



**City Council  
of the  
City of Las Cruces**

**Regular Meeting**

**October 18, 2010  
1:00 P.M.**

**Council Chambers, City Hall**

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**MEMBERS PRESENT:**

Mayor Ken Miyagishima  
Councillor Miguel Silva, District 1  
Councillor Dolores Connor, District 2  
Councillor Olga Pedroza, District 3  
Councillor Nathan Small, District 4  
Councillor Gill Sorg, District 5  
Councillor Sharon Thomas, District 6

**STAFF:**

Robert Garza, Assistant City Manager  
Harry (Pete) Connelly, Interim City Attorney  
Esther Martinez, City Clerk

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**I. OPENING CEREMONIES**

Mayor Miyagishima called the meeting to order and asked for a moment of silence. Councillor Silva led the Pledge of Allegiance.

Presentation of Certificates of Appreciation/Proclamations.

Mayor Miyagishima and a representative from the Animal Services Center of the Mesilla Valley presented the Pet of the Week.

Councillor Silva presented a Proclamation to Sam Bone, Jr. And Lola Lestrick and declared October 29 thru October 30, 2010 as New Mexico State Conference NAACP Weekend.

Councillor Silva presented a Proclamation to Don Bustamante and declared October 2010 as Cyber Security Awareness Month.

Councillor Silva presented a Proclamation to Richard Weaver and declared October 31, 2010 as The Friends of the Community Candy Drop Day.

Councillor Silva presented a Proclamation to Dr. Brian Gilbert and declared November 1, 2010 as Bright Star Dental Halloween Candy Buy Back Day.

Councillor Connor and Juan Fuentes, GFOA presented a Certificate of Achievement for Excellence in Finance Reporting to Pat Degman and Audrey Evins.

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**II. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27(E)(2). *At the opening of each council meeting, the chairperson shall ask if any member of the city council, city manager, or any member of the city staff has any known conflict of interest with any item on the agenda.***

Mayor Miyagishima asked if anyone had any conflicts with anything on the agenda?

Councillor Connor said I will be recusing myself from Item 14 because my husband is employed by El Paso Electric.

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**III. PUBLIC PARTICIPATION**

Ryan Dailey, Member of the Public said I would like to thank Councillor Small for his professionalism in handling a situation that occurred in my neighborhood but I would like to request that the City Manager ask the Police Chief to make a presentation because I want to know if there will be a increase in patrols for my neighborhood. I would also like some information on how to get a Neighborhood Watch started in my neighborhood. I would like to know if you are some kind of officer outside of LCPD, can you still run for City Councillor?

Mayor Miyagishima said I would see no problem with serving as a Detention Officer or with the County and being able to serve on Council. As far as starting a Neighborhood Watch in your neighborhood, you have to take it upon yourself to speak with your neighbors and form a group that is willing to participate, then the Officer in charge of the Neighborhood Watch Program would be able to make arrangements to meet with the group and show you how to start it.

Councillor Small said I handed out flyers to the residents in that neighborhood and we have had three different meetings that were attended by LCPD which included discussions regarding the Neighborhood Watch Program. We are working on trying to have a cook-out to get everyone together and be able to have some discussions regarding these neighborhood issues.

Ryan Dailey said there needs to be a relationship between LCPD and the residents of this community.

Jim Harbison, Member of the Public said I attended the Work Session regarding electronic devices that was held prior to this meeting and I hope this Council takes heed to the comments that were made by the Attorney General's staff.

I have a Neighborhood Watch in my neighborhood and the LCPD Officers show up at every meeting. I think the City has done a tremendous job with these programs.

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**IV. ACCEPTANCE OF AGENDA: THOSE ITEMS ON THE AGENDA INDICATED BY AN ASTERISK (\*) ARE ON THE CONSENT AGENDA AND WILL BE VOTED ON BY ONE MOTION.**

Mayor Miyagishima said Item 9 and Item 12 need to be removed from the Consent Agenda for discussion.

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Councillor Connor Moved to approve the Agenda as Amended and Councillor Thomas Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to accept the Agenda as Amended and it was Unanimously APPROVED. 7-0

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**V. CITY COUNCIL MINUTES**

- \* (1) Regular Meeting of September 20, 2010
- \* (2) Special Meeting of September 20, 2010

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**VI. RESOLUTIONS AND/OR ORDINANCES FOR CONSENT AGENDA**

- \* (3) Resolution No. 11-088: A Resolution to Accept Funding From the Bureau of Land Management (BLM) in the Amount of \$200,000 for the Prehistoric Trackways National Monument Exhibit and Curation Development Offering With No Required Match From the City and to Adjust the FY2011 Budget.

- \* (4) Resolution No. 11-089: A Resolution Authorizing the City of Las Cruces Fire Department to Apply for the FY2010 Staffing for Adequate Fire and Emergency Response Grant Program in the Amount of \$1,287,336 for a Two-Year Grant to Fund Salaries for Firefighters With No Match Required, and to Ratify the City Manager's Signature to Meet the Grant Submission Deadline.
- \* (5) Resolution No. 11-090: A Resolution Authorizing the City of Las Cruces Police Department (LCPD) to Accept the Sub-Grant Agreement for the FY 2010 Project Safe Neighborhoods Grant Awarded by the Department of Justice, Through the New Mexico Department of Public Safety in the Amount of \$10,000 With No Match Required, to Ratify the City Manager's Signature to Meet Grant Award Deadline, and Adjust the FY 2011 Budget.
- \* (6) Resolution No. 11-091: A Resolution Authorizing a Contract With the New Mexico High Intensity Drug Trafficking Areas (HIDTA) Investigative Support Center for Reimbursement of Law Enforcement Overtime Expenses for Domestic Highway Enforcement (DHE) Operations in the Amount of Approximately \$4,740, to Ratify the City Manager's Approval of the Contract, and to Adjust the FY2011 Budget.
- \* (7) Resolution No. 11-092: A Resolution Authorizing the City of Las Cruces to Accept Grant Funds From the U.S. Forest Service in the Amount of \$7,000.00, to Ratify the City Manager's Signature on the Grant Agreement, and to Adjust the FY 2011 Budget.
- \* (8) Resolution No. 11-093: A Resolution Accepting a Memorandum of Understanding Between the Thomas Branigan Memorial Library, the Las Cruces Public Schools, and the Town of Mesilla to Establish a Branch Library and Reading Room at the San Andres High School in the Town of Mesilla.
- \* (10) Resolution No. 11-095: A Resolution Authorizing Staff to Proceed With the Design and Implementation of Plan 4 of the Las Cruces Dam Restoration Study, Section 1135 Project in Conjunction With the Army Corps of Engineers.
- \* (11) Resolution No. 10-11-407: A Resolution Approving a Use of NM State Purchasing Price Agreement #00-000-00-00006, for the Purchase of Ammunition for Indefinite Cost, Indefinite Quantity, Conditioned Upon Approved Budgets and Renewals.

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**VIII. RESOLUTIONS AND/OR ORDINANCES FOR DISCUSSION**

- \* (9) Resolution No. 11-094: A Resolution Adopting an Agreement Between the City of Las Cruces and the Las Cruces Public Schools (LCPS) For Cooperative Use of Current and Future Recreational Space, Athletic Fields, Buildings and Facilities, and Repealing Existing

Agreements Between the City and LCPS Which Were Adopted Pursuant to Resolutions 00-296, 03-326 and 04-091.

Councillor Small Moved to Adopt Resolution No. 11-094 and Councillor Sorg Seconded the motion.

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Councillor Silva asked does this pertain to only athletic facilities?

Mark Johnston, Parks and Recreation Director said it has to do with all of the jointly shared City and Las Cruces Public School's facilities.

Councillor Silva asked how will this affect our relationship with the Court Youth Center?

Mark Johnston said it is my understanding that our current agreement will stay in place.

Councillor Sorg asked does this mean that we share facilities at no cost to each other?

Mark Johnston said the opportunity to share with no cost is written within the agreement and it also includes the opportunity to re-coop true costs that the City or Las Cruces Public School absorbs.

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Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 11-094 and it was Unanimously APPROVED. 7-0

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\*(12) Resolution No. 10-11-408: A Resolution Authorizing the Use of the Existing New Mexico State University Job Order Contracts With LC Structural Construction, Inc., Duran Construction Inc., (Based Out of Las Cruces, NM), and Basic IDIQ, Inc., (Based Out of El Paso, TX), and ESA Construction, Inc., Centennial Contractors Enterprises, Inc., (Based Out of Albuquerque, NM), and the Use of Existing University of New Mexico Contract for Pricing Index Software Services, the Gordian Group Inc., (Based Out of Mauldin, SC), in an Aggregate Amount Not to Exceed \$2,000,000.00; For an Initial Period of One Year, With the Option to Renew at City Council's Discretion.

Councillor Silva Moved to Adopt Resolution No. 10-11-408 and Councillor Small Seconded the motion.

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Councillor Silva asked why aren't we putting out a similar contract ourselves?

Eric Martin, Project Management Administrator said it is our intent to eventually put out a similar contract ourselves but due to the amount of current projects, it is very time consuming and we haven't had a chance to complete that process.

Councillor Silva said my concern is that there are six contractors listed and out of that six, only two are local contractors.

Eric Martin said in general, we found that in most cases the contractors do work with local sub-contractors.

Councillor Silva said I would like to see us move forward as quickly as possible to create our own job order and help our local contractors.

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Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 10-11-408 and it was Unanimously APPROVED. 7-0

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**VII. UNFINISHED BUSINESS**

- (13) Resolution No. 11-059: A Resolution Requesting Approval or Disapproval of a Special Request for Use of Individual Septic Systems Within the Future Development Known as the Overlook. (***TABLED from 9/7/10***)

Councillor Connor Moved to Remove Resolution No. 11-059 from the Table and Councillor Thomas Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to Remove Resolution No. 11-059 from the Table and it was Unanimously APPROVED. 7-0

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Jorge Garcia, Utilities Director gave an overhead presentation and said our Liquid Waste Ordinance is outdated and doesn't address the conversion of septic tank systems consistent with the City's Strategic Plan. This section requires connection of developed land that is within 200 feet; however, there is a waiver in the case that there is a working septic tank on the property. So, we don't really

have a mandatory connection to a sewer system. The New Mexico Environment Department calls for a 3/4 acre lot or parcel size based on the flow and the depth of groundwater should be 4 feet below disposal field. We need to make sure that there is no off-site sewer system in the 5-year ICIP, the distance to an existing wastewater system is greater than one mile with the consideration of regulatory, permitting and/or construction obstacles. We are proposing that whoever puts in septic systems should construct a complete wastewater collection system within the confines of the development. Separate from the approval of this resolution today; we need to modify the Liquid Waste Ordinance to provide legal and regulatory framework to address the use of septic systems inside the City limits; specify requirements and time line to connect to the sewer system, once available and enable the process of obtaining approval for use of septic systems. Original, the Utility Board tabled this item because they weren't comfortable with it and we took this back with to them with our recommendations and they are in agreement with it but they would like to add the requirement of deed restriction that assures future connection to the sewer system, shorter time to connect and restrict subdivision of the parcel until there is connection to the sewer system. The Overlook conditions for approval are a minimum lot or parcel size of 2 acres, demonstrate that depth to groundwater is a minimum of 20 feet or as determined by NMED, follow the design and construction standards as specified by NMED, construct all septic systems in the front of the property, construct an on-site low pressure sewer system to include complete a complete pip system under the roadway that meets LCU standards, individual pump systems to be placed by the customer and/or the Utility in the future, the off-site system is to be constructed in the future and the building requirement that will incorporate a gray water system pursuant to NMED standards.

Councillor Pedroza asked are we going to be doing the changes to the ordinance and apply those changes to the Overlook or are we doing them separately?

Jorge Garcia said only the Overlook issues are before you today but we want to make sure that the conditions that are placed on the Overlook will be identical to what the changes will be for the ordinance.

Councillor Pedroza said I saw in the map that there is a proposed future school site about a mile from this subdivision and that worries me because I think the density will be affected by the school. Are the lots still going to be one or two acres even when the school is built?

Marty Pillar said having a school built would give more of a reason to have a Municipal Sewer System installed for that area. This is to allow us to move forward with the designing of the Overlook. Even if this is approved with septic tanks, we will still be required to hook up to the Septic System once it is installed in this area.

Mayor Miyagishima said I think Councillor Pedroza is asking that if a school is built, will the size of the lots change and the answer would be that I don't think they can change the lot sizes once it is set.

Marty Pillar said that is correct. We are asking for two acre lots right now and if in the future, only a portion of the Overlook is built and then a school is built and a Municipal Sewer System is built; then the owner of that property can come back to Council and request a zone change but we're not looking for that at this time.

Jorge Garcia said there are future plans for a septic system in that area but it is way out in the future which is why we are asking for a condition to be placed that sets a time limit on the amount of time allowed for them to connect to the system once it is built.

Councillor Thomas said it states in our packet that there would be a minimum of 3-acre lots but your presentation stated it would be a minimum of 2-acre lots.

Jorge Garcia said the original proposal asked for a minimum of 3-acre lots but in looking at everything, 2-acre lots would be sufficient which is what we are recommending.

Councillor Connor said we have septic tanks in District 2 and there are about 400 tanks in the backyards of three subdivisions off of Stern but there is no way to get in there to replace them. The septic tanks hold up but there are problems with the leech lines.

Councillor Small said I think a minimum of 3-acre lots would be more conformative to that area.

John Moscato, Developer said as we move forward with a Development Plan, there will be ample opportunity to discuss access, traffic, drainage, health and welfare issues and it will have to be reviewed and approved by City staff. I proposed the 3-acre lots prior to Dr. Garcia and his staff coming up with the concept of requiring the developer to construct a sewer system within the confines of the subdivision. That will add to our cost but it will eliminate the issues with non-compliance with the City's Strategic Plan because the septic system will be temporary.

Councillor Small said the concern that I have is with the higher the density.

John Moscato said we don't have any problems with agreeing to the deed conditions proposed by Dr. Garcia.

Jorge Garcia said by having the system built under the roadway, it facilitates the future connection and prevents hardship to the future property owners.

Marty Pillar gave an overhead presentation and said the New Mexico Environment Department has existing regulations concerning the installation and use of individual septic systems. Section 20.7.3.301 standards, lot size requirements, Table 301.1 lists the minimum lot sizes required for typical flow rates for conventional treatment systems. The Overlook is proposing a minimum lot size of 2-acres or meeting NMED standards, whichever requires the larger lot. Section 20.7.3.301 Table

301.3 lists the limitations for the different soil types in the region; Soil Type A slight limitations, Soil Type B slight limitation, Soil Type C moderate limitation and Soil Type D severe limitations. The Overlook has Soil Types A and B as shown in the Soil Survey of Dona Ana County. Section 20.7.3.302 Standards, Setback Requirements require a minimum distance of 4 feet from the bottom of the system to the seasonal high water table. The Overlook has obtained geotechnical investigations for the project, 73 borings vary from 6 feet to 31 feet deep and no groundwater was encountered in any of the borings. Section 20.7.3.501 Design; Liquid Waste Treatment Units; General, states treatment units may be constructed of the following units: precast reinforced concrete, poured-in-place concrete, fiberglass, polyethylene or other materials as approved in writing by the department. Section 20.7.3.810 Gray Water Discharges and Section 20.7.3.811 Gray Water Systems states the installation of separate gray water systems shall be authorized for residential units. The Overlook has agreed to include the requirement of gray water systems for individual on-lot septic systems.

Councillor Sorg said myself and one other Councillor has information regarding this case that the rest of the Council hasn't heard; is the land that is west of the project zoned Industrial or is there going to some other kind of zoning there?

Marty Pillar said it is my understanding that it is zoned holding right now. There has to be a Master Plan or some document like that to set the zoning.

Councillor Sorg said I support what you are trying to do here and I support having a sewer system within the development. I received one comment from the public regarding this issue and they simply said "no". The ordinance that we will be considering; would the future ordinance apply to this development if it is passed?

Jorge Garcia said yes, it will apply; so, the conditions that you place on the Overlook will be inserted within the ordinance.

Councillor Sorg asked would the 90 day hook-up requirement apply to this project and the ordinance?

Marcy Driggers, Senior Assistant City Attorney said no, what is before the Council today is a resolution but it will need to be amended by Council. I propose that it be amended to incorporate the provisions that were presented by Dr. Garcia.

Councillor Sorg said I would like to suggest that the developer consider the use of a Wetland for the wastewater treatment.

Councillor Silva asked did you consider a package plant for the septic tanks?

Marty Pillar said that has been talked about and one of this things that would include is a operator and a maintenance person with specific qualifications for that plant. The low pressure sewer system

appeared to be a better fit for this area because we can install the septic tanks as the lots are developed and you can't do that with a package plant.

Councillor Silva said I have some difficulty with this project because it isn't listed in our Capital Improvement Projects List but it would impact our overall Improvement Projects because at some point we are going to have to include it. Also, it goes against our Strategic Plan.

Jorge Garcia said the 2008 Wastewater Master Plan includes sewer lines for this area in the future; not five years from now. The way we fund that type of infrastructure is through impact fees. We build the off-site but not the on-site which is what we are asking them to build today.

Councillor Thomas asked can we see what the recommended conditions are, again?

Marcy Driggers showed slides 12, 13 and 15 of Jorge Garcia's presentation and said I would propose that Council amends the resolution to include the conditions of a minimum lot or parcel size of 2 acres, demonstration of the depth to groundwater is a minimum of 20 feet or as determined by NMED whichever is more stringent, follow the design and construction standards as specified by NMED, construct all septic systems in the front of the property such that the connection to the future sewer system is readily enabled and engineer septic systems to minimize future conversion cost to the property owner, construct an on-site low pressure sewer system to include complete pipe system under the roadways that meet LCU standards, individual pump systems to be placed by customer and/or the Utility in the future, off-site system to be constructed in the future, include building requirement that will incorporate a gray water system pursuant to NMED standards, disclose Liquid Waste Ordinance requirements to the property owners through the warranty deed and restrict subdivision of parcels until there is a connection made to the sewer system.

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Councillor Thomas Moved to Amend Resolution No. 11-059 to include the conditions include in slides 12, 13 and 15 which is to require a minimum lot or parcel size of 2 acres, demonstration of the depth to groundwater is a minimum of 20 feet or as determined by NMED whichever is more stringent, follow the design and construction standards as specified by NMED, construct all septic systems in the front of the property such that the connection to the future sewer system is readily enabled and engineer septic systems to minimize future conversion cost to the property owner, construct an on-site low pressure sewer system to include complete pipe system under the roadways that meet LCU standards, individual pump systems to be placed by customer and/or the Utility in the future, off-site system to be constructed in the future, include building requirement that will incorporate a gray water system pursuant to NMED standards, disclose Liquid Waste Ordinance requirements to the property owners through the warranty deed and restrict subdivision of parcels until there is a connection made to the sewer system and Councillor Connor Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 11-059 to include the conditions include in slides 12, 13 and 15 which is to require a minimum lot or parcel size of 2 acres, demonstration of the depth to groundwater is a minimum of 20 feet or as determined by NMED whichever is more stringent, follow the design and construction standards as specified by NMED, construct all septic systems in the front of the property such that the connection to the future sewer system is readily enabled and engineer septic systems to minimize future conversion cost to the property owner, construct an on-site low pressure sewer system to include complete pipe system under the roadways that meet LCU standards, individual pump systems to be placed by customer and/or the Utility in the future, off-site system to be constructed in the future, include building requirement that will incorporate a gray water system pursuant to NMED standards, disclose Liquid Waste Ordinance requirements to the property owners through the warranty deed and restrict subdivision of parcels until there is a connection made to the sewer system and it was Unanimously APPROVED. 7-0

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Russ Warner, Member of the Public said my opposition for increasing the number of septic tanks within our City limits is pretty well documented. All the Councillors campaigned on Smart Growth during their election and it's hard to make people think that you actually meant it when you're adding septic tanks to this City.

Mayor Miyagishima said some of us also campaigned on our business experience and sometimes you have to weigh both of them.

Councillor Thomas said I have studied Smart Growth more than anyone in this room and this would be Smart Growth.

Councillor Sorg said Smart Growth doesn't mean no growth, it means to grow smartly. I would like for this development to assess the impact fees that we may or may not apply to future developments. Should we require impact fees for the main line that goes into this development?

Jorge Garcia said we will be collecting the impact fees whenever the water meters are issued.

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Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 11-059 as Amended and it was APPROVED. 5-2 Councillor Connor, Councillor Pedroza, Councillor Sorg, Councillor Thomas and Mayor Miyagishima voted Aye. Councillor Silva and Councillor Small voted Nay.

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Councillor Connor Moved for a Five Minute Recess and Councillor Small Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion for a Five Minute Recess and it was Unanimously APPROVED. 7-0

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Meeting Recessed at 3:48 p.m. and Reconvened at 4:03 p.m.

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**VIII. RESOLUTIONS AND/OR ORDINANCES FOR DISCUSSION**

- (14) Resolution No. 11-096: A Resolution Authorizing the City to Sign a Memorandum of Understanding With Clearesult Consulting Enabling the City's Participation in El Paso Electric Company's Score Plus Energy Efficiency Rebate Program.

Councillor Pedroza Moved to Adopt Resolution No. 11-096 and Councillor Thomas Seconded the motion.

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David Weir, Community Development Director said the MOU will address the City's participation in the El Paso Electric's Score Plus Program and allow technical assistance from a consultant that they have hired. There will need to be an amendment to change the MOU reference of 2010 to 2011.

Paul Royalty, El Paso Electric gave an overhead presentation and said we started this program on September 1<sup>st</sup> and this has been a successful program in Texas for the past two years. We hired CLEAResult Consulting to work with us on this program and they work with our customers to help them identify, prioritize, implement and find funding for some of the programs.

Councillor Small said I met with CLEAResult a while back and I was very impressed with them and I am very excited about this program.

Robert Garza, Assistant City Manager said we have identified several categories that we would like them to look at and ultimately, if and when they identify a good project for us to undertake, we will be back before Council with the details.

Councillor Silva said this MOU is just between El Paso Electric and the City, not with private residents; correct?

Paul Royalty said that is correct; we have other programs for private residents.

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Councillor Small Moved to Amend Resolution No. 11-096 to change the year from 2010 to 2011 and Councillor Thomas Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 11-096 to change the year from 2010 to 2011 and it was APPROVED. 6-0-1 Councillor Silva, Councillor Pedroza, Councillor Small, Councillor Sorg, Councillor Thomas and Mayor Miyagishima voted Aye. Councillor Connor Abstained.

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Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 11-096 and it was APPROVED. 6-0-1 Councillor Silva, Councillor Pedroza, Councillor Small, Councillor Sorg, Councillor Thomas and Mayor Miyagishima voted Aye. Councillor Connor Abstained.

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- (15) Resolution No. 11-097: A Resolution Authorizing an Option to Lease Agreement Between the City of Las Cruces and SunEdison, for the Thirty Year Lease of Up to 240 Acres of Municipally Owned Land at the Las Cruces International Airport for the Purpose of Developing a Solar Energy Project.

Councillor Small Moved to Adopt Resolution No. 11-097 and Councillor Sorg Seconded the motion.

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Christine Logan, Economic Development Administrator gave an overhead presentation and said this ties into our Strategic Plan under the protection and promotion of our natural and energy resources. We are promoting renewable energy development through the use of the City's property as undeveloped land. The West Mesa Industrial Park is attracting a lot of that type of attention. Through this process, it will be up to El Paso Electric to determine how much power to be delivered and where and based on that, other companies have identified potential locations for a project and we are at the point of getting ready to conduct a technical and financial feasibility study for those sites but to do that we have to look at several properties and then identify the best site and acquire Airport land by lease. There is another site toward the south that would be acquired by a separate option agreement. This option and lease would propose a one year option for the study of the potential of the south half of Section 28. The City would receive \$1,000 for the one year option immediately

upon approval of this option and if they needed more time then this could be extended for an additional year for \$1,500. If they identify a section which we anticipate to be about 120 to 170 acres, we would execute a 30 year lease at the rate of \$500 per acre and it would escalate by 2% every 5 years. This went before the Airport Advisory Board and they asked that any solar activity at this point be kept below this point (pointing at a yellow line on the map). As part of the Option Agreement, any access to the Airport requires at least a 24 hour advance notification to the Airport Manager but at no time will there be access to the airfield. If the lease is exercised, the access route will have to be approved by the Airport Manager, the project must comply with the Airport Minimum Standards and when the project is terminated the developer will need to remove all of the installation that was put there and return the ground in a reasonable manner. In the lease agreement there is a statement that states that the City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the tenant from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the Landlord, would limit the usefulness of the Airport or constitute a hazard to aircraft. The tenant shall, upon approval by the Landlord and prior to any construction of any nature within the boundaries of the Airport, prepare and submit to the Airport Manager and the Federal Aviation Administration one executed set of FAA form 7460-1 "Notice of Proposed Construction or Alternations", as required by Federal Aviation Regulation Part 77. We did make sure that the lease included insurance coverage but there will need to be an amendment to this resolution regarding indemnification. We would like to include the language of "Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this agreement is subject to immunities and limitations of the New Mexico Tort Claims Act or other New Mexico law". This project would allow us to utilize undeveloped land without interfering with the viability of the Airport, generate revenue to support Airport operation and help build renewable energy industry in the area.

Councillor Pedroza asked would it be possible to purchase the energy created by them?

Christine Logan said no, they have an agreement with El Paso Electric for the purchase of the energy.

Mayor Miyagishima said on page 446, Article 9, regarding the sub-lease; on one hand it states they need our permission and then it states they can do it without our permission; can you clarify that?

Christine Logan said the sub-lease states they do need permission from the City to sub-lease to someone else but they don't need our permission to sub-lease to an entity within themselves.

Jared Schoch, SunEdison said the way we operate, maintain and fund these solar plants for customers which in this case is El Paso Electric, is we get investors to work with us.

Councillor Silva asked what would be the impact from this on residential solar units?

Christine Logan said I don't see that there would be any direct impact on the residential units.

Jared Schoch said it is a different part of El Paso Electric so there wouldn't be any impact.

Councillor Silva asked what impact would this have on us, regionally?

Christine Logan said this is part of the requirements for El Paso Electric and there are many regional benefits.

Clay Doyle, El Paso Electric said we have certain mandates that we have to meet regarding renewable energy. This project is a large scale source and won't impact the roof top solar units right now but it could in the future. It will depend upon how much renewable energy we have in our portfolio.

Councillor Silva said I'm hearing concerns from residents; if El Paso Electric meets their quota through one of these solar plants then they wouldn't purchase solar credits from residents.

Mayor Miyagishima asked will this plant meet your quota requirements immediately?

Clay Doyle said Councillor Silva is partially correct. In the future, at some point, we will have enough solar credits and it is foreseeable that we would no longer buy renewable credits. We won't purchase credits that we don't need unless we can resell them to make our money back because this is an additional cost to us our customers.

Councillor Thomas asked is all of the power going to El Paso Electric?

Christine Logan said yes.

Councillor Small said the people that have already purchased solar systems, they sign a contract; correct?

Clay Doyle said that is correct.

Councillor Small said so, you will be providing payment for the duration of that contract; correct?

Clay Doyle said that is correct.

Councillor Pedroza said I want to mention that my solar panels are doing great and the solar program is a very good program for homeowners. Even if El Paso Electric stops buying back the energy credits, it will still be good for homeowners to have solar panels.

Councillor Connor said I always recuse myself from voting on issues with El Paso Electric but when I read the information for this issue I didn't think it would be a conflict for me. However, after hearing all the information maybe I should recuse myself.

Harry (Pete) Connelly, Interim City Attorney said that would be fine.

Jim Hayhoe, Member of the Public said I am the President of the Solar American Consultants and I am a strong supporter of solar projects in Dona Ana County. I support this project but I'm not in favor of this resolution. I am concerned with the lease amount of \$500 per acre because it is lower than the appraisal amount for that property. I don't believe you are getting the market value and I would recommend that you table this and go competitive for this project because there is a large number of companies that would be interested in this property.

Clay Doyle said El Paso Electric did an RFP for renewable energy and we had about 20 bidders respond; of which, we selected SunEdison. So, we did go through a competitive agreement process for this project.

Leon Billstone, Member of the Public said I am an Officer and Director for the Experimental Aircraft Association Local Chapter and I was concerned with how close this project would be to the Airport but the conditions that they have put on this would protect the Airport. I think this project would be good and it won't hurt the Airport.

Jim Hayhoe said I just want to say that I strongly support this project but I just believe that this Council should take a look at the resolution that they are getting ready to sign to make sure they aren't leaving money on the table for 30 years.

Mayor Miyagishima said the amount isn't a lot but I think the long-term affects will have significant impacts here in the City.

Councillor Small said an important factor is that folks have to sign an agreement with El Paso Electric to generate electricity off-site.

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Councillor Thomas Moved to Amend Resolution No. 11-097 to remove the current language and replace it with the language of "Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this agreement is subject to immunities and limitations of the New Mexico Tort Claims Act or other New Mexico law" in Item 4 of the option and in Article 8 of the lease and Councillor Sorg Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 11-097 to remove the current language and replace it with the language of "Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this agreement. Any liability incurred in connection with this agreement is subject to immunities and limitations of the New Mexico Tort Claims Act or other New Mexico law" in Item 4 of the option and in Article 8 of the lease and it was APPROVED. 6-0-1 Councillor Silva, Councillor Pedroza, Councillor Small, Councillor Sorg, Councillor Thomas and Mayor Miyagishima voted Aye. Councillor Connor Abstained.

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Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 11-097 as Amended and it was APPROVED. 6-0-1 Councillor Silva, Councillor Pedroza, Councillor Small, Councillor Sorg, Councillor Thomas and Mayor Miyagishima voted Aye. Councillor Connor Abstained.

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**IX. BOARD APPOINTMENTS**

Mayor Miyagishima appointed Anthony F. Avallone (Recommendation of Individuals Representing Labor) and Richard Ferrary (Recommendation of City Administrator) to the Labor Management Relations Board.

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Councillor Connor Moved to Approve the Mayor's Board Appointments of Anthony F. Avallone (Recommendation of Individuals Representing Labor) and Richard Ferrary (Recommendation of City Administrator) to the Labor Management Relations Board and Councillor Small Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to Approve the Mayor's Board Appointments of Anthony F. Avallone (Recommendation of Individuals Representing Labor) and Richard Ferrary (Recommendation of City Administrator) to the Labor Management Relations Board and it was Unanimously APPROVED. 7-0

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Mayor Miyagishima appointed Jim E. Noble to the Airport Advisory Board.

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Councillor Connor Moved to Approve the Mayor's Board Appointment of Jim E. Noble to the Airport Advisory Board and Councillor Thomas Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to Approve the Mayor's Board Appointment of Jim E. Noble to the Airport Advisory Board and it was Unanimously APPROVED. 7-0

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Mayor Miyagishima appointed James W. Harbison (Military Officers Association of America) to the Veteran's Advisory Board.

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Councillor Connor Moved to Approve the Mayor's Board Appointment of James W. Harbison (Military Officers Association of America) to the Veteran's Advisory Board and Councillor Thomas Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to Approve the Mayor's Board Appointment of James W. Harbison (Military Officers Association of America) to the Veteran's Advisory Board and it was Unanimously APPROVED. 7-0

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Mayor Miyagishima appointed Kathy Mesa to the Fourth of July Committee.

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Councillor Connor Moved to Approve the Mayor's Board Appointment of Kathy Mesa to the Fourth of July Committee and Councillor Small Seconded the motion.

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Mayor Miyagishima called for the roll on the Motion to Approve the Mayor's Board Appointment of Kathy Mesa to the Fourth of July Committee and it was Unanimously APPROVED. 7-0

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Councillor Sorg appointed Ellen B. Weiss to the Health and Human Services Advisory Committee.

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**X. REVIEW QF PROPOSED ORDINANCE(S)**

- (16) **Council Bill No. 11-014; Ordinance No. 2594:** An Ordinance Authorizing an Option to Purchase Agreement Between the City of Las Cruces and SunEdison, for the Purchase of Up to 200 Acres of Municipally Owned Land in Section 2, South of the West Mesa Industrial Park, for Eight Thousand Dollars Per Acre for the Purpose of Developing a Solar Energy Project.

Mayor Miyagishima and Council agreed to bring this item back.

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**XI. STATUS/UPDATES ON CURRENT PROJECT LIST**

1. **Downtown Main Street Construction** - *(Utility and storm drain continue. Road closures at Main/Las Cruces and Main/Lucero Avenue)*
2. **Del Rey/Sandhill Arroyo** - *(Storm Drain Box Culver 80% complete. Del Rey traffic on detour route with closure at Settlers Bend.)*
3. **Santa Cruz Avenue** – *(The Declaration of City Equitable Ownership outlined the in the attached email was filed by staff yesterday at the County Clerk’s Office. The Street Systems section is currently scheduling the grading of the roadway over the next several weeks.)*
4. **Behind Las Cruces Dam Project w/Corps of Engineers** -
5. **Impact Fees** – *(The project is on-going. The Consultant has made revisions to the Land Use Assumptions. Staff is in the process of reviewing a draft and will work with the consultant to finalize the draft document . It is anticipated that a final draft will be available by the end of August.)*
6. **Las Cruces Intermodal Facility** - *(The consultant design team has begun the project with a kick off meeting with City staff to determine expectations and goals to complete the project. Preliminary research and data collection is underway.)*
7. **Bicycle Facilities Planning** - *(Staff is preparing the application for Bicycle Friendly Community with the assistance from the Bicycle Friendly Community Task Force. Staff is working with the Engineering Work Group of the Task Force to identify roadways where bicycle facilities can be added as resurfacing projects are completed. The road diet on Solano will be continued from Missouri to University during early fall. New bike lanes will also be added on Three Crosses (Spitz to Dona Ana Rd.) and Spruce (Solano to Triviz). Motel Blvd will receive shared use lanes between the concrete section and Picacho. There are 4 new League Cycling Instructors in the Las Cruces area, bringing the*

- total number of instructors to 13. The new instructors include three City employees: Caeri Thomas, Naoma Staley, and Andy Hume.)*
8. **EPA Smart Growth Implementation Assistance Program (SGIA)** - *(September 3, 2010: **Picturing el Paseo: Share Your vision for the Corridor** Community awareness continues to grow about the City's Smart Growth Implementation Assistance planning project with the EPA, DOT and HUD. The project's website [www.picturingelpaseo.org](http://www.picturingelpaseo.org) has photo sharing capacity, a survey requesting people's ideas for the corridor, and a wealth of information on the workgroups and upcoming events. The **Green Infrastructure Conference** was a resounding success; proceedings will be produced and available this fall. Staff will be at Munson Senior Center every Wednesday in September from 11am-1pm to record the stories and visions people have of El Paseo past, present and future. Together with our federal partners, staff is producing a number of events this fall: a 3-day **Visioning Workshop #1** September 30<sup>th</sup> through October 2<sup>nd</sup>, a technical **Road Safety Audit** October 26 & 27, and the second **Visioning Workshop** November 18-20. Regular conference calls with the federal partners occur on Tuesday from 1:30-2:30 PM in Room 1158, City Hall, 700 Main Street.)*
  9. **New City Web Site** - *(The new web site will go live for City staff in October, with public unveiling in November. Content from the current web site is being migrated to the new site. Additional effort has been required in updating content, unifying design, and content presentation methodologies. Departmental stakeholders, who will be responsible for authoring content once the site goes live, have been involved in stakeholder meetings, feedback, and content migration. The new site will support greater citizen engagement by providing citizens the ability to receive information via RSS feeds, newsletters, and alerts, as well as providing new content and capabilities. Departmental content authors and Directors will be trained in use of the content management system, authoring standards (including ADA, Section 508, and applicable law.)*
  10. **Downtown Revitalization Activities** - *(Construction of La Placita has started and will be completed by October 31, 2010. Community Development staff are in the process of forming a Downtown Revitalization Plan Ad Hoc Committee.)*
  11. **Sage Café Update** - *(The building may be usable after utility hook-ups: coordination with CLC gas and the contractor to extend about 5 feet of gas line to the meter location; permanent electrical service from EPE and fire line extension from the main to the building. Funding options still being contemplated in order to consider finishing the overall project for items such as kitchen equipment.)*
  12. **Grants/ARRA Status** - *(Will soon be available on the city's website under the Finance Department.)*

Councillor Thomas said there isn't any information regarding the Las Cruces Dam Project but it is listed so I guess we will be getting information on it at some point. I would like to add the Neighborhood Relations Coordinator to the list.

Robert Garza, Assistant City Manager said that position has been filled by Robert Caldwell.

Councillor Thomas said I would still like to get updates on how that is going.

Robert Garza said we can add that to the City Manager's Discussion section for a future meeting.

Councillor Connor said over the past few weeks, I have had several inquiries regarding the service of meals at the Las Cruces Convention Center and there has been discussions of having Global Spectrum as the sole provider. I don't know if Council made that decision or if that was something that was included in their contract but I would like to have an update on it.

Pat Degman, Interim Finance Director said we would be happy to give you an update but Global Spectrum has a Chef on their staff and I think that falls under their direction.

Robert Garza, Assistant City Manager said I have also received inquiries regarding the catering at the Convention Center and I have scheduled a meeting with Global Spectrum for this coming up Wednesday to ask them questions regarding this issue.

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Councillor Silva left the meeting at 5:45 p.m.

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Councillor Sorg said regarding the Bicycle Facilities Plan, it states there are three employees working on that but one of them has left so we need to update that portion of it.

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## **XII. GENERAL DISCUSSION**

### **1. MAYOR**

Mayor Miyagishima said there is a Town Hall Meeting scheduled for October 27<sup>th</sup> regarding the South Main Street design and the impact to the large tree in front of White's Music Box. There is another meeting scheduled for October 28<sup>th</sup> at Mayfield High School regarding certain routes to schools as safe zones that will be patrolled by our Police Officers and webcams will be installed in these areas as well. We use to have airline services in the past and I would like to have the Airport Advisory Board take a look at what it would take to get some kind of a commercial airline service here. I don't know if they can look into it or if we need to create some kind of an Ad-Hoc Committee to do the research.

### **2. CITY COUNCIL**

Councillor Thomas said I would like to thank those of you who attended the Transportation Roundtable last week.

I was wondering if anyone was going to attend the Land Use Law Conference and give us a report on it?

Robert Garza, Assistant City Manager said myself and Pete Connelly will be attending that conference and we will be able to give you a report on it.

Councillor Thomas said there was an article in the Sun News regarding the Affordable Housing Project but there was a typo in the article. It stated it was going to be a \$60 million project but it is suppose to be \$6 million.

We started to review our economic policies and the Mayor is going to be part of a forum at the Space Institute regarding economic development. I wanted to know if there was an interest in learning more about all the different economic models from different cities?

Robert Garza said we can plan on having a Work Session later on this year regarding that issue.

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Councillor Sorg asked what is the Firework Ordinance for this City?

Councillor Connor said in 2004/2005 the City of Las Cruces implemented by ordinance the Safe and Sane Fireworks Use which restricted everything that goes up in the air and the big ground fireworks.

Councillor Sorg said I had a constituent ask me about it and he said he use to be able to have a little firework display outside of his house and he doesn't think he can do it anymore. Is it possible to have an exception to that on certain conditions and locations; kinda like we issue for Burning Permits?

Andrew Bencomo, Deputy Chief LCPD said anything over 10 feet in the air is not allowed and the only exception is for public displays, not private displays.

Councillor Sorg said this is Space Week in New Mexico and the Space Flight Conference Symposium is being held tomorrow at the Pan America Center.

Councillor Small said I spoke with a constituent who has children that attend public schools and they are concerned that it is very difficult for her children to walk or ride their bikes to school which is why I'm glad we are working on the Safe Routes to School project.

Mayor Miyagishima said I just want to mention that the Safe Routes to School is more for keeping kids safe from bullying.

Councillor Small said I spoke at the Dream Center after the Trek for Trash event took place and I would like to congratulate the Codes Officers for getting 650 people registered for this event.

This past Friday, we had a meeting at MacArthur Elementary School and we will be having another meeting this Friday at MacArthur Elementary School.

I would like to suggest that we have a short Work Session to discuss events like the Whole Enchilada Softball Tournament and the benefits they have for our City.

Councillor Pedroza said we have had some setbacks with the Community Gardens but overall, it is going very well.

I agree with the School Safe Zones and hopefully, they can be enacted in the middle and high schools.

We had a very good Joint Work Session with the County regarding the Crisis Triage Center and I would like to get an update on the progress of that center.

In Texas, the Attorney General is paying a lot more attention to foreclosures and I would like learn more about that situation in New Mexico.

Mayor Miyagishima said I don't think we are having that big of a problem with foreclosures.

Councillor Connor said we have an election coming up in the next few weeks and we usually get with our legislators prior to them going to Santa Fe. I recommend that we forgo the formal dinner and arrange for a meeting here in Chambers to just sit down and have a discussion with them.

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3. **CITY MANAGER**

A. Update Concerning Revenue Forecasts and Projections.

Dick Gebhart, Budget Director gave an overhead presentation and said this is a standard update for the 1<sup>st</sup> quarter of Fiscal Year 2011 and we are slightly ahead of where we thought we would be at this time which is good news.

Councillor Small asked are you forecasting lower expectations for subdivisions?

Dick Gebhart said no, I think there was about a 2% increase in the growth of subdivisions.

Robert Garza, Assistant City Manager said we are in the process of scheduling some kind of a retreat to discuss budget options.

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B. Update of JSS Study Regarding Police Department Operations.

Chief Richard Williams, LCPD gave an overhead presentation and said this study came together in May 2009 and there were 13 recommendations. Recommendation One was to reinforce values and mission of Organization, legal update shift training, improve defensive tactics, supervisory review of Use of Force incidents, accountability for Use of Force Violations and review of the Policy. Recommendation Two was for EIS (Early Intervention System) through Blue Team Software, information tracked and automatically routed to commanders and first-line supervisors through PSU, shift or section records are shared with PSU to ensure proper tracking and annual reporting regarding complaint disposition. Recommendation Three was for Objective Reasonableness Standards pursuant to Graham vs. Connor. Recommendation Four is that all Use of Force reports are reviewed by a Sergeant, Lieutenant and Deputy Chief in the officer's immediate chain of command and are subject to review by the Defensive Tactics Unit. The reports are tracked through the aforementioned Blue Team/EIS Software System and annual reports will be available to the public. Recommendation Five is for decentralization; Area Command will give commanders geographic ownership and attend public meetings. A Community Liaison Officer is tasked with community meetings, project coordination, crime prevention, Ident-A-Child and Neighborhood Watch Programs. Improve inter-agency cooperation and the new website will be developed to include communication with the community and online reporting is under study. Recommendation Six is policy deployment utilizing color code matrix, inquiry on tort claims against LCPD is conducted by PSU, policy enhancement and continuous development and meet with the New Mexico Municipal League regarding discussions on accreditation. Recommendation Seven is for the reorganization which will enhance command principles and accountability, commanders held responsible for area/functional goals in monthly COMPSTAT briefings, consistency of discipline will be enhanced by a matrix which will provide all with guidance in recommending discipline, first-line supervisors enabled to conduct direct supervision whenever possible and improve professional development of supervisors through formal training. Recommendation Eight is that late reports are identified and corrected in a timely manner by civilian staff and supervisors and improvements in report-writing procedures are implemented and reviews are conducted by Sergeants who ensure completeness and accuracy. Recommendation Nine is for continuous improvement in training as a priority of LCPD. Recommendation Ten is that training occurs on a continuous basis through mandatory training requirements at the Academy as well as through briefing and opportunity-based training. Recommendation Eleven is for continuous improvement in this area as a priority, refresher classes, briefing training, periodic supervisor review of reports and identifying remedial needs. Recommendation Twelve is that training needs assessment occurs on a constant basis in each section and could be formalized as part of command staff meetings for action by training personnel. Recommendation Thirteen is that briefing training on a variety of subjects occurs, documentation of such training is being improved and standardized department-wide.

C. Mobile Home Park Status Report.

Cheryl Rodriguez, Development Services Administrator gave an overhead presentation and said Mobile Home Parks are allowed in R-2, R-3 and R-4 zoning districts, minimum size is 5 acres, one dwelling unit per mobile home park space and a mobile home is defined as a moveable or portable housing structure, larger than 40-feet in length, 8-feet wide or 11-feet in height. Adoption of 2001 Zoning Code requires all non-conforming mobile home parks to come into compliance with all CLC Municipal Codes to extend possible compliance based on public health, fire, line safety issues and compliance is based on the approved Compliance Plan.

Councillor Connor asked is the Compliance Plan included in the Code?

Cheryl Rodriguez said yes.

Councillor Connor said so, it was approved but we didn't enforce it.

Cheryl Rodriguez said staff went forward to try to get compliance but we didn't enforce it.

Councillor Connor said I have a letter that was sent to the mobile home park that I brought up which is dated March 10, 2004 and it listed about ten items that would put them out of compliance regarding public safety but we never followed up on it. How are we going to follow up on it now?

Cheryl Rodriguez said that is the direction we are seeking from Council.

Councillor Connor said there are so many issues with this park and we need to follow up and help these parks to get into compliance because no one should live in these conditions just because they don't have a lot of money.

Councillor Small said I would suggest that we get up-to-date baseline data so we can have clarity on the situation as we move forward.

Robert Garza said we will put a matrix together and we will need to come up with new strategies and recommendations for follow-ups.

Mayor Miyagishima said I think we need to continue to allow staff to use their discretion and handle it as they see fit.

Councillor Thomas asked how many mobile home parks are there?

Cheryl Rodriguez said approximately, we have about 45 parks.

Councillor Thomas asked are most of them locally owned?

Cheryl Rodriguez said I don't know at this time.

Councillor Thomas said I would suggest that we have some kind of communication with Social Services and Affordable Housing groups regarding these mobile home park conditions.

D. Other Items - Information Only.

None given.

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**Meeting Adjourned at 7:15 p.m.**



\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

(SEAL)