

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 12, 2011. 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	Mary M. Fischer Gayla McCulloch Jason Sandel
PRESENT ONLY FOR A PORTION OF THE MEETING BY TELEPHONE PURSUANT TO RESOLUTION NO. 94-772	Dan Darnell, Councilor

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
DEPUTY CITY CLERK	Melody Coyner

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

INVOCATION: The invocation was offered by Pastor Les Cumiford of World Harvest Center.

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 22, 2011 and the minutes of the Regular Work Session of the City Council held March 15, 2011.

*AGREEMENT BETWEEN THE CITY AND SAN JUAN COUNTY PARTNERSHIP, INC. for operation of an emergency rental assistance program through September 30, 2011 (with three consecutive automatic renewals, subject to the appropriation of funds by the Department of Housing and Urban Development and approval from the City Council) (cost to the City not to exceed \$19,000).

*RECOMMENDATION FROM THE LIQUOR HEARING OFFICER for approval of Application #650581 for transfer of ownership and location of Liquor License #0689 from Z & E, Inc., doing business as Gator's, 1835 E. Main Street, Farmington, New Mexico to Glenn Perkal, doing business as Giant #7220, 609 East 20th Street, Farmington, New Mexico. (Hearing held March 23, 2011)

*WARRANTS PAYABLE for the time period of March 20, 2011 through April 9, 2011, for current and prior years, in the amount of \$5,283,120.91.

Councilor Sandel requested that the Agreement between the City and San Juan County Partnership, Inc. for operation of an emergency rental assistance program be removed from the Consent Agenda.

Thereupon, a motion was made by Councilor Fischer, seconded by Councilor McCulloch to approve the Consent Agenda, with the exception of

the Agreement concerning the emergency rental assistance program, and upon voice vote the motion carried unanimously.

TOOTSIE ROLL DAY PROCLAMATION

The Mayor presented Steve Lopez and Frank Lopez, representing the Knights of Columbus, with a Proclamation declaring April 30, 2011 as "Tootsie Roll Day."

RECOMMENDATIONS FROM THE PLANNING AND ZONING COMMISSION:

CONSENT AGENDA: Community Development Director Mary Holton requested that the Planning and Zoning Commission recommendation 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 item 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, and approval of Petition No. SUP 11-01 from Daniel Westbury requesting a Special Use Permit to allow an apartment as an accessory use at 509 East Hopi Street in the SF-7, Single-family Residential, District.

Councilor Fischer stated that she does not favor accessory apartments being allowed in single-family residential districts. However, she pointed out that the subject apartment is for a family member and stated that she will support the petition with an added condition that the apartment only be occupied by a member of the family who resides in the primary dwelling. In response, the petitioner stated that he has no objection to the proposed condition.

Following brief discussion, Community Development Director Mary Holton stated that, in the future, petitioners requesting a Special Use Permit to allow an apartment as an accessory use will be notified of Councilor Fischer's preference that they be occupied by a family member of the family who resides in the primary dwelling.

Thereupon, a motion was made by Councilor Fischer, seconded by Councilor McCulloch to approve the recommendation from the Planning and Zoning Commission, as contained within the Community Development Department Petition Report, and grant a Special Use Permit to allow an apartment as an accessory use at 509 East Hopi Street in the SF-7 District, subject to the apartment only being occupied by a member of the family that resides in the primary dwelling, and upon voice vote the motion carried unanimously.

The Mayor announced that Councilor Darnell is absent from this meeting and directed that he be contacted by speaker telephone for participation in the meeting, pursuant to paragraph C, Section 10-15-1, NMSA 1978, and City of Farmington Resolution No. 94-772.

Senior Planner Cindy Lopez presented the following recommendation from the Planning and Zoning Commission:

- (2) Adoption of the recommendation from the Planning and Zoning Commission, as contained within the Community Development Department Petition Report, and approval of Petition No. ZC 11-04 from the City of Farmington requesting a zone change from the MF-M, Multi-Family Medium-Density Residential, District to the SF-10, Single-Family Residential, District for 5.61 acres of land located south of Messina Drive and west of Camaron Avenue, pursuant to a condition of approval from a previous zone change that was approved by the Council on March 12, 1996 (Petition No. ZC 1430).

The Mayor reminded the Council that the owners of 20 percent or more of the property within 100 feet of the area under consideration have filed written protest. As a result, an affirmative vote of at least three Councilors is required to approve the subject petition.

City Attorney Jay Burnham advised the Council that, at approximately 11:00 a.m. today, he received a letter from the attorney

representing Socuno, Ltd., the corporation opposing the subject petition. He stated that the letter sets forth legal arguments why the City should not approve the petition, one being that the property under consideration cannot be downzoned unless the original zone designation was established in error. Noting that he needs additional time to research and respond, Mr. Burnham suggested that the Council table the subject petition.

Mayor Roberts recommended that the Council hear the comments from the members of the audience before it considers a motion to table.

Providing background information, Ms. Lopez announced that on March 12, 1996, the Council approved a zone change for the subject property from R-1A, Single Family Residential, District (equivalent to the current SF-10, Single Family, District) to R-3, Multiple Family Residential, District (equivalent to the current MF-M, Multi-Family, Medium Density, District) subject to the construction of an apartment complex within five years from the date of Council approval or the zone designation would revert to R-1A. Noting that the development of the apartment complex did not commence within the five years, Ms. Lopez explained that the City failed to submit a petition to rezone the property. Furthermore, she stated that between May 1, 2003 and March 3, 2004 a change was made to the City's zoning map that changed the zone from multi-family to single-family. Based on staff's opinion that a zoning reversion from multi-family to single-family could not automatically occur, the City initiated the subject petition.

In response to inquiry from Councilor Fischer, Ms. Lopez stated that since she came to work for the City in 2006, Mr. Stoabs has not requested additional time to commence development of the apartment complex, but stated that she would be unaware of any such request prior to that time.

Brief discussion followed concerning the zoning map error and the process currently followed to change the zoning map.

Chuck Banks, 3300 Majesta Place, pointed out that the Silver Ridge Development signs posted at the intersections of Camaron Avenue and Messina Drive and College Boulevard and Messina Drive say "Custom Homes" with no reference to apartments. He suggested that Craig Stoabs (Socuno General Partner) develop the proposed apartments on the three parcels of land he owns at College Boulevard and Victoria Way, south and southeast of St. Jude's Holy Catholic Church.

Bryce Hunter, 4912 Camaron Avenue, provided the Deputy City Clerk with a petition signed by neighbors in opposition to the multi-family zone designation for the 5.61 acres of land located south of Messina Drive and west of Camaron Avenue and asked that it be included in the record of tonight's meeting. He commended the City for initiating the subject petition to rezone the subject property to single-family residential. He also stated that neither he nor other residents in the area were made aware of the proposed apartment complex and contended that, if developed, it would be contrary to the City's Comprehensive Plan and in violation of Section 3-21-5 NMSA 1978 dealing with zoning/conformance to comprehensive plan. He urged the Council to approve the subject petition.

Samuel Petersen, 4812 Kingsway Drive, contended that the City erred in not petitioning to rezone the property to single-family when development of the apartment complex did not commence within five years from the date of Council approval in 1996 and stated that the residents expect the Council to rectify that error. He expressed frustration that the developer sold lots to residents who were under the impression that the area was zoned as single-family residential. He urged the Council to approve the subject petition at tonight's meeting.

Elizabeth HATHENBRUCK, 4822 Camaron Avenue, echoed Mr. Petersen's frustration concerning lots being sold to residents who believed the area was zoned single-family. She pointed out that the Silver Ridge Development sign that is located on the subject property advertises the assets of the neighborhood including, but not limited to, protective covenants. She argued that such covenants prohibit multi-family dwellings.

Referring to the March 9, 2011 memorandum from former Planning and Zoning Commissioner and real estate appraiser Lonnie Moffett, as contained on page 5.48 of the agenda materials, Rod Montoya, 4902 Camaron

Avenue, expressed concern for the potential loss of home value for residents of the area. He also noted that there is only one access to the proposed development and contended that the apartments will most likely be rented to college students even though the developer is proposing a "high-end multi-family development" for retirees and young families. He stated that it is likely that the residents will file a lawsuit if the subject petition is denied.

Bill Hart, 4816 Camaron Avenue, commended Mr. Stoabs for the fine job he did in building his house, but stated that he opposes the proposed apartment complex. He expressed concern for the potential increase in traffic, the limited access for emergency vehicles and the increased demand on existing infrastructure. Mayor Roberts assured Mr. Hart that emergency service and utility providers have reviewed the plans for the proposed development.

William Poteet, 4919 Kingsway Drive, announced that he was never made aware that an apartment complex was planned for the area when he purchased his house in 2007.

Stephen Read, 4708 Camaron Avenue, stated that he would not have purchased his home if he had known about the proposed apartment complex.

Rosa Vigil, 5007 Rio Street, expressed concern for the potential increase in traffic.

John Penn, 3905 La Joya Drive, asked the Council to approve the subject petition, contending that the City will be in violation of the law if it does not approve the petition. He also stated that he has hired a lawyer and will sue the City if the zone change is not approved.

Nestor Vigil, 5007 Rio Street, asked the Council to approve the subject petition.

Craig Stoabs, General Partner of Socuno, 4800 College Boulevard, questioned the City's legal right to request a zone change for his property. He also contended that a multi-family zone designation will provide a good transition from the OP, Office Professional, District and the nearby SF-7, Single-Family Residential, District. Mr. Stoabs argued that he met the condition that required development to commence within five years of Council approval because he has completed the required street improvements and installed the water, sewer and other utility lines to the property in the sizes required for servicing an apartment complex. Noting that staff has recommended denial of the subject petition, he contended that it should be denied because the City has failed to justify the reasons for the requested zone change and because the multi-family zone designation is in accordance with the City's Comprehensive Plan. He requested that the petition be denied.

Mayor Roberts noted that the City initiated the subject petition in an effort to comply with the intent of the Council's decision in 1996 and to facilitate a resolution of the issue. He pointed out that if Petition No. ZC 11-04 is approved, Mr. Stoabs will have an opportunity to petition the Council for a zone change from single-family to multi-family for the subject property.

In response to inquiry from Councilor Fischer, Mr. Stoabs confirmed that he did not oppose the zone revocation condition that was approved in 1996.

Noting that she was a member of the Council in 1996 when the original zone change was approved, Councilor Fischer recalled that the intent of the condition that development of the apartment complex commence within five years of the date of Council approval was to have the apartment complex in place prior to construction of single-family homes on adjacent properties. She contended that apartments are no longer appropriate for the subject property and stated that she will not support multi-family residential zoning.

Mr. Stoabs briefly reviewed the site plan being proposed, as contained on page 5.13 of the agenda materials, and stated that he is willing to build a block wall on the side of the property adjoining Camaron Avenue instead of a wrought iron fence. Pointing out that there is only one access to the proposed complex, Councilor Fischer expressed concern for the limited access for emergency vehicles.

In response to inquiries from Councilor Fischer, Mr. Stoabs stated that he never planned to construct single-family homes on the subject property. He stated that he is willing to work with the City on this issue but is not willing to give up his legal right to develop the property.

Peter O'Sullivan, 4714 Camaron Avenue, encouraged Mr. Stoabs to adhere to the City's zoning code.

There being no further discussion, Mr. Burnham requested that the subject petition be tabled to the April 26, 2011 regular City Council meeting to allow additional time for staff to research the matter and respond to the legal issue raised by the developer's attorney. In response to Mayor Roberts, Mr. Burnham stated that if the claim is valid and the subject petition is approved tonight, the City could be subject to monetary damages. However, he stated that if the claim is not valid, the petition could be approved with no consequences to the City.

Thereupon, a motion was made by Councilor Sandel, seconded by Councilor Darnell to table Petition No. ZC 11-04 to the April 26, 2011 regular City Council meeting, and upon voice vote the motion carried unanimously.

RECESS

Mayor Roberts called a recess at 9:08 p.m.

The meeting was reconvened by the Mayor at 9:17 p.m. with all members of the Council being present.

COUNCIL BUSINESS

Dr. Michael Tornow/Drainage and Flooding Issues

Reminding the Council of his request at the April 5, 2011 Work Session that a constituent be allowed to speak under his business at tonight's meeting, Councilor Sandel introduced Dr. Michael Tornow.

Dr. Tornow, 5421 Colibri Place, stated that he is here tonight with Ken Coleman and Dr. Cody Coleman to address serious drainage issues in the Foothills and Country Club areas that they feel are a public safety matter. He noted that since the heavy rains and resulting floods of August 2010, they have attempted to work with City staff to address their concerns, including submission of a letter asking for a moratorium on building in the Foothills and Country Club areas, with no response until they contacted Councilor Sandel three weeks ago. He expressed concern that the City's current drainage system cannot handle another rain and flood event and asked that the Council direct staff to address the issue.

Brett Jenkins stated that he was contacted by Dr. Tornow for advice on how to handle the flooding and drainage issues following the August 2010 rain event. At that time, he recommended that Dr. Tornow meet with City staff to resolve the matter. He stated that there being no resolution after six months, a lawsuit was filed.

In response to Mayor Roberts, City Attorney Jay Burnham stated that there is a pending lawsuit involving San Juan Development Corporation and Gold Key Development to which the City is a party, but that it is his understanding that the City will be dismissed from the lawsuit.

Councilor Sandel asked for Council consensus to direct staff to review the events resulting from the August 2010 flood and to determine the adequacy of drainage throughout the Foothills area. There were no objections from the Council.

City Energy Plan

In the absence of a Federal or State energy plan, Councilor Sandel expressed a desire for the City to develop its own energy plan. Noting the aging natural-gas-powered generation facilities, the local dependence on coal and the need for additional electric generation, he requested Council consensus to begin the process of developing a statement, by way of resolution, setting forth what the City would like to see as an energy generation plan over the next 20 to 25 years. In response, Mayor Roberts suggested that Councilor Sandel provide the Council with a recommendation

of issues that need to be addressed prior to moving forward with a resolution. There were no objections from the Council.

2011 CLERK OF THE YEAR AWARD

City Manager Rob Mayes proudly announced that City Clerk Dianne Fuhrman is the recipient of the 2011 Clerk of the Year Award from the New Mexico Municipal Clerks and Finance Officers Association.

REAL ESTATE EXCHANGE AGREEMENT

City Manager Rob Mayes presented for consideration a Real Estate Exchange Agreement between the City and the Board of County Commissioners of San Juan County for exchange of property located at 744 West Animas Street (from the County to the City) and for property located at the southwest corner of Miller Avenue and Cedar Street (from the City to the County).

Assistant City Manager Bob Campbell reported that it would cost approximately \$125,000, which includes the addition of a sprinkler system and removal of asbestos, to make the building usable by Masada House. Responding to Mayor Roberts, he noted that he believed whoever occupies the building should bear the cost of improvements.

In response to inquiry from Councilor Fischer, Mr. Campbell stated that there is not a firm commitment from Masada House to lease the building. She stated that she was concerned with the condition of the building and the ability of Masada House to pay for the necessary renovations, but that Mr. Mayes has confirmed that there is another party interested in leasing the property, making the exchange agreement more attractive to her.

Noting that the terms of the exchange agreement are beneficial in terms of numbers, that there is a likelihood that there will be a use for the building without the City paying for remediation and that it will bring activity into the Metropolitan Redevelopment Area, Mayor Roberts expressed his strong support for the exchange agreement.

Following brief discussion, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to approve a Real Estate Exchange Agreement between the City and the Board of County Commissioners of San Juan County for exchange of property located at 744 West Animas Street (from the County to the City) and for property located at the southwest corner of Miller Avenue and Cedar Street (from the City to the County), as presented.

Councilor Fischer stated that she contacted Linda Thompson, San Juan County Assistant Chief Executive Officer for Project Development and Finance, regarding the proposed property exchange and publicly thanked her for addressing her concerns. In addition, she recognized the work done by City and County staff in developing the exchange agreement.

The Mayor called for the vote upon the motion to approve a Real Estate Exchange Agreement between the City and the Board of County Commissioners of San Juan County for exchange of property located at 744 West Animas Street (from the County to the City) and for property located at the southwest corner of Miller Avenue and Cedar Street (from the City to the County), as presented. The roll was called with the following result:

Those voting aye:	Dan Darnell Mary M. Fischer Gayla McCulloch
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Those voting nay:	Jason Sandel
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The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried.

City Manager Rob Mayes presented and read by title Resolution No. 2011-1385 adopting a Cash Reserve Policy for the General Fund. The title of the resolution being:

A RESOLUTION ADOPTING A CASH RESERVE POLICY FOR THE GENERAL FUND.

Councilor Fischer expressed a desire for a three-month cash reserve level as opposed to the 2-1/2 month reserve proposed by staff.

In response to inquiry from Mayor Roberts, Administrative Services Director Andy Mason stated that based on the FY11 expenditure budget, a three-month cash reserve level would increase the reserve amount by approximately \$2 million to \$12.32 million and that based on the General Fund cash balance of \$12.5 million as of the last audited financial statements dated June 30, 2010, approximately \$100,000 could be transferred to the 408 Fund or other capital funds.

Following brief discussion, Councilor Sandel suggested changing the cash reserve level to 25 percent, or 90 days of the annual budgeted expenditures. Mayor Roberts stated that he prefers a cash reserve level of 2-1/2 months to allow money for capital expenditures.

Following consideration, a motion was made by Councilor Sandel, seconded by Councilor Fischer to adopt Resolution No. 2011-1385 Establishing a Cash Reserve Policy for the General Fund (Financial Regulation No. FY-11-1) with the Policy being amended to require an operating cash reserve of 25 percent, or 90 days, of the annual budgeted expenditures. The roll was called with the following result:

Those voting aye:	Mary M. Fischer Gayla McCulloch Jason Sandel
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Those voting nay:	Dan Darnell
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The presiding officer thereupon declared that three Councilors having voted in favor thereof, the said motion carried and Resolution No. 2011-1385 was duly passed and adopted.

City Attorney Jay Burnham presented for discussion a proposed ordinance amending the Unified Development Code to define and provide use standards for private non-profit entity producers of medical cannabis. The title of such proposed ordinance being:

AN ORDINANCE AMENDING CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT CODE DEFINING AND PROVIDING USE STANDARDS FOR PRIVATE NON-PROFIT ENTITY PRODUCERS OF MEDICAL CANNABIS.

He pointed out that Section 2(B) has been amended to remove the 300-foot separation requirement from "youth facilities, parks, recreation facilities, or residential districts" as directed at the April 5, 2011 Work Session.

There being no response to the Mayor's call for discussion, Mr. Burnham announced that the proposed ordinance will be presented for final action at the April 26, 2011 regular City Council meeting.

Councilor Fischer expressed concern that the proposed ordinance is too restrictive.

Mr. Burnham also presented a proposed ordinance dealing with fencing and landscaping of well sites and stated that notice of intent to consider said ordinance has been published two weeks prior to final action upon the ordinance as required by Section 3-17-3 NMSA 1978. He recommended the ordinance, if adopted, be given the number 2011-1241. The title of the ordinance being:

AN ORDINANCE AMENDING SECTION 19-3-10 OF THE FARMINGTON CITY CODE DEALING WITH FENCING AND LANDSCAPING OF WELL SITES.

After a call for discussion and consideration of Ordinance No. 2011-1241, a motion was made by Councilor Sandel, seconded by Councilor McCulloch that said ordinance be passed and adopted as presented. The roll was called with the following result:

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 was carried and Ordinance No. 2011-1241 was duly passed and adopted.

ACTION AND DISCUSSION UPON ITEM REMOVED FROM THE CONSENT AGENDA:

- (1) Agreement between the City and San Juan County Partnership, Inc. for operation of an emergency rental assistance program through September 30, 2011 (with three consecutive automatic renewals, subject to the appropriation of funds by the Department of Housing and Urban Development and the approval of the City Council) (cost to the City not to exceed \$19,000).

In response to inquiry from Councilor Sandel, Community Development Director Mary Holton stated that the \$19,000 cost to the City is in the current Community Development Block Grant ("CDBG") budget and is subject to Council review on an annual basis.

There being no further discussion, a motion was made by Councilor Sandel, seconded by Councilor Fischer to approve an Agreement between the City and San Juan County Partnership, Inc. for operation of an emergency rental assistance program through September 30, 2011, and upon voice vote the motion carried unanimously.

The telephone call with Councilor Darnell was terminated at 9:56 p.m.

There being no further business to come before the Council, the meeting was adjourned at 9:57 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 10th day of May, 2011.

Entered in the permanent record book this 11th day of May, 2011.

Tommy Roberts, Mayor

SEAL

ATTEST:

Dianne Fuhrman, City Clerk