CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2014-66

INTRODUCED BY:

Councilor Joseph Maestas

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.

WHEREAS, official requests for Attorney General's Opinions must be made by legislators, state agencies, elected officials of the state, district attorneys, state boards and state commissioners; and

WHEREAS, Article X, Section 6 of the New Mexico Constitution authorizes municipalities in the state of New Mexico to adopt Home Rule Charters; and

WHEREAS, Paragraph D. of Article X, Section 6 states that "No tax imposed by the governing body of a charter municipality, except a tax authorized by general law, shall become effective until approved by a majority vote in the charter municipality;" and

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
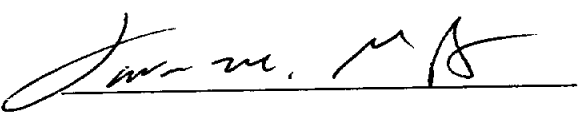
19   paper/plastic bags; and

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.
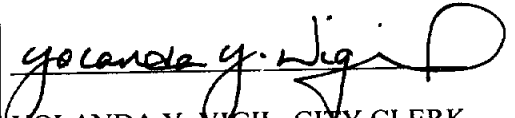
24   **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**

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 13th day of August, 2014.

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11 | ATTEST:

JAVIER M. GONZALES, MAYOR

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14 | YOLANDA Y. VIGIL, CITY CLERK

15 | APPROVED AS TO FORM:

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18 | KELLEY A. BRENNAN, CITY ATTORNEY

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25 | *M/Melissa/Resolutions 2014/2014-66 AG Opinion – Homerule Taxing Authority*