



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
FEBRUARY 8, 2012
CITY COUNCIL CHAMBERS

**AMENDED
ITEM #14-d and H-7**

CITY CLERK'S OFFICE

DATE 2-8-12 TIME 4:30 pm

SERVED BY _____

RECEIVED BY _____

AFTERNOON SESSION – 5:00 P.M.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. SALUTE TO THE NEW MEXICO FLAG
4. INVOCATION
5. ROLL CALL
6. APPROVAL OF AGENDA
7. APPROVAL OF CONSENT CALENDAR
8. APPROVAL OF MINUTES: Reg. City Council Meeting – January 25, 2012
9. PRESENTATIONS
 - a) Report on Outcomes: Opportunities from UNESCO Meetings in S. Korea. (Councilor Wurzbarger and Mayor Coss) (Postponed at January 25, 2012 City Council Meeting)
10. CONSENT CALENDAR
 - a) Bid No. 12/15/B – Hospital Tank Liner Removal Project and Agreement between Owner and Contractor; Sasquatch, Inc. (Bill Huey)
 - 1) Request for Approval of Budget Increase – Project Fund.
 - b) Request for Approval of Professional Services Agreement – Hospital Tank Rehabilitation for Water Division (RFP #12/11/P); NCS Engineers. (Bill Huey)
 - 1) Request for Approval of Budget Increase – Project Fund.
 - c) Request for Approval of Amendment No. 3 to Legal Services Agreement – Qwest v. City of Santa Fe Matters; Cuddy & McCarthy. (Kelley Brennan)



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- d) Request for Approval of Services Agreement – Maintenance and Repairs of City's Land Mobile Radio System; Motorola Solutions. (Thomas Williams)
- e) Request for Approval of Amendment No. 3 to Professional Services Agreement – Santa Fe River Park – El Parque Del Rio Renovations and Improvements; Surroundings Studio, LLC. (Brian Drypolcher)
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- f) Request for Approval of Agreement – Youth Conservation Corps Project for Fire Department; State of New Mexico Youth Conservation Corps Commission (YCCC). (Porfirio Chavarria)
- g) Request for Approval of Capital Outlay Agreements – Fund STB Capital Appropriation Project for Senior Services Division; State of New Mexico, Aging and Long-Term Services Department. (Ron Vialpando)
 - 1) Santa Fe City-Wide Senior Centers – Purchase and Equip Vehicles.
 - 2) Mary Esther Gonzales Senior Center – Building Improvements, Code Compliance, Purchase and Installation of Equipment.
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 - 1) Request for Approval of Budget Adjustments – Grant Fund
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Approval of Second Quarter (Midyear) Budget Adjustments for Fiscal Year 2011/2012 for Quarter Ending December 31, 2011. (Cal Probasco)



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- j) CONSIDERATION OF RESOLUTION NO. 2012-____. (Mayor Coss)
A Resolution Supporting the Application and Response to the Request for Proposals Issued by the North Central New Mexico Economic Development District, Non-Metro New Mexico Area Agency on Aging for Continuation of Services for the Senior Citizens of the City of Santa Fe. (Ron Vialpando)
- k) Request for Approval of Staff Recommendations for Acquiring Security at the Santa Fe Railyard Pursuant to Resolution 2011-53. (Bob Siqueiros)
- l) Request for Approval to Publish Notice of Public Hearing on February 29, 2012:
 - 1) Bill No. 2012-7: An Ordinance Approving a Lease Between the City of Santa Fe and Paseo Parkers LLC, for Approximately 4,965 Square Feet of City Owned Land, Located Within the 700 Block of Paseo de Peralta, Known as Lot 33, In Block 43 of the N.L. Kings Official Map, Filed for Record in Plat Book 1, Page 79, Records of Santa Fe County, NM., for a Parking Area and Landscaping Purposes. (Councilor Romero) (Ed Vigil)
 - 2) Bill No. 2012-8: An Ordinance Approving Technical Corrections to Ordinance No. 2011-37, Chapter 14 SFCC 1987 Revisions, by Amending Subsections 14-2.3(C)(7), 14-2.7(E)(3)(d), 14-2.9(B), 14-3.1(H)(1)(a), 14-3.1(H)(1)(b), 14-3.10(E), 14-3.13(B)(5)(e), 14-4.2(J)(1), 14-4.3(K)(1)(d), 14-5.5(A)(4)(a)(iii), 14-5.5(A)(4)(a)(iv), 14-5.10(A)(3), 14-6.2(C)(4)(c), 14-6.3(D)(1)(i), 14-6.3(D)(2)(a), 14-6.3(D)(2)(C)(iv), 14-6.3(D)(2)(d)(ii), 14-7.1(C)(1), 14-7.3(B)(1)(B)(iii), 14-8.5(A)(1), Section 14-8.6 and Subsections 14-9.2(D) and 14-9.2(K)(1); Amending Tables 14-7.2-1 and 14-9.2-1; Repealing Subsection 14-5.10(E); Enacting Subsection 14-8.8(A)(6); Reenacting Subsection 14-8.11(F); Amending Article 14-12 To Amend the Definitions of "Group Home" and "Townscape Standards", Reenact the Definition of "Housing Opportunity Program" and Repeal the Definition of "One Hundred Year Flood"; and Amending Ordinance 2011-37 to Delete All References to "Historic Design Review Board" and Substitute In Lieu Thereof "Historic Districts Review Board"; All Amendments are for the Sole Purpose of Providing Technical Corrections. (Greg Smith)



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A Resolution Adopting a Cost Allocation Method and Related Formulas for Assessing Enterprise Divisions/Sections for Services Provided by General Fund Divisions/Sections. (Dr. Melville Morgan)
- n) Request for Approval of Appointment of Precinct Officials (Amended) for the March 6, 2012 Regular Municipal Election. (Yolanda Y. Vigil)
- 11. Annual Report Pursuant to Resolution No. 2011-3 Regarding the Programs and Performances Funded by the Professional Services Agreement between the City of Santa Fe and the Lensic Performing Arts Center. (Sevastian Gurule)
- 12. CONSIDERATION OF RESOLUTION NO. 2012-____. (Councilor Wurzbarger)
A Resolution Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority for the Design and Construction of the BDD Booster Station 2A Solar PV Project. (Dale Lyons)
- 13. MATTERS FROM THE CITY MANAGER
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 - a) Discussion of Collective Bargaining Negotiations Between the City of Santa Fe and All Bargaining Units Representing the Employees of the City of Santa Fe Pursuant to §10-15-1(H)(5), NMSA 1978.
 - b) Discussion of the Purchase, Acquisition or Disposal of Real Property by the City of Santa Fe, Office Space Lease Agreement, 500 Market Street, Suite 200 at the Railyard; with Railyard Company LLC, Pursuant to §10-15-1(H)(8), NMSA 1978, and Discussion of Threatened or Pending Litigation in which the City of Santa Fe Is or May Become a Participant Involving Railyard Company, LLC in Accordance with §10-15-1(H)(7), NMSA 1978.
 - c) Discussion of Threatened or Pending Litigation in Which the City of Santa Fe Is or May Become a Participant, Product Agreement with Datamatic, Ltd., in Accordance With Section 10-15-1(H)(7), NMSA 1978.



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- d) Discussion of the Status of Communications with New Mexico Consolidated Construction Services, LLC and New Mexico School for the Arts Relating to the Purchase, Acquisition or Disposal of Real Property at St. Catherine's School Campus, Pursuant to § 10-15-1(H)(8), NMSA 1978.
- 15. Action Regarding the Purchase, Acquisition or Disposal of Real Property by the City of Santa Fe, Office Space Lease Agreement, 500 Market Street, Suite 200 at the Railyard; with Railyard Company LLC, and Regarding Threatened or Pending Litigation in which the City of Santa Fe Is or May Become a Participant involving Railyard Company, LLC. (Geno Zamora)
- 16. Action Regarding Threatened or Pending Litigation in Which the City of Santa Fe Is or May Become a Participant, Product Agreement with Datamatic, Ltd., in Accordance with Section 10-15-1(H)(7), NMSA 1978. (Peter Ortega and Judith Amer)
- 17. MATTERS FROM THE CITY CLERK
- 18. 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
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H. PUBLIC HEARINGS:

- 1) Request from Goler Fine Imported Shoes for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Dispensing/Consumption of Champagne at Goler Fine Imported Shoes, 125 West Palace Avenue, which is Within 300 Feet of the Cathedral Basilica of Saint Francis of Assisi, 131 Cathedral Place. The Request is for the Annual Spring 2012 Footwear Presentation of Donald Pliner Shoe Collection to be held on February 18, 2012 from 12:00 p.m. to 7:00 p.m. (Yolanda Y. Vigil)
- 2) Request from the Santa Fe Children's Museum for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Sale and Dispensing/Consumption of Beer and Wine at the Santa Fe Children's Museum, 1050 Old Pecos Trail which is Within 300 Feet of St. John's United Methodist Church, 1200 Old Pecos Trail, Temple Beth Shalom, 205 E. Barcelona Road and the Immanuel Lutheran Church, 209 E. Barcelona Road. The Request is for the *Kids at Heart* Fundraising Event to be Held on February 10, 2012 from 6:30 p.m. to 9:30 p.m. (Yolanda Y. Vigil)
- 3) CONSIDERATION OF BILL NO. 2012-1: ADOPTION OF ORDINANCE NO. 2012-____. (Councilor Bushee)
An Ordinance Amending Section 4-2.2 SFCC 1987 to Prohibit Open Containers in Unlicensed Public Places. (Alfred Walker)
- 4) CONSIDERATION OF BILL NO. 2012-2: ADOPTION OF ORDINANCE NO. 2012-____. (Councilor Bushee and Councilor Trujillo)
An Ordinance Amending Article 24-9 SFCC 1987 Regarding the City's Vehicle Forfeiture Ordinance. (Alfred Walker and TJ Grundler)
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A Resolution Adopting Administrative Procedures for the Vehicle Forfeiture Ordinance, Article 24-9 SFCC1987.
- 5) **Case #2011-125. Appeal.** Norman Lagasse, Agent for Ida A. Rajotte, Appeals the October 6, 2011, 2011 Decision of the Summary Committee in Case #2011-43 Approving a Lot Split for a 1.853± Acre of Land Located at the Corner of Camino Carlos Rey and Arroyo de Los Chamisos Owned by James Baumbach and Dioly Piedrahita. (William Lamboy and Kelley Brennan)



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- 6) CONSIDERATION OF BILL NO. 2012-3: ADOPTION OF ORDINANCE NO. 2012-____.
An Ordinance Approving Technical Corrections to Ordinance No. 2011-37 Related to Chapter 14 SFCC 1987 by Amending §§ 14-2.3(C)(7), 14-3.10(E), 14-7.1(C)1, 14-8.5(A)(1); Reenacting §14-8.11(F); and Amending §14-9.2(D), Table 14-9.2-1, §14-9.2(K)(1) and Article 14-12 to Refine the Definition of "Group Home", Include the Previously Approved Definition of "Housing Opportunity Program" and Repeal the Obsolete Definition of "One Hundred Year Flood"; All for the Sole Purpose of Providing Technical Corrections. (Greg Smith) **(Withdrawn by Staff)**
- 7) Pursuant to Resolution No. 2012-7, a Request from the Center for Contemporary Arts for Approval of a Special Dispenser Application for a Theatrical Production to be held at the Center for Contemporary Arts, 1050 Old Pecos Trail, on February 25, 2012 from 7:00 p.m. to 9:00 p.m. (Yolanda Y. Vigil)

I. ADJOURN

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

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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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[Signature]

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- h) Request for Approval of Vendor Agreement – Transportation, Nutrition and In-Home Support Services for Senior Services Division; North Central New Mexico Economic Development District Non-Metro Area Agency on Aging. (Ron Vialpando)
 - 1) Request for Approval of Budget Adjustments – Grant Fund
- i) CONSIDERATION OF RESOLUTION NO. 2012-_____.
Approval of Second Quarter (Midyear) Budget Adjustments for Fiscal Year 2011/2012 for Quarter Ending December 31, 2011. (Cal Probasco)



Agenda

REGULAR MEETING OF
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- j) CONSIDERATION OF RESOLUTION NO. 2012-____. (Mayor Coss)
A Resolution Supporting the Application and Response to the Request for Proposals Issued by the North Central New Mexico Economic Development District, Non-Metro New Mexico Area Agency on Aging for Continuation of Services for the Senior Citizens of the City of Santa Fe. (Ron Vialpando)
- k) Request for Approval of Staff Recommendations for Acquiring Security at the Santa Fe Railyard Pursuant to Resolution 2011-53. (Bob Siqueiros)
- l) Request for Approval to Publish Notice of Public Hearing on February 29, 2012:
 - 1) Bill No. 2012-7: An Ordinance Approving a Lease Between the City of Santa Fe and Paseo Parkers LLC, for Approximately 4,965 Square Feet of City Owned Land, Located Within the 700 Block of Paseo de Peralta, Known as Lot 33, In Block 43 of the N.L. Kings Official Map, Filed for Record in Plat Book 1, Page 79, Records of Santa Fe County, NM., for a Parking Area and Landscaping Purposes. (Councilor Romero) (Ed Vigil)
 - 2) Bill No. 2012-8: An Ordinance Approving Technical Corrections to Ordinance No. 2011-37, Chapter 14 SFCC 1987 Revisions, by Amending Subsections 14-2.3(C)(7), 14-2.7(E)(3)(d), 14-2.9(B), 14-3.1(H)(1)(a), 14-3.1(H)(1)(b), 14-3.10(E), 14-3.13(B)(5)(e), 14-4.2(J)(1), 14-4.3(K)(1)(d), 14-5.5(A)(4)(a)(iii), 14-5.5(A)(4)(a)(iv), 14-5.10(A)(3), 14-6.2(C)(4)(c), 14-6.3(D)(1)(i), 14-6.3(D)(2)(a), 14-6.3(D)(2)(C)(iv), 14-6.3(D)(2)(d)(ii), 14-7.1(C)(1), 14-7.3(B)(1)(B)(iii), 14-8.5(A)(1), Section 14-8.6 and Subsections 14-9.2(D) and 14-9.2(K)(1); Amending Tables 14-7.2-1 and 14-9.2-1; Repealing Subsection 14-5.10(E); Enacting Subsection 14-8.8(A)(6); Reenacting Subsection 14-8.11(F); Amending Article 14-12 To Amend the Definitions of "Group Home" and "Townscape Standards", Reenact the Definition of "Housing Opportunity Program" and Repeal the Definition of "One Hundred Year Flood"; and Amending Ordinance 2011-37 to Delete All References to "Historic Design Review Board" and Substitute In Lieu Thereof "Historic Districts Review Board"; All Amendments are for the Sole Purpose of Providing Technical Corrections. (Greg Smith)



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- m) CONSIDERATION OF RESOLUTION NO. 2012-____. (Mayor Coss)
A Resolution Adopting a Cost Allocation Method and Related Formulas for Assessing Enterprise Divisions/Sections for Services Provided by General Fund Divisions/Sections. (Dr. Melville Morgan)
- n) Request for Approval of Appointment of Precinct Officials (Amended) for the March 6, 2012 Regular Municipal Election. (Yolanda Y. Vigil)
- 11. Annual Report Pursuant to Resolution No. 2011-3 Regarding the Programs and Performances Funded by the Professional Services Agreement between the City of Santa Fe and the Lensic Performing Arts Center. (Sevastian Gurule)
- 12. CONSIDERATION OF RESOLUTION NO. 2012-____. (Councilor Wurzburger)
A Resolution Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority for the Design and Construction of the BDD Booster Station 2A Solar PV Project. (Dale Lyons)
- 13. MATTERS FROM THE CITY MANAGER
- 14. MATTERS FROM THE CITY ATTORNEY
 - a) Discussion of Collective Bargaining Negotiations Between the City of Santa Fe and All Bargaining Units Representing the Employees of the City of Santa Fe Pursuant to §10-15-1(H)(5), NMSA 1978.
 - b) Discussion of the Purchase, Acquisition or Disposal of Real Property by the City of Santa Fe, Office Space Lease Agreement, 500 Market Street, Suite 200 at the Railyard; with Railyard Company LLC, Pursuant to §10-15-1(H)(8), NMSA 1978, and Discussion of Threatened or Pending Litigation in which the City of Santa Fe Is or May Become a Participant Involving Railyard Company, LLC in Accordance with §10-15-1(H)(7), NMSA 1978.
 - c) Discussion of Threatened or Pending Litigation in Which the City of Santa Fe Is or May Become a Participant, Product Agreement with Datamatic, Ltd., in Accordance With Section 10-15-1(H)(7), NMSA 1978.



Agenda

REGULAR MEETING OF
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15. Action Regarding the Purchase, Acquisition or Disposal of Real Property by the City of Santa Fe, Office Space Lease Agreement, 500 Market Street, Suite 200 at the Railyard; with Railyard Company LLC, and Regarding Threatened or Pending Litigation in which the City of Santa Fe Is or May Become a Participant involving Railyard Company, LLC. (Geno Zamora)
16. Action Regarding Threatened or Pending Litigation in Which the City of Santa Fe Is or May Become a Participant, Product Agreement with Datamatic, Ltd., in Accordance with Section 10-15-1(H)(7), NMSA 1978. (Peter Ortega and Judith Amer)
17. MATTERS FROM THE CITY CLERK
18. 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 Goler Fine Imported Shoes for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Dispensing/Consumption of Champagne at Goler Fine Imported Shoes, 125 West Palace Avenue, which is Within 300 Feet of the Cathedral Basilica of Saint Francis of Assisi, 131 Cathedral Place. The Request is for the Annual Spring 2012 Footwear Presentation of Donald Pliner Shoe Collection to be held on February 18, 2012 from 12:00 p.m. to 7:00 p.m. (Yolanda Y. Vigil)



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- 2) Request from the Santa Fe Children's Museum for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Sale and Dispensing/Consumption of Beer and Wine at the Santa Fe Children's Museum, 1050 Old Pecos Trail which is Within 300 Feet of St. John's United Methodist Church, 1200 Old Pecos Trail, Temple Beth Shalom, 205 E. Barcelona Road and the Immanuel Lutheran Church, 209 E. Barcelona Road. The Request is for the *Kids at Heart* Fundraising Event to be Held on February 10, 2012 from 6:30 p.m. to 9:30 p.m. (Yolanda Y. Vigil)
- 3) CONSIDERATION OF BILL NO. 2012-1: ADOPTION OF ORDINANCE NO. 2012-____. (Councilor Bushee)
An Ordinance Amending Section 4-2.2 SFCC 1987 to Prohibit Open Containers in Unlicensed Public Places. (Alfred Walker)
- 4) CONSIDERATION OF BILL NO. 2012-2: ADOPTION OF ORDINANCE NO. 2012-____. (Councilor Bushee and Councilor Trujillo)
An Ordinance Amending Article 24-9 SFCC 1987 Regarding the City's Vehicle Forfeiture Ordinance. (Alfred Walker and TJ Grundler)
 - a) CONSIDERATION OF RESOLUTION NO. 2012-____. (Councilor Bushee and Councilor Trujillo)
A Resolution Adopting Administrative Procedures for the Vehicle Forfeiture Ordinance, Article 24-9 SFCC1987.
- 5) **Case #2011-125. Appeal.** Norman Lagasse, Agent for Ida A. Rajotte, Appeals the October 6, 2011, 2011 Decision of the Summary Committee in Case #2011-43 Approving a Lot Split for a 1.853± Acre of Land Located at the Corner of Camino Carlos Rey and Arroyo de Los Chamisos Owned by James Baumbach and Dioly Piedrahita. (William Lamboy and Kelley Brennan)
- 6) CONSIDERATION OF BILL NO. 2012-3: ADOPTION OF ORDINANCE NO. 2012-____.
An Ordinance Approving Technical Corrections to Ordinance No. 2011-37 Related to Chapter 14 SFCC 1987 by Amending §§ 14-2.3(C)(7), 14-3.10(E), 14-7.1(C)1, 14-8.5(A)(1); Reenacting §14-8.11(F); and Amending §14-9.2(D), Table 14-9.2-1, §14-9.2(K)(1) and Article 14-12 to Refine the Definition of "Group Home", Include the Previously Approved Definition of "Housing Opportunity Program" and Repeal the Obsolete Definition of "One Hundred Year Flood"; All for the Sole Purpose of Providing Technical Corrections. (Greg Smith) **(Withdrawn by Staff)**



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
FEBRUARY 8, 2012
CITY COUNCIL CHAMBERS

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.

SUMMARY INDEX
SANTA FE CITY COUNCIL MEETING
February 8, 2012

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
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APPROVAL OF CONSENT CALENDAR	Approved [amended]	2
CONSENT CALENDAR LISTING		2-4
APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – JANUARY 25, 2012	Approved	4
<u>PRESENTATIONS</u>		
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END OF CONSENT CALENDAR DISCUSSION		

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
ANNUAL REPORT PURSUANT TO RESOLUTION NO. 2011-3 REGARDING THE PROGRAMS AND PERFORMANCES FUNDED BY THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF SANTA FE AND THE LENSIC PERFORMING ARTS CENTER	Information/discussion	7-8
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<u>MATTERS FROM THE CITY ATTORNEY</u>		
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ACTION REGARDING THE PURCHASE, ACQUISITION OR DISPOSAL OF REAL PROPERTY BY THE CITY OF SANTA FE, OFFICE SPACE LEASE AGREEMENT, 500 MARKET STREET, SUITE 200 AT THE RAILYARD, WITH RAILYARD COMPANY LLC, AND REGARDING THREATENED OR PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT INVOLVING RAILYARD COMPANY, LLC	No action	12
ACTION REGARDING THREATENED OR PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT, PRODUCT AGREEMENT WITH DATAMATIC, LTD., IN ACCORDANCE WITH SECTION 10-15-1(H)(7), NMSA 1978	Proceed as recommended by staff	13
<u>EVENING SESSION</u>		
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<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<u>APPOINTMENTS</u>		
City of Santa Fe, Division of Senior Services Advisory Board of Directors	Approved	15
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<u>PUBLIC HEARINGS</u>		
REQUEST FROM GOLER FINE IMPORTED SHOES FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF CHAMPAGNE AT GOLER FINE IMPORTED SHOES, 125 WEST PALACE AVENUE, WHICH IS WITHIN 300 FEET OF THE CATHEDRAL BASILICA OF SAINT FRANCIS OF ASSISI, 131 CATHEDRA PLACE. THE REQUEST IS FOR THE ANNUAL SPRING 2012 FOOTWEAR PRESENTATION OF DONALD PLINER SHOE COLLECTION TO BE HELD ON FEBRUARY 18, 2012, FROM 12:00 P.M. TO 7:00 P.M.	Approved	16-17
REQUEST FROM THE SANTA FE CHILDREN'S MUSEUM FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE SALE AND DISPENSING/CONSUMPTION OF BEER AND WINE AT THE SANTA FE CHILDREN'S MUSEUM, 1050 OLD PECOS TRAIL, WHICH IS WITHIN 300 FEET OF ST. JOHN'S UNITED METHODIST CHURCH, 1200 OLD PECOS TRAIL, TEMPLE BETH SHALOM, 205 E. BARCELONA ROAD AND THE IMMANUEL LUTHERAN CHURCH, 209 E. BARCELONA ROAD. THE REQUEST IS FOR THE KIDS AT HEART FUNDRAISING EVENT TO BE HELD ON FEBRUARY 10, 2012 FROM 6:30 P.M. TO 9:30 P.M.	Approved	17-21
PURSUANT TO RESOLUTION NO. 2012-7, A REQUEST FROM THE CENTER FOR CONTEMPORARY ARTS FOR APPROVAL OF A SPECIAL DISPENSER APPLICATION FOR A THEATRICAL PRODUCTION TO BE HELD AT THE CENTER FOR CONTEMPORARY ARTS, 1050 OLD PECOS TRAIL, ON FEBRUARY 25, 2012 FROM 7:00 P.M. TO 9:00 P.M.	Denied	21-24

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
CONSIDERATION OF BILL NO. 2012-01; ADOPTION OF ORDINANCE NO. 2012-08. AN ORDINANCE AMENDING SECTION 4-2.2 SFCC 1987, TO PROHIBIT OPEN CONTAINERS IN UNLICENSED PUBLIC PLACES	Approved	24-26
CONSIDERATION OF BILL NO. 2012-2; ADOPTION OF ORDINANCE NO. 2012- 09. AN ORDINANCE AMENDING ARTICLE 24-9 SFCC 1987, REGARDING THE CITY'S VEHICLE FORFEITURE ORDINANCE	Approved [amended]	26-31
CONSIDERATION OF RESOLUTION NO. 2012- 20. A RESOLUTION ADOPTING ADMINISTRATIVE PROCEDURES FOR THE VEHICLE FORFEITURE ORDINANCE, ARTICLE 24-9 SFCC 1987	Approved	26-31
<u>CASE #2011-125. APPEAL. NORMAN LAGASSE, AGENT FOR IDA A. RAJOTTE, APPEALS THE OCTOBER 6, 2011, DECISION OF THE SUMMARY COMMITTEE IN CASE #2011-43, APPROVING A LOT SPLIT FOR A 1.853± ACRES OF LAND LOCATED AT THE CORNER OF CAMINO CARLOS REY AND ARROYO DE LOS CHAMISOS, OWNED BY JAMES BAUMBACH AND DIOLY PIEDRAHITA</u>	Appeal denied	31-48
CONSIDERATION OF BILL NO. 2012-3: ADOPTION OF ORDINANCE NO. 2012- ____ ORDINANCE APPROVING TECHNICAL CORRECTIONS TO ORDINANCE NO. 2011-37 RELATED TO CHAPTER 14 SFCC 1987, BY AMENDING §§14-2.3(C)(7), 14-3.10(E),, 14-7.1(C)(1), 14-8.5(A)(1); REENACTING §14-8.11(F); AND AMENDING §14-9.2(D), TABLE 14-9.2-1, §14-9.2(K)(1) AND ARTICLE 14-12 TO REFINE THE DEFINITION OF "GROUP HOME," INCLUDE THE PREVIOUSLY APPROVED DEFINITION OF "HOUSING OPPORTUNITY PROGRAM" AND REPEAL THE OBSOLETE DEFINITION OF "ONE HUNDRED YEAR FLOOD;" ALL FOR THE SOLE PURPOSE OF PROVIDING TECHNICAL CORRECTIONS	Withdrawn by staff	48

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
MATTERS FROM THE CITY CLERK	None	49
COMMUNICATIONS FROM THE GOVERNING BODY	Information/discussion	49-53
ADJOURN		53

**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
February 8, 2012**

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 Wednesday, February 8, 2012, at approximately 5:00 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance, Salute to the New Mexico flag, and the Invocation, roll call indicated the presence of a quorum, as follows:

Members Present

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

Others Attending

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

6. APPROVAL OF AMENDED AGENDA

Robert Romero, City Manager, noted that the Agenda was revised to add items 14(d) on the afternoon agenda, and Item H(7) on the Evening Agenda.

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

MOTION: Councilor Bushee moved, seconded by Councilor Calvert, to reconsider the previous approval of the Amended Agenda to amend the Amended Agenda to move Item H(7) to be new Item H(3) and renumber succeeding agenda items accordingly, and to approve the Amended Agenda as amended.

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.

7. APPROVAL OF CONSENT CALENDAR

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

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

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

Against: None.

A copy of FIR #2229, regarding Item 10(l)(1) is incorporated herewith to these minutes as Exhibit "1."

A copy of *Amended City of Santa Fe Regular Municipal Election March 6, 2012, list of polling places and Precinct Board members*, regarding Item 10(n) is incorporated herewith to these minutes as Exhibit "2."

- a) *[Removed for discussion by Councilor Chavez]*
- b) *[Removed for discussion by Councilor Chavez]*
- c) **REQUEST FOR APPROVAL OF AMENDMENT NO. 3 TO LEGAL SERVICES AGREEMENT – QWEST V. CITY OF SANTA FE MATTERS; CUDDY & McCARTHY. (KELLEY BRENNAN)**
- d) **REQUEST FOR APPROVAL OF SERVICES AGREEMENT – MAINTENANCE AND REPAIRS OF CITY'S LAND MOBILE RADIO SYSTEM; MOTOROLA SOLUTIONS. (THOMAS WILLIAMS)**
- e) **REQUEST FOR APPROVAL OF AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT – SANTA FE RIVER PARK – EL PARQUE DEL RIO RENOVATIONS AND IMPROVEMENTS; SURROUNDINGS STUDIO, LLC. (BRIAN DRYPOLCHER)**
 - 1) **REQUEST FOR APPROVAL OF BUDGET INCREASE – PROJECT FUND.**

- f) REQUEST FOR APPROVAL OF AGREEMENT - YOUTH CONSERVATION CORPS PROJECT FOR FIRE DEPARTMENT; STATE OF NEW MEXICO YOUTH CONSERVATION CORPS COMMISSION (YCCC). (PORFIRIO CHAVARRIA)
- g) REQUEST FOR APPROVAL OF CAPITAL OUTLAY AGREEMENTS – FUND STB CAPITAL APPROPRIATION PROJECT FOR SENIOR SERVICES DIVISION; STATE OF NEW MEXICO, AGING AND LONG-TERM SERVICES DEPARTMENT. (RON VIALPANDO)
 - 1) SANTA FE CITY-WIDE SENIOR CENTERS – PURCHASE AND EQUIP VEHICLES.
 - 2) MARY ESTHER GONZALES SENIOR CENTER – BUILDING IMPROVEMENTS, CODE COMPLIANCE, PURCHASE AND INSTALLATION OF EQUIPMENT.
 - a) REQUEST FOR APPROVAL OF BUDGET INCREASE – GRANT FUND.
- h) REQUEST FOR APPROVAL OF VENDOR AGREEMENT – TRANSPORTATION, NUTRITION AND IN-HOME SUPPORT SERVICES FOR SENIOR SERVICES DIVISION; NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT NON-METRO AREA AGENCY ON AGING. (RON VIALPANDO)
 - 1) REQUEST FOR APPROVAL OF BUDGET ADJUSTMENTS – GRANT FUND.
- i) CONSIDERATION OF RESOLUTION NO. 2012-16. APPROVAL OF SECOND QUARTER (MIDYEAR) BUDGET ADJUSTMENTS FOR FISCAL YEAR 2011/2012 FOR QUARTER ENDING DECEMBER 31, 2011. (CAL PROBASCO)
- j) CONSIDERATION OF RESOLUTION NO. 2012-17 (MAYOR COSS). A RESOLUTION SUPPORTING THE APPLICATION AND RESPONSE TO THE REQUEST FOR PROPOSALS ISSUED BY THE NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT, NON-METRO NEW MEXICO AREA AGENCY ON AGING FOR CONTINUATION OF SERVICES FOR THE SENIOR CITIZENS OF THE CITY OF SANTA FE. (RON VIALPANDO)
- k) REQUEST FOR APPROVAL OF STAFF RECOMMENDATIONS FOR ACQUIRING SECURITY AT THE SANTA FE RAILYARD PURSUANT TO RESOLUTION 2011-53. (BOB SIQUEIROS)
- l) REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON FEBRUARY 29, 2012:
 - 1) BILL NO. 2012-7: AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND PASEO PARKERS LLC, FOR APPROXIMATELY 4,965 SQUARE FEET OF CITY OWNED LAND, LOCATED WITHIN THE 700 BLOCK OF PASEO DE PERALTA, KNOWN AS LOT 33, IN BLOCK 43 OF THE N.L. KINGS OFFICIAL MAP, FILED FOR RECORD IN PLAT BOOK 1, PAGE 79, RECORDS OF SANTA FE COUNTY, NM, FOR A PARKING AREA AND LANDSCAPING PURPOSES (COUNCILOR ROMERO). (ED VIGIL)

2) **BILL NO. 2012-8: AN ORDINANCE APPROVING TECHNICAL CORRECTIONS TO ORDINANCE NO. 2011-37, CHAPTER 14 SFCC 1987, REVISIONS, BY AMENDING SUBSECTIONS 14-2.3(C)(7), 14-2-7(E)(3)(d), 14-2.9(B), 14-3.1(H)(1)(a); 14-3.1(H)(1)(b); 14-3.10(E), 14-3.13(B)(5)(e), 14-4.2(J)(1), 14-4.3(K)(1)(d), 14-5.5(A)(4)(a)(iii), 14-5.5(A)(4)(a)(iv), 14-5.10(A)(3), 14-6.2(C)(4)(c), 14-6.3(D)(1)(i), 14-6.3(D)(2)(a), 14-6.3(D)(2)(C)(iv), 14-6.3(D)(2)(d)(ii), 14-7.1(C)(1), 14-7.3(B)(1)(B)(iii), 14-8.5(A)(1), SECTION 14-8.6 AND SUBSECTIONS 14-9.2(D) AND 14-9.2(K)(1); AMENDING TABLES 14-7.2-1 AND 14-9.2-1; REPEALING SUBSECTION 14-5.10(E); ENACTING SUBSECTION 14-8.8(A)(6); REENACTING SUBSECTION 14-8.11(F); AMENDING ARTICLE 14-12.2 TO AMEND THE DEFINITIONS OF "GROUP HOME" AND "TOWNSCAPE STANDARDS," REENACT THE DEFINITION OF "HOUSING OPPORTUNITY PROGRAM" AND REPEAL THE DEFINITION OF "ONE HUNDRED YEAR FLOOD;" AND AMENDING ORDINANCE 2011-37 TO DELETE ALL REFERENCES TO "HISTORIC DESIGN REVIEW BOARD" AND SUBSTITUTE IN LIEU THEREOF "HISTORIC DISTRICTS REVIEW BOARD;" ALL AMENDMENTS ARE FOR THE SOLE PURPOSE OF PROVIDING TECHNICAL CORRECTIONS. (GREG SMITH)**

- m) **CONSIDERATION OF RESOLUTION NO. 2012-18 (MAYOR COSS). A RESOLUTION ADOPTING A COST ALLOCATION METHOD AND RELATED FORMULAS FOR ASSESSING ENTERPRISE DIVISIONS/SECTIONS FOR SERVICES PROVIDED BY GENERAL FUND DIVISIONS/SECTIONS. (DR. MELVILLE MORGAN)**
- n) **REQUEST FOR APPROVAL OF APPOINTMENT OF PRECINCT OFFICIALS (AMENDED) FOR THE MARCH 6, 2012 REGULAR MUNICIPAL ELECTION. (YOLANDA Y. VIGIL)**

8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – JANUARY 25, 2012

MOTION: Councilor Dominguez moved, seconded by Councilor Romero, to approve the minutes of the Regular City Council meeting of January 25, 2012, as presented.

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

9. PRESENTATIONS

- a) **REPORT ON OUTCOMES: OPPORTUNITIES FROM UNESCO MEETINGS IN S. KOREA. (COUNCILOR WURZBURGER AND MAYOR COSS) (Postponed at January 25, 2012 City Council Meeting)**

A copy of the power point presentation is incorporated herewith to these minutes as Exhibit "3."

Councilor Wurzbarger and Mayor Coss presented information via power point, and from the report which is in the Council packet, with regard to their visit to Seoul and Incheon, Korea for the UNESCO Creative Cities Network meeting.

Councilor Wurzbarger gave a brief overview of the Creative Cities Network meeting, commenting the visit showed great potential for the future, in terms of collaboration with artists in Korea and other countries.

Mayor Coss said this is the first time they had a Mayor's Forum at the meeting. He said this Forum dealt with creativity and sustainability, and it was good to put together a show on what Santa Fe has been doing in terms of sustainability. He said the presentation was well received and it was interesting to learn that other mayors are working on similar things as we are in Santa Fe. He said it was a good exchange, noting there were 20 Mayors and Deputy Mayors in attendance at the Mayor's Roundtable, and he was the only U.S. Mayor. He noted that Mayor Park has been to Santa Fe, and expressed an interest in collaborating with Santa Fe, noting he is the Mayor of a city of 12 million people. He said he is working on a visit from Mayor Park to the United States and Santa Fe.

Councilor Wurzbarger complimented Mayor Coss, noting that nobody has a sustainability plan like Santa Fe, which was apparent to the other Mayors and participants.

Councilor Wurzbarger said she made two presentations and was one of the keynotes for the conference.

Councilor Wurzbarger said one of the things they talked a lot about, was how to replace the UNESCO funding which was withdrawn by the United States in its decision to pull out of UNESCO because of political decisions about Palestine just before the conference, noting the United States provides 30% of the funding. She said she is on the committee to look at this and determine their options.

Mayor Coss said it was good to see the work of Santa Fe artists exhibited in Seoul, Korea, in the heart of the fashion district – David Gaussoin, Heidi Bowen, Andrea Fisher Fine Art. He said all of the 400 people attending the conference, as well as the Korean people had the opportunity to see those and they liked it.

Councilor Wurzbarger talked about the artist who visited Santa Fe last summer, who worked with Heidi Bowen to co-produce the pots which he threw and Heidi finished. She said this was a true collaboration between these artists for this exposition.

Mayor Coss said he was pleased to be invited to participate, and to know that people know about Santa Fe and its reputation.

Councilor Wurzbarger talked about the two-day tour of Incheon, noting Korea is a model for building an infrastructure in industry such as in ceramics.

Mayor Coss said this is a very rich opportunity for Santa Fe, noting that he learned that the Koreans travel more than any other Asians, and right now Korea has the most successful economy in the world right now in terms of rate of growth. He said Utah and Sedona, Arizona are ahead of Santa Fe in bringing Korean visitors. He believes Santa Fe can get ahead of them by working a little harder.

Councilor Wurzbarger said they met a lot of people, in addition to attending and participating in the conference.

SPECIAL PRESENTATION

A Mariachi group sang *Las Mañanitas* to Maria Clokey whose birthday is today, and who had to work late this evening covering the broadcast of the Council meeting. Everyone sang *Happy Birthday* to Maria and wished her a very happy birthday.

CONSENT CALENDAR DISCUSSION

- 10(a) BID NO. 12/15/B – HOSPITAL TANK LINER REMOVAL PROJECT AND AGREEMENT BETWEEN OWNER AND CONTRACTOR; SASQUATCH, INC. (BILL HUEY)**
1) REQUEST FOR APPROVAL OF BUDGET INCREASE – PROJECT FUND.

Councilor Chavez said this is the second time this work will be done on this tank. He asked if we are completely removed from the tank contractor who did the previous work.

Mr. Zamora said, "The relationship with the prior contractor was terminated, and then there was litigation which was settled approximately 6 months ago."

Councilor Chavez said hopefully, those funds will help to do some of this work, finish this tank and get it back on line.

Mr. Zamora said, "Funds were recovered through the settlement by the City which can be used to remedy the problems with the hospital tank."

Councilor Chavez asked what funds will be used to do the work being proposed.

Brian Snyder said Mr. Zamora is correct. The City did receive a settlement of \$400,000, which has been paid to the City, and those funds will be used for Items 10(a) and 10(b) on this evening's agenda. He said one is for removal of the liner system and the other is for engineering work to evaluate the tank after the liner system is removed, and perform a design if necessary to stop the leaking.

Councilor Chavez asked the life expectancy of the tank, once it is tank rehabilitated and back on-line.

Mr. Snyder said the City's intent this Spring is to take the tank off line, remove the liner system, and do an engineering evaluation on the tank, and hopefully fix the problem with grouting and calk which are used in an underwater situation, so we don't have to put in another liner system. He said they intend to bring the tank on-line in April, and evaluate the fix implemented, and take it down annually for routine maintenance to evaluate, and if necessary do a long-term fix. However, the hope is to not have to spend more money than what we intend to do in the Spring.

Councilor Chavez said then the objective is to stop the tank from leaking and seeping water.

Mr. Snyder said every tank has an allowable leakage by State and federal regulations, and the goal is to reduce the leakage below what it is now.

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

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

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

Against: None.

**10 (b) REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT –
HOSPITAL TANK REHABILITATION FOR WATER DIVISION (RFP #12/11/P); NCS
ENGINEERS. (BILL HUEY)
1) REQUEST FOR APPROVAL OF BUDGET INCREASE – PROJECT FUND.**

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

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

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

Against: None.

END OF CONSENT CALENDAR DISCUSSION

**11. ANNUAL REPORT PURSUANT TO RESOLUTION NO. 2011-3 REGARDING THE PROGRAMS
AND PERFORMANCES FUNDED BY THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF SANTA FE AND THE LENSIC PERFORMING ARTS CENTER.
(SEVASTIAN GURULE)**

Sevastian Gurule said this report is being presented in accordance with Resolution 2011-3, approved in January 2011, noting staff is directed to provide this report in the Resolution.

Aggie Damron-Garner, Director, Finance and Administration, Lensic Performing Arts Center, presented the information in the report on packet pages 4 & 5. She said she has complete details at the office, and will be glad to provide them to the Council.

Councilor Wurzburger said the contribution of the Lensic to the youth of the community goes far beyond this.

Councilor Bushee noted the deficit or change in revenue to a negative \$7,000, and asked if staff has concerns about that revenue being down, and if the revenues need to be made up, or we need to promote it better.

Sevastian Gurule said the report represents a calendar year which reflects only one summer season, but our fiscal year revenue will benefit for two summer seasons. He said he has no concerns and there will be no negative impact on the budget.

Responding to Councilor Bushee, Mr. Gurule said the revenues are very close to the original projection, and he anticipates more funds in a complete fiscal year.

Mayor Coss thanked Ms. Damron-Garner, and said he was at the Lensic on Monday for the school bands. He said there were a lot of proud kids and parents, commenting that the kids have a remarkable opportunity and the Lensic is a first rate place.

12. CONSIDERATION OF RESOLUTION NO. 2012-19 (COUNCILOR WURZBURGER). A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY FOR THE DESIGN AND CONSTRUCTION OF THE BDD BOOSTER STATION 2A SOLAR PV PROJECT. (DALE LYONS)

A copy of FIR #2230, with attachments, regarding this matter, is incorporated herewith to these minutes as Exhibit "4."

Brian Snyder said this is a follow-up to the BDD Board's request to build another solar project to support the BDD facility which will be located at Booster Station 2A, and for design and construction of a solar project for the pumping stations along the corridor to get the water from the diversion structure to the treatment plant.

Councilor Calvert said he is supportive of the project, but he is concerned if this is the proper jurisdiction, and if this is something on which the County needs to take action, or if it is the proper jurisdiction for the BDD Board to submit this, especially in light of the settlement agreement. He doesn't

want to muddy the waters again, and wants to know if it is appropriate to come from the City as the fiscal agent, or if it should come from the Board or the County should be sending something on its behalf as well.

Mr. Snyder said his understanding is that since the City is the fiscal agent and project manager, that the City is responsible for submitting requests for funding on behalf of the Board, and per the agreement between the City, the County and the BDD Board, that there will be a cost sharing agreement for any grant which is received.

Councilor Calvert said he understands that. However, he wants to know if the City is still operating as the fiscal agent since we are now in the operational stage of the project and are no longer in construction and BDD has its own staff, and if the BDD should submit the application itself.

Mr. Snyder said the City is the fiscal agent and project manager until 2015.

MOTION: Councilor Wurzbarger moved, seconded by Councilor Calvert and Councilor Romero, to approve this request, with the condition, given the complications we experienced in the final closeout, that staff is directed to ask the County to provide a letter to the City, saying it is in favor of being partners in this grant.

DISCUSSION: Councilor Chavez noted on packet page 9 it provides the responsibility of the contractor as follows, "...Once the system is completed and interconnected with PNM, the BDD Board will own and operate the facility and retain ownership of any Renewable Energy Credits (RECs)." He said then the ownership goes to the BDD even though the City is the fiscal agent, which makes sense. He said his question goes to who is responsible for the maintenance of the system.

Mr. Snyder said the operation and maintenance does go to the BDD Board as part of its budget, similar to the existing PV system where any operation and maintenance is shared between the "Board and the partners."

Councilor Chavez asked if there is money in that budget for operation and maintenance which is set aside.

Mr. Snyder said the budget has not been established, noting that this is a request to NMFA to provide funding for this facility.

Councilor Chavez said he understands, he was just jumping ahead to see who will be responsible for the ongoing operation and maintenance, and whether there are funds available. He said it is easy to build something, but harder to fund the ongoing operation and maintenance, noting the City finds itself in this situation over and over again.

Mr. Snyder said the BDD Board hasn't seen the upcoming FY operation and maintenance budget, which will be presented at the BDD Board meeting in March.

Councilor Calvert said such a facility will decrease the overall operation expenses.

Councilor Chavez said he understands, but there is still ongoing maintenance, and said this needs to be factored in, reiterating his concerns, commenting that funding for operation and maintenance often is overlooked.

Councilor Wurzbarger said this will not be overlooked in the upcoming budget the Board has yet to review.

Councilor Bushee noted one portion of the REC revenue is down .05 kWh. She asked if the reason we're going with this.

Councilor Calvert said that is because PNM has been ratcheting down the RECs allowed, with allocations for each level, and once filled, PNM moves down to the next level and this is the lowest level.

Councilor Bushee asked if this allowed by the PRC, and Councilor Calvert said yes.

Councilor Bushee said it ties our hands, in terms of options as to how to do this, and Councilor Calvert said this is correct.

Councilor Romero same the issue came up at SWMA. She said in this case, BCC would be the owners. She said, secondly, the cost savings will be beneficial for the City and County through the BDD. She said, the third thing is that the cost allocation method will be reviewed as we move through the budget process, and the BDD will be looking at this allocation as well. She said she is affirming some of the things coming up at the BDD so we are clear about the appropriate kinds of cost allocations that will be occurring. In this instance, she said she would like to underline the cost savings into the long term.

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

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

Against: None.

13. MATTERS FROM THE CITY MANAGER.

There were no matters from the City Manager.

14. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION

- a) **DISCUSSION OF COLLECTIVE BARGAINING NEGOTIATIONS BETWEEN THE CITY OF SANTA FE AND ALL BARGAINING UNITS REPRESENTING THE EMPLOYEES OF THE CITY OF SANTA FE PURSUANT TO §10-15-1(H)(5), NMSA 1978.**
- b) **DISCUSSION OF THE PURCHASE, ACQUISITION OR DISPOSAL OF REAL PROPERTY BY THE CITY OF SANTA FE, OFFICE SPACE LEASE AGREEMENT, 500 MARKET STREET, SUITE 200 AT THE RAILYARD, WITH RAILYARD COMPANY LLC, PURSUANT TO §10-15-1(H)(8), NMSA 1978, AND DISCUSSION OF THREATENED OR PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT INVOLVING RAILYARD COMPANY, LLC, IN ACCORDANCE WITH §10-15-1(H)(7), NMSA 1978.**
- c) **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 ACCORDANCE WITH §10-15-1(H)(7) NMSA 1978.**
- d) **DISCUSSION OF THE STATUS OF COMMUNICATIONS WITH NEW MEXICO CONSOLIDATED CONSTRUCTION SERVICES, LLC, AND NEW MEXICO SCHOOL FOR THE ARTS, RELATING TO THE PURCHASE, ACQUISITION OR DISPOSAL OF REAL PROPERTY AT ST. CATHERINE'S SCHOOL CAMPUS, PURSUANT TO §10-15-1(H)(8), NMSA 1978.**

MOTION: Councilor Calvert moved, seconded by Councilor Romero, that the Council go into Executive Session for:

- 1. Discussion of collective bargaining negotiations between the City of Santa Fe and all bargaining units representing the employees of the City of Santa Fe, pursuant to §10-15-1(H)(5) NMSA 1978;
- 2. Discussion of the purchase, acquisition or disposal of real property by the City of Santa Fe, office space lease agreement, 500 Market Street, Suite 200 at the Railyard with. Railyard Company LLC, pursuant to §10-15-1(H)(8) NMSA 1978, and discussion of threatened or pending litigation in which the City of Santa Fe is or may become a participant involving Railyard Company, LLC, in accordance with §10-15-1(H)(7) NMSA 1978;
- 3. 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; and
- 4. Discussion of the status of communications with New Mexico Consolidated Construction Services, LLC, and New Mexico School for the Arts, relating to the purchase, acquisition or disposal of real property at St. Catherine's School Campus, pursuant to §10-15-1(H)(8) NMSA 1978.

DISCUSSION: Councilor Bushee said, "I just want to clarify that Item (d) is not to discuss the financial plan, but to just further negotiations. And I will be against going into executive session for Item (b) as long as Item (d) is simply negotiations. Is that correct Geno."

Mr. Zamora said Item (d) is an update on the status of communications and negotiations.

Councilor Chavez said, "I will be voting against 14(b) and (d) because... not because we're discussing possible purchase price, but because it's not being done more in public, so on both 14(b) and (d) I vote against going into executive session on both of those, because we're talking about spending public dollars and purchasing real property on their behalf without them really knowing what we're doing, so I vote against, no, on both of those."

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

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

Against: Councilor Chavez

Abstain: Councilor Bushee

Explaining her vote: I'm going to have to abstain. I only want to hear about 14(a) and (c) in executive session.

The Council went into Executive Session at 6:05 p.m.

MOTION TO COME OUT OF EXECUTIVE SESSION

MOTION: At 7:08 p.m. Councilor Bushee moved, seconded by Councilor Calvert, 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, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting in favor of the motion and no one voting against.

- 15. ACTION REGARDING THE PURCHASE, ACQUISITION OR DISPOSAL OF REAL PROPERTY BY THE CITY OF SANTA FE, OFFICE SPACE LEASE AGREEMENT, 500 MARKET STREET, SUITE 200 AT THE RAILYARD, WITH RAILYARD COMPANY LLC, AND REGARDING THREATENED OR PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT INVOLVING RAILYARD COMPANY, LLC. (GENO ZAMORA)**

No action was taken with regard to this Item.

- 16. ACTION REGARDING THREATENED OR PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT, PRODUCT AGREEMENT WITH DATAMATIC, LTD., IN ACCORDANCE WITH SECTION 10-15-1(H)(7), NMSA 1978. (PETER ORTEGA AND JUDITH AMER)**

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to proceed with Datamatic as recommended by staff.

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.

MAYOR COSS MOVED ITEMS 17 AND 18 TO THE END OF THE EVENING AGENDA

END OF AFTERNOON SESSION AT APPROXIMATELY 7:10 P.M.

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Mayor David Coss, at approximately 7:10 p.m. Following the Pledge of Allegiance, salute to the New Mexico Flag, and Invocation, Roll Call indicated the presence of a quorum as follows:

Members Present

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

Others Attending

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

F. PETITIONS FROM THE FLOOR

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

Maria Bautista, 986 Camino Rizo, said she is addressing Councilor Trujillo specifically. She read an article in the newspaper about looking into crafts and merchandise and such that comes into Santa Fe such to be sure they aren't made in childrens sweat shops. She said this is a large challenge. She said she worked with Dr. Angelo Tomedie from the University of New Mexico who owns Peace Craft in Albuquerque, noting she was the Executive Director. She said they worked with organizations world-wide, etc. in regard to sweatshop labor, alternative trade and equal exchange. They brought their merchandise directly from communities, and in many instances provided the raw material. She said Dr. Tomedie from the UNM hospital traveled with a group of nurses traveled to the Indians in Northern Mexico, and they provided solar panels which provided electricity for the refrigeration for medicine for the doctor to take to the tribe which lived in caves in Northern Mexico. She said all of the supplies are pre-screened, and the merchandise is bought by all the churches in Santa Fe, Albuquerque and Southern New Mexico. She said she has all the contacts for those communities which she would provide, and they can check the merchandise that's coming into town. She recommended working with Dr. Tomedie.

Stefanie Beninato said she is here to speak about the bond issue. She doesn't understand if politicians think people are incredibly stupid or they're speaking out of both sides of their mouth thinking people won't notice when they start contradicting themselves. She said, "On November 30th when you passed the Gross Receipts Tax bond and approved the format of the 3 bonds going to the voters in March, you kept saying over and over, basically the entire City Council, 'We won't repeat the mistakes when we passed the parks bond and we basically did what we wanted with the money include using it for salaries'." She said, with the exception of Councilors Ortiz, Chavez and Bushee, they said the bonds will exponentially increase our property taxes, because you will be able to pass a property tax without going to the voters, and that would be necessary to pay for the staff to "staff the empty buildings that we're constructing."

Ms. Beninato continued, "Ten days ago Mayor the forked tongue came out of your mouth when you were in front of the Finance Committee and you proposed that instead of using the GRT bond money for the projects approved, that you could shave off 10% and buy St. Catherine's, after admitting that you are going to have to force the owners into court, that's it's not only going to cost us the legal fees of going to court, but ultimately it's going to cost more than \$1.9 million to buy that property whose taxable value is \$3.6 million. So I think people need to know that probably the 3 bonds that are going to be put out in March, probably will be used for purposes other than what is stated, and that you've already begun to changed you mind despite the disclaimers and promises that you made to us. Thank you."

G. APPOINTMENTS

City of Santa Fe, Division of Senior Services Advisory Board of Directors

Mayor Coss made the following appointments to the City of Santa Fe, Division of Senior Services Advisory Board of Directors:

Gilbert J. Alarid – term ending 01/2013.

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

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

Sister Cities Executive Committee

Mayor Coss made the following appointment to the Sister Cities Executive Committee:

Kim Song, Ph.D. (Alternate) to fill unexpired term ending 10/2013.

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

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

H. PUBLIC HEARINGS

- 1) **REQUEST FROM GOLER FINE IMPORTED SHOES FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF CHAMPAGNE AT GOLER FINE IMPORTED SHOES, 125 WEST PALACE AVENUE, WHICH IS WITHIN 300 FEET OF THE CATHEDRAL BASILICA OF SAINT FRANCIS OF ASSISI, 131 CATHEDRA PLACE. THE REQUEST IS FOR THE ANNUAL SPRING 2012 FOOTWEAR PRESENTATION OF DONALD PLINER SHOE COLLECTION TO BE HELD ON FEBRUARY 18, 2012, FROM 12:00 P.M. TO 7:00 P.M. (YOLANDA Y VIGIL)**

The staff report was given by Yolanda Y. Vigil, City Clerk, noting the business is within 300 feet of the Cathedral Basilica of St. Francis of Assisi, 131 Cathedral Place. She said there is a letter in the packet from Rev. Msgr. Jerome J. Martinez y Alire of the Cathedral Basilica of St. Francis of Assisi, stating they have no opposition to the request.

Public Hearing

Maria Bautista, 986 Camino Rizo, was sworn. Ms. Bautista said she spoke with Ms. Goler and asked for her support in not moving this event forward. She said Ms. Goler was very gracious. She said, "This is what she had to say. She said alcohol had impacted her family incredibly. I did ask her permission to say this. She said alcohol has impacted her family incredibly. She would consider not doing this with alcohol if we had been there a little earlier. However, she has already done the plane fare, the purchasing and she has La Casa Sena assisting her in the courtyard so she has licensed servers working with her. As I spoke to her, she said the following, 'I promise that I am going to have signs out saying there is a two drink minimum [maximum?]. I promise that I'll have the smallest champagne glasses available. I promise that if somebody needs a ride home I will call a cab or make arrangements for my staff to accommodate them.' She was willing to work with us. I want you to know that at this point we're not just coming to the Council, but we're going to the community requesting the waiver. It is very important we have the community work with us completely as we're trying to make a stand, as you know, against alcohol abuse and DWI. She was gracious, she was wonderful. We're not standing against this waiver, although we're not happy with it, but she was willing to work with us and talk with us and bring herself forward and give us permission to say those things to you as well. Does champagne have the same amount of alcohol as a shot of whiskey, a can of beer or a glass of wine, absolutely."

Stefanie Beninato, was sworn. Ms. Beninato said the City Council spends an inordinate amount of time giving alcohol waivers. She said her position is if you people are going to be selling or serving alcohol, maybe you need to get a license from the State to allow for temporary licensing rather than coming here all the time to ask for waivers. She said Ms. Goler does ask for waivers at least 1-2 times a year for these openings. She said a 7 hour opening to serve alcohol is more than an opening, and believes a two hour opening would be more appropriate. She asked the Council to consider limiting the hours for the opening. She appreciates Ms. Goler's attempt to control the alcohol use, and suggested the Council should impose the additional conditions that she is willing to voluntarily follow.

The Public Hearing was closed

MOTION: Councilor Dominguez moved, seconded by Councilor Romero, to grant the request for a waiver by Goler Fine Imported Shoes, and to allow the dispensing/consumption of champagne at Goler Fine Imported Shoes, 125 West Palace Avenue, for the Annual Spring 2012 Footwear Presentation of the Donald Pliner shoe collection on February 18, 2012, from 12:00 p.m. to 7:00 p.m.

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

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

Against: None.

Explaining her vote: Councilor Bushee said, "Yes, and I just want to inform folks that we would not like to have to hear these waivers, but this is the procedure and they don't want to vary from that, so yes."

- 2) **REQUEST FROM THE SANTA FE CHILDREN'S MUSEUM FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE SALE AND DISPENSING/CONSUMPTION OF BEER AND WINE AT THE SANTA FE CHILDREN'S MUSEUM, 1050 OLD PECOS TRAIL, WHICH IS WITHIN 300 FEET OF ST. JOHN'S UNITED METHODIST CHURCH, 1200 OLD PECOS TRAIL, TEMPLE BETH SHALOM, 205 E. BARCELONA ROAD AND THE IMMANUEL LUTHERAN CHURCH, 209 E. BARCELONA ROAD. THE REQUEST IS FOR THE KIDS AT HEART FUNDRAISING EVENT TO BE HELD ON FEBRUARY 10, 2012 FROM 6:30 P.M. TO 9:30 P.M. (YOLANDA Y. VIGIL)**

The staff report was given by Yolanda Y. Vigil, City Clerk, noting the business is within 300 feet of St. John's United Methodist Church, 1200 Old Pecos Trail, Temple Beth Shalom, 205 E. Barcelona Road and the Immanuel Lutheran Church, 209 E. Barcelona Road. She said there are letters stating no opposition to this request from Rev. Greg Kennedy, St. John's United Methodist Church; Rev. Douglas K.

Escue, Pastor, Immanuel Lutheran Church; and Dorothea Migliori, Executive Director, Temple Beth Shalom.

Public Hearing

Unidentified was sworn, and said, "It is a weary and difficult battle when the majority of people think that drinking is one swell good time. I am reminded however, the words of Winston Churchill, during the darkest days of World War II to his Fellow Britains, 'Never give in. Never give in. Never, never, never.' That's why I will be here repeatedly as long as these waivers appear on your agenda. No matter how many times I explain to you the public safety and health issues regarding alcohol, I'm amazed that you still vote for the waivers. I know you're constrained by the State, but you're still individuals with minds of your own. You vote in order to maintain the status quo, and the status quo is to drink no matter what. If these waivers were designed to circumvent regulations regarding cigar and cigarette smoke on City property, I am certain there would be a unanimous denial of such a waiver. No one has ever been killed, so far as I know, while driving and smoking, yet in the face of epidemic realities of DWI in our community, you continue to rubber stamp these rubber stamp waivers with regard to the public health and safety. This latest request for the Children's Museum is particularly disgusting in view of the double axe message we send children. Don't drink, but I will. I will close with praise for Councilwoman Romero's opening prayer, 'Help them oh God in their endeavors'."

Stefanie Beninato [previously sworn] said she is in opposition to the request. She said it is at the Children's Museum and asked why then need a waiver to be serving alcohol at the Children's Museum, and asked why they can't come to the Convention Center where they don't need a waiver and where it is appropriate, and agrees with the previous speaker about the mixed message to children. Additional, she noticed the City has ignored the mosque which is directly across the Museum, and asked whether the City doesn't consider it a church, and is closer than either Temple Beth Shalom or the Lutheran Church on Barcelona, noting it looks like a home, but it is a mosque. She said Muslims do not drink alcohol. She is sure they are in opposition to having alcohol served within 300 feet of the mosque.

Maria Bautista, 986 Camino Rizo [previously sworn], said she when she saw that the Children's Museum was asking to serve alcohol at a fundraiser, she stomped and said, "The Children's Museum." She asked if people are coming to support the Museum or to drink beer. She spoke with Jeff who is the Deputy Director. She said, "He said to me, this waiver was so easy to get, I can't believe how easy it was. Those were his exact words to me. I said you don't have the waiver yet, and he said, I don't know what you mean. We've already bought all the beer, we already have it. I said why did you do that. Why are you asking for a waiver if you're not going to sell it. He said well, we thought we would do it the legal way. And basically, there is going to be a party at the Children's Museum. And he followed it up by saying this, I've already sold tickets with beer offered on them because he was sure when he came here you would give it to him because he already sold tickets. I said, okay stop. What if I go over there with children and all the people who bought tickets I'll betcha they'll still come in for bingo and will still be happy and will give you another donation. Oh no, I'm not going to try that. Okay, don't try it. What can I say. He

gave me the example of the Food Depot. I think we have a good solution. We don't have the Convention Center in our field all the time, why don't we offer the non-profits, like the Food Depot, one day a year where they can do a really great fundraiser. They don't have to ask for a waiver, because you have the license, the Convention Center is set up. We have security and we don't have the concerns and you wouldn't be burdened by seeing all of us here, because we're going to be here the rest of your lives, unless the State finally listens to use and stops sending you the waivers, because we argue on this with the State too." She further stated that the Children's Museum isn't there for a beer bust, under the auspices of fundraising. She thinks it's totally inappropriate, and this shouldn't be approved because the City left off the Mosque. She said they've gone to Temple Beth Shalom, Immanuel Lutheran and the mosque. She said, "We really have a battle going on, and I'm asking you to really think about it and say no. Because you know what. If we all give a dime to the Children's Museum they won't need beer." She said Jeff told her if she would give him money, he wouldn't need beer to make money. Ms. Bautista continued saying, "M&J is having another event on the second of February, and they'll be serving alcohol.

Public Hearing was closed

Councilor Calvert asked if someone should have been noticed which wasn't.

Yolanda Vigil said, "What I do on these locations is to ask GIS to provide a map. The mosque was not on there. I did tell the applicant that they had to get letters from those who were listed within the 300 feet, but the mosque did not appear on that map."

Gino Zamora said, "To follow up on that Mayor, Members of the Governing Body, in accordance with the Open Meetings Act it is also published and publicly published approximately 5 days in advance, so there is also public notice to the entire community on this."

MOTION: Councilor Wurzbarger moved, seconded by Councilor Ortiz, to grant the request for a waiver by the Santa Fe Children's Museum and to allow the dispensing/consumption of beer and wine at the Santa Fe Children's Museum, 1050 Old Pecos Trail, for the *Kids at Heart* fundraising event on February 10, 2012, from 6:30 p.m. to 9:30 p.m.

DISCUSSION: Councilor Bushee said the City is stuck with these waivers if it's near a school or church for now. However, she doesn't see the logic of how it's okay to have alcohol served solely at the Convention Center, because it is the same impact on the community. She said it is the non-profits which are receiving additional funds through the sales of alcohol that are requesting these waivers. She said, "I know it's status quo to some of you, but it is what it is."

Councilor Chavez said there has been mention about using what's been called "death management practices," to try to manage a bit better, and limiting the number of drinks, a time cut-off for serving liquor, and offering rides. He asked if the City can impose these conditions on the waivers.

Mr. Zamora said, "Those limitations are within the authority of the State and not within the authority of the City. Where we have seen that in the past, Councilor Chavez, and it may be confusing to the Governing Body and to the public, where those issues have been discussed in the past is with regard to activities on City property, and so we have had the authority to limit uses on City property."

Councilor Dominguez said he is working on a bill to start regulating some of that activity on City property, noting it was discussed briefly at Public Works. He said it has gone through its first iteration in the legislative forum and wants to introduce that bill at the end of February.

Councilor Chavez said he appreciates that. However, if the City is being asked to approve waivers, whether or not it is on City property, he thinks we should be able to impose those restrictions, is his point. He said, "If we can't, we can't, okay, but that's what I was getting to, because I think Councilor Bushee is right. It doesn't matter where this is taking place in the community, the impact is still going to be there, whether it's in a private home, which we're sanctioning which we've done before. It's not on City property, but we serve liquor there. So we're all over the map on this, so I just wanted to get a handle on it and ask the question to see how far we can go into imposing these restrictions, because I think it does make sense."

Councilor Wurzbarger said she also saw the inconsistency with the comment about using the Convention Center. She said perhaps we can do some education when we give a waiver, and explore sending out voluntary guidelines to the organization it should consider following for its activity. She said we can't mandate the guidelines, we can, through educational outreach program to organizations which are funded by the City, send them the guidelines, recognizing that the City doesn't have the authority to mandate it.

Councilor Bushee said this is the one fundraiser done by the Children's Museum and she will vote for it. She supports Councilor Dominguez's Resolution limiting waivers to three before it comes to the Council, to prevent people from circumventing the law and holding more than just an even. She said, "But, it's what people want. It's how they raise funds. And they come to us, and when we have said no on very few occasions, and said there are too many liquor sales in a particular part of town, it has been overturned. We do not win those. It's just the way it is. We would love to not have to hear these waivers."

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

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

Against: None.

Explaining his vote: Councilor Trujillo said I'm going to vote yes, and the one thing I want to say is dealing with the non-profits, we're working on something right now, Robert and me, to allow every Councilor to allow one non-profit per year to use the Convention Center. So, I'm working on

a Resolution to see how that can work, and we can possibly look at possibly some of these non-profits looking for places to hold fundraisers to give them the use of the Convention Center, so that will be coming up sometime in the future."

3) PURSUANT TO RESOLUTION NO. 2012-7, A REQUEST FROM THE CENTER FOR CONTEMPORARY ARTS FOR APPROVAL OF A SPECIAL DISPENSER APPLICATION FOR A THEATRICAL PRODUCTION TO BE HELD AT THE CENTER FOR CONTEMPORARY ARTS, 1050 OLD PECOS TRAIL, ON FEBRUARY 25, 2012 FROM 7:00 P.M. TO 9:00 P.M. (YOLANDA Y VIGIL)

A Memorandum dated February 7, 2012, with attachments, to Mayor Coss and City Councilors from Yolanda Y. Vigil, City Clerk, regarding this request, is incorporated herewith to these minutes as Exhibit "5."

The staff report was given by Yolanda Y. Vigil, City Clerk, noting Resolution No. 2012-7 limits the number of special dispenser permit applications which can be administrative approved at the same location to three per calendar year, and three already have been administratively approved this year. She said there is a Memo in the packet indicating the dates of the three administratively approved requests [Exhibit "5"]. She said the location is within 300 feet of churches, but the Governing Body granted a permanent waiver to the Center for Contemporary Arts on May 11, 2011. She noted this is the first request being brought before the Council on Resolution No. 2012-7.

Councilor Dominguez asked if there are a total of three requests for 2012, and Ms. Vigil said yes. She said the fourth event is the one before the Council for February 25, 2012.

Councilor Wurzbarger asked for clarification of the language in the Memo which provides, "The Center for Contemporary Arts received approval from the Governing Body on May 11, 2011, for a permanent waiver of the 300 foot location restriction regarding alcoholic beverages." She said if this true, does this request supercede that.

Mr. Zamora said, "Technically, those are two separate issues. The permanent waiver is for the 300 foot waiver as opposed to actually issuing the license."

Public Hearing

Maria Bautista, 986 Camino Rizo [previously sworn], said she believes there will be such requests from the Center for Contemporary Arts at every Council meeting into the future. She said there is no such thing as a permanent waiver, and "You have broken State law." She said the special permit process is for one time, single events at different locations, noting she looked up the law. She said the special permit is not to be used repeatedly at the same over and over and over, which amounts to running a bar on the side. She said, "You said to M&J, when we brought that to your attention, that obviously they

were doing things every single weekend. And Mayor Coss, you said, they must have found a loophole in the law." She said we need to stop and see what's going on in Santa Fe that everybody needs beer and alcohol to make money. She said she is asking the Councilors, "Where is your accountability to your constituents. I'm trying to get the waiver process out of your lap. I really am. I'm working at the State level. I'm really trying to do that. But what they say there is that you're the only ones who can waive it." She would like the Council to do a moratorium for two weeks. She said she has attended the Legislative parties, and the amount of liquor being consumed is horrifying, commenting she will show the Council the video.

Stefanie Beninato [previously sworn] said she would ask the Council to not approve the Special Dispensers License, reiterating what has been said previously that this is the 4th request occurring in February. She said it's just like establishing a bar at the Center for Contemporary Arts. She said she has no idea for the rationale for granting a permanent waiver, commenting that "your messages are so inconsistent about alcohol use, that you are all over the map in your approach." She said you denied Walmart and forced it to deal with ABC, then why not put conditions on these waiver and let them go to the ABC, and let them tell you that you can't do it. She said she is not confident about Mr. Zamora's legal opinion in this matter. She said if you want to prevent alcohol abuse, you need to come up with an alcohol use plan for the City, based on density. She said if you want to be serious about alcohol abuse, you need a plan to stand up to constitutional challenge. She said Councilor Wurzbarger offered to work with her on this after the budget hearings, but she never heard back from her.

Unidentified [previously sworn] said, "Never give in. Never give in. Never, never, never. Thank you Winston Churchill. I am once again before you to ask you to deny this waiver as I've asked you in the past to deny waivers again and again and again. Stand up and be counted. Realize the serious problem we have here, not only in Santa Fe, but in the entire State regarding alcohol. I am also working at the State level to remove the onus of this responsibility, and if we are successful, you won't be dealing with waivers in the future. But it is your responsibility to say no, and once again I ask you to please say no."

Sandra Napua, Adm. Manager, Center for Contemporary Arts, was sworn. Ms. Napua said the Center for Contemporary Arts is a community and art center for Santa Fe. She said, "We bring in artists from Santa Fe, emerging artists. We bring in artists around New Mexico. We bring in other organizations such as the Theater Grottesco, which you see the information there. Our purpose and job is to have arts in the community, not only visual art, but theatrical art, musical performances, etc., and we like to collaborate with a lot of different organizations here in town. We are not in the process of trying to set up a bar. What we are doing, when we have openings and special events, we do like people to come and enjoy, and have a glass of wine and enjoy the show and the event. And that's something that happens in Santa Fe with most of the art galleries and a lot of the museums, etc. So, I would like to make it very clear, the reason there are 3 this time, and normally we wouldn't have this many, we have brought in Theater Grottesco that is offering an amazing performance for two weekends, and they would like to offer alcohol, basically wine and cheese as something as a way of entertaining and people enjoying themselves at this event. It's not going to be a normal thing that we would have this many in that short period of time. But, through the year, we may have 5-6 special events. So, we would like to ask that you consider this for

this event. It's not going to be a regular thing on a weekly or monthly basis. We're not trying to set up a bar, we're simply setting up a situation so that people can come, enjoy the show, have a glass of wine, have some cheese, have a few hors d'oeuvres. Thank you for assisting us this last year with the permit. We did a lot of work to talk with the churches around us. They were all in compliance with this, and I'm grateful that you would allow that for us, because it does allow us to have community events. It does allow us to have shows and events and things we wouldn't be able to have. Thank you."

The Public Hearing was closed

Councilor Bushee said she is very supportive of the Contemporary Center for the Arts, noting the flyer indicates former Councilor Dr. Chris Moore is a collaborator and guest artist. She said 2 of the 3 events are for Theater Grottesco's opening nights that are serving alcohol, "and to be honest, we might have to skip this last finale with regard to alcohol."

MOTION: Councilor Bushee moved, seconded by Councilor Calvert, to deny the request for a waiver.

DISCUSSION: Councilor Dominguez said he supports the motion. He said, "The reason we even brought this up, normally it would have been done administratively, because, I don't know, is there a waiver being applied for Yolanda."

Ms. Vigil said, "No."

Councilor Dominguez said it is for a Special Dispenser Permit, so it's not necessarily a waiver with regard to this location to a school or a church. But the reason that we brought, or amended the ordinance, was to make sure we had those numbers of administrative approvals brought to us is, is because there we have some leeway or control over the numbers of events that can be happening where alcohol is served. The case that we had before, was a waiver for M&J, which actually needed a waiver to get their permit, and this doesn't necessarily need that same kind of waiver. He doesn't know the appropriate number, 3-4-5, but at some point, if we don't get some control over this, you're going to have organizations that will come to us every week looking for the same kind of opportunity. He said he is in support of this organization, which has done great things in the community, but at the same time, he feels there is an issue with alcohol and alcohol abuse in our community, which we need to address somehow, and he will support the motion.

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

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

Against: Councilor Romero, Councilor Ortiz and Councilor Trujillo.

Explaining her vote: Councilor Romero said, "No. And I'll just say one thing before we run this, I think to non-profits is a very dangerous place. Non-profits depend on fundraisers to make their

money for the whole year. It's an opinion as to how and where they do that, but I think in this instance and other instances specifically, it is very difficult to decide which non-profits we allow or don't allow. I dread that place where we prohibit the type of activity that I think is being proposed."

4) CONSIDERATION OF BILL NO. 2012-01; ADOPTION OF ORDINANCE NO. 2012- 08 (COUNCILOR BUSHEE). AN ORDINANCE AMENDING SECTION 4-2.2 SFCC 1987, TO PROHIBIT OPEN CONTAINERS IN UNLICENSED PUBLIC PLACES. (ALFRED WALKER)

The staff report was presented by Alfred Walker, Assistant City Attorney. He said this is a proposed amendment to a current ordinance which currently permits the serving or consumption of alcohol in unlicensed public places. The proposed amendment is to prohibit the possession of an open container, and just add language to that effect to the existing Ordinance. The primary purpose is that the Police Department has reported that, in attempting to enforce this Ordinance when they find people drinking in public, if the Police Officer doesn't actually observe a person placing the beer can or alcoholic container to their lips, the officer cite for consumption of alcohol. He said this will allow officers to cite a person who is found with an open container on their person or within close proximity.

Public Hearing

Speaking to the request

Richard Czoski, 322 Read Street, said, On behalf of the Board of Directors of the Santa Fe Railyard Community Corporation and myself, I would like to thank you passing the security package for the Railyard earlier this evening. I think that will be a tremendous benefit to us in making the Railyard a better place. We would also like to encourage you to pass this amendment to the open container Ordinance for much the same reason. We feel that passing this Ordinance will make the parks and the public spaces of Santa Fe a much safer and more pleasant place for everyone, families included. And we would like to recommend that you approve this."

Stefanie Beninato said she is in support of this amendment. She thinks it will make it easier for the Police in controlling public drunkenness, and the Railyard isn't the only place that might be a problem. She said she saw someone today was cursing and screaming because they dropped a bottle of beer, although there was still alcohol in the bottle. [The balance of Ms. Beninato's statement is inaudible]

Maria Bautista, 996, thanked Councilor Bushee, and said this is a big step forward because it gives Police Officers a good opportunity to examine open containers. She said this is good step forward, and you are making great strides to get to a place where you can support the situation that is going on – it's nobody's fault. It's a horrible epidemic, but this gives us the way to deal with it, and she is "asking you to wield that sword and take your power, because we don't have the power. We can only bring it to you, and you know what's going on, you're out there. I challenge any of you who go on Airport Road on Friday

night to go to Allsup's, to the convenience stores, and see how many people are buying liquor, drinking it and then going to their cars and driving home. And I ask you to continue to move forward. Please pass this and let this be something that we can look forward to."

Adam Gallegos, President, SF Police Officers, said he is in support of this amendment, mainly because he represents the police and fire personnel who are out in the community every day. He said the number of hours put into this by the Police and Fire personnel are astounding. He said this will give them a tool to curb some of the issues before they happen, noting it ties up two police officers and an ambulance for 45 minutes to an hour to care for someone who is drunk and passed out. He thinks this law will allow them to stop the person with an open container before they get to that point. He said, on a personal note, last Friday, there was a fatal traffic crash on Cerrillos Road, where an intoxicated pedestrian was struck and killed by an automobile. He noted he wasn't there because his son in Las Vegas, New Mexico also struck and killed an intoxicated pedestrian walking in the middle of the road. He said alcohol abuse is not just a problem in Santa Fe, it is a problem everywhere, and asked that the Council consider giving them an extra tool to deal with this problem and deal with the strain on their resources.

Rick Martinez said he is here on behalf of the Neighborhood Network, and they have seen what's happening at the Railyard and in the nearby neighborhoods. He said there are bottles along the road to the Railyard and in all the parks and neighborhoods and along the River Trail. He said this is an important amendment which gives Police more powers. He thanked the Council for the amendment, and reiterated the Neighborhood Network supports this amendment, as well as the people who live in the neighborhoods.

The Public Hearing was closed

Councilor Bushee said this did arise from the Railyard, and at some of the meetings she learned from the Police Bicycle Patrol that they don't have the authority to arrest someone who is very drunk unless they actually see them take a sip of the alcohol. She said this is a short term solution and not the long term effect we need to deal with the "chronic inebriates" that have found a home in the Railyard, and they are trying to tackle that another way. She said this is not limited to the Railyard, commenting that it has been very visible in the Railyard Park. She appreciates those who came forward who have been dealing with this issue in that particular area and hopes it helps to prevent the extreme behaviors.

MOTION: Councilor Bushee moved, seconded by Councilor Trujillo, to adopt Ordinance No. 2012-08.

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

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

Against: None.

Explaining his vote: Councilor Trujillo said, "I'm going to vote yes. We do have these inebriates throughout the City and I hear these people saying 'I challenge, I challenge.' I challenge a lot of these people that are here talking to come to a homeless shelter as me and my family do on a monthly basis. Talk to these people. Try to help them get away from this alcoholism. That's what we do, or we think we do. I see this every Friday of the month. All these people coming to the homeless shelter, drunk on their butts, and I speak to them. There are other things you can do. I challenge you, Ms. Beninato. If you talk the talk, walk the walk."

Explaining her vote: Councilor Wurzbarger said, "[inaudible]...I am happy to give them this tool. I am reinforcing the fact that we need to do more, because I took down the quote from one of you, 'put the bottle away.' My personal experience, and many people that I know, with alcoholics in the family, is saying put the beer away isn't sufficient. The issue is how to deal with the chronic problem. And we are far from making that work in this community. And that's why I'm concerned about how much time we spend on liquor licenses, rather than talking about dealing with the chronic problem. Thank you Mayor. I vote yes."

5) CONSIDERATION OF BILL NO. 2012-2; ADOPTION OF ORDINANCE NO. 2012- 09 (COUNCILOR BUSHEE AND COUNCILOR TRUJILLO). AN ORDINANCE AMENDING ARTICLE 24-9 SFCC 1987, REGARDING THE CITY'S VEHICLE FORFEITURE ORDINANCE. (ALFRED WALKER AND T.J. GRUNDLER)

a) CONSIDERATION OF RESOLUTION NO. 2012- 20 (COUNCILOR BUSHEE AND COUNCILOR TRUJILLO). A RESOLUTION ADOPTING ADMINISTRATIVE PROCEDURES FOR THE VEHICLE FORFEITURE ORDINANCE, ARTICLE 24-9 SFCC 1987.

Alfred Walker, Assistant City Attorney, presented information regarding the proposed bill and Resolution, and reviewed the proposed amendments to the Ordinance, from the Legislative Summary, and his Memorandum of December 21, 2011, to the Finance Committee, both of which are in the Council packet.

Councilor Trujillo said the Police can keep vehicle as long as they want to.

Mr. Walker said he doesn't know, but his understanding is the way the Police Department intends to use these vehicles would be for a very short period of time. He said these are tools that we can use.

Councilor Trujillo asked about a car that we could get fixed up to use, if it would be included in those 5 vehicles.

Mr. Walker said it is included in the 5 vehicles, if it is taken through a forfeiture proceeding. He said there is an amendment sheet in the packet that clarifies that it is 5 at a time, instead of 5 a year. He said as soon as they're through using one vehicle, they can use another.

Councilor Bushee said she appreciates Mr. Walker's efforts on this bill.

Councilor Bushee said a few months ago, the son of a man with multiple DWIs, came in and claimed a vehicle because he said he didn't know his father had had 6 previous DWI's. She asked if this Ordinance amendment closes that loophole, and Mr. Walker said it does not.

Councilor Bushee asked if there a constitutional reason we can't close the loophole. She said there is no way the son could not have known of his father's multiple DWI's.

Mr. Walker said he agrees, but the problem he foresees is how do we determine when we have a situation where we don't believe a son couldn't know about his father's DWI's, and distinguish between that situation and a grandmother who loans her son or grandson her car, but doesn't know of the prior history of DWI. He said, "I believe it would require the City to be able to overcome a fairly significant burden of proof in that situation, because proving what somebody actually knows or doesn't know, it's going to be difficult. Perhaps in that situation, the City could prove it, but in many situations, I don't see the City being able to do that. And what we're left with really, is trying to take cars from people in situations where they really did not know that somebody had that kind of driving history."

Councilor Bushee asked Mr. Zamora his thoughts in this regard.

Mr. Zamora said, "It is important to note the distinction that we're talking about an automatic forfeiture versus the ability to introduce evidence that this isn't an innocent owner. That option still remains, so that in the instance of a son not knowing that the father has 6 previous, there still is an opportunity to put on evidence that the son has knowledge. But what you covered here, is the automatic forfeiture that relates to someone who shares title."

Councilor Bushee said the City did not successfully seize the vehicle in that instance and doesn't know whether the City had the recourse or the will.

Mr. Zamora said, "In that instance Councilor Bushee, and Alfred please fill in. And I think the question there was if there was actual evidence of the son's knowledge. Again, where knowledge does exist, you introduce that as evidence, but the question was whether the City had access to evidence to introduce that the son had actual knowledge, versus holding people accountable where they do have actual knowledge, like the title holder on the vehicle."

Councilor Dominguez asked what would be the use for the 5 vehicles.

Officer Grundler said the vehicles predominately will be used for investigative purposes, whether under-cover cars utilized for various divisions and investigations. He said the reason the Ordinance was changed from the initial 5 a year, to 5 in rotation. He said those cars can be "burned" quickly, if an investigator is using the car for undercover work and it is discovered that the police are using the "vehicle to spy on us, or to do this, that or the other." He said the car then quickly become useless to the Police Department and they will then put it back into the auction block for auction.

Councilor Dominguez asked if the Police Department use of a vehicle would prevent the City from putting the car on the auction block.

Officer Grundler said no. He said he would like to see a way an automobile could be used long-term.

Councilor Dominguez asked if this is all self-funded so the money generated goes back into the program.

Mr. Walker said yes, it is all earmarked for DWI.

Public Hearing

Speaking to the request

Maria Bautista, 986 Camino Rizo, said this is a very good law. There is a penalty and everybody has to pay for what they do – it is an equal exchange. However, it would be great to remember we're asking people not to drink any more, but that doesn't work. She said we need rehabilitation for these people and we should take 10% of the money for rehabilitation and programs. She said, "We all know, alcoholism at some point isn't a choice any more, it is an addiction, it is a disease, and we have to consider the health part of it as well as the punitive part. I said this to the same two people at the Capitol, let's get those tough penalties going. Let's do zero tolerance. That's what I'd like to see. And of course, the penalties are great. Take the guy's car, he's going to drive anyway. Take his license, he's going to drive anyway. He has so many DWI's anyway, remember the guy with 27. Take everything they have, take their furniture, take their wife, take their children, they're going to drive. They're going to drive drunk. They need programs. We need money, we need rehab and really need to address it from both ends of the coin, but thank you very much for initiating this and taking the first. Sell the cars and put it into rehab."

Stefanie Beninato said she appreciates this forfeiture and interlock law and commended Amanda Katz, the manager of the program, for doing it very efficiently. In terms of this Ordinance, she would like more specific information about how cars will be used, and limit the use to a particular type of police work. She said in terms of an innocent lenders, perhaps the degree of the relationship to the drunk driver would allow you to do an automatic future. [Ms. Beninato's remarks here are inaudible] She said, "In terms of Councilor Trujillo's personal attack on me, I would say that talking to people who are drunk is too late. [Ms. Beninato's remarks here are inaudible]." She said talking isn't effective.

Cynthia Delgado, representing the Santa Fe Underage Drinking Prevention Alliance, said she is asking for the Council's support for the Vehicle Forfeiture Ordinance. She thanked the City Attorney's Office and the Santa Fe Police Department for taking a very thoughtful look at this ordinance and the various pieces of it and really trying to improve it. She said, "I would like to say that this Ordinance is focused on repeated offenders, but the largest number of repeat offenders aren't the 6 and 8, they're the ones going from one offense to two offenses." She said the big change in forfeiture for the second DWI is due to the significant leadership role that the City of Santa Fe is taking. She thanked the City Attorney and the Police Department for its leadership and professionalism in addressing this issue.

Unidentified said she is for zero tolerance, so in addition to taking away the vehicles, she would suggest you consider taking peoples licenses away rather than taking them away from the "so called illegal immigrants who are working hard to support the family." She asked if there is an issue because the drivers license is issued by the State, but you seem to be able to work to forfeit the vehicle. She said you need to realize taking away someone's license might have more impact on reducing this problem.

The Public Hearing was closed

Councilor Bushee said, "This seems like we're temperance prohibition on this Council, but I have to say that what we have at our disposal are really preventative tools, and the same with the Open Container law. The idea of this.. it's not to be a money-maker. It's not to be able to seize a bunch of vehicles. It's ideally just going to self-fund, and it's not to generate a whole bunch of money. It's to try and prevent... it's to give our law enforcement officers more tools at their disposal in order to try to prevent tragedies that are related to driving while drinking, and get the multiple offenders off the road."

MOTION: Councilor Bushee moved, seconded by Councilor Trujillo, to adopt Ordinance No. 2012-09.

DISCUSSION: Councilor Bushee thanked Councilor Trujillo for cosponsoring the Ordinance. She said Albuquerque was the first to have a forfeiture Ordinance and we waited to see that it passed constitutional muster, which it did, and then the County and City came up with their bills. She said we've had time to work with the Ordinance which has been a successful tool to date, commenting she is counting the numbers of repeat offenders we've been able to take off the road, taking a weapon away from them and preventing tragedies. She said the City also has looked at due process, the hearing process, and tried to make this more fair as well. She said it is significant that we are reducing the number of DWI's to two for forfeiture, which is the trend. She said this also involves interlocks.

Councilor Bushee said we have found that licenses have been revoked, and the City won the appeal with the gentleman with the jeep. She appreciates that she has been able to visit with attorneys representing people that fall under this Ordinance, and what we need to change to make it reasonable in situations where we needed to be reasonable. She said this is a good mix, but she is still dismayed about the case of the innocent owner whose father had multiple DWI's, and we haven't found a way to capture that.

Councilor Bushee said she appreciates the work of the City Attorney's Office, and thinks it's important for the Police to be able to use some of the vehicles which are just sitting on the lot. She said this program is not a substitute for treatment, and we have tried repeatedly in the Legislature to get a local option excise tax. She said she asked the Speaker if we could get someone to sponsor this in the 30 day session, the long term options which would be available with funding. She said the Speaker told her, "Well, at least you've got economic development because the liquor lobby is going to be coming up here in force, spending money at our restaurants." She said this is what we are up against, in terms of a long term source of funding for treatment programs. She said this is a good balance and adjustments have been made.

Councilor Bushee said she would ask staff to clarify that the administrative procedures make it easy, noting previously only one Captain had a key to the impound lot, and if you couldn't find him, people had to wait to claim the vehicles. She wants to be sure the administrative procedures solve that problem.

Mr. Walker said it's been some time at he looked at those, but he doesn't think we addressed the number of keys.

Officer Grundler said, in addition to himself, one person is temporarily assigned to the unit and he's trying to make that a permanent position, because previously it was only him. He said the Captain was replaced with a Sgt. and "we've been moving on since then." He said this is a security problem, because not just anyone can go to the lot. He said we're dealing with people in a stressful situation, who have been arrested and probably not particularly happy about what's going on, so an officer has to do it. And, it has to be an officer that is trained on the program. He said currently there is only one person, with another assigned temporarily.

Councilor Bushee said this issue was raised by the Judge in all of our discussions, and asked if there is a way to correct this problem.

Officer Grundler said he has requested a permanent position twice, but it hasn't been done.

Councilor Bushee asked if the position could be funded from the vehicle sales.

Officer Grundler said it has to be a police officer, so he doesn't think it would be funded from vehicle sales, because then you're talking about opening the position to hire from outside.

Councilor Bushee said she hopes she doesn't hear that this is a problem.

Officer Grundler said everything has been moving fairly smoothly, and they haven't had a lot of scheduling issues, although it is a very busy office.

Councilor Bushee would like to build in whatever we can to eliminate that problem.

Councilor Calvert said the administrative procedures need to come up with a solution to the issue that the impound lot is the City's #1 offender of the False Alarm Ordinance. He hopes we can solve that problem as well.

FRIENDLY AMENDMENT: Councilor Trujillo would like to amend the Ordinance to provide that if the Department finds a way to fix up and keep a car permanently, that car doesn't count against the 5 vehicles the Police can keep at any one time. **THE AMENDMENT WAS FRIENDLY TO THE MAKER, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Responding to Councilor Trujillo, Mr. Zamora said, "I believe you have appropriately articulated it."

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

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

Against: None.

MOTION: Councilor Bushee moved, seconded by Councilor Trujillo, to adopt Resolution No. 2012- 20.

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

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

Against: None.

- 6) **CASE #2011-125. APPEAL. NORMAN LAGASSE, AGENT FOR IDA A. RAJOTTE, APPEALS THE OCTOBER 6, 2011, DECISION OF THE SUMMARY COMMITTEE IN CASE #2011-43, APPROVING A LOT SPLIT FOR A 1.853± ACRES OF LAND LOCATED AT THE CORNER OF CAMINO CARLOS REY AND ARROYO DE LOS CHAMISOS, OWNED BY JAMES BAUMBACH AND DIOLY PIEDRAHITA. (WILLIAM LAMBOY AND KELLEY BRENNAN)**

A copy of a Memorandum dated January 28, 2012, with attachments, to Members of the Governing Body, from Kelley Brennan, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "6."

The staff report was presented by Kelley Brennan from her Memorandum, with attachments, dated January 28, 2012, to Members of the Governing Body, which is in the Council packet. Please see Exhibit "6" for the specifics of this presentation. Ms. Brennan noted that Tamara Baer, Planner Manager, Current Planning Division, and John Romero, Director, Traffic Engineering Division, are in attendance to answer questions about the process, particularly the traffic and the entrance to the driveway into the street.

Tamara Baer said every lot split application to the City is reviewed against certain standard criteria, and if it doesn't meet those criteria, it won't be move forward. She said, "That did happen in this case. It's also circulated to other members of the Department in the City, and the Development Review Team. So in this case, and every case, the Lot Split Application was seen and reviewed by the Traffic Engineer, by the Fire Department, by the Water and Wastewater Divisions, and all of those Divisions recommended approval. That's really all I would say, is that we reviewed it and it met all the Code criteria."

Councilor Chavez said then they've gone through the process for a Lot Split, noting there was a sheet with conditions of approval in the packet, and asked Ms. Baer to list those conditions.

Ms. Baer read the Conditions of Approval on packet page 38, as follows:

1. Applicant shall obtain address for each new lot. *[standard requirement]*
2. The proposed access and utility easement shall be aligned so that it does not encroach on the existing asphalt trail. *[Arroyo los Chamiso Trail]*
3. Neither resulting lot has a metered service connection. An agreement for Metered Service(s) (AMS) contract with the City Water Division will be required prior to issuance of any construction permit for the lots. *[Both lots currently are vacant]*
4. No fences, walls, trees or other permanent structures shall be allowed within or across sanitary sewer easements. *[from Stan Holland, standard requirement]*
5. Staff redline comments will be provided to the surveyor who shall address all issues and submit the corrected plat in Mylar. *[Standard condition]*
6. The following notes shall be placed on the Plat:
 - a. Show addresses for each parcel on the Plat.
 - b. Add signature line and date for City Traffic Engineer.
 - c. Add signature line and date for Summary Committee Chair and Summary Committee Secretary.
 - d. Add one of the following Floodplain conditions on the plat as appropriate *[standard requirement]*:
 - i. "The February 17, 2011 Preliminary FIRM panel 35049C0413D shows this property is out of the floodplain" – or
 - ii. The solid line labeled FIRM identifies the location of the floodplain as delineated on panel 35049C0413D dated June 18, 2008. The dashed line labeled "Preliminary FIRM" identifies the location of the floodplain as delineated on Preliminary FIRM panel 35049C0413D dated February 17, 2011. *[Staff anticipates these will be adopted sometime early or late this summer, so staff asks the*

surveyor to look at the differences between the maps and refer to that difference if there is such a difference on the lot split, which are virtually identical in this case according to the surveyor.]

Councilor Chavez said then staff approved the lot split based on that criteria and added these conditions along with the approval.

Ms. Baer said staff recommended approval with the conditions.

Councilor Ortiz asked if this went to the Summary Committee because it is a lot split, and Ms. Baer said this is correct.

Councilor Ortiz asked if all lot splits have to go to the Summary Committee, and Ms. Baer said this is correct.

Councilor Bushee disclosed "I am in receipt of a letter from some neighbors to this, and I want to make sure... I don't know whether Councilors have received this. It just says 'Dear Councilmember,' and I want to make sure that it's not considered *ex parte* communication. I did print it out and I'm just now reading it, so I'm going to give it to you, and you can tell me what to do with it."

Ms. Brennan said, "I believe the Summary Committee, in its vote established another condition. What the conditions Tamara read were from the Staff Report, which were adopted and imposed by the Summary Committee. They also imposed another condition relating to the configuration of the driveway. Well, the driveway hasn't been engineered. They wanted to make sure that... there is a slope as you approach the street, and they wanted to make sure there was room for two cars to approach safely and have clear view, and they also wanted to make sure there was some kind of safe distinction between the Trail and the driveway, because there may need to be a retaining wall or some kind of fencing or bollards there. So, there was a general condition. They asked about imposing more specific conditions, but until the applicant knows what they are going to do with the parcel, the driveway would not be engineered. So, that's why I say most of these things are typically left to the building permit stage."

Councilor Romero said, with regard to the additional condition on fencing, "There is no fencing between the trail and the condominiums on Ponderosa, I think it's Lane. Is that correct."

Ms. Brennan said yes.

Councilor Romero asked what was behind the condition of a fence on the Arroyo Chamiso or a wall or some delineation.

Ms. Brennan said, "I believe, and you may be able to help me here Tamara, I believe that it had to do with a slope difference. And it's a matter of correcting for that slope difference just so cars don't veer off or slip, and pedestrians aren't endangered."

Councilor Dominguez asked if the lot split is consistent with zoning, and Ms. Brennan said it is.

Councilor Dominguez asked what is the zoning.

Ms. Baer said, "The zoning is R-5 and there's 1.853 acres. So, the way we calculate density, is that we subtract the flood plain from that acreage and then multiply the remaining acreage by 5."

Councilor Dominguez asked, "So if you wanted to do multi-family dwellings, apartments, you would have to go essentially for a rezoning."

Ms. Baer said, "Not necessarily. If they did not do a lot split, they could come in today and build 5 houses, before the lot split. After the lot split, they can only build 4."

Councilor Dominguez said, "That's what I wanted to hear. Thank you."

Ms. Brennan said the appellant can be heard from to make a statement and also the appellee, before the public hearing.

Public Hearing

Presentation by the Appellant

Helene Foster was sworn. Ms. Foster said she lives on Anna Jean Court, and uses the bike path every day. She said she received a letter from neighbors saying they were very concerned that apartment buildings and condos and larger dwellings would be built on this property, so she came in and met with the City planner. She understands from that meeting, noting she just heard something to contradict that, was if the lots were split, there could be 1 house, 1 dwelling plus perhaps a guest house on each lot. She said she just heard that there would be 4, so she would like clarification, considering that there is a floodplain and an easement. She thought it was a matter of legality that there could be only 2 houses.

Councilor Ortiz said, as a point of order, Ms. Foster isn't the Appellant and is a member of the public, and Mr. Lagasse first has to present his view.

Ms. Foster asked when she can ask her question.

Councilor Ortiz said under comments from the public.

Responding to Mayor Coss, Mr. Lagasse said his presentation should take about five minutes.

Mayor Coss said he wants to be fair to the Appellee as well, and gave Mr. Lagasse 5 minutes to make his presentation, saying he will give the Appellant the same amount of time.

Norman Lagasse, Agent for Ida A. Rajotte, was sworn. Mr. Lagasse said he is representing his mother who has lived on Camino Carlos Rey since 1976. He said he is a party to the Appellants, with the 5 neighbors immediately adjoining the subject property. He said his mother has lived there for 36 years, and some of the Appellants have lived there for 40 years, others for 20 years. He said they are very familiar with Camino Carlos Rey, and since the trail was built "how sweet that is and it is a nice feature for the City and the people who use it." He said Camino Carlos Rey was added as an arterial and no speed humps can be added, so there is constant emergency vehicle use.

Mr. Lagasse said the trail has become more popular and more people are using it. He said they feel not having an idea of the final plan for the property would be consideration of the proximity of the driveway with the Trail on a busy street, the number of dwellings or units, the zoning, and what would be allowed.

Mr. Lagasse said at the Summary Committee meeting, Commissioner Harris asked for a condition of approval that the Safety Access Manual would dictate the ramp area for cars to come up, retaining walls and things of this nature. He said, "I believe the whole process was taken with the idea that, oh, two lots two homes. And Commissioner Harris, if you look through the minutes of the meeting, a lot of the decisions and thoughts were centered around the idea that 2 lots, 2 homes, 2 cars on one driveway. Well our concern, as the neighbors, is that the density could be much larger than that, increasing the use of vehicles at that same point where this all intersects on Carlos Rey. We hear it all day long all night long, the sirens, the ambulances, the near collisions, the kids that are there, the strollers. I think it's a City-wide issue."

Mr. Lagasse continued, "This is a parcel of land that's been excluded from all the subdivisions around, which started in 1966, and the last subdivision was in 1991, which was the Castillo subdivision, which created, I think, approximately 50 units and then they reserved that portion of land out along the arroyo as a private park. All of the land that was excluded from the subdivisions was down low, and this is the parcel that is also down low, which is approximately half in the floodplain, which that private park was designated not buildable because it also was in the floodplain, so that's immediately adjoining this property."

Mr. Lagasse said, "We believe that the Council has the opportunity to look... to ask that this be looked at, the final plan, so that the issue of access, things that were made conditions of approval in the Summary Committee meeting, referencing that Safety Manual, that it gets scrutinized, analyzed, look at for what that purpose will be put to, and how much impact it has at that spot on Carlos Rey. Ultimately, we believe it is a public safety issue. Thank you for your time."

Ms. Brennan said the language of the restated Motion is, "Commissioner Harris moved for approval with the conditions of approval as cited in the Staff Report, with one additional condition, reference to the Safety Access Maintenance Manual will be part of the consideration for any engineered solution, and the engineered solution will involve a double lane driveway, sufficient to accommodate two vehicles, as well as the landing, at an appropriate distance back from Camino Carlos Rey to provide a safe

means of ingress and egress into and out of the subject properties onto Camino Carlos Rey." She said this is the exact condition.

Presentation by the Appellee

Lorenzo Dominguez, Professional Surveyor, Agent for Appellees James Baumbach and Dioly Piedrahita, was sworn. Mr. Dominguez said, regarding the conditions of approval listed in the Staff Report, they have made the changes to the Plat, putting in the signature lines, etc. He said as far as the issue regarding safety, this situation was created by the narrow entryway to the property, and compounded by the pedestrian walkway.

Mr. Dominguez said, "However we believe the driveway will be much more safe, as the cars will be entering into Camino Carlos Rey, versus the houses on Camino Carlos Rey that back up into traffic. So, in essence, the safety issue is not of as much concern as far as this lot split is concerned, versus those that are already existing. In fact, we're creating a safer access, versus the lots that are there already."

Mr. Dominguez continued, "As far as the other condition regarding the Safety Access Manual, we are in agreement with that, and of course, that will be addressed at the time of building permit application."

Councilor Chavez said then Mr. Dominguez is saying the Appellee has met all conditions on your request.

Mr. Dominguez said, "Absolutely. By the way, I'm not the owner, I'm the Agent for the owner, and I'm speaking on his behalf."

Councilor Dominguez said then you are saying the owner agrees to all conditions, and Mr. Dominguez said, "Absolutely."

Councilor Ortiz asked the slope between Camino Carlos Rey and the bottom part of the owner's property.

Mr. Dominguez said a slope analysis was prepared for the project, and he believes it was reviewed and approved by City staff. He said he doesn't have the slope numbers in front of him, but he does have access to those numbers.

Councilor Ortiz asked if the slope on the owner's side of Camino Carlos Rey equates to the slope on the other side of Camino Carlos Rey.

Mr. Dominguez said, "That I don't know."

Councilor Ortiz said, "In terms of the slope analysis that you provided to staff that was approved, was that specifically for the driveway being proposed."

Mr. Dominguez said it was for the entire lot. He said, "It was to show those areas that were in different percentage of slopes, and the only areas that were above 30% were those slopes that were created by the Bellamah development, so they were man-made slopes. That area where the driveway is, we're talking about, is less than 30%, and I believe it's actually around 15% now that I think about it."

Councilor Ortiz asked, "As a surveyor were you aware of what the slopes are to be in compliance with the ADA."

Mr. Dominguez said, "Negative. That's an engineering question."

Councilor Ortiz said, "So if the slope for that particular part of your parcel exceeds the amount of slope for the ADA, are you in agreement that you have to comply with the ADA, if that were to be a condition of approval."

Mr. Dominguez said, "Absolutely, if that's part of the building permit process and review, you know, we'd have to be in agreement."

Councilor Ortiz said then this parcel already is zoned for R-5, and Mr. Dominguez said this is correct.

Councilor Ortiz asked Mr. Dominguez if he can tell us, on behalf of the owners, the reason the owners didn't submit a plan to build houses consistent with the zoning, and why they are going for a lot split.

Mr. Dominguez said, "First and foremost, I really don't know why they only went for 2. I understand that, you know, we've already been through two Summary Committee meetings and are now before the Council on appeal, if we were to apply for 5 units, I can imagine the crowd that would be here today against it."

Councilor Ortiz said, "Is it true the only reason you are coming before any committee is that you want a split. You could have put 4 houses on that unit without a lot split, and you wouldn't have had to go to any committees."

Mr. Dominguez said, "Right."

Councilor Ortiz asked, "Can you tell us what the owner's thinking was to propose the lot split that is before us now."

Mr. Dominguez said, "I absolutely don't know. The owner here and he probably can answer that question. I don't know."

Councilor Bushee said that the owner is going to have a driveway in a utility easement, and asked if that is allowed for a paved driveway.

Ms. Baer said, "Yes. You're allowed to have driveways over utility easements, you just can't put structures."

Councilor Bushee asked if there were concerns or conditions around drainage issues which were addressed by staff.

Ms. Baer said, "No. We looked at those issues, specifically drainage. And considerations would be looked at when there is an actual application for a building permit. Since we don't know where the buildings would be, there is no requirement to show where the drainage is going, but that's not a concern."

Councilor Bushee's said one of the last sentences in the Staff Report was, "The City will investigate erecting a barrier along the easement to keep vehicular traffic on the driveway off the pedestrian bicycle trail." She asked if this has been investigated and if there is a conclusion.

Ms. Baer said, "Yes. We investigated it preliminarily. Eric Martinez who's in charge of Trails did an estimate, he had an estimate performed for what it would cost to do a post and cable fence, 10 feet on center on the post with cable in between, to preclude cars entering the private driveway from then going onto the trail, and it was in the vicinity of \$17,000."

Responding to Councilor Bushee, Ms. Baer said the City would pay for it.

Councilor Bushee asked if the City could require that of the owner.

Ms. Baer said, "I should point out that the City built that trail encroaching on this property without the owner's knowledge. And when we brought that to the attention of the owner and we asked him nicely if he would consider giving the City an easement so the trail could exist legally, he agreed to do that, not only for the trail itself, but for 5 feet north of the trail, so it seemed like a fair exchanged that if the barrier were to be built, that it would be on the City's dime."

Councilor Bushee said she uses the trail and she can see the conflicts.

Mr. Zamora said, "Mayor, members of the Governing Body and Councilor Bushee, with regard to any correspondence that the Councilors may have received, like what was provided to me by Councilor Bushee, unfortunately it is an *ex parte* communication, so I'll ask that the Councilors do not consider those letters in your deliberations, first of all. Second of all, unfortunately, it is not a sworn statement, so it is not a statement that can be placed into the record either."

Councilor Bushee said, "I just brought it here this evening. It's not like I had a lot of thought about it."

Speaking to the request

All those speaking were sworn en masse

Laurie Lee Freilich, Camino Pintores [previously sworn], said, "With a clear view of this situation, I cannot tell you how appalled I am as to the transfer of this property within one year from now. It was purchased one year ago. The homes in this area have been there since the 1970s' okay. What is behind all of this. Tell me, with transparency. I would like to know the history of this little piece of property all of a sudden appearing in the middle of the beautiful arroyo on the bike path area. I can't even figure it out. It's nuts, totally nuts, that all of a sudden, one year ago, this purchase was made. I want the history of this. I think we need an investigation of this. That's one issue. Okay, if you put a road in from the very bitty Camino Carlos Rey, we have all the traffic going both ways, and the bicyclists caught crossing to the other side of the bike path, off the street Camino Carlos Rey, you tell me how a fire truck would be able to access this property and make the turnaround to help in any kind of an emergency situation. It's totally nuts, this whole thing. And why the City allows this is beyond me. I want to know who sold the property to these people. I want the history of this property. This whole thing is derelict. It's bad news. Okay. We have a beautiful arroyo, we have a bike path, we don't need housing in the bike path and the arroyo. It's just appalling to me, okay, so I'd like the history of this and I think we need transparency on this whole issue. This property was only sold one year ago where homes have been around since the seventies, okay. And again, it's just ridiculous. The whole thing is bizarre, and this isn't the City Different, it's the City... I don't know, I hate to use the word, so okay. But anyway, that's what I have to say. It's a sham. It's ugly to put buildings into the arroyo area, okay. I want to know how a fire truck turns around too."

Lynette Guevara [previously sworn], said she resides two blocks from the trail, and uses it several times a week, her 3-year old son uses it, she bikes on it to work, walks her dog on it. She said this is a horrible intersection and "I just want to state that as a fact. I personally have almost been hit multiple times there and there's no way, no conceivable way that adding more to this mix is going to solve the problems there. I would like to specifically request, rather than just add to what's already been said, if they don't think there's a reason to repeat it, I would request that the City reevaluate their floodplain maps in my area. I'm also a hydrologist and I do not believe the accuracy of the floodplain maps. I would also ask and am concerned... Councilor Ortiz mentioned if they hadn't come forward for a lot split there wouldn't even have been any public participation is sounds like, in front of the Council. This is a very very important intersection on a very important trail to the people on the south side of town. So, I want assurance that if the lot split is approved, that will still be additional opportunity, this type of opportunity, to look at the real plans as they come forward, to really really consider those safety issues there. And one more thing to add. I realize this not up to the Council, it's up to the property owner, but if the property were to come up for sale, I would request that the City find a way to purchase it and add it to the arroyo system. I've been involved with the adopt-an-arroyo program, and it's a perfect opportunity for the City to do more for the south side. Thank you."

Helene Foster, [previously sworn] said in summary, she is asking for more transparency in this issue as well. She wants to know why is the lot being split. However, after speaking to a City planner she understands if the lot was split, there would be one structure plus a possible guest house per lot because of the floodplain and the easement. She understands anything more than that would not be legal, and said hopefully, at some point someone can tell us what is being planned for this.

Candace Jagger, member of Plaza de Castillo [previously sworn], said she concerned about emergency vehicle access as well as pedestrians that walk this on a daily basis.

Michael Rodriguez, resident of Plaza de Castillo [previously sworn], said when their development was approved, he believes that the whole section adjacent to their development was removed because of the floodplain it sits on, and so this is a concern. He invited the Mayor and Council to come and visit the area 5:00 p.m., and see all the people using the trail, check out the traffic, and see if you would feel safe in that area.

Diana Hardy [previously sworn] said she lives at 236 Camino Carlos Rey, right next to this property. She has several concerns. She is concerned about the driveway concern with regard to visibility as she comes out of her driveway, and "I won't be able to see." She is most concerned that the property encroaches the path. She said the "builder" talked about putting in a post and cable fence between the path and the driveway, but she doesn't think it is possible because there will be a retaining wall and conflict with the wall and the path. She still feels there is a safety issue, even with this set up. She said Councilor Bushee brought up a good point about the drainage. She said I walked up in that property area, and on the north side there is a concrete, it's not really a culvert, but a concrete path and the water is draining from that subdivision onto the property, so that's going to have to be addressed. And the drainage from there and our drainage will have to go somewhere, and I don't see where it can go. So, those are my concerns, and also, it's definitely a public safety problem with the busy street and the crosswalk, there's a crosswalk right there at the path, and then the driveway is going to add to it, and there's going to be way too much congestion. It will be a disaster."

Robert Ochoa [previously sworn] said he has lived in the area since "dinosaurs played on the Arroyo Chamiso Trail." He has seen that area develop. That is an area that he has been told, and I totally agree with the first lady that said... how that floodplain came up I don't know, because that is a big chug hole when it rains. He said, "If you walk that trail, you can see the water ponding there. There is two sewer manholes right on the trail, one on the right and one on the left, I don't know how they're going to address that. I don't agree that the driveway, that the gentleman said that the approach to Carlos Rey is going to be better. I have lived on Carlos Rey. I've seen the traffic increase. I had to build a driveway around my back yard to get on Hermoso to get out, and even at that, between five in the morning and the evening, you can't get on Camino Carlos Rey from any side street, because the traffic is that bad. If you have a left turn, this development that's going on now, it's going to back traffic all the way back. You're going to have traffic backed up all the way to Pintores, because that's the way the traffic is out there. We get dumped a lot on, on Camino Carlos Rey. We're the stepchild of the City. We're the only ones that have a major thoroughfare. Siler Bridge dumped all the traffic that was going around on Carlos Rey,

because now they go up to Cerrillos to Carlos Rey to get across to the Community College. This is one small problem that we have out in that area. And if this allowed, and it probably will be allowed, because they're meeting all the criteria, you're going to create a big mess. There's going to be a bad accident there and somebody is going to lose their life over a development that could have been stopped. As far as that easement goes, I worked on that easement way back when I was with the Highway Department. That easement was placed on the sewer easement that the City had had for many years. It was not placed on the property. The easement was already there, and I think there was litigation on it that so they could put a trail on a City easement. Thank you."

Judith Pollesh, lives in the neighborhood by Plaza de Castillo, [previously sworn], said unfortunately their board didn't get notice time to poll the members for an official board. She is concerned that the suggestion that if approved tonight, the Council will give you an easement. She doesn't think this is the way to do things. Secondly, every other development that encroaches on the trail has at least a 10 foot setback and a fence we can't see through so there is privacy. She would like to see that here. She said is a really unusual piece of property and a very unusual situation. She would encourage the Council to table action this evening until you can visit the site and see what they're talking about, because you're looking at it in the abstract right now, and thinks they could under the concerns if they would look at the site physically. This is an unusual request, but this is an unusual situation. She thanked the Council for its consideration.

Ann Harvey, [previously sworn] said she lives 3 houses down from the open space, and her house backs onto the arroyo into the walking trail behind it. She said there is a 10 ft. space or more between her fence that is back of her house. She doesn't understand why City staff said it was the "kind permission of the landowner," to have the easement. She asked if there would be one section without a 10 foot setback. She said this is a narrow section, and you need to go and look at this. She definitely can see the safety concerns. She said if it was a single car driveway. She said this property currently offers open space people have enjoyed for decades. She said this is an established neighborhood. She said it is not clear what is going to be built there. [inaudible]

Robert Johner, 2820 Sol y luz [previously sworn], said he walks the area twice a day with his dogs. He said he will affirm what has been said about a moving target. He said they don't know the intent of the development for sure. Secondly, there are the safety issues. He said making a left turn from Anna Jean onto Carlos Rey take "athletic hand eye coordination." He said to make the Camino Carlos Rey intersection any more complicated, not knowing what is to be built, doesn't put them in a good position to make any decisions tonight. He said, "I would also like to affirm that maybe we could negotiate a win-win with the owners of this unfortunate property in terms of what to do with it, because there's a lot at stake with them. But, it's a safety issue and it is a moving target in terms of the intensity and nature of this development."

Stefanie Beninato [previously sworn] said she is glad she isn't "sitting where you are and have to make this decision tonight, because they have complied, and unfortunately if the process works, they get the lot split, and the only way they can appeal is after the permit is issued." Her concern is that there

will be a total of 3 cars coming in and out of each lot. [inaudible]. She said her concern is for now conditions are imposed, and things can change. She emphasizes with the neighbors and their concerns. [The balance of Ms. Beninato's remarks are inaudible]

The Public Hearing was closed

Councilor Ortiz said this isn't the only lot along the Arroyo Chamiso Trail where we're going to have this situation. He said, "When the City put in the Arroyo Chamiso Trail back in the 1990's, they did a poor job of acquiring rights and easements and titles to these lots. So, there are dangling lots..."

The Public Hearing was Reopened

Councilor Ortiz said he will withdraw his comments.

Ida Rajotte was sworn. Ms. Rajotte said she will be affected directly. She said, "My house is.. the land in question is behind the back fence of my property. That's where this development is proposed, or this land has been bought. Anyhow, I've lived there for 36 years, and so sadly I am going to lose the views I have of the Sangres for all these years, which is very painful to me. And that's a concern of mine, but really, truly, I would ask, I don't know word to use, but I would ask each one of you if you would come to this area and see for yourselves what is going on traffic-wise on Carlos Rey and where this proposed driveway is going to go, you would not allow that to happen to the citizens of Santa Fe. I'm telling you, you're going to put someone's life in jeopardy. There are mothers with strollers, there are bicyclists. It's going to be a very, very dangerous situation for people trying to go on this wonderful trail that you've allowed, and it's terrifying to me that you would allow this to happen. I really beg of you to come and look and see for yourselves, and you'll realize that this is a really, really dangerous situation that you would allow. So, I may not have the right words, but I feel very strongly about the dangers that will be involved to all the people who use that path, and for even the drivers on Carlos Rey. I literally am begging you, each one of you to come out and see for yourselves. You hear about it and everybody has permission and it's okay. I'm telling you that it's not okay. It is very very dangerous. So, that's about all I can do, but I'm hoping that you will consider her request and that you will take a personal stand and personal look at what I'm talking about. Thank you."

The Public Hearing was Closed

Councilor Ortiz said, "When the City developed this trail in the 1990's, the City used the easement Mr. Ochoa spoke about that goes down the Arroyo Chamiso, and they put a trail on top of that easement. However, what they did not do is to secure legal access and legal easement throughout some of these private parcels which were buttressing the arroyo that were in the floodplain. These are private lots of record, and so we have this problem in other parts of the Arroyo Chamiso, and we are dealing with the consequences of that. And this developer who is a property owner is looking to either maximize their property which they are entitled to do, because the City did not take the steps when it could have to secure the access. He said if this property owner and the other property owners withdraw their access to that

easement for the trail, the trail goes away. The City does not have legal permission to be on it without the private owners' consent, so that is why you hear City staff talk about well we should put some kind of barrier and we can't impose that requirement on this property owner, because this property owner has allowed that access on that trail for years."

Councilor Ortiz continued, "For those of you who think that we can make this open space, I guess we can. It's called condemnation or it's called negotiate with the private property owner to see at what price the City is willing to purchase this particular parcel. There are 4 other parcels that could also be deemed open space, and is this City going to be in the business of acquiring open space and at what cost of each of these individual parcels. That question is still open, and it's really the subject of, I guess, discussions or negotiations with the private property owner."

Councilor Ortiz continued, "As I see this trail, as I see this parcel, I tend to believe, given the activities of the City just in redoing their FEMA maps, that whatever locations for the FEMA floodplain are for this property, it takes out roughly half of this parcel, and so there is still a buildable lot on this parcel. This party is entitled to build consistent with the zoning, and there is not much we can do except to protect and preserve public safety and to alleviate or mitigate the traffic issues that are there. My concern is the drop-off that you see coming off Camino Carlos Rey down to this parcel. You've heard the applicants say that they are willing to, or are in agreement to build that driveway so that the slope meets ADA requirement."

Councilor Ortiz said, "Given what's happened in my neighborhood, that there were smaller slopes in Pueblos del Sol Trail, that when they were done, needed to be accommodated and there needed to be a much lower gradation of slopes, so I would ask the Appellee, if the Appellee is willing to agree to pay for the costs of, not just doing ADA compliance for the driveway to their property, but also to do the ADA improvements for the trail that are going to be needed on their side as a condition of this approval. If you need additional time, I'm willing to entertain a motion to postpone, I'm good with that."

James Baumbach, owner, was sworn. Mr. Baumbach said the trail itself has very little slope in it in that area. It's an asphalt trail.

Councilor Ortiz said it is an asphalt trail and where it goes down, it's at least a 15% slope on Mr. Baumbach's side and on the other side.

Mr. Baumbach said he doesn't think anyone is saying that the way the trail exists today is a dangerous trail because of the steep nature of the slope.

Councilor Ortiz said what he is saying is when that trail was installed, the City wasn't under the ADA requirements, and now it is. He said when the trail is remodeled to allow the driveway, the trail is going to have to come up to Code with current ADA requirements, and it will require a flattening of the slope. He is asking Mr. Baumbach if that is required under the ADA, if he willing to pay for improvements to trail.

Mr. Baumbach said no, he doesn't want to pay for improvements to the trail.

Councilor Ortiz asked if he is willing to pay for the improvements to his driveway, so the driveway complies, and Mr. Baumbach said, "Absolutely."

Councilor Ortiz asked Mr. Baumbach, if the construction of his driveway requires a relocation of a City trail, if he is willing to pay for any of the cost of the relocation of the Arroyo Chamiso Trail.

Mr. Baumbach said there's plenty of room to put in a legal driveway, and there's not that much of a down slope in the area. He said a grading plan will need to be done, and dirt brought in to grade the driveway to make it comply with all City ordinances, but it won't affect the trail in any way, because the trail will have a 5 foot buffer zone with a cable and then the trail. He said, if the City at some later time wants to improve its trail, it will now have a legal easement and can do whatever it wants with the trail. He said the City built the trail on private property with no easement or permission. He said once the City has the easement it can do whatever it wants.

Councilor Ortiz asked, "When you purchased the property Mr. Baumbach, your title showed that the City had no legal ingress or egress."

Mr. Baumbach said he investigated this with City officials and there is no easement of record. He said no one could find anything on that trail and it certainly doesn't appear in the title binder.

Councilor Ortiz said, "Then you know Mr. Baumbach, the only way the City can continue to have access to your property for the benefit of the public using the trail is one of two ways. Right. To negotiate with you, right, or to condemn parts of your property, right."

Mr. Baumbach said, "I suppose, but I'm no lawyer. I really don't know."

Councilor Ortiz said you are a property owner, though.

Mr. Baumbach said yes, I'm a property owner. He said, "To me, it would seem in the best interest of both parties to resolve this and create the easement and put the cable barrier. That's what was discussed in the other meetings that we've had. It seems like a simple solution without the need for litigation and a big fight. Yes."

Councilor Chavez said he is looking for clarification on the conditions of approval relating to the floodplain, because Condition of Approval (d) reads, "Add one of the following Floodplain conditions on the plat as appropriate," and then it's (i) or (ii).

Ms. Bauer said the currently adopted Flood Plain are the 2008 ones, and the preliminary ones which have not been officially adopted, but which are referred to as updated, are dated February 17, 2011. She said in every case, we want to make sure the more current ones, the 2011 ones are more

restrictive, and that we have that information reflected on the Plat. She said, "In this case, they are virtually the same. The floodplain designation which is determined by FEMA and not by the City, did not change between 2008 and 2011. "

Councilor Chavez said, "Then it's your determination that this property is out of the floodplain."

Ms. Baer said, "No, approximately 40% of it is within the 100 year flood plain, but there continues to be buildable area and at least one buildable lot on each of the lots that are being created."

Councilor Bushee said, "So the buildable area, if this is not [approved as] a lot split then the R-5 zoning and the floodplain maps will allow for a lot large enough to build 5 units."

Ms. Baer said, "That is simply a calculation, taking out the R-5 zoning, it would still allow for 5 units to be built."

Councilor Bushee said, "Given the calculation that also involves the FEMA map... it comes to the questions which has been asked and put out there, you know, but I don't know if it's been answered, is what the owner's intentions are in requesting a lot split."

Mr. Baer said, "We asked that, but they aren't required to tell us what their intention is. What we're required to determine, in looking at a lot split application, is whether a house... let me put it a different way, whether there is at least 2,000 sq. ft. of buildable area on each lot that would be created. And there is that."

Councilor Bushee said, "If you're doing that same calculation, and you don't split the lot, and you've got the FEMA map in mind, do you still believe that 5 units could be built there."

Ms. Baer said, "I can't answer that. I'm saying that density-wise, that's what the map comes out to. There may be other considerations. Without looking at it specifically, and trying to arrange houses on the lot, it's hard to say. Density-wise, taking out the floodplain, it allows, under the current zoning for 5 units to be built. With the lot split, it would allow 1 on the upper lot and 3 on the lower lot."

Councilor Bushee said, "We're not certain of that because... I mean without the lot split."

Ms. Baer said, "Without the lot split, that's correct. It's just a density calculation."

Councilor Bushee said, "Maybe I'm not explaining it correctly."

Ms. Brennan said, "You are, but I think the same conditions would apply, without or without the lot split, in placement of any structures. You would still have to show compliance with terrain requirements and those kinds of things. So, what they have done is to say there is at least one buildable area on each lot, and how it's built out..."

Councilor Bushee said it's not clear where the additional units will be built.

Ms. Brennan continued, "Yes. But the same conditions would apply, in terms of where they were built and how."

Councilor Bushee said, "Are we wrong to ask you why you want to have a lot split. And did that come up."

Mr. Baumbach said, "I keep getting that question, and I really haven't decided, so the idea of why go to all of the trouble for a lot split, is because we're going to have more options that way. So, if I can get some money together, get some financing together, I could do a house on one lot, leave the other lot alone. And then when I bring in utilities, do the driveway, there's a lot of infrastructure, a lot of cost. So, we're doing all of that for one lot, it's much more expensive than for two lots. You see. So, they cost, say \$30,000 or \$40,000 to do the infrastructure, you amortize that over two lots, so it's going to be, maybe \$20,000 to \$25,000 per lot. Now the density's going down, they keep saying that."

Responding to Councilor Bushee, Mr. Baumbach said the density definitely will be going down. He said, "There's no way you can get 5 units on two lots, so you might get 5. Now, to get 5 on a full lot, you know, you would have to have the houses together. You couldn't have separation, so they would be kind of like town homes or something. But that was my plan when we split it, so we'd have two separate lots, two separate building sites, so the density is definitely going down, no matter what. So the idea is with two lots you'd have more options, so I could leave one lot alone. But at this time, we're not planning to do anything. We're not planning to do any building. We just want to get the lot cleared, and later on when I get some financing together, just work on. I'll try to get the utilities, because I can't do any building until we bring in the utilities anyway. That's one of the requirements."

Councilor Trujillo asked if the driveway will be 20 feet wide, and Ms. Baer said this is correct.

Councilor Trujillo asked if it is made of concrete or asphalt.

Ms. Baer said it would be an asphalt driveway, but that's not something that is designed at the time of a lot split, just the right-of-way is established.

Ms. Brennan said, "Just to clarify, the Summary Committee condition requires a two-lane, which is a 20 foot wide driveway."

Councilor Trujillo said, "But we don't know what it's made of yet."

Ms. Brennan said, "No."

Councilor Trujillo said, "My concern is with public safety, and a fire truck getting in there, and a fire truck width and it is about 24 feet long."

Ms. Baer said, "The Fire Department did look at it. At the time any development was proposed, there would have to be a turn around on the property, but they did require that it comply with the Fire Code at the time of construction, and they were satisfied that that could happen with the lot split."

Councilor Trujillo said, "I'm also concerned, if you're putting utilities under asphalt paving, I don't know how much a fire truck weighs, you're looking at the cracking of the asphalt, which actually could do some damage to the utilities as well. Have we looked into that."

Ms. Baer said, "Typically utilities are placed under a driveway, if they can be, Councilor Trujillo, so, and hopefully the fire truck would not have occasion to go there."

Councilor Trujillo said, "Well that's my concern with the turnaround. I know we've had this discussion before about having two exits whenever we're building something, and that does have me concerned if there's a fire there, is the fire truck going to be able to get there and turn around. So, that's my question. Thank you."

Councilor Romero said, "It may seem like it's really hard in some instances, but I think what is clear is that there is a property right. And... Kelley please correct me, but we have a general plan that was approved back in 1998, with a variety of amendments. Correct."

Ms. Brennan said, "Yes Councilor. That is correct."

Councilor Romero continued, "So on that plan, even before 1998, there is this plot of land that sits there and often times folks would look at that as 'Our Land.' I live in a neighborhood with the same thing around open space. And I hear how there could be different venues to appropriate this land, whether it's that they would directly purchase it, and that wasn't offered as a possibility. But often times when neighbors are faced with us, they say, 'Not us. Let the City do it.' I for one am on the short end here, but I really don't think the City is in the position to purchase this land. We're looking at what are the rights of the property owner, which are the same rights other people have had to develop their land. What I'm thinking with other areas, is that if you don't like the zoning in there, you change the zoning, which is another complicated method."

Councilor Romero continued, "When asked what the intention is, I appreciate that he actually said it, but he didn't have to do that. What he's looking at is a lot split. We're now looking at, if it wasn't a lot split, what are the possibilities of what they could do with their private property as owners, and whether they could possibly go up to 5 units, and they could, but that's not what we're here to consider. Because in a development plan, that's where you work out what is possible within the plot of land with the FEMA map. It is unfortunate that the man from FEMA is not here, because FEMA changed the floodplains. The maps have changed... the floodplain mapping. The trails that are changed are private property."

Councilor Romero continued, "So what we're looking at here is probably maximizing one's property rights, legally maximizing the property rights. So, I think it is a valid point where variances are being asked, that's where we say we've got a lot of options to say no to those variances. But when people say [inaudible] I just don't like hearing this. What are the Ordinances and regulations saying. It's unfortunate that people have gotten attached to this particular property as open space. We fought La [inaudible]. We've seen it in other places. I know my neighborhood, built in 1952, has gotten attached to particular open space. But, that's not what we're here to consider, what can possibly be done. And I understand, if you had the money you'd probably be looking at doing more on the property which would increase the number of homes, the number of cars using the access. But we have here a set of conditions, and I think staff has done a good job with what these conditions could be."

Councilor Romero continued, "But, I'm just sad that the Arroyo Chamiso which is important to the community has had such problems. And what we're looking at, is fixing all of the problems that were started in the nineties, as Councilor Ortiz has said. A property owner is getting penalized over and over again. And it just wouldn't be him, there are other property owners in the area. I just want folks to know that there are limitations to what is possible, and this is one of the tough ones where we have to look at what are the rights of all, particularly the property owners."

MOTION: Councilor Romero moved, seconded by Councilor Chavez, to deny the appeal.

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

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

Against: Councilor Ortiz, Councilor Trujillo and Councilor Bushee.

- 7) **CONSIDERATION OF BILL NO. 2012-3: ADOPTION OF ORDINANCE NO. 2012-____ ORDINANCE APPROVING TECHNICAL CORRECTIONS TO ORDINANCE NO. 2011-37 RELATED TO CHAPTER 14 SFCC 1987, BY AMENDING §§14-2.3(C)(7), 14-3.10(E),, 14-7.1(C)(1), 14-8.5(A)(1); REENACTING §14-8.11(F); AND AMENDING §14-9.2(D), TABLE 14-9.2-1, §14-9.2(K)(1) AND ARTICLE 14-12 TO REFINE THE DEFINITION OF "GROUP HOME," INCLUDE THE PREVIOUSLY APPROVED DEFINITION OF "HOUSING OPPORTUNITY PROGRAM" AND REPEAL THE OBSOLETE DEFINITION OF "ONE HUNDRED YEAR FLOOD;" ALL FOR THE SOLE PURPOSE OF PROVIDING TECHNICAL CORRECTIONS. (GREG SMITH) (Withdrawn by Staff)**

This Item was withdrawn by staff.

17. MATTERS FROM THE CITY CLERK

City Clerk Yolanda Vigil said early voting in persons begins next Wednesday, February 15, 2012, in the City Clerk's office here at City Hall. Responding to Mayor Coss, Ms. Vigil said Absentee Voting by paper ballot, placed in the ballot box, is happening right now, but beginning February 15th, voters can come in and actually feed the ballot into a machine.

18. 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 , is incorporated herewith to these minutes as Exhibit "7."

Councilor Calvert

Councilor Calvert introduced the following:

1. An Ordinance adopting the 2012 Procurement Code pursuant to Article IX, Section 9.0-2 of the Santa Fe Municipal Charter and Article 11-13 SFCC 1987. This includes all the things we've been discussing in committee. The timing of adoption should be sooner, rather than later, because we've already passed the CIP bond which we would want to apply, as well as the possibility of the G.O. Bond issue passing. He said this will start through the committee process immediately. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "8."
2. A Resolution amending Rule IV(A) of the *City of Santa Fe Governing Body Procedural Rules* relating to the placement of a proposed item on a Council Agenda that has gone through the committee process and has not been recommended for approval by any Council committee. He said if an item is not approved by at least one committee, it couldn't be moved forward to Council. He said this makes our process more like that which is used at the State and federal level. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "9."

Councilor Dominguez

Councilor Dominguez said he would like to welcome his son home this weekend from his first semester of college, saying he did very well. He said he is now muy flaco – he's gotten very thin.

Councilor Dominguez said he and Councilor Trujillo attended the ExerPlay demonstration or institute which was held, which was about inclusionary play which is an interesting concept. He said although we've advocated for inclusionary zoning and the ADA requirements, this makes sure that the

City's play structures are accessible to everyone with different/special needs. He said the City has come a long way in ensuring the parks are ADA compliant, but we have a way to go to ensure that the playground equipment is accessible to everyone.

Councilor Wurzbarger

Councilor Wurzbarger said, "I didn't vote on the proposal tonight, because I assume it's one of the letters that you read from this gentlemen that wants to do that, and I read that today, so I think it's good that you are introducing that."

Councilor Trujillo

Councilor Trujillo said the Santa Fe Fuegos are doing well, and showed the Council the official hat.

Councilor Trujillo said he attended the forum referred to by Councilor Dominguez, and it really opened his eyes, because when we're building our parks, there are other things that come into play, such as accommodating autistic kids and other special needs kids. He believes we can program a lot of the structures to accommodate special needs kids. He looks forward to working to do this. He urged the members of the Governing Body to attend if they do the forum again. It was very interesting.

Councilor Ortiz

Councilor Ortiz said a constituent raised an issue about a robocall she received, asking her opinion on whether or not she supports the bond issue on the March ballot. He said he wants to assure the public that the City isn't spending money for against that particular ballot issue. He asked if any City monies are going toward any kind of independent groups that are doing robocalls or push calls on the ballot initiatives. He said his constituent had a return call number, but when she called the number it had been disconnected. He asked if there are rules against disconnecting phones when it comes to solicitations or campaigns that are political in nature. He said he believes they have to keep an access point.

Mr. Zamora said, "The only rule I'm aware of, off the top of my head, is in the Campaign Code, which requires any third parties advocating or opposing to register and report their activity. I am not aware of anything specifically regarding the use of phone numbers or maintaining phone numbers. But, if that occurs, there should be a registration of that third party."

Councilor Ortiz asked Ms. Vigil if we have any such registrations.

Ms. Vigil said, "I actually did have a registration today."

Councilor Ortiz noted the robocalls happened Thursday-Saturday, and they were just on the bond issues. He said it was a "push for" poll for the bonds.

Councilor Ortiz noted that the Finance Committee will meet next on Monday, February 20, 2012. He said he wants an informational item placed on that agenda for all bond issues, to go through the financing and what is being proposed to the public, including, but not limited to this issue that "continues to float," that the numbers we have on the property tax cost to the taxpayer are not clear.

Councilor Bushee said she also wants information on staffing or maintaining any of these projects.

Councilor Ortiz said he assumes staff will be prepared to answer any of these kinds of questions.

Councilor Bushee

Councilor Bushee thanked the Council for the unanimous vote on the Open Container and Vehicle Forfeiture Ordinances.

She said she got an email that the DOMA bill has been withdrawn from the Legislature, so our resolution was helpful.

Councilor Bushee introduced a Resolution directing staff to explore the options for implementing a *Change for Change* program that would include the placement of retired parking meters on City property to collect donations for non-profit entities. She said she would like Sabrina Pratt's staff to be involved with this as well as the Mayor's Youth Advisory group and other arts related teen groups, in terms of how they would like to use the funds collected and how the program should evolve. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "10."

Councilor Bushee said she has a number of road issues, including traffic calming related to driveways where people have to back out into the traffic in the face of excessive speeding, noting this is pervasive throughout her District. She is working with Mr. Pino on these. She noted the truck volume is back up on Agua Fria, so perhaps we could do more enforcement there.

Councilor Bushee said she referred a number of things to Robert Romero this week, and she would like an update, particularly on the one on Franklin Avenue.

Councilor Romero

Councilor Romero asked to be added as a cosponsor to both of Calvert's introductions this evening.

Councilor Romero thanked Robert Romero and staff for addressing issues on the road that would "swallow a small sports car," as Mr. Pino says.

Councilor Romero said a neighbor asked if there is anything they can do to plant trees and do clean up on an easement that is on East Street between Jay Street and Young Street, noting this is an area that gets lots of beer cans and other trash. She asked Mr. Romero to let her know about this.

Councilor Chavez

Councilor Chavez acknowledged Senator Wirth for carrying the condominium bill which has been approved by both houses and is on the Governor's desk awaiting signature, noting it contains a local option.

Councilor Chavez said a letter from an insurance company is going out to some of our water customers, soliciting customers to purchase insurance to replace their water lines. He spoke with staff, and they did a PSA, but he wants them to do more public access and outreach to our customers, because the City doesn't condone nor advocate for this.

Councilor Chavez said, "I want to go back to the executive session if I could, and ask staff to share as much as possible with the public what was discussed. The first item is the discussion on collective bargaining. What is the status of our negotiations with the union. Are they at impasse, or are we close to signing the agreements. I'm just asking, because there's a discussion on collective bargaining, so share with the public what was discussed to the extent that you can. Geno. You were in executive session. Can you share with the public what was discussed on executive session (a) having to do with collective bargaining."

Councilor Ortiz said, "Mayor, as a point of order, the privilege rests with the Governing Body as a whole, and so when the Governing Body votes to go in [executive session], individual members of the Governing Body can exercise their right not to go in. But the right not to talk about that in public rests with the Governing Body as a whole, not with any individual Governing Body member."

Councilor Chavez said, "Then we're not going to share that with the public, that's fine. On Item (b) discussion of purchase, acquisition or disposal of real property having to do with 500 Market Street. Can we share with the public what we're doing on that case."

Mayor Coss said, "I think it's the same point Councilor Chavez."

Councilor Chavez said, "Then what about the purchase of St. Catherine's Indian School. Can we share with the public what is the appraisal price and what was discussed there."

Councilor Ortiz said, "Councilor Chavez, I will tell you that at the Finance Committee on February 20th we will be talking about details regarding for St. Catherine's, both the purchase as well as the lease with the School for the Arts."

Councilor Chavez said, "So, nothing can be shared with the public at this point, because we went into executive session and we're not willing to share that with the public. Thank you Mayor."

Mayor Coss

Mayor Coss said he has no communications.

I. ADJOURN

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

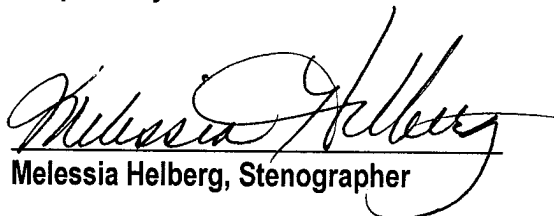
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:



Melessia Helberg, Stenographer