manager is responsible, subject to City Council approval, for the operations of the Welcome Center, including all issues related to the hiring and firing of personnel. She said she'd like to know if and when City Manager Gil de Rubio discussed this situation and action with City Council. Ms. Emmons said she served as Interim Manager for approximately eight weeks or 339 hours and was paid contract labor wages of \$9.00 per hour, which was the same wage that Dianne Bunn hired her at in June, 2010 to be her assistant. After taxes that comes out to be just above minimum wage. She said she believes the City owes her back pay for 339 hours for duties performed as Interim Manager at wages commensurate with those paid for the Manager Position. The job notice that was placed with Colorado Work Force for the Manager position said the wage paid would be between \$23,000 and \$27,000 per year plus benefits, based on experience. Ms. Emmons said she had ten months of experience as Dianne Bunn's assistant before she became Interim Manager. With that said, Ms. Emmons said she believes she should be compensated at \$27,000 per year which comes out to \$13.00 per hour, an additional \$4.00 per hour for 339 hours or \$1,356.00. She concluded that she requires a printed apology from City Manager Gil de Rubio for his comments and a reasonable explanation for his negligence in not doing his due diligence in her background check for this position. She said it is clear that he did not intend to hire her but rather used her temporarily while he conducted his job search. This is a small community where reputation and conduct matter. City Manager Gil de Rubio has damaged hers and now can do his part to repair it. She reiterated that the packet distributed includes copies of all of her letters of reference and a letter from the former director as well as one from Kelly Barbello, as well as her resume that she submitted. City Manager Gil de Rubio responded that there are references checked which are on a resume and there are references checked that are not listed on a resume. He said he did a thorough check of finalists and he stands behind his decision. He said he also had a long meeting with the former director when she submitted her resignation, and supporting information. He said that he stands behind that discussion with the former director. Ms. Emmons countered that in the packet of information is a five-page letter from the former director disputing everything he just said. Mayor Garduno asked City Manager Gil de Rubio to meet with Council to discuss this in more detail.

Jane Barker, Colorado Welcome Center volunteer, addressed Council. She said she has lived in Trinidad for 13 ½ years and has been a volunteer at the Welcome Center for those 13 ½ years. She said this is on behalf of the Colorado Welcome Center volunteers. She said the facts presented are facts and she thinks the majority of the volunteers would agree with all of those facts. Ms. Barker said there's been a grave injustice done to Trinidad with the appointment of the new manager and the firing of the interim manager. She said Ms. Emmons had been an approved and recommended choice for the position by the former manager who had been training her for the past ten months, as well as State Director of Colorado Tourism Kelly Barbello, and a majority of the volunteers. Ms. Emmons had been the acting Director for the past eight weeks and had attended the Colorado Welcome Center state meeting and has performed exceedingly well. Many other Welcome Center managers wanted to know when she was going to be made the manager. The roster of volunteers before the appointment of the new manager was 52 people. Now there are 20 active, 9 inactive, 5 unknown status and 18 volunteers who have resigned. These resignations represent 58,828.5 hours of lost experience or 18.01 years. The work hours were tabulated as of April 30th, so there are more now. The center needs 42 volunteers to carry on a three-two-man shift seven days a week. Obviously, there's not half. What the volunteers can't say, can't be said about this town. Councilmember Rino asked if Council will discuss this further with City Manager Gil de Rubio. Mayor Garduno said they will and asked that a time be set.

Mayor Garduno advised Council of a written correspondence received from Stevie Medina, Housing Director, South Central Council of Governments, requesting a letter of support from City Council regarding a Community Development Block Grant they are applying for. They need letters of support to submit the grant. She reminded that Council submitted one last year and said SCCOG is asking for the same type of letter. She said if no one objects they can submit another letter this year. Council concurred.

REPORT BY CITY MANAGER. ARPA bill. City Manager Gil de Rubio pointed out to Council at their seating places a copy of the current ARPA bill for the month of May, received 6/3/11. He noted that the ECA is down to a little over 4.5 mills and said that was good and as customers they've probably noticed that it's been going down over the past couple of months.

Monthly financials. City Manager Gil de Rubio also pointed out to Council the financial reports handed out. He said the General Fund had a slight surplus because of a sales tax increase which he suggested may have been a result of an audit at Walmart. Additionally, the Power & Light Fund showed some recovery after the rebates to customers in January. Water held its own and the Gas Fund is still dealing with the deferred gas expense. Sewer has the same issues as in the past with a negative cash flow. Councilmember Rino asked for a sales tax receipt comparison report for this year to-date versus last year at this time. City Manager Gil de Rubio said he would provide it to him tomorrow. He elaborated that Walmart put the report for the month above what it was last year, however it is an artificial jump. He thought that this year is currently a little below last year at this time, which was far below the year before for an overall loss of 22% in sales tax comparatively. He reiterated that he'd provide the information.

REPORT BY CITY ATTORNEY. ARPA update. City Attorney Beatty said he was pleased to report that District Court Judge Leslie Gerbacht denied the defendant's motion to transfer of the City's litigation with ARPA to Prowers County. The case will be tried in Las Animas County.

Legislation. City Attorney Beatty provided an update regarding the most recent legislative session affecting the City. He said that HB 11-1115 concerning construction contracts was just signed by the Governor and sets the maximum amount of retainage that may be withheld by a local government in a construction contract at 5%. The City has sought to retain 10%

JUNE 7, 2011

in the past. The bill also requires local government to make final payment within 60 days after final acceptance of the project. He also reported that SB 11-66 is before Governor Hickenlooper for signature and it is expected to be signed this week. It would give the local authority sole authority to decide on special event permits without having to submit them to the State for dual licensing authority. It would also increase the number of days allowed per year from 10 to 15. It is a bill for local control, should the City decide to opt for it.

COMMITTEE REPORTS. None.

UNFINISHED BUSINESS. Public hearing for consideration of an ordinance repealing and re-enacting Chapter 5 ("Buildings"), and Article 1 of Chapter 8 ("Fire Prevention"), of the Code of the City of Trinidad, Colorado, for the purpose of adopting by reference uniform codes for the regulation of buildings, to wit, the 2009 Editions of the International Building Code, International Residential Code, International Fire Code, International Plumbing Code, International Mechanical Code, International Fuel Gas Code, International Energy Conservation Code, International Existing Building Code, International Property Maintenance Code, and International Private Sewage Disposal Code. Mayor Garduno declared the public hearing open and called for public comment. Glenn Davis addressed Council and advised that he is a licensed general contractor in the City and in Las Animas County and has been for a number of years. He said that he is addressing them concerning their consideration of changing to the International Building Code and other codes by reference, and pointed out that he is not opposed to their adoption. He said he thinks things need to be updated. An item reported in local media in support of the City's adoption of these codes was to increase safety for citizens, and many of these codes do that. These codes also increase the cost in building construction at a time when building construction is lagging significantly and he estimated will continue to lag. He said his issues are with what has been taken out of the codes in the ordinance, the fire sprinklers for new residential construction and town homes until 2014, which during the contractor orientation meeting it was explained that in 2014 when it is supposed to be considered again staff intends to push back again; and the other item is carbon monoxide detectors. The consensus was that roofing and stucco contractors should not be required to make sure the detectors are in the home. The ordinance eliminates the requirement that they be installed. He said he understands the reasoning behind taking out the sprinkler systems because they increase the construction cost by \$2,500 to \$5,000 in a new home. However, he said a carbon monoxide detector costs \$50 at Walmart and can save many lives. He added that he was surprised that there was no response or even a discussion from local fire safety personnel about it because it's an important issue. It might be inconvenient when you pull a building permit, but it takes a few minutes and saves lives. He continued that at the work session Health Department officials were pushing for radon mitigation systems, but more is heard about carbon monoxide than radon poisoning. Radon mitigation adds close to \$5,000 to the cost of a new home, yet it wasn't excluded in the adoption of the new codes. Home builders will be required to put in a radon mitigation system but not fire sprinkler systems. He said if he replaces leaky windows and doors and installs energy efficient windows and doors and consequently increases the possibility of carbon monoxide poisoning he will not be required to make sure he puts in a carbon monoxide detector. Mr. Davis suggested that this is an oversight and one that Council could correct this easily and should. He added that lead paint is not dealt with either. Children suffer lead paint poisoning on a regular basis and is prevalent in homes built prior to 1978. The building codes do not address it. However, there is current law that was enacted by the EPA in April, 2010, which states that any time a home built prior to 1978 is having work done on it whereby the surface is disturbed, and there are minimum amounts, the paint needs to be tested and the surface has to be treated in a way that makes the home safer as well as the homes of the neighbors. It is not the responsibility of the City to enforce the EPA's requirements. However several communities in Colorado have already adopted a simple process that says before a building permit is issued on a home built prior to 1978, the contractor must document that they have on site an EPA-certified lead paint person so that it's as safe as possible. It's not a terribly expensive process, but it's an important one. He reiterated that he supports the codes adoption, but would like to see the requirement for carbon monoxide detectors, fire sprinklers and some requirement in older homes for the removal or proper steps to be taken to prevent lead paint poisoning of children and elderly. Councilmember Rino said he thought the radon mitigation was going to be optional with this adoption. He questioned if that wasn't the discussion, that it would be up to the property owner because of the expense. Mr. Davis said that's not the way this ordinance is written. City Attorney Beatty noted that Mr. Davis's concerns all deal with the International Residential Code. As proposed the radon mitigation requirement would be enforced only if Council adopts Appendix Chapter F of the code. If Council wishes to make it optional, he said they could consider not adopting Appendix Chapter F. Regarding the carbon monoxide detectors, he said he appreciates Mr. Davis's concern and agrees that it is an inexpensive life safety issue. The amendment proposed to the City's adoption of the codes is intended to be accommodating to contractors. Exterior projects would not invoke the requirement for the detectors. He read the exception as follows: 'Work involving the exterior surfaces of dwelling units, such as the replacement of roofing or siding, the addition or replacement of windows or doors, or the addition of a porch or deck, is exempt from the requirements of this Section.' The requirement pursuant to the code is that for new construction an approved carbon monoxide alarm shall be installed within 15 feet to the entrance of each bedroom in dwellings within which fuel-fired appliances are installed and in dwelling units that have attached garages. He said he appreciates Mr. Davis's comments but the City was trying to be accommodating to contractors who would not otherwise enter the interior of a home. Staff thought it was just common sense to make that exception. Mr. Davis said his one exception to that would be window and doors because it tightens the home and affects the indoor air quality. Councilmember Rino asked if the Planning Commission recommended approval of the adoption of the codes. Mr. Davis said the Commission did not deal with their adoption as that is not in their purview. City Attorney Beatty reminded that the City hosted an orientation session with the contractors. He said the point Mr. Davis is addressing could be addressed in the exception set forth in Section 5-2(l) on page 5 by removing the exception for the addition or replacement of windows and doors if Council wanted to omit that language. He added that he could research lead paint and address it beyond the adoption of these codes. Regarding radon, he said if Council wished to make a radon system optional, the deletion of the language adopting Appendix Chapter F would accomplish that. City Attorney Beatty reiterated to Council that the City is seeking to adopt these codes because absence of their adoption, it is affecting the City's ISO rating, which affects every citizen's home owner's insurance premium. The City is trying to maintain a healthy ISO rating, and the adoption of these codes would help the City maintain a 4 rating on the 10-point scale. Mr. Davis reiterated that he is not opposed to the adoption of the codes, with those issues being addressed that he raised. There being no further public comment, the hearing was closed.

Second reading of an ordinance repealing and re-enacting Chapter 5 ("Buildings"), and Article 1 of Chapter 8 ("Fire Prevention"), of the Code of the City of Trinidad, Colorado, for the purpose of adopting by reference uniform codes for the regulation of buildings, to wit, the 2009 Editions of the International Building Code, International Residential Code,

International Fire Code, International Plumbing Code, International Mechanical Code, International Fuel Gas Code, International Energy Conservation Code, International Existing Building Code, International Property Maintenance Code, and International Private Sewage Disposal Code. The ordinance title was read aloud. A motion to approve the ordinance on second reading was made by Councilmember Rino and seconded by Councilmember Velasquez. The motion carried with all members voting aye, except Councilmember Aragon, who cast a dissenting vote because the motion on the table was to approve the ordinance as presented. The ordinance was adopted and will become effective on June 17, 2011.

ORDINANCE NO. 1913

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, REPEALING AND RE-ENACTING CHAPTER 5 ("BUILDINGS"), AND ARTICLE 1 OF CHAPTER 8 ("FIRE PREVENTION"), OF THE CODE OF THE CITY OF TRINIDAD, COLORADO, FOR THE PURPOSE OF ADOPTING BY REFERENCE UNIFORM CODES FOR THE REGULATION OF BUILDINGS, TO WIT, THE 2009 EDITIONS OF THE INTERNATIONAL BUILDING CODE, INTERNATIONAL RESIDENTIAL CODE, INTERNATIONAL FIRE CODE, INTERNATIONAL PLUMBING CODE, INTERNATIONAL MECHANICAL CODE, INTERNATIONAL FUEL GAS CODE, INTERNATIONAL ENERGY CONSERVATION CODE, INTERNATIONAL EXISTING BUILDING CODE, INTERNATIONAL PROPERTY MAINTENANCE CODE, AND INTERNATIONAL PRIVATE SEWAGE DISPOSAL CODE

MISCELLANEOUS BUSINESS. Tavern liquor license renewal request by Gina Louise Lujan d/b/a El Rancho Restaurant at 1901 Santa Fe Trail. Councilmember Pando moved to approve the license renewal. The motion was seconded by Councilmember Shew and carried by a unanimous roll call vote.

Modification of premises (temporary) request by Gina Louise Lujan d/b/a El Rancho Restaurant at 1901 Santa Fe Trail for August 26 through August 27, 2011 for the Pre-Blues Fest party. A motion to approve the temporary modification was made by Councilmember Rino and seconded by Councilmember Pando. The motion carried by a unanimous roll call vote.

Tavern liquor license renewal request by JuJo's Pub, Inc. d/b/a JuJo's Pub and Dance Hall at 125 N. Chestnut Street. Mayor Garduno noted that the Health Department reported compliance and pointed out that one of the City's inspections states the fire extinguishers need to be checked and the other states that the fire extinguishers are missing. Chief Perea advised that they are a couple of months behind on the inspection of the extinguishers. The company that services them has been busy fighting fires in the county. One of the extinguishers had been set aside waiting to be recharged. JuJo's is aware of the fact that they need to be addressed and has assured that they will be done. He recommended approval of the renewal, and said he will follow up, but added that JuJo's has been diligent in ensuring compliance in the past. Councilmember Rino moved for the approval of the renewal and the motion was seconded by Councilmember Shew. Roll call was taken on the motion which carried unanimously.

First reading of an ordinance of the City of Trinidad, Colorado, amending select subsections of Section 14-104 ("Non-Conforming Uses and Structures") of Chapter 14 ("Planning and Zoning"), of the Code of the City of Trinidad, Colorado, for the purposes of (i) allowing under certain circumstances, the restoration or replacement of non-conforming structures; and (ii) moderating restrictions on the discontinuance of non-conforming uses, and setting a hearing date for consideration of said ordinance. The ordinance was introduced by Councilmember Velasquez and was read aloud in its entirety. A motion to approve the ordinance on first reading and consider it further at a public hearing at 7:00 p.m. on June 21, 2011 was made by Councilmember Shew and seconded by Councilmember Velasquez. The motion carried unanimously.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, AMENDING SELECT SUBSECTIONS OF SECTION 14-104 ("NON-CONFORMING USES AND STRUCTURES") OF CHAPTER 14 ("PLANNING AND ZONING"), OF THE CODE OF THE CITY OF TRINIDAD, COLORADO, FOR THE PURPOSES OF (I) ALLOWING UNDER CERTAIN CIRCUMSTANCES, THE RESTORATION OR REPLACEMENT OF NON-CONFORMING STRUCTURES; AND (II) MODERATING RESTRICTIONS ON THE DISCONTINUANCE OF NON-CONFORMING USES

Public hearing and first reading of an ordinance of the City of Trinidad, Colorado, (I) amending the City's Official Zoning Map for the purpose of subdividing the "HP - Corazon de Trinidad Historic Preservation District" into an "HP - Corazon de Trinidad Historic Preservation Residential District" and an "HP - Corazon de Trinidad Historic Preservation Mixed-Use District" and (II) amending Chapter 14 ("Planning and Zoning"), Article 4 ("Zoning Ordinance"), of the Code of the City of Trinidad, Colorado, by (i) re-naming Division 12 "Zone District Regulations for the HP - Corazon de Trinidad Historic Preservation Residential District" and (ii) adding a new Division 12.1 entitled "Zone District Regulations for the HP - Corazon de Trinidad Historic Preservation Mixed-Use District", and setting a hearing date for consideration of said ordinance. Mayor Garduno declared the public hearing open and called for comments for or against the ordinance. David Barrack, property owner in the historic district, addressed Council. He said he wasn't before them to speak against the ordinance but rather to ask for a reasonable modification to it. He said a building such as the one he owns on Plum Street was built to be a car service facility. The City's current ordinance makes it nebulous; it is vague. One year ago when he had a potential tenant, he was told by the City that they would need a conditional use permit. During that process the potential tenant went away. This proposed ordinance as originally proposed eliminated vehicle service in the historic district (even as a conditional use). Mr. Barrack said he attended the Planning Commission meetings when this item was being discussed and they and staff were supportive and made a slight alteration to allow it as a conditional use. However, he overheard one Planning Commission member say 'wait until you see what the conditions are.' He said his concern is within the framework of the current economic condition, there's a high vacancy rate down town. His building has been vacant for about 2 1/2 years. The buildings which are vacant having continuing property tax, maintenance and insurance upkeep. He asked that Council consider modifying the ordinance in one section to allow vehicle repair to be a use

JUNE 7, 2011

by right in the down town. The historical use of the building has been vehicle repair; when the building was built in the early 1960s it was specifically built for vehicle repair. He told Council the ordinance will destroy the functional utility of the building, meaning what the building was designed for. The building has sloping floors, has 7,000 square feet of free-standing space and there are no reasonable alterations he can make to the building to allow him to rent it. He estimated the cost of modifications to the building for a suggested alternate use at \$500,000. He said there's no way he could recover that amount of money, nor expect the tenant to make those improvements. He said he's just trying to pay his taxes and stay in business and be a good neighbor. The conditional use is somewhat at the whim of a committee whose conditions may be 'X' today and 'Y' tomorrow. It is not reasonable in this case because it's a traditional use if you count all of the buildings in automotive repair and maintenance. He reiterated his request that it remain that way. Mr. Barrack reminded Council that a few years ago he was involved in the repeal of the previously adopted historic preservation ordinance and said that he is not contemplating anything similar to what happened with that ordinance. He said this ordinance is to facilitate a pedestrian mall down town someday, and he is supportive of that. He said his question is how having an automotive repair facility in down town is harmful to the concept of a pedestrian mall. Main and Commercial Streets would be the primary locations. There are not many buildings on Main or Commercial Streets that can be used for automotive repair because most have basements. He said he doesn't see it as a major detriment to having a pedestrian mall in Trinidad. Those people have to drive cars, and those cars break and there's no reason why we cannot continue to fix them in downtown Trinidad. Councilmember Shew asked if the Planning Commission put the conditions in writing. Mr. Barrack said they talked about fencing, but it was left open as to what else those conditions might be. He said there may be limits to the conditional use permit process, but said he's not aware of those limitations. Councilmember Shew asked Planning Director Fineberg if there are limits. Planning Director Fineberg answered that there are not, within reason. He added that he understands Mr. Barrack's concern. His concern was if it is a use by right, an auto body shop could create an eyesore, for instance with cars parked outside for months or years. That's the type of thing he said he had in mind. The Commission could assign conditions like proper screening, cars cannot remain parked outside for longer than one week, etc. The intent is not to have gold-encrusted windows or wrought-iron screening, essentially not to make it unbearable for the owner or the tenant. The ordinance is intended to prevent an objectionable use in the midst of down town. He said that was his and the Commission's reasoning. Mr. Barrack responded that having been in the car business for years he can say that you don't make money storing cars. Sometimes you have to order parts and it will create a delay. In neighborhoods those same cars have a right to be parked in front of homes, including in the residential part of the historic district in some cases. The purpose of having fences is security. He opined that screening on fences is more of an eyesore than the cars themselves. After a couple of years of sun the plastic looks terrible. It also increases the cost of the fence. The wind loan increases by 50% which he said is a considerable addition to the expense of the fence. It also makes the lot less secure, not more secure. The cost of the screen is \$10 per lineal foot for one that's decent quality and it will have to be replaced in a couple of years. The added cost would have to be recaptured and in the long run the business has to increase their price and the demand drops. That demand is low already. Mr. Barrack reiterated that he's trying to run a property, pay taxes and keep a renter. The changes in the code and utility costs will drive costs up and the city will have more vacancies, not less. He admitted that in this particular instance he was looking out more for himself and didn't look closely at the other types of businesses and whether they were conditional, permitted by right, or not allowed, noting that sometimes we have to take care of ourselves. He restated that he'd like vehicle repair to be a use by right. Councilmember Rino asked Planning Director Fineberg why he wanted to change something that has been an historical use for property owners or do something that creates additional expenses. Here's a person with a building designed for vehicle repair use and its use is being changed. He added that he thought it would be grandfathered in. City Manager Gil de Rubio said this is a recommendation from staff, but pointed out that Council can change the ordinance. Councilmember Rino said he believes they should change it. Mr. Barrack expressed his appreciation and complimented staff on their professionalism, helpfulness, and friendliness. He said they all have the best interest of Trinidad in mind. City Attorney Beatty pointed out the location of the change proposed by Mr. Barrack on page 4 of the ordinance, section 14-88.3, under uses, vehicle repairs to change it to a 'P', permitted by right, should Council desire to change it. Mayor Garduno ascertained that there was no one else present who wished to speak on the matter, and closed the hearing. The ordinance was introduced by Councilmember Pando and then read aloud in its entirety. Councilmember Shew noted that mortuaries and funeral homes are also listed as conditional and wondered if Tom Murphy had any concerns. City Attorney Beatty explained that Mr. Murphy's funeral home is already established and this ordinance is for new proposals. City Planner Fineberg further explained if Mr. Murphy's business were to become vacant for a period of one year it would be subject to conditional use. In Mr. Barrack's case, his business has already been vacant for more than one year (with the previous ordinance potentially being approved), it has thus lost its non-conforming status. It would now be subject to conditional use. Councilmember Rino asked concerning the building that sustained fire damage on Main Street recently, should the owner not be able to afford to finish it with the same façade, would they still have to? He suggested it could become a problem. City Planner Fineberg said it is an issue of economic feasibility. The intent of the ordinance is to get the best product we can get, not to drive people away. He assured Council that staff and the Planning Commission are willing to work with people. He suggested they look at the ordinances for Denver and Boulder as they will see that they simply have language that leaves nothing to the imagination. Councilmember Rino asked about an existing building in historic district down town that is made of corrugated metal and what can be done about it. Planning Director Fineberg answered that there's nothing that can be done about it because it exists prior to the adoption of this ordinance, and provided that it was built in conformance to the prior ordinance it would be fine and stay. This only would affect new development project that will come after the adoption of this ordinance. Councilmember Rino said this metal building isn't an historical building, but it's grandfathered in. He asked if this ordinance was original language or if it was patterned after other cities' ordinance. Planning Director Fineberg said it was the result of a lot of research, incorporation of new things and utilizing other things from other cities' ordinances. Councilmember Shew moved for the approval of the ordinance on first reading and to set a public hearing for its further consideration at 7:00 p.m. on June 21, 2011. The motion was seconded by Councilmember Rino and carried unanimously upon roll call vote.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, (I) AMENDING THE CITY'S OFFICIAL ZONING MAP FOR THE PURPOSE OF SUBDIVIDING THE "HP - CORAZON DE TRINIDAD HISTORIC PRESERVATION DISTRICT" INTO AN "HP - CORAZON DE TRINIDAD HISTORIC PRESERVATION RESIDENTIAL DISTRICT" AND AN "HP - CORAZON DE TRINIDAD HISTORIC PRESERVATION MIXED-USE DISTRICT" AND (II) AMENDING CHAPTER 14 ("PLANNING AND

First reading of an ordinance of the City of Trinidad, Colorado, regarding the provision of natural gas service by the Trinidad Municipal Natural Gas Department, and increasing the gas supply charge applicable to all service classifications, and setting a hearing date for consideration of said ordinance. Mike McFadden, McFadden Consulting Group, addressed Council with a Power Point presentation. He reminded Council that he was responsible for a rate analysis for the City in 2008 and explained that staff has asked him to look at it again, especially with respect to the deferred gas cost. He was asked to present two alternatives for Council's consideration, one with the normal calculation and a second with a gas supply charge reflecting a 50% write-off of the deferred balance as it existed as of 12/31/2010. He reminded those present that the gas supply charge the City collects is designed to recover all upstream gas supply, transportation and storage costs charged to the City. These costs are beyond the City Council's control. He also reminded Council that they adopted the mechanism to do so, and the initial gas supply charge, effective 12/1/2008, which was not that long ago. It provides for an annual true-up that ensures dollar for dollar recovery of gas costs. The over and under recoveries are reflected in subsequent gas supply charges. One of the main benefits of the gas supply charge is that it's the least expensive, most effective way of mitigating price volatility of natural gas on customers. The reason a gas supply charge is so critical, noting that he's not aware of any gas or electric utility in the country that doesn't have a gas supply charge or gas cost recovery mechanism or fuel cost recovery mechanism on the electric side, was illustrated on a pie chart showing cost of gas per dollar of revenue. Mr. McFadden illustrated that two-thirds or \$.662 of each dollar is for the upstream commodity and transporting it across Colorado Interstate Gas Company's system to the City's facilities. Operation and maintenance account for \$.254 of \$1.00. That's the cost the City controls. It represents the gas department, all of the gas employees, all of the facilities owned by the City's gas department and controlled by the City. PLT, payment in lieu of taxes and transfers from the gas department to the general fund, was shown on the chart as representing \$.029 of \$1.00 and Capital, such as a new truck, new meters, other gas equipment, all the physical facilities, represents \$.055 of \$1.00. He surmised that the reason the gas supply charge is so critical is because a little over or under recovery has a significant impact on the City, the end customers. The composition of the gas rate, the structure, is really two parts – one that he referred to as the distribution charges and reflects the gas department's costs. That's the City's costs. There's two parts to the bill, a meter & billing charge and a delivery charge. The meter & billing charge is intended to recover the cost of going out each month, reading the meter, providing the bill, mailing the bill, the internal metering and billing costs. The delivery charge represents all of the other costs. The meter & billing charge is per customer per month; delivery charge is per unit of gas used by the resident. There's no change in these rates in this analysis. It focuses entirely on the gas supply charge. The gas supply charge has two components, a forecast component that looks to what the gas cost might be during the period of time when these rates are in effect; and a past, a deferred increment, which looks back to what was collected for gas cost in the past, what was incurred in gas cost in the past, and the difference is either returned to or recovered from the customer. Mr. McFadden continued that the change in the gas supply charge under either scenario is an increase. The current gas supply charge is \$.3791 per ccf. If the normal gas supply charge is approved by City Council, it would increase the rate from \$.3791 to \$.5638, or \$.1847. If Council chooses to write-off 50% of the deferred balance from 12/31/2010, the proposed rate would drop to \$.5091, which would be an increase of \$.1300. He pointed to the projected gas cost, what he thinks the gas cost will be in the next 12 months, and noted that it actually decreases by \$.0379. The deferred is a result of the current rates having had a credit because the City over-recovered the gas cost when the City put the current rates into effect. It was given back to the customers in this rate. That is why it is calculated at -.0883. Currently the City is under-recovered by \$.1343. A major part of the reason is because the negative was left in too long. It was the coldest winter in at least 22 years. What happened was there was a negative rate in there during very high sales because of the cold weather. If the City writes off 50% of the deferred balance, the forecasted gas cost is still decreased the \$.379, the deferred gas cost would go from \$.0883 to \$.0796 which would only be an increase of \$.1679 as opposed to \$.2226. If those numbers are added together it is \$.1300. Mr. McFadden next illustrated that the total rate is the only component of the rate proposed to change and by only the gas supply charge, illustrating the meter & billing charge remain unchanged and the delivery charge remains unchanged. If it goes to \$.1847 it would be a 27.67% increase. If it goes to \$.1300 it would be a 19.47% increase. Councilmember Shew asked what the forecast is for the gas prices. Mr. McFadden answered that the numbers he is illustrating are annualized numbers. He said there's a chart they will see that will show how the price is trending. It is shown that for the 12-month period the forecasted gas cost is going to be a decrease. Councilmember Shew asked if that's from this November to the next. Mr. McFadden responded affirmatively, but stressed that it is merely a prediction. Councilmember Rino asked to re-review the percentage increase. He asked if his gas bill was \$175, if he's correct that it would go up by a little more than one-fourth. He said that's probably one of the highest increases anyone could possibly have in purchasing gas. Mr. McFadden answered that there are two things that need to be considered, and said he'd address it shortly. He also said he is very sensitive to that. He pointed to a reason being that the City was over-recovered so there was a negative number in our rates and our rates were unusually low. He further explained that when you put a twenty-cent increase on twenty cents it is a 100% increase; if you put twenty-cents on fifty cents it's not. He asked Council to be careful looking at the percentage changes. He recalled that when the last rate went into effect the City passed on a 30% decrease to the customers, in December, 2008. The average residential customer's bill under the 100% increase would average \$14.70 per month. The commercial customer's bill will see an increase of \$69.22 per month and the special contract customer's bill will increase by \$3,236. With a 50% write off, the residential customer's increase would be \$10.35, the commercial's would be \$48 and the special contract customer would be \$2,278. Mr. McFadden showed Council a graph reflecting the impact on residential customers. It showed the current, the proposed at the normal 100% and the proposed at 50%. He pointed out that the graph indicates the spike in the December through March months where 70% of the revenues are experienced in the gas department and when those three months probably exceed the customer's rest of the year's bill because the usage is so high because of the heating costs. He also showed a graph for the commercial customers which illustrated the same spike. Finally he showed Council a graph for the special contract customer. Mr. McFadden showed Council the impact on the gas department revenue, the gas fund coffers. The gas supply charge if the Council approves the normal calculation would result in \$1,125,576 coming into the City, however that money has already been paid out to the gas suppliers last year and to the transporters. The City itself gets no change – no additional dollars are coming into the City's coffers at this point to help run the gas department with this rate change. It's only to the upstream suppliers, who the City has already paid and the customers have already used that gas but they were not charged enough. He continued that the gas prices since 2008 have significantly stabilized. He attributed it

JUNE 7, 2011

largely to shale gas and the fact that it's pretty prevalent. He suspected that in Colorado it will stay stabilized and we will have fairly low gas prices for quite a while. He predicted the shale gas will create a large change, explaining that gas currently flowing from Colorado and Wyoming to Ohio will not flow there anymore because they have these huge deposits in eastern Ohio and western Pennsylvania. Gas from the gulf will be looking for markets as will gas from Colorado and he said he hopes it will make it very stable in the foreseeable future. The forecast was \$5.62 per dekatherm; in the current calculation it is estimated to be \$5.16 per dekatherm. The deferred that was built into the current rates had been over-recovered by \$539,160 which translated into a negative \$.0833 rate. At December, 2010, it was \$666,000 under-recovered and at March, 2011 it was under-recovered by \$780,000. If Council writes off 50% of that, it would affectively drop the \$780,000, which the City has already incurred and the customers have already used the gas, but the City hasn't gotten their dollars yet from the customers. The City would be forgiving \$333,000. Without the write-off the deferred increment would be \$.1343; with the write-off it would be \$.0796 - still an increase. Write off considerations - Mr. McFadden said City Council has the authority to do whatever they want, but the write-off is not free. The \$333,000 is actually a cash expenditure. The City has already paid this money out to the upstream supplier and the customers have already used this gas. This \$333,000 is not in the gas fund. The gas fund is not a cash account but rather an accounting ledger. He compared it to retained earnings for a corporation. Only cash is cash; retained earnings is not cash, expense accounts are not cash, revenue is not cash, that's just a recording. The cash is only in the cash account. He compared it also to income taxes whereby a person has to go to their checking account to get cash to pay their taxes, or if you are getting a refund you'll get it back and put it in your checking or savings account. He continued that what the write-off will do is reduce the cash available to the gas department and any potential transfers to the General Fund. It would be \$333,000 that the gas department won't have to be able to make that transfer. That will require some sort of adjustment, like a cut in labor, expenses and overhead, increases in collections, like taxes, rates or fees or a combination of them all. He opined that it is inconsistent with the whole purpose of the Gas Supply Charge. He reiterated that the charge is there for the purpose of ensuring dollar-for-dollar recovery of the gas cost. Write-off of the December 31st balance does not change it. It's not going to eliminate deferred gas cost. They occur every single month. It would only reduce the balance at this point. In the gas cost adjustment, deferred gas cost is inherent in the calculation. He estimated the odds of it ever going to zero like those of winning the Lottery. It's either over-recovered or under-recovered. The purpose is two-fold - recover the gas cost dollar-for-dollar so the City's not profiting from it, and to mitigate gas volatility. He pointed out that natural gas has historically been the most volatile priced commodity in the world, since 1993. The Gas Supply Charge mitigates the ups and downs to the customers. Public service decided about 8 years ago to go to a monthly GCA, which he said he was involved with having been retained by the Office of Consumer Counsel to review it. They backed off of it because what they ended up doing was following the index price, which he illustrated on the next slide. He added that the citizens have already been benefitted from these rates. Last year their rates were understated during the coldest year in 22 years. Had the City accurately forecasted the prices their rates would have been higher. Mr. McFadden showed on the index price slide that the Henry Hub price, which the New York NYMEX is based upon had spikes in the prices in 2000, 2002, 2005, 2008, and now they are kind of calming down. Shale oil gas is higher than traditional gas but supplies are abundant, so he didn't expect the Henry Hub price to go down significantly. Next he showed the CIG Index Price, which represents the savings that Colorado realizes because they don't have to transport the gas from the gulf of Mexico where Henry Hub is located to Colorado. Therefore they can agree to pay Colorado and Wyoming producers lower prices, and the Wyoming producers are glad to do it because otherwise they'd be incurring the transportation costs to get it to New York, Boston, Chicago, LA. He pointed out its volatility since 1993, when prices were de-regulated. On the next slide Mr. McFadden showed the NYMEX price for December, 2011 gas, and said that it's been trading since before April, 2010. He likened it to the stock market with its price fluctuations. He reiterated that natural gas is a free marketplace that the City has no control over. Mr. McFadden reviewed the next slide that illustrated Trinidad's Gas Supply Charge since December, 2008 to March 1, 2011, as compared to the effective CIG Index Price during that same time. He showed how the City's price was higher than the index price in 2008 so the City reduced the price considerably to return the over-charge to the customers and meanwhile the index price increased. He said that's what he means by price mitigation. You set your price for the year and ride it out and if your price is within reason to the actual gas cost, it will work. Trinidad has only had a two-year period. He showed on the next slide a graph of a similar city on CIG's system that buys gas from NPGA that has had a Gas Supply Charge since November, 2000. He showed how it flattens out the prices to the customers and keeps the price from getting high in the winter and low in the summer. He told Council had they approved the rate in November, it would have gone up to \$.46 rather than \$.56 of \$.50. By extending it over a year, the City got a two-hump camel and one of those humps was the coldest year ever, and the other hump was the following December and October. Therefore the City had two periods of time with extremely high usage when we were trying to get an average rate over twelve months. By not changing it at the time when it could have been changed, it caused a little spike in the prices. He continued that if Council goes with the normal 100% option, and everything occurs as forecasted, which we know won't happen, the deferred will be \$164 under-recovered August 1, 2012. If Council does the write-off it will be \$275, with the only difference being rounding in the designing of the rates. The difference is writing-off \$333,000. If the November 1st rate had been approved it would have been a couple of months down and then would have come back up and ultimately \$114,000 would have been under-recovered. He explained the reason was because when the gas department did the calculation they didn't normalize. Mr. McFadden summarized that the three things that really affect the deferred are the price (which the City has no control of), weather (which results in the demand, and the City has no control of), and the last is making sure the rates get put into effect when they are supposed to, which is a twelve-month period and the City has control of. He said he has had clients who have forgiven deferred balances, others who have put rates into effect and then have changed it off-cycle because of circumstances, like hurricane Katrina. It can be changed off-cycle, but you don't want to go too long and may actually want to shorten it up at times if something unusual happens. Mr. McFadden told Council that his recommendation without having any understanding of their desire to write-off 50% of the deferred, is that Council should approve the rates under the normal calculation. He said the reason is the write-off is counter to the purpose of the Gas Supply Charge, customers already benefitted because the rates were \$.23 less last year than they should have been during the coldest time period, and the write-off may require reducing services or increasing taxes, or perhaps the City has the \$333,000 and feels comfortable with it. Councilmember Shew said his concern is that the rates are going to go up. He asked if the City writes-off the 50%, the rates have to go up anyhow, but the rates are forecasted to be lower next year, so if the City keeps the rates there would we make up the rates? Mr. McFadden answered what the City would make up is \$.50 per dekatherm. However he pointed out that it would not take care of the accounting issue where the auditor is concerned. He said from his perspective, having been doing work of this nature since 1974, he's had clients who have said they are going to let it ride and sometimes it works to their benefit and sometimes it does not. The northeast corridor, New York, Cleveland, Boston, etc., gets all the gas from the gulf. If they have cold weather our prices go up. If they have warm weather our prices will be lower than forecast. Councilmember Shew asked if the rates are raised

now to \$.56 will they go down in November for the next 12 months or will they stay at that rate. Mr. McFadden said it will be at the \$.56. Councilmember Rino said they would have to stay at that rate in order to re-cooperate the \$666,000. He said his question is if the City is just trying to re-cooperate the \$666,000 with the increase. Mr. McFadden said no, the City would be re-cooperating the \$666,000 that we've already paid out, but are also reducing the forecast by \$.06 per dekatherm. The impact on the rates was \$.0379 decrease in the forecast. He reiterated that they are thinking that gas cost is going to drop a little. Councilmember Rino asked if the City re-cooperates the \$666,000, are we just satisfying the auditors. Mr. McFadden said he didn't believe so. He said the auditor's concern is that the City has a regulatory asset out there. Utility accounting is a little different. He said Council is basically the Public Utility Commission (PUC) of Trinidad. If the commission says they are going to amortize that cost over the next 12 months, maybe you write it off, amortize it and say then we're going with whatever the commission wants or whatever the rate says. The problem with that is if the accountant isn't on board, they are going to write that asset off. Then you start getting into a legal question as to whether you have the authority to increase your rates over and above to recover costs that were incurred and wrote-off in the past. That gets to be very contentious. One of the basic principles of regulatory rate making is you recover future costs, not past costs. The way the adjustment clause works is because you've set up a regulatory asset. He said he's been involved with the Public Utility Commission where the courts have overturned their decision. Since the City Council is like the PUC he said they can do what they want and people can take the City to court which may uphold that decision or overturn it. Council could also decide if they want to increase the non-gas costs. Once it's dollars it's just dollars. You are always going to pay the upstream charges, your gas costs, your employees. What will happen is the City will fall short in capital or PILT to the General Fund. He said his concern he'd have was just like when Walsenburg's pipeline was wiped out. You have to make sure you have funds to cover those kinds of things. It's really a business decision and a philosophical decision. The City also has an auditor who is concerned about receiving some direction from City Council about their intentions of recovering the \$666,000. If Council decides to write off the \$333,000 the auditors will immediately hit the gas fund by \$333,000. Councilmember Rino asked the comparable O&M costs of Trinidad to other cities. Mr. McFadden said they are real close. He exemplified an investor-owned utility to a small city utility, and the city's O&M is typically lower. Councilmember Shew asked for clarification that if they approve the 100% (normal) gas supply charge, they will not have to be raised again in November. Mr. McFadden said it is estimated with a start date of August 1st and there's been talk about moving that November 1st date. City Manager Gil de Rubio said the ordinance gives the City latitude and so this can be revisited next year at this time. Mr. McFadden said the one thing the City wants to do when calculating the deferred is look at a deferred period ending July or August so there's only one high heating period included. Councilmember Rino said with an August 1st effective date no one should notice a real increase in gas until November, December, January and February. Mr. McFadden said about 75% of the City's revenues are made in those months, it's the nature of the business, whereas electric is pretty much the opposite with air conditioning. Councilmember Rino asked if anyone knew the City's delinquency rate in the winter months. Finance Director Blatnik said she'd have to pull the information but thought it to be around 37%. City Attorney Beatty clarified that percentage is of late payments. City Attorney Beatty added that if someone doesn't pay their bill, after 45 days they are shut off. Mr. McFadden pointed out that all of the deferred is based on billed usage, not collected usage, which can be an issue. He asked if the City has any energy outreach agencies helping citizens here. City Manager Gil de Rubio said the City works very closely with those agencies. Mr. McFadden said he understands the City did a survey of gas rates and Trinidad had the lowest in the state last year. He attributed that to Trinidad having had the negative deferred and perhaps the other cities having a positive deferred. The real criterion to measure is looking at the revenue without the gas cost. Every utility he knows of has unbundled that so that the gas cost can be identified separately from the non-gas costs. That's the real measure of the comparison. The ordinance was introduced by Councilmember Shew and then read aloud in its entirety. Councilmember Rino suggested that they should have been presented with two ordinances, one for 100% and one for 50%. City Attorney Beatty said the only distinction would be a change in the number from \$.5638 to \$.5091 per ccf. A motion to approve the ordinance on first reading and consider it further at a public hearing at 7:00 p.m. on June 21, 2011, was made by Councilmember Aragon and seconded by Councilmember Shew. The motion carried with all Councilmembers voting aye except Councilmember Rino who cast a dissenting vote.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, REGARDING THE PROVISION OF NATURAL GAS SERVICE BY THE TRINIDAD MUNICIPAL NATURAL GAS DEPARTMENT, AND INCREASING THE GAS SUPPLY CHARGE APPLICABLE TO ALL SERVICE CLASSIFICATIONS

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

PAYROLL, May 14, 2011 through May 27, 2011. A motion to approve the payroll was made by Councilmember Aragon and seconded by Councilmember Shew. The motion carried unanimously.

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

ATTEST:

JENNIE GARDUNO, Mayor

AUDRA GARRETT, City Clerk