

Regular Meeting of the City Council, City of Farmington, New Mexico, held in the Council Chamber at City Hall at 7:00 p.m. on Tuesday, April 9, 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
CITY ATTORNEY	Jay B. Burnham
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 Associate Pastor Mario Parga of First Baptist Church.

City Manager Rob Mayes 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 March 26, 2013 and the minutes of the Regular Work Session of the City Council held March 19, 2013.

*ADOPTION OF RESOLUTION NO. 2013-1463 granting a waiver to Affordable Furniture to allow the dispensing of alcoholic beverages at 224 W. Main Street within 300 feet of two churches during cultural and artistic performances in the downtown area, provided that the event does not take place on a Sunday or between the hours of 6:00 p.m. and 8:00 p.m. on Wednesday.

*ADOPTION OF RESOLUTION NO. 2013-1464 amending the Governing Body Rules of Procedure adopted by Resolution No. 2006-1210.

*WARRANTS PAYABLE for the time period of March 24, 2013 through April 6, 2013, for current and prior years, in the amount of \$6,257,090.98.

Councilor Fischer requested that Resolution No. 2013-1464 concerning the Governing Body Rules of Procedure be removed from the Consent Agenda.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to approve the Consent Agenda, with the exception of Resolution No. 2013-1464, and upon voice vote the motion carried unanimously.

ANIMAL CONTROL OFFICER WEEK PROCLAMATION

The Mayor presented staff from the Farmington Animal Shelter with a Proclamation declaring April 7 through 13, 2013 as "Animal Control Officer Appreciation Week."

NATIONAL SERVICE RECOGNITION DAY PROCLAMATION

The Mayor presented staff from San Juan County Partnership and the local AmeriCorps members with a Proclamation declaring April 9, 2013 as "National Service Recognition Day."

CHILD ABUSE PREVENTION MONTH PROCLAMATION

The Mayor presented Foster & Adoptive Recruiter Patricia Hale and County Office Manager Nichole Garcia of the Children, Youth and Families Department with a Proclamation declaring April, 2013 as "Child Abuse Prevention Month."

PUBLIC HEARING TO RECEIVE COMMENTS ON THE COMMUNITY DEVELOPMENT BLOCK GRANT CITIZEN PARTICIPATION PLAN FOR THE 2014-2018 CONSOLIDATED PLAN AND CONSIDERATION OF THE PROPOSED WORK PLAN

The Mayor convened the public hearing for the purpose of receiving comments on the Community Development Block Grant ("CDBG") Citizen Participation Plan for the 2014-2018 Consolidated Plan.

Utilizing a Powerpoint presentation, CDBG Administrator Jay Peterman reported that the primary goal of the Citizen Participation Plan is to encourage citizen participation in the planning, development and implementation of the Consolidated and Annual Action Plans. He explained that Housing and Urban Development (HUD) specifies five basic standards to guide citizen participation, including involvement of affected persons and other concerned citizens; openness and freedom of access; adequate and timely information; submission of views and proposals; and continuity of participation throughout all stages of the program. Furthermore, he reported that staff proposes to improve the process for citizen participation by extending the public review and comment period for draft documents from 15 to a minimum of 30 days; publish all public notices in both English and Spanish; post all public notices at Sycamore Park Community Center, the Farmington Indian Center and the San Juan Center for Independence; and to post all final documents on the City's webpage. Mr. Peterman also reviewed the process for developing the Consolidated Plan and explained the difference between a minor and substantial amendment. In closing, he directed the Council's attention to page 4.0 of the agenda materials and asked the Council to review the proposed Work Plan for the 2014-2018 Consolidated Plan and announced that he is willing to attend any meetings that are hosted by Councilors in their districts for the purpose of discussing the proposed plans.

There was no response to the Mayor's call for public comment.

Noting that credit counseling was identified as a major impediment to fair housing, Councilor Sandel pointed out that the proposed Citizen Participation Plan does not include participation by credit counselors or financial institutions. In response, Mr. Peterman explained that A Path Home has been included as one of the groups to be consulted in determining the needs of the community and noted that they are responsible for conducting the credit counseling classes at this time. However, he indicated that he is willing to also send the survey to local financial advisors and institutions to gain their feedback. In response to further inquiry from Councilor Sandel, Mr. Peterman pointed out that the Metropolitan Redevelopment Agency has also been identified as an organization for consultation in determining local needs. Councilor Sandel questioned whether a more scientific and randomized survey should be conducted by staff instead of relying on the survey that is done every four years by San Juan County Partnership since their findings are not limited to the needs of Farmington. Mr. Peterman pointed out that such a survey would require the hiring of a consultant and noted that there is no funding currently budgeted for such a project. Councilor Sandel also suggested that staff include the concerns of the Navajo Nation when developing the needs of the community.

In response to comments from Councilor Darnell, Mr. Peterman assured the Council that the Citizen Participation Plan is a fluid document that can be amended at any time. He also stated that he has tried to be broad and inclusive in determining the organizations who will be asked to complete the community survey and provide public input.

In response to comments from Councilor Sandel, Mayor Roberts stated that he believes that it makes sense to include the needs of all minority groups, not just the Navajo Nation, and suggested that Mr. Peterman

contact Pastor Neil Johnson of Ideal Baptist Church since he has contact with a number of minority organizations and groups.

There being no additional comments, the public hearing was closed.

RESOLUTION NO. 2013-1465 ADOPTING THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CITIZEN PARTICIPATION PLAN FOR THE 2014-2018 CONSOLIDATED PLAN

Jay Peterman, CDBG Administrator, requested adoption of Resolution No. 2013-1465 adopting the 2014-2018 CDBG Citizen Participation Plan for the 2014-2018 Consolidated Plan.

As a result of the discussion concerning proposed amendments to the Citizen Participation Plan, a motion was made by Councilor Sandel, seconded by Councilor Darnell to table Resolution No. 2013-1465 to the April 23, 2013 regular City Council meeting. The roll was called with the following result:

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

Those voting nay: Dan Darnell

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

RECOMMENDATIONS FROM THE PLANNING AND ZONING COMMISSION:

CONSENT AGENDA: Community Development Director Mary Holton requested that the Planning and Zoning Commission recommendations marked with an asterisk () be placed on the Planning and Zoning Commission Consent Agenda and voted on by one motion. She asked that if the items proposed did not meet with approval of all Councilors or if a citizen so requested, the item would be removed from the Consent Agenda and heard in regular order.

- *(1) Adoption of the recommendation from the Planning and Zoning Commission, as contained within the Community Development Department Petition Report, to approve Petition No. SUP 13-02 from Michelle Kimsey requesting a Special Use Permit to allow a day care center for up to 12 children to be located in a converted garage at 3609 Crescent Avenue in the S-10, Single-Family Residential, District.
- *(2) Adoption of the recommendation from the Planning and Zoning Commission, as contained within the Community Development Department Petition Report, to approve Petition No. SUP 13-03 from Daniel Westbury requesting a Special Use Permit to allow an accessory apartment at 509 E. Hopi Street in the SF-7, Single-Family Residential, District, subject to the standards of Section 2.5.4 of the Unified Development Code.
- *(3) Adoption of the recommendation from the Planning and Zoning Commission, as contained within the Community Development Department Petition Report, to approve Petition No. ZC 13-01 from Capital S, LLC, represented by Craig Stoabs, requesting a zone change from the OP, Office and Professional, District to the LNC, Local Neighborhood Commercial, District for 3.74 acres located southeast of the intersection of Piñon Hills Boulevard and Messina Drive, subject to access being maintained to the retention pond for Wilshire Estates Subdivision Number 11, Replat A, as identified in Petition No. ZC 08-15.

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

COUNCIL BUSINESS

Campaign Finance Reporting

Noting that Senate Bill 90 was pocket vetoed by Governor Susana Martinez, Mayor Roberts asked the Council if there is consensus to direct the city attorney to draft an ordinance concerning campaign contribution reporting. Following brief consideration, it was the consensus of the Council to direct the City Attorney to proceed with drafting an ordinance.

New Mexico Foundation for Open Government

Councilor Fischer recognized New Mexico Foundation for Open Government Executive Director Gywenh Doland, who was present in the audience. Councilor Fischer stated that she has some concerns on the manner in which City business is being conducted with regard to consensus polls and one-on-one meetings between the Council and city manager concerning the budget and stated that she hopes Ms. Doland can give some advice on these matters.

Median Program

Councilor McCulloch commended the Parks, Recreation and Cultural Affairs Department for the manner in which the medians are being cared for and asked whether staff plans to mail letters to the median sponsors asking for financial contributions. In response, City Manager Rob Mayes assured her that the letters are forthcoming.

Governmental Conduct Act

In response to inquiry from Councilor Sandel, City Attorney Jay Burnham assured him that the draft form for the New Mexico Governmental Conduct Act Official/Officer Financial Interest and Employment Disclosures that he completed and filed with the City Clerk is sufficient since it is more comprehensive than the final form that was later approved. City Clerk Dianne Fuhrman reported that she has received completed disclosure forms from Councilor Sandel and Mayor Roberts.

Powers of the Mayor

In response to inquiry from Councilor Sandel, City Attorney Jay Burnham confirmed that he has issued a follow-up to his opinion memorandum that was distributed on March 15, 2013 concerning the powers of the Mayor. He explained that the purpose of the follow-up memorandum was to replace the statement "...it is common for a "speaker of the house" or a "president of the senate" to make administrative decisions such as making office assignments, assigning telephone extensions or assigning staff, etc." with the sentence, "For instance, if a legislative body had not adopted a procedural rule stating otherwise, it would fall on the presiding officer to make administrative decisions such as making office assignments, assigning telephone extensions, or assigning staff support, etc." He stated that he would characterize this statement to explain that the Mayor's power as the presiding officer is limited to the rules that are adopted by the governing body but, in absence of a rule, he believes that the Mayor has the authority to make decisions.

Councilor Sandel pointed out that the Lt. Governor acts as the Executive Department for the New Mexico State Senate but has no authority or control over the operations of the Legislative Department and asked Mr. Burnham if he has considered this. In response, Mr. Burnham stated that he did, but explained that the roles of the New Mexico Legislature and United States Senate are well developed and that the Governing Body Rules of Procedure for the City of Farmington are fairly new and are not comprehensive so there may be situations that arise that are outside of their scope. Councilor Sandel explained that he is most interested in the separation of powers between the legislative and executive branches, not necessarily the rules of procedure. Mr. Burnham stated that it is his opinion that the two statutes, the one that says that the Mayor is the Chief Executive Officer and the one that says that he is the presiding officer of the governing body, gives him a leadership role in the legislative branch.

Councilor Sandel questioned the limits of the Mayor's authority by asking a rhetorical question on whether he could establish a policy that requires uniforms to be worn during Council meetings. In response, Mr.

Burnham stated that the Mayor could, in fact, establish a dress code in the absence of a rule adopted by the governing body. In closing, Councilor Sandel stated that he is still concerned about the separation of powers issue and announced that he will continue to ask questions until he has a clear understanding of the subject.

All-Mailed Ballot Elections

In response to inquiry from Councilor Sandel concerning information that was provided in a memorandum concerning all-mailed ballot elections, City Clerk Dianne Fuhrman clarified that the Albuquerque City Clerk indicated that their 1999 question to increase the gross receipts tax ¼ percent failed; confirmed that mailed ballot elections have the potential for increasing voter turnout; noted that mailed ballot elections are less costly than city-wide elections; and stated that an all-mailed ballot election could be used for any bond election or any election on the imposition of a mill levy or property tax rate, but cannot be used if candidates are to be elected to office. In response to further inquiry, Ms. Fuhrman and City Attorney Jay Burnham stated that it is their opinion that the state election code governs the use of all mailed-ballot elections and that local legislation is not necessary.

DISCUSSION OF AND ACTION ON ITEM REMOVED FROM THE CONSENT AGENDA:

- (1) Adoption of Resolution No. 2013-1464 amending the Governing Body Rules of Procedure adopted by Resolution No. 2006-1210.

Councilor Fischer explained that the reason that she has requested that the subject resolution be removed from the Consent Agenda is because it is her opinion that consensus violates the Open Meetings Act since it allows the Council to take action on items that are not listed on the agenda. She argued that elected officials, as a matter of policy, should be allowed to ask staff to complete a task without the Council's approval through a consensus poll. Recognizing Foundation for Open Government Executive Director Gywenh Doland, who was present in the audience, Councilor Fischer questioned whether she might be willing to express her opinion on the matter.

Mayor Roberts pointed out that consensus was a process that was established in 2006 when the Governing Body Rules of Procedure were adopted, noting that it is his understanding that there was a feeling at that time that there needed to be a process for dealing with individual requests from the Council in an effort to prevent work overload. Providing further explanation, City Manager Rob Mayes explained that the established process had more to do with preventing the unnecessary expenditure of resources to complete the task if the other members of the Council did not agree with the request.

Providing background information, City Attorney Jay Burnham explained that it is his opinion that it could be perceived that consensus polls are a violation of the Open Meetings Act if the proposed resolution is not adopted making it clear that Council consensus will not be used to take Council action. He pointed out that the proposed resolution states that consensus will only be used to either 1) direct that staff take action that is within the authority of staff without council action; 2) direct staff to move forward with something already authorized by previous council action; or 3) direct that an item requiring council action be prepared and placed on a future council meeting agenda for council action at that time. Mr. Burnham also pointed out that he has been directed by the Council, through the consensus process, to request an advisory opinion from the Attorney General on the consensus process and the Governing Body Rules of Procedure as a whole. However, he noted that it is not customary for the Attorney General to give advisory opinions to local governments and he may decline to do so.

Councilor Sandel reminded the Council that he advocated for the adoption of rules of procedure when he was first elected to the Council in 2006 and, at the same time, was urging the Council to consider changing its form of government to Home Rule. He explained that the Rules of Procedure that were ultimately adopted were those standard practices that had been in place for the Council prior to 2006. In other words, Councilor Sandel explained that a Councilor had to ask permission from the other Councilors to direct staff to draft documents for future consideration by the Council since it was the opinion of the City Attorney that the work load for the Legal Department could become unwieldy if he is asked to draft a number of ordinances or resolutions if

there was not a majority support of the Council to proceed with consideration of the item. He stated that he argued this point by pointing out that it is difficult to know if there is support for an item if the idea is not drafted and presented to the Council for consideration. Furthermore, he stated that he believes that the proposed resolution is necessary in order to establish a definitive policy for dealing with consensus-related items since there have been times when staff has failed to follow-through with items directed by the Council. He also stated that he strongly believes that seeking an advisory opinion from the Attorney General is a wise decision because it will give the Council clear direction on whether consensus polls are consistent with the Open Meetings Act.

There being no further discussion, a motion was made by Councilor Sandel, seconded by Councilor McCulloch to pass and adopt Resolution No. 2013-1464, as presented. The roll was called with the following result:

Those voting aye:	Dan Darnell Gayla McCulloch Jason Sandel
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Those voting nay:	Mary M. Fischer
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The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried and Resolution No. 2013-1464 was duly passed and adopted.

There being no further business to come before the Council, the meeting was adjourned at 8:19 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 23rd day of April, 2013.

Entered in the permanent record book this 24th day of April, 2013.

Tommy Roberts, Mayor

SEAL

ATTEST:

Dianne Fuhrman, City Clerk