

Regular Meeting of the City Council, City of Farmington, New Mexico, held in the Executive Conference Room at City Hall at 7:00 p.m. on Tuesday, March 12, 2013. The open regular session was held in full conformity with the laws and ordinances and rules of the Municipality.

Upon roll call, the following were found to be present, constituting a quorum:

MAYOR	Tommy Roberts
COUNCILORS	Dan Darnell Mary M. Fischer Gayla McCulloch Jason Sandel

constituting all the members of said Governing Body.

Also present were:

CITY MANAGER	Rob Mayes
ASSISTANT CITY MANAGER	Bob Campbell
DEPUTY CITY ATTORNEY	Jennifer Breakell
CITY CLERK	Dianne Fuhrman

The meeting was convened by the Mayor. Thereupon the following proceedings were duly had and taken:

INVOCATION: The invocation was offered by Pastor Glenn Perica of First Presbyterian Church.

City Clerk Dianne Fuhrman led the Pledge of Allegiance.

CONSENT AGENDA: The Mayor announced that those items on the agenda that are marked with an asterisk (*) have been placed on the Consent Agenda and will be voted on by one motion. He stated that if any item did not meet with approval of all Councilors or if a citizen so requested, that item would be removed from the Consent Agenda and heard under Business from the Floor.

*MINUTES: The minutes of the Regular Meeting of the City Council held February 26, 2013 and the minutes of the Regular Work Session of the City Council held February 19, 2013.

*BID: The Purchasing Officer recommended that the bid for purchase of relay panels for Fruitland Substation (Electric) be awarded to McKinley Sales Company, Inc. on its low bid after application five percent in-state preference of \$60,476. Bids opened March 5, 2013 with two bidders participating.

*RECEIPT OF GRANT FUNDS (HAZ MAT ID 360 UPGRADE) in the amount of \$14,000 from the New Mexico Department of Homeland Security for enhancement of the Fire Department hazardous materials response team.

*WARRANTS PAYABLE for the time period of February 24, 2013 through March 9, 2013, for current and prior years, in the amount of \$4,525,977.89.

There being no requests to remove any items, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to approve the Consent Agenda, as presented, and upon voice vote the motion carried unanimously.

AUTHORIZATION TO SPEND \$25,000 FROM THE METROPOLITAN REDEVELOPMENT AREA FUND/COMPLETE STREETS PROJECT

Community Development Director Mary Holton requested permission to expend \$25,000 from the Metropolitan Redevelopment Area ("MRA") Fund for the purpose of hiring a professional traffic engineer to conduct a study to determine the impact that a "complete streets" project will have on Main Street and the adjoining streets. She directed the Council's attention to pages 3.1 thru 3.3 of the agenda materials depicting examples of possible Main Street improvements to include angled parking,

one lane of travel in each direction and center turn lanes. Noting that the scope of the project is not fully developed, she pointed out that the goal of the complete streets concept is to improve safety for motorists, bicyclists and pedestrians by slowing traffic. In response to Mayor Roberts, she announced that staff will be issuing a Request for Qualification-Based Proposals ("RFQP") for professional traffic engineering services.

Councilor Darnell asked if a qualification-based proposal would preclude our local engineers from securing the contract. In response, Purchasing Officer Eddie Smylie reviewed the differences between the RFQP and the Request for Proposal ("RFP") processes, noting that pricing is not a factor with an RFQP. In response to inquiry from Councilor Sandel, Mr. Smylie announced that the criteria for an RFQP is specifically listed in the procurement code but stated that additional criteria could be added. Furthermore, he reported that the RFQP process must be utilized since the City will be looking to hire professional engineering services.

Councilor Sandel pointed out that pages 3.1 thru 3.3 of the agenda materials are excerpts from the MRA Plan and questioned why we need to hire a professional traffic engineer when the plan has already identified how the area should look and asked why this work could not be done by existing staff. In response, Ms. Holton explained that the traffic engineer will do modeling to determine the impact on the adjacent streets if the complete streets concept is approved. She assured him that staff will have the traffic engineer review the goals of the MRA plan to ensure that his proposal is consistent with the vision for that area. City Manager Rob Mayes noted that the City does not employ a traffic engineer nor do we have the software available to complete the modeling. He stated that there is not enough work to justify the hiring of a traffic engineer and explained that the City's Traffic Administrator oversees the day-to-day operations of the Traffic Division.

Councilor Sandel stated that it is his experience that traffic engineers typically look at ways to increase the speeds for motorists along a roadway and questioned whether the Council will have an opportunity to review the proposed plan before construction commences. In response to further inquiry from Councilor Sandel, Ms. Holton announced that she will provide the Council with the three cost estimates that were developed by staff with regard to the proposed roadway improvements on Main Street. She explained that the preferred option at this point provides for the restriping of Main Street to include bicycle lanes and angled parking at a cost of \$165,000. In response to Councilor Fischer, Ms. Holton stated that any proposed construction plan would require Council approval since the funding will come from the MRA Fund.

Councilor Fischer recalled that staff has changed the angle of the parking on Main Street several times over the years and questioned whether this proposal is simply rehashing projects that have already been tried.

Councilor McCulloch stated that she hopes that the traffic engineer that is hired supports the philosophy of the complete streets concept since it is retro and creates a sense of "place".

Following further consideration, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to authorize \$25,000 to be expended from the MRA Fund for the purpose of hiring a professional traffic engineer to conduct a study to determine the impact that a "complete streets" project will have on Main Street and the adjoining streets. The roll was called with the following result:

Those voting aye:	Dan Darnell Mary M. Fischer Jason Sandel
Those voting nay:	Mary M. Fischer

The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried.

COUNCIL BUSINESS

Ricketts Park Renovation Project

Councilor Fischer asked for a status update on the renovation of Ricketts Park, stating that she believes that there may be some procurement violations associated with that project, such as noncompliance with the prevailing wage act.

In response, City Manager Rob Mayes announced that the Connie Mack World Series Committee ("CMWS") was previously authorized by Council to raise money for the purpose of renovating and updating Ricketts Park and reported that they have since entered into a contract with a local company for construction. He stated that over the past two weeks he has become aware of some procurement issues associated with the project since it is a City-owned facility. He assured the Council that he is working with the City's Procurement Officer, Legal Department and the State Department of Workforce Solutions to rectify the matters. Furthermore, he announced that Workforce Solutions has not issued a "stop work" order for the project because the City identified the problem and self-reported.

Open Meetings Act

Announcing that she contacted Gwyneth Doland of the Foundation for Open Government following last Tuesday's City Council Work Session, Councilor Fischer reported that Ms. Doland agrees that a violation of the Open Meetings Act occurred when Mayor Roberts asked for a vote of the Council on whether to proceed with consideration of a resolution since the item was not listed on the agenda. She stated that Ms. Doland has advised that the violation was rectified when the resolution was scheduled for consideration at today's meeting, but she urged the Mayor and Council to be cognizant of the Open Meetings Act to assure that future violations do not occur.

Councilor Fischer also asked that staff provide the Council with information on the Inspection of Public Records Act and the Procurement Code to ensure that we are complying with law.

In response, Mayor Roberts pointed out that the Governing Body Rules of Procedure which were adopted in 2006 establishes the "consensus" process and maintained his position that the action taken last Tuesday to direct that a resolution be drafted for future consideration by the Council was consistent with the established policy. He said that Councilor Fischer characterized the action as a "vote" when she stated that the Mayor is not allowed to vote following his announcement that there was a 4-1 consensus to proceed. He argued that he is allowed to participate in consensus polls and maintained that the action was legal and in accordance with the Open Meetings Act and the Governing Body Rules of Procedure.

Councilor Fischer explained that she considers the action to be a vote since the Mayor clearly announced that it passed by 4 to 1. She maintained that in the past, the Mayor has simply stated whether or not the Council came to a consensus on the matter.

In response to inquiry from Mayor Roberts, Deputy City Attorney Jennifer Breakell confirmed that City Attorney Jay Burnham has issued a memorandum that states that the use of consensus is in compliance with the Open Meetings Act since it directs staff to do something that will then be considered by the Council at a later date. She also announced that it is her opinion that the Mayor may participate in consensus polls as a member of the governing body.

Councilor Sandel pointed out that the Rules of Procedure do not address the process for gaining consensus. He questioned whether it would be appropriate for staff to forward a copy of the Rules of Procedure and the memorandum from Mr. Burnham to a State agency (i.e. the Attorney General) for review to confirm whether they are in compliance with the Open Meetings Act. He explained that the impetus for this suggestion is Mr. Burnham's use of the phrase "a fine line" in determining whether the use of consensus is appropriate. He clarified that he is not opposed to the use of consensus but stated that because it has been raised as a question, he would be more comfortable with a second opinion.

Mayor Roberts stated that it seems odd that the Council would accept an opinion from the city attorney and then decide to seek an opinion from an outside agency because they are not sure whether the opinion is valid and argued that it is a waste of taxpayer's money.

City Manager Rob Mayes pointed out that the Council will be considering Councilor Sandel's proposed amendments to the Rules of Procedure at next Tuesday's Work Session and questioned whether it would be wise to wait until those amendments were considered before requesting a second opinion.

Councilor Darnell stated that he tends to agree with Mayor Roberts, but announced that he would be amenable to asking the Foundation for Open Government (FOG) to make an opinion on the use of consensus.

Ms. Breakell explained that the Attorney General ("AG") is tasked with enforcing the Open Meetings Act and stated that she believes that this office would be the most appropriate for reviewing the documents and issuing an advisory opinion. However, she noted that the AG has the option for determining whether to issue an advisory opinion.

Councilor McCulloch stated that she is not opposed to requesting a second opinion, but questioned the reasons why the use of consensus is being discussed at this time. She asked if the reason is because a particular Councilor did not like the outcome of the consensus vote. In response, Councilor Sandel explained that his reason is because some time ago there was an email exchange between him and the Mayor concerning the Council's authority to direct that an item be drafted and put on an agenda for consideration. He explained that the Mayor correctly pointed out to him that the Rules of Procedure required him to gain support from the Council before such matter could be discussed.

Mayor Roberts confirmed that the Rules of Procedure do not establish the process for gaining consensus, but maintained that such process has been established over the years through consistent use.

Thereupon, the Mayor asked for a consensus from the Council on whether staff should ask the Attorney General for an advisory opinion concerning 1) the Governing Body Rules of Procedure in the form that they will be in following the consideration of the proposed amendments; and 2) City Attorney Jay Burnham's memorandum concerning the use of consensus. Following further consideration, it was the consensus of a majority of the Council to proceed as stated. Councilor Darnell and Mayor Roberts expressed their disapproval.

Fiscal Year 2014 Budget Process

Contending that she believes that the city manager's request to schedule one-on-one budget meetings with the Council outside of a public meeting could be construed as a violation of the Open Meetings Act, Councilor Fischer suggested that a special Work Session of the Council be scheduled for the purpose of discussing the Fiscal Year 2014 budget. She stated that she believes that this method will be more transparent for the public and will be more effective for the Council since they can discuss their concerns collectively.

In response, Mayor Roberts announced that two community input forums have been scheduled; one on Tuesday, March 19 at 5:00 p.m. at the Bonnie Dallas Senior Center and one on Thursday, March 21 at 7:00 p.m. at the Farmington Library. He stated that this method is consistent with the process that he established three years ago and explained that the community forums give the public an opportunity to address their concerns.

City Manager Rob Mayes pointed out that budget development is a four-month process and explained that the one-on-one sessions with the Council are a courtesy to keep them abreast of the issues so they are not surprised by media coverage. He also noted that the Council will have four opportunities to discuss the proposed budget in public meetings and pointed out that special meetings could be scheduled if the Council decides that additional time is needed.

Councilor Darnell stated that he believes that this is an aggressive schedule since the Council will be asked to make tough decisions concerning the preliminary \$4.4 million budget deficit for Fiscal Year 2014. However, he stated that he does not oppose the

proposed schedule and stated that he appreciates the one-on-one sessions with the city manager. Councilor McCulloch agreed and announced that she will be participating in the individual meeting with the city manager.

Councilor Sandel recalled that last year's budget discussions seemed rushed and did not give the Council enough time to debate the issues, specifically with regard to the electric utility department and the capital budgets. He stated that he is not opposed to the one-on-one informational sessions but asked that the Council be given more time in public meetings to discuss the budget.

Mayor Roberts stated that he believes that the proposed budget schedule has worked well in the past but agreed that it may be necessary to schedule a special meeting if the discussions warrant such. He encouraged the Council to keep their schedules flexible in the event that additional meetings are necessary. Mr. Mayes pointed out that the upcoming budget will be the most challenging for the Council because priorities will have to be identified.

In closing, Councilor Fischer asked that staff address two particular items prior to the budget discussions; one being the proposed staffing for the new animal shelter and the other being the budgetary impact if the raises that were given last year are eradicated.

RESOLUTION NO. 2013-1462 ESTABLISHING A POLICY FOR THE PROVISION OF ELECTRONIC MAIL ACCOUNTS TO THE MEMBERS OF THE GOVERNING BODY

Mayor Roberts reminded the Council that he was granted permission at the March 5, 2013 City Council Work Session to draft a resolution that establishes a policy for the provision of electronic mail ("email") accounts for members of the governing body. Providing background information, he announced that he had previously exercised his statutory authority as the Chief Executive Officer ("CEO") for the City of Farmington by directing staff to provide an email account for Councilor Fischer. In hindsight, he explained that he believes that it is a better policy to ask the City Council to consider establishing broader policy regarding the use of email accounts for the purpose of defining the minimum form of communication to be used among the elected body, employees and members of the public. He contended that email is the most basic form of electronic communication and argued that elected officials should have email accounts and make them available to the public. Since the proposed resolution will be applicable to current and future councilors, Mayor Roberts argued that the proposed resolution is a more broad approach to dealing with the situation and stated that it is separate from the Council's request for an opinion from the city attorney on whether the Mayor has the authority to direct that an email account be established for an elected official. He requested adoption of Resolution No. 2013-1462.

Announcing that she had asked staff at the last City Council Work Session to determine whether the Cities of Albuquerque, Santa Fe, Las Cruces, Roswell and Hobbs, San Juan County and the state and federal legislators have such a policy, Councilor Fischer stated that she has yet to receive the information. In response, Government Relations Director Elizabeth Isenberg announced that she is still awaiting some responses, but stated that there does not appear to be any such policy in the state. Councilor Fischer reported that Representative Tom Taylor sent an email indicating that many, but not all, of the State Legislators have an email account and stated that there is no such policy dictating that they do. Deputy City Attorney Jennifer Breakell stated that she has not yet received a response from the federal government.

Councilor Fischer stated that she believes that the proposed resolution is overkill since no other government entity has such a policy. She also contended that the proposed resolution is singling her out and is retribution for announcing that she is not receiving the same information as the other Councilors. Furthermore, she noted that the proposed resolution does not identify the guidelines for implementing the policy; argued that the set-up of a computer for her use could be construed as a misappropriation of taxpayer money since she does not want it; and stated that the policy should be consistent for all members of the Council. In addition, she argued that the Mayor's statutory authority is germane to the discussion of the proposed resolution since he directed staff members to enter her locked office for the purpose of determining how to set-up a computer for her use. Councilor Fischer also noted that Information Technology Director Rich Friedman has indicated

that an iPad would be more appropriate than a computer due to the conditions of her eyes. She reiterated that she prefers to have all emails that are sent to the Mayor and Council printed by the Administrative Aide in the Administrative office and then placed in her box. Furthermore, she voiced concern for the fact that email communication among the members of the governing body could be construed as a rolling quorum and argued that conversations among the governing body should be held in public meetings. She contended that the Council should be embarrassed by the proposed resolution and stated that it is her opinion that they are acting like buffoons. She argued that the method she chooses to communicate with her constituents is her business and stated that she would never tell a fellow elected official how they should communicate with theirs. She contended that she is adequately serving her constituents and stated that she goes out of her way to ensure that their needs are met. Councilor Fischer also stated that she finds it mindboggling that the Mayor is going to such great lengths to establish an email policy when no other government entity in the state has one.

In response to inquiry from Councilor Fischer concerning implementation of the policy, Mayor Roberts announced that he and the other members of the governing body already have established City email accounts and stated that he has a computer in his office located here at City Hall. He also assured her that all members of the elected body would be provided a computer, laptop or iPad if they were to request one since this is common practice for governmental agencies.

Councilor Fischer reiterated her position that action should not be taken on the proposed resolution until the city attorney has determined whether the Mayor's mandate to staff was legal. She stated that in all of her years on the Council she cannot recall a single time when the Mayor directed an employee to do something that they felt uncomfortable doing (such as entering a Councilor's locked office and installing an unwanted computer). Mayor Roberts argued that he is asking the Council to execute their legislative authority independently of his executive authority and pointed out that there is no provision in the proposed resolution that would compel her to use her established email account.

The Mayor and Councilor Fischer further debated his authority to direct staff to do something without the will of the Council. Mayor Roberts reiterated that the purpose for establishing the email account is to give staff some certainty that communication is being delivered to her. He assured her that the Administrative Aide will continue to give Councilor Fischer special treatment by printing out her emails and putting them in her box. Councilor Fischer pointed out that the Administrative Aide also works for her, not just the Mayor, and argued that he can hardly call it special treatment when her box is located just down the hall. Furthermore, she stated that it is her belief that Mayor Roberts does not comprehend the separation of powers and pointed out that the Council work for the constituents and not him or the city manager. She maintained her position that City Manager Rob Mayes absolutely did not call and notify her of the second officer-involved shooting which forced her to contact the city clerk for verification. She reiterated her position that that Mayor is deflecting the true issue by focusing on the email account, but explained that she is mostly concerned that the Inspection of Public Records Act ("IPRA") is not being properly followed since she did not receive the information she requested in a timely manner. She contended that it would have been more appropriate for the Mayor to ask for her opinion on how to resolve the communication concerns instead of mandating that she have an email account and a computer and stated that she believes that Mayor Roberts is interpreting his executive power too liberally. In response, Mayor Roberts announced that he understands the statutory framework with regard to legislative and executive powers but reiterated that state statutes identify the Mayor as the CEO under the Mayor-Council form of government which gives him certain executive powers over the governing body.

Councilor Darnell stated that he is a proponent for all efforts that improve communication and contended that the subject resolution does not single-out one particular councilor. However, he questioned what the policy will be if a Councilor chooses not to use the email. In response, Mayor Roberts explained that it will be discretionary as to whether a Councilor accesses the email account but explained that staff could be directed to monitor it and print hard copies if requested. City Manager Rob Mayes assured Councilor Darnell that staff will monitor Councilor

Fischer's email and print hard copies of all documents and place them in her box.

Councilor McCulloch announced that her mother and mother-in-law, both in their mid '80s, love email but stated that her 26-year old son hates it and only uses it when he is forced to at work. She suggested that an auto-reply be set-up to notify senders that the best way to contact Councilor Fischer is via her personal telephone.

Councilor Sandel pointed out that there are four state legislators that do not have published email addresses. Voicing his opposition to the proposed resolution, Councilor Sandel stated that he does not believe that a policy was established in the past to require that each Councilor have a telephone. Furthermore, he pointed out that the proposed policy could be considered outdated since it specifies a computer instead of an iPad. He stated that he is concerned that the Council is being asked to consider a policy that governs their method of communication instead of allowing them to freely choose. He contended that the method should be agreed upon by the elected officials and their constituents and stated that he is concerned that this issue started as an edict and has morphed into proposed legislation. He stated that he has heard the Mayor say that the purpose for the email account is to provide proof of delivery but he pointed out that dates can be amended if an email is forwarded to another individual. He stated that this could negate the proof of delivery. Furthermore, he noted that some City employees do not have email addresses; argued that the proposed policy could get "lost" over time because it is not a part of the Governing Body Rules of Procedure; stated that he has had significant problems in the past trying to access his City-issued email account; and announced that he does not believe that the proposed resolution takes into account the debate that is before the legislature with regard to the release of emails through the IPRA process. He stated that he is opposed to the resolution because it addresses a special circumstance and contended that such policy is outdated since Twitter is becoming the more common form of communication. He announced that he is concerned about the Mayor's position that he has the authority to mandate that Councilor Fischer be provided an email account and a computer. He stated that he is personally opposed to being dictated by fellow elected officials on how to communicate, noting that he is "almost offended" by the proposed action.

Russell Steele, argued that he does not believe that email is the most basic form of electronic communication since Twitter and Facebook provide instant feeds to a number of individuals. Furthermore, he stated that it is difficult for some individuals to type and/or spell which makes email a more difficult form of communicating. He pointed out that the Council has been discussing this issue for nearly an hour and stated that he believes that there are more pressing matters that need to be addressed.

Responding to comments made by Councilor Sandel, Councilor McCulloch stated that she read the article that was published in today's edition of the *Albuquerque Journal* and understands that the proposed legislation will limit only business-related emails from being released through the IPRA process. She also pointed out that Senate Leader Michael Sanchez does not have a published email address and stated that it is extremely difficult to contact him.

Thereupon, a motion was made by Mayor Roberts, seconded by Councilor Darnell to pass and adopt Resolution No. 2013-1462 establishing a policy for the provision of electronic mail accounts to the members of the governing body of the City of Farmington. The roll was called with the following result:

Those voting aye:	Dan Darnell Gayla McCulloch
Those voting nay:	Mary M. Fischer Jason Sandel

The Mayor voted in favor of the motion and declared the motion carried.

CLOSED MEETING

A motion was made by Councilor Darnell, seconded by Councilor McCulloch to close the meeting to discuss requests for proposals for

banking and merchant services. The roll was called with the following result:

Those voting aye:	Dan Darnell Mary M. Fischer Gayla McCulloch Jason Sandel
-------------------	---

Those voting nay:	None
-------------------	------

The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried.

The Mayor convened the closed meeting at 8:51 p.m. with all members of the Council being present.

Following the closed meeting, during which meeting the matter discussed was limited only to that specified in the motion for closure, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to open the meeting for further business, and upon voice vote the motion carried unanimously.

The open meeting was reconvened by the Mayor at 8:56 p.m. with all members of the Council being present.

AUTHORIZATION TO COMMENCE NEGOTIATIONS ON THE PROPOSAL FOR BANKING AND MERCHANT SERVICES

Purchasing Officer Eddie Smylie announced that proposals for banking and merchant services (Administrative Services) opened on February 20, 2013 with five offerors participating. He recommended that negotiations be commenced with Wells Fargo Bank N.A. as the top evaluated firm and that the optional service for the purchasing card program not be awarded since the current contract is functioning efficiently.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to authorize staff to commence negotiations for a contract for banking and merchant services with Wells Fargo Bank N.A., as recommended by the Purchasing Officer, and upon voice vote the motion carried unanimously.

There being no further business to come before the Council, the meeting was adjourned at 8:58 p.m.

The City Clerk certified that notice of the foregoing meeting was given by posting pursuant to Resolution No. 96-844, et seq.

Approved this 26th day of March, 2013.

Entered in the permanent record book this 27th day of March, 2013.

Tommy Roberts, Mayor

SEAL

ATTEST:

Dianne Fuhrman, City Clerk