

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, January 22, 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 Pastor Ken Weisheit of Crossroads Community Church.

Councilor Darnell 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 January 8, 2013.

\*BID: The Purchasing Officer recommended that the bid for sale of surplus defibrillators (Fire Department) be awarded to AED Authority on its high bid of \$8,412. Bids opened January 9, 2013 with two bidders participating.

\*BID: The Purchasing Officer recommended that the bid for purchase of insulators and crossarms (Electric Utility) be awarded to Stuart C. Irby on its low bid after application of five percent in-state preference of \$29,719.42, and that the alternate bid received from Wesco Distribution, Inc. be rejected for being non-responsive and not meeting specifications. Bids opened January 15, 2013 with five bidders participating.

\*408 FUND EXPENDITURES for Ricketts Park renovations for the purpose of hiring an electrical contractor to connect the fixtures at the Recreation Center and the buildings at the stadium (\$54,500) and to replace the failing message unit under the scoreboard (\$29,000).

\*SECOND REQUEST FROM CRAIG STOABS of Silver Ridge Development to extend the time frame to record the Windsor Heights Subdivision #5 final plat by two years (to February 26, 2015). Petition No. FP 08-01 was approved by the Council on February 26, 2008 and a two-year time extension was granted by the Council on February 8, 2011.

\*RECOMMENDATION FROM THE LIQUOR HEARING OFFICER for approval of Application #837460 for a new restaurant (beer and wine) license from Care Mare, LLC, doing business as Coffee House

Deli & Hot Spot Cyber, 5150 College Boulevard, Suites 205 & 206, Farmington, New Mexico. (Hearing held January 18, 2013)

\*WARRANTS PAYABLE for the time period of January 7, 2013 through January 20, 2013, for current and prior years, in the amount of \$7,258,821.96.

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.

#### INVITATION FROM SAFE ROUTES TO SCHOOL COORDINATOR

Safe Routes to School Coordinator Angela Wakan explained that the priority of the Safe Routes to School program is to provide safe walking and bicycling routes to school by sponsoring safety programs for children and encouraging drivers to pay more attention in school zones. She contended that walking or bicycling provides children freedom, an opportunity to better know their neighborhood and a sense of refreshment when they arrive at school. Relaying statistical data compiled by [distraction.gov](http://distraction.gov), Ms. Wakan reported that in 2010, 3,092 people were killed as a result of distracted driving; an additional 4,016 were injured; 18 percent of all injury crashes were attributed to distracted driving; and that sending or receiving a text message takes a drivers' eyes off of the road for an average of 4.6 seconds, which is the equivalent of driving the length of football field blindfolded at a speed of 55 miles per hour. She invited the Mayor and Council to attend a ribbon-cutting ceremony on February 7, 2013 at 2:00 p.m. at Mesa Verde Elementary School, noting that a "No Phone Zone" will be established on College Boulevard to provide a safer environment for children walking or biking to school. In closing, Ms. Wakan introduced Liam Givens, a fourth grade student at Mesa Verde Elementary School.

Reading from a prepared statement, Mr. Givens announced that he loves going to school and learning along with dance, gymnastics, cub scouts and piano. He stated that his first love is his family and that he enjoys spending time with them. Noting that his older brother, Richie, attends Heights Middle School which is across the street from Mesa Verde Elementary School, Mr. Givens announced that he uses the crosswalk on College Boulevard daily and encouraged drivers to pay more attention so that the children are safe. He stated that he knows that he is responsible for his own safety as a pedestrian, but pointed out that there is a lot of traffic on College Boulevard and he is worried that drivers are not paying close enough attention. He invited the Mayor and Council to attend the ribbon-cutting ceremony on February 7, 2013.

Mayor Roberts reported that he will not be able to attend the ribbon-cutting ceremony because he will be out of town, but he encouraged Council and staff members to attend.

In closing, Ms. Wakan reported that the Safe Routes to School Committee will be meeting at 3:15 p.m. on February 12, 2013 at Mesa Verde Elementary School and she encouraged the Mayor and Council to attend.

#### 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, it 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. ZC 12-16 from Roger Shay, represented by Sakura Engineering, requesting a zone change from the IND, Industrial, District to the GC, General Commercial, District for 0.56 acres of land located at 900 San Juan Boulevard.

There being no requests to remove the item, 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.

Ms. Holton also 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, to approve Petition No. SUP 12-09 from Tony and Denise Lovato requesting a Special Use Permit to keep a horse on their one-acre residential property located at 5807 Foothills Drive in the RE-1, Residential Estate, District, subject to:
  - (a) the petitioners installing a six-foot privacy fence along the entire length of the west property line adjoining 5501 Evergreen and along the northern property line adjoining 5555 Evergreen for the length of the corral (approximately 36 feet); and
  - (b) the Special Use Permit remaining in effect only for the life of the horse.

Utilizing a Powerpoint presentation, Associate Planner Fran Fillerup reported that the subject property has contained a tack shed and covered stall for many years, but stated that it has been decades since a horse was located on the property. Showing a series of photographs that were taken by staff and an adjoining property owner, he pointed out that the property is fenced with either a wood or pipe fence on the north side of the property adjoining the resident at 5501 Evergreen Drive. In response to inquiry from Mayor Roberts, Mr. Fillerup stated that he did not receive any further comments from the opposing neighbors following the Planning and Zoning Commission meeting.

With regard to Mr. Fillerup's comments that there is no record of a Special Use Permit ("SUP") on the property, Councilor Fischer questioned whether it is possible that the prior property owners were not required to have an SUP to keep horses since it was located outside the city limits. In response, Mr. Fillerup agreed that this could be the case; confirmed that a horse is being kept on property located just south of the subject property; noted that two additional SUP's for the keeping of horses in the Foothills area were recently approved; and that there were two horses kept on Evergreen Drive in the 1980's.

In response to inquiry from Mayor Roberts, Mr. Fillerup reported that the Unified Development Code ("UDC") and Chapter 6 of the City Code outline guidelines that limit the number of horses to one per acre and require adequate fencing, screening or separation from adjoining premises; the mitigation of public nuisances (such as dust, noise and odors); and adequate protection for the public and the animal. Furthermore, he pointed out that SUPs are discretionary actions and that the Council could impose certain conditions for approval. In response to inquiry from Mayor Roberts, Mr. Fillerup reported that, historically, SUPs for horses included a corral area that was at least 10,000 feet in size and had a separation of at least 70 feet from adjoining property owners. He stated, however, that there have been exceptions, but that they mostly dealt with the number of animals (i.e. three horses on two acres of land). Mayor Roberts noted that the proposed corral area is only 5,900 square feet in size and asked how staff determined the policy of 10,000 square feet. In response, Mr. Fillerup stated that he did not know the origin of the policy but it is included in previous SUPs. He also reported that staff recommends approval of the subject petition based on the petitioner's proposal for eradicating flies and removing the manure and for the fact that there is an existing corral and tack shed on the property that will provide cover for the animal.

Addressing the Council, Petitioner Denise Lovato reported that her parents moved to Farmington in December because her father was ill and passed away on January 2, 2013. She stated that she is a former real estate agent and knew that they would have to apply for an SUP since the property was zoned RE-1; however, she did not anticipate a problem due to the size of the property (1.25 acres) and there being a corral and tack shed already located on it. She explained that Sophie, the horse, came to live with her parents following the death of her brother about eight years ago. Noting that Sophie is 26 years old (the average life expectancy of a domestic horse is 25-30 years), Ms. Lovato contended that Sophie provides emotional therapy to her mother and stated that they have no intentions of storing additional horses on the property once Sophie is deceased. She reported that her mother is meticulous about the manner in



Those voting nay:            Dan Darnell  
   Jason Sandel

The Mayor voted against the motion and declared the motion failed.

Mayor Roberts explained that the reason that he voted against the motion is because the concerns of the adjoining property owners must be balanced between the therapeutic values that the horse brings to the petitioner. He stated that he does not believe that it is fair to give the latter greater weight. However, he suggested that the SUP be granted on a three-month trial basis in an effort to find a compromise.

Councilor McCulloch stated that she does not believe that three months is long enough because the hot summer season is when the flies become an issue. Councilor Fischer agreed and proposed that the SUP be granted on a six-month trial basis with an automatic six-month renewal option.

Councilor Darnell suggested that the SUP be revoked without recourse if there are substantial complaints lodged by the adjoining property owners. In response, City Attorney Jay Burnham explained that legally the petitioner must be given an opportunity to rectify the deficiencies and noted that an SUP cannot be revoked for subjective reasons. However, he stated that a condition could be imposed to terminate the SUP upon death of the horse, on a certain date or upon conviction of a violation.

Mayor Roberts explained that he prefers that the SUP not be automatically renewed because he wants to grant the adjoining property owners another opportunity to address the Council.

In response to inquiry from Councilor Sandel, Mr. Burnham stated that it is his opinion that the Council could consider another motion on the subject petition without having to request reconsideration since the previous motion was to approve the SUP but failed. In effect, he explained that the motion did not dispose of the issue.

Thereupon, a motion was made by Councilor McCulloch, seconded by Councilor Fischer to adopt the recommendation from the Planning and Zoning Commission and to grant a Special Use Permit to allow a horse to be kept on a one-acre parcel of land located at 5807 Foothills Drive in the RE-1 District, subject to condition (a), as recommended by the Planning and Zoning Commission, and added condition (b) providing that the Special Use Permit shall be in effect for a period of 6 months, at which time the petitioner must reapply. The roll was called with the following result:

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

Those voting nay:            Jason Sandel

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

In closing, Councilor Sandel pointed out that Section 8.9.6 of the UDC states that SUPs shall be valid for a period of 18 months from the date of approval and questioned whether the Council has the legal authority to waive such requirement. He requested written explanation from Mr. Burnham.

#### COUNCIL BUSINESS

##### Pay Plan

Councilor Fischer asked that the discussion concerning the appeal process for the recently adopted pay plan and the status of the 18 employees who are maxed-out in their pay ranges be scheduled for an evening meeting to afford employees an opportunity to attend. She reported that she made this request last week to the Deputy City Clerk but was later advised that City Manager Rob Mayes denied her request to move the discussion from a Work Session to an evening meeting. She explained that she believes that the employees have a right to hear the discussion since they are the ones affected. She stated that she is

horrified to learn of what is going on with the pay plan and believes that the City Manager and Human Resources Director have dropped the ball with regard to the appeal process. She questioned why this issue is even being discussed since she believes that an evening meeting is the most transparent means for addressing the concerns.

Mayor Roberts stated that he concurs with Mr. Mayes since the pay plan will simply be on the agenda for discussion. He explained, however, that if the Council decides to take further action on the pay plan it will be scheduled for consideration at an evening meeting. He also pointed out that Mr. Mayes has the authority to determine the date when items are to be scheduled for consideration by the Council.

Mr. Mayes stated that he had already scheduled the pay plan discussion for the February 5, 2013 Work Session, and asked that Councilor Fischer follow procedure and make her requests directly to him. He stated that what he finds horrifying is the neglect of the pay plan which resulted in 334 of the employees being "topped out" in their pay range.

Councilor Sandel stated that he believes that the discussion should be scheduled for an evening meeting because he intends to bring forth a proposal on how to deal with the 18 employees who are maxed out.

Councilor McCulloch stated that she is not opposed to the discussion being scheduled for an evening meeting.

Providing the Council with further explanation, Councilor Fischer stated that she strongly believes that preferential treatment was granted to some employees by Mr. Mayes with regard to the pay plan and voiced frustration for the fact that additional vacation hours are given to select employees without Council knowledge. Furthermore, she pointed out that the turnover rate in the Human Resources Department is extremely high and voiced concern for the fact that the Human Resources Director only works two weeks out of the month, but is paid a portion of his salary during the two weeks that he is off. She took exception to Mr. Mayes' comments, stating that she is simply asking that the employees be given the opportunity to attend a meeting that affects them directly, and contended that Mr. Mayes should not be trying to "hide the ball" on this matter.

Mayor Roberts stated that if the Council chooses to proceed with amending any portion of the pay plan, then the employees will be given an opportunity to address the Council. He argued that Mr. Mayes is not trying to "hide the ball" and contended that the pay plan process has been open and that employees were given numerous opportunities to review and comment on the pay plan prior to Council action. Furthermore, he stated that he believes that a number of employee meetings were also held. He asked Councilor Fischer to bring forward her specific concerns about preferential treatment of employees.

Councilor Darnell stated that he believes that it is more appropriate to discuss the pay plan in a Work Session to determine whether the Council intends to take any further action.

There being no further discussion, it was the consensus of a majority of the Council to schedule discussion of the pay plan at a regular City Council meeting, which is held in the evening hours.

#### Final Report on the Convention and Visitor's Bureau Fraud Investigation

Councilor Sandel asked if a final report has been issued on the Convention and Visitor's Bureau fraud investigation. In response, City Manager Rob Mayes announced that the report is being finalized and will be distributed by the end of the week. However, he did confirm that the report was previously released to a Councilor because a request for a copy was made through the Legal Department. Councilor Sandel voiced frustration for the fact that such report was not provided to all members of the governing body since this has been the past practice of staff to distribute documents to all members of the Council if it is distributed to one. In response, Mr. Burnham stated that he makes the determination on a case-by-case basis as to whether or not the documentation provided was of general interest to all members of the governing body. He explained that this document is confidential in nature and was requested

by one particular Councilor, so he did not feel obligated to release it to all members of the Council.

Expanding on Mr. Burnham's comments, Mr. Mayes agreed that this was a judgment call, but assured Councilor Sandel that he will provide the remaining Councilors with copies of the report.

Councilor Sandel suggested that a written policy be established to help determine when documents are provided by the Legal Department to the Council.

#### Governmental Conduct Act

Councilor Sandel questioned whether the City is in compliance with the Governmental Conduct Act as it pertains to ethics and the disclosure of gifts. In response, City Attorney Jay Burnham reported that he previously distributed draft disclosure forms to the Council for review and has received some feedback. He stated that he will be sending out a revised disclosure form tomorrow, along with a memorandum concerning gifts. He also pointed out that the Governmental Conduct Act invites local governments to adopt their own code as long as all provisions of the state code are met. He contended that the Council has not yet directed staff to draft an ordinance that establishes a local act.

Councilor Sandel contended that he recalls that specific direction was given by the Council to direct staff to draft an ordinance concerning ethics and campaign contribution reporting requirements. Mr. Burnham stated that he will research the Council minutes tomorrow to determine the Council's intent.

City Attorney Jay Burnham presented a proposed ordinance amending certain sections of the Unified Development Code ("UDC") 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 2013-1263. The title of the ordinance being:

AN ORDINANCE AMENDING CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT CODE.

Mr. Burnham explained that the proposed amendments simply clarify or update sections of the UDC with regard to fence heights for telecommunication towers, sanitary sewer, sidewalks and the expiration of summary and minor subdivision plats.

After consideration of Ordinance No. 2013-1263, a motion was made by Councilor Darnell, seconded by Councilor McCulloch that said ordinance be passed and adopted as presented. The roll was called with the following result:

Those voting aye:	Mary M. Fischer Dan Darnell 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. 2013-1263 duly passed and adopted.

#### CLOSED MEETING

A motion was made by Councilor Darnell, seconded by Councilor McCulloch to close the meeting to discuss requests for proposals for a transit management system, data center infrastructure improvements and third-party administrator for Worker's Compensation. 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 carried.

The Mayor convened the closed meeting at 8:41 p.m. with all members of the Council being present.

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 8:57 p.m. with all members of the Council being present.

REQUEST TO BEGIN PRESENTATION ON PROPOSAL FOR A TRANSIT MANAGEMENT SYSTEM

Purchasing Officer Eddie Smylie reported that proposals for a transit management system (Administration) opened on January 9, 2013 with one offeror participating. He requested authorization to begin presentations with RouteMatch Software.

In response to inquiry from Councilor Sandel, Mr. Smylie reported that the request for proposal specified that the project should cost around \$20,000, noting that the sole proposal came in at \$38,000. He confirmed that if the Council so directed, the proposal process could be terminated and the bid process initiated in an effort to gain more interest. Furthermore, Assistant City Manager Bob Campbell reported that staff has not asked First Transit to modify their reports in an effort to meet the Federal reporting requirements.

There being no further discussion, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to direct staff to begin presentations with RouteMatch Software, as recommended by the Purchasing Officer. 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.

Councilor Sandel asked that the Council receive a report on the appropriateness of the software package. In response, Mr. Smylie noted that this proposal will come back to the Council for award consideration following the presentations.

REQUEST FOR PROPOSALS FOR DATA INFRASTRUCTURE IMPROVEMENTS

Purchasing Officer Eddie Smylie announced that proposals for data infrastructure improvements (Electric Utility/Data Control Center) opened on November 28, 2012 with five offerors participating. He recommended that the contract be awarded to B & D Industries, Inc. as the best evaluated firm based on the pricing schedule for services.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to award the proposal for data infrastructure improvements to B & D Industries, Inc., as recommended by the Purchasing Officer, and upon voice vote the motion carried unanimously.

REQUEST FOR PROPOSALS FOR THIRD-PARTY ADMINISTRATOR FOR WORKER'S COMPENSATION

Purchasing Supervisor Kristi Benson announced that proposals for third-party administrator for worker's compensation (Human Resources) opened on December 12, 2012 with three offerors participating. She recommended that the contract be awarded to Canon Cochran Management Services, Inc. as the best evaluated firm based on the pricing schedule for services.

Thereupon, a motion was made by Councilor Sandel, seconded by Councilor Darnell to award the proposal for third-party administrator for

worker's compensation to Canon Cochran Management Services, Inc., as recommended by the Purchasing Supervisor, and upon voice vote the motion carried unanimously.

Councilor Sandel commended City Manager Rob Mayes for reorganizing the City's operational structure to include the Safety Officer position as a member of the management team. He suggested that nurse case management services be implemented for each employee injury in an effort to ensure that care is being administered in a quick and adequate manner, and he asked that the newly-appointed Safety Officer provide the Council with recommendations as to when case management will be used.

There being no further business to come before the Council, the meeting was adjourned at 9:05 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 12<sup>th</sup> day of February, 2013.

Entered in the permanent record book this 13th day of February, 2013.

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Tommy Roberts, Mayor

SEAL

ATTEST:

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Dianne Fuhrman, City Clerk