

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, June 11, 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:

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| MAYOR      | Tommy Roberts   |
| COUNCILORS | Dan Darnell<br>Mary M. Fischer<br>Gayla McCulloch<br>Jason Sandel |

constituting all the members of said Governing Body.

Also present were:

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|------------------------|----------------|
| 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:

INVOCATION: The invocation was offered by Visitation Pastor Wayne Vaughan of Crossroads Community Church.

Police Corporal Rocky Velarde 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 without discussion 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 May 28, 2013 and the minutes of the Regular Work Session of the City Council held May 21, 2013.

\*DECLARATION OF SURPLUS PROPERTY: The Purchasing Supervisor recommended that worn-out, unusable or obsolete Region II seized vehicles (Administrative Services, Central Warehouse, General Services and Vehicle Maintenance) be declared surplus to the needs of the City and not essential for municipal purposes and that the City Manager or his designee be authorized to dispose of such surplus property pursuant to State Statutes.

\*BID: The Purchasing Supervisor recommended that the bid for a multi-term contract for concrete (Public Works; Electric Utility; Parks, Recreation & Cultural Affairs; and General Services) be awarded to Four Corners Materials on its low bid after application of five percent in-state preference of \$204,640 and that the bid received from Consolidated Constructors, Inc. be rejected for being non-responsive. Bids opened June 5, 2013 with two bidders participating.

\*AWARD CONTRACTS FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 2013 ANNUAL ACTION PLAN (Community Development) for public service projects to People Assisting the Homeless (PATH) (\$27,135.30); San Juan County Partnership (\$15,000); Masada House (\$15,000); and San Juan College Family Resource Center (\$8,000) AND for capital projects to Four Corners Foundation (\$155,000); Masada House (\$77,800); and Big Brothers Big Sisters (\$27,786.30). Proposals opened April 10, 2013 with fifteen offerors participating (seven for public service projects and eight for capital projects). Presentations were made to the Council on May 28, 2013 and June 4, 2013.

\*WARRANTS PAYABLE for the time period of May 27, 2013 through June 8, 2013, for current and prior years, in the amount of \$7,223,148.95.

Councilor Sandel requested that approval to award contracts for the Community Development Block Grant 2013 Annual Action Plan for public service and capital projects be removed from the Consent Agenda.

Audience member Eugene George requested that the bid for a multi-term contract for concrete also be removed from the Consent Agenda.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor Fischer to approve the Consent Agenda, with the exception of the Community Development Block Grant 2013 Annual Action Plan award for public service and capital projects and the bid for a multi-term contract for concrete, and upon voice vote the motion carried unanimously.

RECOMMENDATION 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 without discussion by one motion. She asked that if the item proposed does not meet with approval of all Councilors or if a citizen so requested, that the item be removed from the Consent Agenda and heard in regular order.

- \*(1) Adoption of the recommendation of the Planning and Zoning Commission, as contained within the Community Development Department Petition Report, to approve Petition No. SUP 13-05 from Julie and Ryan Walker requesting a Special Use Permit to keep seven chickens at 322 E. Spruce Street in the MF-L/SMHAO, Multi-family Low Density, District with a Special Mobile Home Area Overlay.

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.

PUBLIC HEARING TO RECEIVE COMMENTS ON THE COMMUNITY DEVELOPMENT BLOCK GRANT 2012 ANNUAL ACTION PLAN AMENDMENT AND ADOPTION OF RESOLUTION NO. 2013-1471 ADOPTING THE COMMUNITY DEVELOPMENT BLOCK GRANT 2012 ANNUAL ACTION PLAN AMENDMENT

Providing opening remarks, CDBG Administrator Jay Peterman announced that the purpose for tonight's hearing is to afford the public a final opportunity to comment on the projects being proposed for the Community Development Block Grant ("CDBG") 2012 Annual Action Plan Amendment. He requested adoption of Resolution No. 2013-1471 approving the CDBG 2012 Annual Action Plan Amendment.

The public hearing was convened by the Mayor.

There being no response to the Mayor's call for public comment, the public hearing was closed.

Following consideration of Resolution No. 2013-1471, a motion was made by Councilor Darnell, seconded by Councilor McCulloch that said resolution be passed and adopted as presented. The roll was called with the following result:

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| Those voting aye: | Dan Darnell<br>Mary M. Fischer<br>Gayla McCulloch<br>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 and Resolution No. 2013-1471 was duly passed and adopted.

RECONVENED PUBLIC HEARING TO CONSIDER ISSUING A PROCLAMATION  
IMPOSING RESTRICTIONS ON THE USE OF FIREWORKS DUE TO SEVERE DROUGHT  
CONDITIONS

Reminding the Council that the public hearing to consider issuing a proclamation imposing restrictions on the use of fireworks due to severe drought conditions was recessed at the June 4, 2013 City Council Work Session, Mayor Roberts reconvened the public hearing.

At the request of Eugene George, 3608 San Medina Avenue, Battalion Chief David Burke agreed to provide statistical data on the number of fireworks-related fires for the five years prior to and since the City imposed the ban on certain fireworks in 1998, noting that the number of fireworks-related fires has been significantly reduced. Mr. George recommended that the Council consider the impact that a ban on the use of fireworks will have on the fireworks industry.

Linda Latner, 2624 East 24<sup>th</sup> Street, expressed a desire to also review the statistical data and urged the Council to allow citizens to continue to celebrate Independence Day with the safe and responsible use of fireworks.

Jim Burnham announced that his family has sold fireworks in the area for over 30 years. Referring to a handout that he provided to the Council, he reviewed statistical data compiled by the New Mexico State Forestry Division and the National Fire Association which reveals that in 2012 there were two fires caused by fireworks on New Mexico private and state lands that consumed 0.75 acres and that, nationwide in 2010, lighters and cigarettes were responsible for 54 times more fires, 99 times more injuries and 26 times more fires than fireworks. He recommended that the Council ban fire sources based on danger and to draft a resolution commending the safe use of fireworks.

Mayor Roberts explained that the purpose of this hearing is to receive comments on a proclamation acknowledging severe drought conditions and imposing restrictions on where fireworks can be used. He stated that a resolution asking citizens to voluntarily abstain from using a number of fire sources will be considered as a separate item.

Councilor Fischer contended that fireworks are not being used responsibly in her neighborhood and that the noise that goes nonstop from midnight to sometimes as late as 5 a.m. is overwhelming to residents and pets. In response, Mr. Burnham contended that many of the fireworks being set-off in her neighborhood are likely illegal; argued that there will always be people who disregard fireworks ordinances/laws; and assured the Council that he will do everything in his power as a vendor to help educate citizens about fireworks and encourage their safe and responsible use.

Following discussion, Mayor Roberts pointed out that the proclamation will not impose any additional restrictions on the sale of fireworks other than what has been in place since 1998 but explained that it restricts the use of fireworks to paved or barren areas or to areas that have a readily accessible water source because of the extreme or severe drought conditions.

Responding to Councilor Darnell, Mr. Burnham stated that he is not speaking against the proclamation and thanked the Council for following the procedure established by State statute.

Councilor Sandel thanked Mr. Burnham for his presentation and agreed that it is important to not hinder the operation of private business but expressed concern regarding fire issues related to fireworks.

Mr. Burnham responded to numerous questions from Councilor Sandel regarding reported fires related to fireworks and when and where fireworks can be sold and used.

In response to inquiries from Councilor Sandel, Chief Burke stated that it is difficult to determine that fireworks are the cause of a fire because pyrotechnics burn up during the fire and that those types of fires are reported to the National Fire Incident Reporting System (NFIRS) as "other" based fires. Fire Marshall Popa stated that the Farmington Fire Department does not report fires directly to the State Forestry Division.

Following brief discussion, Councilor Sandel stated that he agrees that fireworks are less of a fire danger than other fire sources.

In response to inquiry from Councilor Darnell, Mr. Burnham estimated that 30 to 40 percent of his sales occur during the Independence Holiday season.

There being no further response to the Mayor's call for public comment, the public hearing was closed.

PROCLAMATION DECLARING THAT EXTREME OR SEVERE DROUGHT CONDITIONS EXIST WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF FARMINGTON AND PLACING ADDITIONAL RESTRICTIONS ON THE USE OF FIREWORKS EFFECTIVE JUNE 11, THROUGH JULY 10, 2013

In the interest of full disclosure, City Attorney Jay Burnham explained that he and Jim Burnham are half, third cousins but that the relationship does not constitute a conflict of interest. He introduced a proclamation declaring that extreme or severe drought conditions exist and placing additional restrictions on the use of fireworks and noted that it complies with the requirements of Section 60-2C-8.1 NMSA 1978. He echoed the Mayor's previous comments that the proclamation will not impose any additional restrictions on the sale of fireworks but will restrict the use of fireworks to paved or barren areas or areas that have a readily accessible source of water and added that, if adopted, use of fireworks will be prohibited within areas covered wholly or in part by timber, brush or native grass.

There was no response to the Mayor's call for comments from the audience.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to authorize the Mayor to issue a proclamation declaring extreme or severe drought conditions exist within the municipal boundaries of the City of Farmington and placing additional restrictions on the use of fireworks effective June 11, 2013, and upon voice vote the motion carried unanimously.

Noting that the resolution included in the agenda materials has changed, Mayor Roberts proposed and read by title a substitute resolution urging citizens of the City of Farmington to abstain from using fire sources during periods of drought. The title of the resolution being:

A RESOLUTION URGING CITIZENS OF THE CITY OF FARMINGTON TO ABSTAIN FROM USING FIRE SOURCES THAT COULD LEAD TO DEADLY AND/OR DESTRUCTIVE CONSEQUENCES DURING PERIODS OF EXTREME DROUGHT

City Attorney Jay Burnham noted that the resolution references the State Forestry Division Stage I restrictions issued on May 2, 2013 and that should Stage II restrictions be implemented, the proposed resolution would automatically apply the new restrictions within the city as well. He recommended the resolution, if adopted, be given the number 2013-1472.

Following brief discussion, Mayor Roberts suggested that the phrase "including all fireworks" be deleted from Section 1.

In response to inquiry from Councilor Fischer, Chief Burke stated that information is gathered from the Haines Index, National Forest Service and National Weather Service in issuing fire restrictions. In addition, he stated that "red flag" warnings are used to alert land management agencies about the onset, or possible onset, of critical weather and fuel moisture conditions that could lead to rapid or dramatic increases in wildfire activity due to low relative humidity; strong winds; dry fuels; or any combination thereof. In addition, he stated that staff is considering including wind conditions as part of the planned public service announcements.

In response to inquiry from Councilor McCulloch, Chief Burke stated that the differences between Stage I and II restrictions that will impact the City are bans on Class A burning (burn permits); smoking except within an enclosed vehicle or building; and the use of barbecue grills except for those fueled by liquid petroleum gas (LPG) that can be turned on and off.

Following further consideration, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to adopt Resolution No. 2013-1472 with the deletion of "including all fireworks" in Section 1. The roll was called with the following result:

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

The presiding officer thereupon declared that four Councilors having voted in favor thereof, the said motion carried and Resolution No. 2013-1472 was duly passed and adopted as amended.

#### CITY ATTORNEY BUSINESS

City Attorney Jay Burnham presented for discussion a proposed ordinance dealing with campaign financing. The title of such proposed ordinance being:

AN ORDINANCE ADDING DIVISION 3 TO ARTICLE 2 OF CHAPTER 2 (ADMINISTRATION) OF THE FARMINGTON CITY CODE ENTITLED "CAMPAIGN FINANCING"

Referring to questions from the Council at the May 21, 2013 Work Session, Mr. Burnham stated that pursuant to State law, a political committee is required to register with the Secretary of State; that alleged violations of State law can be reported to the Secretary of State and, if found to be valid, referred to either the Attorney General or District Attorney's Office for enforcement of civil penalties; and that it is his opinion that the person cited for violation of the proposed ordinance would be the person who is shown on the registration as the person in charge of the committee. Regarding whether the City can impose contribution limits or spending caps, he stated that the U.S. Supreme Court held in *Buckley v. Valeo* that contribution limits were constitutional but that spending caps were not. Furthermore, he stated that it is his opinion that this case is binding on the City and that the draft ordinance does not contain caps on contributions or spending. Directing the Council's attention to the agenda materials, he briefly reviewed the "clean-up" changes made to the proposed ordinance.

Mayor Roberts suggested that a statement be added that the use of a candidate's personal resources is reportable. Councilor Sandel suggested that the language be patterned after the State statute. Directing the Council's attention to page 10.0 of the agenda materials, Councilor McCulloch questioned whether the last phrase of the definition of "expenditure" which reads "...but does not include the candidate's or his immediate family's personal expenses" means that the candidate does not have to report the use of their own resources. In response, Mr. Burnham stated that that phrase is meant to include personal expenses, i.e. mileage expense of driving a personal vehicle across town. Following brief discussion, it was the consensus of the Council to direct staff to investigate new wording regarding candidate's use of personal resources.

In response to inquiry from Councilor Darnell, Mr. Burnham pointed out that the proposed ordinance requires anonymous contributions exceeding \$25 be contributed to a charitable organization of the candidate's choice.

Councilor Fischer expressed a desire to investigate public financing as a way of limiting campaign spending.

Mayor Roberts stated that he would be supportive of a spending cap but is unsure about a cap on individual contributions and that if a spending cap is implemented, he suggests a \$15,000 limit for mayoral candidates and \$10,000 for councilor candidates. Regarding public financing, he expressed concern for the amount of money made available and the viability of a candidate who is eligible to receive public financing.

Following brief discussion, Councilor Sandel suggested following the State scheme for limits on contributions. Mayor Roberts stated that he does not support following the State scheme because he believes it is counterproductive to what he thinks should be accomplished in municipal

elections. Councilor Darnell agreed with Councilor Sandel that the City should follow available guidelines and stated that he does not object to an ordinance setting out rules for campaign financing but that he will not support anything that discourages potential candidates from running, including contribution limits. Councilor Fischer also agreed with Councilor Sandel and expressed a desire to see what the State and Federal guidelines are. Mayor Roberts suggested that staff be directed to research State and Federal campaign finance schemes. There were no objections from the Council.

Contending that it is advantageous to be consistent with the State, Councilor Sandel expressed a desire to investigate the Secretary of State requirements for timely filing of campaign finance reports and anonymous contributions. In addition, he stated that he is interested in pursuing legal ways to cap spending through public financing. He commended Mr. Burnham for his efforts in drafting this ordinance. In response, Mayor Roberts stated that he had hoped to limit spending without a complex scheme for reporting; that he is not interested in public financing of campaigns; and that he is satisfied with the ordinance as presented with the changes suggested tonight.

Following discussion regarding contribution restrictions, it was the consensus of a majority of the Council to direct staff to include a \$100 limit on campaign contributions in the proposed ordinance.

There being no further discussion, Mr. Burnham announced that the proposed ordinance will be presented for final action at the June 25, 2013 regular City Council meeting.

Mr. Burnham also presented a proposed ordinance increasing sanitation fees 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 Compilation. He recommended the ordinance, if adopted, be given the number 2013-1264. The title of the ordinance being:

AN ORDINANCE AMENDING SECTION 23-2-7 OF THE FARMINGTON CITY CODE TO PROVIDE FOR AN INCREASE IN RESIDENTIAL AND COMMERCIAL CHARGES FOR SANITATION SERVICE

Eugene George, 3608 San Medina, expressed his objection to having to pay a recycling charge.

After consideration of Ordinance No. 2013-1264, 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:

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| Those voting aye: | Mary M. Fischer<br>Dan Darnell<br>Gayla McCulloch<br>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 and Ordinance No. 2013-1264 was duly passed and adopted.

DISCUSSION OF AND ACTION UPON ITEMS REMOVED FROM THE CONSENT AGENDA:

- (1) Recommendation from the Purchasing Supervisor to award the bid for a multi-term contract for concrete to Four Corners Materials on its low bid after application of five percent in-state preference of \$204,640 and to reject the bid received from Consolidated Constructors, Inc. for being non-responsive. Bids opened June 5, 2013 with two bidders participating.

In response to inquiry from Eugene George, 3608 San Medina, Purchasing Supervisor stated that in their bid, Consolidated Constructors stated that after January 1, 2014 a 10 percent healthcare surcharge would be applied to wages which did not meet the City's specification of a firm price for one year.

Thereupon, a motion was made by Councilor Darnell, seconded by Councilor Sandel to approve award of the bid for a multi-term contract for concrete to Four Corners Materials on its low bid after application of five percent in-state preference of \$204,640 and to reject the bid received from Consolidated Constructors, Inc. for being non-responsive, as recommended by staff, and upon voice vote the motion carried unanimously.

- (2) CONTRACTS FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 2013 ANNUAL ACTION PLAN public service projects between the City and People Assisting the Homeless (PATH) (\$27,135.30); San Juan County Partnership (\$15,000); Masada House (Women's) (\$15,000); and San Juan College Family Resource Center (\$8,000) AND capital projects between the City and Four Corners Foundation (\$155,000); Masada House (Men's) (\$77,800); and Big Brothers Big Sisters (\$27,786.30). Proposals opened April 10, 2013 with fifteen offerors participating (eight for capital projects and seven for public service projects). Presentations were made to the Council on May 28, 2013 and June 4, 2013.

Purchasing Supervisor Kristi Benson reported that the recipients and amounts are based on Council direction.

In response to inquiries from Councilor Sandel, CDBG Administrator Jay Peterman stated that the CDBG rule for timeliness is that the City (grantee) cannot have more than 1.5 times their annual allocation sitting in their line of credit at the U.S. Treasury on August 2<sup>nd</sup> of each year. He further stated that if the City submitted its plan for the 2013 CDBG Annual Action Plan ("Plan") minus the \$27,786.30 currently designated to Big Brothers Big Sisters ("BBBS"), it would be necessary to revise the Plan and eventually do a Plan amendment.

Contending that BBBS does not fit into the plan of addressing credit issues or affordable housing and that the "left over" award amount of \$27,736.30 does not go far in satisfying the BBBS request of \$217,474.24, Councilor Sandel suggested that the \$27,786.30 not be allocated; that a new request for proposal be sent out; and that respondents be evaluated based upon the merits of their project, the amount of their request and how well their project fits into the goals of the Plan.

In response to inquiry from Mayor Roberts, Mr. Peterman stated that the BBBS project met an identified need from the 2009-2014 Consolidated Plan for youth services.

Councilor Darnell pointed out that a majority of the Council voted in favor of awarding BBBS \$27,736.30 at last week's Work Session; that, not only is it an eligible project, they ranked very high in the presentations; and that mentoring has a huge impact on the lives of kids served by BBBS.

Mayor Roberts expressed support for the award to BBBS.

Councilor Fischer expressed concern that Northwest New Mexico ("NWN M") Seniors did not submit a proposal and asked if there are any unused funds that they can apply for. In response, Mr. Peterman stated that if there are remaining public service funds at the end of the current CDBG fiscal cycle on September 30, 2013, it may be possible to do a request for proposal for those funds and NWNM Seniors can submit a proposal.

Following further discussion, a motion was made by Councilor Darnell, seconded by Councilor McCulloch to approve the award of contracts for the Community Development Block Grant (CDBG) 2013 Annual Action Plan public service projects between the City and People Assisting the Homeless (PATH) (\$27,135.30); San Juan County Partnership (\$15,000); Masada House (Women's) (\$15,000); and San Juan College Family Resource Center (\$8,000) AND capital projects between the City and Four Corners Foundation (\$155,000); Masada House (Men's)(\$77,800); and Big Brothers Big Sisters (\$27,786.30), as recommended by staff. 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.

There being no further business to come before the Council, the meeting was adjourned at 8:59 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 25th day of June, 2013.

Entered in the permanent record book this 26th day of June, 2013.

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Tommy Roberts, Mayor

SEAL

ATTEST:

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Dianne Smylie, City Clerk