



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
DECEMBER 8, 2010
CITY COUNCIL CHAMBERS

AMENDED – ITEM # 10-v

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 12-6-10 TIME 4:40pm

SERVED BY [Signature]

RECEIVED BY [Signature]

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: Sp. City Council Meeting – November 9, 2010
Reg. City Council Meeting – November 10, 2010
9. PRESENTATIONS
 - a) Employee of the Month for November 2010 – Charles Ortega, Parks Equipment Manager; Parks Division. (5 minutes)
 - b) Muchas Gracias – Joe Maestas, Marty Sanchez Links de Santa Fe Advisory Committee Board Member. (5 minutes)
 - c) Wheeler Civilian Recognition Medal – Lauren Gary. (Asst. Fire Chief Erik Litzenberg) (5 minutes)
 - d) Winners of the Library Book Mark Contest Celebrating Santa Fe's 400th Anniversary. (Pat Hodapp) (5 minutes)
 - e) 2010/2011 City of Santa Fe Poster "Restoration". (Sabrina Pratt.) (5 minutes)
 - 1) Proclamation – "Alexander Merklein Day". (5 minutes)



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10. CONSENT CALENDAR

- a) Bid No. 11/13/B and 11/14/B – Chemicals for Water Treatment Plant; Thatcher Company. (Victor Archuleta)
- b) Bid No. 11/15/B – Chemicals for Water Treatment Plant; DPC Industries. (Victor Archuleta)
- c) Bid No. 11/19/B – City Wide Sewer Line Spot Repair Construction Contract for Wastewater Management Division; Advantage Asphalt & Seal Coating, LLC. (Stan Holland)
- d) Request for Approval of Grant Award – FY 2010 Edward Byrne Memorial Justice Assistance Grant Program for Police Department; Department of Justice, Bureau of Justice Assistance. (Police Chief Aric Wheeler)
 - 1) Request for Approval of Budget Increase – Grant Fund.
- e) Request for Approval of Change Order No. 1 – Complete HVAC and Boiler Retrofits at Three (3) City Facilities; Welch's Boiler Service, Inc. (Nick Schiavo)
- f) Request for Approval of Professional Services Agreement – Security Services for City of Santa Fe Water Facilities (RFP #11/04/P); Chavez Security, Inc. (Michael Gonzales and Bill Huey)
- g) Request for Approval of Professional Services Agreement – City of Santa Fe Employee Assistance Program (RFP #11/02/P); The Solutions Group. (Vicki Gage)
- h) Request for Approval of Two (2) Position Changes – Temporary to Term for Domestic Violence Offender Compliance/Probation Officer Positions for District and Magistrate Courts. (Carol Horwitz)
- i) Request for Approval of Amendment No. 4 to Lease Agreement – State Anti-Donation Requirements and Captures 2009 State Legislative Special Session Severance Tax Bond and Grant Agreement; La Familia Medical Center. (David Chapman)
- j) Request for Approval of Exempt Procurement – Automated Bus System Brushes for Transit Division; Galaxy Associates. (Jon Bulthuis)
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- l) Request for Approval of Amendment No. 2 to Lease Agreement – Increase Lease Parcel and Development of Transfer Station Located at 2600 Buckman Road; Randall Kippenbrock, Santa Fe Solid Waste Management Agency. (Edward Vigil)
- m) Request for Approval of Contract – Community Development Block Grant for HCDD/Affordable Housing; Santa Fe Habitat for Humanity. (Kym Dicome)
 - 1) Request for Approval of Budget Increase – Affordable Housing Loan Fund.
- n) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Wurzburger)
A Resolution Supporting the State's Drug Court Program and Requesting that Funding for the Drug Court Program be a State Priority. (Jeanne Price)
- o) Request for Approval to Publish Notice of Public Hearing on January 12, 2011:
 - 1) Bill No. 2010-40: An Ordinance Approving a Lease Between the City of Santa Fe and the Monte Sol Group, Ltd for Approximately 1.57 Acres of City Owned Land Located at the Santa Fe Municipal Airport in Order for the Lessee to Use and Occupy the Premises to Hangar Aircraft for the Lessee's Private Use and Other Related Purposes. (Councilor Wurzburger and Mayor Coss) (Jim Montman)
 - a) Request for Approval of a Lease Agreement Between the City of Santa Fe and the Monte Sol Group, Ltd. for the Purpose of Using and Occupying the Premises to Hangar Aircraft for its Own Private Use at the Santa Fe Municipal Airport. (Jim Montman)



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- p) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Mayor Coss, Councilor Dominguez, Councilor Trujillo and Councilor Wurzbarger)
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- q) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Trujillo)
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- r) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Calvert, Councilor Trujillo and Councilor Dominguez)
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- s) CONSIDERATION OF RESOLUTION NO. 2010-_____.
A Resolution Relating to a Request for Approval of First Quarter Budget Adjustments for Fiscal Year 2010/2011 Quarter Ending September 30, 2010. (Cal Probasco)
- t) Request for Approval of Amendment to Settlement Agreement – Additional 150 Acre-Feet Per Year (AFY) of Treated Effluent; Club at Las Campanas. (Brian Snyder and Marcos Martinez)
- u) Request for Approval – City of Santa Fe Schedule for 2011 City Council and Council Committee Meetings. (Yolanda Y. Vigil)
- v) Request for Approval for a Request from Santa Fe County for a Water Master Meter to Serve Agua Fria Village in Accordance with the Water Resources Agreement Between the City of Santa Fe and Santa Fe County. (Brian Snyder)



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11. Request for Approval of Hearing Examiner's Findings of Fact and Conclusions of Law: Case # H-09-014: Appeal of the Historic Design Review Board's Decision on June 8, 2010, Concerning Vacant Property Located at 502 Old Santa Fe Trail in the Downtown & Eastside Historic District. Stefanie Beninato Requests that the Land Use Department Hearing Officer Rescind the Approval to Construct an Outdoor Art Market. (Matthew O'Reilly)
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14. Request for Approval of Amendment No. 1 to Professional Services Agreement – Services at Santa Fe University of Art and Design; College of Santa Fe Management, LLC. (Lee DePietro) **(Postponed at November 10, 2010 City Council Meeting)**
15. MATTERS FROM THE CITY MANAGER
16. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION:

- a) Discussion of the Status of Communications with Railyard Company, LLC Regarding the Development of City Property at the Railyard, Pursuant to §10-15-1(H)(8), NMSA 1978, Relating to the Purchase, Acquisition or Disposal of Real Property.
- b) Pursuant to City of Santa Fe Resolution No. 2010-24, Discussion of Threatened or Pending Litigation in which the City of Santa Fe is or may Become a Participant, in Accordance with §10-15-1(H)(7), NMSA 1978.



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17. Action Regarding Thos. S. Byrne, Ltd. v. Railyard Company, LLC and the City of Santa Fe, Pending Litigation in Which the City of Santa Fe is a Participant. (Geno Zamora)
 18. MATTERS FROM THE CITY CLERK
 19. COMMUNICATIONS FROM THE GOVERNING BODY

EVENING SESSION – 7:00 P.M.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. SALUTE TO THE NEW MEXICO FLAG
- D. INVOCATION
- E. ROLL CALL
- F. PETITIONS FROM THE FLOOR
- G. APPOINTMENTS
- H. PUBLIC HEARINGS:
 - 1) Request from Juell Management, LLC, for a Transfer of Ownership of Dispenser License #2618 from Vanessie Liquor Company to Juell Management, LLC. This License will Remain at the Vanessie Restaurant and Piano Bar, 434 West San Francisco. (Yolanda Y. Vigil)
 - 2) Request from Little Tony's Pizzeria, LLC, for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be Located at Little Tony's, 945 West Alameda. (Yolanda Y. Vigil)
 - 3) Request from Pizza Centro, Inc., for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be Located at Pizza Centro, 418 Cerrillos Road, Suite F1/F2. (Yolanda Y. Vigil)
 - 4) Request for Approval of Amendment #3 to Professional Services Agreement; ¡Youthworks! (RFP# 09/02/P). (Fabian Trujillo)
 - 5) Request for Approval of Amendment #5 to Professional Services Agreement; Museum of New Mexico Foundation (RFP# 09/02/P). (Fabian Trujillo)



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- 6) CONSIDERATION OF BILL NO. 2010-35: ADOPTION OF ORDINANCE NO. 2010-_____. (Councilor Romero)
An Ordinance Amending Rule 18, Exhibit A of Chapter 25 SFCC 1987 Regarding Water Meters for Multi-Family Dwelling Units (Apartments and Condominiums). (Brian Snyder)
 - a) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Romero)
A Resolution Adopting Requirements for Master Water Meters for Multi-Family Dwelling Units (Apartments and Condominiums). (Brian Snyder)
- 7) CONSIDERATION OF BILL NO. 2010-36: ADOPTION OF ORDINANCE NO. 2010-_____. (Councilor Trujillo)
An Ordinance Amending Section 23-4.2 SFCC 1987 Regarding Solicitation on Public Property; Creating a New Article 20-2 SFCC 1987 Regulating Panhandling on Public Property; Creating a New Article 20-3 SFCC 1987 Regulating Panhandling on Private Property. (Deputy Chief Abram Anaya)
- 8) CONSIDERATION OF BILL NO. 2010-30: ADOPTION OF ORDINANCE NO. 2010-_____. (Councilor Bushee, Councilor Romero and Councilor Wurzbarger)
An Ordinance Amending Section 6-16.1 SFCC 1987 Regarding the Ethics and Campaign Review Board Quorum. (Yolanda Vigil) **(Postponed at September 15, 2010 City Council Meeting)**
- 9) CONSIDERATION OF BILL NO. 2010-38: ADOPTION OF ORDINANCE NO. 2010-_____. (Mayor Coss)
An Ordinance Amending Various Sections of the Telecommunications Facilities in the Public Rights-of-Way Ordinance, Article 27-2 SFCC 1987; Sections 27-2.2 (Applicability); Portions of 27-2.3 (Definitions); 27-2.4 (Applications); 27-2.5 (Compensations and Charges); 27-2.7 (Obligations of Providers Regarding the Public Rights-of-Way); 27-2.13 (Land Use Review); and Creating a New Section 27-2.16 (Severability); and Making Such Other Changes as are Necessary. (Kelley Brennan)
- 10) CONSIDERATION OF BILL NO. 2010-39: ADOPTION OF ORDINANCE NO. 2010-_____.
Case #2010-169 1713 W Alameda Rezoning Amendment
JenkinsGavin Design and Development, Agent for Haj Khalsa, Requests an Amendment to Rezoning Ordinance No. 2008-43 to Remove a Condition of Approval that Required the Property to be Held in Common and Not be Subdivided. The Applicant Requests the Ability to Subdivide the 1.979-Acre Property as Permitted by the Residential-3 Zoning District. The Property is Located North of West Alameda Street, East of El Rancho Road. (Heather Lamboy)



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- 11) CONSIDERATION OF BILL NO. 2010-32: ADOPTION OF ORDINANCE NO. 2010-_____. (Councilor Ortiz and Councilor Trujillo)
An Ordinance Amending Various Sections of Chapter 14 SFCC 1987 Land Development Code Related to Appeals. (Matthew O'Reilly) (Postponed at November 10, 2010 City Council Meeting) **(Postponed to January 12, 2011 City Council Meeting)**

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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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AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 12-3-10 TIME 3:50 pm

SERVED BY _____

RECEIVED BY tydominguez

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Case #2010-169 1713 W Alameda Rezoning Amendment

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A Resolution Adopting Administrative Procedures Related to Appeals of Land Use Decisions. (Matthew O'Reilly) (Postponed at November 10, 2010 City Council Meeting) **(Postponed to January 12, 2011 City Council Meeting)**

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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December 8, 2010

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**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
December 8, 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 December 8, 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 Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Members Excused

Councilor Rebecca Wurzbarger, Mayor Pro-Tem
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz

Others Attending

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

6. APPROVAL OF AGENDA

Mr. Romero said staff is requesting to postpone Item 10(t) on the Consent Agenda, and Item 6(a) under the Executive Session.

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

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

7. APPROVAL OF CONSENT CALENDAR

Councilor Bushee asked to be added as a sponsor on Item 10(n) on the Consent Calendar, noting it is not necessary to remove this item for discussion.

Councilor Chavez asked if item 10(t) is postponed to a date specific.

Robert Romero said he understands it will be on the agenda for the next Council meeting.

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

DISCUSSION: Councilor Calvert said, with regard to item 10(t), the Public Works Committee asked that it come back to that Committee, so they can see it before it goes to Council, so it might not come back to the Council at its next meeting.

Mayor Coss thanked staff for adding Item 10(v), and asked that staff follow up with Councilor Ortiz, noting he had some questions on that item.

Councilor Chavez asked about an item dealing with a PSA and the Museum of New Mexico Foundation.

Mayor Coss said that is on the evening agenda.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: None.

An Action Sheet from the Public Works/CIP and Land Use Committee meeting of December 6, 2010, regarding Item 10(e), is incorporated herewith to these minutes as Exhibit "1."

An Action Sheet from the Public Works/CIP and Land Use Committee meeting of December 6, 2010, regarding Item 10(n), is incorporated herewith to these minutes as Exhibit "2."

An Action Sheet from the Public Works/CIP and Land Use Committee meeting of December 6, 2010, regarding Item 10(p), is incorporated herewith to these minutes as Exhibit "3."

An Action Sheet, with attachments, from the Public Works/CIP and Land Use Committee meeting of December 6, 2010, regarding Item 10(v), is incorporated herewith to these minutes as Exhibit "4."

- a) BID NO. 11/13/B AND 11/14/B – CHEMICALS FOR WATER TREATMENT PLANT; THATCHER COMPANY. (VICTOR ARCHULETA)
- b) BID NO. 11/15/B – CHEMICALS FOR WATER TREATMENT PLANT; DPC INDUSTRIES. (VICTOR ARCHULETA)
- c) BID NO. 11/19/B – CITY WIDE SEWER LINE SPOT REPAIR CONSTRUCTION CONTRACT FOR WASTEWATER MANAGEMENT DIVISION; ADVANTAGE ASPHALT & SEAL COATING, LLC. (STAN HOLLAND)
- d) REQUEST FOR APPROVAL OF GRANT AWARD – FY 2010 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM FOR POLICE DEPARTMENT; DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE. (POLICE CHIEF ARIC WHEELER)
 - 1) REQUEST FOR APPROVAL OF BUDGET INCREASE – GRANT FUND
- e) REQUEST FOR APPROVAL OF CHANGE ORDER NO. 1 – COMPLETE HVAC AND BOILER RETROFITS AT THREE (3) CITY FACILITIES; WELCH'S BOILER SERVICE, INC. (NICK SCHIAVO)
- f) REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – SECURITY SERVICES FOR CITY OF SANTA FE WATER FACILITIES (RFP #11/04/P); CHAVEZ SECURITY, INC. (MICHAEL GONZALES AND BILL HUEY)
- g) REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – CITY OF SANTA FE EMPLOYEE ASSISTANCE PROGRAM (RFP #11/02/P); THE SOLUTIONS GROUP. (VICKI GAGE)
- h) REQUEST FOR APPROVAL OF TWO (2) POSITION CHANGES – TEMPORARY TO TERM FOR DOMESTIC VIOLENCE OFFENDER COMPLIANCE/PROBATION OFFICER POSITIONS FOR DISTRICT AND MAGISTRATE COURTS. (CAROL HOROWITZ)
- i) *[Removed for discussion by Councilor Chavez]*
- j) REQUEST FOR APPROVAL OF EXEMPT PROCUREMENT – AUTOMATED BUS SYSTEM BRUSHES FOR TRANSIT DIVISION; GALAXY ASSOCIATES. (JON BULTHUIS)
 - 1) REQUEST FOR APPROVAL OF BUDGET ADJUSTMENT – TRANSIT FACILITY CIP GRT FUND.
- k) REQUEST FOR APPROVAL OF SALE OF REAL ESTATE LOCATED AT 605 GARCIA STREET; LEVON D. TASHJIAN AND STEFANIE M. TASHJIAN, TRUSTEES UNDER THE LEVON D. TASHJIAN AND STEFANIE M. TASHJIAN LIVING TRUST, DATED JUNE 24, 1996, AS RESTATED ON MARCH 14, 2001. (EDWARD VIGIL)

- l) *[Removed for discussion by Councilor Bushee]*
- m) REQUEST FOR APPROVAL OF CONTRACT – COMMUNITY DEVELOPMENT BLOCK GRANT FOR HCDD/AFFORDABLE HOUSING; SANTA FE HABITAT FOR HUMANITY. (KYM D8COME)
 - 1) REQUEST FOR APPROVAL OF BUDGET INCREASE – AFFORDABLE HOUSING LOAN FUND.
- n) CONSIDERATION OF RESOLUTION NO. 2010-95 (COUNCILOR WURZBURGER AND COUNCILOR BUSHEE). A RESOLUTION SUPPORTING THE STATE'S DRUG COURT PROGRAM AND REQUESTING THAT FUNDING FOR THE DRUG COURT PROGRAM BE A STATE PRIORITY. (JEANNE PRICE)
- o) REQUEST FOR APPROVAL TO PUBLISH NOTICE OF A PUBLIC HEARING ON JANUARY 12, 2011:
 - 1) BILL NO. 2010-40: AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND THE MONTE SOL GROUP, LTD., FOR APPROXIMATELY 1.57 ACRES OF CITY OWNED LAND LOCATED AT THE SANTA FE MUNICIPAL AIRPORT IN ORDER FOR THE LESSEE TO USE AND OCCUPY THE PREMISES TO HANGAR AIRCRAFT FOR THE LESSEE'S PRIVATE USE AND OTHER RELATED PURPOSES (COUNCILOR WURZBURGER AND MAYOR COSS). (JIM MONTMAN)
 - a) REQUEST FOR APPROVAL OF A LEASE AGREEMENT BETWEEN THE CITY OF SANTA FE AND THE MONTE SOL GROUP, LTD., FOR THE PURPOSE OF USING AND OCCUPYING THE PREMISES TO HANGAR AIRCRAFT FOR ITS OWN PRIVATE USE AT THE SANTA FE MUNICIPAL AIRPORT. (JIM MONTMAN)
- p) CONSIDERATION OF RESOLUTION NO. 2010-96 (MAYOR COSS, COUNCILOR DOMINGUEZ, COUNCILOR TRUJILLO AND COUNCILOR WURZBURGER). A RESOLUTION RECOGNIZING THE BAILE DE LOS CASCARONES HELD BY THE SOCIEDAD FOLKLORICA AS AN OFFICIAL ANNUAL EVENT OF THE GOVERNING BODY AND WAIVING ALL RELATED FEES AND CHARGES AT THE SANTA FE COMMUNITY CONVENTION CENTER FOR THE ANNUAL EVENT INCLUDING ROOM RENTAL AND EQUIPMENT USE AND PARKING. (KEITH TOLER)
- q) CONSIDERATION OF RESOLUTION NO. 2010-97 (COUNCILOR TRUJILLO). A RESOLUTION OPPOSING THE TRANSFER OF THE E911 PROGRAM FROM THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO ANY OTHER STATE DEPARTMENT OR DIVISION. (POLICE CHIEF ARIC WHEELER)

- r) **CONSIDERATION OF RESOLUTION NO. 2010-98 (COUNCILOR CALVERT, COUNCILOR TRUJILLO AND COUNCILOR DOMINGUEZ). A RESOLUTION DIRECTING STAFF TO PREPARE A MEMORANDUM OF UNDERSTANDING WITH THE U.S. DEPARTMENT OF VETERAN'S AFFAIRS THAT WOULD COMMIT THE U.S. DEPARTMENT OF VETERAN'S AFFAIRS TO INSTALL ALL FUTURE HEADSTONES AT THE SANTA FE NATIONAL CEMETERY IN THE UPRIGHT POSITION. (JEANNE PRICE)**
- s) **CONSIDERATION OF RESOLUTION NO. 2010-99. (A RESOLUTION RELATING TO A REQUEST FOR APPROVAL OF FIRST QUARTER BUDGET ADJUSTMENTS FOR FISCAL YEAR 2010/2011 QUARTER ENDING SEPTEMBER 30, 2010. (CAL PROBASCO)**
- t) **REQUEST FOR APPROVAL OF AMENDMENT TO SETTLEMENT AGREEMENT – ADDITIONAL 150 ACRE FEET PER YEAR (AFY) OF TREATED EFFLUENT; CLUB AT LAS CAMPANAS. (BRIAN SNYDER AND MARCOS MARTINEZ)**
This item was removed from the agenda and postponed to the next meeting of the City Council on January 12, 2011
- u) **REQUEST FOR APPROVAL – CITY OF SANTA FE SCHEDULE FOR 2011 CITY COUNCIL AND COUNCIL COMMITTEE MEETINGS. (YOLANDA Y. VIGIL)**
- v) **REQUEST FOR APPROVAL FOR A REQUEST FROM SANTA FE COUNTY FOR A WATER MASTER METER TO SERVE AGUA FRIA VILLAGE IN ACCORDANCE WITH THE WATER RESOURCES AGREEMENT BETWEEN THE CITY OF SANTA FE AND SANTA FE COUNTY. (BRIAN SNYDER)**

**8. APPROVAL OF MINUTES: SPECIAL CITY COUNCIL MEETING – NOVEMBER 9, 2010
REGULAR CITY COUNCIL MEETING – NOVEMBER 10, 2010**

An amended page 2 for the regular City Council meeting of November 10, 2010, submitted by Yolanda Vigil, City Clerk, is incorporated herewith to these minutes as Exhibit "5."

MOTION: Councilor Romero moved, seconded by Councilor Calvert, to approve the minutes of the Special City Council meeting of November 9, 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.

Yolanda Vigil, City Clerk, noted that there is an amendment on Item 7(e) on the Consent Agenda as follows: "This was removed from the agenda." [Exhibit "5"]

MOTION: Councilor Romero moved, seconded by Councilor Calvert, to approve the minutes of the Regular City Council Meeting of November 10, 2010, as amended.

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

9. PRESENTATIONS

a) EMPLOYEE OF THE MONTH FOR NOVEMBER 2010 – CHARLES ORTEGA, PARKS EQUIPMENT MANAGER, PARKS DIVISION.

Mayor Coss read the letter of nomination into the record and presented Mr. Ortega with a plaque and a check for \$100 from the Employee Benefit Committee.

Mr. Ortega thanked the Employee of the Month Committee, his fellow coworkers who nominated him and his family and friends.

b) MUCHAS GRACIAS –JOE MAESTAS, MARTY SANCHEZ LINKS DE SANTA FE ADVISORY COMMITTEE BOARD MEMBERS.

Mayor Coss presented a Muchas Gracias certification to Mr. Maestas's daughter, on behalf of the Advisory Committee. He said Mr. Maestas will be missed and spoke about his service to the City as one of the charter members to the Marty Sanchez Links de Santa Fe Advisory Committee .

Mr. Maestas's daughter spoke about her father and his efforts to get a quality golf facility for the people of Santa Fe. He was concerned about the children of Santa Fe and he worked to see they got the equipment they needed, noting earlier in the year they donated equipment to the Golf Course while he was still alive and they have more equipment to donate. She said he had a gift certificate he had never used, which will be donated to the Marty Links golf programs which support youth golf. She said the family will donate another \$500 in his name to support youth golf

c) WHEELER CIVILIAN RECOGNITION MEDAL – LAUREN GARY. (ASSISTANT FIRE CHIEF ERIK LITZENBERG).

Deputy Chief Eric Litzenberg and Chief Barbara Salas presented the Wheeler Civilian Recognition medal to Lauren Gary for her assistance to the Fire Department in assisting her mother who was badly injured in a fall. Deputy Chief Litzenberg explained the reason this award is being given, saying Lauren's composure changed the course of her life and that of her mother, and read the letter of nomination into the record.

d) WINNERS OF THE LIBRARY BOOK MARK CONTEST CELEBRATING SANTA FE'S 400TH ANNIVERSARY. (PAT HODAPP)

Mayor Coss, assisted by Susie, presented each of the winners of the Library Book Mark contest with a certificate.

Susie said over 200 children participated in the contest, sponsored by the Santa Fe Library, underwritten by the Friends of the Public Library. The children used their unique vision of the 400th Anniversary. There were 5 categories by age level, the youngest at age 3.

e) 2010/2011 CITY OF SANTA FE POSTER "RESTORATION." (SABRINA PRATT)

Sabrina Pratt said this is a program where Santa Fe artists submit their work to be chosen for the annual poster. She said we have returned to an old tradition, and we now have a signed copy of the poster with the City seal. The special edition poster is on display at, and for sale at, the Community Gallery for \$50. She said this year the artwork chosen from among 80 submissions is "Restoration," by artist Alexander Merklein which shows a slice of Santa Fe life – the San Miguel mission, and presented the winning poster to the Governing Body.

1) PROCLAMATION – "ALEXANDER MERKLEIN DAY."

Mayor Coss read a Proclamation declaring December 8, 2010, as Alexander Merklein Day, in Santa Fe and presented a copy of the Proclamation to Mr. Merklein.

Mr. Merklein thanked the City, and the Arts Commission, saying he loves Santa Fe.

Councilor Romero thanked Ms. Pratt for the copy of the poster and the small cards, commenting that the artwork is fabulous.

Councilor Bushee asked if we need to claim the poster and the cards on the ethics form because the signed poster is valued at \$50, and the poster and cards together are valued at more than \$50.

Councilor Calvert believes that is a group disclaimer.

Mayor Coss said it has to be disclosed individually, and this is something that will have to be resolved.

CONSENT CALENDAR DISCUSSION

Mayor Coss noted for the record that Councilor Bushee is to be added as a cosponsor on Item 10(n), and that item was not removed from the Consent Calendar for discussion.

10(i) REQUEST FOR APPROVAL OF AMENDMENT NO. 4 TO LEASE AGREEMENT – STATE ANTI-DONATION REQUIREMENTS AND CAPTURES 2009 STATE LEGISLATIVE SPECIAL SESSION SEVERANCE TAX BOND AND GRANT AGREEMENT; LA FAMILIA MEDICAL CENTER. (DAVID CHAPMAN)

Councilor Chavez said it is good that the City can help La Familia, noting the City owns the building and satisfied the requirements of the State Anti-Donation Clause. He asked, since the City owns the building, who is responsible for maintenance, who pays and what is the funding source.

Mr. Chapman said it is \$50,000 , and it is an annual appropriation from CIP for \$50,000, but doesn't include custodial, and is essentially only for building maintenance.

Councilor Chavez said that sounds a little low, but he wanted this noted for the record. He noted that when we go through the budget process, we know our CIP is spread a little thin.

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

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: None.

10 (I) REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO LEASE AGREEMENT – INCREASE LEASE PARCEL AND DEVELOPMENT OF TRANSFER STATION LOCATED AT 2600 BUCKMAN ROAD; RANDALL KIPPENBROCK, SANTA FE SOLID WASTE MANAGEMENT AGENCY. (EDWARD VIGIL)

Councilor Bushee said she is against this project, so she removed it from the Consent Calendar to vote against it.

MOTION: Councilor Romero moved, seconded by Councilor Calvert, to approve this request.

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

For: Councilor Calvert, Councilor Chavez, Councilor Romero, Councilor Trujillo and Mayor Coss.

Against: Councilor Bushee voted no, and would like to know where the collection will be if this isn't built soon.

Mr. Vigil said Mr. Kippenbrock couldn't attend this meeting this evening, but at the last meeting he stated that as soon as facility is built, there would be a collection in Fall 2011.

Councilor Bushee asked if we would be skipping the collection in the Spring, and asked that staff get back with her in this regard.

END OF CONSENT CALENDAR DISCUSSION

11. **REQUEST FOR APPROVAL OF HEARING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW: CASE #H-09-014; APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON JUNE 8, 2010, CONCERNING VACANT PROPERTY LOCATED AT 502 OLD SANTA FE TRAIL IN THE DOWNTOWN & EASTSIDE HISTORIC DISTRICT. STEFANIE BENINATO REQUESTS THAT THE LAND USE DEPARTMENT HEARING OFFICER RESCIND THE APPROVAL TO CONSTRUCT AN OUTDOOR ART MARKET. (MATTHEW O'REILLY)**

A copy of a Memorandum dated November 18, 2010, to the Mayor and City Councilors, from Matthew O'Reilly, Land Use Department Director, with attached Hearing Examiner's Finding of Facts and Conclusions of Law and Historic Design Review Board Findings of Fact and Conclusions of Law, in Case #H-09-014, is incorporated herewith to these minutes as Exhibit "6."

Mr. O'Reilly said there are three requests this evening for approval of the Hearing Examiner's Findings of Fact and Conclusions of Law, the first for this case. The current Appeals Ordinance provides that the Governing Body shall consider the Hearing Examiner's recommended findings of fact and conclusions of law as a discussion item on the City Council agenda as soon as practicable. It also provides that the Governing Body may accept the Hearing Examiner's recommended findings of fact and conclusions of law, or set the matter for a public hearing.

Councilor Calvert asked if this is now a permanent use.

Mr. O'Reilly said yes.

MOTION: Councilor Romero moved, seconded by Councilor Calvert, to approve the Hearing Examiner's Findings of Fact and Conclusions of Law in Case #H-09-014.

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

For: Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: Councilor Bushee.

Explaining his vote: Councilor Calvert voted yes, commenting he is not enamored with the project, but since the H-Board approved it and had disapproved it previously, he sees no grounds for disapproval.

Disclosure before voting and explanation of his vote: Councilor Chavez disclosed, as a furniture maker, that this is an opportunity of which he may avail himself, and supports the motion because there is a need in the area for this type of vendor program. He agreed with Councilor Calvert this has gone through the H-Board, asking if it provides space for only 27 vendors currently. Mr. Reilly said he can't answer this question. Councilor Chavez said it didn't seem to be a big area or would be causing a lot of commotion on the corner. Councilor Chavez said he would vote in favor of staff's recommendation to accept these Findings of Fact.

Clarification on Councilor Chavez's disclosure: Councilor Bushee asked, in view of Councilor Chavez's disclosure of conflict of interest, should he vote on this item.

Mr. Zamora said at this point there is not an actual or potential conflict which exists. He said the disclosure from Councilor Chavez is that he might avail himself of that market, and that would be the same as any of us availing ourselves of another business that would come up in the future.

Councilor Bushee said she is the Chair of the BCD DRC, and there are professionals on the Committee. She said at a previous meeting one of those professionals chose to recuse himself due to the appearance of a conflict of interest, and she is asking if that is something he needed to do or not. She said that person just thought he might bid on something, but didn't know for sure, so he felt he shouldn't weigh in.

Mr. Zamora said if that person chose to refuse himself, he made an individual decision to do so.

Councilor Bushee said she is asking if we are required to recuse ourselves in that situation.

Mr. Zamora said, "I would have to have been there and considered all the facts with that individual, but based on what you've just described to me, I've heard, I don't know the profession and I don't know the facts and circumstances. But based on what you've just disclosed, I don't see a requirement at that point.

Mayor Coss asked if he needed to vote on this motion.

Ms. Vigil said she met with Attorney Brennan today and said to approve this item, it is just a majority of those present and voting.

12. **REQUEST FOR APPROVAL OF HEARING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW: CASE H-09-013: APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON JUN2 22, 2010, CONCERNING PROPERTY LOCATED AT 1047 OLD SANTA FE TRAIL IN THE HISTORIC REVIEW HISTORIC DISTRICT. SOMMER, KARNES & ASSOCIATES LLP, AGENT FOR MICHAEL McADAMS, OWNER, REQUESTS THAT THE LAND USE DEPARTMENT HEARING OFFICER RESCIND THE CONDITIONS OF APPROVAL FOR THE CONSTRUCTION OF A YARDWALL AND GATES AT THE STREET FRONTAGE. (MATTHEW O'REILLY).**

A copy of a Memorandum dated November 18, 2010, to the Mayor and City Councilors, from Matthew O'Reilly, Land Use Department Director, with attached Hearing Examiner's Finding of Facts and Conclusions of Law and Historic Design Review Board Findings of Fact and Conclusions of Law, in Case #H-09-013, is incorporated herewith to these minutes as Exhibit "7."

Mr. O'Reilly said it is up to the Governing Body to either accept these Findings of Fact and Conclusions of law, or set the matter for a public hearing.

Councilor Bushee asked if the Hearing Examiner is accepting the H-Board's decision in the Findings of Facts and Conclusion of Law with regard to the pilasters or stone.

Mr. O'Reilly said, "The Hearing Examiner is recommending that."

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve the Hearing Examiner's Findings of Fact and Conclusions of Law in Case #H-09-013.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: None.

13. **REQUEST FOR APPROVAL OF HEARING EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW: CASE #H-10-042: APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON JULY 13, 2010, CONCERNING VACANT PROPERTY LOCATED AT 623 CAMINO DE LA LUZ IN THE DOWNTOWN AND EASTSIDE HISTORIC DISTRICT. CECILIA RUMSEY REQUESTS THAT THE LAND USE DEPARTMENT HEARING OFFICER RESCIND THE APPROVAL TO CONSTRUCT A 2,417 SQUARE FOOT RESIDENCE, A 416 SQUARE FOOT RESIDENCE, A 416 SQUARE FOOT ATTACHED STUDIO, AND 440 SQUARE FOOT STANDING GARAGE. (MATTHEW O'REILLY)**

A copy of a Memorandum dated November 18, 2010, to the Mayor and City Councilors, from Matthew O'Reilly, Land Use Department Director, with attached Hearing Examiner's Finding of Facts and Conclusions of Law and Historic Design Review Board Findings of Fact and Conclusions of Law, in Case #H-10-042, is incorporated herewith to these minutes as Exhibit "8"

Matthew O'Reilly reiterated that the Council can approve the Findings of Fact and Conclusions of Law, or set the matter for a hearing. He said there is a typographical error in the caption for this case, and there is only one residence being constructed, but there is no 416 square foot residence being constructed.

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve the Hearing Examiner's Findings of Fact and Conclusions of Law in Case #H-10-042.

DISCUSSION: Councilor Bushee said then there is a 440 sq. ft. garage.

Mr. O'Reilly said, "There is a 416 sq. ft. attached studio and a 440 sq. ft. free standing garage."

Councilor Bushee asked if the property would allow this, and Mr. O'Reilly said this is correct.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: None.

14. REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – SERVICES AT SANTA FE UNIVERSITY OF ART AND DESIGN; COLLEGE OF SANTA FE MANAGEMENT, LLC. (LEE DePIETRO). (Postponed at November 10, 2010 City Council Meeting)

Robert Romero said staff is asking for approval. He thanked Lee DePietro for her work on this item, noting she has resigned from the City. He said the intent is to approve this amendment for \$25,000 for work between now and February to close out the work and contract with the College of Santa Fe group and Richard Czoski, then move forward with our own staff taking care of it. He said staff feels it is important to close out everything and make sure we assign staff to work on the project. He said he feels we can handle this project in-house, and will be moving toward that transition over the next two months.

Councilor Bushee said, for clarification, the reduction was from \$50,000 to \$25,000, and asked if that covers the work that was submitted. She said she is sorry Ms. DePietro is leaving the City.

Mr. Romero believes the \$25,000 covers everything that has been done and what we need to do to close out the contract.

Ms. DePietro said, in the list to which Councilor Bushee is referring, she transferred most of the work in progress currently to staff, with exception to the work that is related to the Santa Fe Art Institute which is the design stage of a variety of things which are happening on that tract which is in progress, so it won't be 100% complete. However, at the end of January enough progress will have been made to transfer it to internal staff.

Councilor Bushee asked who will handle the artwork piece, and asked if that is under consideration.

Mayor Coss asked Councilor Bushee if she is referring to the artwork at the University.

Ms. DePietro said when the staff was doing its due diligence before purchasing the College, staff identified as best they could, all of the various art pieces the City was buying as part of the acquisition. She said those are exhibits to the lease, and the pieces technically are on-loan to the University during the term of the lease. She said what the City needs to do is to develop some sort of system internally, such as is used by the Arts Commission, or we purchase a software program with bar coding which confirms the list, confirming the art work indicating the location of the art work and it stays there. She said this is an outstanding item which needs to be done. She said it is on the list and indicates that it will be done internally.

Councilor Bushee thanked Ms. DePietro for her hard work, especially on these issues.

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

DISCUSSION: Councilor Calvert thanked Ms. DePietro for her hard work at the College of Santa Fe and wished her well in her future endeavors.

Councilor Romero thanked Ms. DePietro for her hard work. She said she would like to "wish us well," in our venture in 2011 into managing property which has been managed at a professional level to this point. She appreciates Ms. DePietro's hard work as well as that of the nonprofit organization. She hopes everything works out okay, commenting that we are entering a tough situation.

Ms. DePietro said it has been wonderful to work with Richard and Sean, and it has been a good learning exercise for her.

Councilor Trujillo added his thanks to Ms. DePietro, saying this has not been an easy task and wishing her the best of luck.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: None.

15. MATTERS FROM THE CITY MANAGER.

There were no matters from the City Manager.

16. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION

- a) **DISCUSSION OF THE STATUS OF COMMUNICATIONS WITH RAILYARD COMPANY, LLC, REGARDING THE DEVELOPMENT OF CITY PROPERTY AT THE RAILYARD, PURSUANT TO §10-15-1(H)(8) NMSA 1978, RELATING TO THE PURCHASE, ACQUISITION OR DISPOSAL OF REAL PROPERTY.**
This item was removed from the agenda

- b) **PURSUANT TO CITY OF SANTA FE RESOLUTION NO. 2010-24, DISCUSSION OF THREATENED OR PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT, IN ACCORDANCE WITH §10-15-1(H)(7) NMSA 1978.**

MOTION: Councilor Romero moved, seconded by Councilor Trujillo, that the Council go into Executive Session, pursuant to City of Santa Fe Resolution 2010-24, to discuss threatened or pending litigation in which the City of Santa Fe is or may become a participant, in accordance with §10-15-1(H)(7) NMSA 1978.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: None.

The Council went into Executive Session at 5:50 p.m.

MOTION TO COME OUT OF EXECUTIVE SESSION

MOTION: At 6:45 p.m., Councilor Calvert moved, seconded by Councilor Chavez, that the City Council come out of Executive Session and stated that the only items which were discussed in executive session were those items which were on the agenda, and no action was taken.

VOTE: The motion was approved unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Romero and Trujillo voting in favor of the motion and no one voting against.

17. ACTION REGARDING THOS. S. BYRNE, LTD. V. RAILYARD COMPANY, LLC, AND THE CITY OF SANTA FE, PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS A PARTICIPANT. (GENO ZAMORA)

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to accept staff's recommendation on this item.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: None.

18. MATTERS FROM THE CITY CLERK

Ms. Vigil said, as of Monday, the Council packets are now available on the web page. She said there will be training of other staff, so other packets can be on the web as well.

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

Councilor Trujillo

Councilor Trujillo introduced an Ordinance Adopting the 2010 Compilation of the City of Santa Fe Uniform Traffic Ordinance, Article 14-1 SFCC 1987. A copy of the ordinance is incorporated herewith to these minutes as Exhibit "10."

Councilor Trujillo wished a Happy Holiday to the other members of the Governing Body and the community.

Councilor Calvert

Councilor Calvert introduced an Ordinance amending various sections of Chapter 14 Land Development SFCC 1987, regarding telecommunications facilities in the City of Santa Fe outside the public rights-of-way, which will be scheduled in consultation with legal.

Councilor Calvert said he read in the paper that the City and County's Rail Tail received prominent mention in the latest edition of *Rails to Trails*, noting it was the featured trail. He thanked the City and County workers who are responsible for the success of that trail, noting he knows there still is more work to do. He said it is good for Santa Fe to get this kind of publicity.

Councilor Calvert wished everyone a very Merry Christmas and a much more prosperous new year.

Councilor Calvert asked everyone to remember, in this season of giving, those less fortunate.

Councilor Bushee

Councilor Bushee said the City got an honorable mention on our first effort to become a bicycle friendly City. She said we are working on the next step, the bronze level.

Councilor Bushee said she has several things she will discuss with Mr. Zamora after the meeting.

Councilor Bushee wished everyone Happy Holidays and to be safe.

Councilor Romero

Councilor Romero introduced a Resolution increasing the procurement preference for the New Mexico agriculture sector for New Mexico fresh produce and processed products purchased by Government and other public and private entities. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "11." She hopes her fellow Councilors will cosponsor the bill with her, noting it is important to buy locally.

Councilor Romero said the members of the Governing Body received a summary of the ENN meeting for Casa Linda and Desert Academy which happened last evening. She thanked the Land Use staff for producing this summary, commenting it is really great.

Councilor Romero said she won't be in attendance at the first meeting in January 2011, and thanked the Mayor for moving some things to the second meeting in January.

Councilor Romero extended best wishes for a Happy Holiday and asked everyone to donate to charities during this season in a generous way.

Councilor Chavez

Councilor Chavez said he wishes everyone in the community a happy, healthy and prosperous new year. He said we can't do our job without the staff and City employees. He wished all of the employees and their families a Merry Christmas and a Happy New Year.

Councilor Chavez asked Ms. Vigil, in addition to Council agenda, if she could provide whatever draft ordinances that would speak to changes to Ethics and Campaign ordinances. He doesn't know when the next public hearing is scheduled to hear the amendments, and hopes we can work on this right after the first of the year.

Mayor Coss

Mayor Coss introduced a Resolution repealing Resolution No. 2010-1 relating to the Open Meetings Act; adopting the State of New Mexico Open Meetings Act by reference, and adopting notice requirements. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "12."

Mayor Coss wished all of the City employees and the staff a Merry Christmas and Happy Holidays. He said this is the last Council meeting of 2010, and he would like to thank his colleagues on the Governor Body for all of their hard work during the past year.

END OF AFTERNOON SESSION AT 6:54 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 Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Members Excused

Councilor Rebecca Wurzbarger, Mayor Pro-Tem
Councilor Carmichael A. Dominguez

Others Attending

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

F. PETITIONS FROM THE FLOOR

A copy of the first 5 pages of a Health and Safety Fact Sheet, dated December 8, 2010, from the IAFF FireFighters, stating its Position on the Health Effects from Radio Frequency/Microwave (RF/MW) Radiation in Fire Department Facilities from Base Stations for Antennas and Towers for the Conduction of Cell Phone Transmission, submitted for the record by Dr. Felicia Trujillo, is incorporated herewith to these minutes as Exhibit "13."

A computer-generated map of registered and unregistered towers, and future towers, submitted for the record by Dr. Felicia Trujillo, is incorporated herewith to these minutes as Exhibit "14."

A letter dated December 8, 2010, to the Honorable Mayor Coss and Members of the Santa Fe City Council, from Michael P. Branch, introduced for the record by Michael P. Branch, is incorporated herewith to these minutes as Exhibit "15."

A copy of an article by Anne Louise Gittleman, *Zapped Resources, Support and Solutions*, introduced for the record by Mary Layne, is incorporated herewith to these minutes as Exhibit "16."

A copy of "12 Basic Precautions to minimize exposure to radiation when using a mobile phone," entered for the record by Mary Layne, is incorporated herewith to these minutes as Exhibit "17."

A statement for the record by R. Francis Mudman Johnson, entered for the record by R. Francis Mudman Johnson, is incorporated herewith to these minutes as Exhibit "18."

A Motion for Reconsideration of Hearing Officer Decision on HDRB approval of 502 Old Santa Fe Trail, submitted for the record by Stefanie Beninato, is incorporated herewith to these minutes as Exhibit "19."

Mayor Coss gave each person 2 minutes to petition the Governing Body.

Dr. Felicia Trujillo said this Governing Body saved her life, because "you stopped CenTex when it was doing some funny things, like running diesel all day," and she developed heart failure because of what CenTex was doing, and this Council "laid down the law" to CenTex to protect her. She lives on the south side, and is now asking the Council to save lives, especially the thousands of children who live on the south side. She said currently there are 39 non-registered cell towers within 4 miles of West Alameda along with 8 registered cell towers. Dr. Trujillo used a computer-generated photograph to demonstrate the locations of the cell towers on or near West Alameda, which she entered for the record [Exhibit "14"]. She said there was a reference in a letter to the editor of the newspaper about the policy taken by the International Association of Firefighters [IAF] in 2004. She said in 2004 the IAF felt it had enough scientific data on an international basis to rule that there would never be a tower near any fire house. She said this came as the result of 6 California firemen becoming very ill within two weeks of cell tower being activated near their fire house, noting the firemen had short term memory loss, tinnitus, loss of focus and vertigo which are very dangerous for a firefighter. She provided a copy of the first 5 pages of her research, because they are still trying to determine whether or not this is real, and she is trying to help. [Exhibit "13"]. She said cell towers are placed where people who are not rich live. She said the Firefighters had a union to help them, but children, the poor, the elderly don't have a union. She said what we have is you. She entreated the Council to keep its powers about managing these things, and not to turn them over to 1-2 people, like the City attorneys, because "we voted for you, and you're our union."

Councilor Ortiz arrived at the meeting

Mike Branch said he is appearing on behalf of the Colgate family, the Pollon Family, Jim Ferguson and my partner owners of 810 W. San Mateo Street, which have approximately 215,000 sq. ft. of space leased to the State of New Mexico in the St. Michael's corridor, or about 1/3 of the total private space leased to the State. Mr. Branch read a letter into the record regarding the impacts on the economy of the proposed Las Soleras State Office Building Project, asking the City Council to "take a hard look at

what I have presented to you, evaluate it, have your staff assess the impacts, and I ask that you present a Resolution from the City of Santa Fe to our newly-elected Governor Susana Martinez, advising her that the Las Soleras State Office Building project is not in the best interests of the citizens of Santa Fe and that the City request that she cancel this project. Please see Exhibit "15," for the specific text of this presentation.

Mary Layne said she is a realtor and a practitioner. She said she wants to give the Council a gift because we all have to think about our health, especially as we grow older. She said Arthur Schopenhauer said, "All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident." She gave each member of the Council a copy of "Zapped Resources, Support and Solutions by Anne Louise Gittleman, and entered a copy for the record [Exhibit "16"]. She also provided a copy of "12 Basic Precautions to minimize exposure to radiation when using a mobile phone." She said there was an interesting book review in *The Washington Post*, and with little fanfare, wireless providers have been giving their customers advice about radiation from cell phones. She said Nokia, Blackberry, iPhone, and Motorola are putting a piece of paper in the box that suggests you hold the cell phone at least an inch from your head. She said, "The fact that they're slipping that in, I find interesting, instead of announcing to the world." She encouraged them to look these over and they will be educated for their health and their children's health.

R. Francis Mudman Johnson, read his statement into the record, urging the Council "to say tonight henceforth, no technologies or chemicals will be used in the City of Saint Francis without verifiable scientific research proving their safety." He urged the Mayor and Council to find a way to rescind the Telecommunications bill and create a study commission to get to the bottom of the matter and until the "consequences to our health by microwave radiation is fully understood." Please see Exhibit "18," for the text of Mr. Johnson's statement for the record. He said the "turn-up of A T&T's microwave energies has caused his blood pressure to become increasingly high, and although he takes medication, this has made it impossible for him to control it, saying it is a common radiation symptom which has the result of giving people strokes or killing them. He said, "25,000 people will have cancer in the next two years of your actions in passing the telecommunications bill." *[Stenographer's note: Mr. Johnson referred to some research that he would leave for the Council, but did not present a copy for the record.]*

Stefanie Beninato said she didn't know the Council would be considering the adoption of the Hearing Officer's recommendations for 502 Old Santa Fe Trail at the afternoon meeting. However, she would not have had the opportunity to speak anyway. She has no personal interest, but she is here because of due process. She said there are huge problems with what happened at the H-Board and with the Hearing Officer. She said, "I just gave you this, which I emailed to you [Exhibit "19"]. But if you look at number 4, for example, the Hearing Officer quite clearly... minute 3 of the CD which is not at all captured in the minutes, and I have to say number one, that the minutes themselves are a problem in terms of due process because they're so inadequate. And that... I'm going to seriously ask that you at least open it up to people who were at the hearing to have a public forum here at Council to try to convince you to hear the

case, and to allow us to speak to the due process problems. Again, the Hearing Officer said that all he was going to do was look at whether.... if the Board had violated the law and thus focus on ordinances. The actual standard is arbitrary, capricious, not supported by substantial evidence in the record or violation of the law. So right there, in minute 3 of the hearing, he's already violated my due process by not using the right standard. This also violates the ordinance itself because the ordinance says that I can make, can point out what facts were improperly determined, which I did. I raised it in terms of permanent structures and architectural standards. And then at the hearing, I cited the ordinances. And again, the Hearing Officer basically told us that we did not raise these issues properly, but he spent the entire time listening to testimony about the architectural style. So, it seems to me that we didn't really have a hearing. If you turn to paragraph 22 you will find, number one, I wasn't given a packet. I had no idea that the Hearing Officer didn't have a complete record of each..."

Mayor Coss asked Ms. Beninato to wrap up.

Ms. Beninato said, "I'm sorry your honor, but you know, you let other people speak for a lot longer than this, so would you just give me at least an opportunity to get through this..."

Mayor Coss said he would like for Mrs. Beninato to wrap up as quickly as possible, saying "we can't do the hearing here."

Ms. Beninato said, "I will. I'd like to just again do paragraph 22 and then I'll be done. And again, this is in the record. I just submitted it. I'm asking that you reconsider this. Because I think again, the City just spent \$667,000, some of which could have been saved by actually looking at due process rights and complying with them, rather than try to ignore it and get around it. And again, in number 22, I did not know what was in the packet. I was unprepared to be able to defend against it. If the Hearing Officer basically tells us we didn't raise the architectural issue properly, and basically discounts everything at the hearing, as well as what's in the record, because it was adequately raised in the record as well. Then again, we didn't really have a hearing. And these cases are quite clear that you really should be reversing this decision. If you won't even hear this argument, and again three to four minutes is not adequate to present this. This is only a couple of paragraphs of 22 paragraphs. I am asking again that you undertake your responsibility as a City Council, as an appeals body and at least open it to people who were at the hearing to try to convince you to have a full hearing."

G. APPOINTMENTS

Arts Commission

Mayor Coss made the following appointments to the Arts Commission:

Anne Pederson – to fill unexpired term ending 10/2012;
Kirk Ellis, Chair – Reappointment – term ending 10/2012;
Joey A. Chavez – Reappointment – term ending 10/2012; and
Ramona Sakiestewa – Reappointment – term ending 10/2012

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

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

Children and Youth Commission

Mayor Coss made the following appointment to the Children and Youth Commission:

Dolores P. Fidel – to fill unexpired term ending 01/2012

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

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

Regional Coalition of LANL Communities

Mayor Coss made the following appointments to the Regional Coalition of LANL Communities:

Mayor Coss, Director;
Councilor Wurzbarger, Alternate Director; and
Juan Torres, Alternate Director

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

DISCUSSION: Councilor Bushee said this was funded for one year for \$10,000 on the part of the City, and one year and it will be back.

Mayor Coss said yes.

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

H. PUBLIC HEARINGS

- 1) **REQUEST FROM JUELL MANAGEMENT, LLC, FOR A TRANSFER OF OWNERSHIP OF DISPENSER LICENSE #2618 FROM VANESSIE LIQUOR COMPANY TO JUELL MANAGEMENT, LLC. THIS LICENSE WILL REMAIN AT THE VANESSIE RESTAURANT AND PIANO BAR, 434 WEST SAN FRANCISCO. (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. She said copies of litter, traffic and noise ordinances are in the Council packet. She said staff recommends this business be required to comply with all of the City's ordinances as a condition of doing business in the City.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Calvert moved, seconded by Councilor Bushee, to approve the request from Juell Management, LLC, for a transfer of ownership of Dispenser License #2618 from Vanessie Liquor Company to Juell Management, LLC, with the license to remain at the Vanessie Restaurant and Piano Bar, 434 West San Francisco.

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

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

Against: None.

- 2) **REQUEST FROM LITTLE TONY'S PIZZERIA, LLC, FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON PREMISES CONSUMPTION ONLY), TO BE LOCATED AT LITTLE TONY'S, 945 WEST ALAMEDA. (YOLANDA Y. VIGIL)**

The staff report was given by Yolanda Vigil, City Clerk, noting the business is not within 300 feet of a church or school, and staff recommends this business be required to comply with all of the City's ordinances as a condition of doing business in the City.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Bushee moved, seconded by Councilor Romero, to approve the request from Little Tony's Pizzeria, LLC, for a Restaurant Liquor License (beer and wine on-premise consumption only), to be located at Little Tony's, 945 West Alameda.

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

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

Against: None.

3. REQUEST FROM PIZZA CENTRO, INC., FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) TO BE LOCATED AT PIZZA CENTRO, 418 CERRILLOS ROAD, SUITE F1/F2. (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. She said staff recommends this business be required to comply with all of the City's ordinances as a condition of doing business in the City.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Bushee moved, seconded by Councilor Romero, to approve the request from Pizza Centro, Inc., for a Restaurant Liquor License (beer and wine on premise consumption only), to be located at Pizza Centro, 418 Cerrillos Road, Suite F1/F2.

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

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

Against: None.

Mayor Coss said Councilor Ortiz has now joined the meeting, and said he hopes the poetry reading went well.

Councilor Ortiz thanked Mayor Coss for allowing him to go in his place, given that his daughter was one of the poets, saying it is a big honor for the family.

4) REQUEST FOR APPROVAL OF AMENDMENT #3 TO PROFESSIONAL SERVICES AGREEMENT: ¡YOUTHWORKS! (RFP #09/02/P). (FABIAN TRUJILLO)

The staff report was given by Fabian Trujillo from the materials in the Council packet. He said YouthWorks has achieved all of its outcomes with 42 placements, 13 full time job placements and 22 students will have completed their GED tests. He said as of today, 5 GEDs have been awarded. He said 13 companies are participating in the program. He said Economic Development staff recommends approval.

Councilor Bushee asked what he means by this is the "second approval."

Mr. Trujillo said an RFP was issued in 2008, and YouthWorks has been approved once for this contract, and he is asking for the second renewal of the contract.

Public Hearing

There was no one speaking for or against this request

The Public Hearing was closed

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

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

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

Against: None.

5) REQUEST FOR APPROVAL OF AMENDMENT #5 TO PROFESSIONAL SERVICES AGREEMENT, MUSEUM OF NEW MEXICO FOUNDATION (RFP #09/02/P). (FABIAN TRUJILLO)

The staff report was presented by Fabian Trujillo. Mr. Trujillo said this is another option for renewal. This is the second renewal of the Museum of New Mexico Foundation contract. He said they have met all of the requirements in the scope of work, and added over 50 artisans, more than \$450,000 in product the last year, held two technical assistance workshops, and its website is going very strong. He said there is a Santa Fe section at the website. He said staff recommends renewal of this contract for the second time.

Public Hearing

Speaking to the request

There was no one speaking for or against this request

The Public Hearing was closed

Councilor Chavez disclosed that as a furniture maker he has participated in the website for the Santa Fe section of *New Mexico Creates*. Councilor Chavez said he has questions if the Council "is comfortable with that."

Mayor Coss said, "We're okay with that."

Councilor Chavez noted the contract started two years ago, and he has questions on two of the items in the scope of services, Section C of the Professional Services Agreement from 2008. He said Section C provides, "Establish internet links to the Santa Fe Community Gallery housed in the Santa Fe Community Convention Center, and establish internet links to any artist's website whose work is being sold or displayed on the New Mexico Creates site." He asked John Stafford to give an update on some of those scope of services which he didn't see captured in the Scope of Services being considered for the next calendar year.

John Stafford said they went through the process last year of having to redo their website to enhance its navigability as well as for easier quick access to the artists. He said while they were doing that, they put the item in question on the back burner. They are in the process of programming the website and expected it to be up and running in 45 days.

Councilor Chavez said he didn't see the Scope of Services reflected that is current, and he wants to be sure that we capture and incorporate those into the Professional Services Agreement. He said they can trust that he would be doing that, but it would be better if it is in writing and reflected in the PSA.

Mr. Stafford said they will do that.

Councilor Chavez said this is a big opportunity for both the Museum Foundation and for the artists. He asked the "commission which is expected of the artist."

Mr. Stafford said the artist establishes the wholesale price, which they receive in full when an item is sold. He said in most cases, in most product categories, it is a 50-50 split to the retail price. He said in some categories such as textiles, furniture, some home decor items, it is 60-40 or 35-65.

Councilor Chavez said he wanted to point this out for the record. He said in the partnership between the Museum and the local artist there is this arrangement, so both sides are financially able to make ends meet.

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

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

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

Against: None.

- 6) **CONSIDERATION OF BILL NO. 2010-35; ADOPTION OF ORDINANCE NO. 2010-30 (COUNCILOR ROMERO). AN ORDINANCE AMENDING RULE 18, EXHIBIT A OF CHAPTER 25 SFCC 1987, REGARDING WATER METERS FOR MULTI-FAMILY DWELLING UNITS (APARTMENTS AND CONDOMINIUMS). (BRIAN SNYDER)**
 - a) **CONSIDERATION OF RESOLUTION NO. 2010-100 (COUNCILOR ROMERO). A RESOLUTION ADOPTING REQUIREMENTS FOR MASTER WATER METERS FOR MULTI-FAMILY DWELLING UNITS (APARTMENTS AND CONDOMINIUMS). (BRIAN SNYDER)**

The staff report was presented by Brian Snyder from his Memorandum of September 29, 2010, which is in the Council packet. He said the intent of the Ordinance is to provide options to developers of multi-unit apartments and condominium complexes as well as to existing mobile home parks, to provide master meters (in the case of apartments and the condos to each building), and in the case of existing mobile home parks for the mobile home park itself, rather than in each existing dwelling unit. He said the resolution intent is to maintain water conservation and the integrity of these water systems. He said staff recommends approval.

Public Hearing

Speaking to the request

There was no one speaking for or against the Ordinance or Resolution

The Public Hearing was closed

MOTION: Councilor Romero moved, seconded by Councilor Calvert, to adopt Ordinance No. 2010-30, with the amendment sheet that is in the packet.

DISCUSSION: Councilor Bushee said then this is for large apartment complexes and condo units.

Mr. Snyder said it is for multi-unit apartments and condos and existing mobile home parks.

Councilor Bushee asked if it is a cost savings for the apartment/complex owners.

Mr. Snyder said there could be a cost savings. He said several years ago there were frozen meters due to unoccupied buildings, and it would reduce that challenge because they were individually metered.

Councilor Bushee said the City is requiring sub-meters, and asked if that is aiding in conservation and Mr. Snyder said yes.

Councilor Bushee said because there are individual meters you could measure conservation. She wants to know if this aids in more water conservation or is it a wash because there are less meters and less maintenance.

Mr. Snyder said it maintains the integrity of the system and the conservation measures over the years, and believes it is a wash.

Councilor Chavez said, with regard to the water meters, in a severe winter there is the threat of freezing. He asked if the meters are placed in a heated portion of the building or if they are below the frost line where they won't freeze, and how that will be different from the meters we use now.

Mr. Snyder said they are not in the heated part of the building, but are in vaults. However, than the 5/8 inch meter there would be a 3-inch master meter, and assuming there is some occupancy in a multi-unit apartment, condo or mobile home park, there would be some flow of water going through the meter. He said the problem with the frozen meters is that there was no water going through the meter. He said with the master meter there would be some flow of water through the meter.

Councilor Chavez said then there would be sufficient flow to prevent freezing.

Mr. Snyder said yes.

Councilor Chavez asked if there is some insulation in the vault.

Mr. Snyder said it typically is a concrete block vault with a lid and a hatch, noting sometimes they put insulation board inside. He said the vaults typically are up to 4 ft. deep and stay warm.

Councilor Chavez said then that is below the frost line and Mr. Snyder said yes.

Councilor Bushee said, in recalling previous legislation, in places such as Park Plazas, there was one big master meter, but there were no submeters, and people were not aware of their own individual water use. She asked if that would be considered multi-family and if this is different.

Mr. Snyder said that would be considered multi-family, and the purpose of the individual submeters for each dwelling unit, is for the expressed purpose of the owner knowing how much water they are consuming on a monthly basis. He said Exhibit A to the Resolution discusses that they have to use similar rate structures and conservation minded measures for the renters, and it is management's responsibility to provide this information to the City on a monthly basis.

Responding to Councilor Bushee, Mr. Snyder said the Resolution and Ordinance are for new construction.

Councilor Bushee said previously, she thought we frowned on master meters.

Mr. Snyder said it is his understanding that master meters were frowned upon previously due to the fact that each resident didn't know how much water they were using, therefore there was no incentive to conserve water. In this case, the submeters will provide that incentive because there will be a bill for the water used. He said the City has found that master meters were billed as a flat fee with the rent or whatever mechanism by which rent is collected, and not by the water used. In this case, we are requiring that they bill accordingly.

Councilor Bushee asked is it a benefit financially to the developer to have submeters.

Mr. Snyder said from the up-front capital cost, including the expansion charges and such to the developer, it is about equal, but it is in favor of the City in terms of long term maintenance on the amount of material we have to own and maintain. It is cheaper for the City to own and maintain one master meter than tens of individual meters.

Councilor Bushee asked, in terms of service fees to the developer and users, if it is a wash, and Mr. Snyder said it is about the same.

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

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

Against: None.

MOTION: Councilor Bushee moved, seconded by Councilor Calvert, to adopt Resolution No. 2010-100, with the amendments in the Council packet.

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

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

Against: None.

- 7) **CONSIDERATION OF BILL NO. 2010-36; ADOPTION OF ORDINANCE NO. 2010-31 (COUNCILOR TRUJILLO). AN ORDINANCE AMENDING SECTION 23-4.2 SFCC 1987, REGARDING SOLICITATION ON PUBLIC PROPERTY; CREATING A NEW ARTICLE 20-2 SFCC 1987, REGULATING PANHANDLING ON PUBLIC PROPERTY; CREATING A NEW ARTICLE 20-3 SFCC 1987, REGULATING PANHANDLING ON PRIVATE PROPERTY. (DEPUTY CHIEF ABRAM ANAYA)**

A copy of "City of Santa Fe, New Mexico Proposed Amendment(s) to Bill No. 2010-36 (Panhandling), submitted by staff, is incorporated herewith to these minutes as Exhibit "20."

A copy of a letter dated December 8, 2010, to the Santa Fe City Councilors, from Peter Simonson, Executive Director, American Civil Liberties Union of New Mexico, regarding Anti-Panhandling Ordinance, entered for the record by Deputy Chief Anaya, is incorporated herewith to these minutes as Exhibit "21."

The staff report was presented by Deputy Chief Abram Anaya. He said this ordinance will replace the existing ordinance which City Legal has deemed to be possibly unconstitutional. He said as opposed to outlawing panhandling outright, the City has chosen to regulate it. He said, with regard to weighing the free speech rights with the issues of health and safety, the ACLU has reviewed the proposed ordinance and has sent out a letter, which he believes has been provided to the Governing Body [Exhibit "21"]. He said they have been in communication and constant touch with the Coalition to end Homelessness, the Interfaith Shelter and other groups, so they have received quite a bit of input.

Deputy Chief Anaya said the amendment sheet before the Governing Body [Exhibit "20"] also shows that we have taken the points from the ACLU and addressed each and every one of those concerns. However, with regard to Amendment #4, which changes "may issue a warning," to "shall issue a warning," there has been some debate. He said the Police Department has concern that by changing the language to "shall," may give people a little too much leeway in that could be used to aggressively panhandle and badger someone to the point of victimization, and police being impotent to do anything

about it. He said there should be some discretion left to the police, but he will leave this to the Governing Body.

Councilor Trujillo, referring to the proposed amendment #4, said on page 4 line 20, the amendment changes "may" to "shall." However, the Police Department would rather it be "may."

Deputy Chief Anaya said yes. He said the ACLU did send him an email with regard to this amendment, saying it isn't a deal-breaker, and in their letter urged the City to consider this change. He said "shall" can prohibit the police from taking appropriate enforcement action immediately on someone who is being overly-aggressive. He said the Department's only concern in the proposed change, relates to the public safety.

Councilor Bushee said she is just getting the letter from the ACLU. She said although they aren't threatening litigation, they say our Ordinance needs to be narrowed and are advising us to vote against the proposed Ordinance. She asked, given that the City gets sued all the time, if this is something the City should worry about.

Mr. Zamora said the City Attorney's Office has reviewed the ACLU's letter and many of these amendments are proposed to address the issues reflected in the letter. He said Marcus Martinez, who has done the constitutional research on this issue, can stand for specific questions.

Councilor Bushee said then this list of amendments [Exhibit "20"] covers everything mentioned in the ACLU letter, including the "unconstitutionally vague language" of when it is directed toward a motor vehicle.

Mr. Martinez said this is correct. The amendment sheet does address all of their concerns. However, Deputy Chief Anaya has pointed out a difference of opinion between the ACLU and the Police Department which is the level of discretion which is afforded the Police Department on a first citation. The Police would like to have the determination of whether or not to give a warning or whether it is appropriate to not give the first warning or to give a citation on the first offense.

Councilor Bushee asked what would be unconstitutional about allowing the police more discretion.

Mr. Martinez said from the letter and his communications with the ACLU, they feel a warning would provide notice of what is and is not prohibited, and therefore would not make the Ordinance constitutionally vague which is one of the arguments they made against the Albuquerque ordinance. He doesn't know that the police having that discretion would make the Ordinance vague, we just know where their preference lies.

Councilor Bushee said then we are going to apply this ordinance only to the BCD, noting that is on the list of amendments, and one of the things the ACLU requested.

Deputy Chief Anaya said this is in reference to "between sunrise and sunset." He said the first draft had a total nighttime darkness ban, and as illustrated by the ACLU, the first amendment does not end when the sun goes down. Therefore, this has to be limited to certain areas.

Councilor Bushee said then it ends in the BCD at sundown, and Deputy Chief Anaya said yes.

Mr. Martinez said the argument the City is making is that this is a reasonable time and place for this restriction, and by focusing on an area where there has been a particular problem with panhandling, the Ordinance, we hope, would withstand constitutional muster. So, they focused on this area where the Police have identified a particular problem with panhandling, and the reason there is a geographical limitation.

Councilor Chavez said, with due respect to the sponsor, the Police Department and City Attorney, he doesn't see that geographical distinction, saying he sees panhandling all over town.

Councilor Ortiz asked if the City of Albuquerque ordinance has the same kinds of geographic limitations.

Mr. Martinez said yes, noting originally there was a City-wide ban, but it is now limited to the Nob Hill area and another area identified, which have a nighttime ban sunset to sunrise.

Councilor Ortiz said then during the day, the rest of the provisions of the Ordinance apply.

Deputy Chief Anaya said they would have to enforce the provisions in all parts of the entire City.

Councilor Ortiz asked if Albuquerque imposed the geographic limitations after or before the restraining order, and Mr. Martinez said after.

Councilor Calvert said he is concerned that there are two amendment sheets and they both say from staff, but one has an Item #4 and the other doesn't. He asked which amendment sheet we are proposing.

Ms. Price said we are going with the one which was handed out tonight [Exhibit "20"], and not the one in the packet.

Councilors Calvert and Bushee said there were two on their desk this evening.

Ms. Price said it is the one which has four amendments, labeled Item H.7) at the top.

Councilor Calvert said then it is up to the Council to decide whether or not we want to include Amendment #4. However, #3 amendment "that is on that page," doesn't talk about the BCD.

Ms. Price said Amendment #2 does.

Councilor Calvert said, regarding “may” or “shall,” according to the ACLU logic, it is hard for people to know all the rules, especially someone who is panhandling, and we don’t know how well they are educated unless we issue them a written warning. Secondly, how do you know you don’t have the same person repeat offending if you don’t issue a written warning, noting it may not be the same officer issuing the citation for the second offense. It would seem to him, that the written warning would be a better tool for doing that.

Deputy Chief Anaya said this is correct, and the reason the Police Department has drafted a letter to issue to all police officers to give to anyone with whom they come in contact. He said he didn’t mean to intimate that the Police would be giving criminal citations on the first offense. His counter argument is that there are those who are so aggressive and egregious that they need to be dealt with “right off the bat,” and sometimes a warning may not be sufficiently adequate. However, that said, he has been working with Hank Hughes, and they will be developing a complete breakdown of the Ordinance and all its provisions.

Councilor Calvert said then the Police Department wants the “may” language because you may need to issue a citation on the first violation because they are so egregious, without first issuing a written warning.

Deputy Chief Anaya said this is correct, because there may be a situation where the person has become so aggressive and egregious that we need to take enforcement action, rather than issuing a warning, giving them a copy of the letter and walking away, which allows the person to continue the egregious act, which isn’t feasible or plausible

Public Hearing

Mayor Coss gave each person 3 minutes to speak to the request.

Speaking to the request

Hank Hughes, Executive Director, New Mexico Coalition to End Homelessness. Mr. Hughes thanked City staff for working closely with him on this issue. He urged the Council to adopt the Ordinance with the amendments. He said, in their letter, the ACLU said its preference is that you not pass it at all, and the second choice is to adopt it with all the amendments. However, he said the Ordinance as would be amended is very clear and sets a nice framework everyone can understand and to protect the public and the free speech rights of the people who are panhandling. He said, although he represents the Homeless Coalition, most homeless people are not panhandlers and most panhandlers are not homeless. He is here to speak on behalf of the rights of the homeless.

Mr. Hughes said it is important to adopt at least the first 3 amendments, which protect the City from an ACLU lawsuit. He spoke with Peter Simonson at the ACLU about this a lot, and Mr. Simonson is very concerned about those. He said the issues about which he is concerned already are addressed in the Ordinance. He said with regard to Amendment #4, he doesn't think anyone has strong feels about it, but he prefers "shall," because he believes it provide real direction to the Police Department in enforcing the ordinance, and, from his perspective, he said people should be treated with respect and given the benefit of the doubt, pointing out that the ACLU he said it is not a deal breaker.

Stefanie Beninato said she think's it is appropriate because panhandling is a problem downtown, but also in front of WalMart and other places. She said the public welfare aspect of limiting it to the downtown justifies the Ordinance, otherwise there would be constitutional problems. She sees the wisdom in the "shall issue the warning," however, she suggested adding language to the effect that "unless the person refuses to cease and desist their action after the after warning is issued", so if the aggressive behavior continued you wouldn't have to wait until the next day to take steps. She said this would protect the idea that you are arbitrarily enforcing the ordinance, and people don't really know what it means, while giving the Police the leeway they might need in a violent situation.

Andrea Fisher said she owns Andrea Fisher Fine Pottery Gallery on the on corner of West San Francisco and Don Gaspar. She is here to tell you what happens during the day on West San Francisco. She said we have to have empathy for those less fortunate. She said, however, that changed this past summer, and what has moved in is a group of professional panhandlers.

Ms. Fisher said, "I have scraped the feces, mopped up the urine from underneath my doorway and picked up all the garbage. This is during the day now. These new professional panhandlers are young, they're aggressive, they're foul mouthed and they are armed. I watched a policeman in my front doorway talk to one of these people and removed 4 or 5 knives from his pocket, one of them, the blade was about 7 inches long. I've had customers who are afraid to walk between West San Francisco Street and Water Street down Don Gaspar because there are congregations of professional panhandlers in that area. I've had to have my son escort ladies. I've had one lady who felt as if she was trapped in a doorway by these professional panhandlers. She told me she had been coming to Santa Fe for 20 years and never encountered anything like that and she would never, ever come back again because she was fearful for what was going on down there. It's happened over and over again. The Mayor has been very responsive, the police have been very responsive, but the problem still has not gone away. As a merchant, people don't come into her shop when there are professionals screaming at them, screaming obscenities at them, chasing after them, saying the foulest things you can imagine to them. Its really bad for my business. I support.. have employees who live in this area obviously. I pay gross receipts tax. 90% of my merchandise comes from with a 100 mile radius of this building, and I really support the community. It was a whole lot better when we had Cecil. If everybody remembers Cecil on the Plaza, unfortunately he had to retire. A substitute for Cecil, a police presence in the area, would make a lot of difference in terms of how aggressive and how prevalent this situation should be. You can tell they're professionals, because they

come with no baggage. The homeless people we see carry their possessions with them. They have no dogs. The rumor on the street is that they take the Rail Runner up from Albuquerque, because they're not tolerated in Albuquerque, and instead hang out in Santa Fe. Anything you could do to help us downtown is good for our community, it's good for business. It's good for all of us if we can somehow give the police the authority they need to stop these really aggressive people."

Valerie Fairchild said she has Fairchild & Company on West San Francisco Street, and has been in business in Santa Fe since 1976. She said this is a huge problem, in that block particularly, because Starbuck's is there and a lot of people congregate begging or harassing people. She has clients who are afraid to come into her store because of the people parked at corners at 112 and at Starbuck's. She said just ending it at night won't address the problem, and we need a stronger ordinance than ending it at sunset. She respects the ACLU and people's right. She said these people are aggressive and harassing people, defaming and debasing the image of Santa Fe. She said we are having problems in this economy anyway, and people don't want to come to an area where there are people with dogs they use as sympathetic images. She is sure most of the dogs aren't tagged or have shots, and would like to see Animal Control to intervene, saying she believes there is animal use involved in this as well. She reiterated it is a huge problem for downtown merchants. She hopes the Council will do the best they can to enable the police to act. She said this is going to really hurt our image.

Elizabeth Perez said she and her husband own "Things Finer," and she agrees with the previous speakers. She is a member of the Downtown Merchants which has discussed more K-9 presence downtown, because when a police dog shows up they all scatter. She said these people are frightening, and she understands are involved in selling drugs and other illegal activities, such as relieving themselves. She said it is not bad only for business, it is bad for employees, it is dangerous and there have been attacks on people. She agrees that we should do something to improve over a 24 hour period. She said they understand the Police Department is stretched to the limit. She said they would be thrilled to hear suggestions of how we can help and things we can do, such as putting cameras in the stores. She believes there are a lot of people ready willing to help and cooperate any way we can.

John Rickey, La Fonda, said he also represents the Lodging Association for the City. He suggested that you take the most punitive measure of the ordinance and put it place, so the police can do their jobs. He has seen them do it and do it very well, noting they have great discretion and are trained very well. He has received comment cards, and he quoted from one of the cards, "I stayed in Santa Fe 4 times this year. I do not feel safe in the Plaza area. Approached multiple times by panhandlers begging for money and cigarettes. Saw scary looking people. Never saw police or security around the Plaza."

Mr. Rickey quoted from another comment card he received, "This is our second time staying in Santa Fe. We came back to Santa Fe because the culture, climate of New Mexico is great. We have a lot of trouble with the number of aggressive panhandlers around the square that continually ask us for money

and make my wife feel uncomfortable walking around, even in the daytime. I had to step over them in the morning to get coffee. We had a truck roll through the square in the early evening and yelling foul language at us."

Mr. Rickey said two of his guests have been attacked, one on the way back to LaFonda from Loretto on Water Street which is dark, and another coming from La Casa Sena from that corner which at night which is very scary, noting the gentleman was hit with a hammer. He said we are very concerned about the image of Santa Fe and that we'll have an incident which will be picked up nationally and mar the image of one of our biggest economic generators for the City.

Stephanie Chavez said she is an employee at Santa Fe Reflections, located at 203 West San Francisco. She has worked on the Plaza for more than 4 years and has witnessed what the previous speakers have witnessed on a daily basis. However, she talks to the homeless people and gets "my hands dirty," and she tries to get to know them and tries to learn where the problems lie. She said it is important to deal with the situation in a manner which puts Santa Fe in a positive light, because "the world is watching how you're going to address this situation." She proposed that "you all get your hands dirty and take a walk through the streets of our City on a daily basis for 8 hours a day, so you can see what I see." She said it is important for Santa Fe to establish a non-profit community center for the homeless on the Plaza, because it is only going to get worse. She said Vietnam veterans congregate on the Plaza, veterans returning from Iraq and Afghanistan with PTSD and inflicting it on the other citizens and the rest of the tourists that come from all over the world. This is her solution. She said, "I challenge you. I would love to see each one of your faces walking down this street, San Francisco, but I never see the leaders of this City doing much and it's disheartening. I challenge you. I dare you to come up with a viable solution that works for Santa Fe. Because the world is watching you."

Diane Zamos said she has a store on Don Gaspar and they experience everything these merchants are experiencing. She has regular customers who tell her they're not coming back to Santa Fe because of what they've seen in the past two years.

The Public Hearing was closed

MOTION: Councilor Trujillo moved, seconded by Councilor Romero, to adopt Ordinance No. 2010-31, with proposed amendments #1, #2 and #3 on the handout [Exhibit "20"], but not Amendment #4.

DISCUSSION: Councilor Bushee said the vehicle policy at this point, will be that nobody can panhandle... She said she has walked around a lot in the BCD and she encounters panhandling downtown and on medians. She said she tends to give money to people standing on medians, especially just before Thanksgiving. She said it seems dangerous for people to panhandle on the medians as well as for the drivers, depending on the interaction, and asked if this is no longer allowed.

Deputy Chief Anaya said this is correct, and it was removed for public safety reasons – for both the safety of the panhandler and the motoring public. He said several panhandlers have been hit by motorists and in some cases were killed.

Councilor Bushee said the current ordinance is more restrictive, but we didn't enforce it, noting panhandling is a regular occurrence on Paseo de Peralta by DeVargas Mall and the bank, as well as near Santa Fe Place by the Harley-Davidson store. She asked how the City Police Department will enforce the ordinance.

Deputy Chief Anaya said the existing ordinance banned panhandling City-wide.

Councilor Bushee said the laws we pass are only as good as the enforcement, and asked if enforcement will be a priority and whether we have the capacity to enforce. She asked, since you haven't been able to enforce it to date, what will the enforcement be like.

Deputy Chief Anaya said, because of the wording of the existing Ordinance, and because the City Attorney determined it was unconstitutional, the Police didn't try hard to enforce it. Now, this Ordinance regulates this activity and gives the Police something more to enforce.

Councilor Bushee asked if the Police will enforce the Ordinance as well as can be expected, and Deputy Chief Anaya said yes.

Councilor Bushee asked, with regard to panhandling being banned in the BCD at night, given the ACLU is looking over our shoulder, and its determination that we have the ability to narrow the restrictions, is it possible to limit panhandling in the BCD during the day, without getting sued

Mr. Zamora said it is the last phrase which is difficult. He said panhandling has and is interpreted as a form of speech.

Councilor Bushee understands that and reiterated her question.

Mr. Zamora said he will ask Mr. Martinez to address that.

Mr. Martinez said it is difficult for him to say, but believes the ACLU would argue that is not a reasonable time, place and manner restriction and by having a complete prohibition in a specific geographic area, it would not leave sufficient alternate avenues of communication open in that area, and they have a free speech right in the BCD.

Councilor Bushee said, not that she wants the ACLU writing our laws, but she doesn't want to get sued. However, she wants to understand why it is okay for the ACLU to say we can't do that at night in a restricted area.

Mr. Martinez said it isn't the ACLU that is saying not at night, it is the City of Albuquerque Ordinance banning panhandling throughout the City. In that case, the ACLU requested and obtained a temporary restraining order in the District Court that this isn't a reasonable restriction, and in this same way an absolute prohibition in a specific geographic area.

Councilor Bushee said the letter from the ACLU says, "Narrow the area where it only applies to the Business Capital District where panhandling is ostensibly a noteworthy problem."

Mr. asked Councilor Bushee's question and she said, "That's what I want to do. I want to apply [it] to the Business Capitol District where panhandling is a noteworthy problem"

Mr. Martinez said he believes they could argue that, and we would attempt to defend it.

Councilor Bushee said they got a temporary restraining order in Albuquerque.

Mr. Martinez said they got an injunction against the application and enforcement of the Ordinance, and Albuquerque changed its ordinance to limit it to the Hob Hill area and another area.

Responding to Councilor Bushee, Mr. Martinez said the limitation in Nob Hill and another area is only at night.

Mr. Zamora said he doesn't want to give the impression that we make these decisions based on the ACLU, but make decisions based on constitutional research that has been raised by our research and the ACLU's research. In the absence of a challenge, staff makes its best decision on what the case law shows us. He said the case law generally shows us that speech issues can be restricted but not banned. He said so we have to find reasonable restrictions. He said an overnight restriction on panhandling, which is speech, is reasonable because it is outweighed by issues of public safety. It is a limited restriction because it is a small geographic area and not the whole are, and it is limited in time.

Councilor Bushee asked if we could permit panhandling in the BCD from the hours of 6:00 p.m. to 10:00 p.m.

Mr. Zamora said there are no case law or examples to back that up, and we would leave it to any challenges in the Court to give us direction. We do have direction on a night time ban and we know a night time ban works, but we won't know about shifting those times until it is challenged.

Councilor Calvert said, that is the prohibition, but the other parts of the Ordinance talk about the aggressive nature which is 24 hours a day. He said that means that some of the conduct we've heard about would be done day and night.

Deputy Chief Anaya said this is correct, and the police will enforce the aggressive panhandling restrictions 24/7.

FRIENDLY AMENDMENT: Councilor Chavez asked the sponsor if it would be possible to amend the motion to incorporate the requirement for a one-year review of the ordinance since it is relatively new. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE GOVERNING BODY.**

Mayor Coss said he believes banning panhandling on medians is good for public safety. However, he asked how that works vis a vis the peace advocates on the medians at St. Francis, and the newspaper vendors on the medians everywhere. He said we had this "go around" with the newspaper vendors and lost it, and they are on lots of major medians across the City, commenting it feels like a very similar activity to panhandling, as well as being dangerous.

Deputy Chief Anaya said he remember reading about this, but doesn't remember all the particulars. He said it had something to do with the commercial nature of the business, and there were restrictions such as the vests and the interactions. He will research this and provide an answer.

Deputy Chief Anaya said the activists are prohibited from the medians because they can't hold up a big sign in the middle of the street blocking the line of sight of motorists, because it could cause a serious problem. He said they are allowed on the sidewalks, but not on the medians, noting it is a free speech issue.

Mayor Coss thanked Councilor Trujillo and the Public Safety Committee for working on this. He this is a giant issue. He said he has been walking downtown which he does a lot and talks to a lot of the merchants when he does. He said he is 6'4" and 200 pounds, and he has been accosted and made to feel very nervous. He has also been insulted when he didn't "cough up the money." He has friends where a panhandling incident turned into a mugging, and it seems it's happened a few more times – you say no and you get punched in the nose.

Mayor Coss said he sees the problem very acutely, and there are people who may not be in poverty but who are taking advantage of the people of Santa Fe in the downtown area. He fully supports the Ordinance and the attempt to reconcile free speech with public safety, and to have a downtown everyone can enjoy and not for a few to victimize everyone else.

Mayor Coss said he would like to see the police to enforce this Ordinance aggressively, enthusiastically and fairly. He said police presence is critical, although he doesn't know we can replace Cecil. He said having the K-9 units downtown, as well as the officers on bicycles downtown, along with as many other officers as we can provide is a requirement now. He said if they are harassing 6 ft. 4 in., 200 pound men downtown, he can only imagine what these people are doing to Seniors and women and to everybody else downtown, reiterating he has seen and experienced the situation. He said we need to address it..

Councilor Bushee asked what if we reversed it because most of the activity is in the day, and permitted it only at night, noting the ACLC says in the letter "narrow the ordinance so it only applies to the BCD where panhandling ostensibly is a noteworthy problem."

Mr. Zamora reiterated there is no case law supporting this type of change, but the argument she makes in the limitation is the protection of public health and safety. It is a policy decision of this Council as to whether it is more dangerous to be accosted at night time from dark areas versus the daytime.

Councilor Bushee said if it becomes a mugging they are breaking the law and the police have every opportunity to arrest the person. She is suggesting that a majority of the activity downtown for visitors and locals alike would be during the day.

Mr. Zamora said that the intention of the ordinance is not to eliminate the speech and the activity, but to manage the health and welfare. He said the Governing Body can make the determination that the better management of the health, safety and welfare is to ban it in the daytime, and allow it at night time.

MOTION TO AMEND: Councilor Bushee moved, seconded by Councilor Chavez, for purposes of discussion, to amend the ordinance to ban panhandling during the day in the BCD and to allow it at night time.

DISCUSSION: Councilor Chavez asked where the Police see this activity concentrated. He said we have agreed that a lot of the activity is in the downtown area, and we want to discourage panhandling there where most of our commerce happens.

Deputy Chief Anaya said this is a 24-hour deal, and they panhandle all day and all night. He said the night time ban is for public safety. He said being accosted at night when the sun is down and it is dark, people are at much higher state of vulnerability and this is the reason the ACLU and the Courts determined that a nighttime ban in certain areas is acceptable and understandable to preserve public safety. He said allowing it at night could put people at a certain amount of risk. He said Police see it around the shopping center. He said it's pitch black outside, and after the meeting if you drive around, you'll see people panhandling on Zafarano, in front of Smiths as well as the downtown area, so it doesn't end in darkness.

Councilor Chavez said it is not concentrated in any one part of town.

Deputy Chief Anaya said this is correct. He said these people congregate anywhere they know there is a lot of commerce, people spend a lot of money – where you have easy targets is where you will find panhandling. He said there is a concentration of panhandlers on the Plaza convening on the grass.

Councilor Chavez said it is a combination of loitering and panhandling, noting loitering may lead to panhandling. He said there are two problems in the downtown area..

Councilor Trujillo asked if the ACLU could come back and say, if we approve Councilor Bushee's amendment, it applies to the Buskers. He said they are permitted, but they are regulated and are there during the day. He asked if this is something they could argue. He said they have worked on this Ordinance for a long time, and it will be reviewed in a year, and we can see where it is going. He asked the Council to give it a chance this year and see what happens.

Councilor Calvert said he understands the sentiment, but he is concerned about the unintended consequences of shifting the permitted activity to night, which would shift a lot of the activity to the night which would be scarier. He said once they learned the rules they would concentrate at night which would be much scarier for people and harder to police.

Councilor Bushee asked what activity other than special occasions do we have downtown after the restaurants close.

Deputy Chief Anaya said if you are downtown when the bars close, you will see the panhandlers panhandling people coming out of the bars because the inebriates are more likely to give money and they are easy targets. He said panhandling doesn't stop when it is dark.

WITHDRAWAL OF THE MOTION: Councilor Bushee withdrew her motion, saying she still believes we should try to ban panhandling in the BCD.

Councilor Romero said she is glad the Motion to Amend was withdrawn. She said she spends a lot of time downtown, more recently with her family and grandchildren, where people were brushing their teeth and spitting it at their shoes. This was shocking because it was in the early evening. She said when she has had dinner meetings downtown, it is frightening. She said this is her home town, and she is worried about the impression we are giving, and for hers and her family's safety. She supports the Resolution, and wishes we could do more, but we're doing the best we can under the existing circumstances. She pointed out that we will be reviewing the Ordinance in a year and we will see how things are working, and perhaps we can strengthen the Ordinance. She appreciates the time the merchants gave her to educate her about the issues downtown and their experiences.

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

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

Against: None.

Explaining her vote: Councilor Bushee said she is going to vote yes. She reminded people that this is happening daily at the St. Elizabeth's Homeless shelter area which is her district, commenting these people are being terrorized. She said they are experiencing all of the same things as downtown, but on a regular daily basis, and we have yet to deal with that problem, and she will be raising this issue as well. She hopes the ordinance goes far enough, but we will see in a year if we can find any other constitutional wiggle room to try to protect our locals and tourists.

Explaining his vote: Councilor Trujillo thanked Deputy Chief Anaya for his excellent work on this. He understands how the downtown merchants feel, noting he has seen the same thing in parking lots in his District. He said there are people in need, and spoke about being panhandled twice by

the same person in the same parking lot with a person asking for money to get home to Taos. He said gave her money the first time. He said he votes yes. He asked Deputy Chief Anaya and Robert Romero if there is a way to put small signs on the medians which say "No panhandling allowed by Ordinance." Mr. Romero said yes.

8) CONSIDERATION OF BILL NO. 2010-30; ADOPTION OF ORDINANCE NO. 2010-32 (COUNCILOR BUSHEE, COUNCILOR ROMERO AND COUNCILOR WURZBURGER). AN ORDINANCE AMENDING SECTION 6-16.1 SFCC 1987, REGARDING THE ETHICS AND CAMPAIGN REVIEW BOARD QUORUM. (YOLANDA VIGIL) (Postponed at September 15, 2010 City Council Meeting)

The staff report was presented by Yolanda Vigil, noting the amendment on page 3 of the packet which provides, "A quorum for the transaction of any official business at meetings by the board shall consist of a majority of the appointed board members then duly serving on the board."

Councilor Calvert said then vacancies don't count against the Committee.

Ms. Vigil said this is correct.

Public Hearing

Speaking to the request

There was no one speaking for or against the proposed amendment

The Public Hearing was closed

MOTION: Councilor Bushee moved, seconded by Councilor Romero, to adopt Ordinance No. 2010-32.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Trujillo.

Against: Councilor Ortiz.

Explaining his vote: Councilor Chavez said he votes yes, being that it is amending the current ordinance so it will be those present. Ms. Vigil said it is a quorum of the appointed members. Councilor Chavez said it isn't fewer people making a decision. He said there was a quorum in attendance at the last meeting, and there was sufficient attendance to conduct the meeting.

Explaining his vote: Councilor Ortiz said he votes no. This ordinance change will allow 3 people to conduct the business of the Committee, and it becomes a "Star Chamber process," with which he has infinite experience.

- 9) **CONSIDERATION OF BILL NO. 2010-38; ADOPTION OF ORDINANCE NO. 2010-33 (MAYOR COSS). AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY ORDINANCE, ARTICLE 27-2 SFCC 1987; SECTIONS 27-2.2 (APPLICABILITY); PORTIONS OF 27-2.3 (DEFINITIONS); 27-2.4 (APPLICATIONS); 27-2.5 (COMPENSATIONS AND CHARGES); 27-2.7 (OBLIGATIONS OF PROVIDERS REGARDING THE PUBLIC RIGHTS-OF-WAY); 27-2.13 (LAND USE REVIEW); AND CREATING A NEW SECTION 27-2.16 (SEVERABILITY); AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY. (KELLEY BRENNAN)**

A copy of "Proposed Amendment(s) to Bill No. 2010-38 (Telecommunications Revisions Substitute), submitted by staff, is incorporated herewith to these minutes as Exhibit "22."

A copy of an Action Sheet from the Public Works/CIP and Land Use Committee meeting of Monday, December 6, 2010, is incorporated herewith to these minutes as Exhibit "23."

The staff report was presented by Kelly Brennan from her Memorandum of December 2, 2010, prepared for meeting of December 8, 2010, with attachments. Ms. Brennan said the Telecommunications Ordinance adopted earlier this year became effective on July 5, 2010, and the City was almost immediately sued by Qwest. She said there was a hearing at the end of September, and another hearing on a Preliminary Injunction Motion. It became clear during the course of the hearings that we could clarify a few items in the Ordinance and it would help us obtain a favorable decision on the Preliminary Injunction Motion. She said staff has met twice with Qwest and understand their needs and the needs of other providers for some clarification. She said the proposed changes address those specific changes which have come out of the Court proceedings and the subsequent negotiations. Ms. Brennan noted the proposed changes are set out in her Memorandum which is in the packet. Ms. Brennan reviewed those changes. Please see Exhibit "22" for specifics of this presentation.

Mr. Zamora said, to provide further clarification to Kelly's remarks and provide further context for the Governing Body, the question of whether the Ordinance is a proper ordinance is within the jurisdiction of the federal courts at this point in time based on Qwest's litigation. He said staff is before the Governing Body with amendments which conform with the direction of the Court, specifically the direction of the Federal Judge, and are consistent with the Court hearings and the Court mandated mediation.

Public Hearing

Speaking to the request

Mayor Coss gave everyone 3 minutes to speak to the request.

Ed Angel said he is from the Santa Fe Complex, and he has concerns. He said when the Council adopted the Ordinance in June 2010, there were a lot of problems with it and the Council had problems. He said the amendment to the Ordinance created the Franchise Advisory Committee, which he was asked to Chair and which has been meeting. He said the Santa Fe Complex, which he also chairs, was asked to create a Master Plan which would be brought to the Council within 3-4 months. He said what has happened since is a lot of people have put a lot of time into this. He said the Task Force was going line by line through the Ordinance with Melissa Byers from City Legal. He said they were ready to present their report to the Governing Body at the first meeting in October, and our meetings were canceled by Mr. Zamora. He said they have a preliminary report which you have seen, which has all kinds of problems with the Ordinance, but none of that is under consideration this evening. He said the Master Plan Committee from the Complex was ready tonight to present its preliminary report, and that was submitted for the packet, but was not approved because Ms. Brennan was out of town, which he doesn't understand because they were ready to go. He asked to do an oral report instead and was told he couldn't do that. He said this Ordinance tonight has not come through the Task Force, even though it was tasked to review the Ordinance, so they have not seen it and do not know anything about it. He said his question is what the Council intends for these two groups to do, because they have put a lot of effort into it and have things they can provide right now about their work and their views and the input they received.

Elena Benton said she is a member of the City Task Force, and a Board member for the Complex. She said she would caution the Council tonight about approving this Ordinance, because a couple of things have been added which are in direct conflict with what the Council discussed, and particularly on page 6 of the Ordinance, where it says Public Rights of Way. She said there was a large discussion to keep facilities out of the public parks, and there is an addition indicating that parks are now considered and as stated, "may only be used by separate agreement." She said Mr. Angel is basically stating that the Task Force appointed by the Mayor has not seen this, nor has it been brought up in public discussion and it has not been brought before the Santa Fe Complex, noting both entities were tasked to review this and report to the Council as per the request of the Council and the Mayor. She would propose that the Council not approve this Ordinance tonight, but have this go through the jurisdictions that you have requested to review this and then report back to you and the other jurisdictions, and then it can come back to the Council for a vote and discussion about it.

Stefanie Beninato said she agrees with the previous speakers. She said the Council passed the Telecommunications Ordinance rather hastily, and you easily could have waited and you would have had a much better Ordinance. You would have had a master plan, so that when you actually approved antennas you would know it was conforming to the City's needs and not businesses's needs. She said, "You took time and you did create this Task Force and a Center you have supported economically, and, again to

bypass them to hurry through these amendments. She said she understands the Court is pushing for these things, but I think if you are engaging in a process which makes sense, to give it to the experts to give you advice, you are going forward, rather than looking at the recommendations, and trying to make the appropriate changes, but do it in a thoughtful way, rather than again, ramming something through that you immediately have challenged and have spent a lot of money on, and are now in Federal Court on it. Again, a little more reflection and less haste would be good. And, it does seem to me that there are members of your staff, particularly, and I don't want to say particularly, in the City Attorney's Office that really are pushing for development and not for thoughtful planning of the development. And that is what I believe the Center is advocating. I'm certainly advocating it as well."

Richard Lowenberg said he is part of the Santa Fe Complex Master Planning Study Group. He supports the words of the previous presenters. He said he thinks it is premature to approve this right now, not enough is being considered, information provided by these two working groups and committees. The one other deep concern he has is the implications of this. He is concerned that the City's and County's Santa Fe Regional Telecom Coalition, the fiber project the City and County are working on, could be undermined by passing this ordinance at this point, without a proper context for a set of decisions that have to be made by telecom. He said it doesn't have to be delayed for a long period of time, but he believes there are issues which have to be addressed, otherwise there will be consequences not intended that will occur.

The Public Hearing was closed

Councilor Bushee said she understands, more and more, that what we do is because it is legally defensible, which is our theme, at least tonight it has been a theme. She understands we've been sued by Qwest, where we are trying to go and the reason this is expedited. However, she has some of the same concerns, which she had when she saw this being advertised and asked the Mayor the reason we can't wait and hear from the committee we put together.

Councilor Bushee asked if an application has been made for Ft. Marcy Park, and if we allow for parks in our current Ordinance.

Ms. Price said this ordinance applies to the public right-of-way, noting a park is not a public right-of-way.

Councilor Bushee understands, and asked if we are now going to allow public parks.

Ms. Price said if there was an application for a park it would be under Chapter 14, and would be a separate agreement which the Council would have to consider as a lease, so there would be another separate public hearing.

Councilor Bushee asked if there has been an application for Ft. Marcy Park, and Ms. Price said she doesn't know.

Councilor Calvert said there was ENN for it.

Councilor Bushee said she heard this a month ago, and wondered how that was allowed.

Mayor Coss said it is not allowed under this Ordinance.

Ms. Brennan said it does not fall within this Ordinance. She said the language on page 6 merely clarifies that, "Parks, open space, trails not located in a public-rights-of way, or other city owned land, are not public rights-of-way and may only be used by separate agreement." She said that does not change the means that they aren't located in public rights-of-way under this Ordinance, and they do fall under Chapter 14.

Councilor Bushee said but there was an ENN.

Ms. Brennan said Mr. O'Reilly just told her that there was an ENN for an installation at Ft. Marcy Park, but the request has been withdrawn.

Councilor Bushee said then the concern is moot under this ordinance, and Ms. Brennan said this is correct.

Councilor Bushee asked, with regard to the concerns raised this evening as to when we will review this Ordinance after the task force comes back with its recommendation – when will that happen.

Mr. Zamora said, "As I stated earlier, we are in the jurisdiction of the Federal Court. We expect a decision shortly on the validity of the Ordinance. Shortly means in the Spring of next year. We expect a decision from the Court as to whether the Ordinance is valid or not, or whether it's going to be temporarily be invalidated until trial. So we do have that coming. At this point in time, the Court is analyzing the Ordinance as is, and it's also making suggestions on provisions to clarify prior to making its decision. The question of the committee itself directly, as part of that Ordinance, if the Ordinance is thrown out, that committee is thrown out. If the Ordinance is kept, that Committee is kept, and at that point in time then the committee can proceed forward."

Councilor Bushee said if we approve this tonight, and we get through this Federal Court case and they like our Ordinance, are we no longer going to open anything up. Are we going to be done because it was sanctioned and blessed, commenting that generally is how it has been working from the Legal Department. We are going down in terms of determining our ordinances. She said, "I get it. We don't want to be sued, but just for this one case, we're going to do this, and we're going to come back and have another pass at this."

Mr. Zamora said, "We aren't really in litigation over most of our ordinances, but where we are in litigation, and we are in the jurisdiction of the Federal Court and we've been given directions by the Federal Court, then we do our best to comply with that. That time period is coming to a close very soon. And, like any other ordinance, if this Ordinance gets finalized and put on the books... if it gets invalidated, then we have to go back to the drawing board and hold hearings on a new Ordinance. If it gets approved, like any other ordinance, you can revisit it, you can consider amendments, you can tweak and improve the Ordinance. But right now we're getting a ruling on the Ordinance as passed, is it valid and can you go forward with tweaking and improving the Ordinance."

Councilor Bushee said she wants to make sure the doors aren't closed, and Councilor Calvert has inserted that [inaudible] bill, and you've already written and said they're being sued.

Ms. Brennan said they are in fact being sued. She said, "I want to emphasize that we have every reason to believe at this stage that these amendments will assist us in having a decision in favor of the City, that they clarify, without really changing the effect, we were... during all of the proceedings, it has been interesting to us that things we thought were clear, could be more clear, and we expect these amendments will accomplish that and that we will have a favorable outcome."

Councilor Romero asked, when we get a decision back from the Federal Courts, and if this Task Force moves forward with its task, would it be looking at things from a narrower perspective. She would like some clarity with respect to the Task Force which has spent a lot of time, and if the scope of work would then be shifting because of the final decision from the Courts.

Mr. Zamora said, "The duties and responsibilities that are contained in the Resolution would remain the same, unless the Court gave some direction to invalidate it, but it's not a question within the litigation, so I don't expect that. And there are 4 duties that are mentioned in Section 4 of the Resolution, and that's Resolution No. 2010-56: working with staff to develop a communication baseline study. That is something they could proceed with. Review and make recommendations regarding the Telecommunications Master Plan developed by City staff. The third issue is review and make recommendations regarding the Ordinance, and it's 2010-14, this Telecommunications Ordinance, and advise on City policies, programs and Ordinances as they relate to telecommunications. So, I think those 4 items are still applicable."

MOTION: Councilor Romero moved, seconded by Councilor Calvert, to adopt Ordinance No. 2010-33, with the amendments.

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

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

Against: None.

- 10) **CONSIDERATION OF BILL NO. 2010-39; ADOPTION OF ORDINANCE NO. 2010-34. CASE #2010-169. 1713 W. ALAMEDA REZONING AMENDMENT. JENKINS GAVIN DESIGN AND DEVELOPMENT, AGENT FOR HAJ KHALSA, REQUESTS AN AMENDMENT TO REZONING ORDINANCE NO. 2008-43, TO REMOVE A CONDITION OF APPROVAL THAT REQUIRED THE PROPERTY TO BE HELD IN COMMON AND NOT BE SUBDIVIDED. THE APPLICANT REQUESTS THE ABILITY TO SUBDIVIDE THE 1.979 ACRE PROPERTY AS PERMITTED BY THE RESIDENTIAL 3 ZONING DISTRICT. THE PROPERTY IS LOCATED NORTH OF WEST ALAMEDA STREET, EAST OF EL RANCHO ROAD. (HEATHER LAMBOY)**

A copy of a Memorandum prepared November 22, 2010, for the City Council meeting of December 8, 2010, with attachments, to Mayor David Coss and Members of the City Council, from Heather L. Lamboy, Senior Planner, Current Planning Division, is incorporated herewith to these minutes as Exhibit "24."

A copy of "Exhibit B: Conditions of Approval, Bill No. 2010-39, 713 West Alameda Rezoning (Case #2010-169)," is incorporated herewith to these minutes as Exhibit "25."

A copy of photographs used by Jennifer Jenkins, Agent for the Applicant, submitted for the record by Jennifer Jenkins, are incorporated herewith collectively to these minutes as Exhibit "26."

A copy of a letter dated December 1, 2010, to Haj Khalsa, from Cissy Moore, Senior Loan Officer, New Mexico Bank & Trust, entered for the record by Jennifer Jenkins, is incorporated herewith to these minutes as Exhibit "27."

A copy of a letter to Haj, from Ian MacGillivray, Business Development Officer, Los Alamos National Bank, entered for the record by Jennifer Jenkins, is incorporated herewith to these minutes as Exhibit "28."

A copy of a letter to Haj [Khalsa], from Harmon Burttram, Vice President, Century Bank, entered for the record by Jennifer Jenkins, is incorporated herewith to these minutes as Exhibit "29."

A copy of a letter to the City Council, from Tyson Reed, Able Hands Landscaping, in support of the proposed project, entered for the record by Jennifer Jenkins, is incorporated herewith to these minutes as Exhibit "30"

A copy of a letter from Steve Hyde, in support of the proposed project, entered for the record by Jennifer Jenkins, is incorporated herewith to these minutes as Exhibit "31"

The staff report was presented by Heather Lamboy. Please see Exhibits "24" and "25" for specifics of this presentation.

Ms. Lamboy noted that a revised set of conditions, relating to this Case, were handed out prior to this evening's meeting. She said in conversations with Wendy Blackwell, City Technical Review Division, Ms. Blackwell wanted clarification that the site density may be further limited by those terrain management ordinance, noting the language is before them [Exhibit "26"]. She said she shared this document with the Applicant and Ms. Jenkins had no opposition to that particular condition being added.

Recommendation: The Land Use Department recommends approval with conditions as outlined in this Report [Exhibit "25"].

Public Hearing

Presentation by the Applicant

Jennifer Jenkins, JenkinsGavin Design and Development, 130 Grant Avenue, Suite 101, Agent for the applicant, was sworn. Ms. Jenkins said he is here on behalf of Haj Khalsa who is the new owner of the property. She said when he purchased the property, Mr. Khalsa was fully aware that a condition was added to the rezone approval in 2008, that the property be developed in a compound style to be held in common and not be subdivided.

Ms. Jenkins said the owner is experiencing significant issues with respect to obtaining construction financing to develop the project as well as understanding his future buyers will be running into serious issues as well in this economic climate and in this lending climate, in terms of obtaining financing. She said as Ms. Lamboy mentioned, Mr. Khalsa is very committed to the compound concept so we don't end up with something that is "linear and cookie cutter and boring and uninteresting." She said they feel they can remain true to the intent of the condition and develop a historic style residential compound with invisible lines in the sand to allow for fee simple lots.

Ms. Jenkins demonstrated the previous plan submitted in 2008 using enlarged drawings. [Exhibit "26"] She said they were proposing a 6-unit residential compound with a private driveway coming off West Alameda, noting the site is only 200 feet from West Alameda. She said there is one existing home on the property which is Mr. Khalsa's homes. He said homes are situated "as it goes up the hill," creating an interesting compound-style development.

Ms. Jenkins demonstrated the current proposal using enlarged drawing. She noted the proposed lot lines and the existing home. She said this is very similar to what was proposed originally. She said they are asking Council assistance to be sure this project remains viable and feasible, not ignoring the original intent. She said currently it is not viable and feasible.

Ms. Jenkins said the original intention was that it should be developed to be consistent with what is happening in the surrounding neighborhood.

Ms. Jenkins entered 3 letters for the record from New Mexico Bank and Trust, Los Alamos National Bank and Century Ban, which detail the current details in this lending climate with condominium development, and financing for the end buyers. [Exhibits "27," "28," and "29," respectively]

Ms. Jenkins entered 2 letters of support from local residents who are asking for your assistance in making sure we have a viable project, so her client can continue to invest in the community. [Exhibits "30" and "31," respectively]

Councilor Calvert said the staff report talks about permitting 5 dwelling units on the site, and asked if the site includes the existing unit.

Ms. Jenkins said it does not. She said the six units represent the inclusion of the 60% bonus unit through the Santa Fe Homes Program..

Councilor Calvert said then there will be an affordable home, and Ms. Jenkins said yes. Councilor Calvert said he didn't see that mentioned in the Staff Report.

Councilor Bushee asked if it is accurate that it is 5 dwelling units, or with the MT overlay, is it 4 dwelling units.

Ms. Jenkins said based on their analysis of the topographic data, it is their determination that they do not meet the requirements for the Mountain and Difficult Terrain, in terms of 25% of the parcel has to have slopes of 20% or greater.

Councilor Bushee asked if this is staff's determination.

Ms. Jenkins said the applicant has not submitted anything formal to staff and that would be part of the Subdivision application, where they would have a formal, certified slope analysis that would determine that at that time.

Councilor Bushee wants to know if we are dealing with 4 or 5 units.

Councilor Calvert said Condition #2 addresses that issue.

Councilor Bushee asked staff to speak to this issue.

Ms. Lamboy said in 2008, there was discussion about 6 units which included the affordable unit at that time. However, there was discussion of the Mountainous and Difficult Terrain overlay, and without any resolution on that from a surveyor and an agreement by the City Engineer, we have to assume they might be limited by that requirement of 75% density for the site.

Councilor Calvert said the question is whether Condition #2 cover that eventuality.

Mr. O'Reilly said yes.

Speaking to the Request

Mayor Coss asked that Mr. Khalsa keep his statement to an additional 3 minutes to match the time used by Ms. Jenkins.

Haj Khalsa was sworn. Mr. Khalsa said he is the owner of property with his brother. He said he would like to thank the Council for hearing this case, and he hopes that this will be approved.

Edward Bellow, Coyote Ridge Subdivision, was sworn. Mr. Bellow said he lives in the Coyote Ridge Subdivision which isn't far from the project. He said, "I am here to support the zoning amendment for the following reasons. I would like to reinforce everything said before me, but specifically, this amendment will allow Mr. Khalsa to obtain financing, it would support investment in our community. It would also be a project that's going to be designed in a compound style as presented in the original proposal. The vast majority of the homes are on single family lots in Santa Fe, and lastly, infill development is better than sprawl. And once again, I do support the amendment. Thank you."

Bryce Chapman was sworn. Mr. Chapman said he and his wife just purchased the property to the east of Mr. Khalsa's property, and they support the project.

The Public Testimony Portion of the Public Hearing was Closed

MOTION: Councilor Romero moved, seconded by Councilor Chavez, to adopt Ordinance No. 2010-34, approving Case #2010-169, 1713 W. Alameda Rezoning Amendment, with the two conditions as recommended by staff, and Amended Exhibit B as submitted by staff.

FRIENDLY AMENDMENT: Councilor Calvert said he has another concern which isn't new, and it has to do with the drainage and erosion control, which is a particular problem on West Alameda. He said many of the driveways are dirt. He said he knows we require that things should stay on the lot, especially the driveway which is an easement, but that "stuff just ends up on Alameda." He said this year there was a particularly heavy rain which made the bike lanes inoperable and City crews had to go out and clear the road. He would like to add a condition of approval which strengthens that provision which is, "No flooding of adjacent properties and no silting of adjacent properties or the street." He said this might require that the easement and driveway be paved with a mechanism put in to catch silt before it gets to the street.

THE AMENDMENT FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS

BY THE OTHER COUNCILORS, WITH THE SECOND OBSERVING THAT IT MAY NOT BE POSSIBLE TO KEEP ALL OF THE SILT OFF WEST ALAMEDA.

Councilor Calvert said that is just for this one project.

Councilor Chavez said he realizes it is just for this one project, but he will go ahead and support the project for now and see how it plays out.

VOTE: The motion failed to pass for lack of the required five votes in the affirmative, on the following roll call vote:

For: Councilor Calvert, Councilor Chavez, and Councilor Romero.

Against: Councilor Trujillo, Councilor Bushee, Councilor Ortiz and Mayor Coss.

Explaining his vote: Councilor Trujillo said he voted against this in 2008, and he is going to vote no again.

Explaining his vote: Councilor Ortiz said he voted against this when it first came up. He said he recalls that the presentation at that time, and "you all weren't in the picture," but the agent at the time sold this as a compound and told us that they weren't doing piecemeal zoning on this parcel because it was going to be a compound, so they were looking for a density [bonus]. He said he remembers there was much more discussion than was referenced by Councilor Calvert, on the drainage issue and he was particularly concerned about the illegal cut which occurred on the property, noting remediation is still a condition of approval. He said, although she isn't here this evening, Councilor Wurzbarger mentioned that she would have to follow this issue with the Planning Commission because it wouldn't come back to the City Council. He doesn't believe it comes back to the City Council, and if approved, the applicant would have to apply for a variance. He said drainage is a problem, and he thought this was piecemeal previously, and especially now, because of the request being made by the Applicant for single family units. He believes that has come to pass through no fault of the Applicant, so he is going to vote no.

Explaining her vote: Councilor Bushee that said she still wanted to have discussion about the subdivision piece, and thought we were going to have that discussion, but then we were voting. She had the same concerns then and voted no when it was the previous owner. She said she didn't want to see the same issues around drainage, and she still has the same concerns. She isn't opposed to this project necessarily, so she is in a quandary. She said it is frustrating because she feels that it is a nice location and it could happen, but a lot of things have to be taken into account, and doesn't know that we had that discussion, so she is going to have to vote no right now.

Explaining his vote: Mayor Coss said he will vote no, saying he did not intend to cut off debate and thought we were done, so he will vote no now and hope for another motion.

Councilor Bushee said failure to adopt doesn't mean we can't make another motion with additional conditions, saying she thought that we were going to have that discussion, but all of a sudden we were voting without doing that.

Councilor Ortiz asked who would make the motion to reconsider, noting there is no majority voting against the motion. He asked if the Mayor would have to vote no to create a majority.

Mr. Zamora said in looking at the Governing Body rules, the Mayor may vote to break a tie vote, but that doesn't mean to make a determinative action. He said once the Mayor voted, at that point, the Mayor would be a member of the majority voting either for or against the motion.

Mayor Coss said his vote wouldn't result in approval because 5 votes are needed.

Mr. Zamora said this is correct, but a member of the majority may propose an alternate motion.

Mayor Coss said, "Then if I vote no, Councilor Bushee can make an alternative motion, because she's in the majority."

Mr. Zamora said yes, or any member in the majority can make the motion. He said it would be the same if he voted yes.

MOTION: Councilor Bushee moved, seconded by Councilor/Ortiz moved to reconsider the previous action which failed to approve Item H(10).

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

Councilor Bushee said her concern is the subdivision and asked why it is necessary to create a subdivision, and asked if it was just for the financing piece.

Ms. Jenkins said creating fee simple lots developed in a compound style is critical for this project to happen at all, to achieve financing for the infrastructure improvements and for the end buyers to obtain financing. She said the Applicant completely acknowledges that there are drainage issues on the property, but they can't fix the drainage issues without the financing, so it is all tied together. She said Mr. Khalsa has invested significant funds with engineers, analyzing the property, walking the property with engineers and permaculture specialists trying to completely understand how the water is moving, how to best retain the water and address this issue. She said he has been very proactive with consultants to this point,

before anything has been submitted. She said he is working very hard to understand what is happening and what are the best solutions, and working closely with the neighbors to the south to make sure water isn't running onto their property. She said being able to resolve these issues requires financing, and the subdivision requires financing.

Councilor Bushee asked for more information about developing the projected in a clustered manner as single family, and asking if the driveway situation will be changing. She asked what happened with the illegal cut.

Ms. Jenkins said they have determined that the illegal cut is not on the Applicant's property. She said when they submit their application for development review, all of that will be addressed in accordance with the condition through topo, slope analysis, aerials.

Councilor Bushee asked staff to talk about the illegal cut.

Ms. Lamboy said she spoke with Wendy Blackwell this afternoon with reference to the illegal cut. She said it obviously is located on the property just north of the subject property, and there have been some effect on the flag portion of the subject property which may have to be remediated. She said until they get into the very fine details of the development review, they won't be able to provide those details, and the reason that condition still stands. She said at the ENN, Ms. Jenkins stated there will be a Homeowners Association to help with the maintenance and to control the common elements, which could also include stormwater catchment, and dealing with the silting issue, so this might be different from another subdivision with just lots and no Homeowners Association in that regard.

Councilor Bushee said part of the problem, before Mr. Khalsa, is that we've witnessed what has occurred, and even the raw land has caused problems. She doesn't think it should stay raw land because it's not going to get ameliorated. She is concerned that it stay in a compound setting.

Ms. Jenkins said this is what they have attempted to demonstrate, and there are lot lines on that page, but the lot lines don't prevent developing a residential compound. She said there are lot lines on the page they can plot that are on paper that in no way prevent this from being developed the way it was contemplated originally.

Councilor Bushee asked the reason for lot #6.

Ms. Jenkins said, with regard to the Santa Fe Homes Program, there is a 15% density bonus, so we currently are showing 6 lots. If it is determined that we are subject to the limitations of the Mountainous and Mountainous Terrain, then we will be limited to 5 lots with the density bonus.

Councilor Bushee would like to condition approval that they don't build on more than 5 lots. She said this is a hard piece of land.

Ms. Jenkins said it is actually very gentle terrain. There are a few areas near some drainage, but it is actual gentle terrain, and it does climb from West Alameda to the north end of the site, but there are lovely little shelves. It actually is quite developable.

Councilor Bushee asked if they are building on sand.

Ms. Jenkins said there has been no soil analysis report yet.

Councilor Bushee doesn't believe the Applicant can get 6 lots out of the property.

Ms. Jenkins said it is possible, but they may not be able to do so. She wanted to show the Council a maximum scenario.

Councilor Bushee would like to impose a condition of approval that the Applicant will not build more than 5 lots.

Ms. Jenkins said she would like to confer with her client in this regard.

Councilor Romero told Ms. Lamboy she likes the ENN format she is using to let the Council know what occurred at the ENN meetings. She said at the recent ENN meeting held on this project, two of the biggest concerns were around the two-story and people wanted to be sure the structure didn't block their view. She understood that this is not to be considered, and asked if this is still in the mix.

Ms. Lamboy said the maximum height allowed in the Foothills District of the Escarpment Ordinance is 20 feet, so it is likely they would not do two-story construction, but it is possible. However, considering the size of the lots which are generous, it is likely there will be one-story construction, noting the nature of the topography.

Councilor Romero said she walked this land many years ago and again more recently, commenting that is sandy. She understood Ms. Jenkins to say they would be doing a soil analysis, reiterating that is sandy with quite a lot of rocks. She said she would like to impose a condition that the Applicant will do a soil analysis.

Ms. Lamboy said that would be done at the building plan level, but certainly could be done at development plan, and if it was determined to be important there are things Staff can require for the development plan application which traditionally are done at the building permit level.

Councilor Romero said, "If there is more land to work on for one individual homeowner it is actually more difficult, so I am seeing the benefit to the smaller groupings with having people being able to remediate with the Homeowner's Association, blocks of land, rather than one family having to do a lot more to remediate. So, I'm actually seeing the benefit of that kind of development in the way that you've done here which could be much more of a fluidness or seamlessness to the kind of development that is being

proposed, rather than the more standard 'what's mine is mine and what's yours is yours.' I'm seeing in this construction a little more fluidness, and I am please with that. I appreciate the idea there could possibly be a little bit more because we are looking for affordable homes. That's the point. So, I would be hesitant to limit because of that affordability. You can't have it both ways. So, anyway, I'm looking at it from that affordable perspective. It's lovely land. It's next to the Coyote Ridge area and it is kind of a meandering walk that I've done through there. So, I do note that the sand and the rock are a problem, and I think that's what would have to be worked around."

Ms. Jenkins said, "My client would be absolutely willing to submit a soil analysis with the subdivision application." She said this typically is done as a part of the engineering process, so they would be amenable to that condition.

Councilor Ortiz recalls that this compound idea came up shortly after another compound came up that he voted against in his District for similar reasons. It was this idea of getting around some of the requirements of the Subdivision Regulations, by presenting it as a common area of land to get the density bonus. He said the anticipated fear at that time was that parties would come back, after their development plan was submitted and submit them for single family homes. He said they were essentially skirting the requirements of the Subdivision Act by doing condominiums. He said he voted against a project off Siringo Road in his District, and this project came up shortly thereafter, and to be consistent he thought he should maintain the same position. He said it seems to him this is what is happening again now, through no fault of the current owner. He asked Ms. Jenkins if the Applicant will comply with all of the Subdivision Regulations now that it's not a common property, and is instead a subdivision.

Ms. Jenkins said, "Absolutely. Yes sir."

Councilor Ortiz asked, as a subdivision, if the Applicant will run into a problem with regard to access because the subdivision requires more access in terms of right-of-way than they were willing to provide because they have to go through the existing right-of-way south of their property.

Ms. Jenkins said, "That's exactly it."

Councilor Ortiz said then the Applicant will have to go before the Planning Commission to request a variance from the Subdivision Regulations which require 38 ft., or whatever it is, because the Applicant doesn't have that coming into the property. He said, "You can put it on your property, you just can't compel the southern property owner to do it. Is that right Jennifer."

Ms. Jenkins said at the time in 2008, if there was off site access that didn't meet City standards, the Land Use Department did not require a variance, as long as you had a 20 ft. drivable service to the satisfaction of the Fire Marshal for emergency access. She said there has been a recent policy change in respond to Phase 1 annexations, which is that the City is now requiring variances for any off site access which does not meet City Code. So, the Applicant is providing a 30 ft. easement on site with a 20 ft. drivable surface, and will be going to the Planning Commission in full compliance with all of the submittal

requirements. She said they aren't trying to get away with anything. She said they will be required, under the new policy, to request a variance for the off site portion, which is approximately 200 ft. in length..

Councilor Ortiz asked the position of the property owners that bear the burden of the access.

Ms. Jenkins said they have met with them several times, and Mr. Khalsa has met with them, and they have not stated any opposition. They are excited that the drainage issues will be addressed as part of the development. She said they don't use that driveway and access their property a little west, so the Homeowners Association for the compound will maintain that portion of the driveway as well as the on site portion of the driveway. It is really a "win win" for them. She said a father and son share the property and they have a nice, open dialogue with them about the plans.

Councilor Ortiz said while he understands the Homeowners Association will be responsible for the continued care and maintenance, he asked why the Governing Body give permission to this property owner who is the developer to pass that cost on to future unknown property owners. He asked why the Governing Body wouldn't just require this developer to bear that cost.

Ms. Jenkins said having a developer maintain a road in a subdivision in perpetuity is somewhat untenable, and Homeowners Associations served by shared private driveways that maintain their driveway is Code compliant and common. It would not be a huge expense. The only maintenance responsibilities obviously would be snow removal and annual grading, and it is a common and appropriate practice which is Code compliant.

Councilor Ortiz asked if it is allowed under the Subdivision Regulations that if this was coming forward to the Council in 2008, as a request for a subdivision, that the subdivision would be required to bring the roads to City standards.

Ms. Jenkins said when you are serving 8 units or less, you can serve that project with a shared private driveway, so this is what they are proposing.

Councilor Ortiz said you aren't proposing this now, because this is just a request to change one of the conditions, and you are saying that you would be requesting that when you go forward with preliminary development plan.

Ms. Jenkins said when they go forward with the preliminary subdivision plat, yes.

Councilor Ortiz said he remembers this. He said if the Applicant was saying this was all affordable, and there was some indication that the current property owner, which for all intents and purposes is the developer of the project, was coming forward and was doing this as a true infill project, and wasn't doing this to maximize the amount of money he could recover, based on the acquisition of this property, he [Ortiz] probably would be of a different mind. However, he can't see the rationale to change his initial opinion about where he saw this project to begin with. He said nothing in this discussion has

changed his opinion about the merits of this particular case, so he will still vote no, unless there is another amendment.

Councilor Bushee said the reason she thinks 6 lots are too many is the disturbance of the terrain. She said you won't know until you have the review whether or not it will be mountainous terrain. She said if no guest houses are allowed, there would be less disturbance, and would like to make that a condition of approval.

Ms. Jenkins said she has to talk with her client.

Councilor Bushee said the road issue is about keeping the terrain in place.

Ms. Jenkins said they have been studying this issue for months, and the drainage would be part of the maintenance.

Councilor Bushee said when you pass maintenance to a Homeowners Association, it doesn't get done, and then the City has a hard time enforcing that. She said she knows of tons of situations in the Foothills District where the old ponds fill up and no one maintains them, commenting they don't work well anyway and they end up downstream in the next part of her District.

Ms. Jenkins said Mr. Khalsa lives on the property, this is home, and he is not a developer.

Councilor Bushee said he is now.

Ms. Jenkins said, unfortunately, it is a City Code requirement that every drainage improvement not be maintained by the City, so they have no choice but to build ponds and to maintain them.

Councilor Bushee said she is going to work on conditions of approval, because right now, this project is "going down in flames." She said perhaps this is doable if we limit some things. She is trying to limit the soil disturbance, everyone is trying to limit the drainage issue and the road is part of that because more traffic, more wear and tear, and if it isn't paved and staying in place. She said there is the issue of the views, although that's not her issue.

Ms. Jenkins said the northern 2/3 of the property is located in the Escarpment District, so there will be height limitations anyway.

Councilor Bushee said if you do a pitched roof, you can harvest the water.

Ms. Jenkins said pitched roofs aren't allowed in the Escarpment District. She asked for a moment to confer with her client.

Councilor Ortiz said we still could postpone this to January.

Ms. Jenkins said her client would be willing to restrict and not allow guest houses on the property. However, the potential for the 6 units is critical, because when he purchased the property it was based on that, and they understand it is only a potential.

Councilor Bushee said, once that it is determined whether it is mountainous terrain, and you get the soil analysis, she believes the Council would like to see this again.

Councilor Bushee asked Councilor Calvert if he is satisfied with the drainage condition, and asked him to repeat his condition of approval.

Councilor Calvert said it is, "“No flooding of adjacent properties and no silting of adjacent properties or the street.”

Councilor Bushee said then you aren't requiring the road to be paved. She asked if we can add West Alameda as an adjacent property.

Councilor Calvert said it prohibits this on adjacent properties and the street.

Ms. Jenkins said there will be no guest houses, and the soil analysis will be submitted with the preliminary plat.

Councilor Bushee said there also will be a determination of whether it is Mountainous Terrain.

Ms. Jenkins noted there is an illegal cut north of the property, and any portion of the cut which may be on their property has to be remediated.

Councilor Bushee said after all determinations have been made, we want to see it again.

Ms. Jenkins asked if it will come back as action item.

Councilor Bushee said Ms. Jenkins will be getting conceptual approval and the Council wants to see it again.

MOTION: Councilor Bushee moved, seconded by Councilor Romero, to adopt Ordinance No. 2010-34, approving Case #2010-169, the 1713 W. Alameda Rezoning Amendment, with the two conditions as recommended by staff, the Amended Exhibit B as submitted by staff, and with the following conditions of approval:

1. No guest houses will be built on the property;
2. There will be no flooding of adjacent properties and no silting of adjacent properties or the street

3. The Applicant will have a soil analysis done, which will be submitted with the preliminary plat.
4. There will be a determination of whether it is Mountainous Terrain
5. Any portion of the illegal cut north of the property which may be on the subject property has to be remediated.
6. The approval is conceptual in the sense that the Council wants to see this Case once all of the details are worked out.

DISCUSSION: Councilor Bushee said she won't deal with the number of lots until it comes back to the Council.

CLARIFICATION OF THE MOTION: Mr. O'Reilly asked if the motion is to approve the rezoning this evening, but ask that the Final Subdivision Plat will come back to the City for review, in addition to the Planning Commission.

Mayor Coss said this is correct.

DISCUSSION: Councilor Bushee asked, if it ends up being 6 lots being built, what would be the lot sizes.

Ms. Jenkins said the lot sizes are generous, ranging from 8,000 sq. ft. to 12,000 sq. ft.

Councilor Bushee will be interested to see what the Planning Commission does with this.

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

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Mayor Coss [voting in favor of the motion to provide the 5 affirmative votes needed to adopt an Ordinance]..


Against: Councilor Trujillo and Councilor Ortiz.

- 11) CONSIDERATION OF BILL NO. 2010-32: ADOPTION OF ORDINANCE NO. 2010- ____ (COUNCILOR ORTIZ AND COUNCILOR TRUJILLO). AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 14 SFCC 1987, LAND DEVELOPMENT CODE RELATED TO APPEALS. (MATTHEW O'REILLY). (Postponed at November 10, 2010 Council Meeting). (Postponed to January 12, 2011 City Council Meeting)
- a) CONSIDERATION OF RESOLUTION NO. 2010- ____ (COUNCILOR ORTIZ AND COUNCILOR TRUJILLO). A RESOLUTION ADOPTING ADMINISTRATIVE PROCEDURES RELATED TO APPEALS OF LAND USE DECISIONS. (Postponed at November 10, 2010 Council Meeting). (Postponed to January 12, 2011 City Council Meeting) (MATTHEW O'REILLY).

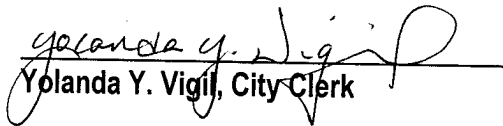
I. ADJOURN

The was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 10:00 p.m.

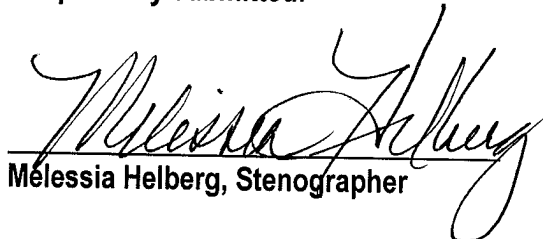
Approved by:


Mayor David Coss

ATTESTED TO:


Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Melissa Helberg, Stenographer