



**ACTION SHEET  
CITY COUNCIL COMMITTEE MEETING OF 08/13/14  
ITEM FROM FINANCE COMMITTEE MEETING OF 08/04/14**

**ISSUE:**

24. Request for Approval of a Resolution Calling on our State Legislative Delegation to Request a State Attorney General's Opinion to Clarify the Taxing Power a Home Rule Municipality Possesses Pursuant to the N.M. Constitution and Statutory Law and Whether a Home Rule Municipality has the Authority to Impose a Tax on Items that are Not Expressly Prohibited from Taxation Pursuant to State Law. (Councilor Maestas) (Kelley Brennan)

**Committee Review:**

City Council (scheduled)

08/13/14

Fiscal Impact – No

**FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM**

**FUNDING SOURCE:**

**SPECIAL CONDITIONS OR AMENDMENTS**

**STAFF FOLLOW-UP:**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

3-17-14

# City of Santa Fe, New Mexico

## LEGISLATIVE SUMMARY

Resolution No. 2014-\_\_\_

AG Opinion – Homerule Taxing Authority

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**SPONSOR(S):** Councilor Maestas

**SUMMARY:** The resolution calls on the City's State Legislative delegation to request a State Attorney General's Opinion to clarify the taxing power a home rule municipality possesses pursuant to the N.M. Constitution and statutory law and whether a home rule municipality has the authority to impose a tax on items that are not expressly prohibited from taxation pursuant to state law.

**PREPARED BY:** Rebecca Seligman, Legislative Liaison Assistant

**FISCAL IMPACT:** No

**DATE:** July 29, 2014

**ATTACHMENTS:** Resolution  
FIR



1           **WHEREAS**, §3-15-7 NMSA 1978 provides that a home rule charter “shall not authorize the  
2 levy of any tax not specifically authorized by the laws of the state;” and

3           **WHEREAS**, §3-18-2 NMSA 1978 prohibits any municipality from imposing an income tax,  
4 a tax on property measured on an ad valorem, per unit or other basis or any excise tax, including but  
5 not limited to sales taxes, gross receipts and excise taxes on any incident relating to tobacco, liquor,  
6 motor fuels and motor vehicles; and

7           **WHEREAS**, the New Mexico Supreme Court addressed the extent of a home rule  
8 municipality's taxing authority in *Waksman v. City of Albuquerque*, 102 N.M. 41, 690 P.2d 1035  
9 (1984), which prohibited a home rule city, after the effective date of a statute establishing a maximum  
10 license tax, from imposing a tax in excess of the statutory rate; and

11           **WHEREAS**, the Supreme Court acknowledged that, under N.M. Const. art. X, §6(D), "a  
12 'home rule' municipality in New Mexico need look to legislative enactments not for a grant of power  
13 to act, but only for express limitations on that power;" and

14           **WHEREAS**, state law expressly prohibits municipalities from imposing certain taxes,  
15 however, it is not clear as to whether an imposition of a tax for items that are not expressly prohibited  
16 are permitted to be taxed pursuant to state law; and

17           **WHEREAS**, items that state law does not expressly prohibit from being taxed include but are  
18 not limited to telecommunications services, styrofoam, plastic bottles, carbon emissions and  
19 paper/plastic bags; and

20           **WHEREAS**, the Governing Body would like an Attorney General's Opinion to clarify the  
21 taxing power the City of Santa Fe possesses, as a home rule municipality, pursuant to the N.M.  
22 Constitution and statutory law and whether a home rule municipality has the authority to impose a tax  
23 on items that are not expressly prohibited from being taxed pursuant to state law.

24           **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
25 **CITY OF SANTA FE** that the Governing Body hereby calls on our State legislative delegation to

1 request a State Attorney General's Opinion to clarify the taxing power a home rule municipality  
2 possesses pursuant to the N.M. Constitution and statutory and whether a home rule municipality has  
3 the authority to impose a tax on items that are not expressly prohibited from being taxed pursuant to  
4 state law.

5 **BE IT FURTHER RESOLVED** that the City Clerk is directed to forward a copy of this  
6 resolution to the City's State legislative delegation, the New Mexico Municipal League and the City's  
7 lobbyist.

8 PASSED, APPROVED, and ADOPTED this \_\_\_ day of \_\_\_\_\_, 2014.

9  
10  
11 ATTEST:

\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

12  
13  
14 \_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

15 APPROVED AS TO FORM:

16   
17 \_\_\_\_\_  
18 KELLEY A. BRENNAN, CITY ATTORNEY

### City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

**Section A. General Information**

(Check) Bill: \_\_\_\_\_ Resolution:  X

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): A RESOLUTION CALLING ON OUR STATE LEGISLATIVE DELEGATION TO REQUEST A STATE ATTORNEY GENERAL'S OPINION TO CLARIFY THE TAXING POWER A HOME RULE MUNICIPALITY POSSESSES PURSUANT TO THE N.M. CONSTITUTION AND STATUTORY LAW AND WHETHER A HOME RULE MUNICIPALITY HAS THE AUTHORITY TO IMPOSE A TAX ON ITEMS THAT ARE NOT EXPRESSLY PROHIBITED FROM TAXATION PURSUANT TO STATE LAW.

Sponsor(s): Councilor Maestas  
Reviewing Department(s): City Attorney's Office  
Person Completing FIR: Rebecca Seligman Date: 07/24/14 Phone: 955-6501

Reviewed by City Attorney: Valley A. Brennan Date: 7/29/14  
(Signature)

Reviewed by Finance Director: Joselyn Garcia Date: 7/29/14  
Assistant (Signature)

**Section B. Summary**

Briefly explain the purpose and major provisions of the bill/resolution.

The purpose of the resolution is to request our state legislative delegation to request a State Attorney General's Opinion clarifying the taxing power a home rule municipality has pursuant to the New Mexico Constitution and statutory law.

**Section C. Fiscal Impact**

**Note:** Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**1. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs  
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs  
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

X  Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY 13/14	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Total:	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY 13/14	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

_____	_____	_____	\$ _____	_____	_____	_____
_____	_____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	_____	_____	\$ _____	_____	_____	_____

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

None

**Section D. General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None that staff is aware of.

**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

We would not be able to obtain a legal opinion from the State Attorney General regarding whether a Homerule municipality has the authority to tax when it is not specifically prohibited to do so by state law.

**3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None that staff is aware of.

**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

Once a legal clarification of law regarding the authority of Homerule municipality taxing authority from the Attorney General's Opinion, it potentially could allow the City the ability to impose a tax on items that are not expressly prohibited from being taxed pursuant to law.