



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
APRIL 30, 2014  
CITY COUNCIL CHAMBERS

## AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 4/25/2014 TIME 3:40P

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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 – April 9, 2014
9. PRESENTATIONS
  - a) Employee of the Month for April 2014 -- Donald E. Bell, Senior Services Van Driver. (5 minutes)
  - b) Muchas Gracias – Santa Fe Trails Staff. (5 minutes)
  - c) 11<sup>th</sup> Annual Children's Water Conservation Poster Contest Winners (Caryn Grosse, Water Conservation Specialist) (5 minutes)
  - d) Santa Fe High Cheer Team – Overall Champs and State Champs. (5 minutes)
  - e) St. Mike's Pony Express Dance Team – State Champs. (5 minutes)
  - f) Proclamation -- Celebrate Santa Fe Tourism. (Randy Randall and Simon Brackley) (5 minutes)
10. CONSENT CALENDAR
  - a) Bid No. 12/23/B and Bid No. 12/24/B Renewals – Polyelectrolyte Chemicals for FY 2014/2015 Wastewater Treatment Plant and Compost Dewatering Facility; Polydyne, Inc. (Luis Orozco)



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- b) Request for Approval of Change Order No. 2 – Police Station Improvements Phase III; Sarcon Construction Corporation. (LeAnn Valdez)
- c) Request for Approval of Vacation of Existing City Alley Within the Bounds of Sierra Vista Addition Adjoining the Boundaries of Lots 10 (a Portion), 11, 12, 13, 14, 25 (a Portion), 26, 27, 28 and Tract A of the Sierra Vista Addition, a.k.a. 816, 818, 830, 832 Camino Sierra Vista and 901 and 903 Mercer Street; David Schutz, Agent for Two Doc Properties, LLC. (Edward Vigil)
- d) Request for Approval of Procurement Under Cooperative Price Agreement – Professional Consulting Services - Perform Employment Testing for Police and Fire Departments; Donnoe & Associates, Inc. (Jan Snyder)
- e) Request for Approval of Early Repayment of Nine (9) New Mexico Finance Authority (NMFA) Water Division Loans. (Nick Schiavo)
- f) Request for Approval of Change Order No. 3 Under the Alternate A - Owners Contingency – Santa Fe Reservoirs Infrastructure Improvement Project; RMCI, Inc. (Robert Jorgensen)
- g) Request for Approval of Amendment No. 2 to Legal Services Agreement – Legal Services for the City's Application to Re-Permit the City's Northwest Well and Return Flow/Discharge Credit; Stein & Brockmann, P.A. (Marcos Martinez and Nick Schiavo)
  - 1) Request for Approval of Budget Increase – Water Fund.
- h) Request for Approval of Budget Transfer from Bicentennial Pool Fund to Municipal Facility Repair Fund for Fort Marcy Roof and Skylight Replacement. (David Pfeifer)
- i) Request for Approval of Annual City of Santa Fe Investment Policy. (Helene Hausman)
- j) CONSIDERATION OF RESOLUTION NO. 2014-\_\_\_\_. (Councilor Trujillo and Councilor Bushee)  
A Resolution Directing Staff to Study the Feasibility of Holding, On an Annual Basis, at Least One City Council Meeting in Each of the Four Council Districts to Encourage Involvement and Participation by Residents of the Council Districts. (Jodi Porter and Yolanda Y. Vigil)



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- k) CONSIDERATION OF RESOLUTION NO. 2014-\_\_\_\_. (Councilor Bushee)  
A Resolution Supporting Pedestrian Improvements Along East Alameda and the Santa Fe River with Funding Support Provided Through a Cooperative Agreement with the New Mexico Department of Transportation. (Brian Drypolcher)
- 1) Request for Approval of Cooperative Agreement – Pedestrian Improvements to East Alameda and Santa Fe Trail; New Mexico Department of Transportation.
  - 2) Request for Approval of Budget Adjustment – Project Fund.
- l) CONSIDERATION OF RESOLUTION NO. 2014-\_\_\_\_. (Councilor Trujillo)  
A Resolution Directing the City Manager to Establish a City of Santa Fe Internship Program to Provide an Opportunity for College Students to be Employed by the City During Semester Breaks from College. (Sandra Perez)
- m) Update on the McClure/Nichols Reservoir. (Alex Puglisi and Robert Jorgensen) (Informational Only)
- n) CONSIDERATION OF RESOLUTION NO. 2014-\_\_\_\_. (Councilor Dimas, Councilor Bushee and Councilor Lindell)  
A Resolution Authorizing the Establishment of a LEAD Policy Committee and LEAD Case Coordination Subcommittee to Ensure the Efficient and Ethical Operations of the LEAD Santa Fe Program. (Terrie Rodriguez) (Postponed at April 9, 2014 City Council Meeting) **(Postponed to May 14, 2014 City Council Meeting)**
11. Request for Ratification of Procurement of New Office Furniture for Police Department Building Expansion – Bid No. 13/12B; Creative Interiors. (Robert Rodarte)
12. MATTERS FROM THE CITY MANAGER



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## 13. MATTERS FROM THE CITY ATTORNEY

### Executive Session

In Accordance with the New Mexico Open Meetings Act §10-15-1(H)(7) NMSA 1978, Discussion Regarding Pending Litigation in Which the City of Santa Fe is a Participant:

- a) High Summitt Corp.; Summit South Co; and Ralph Brutsche v. City of Santa Fe, Case No. D-101-CV-2009-03914 in the First Judicial District Court for the State New Mexico.
  - b) City of Santa Fe's Intervention in Utility Case No. 13-0390-UT Before the Public Regulation Commission;
  - c) Qwest Corp. v. City of Santa Fe, Case No. 14-2008 in the Tenth Circuit Court of Appeals.
14. Action Regarding High Summitt Corp.; Summit South Co; and Ralph Brutsche v. City of Santa Fe, Case No. D-101-CV-2009-03914
15. Action Regarding City of Santa Fe's Intervention in Utility Case No. 13-0390-UT. (Marcos Martinez)
16. MATTERS FROM THE CITY CLERK
17. 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





# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
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CITY COUNCIL CHAMBERS

## G. APPOINTMENTS

- Bicycle and Trail Advisory Committee
- Marty Sanchez Links de Santa Fe Advisory Committee
- Public Safety Committee
- Santa Fe Regional Juvenile Justice Board
- City Business and Quality of Life Committee
- Sister Cities Committee
- Park Bond Audit Task Force

## H. PUBLIC HEARINGS:

- 1) Request from Murphy Oil USA, Inc. for a Transfer of Ownership of Dispenser License #0649 with Package Sales from Murphy Oil Corporation to Murphy Oil USA, Inc. This License Will Remain at Murphy Express #8609, 5301 Las Soleras Drive. (Yolanda Y. Vigil)
- 2) Request from Alamowing Santa Fe, LLC for a Transfer of Ownership and Location of Dispenser (Canopy) License #1363 (On-Premise Consumption Only) from City Hall, Inc., dba Rouge Cat, 101 W. Marcy Street, Suite 5, Santa Fe to Alamowing Santa Fe, LLC, dba Buffalo Wild Wings, 3501 Zafarano Drive. (Yolanda Y. Vigil)
- 3) Request from Gregory Neil Menke for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be located at The Beestro, 101 West Marcy Street. (Yolanda Y. Vigil)
- 4) Request from Valentina's Restaurant, LLC for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be Located at Valentina's Restaurant, 945 W. Alameda. (Yolanda Y. Vigil)
- 5) Request from El Museo Cultural de Santa Fe for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Dispensing/Consumption of Beer and Wine at El Museo Cultural de Santa Fe, 555 Camino de la Familia, Which is Within 300 Feet of Tierra Encantada Charter School @ Alvord, 551 Alarid Street. This Request is for the Event "Arts, Culture and Community" Which is a Fundraiser for El Museo Cultural and Esperanza Shelter for Battered Families to be Held on May 3, 2014 from 5:30 p.m. to 8:00 p.m. (Yolanda Y. Vigil)



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- 6) Request from Joe Wade Fine Art for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Dispensing/Consumption of Wine at Joe Wade Fine Art, 102 E. Water Street, Which is Within 300 Feet of The Church of Antioch at Santa Fe, 207 Old Santa Fe Trail. This Request is for the Following Events/Dates which will be held from 5:00 p.m. to 7:00 p.m.: (Yolanda Y. Vigil)
  - May 7, 2014 – Private Gallery Opening
  - July 4, 2014 – Jon Oteri Solo Exhibition
  - August 22, 2014 – Annual Indian Market Show
  - August 29, 2014 – Roger Williams Solo Exhibition
  - October 3, 2014 – Manfred Rapp Solo Exhibition
- 7) Request from New Mexico School for the Arts (NMSA) for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Dispensing/Consumption of Alcoholic Beverages in the Georgia O'Keeffe Museum Education Annex Parking Lot, 123 Grant Avenue, Which is Within 300 Feet of the First Presbyterian Church, 208 Grant Avenue. This Request is for NMSA's Annual Fundraising Gala "ArtSpring" to be Held on Friday, May 9, 2014 from 7:00 p.m. to 9:30 p.m. (Yolanda Y. Vigil)
- 8) Request for Approval of DRAFT Affordable Housing 2014/2015 Annual Action Plan. (Alexandra Ladd)
- 9) CONSIDERATION OF BILL NO. 2014-12: ADOPTION OF ORDINANCE NO. 2014-\_\_\_\_. (Councilor Trujillo)  
An Ordinance Relating to Tournament Fees and Adult League Fees at the MRC and City Sports Fields; Amending Subsection 23-4.12 SFCC 1987 to Establish Tournament Fees, Amend the Adult League Fees and to Include Youth League Requirements to be Consistent with Subsection 23-7.5 SFCC 1987; Amending Section 23-7.5 SFCC 1987 to Establish Tournament Fees and to Amend the Adult League Fees; and Making Such Other Stylistic and Grammatical Changes that are Necessary. (Jennifer Romero)
- 10) CONSIDERATION OF BILL NO. 2014-10: ADOPTION OF ORDINANCE NO. 2014-\_\_\_\_. (Councilor Calvert)  
An Ordinance Relating to Street Performers on Public Property; Amending Section 23-8 SFCC 1987. (Zachary Shandler) **(Postponed at March 26, 2014 City Council Meeting)**



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
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- 11) CONSIDERATION OF RESOLUTION NO. 2014-\_\_\_\_.  
**Case #2013-101. 2791 and 2797 Agua Fria Road (Rivera) General Plan Amendment.** James W. Siebert, Agent for Stella Rivera, Requests General Plan Future Land Use Map Amendment to Change the Designation of 4.65± Acres from Rural/Mountain/Corridor (1 Dwelling Unit per Acre) to General Commercial. (Dan Esquibel)
- 12) CONSIDERATION OF BILL NO. 2014-15: ADOPTION OF ORDINANCE NO. 2014-\_\_\_\_.  
**Case #2013-102. 2791 and 2797 Agua Fria Road (Rivera) Rezoning.** James W. Siebert, Agent for Stella Rivera, Requests Rezoning of 4.65± Acres from R-1 (Residential, 1 Dwelling Unit per Acre) to C-2 (General Commercial). The Application Includes a Development Plan for Existing Residential and Nonresidential Uses of the Property. (Dan Esquibel)

## 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  
April 30, 2014**

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APPROVAL OF CONSENT CALENDAR	Approved [amended]	2
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APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – APRIL 9, 2014	Approved	3-4
<b><u>PRESENTATIONS</u></b>		
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<b><u>CONSENT CALENDAR DISCUSSION</u></b>		
REQUEST FOR APPROVAL OF VACATION OF EXISTING CITY ALLEY WITHIN THE BOUNDS OF SIERRA VISTA ADDITION ADJOINING THE BOUNDARIES OF LOTS 10 (A PORTION), 11, 12, 13, 14, 25 (A PORTION), 26, 27, 28 AND TRACT A OF THE SIERRA VISTA ADDITION, A/K/A 816, 818, 830, 832 CAMINO SIERRA VISTA AND 901 AND 903 MERCER STREET; DAVID SCHUTZ, AGENT FOR TWO DOC PROPERTIES, LLC	Approved	6
CONSIDERATION OF RESOLUTION NO. 2014-29. A RESOLUTION SUPPORTING PEDESTRIAN IMPROVEMENTS ALONG EAST ALAMEDA AND THE SANTA FE RIVER WITH FUNDING SUPPORT PROVIDED THROUGH A COOPERATIVE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION	Approved	7
REQUEST FOR APPROVAL OF COOPERATIVE AGREEMENT – PEDESTRIAN IMPROVEMENTS TO EAST ALAMEDA AND SANTA FE TRAIL; NEW MEXICO DEPARTMENT OF TRANSPORTATION	Approved	7
REQUEST FOR APPROVAL OF BUDGET ADJUSTMENT – PROJECT FUND	Approved	7
CONSIDERATION OF RESOLUTION NO. 2014-30. A RESOLUTION DIRECTING THE CITY MANAGER TO ESTABLISH A CITY OF SANTA FE INTERNSHIP PROGRAM TO PROVIDE AN OPPORTUNITY FOR COLLEGE STUDENTS TO BE EMPLOYED BY THE CITY DURING SEMESTER BREAKS FROM COLLEGE	Approved a/amended	7-8
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REQUEST FOR RATIFICATION OF PROCUREMENT OF NEW OFFICE FURNITURE FOR POLICE DEPARTMENT BUILDING EXPANSION – BID NO. 13/12/B; CREATIVE INTERIORS	Approved	10-12

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<u>APPOINTMENTS</u>		
Bicycle and Trail Advisory Committee	Approved	20-22
Marty Sanchez Links de Santa Fe Advisory Committee	Approved	20-22
Public Safety Committee	Approved	20-22
Santa Fe Regional Juvenile Justice Board	Approved	20-22
City Business and Quality of Life Committee	Approved	20-22
Sister Cities Committee	Approved	20-22
Park Bond Audit Task Force	Approved	20-22

**ITEM****ACTION****PAGE #****PUBLIC HEARINGS**

REQUEST FROM MURPHY OIL USA, INC.,  
FOR A TRANSFER OF OWNERSHIP OF  
DISPENSER LICENSE WITH PACKAGE  
SALES FROM MURPHY OIL CORPORATION  
TO MURPHY OIL USA, INC. THIS LICENSE  
WILL REMAIN AT MURPHY EXPRESS  
#8609 LAS SOLERAS DRIVE

Approved

22-23

REQUEST FROM ALAMOWING SANTA FE,  
LLC, FOR A TRANSFER OF OWNERSHIP  
AND LOCATION OF DISPENSER (CANOPY)  
LICENSE #1363 (ON PREMISE CONSUMPTION  
ONLY), FROM CITY HALL, INC., D/B/A ROUGE  
CAT, 101 W. MARCY STREET, SUITE 5, SANTA  
FE, TO ALAMOWING SANTA FE, LLC, D/B/A  
BUFFALO WILD WINGS, 3501 ZAFARANO DRIVE

Approved

23-24

REQUEST FROM GREGORY NEIL MENKE FOR  
A RESTAURANT LIQUOR LICENSE (BEER AND  
WINE ON-PREMISE CONSUMPTION ONLY) TO  
BE LOCATED AT THE BEESTRO, 101 W. MARCY  
STREET

Approved

24-25

REQUEST FROM VALENTINA'S RESTAURANT,  
LLC, FOR A RESTAURANT LIQUOR LICENSE  
(BEER AND WINE ON-PREMISE CONSUMPTION  
ONLY) TO BE LOCATED VALENTINO'S  
RESTAURANT, 945 W. ALAMEDA

Approved

25

REQUEST FROM EL MUSEO CULTURAL DE  
SANTA FE FOR A WAIVER OF THE 300 FOOT  
LOCATION RESTRICTION AND APPROVAL  
TO ALLOW THE DISPENSING/ CONSUMPTION  
OF BEER AND WINE AT EL MUSEO CULTURAL  
DE SANTA FE, 555 CAMINO DE LA FAMILIA,  
WHICH IS WITHIN 300 FEET OF TIERRA  
ENCANTADA CHARTER SCHOOL @ ALVORD,  
551 ALARID STREET. THIS REQUEST IS FOR  
THE EVENT "ARTS, CULTURE AND COMMUNITY,"  
WHICH IS A FUNDRAISER FOR EL MUSEO  
CULTURAL AND ESPERANZA SHELTER FOR  
BATTERED FAMILIES TO BE HELD ON MAY 3, 2014,  
FROM 5:30 P.M. TO 8:00 P.M.

Approved

26-28

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
REQUEST FROM JOE WADE FINE ART, FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF WINE AT JOE WADE FINE ART, 102 E. WATER STREET, FOR THE FOLLOWING EVENTS/ DATES, WHICH WILL BE HELD FROM 5:00 P.M. TO 7:00 P.M.: May 7, 2014 – Private Gallery Opening; July 4, 2014 – Jon Oteri Solo Exhibition; August 22, 2014 – Annual Indian Market Show; August 29, 2014 – Roger Williams Solo Exhibition; and October 3, 2014 – Manfred Rapp Solo Exhibition	Approved	28-29
REQUEST FROM NEW MEXICO SCHOOL FOR THE ARTS (NMSA) FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF ALCOHOLIC BEVERAGES IN THE GEORGIA O'KEEFFE MUSEUM EDUCATION ANNEX PARKING LOT, 123 GRANT AVENUE, WHICH IS WITHIN 300 FEET OF THE FIRST PRESBYTERIAN CHURCH, 208 GRANT AVENUE. THIS REQUEST IS FOR NMSA'S ANNUAL FUNDRAISING GALA "ARTSPRING" TO BE HELD ON FRIDAY, MAY 9, 2014 FROM 7:00 P.M. TO 9:00 P.M.	Approved	29
REQUEST FOR APPROVAL OF DRAFT AFFORDABLE HOUSING 2014/2015 ANNUAL ACTION PLAN	Approved	30-32
CONSIDERATION OF BILL NO. 2014-12: ADOPTION OF ORDINANCE NO. 2014-18. AN ORDINANCE RELATING TO TOURNAMENT FEES AND ADULT LEAGUE FEES AT THE MRC AND CITY SPORTS FIELDS; AMEND THE ADULT LEAGUE FEES AND TO INCLUDE YOUTH LEAGUE REQUIREMENTS TO BE CONSISTENT WITH SUBSECTION 23-7.5 SFCC 1987; AMENDING SECTION 23-7.5 SFCC 1987 TO ESTABLISH TOURNAMENT FEES AND TO AMEND THE ADULT LEAGUE FEES; AND MAKING SUCH OTHER STYLISTIC AND GRAMMATICAL CHANGES THAT ARE NECESSARY	Approved w/direction to staff	33-41



<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
CONSIDERATION OF BILL NO. 2014-10: ADOPTION OF ORDINANCE NO. 2014-19. AN ORDINANCE RELATING TO STREET PERFORMERS ON PUBLIC PROPERTY; AMENDING SECTION 23-8 SFCC 1987	Approved [amended]	42-63
CONSIDERATION OF RESOLUTION NO. 2014-31. <u>CASE #2013-101.</u> 2791 AND 2797 AGUA FRIA ROAD (RIVERA) GENERAL PLAN AMENDMENT. JAMES W. SIEBERT, AGENT FOR STELLA RIVERA, REQUESTS GENERAL PLAN FUTURE LAND USE MAP AMENDMENT TO CHANGE THE DESIGNATION OF 4.65± ACRES FROM THE RURAL/MOUNTAIN/CORRIDOR (1 DWELLING UNIT PER ACRE) TO GENERAL COMMERCIAL	Approved	63-66
CONSIDERATION OF BILL NO. 2014-15: ADOPTION OF ORDINANCE NO. 2014-20. <u>CASE #2013-102.</u> 2791 AND 2797 AGUA FRIA ROAD (RIVERA) REZONING. JAMES W. SIEBERT, AGENT FOR STELLA RIVERA, REQUESTS REZONING OF 4.65± ACRES FROM R-1 (RESIDENTIAL, 1 DWELLING UNIT PER ACRE) TO C-2 (GENERAL COMMERCIAL). THE APPLICATION INCLUDES A DEVELOPMENT PLAN FOR EXISTING RESIDENTIAL AND NONRESIDENTIAL USES OF THE PROPERTY	Approved	63-66
ADJOURN		67

**MINUTES OF THE  
REGULAR MEETING OF THE  
GOVERNING BODY  
Santa Fe, New Mexico  
April 30, 2014**

**AFTERNOON SESSION**

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor Javier M. Gonzales, on Wednesday, April 30, 2014, 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 Javier M. Gonzales  
Councilor Patti J. Bushee  
Councilor Bill Dimas  
Councilor Carmichael A. Dominguez  
Councilor Peter N. Ives  
Councilor Signe I. Lindell  
Councilor Joseph M. Maestas  
Councilor Christopher M. Rivera  
Councilor Ronald S. Trujillo

**Others Attending**

Brian K. Snyder, City Manager  
Kelley Brennan, Interim City Attorney  
Yolanda Y. Vigil, City Clerk  
Melessia Helberg, Council Stenographer

**6. APPROVAL OF AGENDA**

Brian Snyder asked to remove Item #10(i) from the Afternoon Agenda.

**MOTION:** Councilor Rivera moved, seconded by Councilor Dimas, to approve the agenda as amended.

**VOTE:** The motion was approved unanimously on a voice vote with Councilors Bushee, Dimas, Dominguez, Ives, Lindell, Maestas, Rivera and Trujillo voting in favor of the motion and none against.

## **7. APPROVAL OF CONSENT CALENDAR**

Councilor Lindell said she will recuse herself from voting on Item 10(c). She said she will be recusing herself on Items H(11) and H(12) on the Evening Calendar, because she heard both of these cases as a Planning Commissioner.

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

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

## **10. CONSENT CALENDAR**

A copy of an Action Sheet from the Public Works/CIP and Land Use Committee meeting of Monday, April 28, 2014, regarding Item 10(h) is incorporated herewith to these minutes as Exhibit "1."

- a) **BID NO. 12/23/B AND BID NO. 12/24/B RENEWALS – POLYELECTROLYTE CHEMICALS FOR FY 2014-2015 WASTEWATER TREATMENT PLANT AND COMPOST DEWATERING FACILITY; POLYDYNE, INC. (LUIS OROZCO)**
- b) **REQUEST FOR APPROVAL OF CHANGE ORDER NO. 2 – POLICE STATION IMPROVEMENTS PHASE III; SARCON CONSTRUCTION CORPORATION. (LeANN VALDEZ)**
- c) ***[Removed for discussion by Councilor Dimas]***
- d) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER COOPERATIVE PRICE AGREEMENT – PROFESSIONAL CONSULTING SERVICES – PERFORM EMPLOYMENT TESTING FOR POLICE AND FIRE DEPARTMENTS; DONNOE & ASSOCIATES, INC. (JAN SNYDER)**
- e) **REQUEST FOR APPROVAL OF EARLY REPAYMENT OF NINE (9) NEW MEXICO FINANCE AUTHORITY (NMFA) WATER DIVISION LOANS. (NICK SCHIAVO)**

- f) REQUEST FOR APPROVAL OF CHANGE ORDER NO. 3 UNDER THE ALTERNATE A – OWNERS CONTINGENCY – SANTA FE RESERVOIRS INFRASTRUCTURE IMPROVEMENT PROJECT; RMCI, INC. (ROBERT JORGENSEN )
- g) REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO LEGAL SERVICES AGREEMENT – LEGAL SERVICES FOR THE CITY'S APPLICATION TO RE-PERMIT THE CITY'S NORTHWEST WELL AND RETURN FLOW/DISCHARGE CREDIT; STEIN & BROCKMANN, P.A. (MARCOS MARTINEZ AND NICK SCHIAVO)
  - 1) REQUEST FOR APPROVAL OF BUDGET INCREASE – WATER FUND.
- h) REQUEST FOR APPROVAL OF BUDGET TRANSFER FROM BICENTENNIAL POOL FUND TO MUNICIPAL FACILITY REPAIR FUND FOR FORT MARCY ROOF AND SKYLIGHT REPLACEMENT. (DAVID PFEIFER)
- i) REQUEST FOR APPROVAL OF ANNUAL CITY OF SANTA FE INVESTMENT POLICY. (HELENE HAUSMAN) This item was removed from the Consent Agenda
- j) CONSIDERATION OF RESOLUTION NO. 2014-28 (COUNCILOR TRUJILLO AND COUNCILOR BUSHEE). A RESOLUTION DIRECTING STAFF TO STUDY THE FEASIBILITY OF HOLDING, ON AN ANNUAL BASIS, AT LEAST ONE CITY COUNCIL MEETING IN EACH OF THE FOUR COUNCIL DISTRICTS TO ENCOURAGE INVOLVEMENT AND PARTICIPATION BY RESIDENTS OF THE COUNCIL DISTRICTS. (JODI PORTER AND YOLANDA Y. VIGIL)
- k) *[Removed for discussion by Councilor Trujillo]*
- l) *[Removed for discussion by Councilor Trujillo]*
- m) *[Removed for discussion by Councilor Bushee]*
- n) CONSIDERATION OF RESOLUTION NO. 2014-\_\_\_\_ (COUNCILOR DIMAS, COUNCILOR BUSHEE AND COUNCILOR LINDELL). A RESOLUTION AUTHORIZING THE ESTABLISHMENT OF A LEAD POLICY COMMITTEE AND LEAD CASE COORDINATION SUBCOMMITTEE TO ENSURE THE EFFICIENT AND ETHICAL OPERATIONS OF THE LEAD SANTA FE PROGRAM. (TERRIE RODRIGUEZ). (Postponed at April 9, 2014 City Council Meeting). (Postponed to May 14, 2014 City Council Meeting)

**8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – APRIL 9, 2014.**

**MOTION:** Councilor Dominguez moved, seconded by Councilor Trujillo, to approve the minutes of the Regular City Council meeting of April 9, 2014, as presented.

**VOTE:** The motion was approved on a voice vote with Councilors Bushee, Dimas, Dominguez, Ives, Lindell, Maestas, Rivera and Trujillo voting in favor of the motion and none against.

## **9. PRESENTATIONS**

### **a) EMPLOYEE OF THE MONTH FOR APRIL 2014 – DONALD E. BELL, SENIOR SERVICES VAN DRIVER.**

Councilor Bushee read the letter of nomination into the record and presented a plaque and a check for \$100 from the Employee Benefit Committee to Donald Bell, Senior Services Van Driver, Employee of the month for April 2014.

Mr. Bell talked about his experience in working with the City, and said you get back what you're willing to put in. He said his father taught him if he was doing a job for somebody, always to do a little bit more than what the person is paying for, and what they expect, and he would always get along and he will never have any problems coming back to him.

### **b) MUCHAS GRACIAS – SANTA FE TRAILS STAFF**

Councilor Dominguez presented Muchas Gracias certificates to Santa Fe Trails Staff for their outstanding assistance during the recent Rail Runner emergency.

Mayor Gonzales congratulated and thanked all of those who responded on this very difficult day during the tragedy that occurred at the Rail Runner crossing, and transporting people during that time. He said, "You did it safely and you represented the City quite well, and our gratitude is more than what you are holding in your hands, and it is a small way of thanking you for what you did and for comforting many people during that time."

### **c) 11<sup>TH</sup> ANNUAL CHILDREN'S WATER CONSERVATION POSTER CONTEST WINNERS (CARYN GROSSE, WATER CONSERVATION SPECIALIST)**

Councilor Ives presented the winners with plaques and canvass bags, assisted by Caryn Grosse, Water Conservation Specialist, and Alan Hook, Water Division. Mayor Gonzales congratulated each of the winners.

Councilor Ives said the poster of the grand prize winner, Mali Murphey, will be on a City bus for one year, and the posters of all of the other winners will be featured in the annual calendar.

**d) SANTA FE HIGH CHEER TEAM – OVERALL CHAMPS AND STATE CHAMPS**

Councilor Trujillo presented a trophy to the Santa Fe High Cheer Team, who were the overall champions and 2014 State Champions, and congratulated them on their championship. He said this is the first 4-A State Champion Cheer Team in the history of Santa Fe High School

The Coach said she is very proud of this Team, commenting she has been working with them since they were very little, beginning with practice at the Boys & Girls Club. She said two members of the Team will be cheering for the NMSU Aggies next season.

**e) ST. MIKE'S PONY EXPRESS DANCE TEAM – STATE CHAMPS.**

Councilor Rivera presented a trophy to the St. Michael's Pony Express Dance Team, the 2014 State Champions. He said the Team is coached by Lydia Sanchez, who has coached 15 State Championship teams during her 25 years of coaching.

The Team Captain thanked the Governing Body for this honor, noting the Pony Express has won 23 State Championships. She said they work very hard, and without Coach Sanchez they wouldn't have this legacy.

Mayor Gonzales congratulated the Pony Express on their success. He thanked the Police and Firefighters who escorted the champions from their high schools to the City Hall this afternoon.

**f) PROCLAMATION – CELEBRATE SANTA FE TOURISM. (RANDY RANDALL AND SIMON BRACKLEY)**

A statement for the record by Randy Randall and Simon Brackley, submitted for the record by Randy Randall, is incorporated herewith to these minutes as Exhibit "2."

Randy Randall introduced Monique Jacobsen, New Mexico Secretary of Tourism, noting she also was a member of the St. Michael's Pony Express and they were State champions as well. He introduced Simon Brackley, Executive Director, Santa Fe Chamber of Commerce.

Mr. Randall and Mr. Brackley read their statement into the record. Please see Exhibit "2" for specifics of their statement.

Mr. Randall invited everyone to join them in Celebrating Tourism in Santa Fe, opening ceremonies at 10:00 a.m., at the Santa Fe Community Convention Center, and to participate in the day's activities, including the exposition at the Convention Center 10:30 a.m. to 5:00 p.m.

Mayor Gonzales thanked Mr. Randall and Mr. Bradley for the presentation, and welcomed Secretary Jacobsen, and asked for her to speak about her ideas on how to collaborate and support tourism mutually between the State and City.

Secretary Jacobsen said there is incredible momentum right now in tourism in New Mexico, with a record-breaking number of tourists and spending a record number of dollars. This is the perfect time to take that momentum "and really blow the doors out," and by getting tourism operating at the highest level, change the economy significantly. She said in collaboration, one of the biggest pushes is to speak with one voice in the marketplace. She said two years ago the State put \$2.5 million against this message, last year \$2.5 million and the same this year – \$7 million – plus \$2 million for advertising for a total of \$9 million. She said this is the perfect time to work together, because it means tax dollars and jobs. She has visited with Randy Randall over a weekend to go through all of the ways we can work together.

Mr. Brackley said this is a collaborative effort and thanked his staff at the Chamber, the staff at the CVB and the Chamber's Tourism Committee, volunteers, who gave their time to put Tourism Day together. He thanked *The Santa Fe New Mexican* for being a collaborator as well.

Mr. Randall said he will be working with Secretary Jacobsen in her efforts to be at the forefront of those efforts.

Mayor Gonzales said he will read the Proclamation into the record tomorrow at the opening ceremonies.

#### **CONSENT CALENDAR DISCUSSION**

**10(c) REQUEST FOR APPROVAL OF VACATION OF EXISTING CITY ALLEY WITHIN THE BOUNDS OF SIERRA VISTA ADDITION ADJOINING THE BOUNDARIES OF LOTS 10 (A PORTION), 11, 12, 13, 14, 25 (A PORTION), 26, 27, 28 AND TRACT A OF THE SIERRA VISTA ADDITION, A/K/A 816, 818, 830, 832 CAMINO SIERRA VISTA AND 901 AND 903 MERCER STREET; DAVID SCHUTZ, AGENT FOR TWO DOC PROPERTIES, LLC. (EDWARD VIGIL)**

Councilor Lindell and Councilor Dimas recused themselves from participating on this item.

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

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

**For:** Councilor Bushee, Councilor Dominguez, Councilor Ives, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Recused:** Councilor Dimas and Councilor Lindell.

**10(k) CONSIDERATION OF RESOLUTION NO. 2014-29 (COUNCILOR BUSHEE). A RESOLUTION SUPPORTING PEDESTRIAN IMPROVEMENTS ALONG EAST ALAMEDA AND THE SANTA FE RIVER WITH FUNDING SUPPORT PROVIDED THROUGH A COOPERATIVE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION. (BRIAN DRYPOLCHER)**

- 1) REQUEST FOR APPROVAL OF COOPERATIVE AGREEMENT – PEDESTRIAN IMPROVEMENTS TO EAST ALAMEDA AND SANTA FE TRAIL; NEW MEXICO DEPARTMENT OF TRANSPORTATION.**
- 2) REQUEST FOR APPROVAL OF BUDGET ADJUSTMENT – PROJECT FUND.**

A copy of an Action Sheet from the Public Works/CIP and Land Use Committee meeting of Monday, April 28, 2014, regarding Item 10(k) is incorporated herewith to these minutes as Exhibit “3.”

Councilor Trujillo said, “As with anything dealing with the New Mexico Department of Transportation, I do pull it off. I am employed by the New Mexico Department of Transportation. I used to oversee these cooperative agreements. I no longer oversee them. There is no conflict of interest.”

**MOTION:** Councilor Trujillo moved, seconded by Councilor Rivera, to adopt Resolution No. 2014-29, approving Item 10(k) and Items 10(k)(1) and (2).

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**10(l) CONSIDERATION OF RESOLUTION NO. 2014-30 (COUNCILOR TRUJILLO COUNCILOR BUSHEE, COUNCILOR RIVERA AND COUNCILOR DIMAS). A RESOLUTION DIRECTING THE CITY MANAGER TO ESTABLISH A CITY OF SANTA FE INTERNSHIP PROGRAM TO PROVIDE AN OPPORTUNITY FOR COLLEGE STUDENTS TO BE EMPLOYED BY THE CITY DURING SEMESTER BREAKS FROM COLLEGE. (SANDRA PEREZ)**

Councilor Trujillo said he pulled this item to make sure that the amendment he proposed is in the packet, because it wasn't stated in the caption.

Yolanda Vigil said the amendment is in the packet and he can move for approval as amended.

Councilor Bushee asked to be added as a cosponsor.



**MOTION:** Councilor Trujillo moved, seconded by Councilor Bushee, to adopt Resolution No. 2014-30, as amended.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Explaining his vote:** Councilor Rivera said, "Yes, and sign me on as a sponsor as well."

**Explaining his vote:** Councilor Dimas said, "Yes, and you can add me as a cosponsor."

**10(m) UPDATE ON THE McCLURE/NICHOLS RESERVOIRS. (ALEX PUGLISI AND ROBERT JORGENSEN). (INFORMATIONAL ONLY)**

A copy of *McClure Reservoir Restoration Project Updates*, entered for the record by Alex Puglisi, is incorporated herewith to these minutes as Exhibit "4."

Councilor Bushee said she likes having water in the River, but she hears from people daily asking why we are sending all our water down the Rivera. She asked if there will be some kind of "explanatory column." She said this is about how we educate the public because she's tired of trying to do it one-on-one with people who call her.

Alex Puglisi, Public Utilities, said they have been providing updates to the press and have been called several times by the press, and they have released information. He said there is information posted on the website. He said they started briefing the Public Utilities Committee in March and this is a follow-up to that briefing – the memo in the Council packet which was presented to the PUC on March 26, 2014 – and it was current as of that date.

Mr. Puglisi said a lot has been happening since March 26<sup>th</sup>, so he has provided some bullets and some pictures of the status of the tower intake reconstruction project, and the status of releases from McClure Reservoir [Exhibit "4"]. He said staff will continue to try to issue press releases as often as possible in this regard. He noted there have been articles in the newspaper. And information has been spread through the Water Conservation Committee. He said they have made an effort to get this information out there and they can step up that effort if needed.

Councilor Bushee suggested they step up the effort, and asked that they get Joe Abeyta involved in that effort.

Mr. Puglisi said they will do a press release on the information handed out today. They are coming to conclusion on the Nichols tower rehabilitation project and will begin filling Nichols in mid-May. As a result, they have to shut down releases from McClure. There will be a period of time when releases from McClure will be shut down so we can train all of the water out of Nichols and put a stop log in to block the outlet from the dam. At that point, they will start filling Nichols. They project Nichols will be filled to 80% by the end of May.

Mr. Puglisi said, "Because of our releases, we're actually recommending, Councilor Trujillo, that we hold our Fishing Derby sometime in the week of June 14, 2014, starting on June 14<sup>th</sup> because we want to have guaranteed flows in the River while we are filling Nichols and providing irrigation water to the various irrigation canals around the City." They are ramping up the treatment at the Treatment Plant to 6.5 million gallons, and plan to bring it to 7 million. So you will see decreases in the River over time. We want to ensure we utilize the water in the best way, to ensure there is sufficient water in the River for the Fish Derby.

Mr. Puglisi said, "In preparation, we are increasing releases to the River during the times water would be released under the Living River Ordinance. We won't count some of the releases toward the Living River Ordinance until we do post flows in June and August. We are trying to stretch our releases to basically meet the requirements of the Living River Ordinance and empty the dam at the same time."

Brian Snyder said the Water Division staff will be on the radio tomorrow to talk about this and will be on upcoming TV show.

Councilor Trujillo said it has been wonderful to see the water running down the River, and would like to see if we can get the Park crews to thin the vegetation near Sandoval Street to make it accessible to the public.

Councilor Maestas said he checked the snapshot of total water use, and just over 70% was being utilized from Buckman and 20% from Canyon Road. This means we are virtually resting our wells and not mining groundwater. He would like this information to get to the public so they will know that we aren't having to seek water from other sources such as groundwater, while making these releases.

Mr. Puglisi said the Canyon Road treatment plant is providing about 70% of the water supply for the City, and they are maximizing use of the water released to the River, noting we are totally resting the well field right now.

Councilor Maestas asked if they also can show total percentages from all sources, so they have an idea of the big picture.

Councilor Dominguez said this is most water he has seen in the River on the south side for a long time. He thanked Mr. Puglisi for all of his work.

Mr. Puglisi said there is also an irrigation return to the River.

Councilor Rivera thanked him for his hard work. He suggested he speak with Jodi Porter to look at different ways to get out the message, and he would like report on different media sources you are considering at the next PUC meeting.

Mr. Puglisi said he will do so, noting they sent packet information for the meeting, but he will develop a handout for the Committee at the meeting.

**11. REQUEST FOR RATIFICATION OF PROCUREMENT OF NEW OFFICE FURNITURE FOR POLICE DEPARTMENT BUILDING EXPANSION – BID NO. 13/12/B; CREATIVE INTERIORS. (ROBERT RODARTE)**

David Pfeiffer said Robert Rodarte had to leave, so he is stepping in, and will stand for questions.

Councilor Rivera said he has a problem with the way this whole thing came about. He said this was discussed a Committee meeting last month, but it was pulled at the last minute, because the money already had been spent. He said he was told the purchase was done under the definition of an emergency procurement. He said the emergency conditions are "something that would threaten the function of government, the preservation or protection of property or the health and safety of any person." He doesn't see this purchase as meeting that emergency definition. He asked when construction on the Police Department started.

Mr. Pfeiffer said it started in March 2014.

Councilor Rivera asked, "Before that when they were doing design, the whole process of trying to figure out what they were doing to do and need, didn't they know they were going to need furniture at that time."

Mr. Pfeiffer said, "Yes they knew they needed furniture. I think it was in hindsight, so we had to get it ordered so we would have it there on time."

Councilor Rivera said, then this was an oversight which has now turned into an emergency procurement.

Deputy Chief Schaerfl said, "I don't classify it as an oversight, but I can't speak to the specifics of the procurement code. I know that we couldn't get Creative Interiors to give us a formal quote until the finalization and approval of the plans as submitted by the award win to Sarcon. Once Sarcon won the award and the plans were finalized, then we had Creative Interiors and develop a quote based on the final approved draft. So the kick-off date of getting the approval of the Creative Interiors proposal was approved after the approval of the construction project, so it had to play catch up a little bit. And they did take some time getting us the finalized quote based on the itemized description of each office. I know

there was a lag in getting that quote finalized. I can't comment or speak on the classification of that request at this time."

Councilor Rivera noted Mr. Snyder approved it as an emergency purchase, and asked him to elaborate on that.

Mr. Snyder said, "I had the City Attorney's Office and the City Procurement.... I got their recommendation in reviewing it. And based on their review, I felt comfortable signing off on it. I didn't necessarily understand it to be an emergency as you described it, as a need to furnish a building. And there was adequate coverage in the Procurement Manual that we could procure it in this manner, and then come back to the Governing Body and formally seek approval from the Governing Body for this item."

Councilor Rivera said it went through the bid process, which is another reason he doesn't understand why it couldn't wait 2-3 weeks to go through the entire process and be heard by the entire Governing Body and be in approved in the appropriate manner. He said, "I believe the money has already been sent, a purchase order cut, and probably a portion of it sent to Creative Interiors. Is that true."

Mr. Snyder said, "That is true. A purchase order has been issued. The furniture has been ordered. My understanding is, from a timing standpoint, if it had gone through the entire City committee approval process, we would have had a vacant building without any furniture in it, similar to the Courthouse. With that in mind, it was reviewed on how we could expedite that. And basically, the furniture lead time was such that we had to get it ordered in a timely and why we went through the process we went through."

Councilor Rivera asked how much has been procured, and if it is the entire \$150,000.

Mr. Snyder said his understanding is all the furniture has been procured and is on order.

Councilor Rivera said he hopes they were the low bidder.

Mr. Snyder said he understands it went through the bid process and it was awarded to the low bidder.

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

**DISCUSSION:** Councilor Ives said the most compelling part of this is that the Police were experiencing overcrowding in secure and sensitive areas of the existing building, along with having to relocate several employees to other locations, such as Market Station. "And I recognize there are many secure and sensitive areas within the Police Department, so it seemed an appropriate use in the instance based on that, and certainly we always want to avoid these circumstances where we can, but occasionally it will happen, and that reference seemed appropriate to me."

Deputy Chief Schaerfl said, "That is correct. Currently, due to the displacement of several of the specialty teams, most notably the Criminal Investigation Team, specifically for the construction. Right now I have 8 people working out of a space originally designated for 3 or 4. So there is that concern for the day to day operations. We're making do and everybody is greatly anticipating the finish date of the new building. You are correct if this process lingered any longer, it would have caused disruption of day to day operations."

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas and Councilor Trujillo.

**Against:** Councilor Rivera.

**Explaining his vote:** Councilor Dominguez said, "I'm going to vote yes, but I just hope that we have an open process as we move forward *[the balance of his remarks are inaudible because his microphone was turned off]*."

## **12. MATTERS FROM THE CITY MANAGER**

There were no matters from the City Manager.

## **13. MATTERS FROM THE CITY ATTORNEY**

### **EXECUTIVE SESSION**

**IN ACCORDANCE WITH THE NEW MEXICO OPEN MEETINGS ACT §10-15-1(H)(7), NMSA 1978, DISCUSSION REGARDING PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS A PARTICIPANT:**

- a) **HIGH SUMMIT CORP.; SUMMIT SOUTH CO. AND RALPH BRUTSCHE V. CITY OF SANTA FE, CASE NO. D-101-CV-2009-03914 IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEW MEXICO;**
- b) **CITY OF SANTA FE'S INTERVENTION IN UTILITY CASE NO. 13-0390-UT BEFORE THE PUBLIC REGULATION COMMISSION; AND**
- c) **QWEST CORP. V. CITY OF SANTA FE, CASE NO. 14-2008 IN THE TENTH CIRCUIT COURT OF APPEALS.**

Councilor Ives said he would recuse himself from discussion of Items 13(a) and 13(c). He said, "In the past I have represented Mr. Brutsche, actually the party who sold water rights to Mr. Brutsche, in connection with Summit South. And then, also everybody is familiar with my relationship to the Qwest Corporation Case. I just wanted to get that on the record."

**MOTION:** Councilor Bushee moved, seconded by Councilor Dimas, that the Council go into Executive Session for discussion of pending litigation in which the City of Santa Fe is a participant, in accordance with §10-15-1(H)(7) NMSA 1978, as indicated in 13(a), (b) and (c).

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Abstain:** Councilor Ives.

The Council went into Executive Session at 6:15 p.m.

#### **MOTION TO COME OUT OF EXECUTIVE SESSION**

**MOTION:** At 7:00 p.m., Councilor Dominguez moved, seconded by Councilor Maestas, 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 on the following roll call vote:

**For:** Councilor Dimas, Councilor Dominguez, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Abstain:** Councilor Ives.

**Absent for the vote:** Councilor Bushee.

#### **14. ACTION REGARDING HIGH SUMMIT CORP., SUMMIT SOUTH CO. AND RALPH BRUTSCHE V. CITY OF SANTA FE, CASE NO. D-101-CV-2009-03914.**

**MOTION:** Councilor Dominguez moved, seconded by Councilor Trujillo, that "we direct staff to move in accordance with the discussion that we had in executive session."

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Abstain:** Councilor Ives.

**15. ACTION REGARDING CITY OF SANTA FE'S INTERVENTION IN UTILITY CASE NO. 13-0390-UT. (MARCOS MARTINEZ)**

**MOTION:** Councilor Dominguez moved, seconded by Councilor Rivera, that "we direct staff to move in accordance with the direction that was given in Executive Session."

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**16. MATTERS FROM THE CITY CLERK**

There were no matters from the City Clerk.

**17. 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 April 30, 2014, is incorporated herewith to these minutes as Exhibit "5."

**Councilor Dimas**

Councilor Dimas introduced an Ordinance repealing and readopting Article IX of the Uniform Traffic Ordinance to establish that parking violations related to parking meters, parking lots and parking garages are nuisances and subject to administrative adjudication; and making such other changes as are necessary to meet the purposes of this Ordinance. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "6."

### **Councilor Maestas**

Councilor Maestas introduced a Resolution adopting the City of Santa Fe Investment Policy to formalize the City policy related to investment of City Funds. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "7."

### **Councilor Bushee**

Councilor Bushee introduced the following:

1. A Resolution endorsing the North Central Regional Transit District's FY 2015 budget proposal, approving the FY 2015 City of Santa Fe Regional Transit Plan and directing staff to submit the City of Santa Fe Regional Transit Plan for FY 2015 to the North Central Regional Transit District Board of Directors for consideration and approval. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "8."
2. An Ordinance authorizing the execution and delivery of a loan agreement by and among the City of Santa Fe (the "Governmental Unit") and the New Mexico Finance Authority, evidencing a special limited obligation of the City to pay a principal amount of \$3,500,000, for the acquisition of transit buses for the governmental unit's public transportation system; providing for the payment of the loan agreement from certain gross receipts tax revenues distributed to the City; providing for the distributions of gross receipts tax revenues from the Taxation and Revenue Department to be redirected to the New Mexico Finance Authority or its assigns pursuant to an Intercept Agreement for the payment of principal and interest due on the loan agreement; specifying details of the Loan Agreement, including the net effective interest rate; ratifying actions heretofore taken; repealing all action inconsistent with this ordinance; and authorizing the taking of other actions in connection with the execution and delivery of the Loan Agreement and Intercept Agreement. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "9."

### **Councilor Ives**

Councilor Ives introduced the following:

1. A Resolution endorsing the Green Lodging Initiative; and directing staff to explore ways to continue, fund and extend the Green Lodging Initiative to all lodging facilities in the City of Santa Fe. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "10."



2. A Resolution authorizing Public Utilities Department staff to apply for a U.S. Bureau of Reclamation (BOR) funding opportunity to evaluate the feasibility of utilizing reclaimed water for alternative non-potable and potable uses. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "11."
3. A Resolution establishing funding priorities for ITT, Land Use and City Attorney expansion requests identified in the 2014/2015 budget hearings that are not incorporated into the budget, in the event additional funding is identified. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "12."

Councilor Lindell she would like to cosponsor the Resolution.

### **Councilor Dominguez**

Dominguez thanked staff and Mr. Snyder for the budget hearings for the past two days, and those members of the Governing Body in attendance. He said there will be one last budget hearing on May 5, 2014, and talk about the expansion items brought up during the budget hearings and generally wrap things up. He said the Governing Body members are welcome to attend.

Councilor Dominguez introduced the following, commenting that they came from the City's bond counsel:

1. A Resolution of the Governing Body of the City of Santa Fe, New Mexico declaring its official intent to reimburse itself with the proceeds of a future tax-exempt borrowing for capital expenditures paid to 1) acquire land, plan, design, equip, renovate and improve public parks, bike-pedestrian trails and related infrastructure projects, and 2) acquire, install, construct, upgrade and improve sustainable environment projects; identifying the capital expenditures and the funds to be used for such payment; and providing certain other matters in connection therewith. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "13." Councilor Dominguez said this Resolution needs to go to Public Works as well as the Bicycle & Trail Advisory Committee
2. A Resolution of the Governing Body of the City of Santa Fe, New Mexico declaring its official intent to reimburse itself with the proceeds of a future tax-exempt borrowing for certain capital expenditures undertaken or to be undertaken by the City; identifying the capital expenditures and the funds to be used for such payment; and providing certain other matters in connection therewith. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "14." Councilor Dominguez said this Resolution also needs to go to Public Works as well as the Bicycle & Trail Advisory Committee

### **Councilor Lindell**

Councilor Lindell had no communications.

### **Councilor Trujillo**

Councilor Trujillo asked Mr. Snyder to check on Marc Brandt Park to see that it is getting watered.

Councilor Trujillo said he is honored to introduce Bill Moore, Coach of the Santa Fe Fuego, and Beau Brumble the voice of the Fuegos.

Bill Moore said he is pleased and honored to come back for a third season. He thanked everyone for the use of the ball park. He said in the interim he was transferred to a different City, and asked the Commissioner to reassign him to Santa Fe, which he did. He said they start Spring Training in Taos this weekend with two other League teams, so we can play exhibition games without a lot of travel. He hopes we can host a couple of teams in Santa Fe next year for training to do the same thing. He said the season opens two weeks from today, and he is excited at his team this year – “we’re going to be very very fast.” He invited everyone to come out to the games.

Mr. Brumble said Ft. Marcy is a great place to play, and it is in the heart of Santa Fe. He said this is a great team that gives 100%. He said he is now the announcer for the Santa Fuego, so he will be attending all 44 teams. He said they will have a booth at the Convention Center tomorrow, and asked everyone to come by and say hello. He thanked the Governing Body for giving them the opportunity to play at Ft. Marcy.

### **Councilor Rivera**

Councilor Rivera said over the weekend he participated in the Great American Clean-up Day – and thanked his wife and 4 daughters for their assistance in this efforts. He said there are lots of volunteers whom he would like to thank as well, including Gilda Montano and her crew and other City staff that participated.

Councilor Rivera introduced a Resolution proclaiming severe or extreme drought conditions in the City of Santa Fe and restricting the sale or use of fireworks within the City of Santa Fe and prohibiting other fire hazard activities. He said Councilor Trujillo would like this Resolution to go to the Public Works Committee. A copy of the Resolution is incorporated herewith to these minutes as Exhibit “15.”

### **Mayor Gonzales**

Mayor Gonzales had no communications.

Mayor Gonzales said there will be a short break, and then the evening session will be called to order.

**END OF AFTERNOON SESSION AT APPROXIMATELY 7:15 P.M.**

## **EVENING SESSION**

### **A. CALL TO ORDER AND ROLL CALL**

The Evening Session was called to order by Mayor Javier M. Gonzales, at approximately 7:25 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 Javier M. Gonzales  
Councilor Patti J. Bushee  
Councilor Bill Dimas  
Councilor Carmichael A. Dominguez  
Councilor Peter N. Ives  
Councilor Signe I. Lindell  
Councilor Joseph M. Maestas  
Councilor Christopher M. Rivera

#### **Others Attending**

Brian K. Snyder, City Manager  
Kelley Brennan, Interim City Attorney  
Yolanda Y. Vigil, City Clerk  
Melessia Helberg, Council Stenographer

### **F. PETITIONS FROM THE FLOOR**

A Memorandum dated April 22, 2014, to the Governing Body, from Dave McQuarie, MCD Plan Review Sub-Committee Chair, regarding 2013 ADA Curb Ramp Improvement Project for Street Overlays, entered for the record by David McQuarie, is incorporated herewith to these minutes as Exhibit "16."

A letter dated April 25, 2014, To Whom It May Concern, from Miriam Leth-Espensen, entered for the record by Miriam Leth-Espensen, is incorporated herewith to these minutes as Exhibit "17."

*Mayor Gonzales gave each person two minutes to petition the Governing Body*

**David McQuarie** thanked Mayor Gonzales for directing City staff to address questions from constituents. He said maybe this will assist in ADA complaints to the U.S. Department of Justice. He said he distributed a Memo to the Governing Body where a review was done for the overlay. This is the second, the first was on February 20, 2013. At that time it was recommended not to spend public funds because the plans were incomplete. He said he is reiterating that you do not use public funds because it is "nothing more than discrimination." He said a curb is a barrier to him, while it is only an inconvenience to you. He said the Federal law, the Americans with Disabilities Act, said we should all be reasonably equal in access. There are a few in the City that don't seem to get this message, and haven't for 12 years. They

still don't understand. He said when we were children, our parents trained them to cross the street at the corner after looking both ways. We can't do that. Where is our dignity.

Mr. McQuarie said secondly, you are having budget hearings. He asked if anybody on staff mentioned that you need to fund the transition plan that was passed years ago, and was supposed to be done 2011-2015. He said there is no budget because staff has never asked for one. He said perhaps if staff asks they will get a budget. He said "Councilor Dimas, maybe you'll finally get an area where you can see the audience and they can see you."

**Miriam Leth-Espensen**, said she is an American citizen and she stands before you under the protection under the First Amendment of the Constitution of the United States of America. Ms. Leth-Espensen said she is concerned about the systematic destruction of her historic neighborhood, Castillo Place two blocks from here. Please see Exhibit "17," for the complete text of Ms. Leth-Espensen's statement.

Ms. Leth-Espensen said, "I respectfully request that you review the material that I have submitted, clean out the City Attorney's Office, and if necessary, ask for Federal Assistance to do so."

## **G. APPOINTMENTS**

A Memorandum dated April 30, 2014, replacing the Memorandum in the Council packet, to the City Council from Mayor Javier M. Gonzales, regarding Appointments, entered for the record by Mayor Gonzales, is incorporated herewith to these minutes as Exhibit "18."

Mayor Gonzales said hopefully these appointments represent the Governing Body's requests for each of the positions being appointed.

Councilor Rivera said he has no problem with these appointments, but he wants to make it clear that after speaking with the Chair of the Bicycles and Trails Advisory Committee, he would like to see someone who represents the South side on that Committee. He wants to be sure we continue to keep a position open for that person.

Councilor Bushee said, for clarification, the two members to be appointed this evening, live on the South side, we're just specifically looking for District No. 3 in the missing positions.

Mayor Gonzales said he directed staff to issue a press release to communicate to the public the upcoming positions to be appointed, and individuals interested in serving on a City committee should submit their resume and information.

Mayor Gonzales asked if there can be a blanket approval of all appointments.

Ms. Vigil said yes, noting the substitute Memorandum needs to be added for the record [Exhibit "18."

Mayor Gonzales made the following appointments:

**Bicycle and Trail Advisory Committee**

Joseph A. Abbatacola – Reappointment – term ending 06/2015;  
John W. Longworth – Reappointment – term ending 06/2015;  
James Ronald Pacheco – Reappointment – term ending 06/2015; and  
Shelly Robinson – Reappointment – term ending 06/2015.

**Marty Sanchez Links de Santa Fe Advisory Committee**

Linda Zingle – to fill unexpired term ending 12/2015.

**Public Safety Committee**

Joe H. Arellano – to fill unexpired term ending 10/2015

**Santa Fe Regional Juvenile Justice Board**

Ted A. Lovato – to fill unexpired term ending 10/2015.

**City Business and Quality of Life Committee**

Bradford "Brad" Dean Furry – to fill unexpired term ending 03/2015; and  
Piper Kapin – Reappointment – term ending 03/2016.

**Sister Cities Committee**

Carol Robertson Lopez – Chair Appointment.

### **Park Bond Audit Task Force**

Lisa Kerr – Internal Auditor;  
Teresita Garcia – Finance Department;  
Eric Martinez – Public Works Department;  
Anna Hansen, Chair, Parks and Open Space Advisory Commission;  
Councilor Bushee – Chair, Bicycle and Trail Advisory Committee;  
Hazelaine Romero – Audit Committee; and  
Marc Tupler – Audit Committee.

**MOTION:** Councilor Maestas moved, seconded by Councilor Dimas, to approve all the recommended appointments as outlined in the Memorandum in our packet [Exhibit "18"]

**VOTE:** The motion was approved unanimously on a voice vote with Councilors Bushee, Dimas, Dominguez, Ives, Lindell, Maestas, Rivera and Trujillo voting in favor of the motion and none against.

### **H. PUBLIC HEARINGS**

Councilor Maestas said, "Prior to beginning the public hearings, I would like to make a statement. I disclosed at a prior meeting that I have an interest in a family business that owns an inter-local dispenser liquor license in Espanola that currently is for sale. And I stated on the record that I will be recusing myself, until the family license is sold, from voting on any inter-local license transfer request and from any discussion this body may have about inter-local transfer licenses, generally. I have asked the Interim City Attorney whether she believes that the family licenses raises any conflict with respect to tonight's agenda items, specifically Agenda Items H(1) through H(7), and she advised me that she does not believe there is a real or apparent conflict. As a result, I will be voting on these items, again Items H(1) through H(1) tonight."

#### **1) REQUEST FROM MURPHY OIL USA, INC., FOR A TRANSFER OF OWNERSHIP OF DISPENSER LICENSE #0649 WITH PACKAGE SALES FROM MURPHY OIL CORPORATION TO MURPHY OIL USA, INC. THIS LICENSE WILL REMAIN AT MURPHY EXPRESS #8609 LAS SOLERAS DRIVE. (YOLANDA Y. VIGIL)**

The staff report was presented by Yolanda Vigil, City Clerk, from her memorandum of April 24, 2014, with attachments, to Mayor Gonzales and City Councilors, which is in the Council packet, noting this location is not within 300 feet of a church or school. She said there are staff reports in the packet regarding litter, noise and traffic, and staff recommends that this business be required to comply with all City ordinances. She noted the applicant is in the audience if there are questions.

## **Public Hearing**

Mayor Gonzales asked the applicant if he would like to address the Governing Body, and he said no, and there were no questions by the Governing body of the applicant.

There were no persons speaking to this request.

## **The Public Hearing was closed**

**MOTION:** Councilor Rivera moved, seconded by Councilor Dimas, to approve the request from Murphy Oil USA, Inc., for a transfer of ownership of Dispenser License #0649 with package sales from Murphy Oil Corporation to Murphy Oil USA, Inc., with the license to remain at Murphy Express #8609, 5301 Las Soleras Drive.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

- 2) **REQUEST FROM ALAMOWING SANTA FE, LLC, FOR A TRANSFER OF OWNERSHIP AND LOCATION OF DISPENSER (CANOPY) LICENSE #1363 (ON PREMISE CONSUMPTION ONLY), FROM CITY HALL, INC., D/B/A ROUGE CAT, 101 W. MARCY STREET, SUITE 5, SANTA FE, TO ALAMOWING SANTA FE, LLC, D/B/A BUFFALO WILD WINGS, 3501 ZAFARANO DRIVE. (YOLANDA Y. VIGIL)**

The staff report was presented by Yolanda Vigil, City Clerk, from her memorandum of April 24, 2014, with attachments, to Mayor Gonzales and City Councilors, which is in the Council packet, noting the location is not within 300 feet of a church or school. She said, "So you understand, we do have a liquor license presently at Buffalo Wild Wings. This license is going to transfer to the Buffalo Wild Wings in Farmington. So the dispenser license that is coming from Rouge Cat, would then transfer over to the Buffalo Wild Wings on Zafarano Drive." She said there are staff reports in the packet regarding litter, noise and traffic, and staff recommends that this business be required to comply with all City ordinances. She said the applicant is in the audience if you have questions.

Councilor Dominguez asked if this means that we actually are losing one license from the City limits.

Ms. Vigil said this is correct, as one will be transferring to Farmington.



Councilor Dominguez said, "That one is transferring to Farmington, but they're just moving the one from one location in the City to another location in the City."

Ms. Vigil said this is correct.

#### **Public Hearing**

There was no one speaking to this request.

#### **The Public Hearing was closed**

**MOTION:** Councilor Dominguez moved, seconded by Councilor Ives, to approve the request from Alamowing Santa Fe, LLC, for a transfer of ownership and location of Dispenser (Canopy) License #1363 (on-premise consumption only, from City Hall, Inc., d/b/a Rouge Cat, 101 W. Marcy Street, Suite 5, Santa Fe to Alamowing Santa Fe, LLC, d/b/a Buffalo Wild Wings, 3501 Zafarano Drive.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

#### **3) REQUEST FROM GREGORY NEIL MENKE FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) TO BE LOCATED AT THE BEESTRO, 101 W. MARCY STREET.**

The staff report was presented by Yolanda Y. Vigil, from her memorandum of , April 24, 2014, with attachments, to Mayor Gonzales and City Councilors, which is in the Council packet, noting the location is not within 300 feet of a church or school. She said there are staff reports in the packet regarding litter, noise and traffic, and staff recommends that this business be required to comply with all City ordinances. She said, as a condition of approval, items in front of the business that are on the City sidewalk and any seating must be removed, as it is in violation of City Code §23-4-8 SFCC 1987, so no kind of seating can be in the sidewalk area.

#### **Public Hearing**

There was no one speaking to this request.

#### **The Public Hearing was closed**

**MOTION:** Councilor Trujillo moved, seconded by Councilor Rivera, to approve the request from Gregory Neil Menke for a Restaurant Liquor License (beer and wine on-premise consumption only), to be located at the Beestro, 101 West Marcy Street, with conditions of approval as recommended by staff.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**4) REQUEST FROM VALENTINA'S RESTAURANT, LLC, FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) TO BE LOCATED VALENTINO'S RESTAURANT, 945 W. ALAMEDA**

The staff report was presented by Yolanda Y. Vigil, from her memorandum of April 24, 2014, with attachments, to Mayor Gonzales and City Councilors, which is in the Council packet, noting the location is not within 300 feet of a church or school. She said there are staff reports in the packet regarding litter, noise and traffic, and staff recommends that this business be required to comply with all City ordinances.

**Public Hearing**

There was no one speaking to this request.

**The Public Hearing was closed**

**MOTION:** Councilor Lindell moved, seconded by Councilor Dimas, to approve the request from Gregory Neil Menke for a Restaurant Liquor License (beer and wine on-premise consumption only), to be located at the Beestro, 101 West Marcy Street, with conditions of approval as recommended by staff.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

- 5) **REQUEST FROM EL MUSEO CULTURAL DE SANTA FE FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF BEER AND WINE AT EL MUSEO CULTURAL DE SANTA FE, 555 CAMINO DE LA FAMILIA, WHICH IS WITHIN 300 FEET OF TIERRA ENCANTADA CHARTER SCHOOL @ ALVORD, 551 ALARID STREET. THIS REQUEST IS FOR THE EVENT "ARTS, CULTURE AND COMMUNITY," WHICH IS A FUNDRAISER FOR EL MUSEO CULTURAL AND ESPERANZA SHELTER FOR BATTERED FAMILIES TO BE HELD ON MAY 3, 2014, FROM 5:30 P.M. TO 8:00 P.M. (YOLANDA Y. VIGIL)**

The staff report was presented by Yolanda Y. Vigil, from her memorandum of April 24, 2014, with attachments, to Mayor Gonzales and City Councilors, which is in the Council packet. She noted there is a letter in the Council packet from Carl Gruenler, Chief Business Officer, Santa Fe Public Schools stating that the School District will refrain from issuing a decision regarding opposition or non-opposition to this request.

#### **Public Hearing**

**Thomas Romero, El Museo Board Treasurer, was sworn.** Mr. Romero said he would like to invite the Governing Body to the event, noting he put a flyer on their desks. He said the part where the liquor will be served is a small part of the entire weekend. He said, "Following this, there will be a dance and there will be no alcohol. We invite you to come. We have invited the Mayor on Sunday which is a free celebration and we invite all of you as well, if you would to come and enjoy the entertainment and the people of Santa Fe in enjoying Cinco de Mayo."

#### **The Public Hearing was closed**

**MOTION:** Councilor Dimas moved, seconded by Councilor Dominguez, for discussion purposes, to grant the request for a waiver of the 300 foot location to allow the dispensing/consumption of beer and wine at El Museo Cultural de Santa Fe for the event "Arts, Culture and Community," a fundraiser for El Museo Cultural and Esperanza Shelter for Battered Families, on May 3, 2014 from 5:30 p.m. to 8:00 p.m., with conditions of approval as recommended by staff.

**DISCUSSION:** Councilor Dominguez asked who the letter in the packet is from.

Ms. Vigil said the letter is from Paul Gruenler, Santa Fe Public Schools, and this is the standard letter they have been submitting, stating they are not taking a position on any of these requests.

Councilor Dominguez asked if Paul Gruenler is Principal of the Charter Schools.

Ms. Vigil said this is coming to you from the Santa Fe Public Schools Administration.

Councilor Dominguez said the letter it isn't coming from the Public Schools legal counsel, and Ms. Vigil said no, it is from Carl Gruenler..

Mr. Snyder said Carl Gruenler is the Chief Business Officer for the Santa Fe Public Schools.

Councilor Rivera asked if Charter Schools are under the same governance as the Public Schools.

Ms. Vigil said she believes so, noting when the requests come from the Charter Schools, they are funneled through the Santa Fe Public Schools Administration.

Councilor Rivera said it is understanding that are separate from the Public Schools in terms of governance. He asked Ms. Vigil to look into this for such future requests.

Councilor Dominguez said he is going to support this request. He said, "I almost feel like we should require them to give us their approval or not, instead of just passing the buck, if you will, onto the Governing Body, not that we would necessarily not agree with them, but we should get some position from those about an issue that we have, not only in this community, but in the State. And so, I'll just make that as a comment. I'm not sure that I will propose a piece of legislation. They are just as much a part of this community as everyone else, and I think that would only be fair. So, I'll just say that."

Ms. Vigil said, "I just want to remind you that this event will be on a Saturday, and in the evenings from 5:30 to 8:00 p.m., so the school will not be in session, if that helps."

Councilor Dominguez said, "Well it does, and that's why I'm probably going to support this, but that's their standard response to pretty much everything, and they need to take a stand."

Councilor Maestas said, "I would only make the point, if you read the letter, it is a canned letter from the schools. It would be hypocritical... it would probably be against their own policy, their alcohol free zone policy, to take a position on any liquor license, action or event. So I think, if we make that a condition, whether they say yes or no, then we could have a serious backlog of these kinds of requests. I doubt they would be willing, because I think they state it right there, because we have this policy, it would be hypocritical of us or we would go against our own policy if we took a position either yes or no against these actions. So I would just caution against requiring a specific position from the schools. Maybe if they came before us and talked about the circumstances around the school, maybe to hear from them directly, I would like to see that if need be. But requiring them to take a solid position would be problematic for them and as a result it could really affect future requests."

Councilor Dominguez said, "I agree, but I think their policies, in talking with their wellness folks, is really contradictory to what they have indicated in many other forums and many other policies, and so that policy could still be changed. And I'm not necessarily taking a position on it, I just think that they really need to think about what they're not promoting, or promoting. It's just a comment. Again, I'm not sure I'm ready to produce any piece of legislation, but they need to be aware that some of those decisions they are making us make, are decisions that could have an impact on this community in general. So I just make that observation.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

- 6) **REQUEST FROM JOE WADE FINE ART, FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF WINE AT JOE WADE FINE ART, 102 E. WATER STREET, FOR THE FOLLOWING EVENTS/DATES, WHICH WILL BE HELD FROM 5:00 P.M. TO 7:00 P.M.: May 7, 2014 – Private Gallery Opening; July 4, 2014 – Jon Oteri Solo Exhibition; August 22, 2014 – Annual Indian Market Show; August 29, 2014 – Roger Williams Solo Exhibition; and October 3, 2014 – Manfred Rapp Solo Exhibition. YOLANDA Y. VIGIL)**

The staff report was presented by Yolanda Y. Vigil, from her memorandum of April 24, 2014, with attachments, to Mayor Gonzales and City Councilors, which is in the Council packet. She noted there is a letter in the packet from Rev. Daniel P. Danganan, Pastor and Bishop, the Church of Antioch at Santa Fe, stating they give their permission and support for this request.

#### **Public Hearing**

There was no one speaking to this request.

#### **The Public Hearing was closed**

**MOTION:** Councilor Ives moved, seconded by Councilor Bushee, to grant the request for a waiver of the 300 foot location to allow the dispensing/consumption of wine at Joe Wade Fine Arts, 5:00 p.m. to 7:00 p.m., for the following events/dates: May 7, 2014 – Private Gallery Opening; July 4, 2014 – Jon Oteri Solo Exhibition; August 22, 2014 – Annual Indian Market Show; August 29, 2014 – Roger Williams Solo Exhibition; and October 3, 2014 – Manfred Rapp Solo Exhibition.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

- 7) **REQUEST FROM NEW MEXICO SCHOOL FOR THE ARTS (NMSA) FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF ALCOHOLIC BEVERAGES IN THE GEORGIA O'KEEFFE MUSEUM EDUCATION ANNEX PARKING LOT, 123 GRANT AVENUE, WHICH IS WITHIN 300 FEET OF THE FIRST PRESBYTERIAN CHURCH, 208 GRANT AVENUE. THIS REQUEST IS FOR NMSA'S ANNUAL FUNDRAISING GALA "ARTSPRING" TO BE HELD ON FRIDAY, MAY 9, 2014 FROM 7:00 P.M. TO 9:00 P.M. (YOLANDA Y. VIGIL)**

A letter dated April 27, 2014, from David Grayson, President, First Presbyterian Church, saying they agreed to this event, is incorporated herewith to these minutes as Exhibit "19."

The staff report was presented by Yolanda Y. Vigil, from her memorandum of April 24, 2014, with attachments, to Mayor Gonzales and City Councilors, which is in the Council packet, noting there was a letter on the Councilor's desk this evening, from David Grayson, President, First Presbyterian Church Santa Fe, stating they are okay with this request.

#### **Public Hearing**

There was no one speaking to this request.

#### **The Public Hearing was closed**

**MOTION:** Councilor Ives moved, seconded by Councilor Dimas, to grant the request for a waiver of the 300 foot location to allow the dispensing/consumption of alcoholic beverages at the Georgia O'Keeffe Museum Education Annex Parking Lot, 124 Grant Avenue for the New Mexico School for the Art's Annual Fundraising Gala "ArtSpring," on Friday, May 9, 2014 from 7:00 p.m. to 9:30 p.m., with conditions of approval as recommended by staff.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**8) REQUEST FOR APPROVAL OF DRAFT AFFORDABLE HOUSING 2014/2015 ANNUAL ACTION PLAN. (ALEXANDRA LADD)**

The staff report was presented by Alexandra Ladd from her Memorandum of April 22, 2014, which is in the packet. She said this is done every year as a condition of our entitlement from HUD for our CDBG funds. She said, "Because of the way the HUD approval process works, and that we want to get our allocations made and the contract in place by the beginning of the fiscal year, we often start the process before we know what the final allocation amount is. This year we estimated it to be \$500,000, which is reflected in the plan before you. And then we got good news from HUD that they are giving \$526,000, so this is good news and we will allocate the \$26,000 at a later date and do an amendment to the plan.

Ms. Ladd introduced the new CDBG planner, Margaret. She said after this evening she will be turning over the reins to Margaret, and she will be finishing the rest of this fiscal year and will start the next fiscal year with you.

Ms. Ladd said Councilor Ives spoke with her earlier with regard to the Memo which shows the amounts of funding and how they have declined over the past few years. She said it never occurred to her that the reduced funding is because of budget cuts on the federal level and not because we haven't expended our money in a timely or appropriate fashion.

Councilor Ives said he is painfully aware of federal budget cuts, and the impact on programs such as this one. He asked if it would be worthwhile to see if there are any other communities who have seen an increase in funding rather than a decrease – look at what others are doing differently to garner the greatest possible support– and do we need to do anything differently based on others who are having success. He said he frankly doesn't know whether or not there are other cities, and would hope we are tracking that as part of the process.

Councilor Maestas asked how the unexpected additional funds from HUD will be allocated.

Ms. Ladd said last week the CDBG Commission, who is responsible for making the initial funding recommendations, considered that issue, and made the decision that the \$26,000 will go toward down-payment assistance, given this year's funding priority to support some of the projects that don't have other sources of funding. She said that will be brought forward to the Governing Body at the appropriate time to amend the plan.

Councilor Maestas asked if it should be amended this evening to add the additional funding.

Ms. Ladd said the smoothest way in terms of HUD's perspective is to follow all the protocols to do the amendment later.

Councilor Dominguez noted 20% is allowed for administration of the CDBG at \$100,000. He asked if it the \$100,000 the 20% or if it is 20% of the \$100,000.

Ms. Ladd said the \$100,000 is the 20% allowed, and it is used to fund a staff position, to pay for training expenses for the staff position, and any advertising required to notify the public of the various plans and reports that go out for public review.

Councilor Dominguez asked if the City has a definition of "decent housing," or if it is based on the federal definition, and are they consistent.

Ms. Ladd said she is unsure how the City Code addresses "decent housing, noting this definitely is HUD lingo, and has been the standard used for all sorts of HUD programs for years and years.

Councilor Dominguez asked Ms. Brennan if we need to have that definition.

Ms. Brennan said, "No Councilor, I don't, but I would assume that the HUD definition would control, based on my experience in housing in Boston."

### **Public Hearing**

**Kathryn** said she was the guardian for Matthew Solano who was a veteran and "he went to heaven December 2012." She said he had schizophrenia and was homeless. She is on Section 8 Housing, she is very grateful to God she is on Section 8 Housing, and on disability and have a place to live. She said the management there is awful and she doesn't know where to go to get help. She said, "I'm in Alcoholics Anonymous and I know that I can either be part of the solution or part of the problem. And I really want to be part of the solution. It's run by Monarch properties, and they don't do diddly-squat. The manager doesn't do diddly-squat, and Matthew, being a veteran with schizophrenia, there was no place in Santa Fe for him to live."

Kathryn continued, "And when God put him in my life, I was so grateful when I was with him for about 7 years and I was able to get him on Section 8 Housing. It was open for one day and I sent away for him to get his birth certificate and I got him into Las Palomas where he was ripped off every almost, for cigarettes and blah blah blah. It was the only place I knew where he could live, because he stayed with everybody else and then he got tasered by the Police. The Police here don't know how to handle people with mental illness. That's another thing I could go on about. So he ended up going to Albuquerque with other people with mental illness from the veterans department. And that's what I'm so passionate about, is having a place in Santa Fe for veterans that have mental illness. There is no place here. And also there's no place here for the homeless with alcoholism. I'm in AA and there needs to be places here for alcoholics to get well. There's one place for a 30 day program. There's no halfway houses here and Santa Fe is so backwards, and I've lived here for 22 years. And the Section 8 Housing, it's somehow that we're left in and we're not."



Kathryn continued, "I was raised in an upper middle class home and we deserve the same as everybody else. Like when this says "decent housing," I don't know what that word means. We deserve the same as everybody else. Somehow we're looked down, looked down, and we deserve the same, and so do veterans with schizophrenia. And I really want to be part of helping people live in a better place. If I didn't make sense, I really need to make sense."

Mayor Gonzales said she made sense and spoke from her heart.

**The Public Hearing was closed**

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

**DISCUSSION:** Councilor Bushee thanked staff, saying she thinks the funds are well apportioned, and welcomed Margaret to the City. She is grateful they continue to pursue rental assistance, which is a significant need in Santa Fe. She is grateful it is back in the loop. She said she would like to talk to Kathryn, the woman who just spoke, about some of what she discussed. She said some of it has to do with the oversight of public housing which is not part of this plan, and that's where we could have a little more influence that we do currently.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

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Mayor Gonzales said, "Before we go to Item 9, as we prepare for the consideration of the Ordinance relating to street performers on public property, I just want to send out a message to buskers, one of two choices. You all can come individually and be part of the time allotment, or you can determine if there is an individual to whom you would like to transfer your time that we can allow more time. It's something to consider while we're discussing the next Ordinance. If you decide it will be a single individual at that point, we'll make a determination of how much time you would need, but one of the two. So I just want to make sure you guys have the opportunity to decide what you would prefer."

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- 9) **CONSIDERATION OF BILL NO. 2014-12: ADOPTION OF ORDINANCE NO. 2014-18 (COUNCILOR TRUJILLO AND COUNCILOR RIVERA). AN ORDINANCE RELATING TO TOURNAMENT FEES AND ADULT LEAGUE FEES AT THE MRC AND CITY SPORTS FIELDS; AMEND THE ADULT LEAGUE FEES AND TO INCLUDE YOUTH LEAGUE REQUIREMENTS TO BE CONSISTENT WITH SUBSECTION 23-7.5 SFCC 1987; AMENDING SECTION 23-7.5 SFCC 1987 TO ESTABLISH TOURNAMENT FEES AND TO AMEND THE ADULT LEAGUE FEES; AND MAKING SUCH OTHER STYLISTIC AND GRAMMATICAL CHANGES THAT ARE NECESSARY. (JENNIFER ROMERO)**

The staff report was presented by Jennifer Romero, noting she will stand for questions.

Councilor Trujillo said we're looking at reducing some of the fees. He said we are trying to create economic development in this community. And we haven't seen good tournaments in a long time like we had back in the 1980's. He said by doing this we want to get some big tournaments into the community and get people coming to Santa Fe for some fun activities. The Santa Fe Softball Association has a new President with a positive vision of what he wants to do. He sees something good coming out of this, and what we're not charging will come back to is even greater – having big tournaments and people coming to Santa Fe and spending money in the community.

Councilor Bushee said the FIR indicates a revenue loss of \$269,000 and \$130,000, and asked if this is accurate.

Ms. Romero said those are the estimated expenses for overtime, salary and operating expenses. She has a breakdown of how they came up with the FIR and she can provide that to her.

Councilor Bushee said that would be great. She asked, "The genesis of this. Was this brought to someone's attention because we charge more than other communities and that's keeping us from having these tournaments, and why would we need additional... I thought it said somewhere, and I read a lot of minutes that we were going to seek an additional position, or is that just all overtime."

Ms. Romero said that is the overtime and salary for our supervisor and maintenance workers to cover the maintenance costs.

Councilor Bushee asked if there was an additional position, or if this is all overtime.

Ms. Romero said, "It is all overtime."

Councilor Bushee asked Councilor Trujillo what brought this to his attention, and how we can we be assured that we will get additional tournaments here.

Councilor Trujillo said, "Staff brought this. You know Councilor, I can't assure you, I can't say that we're going to get 10,000 tournaments or 100,000 tournaments. I think, looking at what's happening with this league and around Santa Fe, we haven't had the opportunity to look at other towns here in New Mexico. Look at Las Cruces, they have The Whole Enchilada Tournament which brings teams from Arizona, Texas, Colorado, New Mexico. It's these kinds of things we don't have here in the City."

Councilor Bushee said, "What I mean, is what prompted you or staff to pursue the streamlining you might say, or reduction of our current fee structure."

Councilor Trujillo asked Ms. Romero to explain.

Ms. Romero said, "This is a subject that was brought to us by the Leagues for the past several years. We looked other municipalities, like Las Cruces, Ruidoso, Roswell and a few other communities to see what fees they charge and found that the fees we charge are more than the other fee structures. This was a way for us to reduce the fee, and to enable us to easily administer the fee structure we have as well as attract more teams, in working with our softball league, soccer league and rugby league that utilize that MRC sports complex."

Councilor Bushee said her only concern is that we seem to, every year, come budget time, lament that we are short staffed in the maintenance world and that needs to be increased as we add new parks and new possibilities, and "I don't like the idea of overtime, as much as I like the idea of having adequate staff." She wants to be line and to make sure we are encouraging, but "I'm really remiss to let go of almost \$300,000."

Ms. Romero said at the last Finance Committee meeting where the proposal was approved, there was a request to have in an amendment in place to look at how we do this year. She said they are tracking all of their expenses as well as salary costs for the Sports Complex as we go into the season League activity. She said in a year she will bring this back to see if it has been beneficial to the City and to meet the needs of the facility.

Councilor Dominguez said, "I can tell you that I stand in support of this. I understand how tight the monies are, and I understand Councilor Bushee's comments and her concerns. I have all the confidence in the world that the, I guess, the League will do what they can to see that there are opportunities to promote that economic development if possible. But one of the questions I do have, when you say leagues, does this apply to soccer as well."

Ms. Romero said yes.

Councilor Dominguez said, "So I think that's something that might help because there are a lot of opportunities, even in bringing some soccer tournaments to Santa Fe, so it's not just on the backs of the softball league, but it's also an opportunity for soccer to promote their sport and economic development in the community. And, quite frankly, if we want to make the changes that some people have talked about at

the MRC we need to give them the opportunity to generate the revenues they think they can make to offset the impacts to the General Fund, so I stand in support of this."

Councilor Lindell asked during a year, how many tournament teams that we have.

Ms. Romero said, typically, within a year, we have had approximately 10 softball tournaments, 1 rugby tournament and 1 soccer tournament. She said, "For example, for rugby and soccer, it's their end of year championship tournament. And throughout the season the league has had.... what we found again and this was the previous seasons, the softball league tournament events have declined. Again, in speaking with them and the other league presidents, the goal is to increase tournament play, increase league play, gathering more teams to participate in the leagues, and then promoting tournaments to them so they can participate in those as well."

Councilor Lindell said we have to bring a lot of teams in to match what we're spending to bring in that kind of income and asked how this will be funded this year.

Ms. Romero said, "Again the expense for the maintenance, specifically at the MRC, had never been able to match the revenue. So again, this is just another way for us to promote the facility and entice the leagues that use it to join us in these efforts. The funding source.... we do receive funding from the Parks Division for maintenance, salaries and operating expenses. And this is an estimate. The FIR that you received in your packet is an estimate of those anticipated costs, should there be an increase in tournaments and an increase in activity."

Councilor Rivera said, "I also am in support of this Resolution. Looking at the FIR, it shows that we paid in, and it says fiscal year 12/13, we paid \$208,250 in personnel and all other operating costs. It that correct."

Ms. Romero said that is correct.

Councilor Rivera asked if it is for fiscal year 12/13, and Ms. Romero said yes.

Councilor Rivera asked if we know the cost for this fiscal year.

Ms. Romero said, "Because we aren't at the end of our fiscal year, I don't have those calculations yet. However, Mr. Mayor, Councilor Rivera, we will put that together for you."

Councilor Rivera said, "Based on just averages, do you think it's close to same, or probably a little bit higher because costs go up from year to year."

Ms. Romero said, "Yes, that is correct. What we see is an increase in our fertilizer, our seed and lots of those things to, again, maintain the facility."

Councilor Rivera said, "The total fiscal impact is not \$269,00, because we pay almost \$208,000, \$210,000 or even \$220,000 this fiscal year, so it would be the difference between the two. Correct."

Ms. Romero said, "That is correct."

Councilor Rivera said, "Then the total impact of this program would be closer to \$40,000, for this coming fiscal year."

Ms. Romero said, "Councilor Rivera, yes sir."

Councilor Rivera asked, "Are we passing this soon enough to take effect this year. Have the Leagues already started to sign up."

Ms. Romero said, "Yes, that is correct. We have met with the leagues that have already started and begun to provide them information on the implementation of this fee structure. I collect the fees for this fiscal year now, until June, before June thirtieth, and we will put those in our City revenue. And again, the fee structure will continue into, for example, the season for soccer that starts in July and other leagues that utilize the facility."

Councilor Rivera said we have an annual review on this Ordinance to see how well it has done, and Ms. Romero said that is correct.

Councilor Dimas said, "I wholeheartedly support this Resolution and I love the idea that we're lowering the fee so we can get more activity going at the MRC. It strikes me that our mens and womens softball leagues have been dwindling over the years, I think because it's been so expensive to join and to be a part of those leagues. I think a lot of the reasoning in this, and I think Councilor Trujillo knows this is true, that it is going to bring about a lot more teams that will come into the League and participate. Is that the feelings of the leagues and the people you have been talking to."

Ms. Romero said, "Yes. In speaking with all the league presidents in the previous meetings we have had, that is our goal and the hope for the facility, and what we're encouraging as well as the information they are putting out for registration and gathering the leagues, and starting the league activity now that it started in April."

Councilor Dimas asked what percentage of teams we have lost over the years. He said, "I remember, years back, that the leagues were functioning well and there were a lot of different teams, and in fact, you couldn't get a team in after a while. Do you know what percentage of teams we have lost over the years. Do you have any idea."

Ms. Romero said, "At this time, I don't have that information, but I can gather our historical data and provide that to you if you like."

Councilor Dimas said, "I think that would be very important to know for the future. And that might be something we want to compare at the end of the year. Also, how many teams we actually increased by lowering these fees. I think that will be very important to know." He reiterated that he is wholeheartedly in favor of this and believes it will bring something to Santa Fe we've need for a long time, and allow a lot more teams to join and participate."

Councilor Maestas said, "Tell us what you think would represent success."

Ms. Romero said her goal "is an increase of 10-15% in the league number of players and 5% in tournaments. This is just my estimate. I believe working with the new League President, this is definitely a possibility. Again, for us, it's a pilot program. If it doesn't work, we'll bring it back to you to make recommendations as you see fit."

Councilor Lindell said when this comes back in a year, she wants very very specific information about the increase in the number of teams and a really clear picture of the revenues on this. She said, "When I look at the revenue sources we have on this right now, it is less than \$21,000, at a cost of over \$200,000. It's carrying 10% of its cost. So, I would very much like to see a detailed analysis of it next year and see if it's carrying more of its cost with a new, lower fee structure. It puts a lot of pressure on the staff to get more teams to play in these tournaments."

Councilor Ives asked the number of adult leagues currently.

Ms. Romero said there are 5 adult leagues, and in addition there are 3 youth leagues, and then we have the high schools that utilize the facility. She said, "Throughout the season, we're at capacity in terms of availability during the week. Weekends is when we have our softball tournaments, and any special events that may come up."

Councilor Ives asked, on average, how many teams there are within each of the adult leagues.

Ms. Romero said, "Off the top of my head, I don't want to give you an answer, but I do have that information from past years, and next week, I will be meeting with our softball leagues, because they are continuing registration at this time for this season, and I can provide that to you as well."

Councilor Ives said he was trying to assess the impact of a 10-15% increase with presumably 10 players a team, at \$25 each, \$250 for each new team play, for 5 leagues each with 10 teams, that would be about \$1,250 coming back in.

Ms. Romero said, "Previously, for example in softball, we've had anywhere from 70-80 teams for adult baseball. It's been 10-12 teams. They play on the weekend. Rugby is one team, and soccer ranges from 10-20 teams."

Councilor Ives said it would be fascinating to hear the actual impacts in terms of the changes we're considering. "Looking back 2-3 years, in terms of numbers of teams, numbers of leagues and what the increases are. And it sounds like, even more importantly, the question about the increase in tournaments and what the impacts are there would be relevant. Presumably with a tournament, if it's a league that's holding the tournament, it's a \$25 permit fee under the new scheme and that's it."

Ms. Romero said, "If I may correct you. For the tournament fee structure, it's \$25 per team, so a flat fee. The way I deal with that is to make the tournament fee easier to administer as opposed to having all these different fees. The bottom line with that, is it comes out to about even to what we have been previously charging, so there's not a large impact there. It's moreso when we'll see it on the \$100 team fee for the League season."

Councilor Trujillo, "I'm going to wait for the public hearing, but I do know the President of the League, Mr. Rodriguez is here, and I know he has been addressing some of the ideas he has. I have had conversations with Ray Sandoval of Kiwanis, and they're looking at a collaboration, I can say this for the softball league, like Las Cruces, and possibly having a Zozobra Classic, a 24-hour tournament. Any of you who have ever played softball, if you've ever been to the Whole Enchilada, you see the impact it has on the community. I remember the time when I was down at State, the tournament used to be held during the Whole Enchilada Fiesta and they had to moved it back to a week before because of how many teams they were getting, and not being able to accommodate all the teams. I see the vision Mr. Rodriguez has and I'm hoping, I can't guarantee, but I'm hoping that we see this kind of impact in this community. People want to come to Santa Fe. And I'm hoping while they're here playing softball they're staying in our hotels, eating in our restaurants and spending money here in Santa Fe. I'll just yield it at that and wait for the numbers."

Councilor Dominguez asked if we have State capital monies for this.

Ms. Romero said, "I believe we received ICIP funding for shade structures for all different areas within the Parks Division. To my knowledge, that's the only money that we have received recently. I'll defer the question to City Manager Snyder.

Mr. Snyder said he is unaware of any recent funding we're received for the MRC in the last two years.

Councilor Dominguez recalls, "We were given State money at one time, and part of the reason we were given the State money was to promote the MRC for these sorts of activities, for much larger kinds of tournaments. And so, again, the intent is to allow the MRC to operate like a true enterprise and make those decision they think, and I'm hearing Jennifer say that she thinks that there may be an increase, to generate the revenues you need to generate, to not only operate, but to offset transfers in from the General Fund."

Councilor Dominguez continued, "One of the questions I had was.... so are you prepared, Jennifer, to really to track the progress, not only in terms of leagues, in terms of participants and the finances in and out, but there is an economic development impact just kind of generally speaking. I'm not sure where this is going to go, but if there is a motion in support of this, I would like to see direction to the City Manager to work with the CVB and other departments or divisions to track the potential revenues as well as to, I think, host the tournaments. Again, I'm not sure where this is going to go, but that is where I would like to see things go."

### **Public Hearing**

**Paul Rodriguez, Acting President, Santa Fe Softball Association**, said they are here to answer any questions you might have regarding the softball league and our vision. We do plan on having more tournaments here, and bring more teams to Santa Fe to spend money in our hotels and restaurants.

**Gilbert Garcia, Commissioner**, said, "We've put a Board together. We've just taken the League over. Paul Rodriguez is the present, Laverne Ulibarri is the Treasurer and then we have 5 commissioners. I'm one of them. Our vision and mission is to bring these teams back into Santa Fe. I'm going to be honest, we were losing a lot of people going to White Rock because their fees were lower. We have said we are going to put this together and start working with the City, and lower some fees to see how it would work. And we would put in our time to help clean the fields, help keep the trash out, just help the City workers so there isn't a lot overtime and expense by us doing this, so we see how it works. If we're asking you to lower the fees, we're going to have to put in our time to help so you don't have that overtime and expense. We're also trying to bring more tournaments in, because that's where the City makes money. We're trying to bring big tournaments, as Councilor Trujillo mentioned. Las Cruces has the Whole Enchilada. I've been going to the Whole Enchilada since I started softball many years ago. And we're the Capitol City of New Mexico, and we should represent the Zozobra Blowout or Zozobra Class and have a 24 hour tournament that brings money into the City. We can tell you already, we've had great feedback. We've increased the teams, not a lot, but probably 20%. So word got out that we've lowered the fees so we've got more teams, so that's nice. The biggest thing is to bring more tournaments and bring money to the City."

### **The Public Hearing was closed**

Councilor Bushee said she is hopeful this brings more teams to play and use our fields, and understands that it's subsidized. "I'm still referring to the overall figure of the subsidy right now. I used to coach soccer and play soccer, but I sat up here and got unathletic. But we had tournaments at the polo grounds for years, and then they built a bunch of complexes in Albuquerque and all the tournaments went there. And I also know that women's softball has tournaments in Chama weekends. Aside from softball wanting to generate more activity, what other leagues are even looking at doing this."



Ms. Romero said, The President of La Liga Soccer League is responsible for adult and youth soccer. They've come to us and they have interest also in promoting more tournaments at soccer valley. We haven't sat with rugby with regard to an increase in tournaments, but that's definitely something we will do. They use the facility quite a bit throughout the season, including Saturdays and Sundays when they have their games. This weekend, they'll be hosting the High School Rugby Tournament at the Sports Complex."

Councilor Bushee said she sees where this is going. She said, "My concern is that once we implement something like this, we never turn back. This is where this is going to stay. I've never seen us do something like that. I just want everybody to be very thoughtful about what this might mean. And my only big concern is that it's emphasizing overtime. And, even though there are offerings of help from volunteers, staff never builds that into their program. Even if it means hiring someone rather than paying the overtime, I think that makes more sense. So, those are my concerns."

Councilor Dominguez said, "I hear what you're saying Councilor Bushee. I think that certainly is a concern, because it's not just something we have to deal with at the MRC, it's really across the Board. But this is an opportunity to ask to staff to pay attention to some of those details so that we can measure some of those things. And that's what I'm hopeful for, is that we're able to measure some of those opportunities and so. And it's not going to be all Jennifer. It's going to be other City staff members that hopefully will help in that endeavor. So I hear what you're saying."

Councilor Rivera said, "Paul said some of those teams are going to White Rock. Have those teams stated that they would be willing to come back if the fees were not the same."

Mr. Rodriguez said, "We have spoken with some of the teams from the northern areas, and there's an agreement we would get them here because our fees have been reduced, and would provide double headers for them, and have a week off and a week on. But yes, they have stated that they do intend to come down and play in our league in the future. This year we have 84 teams over the 64 teams last year, so that's a 20 team jump, and we haven't started yet. So what you're going to approve hopefully, is going to be beneficial for our League and for the City of Santa Fe, but they have expectations of actually coming here again. So, I'm optimistic that we'll break 100 next year."

Councilor Rivera said, "Jennifer, a one year evaluation I know is going to be tough. But you're there, you're going through it, so look at some of those intangibles." He said the money is important, but we've been subsidizing for a long time. He wants to see how many more people are using the field than before, and how many families are coming. He wants to look at things that bring in local people.

Mayor Gonzales said, rather than waiting a year to see if this works, to build on what Councilor Dominguez talked about, we need to sit with the CVB, our economic development group and others and all the people interested in seeing outdoor recreation to go to the next level in terms of tourism. and develop a plan to identify tournaments around special events – Fiestas, Indian Market or whatever makes sense. He said, to the credit of this Council and the Councils before, the MRC is one of best in the State if not

nationally, and we aren't using it to its full potential in bringing people into Santa Fe. However, it means we need a plan to identify tournaments and solicit money from OTAB so we have real dollars in marketing coming to Santa Fe. We could then create the measurements, so next year when this comes back to us, we can identify where there was success and where we need to do more. He doesn't want to set "you guys up for failure, and come back and tell the Council, well we didn't hit the marks we wanted," because you didn't necessarily get the help that you would have."

Mayor Gonzales said, "This doesn't have to go in the Ordinance, but I would say from the Public Works perspective that there should be a plan brought to you and maybe even financed that has a wholistic approach for how we're going to market the MRC with these reduced fees, with the tournaments that we can bring in, set some goals for how many room nights we want to tie to that, how much money we want to have spent in the community. I think to Councilor Rivera's point, enhancing the quality of life means more participation. And being able to track an increase in the number of people from Santa Fe that are playing on those fields, bring their kids, those are all things we can do because we have baseline data today. But with this, use it as a tool to create a plan and then get out there and do the great things that we can do."

**MOTION:** Councilor Trujillo moved, seconded by Councilor Dimas, to adopt Ordinance No. 2014-18, with the amendment in the Council packet, with direction to staff to work with the Leagues and our CVB as to how we can promote these tournaments to the rest of New Mexico, and outlying states as well, and to come up with an actionable plan, with metrics and resources that are going to go into it.

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Explaining his vote:** Councilor Rivera said, "Yes, and sign me up as a cosponsor."

**Explaining her vote:** Councilor Bushee said, "I'm going to give it a shot, but I am concerned about overtime still. So I guess... so a reluctant yes."

**10) CONSIDERATION OF BILL NO. 2014-10: ADOPTION OF ORDINANCE NO. 2014-19 (COUNCILOR CALVERT). AN ORDINANCE RELATING TO STREET PERFORMERS ON PUBLIC PROPERTY; AMENDING SECTION 23-8 SFCC 1987. (ZACHARY SHANDLER) (Postponed at March 26, 2014 City Council Meeting)**

A copy of a letter dated April 28, 2014, from Talia Kosh, Esq., attorney for Santa Fe Buskers Alliance, and the Santa Fe Buskers Alliance, in this matter, is incorporated herewith to these minutes as Exhibit "20."

A copy of the statement for the record, dated April 29, 2014 to Esteemed Councilors, Mayor and City Attorney, from Talia Kosh, Esq., attorney for Santa Fe Buskers Alliance, in this matter, is incorporated herewith to these minutes as Exhibit "21."

A letter dated April 30, 2014, to Zachary Shandler, Assistant City Attorney, from Peter Simonson, Executive Director, American Civil Liberties Union of New Mexico, submitted for the record by Zachary Shandler, is incorporated herewith to these minutes as Exhibit "22."

Mayor Gonzales said Councilor Maestas indicated that I had not extended the same offer to the vendors from the Plaza who would like to approach. He said, "If you would like to have a single spokesperson to be able to speak specifically to the Ordinance, we can grant more time. If not, then again it is the one minute allotment that is granted to each speaker. So consider that before you come up and if you want to combine your speakers we can go ahead and do so."

The staff report was presented by Zachary Shandler. Mr. Shandler said, "The Plaza for hundreds of years has been the center of commerce. People have been unloading saddle bags and carts and buying and selling goods for hundreds of years. And when a previous Council designated the Plaza as a park it found that the Plaza and the Plaza Park are the heart of the City. Standards for its use should encourage variety, equity, usage and regulations in respect for the important role the Plaza and the Plaza Park play in the live of Santa Fe. One could also say these standards should encourage the celebration of the historic and esthetics incident to the oldest Capitol in the United States."

Mr. Shandler continued, "Citizens, however, are complaining it's too loud in the Plaza. It's loud and I can't hear the person I'm talking right next to. Too loud, I can't hear what my customer is ordering. So let me provide a hopefully humorous analogy. What if Councilor Maestas and I are engaged in commerce, and what if Councilor Dimas, who I understand sings in a rock and roll band, starts singing next to us loudly, *Rock Around the Clock*. What if Councilor Dimas sings that song for two straight hours. Where do Councilor Dimas's First Amendment Rights intersect with others abilities to peaceably conduct commerce. And how do you, as policymakers write or rewrite an Ordinance to deal with this intersection. And to build the record and frame the issue, I'm going to speak about five minutes about the legal and constitutional issues."

Mr. Shandler continued, "The U.S. Supreme Court has stated, 'Our cases make clear that even in a public forum, the government may impose reasonable restrictions on the time, place or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, they are narrowly tailored to serve a significant government interest, and that they leave open ample, alternative channels for communication of information.' So, let's go through that analysis. Number one. Content neutral. The content based restriction on performance is valid only if it fits within the category of speech that the First Amendment does not protect, like obscenity. You can do something about that. But it means you cannot amend the Busker Ordinance to pick and choose between preferred content, such as Councilor Dimas's band, or my band, which might be an attorney rap group."

Mr. Shandler continued, "Number two. Narrowly tailored to serve a significant government interest. Government has a substantial interest in protecting its citizens from unwelcome noise. This interest is perhaps at its greatest when the government seeks to protect the well being, tranquility and the privacy of the home, but it is by no means limited to that context. For the government may act to protect even such traditional public forums as city streets and parks from excessive noise. That's from the *Ward v. Rock against Racism* case. So the requirements of narrowly tailoring, so long as the means chosen are not substantially broader than necessary to achieve the government's interest. This means that you can amend the Busker Ordinance regarding the time of performance, the place of performance and the manner of performance if you enter a finding tonight that the change serves a significant interest, and if a change is narrowly tailored or specifically focused on the issue."

Mr. Shandler continued, "And number three, the alternative channels of communication. In *Madison, Wisconsin* the Court ruled that a daily, fixed amplification time period was permissible, because speakers wishing to use amplification devices could speak between twelve and one thirty or five to seven. And so, under the *Stokes v. City of Madison* case, there were alternative channels for communication and that was permissible. I anticipate during the public hearing that's coming up, some parties will ask you to table everything tonight. This will leave the *status quo*, so what are the current laws. A street performer, currently cannot perform within 150 feet of another street performer. A street performer cannot be louder than 60 decibels as measured for a period of ten minutes, at least one foot inside the property line of the affected property. A person using amplification devices cannot be heard from more than 25 feet. A street performer must move every two hours and the City's Busker License controls or supersedes other entity's busker license"

Mr. Shandler continued, "So again, that's the *status quo* today if this bill is tabled or failed, those laws remain on the books. But what if you, tonight want to try to write a change. My legal advice to you is the City Council may amend the Busker Ordinance regarding time, place and manner, while honoring the street performer's First Amendment rights. So where should you start in your language. First, there's Councilor Calvert's bill. There's also the facilitator's report which is in your packet, which summarized the 3 hour public community meeting and was set up to take the dispute over process off the table. And there was your previous public hearing on this issue. There has been approximately 30 ideas offered to address how time, place and manner requirements can be applied. My advice to you is to focus on 4-6 ideas tonight based on Councilor Calvert's bill and from the ideas presented during the public meetings. That

might be the most effective and narrowly tailored to deal with the issues. And in fact, that's what tonight's substitute bill does. It has 4-6 ideas, and it has a clause requiring staff to report back to you on all other issues before October 30, 2014. So let me introduce the 4-6 ideas in the Substitute Bill."

Mr. Shandler continued, "First, the bill starts by amending Section 23-8.4. In legislative speak, that means the current sections up to Section 8.4 are left untouched. Those sections as written now, remain as is. I know Councilor Calvert wanted to change some wording in the [inaudible] section, but those ideas will have to wait until the October 30<sup>th</sup> report. So the first idea tries to make it more clear what a licensed performer is doing. The government has a significant interest in protecting the safety and the public, and providing due care for the safety of the public. So, for example, a previous council has stated that no person can operate a unicycle or have fire in the Plaza Park. A new requirement on the Busker License with a single line, stating the type of performance, is narrowly tailored to ensure that the busker and the Finance Department do not approve a license for an already prohibited activity. And the categories can be broad, music, dance, juggling. It has been represented to me that recently a busker was on a unicycle on the Plaza. If there had been this one line requirement, that would have been caught in the front end."

Mr. Shandler continued, "The second idea, eliminates the \$10 thirty-day license. That means there will be one uniform fee of \$35 per calendar year. This idea appeared to have unanimous support from the stakeholders at the public meeting, so it might be one of the few items that everyone is agreed upon. We'll find out tonight. The third idea is to require buskers to have their license displayed and a City produced photo ID. Right now, the requirement is to have the license and identification available. The government has a substantial interest in making sure licenses are not fraudulently used and shared among non-licensees. There have been stories of buskers sharing or passing a license between performers. However, it is possible that some of the speakers tonight will argue about the legal concerns of photo ID requirements. They may raise the arguments that allegations, absent specific proof of fraud, does not represent the significant government interest in requiring one group on the Plaza as opposed to others to have photo ID is not a narrowly tailored tool. Perhaps you will feel that the current requirements that the buskers have available, their own photo ID suffices to meet the government interest."

Mr. Shandler continued, "The fourth idea jumps to Section 23-8.5, which creates a 50 foot zone around Plaza Park artisans and art vendors, and pushcart vendors from the street performers. Going back to our example, this would require Councilor Dimas to perform his excellent singing 50 feet away from Councilor Maestas. And, as the Plaza is laid out, about every 25 feet there is a bench. This would mean that Councilor Dimas could sit on the second bench away from Councilor Maestas."

Mr. Shandler continued, "The government has significant interest in providing a peaceful opportunity for commerce to occur on the Historic Plaza. As the previous Council found, the standards for Plaza use should encourage equity in usage and regulations. There also is a significant government interest since the City license juries and the City Manager than instructs these vendors exactly where they

can work on the Plaza. Since these vendors are in fixed locations, it would be easy to draw a map of where the 50 feet falls and include it in the busker application packet. However, again it is possible that speakers tonight will argue that two benches away limits the other places where they can perform on the Plaza. Perhaps they will argue too, that 25 feet or one bench away is a more narrowly tailored solution."

Mr. Shandler continued, "The fourth idea came from the Plaza vendors, so I'll be interested to hear if they feel the 25 or 50 foot solution are equally preferable. It is also possible that the downtown merchants will similarly advocate for some type of zone. Now they do have a difference in that they can step into their store. They may raise the issue about buskers blocking their display windows as a problem. My advice to you is the issue of blocking displaying windows and where street performers can stand on streets is challenging. Where is the boundary between private and public streets. What if one merchant likes a musician and his immediate neighbor does not. What if by limiting people on streets they are all forced to the Plaza Park. It is my advice to you that these issues need more study. This idea also incorporates a requirement that street performers themselves should stay 50 feet apart from each other. The government has a significant interest in providing a peaceful opportunity for street performers to perform on the Historic Plaza, and for the combined sound of all the performers not to be disruptive to the community. As stated above, standards for the Plaza use should encourage variety, equity and usage in regulations."

Mr. Shandler continued, "The current *status quo* is 150 feet, and as documented in the facilitator's report, this means that only 1 or 2 buskers should be on the Plaza right now. It is possible that speakers tonight will argue that 2 benches away between street performers, limits the places where they can perform. Perhaps they feel 25 feet is a more narrowly tailored solution. I'll be interested to hear from the representative of the Busker's Alliance, because this is an issue about how close they want to be with each other. Perhaps they are ready to offer other solutions that they think are narrowly tailored. Perhaps they think that a distance requirement is not prudent, but a cap of 3 musicians and 2 non-musicians on the Plaza and portals at one time, and let the performers and the dancers and balloon makers figure out, on a day to day basis where they should stand in relation to each other. I'll be interested to hear what their solutions are."

Mr. Shandler continued, "The fifth idea states that street performers shall not be plainly audible 50 feet away from the performance site. Please know that 'where plainly audible,' is language from the current noise ordinance and it is used in current City Code regarding noise ordinance about radio and music between neighbors. 'Plainly audible' is already in Code. The government has significant interest in providing a peaceful opportunity for commerce to occur on the Historic Plaza. The 50 foot measurement is narrowly tailored as is consistent with the 50 foot requirement as mentioned above. However, again, it is possible that speakers will argue tonight that the 50 foot, or the two benches away is too close. Perhaps you will feel a different distance is more of a narrowly tailored solution. Perhaps the speakers will argue that 'plainly audible' is maybe too subjective to the listener, and may advocate for a numeric figure like 60 decibels. If so, those speakers should be prepared to explain where the measurement should be taken, perhaps 20 feet, 25 feet away and how long to make it an effective tool."

Mr. Shandler continued, "The fifth idea also includes a fixed time each day when amplification can be used. The government has a significant interest in providing a peaceful opportunity for commerce to occur on the Historic Plaza. Amplification also impacts the merchants around the Plaza. With amplification, they can't hear their customers within their stores. They can't conduct meetings with their clients. But the fixed time is narrowly tailored, because it still allows amplification on a daily, fixed basis, during a portion of the lunch hour and afternoon where there is likely larger crowds of people, and it is during the standard two-hour period that is currently in the Code. It is also similar to the narrowly tailored solution that survived legal challenge in Madison, Wisconsin."

Mr. Shandler continued, "The sixth idea is that buskers will have to stay off the band stand and really move when their two hours is complete. If on the Plaza, they have to move off the Plaza. If somewhere else, they have to move 100 feet. The government has a significant interest in providing an opportunity for a multiple of buskers to perform and a peaceable opportunity for commerce to occur on the Plaza. This is narrowly tailored, because moving needs some level of quantification. For example, Councilor Dimas can't just jump into Councilor Bushee's seat right now and claim that he has moved and play for another two hours next to Councilor Maestas. There needs to be some numeric quantification to make it effective."

Mr. Shandler continued, "The final idea in Section 8.7 was meant as a cleanup measure. My overall advice to you is not to touch Section 8.7, the Enforcement Section, for two reasons, tonight. First there has been much debate about the so-called criminalization or recriminalization and if you leave Section 8.7 alone, you can say, we're not changing anything about that tonight, and let's study during the next 6 months in advance of the October presentation. The Police, Finance Department staff and the City Attorney's Office are ready to start a pilot project to track data. How many people actual get warnings. Is it the same 3 people every day. How many people get criminal citations. How are those handled and adjudicated. In comparison, how many people get citations for skateboarding on the Plaza. Do they pay fines. This will provide a 6 month window of the learning experience, an assessment of how the parties act in their involvement and really the success of the community at policing and the People at the Plaza Initiative. At the end of the 6 months, we can have hard data, we can sit with the stakeholders and figure out what the best practices are for enforcement."

Mr. Shandler continued, "But of course, in conclusion, I couldn't help myself, and I suggested to the cosponsors to delete a portion regarding written warnings in Section 8.7(a)(1) and (2), because the Police on the Plaza do not have a written warning system. How the ACLU has contact the City Attorney's Office and interpreted this housekeeping deletion, as a change to delete an officer's opportunity to provide a warning. That was not my intent. So my advice to you is to restore the change to Section 8.7, and let's handle all the enforcement issues after the pilot project is complete and can be reported to you at the October thirtieth date. Now while we were preparing for this, the Police had a good compromise suggestion. Again, the issue is there's no written warning. Again the issue is that for skateboarders there is just a warning. So my advice to you in Section 8.7 is to restore all of the deletions except for the word 'written.' That means it would read, 'Upon first violation of the provisions of this Section, the Police may issue a warning to the person violating the Section. I believe this would address the ACLU's concern

about progressive discipline and enforcement. And just by striking the word 'written,' would resolve the Police's concern and also make it consistent with the existing ordinance about skateboarders."

Mr. Shandler continued, "And, in overall conclusion, my advice to you is the City Council may amend the Busker Ordinance regarding time, place and manner, while honoring the street performers First Amendment Speech Rights, and I stand for any questions."

Mayor Gonzales said he appreciates Councilors Maestas, Lindell and Trujillo spending time on this on behalf of the Council. "Our goal last month was to drive to a decision tonight, and to put in the time and effort to make sure that there was ample public participation. I believe we hired a facilitator to participate in that. Briefly, before we go on, one of you 3 can offer the Council a perspective on the process if the mandates that the Council directed during the past 30 days was met and if you feel like we are prepared to go ahead and consider the Ordinance tonight."

Councilor Maestas said he won't restate what Mr. Shandler said. He said we are here on April 30<sup>th</sup>, and you asked us to make this time specific and to ensure we took the steps necessary to ensure that the process was correct. He said the three Councilors sat in the middle of the floor for 3 hours and listened to all sides of the issue. It was a facilitated meeting. He said, "I think these amendments represent compromise." We completely backed off adding additional provisions in the criminal section to make the penalties more harsh. We believe the changes will be measured and we will evaluate this on October 30, 2014. We feel this is the best approach, and considers the bill to be consensus among the buskers, vendors and law enforcement, because the existing ordinance was difficult to enforce and these changes will aid in the improving the enforceability of the Ordinance. We addressed the process, the changes are measured, represent compromise, we enhanced enforcement. We have to bear in mind that the Plaza is for a lot of folks and not just the vendors and buskers – tourists, residents of Santa Fe, merchants and their customers. As decision makers we need to consider everyone that comes to the Plaza, and asks that you consider our broad constituency in addition to the constituency here tonight. He said Councilor Calvert did a lot of work, and this preserves a lot of that work, addresses the immediate concerns, and we have consensus among the primary stakeholders on this issue.

### **Public Hearing**

**Ben Baur** said he would ask a compromise from what you propose. Ms. Talia Kosh can address some legal issues, but the buskers are more in the position of responding to the City, as opposed to as on a par with the vendors and other groups, because this affects their time on the Plaza. We would ask if Ms. Kosh can address you for 10-12 minutes, noting many buskers have agreed not to address the issues, but there are other vendors that would like to speak and haven't been part of the process.

Mayor Gonzales said he will give Ms. Kosh 7 minutes to speak to the issue. He asked those who want to speak to line up and prepare their comments for the one minute they will be allotted.



**Talia Kosh, Esq.**, said she represents the Santa Fe Buskers Alliance tonight, and they called her and asked her to be a part of these conversations. She said she comes as an advocate on this issue, she also comes as a friend of the Council. She expressed sincere gratitude and thanks for all of your patience and time you put into this. She grew up in Santa Fe and practices law here, and is the founder and co-president of New Mexico Lawyers for the Arts which is a *pro bono* organization, as well as being an educator. She has dedicated her life in very large part to helping artists navigate the laws that control their work. Her interest is in bridging worlds and finding where things connect and meet, because the collaborative and connective economy is upon us. She said sometimes laying out the big picture and comparative models is the most effective way to lend perspective. And that is the intent of the documents they submitted to you.

Ms. Kosh said, "I appreciate Mr. Shandler's very thorough presentation. It was very useful. I would just like to reiterate a few of the definitions and purpose of the section at issue. The purpose that still exists and hasn't been changed is to ensure the ability of street performers to perform in public spaces and to promote harmony among street performers, local businesses, residents and visitors to Santa Fe. Many of the proposed changes on the table right now, in our opinion, do not do that. As Councilor Maestas asserted, this proposed legislation was a compromise among all parties. I will state very frankly, we had a recent meeting last week with Mr. Shandler and the Buskers Alliance. And we came out of that meeting feeling very positive, and he listened, he was patient, and we felt very positively during that meeting. But then the proposed legislative that came out of that was very surprising to us on several points. There are new issues, new legislation here that has never been discussed. I wasn't at the 3 hour mediation and community meeting, but even if I was, these issues wouldn't have been discussed there. So I feel compelled to talk about those as briefly as possible here."

Ms. Kosh continued, "I would like to reiterate, in the definitions section, Street Performer includes reciting or singing, acting, dancing, miming, playing a musical instrument, perform a theatrical or literary work. Street performer means an individual who performs. So a performer is really another word for an artist, so that's how I'm going to refer to them here, as street artists. We speak a lot about creative economy here which is built on artists that are not only defined to a gallery or concert hall, many live and breathe that get these performances on the street."

Ms. Kosh said, "It's a very slippery slope when you start to define what art shall be regulated and what art shall not be regulated. Under this definition, your use of these sorts of archaic delineations are concerning. And increasingly younger artists are operating and working in multiple mediums, not only in visual arts, but in performance art incorporating music, multi-media experiences, technology. The breaking down of these barriers of creative mediums means that street artists restrictions, as written affect every artist. So when you regulate artistic speech, by requiring these artists to be licensed for a particular type of speech, as the new proposed legislation does, this legislation demands that certain artists specify or write down what type of performance they are getting a license for. This is a content restriction. As Mr. Shandler discussed, the strictest of scrutiny applies when this is an issue. These are our concerns. What if the street artist lists are getting a license for music, but they actually have performance or visual elements in their work. What if the work they do is difficult to define. Does that mean public safety is going to make a

determination about what's on their license about whether or not their performance falls into what is specified on the license. I understand the purpose of why this is in here, but it's not specified in the legislation, and so we can only look at in terms of the effect."

Ms. Kosh continued, "When you limit the licensing scheme to categories in a world where these categories are falling apart, there is going to be confusion. There is no time to go into every single objection, an issue we have laid out in our documents to you. So, over all, I respectfully ask that we have more time to be able to discuss these matters in some private meetings with you, with some of the sponsors of the bill. Because I do feel that there is, somewhere along the way, a breakdown of communication."

Ms. Kosh continued, "So currently, the proposed legislation, the issues we object to, is, number one, the 50 foot requirement between buskers and any vendor. So, the ACLU wrote a letter to you today, and in the letter they said, 'Between the fifty-foot buffers, and new limits on performing in the Plaza, the amended ordinance may create such a web of intersection restrictions that it all but eliminates possibilities for street performers to occupy the Plaza and long stretches of nearby public property...' So we have to look at the effects of these things. This legislation, in effect creates a ban on street performances, in the Plaza and downtown."

Ms. Kosh continued, "The Santa Fe Busker Alliance has taken to measuring the Plaza and found that the 50 foot requirement denies all but the center of the Plaza to busking activities, street performing activities, even those that don't have any sound. The effect of this rule is to allow only one busker on the Plaza at any given time, including those that lack sound. Additionally, the provision would be invalid because it floats. So what is not considered in this provision is many performances, such as acting, pantomime, our ladies of mariachi who are here tonight. These performances float, they move. And because the area of performance may be in constant flux, the 50 foot buffer zone is vague and unpredictable and risks burdening more speech than intended. So it's that narrowly tailored question that comes into effect here,"

Ms. Kosh continued, "The other element of this that we take issue with, is the 'not plainly audible beyond 50 feet.' Perhaps it's the most concerning element. I know this is a difficult issue. It's difficult, no matter how you cut it. It was initially proposed at 100 feet and reduced by half. However, we have fundamental issues with this objectively, plainly audible standard. This term is not defined anywhere. Even if it were, it has the practical effect of silencing speech throughout virtually the entire community. Plainly audible from 50 feet could be a simple conversation if the wind blows in the right direction. If you had said on this point, street performers will have difficulty ascertaining whether or not their speech violates the law and subjects them to penalties. It is confusing what this means to everyone. Further, it gives public officials and the public discretion over such decisions. This type of discretion has been prohibited by our Supreme Court in *Shuttlesworth*."

Ms. Kosh continued, "One more problem with this, the identification issue, again, there's a less restrictive means, which means making the identification available. The amplification issue is a new issue. Amplified is not synonymous with made louder. This would all but limit certain types of speech, including electronic music which requires amplification and synthesizers, so it actually is a content restriction speech. So overall, this vision of the Plaza that is painted through this proposed Ordinance is one of severely restricted speech. The effect is a dangerous and unconstitutional restriction on speech. And I believe that if this is tabled, and we have a little bit more time, along with the other interested parties, to have a sit-down with the sponsors of this bill, we can solve these issues together. And we respectfully request this."

**Ricky Rodriguez** said he is a break dancer who has been dancing on the Plaza for 17 years. He said he comes with a group of kids. He said it seems we are "put into a bind to have confrontation with everybody else, including the police, because this rule, mathematically, does not make sense. If you did 2 hours a day, 12 hours a day of daylight, you would only get 6 people there a day. So you get 6 people hanging out there all day long. I'm thinking shorter time. If you can't make your money in half hour or perform and let everybody love what you are doing – if half an hour is not enough, even his mom doesn't want to see him break dance for 2 hours. He said half hour would be logical – to share. A simple kindergarten math problem. There's not enough time in the day for 2 hours. "And I know you guys already have 150 people or so to pay for it, that's \$35 a pop. That's a lot of money invested in the City."

**Curtis Hutchinson** said he is a busker, a composer, an entrepreneur and a businessman. He played piano at the Eldorado Hotel for 17 years, and has played notable venues around the world, and has worked with many of the best known musical artists alive, and many who have passed. He said with regard to not being able to share licenses, he has some artists to join him. He said Jerry Fried brings his saxophone and comes and plays with him. He has to use a keyboard and amplification. He moved to Santa Fe in 1980 from Vail, Colorado, where he founded the West Media Group and did global marketing for Vail Mount and the Vail Resorts Association. He has experience in what brings tourists to a place. He said these restrictions on busking aren't a very good idea as far as our visitors are concerned.

**Philip Gutierrez** said he is a flautist and a traveling busker, coming to Santa Fe a year ago for one week, where he and his girlfriend made their first \$100. He said a year later they are a lot better and making more money, and "we like it the way it is." He said a one month permit is nice, and to renew it annually is good and he wouldn't like to see that go away.

**Joanna Valdez-Reyes, leader and member of Mariachi Bona Ventura**, said they play on the Plaza every year. They buy a buskers permit in the Spring every year, and it comes with a paper with regulations and restrictions, and they read it thoroughly and have always followed it and so far it's worked out okay. She they try to work and get along with the other buskers. She said with regard to the 50 feet, "as far as my group is concerned, without this microphone, I could sing the whole room out right now."

That's just one person and there are 7-8 at times. She said all of the girls can't always be there all the time, because of emergencies and illnesses and such.

**Angel Kinkowski, Director, Make a Difference in New Mexico**, said she also is a busker, playing a guitar and singing Christian music. She said, "This amendment is another step toward turning Santa Fe into just another "sterile, money centered old town. What makes Santa Fe unique and brings people here is its unique inclusive culture. This amendment will strike that out." She said she is going to address the "elephant in the room," the homeless. She said she has experienced homelessness. She said this is an opportunity that is unique in Santa Fe that you can't find any place. Busking isn't an elite occupation, and "you can't expect to have Carlos Santana playing in the middle of the Plaza. The Plaza is meant for musicians just starting out, traveling musicians and people learning their craft." She asked about the bandstand, saying you can hear them a block away, but this amendment doesn't seek to ban the bandstand from performances. She would ask that you reconsider the amendments and what Santa Fe really is. Is it a commerce center or is it a center of cultural inclusivity.

**Ben Baur** said he is a lawyer by day. He likes the proposed change to provide for a warning and if the Police do this, it is acceptable. They appreciate the conversations about this issue and the give and take that has happened. He said as a criminal defense lawyer, he has tried to keep an eye on where things are going to break down and someone is in court. He sees this with the type of performance, and asked how you are going to give a license for a particular type of performance, how do you define that. He thinks it's unnecessary, and thinks a unicycle could be covered under something else, and suggested that provision be stricken this evening which would be good for the bill. He said you are going to have to create a new kind of photo-license for this. It is unnecessary and something you could delete from the bill. He would ask that the Police avoid making any arrests under the Ordinance.

**Unidentified** said he is here to give thanks to the sponsors, Councilors Lindell, Maestas and Trujillo who were great at the public meeting, commenting he had never seen such dedication. He said it has been a quick one month and a lot of work, but the Buskers have formed relationships with the vendors and some of the Plaza merchants. He said Craig Allen, Ortega's has been really good to work with, and there is more to come in the future. He said Andrea Caldera has the fajita cart on the Plaza, and it has been great talking with her, and they have come to some understandings. He said if we had more time, the group is forming, and relationships are going, and they want to continue that, and want a bill that could be a model for the entire USA. He is hoping you will postpone the bill, because we can exist under the current bill for a short time.

**Stephen Kinkowski, Make a Difference New Mexico**, said he walks down the street every day as he's coming from work, noting he is working at the old St. Vincent Hospital, usually after the buskers are gone. He said it seems desolate and peaceable, but dead. When he walks through on the weekends, there is a joyful noise and hundreds of people walking through the square and it seems like Santa Fe is alive. He said, "I don't know. You make the decision."

**Ellen Vasquez** said she lives next door and she has talked to a lot of her neighbors, and "as I may be so bold as to represent the community of people. Everyone wants the buskers that I asked, and I've asked people from all different walks of life and status. And we love our City different. Let's keep it that way.

Mayor Gonzales asked if the vendors want to speak individually, or if they are going to ask for time. They said they will be speaking individually. He gave each person one minute to speak to the issue.

**Ben Chavez** said he is a Plaza vendor. He thanked Zach Shandler, the City Attorney for all of the work he has done on this. He thinks the proposed Ordinance is great, a great start. There are still some issues that probably will have to be addressed later on, but for right now, he encouraged the Council to go ahead and pass the Ordinance. He thinks it addresses a lot of the issues about which vendors are concerned. He appreciates the Police presence on the Plaza. He said there is a great feeling on the Plaza as to how things are going, and "we're really ecstatic about it. It's a great place to work again, and I just encourage you guys to pass it. We love it, and it's a great beginning."

**Leigh Murphey** thanked the staff and the Governing Body for changes you have made to the Ordinance. She thanked them for hearing their concerns and for considering them. She said, "It is good, very good to be an American. I have truly appreciated this process. Thank you Zach, very much. I don't think any of us can say thank you enough. We truly respect the time that you've put into this. And I've learned a lot by listening to the things you have brought forward. Thank you." She said all of this work would be for nothing unless the Police have a better ability to be able to enforce the Ordinance. She said it is still a mystery to her that, apart from the Buskers, everyone else must have a permit specifically for the Plaza, and pay a Plaza user fee. She said the Buskers are the only people who do not have to adhere to these rules and standards with regard to the Plaza, which remains a mystery to her. She said this is 300 people who have had access to the Plaza to generate tips and an income, and only twenty-some of them have participated in this process. She has not heard one of them come up here and honestly say that perhaps that is not right. This is a mystery to her. She said, "Having said that, we are very appreciative of the Ordinance and hopeful that it will make a difference."

**Michael Murphy** said he wants to say, maybe we should just get rid of all the vendors and just have buskers on the Plaza and see how that goes for a while. He said it isn't a great idea, but we can try that. He said we have a new Council that wants to bring new arguments, some are legitimate, and lot of them are not, because if this Council had been a lot of our meetings a lot of that has been discussed. So it's very frustrating when you have people come at the middle of the end and now are trying to drag it out more and more. We have spent a lot of time of this, and "I would like for you guys to honor that if you would please." We want to make sure there is enforcement. If Police are just giving warnings, people have been tearing up warnings in their face and throwing them on the ground. Is that what we are going to continue to do. There is a problem. These buskers, most of them aren't the problem. The problem is with the buskers who are not here, and this is the point that we've made. And so when you have people who don't want to adhere to the busker rules, and the police can't do anything about it, it frustrates buskers, vendors, shop owners, so that's why something needs to be done. The reason, for example to specify a type of license, is because we have a busker with a license for silent poetry. He's selling weeds, drugs. Is that what buskers should be doing on the Plaza. These buskers would say he's not a busker, and they're right. And something needs to be done about those things.

**Valerie Fairchild, Santa Fe Downtown Merchants Association**, said she would like to recommend that you pass this, because it is a step in the right direction and you're going to review it in 6 months anyway. All sides have brought up good points, but she thinks if we get this going, it's like Obamacare, one step at a time. She thanked the Police for being on the Plaza. She supports the Ordinance, and sees points from different sides, reiterating it is a good step in the right direction. She thanked everyone for all of their hard work.

**Andrea Caldera** thanked everybody – Mr. Crump, Mr. Shandler, the buskers that have come to all of the meetings and given input, and George who has done so much. She thanked everybody who has been involved in the whole thing, and to bring a sense of community, and not to separate people and bring animosity. She is hoping this will bring togetherness, fellowship and community. She said, "Please keep the Police Department on the Plaza, because without them, it's terrible. So please support the Police Department on the Plaza. Keep them there. I'll be here again if they leave."

#### **The Public Hearing was closed**

**MOTION:** Councilor Maestas moved, seconded by Councilor Bushee, to adopt Ordinance No. 2014-19, "with the following amendment, restore the language stricken in Section 23-8.7(a) parts (1) and (2), with the exception of the word written."

**DISCUSSION:** Mayor Gonzales said there is specificity in the Ordinance, and asked how we regulate that without stifling the great music or the great performance that might be happening on the Plaza. He said, "What I worry about, is if there is this buffer that exists, we're going to have people that literally one, two, three and then calling Code Enforcement saying you've got to get down here. How do we keep it from becoming an enforcement nightmare and still be able to support and promote great buskers that are spending time on the Plaza.

Mr. Shandler said, "I think you can argue that it is problematic as is, and to create a 150 foot buffer between 3 performers, if properly enforced today, there would be a very limited number of street performers. The goal that the City Attorney's Office and the Finance Department and the Police Department are, we're going to have some educational sessions. And we're going to work on education and training, and re-training. And then, in 6 months we can come back to you with an assessment of how the parties have worked this out, and maybe there will be a need for modification. And that's why we look forward to coming back to you with some specific data."

Mayor Gonzales said, "But in the meantime, we're about to go to the highest season for street performers, and about to go to a more strict, highly regulated Ordinance. And I understand the point. And what I'm a little bit worried about, was it the few bad apples that drove this. Or do we know, based on other Ordinances around the country where the street performers were moving toward a best practice-type model that really assures that there is proper regulation, good quality, opportunity to express oneself. I guess my question, more specifically is did this Ordinance come about to get rid of a view of the bad seeds, or did it come about to be able to enhance the experience for not just the buskers, but for visitors, merchants and others."

Mr. Shandler said, "The genesis of the project came about from complaints that it is too loud. That, as much as Councilor Dimas is an excellent singer, business cannot be conducted and how can we figure out how to resolve that issue. We looked at Ordinances throughout the country and that's where we came up with over 30 very good ideas. But the advice I'm giving the Council tonight, these are maybe the most effective tools based on case law and practices in other cities."

Mayor Gonzales said, "Well, I want to thank the Council, certainly for their leadership in this area and driving consensus. I do, though, want to pay close attention. I remember as a kid, sitting with my grandfather listening to, at the time I didn't know they were buskers, but there were street performers out there. And I just don't want for it to become so regulated that it is difficult for people to go out and practice their craft or enhance the experience for people who are walking through the Plaza. I think we have to err on the side of being flexible, and not so much on the side of being super strict. And I think that's going to be the difference in how we deal with this and try and regulate it effectively."

Councilor Rivera thanked everyone for being here tonight, commenting it is great to hear from everybody. He especially thanks the Councilors who took the time to meet with everybody. He said this looks like pretty good work, and a good starting point, and thanked everybody for taking their time to get this done.

Councilor Rivera asked Mr. Shandler, "On page 2 of the Ordinance, on line 23, it says, 'F. Street performers shall stay at least fifty feet away,' and you scratched out 150 feet, so it's making the Plaza area more inviting to buskers. That's the way I read it. It's giving more opportunity to get more in there. Is that true, is that correct."

Mr. Shandler said, "That's right. The zone between 3 performers is being shrunk which in theory would allow a greater number of performers than is the *status quo* Ordinance."

Councilor Rivera said, "I wasn't quite sure from hearing some of the comments. I felt like they thought we were trying to push them out, when really it is encouraging more to be on there."

Councilor Rivera said, "The second thing was on what you had recommended with regards to 23-8.7, really number 2, 'On a second and subsequent violation by the same person, the police shall issue a citation.' So they would give, basically a verbal warning first and then jump to a citation."

Mr. Shandler said, "Yes. That would be the progressive discipline. This is an area we would like to study and come back to, about what would be the effective technique, should it be decriminalized, should it just be a licensure penalty. But what you've stated is correct."

Councilor Rivera said, "If I could hear from one of our Police Officers there. Is this going to make it easier for you to enforce, or is it going to be *status quo*."

Sergeant McCoy said, "The changes would help us. We worked with the City Attorney's office as well. The problem that we are running into currently, the Ordinance we currently have is not enforceable by use, other than to give numerous verbal warnings. The reason being, it states that we shall issue a written warning on the first violation. We don't have written warnings. We cannot issue a written warning, other than a traffic citation. We would basically have to redesign our non-traffic citations with added cost to the City to add that feature. We have used that same book for a long period of time. So we feel that just changing the first part would make it very user friendly, more [inaudible] for the current officers, not only the bicycle team, but our patrol officers as well, to also understand more of what the enforcement is. Instead of leaving it to suggestion, as to how it was written and there is a lot of confusion. So I think that change would definitely help us out, and allow us to give verbal warnings. We don't want to go straight to a written citation. We want to make it educational. We want to keep it more community policing, instead of just bringing the hammer down. That's not what we're here to do."

Councilor Rivera said, "And if you did have to issue a citation, you talked about your book. Is there adequate check-box areas in the citation book to issue a citation for something under this Ordinance."

Sergeant McCoy said, "Yes, there is." He said if he issues a non-traffic citation, he would follow it with a narrative/report he would prepare about the reason he issued the citation.



Councilor Rivera thanked him for being here tonight, and for his work on the Plaza, commenting it is much appreciated by all, and said, "Keep up the good work."

Councilor Dominguez said on Page 2 of the Memo it says, " less than 50 feet from other street performers, and then there is a comma, and that's it."

Mr. Shandler provided the correct copy for Councilor Dominguez.

Mayor Gonzales asked, "For the record, could you verify the Councilor's question."

Mr. Shandler said, "For the record, Mr. Mayor, the bill as proposed is 50 feet from street performer to street performer, and street performers to Plaza Park Artisan vendors and Plaza push cart vendors."

Councilor Bushee said, "I read the minutes from the facilitated meeting. I'm still not quite sure I understand the need to identify exactly the type of performance and also for the photo identification."

Mr. Shandler said, "The reason for the one line addition to the current Busker's License would assist the Finance Department, on the front end, if someone is going to perform on a unicycle or with fire, which currently are prohibited in other Ordinances that the Finance Department and the busker would understand that performance is prohibited, so the busker wouldn't go to the Plaza and run into an enforcement issue."

Councilor Bushee said, "I'm trying to track all of what we're doing with the Plaza these days, and it's ironic that we're kind of clamping down on street performers, when we're really trying to open the Plaza, at least that's an effort that has been put out there. So I want them to track. If the streets are now going to be the expanded Plaza, or some streets, I would really like to have this track. If there is someone who can be on a unicycle and play an instrument, then all the power to them, from my perspective, that's if we have that expanded Plaza. I want our Police Officers to be really clear about what the Ordinance is and everybody to feel like this a reasonable effort. But the whole idea about the photo ID, again, some of this effort feels it does not go with.... I don't know where the whole closing the streets to traffic is going to go. Even if we were to utilize the street that is currently closed as an experiment and there were efforts made.... I'm a little concerned about a couple of those new sections. In particular, I was very empathetic, especially the Mariachi group. They may not know which performers are going to come. They are a group. Do we have to be that strict about who shows up that day. And the same for the collaborative effort, if there is good music. And I get... and I know there were a couple of folks just passing through town that were real problematic for everybody and that's why we started this discussion."

Councilor Bushee continued, "I am trying to track the whole, 'we want people down on the Plaza, we want vitality, vibrancy, variety,' and I also want to.... if the plan is to close the streets to traffic, have more food trucks and more performances and street art, we need to redirect that. Then there needs to be equity. If we're going to treat the buskers this way, how is that going to work for.... are we going to have different permits for people who actually.... I don't know. I've been tracking the busking for a long time. I worked with folks, Michael Crews and others, to put the first Ordinance in place, because people were having their

own problems. I'm having a hard time trying to fit together the changes that may come to the Plaza and how we're now regulating this, and why we wouldn't want to track the two."

Mr. Shandler said, "The current Ordinance does allow a band, and just one person, the lead band member can get the names. I'm not sure why there was confusion that if some of the people didn't show up, that was problematic."

Councilor Bushee said then they all don't have to be there.

Mr. Shandler said, "That's my understanding. And in terms of the other questions, I believe those are more policy questions of the full Council."

Councilor Bushee said, "But again, the whole photo ID thing. What was the point of that."

Mr. Shandler said that was to make sure there isn't abuse or fraud in the licensing process. "But, in my opening remarks, I provided the pros and cons of that legal argument, and I'll leave it to you as a policymaker which one you find is more persuasive."

Councilor Bushee said, "We require the same licensing amount, \$35. I get my business permit through the mail, and you don't actually ask me much to get that license, so I'm not sure I understand the point of that."

Councilor Bushee said, "I'm also suggesting that.... maybe that's happening on a regular basis, and that's a concern, but I don't know that.... I don't know, I'm always sensitive to the whole photo ID requirement thing, when it comes to a lot of things. So again, those are things that stood out to me, and then also, just the where are we going with the Plaza in terms of its expansiveness, and for opportunities and how we would then track, follow that new activity if that's where we're going. And so that may allow for new places. And I know this is just for the Plaza, but everybody wants to be on the Plaza. That's why we started to regulate that in the first place."

Councilor Bushee continued, "I'm not trying to discount the efforts that have been made to date either. And I was also pretty empathetic to the gentleman that plays the piano. I also don't want to see giant generators and long extension cords like we've had on the Plaza. I think that was just wrong, and my answer to that was no free electricity on the Plaza either. But the gentleman, if he is going to.... and the collaboration, if he's going to play a piano and there are other musicians he wants to invite in, how do you say no to that."

Mr. Shandler said, "That has been a discussion in previous meetings. The *status quo* right now is you can get an individual license or you can get a license for your band. The *status quo* right now is that if two licensed members are playing together they should be 150 feet apart. And whether that's realistic or not, and whether there is a better result, is something we can study in the next 6 months, and it's not one of the 4-6 ideas that I'm ready to advise is ready."

Councilor Bushee said then the gentleman who wants to collaborate on occasion, if he would get a band license he could gig with different people with different types of instruments. "It could be a little bit more flexible. Is there an option that is flexible."

Mr. Shandler said, "Under the *status quo* right now, they would have to get a band license and list the members. So I acknowledge your point that if someone flew in from Los Angeles, they might have to get some other license. I acknowledge your point, I would like the opportunity to....."

Councilor Bushee asked if that license exists that allows that flexibility.

Mr. Shandler said, "Not under the current *status quo*, but that's something that needs to be studied and presented back to the Council."

Mayor Gonzales said, "Councilor Bushee, when you say under the current *status quo*, are you talking about the existing ordinance or what is proposed in front of us right now.

Mr. Shandler said, "By *status quo*, I mean what's on the books right now, presuming you...."

Mayor Gonzales said, "So if this passed, as amended, to Councilor Bushee's point, would somebody be able to collaborate without having to bring all the members that they were collaborating with to get a license to be able to perform."

Mr. Shandler said, "Mr. Mayor, if Councilor Bushee wants to offer an amendment like that, we could try to work through the language right now. Or whether she would want to specifically direct staff to specifically study that and provide some language."

Mayor Gonzales said he understands the point. "So that issue wasn't offered in any of the amendments. It is going to stay as a *status quo* issue if it's adopted, as is, without any amendments."

Mr. Shandler said this is correct.

Councilor Bushee said, "Maybe you can guide me, Zach, when you have a minute."

Councilor Dimas said he has concerns about enforcement. He asked, "I till have a hard time figuring out exactly how, having been in law enforcement for as many years as I was, how you go about enforcing all of this. There is so much in here, and so many rules and regulations. And I know you're going to be going through a training period and so forth. I guess, the question I have is, do you know how many citations have been issued over the last year to buskers, and what the outcome of those citations were in Municipal Report. Do you have any idea."

Sergeant McCoy said, "Last year... I was just recently appointed supervisor over the Bike Team. Last year I was a member of the team, so I can tell you how many I wrote last year, which is about 8 busker violations and they were repeat offenders. A lot of them currently have warrants for their arrest, because they failed to appear in Court, and that would be 3 of those. And that is part of the problem we have with not allowing enforcement, or not having it, is you get the repeat offenders, and none of those repeat offenders are here today. It is a small chunk that we keep dealing with over and over and over that don't follow this policy or Ordinance. That's the only way I can answer. I can look at the staff and bring those and get those to Council and the Mayor and Council as soon as possible, but I can only speak of how many I wrote."

Councilor Dimas said, "I think that this isn't a criminal offense. I don't see it as a criminal offense. And what I would like to see is, actually, us go in a different direction and make it a civil violation rather than a criminal offense. We just can't be issuing bench warrants all the time. This is what we've been doing with the parking situation, parking meters and such. This is the reason I am proposing a new Resolution and Ordinance to make that civil, rather than criminal. Not only that, we aren't able to collect the fines, a lot of people don't pay the fines, they don't have the money to pay the fines and that is the reason a lot of them they don't show up in Court. They would rather deal with the bench warrant and take the chance of going to jail or whatever it might be. If we look at the aspect of making it a civil violation, rather than criminal, we would actually have an opportunity to collect those fines more easily than issuing bench warrants and making it a criminal offense." This will take effort by our Code enforcement people, because Police Officers don't have the jurisdiction to write Code enforcement citations. That's another aspect that might be difficult. We need to look at this in the future. He is in support of this Ordinance and looks forward to seeing how it works out at the end of October. He thanked Mr. Shandler for his hard work on this.

Councilor Maestas said on pages 133-136 of the Council packet, entitled Street Performers Ten Golden Rules. He said Mr. Shandler took it upon himself to do a poll of all the attendees. He said, "I just want to reiterate that the nature of these amendments are not new, in fact, if you look at page 134, one of the questions was, 'Street performers shall have available and display the performer's business license which identifies their performance medium and have available proof of identification for review by the City at all times.' Out of 38 respondents, 33 liked it. Is this scientific. Maybe not, but this proves these aren't new issues and that we really did present them in an organized manner, we polled folks. I would like to yield the floor to Zach if you want to say anything more briefly about the Ten Golden Rules."

Mr. Shandler said he has spoken enough and will stand for questions.

Councilor Lindell thanked everyone who participated in this project, noting there has been back and forth communication between lots of people who probably would not have communicated with one another otherwise. She appreciates that. She also appreciates how respectful it has been.

**FRIENDLY AMENDMENT:** Councilor Lindell asked to amend the Ordinance regarding photo identification in Section 23-8.4(D), page 2 line 3 so that it reads as follows: 'At all times street performers shall have available the performer's City-issued business license and a photo identification.' **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE GOVERNING BODY.**

**CONTINUATION OF DISCUSSION ON THE MOTION AS AMENDED:** Mayor Gonzales said he understands the issue of protecting from fraud. But if the license has, for example, mariachi performers and there is no photo ID, but you have someone who is juggling, would you be able to determine that the license is being held by the appropriate individual without having to see a photo, so we don't have to go down that route. He asked if the vendors, including those under the portal, are required to have photo ID's.

Sergeant McCoy said, "I do know they have to have a photo ID with them. The purpose of the photo ID was several things. Not only did it help law enforcement when it came to checking a permit. If they had an ID we would be able to tell they are one and the same, they're holding their own permit and not giving vendors have to have a photo identification. Helped in checking to verify it is their permit and not giving it to someone else. As well as, what they're performing.... we had some people that were using their license on the Plaza and would go from music or playing an instrument to doing something different when their time was up to move. We would go up and say, hey you need to move. And they were well, I'm not playing music any more, I'm going to do this, and that would prevent that from happening."

Mayor Gonzales said then the license won't have a photo, it will have their name, and under the proposed amendment they could provide any kind of photo identification which would be appropriate.

Mr. Shandler said this is correct.

Councilor Trujillo thanked everyone who participated. He said this isn't a perfect Ordinance, commenting we've never passed a perfect Ordinance in the life of the City. There will always be somebody that likes it, and somebody that doesn't like it. It's not perfect, but it's a beginning and it's workable. It will come back to this Council in 6 months for review. He said he enjoys going to the Plaza and enjoys listening to some of the music. There are some types of busking he doesn't consider busking. He said when he sees somebody in a clown outfit standing there asking for money to scare you to make you yell, he doesn't consider that busking and in his opinion, something he doesn't want on the Plaza. He does respect the musicians, the street performers who do this. At the same time, he has respect for the vendors who have been there all these years, and pay taxes on what they sell, yet we have some buskers who sell C.D.'s and they're not paying GRTs on that. He said these are issues, "over the course of the 6 months, and maybe into next year, that I think we will review." He said we sat before you, we listened to you. He said he will give kudos to Councilor Maestas because he "took the bull by the horns and ran with. And Councilor for

being on the Council a very short time, you really took the leadership on this, and I think you've done a helluva job, what you've written. And Councilor Lindell as well. In the short time you've been here you took, in my opinion, a serious and ran with it, and you both did an outstanding job, so I commend you for that. And, we'll see you in 6 months to review what happened."

Councilor Ives thanked the Councilors who have worked on this. He said, "I know it's been a significant amount of effort and I would include former Councilor Calvert in that for his time spent bring this before this body. I think the measure we're considering tonight is in response in what came to be perceived flaws in the existing Ordinance. I think many of the comments people have made where they've said let's keep the Ordinance in place, may not mean let's keep the current Ordinance in place, but rather, let's not enforce it. I must admit I'm always frustrated by the circumstance where we have Ordinances or other items on our books that are not enforced. They are there for a reason to begin with."

Councilor Ives continued, "We've heard a good deal of discussion about the distance provision. And clearly, the existing Ordinance provision requires 150 feet between street performers. That proposal is to be changed to be 50 feet, not only between street performers, but also other vendors on the Plaza. To me, that is a change that makes sense, because it recognizes that the Plaza is not just there for buskers, it's not just there for Plaza vendors, it's really there for all the people of the City. So, really what we're looking for something is something that balances those interests in a sensible way that allows all of us to be there without being unduly interfering with other peoples' use of the Plaza. The reduction of the distance from 150 feet to 50 feet, I think clearly favors a greater busker presence on the Plaza, looking at only buskers, as opposed to others who might be using it. But again, I do think it's reasonable to account for others' uses of the Plaza as well. To me, this issue has always come down in significant measure to questions of enforcement. And I applaud the efforts within the City to create a permanent Police presence on the Plaza, and to promote that presence as a community policing presence, as opposed to a more stern and/or militaristic presence, similar to those we've read about in some of the papers recently."

Councilor Ives continued, "I agree with all those who have said there is nothing, and there likely never will be something that certainly is going to please everybody or something that's going to be perfect. And often, with these types of measures, I think we go through a process of working toward something that is better. When I look at our old Ordinance, versus what is proposed here, my own feeling is that what is proposed is better than what was on the books currently. So I am in favor of this. I would certainly not want that to be a statement that the discussions don't continue, and that we don't continue to strive for ways to improve it. The greatest thing that can be said about this effort coming forward, is that fact that it has brought people together into a valid discussion about these uses of the plaza. And at some point in time, we have to act, but that does not mean that act is the final act and that the discussions don't continue."

Councilor Ives continued, "While we've been sitting here, I've been wondering about language to address that sort of multiple performer circumstance of two street performers coming together, if they come together in concert in terms of their performance, that that might be considered a band type of circumstance. I'm not satisfied with that language yet, but that could be an example of the types of continued improvement we can try and bring to the language of the Ordinance. So, I look forward to continuing the discussions, and I hope we are able to do that. Again, I applaud everybody's efforts to date and the hard work that everybody has put in toward bringing this to the point that it is at currently. As I said, I consider this measure to be an improvement on the measure that existed before, and in that sense, I'm in favor of it. I acknowledge that there are still challenges within the Ordinance that we should continue to try and address. And I think reviewing it in October, if not before if improvements can be suggested, makes entire sense. And I really am anxious to see how, again that community policing presence on the Plaza, what effect that will have on people's perceptions of the Plaza, people's use of the Plaza over what is soon to be our very busy outdoor on the Plaza time of year. So thank you all."

Councilor Bushee said, "I don't see where in the Ordinance, Zach, that you say that a band has to list its members. Is that in your administrative, sort of."

Mr. Shandler said, "I don't know if you have a copy of 8.4. That's something that's not part of the Committee Substitute. I would be happy to approach with a full version of the current one."

Councilor Bushee said, "It just says, 'only one member of a street performer group is required to obtain a business license, unless a member also performs individually.' But it doesn't say they have to list the band members individually."

Mr. Shandler said, "In talking to the Finance Department, that is how the application is written"

Councilor Bushee said, "I see. That's what I meant. Is it administrative procedure. So I was back to that collaborative thing, and I don't want to open up the whole thing. And I'm sure you'll maybe entertain this in 6 months. But I was looking for like each license holder would be allow a guest a guest artist 3 times a year, or something like that, where they had a collaboration. So I didn't know if that could be added as like (c). (c) has been eliminated and you re-lettered."

Mayor Gonzales said, "I think that would be hard, even more difficult to enforce wouldn't it."

Councilor Bushee said, "I know. All right. This is just... and I know we're trying to anticipate all circumstances and I think you can't do that. I think there has to be a little bit more fluidity built into this. All right. I give up on that."

Mayor Gonzales said, "A for effort Councilor, you're going in the right direction. Before we go to call for a roll call vote, I do want to also echo the thanks that have been given. A couple of things. George, way to go. You pulled the buskers together. You got an alliance, you voice is strong, it's being heard. And you're an active participant in the continuation of this Ordinance. So, well done on that part. Tonight, this may

not have been tabled. Maybe it's going to be voted on and pass. It doesn't mean, as has been indicated tonight, that this is the end. It really gives us a starting point to monitor, to work through to refine. So please convey all of our thanks to the buskers who spent the time on this, and to let them know that their voices were heard, and it's not being eliminated out of this process."

Mayor Gonzales continued, "And then, of course, out of all of this, Zach and Sergeant, it really is for our officers that are on the Plaza who are going to set the tone for how this Ordinance is going to be in effect. I think it's important that it used the way you told us, that's it's going to be a tool to get rid of the people who really are just trying to mask as buskers to do something other what they were doing, and not to be used as a tool to try and regulate incredibly talented people who are wanting to be there. And so, I think equally important in monitoring this, is that the tone, administration and enforcement has to come from the side of flexibility and education and tolerance, moreso than, let's quickly move to get this citation, because you are within 40 feet of the next entertainer. I know that's a hard thing to ask, because so much is driven by subjectivity, but I have faith and confidence in you and your team to be able to figure that out. And if you need support from us, we're ready to do that. Okay."

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

**For:** Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Explaining his vote:** Councilor Dominguez said, "They say the road to hell is paved with good intentions, I vote yes."

**Explaining her vote:** Councilor Bushee said, "Yes, but I do look forward to a continued dialogue."

Mr. Shandler noted the effective date of the Ordinance will be May 12, 2014.

- 11) **CONSIDERATION OF RESOLUTION NO. 2014-31. CASE #2013-101. 2791 AND 2797 AGUA FRIA ROAD (RIVERA) GENERAL PLAN AMENDMENT. JAMES W. SIEBERT, AGENT FOR STELLA RIVERA, REQUESTS GENERAL PLAN FUTURE LAND USE MAP AMENDMENT TO CHANGE THE DESIGNATION OF 4.65± ACRES FROM THE RURAL/MOUNTAIN/CORRIDOR (1 DWELLING UNIT PER ACRE) TO GENERAL COMMERCIAL. (DAN ESQUIBEL)**

*Items #H(11) and #H(12), were combined for purposes of presentation, discussion and public hearing, but were voted upon separately.*



A Memorandum dated April 30, 2014, with attachments, to the Governing Body, from Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division, regarding Case 2013-101 and Case #2013-102, is incorporated herewith to these minutes as Exhibit "23."

Councilor Lindell has recused herself from participating on this Agenda Item.

Dan Esquibel presented information regarding this matter from his Memorandum of April 20, 2014. Please see Exhibit "23" for specifics of this presentation.

### **Public Hearing**

#### **Presentation by the Applicant**

**James W. Siebert, 915 Mercer, agent for the Applicant Stella Rivera was sworn.** Mr. Siebert said he is the planning consultant representing Stella and George Rivera, both of whom are here tonight. He said, "And let me say, for the record, I think Councilor Dimas should be able to sing any time he wants."

Mr. Siebert said, "Let me talk about two things tonight. One is just kind of the history of the property. You probably all know this property more as Club Alegria that existed at one time on Agua Fria. The history is that is George's father, George, Sr., started this business back in the mid-fifties. And at that time, it was kind of a dance and social club. Also, at the same time, he built his house there. And, in talking to George, Jr., at that time along Agua Fria, that was kind of what people did. They built their house and they built their business kind of on the same lot. And that's what happened over a period of time. It did evolve and it grow."

Mr. Siebert continued, "Jurisdictionally, it has had a very complicated history. Initially, it was in the County, and the business license was issued by the Count, which he always had his business license during those years. And then in the nineties, the extraterritorial regulations came in, and it was a joint jurisdiction between the City and County. But because the County had greater authority, the County continued to issue business licenses during that period of time. And when they adopted the regulations, what happened is, because this was pre-existing to any zoning regulations, it became a legal, nonconforming use, and that continued on during this period of time it was under County and extraterritorial jurisdiction. And then, in 2009 the City, through a joint City-County Settlement Agreement, assumed total unilateral jurisdiction over land use issues in this particular area. And it was at that time, that this property was zoned R-1, single family residential."

Mr. Siebert continued, "In approximately, 2011, the business, the Club Alegria and the package liquor ceased to exist. But what happened, and the confusion was, that during that time, between 2009 and 2011, the County kept issuing business licenses. So the Riveras thought, well, we must still be under County jurisdiction, therefore. And this wasn't uncommon. It took place throughout the extra-territorial

area. But when they stopped the business, they stopped receiving business licenses on an annual basis. So after a year, they were no longer a legal non-conforming use. They were a non-conforming use that couldn't come back and ask to continue that use that had been in existence for about the last 60 years."

Mr. Siebert then demonstrated the subject site with an enlarged drawing. Mr. Siebert said, "The other part of this is how does this relate to other commercial zoning in the area. I'm going to be real brief here. I know it's been a long night. 'This' is the property. 'This' is existing C-2 PUD zoning. What's right adjacent to them is Ulibarri's Landscaping, which probably has been in existence about as long as I have as well. And the (inaudible) in here, which is a combination of home occupation and a residential unit. Ms. Rivera does live here on the property right now."

Mr. Siebert continued, "The other thing that is taking place in the area of gray is I-2, which is heavy industry, which is the heaviest zoning district that we have in the City of Santa Fe. And, as was mentioned by staff, the buffer for the residential neighborhood to the north is provided by the Santa Fe River. So as you can see, commercial zoning in this area is consistent with the various zoning districts that surrounding it."

Mr. Siebert continued, "So, to be brief, what we are requesting with the C-2 zoning is you simply recognize the uses that have existed on that property for the last 60 year. So with that, I'll answer any questions you may have."

Councilor Ives said, "I'm just curious about the north side of the property, which appears to abut the Santa Fe River. And in terms of the various trails and other uses that we're trying to see the City and the County promote along the Santa Fe River, are there allowances for any type of trails or public use, and Dan you may know better through that area, what those possibilities are. But I'm certainly curious about that, because I wouldn't want to prevent that from happening. And if this was an opportunity to promote that, would certainly want to do that."

Mr. Siebert said, " Actually, we did look into that particular issue. The County is actually in charge of the trail system in that particular area along the Santa Fe River. And it's on the north side of the River, it's not on the south side of the River. It's not on this property. It doesn't relate to this property at all."

Councilor Ives said he just wanted to make sure that was not an issue.

### **Speaking to the Request**

There was no one speaking for or against this request.

### **Public Hearing was closed**

**MOTION:** Councilor Ives moved, seconded by Councilor Dominguez, to adopt Resolution No. 2014-31, approving Case #2013-101, 2791 and 2797 Agua Fria Road (Rivera) General Plan Amendment, and adopting the Findings of Fact and Conclusions of Law of the Planning Commission as the Findings of the City Council.

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

**For:** Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Recused:** Councilor Lindell.

**Absent for the vote:** Councilor Bushee.

- 12) **CONSIDERATION OF BILL NO. 2014-15: ADOPTION OF ORDINANCE NO. 2014-20. CASE #2013-102. 2791 AND 2797 AGUA FRIA ROAD (RIVERA) REZONING. JAMES W. SIEBERT, AGENT FOR STELLA RIVERA, REQUESTS REZONING OF 4.65± ACRES FROM R-1 (RESIDENTIAL, 1 DWELLING UNIT PER ACRE) TO C-2 (GENERAL COMMERCIAL). THE APPLICATION INCLUDES A DEVELOPMENT PLAN FOR EXISTING RESIDENTIAL AND NONRESIDENTIAL USES OF THE PROPERTY. (DAN ESQUIBEL)**

Councilor Lindell has recused herself from participating on this Agenda Item.

**MOTION:** Councilor Ives moved, seconded by Councilor Rivera, to adopt Ordinance No. 2014-20, approving Case #2013-102, 2791 and 2797 Agua Fria Road (Rivera) Rezoning, and adopting the Findings of Fact and Conclusions of Law of the Planning Commission as the Findings of the City Council.

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

**For:** Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** None.

**Recused:** Councilor Lindell.

**Absent for the vote:** Councilor Bushee.

**I. ADJOURN**

The was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 10:40 p.m.

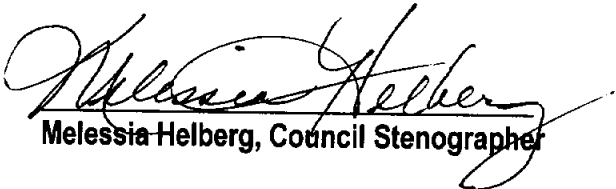
**Approved by:**

\_\_\_\_\_  
**Mayor Javier M. Gonzales**

**ATTESTED TO:**

\_\_\_\_\_  
**Yolanda Y. Vigil, City Clerk**

**Respectfully submitted:**

  
**Melessia Helberg, Council Stenographer**

**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
MONDAY, APRIL 28, 2014**

**ITEM 6**

REQUEST FOR APPROVAL OF BUDGET TRANSFER FROM BICENTENNIAL POOL FUND TO MUNICIPAL FACILITY REPAIR FUND FOR FORT MARCY ROOF AND SKYLIGHT REPLACEMENT IN THE AMOUNT OF \$110,568 (DAVID PFEIFER)

**PUBLIC WORKS COMMITTEE ACTION:** Approved

**SPECIAL CONDITIONS OR AMENDMENTS:**

**STAFF FOLLOW UP:**

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

*Exhibit "1"*

Mayor & Monique  
of Santa Fe

Recognize Sec'd Tourism - Monique Jacobsen  
Bm Express

R Simon and I would like to thank you for your commitment and continued support to the promotion and growth of tourism in Santa Fe. In the next couple of minutes we will touch on the importance of tourism to our community and the many benefits that are derived from a healthy tourism industry. Because you are already supporters, I am sure none of this is new for you, however it is always good to take a step back and remind ourselves how critical tourism is to the everyday life of virtually every member of our community. Whether directly or indirectly involved or simply a beneficiary through the improvement to the community, Tourism virtually touches every resident in a most positive manner.

The benefits of a healthy tourism industry are really pretty simple: more visitors come to Santa Fe, more jobs are created, more tax revenues are collected and the overall economy and life style of the city is enhanced. Let's discuss each of these a bit more:

- S
1. Hundreds of thousands of visitors come to Santa Fe to spend an average of two and a half nights in almost 5000 hotel rooms and over 500 vacation rentals. They annually spend more than 700 million dollars in our hotels, restaurants, stores, galleries, spas, attractions and other offerings we have for them to leave their dollars in Santa Fe.
  - R 2. Thousands of jobs are created. In fact around 10,000 folks work directly in tourism. That's about 15% of the population and 25% of those in the workforce. And that does not even count the jobs created to support the 10,000 just mentioned. The total payroll for our tourism industry is over 300 million dollars and with your continued support this number will only grow.
  - S 3. Taxes that our tourists pay generate over 48 million dollars every year. The state has recently documented, through a very expensive and detailed return on investment study that for every dollar invested in advertising and marketing the state, there is a \$3 return in taxes – not spending but actual tax dollars! If anything, our return in Santa Fe, based on our pricing model, is

Exhibit "2"

even greater. But even at a \$3 return, an additional million dollars invested in the direct promotion of Santa Fe will bring an additional 3 million dollars of tax revenues. It takes both a commitment and investment to make this happen. At the state level, the legislature has almost doubled the level of funding over the past two years.

2 4. Tourism is a clean industry that does not pollute and rarely dilutes our natural resources. It is one of the best possible exports for any community to enjoy. And it is very elastic...with the ability to grow and expand without the need for significant infrastructure additions to produce greater results. With a city wide occupancy of 63.6% in 2013 (up from 58.9% the prior year), average restaurant utilization in the same range and plenty of goods to sell on our retail shelves, there is ample capacity to add hundreds of millions of additional revenues – four hundred million in fact and generate another 28 - 30 million dollars of taxes if we are just willing to take a calculated and bold step and make the necessary investment in promotion. People will travel and spend their discretionary money – that is a fact – so we do not need to create a customer. We just need to catch the attention of the potential customer and help them make the decision to come to Santa Fe. Once they visit, our chances are 40% that they will repeat and maybe even make a trip to our wonderful city an annual event.

5 5. Finally, the citizens of Santa Fe have the opportunity to enjoy all of the same amenities and services that bring the tourists here including the likes of world class opera, chamber music, an abundance of performances at the Lensic, Restaurant Week, Santa Fe Farmers Market, cooking schools, the availability of art for every desire, skiing without lift lines and my favorite: Santa Fe Wine and Chile Fiesta just to mention a few. In addition our residents enjoy 61 parks covering 2,500 acres, 11 community centers, , 4 pools, an extensive transit system, incredible museums, miles of trails, 20 unique markets, and some of the greatest dining opportunities in more than 250 restaurants most of which the typical city of our size cannot support. It

is with the support of tax revenues generated by tourism that Santa Fe is able to sustain a wonderful life style for its residents and all of us are able to enjoy the best of so many things that the typical community our size simply does not have. But perhaps we may have gotten a bit ahead of ourselves. The economic turndown in 2007 and 2008 showed the danger of relying so much on tourism. We are all working to diversify our economy, but tourism cannot be taken for granted. We cannot assume that tourism will always be there. We must stay ahead of the curve and apply the appropriate resources to support a healthy tourism environment and then we can almost count on the magic we have here in Santa Fe to keep us moving forward as one of the nation's premier destinations.

Again, thank you for your support of tourism. Our nation celebrates Tourism Week this week and tomorrow we focus on our own tourism in Santa Fe. I invite you to join us tomorrow to celebrate with many of the tourism partners in a expo being held at the Community Convention Center. The Opening Ceremonies start at 10:00 with a ribbon cutting at 10:15 and the celebration will continue until 5. The 80 plus exhibitors represent the many businesses and organizations who collectively invest not only their money, but their time and dedication to Santa Fe at a level that exceeds what ever we can do as a city, bureau or chamber. We owe them all a tremendous thanks for what they do to make every district and every aspect of our city a better place to be.

Thank yous to.



**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
MONDAY, APRIL 28, 2014**

**ITEM 13**

REQUEST FOR APPROVAL OF A RESOLUTION SUPPORTING PEDESTRIAN IMPROVEMENTS ALONG EAST ALAMEDA AND THE SANTA FE RIVER WITH FUNDING SUPPORT PROVIDED THROUGH A COOPERATIVE AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (**COUNCILOR BUSHEE**) (**BRIAN DRYPOLCHER**)

- REQUEST FOR APPROVAL OF COOPERATIVE AGREEMENT – PEDESTRIAN IMPROVEMENTS TO EAST ALAMEDA AND SANTA FE TRAIL WITH NEW MEXICO DEPARTMENT OF TRANSPORTATION
- REQUEST FOR APPROVAL OF A BUDGET ADJUSTMENT

**PUBLIC WORKS COMMITTEE ACTION:** Approved on consent

**SPECIAL CONDITIONS OR AMENDMENTS:****STAFF FOLLOW UP:**

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

*Exhibit 13*

## **McClure Reservoir Restoration Project Updates**

- The original plan was to have the reservoir water elevation to be at 49% of the total storage capacity at McClure Reservoir by April 30<sup>th</sup>.
- On April 29<sup>th</sup> the storage elevation at McClure Reservoir was 45% of the total storage capacity.
- Currently, 13.1 Million Gallons per Day (MGD) is being released from McClure Reservoir. Previously, flow from McClure Reservoir was 10 MGD until April 23<sup>rd</sup> when reservoir releases increased to the present outflow of 13.1 MGD.
- As of April 29<sup>th</sup>, 4.2 MGD (6.5 cubic feet per second) of inflow from the Santa Fe River is entering McClure Reservoir.
- 6.2 MGD is being treated by Canyon Road Water Treatment Plant.
- 3.0 MGD is being diverted to Acequia Madre and other irrigation systems beginning on May 2<sup>nd</sup>.
- The Public Utilities Department recommends that plans for an Annual Fish Derby be set for Saturday, June 14, 2014.
- Nichols Reservoir will begin to fill on May 15<sup>th</sup> after the "stop log" is placed into the reservoir drain outlet pipe.

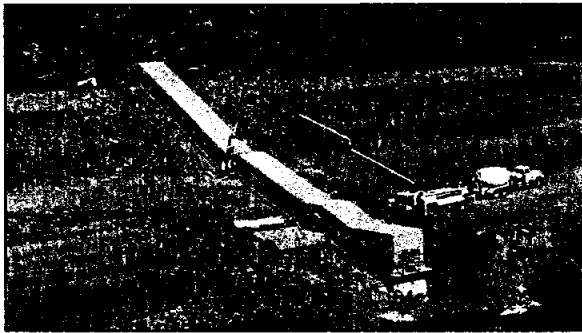
### ***Where can I find more information?***

The City provides daily information on water production, reservoir capacity, total system storage at [http://www.santafenm.gov/daily\\_water\\_production\\_reports](http://www.santafenm.gov/daily_water_production_reports).

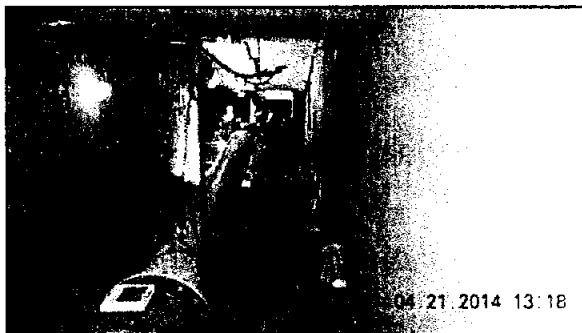
For drought management information and water conservation, please visit [www.savewatersantafe.com](http://www.savewatersantafe.com)

**McClure & Nichols Reservoirs Improvements, CIP Project #3038**  
**Project Status - April 29, 2014**

Work on the Nichols Dam intake structure is nearing completion. The final concrete pour was made today. Piping and valving has been installed with electrical work underway. Nichols Dam and Reservoir is scheduled for filling in mid-May.

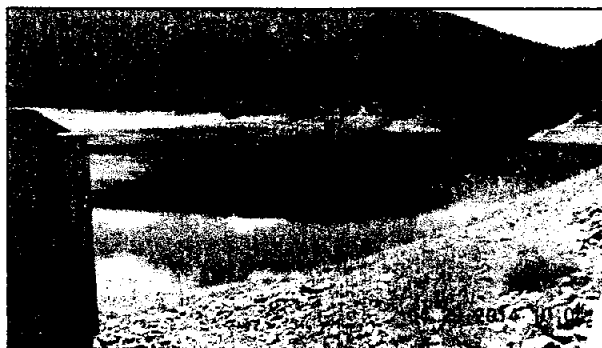


**Final concrete pour at Nichols Dam (WCM photo)**



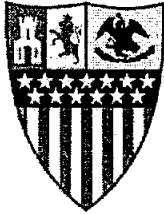
**Piping inside Nichols Dam intake structure (WCM photo)**

Flows into Nichols Reservoir from McClure Reservoir are scheduled to be cut off beginning on May 9, 2014 in order to complete final work at Nichols Dam and set the stop log. Filling of Nichols will be done at a controlled rate to slowly load the dam embankment. Water releases from Nichols Dam to feed the Santa Fe River and the Canyon Road Water Treatment Plant will be suspended for approximately 16 days from May 9<sup>th</sup> thru May 25<sup>th</sup>.



**McClure Reservoir water level (WCM Photo)**

Work at McClure is scheduled to begin September 1, 2014.



**CITY COUNCIL MEETING OF  
APRIL 30, 2014  
BILLS AND RESOLUTIONS SCHEDULED FOR INTRODUCTION  
BY MEMBERS OF THE GOVERNING BODY**

<b>Mayor Javier Gonzales</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>
<b>Councilor Patti Bushee</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>
	<p style="text-align: center;">A RESOLUTION</p> <p>ENDORISING THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT'S FY2015 BUDGET PROPOSAL, APPROVING THE FY2015 CITY OF SANTA FE REGIONAL TRANSIT PLAN AND DIRECTING STAFF TO SUBMIT THE CITY OF SANTA FE REGIONAL TRANSIT PLAN FOR FY2015 TO THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT BOARD OF DIRECTORS FOR CONSIDERATION AND APPROVAL.</p>	<p>Public Works Committee - 5/12/14</p> <p>Finance Committee - 5/19/14</p> <p>Transit Authority Board 5/27/14</p> <p>City Council - 5/28/14</p>
	<p style="text-align: center;">AN ORDINANCE</p> <p>AUTHORIZING A LOAN AGREEMENT BETWEEN THE CITY AND THE NEW MEXICO FINANCE AUTHORITY IN THE AMOUNT OF \$3,500,000 FOR THE ACQUISITION OF TRANSIT BUSES.</p>	<p>Finance Committee - 5/19/14</p> <p>City Council (request to publish) - 5/28/14</p> <p>City Council (public hearing) - 6/25/14</p>
<b>Councilor Bill Dimas</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>
	<p style="text-align: center;">AN ORDINANCE</p> <p>REPEALING AND READOPTING ARTICLE IX OF THE UNIFORM TRAFFIC ORDINANCE TO ESTABLISH THAT PARKING VIOLATIONS RELATED TO PARKING METERS, PARKING LOTS AND PARKING GARAGES ARE NUISANCES AND SUBJECT TO ADMINISTRATIVE ADJUDICATION; AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY TO MEET THE PURPOSES OF THIS ORDINANCE.</p>	<p>Public Safety Committee - 5/20/14</p> <p>Finance Committee - 6/2/14</p> <p>City Council (request for publication) - 6/11/14</p> <p>City Council (public hearing) - 7/9/14</p>

<b>Councilor Carmichael Dominguez</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>
	A RESOLUTION DECLARING THE CITY'S OFFICIAL INTENT TO REIMBURSE ITSELF WITH THE PROCEEDS OF A FUTURE TAX-EXEMPT BORROWING IN AN AMOUNT NOT TO EXCEED \$5,800,000 FOR CAPITAL EXPENDITURES PAID TO 1) ACQUIRE LAND, PLAN, DESIGN, EQUIP, RENOVATE AND IMPROVE PUBLIC PARKS, BIKE-PEDESTRIAN TRAILS AND RELATED INFRASTRUCTURE PROJECTS AND 2) ACQUIRE, INSTALL, CONSTRUCT, UPGRADE, AND IMPROVE SUSTAINABLE ENVIRONMENT PROJECTS.	Finance Committee - 5/5/14 City Council (scheduled) - 5/14/14
	A RESOLUTION DECLARING THE CITY'S OFFICIAL INTENT TO REIMBURSE ITSELF WITH THE PROCEEDS OF A FUTURE TAX-EXEMPT BORROWING IN AN AMOUNT NOT TO EXCEED \$16,000,000 FOR CERTAIN CAPITAL EXPENDITURES UNDERTAKEN OR TO BE UNDERTAKEN BY THE CITY.	Finance Committee - 5/5/14 City Council (scheduled) - 5/14/14
<b>Councilor Peter Ives</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>
	A RESOLUTION ENDORING THE GREEN LODGING INITIATIVE; AND DIRECTING STAFF TO EXPLORE WAYS TO CONTINUE, FUND AND EXTEND THE GREEN LODGING INITIATIVE TO ALL LODGING FACILITIES IN THE CITY OF SANTA FE.	Public Utilities Committee 5/7/14 City Business Quality of Life - 5/14/14 Finance Committee - 5/19/14 City Council (scheduled) - 5/28/14
	A RESOLUTION AUTHORIZING PUBLIC UTILITIES DEPARTMENT STAFF TO APPLY FOR A U.S. BUREAU OF RECLAMATION (BOR) FUNDING OPPORTUNITY TO EVALUATE THE FEASIBILITY OF UTILIZING RECLAIMED WATER FOR ALTERNATIVE NON-POTABLE AND POTABLE USES.	Public Utilities Committee - 5/7/14 Finance Committee - 5/19/14 City Council (scheduled) - 5/28/14
	A RESOLUTION ESTABLISHING FUNDING PRIORITIES RELATED TO EXPANSION REQUESTS FOR THE INFORMATION TECHNOLOGY & TELECOMMUNICATIONS ("ITT") DEPARTMENT AND THE LAND USE DEPARTMENT WHICH ARE BEYOND THE BASE BUDGET FOR FISCAL YEAR 2014/2015.	Finance Committee - 5/5/14 City Council (scheduled) - 5/14/14

<b>Councilor Signe Lindell</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>
<b>Councilor Joseph Maestas</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>
	A RESOLUTION ADOPTING THE CITY OF SANTA FE INVESTMENT POLICY TO FORMALIZE THE CITY POLICY RELATED TO INVESTMENT OF CITY FUNDS.	Finance Committee - 5/19/14 City Council (scheduled) - 5/28/14
<b>Councilor Chris Rivera</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>
	A RESOLUTION PROCLAIMING SEVERE OR EXTREME DROUGHT CONDITIONS IN THE CITY OF SANTA FE AND RESTRICTING THE SALE OR USE OF FIREWORKS WITHIN THE CITY OF SANTA FE AND PROHIBITING OTHER FIRE HAZARD ACTIVITIES.	Finance Committee – 5/19/14 Public Safety Committee – 5/20/14 City Council (scheduled) – 5/28/14
<b>Councilor Ron Trujillo</b>		
<b>Co-Sponsors</b>	<b>Title</b>	<b>Tentative Committee Schedule</b>

Introduced legislation will be posted on the City Attorney's website, under legislative services. If you would like to review the legislation prior to that time or you would like to be a co-sponsor, please contact Melissa Byers, (505)955-6518, [mdbyers@santafenm.gov](mailto:mdbyers@santafenm.gov) or Rebecca Seligman at (505)955-6501, [rxseligman@santafenm.gov](mailto:rxseligman@santafenm.gov).

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2014-\_\_

INTRODUCED BY:

Councilor Bill Dimas

AN ORDINANCE

REPEALING AND READOPTING ARTICLE IX OF THE UNIFORM TRAFFIC  
ORDINANCE TO ESTABLISH THAT PARKING VIOLATIONS RELATED TO PARKING  
METERS, CITY PARKING LOTS AND CITY PARKING GARAGES ARE NUISANCES  
AND SUBJECT TO ADMINISTRATIVE ADJUDICATION; AND MAKING SUCH OTHER  
CHANGES AS ARE NECESSARY TO MEET THE PURPOSES OF THIS ORDINANCE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. [REPEAL] Article 12-9, of the City of Santa Fe Uniform Traffic  
Ordinance, (being Ord. #2006-34, as amended) is repealed.

Section 2. A new Article 12-9 of the City of Santa Fe Uniform Traffic Ordinance is  
ordained to read:

ARTICLE IX [NEW MATERIAL] PARKING

12-9-1 ADMINISTRATION. The parking division director has the authority to administer  
the provisions of Article 12-9.\*

12-9-2 DEFINITIONS. As used in this Article:

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.

1  
Exhibit "6"

1       *Default* means the failure to pay a fine or to timely pay a fine pursuant to a decision of a  
2 hearing officer under 12-9-4 of the Uniform Traffic Ordinance.

3       *Hearing officer* means a person appointed by the city manager to resolve disputes under  
4 Section 12-9-4 in an administrative hearing.

5       *Nuisance* means the act of parking a vehicle in violation of 12-9-4 of the Uniform Traffic  
6 Ordinance.

7       *Parking fine notification*, as used in Section 12-9-4, includes the following:

8           (1)     *Municipal parking lot or garage insufficient payment notice* means a written  
9 notice affixed to the windshield of the vehicle or handed to the patron upon exiting a  
10 municipal parking lot or garage by a city of Santa Fe parking attendant or other person  
11 authorized by the city of Santa Fe, for failure to provide sufficient payment for the mandatory  
12 parking fees at a municipal parking lot or garage.

13           (2)     *Municipal parking meter violation notice* means a written notice affixed to  
14 the windshield of the vehicle by a city of Santa Fe parking enforcement officer, parking  
15 attendant, police officer or other person authorized by the city of Santa Fe, for failure to pay  
16 the mandatory parking fees at a municipal parking meter.

17       *Parking division director* means the director of the city of Santa Fe parking division and  
18 parking violations bureau or his or her designee.

19       *Parking meter* means:

20           (1)     Multi-space parking meter, including a pay and display machine that is a type  
21 of ticket machine used for regulating parking in municipal parking lots or garages, and

22           (2)     Single-space parking meter that regulates on street parking.\*

23       *Parking violations bureau* means the entity of the city of Santa Fe that is charged with the  
24 administration of parking violations.

25       **12-9-3       PARKING METER REGULATIONS**

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.



**12-9-3.1 AUTHORITY TO ESTABLISH PARKING METER ZONES (formerly 12-9-1).**

A. The parking division director may establish parking meter zones in which the parking of vehicles upon streets or parts of streets shall be regulated by parking meters between the hours of 8:00 a.m. and 6:00 p.m. of any day except Sunday and public holidays.

B. The parking division director may limit the period of time for which parking is lawfully permitted in any parking meter zone in which meters are located regardless of the number of coins deposited in a meter.

C. The parking meter zone may be diminished or extended and enlarged, or other parking meter zones may be created.\*

**12-9-3.2 INSTALLATION OF PARKING METERS (formerly 12-9-2).**

A. The parking division director shall install parking meters in established parking meter zones.

B. Parking meters shall be placed on the curb immediately adjacent to each designated parking space.

C. Parking meters shall be capable of being operated, either automatically or mechanically. Payment shall be made upon the deposit of a twenty-five cent coin, ten-cent coin or five-cent coin. The parking division director may implement other methods of payment, such as cash keys, credit cards and debit cards.

D. Each parking meter shall be designed, constructed, installed and set so that an appropriate signal will indicate expiration of the lawful parking meter period which was registered by the deposit of payment as provided herein.

E. During the lawful parking meter period registered by the deposit of payment and prior to the expiration of the lawful parking meter period, the meter shall indicate the interval of time which remains of such period.

F. Each parking meter shall bear a legend indicating the days and hours when the

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.

1 requirement to deposit payment shall apply, the value of the coins or payment to be deposited and the  
2 limited period of time for which parking is lawfully permitted in the parking meter zone in which  
3 such meter is located.\*

4 **12-9-3.3 PARKING METER SPACES (formerly 12-9-3).**

5 A. The parking division director shall designate the parking space adjacent to each  
6 parking meter for which the meter is to be used by appropriate markings, including signage, upon the  
7 curb or the pavement of the street or both.

8 B. Designated parking meter spaces shall be of appropriate length and width so as to be  
9 accessible from the traffic lanes of the street.

10 C. No person shall park a vehicle in any designated parking meter space during the  
11 restricted or regulated time applicable to the parking meter zone in which the meter is located so that  
12 any part of the vehicle occupies more than one space or protrudes beyond the markings designating  
13 the space. However, a vehicle which is of a size too large to be parked within a single designated  
14 parking meter zone shall be permitted to occupy two adjoining parking meter spaces when coins of  
15 the appropriate denominations have been deposited in the parking meter for each space so  
16 occupied.(\*)

17 **12-9-3.4 PARKING TIME LIMITS (formerly 12-9-4).** Parking or standing a vehicle in a  
18 designated space in parking meter zones shall be lawful upon the deposit of legal coins as indicated  
19 on each parking meter.(\*)

20 **12-9-3.5 DEPOSIT OF COINS OR OTHER METHOD OF PAYMENT (formerly 12-9-**  
21 **5).**

22 A. No person shall park a vehicle in any parking space regulated by a parking meter  
23 between the hours 8:00 a.m. and 6:00 p.m. on any day except Sundays and public holidays unless a  
24 coin or coins of the appropriate denomination or other method of payment as provided in this  
25 ordinance have been deposited therein and the meter has been placed in operation.

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.

1           B.     No person shall permit a vehicle within his control to be parked in any space  
2 regulated by a parking meter between the hours of 8 a.m. and 6 p.m. on any day except Sundays and  
3 public holidays while the parking meter for the space indicates by signal that the lawful parking time  
4 in the space has expired. This provision does not apply to the act of parking or the necessary time  
5 which is required to deposit immediately thereafter a coin or coins in the meter.

6           C.     No person shall park a vehicle in any parking meter space for a consecutive period of  
7 time longer than the limited period of time for which parking is lawfully permitted in the parking  
8 meter zone in which the meter is located, irrespective of the number or amounts of  
9 coins or other payment method as provided in this ordinance deposited in the meter.

10          D.     Failure to deposit proper coin or coins or other payment method as provided in this  
11 ordinance constitutes a violation of this ordinance.

12          E.     Upon expiration of the legal parking time, it is the duty of the owner or driver of the  
13 vehicle to remove the vehicle from the parking space.

14          F.     It is unlawful for any person to cause, allow, permit or suffer a vehicle registered in  
15 his name to be parked or to stand overtime or remain in the parking space beyond the specified  
16 parking time limit.

17          G.     The provisions of this section shall not apply in a period of emergency determined by  
18 an officer of the fire department or the police department or in compliance with the directions of a  
19 police officer or traffic-control device.

20          H.     The provisions of this section shall not relieve any person from the duty to observe  
21 other and more restrictive provisions of this ordinance prohibiting or limiting the stopping, standing  
22 or parking of vehicles in specified places or at specified times.(\*)

23 **12-9-3.6     USE OF SLUGS PROHIBITED (formerly 12-9-6).** No person shall deposit or  
24 attempt to deposit in any parking meter any slug, button or any other device or substance as  
25 substitutes for coins of United States currency or other method of payment as provided in this

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.

ordinance.(\*)

**12-9-3.7 TAMPERING WITH METER** *(formerly 12-9-7)*. No person shall deface, injure, tamper with, open or willfully break, destroy or impair the usefulness of any parking meter. (\*)

**12-9-3.8 PRESUMPTION OF UNLAWFUL PARKING** *(formerly 12-9-8)*.

A. When the "violation" indicator is showing on a parking meter to indicate the expiration of the lawful parking meter period for which coins or other method of payment as provided in this ordinance have been deposited, it shall be presumptive evidence that any vehicle found in a regulated parking space is parked in violation.

B. It is unlawful and an offense for any person to deposit or cause to be deposited in a parking meter covering a metered parking stall which he has already occupied for the meter specified time limit any coins or other method of payment as provided in this ordinance for the purpose of extending parking time beyond the total lawful parking period designated for the parking meter zone in which the meter is located.(\*)

**12-9-3.9 PARKING IN DESIGNATED ACCESSIBLE PARKING SPACES** *(formerly 12-9-9)*.

A. It is unlawful for any person to park a motor vehicle not carrying registration plates or a placard indicating disability in accordance with Section 66-3-16 NMSA 1978 and Section 3-51-46 NMSA 1978 in a designated accessible parking space for persons with significant mobility limitation or in such a manner as to block access to any part of a curb cut designed for access by persons with significant mobility limitations. Any person who violates this section shall be subject to a mandatory court appearance and a fine, of not less than two hundred fifty dollars (\$250) or more than five hundred dollars (500). Failure to properly display a parking placard or special registration plate issued pursuant to Section 66-3-16 NMSA 1978 is not a defense against a charge of violation of Subsection A of this section (66-7-352.5 NMSA 1978)

B. It is unlawful for any person to stand or stop a motor vehicle not carrying registration

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.

1 plates or a placard indicating disability in accordance with Section 66-3-16 NMSA 1978 and Section  
2 3-51-46 NMSA 1978 in a designated accessible parking space for persons with significant mobility  
3 limitation. Any person who violates this section shall be subject to a mandatory court appearance and  
4 a fine, of not less than two hundred fifty dollars (\$250) or more than five hundred dollars (500).  
5 Failure to properly display a parking placard or special registration plate issued pursuant to Section  
6 66-3-16 NMSA 1978 is not a defense against a charge of violation of Subsection A of this section  
7 (66-7-352.5 NMSA 1978).

8 C. It is unlawful for any person to use a designated accessible parking space for persons  
9 with significant mobility limitation for the purpose of receiving or discharging passengers or for  
10 loading or unloading if the vehicle receiving or discharging the passengers or loading or unloading  
11 does not carry registration plates or a placard indicating disability in accordance with Section 66-3-16  
12 NMSA 1978 and Section 3-51-46 NMSA 1978. Any person who violates this section shall be subject  
13 to a mandatory court appearance and a fine, of not less than two hundred fifty dollars (\$250) or more  
14 than five hundred dollars (500). Failure to properly display a parking placard or special registration  
15 plate issued pursuant to Section 66-3-16 NMSA 1978 is not a defense against a charge of violation of  
16 Subsection A of this section (66-7-352.5 NMSA 1978).

17 D. As used in this section, "designated accessible parking space" means any space  
18 including an access aisle, marked and reserved for the parking of a vehicle that carries registration  
19 plates or a parking placard indicating disability in accordance with Section 66-3-16 NMSA 1978 and  
20 Section 3-51-46 NMSA 1978, and designated by a conspicuously posted sign bearing the  
21 international symbol of accessibility and if paved, by a clearly visible depiction of this symbol  
22 painted white on blue on the pavement of the space. Temporary accessible parking spaces may be  
23 designated by a blue hood labeled as accessible parking or in such other manner as to clearly indicate  
24 the space is for accessible parking only. "Curb cut" means a short ramp through a curb or built up to  
25 the curb designed for access by persons with disabilities. (66-7-352.5 NMSA 1978).

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.

1           E.       Any vehicle parked in violation of Subsections A., B. or C. of this section is subject  
2 to being towed at the expense of the vehicle owner upon authorization by law enforcement personnel  
3 or by the property owner or manager of a parking lot.

4           F.       State, county and municipal law enforcement personnel have the authority to issue  
5 citations for violations of §12-9-3.4 in their respective jurisdictions, whether the violation occurs on  
6 public property or private property (Section 3-51-46 NMSA 1978).

7           G.       A law enforcement officer may issue a citation or authorize towing of a vehicle for a  
8 violation of Section A of this section regardless of the presence of the driver (66-7-352.5 NMSA  
9 1978). (Ord. No. 2006-34, Ord. No. 2007-49, Ord. No. 2009-11)

10 **12-9-3.10       SPECIAL REGISTRATION PLATE OR PARKING PLACARD INDICATING**  
11 **DISABILITY (*formerly 12-9-10*).**

12           A.       Vehicles displaying a valid special registration plate or parking placard pursuant to  
13 Section 66-3-16 (1999) NMSA 1978 and Section 3-51-46 NMSA 1978 are exempt from the payment  
14 of any parking fee imposed by the city of Santa Fe but shall not be exempt from any penalty or other  
15 provisions of the Santa Fe City Code or of this Ordinance.

16           B.       Vehicles displaying a valid special registration plate or parking placard pursuant to  
17 Section 66-3-16 (1999) NMSA 1978 and Section 3-51-46 NMSA 1978 shall be permitted to park for  
18 unlimited periods of time in parking zones where the length of time for parking is normally restricted  
19 and no penalty shall be imposed for such parking subject, however, to the following limitations. The  
20 provisions of this section do not pertain to zones where stopping, standing or parking is prohibited,  
21 zones reserved for special types of vehicles, zones where parking is prohibited during certain hours of  
22 the day in order to facilitate traffic, during those hours when parking is prohibited, and zones subject  
23 to similar regulation because parking presents a traffic hazard.

24           C.       All special registration plate or parking placard issued pursuant to Section 66-3-16  
25 (1999) NMSA 1978 shall expire on the same date as the person's driver's license or identification

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.

card issued pursuant to Section 66-5-401 NMSA 1978.

D. A special registration plate or parking placard displayed on a vehicle parked in a designated accessible parking space in the absence of the holder of that plate or placard, is subject to immediate seizure by a law enforcement official and if seized shall be delivered to the division within 72 hours. Failure to surrender the parking placard on demand of a law enforcement officer is a petty misdemeanor and punishable by a fine not to exceed \$100.00.

#### **12-9-4 PARKING NUISANCE**

##### **12-9-4.1 AUTHORITY; TITLE.**

Section 12-9-4 is adopted pursuant to the statutory grant of authority contained in Sections 3-17-1 and 3-18-17A NMSA 1978 and shall be referred to as the "Parking Nuisance Ordinance". This Section shall be effective and enforced within the geographical boundaries of the city of Santa Fe.

##### **12-9-4.2 PURPOSE AND INTENT.**

A. It is the intent of the governing body by adopting this Section to abate the following nuisances:

(1) Nuisances caused by persons who park in city-owned metered spaces or municipal parking lots and garages and fail to make the required payments or remain parked after the paid period of time has expired; and

(2) Nuisances caused by persons who aggregate numerous parking fine notifications and fail to pay fines assessed by the parking violations bureau.

B. The governing body declares that this section is a nuisance abatement measure enacted pursuant to the city's inherent authority under state law and that the remedies are purely civil and not criminal in nature.

##### **12-9-4.3 PARKING METER NUISANCES.**

A. It is a nuisance for any person to park a vehicle in a designated space in a parking meter zone between the hours of 8:00 a.m. and 6:00 p.m. on any day except Sundays and public

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.

1 holidays without depositing the payment indicated on the parking meter.

2 B. It is a nuisance for any person to park a vehicle in any designated parking meter  
3 space during the restricted or regulated time applicable to the parking meter zone in which the meter  
4 is located so that any part of the vehicle occupies more than one space or protrudes beyond the  
5 markings designating the space. However, a vehicle which is of a size too large to be parked within a  
6 single designated parking meter zone is not a nuisance if it occupies two adjoining parking meter  
7 spaces when appropriate payment has been deposited in the parking meter for each space so occupied.

8 C. It is a nuisance for any person to permit a vehicle within his or her control to be  
9 parked in any space regulated by a parking meter between the hours of 8 a.m. and 6 p.m. on any day  
10 except Sundays and public holidays while the parking meter for the space indicates by signal that the  
11 lawful parking time in the space has expired. This provision does not apply to the act of parking or  
12 the necessary time which is required to deposit immediately thereafter payment in the meter.

13 D. It is a nuisance for any person to park a vehicle in any parking meter space for a  
14 consecutive period of time longer than the limited period of time for which parking is lawfully  
15 permitted in the parking meter zone in which the meter is located, irrespective of the amount of  
16 payment deposited in the meter.

17 F. It is a nuisance for any person to cause, allow, permit or suffer a vehicle registered in  
18 his name to be parked or to stand overtime or remain in the parking space beyond the specified  
19 parking time limit.

20 G. It is a nuisance for any person to deposit or attempt to deposit in any parking meter  
21 any slug, button or any other device or substance as substitutes for coins or other method of payment  
22 as provided by this ordinance of United States currency. This nuisance shall be abated by the  
23 payment to the city of the fine set forth in 12-9-4.5 or the city's actual damages.

24 H. It is a nuisance for any person to deface, injure, tamper with, open or willfully break,  
25 destroy or impair the usefulness of any parking meter. This nuisance shall be abated by payment of

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.



1 the city's actual damages plus the fine set forth in 12-9-4.5.

2 I. The provisions of this section shall not apply in a period of emergency determined by  
3 an officer of the fire department or the police department or in compliance with the directions of a  
4 police officer or traffic-control device.

5 J. The provisions of this section shall not relieve any person from the duty to observe  
6 other and more restrictive provisions of this ordinance prohibiting or limiting the stopping, standing  
7 or parking of vehicles in specified places or at specified times.

8 **12-9-4.4 MUNICIPAL PARKING LOT AND GARAGE NUISANCES.**

9 A. It is a nuisance for any person to park a vehicle in a municipal parking lot or garage  
10 without providing sufficient payment for the period of time the vehicle was parked.

11 B. It is a nuisance for any person to deposit or attempt to deposit in any pay and display  
12 machine located in a municipal parking lot or garage, any slug, button or any other device or  
13 substance as substitutes for coins of United States currency or other method of payment as provided  
14 in this ordinance. At the election of the city, this nuisance shall be abated by the payment to the city  
15 of the fine set forth in 12-9-4.5 or the city's actual damages.

16 C. It is a nuisance for any person to deface, injure, tamper with, open or willfully break,  
17 destroy or impair the usefulness of any parking meter. This nuisance shall be abated by payment of  
18 the city's actual damages plus the fine set forth in 12-9-4.5.

19 D. The provisions of this section shall not apply in a period of emergency determined by  
20 an officer of the fire department or the police department or in compliance with the directions of a  
21 police officer or traffic-control device.

22 E. The provisions of this section shall not relieve any person from the duty to observe  
23 other and more restrictive provisions of this ordinance prohibiting or limiting the stopping, standing  
24 or parking of vehicles in specified places or at specified times.

25 **12-9-4.5 Fines**

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.

1 A. The fine for violation of Section 12-9-4.3 and 12-9-4.4 shall be sixteen dollars  
2 (\$16.00) per violation, except for a violation of 12-9-4.3 the fine shall be twenty-seven dollars

3 B. Fines are subject to a \$25.00 additional penalty if the fine is not paid within fifteen  
4 (15) days from receipt of the fine.

5 **12-9-4.6 Enforcement.**

6 A. *Parking Fine Notification.*

7 (1) **Form and contents.** The parking fine notification shall state and contain the  
8 license plate number, the date and time of the parking fine notification, the type of violation,  
9 the location of the violation and the amount of the fine. The parking fine notification shall  
10 conspicuously and in bold face type state; "Failure to pay this fine on time may lead to  
11 serious legal consequences including the assessment of additional fines and monies due." The  
12 parking fine notification shall inform the registered owner that within fifteen (15) days of the  
13 date of the parking fine notification, the owner may submit a request for hearing to the  
14 parking violations bureau on a form provided by the parking violations bureau, in accordance  
15 with Subsection 12-9-4.6(B)(2) SFCC 1987.

16 (2) **Delivery.** Correspondence from the city regarding parking fine notifications  
17 shall be delivered to the address of the registered owner according to the address registered  
18 with the department of motor vehicles (DMV). The registered owner has a duty to timely  
19 notify DMV of a change of address. The failure to do so does not entitle the registered owner  
20 to assert the defense of inadequate notice. The mailing of a parking fine notification to the  
21 address of the registered owner of a vehicle according to the records of DMV is constructive  
22 notice of a parking fine notification.

23 B. *Response to a Parking Fine Notification.* Within fifteen (15) days from the date of  
24 issuance of the parking fine notification, the registered owner shall pay the fine or submit a request  
25 for a hearing.

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.

1           (1)     *Payment of the parking fine.* Upon receipt of the parking fine notification, the  
2 recipient may elect to admit the violation and pay the fine. To proceed under this paragraph,  
3 the recipient shall admit the violation by signing and dating the parking fine notification on a  
4 space provided and returning the parking fine notification with payment to the parking  
5 violations bureau within fifteen (15) days. The city may, but is not required to, adopt  
6 procedures for alternative methods of payment of fines using the internet or other on-line  
7 services. There shall be a fifty dollar (\$50.00) penalty for any payment tendered that is not  
8 honored or is returned for any reason.

9           (2)     *Request for hearing.* The recipient of a parking fine notification may submit  
10 a request for hearing on a form provided by the parking violations bureau by so indicating  
11 and returning the parking fine notification to the parking violations bureau within fifteen(15)  
12 days of the date of the parking fine notification. There is no fee for a hearing. The hearing  
13 officer shall schedule a hearing.

14       C.     *Default with forfeit of hearing on the merits.* If the city does not receive payment of  
15 the fine or a request for a hearing within fifteen (15) days from the date of the parking fine  
16 notification, the registered owner is in default. Default automatically results in liability to the  
17 registered owner of the vehicle for the violation and the registered owner is barred from requesting or  
18 obtaining any hearing on the merits of the parking fine after the date of the default. A default results  
19 in an additional penalty of twenty-five dollars (\$25.00). The parking violations bureau shall mail the  
20 notice of default to the defaulting party. The notice of default shall inform the recipient that they have  
21 fifteen (15) days from the date of mailing of the notice of default to pay the fine and default penalty..  
22 If the default is not cured within 15 days, the city may pursue all remedies for collection of a debt and  
23 is entitled to an award of reasonable attorney's fees incurred. An uncured notice of default shall be  
24 entered into the records of the parking violations bureau and, at the City's discretion, the default may  
25 be cured even after 15 days from the mailing of the notice of default by payment in full plus penalties

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A reference includes any unreferenced paragraphs that precede it.

1 but only if the payment is made before being sent to a contracted collection agency, or the default  
2 may be promptly sent to a contracted collection agency, and once sent to a collection agency the  
3 default may only be cured by payment to the collection agency.

4 D. *Hearing on the Merits.* The recipient of a parking fine notification may request that a  
5 hearing be scheduled before a hearing officer.

6 (1) The hearing on the merits shall be held within fifteen (15) city business days  
7 of receipt of the request unless the hearing is continued with agreement of the parties.

8 (2) The hearing on the merits shall be informal and not bound by the technical  
9 rules of evidence.

10 (3) The hearing officer shall only determine whether there was a violation of 12-  
11 9-4, an expired parking meter violation or a municipal parking lot or garage violation.

12 (4) The hearing officer shall mail or deliver written notice of his or her decision  
13 to the owner within fifteen (15) city business days of the hearing.

14 (5) The registered owner is strictly and vicariously liable for the violation unless  
15 one (1) of the exceptions herein applies. If there is more than one (1) registered owner, all  
16 registered owners shall be jointly and severally liable.

17 E. *Defenses.* The respondent may present the following defenses in addition to any other  
18 defenses available under law and has the burden of proof concerning the defenses:

19 (1) The vehicle was stolen or otherwise being driven without the registered  
20 owner's knowledge or permission at the time of the alleged violation. The registered owner  
21 shall have a police report pertaining to the theft to avail the owner of this defense.

22 (2) The ownership of the vehicle had lawfully been transferred and conveyed  
23 from the registered owner to another person before the time of the alleged violation. To assert  
24 this defense, the registered owner shall identify the transferee and provide proof of  
25 conveyance.

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A reference includes any unreferenced paragraphs that precede it.

(3) The evidence does not show that a parking violation was committed involving the subject vehicle.

F. *Revenue.* The revenue generated through parking violations fines, hearings and collections shall be retained and distributed by the parking violations bureau. Each month, the parking violations bureau shall retain the gross total amount of penalties, fines, fees and costs assessed and collected that month and the parking violations bureau shall be responsible for paying all costs associated with the hearing officer, or a collection contract or other contractors that assist the city in imposing and collecting penalties or fines and costs or fees.

**Section 3. Section 12-11-3 of City of Santa Fe Uniform Traffic Ordinance (being Ordinance No. 2006-34) is amended to read:**

**12-11-3 WHEN PERSON CHARGED MAY ELECT TO APPEAR AT BUREAU OR BEFORE MUNICIPAL JUDGE.**

A. This section does apply to all violations of the Uniform Traffic Ordinance except:

(1) parking nuisance violations (parking meter violations and municipal parking lot and garage violations) as set forth in Sections 12-9-3 and 12-9-4 of the Uniform Traffic Ordinance; and

(2) parking violations designated in Section 12-9-3.9 and 12-9-3.10 as such violations relate to parking in designated accessible parking spaces, including not carrying required registration plates or a placard indicating disability.

B. Any person charged with an offense for which payment of a fine may be made to the traffic violations bureau under the foregoing provisions shall have the option of:

(1) paying the fine within the time specified in the citation/notice of arrest at the traffic violations bureau upon entering a plea of guilty and upon waiving appearance in court;  
or

(2) upon a plea of not guilty shall be entitled to a trial as authorized by law and depositing any bail required as provided in the Rules of Procedure for the Municipal Courts,

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.

adopted by the New Mexico Supreme Court, as amended.

[B]C. For the purpose of this ordinance, the payment of a fine to the traffic violations bureau shall be deemed an acknowledgment of conviction of the alleged offense. The traffic violations bureau, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment of the fine.(\*)

**Section 4. Section 12-12-1 of City of Santa Fe Uniform Traffic Ordinance (being Ordinance No. 2006-34) is amended to read:**

**12-12-1 PENALTIES.**

The following provisions in Article 12-12 of the Uniform Traffic Ordinance shall not apply to parking meter violations or municipal parking lot and garage violations as fines for these violations are covered in 12-9-3 and 12-9-4.

**Section 5. Schedule B, Parking Violation Fines Schedule of City of Santa Fe Uniform Traffic Ordinance (being Ordinance No. 2006-34, as amended) is amended to read:**

**SCHEDULE B**

**PARKING VIOLATION FINES SCHEDULE**

ADOPTED: July 12, 2006

AMENDED: March 25, 2009 – Ord. #2009-11

\_\_\_\_\_, 2014 – Ord. #2014-\_\_\_\_

**SECTION 1.**

This Exhibit may be cited as the city of Santa Fe parking violation fines schedule.

**SECTION 2.**

"Parking violation" means violation of the following listed sections of the city of Santa Fe Uniform Traffic Code for which the listed fine is established. The term "parking violation" does not include any violation which has caused or contributed to the cause of an accident resulting in injury or death to any person.

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.

	<b>COMMON NAME OF OFFENSE</b>	<b>SECTION VIOLATED</b>	<b>FINE</b>
1			
2	Stopping, Standing or Parking Prohibited	12-6-6.1	\$27
3	Additional Parking Regulations	12-6-6.2	\$21
4	Stopped/Parked Vehicles		
5	Interferes with other Traffic	12-6-6.3	\$35
6	Parking <u>in</u> Alleys Prohibited	12-6-6.4	\$27
7	All-Night Parking <u>Prohibited</u>	12-6-6.5	\$27
8	Parking for Certain Purposes Prohibited	12-6-6.6	\$27
9	Parking Adjacent to Schools Prohibited	12-6-6.7	\$27
10	Parking Prohibited on Narrow Streets	12-6-6.8	\$27
11	Standing or Parking on One-Way Streets	12-6-6.9	\$27
12	Standing or Parking on Divided Streets	12-6-6.10	\$27
13	Stopping Standing or Parking/Hazardous Places	12-6-6.11	\$27
14	Stopping, Standing or Parking/Certain streets	12-6-6.12	\$27
15	Stopping, Standing or		
16	Parking/Business/Residence distr.	12-6-6.14	\$27
17	Parking in a Special Parking Area Without a Permit	12-6-6.15	\$32
18	Stopping, Standing or Parking/Freight		
19	Loading Zones	12-6-8.4	\$37
20	Parking of Buses and Taxicabs	12-6-9.3	\$37
21	Restricted Use of Bus and Taxicab Stands	12-6-9.4	\$27
22	<del>Parking Meter Space</del>	<del>12-9-3</del>	<del>\$27</del>
23	<del>Parking Time Limits</del>	<del>12-9-4</del>	<del>\$16</del>
24	<del>Presumption of Unlawful Parking</del>	<del>12-9-8</del>	<del>\$27]</del>
25	Abandoned vehicles on private property	12-12-18	\$15

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.

**SECTION 3. MUNICIPAL COURT FEES**

The municipal court fees set forth in Section 1-3.2 Section SFCC 1987 shall not apply to parking violations set forth in Section 2 above.

**SECTION 4. PAYMENT OF FINES**

Fines shall be paid to the city:

(a) by mailing a check or money order to city of Santa Fe parking violations bureau P.O. Box 909 Santa Fe New Mexico 87504-0909;

(b) by depositing a check, money order or cash in a yellow collection box located on parking meters around the down town area; or

(c) in person at locations designated by the city.

Payment shall be received within 15 days of the date of citation otherwise, the fine shall double.

Failure to pay the fine may result in the booting of the vehicle as set forth in section 12-12-20 of the city of Santa Fe uniform traffic code adopted in section 24-1.1 SFCC 1987. An alleged violator may protest the charge of violation by filing the proper form to protest the violation with the municipal judge located at 2511 Camino Entrada within 30 days of the charge of violation. No fine imposed upon later conviction shall exceed the fine established for the particular parking violation.

**SECTION 5. MANDATORY COURT APPEARANCE.**

This parking violations fines schedule and the fines set forth in 12-9-5 do not apply to the following parking violations which requires a mandatory court appearance and a fine no less than two hundred fifty dollars (\$250) and no more than five hundred dollars (\$500):

Parking in Designated Accessible Parking Space ~~[12-9-9]~~ 12-9-3.9

Special Registration Plate or Parking Placard Indicating Disability 12-9-3.10

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code. A reference includes any unreferenced paragraphs that precede it.



1 APPROVED AS TO FORM:  
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4 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY  
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25 *M/Melissa/Bills 2013/Parking\_UTO Changes(4\_29\_14)*

\*An asterisk (\*) at the end of a paragraph indicates that there are no comparable provisions in the State Code.  
A reference includes any unreferenced paragraphs that precede it.

**CITY OF SANTA FE, NEW MEXICO**

**RESOLUTION NO. 2014-\_\_**

**INTRODUCED BY:**

Councilor Joseph Maestas

**A RESOLUTION**

**ADOPTING THE CITY OF SANTA FE INVESTMENT POLICY TO FORMALIZE THE  
CITY POLICY RELATED TO INVESTMENT OF CITY FUNDS.**

**WHEREAS**, the City of Santa Fe Investment Policy ("Investment Policy") became effective on November 30, 2005 and has been reviewed on an annual basis by the Finance Committee and if modifications have been required such modifications have been approved by the City Council, see the 2013 Investment Policy, attached hereto as Exhibit "A"; and

**WHEREAS**, the purpose of the Investment Policy is to indicate a conscious formal effort by the City to develop, implement and monitor the investment of all City funds; and

**WHEREAS**, the Investment Policy is an important means to communicate to staff and the public the City's policies on management of its financial assets; and

**WHEREAS**, the overall policy statement in the Investment Policy states that "It is the policy of the City to invest funds in a manner which will provide the highest investment return with the maximum security while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds;" and

1       **WHEREAS**, Section 6.19 of the Investment Policy requires that the policy “be adopted by  
2 resolution of the City Council”; and

3       **WHEREAS**, there is no record of the City showing that the Investment Policy has been  
4 adopted by resolution; and

5       **WHEREAS**, there is a need to amend 3.0 of the Investment Policy to indicate the adoption of  
6 this resolution; and

7       **WHEREAS**, additionally, there is a need to amend Section 6.19 of the Investment Policy to  
8 indicate that by June 30<sup>th</sup> of each fiscal year the investment policy shall be renewed annually by the  
9 Finance Committee and if modifications are required, not only on annual basis but as may be needed  
10 from time to time, then such modifications shall be approved by the City Council.

11       **NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
12 **CITY OF SANTA FE** that the Governing Body hereby formally adopts the City of Santa Fe  
13 Investment Policy with the following modifications:

14       1.       **3.0       REFERENCES:**

15               3.1       SFCC 11-8C.

16               3.2       Code of Ethics Ordinance 1-7.5H.

17               3.3       Securities & Exchange Commission Rule 15(c)3-1 (uniform net capital rule).

18               3.4       NMSA 1978 sections 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-36, 6-10-44,  
19               and 3-45-24.

20               3.5       Resolution No. 2014-

21       2.       **6.19       INVESTMENT POLICY ADOPTION**

22               The City’s investment policy shall be adopted by resolution of the City Council. The  
23 policy shall be renewed annually by the Finance Committee, no later than June 30 of  
24 the fiscal year. ~~[with any m]~~ Modifications to the policy, whether during the annual



1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2014 -**

3 **INTRODUCED BY:**

4 Councilor Patti Bushee

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10 **A RESOLUTION**

11 **ENDORISING THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT'S FY2015**  
12 **BUDGET PROPOSAL, APPROVING THE FY2015 CITY OF SANTA FE REGIONAL**  
13 **TRANSIT PLAN AND DIRECTING STAFF TO SUBMIT THE CITY OF SANTA FE**  
14 **REGIONAL TRANSIT PLAN FOR FY2015 TO THE NORTH CENTRAL REGIONAL**  
15 **TRANSIT DISTRICT BOARD OF DIRECTORS FOR CONSIDERATION AND APPROVAL.**  
16

17 **WHEREAS**, the North Central Regional Transit District (hereinafter referred to as  
18 "NCRTD") was created in 2004 by agreement between the City of Espanola, Los Alamos County,  
19 Pojoaque Pueblo, Rio Arriba County, San Ildefonso Pueblo, San Juan Pueblo, Santa Clara Pueblo, the  
20 City of Santa Fe, Santa Fe County and Tesuque Pueblo; and

21 **WHEREAS**, NCRTD Resolution 2008-14 states that "in order to create a truly effective and  
22 efficient regional transit system that cooperatively and equitably serves north central New Mexico,  
23 the NCRTD believes that the City of Santa Fe should be a member of the District"; and

24 **WHEREAS**, as a result of City of Santa Fe Resolution 2008-87, the City of Santa Fe joined  
25 the NCRTD and soon thereafter expanded City delivered transit services to provide connecting

1 transportation to and from the Rail Runner, through funding made available by the NCRTD; and

2 **WHEREAS**, the City's expanded services include:

- 3 • Santa Fe Pick-Up operations, providing shuttle service from the final Rail Runner station
- 4 at the Railyard, to downtown destinations and Museum Hill;
- 5 • Santa Fe Trails Route 22, serving the New Mexico 599 Rail Runner station as well as
- 6 Rancho Viejo and Santa Fe Community College;
- 7 • Santa Fe Trails Routes 2 and 4, serving inbound and outbound Rail Runner trains at
- 8 South Capital station;
- 9 • Additional enhanced, or "special service", provided to accommodate visitors and
- 10 residents alike, and meet increased demand for Rail Runner transfers, on Folk Art
- 11 Market, Spanish Market, and Indian Market weekends, as well as annual community
- 12 celebrations of Zozobra and the Canyon Road Farolito Walk; and

13 **WHEREAS**, the existing services provided by Santa Fe Trails have been deemed to meet the  
14 definition of regional services as adopted by the NCRTD Board and incorporated into its financial  
15 policies as amended on November 4, 2011 by Board Resolution No. 2011-10; and

16 **WHEREAS**, the NCRTD has identified funding in their FY2015 budget proposal to keep the  
17 aforementioned regional services, operated by the City, funded and running through FY2015; and

18 **WHEREAS**, the NCRTD will reimburse the City for said regional transit services, upon  
19 receipt of invoices for service delivered, up to a FY2015 total of \$953,274.00 ; and

20 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
21 **CITY OF SANTA FE** that the Governing Body hereby endorses the proposed FY2015 NCRTD  
22 budget that continues to fund regional transit services, as identified above, that the City of Santa Fe  
23 currently provides on behalf of the NCRTD, and that the aforementioned routes compose and are  
24 approved as the City of Santa Fe Regional Transit Plan for FY2015, and upon approval by the  
25 NCRTD Board of Directors, is incorporated in the NCRTD service plan.

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PASSED, APPROVED, and ADOPTED this \_\_\_\_ day of \_\_\_\_, 2014.

\_\_\_\_\_  
JAVIER GONZALES, MAYOR

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
KELLEY BRENNAN, CITY ATTORNEY

Draft: April 28, 2014

STATE OF NEW MEXICO       )  
COUNTY OF SANTA FE       ) ss.  
CITY OF SANTA FE           )

The City Council (the "Governing Body") of the City of Santa Fe, New Mexico (the "Governmental Unit"), met in regular session in full conformity with the law and the rules and regulations of the Governing Body at the Santa Fe Municipal Offices, 200 Lincoln Avenue, Santa Fe, New Mexico 87501 on the 25<sup>th</sup> day of June, 2014, at the hour of 7:00 p.m. Upon roll call, the following members were found to be present:

Present:

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Absent:

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Also Present:

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Thereupon, there was officially filed with the Clerk a copy of a proposed ordinance in final form.



CITY OF SANTA FE, NEW MEXICO  
COUNCIL BILL NO. 2014-\_\_  
INTRODUCED BY:

Councilor Patti Bushee

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND AMONG THE CITY OF SANTA FE (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF \$3,500,000, FOR THE ACQUISITION OF TRANSIT BUSES FOR THE GOVERNMENTAL UNIT'S PUBLIC TRANSPORTATION SYSTEM; PROVIDING FOR THE PAYMENT OF THE LOAN AGREEMENT FROM CERTAIN GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; PROVIDING FOR THE DISTRIBUTIONS OF GROSS RECEIPTS TAX REVENUES FROM THE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO AN INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; SPECIFYING DETAILS OF THE LOAN AGREEMENT, INCLUDING THE NET EFFECTIVE INTEREST RATE; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of the Ordinance unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing home-rule municipality under the constitution and general laws of the State of New Mexico; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interests of the Governmental Unit and its residents that the Loan Agreement be executed and delivered and that the financing of the Project take place by executing and delivering the Loan Agreement; and

WHEREAS, pursuant to the Municipal Gross Receipts Tax Act, Sections 7-19D-1 through 7-19D-12, NMSA 1978 and City Ordinance No. 23, 1991, the Governmental Unit has imposed a municipal gross receipts tax in the amount of one quarter (1/4) of one

percent (1%) of the gross receipts of persons engaging in business within the Governmental Unit, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act (the "Municipal Gross Receipts Tax"); and

WHEREAS, the Governing Body desires to provide that, under the circumstances specified in the Loan Agreement, a portion of the distributions of the Pledged Tax Revenues will be redirected to the Finance Authority or its assigns pursuant to an Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, the Loan Agreement shall be executed and delivered with a first lien (but not an exclusive first lien) on the Pledged Tax Revenues; and

WHEREAS, other than as described in Exhibit "A" to the Loan Agreement, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable from the Pledged Tax Revenues and other legally available special revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Tax Revenues to the Finance Authority (or its assigns) for the payment of the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Related Documents which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Definitions. As used in this Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, including Sections 3-31-1 through 3-31-12, Section 6-21-1 through 6-21-31, Section 7-1-6.4, and Sections 7-19D-1 through 7-19D-12, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement, including this Ordinance.

"Aggregate Annual Debt Service Requirement" means the total principal and interest due and payable pursuant to the Loan Agreement and on all Parity Tax Obligations secured by a pledge of the Pledged Tax Revenues, for any one Fiscal Year.

"Authorized Officers" means, in the case of the City, the Mayor, Manager, Finance Director & Treasurer, and Clerk, and in the case of the Finance Authority, the Chairman, Vice-Chairman, Secretary and Chief Executive Officer.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority and specifically related to the Loan Agreement and the Loan Agreement Payments.

"Closing Date" means the date of execution, delivery and funding of the Loan Agreement.

"Completion Date" means the date of final payment of the cost of the Project.

"Debt Service Account" means the account in the name of the Governmental Unit within the Debt Service Fund established under the Indenture and held by Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

"Distributing State Agency" means the Taxation and Revenue Department of the State of New Mexico.

"Expense Fund" means the Expense Fund created pursuant to the Indenture, to be held and administered by the Trustee to pay costs of issuance of the Loan Agreement and the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority and the Trustee in administering the Loan Agreement, including legal fees.

"Finance Authority" means the New Mexico Finance Authority.

"Fiscal Year" means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

"Governing Body" means the City Council of the City of Santa Fe, New Mexico, or any future successor governing body of the Governmental Unit.

"Governmental Unit" or "City" means the City of Santa Fe, New Mexico.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

"Indenture" means the General Indenture of Trust and Pledge dated June 1, 1995, as amended and supplemented by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a pledge notification or supplemental indenture.

"Independent Accountant" means (i) an accountant employed by the State and under the supervision of the State Auditor, or (ii) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Governmental Unit who (a) is, in fact, independent and not under the domination of the Governmental Unit, (b) does not have any substantial interest, direct or indirect, with the Governmental Unit, and (c) is not connected with the Governmental Unit as an officer or employee of the Governmental Unit, but who may be regularly retained to make annual or similar audits of the books or records of the Governmental Unit.

"Intercept Agreement" means the Intercept Agreement between the Governmental Unit and Finance Authority providing for the direct payment of Pledged Tax Revenues in amounts sufficient to pay principal, and interest due on the Loan Agreement.

"Loan" means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

"Loan Agreement" means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee.

"Loan Agreement Balance" means, as of the date of calculation, the Loan Agreement Principal Amount less the aggregate principal amount paid or prepaid pursuant to the provisions of the Loan Agreement.

"Loan Agreement Payment" means, collectively, the Principal Component and the Interest Component to be paid by the Governmental Unit as the payment of the Loan Agreement, as shown on Exhibit "B" to the Loan Agreement.

"Loan Agreement Principal Amount" means an amount not to exceed \$3,500,000.

"NMSA" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

"Ordinance" means this ordinance as supplemented or amended from time to time.

"Parity Tax Obligations" means the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of Pledged Tax Revenues and issued with a lien on the Pledged Tax Revenues on a parity with the lien thereon of this Loan Agreement.

"Pledged Tax Revenues" means

(i) the revenues of the Municipal Gross Receipts Tax imposed by the Governmental Unit pursuant to Sections 7-19D-1 through 7-19D-12, NMSA 1978 and City Ordinance No. 23, 1991, in the amount of one-quarter of one percent (.25%) of the gross receipts of persons engaging in business within the Governmental Unit, as determined and adjusted under the Municipal Local Option Gross Receipts Taxes Act; and

(ii) the portion of the gross receipts tax distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, which represents the amount of one-quarter percent Municipal Gross Receipts Tax revenues that would have been remitted to the City but for the deductions (effective January 1, 2005) provided by Section 7-9-92 and 7-9-93 NMSA 1978 and any similar distributions made to the City in lieu of one-quarter percent Municipal Gross Receipts Tax revenues pursuant to law; and

(iii) any other gross receipts tax revenues received by the City, whether from distribution by the State or pursuant to gross receipts taxes imposed by the City, and hereafter (i.e. after the adoption of this ordinance) pledged to the payment of the Loan Agreement by affirmative act of the Council.

"Processing Fee" means the processing fee, if any, to be paid on the Closing Date by the Governmental Unit to the Finance Authority for the costs of originating and servicing the Loan, as shown on Exhibit "A" to the Loan Agreement.

"Program Account" means the account in the name of the Governmental Unit established under the Indenture and held by the Trustee for deposit of a portion of the proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

"Project" means the acquisition and any other expenses necessary for or incidental to the provision of public transportation replacement buses, payment of the Processing Fee to the Finance Authority and payment of related professional fees.

"Related Documents" means the Loan Agreement and the Intercept Agreement and any other document or agreement containing an obligation of the Governmental Unit as may be required in connection with the execution and delivery of the Loan Agreement.

"State" means the State of New Mexico.

"Trustee" means the trust company or national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward the Project and the execution and delivery of the Loan Agreement, be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the Project and Related Documents. The Project and the method of financing the Project through execution and delivery of the Related Documents are hereby authorized and ordered.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of the Project.

B. The Pledged Tax Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

C. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

D. The Project and the execution and delivery of the Related Documents pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the residents of the Governmental Unit.

F. The Governmental Unit will finance the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in this Ordinance, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement.

Section 5. Related Documents - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of at least a three-fourths majority of all of the members of the Governing Body. For the purpose of conserving the property, protecting the general welfare and prosperity of the citizens of the Governmental Unit and financing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount not to exceed \$3,500,000, and the execution and delivery of the Related Documents are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the acquisition and any other expenses necessary for or incidental to the provision of public transportation replacement buses, (ii) to pay the Processing Fee to the Finance Authority and costs of related professional fees. The Project will be owned by the Governmental Unit.

B. Detail. The Loan shall be payable in installments of principal due on the dates designated in the Loan Agreement and bear interest payable on the dates designated in the Loan Agreement and at the rates designated in the Loan Agreement.

The Loan shall be issued at an interest rate not to exceed twelve percent (12%), which is the maximum rate permitted by State law, with a net effective interest rate of \_\_\_\_\_.

Section 6. Approval of Related Documents. The forms of the Related Documents presented at the meeting of the Governing Body at which this Ordinance is adopted are approved and confirmed. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Related Documents with such changes, insertions and omissions that are consistent with this Ordinance as may be approved by such individual Authorized Officers, and the Clerk is hereby authorized to affix the seal of the Governmental Unit on the Related Documents and attest the same. The execution of the Related Documents by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligations. The Loan Agreement shall be secured by the pledge of the Pledged Tax Revenues as set forth in this Ordinance and the Loan Agreement and shall be payable solely from the Pledged Tax Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be special, limited obligations of the Governmental Unit, payable from the Pledged Tax Revenues as provided in this Ordinance, the Loan Agreement and the Related Documents and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance nor in the Loan Agreement, nor any other Related Documents or instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Tax Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other Related Document or instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement and Related Documents shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other special revenues of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of Acquisition of the Project.

A. Program Account and Debt Service Account.

(i) Loan Agreement Account. The Governmental Unit hereby consents to creation of the Debt Service Account to be held and maintained by the Finance Authority and to the Program Account by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves of the deposit of the proceeds of the Loan Agreement in the Program Account.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account, as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B. Completion of the Project. Upon the Completion Date, the Governmental Unit shall execute a certificate stating that the Project has been completed. As soon as practicable, and, in any event, not more than 60 days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Tax Revenues, Distributions of the Pledged Tax Revenues and Flow of Funds.

A. Deposit of Pledged Tax Revenues. Except as otherwise provided in the Loan Agreement and the Intercept Agreement, Pledged Tax Revenues shall be paid to the Finance Authority for deposit in the Debt Service Account in an amount sufficient to pay principal, interest and other amounts due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Debt Service Account if the amount in the Debt Service Account totals a sum at least equal to the entire aggregate amount to become due as to principal and interest, on, and any other amounts due under, the Loan Agreement, in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided in Subsection C below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section and any payments required by Parity Tax Obligations, any moneys remaining in the Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.



Section 10. Lien on Pledged Tax Revenues. The Pledged Tax Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest and any other amounts due under the Loan Agreement. The Loan Agreement constitutes an irrevocable parity lien, but not necessarily an exclusive parity lien with the lien of the Parity Tax Obligations, on the Pledged Tax Revenues as set forth herein and therein.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance and the Loan Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Ordinance and the Loan Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as they may determine).

Section 12. Supplement and Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Ordinance may be supplemented by resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Related Documents have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and Clerk of the Governmental Unit, and the title and general

summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

[Form of Summary of Ordinance for Publication]

CITY OF SANTA FE, NEW MEXICO  
NOTICE OF ADOPTION OF ORDINANCE

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 2014-\_\_, duly adopted and approved by the Governing Body of the City of Santa Fe, New Mexico (the "City"), on June 25, 2014. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 200 Lincoln Avenue, Santa Fe, New Mexico 87501.

The title of the Ordinance is:

CITY OF SANTA FE, NEW MEXICO  
COUNCIL BILL NO. 2014-\_\_  
ORDINANCE NO. 2014-\_\_

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BY AND AMONG THE CITY OF SANTA FE (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE CITY TO PAY A PRINCIPAL AMOUNT OF \$3,500,000, FOR THE ACQUISITION OF TRANSIT BUSES FOR THE GOVERNMENTAL UNIT'S PUBLIC TRANSPORTATION SYSTEM; PROVIDING FOR THE PAYMENT OF THE LOAN AGREEMENT FROM CERTAIN GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; PROVIDING FOR THE DISTRIBUTIONS OF GROSS RECEIPTS TAX REVENUES FROM THE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO AN INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; SPECIFYING DETAILS OF THE LOAN AGREEMENT, INCLUDING THE NET EFFECTIVE INTEREST RATE; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN

CONNECTION WITH THE EXECUTION AND DELIVERY OF THE  
LOAN AGREEMENT AND INTERCEPT AGREEMENT.

A summary of the subject matter of the Ordinance is contained in its title.

This notice constitutes compliance with Section 6-14-6 NMSA 1978.

[End of Form of Summary for Publication]

PASSED, APPROVED AND ADOPTED THIS 25<sup>th</sup> DAY OF JUNE, 2014.

CITY OF SANTA FE, NEW MEXICO

By \_\_\_\_\_  
Javier M. Gonzales, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

Approved as to Form:

\_\_\_\_\_  
Kelley A. Brennan, Interim City Attorney

Councilor \_\_\_\_\_ then moved adoption of the foregoing Ordinance,  
duly seconded by Councilor \_\_\_\_\_.

The motion to adopt said Ordinance, upon being put to a vote, was passed and  
adopted on the following recorded vote:

Those Voting Aye:

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Those Voting Nay:

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Those Absent:

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\_\_\_\_\_ ( ) members of the Governing Body having voted in favor of said motion,  
the Mayor declared said motion carried and said Ordinance adopted, whereupon the  
Mayor and the Clerk signed the Ordinance upon the records of the minutes of the  
Governing Body.

After consideration of matters not relating to the Ordinance, the meeting on the motion duly made, seconded and unanimously carried, was adjourned.

CITY OF SANTA FE, NEW MEXICO

By \_\_\_\_\_  
Javier M. Gonzales, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

STATE OF NEW MEXICO )  
COUNTY OF SANTA FE ) ss.  
CITY OF SANTA FE )

I, Yolanda Y. Vigil, the duly acting and qualified Clerk of the City of Santa Fe, New Mexico (the "City"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City, had and taken at a duly called regular meeting held at the Santa Fe Municipal Offices, 200 Lincoln Avenue, Santa Fe, New Mexico, 87501 on June 25, 2014 at the hour of 7:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

3. Notice of the June 25, 2014, meeting of the Governing Body was duly given as required by the Open Meetings Act, Sections 10-15-1 through 4, NMSA 1978 and Resolution No. 2014-1 which is the current Resolution of the City which establishes the reasonable notice policy of the City as required by the Open Meetings Act.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_ day of \_\_\_\_, 2014.

CITY OF SANTA FE, NEW MEXICO

(SEAL)

By \_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

EXHIBIT "A"

Notice of Meeting



1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2014-\_\_**

3 **INTRODUCED BY:**

4  
5 Councilor Peter Ives

6  
7  
8  
9  
10 **A RESOLUTION**

11 **ENDORISING THE GREEN LODGING INITIATIVE; AND DIRECTING STAFF TO**  
12 **EXPLORE WAYS TO CONTINUE, FUND AND EXTEND THE GREEN LODGING**  
13 **INITIATIVE TO ALL LODGING FACILITIES IN THE CITY OF SANTA FE.**

14  
15 **WHEREAS**, fourteen bed and breakfasts, hotels, inns, motels and resorts, representing a  
16 cross section of lodging facilities in Santa Fe have participated in the Green Concierge Certificate  
17 program; and

18 **WHEREAS**, such lodging facilities account for approximately 36% of the total number of  
19 lodging rooms in Santa Fe and approximately 50% of downtown hotel rooms; and

20 **WHEREAS**, the Green Concierge Certificate program, known locally as the Green Lodging  
21 Initiative, promotes Santa Fe as an environmentally conscious and climate smart city, both nationally  
22 and internationally; and

23 **WHEREAS**, the Santa Fe Watershed Association contracted with Hospitality Green, LLC,  
24 founder of the Green Concierge Program, to bring the program to Santa Fe; and

25 **WHEREAS**, the participating lodging facilities include La Fonda on the Plaza, La Posada de

Santa Fe Resort and Spa, Old Santa Fe Inn, Inn on the Alameda, Silver Saddle Motel, Eldorado Hotel and Spa, Santa Fe Sage Inn, Hotel Santa Fe, Inn of the Governors, Ten Thousand Waves, Inn at Santa Fe, Inn of the Five Graces, Fort Marcy Suites and Casa Cuma Bed and Breakfast; and

**WHEREAS**, such facilities have realized significant energy savings and water savings, which benefit the community of Santa Fe; and

**WHEREAS**, the training that was provided to the staff of the lodging facilities included no less than 12 hours of training for some 90 persons working the facilities; and

**WHEREAS**, the program included an on-site third party assessment of the impact of the program on the participating facilities; and

**WHEREAS**, the assessment included evaluations of each facilities' policies, including, personnel practices; contractual obligations; waste/recycling; universal waste handling; purchasing/source reduction; pollution prevention; water/energy usage/maintenance practices and chemical management and disposal practices; and

**WHEREAS**, the lodging industry is a mainstay of the Santa Fe economy, resulting in Santa Fe collecting in excess of \$8,000,000 in taxes from Santa Fe lodging facilities; and

**WHEREAS**, the Green Lodging Initiative has fostered Santa Fe lodging facilities to participate with local green product vendors in ways that benefit both the lodging facilities and vendors; and

**WHEREAS**, the Green Lodging Initiative stimulates participation in energy efficiency programs offered by Public Service Company of New Mexico in positive ways; and

**WHEREAS**, the following significant results<sup>1</sup> have been achieved through the Green Lodging Initiative:

**ENERGY SAVINGS**

kWh	MMBTU's	Metric Tons CO2*
1.2 million per year	1,761,739	356
* EPA Calculator		

**WATER SAVED (Annual):**

Water Source	Gallons	Volume Weight of Plastic (lbs)	Metric Tons CO2*
Bottled Water	79,594	5094	5807
Laundry System Change Outs (based on first 2 months)	702,000		
Toilets + Showerheads (partial calculation)	772,000		
<b>Total Water Saved</b> (final figures t.b.d.)	<b>1,553,594</b>		

\* U.S. EPA, 2006. Solid Waste Management and Greenhouse Gases: A Life-Cycle Assessment of Emissions and Sinks

**GREEN CLEANING REDUCTIONS FROM CHEMICAL CHANGE OUTS:**

Toxic Waste (lbs)	Plastic Solid Waste (tons)	Water Saved (gallons)
2000 per year	0.8	208

\* AHLA Green Cleaning Calculator

**RECYCLING AND SOLID WASTE (does not include reuse quantifications at this time)**

Solid Waste (tons)	Recycling (tons)	Recycling*
1700 per year	300	20%

\* EPA WARM Model

**WHEREAS**, continuation of the Green Lodging Initiative will allow for Santa Fe's lodging facilities to receive further training for greater incorporation of the Green Meeting Standards in order to meet the new requirements of International Green Meeting Standards to further the Santa Fe brand; and

1       **WHEREAS**, the continuation of the Green Lodging Initiative will allow Santa Fe's lodging  
2 industry and the City of Santa Fe to promote Santa Fe as an environmentally conscious and climate  
3 smart City; and

4       **WHEREAS**, the City of Santa Fe can and should be a national leader in the green economy,  
5 which will help to attract a greater number of the ever expanding pool of organizations looking to  
6 hold meetings in only those cities that are environmentally conscious and green.

7       **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
8 **CITY OF SANTA FE THAT** the Governing Body hereby authorizes City funding in the amount of  
9 \$50,000 be made available to further the Green Lodging Initiative in the city of Santa Fe and  
10 promote the goal that the remaining 64% of the lodging facilities, by room capacity, become Green  
11 Concierge Certificate holders.

12       PASSED, APPROVED, and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

13  
14  
15 ATTEST:

\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

16  
17 YOLANDA Y. VIGIL, CITY CLERK

18 APPROVED AS TO FORM:

19  
20 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

21  
22 M/Melissa/Resolutions 2014/ Green Lodging Incentive

<sup>1</sup> There are not final determinations but are verified as of 4/10/14. More data needs to be entered and confirmed. The figures represent resource reductions achieved by the properties during the project year 2013. Waste and Recycling are actual tonnages of materials disposed of in 2013 calendar year

1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2014-\_\_

3 INTRODUCED BY:

4  
5 Councilor Peter Ives  
6  
7  
8  
9

10 A RESOLUTION

11 AUTHORIZING PUBLIC UTILITIES DEPARTMENT STAFF TO APPLY FOR A U.S.  
12 BUREAU OF RECLAMATION (BOR) FUNDING OPPORTUNITY TO EVALUATE THE  
13 FEASIBILITY OF UTILIZING RECLAIMED WATER FOR ALTERNATIVE  
14 NON-POTABLE AND POTABLE USES.  
15

16 WHEREAS, the City of Santa Fe (City) completed two studies in 2013 that identified  
17 reclaimed water as an under-utilized asset; and

18 WHEREAS, the findings of these studies indicated that the next important step in the  
19 evaluation process is for the City to evaluate the feasibility of utilizing reclaimed water to augment its  
20 integrated water supply portfolio; and

21 WHEREAS, there is a need to establish engineering, legal, environmental, and cost-benefit  
22 factors of utilizing reclaimed water for select alternatives such as those outlined in the *Reclaimed*  
23 *Wastewater Resource Plan*, adopted by the Governing Body through Resolution No. 2013-55; and

24 WHEREAS, through the adoption of Resolution No. 2013-55, the Governing Body directed  
25 staff to develop a program to implement the actions identified within the *Reclaimed Wastewater*

1 *Resource Plan*; and

2       **WHEREAS**, there is currently a funding opportunity available through the BOR entitled  
3 “WaterSMART: Development of Feasibility Studies under the Title XVI Water Reclamation and  
4 Reuse Program for Fiscal Year 2014;” and

5       **WHEREAS**, if the City is successful in receiving the funding, the City would receive  
6 \$150,000 and be required to match \$150,000 in in-kind services, thereafter, the City would use the  
7 funding to evaluate the feasibility of utilizing reclaimed water to augment its integrated water supply  
8 portfolio.

9       **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
10 **CITY OF SANTA FE** that staff is directed to apply for funding through the BOR WaterSMART:  
11 Development of Feasibility Studies under the Title XVI Water Reclamation and Reuse Program  
12 funding opportunity.

13       **BE IT FURTHER RESOLVED** that if the City is successful in receiving such funding, the  
14 Governing Body hereby authorizes the acceptance of such funding.

15       **BE IT FURTHER RESOLVED** that staff is directed to reach out to Santa Fe County in an  
16 effort to collaborate with the County in evaluating the feasibility of utilizing reclaimed water to  
17 augment Santa Fe’s water supply portfolio.

18       PASSED, APPROVED, and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

19  
20 \_\_\_\_\_  
21 JAVIER M. GONZALES, MAYOR

22 ATTEST:

23  
24 \_\_\_\_\_  
25 YOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:

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KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2014-\_\_\_\_**

3 **INTRODUCED BY:**

4  
5 Councilor Peter Ives

6  
7  
8  
9  
10 **A RESOLUTION**

11 **ESTABLISHING FUNDING PRIORITIES FOR ITT, LAND USE AND CITY ATTORNEY**  
12 **EXPANSION REQUESTS IDENTIFIED IN THE 2014/2015 BUDGET HEARINGS THAT**  
13 **ARE NOT INCORPORATED INTO THE BUDGET, IN THE EVENT ADDITIONAL**  
14 **FUNDING IS IDENTIFIED.**

15  
16 **WHEREAS**, through the annual budget review process, the Finance Committee was  
17 presented with an expansion request spreadsheet that included expansion requests from various City  
18 departments; and

19 **WHEREAS**, based on the expansion requests, the Governing Body desires to establish  
20 funding priorities for certain expansion requests from the ITT Department, the Land Use Department  
21 and the City Attorney's Office.

22 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
23 **CITY OF SANTA FE** that the Governing Body establishes funding priorities for the following  
24 expansion requests identified in the 2014/2015 budget hearings that are not incorporated into the  
25 budget in the event additional funding is identified:



1

## 1. ITT Department – \$2,563,118

INFORMATION TECHNOLOGY & TELECOMMUNICATIONS			
Division	Ranking On Request	Description	Total
Network Operations	1	Base increase: JD Edwards upgrade to release 9.1	480,000
Network Operations	2	Base increase: replcmt. of IBM System I (iSeries/AS400) system	600,000
Network Operations	3	Base increase: replcmt. of point-to-point microwave comm. system	55,000
Network Operations	4	Base increase: data center audit remediation	106,500
Network Operations	5	Base increase: replacement of end-of-life switches/routers	261,500
Network Operations	6	Base increase: Microsoft Server 2012 w/ software assurance	12,660
Network Operations	7	Base increase: 75 hand-held radios for SFPD-replcmt. plan year 2	155,466
Network Operations	8	Base increase: replacement of 350 PCs/various City departments	472,500
Network Operations	9	Base increase: What's Up Gold network management system	14,385
Systems & Programming	10	Base increase: 7 laptops for Citywide applications training	10,500
Network Operations	11	Base increase: SFPD data center temperature/humidity sensor	500
Network Operations	17	Certification-level training for ITT staff - phase 1 of 3-year plan	129,500
Network Operations	18	Backup generator for City Hall data center	100,000
Network Operations	19	Document management system pilot project--PD, Clerk, Attorney	52,327
Network Operations	20	Video surveillance forensic analysis & historical data preparation	5,200
Geographic Info. Systems (GIS)	21	ArcGIS web-based GIS cloud server implementation	92,100
Network Operations	22	Citywide mobile device management system pilot project	13,000
Network Operations	23	Tape backup systems for virtual servers (VMware/Symantec V-Ray)	1,980
<b>TOTAL</b>			<b>2,563,118</b>

2

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[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

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2. Land Use Department – \$359,683

LAND USE DEPARTMENT			
Division	Ranking On Request	Description	Total
Inspections & Enforcement	1	Ordinance Enforcement Specialist position - annexation [1 FTE]	66,183
Administration	2	Sunguard ONESolution Community Dev. Suite/maint. agreement	271,300
Building Permit Division	3	NaviLine software upgrade contract services - Building Permit Div.	8,500
Historic Preservation	6	Increase in printing/publishing - Historic Preservation	4,000
Administration	7	Flat file storage system - Land Use Administration	4,800
Administration	8	Copier/scanner/maintenance contract - Land Use Administration	4,900
TOTAL			359,683

3. City Attorney's Office – \$111,693

GENERAL GOVERNMENT			
Division	Ranking On Request	Description	Total
City Attorney	1	Assistant City Attorney Position – City Prosecutor's Office [1 FTE]	111,693

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:

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KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2014-\_\_\_\_

INTRODUCED BY:

Councilor Carmichael Dominguez

A RESOLUTION

OF THE GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO DECLARING ITS OFFICIAL INTENT TO REIMBURSE ITSELF WITH THE PROCEEDS OF A FUTURE TAX-EXEMPT BORROWING FOR CAPITAL EXPENDITURES PAID TO 1) ACQUIRE LAND, PLAN, DESIGN, EQUIP, RENOVATE AND IMPROVE PUBLIC PARKS, BIKE-PEDESTRIAN TRAILS AND RELATED INFRASTRUCTURE PROJECTS AND 2) ACQUIRE, INSTALL, CONSTRUCT, UPGRADE, AND IMPROVE SUSTAINABLE ENVIRONMENT PROJECTS; IDENTIFYING THE CAPITAL EXPENDITURES AND THE FUNDS TO BE USED FOR SUCH PAYMENT; AND PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City of Santa Fe (the "City"), in the State of New Mexico (the "State"), is a political subdivision duly organized and existing pursuant to the Constitution and laws of the State; and

WHEREAS, the City Council (the "Governing Body") is the governing body of the City; and

WHEREAS, the Governing Body has determined that it is in the best interest of the City to make certain capital expenditures in connection with the Projects (as hereinafter defined); and

WHEREAS, the City currently intends and reasonably expects to participate in a tax-exempt borrowing to finance such capital expenditures within 18 months of the date of such capital expenditures or the placing in service of the Projects, whichever is later (but in no event more than three years after the date of the original expenditure of such moneys), including an amount not to exceed \$5,800,000 for reimbursing the City for the portion of such capital expenditures made no earlier than 60 days prior to the date hereof or to be made after the date hereof but before such borrowing; and

WHEREAS, the Governing Body hereby desires to declare its official intent, pursuant to 26 C.F.R. §1.150-2, to reimburse the City for such capital expenditures with the proceeds of the City's future tax-exempt borrowing.

*Exhibit "13"*

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTE FE, NEW MEXICO THAT:

Section 1. Declaration of Official Intent. The City presently intends and reasonably expects to finance a portion of the costs of 1) acquiring land for, and designing, building, equipping, renovating and improving public parks, bike-pedestrian trails and related infrastructure and 2) acquiring, installing, constructing, upgrading and improving sustainable environment projects, including renewable energy, arroyo drainage and watershed security projects (the "Projects") with moneys currently held in City's General Fund.

Section 2. Dates of Capital Expenditures. All of the capital expenditures within the scope of this Resolution were made no earlier than 60 days prior to the date of this Resolution.

Section 3. Issuance of Bonds or Notes. The City presently intends and reasonably expects to participate in a tax-exempt borrowing within 18 months of the date of the expenditure of moneys on the Projects or the date upon which the Projects are placed in service or abandoned, whichever is later (but in no event more than three years after the date of the original expenditure of such moneys), and to allocate an amount not to exceed \$5,800,000 of the proceeds thereof to reimburse the City for its prior expenditures in connection with the Projects.

Section 4. Confirmation of Prior Acts. All prior acts of the officials, agents and employees of the City that are in conformity with the purpose and intent of this Resolution, and in furtherance of the Projects, shall be and the same hereby are in all respects ratified, approved and confirmed.

Section 5. Repeal of Inconsistent Resolutions. All other resolutions of the Governing Body or parts of resolutions, inconsistent with this Resolution are hereby repealed to the extent of such inconsistency.

Section 6. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

ADOPTED AND APPROVED this \_\_\_ day of \_\_\_\_\_, 2014.

CITY OF SANTA FE, NEW MEXICO

By \_\_\_\_\_  
Javier M. Gonzales, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Yolanda Y. Vigil, Clerk

Approved as to Form:

\_\_\_\_\_  
Kelley A. Brennan, Interim City Attorney

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2014-\_\_\_\_

INTRODUCED BY:

Councilor Carmichael Dominguez

A RESOLUTION

OF THE GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO DECLARING ITS OFFICIAL INTENT TO REIMBURSE ITSELF WITH THE PROCEEDS OF A FUTURE TAX-EXEMPT BORROWING FOR CERTAIN CAPITAL EXPENDITURES UNDERTAKEN OR TO BE UNDERTAKEN BY THE CITY; IDENTIFYING THE CAPITAL EXPENDITURES AND THE FUNDS TO BE USED FOR SUCH PAYMENT; AND PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City of Santa Fe (the "City"), in the State of New Mexico (the "State"), is a political subdivision duly organized and existing pursuant to the Constitution and laws of the State; and

WHEREAS, the City Council (the "Governing Body") is the governing body of the City; and

WHEREAS, the Governing Body has determined that it is in the best interest of the City to make certain capital expenditures in connection with the Project (as hereinafter defined); and

WHEREAS, the City currently intends and reasonably expects to participate in a tax-exempt borrowing to finance such capital expenditures within 18 months of the date of such capital expenditures or the placing in service of the Project, whichever is later (but in no event more than three years after the date of the original expenditure of such moneys), including an amount not to exceed \$18,000,000 for reimbursing the City for the portion of such capital expenditures made no earlier than 60 days prior to the date hereof or to be made after the date hereof but before such borrowing; and

WHEREAS, the Governing Body hereby desires to declare its official intent, pursuant to 26 C.F.R. §1.150-2, to reimburse the City for such capital expenditures with the proceeds of the City's future tax-exempt borrowing.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO THAT:

*Exhibit "14"*

Section 1. Declaration of Official Intent. The City presently intends and reasonably expects to finance its acquisition of streets, roads, buildings and other capital improvements (the "Project") with moneys currently held in City's General Fund.

Section 2. Dates of Capital Expenditures. All of the capital expenditures within the scope of this Resolution were made no earlier than 60 days prior to the date of this Resolution.

Section 3. Issuance of Bonds or Notes. The City presently intends and reasonably expects to participate in a tax-exempt borrowing within 18 months of the date of the expenditure of moneys on the Project or the date upon which the Project is placed in service or abandoned, whichever is later (but in no event more than three years after the date of the original expenditure of such moneys), and to allocate an amount not to exceed \$18,000,000 of the proceeds thereof to reimburse the City for its prior expenditures in connection with the Project.

Section 4. Confirmation of Prior Acts. All prior acts of the officials, agents and employees of the City that are in conformity with the purpose and intent of this Resolution, and in furtherance of the Project, shall be and the same hereby are in all respects ratified, approved and confirmed.

Section 5. Repeal of Inconsistent Resolutions. All other resolutions of the Governing Body or parts of resolutions, inconsistent with this Resolution are hereby repealed to the extent of such inconsistency.

Section 6. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

ADOPTED AND APPROVED this \_\_\_ day of \_\_\_\_\_, 2014.

CITY OF SANTA FE, NEW MEXICO

By \_\_\_\_\_  
Javier M. Gonzales, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Yolanda Y. Vigil, Clerk



Approved as to Form:

---

Kelley A. Brennan, Interim City Attorney

**CITY OF SANTA FE, NEW MEXICO**

**RESOLUTION NO. 2014-\_\_**

**INTRODUCED BY:**

Councilor Chris Rivera

**A RESOLUTION**

**PROCLAIMING SEVERE OR EXTREME DROUGHT CONDITIONS IN THE CITY OF  
SANTA FE AND RESTRICTING THE SALE OR USE OF FIREWORKS WITHIN THE  
CITY OF SANTA FE AND PROHIBITING OTHER FIRE HAZARD ACTIVITIES.**

**WHEREAS**, the danger of range fires, grass fires, forest fires and structure fires is very high or extremely high in and around the city of Santa Fe; and

**WHEREAS**, the weather in Santa Fe has been dry and windy, contributing to the present very high or extremely high fire risk, and it is predicted that the windy and dry weather will continue into the coming weeks, causing progressively worsening fire conditions; and

**WHEREAS**, due to low winter precipitation, United States forest service data indicates very high or extreme fire danger presently exists; and

**WHEREAS**, it is anticipated that drought conditions will be present for the foreseeable future; and

**WHEREAS**, the probability of ignition of materials likely to serve as fuel for fire is presently extremely high in the city of Santa Fe; and

1       **WHEREAS**, in recent months, the city of Santa Fe fire department has responded to  
2 wildland fires which have threatened structures and homes in the city of Santa Fe, and

3       **WHEREAS**, if the city experiences a fire that burns out of control in the watershed, 40%  
4 of the city's water resources are at serious risk of complete loss or substantially reduced capacity;  
5 and

6       **WHEREAS**, if the city experiences a fire that burns out of control in populated areas, it  
7 may be necessary to evacuate and relocate affected residents; and

8       **WHEREAS**, pursuant to N.M. Stat. Ann. Section 60-2C-8.1, the governing body of a  
9 municipality is authorized to restrict the sale or use of fireworks within the boundaries of the  
10 municipality if severe or extreme drought conditions exist.

11       **NOW THEREFORE BE IT PROCLAIMED BY THE GOVERNING BODY OF**  
12 **THE CITY OF SANTA FE:**

13       **Section 1.**       This resolution shall be deemed a proclamation within the meaning of  
14 Section 60-2C-8.1 NMSA 1978 and Section 12-3.9 SFCC 1987.

15       **Section 2.**       As per Section 60-2C-8.1 NMSA 1978, the governing body has  
16 determined and declares that severe or extreme drought conditions exist within the boundaries of  
17 the city of Santa Fe based upon current drought indices published by the national weather service  
18 and other relevant information supplied by the United States forest service.

19       **Section 3.**       The governing body restricts the sale or use of fireworks to the maximum  
20 extent possible permitted in Section 60-2C-8.1 NMSA 1978.

21               A.       The sale or use of the following fireworks is specifically prohibited  
22 within the city limits:

23                       (1)     aerial devices:

24                               (a)     aerial spinners;

25                               (b)     helicopters;

- (c) mines;
- (d) missile-type rockets;
- (e) roman candles;
- (f) shells; and
- (g) stick-type rockets;
- (2) ground audible devices:
  - (a) chasers; and
  - (b) firecrackers.

B. All fireworks within any lands covered wholly or in part by timber, brush or native grass are prohibited.

**Section 4.** An exception to the above restrictions are public displays of fireworks in strict conformance with the requirements and conditions set forth in Section 12-3.3 SFCC 1987 and as approved by the city of Santa Fe fire chief.

**Section 5.** Pursuant to Section 12-3.9 SFCC 1987:

A. Any individual, firm, partnership or other entity found in violation of the above restrictions shall be deemed guilty of a misdemeanor and shall be punished by imprisonment for up to ninety (90) days or a fine not to exceed five hundred dollars (\$500), or both.

B. Each and every occasion on which this section is violated shall be considered a separate offense.

**BE IT FURTHER RESOLVED** that:

**Section 1.** Due to severe or extreme drought conditions and wildland fire conditions, the Governing Body hereby prohibits the following activities, in accordance with the International Fire Code® as adopted by §12-2.1 SFCC 1987:

A. Open burning, including campfires, bonfires, pit barbecues;

- B. Burning of weeds, trash, or other vegetation;
- C. Using charcoal barbecue grills in public parks and recreation areas;
- D. Smoking in public parks, recreation areas, or on any public trail; and
- E. Using any motorized all terrain vehicle or motorcycles on city owned open space, parks, trails, or other recreational areas.

Charcoal barbecuing at a residential structure is permitted if the fire is closely monitored and fire-extinguishing equipment, such as a garden hose or fire extinguisher, is readily available.

**Section 2.** Pursuant to Section 1-3.1 SFCC 1987:

A. Any individual, firm, partnership or other entity found in violation of the above restrictions shall be deemed guilty of a misdemeanor and shall be punished by imprisonment for up to ninety (90) days or a fine not to exceed five hundred dollars (\$500), or both.

B. Each and every occasion on which this section is violated shall be considered a separate offense.

**BE IT FURTHER RESOLVED** that the Governing Body recognizes that Section 60-2C-8.1 NMSA 1978 only allows municipalities to adopt fireworks restrictions for 30 days at a time and no less than 20 days prior to a holiday for which fireworks may be sold. Therefore, to ensure that there will be no lapse in the fire restrictions imposed by this resolution, the Governing Body may impose these fire restrictions at any subsequent meeting date hereafter to ensure that such fire restrictions are in place during extreme or severe drought conditions and wildland fire conditions.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

1 ATTEST:

2  
3 \_\_\_\_\_  
4 YOLANDA Y. VIGIL, CITY CLERK

5 APPROVED AS TO FORM:

6  
7 \_\_\_\_\_  
8 KELLEY A. BRENNAN, INTERIM CITY ATTORNEY

# MEMO

DATE: April 22, 2014  
TO: Governing Body  
FROM: Dave McQuarie, MCD Plan Review Sub-Committee Chair  
VIA: David A. Chapman, Interim ADA Coordinator/Staff Liaison  
RE: 2013 ADA Curb Ramp Improvement Project for Street Overlays

As per Resolution 2006-151, the above referenced project was reviewed by myself, Chair of the MCD Plan Review Sub-Committee via David A. Chapman, Interim ADA Coordinator/MCD Staff Liaison on April 14, 2014. Plan comments are as follows:

- Why didn't the Engineer of the project come to the review meeting to answer questions?
- All intersections, even 'T's, require access to cross the street for all pedestrians. Many shown on this map do not. Therefore, please provide written documentation for each location where access is restricted.
- Why are there no sidewalk ramps? We have to have accessible routes.
- The six routes listed on sheet number 5 (Camino Delora, Paseo Del Sur, Calle De Agua, Monte Verde, Vallecita Drive and East Zia Road) were listed as rural with no sidewalks. This is incorrect because ADA makes no distinction between rural and non-rural. It addresses only accessible routes. Why haven't you put curb-cuts? The curb is a barrier.
- On Cerrillos Road between St. Francis Drive and Guadalupe St. there are no accessible crossings. Why?
- On Early Street from Cerrillos Road to Marquez Place, there is nowhere to cross Early Street. Why?
- It is recommended by MCD Plan Review that the Governing Body withhold all public funds because what is shown as restricted access is based on discrimination.

If you have any questions, please call me at 471-5785. Thank you.

EXC: MCD Members  
Andrew Martinez, Project Manager  
Eric Martinez, Roadway & Trails Division Director

To Whom It May Concern  
From Miriam Leth-Espensen  
April 25<sup>th</sup>, 2014

This communication concerns a small historic mixed use neighborhood, called Castillo Pl., a small triangle between Paseo De Peralta, Marcy St. and Otero St., which is so congested that emergency vehicles cannot make the horse-shoe loop.

The following is a chronological account of citizen attempt to preserve this neighborhood against deliberate opposition from the city staff of Santa Fe. All claims made in this communication are documented.

In response to the arrival of "developers" the Castillo Place Neighborhood Association is formed in 1991 and negotiations with City staff concerning parking spaces for proposed development begin. We refer to City Ordinance 14-26.10 E, which accept non-conforming parking spaces pre-existing prior to February 22, 1984 ONLY.

Mr. Jere Corlett and his wife file an affidavit with the City stating that no parking existed in the backyard of 622 Castillo Pl. prior to 1984 or thereafter.

Thus the proposed development of Castillo Inn, now known as Antigua Inn has to adjust its parking proposal.

A revised Landscape and Parking plan is submitted on 10/19/1993 by Jane Crawford, the developer with 3 parking spaces identified as spaces #1, 2 and 3 on plat, which the City has on file. A 5 year Rental Agreement between Ms. Crawford and Jack Donnell for an additional 2 parking spaces is drawn up beginning May 1<sup>st</sup>, 1993 to meet zoning requirements.

Ms. Brennan states in a letter dated Feb.26 2009 that this plan, upon which the occupancy permit was granted, was never filed and thus is invalid. Incompetence or cover-up?

1.

*Exhibit "17"*



Simultaneously an easement is granted by Ms. Crawford to Christopher Cullen and Timothy J Vigil, Abrazo de La Cruz Partnership, 624 Paseo de Peralta for 2 parking spaces on the North-East Corner of 622 Castillo Pl. This agreement is signed on May 14<sup>th</sup>, 1992 and an iron post and fencing is erected changing the rounded curve to a sharp right turn. The post bears witness to the many cars, which failed to successfully negotiate that turn.

According to a letter dated July 26<sup>th</sup> 1994 from Julian Grace, Development Services Coordinator:

1. NO BACK-OUT TO LOMA LANE OR ACCESS EASEMENT WILL BE ALLOWED.
2. THE CITY HAS NOT APPROVED PARKING ON THE NORTHEAST CORNER OF CASTILLO PLACE. THE CITY DOES NOT RECOGNIZE THE PARKING PLAN, NOR DOES THE CITY RECOGNIZE THE AGREEMENT BETWEEN THE TWO ENTITIES.

On March 10<sup>th</sup> 1993 we take the matter to the Santa Fe City Council for CONSIDERATION OF RESOLUTION NO. 1993-23.

In reference to a Final Decree issued by Robert E. Fox, District Judge in District Court, filed April 30, 1953 we ask the City Council to affirm Loma Lane as a Public Street and the easements, both the southern and northern extensions as public easements.

Although the easements appear on plat as "Private Easements", nobody owns them and nobody has ever paid taxes on them. Furthermore, easements connecting to a public street whether private or public are by definition, public.

The Resolution passes on a Roll Call vote:

For: Councilor Farber, Jaramillo, Montano, Sanchez and Delgado.

Against: Councilor Griego, MacGregor and Chavez.

Yes, I was there.

The following day, Thursday March 11, 1993, The New Mexican publishes the Resolution:

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE THAT LOMA LANE TO BE A PUBLIC STREE; AND

BE IT FUTHER RESOLVED THAT:

2.

1. THE EASTERLY EXTENSION OF LOMA LANE AND THE SOUTHERLY EXTENSION OF THAT EASTERLY EXTENSION, TOGETHER WITH THE INGRESS AND EGRESS FROM AND TO CASTILLO PLACE, ARE DECLARED TO BE PUBLIC EASEMENTS; AND
2. CITY STAFF IS INSTRUCTED TO ASCERTAIN THE LEGAL DESCRIPTION OF THE PROPERTY ENCOMPASSED BY LOMA LANE AND BY THE EASTERLY EXTENSION OF LOMA LANE AND THE SOUTHERLY EXTENSION OF THAT EASTERLY EXTENSION, TOGETHER WITH THE INGRESS AND EGRESS FROM AND TO CASTILLO PLACE AND TAKE THE STEPS NECESSARY TO SECURE AND MAINTAIN THAT PROPERTY AS A PORTION OF THE CITY'S PUBLIC DOMAIN IN ACCORDANCE WITH THIS RESOLUTION.
3. CITY STAFF IS INSTRUCTED TO RECEIVE COMMENT ON THE STATUS OF THIS PROPERTY FROM ANY INTERESTED PARTY

On November 7<sup>th</sup>, 1996 the ownership of 622 Castillo Pl is transferred to Kendra Ann Weeks, who does not renew the Rental Agreement with Jack Donnell for the 2 aforementioned parking spaces.

On May 1<sup>st</sup>, 2002 the ownership is again transferred to Marco and LaDora Stella, who revert the property back to Residential, hoping to raise their family on Castillo Pl. Due to the onslaught of traffic created by Dr. Cook's Dental practice on the eastern side of Loma Lane (a separate development, which I shall get to shortly) the Stellas are forced to leave in early 2008 (so much for mixed use) and sell their property to a Kenneth A. Mohundro, from Texas.

When I returned from a family visit in early 2009, the Eastern fence of 622 Castillo Place has been removed, a Coyote fence erected extending from the previous south and north boundary of 622 Castillo Pl. into Loma Lane and 5 parking spaces with back out into Loma Lane have appeared.

Mr. Mohundro defaults on his second mortgage, 622 Castillo Pl. goes into foreclosure. The property is purchased by Randall Taishoff in 2010. The Coyote fences are still sticking out into Loma Lane, and the five parking spaces remain unchanged.

A Survey Plat prepared by RED MOUNTAIN ENGINEERS dated 02/10/1995 for Jack Donnell relies solely on King's Official Map of the City of Santa Fe, dated 1912, completely ignoring plat delineations from the 1953 Final Decree. This survey includes approximately 11' of Loma Lane with a License Agreement with The City of Santa Fe, which Bernadette Romero in a letter dated 03/25/2014 claims that the City has not been able to locate. I have, and it is attached to a letter dated 04/09/1995 from Ms. Crawford, stating:

"I have no objection to the city entering into a licensing agreement concerning the fence and landscaping on the eastern boundary of 231 Castillo Pl. and the owner, Jack Donnell".

Incompetence or cover-up?

Please note that I was not informed about this agreement.

It is my understanding, that under 3-21-6. Zoning: mode of determining regulations, restrictions and boundaries of district; public hearing required; notice. I, as well as all the other property owners should have been notified by certified mail. We were not.

The old Adobe on Donnell's property Tract 2 is torn down and sold to Cecilia Dunn with the 11' of Loma Lane included and the Licensing agreement. A 2 story Territorial replaces the historic building.

In 1998, with the arrival of Dr. Cook's practice in this new construction, our concern re traffic, safety and parking grows.

In June/July 1998, at the request of the city I volunteer to conduct a survey of all the residents, who have an interest in this matter.

The majority asks the city to enforce code, develop a parking plan, create one-way around the horseshoe loop and place speed and other safety signs. City staff informs us that our majority is too small for the city to adhere to the results of the survey. Really? Perhaps we were the wrong majority? Mike Lujan, from the Parking Division, assures us at a meeting, that a parking plan is very feasible and agrees that certain parking restrictions are appropriate.

No parking restrictions are ever endorsed by the city, and although a one-way arrangement goes into effect in Oct. 1998, it suddenly disappeared in early Feb. 1999 without any notification to the people, who have participated in the survey.

The explanation comes from Lidia Morales with the city attorney's office. She decides that The City Council Resolution from 1993 is invalid and that the Easements to Loma Lane are private. Really?

This opinion is echoed still today by the city attorney's office, now represented by Kelly A. Brennan.

In a letter dated March 31, 2014 Ms. Brennan states that: "nothing has changed to alter the conclusions outlined in my 2009 letter, which were reached only after extensive research"

That letter, dated Feb. 26 2009 addressed to Karl Sommer, who is representing me at the time, Ms. Brennan interprets the 1953 Decree thusly: "The decision found the plaintiffs in the matter were entitled to the use of those lands now know as Loma Lane as a public street. The city was not party to that action, and it is unclear whether the property owners who were affected by the Court's decree (the 1953 Decree) as to the status of Loma Lane received proper notice, and thus the 1953 Decree may not be effective against those properties to the extent that Loma Lane's identification by the Court as a "public street" had a negative effect upon them."

The survey plats have been changed since 1990, and yet city staff refuses to run the tract descriptions through their computer-program to verify boundaries. Rather they claim in their letter of July 26, 1994 that the changes merely constitute a "Survey Blunder". (What about the licensing agreement?)

Further:

"It is my understanding that staff's investigation of the matter led to the conclusion that the cost of pursuing a taking by eminent domain of the lands comprising the Alley would be prohibitive and that in any event such a taking was not advisable as the Alley did not meet the standards for City streets." It is unclear to me, which "staff" Ms. Brennan refers to here. I would like clarification.

There was never a question of eminent domain, since nobody owned the easements and I refer back to the City Council Meeting of March 10, 1993:

Councilor Farber explained that the Public Works Committee reviewed the materials and learned that in a 1953 quiet title suit, Loma Lane was declared to be a public street. In response to concerns expressed to him by Ms. Crawford with respect to the phrasing of a "private alley" within Tract 1 and Tract 3, he said he had spoken that day with members of the Land Use Staff,

who pulled out various surveys “and could not find any complete access to Paseo de Peralta such as it would be indicated as exists on the street today – which raises the question about exactly what is stated within the quiet title action with regard to that private lane.” On that basis, he said, he felt the city justified to pursue the resolution.

Councilor MacGregor disagreed that it was this simple, because the resolution would also declaring the extensions to be public easements. She said this could be a “taking”.

Councilor Farber remarked that he found it inappropriate for Councilor MacGregor to be inferring that the city could be sued or that this was a taking. He expressed concern about people, who “throw around” this term: “It has a very distinct meaning and definition in the law, and that’s not what this is.” He pointed out that a resolution is not an ordinance, and its purpose is simply to express the will of the governing body.

I also refer back to a Public Works/CIP & Land Use Committee meeting Feb. 8, 1993:

Ms. Delayo said: “From November until today, my position has changed. Castillo Place has always been recognized as a public right of way. However, in November, we didn’t have any documentation, which showed Loma Lane to be a public right of way. By reviewing the 1953 quiet title suit, I think it appears that Loma Lane is a public street. Although the city hasn’t claimed it, we’ll take it.” She said, “there is no dedication statement on any plat or formal acceptance by the city, but the city doesn’t necessarily need that anyway, because there is no statutory or city requirement that requires an ordinance or any other formal action.”

With regard to parking requirements and back out into Loma Lane from 622 Castillo Pl., I refer back Ordinance 14-26.10E and to the letter dated July 26<sup>th</sup> 1994 from Julian Grace, Development Services Coordinator:

**NO BACK-OUT TO LOMA LANE OR ACCESS EASEMENT WILL BE ALLOWED.**

Ms. Brennan's letter from 2009 further states, that she is acting on advice from the City's Traffic Engineer , (does he have a name?) that given the low travel speeds on Loma Lane, back out from 622 Castillo Pl. is permitted.

Even if that were sufficient justification, which it is not, it is utterly absurd. Cars come zooming through here all the time as witnessed by a large indentation in the road just around the corner of the Northern extension of Loma Lane and the many pot holes on the Southern extension, which city staff seemingly is instructed not to fix.

The final insult of Ms. Brennan's letter from Feb. 2009 is her suggestion that I seek mediation with the current owner, at the time Mr. Mohundro. Mr. Mohundro was convicted in 1991 of third degree felony in the Third District, At Austin No.03-94-00507-CR and later defaults on a second mortgage on 622 Castillo Pl. and walks away with \$150,000.00 That is the kind of person Ms. Brennan expects me to negotiate with?

#### CONCLUSION:

It has been over 20 years since I began the battle to preserve my neighborhood.

In spite of City Council Resolution and directives, zoning regulations etc., in spite of legal documentation and obvious safety concerns the City Attorney's Office is bent on ignoring it all and continues the deterioration of what was once a beautiful little historic neighborhood.

Why?

As always, the question is: Who benefits from this stance?

The City Council represents our legal government, and when city staff overrides our government, we loose our democracy.

Don't let the city staff steal our democracy.

I respectfully request that our current Major and councilors honor the Resolution of 1993, as you will want your resolutions to be respected in the future.

If documentation or any additional information, I may have access to is needed, please contact me at: [miriamsf@me.com](mailto:miriamsf@me.com)

# City of Santa Fe, New Mexico

# memo

DATE: April 30, 2014  
TO: City Council  
FROM: Mayor Javier M. Gonzales  
RE: Appointments

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I would like to make the following appointments:

Bicycle and Trail Advisory Committee

Joseph A. Abbatacola – Reappointment – term ending 6/2015  
John W. Longworth – Reappointment – term ending 6/2015  
James Ronald Pacheco – Reappointment – term ending 6/2015  
Shelley Robinson – Reappointment – term ending 6/2015

Marty Sanchez Links de Santa Fe Advisory Committee

Linda Zingle – to fill unexpired term ending 12/2015 (Resume attached)

Public Safety Committee

Joe H. Arellano – to fill unexpired term ending 3/2018 (Resume attached)

Santa Fe Regional Juvenile Justice Board

Ted A. Lovato – to fill unexpired term ending 10/2015 (Resume attached)

City Business and Quality of Life Committee

Bradford “Brad” Dean Furry – to fill unexpired term ending 3/2015 (Resume attached)  
Piper Kapin – Reappointment – term ending 3/2016

Sister Cities Committee

Carol Robertson Lopez -- Chair Appointment

*Exhibit "18"*

**Park Bond Audit Task Force**

Liza Kerr – Internal Auditor

Teresita Garcia – Finance Department

Eric Martinez – Public Works Department

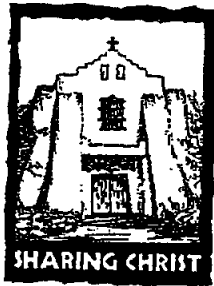
Anna Hansen, Chair, Parks and Open Space Advisory Commission

Councilor Bushee – Chair, Bicycle and Trail Advisory Committee

Hazeldine Romero – Audit Committee

Marc Tupler – Audit Committee





YESTERDAY  
TODAY &  
TOMORROW

**Pastor:**

Rev. Dr. Harry Eberts III

**Parish Associate:**

Rev. Andrew Black

**Director of Music:**

Dr. Linda Raney

**Child Development**

**Center Director:**

Anne Liley

**Coordinator for  
Kids' Community:**

Cindy Piatt

**Office Manager:**

Krista Peterson

**Business Manager:**

Marcella Ortiz

**Facilities Manager:**

Bill Adrian

Julie Bernard Gomez  
Director of Development  
New Mexico School for the Arts  
275 E. Alameda  
Santa Fe, NM 87501  
April 27, 2014

Dear Ms. Gomez,

In response to your April 24 request to Bill Adrian, this is to advise that the Session of First Presbyterian Church Santa Fe has agreed to the serving of alcoholic beverages at your fundraising event on Friday, May 9, 2014 in and around the parking lot of the Georgia O'Keeffe Museum Education Annex at 123 Grant Street from approximately 7:15 p.m. - 9:30 p.m. This agreement is related to our proximity to the event and is subject to your obtaining all necessary approvals from the City and the O'Keeffe. Best of luck on your gala.

Sincerely,

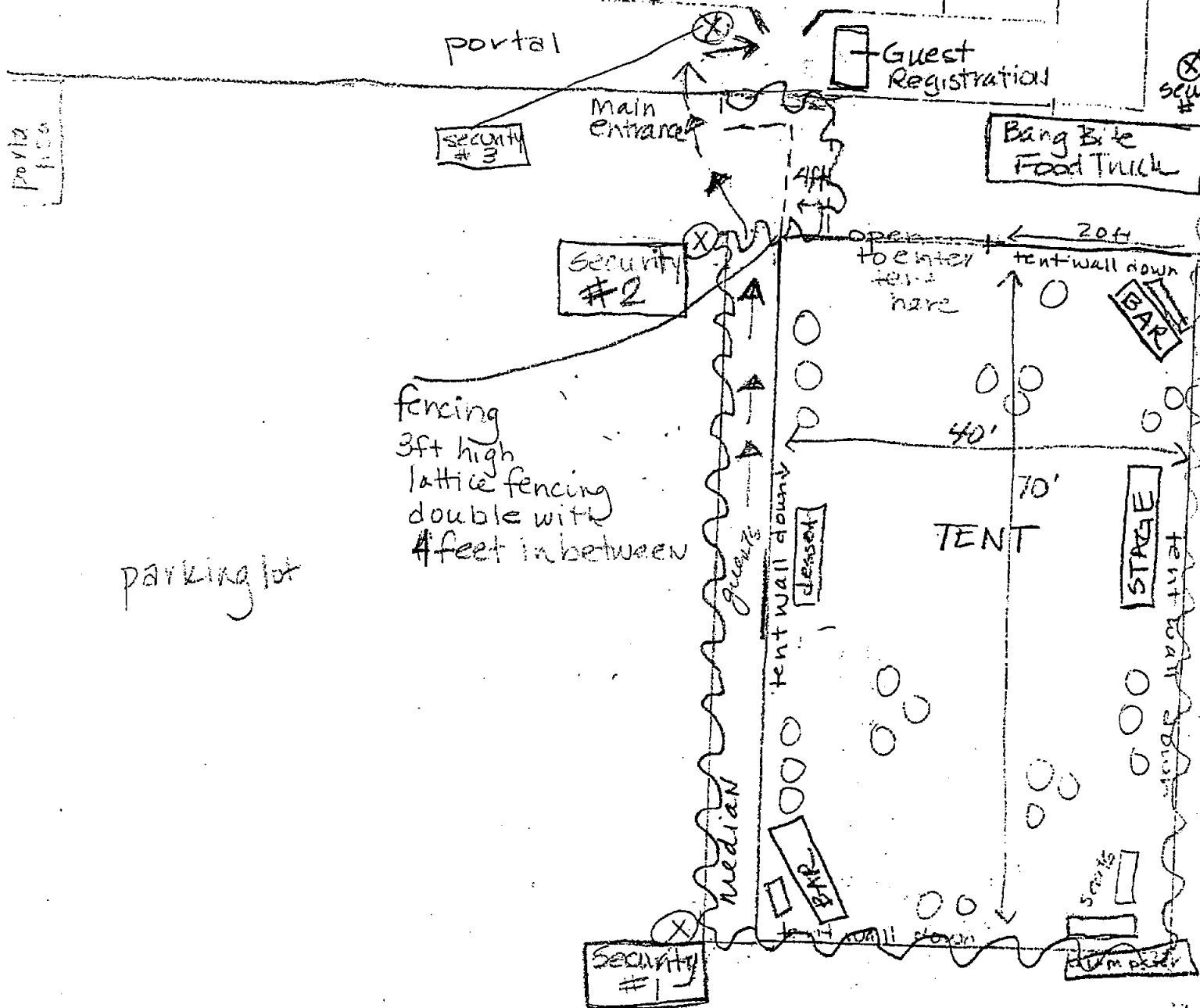
David Grayson  
President, First Presbyterian Church Santa Fe

Sheridan

New Mexico School for the Arts  
Art Spring 2014  
Friday, May 9

123 Grant Avenue, Santa Fe

- NOT TO SCALE -



GRANT AVENUE

\* 4 security guards

April 28, 2014

**To:** Sponsors of Substitute Bill No. 2014-10, "An Ordinance Relating to Street Performers on Public Property," and Summary Memo.

**From:** Santa Fe Buskers Alliance, and its representative and consultant, Talia Kosh, Esq.

**Re:** Response to Substitute Bill No. 2014-10. An Ordinance Relating To Street Performers on Public Property; Amending Section 23-8 SFCC 1987

**Dear Councilors Lindell, Maestas, Trujillo, the Governing Body, City Attorney's Office and other key City staff members:**

This letter is respectfully written in response to the recent amendments to Section 23-8 SFCC 1987 in Bill No. 2014-10, "AN ORDINANCE RELATING TO STREET PERFORMERS ON PUBLIC PROPERTY."

This letter is written on behalf of the Santa Fe Buskers Alliance ("SFBA"), identifying and explaining the SFBA's issues and serious concerns with the amendments/new bill. We would like to first point out that the Bill at issue, posted on the City of Santa Fe website seems to amend sections of the current law by omission of certain sections, such as the purpose and definition sections, without making reference to the fact that these sections will be deleted from the current Bill. The confusion surrounding the amendments and the bill is unfortunate, as it makes responding to it eloquently close to impossible. The new amendments further confuse the issue by adding new elements to the Bill that have never been heretofore discussed with the public, and further curtail First Amendment rights without a full understanding of or discussion relating to these details. In our opinion, these amendments should not be voted on by the Council without further discussion and amendments. This letter is to inform and caution the City about the consequences of these amendments should they pass.

The SFBA and its representatives question the constitutionality of certain sections of the Ordinance, as written, but especially we question the proposed substitute ordinance. We do this for two reasons, first to ensure the First Amendment rights of street performers in Santa Fe and second to make the City of Santa Fe aware of the liabilities that will incur if the proposed ordinance is made law. We thank the City Council for putting time and effort into this important

issue, but there is a breakdown of communication and a large disconnect between Council and the public that must be addressed. We all desire a model code relating to buskers and the intent of this letter is try to mend and make bridges over this wide gap of understanding.

To bridge this gap of understanding of how this law will and shall further curtail First Amendment rights, it is necessary to lay out the extensive law on this issue, which, when challenged, most often falls in favor of the holders of such First Amendment rights being curtailed, in ways identical or similar to those in the Bill at issue in this case.

There are certain sections of the Santa Fe Ordinance, in particular, and discussed below, which may be applied in an unconstitutional manner to deprive buskers of their Artists' Rights. Additionally the Ordinance is not narrowly tailored to serve a significant or substantial City of Santa Fe interest. A restriction on speech is narrowly tailored if the regulation is "not substantially broader than necessary to achieve the government's interest." *Casey v. City of Newport* 308 F.3d 106, 110, 113 (1st Cir. 2002). In the current law, the City has stated that their interests and concerns are in "promoting and encouraging street performance" in Santa Fe, issues of crowds, public safety, volume and conflicts between performers and merchants. The remedies are overly broad and not narrowly tailored to serve a significant government interest. Additionally, the City must consider less burdensome alternatives prior to any enactment of a law restricting free speech in public places.

*Reno v. ACLU* eloquently states, "the City's licensing requirement was intended to catch within its net merchants engaged solely in commerce of ready-made goods that clog the sidewalks and compete unfairly with legitimate stores. Applied over broadly, the Ordinance essentially would impose a chilling effect on genuine artists whose true calling is art and not commerce, and whose manifest purpose may be to create expression rather than markets, even if at times some of their work may skirt the line between expressiveness and merchandise. Such an extension of the licensing regime would force artists to confront an undue dilemma: either to quell their creativity or to risk arrest if they believe their work is sufficiently expressive to fall within the protection of the First Amendment. Freedom of expression is designed precisely to bar the government from compelling individuals into that speech-inhibiting choice. See *Reno v. American Civil Liberties Union*, 521 U.S. 844, 871-72 (1997)."

There is a clear lack of understanding of how entrenched street performances are in First Amendment rights, and so a conversation of this is also necessary here. Street performances are a form of expression protected by the First and Fourteenth Amendments of the United States Constitution. Street performers seek to reach an audience that might not choose to attend an organized or formal performance event or that might feel excluded from these more formal forums. See *Berry v. New York*, 97 F.3d, 689, 698 (2d Cir. 1996). The public expression of music and visual art is a form of communication between the artist and the public

not possible in enclosed, separated spaces. *Berry* at 698; *Casey v. City of Newport*, 308 F.3d 106, 110 (1<sup>st</sup> Cir. 2002).

Artists who are still developing their talent and their career might not be interested in reaching those members of the public who attend concert halls or galleries. *Berry* at 698. For this reason and others, the street is the birthplace and the melting pot of many new genre of artistic expression.

#### **1. Procedural History:**

This is not the first fight buskers have had to make in Santa Fe to protect their First Amendment rights to play on public lands. In 2006, the City of Santa Fe ended their prohibition of busking on the Plaza after much debate and battling. According to the Santa Fe Journal, the reason this ban was finally lifted is the then City Attorney, Frank Katz, advised the City that if they did not lift the ban, they'd risk a lawsuit. We do not have a history of creating a model code for busking. The current changes to the ordinance have the same effect as banning busking on the Plaza and many downtown areas.

On March 26, 2014, a bill was brought before the Santa Fe City Council that would unconstitutionally limit street performance. The Santa Fe Buskers Alliance (SFBA) received notice of this shortly before the meeting and turned out en masse to speak against the bill. The City withdrew the bill mainly on the grounds that the street performers had no input. The SFBA has held meetings with vendors, the City councilors and attorneys, and attended a public meeting on April 10, 2014, to address their concerns and offer solutions. The outcome of this was a new bill that is, in SFBA and many community members' opinions, actually worse than the bill that had been under consideration.

Since 2005, the SFBA and key members of the community have attempted to work out a reasonable solution with the City of Santa Fe, the Santa Fe Police Department, Public Safety, and merchants and vendors in the downtown area. Despite the efforts, laws remain in force in violation of the First and Fourteenth Amendments to the United States Constitution and the Constitution of the State of New Mexico. What is worse, the Council now seeks to infringe on these rights even further.

#### **Downtown and Plaza Area:**

These areas are the heartbeat of Santa Fe and have been a central gathering place for several centuries. Residents and tourists use the Plaza and the downtown area in every day life simply to congregate on the sidewalks and parks that are open to the public. The Plaza and downtown area plays a special role in bringing citizens together in a rich and varied community. Santa Fe has hosted hundreds of musicians, magicians, political activists, community organizers and cultural groups from all walks of life.

## **2. Current Ordinance and Amendments:**

The City of Santa Fe has taken insufficient action to revise this Ordinance. Unless an adequate solution is implemented and unless the City ceases unconstitutional enforcement actions, those aggrieved will continue to be deprived of their constitutional rights. The Ordinance, as written and amended, violates free speech and equal protection rights under the First and Fourteenth Amendments to the Constitution of the United States.

When First Amendment freedoms are implicated, courts must place these freedoms in a preferred position. See *Reeves*, 631 F.2d at 383. **The government bears the burden of justifying its regulation as narrowly tailored.** *Lionhart v. Foster* 100 F.Supp.2d 383 (E.D.La., 1999); See also *Doe*, 968 F.2d at 90. Now that the proposed ordinance has taken out all language of purpose and definition, there is no justification for these amendments. Should the language of definition and purpose remain in the Ordinance, then the City has a duty to uphold the purpose of this bill, which is to promote and encourage street performance.

Again, the proposed substitute Bill has permitting requirements that impact free speech. Many jurisdictions have ruled that forcing street performers to obtain a license annually unduly impacts free speech and such licensing schemes have been found unconstitutional in and of themselves. Courts have traditionally frowned upon permitting requirements that impact free speech. The Ninth Circuit states plainly, "a permitting requirement is a prior restraint on speech and therefor bears a 'heavy presumption' against its constitutionality. *Berger v City of Seattle*, 569 F.3d 1029, at 1037. (9<sup>th</sup> Cir. 2009).

The Supreme Court has also made clear:

"It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so. *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 122 S.Ct. 2080, 153 L.Ed. 2d 205 (2002). Courts find especially noxious permitting requirements that apply to individual speakers in public forums. "We and almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum." *Berger* 569 F.3d at 1039. Like the permitting requirements in *Berger*, the City of Santa Fe's permitting requirements "have an impermissibly broad scope, do not meaningfully promote the City's asserted interests, and address interests that could be achieved through means far less intrusive than an individual speaker registration requirement. *Id.* At 1040. The City of Santa Fe's permitting requirement is exactly the type of free speech restraints courts have consistently struck down.

The ordinance at issue not only fails to achieve the City's asserted purpose "to encourage and facilitate street performances in public areas," but in fact achieves the opposite effect. Santa Fe's permitting scheme discourages potential speakers by creating additional hurdles and severe restrictions, eliminating anonymity and spontaneity. The new set of regulations does nothing to achieve its purported goal of encouraging street performances in public areas, and in fact discourages them. Less intrusive measures are possible.

There are less intrusive means to regulate sidewalks and thoroughways than a permitting requirement that potentially affects all speakers. There is little reason to require persons to register their identity before speaking. The fee requirement imposed regardless of financial gain or number of performances places an undue burden on speakers and affixes a price tag to free speech rights. Nothing chills free speech rights more than forcing every speaker to register AND TO DISPLAY their identity with both the local government and also publicly, during performances. The proposed bill forces street performers to display their identification cards now in order to perform. Displaying a license should suffice. Making identification available should suffice. Demanding those who obtain a license, which is a contract with the City, to perform on its street to display an identification card at all times places an impermissible chilling effect on free speech.

### **3. The First Amendment Standard and Public Places:**

Jane Jacobs has called sidewalks "the main public place of a city" and "its most vital organs." Urban sidewalks have long been considered the city's public boardroom. Nevertheless how sidewalks can be used and by whom have been long debated in court by municipal governments, civil rights advocates and political activists."

The First and Fourteenth Amendments to the United States Constitution impose significant limits on the government's ability to regulate expressive activities. Live entertainment, including music and street performances, is constitutionally protected.

The Santa Fe Historic Plaza and Downtown are traditional public fora where speech, expression and assembly receive the utmost constitutional protections. These areas have "immemorially been held in trust for the use of the public" to assemble, communicate thoughts, and discuss public questions. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L. Ed. 2d 794 (1983). For a regulation that restricts speech in a public forum to be constitutional, it must be: (1) content-neutral, (2) narrowly tailored to serve a significant governmental interest and (3) leave open ample alternative channels for communication. *Berger v. City of Seattle*, 596 F.3d at 1036. Berger has held that permitting of such artistic activity such as busking is impermissible permitting requirements and are not narrowly tailored to serve a valid governmental interest. Government bears the burden of justifying regulation of expressive activity in a public forum. *Berger v. City of Seattle*, 569 F.3d, 1029, 1035 (9<sup>th</sup> Cir. 2009).

Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance the government's goals. *Casey* at 112 (quoting *Ward*, 491 U.S. at 799).

The Ordinance at issue is substantially broader than necessary to protect the public safety. Evaluating the City of Santa Fe's public safety concerns, other courts have held that there is "no safety interest substantial enough to outweigh the plaintiff street musician's First Amendment interests." *Davenport v City of Alexandria, Va.*, 748, F.2d 208, 210 (4<sup>th</sup> Cir. 1984). In its evaluation, the Court considered an array of public safety issues, including the rate of pedestrian traffic, the working population, the volume of vehicular traffic, the composition of the area and the availability of alternative forums for expression or alternative means of regulating traffic flow. *Davenport* at 210. Despite the case law, precedent, studies and efforts of the City of Santa Fe, the many interests of the busking community have not been weighed as justice would require.

**A. The Ordinance as Written and the Proposed Substitute Ordinance Violates the First and Fourteenth Amendments:**

With the recent proposed Ordinance, published on April 25, 2014, there is a removal of all mention and language regarding important legislative findings, purpose and definitions (Section 23-8.1-23-8.3). This removal frustrates the purpose of the legislation. We wholly object to this removal and assert that what is proposed has been incredibly difficult to discern.

The proposed ordinance was unsatisfactory for these reasons, listed in the order of presentation:

1. **Change to licensing application must expressly state the type of performance:** This is an unconstitutional restriction on speech and is not narrowly tailored to restrict the activity.

This is a content restriction on free speech and therefore strict scrutiny applies. This requirement does not seem to have any immediately identifiable purpose, and none that has been fleshed out.

This restriction on free speech could, more likely than not, be construed as a form of prior restraint. There are street performers who perform according to the environment. Their choice of performance and choice of instruments or performance may depend on this environment: some play multiple instruments in a variety of styles and may perform alone or with others depending upon the creative mix of the moment. There are many performers whose



expressions are not considered in this ordinance. The City of Santa Fe has no interest in these types of restrictions on such a variety in forms of expression.

The Ordinance applies to an overly-broad group of individuals and will curtail legitimate expressive activity. In *Berger*, the court found a substantially similar provision to be overly broad and unconstitutional.

2. **Elimination of the 30-day license:** There is no substantial or compelling government interest for this elimination. This is an unconstitutional restriction on speech and is not narrowly tailored to restrict the activity.

The temporary license currently available to performers who are travelling through Santa Fe is vital to their survival, as the \$35 license fee is a large expense when these performers must apply for a license in each city to which they travel.

The travelling minstrel, as a source of entertainment and information, has been a world tradition for centuries. This time-honored tradition is essential and great care must be taken by municipalities to not curtail this culture and to preserve these traditions. This language does not promote the purpose of the Ordinance in "encouraging" or facilitating street performance.

3. **Requirement of Photo ID.** This has been overturned in other cities, specifically in the opinion of *Berger*. Cities must take great care to not enact such restrictions that have an incredibly chilling effect on free speech. Buskers are being singled out for this invasive measure, as vendors or other persons on the Plaza are not required to display a photo ID.

Again, nothing chills free speech rights more than forcing every speaker to register AND TO DISPLAY their identity with both the local government and also publicly, during performances. The proposed bill forces street performers to display their identification cards now in order to perform. Displaying a license should suffice. Making identification available should suffice. Demanding those who obtain a license, which is a contract with the City, to perform on its street to display an identification card at all times places an impermissible chilling effect on free speech.

4. **50 foot requirement between Buskers and Any Vendor.** The effect of this is an unconstitutional restriction on speech and is not narrowly tailored to restrict the activity.

Regulating the required distance between performers is overbroad and unconstitutionally vague and burdens all speech within 50 feet of a performance. Additionally, the provision is

invalid because it "floats." *Schenck v. Pro Choice Network of Western New York*, 519 U.S. 357 (1997). Many performances such as acting, pantomime, juggling, magic and dancing involve broad movement. Santa Fe, in particular, is known for its roving mariachi music. Because the area of performance may be in constant flux, the buffer zone is vague and unpredictable and risks burdening more speech than intended. See *Shenck*.

The SFBA has taken to measuring the Plaza and has found that the 50 foot requirement **denies all but the center of the Plaza to busking activities**. Due to other restrictions in the ordinance, **the effect of this rule is to allow only one busker on the Plaza at any given time**, including those that lack sound in their performances. On this point, the buskers are being treated differently than the other members of the public and those licensed to sell goods in the area, as there exist vendors all along Palace Avenue and vendors on every corner. Any busker playing on the Plaza would be confined to the center. The effect of this Ordinance is to put an impermissible and unconstitutional ban on busking on all but the center of the Plaza.

In *Davenport*, the City's rule in that case also had a distance prohibition. This was found to provide no guidelines to direct the judgment of officers and no avenue for appeal for the musician. See *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-151 (1969) (A content-neutral time, place and manner regulation must not vest public officials with discretion over permitting decisions). This discretion would occur with any floating performance.

Limiting performers to such small areas within downtown and the plaza is unsupported by a significant governmental interest and conflicts with the ordinance's stated purpose. Confining speech in this way does not allow persons to reach their intended audiences.

Effectively, the locations denied to performance are overly broad and do not leave open ample alternative channels for communication and allow too much government discretion.

5. **Restriction of Amplification on the Plaza.** This is an unconstitutional restriction on speech and is not narrowly tailored to restrict the activity. On this point, the Ordinance unconstitutionally Restricts Speech.

The amplification section, as written, would bar artists from exercising their constitutionally-protected right to amplify their performance in public streets and parks. The SFBA brought before the City several times **that in the world of modern music, "amplified" is not synonymous with "made louder."** For example, electronic musical instruments can only produce sound through a process of electronic amplification, but those instruments are not inherently louder than acoustic or unamplified instruments. A modern synthesizer, for example, can make sound only by means of electronic amplification, yet that amplified instrument easily and faithfully mimics the sounds produced by a wide range of acoustic instruments such as pianos, harps, flutes, acoustic guitars, violins, drums, etc. Additionally, amplification is used to

modify the sounds of acoustic instruments. Moreover, the amplifier can produce those musical sounds as softly and quietly as desired.

When a municipality chooses to prohibit sound levels in public places that are not demonstrably disturbing, the courts will reject the regulation as overly broad. Other jurisdictions have held these kind of extreme restrictions on amplification to be unconstitutional. For example, New Orleans street performers in *Lionhart v. Foster* 100 F.Supp.2d 383 (E.D.La., 1999) LEXIS 17059, won their federal case that declared a sound level of 55db of amplification to be unconstitutional. The judge referred to cases which gave amplification First Amendment protection and cited cases such as *Reeves v. McConn*, 631 F.2d at 381. **The court noted "there is probably no more appropriate place for reasonably amplified speech than the streets and sidewalks of a downtown business district."** *Reeves*. at 384. See also *Beckerman v. City of Tupelo*, 664 F.2d at 516 ("Because this ordinance extends its total and non-discretionary prohibition to areas which have not been shown to be incompatible with sound equipment, it is unconstitutionally overbroad."). The court stated that, in addition to the "narrowly tailored" requirement, the number of watts chosen as the point of regulation must also be reasonable. See *Reeves*, 631 F.2d at 387. The city could not broadly prohibit reasonably amplified speech simply because it feared that disruption might sometimes result. See *id.* at 388.

On similar facts, the District of Columbia Circuit struck down a federal regulation, which prohibited the playing of musical instruments at a level higher than "60 decibels measured on the A-weighted scale at 50 feet." *Doe*, 968 F.2d at 89-90. Defendants there were arrested under the regulation for chanting and beating drums in Lafayette Park across from the White House during a war protest. See *id.* at 87. The court observed " 'excessive' noise by definition means something above and beyond the ordinary noises associated with the appropriate and customary uses of the park." *Id.* at 89. The defendant proffered evidence that loud conversations exceed 60 decibels, and the government offered nothing to show that the chosen decibel level prohibited only disturbing or excessive speech activity. See *id.* at 90-91 ("Where constitutionally protected activity is implicated, we cannot simply defer to the Park Service's unexplained judgment."). In this case it was demonstrated that even and especially speech that is offensive to the federal government cannot be curtailed.

The use of loud speakers and amplifiers on the streets is a volatile issue. The United States Supreme Court and the lower courts have ruled on the issue many times. See the American Law Review, 10 ALR2d 627-634 for a general overview. The court cases: *Saia v New York*, 334 US 558 (1948); *Kovacs v Cooper*, 336 US 77 (1949); *Phillips v Township of Darby*, 305 F. Supp. 765 (1969); *Maldonado v County of Monterey*, 330 F. Supp. 1282 (1971); *US Labor Party v Rochford*, 416 F. Supp. 204 (1975); *US Labor Party v Pomerleau*, 557 F2d 410 (1977); and *Reeves v McConn*, 631 F2d 337 (1980); *Ward v. Rock Against Racism*, 109 S. Ct. 2746 (1989).

A prior restraint involves discretion over some form of protected expression, and Madison contends that only speech, not amplified speech, enjoys First Amendment protection. This is incorrect. The First Amendment protects effective speech, not merely uttered words, and

effective speech sometimes requires that ideas be transformed into musical speech, loud speech, financial speech or other forms of expression that a casual reading of the First Amendment might not reveal as "speech." *Stokes v City of Madison*, United States Court of Appeals Seventh Circuit., 930 F.2d 1163, 59 USLW 2652, (1991)

In general, the courts have suggested amplification should be allowed, but regulated by wattage (power) or decibels (volume). Depriving the musicians of control over sound quality and mix would therefore restrict a substantial quantity of expression without advancing the interest of noise reduction.

*Casey v. City of Newport* 308 F.3d 106, 110 (1st. Cir. 2002) states, in part:

"...amplifiers are also used to create new "messages" that cannot be conveyed without amplification equipment. Amplification enables performers to boost the relative volume of quiet instruments, such as the bass and the lower registers of the human voice, and to adjust the tonal qualities of voices and instruments without necessarily increasing the overall volume of the performance.

Much modern music simply cannot be performed without the use of amplifiers. Thus the ban on amplification has a direct and immediate effect on the expression at issue. The record therefore does not support the district court's conclusion that appellants "could still convey their . . . messages" without amplification. Without amplification, some of the messages are not conveyed at all."

**6. No food and vegetation exchange rule.** The Assistant City Attorney confirmed that the rule was in the ordinance to specifically deny Tom Dukett, a person with which the City has an ongoing feud, a buskers license or alternatively as a means to punish him if he does obtain one. We spoke to this saying that the Street Performers ordinance should not have language in it that is directed specifically at one person, that we did not like this sort of confrontational language in our code and that it should be removed. This language also creates an unconstitutional restraint on protected activity of citizens being able to offer food to a busker, should they wish.

**9.) Not plainly audible beyond 50 feet.** This is an outrageous unconstitutional restriction on speech and is not narrowly tailored to restrict the activity. On this point, the ordinance unconstitutionally restricts speech. The locations permitted for performance do not leave open ample alternative channels for communication and allow too much government discretion.

The 50 foot audibility restriction is unreasonable in the extreme, vague in definition, and will have unconstitutional results and application. For example, consider the all-girl mariachi group Mariachi Buenaventura who have been and still are street performers in Santa Fe. This

group has gained world-wide recognition and is part of Santa Fe's heritage. They cannot be street performers anywhere in Santa Fe, according to the rule. Also consider the marimba band. They have, for years, provided great entertainment on the Plaza and the downtown environs, and are an expressive outlet for youth. They face the same restriction and cannot perform

**Santa Fe's plainly audible rule is a dramatic expansion of the City's ability to regulate expression. This rule would effectively ban speech throughout the Plaza and the entire City of Santa Fe.** Though the City may place appropriately tailored restrictions on expression to avoid disruption at large events, this plainly audible rule goes beyond constitutional limits and it is an attempt to privatize traditional public forums. Nearly the entire Plaza cannot be utilized by buskers should it fall within the "plainly audible" restriction of 50 feet. **It has the practical effect of silencing speech throughout virtually the entire community.**

The City cannot save its over broad speech restrictions by construing them more narrowly. While a narrowing construction is relevant to evaluating the constitutionality of these rules, limiting constructions may be imposed only if "made explicit by textual incorporation, binding judicial or administrative construction, or well-established practice." *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750 (1988). There is no definition of "plainly audible" anywhere in the ordinance, making it an extremely subjective and unconstitutional standard.

As SFBA and its representatives stated at their meeting with the City's Assistant Attorney, that this section is unconstitutional, entirely subjective and could be used as a method of harassment of buskers. We requested that some objective measure, **such as decibel levels**, be used and volunteered to participate in an experiment to determine what decibel level would be sufficient to meet the plainly audible requirement. Also, on a quiet day, or if the wind blows, it is nearly impossible to contain any sound to 50 feet.

**The "plainly audible" requirement is incredibly troubling and subjective.** There is no other model ordinance in the country regulating such activity that uses a standard to void in First Amendment considerations. It gives public officials discretion over decisions in a time, place or manner regulation. This has been prohibited by our Supreme Court. *See Shuttlesworth* 394 U.S. at 150).

Again, the City has offered insufficient justification on this issue. With the proposed City of Santa Fe ordinance at issue, there has been no evidence offered that demonstrates that the "plainly audible" standard prohibits only disturbing or excessive speech activity. There's been no evidence offered that the "plainly audible" standard is a better standard than the one used in most other jurisdictions; that of decibel measurement. The court therefore found that the government failed to carry its burden of showing that the regulation was narrowly tailored to further its interest in preventing excessive noise in a traditional public forum. *See id.* *See also*

*U.S. Labor Party v. Pomerleau*, 557 F.2d 410, 413 (4th Cir.1977) (invalidating city anti-noise ordinance when decibel level prohibited noise no greater than person speaking slightly louder than normal); *Maldonado v. County of Monterey*, 330 F.Supp. 1282, 1286 (N.D.Cal.1971)

Also, the District of Columbia Circuit also struck down a federal regulation which prohibited the playing of musical instruments at a level higher than "60 decibels measured on the A-weighted scale at 50 feet." (*Doe*, 968 F.2d at 89-90) This case also included the playing of drums in front of the White House. New Orleans artists also received a preliminary injunction restraining order on May 31, 1996 when the city tried to impose a inaudible at 25 foot requirement Case 96-1869 (E.D.La.,1996) *ROSELYN LIONHART, et al versus CITY OF NEW ORLEANS*, et al;1996 U.S. Dist. LEXIS 18903 (December 13, 1996).

10.) **The Criminal Enforcement Penalty:** Buskers are treated differently than other citizens using the plaza (See Section 23-5.4). Buskers would be subject to penalties different than any other user of the plaza. (Section 1-3) There is no language now in the ordinance that includes a written or verbal warning for a violation. For example, if there is a violation of the 50 foot ordinance, then there is a punishment of a maximum \$500 fine or imprisonment. With the already-discussed subjective and confusing standards, this is worrisome. The desire is to have the City take out all mentions of criminalization. This should be an issue of administrative enforcement only.

**11.) The Power Vesting in the Finance Director and the Lack of Forum:**

First, Santa Fe vests all authority to regulate performances and the licensing of buskers in the Finance Director who knows little about the art and activity of street performance. There has been a breakdown of communication regarding the interests being served and the attempt to resolve these disputes regarding the Ordinance through discussions with the City. The replacement Ordinance retains even broader restrictions on artists' ability to perform, vests complete discretion in the Finance Director, and fails to address completely the rights of performers. There is a lack of forum for issues that arise between and among buskers, buskers and public safety officers and buskers and the general public where buskers can have their concerns addressed and heard. The law ought to contain such provisions.

**The Ordinance does not leave open ample alternative Channels for the Type of Expressive Activity that Is being Restricted.**

A regulation leaves open ample alternative channels for the type of expressive activity that is being restricted if "it does not attempt to ban any particular manner or type of expression at a given place or time." *Ward*, 491 U.S. at 803. This is clearly being violated with both the amplification ban and the fifty foot rule and audibility rule.

## **10. Summary**

The Santa Fe Buskers Alliance feels that passage of this proposed bill as is will severely curtail the protections afforded by the First and Fourteenth Amendments as applied to street performers and that the passage of this bill will expose the City of Santa Fe to many unnecessary liabilities on which the likelihood of success by the City are very low, that will be time consuming and expensive to the taxpayers to litigate should these attempts to bridge the gap of understanding prove wholly unsuccessful.

**11. Recommendation: It is the SFBA's recommendation that this bill be tabled and that the City of Santa Fe, the SFBA, and the citizens of Santa Fe work together in earnest to produce legislation that meets the needs of the city and its citizens in a manner that will honor the protections provided by the first and fourteenth amendments and limit the liabilities incurred by the City of Santa Fe in its eventual passage.**

Respectfully Submitted,

\_\_\_\_\_  
T.K.

Talia Kosh, Esq.

Attorney at Law

Representative for SFBA

Resident of the City of Santa Fe

April 29, 2014

Esteemed Councilors, Mayor and City Attorney:

Referencing "Our Response to Substitute Bill No. 2014-10. An Ordinance Relating To Street Performers on Public Property; Amending Section 23-8 SFCC 1987," we hereby submit, as per the Council's request, a summary of our recent response.

For more details on constitutional arguments underlying these issues, please see our full response.

The Santa Fe Buskers Alliance and its representatives express our desire to assist you and bring deeper understanding to your very difficult decisions surrounding this substitute bill, to which you have already devoted much time and consideration.

There are serious issues that the proposed legislation does not sufficiently address and actually creates additional issues. **That is why request a tabling of this substitute bill so that the SFBA may meet with the Sponsors of the substitute ordinance, as it is clear that there is a breakdown of communication from SFBA to the Council.** We truly believe this gap of understanding can be bridged if all participants regarding this legislation are in the room together.

We would like to first point out that the recent substitute ordinance seems to amend sections of the current law by omission of certain sections, **such as the purpose and definition sections**, without making reference to the fact that these sections will be deleted from the current bill. By omitting the purpose and definition sections, what is left is legislation without purpose or definition. We must highlight that the current ordinance, as it stands, has a purpose of "promoting and

*Exhibit "21"*



encouraging street performance” in Santa Fe. The substitute bill fails to accomplish this in many ways outline ,in brief, here:

Passage of the proposed legislation would result in an abridgment of the constitutional rights of street performers and would open the city to redress through the courts to remedy those abridgments. To avoid such problems *it is the desire of the SFBA to work with you to create legislation that would both satisfy the needs of the city and preserve the first and fourteenth amendment rights of street performers.*

We understand that the city, for various reasons has a need to regulate street performance as to time, manner and place. However, every municipality is subject to constitutional constraints and there must be justifiable compelling interest in such restrictions on speech.

Because the public areas of the city, and especially the Plaza are public fora, free speech and expression are protected by the First and Fourteenth amendments of the United States Constitution.

The courts have ruled that street performance is a protected form of public expression and regulation of public expression must serve a compelling or significant government interest, be narrowly tailored to meet that interest, not be construed as prior restraint of free speech, be content neutral, and leave open ample alternative channels for communication.

The stated interests in the current legislation are to address public safety issues and to prevent conflicts between street performers and between street performers and merchants or vendors. Significantly, courts have consistently held that the First Amendment rights of performers are so important that they take precedence over all these other interests, when the government is attempting to restrict them on public land.

Both the current and proposed legislation are not narrowly tailored to meet significant government interest, has elements that are not content

neutral, creates prior restraint and does not leave ample alternative channels for communication open.

**More specifically, concerns of constitutionality in the substitute ordinance exist in the following ways:**

**Prior restraint exists in:**

- The act of licensure of street performers
- Requirement specifying the type of performances in the license
- Requirement to state type of performance upon application
- The requirement of street performers to **display** a license
- The issuance of a photo ID to street performers
- Risk of citation, fine, arrest, or imprisonment for violation of the street performer ordinance

**Lack of content neutrality exists in**

- Restriction of audibility to 50 feet
- Restrictions on amplification (which are, effectively, a ban on amplification)
- Restrictions on legal items used in performance
- Restrictions on legal items offered in trade
- Restrictions on performance space
- Elimination of the short term license
- The “Plainly Audible” standard is overly broad, vague and unconstitutional.

The Council should look to regulating speech by another, more objective standard such as decibel levels. This must be reviewed as well so as not to be so restrictive on decibel levels that it cannot pass constitutional muster. Courts have consistently denied all of these restrictions when they could not be demonstrably linked to a significant or compelling governmental interest.

**Lack of ample alternative channels exists in:**

- Distance restrictions of the proposed legislation: The SFBA has taken to measuring the Plaza and has found that the 50 foot requirement **denies all but the center of the Plaza to busking activities**. Due to other restrictions in the ordinance, **the effect of this rule is to allow only one busker on the Plaza at any given time**, including those that lack sound in their performances.
- Lack of venue for dispute resolution brought by street performers.

**The following are not narrowly tailored to meet significant government interest:**

- Issuance of IDs does not further the City of Santa Fe's stated interest in terms of public safety or dispute resolution.
- Volume restrictions are overly broad
- Subjective interpretation of what constitutes blocking a public thoroughfare
- Elimination of short term license
- Criminal enforcement of the street performer rules

Remedies/Alternative Methods: There are alternative methods that will not place such a heavy burden on protected speech and yet meet the City of Santa Fe's needs. Some might be the objective determination of what volume levels/decibel levels are acceptable and objective measurement, creation of a venue to review license violations that is not a criminal venue, objective methods of determining audibility such as decibel or watt meters, and density determinations that are not subject to distance measurement.

The SFBA is willing to work with the City of Santa Fe and other interested parties to determine workable constitutional solutions to meet the city's needs.

Respectfully,

T.K.  
 Talia Kosh  
 Representative for SFBA



April 30, 2014

Zachary Shandler  
Assistant City Attorney  
City of Santa Fe  
200 Lincoln Ave.  
PO Box 909  
Santa Fe, NM 87504-0909

Dear Mr. Shandler:

I write to express the ACLU's concerns about proposed amendments to the Santa Fe ordinance concerning street performers on public property. As you are no doubt aware, any restrictions on "busking" must be content neutral, narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication. The ordinance's existing licensing and time, place, manner restrictions may already fail these tests, especially in 'as applied' situations. To expand those restrictions only heightens our concern that street performers will be illegally censored. We are especially troubled by the following:

- The requirement that street performers "shall not be plainly audible fifty feet (50') away from the performance site" is likely void for vagueness. "Plainly audible" is a subjective determination that varies with environmental conditions and individual hearing abilities. Street performers will have difficulties ascertaining whether or not their speech violates the law and subjects them to penalties.
- By eliminating the first-time warning provision, the City is creating a more rigorous scheme of enforcement for protected speech activity than for activities that pose an identifiable threat to public safety. Namely, persons who violate City prohibitions on riding bicycles, throwing recreational objects, operating roller skates, or allowing pets to roam unleashed in the Plaza area receive a warning for their first offense. Such disparate treatment calls into question the significant governmental interest behind the amendment.

Removal of the warning provision also strikes us as poor public policy because it will likely subject many performers to fines or even jail time when a simple warning would suffice. The warning provision also provides fair notice to street performers who may not live in Santa Fe and be aware of the law. Is it the City's goal to levy fines or effectively regulate street performances?

*Exhibit "22"*

- Between the proposed fifty-foot buffers around vendors and new limits on performing in the Plaza, the amended ordinance may create such a web of intersecting restrictions that it all but eliminates possibilities for street performers to occupy the Plaza and long stretches of nearby public property, all of which are considered traditional public fora. This casts doubt on whether the amended ordinance is indeed narrowly tailored.

In light of these concerns, we would urge the Santa Fe City Council to reject or significantly modify the proposed amendments to the street performer ordinance. The ACLU is committed to ensuring that street performers are able to exercise their free speech rights as guaranteed under the U.S. and New Mexico Constitutions.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Simonson", followed by a period.

Peter Simonson  
Executive Director

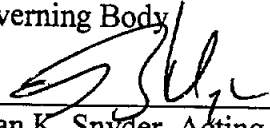

# City of Santa Fe, New Mexico


# memo

DATE: April 30, 2014 Governing Body Meeting

TO: Governing Body

VIA:

  
Brian K. Snyder, Acting City Manager  
Matthew S. O'Reilly, P.E., Director, Land Use Department  
Tamara Baer, Planner Manager, Current Planning Division 

FROM: Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division 

## RIVERA GENERAL PLAN AMENDMENT AND REZONING

Case #2013-101. 2791 and 2797 Agua Fria Road (Rivera) General Plan Amendment. James W. Siebert, agent for Stella Rivera, requests General Plan Future Land Use map amendment to change the designation of 4.65± acres from Rural/Mountain/Corridor (1 dwelling unit per acre) to General Commercial. (Dan Esquibel, Case Manager)

Case #2013-102. 2791 and 2797 Agua Fria Road (Rivera) Rezoning. James W. Siebert, agent for Stella Rivera, requests rezoning of 4.65± acres from R-1 (Residential, 1 dwelling unit per acre) to C-2 (General Commercial). The application includes a Development Plan for existing residential and nonresidential uses of the property. (Dan Esquibel, Case Manager)

Attached as Exhibits A1 through E1, are the March 14, 2014 Planning Commission Findings of Fact and Conclusions of Law, proposed Resolution & Bill, February 6, 2014 Planning Commission meeting minutes and packet material for the Governing Body's review.

### RECOMMENDATION:

The Land Use Department recommends **APPROVAL** of the General Plan Amendment and Rezoning. No conditions are submitted as part of the General Plan or Rezoning. DRT conditions will be made part of the Development Plan.

*Two motions will be required; one for #Case 2013-101 Rivera General Plan Amendment and one for #Case 2013-102 Rivera General Rezoning to C-2.*

*Exhibit "23"*

## **I. APPLICATION OVERVIEW**

At the February 6 Planning Commission meeting, the Commission recommended approval of #Case 2013-101 Rivera General Plan Amendment and #Case 2013-102 Rivera Rezoning to C-2. There were no comments made at the public hearing portion of the meeting.

## **III. CONCLUSION**

The proposal satisfies the criteria in Chapter 14 for General Plan Amendment and Rezoning. The submitted Development Plan identifies existing conditions requiring minor graphic corrections. The proposed requests do not conflict with the General Plan policies of the City nor do they conflict with existing uses in the area. The property is bordered by the Santa Fe River to the north, creating a buffer to the R-1 rural character to the north of the river. The east portion of the property includes the residential component of the development providing a transition from commercial to residential to the east. No negative comments have been provided from other City reviewing Divisions.

## **IV. EXHIBITS:**

Exhibit A: March 14, 2014 Planning Commission Findings and conclusions of Law

Exhibit B: Resolution

Exhibit C: Bill

Exhibit D: February 6, 2014 Planning Commission Minutes

Exhibit E: February 6, 2014 Planning Commission Packet

April 8, 2014  
Governing Body  
Cases 2013-101 & 102  
**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **EXHIBIT A**

March 14, 2014 Planning Commission Findings and Conclusions of Law



City of Santa Fe  
Planning Commission  
Findings of Fact and Conclusions of Law

Case #2013-101

2791 and 2797 Agua Fria Street General Plan Amendment

Case #2013-102

2791 and 2797 Agua Fria Street Rezoning to C-2

Owner's Name – Stella Rivera

Applicant's Name – James W. Siebert and Associates, Inc.

THIS MATTER came before the Planning Commission (Commission) for hearing on February 6, 2014 upon the application (Application) of James W. Siebert and Associates, Inc. as agent for Stella Rivera (Applicant).

The property is located east of the Siler Road intersection at 2791 and 2797 Agua Fria Street (Property) and is comprised of 4.32± acres zoned R-1 (Residential – 1 dwelling unit/acre).

The Applicant seeks (1) approval of an amendment to the City of Santa Fe General Plan Future Land Use Map (Plan) changing the designation of the Property from Rural Mountain Corridor to Community Commercial and (2) to rezone the Property from R-1 to C-2 (General Commercial).

After conducting a public hearing and having heard from staff and all interested persons, the Commission hereby FINDS, as follows:

FINDINGS OF FACT

General

1. The Commission heard testimony and took evidence from staff, the Applicant, and members of the public interested in the matter.
2. Santa Fe City Code (Code) §14-3.2(D) sets out certain procedures for amendments to the Plan, including, without limitation, a public hearing by the Commission and recommendation to the Governing Body based upon the criteria set out in Code §14-3.2(E).
3. Code §§14-3.5(B)(1) through (3) set out certain procedures for rezonings, including, without limitation, a public hearing by the Commission and recommendation to the Governing Body based upon the criteria set out in Code §14-3.5(C).
4. Code §14-3.1 sets out certain procedures to be followed on the Application, including, without limitation, (a) a pre-application conference [§14-3.1(E)(1)(a)(i)]; (b) an Early Neighborhood Notification (ENN) meeting [§14-3.1(F)(2)(a)(iii) and (xii)]; and (c) compliance with Code Section 14-3.1(H) notice and public hearing requirements.
5. A pre-application conference was held on June 13, 2013.

6. Code §14-3.1(F) establishes procedures for the ENN meeting, including (a) scheduling and notice requirements [Code §14-3.1(F)(4) and (5)]; (b) regulating the timing and conduct of the meeting [Code §14-3.1(F)(5)]; and (c) setting out guidelines to be followed at the ENN meeting [§14-3.1(F)(6)].
7. An ENN meeting was held on the Application on August 19, 2013 at the Southside Public Library on 6599 Jaguar Drive.
8. Notice of the ENN meeting was properly given.
9. The ENN meeting was attended by the Applicant and City staff; there was one member of the public in attendance and no concerns were raised.
10. Commission staff provided the Commission with a report (Staff Report) evaluating the factors relevant to the Application and recommending approval by the Commission of the proposed Plan amendment and the rezoning.

#### The General Plan Amendment

11. Code §14-3.2(B)(2)(b) requires the City's official zoning map to conform to the Plan, and requires an amendment to the Plan before a change in land use classification is proposed for a parcel shown on the Plan's land use map.
12. The Commission is authorized under Code §14-2.3(C)(7)(a) to review and make recommendations to the Governing Body regarding proposed amendments to the Plan.
13. The Commission has considered the criteria established by Code §14-3.2(E)(1) and finds the following facts:
  - (a) *Consistency with growth projections for the City, economic development goals as set forth in a comprehensive economic development plan for the City, and with existing land use conditions, such as access and availability of infrastructure [§14-3.2(E)(1)(a)].*  
The Property is located in an area developed with industrial, commercial, mixed-use and higher-density (R-2, R-4 and R-6) residential zoning, generally located on the south side of Agua Fria Street, as well as the abutting R-1 zoning and despite the R-1 zoning has historically been used for commercial uses. The Plan acknowledges the mix of uses in the Siler Road area and encourages the continued development of compatible businesses to provide employment opportunities in close proximity to residential uses. Water, electrical, and natural gas utilities are available to serve the Property. There is currently no sanitary sewer accessible to the Property.
  - (b) *Consistency with other parts of the Plan [§14-3.2(E)(1)(b)].*  
The proposed amendment is consistent with provisions of the Plan that recognize the prevailing use and character of an area.
  - (c) *The amendment does not: (i) allow uses or a change that is significantly different from or inconsistent with the prevailing use and character of the area; (ii) affect an area of less than two acres, except when adjusting boundaries between districts; or (iii) benefit one of a few landowners at the expense of the surrounding landowners or the general public [§14-3.2(E)(1)(c)].*  
The amendment will not allow a use or change that is inconsistent with the prevailing uses of the area and if there is any change in use, buffering to adjacent residential areas will be required. The proposed amendment conforms the zoning of the Property to historic and existing uses and is consistent with zoning in the surrounding area. Based

upon the foregoing, the amendment would not benefit the Property owner at the expense of the surrounding landowners and the general public.

- (d) *An amendment is not required to conform with Code §14-3.2(E)(1)(c) if it promotes the general welfare or has other adequate public advantage or justification [§14-3.2(E)(1)(d)].*

This is not applicable, as, based upon paragraph 13(d) above, the proposed amendment conforms with Code §14-3.2(E)(1)(c).

- (e) *Compliance with extraterritorial zoning ordinances and extraterritorial plans [§14-3.2(E)(1)(e)].*

This is not applicable.

- (f) *Contribution to a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development [§14-3.2(D)(1)(e)].*

The proposed amendment will contribute to a coordinated, adjusted and harmonious development of the City in that it is consistent with the policies of the Plan as set forth in paragraph 13(a)-(c) above.

### The Rezoning

14. Under Code §14-3.5(A)(1)(d) any person may propose a rezoning (amendment to the zoning map).
15. Code §§14-2.3(C)(7)(c) and 14-3.5(B)(1)(a) provide for the Commission's review of proposed rezonings and recommendations to the Governing Body regarding them.
16. Code §14-3.5(C) establishes the criteria to be applied by the Commission in its review of proposed rezonings.
17. The Commission has considered the criteria established by Code §§14-3.5(C) and finds, subject to the Conditions, the following facts:
  - (a) *One or more of the following conditions exist: (i) there was a mistake in the original zoning; (ii) there has been a change in the surrounding area, altering the character of the neighborhood to such an extent as to justify changing the zoning; or (iii) a different use category is more advantageous to the community, as articulated in the Plan or other adopted City plans [Code §14-3.5(C)(1)(a)].*

The zoning for the Property was established at the time it was annexed into the City and did not accurately reflect the mixed uses and character existing in the area at the time. Rezoning the Property will not alter that character.
  - (b) *All the rezoning requirements of Code Chapter 14 have been met [Code §14-3.5(C)(1)(b)].*

All the rezoning requirements of Code Chapter 14 have been met.
  - (c) *The proposed rezoning is consistent with the applicable policies of the Plan [Section 14-3.5(A)(c)].*

The proposed rezoning is consistent with the Plan as set forth in the Staff Report.
  - (d) *The amount of land proposed for rezoning and the proposed use for the land is consistent with City policies regarding the provision of urban land sufficient to meet the amount, rate and geographic location of the growth of the City [Code §14-3.5(C)(1)(d)].*

The Property consists of 4.32± acres and its use is consistent with the uses and character of the area as it has developed and with the historic uses of the Property.

- (e) *The existing and proposed infrastructure, such as the streets system, sewer and water lines, and public facilities, such as fire stations and parks, will be able to accommodate the impacts of the proposed development [Section 14-3.5(C)(e)];*

Water, electrical, and natural gas utilities are available to serve the Property.

### CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the hearing, the Commission **CONCLUDES** as follows:

#### General

1. The proposed Plan amendment and rezoning were properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
2. The ENN meeting complied with the requirements established under the Code.

#### The General Plan Amendment

3. The Commission has the power and authority at law and under the Code to review the proposed amendment to the Plan and to make recommendations to the Governing Body regarding such amendment.

#### The Rezoning

5. The Applicant has the right under the Code to propose the rezoning of the Property.
6. The Commission has the power and authority at law and under the Code to review the proposed rezoning of the Property and to make recommendations regarding the proposed rezoning to the Governing Body based upon that review.

**WHEREFORE, IT IS ORDERED ON THE 13<sup>th</sup> OF MARCH 2014 BY THE PLANNING COMMISSION OF THE CITY OF SANTA FE:**

1. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Commission recommends to the Governing Body that it approve the Plan amendment.
2. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Commission recommends to the Governing Body that it approve the rezoning of the Property to C-2.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Michael A. Spray  
Thomas Spray  
Chair

3/13/14  
Date:

FILED:

Yolanda Y. Vigil  
Yolanda Y. Vigil  
City Clerk

3/14/14  
Date:

APPROVED AS TO FORM:

Kelley A. Brennan  
Kelley Brennan  
Interim City Attorney

3/10/14  
Date:

April 8, 2014  
Governing Body  
Cases 2013-101 & 102  
**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **EXHIBIT B**

Resolution
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1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2014-\_\_\_\_

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10 A RESOLUTION

11 AMENDING THE GENERAL PLAN FUTURE LAND USE CLASSIFICATION FROM  
12 RESIDENTIAL - RURAL/MOUNTAIN/CORRIDOR (1 DWELLING UNIT PER ACRE) TO  
13 GENERAL COMMERCIAL FOR A 4.65± ACRE PARCEL OF LAND LOCATED  
14 APPROXIMATELY 1,100 FEET NORTH EAST OF SILER ROAD ON THE NORTH SIDE  
15 OF AGUA FRIA STREET (2791 AND 2797 AGUA FRIA STREET) WITHIN T17N, R9E,  
16 SECTION 33 N.M.P.M., SANTA FE COUNTY NEW MEXICO ("2791 AND 2797 AGUA  
17 FRIA STREET (RIVERA) REZONING," CASE NO. 2013-101).

18 WHEREAS, the agent for the owners of that certain parcel of land comprising 4.65± acres  
19 located approximately 1,100 Feet North East of Siler Road on the north side of Agua Fria Street  
20 (2791 And 2797 Agua Fria Street) within T17N, R9E, Section 33 N.M.P.M., Santa Fe County New  
21 Mexico (the "Property") has submitted an application to amend the General Plan Future Land Use  
22 Map classification of the Property from Residential – Rural/Mountain/Corridor (1 dwelling unit per  
23 acre) to "General Commercial"; and

24 WHEREAS, pursuant to Section 3-19-9 NMSA 1978, the General Plan may be amended,  
25 extended or supplemented; and

1       **WHEREAS**, the Governing Body has held a public hearing on the proposed amendment,  
2 reviewed the staff report and the recommendation of the Planning Commission and the evidence  
3 obtained at the public hearing, and has determined that the proposed amendment to the General Plan  
4 meets the approval criteria set forth in Section 14-3.2(D) SFCC 1987; and

5       **WHEREAS**, reclassification of the subject property would be consistent with the General  
6 Plan Themes and Policies for Land Use (General Plan, Chapter 3) and Growth Management (General  
7 Plan, Chapter 4); and

8       **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
9 **CITY OF SANTA FE:**

10       **Section 1.**       That the General Plan Future Land Use Map classification for the Properly  
11 be and hereby is amended as shown in the General Plan Amendment legal description attached hereto  
12 as EXHIBIT A and incorporated herein.

13       **PASSED, APPROVED, and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2014.

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17 **ATTEST:**

\_\_\_\_\_  
**JAVIER M. GONZALES, MAYOR**

18  
19 \_\_\_\_\_  
20 **YOLANDA Y. VIGIL, CITY CLERK**

21  
22 **APPROVED AS TO FORM:**

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24 \_\_\_\_\_

25 **KELLEY A. BRENNAN, INTERIM CITY ATTORNEY**



PERIMETER LAND DESCRIPTION, OF THE RIVERA TRACT

THE RIVERA TRACT LYING WITHIN SECTION 33, T.17N., R.9E., N.M.P.M., CITY AND COUNTY OF SANTA FE, NEW MEXICO, SAID PERIMETER BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE RIVERA TRACT WHICH LIES S79°06'26"W, 119.10 FEET FROM A BLM BRASS CAP STAMPED LOT 23 AP4, SHC 417, TR1,

THENCE S64°06'16"W, 37.05 FEET TO A POINT;

THENCE S60°49'17"W, 79.97 FEET TO A POINT;

THENCE S59°05'31"W, 247.04 FEET TO A POINT;

THENCE S55°36'21"W, 3.18 FEET TO A POINT;

THENCE N13°57'04"W, 194.52 FEET TO A POINT;

THENCE S57°28'03"W, 49.98 FEET TO A POINT;

THENCE N13°02'25"W, 243.94 FEET TO A POINT;

THENCE N42°17'51"E, 370.63 FEET TO A POINT;

THENCE N62°05'20"E, 77.09 FEET TO A POINT;

THENCE S15°20'23"E, 545.34 FEET TO THE POINT OF BEGINNING, CONTAINING 4.32 ACRES MORE OR LESS, ALL AS SHOWN ON PLAT RECORDED JANUARY 16, 2014 IN PLAT BOOK 769, PAGE 10, OFFICE OF THE SANTA FE COUNTY CLERK.

Res No. \_\_\_\_\_

EXHIBIT A

DAWSON SURVEYS INC.  
PROFESSIONAL LAND SURVEYORS  
2502B CAMINO ENTRADA  
SANTA FE, N.M. 87505  
FILE#9384\DESC DATE:02\24\14

April 8, 2014  
Governing Body  
Cases 2013-101 & 102

**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **EXHIBIT C**

Bill
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**CITY OF SANTA FE, NEW MEXICO**

**BILL NO. 2014-15**

**AN ORDINANCE**

**AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SANTA FE; CHANGING  
THE CLASSIFICATION FROM R-1 (RESIDENTIAL, 1 DWELLING UNIT TO THE ACRE)  
TO C-2 (GENERAL COMERCIAL); AND PROVIDING AN EFFECTIVE DATE WITH  
RESPECT TO A CERTAIN PARCEL OF LAND COMPRISING 4.65± ACRES LOCATED  
AT 2791 AND 2797 AGUA FRIA STREET ("2791 AND 2797 AGUA FRIA STREET  
(RIVERA) REZONING," CASE NO. 2013-102). BE IT ORDAINED BY THE GOVERNING  
BODY OF THE CITY OF SANTA FE:**

**Section 1.** The following real property (the "Property"), located within the municipal  
boundaries of the city of Santa Fe, is restricted to and classified C-2 (General Commercial):

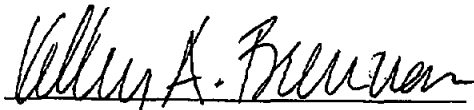
The parcel of land comprising 4.65± acres generally located at 2791 and 2797 Agua Fria  
Street more fully described in EXHIBIT A attached hereto and incorporated by reference,  
located in T17N, R9E, Section 33 N.M.P.M., Santa Fe County, New Mexico,

**Section 2.** The official zoning map of the City of Santa Fe adopted by Ordinance No.  
2001-27 is amended to conform to the changes in zoning classifications for the Property set forth in  
Section 1 of this Ordinance.

1           **Section 3.**     This rezoning action and any future development plan for the Property is  
2 approved with and subject to the conditions set forth in EXHIBIT B and incorporated herein  
3 summarizing the City of Santa Fe staff technical memoranda and conditions recommended by the  
4 Planning Commission on February 6, 2014.

5           **Section 4.**     This Ordinance shall be published one time by title and general summary and  
6 shall become effective five days after publication.

7 APPROVED AS TO FORM:

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10 KELLEY BRENNAN, INTERIM CITY ATTORNEY  
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PERIMETER LAND DESCRIPTION, OF THE RIVERA TRACT

THE RIVERA TRACT LYING WITHIN SECTION 33, T.17N., R.9E., N.M.P.M., CITY AND COUNTY OF SANTA FE, NEW MEXICO, SAID PERIMETER BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE RIVERA TRACT WHICH LIES S79°06'26"W, 119.10 FEET FROM A BLM BRASS CAP STAMPED LOT 23 AP4, SHC 417, TR1,

THENCE S64°06'16"W, 37.05 FEET TO A POINT;

THENCE S60°49'17"W, 79.97 FEET TO A POINT;

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THENCE N13°02'25"W, 243.94 FEET TO A POINT;

THENCE N42°17'51"E, 370.63 FEET TO A POINT;

THENCE N62°05'20"E, 77.09 FEET TO A POINT;

THENCE S15°20'23"E, 545.34 FEET TO THE POINT OF BEGINNING, CONTAINING 4.32 ACRES MORE OR LESS, ALL AS SHOWN ON PLAT RECORDED JANUARY 16, 2014 IN PLAT BOOK 769, PAGE 10, OFFICE OF THE SANTA FE COUNTY CLERK.

Bill No. 15

EXHIBIT A

DAWSON SURVEYS INC.  
PROFESSIONAL LAND SURVEYOR'S  
2502B CAMINO ENTRADA  
SANTA FE, N.M. 87505  
FILE#9384\DESC DATE:02\24\14

# **EXHIBIT B**

## **2791 and 2797 Agua Fria Road (Rivera) Rezoning**

No conditions are submitted as part of the Rezoning. Development Review conditions will be made part of the Development Plan.

April 8, 2014  
Governing Body  
Cases 2013-101 & 102  
**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **EXHIBIT D**

February 6, 2014 Planning Commission Minutes

SUMMARY INDEX  
CITY OF SANTA FE  
PLANNING COMMISSION  
February 6, 2014

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CALL TO ORDER/ROLL CALL	Quorum	1
APPROVAL OF AMENDED AGENDA	Approved	1
<u>APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS</u>		
MINUTES – JANUARY 9, 2014	Approved	2
FINDINGS/CONCLUSIONS – <u>CASE #2013-119.</u> LOT 6A, PLAZA LA PRENSA, SOUTHWEST BUSINESS PARK FINAL SUBDIVISION PLAT	Approved	2
<u>OLD BUSINESS</u>	None	2
<u>NEW BUSINESS</u>		
CASE 2013-101. 2791 and 2797 AGUA FRIA ROAD (RIVERA) GENERAL PLAN AMENDMENT. JAMES W. SIEBERT, AGENT FOR STELLA RIVERA, REQUESTS GENERAL PLAN FUTURE LAND USE MAP AMENDMENT TO CHANGE THE DESIGNATION OF 4.65± ACRES FROM RURAL/ MOUNTAIN/CORRIDOR (1 DWELLING UNIT PER ACRE) TO GENERAL COMMERCIAL	Approved	2-7
CASE 2013-102. 2791 AND 2797 AGUA FRIA ROAD (RIVERA) REZONING. JAMES W. SIEBERT, AGENT FOR STELLA RIVERA, REQUESTS REZONING OF 4.65± ACRES FROM R-1 (RESIDENTIAL, 1 DWELLING UNIT PER ACRE) TO C-2 (GENERAL COMMERCIAL). THE APPLICATION INCLUDES A DEVELOPMENT PLAN FOR EXISTING RESIDENTIAL AND NON-RESIDENTIAL USES OF THE PROPERTY	Approved	2-7
CASE #2013-128. 2868 RUFINA STREET		



<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
(HOMEWISE) REZONING. JENKINS GAVIN DESIGN & DEVELOPMENT, INC., AGENT FOR HOMEWISE, INC., REQUESTS REZONING OF 2.39± ACRES FROM I-2 (GENERAL INDUSTRIAL) TO I-1 (LIGHT INDUSTRIAL) TO ACCOMMODATE A PROPOSED 20,000± SQ. FT. OFFICE BUILDING	Approved	8-14
<u>CASE #2013-130.</u> 313-317 CAMINO ALIRE (DESERT ACADEMY) GENERAL PLAN AMENDMENT. DAVID SCHUTZ, AGENT FOR DESERT ACADEMY, REQUESTS APPROVAL OF A GENERAL PLAN FUTURE LAND USE MAP AMENDMENT TO CHANGE THE DESIGNATION OF 1.38± ACRES OF LAND FROM RESIDENTIAL LOW DENSITY (3-7 DWELLING UNITS PER ACRE) TO OFFICE. THE PROPERTY IS THE FORMER SITE OF DESERT ACADEMY	Approved	14-19
<u>CASE 2013-131.</u> 313-317 CAMINO ALIRE (DESERT ACADEMY) REZONING. DAVID SCHUTZ, AGENT FOR DESERT ACADEMY, REQUESTS REZONING OF 1.38± ACRES OF LAND FROM 4-5 (RESIDENTIAL, 5 DWELLING UNITS PER ACRE) TO C-1 (OFFICE AND RELATED COMMERCIAL). THE PROPERTY IS THE FORMER SITE OF DESERT ACADEMY	Approved	14-19
STAFF COMMUNICATIONS	Information/discussion	19
MATTERS FROM THE COMMISSION	Information/discussion	20
ADJOURNMENT		20

**MINUTES OF THE MEETING  
OF THE  
PLANNING COMMISSION  
February 6, 2014**

A regular meeting of the City of Santa Fe Planning Commission, was called to order by Chair Tom Spray, at approximately 7:10 p.m., on Thursday, February 6, 2014, in the City Council Chambers, City Hall, Santa Fe, New Mexico.

**A. ROLL CALL**

**MEMBERS PRESENT:**

Commissioner Tom Spray, Chair  
Commissioner Lisa Bemis  
Commissioner Michael Harris  
Commissioner Signe Lindell  
Commissioner Lawrence Ortiz  
Commissioner John Padilla  
Commissioner Dan Pava  
Commissioner Renee Villarreal

**MEMBERS EXCUSED:**

Commissioner Angela Schackel-Bordegary

**OTHERS PRESENT:**

Matthew O'Reilly, Director, Land Use Department  
Tamara Baer, Planner Manager, Current Planning Division – Staff liaison  
Kelley Brennan, Assistant City Attorney  
Melessia Helberg, Stenographer

There was a quorum of the membership in attendance for the conducting of official business.

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AMENDED AGENDA**

**MOTION:** Commissioner Villarreal moved, seconded by Commissioner Bemis, to approve the Agenda as presented.

**VOTE:** The motion was approved unanimously on a voice vote, with Commissioners Bemis, Harris, Lindell, Ortiz, Padilla, Pava, and Villarreal voting in favor of the motion and no one voting against [7-0].

**D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS**

**1. MINUTES – JANUARY 9, 2014**

**MOTION:** Commissioner Harris moved, seconded by Commissioner Villarreal, to approve the minutes of the meeting of January 9, 2014, as presented.

**VOTE:** The motion was approved unanimously on a voice vote, with Commissioners Bemis, Harris, Lindell, Ortiz, Padilla, Pava and Villarreal voting in favor of the motion and no one voting against [7-0].

**2. FINDINGS/CONCLUSIONS**

**CASE #2013-119. LOT 6A, PLAZA LA PRENSA, SOUTHWEST BUSINESS PARK FINAL SUBDIVISION PLAT.**

A copy of the Findings of Fact and Conclusions of Law in Case #2013-119, Lot 61, Plaza la Prensa, Southwest Business Park Final Subdivision Plat, is incorporated herewith to these minutes as Exhibit "1."

**MOTION:** Commissioner Villarreal moved, seconded by Commissioner Ortiz, to approve the Findings of Fact and Conclusion of law in Case #2013-119, Lot 6A, Plaza la Prensa, Southwest Business Park Final Subdivision Plat, as presented by staff.

**VOTE:** The motion was approved unanimously on a voice vote, with Commissioners Bemis, Harris, Lindell, Ortiz, Padilla, Pava and Villarreal voting in favor of the motion and no one voting against [7-0]

**E. OLD BUSINESS**

There was no old business.

**F. NEW BUSINESS**

*Items F(1) and F(2) were combined for purposes of presentation, public hearing and discussion but were voted upon separately.*

- 1. CASE 2013-101. 2791 and 2797 AGUA FRIA ROAD (RIVERA) GENERAL PLAN AMENDMENT. JAMES W. SIEBERT, AGENT FOR STELLA RIVERA, REQUESTS GENERAL PLAN FUTURE LAND USE MAP AMENDMENT TO CHANGE THE DESIGNATION OF 4.65± ACRES FROM RURAL/MOUNTAIN/CORRIDOR (1 DWELLING UNIT PER ACRE) TO GENERAL COMMERCIAL. (DAN ESQUIBEL, CASE MANAGER)**

A Memorandum dated January 30, 2014, for the February 6, 2014 Planning Commission Meeting, with attachments, to the Planning Commission from Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division, regarding Case #2013-101, 2791 and 2797 Agua Fria Road (Rivera) General Plan Amendment, and Case #2013-102, 2791 and 2797 Agua Fria Road (Rivera) Rezoning, is incorporated herewith to these minutes as Exhibit "2."

A copy of a Santa Fe County Business Registration certificate, with attached receipt for \$35 from Santa Fe County, are incorporated herewith collectively to these minutes as Exhibit "3."

A series of color photographs and drawings of the subject site, used by Daniel Esquibel in his presentation, and entered for the record by Daniel Esquibel, are incorporated herewith to these minutes collectively as Exhibit "4."

The staff report was presented by Daniel Esquibel. Please see Exhibit "2" for specifics of this presentation.

**Recommendation:** The Land Use Department recommends approval of the General Plan Amendment and Rezoning with no conditions of approval as part of the General Plan or Rezoning. DRT conditions will be made part of the Development Plan.

### Public Hearing

#### Presentation by the Applicant

**Jim Siebert, 915 Mercer, Agent for the Applicant, Stella Rivera and her son George Rivera,** was sworn. Mr. Siebert said, "Originally, this property was under County jurisdiction, and if you wanted something, you would go to the County and request approval for a building permit or other permits. Then there was the Extraterritorial Jurisdiction which lasted for about 12 years, and then at that time, it was both City and County jurisdictions. You would still though at that time, submit all your applications to the County. Then in 2009, the City adopted the SPPAZO [Subdivision, Platting, Planning, And Zoning Ordinance] for the presumptive City limits. At that point, they established zoning for the property and jurisdictional control at the same time. On January 1, 2014, this and other parts of the presumptive City limits, were annexed to the City."

Mr. Siebert continued, "And part of the reason I'm giving this history, is I think there's going to be a question that comes up is, one, the City established the zoning back in 2009, why didn't the applicant at that time say something. What has progressed over all this time is that the Riveras have lived through all these jurisdictions, and the result has been that they continued to do business as they have always done business. But in this particular case, because one of the businesses was no longer renewing their business licenses, it was leasing the old Club Alegria, all that came to an end and they became a non-conforming use. They simply couldn't continue to do business as they have in the past."

Mr. Siebert continued, "And just to kind of further give you a little background on these kinds of lack of understanding of jurisdictional issues, I'm going to hand you out a couple of items, and leave this with the secretary [Exhibit "3]. What this is, and once again to reiterate, 2009 is when the City took over the jurisdiction of this particular area. Then in 2010, the County issued a Business Registration for Club Alegria [Exhibit "3], so even then there was some real confusion about who had jurisdiction over this area."

Mr. Siebert continued, "And then the Sylvans Wholesale was just a few doors down from this particular request. They issued a business license, the Sylvans, in the exact same area in 2012. So you can begin to understand the kinds of confusion that existed in this particular area of what was the County."

Mr. Siebert continued, "So the property is currently zoned R-1. There is a variety of uses on the property and I will point those out on the aerial. So, under current R-1 regulations, the only use that would be existing on the property that would be conforming would be Stella Rivera's residence. Everything else would be a non-conforming use. If it burned down, they couldn't simply replace it. These uses, by the way, most of them have been in business for 50 years."

Mr. Siebert continued, "So let me pull out some maps. So just to reiterate what staff has pointed out in the way of zoning. The property sits 'here.' 'This' is the Ulibarri landscaping business that sits on 'this' property over 'here.' 'C-2' is 'here.' And kind of scattered throughout 'here' is a mix of what were approved commercial uses in the County, a lot of those are now non-conforming uses. But roughly across the street is I-2. Heavy industry which is the most intensive zoning district that Santa Fe has. 'This' is the [inaudible] structure, 'this' is the old Nambe manufacturing location. And I tell you what's taken place and what's on the property. 'This' is Stella Rivera's home, and it has been there for the last 50 years. 'This' is the old Club Alegria. The Club Alegria really hasn't existed for about 10 years. It's been closed up. And some of the uses that have been in there, the last one was a pond supply and contractor. There have been carpentry shops, two different carpentry shops that sit on 'this' side. There are 4 apartment units that are 'here,' and another rental unit that sits 'here,' and not shown in the photograph, there's a landscape businesses that have based some of their supplies out of the old Club Alegria."

Mr. Siebert continued, "The kind of interesting thing about this is that what we're requesting tonight is the continuation of uses that have existed on this property for 50 years. So all of a sudden we're going from the lowest single family district in Santa Fe to a C-2 general commercial district. And I think the one thing I'd like to leave you with is George Rivera in some of our discussions, he said, when they moved to the property and his dad built the house and started Club Alegria, that in that particular area, that's what people did. You moved, you built a house and you started your business, and a lot of those businesses actually in the surrounding areas are still there today. So with that, I would like to request your approval of C-2 zoning and the General Plan Amendment and I'll answer any questions you may have."

#### Speaking to this request

There was no one speaking for or against this request.

#### The Public Testimony Portion of the Public Hearing Was Closed

Commissioner Lindell said she has questions about the sewer and capping of the well. She asked what infrastructure is available to this property.

Mr. Esquibel said, "As you know, this was annexed in from the County and the development of this piece of property came in during the 1950's and 1960's. In any event, the development of this property actually came in prior to the County Code. The County Code came into effect in 1981, and their General Plan came into effect in 1980, so a lot of infrastructure was built as it was in the County when there wasn't much infrastructure from the City available to that, and it has maintained its status quo. Within the City limits, they will be able to attach on any infrastructure that is available to the property. And what was requested by our DRT for Sewer and Water, was that there was movement in that direction for connection by capping the well and connecting to the sewer system. And that will be a function of the Development Plan as we move forward with that review."

Commissioner Lindell said, "I guess I'm somewhat not clear. I understand about capping the well and attaching to the City water, but it says they would obtain a septic system permit. So, is it going to stay on septic."

Mr. Esquibel said he would leave that to Stan Holland to determine whether or not there will be a push to connect them. He is unsure exactly where the sewer system is along Agua Fria. He said, currently, if they have an existing septic system, we would like to make sure that the infrastructure they've developed around the septic system can still accommodate that growth. Sometimes it will develop over and over again, but the septic system stays the same size. They might increase the leach field a little bit, but the actual box that's put in the ground doesn't increase in size, so they're looking at that as a main issue.

Commissioner Lindell said she thinks this property borders the River, and Mr. Esquibel said this is correct.

Commissioner Lindell said it says it's not accessible to the City public sewer system. She hopes by the time this property is developed more that it would have access to a public sewer system rather than putting a septic system there. She said, "I don't know that I'm really looking for an answer on this, because I don't think there is an answer on it, I'm just putting out a wish list on it. So there is water there that they have to cap the well and tap into City water. That's what it sounds like. Is that true."

Mr. Esquibel said, "I believe so, yes."

Ms. Baer said, "There's a 10 inch water line in Agua Fria, so water is available immediately in front of the site, and so they will be connecting to City water. There is no City sewer line that is adjacent to or within 200 feet of the property, so the sewer folks take a look at the proximity of the nearest line. If it's not within 200 feet, then they're not required by Code to connect to City sewer. So that's simply not available at this time."

Commissioner Lindell asked, "If it were available some time in the future, prior to anything happening with this property, would then they be required to attach."

Ms. Baer said they would be required to connect at time of development or improvement of the property.

Commissioner Padilla said Mr. Trujillo's memo provides, "All structures will be served by individual meters. That's upon development of the property. Or did I understand you correctly, if this is approved, part of the development plan, there were no conditions of approval, do not require that they connect on approval of this general plan amendment and rezoning. Is that correct."

Ms. Baer said, "The 2008 Ordinance, which required connection if those utilities were available, does say specifically, upon improvement or development of the property. Now I believe this is a separate condition that Mr. Trujillo is asking for and it would become a condition of this approval. So, in other words, it's not that the Code necessarily requires it until the time of improvement or development. But as I read Mr. Trujillo's memo, I think he's asking for that to happen before the rezoning would be recorded."

Commissioner Padilla asked Mr. Siebert if that acceptable to the owner.

Mr. Siebert said it was his understanding that there were no conditions associated with this. He said some of the property is on City water.

**George Rivera, 2182 Candelero Street, son of the owner, was sworn.**

Mr. Padilla noted the request for approval of the General Plan Amendment and Rezoning have no conditions of approval. He said staff has stated, as part of this approval, you will be required to connect the entire project to City services.

Ms. Baer said, "If I may, I would like to retract that. The report does say there are no conditions that attach to the rezoning and the general plan amendment. They do say the DRT conditions, of which this is one, would apply at the time of the development plan. So, if they come in for a new development plan to expand or to add additional property, that's when that would have to happen."

Commissioner Padilla asked what units are on City water service at this time.

Mr. Rivera said, "In 1984, when I remodeled the Club Alegria, we hooked up to the City. So, the Club Alegria has City water and we worked it where, in case the well would dry out, or something happened to the well, City water will service the 4 apartments and my mother's house to the right side. So, we're all hooked up with City water, except we just have one meter that provides for everything, but right now it's only metered for the building for the nightclub building. But we have access if we wanted to provide water for the apartments with the hookup we already have there."

Chair Spray asked said at the bottom of packet page 4, it says "because the property is zoned R-1, the liquor license that is located on the property for over 50 year can no longer be used at its historic location." He asked, "Does that mean if the zoning is changed, the liquor license can be used, and is that the plan."

Mr. Siebert said, "The way it works with the liquor license is that a liquor license is not valid unless the underlying zoning permits the liquor license and that activity to occur. In this particular case, the liquor license is valid. It still remains valid, it's kept current every year with the State, but since it's zoned R-1, he can't use the liquor license. Now whether it will be used again when it becomes C-2, it would then be a valid license under State law. Whether Mr. Rivera uses it at that location, remains to be seen. He has the opportunity once it is zoned, to lease it and move it to another location within the City limits. Before, he was in the County and didn't have that opportunity. You can't move a liquor license from the County to the City, so at this time, it would probably depend on what the ultimate use of the old Club Alegria would be."

Chair Spray said, "So the possibility would exist that you could use it again."

Mr. Siebert said yes.

Chair Spray said, "Ms. Baer or Ms. Brennan, can I ask you, would that going forward in the Development Plan, would that have anything to do with anything."

Ms. Baer said, "It may not Mr. Chair, Commissioners. If it turns out they just do a tenant remodel, and there's no development, there's nothing that kicks in the development plan requirement, which in this case would be 10,000 sq. ft. or more of new construction. Then that would simply be processed as part of the building permit."

Chair Spray said, "So he can open it up and Club Alegria lives again."

Ms. Baer said, "They would have to go through the City Council, I believe."

Mr. Siebert said, "The nightclub itself would require, I want to say a special exception, but what is it now. Is it a special use under the new Code. So if they want to do a nightclub, it would have to come back for another hearing for a special exception."

Responding to the Chair, Ms. Baer said, "The hearing would be through this body because it is adjacent to residential."

**MOTION:** Commissioner Pava moved, seconded by Commissioner Ortiz, to recommend to the Governing Body, the approval of Case #2013-101, 2791 and 2797 Agua Fria Road (Rivera) Rezoning as recommended by staff.

**VOTE:** The motion was approved unanimously on a voice vote, with Commissioners Bemis, Harris, Lindell, Ortiz, Padilla, Pava and Villarreal voting in favor of the motion and no one voting against [7-0].



2. **CASE 2013-102. 2791 AND 2797 AGUA FRIA ROAD (RIVERA) REZONING. JAMES W. SIEBERT, AGENT FOR STELLA RIVERA, REQUESTS REZONING OF 4.65± ACRES FROM R-1 (RESIDENTIAL, 1 DWELLING UNIT PER ACRE) TO C-2 (GENERAL COMMERCIAL). THE APPLICATION INCLUDES A DEVELOPMENT PLAN FOR EXISTING RESIDENTIAL AND NON-RESIDENTIAL USES OF THE PROPERTY. (CAN ESQUIBEL, CASE MANAGER)**

**MOTION:** Commissioner Pava moved, seconded by Commissioner Villarreal, to recommend to the Governing Body, the approval of Case #2013-102, 2791 and 2797 Agua Fria Road (Rivera) Rezoning, as recommended by staff.

**VOTE:** The motion was approved unanimously on a voice vote, with Commissioners Bemis, Harris, Lindell, Ortiz, Padilla, Pava and Villarreal voting in favor of the motion and no one voting against [7-0].

3. **CASE #2013-128. 2868 RUFINA STREET (HOMEWISE) REZONING. JENKINS GAVIN DESIGN & DEVELOPMENT, INC., AGENT FOR HOMEWISE, INC., REQUESTS REZONING OF 2.39± ACRES FROM I-2 (GENERAL INDUSTRIAL) TO I-1 (LIGHT INDUSTRIAL) TO ACCOMMODATE A PROPOSED 20,000± SQ. FT. OFFICE BUILDING. (DONNA WYNANT, CASE MANAGER).**

A Memorandum, with attachments, dated January 24, 2014 for the February 6, 2014 meeting, to the Planning Commission from Donna Wynant, Senior Planner, Senior Planning Division, is incorporated herewith to these minutes as Exhibit "5."

A series of aerial photographs and drawings of the subject site, used by Jennifer Jenkins in her presentation, and entered for the record by Jennifer Jenkins, are incorporated herewith to these minutes collectively as Exhibit "6."

The staff report was presented by Donna Wynant. Please see Exhibit "5" for specifics of this presentation.

**Recommendation:** Staff recommends approval of the request to rezone property at 2868 Rufina Street from I-2 to I-1, with all staff conditions as outlined in the report.

### Public Hearing

#### Presentation by the Applicant

Jennifer Jenkins and Colleen Gavin, JenkinsGavin Design & Development, Agent for the Applicant, were sworn. Ms. Jenkins said, "We are here this evening on behalf of Homewise, Inc., in request a 2.39 acre parcel, at the corner of Clark Road and Rufina."

April 8, 2014  
Governing Body  
Cases 2013-101 & 102  
**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **EXHIBIT E**

February 6, 2014 Planning Commission Packet

# City of Santa Fe, New Mexico

# memo

**DATE:** January 30, 2014 for the February 6, 2014 Planning Commission Meeting

**TO:** Planning Commission

**VIA:** Matthew S. O'Reilly, P.E., Director, Land Use Department *MSO*  
Tamara Baer, Planner Manager, Current Planning Division *TB*

**FROM:** Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division *DAE*

## **RIVERA GENERAL PLAN AMENDMENT AND REZONING TO GENERAL OFFICE.**

**Case #2013-101.** 2791 and 2797 Agua Fria Road (Rivera) General Plan Amendment. James W. Siebert, agent for Stella Rivera, requests General Plan Future Land Use map amendment to change the designation of 4.65± acres from Rural/Mountain/Corridor (1 dwelling unit per acre) to Community Commercial. (Dan Esquibel, Case Manager)

**Case #2013-102.** 2791 and 2797 Agua Fria Road (Rivera) Rezoning. James W. Siebert, agent for Stella Rivera, requests rezoning of 4.65± acres from R-1 (Residential, 1 dwelling unit per acre) to C-2 (General Commercial). The application includes a Development Plan for existing residential and nonresidential uses of the property. (Dan Esquibel, Case Manager)

### **RECOMMENDATION:**

The Land Use Department recommends **APPROVAL** of the General Plan Amendment and Rezoning with no conditions of approval as part of the General Plan or Rezoning. DRT conditions will be made part of the Development Plan.

*Two motions will be required: one for #Case 2013-101 Rivera General Plan Amendment and one for #Case 2013-102 Rivera Rezoning.*

### **I. APPLICATION OVERVIEW**

The Applicant is requesting a General Plan Future Land Use Map amendment from Rural/Mountain/Corridor and Rezoning from R-1 (1 dwelling unit per acre) to C-2 (General Commercial) in order to continue legal nonconforming nonresidential use established on the property. The property came into the City's jurisdiction on August 27, 2009 under Ordinance 2009-01 and was annexed as part of the Phase 2 annexation on January 1, 2014.

Nonresidential use was established on the property prior to the adoption of County zoning regulations, and by County standards was considered legal nonconforming. Legal nonconforming status continued under the City's jurisdiction. The property was designated R-1 on August 27, 2009 as part of the original SPPAZO ordinance, which granted zoning jurisdiction to the City.

The property consists of 4.32± acres, located on the north side of Agua Fria Street and accessed directly from Agua Fria Street. The property is the site of the former Club Alegria night club housed in a 10,000 square foot building, and no longer in operation. However, a liquor license is still held by the applicant and located at the property. The uses now established on the property contain a mix of both residential and commercial. The building that housed the night club now contains wood working shops occupying 3000 square feet and a landscaping firm with portable buildings occupying 220 square feet. The balance of the structure remains empty. Other uses on the property are residential, consisting of 5 rental units and 1 single family dwelling occupied by the applicant. Residential use is allowed in a C-2 District as part of an approved Development. The applicant is proposing a Development Plan to allow existing residential uses to continue.

The adjoining properties include the Santa Fe River, with sand and gravel extraction to the north, Agua Fria Street to the south, residential to the east, a landscape company to the northwest and residential to the southwest.

City zoning surrounding the property is R-1 (Residential-1 dwelling unit per acre) to the north, west and east, and I-2 (Heavy Industrial) across the street on the south side of Agua Fria Street.

Direction	Use
North	R-1 (1dwelling units per acre)
South	South side of Agua Fria Street I-2 (General Industrial)
East	R-1 (1dwelling unit per acre)
West	R-1 for 630± feet then C-2 (General Commercial)

The nearest C-2 (General Commercial) District is approximately 630± feet west of the property, with pockets of residential and legal nonconforming commercial uses in between.

### **Early Neighborhood Notification**

An Early Neighborhood Notification (ENN) meeting was held on August 19, 2013 at the Southside Library. No concerns were raised.

## **I. GENERAL PLAN AMENDMENT POLICIES & APPROVAL CRITERIA**

### **Case #2013-101. Rivera General Plan Amendment.**

The Future Land Use Map identifies this area as Rural Mountain Corridor, 1 dwelling unit to the acre. Section 14-3.2 of the Land Development Code establishes approval criteria for General Plan Amendments. These are addressed below.

## **Chapter 14 Criteria**

### **Section 14-3.2 (E) (1) Approval Criteria (applicable criteria)**

The Planning Commission shall review and make a finding on the following criteria:

(1) Criteria for All Amendments to the General Plan

- (a) consistency with growth projections for Santa Fe, economic development goals as set forth in a comprehensive economic development plan for Santa Fe and existing land use conditions such as access and availability of infrastructure;

**Applicant response:** *This is a rather unique property where many of the buildings have existed on the lot for over 50 years. This is not a matter of being in the path of growth but having existed within a developed area of the City for a substantial period of time, well beyond the time limits of the current property became the subject of the City's land use regulatory controls, including the rezoning of the property to R-1, single Family residential.*

**Staff response:** *The proposal is consistent with the City of Santa Fe growth projections and makes efficient use of existing infrastructure. The existing use of the property provides a continued employment base for the City, consistent with economic development goals for Santa Fe.*

(b) Consistency with other parts of the General Plan;

**Applicant response:** *The City General Plan shows this property as Rural/Mountain/Corridor, 1 dwelling per acre. The properties across Agua Fria to the south are zoned I-2, Heavy Industrial zoning and consist of industrial, service and retail businesses. The properties on either side of the subject rezoning consist of a mix of commercial, multi-family, mobile homes, residential rentals and a few scatter single family dwellings. The properties at the northeast corner of the Siler Road and Agua Fria Road intersections are zoned C-2/PUD and extend for a distance of approximately 560 feet along Agua Fria. It is assumed that the properties that are currently zoned C-2/PUD required a general plan amendment that was approved as part of the rezoning process. With the exception of a few scattered single family dwellings, the land to the east is very similar to the land that was previously rezoned C-2/PUD at the northeast corner of Siler Road and Agua Fria Road intersection.*

**Staff response:** *The property was annexed as part of the Phase 2 City Initiated Annexation. The physical layout and design along this portion of Agua Fria Street from the property to the Siler Road intersection is predominantly nonresidential, in contrast to the rural characteristics of the Rural corridor designation. A change in general policy for this area would not conflict with the comprehensive growth policies of the city.*

(c) the amendment does not:

- (i) allow uses or a change that is significantly different from or inconsistent with the prevailing use and character in the area; or

**Applicant Response:** *The uses have existed on this property for 25-30 years. The surrounding uses have a similar time frame.*

- (ii) affect an area of less than two acres, except when adjusting boundaries between districts; or

**Applicant Response:** *The requested amendment is greater than 2.0 acres in size.*

- (iii) benefit one or a few landowners at the expense of the surrounding landowners or the general public;

**Applicant Response:** *The requested commercial zoning designation is generally consistent with the land use patterns found on surrounding and near-by lots.*

**Staff response to i, ii & iii:** *The prevailing use for the property is R-1 (Residential-1 dwelling unit to the acre) with nonconforming, nonresidential uses as well. The adjoining properties to the west also include a mix of residential and nonconforming, nonresidential uses. This portion of the District represents the outskirts of the R-1 District bordered by Agua Fria Street and I-2 zoning across the street. The change would be consistent with the area and the 4.32± acre tract is sufficiently large so as to be consistent with city rezoning policies. Further, it converts nonconforming uses and structures specifically designed for nonresidential use to conforming uses and structures along Agua Fria Street.*

- (d) an amendment is not required to conform with Subsection 14-3.2(E)(1)(c) if it promotes the general welfare or has other adequate public advantage or justification;

**Applicant Response:** *The justification for the rezoning action is based on the historic use of the property.*

- (e) compliance with extraterritorial zoning ordinances and extraterritorial plans;

**Applicant Response:** *This criterion is no longer relevant since the adoption of SPaZZo and the relinquishment of the land use regulatory authority outside the city limits and the transfer of authority from extraterritorial jurisdiction to the City.*

- (f) contribution to a coordinated, adjusted and harmonious development of Santa Fe that in accordance with existing and future needs best promotes health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development; and;

**Applicant response:** *With the exception of the single family residence occupied by Ms. Rivera, none of the other structures within the development request are consistent with the underlying R-1, single family residential zoning that is associated with the current zoning on the property. As non-conforming structures they cannot be modified to allow for other uses or expand the structure beyond its current foot print. In fact, the club/bar has not been operational for some time and as such is no longer a legal, nonconforming use. Because the property is zoned R-1 the liquor license that is located on the property for over 50 years can no longer be used at its historic location, since the use does not conform to the underlying zoning. This inability to make investments in the existing structures can lead to the neglect of these structures which does*

nothing to "promote health, safety, morals ... or general welfare." Encouraging redevelopment of these structures will maintain their value and discourage blight in this area of the City proposed for annexation in the near future.

**Staff response:** The applicant's focus for the property is the continued reuse of the existing structure. Nothing prevents adaptive reuse of the existing structures to develop within the existing zoning and meeting requirements in accordance with health, safety and welfare. However, a change in zoning from R-1 to C-2 will expand the variety of uses allowed for the property, promoting greater opportunity for economic development. The current uses within the property are legal non-conforming, which, upon expiration, could not be reinstituted under the current zoning. This would result in empty buildings requiring massive remodeling or tear down in order to redevelop in a residential or approved district nonresidential manner. Continued reuse of the existing structure provides for efficient use of City resources and has less of an environmental impact, all of which are promoted in the City's General Plan.

- (g) consideration of conformity with other city policies, including land use policies, ordinances, regulations and plans.

**Applicant response:** The City has a policy of promoting a mix of land uses, this property has historically included a mix of residential, retail and entertainment. The recent changes to the City code now permit residential uses within a C-2 commercial district.

**Staff response:** The proposal is submitted to all appropriate city departments for review and comment. This provides full compliance with all city policies, ordinances and regulations (reference Exhibits A1 through A7 Development Review Team "DRT" responses).

(2) Additional Criteria for Amendments to Land Use Policies

- (a) the growth and economic projections contained within the general plan are erroneous or have changed;

**Applicant response:** When the existing General Plan was adopted in 1999 it seems that the General Plan failed to recognize the land use complexity of this part of the urban area. It is not a matter of the growth and economic projections being in error as it is the failure to observe the variety of existing land uses and assign a zoning district that best fit those land uses. Under the current zoning regulations residential uses are only allowed in a C-2 zoning district if there is a development plan that accompanies the rezoning request. The City was not in a position to prepare a development plan for this area or other areas with a mix of commercial and residential uses when the property was assigned its current zoning designation

- (b) no reasonable locations have been provided for certain land uses for which there is a demonstrated need; or

**Applicant response:** There are other locations in Santa Fe where general commercial is available. This location has served as a commercial use for over 50 years.

- (c) conditions affecting the location or land area requirements of the proposed land use have changed, for example, the cost of land space requirements, consumer acceptance, market or building technology.

**Applicant response:** *This property has historically been subject to either County or Extraterritorial jurisdiction. This property has always be recognized as a legal non –conforming use until the City exerted jurisdictional control over this property, at which time unbeknownst to the land owner the commercial status was eliminated.*

**Staff response (a), (b) and (c):** *Growth has generally shifted to the south and west parts of the City, which increases the need for services, including C-2 types of uses in this part of town.*

Additional criteria for amendment identify that the proposed change in land use be related to the character of the surrounding properties. With findings that:

- (a) The growth and economic projections contained within the *general plan* are erroneous or have changed;

**Applicant response:** *When the existing General Plan was adopted in 1999 it seems that the General Plan failed to recognize the land use complexity of this part of the urban area. It is not a matter of the growth and economic projections being in error as it is the failure to observe the variety of existing land uses and as sign a zoning district that best fit those land uses. Under the current zoning regulations residential uses are only allowed in a C-2 zoning district if there is a development plan that accompanies the rezoning request. The City was not in a position to prepare a development plan for this area or other areas with a mix of commercial and residential uses when the property was assigned its current zoning designation.*

- (b) No reasonable locations have been provided for certain land uses for which there is a demonstrated need; or

**Applicant response:** *There are few locations this close to the center of the City where such a variety of land uses can take place. The 1-2, Heavy Industrial District across Agua Fria does not allow for residential uses and restricts retail and office uses as well. With the rezoning of this property to C-2 the City begins to recognize the diverse land use pattern that has existed along this section of Agua Fria for the last 50 years.*

- (c) conditions affecting the location or land area requirements of the proposed land use have changed, for example, the cost of land space requirements, consumer acceptance, market or building technology.

**Applicant response:** *The conditions affecting the subject land are more jurisdictional than a result of market conditions. Historically this area has been under extraterritorial jurisdiction where diverse mixes of land uses are permitted as part of the development review process. Santa Fe County permitted business licenses for changes to uses within buildings as legal, non-conforming structure uses. When the City assumed regulatory control over this area, the assignment of R-1 rezoning made all of the structures, with the exception of the single family residence, non-conforming structures. The application of the C-2 zoning with a development plan will bring all of the structures into conformity.*



*Since the structures are existing there is no impact to the surrounding property, which consists of heavy industrial zoning across Agua Fria to the south, the Ulibarri tract to the west with a landscape business and single family residential to the east. All these uses have co-existed with each other for 30-40 years. At the time this area developed, which was in the 50's and 60's families built their homes and started their businesses on the same lot. This was the land use pattern for the area and pretty much remains the same pattern today.*

**Staff response (a),(c) and (d):** *The recent City-initiated annexation and the existing non-residential development along this corridor segment, together, support reconsideration of land use designations. Additionally, while general commercial districts exist in Santa Fe, increasing interest in servicing the industrial properties with general services is on the rise. Providing support services to industrial areas in their proximity reduces the need to travel to other areas of the city for such services and removes any pressure to accommodate those services within the industrial districts themselves.*

#### **IV. REZONING POLICIES & APPROVAL CRITERIA**

**Case #2013-102.** Rivera Rezoning to C-2.

##### **Chapter 14 – Santa Fe City Code**

Article 14-3.5(C) of Chapter 14 SFCC, establishes approval criteria that the reviewing bodies must make in order to recommend or approve any rezoning:

(1) The planning commission and the governing body shall review all rezoning proposals on the basis of the criteria provided in this section, and the reviewing entities must make complete findings of fact sufficient to show that these criteria have been met before recommending or approving any rezoning:

(a) one or more of the following conditions exist:

- (i) there was a mistake in the original zoning;
- (ii) there has been a change in the surrounding area, altering the character of the neighborhood to such an extent as to justify changing the zoning; or
- (iii) a different use category is more advantageous to the community, as articulated in the *general plan* or other adopted city plans;

**Applicant response:** *When the existing General Plan was adopted in 1999 it seems that the General Plan failed to recognize the land use complexity of this part of the urban area. It is not a matter of the growth and economic projections being in error as it is the failure to observe the variety of existing land uses and assign a zoning district that best fit those land uses. Under the current zoning regulations residential uses are only allowed in a C-2 zoning district if there is a development plan that accompanies the rezoning request. The City was not in a position to prepare a development plan for this area or other areas with a mix of commercial and residential uses when the property was assigned its current zoning designation.*

**Staff response:** *There was no error in the original zoning that was established for this large area annexed into the city. It is not clear if during the review, consideration was given to this specific area and existing conditions for designation. More likely, and in recognition of the diversity of land uses in the area, any consideration of rezoning was postponed to individual property owners or groups of owners. Upon staff recommendation, the applicant did pursue the possibility of rezoning a larger area by including adjacent properties in the application, but those property owners were not interested in applying for rezoning at this time.*

- (2) no reasonable locations have been provided for certain land uses for which there is a demonstrated need.

**Applicant response:** *There are few locations this close to the center of the City where such a variety of land uses can take place. The I-2, Heavy Industrial District across Agua Fria does not allow for residential uses and restricts retail and office uses as well. With the rezoning of this property to C-2 the City begins to recognize the diverse land use pattern that has existed along this section of Agua Fria for the last 50 years.*

**Staff response:** *The property was annexed as part of the Phase 2 City Initiated Annexation Plan. The zoning designation granted by the city is residential allowing 1 dwelling unit to the acre (R-1). No significant changes to the area have occurred beyond phase 2 annexation and zoning to R-1.*

- (i) a different use category is more advantageous to the community, as articulated in the general plan or other adopted city plans;

**Applicant response:** *The owner of the property states that a liquor license has existed on this property for the Club Alegria for 50 years. Commercial uses have taken place on this property since approximately 1955. The prior Club Alegria building has been used for approximately 10 years as various retail commercial uses, including a pond supply and construction company that also sold various exterior patio goods associated with the pond sales. Other commercial uses such as landscape companies and their associated yards have occupied the property for several years. The City General Plan shows this property and other properties between Agua Fria and the Santa Fe River as "Low Density Residential". The predominate land use for this area is commercial and higher density rental housing. Since this area was brought into the "Presumptive City Limits" and zoned R-1, single family residential, one dwelling per acre, most of the uses have become non-conforming. The land owners are now limited in the expansion of the existing structures on the property and the issuance of business licenses. If the business ceases to exist for one year or more the property must revert back to a low density single family use which is not consistent with the existing land use pattern.*

*Given the inconsistency between the zoning and the actual land use it would be more advantageous to recognize the existing land use pattern for the area. It does not make planning sense to create non-conformity out of 70 to 80 percent of the ownership in the vicinity of this request. That non-conformity discourages investment in the property and can lead to blight in the area.*

**Staff response:** *At the time of annexation and zoning designation, the city also categorized future Land Use for the area. The Future Land Use Map identified the property as Rural Mountain Corridor, 1 dwelling per acre. The proposed request to rezone from R-1 to C-2 is consistent with*

that portion of the R-1 District closest to the I-2 and C-2 Districts along Agua Fria Street where the predominant use is nonresidential. The rezoning provides appropriate infill development to the area while converting nonconformities to conforming.

- (b) all the rezoning requirements of Chapter 14 have been met;

**Applicant response:** *Currently the existing zoning is R-1, Single Family Residential, one dwelling per acre. Rezoning of the property to C-2 would bring the uses on this property into conformance with the historic uses that have taken place on this property.*

- (c) the rezoning is consistent with the applicable policies of the general plan, including the future land use map;

**Applicant response:** *The City General Plan shows this tract as "Rural/Mountain/Corridor, 1 dwelling unit to the acre", which is inconsistent with the use of the property and the surrounding uses for the area. It appears that the area was inadequately surveyed when the City General Plan was prepared and when zoning was assigned to this area during the adoption of spaZZo, or the ordinance that established the zoning legislation for the areas that the City planned to annex in the future. It is therefore, not that the property is inconsistent with the General Plan, especially the future land use map, but that the land use designation established by the City General Plan was incorrect.*

**Staff response to "b" and "c":** *As previously discussed, the proposal is submitted to all appropriate city departments for review and comments to the reviewing bodies. This provides full compliance with all city policies, ordinances and regulations (reference Exhibits A1 through A7 Development Review Team "DRT" responses)." The applicant has submitted a request for a General Plan Amendment, which, if approved, will provide consistency with the Future Land Use Map.*

- (d) the amount of land proposed for rezoning and the proposed use for the land is consistent with city policies regarding the provision of urban land sufficient to meet the amount, rate and geographic location of the growth of the city; and

**Applicant response:** *Although there is a limited amount of vacant or developed C-2 land in this area of the City, the land area associated with this request should not be considered an addition to the City's supply of C-2 land, since it has been used for that purpose for 55 years. The rezoning request for the subject property should be considered an infill development rather than a property that is located in the path of the future growth of the community.*

**Staff response:** *At 4.32± acres, the subject property is greater than the 2 acre minimum for rezoning. The existing uses on the property are a mix of nonconforming and residential uses. The already existing nonresidential uses are typically found in a C-2 District (General Commercial). The adjoining uses include residential and nonconforming commercial. The areas to the south and west represent more compact urban form supporting infill, versus auto-oriented, low-density development found in rural communities.*

- (e) the existing and proposed infrastructure, such as the streets system, sewer and water lines, and public facilities, such as fire stations and parks, will be able to accommodate the impacts of the proposed development.

**Applicant response:** *All public utilities are available on Agua Fria, including water and sewer lines, gas and electric lines and cable and telephone lines. The City has completed street improvements and widening of Agua Fria adjacent to the subject property including upgrades to the Agua Fria and Siler Road intersection. Siler Road has recently been completed from Agua Fria to West Alameda providing for alternative points of access to this site. The closest Fire Station to this site is located on Cerrillos Road near Third Street within a five minute service radius to this property. The County has been negotiating with the Boylan family to purchase the 6± acre tract of land adjacent to the northern boundary of this property. This purchase would allow for the continuation of the Santa Fe River improvements and the construction of trail on the north side of the Santa Fe River.*

**Staff response:**

*DRT comments and conditions have been submitted to the Planning Commission addressing infrastructure review.*

## **V. DEVELOPMENT PLAN**

The applicant has submitted a Development Plan in order to allow residential development in a C-2 District (if rezoned). As previously stated in this report, there are 5 residential rentals units and 1 single family residence, which is occupied by the applicant. The Development Plan submitted is fairly basic, essentially depicting existing conditions. The Development Plan requires minor graphic delineations related to parking, landscaping and terrain management to be brought to code standards. No new construction is proposed as part of this application. Any future construction of 10,000 square feet or more will trigger the requirement for a new Development Plan for Planning Commission review and approval.

## **VI. CONCLUSION**

The proposal satisfies the criteria in Chapter 14 for General Plan Amendment and Rezoning. The submitted Development Plan identifies existing conditions requiring minor graphic additions. The proposed requests do not conflict with the General Plan policies of the City nor with existing uses in the area. The property is bordered by the Santa Fe River to the North, creating a buffer to the R-1 rural character to the north and providing a distinct and identifiable boundary between the residential to the east. All City reviewing Divisions support the applications as presented. Proposals for significant development or expansion will require Planning Commission review of a new Development Plan.

## **VII. EXHIBITS:**

### **Exhibit A -DRT comments**

- A1: Wastewater Management
- A2: Water Division
- A4: Environmental Services Division
- A5: Technical Review Division
- A6: Traffic Engineering
- A7: Fire Marshal

### **Exhibit B- Future Land Use and Zoning map**

- B1: Land Use Map
- B2: Zoning Map

### **Exhibit C - ENN and correspondence**

### **Exhibit D - Applicant submittals**

- D1: General Plan and Rezoning information

### **Packet Attachment -Plans and Maps**

February 6, 2014  
Planning commission  
Case # 2013-101 &102

**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **EXHIBIT A**

Development Review Team (DRT)
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## MEMO

### Wastewater Management Division DEVELOPMENT REVIEW COMMENTS

#### E-MAIL DELIVERY

Date: October 7, 2013

To: Dan Esquibel, Case Manager

From: Stan Holland, P.E.  
Wastewater Management Division

Subject: Case 2013-101 & 102 - 2791 & 2797 Agua Fria Road Rezoning and General Plan  
Amendment

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The subject properties are not accessible to the City public sewer system. Prior to any new construction on the lot, the owner shall obtain a septic system permit from the State of New Mexico Environment Department (505-827-1840).

There are no Wastewater Division comments for the Applicant to address.

*City of Santa Fe*  
**memo**

**DATE:** October 16, 2013  
**TO:** Dan Esquibel, Land Use Planner, Land Use Department  
**FROM:** Antonio Trujillo, *Water Division Engineer*  
**SUBJECT:** Case #2013-101, 102. 2791 and 2797 Agua Fria Road General Plan  
Amendment and Rezone

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All structures will have to be served by individual metered services. The well will have to be capped. Fire protection is to be addressed by the Fire Department. This may require a main extension for the installation of fire service or fire protection.



S-waste-1 20130-101.txt  
From: MARCO, RANDALL V.  
Sent: Tuesday, October 15, 2013 3:23 PM  
To: ESQUIBEL, DANIEL A.  
Subject: Case 20130-101

Dan,  
For this case refuse & recycling must be brought to an area  
for pickup that is currently being serviced by  
the City of Santa Fe solid waste division.

Randall Marco  
Community Relations / Ordinance Enforcement  
Environmental Services Division  
Office : 505-955-2228  
Cell : 505-670-2377  
Fax : 505-955-2217  
rvmarco@santafenm.gov

S-waste-2 2013-102.txt  
From: MARCO, RANDALL V.  
Sent: Tuesday, October 15, 2013 3:24 PM  
To: ESQUIBEL, DANIEL A.  
Subject: Case #2013-102

Dan,  
No solid waste issues at this time.

Randall Marco  
Community Relations / Ordinance Enforcement  
Environmental Services Division  
Office : 505-955-2228  
Cell : 505-670-2377  
Fax : 505-955-2217  
rvmarco@santafenm.gov

DATE: October 15, 2013

TO: Dan Esquibel  
Case Manager

FROM: Risana "RB" Zaxus, PE  
City Engineer for Land Use Department

RE: Case # 2013-101 and # 2013-102  
2791 and 2797 Agua Fria Road  
General Plan Amendment and Rezoning

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I have no review comments on this case.

# City of Santa Fe, New Mexico

## memo

**DATE:** October 21, 2013

**TO:** Daniel Esquibel, Planning and Land Use Department

**VIA:** John Romero, Traffic Engineering Division Director *JR*

**FROM:** Sandra Kassens, Traffic Engineering Division *SK*

**SUBJECT:** 2791 and 2797 Agua Fria General Plan Amendment & Rezone. Cases # 2013-101 and 102

### ISSUE:

James W. Siebert, agent for Stella Rivera, requests General Plan Future Land Use map amendment to change the designation of 4.65± acres from Residential Low Density (3-7 dwelling units per acre) to General Commercial, Case # 2013-101. James W. Siebert, agent for Stella Rivera, requests rezoning of 4.65± acres from R-1 (Residential, 1 dwelling unit per acre) to C-2 (General Commercial). The application includes a Development Plan to address existing residential and nonresidential uses of the property including night club and liquor sales, case # 2013-102. The property is located approximately 440 feet northeast of the Siler Road/Agua Fria intersection and within phase 2 of the City initiated Annexation area.

### RECOMMENDED ACTION:

Review comments are based on submittals received on October 2, 2013. The comments below should be considered as Conditions of Approval to be addressed prior to final approval unless otherwise noted:

1. Applicant shall remove the existing drive-pads at 2797 and 2791 Agua Fria Street; replace them with sidewalk and curb and gutter; maintain the existing drive-pad for the commercial driveway and a construct a 20 foot wide drive-pad at Jardin Lane.
2. Although the Traffic Engineering Division had previously requested either the construction of a right turn deceleration lane or a Traffic Impact Study (TIS) to demonstrate that a right-turn deceleration lane is not needed; neither shall be required at this time. This decision is based on our realization that it could be onerous to relocate a curb drop-inlet and possibly a power pole in order to accommodate a right lane deceleration lane.

If you have any questions or need any more information, feel free to contact me at 955-6697. Thank you.

February 6, 2014  
Planning commission  
Case # 2013-101 &102

**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

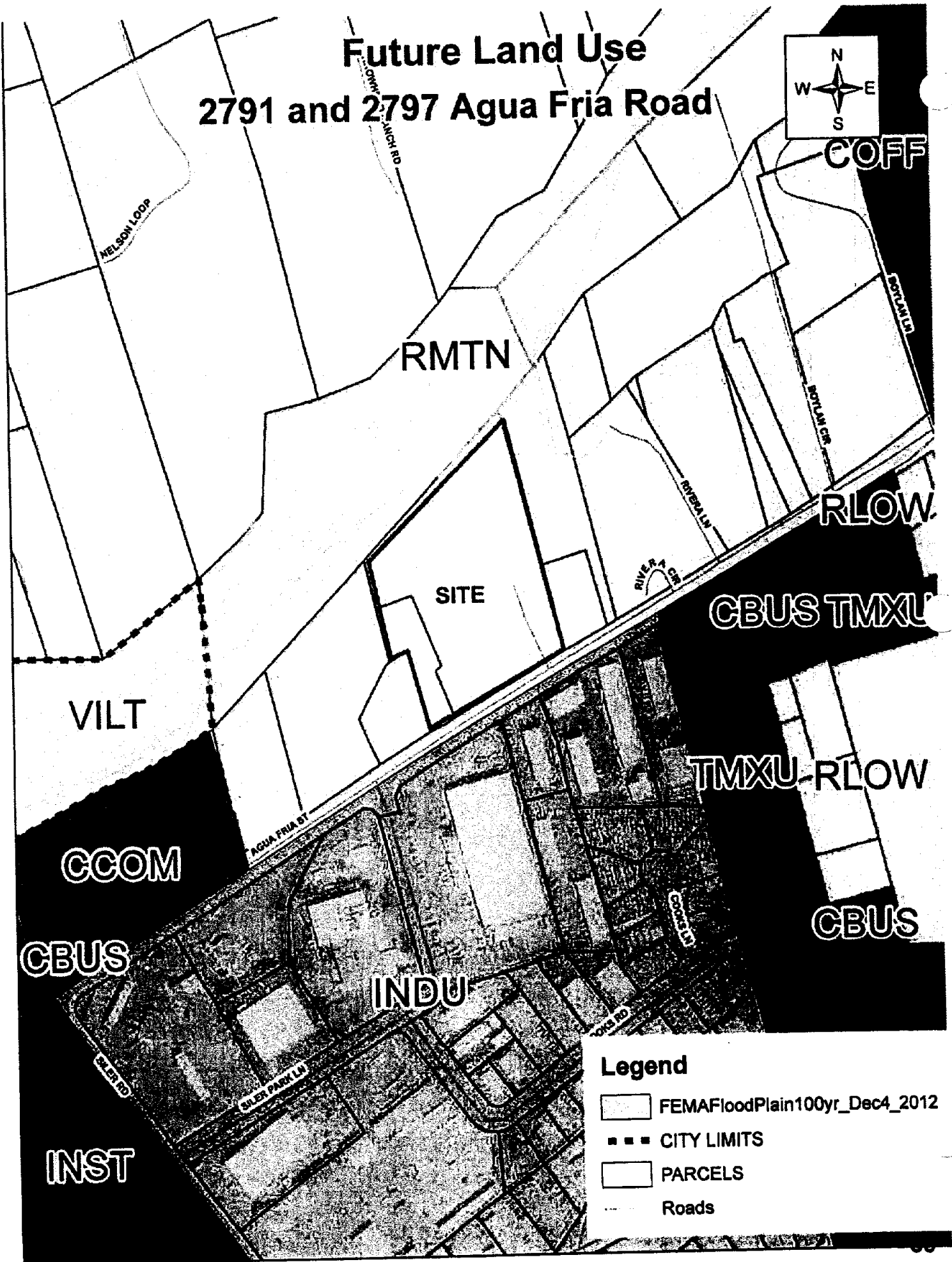
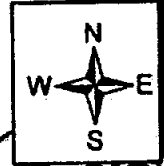
# **EXHIBIT B**

Future Land Use and Zoning map

**C1PUD**



# Future Land Use 2791 and 2797 Agua Fria Road



February 6, 2014  
Planning commission  
Case # 2013-101 &102

**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **EXHIBIT C**

ENN
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**JAMES W. SIEBERT  
AND ASSOCIATES, INC.**

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**915 MERCER STREET \* SANTA FE, NEW MEXICO 87505**  
**(505) 983-5588 \* FAX (505) 989-7313**  
**jlm@jwsiebert.com**

**EARLY NEIGHBORHOOD NOTIFICATION MEETING**

April 26, 2013

Dear Neighbor:

**Southwest Business Park** is requesting a General Plan Amendment to amend to contiguous tracts of land from very low density to community commercial and rezoning from R-1 to C-2. The subject properties are located at 2791 Agua Fria Rd and 2797 Agua Fria Rd.

In accordance with the requirements of the City of Santa Fe's Early Neighborhood Notification regulations, this is to inform you that a meeting is scheduled for:

**Time: 5:30 PM**  
**When: Monday August 19, 2013**  
**Where: Southside Library**  
**6599 Jaguar Drive**  
**Santa Fe, NM 87507**

Early Neighborhood Notification is intended to provide for an exchange of information between prospective applicants for development projects and the project's neighbors before plans become too firm to respond meaningfully to community input.

Attached, please find a vicinity map on reverse side of this letter. If you have any questions or comments, please contact (*James Siebert & Assoc. Inc., (505) 983-5588, jlm@jwsiebert.com*).

Sincerely,

James W. Siebert

Attachments: Vicinity map



## City of Santa Fe Land Use Department Early Neighborhood Notification Meeting Notes

<i>Project Name</i>	Rivera Agua Fria GPA & Rezoning
<i>Project Location</i>	2791 & 2797 Agua Fria Street
<i>Project Description</i>	General Plan Amendment from Single Family Residential to Commercial and rezoning from R-1 to C-2 of two contiguous lots at - (5.79 acres +/-).
<i>Applicant / Owner</i>	Stella Rivera
<i>Agent</i>	James w. Siebert & Assoc., Inc.
<i>Pre-App Meeting Date</i>	6/13/13
<i>ENN Meeting Date</i>	8/19/13
<i>ENN Meeting Location</i>	Southside Library - 6599 Jaguar Drive
<i>Application Type</i>	ENN
<i>Land Use Staff</i>	Heather Lamboy
<i>Other Staff</i>	
<i>Attendance</i>	1

### Notes/Comments:

There were no comments or concerns raised.



City of Santa Fe  
Early Neighborhood Notification Meeting  
Sign-In Sheet

Project Name: 2791 & 2797 Agua Fria Road Meeting Date: 8/19/13  
Meeting Place: South Side Library Meeting Time: 5:30

Applicant or Representative Check Box below

↓	Name	Address	Email
<input type="checkbox"/>	1 <u>Leroy Romero</u>	<u>2749-B AGUA FRIA</u>	<u>none</u>
<input type="checkbox"/>	2		
<input type="checkbox"/>	3		
<input type="checkbox"/>	4		
<input type="checkbox"/>	5		
<input type="checkbox"/>	6		
<input type="checkbox"/>	7		
<input type="checkbox"/>	8		
<input type="checkbox"/>	9		
<input type="checkbox"/>	10		
<input type="checkbox"/>	11		
<input type="checkbox"/>	12		

For City use: I hereby certify that the ENN meeting for the above-named project took place at the time and place indicated.

Printed Name of City Staff in Attendance | Heather Lamboy

[Signature] Signatures of City Staff in Attendance  
8/19/13 Date

This sign-in sheet is public record and shall not be used for commercial purposes.



## ENN GUIDELINES

### Applicant Information

Project Name: 2791& 2797 Agua Fria Rezoning (Rivera Tracts)

Name: Siebert James W  
Last First M.I.  
Address: 915 Mercer Street  
Street Address Suite/Unit #  
Santa Fe, NM 87505 NM 87505  
City State ZIP Code  
Phone: ( 505 ) 983-5588 E-mail Address: jim@wsiebert.com

**Please address each of the criteria below. Each criterion is based on the Early Neighborhood Notification (ENN) guidelines for meetings, and can be found in Section 14-3.1(F)(5) SFCC 2001, as amended, of the Santa Fe City Code. A short narrative should address each criterion (if applicable) in order to facilitate discussion of the project at the ENN meeting. These guidelines should be submitted with the application for an ENN meeting to enable staff enough time to distribute to the interested parties. For additional detail about the criteria, consult the Land Development Code.**

- (a) **EFFECT ON CHARACTER AND APPEARANCE OF THE SURROUNDING NEIGHBORHOODS** For example: number of stories, average setbacks, mass and scale, landscaping, lighting, access to public places, open spaces and trails.

*The surrounding neighborhoods south of the Santa Fe River and on either side of the development request are generally one story in height and since they are commercial buildings they are typically 18 to 24 feet in height. Given the age of many of the buildings that are located between Agua Fria Street and the Santa Fe River the building setbacks vary considerably since many of the buildings predate City zoning regulations. Landscaping and lighting is limited on this property and surrounding properties. There is a trail that is planned on the north side of the Santa Fe River. The County is negotiating for the purchase of open space along the Santa Fe River, immediately north of the subject property. The County has not yet acquired the property at this point in time.*

- (b) **EFFECT ON PROTECTION OF THE PHYSICAL ENVIRONMENT** For example: trees, open space, rivers, arroyos, floodplains, rock outcroppings, escarpments, trash generation, fire risk, hazardous materials, easements, etc.

*There is a separate tract of land between the northern boundary of this property and the Santa Fe River. This property contains the width of the Santa Fe River from bank to bank. A small portion of the northern area of the property is encumbered by a 100 year flood plain. There are no escarpments or rock outcroppings which pertain to this tract of land. Fire risk is limited to the existing buildings which are currently serviced by City water and City fire hydrants. There are no hazardous materials stored within the subject tracts of land. There are no platted easements located on the property. The County is negotiating for the tract of land to the north that contains the Santa Fe River to purchase this land as open space.*

- (c) IMPACTS ON ANY PREHISTORIC, HISTORIC, ARCHAEOLOGICAL OR CULTURAL SITES OR STRUCTURES, INCLUDING ACEQUIAS AND THE HISTORIC DOWNTOWN** For example: the project's compatibility with historic or cultural sites located on the property where the project is proposed.

*This property is located within the River/Trails Archaeological District. An archaeological survey and report is required for tracts of land 2 acres or greater in size. An archaeological report and survey will be required for this property. There are no known cultural sites or structures located on the property. There are no acequias that serve or have ever served the land as they relate to this property. This tract of land is not located within the Historic Downtown.*

- (d) RELATIONSHIP TO EXISTING DENSITY AND LAND USE WITHIN THE SURROUNDING AREA AND WITH LAND USES AND DENSITIES PROPOSED BY THE CITY GENERAL PLAN** For example: how are existing City Code requirements for annexation and rezoning, the Historic Districts, and the General Plan and other policies being met.

*The land use pattern for this tract of land is consistent with the land uses to the east and west of the property. The intensity of use increases on the South side of Agua Fria, where the land is zoned I-2, Heavy Industrial. The City General Plan recommends a land use of low density residential, allowing for 1-3 dwellings per acre. This future land use recommendation is inconsistent with the current use not only on this property but the parcels of land to the east and west of this property. The request for C-2, General Commercial zoning, is consistent with the current uses on the property and a reasonable transition from the I-2, Heavy industrial zoning that is located on the South side of Agua Fria. The properties to the east and west of the subject tract are similar in scope and density to the uses located on the Rivera tract. The property is not currently located within the City limits although it is served by City water and City sewer. The City has entered into an amended settlement agreement with the County to annex this area between Agua Fria Road at the end of 2013 or beginning of 2014.*

- (e) EFFECTS ON PARKING, TRAFFIC PATTERNS, CONGESTION, PEDESTRIAN SAFETY, IMPACTS OF THE PROJECT ON THE FLOW OF PEDESTRIAN OR VEHICULAR TRAFFIC AND PROVISION OF ACCESS FOR THE DISABLED, CHILDREN, LOW-INCOME AND ELDERLY TO SERVICES** For example: Increased access to public transportation, alternate transportation modes, traffic mitigation, cumulative traffic impacts, pedestrian access to destinations and new or improved pedestrian trails.

*This length of Agua Fria Road that is in the area of this property has been improved with new pavement, access management and sidewalks on both sides of the road. Pedestrian access and safety has been greatly enhanced by these recent improvements to Agua Fria Road. There is a City transportation bus stop with 200 feet of this property. The sidewalks were constructed to satisfy the ADA access requirements at the driveways along Agua Fria Road allowing for wheel chairs to navigate this section of Agua Fria Road improving access for the disabled. With the extension of the trail system along the Santa Fe River there will be the opportunity to bicycle to the City center from this area via a bridge crossing on Siler Road. The traffic generation will be no greater than what has historically occurred on the property.*

- (f) IMPACT ON THE ECONOMIC BASE OF SANTA FE** *For example: availability of jobs to Santa Fe residents; market impacts on local businesses; and how the project supports economic development efforts to improve living standards of neighborhoods and their businesses.*

*This property has historically been used for commercial purposes. The uses on the property have offered employment to Santa Fe residents for over 60 years. While the City does not currently collect gross receipts from the businesses on this property it will begin collecting gross receipts as soon as the property is legally annexed to the City.*

- (g) EFFECT ON THE AVAILABILITY OF AFFORDABLE HOUSING AND AVAILABILITY OF HOUSING CHOICES FOR ALL SANTA FE RESIDENTS** *For example: creation, retention, or improvement of affordable housing; how the project contributes to serving different ages, incomes, and family sizes; the creation or retention of affordable business space.*

*The uses on this property consist of both commercial and residential. There is a single family residence on the smaller lot that is occupied by the owner of the property. There are also three rental dwelling units located on the both lots. There is no proposal at this time to convert the housing to commercial uses. The existing rental units will continue to be utilized for residential purposes.*

- (h) EFFECT UPON PUBLIC SERVICES SUCH AS FIRE, POLICE PROTECTION, SCHOOL SERVICES AND OTHER PUBLIC SERVICES OR INFRASTRUCTURE ELEMENTS SUCH AS WATER, POWER, SEWER, COMMUNICATIONS, BUS SYSTEMS, COMMUTER OR OTHER SERVICES OR FACILITIES** *For example: whether or how the project maximizes the efficient use or improvement of existing infrastructure; and whether the project will contribute to the improvement of existing public infrastructure and services.*

*This property is already served by a full complement of City services including water and sewer. There is a City bus route that serves this section of the City that is located within 200 feet of the property. With annexation this tract of land is eligible for City police and fire protection and solid waste collection. No additional public infrastructure is required to serve this property. There are fire hydrants located along Agua Fria Road, two of which are across Agua Fria and one hydrant is located on the same side of the street within 300 feet of the requested rezoning.*

- (i) IMPACTS UPON WATER SUPPLY, AVAILABILITY AND CONSERVATION METHODS** *For example: conservation and mitigation measures; efficient use of distribution lines and resources; effect of construction or use of the project on water quality and supplies.*

*Water lines are currently available on Agua Fria and are capable of serving an increase in intensity of use, should that occur on the property. The owner's plan is to maintain the current uses on the property and as such the water use on the property will remain the same until such time as redevelopment of the property takes place. Any redevelopment of the property that increases water use will have to comply with the City water conservation measures.*

- (j) EFFECT ON THE OPPORTUNITIES FOR COMMUNITY INTEGRATION AND SOCIAL BALANCE THROUGH MIXED LAND USE, PEDESTRIAN ORIENTED DESIGN, AND LINKAGES AMONG NEIGHBORHOODS AND RECREATIONAL ACTIVITY AND EMPLOYMENT CENTERS** *For example: how the project improves opportunities for community integration and balance through mixed land uses, neighborhood centers and/or pedestrian-oriented design.*

*This property has been used for commercial and residential purposes for the last 40-60 years. Community integration is already accomplished by the mix of residential and commercial that occurs on these lots. There is an existing sidewalk on Agua Fria and the completion of the trail system on the north side of the Santa Fe River will allow for a pedestrian and bicycle connection to Santa Fe's downtown.*

- (k) **EFFECT ON SANTA FE'S URBAN FORM** *For example: how are policies of the existing City General Plan being met? Does the project promote a compact urban form through appropriate infill development? Discuss the project's effect on Intra-city travel and between employment and residential centers.*

*This area of Santa Fe has been part of the Santa Fe Urban Boundary since the 1970s. Annexing this area implements the City General Plans that have been adopted over the last 40 years. It does not promote compact urban form since it has been part of the compact urban form for the last 40 years. A variety of residential development is located within a mile of this proposed rezoning.*

(l) **ADDITIONAL COMMENTS** (optional)

February 6, 2014  
Planning commission  
Case # 2013-101 &102  
**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **EXHIBIT D**

Applicant submittal



**2791 & 2797 AGUA FRIA ROAD**

**GENERAL PLAN AMENDMENT**

**DEVELOPMENT PLAN**

**&**

**REZONING REPORT**

**PREPARED FOR**

**STELLA RIVERA**

**PREPARED BY**

**JAMES W. SIEBERT & ASSOC., INC**

**SEPTEMBER, 2013**

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## APPENDICES

Appendix A	Warranty Deed
Appendix B	Surrounding Legal Lot of Record Plats
Appendix C	ENN Sign-in Sheet
Appendix D	Aerial Photo
Appendix E	Well Permit

## FIGURES

Figure 1: Vicinity Map
Figure 2: Photos of Property

## **PROJECT DESCRIPTION AND LOCATION**

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The subject property is located at 2791 and 2797 Agua Fria Road and consists of approximately 4.65 acres. The property is currently zoned R-1 with several existing buildings used for single family, rental and commercial purposes. The prior Club Algeria building was used as a dance hall/night club with an adjoining liquor store. More recently the building has been used for a variety of retail uses including a pond supply. This same structure has been occupied by two different wood working shops for approximately 15 years.

Figure 1 is a vicinity map indicating the location of the subject property relative to the City street system and other known land marks in the area.

## **OWNERSHIP, LEGAL LOT OF RECORD**

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The subject property is owned by Stella Rivera. A warranty deed for the property in the name of Ms. Rivera can be found in Appendix A to this report.

The legal lot of record for this property is created by exception, or defined as a lot surrounded by recorded legal lots of record. The three recorded plats that form the west, north and east boundaries of the subject property are provided in Appendix B. Agua Fria Road serves as the southern boundary for this property.

## **DEVELOPMENT REQUEST**

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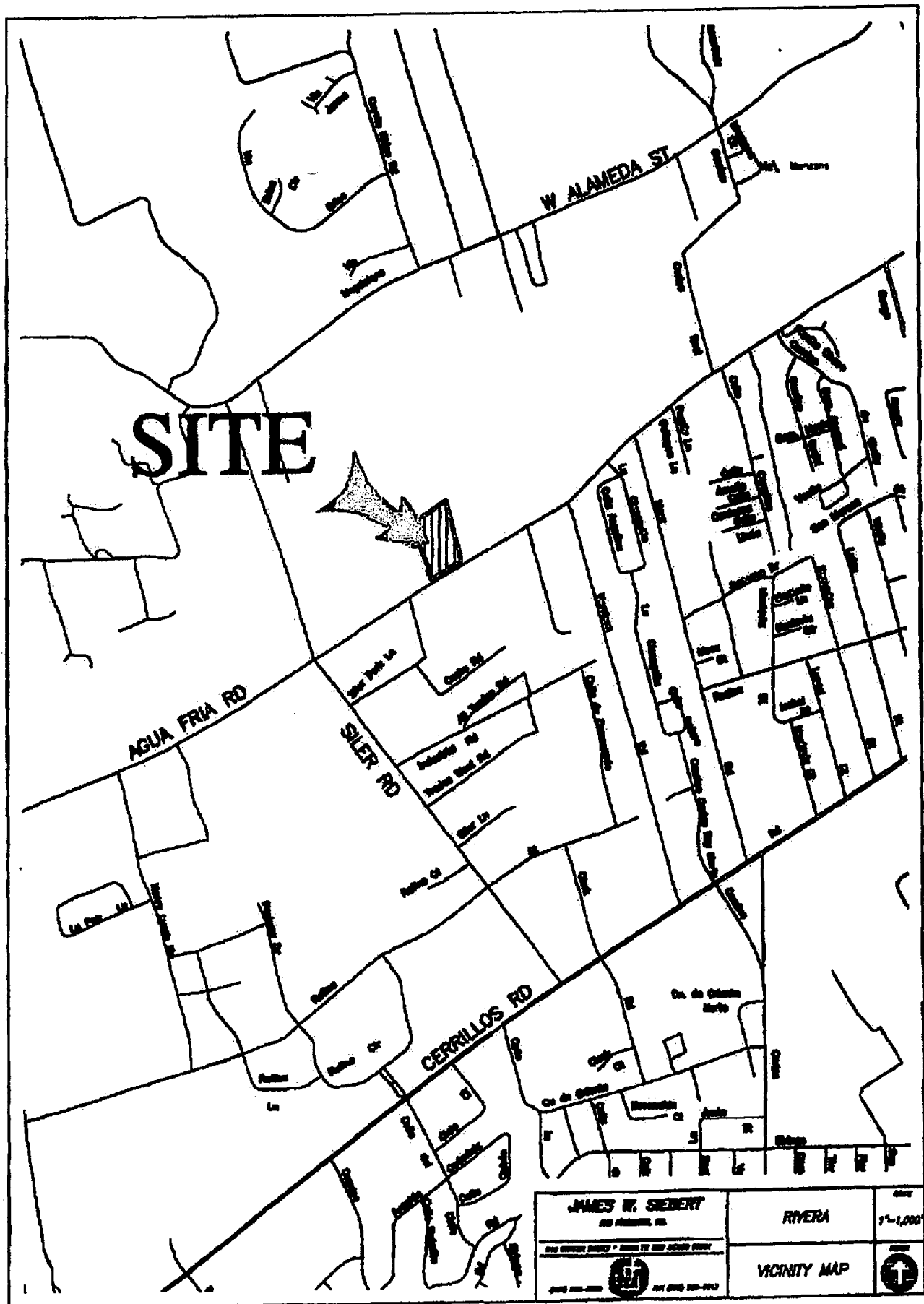
The applicant is requesting a general plan amendment to amend the existing land use from Residential Low Density to General Commercial and to rezone the subject 4.65 acres from R-1 (one dwelling per acre) to C-2 (General Commercial). Included with this request is a development plan for the property allowing residential uses to be included with the commercial uses if the C-2 zoning for this property is approved.

## **ENN**

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An Early Neighborhood Notification (ENN) meeting was held on August 19, 2013 at the Tierra Contenta Library. One couple attended the meeting to find out the process required to rezone their property to C-2 since the historic use has been for commercial purposes and they were interested in rezoning there property which is in close proximity to the requested rezoning. No subsequent comments were received in writing on the requested general plan amendment or rezoning. The sign in sheet for the meeting is provided in Appendix C.

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## **PRIOR JURISDICTION AND EXISTING CONDITIONS**

The property consists of 4.65 acres of land with several buildings located on the property. The size and type of use for these building is provided below.

<b><u>Building Use</u></b>	<b><u>Building Size</u></b>
Prior Liquor Sales and Bar/Club	10,000 square feet
Wood Working Shops	3,000 square feet
Single family (Estela Rivera residence)	2,650 square feet
Rental Unit west side	2,050 square feet
Rental Units on east side tract (4 units)	5,000 square feet
Landscape firm in multiple portable buildings	220 square feet

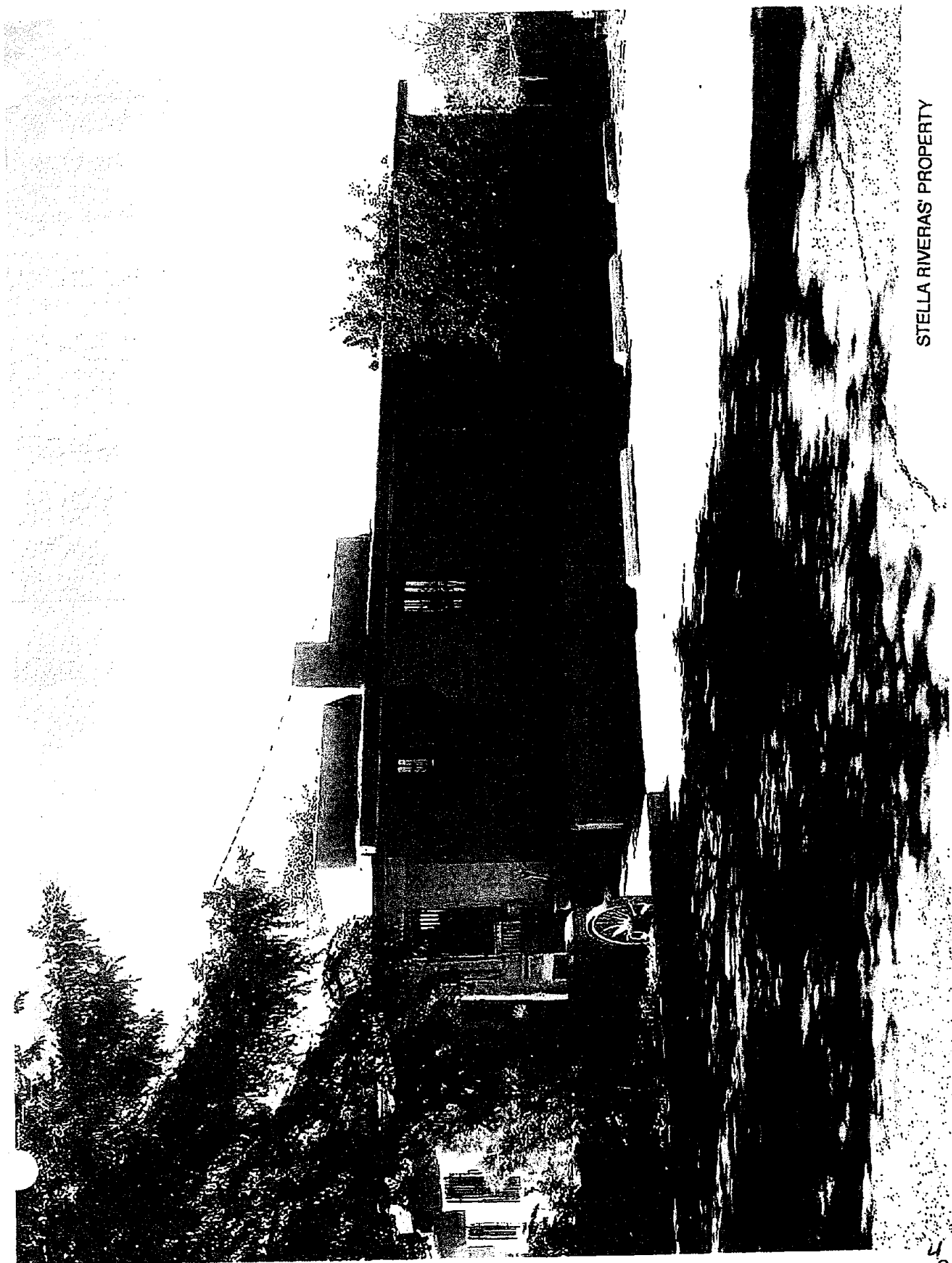
Various photos of the buildings on property are included in Figure 2 of the report

## **ACCESS**

Access to the property is directly off Agua Fria. There is an existing driveway that accesses the back of the Club Alegria building and the residential units to the west. There is another private driveway that has been named Jardin Lane that provides access to the four attached rental units, storage shed and vacant land that sits at a lower elevation from the remainder of the property.

## **ARCHAEOLOGY**

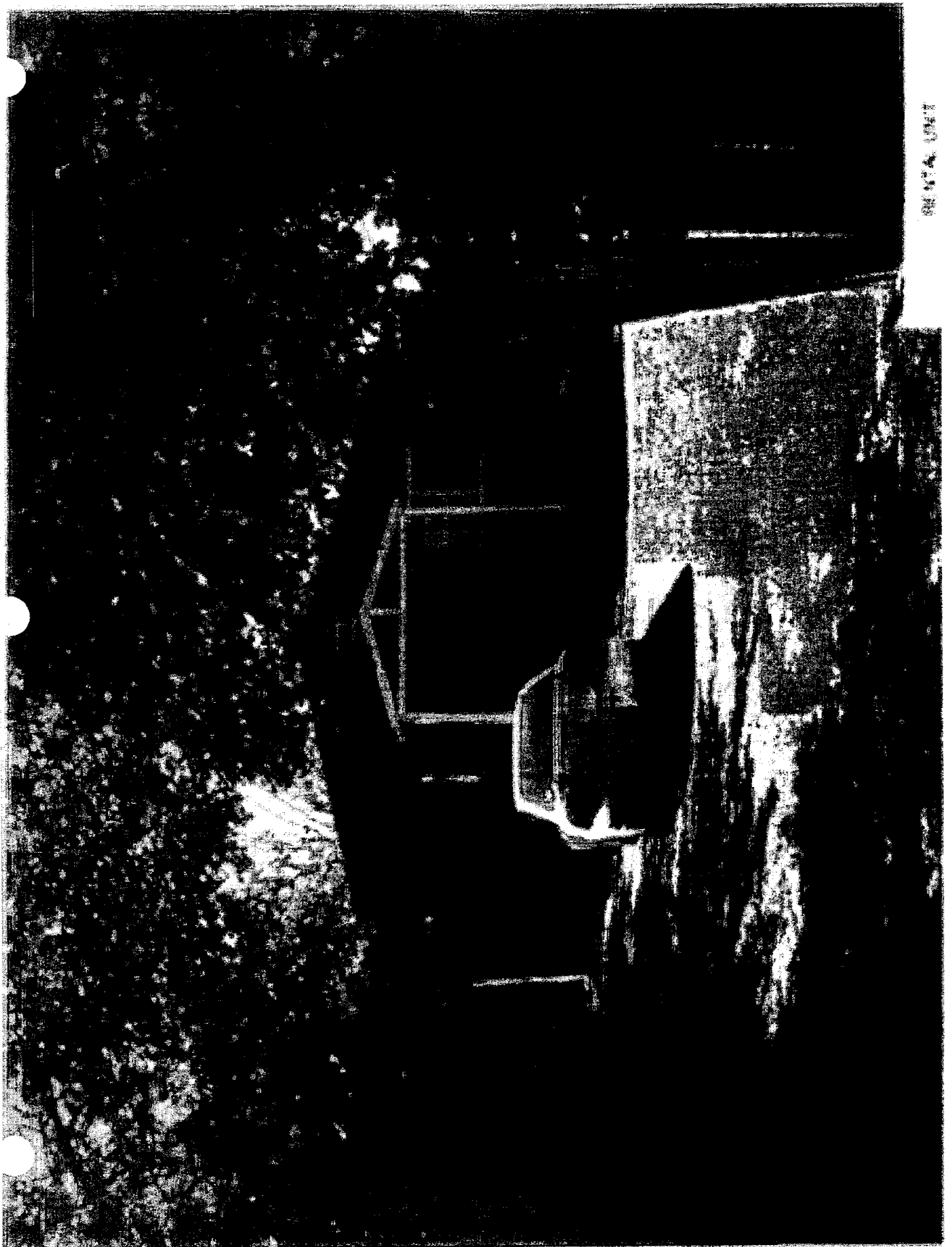
This tract of land is located in the River and Trails district. Per City code an archaeological study is required for parcels more than two acres in size. An archaeology study has been prepared by Steve Townsend and is submitted under a separate cover. There are buildings on the property that are older than 50 years and qualify as having historic potential. There are no alterations of the existing property and no effect to significant cultural resources, therefore cultural resource clearance is recommended by the consulting archaeologist.



STELLA RIVERAS' PROPERTY



PARADE GROUND ALONG A CURRENT WOODS







DUPLEX APARTMENT UNITS ON EAST SIDE OF PROPERTY

## **ADJOINING LAND USES**

The property on the south side of Agua Fria Road is zoned I-2 which is the most intensive zoning district permitted in Santa Fe. A plumbing supply/retail store and materials yard is across Agua Fria from the subject property. Also across Agua Fria are multiple metal buildings that house a variety of generally light industrial and retail businesses. Adjoining the eastern boundary of the property is one single family dwelling, a barn and other related structures. There is a large wooden building to the rear of this same property located on the eastern boundary that was constructed as a single family residence but is now an abandoned structure.

To the west of the subject property adjacent to Stella Rivera's tract is a single family residence and two mobile homes. At the northwest side of this same tract is the materials yard for Ulibarri Landscape Company. A privately owned vacant tract of land is located on the north side of the subject property. This tract is for the most part located within the flood zone of the Santa Fe River. Santa Fe County has been negotiating the purchase of this tract to continue the restoration and enhancement of the Santa Fe River and to construct a trail along the north bank of the Santa Fe River.

Appendix D is an aerial photograph describing the location of the subject tract and adjoining land uses.

## **UTILITIES**

### **Water**

A 10 inch water line is located in Agua Fria Road. The prior Club Algeria building is served by City water via the 10 inch water line on Agua Fria Road. All the other structures on the property are serviced by a well that is located adjacent to Ms. Rivera's house. The permit for the well issued by the Office of the State Engineer in 1952 is found in Appendix E to this report.

### **Sewer**

All of the buildings are served by existing septic tanks and leach fields. The Club Alegria building and four residential rental units are served by a septic tank and leach field located at the northeast side of the property. Ms. Rivera's residence and adjoining rental unit are served by two separate septic tanks and leach fields.

### **Dry Utilities**

Electric, telephone and gas have been constructed to the property and serve the existing residential and commercial structures. These utilities have been extended underground to the various buildings on the property from Agua Fria Road.

## **RESPONSE TO GENERAL PLAN AMENDMENT CRITERIA**

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The Land Development Code lists the criteria for addressing an amendment to the General Plan. Each of these criteria is addressed below.

**(1) Criteria for all amendments to the general plan:**

- (a) Consistency with growth projections for the City using a data base maintained and updated on an annual basis by the City, with economic development goals as set forth in a comprehensive economic development plan for the City, and with existing land use conditions, such as access and availability of infrastructure.*

This is a rather unique property where many of the buildings have existed on the lot for over 50 years. This is not a matter of being in the path of growth but having existed within a developed area of the City for a substantial period of time, well beyond the time limits of the current General Plan for the City. This property was part of the extraterritorial jurisdiction. In 2009 the property became the subject of the City's land use regulatory controls, including the rezoning of the property to R-1, Single Family Residential.

- (b) Consistency with other parts of the General Plan.*

The City General Plan shows this property as residential, low density, 1-3 dwellings per acre. The properties across Agua Fria to the south are zoned I-2, Heavy Industrial zoning and consist of industrial, service and retail businesses. The properties on either side of the subject rezoning consist of a mix of commercial, multi-family, mobile homes, residential rentals and a few scatter single family dwellings. The properties at the northeast corner of the Siler Road and Agua Fria Road intersections are zoned C-2/PUD and extend for a distance of approximately 560 feet along Agua Fria. It is assumed that the properties that are currently zoned C-2/PUD required a general plan amendment that was approved as part of the rezoning process. With the exception of a few scattered single family dwellings, the land to the east is very similar to the land that was previously rezoned C-2/PID at the northeast corner of Siler Road and Agua Fria Road intersection.

- (c) Compliance with the extraterritorial zoning ordinances and extraterritorial plan.*

This criterion is no longer relevant since the adoption of SPaZZo and the relinquishment of the land use regulatory authority outside the city limits and the transfer of authority from extraterritorial jurisdiction to the City.

*(d) Contribution to a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.*

With the exception of the single family residence occupied by Ms. Rivera, none of the other structures within the development request are consistent with the underlying R-1, single family residential zoning that is associated with the current zoning on the property. As non-conforming structures they cannot be modified to allow for other uses or expand the structure beyond its current foot print. In fact, the club/bar has not been operational for some time and as such is no longer a legal, nonconforming use. Because the property is zoned R-1 the liquor license that is located on the property for over 50 years can no longer be used at its historic location, since the use does not conform to the underlying zoning. This inability to make investments in the existing structures can lead to the neglect of these structures which does nothing to "promote health, safety, morals ... or general welfare." Encouraging redevelopment of these structures will maintain their value and discourage blight in this area of the City proposed for annexation in the near future.

**(2) Additional Criteria for Amendments to Land Use Policies**

- a) *The growth and economic projections contained within the plan are erroneous or have changed; or:*

When the existing General Plan was adopted in 1999 it seems that the General Plan failed to recognize the land use complexity of this part of the urban area. It is not a matter of the growth and economic projections being in error as it is the failure to observe the variety of existing land uses and assign a zoning district that best fit those land uses. Under the current zoning regulations residential uses are only allowed in a C-2 zoning district if there is a development plan that accompanies the rezoning request. The City was not in a position to prepare a development plan for this area or other areas with a mix of commercial and residential uses when the property was assigned its current zoning designation.

- b) *No reasonable locations have been provided for certain land uses for which there is demonstrated need; or*

There are few locations this close to the center of the City where such a variety of land uses can take place. The I-2, Heavy Industrial District across Agua Fria does not allow for residential uses and restricts retail and office uses as well. With the rezoning of this property to C-2 the City begins to recognize the diverse land use pattern that has existed along this section of Agua Fria for the last 50 years.

- c) *Conditions affecting the location or land area requirements of the proposed land use have changed, for example, the cost of land space requirements, consumer acceptance, market, and building technology; and*

The conditions affecting the subject land are more jurisdictional than a result of market conditions. Historically this area has been under extraterritorial jurisdiction where diverse mixes of land uses are permitted as part of the development review process. Santa Fe County permitted business licenses for changes to uses within buildings as legal, non-conforming structure uses. When the City assumed regulatory control over this area, the assignment of R-1 rezoning made all of the structures, with the exception of the single family residence, non-conforming structures. The application of the C-2 zoning with a development plan will bring all of the structures into conformity.

- d) *The effect of the proposed change in land use will not have a negative impact on the surrounding property. The proposed change in land use must be related to the character of the surrounding area or a provision must be made to separate the proposed change in use from adjacent property by a setback, landscaping or other means.*

Since the structures are existing there is no impact to the surrounding property, which consists of heavy industrial zoning across Agua Fria to the south, the Ulibarri tract to the west with a landscape business and single family residential to the east. All these uses have co-existed with each other for 30-40 years. At the time this area developed, which was in the 50's and 60's families built their homes and started their businesses on the same lot. This was the land use pattern for the area and pretty much remains the same pattern today.

## **RESPONSE TO CRITERIA FOR REZONING OF THE PROPERTY**

### **Rezoning Application – Approval Criteria**

This section of the report addresses the rezoning criteria set forth in Section 14-3.5(C) of the Land Development Code.

- (a) One or more of the following conditions exist:

- (iii) *A different use category is more advantageous to the community as articulated in the general plan or other adopted plans.*

The owner of the property states that a liquor license has existed on this property for the Club Alegria for 50 years. Commercial uses have taken place on this property since approximately 1955. The prior Club Alegria building has been used for approximately 10 years as various retail commercial uses, including a pond supply and construction company that also sold various exterior patio goods associated with the pond sales. Other commercial uses such as landscape companies and their associated yards have occupied the property for several years.

The City General Plan shows this property and other properties between Agua Fria and the Santa Fe River as "Low Density Residential". The predominate land use for this area is commercial and higher density rental housing. Since this area was brought into the "Presumptive City Limits" and zoned R-1, single family residential, one dwelling per acre, most of the uses have become non-conforming. The land owners are now limited in the expansion of the existing structures on the property and the issuance of business licenses. If the business ceases to exist for one year or more the property must revert back to a low density single family use which is not consistent with the existing land use pattern.

Given the inconsistency between the zoning and the actual land use it would be more advantageous to recognize the existing land use pattern for the area. It does not make planning sense to create non-conformity out of 70 to 80 percent of the ownership in the vicinity of this request. That non-conformity discourages investment in the property and can lead to blight in the area.

*(b) All the rezoning requirements of Chapter 14 have been met.*

Currently the existing zoning is R-1, Single Family Residential, one dwelling per acre. Rezoning of the property to C-2 would bring the uses on this property into conformance with the historic uses that have taken place on this property.

*(c) The rezoning is consistent with the applicable policies of the general plan, including the future land use map.*

The City General Plan shows this tract as "Low Density Residential, 1-3 dwellings/acre", which is inconsistent with the use of the property and the surrounding uses for the area.

It appears that the area was inadequately surveyed when the City General Plan was prepared and when zoning was assigned to this area during the adoption of SpazZo, or the ordinance that established the zoning legislation for the areas that the City planned to annex in the future. It is therefore, not that the property is inconsistent with the General Plan, especially the future land use map, but that the land use designation established by the City General Plan was incorrect.

*(d) The amount of land proposed for rezoning and the proposed use for the land is consistent with city policies regarding the provision of urban land sufficient to meet the amount, rate, and geographic location of the growth of the city.*

Although there is a limited amount of vacant or developed C-2 land in this area of the City, the land area associated with this request should not be considered an addition to the City's supply of C-2 land, since it has been used for that purpose for 55 years. The rezoning request for the subject property should be considered an infill development rather than a property that is located in the path of the future growth of the community.

- (e) The existing and proposed infrastructure, such as the streets system, sewer and water lines, and public facilities, such as fire stations and parks, will be able to accommodate the impacts of the proposed development.*

All public utilities are available on Agua Fria, including water and sewer lines, gas and electric lines and cable and telephone lines. The City has completed street improvements and widening of Agua Fria adjacent to the subject property including upgrades to the Agua Fria and Siler Road intersection. Siler Road has recently been completed from Agua Fria to West Alameda providing for alternative points of access to this site.

The closest Fire Station to this site is located on Cerrillos Road near Third Street within a five minute service radius to this property. The County has been negotiating with the Boylan family to purchase the 6± acre tract of land adjacent to the northern boundary of this property. This purchase would allow for the continuation of the Santa Fe River improvements and the construction of a trail on the north side of the Santa Fe River.

## **RESPONSE TO GENERAL PLAN AMENDMENT CRITERIA**

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The Land Development Code lists the criteria for addressing an amendment to the General Plan. Each of these criteria is addressed below.

**(1) Criteria for all amendments to the general plan:**

- (a) Consistency with growth projections for the City using a data base maintained and updated on an annual basis by the City, with economic development goals as set forth in a comprehensive economic development plan for the City, and with existing land use conditions, such as access and availability of infrastructure.*

This is a rather unique property where many of the buildings have existed on the lot for over 50 years. This is not a matter of being in the path of growth but having existed within a developed area of the City for a substantial period of time, well beyond the time limits of the current General Plan for the City. This property was part of the extraterritorial jurisdiction. In 2009 the property became the subject of the City's land use regulatory controls, including the rezoning of the property to R-1, Single Family Residential.

- (b) Consistency with other parts of the General Plan.*

The City General Plan shows this property as residential, low density, 1-3 dwellings per acre. The properties across Agua Fria to the south are zoned I-2, Heavy Industrial zoning and consist of industrial, service and retail businesses. The properties on either side of the subject rezoning consist of a mix of commercial, multi-family, mobile homes, residential rentals and a few scatter single family dwellings. The properties at the northeast corner of the Siler Road and Agua Fria Road intersections are zoned C-2/PUD and extend for a distance of approximately 560 feet along Agua Fria. It is assumed that the properties that are currently zoned C-2/PUD required a general plan amendment that was approved as part of the rezoning process. With the exception of a few scattered single family dwellings, the land to the east is very similar to the land that was previously rezoned C-2/PID at the northeast corner of Siler Road and Agua Fria Road intersection.

- (c) the amendment does not:*

- (i) allow uses or a change that is significantly different from or inconsistent with the prevailing use and character in the area; or*

The uses have existed on this property for 25-30 years. The surrounding uses have a similar time frame.



- (ii) affect an area of less than two acres, except when adjusting boundaries between districts; or*

The requested amendment is greater than 2.0 acres in size.

- (iii) benefit one or a few landowners at the expense of the surrounding landowners or the general public;*

The requested commercial zoning designation is generally consistent with the land use patterns found on surrounding and near-by lots.

- (d) an amendment is not required to conform with Subsection 14-3.2(E)(1)(c) if it promotes the general welfare or has other adequate public advantage or justification;*

The justification for the rezoning action is based on the historic use of the property.

- (e) compliance with extraterritorial zoning ordinances and extraterritorial plans;*

This criterion is no longer relevant since the adoption of SPaZZo and the relinquishment of the land use regulatory authority outside the city limits and the transfer of authority from extraterritorial jurisdiction to the City.

- (f) Contribution to a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.*

With the exception of the single family residence occupied by Ms. Rivera, none of the other structures within the development request are consistent with the underlying R-1, single family residential zoning that is associated with the current zoning on the property. As non-conforming structures they cannot be modified to allow for other uses or expand the structure beyond its current foot print. In fact, the club/bar has not been operational for some time and as such is no longer a legal, nonconforming use. Because the property is zoned R-1 the liquor license that is located on the property for over 50 years can no longer be used at its historic location, since the use does not conform to the underlying zoning. This inability to make investments in the existing structures can lead to the neglect of these structures which does nothing to "promote health, safety, morals ... or general welfare." Encouraging redevelopment of these structures will maintain their value and discourage blight in this area of the City proposed for annexation in the near future.

- (g) consideration of conformity with other city policies, including land use policies, ordinances, regulations and plans.*

The City has a policy of promoting a mix of land uses, this property has historically included a mix of residential, retail and entertainment. The recent changes to the City code now permit residential uses within a C-2 commercial district.

**(2) Additional Criteria for Amendments to Land Use Policies**

- a) *The growth and economic projections contained within the plan are erroneous or have changed; or:*

When the existing General Plan was adopted in 1999 it seems that the General Plan failed to recognize the land use complexity of this part of the urban area. It is not a matter of the growth and economic projections being in error as it is the failure to observe the variety of existing land uses and assign a zoning district that best fit those land uses. Under the current zoning regulations residential uses are only allowed in a C-2 zoning district if there is a development plan that accompanies the rezoning request. The City was not in a position to prepare a development plan for this area or other areas with a mix of commercial and residential uses when the property was assigned its current zoning designation.

- b) *No reasonable locations have been provided for certain land uses for which there is demonstrated need; or*

There are other locations in Santa Fe where general commercial is available. This location has served as a commercial use for over 50 years. The effect of the proposed change in land use will not have a negative impact on the surrounding property. The proposed change in land use must be related to the character of the surrounding area or a provision must be made to separate the proposed change in use from adjacent property by a setback, landscaping or other means.

- c) *Conditions affecting the location or land area requirements of the proposed land use have changed, for example, the cost of land space requirements, consumer acceptance, market, and building technology; and*

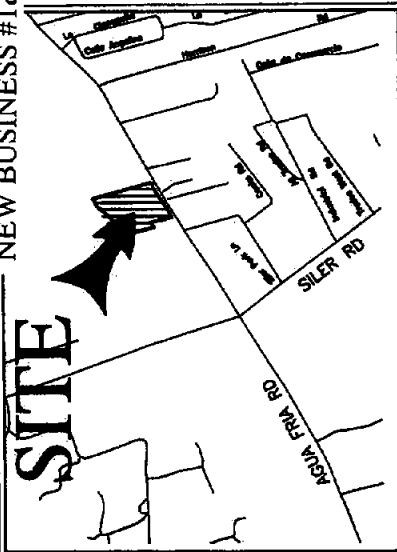
This property has historically been subject to either County or Extraterritorial jurisdiction. This property has always been recognized as a legal non-conforming use until the City exerted jurisdictional control over this property, at which time unbeknownst to the land owner the commercial status was eliminated.

February 6, 2014  
Planning commission  
Case # 2013-101 &102

**RIVERA GENERAL PLAN AMENDMENT  
AND REZONING TO GENERAL OFFICE**

# **APPLICANT ATTACHMENTS**

Plan Attachments
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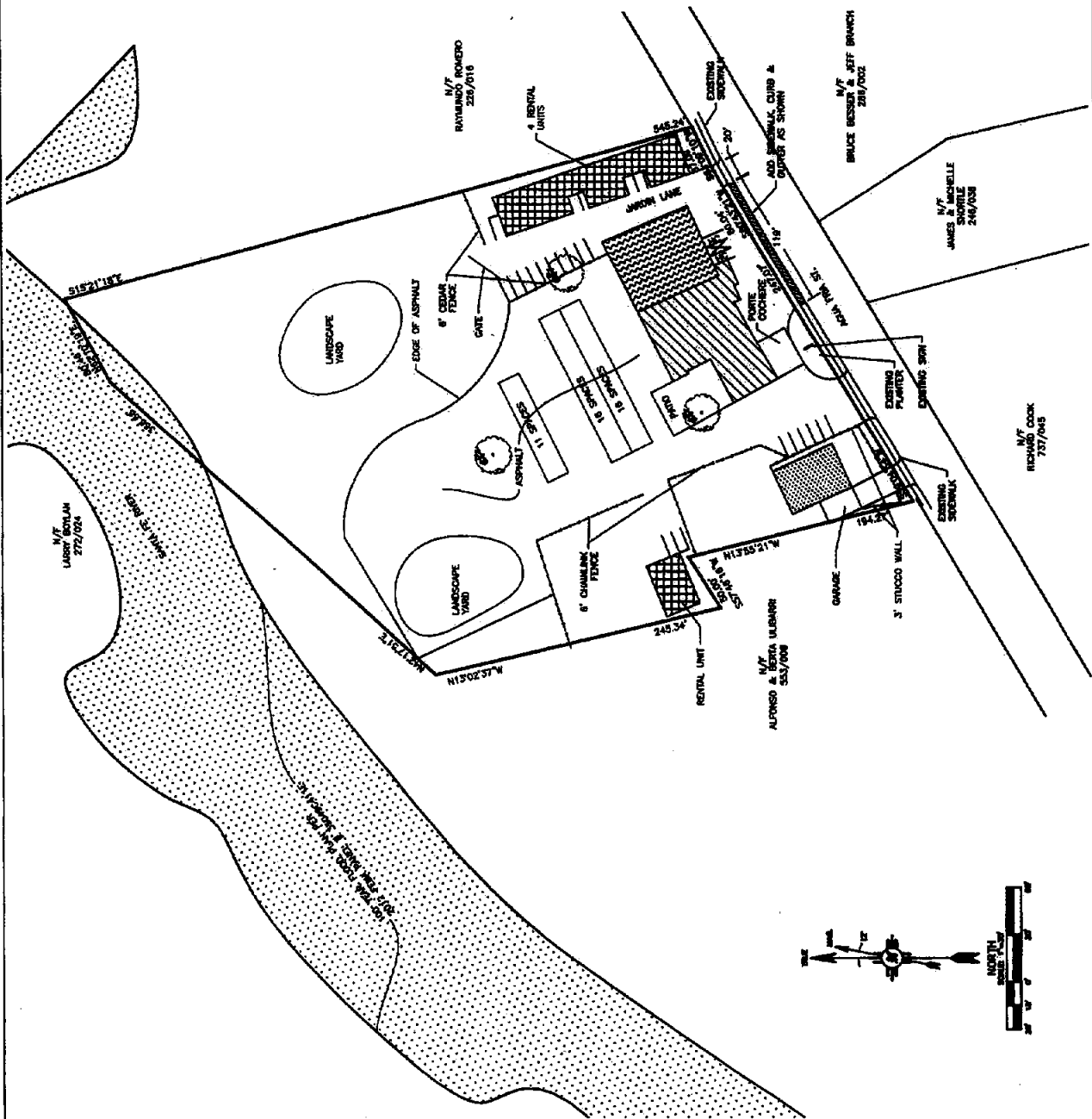


VICINITY MAP  
N.T.S.

**SITE DATA:**  
 LOT AREA: 4.324 AC.  
 SINGLE FAMILY RESIDENCE: 2,200 SQ. FT.  
 RENTAL UNITS: 6,500 SQ. FT.  
 COMMERCIAL BUILDING: 11,700 SQ. FT.  
 (JUNK STRUCTURES)  
 COMMERCIAL PARKING SPACES: 17 SPACES  
 LOT COVERAGE: 11% (20,400 SQ. FT.)

**LEGEND:**  
 SINGLE FAMILY RESIDENCE  
 RESIDENTIAL RENTAL UNITS (6)  
 COMMERCIAL  
 EXISTING CARPENTRY SHOP

**NOTES:**  
 ALL STRUCTURES ON THIS PLAN ARE EXISTING



CASE# 2013-101 & 2013-102

JAMES W. SHERIDY AND ASSOCIATES, INC.	RIVERA	1"=50'	DATE	10/20/13	1
			DATE	10/20/13	1
DEVELOPMENT PLAN			DATE	10/20/13	1
			DATE	10/20/13	1