

DECEMBER 20, 2011

CITY OF TRINIDAD
TRINIDAD, COLORADO

The regular meeting of the City Council of the City of Trinidad, Colorado, was held on Tuesday, December 20, 2011 at 7:00 p.m. in City Council Chambers at City Hall.

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

The pledge of allegiance was recited.

READING OF THE MINUTES. Regular Meeting of December 6, 2011. Mayor Garduno called for any additions or corrections. A motion to dispense with the reading and accept the minutes as submitted was made by Councilmember Pando and seconded by Councilmember Toupal. The motion carried unanimously.

PUBLIC HEARING. Transfer of ownership application filed by Gino's Sports Bar, LLC at 991 E. Main Street (formerly Linda Velasquez d/b/a Gino's Sports Bar). Councilmember Velasquez recused herself and sat in the audience. Mayor Garduno called the hearing to order and announced that she would be presiding over the hearing. She stated the purpose, a transfer of ownership application filed by Gino's Sports Bar, LLC, regarding the tavern liquor license currently held by Linda Velasquez for Gino's Sports Bar located at 991 East Main Street in the City of 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 statements 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, and/or the authority may choose to postpone its decision on the matter for a period to be determined by the local authority. 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 application packet constitutes the exhibits for this hearing in addition to any other documents offered. She said that according to the transfer of ownership application, Gino's Sports Bar, LLC, is a Colorado limited liability company whose members are Joseph Cordova, Linda Velasquez and Chris Velasquez. She asked if they were present and satisfied with the rules of procedure as explained. To both questions, all three answered affirmatively. Mayor Garduno called for opening statements, reminding that they are not evidence, but rather an opportunity to summarize the respective positions, and that they may be waived. Chris Velasquez offered as an opening statement that he was born and raised in Trinidad and had worked for the City of Trinidad for 35 years and has been doing business at Gino's Sports Bar for 15 years, 16 in February or March. He said this (referring to an incident later entered as People's Exhibit 1) was the first they have had in that time. Joseph Cordova and Linda Velasquez declined to make an opening statement. Mayor Garduno called upon City Attorney Beatty who offered that the scope of the liquor licensing authority's inquiry this evening is for consideration of a transfer of ownership application which limits City Council to consider three requirements – the applicants' age (at least 21); any physical changes to the premises; and the applicants' moral character, record and reputation. He advised that the City will stipulate that all members of this limited liability corporation are at least 21 years old or older. Therefore, he explained that the primary inquiry will be the moral character of each member of the limited liability corporation. Mayor Garduno called for the applicant's evidence and testimony of witnesses. The applicants had none to offer and Councilmember Rino said the information was provided in their packets. Mayor Garduno asked City Attorney Beatty if he had any questions of the applicants. City Attorney Beatty suggested there may be a person to speak on behalf of an applicant. Yolanda Romero, who signed in to speak on behalf of Chris Velasquez and the transfer of the license to him, addressed Council. She thanked Council for the opportunity to address Council in support of this transfer. Ms. Romero told Council that she has known Chris Velasquez since the 1960s as a friend, businessman, family man, and worker for the City. She said he is a man of integrity and responsibility, a hard worker and dependable. She continued that he and his family have taken a run-down building in Trinidad and built it into a respectable, clean and safe environment where people, young and old, can go and enjoy dancing and cocktails. He has many good qualities, endless in his energy to provide quality service to all patrons who enjoy entertainment at Gino's Bar. She asked Council to consider his request for license transfer without reservation and accept his hard work for all of these years and the contributions made to Trinidad's tax base as a meaningful and productive business face in our community. There was no other witness on behalf of the applicant. Neither Council as the local licensing authority nor parties of interest posed any questions. Mayor Garduno called for the City's evidence and testimony of witnesses. City Attorney Beatty stated that as Mayor Garduno said, this application, submitted by Gino's Sports Bar, LLC, a Colorado Limited Liability Company of which Joseph Cordova has a 50% ownership, and Chris Velasquez and Linda Velasquez each a 25% ownership. He asked the applicants if that was correct to which they responded affirmatively. He asked Council as the liquor licensing authority to take judicial notice of the letters of character reference provided on behalf of each applicant and identified who they were from and on behalf of. He noted that they were a part of the application packet. He reminded that the applicants are all over the age of 21 and said his presentation will only be on the moral character of the applicants. He asked Council to notice that within the criminal history records in the packet there were some pending criminal charges for Joseph Cordova and Linda Velasquez. He advised that he wished to call on witnesses about the charges. City Attorney Beatty called upon Dave Reed.

David Reed came forward and was sworn in by Mayor Garduno. At the request of the City Attorney, he stated his name for the record and spelled his last name. City Attorney Beatty asked his occupation to which he answered that he is a criminal investigator with the Colorado Department of Revenue, State Liquor Enforcement Division and currently the supervisor in the Colorado Springs field office. Mr. Reed testified that he has been with the Division for 10 years and had additional law enforcement experience having worked for 21 years at the Fremont County Sheriff's Office. City Attorney Beatty asked if he has participated in liquor enforcement actions within the City in his capacity with the State in the past. Mr. Reed answered that he had, Trinidad is in their jurisdiction. City Attorney Beatty asked Mr. Reed if he had participated in liquor enforcement actions involving alleged illegal gambling at liquor licensed establishments in Trinidad. Mr. Reed answered affirmatively and said the most recent was at Gino's Sports Bar. When asked when, he testified that he was contacted around June by the local authorities at the police department and asked if they could look into alleged gambling activity, which is not uncommon for them to investigate because local authorities really can't. He said they were told the bar was predominately Hispanic so he spent time looking for an Hispanic investigator. On or about July 7th they came down to Trinidad and went in undercover to see what it was like. Investigator Russ Elliott came down and found a table set up in the tavern. Russ Elliott and Bryan Osterhouse came back down on July 14, 2011 to see if they could get into the game. They went to Gino's Sports Bar, the game started and they were invited into the game. Mr. Reed said it bothered him that they were questioned if they were law enforcement, they jokingly said they were FBI and the guy said okay, go ahead and play. They played on July 14th and cashed out with winnings. On July 27th they got a search warrant in El Paso County and on July 28th they came to Trinidad with agents from the Colorado Bureau of Investigation and Investigators Russ Elliott and Bryan Osterhouse were again invited into the game. They were wearing body wires so the conversations could be heard. They were told to come in, the game was in process. Mr. Reed said his office, CBI and local authorities went in at that point and executed the search warrant. City Attorney Beatty asked if the card games on July 14th and July 18th, 2011, constitute a violation of the Colorado Liquor Code or regulations promulgated thereunder. Mr. Reed answered that it did, it was illegal gambling activity. City Attorney Beatty asked Mr. Reed to delineate between lawful and unlawful gambling. Mr. Reed answered, using poker as the example, that there are three elements that make gambling legal or illegal – if there is chance, risk or gain. In cards there is the element of chance itself. He exemplified opposite of chance is skill, such as with billiards. Gain is what you will win and it can be direct or indirect. Cash is a direct win whereas an indirect winning may be a seat at a Las Vegas poker game – it is a thing of value. Risk is the other element – what does it take for me to play? A buy-in is a direct risk. An indirect risk is a charge of \$10 at the door for all the players or you must buy four drinks at \$4 a drink. In this instance, Mr. Reed said they had chance, risk with a \$50 buy-in to play and we had gain. One of his investigators lost and the other won \$160. Therefore the element of gain was there. If all of the elements exist it is illegal gambling. However, Mr. Reed said there is one exception to the rule and that is if there is a bona fide social relationship among the players. He continued that when his office first gets notified that is the first thing they think, they players must know each other in a social relationship. He clarified that they players must know each other outside of the game. In this instance several players worked in the gas fields and could very well fall under a bona fide social relationship and that wouldn't make it illegal gambling, however no one knew his two investigators. They only knew each other but didn't know the other players. Consequently, he said the bona fide social relationship exemption is null and void in those games because both times the investigators played and didn't know the other players in the game. The games on July 14th and July 28th were illegal gambling. City Attorney Beatty asked if anyone was in charge of the poker game. Mr. Reed answered that one person appeared to be in charge and identified him as Joseph Cordova. They had to get permission from him to play and he disbursed final funds. He was the one person who collected the \$50 buy-in and he paid out winnings as well. Mr. Reed, upon City Attorney Beatty's questioning, answered that Linda Velasquez was not present during the games. City Attorney Beatty asked if subsequent to the action taken on July 28th, 2011, had the Department of Revenue Liquor Enforcement Division issued an Order to Show Cause and Notice of Hearing to Linda Velasquez. Mr. Reed responded affirmatively. City Attorney Beatty asked if the notice and order alleged violations of the Colorado Statutes or regulations of the state governing Linda Velasquez's tavern license. Mr. Reed advised that it did. Upon further inquiry he testified that it alleged allowing illegal gambling on licensed premises and possession of gambling devices. City Attorney Beatty asked if they had reached a resolution on this matter with Linda Velasquez. Mr. Reed said they did. City Attorney Beatty asked if it was documented in a Stipulation, Agreement and Order. Mr. Reed responded that it was. He asked Mr. Reed if he recognized the document handed to him, which he had marked as People's Exhibit #1. Mr. Reed testified that there were two separate documents presented for him to identify – one was an Order to Show Cause which identified the charges filed against the licensee and the other was a Stipulation Agreement and Order which was a settlement the State reached with Linda Velasquez. City Attorney Beatty asked what the final resolution was. Mr. Reed said the licensee and state agreed to a 25-day suspension with eight days served, which he believed had just been satisfied, and the remaining 17 days held in abeyance for one year. He clarified that the 17 days held in abeyance will not transfer to this transferred license. They don't send penalties from one license to another. City Attorney Beatty asked if the disciplinary action the State of Colorado imposed was consistent with their actions with other illegal gambling incidents in the state. Mr. Reed answered that it was. City Attorney Beatty requested the document marked People's Exhibit #1 be admitted into evidence and the request was granted and advised that copies of the same appeared in the Council's packets already. City Attorney Beatty asked Mr. Reed if he was aware of criminal charges pending against Linda Velasquez and if to his knowledge those charges stem from the liquor enforcement action on July 28, 2011. Mr. Reed responded affirmatively to each question. There being no further questions from City Attorney Beatty, Mayor Garduno asked if the applicant had any questions of Mr. Reed. They had none. Mayor Garduno called for questions from the authority. Councilmember Rino asked if other than on July 14th and July 28th had the investigators who worked for the Liquor Enforcement Division where Mr. Reed works ever been in Gino's Sports Bar before. Mr. Reed said he was sure they had. Councilmember Rino asked if then it wasn't the first time they had been in there, on those nights. Mr. Reed said he didn't believe so. Councilmember Rino asked if the police department had been in Gino's to observe in the past two to three years. Mr. Reed stated that his office received a call from the police department asking for guidelines as to what is legal and illegal gambling because they suspected it was taking place there. He said he thought it was Detective Vigil who had contacted them. Mr. Reed said sent that information and thought the Chief then used that information to produce a letter that he went over with Linda Velasquez as to what is and is not illegal gambling. However, he said he didn't know when that occurred. Councilmember Rino re-asked if his agents had been in Gino's prior to those dates. Mr. Reed said they had for inspections. Councilmember Rino asked if they had ever observed gambling during those prior visits. Mr. Reed answered that not that he was aware of, had they. Mayor Garduno called for questions by parties in interest. There were none. Mayor Garduno called for any interested parties to present evidence. None appeared. City Attorney Beatty advised that he had one additional witness. He called upon Police Chief Charles Glorioso who presented himself, was sworn in, and stated his full name as Charles Glorioso and spelled his last name. He testified that he is the Chief of Police for the City of Trinidad and has been with the City's police department for 22 years. When

ECEMBER 20, 2011

asked if within the past few years the department had received reports of gambling at Gino's Sports Bar, he advised that they had. City Attorney Beatty asked what the department's response was to those reports. Chief Glorioso testified that they contacted Liquor Enforcement to ask for their help with an investigation. He said he also asked them to provide a list of rules to provide to the bar owner, Linda Velasquez, and advise her of the alleged allegations. City Attorney Beatty asked if after the police department called the state, did Liquor Enforcement initiate an investigation of alleged illegal gambling going on at Gino's Sports Bar. Chief Glorioso said they did. City Attorney Beatty asked if he was familiar with the process for the investigation. Chief Glorioso said that the Liquor Enforcement Division investigators came down three times, on July 7th, 14th and 28th, 2011. He testified upon inquiry that the police department offered support and assisted with the execution of the search warrant on July 28, 2011, with Liquor Enforcement and CBI (Colorado Bureau of Investigation). City Attorney Beatty asked who was managing the bar on July 28th. Chief Glorioso said Joseph Cordova was. City Attorney Beatty commented that Linda Velasquez was the licensee on that date and asked if she was present on that date. Chief Glorioso said she was not initially, however Joseph Cordova asked him if he could call her, he did and she arrived. City Attorney Beatty asked him if he had communication with Linda Velasquez on July 28th. Chief Glorioso said Linda Velasquez initially met with Joseph Cordova who handed her a copy of the search warrant. She then approached him at the other end of the bar and asked him what was going on. He answered that he was there with CBI and Liquor Enforcement to execute a search warrant. She became upset with him over the execution of the search warrant and told him she was pissed and that pay backs were a bitch and that he was going to pay for this. City Attorney Beatty asked Chief Glorioso if he perceived the statements as a treat. Chief Glorioso said he did and upon further inquiry testified that the alleged statements were the basis for the criminal charges. City Attorney Beatty pointed out that Linda Velasquez's criminal record reflects the charges pending against her. He identified the charges as Attempting to Influence a Public Servant in violation of CRS 18-8-306, Obstructing Government Operations in violation of CRS 18-8-102, and Harassment-insults/taunts/challenges in violation of CRS 18-9-111(1)(h). He asked Chief Glorioso if those charges stemmed from her statements to him on July 28, 2011. Chief Glorioso said they did. City Attorney Beatty asked if Gino's Sports Bar has historically been operated in a safe and acceptable manner. Chief Glorioso opined that they have, adding that Gino's Sports Bar probably draws the largest crowds and manages them very well. City Attorney Beatty recalled that during Chris Velasquez's opening statement he said they've been operating for about 16 years and has not had any liquor licensing violations. He asked if that was correct to his recollection. Chief Glorioso said that as far as he knows this is the first time. Mayor Garduno called for questions by the applicant. Chris Velasquez asked Chief Glorioso if when he gave Linda Velasquez the set of rules and talked to her if he told her she was 'good to go'. Chief Glorioso said he provided her with the rules. Chris Velasquez said in the rules it says you have to be bona fide friends and another rule says that she couldn't keep anyone from playing, from entering the game. Chief Glorioso said they have to have a bona fide relationship to play. Chris Velasquez asked Chief Glorioso if he knew about this for three or four years why nothing was done prior to this. Chief Glorioso stated that his department had observed a poker table behind the bar but they couldn't know with certainty if there was a bona fide relationship between the players. They would have to assume all of the players knew each other. He added that was why they needed help from Liquor Enforcement. Chris Velasquez opined that the reason it happened now was because of the election and the fact that Joseph Cordova put his name into the hat. Chief Glorioso denied that statement. City Attorney Beatty objected to the statement because it appeared to be testimony rather than a question. Mayor Garduno asked if any authority member had any questions. Councilmember Rino asked Chief Glorioso how long the department's officers had observed poker games at the bar. Chief Glorioso said the department does bar checks on a frequent basis as time permits. It was known to them that the games that took place on Thursday nights. He said he imagines any time they went in to do a bar check on a Thursday night they probably saw gambling. Councilmember Rino asked how long before the search warrant was executed did they know about it. Chief Glorioso said that in June it had been brought back to his attention that the people playing were not in a bona fide relationship. He said there was no way he could know nor could his officers. Councilmember Rino asked if the other two were plants. Chief Glorioso answered that the two agents sent in to investigate alleged illegal gambling. Councilmember Rino asked when he gave her the rules did he call her to his office. Glorioso said he went to her place of employment to tell her he needed to speak with her. She told him she was going on break and said she wanted to talk to him then. Councilmember Rino asked if all of the bars in Trinidad were given the rules and regulations about gambling prior to this. Chief Glorioso answered that Black Jack's had inquired as to what they can do to have card games and they were provided the rules. Councilmember Rino asked if it standard procedure to give the bars rules about gambling. Chief Glorioso answered that he doesn't issue them and didn't know if Liquor Enforcement does. Councilmember Rino asked who would give the rules and regulations. Chief Glorioso said it is up to them to know. They are the owners of their business and it is up to them to know the rules and regulations that pertain to their business. Councilmember Rino asked if the state would give them the rules when they get a license. Chief Glorioso said any time he has a question he would call David Reed and inquire. Councilmember Rino asked if they were given the rules after. Chief Glorioso said he met with Linda Velasquez in June and the investigation didn't occur until July. Councilmember Pando commented that the department was aware of gambling, so someone had to voice their objection and say there was gambling going on. He asked Chief Glorioso if that was correct. Chief Glorioso said he heard from the City Manager who told him he wanted him to look into it. When asked if someone else reported it, Chief Glorioso said he talked to the City Manager and the department had calls throughout some time that there was illegal gambling going on. He said he was unable to prove whether there was a bona fide relationship in the game. That was why he said he sought outside investigators. Councilmember Pando said he would think perhaps there's some way to intervene and take call of the situation without having to go higher. Chief Glorioso said he tried by meeting with the bar owner and supplying her with the list of rules, telling her that he had received reports of illegal gambling. Councilmember Pando opined that the comments made by Linda Velasquez he could understand someone making in the moment where she would respond and not necessarily mean what she said. He said we sometimes say things and don't necessarily mean anything. Chief Glorioso stated that was his opinion and Councilmember Pando agreed. Mayor Garduno ascertained that there were no parties in interest to present and no additional witnesses. She called for rebuttal. Joseph Cordova stated that the police came to his place at least twice a week for the past two years and on Wednesdays and Thursdays and observed them playing and they were all bona fide friends playing in the game. The only two who were not were the undercover agents. The week before they started playing he said he told them they had to be a friend to play in the game. The men came back the next week. After they had a couple of beers inside the bar and talked to him and they were friends. They didn't play that week. They came back in the following week and had a drink and started to talk and they became his friends and he had invited them to play as soon as he introduced them to his friends. He said there have always been bona fide friends playing in this game. Linda Velasquez offered that Chief Glorioso testified that she had used that word and refuted the testimony because she stated she doesn't cuss. She added she doesn't use those words even if she gets mad. She concluded that she didn't say that. Chris Velasquez offered no rebuttal. City Attorney Beatty, Dave Reed and Charles Glorioso offered no rebuttal. Councilmember Shew questioned Dave Reed about Joseph

Cordova testifying that he had a few beers with the investigators and asked if that makes it a bona fide relationship. Mr. Reed explained that it wouldn't meet the requirement of knowing them outside of the poker game. Having been introduced to the others doesn't make it a bona fide social relationship outside of the establishment. He said that in another investigation they had done elsewhere, the owner had everyone meet in the parking lot to introduce themselves to be able to play. That is not what that means whatsoever. Mayor Garduno called for any closing statements from parties in interest. There being none, the hearing was closed. Mayor Garduno called for a motion or discussion. Councilmember Rino moved, based on what he heard this evening, according to the agreement they have already been punished by the eight days of closure and the balance of 17 days be held in abeyance, and that if that closure satisfies Council he moved that there be no suspension or violation and the transfer be approved. Councilmember Pando seconded the motion, which carried by a unanimous roll call vote of Council members present.

Councilmember Velasquez resumed her seat.

Transfer of ownership application filed by Robert Leonetti d/b/a Park Café at 608 Arizona Avenue (formerly Robert & Donna Leonetti d/b/a The Park). Mayor Garduno called the hearing to order and announced that she would be presiding over the hearing. She stated the purpose, a transfer of ownership application filed by Robert Leonetti regarding the tavern liquor license currently held by Robert and Donna Leonetti for the Park Cafe located at 608 Arizona Avenue in the City of 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, and/or the authority may choose to postpone its decision on the matter for a period to be determined by the local liquor authority. 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 application packet constitutes the exhibits for this hearing in addition to any other documents offered during the hearing. She asked if Mr. Leonetti was present and if he was satisfied with the rules. Mr. Leonetti answered affirmatively to both questions. Mayor Garduno called for opening statements, reminding that they may be waived. Mr. Leonetti waived providing an opening statement. City Attorney Beatty provided that the City wished to stipulate that Robert Leonetti is at least 21 years or older. Therefore the primary basis of the inquiry is the moral character of Robert Leonetti. Mayor Garduno asked Mr. Leonetti if he wished to present evidence or testimony. Mr. Leonetti declined. City Attorney Beatty stated that in the application packet Mr. Leonetti indicated a few liquor violations in the past and asked if that was correct. Mr. Leonetti said it was, two for serving minors and one for serving after hours. He was asked if he received discipline. Mr. Leonetti said he did for all three. City Attorney Beatty asked when the most recent violation occurred. Mr. Leonetti estimated that it was two or three years ago. City Attorney Beatty asked Mr. Leonetti if he has learned from those violations. Mr. Leonetti said he hoped so. City Attorney Beatty asked why he is seeking the transfer. Mr. Leonetti said he purchased his partner's share of the bar. Mayor Garduno asked for questions from the authority. Councilmember Rino asked if he had been provided with the rules and regulations relative to gambling by anyone. Mr. Leonetti answered that he had not since he owned the business. Councilmember Pando asked if he was correct in that the violations disclosed had been through his employees and not personally by him. Mr. Leonetti said that was correct and added that one was caused by an employee who had just been through the TIPS class one month prior. Mayor Garduno asked what he will do differently to prevent violations. Mr. Leonetti said their job description is highlighted that they are to stay within the law in serving drinks. Mayor Garduno, after having confirmed the lack to interested parties to pose questions, called for the City's evidence and testimony. City Attorney Beatty asked City Council as the local licensing authority to take judicial notice of the letters of character reference provided for Robert Leonetti contained within their packets. He also noted that Mr. Leonetti has no criminal history record to speak of. He offered no additional evidence. Mayor Garduno confirmed the lack of questions by the applicant to the City Attorney, the authority members, parties in interest, and the lack of interest in offering rebuttal and closing statements. She closed the public hearing and called for discussion or a motion. Councilmember Shew moved to approve the transfer. The motion was seconded by Councilmember Toupal and carried unanimously upon roll call vote.

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. None.

REPORT BY CITY MANAGER. Snow storm. City Manager Gil de Rubio extended happy holiday wishes to the citizens of Trinidad and City Council. He expressed his appreciation to Public Works Director Mike Valentine and Parks Superintendent Dave Esquibel and their crews for the work they did during and after the recent big snow storm. He said that the City had about 15 inches of snow and I-25 had closed from Pueblo to Raton Pass, extending down to Las Vegas, New Mexico. Roughly eleven families stayed overnight at the Community Center. He additionally extended appreciation to Linda Velasquez and members of Safeway for the free food provided to those travelers.

Acceptance of financial reports. City Manager Gil de Rubio called to Council's attention the first flow chart provided within their packet representing the monthly sales tax comparison for 2011. He said last month was followed by another extraordinary month yielding a 13.8% increase over October, 2010's sales tax revenue, by \$47,249. For the year, through October, the City has realized an approximate 6.18% increase over the same period last year (through October, 2010), resulting in an increase in sales tax revenue for that period of about \$236,000. He said it is quite a turn around, but reminded Council that the City lost 28% over the last three years so there is still a long ways to go. City Manager Gil de Rubio then pointed to the General Fund's financial report for period ending November 30, 2011. He asked Council to look at how the sales tax revenue is reflected at the top of the first page of the report, shown at just a little over 100% collected with still a couple of months to go. He continued that the General Fund expenses for November came to about \$7.5 million, which is roughly 7% under what was budgeted. With the increase of revenue, the General Fund finished November with a

DECEMBER 20, 2011

\$304,000 fund balance approximately. City Manager Gil de Rubio said that is quite extraordinary for this time of year. He added that he hoped it would continue into December so we don't have to tap into the reserves, reminding Council that for the last two to three years they have had to budget to dip into reserves, but didn't have to last year and hopes to not have to again this year. City Manager Gil de Rubio attributed it to management of expenses and thanked staff and department heads to that end. He next called to Council's attention the Power & Light Fund financial report. He said that the Power & Light Fund finished November with about a \$6,700 fund balance for that month. The fund has a cash balance of about \$33,000 as of November 30th; it has a \$1.2 million unrestricted reserve balance. Therefore the net balance is about \$1.28 million. He pointed out that purchase power and generation is coming close to the budgeted amount, having spent \$5.6 million of the \$6 million budgeted, or 93% of expected. He concluded that we'll see what happens in December. City Manager Gil de Rubio reported that the Water Fund had a positive fund balance of \$377,000 for the month and a cash balance of \$1.7 million, an unrestricted cash reserve of \$4.7, resulting in a net balance of \$6.4 million. The Gas Fund had roughly \$739,000 in revenue over expenses, however with the deferred gas cost of \$627,000 the net revenue over expenses for November was \$112,000. It had a cash balance of about \$541,000, and unrestricted cash reserve of about \$1.2 million for a net balance of about \$1.8 million. City Manager Gil de Rubio continued reporting that the Sewer Fund had \$135,000 in expenses over revenues with the resulting net negative balance as of November 30th of approximately \$157,000. He told Council that the Lottery Fund is doing good with an actual fund balance on January 31, 2011 of about \$151,000, uncollected estimated revenue of \$120,000, less committed projects resulted in an estimated undesignated cash balance at end of November of approximately \$52,000. The Marketing and Tourism Fund had a negative balance for November of about \$41,000, but an actual fund balance of \$216,000, an uncollected revenue estimate of \$7,000, less committed expenses left a total fund balance of about \$175,000 at the end of November. Capital Projects yielded \$284,000 in revenues over expenses. It had an actual fund balance of \$1.8 million, \$1.75 of which was committed, resulting in an undesignated balance as of November 30, 2011 of \$395,000. City Manager Gil de Rubio offered to answer any questions. There were none. Councilmember Shew made a motion to accept the financial reports as presented. The motion was seconded by Councilmember Toupal and carried unanimously upon roll call vote. City Manager Gil de Rubio called to Council's attention a copy of the most recent ARPA bill provided to them in their packets and asked Council to call him if they had questions.

REPORT BY CITY ATTORNEY. Orientation. City Attorney Beatty pointed out to Council that City Manager Gil de Rubio had arranged for an orientation session for the new Council in January and advised there is an additional training opportunity available to continuing and newly elected Council members. He said the Colorado Municipal League will provide a session entitled "Effective Governance" on February 3, 2012 at the CML office in Denver. The session will provide an overview of resources available to Council. He concluded that if anyone is interested arrangements can be made for their attendance.

COMMITTEE REPORTS. None.

UNFINISHED BUSINESS. Public hearing for consideration of an ordinance appropriating certain sums of money out of the revenues of the City of Trinidad, Colorado, to defray and meet the liabilities of the City of Trinidad for the fiscal year beginning January 1, 2012 and ending December 31, 2012; said ordinance being termed the annual appropriation bill for the 2012 fiscal year. Mayor Garduno opened the hearing. Councilmember Rino pointed to information he passed out to Council prior to the meeting listing some of his thoughts and what he said he'd like to see done. He said in preparing the handout he looked at it and thought some of the things in the budget Council had little or no input in. He said these were his opinions, such as the land acquisition allocation of \$344,000 – there was no clarification for its use, no work session about it. Rather he said at the public hearing it was presented and in a way that Council had no input. He said his understanding is that it is for land acquisition of property below Elm Street. City Manager Gil de Rubio said it is on the north side of Elm Street. Councilmember Rino said his concern is that it was presented that it would be used for development. He asked if that is the intent. City Manager Gil de Rubio said it is. Councilmember Rino asked if the soil on the property has been checked because it previously had been used by many gas and oil companies and could be contaminated. It might be wise to look at the land before we make a commitment on it. He suggested Council form a committee to gather recommendations from the community for capital projects whereby each Council member appoint one business person and one resident and the Mayor select three people and then those people look at where to spend the Capital Improvement money that would be most beneficial to the City. Not something the residents will not see as a positive thing or positive move for the community. He continued that his opinion is that very seldom does the City give the public an opportunity to present themselves. We have a hearing, but there's no participation. Maybe a committee might come back with priorities that they think are more important than the land acquisition at this particular time. He suggested the money instead be put into an escrow account and they can look at priorities in the City. Council wouldn't have to accept the priorities. If there are legitimate concerns like infrastructure and streets falling apart, curb and gutter need repairs they be considered. He said he thought just this morning about maybe looking at finding a way to get better snow removal equipment to do the job, although he didn't know if the money could be spent that way. It is important for them to look at it. Councilmember Rino continued that another thing he had a concern with was taking the money away from the Colorado Avenue islands and using it instead for tree mitigation. He asked where we are going to put \$150,000 worth of trees. City Manager Gil de Rubio said the City has had an engineer look at our trees and the City has a big problem with Dutch Elm Disease throughout the City, Colorado Avenue area especially. The problem is both City and privately owned trees and he said he is looking at the City-owned trees. Councilmember Rino said he didn't know what it was for and why it was so important to take away from the Colorado Avenue project where there is a recognized problem. He questioned the \$100,000 having been taken away from the courthouse brick project and put into paving, which was alright. But he said he thought they should have instead put additional back into the courthouse project. He said they need to maintain the \$500,000 or \$600,000 they allocate for the streets. City Manager Gil de Rubio said the money to maintain the streets is still in the budget. Councilmember Rino said if there are other concerns they need to be discussed and other Council members need to speak out now rather than waiting until after the budget is approved and then complain about it. Councilmember Pando said he thought the City needs to hire a Power & Light Superintendent. It is a very important department and a large department, he said, and he knows the City Manager is taking his time to take care of it. He said the City has always had a Superintendent of Power & Light and with the future coming up they need that individual. He said he's sure there's some place they can switch some money and hire that person. Another thing he said he wanted to discuss, clarifying that it is not a personal attack on the City Manager, was the 2% increase in salary included for the City Manager. He said they have a contract whereby Council pays him 'X' amount and it doesn't call for any increase so he said he thought it needs to be deleted. Regarding the issues he raised, Councilmember Pando said if they need to do it as a motion and vote on it he was perfectly willing to do it that way. He

added that he didn't know how Councilmember Rino wanted to handle the issues he raised but surmised that they are the things that need to be acted on and changed in the budget. Councilmember Rino suggested to Councilmember Pando if they do away with the LED lighting they could use that money to pay for a superintendent and put the LED lighting off a year. It is a \$74,000 expenditure in the budget. Mayor Garduno said that represents a payment. She asked for clarification on the tree project. City Manager Gil de Rubio said the funding in the budget was a small part of the project said he could see turning into a multi-year project. Mayor Garduno asked if there's a plan to attack the problem. City Manager Gil de Rubio answered that PWD Valentine went around with the State Forester who is well versed with Dutch Elm Disease to survey the trees. He said he wanted to get money up front and predicted the \$150,000 would escalate to over one-half million dollars, plus. He elaborated that they will be developing a plan of action but initially he wanted to get some funding up front and with the State Forester go through several areas of the City to decide how to address it over the next few years. Mayor Garduno asked if the majority of the diseased trees are in public or in private property. She also asked what they City will do with the trees in private property and what effect it will have on the overall problem. PWD Valentine answered that there are a lot of the diseased trees in the public right-of-way and there are some in private property. Because the disease travels through the trees' root system and through the air, it is going to be hard to control the disease without getting into private property and without an ordinance enforcing some kind of mitigation. Mayor Garduno explained that to be the basis of her question – if you take care of public trees but not the ones on private property it is uncertain how far you would get. City Manager Gil de Rubio said the trees will fall no matter where they are. There needs to be funding for cutting and eliminating roots once the trees fall. He added that he doesn't want to wait. He said it is happening and he is trying to be pro-active. This should have been done years ago. It is starting to take effect currently. Mayor Garduno asked if the trees are dying and falling over. City Manager Gil de Rubio said there are. PWD Valentine said several major branches have fallen into the streets. Councilmember Rino suggested Colorado Avenue needs to be done first. City Manager Gil de Rubio reminded that the trees are falling. He said the City needs to cut the trees down before they fall and hurt someone. Upon inquiry he added that although the trees should be replaced, the City doesn't have the money. We need to take care of the emergency situation. Councilmember Rino said he didn't have a problem with that. Joe Bonato addressed Council as a citizen, not as a councilmember-elect, regarding buying the land on Elm Street. He asked why the City wants to buy this property – what is its great importance. City Manager Gil de Rubio reminded that the budget was presented on October 5th and there's been public meetings and public hearings and it came up in the discussion with the county at a work session. He said the City is in process with the \$344,000 of buy three lots heading east and west on the north side of Elm Street. The intent is to enter into a private/public relationship for recreation and retail development. Several nation-wide retail businesses have expressed interest in that area. Mr. Bonato suggested it would be more feasible to use the money on the City's infrastructure needs before we purchase property with the \$344,000 appropriated, given the way the economy is. He added that the County Commissioners seemed pretty anxious to give the City a deed for this property. He questioned if the property is so valuable why the Commissioners were so anxious. He told Council that years ago there were three gas refineries there, Texaco, Chevron and 66, all in that area. It needs to be considered as a council and citizen. If the land is contaminated is the City going to be responsible for clearing out the dirt and putting all new top soil? He said that would be a lot of expense. Mr. Bonato said he was talking from his heart and this is a worrisome deal, but if the money is appropriated that's fine. He further suggested that the developer interested in buying the land should buy it and develop it. Why take taxpayer's money to buy property? He said he hoped his views reached Council as it is a very large concern not only for him but people also called him. We need to think what we are doing and realize if it is feasible. City Manager Gil de Rubio said he thought Mr. Bonato was confusing the County land with the property he was proposing to buy. He said the property proposed for purchase is three parcels and the County's parcel is yet a different parcel in that vicinity. The \$344,000 will not go toward the County property. Regarding the Brownfield restrictions, they haven't yet been perused, but his understanding is that soils mitigation funding would be available and the City would be highly favorable in getting those funds to eliminate any type of contamination. The private investor is also buying other parcels and this was proposed to be a jointly-owned public/private enterprise. He said the City needs to show its vision and an eagerness to join and it helps to get additional grants if we are going to use the property for recreation. This whole area plays a very important part in the City. There's a national real estate agency interested in helping Trinidad and a national retailer has expressed interest in development. He said the reasons he is hearing tonight are really baffling. There was \$1.2 million that has been allocated for new appropriations in this year's capital improvements. Out of that amount 18% was for new projects and the remaining is for continuing projects the City Council approved in the past. He reviewed the budget timeline, saying he was a little concerned. The budget was presented to Council on October 5th. He said he hadn't heard anything until two or three weeks ago when Councilmembers Pando and Rino came and asked some questions. There was a public hearing on capital improvements. Not only were there no members of the general public in attendance, but Council members didn't raise any questions about capital improvements or the budget at that time. He said he applauds Councilmember Rino on wanting community input but he said he felt a 13 member committee was a large number to run a committee. If this suggestion is for next year, he said that's fine, but it is last minute now for this budget. City Manager Gil de Rubio continued that regarding Councilmember Pando's suggestion to hire a Superintendent of Power & Light, the City doesn't need one. The department is running well. The day-to-day operations he has little concerns over. He said he meets with the foreman several times a week. Retaining a superintendent would not stop his involvement with ARPA which takes a fair amount of his time, but would as a City Manager anyway. He added that he doesn't care about his pay raise. It was negotiated that there would be no time limit on his contract and that he would be subject to any increase given to City staff. He said keep the 2%; it doesn't bother him. However, he said that Councilmember Pando bringing up his contract bothered him and that Council has breached his contract in several areas. Councilmember Pando countered that it goes the other way also. City Manager Gil de Rubio asked where he breached his contract. Councilmember Pando said he wasn't here to discuss that. City Manager Gil de Rubio said that with respect to the Capital Projects he felt they had a very good capital improvement plan. He agreed the streets need to be improved and the City needs new snow removal equipment. Those things should not be in expense line items in the budget like they are, they should be in capital improvements and should be planned out. He added that he would love to have a committee next year and he's asked for a five-year plan from department heads which he'd like to put in front of that committee. The City needs equipment badly but we are not going to get it in the expense side of the budget. Councilmember Rino said what he is saying is the \$344,000 should be put in an escrow account, not that it can't be used for that. He said they should let the committee look at it and say if it is a priority they would like to put forth. There may be some other idea to be looked at. Mayor Garduno said she'd like to take a consensus on the items raised. She added that at another time she'd like to follow up on the comment that Council has breached the City Manager's contract as it concerned her. She asked if when they approve the budget if it is approved as a whole and not necessarily the line items are approved. Can the money be moved from one line item to another within the same fund? City Manager Gil de Rubio said it can within the fund. City Attorney Beatty reminded that the hearing is still open and said he wanted to clarify to Joe Bonato

DECEMBER 20, 2011

regarding the allocation for land acquisition in the Capital Projects Fund that even if the money were to be appropriated to acquire the land it would still come before Council for approval. He said he was grateful for the history on the land near Elm Street. He ensured that the City would conduct appropriate due process in the event of any land acquisition and do at least a phase one environmental assessment. Councilmember Rino asked if money can be transferred within the Capital Project Fund and if it can be done with or without Council's approval. City Attorney Beatty said that inter-fund transfers can be made. If they are material staff would seek Council approval by resolution. Transfers from one fund to another would have to be accomplished by ordinance approval by Council. Councilmember Pando asked if that applies to any amount of money. City Attorney Beatty said fund to fund requires an ordinance. There being no further comments, the hearing was closed.

* Second reading of an ordinance appropriating certain sums of money out of the revenues of the City of Trinidad, Colorado, to defray and meet the liabilities of the City of Trinidad for the fiscal year beginning January 1, 2012 and ending December 31, 2012; said ordinance being termed the annual appropriation bill for the 2012 fiscal year. The ordinance title was read aloud. Councilmember Rino moved to delete the \$344,000 allocation for land acquisition and put it in an escrow account. Councilmember Pando seconded the motion which carried by a majority, with all Council members present voting aye excepting Councilmember Toupal who cast a dissenting vote. City Attorney Beatty clarified that the budget would remain as presented and it would not change the fund allocation it would just set aside those funds in an escrow. Councilmember Shew asked if those funds could be used. City Attorney Beatty advised they could. Councilmember Pando made a motion to hire a Superintendent of Power and Light. The motion was seconded by Councilmember Rino. City Attorney Beatty noted that would be an allocation that is not currently in the budget. He asked if the funding for the position would come from another line item in the fund. Councilmember Pando amended his motion to identify that the funding for the position would come from the LED lighting line item for payment of the superintendent's position for 2012. Councilmember Velasquez asked when the City is required to have the LED lighting in place. City Manager Gil de Rubio answered that it needs to be accomplished by 2014. Councilmember Shew asked what a superintendent of power and light is going to do. Councilmember Pando said what he has done in the past. Councilmember Shew reminded that the City doesn't generate power and he doesn't work on the line gang. We're going to pay a guy to sit in the office. We could use the money for other purposes. He re-asked what the superintendent will do. Mayor Garduno asked how long the City had a Power & Light Superintendent and questioned that now we are finding we don't need one. She said that's curious. Councilmember Toupal agreed with Councilmember Shew stating that he can't see if the City Manager is saying the City doesn't need one, hiring one. City Manager Gil de Rubio said there is definitely no need. Councilmember Rino amended his second accordingly. Roll call was taken and the following votes were cast:

Aye – Pando, Rino, Velasquez, Garduno

Nay – Shew, Toupal

The motion carried by majority. Mayor Garduno asked where that puts the City with LED lighting. Councilmember Rino said it delays it a year. City Manager Gil de Rubio said it is gone. Councilmember Rino asked if they are going to form a committee. Councilmember Toupal suggested if they are going to do that they wait until the new Council is seated. He added that he doesn't like for committees to do Council's job. That is Council's job to make those decisions, not a committee's. Councilmember Rino asked about the public input. Councilmember Toupal said they could get input without a committee. Councilmember Pando said it makes sense to wait until the new Council members are seated. City Attorney Beatty said with the two motions moved and approved it doesn't change the total expenditures for any funds in the budget ordinance. A motion to approve the ordinance on second reading was made by Councilmember Toupal and seconded by Councilmember Shew. The motion carried unanimously upon roll call vote. The ordinance was approved and will become effective December 30, 2011.

ORDINANCE NO. 1922

AN ORDINANCE APPROPRIATING CERTAIN SUMS OF MONEY OUT OF THE REVENUES OF THE CITY OF TRINIDAD, COLORADO, TO DEFRAY AND MEET THE LIABILITIES OF THE CITY OF TRINIDAD FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2012 AND ENDING DECEMBER 31, 2012; SAID ORDINANCE BEING TERMED THE ANNUAL APPROPRIATION BILL FOR THE 2012 FISCAL YEAR

Public hearing for consideration of an ordinance amending the City of Trinidad's Annual Budget for the fiscal year beginning January 1, 2011 and ending December 31, 2011, to identify projected additional expenditures from the Power & Light and Tourism Funds. Mayor Garduno opened the hearing. Councilmember Pando asked if this is to address the changes previously discussed. City Manager Gil de Rubio advised that it is. Having ascertained that there was no further public comment, Mayor Garduno closed the hearing.

Second reading of an ordinance amending the City of Trinidad's Annual Budget for the fiscal year beginning January 1, 2011 and ending December 31, 2011, to identify projected additional expenditures from the Power & Light and Tourism Funds. The ordinance title was read aloud. A motion to approve the ordinance on second reading was made by Councilmember Toupal and seconded by Councilmember Rino. The motion carried unanimously upon roll call vote. The ordinance was approved and will become effective December 30, 2011.

ORDINANCE NO. 1923

AN ORDINANCE AMENDING THE CITY OF TRINIDAD'S ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2011 AND ENDING DECEMBER 31, 2011, TO IDENTIFY PROJECTED ADDITIONAL EXPENDITURES FROM THE POWER & LIGHT AND TOURISM FUNDS

Public hearing for consideration of an ordinance amending Article 1 ("Utility Billing") of Chapter 12 ("Municipal Utilities") of the Code of the City of Trinidad, Colorado, by adding a new section 12-4.2 entitled "Utility Rates and Finances". Mayor Garduno declared the public hearing open and call for discussion and comments for or against the

ordinance. There were none and the hearing was closed.

Second reading of an ordinance amending Article 1 ("Utility Billing") of Chapter 12 ("Municipal Utilities") of the Code of the Code of the City of Trinidad, Colorado, by adding a new section 12-4.2 entitled "Utility Rates and Finances". The ordinance title was read aloud. A motion to approve the ordinance on second reading was made by Councilmember Shew and seconded by Councilmember Pando. The motion carried unanimously upon roll call vote. The ordinance was approved and will become effective December 30, 2011.

ORDINANCE NO. 1924

AN ORDINANCE AMENDING ARTICLE 1 ("UTILITY BILLING") OF CHAPTER 12 ("MUNICIPAL UTILITIES") OF THE CODE OF THE CODE OF THE CITY OF TRINIDAD, COLORADO, BY ADDING A NEW SECTION 12-4.2 ENTITLED "UTILITY RATES AND FINANCES"

MISCELLANEOUS BUSINESS. Hotel and restaurant liquor license renewal request by Mission at the Bell Restaurant, Inc. d/b/a Mission at the Bell Restaurant at 134 W. Main Street, Ste. 14. Mayor Garduno noted the Fire Chief's comments and asked if he recommends approval of the license. Fire Chief Perea responded affirmatively. A motion to approve the license renewal was made by Councilmember Rino and seconded by Councilmember Pando. The motion carried by a unanimous roll call vote of Council.

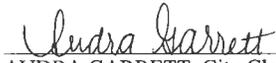
Retail liquor store license renewal request by Linda T. Anderson Barron d/b/a Mountain Liquor & General Store at 1144 Robinson Avenue. Mayor Garduno noted the Fire Chief's compliance issues. Chief Perea advised Council that the issues have all been taken care of and recommended approval. A motion to approve the license renewal was made by Councilmember Pando and seconded by Councilmember Toupal. The motion carried by a unanimous roll call vote of Council.

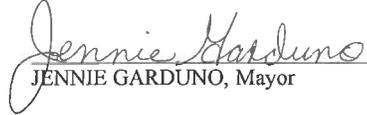
BILLS. A motion to approve the bills was made by Councilmember Velasquez. The motion was seconded by Councilmember Shew. Roll call was taken on the motion. The motion carried unanimously.

PAYROLL, December 10, 2011 through December 23, 2011. A motion to approve the payroll was made by Councilmember Rino 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 Rino and seconded by Councilmember Velasquez. The meeting was adjourned by unanimous vote of Council.

ATTEST:


AUDRA GARRETT, City Clerk


JENNIE GARDUNO, Mayor