



AGENDA

**SPECIAL MEETING OF
THE GOVERNING BODY
DECEMBER 21, 2022
1:00 PM
COUNCIL CHAMBERS
CITY HALL
200 LINCOLN AVENUE**

PROCEDURES FOR SPECIAL GOVERNING BODY MEETING

Viewing: Members of the public may view the meeting through the Government Channel on Comcast Channel 28 and Comcast HD928 or may stream the meeting live on the City of Santa Fe's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

The video recording of this and all past meetings of the Governing Body will also remain available for viewing at any time on the City's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. Staff is available to help members of the public access pre-recorded Governing Body meetings on-line at any time during normal business hours. Please call 955-6521 for assistance.

Join on Zoom: <https://santafenm-gov.zoom.us/j/83111469576>

Radio Broadcast: The meeting can be heard on radio station KSFR 101.1.

Written Public Comment: Members of the public may submit written comments on legislation by clicking on the comment bubble to the right of the meeting on the public portal at <https://santafe.primegov.com/public/portal> through 1:00p.m. the day of the meeting.

The agenda and packet for the meeting will be posted at <https://santafe.primegov.com/public/portal>.



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SPECIAL MEETING OF
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DECEMBER 21, 2022
1:00 PM
COUNCIL CHAMBERS
CITY HALL
200 LINCOLN AVENUE

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

Councilor Cassutt

3. **SALUTE TO THE NEW MEXICO FLAG**

Councilor Lee Garcia

4. **INVOCATION**

Councilor Romero-Wirth

5. **ROLL CALL**

6. **APPROVAL OF AGENDA**

7. **DISCUSSION/ACTION ITEMS**

- a. Request for Approval to Extend the Period to Close in the Purchase Agreement for Approximately 23.08 Acres Located at 1085 Richards Avenue, Item #22-0500, from December 30, 2022 to January 31, 2023. (Terry Lease, Asset Development Manager: tjlease@santafenm.gov).
- b. Authorizing the City Manager to Terminate the Agreement for the Purchase of Approximately 23.08 Acres Located at 1085 Richards Avenue, Item #22-0500, if the Department of Game and Fish Does not Agree to Extend the Closing Date from December 30, 2022 to January 31, 2023 on or before December 30, 2022.

8. **INTRODUCTION OF LEGISLATION**

- a. CONSIDERATION OF RESOLUTION NO. 2023-___. (Mayor Webber)
A Resolution Rescinding Resolution No. 2022-2 Relating to the Open



City of Santa Fe

AGENDA

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Meetings Act; and Adopting Annual Notice Requirements for 2023.
(Kristine Bustos Mihelcic, City Clerk: kmmihelcic@santafenm.gov, 505-955-6521)

Committee Review:

Special Governing Body (Introduced): 12/21/2022

Governing Body: 01/11/2023

9. **ADJOURN**

City of Santa Fe, New Mexico

memo

DATE: December 16, 2022

TO: City of Santa Fe Governing Body

FROM: Terry Lease, Asset Development Manager *TL*

VIA: Rich Brown, Community Development Director *RB*

ITEM AND ISSUE:

Request for Approval to Extend the Period to Close, from December 30, 2022 to January 31, 2023 in the Purchase Agreement for Approximately 23.08 Acres Located at 1085 Richards Avenue, Item #22-0500... (Terry Lease, Asset Development Manager: tjlease@santafenm.gov).

BACKGROUND AND SUMMARY:

As contemplated in the Purchase Agreement approved by the Governing Body on October 12, 2022, the City obtained its own appraisal for the land owned by the Game and Fish Department. That appraisal evaluated the 23.08 acres located at 1085 Richards Avenue as having a lower value than the three million purchase price included in the Purchase Agreement.

The Community Development Department, along with the Game and Fish Department, is obtaining the services of a third appraiser to evaluate the two appraisals. Because the current closing date of the Purchase Agreement is December 30, 2022, and the results of the third appraiser's evaluation will not be complete in time to take into account during the remaining days of the term, an extension to the closing date is necessary.

ACTION REQUESTED:

Approval of the extension to the closing period in Item #22-0500.

ATTACHMENTS

Item #22-0500

Agreement to extend Closing Date established in Item #22-0500

**FIRST AMENDMENT
TO
AGREEMENT OF SALE**

[1085 Richards Avenue Tract, Santa Fe, New Mexico 87507 – 23.08 acres]

THIS FIRST AMENDMENT TO AGREEMENT OF SALE (this "Amendment") is made by and between the NEW MEXICO STATE GAME COMMISSION, an agency of the State of New Mexico, ("Seller"), and the CITY OF SANTA FE, a New Mexico municipal corporation, ("Buyer"). The Amendment amends that certain Agreement of Sale (the "Agreement") (City of Santa Fe Item # 22-0500), by and between the parties dated October 13, 2022 (by Buyer) and October 18, 2022 (by Seller) for the sale of 23.08 acres of property located generally at 1085 Richards Avenue as more particularly described in the Agreement. Pursuant to Paragraph 2 of the Agreement, Buyer obtained its own appraisal of the Property during the Due Diligence Period. The Buyers's appraisal did not support the Purchase Price, which Paragraph 2 of the Agreement states allows the Parties to renegotiate the Purchase Price. In order to provide additional time to renegotiate the Purchase Price, the parties agree as follows:

1. **CLOSING**. The Closing Date, previously specified in Paragraph 9.1 of the Agreement, shall be on or before January 31, 2023.

2. **OTHER TERMS**. Capitalized terms used but not defined in this Amendment have the respective meanings assigned to such terms in the Agreement. Except as expressly modified herein, all other terms and agreements contained in the Agreement remain in full force and effect.

EXECUTED in multiple counterparts by the Seller and Buyer on the dates set forth below. The later date is the Effective Date of this Amendment.

[Signatures and approvals on following page.]

AGREEMENT OF SALE

[1085 Richards Avenue Tract, Santa Fe, New Mexico 87507 – 23.08 acres]

THIS AGREEMENT OF SALE (this "Agreement") is made by and between the NEW MEXICO STATE GAME COMMISSION, an agency of the State of New Mexico, ("Seller"), and the CITY OF SANTA FE, a New Mexico municipal corporation, ("Buyer").

1. **PURCHASE AND SALE OF PROPERTY.** Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the following described property for the consideration and subject to the terms, provisions, and conditions of this Agreement:
 - a. All of the property located in Santa Fe County, New Mexico shown as a "Portion of Lot 12" on that certain "Boundary Plat of a Portion of Lot 12 Prepared for the N.M. State Game Commission" prepared by Dawson Surveys, Inc., dated July 19, 2013 and recorded July 19, 2013 In Book 761, Page 013, as Document No. 1712549 of the records of the Santa Fe County Clerk, consisting of approximately 23.08 acres, more or less.
 - b. All improvements and fixtures located on the Property.
 - c. All development rights, easements appurtenant to the Property, and any and all right, title, and interest of the Seller in and to the minerals, mineral rights, and royalty interests located in, under, or around the Property.
 - d. Seller's interest in all streets, alleys, and rights of way related to the Property.

(All of the foregoing items are hereinafter collectively referred to as the "Property").

2. **PURCHASE PRICE.** The Purchase Price (the "Purchase Price") for the Property is the value as appraised by Pendleton Appraisal Ltd. (effective date of appraisal of May 5, 2022), totaling Three Million Dollars (\$3,000,000), which Purchase Price shall be paid by Buyer to Seller at Closing in cash or immediately available funds. At any time during the Due Diligence Period (defined below) Buyer may obtain its own appraisal of the Property including consideration of, among other things, the impact of the proposed extension of Richards Avenue. If the Buyer's appraisal does not support the Purchase Price, the parties may renegotiate the Purchase Price. If the parties cannot reach agreement on the Purchase Price, Buyer may either proceed with the above Purchase Price or terminate this Agreement.
3. **DUE DILIGENCE PERIOD.** From and after the Effective Date hereof through December 15, 2022 (the "Due Diligence Period") Buyer shall be afforded access to the Property for purposes of satisfying Buyer with respect to the representations, warranties and covenants of Seller contained herein, the condition of the Property, and with respect to satisfaction of any of the Buyer Conditions Precedent (as defined below), including, without limitation, survey, site inspections (including, inspections of improvements located on the Property) and those engineering and environmental surveys which Buyer elects to

have conducted at its sole cost and expense. In conjunction with the foregoing, Buyer shall provide to Seller at least two (2) days prior notice that it, or its authorized employees, agents, representatives and/or contractors will be on site to conduct those inspections, testing, and/or surveys authorized herein. Buyer shall repair all damage to the Property, including the improvements thereon, caused by Buyer and/or its agents in conducting the tests, inspections and/or surveys authorized hereunder, and if necessary, shall restore the condition of any of the Property disturbed or disrupted by such testing or inspection to a condition which is as good as the condition of the Property immediately prior to the inspection, survey and/or testing conducted by Buyer. At any time during the Due Diligence Period, Buyer may notify Seller that it is not satisfied with the Property for any reason whatsoever, or for no reason, and may terminate this Agreement, and neither party shall have any further obligations hereunder.

4. **TITLE COMMITMENT.** Within seven (7) days of the date on which this Agreement is signed by the parties hereto, Seller will provide and deliver to Buyer the following:
 - a. A Title Commitment for the Property from Prima Title (the "Title Company") binding the Title Company to issue at Closing, for the Property, an Owner's Policy of Title Insurance for the Purchase Price specified herein.
 - b. True, correct, and legible copies of any and all instruments referred to in the Commitment, including any update thereto, that constitute exceptions or restrictions upon the Seller's title.
 - c. Buyer shall have ten (10) days from date Seller provides and delivers to Buyer Title Commitment(s) and legible copies of all exceptions to review and approve same or notify Seller in writing of any objections thereto. If Buyer gives written notice to Seller of any objections to title, then Seller shall have five (5) days from receipt of such notice to advise Buyer whether it will cure the objections complained of by Buyer, with such curative work to be completed no later than the Closing Date. If Seller is unwilling or unable to cure the title objections complained of by Buyer, then it shall notify Buyer within such five (5) day period. Buyer shall then advise Seller whether it will (i) accept title to the Property in its then current state, with no reduction in the Purchase Price; or (ii) terminate this Agreement, in which case neither party will have any further claim against the other except as specifically set forth herein.

5. **SELLER'S DELIVERABLES.** If Seller has not already done so, Seller shall deliver or cause to be delivered to Buyer, the following items:
 - a. Any surveys, reports, studies, and assessments of the Property which Seller has had done or has in its possession.
 - b. The Lease Agreement between the Seller and the New Mexico Energy, Minerals, and Natural Resources Department (EMNRD Agreement No. 20-

521-0400-0132 dated April 15, 2020) (the "EMNRD/Forestry Lease") a copy of which has been delivered to Buyer.

- c. In addition, Seller shall promptly deliver to Buyer such other information relating to the Property that is specifically requested by Buyer of Seller in writing to the extent such information either is in the possession or control of Seller, or may be obtained by Seller through the exercise of reasonable efforts and without unreasonable expense to Seller.
- d. The appraisal report (completed by Pendleton Appraisal, LTD. with a date of valuation of May 5, 2022) a copy of which has been delivered to Buyer.

6. **CONDITIONS PRECEDENT TO CLOSING.**

6.1. Buyer's Conditions. The following are conditions precedent to Buyer's obligations hereunder (the "Buyer Conditions Precedent"). The Buyer Conditions Precedent are intended solely for the benefit of Buyer and may be waived only by Buyer in writing. In the event any Buyer Condition Precedent is not satisfied, Buyer may, in its sole and absolute discretion terminate this Agreement, and all obligations of Buyer and Seller hereunder (except provisions of this Agreement which recite that they survive termination) shall terminate and be of no further force or effect.

- a. Issuance of the Title Commitment, subject only to any title exceptions which have not been objected to by Buyer, and the parties' agreement on Closing instructions to the Title Company which detail, among other things, the acceptable exceptions which may remain in the to-be-issued Title Policy.
- b. A certification from Seller establishing that to the best of Seller's knowledge and belief, all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.
- c. Buyer shall have completed all tests, surveys, analysis, and other due diligence as it shall, in its sole and absolute discretion, deem appropriate and has determined that the results of such examination and analysis are satisfactory to Buyer, in its sole and absolute discretion.
- d. Seller shall have fully complied with all of Seller's duties and obligations contained in this Agreement.
- e. A certification from Seller that as of the Closing Date and to the knowledge of Seller, and each of them there is no litigation or administrative agency or other governmental proceeding pending or threatened, which after Closing would in any way impact the value of the Property or the ability of Buyer to own, use, maintain, occupy or operate the Property as Buyer intends to use the Property.

- f. Buyer's reasonable determination that there is no material adverse change in, or addition to, the information or items reviewed and approved by Buyer, including without limitation, any material modification of, or addition to, any of the matters disclosed in or on the Title Commitment or the Survey the Property, which otherwise might affect title to the Property, or Buyer's intended use thereof.
- g. The physical condition of the Property at Closing, including any improvements thereon, shall be substantially the same as on the date of Buyer's execution of this Agreement, reasonable wear and tear and loss by casualty or condemnation excepted.
- h. All of the funds necessary for the purchase of the Property have been made available to Buyer and tendered to the Title Company for payment to Seller at Closing. The Parties acknowledge that Buyer's obligation to proceed with the purchase of the Property in accordance with the terms of this Agreement is expressly subject to and conditioned upon Buyer's receipt of the necessary funding for such purchase.

6.2. Seller's Conditions. The following are conditions precedent to Seller's obligations hereunder (the "Seller Conditions Precedent"). The Seller Conditions Precedent are intended solely for the benefit of Seller and may be waived only by Seller in writing. In the event any Seller Conditions Precedent is not satisfied, Seller may, in its sole and absolute discretion, terminate this Agreement, and except as otherwise set forth in this Agreement, all obligations of Buyer and Seller hereunder (except provisions of this Agreement which recite that they survive termination) shall terminate and be of no further force or effect.

- a. Buyer shall certify to Seller that, to the best of Buyer's knowledge, all of Buyer's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.
- b. Buyer shall have fully complied with all the Buyer's duties and obligations contained in this Agreement.
- c. The funds necessary to complete the purchase of the Property have been received by Seller and/or tendered to the Title Company.

7. **REPRESENTATIONS AND WARRANTIES AND COVENANTS OF SELLER.**

Seller represents and warrants to Buyer that to the best of Seller's actual knowledge and belief, without any duty to investigate, as of the date hereof and as of the date of Closing:

- a. Any books, files, and records regarding the Property or any part thereof delivered by Seller to Buyer, or made available by Seller to Buyer for review,

are all of the unaltered copies of such books, files, and records in Seller's possession or control relating to the Property.

- b. Seller has complied in all material respects, with all applicable laws, ordinances, regulations, statutes and rules relating to the Property, and every part thereof, and has not received, and is not aware of, any notification from any governmental authority having jurisdiction, requiring any work or remediation on the Property, or advising of any condition (including without limitation, any Regulated Substance) which would render the Property or any part thereof, unusable, or affect the usability of the Property or any part thereof, for the purposes of the Buyer. For purposes of this Agreement "Regulated Substance" shall include but not be limited to "regulated substances" "hazardous waste" or "hazardous materials" "toxic substance" "pollutants" "contaminations" or "pesticides", as defined in the Resources Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substance Control Act, and/or similar state, federal or local environmental laws.
- c. To the best of the Seller's knowledge and belief, there are no surface conditions or subsurface conditions with respect to the Property that constitute, or with the passage of time, may constitute, a public or private nuisance.
- d. There are no parties or trespassers in possession, or persons who have a right to possess (other than pursuant to the EMNRD/Forestry Lease), all or any portion of the Property as of the date of this Agreement, except those identified in the Title Commitment provided by Seller to Buyer. No third party can claim, or with the passage of time, may claim title to any portion of the Property by adverse possession or prescriptive easement; and there are no leases (other than the EMNRD/Forestry Lease), permits, leniencies, easements, licenses or rights of way, or other forms of agreement affecting the Property, except as may be shown on the Title Commitment to be furnished in accordance with this Agreement.
- e. There is no (1) condemnation, environmental, zoning or other land-use proceedings, instituted or threatened, against the Property or any part thereof; (2) special assessment proceedings affecting the Property or any part thereof (other than as set forth in the Title Commitment); or (3) existing or proposed easements, covenants, restrictions, agreements or other documents which affects title to the Property or any part thereof, and which are not disclosed by the Title Commitment.
- f. There is no litigation, arbitration or mediation proceeding pending or threatened, against the Property or any part thereof, against Seller or Seller's predecessor in interest with respect to the Property or any part thereof which could prevent or materially impair the ability of Seller to perform its duties and obligations hereunder.

- g. There are no disputes, claims or actions pending or threatened, involving the boundaries of the Property, including without limitation, the location of any fence or other natural or artificial monument marking any of the Property boundaries.
- h. As of the Closing Date, Seller will be the sole fee owner of the Property to be conveyed in accordance with the terms of this Agreement, and is not and will not be, holding fee title as a nominee for any other person or entity. No person or entity other than Seller has any right of first refusal, option to purchase, or other similar right to, or interest in, the Property.
- i. Seller is not a "foreign person" within the meaning of Internal Revenue Code Section 1445(f)(3).
- j. Except for its agreement with the current owner of the Property to acquire the Property, Seller has not entered into, and during the pendency of this Agreement will not enter into, any agreement related to the purchase or sale of the Property other than this Agreement and the documents executed in connection herewith.

8. **REPRESENTATIONS AND WARRANTIES OF BUYER.** Buyer hereby represents and warrants to Seller as follows:

- a. Buyer is the City of Santa Fe, a New Mexico municipal corporation.
- b. This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are, or at the time of Closing will be, duly authorized, executed and delivered by Buyer, and are, or at the Closing will be, legal, valid and binding obligations of Buyer, and do not, and at the time of Closing, will not, violate any provisions of state law, or any agreement, regulation or judicial order to which Buyer is subject.
- c. Except for the representations, warranties and covenants made to it by Seller which are set forth in Section 7 above, upon which Buyer is expressly relying, Buyer acknowledges that it is purchasing the Property based upon its own inspections and its purchase of the Property, as contemplated by this Agreement shall be "as is" and with all faults.

9. **CLOSING.**

9.1 The Closing of the transaction contemplated by this Agreement will occur on or before December 30, 2022, or such other date as the parties mutually agrees to, (the "Closing Date") through the office of the Title Company and at a time to be agreed upon by the Buyer and Seller. In any event, the Closing Date may be extended as otherwise mutually agreed to by the parties in writing.

9.2 At the Closing, Seller shall deliver to Buyer and/or the Title Company, as applicable:

- a. A Warranty Deed conveying to the Buyer the Property and appurtenant rights subject only to exceptions previously approved or deemed accepted by Buyer in accordance with the terms and provisions of this Agreement.
- b. An Owner's Policy of title insurance (the "Title Policy") issued by Title Company in the amount of the Purchase Price, dated as of the Closing Date, insuring Buyer's fee simple title to the Property to be good and indefeasible subject only to those title exceptions permitted herein, and insuring permanent legal access from a public way to the Property.
- c. Possession of the Property, and keys thereto, as well as disclosure of access codes for any gates securing the Property or any portion thereof.
- d. Any affidavits or other documents required under the terms of this Agreement, and an affidavit stating that Seller is not a foreign person within the meaning of Section 1445(F)(3) of the Internal Revenue Code.
- e. Any other document reasonably required by the Title Company or the Buyer to carry out the terms and obligations of this Agreement.
- f. Original or copies of all certificate permits, licenses, and other authorizations (if in the possession of Seller) necessary for the full use, operation, maintenance and acceptance, of the Property or any portion thereof.

9.3 At the Closing, Buyer shall deliver, or shall cause to be delivered, to Seller and/or to the Title Company, as applicable:

- a. The Purchase Price, together with funds sufficient to pay Buyer's obligations hereunder.
- b. Evidence of Buyer's authorization, as required by the Title Company or Seller, to enter into this Agreement and consummate the transaction.
- c. Any document reasonably required by the Title Company or the Seller to carry out the terms and obligations of this Agreement.

9.4 Unless otherwise provided herein, Seller shall be responsible for payment for the title insurance premium for the Title Policy to be provided to Buyer including the removal of the mechanics and materialmen's lien exception; all costs for curing title matters, or environmental matters, any attorney's fees incurred by Seller, and any other costs and expenses required to be paid by Seller pursuant to the terms of this Agreement. Buyer shall pay for the cost of recording the Warranty Deed, and any costs specified in this Agreement to be Buyer's obligation.

9.5 Rents, water, wastewater and utility charges, if any, and any other items of income or operational expenses owing in connection with the Property shall be paid by Seller up to the Closing Date, and will be paid by Buyer for those periods after Closing has taken place.

10. **CASUALTY LOSS.** If, prior to Closing, any part of the Property is damaged or destroyed by fire or other casualty loss, Seller bears the risk of such loss and Buyer may either terminate this Agreement or Buyer may accept the Property in its then existing condition, with a reduction of the Purchase Price to the appraised value of the Property at the time of Closing after the loss. In no event will Seller be obligated to make any repairs to the Property.
11. **DEFAULT.** If Seller fails to comply herewith, Buyer may (1) obtain specific performance for this Agreement, (2) terminate this Agreement, or (3) pursue any other remedy authorized by law or equity. If Buyer fails to comply herewith for any reason, Seller may (1) obtain specific performance for the Agreement, (2) terminate this Agreement, or (3) pursue any other remedy authorized by law or equity.
12. **CONDEMNATION.** If any part of the Property is condemned prior to Closing, Seller shall promptly give Buyer written notice of such condemnation and Buyer in its sole discretion may either retain the condemnation award and apply such award to reduce the Purchase Price provided herein or declare this Agreement terminated by delivering written notice of termination to Seller.
13. **[Intentionally deleted.]**
14. **NOTICES.** Any notice or communication required or permitted hereunder will be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the address directly below, or when hand-delivered as evidenced by written acknowledgment therefor. Any notice required thereunder shall be deemed effective as of the date of hand delivery, or on the third day after the same shall have been deposited in the United States mail, as hereinbefore specified.

Seller: City of Santa Fe
PO Box 909
Santa Fe, NM 87504
Attn: John Blair, City Manager
Tel: 505-955-6848
Email: jwblair@santafenm.gov

NMSGC: New Mexico State Game Commission
1 Wildlife Way
Santa Fe, NM 87507
Attn: Michael B. Sloane

Tel: 505-476-8000
Email: michael.sloane@state.nm.us

Either party may change its address for notice at any time, by written notice to the other party delivered in the manner hereinbefore prescribed.

15. **INTEGRATION.** This Agreement contains the complete agreement between the parties regarding the subject matter hereof and cannot be varied except by a written agreement of the parties, executed by duly authorized representatives of each party. The parties agree that there are no oral agreements, understandings, representations or warranties that are not expressly set forth herein.
16. **BINDING EFFECT.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective successors, legal representatives and assigns.
17. **ASSIGNMENT.** Buyer may not assign its interest in this Agreement.
18. **NEW MEXICO LAW TO APPLY.** This Agreement must be construed under and in accordance with the laws of the State of New Mexico.
19. **LEGAL CONSTRUCTION.** If any one or more of the provisions of this Agreement are, for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement must be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Notwithstanding the foregoing, if any provision of this Agreement is for any reason deemed to be illegal, invalid or unenforceable and the omission of such illegal, invalid or unenforceable provisions materially changes the rights of the parties, or the benefits which either party intends to receive hereunder, then the party whose right or benefits have been so affected shall have the right to terminate this Agreement by giving written notice to the other party, whereupon neither party shall have any further obligations hereunder, except as may be otherwise specified therein.
20. **TIME.** Time is of the essence with respect to each party's performance of its obligations hereunder. Any time period herein calculated by reference to "days" shall mean calendar days; provided, however, that if the action date deadline for a party falls on a Saturday, Sunday or holiday recognized by the State of New Mexico, such action date shall be extended to the next day that is not a Saturday, Sunday or federally recognized holiday.
21. **BROKERS' COMMISSION.** Neither party is using a real estate broker in this transaction and no broker commissions are due. Each party, independently, is responsible for any claims by any brokers acting through that party.


EXECUTED in multiple counterparts by the Seller and Buyer on the dates set forth below. The later date is the Effective Date of this Agreement.

City of Santa Fe, New Mexico

memo

DATE: December 20, 2022

TO: City of Santa Fe Governing Body

FROM: Erin K. McSherry, City Attorney 

ITEM AND ISSUE:

Authorizing the City Manager to Terminate the Agreement for the Purchase of Approximately 23.08 Acres Located at 1085 Richards Avenue, Item #22-0500, if the Department of Game and Fish Does not Agree to Extend the Closing Date from December 30, 2022, to January 31, 2023 on or before December 30, 2022.

BACKGROUND AND SUMMARY:

Although the City understands that the Department of Game and Fish is likely to sign the Agreement to Extend the Period to Close the purchase of 1085 Richards Avenue (the Property), as of the end of the day, December 20, 2022, the City does not have a signed agreement from the Department. A written agreement is required to extend the time for closing.

If the Game and Fish Department does not sign the agreement to extend the time for closing, and the Governing Body does not want to purchase the Property without further consideration of its value, then the City must terminate the agreement.

Without authorizing the City Manager to terminate the agreement, termination would require a Special Meeting for a vote of the Governing Body before December 30, 2022. Authorizing the City Manager to terminate, by contrast, may avoid another special meeting before the end of the year.

ACTION REQUESTED:

Authorization of the City Manager to terminate the agreement for the purchase of the Property, Item #22-0500, if the Department of Game and Fish does not agree to extend the closing date to January 31, 2023.



City of Santa Fe, New Mexico

Memorandum



Date: December 16, 2022

To: Finance Committee, Quality of Life Committee, Public Works and Utilities Committee, and Governing Body

From: Kristine Mihelcic, City Clerk *KM*,

RE: Adoption of Open Meetings Act notice requirements for 2023

EXECUTIVE SUMMARY:

The proposed Resolution repeals Resolution No. 2022-2 and adopts new notice requirements for 2023.

BACKGROUND:

The New Mexico Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4, requires that public bodies adopt notice requirements for public meetings at least annually. As a result, each year the Governing Body adopts a Resolution adopting notice requirements for that year.

ACTION REQUESTED:

Adopt the proposed Resolution as presented.

ATTACHMENTS:

Resolution
Resolution No. 2022-2
Fiscal Impact Report

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CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2023-__

INTRODUCED BY:

Mayor Alan Webber

A RESOLUTION

**RESCINDING RESOLUTION NO. 2022-2 RELATING TO THE OPEN MEETINGS ACT; AND
ADOPTING ANNUAL NOTICE REQUIREMENTS PURSUANT TO THE OPEN MEETINGS
ACT FOR 2023.**

WHEREAS, the New Mexico Open Meetings Act (“Open Meetings Act”), NMSA 1978, Sections 10-15-1 to -4, requires that public bodies “determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body”; and

WHEREAS, the Open Meetings Act governs the Governing Body and the Governing Body’s subordinate policymaking bodies; and

WHEREAS, the City desires to comply with the Open Meetings Act by rescinding its prior year’s Open Meeting Act Resolution, Resolution No. 2022-2, and to adopt new notice requirements for the City’s policymaking bodies; and

WHEREAS, the City of Santa Fe seeks to give annual notice to the public of its determination, pursuant to NMSA 1978, Section 10-15-1(D), that seventy-two (72) hours’ notice prior to its regular and special meetings and the meetings of its subordinate policymaking bodies is deemed by the City to be

1 reasonable notice.

2 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY**
3 **OF SANTA FE:**

4 **Section 1.** Resolution No. 2022-2 is hereby rescinded.

5 **Section 2.** The applicability of the Open Meetings Act to the City's policymaking bodies is
6 recognized.

7 **Section 3.** The notice requirements set forth below are hereby adopted.

8 A. The City shall give a minimum of seventy-two (72) hours' notice of all regular
9 and special meetings of the Governing Body and its subordinate policymaking
10 bodies.

11 B. The notice shall include the date, time, and place of the planned meeting and a
12 list of specific items of business to be discussed or transacted at the meeting or
13 information on how the public may obtain a copy of such an agenda.

14 C. The City shall make the notice available to the public and news media through
15 reasonable means, including posting on the City's website.

16 D. The agenda shall be filed, recorded, and posted on the City's website.

17 **Section 4.** Regular Meetings of the Governing Body

18 A. Unless otherwise specified, including in subsections B below, regular meetings
19 of the Governing Body shall be held as follows:

20 i. On the second and last Wednesday of each month.

21 ii. In the City Council Chambers of the municipal building of the City,
22 located at 200 Lincoln Avenue, Santa Fe.

23 B. When it is difficult or impossible for members of the Governing Body to meet in
24 person, they may participate virtually pursuant to SFCC 1987, Section 1-9.

25 C. To the extent possible, meetings will be broadcast via the City's YouTube channel

1 and other media as available, such as the City’s Government Channel on Comcast
2 Channel 28 or Comcast Channel HD928, and on the radio at KSFR 101.1 FM.

3 **Section 5:** Special Meetings

4 A. The City shall provide a minimum of 72 hours’ notice of all special meetings of
5 the Governing Body and its subordinate policymaking bodies.

6 B. Unless otherwise specified, special meetings are held at the same place specified
7 in NMSA 1978, Sections 10-15-1 to -4. The date, time, and place of a special
8 meeting shall appear on the agenda and be made available to the public and news
9 media through reasonable means including posting on the City’s website.

10 C. The agenda shall be filed, recorded, and posted with the office of the City Clerk.

11 D. When it is difficult or impossible for members of the Governing Body to meet
12 in person, they may participate virtually pursuant to SFCC 1987, Section 1-9.

13 E. To the extent possible, meetings will be broadcast via the City’s YouTube
14 channel and other media as available, such as the City’s Government Channel
15 on Comcast Channel 28 or Comcast Channel HD928, and on the radio at KSFR
16 101.1 FM.

17 **Section 6:** Quasi-Judicial Committees and Subordinate Policymaking Bodies

18 A. The Governing Body hereby requires that every quasi-judicial committee, board,
19 or commission, including but not limited to the planning commission, historic
20 design review board, and board of adjustment, follow the same notice
21 requirements as the Governing Body, and as provided in this resolution and the
22 Open Meetings Act.

23 B. The Governing Body of the City hereby requires that all other policymaking
24 boards, commissions, and committees shall follow the same notice requirements
25 as provided by the Open Meetings Act.

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Section 7: Emergency Meetings

- A. Pursuant to its procedural rules, the Governing Body or subordinate policymaking body may call, with, if possible, up to 24-hours' notice, a meeting to consider any matter that needs emergency treatment because of a clear and present danger to the health, welfare, or safety of the people of the City. When possible, 24-hour telephonic notice will be given to all media who normally cover City meetings before the emergency meeting commences.
- B. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Unless there is a state of national emergency already declared for the same reasons, within ten days of taking action on an emergency matter, the City will notify the Attorney General's Office that the emergency meeting took place.

PASSED, APPROVED, and ADOPTED this ___ day of _____, 2023.

ATTEST:

ALAN WEBBER, MAYOR

KRISTINE MIHELICIC, CITY CLERK

APPROVED AS TO FORM:



ERIN K. McSHERRY, CITY ATTORNEY

Legislation/Resolutions/2023/Open Meetings Act 2023

FISCAL IMPACT REPORT

General Information:

(Check) Bill: _____ Resolution: X

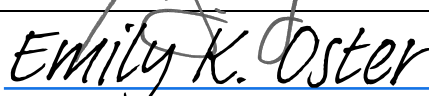
Short Title(s): Open Meetings Act 2023

Sponsor(s): Mayor Webber

Reviewing Department(s): City Clerk

Staff Completing FIR: ^{KM,} Kristine Mihelcic Date: 12/16/2022 Phone: 955-6327

Reviewed by City Attorney:  Date: Dec 16, 2022

Reviewed by Finance Director:  Date: Dec 19, 2022
Emily K. Oster (Dec 19, 2022 10:32 MST)

Summary:

The purpose of this Resolution is to comply with the Open Meetings Act by rescinding Resolution No. 2022-2, relating to the Open Meetings Act (OMA); and adopt annual notice requirements for 2023.

Departments Affected:

Governing Body, City Clerk's Office, and Departments supporting policy making bodies.

Consequences of Not Enacting Legislation:

If this legislation is not adopted, the Governing Body would need to adopt notice requirements for meetings governed by the OMA by a different manner in a public meeting.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:

This resolution rescinds the prior resolution on this topic, Resolution No. 2022-2.

Performance and Administrative Implications:

Compliance with the OMA is required for decisions of policy making bodies to be final and binding.

Fiscal Implications:

OMA does not require stenographers, but funds for stenographers come from the General fund and are included in the City Clerk's budget for FY23.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE 23	FYE 24	FYE 25	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
<u>Personnel and</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Benefits*</u>							
<u>Capital Outlay</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Contractual/</u>	_____	<u>\$35,000</u>	<u>\$35,000</u>		<u>R</u>	_____	
<u>Professional Services</u>							
<u>Operating</u>	\$ _____	\$ _____	\$ _____		_____	_____	\$ _____
<u>Total:</u>		<u>\$35,000</u>	<u>\$35,000</u>				<u>\$105,000</u>

* This includes all staff time associated with executing the job functions of the proposed legislation.

Expenditure Narrative:

The City Clerk's Office allocated \$35,000 for stenographer contracting costs associated with providing detailed minutes to certain committees including Governing Body, the City Council Standing Committees, and Planning Commission and plans to similarly budget in future years.

Revenue

Revenue Type	FYE __	FYE __	FYE __	Recurring (R) or Non-recurring (NR)	Fund
General Fund	\$ _____	\$ _____	\$ _____	_____	_____
Special Revenue	\$ _____	\$ _____	\$ _____	_____	_____
CIP	\$ _____	\$ _____	\$ _____	_____	_____
Enterprise	\$ _____	\$ _____	\$ _____	_____	_____
Internal Service	\$ _____	\$ _____	\$ _____	_____	_____
Trust and Agency	\$ _____	\$ _____	\$ _____	_____	_____
Federal	\$ _____	\$ _____	\$ _____	_____	_____
Other	\$ _____	\$ _____	\$ _____	_____	_____
Total	\$ _____	\$ _____	\$ _____		

Revenue Narrative:

Signature: 

Email: kmmihelcic@santafenm.gov