

Minutes of the Emergency Meeting of the Gallup City Council, City of Gallup, New Mexico, held at Gallup City Hall, 110 West Aztec Avenue, at 2:00 p.m. on Tuesday, April 14, 2020.

To comply with the New Mexico Open Meetings Act and the Public Health Order issued by the New Mexico Department of Health, the meeting was conducted through the use of a virtual meeting platform and was streamed live through YouTube for public access.

The meeting was called to order by Mayor Jackie McKinney. Upon roll call, the following were present:

Mayor:	Jackie McKinney
Councilors:	Linda Garcia Michael Schaaf Yogash Kumar Fran Palochak
Also present:	Maryann Ustick, City Manager Curtis Hayes, City Attorney

Mayor McKinney welcomed newly elected Councilor Michael Schaaf. He also welcomed Mayor-Elect Louis Bonaguidi who was also in attendance.

Presented to the Mayor and Councilors for their approval was the following Discussion/Action Topic:

- 1. Ordinance No. S2020-3; Emergency Ordinance Establishing a Curfew for Individuals and Businesses and to Ban the Sale of Alcohol by Certain Outlets to Aid in Stopping the Spread of the COVID-19 Virus During the Period of the Declared Emergency – Curtis Hayes, City Attorney**

Mayor McKinney said public comment regarding the proposed ordinance will be taken by telephone after the presentation by Mr. Hayes, with input by Chief Jesus “Chuy” Morales of the Gallup Fire Department and Chief Franklin Boyd of the Gallup Police Department. Mayor McKinney provided updated information regarding the COVID-19 pandemic regarding the increasing number of COVID-19 cases in the county, the number of City employees who have tested positive for the virus and the work being done to isolate transients being tested for the virus. Mayor McKinney said municipalities in New Mexico have the authority to adopt ordinances that are not inconsistent with the laws of New Mexico that provide for the safety and preserve the health of the municipality and its citizens. The State’s Public Health Order provides that it does not restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

Mr. Hayes said one of the underlying goals or philosophies in the proposed ordinance is

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to reduce the incidents of unnecessary social contacts. The proposed ordinance has many proposals for the Mayor and Councilors to consider; therefore, it is easier to remove language from the ordinance than try to write additional language to the ordinance during the course of the meeting. Mr. Hayes provided an overview of three substantive sections of the ordinance: 1) public curfew; 2) closure of businesses during the curfew; and 3) alcohol sales restrictions. The proposed ordinance would impose a public curfew within the city of Gallup beginning at 8:00 p.m. each evening and continuing until 5:00 a.m. the following morning. The ordinance provides exemptions for the following: personnel employed by any governmental entity while in the conduct of their official duties; personnel employed by a private entity engaged in providing essential services; persons that are traveling to and from a hospital or other health care facility or business that provides veterinary services; and persons traveling through Gallup on an interstate or state highway. The proposed ordinance requires businesses and non-profit entities that provide products or services directly to the public to remain closed between the hours of 8:00 p.m. and continuing until 5:00 a.m. the following morning. The ordinance provides exemptions for the following: businesses or non-profit entities providing products or services which must be provided during the hours the curfew is in effect in order to prevent the loss of human or animal life, injury to persons, injury to animals, or significant damage to property; convenience stores may sell fuel during the hours of the curfew, but no other product or service may be sold and customers may not be allowed into the retail space of business; truck stops are exempt from the closure of any part of the business; and fast food and restaurants that have a drive up window or curbside pickup service are exempt from the business closure curfew. Section 5A of the ordinance duplicates the provisions under the State's Public Health Order requiring liquor stores to be closed during the period of the declared emergency; however, Section 5B requires convenience stores that hold a dispenser's license, to be prohibited from selling alcoholic beverages at any time on any day of the week until such time the Governor revokes the Public Health Order. The reasons for the provisions under Section 5B of the proposed ordinance, is due to the significant population of homeless individuals that purchase alcoholic beverages at convenience stores and then consume and share alcoholic beverages with other similarly situated individuals in groups that do not maintain adequate social distancing and engage in behaviors that significantly increase the risk of spreading the COVID-19 virus. The only place remaining place in Gallup where alcoholic beverages may be sold are the grocery stores. Generally, grocery stores have security in place that are better equipped with enforcing social distancing requirements. Mr. Hayes explained the definition of a convenience store, which is included in the proposed ordinance, as well the provisions for penalties and enforcement of the ordinance.

Fire Chief Jesus "Chuy" Morales, the City's Emergency Manager, expressed his concerns for the well-being of his personnel, their families and the community. Although there is

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an isolation order by the Governor, people are not doing what they need to be doing since there is a high number of social interactions in the community. He said residents need to stay indoors especially if they are not conducting essential business or activities. He said anything that the public can do to help prevent the spread of the virus is appreciated by public safety officials.

Chief of Police Franklin Boyd said this epidemic has created a very huge and unique problem for the Police Department in enforcing the New Mexico Detoxification Reform Act. He said before the pandemic started, it was already challenging to deal with this issue regarding intoxicated persons and taking them into protective custody. They have responded to calls for service regarding intoxicated individuals, whether they are arguing, fighting, aggressively panhandling or passed out in the streets. The New Mexico Department of Health has limited the capacity of those admitted to the detox center at the Na’Nizhoozi Center, Inc. (NCI) to 20 individuals; however, the detox center was closed last night due to issues with manpower. Chief Boyd provided an overview of the challenges faced by his department regarding the enforcement of the Act. His department transports inebriates to the hospital, if they need medical attention, or book them at the detention center, if they are charged with a crime; however, the detox center is closed, the hospitals are at capacity and the detention center imposed restrictions on the individuals to be booked. Since there is no longer a place to take intoxicated individuals, the Police Department’s hands are tied when it comes to enforcement of the Act. Chief Boyd said matters are now worse in dealing with the homeless or transient population since it has caused a pandemic within the pandemic. Through the Department of Health’s contact tracing, they have determined that at least six police officers came into contact with individuals who tested positive for the virus and which resulted in multiple officers being quarantined and tested. None of the officers’ test results were positive; however, the problem is going to become unsustainable for police officers due to the continuous contact with individuals and having to be tested and quarantined.

The following members from the public commented on the proposed ordinance via telephone:

Levi Saucedo said alcohol sales should also be prohibited at grocery stores also because people are not following social distancing guidelines in the customer lines at grocery stores. He said a curfew for businesses is not a bad thing, but expressed concerns with non-essential businesses that are open.

Sandra Evan asked if there will be restrictions in the amount of liquor grocery stores will be allowed to sell. She feels with convenience stores not being able to sell liquor, there will be more high risk people who have been infected with the virus coming into contact

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with those buying groceries at the grocery stores. She also expressed concerns with increasing the risk of exposure to the checkout clerks at grocery stores.

Mervyn Tilden said he believes the City should work together with the Navajo Nation.

Salvador Nava said the proposed ordinance establishing a curfew is not what the people of Gallup require to prevent the spread of the COVID-19 virus. He believes if a curfew were to be imposed, it will require enforcement of the ordinance which will redirect people and resources from the Police Department and potentially exposing them to the virus. Mr. Nava said the virus has nothing to do with alcohol and the focus should be placed on the transient population.

Michael Sanders said on April 4th, the Gallup Independent reported that the CEO of RMCH fired 15 critical care personnel. He said there has been nothing done in the community to replace the 15 positions at the hospital during the pandemic. Mr. Sanders also referenced another news article where the CEO wants to cut wages for the doctors and nurses at the hospital. He expressed his concerns with punishing people who follow the rules by limiting the sales of alcohol.

Marcus Valentine asked about the criteria for lifting the curfew if a curfew is imposed. He said if the transient population is the problem, he recommended isolating the problem by rounding up people who are in groups of five or more to have them tested and isolated if needed.

Angela Olive said the proposed ordinance would be restricting people who are already abiding by the rules that are in place. If the issue is with the homeless population, she said the City should come up with a system to get the homeless people into a place where they are contained so the general public is not restricted and their constitutional rights are not impeded.

Cheryl Begay asked if the proposed alcohol restrictions would cause problems with bootlegging and other crimes with the homeless population. Referring to the homeless population, she asked if people are found in groups of 6 people or more, if they could be confined to a certain place, such as a hotel. She also recommended stopping vehicles late at night especially if the vehicles are full of passengers.

Jason Valentine said he believes the idea for the proposed ordinance is to limit the movement of transients after 8:00 p.m. He expressed concerns about the proposed curfew when every law abiding citizen is done with their shopping by 8:00 p.m. Mr. Valentine also said alcohol is not the real issue and by limiting or eliminating the ability for transients to obtain alcohol, several things will happen as transients will become

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violent as they go through withdrawals. He said convenience store employees may be at risk since they may be assaulted by transients if they cannot obtain alcohol. He also believes transients will be forced into higher populated grocery stores and putting others at risk if they are carrying the virus. Mr. Valentine said the City should address the transient population and their lack of respect for the social distancing rules rather than imposing restrictions on residents who are adhering to the rules.

Manuel Brieno said he works in an establishment that sells alcohol. He expressed his support for limiting or eliminating the sale of alcohol and favors the proposed curfew. He said anything that could be done to keep people at home will help the situation.

The Mayor and Councilors discussed the proposed ordinance and posed questions about the ordinance to City staff.

Councilor Palochak asked if the problem with panhandlers could be addressed since the panhandlers come into close contact with people when they ask for money. Mr. Hayes said the Pedestrian Safety Ordinance, which was adopted by the Council last year, prohibits people coming into close contact in a threatening manner. Regarding the problem with people being in groups of five or more, Mr. Hayes said the existing provisions of the State's Public Health Order already prohibits mass gatherings, without having to include additional language to the City's ordinance.

Councilor Kumar said grocery stores are better suited for handling alcohol sales due to their floor space and security. He said social distancing is not maintained at gas stations. There is cross contamination at gas stations since clerks are handling money and identification cards while moving on to the next customer. From his window, Councilor Kumar said transients are sharing their drinks and have no regard for safety. He also does not want to have police officers dealing with these people due to the high risks involved. He said a curfew cannot be imposed and does not want police officers having to stop individuals because there is a lower amount of traffic out there already.

Councilor Garcia asked Chief Boyd if it would be difficult for his department to enforce the proposed curfew. Chief Boyd said there is a lack of manpower to stop everyone on the streets between the restrictive hours. Councilor Garcia does not see a need for a curfew at this time since citizens are already doing what they can to stay home. Regarding alcohol restrictions, Councilor Garcia said it should be all or none. She said it would be bad to only have grocery stores sell alcohol. She expressed concerns with putting customers and employees at risk at grocery stores.

Councilor Schaaf said alcohol sales should be restricted at the convenience stores and recommends adopting similar restrictions as the County, by limiting sales to only beer or

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Wine with less than 10% alcohol. He supports limiting alcohol sales to the grocery stores. Regarding the proposed curfew, he said people are doing a good job staying at home.

Mayor McKinney said the Council does not want to do anything to penalize any law abiding citizen. In gathering input from City staff, the original intent was to impose a curfew on businesses and by doing so, it would limit the amount of people going out to travel to shop unless they needed essential items, such as prepared food through a drive up window. City officials recognize that all major grocery chain stores, including Wal-Mart, are already closing at 8:00 p.m. Mayor McKinney said he is not in favor of continued alcohol sales at convenience stores because alcohol sales at grocery stores are well managed and maintained with security. Based on information from local doctors, another public health crisis may surface if alcohol sales are totally prohibited since there are people that may go through withdrawals. He is in favor of shutting down alcohol sales at convenience stores which creates a high volume of visitors that purchase miniatures, half pints and pints of alcohol that are normally consumed within 100 to 200 yards from the store where bottles are passed around. The City can approach the grocery stores and talk to them about their security, make sure that people are complying with social distancing guidelines and limiting people from going into the store that do not need to be in there. Mayor McKinney said he contacted the ownership of Speedway and asked them to voluntarily shut down their alcohol sales and to be a good community partner; however, they flatly denied his request. Speedway officials said they will continue their alcohol sales until such time an order banned it.

Councilor Kumar said people should have their lists ready when they go to the grocery stores and they should be shopping alone. He also said there is less traffic in the grocery stores.

Councilor Garcia disagreed and said there are not less customers at the grocery stores. She said she has been there and seen the checkout lines at the grocery stores. She recommended adopting the same restrictions imposed by the County because if the City does not follow suit, there will be an influx of people coming into town to buy their alcohol. She said they need to do whatever they can to encourage people to stay home.

Mayor McKinney said if the Council is not going to challenge the convenience stores to discontinue the sales of alcohol, he recommended adopting an ordinance prohibiting the sale of hard liquor in the city, which limits the sale of alcohol to only beer and wine.

Regarding Mayor McKinney's recommendation, Councilor Schaaf asked if beer and wine sales would be allowed in convenience stores. Mayor McKinney said the Council needs to be consistent across the board or they can allow full alcohol sales at the grocery stores and limit the sales where they know where the problem is at the convenience stores.

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Mr. Hayes said the Council should consider the restriction of alcohol sales that will assist in the prevention of the spread of the COVID-19 virus. By doing so, it will be the only possible legal justification the City has to have additional restrictions on alcohol. He said the Council should not consider other problems that alcohol causes in this community.

Councilor Garcia said the City cannot fully restrict the sale of alcohol because people may go through withdrawals. She reiterated her proposal for limiting the sale of alcohol.

Mr. Hayes recommended including the definition for beer and wine provided under the State Liquor Control Act if the Council chooses to prohibit the sale of hard liquor.

Following discussion, Councilor Palochak made the motion to adopt an ordinance that makes the curfew suggestive, as opposed to mandatory, a suggested curfew of 8:00 p.m. and that liquor sales from convenience stores be banned.

Councilor Schaaf asked for clarification of the motion regarding the proposed curfew and alcohol restrictions at convenience stores. Discussion followed regarding the enforcement of the proposed curfew.

Mr. Hayes said he was not clear if the motion included maintaining section 4 of the ordinance concerning the proposed curfew on businesses or if the section was going to be eliminated.

Councilor Palochak restated her motion to have a suggested curfew of 8:00 p.m., to eliminate the sale of alcohol at convenience stores. She asked if there were any businesses open after 8:00 p.m.

Councilor Kumar recommended leaving the curfew portion out of the ordinance and was in agreement with the remainder of the ordinance.

Councilor Palochak restated her motion to not have a curfew and to adopt all other parameters of the suggested ordinance, but to include the elimination of alcohol sales at convenience stores. Councilor Garcia asked Councilor Palochak about the sale of alcohol at grocery stores. Councilor Palochak said the grocery stores would be able to sell alcohol. Councilor Garcia asked if all liquor would be sold from grocery stores. Councilor Palochak responded yes. Councilor Schaaf seconded Councilor Palochak's motion. Roll call: Councilors Palochak, Schaaf, Kumar and Mayor McKinney voted yes. Councilor Garcia voted no. Motion carried.

Mayor McKinney said the ordinance will prohibit the sale of alcoholic beverages of any kind at convenience stores and there will be no business curfew to allow convenience

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stores and restaurants for drive through, pickup and delivery service, to remain open. He also said Mr. Hayes will include the proper language in the ordinance and it will be delivered to the affected businesses the following day.

Councilor Kumar said the Council can revisit the ordinance to amend it as needed.

Councilor Garcia agreed with Councilor Kumar. She believes the Council may need to revisit the ordinance because there will be an influx of people buying alcohol at grocery stores.

Councilor Palochak said the ordinance is a work in progress and the Council can definitely revisit the ordinance.

Mayor McKinney said the ordinance is effective to the date of the State's Public Health Order unless the Council amends the ordinance. He assured citizens that the City will continue to provide services to the public and asked everyone to do what they can to stay at home. He encouraged everyone to send only one person from their household to obtain necessities. He also welcomed citizens to call or E-mail him at his office with their concerns.

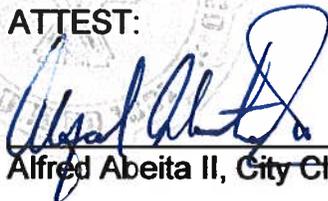
There being no further business, Councilor Kumar made the motion to adjourn. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Garcia, Schaaf and Mayor McKinney all voted yes.



Jackie McKinney, Mayor



ATTEST:



Alfred Abeita II, City Clerk

Approved 4/28/2020