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

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

The pledge of allegiance was recited.

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

PETITIONS OR COMMUNICATIONS, ORAL OR WRITTEN. Councilmember Pando offered an apology for having exited Council Chambers during the last regular meeting without permission, and assured it would not happen again. Mayor Garduno accepted the apology.

Jesse Manzanares addressed Council. He provided that he is retired, was born and raised in Trinidad and detailed his credentials and law background, noting that he never sought elected office. He said the controversy that occurred last week spurred him want to come tonight and tell Council how much he admired each of them for their willingness to serve in these positions, study the issues, make decisions, and deal with some unfriendly audiences at times. Mr. Manzanares said he read the newspaper's account and Mr. Murphy's television broadcast of the last meeting on Sunday. He said he watched the program with the idea to learn for himself what had occurred. He said he was both impressed and disappointed. He said he felt the news sensationalized the meeting and it was different than what occurred on tape. The news provided their interpretation rather than the facts in his opinion. The video shows and people can see what happened and can draw their own conclusion, not someone else's. He added that we need to realize that many in the media are not fair and balanced and will shade articles from time to time to benefit someone. He continued that he was impressed with the collective composure of Council. Rumors had stirred people up and they came. Some were polite and some were not and he saw some make disrespectful remarks. He commended Mayor Garduno's calm demeanor and wise counsel in keeping what could have been a heated meeting, calm and productive. Mr. Manzanares said he personally didn't much like the final result where nothing seemed to happen. He said that he thinks Council has a job to do, to evaluate the City Manager, and they need to do it. He added that he felt what he saw had been orchestrated, although he wasn't sure by who or why, but it certainly didn't benefit the community or Council, and he hopes it doesn't continue. This community is a fertile ground for rumors and gossip, he said, exampling the Miner mascot at Trinidad High School and the rumor surrounding it. Rumors cause people to react and sometimes causes people to say things they didn't really want to say. Mr. Manzanares said he heard street rumors about Council going to fire Mr. Gil de Rubio, or some members wanted to. He said he heard if from a pretty reliable source, some people who attended a service club meeting. He said he didn't know what to think of it but didn't believe it because he knew there was a contract in place and a Charter provision and State Statute that dealt with those things and they would take time to go through and he also knew they didn't run business precipitously like that. He said he also heard street rumors about credit cards and about bankruptcies and that's why he thinks Council needs to stop, be calm, and look at everything and make sure they protect the City's finances. Nothing would be better than for them to do a thorough and full evaluation and everything look rosy and they move on. If there are problems, then they can be addressed. Mr. Manzanares referred to the Charter Section 6.4 which calls for the annual evaluation and pointed out that it doesn't say which month, when it is to take place. However, he said he was privy to a City Manager's employment contract years back and it also called for an evaluation similar to the Charter language, to be done in the month of June. He said he doesn't know if the current City Manager's contract has that language. He said he also saw in the old contract that the City Manager contracted with the City to keep that report confidential. He said to Councilmember Rino that to answer his question of whether the Open Meetings Law prevails over the Charter provision, probably the Open Meetings Law does, but an employee by contract can waive their Statutory right. He suggested they could ask City Attorney Beatty where there's a provision in the contract to waive that right to not have confidentiality. Finally, he said regarding the matter of Linda Velasquez having a conflict of interest, he said he thinks Council knows and so does Mr. Murphy that she is not disqualified from being a member of Council. If any of them are businessmen and don't pay their taxes it doesn't disqualify them from conducting their business. It is unfortunate that issue even arose. He concluded that he intended to apologize to Councilmember Velasquez on behalf of the citizens for that having been raised.

Joe Cordova addressed Council and thanked and congratulated them on the great job they do in running the City. He said he was upset with Tom Murphy making comments about Linda Velasquez abstaining from voting on issues before Council, which he felt was wrong. He concluded that he was born and raised here and loves this community and it is a wonderful place to live, otherwise Mr. Manzanares said everything else that he would have like to have said.

Bernadette Baca-Gonzalez addressed Council on the topic of the failure to hold a regular work session on September 13, 2011. She told Council that their failure to hold that work session created a hardship on City employees who are responsible for preparing their agenda, board packets and making other arrangements to facilitate Council's ability to perform their duties as Council persons on behalf of City taxpayers. She assured that she was not asked to address them on this issue and continued that her many years of service with political subdivisions taught her to respect the time and commitment of the employees. Most are exempt and can work an unlimited number of hours. They work a normal work day, maybe go home to eat supper and then are back for a meeting or during the course of the day to conduct a work shop.

She respectfully requested that before another meeting or work shop is cancelled there be a significant reason why it doesn't go forward. Council owes it to each employee of the City who facilitates their ability to govern. Ms. Baca-Gonzalez said if there were a snow storm, it is understandable. She concluded that as elected officials they need to prepare their calendars to ensure they are here to conduct the City's business. Mayor Garduno responded that about two weeks ago Council postponed a work session for the convenience of the City Manager and City Attorney who were out of town that day. Council felt their participation was important so the meeting was postponed. She asked Ms. Baca-Gonzalez why that wasn't a big deal and this time it was. She added that according to the Charter Council has an obligation to meet in two regular sessions per month. Work sessions are not required. She re-asked why this is such an issue and not the past one.

REPORT BY CITY MANAGER. Financial reports. City Manager Gil de Rubio advised that financial reports will be included in their packets this Friday, noting that they are looking pretty good.

Library. City Manager Gil de Rubio announced that the ribbon-cutting ceremonies at the Carnegie Public Library and the computer center were very successful. He urged Council to stop in at the new computer center, adding that they have $35,000 in equipment and volunteers are manning the facility. It is very beautiful. He offered his appreciation to Jane Besel and John Sanders for their extraordinary efforts in getting it up and running. He concluded that if they go to the library they can see a significant change to the building, including paint, carpeting, lighting, etc.

Historical Buildings. City Manager Gil de Rubio reminded Council of the downtown building tour he had done with Steve Turner from the State Historical Society, the Executive Director of DOLA, a representative of historical society, and from the Main Street Program. He said they visited a lot of buildings, including The Blue Crate, the Columbian, the brewery, Mt. Carmel and the Opera House. He added that it was great because they got people from Denver here to look at Trinidad and lined us up with future funding and grants when the money loosens up a bit, perhaps 2013.

Golf Course Clubhouse. City Manager Gil de Rubio informed Council that the City will contract to start the removal of the asbestos from the basement of the golf course clubhouse building on September 29th. The HVAC design is almost done and the work will be bid out soon. Upon inquiry, he said the asbestos removal is estimated to cost between $25,000 and $28,000. Councilmember Rino said he understood that the new roof had a leak and asked if the work had been bonded. City Manager Gil de Rubio answered that it was and that the problem has already been corrected. An elbow in the drainage system wasn't glued properly. He reiterated that it has been repaired.

REPORT BY CITY ATTORNEY. Cougar Canyon. City Attorney Beatty announced that the Cougar Canyon Golf Links transaction closed on September 14th. Colarelli Construction is now the new owner of the course. The City's Assignment and Amendment to Provide Untreated Water is now in effect with their newly created entity, Colorado International Resorts and Fine Living, LLC.

ARPA Update. City Attorney Beatty reminded Council of ARPA's previous attempt through a motion to the Las Animas County District Court to change venue to Prowers County and its subsequent denied by District Court Judge Leslie Gerbracht. He updated Council that more recently ARPA filed a Petition for Relief under Colorado Appellate Rule 21 with the Colorado Supreme Court seeking its reconsideration to change venue to Prowers County. The Supreme Court denied that motion on September 8th.

City Attorney Beatty offered his thanks to City Council for their service.

Mayor Garduno wished good luck to Cougar Canyon.

COMMITTEE REPORTS. None.

UNFINISHED BUSINESS. None.

MISCELLANEOUS BUSINESS. Consideration of Security Services Agreement between the City and Trinidad School District Number One. Councilmember Toupal moved to approve the agreement and the motion was seconded by Councilmember Pando. Upon roll call vote, the motion carried unanimously.

Approval of Property/Casualty and Workers' Compensation insurance coverage renewal through CIRSA (Colorado Intergovernmental Risk Sharing Agency) for 2012. A motion to accept the insurance renewal through CIRSA was made by Councilmember Shew and seconded by Councilmember Toupal. Roll call was taken, and the motion carried unanimously.

Request to retain special Deputy Municipal Court Judge for a Municipal Court matter. Councilmember Rino moved to appoint the Honorable Judge George Newnam to fill the vacancy. The motion was seconded by Councilmember Toupal. Councilmember Aragon asked for clarification, stating she thought they were appoint a special Deputy Municipal Court Judge for that particular case and not permanently and suggested the motion should be amended. Councilmember Rino said his motion was for whenever the vacancy occurs. City Attorney Beatty clarified that this request is for two specific cases, 2011P113 and 2011T230, for which Sisto Mazza is the attorney. Councilmembers Rino and Toupal acknowledged the clarification. The motion carried by a unanimous roll call vote.

Request by Tom Murphy for Council to consider retaining an independent investigator to review possible violations of the Home Rule Charter by City Council Members. Thomas Murphy, owner of Mullare-Murphy Funeral Home and Trinidad Times TV, and with his wife co-owner of Trinidad Times Independent and Raton Range, addressed Council. He asked Council to hold their comments and questions until he was done and at the end of his address he would ask for a motion and second and for a vote to see where Council stands on this issue. He said he was here because of Charter Chapter 5, Section 5.16, Meetings to be Public, which allows him to be and reads 'All regular and special meetings of the Council shall be open to the public and citizens shall have reasonable opportunity to be heard under such rules and regulations as the Council may prescribe.' He asked Mayor Garduno if they have any rules in writing, to which she replied that they do not. Mr. Murphy said it is his intent to be respectful even though nowhere in the Charter does it say they are entitled to any special privileges, nor are they to bow down or address them with any formalities. It is done as a courtesy by others, but it is

not required. However, in the Charter, under the Prefatory Synopsis, page one, third paragraph, 'this Charter ensures the orderly and economical management of the government of Trinidad, guided and controlled by the people of Trinidad, through their elected representatives.' He continued, fourth paragraph, 'To ensure the greatest possible control of government process "by the people" provision is made in the Charter for direct democratic processes of initiative, referendum, and recall. These provisions provide the means whereby the people can, if they wish, directly control the legislative process and/or recall any elected official who proves to be unsatisfactory.' Paragraph six, he read 'Under this Charter the Council will be responsible to the people.' Mr. Murphy then referred to Section 2.71, City of Trinidad Code of Conduct and Code of Ethics, and read the mission statement 'The mission of the Trinidad Board of Ethics is to assure that the public has confidence in the integrity of all aspects of City government and the Public Servants that exercise discretionary powers. The City shall be guided by the principle of non-partisanship - all actions, decisions and votes shall be made in the best interest of the public, on their merits, objectively and without regard to political party, regional or ideological partisanship; Declaration of Purpose. Public Interest. Treat public service as a public trust, only using the power and resources of public service to advance public interest and not to attain personal or private benefit; Objective Judgment. Employ independent, objective judgment in performing duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.' He said he is here because this Council holds in its hands the ability to either build up or destroy this community. ARPA, overcharging the residents for utilities, and micromanagement of staff are three examples that are killing our community, and Council is responsible. So now he said it is his time to stand up and address Council as he is entitled to under the First Amendment. In 2003 he said he and his wife attended a convention in New Mexico and listened to a speech given by a retired Chief Justice at the New Mexico Foundation for Open Government. The subject of the speech was "The Public's Right to Know." Mr. Murphy read exerpts "Secrecy in a democratic government is the antithesis to all that democracy stands for. It keeps the people in the dark and destroys any opportunity they may have to speak out for or against any government action. When access to governmental activity is denied or restricted in any way, and access to the opportunity to observe the activity is stopped, democracy dies. It's just that simple. For if this is truly a country of, by and for the people, then the people must be informed if they are expected to act. The people have the right to know"...But what is it that people have the right to know? The Open Meeting Act is clear. He said when it comes to personnel matters the person being discussed has a right to be there and have it in open session, no if, ands, or buts. Mr. Murphy referred to a second point made during the Chief Justice's speech which was that another more destructive form of deception today is the selling of fear. "Fear is the most debilitating of all emotions. A fearful person will do almost anything, say anything, accept anything, reject anything if it makes him feel more secure for his own, his family's or his country's security and safety whether it actually accomplishes it or not. It works like a charm. A fearful people are the easiest to govern. Their freedom and liberty can be taken way and they can be convinced to believe that it was done for their own good to give them security. They can be convinced to give up their liberty voluntarily." Mr. Murphy said in the Charter there are six references in the first five pages to the Colorado Constitution. He said he did an interview yesterday and realized that there are a number of people who think that because we have a Home Rule Charter, that we don't have to adhere to the state laws of Colorado. He asked Council members how many of them had the Colorado Municipal League Handbook for Municipal Elected Officials. Two said they did. Mr. Murphy asked audience members and Mr. Manzanares said he did. He encouraged all of them to get a copy of it. He said it is a great outline. The first chapter, Chapter 1, includes Introduction, the Democratic Heritage of Municipal Government, History of Colorado municipalities, and the Legal Nature of Municipalities. He read from the third section, the Legal Nature of Municipalities, "the word 'municipal' is derived from the Roman word 'municipium', a free city capable of governing its local affairs while remaining subordinate to the sovereignty of Rome. The word municipality was later applied to self-governing cities and towns in early England. Two characteristics mark the existence of municipalities – its right to exist is derived solely from the state, and its legal status as a municipality is voluntarily assumed by its residents. While residents can retain the sole power to formation and discontinuation of a municipality, municipalities are at the same time political subdivisions of the state, subordinate to and dependent on the state for the authorization to exercise any and all powers. This results in a dual role. A municipality may govern its own affairs within a certain limit, but it also acts in a qualified sense as an agent of the state government." He said this is important because he thinks the last meeting spelled it out, but wanted to give Council a little bit of history. He stated that in September, 2006, there was a story in the Trinidad Times Independent about a meeting being held at the City's Power & Light Warehouse by City Council members and City Manager Jim Soltis. The story read that it was intended to be a retreat where they might discuss issues more openly without the press or the public present, according to Council members Jennie Garduno and John Rino. Councilmember Rino said in the story that he had brought a couple of concerns, nobody else did. The other members only wanted to discuss behavior of the Council, what some of them believe is a negative perception of the Council by the public. He reminded that this occurred in 2006. He continued, reading "in some issues that had been hashed over before but were apparently unresolved. The last issue Rino hoped the Council would address was how they deal with personalities on Council; how we deal with each other; how we respect each other. What we say here and how we act at the meetings is a reflection on the entire Council. We need to sit down as a Council in executive session and discuss our differences in the Council and solve some of the problems we have. Sometimes when you leave the Council Chambers you leave with a feeling that there's animosity among Council members." Mr. Murphy said he doesn't find anywhere in the Charter or in the State of Colorado that sitting down and discussing your differences in executive session is a topic. He read "Jennie Garduno agreed issues should be addressed. How the Council actually functions and the interactions that take place among Council member and the behavior is sometimes less than desirable. I feel we function in a disorganized manner even though we have written agendas. I would like to see our meetings better organized and under better control." "Garduno said last Thursday's meeting was an example. She had asked if there would be an agenda and a facilitator." "She said 'I thought this was going to be a session where we could really just discuss issues without concern how public it was going to be, and in order to participate I think you need to have a facilitator.'" There were other comments about the negative perception, of Council's attitude toward the public, and Mr. Reorda finished it up with "My platform was to get everybody to work together. I discovered that as long as they're happy, we are working together. If they're not happy, we are not working together. Even though we disagree, once we leave the meeting we don't take it to the streets. It's already been voted on. Once the decision is made we live with it." Mr. Murphy continued that in July, 2007, John Rino, Jennie Garduno and Linda Velasquez were here for a meeting with then-City Attorney Gene Duran. He said a number of things popped up that alarmed him. He said it appeared there had been a number of discussions about personnel in executive session when they weren't there and it seems to be carrying over into this Council. That was an example of someone who chose to have their executive session in public. He questioned if people just don't remember. Mr. Murphy said he was there and he remembers it well. Mr. Murphy referenced the prior meeting on September 6th and said people may have been disappointed in what he had to say, but it is his First Amendment right. He referred back to fear and said it was his understanding that Ms. Velasquez was threatening the Chief of Police

with his job. The fact that she is the City Manager's boss and the City Manager is the Chief of Police's boss, if they go into executive session that was his point. She certainly would have had the opportunity to influence him. That was his point and if people disagree with it, he said that is fine with him. Mr. Murphy addressed Councilmember Pando and said his statement that he was confused about the executive session, that it was insane, not seeing it happen, refuse to evaluate, difficult to separate written from your own, the process is not valid, an open meeting is not valid, and Councilmember Rino said we just want to offer suggestions to the department, we may want to talk about department heads, personnel may come up – none of these things are listed as executive session topics. Bouncing back to fear, Mr. Murphy said he was a part of the lawsuit as Mr. (David) Grugel who is here was, when they sued the City over utilities. He said Mr. Grugel went around to a number of people who stated to him that 'no, we can't – we're afraid of the City'. That is what is out there in the business community. They are afraid that the City is a weapon. He asked if they can believe that and asked if they want to attract businesses here. He told Councilmember Rino that Gene Duran dealt with it with him, because he had heard rumors about what was happening with him and his job. And here we are again today with rumors. Mr. Manzanares heard them. Where do they start? Mr. Murphy said he didn't know. But he said he does know that Mayor Garduno said at one point that it was not true that the City was passing these out (evaluations) and he wondered how it was that she would even know that. He revisited fear of the City and the business community – he asked Council if they knew why the people rallied here? He said it was because of City Manager Gil de Rubio. They rallied because he walks in their door and asks what they need, instead of the perception that they have to be afraid of what the City might do to them if they want to do something differently or if they have an idea. Mr. Murphy continued that it is a different day and we need to move forward. He said he sees the same people who were on Council five years ago who had the same problems. He suggested maybe it is time for new blood in these seats and time for Council to say maybe they should let someone else have a shot. Mayor Garduno suggested maybe Mr. Murphy should have a shot at it. Mr. Murphy said maybe he should. He said his concerns with the Charter violations were that he felt Councilmember Velasquez had a conflict of interest when she seconded Councilmember Pando's vote. He said he thinks there was a conflict of interest knowing that she had already threatened the Chief of Police with his job. She did not disclose that she had a conflict of interest. Appearing in the newspapers is not disclosing that she had a conflict. He told the Mayor that he felt she failed to call for a vote, because it says in the Charter if there's a conflict of interest that there should be a vote. He referred to misconduct in office and thanked Councilmember Pando for apologizing. He added that he thought it was important that he apologized to the Mayor but pointed out that he didn't apologize to the community. Mr. Murphy said he still feels that is misconduct in office, and added that he thinks Linda Velasquez, Alfredo Pando and Mayor Garduno all have misconduct in office. He asked what they do about it and then addressed City Attorney Beatty. He told him that he thinks there are five reasons why this Council has to consider different legal counsel. First he said what he saw last week was what he saw with Mr. Duran where there was a complete lack of respect when he offered his legal opinion. He added that he doesn't know how Council could possibly take his advice on this issue and he thinks outside counsel is required. Secondly, Council holds his job in their hands, which goes back to the fear issue. Any man that is afraid of his job will tell somebody anything that they want. Third, he told City Attorney Beatty that he should have told Council that they were violating the Charter since he is their legal counsel. Fourth, he opined that it is clear that there have been a number of times that they have violated executive session by talking about personnel when they were not present. That means if all of them, if they didn't call for it may have violated their oaths of office. He reminded that they all took an oath of office to uphold the Constitution of the United States, the Colorado Constitution and the Charter of the City. He asked for someone to make a motion and someone to make a second to ask for legal counsel. If any of these rumors are true and this doesn't happen, he suggested the next step is that they need to move toward having a Grand Jury investigation because there are a lot of other rumors out there besides someone losing their job. He said he'd be all for it because he'd like to hear people testifying under oath as to what is really going on in this community. He reiterated if anybody is willing he sure would like to have a motion and a second. Mayor Garduno apologized and said he is not in a position to ask for a motion. Mr. Murphy pointed out that he just did and Mayor Garduno rebutted that he is not on Council. Councilmember Aragon said she'd like to hear from City Attorney Beatty. Mayor Garduno asked City Attorney Beatty if he was prepared to address this. City Attorney Beatty answered that he was not substantively prepared but he thought Mr. Murphy made his comments and he advised Council to take it under consideration. Mayor Garduno asked if they need to have a motion. City Attorney Beatty said they do not. Mayor Garduno thanked Mr. Murphy for his comments and said that Council will take his requested under advisement.

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

PAYROLL, September 3, 2011 through September 16, 2011. A motion to approve the payroll was made by Councilmember Shew and seconded by Councilmember Toupal. The motion carried unanimously.

Roberta Cordova invited Council to attend the Carnegie Library 100th birthday party of the Hebe statue sponsored by the Pierian Club. She explained that the Pierian Club, a club that has existed since 1893, donated the Hebe statue 100 years ago. The party will be at the Library at 2:00 p.m. this next Saturday (September 24, 2011) and refreshments will be served. She concluded that she hoped they could attend.

ADJOURNMENT. There being no further business to come before Council, a motion to adjourn the regular meeting was made by Councilmember Shew and seconded by Councilmember Toupal. The meeting was adjourned by unanimous vote of Council.

ATTEST:

JENNIE GARDUNO, Mayor

AUDRA GARRETT, City Clerk