



AGENDA

REGULAR MEETING OF
THE GOVERNING BODY
JANUARY 25, 2023 5:00 PM
COUNCIL CHAMBERS, CITY
HALL
200 LINCOLN AVENUE

PROCEDURES FOR 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.

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> until 1 p.m. the day of the meeting.

Live Public Comment: Members of the public may provide public comment in person during *Petitions from the Floor*, *Public Comment*, *Final Action on Legislation*, or *Public Hearings*.

Virtual Public Comment: To provide public comment during *Petitions from the Floor*,

Public Comment, Final Action on Legislation, or Public Hearings virtually, you must join the Zoom meeting by internet or phone, as follows:

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm.gov.zoom.us/j/89251112316>.

Attendees should use the “Raise Hand” function to be recognized by the Mayor to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: **US: 1 (346) 248-7799 - Webinar ID: 892 5111 2316**

Phone attendees should press *9 to use the “Raise Hand” function to be recognized by the Mayor to speak at the appropriate time.

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

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

Councilor Romero-Wirth

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

Councilor Lee Garcia

4. **INVOCATION AND REMEMBRANCES**

Councilor Chavez

5. **ROLL CALL**

6. **APPROVAL OF AGENDA**

7. **APPROVAL OF CONSENT AGENDA**

8. **PRESENTATIONS**

- a. Audit Update for FY21. (Emily Oster, Finance Director: ekoster@santafenm.gov, 505-629-3411)

9. **ACTION ITEMS: CONSENT AGENDA**

- a. Request for Approval of the December 14, 2022 Regular Governing Body Meeting Minutes. (Geraldyn Cardenas, Assistant City Clerk: gfcardenas@santafenm.gov; 505-955-6519)

Committee Review:

Governing Body: 01/25/2023

- b. Request for Approval of the December 21, 2022 Special Governing Body Meeting Minutes. (Geraldyn Cardenas, Assistant City Clerk: gfcardenas@santafenm.gov; 505-955-6519)

Committee Review:

Governing Body: 01/25/2023

- c. Request for Approval of Liquor Hearing Officer's Recommendation to Approve the Request from Starry Nights Beverage, LLC, for a Transfer of Ownership and Location of Inter-Local Dispenser Liquor License No. 28082, from Pink Adobe, 406 Old Santa Fe Trail, to Inn of the Five Graces, 406 Old Santa Fe Trail & 150-160 E. De Vargas Street, Santa Fe. (Alexandria Mares, Marketing & Special Events Coordinator: armares@santafenm.gov, 955-6520)

Committee Review:

Liquor Hearing: 01/09/2023

Governing Body: 01/25/2022

- d. Request for Approval of Liquor Hearing Officer's Recommendation to Approve the Request from Starry Nights Beverage, LLC, for a Transfer of Location Only of Inter-Local Dispenser Liquor License No. 28081, from Inn of the Five Graces, 150-160 E. De Vargas Street, to Inn of the Five

Graces #2, 330 Old Santa Fe Trail & 129-141 E. De Vargas Street, Santa Fe. (Alexandria Mares, Marketing & Special Events Coordinator: armares@santafenm.gov, 955-6520)

Committee Review:

Liquor Hearing: 01/09/2023

Governing Body: 01/25/2023

- e. Request for Approval of Liquor Hearing Officer's Recommendation to Approve the Request from Taurus Adelfi, LLC, for a Transfer of Ownership of Inter-Local Dispenser Liquor License No. 2574 with On-Premises Consumption Only and Patio Service, to Remain Located at The Bull Ring, 150 Washington Avenue, Suite 108, Santa Fe. (Alexandria Mares, Marketing & Special Events Coordinator: armares@santafenm.gov, 955-6520)

Committee Review:

Liquor Hearing: 01/09/2023

Governing Body: 01/25/2023

- f. Request for Approval of Liquor Hearing Officer's Recommendation to Approve the Request from Yin Yang Chinese Cuisine LLC, for a Restaurant A (Beer & Wine) Liquor License, to be Located at Yin Yang Chinese Restaurant, 418 Cerrillos Road, #A, Santa Fe. (Alexandria Mares, Marketing & Special Events Coordinator: armares@santafenm.gov, 955-6520)

Committee Review:

Liquor Hearing: 01/09/2023

Governing Body: 01/25/2023

- g. Request for Approval to Purchase a Vactor Ace Easement Machine for the Wastewater Collections Division with Pete's Equipment Repair in the Total Amount of \$111,506.25. (Benjamin Sandoval, Wastewater Collections Manger: basandoval@santafenm.gov, 505-955-4632)

- 1. Request for Approval of a Budget Adjustment Resolution from the WWMD Cash Balance in the Amount of \$111,506.25.

Committee Review:

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- h. Request for Approval of Contract with MISCOWater/TW Associates to Purchase and Install Two Polymer Dosing Systems in the Total Amount of \$71,113.75. (P.Fred Heerbrandt, P.E., Engineer Supervisor: pfheerbrandt@santafenm.gov)

- 1. Request for Approval of a Budget Adjustment Resolution from the Wastewater Management Division Cash Balance In the Amount of \$71,113.75.

Committee Review:

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- i. Request for Approval of Telecommunications Agreement with Century Link/Lumen Amendment No. 1 to SPA #20-361-0021-04390 to Add the City of Santa Fe to the SPA for Network Security, Bandwidth and Content Filtering in the Total Amount of \$430,884.00 for Thirty Six Months. (Manuel Gonzales, ITT Department Director, mmgonzales@santafenm.gov, 505-955-5576)

Committee Review:

Finance Committee 01/17/2023

Quality of Life Committee 01/18/2023

Governing Body 01/25/2023

- j. Request for Approval of Amendment No. 1 to American Rescue Plan Act (ARPA) Recovery Funds Subrecipient Contract No.22-0477 in the Total Amount of \$900,000 for Early Childcare Job Development Services with the Santa Fe Community College Early Childhood Education Center of Excellence (SFCC-ECCOE). (Julie Sanchez, Youth and Family Services Division Director: jjsanchez@santafenm.gov, 505-955-6678).

Committee Review:

Finance Committee: 1/17/2023

Quality of Life Committee: 1/18/2023

Governing Body: 1/25/2023

- k. Request for Approval of Memorandum of Agreement No. 2022-0233-CSD/MM with Santa Fe County to Receive \$100,000 in County American Rescue Plan Act (ARPA) Funding for Prevention and Intervention Programs to Address Youth and Community Violence Through a Collaborative Violence Prevention Unit. (Julie Sanchez, Youth and Family Services Director: jjsanchz@santafenm.gov, 505-955-6678 and Sophie Andar, Youth and Family Services Program Manager: sxandar@santafenm.gov, 505-955-6236)

Committee Review:

Finance Committee: 01/17/2023

Quality of Life Committee: 01/18/2023

Governing Body: 01/25/2023

- l. Request for the Approval of State of New Mexico Aging and Long Term Services Department Grant Agreement in the Total Amount of \$268,841.12 for the Foster Grandparent, Senior Companion, and Retired Senior Companion Volunteer Programs, Term Ending June 30, 2023 (Anya Alarid, Senior Services Program Manager: aalarid@santafenm.gov, 505-955-4744).

Committee Review:

Finance Committee: 1/17/2023

Quality of Life: 1/18/2023

Governing Body: 1/25/2023

- m. CONSIDERATION OF RESOLUTION NO. 2023-___. (Councilor Cassutt) A Resolution Approving the Updated Santa Fe Trails Agency Safety Plan and Directing its Submission to the Federal Transit Administration. (David Chapman, Technical and Grant Writer: dachapman@santafenm.gov, 505-955-6824)

Committee Review:

Governing Body (Introduced): 01/11/2023

Public Works and Utilities Committee: 01/23/2023

Governing Body: 01/25/2023

- n. CONSIDERATION OF RESOLUTION NO. 2023-___. (Mayor Webber, Councilor Chavez, Councilor Romero-Wirth, Councilor Cassutt and Councilor Lindell)

A Resolution Relating to Firearms; Recognizing that Certain City Properties are Used for School-Related Activities, Which Makes the Carrying of a Deadly Weapon on Such Properties a Fourth-Degree Felony Pursuant to NMSA 1978, Section 30-7-2.1; and Directing the City Manager to Work with Staff to Post Notice on Such Facilities. (Kyra Ochoa, Community Health and Safety Department Director: krochoa@santafenm.gov)

Committee Review:

Governing Body (Introduced): 11/30/2022

Quality of Life Committee (Postponed): 12/7/2022

Quality of Life Committee: 01/04/2023

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- o. CONSIDERATION OF RESOLUTION NO. 2022-___. (Mayor Webber, Councilor Cassutt, Councilor Chavez)

A Resolution Adopting the Midtown Community Development Plan for the Midtown Redevelopment Project. (Lee Logston, Midtown Asset Development Manager: llogston@santafenm.gov, 505-995-6914)

Committee Review:

Governing Body (Introduced) (Postponed): 11/09/2022

Governing Body (Introduced) (Postponed): 11/30/2022

Governing Body (Introduced): 12/14/2022

Finance Committee: 01/03/2023

Community Development Commission: 01/04/2023

Quality of Life Committee: 01/04/2023

Public Works and Utilities Committee: 01/09/2023

Economic Development Advisory Committee: 01/11/2023

Governing Body (Postponed): 01/11/2023

Governing Body: 01/25/2023

10. **ACTION ITEMS: DISCUSSION AGENDA**

- a. CONSIDERATION OF RESOLUTION NO. 2022-___. (Councilor M. Garcia, Councilwoman Villarreal and Mayor Webber)
A Resolution Adopting a Strategy for Donating or Selling, at Below-Market Value, a Property Identified as “Las Estrellas Tract 6A” to a Developer Certified as a “Qualifying Grantee” Under the New Mexico Affordable Housing Act to Develop Santa Fe Homes Program Homes, Low-Priced Dwelling Units, or Units Price-Restricted Through Another Affordable Housing Subsidy; and Approving an Announcement to Sell the Remaining Seven Las Estrellas Lots with a Local Preference. (Terry Lease, Asset Development Manager: tjlease@santafenm.gov)

Committee Review:

Governing Body (Introduced): 11/30/2022
Community Development Commission: 12/07/2022
Economic Development Advisory Committee: 12/14/2022
Quality of Life Committee: 01/04/2023
Public Works and Utilities Committee: 01/09/2023
Finance Committee: 01/17/2023
Governing Body: 01/25/2023

11. **MATTERS FROM THE CITY MANAGER**

12. **MATTERS FROM THE CITY ATTORNEY**

EXECUTIVE SESSION

In Accordance with the New Mexico Open Meetings Act, NMSA 1978, Section 10-15-1, Part (H)(7), Quarterly Update of Attorney-Client Privileged Discussion of Pending and Threatened Litigation. (Erin K. McSherry, City Attorney: ekmcsherry@santafenm.gov, 505-955-6512)

13. **MATTERS FROM THE CITY CLERK**

14. **COMMUNICATIONS FROM THE GOVERNING BODY**

15. **INTRODUCTION OF LEGISLATION**

- a. CONSIDERATION OF BILL NO. 2023-9 (Mayor Webber, Councilor

Lindell, Councilor Cassutt and Councilor Romero-Wirth)
A Bill Approving a Lease Agreement Between the City Of Santa Fe and Specifica, LLC, for the Lease of City-Owned Building and Improvements Located At 500 Market Street Within the Railyard Within the City And County of Santa Fe, New Mexico to Expand Its Biotechnological Company. (Andrea Salazar, Assistant City Attorney, asalazar@santafenm.gov, 505-955-6303)

Committee Review:

Governing Body (Introduced): 01/25/2023
Governing Body (Public Comment): 02/08/2023
Finance Committee: 02/13/2023
Quality of Life: 02/15/2023
Public Works and Utilities: 02/20/2023
Governing Body (Public Hearing): 03/08/2023

16. **PETITIONS FROM THE FLOOR**

17. **PUBLIC COMMENT ON BILLS (FIRST PUBLIC COMMENT, NO ACTION)**

- a. CONSIDERATION OF BILL NO. 2023-4. (Councilor Cassutt and Councilwoman Villarreal)
An Ordinance Amending SFCC 1987 to Use Gender-Neutral Language. (Pat Feghali, Assistant City Attorney: pfeghali@santafenm.gov, 505-955-6501)

Committee Review:

Governing Body (Introduced): 01/11/2023
Governing Body (Public Comment): 01/25/2023
Quality of Life Committee: 02/01/2023
Governing Body: 02/22/2023

- b. CONSIDERATION OF BILL NO. 2023-6. (Mayor Webber)
An Ordinance Amending Section 2-8.2(A), "Creation of Department" by Removing Language that Prescribes a "Recreation Division" as a Division of the Community Health and Safety Department and "Family and Youth Services" as a Component of the Community Services Department; and by Removing the Term "Safety" from the Name of the

“Office of Emergency Management and Safety”. (Kyra Ochoa, Community Health and Safety Department Director: krochoa@santafenm.gov)

Committee Review:

Governing Body (Introduced): 01/11/2023
Governing Body (Public Comment): 01/25/2023
Quality of Life Committee: 02/01/2023
Public Works and Utilities Committee: 02/06/2023
Finance Committee: 02/13/2023
Governing Body (Public Hearing): 02/22/2023

- c. CONSIDERATION OF BILL NO. 2023-5 (Councilor Romero-Wirth and Councilor Cassutt)
An Ordinance Amending Sections 2-1.9, 2-4.6, and 19-4. SFCC 1987, to Authorize Governing Body Members to Employ Staff When Funds are Budgeted for that Purpose and Aligning those Sections with the City of Santa Fe Charter. (Bernadette Salazar, Human Resources Director, bjsalazar@santafenm.gov, 505-955-6591)

Committee Review:

Governing Body (Introduced): 01/11/2023
Governing Body (Public Comment): 01/25/2023
Quality of Life Committee: 03/01/2023
Public Works and Utilities Committee: 03/06/2023
Finance Committee: 03/13/2023
Governing Body (Public Hearing): 03/22/2023

- d. CONSIDERATION OF BILL NO. 2023-7. (Mayor Webber)
An Ordinance Relating to Fire Safety; Creating a New Section 12-7 SFCC 1987 to Allow the City Manager, in Consultation with the Fire Chief, Emergency Manager, and the Director of the Community Health and Safety Department, to Close Certain Public Spaces if Fire Conditions Require Such Closure to Protect Life or Property, and to Preserve Public Peace and Safety. (Brian Moya, Fire Chief: bjmoya@santafenm.gov)

Committee Review:

Governing Body (Introduced): 01/11/2023
Governing Body (Public Comment): 01/25/2023
Public Safety Committee: 02/21/2023

Quality of Life Committee: 03/01/2023
Public Works and Utilities Committee: 03/06/2023
Finance Committee: 03/13/2023
Governing Body (Public Hearing): 03/22/2023

- e. CONSIDERATION OF BILL NO. 2023-8. (Mayor Webber)
An Ordinance Amending Section 14-6.2(I) to Permit Cannabis Retailers Wholly Owned by a Tribe Within Four Hundred (400) Feet of Another Retailer if the Other Retailer Initiates its Application for a Cannabis Retail License After the Retailer Wholly Owned by a Tribe. (Pat Feghali, Assistant City Attorney: pfeighali@santafenm.gov, 955-6501)

Committee Review:

Governing Body (Introduced): 01/11/2023
Governing Body (Public Comment): 01/25/2023
Planning Commission: 02/02/2023
Public Works and Utilities Committee: 02/06/2023
Governing Body (Public Hearing): 02/22/2023

18. **FINAL ACTION ON LEGISLATION (PUBLIC HEARING)**

- a. CONSIDERATION OF BILL NO. 2022-23. ADOPTION OF ORDINANCE NO. 2023-____. (Councilor Lindell, Mayor Webber and Councilor Chavez)

An Ordinance Amending Section 12-10-1.10 of the Uniform Traffic Ordinance Governing Mufflers and Emission Control Devices; and Amending Schedule A of the Uniform Traffic Ordinance to Increase Penalties for Muffler Noise Violations. (Matthew Champlin, Deputy Chief of Police: mrchamplin@santafenm.gov, 505-955-5201)

Committee Review:

Governing Body (Introduced): 09/14/2022
Governing Body (Public Comment): 09/28/2022
Quality of Life Committee (Postponed): 10/05/2022
Quality of Life Committee (Forwarded with No Recommendation): 10/19/2022
Public Works and Utilities Committee (Postponed): 10/24/2022
Public Works and Utilities Committee (Forwarded with No Recommendation): 11/07/2022

Finance Committee: 11/28/2022
Governing Body (Public Hearing) (Postponed): 01/11/2023
Governing Body (Public Hearing): 01/25/2023

19. **PUBLIC HEARINGS**

- a. **Appeal # 2022-5536-APPL of Case # 2022-5189-HDRB.** Appeal by Heidi & John Mullican of the Historic Districts Review Board's Denial of a Proposal to Reconstruct a Yard Wall on a Property at 330 Don Cubero Pl. in the Don Gaspar Area Historic District. (Frank Ruybalid, Assistant City Attorney: feruybalid@santafenm.gov)

- b. CONSIDERATION OF RESOLUTION NO. 2023-_____.
Case #2021-5505. NM Land Solutions LLC, Agent, for Dry Creek Partnership, Applicant, requests approval of a Resolution to amend the General Plan Future Land Use Map to change the Future Land Use Classification for approximately 2.2 acres of land located at 6350 Airport Road, from Office to Community Commercial. (Heather Lamboy, Assistant Land Use Director: hllamboy@santafenm.gov, 505-955-6598) **POSTPONED FROM THE JANUARY 11, 2023 REGULAR GOVERNING BODY MEETING**

- c. CONSIDERATION OF BILL NO. 2023-3. ADOPTION OF ORDINANCE NO. 2023-_____.
Case #2021-5506. NM Land Solutions LLC, Agent, for Dry Creek Partnership, Applicant, Requests Approval of a Bill to Rezone Approximately 2.2 Acres of Land Located at 6350 Airport Road, from C-1 (Office and Related Commercial District) to C-2 (General Commercial District). (Heather Lamboy, Assistant Land Use Director: hllamboy@santafenm.gov; 505-955-6598) **POSTPONED FROM THE JANUARY 11, 2023 REGULAR GOVERNING BODY MEETING**

- d. CONSIDERATION OF RESOLUTION NO.2023_____.
Case #2021-4648. JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Requests Approval of a Resolution to Amend the Designation on the General Plan Future Land Use Map for Approximately 19.54 Acres, Located at 3600 South Meadows Road and within the River and

Trails Archeological Review Overlay District and the Suburban Archeological Review Overview District, from Park to Low-Density Residential (Residential: Three to Seven Dwelling Units Per Acre). (Dan Esquibel, Case Manager, daesquibel@santafenm.gov, 505-955-6587) **POSTPONED FROM THE JANUARY 25, 2023 REGULAR GOVERNING BODY MEETING.**

- e. CONSIDERATION OF BILL NO. 2023-1. ADOPTION OF ORDINANCE NO. 2023-_____.
Case #2021-4649. JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Requests Approval of Bill 2023-1 to Rezone Approximately 19.54 Acres, Located at 3600 South Meadows Road and within the River and Trails Archaeological Review Overlay District and the Suburban Archaeological Review Overview District, from R-1 (Residential: One Dwelling Unit Per Acre) to R-6 (Residential: Six Dwelling Units Per Acre). (Dan Esquibel, Case Manager, daesquibel@santafenm.gov, 505-955-6587) **POSTPONED FROM THE JANUARY 25, 2023 REGULAR GOVERNING BODY MEETING.**

- f. CONSIDERATION OF RESOLUTION NO. 2023-_____.
Case #2021-4650. JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Requests Approval of a Resolution to Amend the Designation on the General Plan Future Land Use Map for Approximately 2.66 Acres, Located at 3740 South Meadows Road and within the River and Trails Archaeological Review Overlay District and the Suburban Archaeological Review Overview District, from Park to High-Density Residential (Residential: 12 to 29 Units Per Acre). (Dan Esquibel, Case Manager, daesquibel@santafenm.gov, 505-955-6587) **POSTPONED FROM THE JANUARY 25, 2023 REGULAR GOVERNING BODY MEETING.**

- g. CONSIDERATION OF BILL NO. 2023-2. ADOPTION OF ORDINANCE 2023-_____.
Case #2021-4651. JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Requests Approval of Bill 2023-2 to Rezone Approximately 2.66 Acres Located at 3740 South Meadows Road and within the River and Trails Archaeological Review Overlay District and the Suburban Archaeological Review Overview District, from R-1 (Residential: One Dwelling Unit Per Acre) to R-21 (Residential: 21 Dwelling Units Per Acre).

(Dan Esquibel, Case Manager: daesquibel@santafenm.gov, 505-955-6587) **POSTPONED FROM THE JANUARY 25, 2023 REGULAR GOVERNING BODY MEETING.**

- h. CONSIDERATION OF RESOLUTION 2023-____.
Case #2022-5618. JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Requests Approval of Resolution 2023-____ to Adopt a Master Plan for a Residential Project on Approximately 22.2-Acres Located at 3600 and 3740 South Meadows Road to Include a Subdivision, Development Plan, and Construction of a Neighborhood Park for Dedication to the City. (Dan Esquibel, Case Manager, daesquibel@santafenm.gov, 505-955-6587) **POSTPONED FROM THE JANUARY 25, 2023 REGULAR GOVERNING BODY MEETING.**

20. **APPOINTMENTS**

- a. Economic Development Advisory Committee
- Kristin Pulatie – Appointment – Term Ending 06/2024
 - Mary Ondine Frauenglass – Appointment – Term Ending 06/2024

21. **ADJOURN**

Closed captions are provided for this meeting. Persons with disabilities in need for additional accommodations, contact the City Clerk's office at 505-955-6521, five (5) working days prior to meeting date.

**Governing Body
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January 25, 2023**

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20. Appointments		
a) EDAC	Appointments approved	66-67

**Regular Meeting of the Governing Body
Wednesday, January 25, 2023
City Hall
Santa Fe, New Mexico
Hybrid Meeting**

MINUTES

1. CALL TO ORDER

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Alan Webber, Mayor, on Wednesday, January 25, 2023, at approximately 5:10 p.m., at the Council Chambers at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico as a hybrid meeting.

2. PLEDGE OF ALLEGIANCE

Councilor Romero-Wirth led the Pledge of Allegiance.

3. SALUTE TO THE NEW MEXICO FLAG

Councilor Lee Garcia led the Salute to the New Mexico Flag.

4. INVOCATION

Councilor Chavez gave the Invocation. She focused on light that helps us every day. She thanked those who spread light from their heart from what has been darker days and the powers of light and how we project ourselves and light lead us in love of others. Amanda Gorman wrote in her poem, that light is what we need in our life right now.

Councilor Michael Garcia recognized the lives lost this past week in violent events.

The Governing Body observed a moment of silence for those who have recently died and their grieving families.

5. ROLL CALL

Roll call indicated the presence of a quorum in-person, as follows:

Members Present

Mayor Alan Webber
Councilor Signe Lindell
Councilor Jamie Cassutt
Councilor Amanda Chavez
Councilor Lee Garcia
Councilor Michael Garcia
Councilor Christopher M. Rivera
Councilor Carol Romero-Wirth
Councilor Renee D. Villarreal

Members Excused

Other Participants Attending

Erin McSherry, City Attorney
Kristine Bustos-Mihelcic, City Clerk
John Blair, City Manager
Emily Oster, Finance Director
Rich Brown, Economic Development Division Director
Andrea Salazar, Assistant City Attorney
Carl Boaz, Council Stenographer

6. APPROVAL OF AGENDA

Ms. Bustos-Mihelcic said Item 15a should be removed.

MOTION: Councilor Chavez moved, seconded by Councilor Cassutt to approve the agenda as amended with Item 15a deleted.

VOTE: The motion was approved on a unanimous voice vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

5. APPROVAL OF CONSENT AGENDA

Ms. Bustos-Mihelcic said several cases were pulled for discussion: Item n by Councilor Rivera and Councilor Lee Garcia and Item o by Councilor Lindell and Councilor Lee Garcia.

Councilor Michael Garcia asked to pull Items b and l for his recusal.

MOTION: Councilor Lindell moved, seconded by Councilor Michael Garcia to approve the Consent Agenda as amended with Items b, l, n, and o pulled for discussion.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

7. PRESENTATIONS

- a. Audit Update for FY21. (Emily Oster, Finance Director: ekoster@santafenm.gov, 505-629-3411)

Director Oster presented the FY 21 Audit Update. She said the Finance Department has completed our first visit from our external auditors on last week. And we are following up on their questions. The federal grant is a single audit and working on it now. Also on CLA consultants on 21 and 22 and also working with Carr Riggs Ingram.

Councilor Lee Garcia asked if we expect to have the audit submitted by the June target date. - as part of our target in June we expect to have it done.

Director Oster agreed.

Councilor Lee Garcia asked if she was very confident on that target being hit.

Director Oster said she was confident.

9. ACTION ITEMS: CONSENT AGENDA

- a. Request for Approval of the December 14, 2022 Regular Governing Body Meeting Minutes. (Geraldyn Cardenas, Assistant City Clerk: gfcardenas@santafenm.gov; 505-955-6519)
Committee Review:
Governing Body: 01/25/2023

- This item was pulled for discussion by Councilor Michael Garcia
- b. Request for Approval of the December 21, 2022 Special Governing Body Meeting Minutes. (Geraldyn Cardenas, Assistant City Clerk: gfcardenas@santafenm.gov; 505-955-6519)

Committee Review:

Governing Body: 01/25/2023

Councilor Michael Garcia said he pulled this consent item because he was not present at the December 21 special meeting and wanted it recorded that he abstained.

MOTION: Councilor Villarreal moved, seconded by Councilor Lindell to approve the minutes of the December 21, 2022 meeting as presented.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Abstained: Councilor Michael Garcia.

- c. Request for Approval of Liquor Hearing Officer's Recommendation to Approve the Request from Starry Nights Beverage, LLC, for a Transfer of Ownership and Location of Inter-Local Dispenser Liquor License No.28082, from Pink Adobe, 406 Old Santa Fe Trail, to Inn of the Five Graces, 406 Old Santa Fe Trail & 150-160 E. De Vargas Street, Santa Fe. (Alexandria Mares, Marketing & Special Events Coordinator: armares@santafenm.gov, 955-6520)

Committee Review:

Liquor Hearing: 01/09/2023

Governing Body: 01/25/2022

- d. Request for Approval of Liquor Hearing Officer's Recommendation to Approve the Request from Starry Nights Beverage, LLC, for a Transfer of Location Only of Inter-Local Dispenser Liquor License No. 28081, from Inn of the Five Graces, 150-160 E. De Vargas Street, to Inn of the Five Graces #2, 330 Old Santa Fe Trail & 129-141 E. De Vargas Street, Santa Fe.

(Alexandria Mares, Marketing & Special Events Coordinator:
armares@santafenm.gov, 955-6520)

Committee Review:

Liquor Hearing: 01/09/2023

Governing Body: 01/25/2023

- e. Request for Approval of Liquor Hearing Officer's Recommendation to Approve the Request from Taurus Adelfi, LLC, for a Transfer of Ownership of Inter-Local Dispenser Liquor License No. 2574 with On-Premises Consumption Only and Patio Service, to Remain Located at The Bull Ring, 150 Washington Avenue, Suite 108, Santa Fe. (Alexandria Mares, Marketing & Special Events Coordinator: armares@santafenm.gov, 955-6520)

Committee Review:

Liquor Hearing: 01/09/2023

Governing Body: 01/25/2023

- f. Request for Approval of Liquor Hearing Officer's Recommendation to Approve the Request from Yin Yang Chinese Cuisine LLC, for a Restaurant A (Beer & Wine) Liquor License, to be Located at Yin Yang Chinese Restaurant, 418 Cerrillos Road, #A, Santa Fe. (Alexandria Mares, Marketing & Special Events Coordinator: armares@santafenm.gov, 955-6520)

Committee Review:

Liquor Hearing: 01/09/2023

Governing Body: 01/25/2023

- g. Request for Approval to Purchase a Vactor Ace Easement Machine for the Wastewater Collections Division with Pete's Equipment Repair in the Total Amount of \$111,506.25. (Benjamin Sandoval, Wastewater Collections Manger: basandoval@santafenm.gov, 505-955-4632)

1. Request for Approval of a Budget Adjustment Resolution from the WWMD Cash Balance in the Amount of \$111,506.25.

Committee Review:

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- h. Request for Approval of Contract with MISCOWater/TW Associates to Purchase and Install Two Polymer Dosing Systems in the Total Amount of \$71,113.75. (P. Fred Heerbrandt, P.E., Engineer Supervisor: pfheerbrandt@santafenm.gov)

1. Request for Approval of a Budget Adjustment Resolution from the Wastewater Management Division Cash Balance In the Amount of \$71,113.75.

Committee Review:

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

- i. Request for Approval of Telecommunications Agreement with Century Link/Lumen Amendment No. 1 to SPA #20-361-0021-04390 to Add the City of Santa Fe to the SPA for Network Security, Bandwidth and Content Filtering in the Total Amount of \$430,884.00 for Thirty Six Months. (Manuel Gonzales, ITT Department Director, mmgonzales@santafenm.gov, 505-955-5576)

Committee Review:

Finance Committee 01/17/2023

Quality of Life Committee 01/18/2023

Governing Body 01/25/2023

- j. Request for Approval of Amendment No. 1 to American Rescue Plan Act (ARPA) Recovery Funds Subrecipient Contract No.22-0477 in the Total Amount of \$900,000 for Early Childcare Job Development Services with the Santa Fe Community College Early Childhood Education Center of Excellence (SFCC-ECCOE). (Julie Sanchez, Youth and Family Services Division Director: jjsanchez@santafenm.gov, 505-955-6678).

Committee Review:

Finance Committee: 1/17/2023

Quality of Life Committee: 1/18/2023

Governing Body: 1/25/2023

- k. Request for Approval of Memorandum of Agreement No. 2022-0233CSD/MM with Santa Fe County to Receive \$100,000 in County American Rescue Plan Act (ARPA) Funding for Prevention and Intervention Programs to Address Youth and Community Violence Through a Collaborative Violence Prevention Unit. (Julie Sanchez, Youth and Family Services Director: jjsanchz@santafenm.gov, 505-955-6678 and Sophie Andar, Youth and Family Services Program Manager: sxandar@santafenm.gov, 505-955-6236)

Committee Review:

Finance Committee: 01/17/2023

Quality of Life Committee: 01/18/2023

Governing Body: 01/25/2023

Item I was pulled for discussion by Councilor Michael Garcia.

- I. Request for the Approval of State of New Mexico Aging and Long-Term Services Department Grant Agreement in the Total Amount of \$268,841.12 for the Foster Grandparent, Senior Companion, and Retired Senior Companion Volunteer Programs, Term Ending June 30, 2023 (Anya Alarid, Senior Services Program Manager: aalarid@santafenm.gov, 505-955-4744).

Committee Review:

Finance Committee: 1/17/2023

Quality of Life: 1/18/2023

Governing Body: 1/25/2023

Councilor Michael Garcia said he pulled this so he could recuse himself from the vote because he works for the agency providing the funding. He left the room.

MOTION: Councilor Romero-Wirth moved, seconded by Councilor Cassutt to approve the funding agreement with State of New Mexico Aging and Long-Term Services Department as presented.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor Lindell, Council Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Recused: Councilor Michael Garcia recused himself and was not present for the vote.

Councilor Michael Garcia returned to the bench after the vote.

- m. CONSIDERATION OF RESOLUTION NO. 2023-___. (Councilor Cassutt) A Resolution Approving the Updated Santa Fe Trails Agency Safety Plan and Directing its Submission to the Federal Transit Administration. (David Chapman, Technical and Grant Writer: dachapman@santafenm.gov, 505-955-6824)

Committee Review:

Governing Body (Introduced): 01/11/2023

Public Works and Utilities Committee: 01/23/2023

Governing Body: 01/25/2023

Item n was pulled for discussion by Councilor Lee Garcia and Councilor Rivera.

- n. CONSIDERATION OF RESOLUTION NO. 2023-__. (Mayor Webber, Councilor Chavez, Councilor Romero-Wirth, Councilor Cassutt and Councilor Lindell)

A Resolution Relating to Firearms; Recognizing that Certain City Properties are Used for School-Related Activities, Which Makes the Carrying of a Deadly Weapon on Such Properties a Fourth-Degree Felony Pursuant to NMSA 1978, Section 30-7-2.1; and Directing the City Manager to Work with Staff to Post Notice on Such Facilities. (Kyra Ochoa, Community Health, and Safety Department Director: krochoa@santafenm.gov)

Committee Review:

Governing Body (Introduced): 11/30/2022

Quality of Life Committee (Postponed): 12/7/2022
Quality of Life Committee: 01/04/2023

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

Ms. Bustos-Mihelcic read the caption for this item.

MOTION: Councilor Romero-Wirth moved, seconded by Councilor Chavez, to approve this Resolution relating to Firearms.

Discussion on the Motion:

Councilor Lee Garcia pointed out that this keeps us out of any issue of people contesting our action. He read from the Second Amendment to the Constitution of the United States. He understood that a notification must be made to post prohibition signs. He disagreed that this Resolution will work and its passage would open the City for potential litigation.

He asked if the signs go up for these events and then come back down after these events are over.

Councilor Rivera said he first voted in favor but has the same concerns as Councilor Lee Garcia. He supported it initially because it only goes along with state law. But those events are not always occurring at our schools. He also asked what would be done at private school events. Signs should stay up at all times. He was not sure this would work.

Councilor Michael Garcia, at the Public Works Committee, asked for an example that is currently being used. Someone said that Albuquerque was doing it. He asked if any of the Albuquerque signs were still up.

Director Ochoa was unable to find a sign in Albuquerque, nor the verbiage that was on the signs.

Ms. McSherry said one of the signs in Albuquerque was shown in the newspaper.

Councilor Michael Garcia noted the State Statute references deadly weapons, not just firearms. Do we have such a list? We should be specific.

Director Ochoa deferred to Ms. McSherry on the definition of deadly weapons. She was aware of four cases dealing with that issue.

Councilor Michael Garcia concluded we don't have such a list. In the Joseph Montoya Building things like mace are not allowed and his wife had to leave to leave her mace in the car to be allowed into the building.

City Hall would be included where this would apply and a contractor could have a tool on him when coming in to get a permit. And could get in trouble because of it. He asked how the Governing Body could resolve those.

Director Ochoa agreed "deadly weapon" would need to be defined on the sign.

Ms. McSherry knew there was a case that included a definition.

Director Ochoa also had a definition from the Police Department and read the definition which had a long list of various weapons on it.

Councilor Michael Garcia commented there is confusion on this right now.

Mayor Webber read the intent of the resolution. It is a statement of purpose and intention. We've just become aware of another mass slaying taking place. This is a way to support existing legislation. He told the Governor today he was in support of the bills on her business at the Legislature this year.

VOTE: **The motion was approved on the following roll call vote with:**

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor Michael Garcia, Councilor Lindell, Councilor Romero-Wirth, and Councilor Villarreal.

Against: Councilor Lee Garcia, and Councilor Rivera.

This item was pulled for discussion by Councilor Lee Garcia and Councilor Lindell.

- o. CONSIDERATION OF RESOLUTION NO. 2022-___. (Mayor Webber, Councilor Cassutt, Councilor Chavez)
A Resolution Adopting the Midtown Community Development Plan for the Midtown Redevelopment Project. (Lee Logston, Midtown Asset Development Manager: llogston@santafenm.gov, 505-995-6914)

Committee Review:

Governing Body (Introduced) (Postponed): 11/09/2022.

Governing Body (Introduced) (Postponed): 11/30/2022.

Governing Body (Introduced): 12/14/2022

Finance Committee: 01/03/2023

Community Development Commission: 01/04/2023

Quality of Life Committee: 01/04/2023

Public Works and Utilities Committee: 01/09/2023

Economic Development Advisory Committee: 01/11/2023

Governing Body (Postponed): 01/11/2023

Governing Body: 01/25/2023

Ms. Bustos-Mihelcic read the caption for this item.

MOTION: Councilor Cassutt moved, seconded by Councilor Chavez to approve the Midtown Community Development Plan as presented.

Discussion on the Motion:

Councilor Villarreal pointed out that she had proposed a lot of changes that were not in the packet now. She wanted to hear from her colleagues about an appetite to go through them. She asked if Staff had a solution to this since no one has seen them.

Ms. McSherry said some of this was very technical and asked if the Governing Body could focus on something else for a while to allow her time to complete her analysis to make it clearer for the Governing Body .

MOTION: Councilor Cassutt moved, seconded by Councilor Romero-Wirth, to place this item on the table.

Discussion on the Motion to Table [*although a motion to table is not debatable*]

Councilor Villarreal, on that motion, wanted to let people know there were things they have not seen yet, and the Governing Body doesn't necessarily

need to get it done tonight. She added that she did not want to delay this because it is important, so she was okay with putting it aside for now. She didn't know how many pages were there.

Councilor Michael Garcia said there were 12 pages.

Mayor Webber thought the Councilors were not just talking about rewrites in the document, itself, but also change some of the stylistic expressions on other passages.

Ms. McSherry said most of them were technical. There were a couple of places with open ... but most were technical.

Council Villarreal said yes, she mostly agreed. Most are stylistic grammar, formatting changes. There was a section she had recommended about definitions so that people understand certain steps that will happen as it relates to this plan that she thought were important to include. So she didn't know if the Governing Body wanted to wait for those until later and include those at a different time. She did not know what that process looked like.

Ms. McSherry said that on those, there was no chance to get to vote tonight. She would not be able to make any recommendation tonight.

Mayor Webber commented that part of the problem was there are people at this meeting who came specifically for this item. So he proposed to lay it on the table for the moment and then see where we are later. He asked if that was comfortable for now.

VOTE: **The motion to table this item was approved on the following roll call vote with:**

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

During the vote, Councilor Lindell asked what the definition of "laying it on the table" was.

Ms. McSherry said she didn't have a definition off the top of her head, but it basically meant setting it aside until later in the meeting and not postponed to a different meeting. It is not debatable and is of the highest priority and means it is to come up later in the meeting.

Councilor Romero-Wirth asked if it is 12 pages long.

Ms. McSherry said that was mentioned but she was working on three pages.

Against: Councilor Lindell.

10. **ACTION ITEMS: DISCUSSION AGENDA**

- a. CONSIDERATION OF RESOLUTION NO. 2022-___. (Councilor M. Garcia, Councilwoman Villarreal, and Mayor Webber)
A Resolution Adopting a Strategy for Donating or Selling, at Below-Market Value, a Property Identified as “Las Estrellas Tract 6A” to a Developer Certified as a “Qualifying Grantee” Under the New Mexico Affordable Housing Act to Develop Santa Fe Homes Program Homes, Low-Priced Dwelling Units, or Units Price-Restricted Through Another Affordable Housing Subsidy; and Approving an Announcement to Sell the Remaining Seven Las Estrellas Lots with a Local Preference. (Terry Lease, Asset Development Manager: tjlease@santafenm.gov)

Committee Review:

Governing Body (Introduced): 11/30/2022.

Community Development Commission: 12/07/2022

Economic Development Advisory Committee: 12/14/2022

Quality of Life Committee: 01/04/2023

Public Works and Utilities Committee: 01/09/2023

Finance Committee: 01/17/2023

Governing Body: 01/25/2023

Ms. Bustos-Mihelcic read the caption for this item at 5:45 p.m.

MOTION: Councilor Villarreal moved, seconded by Councilor Michael Garcia to approve the Resolution as proposed.

Discussion on the Motion:

Director Brown introduced this matter. He described it as an amendment on local issue preference with public notice. He knew there were several amendments to it. He saw it as a positive decision and would answer any questions.

Councilor Cassutt said she, Councilor Villarreal, and Councilor Michael Garcia have been working on an amendment that was quite comparable to the amendment Councilor Romero-Wirth and Councilor Lindell had proposed. And we were going to have a discussion on them. She said if it was okay with the cosponsors of her amendment, we could take it from here and discuss some of the differences.

MOTION: Councilor Romero-Wirth moved, seconded by Councilor Lindell, to amend the motion to approve the amendment by Councilor Lindell and Councilor Romero-Wirth.

Discussion on the Amendment:

Councilor Romero-Wirth explained there were concerns that she was trying to address with this amendment. One was concern that a local preference might be used to purchase the property and then the purchaser would flip the property. She and Councilor Lindell were trying to protect against that. The other objective was to incentivize the actual development of the property and protect against the local preference being used if someone wants to buy and hold the property. Staff can explain it in more detail. Essentially, she wanted to insert two other “Be it further resolve” clauses to accomplish the goals.

Councilor Lindell said what we don’t want to see is for someone to purchase this with a local preference and hold it or immediately sell it again. We want to see the project begin and move forward. She hoped that could be accomplished with this amendment.

Director Brown asked Andrea Salazar to speak to the technical aspects.

Ms. Salazar said the intent of the amendment was in two sections. One was to prevent any resale within three years, utilizing a letter of credit obtained through a bank. The proposal is for it to be for an amount equal to 2% of the purchase price so that letter of credit, after purchased with a local preference, would then have to present a letter of credit to the City so they could is the first and they had to present a letter and second has a - year with another letter of credit so they could draw down against it, if they do not meet the three-year mark. It was similar to the next provision which was a 5-year provision to start building out the development such as infrastructure, engineering, and if not done within the five-year period, there would be another letter of credit of a 1% amount of the contract price that could be drawn down against that.

Councilor Villarreal thanked her colleague for the amendment to ensure that local preference was sustainable and what she wanted to finish, because the terms were not terms she was aware of, having the property for three years, she wanted more explanation on securing it with a letter of credit in the amount of 2,000 of the purchase price.

Ms. Salazar said it was 2%.

Councilor Villarreal apologized. She meant 2% of the purchase price.

We've done this before. Where have we used that.

Ms. Salazar said the City used it in the LEDA projects and has used it often this way. This form of securitization is to make a bank deposit and the bank writes the letter of credit for the City to draw down if the purchaser doesn't meet the provisions of the agreement. After three years, the City would authorize release of the letter of credit and go on to the next provision.

Councilor Villarreal said the other provision was when the purchaser is awarded the local preference and begin development of the property including financing, infrastructure, engineering, and utility development within in a five-year period of completion with a 1% letter of credit. She asked if that was a separate letter.

Ms. Salazar agreed. The City would hold two letters of credit from their bank – one for \$100,000 held for three years, and the \$50,000 held for five years.

Councilor Michael Garcia asked regarding the second be it further resolved, if there was any reason they could not include any purchaser. This amendment is only for a purchaser with local preference. He thought whoever buys this property should be held accountable to developing the property within five years. Santa Fe is in deep need for housing. Those who don't use local preference should also be required to develop within 5 years.

Councilor Romero-Wirth said what she was concerned about is if someone purchases this property, because they took advantage of our local preference, we want to make sure the purchases does not flip it and start development. If the purchaser does not take advantage of the local preference, then it is the purchaser's prerogative to decide what to do with it.

Councilor Cassutt said she wanted a longer time frame – not being able to sell within 10 years was in their amendment. She wanted to know why they chose 3 and 5 years. She understood someone not being able to develop within three years.

Director Brown said the advice he gave to the sponsors was that the 3-year period is based on economic cycles where one could or could not flip it based on economic cycles. But you could see shovels on the ground within 5 years. But ten years is a long time for holding capital. He gave some examples to explain it further.

Ms. Salazar briefly described how the penalty would be imposed when the restrictions were not met and the City does not add that on to the purchase price. It is an artificial number for violation.

Director Brown added that the local preference values were an inflated number to the purchase price.

Councilor Cassutt said their amendment didn't stipulate that only a local preference would be subject to the three year or five year requirement to start development, but selling to someone who is committed to move forward with development. So she was in support of this applying to all purchasers.

Councilor Villarreal asked if she was suggesting that apply to all buyers.

Councilor Cassutt agreed. Why wouldn't the sponsors consider that as an amendment to the amendment.

Councilor Romero-Wirth pointed out that the portions we are talking about are the seven tracts that are difficult to build on. She didn't have a problem if they choose to buy and leave it as open space. But if you use local preference to win the purchase, you should be required to develop it. If not using the local preference enticement, do we have the right to impose on property rights when it must be developed? Is that legal?

Ms. McSherry said those would be terms of the offer to sell.

Councilor Romero-Wirth asked if the City could control the offer like that without any government incentives.

Ms. McSherry believed those terms could be put in the offer to sell. It was whether people would respond or not to that offer.

Mayor Webber pointed out that this application specifically talks about the local preference. Those two provisions were designed to make sure the local preference was not misused, and the purchaser would use it to build housing. And a question could come up for this resolution whether it might somehow run afoul of the anti-donation clause. This is very specific amendments to solve very specific problems.

Councilor Lindell observed that someone could buy it and just leave it as open space. Tract 6a could be AH. But the rest has been vacant for years because it would be horribly hard to build on them and horribly expensive. Those houses will be very expensive because it is very expensive to build on them.

Councilor Michael Garcia said this is unique and not a private entity transaction. The priority is to develop homes on this property. We should do everything possible to get more housing. There is still the requirement for AH or is there fee in lieu of option?

Ms. Salazar said AH is a requirement. If they start to build, then AH is part of it. We should encourage a home ownership opportunity.

Councilor Rivera asked Director Brown to explain where the two 3% numbers came in.

Ms. Salazar said it depends on whether the buyer holds a Santa Fe business license for three years or more. Second, if you have Tax and Rev certificate and have paid taxes to the State for a certain number of years, you would qualify.

Director Brown added that it allows for their bid to have a bonus number than can value it up to 6% as evidenced by letter of credit.

Ms. Salazar agreed. Technically, it converts an amount of money into a letter of credit. It correlates.

Councilor Rivera said it really cuts the local preference in half.

Mayor Webber added that you don't lose your money. It is simply in escrow, and it is, in effect, an insurance policy to use the money for the intended use.

Councilor Romero-Wirth noted it gives a local bank the opportunity to participate in the economic windfall of this property and it has been appraised around \$5 million. The real challenge is securing the \$30 million to put in the infrastructure to build on those seven tracts because of the steep terrain and floodplain.

VOTE: **The amendment was approved on the following roll call vote with:**

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Romero-Wirth, and Councilor Villarreal.

Against: Councilor Rivera.

Discussion on the Motion as Amended:

Councilor Villarreal gave more context. It relates to Las Estrellas Master Plan which was in the works a long time. But on March 10, 2021, the Governing Body adopted a resolution requiring a public announcement of sale of the City's property. Councilor Vigil Coppler and Councilor Michael Garcia and she worked on that local preference. This tract has a great potential for AH, so it was in our best interest to prioritize it as AH. And RFPs to be considered for AH in that area. In the resolution were some stipulations and requirement criteria to look at for that prioritization.

Councilor Lindell voice her hope that it should also benefit women-owned and veteran-owned businesses to include in the carve-outs.

Councilor Villarreal said she has started to work on that.

Councilor Michael Garcia thanked Director Brown, Director Ladd, Attorney Salazar, Terry Lease, and others for this big lift to be able to put this property to its best use for the community. The result is a game changer for Affordable Housing and for local developers. He also thanked the Santa Fe Homebuilders for their role in this effort.

VOTE: The motion as amended was approved on a unanimous voice vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Mayor Webber announced again to the public that the cases on South Meadows had been postponed to February 1, 2023 at 7:00 pm.

Return to Midtown Review:

MOTION: Councilor Cassutt moved, seconded by Councilor Cassutt to take the Resolution Adopting the Midtown Community Development Plan for the Midtown Redevelopment Project from the table for consideration.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Director Brown said this plan has had a lengthy community engagement since 2018. This guides how land will be developed and how to implement our guidelines in the next development at Midtown. There is much interest in them, based on an earlier affirmative vote this evening.

Councilor Michael Garcia thanked Director Brown for the updated FIR to understand what is being proposed in the Plan around land sales. He read that the Garson was worth approximately \$12.5 million, \$2.5 million on other land sales. He asked where the money is being received.

Director Brown said the land sale money comes to the Economic Development Fund which is then invested in the property things like infrastructure, access, programming or subsidies for Affordable Housing (AH), so investing in the City, mostly to Midtown for redevelopment.

Councilor Michael Garcia recalled the Governing Body recently passed an ordinance about selling of property with 50% to ED and 50% to the AH Trust Fund. Because of the LINC, it stays in the overlay so \$6.25 million goes to AH in the LINC.

Director Brown agreed. It would stay within the Opportunity Zone in Midtown.

Councilor Michael Garcia thanked Director Brown for taking the comments into consideration. It has made the Plan stronger. And thanks to all Staff who put the Plan together.

Councilor Cassutt introduced her amendment that was in the packet, and instead of reading it, turned to Ms. Salazar for a summary.

Ms. Salazar summarized the amendment including at the end of the plan in Appendix C on how buildings will be used with asterisks on certain buildings on the campus that had been slated for demolition, now to be relooked at for reuse. She listed them. The next part of the amendment was to change the terms on the second page of appendices 3 and 4 which go together and changed "short-term" use to "temporary" use. The third was to place under short-term use/demolition to insert the student housing, Apartment A and B, because they are being used. The fourth amendment was in Appendix C with changing demolishing/ no reuse, to remove those student housing apartments from that section.

MOTION: Councilor Cassutt moved, seconded by Councilor Villarreal to approve Amendment A as proposed.

VOTE: **The motion was approved on a unanimous voice vote with:**

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Amendment B:

Councilor Villarreal introduced Amendment B, which was a combination of stylistic grammar, formatting changes. some word changes and consistencies with certain sections. She knew Staff added some and she agreed to sponsor them for staff members.

Councilor Villarreal thought there might be more of them. She asked if Staff wanted to add definitions.

Ms. Salazar explained why definitions were not here. The Staff didn't have time to correlate them with the RFPs to ensure all documents already sent out would meet the definitions that had been drafted.

Councilor Villarreal said they are just clean up work and not changing the substance. It was a long and tedious process, and she wasn't even sure that needed to be an amendment.

Mayor Webber agreed it was just a good job of editing. And it is in our packets.

Director Ladd commented on the editing that it clarified for the public by saying it better.

Councilor Lindell saw that none of this was substantive. It was merely grammar and writing style.

Councilor Villarreal agreed. These were just technical changes by rewriting sections that didn't make sense. She used "language that was more digestible."

Ms. Salazar noted that some of the language came out of the conversations with the Community Development Commission. They spent a lot of time reading it and along with Councilor Villarreal's eagle eyes for all of the grammar and inconsistencies, etc. there were questions asked by CDC that made it clearer.

Councilor Lindell referred to page 22 under Methods of Implementation/Art in Public Places, she asked if that wasn't substantive. She felt it was a substantive change. She couldn't digest it all in just four minutes.

MOTION: Councilor Villarreal moved, seconded by Councilor Michael Garcia, to approve the amendment B as it was in the packet.

VOTE: The motion was approved on a unanimous voice vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Abstained: Councilor Lindell.

Main Motion as Amended:

Councilor Lindell said, "I appreciate the update on FIR and the reduction of cost. I went through many items at Finance and many of them determine much more time than just being in a document. In the new FIR is \$10 million from Garson but in the request, it is either sale or lease. I find this FIR asking for too much money from few specifics. There is no explanation about the reduction of price. These amendments were not ready to be heard. I'm not comfortable with what the document gave us. It was at Finance for weeks with numerous mistakes. There are not enough specifics here for me to support it. We probably should have had a special meeting to go through the whole document. I read them numerous times and still don't understand it."

Councilor Lee Garcia said his questions were answered. It is a huge decision. He wanted done once it was right. There was no room for error on this one.

Councilor Villarreal felt better about the document after all the editing, It was a culmination of rich community engagement. There were things some of us wanted to consider but haven't. Some folks at CDC felt it didn't do enough and was not radical enough. But she was supporting this and comfortable with this guiding document. The details will be forthcoming in the resolution, and she thought for all who have been listening that we have a good road map to use.

Councilor Cassutt agreed with that. At Quality-of-Life Committee, the members talked about this being a continual process. She thanked our City's partners for all the time and effort. This is a good document. Midtown is such an opportunity with all the experiments we have looked for. And how our ROI can provide for this community if it is done well. She was excited to continue working on it.

Mayor Webber commented that cities are living organisms and have to change. One aspiration is to include everyone more in how we execute projects. The plan lays out the policies that speak directly to our values and to our neighborhoods. The engagement of the community will continue ongoing not only at Midtown but in every part of the City. There are already three RFPs out and soon there will be one on AH.

VOTE: **The motion was approved on the following roll call vote with:**

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: Councilor Lindell.

Agenda Amendment

MOTION: **Mayor Webber moved, seconded by Councilor Cassutt to amend the agenda to hear Petitions from the Floor next and then return to the previous agenda.**

VOTE: **The motion was approved on the following roll call vote with:**

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Petitions from the Floor

Mayor Webber gave the specifics.

Alicia Caspita Chicol, District 1 – Chainbreaker member for 8 years. She defined the purpose of Chainbreaker. Chainbreaker has been organizing around the topic of Midtown since 2018. They held a people's assembly

on the campus and knocked on over 17,000 doors to make it happen. And that was just the beginning. Chainbreaker has not stopped knocking. In 2021, the Chainbreaker was one of the organizations involved with the Midtown Engagement Partners to gather community voices and visions for the future of Midtown. They submitted a report detailing the guidance from the community, ideas which incorporated into the Plan now approved by the City. “We appreciate the City Council voting to approve the Plan. This Plan is the culmination of many years of organizing in neighborhoods. Together, we have accomplished so much. And we know we will need to accomplish so much more. It is a generational project but the opportunity for future success depends on your decisions right now. We appreciate your vote in support of the community and in your investment of time and resources. There remains much more work ahead and we look forward to continuing to engage the community, protect the surrounding neighborhoods from displacement, and work with the City to build the best possible outcome for Midtown.”

Stefanie Beninato was heard very well by other participants on Zoom but could not be heard in Council Chambers. When the problem was fixed so the Governing Body could hear her, she commented that the Zoom connection did not work properly at the HDRB meeting and did not work at the Webinar ID. So she could not go through her own account to get to the meeting. It took her 30 minutes to get a proper link.

Ms. Bustos-Mihelcic ended up streaming her through the microphone on her laptop.

Ms. Beninato said she sent a proposal to the Governing Body to change the discussion part of the Land Use Appeal that would actually allow an account who is often a pueblo participant who gets shut out of the session without having any notice or ability to be heard. It is a long time coming and if you are going to put your money where your mouth is about public participation, that this is a step you can take pretty temporary to solve what I think is a pretty bland process problem. You also have due process problems with the BIA? In the fact that passed a nonconforming sign when there is an ordinance that clearly says they cannot do that. She said it was a City Attorney staff member and a Land Use member. She has been asking the City Attorney what she was going to do about it. Last night at the H-Board, once again the member said he did not have to observe the law – that “why bother?” and the Staff Attorney was really terrible. “I have sent you [??] they are part of the public record. I am asking you to look at it because this is the kind of thing that really shows distrust of the city and specifically of Land Use. We need competent honest people who are not spending hours with the developers’ agents to bring development projects that are relatively simple too. Thank you.”

John Blair said this was also a glitch with Zoom at a legislative hearing yesterday.

There were no other Petitions from the Floor at 7:21 p.m. The Governing Body returned to their regular order of business.

11. MATTERS FROM THE CITY MANAGER

Ms. Bustos-Mihelcic read the next item – Matters from the City Manager.

Manager Blair highlighted for the Councilors that we are going live with our newest upgrade. The current system (financial) will come down at 5:00 p.m. on Thursday and go live on Friday morning with the new IT system and have a readout by Monday afternoon for everyone. It has been a monumental effort led by Manuel Gonzales and his team, Bernadette Salazar and her team, and Emily Oster and her team. There was a significant amount of staff training to help staff get comfortable with the new system.

At the last regular meeting, the Governing Body approved the property purchase from State Game and Fish and we will know Friday afternoon if they accept the price we offered. If not, we will go to further negotiations.

A new Public Works Director is being hired and will be announced later this week. He thanked Jesse Roach, City Water Division Director, who agreed to serve as the Interim Public Works Director and is on the ground running.

He reported he flew with Mayor Webber to Washington DC for the US Conference of Mayors winter meeting. It was interesting to see that what is affecting Santa Fe is affecting other cities as well. The takeaway was a reminder about the extraordinary work our Staff is doing, and the great place Santa Fe really is compared with many other communities of the country. And was a great reminder for him about the extraordinary work of our Staff.

He added that many teams have worked around the clock to make things work in many land use projects. "Thank you."

12. MATTERS FROM THE CITY ATTORNEY

Ms. McSherry said Andrea Salazar has been recruited as General Counsel at the State Auditor's Office and thanked her for all of her work over the last four years for the City. She mentioned numerous economic development projects, libraries, recreation facilities but congratulations upon her appointment.

Ms. McSherry recommended a closed executive session on litigation and read the details as cited in the agenda.

EXECUTIVE SESSION

In Accordance with the New Mexico Open Meetings Act, NMSA 1978, Section 10-15-1, Part (H)(7), Quarterly Update of Attorney-Client Privileged Discussion of Pending and Threatened Litigation. (Erin K. McSherry, City Attorney: ekmcsherry@santafenm.gov, 505-955-6512)

MOTION: Councilor Rivera moved, seconded by Councilor Romero-Wirth, to enter executive session pursuant to the Open Meetings, Section 10-15-1, Part (H), subpart (7), for discussion of pending or threatened litigation in which the Governing Body is or may become a participant.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Mayor Webber asked for a time estimate on the closed session.

Ms. McSherry estimated it would be relatively short.

The Governing Body entered executive session at 7:27 p.m. and returned from executive session at 7:57 p.m.

MOTION: Councilor Rivera moved, seconded by Councilor Romero-Wirth, pursuant to the Open Meetings Act, Section 10-15-1, Part J, to reconvene in open session, and state for the record that the matters discussed in the closed session were limited to those specified in the motion for closure.

VOTE: The motion was approved on a unanimous voice vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

13. **MATTERS FROM THE CITY CLERK**

Ms. Bustos-Mihelcic passed.

14. **COMMUNICATIONS FROM THE GOVERNING BODY**

Councilor Lee Garcia had no communications.

Councilor Cassutt thanked Andrea Salazar for all her work and wished her well at her new position.

Councilor Romero-Wirth had no communications and had already thanked Ms. Salazar for all her work and wished her well.

Councilor Lindell said good luck to Andréa Salazar and gave a huge thank you to the road crew for such awesome work on the streets in this treacherous weather.

Councilor Villarreal said it was a pleasure working with Ms. Salazar. She gave thanks to Tenzin in our IT Department. He helped her with some technical issues on a Sunday and he helped her be able to review her packet.

She announced Artworks Student work exhibit this Friday at 5 at the Santa Fe Community Gallery focused on youth and their art submitted in partnership with Artworks programming.

Councilor Michael Garcia gave a shout out to Ms. Salazar on her next adventure. He gave a shout out to his daughter celebrating her sixteenth birthday yesterday.

Councilor Rivera also thanked our road crews for their great work throughout the City. And thanked our City Manager, Deputy City Manager, and Danny Mackie for all their work with the Airport Advisory Board in their requests. There are still many needs at the airport. Thanks to the hiring of the new Airport Manager, whom not everyone has met yet. Maybe we can get him here for introductions. He thanked them for addressing the many needs there. They all seem happy right now.

He congratulated Jesse Roach for the Water Source of Supply Staff. Public Works Committee recognized them for winning an award and have won it twice in three years. They continue to do great work.

He asked Governing Body to watch a one-hour video, "The Call We Carry" based on the Tacoma Fire Department. It talks about the trauma those public safety people carry who deal with stuff on a daily basis in their career. And the cardiac event on the field when the football player for the Buffalo Bills went into cardiac arrest. For him, it was over a 25-year career.

Councilor Chavez also wished Ms. Salazar luck and thanked the road crew. She also wanted to thank Manager Blair for his quick responses always when we call for help.

She announced her daughter Lena turned 7 today. Lena is a light – her presence, her beauty, her personality. She is who I hope to grow up to be. She is sad about not being six years anymore. “Happy Birthday Baby.”

Mayor Webber said, “Happy Birthday from all of us.”

He announced Santa Fe is #1 in the country for small community best place to live and work as a movie maker. It continues to amaze all of us that we get to be named #1 in so many categories. Our creative presence is incredible, and we should thank our teams that make it happen.

He promised to give an update on the U. S. Conference of Mayors in the near future. He will point out where we are doing well and where we need to double down to do even better. “The badge I wear brings people to me to say how much they love Santa Fe. No other city has that kind of reaction. We are a really special place that others rave about. Be proud.

Councilor Cassutt said the Quality of Life Committee had a presentation of *Call to Carry*. She encouraged everyone to watch it because it is what our firefighters here are doing to address this situation.

Councilor Rivera added that it is sad what happens to some of them with alcohol and depression as a result of their work.

Ms. Bustos-Mihelcic agreed. She said she knows what it is like when a firefighter has to leave an event and come home to sleep.

15. INTRODUCTION OF LEGISLATION

- a. ~~CONSIDERATION OF RESOLUTION 2023-___ (Mayor Webber)
A Resolution in Support of Governor Lujan Grisham’s Call to Pass Gun Reforms, Including a Ban on the Sale of Assault Weapons. (John Blair, City Manager: jwblair@santafenm.gov, 505-955-6521)
Committee Review:
Governing Body (Introduction): 01/25/2023
Quality of Life Committee: 02/01/2023
Governing Body: 02/08/2023~~

This item was removed from the agenda under Approval of the Agenda.

- b. CONSIDERATION OF BILL NO. 2023-9 (Mayor Webber, Councilor

Lindell, Councilor Cassutt and Councilor Romero-Wirth)
A Bill Approving a Lease Agreement Between the City Of Santa Fe and Specifica, LLC, for the Lease of City-Owned Building and Improvements Located At 500 Market Street Within the Railyard Within the City And County of Santa Fe, New Mexico to Expand Its Biotechnological Company. (Andrea Salazar, Assistant City Attorney, asalazar@santafenm.gov, 505-955-6303)

Committee Review:

Governing Body (Introduced): 01/25/2023.
Governing Body (Public Comment): 02/08/2023
Finance Committee: 02/13/2023
Quality of Life: 02/15/2023
Public Works and Utilities: 02/20/2023
Governing Body (Public Hearing): 03/08/2023

Ms. Bustos-Mihelcic read the caption for this item.

There were no comments.

16. PETITIONS FROM THE FLOOR

Petitions from the Floor were heard earlier in the meeting.

17. PUBLIC COMMENT ON BILLS (FIRST PUBLIC COMMENT, NO ACTION)

- a. CONSIDERATION OF BILL NO. 2023-4. (Councilor Cassutt and Councilwoman Villarreal)
An Ordinance Amending SFCC 1987 to Use Gender-Neutral Language. (Pat Feghali, Assistant City Attorney: pfeghali@santafenm.gov, 505-9556501)

Committee Review:

Governing Body (Introduced): 01/11/2023.
Governing Body (Public Comment): 01/25/2023
Quality of Life Committee: 02/01/2023
Governing Body: 02/22/2023

Ms. Bustos-Mihelcic read the caption for this proposed ordinance. She said there were two people waiting to comment.

The first was Ryan Martinez but he wanted to address a matter that was already dealt with earlier in the meeting.

Stefanie Beninato said she thought this was long overdue. This cleanup is definitely needed.

There were no other public comments.

- b. CONSIDERATION OF BILL NO. 2023-6. (Mayor Webber)
An Ordinance Amending Section 2-8.2(A), "Creation of Department" by Removing Language that Prescribes a "Recreation Division" as a Division of the Community Health and Safety Department and "Family and Youth Services" as a Component of the Community Services Department; and by Removing the Term "Safety" from the Name of the "Office of Emergency Management and Safety". (Kyra Ochoa, Community Health and Safety Department Director: krochoa@santafenm.gov)

Committee Review:

Governing Body (Introduced): 01/11/2023
Governing Body (Public Comment): 01/25/2023
Quality of Life Committee: 02/01/2023
Public Works and Utilities Committee: 02/06/2023
Finance Committee: 02/13/2023
Governing Body (Public Hearing): 02/22/2023

Ms. Bustos-Mihelcic read the caption for this bill introduced by Mayor Webber.

There were no comments on this bill.

- c. CONSIDERATION OF BILL NO. 2023-5 (Councilor Romero-Wirth and Councilor Cassutt)
An Ordinance Amending Sections 2-1.9, 2-4.6, and 19-4. SFCC 1987, to Authorize Governing Body Members to Employ Staff When Funds are Budgeted for that Purpose and Aligning those Sections with the City of Santa Fe Charter. (Bernadette Salazar, Human Resources Director, bjsalazar@santafenm.gov, 505-955-6591)

Committee Review:

Governing Body (Introduced): 01/11/2023.
Governing Body (Public Comment): 01/25/2023
Quality of Life Committee: 03/01/2023
Public Works and Utilities Committee: 03/06/2023
Finance Committee: 03/13/2023
Governing Body (Public Hearing): 03/22/2023

Ms. Bustos-Mihelcic read the caption for this Ordinance.

Stefanie Beninato wondered what this really means. She asked if the Governing Body is trying to professionalize City Council and add support staff. She resents that the City doesn't have contact information for each

Department on the website. It is not transparent. Just calling Constituent Services was not okay. She wanted it to be specific and whether The City wanted someone hired. She thought that should be voted on by referendum.

There were no other comments on this bill.

- d. CONSIDERATION OF BILL NO. 2023-7. (Mayor Webber)
An Ordinance Relating to Fire Safety; Creating a New Section 12-7 SFCC 1987 to Allow the City Manager, in Consultation with the Fire Chief, Emergency Manager, and the Director of the Community Health and Safety Department, to Close Certain Public Spaces if Fire Conditions Require Such Closure to Protect Life or Property, and to Preserve Public Peace and Safety. (Brian Moya, Fire Chief: bjmoya@santafenm.gov)

Committee Review:

Governing Body (Introduced): 01/11/2023.

Governing Body (Public Comment): 01/25/2023

Public Safety Committee: 02/21/2023

Quality of Life Committee: 03/01/2023

Public Works and Utilities Committee: 03/06/2023

Finance Committee: 03/13/2023

Governing Body (Public Hearing): 03/22/2023

Ms. Bustos-Mihelcic read the caption on this ordinance to close public spaces when fire conditions warrant such a closure.

There were no public comments on this bill.

- e. CONSIDERATION OF BILL NO. 2023-8. (Mayor Webber)
An Ordinance Amending Section 14-6.2(l) to Permit Cannabis Retailers Wholly Owned by a Tribe Within Four Hundred (400) Feet of Another Retailer if the Other Retailer Initiates its Application for a Cannabis Retail License After the Retailer Wholly Owned by a Tribe. (Pat Feghali, Assistant City Attorney: pfeghali@santafenm.gov, 955-6501)

Committee Review:

Governing Body (Introduced): 01/11/2023.

Governing Body (Public Comment): 01/25/2023

Planning Commission: 02/02/2023

Public Works and Utilities Committee: 02/06/2023

Governing Body (Public Hearing): 02/22/2023

Ms. Bustos-Mihelcic read the ordinance caption.

Richard Hughes, on Zoom, said he was an attorney who represents Picuris Pueblo. The pueblo has been a majority owner of Hotel Santa Fe and providing service for its 150 members. It was able to acquire the former First Nation Bank drive up and got zoning for it more than a year ago. The Pueblo filed an application for a cannabis permit. But the State Department that was reviewing the permits lost the Pueblo's application twice and took almost nine months to get that permit approved. But by that time another facility had been opened across the street. This bill would allow Picuris to go ahead with their application and open this facility. He urged the Governing Body to treat it with favorable appreciation.

Stefanie Beninato was happy Mr. Hughes spoke and explained it. She would support this measure and thought it was important to promote Native American business establishments. The other business has multiple dispensers here and other places.

There were no other public comments on this bill.

18. **FINAL ACTION ON LEGISLATION (PUBLIC HEARING)**

- a. CONSIDERATION OF BILL NO. 2022-23. (Councilor Lindell, Mayor Webber and Councilor Chavez)
An Ordinance Amending Section 12-10-1.10 of the Uniform Traffic Ordinance Governing Mufflers and Emission Control Devices; and Amending Schedule A of the Uniform Traffic Ordinance to Increase Penalties for Muffler Noise Violations. (Matthew Champlin, Deputy Chief of Police: mrchamplin@santafenm.gov, 505-955-5201)

Committee Review:

Governing Body (Introduced): 09/14/2022.

Governing Body (Public Comment): 09/28/2022

Quality of Life Committee (Postponed): 10/05/2022

Quality of Life Committee (Forwarded with No Recommendation):
10/19/2022

Public Works and Utilities Committee (Postponed): 10/24/2022

Public Works and Utilities Committee (Forwarded with No
Recommendation): 11/07/2022

Finance Committee: 11/28/2022

Governing Body (Public Hearing) (Postponed): 01/11/2023

Governing Body (Public Hearing): 01/25/2023

Ms. Bustos-Mihelcic read the caption for this proposed ordinance on noise control. Deputy Chief Matthew Champlin was available.

Staff Presentation

Deputy Chief Champlin said there were about six amendments. He thought the Councilors had done a very extensive job in adding to it and being conscious of many different aspects. He was present to answer any questions and deferred to the sponsors to explain them further.

Ms. McSherry added that the City Prosecutor was also present.

Public Comment

Pam Parthes at 1304 Arreno Court, representing the disability community, asked the Governing Body to please keep in mind those with anxiety and panic disorders and those with hearing disabilities and those who are older who need to be cared for. People with hearing aids may have increased sounds but that means the muffler noise this ordinance addresses also increases. People with PTSD are doing their best. Please consider like people who need to breathe clean air.

Name not audible, living at 1512 Don Gaspar Ave., was in favor of increased fines for illegal mufflers. She was a member of Stop Aggressive Drivers, which includes this one aspect of it. 1,445 people have signed their petition at Change.org. If we continue with infill, we need to get control over behaviors on the streets. This is about their behavior. We have laws on the books, and she wanted them enforced.

Joe Schepps, represented the Santa Fe Lodgers Association. He appreciated the Governing Body finally addressing this issue. Please look at the noise cameras. They are about to be used in Albuquerque. They are a great solution that takes pressure off the police and Sheriff's Departments. It will issue a ticket and that is the only way this will be enforced. The Lodgers feel strongly that the fines are not what we wanted but they are good enough. Enforcement has to be immediate, and we endorse those noise cameras.

Bridget Dixon president CEO of the Santa Fe Chamber of Commerce, residing at 4147 Las Plisa, who described the Chamber's history and size. She said the excessive loud motors disturbs the tranquility and revving them is threatening and aggressive. The Chamber receives phone calls and letters from concerned residents and businesses about the problem. It also upsets tourists' experience here. She applauded all of the Governing Body for working together on this ordinance to make it work, A higher fine would deter them. The Chamber supports the ordinance as proposed.

Stefanie Beninato was in support of raising the fines and enforcement was really the key. She liked what Mr. Schepps said about cameras that

could actually record the level of the noise from loud mufflers. She thought that would be really good. She works downtown and outside and the noise from them is often deafening. And those noises are getting louder and louder at night near where she lives in South Capitol. And some people are driving downtown at 5 a.m. with loud mufflers. She wished delivery trucks could avoid driving on residential streets at that hour. Enforcement is key but just raising fines is not enough.

Michael Gallagher – living near Ft Marcy tennis court park, said in the summertime, their windows are open and there is noise 24/7. He hoped the Governing Body can do something about it with the courage to do it.

There were no other public comments on this proposed ordinance.

MOTION: Councilor Lindell moved, seconded by Councilor Chavez, to approve the Ordinance Governing Mufflers and Emission Control Devices as presented.

Discussion on the motion:

Councilor Romero-Wirth referenced the amendment sheet C sponsored by her and Councilor Cassutt to change the effective date of the ordinance to allow 90 days to establish the compliance test and the method of conducting that test and allow Staff the time needed to put it into place prior to issuance of tickets that would need to be addressed by our compliance test. There is a fix-it-ticket in there and if a driver thinks they have fixed their muffler or have been wrongly accused, and wanted to challenge the ticketed, we need to have the compliance test in place.

Councilor Cassutt added that it would provide the opportunity for good education to the community about the change so those with modified mufflers have time to get them fixed before fines are issued.

Amendment C:

MOTION: Councilor Romero-Wirth moved, seconded by Councilor Chavez, to amend the Ordinance Governing Mufflers and Emission Control Devices with the language in Amendment Sheet C.

VOTE: The motion was approved on a unanimous voice vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Amendment G:

Councilor Romero-Wirth had another amendment to present.

Councilor Cassutt presented Amendment Sheet G that would change the previous amendment on the compliance test where it said the City Manager's designee shall prescribe the compliance test, based on the levels as identified as excessive in Section 10.2-9. And a person cited under this section may rely on measured decibel level from this compliance test as an affirmative defense in challenge of a citation and would delete paragraphs G and H in their entirety, including the chart in H. The reason for this amendment is to provide more flexibility with a number of tools to identify the way it would work best for the City but still using those established decibel levels that are drawn from the Noise arguments that were already established in Chapter 10.

Councilor Romero-Wirth added that it was first amended in Finance Committee and had added the decibel levels cited here in Section 10.2-9 from the Noise Ordinance. We also had taken what is in the noise ordinance and just moved it over to change it in Uniform Traffic Code. In doing that, there was contemplated in there a way of monitoring decibel levels in which the car is going a certain speed and the decibel reader must be at a specific location and specifies many things which are not going to work for the purposes that we want in the Uniform Traffic Code. So we are taking those decibels levels but need the City Manager to prescribe the compliance test so that if the driver fixes the muffler, and can demonstrate that it is fixed, that the driver should not be fined. There would be an appropriate test or if the driver thinks they have been wrongly cited, and challenge their ticket. The City would then have the appropriate means to measure the decibel level. This is a shift and as Councilor Cassutt said, it amends the amendment we adopted with appropriate tweaks for how we are using it.

Ms. McSherry suggested including a page number because it is just in the amendment and not in the original ordinance. It would only delete paragraph H in its entirety.

MOTION: Councilor Romero-Wirth moved, seconded by Councilor Cassutt to amend – to adopt Amendment G and in item 2, only delete paragraph H in its entirety.

Discussion on Amendment G:

Mayor Webber clarified the motion would develop a compliance test and that a person cited could rely on that test as an affirmative defense in challenging the citation and it removes the language that had been in the bill that had a different approach to doing the decibel test because it doesn't apply to what we are doing.

Councilor Romero-Wirth disagreed with the motion as clarified.

Councilor Romero-Wirth withdrew her motion and Councilor Cassutt withdrew her second.

New Motion to Amend the Amendment Sheet G:

MOTION: Councilor Cassutt moved, seconded by Councilor Romero-Wirth to amend Amendment G and strike "Paragraph G" and so the second reads, delete Paragraph H in its entirety, including the chart in H.

Discussion on the Motion:

Councilor Lindell asked if this didn't need to come to the Governing Body in written form. Those are the rules.

Ms. McSherry said she could write it out and display it on the screen.

Councilor Romero-Wirth yielded the floor back to Mayor Webber. She said we could come back to this amendment.

The vote on this amendment was suspended.

Amendment D

Councilor Cassutt, Councilor Villarreal, and Councilor Rivera brought Amendment D to the floor.

Councilor Cassutt said Amendment D changed time period for when a person needed to come into compliance after receiving a citation from 60 to 90 days. It was a proposal based on the fact that it sometimes took more time for people to get an appointment for the work and perhaps a financial consideration and a need to raise the money to fix the muffler. The amendment was drafted after hearing that repairing a muffler could cost as much as \$2,000. They were getting responses that sixty days would likely not be enough.

MOTION: Councilor Chavez moved, seconded by Councilor Villarreal, to approve Amendment D.

Discussion on the Motion:

Councilor Lindell pointed out that Amendment D references paragraph H which has been deleted.

Councilor Romero-Wirth said this must reference the amendment that was adopted. The only thing this does is extend the 60-day period to 90 days. This would only change sixty to ninety days. Because this language is not in the Bill, we must amend the amendment that was at Finance.

Ms. McSherry agreed that was correct. And there was a docket which made it a part of the Bill right now. It only affects Paragraph F and is not being touched by the other amendments.

VOTE: **The motion was approved on the following roll call vote with:**

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

Amendment Sheet E:

Councilor Cassutt said this amendment would change the minimum fine from \$250 to \$100 for a first offense; a second offense would \$250; and third and all subsequent offenses would be \$500. There were a number of reasons for this change. We are trying to balance how we can we are incentivizing the community to not engage in behavior that is disruptive. It needs to be addressed. For many individuals, \$250 is a very high fine and \$100 could help She did some research on behavior change and found that higher fines were less effective than lower fines to change behavior. The lower fines with more interruptions in one's life would make it more likely that individual would actually change their behavior.

She felt it was important to look at it not in a vacuum, but with some of the other work being done at the City. Primary was the staffing of our Police Department. She gave a lot of credit to Chief Joye and Deputy Chief Champlin and the leadership of the Police Department, to the administration, and to this Governing Body for a lot of the work done to increase the staffing level. Chief Joye gave a wonderful presentation on the ability of the Police Department to continue to enforce traffic. We need

them on patrol for safety. We will see this improvement as we continue to staff up the Police Department.

At \$250, a loud car would be a higher citation then – something that would present a physical danger to individuals. Looking at \$100 fine was being offered only for the initial stop – as a fixit ticket. It offers an incentive to take care of it at the first citation.

Councilor Villarreal clarified this amendment is reducing the first offense and raising to \$250 for the second offense. She said the \$500 was not part of this amendment. She agreed with what the research showed and how the penalty can effect change. This is a compromise and a balance she endorsed.

Councilor Rivera said the other sponsors summed it up well. Fines hit lower income people the hardest. A hundred dollars may make a big difference to a person or family with lower incomes.

He had asked Mr. Hibner to break out some numbers a little further. We saw the number of citations given during the blitz but the ages between 15 and 21 had 40 citations; for ages 22 – 27 had 54 citations. We are looking at that age group from 15-27 that received the majority of citations. They may have had the money to modify the muffler or maybe bought the vehicle already modified. But it is a younger group being targeted here. He didn't comment about motorcycles.

MOTION: Councilor Villarreal moved, seconded by Councilor Rivera, to approve Amendment E.

Discussion on the Motion:

Councilor Villarreal said he original fine amount at \$25 was based on what the State had for first offense. But the State is considering raising the fine to \$50.

thought \$100 was not going to bring a behavior change.in light of the \$2,000 estimate to fix the mufflers. A \$100 fine was not realistic to effect any change. She asked Deputy Chief Champlin if he had any idea how old the driver was when pulling them over.

Deputy Chief Champlin agreed they usually don't know the driver's age.

She had not heard anyone except Councilors who were opposed to it. She had not had one email or one call from someone saying please don't do this – that it would create a hardship for them if they got picked up. She didn't know why we would cater to this disruption.

Councilor Lindell emphasized this problem is disrupting people's lives. And it is a nationwide problem.

Councilor Lindell noted that New York State raised their fines from \$150 to \$1,000. Colorado went to \$500. There is something aggressive about this.

In her research she saw modified mufflers had names such as: Cherry Bomb, Neighbor Haters, Black Widow, Angry Housewife, Evil Energy, and Sharp Road. That is kind of aggressive and not very friendly. WE know what this is about. Do we want it to continue, or do we want to stop it?

She didn't think a \$100 fine would persuade them to fix their mufflers. It will put more pressure on the police, but a \$100 fine is not enough and totally disincentivizes changing the muffler at all.

Councilor Chavez said she sponsored this bill because it must be addressed. Law enforcement has supported it. Fines will not matter until it is costlier than fixing the problem. The person will continue until it exceeds the cost of the modification. Individuals will have to continue to have police stop them and fine them for change to happen.

Councilor Lee Garcia didn't believe that was a good estimate to fix a muffler. It depends on the cost of a converter or muffler. He estimated it was more like \$200 to \$500 cost.

Councilor Romero-Wirth corrected a couple of things in HB 71, prohibiting the alteration of mufflers except for repairs that bring the muffler back at its original level condition. The misdemeanor would have a \$50 fine. That gets us into how to solve the problem. Fines are one way and one tool and currently at \$25 for an altered muffler. And this would move it to \$100. It is an increase. SB 48 is sponsored by two from the Santa Fe delegation wherein the State would give Counties permission to have inspection programs and require vehicles to pass those inspections as a local government. An owner would not be able to register their vehicle with the State and capture many things. It would make vehicles safer while reducing the noise problem. Those bills will help.

Councilor Cassutt explained that the \$2000 was achieved by a survey of local repair facilities. If they get caught once they will get caught again. The best thing we can do is support Law Enforcement. She thought SB 48 will be the real turning point for this issue. It will take a variety of solutions with multiple strategies to effect this.

Mayor Webber agreed. We know expense changes behavior. There is a direct correlation. The first fine is \$200 in Albuquerque. England has a new laser to determine decibels. We need that technology, and we need more enforcement. But we have a chance to deal with the rapid increase post COVID driving aggression. We see road rage, racing and includes vehicles that are built very loud - intentionally noisy. He will definitely vote for it. He favored a higher first fine.

vote on amendment E – Councilor Romero-Wirth voted no, and Mayor Webber voted no. rest were yes.

VOTE: **The motion was approved on the following roll call vote with:**

For: Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, and Councilor Villarreal.

Against: Councilor Romero-Wirth and Mayor Webber.

Tabled Amendment B

Ms. McSherry had written the amendment in a red line version and Ms. Bustos-Mihelcic share the written version on screen.

MOTION: **Councilor Romero-Wirth moved, seconded by Councilor Cassutt, to approve Amendment B as amended.**

VOTE: **The motion was approved on the following roll call vote with:**

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: Councilor Lee Garcia.

Main Motion as Amended:

Discussion on the Motion as amended:

Councilor Rivera didn't think it was a noise problem and described the problem out on Airport Road where he lived. He supported the amendments. He grew up from here close by. He heard from motorcycle clubs and car clubs that were against it. Racing should be dealt with and enforced.

Councilor Michael Garcia said during the Committee process, Deputy Chief Champlin talked about cameras and testifying. He asked for an update on where the City was moving and utilizing tools such as these.

Deputy Chief Champlin talked with a person at UNM who is starting a business called "Not Allowed." They are doing a pilot project in Albuquerque now. He has offered to do it in Santa Fe also. He was not very familiar with it and not associated with his firm at all. He is offering the technology.

Councilor Michael Garcia asked regarding enforcement, if Santa Fe doesn't have a noise camera, how he would anticipate ensuring this would be enforced. If this passes here, that would be the expectation from the community = that the noise was going to stop. He asked how this would get implemented and how challenging it might be to actually enforce what is being approved, etc.

Deputy Chief Champlin acknowledged it was a complicated topic and would be complicated to enforce. It is a Quality of Life issue, and as he presented to the Committees, calls for service come first. We are down to 19 vacancies right now. And 14 are on patrol duty.

The Department will train officers on this and focus on it as we can and have.

Councilor Michael Garcia thanked him for his response. The community expectation was that if the noise didn't stop on the 91st day, were we unsuccessful or would it be six months down the road or one year later? If not, the City must take another bite at the apple and figure out how ultimately to address the problem.

Deputy Champlin assured him if it didn't work, they would change their approach. He agreed it is complicated and difficult to enforce but we must do it in spite of 14 vacancies. Airport Road is a place where we get complaints. We will do training and updating in our department as much as we can. We will use tools like cameras and other technology especially if our staffing increases.

Councilor Lee Garcia Shared his personal experiences growing up and said he didn't support increasing fines.

Councilor Villarreal was willing to find a compromise, but it all comes down to enforcement.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: Councilor Lee Garcia.

19. PUBLIC HEARINGS

- a. **Appeal # 2022-5536-APPL of Case # 2022-5189-HDRB.** Appeal by Heidi & John Mullican of the Historic Districts Review Board's Denial of a Proposal to Reconstruct a Yard Wall on a Property at 330 Don Cubero Pl. in the Don Gaspar Area Historic District. (Frank Ruybalid, Assistant City Attorney: feruybalid@santafenm.gov)

Ms. Bustos-Mihelcic read the caption on the appeal.

Mayor Webber reviewed the process for Quasi-Judicial hearings.

Disclosures

Councilor Romero-Wirth disclosed her constituent came to her to find out the City processes and get information. As a result of those extensive discussions, she recused herself from this case.

Councilor Michael Garcia had some conversations but asked for advice from Ms. McSherry. He directed people to appropriate places but didn't think it would impair his judgement. However, after seeking advice from the City Attorney, he decided to recuse himself.

Staff Report

Mr. Ruybalid was sworn and presented the Staff Report. The H-Board prohibited the property owners at 330 Don Cubero Place from rebuilding a wall. He said the owners took down the latillas all around the front yard atop the stucco wall when they found it necessary to create an opening in the stucco wall to allow earthmoving equipment to access a sewer line on the property and when replacing the latillas, a City Inspector issued a red tag or stop order, prohibiting them from recreating what was feared by the City to be a nonconforming structure. He briefly described the area where the property was located on Don Cubero Place.

He displayed the site plan for the property and pointed out the large front yard area. He described the stucco yard wall details, which with the

latillas, was about six feet tall, making it nonconforming because of its height out of harmony with the streetscape. He explained how the parameters of a streetscape were defined in the Code and how the Inspector determined it to be nonconforming. On Don Cubero Place, the maximum height for a yard wall was 4' 2". It was 4' 6" on Don Cubero Avenue. In the historic building inventory, the nonconforming latillas were estimated to have been installed after 1995.

Appellant Report

Michael Allison, counsel for the Appellants, was sworn in. He stated that Heidi Mullican was present, as was Esteban Trujillo, architect who had worked on this issue. He mentioned the agent on appeal for them.

He gave a quote from the City Attorney's memorandum, page 7-8. "Historic District standards can be flexible when the Board grants variances from them under appropriate conditions. If a project applicant can adequately document the need for departure from them." He acknowledged that the applicants have the burden of proof before the Governing Body but it clearly indicates their ability as well as the Review Board to grant a variance or an exception when circumstances are appropriate.

He submitted if there ever were appropriate circumstances, this was it. Two of the circumstances that were most appropriate were that as is require by a contractor before digging in Santa Fe, TLC which was the contractor hired to replace the sewer line asked the City to go to the property and locate the sewer line for them. The City did that and TLC said they would need to remove a portion of the wall to dig through since the sewer line went under the wall. They took out a six-foot section of the wall that required all latillas to be redone.

But TLC did not find a sewer line. The City had improperly located the sewer line and it turned out to be on the other side of the house, was ultimately replaced without any disturbance of the house or wall.

The entire reason for being present was that a wall was removed based on what the City said its location was and it was not there. If that initial mistake by the City had not happened, the applicant would not be at this meeting and would not have the problem. They thought that was an appropriate circumstance for the Governing Body to consider an exception.

The other fact he pointed out was that the record of the May 24, 2022 hearing before the HDRB was videotaped and he looked at it and cited

some excerpts before the Governing Body. Some of it was the testimony of Angela Bordegaray and pictures of other walls in the Don Gaspar Historic District had evidence that showed that Ms. Bordegaray made misrepresentations to the H Board on two important issues. The first was whether or not this residence was contributing or noncontributing. It is, in fact, noncontributing and the historic building inventory Mr. Ruybalid showed on the screen on page 1, right hand corner, (from the 1995 survey) that said this building was noncontributing, with a box checked in two different places.

However, Ms. Bordegaray inaccurately told the H Board the building was contributing. Mr. Trujillo was unable to find any record that changed its status after 1995.

Later at the meeting, a Board member stated that the house is contributing, asked if the wall was designated contributing. The response was, "It's a contributing structure." That was also wrong. And that shows that the Board was interested in that issue and wanted to know, and therefore, presumably, included that inaccurate fact within their deliberations. The other issue, at 4.59, Ms. Bordegaray indicated that the neighborhood was predominantly low walls – all of the yard walls were low except for the one next door. She did not say what neighborhood means at that time, but it seems pretty clear that the relevant geographical area was the Don Gaspar Historic District. Mr. Trujillo went out and started photographing other similar walls with latillas of varying heights throughout the District. He had four pages of photos (62 photos) that showed there were 62 other walls within the Don Gaspar Historic District that were not predominantly low and that have latilla tops almost identical or very similar to the Mullican's wall. He assumed that the Board relied upon all information presented to them, and two inaccurate statements.

Another issue he thought was important, although not determinative, was that originally, Staff recommended approval of this application "as it complies with 14-5 D, General design standards for all H Districts, and 14-5.2 H – Don Gaspar Area District. The position of the Staff was that the application should be granted, based upon their observed facts.

He also pointed out that the wall with the latillas provided property in the only outdoor space in the front yard, since the house sat on a zero-lot line in the rear. Without the latillas, people could look inside their home and invade their privacy. When the Mullican family purchased the home in 2000, the latillas were in place.

In February 2022, the sewer line broke. It was classified by the City as an emergency, and it was a health risk and an unpleasant issue for the neighborhood. Mr. Mullican responded right away to get it repaired at their

own cost to protect their own property, their own interest, to restore their sewer service, and also to protect their neighbors' interests and the City in general. They hired TLC Plumbing, who pulled a construction permit in this case. Ms. Mullican received a restoration permit from the City that said go forward with the work. She, as well as TLC, perceived that to allow tearing down a portion of the wall, digging the trench, and removing/replacing the main sewer line which turned out to be not there but on the other side of the house. They had proceeded in good faith by thinking they had all the permits they needed from the City at that time.

The wall was rebuilt and before they began reinstalling the exact same latillas that had been there for years, they got the red tag from the City and are here as a result.

Another point Ms. Bordegaray stated, "Applicants began to reconstruct the wall as it had been." There was never any assertion that anything other than just restoring what had already been there for all this time, that never would have been disturbed if there was no sewer problem and in fact, should not have been disturbed, even though there was a sewer problem, except for the City's mistake.

He summarized that this was not a voluntary remodel other than responding to an emergency. They were not adding an addition or building a new home or remodeling. They were simply putting back what had always been there except for an event beyond their control. It did not in any way change the character of the residence or the neighborhood. It is reasonably like, aesthetically, the entire neighborhood. There was nothing different there and there were latilla walls all over the district that exceeded the height restrictions the Board was trying to enforce here.

With respect to the inaccurate status designation, the City Attorney's memo does not attest to it but merely said it was irrelevant. Whether it was contributing or not was not the issue. The problem with that is that everything at issue is the aesthetics of the neighborhood. This is not about safety or anything else other than "what does it look like?" A contributing structure, as defined under 14-12-1 is a structure that helps to establish and maintain the character of that historic district." That is an aesthetic standard. A contributing structure has a higher standard when one tries to change something. The Board was told and obviously was assuming it was a contributing property with higher scrutiny, higher standard, but that was inaccurate. And to say the contributing status of the wall was irrelevant ignores the fact that it is all about aesthetics. Contributing is exactly relevant to that issue.

With respect to granting an exception, there are six criteria the appellants need to establish. He believed they have all been established here. Mr.

Trujillo opined to that in a letter in the report. He explained why he believed all six criteria were fulfilled. And Mr. Allison briefly went through each one of the six criteria.

He concluded, "This is a case that has the appropriate circumstances where an exception or variance from the strict normal rules should be allowed by this body – should have been allowed by the Review Board. However, there is a separate legal basis, we believe, that should allow the Mullican's to reinstall their latillas. This is under Section 14-10.3 of the Code entitled *Legal nonconforming structures*. Before all of this happened, the wall with the latillas was a legal nonconforming structure. It was over the height, but it was allowed, essentially grandfathered because it was already there. That's the term for it. 14-10.3a states that this section, 14-10.3 is not intended to prohibit additions or alterations that do not increase the nonconformity. So there is a policy that is expressed there that if you've got a nonconforming use and you need to maintain it, or repair it and it doesn't change or increase the nonconforming aspect of the condition, that is permitted. And there is a more specific objective standard under 14-10.3c "if a legal nonconforming structure is destroyed beyond 66 and 2/3 percent, it shall not be reconstructed." This obviously is below 662/3% and is allowed to be reconstructed. The latillas constitute 29% of the wall, well below the two-thirds of the wall. So presumptively, under this ordinance, by its expressed language, is permitted to be reconstructed without receiving an exception or variance.

Based on those two legal routes, he believed the Board was mistaken in denying this application, over the recommendations of Staff. Beyond that, just looking at appropriate circumstances, this is a case that was initiated by a mistake of the City of Santa Fe in locating a sewer line. The wall would not ever have been touched if no mistake had been made. That is a circumstance he believed should be considered.

The most important is that there are two very clear and very inaccuracies in what Staff told the Board. And the Board specifically asked about the status and were told it was contributing and it clearly was not. And the second was Ms. Bordegaray's statement that all the walls in the neighborhood were low. He was not saying it was intentionally misleading, but it was not true.

For those four reasons, he asked the Governing Body to reverse the decision of the Review Board and grant the exception or otherwise state it was allowed under the sections of the Code he cited.

Public Testimony at 10:30 p.m.

The witness was sworn away from the microphone.

Deborah Golson, 843 Don Cubero, said she assumed the Governing Body got the public statement – the written statements we all sent under notary. I submitted two letters – one from Walter Sonnheim Smith, an email from Mark Yetson, who also sent a letter, and one from a couple who lived right across the street whose name she could not remember. A whole neighborhood responded. They all bought their houses and thought the coyote fence was already there. But in the archives, “we see everything gong on. We’ve all bought our houses, knowing that fence was there. And I live on the corner and another lives across the street. None of us have six-foot walls around our house. So I don’t know how measuring is done. ... but basically, and just one more second, the one Walter thinks the wall was built first has an extra addition before 1995, so we wonder about when it was actually done.” When I walk by, I can look right into her bedroom. For the sanity of the whole neighborhood, I do hope you reverse the Historic Board, remand for reconsideration, or alternatively order it tonight. Thank you very much.

There was no other public testimony.

Governing Body Questions

Councilor Cassutt asked to hear more about the interaction with the City in terms of the misinformation about where the sewer line was. Did the City come out to the property? And I assume this is a question for the Applicant. I’m not sure who would be best to answer that. Did the City come out to the property and say this is here? Did TLC pull a permit and say we think the sewer line is here, and the City approved? How did this mistake come about with the City?

Ms. Bordegaray started to answer, and Mayor Webber asked her to state her name again for the record.

Heidi Mullican gave her name. She was still sworn and said that on February 1, 2022 the sewer line broke. It took a week before TLC could even do any digging. On day 20, we still couldn’t figure out where the sewer actually existed. So we were without a sewer for 24 days. On day 20, TLC said that we need to have the City come out and locate the sewer line. So the City came out and located it, which TLC, because they located on Don Cubero, they would need to take down a section of our wall. And I said okay, I guess we need to. So six feet was what the digger took to get in and we took down a six-foot section. Then we found out that there was no sewer going out to the front. That it was actually on Houghton on the back side. Once they figured that out, TLC was able to dig on Houghton

and had that sewer line located on Houghton, and then we were left with a mess.

Mr. Allison said that the City comes out here and they come to the residence and they do a marking with spray and that is how they locate the sewer line.

Councilor Cassutt thanked them for their testimony. And there was a mention that six feet of the wall had to come down. And why did all the latillas have to come down at that time as opposed to just six feet?

Ms. Mullican said they bought the house in 2000 with latilla fences on top. Looking at the survey of 1995, it is our understanding, piecing things together, that somewhere between 1995 and way before 2000, so we guessed 1996 or 1997, that the previous put the latillas up to keep her dogs from jumping over. I'm in the same position. My dogs consider that fence. It is not safe for us; not safe for the public. There is no privacy.

Councilor Cassutt said she appreciated the information, but she was just curious why, at that point all of it had to come down.

Ms. Mullican said the latillas all had to come down because they had been up there so long. The way they were installed, it required They began to sag at various parts of the yard. They were up for 27 years at least. So we took down that six-foot section and it caused the other ones to start falling sideways. Since we were looking at replacing with the same materials, it was a good time to fix the lower wall with restuccoing because it had cracks and had not been repaired for over thirty years.

Councilor Cassutt thanked her and appreciated that. She asked a question of Staff next.

She asked regarding something about when less than 50% in the historic code was impacted, then you can go ahead with a nonconforming structure that was damaged, you were not supposed to replace it. But if less than 50%, you can.

Mr. Ruybalid responded.

Councilor Cassutt said the heart of the question is how we define nonconforming structure. She asked if that was the entire wall of stucco and latillas or that maybe the City was just defining it as the latillas. She asked if she was calculating that correctly.

Mr. Ruybalid responded and quoted from the Code and interpreted it.

Ms. McSherry thought Councilor Cassutt was asking about 14-10.3.

Councilor Cassutt agreed.

Ms. McSherry said from the Applicant's prior statement that neither the H Board nor in conversations with Mr. Ruybalid, the question would be does this section have any bearing on this case. It is a specific provision in the historic district governing chapter about exceptions we know apply, which are extremely specific and we have an overarching theory in Chapter 14 that has specific provisions that govern over a more general.

Mr. Ruybalid said what Mr. Allison read talks about a legal nonconforming use and there are a lot of code provisions that apply to them. A legal nonconforming use is specifically defined in the code as a use that was lawfully established but that fails to conform to the use regulations of this chapter of a legal nonconforming structure. A structure that was lawfully constructed but that fails to conform to the standards of Chapter 14 for structures, such as restrictions on area lot coverage, height, or other characteristics on the lot. That has been a longstanding provision of the Code. Furthermore, Gary Moquino, the inspector, indicated that there was no record whatsoever in the City of Santa Fe that anybody ever applied for a permit to build that latilla top around that wall. We have no idea how that got built.

Councilor Cassutt understood the more specific provision within the Code in the historic section of Chapter 14 applies.

Ms. McSherry said what she was hearing Mr. Ruybalid saying was different. It sounded like the City's records don't show there is a legal nonconforming structure because it was never constructed legally. It is outside of conforming before and now, unless something changed after it was built legally.

Councilor Cassutt said it doesn't sound like the 50% section does not apply in this case. She had no other questions.

Councilor Rivera asked if we were able to determine that the City made a mistake on locating the sewer line.

Mr. Ruybalid didn't recall specifically asking Mr. Moquino or Ms. Bordegaray about that. He did recall something about learning that the sewer extended to the back of the property out to West Houghton alley and did not go to the front yard. The explanation the City gave erroneous information, he hadn't heard about before.

Councilor Rivera asked if it never came up in the H Board hearing.

Mr. Ruybalid didn't recall that. The hearing was long with a lot of dialogue, but he didn't recall that specifically.

Councilor Rivera asked if this building was contributing or noncontributing.

Mr. Ruybalid said all indications were that this was a noncontributing structure and the error might be in looking at the wall height calculation for Don Cubero Place. It appears in the packet as a bunch of red, orange, and yellow structures on a pink map. It was very colorful and you might see that 330 Don Cubero Place house appeared in orange, which indicated noncontributing structures. The garage on the left side of the house appeared in red, that indicated that it was contributing. The practice might be if any part of the house was contributing then the entire property was considered contributing. But he believed that was in error that should not appear in red. In looking at the Historic Properties Inventory that he referenced in his presentation, way back when they were doing those HCPI's that property was designated as noncontributing and we can't find anything to indicate the H Board ever made a decision to change that designation. The wall height was not contingent on the status of the house as contributing. It applies to a particular streetscape and not to the entire historic district.

Councilor Rivera said the Applicant showed something from the Historic Design Review Board that said that all the walls were – probably within that four-foot level except for the one right next door. Do we know how tall that wall is?

Mr. Ruybalid said it appears on the wall height calculations – the wall at 336 Don Cubero Place is 89 inches and at the lowest is 78 inches. So they are next door to a very tall wall. On the other hand, the property next door to the west at its highest is 42 inches and lowest is 30 inches.

Councilor Rivera asked if we know when that very tall wall was constructed and if it went through the proper procedures.

Mr. Ruybalid said he would have to search for that information. He also knew that property next door was noncontributing. Many of those houses were built in the 1930's but what modifications had been made to them was sometimes difficult to ascertain.

Councilor Rivera asked if the 89-inch wall was block or a combination of block and latillas or just latillas or something else.

Mr. Ruybalid suggested Ms. Bordegaray would be able to answer that.

Angela Shackelford Bordegaray, Case Manager, was sworn in.

Councilor Rivera asked her about the composition of the 89-inch wall.

Ms. Bordegaray said it is stuccoed masonry and a portion of it has latillas adjacent to the subject wall. She added that it is a non-historic wall. All the other walls in that streetscape were low walls.

Councilor Chavez said there was a map she understood showed a height calculation based on averages of height. She was more interested in the number of walls that were similar in height to that area. She could see heights written on the map and thought she saw some that were six feet – multiple – not just the one next door. She wanted to know the number of houses that had similar height walls – how many there are.

Ms. Bordegaray thanked her for the opportunity to explain the term streetscape and how many there were. All the walls, except for that one wall, they are all low walls. You saw pictures from the Appellant and from Esteban Trujillo, the Applicant's representative, that were taken throughout the Don Gaspar Historic District, which is pretty large. And that is not the applicable streetscape. Streetscape is actually confined to that street the subject property is on.

Councilor Chavez thought she saw measurements within the streetscape projected on the screen. There were numbers next to lots and was what she was referencing. And it was within the streetscape.

Mayor Webber was looking at it on his computer and said it was page 26 of the HDRB minutes and Mr. Ruybalid had it in his presentation as a colored map with highest and lowest points along the street. It was how they achieved the average, but it also had individual calculations.

Ms. Bordegaray agreed the map had calculations of each of the walls and those walls that were not historic were thrown out in the averaging. She showed a picture of that street, looking at the subject property and one could see along the street that there were only low streets which was the character of the Don Gaspar District.

Councilor Chavez asked if there was a picture view of the opposite direction.

Ms. Bordegaray found one and showed it. It showed the next-door wall that was tall. The map showing wall height calculations was shown next.

Councilor Chavez thanked Staff for showing that.

Councilor Lindell, at 11:00 asked questions of Mr. Allison. She noted that all of this started with the sewer issue. She was having a hard time getting past it. She understood the Mullicans were told by the City where the sewer line was. Correct?

Mr. Allison agreed.

Councilor Lindell said that location was not correct. Where the City said the sewer line was not where it was. So all of this razing of this wall was because that was where the City told them the sewer line was located and they needed to get in there and dig.

Mr. Allison said that was correct. He thought it was a matter of State Law that a contractor is not to start digging until they have been informed by whatever the appropriate jurisdiction is where the lines are. It is a safety issue as well as a practical issue. The City is the one that has the records as to where the lines are underground. There are gas lines and water lines and electric lines. So it is a matter of safety for a contractor, particularly a large contractor like this, as a matter of course, this is how they are going to locate a line. That is what happened in this case.

Apparently the City records were incorrect but they came out and drew the line on the ground like up to the wall and past the wall. So TLC needed to remove a portion of the wall because they thought they needed to. And they started digging and there was no sewer.

Councilor Lindell asked how far away from where they were told the sewer line was located, was it actually located.

Mr. Allison said it was on a different street. He asked if Ms. Mullican could respond to that and Councilor Lindell agreed.

Ms. Mullican said the sewer line actually was 64 feet underneath the house to the back alley. That is where we found the faulty sewer line actually was. They dug right behind the house on Houghton.

Councilor Lindell understood.

She also understood the vote by the Historic Board was a 3-2 vote and asked if that was correct. That is what the record says.

Councilor Lee Garcia asked how we would find the City's liability for the locating of the sewer. He said he had asked for the City to locate lines for his construction work. He was struggling to figure out how they could identify a line that went under the house to the opposite side. That was what happened. They do have cameras and ways to go into the sewer

lines to find them. He couldn't understand why the City marked it on the wrong side of the house. He asked if there was a work order registered with the City to come out.

Mr. Allison didn't know but assumed there was one. They did put in the request to the City.

Councilor Lee Garcia understood it was a mistake.

He said he had a question about when the house was built and had heard there was not a permit pulled to allow this to be built and maybe had requested a variance for height.

Mr. Ruybalid understood that was done for the latillas. That was before the Mullicans owned it.

Councilor Lee Garcia asked regarding the fence height, when the fence height was determined how high it could be built. He understood five feet was the norm for the City.

Ms. Bordegaray said the Historic Ordinance has the design standards for each of the five historic districts and the height standards that apply throughout the five historic districts. That refers to the heights of all structures and includes sidewalls and entrances, etc. In the Code it specifies how to calculate an allowable height for each structure in any of the historic districts.

Councilor Lee Garcia asked, for this property, what the maximum allowable height was for a fence or wall.

Ms. Bordegaray said for this streetscape it was 4' 7".

Councilor Lee Garcia asked if she knew when that rule was put into effect.

Ms. Bordegaray said that was done on an individual basis per case.

Councilor Lee Garcia assumed, since it was constructed in the late nineties, that it would have to have gone through the process in order to be built.

Ms. Bordegaray said theoretically, yes, and it didn't. There are many others. There is no record of a permit for the latillas.

Councilor Lee Garcia understood this would probably have to go to the H Board to request a variance for the wall to be built again. Or does it go to the Planning Commission. Who is it handled by?

Ms. Bordegaray deferred to Legal Counsel.

Mayor Webber explained the question is, if the Governing Body approved restoring the wall, whether it would need to go back to the HDRB or to a different process or if the Governing Body supersedes all other processes.

Ms. McSherry said they would be able to proceed at that point.

Councilor Lee Garcia assumed if the Governing Body did not grant this appeal, the wall stays to 4' 7".

Ms. Bordegaray said in this case, it would mean the latillas could not be added back on the wall.

Mr. Lee Garcia asked what the height of the stucco wall was.

Ms. Bordegaray said it varied between 4' 2" to 4' 10" as in the staff report, because of the topography. She agreed it was six feet with the latillas.

Councilor Villarreal said her colleagues had asked the questions she had. She had one follow-up. She noted there were other walls around this house and she understood there were other sections of the wall that were six to eight feet high. It was not the front part. She asked if Staff could verify that. Mr. Ruybalid had mentioned there were other sections that were 6-8 foot levels.

Mr. Ruybalid did not refer saying 8'.

Ms. McSherry said if he was going to speak about personal things, he needed to be sworn.

Councilor Villarreal said she was asking whether parts of the wall, not in front, were higher than six feet.

Mr. Ruybalid suggested she look at the HCPI which was part of the packet. It also had pictures of the back of the house that fronts on West Houghton Street. Those walls on the back yard and around the sides appear to be about six feet tall.

Councilor Villarreal asked if an alley way was a street.

Mr. Ruybalid said the calculation is made from the front. An alley way is not a street, especially not in this situation.

Councilor thought the alley was also a streetscape and the wall there was six feet. She had a hard time with this case, based on some of the information provided about different levels of fences and not even talking about the alley way. It depends on how one interprets the code. To her, there was a streetscape on the alley way.

Mr. Ruybalid said Santa Fe City Code, Section 14-5.2, subsection D a said streetscape on both sides of the street for a distance of 600 feet, measured from the midpoint of the street-facing façade of the fences parallel to the street. So in the Code, it is identified as in front. In some areas, houses have addresses on Houghton but at Don Cubero Place, all have Don Cubero addresses.

Councilor Villarreal understood.

Ms. Bordegaray said the back was a different streetscape. But the streetscape that applies is in the front – visually looking at the front.

Mayor asked for a motion to waive the time limit at 11:17 before it got to 11:30 pm.

MOTION: Councilor Chavez moved, seconded by Councilor Cassutt to waive he rules and allow the Governing Body to extend the meeting beyond 11:30 p.m.

Discussion on the Motion:

Mayor Webber noted that two members were recused and wondered if they should vote on this motion. He decided to just ask the Clerk to call the roll.

Councilor Lindell asked, the Governing Body goes beyond 11:30, we still have the option to truncate the rest of the agenda.

Mayor Webber said he was just trying to get the motion passed before the Governing Body was at 11:30.

MOTION: Councilor Chavez moved, seconded by Councilor Cassutt to waive he rules and allow the Governing Body to extend the meeting beyond 11:30 p.m.

Recused: Councilor Michael Garcia and Councilor Romero-Wirth

Councilor Cassutt went back to the concept around the City's blunder and wondered if it was discussed at H Board at all. She was not seeing that anywhere in the notes. It didn't say anything about it being the City's fault. That was not reflected in the H Board minutes so she wondered if it was discussed at the H Board meeting.

Mr. Ruybalid did not recall that coming up. He remembered them saying they dug in one location and did not find the sewer line there and it turned out to be an unnecessary dig and they found it extending out in the back on West Houghton. But where the information came from, he didn't recall.

Councilor Cassutt said she was guessing that would be Public Utilities who would have mislocated it.

Ms. Mullican said TLC requested that Utilities come out and mark where ... which street the sewer line was on and where they needed to dig. They marked it on Don Cubero Place.

Councilor Cassutt thanked her.

She asked if we shouldn't have a City record showing that there was a mistake made on the part of the City. For her, that matters, whether there was a City blunder. And not having that confirmation was an area she was struggling with. She was not sure there was a way to get that confirmation.

Mayor Webber suggested asking the Appellant if at the H Board hearing, the issue of the City's mis-identification of the sewer line was brought up.

Ms. Mullican said, "Nowhere along this whole process was this allowed to be addressed."

Mayor Webber took that as a no.

Ms. Mullican said, "Correct."

Mayor Webber asked how it was not allowed. "You tried to bring it up and the Cahir said it was out of order? Because I am looking at the minutes as well all have and also don't see it in the minutes."

Mr. Allison said that issue was never discussed. It was all about the height calculation. It was all about conformity. That was not an issue, and it should have been.

Mayor Webber said, "You made a presentation."

Mr. Allison agreed he made a presentation.

Mayor Webber said, "And you described about the sewer line being in the wrong location, but you didn't attribute the mistake to anybody at that time."

Mr. Allison said it was a mistake and the wrong location.

Mayor Webber said, "That wasn't my question, however. I'm just reading the Applicant's presentation from the minutes. Explain the situation arose from the sewer being in the wrong location. It was necessary to destroy, in the minutes it says eight feet of the wall, etc. But looking at the minutes to the extent that we are relying on them, for prior information, the issue of the City misidentifying the location, wasn't really then part of your presentation."

Mr. Allison said, "It wasn't part of the presentation but was part of the letter. I thought it was part of the evidence. It was there because I don't know what they are going to throw at me when I present."

Mayor Webber said he was not attacking their Counsel.

Mr. Allison said it was addressed in the letter. He didn't know if the Board members read the letter. He had no idea.

Mayor Webber appreciated that. He asked if that helped answer Councilor Cassutt's question. It appears it did not in the presentation or in the give and take with the Board.

Councilor Cassutt agreed that answered her question.

Mayor Webber had one question of Staff. Since we are looking into the minutes, I have been confused all night long about what the Staff's recommendation was at the H Board. Part of my confusion is when I read it, it is confusing to me.

Mayor Webber read it out loud so everyone can know what I'm reading. "Staff recommendation: Staff does not find that all the exception criteria have been met. But the Board may find that they have, upon further testimony. Otherwise, Staff recommends approval of the application as it complies with 14-5.2(D – General Design Standards for all H Districts) and 14-5.2(H – Don Gaspar Area District)."

In as much as this case revolves around a fence, it seems we are on both sides of the fence. It is a serious situation, but we didn't find the criteria

had been met but the Staff recommends approval of the application. How does that work as a decision-making process?

Ms. Bordegaray said yes. "As Staff, we make these recommendations to our Board. And as Staff, we are the experts, and the Board will make decisions as they find their opinions. In this particular case, yes, I recommended approval, however, because it required an exception to the height standards, which were the six criteria, part of my review in my report is to respond to the Applicants' responses to those six criteria. And all those criteria are in the packet. To all of those, Staff disagreed that any of those were met. That is our process and then at the hearing, the Board has additional testimony. They make the decision."

Mayor Webber said all of that was crystal clear, although he might disagree with her finding that the exception criteria were met. But if the criteria were not met, why she would end up recommending approval.

Ms. Bordegaray explained how she came to that position, including the unfortunate circumstances for the property owners that they had to deal with. She, too, tried to figure out who was responsible for the mistake that had very bad consequences for them.

He pointed out that the Governing Body also must wrestle with complicated issues and come up with solutions that both conform to the City Code requirements and follow out sense of the circumstances that are human condition assets. He thanked her for the good and candid response.

Councilor Rivera had never seen a time when the City had missed finding a sewer and mentioned several ways in which they could have avoided that mistake. He knew they would not get that figured out at this meeting.

Mayor Webber asked for any other questions remaining.

Councilor Lee Garcia referenced a letter regarding the mislocation of the sewer line that was done by the City.

Mr. Allison agreed.

Councilor Lee Garcia asked if a copy of the letter was made available.

Mr. Allison said the letter was by Leo Martinez that.

Ms. McSherry said the letter was in the packet addendum on page 27.

Mr. Allison said the letter indicated that it shouldn't even be an issue because of the emergency.

Councilor Lee Garcia's other question was about grandfathering. He understood the structure was likely constructed without a permit. Without that, he asked how far the City would go back for grandfathering and what the interpretation is when something changes like now to rebuild back to what it was in its original state. He asked that of the City Attorney

Mr. Allison said the letter was to Ms. Bordegaray, dated April 27, 2022. It was where he went through his opinion regarding the sixth criterion for an exception, but at the end he said there was a sequence of events that he described and on February 14, he stated that the City locates the sewer line to be on Don Cubero Place and TLC determined that part of the wall had to be removed to fix it and TLC did it. Then on February 20, they dug and determined the sewer line was not on Don Cubero Place but on West Houghton. He clarified it was the sewer line from the house to the City's main sewer line at the street.

Councilor Lee Garcia was struggling with that event and when a City work order was put in, who went out to locate the line and whether it was a judgment call on behalf of the contractor.

Mayor Webber gave the Appellant five minutes for a closing statement.

Mr. Allison said regarding who made the sewer line mistake. He asked if this was a de novo hearing and believed it was. Clearly it was de novo since additional evidence was taken from additional witnesses. Then the evidence presented here on that issue is before this body. That evidence is that the City came out and mislocated the line. However, Mr. Trujillo just showed that it was raised in the previous proceeding as well. The evidence is that the City mislocated the line. We wouldn't be here if that had not happened because the wall would not have been disturbed.

His second point was that there was discussion about whether more than 50% destruction happened. The policy is clear that if disturbed below 50%, it could be replaced. This is 29% - less than 50 or 66 percent. This is an issue of maintenance. This is about required maintenance because of a sewer line break. It certainly is a policy of the City to encourage residents to maintain their property. In this case, had the Mullicans not spent the money and effort to deal with this issue, we would have a much bigger problem. They were maintaining what was already there.

The last thing is the fact that the decision of the Review Board had to be based on two very significant inaccuracies. The first was the difference between contributing and noncontributing. On at least two occasions, it

was represented that it was contributing and once in response to a Board member's question. They were acting under the assumption that this was a contributing property – it was not. And that is a material issue because all of this relates to aesthetics. If the property is contributing, it is held to a higher standard.

The other inaccuracy is the statement that the neighborhood has predominantly low yardwalls. He believed the City now has taken the position that the neighborhood is just the streetscape. But that was not what the Board members were told.

That distinction was not made that they were taking this very small sample. When we represented to you that the area has predominantly low walls and is clearly not the case, that we are only talking about that one little segment, then at least the Review Board would have been operating on accurate information. But why would you take such a small segment?

The policy is to maintain harmony throughout the area – throughout the district. So if you are just going to choose three or four houses as your sample that is not consistent with policy you are trying to meet, which is to maintain harmony through out the district. So, if this Body allows the Board rule to stand on a decision that is materially inaccurate information, he didn't think that was a policy the City wanted to use, and would ask the Board to grant the exception.

Mayor Webber closed the public hearing at 11:42 pm.

MOTION: Councilor Lindell moved, seconded by Councilor Villarreal, to grant the appeal on the grounds that, although the yardwall with latilla extension as it existed before the demolition does not conform to the historic district height limitation, the Appellant has conclusively demonstrated the six exception criteria were met that are found in the Code.

Mayor Webber thought the Staff Report, once explored, is not so confusing. He agreed the six were met and went through each of them to explicate how they met each one.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor Lindell, Councilor Rivera, and Councilor Villarreal.

Against: None.

Recused: Councilor Michael Garcia and Councilor Romero-Wirth

Councilor Michael Garcia and Councilor Romero-Wirth returned to the bench after the vote was taken.

- b. CONSIDERATION OF RESOLUTION NO. 2023-____.
Case #2021-5505. NM Land Solutions LLC, Agent, for Dry Creek Partnership, Applicant, requests approval of a Resolution to amend the General Plan Future Land Use Map to change the Future Land Use Classification for approximately 2.2 acres of land located at 6350 Airport Road, from Office to Community Commercial. (Heather Lamboy, Assistant Land Use Director: hllamboy@santafenm.gov, 505-955-6598)
POSTPONED FROM THE JANUARY 11, 2023 REGULAR GOVERNING BODY MEETING

Ms. Bustos-Mihelcic read the caption for this resolution.

Mayor Webber repeated the process steps involved and recommended considering this item (b) and the next one (c) together.

- c. CONSIDERATION OF BILL NO. 2023-3. ADOPTION OF ORDINANCE NO. 2023-____.
Case #2021-5506. NM Land Solutions LLC, Agent, for Dry Creek Partnership, Applicant, Requests Approval of a Bill to Rezone Approximately 2.2 Acres of Land Located at 6350 Airport Road, from C-1 (Office and Related Commercial District) to C-2 (General Commercial District). (Heather Lamboy, Assistant Land Use Director: hllamboy@santafenm.gov; 505-955-6598) **POSTPONED FROM THE JANUARY 11, 2023 REGULAR GOVERNING BODY MEETING**

Ms. Bustos-Mihelcic read the caption for this proposed ordinance.

Mayor Webber repeated the process for the Governing Body to follow.

Disclosures

There were no disclosures for these two cases.

Staff Report

Ms. Lamboy presented the Staff Report to the Governing Body.

She said the subject property is a vacant lot between Geo Lane and Paseo del Sol on Airport Road. The request is for General Plan Amendments to change this commercial area from C-1 to C-2 which is a general commercial zone district.

There is multi-family development located in the vicinity, single family residential, manufactured home parks, and various commercial on the north side of the street. The existing Future Land Use is designated as Office, which is interspersed with business and commercial use and also a mixed category with the airport overlay.

The proposed future land use would change to commercial which is found along the corridor further down Airport Road. It is also part of the Southwest Area Master Plan area. This particular neighborhood is the South Central Planning Area which calls for eclectic assembly of uses and also a neighborhood center that is part of the overall mix of uses. The general commercial zone could be part of that mix.

She explained how the new zoning makes it consistent with development goals with other parts of the General Plan and provides for harmonious development and would not interfere with other development or uses in the area.

There has been a change in use in the surrounding area and a different zoning category is more advantageous now to foster redevelopment, is consistent with the applicable General Plan policies, and the infrastructure improvements will accommodate for future development on this site

The Staff recommendation, as well as from the Planning Commission recommendation, is approval of the proposed General Plan Amendment and the proposed rezoning to C-2.

Applicant's Presentation

Nathan Manzanares with NM Lands Solutions, 915 Mercer Street, Santa Fe, was sworn. He said He and his company have worked with City Staff to follow Chapter 14. The Planning Commission unanimously recommended approval of this proposal, and he was excited to bring more commercial activity and development to this part of Santa Fe. He stood for questions.

Public Testimony

There was no public testimony.

Governing Body Questions

Councilor Villarreal referenced the packet material clarified their referencing the US Census data for 2020 on page 7 of the memo. It said that population was over 150,000 and asked if the Applicant was referring to County population.

The Applicant believed that was an estimate of County and City, but it seemed a little high.

Councilor Villarreal agreed. On page 12, they also referenced “the subject site has been extraordinarily difficult to market, due to the C-1 office uses, not wanting to be within close proximity to Airport Road.” She asked if that was due to current noise volumes within that area. She was curious where that information came from.

Mr. Manzanares said he thought this site has been vacant for awhile and the noise was one aspect of it, in addition to the limited uses that were allowed under the C-1 zone. That area is evolving and changing. The C-2 zoning designation allows for more community commercial and in the environment now, no one needs an office anymore. A lot of things can be done from home. So it is hard to market that type of use in this day and age.

Councilor Villarreal said this is about people not wanting C-1 because they don’t want to be in close proximity to Airport Road due to current noise volumes associated within the area. She wondered about the source of that statement and data source.

Mr. Manzanares thought that was given to us from the experience of the current owner as they were not able to market the site. Traffic might be associated with it from Airport Road which is a high traffic area and a heavily used road.

Councilor Villarreal said she was just curious where that came from.

Councilor Villarreal asked Staff about the use indicated in the packet. It said it will be an auto parts retail store. She asked if that was a guess or confirmed.

Ms. Lamboy said at the ENN meeting, a proposal was introduced to the community. The Applicant did say there might be an auto parts store there. That is where that began. Right now the application is for rezoning and General Plan Amendment. They have not put together any site design or anything else.

Councilor Villarreal asked if the owner had indicated a desire to sell the property.

Mr. Manzanares said in the first ENN, they had a user who was interested in the site. He said they try to be transparent with all projects and let them know that was a potential user because they have worked on this project since May and nothing has been finalized with a lessee or new owner. Nothing is settled now.

Councilor Villarreal said she and other members have talked about potential uses and she knew there were folks who wanted to have a grocery store that never came to fruition. She asked them if this was the parcel that was considered for storage units.

Ms. Lamboy said she didn't know if it was the same parcel.

Councilor Villarreal said the proposal was for temperature-controlled storage units and the Governing Body didn't support that. She just didn't want this to utilize uses that the Governing Body did not feel were appropriate commercial use. She was not opposed to an auto parts retail store. She just hoped they had a better idea for the proposed use.

Mr. Manzanares said if that were a potential use, it would come back to the Governing Body via the zoning. Or we could go to administrative uses. At the moment we are just trying to remarket the property by getting it rezoned and there is nothing set in stone.

Ms. Lamboy said the pathway would be if the Governing Body were to find or approve this tonight, the Applicants could then work on a development plan. If one building were to be less than 2000 square feet, to be built on this property, it would just be a building permit review at this point. The 10,000 sq. ft. threshold was if a residential development were nearby. And that is the case to the east and the south.

If a Master Plan was required, that would go to the Planning Commission. It would only come to the Governing Body if there were appeals.

Councilor Villarreal hoped the applicants would consider a grocery store there for the people who lived in that area.

Councilor Lee Garcia asked if they considered any other zoning for this property.

Mr. Manzanares said they did an analysis of the site and felt this area would be best served by a C-2 zone designation, due to the fact that it

has access via the two surrounding streets, but did look at it. C-2 would provide the most community commercial to the area.

Councilor Lee Garcia said if C-2 was approved, apartment complexes would be allowed. He asked Staff what steps would be needed to do that kind of development.

Ms. Lamboy explained the thresholds and said she would need to look at the Code to confirm how many apartments and how big the maximums would be.

Councilor Lee Garcia asked about I-1 and I-2 zones.

Ms. Lamboy said they would not be appropriate in this case because there is not any in close proximity to this property.

Councilor Lee Garcia thanked her for the information.

Councilor Rivera asked what other uses were allowed in C-2 zones.

Ms. Lamboy shared the permitted use table with the Governing Body.

She said a storage use proposal would go to the Board of Adjustment for review.

Ms. Feghali confirmed several examples for Councilor Rivera on which would come to the Governing Body and which ones would not.

Councilor Rivera asked how the Airport Road overlay would affect the uses on a C-2 zone.

Ms. Lamboy shared the minimal effect of the overlay on this property.

Councilor Cassutt asked about the borders for the Airport Main Street Program and if this property was included in that program.

Ms. Lamboy said she did not know that without looking it up.

Councilor Cassutt asked if the applicant knew about the Main Street program, and he linked up to find out more about it.

Mr. Manzanares said they had not had any engagement with the Main Street Program with having so many ENNs with the community. He added that at the second ENN meeting, no one showed up.

Councilor Cassutt said a group was working with EDAC to discuss what things the community needs and how to handle economic growth in the Airport Road area to enhance the quality of life for the residents there.

She hoped the property owner would engage with that group to talk about the best use for that property.

Mayor Webber asked for a reminder on the criteria required for a change in the General Plan. Staff read them from the code.

Mayor Webber noted that the Staff report said this case met those criteria.

Mayor Webber closed the public hearing on the case at 12:19 a.m.

Action of the Governing Body

MOTION: Councilor Lee Garcia moved, seconded by Councilor Lindell, to approve the request to amend the General Plan Future Land Use Map from Office to Community Commercial for the property located at 6350 Airport Road.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

MOTION: Councilor Lee Garcia moved, seconded by Councilor Lindell, to approve the request to rezone from C-1, Office and related Commercial District, to C-2, General Commercial, for the property located at 6350 Airport Road.

Discussion on the Motion:

Councilor Rivera hoped the applicant would do something nice for Airport Road. He noticed the Applicant wrote down information on the Airport Road Main Street program.

Councilor Cassutt confirmed that this property is within the boundaries of the Airport Road Corridor so this property is eligible to be part of the Main Street program.

VOTE: The motion was approved on the following roll call vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None

- d. CONSIDERATION OF RESOLUTION NO. 2023-____.
Case #2021-4648. 3600 and 3740 South Meadows General Plan Amendment. JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Requests a General Plan Amendment Per Chapter 14 SFCC 1987, 14-3.2 from Park to Low-Density Residential (Residential: 3 to 7 Dwelling Units Per Acre) for +/-19.54 Acres and Consideration of a Resolution. The Property is Located within the River and Trails and Suburban Archaeological Review Districts and Zoned R-1 (Residential: One Dwelling Unit Per Acre). (Dan Esquibel, Case Manager: daesquibel@santafenm.gov, 505-955-6587)
POSTPONED TO A SPECIAL GOVERNING BODY MEETING ON FEBRUARY 1, 2023 STARTING AT 7:00PM.
- e. CONSIDERATION OF BILL NO. 2023-1. ADOPTION OF ORDINANCE NO. 2023-____.
Case #2021-4649. 3600 and 3740 South Meadows Rezoning. JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Requests Rezoning Per Chapter 14 SFCC 1987, 14-3.5 from R-1 (Residential: 1 Dwelling Unit Per Acre) to R-6 (Residential: 6 Dwelling Units Per Acre) for +/-19.54 Acres and Consideration of a Bill. The Property is Located within the River and Trails and Suburban Archaeological Review Districts and Zoned R-1 (Residential: One Dwelling Unit Per Acre). (Dan Esquibel, Case Manager: daesquibel@santafenm.gov, 505-955-6587) **POSTPONED TO A SPECIAL GOVERNING BODY MEETING ON FEBRUARY 1, 2023 STARTING AT 7:00PM.**
- f. CONSIDERATION OF RESOLUTION NO. 2023-____.
Case #2021-4650. 3600 and 3740 South Meadows General Plan Amendment. JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Request a General Plan Amendment Per Chapter 14 SFCC 1987, 14-3.2 "Amendments to the General Plan" from Park to High-Density

Residential (12-29 Units Per Acre) for +/-2.66 Acres and Consideration of a Resolution. The Property is Located within the River and Trails and Suburban Archaeological Review Districts and Zoned R-1 (Residential: 1 Dwelling Unit Per Acre). (Dan Esquibel, Case Manager: daesquibel@santafenm.gov, 505-955-6587) **POSTPONED TO A SPECIAL GOVERNING BODY MEETING ON FEBRUARY 1, 2023 STARTING AT 7:00PM.**

- g. CONSIDERATION OF BILL NO. 2023-2. ADOPTION OF ORDINANCE 2023-_____.
Case #2021-4651. 3600 and 3740 South Meadows Rezoning.
JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, Requests Rezoning Per Chapter 14 SFCC 1987, 14-3.5 "Rezoning" from R-1 (Residential: 1 Dwelling Unit Per Acre) to R-21 (Residential: 21 Dwelling Units Per Acre) for +/-2.66 Acres and Consideration of a Bill. The Property is Located within the River and Trails and Suburban Archaeological Review Districts and Zoned R-1 (Residential: One Dwelling Unit Per Acre). (Dan Esquibel, Case Manager: daesquibel@santafenm.gov, 505-955-6587) **POSTPONED TO A SPECIAL GOVERNING BODY MEETING ON FEBRUARY 1, 2023 STARTING AT 7:00PM.**
- h. CONSIDERATION OF RESOLUTION 2023-_____.
Case #2022-5618. 3600 and 3740 South Meadows Master Plan.
JenkinsGavin, Inc., Agent for Homewise, Inc., Applicant, requests Master Plan Approval per 14-3.9 for a future residential project on +/-22.2-acres, to include subdivision, development plan, and construction of a neighborhood park for dedication to the City, and consideration of a Resolution. The Proposed Zoning of the Properties is R-6 (Residential: Six Dwelling Units Per Acre) and R-21 (Residential: Twenty-One Dwelling Units Per Acre). (Dan Esquibel, Case Manager: daesquibel@santafenm.gov, 505-955-6587) **POSTPONED TO A SPECIAL GOVERNING BODY MEETING ON FEBRUARY 1, 2023 STARTING AT 7:00PM.**

20. **APPOINTMENTS**

- a. Economic Development Advisory Committee
- Kristin Pulatie – Appointment – Term Ending 06/2024
 - Mary Ondine Frauenglass – Appointment – Term Ending 06/2024

Ms. Bustos-Mihelcic read the nominees to EDAC.

MOTION: Councilor Romero-Wirth moved, seconded by Councilor Cassutt to approve the appointees to the EDAC as presented.

VOTE: The motion was approved on a unanimous voice vote with:

For: Mayor Webber, Councilor Cassutt, Councilor Chavez, Councilor L Garcia, Councilor M Garcia, Councilor Lindell, Councilor Rivera, Councilor Romero-Wirth, and Councilor Villarreal.

Against: None.

21. **ADJOURN**

Having completed the agenda and with no further business to come before the Governing Body, the meeting was adjourned at 12:23 a.m.

Approved by:



Mayor Alan Webber

ATTESTED TO:



Kristine Bustos Mihelcic, City Clerk

Respectfully submitted by:



Carl G. Boaz, Council Stenographer

**GOVERNING BODY MEETING
EXECUTIVE SESSION
January 25, 2023**

The Governing Body of the City of Santa Fe met in an executive session duly called on January 25, 2023, beginning at 7:31 p.m.

The following was discussed:

In Accordance with the New Mexico Open Meetings Act, NMSA 1978, Section 10-15-1, Part (H)(7), Quarterly Update of Attorney-Client Privileged Discussion of Pending and Threatened Litigation. (Erin K. McSherry, City Attorney: ekmcsherry@santafenm.gov, 505-955-6512)

PRESENT

Mayor Webber
Councilor Lindell
Councilor Cassutt
Councilor Rivera
Councilor L. Garcia
Councilor Romero-Wirth
Councilwoman Villarreal
Councilor M. Garcia
Councilor Chavez

STAFF PRESENT

John Blair, City Manager
Erin McSherry, City Attorney
Kristine Bustos Mihelcic, City Clerk
Andrea Salazar, Assistant City Attorney

There being no further business to discuss, the executive session adjourned at 7:52 p.m.



Kristine Bustos Mihelcic, City Clerk