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Wednesday, February 5, 2014**

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MATTERS FROM THE PUBLIC	None	17
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**MINUTES OF THE  
CITY OF SANTA FE  
PUBLIC UTILITIES COMMITTEE  
Wednesday, February 5, 2014**

**1. CALL TO ORDER**

A meeting of the Public Utilities Committee was called to order by Councilor Christopher N. Calvert, Chair, at approximately 5:00 p.m., on Wednesday, February 5, 2014, in the Council Chambers, City Hall, Santa Fe, New Mexico.

**2. ROLL CALL**

**MEMBERS PRESENT:**

Councilor Calvert, Chair  
Councilor Bill Dimas  
Councilor Carmichael A. Dominguez  
Councilor Christopher M. Rivera  
Councilor Ronald S. Trujillo

**OTHERS PRESENT:**

Nick Schiavo, Acting Public Utilities Director  
Stephanie Lopez, Public Utilities  
Marcos Martinez, Assistant City Attorney  
Melessia Helberg, Stenographer

There was a quorum of the membership present for conducting official business.

**NOTE: All items in the Committee packet for all agenda items are incorporated herewith to these minutes by reference. The original Committee packet is on file in the Public Utilities Department.**

### **3. APPROVAL OF AGENDA**

**MOTION:** Councilor Rivera moved, seconded by Councilor Dominguez, to approve the Agenda as presented

**VOTE:** The motion was approved unanimously on a voice vote.

### **4. APPROVAL OF CONSENT AGENDA**

Stephanie Lopez said on Consent Items #11, #12 and #13, under committee action, to change the City Council from February 29<sup>th</sup>, to February 26<sup>th</sup>.

**MOTION:** Councilor Trujillo moved, seconded by Councilor Dimas, to approve the following Consent Informational Calendar and Consent Action Calendar as amended.

**VOTE:** The motion was approved unanimously on a voice vote.

#### **CONSENT – INFORMATIONAL CALENDAR**

7. *[Removed for discussion by Councilor Dominguez]*
8. UPDATE ON CURRENT WATER SUPPLY STATUS. (VICTOR ARCHULETA)
9. DROUGHT, MONSOON AND WATER RESOURCE MANAGEMENT UPDATE. (RICK CARPENTER)

#### **CONSENT – ACTION CALENDAR**

10. CIP HIGH SPEED INTERNET PROJECT. (SEAN MOODY)
  - a. REQUEST FOR APPROVAL OF TELECOMMUNICATIONS SERVICES AGREEMENT – CYBER MESA COMPUTER SYSTEMS, INC.
  - b. REQUEST FOR APPROVAL OF MEMORANDUM OF UNDERSTANDING – STATE OF NEW MEXICO DEPARTMENT OF INFORMATION TECHNOLOGY. (SEAN MOODY)

Economic Development Review Committee 02/03/14; Public Utilities Committee 02/05/14; Public Works Committee 02/10/14; Finance Committee 02/17/14; City Business & Quality of Life Committee 02/18/14; and City Council 02/26/14.

11. **REQUEST APPROVAL OF THE PROFESSIONAL SERVICES AGREEMENT WITH SERVICE LINE WARRANTIES OF AMERICA FOR SEWER AND WATER LINE WARRANTIES FOR THE RESIDENTS AND HOMEOWNERS OF THE CITY OF SANTA FE UNDER RFP NO. 14/12/P. THERE IS NO COST TO THE CITY FOR THIS AGREEMENT. (NICK SCHIAVO) Public Utilities Committee 02/05/14; Finance Committee 02/174; and City Council 02/26/14.**
12. **REQUEST FOR APPROVAL FROM THE ENVIRONMENTAL SERVICES DIVISION TO TRANSFER FIXED ASSET #24236 TO THE FIRE DEPARTMENT TO ASSIST THE WILD LAND DEPARTMENT WITH HAZARDOUS FUEL REDUCTION PROJECTS. (LAWRENCE GARCIA) Public Utilities Committee 02/05/14; Finance Committee 02/174; and City Council 02/26/14.**
13. **REQUEST FOR APPROVAL OF CHANGE ORDER NO. 2 TO THE CONSTRUCTION CONTRACT WITH RMCI, INC., FOR THE SANTA FE RESERVOIR INFRASTRUCTURE IMPROVEMENTS PROJECT – CIP #3038 FOR THE AMOUNT OF \$144,348.00 EXCLUSIVE OF NMGR. (ROBERT JORGENSEN) Public Utilities Committee 02/05/14; Finance Committee 02/174; and City Council 02/26/14.**

**5. APPROVAL OF MINUTES FOR THE JANUARY 15, 2014, PUC MEETING**

**MOTION:** Councilor Trujillo moved, seconded by Councilor Rivera, to approve the minutes of the meeting of January 15, 2014, as submitted.

**VOTE:** The motion was approved on a voice vote, with Councilor Trujillo, Councilor Rivera and Councilor Dominguez voting in favor of the motion, no one voting against, and Councilor Dimas abstaining.

**INFORMATIONAL ITEMS**

**6. PRESENTATION BY NEW ENERGY ECONOMY REGARDING PUBLIC SERVICE GENERATION REPLACEMENT PLAN. (COUNCILOR RIVERS)**

A copy of a power point presentation, *San Juan Replacement Alternatives*, by David Van Winkle, New Energy Economy, February 2014, is incorporated herewith to these minutes as Exhibit "1."

Councilor Rivera said when he learned about PNM's plan to take down their two energy plants in the Farmington area, he became concerned about its plans after that. He met with New Energy Economy and came up with a plan and a Resolution to be considered later in this meeting. He said generally, he doesn't like to do resolutions about things over which this Council has no authority. However, this affects residents of Santa Fe very strongly and he believes it is important that we address it.

Mariel Nanasi, Executive Director, New Energy Economy, presented information regarding this matter. Please see Exhibit "1" for specifics of this presentation. She said New Energy is a local non-profit which does advocacy work in Santa Fe, mostly to direct climate change, first and foremost to close down coal plants. They want to close the plant in Farmington which is the single greatest driver of climate disruption in New Mexico, as well as the largest polluter in New Mexico with enormous local health impacts. She said one out of 4 high school students in New Mexico have asthma.

David Van Winkle, Board Member, New Energy Economy, presented information regarding this matter. Please see Exhibit "1" for specifics of this presentation.

*The Committee commented and asked questions as follows:*

- Chair Calvert asked the source of water used at the Generating Plant.

Mr. Van Winkle said physically it comes from the San Juan River. The water is owned by the Apache and Navajo Tribes.

- Chair Calvert asked if it is coming from the same watershed.

Mr. Van Winkle said it is the San Juan. He said our water which comes to the Buckman comes from the San Juan, goes through the tunnel and goes down the Rio Chama into the Rio Grande, so it is the same physical source.

- Chair Calvert said this has an impact on our ability to use our water allotments on the Rio Grande.

Mr. Van Winkle said he would think so, but he is not a water lawyer.

- Councilor Dominguez thanked Ms. Nanasi and Mr. Van Winkle for their presentation and the information. He apologized for not meeting with them earlier, and is glad for the opportunity to sit today and listen to the presentation. He asked about the governing structure of New Energy Economy.

Mr. Van Winkle said there are 8 Board members.

- Councilor Dominguez asked how often they have meetings.

Mr. Van Winkle said once every 3 months.

- Councilor Dominguez asked if there are general meetings for the public – how are you educating others on this information..

Ms. Nanasi said she speaks at conferences, the Community College and a number of public forums. She said, "And for this specifically, we're hoping if you all put it out for a vote that there will be a hearing and that you can hear from the public, because I think people really are hungry to take action locally about ultimately transitioning our dependence from fossil fuels to solar and wind. Santa Fe probably is one of the best resources in the world for solar, so we have an enormous opportunity. And I know this City has done a lot, thanks in large part to Nick Schiavo, but we're really hoping to promote that, and New Energy Economy, for instance, work with the City on the solar on the fire states, and work with the County as well. And now we have a capital outlay bill in the Legislature to solarize all fire stations in Santa Fe County. And every time we do that, we have a solar celebration – Councilor Calvert, Bushee and the Mayor were there and Mr. Schiavo. And so we do public events. We do "dying to donate" events at local restaurants. Anybody who'll have us, we'll go, and we work a lot with young people. In January, I spoke at the Indian School, the Santa Fe High School twice, Desert Academy and one more school. That's what we do is education and create a public education and awareness campaign around these issues."

- Councilor Dominguez asked if the Board meetings are open to the public.

Ms. Nanasi said, "No, we're non-profit, they're not open to the public, but I'm happy to meet with anybody."

- Councilor Dominguez asked if the organization has public meetings, outside of going to the various events where you go to educate folks.

Ms. Nanasi said, "We do. We've met with people at McCune Foundation, for instance, last month on just this issue."

- Councilor Dominguez said she answered his questions in terms of how active they are with the Legislature, lobbying efforts and outreach to schools.

Ms. Nanasi said Peter Wirth is a big supporter as well as Representative Jim Trujillo, but not only our Santa Fe delegation. Representative Emily King who is a firefighter from Bernalillo County is in support of this as well as Senator Soules from Dona Ana County. They're saying if Santa Fe County solarizes all of the fire stations, they want to be next.

- Councilor Rivera said Santa Fe isn't the only community which will be impacted by PNM's plans, and asked Ms. Nanasi to speak to this.

Ms. Nanasi said, "PNM has about 500,000 customers, and the largest number are in Albuquerque, and basically we're hoping that this body will pass this Resolution. And what it calls to do is to file the Resolution, not only with the PRC Commissioners, but file it as part of this case. I was also thinking we should make one amendment to just include the number of PNM's filing as part of this Resolution, so it would be made to the PRC Commission that this is the City of Santa Fe's position. And I hope to have this kind of Resolution in other venues as well, both in Santa Fe County, but also in Bernalillo and Espanola and just other city councils and other county commissions to take up this issue, because we think it's really important and you're the leaders of the City and I think you'll find at the hearing on February twenty-sixth that there's a lot of public support for this, both in terms of environmental and health concerns, but also in terms of jobs."

Mr. Van Winkle said, "I think this is in line with previous actions that the City has taken, things along the lines of the Mayor's conference on climate change, a commitment that the City made years ago to the Sustainable Santa Fe Commission and the resolutions that go along with those actions. So I think this is very consistent with the actions that the City has taken."

## **CONSENT DISCUSSION**

### **7. STATUS REPORT ON THE ENVIRONMENTAL SERVICES DIVISION. (LAWRENCE GARCIA)**

Councilor Dominguez said there is an identified number of complaints, and asked if this is par for the course, and how many of the complaints are coming from the newly-incorporated area.

Lawrence Garcia said the majority of the complaints are coming from the service area to which we have been providing service. They have seen a major reduction in the number of call in complaints than we have seen in the past. He said they are working with the education of the drivers to make that "a driver."

Chair Calvert would like a running twelve-month summary to be provided to this Committee, commenting he forgets the numbers month to month, which will give the Committee the current trends and answer questions.

Councilor Dominguez agrees with Councilor Calvert to work to establish a trend for the future.

Councilor Dominguez asked, "With regard to the equipment purchases, are we going to be retiring three units with the three new units."

Mr. Garcia said, "We are actually looking to purchase five units this year, and three of the units are recycling units and two of the units are rear load units which are going to be used for the downtown area. At this point, we are waiting for the results of a comprehensive solid waste management which will be coming out at the end of this fiscal year. And at that point, we will be looking to either utilize those pieces of equipment in other areas, or that we will be looking to put those out for auction."

Councilor Dominguez said, "So we'll know about retiring those later after we get the results of this study."

Mr. Garcia said, "That's correct. And also, the recycling units that we have in place, we have invested quite a bit of money into two of the older units because we had a short number of units, and we really didn't want to turn those over until we recovered some of that cost that we put into those trucks, but by the end of the fiscal year, we will have the ability to make a decision if we keep the entire fleet on board, or we can reduce some of the fleet."

Mr. Schiavo asked, "The ones that we're getting with the DERA [Diesel Emission Recovery Act] grants for, do we have to actually decommission those vehicles."

Mr. Garcia said, "On the DERA grants, there are two DERA grants we have received. One is for \$67,000, the other for \$64,000. We've only received one of the trucks through the DERA grants, and we actually had to retire one of the units that it was replacing. And we had to actually disable it. So it didn't go to auction, we're actually using parts off that vehicle to repair some of the other trucks. And then when we get to the point where it's not usable for the Division, we will go ahead and scratch the vehicles. And then the second DERA grant that's coming in, basically will be the same. We will have to disable one other unit and then we will utilize that vehicle for parts."

Councilor Dominguez said, "Now that we've turned over some of the graffiti operation to Keep Santa Fe Beautiful, I'm wondering if there is a way for us to continue to track that data. And maybe, you don't have to answer it now, but maybe a memo to the Committee about how the

partnership is working and how it's structured and what their role has been identified to be and whether there are any changes that staff sees happening in the future with that. I've tried three different ways to address graffiti and so maybe this is the answer, but if we can keep some data on that and just kind of look at the partnership, that would be helpful as well. So, can we ask that they just provide us with a memo."

Chair Calvert asked when staff can give an update, in terms of where they are with taking over the operation and providing numbers, as in trends.

Mr. Garcia said, "I can provide you an update right now off the top of my head, exactly what's going on with the graffiti program. So currently, we are moving three positions from the Parks Division to Environmental Services under Keep Santa Fe Beautiful, and we are requesting to hire a coordinator position. Those are the four positions that were tied to graffiti at this point. Prior to it moving to Environmental Services, the Graffiti Division actually worked on Trails and striping fields. So at this point, they are going to be focused on graffiti only, so we believe we are going to see a large impact by the graffiti crews and they are going to be able to complete a lot more."

Mr. Garcia continued, "As far as tracking, we want to expand the graffiti crews, and expand the work we're going to do. And, as I told them, the only way that I can bring it forward to the committees, is if I can show that we are doing some positive impacts through that program. So definitely, I want to bring forward to you the impacts from moving Graffiti from Parks to Environmental Services."

Councilor Dominguez asked how the relationship with Keep Santa Fe Beautiful is working.

Mr. Garcia said, "We put a secondary in charge who is under Environmental Services, and that's our Operations Manager, Eric Lucero. Gilda actually is out for a conference this week, so the ball didn't fall to the wayside. Actually our Operations Manager took that over. As far as how it's working with the Division, it is relatively new, although we are trying to strategically put together processes where we can track all of the cleaning we do, the painting we do, the supplies we use, how many areas we've actually cleaned up."

Mr. Garcia continued, "There's a lot of pieces to the Graffiti Program that have not been addressed. Some of those are actually going out to stores and making sure that aerosol spray cans are locked up and they're not selling those to minors. There's other pieces we are supposed to be looking at with the Police Department to see if there's some kind of trend for gangs and different units that actually are doing some of this graffiti, or if it's different individuals that are doing this. So all of those pieces are going to be looked at. We're going to try to really expand this program."

Chair Calvert said, "One of the things that was pitched to us, for lack of a better word, was through Santa Fe Beautiful, they would be able to bring more to bear than just City resources, and so I'll be interested. I think you can keep the Committee updated through this vehicle, and if you want to expand on anything, how it's moving forward, in terms of hiring staff, any grants, numbers in terms of graffiti reduction – how many you've done, how this compares to previous months or years. I think all that information will be helpful for us in evaluating how it's going."

Mr. Garcia said he will add this information to the report to this Committee on a monthly basis.

Responding to Councilor Dominguez, Mr. Garcia said the cleanup of the 54 sites mentioned in his Memorandum is for one month, or since it came to the Environmental Division. He said they will be working on response time and other parts of the program.

#### **DISCUSSION AND ACTION ITEMS**

14. **REQUEST FOR APPROVAL OF BILL NO. 2014- \_\_\_\_\_. AN ORDINANCE RELATING TO THE SINGLE-USE BAG ORDINANCE, SECTION 21-8 SFCC 1987; AMENDING SUBSECTION 21-1 TO MODIFY THE LEGISLATIVE FINDINGS RELATED TO PAPER GROCERY BAGS; AMENDING SUBSECTION 21-8.4 TO ELIMINATE THE REQUIREMENT THAT RETAIL ESTABLISHMENTS COLLECT A PAPER GROCERY BAG CHARGE OF NOT LESS THAN TEN CENTS FOR EACH PAPER GROCERY BAG PROVIDED TO CUSTOMERS; AMENDING SUBSECTION 21-8.6 TO ESTABLISH A 30-DAY IMPLEMENTATION PERIOD; AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY (COUNCILOR WURZBURGER AND COUNCILOR BUSHEE). (LAWRENCE GARCIA AND KATHERINE MORTIMER). Public Utilities Committee 01/15/14 (postponed by staff); Finance Committee 01/21/14 (no quorum); City Council (request to publish) 01/29/14; Public Utilities Committee 02/05/14; City Business & Quality of Life Committee 03/18/14; and City Council (public hearing) 02/26/14.**

Councilor Trujillo asked Ms. Brennan what changed that she would now interpret this as not being okay.

Ms. Brennan said, "Councilor Trujillo, you are correct. It did change. I think as the Ordinance effective date neared, people started to ask more questions and the question you forwarded was one of several. And because of those questions, I had a conversation with a couple of people on staff about the Ordinance. I looked at the Ordinance to see what some of the answers were, and I was struck by the paper bag charge and the way it was collected and allocated. And I did not believe that it was valid. I had a concern about there being an improper tax. And we

discussed it with staff and looked into recent developments in case law and similar ordinances elsewhere, and concluded that it probably put the rest of the Ordinance at risk."

Councilor Trujillo said, "I totally agree with it. We had this discussion at Council and that's one of the things I was discussing – how can you impose a tax when... I could see if this money was going to some program was going to do, but it was just a tax that we were going to let the Walmart and all that charge, and I thought that was unfair. I'm glad you guys are doing this. I'm glad you're doing the revision. To stay consistent with my vote, I'm going to vote no, but I'm glad you're not going to be charging the people of Santa Fe 10¢ for a paper bag that only costs 5¢ to make."

Councilor Rivera asked, "Just for clarification. The stores still have the option to charge for the paper bags. Is that correct."

Ms. Brennan said, "Yes Councilor, they do."

Councilor Rivera said, "Some of these larger stores that are going to have to pay more for shipping, trucking of paper bags, still have the option to charge the 10¢."

Ms. Brennan said, "That's correct Councilor, and also, of course, most businesses recover their cost through their pricing systems. And, in this case, they have the opportunity to make money selling reusable bags that are more permanently reusable perhaps than paper bags."

Councilor Rivera said some of the other communities which charge a fee for the paper bags, those funds goes to specific programs.

Ms. Brennan said, "That's correct Councilor. In California which had a case which superficially appeared to be like the City's, where they charged 10¢ cents per paper bag and the merchant retained the fee. Nevertheless, that 10¢ was allocated to carry out purposes of the regulation, so it was different than ours, which basically allows the merchant to keep the fee, raises some anti-donation clause issues as well as the tax question."

Chair Calvert asked Ms. Brennan to explain the difference between the Los Angeles example and ours. He said, "I know that was one of the ordinances we modeled ours after. And so could you give a brief description of the difference."

Ms. Brennan said, "I'm going from memory here, but we did look at that, particularly when we were discussing this tax versus a fee. And just generally, a fee is when the money is utilized to fund the cost of the regulation. And in the California case, the fee, while collected by the merchant, was, under the ordinance, specifically applied to certain things that constituted supporting the regulation."

Chair Calvert asked for examples of those things.

Ms. Brennan said, "Well, educating the public about the reusable bags and the advantages of reusable bags. They were also allowed to retain the actual cost of the paper bags. The merchant. The merchant was able to apply it to the actual cost of the paper bag, education for the public and there was another category of things. But it was specifically dedicated to the cost of carrying out the regulation."

Chair Calver said, "And we couldn't modify our Ordinance to be in conformance with that type of legal structure, if you will. You're telling me that the merchants are going to keep part of it anyway. And so, how does that differ from ours. And if that's the only difference, is there not just a tweak we can do instead of just saying no 10¢, we can change the way we worded our fee or whatever you want to call it."

Ms. Brennan said, "Councilor, there is another difference in the statutory scheme that the quote was interpreting in California. And I'm not so sure the Courts in New Mexico would make the same kind of finding as on the tax fee basis, based on those differences. But over and above that, we have discussed studying this further, looking at data and seeing what kinds of incentives can be created to reduce the use of paper bags as well as plastic bags to orient people to using more permanent, reusable bags. And I think that we would really like to take time to study that and look at what's happening. It is an evolving area of law, and people are also thinking of new kinds of incentives I think. And so there's a study period built into the Ordinance that we've emphasized in this amendment as well."

Chair Calvert said, "But I'm not seeing that much difference between ours and Los Angeles. Los Angeles, yes it is in California, but it went to a district court and was upheld, and went to an appellate court and was upheld. So is there something specific to New Mexico that we're hanging our legal hat on here. I'm not grasping why ours just has to be thrown out lock, stock and barrel."

Ms. Brennan said, "Councilor, part of the issue with this was timing. It seemed important, when we realized, and because of the need to advertise and have hearings, that it be enacted before the Ordinance, as it currently exists, became effective on the twenty-seventh. And, the closest schedule we can get, in fact, gets us to the hearing on February 26, the day before it becomes effective. I think there is a significant difference between the California Ordinance and

ours. Ours allows the merchant to collect 10¢ per paper bag and to keep the money, no matter what the actual cost of the paper bag is. And in spite of the anti-donation clause to the Constitution, it is more like an indirect tax than a fee, because the 10¢ is not allocated to 100% serve the purposes of the Ordinance. I understand that there could be a tweak. I think this would be a little more significant than a simple tweak."

Chair Calvert said, "We could quite easily determine in this market, with these size stores we have here what the paper bag cost them. If we wanted to reduce it from 10¢, if we think their actual cost is 7¢, then we could change it from 10¢ to 7¢."

Ms. Brennan said, "Councilor, I think, in fact, that there was a significant variation in the price of paper bags to different merchants based on quantity and the quality of the bags they used. And so setting a price for paper bags might not be that simple, and raises an issue of setting price, another issue that I think the City needs to avoid, which I haven't mentioned before."

Chair Calvert said, "What about the merchant charges what they can document as the cost to them of the bag. They can charge that fee."

Ms. Brennan said, "They can do that now."

Chair Calvert said, "Well right, but they're not going to, because as you explained previously, how they're going to get recovery from that is through the prices of their products. They're not going to come out and say, 'Oh, we're not voluntarily going to charge you 7¢ for this if we don't have to.' They're going to continue to say your paper bag is free, but we know that isn't the case. It's going to be added to the price of the merchandise, just like parking at the mall isn't free. It's added into the rent and passed on in the project price. So I mean, I think... yes, they can do that, they say that they're doing that. No."

Ms. Brennan said, "Well Councilor, I think your original question to me was, in my opinion, is there a significant legal difference between the California Ordinance and ours. And I think, yes, particularly in light of New Mexico law."

Chair Calvert said, "That point right there. In light of New Mexico law, you never got to that point. What is in light of New Mexico add to this discussion."

Ms. Brennan said, "A [inaudible] requires that the money collected be used to enforce the regulation, unlike a tax. The anti-donation clause of the Constitution prohibits benefitting private businesses, the public, and again, without getting into the decision of the Court of Appeals in

California, basically, the Court said quite simply, without a lot of legal reasoning, it's not a tax. I'm not sure our Courts would do that, but ultimately, it's our analysis and recommendation, and the Council decides."

Chair Calvert said, "I think if you structure the fee at cost, what it cost them, plus there's going to be some initial fees for them to administer and report on these things to us. So, at least initially, it's not just the cost of the bag. There are some implementation costs. But you could peg it to whatever it cost them, plus something initially for administration, and then that one-time cost could later go away, right, because those are up front, one-time costs pretty much and then you could keep it pegged to whatever it cost them that they pay for bags."

Ms. Brennan said, "Councilor Calvert, I agree that there are many things that can be done to create incentives, and I believe that it's a goal to do that, but I do believe it requires further thought and analysis."

Chair Calvert asked how much time she thinks that will take.

Ms. Brennan said, "Well, I think there will be some data available from the study that will help that. I think that Nick might be able to speak to the other kinds of things that can be looked at. Frankly, we haven't had an opportunity to look closely to what the groups who came up with the Ordinance looked at and considered. I would want to look at that, and I would want to analyze the law that has evolved in those jurisdictions, because the Boulder Ordinance I think is being litigated now. And I think that might give us some guidance. I can't give you a time period."

Chair Calvert said, "The reason I ask that is I think rolling this out, minus the fee on the paper bag, just sends the wrong message and is not even good policy. I guess I would be more inclined to delay the implementation more than a month. I know, technically, we're not delaying it at all, but we're doing this month of whatever we want to call it, grace period sort of. So I'd be willing to.... I would be willing to extend that to a longer period of time to give you the ability to make that analysis and be comfortable with it, instead of rolling it out, just minus the 10¢. I think that doesn't send the right message and it isn't good policy."

Ms. Brennan said, "All right, that's the policy decision that obviously is the Council's to make."

Councilor Dominguez asked, "So having said that, what happens if this amendment does not get approved."

Ms. Brennan said, "If this amendment isn't approved, the Ordinance goes into effect on the twenty-seventh, banning plastic bags with a 10¢ charge for paper bags mandated by the City."

Councilor Dominguez said, "And your concern is whether or not it is a tax or a fee."

Ms. Brennan said, "That's correct. And I think it may expose the entire Ordinance to being litigated and being found to be...."

Councilor Dominguez said, "I kind of agree with Councilor Calvert in terms of some sort of delay. I have no idea of how long a delay that might be. But I also see that voting against this is not necessarily a statement of the principle of whether or not we should ban plastic bags. It's really a technical resolution, if you will, on keeping the City of Santa Fe out of some trouble."

Ms. Brennan said, "That would be my view, and I think staff can be directed to explore possibilities and report back to the Council as well."

Councilor Dominguez said, "So there is some value then in delaying it."

Chair Calvert said, "If I may, Councilor. Like I said, I think right now, you've got this month period in the amendment built in, which for all intents and purposes is a month delay in my mind. Because if people have the discretion of doing it or not doing it, they're probably not going to do it. Okay. I think we could expend whatever you want to call that month period. We could extend that to, say, three months, without delaying the whole Ordinance. I think we still want the one part to go through, but we could delay what we're going to do on the paper bags for say three months instead of one month, to give staff time enough to bring back a good resolution."

Councilor Dominguez said, "So what you're basically expressing is an amendment that would increase that time period. But Councilor, what I'm not hearing from staff is any time frame about how long it will take them to resolve that. Did I hear that correctly. You're waiting for Boulder to happen, and some analysis and we're going to be getting a new administration, and who knows what happens then, but I hear you saying that there is that even three months may not be enough time, I guess."

Ms. Brennan said, "I think Councilor, that I wouldn't say we had to wait until the Boulder litigation was resolved, but I think we would like to take a look at the respective ordinances and the state of the litigation, and perhaps the statutory framework that supports them, before we would recommend one thing or the other as an incentive. And, particularly, in the framework of New Mexico law. The 30-day period is what we're calling an implementation period. Plastic bags will still be banned. We will not be issuing citations in that period, because merchants will need to instruct their staff about how to educate the public about the change when they have started to

move in one direction. So it's not delaying the effective date, you're correct, and it's not keeping the ban from taking effect. It purely addresses the paper bag fee."

Chair Calvert said, "If we change that implementation period from one month to three months, do you see a problem with that."

Ms. Brennan said, "Councilor Calvert, this may be overly cynical, but I would not be surprised if we expanded the implementation period for three months, if the plastic bags did not continue to be distributed perhaps longer than they would otherwise. If we're not issuing citations, in other words not enforcing the Ordinance, I would not be surprised if people might not take advantage of that and continue to use plastic bags."

Councilor Calvert said, "We could modify what we were enforcing as well. Right. We could still have the plastic bag ban and enforce that aspect and not enforce the paper bag aspect for a period until we come up with a better incentive or disincentive."

Ms. Brennan said, "That appears that you would not like to repeal the paper bag portion of the Ordinance, if we're not enforcing it."

Chair Calvert said, "We've got to be enforcing it during that month period anyway."

Ms. Brennan said, "We won't be enforcing using plastic bags. The 10¢ charge, if the amendment is adopted, is gone. What's left is the plastic bag ban. And so it allows merchants a month to retrain staff, maybe to think about how much they're going to charge for a paper bag, if they're going to charge for a paper bag, or shift to a more permanent reusable bag that they can sell for 69¢ at the point of sale."

Chair Calvert said, "I'm not going to be voting on this anyway, but I think we could go ahead and pass this amendment, because we're probably going to need that grace period since we've seen sending mixed messages to the people who are going to have to administer it. But I would hope to see an amendment to this bill in short order as possible to put back some disincentive for the paper bag. Because, I think, in my opinion, that is part and parcel of the whole package, and it doesn't make sense to have one part and not the other. It sends the wrong signal, doesn't even make sense environmentally to do that. So I would be hoping that, even if we pass this, that there will be an amendment coming forward within a couple of months that would reinstate that at some level."

Ms. Brennan said, "Councilor, I think there's a recognized goal among people that worked on this. And I'm really not talking about legal staff *per se*, we can contribute a small part, to work on the idea of incentives and disincentives to focus people's attention on reusing bags that are in a

more permanent form, canvass or heavier weight bags. And we may have a couple of months of data to see whether people are just making the switch to paper bags, or whether they're actually paying 69¢ at the point of sale and buying reusable bags and bringing them back."

Councilor Trujillo said, "Say I'm Walmart. I want to find a way around this. So I call J.C. Penny and say, what size bags do you guys use. Well I get those plastic bags and I start using them in Walmart. Am I in violation of the law, because they're a thicker grade. If I'm Walmart, am I in violation if somebody comes in and sees me using that thicker bag, the bag that isn't banned. Am I in violation."

Ms. Brennan said, "Councilor, I don't think so, because the bag isn't banned."

**MOTION:** Councilor Dominguez moved, seconded by Councilor Rivera, to approve this request.

**VOTE:** The motion was approved on a voice vote, with Councilors Dimas, Dominguez and Rivera voting in favor of the motion and Councilor Trujillo voting against the motion.

15. **REQUEST FOR APPROVAL OF RESOLUTION NO. 2014- \_\_\_\_\_. A RESOLUTION RELATING TO THE REPLACEMENT POWER/ENERGY PLAN PROPOSED TO REPLACE 83 MEGAWATTS AT THE SAN JUAN GENERATING STATION; URGING THE NEW MEXICO PUBLIC REGULATION COMMISSION TO REJECT PNM'S REPLACEMENT PLAN AND CLAIM FOR COST RECOVERY OF STRANDED ASSETS AND SUPPORT AN ALTERNATIVE RENEWABLE ENERGY BASED REPLACEMENT PLAN (COUNCILORS RIVERA, DOMINGUEZ, DIMAS, CALVERT AND TRUJILLO). (NICK SCHIAVO) Public Utilities Committee 02/05/14; Finance Committee 02/17/14; and City Council (scheduled) 02/26/14.**

Councilor Rivera said as explained earlier, and with the presentation, the Resolution is self explanatory. He thinks it is important for the citizens of New Mexico, especially those we represent here in Santa Fe, that "we try to intervene before the PRC is faced with a decision." He said he would welcome any cosponsors.

Councilors Dimas, Dominguez, Calvert and Trujillo asked to be added as cosponsors.

**MOTION:** Councilor Rivera moved, seconded by Councilor Dimas, to approve this request.

**VOTE:** The motion was approved unanimously on a voice vote.

## **MATTERS FROM THE PUBLIC**

There were no matters from the public.

## **MATTERS FROM THE CITY ATTORNEY**

There were no matters from the City Attorney.

## **ITEMS FROM STAFF**

There were no items from staff.

## **MATTERS FROM THE COMMITTEE**

Councilor Rivera talked about the time he spent visiting the Wastewater Division, touring the facility, looking at equipment, going out in the field to witness them sending the camera down into the sewer lines – the entire process and how it works. He said staff was very complimentary of Bryan Romero which speaks to his leadership. The plant runs exceptionally, noting Mr. Carrillo is about to retire, and although he will be missed, there are people that can step up and take his place. He asked Mr. Schiavo to pass his thanks to everyone, commenting it was a great experience.

Mr. Schiavo said Councilor Rivera did this at Council last week, so he spoke with Bryan Romero and they were very impressed with his visit.

Councilor Dominguez said the next meeting is on March 5, 2013. He thanked him for his chairmanship on the Committee, his stewardship of the environment and his leadership as Chair.

Chair Calvert said he will be attending that meeting, because legal has given him an opinion that he is still a Councilor until his replacement is sworn.

Councilor Trujillo said “they” are looking to purchase a Vactor machine, and they called to meet with him because he deals with the fleet. A said a lot of times the cities can piggy-back to purchase vehicles. He said, “That practice is going to stop, so we are going to be having to write our own specifications for our vehicles. Just bringing that to you.”

Mr. Schiavo said that is good to know.

Councilor Rivera said, "In some places, if you request a letter, they have to give you permission to use it. Is that process going to continue."

Councilor Trujillo said, "That's the thing that's coming before us. A lot of counties have piggy-backed off ours for equipment. I've heard that some people have said if you get a letter, I don't know where this is going, I just want us here at the City to realize that that may come to an end, about piggybacking off State Purchase Agreements, so we may have to start doing our own specs. It's coming and it may not come, but I think that practice of piggybacking is going to stop."

Councilor Rivera said, "The Houston/Galveston area Council charges a fee if you want to use their contracts. You have to pay them a fee for the spec books. Is the State considering doing anything like that."

Councilor Trujillo said he hopes not. He believes it is the State's duty to help municipalities and counties. He doesn't know what this administration has planned. This is just FYI.

#### **NEXT MEETING: WEDNESDAY, MARCH 5, 2014**

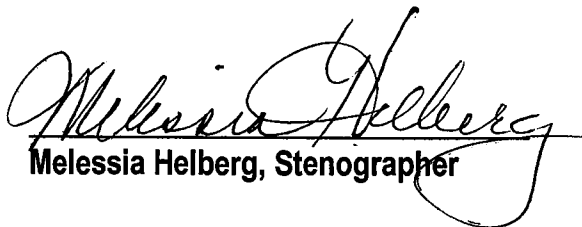
Ms. Lopez said the meeting on March 5, 2014, will be at the main library.

#### **ADJOURN**

There was no further business to come before the Committee, and the meeting was adjourned at approximately 6:15 p.m.

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**Christopher Calvert, Chair**



**Melessia Helberg, Stenographer**