CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2013-___

INTRODUCED BY:

Mayor David Coss

Councilor Patti J. Bushee

A RESOLUTION

RECOGNIZING THAT SAME-SEX MARRIAGE IS LEGAL IN NEW MEXICO AND ENCOURAGING NEW MEXICO'S COUNTY CLERKS TO ISSUE MARRIAGE LICENSES TO SAME-SEX COUPLES.

WHEREAS, the Charter of the City of Santa Fe recognizes that Santa Fe has "a history of tolerance towards all people, cultures, traditions, and lifestyles;"

WHEREAS, the Charter also acknowledges that "the human and civil rights of the residents of the City of Santa Fe are inviolate and shall not be diminished or otherwise infringed;" and

WHEREAS, the struggle for equality among lesbian, gay, bisexual, and transgender people is the modern face of the Civil Rights Movement; and

WHEREAS, nine states and the District of Columbia currently extend marriage licenses to same-sex couples;

WHEREAS, Santa Fe has always been a proud leader in recognizing basic human rights

and in fighting against discrimination; and

WHEREAS, New Mexico's statutory definition of marriage is gender-neutral and does not define marriage as between a man and a woman, NMSA 1978, Section 40-1-1 (1862-63); and

WHEREAS, the only marriages prohibited by statute in New Mexico include those between relatives within a specified degree of relation and those with minors, Section 40-1-9, and New Mexico County Clerks are required by statute to issue marriage licenses when they are satisfied that the parties are not relatives and are at least eighteen years of age, Sections 40-1-10 to -13; and

WHEREAS, New Mexico already recognizes same-sex marriages from other jurisdictions, Section 40-1-4; N.M. AG Op. No. 11-01 (2011); and

WHEREAS, the Constitution of the State of New Mexico requires that equal rights shall not be denied on account of the sex of any person, N.M. Const. art. II, Section 18; and

WHEREAS, if a marriage license is denied solely because the applicants are of the same gender, the judicial remedy is for a couple to file a writ of mandamus with the district court in that judicial district to require the County Clerk to issue the license, pursuant to the New Mexico Constitution art. VI, Section 3 and Section 44-2-4 (1884);

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE that we, the members of the Santa Fe governing body, do hereby recognize that, under New Mexico law, same-sex marriage is legal in our State and that our State's citizens have the right to marry the partner of their choice for the following reasons:

1. New Mexico marriage laws do not define marriage as between a man and a woman;
2. Although our State statutes prohibit certain marriages, same-sex marriage is not prohibited;
3. Pursuant to New Mexico marriage statutes, a valid same-sex marriage from

another state is recognized in New Mexico; and

4. To discriminate against same-sex couples would violate the New Mexico Constitution, which requires equality under law regardless of sex.

BE IT FURTHER RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE that we strongly encourage New Mexico's County Clerks to follow state law and issue marriage licenses to loving, committed couples who have the right to marry the person that they love, including same-sex couples.

PASSED, APPROVED and ADOPTED this ____ day of _____, 2013.

_____

DAVID COSS, MAYOR

ATTEST:

_____

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

_____

GENO ZAMORA, CITY ATTORNEY