



CITY COUNCIL MEETING
JUNE 26, 2012, 6PM
CITY HALL COUNCIL CHAMBERS
405 N. PASEO DE OÑATE ESPAÑOLA, NM

A. CALL TO ORDER

Mayor Lucero called the meeting to order at 6:00pm.

B. PLEDGE OF ALLEGIANCE

Mayor Lucero led the pledge of allegiance.

C. MOMENT OF MEDITATION/ INVOCATION

Mayor Lucero led Moment of Meditation/Invocation.

D. ROLL CALL/ DETERMINATION OF QUORUM

The following Governing Body members were in attendance:

Mayor:	Alice A. Lucero
Mayor Pro-Tem:	Dennis Tim Salazar
Councilors:	Robert Seeds
	Peggy Sue Martinez (by telephone)
	Cecilia Lujan
	Cory Lewis
	Eric S. Radosevich
	Elaine Herrera

E. APPROVAL OF AGENDA

Mayor Lucero presented the following agenda for approval:

---Begin---



AGENDA
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- A. CALL TO ORDER**
- B. PLEDGE OF ALLEGIANCE**
- C. MOMENT OF MEDITATION/ INVOCATION**
- D. ROLL CALL/ DETERMINATION OF QUORUM**
- E. APPROVAL OF AGENDA**
- F. PUBLIC COMMENTS**

G. COUNCILOR COMMENTS

H. MATTERS FROM THE MAYOR

1. Employee of the Month-Macrina Montoya
2. Appointment of Community Services Committee Chair

I. BUSINESS WITH VISITORS

1. Tewa Women United- Terrace Garden Update

J. REPORTS

2. **Council Committees** (Public Safety, Public Works, Community Services, Finance)
3. **Council Appointed Liaison** (NCSWA, NCRTD, E911, Hands Across Cultures, Fiesta Council, Beautification Committee)
4. **City Manager, including Finance Report and Staff Reports**

K. CONSENT AGENDA

5. Minutes
 - a. May 21, 2012 City Council Work Session Minutes
 - b. May 29, 2012 City Council Meeting Minutes

L. ITEMS PROPOSED FOR COUNCIL CONSIDERATION/DISCUSSION ITEMS

6. Request for Day of Music & Art on the Plaza- Brock Salazar

M. EXECUTIVE SESSION

Pursuant to New Mexico Open Meetings Act Section 10-15-1 (H) Subsection (2) limited personnel matters; (5) discussion of bargaining strategy preliminary to collective bargaining negotiations; (7) attorney-client privilege pertaining to threatening or pending litigation in which the public is or may become a participant; (8) discussion of the purchase, acquisition or disposal of real property or water rights by the public body.

N. ANNOUNCEMENTS

O. ADJOURNMENT

The Governing Body may revise the order of the agenda items considered at this Open Meeting. If you are an individual with a disability who is in need of an amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the City Clerk at 747-6019 at least three days prior to the meeting.

---End---

Motion by Councilor Lujan to approve the agenda; seconded by Councilor Seeds.

Motion carried 6-0.

F. PUBLIC COMMENTS

Mr. Joe Montoya stated that he was present to address council regarding the Wastewater Treatment Plant (WWTP). He stated that most of the councilors were aware that his family owned 6-7 acres adjoining the plant. He reminded them that he had spoken before the council previously; however, the stench had now become almost unbearable. Mr. Montoya stated he did not believe the City had addressed the problem seriously. He continued that the City was hurting because of the problem as there was prime commercial property and it may drive investors away.

Mr. Montoya stated that he had spoken with personnel at the sewage plant who had been cordial to him. He explained that he had originally believed the smell was from the storage of the sludge. He stated that former City Manager Lujan had ensured that it was removed. He stated that he now believed that the problem was the fact that the waste was turned over intermittently after being trucked approximately 100 yards. Mr. Montoya stated that he understood that the City was short of money and suggested it be removed and sent to a remote area.

Mayor Lucero stated that Mr. Montoya had gone before the council with the same problem for several years and she apologized that his family's needs had not been met. She stated that she

had relatives in the area and felt the council owed it to the City to do something. She stated that WWTP Superintendent Carlos Rodriguez was in attendance. Mr. Montoya replied that WWTP Superintendent was a good person.

Mayor Lucero stated that she would like to refer the matter to the Public Works committee to come up with a solution. She stated that when the plant was being expanded, the Governing Body had been led to believe that there would be a building where sludge would be contained. Mayor Lucero requested that WWTP Superintendent Rodriguez research different options.

Councilor Seeds stated that he agreed with Mayor Lucero. He expressed his belief that there was a need to transfer the waste to an appropriate place.

Councilor Lujan asked City Clerk Mascareñas to make sure that the issue would appear on the Public Works committee agenda.

Mayor Pro-Tem Salazar asked Mr. Montoya if he had addressed the issue with Public Works Director Marvin Martinez. Mr. Montoya replied that he had when James Lujan was the City Manager. He explained that, at that time, they believed the stench was due to the lack of hauling and Public Works Director Martinez and former City Manager Lujan had made sure that it was transferred to Rio Rancho. He added that WWTP Superintendent had educated him on the process. Mayor Pro-Tem Salazar apologized for the difficulties that Mr. Montoya had encountered.

Councilor Radosevich entered at 6:16pm.

Public Works Director Martinez stated that they had been removing bio-solids by 100 metric tons at a time and it was an endless process. He explained that no matter how much was moved, they were always behind. He reported that the state had now authorized the removal of 500 tons at a time.

Mayor Lucero asked that Public Works Director Martinez and WWTP Superintendent Rodriguez return with options for resolution at the July 10th Finance Board Work Session. Public Works Director Martinez stated that they had been working diligently to remove the bio-solids.

Councilor Martinez thanked Mr. Montoya for the advocating he was doing for the community.

Mr. Montoya asked Public Works Director Martinez to explain what bio-solids were. Public Works Director Martinez replied that it was the sludge. Mr. Montoya stated that the sludge was not the problem. He explained that the drying process was what created the smell. Public Works Director Martinez stated that the City had no choice but to process them on site. He explained that the bio-solids were brought out of the plant and placed 200-300 yards away. Public Works Director Martinez stated that he would meet with the State Environment Department regarding any possible resolutions.

Councilor Seeds asked Public Works Director Martinez if the City was obligated to go through that process or if it was for cost savings. Public Works Director Martinez stated that if the

Environmental Protection Agency process was not followed, the City could be fined \$50,000 per day. Councilor Seeds asked if the transport of the solids prior to the drying process was allowed. Public Works Director Martinez stated that he did not believe so.

Mr. Joe Montoya Jr. stated that he lived next door and worked for Los Alamos County Utilities. He stated that he understood the process. He explained that Los Alamos County had a lower amount of sewage; however, they had a bell press. He stated that the waste was placed directly into a truck and shipped off. He explained that the process was dependent upon the class of drying material. Public Works Director Martinez stated that Mr. Montoya Jr. was correct. He explained that the City of Española had a permit to process Class A sludge, but was processing Class B sludge. He stated that work was being completed to accomplish Class A; however, it could only be achieved when the sludge met a temperature of 150 degrees Fahrenheit. He explained that the temperature could not be achieved at certain times of the year without a large building and heater.

Councilor Radosevich stated that the smell worsened in summer. Public Works Director Martinez replied that the stench increased any time there was moisture. Councilor Radosevich asked if the sludge could be treated with an enzyme. Public Works Director Martinez said that enzymes could only be used for septic tanks. He explained that former WWTP Superintendent Frank Naranjo had attempted using deodorizer; however, it had created a bigger problem.

Ms. Jeannie Bart stated that she liked the announcements placed in the bills; however, she found it difficult that North Central Solid Waste Authority required checks be printed with an address. She explained that was issue because she had been advised by her bank and attorneys to put minimal information on checks for safety reasons. She added that anyone who moved would be required to make changes to their checks. Ms. Bart stated that no one else in the state had the same stipulation.

Mayor Lucero thanked Ms. Bart for being present and voicing her issue. She thanked her for reading the newsletter.

ASD Sandoval explained that the policy had been put into place because the bill collection processing company (Global Payment) read checks by picture. She stated that the company treated the check as noncompliant if the required information was not on it. She assured the Governing Body that she had instructed the utilities workers to manually deposit checks without addresses.

Councilor Lujan asked that the newsletter reflect this. Ms. Bart thanked the council.

G. COUNCILOR COMMENTS

Councilor Seeds stated that he hoped everyone would work toward conducting two (2) City Council Meetings to do the business of the City. Mayor Lucero stated that the Open Meetings resolution had been approved in March.

Councilor Martinez apologized for attending the meeting by telephone and thanked everyone for tolerating the connection. She explained that she was in Albuquerque with the Youth Alliance for the City of Española as the adult sponsor. Mayor Lucero thanked Councilor Martinez for taking the time to join the students.

Councilor Martinez stated that she was concerned about the firework situation. Mayor Lucero stated that she and Chief Branch had issued a no burn moratorium. Councilor Martinez asked who responded to calls regarding fireworks. Mayor Lucero stated that the fire department responded.

Mayor Lucero announced that the July City Council Meeting would have to take place on the 26th due to a bid opening. She explained that the bid approval process was time-sensitive and added that finance would have additional time to prepare the final budget. Councilor Martinez asked what the bid opening was for. Mayor Lucero replied that it was for the blending of Wells 4 and 7. She stated that the City had until November to finalize the project.

H. MATTERS FROM THE MAYOR

1. Employee of the Month-Macrina Montoya

City Clerk Mascareñas stated that she had nominated Receptionist Macrina Montoya for Employee of the Month. She explained that she had intended to do this for a while, but was further motivated at the suggestion of Human Resource Analyst Stephanie Martinez.

City Clerk Mascareñas stated that all employees were currently doing more with less. She stated that Ms. Montoya was not only a prime example of this, but she was an example of teamwork. City Clerk Mascareñas stated that Ms. Montoya was always willing to pitch in and lighten the load of other employees.

2. Appointment of Community Services Committee Chair

Mayor Lucero stated that due to the resignation of former Councilor Greg Ortega, she would like to appoint Councilor Robert Seeds as Community Services Chairman.

Motion by Councilor Lujan to approve the appointment; seconded by Councilor Lewis.

Motion carried 7-0.

I. BUSINESS WITH VISITORS

7. Tewa Women United- Terrace Garden Update

Ms. Beata Tsosie-Pena stated that she worked with Tewa Women United. She stated that a few months prior, she presented regarding the Terrace Garden Project. She requested resource suggestions.

She stated that they had completed a preliminary design and were attempting to raise \$10,000. Mayor Lucero asked where they were soliciting sponsorships. Ms. Tsosie-Pena stated that she

had spoken with the Rotary and Garden Club and would soon be asking businesses. Mayor Lucero asked if there would be a plaque in the garden. Ms. Tsosie-Pena replied in the affirmative.

Councilor Radosevich stated that he was happy this was being done. He suggested asking for help from Transit Mix, Lowe's, Kelly Cook's Tree farm, and Country Farm Supply.

Councilor Seeds asked Mayor Lucero if this project could be discussed in the newsletter. Mayor Lucero replied in the affirmative and stated that the next newsletter would go out in August.

J. REPORTS

8. Council Committees (Public Safety, Public Works, Community Services, Finance)

Councilor Martinez asked if an agenda for each meeting could be placed in her box. Councilor Lewis requested that the agendas be placed in his box as well. Mayor Lucero instructed City Clerk Mascareñas to inform the department heads to place agendas for committee meetings in all of the Councilor's boxes.

9. Council Appointed Liaison (NCSWA, NCRTD, E911, Hands Across Cultures, Fiesta Council, Beautification Committee)

City Clerk Mascareñas stated that Councilor Valdez had requested that she announce that NCSWA had approved their preliminary budget and extended Manager Gino Romero's contract for an additional three years. She stated that Councilor Valdez has also asked her to announce that the Beautification Committee had placed planters on Mainstreet.

Councilor Herrera stated that Hands Across Cultures would be holding a Golf Tournament on July 27th at Cochiti. Councilor Seeds asked about the cost. Councilor Herrera stated that she would email everyone the details.

Community Services Director Len Cata announced that an evening swim session had been requested. He stated that they would begin on Friday, June 29th and there would be a twilight swim at Ranchitos from 7-10pm. He added that they would be offering water aerobics and zumba aquatics every other Friday.

Councilor Radosevich asked about the progress on the softball fields. Community Services Director Cata stated that Mr. Baldonado would present to the Community Services Committee on July 9th with some options.

Councilor Radosevich asked if the lights in Valdez Park had been fixed. Community Services Director Cata stated that they would be submitting the paperwork the following day.

Judge Salazar announced that the Municipal Court had received the Certificate of Occupancy for their new location. He stated that the address was 1316 Calle Adelante, Suite D. He announced that they would undergo an owner's training conference the following day. He added that the Court would be closed for moving from July 16th-20th.

Councilor Lewis exited at 7:13pm.

Councilor Martinez stated that the Regional Transit District would be moving to their Española location in August.

Councilor Lewis re-entered at 7:15pm.

Mayor Lucero stated that she had been informed that there was a median with planters that had not been planted. Mayor Lucero asked if the Beautification Committee could plant. Councilor Martinez stated that it was a possibility.

10. City Manager, including Finance Report and Staff Reports

Interim City Manager Joe Duran stated that the finance department was working on the final cash end balance.

He reported that Planning & Zoning had received their plotter. Interim City Manager Duran thanked 911 for the planning and coordination.

Interim City Manager Duran stated that he and Public Works Director Martinez had done an inspection of the Wastewater Treatment Plant. He announced that new processes would be implemented and there would be improvement within the next month.

K. CONSENT AGENDA

11. Minutes

- a. May 21, 2012 City Council Work Session Minutes
- b. May 29, 2012 City Council Meeting Minutes

Motion by Councilor Lewis to approve the consent agenda; seconded by Councilor Radosevich.

Motion carried 7-0.

L. ITEMS PROPOSED FOR COUNCIL CONSIDERATION/DISCUSSION ITEMS

12. Request for Day of Music & Art on the Plaza- Brock Salazar

Mr. Brock Salazar stated that he had proposed to have an event on the plaza with live music. He stated that he had invited local artists to display their art in the Mision. He explained that he would like charities to place booths. Mr. Salazar added that Community Services Director Cata would piggyback with certain activities.

Community Services Director Cata stated that they would make the event family-friendly. He announced that they would have music and art, but also an outdoor volleyball tourney, skate competition, and puppet show. He explained that it would be a drug and alcohol free event. Community Services Director Cata explained that Mr. Salazar was requesting a co-sponsorship and they would not require security.

Motion by Councilor Radosevich to approve the request for a Day of Music and Art on the Plaza; seconded by Mayor Pro-Tem Salazar.

Motion carried 7-0.

M. EXECUTIVE SESSION

Pursuant to New Mexico Open Meetings Act Section 10-15-1 (H) Subsection (2) limited personnel matters; (5) discussion of bargaining strategy preliminary to collective bargaining negotiations; (7) attorney-client privilege pertaining to threatening or pending litigation in which the public is or may become a participant; (8) discussion of the purchase, acquisition or disposal of real property or water rights by the public body.

Mayor Lucero called on City Attorney Frank Coppler for an opinion regarding Judge Salazar's request to go into Executive Session. City Attorney Coppler stated that he understood that the Judge had requested the City Council approve payment of attorney fees that he incurred within disciplinary proceedings. He stated that he had discussed the issue with Judge Salazar over the phone. City Attorney Coppler stated that, in accordance with Councilor Radosevich's request, he would provide an opinion.

City Attorney Coppler stated that because this was a request for the payment of public funds, he was not aware of any exceptions in the Open Meetings Act that would allow them to discuss the issue in an executive session. He stated that this had been done months prior under the threat of pending litigation.

City Attorney Coppler explained that the Municipal Judge was independent with respect to his conduct and not subject to City personnel rules. City Attorney Coppler stated that Judge Salazar was answerable only to the Supreme Court; therefore, he suggested the discussion take place in public.

Councilor Seeds asked City Attorney Coppler if the Judge could file a lawsuit. City Attorney Coppler stated that he had heard no threat of litigation.

Motion by Councilor Lujan to enter into Executive Session. No second. Motion died.

Mayor Lucero stated that Judge Salazar had requested the payment of an invoice for legal fees for his appearance before the Judicial Standards Commission.

Mayor Pro-Tem Salazar stated that Judge Salazar was his cousin. He stated that he had verified with City Attorney Coppler that it would not be a conflict of interest because they would be acting in their official capacities.

Judge Salazar confirmed that he had spoken with City Attorney Coppler and he respectfully disagreed with his opinion. He stated that City Attorney Coppler had stated that this would be a violation of the Anti-Donation clause. He stated that he had researched the statute and found that he disagreed with that clause. Judge Salazar stated that City Attorney Coppler had also informed him that it would be a violation of the Extra-Compensation clause. Judge Salazar stated that he had attempted to research that clause, but had been unable to find any information. He stated

that according to the New Mexico Municipal League's General Counsel, the City was not obligated to help with any attorney fees but it was the City Council's discretion.

Judge Salazar stated that he felt that this was a personnel matter and it had to do with proposed discipline. He expressed his belief that it warranted an Executive Session.

City Attorney Coppler prefaced his remarks by stating that there was no more uncomfortable position for him than to disagree with something very personal to Judge Salazar. City Attorney Coppler expressed his respect for the Judge and his friendship. He stated that he hoped his disagreement would not interfere with that. City Attorney Coppler stated that they have a situation where the Judge was unique in the City structure because his conduct was governed by the personnel rules of the Supreme Court. He explained that every other employee of the City was subject to the personnel process of the City.

City Attorney Coppler provided the example of a Department Heads encountering problems with the City Manager. He stated that if the Department Head progressed through the personnel process, contested the action and hired an attorney to contest, the Department Head would be required to personally pay for the attorney. He stated that if Judge Salazar was charged under Supreme Court disciplinary action, the judge would be responsible for his own attorney's fees.

City Attorney Coppler stated that in the case of Judge Salazar, Article 4 Section 7 prohibited extra or increased compensation for public officials. He cited an Attorney General opinion that stated that Municipal Judges were covered by that. City Attorney Coppler stated that he understood Judge Salazar's argument. He explained that, under the prior administration and prior City Attorney, Angela "Spence" Pacheco had allowed the council to pay the fees and they had. City Attorney Coppler stated that while he respects District Attorney Pacheco, he disagreed regarding the payment of fees for a personnel issue.

City Attorney Coppler stated that it may be argued that it is commonplace to pay attorney fees for city employees or officials who are sued by third parties under the Tort Claims Act. He specified that this was only correct when the employee was working within their duties and someone was injured. He stated that, in this situation, the complaint was brought by the Judicial Standards Commission having to do with Judge Salazar acting improperly.

Motion by Councilor Lewis to help with attorney fees based on Judge Salazar acting in his official capacity; seconded by Mayor Pro-Tem Salazar.

Mayor Lucero asked City Attorney to clarify the repercussions of approving this measure. City Attorney Coppler stated that the City would be in violation of the Anti-Donation clause and the Extra Compensation clause. He clarified that payment of the bill for a private attorney hired to represent the judge on a personal charge would be to provide additional compensation to Judge Salazar. Mayor Lucero asked why it was considered a personal charge. City Attorney Coppler stated that the charges were against him personally and not the City of Española.

Mayor Pro-Tem Salazar asked City Attorney Coppler if it could be argued that the individuals had approach Judge Salazar as an elected official. Mayor Pro-Tem Salazar stated that he was

confused regarding how this violated the Anti-Donation clause. City Attorney Coppler used the example of former City Manager Lujan's indictment stemming from the alleged use of public funds to pave private parking lots at a church. He stated that it was done in his capacity as Santa Fe Public Works Director, but it was determined that he may have acted outside the scope of his authority. City Attorney Coppler stated that the same respect was made to a public judge as it was not the Office of Municipal Judge that was charged.

Mayor Lucero asked if the judge had the authority to do what he had done. City Attorney Coppler stated that he had not read the proceedings because they were confidential. Judge Salazar stated that the proceedings had been made public. Judge Salazar explained that a District Judge had quashed an order releasing an motor bike from the custody of a towing company. The District Judge believed that Judge Salazar did not have jurisdiction. Judge Salazar stated that he had since realized that he erred in his judgment. He explained that he had wrestled with the decision and had believed that he had jurisdiction.

Councilor Seeds stated that he struggled with this decision and asked City Attorney Coppler if a limit could be placed on the amount they pay. City Attorney Coppler replied in the affirmative.

Councilor Seeds stated that he was troubled and expressed his belief that officials sometimes make wrong decisions. He stated that he could not avoid the call of helping an official.

Councilor Radosevich stated that he believed that the issue had begun with the City police and carried on beyond people's control. He expressed his belief that the judge erred in judgment, his intentions were good.

Councilor Martinez asked if it was the Española Police Department that had placed the hold on that vehicle. Judge Salazar stated that the bike should have been released within two (2) days. He stated that the individual had the finances to recover it and management was requiring release title, registration, etc.

Councilor Seeds clarified that the situation had nothing to do with any company he was involved with.

Mayor Pro-Tem Salazar stated that he felt there was an error in judgment and it was an honest mistake. He stated that he did not believe there was malice involved.

Councilor Lujan thanked City Attorney Coppler for his comments. She stated that because of Mr. Coppler's clarification, she would not support the Governing Body using public funds for a personal charge.

Councilor Martinez asked what the ramifications were if the Council voted against the City Attorney's advice. City Attorney Coppler replied that he understood that Judge Salazar's fees were paid in the past with no adverse ramifications.

Mayor Lucero requested that, if approved, a limit be set due to the current budget situation.

Councilor Herrera asked if the payment would affect the General Fund.

Mayor Lucero stated that it would be a hardship on the City as an additional \$150,000 still needed to be cut.

Mayor Lucero stated that the Judge had a line item for legal fees but it was not for this purpose.

Roll Call Vote:

Mayor Pro-Tem:	Dennis Tim Salazar	In Favor
Councilors:	Robert Seeds	In Favor
	Peggy Sue Martinez (by telephone)	Against
	Cecilia Lujan	Against
	Cory Lewis	In Favor
	Eric S. Radosevich	In Favor
	Elaine Herrera	In Favor

Motion carried 4-2.

Mayor Lucero suggested that the Council consider a limit. She explained that the Judge had a \$7,700 invoice and he still had to go before the Supreme Court. Councilor Seeds suggested that covering the existing bill and the first visit to the Supreme Court.

Motion by Councilor Seeds to pay Judge Salazar's current \$7,700 bill and the cost of the first hearing before the Supreme Court; seconded by Councilor Lewis.

Roll Call Vote:

Mayor Pro-Tem:	Dennis Tim Salazar	In Favor
Councilors:	Robert Seeds	In Favor
	Peggy Sue Martinez (by telephone)	Against
	Cecilia Lujan	Against
	Cory Lewis	In Favor
	Eric S. Radosevich	In Favor
	Elaine Herrera	Against

Motion carried 4-3.

Judge Salazar thanked the Governing Body and stated that he would use Interim City Manager Duran as his point of contact.

N. ANNOUNCEMENTS

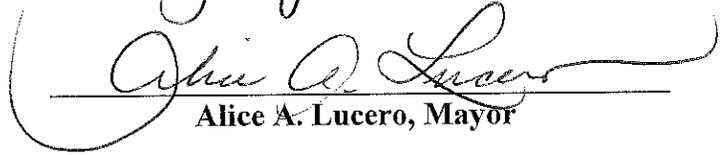
O. ADJOURNMENT

Motion by Councilor Lewis to adjourn; seconded by Mayor Pro-Tem Salazar.

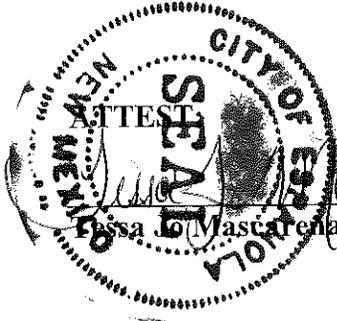
*Motion carried 7-0.
The meeting was adjourned at 8:07pm.*

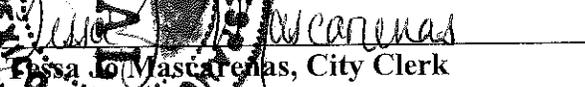
Minutes taken and transcribed by Tessa Jo Mascareñas, City Clerk.

APPROVED AND ADOPTED THIS 26th DAY OF July, 2012.



Alice A. Lucero, Mayor





Tessa Jo Mascareñas, City Clerk