



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
JUNE 9, 2010
CITY COUNCIL CHAMBERS

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 6-4-10 TIME 9:10 am

SERVED BY _____

RECEIVED BY Lydell Dominguez

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 – May 26, 2010.
9. PRESENTATIONS
 - a) Employee of the Month for June 2010 – Karen Valdez, Budget Analyst; Santa Fe Police Department. (5 minutes)
 - b) Muchas Gracias – Daniel Coriz; Restoration of BMX Track. (5 minutes)
 - c) Proclamation – “IMPACT Awareness Day, Helping to Keep Santa Fe Safe”. (5 minutes)
 - e) Alto Street Design Competition Award. (Councilor Calvert) (5 minutes)
 - f) Sustainable Santa Fe Plan Progress Report. (Katherine Mortimer) (10 minutes)
10. CONSENT CALENDAR
 - a) Request for Approval of Amendment No. 1 to Professional Services Agreement – Design/Build Services to the Dectron Units at GCCC; M & E Engineering Inc. (Martin Valdez)
 - b) Request for Approval of Procurement Under State Price Agreement – Pavement Resurfacing; Cutler Repaving Inc. (David Catanach)



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- c) Request for Approval of a Lease Agreement – Canyon Road Parking Lot; Roman Salazar. (Walter Roybal)
- d) Request for Approval of Amendment No. 3 to Professional Services Agreement – Security Services; Chavez Security. (Walter Roybal)
- e) Request for Approval of 2010/2011 1% Lodgers' Tax Funding Recommendations – Arts Commission Community Arts Promotion Program (RFP 10/21/P); Various Vendors. (Debra Garcia y Griego)
- f) Request for Approval of Project Agreement – Purchase Equipment; New Mexico Department of Transportation. (Police Chief Aric Wheeler)
 - 1) Request for Approval of Budget Increase – Grant Fund.
- g) Request for Approval of Amendment No. 2 to Professional Services Agreement – Provide Technical Application Support Services; Mike Lancaster. (Caryn Fiorina)
- h) Request for Approval of Amendment No. 2 to Professional Services Agreement – Provide Technical Application Support Services; Kevin Yeaman. (Caryn Fiorina)
- i) Request for Approval of Legal Services Agreement – Represent City in Legal Matters; Sheehan, Sheehan & Stelzner. (Bill Cassel)
- j) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Ortiz)
A Resolution Declaring the Month of April Each Year as "Newborn Month" and Directing Staff to Assist the University of Phoenix and Presbyterian Medical Services In Arranging for an Annual Baby Shower for "Newborns in Need". (Jeanne Price)
- k) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Wurzburger)
A Resolution Supporting Approval of the Downtown Parking and Transit Program. (Jon Bulthuis)
- l) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Bushee)
A Resolution Appealing to the All Indian Pueblo Council to Save the Paolo Soleri Amphitheater Located on the Santa Fe Indian School Campus. (Jeanne Price)



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- m) Request for Approval of Renewal of Comprehensive Insurance Program Coverage; Willis of Arizona. (Barb Boltrek)
 - n) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Romero)
A Resolution Directing City Staff to Work with the Santa Fe Public Schools to Draft an Updated Joint Powers Agreement. (Robert Romero)
 - o) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Mayor Coss, Councilor Bushee, Councilor Wurzburger and Councilor Romero)
A Resolution Approving a Waiver of the Santa Fe Home Program Requirements for Phase A-1 of the Artyard Project Located within the Railyard Upon the Fulfillment of Certain Conditions. (Melissa Dailey)
 - p) Request for Approval to Publish Notice of Public Hearing on June 30, 2010:

Bill No. 2010-7: An Ordinance Amending Section 1-3.2 SFCC 1987 Regarding the Imposition of Municipal Court Fees and Section 12-6-12.2 of the City of Santa Fe Uniform Traffic Code Regarding Penalties for Operating a Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs. (Councilor Wurzburger) (Judge Yalman)
- 11. MATTERS FROM THE CITY MANAGER
 - 12. MATTERS FROM THE CITY ATTORNEY
 - 13. MATTERS FROM THE CITY CLERK
 - 14. 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



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E. ROLL CALL

F. PETITIONS FROM THE FLOOR

G. APPOINTMENTS

H. PUBLIC HEARINGS:

- 1) Request from Espiritu, LLC for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be Located at Pizzeria Espiritu, 1722 A & B, St. Michael's Drive. (Yolanda Y. Vigil)
- 2) Request from Santa Fe Café, LLC for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be Located at Café at Inn at Santa Fe, 8376 Cerrillos Road. (Yolanda Y. Vigil)
- 3) Request from Marble Brewery, Inc. for a Small Brewer (Off-Site) Liquor License and an Expansion of Current Premise (Transfer of Location) to be Located at Marble Brewery Tap Room, 60 E. San Francisco Street, Suite 313. (Yolanda Y. Vigil)
- 4) CONSIDERATION OF BILL NO. 2010-10: ADOPTION OF ORDINANCE NO. 2010-_____. (Councilor Wurzburger and Councilor Romero)
An Ordinance Amending Various Sections of Article 26-1 Regarding the Santa Fe Homes Program in Order to Increase the Maximum Income of Eligible Buyers to 120% of Area Median Income; to Allow the Grouping of Santa Fe Homes Program Units; and to Make such other Changes as are Necessary. (Kathy McCormick) **(Postponed at the May 26, 2010 City Council Meeting)**
 - a) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Wurzburger and Councilor Romero)
A Resolution Amending the Administrative Procedures for the Santa Fe Homes Program in Order to Increase the Maximum Income of Eligible Buyers to 120% of Area Median Income; to Allow the Grouping of Santa Fe Homes Program Units; to Eliminate the First-Time Homebuyer Status Requirement; and to Make Such Other Changes as are Necessary. (Kathy McCormick) **(Postponed at the May 26, 2010 City Council Meeting)**



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- 5) CONSIDERATION OF BILL NO. 2010-16: ADOPTION OF ORDINANCE NO. 2010-_____.
An Ordinance Repealing Chapter 27 SFCC 1987 and Creating a New Chapter 27 SFCC 1987 Regarding Telecommunications Services. (Kelley Brennan)
- 6) CONSIDERATION OF BILL NO. 2010-20: ADOPTION OF ORDINANCE NO. 2010-_____.
Case #2010-24. 528 Abeyta Street Rezoning. Kurt Sommer, Agent for Theodore Rogers and Elizabeth Rogers, Requests Rezoning of .415± Acres of Land from RC-8 (Residential Compound, 8 Dwellings Per Acre) to R-3 (Residential, 3 Dwellings Per Acre). (Donna Wynant)

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.

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.

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June 9, 2010

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**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
June 9, 2010**

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor David Coss, on June 9, 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

Mayor David Coss
Councilor Rebecca Wurzburger, 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

Others Attending

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

6. APPROVAL OF AGENDA

MOTION: Councilor Romero moved, seconded by Councilor Bushee, to approve the agenda as published.

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

7. APPROVAL OF CONSENT CALENDAR

MOTION: Councilor Wurzburger moved, seconded by Councilor Bushee, 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 Wurzburger.

Against: None.

- a) **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – DESIGN/BUILD SERVICES TO THE DECTRON UNITS AT GCCC; M & E ENGINEERING, INC. (MARTIN VALDEZ)**
- b) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – PAVEMENT RESURFACING; CUTLER REPAVING, INC. (DAVID CATANACH)**
- c) **REQUEST FOR APPROVAL OF A LEASE AGREEMENT – CANYON ROAD PARKING LOT; ROMAN SALAZAR. (WALTER ROYBAL)**
- d) **REQUEST FOR APPROVAL OF AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT – SECURITY SERVICES; CHAVEZ SECURITY. (WALTER ROYBAL)**
- e) **REQUEST FOR APPROVAL OF 2010/2011 1% LODGERS' TAX FUNDING RECOMMENDATIONS – ARTS COMMISSION COMMUNITY ARTS PROMOTION PROGRAM (RFP 10/21/P); VARIOUS VENDORS. (DEBRA GARCIA Y GRIEGO)**
- f) **REQUEST FOR APPROVAL OF PROJECT AGREEMENT – PURCHASE EQUIPMENT; NEW MEXICO DEPARTMENT OF TRANSPORTATION. (POLICE CHIEF ARIC WHEELER)**
 - 1) **REQUEST FOR APPROVAL OF BUDGET INCREASE – GRANT FUND.**
- g) **REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT – PROVIDE TECHNICAL SUPPORT SERVICES; MIKE LANCASTER. (CARYN FIORINA)**
- h) **REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT – PROVIDE TECHNICAL APPLICATION SERVICES; KEVIN YEAMAN. (CARYN FIORINA)**

- i) REQUEST FOR APPROVAL OF LEGAL SERVICES AGREEMENT – REPRESENT CITY IN LEGAL MATTERS; SHEEHAN, SHEEHAN & STELZNER. (BILL CASSEL)
- j) CONSIDERATION OF RESOLUTION NO. 2010- 44 (COUNCILOR ORTIZ). A RESOLUTION DECLARING THE MONTH OF APRIL EACH YEAR AS “NEWBORN MONTH” AND DIRECTING STAFF TO ASSIST THE UNIVERSITY OF PHOENIX AND PRESBYTERIAN MEDICAL SERVICES IN ARRANGING FOR AN ANNUAL BABY SHOWER FOR “NEWBORNS IN NEED.” (JEANNE PRICE)
- k) CONSIDERATION OF RESOLUTION NO. 2010- 45 (COUNCILOR WURZBURGER). A RESOLUTION SUPPORTING APPROVAL OF THE DOWNTOWN PARKING AND TRANSIT PROGRAM. (JON BULTHUIS)
- l) *[Removed for discussion by Councilor Ortiz]*
- m) REQUEST FOR APPROVAL OF RENEWAL OF COMPREHENSIVE INSURANCE PROGRAM COVERAGE; WILLIS OF ARIZONA. (BARB BOLTREK)
- n) CONSIDERATION OF RESOLUTION NO. 2010- 46 (COUNCILOR ROMERO). A RESOLUTION DIRECTING CITY STAFF TO WORK WITH THE SANTA FE PUBLIC SCHOOLS TO DRAFT AN UPDATED JOINT POWERS AGREEMENT. (ROBERT ROMERO)
- o) *[Removed for discussion by Councilor Bushee]*
- p) REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON JUNE 30, 2010:

BILL NO. 2010-7: AN ORDINANCE AMENDING SECTION 1-3.2 SFCC 1987, REGARDING THE IMPOSITION OF MUNICIPAL COURT FEES AND SECTION 12-6.12.2 OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE REGARDING PENALTIES FOR OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS (COUNCILOR WURZBURGER). (JUDGE YALMAN)

8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – MAY 26, 2010

MOTION: Councilor Wurzbarger moved, seconded by Councilor Romero, to approve the minutes of the Regular City Council meeting of May 26, 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 JUNE 2010 – KAREN VALDEZ, BUDGET ANALYST; SANTA FE POLICE DEPARTMENT.

Mayor Coss read the nominating letter into the record and presented Ms. Valdez with a plaque and a check for \$100 from the employee benefit committee. He thanked her for her exemplary service to the City.

Deputy Chief Contreras spoke about her work and her great work attitude and presented her with a bouquet on behalf of the Department.

Ms. Valdez thanked the Department for the nomination and said she is very honored to receive this award..

b) MUCHAS GRACIAS –DANIEL CORIZ; RESTORATION OF BMX TRACK.

Mayor Coss, assisted by Councilor Dominguez, presented a Muchas Gracias Certificate to Daniel Coriz for his work on behalf of the Parks Advisory Committee and his efforts for beautifying and restoring the BMX track at the MRC complex.

Councilor Dominguez said Mr. Coriz stepped up to the plate to get the BMX Track into condition so it can be used. He said they recently shot a commercial about the Track being available. The commercial was presented to the Governing Body at this time. Councilor Dominguez said the commercial will call attention to the Track so people will use it more. He said the Track is consistent with the Council's efforts for more healthy lifestyles as well as being good clean fun for kids.

c) PROCLAMATION – “IMPACT AWARENESS DAY, HELPING TO KEEP SANTA FE SAFE.”

Mayor Coss read the proclamation into the record declaring June 10, 2010, as Impact Awareness Day, and presented the proclamation to Alena Schaim, Impact Personal Safety. He thanked her for the work that she does on behalf of the Community.

Alena Schaim, Impact Personal Safety, said since they opened their doors, they have served 2,000 people. She spoke about a child who avoided being abducted from a local park by using the skills learned in their classes. She said invited the Governing Body and the public to a special ceremony at Fire Station #3 at 11:30 a.m. on June 10th for a special ceremony, followed by Frito pies for everyone. She said they will also be doing a one hour Personal Safety 101 Seminar which will be available to any member of the public at no fee.

d) ALTO STREET DESIGN COMPETITION AWARD. (COUNCILOR CALVERT)

Councilor Calvert spoke about a City owned lot on Alto which was decided to be used for affordable housing, and to hold a design competition to get good ideas from architects/designers/builders. Councilor Calvert presented awards for the overall best designs to Mahid Majarah, Jonah Standard, and Homewise for having one of the best overall designs, as well as recognizing other outstanding contributors to the competition. Councilor Calvert recognized the other partners and sponsors in this endeavor, saying they received local state, national and international entries in the design competition.

Councilor Calvert thanked staff Melissa Dailey, and member of the public Alexandra Ladd for their work on this competition. He said Ms. Ladd prepared a book which documented what they did and what they learned, "Lessons Learned – The GreenWorks Courtyard and Community Building – Architectural Design Competition – Santa Fe, New Mexico, January 23, 2009." He presented a copy of the book to the members of the Governing Body. He said he will be introducing a Resolution to move forward with this project.

e) SUSTAINABLE SANTA FE PLAN PROGRESS REPORT

Camilla Bustamante, Chair of Sustainable Santa Fe Commission, highlighted items from the past year in the Sustainable Santa Fe Plan Progress Report. Please see the Report in the packet for specifics of this presentation.

Councilor Ortiz asked Dr. Bustamante to point to three things which the Governing Body can do in the next year.

Dr. Bustamante said it would be to develop a specific strategy and a special tool (s) for implementing the tasks, continue to support initiatives which create value added opportunity for solid waste management, and continue to support and bringing up initiatives that congratulate people for the efforts.

Councilor Ortiz thanked Dr. Bustamante and the members of the Commission for their work, for focusing on the work which is crucial and essential, and for taking the Commission in a very bold and aggressive step forward.

Councilor Calvert thanked Dr. Bustamante, the Commission, the City staff as well as the community that participated. He said he has reviewed the plan and given feedback, with his comments and concerns, and asked other Councilors to do the same.

CONSENT CALENDAR DISCUSSION

10 (I) CONSIDERATION OF RESOLUTION NO. 2010- 47 (COUNCILOR BUSHEE). A RESOLUTION APPEALING TO THE ALL INDIAN PUEBLO COUNCIL TO SAVE THE PAOLO SOLERI AMPHITHEATER LOCATED ON THE SANTA FE INDIAN SCHOOL CAMPUS. (JEANNE PRICE)

MOTION: Councilor Ortiz moved, seconded by Councilor Bushee, to adopt Resolution No. 2010-47, with the following amendments on page 2 of the Resolution:

Line 7, amend as follows: "...resolution and a copy of Ordinance No. 2009-54 to the All Indian Pueblo Council; and

Add a new paragraph after line 8, "AND BE IT FURTHER RESOLVED, that the City Manager and City Attorney shall communicate to the All Indian Pueblo Council that any action taken by a former City Manager purporting to allocate water rights to this property was, and is, null and void and ultravirius."

DISCUSSION: Councilor Ortiz said we have not had any communication with the All Indian Pueblo Council ["Pueblo Council"] on its plan for this property. He said the ordinance he and Councilor Romero sponsored, which was unanimously approved by the Council, provides that all future plans have to go through the City approval process. He said staff has done an admirable job of trying to find the letter from former City Manager Jim Romero, but were unable to find the letter and there is no record of the letter. He doesn't want to put this Governing Body in an antagonistic position with the Pueblo Council, noting it is under some belief that it has water rights, or that it doesn't have to abide by the City processes because of that action. He said if we are going to adopt this Resolution discussing starting the process, we need to lay all of our cards on the table. He said those cards are that the City is concerned and wants to talk about our process, and they may have an issue if they are going to do further development of the property with respect to the water rights, which he thinks they don't have. He believes this language communicates the message loud and clear to the Pueblo Council.

FRIENDLY AMENDMENT: Councilor Bushee asked to amend the motion to provide that the City Manager and the City Attorney will get back to the Council with what that process will be and to outline it in a letter as well. **THE AMENDMENT WAS FRIENDLY TO THE MAKER TO ADD THE LANGUAGE AS ANOTHER "BE IT FURTHER RESOLVED," AND TO THE SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE COUNCIL.**

DISCUSSION ON THE MOTION AS AMENDED: Councilor Bushee said, rather than an antagonistic approach, this is to reference that the City does have an ordinance, and this property and others formerly considered not to be under our jurisdiction, does impact any aspects of the community. She said this is a personal appeal to save the building, noting there are few examples of "Paolo Soleri architecture built that we have," and it is hoped there will be some recognition by the Council that it is worth preserving for the community, no matter its use. It is also important that we also know what is going to happen there, and that is what the letter will outline.

Councilor Romero said she appreciated the support of the Council last year in unanimously adopting the Ordinance. She asked to be listed as a cosponsor of this Resolution. She does not believe this action is adversarial, but says to the Pueblo Council that it is a part of our community and how it can be made accountable to the City for what it is doing.

Councilor Chavez said it appears the Resolution is more in the spirit of open communication and establishing that communication between the City and the Pueblo Council. He said the Resolution began as an appeal, but contains other things which aren't part of the ongoing discussions. He said if we trust what is in the newspaper, that Superintendent Chavez has decided that the Paolo Soleri is too expensive to maintain, doesn't generate the needed revenue, and is not part of its larger business plan which focuses on education. He is unsure that asking them to change their mind is the right thing to do. He said it is right to ask for them to communicate with the City every step of the way. He supports part of the Resolution and some of the amendments, but is unsure he will be supporting this Resolution as amended. He is unsure we will have the influence to save that portion of the campus.

Mayor Coss said more communication and information sharing is always a good thing. He said the Governor and Superintendent Chavez reached out to him, and today they had lunch. He said they have made the decision about Paolo Soleri which was put in the form of a press release, and doesn't know they would reverse the decision. He said the basic things pointed out by the Governor is that \$600,000 of minimum maintenance is needed, it doesn't meet ADA guidelines, has no fire system, and really isn't an adequate facility for the kinds of concerts people would like to have there. He said secondly, they find it very inconsistent with their main educational mission. He said they want to have an alcohol and drug free campus. He said they showed him pictures today of the alcohol bottles all over the campus after last week's concert. He said they do have significant issues. He said they know we need more communication and an open dialogue with the community and the City. He said the City approved an MOU about 18 months ago, and they gave it back to the City to pursue. He said Geno Zamora and staff have redrafted the MOU and are about ready to present that MOU with regard to how we interact with the Indian School.

Mayor Coss pointed out that this is Federal Trust Land, and there is a long, long history of interactions with the Native Americans, and this is their school and their Trust Land. He said the City has a sewer line which runs across that land and the lease, and the right-of-way for that expired in 2003. He said there are a lot of things to discuss, but it would be a hard statement to make that "you can't hook up to our sewer," when our sewer line is on their land which is Federal Trust Land.

Mayor Coss said they assured him today they have no issue in communicating with us, and to show any of us the current condition of the Paolo Soleri, and talking about their concerns, and what they are trying to do at the Indian School. He said this can be a very positive step forward. He said we are always a little behind with our relations and communications, but the Superintendent and staff did reach out today and so we are started in that direction. He said Mr. Zamora is about ready with an MOU with which we can start these communications.

Councilor Bushee said, in addition to Councilor Romero, the other cosponsors of the Resolution are Councilors Trujillo, Dominguez and Ortiz. She hopes this Resolution was the impetus for opening communications at lunch today and we will further that today with the adoption of this Resolution and noting Ordinance No. 2009-54. She is grateful they have an educational mission, and looks forward to a direct communication as to what will be coming there.

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

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

Against: Councilor Chavez

10 (o) CONSIDERATION OF RESOLUTION NO. 2010- 48 (MAYOR COSS, COUNCILOR BUSHEE, COUNCILOR WURZBURGER AND COUNCILOR ROMERO). A RESOLUTION APPROVING A WAIVER OF THE SANTA FE HOME PROGRAM REQUIREMENT FOR PHASE A-1 OF THE ARTYARD PROJECT LOCATED WITHIN THE RAILYARD UPON THE FULFILLMENT OF CERTAIN CONDITIONS. (MELISSA DAILEY)

A Memorandum dated June 9, 2010, to the Members of the Governing Body, from Kelley Brennan, Assistant City Attorney, regarding Railyard Lease Parcels A-2 and B-1, Application of Railyard Master Plan, is incorporated herewith to these minutes as Exhibit "1."

Councilor Bushee said, thus far, Artyard has been required to make a cash payment of \$518,250, and thus far put \$595,000 into the property, and asked if this is correct.

Ms. Dailey said the \$595,000 is not what they have put into the property, it is the leasehold value of the two remaining parcels.

Councilor Bushee asked Ms. Dailey to clarify that the City isn't losing anything in this arrangement. She asked if the hardship, referenced on page 2, lines 9-11, "a condition occurring as a direct consequence of the Santa Fe Homes Program which would require the property owner to lose money on the development taken as a whole," is the bank as referenced in this situation.

Ms. Dailey asked that this question be answered by the Bank's legal counsel.

Nancy Long, Counsel, Century Bank, said the bank has been the construction lender on the project and has been assisting the developer in trying to complete A-1. She said the economic hardship ultimately is to the developer of the project, but the Bank has been in this as a partner, and also would suffer economic consequences.

Councilor Bushee said she would like concrete or specific information when this comes back to the Council. She has read in the paper that the "so-called property owner says everything is fine. So, I would just want the case to be made clearly on paper about the need for an extreme hardship."

Ms. Long said she understands this. She said, with regard to Councilor Bushee's comment about the revised agreement, the SF Homes Program Agreement, that there would need to be documentation to void the agreement which requires the two affordable units, so it wouldn't be revised.

Councilor Bushee said she understands that, but she wants more detail as this moves forward.

Melissa Daily said she anticipated the Council would want some of these details, and she has some economic data which does describe that. However, she has been advised that it possibly could fall under the New Mexico Economic Development Act and something which could not be released to the public, but she can provide the data to the Governing Body.

Mayor Coss said he believes Councilor Bushee would like that information when the Council gets to the consideration of the agreement.

Councilor Bushee said she wants to be very clear about this, and said she is sponsoring this legislation because she believes this is the direction in which we should go, but she wants to be clear that the details are correct.

Kelley Brennan said she wants to clarify that the Santa Fe Homes Program unit obligation is the responsibility of the developers. Ms. Brennan distributed a Memorandum to the Governing Body in this regard [Exhibit "1"].

Councilor Bushee said she knows nothing about the other entity which is rumored to be coming into New Mexico and doesn't necessarily want to tie the two together, but she also doesn't want another incomplete project. She said she wants to know the timeline for the revised Homes Program Agreement, and when we will have information from the Economic Development staff with regard to the "next potential possibility there." She wants to feel "rest assured that we are making the right decision."

Ms. Dailey said staff can begin immediately. She said, as pointed out by Mr. Long, the Santa Fe Homes Program Agreement wouldn't be revised. The City would terminate the Agreement for A-1, and the other two parcels would be released from that, and the parcels then become the responsibility of the Santa Fe Railyard Community Corporation to lease out.

Ms. Daily said the answer is yes, to Councilor Chavez's question from "last time," if this type of business is allowed to be at the Railyard. She said the question was, "Can you report to Council the information regarding the development opportunity for B-1 and A-2 for correlation with the Railyard Master Plan." She said it does correlate. She said any business would qualify in terms of being in the Railyard in between design standards sub-districts. All office, professional and business uses are permitted in this district.

MOTION: Councilor Bushee moved, seconded by Councilor Wurzbarger, to adopt Resolution No. 2010-48, as amended, with direction to staff to provide the next steps as to how to fill those lease spaces, with whatever Committees will hear that.

DISCUSSION: Councilor Chavez asked staff for clarification, for the record, that she said he asked for something regarding the use of those parcels.

Ms. Brennan said she transcribed the question, "Members of the Public Works Committee asked, at their June 7, 2010 meeting whether Railyard Lease Parcels A-1 and B-2 can be developed for office and film post production facilities or for further uses."

Councilor Chavez said he never had an issue with a different use. His question had to do with whether the current project will repay the City the \$500,000 for the affordable units, if the City waives those. He said he also asked if there were other incentives which had been give, which is sort of standard. He said usually, if the developer agrees to do affordable units, the City will waive infrastructure improvements, and asked if there are other incentives which are not included which are the developer's responsibility.

Ms. Dailey said in the research she has done, there is no record of water or fees being waived by the City. She said she contacted water budget staff, and the water for the 17 units was provided by retrofits. She said because the permits would have been issued by the State Construction Industries Division, the developer was not required to pay us fees or then request fee waivers.

Councilor Chavez asked if there is anything in terms of infrastructure improvements, and Ms. Dailey said no.

Ms. Dailey said, with regard to the \$518,000, there was no fee-in-lieu. She explained there is no record of payment in the computerized accounting system back to 2005, and the City has been presented with no proof that the fee was ever paid. She said if they were asking for an alternate means of compliance and asked to pay instead, a fee of \$240,000 per unit for a total of \$480,000, noting the fee is based on what we are getting based on what we are giving up. She said, however, the developer is requesting a waiver of the Santa Fe Homes Program requirement, and would not be required to reimburse the City, because the leasehold value of the two properties is \$595,000 [Ms. Dailey's answer here was interrupted by the Council]

Councilor Chavez said we were led to believe at the Public Works Committee that the developer would still have to reimburse the City that amount.

Ms. Dailey said that was not the intent that they meant to imply.

Councilor Chavez said other amendments were accepted at Public Works, and he doesn't see those reflected.

CLARIFICATION OF THE MOTION: Councilor Bushee said the other amendments would be part of the motion.

Ms. Vigil said the amendments were provided to the Councilors prior to the meeting. [STENOGRAPHER'S NOTE: *The amendments were not provided to the Stenographer for the record*]

Councilor Chavez said, then if the waiver is not granted, the Artyard would still be required to make a cash payment of \$518,000.

Ms. Dailey said yes. The current Santa Fe Homes Program Agreement would still be in place.

Councilor Chavez asked how many residential units are in the Artyard now.

Ms. Dailey said there are 9 residential units – 7 market and 2 affordable – 3 are occupied, none of which are affordable units.

Councilor Chavez said people can live on top, but don't have to be connected to the business below, and Ms. Dailey said this is correct..

Councilor Wurzbarger said as she understands this, it is a trade in order to not have to do the Affordable Homes, and the other two properties are being returned to the Railyard for development by someone else, and Ms. Dailey said this is correct.

Councilor Wurzbarger asked what happened to A-1, and if that stays with the current developer.

Ms. Dailey said the intention is to complete A-1, and Century Bank intends to work with the developer in doing this because it is in the Bank's best interest to complete the project.

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

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

Against: Councilor Chavez

Explaining her vote: Councilor Bushee voted yes, saying however she is sad that we were unable to get the affordable housing on the Railyard, but she understands the economic circumstances as to why that was difficult to do.

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

There were no matters from the City Attorney.

13. MATTERS FROM THE CITY CLERK

There were no matters from the City Clerk.

Mayor Coss moved Item 14, Communications from the Governing Body, to the end of the agenda.

END OF AFTERNOON SESSION AT 6:15 P.M.

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Mayor David Coss, 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

Mayor David Coss
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

Others Attending

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

MOTION: Councilor Romero moved, seconded by Councilor Chavez, to amend the Agenda to hear Item H(6) after Item H(3), and to approve the agenda as amended

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

F. PETITIONS FROM THE FLOOR

David McQuarie, Mayor's Committee on Disabilities, said they held the parking exchange and 1,200 signs were distributed. However, Mayor Coss was the only member of the Governing Body who attended, noting the entire Governing Body was invited to attend the parking exchange.

Robert Francis Johnson read the Prayer of St. Francis of Assisi

G. APPOINTMENTS

Public Safety Committee

Mayor Coss made the following appointment to the Public Safety Committee:

Benjamin L. Montano – term ending 03/2014.

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

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

Capital Improvements Advisory Committee

Mayor Coss made the following appointment to the Capital Improvements Advisory Committee:

Gilbert A. Romero – to fill unexpired term ending 11/2011.

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

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

H. PUBLIC HEARINGS

1) REQUEST FROM ESPIRITU, LLC,, FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) TO BE LOCATED AT PIZZERIA ESPIRITU, 1722-A & B, ST. MICHAEL'S DRIVE (YOLANDA Y. VIGIL)

The staff report was given by Yolanda Vigil, City Clerk, noting the business is not within 300 ft. of a church or school, noting there is an existing license, but the business has changed ownership, therefore they need to reapply. She said this business is required to comply with the City's litter and noise ordinances, and all alcohol consumption will take place inside the restaurant.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Wurzburger moved, seconded by Councilor Calvert, to approve the request from Espiritu, LLC, for a Restaurant Liquor License (beer and wine on-premise consumption only) to be located at Pizzeria Espiritu, 1722-A & B St. Michael's Drive, Santa Fe.

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 Wurzburger.

Against: None.

Absent for the vote: Councilor Bushee.

2) REQUEST FROM SANTA FE CAFÉ, LLC, FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY), TO BE LOCATED AT CAFÉ AT INN AT SANTA FE, 8376 CERRILLOS ROAD. (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. This business is required to enclose the outdoor premises, which was completed today. Staff said this business is required to comply with the litter and noise ordinances.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Romero moved, seconded by Councilor Ortiz, to approve the request for Restaurant Liquor License (Beer and Win On-Premise Consumption only), to be located at Café at Inn at Santa Fe, 8376 Cerrillos Road.

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 Wurzburger.

Against: None.

Absent for the vote: Councilor Bushee

- 3) **REQUEST FROM MARBLE BREWERY, INC., FOR A SMALL BREWER (OFF-SITE) LIQUOR LICENSE AND AN EXPANSION OF CURRENT PREMISE (TRANSFER OF LOCATION) TO BE LOCATED AT MARBLE BREWERY TAP ROOM, 60 E. SAN FRANCISCO STREET, SUITE 313. (YOLANDA VIGIL)**

The staff report was given by Yolanda Vigil, City Clerk, noting the business is not within 300 feet of a church or school. She said there is an existing small brewer's license at this location, but the expansion requires the owner to submit a re-application to expand. She said there will be alcohol consumption in the exterior portion of the second floor similar to the one presently at the Ore House.

Public Hearing

Trish Burgett was sworn. Ms. Burgett said as much problems as we have with liquor in this City, she is amazed the City just approves them as they have done this evening. She said this is the first time she's attended one of these hearings, or she would have spoken up sooner. She can't imagine approving more liquor licenses.

The Public Hearing was closed

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve the request from Marble Brewery, Inc., for a Small Brewer (Off-Site) Liquor License and an Expansion of Current Premise (Transfer of Location) to be located at Marble Brewery Tap Room, 60 E. San Francisco Street, Suite 313, Santa Fe.

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.

Absent for the vote: Councilor Bushee.

Councilor Bushee arrived at the meeting.

- 6) **CONSIDERATION OF BILL NO. 2010-20; ADOPTION OF ORDINANCE NO. 2010-12. CASE #2010-24. KURT SOMMER, AGENT FOR THEODORE ROGERS AND ELIZABETH ROGERS, REQUESTS REZONING OF .415± ACRES OF LAND FROM RC-8 (RESIDENTIAL COMPOUND, 8 DWELLINGS PER ACRE) TO R-3 (RESIDENTIAL, 3 DWELLINGS PER ACRE). (DONNA WYNANT)**

A Memorandum, with attachments, dated May 26, 2010 for June 9, 2010 City Council Meeting, to the City Council from Donna Wynant, Senior Planner, Current Planning Division, is incorporated herewith to these minutes as Exhibit "2."

The staff report was presented by Donna Tamara Baer, Planning Manager, Current Planning Division, noting staff recommends approval of this request. Please see Exhibit "2," for specifics of this presentation.

RECOMMENDATION: The Planning Commission on 4/1/10 recommended approval of the request to rezone .415± acres of land to R-3 (Residential, 3 dwellings per acre) based on Approval Criteria in Sections 14-3.5 SFCC 2001.

Public Hearing

Presentation by the Applicant

Kurt Sommer, attorney for the Applicant, was sworn. Mr. Sommer said all his clients want to do is to add a staircase which ultimately will benefit the neighborhood, because with the rezoning less homes possibly could be built in the area.

Speaking to the request

There was no one speaking for or against the request.

The Public Hearing was closed

MOTION: Councilor Romero moved, seconded by Councilor Wurzbarger, to adopt Ordinance No. 2010-12, approving the rezoning in this case.

DISCUSSION: Councilor Bushee said there was a comment in the packet that a neighbor expressed concern about the lack of adequate parking for the properties along the base of the street. She presumes that a lot consolidation would require more off street parking.

Ms. Baer said the parking issue had to do with a different property, and was raised because there was a common ownership. However, the Planning Commission determined it was a separate issue and shouldn't be raised in connection with this rezoning.

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 Wurzburger.

Against: None.

Explaining his vote: Councilor Calvert said he votes yes, based on the Findings of Fact and Conclusions of Law from the Planning Commission.

- 4) **CONSIDERATION OF BILL NO. 2010-10: ADOPTION OF ORDINANCE NO. 2010-13. (COUNCILOR WURZBURGER AND COUNCILOR ROMERO). AN ORDINANCE AMENDING VARIOUS SECTIONS OF ARTICLE 26-1 REGARDING THE SANTA FE HOMES PROGRAM IN ORDER TO INCREASE THE MAXIMUM INCOME OF ELIGIBLE BUYERS TO 120% OF AREA MEDIAN INCOME; TO ALLOW THE GROUPING OF SANTA FE HOMES PROGRAM UNITS; AND TO MAKE SUCH OTHER CHANGES AS ARE NECESSARY. (KATHY McCORMICK) (Postponed at the May 26, 2010 City Council Meeting)**
- a) **CONSIDERATION OF RESOLUTION NO. 2010-49. A RESOLUTION AMENDING THE ADMINISTRATIVE PROCEDURES FOR THE SANTA FE HOMES PROGRAM IN ORDER TO INCREASE THE MAXIMUM INCOME OF ELIGIBLE BUYERS TO 120% OF AREA MEDIAN INCOME; TO ALLOW THE GROUPING OF SANTA FE HOMES PROGRAM UNITS; TO ELIMINATE THE FIRST-TIME HOMEBUYER STATUS REQUIREMENT; AND TO MAKE SUCH OTHER CHANGES AS ARE NECESSARY. (KATHY McCORMICK) (Postponed at the May 26, 2010 City Council Meeting)**

Items 4, and 4(a) were combined for purposes of staff presentation, discussion and public hearing, but were voted upon separately.

A copy of proposed amendments to the Bill, submitted by Councilor Romero, is incorporated herewith to these minutes as Exhibit "3."

Melissa Dailey, Housing Planner, presented information regarding this matter from the Memorandum, with attachments, to the City Council and Mayor Coss, from Kathy McCormick, Director, Housing & Community Development Dept. And Melisa Dailey, Housing Planner, regarding the Santa Fe Homes Program Changes, which is in the Council packets. Please see this Memorandum for specifics of this presentation.

Councilor Bushee said she didn't realize staff was going to change the ordinance before it came back to the Council, and understands one thing is the addition of an amendment. She asked if we are

dealing with the original proposal, so that we can be clear about the clustering and all of that, noting the City didn't readvertise, it just postponed this.

Mayor Coss said the main change in the substitute draft was that the language on clustering was deleted.

Councilor Bushee asked if we are calling this a substitute draft.

Jeanne Price said there were several discussions between the staff and Councilor Romero, and then staff and Councilor Wurzbarger. She said issues came up as still being somewhat unresolved for the Governing Body, and those several issues have been distilled into the three amendment sheets before the Council – two were in the Council packet and one was handed out before the meeting [Exhibit "3"]. She said the two amendments in the packet are amendments to the proposed Resolution which are the procedures.

Responding to Councilor Bushee, Jeanne Price said the amendment which was handed-out is to amend the title – there would be a removal of language [Exhibit "3"].

Public Hearing

Mayor Coss gave each person two minutes to speak to the issue.

Rob Gibbs, Homewise, said he has also been a private non-profit builder, and has worked extensively on affordable housing with the City Task Force. He supports Councilor Wurzbarger's proposed changes. He believes it is appropriate going forward to help regain some of the home construction activity. He said these changes increasing the sales prices will help them to spread out losses, helps to make the increase on market homes less, and makes the price points more marketable. He said the change eliminating the first time buyer requirement is helpful with the 100-120%, because families who had purchased in the low 65-80% can now move up. He supports the changes to the ordinance, and looks forward to working with staff for any proposed changes in the future.

Ted Switzer, Habitat for Humanity, said producing affordable housing anywhere, particularly in Santa Fe, has always been difficult, and producing housing in these economic times has been very, very difficult. He said anything the Council can do to encourage homebuilding of affordable housing, in particular, is very much in order. He fully supports the changes as proposed.

Jeff Branch, developer in town, said he came before the Council a few years before on the Sierra Azul project, although that project of 222 lots has not yet been built, noting there was an annexation that night with 44% affordable. He said this doesn't affect them because this is done through an Annexation

Agreement. However, they do not support the clustering in their subdivision, because they like the mix. he has done 4-5 projects, all of which have a mix of affordable, with the exception of an apartment complex which is 100% affordable. He said it has been difficult to move forward on Sierra Azul because of the affordable component. He said some of the things proposed this evening will be helpful in this regard. He said the plat on Sierra Azul is ready to be recorded, and if he can get funding for infrastructure, he is ready to build 105 lots. He said with the banking situation in the community, he is unable to obtain funding for infrastructure, although hopefully, there is \$125,000 forthcoming from the CIP for infrastructure, but with a caveat to go up another 10% affordable which he cannot do. He is in support of the majority of the Ordinance changes this evening.

Brandon Jones, Vice President, Pulte Group, said he supports all of the proposed changes. He said the elimination of first time homebuyer requirement will provide an additional opportunity to attract people from the North Rio Rancho area to come here, as well as others working in Santa Fe who live elsewhere. He said there is a backlog of homes currently for people who qualified for the Homes Program, but chose not to buy because of the lien. This allows them to take credit for selling to an affordable buyer. He said it is "our company's intention to do everything in our power to have folks who work in Santa Fe, live in Santa Fe, and these changes help us to do that."

Kim Shanahan, Executive Officer, Santa Fe Area Homebuilders Association, said he commends the Council for this Ordinance, which the Association fully supports. He said, in the spirit of negotiation and compromise, the clustering component of the Ordinance should go away, and he doesn't believe it is an issue. He hopes this Council will see that what we're about to do is a step forward if we are to get the industry and the economy back on its feet. He said all of the previous speakers are members of the Association. He said we are talking about homes of \$300,000 and less in talking about up to 120% of AMI. He said the sad reality is that two of the previous speakers may be doing virtually all of the 100 affordable homes over the next two years, and the incentives we will be offering will go to two builders – one for profit national builder and one very competitive non-profit builder. He said he has 50 builders who would be happy to build two homes. He said we need to think about how to do this so we can build locally – greener and better. He said these are good things being considered. However, he wants the Council to go right back to work for creative ideas to get our workers and builders back to work.

Sharon Welsh, SF Community Housing Trust, commended the Council and Staff, for their work on the ordinance, and said the recent changes are improvements. She had a problem in reducing the number of units, theoretically, available to people under 80% of median, because the waiting lists are large for that segment and "not for the other 80% segment." She believes this is the best solution for causing more supply to occur, and so in that way, she supports the ordinance. She is sorry there is no relief provision for non-profits, because that skews their way of doing business, because they don't have a profit side. She said the Housing Trust is dedicating to serving people below 80% of median. She said

they pay the City for the second mortgages they have been providing, but there is no credit for that on the books after the fact for doing so. She said she discussed this with McCormick and staff, and they have been very reasonable in working with them on waivers for smaller issues. She said most people are not aware that the risk feature is so much higher than two years ago.

The Public Hearing was closed

PROPOSED AMENDMENT TO THE PROPOSED ORDINANCE. Councilor Calvert noted there are amendments on our desk for Item H-4, and appreciates staff trying to purge the ordinance from the clustering. However, they missed one on page 7 of the ordinance, Section D on line 13 and lines 15-17. He said he appreciate staff encouraging an ordinance change on clustering. Councilor Calvert would like to amend the ordinance to strike that language.

Ms. Price said page 5, beginning on line 25, starts Section 4 of the bill, and all of that section of the bill, if we change out the middle of page 7, there are no other changes to that whole section of the bill, so we don't need that section of the bill.

Councilor Calvert said he understands, but it says "On page 5, beginning on line 25 and continuing through page 7, line 2," and this appears at page 8.

Ms. Price said it should be through page 8.

AMENDMENT TO PROPOSED AMENDMENT SUBMITTED BY COUNCILOR ROMERO
[EXHIBIT "3"]. Mayor Coss said then Amendment No. 1, should say, "On page 5, beginning on line 25 and continuing through page 8, delete Section 4 of the bill."

Councilor Calvert referred to the amendment sheets in the packet, regarding Amendment 3(b), which provides, "The lien described in this section shall not apply to any SFHP Home if the affordable home price is within \$10,000 of the appraised value." He believes that should be "market value," instead of "appraised value," noting this would mean the market would be 95% of the appraised value, so there would be a \$9,500 difference instead of \$10,000. He said everything else in the paragraph references the market value.

Ms. McCormick said staff was intentional in saying it was \$10,000 of the appraised value and not market value, because the market value is the basis for which they calculate what the shared equity lien would be, if any, on the program.

Responding to Councilor Calvert, Ms. McCormick said they typically take the appraised value and then 95% of that becomes the market value for purposes of calculating everything that happens after that. If the home appraised at \$100,000, and Homes Program price was \$95,000, it would be within \$10,000 of the appraised value, therefore no shared equity lien, no other calculations would be required for the program home. She said in Item 3(b) staff intentionally said "appraised value." She said it is a confusing

part of the program, as to whether or not a shared equity lien would be required.

PROPOSED AMENDMENT: Councilor Calvert wants to amend to include some language on tracking. He said part of the idea is to keep money in the local economy, but where we are waiving the lien, he wants to be people stay, and don't just flip the house when the economy improves and prices increase. He wants to see tracking on the program to see the longevity of the people who buy these homes. Ms. McCormick said this can be done easily by placing some sort of deed of trust on the home which would tell us when the house was sold. That's how we would track it.

Councilor Dominguez said one of the discussions at Committee, was the possibility of extending the warranty for affordable homebuyers, but we never got an analysis of that. He said, for example if someone buys a home in November, by the next November there could be issues which could contribute to more expense of fixing the system, but the warranty has expired. He asked if staff did any analysis of potential costs.

Ms. McCormick said the only discussion among staff was it was felt there would be continuing work on the Homes Program over the course of the year, but that wasn't included in these changes. She said it may be possible to escrow additional dollars to carry a home warranty into the second year, in addition to the one year warranty provided by the homebuilder. She said staff will continue to look at this issue

Councilor Dominguez believes it would be beneficial to have something like that, because there are plenty of homebuyers who have had that experience of having that added expense.

Councilor Dominguez referred to page 3 of the Memorandum, regarding the items summarized in comments provided by various people in the community. He asked, with regard to eliminating the first time homebuyer criteria, the rationale behind this. He said the definition of a first time homebuyer is built in. He said the changes provide an opportunity for people who may have, for example, moved to Rio Rancho, to move back to Santa Fe, and still fall under the first time homebuyer definition. He said it appears that the intent already is built into the definition of first time homebuyers.

Ms. McCormick said that provision is focused only on essential works. She said this definition allows it to be for anyone as long the person meets all other income and asset requirements.

Councilor Dominguez said he doesn't have a lot of heartburn over this, and understands the intent is to open up the market to get more people interested in purchasing a home in Santa Fe. He said what is provided is a decent attempt to get to that.

Ms. McCormick said part of this is also targeted to people who bought a Santa Fe Homes Program unit, their life circumstances have changed, but their income hasn't increased as much, but are prohibited from buying another SFHP unit. This ordinance change would allow them to buy another affordable unit,

without having to move to Rio Rancho. She said she has this situation on her own staff, so she knows this is a real concern.

Councilor Dominguez asked if we are actively recruiting to help people to move up.

Ms. McCormick said she has done nothing until this is adopted.

Councilor Dominguez said he is speaking of what is already provided without these changes.

Ms. McCormick said yes, they have worked closely with Homewise on its employer assisted housing program which is an extensive effort to work with local employers to create opportunities for employees to at least consider purchasing in Santa Fe, and over 100 employers have signed up for that program. She said we were successful in getting 3-4 policemen to purchase in SF County, not necessarily in Santa Fe City proper.

Councilor Dominguez said he is unsure about the addition of the 5th tier. He understands the economics and the intent of the proposal. He asked if this is being done purely to be consistent with the County's program. He said, without understanding the County's program, the County may have different needs and a different program and different tiers which are designed to attract people. He doesn't have a lot of heartburn about this, but sometimes it may not make sense later down the road.

Ms. McCormick said there usually isn't just one reason to do something. The first was how to put the City and County programs into greater alignment, and one of the things they considered were the sale prices in looking at the 5 tiers. She said an important back check is that they also are looking at this as a small economic stimulus for Santa Fe, which are two wins. The buyer can be qualified to be in the City or County program and the developer can build across more price points. She said Melisa will be doing a review of the program in 18 months with regard to the success of this change.

Councilor Dominguez asked if this provision will sunset in two years, or if we will just review it in two years.

Ms. McCormick said it is structured to be reviewed in two years based on analysis of the effectiveness of the changes, noting the sunset was for the clustering provision.

Councilor Bushee said she is not convinced that the 5th tier is a stimulus effort, and she is concerned it would take away from the first two tiers, in terms of resources. She asked Sharon Welsh and Mike Lofton to comment, noting Homewise is quoted on page 3 as saying this is a critical step and quick economic stimulus.

Mike Lofton said his comment was on the overall package of changes, which he thinks are critical to stimulating affordable housing and the economic benefit that comes with that and agrees with Councilors Dominguez and Bushee that the biggest need in the community is below 80%, and the 5th tier

brings availability down to 15% and he would prefer to keep it at 20%. He said the maximum price that can be charged is actually above current market price in most of Santa Fe, so you won't be able to get that price, and will sell it lower, because that's the market right now, given the economy. He said Homewise helps people up to 120% of median which is an important part of the work force, and they are very committed to that. He said currently, the market is serving that segment quite well. He said, however, it is a good thing to watch. If the market changes and home prices escalate, that could become part of the market that isn't being served. He would like to see the current tiers to stay in place without changes, but he believes all of the other changes are real good.

Responding to Councilor Bushee, Mr. Lofton said when the market was hot and the prices were high, they were very worried about people in the 5th tier being able to buy a home, but that isn't true now, and they are able to buy homes.

Councilor Bushee asked if she should be concerned that it will negatively impact the group served primarily by Ms. Welsh.

Mr. Lofton said yes, because it will reduce the number of homes available to people below 80% of the median income – you have reduced the amount of affordable housing where the need is greatest.

Councilor Bushee said it is her belief, to get more people into homes at the lowest income level, we need more down-payment assistance and to stimulate the economy, we need funds to build infrastructure for affordable housing, and is glad we're using CIP bond funds for that purpose. She remains concerned about the unintended consequences of adding the 5th tier.

Ms. Welsh said she agrees with everything Mr. Lofton said, and it does reduce housing for people below 80% from 20 to 15% by this action. She said, however, if it stimulates more supply to occur, then we haven't lost, because 20% of zero isn't as good as 15% of something. She pointed out that most of the developers verified that they don't have a market for those price points. She said if the property is a very choice property where there is a significant difference between market value, then there is more demand for it. However, if it is close to market value, why would people submit themselves to unnecessary procedures if you could do the same thing as market.

MOTION: Councilor Bushee moved, seconded by Councilor Wurzbarger, to adopt Ordinance No. 2010-13, with all the new amendments and the proposed staff changes, to strike the 5th tier language, and with the new amendment proposed by Councilor Wurzbarger.

DISCUSSION: Councilor Bushee believes 18 months is a good time frame to look at what is happening in the market and what we need to do, and would be willing to look at a new tier at that time. She asked that the people speaking this evening look at creative ways to create more down-payment assistance, and challenged everyone to get creative.

CLARIFICATION OF THE MOTION: Councilor Wurzbarger asked if the motion includes the amendments

proposed by Councilor Calvert on page 13 of the ordinance and the amendment regarding tracking. Councilor Bushee said yes, it includes all amendments, noting she is recommending eliminating the 5th tier.

Councilor Chavez asked Councilor Wurzburger to state her amendment for the record.

Councilor Wurzburger stated that her proposed amendments are the two pages of amendments in the packet dealing with the issue of the \$10,000, the removal of the lien, to give compatibility to homes under the Homes program and market homes – on pages 42-43 of the packet.

FRIENDLY AMENDMENT: Councilor Chavez said his concerns have been addressed – the first time homebuyer portion and clustering. He said the first time homebuyer component was the cornerstone of the program. He said we need to follow those as we track this program. He is unsure, in making these changes, if we will be able to entice someone living in Rio Rancho to move back or to move to Santa Fe. He said in general it's good to review ordinances and he would like to see a one year review instead of a two year review. **THE AMENDMENT WAS FRIENDLY TO THE SECOND. THE AMENDMENT WAS FRIENDLY TO THE MAKER WITH THE COMPROMISE THAT STAFF WILL MONITOR THE PROGRAM AND COME FORWARD IMMEDIATELY WITH ANY NOTICEABLE CHANGES, AND WITH A FORMAL REVIEW IN 18 MONTHS. THERE WERE NO OBJECTIONS TO THE FRIENDLY AMENDMENT BY THE OTHER MEMBERS OF THE GOVERNING BODY.**

Ms. Dailey said staff does track things, and if the ordinance is adopted, staff will speak with our housing partners and they will begin tracking immediately. She agrees with Councilor Bushee that staff will start analyzing at 18 months. If there is a glaring problem or issue in the interim, staff will bring that forward to the Council. She said it is anticipated that staff will be bringing more items to the Council prior to the 18 month time period.

Councilor Chavez said we will have to start reviewing the program starting tomorrow. We are adjusting to the market now, and the reason we did the Homes Program 15 years ago was to adjust to the market, and we are always going to be adjusting to the market. The market versus the appraisal will determine who is going to buy a house when and where. Councilor Bushee said we were trying to jumpstart the market initially.

Councilor Chavez said this only will be a stimulus to the City if we keep every penny of the money here in town, and that's a big if.

FRIENDLY AMENDMENT: Councilor Romero said she was comfortable with the two years, but can agree with the compromise to 18 months. She proposed to amend the motion as follows: "Staff will monitor the program and make regular reports to the Governing Body with a more formal review at the end of 18 months." She would also like to include language for a discussion on the extended warranty at the end of 18 months. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND THE SECOND, AND THERE WERE NO OBJECTIONS TO THE FRIENDLY AMENDMENT BY THE OTHER MEMBERS OF THE GOVERNING BODY.**

Councilor Dominguez he likes the 18 month tracking period. He said we would like the market to move within one year and we would see some changes, but he doesn't think it will happen that quickly.

CLARIFICATION OF THE MOTION BY THE CITY CLERK: Ms. Vigil said Ms. Price is recommending that the tracking language be included in the Resolution rather than in the ordinance.

VOTE: The motion, as amended, 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.

MOTION: Councilor Romero moved, seconded by Councilor Bushee, to adopt Resolution No. 2010-49, with the proposed amendment on tracking and Councilor Calvert's amendment.

FRIENDLY AMENDMENT: Ms. Price said the reporting thing is one of the amendments from Councilor Wurzbarger on her sheet, asked if that can be amended to include the provision on tracking. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE GOVERNING BODY.**

CLARIFICATION OF THE MOTION BY THE CITY CLERK: Ms. Vigil asked if the motion includes the amendments in the Council packet, and Councilor Romero said that it does.

VOTE: The motion, as amended, 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.

Mayor Coss thanked Councilors Wurzbarger and Romero and the City staff for their work on this issue. He also thanked the building community and affordable housing community for meeting with us and working on this as well. He looks forward to some home building in Santa Fe.

- 5) **CONSIDERATION OF BILL NO. 2010-16: ADOPTION OF ORDINANCE NO. 2010-14. (AN ORDINANCE REPEALING CHAPTER 27 SFCC 1987 AND CREATING A NEW CHAPTER 27 SFCC 1987, REGARDING TELECOMMUNICATIONS SERVICES. (KELLEY BRENNAN)**

A packet of information titled "Exhibits for Bill No. 2010-16," submitted for the record by Kelley Brennan, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "4."

A proposed amendment sheet with two amendments to the bill, submitted by staff, is incorporated herewith to these minutes as Exhibit "5."

A copy of "Concerns Addressed on Flyer Titled: 'URGENT: PUBLIC HEARING,' Bill No. 2010-16," submitted for the record by Kelly Brennan, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "6."

A copy of the Statement for the record by Betsy Millard, submitted by Betsy Millard, is incorporated herewith to these minutes as Exhibit "7."

The staff report was presented by Kelley Brennan from the materials in the packet, describing the public input process, noting the misinformation in the flyer is addressed in a chart and refers to the ordinance by page and line number. She hopes the description of the process will clarify some of the questions which are raised in the flyer and have been raised throughout. She said the ordinance addresses only telecommunication facilities in the public right-of-way, and does not address telecommunication facilities on private property or public property that is not public right-of-way, such as parks or private utility easements. She described the three-step process for obtaining a franchise from the City. Please see Exhibits "4," "5," and "6" for specifics of this presentation.

Public Hearing

Mayor Pro-Tem Wurzbarger, temporarily presiding on behalf of Mayor Coss, gave everyone two minutes to speak to the issue

Speaking to the request

Leo Baca, Director Government Relations, Qwest in New Mexico, said Qwest opposes the ordinance. He said Qwest met with City staff to review the ordinance, and we were asked to provide specific changes. He said, however, the problems with the ordinance go far beyond a word here or a number there. The ordinance as a whole is harmful to Qwest and to the citizens of Santa Fe who are Qwest customers.

Mr. Baca said, "If this ordinance is passed, phone bills will increase. Increases to residential and business customers will be between 1 and 3% according to this ordinance, and that would be on a larger base than what is currently there. So, our phone customers will see their bills increase. As a couple of examples, the Santa Fe Public Schools will see an increase in its phone bill of at least \$580 per month, and that was before I got more information today that some recent services that they purchased from Qwest that aren't currently taxed, with the franchise, could triple that to up to about \$1,500 per month, in

addition to what the schools already pay today. That's a month. The City of Santa Fe will see an increase in its phone bill of about \$1,000 per month, just with this fee as proposed in the ordinance. It's because it's applied to a larger base."

Mr. Baca continued, "The ordinance is not competitively neutral. Wireless and cable company voice phone customers will not pay the fee, while Qwest customers will see the increases that I've just noted. There is a \$2,500 fee for application to the Land Use Department. This fee does not exist in other municipalities in New Mexico. Last year, Qwest did over 100 jobs in the Santa Fe area to place fiber and copper facilities to our customers. If this fee were in place, that would be about a quarter of a million extra that we would have to pay to provide facilities to our customers in New Mexico. Again, no other city does this. The City of Santa Fe does not have to pass this ordinance in order to comply with the FCC. The FCC requirements are for cell tower applications only, not land line applications. Thank you."

Brian Harris said, although he works for the Attorney General as a telecom specialist, he is here as a private citizen of Santa Fe. He said although he has spent most of the past 7 years litigating against Qwest, he agrees with Mr. Baca. This ordinance isn't "ready for prime time" yet. He said telecommunications is a basic utility like clean water and electricity, and is an essential building block to wealth. The ordinance seems designed to maximize revenue for the City, which is all "well and good," but it is a little early for that. He urged the Council to step back. He said there is a lot of energy and there are a lot of specialists in the community, and you will hear from them, urging you to postpone passage of this bill, and to work it a little more, to create an ordinance which removes the toll booths which will be an impediment to wealth creation for Santa Fe and will help the City to develop an ordinance which will benefit its citizens more. He said there is a lot of energy in the community that is willing to sit and work on this ordinance, and he urged the Council to please continue to work on the ordinance and not pass it now. He said Mr. Baca was correct when he said that federal law does not compel passage of this ordinance right now. The 90 day deadline for consideration is tolled when an applicant comes in to site cell towers, and we're not yet at that stage. He urged the Governing Body to postpone consideration, and work with the members of the Santa Fe Complex and other citizens, and we can develop the ordinance which best serves the citizens of Santa Fe.

Nadia Brent Lukes said, like much of the public, she is feeling suspicious and cynical of any corporations wanting to come into Santa Fe. She is here to support Councilor Chavez who, she understands, is urging a moratorium on this. She would appreciate it if more time was put into investigating it before the ordinance is adopted.

Giselle Piburn said she is against giving these corporations more access to our homes, neighborhoods, schools and parks. She is particularly against having access to our homes through easements as well. She would like more time to continue looking at this. She said she isn't a specialist on this, but she wants to hear more about that. She said many families have young children and it is difficult

for them to attend this evening to voice their concerns. She suggest that we could provide an opportunity for people to provide written comment so people can cycle through more quickly.

Simon Brackley, President, Santa Fe Chamber of Commerce, he said as pointed out by Ms. Brennan, fast affordable, broad band is the number one determinate of small business success in the United States. The Small Business Administration found that fast, affordable broadband is the number one determinate for small business success. He urged the Governing Body to do whatever they can to remove obstacles to fast, affordable broadband in Santa Fe. He said, "As Mr. Baca pointed out, at the very least, this is going to keep rates lower for individuals and businesses in our community."

Ed Angel, Board Chairman, Santa Fe Complex, said as you know, you have seated them as an entity to broaden and diversify the economy of Santa Fe, so they are very concerned with broadband access and its importance for the economic development of the City. However, they have put together a group of experts to look at some of the issues concerning this proposed ordinance, and find many technical difficulties with the ordinance in the packet. Specifically, they are recommending that the Governing Body delay any approval of the ordinance until those issues are dealt with. Secondly, they are very concerned that there is no Telecommunications Master Plan in the City, and we are doing this without the context we need to really develop a plan that will be best for all citizens of the City. He said the third general recommendation is that they are volunteering the Complex and the group of experts in expanding it and hope they can work with the Council and others over the summer and into the future, to develop a much better plan than is in this ordinance.

Betsy Millard, resident of District 2, said she is relieved to see the number of people in opposition to the ordinance, noting she is concerned about the possibility of the installation of more cell towers and antennas being installed in residential districts. Ms. Millard spoke against the proposed ordinance and advocating an ENN and more public input. A copy of Ms. Millard's statement is entered for the record [Exhibit "7"]. Please see Exhibit "7" for specifics of this presentation.

Pat Simons, Casa Solana, said the lady who first spoke this evening, said she would speak to you privately about misconceptions as to this, and asked why this is not before the public. He is asking her to come up here in public and see if she can refute some of the issues. The second question is the safety of being exposed to electromagnetic fields. He read years ago about police officers who would drive around with their radar guns in their laps, because they were told it was safe, but there was a rise in testicular cancer among policemen driving cruisers. He said, "Asking the industry to assure us that it is safe is like asking the cigarette companies, as people did for years, that there's no viability of cancer." He said it is the fox driving the henhouse, and the way it is presented is "like Haliburton's no bid contracts." We're here after the permits are permitted. He doesn't know anybody who has had problems getting communications in Santa Fe. He said it is a little slow, but he doesn't care for the highest broadband. He

asked what this is really about. He said it seems like something for the industry, and asked what it does for the businesses in Santa Fe. He supports "Councilor Chavez here on this."

John Brown, President, CityLink Fiber Holdings, Applicant, said he is one of the applicants who has been looking to build an open access, public neutral, fiberoptic network in Santa Fe. He has submitted many emails and comments to the City Attorney's Office, but has received zero responses. He said there have been no response to his queries about concerns he has with the ordinance.

Mr. Brown said, "Earlier this evening, I was told by one of the City staff, that one of my major concerns, my interpretation of the written word was incorrect and that they will be happy to give me changes to that after the vote tonight. I think that if we're going to vote and pass a bill, that the language should be in there and should be correct. Specifically, I draw attention to page 38 of the bill as posted on the website today, which is going to be the Land Use Section 27-2.13 (G) Fee Applications. And, I will quote, 'Applications shall be accompanied by a non-refundable fee of \$2,500, or the fee established by the Governing Body for the development plan review, whichever is less, for applications showing multiple phases or locations, this fee shall be charged for each phase or location.' "

Mr. Brown continued, "As the words are written today, if I go build a fiberoptic ring around Paseo de Peralta, I will pay \$2,500 for that fee. I don't have a problem with that. Tomorrow, if I come and I hook up a house, according to this language, that's new construction, I will now have to pay that \$2,500 fee. Qwest will have to do that as well. I urge this body not to pass the ordinance as written, tonight, and to work with the industry and the community in getting a good, sane, reasonable bill put together. Thank you."

Elena Benson said she has over 20 years in industry of working around the world and in major cities within the U.S. She is urging the Governing Body not to vote tonight to pass the ordinance, until we have a telecommunication plan. In instances where she has worked with various municipalities and countries, telecommunications have gone in and put in infrastructure where it is best for them, not for the community, the City, but what is economically advantageous for the company. She strongly recommends the City doesn't pass this plan until the City has a plan. She said, otherwise, other than John, they just want to target one section of the City, and are not targeting the businesses nor the underserved in Southwest Santa Fe, and are just going for the North. She said, without a telecommunications plan, others will do the same. She strongly urged the Governing Body to delay the ordinance until there is a coordinated telecommunications plan to benefit the City.

Richard Lowenberg, Lead Communications Planner, contracted by the State of New Mexico, said he has been working on state-wide efforts of this nature. He said his comments are included in the packet as part of the Santa Fe Complex comments. He does not believe this ordinance is ready to be passed at this point. It is incomplete, and in his mind, undermines the City's ability to achieve what it really

hopes to achieve, as well as undermines our ability to achieve many of the things for which the federal plan and the State's integrated strategic broadband plan advocates. He said we're not ready, and he advocates that the Council take at least the summer to work on coordination with Land Use, and to initiate a communications master plan which is an over arching approach to making this and other decisions which will impact our economic and network future.

Arthur Firstenberg, District One. Mr. Firstenberg said he has seen the response of staff to the flyers they have been circulating and thanked Staff for responding to one of the points by eliminating private easements from the definition of public rights-of-way.

Mr. Firstenberg said, "The other points on the flyer have in no way been adequately addressed. I will raise three of them right now. Public hearings on antennas will occur only after the franchises are awarded. This is from 27-2.13(F). 'After approval of a franchise and prior to construction, the provider shall submit an application to the Land Use Department for review by the Planning Commission.' The City Council approves the franchise first without knowing where any of the antennas will be and then the Planning Commission holds a hearing. Second, antenna and tower locations can be changed after the public hearing with no further public notification. This is from Section 27-2.13(L) Modifications that 'do not materially alter the approved telecommunications plan may be approved by the Land Use Director. Relocation of a single antenna to an adjacent structure along the approved route is not a material alteration.' If the route changes, that receives a new public hearing. If antenna location changes, it doesn't. Three, towers and antennas in historic districts will no longer have to be approved by the H-Board. This is from Section 27-2.13(C)(5). 'Facilities in Historic District shall be reviewed by the Historic Preservation Division staff.' There is no provision for review by the H-Board. In summary, the whole public hearing process in this proposed ordinance is a farce. It shouldn't be passed. It's not ready. Thank you."

Victoria Jewett, District 2, said she is most concerned about antennas which would sprout up in neighborhoods. She said neighborhoods currently are protected, because antennas require special permitting. The new ordinance would bypass ENN and a public hearing, and allow the City to approve hundreds of antennas at once, administratively, with minimal public participation. According to Section 27-2.13, "preference for not residential locations would be waived if it is necessary to assure continuing service coverage by the applicant at the same level, or to close a significant gap in coverage." Since none of the applicants currently have any antennas in Santa Fe, the preference for non-residential locations will be waived for all of them. Another consideration for granting a waiver is to increase the affordability of telecommunications services through competition. These are not low power antennas. ExtaNet Systems submitted a document to the City, specifying that the pilot EIRP of each antenna is 39.1 to 41.1 DBMs which is 8-13 watts and the pilot channel and it's 15% of the antenna's total power. What this means is that the total power of each antenna is between 55-85 Watts. By comparison, a Wi-fi hot spot in its 0.2 watts, the damaging biological effects of such emissions have been document in scores of independent studies. These powerful antennas do not belong in the City's neighborhoods, and not by franchise, certainly.

Mike Ripperger, Telecommunications Bureau Chief, Public Regulation Commission, said he is here to speak as a citizen. He has been working with the Santa Fe Complex and supports their ideas. He said he thinks the City needs a master plan before moving forward, and does not believe a telecommunications ordinance should be passed prior to a land use ordinance, and those should be coordinated. He said if the City passes the ordinance now, with the problems it has, the City is in danger of piecemeal entry by providers. The City would wind up with a patchwork of availability of a variety of services to the citizens, and there will be "haves" and "have nots." There will be areas of good service with more advance services, and other areas they won't touch. He said it is an economic decision made by carriers where they will decide where to serve because it isn't worth going somewhere else. He urged the Council to take some time and allow them to develop a plan and map out what the City has. He said the Department of Information Technology already is working on broadband mapping. If there is no real urgency to pass this, he recommends taking some time and allowing them to get some experts together, bring in the public and the providers, and sit and map out something which really will benefit the City. He believes a short delay would serve the City well.

Betty Bird, District 1, said these towers are not low power antennas. She said ExtaNet Systems submitted a document to the City specifying that the "pilot EIRP" effective isotropic radiated power of each antenna is 39.1 to 41.1 DBM 8.1 to 12.9 watts. She said the pilot channel emits 15% of the antenna's total power. The total power of each antenna is between 55-85 watts. She said wi-fi hot spits emit only 0.2 watts. She said companies will be given blanket franchises to build unlimited numbers of antennas and towers on the streets and sidewalks – franchises for the purpose of installing "telecommunications facilities in the public rights-of-way," Section 27-2.2. She said the definition of telecommunications facilities in Section 27-2.3 includes "towers." She said towers up to 100 ft. tall will be allowed. Section 27-2.13(b) provides, "Telecommunications facilities located on the new structures shall not exceed the maximum height for buildings otherwise permitted as set forth Chapter 14 SFCC 1987." Since Chapter 14 allows towers up to 100 ft. tall in commercial and industrial districts, Section 14-6.2(e)(3)(x), franchises also will be permitted to build 100 ft. tall towers in commercial and industrial districts without the land use restrictions – setbacks, landscaping – currently in Chapter 14. She supports Councilor Chavez's request for a moratorium.

Virginia Miller, District 1, thanked the City for working on this and continuing to consider all options. She supports the general master plan as a good idea. She is concerned the Land Use Code will be repealed in the proposed ordinance. Section 27.2 will supercede the provisions of Section 14-6.2(e) which is the Land Use Code. She said the extensive provisions in the 14-6.2 are being replaced by Section 27.2.13 Land Use Review, which requires the City to minimize the total number of towers throughout the community. It has setback requirements, fencing requirements, landscaping and separation requirements – the minimum separation between towers is 1,000. The new Land Use Review provisions contain none of this. The private, wireless, telecommunications industry requires some restrictions, regulations and accountability. She wants the City to keep the Land Use Code and maintain City control of the telecom process to protect the life, safety and welfare of the community. One way to

help fiberoptics cable to remain viable is to have separate ordinances for cable and wireless. She urged the Council not to adopt the ordinance as is, and to keep working on it. She said we can do a better job.

Julie Tamborine said she is an advocate for seniors, people with disabilities and veterans, and runs a crisis team to help people with disabilities who are homeless. She is receiving an increasing number of reports of people who are losing homes or are homeless because of environmental sensitivities, including sensitivities to microwave. She is concerned that there is no place for these people to go once they lose their homes. Her hope is that the City Council will find a way to get the technological progress the City needs in a way that safeguards the health of all of us. She said we need to find a different way to do this together.

Bill Bruno said he knows the Council is not allowed to legislate based on the health effects of microwaves, but that doesn't mean we should have a bad ordinance or that we can't be smart about the ordinance. He just returned from the American Environmental Conference, and this year's theme was EMF sensitivity. Data was presented suggesting some people don't react at all to EMFs while others react strongly. He spoke about the different speakers at the conference. He said he supports the moratorium on the ordinance. .

Dan Piburn, body worker, and homeowner, said he is attending as a father who is concerned about the well being of his children. He said a wi-fi is 0.3 watts as opposed to what the towers will produce. He is very concerned, especially with regard to how many will be relegated to the neighborhoods. He noted ExtaNet Systems have applied for 89 locations in the downtown area. He is concerned about the incredible influx of wi-fi into the City, and we'll have very little to say about it, once this is passed. He said, "Let this be a cautionary tale that, not until this was passed in other cities, was it rescinded by a public outcry. Davis rescinded its previous approval of 37 encroachment permits, and Turtle Rock a population of 3,653 in Irvine County rejected the proposal. And in New York, there were a group of people that ended up suing for \$100 million, this is in Merrick, New York, after this was passed." He thanked Councilor Chavez for proposing a moratorium. He said they all support the moratorium until they have more facts.

Michael Collins said one of his main concerns are the children. He understands it has been substantiated that "radiofrequencies" are a danger to children and pregnant women, which is a concern in discussion about bringing the towers in or near City parks. He said the ordinance is not ready for prime time. He doesn't like the idea that hearings will be held only after the franchise is awarded and that tower locations can be changed after the public hearing with no public notification. The company will be required to submit plans to the City, but the public can't see them. He said the City has faced threats of lawsuits in the past and prevailed. He said the Council has shown courage in the past on things such as the Living Wage, and doesn't believe it should be intimidated by a corporation. He said he is concerned about the next generation and supports the moratorium.

Jan Boyer, Casa Solana, said she went to antennasearch.com., and found there are 14 cell towers and 202 antennas within two miles of her home. She asked how much is enough and how many layers we need. She said we really don't know about the safety of these things. She read an article in The Santa Fe New Mexican about this which was about a study which said it was safe. She said this is a study paid for in part by the telephone company. She has a lot of concerns. She supports the moratorium, and would like to see a general plan and for everyone to take more time with this before moving forward. She understands the reason it has to go forward, but doesn't think it is necessary to give so much power to "them" in secrecy.

Debra Corblough thanked Councilor Chavez for proposing a moratorium, which she strongly supports. She is an Holistic health care practitioner. Her main concern is the health effect of EMFs. She said we are doing a huge experiment on the public in blanketing the City with antennas and we don't know what the results will be. She urged everyone to search, noting there is a lot of information on this topic. She said it is irresponsible to pass the ordinance without doing serious research on the health effects, commenting that you don't have to be able to feel it for it to be damaging your body.

Robert Francis Johnson, said he was formerly employed by the Schools, and hasn't had his day in Court, and believes the newspaper has censored references to this, including letters to the editor. He said corporate wrong-doing is on his agenda. He said there is a DVD and book called "The Corporation," and advised the Council to view and discuss it. He said a small part of it is devoted to Fox News' investigation of Monsanto agricultural, which did no research and the research was fabricated. In response to Monsanto's threat to pull its ads, Fox News pulled the story. Monsanto took Fox news to Court and won, but lost in the review because case law is that corporations are not expected to be truthful.

Alia Dodie expressed support for the previous concerns which have been expressed, and for Councilor Chavez's call for a moratorium. She said she is a doctor of oriental medicine. She thinks more research needs to be done. She said the proposed fees of \$2,500 per franchise is about \$25 per antenna. She said Pittsburgh charges \$500 per antenna and \$5,000 per cell tower. She said Berkshire, New York charges \$5,000 per tower and \$2,000 to add another antenna on the same tower. She said if we are going to use this technology, we should set the fees a lot higher and \$5,000 per antenna is reasonable to protect our property values and our health. She said we charge \$2,500 per application for the fiberoptics which are underground would keep the beauty of Santa Fe, protect property values and is totally safe. She said this has caused CitiLink to abandon its application, and believes we should charge a minimal fee for fiberoptics.

Mr. and DiGristi just moved to Santa Fe from Italy for its beauty and health consciousness. He said he is part of the wave coming here that do not believe the antennas are healthy. He loves Santa Fe. He said the quality of life is esthetics and it is beautiful not to see antennas everywhere.

Nicole DeJurenev, President of the Casa Solana Neighborhood Association, said, "First we do not want antennas by our houses. She said she recently had a bad experience with Qwest when they tried to chop down a 50 year old, very rare alligator juniper. She said with the adoption of this ordinance the City would have no control. She suffers from several autoimmune diseases and an environmental illness, so if it becomes too toxic in this environment, she will have to sell her house to get away from it. She said, "So if you create a situation where I'm sicker, trust me, I'll sue you." She said "9 of you" should not be saying what is going to happen to the rest of this. She said this is a big deal and should go to a City-wide vote, and we should be able to see where the towers are, how high they are, and whether we approve of the location of the tower. She said, "This isn't up to Qwest and what is this. You're just giving it to Qwest. Is this something else you're just giving away. You're not putting this out for competitive bids. I don't get it. You should not be the sole people decide something about, in her case, that could make me very sick. So please, take that under advisement."

Marilyn Bayne, Old Santa Fe Association, asked the Council to review and modify the recommended process where these now would be going to Historic Division Staff and not to the Historic Design Review Board. It is of concern to the Association, and should be of concern to the Governing Body. She asked that the Governing Body maintain the purview of the Historic Design Review Board in reviewing these cases.

Leah Morton, physician, said she is frustrated because she feels she is under a gag because of the 1996 FCC regulations that health considerations and environmental considerations may not be considered by a City in reviewing the applications for trade with the telecommunications industry. There are other physicians here tonight who may feel similarly gagged. She is going to talk instead about the esthetics. She said, "I propose that we do go ahead and put an antenna on every 4th building in Santa Fe, and then the property values will drop 20 or more percent, and that would solve the affordable housing issue. I'm not sure it would work as an economic stimulus." She understands the constraints under which the Council is considering this issue and she feels constrained along with them.

Randy Bell said he is persuaded by previous comments, especially from the Santa Fe Complex, that there really needs to be a telecommunications plan in place so this isn't piecemeal, and there is some overall coherence in where we are going in this important technological process. He said it is clear that the ordinance as proposed has many defects which can't be resolved by a few strategic amendments this evening. He urged the Governing Body to vote for Councilor Chavez's moratorium, or table the ordinance for further work. He strongly feels the City needs to bring in an outside consultant with expertise in the technology and the statutory structure in order to make the ordinance work for the citizens of Santa Fe, and not just for the corporations involved. He said he got a copy of the chart "Responses to Public Concerns," and some proposed amendment language. He has procedural issues with due process. The public hasn't had a chance to look at the amendments and have adequate notice.

Mr. Bell continued, saying the #2 concern indicates that there is notice to be provided to property owners within 100 feet, but there is no public hearing which is unacceptable. He said #5 is something Marilyn Bayne addressed, the staff language attempting to deal with the Historic Design concern is completely adequate. The language, as it stands now, provides that approvals would be based on staff review along, and they go on to say that they could add that the staff could look at "additional guidelines adopted by the Historic Design Review Board." That implies that the Board will develop blanket guidelines for such telecommunication installations, but that is contrary to the Historic Design Review Ordinance. He said each individual item needs to be determined within its historic context, wherever it is going to be. He urged the Governing Body to defer action on the Ordinance.

Tanya Wells said she has lived in Santa Fe since 1988. She has been a renter the whole time, so she can't speak to the homeowner's issues. However, thanks to KSFR broadcasting the City Council, there's been many times when she's listened to the proceedings. She said sometimes it is a lot of minutiae. People coming with one home talking about a solar panel, and their neighbors and such. She predicts if the City goes down this path without more telecommunication guidance from experts, we will have those kinds of meetings about over-saturation. She signed a lease for an apartment a month ago, and there was no Wi-fi available. Now, 1-2 months later, there are 4 different Wi-fi options in her apartment coming from other residents in the building, but she can't use any of them because they are locked. She said if everyone gets it in the building there will be 24 private wifis. She can imagine coming here with our esthetic, health, and affordability issues. She said without a larger plan, the Council will be helpless in the face of the differing viewpoints. She urged that the Council maintain City control and regulate more on this issue. She doesn't want to wind up in the situation, for example, where many citizens believe that the gulf is being ruined because of lack of regulations. She said they had regulations, but were not following them, commenting the same is true for the coal mine and the Exxon Valdez which was a case of drinking on the job. She said no one can rightfully expect the Council to know all of the problems that might arise with this in advance. She said we can expect the Council not to give away its power to regulate.

Terese Zucal said she has heard so many interesting things said tonight it is overwhelming. She said the main thing that seems to be happening is misinformation. She said we were hearing from the Councilors that they have to vote tonight because of a 90 day deadline, but we find out that 90 day applies only after the ordinance is passed and the first applications come in. She said that is one area of huge misinformation. She said she went door to door on this issue, and heard from people about a wide variety of issues, and a lot of people don't know what's going on. She said when they were handing out the flyer, the City Attorney was telling them it was wrong information, but it wasn't wrong information and it is all correct. She hears there have been "addendums" to issues. She said one of which she doesn't understand, "Parks, open spaces and trails that are not located in the public right-of-way or other City owned land is not a public right-of-way." This is confusing and she doesn't understand. Another is that, "An antenna can't be placed in any City park, except in accordance with the requirement of the Land Use Director, but at this time there are no requirements in the Land Use Director's Office." She said we need

the time to make this right. She asked the Council to consider lower fees for fiberoptic, and higher fees for Wi-fi..

Ann McCampbell, physician, said she is a member of the Chemical Sensitivities Task Force. She echoes many of the sentiments expressed by previous speakers. She said as a practical matter, the way to keep this issue out of the courts will be not to vote yes or no on this, because a no vote likely will trigger a suit from industry, and a yes vote will trigger a suit from the community. She said the industry is not allowed to charge for attorneys fees and costs, but citizens can do so. She said taking this to court will engender ill will all around, cost a lot and won't get us where we want to go. She said the City has no many plans, but here's this big issue which won't go away that definitely needs a plan. She said it is completely losing control of the process, and doesn't know if it is because EMFs can't be seen. She said so far the Governing Body hasn't treated this matter as it should have been treated. She would like to see a task force, or working group put together with the stakeholders, and based on the testimony tonight, many of the stakeholders are willing to do that. She would like that group to work together to come up with a win-win solution. She said the current proposal is a "lose, lose, lose" situation all the way around.

Stefanie Beninato, District 2, said she supports the previous remarks, and she has concerns about the issue. She believes a master plan is needed before the City moves forward with the ordinance. She said we already have 200 antennas within a 2 mile radius of somebody's house, and asked how many more we need. She would strongly support that the Council delay the vote on this and allow the Santa Fe Complex to come forward as part of the working group, commenting the Complex seems very eager. She said the City is supporting them and should use their expertise and resources. She is concerned about the lack of participation, after the franchise is granted, as well as that the Historic Design Review Board loses all control over the esthetic issues. She said we now have a proliferation of TV dishes in the Historic zone, in front of the houses, which looks really ugly from the street, doesn't look historic, and aren't being screened at all. She asked the economic impact on tourism when people see all these towers downtown, noting there already are towers and dishes downtown. It looks ugly, doesn't make us seem different and encourage people to come here. She said there should be a separation of fiberoptics and the cell technology, because fiberoptics is safe and esthetically pleasing because it is underground. She is concerned that it will be allowed in the parks in accordance with exceptions developed by the Land Use Director, which can be done at any time without a public process. And, suddenly we'll have antennas in parks which concerns her in terms of health and esthetics..

Azlan White said Santa Fe has more intelligence per capita than most cities, or at least this is our reputation. She said the Councilors have the gift of speaking on behalf of this really intelligent population, and intelligence lets you choose win-win situations over everybody loses situations. This is an exciting time, and technology is exploding. She said the fiberoptics available is secure, inexpensive and lots of funding is available to build fiberoptic networks. She said creating a plan would be the intelligent thing to do. She said at the last meeting a lot of things were unclear. She reminded the Councilors that they are

speaking on behalf of their constituents and what they think and feel. She has talked to hundreds of people in Santa Fe about this and was at two town hall meetings, and only one person said he would like to have faster service. She encouraged the Council either to hold off on the plan, and the FCC has said a moratorium is a way to give yourselves more time.

Donato Coviello said this is the second week in a row he has brought a solution which is to reinstitute the Communications Technology Advisory Committee which was the committee which performed a review of the cable community 25 years ago. He said that company suggested a municipal fiberoptic utility 25 years ago. He doesn't understand why that committee was "killed." He said everyone is talking tonight about the City, the industry and the community should get together and develop a plan prior to adopting the ordinance. He said he doesn't hear any kind of review of customer service standards and how you will effectively influence these franchises after the fact. He said there is no public access when you start broadcasting shows over phone lines, and the City won't get a penny of franchise money. The cable company will then question why they should pay franchise fees when you aren't charging the phone companies franchise fees. He reminded the public that Santa Fe is a Charter City, and under the charter the people can come up with an initiative, an ordinance of our own. He said a very small percentage of people can repeal the ordinance, as well as initiate our own ordinance. And, if we see reason, we can "recall people on this thing." He said the structure of our City was meant for this issue. He said to generate interest, he believes the public should petition for our own ordinance.

Howard Bricher said he is a 15 year resident of Santa Fe. His one and major concern is for the health and well being of all of the constituency. He said this Council has the power, with a vote this evening, to bathe this entire community with radiation. He said, "I hope you have all done your research. I hope you have taken a look individually, Google if you have to, Google all the valid scientific studies which show without a doubt how this radiation affects human beings, particularly children with their thin skulls, pregnant women, frail seniors and health people. It is a big job for you to make a decision. Personally, I would rather you not make the decision. Personally, I think that every person in this City has the right to vote on this. They have the right to determine whether or not they, and their family and their neighbors would be bathed with this radiation, whether you would be informed first. I think it is your obligation not to vote for this, but to inform yourself and then inform your constituents and find out what they know about it. This is a big health issue."

Judy Herzel said she is a mother, an artist and a marketing professional. She said, speaking from her heart, this ordinance really frightens her and makes her scared and makes her lie awake at night. She's seen too many vibrant people in this community, who should still be with us, but aren't alive any more. She said the health risk of being near Los Alamos puts Santa Fe in a more vulnerable place, and it is a risk we all take into consideration to be here. And we make that choice, but as we make other choices where we have control, we should take that into consideration as well. She said she has appreciated all of the comments which speak to what a really City different we are. She said she wonders if there is a silver

lining in this where we take leadership and show the rest of the country and the world how to do this. She said Santa Fe sometimes has this strange thing where we act like this dumb little kid that doesn't know anything, and we're going to take orders from "up here" because we are a New Mexico smaller economy, when the population is "so not that, and so brave." She said we have the 2020 challenge of no waste, the first state to have ecotourism. She thinks this City should be the leader in doing this in a really healthy and brilliant way. She said we have something precious here, and we should design it the way we want this. She said we should choose the companies with which we want to work, look at their track record and design this so it works for us.

Joanie Arens, Concerned Citizens for Nuclear Safety, said she lives in District #1. She said CCNS supports the moratorium, the development of a master plan and fiberoptics. She said we need to keep the electromagnetic fields in wires. We can't continue to let them just go out into the environment, and we discovered that when considering whether to wire the libraries. She said people are committed to cell phones, but she doesn't have one, and has made a choice not to have one. She doesn't like going places where she can feel the radiation. She is very very worried about the children and echoes what others have said in terms of the research. She said it doesn't take much effort to find out what Europe is doing, and we need to protect our people.

Consuelo Luz, District 1, said she has been here in the Chambers before, and asked the Council please, please to listen to the voice of the people on this matter. She said her dear friend had to leave the area because of this issue, and moved to Bolivia recently because she couldn't withstand the electromagnetic and microwave which is taking over our community. She said we need to be wise and responsible about this, and let Santa Fe be an island of sanity. She said a recent report said bees are being destroyed by microwave energy. She said we have to make a choice at this point in our civilization on this planet, which is to choose life or whether to choose Santa Fe and death, and this certainly is on the vanguard of that. She urged the Council to listen to all of us and to do the right thing.

Erica Elliott, physician, said she has a family practice in environmental medicine. She said she is seeing a growing number of people with electromagnetic sensitivity which is a tragedy, and the distress they experience. She said she experienced a "taste" of that. A neighbor put up an antenna which was close to her house and she developed neuropathy, ringing in her ears and elevated blood pressure over the year the person lived there. She said after the neighbor moved away, the symptoms resolved right away. She said the symptoms of her patients are much worse and it is hell for them. It is a growing problem, and she urged the Council to do research to find out what unbiased studies have been done which aren't funded by the industry. She would like to see more focus placed on fiberoptics.

The Public Hearing was closed

The Governing Body commented, made suggestions and asked questions as follows:

- Councilor Dominguez said the City already has an ordinance in this regard, and asked what led to the need for the new ordinance, and if there is a sense of urgency.

Kelly Brennan said she does not believe we are operating under a 90 day deadline. She said she came into this matter after the Qwest case was decided which invalidated virtually all of the ordinance.

- Councilor Dominguez said then the court said that the ordinance prohibiting this is invalid.

Ms. Brennan said it virtually gutted the ordinance and we have been without an ordinance for an extended period of time. She said this Ordinance repeals the previous ordinance, repealing the provisions which the Court found to be invalid, and enacted a franchise ordinance in its place. She said the word "repeal," has been used in relation to Chapter 14. And she wants to clarify that the word "supercede" means, with respect to the franchise ordinance which is governing facilities in the public rights-of-way, the land use provisions in the franchise ordinance supercede anything in Chapter 14 that might otherwise apply, but it is still within the very narrow framework of the franchise ordinance in the public rights-of-way.

- Councilor Dominguez asked Ms. Brennan to talk about the 90-day provision or the "shotgun rule," or the "shot clock" provision.

Ms. Brennan said we are looking at this as governing our right-of-way and we are thus applying it to wire and wireless, because the installations in the right-of-way create obstacles, they create expense to the City.

Councilor Dominguez said he heard that testimony, and when he read the ordinance and the Memo it says wireline or wireless, and governing the rights-of-way.

Ms. Brennan said both of these things have equipment in the right-of-way and the City wants to regulate them.

- Councilor Dominguez said there is a concern about the south side and that this may allow access to technology on only one side of town and not the other. He quoted from Ms. Brennan's Memorandum, "The criteria for Commission review are set out in the Bill. They include a showing that the facilities are necessary to address a significant gap in service..." He asked if he is to presume an over-abundance of these kinds of applications on one side of town is not a legitimate reason to apply for the franchise.

Ms. Brennan said in that case, the Planning Commission would have the authority to turn down the application.

- Councilor Dominguez asked, without this ordinance and with the existing ordinance, if this means that a particular part of town may not have access to some broadband capabilities.

Ms. Brennan said the federal government is really depending on business competition to build out the nation's infrastructure, but there also a lot of communities that are exploring developing their own systems. She said the City and County of Santa Fe are talking about developing and working toward an open access fiber network which is a parallel course. She believes the people at the Santa Fe Complex have spent a certain amount of time on that. She said, as a side note, she agrees that a telecommunications plan is an excellent idea and would help guide the decision making process. She understands, from conversations with people who are interested in doing that *pro bono*, that they feel it can be done in 2½ to 4 months. She said we're talking about a process that is going to take some time.

- Councilor Dominguez asked if it means, without this franchise agreement, and with what is on the books, that it would be more difficult to provide broadband capabilities to other parts of town.

Ms. Brennan said she believes so, and doesn't think there would be the motivation to build out anything in the City.

- Councilor Dominguez said it has been said there is this idea that government, or somebody, will be making a lot of money off this, and with regard to the franchise fee supposes that will be the City of Santa Fe. He asked how that fee came about and why it is 3% and not 2% or another figure, and the application fee as well. As a follow-up, when Ms. Brennan says the application fee is to compensate the City for the use of the right-of-way for its costs to operate and maintain the right-of-way – what does “operating and maintaining” mean.

Ms. Brennan said those are the physical costs associated with the right-of-way – repair of streets, traffic control, all the things that go with operating the right-of-way after the improvements have been made, and during the construction and build out.

Ms. Brennan said originally Frank Katz had based our ordinance on Albuquerque's Ordinance, and he had specified 5%, because the cable fee was set at 5%, which was acceptable under the Ordinance. She said they looked at the fees in talking with Jonathan Kramer in California, a lawyer and expert, who was nice enough to view this *pro bono* and provide comments. Mr. Kramer said the fee which applies in the state usually is a good standard. She said after research, they learned Albuquerque was the only city with this kind of ordinance and fee. And the fee in year one is 3% of gross revenue, in year two 4% of gross revenue and in year 3 and beyond it is 5% of gross revenue. She noted Albuquerque defines gross revenue somewhat differently. She said they thought 3% was reasonable. She noted Qwest is now paying 2% on a local exchange service.

- Councilor Dominguez said then the fee is not arbitrary.

Ms. Brennan said, "We do not believe it is arbitrary."

- Councilor Dominguez said there is a mandate/requirement that franchisees must demonstrate that the facilities meet all of the applicable federal, state and local requirements, including federal safety standards. He asked how the City of Santa Fe can verify that accuracy, saying he doesn't know that the City has the expertise to make this determination, other than something that they or the FCC or somebody provides. He asked how we will follow up to see that they continue to meet those guidelines.

Ms. Brennan said we provided for a certification upon application and for an annual certification for which we have provided a fee to have monitored in paper work and to have field verification.

Jeanne Price said the certification and such is on page 43 of the bill in the middle of the page, where they talk about initial and updated certification, and the City would hire an independent consultant to review those.

- Councilor Dominguez said then the consultant is expected to be an unbiased expert who can verify the accuracy of the federal requirements regarding safety standards, and Ms. Price said this is correct.
- Councilor Bushee said she heard John Brown reference the fee structure, saying that we start with a \$2,500 fee and each permit would require another \$2,500.

Ms. Brennan said this is what Mr. Brown said, but staff does agree with his interpretation. She said there is no intent to charge \$2,500 to connect a network loop to a house.

- Councilor Bushee said we have heard that we charge way too little and also that we are ridiculously cost prohibitive. She asked Ms. Brennan if, in her mind, she feels they have to be treated the same in terms of fee structure.

Ms. Brennan said this is correct.

- Councilor Bushee asked if it is true that Albuquerque has a minimal charge for fiberoptic connections.

Ms. Brennan said she can't speak to that, but she believes the \$2,500 fee is charged in Albuquerque and Mr. Brown said he wouldn't have a problem with that for the network. He was concerned about having to pay that amount for each connection to a house.

- Councilor Bushee asked Ms. Brennan what she thinks Mr. Brown will have to pay.

Ms. Brennan said he will pay \$2,500 to apply for a franchise.

Councilor Bushee asked if this is a one time payment and Ms. Brennan said yes.

- Councilor Bushee asked Mr. Brown if he can speak to this issue.

John Brown said the City of Albuquerque charges a single one-time fee of \$2,500, and the only time he will have to pay \$2,500 during the life of his franchise. He said Albuquerque charges a flat 3%. He understands it is Ms. Brennan's intention that he won't have to pay \$2,500 each time he does construction – he is ecstatic to hear this and it changes his economic model to the positive. He would encourage staff to ensure that language is properly codified on page 38(G) of the Ordinance [packet page 65] which provides, "Fee. Application shall be accompanied by a nonrefundable fee of \$2,500 or the fee established by the governing body for development plan review, whichever is less. For applications showing multiple phases or locations, this fee shall be charged for each phase or location." The way it is now written, his interpretation and that of his attorney's is that he will have to pay the \$2,500 for each multiple phase or location.

- Councilor Bushee asked Ms. Brennan's interpretation.

Ms. Brennan said staff looks at this as equivalent to a development plan, and encouraging franchise applications to show different phases of development. She said Mr. Brown talked about building a loop around the Paseo and a loop out Cerrillos and called it phase 1 and 2. If he brought them both at the same time the fee would be \$2,500. If he brought in a loop around Paseo and then two years later he came back for an extension down Cerrillos, that would be another one. However, the connections from the main lines to individual houses would not require a fee.

- Councilor Bushee asked if Albuquerque treats wire and wireless differently in Albuquerque.

Mr. Brown said he hasn't paid attention to wireless because that isn't his business. However, he believes there is a power moratorium and there is a strict process for that. He said he doesn't believe Albuquerque treats wire and wireless differently, and are in the same ordinance process in terms of access and right-of-way. He said Albuquerque has another layer when it comes to specific land use when someone has to erect a tower and to obtain a permit for construction and to erect the tower. He said from a fee structure perspective, everybody pays 3%.

Ms. Brennan said PNM is charged \$2,500 when it comes to the Planning Commission with an application for anything over three poles. This is another reference point for the establishment of the fee.

- Councilor Bushee said she truly understands staff's position, and hopes it isn't because of the ticking clock which hasn't started, which she found frustrating in the first go-around on this ordinance. She understands the attempts to streamline the process so we don't mess up with the 30 day rule. She said she really took to heart some of the concerns brought by the Santa Fe

Complex. She understands we're here because Qwest sued the City and our ordinance was found to be overly burdensome. So, we moved from the leasing paradigm to the franchise paradigm which she finds streamlined. What is missing is the integration with some of the efforts that are built into the Land Use Code. She understands that staff doesn't want to go to both the Board of Adjustment and the Planning Commission. However, she doesn't understand bypassing the Historic Design Review Board. She said in the private world a special exception is required in all zoning districts and in the H-District, in particular, the requirements are for a landscape plan, traffic control plan, and more detail is available.

Councilor Bushee does not understand putting this on a Commission-based process. She said there is always an appeals process, and believes appeals from the Planning Commission will come to the City Council. She truly believes, in trying to pay heed to the federal government and its ticking clock, we have bypassed layers of review that would be helpful. She has concerns we really aren't integrating the land use issue by green lighting the right-of-way piece and saying it will supercede. She said this isn't going to go away, but she would like an opportunity for the people who really could offer some expertise from the community to have a stab at this in terms of trying to integrate Chapter 14 standards into this Commission approach.

Councilor Bushee doesn't believe we have time to put together a formally established committee. She has concerns which are similar to those expressed by those from the Santa Fe Complex. she believes we can do better and we can do more, and asked Ms. Brennan if she is saying the same thing.

Ms. Brennan said she would like to point to some of the things in Chapter 14. She said, for example, collocated antennas in residential districts can be approved administratively under the current Chapter 14.

Councilor Bushee said they also can't exceed the height of the existing pole, and Ms. Brennan said this is true in the new ordinance, and it is 100 feet in Chapter 14.

Councilor Bushee said language on page 16 of the Ordinance says, "The antenna shall not exceed the height limitation for the underlying or overlay zoning, unless the antenna is placed on an existing tower and structure and does not exceed the height of the tower or structure." Councilor Bushee said she doesn't believe the ordinance is ready for adoption.

- Councilor Chavez said staff determined that a franchise agreement was better than leasing the right-of-way, and asked if this is because Albuquerque is doing it that way.

Ms. Brennan said it is in large part because of the findings in the Qwest case and in a franchise agreement you are not creating an exclusive right in a piece of land as you do under a lease, and you are creating a non-exclusive right in the right-of-way and this particularly addresses the right-of-way.

Councilor Chavez believes that could be addressed in a master plan. He said part of the reason we are doing this is to provide service to those who want and need it. The other part is to generate revenue. He asked if we would be able to generate more revenue under the lease provision.

Ms. Brennan said she can't say how those things would compare. However, the franchise fee relates to two things: the cost of maintaining and regulating the right-of-way and the use of the right-of-way.

- Councilor Chavez said then it could be appraised and leased as if it was being rented. He doesn't think this is ready, and we need to look at other options, such as reconstituting the task force that was put in place for Comcast, as he suggested 2-3 meetings ago, and part of the reason he suggested holding town hall meetings. He said the public is a stakeholder and is engaged and willing to help us get to a better place, and believes we should accept their offer.
- Councilor Wurzbarger said she feels we have been working on the wrong question, and have been working on the technique. We were first driven by the demand that we had to respond to the federal government, but that is going away. She believes we need to focus on what we are trying to accomplish, what we need as a community, how much we have and project out a basic plan of what we need and what will be needed in the future in responding to the economic development of the community and the issue of safety .

MOTION: Councilor Wurzbarger moved, seconded by Councilor Calvert, to accept the very generous offer of the Santa Fe Complex to come back within 3 months with a structure of a strategic plan for telecommunications which outlines what it is we are trying to accomplish.

DISCUSSION: Councilor Calvert said he has a list of questions to ask, page by page, about clarifications, changes, and such, but he doesn't want to take the time to do that at this point. He doesn't want to dismiss the effort of staff, but he does think some of the work they've done will fit nicely into a master plan and perhaps there will be changes. He said we need that master plan as to how things will fit together. He said we need to remember that whatever we charge the developer is passed on to the constituency. He said if we charge a lot, they will pay a lot. He doesn't want to discuss the fee at this time. He wants to take advantage of the available expertise of the Santa Fe Complex, and the work already done, to come up with a plan that will work.

Councilor Bushee would like to give direction to staff for a baseline study which would analyze the current coverage which would provide a kernel of a plan, where we could then direct "him" toward where we want service.

Councilor Bushee said whatever Committee we put together, we may want to reinstitute a Communication Technology Advisory Committee to review these plans as submitted and advise us. It then can go before the Planning Commission as a recommendation, noting that the Planning Commission as the review body doesn't have the expertise in this area.

Mayor Coss said the Santa Fe Complex is being charged with developing a telecommunications plan in Santa Fe which the Governing Body has been unable to do for 15 years. He asked Ed Angel, Chairman, what would be the charge to the City and what would be the public participation process.

Mr. Angel said, "Realistically, in three months, we can come up with, starting with the group that we put together and adding more people who have spoken at this meeting, that we will be able to give you, not a detailed master plan, but an outline." He said the Mayor stated it quite well as to what are the right questions. He said, "We are not asking to be paid for this, and all the people who have been working on this are volunteers and all of them are committed to continue to work on it.

Mayor Coss asked if this includes the baseline study of where coverage is and where coverage should be.

Mr. Angel said, "If we start getting into that level of detail, I think we may need some technical help... [Mr. Angel's statement was interrupted by Councilor Bushee].

Councilor Bushee said the baseline study would come when there are franchise fees available. But, there is a requirement in the Land Use Code that a plan be submitted each time a tower or antenna has gone forward, and these plans exist and we should be able to understand what the coverage is by reviewing those plans. She said if someone comes in for a franchise, and we already have coverage, we can say, "That's not really where we want coverage. We want it over here."

Geno Zamora, City Attorney, said, "There are two issues and perhaps Kelly can elaborate on that proposal. I am not sure that you actually have the authority to dictate to those businesses where they locate or where competition does occur and where it doesn't occur within the City. So, I just want to give a little bit of caution on that. You may get an assessment of where holes need to be plugged and businesses may choose to plug those holes. Businesses may already have that information if they are actually pursuing a large business plan in Santa Fe. But, I just want to caution the Governing Body on leading with a statement to industry that the Governing Body will dictate where they'll be doing business."

SUMMARY OF ITEMS TO INCLUDE IN THE MASTER PLAN: Councilor Romero said it sounds like we are moving toward a master plan. She would like to include the existing conditions of where we sit today in the master plan, along with Councilor Wurzbarger's statement that it will be completed in 3 months, that a technical advisory committee WILL be formed, which would include a public involvement plan. **THERE WERE NO OBJECTION TO THE SUMMARY AS SET OUT BY COUNCILOR ROMERO.**

Councilor Ortiz said, "I do respect Councilor Wurzbarger's attempt at trying to get at what the importance is for the community. I will state, however, that this process began back in November 2009 and we have postponed consideration of this Ordinance now, it looks like twice. So from November 2009 to June 2010 is seven months, and with the 90 day extension, that's another ten months. Now granted, I was persuaded by some of the points raised by the Santa Fe Complex. I will say that the longer time this goes on, the more hysteria that gets generated by some of the issues that are related to this ordinance, and I find are

making some of what are very valid arguments, less persuasive. And I don't know if this extension of time is nothing more than just an ability by some people to just extend out the process."

Councilor Ortiz continued, "But we have been, and continue to be if the motion passes, legally bare when it comes to the City's enforcement of anything. As I think staff has pointed out, we don't have an ordinance in place now. We don't. It's been invalidated by the Courts. We are subject to legal challenge at any time by any provider and we take our risk when we do that. And, so while it would have been nice to have gotten this offer from the Santa Fe Complex when the first ordinance came about in November 2009, or when we postponed it the second time in February 2010, I guess we've got no place to go but to take their offer now and to see if it yields a better result, if they can, in fact, get stakeholders to the table."

Councilor Ortiz continued, "We've had hearings on this proposed ordinance at all City Committees and no representation by members of the public, not by any of the interested stakeholders. It's gone through a Committee process now twice, in which case, we have not received comments. We've had a chance to ask substantive questions about the ordinance – all of us have – all of the Committees that all of us sit on. To say that we need more time because this ordinance isn't ready, I think is to continue to punt this ball. And to use Councilor Calvert's analogy of the Railyard... when the City did the Railyard, the first thing they did is they acted. They purchased the Railyard and they moved to do something, and then they took the actions after the fact to come up with the master plan. And what we are continuing to do is to continue to push off that decision point. We're continuing to push off a process that is going to lead us, potentially, to some problems."

Councilor Ortiz continued, "I wasn't impressed with the first cut of this from the former City Attorney's review of the ordinance. I think at the time, I viewed Councilor Chavez's request for a moratorium, really, in light of the election cycle that we were going through."

Councilor Chavez said, "I had nothing to do with that."

Councilor Ortiz said, "I know, but I think in hindsight, the process that he really compelled, not by forcing a moratorium, because we've never brought that to a vote.. It's never come before any Committee. But just the fact that he scheduled the town halls, engendered the public comments, I think has brought a better process for that. And so I think that the additional time was well worth it, but I think it's time to act. I think we need to come up with some kind of decision point. So, I'm still not convinced that three months is entirely necessary. I'm not convinced that this motion is absolutely crucial, so I'm going to be opposing the motion."

Councilor Dominguez asked if we have the ability to give an entity business without going through some sort of process.

Mayor Coss said we do if they're working for free.

Councilor Dominguez said, "We're paying them already, so I'm just trying to figure out how that works, in terms of procurement, and making sure that there is no perception that there is any wrongdoing or anything like that. I just want to make that clear."

Mr. Zamora said, "Currently, there is not a valid ordinance in place that allows broadband and telecommunications providers to utilize the right-of-way to provide competition in these services."

Councilor Dominguez said the question is what if there is another group that wants to do this planning for us for free, and are we going to offer that opportunity as well, commenting that nobody has stepped up to the plate to do that. He wants to be sure that there isn't some ordinance, regulation or law that says we can't give business away like that, even if it is for free.

Mr. Zamora said, "You raise a valid question, and I hate to bring up a trite expression, but sometimes you get what you pay for. I don't mean that to be an insult. I mean that to be there are a lot of good and qualified people willing to give free advice and add free things, but you do have to make a decision at some point if you are going towards outside expertise. If it is simply volunteer expertise, or you go out and you do an RFP search and pay for technological services."

Councilor Dominguez said, "The reason I ask that is because I have a profound and a lot of respect for the Complex. I think they've done the community well. But, at the same time, I have to be comfortable knowing there's not a bias that's going to be interjected in this planning process. I take people for their word and I would agree or assume that there's not, but we haven't vetted that. We haven't had an opportunity to give them the chance to prove that to us. And so, I say that with all due respect to the Santa Fe Complex, and really what we're proposing to do."

Councilor Dominguez asked, "If we were to approve this tonight... this is an ordinance that's going to have to be worked on, not only in three month, but in a year, the year after that. It's going to be continuous, continuous work as technology changes, as we get more information, even about health impacts, this ordinance could change. So, if the ordinance were approved tonight, how long would it take to go into effect."

Ms. Price said the ordinance as originally written which is in the Council packet, would be effective immediately on adoption, which was done because we had these applications and the standard 10 days didn't seem to make much difference for that. She said after that, they would have to apply for the franchise, and the franchise would then go through the review process, which could take a number of months. She noted there would be an additional 3 months to go through the Land Use process.

Councilor Dominguez said, "And so, there's nothing that prohibits anybody – Santa Fe Complex or anybody else – from working on that starting tomorrow and continuing that work throughout the 3 months."

Councilor Dominguez said, "I want to echo some of what Councilor Ortiz said, and that is the longer we delay this, the more opportunity there is to continue to provide misinformation about what this is doing, and

there's been a lot of misinformation. I'm not saying it's all been misinformation. I think there's been some good dialogue and some resolve to some of the issues that have been proposed. I think, though, that one of the reasons I'm not in favor of postponing this or tabling it or coming back in 3 months, is that's time lost for our ability to provide affordable broadband capabilities to our entire community, and that includes education access we well. We don't have an ordinance right now, as I understand, and in 3 months who knows what's going to come up with the analysis that comes from the Santa Fe Complex, or anyone else. And so I think that approving this doesn't mean that we can't change it. And, I don't think there's a single person up here who wants to do the wrong thing, whether it's health impacts, land use, or something else."

Councilor Dominguez continued, "One of the concerns I had... and it doesn't look like there are the votes to get this thing approved. But, one of the concerns I had with Land Use is that the Historic Design Review Board should have the opportunity to look at this and provide input, because they know the Historic District better than a lot of people. I read the language where the guidelines are given to the Planning Commission and the Planning Commission makes their approval or not. But, for me it's the difference between the known and the unknown. We don't know what the health impacts are with regard to health impacts, we don't know what they are. I think that's a lot of the fear that is in the community is that we don't know what those health impacts are. But, we do know that we need to be able to provide that affordable capability for our entire community, and we need to be able to get something on the books to make that happen. The more we delay, the more opportunity there is to not provide that."

Councilor Chavez said, "One way to get around the perceived conflict of giving someone work that may or may not be qualified, you could do it officially and appoint a task force or a technical advisor committee which is comprised of the Complex, member of the public, City staff and others, and make it official. Direct them to do the work that needs to be done and have it done under the City Charter so it's not out there subject to speculation or criticism. I just offer that because it's been done in the past. It's been done for Comcast for the services that they are providing. It's too bad we didn't keep that in place and keep working on a facilities plan or a franchise plan that's needed."

Councilor Chavez said, "So I would make that as a suggestion, because I think we've done the Plaza Task Force, and we've done other task forces in short order, and I think that at the next meeting you can make those appointments."

Councilor Trujillo said, "He said the main concern is health, that's what I've been hearing for the last 7 months. I'm in a situation where I have young children. I give a damn about my children's health. I give a damn about the technology they're missing out. I'm tired of seeing New Mexico 48th or 49th, 50th. We're always lagging behind. We had the same discussion when we tried to get Wi-fi into the libraries. People were against it, but I see all of the good that has happened. I talk to high school kids who say they are able to go to the library to get their homework done and are getting good grades. And as I've said, this technology is here and it's not going away. And I hear all these people talking about Santa Fe. Yeah, we are the City different. I've been here almost 42 years, my entire life I've spent in this community. I love this community, but at the same time, I want my children to be able to succeed in this community and I want to be able to give them those opportunities that I did not have as a child. And how hard was it to go

and look through the Encyclopedia Britannica for a report that took you almost a week to do. And now, my son can do a report in two hours by going on the internet."

Councilor Trujillo continued, "I'm with Councilor Ortiz on this. We have postponed this. We're postponing it again. We're looking at another 3 months. After those next three months, what's going to happen. We're going to come back to Council and we're going to come back for another hearing, and someone's going to postpone it for another 3 months and we've got this going on. I had a lot of questions dealing with the wattage of power lines. These are the questions I wanted to ask, but I don't know where we are with it right now. We talked about antennas. I think in all these neighborhoods we have Dish Network and Direct TV, maybe those haven't been regulated, but I don't hear people talking about those too much, as long as they're getting their cable and their NFL network, I guess they're fine. But when it's being able to get technology to the people in this community, it's another story. So, I also will be voting on this, and I hope we can move on. Like Councilor Dominguez said, we pass this tonight, there's no reason the Complex can't start working on something. We can get some good information from you. I just think we need to move on with this. We need to take a vote. We can't be postponing this week after week."

FRIENDLY AMENDMENT: Councilor Bushee asked to amend the motion to provide that by the first meeting in October we will be hearing the Telecommunications Ordinance, and that by the next meeting the Mayor will appoint a committee and we approve it, and that it is made up of a broad based coalition, so it's not just putting it on the burden of the Complex and names can come forward, and that we are really clear in refining the motion to suggest that we deal with everything, including the land use aspect outside of right-of-way. She said the whole package should be able to come forward, including the master plan and integrating land use, so it's not just separating and living in "silo land," like we've been in around the right-of-way only. I think all of the issues are up and we should address them all at once, so we should advertise properly in September or the end of August so that it is scheduled to be heard at the first meeting in October.

DISCUSSION ON THE FRIENDLY AMENDMENT: Councilor Wurzbarger said the telecommunications ordinance is larger than right-of-way, and this is what she intended, and she thinks Councilor Romero clarified that with respect to what would be in the plan.

Councilor Bushee said she doesn't believe we have to have the baseline set or anything like that. She thinks the idea of understanding coverage is all she's asking for.

THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.

Councilor Romero said, "Kelley, let's do a reality check. From your perspective, an ordinance that would be passed today could actually call for a master plan to be developed, correct."

Ms. Brennan said, "I think that staff is certainly far from adverse to a master plan, and we were actually anticipating things developing on a parallel tract, if the ordinance were adopted, reconciling the language

of Chapter 14.to it, and pursuing a master plan. And, in fact, economic development has already assembled a working group that includes a number of people from Santa Fe Complex and also some others, and which may relieve the discussion as to whether it should go to one business or not. But we've sort of seen these things happening in parallel. Councilor Dominguez pointed out the process of applying for and receiving a franchise will take time. And, if it's going to take three months to develop a master plan, those things can operate in tandem."

Ms. Brennan continued, "And also, I do want to emphasize the broadband plan submitted to Congress by the FCC is almost certainly going to change the landscape, and Councilor Dominguez is right, there will be changes to the ordinances as we go along. I think that's a given, and Congress will take authority and give much more direction in that respect."

Councilor Romero said she has never seen a City issue a plan in 3 months. She said by the time you appoint a task force and build on something already started. She asked if a plan of this complicated nature ever been finished in the history of the City in 3 months.

Matthew O'Reilly, Land Use Department Director said he hasn't worked for the City that long, but it does seem a bit of stretch to him to be able to see some sort of a comprehensive master plan put together in 90 days.

Councilor Romero said Ms. Brennan has answered questions about an ordinance which is moving in tandem with things that already are occurring given our economic development, given that the RPA is going to be doing its own strategic planning which could contain telecommunications as a regional issue with the County which is looking at the broadband issue. It sounds as if we already are heading in the direction given what Congress is doing on the broadband issue.

Ms. Brennan said staff has already started working on Chapter 14 language to reconcile it. She said they did meet with the economic development group and indicated an interest in working on that with them.

Councilor Romero said she is swayed by the discussion and was dismayed in the change in the tenor of the conversation since November. She said the risk of creating a greater rift in the community is worse than moving forward without something.

Mr. O'Reilly said the statement was made by the gentleman from the Santa Fe Complex that perhaps within 3 months there could be some sort of general outline. He said all of that would be great as a starting point, but he questions its usefulness to this Council, and that we would need to allow a much longer period of time to come up with a useful and comprehensive master plan with the kinds of information in it that was requested by Councilor Bushee. However, there is no reason that cannot happen while the rest of this is moving forward.

Councilor Bushee said she would remind the Council that we have existed without an ordinance since 2004. She suggested when someone of the caliber of the Santa Fe Complex and those who have been

working with us all along stand up and say give them to the end of the summer and they can come up with a better product, she doesn't see why we wouldn't do that. She said she isn't saying that staff efforts haven't been valiant, but the initial effort, to her, was not at all thoughtful and we're just kind of catching up here. She also believes that we should not be operating separately, and it needs to be integrated. She believes we can go another 3 months without an ordinance, and she doesn't believe it is a stalling tactic. She said everyone has made real attempts at this, but we're not there yet. We hear from people that the ordinance isn't helpful economically, and pled with the other Councilors to vote in favor of the motion.

Councilor Ortiz said, "Councilor Bushee is very persuasive, and he will remind her and the rest of us, that the only reason we have to come up with this ordinance, and the only reason that we got presented the first product we got, is because we got applications in the process. We got by, essentially, with no ordinance until someone came in and said we want to do business, and said oh yes, we don't have an ordinance. We don't have anything. And they have been sitting there waiting. He agrees that 3 months for a better product seems very inviting and almost seems worth the effort if we get a better product. But, if get, well jeez, we need more time because we can only come up with general concepts. And, we get another public hearing, our 3rd public hearing, in which we get the restatement of the same facts, which is that we think that there's problems here and we don't want this in our neighborhood and we don't want this in our home. And we are continuing to listen to those arguments to the detriment of bringing Santa Fe into the realm of where the rest of where we are going to. So, three months to get a better product because we're relying on a particular group with a particular expertise that's going to have a public process that's going to have the same kind of concerns."

Councilor Bushee said we have applicants here asking us to take the time to do this.

Councilor Ortiz said, "We have an applicant here and we have Qwest who doesn't want to be treated the same way as anyone else. They don't want to pay. And they're telling us they're not going to pay, we're going to pay. Those are all very persuasive arguments."

Councilor Bushee said she isn't saying we can please everyone, but believes we can come up with something better with this little extra effort.

Mayor Coss thanked Kelley, Matt, Jeanne, Geno and staff for their really hard work on this. He said, with regard to the 3 months, there are people here saying it affects their health and not to do it. He said no matter how good the plan is, and whether Qwest is happy with it, that issue is still going to be there, and we are prohibited by federal law from doing that. He is glad that we are, because otherwise the Council would be ruling on the safety of caffeine, or birth control pills or whatever. He said our expertise is in land use, and the staff took the best shot in moving this in a land use direction, although it could have been tighter on the H-Board review and may be too streamlined regarding the time requirements we have if someone applies. Nobody has applied, and we may be okay for a while being legally bare. However, if somebody applies while we're legally bare, that could be rough and we don't know what will happen. Under the proposed ordinance we would have some idea. However, we won't know if someone applies within the

next 90 days. He said the City can regulate land use, but we can't regulate health exposures except to ensure that they meet FCC health regulations.

Mayor Coss said the ordinance won't cause broadband to be available to economically disadvantaged parts of town. It just won't do it. If we want that to happen, we are going to have to do it ourselves and pay for it ourselves. This is the reason he and Councilor Wurzbarger are advocating \$3 million for a broadband project in town. He said if we were to declare a moratorium, we need to say what the next step will be. And we're saying now, it is a committee that I'm appointing. However, we will go through this public process again, and I don't think we'll resolve the issue of whether it's health. He said the next public meeting will see 100 people here talking about the health effect and we will be in the same position again. We can regulate land use, and he believes we could have adjusted the proposed ordinance on land use. He has not heard from the Attorney General or the PRC, although some of their guys are here this evening saying this or that about this issue. He reiterated that what we can regulate is land use and that's what we will have to do.

Councilor Calvert said in 3 months we will have the ordinance and land use better integrated, noting staff has said it intends to go into Chapter 14 and bring that forward. He asked why not have those come forward together at the same time and resolve the changes as an integrated package.

CLARIFICATION OF THE MOTION: Ms. Vigil asked if this is to be postponed to the first meeting in October or the last meeting in September. Councilor Bushee said it is to be postponed to the first meeting in October, so it has to be advertised.

VOTE: The motion, as amended, was defeated on the following roll call vote:

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, and Councilor Wurzbarger.

Against: Councilor Dominguez, Councilor Ortiz, Councilor Romero and Councilor Trujillo.

The resulting vote was a tie vote and the Mayor voted against, thus defeating the motion.

Explaining his vote: Councilor Chavez voted yes, and on the point of misinformation said from this point forward we need to get information to the public because this is our ordinance, and it needs to work for the public and the industry. He said we need to be putting out the information and this is where we went wrong in the beginning.

Explaining her vote: Councilor Bushee voted yes, saying what is missing in the current ordinance is the land use piece and she would challenge the Mayor to say that we have used our expertise currently in a separate ordinance that just deals with right-of-way. She believes we have left out the land use piece.

MOTION: Councilor Romero moved, seconded by Councilor Trujillo, to adopt the ordinance, direct staff to work with the Santa Fe Complex to develop a master plan in 3 months, and continue to work in tandem with other City departments, such as the Economic Development Department and any other task force that is developed, to present the plan..

DISCUSSION: Councilor Bushee asked Mr. Angel if the adoption of this ordinance this evening will throw in any kinks in the ability to have a master plan.

Mr. Angel said the short answer is no. The longer answer is, by passing the ordinance, there are potential down sides. They have big concerns with the wording in the ordinance, which aren't the health concerns, which deal with the technical issues. If you pass the ordinance tonight, those possibly can have consequences which can potentially interfere with any master plan. He said they can work on the master plan, but there may be consequences.

FRIENDLY AMENDMENT: Councilor Bushee asked to amend page 37 of the proposed ordinance to provide that the Historic Design Review Board will review instead of staff. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

FRIENDLY AMENDMENT: Councilor Bushee would like to amend the ordinance to refer to the items in Section 14-6.2 with regard to incorporating the land use concerns into the ordinance, such as a traffic control plan during construction, like landscape restoration and screening for any facility that might need that. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

FRIENDLY AMENDMENT: Councilor Bushee would like to amend the ordinance, with regard to collocation of antennas, to provide that "The antennas shall not exceed the height limitation for the underlying or the overlay zoning, unless the antenna is placed on an existing tower or structure, and does not exceed the height of the tower or structure." She asked when does the underlying zoning actually allow for a 100 ft. tower.

DISCUSSION ON THE FRIENDLY AMENDMENT: Mr. O'Reilly said the kinds of things she is requesting are appropriate, but if the Council is intending that the changes to Chapter 14 will come back simultaneously with this.

Councilor Bushee said that isn't the question and asked Ms. Brennan to speak to how to incorporate those things into the ordinance.

Mr. O'Reilly said his point is that these things belong in the Land Use Code and not in the Franchise Ordinance.

Councilor Bushee said, "As someone who is going to vote on this, that the land use aspects, the protections that I feel are missing in this existing right-of-way ordinance, I would like to begin to incorporate some of them in there, including the review by the Historic Design Review Board.

Ms. Brennan said Jeanne Price is looking for some of the contents of the ordinance which we believe addresses some of these things already.

Councilor Bushee said, "I got to the second half of the ordinance, which generically covers things, but not with any specificity." She said she would yield to Councilor Calvert, but she still has great concern about the way the ordinance is written.

Councilor Calvert said it would be helpful to have an index at the beginning of this lengthy ordinance, so when needed, people can get to the right point.

Councilor Calvert asked on page 7, where the ordinance discusses public rights-of-way in terms of parks, open space and trails, if there is any reason we can't just say it isn't allowed in parks, open space and trails.

Ms. Brennan said the City is regulating the rights-of-way, and we define the rights-of-way as not including those things, so it does say that essentially.

Councilor Calvert said it does, but on page 18 it says, "... except in accordance with City requirements," and asked what this means, saying it is very vague. He said the statement is ambiguous at best.

Ms. Brennan said it means other items of Code that may be applicable, but aren't specifically excluded, for example the non-conformity provision. If there are existing facilities in the right-of-way which might not conform with the requirements of the ordinance when adopted, those would be deemed legally non conforming. This is an example of what a City requirement would be that still would be applicable.

Councilor Calvert asked if there others, noting this statement doesn't tell him that, understanding this is a general rule that we follow – are there others we are talking about. He said if you include a statement like this, then you should have the reasons it is included.

Responding to Councilor Calvert, Ms. Brennan said in being this specific, you always miss something, and this is a drafting rule.

FRIENDLY AMENDMENT: Councilor Calvert asked if language on page 7 can be stated in clearer fashion. He quoted from line 21, page 7, which provides, "Parks, open space, trails not located in a public-rights-of-way or other city owned land are not public rights of way." He understands the member of the public who spoke about this evening, because he doesn't understand what this means.

DISCUSSION ON THE FRIENDLY AMENDMENT Ms. Brennan said it means that some trails are located

in the public rights of way and go below existing poles. Those are within the rights-of-way, and "trails that are not are not." She said they really struggled with that wording and that was the wording that said what they had to stay.

Councilor Ortiz said he has a "real world" example. He said the Pueblos del Sol trails that go under the PNM poles are already there. He said next door, the Park Plaza Trails, they are not.

[STENOGRAPHER'S NOTE: THERE WAS NO INDICATION OF WHETHER OR NOT THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND.]

FRIENDLY AMENDMENT: Councilor Calvert said line 15 on page 8, discusses delivery of natural gas and electricity, and asked why water isn't included, and asked if we don't include our own utility in this.

Ms. Brennan said this is in the category of what telecommunications does not include, and Councilor Calvert said yes. Ms. Brennan said this is referring to a statute specifically defining the utilities in those statutes, so it cites specifically the things which are included in the statute. If it is not included in the statute it is not listed.

Councilor Calvert said we have telecommunications involved in our Water Division and asked if we want to include those kinds of things.

Ms. Brennan believes it is covered under the statutory reference, but it can be inserted if it is not.

THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.

FRIENDLY AMENDMENT: Councilor Calvert would like to amend line 13, page 9, to clarify that it "... has been accepted as complete," as opposed to "approved." He would like to clarify the language that it has been "accepted" as opposed to "approved." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Calvert said on Page 9, line 22, we are discussing a legislative function, and later we are talking about the Planning Commission and we are given specific guidelines on how it will judge the application. He said here, where there are none, the only thing that comes close to that is on page 2, the purpose page. He asked when we do a legislative function, what will be our grounds or findings on which we judge franchises which are brought to the Council. He asked if the City is allowed to enter the specific "track record" of the company making application. He asked if we will be basing our findings on the general purpose statement to make our findings and decisions, or is there something else.

Ms. Brennan said she believes this is true. She there is an application form in the packet that asks for corporate information, licensing information and such, and believes this would be the threshold.

Councilor Calvert said that will give some help, but won't be the sole basis of our decision.

Ms. Brennan said this Council does have discretion, and the franchise is a general grant of authority and the next step is where the technical details are address, and the Council will be exercising authority in a broader sense.

Councilor Calvert said it is a public hearing and we will be hearing testimony and asked on what we will be making our decision, and believes the Council needs guidance in this regard.

Councilor Calvert asked if the Commission will be responsible for coming up with Findings and Conclusions for that as well. Ms. Brennan said, "As a legislative function no."

FRIENDLY AMENDMENT: Councilor Calvert proposed to amend line 20 on page 17 as follows, "Providers shall label all material as confidential as is appropriate." He said everything isn't necessarily confidential. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Calvert said line 22 on page 17, says, "The City and provider shall hold such additional meetings as they deem necessary to exchange additional information with a view toward coordinating their respective activities in these areas where such coordination will prove mutually beneficial..." He said this is okay, except when the forecast information is clearly misleading. He guesses this is the intent.

Ms. Brennan said this provision is designed to ensure coordination between City schedules for construction and any provider, for instance if they are digging up a street. She said the City can impose a penalty.

Councilor Calvert said we are trying to get an idea of where they are going so we can do the actual planning, so if they aren't doing it in good faith, then we have to call them on that.

Ms. Brennan said in that instance they would be subject to the violations and penalties section of the ordinance.

Councilor Calvert said page 23 and 36 talks about undergrounding of utilities. Line 16, page 23 provides, "The conversion from overhead to underground shall be non-discriminatory and shall be conditioned upon the City requiring the undergrounding of all existing and new facilities located or to be located in the area. Such replacement of overhead with underground distribution facilities of a provider shall be paid for by such provider." He said we, as a City utility, agreed that our Water Division would honor the covenants of neighborhoods designed with underground utilities, and believes there should be condition of approval that the covenants and restrictions in those areas which were developed with underground utilities will be honored.

Ms. Brennan said the ordinance requires undergrounding of all facilities wherever feasible. She said one of the places where we need to reconcile the ordinance is in the undergrounding to include telecommunications facilities.

Councilor Calvert asked why this can't be included in this ordinance.

Ms. Brennan said the ordinance does require undergrounding to the extent possible.

Councilor Calvert said it isn't included, and doesn't specifically say it recognizes those neighborhoods.

Ms. Brennan said the ordinance does require undergrounding to the extent possible, and in some cases it is not feasible to underground.

FRIENDLY AMENDMENT: Councilor Calvert said when we did the water utilities did its telecommunications, it had to be the least impactful, even if was overground, honoring the undergrounding covenants of certain neighborhoods that were developed that way. He would like to see similar language in this ordinance. Ms. Brennan said we do provide for the least impact and staff can expand on that language. She asked if he specifically is looking for language for neighborhoods where we will make the best effort to abide by the performance of those covenants, and Councilor Calvert said yes. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Calvert said on pages 24 and 26, there are references to maps and what shall be furnished. He strongly encourages that we not use maps in terms of what is provided, because often maps are referenced from landmarks which change. He would like something which is GPS coordinated so we can always rely on it being accurate. He quoted from line 4, page 26 of the ordinance, "The provider shall furnish to the City, as soon as practicable without charge, current "As-Built" maps, either in a "hard copy" printed form or in the City's GIS format or compatible data base.." He wants something which will always be accurate in a hard copy map, depending on what it is based and reference, noting it may be referenced on landmarks which may not stay there.

Mayor Coss suggested it could say "and."

Mr. O'Reilly said currently the City's GIS format includes maps that are tied to the City's GIS coordinate system, so anytime anyone does that, it is tied to a GPS State coordinate system. So, it is possible to reconcile all the maps to each other through their system. So, simply by saying it is in the City's GIS format means that we can get those maps just the way we need them.

FRIENDLY AMENDMENT: Councilor Calvert would like to amend line 5 on page 26 as follows: "...current "As Built" maps, either in a "hard copy" printed form or in the City's GIS format..." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Calvert said he will readily admit that he doesn't understand the technology here. He said it seems to him there has been differentiation in the literature between "antennas" and "base stations," at a minimum. He doesn't know whether base station always implies a tower or not. He said on page 36 where we are talking about the Zoning Districts and what is allowed, he would like to differentiate between "antennas" and the "base towers." He can accept what is under Subsection A for "antenna," but he would like to see "base station" precluded in residential and Historic Districts, if his understanding is correct that a base station means there will be a tower.

Ms. Brennan said he is talking about a high tower with a larger antenna array. She said she does not believe those could be cited in any right-of-way because of the space, fencing and security protection specifically required of them. She said when you see them they have large equipment facilities and are fenced off.

Councilor Calvert asked why we can't just say that.

Councilor Bushee asked Ms. Brennan why staff didn't choose to take the language already in the existing Chapter 14-6.2, where a special exception is required to locate a tower in the Historic District and to go before the Historic District – why wouldn't it be based on a special exception.

Ms. Brennan is unsure this is the same question, but she will try to answer. She said because of these things which typically will be located in the right-of-way, being networks as opposed to single site antennas, staff was looking at it as being more like a development, and it was preferable to be able to view the entire proposed network at a single review. At the Planning Commission, there are provisions for waivers and the general variance standards would apply.

Ms. Price said in the land use requirements added to Chapter 27, there are waiver specific criteria for the Planning Commission to consider.

Councilor Bushee said, "No. I'm asking in general in the Historic District, if one wants to pursue... and let's say the first place they want to go is downtown, or I don't know... pick a section of the Historic District. That's a section where a wealthy customer might live, and they want to come in. And we say, in order to locate in the Historic District you have to go with special exception to the Historic Design Review Board.

Ms. Brennan said, "Part of the reason we tried to look at this as providing an adequate degree of review, but also understanding when there is an application and we are considering it, the shot clock will apply to wireless facilities and we will have, if it is a collocation, a 90 day deadline, and if it is a new location, a 150 day deadline. So we were trying to look at a process that would meet those requirements."

Councilor Bushee said, "I understand your streamlined approach."

Ms. Brennan said, "That's it."

Councilor Bushee said, "But, I'm saying when you get to Chapter 14, everything went to the Board of Adjustment and the Planning Commission, it required special exception and many more layers of land use review and protection from my perspective. And so, I guess I'm asking, given that generally speaking, we don't want to see any kind of towers and antennas in our parks, in our whatever, that we could treat it the same for the Historic District."

Mr. O'Reilly said, "The distinction here is that these things are in rights-of-way of streets. You cannot build a 100 ft. standard cell tower, like we normally think of when we think of towers in a City street. There simply isn't room."

Councilor Bushee said, but you can collocate on telephone poles.

Mr. O'Reilly said you can collocate a small antenna on a telephone pole or possibly even a street light, but those aren't these massive towers you are thinking about. He said the massive towers are by definition, because of their size, going to be located on private property. And, when they are, they fall under Chapter 14.

Councilor Bushee asked about the tower by The New Mexican which is in the Historic District.

Mr. O'Reilly said if someone were to come in today to build that tower, it would be necessary to go to the Historic Design Review Board, and through every single provision in Chapter 14 right now. He doesn't think they would have to go to the Planning Commission. But, if it was in the escarpment, they would have to go to the Planning Commission. If it was in the South Central Highway Corridor Protection District they would have to go to the Planning Commission and may have to go to the Board of Adjustment. He said that tower is not in the street right-of-way and is on private property, and all of those protections stay, at least the way Chapter 14 is written now.

Councilor Calvert said, "The problem is, since we're not bringing these things forward in a coordinated fashion, the person who reads this wording doesn't know that. Right. So I'm saying for clarification and understanding, why don't you spell it out in this one, because this is all we've got right now."

Mr. O'Reilly said the people reading this ordinance should know that, because the ordinance is designed for rights-of-way, not private property, where you could build a massive 100 ft. cell type tower.

Councilor Calvert asked why we don't just have language saying that those towers aren't located in residential and Historic Districts.

Mr. O'Reilly said you could say that those kinds of towers aren't allowed in the right-of-way anywhere within the City's right-of-way.

FRIENDLY AMENDMENT: Councilor Bushee noted there is an amendment on line 9, page 36 which asks to exceed the maximum height by more than 5 feet. Councilor Bushee would like to strike the amendment

proposed by staff as follows: ~~"8. On page 36, line 9, after the word "located" insert the words "by more than five feet."~~ She would like to stick with the current language, which means you won't go higher than the pole.

DISCUSSION ON THE FRIENDLY AMENDMENT: Ms. Brennan said this language was included, because in some places, it may be preferable to put them higher than the pole height. However, if the language is deleted, they can achieve the same thing by requesting a waiver. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

FRIENDLY AMENDMENT: Councilor Calvert would like to put clarifying language on page 36 of the ordinance, saying that cell towers would not be permitted in the right-of-way in residential or the Historic District. Ms. Brennan said they could say that cell towers would not be permitted anywhere in the right of way, such as on Marcy Street. She said we are talking about a certain kind of tower and they will describe that. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Calvert noted the previous friendly amendment on page 37 which provides that the Historic Design Review Board will review instead of Historic Preservation Division Staff.

Councilor Calvert referred to the language on line 13, page 37, which provides, "All lockable telecommunications facilities shall be kept locked when not being actively serviced by the provider." He understands this, and asked what the City does in terms of emergency access if there is a need.

Mr. O'Reilly said, "To the extent that the City would have the right to enter one of these telecommunications facilities and unlock it, the City would do what the Fire Department would do which is to break the lock."

Councilor Calvert said this is fine, just as long as everybody knows that.

Councilor Calvert said line 16 page 39, provides, "... The Applicant shall: (a) Place in the public right-of-way in a location approved by the City, or if the project is on private or public property immediately adjacent to the public right-of-way in a location approved by the City.." He asked why this language is included if this applies only to right-of-way.

Ms. Brennan said it is there because staff was trying to anticipate a situation where an equipment cabinet provider might get an easement from a private property owner, and we would still want it to be posted as a part of the entire project. She said that is the only instance where staff thought it should be posted, even though it was on a private property easement merely because it was included within the network.

Councilor Calvert said line on page 40 there is a discussion of the Planning Commission Review, and on line 20, "(5) Findings of fact and conclusions of law shall be prepared and approved. (6) A decision of the

Planning Commission is appealable as set forth in Section 14-3.17 SFCC 1987.” He asked if this is the Board of Adjustment or the City Council.

Ms. Brennan said the reference is to the appeals ordinance, and from the Planning Commission right now you go to the Hearing Examiner, and then the Hearing Examiner will make recommendations. The City Council would decide whether to hear it *de novo*.

Councilor Calvert said, although it is cited, it doesn't help someone reading that to know what that means.

Ms. Brennan said it is an approximately 30 page ordinance.

Councilor Calvert said beginning on line 23 on page 40, the Ordinance provides, “(7) Any denial of an application or any approval of an application containing any conditions not accepted by the applicant shall (a) be in writing, and (b) shall cite to the administrative record, and (c) shall not become final until approved by the same body at its next regularly scheduled meeting.” He asked if we are talking about the Planning Commission's decision, and asked who will be doing it. When you say “be in writing,” who is going to have this in writing – the applicant – or is the Planning Commission we're talking about.

Ms. Brennan said it will be the Planning Commission and this is tracking with language in statute and case law.

Councilor Calvert said there should be something added for clarity.

Ms. Brennan reiterated that this in reference to case law, and very often the Planning Commission and other bodies will make a decision subject to a certain condition, and in this case it is very wise for the wireless telecommunication facility to have the applicant state on the record that it is acceptable and then to embody that in the written record.

Councilor Calvert believes we need clarification that it is the Planning Commission that is putting this stuff in writing as a part of the public record, because it isn't clear, and he wants a little bit of clarity.

Councilor Calvert said on page 41, we go through these things regarding a waiver, and he presumes that all of these things must apply.

Ms. Brennan said where the word “and” is used, that is what it would imply.

Councilor Calvert said on page 42 there are an a, b, c, and d, and asked if it is all of those, or all of the ones on the previous page, or both.

Ms. Brennan said this is number (2) and it lists all of the things the Planning Commission must consider while making its decision to grant or to not grant a waiver.

Councilor Calvert asked if we are then saying that all of these have to apply.

Ms. Brennan said yes, in different contexts. The Planning Commission must consider the items listed in (2) and when making Findings, it must make specific Findings as to the points listed in (1).

FRIENDLY AMENDMENT: Councilor Ortiz asked that new language be included in 27-2.15 changing the review period to four months after adoption, which is consistent with the discussion and direction Councilor Romero gave to staff. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

FRIENDLY AMENDMENT: Councilor Ortiz asked that a new Section 27- 2.16 be added to the Ordinance as follows: "Appointment of Communication Franchise Advisory Committee. As soon as practicable, the Mayor shall solicit and appoint, with the advice and consent of the Governing Body, a committee of no less than 5 and no more than 9 individuals who shall advise, consult and work with the public to make recommendations consistent with – AND THEN INSERT THE PROVISION ABOVE, 27-2.15, which is the review provision that talks about what we have to do to come up with the recommendations." Councilor Ortiz said it is his hope, given the direction that Councilor Romero put in the ordinance, that this Committee can be appointed as quickly as possible so they can undertake the review, and find and fill the gaps in the ordinance which already have been identified. He said by including it in the ordinance itself, it actually creates the committee process for which some members of the public were asking **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Ortiz stated, "Some of the points that Councilor Calvert brought up I think relate to some of the discussions that we have, because we have the ability as the Governing Body, as a Legislative function to set the terms of whatever particular franchise agreement that comes before us. We have that Legislative ability. And when it relates to the actual applications of those facilities within the franchise, that goes through a land use process. A land use process that is still subject to some of the requirements that some of the people still don't believe are in the ordinance."

Councilor Ortiz continued, "I think this is a good first step. I think with the 4 month review and with the Committee appointed to come up and to fill in the gaps, that we are making strides and efforts to bring Santa Fe out from the shadow that seem to always find ourselves in."

FRIENDLY AMENDMENT: Ms. Price said, in order to do a good job of covering all of the amendments, and getting them incorporated into the final ordinance and publishing them, she asked that the ordinance not be effective immediately, and to strike the effective date – page 44, lines 3-4, and make it our standard time which is 5 days after publication and staff will publish the Ordinance after it is fully prepared. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Bushee said there are two people who have applied and she would like to ask questions of : asked John Brown, CityLink Fiber Holdings, and Patti Ringo of ExteNet.

Councilor Bushee said, "First of all, we haven't really addressed the fee structure, and we probably are going to have a series of unintended consequences, including the only empathy I have on the Qwest side of things is that they are going to pass on immediately cost increases. And for what that's worth, that's a consequence. But I spoke with Mr. Brown, and I said, so, aside from the fees, what's wrong with this ordinance, and he said, you know, I applied for this 3 years ago, and if you pass this, I won't come here, essentially. He pointed out, and this was 3 years ago he was knocking on our door and we're waiting on 90 days here, Mayor, and we're worried that we're bare. He said I won't probably come back and do business here. And so there were very many little things like a lot of them. Basically, they think the ordinance is badly written. So, when you have on page 7, the definition of structure, it says, 'Structure means anything that is constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Structures include, but are not limited to walls, buildings, fences, poles, street light, street signs and other signs.'" However, it mentions nothing about undergrounding.

Councilor Bushee continued, "And I go on to page 4, I think it is, yeah, under Emergency Repair, there is no mention of the network, it just says structure." I mean they can speak to these more clearly. Patti, I guess you could speak to what your issues are too. Would you just briefly."

Patti Ringo said, "Now I have to preface this by saying, I did not come with written comments, and we weren't actually going to comment. We had one particular objection that we may supply comments on later, depending on what happens tonight. But, the way the fee structure is, it treats CitiLink Fiber Extenet Systems, Qwest and everybody the same. So, for a wireless [inaudible] that doesn't have an end user you can track. It's not a house. It's not a land line telephone. It's not a drop for a computer some place. We get charged the exact way they get charged and that's pretty hard to figure, from a financial standpoint when you're looking at an auditing or trying to figure out what that percentage rate would be. So, our construction costs are different from their construction costs, that sort of thing. So, that would probably be our biggest objection. If that makes sense. I'm trying to explain it without my notes in front of me."

Councilor Bushee said, "Mr. Brown on page 8, you talked to me, under the definition of telecommunications, you talked about internet servers."

Mr. Brown said yes. His understanding of the way the definitions are on page 8, line 3 of what was posted today, the definition of telecommunications would include an unintended consequence there of internet server providers, folks like Vonage, VoIP, and other providers that are out there today providing services that do, in fact, make use of the right-of-way would now suddenly be required to file a franchise or find themselves in non-compliance with this ordinance and its very stiff penalties. I don't think that Cyber Mesa, as a well known local ISP here in town, thinks that they have to do that. But the definition here is that they would be forced to come and do that. They would be forced to become a franchisee within the City. Now, maybe that's the City's intent because it's a revenue stream, but I don't think that's the City's intent to hamper businesses in being able to grow and bring more in."

Mr. Brown continued, "And I think if I can, just for a moment, if I could address the Mayor's comment about additional revenue streams for the City. Yes, a franchise helps with revenue streams, but I think to go back to the gentleman from the AG's office, Mr. Harris, this isn't a major revenue stream. This is an enabler of revenue streams. An ordinance should take care of what the City gets paid to manage and maintain and recover the costs of the franchise. Land use. You already have a decent land use section. Simply refer to that. I tried to say that on February tenth, but unfortunately it wasn't heard very well. Your land use is good. Refer to it. Change it as needed for cellular and wireless as you want, but don't burden the telecommunications ordinance with stuff you're already duplicating in the land use section. Refine land use."

Councilor Bushee said, "And just with regard to the fee section on page 38, Kelley do you believe that the language is clear. And what you had suggested to Mr. Brown will be what will result from the language in this."

Ms. Brennan said, "We specifically asked Mr. Kramer to review this language. And I have a degree of confidence in him, yes."

Councilor Bushee said, "Then your interpretation is that he just pays one fee and if he phases some years later he pays another fee."

Ms. Brennan said this is correct.

Councilor Bushee said, "And Mr. Brown you don't believe this language says that."

Mr. Brown said, "My challenge is that I think that that's their intent, but I believe that the words, where you have 'prior to construction,' and so forth, potentially hints to the fact that I may have to do that on a per home or a per business basis, while other telecommunications companies are going to have to do it on a per home or per business construction basis. I think that we should have some change in Section G, that clarifies it, what that word should be at this very moment, it's late, I'm a little lost for those words, but I'd certainly be very happy to craft language to make that comfortable. That's the scary part for me, Section G, line 21, page 38."

Councilor Bushee asked Mr. Baca if Qwest has similar concerns.

Mr. Baca said, "Yes, Councilor Bushee. We already have an existing network. I think there's a big difference between what Mr. Brown is doing versus our existing network. What Mr. Brown is doing, he comes in with a plan to build around Paseo de Peralta and whatever extension plans he has after that. Those are definite plans that he has in mind and he can tell you, maybe even forecast it. However, with Qwest, we have an existing network here throughout the entire City. We have, as I mentioned earlier, in the last year we had over 100 jobs where we were building facilities in one way or another, whether to a new subdivision or a new industrial park in one location or another. So, I think there's a difference when

we are the provider of last resort and we have to build out to all of these locations, and I think that \$2,500 fee might apply in every one of those cases to us.

Councilor Bushee said, "Kelley did you hear that. And that's going to be passed onto everybody here and there, Mayor. I just want to be clear what we're charging."

Ms. Brennan said she will say it is in the nature of business to pass costs to consumers. She would like to believe Qwest has something of a plan. She said in their circumstances, Qwest might need something such as we do with PNM. There is an approval process for PNM, and anything over 3 poles requires them to come in for approval and they do.

Councilor Bushee asked how they would pay, noting Qwest is mandated by the PRC.

Ms. Brennan said PNM pays \$2,500 when they come before the Planning Commission, whether it is 4 poles or 20 poles.

CALL FOR THE QUESTION: Councilor Romero, seconded by Councilor Trujillo, called for the previous question.

VOTE: The call for the question 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: Councilor Bushee.

CLARIFICATION OF THE MAIN MOTION, AS AMENDED: Ms. Vigil said Ms. Price would like to know if the amendments which were on the desk and the amendments in the packet except for the one which was deleted, are included in the motion, and Councilor Romero said they are included in the main motion as amended.

VOTE: The main motion, as amended, was approved on the following roll call vote:

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

Against: Councilor Bushee and Councilor Chavez.

Explaining her vote: Councilor Bushee said, "I'm used to us making sausage in public, but we've just made corned beef hash and I hope we haven't made a mess of it, so I vote no."

Explaining his vote: Councilor Calvert said, "I guess I'll vote yes and hope the master planning catches up with the ordinance and all of the other things that need to be done."

Explaining his vote: Councilor Chavez said, "So this version is a little bit better. The review process that the review timeline is now 4 months instead of 3 months, and it's going to be a task force that's going to be officially appointed by the Mayor and approved by the Governing Body. That makes it a little bit better, but I think I'm still going to vote no."

MOTION: At 11:55 p.m., Councilor Calvert moved, seconded by Councilor Trujillo, to suspend the rules and continue the meeting past midnight.

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

14. 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 June 9, 2010, is incorporated herewith to these minutes as Exhibit "8."

Councilor Wurzburger

Councilor Wurzburger Introduced a Resolution declaring this year and every year thereafter, that the week preceding the Santa Fe International Folk Art Market shall be known as "International Folk Arts Week." She said the Resolution will go to Finance, Public Works and the Council. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "9."

Councilor Dominguez

Councilor Dominguez introduced the following:

1. A Resolution directing staff to seek input from SF Public Schools regarding the proposed Teen Center at Tino Griego pool, and if the School District supports the center, obtain what, if any, commitment the School District could offer as a partner in the project. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "10."
2. A Resolution repealing Resolution No. 2008-50 that established the Land Use Subcommittee, a Subcommittee of the Public Works/CIP & Land Use Committee, for the

purpose of eliminating the Land Use Subcommittee. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "11."

3. A Resolution directing staff to proceed with a community planning process for the Airport Road area that will result in a master plan that focuses on establishing a healthy community, streetscape enhancements and adjoining land development. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "12."

Councilor Calvert

Councilor Calvert introduced the following:

1. A Resolution directing the Office of Affordable Housing to move forward with the development and possible construction of affordable housing at the 635 Alto Street property and to pursue further analysis of the winning local design by assessing architectural plans and site development costs. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "13."
2. A Resolution allocating three acre feet of available water from the City's existing water supply to Luna Laundry to be located at 3138 Rufina Street. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "14."
3. An Ordinance amending Section 23-5.3(F)(3) SFCC 1987, regarding conditions of operation for Plaza artists/artisans relating to the display of artwork. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "15"

Councilor Calvert congratulated the City Staff for their work on the Fishing Derby, and thanked Councilor Trujillo for his leadership in making this an annual event. It was very well received, and a relevant experience to relate to a living river.

Councilor Calvert asked the status of the labor contracts, and presumes they are still unresolved.

Mr. Romero said they are still in negotiations, but he thinks we are close to the to best and final offers.

Councilor Calvert said the Council adopted a Resolution to start these negotiations early, so they would be done in time for the budget and the end of the fiscal year, but that isn't happening. He doesn't believe this process is working. He said we need to look at how we're doing this, and believes there has to be a better approach. He would like to see something close to a contract as we're discussing the budget, but he hasn't seen this in the 5 years he's been on the City Council.

Councilor Calvert asked the status of moving the trash container away from the back entrance to City Hall.

Mr. Romero said he is working on it. He said the issue is that with the construction of the Convention Center, there isn't another place to put it. He is looking at a small compactor if we can purchase it. He said the only place it could be located is behind the wall at the Convention Center.

Councilor Calvert said, as part of the landscaping contract, perhaps he could build an enclosure for the trash container. He would like to get this resolved expeditiously.

Councilor Calvert said there are still some campaign signs left from the Primary Election, and asked the City Manager to contact the appropriate person and ask them to remove the signs.

Councilor Calvert said the printing on the Wayfinder signs is too small for motorists to read.

Mr. Romero understands the only ones which are up are the pedestrian signs, and he is working on this.

Councilor Trujillo

Councilor Trujillo introduced the following:

1. Councilor Trujillo introduced an ordinance prohibiting the feeding of non-domestic animals on City property. A copy of the ordinance is incorporated herewith to these minutes as Exhibit "16."
2. Councilor Trujillo introduced an Ordinance regarding solicitation on private property within the City of Santa Fe. A copy of the ordinance is incorporated herewith to these minutes as Exhibit "17."

Councilor Trujillo said the Relay for Life is this Friday, and invited staff to walk with them

Councilor Trujillo thanked staff for their work on the Fishing Derby which was a real success. He said the Mayor and Councilors Calvert and Bushee attended as well. He said the kids caught fish. It was a Fun Saturday with a lot to do including the River Festival.

Councilor Trujillo asked Mr. Romero to look at some kind of grand opening now that Franklin Miles is nearing completion, and invite the neighborhood.

Councilor Ortiz

Councilor Ortiz said there is well construction in the Barrio la Canada at all hours, and it is bothering the residents in the area..

Councilor Romero said it is close to the end and the noise isn't as loud. He said they have been given strict timelines for operation. He will look into the matter.

Councilor Ortiz would like a review of the alarm ordinance. He said there have been complications such as the application fee, noting one of his elderly constituents got zinged with \$25 penalty because he mistakenly dialed 911. He said the officers were very nice and accommodating, but he got a bill about two weeks later. He wants the ordinance to go to Public Safety and Finance for a review of its effectiveness and whether it should be repealed..

Councilor Ortiz received a letter from the Nava Adé HOA. He said the City had an agreement to get a tract of land from the developer ASW, and ASW has either gone "belly up," or absconded. He said the City hasn't effected the transfer of that property. He said the HOA has contacted the City Attorney's office who gave them direction on how long it would take to file a motion to enforce. He will forward the letter and emails to the City Attorney and City Manager, and asked them to look into this matter.

Councilor Ortiz said the Candlelight Homeowners Association is protesting a fence which was built at Zia/Sr. Francis without a permit. He would like the Land Use Department to follow up with the landowner. Mr. O'Reilly said the applicant is coming tomorrow to file for a permit.

Councilor Calvert said the False Alarm Ordinance has been implement only for the last month or so, and believes it might be premature to review the ordinance.

Councilor Ortiz said the review was to be done one year from passage of the ordinance.

Councilor Bushee

Councilor Bushee introduced the following:

1. A Resolution directing staff to obtain a telecommunications baseline study that would analyze the need for telecommunications services. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "18."
1. A Resolution requesting the Governor to order the Secretary of Taxation and Revenue to direct the Motor vehicle Division to implement comprehensive bicycle safety and road-sharing educational provisions in the New Mexico drivers handbook, the New Mexico

drivers test and student drivers education curriculum. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "19."

Councilor Bushee said she has come to the conclusion we no longer need the Affordable Housing Roundtable and will write a Resolution decommissioning that group. She said we never hear from them, and perhaps this will prompt them to come forward and say what they are doing.

Councilor Romero

Councilor Romero had no communications

Mayor Coss

Mayor Coss had no communications.

I. ADJOURN

There was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 12:15 p.m.

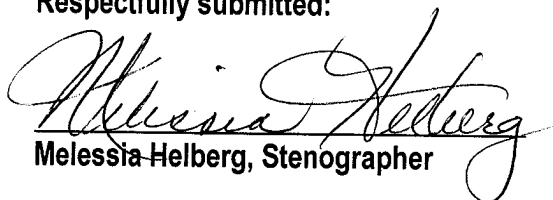
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Melessia Helberg, Stenographer