

AGENDA

GALLUP CITY COUNCIL REGULAR MEETING TUESDAY, JANUARY 11, 2022; 6:00 P.M. CITY COUNCIL CHAMBERS



Louie Bonaguidi, Mayor
Linda Garcia, Councilor, Dist. 1 Michael Schaaf, Councilor, Dist. 2
Yogash Kumar, Councilor, Dist. 3 Fran Palochak, Councilor, Dist. 4

Maryann Ustick, City Manager
Curtis Hayes, City Attorney

The meeting will be accessible through the City of Gallup's Facebook Page:

[City of Gallup, New Mexico Government - Home | Facebook](https://www.facebook.com/cityofgallupnm/)

Members of the public may submit comment on non-agenda items either in person or by telephone.

To submit comment by telephone, please call 863-1254 to leave your name and a return phone number.

A. Pledge Of Allegiance

The members of the body and the public are invited to recite the Pledge of Allegiance.

B. Roll Call

C. Consent Agenda

These items are placed on the Consent Agenda so City Council can designate by unanimous consent those routine items they wish to be approved or acknowledged by one motion. If any item does not meet the approval of all Council members or if a citizen so requests, it will be heard as a separate item.

Action Needed:

Motion to approve or acknowledge Items 1-6 on the Consent Agenda by unanimous vote:

1. Approval Of Minutes

November 2, 2021 Work Session

December 7, 2021 Work Session and Special Meeting

Fiscal Impact: None.
Recommendation: Approve minutes.
Speaker's Name None.

Documents:

[DRAFT MINUTES NOV 2 2021 WORK SESSION.PDF](#)
[DRAFT MINUTES DEC 7 2021 WORK SESSION.PDF](#)
[DRAFT MINUTES DEC 7 2021 SP MTG.PDF](#)

2. Resolution No. R2022-1; Annual Determination Of Notice Under The Open Meetings Act

The New Mexico Open Meetings Act requires all public bodies to provide reasonable notice to the public of all its meetings. The Act also requires public bodies to determine its notice procedures at least once a year in a public meeting. While the Open Meetings Act itself does not impose any specific requirements, other than an agenda being available 72 hours in advance of each meeting, the New Mexico Attorney General will consider the following notice procedure as reasonable: 1) 10 days advance notice for regular meetings; 2) 3 days advance notice for special meetings; and 3) 24 hours advance notice for emergency meetings, unless the threat of personal injury or property damage requires less notice. The proposed resolution contains the Attorney General's recommendations for providing notice to the public of all City Council meetings. The resolution also provides language for the City Council to comply with the Attorney General's guidelines for conducting virtual meetings, if such meetings are necessary.

Fiscal Impact: None.
Recommendation: Approve Resolution No. R2022-1.
Speaker's Name Alfred Abeita, II

Documents:

[R2022-1 ANNUAL OPEN MEETINGS RESOLUTION.PDF](#)

3. Approval Of Gallup Mobility Investment District Report And Delivery Plan

On December 7, 2021, Michael Sage from GGEDC, Lois Yates and Adam Wasserman from GLD Partners did a presentation on the Gallup Mobility Investment Plan Report. The report outlines ways for the Gallup community to develop a Gallup Mobility Investment District (GMID). To comply with the City's EDA grant, the final report requires approval by City Council.

Fiscal Impact: None at this time. Report and delivery plan are funded by EDA grant and 20 percent match with State funds for a total project cost of \$750,000.
Recommendation: Approve Gallup Mobility Investment District Report and Delivery Plan.
Speaker's Name Maryann Ustick, City Manager & Michael Sage, GGEDC

Documents:

[GALLUPMOBILITYINVESTMENTDISTRICT_FINALREPORT_11.22.21.PDF](#)
[GALLUP MOBILITY INVESTMENT DISTRICT GCC DEC 2021
REVISED.PDF](#)

4. Approval Of Funding For Professional Services For DePauli Engineering And Surveying LLC To Design The Kachina Sewer Line.

The Planning and Development Department is requesting City Council's approval of funding in the amount of \$185,000.00 for professional services to be paid to DePauli Engineering and Surveying LLC, to design the Kachina sewer line. The Kachina sewer line is an expansion of the City's waste water system north to provide service for future development at the County's Industrial Park located on Carbon Coal Road.

Staff is requesting City Council's approval to fund the \$185,000.00 from DFA Emergency Infrastructure Grant No. 20-E2755 that City Council accepted at their August 24, 2020 Council Meeting.

Fiscal Impact:	None, the \$185,000.00 will be funded with DFA Emergency Infrastructure Grant No. 20-E2755 in project No. LA2155
Recommendation:	Staff recommends approval of said funding to allow moving forward with said design.
Speaker's Name	C.B. Strain

Documents:

[KACHINA SEWER LINE DESIGN 2018_2019_07P \(1\).PDF](#)
[PER KACHINA SEWER.PDF](#)

5. Recommendation Of Bid Award For Formal Bid No. 2118 To DUB-L-EE, LLC For The Navajo Gallup Water Supply Project Reach 27.11 And Related Budget Adjustment

The lowest qualified bidder for NGWSP Reach 27.11 (Formal Bid 2118) was DUB-L-EE, LLC of Albuquerque, N.M. in the amount of \$4,598,580.61 including New Mexico Gross Receipts Tax.

Navajo Gallup Water Supply Project, Reach 27.11 is funded by the Water Trust Board (WTB) through the New Mexico Finance Authority (NMFA), Grant No. WPF#5099 and the U.S. Bureau of Reclamation (USBR) Cooperative Agreement No. R11AC40002.

The WPF#5099 loan/grant agreement was to pay for NGMSP Reaches 27.10 and 27.11. Balance remaining is \$3,969,167.16. Additional funding in the amount of \$692,354.80, including contingencies, from the USBR will be necessary.

The project consists of installing approximately 7,300 linear feet of 14" CL350 ductile iron waterline, 6,600 linear feet of 12" CL 235 DR18 C900 PVC waterline, and a meter station. Work will also include air release stations, valves, fittings,

specials, grade control structures and devices, grading, excavation, trenching, backfilling, and compaction. 12,000 linear feet of Asphalt, gravel road surfacing and fencing will also be required.

This project is located south of Gallup, New Mexico within Section 28 and 33, T15N, RI 8W, N.M.P.M. and Section 4 and Section 5, TI 4N, R18W. N.M.P.M. The 14" and 12" waterlines begin at the Lyon's Pump Station located along the Old Zuni Road east of the intersection of Dusty Road and Cipriano Street, and runs south to the Red Rock Chapter. The meter station is located at the end of the waterline on Refuge Rock Road, approximately 1.6 miles west of NM State Road 602.

Recommendation:

Staff recommends award of NGWSP Reach 27.11, Formal Bid 2118, to DUB-L-EE, LLC in the amount of \$4,598,580.61.

Fiscal Impact:	Budget adjustment of revenues and expenditures into Fund 306 in the amount of \$692,355 only, reimbursable by the USBR.
Recommendation:	Staff recommends approval of bid award and budget adjustment. Please see above.
Speaker's Name	Adrian Marrufo, Acting Director W/WW

Documents:

[BID TABULATIONS REACH 27.11.PDF](#)
[FINAL 27.11 ENGINEERS ESTIMATE.PDF](#)
[RECOMMENDATION OF AWARD.PDF](#)
[APPENDIX A - REGIONAL MAP.PDF](#)

6. Award Of Contract For Alpine Redevelopment Plan

The Gallup City Council at their August 10, 2021 regular City Council Meeting accepted Legislative Appropriation Number 21-ZF9136 in the amount of \$75,000.00 in order to develop a redevelopment plan for the purpose of economic development reuse of the old Alpine property.

Requests for proposal (RFP's) went out and one (1) firm responded. The RFP Evaluation Committee evaluated the proposal and met on January 3, 2022 to score the proposal using criteria developed and included in RFP No. 2021/2022/03/P. After thorough review and discussion the Evaluation Committee selected Sites Southwest as the firm most qualified for the project. The reason for this selection is based on the extensive experience and expertise Sites Southwest has in developing redevelopment plans. Sites Southwest has developed redevelopment plans of this type for Cities comparable to Gallup throughout New Mexico.

Fiscal Impact:	Revenue and expenditure budget in the amount of \$75,000.00 to be reimbursed to the City from Legislative Appropriation No. 21-ZF9136
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Recommendation: RFP Evaluation Committee recommends approval of award of contract to Sites Southwest

Speaker's Name C.B. Strain

D. Discussion/Action Topics

1. Approval Of New Budget For Harold Runnels Athletic Complex

Staff is requesting Approval for a new Budget in the amount of \$35,000 to staff and operate the Harold Runnels Athletic Complex in the amounts of \$15,000 from the General Fund to 3547 for Personnel and \$20,000 from General Fund to 3547 for Operations. Approval of this item allows the Recreation Department the opportunity to staff and operate the Harold Runnels Facility for the remainder of the current Budget year 2022. This facility has been closed since March 13th 2020, due to the Covid 19 Pandemic.

Fiscal Impact: \$35,000 from the General fund to 3547 \$15,000 for Personnel, from GF to 3547 \$20,000 for Operation, from GF to 3547

Recommendation: Staff recommends the approval of a new Budget for the Harold Runnels Athletic Complex

Speaker's Name Vincent Alonzo

2. Resolution No. R2022-3; A Resolution Authorizing The Gallup Electric Department To Affirm The Net Metering Program And Establishing And Adopting Associated Policy

Resolution R2022-3 is an affirmation of previous Resolutions R2009-7 and R2011-18 which allow for the City of Gallup Electric Customers to place renewable generation systems on their property. This Resolution will allow Commercial Customers to be able to put renewable resources on their property up to 75 KW, which were not included in the original Resolutions. This Resolution also allows a change in the methodology of calculating Avoided Cost which could be paid to customers who produce more electricity than they can use themselves. This methodology is is an attachment as Appendix "B".

Fiscal Impact: None

Recommendation: Recommend the approval of Resolution No. R2022-3 and attendant Appendices.

Speaker's Name John Wheeler

Documents:

[RESOLUTION R2022-3.PDF](#)

3. Approval Of City Participation In The National Opioid Litigation Settlement Agreements

This agenda item requests Council approval for the City Attorney to register the City with the "National Opioid Settlement" website established by the Federal District Court for the Northern District of Ohio and file a participation agreement by which the City would be agreeing to the terms of a proposed settlement agreement with the three largest wholesale distributors of prescription opioids.

The participation agreement includes a release whereby the City agrees not to bring suit against those defendants for any damages the City may have incurred based upon their conduct. (the participation agreement form is attached.)

The agenda item is also asking for approval for the City Attorney to file a participation agreement in the settlement agreement with one manufacturer, Janssen and its parent company Johnson and Johnson, should the State of New Mexico decide to accept the J&J settlement agreement and become a "settling state" to that agreement. Currently the New Mexico Attorney General has only agreed to participate in the settlement agreement with the three distributors.

In 2017, more than 3000 Federal lawsuits filed by local and state governments against the manufacturers and distributors of prescription opioids were consolidated into a single "multi-district litigation" (MDL) case in the Federal District Court for the Northern District of Ohio. In July of last year, two proposed settlements were announced; one with three of the largest wholesale distributors (McKesson, Cardinal Health and AmerisourceBergen) and one with manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson. If the settlements are approved by a sufficient number of local and state governments nationwide, the three distributors will pay out \$21B over 18 years. (The J&J settlement requires that it pay out \$5B over nine years.)

The initial deadline for cities and counties in "settling states" to file participation agreements is January 26, 2022. The defendants will then have until February 25 to decide if a sufficient number of cities and counties have signed on to the agreements for them to proceed forward. The defendants have already determined that a sufficient number of states have accepted the agreements. (Approximately 50 out of 55 "states," which includes U.S. territories and the District of Columbia, have accepted the terms of each of the settlement agreements.)

After various costs such as attorney's fees are deducted, \$19B will be available to be paid out to state and local governments around the country, regardless of whether it has sued one or more of the three distributors. The \$19B is divided into a "base payments fund" of up to \$10.2B and an "incentives payments fund" of up to \$8.3B. The base payments fund is used to pay a guaranteed minimum amount to each state that agrees to the settlement. The incentives fund is to provide additional funding to states based upon the percentage of a state's population represented by the cities and counties within the state that agree to the settlement. (The J&J settlement provides for J&J to pay \$4.5B in damages, with up to \$1.94B going to base payments and up to \$2.3B going to incentive payments.)

Each state has been assigned a percentage (the "overall state allocation percentage") of the total settlement based upon population and a "severity index" that factors in the amount of prescription opioids distributed within the state, the opioid overdose death rate, and the prevalence of diagnosed cases of Substance Use Disorder. New Mexico's allocation percentage is 0.8557238713% which equals approximately \$87.28M from the distributors' base payment fund. The state could receive up to \$71.025M from the incentives fund, but to receive that

amount it will require that almost all of the cities and counties in NM agree to the settlement. (If New Mexico were a settling state in the J&J agreement, it would be entitled to \$16.6M from the J&J base payments fund and up to \$19.68M from the incentives fund.)

Once the annual payment to a state from each of the settlements is determined by adding the base payment and the incentives payment, the total payment to a state would be separated into three funds: 70% to an "abatement accounts fund," 15% to a "state fund," and 15% to a "subdivision fund;" UNLESS the state obtains approval to distribute the funds differently. Most states have already developed plans to deviate from the 15/70/15 split and they generally provide more funding directly to local governments.

The subdivision fund is established to directly reimburse cities and counties and how it is to be distributed within a state is also based on population and the severity index formula. IF there is not an agreement between New Mexico cities and counties and the state or if the legislature does not mandate a different distribution, Gallup would be entitled to 0.7722895935% of the NM Subdivision Fund and McKinley County would receive 1.0214669791%.

Applying those percentages to the distributors settlement, if New Mexico gets the maximum possible incentives, the total amount to be paid to NM would be approximately \$158.305M (\$87.28M in base payments plus \$71.025M in incentives). If only 15% of that amount is put into the subdivision fund, it would be funded up to \$23.745M ($\$158.305\text{M} \times 15\%$). Gallup's share, paid out over 18 years, would be approximately \$183,386 and McKinley County's would be \$242,555. (The distribution amounts from the J&J settlement would be approximately 1/4 of those amounts, paid out over nine years.).

Unless New Mexico obtains approval for a different distribution, by default, 70% of the total funding would go to the abatement accounts fund that would be distributed according to the recommendation of an advisory committee that has "equal representation from the state and local levels." An important component of the two agreements is that no less than 70% of the funding a state receives must be spent on programs to abate future opioid abuse and that are within pre-approved uses that include "a wide range of intervention, treatment, education, and recovery services."

The attached chart shows how the money from distributors' settlement would be allocated. The third attachment entitled "Materials from the National Opioid Settlement website" contains further details regarding the two settlement proposals.

The two settlement proposals do not include a number of other companies that either manufactured or distributed prescription opioids at the wholesale or retail level (pharmacies). Purdue Pharma, a manufacturer, is in Chapter 11 bankruptcy. A deal requiring the company to pay up to \$10B for harm caused by primarily Oxycontin was rejected by the bankruptcy judge last month, primarily because the deal protected the Sackler family members from further liability. Mallinckrodt, another manufacturer, is also in Chapter 11 bankruptcy. Prior to filing for

bankruptcy, a tentative settlement agreement requiring it to pay \$1.7B to resolve the claims in the consolidated MDL case was supported by almost all of the state and local government plaintiffs. However, a ruling in a separate Federal case finding it liable to pay “\$640 million for retroactive rebates related to its multiple-sclerosis treatment Acthar” resulted in the company filing for Chapter 11 bankruptcy protection. Two other large manufacturers, Teva and Invidior, are also not parties to the settlement agreements

The other remaining large defendants, some of which have negotiated settlements with a handful of individual states and local governments, but are not parties to the nationwide settlement agreements, are the pharmacies such as CVS, Walgreens, and Walmart. Unless settlement is reached with those companies, their cases will proceed to trial.

Fiscal Impact:	Potential future revenue to the City in yet to be determined amounts.
Recommendation:	Approval of the request of the City Attorney
Speaker's Name	Curtis Hayes

Documents:

[SUBDIVISION SETTLEMENT PARTICIPATION FORM.PDF](#)
[DISTRIBUTOR PAYMENT FLOW CHART EDITED.PDF](#)
[MATERIALS FROM THE NATIONAL OPIOID SETTLEMENT WEBSITE.PDF](#)

E. Motion To Adjourn Into Closed Session

For the Purpose of Discussing the Purchase, Acquisition or Disposal of Two (2) Parcels of Real Property, Pursuant to NMSA 1978 Section 10-15-1(H)(8)

F. Motion To Reconvene Regular Meeting

G. Certification For The Record Of The Matters Discussed During The Closed Session

H. Comments By Public On Non-Agenda Items

Members of the public are invited to comment on matters not appearing on the meeting agenda.

I. Comments By Mayor And City Councilors

J. Comments By City Manager And City Attorney

K. Motion To Adjourn

Pursuant to the “Open Meetings Act”, NMSA 1978, Section 10-15-1 through 10-15-4 of the State of New Mexico, this Agenda was posted at a place freely accessible to the public 72 hours in advance of the scheduled meeting.

