



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
FEBRUARY 10, 2010
CITY COUNCIL CHAMBERS

AMENDED – ITEM H-8

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 2/8/10 TIME 4:30 pm

SERVED BY _____

RECEIVED BY Hydromunquez

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. SALUTE TO THE NEW MEXICO FLAG
4. INVOCATION
5. ROLL CALL
6. APPROVAL OF AGENDA
7. APPROVAL OF CONSENT CALENDAR
8. APPROVAL OF MINUTES: Reg. City Council Meeting – January 27, 2010
9. PRESENTATIONS
 - a) Employee of the Month for February 2010 – Gary Moquino, Historic Construction Inspector – Land Use/Historic Preservation. (5 minutes)
 - b) Muchas Gracias – Gabe Vigil. (5 minutes)
 - c) Muchas Gracias – Vicki Pozzebon. (5 minutes)
 - d) Santa Fe Trends 2010. (Reed Liming) (5 minutes)
10. CONSENT CALENDAR
 - a) Request for Approval of State of New Mexico Governmental Services Agreement – Wildland Fire Suppression Crew and Santa Fe River Restoration Project; State of New Mexico Youth Conservation Corps Commission. (Porfirio Chavarria)



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
FEBRUARY 10, 2010
CITY COUNCIL CHAMBERS

- b) Request for Approval of Consideration to Re-Establish Positions in FY 2009/2010 Budget. (Vicki Gage) (Postponed at January 27, 2010 City Council Meeting) (**Postponed to February 24, 2010 City Council Meeting**)

11. MATTERS FROM THE CITY MANAGER

12. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION:

Discussion of City of Santa Fe's Filing of a Brief with the New Mexico Supreme Court in the Public Service Company of New Mexico v. the New Mexico Public Regulation Commission Case No. 32176; Pursuant to §10-15-1(H)(3) NMSA 1978.

13. Action on City of Santa Fe's Filing of a Brief with the New Mexico Supreme Court in the Public Service Company of New Mexico v. the New Mexico Public Regulation Commission Case No. 32176. (Marcos Martinez)

14. MATTERS FROM THE CITY CLERK

15. COMMUNICATIONS FROM THE GOVERNING BODY

EVENING SESSION – 7:00 P.M.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. SALUTE TO THE NEW MEXICO FLAG
- D. INVOCATION
- E. ROLL CALL
- F. PETITIONS FROM THE FLOOR
- G. APPOINTMENTS



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
FEBRUARY 10, 2010
CITY COUNCIL CHAMBERS

H. PUBLIC HEARINGS:

- 1) Request from Bistro 315, Inc., for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be Located at Bistro 315, 315 Old Santa Fe Trail, Units C, D, E. (Yolanda Y. Vigil)
- 2) Request from Angeliki Ltd., Co., LLC, for a Transfer of Location of Inter-Local Dispenser License #2729 from Sabroso Northern NM Grill and Cantina, 5210 San Mateo Blvd., NE, Suite A, Albuquerque, to Evangelos Cocktail Lounge, 200 West San Francisco Street. (Yolanda Y. Vigil)
- 3) Request from Evangelos, Inc., for a Transfer of Location of Dispenser License #659 from Evangelos Cocktail Lounge, 200 West San Francisco Street, Santa Fe, to Sunflower Farmers Market, 3201 Zafarano Drive, Suite 20. (Yolanda Y. Vigil)
- 4) Request from The National Dance Institute of New Mexico (NDI-NM) for a Permanent Waiver of the 300 Foot Location Restriction to Allow the Dispensing/Sale of Alcoholic Beverages at NDI-NM, 1140 Alto Street which is within 300 feet of Desert Academy and the Former Alameda Middle School. (Yolanda Y. Vigil)
- 5) CONSIDERATION OF BILL NO. 2010-1: ADOPTION OF ORDINANCE NO. 2010-_____. (Councilor Trujillo)
An Ordinance Amending Article 24-1 SFCC 1987 Regarding the *City of Santa Fe Uniform Traffic Code*; Amending Sections 12-1-42.1, 12-7-9.2, And 12-7.9.5 of the *City of Santa Fe Uniform Traffic Code* Regarding Off-Highway Motor Vehicle Use; and Amending Exhibit A, of the *City Of Santa Fe Uniform Traffic Code* Regarding Traffic Violation Penalty Assessments. (Jeanne Price)
- 6) CONSIDERATION OF BILL NO. 2010-2: ADOPTION OF ORDINANCE NO. 2010-_____.
An Ordinance Repealing Chapter 27 SFCC 1987 and Creating a New Chapter 27 SFCC 1987 Regarding Telecommunication and Cable Services. (Maureen Reed)



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
FEBRUARY 10, 2010
CITY COUNCIL CHAMBERS

- a) CONSIDERATION OF BILL NO. 2010-3: ADOPTION OF ORDINANCE NO. 2010-_____.
An Ordinance Granting a Non Exclusive Franchise to Newpath Networks, LLC to Rent, Use and Occupy the City's Public Rights-of-Way in the City of Santa Fe, New Mexico, and Fixing the Terms and Conditions Thereof. (Maureen Reed)
- b) CONSIDERATION OF BILL NO. 2010-4: ADOPTION OF ORDINANCE NO. 2010-_____.
An Ordinance Granting a Non-Exclusive Franchise to Citylink Fiber Holdings of Santa Fe, New Mexico, LLC to Rent, Use and Occupy the City's Public Rights-of-Way in the City of Santa Fe, New Mexico, Fixing the Terms and Conditions Thereof. (Maureen Reed)
- 7) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Romero, Councilor Bushee, Councilor Calvert and Councilor Trujillo)
A Resolution Urging the U.S. Congress, the President and Executive Branch Members to Require the Federal Communications Commission to Reassess the Health Impacts of Radio Frequency Emissions; and to Actively Seek and Support Federal Legislation that Would Give Local Governments Greater Flexibility With Regard to the Placement of Wireless Communications Facilities (Maureen Reed)
- 8) Pursuant to §60-6B-10 NMSA 1978, a Request for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Consumption of Champagne at Goler, 125 East Palace Avenue, which is Within 300 Feet of The Cathedral Basilica of Saint Francis of Assisi, 131 Cathedral Place. The Request is for a Reception to be held on February 20, 2010 from 10:00 a.m. to 6:00 p.m. (Yolanda Y. Vigil)

I. ADJOURN

Pursuant to the Governing Body Procedural Rules, in the event any agenda items have not been addressed, the meeting should be reconvened at 7:00 p.m., the following day and shall be adjourned not later than 12:00 a.m. Agenda items, not considered prior to 11:30 p.m., shall be considered when the meeting is reconvened or tabled for a subsequent meeting.



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
FEBRUARY 10, 2010
CITY COUNCIL CHAMBERS

NOTE: New Mexico law requires the following administrative procedures be followed when conducting "quasi-judicial" hearings. In a "quasi-judicial" hearing all witnesses must be sworn in, under oath, prior to testimony and will be subject to reasonable cross-examination. Witnesses have the right to have an attorney present at the hearing.

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) days prior to meeting date.

**SUMMARY INDEX
SANTA FE CITY COUNCIL MEETING
February 10, 2010**

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<u>AFTERNOON SESSION</u>		
CALL TO ORDER AND ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved [amended]	1-2
APPROVAL OF CONSENT CALENDAR	Approved [amended]	2
CONSENT CALENDAR LISTING		2
APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – JANUARY 27, 2010	Approved	3
<u>PRESENTATIONS</u>		
EMPLOYEE OF THE MONTH FOR FEBRUARY 2010 – GARY MOQUINO, HISTORIC CONSTRUCTION INSPECTOR – LAND USE/HISTORIC PRESERVATION		3
MUCHAS GRACIAS – GABE VIGIL		3
MUCHAS GRACIAS – VICKI POZZEBON	Postponed to 02/24/2010	3
SANTA FE TRENDS 2010		4
<u>CONSENT CALENDAR DISCUSSION</u>		
REQUEST FOR APPROVAL OF STATE OF NEW MEXICO GOVERNMENTAL SERVICES AGREEMENT – WILDLAND FIRE SUPPRESSION CREW AND SANTA FE RIVER RESTORATION PROJECT; STATE OF NEW MEXICO YOUTH CONSERVATION CORPS COMMISSION *****	Approved	4-6
END OF CONSENT CALENDAR DISCUSSION *****		
MATTERS FROM THE CITY MANAGER	None	6
MATTERS FROM THE CITY ATTORNEY		

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
EXECUTIVE SESSION	Approved	7
MOTION TO COME OUT OF EXECUTIVE SESSION	Approved	7
ACTION BY THE CITY OF SANTA FE'S FILING OF A BRIEF WITH THE NEW MEXICO SUPREME COURT IN <u>PUBLIC SERVICE COMPANY OF NEW MEXICO V. THE NEW MEXICO PUBLIC REGULATION COMMISSION</u> , CASE NO. 32176, PURSUANT TO §10-15-1(H)(3)	Approved	8
MATTERS FROM THE CITY CLERK	Information	8
COMMUNICATIONS FROM THE GOVERNING BODY	Information/discussion	8-9
<u>EVENING SESSION</u>		
CALL TO ORDER AND ROLL CALL	Quorum	10
PETITIONS FROM THE FLOOR		10-11
<u>APPOINTMENTS</u>		
Business & Quality of Life Advisory Committee	Approved	11
Arts Commission	Approved	11-12
Complete Count Committee	Approved	12
<u>PUBLIC HEARINGS</u>		
REQUEST FROM BISTRO 315, INC., FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY), TO BE LOCATED AT BISTRO 315, 315 OLD SANTA FE TRAIL, UNITS C, D, E.	Approved	13
REQUEST FROM ANGELIKI, LTD., CO., LLC., FOR A TRANSFER OF LOCATION OF INTER-LOCAL DISPENSER LICENSE #2729 FROM SABROSO NORTHERN NM GRILL AND CANTINO, 5210 SAN MATEO BLVD., NE, SUITE A, ALBUQUERQUE, TO EVANGELOS COCKTAIL LOUNGE, 200 WEST SAN FRANCISCO STREET	Approved	13-14

ITEM**ACTION****PAGE #**

REQUEST FROM EVANGELOS, INC., , FOR A
TRANSFER OF LOCATION OF DISPENSER LICENSE
#659 FROM EVANGELOS COCKTAIL LOUNGE, 200
WEST SAN FRANCISCO STREET, SANTA FE, TO
SUNFLOWER FARMERS MARKET, 3201 ZAFARANO
DRIVE, SUITE 20

Approved

14

PURSUANT TO §60-6B-10 1978, A REQUEST
FOR A WAIVER OF THE 300 FOOT LOCATION
RESTRICTION AND APPROVAL TO ALLOW THE
CONSUMPTION OF CHAMPAGNE AT GOLER, 125
EAST PALACE AVENUE, WHICH IS WITHIN
300 FEET OF THE CATHEDRAL BASILICA OF
SAINT FRANCIS OF ASSISI, 131 CATHEDRAL
PLACE. THE REQUEST IS FOR A RECEPTION
TO BE HELD ON FEBRUARY 20, 2010, FROM
10:00 A.M. TO 6:00 P.M.

Approved

15

REQUEST FROM THE NATIONAL DANCE
INSTITUTE OF NEW MEXICO (NDI-NM) FOR A
PERMANENT WAIVER OF THE 300 FOOT
LOCATION RESTRICTION TO ALLOW THE
DISPENSING/SALE OF ALCOHOLIC BEVERAGES
AT NDI-NM, 1140 ALTO STREET, WHICH IS
WITHIN 300 FEET OF DESERT ACADEMY AND
THE FORMER ALAMEDA MIDDLE SCHOOL

Postponed to 02/24/2010 16

CONSIDERATION OF BILL NO. 2010-01: ADOPTION
OF ORDINANCE NO. 2010- 2. AN ORDINANCE
AMENDING ARTICLE 24-1 SFCC 1987, REGARDING
THE *CITY OF SANTA FE UNIFORM TRAFFIC CODE*;
AMENDING SECTIONS 12-1.42.1, 12-7.9.2, AND
12-7.9.5 OF THE CITY OF SANTA FE UNIFORM
TRAFFIC CODE, REGARDING OFF-HIGHWAY
MOTOR VEHICLE USE; AND AMENDING EXHIBIT A
OF THE CITY OF *SANTA FE UNIFORM TRAFFIC CODE*,
REGARDING TRAFFIC VIOLATION PENALTY
ASSESSMENTS

Approved

16-17

ITEM**ACTION****PAGE #**

**CONSIDERATION OF BILL NO. 2010-2: ADOPTION
OF ORDINANCE NO. 2010-____. AN ORDINANCE
REPEALING CHAPTER 27 SFCC 1987, AND CREATING A
NEW CHAPTER 27 SFCC 1987, REGARDING
TELECOMMUNICATIONS AND CABLE SERVICES**

Postponed to 02/24/2010 17-47

**CONSIDERATION OF BILL NO. 2010-4:
ADOPTION OF ORDINANCE NO. 2010-____.
AN ORDINANCE GRANTING A NON EXCLUSIVE
FRANCHISE TO NEWPATH NETWORKS, LLC, TO
RENT, USE AND OCCUPY THE CITY'S PUBLIC
RIGHTS-OF-WAY IN THE CITY OF SANTA FE, NEW
MEXICO, AND FIXING THE TERMS AND CONDITIONS
THEREOF**

Postponed to 02/24/2010 17-47

**CONSIDERATION OF BILL NO. 2010-____:
ADOPTION OF ORDINANCE NO. 2010- 4.
AN ORDINANCE GRANTING A NON
EXCLUSIVE FRANCHISE TO CITYLINK
FIBER HOLDINGS OF SANTA FE, NEW
MEXICO, LLC, TO RENT, USE AND
OCCUPY THE CITY'S PUBLIC RIGHTS-
OF-WAY IN THE CITY OF SANTA FE,
NEW MEXICO, AND FIXING THE TERMS
AND CONDITIONS THEREOF**

Postponed to 02/24/2010 17-47

**CONSIDERATION OF RESOLUTION NO. 2010- 08. A
RESOLUTION URGING THE U.S. CONGRESS, THE
PRESIDENT AND EXECUTIVE BRANCH MEMBERS
TO REQUIRE THE FEDERAL COMMUNICATIONS
COMMISSION TO REASSESS THE HEALTH IMPACTS
OF RADIO FREQUENCY EMISSIONS; AND TO
ACTIVELY SEEK AND SUPPORT FEDERAL
LEGISLATION THAT WOULD GIVE LOCAL
GOVERNMENTS GREATER FLEXIBILITY WITH
REGARD TO THE PLACEMENT OF WIRELESS
COMMUNICATIONS FACILITIES**

Approved

47-48

ADJOURN

48

**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
February 10, 2010**

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor Pro-Tem Rebecca Wurzbarger, on February 10, 2010, at approximately 5:00 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance, Salute to the New Mexico flag, and the Invocation, roll call indicated the presence of a quorum, as follows:

Members Present

Councilor Rebecca Wurzbarger, Mayor Pro-Tem
Councilor Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Members Excused

Mayor David Coss

Others Attending

Robert Romero, City Manager
Geno Zamora, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

6. APPROVAL OF AGENDA

Robert Romero noted there is an Amended Agenda which adds Item H(8) which is a request for a waiver of the 300 foot location. He asked, on the evening agenda, to postpone Item H(4) at the request of the Public Schools, and to move Item H(8) to be heard after Item H(3). He asked to postpone Item 9(c) on the afternoon agenda to the next meeting of the Council. .

MOTION: Councilor Chavez moved, seconded by Councilor Romero, to approve the agenda as amended.

DISCUSSION: Councilor Calvert asked to postpone #6. He said the legal staff has cautioned that this item is time sensitive. However, he thinks we have not had the full public process we would have liked to have to more fully air this issue. There has been only one public hearing which was at Public Works, but unfortunately, most of the discussion was about the health effects. He said, following that meeting, he and other Councilors have spoken with the concerned people to focus their discussion. There was to have been a public hearing at the PUC, but the meeting was canceled because of the weather. He is concerned that we are going to try to "create sausage" tonight with one public hearing and no opportunity to follow-up on questions, or comments, or to clarify questions. He reiterated that he understands legal's concerns which is their responsibility. However, he believes we have a bigger responsibility to the public to "get it right," and to protect the citizens. He asked to postpone this item to the March 10, 2010, which will follow a public hearing at the PUC, so we can have a thorough discussion on this topic.

MOTION: Councilor Calvert moved to amend the motion to postpone Item #6 to the Council meeting of March 10, 2010. **THE MOTION FAILED FOR LACK OF A SECOND.**

VOTE ON THE MAIN MOTION: The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

7. APPROVAL OF CONSENT CALENDAR

Councilor Bushee asked if Item 10(a) went to the Public Works Committee.

Mr. Romero said it did not go to the Public Works Committee. Responding to Councilor Bushee, he said he doesn't know the reason, but the staff person is here and can talk about this item.

MOTION: Councilor Bushee moved, seconded by Councilor Trujillo, to approve the following Consent Calendar, as amended.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: None.

a) *[Removed for discussion by Councilor Bushee]*

b) **REQUEST FOR APPROVAL OF CONSIDERATION TO RE-ESTABLISH POSITIONS IN FY 2009/2010 BUDGET. (VICKI GAGE) (Postponed at January 27, 2010 City Council meeting) (Postponed to February 24, 2010 City Council meeting)**

8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – JANUARY 27, 2010

MOTION: Councilor Trujillo moved, seconded by Councilor Romero, to approve the minutes of the Regular City Council meeting of January 27, 2010, as presented.

VOTE: The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

9. PRESENTATIONS

a) EMPLOYEE OF THE MONTH FOR FEBRUARY 2010 – GARY MOQUINO, HISTORIC CONSTRUCTION INSPECTOR – LAND USE/HISTORIC PRESERVATION

Mayor Pro-Tem Wurzbarger read the letter of nomination into the record commending Gary Moquino for his hard work and performing an inspection in spite of a very heavy snowfall. She presented Mr. Moquino with a plaque and a check for \$200 from the Employee Benefit Committee.

Mr. Moquino thanked the City for hiring him, saying it is good that he could stay here and work in the City where he grew up.

b) MUCHAS GRACIAS – GABE VIGIL

Mayor Pro-Tem Wurzbarger asked Councilor Trujillo to present this award. Councilor Trujillo spoke about Mr. Vigil's accomplishments as a santero, for keeping this art form alive, and for teaching this art, especially to our children.. He said the City commissioned Mr. Vigil and his brother Gil in 1998 to create a retablo of *Nuestra Señora de Guadalupe*, which was presented to Secretary of State Hillary Clinton and Former First Lady, during a visit to Santa Fe, and is now in the Smithsonian. Councilor Trujillo presented Mr. Vigil with a Muchas Gracias certificate for his outstanding artistic achievements and for his commitment to keeping this centuries old art form alive, so it is not forgotten nor lost..

Mr. Vigil thanked the Council for this honor and the award, and the opportunity to produce his art for New Mexico and the rest of the world to see. Responding to Mayor Pro-Tem Wurzbarger, Mr. Vigil he said he has been doing this art form for 20 years.

c) MUCHAS GRACIAS – VICKI POZZEBON

This item is postponed to the meeting of February 24, 2010.

c) MUCHAS GRACIAS – VICKI POZZEBON

This item is postponed to the meeting of February 24, 2010.

d) SANTA FE TRENDS 2010 (REED LIMING)

A copy of "Santa Fe Trends 2010," is incorporated herewith to these minutes as Exhibit "1."

Mr. Liming thanked Valerie Chelonis, City Graphics, for her work on all 13 issues of *Santa Fe Trends*, saying she is retiring at the end of the month. He acknowledged her efforts and thanked her for all of her excellent work during her time with the City.

Mr. Liming reviewed the information in Exhibit "1". Please see Exhibit "1" for specifics of this presentation.

CONSENT CALENDAR DISCUSSION

10 (a) REQUEST FOR APPROVAL OF STATE OF NEW MEXICO GOVERNMENTAL SERVICES AGREEMENT – WILDLAND FIRE SUPPRESSION CREW AND SANTA FE RIVER RESTORATION PROJECT; STATE OF NEW MEXICO YOUTH CONSERVATION CORPS COMMISSION. (PORFIRIO CHAVARRIA)

Councilor Bushee said this doesn't have to go to Public Works, but in the future she would like these kinds of things to go to Public Works. She asked what is the \$81,000 in-kind contribution.

Mr. Chavarria said most of it is for his time, and a portion is for Forest Service time, noting the Forest Service is collaborating on the project, and a small portion is for materials for training. This is a 6 months grant, March 2010 through mid-September 2010. He will be with the crew for the entire time.

Councilor Bushee asked why this stretch is being done, and what is meant by "improving safety along the river."

Mr. Chavarria said this is a Youth Conservation Corps grant to hire 10 individuals for a wildland fire suppression crew, and when they are not fighting fires, they will be working along the Santa Fe River to remove some of the older trees along the river which are dead which are over trails and such and creating a hazard to pedestrians as well as vehicle traffic. He said in some areas of the river, the flow has become so congested by the willows and dead material along the area. He said they will be removing the material and some "live in there" to create better access to the river, and so Police and Fire can have access to and can see in the river without having to go down there physically.

Councilor Bushee asked if this request went to the River Commission. Mr. Chavarria said no. He has been working with Brian Drypolcher, Watershed Coordinator, to get this to the River Commission. He

has been speaking with people with the River Commission as well as groups from the Watershed Association and other groups who have adopted sections along this stretch of the River.

Councilor Bushee said this stretch of River has had the most work done to it over the past 5 years. She asked if he has marked the trees.

Mr. Chavarria said he hasn't marked any trees. He said the Parks Division has done an inventory of the trees. He has had discussions with the Sierra Club and other groups about that stretch of the River, and they feel this is a great resource for them to utilize. He said the Sierra Club has been out to the site once a month during the past year.

Councilor Bushee said this is a backward process and it should have gone through the River Commission and other City committees, before coming to the Council. She said she is called by citizens, for example, if an Elm tree is removed or if it stays. She has no problem in removing hazardous dead trees, but if they will be removing invasive species trees that needs a plan.

Mr. Chavarria said this is a whole encompassing effort. He said some invasive species trees, such as elms, will be removed. He is working very closely with groups in the community to establish which trees will be removed, and which will stay. He held a Community meeting in December, and is planning another in mid-March to look at these issues. He said during this process, he looking at holding one community meeting each week to discuss the activities during the week.

Councilor Bushee said Mr. Chavarria needs to work with he people who live and/or work in the area with regard to removal of Cottonwoods, and said she wants to be sure there remains sufficient work to be done along this stretch of the River.

Mr. Chavarria said there are lots of standing cottonwood and elm trees near Patrick Smith Park, for example.

Councilor Bushee reiterated that he needs to make an effort to notify the neighborhood associations associated with this stretch of the River about work to be done.

MOTION: Councilor Bushee moved, seconded by Councilor Romero, to approve this request, with the caveat that Mr. Chavarria continue to work closely and communicate with the people who live in the area and organizations such as the Sierra Club and the River Commission which are deeply involved with this stretch of the River.

DISCUSSION: Mr. Chavarria said the plan is not to do any work until "we have discussed the entire project, exactly what we are going to do and how we are going to do it."

Councilor Bushee asked if it will go below Camino Alire, noting there is land below Camino Alire the Archuleta family gave to the City, and that stretch probably needs work, but he would need to communicate and work with the people and groups about any work there as well.

Mr. Chavarria said this is a possibility, noting he believes it would fall within the scope of the project, and he believes he could request an amendment to the scope of the project with the State, indicating we want to extend the project area.

Councilor Chavez said there is a stretch between St. Francis and Camino Alire, which has the deepest cut, and the erosion is moving closer to the property lines, and asked if he is working one side of the river bank, and Mr. Chavarria said they are.

Responding to Councilor Chavez, Mr. Chavarria said they will be doing work in the channel if it is warranted, but there is nothing specific which is planned. However, if opportunities arise where they can add material to keep the soil in place or stabilize the banks, he believes they would utilize those resources.

Councilor Chavez said the work needs to be coordinated with the work being done on the River Trail, and said Mr. Chavarria should partner with that group..

Councilor Bushee said she heard Mr. Chavarria say that they would be removing willows, reminding him that people have planted willows purposely.

Mr. Chavarria reiterated that he is working very closely with the people who are involved with this section of the River. He said he has been working with the Watershed Association which holds the annual fishing derby, and their biggest complaint last year was there wasn't enough access to the River for people to fish, as well as that it stopped at Guadalupe and fishing could have gone further. He said they will try to remove willows in such a way as to leave clumps, and if possible to transplant the willows to other areas.

Councilor Bushee reiterated that Mr. Chavarria needs to start the process with the River Commission, because along some stretches, willows have been planted intentionally to maintain the bank.

Mr. Chavarria said in other areas, working with the willows involves just removing some of the material and trash that has accumulated around the willows.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: None.

END OF CONSENT CALENDAR DISCUSSION

11. MATTERS FROM THE CITY MANAGER.

There were no matters from the City Manager.

12. MATTERS FROM THE CITY ATTORNEY

Mr. Zamora noted there is a new section on the last page of the two "Bills and Resolutions Scheduled for Adoption," relating to proposed ordinances or other amendments which are requested by staff, where staff has found errors, or the need for updates or corrections. He said this is a new process, and rather than calling individual Councilors for sponsorship, these will be listed here, and if Councilors are interested in sponsoring these Ordinances they can contact Ms. Price.

EXECUTIVE SESSION:

- a) **DISCUSSION OF SANTA FE'S FILING OF A BRIEF WITH THE NEW MEXICO SUPREME COURT IN PUBLIC SERVICE COMPANY OF NEW MEXICO V. THE NEW MEXICO PUBLIC REGULATION COMMISSION, CASE NO. 32176, PURSUANT TO §10-15-1(H)(3) (MARCOS MARTINEZ)**

MOTION: Councilor Calvert moved, seconded by Councilor Romero, that the Council go into Executive Session for the purpose of discussion of the filing of a brief with the New Mexico Supreme Court in Public Service Company of New Mexico v. the New Mexico Public Regulation Commission, Case No. 32176, pursuant to §10-15-1(H)(2).

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: None.

The Council went into Executive Session at 5:35 p.m.

MOTION TO COME OUT OF EXECUTIVE SESSION

MOTION: At 5:45 p.m., Councilor Ortiz moved, seconded by Councilor Chavez, that the City Council come out of Executive Session and stated that the only item which was discussed in executive session was the item which was on the agenda, and no action was taken.

VOTE: The motion was approved unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and no one voting against.

13. ACTION CITY OF SANTA FE'S FILING OF A BRIEF WITH THE NEW MEXICO SUPREME COURT IN PUBLIC SERVICE COMPANY OF NEW MEXICO V. THE NEW MEXICO PUBLIC REGULATION COMMISSION, CASE NO. 32176, PURSUANT TO §10-15-1(H)(3) (MARCOS MARTINEZ)

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to authorize the City Attorney's Office to file an appellate brief on behalf of the City in this case.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: None.

14. MATTERS FROM THE CITY CLERK

Yolanda Vigil said Early Voting will be conducted in her office through February 26, 2010.

15. COMMUNICATIONS FROM THE GOVERNING BODY

A copy of "Bills and Resolutions scheduled for introduction by members of the Governing Body," for the Council meeting of February 10, 2010, is incorporated herewith to these minutes as Exhibit "2."

Councilor Dominguez

Councilor Dominguez had no communications.

Councilor Trujillo

Councilor Trujillo had no communications.

Councilor Bushee

Councilor Bushee said she spoke with Mr. Zamora after Former Councilor Farber appeared before the Council at the last meeting. She said Mr. Zamora has researched this issue, and said there is no policy on settlements and such. She would like to direct staff to begin drafting a policy around the issue for introduction by the next Council meeting.

Councilor Chavez

Councilor Chavez had no communications.

Councilor Romero

Councilor Romero introduced an Ordinance, cosponsored with Councilor Wurzburger, amending §14-5.5(A)(3) SFCC 1987, regarding general standards for the South Central Highway Corridor Protection District. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "3."

Councilor Ortiz

Councilor Ortiz had no communications.

Councilor Wurzburger

Councilor Wurzburger introduced the following:

1. An Ordinance authorizing a Water Project Fund Loan/Grant Agreement between the City and the MFA, for the construction of the Buckman Surface Water Direct Diversion project, which will go to Finance, Council, Public Utilities and back to the Council on 03/31/10. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "4."
2. An Ordinance authorizing a Water Project Fund Loan/Grant Agreement between the City and the MFA, for the costs of the borrower/grantee's Watershed Management Project, which will go to Finance, Council, Public Utilities and back to the Council on 03/31/10. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "5."

Councilor Calvert

Councilor Calvert introduced a Resolution authorizing a loan agreement with the MFA for \$161,807 for financing the upgrades to the City's Water Utility System, including specifically a micro-hydroelectric power generation project. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "6."

Mayor Coss

Mayor Pro-Tem Wurzburger, on behalf of Mayor Coss, introduced an Ordinance amending §25-4.2 SFCC 1987, regarding Water Rate Adjustments. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "7."

END OF AFTERNOON SESSION AT 5:50 P.M.

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Acting Chair Miguel Chavez, at approximately 7:00 p.m. Following the Pledge of Allegiance, salute to the New Mexico Flag, and Invocation, Roll Call indicated the presence of a quorum as follows:

Members Present

- * Councilor Rebecca Wurzbarger, Mayor Pro-Tem
 - Councilor Patti J. Bushee
 - Councilor Christopher Calvert
 - Councilor Miguel Chavez
 - Councilor Carmichael A. Dominguez
 - Councilor Matthew E. Ortiz
- * Councilor Rosemary Romero
 - Councilor Ronald S. Trujillo

Members Excused

Mayor David Coss

Others Attending

Robert P. Romero, City Manager
Geno Zamora, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

- * Mayor Pro-Tem Wurzbarger and Councilor Romero arrived shortly after the Evening Session was called to order, noting they were late because they were at the State Legislature testifying.

Acting Chair Chavez wished Councilor Calvert a happy birthday.

F. PETITIONS FROM THE FLOOR

Donato Coviello appeared to update the Council on the census effort, noting \$400 billion is allocated based on the census count. He encouraged everyone to take part. He spoke about the importance of the census and the Census Bureau's efforts to count everyone. Mr. Coviello said people can fill out the questionnaire and mail it, or wait for a census person to come to their home, noting all census workers will have a badge, and no census worker will ask for your social security number. He said for every 1% not counted, it costs \$100 million which should go for children, roads and such. Mr. Coviello presented the Governing Body and staff with small gifts from the Census Bureau, to remind them to keep the census in mind and to support the census effort. He said he will be updating the Council at every meeting from now through the end of the census.

Robert Francis Johnson, said he will be testifying later on a very important issue, but he wanted to bring a quote from Bob Barth, now deceased, who was a former radio/tv personality in Santa Fe, in the spirit of bringing us together. The quote is as follows, "Yes our work on earth is different. Some of us broadcast, some of us write, some of us dig, some of us sing. But, our real mission on this planet, probably is the same. We are here to love and respect one another, and share each other's happiness, grief and melancholy. We are here to give each other a part of our own being in a non-selfish and loving way."

G. APPOINTMENTS

Acting Chair Chavez presented the following appointments on behalf of Mayor Coss.

Business & Quality of Life Advisory Committee

Mayor Coss made the following appointment to the Business and Quality of Life Committee:

Frederick Warhanek – to fill unexpired term ending 03/2010.

MOTION: Councilor Calvert moved, seconded by Councilor Ortiz, to approve this appointment.

VOTE: The motion was approved unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, and Trujillo voting for the motion, none against, and Councilors Wurzbarger and Romero absent for the vote.

Arts Commission

Mayor Coss made the following appointments to the Arts Commission:

Justin Bransford – Reappointment – term ending 10/2011;
Joey Chavez, Chair – Reappointment – term ending 10/2010;
Kirk Ellis – Reappointment – term ending 10/2010;
Michael Namingha – Reappointment – term ending 10/2011;
Peter Pacheco – Reappointment – term ending 10/2011;
Kerri Segell – Reappointment – term ending 10/2011;
Ramona Sakiestewa – to fill unexpired term ending 10/2010;
Gail Springer – to fill unexpired term ending 10/2011; and
Melissa White – Reappointment – term ending 10/2010.

MOTION: Councilor Bushee moved, seconded by Councilor Trujillo, to approve these appointments.

VOTE: The motion was approved unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, and Trujillo voting for the motion, none against, and Councilors Wurzburger and Romero absent for the vote.

Complete Count Committee

Mayor Coss made the following appointments to the Complete Count Committee:

Todd Johansen – term ending 06/2010;
Susan Odiseos – term ending 06/2010;
Amy Summa – term ending 06/2010;
Deborah Tang – term ending 06/2010; and
Virginia Soto – term ending 06/2010.

Councilor Bushee asked City Clerk Yolanda Vigil what exactly does this Committee do, and asked if there was a recent Resolution about this.

Ms. Vigil said the Council adopted a Resolution, noting this is a combined City/County committee. Ms. Vigil said she doesn't remember what the Resolution said in terms of the work of this committee.

Jeanne Price said the Resolution to establish this Committee was done quite a while ago, at the request of the Census people. The Committee is to help to get the word out so that we have a good count.

Mayor Pro-Tem Wurzburger and Councilor Romero arrived at the meeting.

Mr. Coviello said he attended two meetings of this Committee, and it is a group composed of representatives from the City/County/Schools, along with community groups. He said one of the difficulties in the census is counting the homeless and the sensitive nature of some of the shelters represented on the committee. He said part of the work of the Committee is to network, and find the homeless, and spoke about some of the efforts by this group in this regard. He said it is a wonderful Committee and has been of great help in the census effort.

MOTION: Councilor Ortiz moved, seconded by Councilor Calvert, to approve these appointments.

VOTE: The motion was approved unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

Mayor Pro-Tem Wurzburger assumed the duties of Chair

H. PUBLIC HEARINGS

- 1) REQUEST FROM BISTRO 315, INC., FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY), TO BE LOCATED AT BISTRO 315, 315 OLD SANTA FE TRAIL, UNITS C, D, E. (YOLANDA Y. VIGIL)**

The staff report was given by Yolanda Vigil, City Clerk, noting the business is not within 300 feet of a church or school, and staff requests that the business be required to comply with all City ordinances. She noted there currently is a restaurant liquor license at this location which is owned by the same entity. However, because the corporate structure has changed, a new application is required.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Bushee moved, seconded by Councilor Calvert, to approve the request for a Restaurant Liquor License (beer and wine on-premise consumption only), to be located at Bistro 315, 315 Old Santa Fe Trail, Units C, D, E.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: None.

- 2) REQUEST FROM ANGELIKI, LTD., CO., LLC., FOR A TRANSFER OF LOCATION OF INTER-LOCAL DISPENSER LICENSE #2729 FROM SABROSO NORTHERN NM GRILL AND CANTINO, 5210 SAN MATEO BLVD., NE, SUITE A, ALBUQUERQUE, TO EVANGELOS COCKTAIL LOUNGE, 200 WEST SAN FRANCISCO STREET. (YOLANDA Y. VIGIL)**

The staff report was given by Yolanda Vigil, City Clerk, noting the business is not within 300 feet of a church or school and there are staff reports in the packet regarding litter and noise. Staff is requesting the business be required to comply with all City ordinances.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Bushee moved, seconded by Councilor Trujillo, to approve the request for a Transfer of Location of Inter-Local Dispenser License #2729 from Sabroso Northern NM Grill and Cantina, 5210 San Mateo Blvd, NE, Suite A, Albuquerque, New Mexico, to Evangelos Cocktail Lounge, 200 West San Francisco Street.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: None.

- 3) REQUEST FROM EVANGELOS, INC., , FOR A TRANSFER OF LOCATION OF DISPENSER LICENSE #659 FROM EVANGELOS COCKTAIL LOUNGE, 200 WEST SAN FRANCISCO STREET, SANTA FE, TO SUNFLOWER FARMERS MARKET, 3201 ZAFARANO DRIVE, SUITE 20. (YOLANDA Y. VIGIL)**

The staff report was given by Yolanda Vigil, City Clerk, noting the business is not within 300 feet of a church or school and there are staff reports in the packet regarding litter and noise. Staff is requesting the business be required to comply with all City ordinances.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Ortiz moved, seconded by Councilor Calvert, to approve the request for a Transfer of Location of Dispenser License #659 from Evangelos Cocktail Lounge, 200 West San Francisco Street, Santa Fe, to Sunflower Farmers Market, 3201 Zafarano Drive, Suite 20, Santa Fe. (Yolanda Y. Vigil)

DISCUSSION:

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: None.

- 8) **PURSUANT TO §60-6B-10 1978, A REQUEST FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE CONSUMPTION OF CHAMPAGNE AT GOLER, 125 EAST PALACE AVENUE, WHICH IS WITHIN 300 FEET OF THE CATHEDRAL BASILICA OF SAINT FRANCIS OF ASSISI, 131 CATHEDRAL PLACE. THE REQUEST IS FOR A RECEPTION TO BE HELD ON FEBRUARY 20, 2010, FROM 10:00 A.M. TO 6:00 P.M. (YOLANDA Y. VIGIL)**

A copy of a Memorandum, with attachments, dated February 10, 2010, from Yolanda Y. Vigil, City Clerk, to Mayor Coss and City Councilors, regarding this request, is incorporated herewith to these minutes as Exhibit "8."

The staff report was given by Yolanda Vigil, City Clerk, noting the business is within 300 feet of the Cathedral Basilica of Saint Francis of Assisi, 131 Cathedral Place. The reception will be held on February 20, 2010, 10:00 a.m. to 6:00 p.m.

Public Hearing

Julie Kane, Assistant General Manager, La Casa Sena was sworn. She said they have been doing events at Goler which has shared their Courtyard at Sena Plaza for 10-15 years, with no problem. She said they are being more careful about the "feed law." She said they received a Letter from the Monsignor at the Cathedral, saying he has no problem with the proposed event..

Councilor Bushee asked if they start serving liquor at 10:00 a.m.

Ms. Kane said it is on Saturday, so they can serve liquor before noon. However, she believes they plan to serve appetizers 10:00 a.m. to 12:00 noon with champagne. She said it is an invitation only reception, and it is within the Goler's Store. She said La Casa Sena is handling the event, noting they are just across the courtyard from them.

The Public Hearing was closed

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve the request for a waiver of the 300 foot location restriction and approval to allow the consumption of champagne at Goler, 125 East Palace Avenue, which is within 300 feet of the Cathedral Basilica of St. Francis of Assisi, 131 Cathedral Place, for a reception to be held on February 20, 2010, from 10:00 a.m. to 6:00 p.m..

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: None.

- 4) **REQUEST FROM THE NATIONAL DANCE INSTITUTE OF NEW MEXICO (NDI-NM) FOR A PERMANENT WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE DISPENSING/SALE OF ALCOHOLIC BEVERAGES AT NDI-NM, 1140 ALTO STREET, WHICH IS WITHIN 300 FEET OF DESERT ACADEMY AND THE FORMER ALAMEDA MIDDLE SCHOOL. (YOLANDA Y. VIGIL)**

This item was postponed to the Council meeting of February 24, 2010.

- 5) **CONSIDERATION OF BILL NO. 2010-01: ADOPTION OF ORDINANCE NO. 2010- 2 (COUNCILOR TRUJILLO). AN ORDINANCE AMENDING ARTICLE 24-1 SFCC 1987, REGARDING THE CITY OF SANTA FE UNIFORM TRAFFIC CODE; AMENDING SECTIONS 12-1.42.1, 12-7.9.2, AND 12-7.9.5 OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE, REGARDING OFF-HIGHWAY MOTOR VEHICLE USE; AND AMENDING EXHIBIT A OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE, REGARDING TRAFFIC VIOLATION PENALTY ASSESSMENTS. (JEANNE PRICE)**

Jeanne Price, presented information regarding this matter from the materials in the Council packet, noting this update is being done to reflect the most recent changes in State law in the last Legislature. Ms. Price reviewed the proposed changes.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Trujillo moved, seconded by Councilor Romero, to adopt Ordinance No. 2010-2.

DISCUSSION: Councilor Bushee noted there is nothing in the bill to require helmets for operators of ATVs, and asked if that change was adopted by the Legislature.

Ms. Price said she is unaware of that change, noting it was not among the changes received from the NMML

Councilor Bushee asked if the City could contemplate this law on its own, or if this is out of our jurisdiction.

Mr. Zamora said he would need to research the State's jurisdiction over helmet laws. The only helmet laws of which he is aware at the State level relate to minors and requiring minors to use helmets. He does not believe there is a requirement for adults to wear helmets in New Mexico, commenting it is a very hot issue any time legislation is considered requiring adults to wear helmets.

Councilor Bushee said then the City would not have the purview to adopt helmet laws unless the State permitted that.

Mr. Zamora doesn't believe it to be the case, or the City would not have been able to pass a cell phone ordinance. He believes it is possible, but he wants to do more research to give a definitive answer.

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

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: None.

Abstain: Councilor Bushee

Explaining his vote: Councilor Chavez voted yes, commenting that this bill was approved by the Finance Committee.

- 6) **CONSIDERATION OF BILL NO. 2010-2: ADOPTION OF ORDINANCE NO. 2010-____. AN ORDINANCE REPEALING CHAPTER 27 SFCC 1987, AND CREATING A NEW CHAPTER 27 SFCC 1987, REGARDING TELECOMMUNICATIONS AND CABLE SERVICES. (MAUREEN REED)**
 - a) **CONSIDERATION OF BILL NO. 2010-4: ADOPTION OF ORDINANCE NO. 2010- ____ . AN ORDINANCE GRANTING A NON EXCLUSIVE FRANCHISE TO NEWPATH NETWORKS, LLC, TO RENT, USE AND OCCUPY THE CITY'S PUBLIC RIGHTS-OF-WAY IN THE CITY OF SANTA FE, NEW MEXICO, AND FIXING THE TERMS AND CONDITIONS THEREOF. (MAUREEN REED)**
 - b) **CONSIDERATION OF BILL NO. 2010-____: ADOPTION OF ORDINANCE NO. 2010- 4. AN ORDINANCE GRANTING A NON EXCLUSIVE FRANCHISE TO CITYLINK FIBER HOLDINGS OF SANTA FE, NEW MEXICO, LLC, TO RENT, USE AND OCCUPY THE CITY'S PUBLIC RIGHTS-OF-WAY IN THE CITY OF SANTA FE, NEW MEXICO, AND FIXING THE TERMS AND CONDITIONS THEREOF. (MAUREEN REED)**

Items #H(6), H(6)(a) and H(6)(b) were combined for purposes of presentation, public hearing and discussion.

A copy of proposed amendments to Bill No. 2010-2, Telecommunications Code, submitted by staff, is incorporated herewith to these minutes as Exhibit "9."

A copy of proposed amendments to Bill No. 2010-4, CityLink Telecommunications Franchise, submitted by staff, is incorporated herewith to these minutes as Exhibit "10."

A copy of a "Petition for a Temporary Moratorium on Cell Towers and Antennas," with attached signature petitions, entered for the record by Arthur Firstenberg, is incorporated herewith to these minutes as Exhibit "11."

A copy of a Petition for Review of Order of the Federal Communication Commission, no Case No. given, filed in the United States Court of Appeals for the Fifth Circuit, in The City of Arlington, Texas v. United States of America and Federal Communications Commission, entered for the record by Chellis Glendinning, is incorporated herewith to these minutes as Exhibit "12."

A copy of "Statement to SF City Council, 10 February 2010, Chellis Glendinning and Four Others," entered for the record by Chellis Glendinning, is incorporated herewith to these minutes as Exhibit "13."

The staff report was presented by Maureen Reed, from the Memorandum, with attachments, dated November 12, 2009, to the Governing Body, from Frank D. Katz, City Attorney, regarding proposed revision to the Telecommunications Ordinance, and other materials which are in the Council packet. She noted items (a) and (b) are for applications for franchises by two companies. The first is from NewPath which plans to install a DAS system, the second is from CityLink Fiber to put fiber into the street or into the sewers, noting representatives from both companies are in attendance this evening. Ms. Reed noted there are minor amendments in the packet for approval.

Mayor Pro-Tem Wurzbarger said Amendment #8 on Exhibit "9," provides, "(f) A franchise does not include the right to use the city's sewer or storm sewers which requires a license from the city." She asked if this means a company can't use the sewers.

Ms. Reed said the amendment provides that they can use the sewer if they have a license. She said this is to make it clear that the franchise doesn't give them the right to go into the sewers, and they would have to obtain a license from the City to go into the sewers.

Public Hearing

All those speaking were sworn en masse

Mayor Pro-Tem Wurzbarger gave each person 2 minutes each to speak to this issue, asked people not to be repetitive of others remarks, and asked that everyone be sworn-in at the same time.

Mr. Zamora, responding to a question from the Governing Body, said since items H(6), (a) and (b) are combined for purposes of presentations, discussion and public hearing, people testifying need to be sworn because H(6)(a) and b) relate to individual applications which requires people giving testimony to be sworn.

Warren Salomon, 2913 Pueblo Jacona, previously sworn, said he is in favor of this issue. He requested that a provision be written into the ordinance that fiber installations will be provided to residents and shall be in the same proportion as it relates to businesses, schools and community centers as stated. He said, for example if schools and libraries represent 5% of the businesses, that an equal amount of fiber be provided for residences. He would like this to be done at the same time. He believes fiber-optics should be afforded to residents in the same quantities as it is to everyone else.

JoAnn Colley, Santa Fe, previously sworn, said 619 citizens signed a petition for a temporary moratorium on cell towers and antennas, and read the petition heading into the record. Please see Exhibit "12" for the text of the heading of the petition.

Arthur Firstenberg, previously sworn, said, "This ordinance would mean a drastic change in the way the City of Santa Fe does business. Until now, the City required one application for one antenna. If this passes, the City will require one application for 40, 50, 100 antennas. These companies will pay for the right to install unlimited numbers of antennas anywhere they please, on any roads or sidewalks. The locations will be public record, but there will be no notification of numbers and no participation in the process by neighbors. No one is forcing the City of Santa Fe to trample on the rights of its citizens. Sprint sued San Diego and it lost. Sprint sued Palos Verdes Estates and lost. Next, G-Networks sued San Francisco and lost. NewPath Networks sued Irvine and lost. Next, G-Networks sued Huntington Beach and lost. Level 3 Communications sued St. Louis and lost. All of those cities enacted much stronger ordinances than the one Santa Fe is proposing to pass today, and those ordinances have all been upheld by courts in 2008 and 2009. Those ordinances require a separate application for each antenna site, neighborhood notification, an appeals process, and they specify preferred zones and locations away from residential areas. None of them allow franchises. Please put a halt to this process today. Put in place a moratorium and take the time to research this much more carefully and draft a better ordinance for us all.

Victoria Jewitt, 1405 Seville Road, previously sworn, said there is no reason for the City to pass such a poor ordinance in haste. She said the FCC's 90 day rule, which is already being challenged in Court, does not prohibit moratoriums. The worst part of the ordinance is that it would grant franchises resulting in a total lack of regulation by the City. Many cities have adopted moratoriums while they wrote carefully considered ordinances. Between 2005 and the present, the cities of Gahanna, Ohio, Glory Hills, Richmond, Pasadena, Glendale and San Diego enacted moratoriums which have lasted between 8 and 12 months. None of these moratoriums was challenged in court. None of the ensuing ordinances was challenged either, except for San Diego's which was upheld by the Ninth Court of Appeals in 2008. Here's the requirements of Glendale's draft ordinance: Specification of preferred zones and locations; more franchises; notification of property owners; proof of compliance with the FCC exposure limits for Radio Frequency Radiation; visual impact analysis with photo-simulations. Why can't Santa Fe draft an ordinance like that."

Ray [inaudible] 11 Senda del Fuego, previously sworn, said he was educated at Princeton and Cornell universities, and works at one of the local laboratories, and doesn't represent them in this statement. He said his training is in electromagnetic field therapy, and he works in turbulent fluids and interactions with various forces. The point he would like to make is that the metric that the FDA uses to assess electromagnetic radiation is simplistic and very different from the ones Russians investigate when assessing these things, noting the Russians have a much better scientific background than the United States in electromagnetic field interaction with physiology. The metric used here is how much the temperature is raised by the absorption of electromagnetic radiation of it interacting with material substances. In the case of (inaudible) you have to do something else. You actually have to look at frequency matching with the electronic band structure in DNA. The possibility of these frequencies being resonant frequencies with molecular structure in the DNA is something that the government in large is using as a metric for assessing these things.... He said, "To me, I don't want to be exposed to an electromagnetic field that is frequency matched with my DNA."

Bill Bruno, Ph.D., Botolph Road, previously sworn, said he seconds what the previous speaker said about the science. He said he is holding the latest *GQ Magazine* which he said he just picked up. [STENOGRAPHER'S NOTE: Although Mr. Bruno referred to and quoted from *GQ Magazine*, he did not enter the magazine into the record.] He said, "You have a cell phone and a pack of cigarettes. In *GQ* magazine, it says, 'warning, your cell phone may be hazardous to your health.' And the recommendations in this article, there's a bunch of recommendations, but one of them is 'get a land line and use it at home,' one of them is 'abandon Wi-Fi,' and it says Germany has already advised its citizens not to go wireless. And then the third tip is, 'don't live next to a cell tower if you can help it.' The sad part is that the research is just in the works, except they interview in here a guy who has been working on this stuff for decades, and he's been saying for decades it's not safe, and his name is Allen Fray, and he describes the microwave hearing effect, where people who stand in front of a radar station can sometimes hear the pulses of the radar. Now, I've had this effect myself, from cell phone towers. And, so there is a health issue, but we're not talking about the health issue. I want to talk about the nuisance issue. If I have a cell tower near my house, it's as though somebody is playing a speaker 24 hours a day, 7 days a week, and I can hear it and I can't sleep. It's a nuisance. It's a health effect and it has to be stopped. Now, I can't always hear it, it depends on my particular, you know, how much exposure I've had recently and that's been shown in a recent.... there's an Austrian researcher named Latke, and he's done studies showing that this is a real effect, that people's sensitivity depends on the recent exposure that they've had."

Virginia Miller, 125 Calle Don Jose, previously sworn, said she is very glad to see the Resolution, Item #7, calling on Congress and the President to revise Federal law which says we can't use health and environmental issues and concerns to stop installing of antennas throughout the City. She said she does want to focus on health issues, and she supports this Resolution. She supports the Petition for a Moratorium to come up with an ordinance which protects the rights and health of the people of Santa Fe. She said on December 9, 2009, she sent an email, and asked the Council to refer to and use it to assist in the rewriting of the ordinance. It will give a lot of wonderful ideas to protect both rights and health. She said Dr. Stephen Sinatra, a practicing cardiologist, in Connecticut, says that modern day appliances, such as cordless telephones, computers, televisions and microwave ovens produce a variety of signals and

energy, some of which "radiate directly into the tissue of nearby organisms. Some people are more vulnerable," experiencing lightheadedness. She said Dr. Sinatra is concerned about the effect of electro-pollution on the heart because it impacts the heart rate variability and can lead to cardiac arrhythmia and even cardiac arrest, and is concerned about the effect on children.

Marjorie Young, 2300 West Alameda, previously sworn, said her special concern is about health and she is in favor of the moratorium to give the Council time to develop an ordinance which won't make the "adults and children of Santa Fe guinea pigs in a process just being studied by science and isn't fully understood."

Variella Miaza, 1721 Paseo de Peralta, previously sworn, said she opposes the change in law. She said she sleeps better during a power outage. She sleeps better when she turns off wi-fi and cell phone at night. Many people are concerned about the health effects of these things, and would like to have a say in the matter before cell phone companies put them close to their homes. She said people may be concerned about the property value of their homes decreasing as a result. She supports the delay before a change in law.

Rick Martinez, 725 Mesilla Road, previously sworn, said his main concern about this is that there is no neighborhood notification. He said their Neighborhood Network goal to protect neighborhoods, but this does not protect neighborhoods. He said we need to be sure there is a requirement for neighborhood notification in the ordinance. He said, "It is about time that we stand up to our big brother in Washington, and tell him that neighborhood notification is important in this whole ordinance. Without it, you're letting the neighborhoods down by saying it's okay to put up a cell tower anywhere you want."

Randall Bell, attorney, on behalf of his client, Sally Bingham, previously sworn, said he is also speaking on his own behalf, because he has the same position on this issue. He strongly supports the petition for a moratorium, saying the points are well taken, and the points made by previous speakers are very strong. He said many other cities have done so, commenting that a moratorium is not a denial, but it gives the City the opportunity to strengthen whatever new ordinance(s) are put in place. He said the City shouldn't be so broadly surrendering its regulatory powers and also the rights of the citizens to have public hearings and comment. He supports the petition for moratorium, and hopes the City adopts the Resolution which follows these items.

John Bent, Calle Pava, previously sworn, said he has nothing to add to what has been said previously. He would love to see Santa Fe, which he considers to be progressive, take a stand and get the feds to change law. He is tired of particular groups, especially the telecommunications lobby, having the influence they enjoy in passing laws which ultimately are not well founded. He urged the Council to approve the moratorium.

Aslan White, 207 Double Arrow Road, previously sworn, said she is strongly opposed to having any more cell towers than we need. She has experienced microwave and cell phone towers being detrimental to her personally. She has done a lot of research, and people all over the world who live near

these towers, get ill and get cancers. She said it does impact their health. She doesn't understand a federal ordinance that would actually say that we're not able to speak about health and environment. It doesn't really make sense to me, as a role for the federal government to be playing. She is happy that the City is revisiting the law and inspired that cities are standing up to the federal government and being supported and winning cases. She urged the City to join in this effort, noting Santa Fe is one of the top 10 healthy cities in the nation, and we don't want to turn our City into a microwave.

Scott Shooker, previously sworn, said he will ditto what Aslan has said and urge the Council to resist the Telecommunications Act of 1996, and protect the health and safety of Santa Fe, by keeping the ordinance at "one permit, one antenna," and rewriting the ordinance to include the precautionary principle which would require the cell phone companies to "prove, beyond the shadow of a doubt, to a publicly appointed third party, that these cell phone towers do not cause harm to living things."

Sharon O'Neal Worth, 161 Calle Ojo Feliz, previously sworn, said she supports the moratorium. She said it feels as if we are letting big business, in the name of profit, run "rough shod," over the neighborhoods and neighborhood and individual rights and our health. She believes this issue needs to be studied, and the precautionary principle needs to be considered. She offered a quote from David Brower, "Environmentalists make difficult neighbors, but they make wonderful ancestors."

Mary McGinnis, 1518 Calle Ojo Feliz, previously sworn, said she is in opposition to the adoption of the ordinance and supports the moratorium. She has worked with people dealing with electromagnetic illnesses for the past 20 years, and she hears about their struggles to find a place to live which isn't so close to a cell tower. She knows one person who is hesitating about moving into town because the ordinance might be passed as is. She believes a lot more study and research which can be done. She said more people would be here this evening, but they are concerned about the electromagnetic effects from coming into this building. She hopes the City will continue to study the issues and invoke the cautionary principle. She hopes Santa Fe will continue to be a welcoming place for people dealing with illness and disability.

Robert Francis Johnson, 208 ½ Flacco Street, previously sworn, said he is here to talk about corporate wrong-doing around the time of this legislation which gives corporations full access to our environment. He said a historic time is when the corporate government took over the federal government, and took away our rights. He said we live in the holy city of St. Francis. He said the problem with corporations is that there are no moral values. He said the Chief Justices just ruled that corporations are living, breathing, bleeding people, which is a lie or insanity. In the City of St. Francis, perhaps there is a way to insert harmlessness as a moral value into the corporate structure, if they want to do business in Santa Fe.

Deirdre McCarthy, Chimayo, previously sworn, said she salutes the previous testimony for the moratorium. She said we live in a unique city, and we have the opportunity not to speed ahead with doing something that feels like an enormous experiment, in the name of progress. Santa Fe has been known as being unique for 400 years, and has a precedent of opposing these kinds of development before

considering them carefully. Ms. McCarthy read from Exhibit "13," which lists world events by year relating to the issues of cell phones and cell towers, exposure to various high voltage power lines, power substations, cell towers, radio lines and telecommunication systems such as WiFi, as well as the danger of operating an automobile while talking on a cell phone. Please see Exhibit "13," for the complete text of these presentations

Liseth Marroquin, 2314 Camino Oralbi, Santa Fe, previously sworn, continued to read from Exhibit "13." Please see Exhibit "13," for the complete text of these presentations. She urged the Council to reject the ordinance and adopt a moratorium so the City can study the issues.

Diana Thatcher, 80 Calle Estaban, previously sworn, continued to read from Exhibit "13." Please see Exhibit "13," for the complete text of these presentations. Ms. Thatcher urged the Council to reject the ordinance as proposed, and to impose a moratorium to study this issue more deeply.

Angela Werneke, Seton Village, previously sworn, continued to read from Exhibit "13" Please see Exhibit "13" for the complete text of these presentations.

Chellis Glendinning, Chimayo, continued to read from Exhibit "13" Please see Exhibit "13," for the complete text of these presentations.

Patrick McGinn, previously sworn, spoke about a technician who, 10 years ago, had his truck parked at the base of a microwave tower. The yagi is the center of the microwave dish. The technician stood up in the back of the truck with his head in the signal of the yagi and blacked out for five minutes and woke up with a tremendous headache. This started him thinking about the electromagnetic effects of our living environment.

Elena Benson, DeVargas Heights, President of the ACSYL, previously sworn, said she is representing several hundred households in the area with more than 1,000 voters. They are very concerned about the rewrite, because it doesn't protect the homeowners. Their major concerns are lack of notification. They have experienced issues with Qwest going into peoples backyards and trenching without notification. It is well noted that when an antenna is placed on the property, in addition to the construction damage, the home value drops by 20%. They strongly support the moratorium so regulations can be tightened. She spoke about the Chimayo tower issue. She strongly recommends that the City tighten its regulations because it isn't well protected, noting that once antennas are installed "you can't get them out. It's virtually impossible."

John McFie, private citizen, previously sworn , works in the Department of Health and the Consumer Product Safety Commission, noting that neither agency has any authority on this issue, although they are about to organize a national conference through the Childrens Network because of the safety issue, especially for children. In 1995, the EPA recommended more stringent safety standards, and Congress "responded by taking away the funding for their laboratory where they had done all the testing already, and they lost all regulatory authority. Regulatory authority is now exclusively with the FDA and

FCC.” The FCC just put out an information sheet which states that “the science is not conclusive.” However, if you have concerns, they have the following precautionary measures: never have a cell phone near your head, on your body, when it’s in the on position.” He said we have the infrastructure to handle 100,000 cell phones at one time, which is sufficient and probably already is in the danger zone. He said this will devalue real estate. He said the litigation which will result from devaluing real estate will be 10-100 times that of litigation resulting from these contracts. He said Santa Fe is one of the most beautiful cities in the world, noting that he is a 4th generation New Mexican. He said everything is perfect, except for this issue.

Carol Ann Walker, 19-A Pinon Jay Trail, previously sworn, supports the moratorium. She is a former world class athlete, and the first American woman to be the world record-holder in the marathon. She said many world class athletes use protection against radio frequencies because they can’t win competitions without that protection. She is privileged to have worked with Dr. Dietrich Klinghart, a prestigious world physicians who works primarily with autistic children. Dr. Klinghart is finding that when families turn off wi-fi and won’t allow the children to use the cell phone, lower radio frequencies and provide protection to children while they sleep at night, that these children are no longer autistic. She said Baxter State Park in Maine does not allow cell phones within the park because it changes the way people react to animals, and it changes the behavior of wildlife and causes aggression.

Greg Friedman, 1022 Placita Loma, previously sworn, said he supports the moratorium. He recently read a study done in Scandinavia which indicated that where cell towers are placed, the sleep patterns of people near the tower is disrupted.

Katie Singer, Camino San Patricio, previously sworn, is in support of a moratorium. She said a Rabbi taught her that it is very important to honor the Sabbath, and if you rest everything will follow – no murders, etc. If we have cell phone towers and microwaves running 24/7/365, we don’t rest, and we’re all spinning. She said this is a spiritual issue, which is not prohibited by the Telecom Act. The current ordinance does not require neighborhood notification or testing of radiation levels which she believes are important to the wellness of the City. She urged the Council to support the moratorium so there will be ample time to craft an ordinance which truly serves the City.

Tom Johnson, 1201 Madrid Road, previously sworn, said there are two very separate and different technologies lumped together under the same broad ordinance. He said he is not against the section dealing with cell towers and antennas and such. He is in support of Section 4, which deals with CityLink fiber. This is fiberoptics, beneath the ground and the physical properties are completely different, and there is no electromagnetic radiation in fiberoptics. He said on a “good day, wi-fi is, at best, a stop-gap technology for communications.” He said in 5 years it will take 50-100 gigabytes of through-put to download NetFlix, and such, and to use this technology for education, telemedicine and politics. He hopes the Council separates these issues, and encourages them to adopt Section 4.

Ann McCampbell, was sworn, and said she is in support of the moratorium and tabling the decision on the ordinance so it can be reviewed further. She would like to see some way to notify the neighbors that antennas are going up in the neighborhood, and not necessarily an ENN. She would like to see monitoring of the towers to ensure the towers are not emitting radiation over the limits. She believes that some things the Council can do are not in the ordinance, as proposed.

The Public Hearing was closed

The Council commented and asked questions as follows:

- Councilor Chavez said H(6) is the ordinance repealing and creating a new chapter and the two ordinances for exclusive franchises are H(6)(a) and (b). He asked if these will be considered separately. Mr. Zamora said H(6), which is proposed Ordinance No. 2010-3, must be adopted before consideration of the ordinances for exclusive franchises, Ordinance Nos. 2010-4 and 2010-5.
- Councilor Trujillo asked if the City requires an ENN that the tower is going to be put-up in this right of way. Ms. Price said proposed Ordinance 2010-3 does not include notification. She said in Chapter 14, there are procedures for various antenna and tower notifications, but does not know those specific procedures, commenting this isn't being considered this evening.
- Councilor Bushee asked if the City is precluded from providing notification procedures in this ordinance.

Ms. Reed said yes, this matter is mostly pre-empted. She said the federal government requires the City to permit access to the public way in a non-discriminatory manner to companies which apply. She said the ordinance provides that they are required to provide maps of the locations of the antennas.

- Councilor Bushee said this Council has gone out of its way for years to provide public notification and asked if Santa Fe can make this provision in the ordinance since it is a home rule city. Ms. Reed said the federal government does say that these companies must follow our land use ordinances, and "that is the place that we would look to, to see what is required presently, and perhaps require changes to be made to the Land Use Ordinance in the future.
- Councilor Bushee asked Ms Reed if she is saying we can amend the ENN to include such things as cell towers and other telecommunication facilities in our right-of-way.

Ms. Reed said, "It would have to be examined closely, with regard to the legal requirements, reiterating that they are required to follow our land use ordinances

- Councilor Bushee said currently the ENN ordinance doesn't include such things as rights-of-ways specific to towers. She said, "You have given us a limited time frame to deal with this issue." She asked, "If one were interested in pursuing, at the very least, an ability to give notice to people, and thus the basis for a tabling of this ordinance, until we had a chance to work that in, would that be a basis by which we could pursue a little more time to consider some changes."

Ms. Reed said, "No. As mentioned before, on November 18, 2009, the FCC issued a regulatory ruling declaring that a reasonable time for this Council to approve applications is 90 days for collocation. So, we are past the 90 days in this matter, and we must go forward or run the risk of being taken to Court. And, I must point out that while you talk about... one reason you have early notification is so adjustments can be made to what's proposed. These companies are permitted by the federal government to come in and put these systems into the right-of-way."

- Councilor Bushee said she has attended meetings where we have heard matters regarding installation of cell towers, and we had hearings. She said in her District there were hearings on collocations, and there were notifications and they held neighborhood meetings. She said this is smart business, but she doesn't know what required that in the past.

Ms. Reed said she doesn't know what required this in the past. Ms. Reed reiterated, "We cannot require these companies that have applied, looking at our land use ordinance today, to meet and hold off until maybe the ordinance is changed in the future. We cannot do that with these companies that are before us."

- Councilor Bushee said she has gotten so many emails on this, and she can't remember what different provisions were made in other cities, such as San Diego, and asked Ms. Reed if she has studied those communities.

Ms. Reed said, "I have looked at them, but I want to point out that they all have different facts, and this ruling from the FCC just came out in November – that's just a couple of months ago. So, it's brand new and it wasn't in effect when all of these lawsuits started."

Councilor Bushee said you mean the recent ruling, and Ms. Reed said correct. Councilor Bushee said, "Go ahead and restate what we're talking about here."

Ms. Reed reiterated, "On November 18, 2009, the Federal Communication Commission issued a Declaratory Ruling defining what a reasonable time is for action by a local government, and what time period constitutes a failure to act. The FCC expressly determined that a reasonable period for action by a local government is 90 days for collocations. And what you have before you, is a collocation."

- Mayor Pro-Tem Wurzbarger asked, "Are we to infer from what you said, that after 90 days, the federal government is going to sue the City of Santa Fe." Ms. Reed said, "No."

Mayor Pro-Tem Wurzbarger asked, "Then what are we to infer."

Ms. Reed said, "You are to infer, and the fact is that, for instance, NewPath could sue us in federal court. They could collect attorneys fees and the burden is placed by the FCC on the City, and the presumption is that the City has not acted properly and the City then has to fight that presumption it has not acted properly. It is a very high bar that the City has to reach to prevail in federal court."

- Councilor Calvert asked if the 90 day rule applies to the applications for antennas or to the franchise. Ms. Reed said, "It is the application for the franchise, which of course, that implies permission..." [Ms. Reed was interrupted before completing her answer]

Councilor Calvert asked, "Are you sure that's the way it's interpreted."

Ms. Reed said, "Yes. I must say you all have spent about \$500 sending me to class in the last few months...you don't know about that... where I listened to lectures and many experienced attorneys, but it absolutely is for the franchise application."

- Councilor Calvert asked, "For whomever on that City Attorney staff, is there... do we have even... do we have the authority tonight to do anything such as a moratorium."

Ms. Reed said, "No, because of this FCC ruling."

Councilor Calvert said this isn't the answer to his question. He said, "I think, procedurally, I'm asking, do we have the authority... is that within the purview of the way that this has been noticed and listed in the agenda."

Mr. Zamora said, "There is not appropriate notice to consider a moratorium. It's not properly before the board this evening."

Mayor Pro-Tem Wurzbarger said, "So, therefore, the action before us is yes, no, table or typical actions with respect to an ordinance. Is that correct."

Mr. Zamora said, "Regarding a moratorium, consideration of a moratorium, that is not properly before you to be considered this evening."

- Councilor Calvert said there is an amendment in the packet which discusses providing a map to the public and the map is updated when something new comes along. That amendment deleted all the language regarding proprietary, trade secrets and all of that stuff. Ms. Reed said this is correct.

- Councilor Calvert asked, “Does our current proposal allow these companies to install equipment on easements to private property.” Ms. Reed said the franchises are only for public property, and it doesn’t address private property.
- Councilor Calvert said, “So easements are sort of in a gray area. How.. [are] they considered.” Ms. Reed said, “Well, I want you to understand. For instance, PNM, there are utility easements on property, on private property. So PNM has poles in utility easements. PNM has an agreement, probably, with different companies to use their poles, but we don’t get involved in that – we can’t.”

Councilor Calvert said, “Well, okay, but by sort of... indirectly you’re saying yes.” Ms. Reed said, “I don’t think so. I’m not sure. I’d better go back and double check. What is your exact question.”

Councilor Calvert asked, “Does our proposed ordinance allow these companies to install equipment on easements to private property.” Ms. Reed said, “This proposed ordinance only addresses public right-of-way.”

Councilor Calvert said Ms. Reed brought up that PNM has easements on private property, and then she said they might have arrangements with PNM. He said, “At least, through the back door way, they would be able to install on easements to private property.” Ms. Reed said, “Councilor, I don’t know, and I can’t get involved in PNM’s easements. We just don’t get involved with PNM’s easements.”

- Councilor Calvert asked if the ordinance contains language which requests annual or periodic testing, especially if additional equipment is added. Ms. Reed said, “No. We do not.”
- Councilor Calvert asked if the City is given some sort of certification that it meets FCC requirements when it is installed initially. Ms. Reed said, “No. These companies get their permission from the PRC, and they provide that documentation to us.”

Councilor Calvert said, then that’s some form of verification that they do. Ms. Reed said, “I don’t know what all goes on at the PRC with regard to these companies, but they are certified as companies permitted to provide these services in the State by the PRC.”

Councilor Calvert said then it doesn’t say anything to the effect of, “what’s installed meets it.” They’re granted a license by the PRC to do this, but it doesn’t say that what they put in places does comply with FCC regulations in terms of power output. Ms. Reed reiterated, “I don’t know what the PRC looks at, but we do not have anything in our ordinance.”

- Councilor Calvert asked, “Do we have the language in ours... because I know, in response to one email... actually Frank suggested that we do add that language to our ordinance, which says if the FCC were to change the power limits that we have the ability to either terminate or discontinue that franchise, based on the fact that the limits have been lowered.”

Ms. Reed said, "Councilor, we decided not to do that, and we think that it... the best way is that we can change our ordinance any time, consistent with new laws that come out. And so we have that power at any time."

Councilor Calvert said, "Well, we do, but then it just takes that much longer for it to take effect."

Ms. Reed said, "It's true, but you have to give companies notice, so we would have to publish... and we always take some time, because it takes some time to give notice."

- Councilor Calvert asked if the City could give notice sooner. Ms. Reed said, "Councilor, that would be a very risky interpretation." Councilor Calvert asked, "Why." Ms. Reed said, "Because you must give notice to companies who are already doing business and already have a right, and give them an opportunity to respond. And, just because the law changes, the company wouldn't know what changes specifically we were going to make to our ordinance."

Councilor Calvert said we wouldn't have to make a change to the ordinance, because it already would be included, "that's my point."

Ms. Reed said, "There'd be this change in the federal law, which we have no idea what it would be, and we wouldn't want to..." [Ms. Reed was interrupted before she completed her sentence]

Councilor Calvert said we can be very specific about what it is that we're talking about. Ms. Reed said, "Councilor, it would be very difficult to anticipate what an exact federal law change would be."

Councilor Calvert said, "Well, I guess I'm puzzled because Frank, who did the majority of the research on this, and you know, I think partly on what you're relying is said in his answer to an email that he suggested we put that language in."

Ms. Reed said, "I know that all of this has been considered, and obviously decisions were made after careful considerations. There is a sentence in the ordinance that states, "Telecommunication networks or cable systems granted approval under this article, shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including, but not limited to..." She said it goes on to talk about trenching and such. She said, "So all these companies are required to follow federal law, without our changing the ordinance."

- Councilor Calvert said, "In terms of our current ordinance, and what notification there would be: When somebody comes in under one of these franchises to install these antennas, on the initial installation of however many they propose, will they be putting some sort of notice sign at each location under our Land Use Code." Ms. Reed said, "I am not the one who's going to make the Land Use Code interpretation, because that's not my specialty. I just have to tell you that I'm not that familiar with it."

Councilor Calvert asked if someone is here that is. Ms. Reed said Kelly Brennan is the land use attorney and she's not here.

- Councilor Calvert said, "This is why I asked, I think I asked earlier, to have this thing tabled, because I don't think we have all the information or sources of answers that we need to discuss this thing tonight. But, I'm curious, because that was one of... again, one of Frank's answers to one of the questions about notices. He said we already have a procedure in place for either the H-Board or the Land Use Division that, when they put up these.... that there would be a yellow notice like we put at a lot of sites for every... on every site that they put one up."

Ms. Reed said there is a difference between the Historic Code and the Escarpment District.

Councilor Calvert said he said nothing about the Escarpment District. Ms. Reed said there will be much stricter requirements in those Districts. Councilor Calvert said he understands, but he is talking about two instances that govern... that would require us to put up these kinds of notices. At least, according to Frank, that was his answer that that would happen. He said, "I'm just trying to get verification from somebody that is on the current staff, that that is the case."

Ms. Reed said, "I'm not sure what he had in mind, when he was talking about... I don't know which areas of town or what he had in mind."

Mayor Pro-Tem Wurzbarger said we don't have this answer tonight, and you can decide what you want to do with that, and said we need to go onto other questions.

Councilor Calvert said, "Obviously we don't have the answer to... after the initial installation and they decide to add to it, will they still be required to put a notice on every site where they were going to put a new one. So, that's another question that we don't have the answer to."

- Councilor Romero said then there are no precautionary principles as an ordinance and as part of our review of projects. Ms. Reeds said, "Well, what I would say, is you don't have a precautionary principle because of FCC rulings."

Councilor Romero said, "We actually could pass one as an ordinance at our City level, but we don't have one in place that would help us review projects like this. So, just so folks know that we don't have that. I've looked at that. It's an ordinance. We don't have one in place. But it seems to me that, given the exchange of information that Frank gave us, I recall that even if we pass this ordinance following the FCC regulations, we still have time to look at our Chapter 14 ordinances that are in review. We have not finalized those, I think we're like 95% close to being done with those, but that would allow us time at our own local level to look at our Chapter 14 ordinances to make sure that any structures beyond the Historic District, but throughout the City... because I think Frank's point was, we had a lot of stringent regulations at the Historic level, but to make sure that they were in place for the whole City, would be a review to make sure this is in place at Chapter

14 level as we are wrapping things up. Because, we've not finalized those yet, right, we've been doing sections it seems like.'

Ms. Reed said they are not finalized.

- Councilor Romero said we could go back to our own Land Use Ordinance to be sure they are a little stricter on structures, I think. Ms. Reed said, "Yes, and Kelley would be advising you about that, but yes, they are not finalized and changes can be made."

Councilor Romero said, "The other point I'll make is, I think folks have pointed out most of the impacts, but the fact is that we don't have anything.. that, even at the State level, they've never passed anything and it keeps coming up. I think other folks in the audience could probably even speak to it better than I could, but I know that other counties – Bernalillo County – have tried to get this passed, but it's never made it's way past... and it's never been implemented. But, I know that it's a discussion that keeps coming up on looking at the various projects. But, again, this is something in the future that we can look at. I think relying on our Land Use Ordinance, our Nuisance Ordinances, are the best mechanisms to actually hold companies accountable. And, it's a big difference between what we can do at the federal level and what we can do as we well know, at the State level, but we've actually got quite a bit of our own powers. People have noted that we are the City of Holy Faith and this City can do quite a bit of things around our own Land Use Ordinance, so I'm encouraging us to really look at those carefully and see where we can tighten them up even further."

Councilor Chavez said most of the points he has noted have been touched – ENN, public notice and right-of-way, utility easements. He asked about open space, such as parks and trails, and asked if this falls under Land Use as well. Ms. Reed said, "No, it doesn't. It's excluded specifically."

Councilor Chavez said then that is the only area where we have some discretion in where the cell towers can be placed. Ms. Reed said, "Correct. And you know the two companies before you tonight are not cell towers."

Councilor Chavez said telecommunications and the first request for wireless does depend on towers. Ms. Reed said the companies are anticipating having an agreement with PNM to use PNM's poles, so it is collocation.

Councilor Chavez said, then they're using existing poles and towers already in place. Ms. Reed deferred to Mr. Wells.

Todd Wells, attorney for NewPath, was sworn. Mr. Wells said, "What a DAS system entails is the attachment of what is called an ultra low power antenna to, in this case, a Power of New Mexico pole. We have an existing pole attachment agreement which I provided to the City. We are also licensed by the

State Public Regulatory Commission, as a telecommunications provider. If it would be helpful, and very quickly, what these installations typically look like is a small, single panel antenna that's attached just below the electric lines, the existing electric lines. There may be one attached shooting one way and one the other way, or there may just be simply one. It depends on the circumstance. And, that antenna would be placed.... one would be placed every one-quarter to one-half mile. So, it's not a situation, just so that Council's aware, it's not a situation where we're locating on multiple poles within a given neighborhood, or what have you. We obviously, in having done this across the country, we obviously look to commercial areas first for attachment of one of those antennas that I just described, and then we look for other areas where we fill in. It has been our intention and assumption, in working with the City on this process since September, that we would fully comply, not only with the ordinance which is before you tonight, but also, that we would fully comply with any land use ordinance which is applicable.

Mr. Wells continued, "You need to know that we are not in the position where, tomorrow morning, I will walk into the Planning Commission with plans and say we want to go 65 places here. That's not going to happen, Councilor. We're probably some period of time, 30-45 days away from that process. And we understand, and respectfully my interpretation would be that as long as the local zoning regulations and restrictions are reasonable that we would be required to comply with them. The one item that I would respectfully ask is that we've been very patient in working through this process with the City. We've been happy to do that, even though we're beyond other deadlines, it's our intention to be a good neighbor. But, I would hope that we would be in a position to move the franchise forward and the telecommunications ordinance forward, with the understanding that Council may consider additional restrictions if it desired, in its Land Use Code. And I think Councilor, your position was exactly how I was understanding the process."

- Councilor Chavez said he would like to be able to sever the new DAS low power frequency from wireless, and asked if there is a possibility to do this, so that one could move forward without the other.

Ms. Reed asked, "Let me understand, do you mean for the vote, because I see, first of all, two of the ordinances have amendments and we have to make sure that when someone makes a motion it includes the amendments. But, there will be a motion on the Master, then a motion on Newpath and then a motion on CitiLink. But, as I pointed out, the FCC November 18, 2009 ruling does apply to both Newpak and Newpath."

Councilor Chavez said he understands, but he would like, if possible, to sever them in some fashion, and move forward with one..

Mr. Zamora reiterated that there are three separate items to be considered here, which will be voted on separately, so they are severed, and the amendments can be attached to each of them.

There was a short break from 9:00 to 9:05 p.m., to deal with unruly behavior by a member of the audience

Ms. Reed said she has one administrative issue to resolve. She said in response to a question, Mr. Wells was permitted to respond to his kind of service, and staff believes Mr. Brown should be afforded the opportunity to respond briefly.

John Brown, President, CityLink, said he has holdings for a local company in Albuquerque. He said CityLink is an underground fiber optic network and is not wireless, is not building antennas, nor attaching boxes nor cables to PNM poles. Everything they do is underground for many different reasons. Regarding Chapter 14, the Land Use Code, it is his understanding and interpretation that "we would comply with existing and potentially future land use requirements," and understands Chapter 14 already contains Land Use requirements for telecommunications providers. He said as it applies to what they are doing, he sees no problem in being able to follow those.

- Councilor Bushee said she has been trying to talk to the new City Attorney, and it is her understanding that you don't have to look through Chapter 14. She said this Council hears all lease agreements, in a public forum, and usually through the committee process, and this is no different. She said, "I'm looking for... because this is stymieing me, in terms of, you know, now we've got to go back and look at our Chapter 14 or this or that. I just really think that we already have the ability to require that this come, at the very least, through our Committee process. That's how we handle all lease agreements that I know of.

Mr. Zamora said, "What currently exists, and I can't speak to the details of it yet, but what currently exists is the authority of the Governing Body, especially through its committees, to review land use issues as it affects not only the City, but as it affects the City's rights in things such as easements. That's currently in ordinance. And to build upon what Maureen has already testified, is that the requirements, not only of the master ordinance at issue tonight, but even federal law, is that these companies comply with current ordinance. And, although I can't give you the specific cite, currently, by ordinance, you have the authority to review the parameters by which people use the easements. So, I do foresee that you would have that similar authority as people use the easements for any of these telecommunications purposes – that you will be able to review that through the committee process."

- Councilor Bushee asked what would be wrong with building it in here clearly in some form or fashion. She said on, "Page 2 of the ordinance it says "list of the purpose of the articles," which this ordinance is repealing, Chapter 27 and creating a new Chapter 27, regarding the telecommunication and cable services. And then it says, "The purpose of the article is to establish... and then it says all these various things... to permit this and not promote competition, obtain fair compensation... and then it says, number 5, minimize the congestion, inconvenience, visual impact and other adverse effects on the City's public rights-of-way and number 6, to the extent permitted by State and federal law, exercise such other powers as the City may have to

protect the public health, safety and welfare ensuring the continued quality of telecommunication and cable services, and safeguard the rights of consumers. And, so somewhere under safeguarding the rights of consumers, to me at the very least, is having a public review process by which those consumers can be aware of what is coming into their neighborhood. To me, that is the bottom line, bedrock of what local government is supposed to do. So, how can we, at the very least, make that statement clear. And, Jeanne does it already say it somewhere other than just referring to the fact they have to comply with all existing ordinances. It's our ordinance. I don't want to keep hearing, you know, that the FCC says we can't, when we're writing our ordinance, and we have an already established process by which we publicly review lease agreements. So I would like some clear statement in some up-front portion of this ordinance, or I can't consider this ordinance. So, can someone tell me. I have Jeanne being referred to here."

Mayor Pro-Tem Wurzbarger said she would like to ask Mr. Zamora since he wanted to respond.

Mr. Zamora said the language cited by Councilor Bushee basically says, "you can use your authority for those purposes. Those purposes are addressed in other portions of the Code, such as the Land Use Code. So, the down side of repeating it in multiple places within the Code, is that you're either going to have duplicative processes or competing and inconsistent procedures.

Councilor Bushee said, "Well, I just want something consistent spelled in this Chapter 27. Because, I mean, already the attorney that you've sent off to school to learn about these kinds of ordinances has not made it clear to me that we can have a public process, so maybe Jeanne can tell me."

Ms. Price said, "If I could address Councilor Bushee's question, particularly the lease, it is my understanding, and I would want our two attorneys here to correct me if I'm incorrect, but the lawsuit we didn't prevail in, in 2004, was... one of the major pieces of that was striking down our original ordinance that required a lease of these telecommunication providers."

Councilor Bushee asked if we then are just going to do it through franchise agreements, and Ms. Price said yes. Councilor Bushee asked if it can be built into the franchise agreement requirements or criteria.

Ms. Reed said, "No you cannot, because of the 90 day requirement, but you can have changes made to our Land Use Ordinance."

Councilor Bushee said, but you're saying we're not going to do it through lease agreements. Ms. Reid reiterated, "We cannot according to the Federal Court of Appeals."

- Councilor Bushee asked what are the parameters of what you can put in a franchise agreement. Ms. Reed said, "Our franchise agreement meets the parameters, but you have to combine that with the November 18, 2009 FCC decision giving us only 90 days.

Councilor Bushee asked what is required in a franchise agreement, and can we amend what is required in a franchise agreement, noting we already have franchise agreements with cable services and all of that.

Ms. Reed said those franchise agreements will now be operating under these details. ... This franchise agreement is going to work for all of these companies in the future. We have old agreements with other companies, but this is the new franchise agreement that will be used for everyone.

- Councilor Bushee said, "Let's get to the specifics of the franchise agreement, because you're giving me the repeat of what you said before, that our current ordinances are not covered in terms of a public process and we have to go back and amend Chapter 14, is what I hear your attorney saying. And I hear this attorney saying it's a land use, it's not a lease agreement. It's a franchise agreement, so franchise agreements. We also have a public review of... not for every specific location, and may go for 10 years according to the term of limit here on the franchise agreement. So, can I build it into the franchise agreement. I mean, I've heard both gentlemen that are here this evening with their projects saying they don't have a problem with a public process. I want to know, I want some assurance that there is a public process."

Mayor Pro-em Wurzbarger asked Mr. Zamora to respond.

- Mr. Zamora reiterated, "There is a public process under the Land Use Ordinance which would continue to apply..." Councilor Bushee said, "...but to franchise agreements. This is what she's saying." Mr. Zamora said, "To franchise agreements no, but to the implementation of the franchise agreements as it relates to structure and other effects on land use."

Councilor Bushee asked, "So is it a lease agreement." Ms. Reed reiterated, "No. It cannot be a lease agreement."

Councilor Bushee said, "So, it's a franchise agreement that's going to talk about land use, which is strange."

Mr. Zamora said it is a franchise agreement that utilizes property within the City limits to which the Land Use Code will apply.

Councilor Bushee asked, "And what page of the packet are you referring to, which specific, sort of model franchise agreement, so I can see if there's a way to make clear what I'm trying to make clear." Mr. Zamora asked if there is a franchise agreement in the packet. Ms. Reed said, "We have the master agreement."

Ms. Price said the first document is the ordinance that's the master ordinance which changes the chapter of code, and then you have two franchise agreements.

Councilor Bushee said, "No, I know I have those two, but what she's saying is that there's a master franchise agreement, and page 89 is just the application form for wireless projects."

Ms. Reed said she calls it the master because that's what attorneys that talk about this stuff refer to it as, but it's just a rewrite of Chapter 27, the ordinance."

Councilor Bushee said, "That's not a franchise agreement. It requires franchise agreements now instead of lease agreements, which bypasses the land use process."

Ms. Reed reiterated, "No. The FCC permits the cities to enforce their land use processes."

Councilor Bushee asked where this is stated in this arrangement.

Ms. Reed said is in the FCC rulings. She reiterated, "The FCC permits the cities to enforce their land use rules."

Councilor Bushee asked what is wrong with restating it in our ordinance that we're writing.

Ms. Reed said, "It's not necessary, it's law." Councilor Bushee said, "I'm not asking if it's necessary. I would like to see it in our local ordinance spelled out somewhere. Are you saying I can't."

Mayor Pro-Tem Wurzbarger said, "The FCC has not said that we can't in our own ordinance, specify the land use restrictions. Is that correct, Geno."

Mr. Zamora said, "The FCC requires that these organizations comply with the ordinances of the municipality. Your existing ordinances address these issues, provide a public process, and that is through the land use ordinance."

Councilor Bushee responded, "Great. So, spell it in this ordinance somewhere. Simple language. Up front. That they must comply with all City ordinances."

Mr. Zamora said he thought we heard earlier that it was in the ordinance, and Councilor Bushee asked, "Well, where is it."

Councilor Chavez said it is on page 18, 27-2.6.

Ms. Reed said it is what she read earlier, the last page 27-2.14 New Material.

Mayor Pro-Tem Wurzbarger said, "Wait. Let's start over. We want to know exact page numbers on which one of these documents." Councilor Calvert said it is page 85 of the packet, and Mayor Pro-Tem Wurzbarger said that's 27-2.14. Now are we all on the same page, Councilor."

Councilor Bushee quoted from packet page 85, ordinance page 38, line 4, as follows:

"17-2.14 [NEW MATERIAL.] Compliance with Other Codes. Telecommunication networks or cable systems granted approval under this article shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including, but not limited to, the following:

A. Towers or antennas associated with a franchise approved under this Article located within the planning and platting jurisdiction of the city upon private or public land shall be subject to Section 14-6.2(E) SFCC 1987 "Land Development Laws."

Councilor Bushee asked if this is where she is saying that we require it come before committees at the very least. Mr. Zamora said, "Through the process already required in existing Code. Yes."

- Councilor Bushee said, "So, if one were to amend any of these land development laws and require specific public notification, any future franchise agreement would fall under that." Mr. Zamora said any future activity under franchise agreements could even affect current franchise agreements that are doing future construction.

Councilor Bushee said it also provides that, "Any trenching within the city may require an archaeological clearance permit, and believes somewhere ADA is mentioned and spelled out. She said, "Then you are assuring me, that at the very least that right now, we have in place, at least through our committee process, a public process that would be required after they fill out their application, to come before the committees and the Council for approval for these... I don't know, I guess you'd call them franchise agreements." Mr. Zamora said, "Yes." Councilor Bushee asked, "Do you agree." Ms. Reed said, "They're required to follow our ordinances."

Mr. Zamora said, "Yes. I'm telling you yes, because we have those requirements in an existing ordinance, and an existing ordinance is required to be followed."

Councilor Bushee asked, "And is that clear to the two gentlemen that are here. Okay."

- Councilor Ortiz pointed out that he found a similar requirement for construction on packet page 67, ordinance page 20, lines 13-15. He said part of the confusion we have here and in the public testimony is the fallacy that we are doing something new here, so there is a hue and cry for actions we've already taken and gone to Court for, and the Court has come back and said, "You need to redo it." He asked if this is a fair summary of what's happened. Ms. Reed said it is absolutely fair, and the City spent a lot of money and ended up with a loss.
- Councilor Ortiz said one of the requests at the Finance Committee was to get a sense of the negotiations back and forth between the City and two people before us today. He asked if there is

more to report than what is before the Committee today. Ms. Reed said, "No, Councilor, there hasn't been negotiations. We have the form individual ordinances, franchise agreements that we email to the companies, and they fill in the blanks and email it back to us. She said, "We put what they respond with on your agenda."

- Councilor Ortiz referred to packet page 101, which is a letter from one of the representatives here. He said this latter is in the packet, purports to indicate this company was allowed a courtesy of looking at and being able to comment on the proposed ordinance. Ms. Reed said this is standard in the industries, that all municipalities share their drafts for discussion, so they were provided a draft.

Councilor Ortiz asked how many other companies were provided a draft by the former City Attorney. Ms. Reed said, "Only the companies that we knew about who had come to us. That's 3. And we have a fourth one now."

- Councilor Ortiz noted in the comments to the December Public Works Committee, Frank Katz, former City Attorney, mentioned that the 90 day period in which the municipality is required to have its approval process – it's 90 days for collocation and 150 days for new towers. He asked if this is her understanding of the requirement that comes from the federal government. Ms. Reed said she doesn't have it in front of her, but yes, that's basically it.
- Councilor Ortiz said most of the people who commented this evening during the Public Hearing, were concerned about all kinds of things, but mostly about new cell towers and the health impacts thereof. Even under the FCC, assuming our laws are reasonable and non-discriminatory, the FCC ruling gives us a window of time to look at and to make a decision on whatever application comes before it, and Ms. Reed said this is correct.

Councilor Ortiz said so it is 90 days for a collocation application or 150 days if there was a new tower, and Ms. Reed said this is correct. Councilor Ortiz said then we would have the ability, under our Code, Chapter 14 or provisions we write into law now, if there was an application, these companies would have to comply with our ordinances, and we would have to act on them within 150 days. Ms. Reed said, "If it's for a new cell tower."

Councilor Ortiz said about 80% of the people testified about new cell towers, and don't have any more new cell towers, but that's not what we're hearing tonight. Councilor Ortiz asked, so far as she knows, are there any applications in the Land Use Department for new cell towers. Mr. Reed said, "I know there aren't." Councilor Ortiz asked when was the last new cell tower or collocation application that we heard. Ms. Reed said she doesn't know, but there haven't been any during the 5 years she's been with the City.

Councilor Ortiz said then for at least 5 years, no new cell tower applications have come through. Ms. Reed said, not that I know of.

Councilor Chavez said even though new cell towers were not installed, they did use bell towers and other existing structures to mount antennas.

Responding to Councilor Ortiz, Ms. Reed said she does not know if a bell tower fits under a collocation definition.

- Councilor Ortiz said he has read the decision which has been the basis all along for the former City Attorney to move this ordinance forward. He said the Court ruled that some parts of the existing ordinance were unconstitutional. And yet the approach that was taken, was that the entire ordinance needed to be scrapped and we needed to completely redo the ordinance. He asked for clarity as to why we are reinventing a new ordinance, when the decision itself is clear in mentioning only particular parts of the ordinance with which the Court had problems.

Ms. Price said she did include in the packet, a highlighted copy of the current ordinance, indicating those sections which were struck down. She said, in essence, it took out so much of the ordinance's basis, as well as actual words, that we chose to adopt a new ordinance and repeal the old one. She said they tried to cover the remaining issues in various forms in the new ordinance.

- Councilor Ortiz quoted from the decision on packet page 22, as follows, "...Viewing the Ordinance as a whole does not reveal a scheme which prohibits telecommunications service through interrelated provisions. It is the substantial increase in cost by excess conduit requirements and the appraisal-based rent that in themselves renders those provisions prohibitive.... likewise it is the free ranging discretion that is objectionable, not the interplay between the discretionary provisions and rest of the Ordinance. Accordingly, we conclude that it is the individual provisions identified above which are prohibitive and not the ordinance as a whole."

Councilor Ortiz said that Court holding made us have to go through and reinvent an entire ordinance to comply with this law, which we spent a lot of money on, and were challenged on and ultimately lost up through the Court of Appeals process.

Ms. Reed said, "As Jeanne pointed out, when they took out the sections that the Court overruled, there was very little left, and we thought it was better to start over. She said, as testified previously, we did follow Albuquerque's, noting Albuquerque paid a lot of money to local and Washington D.C. lawyers, to draft a new ordinance after this decision came out.

Councilor Ortiz said then what we did is, after this decision came out, instead of spending our own resources or doing our own research, we saw what Albuquerque did, and we copied Albuquerque's ordinance which is substantially what is before us now.

Ms. Reed said she wouldn't say it was copied, but it was used as a guide, but we have made changes to our ordinance that are different from Albuquerque.

Councilor Ortiz asked what the differences would be. Ms. Reed said our Ordinance is written for telecommunications and cable, and Albuquerque isn't set up that way. Councilor Ortiz asked the reason we did that. Why did we marry two seemingly disparate things. Ms. Reed said the previous City Attorney did the research, and felt it was the best way to do it. She likes it this way personally, because it is easy to work with. She said it is unusual, but it is the preferred way to go. Also, many cities have a rate lower than 5%, and this rate is considered to be somewhat controversial and somewhat high by companies.

- Councilor Ortiz said if we were to pass on the main cable franchise and act only on the subsidiary franchises and change the percentage to, for example 1%, does this get us around the legal issues identified in Qwest v. City of Santa Fe, such as the cost of doing business. Ms. Reed said no. She said a big piece is having the property evaluated. Companies are required to determine the property value, which is a long and expensive process, so it was removed.

Councilor Ortiz said, then if we remove the appraisal process, as well as the percentage and kept our existing ordinance, would that satisfy the legal problems identified in the decision. Ms. Reed said there also was the problem that we can't have a lease. She said Ms. Price has shown you all of the areas which had to be removed, reiterating it was decided it was better to go with a new ordinance and follow Albuquerque's.

- Councilor Ortiz said then all of the portions which are highlighted are portions which have been specifically delineated from the Court of Appeals Decision. Ms. Price said yes. She said, with regard to marrying telecommunications and cable, when we are discussing cable in the proposed ordinance, it has to do with cable TV and not a conduit like Mr. Brown of CitiLink is proposing. She said the CitiLink proposal is a telecommunications proposal.
- Councilor Dominguez said, his reading of the ordinance is that the City has the ability to terminate if they don't pay fees, permits and such with regard to our local requirements. He asked what happens if they are not in compliance in terms of output and it impact on the health of individuals – is that regulated by FCC. Ms. Reed said this is correct. He asked the mechanism we have to determine whether or not they 're in compliance with that.

Ms. Reed said we would need a staff, noting many big municipalities who have ben doing this for a long time in California have engineers and consultants and all kinds of monitoring systems. It would be necessary to have something like that to monitor for compliance.

Councilor Dominguez asked how we currently determine that. Ms. Reed said, "We can't. We don't have an ability to do that at the City. We have no technical people to do that. She said there are Cities in California that have whole departments to do this

- Councilor Dominguez said we have language which makes it so that the applicants must comply with the requirements of the municipality. He asked if there is something which mandates that they be in compliance with the FCC regulations what are the penalties.

Ms. Reed said, "Absolutely, and that's the same paragraph we talked about and then Councilor Ortiz found a second paragraph that said the same thing. They absolutely are required to follow federal law and to be in compliance with federal regulations.

- Councilor Bushee can see the specifics of lease agreements may have incurred more cost because of the details. She said we are dealing with a land use, and once again asked why it wouldn't be done through a lease agreement. Ms. Reed again responded that the Court won't let us.

Councilor Bushee asked if the Court said outright, no lease agreements, or just said this lease agreement doesn't work. Ms. Reed said, "I'd have to have the exact one, but we believe that the Court does not permit lease agreements and requires a franchise agreement instead."

Councilor Bushee asked where it says that in the Court decision. She said she is reading the lease and remembers the details which were worked into the lease, and can see where they may have been inhibiting free commerce of some sort if you were a person trying to put an antenna up in our town. Ms. Reed said the land use law still applies. She said it is franchise agreements everywhere in the country, and said "we believe that the Court overruled our using these.

Councilor Bushee asked Mr. Zamora if he agrees with that sentiment.

- Mr. Zamora said he is relying on Maureen's expertise.

Councilor Bushee asked again where it says this in the decision, and Ms. Reed again responded that she can't tell her that tonight. Councilor Bushee said then she can't vote on this tonight. She said it makes no sense to her that we aren't operating under a lease agreement for our right of way.

- Mr. Zamora said it is easy to mix apples and oranges, and we've been going at this for a long time. He said we aren't talking about typical lease rights and property rights, but talking about telecommunications issues that are governed by federal law. He said in the applicability of federal law and federal case law, it was determined that a lease agreement is not proper and that franchise agreements are proper.

Mayor Pro-Tem Wurzbarger said Ms. Price told her that they think it may be in the federal requirement, but that's not something that's before us. Councilor Bushee said, "I just don't buy it."

Councilor Chavez is troubled with the fact that these two components were married – the fiber-optic and the wireless. He wants to separate/divorce them from each other as we move forward or deny it. He said one is bringing the other down. He is fine with franchise agreements instead of leases.

MOTION: Councilor Chavez moved, in the event the master ordinance fails to pass, to direct staff to sever the franchise for Newpath from the franchise for CityLink Fiberoptic, either tonight, or as we move forward with this discussion. **THE MOTION DIED FOR LACK OF A SECOND.**

- Ms. Reed said these are separate votes.
- Responding to Mayor Pro-Tem Wurzbarger, Mr. Zamora said the master ordinances must pass first and the secondary considerations are the two individual applications. He said if the master ordinance fails, we can't move forward with the other two, and failure to adopt the ordinance, puts us out of compliance with federal law. He said it is up to the Governing Body to make that decision.
- **EXPLANATION:** Councilor Ortiz said the motion is in response to the answer from staff as to why cellular towers are linked to fiberoptics or other forms of communication.
- Ms. Price said both companies are telecommunications, neither are cable, reiterating that the cable laws have to do with cable TV. The reasons these are together is that many of the provisions are the same to use our right-of-way. The master ordinance is very carefully crafted to deal with the Telecommunications and the separate Cable Act which has to do with television. If the master ordinance isn't adopted, the franchises for CityLink and NewPath would have no reference in City Code. She said the master ordinance is needed to say how this works in our public right-of-water,
- Mayor Pro-Tem Wurzbarger said then the old ordinance won't work. Mr. Zamora this is correct, because it has been ruled substantially unconstitutional.
- Councilor Calvert said the required map is a form of notification and information. He asked if there is a provision that a person could do anything to protest or to appeal the map.
- Ms. Reed said no, and reiterated that exists in the Land Use Code.
- Responding to Mayor Pro-Tem Wurzbarger, Mr. Zamora said there is a hearing process which we use currently which is applicable.
- Mayor Pro-Tem Wurzbarger asked if this means after people sign the paperwork, that within 30 days they will first have to go through a public process where there is an ENN, and it is not just a matter of sending the map. Mr. Zamora said this is correct – they first have to go through a public process.

Mr. Wells said he has reviewed this section of the ordinance and it provides that he would submit an application and then go through a public process, which probably would require advertising and all of the steps that currently exist in the Code. He said whoever this comes back to, it will follow the exact process outlined in the Code. He said this ordinance provides that they must comply with all of the City Codes as it relates to the particular question. The City's Land Use provisions are a part of the process, noting he can't pull a building permit until he has worked all the way through this process. There are no special circumstances here, because we have a franchise agreement.

- Councilor Calvert said the map will be issued after the fact, because it only indicates approved locations, and not necessarily in advance as it relates to what is being proposed to the City. He said applicants would comply with the notice requirements before any approval would occur.

Mr. Wells said the map is simply an "as built," which shows what exists and where the fiber is so that Public Works don't have a problem down the road. The map he is referring to is after the fact, but please recognize there is a whole process before that.

- Councilor Calvert asked, regarding the public process "that everybody is citing in the Land Use Code, but nobody can give us specifics, does that also give us what these things will look like and all that information."

Mr. Wells said there is an entire process of what must be included in the drawings, which shows what it will look like and may require computer simulated photo, etc., etc., etc. He said there are specific land use requirements which are within City Code, and that is exactly what his engineering people will submit, and this is the way they do it everywhere.

- Mr. Brown said in the City of Albuquerque, when they are ready to do construction they first go to City Planning and open an application for a permit. The permit application requires them to submit drawings. They also communicate with the City in advance on a quarterly basis what our proposed future build-outs and locations will be, and he sees no reason we wouldn't want to be able to communicate that as well to the City of Santa Fe. He said they know in advance, from a sales and marketing perspective with their services, that they will be communicating with neighborhoods and working with neighborhood associations, to let them know we will be bringing fiber optic services to those homes and businesses to determine the interest in the area for the service. He reiterated that they are "fully intending to comply with current Section 14, and as I understand the master ordinance franchise, even though future version of Section 14 as it may be amended in the future or changed." He said they are all underground and it is a right-of-way and it's not a ground lease. They are doing the same thing that Qwest, Comcast or PNM, the Gas Company or the water company does – they are making use of a right-of-way to provide a public convenience utility.

- Councilor Calvert thinks we have the process slightly backward, noting we are in the process of revising Chapter 14, and if you want safeguards and to ensure compliance with the appropriate things in Chapter 14, he would think we would want those in place before we approve this process.
- Councilor Bushee said she is concerned that one of the things which was stricken from the old Code is that they would register annually with the City and we were requiring more up-front information as to where they were going to locate. She just heard these two businessmen say they are planning to provide this information, but she has no assurance from anything she's heard from Maureen "or you," that this is something we could have just built into the ordinance in the first place. She said it isn't spelled out specifically, and spoke about the way it was done previously with PNM.
- Councilor Bushee reiterated that the proposed ordinance doesn't provide for us to see or hear any details about anything, except for what we will charge them – that is what is negotiated – and these franchises are for 10-year periods. She remains frustrated that everybody says they have to follow the Land Use Code, but she doesn't see that anywhere in print. She said, "I don't feel like we're there yet. And unless you can, you know... I don't need to hear from you actually. I just need to hear somewhere in here that this is.... I just don't like the way we've done this. I don't like the way we put this together. I don't like that it's under a franchise agreement, and not a lease agreement. It is a land use that we're talking about here... everything about it, other than the money..."
- Ms. Reed said the FCC doesn't see it as a land use issue. They say we have to follow our Chapter 14, but they're talking about, they're demanding that the cities gives these companies a right-of-way lease [franchise?] for telecommunications.

Councilor Bushee said then they see it as an air space use.

Ms. Reed said, "I'm not technical, but the FCC wants the telecommunications to be spread throughout the country using the public right of way. And we can enforce our Land Use Ordinance."

- Councilor Bushee said, "In our Land Use requirements it seems we would get to say what it looks like, how it feels, how it.... It's real, even though the FCC doesn't want to say that it's a decision that we can make around land use and wanting to dance around it. So, are you saying because the FCC doesn't see it that way in this, or are you now saying it's because of that court case."

Ms. Reed said it is everything combined.

Councilor Bushee said, "Okay. Point to me where it says, in that Court case, that we can't do a lease agreement."

- Mayor Pro-Tem Wurzbarger said, "Okay. We talked about this earlier, Councilor, and my understanding, just to try to bring this to a little bit of closure, is we've talked about that, and it's not the Court case that determined that, it was the FCC, that determined how we are looking at this issue. Is that correct Geno."

Mr. Zamora said, "That's correct. The Court case, however did address that the lease provisions of the former ordinance were improper. And we are proceeding in accordance with FCC as they govern telecommunications and implement telecommunications. where we have the authority. We don't have the authority to govern the telecommunications itself, but we have the authority to govern the implementation of those telecommunications locally through avenues such as the Land Use Code and every other Code we have at the City."

Mayor Pro-Tem Wurzbarger's asked if this statement is clear, whether or not you agree with it. Councilor Romero said that it is.

MOTION: Councilor Romero moved to adopt Ordinance No. 2010-3, with all of the amendments as proposed by staff. **THE MOTION DIED FOR LACK OF A SECOND.**

Mayor Pro-Tem Wurzbarger said she would like a motion to table this item until we can decide what to do.

MOTION: Councilor Bushee moved, seconded by Councilor Chavez, to table this item until we can decide what to do.

DISCUSSION: Responding to Mayor Pro-Tem Wurzbarger, Councilor Bushee said the Chair asked for a motion, but she [Bushee] wants to vote on the issue.

Councilor Chavez said we know that if we postpone this, we will have the FCC breathing down our neck, and asked Mr. Zamora his recommendation to bring this back to the Planning Commission and then the full Council.

Mr. Zamora said we are already late.

Councilor Chavez said, understanding this, we have the FCC telling us to do something, we are asking for more time, and asked how much more time we can ask for.

Mr. Zamora said there is no opportunity for us to ask for additional time from the FCC. We have exceeded the deadlines already and we are out of compliance. However, it would be staff recommendation if you do choose to postpone this, that you consider it at the next available opportunity so that we minimize any legal costs, legal expenses, etc.

Councilor Chavez said then his suggestion would be to bring it back to the next Council meeting.

Mayor Pro-Tem Wurzbarger asked the maker and second if they are willing to modify the motion.

RESTATED/MODIFIED MOTION: Councilor Bushee moved, seconded by Councilor Chavez, to postpone Agenda Items H(6), H(6)(a) and H(6)(b) to the next Council meeting on February 24, 2010, and that the public hearing is closed.

DISCUSSION: Mayor Pro-Tem Wurzbarger asked if there is further guidance from the Committee.

Councilor Bushed pointed out this is a motion to postpone.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: None.

Explaining his vote: Councilor Calvert said, "Yes, and I will try and give some guidance. I would say look at some of the other ordinances that have been done if they can comply within the 90 day framework. If some of the other ordinances could be instructive, I think it might be helpful, and where we might want to go. Yes. "

Explaining his vote: Councilor Chavez said yes, and his only direction would be to try, if there is any way possible, to separate the two franchises, and that would be his direction to staff. Mr. Zamora asked Councilor Chavez for clarification of what he means by separate the two. Councilor Chavez said, "The fiber optic from the wireless." Mayor Pro-Tem Wurzbarger asked if this is in terms of the revision of the ordinance and Councilor Chavez said yes.

Explaining his vote: Councilor Dominguez said he would look to the staff to get some language I'm comfortable with in the [inaudible] of the ordinance, so I vote yes.

Explaining his vote: Councilor Ortiz said, "Before I vote, I do want to thank Maureen for taking on what has been a herculean effort that was not done with her work, but by the work of the former City Attorney, and all of the work has been done. She has become, in the very short period of time I've seen, a resource that the City values. And so, nothing that she has done or none of the work that she has taken reflects in any way any personal opinion that she may have, or any kind of bias that I can see. I think she's done a wonderful job, so I'm thankful for her work. There's a little more work to be done, but I think it can be accomplished, and so I vote yes.

CLARIFICATION BEFORE VOTE: Councilor Romero asked Councilor Calvert, for clarification if he is talking about the ordinances that were prior to the November 2009 decision. She looked at several on line, and but those were prior to the November 2009. She asked Councilor Calvert which ordinance he wants to look at. Councilor Calvert said the decision Ms. Reed is talking about is the 90-day edict and we're already outside of that. He doesn't believe they have struck down those ordinances, and he hasn't seen anything that struck down the existing ordinances. He believes they are instructive as to something you might want to do. The reference here came up with the new time period. He said if we can still do those kinds of programs within that same time period, then I think that's where we would like to go. Councilor Romero said further direction to staff would be to review, within Chapter 14, anything that doesn't refer specifically to telecommunications and then make a recommendation to Land Use staff to include that language.

Point of Order: Councilor Bushee said this is a motion to postpone and we're having a dialogue.

Mayor Pro-Tem instructed Councilors in voting to say their opinion and to say what information they need to make a better decision next time.

Explaining her vote: Councilor Romero said she would direct staff to include any telecommunications language to make it clearer, and said, "I'll vote yes."

Explaining his vote: Councilor Trujillo asked what happens now – what can the FCC do to us. Mr. Zamora said, "It actually resides within the individual communities who have applications before us, who will now have rights under federal law to sue the City and force lots of remedies, including monetary remedies." Councilor Trujillo voted yes.

- 7) **CONSIDERATION OF RESOLUTION NO. 2010- 08 (COUNCILOR ROMERO, COUNCILOR BUSHEE, COUNCILOR CALVERT AND COUNCILOR TRUJILLO). A RESOLUTION URGING THE U.S. CONGRESS, THE PRESIDENT AND EXECUTIVE BRANCH MEMBERS TO REQUIRE THE FEDERAL COMMUNICATIONS COMMISSION TO REASSESS THE HEALTH IMPACTS OF RADIO FREQUENCY EMISSIONS; AND TO ACTIVELY SEEK AND SUPPORT FEDERAL LEGISLATION THAT WOULD GIVE LOCAL GOVERNMENTS GREATER FLEXIBILITY WITH REGARD TO THE PLACEMENT OF WIRELESS COMMUNICATIONS FACILITIES. (MAUREEN REED)**

Public Hearing

Mayor Pro-Tem Wurzbarger said she will limit the time to speak to this issue to one minute.

. **JoAnn Colley** asked if it is possible to put the petition on the next agenda and actually do something about it..

Mayor Pro-Tem Wurzbarger said, "We thought about it, but thank you for your input."

Arthur Firstenberg said he supports the adoption of this Resolution. He apologized for his colleague Bill Bruno. He said he wants to clarify that the Glendale ordinance has not passed and they are still working on it in Glendale, but he would like everyone to look at that ordinance..

Aslan White said she would like to emphasize that these technologies are very different from one another, and the wireless technology is very different from the fiber optic technologies. She said it seems like communities should have an opportunity to decide what technologies are being placed in our neighborhoods.

The Public Hearing was closed

MOTION: Councilor Calvert moved, seconded by Councilor Bushee, to adopt Resolution No. 2010- 08.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: None.

Councilor Dominguez and Councilor Chavez asked to be added as sponsors of the Resolution.

I. ADJOURN

The was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 10:15 p.m.

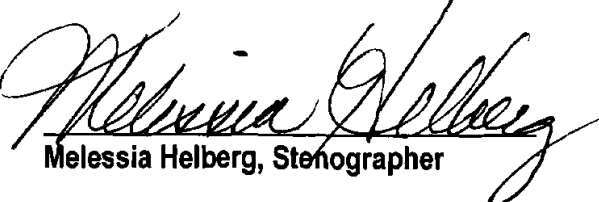
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Melessia Helberg, Stenographer