

JUNE 21, 2011

CITY OF TRINIDAD  
TRINIDAD, COLORADO

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, June 21, 2011 at 7:00 p.m. in City Council Chambers at City Hall.

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

The pledge of allegiance was recited.

**READING OF THE MINUTES.** Regular Meeting of June 7, 2011. Mayor Garduno asked if there were any additions or corrections to the minutes of June 7, 2011. There being none, a motion to approve the minutes as submitted was made by Councilmember Shew and seconded by Councilmember Aragon. The motion carried unanimously, excepting Councilmember Toupal who abstained due to his absence from that meeting.

Mayor Garduno sought and received Council's consent to move item 8g up on the agenda.

**MISCELLANEOUS BUSINESS.** Approval of Statement of Work for support of the Colorado Welcome Center (item 8g). City Manager Gil de Rubio told Council this is the agreement the City signs with the State of Colorado each year regarding the Colorado Welcome Center. The verbiage is the same as last year's agreement. He reminded Council that the State's fiscal budget year is from July 1, 2011 through June 30, 2012, and said the State has committed \$62,278 toward the Center's operation and the City has committed \$9,417, for a total of \$71,695. City Manager Gil de Rubio pointed out that there is no funding increase from neither the City nor the State; it operation will be level funded from last year. A motion to approve the Statement of Work for support of the Colorado Welcome Center was made by Councilmember Toupal and seconded by Councilmember Aragon. The motion carried by a unanimous roll call vote.

**PUBLIC HEARING.** New retail liquor store license request by Kenneth R. Geggelman d/b/a Trinidad Beer, Liquor & Wine Depot at 900 Arizona Avenue. Mayor Garduno called the hearing to order and announced that she would be presiding over the hearing. She stated the purpose, an application for the issuance of a new retail liquor store license filed by Kenneth R. Geggelman d/b/a Trinidad Beer, Liquor & Wine Depot, for a retail liquor store proposed to be located at 900 Arizona Avenue, Trinidad, Colorado. Mayor Garduno then instructed those present on the order in which evidence and testimony would be heard as follows: Opening statements or remarks from the applicant followed by the same by the City Attorney, then applicant's evidence and testimony of witnesses. Next she advised that she would call for the City's evidence and testimony of witnesses. She then advised that she would thereafter call for a presentation of evidence and any testimony of witnesses by any party in interest. Rebuttal evidence would then be called for and finally closing arguments by the applicant, the City and any party in interest. Mayor Garduno said that the hearing would then be closed and she would call for a motion and discussion. She additionally advised that an executive session may follow the hearing, or the authority may choose to postpone its decision on the matter for a period of up to 30 days. She asked anyone who was going to testify to come forward and be administered the oath and said she reserved the right to limit testimony or questioning that was repetitive, cumulative, or argumentative and to set a limit on the duration of testimony if necessary. Also, formal rules of evidence would not be followed and the testimony and exhibits will be liberally admitted. She told those present that if they had an objection they should raise their hand and she would call upon them. She advised that she would rule on the objection and it would stand unless a council member requests a vote on that ruling, in which case admissibility of the testimony would be decided by a majority vote of Council present. Mayor Garduno announced that the neighborhood boundary set by the Liquor Licensing Authority is the corporate City limits and that the application packet constitutes the exhibits for this hearing in addition to any other documents offered by the applicant. Mayor Garduno asked the applicant, Kenneth R. Geggelman, if he was satisfied with the rules and if he is representing himself. He responded affirmatively. Mayor Garduno called for opening statements from the applicants. Mr. Geggelman introduced himself as Kenneth R. Geggelman and said he resides at 1139 Sanders in Trinidad. He explained that he has purchased the building at 900 Arizona Avenue to put in a liquor store, and applied for the license on May 3<sup>rd</sup>. Prior to coming to Council on May 17<sup>th</sup>, Mr. Geggelman said he spoke to all of the neighboring businesses to make sure no one was against it. Mr. Geggelman offered 10 to 12 letters from business owners and petitions. City Attorney Beatty said he had no objection to them being submitted however suggested it be done during the presentation of evidence rather than during his opening statement. City Attorney Beatty offered under opening statements for the public's benefit of identifying the location of the proposed premise that this is the former McKenzie Plumbing building at 900 Arizona Avenue. Mr. Geggelman was advised that he may now present his evidence, the letters and petitions to Council through the City Attorney, which he did and they were passed around to City Council. Councilmember Aragon asked if the petition signatures were supposed to be gathered in the neighborhood. City Attorney Beatty reminded that the neighborhood had been defined as the corporate city limits. It is appropriate to count signatures from residents or parties of interest. Mayor Garduno commented that the letters submitted as evidence this evening were in their packet. Mr. Geggelman corrected that he only submitted three letters for their packet. If he went out and talked to businessmen before his May 17<sup>th</sup> Council appearance and they wrote him a letter, he said he didn't go back to them for petition signatures. These are all additional letters, different from those in their packet. Councilmember Shew asked Mr. Geggelman if he has ever run a liquor store, recalling him having worked for Duran Oil. Mr. Geggelman answered that he owned the Monte Cristo Bar from 1988 to 1991. Also he said he had a beer license for Loaf N Jug in 1974 and has had oversight of liquor licenses for the past 35 years, here and in New Mexico and Oklahoma. Mayor Garduno asked if he had any witnesses to testify, to which Mr. Geggelman said he did not. Mayor Garduno called for questions by the City. City Attorney Beatty advised that as a liquor license applicant in Colorado he carries the initial burden of proving that the reasonable requirements of the neighborhood and the desires of its adult inhabitants are not being satisfied by existing liquor outlets. He acknowledged the evidence provided by way of letters and petitions and asked Mr. Geggelman how many signatures were contained on the petitions. Mr. Geggelman estimated it to be around 120. City Attorney Beatty asked if he

canvassed the neighborhood. Mr. Gегelman said he picked up signatures all over town, and reiterated that he obtained the letters prior to May 17<sup>th</sup> from business people. Additionally, he named other business owners who he spoke to personally about his intent. City Attorney Beatty asked if he heard any objection. Mr. Gегelman said he did from one person, Jean Fleming, who has a yoga studio directly across the street from his proposed location. He said she expressed disappointment because the area has been so quiet since the other liquor store has been closed. He said they spoke and he thinks she's satisfied with his plan because she waves at him every day now. City Attorney Beatty announced that the Liquor Authority Board must determine if the granting of this license would result in an undue concentration of this type of license in Trinidad resulting in the need for more law enforcement resources. He asked Mr. Gегelman if he thought the license would have such a result. Mr. Gегelman answered that he did not believe that it would. City Attorney Beatty asked if he felt the needs of the neighborhood are not being met by existing establishments. Mr. Gегelman responded affirmatively and added that he feels that strongly. Trinidad isn't very big, a mile across town. This City Council and past City Councils have been generous with liquor licenses, but that they are evenly spread and no one is in much competition. The Tire Shop and Hops & Vines are probably the two closest ones, within one-half mile of each other. Both have their own customers. He surmised that there's nothing on that side of town currently. City Attorney Beatty recalled Mr. Gегelman's testimony about having been the owner of Monte Cristo and having oversight of liquor licenses in New Mexico and Oklahoma too and asked for clarification. Mr. Gегelman said that he was in charge of them, mostly recently as Vice President of Duran Oil. They also had a liquor store in Raton, an on/off premises store, however they never let anyone drink on premises. Additionally he oversaw Loaf N Jug stores, and at one time 24 stores. City Attorney Beatty asked during his tenure with Duran Oil Company and as owner of Monte Cristo Bar if he had ever been charged or convicted of a violation of liquor laws in Colorado. Mr. Gегelman said he had not. City Attorney Beatty asked if he had any formal education or experience in other types of business. Mr. Gегelman said he's a good jack of all trades. City Attorney Beatty asked if he'd be involved in the day-to-day operations of the liquor store. Mr. Gегelman responded affirmatively. City Attorney Beatty asked his security plans for the proposed premises. Mr. Gегelman said he plans to install five cameras in the store and bars on the windows, emphasizing his belief in having cameras in stores, especially liquor stores. When asked by City Attorney Beatty if he's ever been convicted of a crime, Mr. Gегelman answered that he has not. City Attorney Beatty asked about his conversations with the Fire and Police Chiefs. Mr. Gегelman said Fire Chief Perea told him he needed to seal up a room and install carbon monoxide alarms and smoke detectors. He added that he's purchased the detectors, but they are not yet installed. The Building Inspector was pretty happy with the building and he said he would take care of the Fire Department's issues. City Attorney Beatty pointed out that the Building Inspector wanted drawings. Mr. Gегelman said he submitted the drawings the second day after they were requested. City Attorney Beatty noted that Council was provided with a hand-drawn diagram of the proposed premise showing approximately one-half of the premises being used for the retail liquor store. He asked the plans for the other portion of the building. Mr. Gегelman said the plan is to open a beef jerky manufacturing plant. Upon further inquiry he advised that it will be a separate operation, to be run by a limited liability corporation leasing the space from him. City Attorney Beatty said he understands he is requesting a rezoning of the property to Community Commercial. Mr. Gегelman said he is and had been through the Planning Commission meeting last week on June 14<sup>th</sup>, noting that the Planning Commission voted to approve the zone change. City Attorney Beatty confirmed with Mr. Gегelman his understanding that should the license be granted it would not and could not be issued until the building is in substantial compliance with the Building Inspector and Fire Department. City Attorney Beatty had no further questions and Mayor Garduno opened up the questioning to the Authority. Councilmember Rino asked Mr. Gегelman if the license is granted how soon he would be able to open. Mr. Gегelman estimated that it will take him approximately two weeks to fix up the store the way he wants to. He said he's been waiting for the decision. He has to remove some tile and move a couple of walls and restated that he should be able to open in two to three weeks at the most. Mayor Garduno called upon parties in interest to pose questions. Luis Lopez was sworn in and identified himself as the owner of Hops and Vines Liquor on Santa Fe Trail. He said they are not trying to do anything against anyone in the community, they are just trying to keep their businesses viable. Both families are good people. This has to do with business and keeping business viable. City Attorney Beatty asked if he had any questions of Mr. Gегelman, otherwise if he had a statement to make there would be an appropriate time later in the hearing. Mr. Lopez returned to his seat. Michelle Miles was sworn in, identified herself and asked Mr. Gегelman if he will be selling beef jerky to the public. Mr. Gегelman answered affirmatively and upon further questioning said that it will be a separate footprint entirely. Ms. Miles pointed out that the same of beef jerky in a liquor store is illegal. Mr. Gегelman said the building is 6,400 square feet and his intent is to use about 3/10 of it for the liquor store and the rest as a warehouse and old meat market where the jerky will be processed. Ms. Miles asked if he spoke with Colorado Liquor Enforcement and if forming a separate limited liability corporation is sufficient, because she would think she could then sell cheese. Mr. Gегelman said the LLC will be leasing space from him and clarified that he is not a member of the LLC and the LLC will only be leasing the space in the building. Mayor Garduno called for presentation of the City's evidence. City Attorney Beatty introduced an analysis compiled by City staff of active liquor licenses comparing statewide concentration versus local concentration in Trinidad. He pointed out at Council's seating a slightly revised copy from that provided in their packet because Council had previously accepted an affidavit of surrender for Arizona Liquor which reduced the number of total local retail liquor stores to five. He provided Mr. Gегelman with a copy as well. He said the report reflects for retail liquor store licenses held statewide, there's one for every 3,112 Colorado residents. In Trinidad, based on the most recent population count there's one for every 1,816 residents. He added that he isn't presenting this meaning to dissuade the Liquor Authority's approval or disapproval, but merely to create a basis for their decision. He continued that this analysis indicates that Trinidad has a slightly higher number of retail liquor stores per capita than the average within the state of Colorado. Mayor Garduno asked if he had any witnesses for testimony. City Attorney Beatty advised that he had none. Mayor Garduno called for questions by the applicant for the City Attorney. Mr. Gегelman had none. Mr. Gегelman said he understands the analysis but Trinidad is kind of special. The concentration for example in Denver is a population of 8,000 people for 20 blocks. We are spread all over. Mayor Garduno asked if the Authority Members had any questions of the City Attorney. There were none. She then called for questions for the City Attorney by parties of interest. There being none, she called for evidence by interested parties. Luis Lopez reintroduced himself by name and as owner of Hops & Vines. He reiterated that this is nothing personal with the families involved who are trying to open businesses in our community. They applaud that. He told Council that six liquor store owners signed the statement. He indicated the statement having been signed by the five retail liquor store licensees in the City limits and one just out of the City limits, Penny Saver, who asked to sign it because he's a resident of the City and has had a business in the community for 20 years. He reminded Council that we are just recovering from one of the worst recessions in our Country's history as well as our City and County. He said he believes the City still has furlough days going on in the City. There's a lot less money being spent and earned in the community at this time. Mr. Lopez estimated this to be the first time in Trinidad's history of getting liquor stores together other than to beat each other up on price. He provided Council each with

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a copy of the statement and read it aloud. A copy of the letter is on file as evidence. Mayor Garduno ascertained that the applicant had no questions of Mr. Lopez. City Attorney Beatty asked if the other signatories were present and upon learning that they were he suggested it would be appropriate for them to each attest to their signature to the letter. Linda Barron, Mountain Liquor & General Store, was sworn in. She said her opinion was expressed in the letter read by Mr. Lopez. Norma Wiggins, Main Street Liquor, was sworn in. She said she's been in business for 20 years and has seen a lot of changes in Trinidad, some good and some not. She said she thinks the last thing needed here is another liquor store. Chris Velasquez, Kit Carson Liquor, was sworn in. He said he's new to the business, having only been open about seven months and it's hard enough to get a business off the ground, much less getting two more in here. They are still trying to get through it. If two more come in, he said he didn't know if he'd make it. Michelle Miles, Tire Shop Wine & Spirits, re-addressed Council and was sworn in. She said that City Attorney Beatty pointed out that the applicant has the burden of proving that the needs and desires are not being met. She reminded that it is recommended that as part of the liquor code they look at density. According to the data the current licensees pulled together, Trinidad is at more than two times that of the state average. With two more, Trinidad will go from 3.3 to 9.9, or more than three times the state average including the liquor stores right outside of the city limits. She said the only thing she heard was 100 signatures of people being submitted, representing the desires of 120 people. The needs need to be shown that they are not being met. She said the evidence shows that they are more than being met, reiterating that Trinidad has more than twice the Colorado average. Ms. Miles recalled the applicant's testimony that he feels strongly that they are not being met because there's nothing on that side of town. That's not part of the review process. The community was defined as the corporate limits of Trinidad, not that part of town. She said that her business has been open since November and she hasn't taken a distribution and has been working 60 to 70 hour weeks. Her business has not been profitable cumulatively since she's been open, adding that she's being paid in single digits, less than her least expensive employee. Ms. Miles continued that a lot of people think that the more competition there is the more the prices will go down. She said that this type of business is not a free market. She can only buy certain products from certain places. They have a monopoly. They set policy that discriminates against small stores, with what they term volume pricing. In order to get a decent price she said she sometimes has to buy in a six-month quantity of the item. If competition is increased and the pie is sliced thinner, all of them will have to raise their prices by 20 to 25% because they will not be able to take advantage of any volume pricing. It is not a consumer friendly thing to have high liquor store density rates. She said she's not asking Council to vote in her economic interest or against anyone's economic interest, rather she's asked for Trinidad not to eat its young. It is a hard business to get going. Mayor Garduno asked Mr. Geggman if he had any questions of the parties of interest. He declined. She opened up questioning of parties in interest to City Attorney Beatty. City Attorney Beatty asked Luis Lopez if he can produce the Summit Economics liquor store density analysis referred to in the letter. Mr. Lopez answered that Ms. Miles provided the information to him. Ms. Miles produced the reports and submitted them to City Attorney Beatty. They were introduced into evidence for the Liquor Authority's consideration. Ms. Miles explained that the analysis was pieced together from census data and Colorado liquor data. She assured Council that her math was accurate. Councilmember Aragon asked if her complaint is that Trinidad can't have any more liquor stores or that she doesn't want the competition. Ms. Miles responded that the applicant must prove that the needs are not being met by existing stores. She said her evidence is that they are being met. She reiterated that competition sometimes drives prices up. Councilmember Aragon suggested she needed time to review the information. City Attorney Beatty reminded the Authority that they do not have to reach a decision this evening; they can take up to 30 days to render their decision. Councilmember Pando asked if her contention is that the needs are being met because of the ratio. Ms. Miles answered that Trinidad has one of the best served populations measured by those statistics in the entire Country. She said the harder evidence (that proves they are being met) is that she is not making money. She said she has not taken a distribution. Kit Carson Liquor is having difficulty too. She continued that when she applied for license one year ago, Arizona Liquor and Kit Carson Liquor had just closed. She spoke to the testimony she presented to City Council and said she presented a lot including doing something different and pulling in traffic from the interstate, as well as demographic information and appealing to elderly people with wine. It's different this time; no one opposed her application. At this point, too much is too much. We are in trouble. City Attorney Beatty recalled the remark that increased competition sometimes drives up prices, which is contrary to the laws of supply and demand. Ms. Miles recited her educational background and said in all free markets, that is true. However, the liquor industry is not a free market system. She reiterated earlier testimony about only being able to acquire certain stock from certain places. If no one can buy in volume the result is a rise in prices to the consumer. City Attorney Beatty told Ms. Miles that one philosophy that could be adopted by the Liquor Authority is to allow whatever the market will bear within the City of Trinidad. Ms. Miles said the result could be a rise in the prices. Mayor Garduno called upon parties of interest to offer rebuttal evidence. Ted Martinez was sworn in. He stated that this is America which was founded on free enterprise and competition. If Mr. Geggman has his paperwork in order and has the wherewithal, he shouldn't be denied a license because other license holders object because he might offer competition. He said he feels that would be discriminatory and unconstitutional. Michelle Miles, Tire Shop Wine & Spirits, responded that for something to be unconstitutional it's odd that in the liquor code it specifically contemplates that for purposes of determining the issuance of a tavern or liquor store license would result in an undue concentration of the same class of license and as a result require additional law enforcement resources, the state or local authority may consider factors including but not limited to the liquor store density rate, pursuant to Regulation 47-301, State of Colorado. A copy of that regulation was submitted into evidence. She said she wishes she could buy her stock from anyone; it is not fair to her, but it is not unconstitutional. Mayor Garduno ascertained that no one else wished to present rebuttal evidence. Mr. Geggman commented that that was pretty rough, and thanked Mr. Martinez for his testimony. He said the testimony took him back to 1979 when McDonalds was coming to Trinidad. A lot of business owners fought McDonalds, the #1 sign in the United States that can pull people off of an interstate. He said he thinks the City of Trinidad has come a lot further than that. He said he thinks he showed Council that there are needs to be met. He also said he understands that Kit Carson Liquor is struggling. They came with all signatures of liquor stores. Council is not here to give them welfare. This is free opportunity. He said he is going to buy from the same places they do, he's not going to get any benefits and he doesn't expect any benefits, but he is going to work hard, market and promote and produce sales tax dollars for Trinidad. For all of this group to get together is a darn shame that our business people are like that. He reminded that he presented 15 letters of business people in Trinidad recommending his liquor store and his reputation. That hurts his reputation. He said that's his rebuttal. Mayor Garduno asked if he had any other closing arguments. Mr. Geggman declined at this time. Luis Lopez asked Mr. Geggman how many liquor store owners of this collective group he asked. Mr. Geggman answered that he didn't talk to any of them. He corrected that he spoke to Mike Romero who didn't want to get involved because of being related to someone on Council, but had previously given him a letter that Mr. Geggman didn't ultimately include to respect his position of not wanting to be involved. He said when he opened a convenience store years ago he didn't have to ask the other convenience stores if he could and it's the same now. He told the retail liquor store licensees present that they are

snakes in the grass protecting their own business who should just stand up here and say they don't want the competition. He said he wished the owner of Penny Lane were here so he could tell him too. Mayor Garduno asked City Attorney Beatty if he had any closing comments. City Attorney Beatty said Council has been presented with a wealth of evidence, a number of letters of recommendation from business owners and signatures in favor of the license issuance. They've also heard counter arguments from representatives from the local liquor industry. He reminded Council as the Liquor Authority that this is not a decision that must be rushed. They have up to 30 days to render their decision. There has been additional evidence introduced by Mr. Geggelman and by parties in interest that Council didn't have in advance of the hearing. He surmised that it is within their right to postpone their decision if they desired. Mr. Geggelman offered in his closing statement that back in December when Tire Shop Wine & Spirits got their license Luis Lopez battled that license but now they are friends in the grass. When Tire Shop's license was approved Arizona Liquor Store's license was still in effect. It wasn't rescinded until April 8th. When she applied, there were an equal number of licenses as there are now. Mayor Garduno called for closing arguments by parties in interest. There was none. Councilmember Shew called upon Police Chief Glorioso to gain law enforcement's perspective. Chief Glorioso commented that this is a tough decision and said he would just comment based on the facts. He said there are a lot of outlets but everyone deserves free competition. He opined that it wouldn't be a problem for law enforcement as there will be the same number of people buying liquor. Mayor Garduno closed the hearing and called for a motion or further discussion. Councilmember Aragon asked City Attorney Beatty if he felt comfortable or if he needed more time to review the statistics. She added that she'd like legal advice. City Attorney Beatty said it is not his decision to need additional review time. He advised that Council can call for an executive session for legal advice if they'd like or can move to postpone their decision or grant the license. Councilmember Aragon commented that she's in favor of granting the license if there's no legal liability with respect to ratio to the City. She added that her opinion is that we have too many but that's not what they heard. Councilmember Velasquez asked if Council has to make a motion on this license now because they have another hearing coming up. City Attorney Beatty reiterated that Council may postpone their decision for up to 30 days. He reminded that a motion to approve the application should be supported by a finding that the liquor authority found that the reasonable requirements, the needs and desires, warrant this new license. Mayor Garduno pointed out that there's evidence that they haven't had time to review, so they may want to consider postponement. Councilmember Toupal moved for the approval of the liquor license adding that postponing will hurt the business in getting established, and adding that the motion is supported by a finding that the reasonable requirements warrant its issuance. Councilmember Aragon seconded the motion. Councilmember Rino commented that he really thinks the needs are being met in the community. He suggested the two new licenses will saturate the community with liquor outlets, although he said he doesn't know if Council could deny the license based upon the information provided. He opined that both entities will suffer, those with licenses now and the new ones. He clarified that he doesn't think they can deny the license approval based on what they heard tonight. Councilmember Pando commented that he felt the same way in that the needs are being met but as a business man he is pro-business. He said he has a hard time turning down someone wanting to go into their own business and pursue it. He added that he thinks the needs are being met but questioned if they should deny someone the right to enter into private ownership of a business. City Attorney Beatty clarified that the Liquor Authority is acting solely on the application of Kenneth R. Geggelman at this point. Roll call was taken on the motion and the following votes were cast:

Aye – Aragon, Rino, Shew, Toupal, Garduno

Nay – Pando

Abstain – Velasquez

The motion carried and the license was approved.

New retail liquor store request by Robinson Liquor, LLC d/b/a Arizona Liquor Store at 847 Arizona Avenue. Mayor Garduno called the hearing to order and announced that she would be presiding over the hearing. She stated the purpose, an application for the issuance of a new retail liquor store license filed by Robinson Liquor, LLC d/b/a Arizona Liquor Store, for a retail liquor store to be located at 847 Arizona Avenue, Trinidad, Colorado. Mayor Garduno then instructed those present on the order in which evidence and testimony would be heard as follows: Opening statements or remarks from the applicant followed by the same by the City Attorney, then applicant's evidence and testimony of witnesses. Next she advised that she would call for the City's evidence and testimony of witnesses. She then advised that she would thereafter call for a presentation of evidence and any testimony of witnesses by any party in interest. Rebuttal evidence would then be called for and finally closing arguments by the applicant, the City and any party in interest. Mayor Garduno said that the hearing would then be closed and she would call for a motion and discussion. She additionally advised that an executive session may follow the hearing, or the authority may choose to postpone its decision on the matter for a period of up to 30 days. She asked anyone who was going to testify to come forward and be administered the oath and said she reserved the right to limit testimony or questioning that was repetitive, cumulative, or argumentative and to set a limit on the duration of testimony if necessary. Also, formal rules of evidence would not be followed and the testimony and exhibits will be liberally admitted. She told those present that if they had an objection they should raise their hand and she would call upon them. She advised that she would rule on the objection and it would stand unless a council member requests a vote on that ruling, in which case admissibility of the testimony would be decided by a majority vote of Council present. Mayor Garduno announced that the neighborhood boundary set by the Liquor Licensing Authority is the corporate City limits and that the application packet constitutes the exhibits for this hearing in addition to any other documents offered by the applicant. She stated that the applicant is a Colorado limited liability company wholly owned by Gregory R. Robinson. Mayor Garduno asked the applicant, Gregory Robinson, if he was present and if he was satisfied with the rules. Mr. Robinson responded affirmatively. Mayor Garduno called for opening statements from the applicant. Mr. Robinson offered by way of an opening statement that his family has been doing business in this area for 50 years, maybe more. He said he would like an opportunity to run a business in Trinidad. He said he's been here for 30 years, all of his life, and reiterated his desire to run a business in Trinidad. City Attorney Beatty offered for the public's benefit that the application filed by Robinson Liquor, LLC pertains to the former Arizona Liquor Store at 847 Arizona Avenue. Mayor Garduno called for the applicant's presentation of evidence and testimony of witnesses. Mr. Robinson presented petitions. He said he and his wife went out in the area of Arizona Avenue, Colorado Avenue and the surrounding areas and gathered over 150 signatures from almost every house in that area. He said being that he talked to all those people he got signatures from, they told him that the requirements are not being met by other retail liquor stores in the area. He was told that it would be nice to walk out their door and walk down the street to get what they need instead of having to go across town to get what they need. Mayor Garduno asked Mr. Robinson if he had any witnesses to testify. He had none. Mayor Garduno asked for questioning by City Attorney Beatty of the applicant. City Attorney Beatty said he had no objection to the admissibility of the petition. He noted that the application was submitted by Robinson Liquor, LLC, a Colorado limited liability company, and asked Mr. Robinson if he is 100% owner of the LLC. Mr. Robinson responded affirmatively. City Attorney Beatty asked if he is at

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least 21 years old. Mr. Robinson said he is. City Attorney Beatty asked if he ever operated a liquor licensed business. Mr. Robinson said he has not. City Attorney Beatty asked if he's had any formal education or experience in the operation of other types of business. Mr. Robinson said his family does. He elaborated that his uncle owns and operates Al's Gas Service and his father owns and operates a saw mill and trucking business. He added that they will be assisting him if he needs help, and further elaborated that he has worked for his family. City Attorney Beatty asked if he will be involved in the day to day operation of the business, to which Mr. Robinson assured he would. City Attorney Beatty asked if he has any familiarity with State and local liquor laws; Mr. Robinson said he's read the book. City Attorney Beatty asked his plans for security. Mr. Robinson said he will be in contact with the Trinidad Police Department to ask for patrols of the area during certain times, if they can, and he intends on installing five security cameras. There are already bars on the building. City Attorney Beatty said Mr. Robinson has answered this forthcoming question in part. He reminded that the applicant has the initial burden of proving that the requirements of the neighborhood and desires of its adult inhabitants are not being satisfied by existing outlets. He acknowledged the signatures presented and that Mr. Robinson personally witnessed a need in the community. He asked if he had any other evidence or testimony. Mr. Robinson reiterated that he spoke to people in the community, going door to door, who said they'd like to have Arizona Liquor Store open again. He also reiterated that he gather about 150 signatures. City Attorney Beatty asked if anyone was in opposition to the license issuance. Mr. Robinson said there were two people, one was because Ken Gegelman was trying to open and the other said he/she didn't drink so he/she didn't want to sign it. City Attorney Beatty said that the Liquor Authority must determine if the issuance of this license will result in an undue concentration of liquor stores in Trinidad requiring an increased need for law enforcement resources. He asked Mr. Robinson if he believed his store would result in an undue concentration in the City. Mr. Robinson answered that he didn't think so, he thought it would be fine. He pointed out that it had previously been an established business at that location for quite some time, more than 40 years as a liquor store. He continued that had it not been for the untimely death of Carl Veltri, he believes Arizona Liquor Store would be open to this day. Mr. Robinson said he had an opportunity to talk to the owner of the building about re-opening the liquor store. City Attorney Beatty asked Council as the Liquor Authority to take judicial notice of the letters of character reference provided on behalf of Gregory Robinson. City Attorney Beatty asked Mr. Robinson if he's ever been convicted of a crime. Mr. Robinson answered that he has not. Councilmember Aragon asked Mr. Robinson if he's buying the building to which Mr. Robinson replied that he is going to lease it for one year with the option to buy. He added that he didn't want to get too deep before he got an approval. There being no further questions by the authority and none from parties in interest, Mayor Garduno called for presentation of the City's evidence. City Attorney Beatty said he would like to reintroduce his Analysis of Active Statewide versus Local Concentration of Liquor Licenses pursuant to the most recent numbers available from the 2010 U. S. Census for the City and the state license reporting. He asked that they take notice as it regards this type of license, retail liquor stores, the statewide population is 3,112 per license. Trinidad's concentration based on the figure of five licenses that the city had at the start of the evening is 1,816 people per license. He provided a copy of the analysis to the applicant, Mr. Robinson. He called on Chief Glorioso to testify. Chief Glorioso was sworn in. City Attorney Beatty reminded that the liquor authority is charged with determining if the issuance of this license will result in an undue concentration of liquor stores within the corporate limits of the City. He asked the Chief for his opinion. Chief Glorioso said his opinion is that people will continue to buy, it will just be spread out, adding two more. The population buying will not increase because there are more places, and it will hurt the other businesses. Mayor Garduno ascertained that neither the applicant nor the authority had questions of City Attorney Beatty. Councilmember Rino commented that he doesn't know if this can be considered a new license. Historically a license has been there, for probably 50 years and still would be had Mr. Veltri not passed away. This is a new license under a different name, but the license has been there. City Attorney Beatty clarified that this is a new license because Council had previously received and accepted an Affidavit of Surrender of the previous liquor license. Mr. Robinson added that he would have gotten in with an application earlier but couldn't due to the fact that the previously lease wasn't up until April, so he couldn't before then. Mayor Garduno called for questions from parties in interest for the City Attorney. Michelle Miles was sworn in and stated her name for the record. She asked if it's possible to say the needs of the community are being met by existing establishments and still grant a license. City Attorney Beatty answered that as it pertains to this public hearing, Council is charged with weighing all of the evidence presented, including petitions and statements to the effect that the needs are not being met. The Liquor Authority is charged with making a number of determinations. If a motion to approve the license is made, it is supported by a conclusion that the needs are not being met by existing establishments, therefore warranting the issuance of the new license. Ms. Miles said there was evidence presented about liquor store density and the other evidence as well and it has to be weighted. She said if at the end of this hearing they say the needs are being met they will have contradicted themselves by voting for this new license. If they feel the needs are being met they are not supposed to vote for it; it seems contrary to the application process. City Attorney Beatty stated that statements made during discussions of application. However if a motion is made to approve the license it is based upon a conclusion on the needs are not being met. Ms. Miles argued that if someone says or declares that the needs are being met then they should be voting according to the law. City Attorney Beatty said he respects the autonomy of the Council members and they can make statements, but they are balancing the factors that they must consider. Applicants only have the initial burden of proving the needs are not being met by existing outlets. She said the only evidence she heard was 120 signatures and that it would be nice not to have to drive across town. If the needs are being met the license should not be granted, arguing that according to the liquor density they are. Councilmember Rino said the comment was that maybe the needs are being met at this time, but he said he doesn't feel that gives him the right to vote no based on that. They still have the right to open the business and he doesn't want to discriminate. He added that he has the right to vote for it if he applied for the license and his character is there. Ms. Miles suggested what Councilmember Rino is saying is that the law says one thing and but he can vote any way he wants. Councilmember Rino said that her figures don't mean it's being met. He can have an opinion as to whether they are, but that doesn't mean it's true. Ms. Miles told City Attorney Beatty that statements have been made that the needs are being met and he should instruct them to vote against the license pursuant to what the law reads. City Attorney Beatty reiterated that the applicant has the initial burden to establish that the needs are not being met. City Council can determine and can make statements that might seem to contradict that determination. If they reach a conclusion in support of finding that the needs and desires warrant issuance of the new license then that is the determination. Ms. Miles further argued that if in Council's heart of hearts they feel the needs are being met the law shows they should vote against the license. City Attorney Beatty said he understands her point. Norma Wiggins, Main Street Liquor, testified that she's been in business for 20 years. She asked the applicant if he went City wide with his petition or just in the area of Arizona and Colorado Avenues. Mr. Robinson said he went City wide, however mainly in the Arizona, Colorado Avenue areas. Councilmember Rino said he saw signatures from Aiello Street, Saddle Road, Seventh Street, College Street, etc. Ms. Wiggins stated that there are enough liquor stores in Trinidad and that Trinidad has double the numbers of liquor stores than average of Colorado's population. The City is already saturated with liquor stores and we need to encourage other

businesses to come into the community. We need competition in other areas. Mayor Garduno asked if there were any questions of the City Attorney. Mr. Robinson recalled the question posed to Kenneth Geggelman about how long it would be before he could open and he answered two to three weeks. Mr. Robinson said his building is ready to go. Both the Fire Department and Building Inspector have approved it. He said he can have it ready in one week and be getting revenue for Trinidad in that time. There being no further questions, Mayor Garduno called for rebuttal. There was none and she called for evidence from interested parties. Michelle Miles, Tire Shop Wine & Spirits, said she's not going to rehash the issues, but said they clearly saw the needs and requirements are being met and the liquor store density ratio doesn't lie. The fact is that Colorado is the fifth highest in the nation and Trinidad has two times the density, about to be three times that. The only evidence presented was 120 signatures. She suggested she could get 120 signatures from people to kill all the dogs in Trinidad. She said her evidence is clear and compelling. She suggested that the license approval could actually reduce sales tax. City inhabitants will not drink more or less. It is not possibly going to increase sales tax revenue. She said if she has to increase her prices and sells less it will not. Ms. Miles spoke to her interstate business and said her store leaves a favorable impression on travelers. She asked the proximity in relation to Trinidad State Junior College. City Attorney Beatty said it is outside of the 500 foot-limit. Ms. Miles reiterated that if the conclusion is that the needs are being met and there's compelling evidence, the law says you must vote against the license. Mayor Garduno asked Mr. Robinson if he had any questions to Ms. Miles. Mr. Robinson did not. City Attorney Beatty asked Ms. Miles since this is a new public hearing if she wished to reintroduce her evidence from the previous hearing. Ms. Miles did, and City Attorney Beatty had no objection. Ms. Miles said her points made in the previous hearing apply to this one with the statistics being off by one now with the approval of Mr. Geggelman's license. Mayor Garduno called for rebuttal evidence. Steve Robinson, Gregory Robinson's father, addressed Council and was sworn in. Mr. Robinson said he has six sons. Their family has seven generations in Las Animas County and the surrounding areas of Trinidad. He said all of his sons have had their own business. Greg is his youngest son who he said he's proud of and his wife who works for him at the saw mill. Mr. Robinson said he is asking Council for the opportunity to get these young entrepreneurs to get their feet wet and run their own business. He added that he doesn't believe in protectionism. We are all working harder for less money than we did ten years ago. The community is strong and competition is good. City Attorney Beatty declined questioning Mr. Robinson. Mayor Garduno called for closing arguments. Greg Robinson said he would like the opportunity to run a business in Trinidad if Council would take it into consideration. City Attorney Beatty offered that the Liquor Authority board heard a wealth of evidence both in support and against the application filed by Greg Robinson for a new retail liquor store license. Mr. Robinson's evidence included petition signatures along with his statements to the effect that he believes the needs and desires warrant the issuance of the new license. He pointed out that they heard evidence from parties in interest to the contrary and a statement signed by representatives from the local liquor industry. City Attorney Beatty reminded the Liquor Authority board that they need not be rushed into a decision as it regards this application as they can take up to 30 days and if they desire additional legal advice they can hold an executive session for the same. Mayor Garduno called for closing arguments by parties in interest. There being none, she declared the public hearing closed and called for a motion or discussion. Councilmember Aragon moved to accept the request for the liquor license supported by a conclusion that the reasonable requirements of the neighborhood and the desires of its adult inhabitants warrant the issuance of this new license. Councilmember Shew seconded the motion. Councilmember Aragon told Council that two or three years ago she called the state liquor licensing authority about the law who told her that it is entirely up to City Council to issue a license or not. City Attorney Beatty agreed with the interpretation that Council has broad discretion. Roll call was taken and the following votes were cast:

Aye – Aragon, Rino, Shew, Toupal, Garduno  
 Nay – Pando  
 Abstain – Velasquez

Councilmember Pando commented that the reason for his nay vote is that young people need an opportunity to open their own business and take chances, but he felt the evidence proved the needs are being met by existing establishments.

**PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN.** Ted Martinez addressed Council opposing the proposed gas rate increase. He said Council and the City Administration is supposed to be in charge of the City's money and spending on projects to benefit the majority not just a few. He said the golf course benefits only a few and is a total waste of money. It is customary to get a grant before you start building. It shouldn't fall on the residents. It is up to City Council to look out for our best interests. He said people can't afford for them to be taxing them any time you need money and people are tired of it. He suggested that the City Manager, City Attorney, and City Council, whoever voted for this take a 10% cut in salary and apply it to the gas increase. Councilmember Rino corrected that the purchase of the clubhouse was done from money in the Capital Improvement fund which can't be used for salaries or any utilities. The citizens voted for it for that reason. He said they feel the clubhouse is a capital improvement because the City owns the golf course itself and they are hopeful that in the next few years it will generate funds so that the City doesn't have to subsidize the Golf Association. Mr. Martinez said the City isn't supposed to subsidize private business. Councilmember Rino said it is not. The lottery funds are being used on those things that are eligible on the golf course, which the City owns, just as it does with the other parks. Mr. Martinez said the other parks don't have restaurants and that City is not in the real estate or development business. A grant hasn't been approved yet. He said he read in the paper that the City is going to go ahead with improvements and then apply for a grant. Generally you do that before you spend the money, not after. City Manager Gil de Rubio responded that the City is not seeking a grant for the current renovations to the building. There are still areas of improvement that they will seek future grant to attain. Councilmember Aragon elaborated that they are not doing everything at one time. Mr. Martinez asked how they can afford the gas increase. City Manager Gil de Rubio explained that the gas increase is to pay for the gas, the product. The City already purchased it but didn't pass the cost down to the consumer. Therefore the gas department has a deferred expense. They have to write it off or pay a part back. Mr. Martinez asked who Council and the City Manager are accountable to and where does the public come in. City Manager Gil de Rubio said he is accountable to Council and Council to the public and that the public can be heard during the public hearing on the gas increase or at voting time for Council. Every public meeting is open to the public. Mr. Martinez said the public knew this was coming. Mr. Martinez said Trinidad citizens were paying three times more than La Junta back in 2008 and the City came up with a lame excuse as to why. He asked if the City is still using the turbines at the Power Plant. City Manager Gil de Rubio said we are only for emergency situations. Mr. Martinez concluded that the residents can't afford any more hits. It is hard enough with prices going up and no cost of living increases. He concluded that he thinks the City needs to tighten its belt like everyone else.

**REPORT BY CITY MANAGER.** Financial reports. City Manger Gil de Rubio handed out the financial reports

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for the City ending May 31, 2011. He pointed out that there is included an additional attachment tracking sales tax pursuant to Councilmember Rino's request for information. The year-to-date sales tax report indicates an approximate 7% increase. He then quickly reviewed the financial reports. He said the General Fund is pretty healthy with more than \$374,000 as a fund balance, which is skewed because of property tax influx. The actual fund balance is about \$95,728. Councilmember Rino asked that at the next work session Utilities Supt. Fernandez give an estimate on the cost of repairs to North Lake dam. He said he feels it is critical. If the City doesn't do something soon and we have to drop the lake by 500 acre feet and as dry as it has been and if it continues all summer we can be in a serious problem. They may need to look at it within the City's finances. They've been talking about a grant from the Federal government for the past five years. It doesn't look like we'll be getting the grant money. City Manager Gil de Rubio reminded Council that in December he suggested they wait until March to find out about grant funding. DOLA funding has dried up. He added that Utilities Supt. Fernandez has applied for a grant in the amount of \$795,000 and attached to the grant was an itemized cost for the construction to fulfill the requirements for the actual cost which he'll provide to Council. The grant was to the Colorado Water Conservation Board. Supt. Fernandez said they will be having a preliminary hearing at the Arkansas Basin Roundtable meeting the second week in August. Councilmember Rino reiterated that Council needs to know the cost. City Manager Gil de Rubio said he is exploring the possibility of a USDA low-interest loan. Councilmember Aragon asked for the cost to treat the water per day. She suggested the City's treatment cost of that 500 acre-feet being offset be given to the citizens in the form of free water. Supt. Fernandez said that if the City releases that water from North Lake, the water attorneys advised the City to contact the water commissioner to see if we can get credit into Trinidad Lake. Councilmember Rino asked if the City could store it in the City's pool if we have to and use it for augmentation. Supt. Fernandez said if we can.

**REPORT BY CITY ATTORNEY.** City Attorney Beatty reminded that regarding the proposed Home Rule Charter amendments, Tami Tanoue from CIRSA and City Council had agreed to hold at least one public forum. He said he is looking at the evening of Tuesday, July 12<sup>th</sup> for the forum, but has not yet confirmed Ms. Tanoue's availability, if Council has no objection.

**COMMITTEE REPORTS.** None.

**UNFINISHED BUSINESS.** Public hearing for consideration 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. Mayor Garduno declared the public hearing open and called for comments for or against the ordinance. There being none, the hearing was closed.

Second 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. The ordinance title was read aloud. A motion to approve the ordinance on second reading was made by Councilmember Rino and seconded by Councilmember Shew. The motion carried unanimously.

#### ORDINANCE NO. 1914

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 for consideration 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". Mayor Garduno declared the public hearing open and called for comments for or against the ordinance. David Barrack, property owner in the historic preservation district, addressed Council. He reminded them that at the last meeting he asked their consideration in amending the ordinance to allow vehicle repair in the district to be a use by right. Councilmember Aragon asked if this can be done through zoning and Planning Commission or does this have to be done in some form of amendment to the ordinance. City Attorney Beatty said that the Planning Commission devoted many hours and hearings to this ordinance and Planning Director Fineberg provided leadership for that endeavor. The ordinance is as was approved and recommended by the Planning Commission however he pointed out that it is within City Council's discretion to make amendments to the proposed ordinance. He further clarified that David Barrack is seeking a very simple amendment to Section 14-88.3, Uses, Page 4 of 16 in the table, under vehicle repair from a 'C' to a 'P', conditional use under vehicle repair being changed to a use permitted by right. Councilmember Rino said he thought Council discussed it at the last meeting. Mr. Barrack said it was discussed but no one made a motion to make the change in the ordinance and it was passed as proposed by the Planning Commission. Consequently, he said he was back hoping they'd make the change from conditional use to permitted use. Mayor Garduno asked if Council can approve the ordinance on second reading with that proposed amendment. City Attorney Beatty answered that they can. The hearing was closed.

Second 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 "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". The ordinance title was read aloud. Councilmember Pando moved to approve the ordinance as presented with an amendment to proposed Section 14-88.3 to make vehicle repair a use permitted by right rather than a conditional use. The motion was seconded by Councilmember Shew and carried unanimously upon roll call vote. The ordinance was approved and will become effective on July 1, 2011.

ORDINANCE NO. 1915

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 "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"

Public hearing for consideration 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. Mayor Garduno declared the hearing open and called for comment for or against the ordinance. There was none and the hearing was closed.

Second 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. City Attorney Beatty commented for the record that their Council packets included an ordinance as initially presented to increase the gas supply charge to \$.5638 per 100 cubic feet of gas. He reminded Council that they've seen a lot of documents from McFadden Consulting and from the City. It boils down to the calculation on the second page of item 7c - forecasted gas cost of \$2,617,556.61 plus a deferred gas cost in the amount of \$818,447.36, pursuant to Gas Tariff No. 1, divided by forecasted gas sales in the amount of 6,094,075 ccf, which equals the stated figure of \$.5638 per ccf. He continued that as directed by City Council he also included an alternate version of the ordinance in the packet which involves not re-cooperating all of the gas cost for 2010, pointing out that it is labeled 50% version. That ordinance shows the increase to \$.5091 per ccf rather than \$.5638 per ccf. In support of that alternate gas supply charge calculation, the deferred gas cost within Gas Tariff No. 1's formula reduces by \$333,000. He added that the first ordinance as presented to increase the gas cost to \$.5638 per ccf is recommended by City staff. Councilmember Pando commented that there's not much difference between the two. The ordinance title was read aloud. Mayor Garduno said this was one issue she really lost sleep over. It's a difficult issue that she said she's not prepared to vote one way or another on, although Council needs to do something. Without the increase she said she knows the consequence; she also knows the impact on businesses and residents. It may not be large but when you get the utility bill whatever is there is still very difficult given the fact that we have so many unemployed people struggling to pay their bills now. She concluded that her brain tells her one thing and her heart tells her something else. Councilmember Aragon moved for the approval of the ordinance as originally presented to increase the gas supply charge to \$.5638 per ccf. The motion was seconded by Councilmember Toupal. Roll call was taken and the following votes were cast:

Aye - Aragon, Shew, Toupal

Nay - Pando, Rino, Velasquez, Garduno

The motion failed. City Attorney Beatty asked Council to consider the alternative ordinance of a 50% increase to \$.5091 per ccf so as not to collect all of the gas cost from 2010. Councilmember Toupal moved for the approval of the ordinance amending the gas supply charge to \$.5091 per ccf. Councilmember Aragon seconded the motion. City Manager Gil de Rubio reminded Council of the legalities associated with that motion, especially retroactive rate making. City Attorney Beatty reminded Council of a memorandum he issued regarding this issue that advised in essence they would be writing off \$333,000 in deferred gas costs from 2010 which could not be easily recovered and not through the gas supply charge in the future. Councilmember Rino asked City Attorney Beatty if he was here when they had the gas lawsuit and settled that suit. City Attorney Beatty said he was here to finalize it. Councilmember Rino asked if they were at liberty to talk about it. City Attorney Beatty answered that they are not. Councilmember Aragon asked if this will affect the City's ability to bond and borrow money. Can they justify it? City Attorney Beatty said it just reduces the gas department's reserve fund. Councilmember Aragon confirmed that it will be gone forever. City Manager Gil de Rubio cautioned that it could be considered retroactive rate making once the amount outstanding on the books is re-cooperated. The question becomes do you continue with that rate. Councilmember Aragon asked if they increased the gas rate how long that rate would have been in effect. City Attorney Beatty answered that it would have been in place for one year so long as the gas stabilized. Councilmember Aragon said she didn't feel fully informed and doesn't feel they made the right decision. City Manager Gil de Rubio said Council has to do something. Councilmember Aragon asked about alternative rates like 80% or 70%. City Attorney Beatty reminded that the 50% version was at Council's suggestion and he doesn't have the calculations prepared for alternate rates. City Manager Gil de Rubio also reminded that Council has to give a directive to the City's auditors by the end of this month or the City will not get a clean audit. He continued that he's very sensitive to the cost they are talking about here. City Council made a gamble back in November to not increase the rate to \$.47 and it didn't pay off. He questioned why they'd gamble again especially when talking about retro-rate making consequences in the future. Not for this amount, it doesn't make sense. Councilmember Rino said the amount they are looking at is \$666,000. City Manager Gil de Rubio clarified that it is between \$.50 mills or \$.56 mills. Councilmember Rino said it is a 30% increase in the gas bill, which is a pretty good increase for people in this community. City Manager Gil de Rubio said that's because it wasn't increased in November. Councilmember Rino said the reason he voted the way he did in November was because the gas fund had a surplus. That money has been paid out and it not owed to anyone, just ourselves (gas fund). It's not a bill we are

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getting from the gas company. We've already paid it out. Councilmember Toupal called for the question. Roll call was taken and the following votes were cast: Aye – Aragon, Pando, Shew, Toupal, Velasquez  
Nay – Rino, Garduno

The motion to approve the ordinance as amended on second reading carried by a majority vote. The ordinance was approved and will become effective on July 1, 2011.

ORDINANCE NO. 1916

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

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**MISCELLANEOUS BUSINESS.** Hotel and restaurant with optional premises liquor license renewal request by Trinidad Golf, LLC d/b/a Cougar Canyon Golf Links at 306 Fairway Court. Councilmember Aragon moved to approve the license renewal. City Attorney Beatty pointed out that this is a request for a hotel and restaurant license with optional premises. The applicant has indicated ownership of the premises. He asked that the applicant to clarify on the status of ownership. Karl Gabrielson on behalf of Trinidad Golf, LLC answered that Cougar Canyon Golf, LLC still has a lawsuit in Federal Court arguing that the LLC still owns the course, in their attorney's opinion. City Attorney Beatty asked if they are owner of record. Gabrielson said he wasn't sure which entity owns it. City Attorney Beatty said he is under the impression that the golf course is currently titled to National Servicing Administration, LLC's entity and Trinidad Golf owns the hotel and restaurant premises. His question is just with the golf course. Mr. Gabrielson said had he been asked prior to coming tonight he could have presented documentation. City Attorney Beatty said the question was posed by the City Clerk. He recommended Council postpone the renewal application for clarification on ownership. A motion to postpone consideration of renewal was made by Councilmember Toupal. The motion was seconded by Councilmember Shew and carried by a unanimous roll call vote, excepting Councilmember Pando who cast a dissenting vote.

Special events permit (malt, vinous and spirituous) request by A. R. Mitchell Memorial, Inc. at 150 E. Main Street for July 9 and July 21, 2011. A motion to approve the permit request was made by Councilmember Shew and seconded by Councilmember Velasquez. The motion carried by a unanimous roll call vote.

Special events permit (malt, vinous and spirituous) request by Mt. Carmel Health, Wellness and Community Center at 911 Robinson Avenue for July 16 and July 17, 2011. Councilmember Toupal moved for the approval of the permit and the motion was seconded by Councilmember Shew. Councilmember Pando asked if the building will be ready, to which Chris Simpleman responded affirmatively. Roll call was taken on the motion, which carried unanimously.

Retail liquor store license renewal request by Opera House Wine & Spirits, LLC d/b/a Tire Shop Wine & Spirits at 601 W. Main Street. Councilmember Shew moved for the license renewal. Councilmember Pando seconded the motion, which upon roll call vote carried unanimously.

Consideration of request by Sara Ferguson and Kim Krisco for a ¾" extraterritorial residential water tap. Supt. Fernandez said he recommended approval of the request. A motion to approve the tap was made by Councilmember Shew and seconded by Councilmember Pando. The motion carried by a unanimous roll call vote of Council.

First reading of an ordinance of the City of Trinidad, Colorado, amending an addition to the International Residential Code, 2009 Edition, pertaining to carbon monoxide alarm requirements, and setting a hearing date for consideration of said ordinance. The ordinance was introduced by Councilmember Shew and then 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 July 5, 2011 was made by Councilmember Toupal. Councilmember Velasquez seconded the motion, which carried unanimously upon roll call vote.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF TRINIDAD, COLORADO, AMENDING AN ADDITION TO THE INTERNATIONAL RESIDENTIAL CODE, 2009 EDITION, PERTAINING TO CARBON MONOXIDE ALARM REQUIREMENTS

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Approval of Statement of Work for support of the Colorado Welcome Center. This item was considered at the onset of the meeting.

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

**PAYROLL,** May 28, 2011 through June 10, 2011 and June 11 through June 24, 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 Toupal and seconded by Councilmember Shew. The meeting was adjourned by unanimous vote of Council.

ATTEST:

JENNIE GARDUNO, Mayor

AUDRA GARRETT, City Clerk