

VALENCIA COUNTY BOARD OF COMMISSIONERS

SPECIAL MEETING

August 23, 1999

M I N U T E S

The Special Meeting of August 23, 1999 was called to order by Chairman Alicia Aguilar at 11:26 AM.

PRESENT

Alicia Aguilar, Chairman
Aurelio H. Padilla, Vice-Chairman
S. T. Frank Pando, Member
Eloy Giron, Member
Helen Baca, Member
James Fernandez, County Manager
Thomas Garde, County Attorney
Kandy Cordova, County Clerk
Press and Public

ABSENT

PLEDGE OF ALLEGIANCE

Mel Sissons led the Pledge of Allegiance.

APPROVAL OF AGENDA

Chairman Alicia Aguilar said there is an Executive Session if it is necessary and the Action Item is the Public Hearing and Final Consideration for the Solid Waste Collection and Disposal Ordinance.

Commissioner Frank Pando made a motion to approve the agenda as presented. Commissioner Helen Baca seconded the motion. Motion carried.

EXECUTIVE SESSION

There was no need for an Executive Session.

ACTION ITEMS

(A) PUBLIC HEARING/FINAL CONSIDERATION

Solid Waste Collection and Disposal Ordinance

Chairman Alicia Aguilar said at a previous meeting, this Commission did vote to publish a new ordinance. The intent was advertised. At the time it was done, it was also subject to attorney approval because our attorney was out of town. She said, "Our attorney has had a chance to review the ordinance and what you have before you is what is being considered."

The Ordinance shall be known and may be cited as the Solid Waste Collection and Disposal Ordinance of the County of Valencia, New Mexico.

Chairman Alicia Aguilar went through the ordinance quickly, highlighting certain sections.

- **Section 1/Purpose and Intent.**

This also addresses the statutes that apply to the unincorporated lands within Valencia County and our jurisdiction.

- **Section 2/Definitions.**

Anywhere that you see residential or commercial, one applies to the other. A hauler is anyone doing business for the collection and disposal of solid waste. There isn't a different definition for a commercial hauler and a residential hauler.

- **Section 3/Containers for Solid Waste**

Chairman Aguilar said the polycart was changed to where they should not be filled with more than 150 lbs. of waste. It used to be 200 and the haulers felt that it was too much.

- **Section 4/Collection of Solid Waste**

5.1.3 is important in that the permits will be for 12 consecutive months for up to three years, but no permit will go past Sept. 30, 2002. If someone wants to go into the business in July of the year 2002, they don't automatically get a three-year contract. They all expire on Sept. 30th for a review of the contract and the services.

- **Section 5/Collection Authorization**

Valencia County will be advertising in the newspaper who the permitted or contracted haulers are in Valencia County. If there are any changes in status of these people doing business in Valencia County, it will also be published. This is our way of informing the public.

- **Section 6/Commercial/Residential**

This talks about the application, selection and issuance of a permit and how it is to be done. There will be a contract drawn up with each hauler, each hauler will be signing it. That will be the contractual agreement between the County and the haulers. There will also be a \$25.00 fee for the haulers to file an application with the County. That would be the intent to do business, at which time the County Manager will be looking at a list as to the requirements that a hauler will have to meet in order to do business in the County. It is important to state that even though the County will have a contract with the haulers, they are independent contractors. They don't act as agents, servants or employees of the County.

This ordinance will specify the work to be done by the hauler, but the method, manner and means to be employed to accomplish this work shall be the responsibility of each hauler. We're also asking in the ordinance that the trucks be identified with the hauler's names.

- **Section 7/Accumulation of Solid Waste**
- **Section 8/Disposal of Solid Waste**

All of the solid waste must be disposed at a permitted landfill. That is in compliance with New Mexico Solid Waste Management Regulations and New Mexico Environmental Dept. Regulations and any Federal, State and local rules and regulations in effect at the location where the final disposition of solid waste will occur.
- **Section 9/Frequency of Collection**
- **Section 10/Fees for Public Collection and Disposal**

The fees that are shown have been in effect for three years.
Use taxes, host fees, environmental assessments, should be deleted from the ordinance.
- **Section 11/Recycling**
- **Section 12/Exemptions**
- **Section 13/Violations**

It is more specific as to the fees and law according to the attorney.
- **Section 14/Authority of County Codes Enforcement Officers and Deputies to Enter Premises.**

This identifies who will be responsible for enforcement of this ordinance. It identifies the Valencia County Code Enforcement Officers and also the Valencia County Sheriff's Deputies.
- **Section 15/Compliance with Laws and Regulations**

This further identifies that each hauler shall comply with all applicable federal and state laws, County ordinances, rules and regulations and all amendments thereto throughout the duration of their contract or permit. Each contractor and his surety shall indemnify, defend and save harmless the County from and against any claim, demand, suit, judgment, settlement, costs, or expenses, including without limitation, court costs and attorneys' fees arising from or in connection with any violation of any such law, rule and regulation, whether by himself, his employee or his agent.
- **Section 16/Interpretation and Conflict**
- **Section 17/Severability**
- **Section 18/Proof of Insurance by the Residential/Commercial Contractor (Hauler)**

This actually identifies the amount of insurance. It also indicates that the contractor shall file a copy of their insurance coverage with the County Clerk. All contractors shall have Workman's Compensation.
- **Section 19/Performance Bonds by Contractors (Haulers)**

This is setting a performance bond of \$500,000.00 each regardless of the amount of customers that they have.
- **Section 20/Effective Date**

This ordinance shall become effective 30 days after the date it is approved by majority vote of the Valencia County Board of County Commissioners and recorded by the County Clerk.

Mel Sissons asked a question regarding the performance bond. He requested that there be more language on how a person would forfeit the performance bond. He said his insurance company wanted to know before they write the bond for him, how the rules would apply if the County decides he has not done something and they say, "you have forfeited this bond." He understands the purpose of the bond, but he doesn't see language on what causes forfeiture of the bond.

Chairman Aguilar said, "I'll turn that over to our attorney, but if you look under "Suspension or Revocation", we have a right to suspend or revoke any permit subject to the terms and conditions of the permit, so that you have a permit and it talks about records that are required and paying the enforcement fee, if you have a change in ownership and you don't let us know, truck identification. To me those are examples."

Tom Garde said, "One of the reasons that we were delayed in the beginning of this meeting is there was another draft of an ordinance that I felt was not very complete. This ordinance that we have before us goes into a lot more detail than the second or third draft of the ordinance. I think we need input with regards to this meeting as far as the contract that every hauler will sign will set out what exactly is required and what exactly would have to happen before we get to the point of revoking the bond. This ordinance is very specific and I think for more detail that would be in the contract itself. It will be set up so that every hauler will know what is required of them, so that you're not walking into a situation where it was vague and the County can revoke it because of a vague thing. That is not the intention."

Mr. Sissons said there was some talk about raising the cost of residential pickup at the last meeting, because of the cost of living increase. He asked if that was going to be looked at. Chairman Aguilar said it was her understanding that it was not going to exceed \$13.00 per month.

She said, "There is a CPI adjustment and if I recall the conversation on the CPI adjustment, would we look at that CPI adjustment today because the \$13.00 had been in effect for 13 years or were we going to wait a year before we looked at the fee. That is something that this Commission needs to make a decision on now." Mr. Sissons said their billing would go out shortly and they need to know if they are going with the old rate or a new rate. Chairman Aguilar said she asked that the haulers provide the Commission with a proposal for any proposed changes. There seemed to be concerns on the dumpsters. She said she got information from Waste Management this morning.

Marlene Feuer apologized if she was confusing the Commission, but she did not know until she got to the meeting that the documents had been changed again. Her recommendations are; in the definitions section that there be a definition for CONSTRUCTION DEBRIS. They believe that will affect the haulers that want to franchise for roll-off services etc. She said there are some verbiage changes, but it is up to the attorney if they want to adopt them. They are coming from her attorney. The main issues that she wishes to discuss are:

- It is very difficult to react to a document that they just received. Their attorney's have not reviewed it. She asked if there was a rush on this issue or if they could give them an opportunity to have their attorney review the new ordinance. She said there are two haulers that are not here to make comments on it.
- There are some differences in the insurance section. She said, "You are asking for a copy of the policy. Waste Management's Insurance Policy is about a foot thick, I would appreciate it if you would just ask for the Certificate of Insurance. That is probably all you need."
- "Under the CPI Adjustment and I think we discussed this in a meeting with Commissioner Pando and Commissioner Aguilar, you say Valencia County may implement an adjustment on the CPI and I am advocating that you change the "may" to "shall". It is probably based on history, whether it is Waste Management that has been operating over a year without a CPI Adjustment, they were entitled to one with their previous contract. The CPI Adjustment has never been made. In essence under the old ordinance, we have been collecting trash at the same rates for three years and the CPI Adjustment was under the old contract and it was never implemented. Whether that was for failure of the haulers to request it or the Commissioners to act, but we would prefer it to be automatic and changing the "may" to "shall", it is cleaner and we have the assurance that just the cost of doing business based on the CPI would go up on an annual basis." James Fernandez said the monthly service fee would have gone to \$13.84. What we have is a new enforcement fee and I guess the 4% on the residential as we discussed this with administration would deal the County somewhere around their fifty cents. If we go to the new \$13.84 rate, the County will generate more. If we do it by percentage, we suggest that as the CPI goes up that the County coffers by percentage will also increase so it won't be just the haulers benefiting from the increase, the enforcement fee will do that as well. The 4%, we're thinking would yield exactly what the ordinance was intending to yield prior. The 5% on the commercial is a brand new fee. That was not in the ordinance prior and the reason I point that out, we're not in disagreement with paying that 5% to the County, the reason I point it out to you is that we will be later talking about the rates in total. That 5% is now a burden that was never on any of the haulers."

Carlos Montoya said there was also a section in the old agreement where you would provide a special pickup day in certain quarters of the year and it is not provided for in this new contract. Ms. Feuer said, "That is correct, so you're saying that you are not asking for any free service. That's interesting because I have talked to some of the Commissioners and they felt they wanted to do that and we need to talk about that. 5% of the commercial fees is probably way in excess of what we would have provided in free services as well."

Commissioner Eloy Giron said he thought they were going to call that an "Amnesty Day" and he did not see that in the new ordinance. Ms. Feuer said when they met with Commissioner Pando and Commissioner Aguilar all of the haulers agreed that they wanted to provide those kinds of services to the County. She said, "Tierra Bonita called Waste Management a couple of weeks ago requesting some cleanup services at the rodeo that you've got going on right now. I talked to administration and they said yes because other haulers said they have not had the opportunity to do that. Talking to James Fernandez, he said, fine and asked Tierra Bonita to request it from the other haulers. Just so that you are aware, the request went out, I believe Mr. Sissons was asked and Reliable Waste, Mr. Apodaca. Mr. Sissons does not provide roll-offs, but your other haulers could not provide that service. We are providing it for this weekend. It's advertising for Waste Management, but if you do include it in your ordinance we have to make sure that everybody plays. Other than that I will be with the other haulers today, but that is not occurring right now."

Ms. Feuer said, "My last is all going to be based on the rates and I feel like I'm up here being an advocate for the other haulers that are not here right now, but I do know that we have talked about this. We are advocating that Section 10-1.2 under the rates in all sense of fairness that the rate go to \$13.84 per month. That will take into consideration, the CPI Adjustments and I'm sorry I don't have the rates I provided for you because I didn't know this is the way the meeting was going to go today. Under the commercial collection services under section 10-2.1 on your weekly dumpster trash collection services, those rates are inadequate. There is a 1 cubic yard dumpster, a 2 cubic yard dumpster and a 4 cubic yard dumpster. I wish Mr. Sanchez were here because he provides more of the 1 cubic yard dumpsters than we do."

"We are suggesting a \$46.00 rate for the 1 cubic yard dumpster. On the 2 cubic yard dumpster it's \$70.00 and on the 4 cubic yard dumpster it's \$102.00. These rates are being taken off of the rates that we've established in the South Valley of Bernalillo County."

There was a lengthy discussion on the rates for the commercial dumpsters. It was agreed that the 1 cubic yard dumpster will cost \$46.00 per month, the 2 cubic yard dumpster will cost \$66.00 per month and the 4 cubic yard dumpster will cost \$102.00 per month.

Discussion was held on the rate for residential pick-up. The amount will stay at \$13.00 per month for residential customers. It was agreed that the County Manager through appropriate verification prior to April 1, 2000 and each and every year shall determine the CPI amount thereafter and implemented on July 1, 2000. It is agreed that the CPI would apply to all solid waste collection and disposal service. It was the agreement of the Commission that the commercial roll-offs be left alone.

Chairman Aguilar said the last item is Section 7, Business Site Disclosure Zoning Compliance. That should have been deleted. It is understood that the business would have to be in compliance and they would have to have a business license when they come to get the permit.

Mel Sissons asked when this ordinance would take effect. Chairman Aguilar said, "Depending on the action taken today, this will be effective in 30 days and we're looking at the contracts being finalized in the next couple of weeks so that you will be able to make application and have an effective contract by October 1st."

Tom Garde said, "I think that will work out, the only concern that I have is that we have an actual ordinance that the hard copy adopted today and I don't know if we'll be able to get that done. I would also like to see the contract reviewed by this commission together with the haulers so there are no questions as to the requirements."

Chairman Alicia Aguilar said she liked the process that was followed before where they contacted the haulers, having a draft of the contract and having them review it.

Tom Garde said, "With regards to the suggestions made by Ms. Feuer, I think it would be appropriate to include the definition of CONSTRUCTION DEBRIS. Changes with regards to sub-section 5.1.4 where we made the requirement for the policy and that we just include the Certificate of Insurance." Chairman Aguilar said, "A Contract Agreement also, she is recommending that we add the language 'engaged in the business of collection of solid waste'. Right now we have it as a binding agreement between the County of Valencia and the contractor/hauler. Right after that to add the words 'engaged in the business of collection'. The other definition that I think is important is CONTRACT HAULER to be added. It's a person or company permitted by the State of New Mexico that has entered into a contract agreement and has been granted a permit to engage in the business of the collection of solid waste by the Valencia County Board of County Commissioners and provide disposal services for persons within the unincorporated areas of Valencia County. A contractor may also be known as a commercial hauler. When we go into HAZARDOUS WASTE, it means any waste or any combination of waste which are not solid waste as defined in NMSA 1978 74-9-3 (and are defined as hazardous waste under any and all applicable federal, state and local laws or regulations.)"

The Commission took a 30-minute break while the changes and corrections were inserted into the ordinance.

County Attorney Tom Garde stated, "During the break I was given some language by Ms. Feuer with regards to the tax portion (10-5-0). A contractor may petition the County for a rate adjustment on the basis of unusual changes in the cost of operation, such revised laws, ordinances or regulations; changes in disposal fuel; or for other industry related reasons."

Marlene Feuer said, "In some of the language we've provided to Mr. Garde, everything is pretty much the same, it's just that we would add a sentence on saying, 'the County shall not unreasonably withhold approval of a rate adjustment pursuant to this section and shall complete action within 90 days.' The reason we ask for that language is that we have been put in a position where we come before a governing body such as the fuel goes up and it can be months before we can get a governing body to react. It is a huge burden, so we just ask, and Mr. Garde has used the word timely, and I appreciate that. We are requesting that you add that last sentence."

Chairman Alicia Aguilar said, "I have a problem with that, in that unreasonably withhold because that leaves it open for interpretation. What's unreasonable, what's reasonable? It could be that we're talking about any other related industries, what if someone says, 'well I had to buy a new fleet of trucks or I had to go and replace some polycarts because they are being lost and it's costing me more to replace them'. It almost seems that you're coming and we're saying, it's more of a positive just come in and ask for it and we're going to grant it." Ms. Feuer said, "It is not meant to read that way and it's taken with the previous sentence which says, 'the County shall have the right as a condition for negotiations or approval to demand an inspections by itself or authorized representatives or independent auditors of pertinent records or documents that demonstrate the need for an adjustment to the rate', that is a safeguard." Chairman Aguilar said, "Going back to the conversation that we had, if we say that any contractor may petition the County for a rate adjustment on the basis of unusual changes in the cost of operations such as new or revised laws, ordinance or regulations, changes in disposal fees, cost of fuel or for other industry related reasons. It is already indicating that this is the procedure so if you follow it, that's how I'm reading it and we're setting it at \$13.00 so that if one contractor has a burden and petitions it, does it apply to everyone?"

Commissioner Frank Pando said he thought it should be left alone. He did not believe that it should have been put in to begin with. He said, "I think we can beat this to death, but it is not written in stone. If something happens, we can always amend it or change it."

Marlene Feuer asked if they were striking Section 10.6.0 or are they leaving the County Attorney's language in and not accepting what she asked for.

Chairman Aguilar said, "This is me personally, I don't mind leaving it in up to reasons, but that is it. In a sense, you can petition us, but that doesn't mean there is going to be action taken." Ms. Feuer said, "That is our fear of doing business and not having elected officials that will react. We're in a regulated industry and you're regulating us, so I guess we're asking that that regulation be fair."

Tom Garde said, "The language that is in there, it should be 10.7.0 and the word should be contractor. I think, I would suggest that you leave some language in there because otherwise you are going to have to amend an ordinance. I don't think that is something that you want to do. So long as you provide them a fair hearing. I think that would satisfy the contractors or the public. If you don't include some language in there, then you're going to look at amending an ordinance just to take care of that particular item."

Chairman Aguilar said, "If you look at 5.1.0, it already says that the solid waste disposal haulers and the public can recommend new procedures and/or regulations and the Valencia County Board of Commissioners can change or revoke existing procedures/regulations provided all the changes are done in a public meeting and follow all the rules and regulations pertaining to amendments to ordinances and amendments to contracts. There is language in there on procedure."

Tom Garde said he believes that one section will support Ms. Feuer's request.

Chairman Aguilar said, "What we are striking is, the contractor shall provide all required documentation as required by the County. The County shall conduct such hearings as required in a timely manner."

Commissioner Eloy Giron made a motion to approve Ordinance 99-04. Commissioner Al Padilla seconded the motion. Motion carried. **(See Exhibit A)**

Chairman Alicia Aguilar stated, "I'd like to thank the Commissioners for their help and for their input. I would really like to commend our County Manager and our County Attorney. This has been a very delicate issue. I think we handled it very well, very professionally and thank you all for all of your efforts."

ADJOURNMENT

Commissioner Eloy Giron made a motion to adjourn the August 23, 1999, Special Meeting of the Valencia County Board of County Commissioners. Commissioner Frank Pando seconded motion. Motion carried.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the August 23, 1999, Special Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

VALENCIA COUNTY BOARD OF COMMISSIONERS

ss
ALICIA AGUILAR, CHAIRMAN

ss
AURELIO H. PADILLA, VICE-CHAIRMAN

ss
S. T. FRANK PANDO, MEMBER

ss
ELOY GIRON, MEMBER

ss
HELEN BACA, MEMBER

ATTEST: ss

KANDY CORDOVA, COUNTY CLERK

DATE: August 23, 1999