

Work Session of the City Council, City of Farmington, New Mexico, held Tuesday, April 5, 2011 at 9:00 a.m. in the Executive Conference Room at City Hall, 800 Municipal Drive, Farmington, New Mexico, in full conformity with the rules, regulations and ordinances of the municipality.

At such meeting the following were present, constituting a quorum:

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| MAYOR | Tommy Roberts |
| COUNCILORS | Dan Darnell Mary M. Fischer Gayla McCulloch Jason Sandel (arrived late) |

Constituting all the members of the Governing Body.

Also present were:

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| CITY MANAGER | Rob Mayes |
| ASSISTANT CITY MANAGER | Bob Campbell |
| CITY ATTORNEY | Jay B. Burnham |
| CITY CLERK | Dianne Fuhrman |
| DEPUTY CITY CLERK | Melody Coyner |

BID/PURCHASE OF PADMOUNT SWITCHGEAR

Purchasing Officer Eddie Smylie reported that bids for purchase of padmount switchgear opened on March 29, 2011 with four bidders participating. He recommended that the bid be awarded to Stuart C. Irby on its low bid after application of five percent in-state preference of \$80,722.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor Fischer to award the bid for purchase of padmount switchgear to Stuart C. Irby on its low bid of \$80,722, as recommended by the Purchasing Officer. The roll was called with the following result:

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| Those voting aye: | Dan Darnell Mary M. Fischer Gayla McCulloch |
| Those voting nay: | None |
| Those absent: | Jason Sandel |

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

GENERAL FUND CASH RESERVE POLICY

Providing opening remarks, Administrative Services Director Andy Mason stated that one of the key components of a financially stable organization is the adoption of a prudent cash reserve policy for the General Fund. He further contended that a clearly delineated policy contributes to improved government financial management and aids management and the governing body in decision making and fiscal actions. Furthermore, he noted that adequate cash reserve is an essential part of an emergency or disaster plan. Noting that State Statute requires government bodies to maintain a minimum cash reserve balance of 8.3 percent, or 1/12th of the annual budgeted expenditures, Mr. Mason stated that staff is recommending that the City maintain a cash reserve balance of 20.8 percent, or 2-1/2 months' worth of annual budgeted expenditures. He also stated that staff is recommending that if the General Fund cash reserves exceed 20.8 percent, that the excess resources be transferred to the 408 Fund for use on one-time, non-recurring General Fund capital projects. In addition, he stated that the policy will allow, under certain circumstances, the use of the cash reserve (minus the 8.3 percent State minimum requirement and any fund balance restrictions) for emergencies and unanticipated expenditures. City Manager Rob Mayes pointed out that a 20.8 percent cash reserve policy would equal \$10.25

million, based on the FY11 expenditure budget. He also noted that as of the last audited financial statements dated June 30, 2010, the General Fund has a cash balance of \$12.5 million which means that \$2.26 million could be transferred to the 408 Fund or other capital funds.

Councilor Sandel arrived at the meeting at 9:07 a.m.

In response to inquiry from Mayor Roberts, Mr. Mason confirmed that staff reviewed a number of cash reserve policies from other governmental entities before drafting the subject policy and noted that the Government Finance Officers Association recommends a cash reserve level of two months' annual budgeted expenditures.

Following discussion concerning the recommended cash reserve balance, Councilor Sandel expressed his preference for a 90-day cash reserve policy.

In response to inquiry from Councilor Fischer, Mr. Mason confirmed that all City funds are invested.

Following further discussion, it was the consensus of the Council to direct staff to draft a resolution adopting the Cash Reserve Policy, as presented. Mr. Mayes stated that the resolution will be presented for Council consideration at the April 12, 2011 regular City Council meeting.

BROADBAND HIGH-SPEED INTERNET

At the request of Mayor Roberts, representatives from Advantas Internet Solutions, PacketRail Optical Networking, Skyworks Industries and Digiinet Wireless Internet introduced themselves to the Council.

Mayor Roberts announced that Kansas City, Kansas was chosen as the recipient of the high-speed broadband network that was offered through Google's "Think Big with a Gig" program. He commended local civic and business leaders for their efforts in promoting Farmington as a viable competitor for the program.

Noting that staff has been evaluating the best solutions for utilizing the City's fiber optics, Assistant City Manager Bob Campbell reported that the Electric Utility system commissioned a telecommunications assessment of the City's fiber infrastructure in 2007. As a result of that study, he stated that staff conducted a number of meetings to determine whether there is an interest in sharing and utilizing the existing fiber optic infrastructure, noting that it is the goal of staff to make 100 megabits available to every household and business in Farmington. Mr. Campbell explained that the City currently owns more than 80 miles of fiber optics and stated that if 25% of the "dark" (or unused) fiber were leased, it could generate approximately \$150,000 annually, but stated that it would put the City in direct competition with a local internet provider. He noted that the business owner is aware of the issue, but has not voiced any opposition. Furthermore, Mr. Campbell explained that another option is for the City to provide limited internet services to certain businesses (e.g. governmental entities and/or non-profit corporations). He stated that this would require the City to spend \$750,000 but would generate \$1.2 million in annual revenue. In addition, he stated that the City could operate as a "triple play" retail provider (telephone, internet and cable services), but that would require an upfront investment of about \$10 million with annual revenues estimated at \$5 million based upon 25% of the market. In closing, Mr. Campbell reviewed the difficulty that La Fayette, Louisiana experienced in trying to become a triple play municipality, and stated that in 2008, there were only 500 municipalities out of 15,000 that provided triple play services.

Councilor Sandel voiced frustration for the amount of time that it has taken for staff to analyze this issue. Referring to the findings that were made by ION Consulting in 2007, he reiterated that 1) the population density prevents a major challenge to cost-effectively covering the desired service area; 2) the most dense area of the community already has Qwest services; 3) new service providers are emerging as competitors; and 4) it is not clear that the City is willing to make the long-term resource commitment to proceed with expanding the services. He contended that it appears that staff is asking the Council to proceed with a recommendation without fully explaining how the services will be provided to the community.

Discussion followed concerning the need to hire a consultant to evaluate and determine the best utilization methods for the City's "dark" fiber. Councilor Sandel contended that the Request for Proposals for professional consulting services should include options for extending the services beyond Farmington and stated that staff should identify the benefits of public versus private service providers.

Mayor Roberts asked for comments from the members of the audience.

Corey Brindle from PacketRail Optical Networking reported that they have 320 gigs of bandwidth in the Farmington area and explained that leasing the City's "dark" fiber would allow them to partner with local internet companies and expand the service capabilities. He asked the Council to support the proposed project.

Jared Davis, Skyworks Industries, also asked the Council to support the project, noting that his company will be able to backhaul the excess bandwidth and further expand the service area.

Jim Davis, owner of Advantas Internet, stated that the goal of the project is to transport the broadband connectivity to tower locations in an effort to improve the overall technology.

There being no further discussion, a motion was made by Councilor Sandel, seconded by Councilor Darnell to authorize staff to issue a Request for Proposals for professional services to evaluate and determine the best utilization methods for the City's "dark fiber", and upon voice vote the motion carried unanimously.

PROPOSED ORDINANCE DEALING WITH USE STANDARDS FOR PRIVATE,
NON-PROFIT ENTITY PRODUCERS OF MEDICAL CANNABIS

City Attorney Jay Burnham introduced a proposed ordinance amending the Unified Development Code dealing with use standards for private, non-profit entity producers of medical cannabis. He noted that the proposed ordinance amends the Unified Development Code ("UDC") to add Licensed Medical Cannabis Producer ("producer") as a permitted use in the IND, Industrial, and the PIP, Planned Industrial Park, Districts and imposes separation requirements from any school, church, daycare center, youth facilities, parks, recreation facilities and residential districts. He reminded the Council that State Statute imposes a separation requirement from schools, churches and daycare centers and that the Unified Development Code Implementation Committee ("UDCIC"), the Planning and Zoning Commission ("P&Z Commission") and Community Development Department recommended that the separation requirement be expanded to include youth facilities, parks, recreation facilities and residential districts. He requested permission to proceed with publication of a Notice of Intent to Consider said ordinance.

Utilizing a powerpoint presentation, Associate Planner Margaret Ambrosino presented maps that showed the zoning requirements based upon State Statutes and the recommendations from the UDCIC and P&Z Commission.

Following brief discussion, Councilor Darnell stated that he supports the separation requirements imposed by State Statute.

Responding to Councilor Sandel, Community Development Director Mary Holton reminded the Council that staff had recommended that producers be permitted in the IND and PIP districts because the lot sizes are larger and barbed-wire fencing is allowed.

Noting that a major component of the State law is the anonymity of producers, Councilor Sandel expressed concern that the more the City restricts the permitted use, the closer it comes to compromising the anonymity of the business.

Responding to Councilor Fischer, Assistant City Attorney Brigitte Thomas stated that the New Mexico Public Health Office provides medical cannabis patients a phone number and that when called the patient's identity is verified, their prescription is processed and then delivered. However, she stated that it is her understanding that the law does not prohibit patients from going to the cannabis growing site. In addition, she stated that the law contains requirements for shielding visibility of growing operations.

Following brief discussion, Councilor Fischer stated that she does not support the City imposing restrictions beyond those already enforced by the State.

Mr. Burnham stated that it is staff's legal opinion that since there is no specific preemption in the State Statute, that the legislature knew that cities would implement zoning for medical cannabis growing operations. However, he stated that he believes that it was the legislature's intent to specifically preempt other restrictions, such as the recommendation from the UDCIC and P&Z to expand the separation requirements to youth facilities, parks, recreation facilities and residential districts.

Following further discussion, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to amend Section 2(B) to remove "youth facilities, parks, recreation facilities, or residential districts" and to direct the City Attorney to publish notice of intent to consider adoption of a proposed ordinance in accordance with State Statutes.

In response to inquiry from Mayor Roberts, Ms. Thomas explained that, contrary to the statement that she made at the March 8, 2011 regular City Council meeting, she now believes that the City cannot restrict the number of medical cannabis producers allowed to operate within the city limits.

The Mayor called for the vote upon the motion to amend Section 2(B) to remove "youth facilities, parks, recreation facilities, or residential districts" and to direct the City Attorney to publish notice of intent to consider adoption of a proposed ordinance in accordance with State Statutes. The roll was called with the following result:

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| Those voting aye: | Dan Darnell Mary M. Fischer Gayla McCulloch Jason Sandel |
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| Those voting nay: | None |
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The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried.

RESOLUTION ESTABLISHING A POLICY REGARDING COUNCIL APPROVAL OF CONTRACTS AND LEASES

City Manager Rob Mayes reminded the Council that the subject resolution was tabled at the March 1, 2011 and March 15, 2011 Work Sessions. He stated that during the process of attempting to establish a policy regarding Council approval of contracts and leases, it has become clear that the Council agrees with the system currently being used by staff to determine which contracts or leases require Council approval. Purchasing Officer Eddie Smylie pointed out that, historically, Council authorization was required to commence contract negotiations which engaged the Council in the request for proposal process prior to the contract being awarded. He stated that this process ended a few years ago at the direction of the previous City Manager, but recommended that the policy be re-instated. There were no objections from the Council.

Following brief discussion, a motion was made by Councilor Sandel, seconded by Councilor Darnell to table indefinitely the subject resolution, and upon voice vote the motion carried unanimously.

COUNCIL BUSINESS

Angel Valley Funeral Home

Expressing concern that there is insufficient parking at the Angel Valley Funeral Home at 2111 West Apache Street, Councilor Fischer requested that staff monitor the first few funerals to determine if there are parking issues. There were no objections from the Council.

Big Brothers Big Sisters Bowl For Kids' Sake

Councilor Darnell announced that Big Brothers Big Sisters of San Juan County will be sponsoring their annual Bowl For Kids' Sake fundraiser June 11, 2011 and encouraged the Council and staff members to participate in the event.

Request from Constituent

Stating that a constituent has requested an opportunity to address the Council concerning drainage and flooding issues on his property, Councilor Sandel asked that the constituent be allowed to speak under his business at the April 12, 2011 regular City Council meeting. There were no objections from the Council.

Navajo Agricultural Products Industry

Mayor Roberts stated that during a recent meeting with management of Navajo Agricultural Products Industry ("NAPI"), NAPI Manager Tsosie Lewis presented him with a Resolution of the Navajo Agricultural Products Industry Board of Directors requesting the City's support for proper Federal funding for completion of the Navajo Indian Irrigation Project ("NIIP"). He noted that NAPI is a wholly owned enterprise of the Navajo Nation charged with operating and managing a commercial farm on lands held in trust for the Navajo Nation by the United States under legislation establishing NIPP. He stated that NIIP was authorized by Congress in 1962 to provide a water delivery system from the Navajo Dam reservoir to 110,630 acres of irrigable land for the benefit of the Navajo Nation and, by necessary implication, the Four Corners economy; but that NIIP is 35 years behind schedule and that 30,000 of the original 110,630 acres of irrigable land remain uncultivated. He noted that the proposed fiscal year 2012 Federal budget reduced NIIP funding from an already inadequate \$12 million to \$4 million. He requested consensus from the Council to direct staff to draft a resolution formally adding the City's support to that of the New Mexico Legislature urging the United States Congress and the President of the United States to appropriate \$26 million in the fiscal year 2012 budget for the construction of block 9 of NIIP and subsequent annual appropriations for the prompt completion of blocks 9, 10 and 11 of NIPP.

In response to inquiry from Councilor Darnell, Mayor Roberts stated that he is unaware of any economic impact analysis with regard to completion of NIIP, but that NAPI's resolution indicates that their operations contribute from \$35 to \$300 million per year to the regional economy and provide valuable diversity in economic activities in the region. Furthermore, he contended that what goes on at NAPI has the potential to greatly contribute to long-term economic development in San Juan County.

Councilor Fischer expressed concern for the financial stability of NAPI.

Following brief discussion, Councilor Fischer expressed a desire to know what impact the completion of NIIP will have on water in the region, factoring in the 600,000 acre feet of water in the Navajo water rights settlement.

Following further discussion, it was the consensus of the Council to direct staff to draft a resolution formally adding the City's support to that of the New Mexico Legislature urging the United States Congress and the President of the United States to appropriate \$26 million in the fiscal year 2012 budget for the construction of block 9 of NIIP and subsequent annual appropriations for the prompt completion of blocks 9, 10 and 11 of NIPP.

Animal Services Advisory Board

Mayor Roberts announced that he has been approached by local animal rights advocates requesting that the Council consider establishing an Animal Services Advisory Board. Following brief discussion, it was the consensus of the Council to direct staff to draft an ordinance reestablishing an Animal Services Advisory Board.

Recognition of Vince Woods and Darren Curley

Mayor Roberts publicly recognized the efforts of Streets' employees Vince Woods and Darren Curley in recovering a check that was blown from a citizen's car while she was getting gas at a local service station.

CLOSED MEETING

Motion made by Councilor Darnell, seconded by Councilor McCulloch to close the meeting to discuss acquisition/disposition of real property (intergovernmental exchange for mutual benefit); disposition of real property managed by the Parks, Recreation and Cultural Affairs Department not currently being used for City purposes; and a limited personnel matter (City Manager evaluation). The roll was called with the following result:

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| Those voting aye: | Dan Darnell Mary M. Fischer Gayla McCulloch Jason Sandel |
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| Those voting nay: | None |
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The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried.

The Mayor convened the closed meeting at 10:58 a.m. with all members of the Council being present.

Councilor Sandel left the meeting at 12:20 p.m.

Following the closed meeting, during which meeting the matters discussed were limited only to those 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 12:44 p.m. with Councilors Darnell, Fischer and McCulloch being present.

There being no further business to come before the Council, the meeting was adjourned at 12:45 p.m.

APPROVED this 26th day of April, 2011.

Tommy Roberts, Mayor

SEAL

ATTEST:

Dianne Fuhrman, City Clerk