

Work Session of the City Council, City of Farmington, New Mexico, held Tuesday, March 19, 2013 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:

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:

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

#### INTRODUCTION OF PARKS, RECREATION & CULTURAL AFFAIRS DIRECTOR

Assistant City Manager Bob Campbell introduced newly-hired Parks, Recreation & Cultural Affairs Director Cory Styron.

#### PROCUREMENT MONTH PROCLAMATION

Mayor Roberts presented Purchasing Officer Eddie Smylie with a Proclamation declaring the month of March, 2013 as "Procurement Month." He recognized the Purchasing staff for their dedication and commitment to the City of Farmington.

#### BID/EXPANSION OF THE FARMINGTON MUSEUM AT GATEWAY PARK

Purchasing Officer Eddie Smylie reported that bids for expansion of the Farmington Museum at Gateway Park (Parks, Recreation & Cultural Affairs) opened on March 6, 2013 with seven bidders participating. He recommended that the bid be awarded to Mick Rich Contractors, Inc. on its low bid after application of five percent in-state preference of \$1,851,200.

Citing an expected FY14 budget deficit, Councilor Fischer questioned the potential impact if the bid award were to be postponed until after the budget hearings. In response, Mr. Smylie stated that the cost of materials could change.

Responding to Mayor Roberts, City Manager Rob Mayes pointed out that the museum expansion is funded by the proceeds from the bonds issued last year and noted that the funding can only be used for projects identified in the bond (storm sewer and drainage, animal shelter, Civic Center, fire station #1/fire administration building and the museum expansion). In addition, he stated that he does not anticipate any significant operational costs for the museum related to the expansion.

Following further discussion, a motion was made by Councilor McCulloch, seconded by Councilor Darnell to award the bid for expansion of the Farmington Museum at Gateway Park to Mick Rich Contractors, Inc. on its low bid of \$1,851,200, 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
Those absent:	Jason Sandel

The presiding officer thereupon declared that a majority of the

Councilors present having voted in favor thereof, the said motion carried.

FORM AGREEMENT FOR THE LEASE OF FIBER OPTIC CABLE

Assistant City Manager Bob Campbell reminded the Council that at the November 13, 2012 regular City Council meeting staff was directed to present the City's proposal to lease its fiber optic cable to Four Corners Economic Development, the Chamber of Commerce and the City's Cable and Communications Commission. He reported that those presentations have been made and that each board and commission recommended that the City lease its fiber optic cable. He requested approval of the form Agreement for the Lease of Fiber Optic Cable ("Agreement").

In response to inquiry from Mayor Roberts, City Attorney Jay Burnham stated that the Legal Department has reviewed the form Agreement and pointed out that each Agreement will be approved as to form and content prior to execution.

Noting that staff previously recommended that each company be leased no more than four strands of fiber at one time, Mayor Roberts expressed concern that the Agreement does not limit the number of fibers available for lease. In response, Mr. Campbell stated that the Farmington Electric Utility System ("FEUS") will make no more than 50 percent of the fiber runs available for lease and that they will generally, by practice, only allow four strands per vendor to ensure that other vendors have the opportunity to lease fiber. He further stated that the Cable and Communication Commission recommended allowing flexibility in the Agreement should there be a scenario for a vendor to lease more than four strands.

Following brief discussion, Mr. Campbell announced that Brainstorm Internet; the City of Bloomfield; Farmington Municipal Schools; and San Juan College are prepared to lease fiber from the City when it is made available.

Discussion followed concerning the rate structure, the term of the Agreement and the potential for the City to lease bandwidth at some point in the future.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to approve the form Agreement for the Lease of Fiber Optic Cable, as presented. The roll was called with the following result:

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.

COUNCIL BUSINESS

Repeal of the Hold Harmless Agreement/Gross Receipts Tax on the purchase of food and medical services

Councilor Darnell expressed frustration with the New Mexico Legislature for the last-minute repeal of the hold harmless agreement for cities as it pertains to gross receipts tax on the purchase of food and medical services ("hold harmless agreement"). He suggested that the only good solution is to re-implement gross receipts tax on the purchase of food and medical services and "man up and deal with it." He urged the Council to think about what can be done to make the statement that repealing the hold harmless agreement is unreasonable, e.g. draft a resolution or write a letter to the governor.

Councilor Sandel arrived at the meeting at 9:23 a.m.

Mayor Roberts agreed that it will be a challenge to deal with the repeal on an ongoing basis and stated that New Mexico Municipal League

Executive Director Bill Fulginiti is considering writing a letter to the governor's office requesting a veto of the bill.

Legal Opinion/Powers of Mayor in Reference to Council Members

Mayor Roberts reminded the Council that at the February 26, 2013 Regular City Council meeting City Attorney Jay Burnham was directed to draft a memorandum that explains the Mayor's level of authority with regard to directing a staff member to do something that is contrary to the desires of a Councilor. He noted that Mr. Burnham's legal opinion has been provided to the Council and asked if any councilor had questions for Mr. Burnham.

Councilor Fischer contended that the legal opinion was unclear and presented conflicting positions. To clarify, Mr. Burnham stated that, much like the authority of a speaker of the house or president of the senate to make administrative decisions such as making office assignments and assigning telephone extensions or staff, the Mayor has authority to direct administrative procedures for the Council such as directing staff to make computers and the necessary software available to members of the governing body to use should they choose to do so. However, he noted that this authority does not allow the Mayor to compel members to use the computer or to use it specifically for the purpose of sending and receiving emails to and from staff; other councilors; and the public. He noted that once Resolution No. 2013-1462 establishing an email policy for the governing body was adopted on March 12, 2013, the Mayor's direction to staff must comply with the terms of the resolution.

Discussion followed concerning access to Councilor Fischer's password and her locked office and New Mexico Municipal League's attorney Randy VanVleck's quote in the March 15, 2013 edition of the *Tri-City Tribune* that "The Mayor on his own can't dictate an email address."

Councilor Fischer asked that, in the future, she be notified if staff will be "doing things for me or to me."

Referring to an email from Mr. VanVleck to Mr. Burnham, Mayor Roberts noted that after being provided with a copy of Mr. Burnham's opinion, Mr. VanVleck apologized for not conferring with Mr. Burnham prior to speaking with the *Tri-City Tribune* reporter and agreed that "as the Presiding Officer of the legislative branch, the Mayor does have some authority to manage or control the body" and that "...it makes perfect sense that the Mayor could direct that computers and the appropriate software (including e-mail addresses) be made available to members of the legislative body for use as they see fit so long as the use is consistent with any City policy on the matter."

Mayor Roberts contended that it was inappropriate for Mr. VanVleck to weigh in on a local matter in response to a reporter's request and suggested that he expressed his opinion based on the way the facts were represented to him by the reporter. *Tri-City Tribune* reporter Debra Mayeux strongly disagreed with the Mayor and left the meeting.

In response to inquiry from Councilor Sandel, City Manager Rob Mayes stated that the City has an administrative regulation establishing an email policy for employees and agreed to provide a copy to the Council.

Contending that Mr. Burnham's interpretation of the authority of a speaker of the house or president of the senate is inconsistent with actual practice, Councilor Sandel asked that the legal opinion be "cleaned up to reflect exactly how it does occur at the state level." In response, Mr. Burnham stated that his opinion addressed legislative bodies in general and not the New Mexico legislature specifically and offered to do further research to determine what the common practice is in other jurisdictions. Councilor Sandel stated that he is interested in New Mexico and that "any research into fact finding behind the statements that have been made in your memorandum, I think, have value to make sure that the memorandum does, in fact, represent how things are actually done." He further stated that he made the assumption that the opinion was talking about New Mexico and that "we could do a review of each legislative body across the United States, but perhaps that would be not time well spent."

Consensus/Council Rules of Procedure

Councilor Sandel contended that the Council Rules of Procedure ("Rules") do not address how consensus items are to be handled and stated that the purpose of the Rules is to provide clarity and equality across the governing body. In an effort to clarify how consensus is obtained, he suggested that the Rules be amended to require a Councilor to request a consensus; the membership is polled; the Mayor makes a declaratory statement; staff records the item on the consensus list and provides a copy to the Council within three days of the meeting; and identify a process to close-out consensus items.

Mayor Roberts announced that he believes that the current consensus process works reasonably well, but stated that he has no problem with memorializing the process.

City Attorney Jay Burnham provided the Council with a draft statement that would allow for consensus to only be used to either 1) direct that staff take action that is within the authority of staff without Council action or directing staff to move forward with something already authorized by previous Council action; or 2) direct that an item requiring Council action be prepared and placed on a future Council meeting agenda.

Following discussion, Councilor Fischer asked for clarity on when to use and not use consensus.

Following further discussion, City Manager Rob Mayes reminded the Council that at the February 12, 2013 Regular City Council meeting it was the consensus of the majority of the Council that staff ask the Attorney General for an advisory opinion concerning 1) the Governing Body Rules of Procedure in the form that they will be in following the consideration of the proposed amendments; and 2) City Attorney Jay Burnham's memorandum concerning the use of consensus.

Councilor Fischer suggested providing the Rules to the Foundation for Open Government for their review as well.

Thereupon, a motion was made by Councilor Sandel, seconded by Councilor Fischer to table action on amending the Council Rules of Procedure concerning consensus items to the April 2, 2013 Work Session to allow time for Councilor Sandel and Mr. Burnham to draft the amendment, and upon voice vote the motion carried unanimously.

CLOSED MEETING

A motion was made by Councilor Darnell, seconded by Councilor McCulloch to close the meeting to discuss acquisition of real property pursuant to Section 10-15-1H(8) NMSA 1978 (riverine trail). 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 9:56 a.m. with all members of the Council being present.

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

The open meeting was reconvened by the Mayor at 10:00 a.m. with all members of the Council being present.

LAND EXCHANGE AGREEMENT/CARTER TRUST

Assistant City Manager Bob Campbell requested approval of a Land Exchange Agreement between the City and Terry and Rose Carter, Trustees of the Carter Trust, for exchange of 1.0 acre of City-owned property for 1.0 acre of property owned by Carter Trust for the purpose of extending the riverine trail. The properties lie within 550 feet of one another and are located off of Largo Street and Southside River Road.

Following brief consideration, a motion was made by Councilor McCulloch, seconded by Councilor Darnell to approve a Land Exchange Agreement authorizing the exchange of 1.0 acre of City-owned property for 1.0 acre of property owned by Carter Trust, as presented, and upon voice vote the motion carried unanimously.

There being no further business to come before the Council, the meeting was adjourned at 10:02 a.m.

APPROVED this 9<sup>th</sup> day of April, 2013.

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Tommy Roberts, Mayor

SEAL

ATTEST:

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Dianne Fuhrman, City Clerk