



**(REVISED)**  
**CITY OF SANTA FE, NEW MEXICO**  
**PETITION CERTIFICATION**

REFERENDUM AND INITIATIVE PETITION  
REDUCING MARIJUANA PENALTIES

I, Yolanda Y. Vigil, the City Clerk of the City of Santa Fe, New Mexico, hereby certify that the Referendum and Initiative Petition regarding reducing marijuana penalties was submitted within the period as prescribed by law and contained the minimum number of valid names, addresses and signatures as mandated by law.

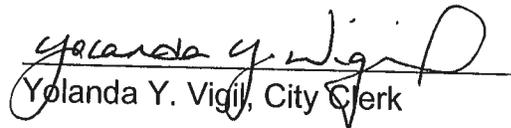
Pursuant to City of Santa Fe Municipal Charter Sections 3.01 and 3.02, the petition is deemed to be sufficient if signed by qualified electors in an amount equal to thirty-three and one third percent or more of the actual voters in the last mayoral election, including at least ten percent of the actual voters for the mayor in each council district in the last mayoral election.

A total of **5,673** valid signatures were required for certification, including the aforementioned ten percent in each council district as follows:

District #1	<b>546</b>
District #2	<b>463</b>
District #3	<b>262</b>
District #4	<b>431</b>

Listed below are the verified totals:

Signatures	Purged	Valid	Valid District #1	Valid District #2	Valid District #3	Valid District #4
<b>10,925</b>	<b>5,167</b>	<b>5,758</b>	<b>2,087</b>	<b>1,623</b>	<b>916</b>	<b>1,132</b>

  
Yolanda Y. Vigil, City Clerk

August 22, 2014  
Date

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PETITION CERTIFICATION**

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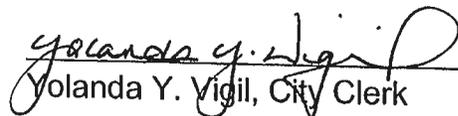
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<b>10,925</b>	<b>5,171</b>	<b>5,754</b>	<b>2,086</b>	<b>1,622</b>	<b>914</b>	<b>1,132</b>

  
 Yolanda Y. Vigil, City Clerk

August 18, 2014  
 Date



# City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909  
www.santafenm.gov

*Javier M. Gonzales, Mayor*

## Councilors:

Peter N. Ives, Mayor Pro Tem, Dist. 2  
Patti J. Bushee, Dist. 1  
Signe I. Lindell, Dist. 1  
Joseph M. Maestas, Dist. 2  
Carmichael A. Dominguez, Dist. 3  
Christopher M. Rivera, Dist. 3  
Ronald S. Trujillo, Dist. 4  
Bill Dimas, Dist. 4

## Memorandum

To: Mayor and City Councilors

From:

*Kelley A. Brennan*  
Kelley A. Brennan  
City Attorney

Re: Opinion of City Attorney  
Pursuant to Section 3.02 C. of Article III  
of the City of Santa Fe Municipal Charter

Date: August 22, 2014 for the August 27, 2014 Meeting of the Governing Body

## Background

Section 3.02 C. of Article III of the City of Santa Fe (City) Municipal Charter (the Charter) requires the City Attorney "...to review and render and publish a public opinion as to the legality and form of any ordinance..." proposed to the Governing Body by registered City voters through the right of initiative granted to them under the Charter<sup>1</sup>. Although the right of referendum<sup>2</sup> granted under the Charter to the electorate does not contain a similar provision, since ordinances can be repealed only through adoption of an ordinance providing for repeal, we address here as well the ordinance proposed by referendum repealing Santa Fe City Code 1987 (SFCC) Section 16-5.1 A.

On June 24, 2014 the City Clerk approved for circulation within the City a Referendum and Initiative Petition (the Petition) submitted by Drug Policy Action and ProgressNowNM to repeal SFCC Section 16-5.1 A. (the Repeal) to reduce the penalties for possession of one ounce or less of marijuana (the Referendum) and to adopt a new nuisance ordinance (the New Ordinance) (1) prohibiting, as a civil offense, the possession of one ounce or less of marijuana and of marijuana paraphernalia; (2) but making possession of marijuana and marijuana paraphernalia

<sup>1</sup> Article III, Section 3.02 A., entitled "Right of Initiative", provides: "Registered voters who are residents of the city shall have the power to propose ordinances to the governing body, except as prohibited by law or this charter."

<sup>2</sup> The right of referendum grants "[r]egistered voters who are residents of the city...the power to repeal any adopted ordinance, except as prohibited by law and [the] charter." See Article III, Section 3.01 A. of the Charter.

the lowest law enforcement priority; and (3) establishing a \$25 maximum fine for possession (collectively, the Initiative).

On August 18, 2014 the City Clerk certified that the Petition had been returned within the 90-day period prescribed by law and that it contained the minimum number of valid names, addresses and signatures mandated by law.

Charter Sections 3.01 H. and 3.02 I. require the City Clerk to present the Referendum and Initiative to the Governing Body for its consideration at its next regularly scheduled meeting after the Clerk has verified the signatures. At that meeting the Governing Body may (1) adopt the ordinances proposed in the Referendum and Initiative; (2) adopt an election resolution referring the ordinances to the electorate; or (3) postpone the matter for consideration to a date certain no more than 30 days after that meeting, or September 26, 2014<sup>3</sup>.

#### The City's Authority to Enact the Ordinances

New Mexico's Constitutional Amendment on Home Rule Authority (the Amendment) allows a municipality with a home rule charter to exercise all legislative powers not expressly denied by general law. The Amendment states in part:

- D. A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter. This grant of powers shall not include the power to enact private or civil laws governing civil relationships except as incident to the exercise of an independent municipal power.
- E. The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of municipalities. N.M. Const. art. X, § 6(D), (E)

Courts have interpreted the Amendment as, "a generous grant of authority ... which gives the municipality blanket authority to act as long as the legislature has not expressly denied that authority." *New Mexicans for Free Enter. v. The City of Santa Fe*, 2006-NMCA-007, ¶ 14, 138 N.M. 785, 794, 126 P.3d 1149.

The purpose of the grant is to: "enable municipalities to conduct their own business and control their own affairs, to the fullest possible extent, in their own way ... upon the principle that the municipality itself knew better what it wanted and needed than did the state at large." *New Mexicans for Free Enter. v. The City of Santa Fe*, 2006-NMCA-007, ¶ 15.

Thus, Home Rule municipalities do not need to look to the legislature to act, but only to ensure that the legislature has not placed limits on a municipality's power.

Further, under the New Mexico Constitution, home rule municipalities are given greater authority to enact ordinances than non-home rule municipalities ... "a home rule municipality no longer has to look to the [L]egislature for a grant of power to act, but only looks to legislative

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<sup>3</sup> The last regularly-scheduled meeting before the September 26 expiration date is September 24, 2014.

enactments to see if any express limitations have been placed on their power to act.” *City of Rio Rancho v. Mazzei*, 2010-NMCA-054, ¶ 13, 148 N.M. 553, 556, 239 P.3d 149.

### Legality of the Referendum and Initiative

In accordance with N.M.S.A. 1978, § 3-17-1, a municipality may adopt an ordinance that is “not inconsistent with state law.” A municipal ordinance does not conflict with state law unless “[i]t permits an act the general law prohibits, or vice versa.” The New Mexico Court of Appeals “has further explained that an ordinance will conflict with state law when state law specifically allows certain activities or is of such a character that local prohibitions on those activities would be inconsistent with or antagonistic to that state law or policy. *Stennis v. City of Santa Fe*, 2008-NMSC-008, ¶ 21, 143 N.M. 320, 176 P. 3d 309 (internal citations omitted).

NMSA 1978, § 30-31-23 A. makes it unlawful “...for a person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of professional practice...” and NMSA 1978, § 30-31-23 B.(1) establishes criminal penalties for the possession of one ounce or less of marijuana.

The proposed ordinance repealing SFCC Section 16-5.1 A. would delete the following language:

It is unlawful for a person intentionally to possess one (1) ounce or less of marijuana. It is not a violation of this section for a person to possess marijuana obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or as authorized by the Controlled Substances Act, Section 30-31-1 NMSA 1978.

The Repeal has no effect on the operation of NMSA 1978, § 30-31-23 (A). It does not permit the use or possession of marijuana or prohibit an existing law enforcement practice. City police officers can still bring charges against offenders under NMSA 1978, § 30-31-23 (A) in state Magistrate Court. *See*, N.M. Atty. Gen. Op. 08-06 (2008) (“We believe that state law does not preempt enforcement of municipal domestic violence ordinances. The fact that the state statute provides a full misdemeanor penalty for certain acts of domestic violence does not preclude or preempt prosecution of a city ordinance that carries a petty misdemeanor penalty. This, however, has no bearing on where a municipal police officer may refer a case for prosecution. ...an officer may file the charge in either municipal or magistrate court and depending on that choice, either the city attorney or the district attorney has the authority to prosecute.”) It is therefore not inconsistent with state law. It does not prohibit what is permitted or permit what is prohibited.

Nor is the New Ordinance inconsistent with NMSA 1978, § 30-31-23 (A). The subsection heading reads: 20-6.1 Lowest Law Enforcement Priority; Possession prohibited<sup>4</sup>. While the full text of the New Ordinance does not incorporate language specifically prohibiting possession of one ounce or less of marijuana, the subsection heading, taken together with the full text, clearly

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<sup>4</sup> SFCC Section 1-1.4, entitled “Section Headings”, provides: “The section headings following the section numbers of [SFCC], printed in capital letters, are intended to be generally descriptive of the contents of the section and shall not be considered a limitation of the section.” This provision is not applicable to the subsection heading.

indicates the intent not to legalize, but to decriminalize, possession of one ounce or less of marijuana<sup>5</sup>. That is, if the possession of one ounce or less of marijuana were not prohibited by the New Ordinance, there would be no need to establish priorities for law enforcement relating to its possession, or penalties for its possession.

In addition, the New Ordinance is not inconsistent with state law simply because it provides for a civil rather than a criminal penalty. In *Stennis* the New Mexico Supreme Court concluded that a City ordinance prohibiting drilling a domestic water well within two hundred feet of a water distribution line, where state law prohibited domestic wells within three hundred feet, was not in conflict with state law, as it was less restrictive. (“The 1999 Ordinance is neither inconsistent with nor antagonistic to Section 3-53-1.1 because it restricts the same activities as Section 3-53-1.1 but does so in a less restrictive manner.” *Stennis*, at ¶ 22.) The Court cited *State ex rel. Coffin v. McCall*, 58 N.M. 534, 273 P. 2d 642 (1954), for the proposition that “...an ordinance, which was less restrictive than the corresponding state statute, merely complemented the statute and was nowhere antagonistic therewith.” *Stennis*, at ¶ 22 (internal citations omitted).

And, in *Mazzei*, above, the New Mexico Court of Appeals concluded that where a municipal ordinance prohibited exactly the same acts as state statute, but imposed different penalties, the ordinance was not inconsistent with the laws of New Mexico because it did not permit an act prohibited by the general law or vice versa. *Mazzei* at ¶ 11.

The *Mazzei* Court looked to the powers granted to home rule municipalities under the New Mexico Constitution to reach its conclusions, stating:

Further, under the New Mexico Constitution, home rule municipalities are given greater authority to enact ordinances than non-home rule municipalities. Our Constitution states that a home rule municipality “may exercise all legislative powers and perform all functions not expressly denied by general law or charter.” ... The purpose of the [A]mendment “is to provide for maximum local self-government” and, therefore, a liberal construction should be given “to the powers of municipalities.” In *Apodaca v. Wilson*, the New Mexico Supreme Court construed the phrase “not expressly denied” ... to mean that a clear “statement of the authority or power denied must be contained in such general law...or otherwise no limitation exists.” *Mazzei* at ¶ 13.

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<sup>5</sup> The New Ordinance provides:

20-6.1 Lowest Law Enforcement Priority; Possession Prohibited.

A. It is the duty of the police department to make possession of one ounce or less of marijuana the lowest law enforcement priority.

B. A person who possesses one ounce or less of marijuana may be fined no more than twenty-five dollars (\$25.00). It is not a violation of this section for a person to possess marijuana obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or as authorized by the Controlled Substances Act, Section 30-31-1 NMSA 1978.

C. A person possessing paraphernalia intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana into the human body may be fined no more than twenty-five dollars (\$25.00).

Finally, we have considered whether the language of NMSA 1978 § 30-31-26<sup>6</sup>,” expressly denies to the City the power to enact the Repeal and adopt the New Ordinance and have concluded that it does not. NMSA 1978 § 30-31-26 (A) clearly contemplates the existence of “civil or administrative penalt[ies] or sanction[s]” other than those set out in the Controlled Substances Act and addresses the relationship between those penalties and sanctions and the penalties established under the Controlled Substances Act (presumably to preclude double jeopardy defenses.) NMSA 1978 § 30-31-26 (B) permits a municipality to adopt a criminal ordinance prohibiting, among other things, the possession of marijuana, but requires the municipality to attach the same penalties to the crime as attach to it under the Controlled Substances Act, found at NMSA 1978 §30-31-23 B.(1). This is precisely what SFCC Section 16-5.1 A. currently does. This ordinance is the subject of the Repeal. By contrast, the New Ordinance removes possession of one ounce or less of marijuana from the City’s criminal ordinances, places it within the civil nuisance law, and establishes a civil fine of no more than \$25, precisely as contemplated by Section 30-31-26 (A). Thus a penalty imposed for the same offense under the Controlled Substances Act will be in addition to a civil penalty imposed by the City under the New Ordinance.

Based upon the foregoing, we have concluded that the New Ordinance is not inconsistent with state statute and is therefore legal.

#### Equal Protection Considerations; Prosecutorial and Police Discretion

We have also considered whether permitting a police officer to choose between citing a person possessing an ounce or less of marijuana with a civil offense under the New Ordinance or a criminal offense under state law violates the equal protection requirements of the United States and New Mexico Constitutions and the Charter and have concluded that it does not.

In *State v. Rosaire*, 1996-NMCA-115, 123 N.M. 250, 939 P. 2d 597 (1996), the New Mexico Court of Appeals found that prosecuting a prisoner for escape from the state penitentiary inmate-release program in violation of statute, where the correctional facility where he was incarcerated had an administrative procedure for punishing inmates who failed to return on time and prison authorities had determined under that procedure that his action did not warrant reprimand, did not violate equal protection. *Rosaire*, at ¶ 22. Nor did the Court find that the defendant’s prosecution under the statute was due to fundamental error. (“There was no fundamental error in the prosecution of Defendant under the statute prescribing [*sic*] this conduct merely because an administrative policy existed to sanction the same behavior.” And, “...we have no basis to conclude Defendant’s prosecution under the statute constituted a denial of equal protection, much less amounted to fundamental error.” *Id.* (internal citations omitted.))

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<sup>6</sup> 30-31-26. Penalties under other laws.

A. Any penalty imposed for violation of the Controlled Substances Act is in addition to any civil or administrative penalty or sanction otherwise provided by law.

B. A municipality may, by ordinance, prohibit distribution or possession of a controlled substance enumerated in Schedules I, II, III or IV but penalty provisions shall be the same as those provided for a similar crime in the Controlled Substances Act.

In *State v. Karpinski*, 285 N.W. 2d 729 (Wis. 1979) the Supreme Court of Wisconsin considered whether the "...mere coexistence of a state statute and a municipal ordinance prohibiting the same conduct gives prosecutors unbridled discretion in the charging decision in violation of the equal protection or due process guarantees of the federal and state constitutions." *Karpinski*, at 604. In *Karpinski*, the penalty under the state statute for possession of controlled substances (marijuana and amphetamines) was a fine or a term of imprisonment in the county jail. The municipal ordinance provided for a civil action, with a fine. In reaching its conclusions, the *Karpinski* Court discussed at length the generally-accepted doctrine that a prosecutor has wide discretion in deciding whether to prosecute and under which available statutes to prosecute. The Court explained that "...the prosecutor has great discretion in determining when to commence a prosecution. While it is the prosecutor's duty to prosecute criminal actions [...], the prosecutor is not required to prosecute all cases in which it appears that the law has been violated. We have characterized the prosecutor's charging discretion as 'quasi-judicial' in the sense that it is his duty to administer justice rather than to obtain convictions." *Karpinski*, at 607. The Court concluded that "...the prosecutorial discretion...whether to file criminal charges against Karpinski, to forward the case to the city attorney's office, or to drop the matter completely falls within the generally accepted bounds of prosecutorial discretion... Because Karpinski has made no showing of abuse of prosecutorial discretion or selective enforcement...", the criminal complaint against him was not dismissed.

Similarly, police officers charged with the day-to-day response to crime are expected to exercise their own judgment within the limits set by law. They have wide discretion to decide (1) whether to take action; (2) where a given situation fits in the scheme of law, rules and precedent; and (3) which official response is appropriate to the circumstances. To ensure that discretion is exercised responsibly, government authority is often delegated to professionals. Professionalism requires a minimum level of training and orientation, which guide officials in making decisions. The professionalism of policing is due largely to the desire to ensure the proper exercise of discretion. See, Bureau of Justice Statistics website, <http://www.bjs.gov/content/justsys.cfm> (last visited August 14, 2014)

In New Mexico, the enactment of NMSA 1978, § 31-1-6, entitled "Citation in lieu of arrest without a warrant", permits "[a] law enforcement officer who arrests a person without a warrant for a petty misdemeanor or any offense under Chapter 17 NMSA 1978 to offer the person arrested the option of accepting a citation to appear in lieu of taking the person to jail." This effectively codifies police discretion in this instance.

The United States Court of Appeals for the 10<sup>th</sup> Circuit has interpreted this statute in *Martinez v. Carr*, 479 F.3d 1292, 1297 (10th Cir. 2007) as follows:

The statute under which Officer Carr proceeded afforded him the choice to effect an immediate arrest or issue a citation. See N.M. Stat. Ann. § 31-1-6(A) ("A law enforcement officer who arrests a person without a warrant for a petty misdemeanor ... may offer the person arrested the option of accepting a citation to appear in lieu of taking him to jail."). The Supreme Court has instructed that, under such statutory rubrics, law enforcement officers are entitled to substantial discretion in choosing which alternative to

pursue. *See generally Atwater v. City of Lago Vista*, 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001).

And, Justice Bosson, writing for the New Mexico Supreme Court in *Town of Silver City v. Ferranti*, Case No. 34,078 (Not Reported) (2014), stated “We have found no case law, nor has any been cited to this Court, that would constitutionally require express standards before a law enforcement officer could exercise his discretion either to arrest or to issue a citation for minor offenses such as [rolling a marijuana joint and drinking in public]. To the contrary, it is not uncommon for our statutes and municipal ordinances to grant such authority to officers without any express guidance.”

Based upon the foregoing, we have concluded that the mere existence of different penalties under state statute and municipal ordinance that prohibit the same activity and the exercise of police discretion in enforcement does not violate equal protection requirements.

#### Lowest Law Enforcement Priority

Neither the Repeal nor the New Ordinance impair the exercise of police discretion, as police officers may still charge offenders under state law, but are afforded an additional opportunity to cite offenders for a civil infraction. In effect, the language adds another tool to a police officer’s tool box. In addition, we note that the Repeal and New Ordinance appear to address the concerns identified in Resolution No. 2012-66, adopted by the Governing Body on June 27, 2012 (Resolution 2012-66). Resolution 2012-66 established the Law Enforcement Assisted Diversion (LEAD) Task Force “...to collaborate regionally and across different areas of focus, in order to explore and recommend long-term solutions in a Community Strategic Plan for addressing the issues arising from persons who are addicted to drugs and alcohol.” Resolution 2012-66 directed the LEAD Task Force to, among other things, “...[e]xplore and discuss options for removing drug traffickers from the streets in an effort to curb addiction problems...” and “[i]dentify proposed and existing programs that are alternatives to incarceration...” Finally, making the possession of one ounce or less of marijuana the lowest law enforcement priority provides the kind of express guidance that Justice Bosson noted in *Ferranti*, above, is generally missing.

#### Form

While, as noted above, the New Ordinance does not contain within its text a specific prohibition for possessing one ounce or less of marijuana, we conclude that the New Ordinance is sufficient as to form, as the prohibition is nevertheless clear from the subsection heading, taken together with the text.

In the event that the Governing Body adopts the New Ordinance, we would propose an amendment to include that language in the text. If the Initiative is referred to the electorate and becomes effective upon its approval as provided in the Charter, we would propose the same amendment at that time. In addition, we note that in the event the New Ordinance is approved, either by the Governing Body upon its vote or upon the vote of the electorate, the Governing Body will also need to adopt administrative procedures to address the due process requirements

related to the civil penalty process. These procedures could also address the goals identified in Resolution 2012-66.

### Unintended Consequences

We note that if the Repeal and the New Ordinance are adopted, persons in possession of one ounce or less of marijuana or of marijuana paraphernalia may be cited for a civil infraction under the New Ordinance and also be criminally charged under state statute. This is especially true given the language of NMSA 1978 § 30-31-26 (A) noted above providing that criminal penalties under the Controlled Substances Act are in addition to any civil and administrative penalties otherwise provided by law.

In *City of Albuquerque v. One (1) White Chevy Ut.*, 2002-NMSC-014, 132 N.M. 187, 46 P. 3d 94 (2002), the New Mexico Supreme Court considered whether New Mexico's constitutional and statutory double jeopardy provisions precluded Albuquerque's pursuit of DWI-related civil forfeiture actions after the completion of criminal proceedings. The Court concluded that Albuquerque's ordinance did not violate the Double Jeopardy Clauses of the United States and New Mexico Constitutions or the statutory double jeopardy provision. *One (1) White Chevy*, ¶ 2. The Court noted that the legislature "may impose both a criminal and a civil sanction in respect to the same act or omission" without violating the Double Jeopardy Clause and that a "criminal adjudication followed by a civil forfeiture, or vice versa, violates double jeopardy only if the forfeiture constitutes 'punishment.'" *One (1) White Chevy*, ¶ 7 (internal citations omitted.) The Court conducted a "multiple punishment analysis", weighing three factors, including whether (1) the state subjected the defendant to separate proceedings; (2) the conduct leading to the separate proceedings consisted of one offense or two; and (3) the penalties constituted "punishment". In considering whether the penalties constitute "punishment", the Court evaluated the government's purpose in enacting the legislation, rather than the effect of the sanction on the defendant, then considered whether the sanction was sufficiently punitive in its effect that, on balance, the punitive effects outweighed the remedial. *One (1) White Chevy*, ¶ 11 (internal citations omitted.)

A penalty is remedial rather than punitive if it is intended to serve a public purpose. Revocation of a driver's license and forfeiture of a vehicle in civil proceedings after a DWI conviction have been found to be remedial. *One (1) White Chevy*, ¶ 3 (internal citations omitted.) The New Ordinance decriminalizes the possession of one ounce or less of marijuana and provides for a maximum \$25 fine. When viewed in light of the goals of Resolution 2012-66, the New Ordinance serves the identified purpose of focusing law enforcement on drug traffickers and dealing with addiction through alternatives to incarceration. Under these circumstances, the New Ordinance clearly serves a remedial purpose. Thus both state law and the New Ordinance can be applied to a single offense of possession of one ounce or less of marijuana without constituting double jeopardy.

1 CITY OF SANTA FE NEW MEXICO

2 BILL NO. 2014-24

3 INTRODUCED BY:

4  
5 Referendum & Initiative Petition

6  
7  
8  
9  
10 AN ORDINANCE

11 AMENDING SECTION 16-15 SFCC 1987 TO REDUCE THE PENALTIES FOR  
12 POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA AND POSSESSION OF  
13 MARIJUANA PARAPHERNALIA; AND CREATING A NEW SECTION 20-6 SFCC 1987 TO  
14 ESTABLISH THAT POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA AND  
15 POSSESSION OF MARIJUANA PARAPHERNALIA ARE CIVIL INFRACTIONS.

16  
17 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

18 Section 1. Subsection 16-15.1 SFCC 1987 (being Ord. # 2005-7, §3, as amended) is  
19 amended to read:

20 **16-15.1 Intent; Marijuana; Synthetic Cannabinoids; Possession Prohibited.**

21 [~~A. It is unlawful for a person intentionally to possess one (1) ounce or less of marijuana.~~  
22 ~~It is not a violation of this section for a person to possess marijuana obtained pursuant to a valid~~  
23 ~~prescription or order of a practitioner while acting in the course of his professional practice or as~~  
24 ~~authorized by the Controlled Substances Act, Section 30-31-1 NMSA 1978.]~~

25 [B]A. It is unlawful for a person intentionally to possess one (1) ounce or less of synthetic

1 cannabinoids for the purpose of causing a condition of or inducing symptoms of intoxication, elation,  
2 euphoria, dizziness, excitement, irrational behavior, exhilaration, stupefaction or dulling of the senses,  
3 or for the purpose of, in any manner, changing, distorting or disturbing the audio, visual or mental  
4 processes.

5 [E]B. A person who violates this section shall, for the first offense, be guilty of a petty  
6 misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one  
7 hundred dollars (\$100.) and by imprisonment for not more than fifteen (15) days.

8 [D]C. The municipal court does not have jurisdiction over subsequent offenses.

9 **Section 2. Subsection 16-15.2 SFCC 1987 (being Ord. # 2005-7, §3) is amended to**  
10 **read:**

11 **16-15.2 Possession, Delivery or Manufacture of Drug Paraphernalia Prohibited;**  
12 **Exceptions.**

13 A. ~~[It is unlawful for a person to use or possess with intent to use drug paraphernalia to~~  
14 ~~plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,~~  
15 ~~prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise~~  
16 ~~introduce into the human body a controlled substance in violation of the Controlled Substance Act.~~  
17 ~~The provisions of this subsection do not apply to a person who is in possession of hypodermic~~  
18 ~~syringes or needles at the time he is directly and immediately engaged in a harm reduction program,~~  
19 ~~as provided in the Harm Reduction Act.] It is unlawful for a person to use or possess with intent to~~  
20 ~~use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,~~  
21 ~~produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or~~  
22 ~~otherwise introduce into the human body a controlled substance in violation of the Controlled~~  
23 ~~Substances Act. The provisions of this subsection do not apply to a person who is in possession of~~  
24 ~~hypodermic syringes or needles at the time he is directly and immediately engaged in a harm~~  
25 ~~reduction program, as provided in the Harm Reduction Act or to a person who is in possession of~~

1 drug paraphernalia intended for marijuana use.

2 B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture  
3 with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one  
4 reasonably should know, that it will be used to plant, propagate, cultivate, grow, harm, manufacture,  
5 compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal,  
6 inject, ingest, inhale or otherwise introduce in the human body a controlled substance in violation of  
7 the Controlled Substances Act. The provisions of this subsection do not apply to:

8 (1) Department of health employees or their designees while they are directly  
9 and immediately engaged in activities related to the harm reduction program authorized by  
10 the Harm Reduction Act; or

11 (2) The sale or distribution of hypodermic syringes and needles by pharmacists  
12 licensed pursuant to the Pharmacy Act.

13 C. A person who violates this section with respect to subsection A of this section is  
14 guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not less than fifty  
15 dollars (\$50.00) nor more than one hundred dollars (\$100.) or by imprisonment for a definite term of  
16 ninety (90) days, or both. A person who violates this section with respect to paragraph B of this  
17 subsection is guilty of a petty misdemeanor. (For state law, see Sec. 30-31-25.1)

18 **Section 3. A new Section 20-6 SFCC 1987 is ordained to read:**

19 **20-6 [NEW MATERIAL] MARIJUANA AND MARIJUANA PARAPHERNALIA**  
20 **POSSESSION**

21 **20-6.1 Lowest Law Enforcement Priority; Possession Prohibited.**

22 A. It is the duty of the police department to make possession of one ounce or less of  
23 marijuana the lowest law enforcement priority.

24 B. A person who possesses one ounce or less of marijuana may be fined no more than  
25 twenty-five dollars (\$25.00). It is not a violation of this section for a person to possess marijuana

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obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or as authorized by the Controlled Substances Act, Section 30-31-1 NMSA 1978.

C. A person possessing paraphernalia intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana into the human body may be fined no more than twenty-five dollars (\$25.00).

APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY

~~VOTE: The motion was approved on the following Roll Call vote:~~

~~For: Mayor Gonzales, Councilor Bushee, Councilor Ives, Councilor Lindell and Councilor Maestas.~~

~~Against: Councilor Dimas, Councilor Dominguez, Councilor Trujillo and Councilor Rivera.~~

**14. REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING ON AUGUST 27, 2014:**

**BILL NO. 2014-24: AN ORDINANCE AMENDING SECTION 16-15 SFCC 1987, TO REDUCE THE PENALTIES FOR POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA AND POSSESSION OF MARIJUANA PARAPHERNALIA; AND CREATING A NEW SECTION 20-6 SFCC 1987 TO ESTABLISH THAT POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA AND POSSESSION OF MARIJUANA PARAPHERNALIA ARE CIVIL INFRACTIONS. (KELLEY BRENNAN AND YOLANDA Y. VIGIL)**

Yolanda Vigil, City Clerk, said she has been verifying petition signatures, and they have accepted 4,061 signatures, and the total required is 5,673, so what is needed are an additional 1,512 signatures.

Mayor Gonzales said, "In the statutes as written, regarding this initiative, is there a date certain by which the signatures or threshold needs to be qualified."

Ms. Vigil said, "There is actually 90 days given to gathering of petitions for referendum and initiative, and they commenced on July 24, 2014, and they have until September 22, 2014, to actually collect petition signatures. Right now, the goal is to get this on the November General Election ballot."

Mayor Gonzales said then that is the goal of the petitioners, and Ms. Vigil said yes.

**MOTION:** Councilor Maestas moved, seconded by Councilor Bushee, to approve this request.

**DISCUSSION:** Councilor Bushee said she read in the newspaper that we would have the option, even with this Ordinance, as a home rule City to either go with the State law or with the City law. She asked if this is correct, and if any amendment is needed before we have public hearings. She doesn't want to circumvent the efforts.

Ms. Brennan said, "I'm not sure I understand the question, but there is an existing State law which of course, would not change. This would merely change the priority of enforcement in the City fundamentally."

Councilor Bushee said, "I understand that, maybe it was just coming from the Chief that said Officers would have the option of choosing to follow State law or City Code."

Ms. Brennan said, "The option to enforce State law would still exist, and our Ordinance currently tracks State law."

Councilor Bushee said, "No. If the Ordinance were to change and we were to lower the penalty, could we not build in somewhere that they would have to follow the City's law."

Ms. Brennan said, "State law preempts actions of the City that either prohibit what State law allows, or allows what State law prohibits, so we could not do that. What we are doing with this Ordinance, if passed, is changing the penalty and establishing priorities within the City."

Councilor Bushee said, "And our Police Force would have to follow that."

Ms. Brennan said, "Our Police Force would follow the priorities established by the Council, but could still enforce State law."

Councilor Bushee said she doesn't want to have inconsistent enforcement.

Ms. Brennan said, "If enough signatures are verified, and it is certified by the Clerk and it comes to this Governing Body as an Ordinance, I will be giving an opinion on the legality of it. And I cannot give that opinion now."

Councilor Bushee said, "Okay. It seems like a lot of effort for maybe not having all the parameters up front. Is there a possibility of having those?"

Ms. Brennan said, "I do not believe there is a conflict between what is being proposed and existing law."

Councilor Dimas said, "I just wanted to add one thing. Police officers have the discretion. You cannot direct a Police officer to file in one Court or another. And with this resolution, you cannot direct them to file in Municipal Court where this would be effective. Police Officers in this jurisdiction have their own jurisdiction where they can file in either Magistrate Court which is a State Court or a Municipal Court. And if they file in Magistrate Court, then they will follow the Magistrate State Statutes which will eliminate whatever it is that this resolution is trying to do, the \$25 fine and make it a civil. In Magistrate Court, it will still be a criminal violation."

Councilor Bushee said, "What we did with the resolution for the immigrant community, in terms of making it not our priority as a local police force to act as if we were ICE. That was a resolution. That was the intent of the Council. Is that something that could then be developed by resolution. These are a lot of if's. I get it. I'm just asking because we're setting this ball in motion tonight."

Ms. Brennan said, "The people who are circulating the petition set this ball in motion."

Councilor Bushee said, "I know that, but we're moving it forward."

Ms. Brennan said, "And our response is governed by our Charter."

Councilor Bushee said, "Okay, I'll ask those questions when we have a chance down the road."

Mayor Gonzales asked when the public hearing will take place, and Ms. Vigil said it will be August 27, 2014.

Mayor Gonzales said, "August twenty-seventh, where the public will be able to come in and weigh-in, and at that point, the Council can determine whether they want to advance this forward, or to stop it at that point. Correct."

Ms. Brennan said, "The Governing Body would be deciding whether to adopt it as an ordinance, itself, and therefore render an election not necessary, or to let it go to the electorate. But the Governing Body couldn't really stop it at that point. This is all subject to the certification of the signatures."

Councilor Maestas said, "Again, this is kind of a procedural action, but I urge my colleagues.... it looks like they have the potential to get enough signatures, and if anything, let's let the people speak on this issue. This is the first such petition based referendum that is being used under our Charter. I think we're watching an experiment kind of unfold in the most form of participatory government. So I hope we don't try and truncate it, and let it take its course."

Councilor Rivera said, "Just a quick question Kelley, based on your last comment. If they get the appropriate amount of signatures this will go to referendum. Why do we need to have a public hearing on it. Obviously, they have enough, probably more than would attend here, signed the petition. What's the purpose of a public hearing."

Ms. Brennan said, "I believe it is required by the Charter, and essentially it's an ordinance that would be enacted by the City which would require a public hearing."

Councilor Rivera said, "But we could decide not to accept, or not to change the Ordinance or accept the Ordinance, but it would still go to referendum."

Ms. Brennan said this is correct.

Councilor Ives said, "I am in agreement with many of the comments that have been made in terms of process. This an important one, in terms of portions of our Charter rarely brought before us. So, from the procedural point of view, I support this, because I think the public hearing is an important opportunity for the discussion to occur, because the issue clearly has gotten significant attention nationally. Various states have acted very affirmatively on these issues. It's designed to address many systemic problems across our society, so I actually look forward to the public hearing, regardless of whether or not there are enough signatures, and regardless whether or not this body would have the power to prevent it going forward. So I'm glad we're doing it."

**VOTE:** The motion was approved on the following Roll Call vote:

**For:** Mayor Gonzales, Councilor Bushee, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** Councilor Dimas.

**Explaining his vote:** Councilor Dimas said, "I can't support this. No."

**Explaining his vote:** Councilor Dominguez said, "Part of our democracy, somewhat democracy [inaudible]. I vote yes.

**15. MATTERS FROM THE CITY MANAGER**

There were no matters from the City Manager.

**16. MATTERS FROM THE CITY ATTORNEY  
EXECUTIVE SESSION**

**A. IN ACCORDANCE WITH THE NEW MEXICO OPEN MEETINGS ACT §10-15-1(H)(7) NMSA 1978, DISCUSSION REGARDING PENDING OR THREATENED LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT, SOUTHSIDE TRANSIT CENTER LOCATION. (ZACHARY SHANDLER)**

*Councilor Maestas said, "Mr. Mayor, I need to read a statement. It's a statement of recusal regarding the executive session. I want to disclose that my sister-in-law represents a party claiming an interest in the matter that is the subject of tonight's executive session. Although she is not a, quote, family member, unquote, under the City's Code of Ethics, in the interest of avoiding any perceived conflict, I am recusing myself from participating in Item #16 and Item #17 on tonight's agenda."*

**MOTION:** Councilor Rivera moved, seconded by Councilor Dimas, that the Council go into Executive Session for discussion regarding pending or threatened litigation in which the City of Santa Fe is or may become a participant, Southside Transit Center Location, in accordance with §10-15-1(H)(7) NMSA 1978.

**VOTE:** The motion was approved on the following roll call vote:

**For:** Mayor Gonzales, Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Recused:** Councilor Maestas.

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2014-\_\_**

3 **INTRODUCED BY:**

4  
5 Referendum & Initiative Petition

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10 **A RESOLUTION**

11 **CALLING FOR A SPECIAL MUNICIPAL ELECTION TO BE HELD CONCURRENTLY**  
12 **WITH THE SANTA FE COUNTY GENERAL ELECTION ON NOVEMBER 4, 2014 FOR**  
13 **THE PURPOSE OF VOTING FOR OR AGAINST MUNICIPAL QUESTIONS RESULTING**  
14 **FROM A REFERENDUM AND INITIATIVE RELATED TO REDUCING MARIJUANA**  
15 **PENALTIES.**

16  
17 **BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

18 **Section 1. DATE AND PURPOSE OF ELECTION.** A special municipal election  
19 shall be held concurrently with the Santa Fe County General Election on Tuesday, November 4, 2014  
20 for the purposes of:

21 A. Voting for or against an ordinance repealing Paragraph A of Subsection 16-15.1  
22 SFCC 1987 to reduce the penalties for possession of one ounce or less of marijuana; and

23 B. Voting for or against an ordinance adding new material to Paragraph A of Subsection  
24 16-15.2 SFCC 1987 to reduce the penalties for possession of marijuana paraphernalia; and creating a  
25 new section 20-6 SFCC 1987 to establish that possession of one ounce or less of marijuana and



1 FOR THE ORDINANCE

2 AGAINST THE ORDINANCE

3 MUNICIPAL QUESTION 2

4 CITY OF SANTA FE INITIATIVE

5 **An Ordinance Adding New Material to Paragraph A of Subsection 16-15.2 SFCC**  
6 **1987 to Reduce the Penalties for Possession of Marijuana Paraphernalia; and**  
7 **Creating a New Section 20-6 SFCC 1987 to Establish That Possession of One Ounce**  
8 **or Less of Marijuana and Possession of Marijuana Paraphernalia Are Civil**  
9 **Infractions.**

10 **16-15.2 Possession, Delivery or Manufacture of Drug Paraphernalia**  
11 **Prohibited; Exceptions.**

12 A. It is unlawful for a person to use or possess with intent to use drug  
13 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound,  
14 convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal,  
15 inject, ingest, inhale or otherwise introduce into the human body a controlled substance in  
16 violation of the Controlled Substances Act. The provisions of this subsection do not  
17 apply to a person who is in possession of hypodermic syringes or needles at the time he is  
18 directly and immediately engaged in a harm reduction program, as provided in the Harm  
19 Reduction Act or to a person who is in possession of drug paraphernalia intended for  
20 marijuana use.

21 B. It is unlawful for a person to deliver, possess with intent to deliver or  
22 manufacture with the intent to deliver drug paraphernalia with knowledge, or under  
23 circumstances where one reasonably should know, that it will be used to plant, propagate,  
24 cultivate, grow, harm, manufacture, compound, convert, produce, process, prepare, test,  
25 analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce

1 in the human body a controlled substance in violation of the Controlled Substances Act.

2 The provisions of this subsection do not apply to:

3 (1) Department of health employees or their designees while they are  
4 directly and immediately engaged in activities related to the harm reduction program  
5 authorized by the Harm Reduction Act; or

6 (2) The sale or distribution of hypodermic syringes and needles by  
7 pharmacists licensed pursuant to the Pharmacy Act.

8 C. A person who violates this section with respect to subsection A of this  
9 section is guilty of a petty misdemeanor and upon conviction shall be punished by a fine  
10 of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.) or by  
11 imprisonment for a definite term of ninety (90) days, or both. A person who violates this  
12 section with respect to paragraph B of this subsection is guilty of a petty misdemeanor.  
13 (For state law, see Sec. 30-31-25.1)

14 **20-6 [NEW MATERIAL] MARIJUANA AND MARIJUANA PARAPHERNALIA**  
15 **POSSESSION**

16 **20-6.1 Lowest Law Enforcement Priority; Possession Prohibited.**

17 A. It is the duty of the police department to make possession of one ounce  
18 or less of marijuana the lowest law enforcement priority.

19 B. A person who possesses one ounce or less of marijuana may be fined no  
20 more than twenty-five dollars (\$25.00). It is not a violation of this section for a person to  
21 possess marijuana obtained pursuant to a valid prescription or order of a practitioner  
22 while acting in the course of his professional practice or as authorized by the Controlled  
23 Substances Act, Section 30-31-1 NMSA 1978.

24 C. A person possessing paraphernalia intended for use, or designed for use  
25 in ingesting, inhaling, or otherwise introducing marijuana into the human body may be

1 fined no more than twenty-five dollars (\$25.00).

2 FOR THE ORDINANCE

3 AGAINST THE ORDINANCE

4 **Section 3. CLOSING OF REGISTRATION BOOKS.** Only qualified electors of the  
5 City of Santa Fe may vote in the special municipal election. A qualified elector is any person whose  
6 affidavit of voter registration has been filed by the Santa Fe County Clerk on or before the twenty-  
7 eighth (28<sup>th</sup>) day prior to the election, who is registered to vote in a general election precinct  
8 established by the Santa Fe Board of County Commissioners that is wholly or partly within the City  
9 of Santa Fe boundaries, and who is a resident of the City of Santa Fe. Registration books for this  
10 election will be closed at 5:00 p.m. on October 7, 2014.

11 **Section 4. POLLING PLACES AND PRECINCTS.** The following polling places  
12 shall be used for the conduct of the special municipal election and qualified electors of the City of  
13 Santa Fe may vote at the polling places listed below between the hours of 7:00 a.m. and 7:00 p.m. on  
14 November 4, 2014.

15	<u>PRECINCT #</u>	<u>POLLING PLACE</u>
16	8	Tesuque Elementary School, 1555 Bishop's Lodge Road
17	9	Acequia Madre Elementary School, 700 Acequia Madre
18	10	Fort Marcy Complex, 490 Bishops Lodge Road
19	11	Gonzales Community School, 851 W. Alameda
20	12	La Cienega Community Center, 136 Camino San Jose
21	20	Gonzales Community School, 851 W. Alameda
22	21	Gonzales Community School, 851 W. Alameda
23	22	Montezuma Lodge, 431 Paseo de Peralta
24	24	Academy at Larragoite School, 1604 Agua Fria Street
25	25	Aspen Community Magnet School, 450 La Madera

1	26	Tierra Encantada Charter School @ Alvord, 551 Alarid Street
2	27	Tierra Encantada Charter School @ Alvord, 551 Alarid Street
3	28	Montezuma Lodge, 431 Paseo de Peralta
4	29	Santa Fe County Fair Building, 3229 Rodeo Road
5	30	Fort Marcy Complex, 490 Bishops Lodge Road
6	31	Salazar Elementary School, 1231 Apache Avenue
7	32	Salazar Elementary School, 1231 Apache Avenue
8	33	Aspen Community Magnet School, 450 La Madera
9	34	Salazar Elementary School, 1231 Apache Avenue
10	35	Nava Elementary School, 2655 Siringo Road
11	36	Acequia Madre Elementary School, 700 Acequia Madre
12	37	Capshaw Middle School, 351 W. Zia Road
13	38	Genoveva Chavez Community Center, 3221 Rodeo Road
14	39	Genoveva Chavez Community Center, 3221 Rodeo Road
15	41	De Vargas Middle School, 1720 Llano Street
16	42	Public Schools Administration Building, 610 Alta Vista Street
17	43	Public Schools Administration Building, 610 Alta Vista Street
18	44	Wood Gormley Elementary School, 141 E. Booth Street
19	45	Unitarian Universalist Congregation of Santa Fe, 107 W. Barcelona Road
20	46	Unitarian Universalist Congregation of Santa Fe, 107 W. Barcelona Road
21	47	Acequia Madre Elementary School, 700 Acequia Madre
22	48	St. John's Methodist Church, 1200 Old Pecos Trail
23	49	Genoveva Chavez Community Center, 3221 Rodeo Road
24	50	Nava Elementary School, 2655 Siringo Road
25	51	De Vargas Middle School, 1720 Llano Street

1	52	E.J. Martinez Elementary School, 401 W. San Mateo Road
2	53	Pasatiempo Senior Center, 664 Alta Vista Street
3	54	Capshaw Middle School, 351 W. Zia Road
4	55	St. John's Methodist Church, 1200 Old Pecos Trail
5	56	Santa Fe County Fair Building, 3229 Rodeo Road
6	62	La Cienega Community Center, 136 Camino San Jose
7	64	Sweeney Elementary School, 4100 S. Meadows Road
8	66	Agua Fria Community Center, 1 Prairie Dog Loop
9	67	Ramirez Thomas Elementary School, 3200 Calle Po Ae Pi
10	74	Genoveva Chavez Community Center, 3221 Rodeo Road
11	75	Sweeney Elementary School, 4100 S. Meadows Road
12	76	Chaparral Elementary School, 2451 Avenida Chaparral
13	77	Chaparral Elementary School, 2451 Avenida Chaparral
14	78	Santa Fe County Fair Building, 3229 Rodeo Road
15	80	Agua Fria Community Center, 1 Prairie Dog Loop
16	83	Unity Church of Santa Fe, 1212 Unity Way
17	86	Ortiz Middle School, 4164 S. Meadows Road
18	89	César Chávez Elementary, 6251 Jaguar Drive

19 **ABSENTEE IN-PERSON VOTING**

20 Office of the County Clerk, 102 Grant Avenue

21 **EARLY VOTING ALTERNATE SITES**

22 Santa Fe County Fair Building, 3229 Rodeo Road, Santa Fe

23 El Dorado Senior Center, 16 Avenida Torreon, El Dorado

24 Edgewood Old Fire Station, 25 East Frontage Road, Edgewood

25 Pojoaque County Satellite Office, 5 W. Gutierrez – Ste. 9, Pojoaque Pueblo Plaza

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**Section 5. ABSENTEE AND EARLY VOTING.**

**A. Absentee Voting by Mail.** Absentee voting by mail begins on Tuesday, October 7, 2014 and ends on Friday, October 31, 2014. Returned absentee ballots must be received by the Office of the County Clerk by 7:00 P.M. on November 4, 2014.

**B. Absentee-In Person Voting.** Absentee-in person will be conducted in the Office of the County Clerk, 102 Grant Avenue, Santa Fe, New Mexico from Tuesday, October 7, 2014 through Saturday, November 1, 2014.

**C. Alternate Sites for Early Voting.** Early voting will be available Saturday, October 18, 2014 through Saturday, November 1, 2014. Hours of voting are from 12:00 Noon until 8:00 p.m. Tuesday through Friday, and from 10:00 a.m. until 6:00 p.m. on Saturdays.

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

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

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
KELLEY A. BRENNAN, CITY ATTORNEY

*M/Melissa/Resolutions 2014/Election 2014\_Marijuana*

**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): CALLING FOR A SPECIAL MUNICIPAL ELECTION TO BE HELD CONCURRENTLY WITH THE SANTA FE COUNTY GENERAL ELECTION ON NOVEMBER 4, 2014 FOR THE PURPOSE OF VOTING FOR OR AGAINST MUNICIPAL QUESTIONS RESULTING FROM A REFERENDUM AND INITIATIVE RELATED TO REDUCING MARIJUANA PENALTIES.

Sponsor(s): Referendum and Initiative  
 Reviewing Department(s): City Attorney's Office/City Clerk's Office  
 Persons Completing FIR: Yolanda Vigil and Melissa Byers Date: 12/06/2013 Phone: 955.6518  
 Reviewed by City Attorney: [Signature] Date: 8/22/14  
 (Signature)  
 Reviewed by Finance Director: [Signature] Date: 8/22/2013  
 (Signature)

**Section B. Summary**

Briefly explain the purpose and major provisions of the bill/resolution:  
The purpose of the resolution is to call for a special election for the purpose of voting for or against municipal questions resulting from a referendum and initiative related to reducing marijuana penalties.

**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)

\_\_\_\_\_ 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*		<u>\$ 8,000.00</u>	_____	_____	\$ _____	_____	_____	_____
Overtime		<u>\$ 2,000.00</u>	_____	_____	_____	_____	_____	_____
Fringe**		\$ _____	_____	_____	\$ _____	_____	_____	_____
Capital Outlay		\$ _____	_____	_____	\$ _____	_____	_____	_____
Land/ Building		\$ _____	_____	_____	\$ _____	_____	_____	_____
Professional Services		<u>\$20,000.00</u>	N	NR	\$ _____	_____	_____	General
All Other Operating Costs		<u>\$35,000.00</u>	N	NR	\$ _____	_____	_____	General
Advertising		<u>\$15,000.00</u>	N	NR	\$ _____	_____	_____	General
<b>Total:</b>		<u>\$80,000.00</u>			\$ _____			

\* 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 10/11	"R" Costs Recurring or "NR" Non-recurring	FY 11/12	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
<b>Total:</b>	\$ _____		\$ _____			

**3. Expenditure/Revenue Narrative:**

Explain expenditure/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.)

**Budget to be used, if necessary, for the special municipal election to be held concurrently with the Santa Fe County General Election on November 4, 2014; i.e., election supplies, precinct officials, temporary personnel and advertising.**

**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.

**No**

**2. Consequences of Not Enacting This Bill/Resolution:** Are there consequences of not enacting this bill/resolution? If so, describe:

**The City would be required to have a municipal special election or a special municipal election in conjunction with the regular municipal election.**

**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.

**By adopting the special election resolution, the voters of Santa Fe will be given the opportunity to vote for or against municipal questions, resulting from a referendum and initiative related to reducing marijuana penalties, concurrently with the Santa Fe County General Election on November 4, 2014.**

Form adopted: 01/12/05; revised 8/24/05; 4/17/08

# City of Santa Fe, New Mexico

## BUDGET ADJUSTMENT REQUEST (BAR)

DEPARTMENT / DIVISION / SECTION / UNIT NAME					DATE	
ITEM DESCRIPTION	BU / LINE ITEM	<--(Finance Dept Use Only)-->		INCREASE	DECREASE	
		SUBLEDGER / SUBSIDIARY	DR / (CR)			
Salaries	12011.500110			8,000		
Overtime	12011.501400			2,000		
Contractual Services	12011.510310			20,000		
Operating Supplies	12011.530200			35,000		
Print / Publish	12011.561800			15,000		
<b>JUSTIFICATION:</b> (use additional page if needed) --Attach supporting documentation/memo				<b>TOTAL</b>	\$ 80,000	\$ -

Budget to be used, if necessary, for the Special Municipal Election to be held concurrently with the Santa Fe County General Election on November 4, 2014. (See proposed Election Resolution)

**CITY COUNCIL APPROVAL**

City Council Approval Required

City Council Approval Date

Agenda Item #:

*Yolanda y. Nigro* 8-22-14  
Prepared By \_\_\_\_\_ Date

\_\_\_\_\_  
Division Director \_\_\_\_\_ Date

*Yolanda y. Nigro* 8-22-14  
Department Director \_\_\_\_\_ Date

\_\_\_\_\_  
Budget Officer \_\_\_\_\_ Date

*Mosita Guan* 8/22/14  
Finance Director \_\_\_\_\_ Date

\_\_\_\_\_  
City Manager \_\_\_\_\_ Date