

Item # 1

Regular Meeting
January 3, 2012



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

Regular Meeting

January 3, 2012

1:00 P.M.

Council Chambers, City Hall

MEMBERS PRESENT:

STAFF:

- 14 Mayor Ken Miyagishima
- 15 Councillor Miguel Silva, District 1
- 16 Councillor Greg Smith, District 2
- 17 Councillor Olga Pedroza, District 3
- 18 Councillor Nathan Small, District 4
- 19 Councillor Gill Sorg, District 5
- 20 Councillor Sharon Thomas, District 6

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

DRAFT

I. OPENING CEREMONIES

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

Molly Striker sang the National Anthem.

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.

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?

1 None given.

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5 **III. PUBLIC PARTICIPATION**

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7 Ms. Patterson, Member of the Public said I am the Vice Chair for the Health and Human Services
8 Advisory Board and each year we are responsible for reviewing funding applications for non-profit
9 organizations. The total dollar amount for distribution has always been \$300,000 and this year, we've
10 had 27 applications for funding that far exceeds the amount we have available. To my knowledge,
11 this fund has never been re-evaluated to take into consideration the cost of living or the economy.

12

13 Mayor Miyagishima asked are you giving us a report for the advisory board?

14

15 Ms. Patterson said yes.

16

17 Mayor Miyagishima said unfortunately, the rules state that matters concerning advisory boards need
18 to be submitted in writing.

19

20 Ms. Patterson said I know you will be discussing the budget tomorrow and I just wanted to say that
21 we need a lot more money than just the \$300,000.

22

23 David Lither, Member of the Public said there has been an airplane that has been circling around our
24 neighborhood over 700 times during the past two weeks and no one seems to know who is flying this
25 plane. I think we should be able to have a system of verifying and determining who or what is flying
26 over us at anytime.

27

28 Russ Warner, Member of the Public said I just want to wish everyone a happy new year and wouldn't
29 it be nice if everyone made a resolution to treat everyone with dignity and respect.

30

31 Frank Bryce, Member of the Public said I'd like to express my disappointment regarding the bus
32 contract issue. I hope you are taking a good look at it and all of your other contracts.

33

34 Mayor Miyagishima said staff is looking into that situation.

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

41

1 Councillor Silva Moved to Approve the Agenda and Councillor Thomas Seconded the motion.

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

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10 **V. CITY COUNCIL MINUTES**

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12 *(1) Regular Meeting of December 19, 2011

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16 **VI. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA**

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18 *(2) Resolution No. 12-104: A Resolution to Accept Grant Funding from the Department of
19 Homeland Security, Federal Emergency Management Agency on Behalf of the Las Cruces
20 Fire Department in the Amount of \$399,744.00 and to Adjust the FY 2012 Budget.

21

22 *(3) Resolution No. 12-105: A Resolution Authorizing the City of Las Cruces to Accept a
23 Contract Amendment for Fiscal Year 2011-2012 from the North Central New Mexico
24 Economic Development District Non-Metro Area Agency on Aging, Increasing the Total
25 Contract Amount by \$5,200, and to Adjust the City's Fiscal Year 2011-2012 Budget.

26

27 *(4) Resolution No. 11-12-355: A Resolution Authorizing Awards of a Contract to ASA
28 Architects, of Las Cruces, New Mexico, to Provide Architectural and Engineering Design
29 Services for Fire Station 7 (RFP 11-12-355) in the Amount of \$207,000.00; Plus New
30 Mexico Gross Receipt Tax of \$15,654.38; Plus Contingency/Reimbursables of \$20,000.00;
31 for a Total Authorization of \$242,654.38

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33 *(5) Resolution No. 11-12-422: A Resolution Authorizing the Use of the Existing Pricing
34 Agreement that Cooperative Educational Services (CES) has with G. Sandoval Construction,
35 Inc., of Las Cruces, New Mexico, for Foundation construction and Erection of the Pre-
36 Engineered Training Tower at the Las Cruces International Airport for the Contract Sum of
37 \$200,271.00; Plus an Allowance of \$15,145.49 for Gross Receipts Tax; and a Contingency
38 of \$20,000 ; for a Total Authorization of \$235,416.49.

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42 **VII. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION**

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2 (6) Resolution No. 12-106: A Resolution Repealing City Council Resolution No. 06-221 and
3 Authorizing Staff to Negotiate the Purchase of Mesa Development Center, Inc. Based on an
4 Appraisal to be Prepared by Robert Pender.
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6 Councillor Small Moved to Adopt Resolution No. 12-106 and Councillor Thomas Seconded the
7 motion.
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11 Jorge Garcia, Utilities Director said this is basically to redo the appraisal for the Mesa Grande Water
12 Company. There was a resolution brought forward sometime back that directed staff to negotiate
13 based upon an appraisal which was never done. This issue was discussed at the utility board level
14 and the recommendation was to have Mr. Pender do the appraisal of the Mesa Grande Water
15 Company. We believe that while the issues are being addressed by the Supreme Court, we could use
16 that time to proceed with the appraisal.

17
18 Councillor Pedroza said should the Supreme Court state that they are going to review this issue, are
19 we going ahead and following through with finalizing the purchase?
20

21 Jorge Garcia said at this point, we want to do the appraisal and negotiate but we won't file anything
22 until we find out how the case is decided.
23

24 Marcy Driggers, Assistant City Attorney said members of the Pettes family are here today and they
25 did appear at the Utility Board meeting and they are in support of a re-appraisal of their company.
26 We have had issues with the continuation of negotiations due to the litigation with Moongate Water;
27 however, the Court of Appeals ruled that Moongate Water Company did not have an exclusive
28 service area against the City of Las Cruces which means now the City can update its appraisal and
29 resume negotiations with Mesa Development Center. Moongate is now seeking the next higher level
30 of the Appeals Court which is the Supreme Court but as of noon today, there has not been any
31 response to their request. If the Supreme Court does decide to hear their appeal, we can still continue
32 with the negotiations because the ruling by the Court of Appeals remains the law until the New
33 Mexico State Supreme Court either affirms it or overturns it.
34

35 Councillor Sorg asked what is the procedure after the appraisal is done?
36

37 Marcy Driggers said once the appraisal is done, the Pettes family might not be satisfied with it so
38 they might want to have their own appraisal done. If they are satisfied with it then we might be able
39 to reach an agreement and that agreement would be brought forward to the Utility Board for their
40 review and approval.
41

42 Councillor Sorg asked would it come back before Council?

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2 Jorge Garcia said the Utility Board has authority of things included in the budget and this item is
3 included in the budget so the Board can make the final approval.

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5 Councillor Pedroza asked if a transfer is made, it wouldn't be challenged if the Supreme Court
6 decided to reverse the Court of Appeals decision?

7
8 Marcy Driggers said I can't say that Moongate won't challenge it but I don't think they would prevail
9 because the law at the time of the acquisition would control the fact that a subsequent appeal
10 overturned that law but we can get an opinion from the law firm that is representing the City in the
11 case with Moongate.

12
13 Councillor Silva asked what was the previous appraised amount?

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15 Marcy Driggers said in 2005 it was appraised at \$710,000 but the Pettes family didn't agree with that
16 appraisal so they had their own appraisal done which that appraisal was for \$2.5 million. Because
17 there was such a drastic difference, staff obtained the services of the Center of Public Utilities at
18 New Mexico State University, not to reappraise it because they aren't appraisers but to try to
19 reconcile the two appraisals.

20
21 Marilyn Hill, Vice President of Mesa Development said we are very concerned about our customers
22 and we want to make sure they are provided the best water service and that the facilities are up to
23 date. We want to move forward with this transaction and we are looking forward to getting the
24 appraisal from Mr. Pender.

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28 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 12-106 and it was
29 Unanimously Approved. 7-0

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33 (7) Resolution No. 12-107: A Resolution Approving the First Amended Joint Powers
34 Agreement to Establish the Animal Services Center of the Mesilla Valley and to Provide for
35 the Financing, Operation and Maintenance of the Center.

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37 Councillor Thomas Moved to Adopt Resolution No. 12-107 and Councillor Sorg Seconded the
38 motion.

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1 Marcy Driggers, Assistant City Attorney said in 1983 the City of Albuquerque deeded about 15 acres
2 on the East Mesa to the City of Las Cruces for the purpose of an animal shelter. After a few years
3 the City entered into an MOU with the County to have both entities operate the shelter facility. Then
4 we entered into a Joint Powers Agreement which is an agreement of two governmental entities to
5 create a separate legal entity that has the same power as the separate government entities. The
6 original Joint Powers Agreement states that the City as owner of the land would deed the property
7 to the Animal Service Center but as the title work was done it was discovered that the deed contains
8 a reversion clause which means if the property is not used for a specific purpose or the property is
9 transferred then it can revert back to the grantor of the property. We were unable to get Albuquerque
10 to waive the reversionary clause therefore it became necessary to revise the original Joint Powers
11 Agreement to state instead of deeding the property to Animal Service Center, we would lease it to
12 them. There were other issues so this agreement addresses three primary concerns which are the
13 reversionary clause, composition and quorum clarification of the board of directors, budget and
14 funding provision issues. This amended agreement has been recommended for approval by the
15 Animal Services Board and has been unanimously approved by the County Commission.

16

17 Frank Bryce, Member of the Public said I am the President of the Southern New Mexico Humane
18 Society and a number of us have an issues with the board members being employees that are voting
19 for their boss. I have three simple questions; is there a written acknowledgement from the City of
20 Albuquerque for the lease of this property, does the director have contractual rights, and what if the
21 City pulled out of this agreement, they would still have this lease for the building so what would you
22 do in that case?

23

24 Marcy Driggers said to answer your questions, there is a written letter from David Campbell who
25 is the Chief Administrator for the City of Albuquerque, stating they had no objection with the City
26 leasing the property to a non-profit entity that used it for an animal service center. If the City pulls
27 out of the JPA then the agreement would dissolve and the assets would revert back to whom they
28 belong to so the City would inherit the property back with the facilities on it and would have to come
29 up with some kind of resolution for the needs of the animals within the city limits. Regarding the
30 question about the contractual authorization by the director, this agreement contains the same
31 authorizations as the previous agreement. The Board can enter into contracts but it doesn't
32 specifically state that Dr. Beth can enter into contracts. Obviously there are day to day things like
33 ordering supplies which are mini contracts so she is entering into contracts all the time. I don't think
34 it is intended for the Board to micro-manage everything so there is a gray-area regarding what Dr.
35 Beth can contract, order or secure but she is considered the Executive Director and she has the
36 authority to act.

37

38 Frank Bryce said there is an issue with a recent contract of \$39,000 for security cameras at the shelter
39 and I asked the Chairman of the Board about it but he said he knew nothing of it.

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41 Robert Garza, City Manager said the City of Las Cruces is the fiscal agent for the Animal Service
42 Center so Dr. Beth has to go through the Purchasing Department for purchases.

1
2 Russ Warner, Member of the Public said these types of things have been going on ever since Dr.
3 Beth came here and I think it is about time that Mr. Bryce and the Southern New Mexico Humane
4 Society stop what appears to be a personal vendetta against her.

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8 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 12-107 and it was
9 Unanimously Approved. 7-0

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13 (8) Resolution No. 12-108: A Resolution Authorizing the City of Las Cruces Parks and
14 Recreation Department to Apply for the Watersmart: Water and Energy Efficiency Grant
15 through the U.S. Department of the Interior, Bureau of Reclamation in the Amount of
16 \$50,000.00 with a Fifty-Percent (50%) Cost Share Requirement (Cash or In-Kind) for a
17 Water Conservation Project.

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19 Councillor Small Moved to Adopt Resolution No. 12-108 and Councillor Sorg Seconded the motion.
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23 Augie Henry, Grants Administrator gave an overhead presentation and said the Parks and
24 Recreation Department wants to use about \$50,000 of this grant to establish warning tracks along
25 the inside perimeter of the ballfields in the Hadley Complex and to provide for the installation of
26 smart controllers for the efficient watering of the baseball fields. The total application is not to
27 exceed expenditures of \$500,000 over three years. There is a minimum 50% match in either cash or
28 in-kind contributions and the application deadline is January 19, 2012. This grant is also going to
29 be used by the Utilities Department for three specific areas which are for high efficiency retro-fit
30 toilets which is a \$50,000 program, the second one is for the Irrigation Controller Rebate Program
31 which is another \$50,000 and for automatic readers for reading meters which is \$200,000.

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33 Councillor Small said I strongly support this but I would like to know why we aren't going for the
34 full amount?

35
36 Augie Henry said we're looking at our budget and being able to meet the match amounts.
37

38 Leanne DeMouche, Water Conservation Coordinator said we have to consider the budget.
39

40 Mayor Miyagishima said I think that is regarding the next item.

41
42 Councillor Small said Leanne can respond when we get to the next item.

1 Mark Johnston, Parks and Recreation Director said this would make a great difference for our
2 ballfields.

3

4 Councillor Small said this is a one-time grant opportunity; correct?

5

6 Augie Henry said that is correct.

7

8 Councillor Small said then it would make sense for us to maximize this opportunity. What would
9 it take to do an additional one or two fields?

10

11 Mark Johnston said the \$50,000 is going to be a in-kind service match which means we are going
12 to use current staff levels to achieve our match and I don't know how much further I could stretch
13 our Parks Crew.

14

15 Councillor Small said so the concern is with the staffing levels and you don't think it would be wise
16 to go any further with the in-kind service.

17

18 Mark Johnston said that is a Council decision but I would feel more comfortable with our current
19 in-kind service and not having to push staff or the budget.

20

21 Councillor Small asked is the in-kind service going to be regular or overtime?

22

23 Mark Johnston said it would be regular time which is why we really need to balance our crews.

24

25 Councillor Small said so we won't be out any money if this is paid as regular time so would there
26 be a way that we can do a small increase in additional money?

27

28 Robert Garza, City Manager said you could amend this resolution to modify it "up to" a certain
29 amount limit.

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33 Councillor Small Moved to Amend Resolution No. 12-108 Section #1 under THAT to strike "in the
34 amount of \$50,000" and insert "up to the amount of \$100,000" and Councillor Sorg Seconded the
35 motion.

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39 Councillor Smith asked does that need to extend to the other mentions of \$50,000 throughout the
40 document?

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42 Mayor Miyagishima said that will probably be an inclusion in your motion and second; correct?

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2 Councillor Small said yes.

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6 Mayor Miyagishima called for the roll on the Motion to Amend Resolution No. 12-108 to strike "in
7 the amount of \$50,000" and insert "up to the amount of \$100,000" throughout the document and it
8 was Unanimously Approved. 7-0

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12 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 12-108 as Amended
13 and it was Unanimously Approved. 7-0

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17 (9) Resolution No. 12-109: A Resolution Authorizing the City of Las Cruces Utilities
18 Department to Apply for the Watersmart: Water and Energy Efficiency Grant through the
19 U.S. Department of the Interior, Bureau of Reclamation in the Amount of \$300,000.00 with
20 a Fifty-Percent (50%) Cost Share Requirement (Cash or In-Kind) for the Procurement of
21 Automatic Meter Readers and Rebate Programs for High-Efficiency Toilets and Smart
22 Irrigation Controller Technology.

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24 Councillor Sorg Moved to Adopt Resolution No. 12-109 and Councillor Small Seconded the motion.

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28 Augie Henry, Grant Administrator gave an overhead presentation and said this is the same grant
29 that was discussed for the previous item. The only difference is that the Utilities will be functioning
30 for this portion of it for three specific areas which are for high efficiency retro-fit toilets, the
31 irrigation controller rebate program and for automatic readers for reading meters.

32

33 Councillor Sorg said it states that there is a maximum of \$500,000, is that the amount that the City
34 spends or the amount of the total grant including the in-kind.

35

36 Augie Henry said that is the total amount. We can't be reimbursed for more than \$500,000 and our
37 match is separate from that amount.

38

39 Councillor Sorg said so, if we got the \$500,000 then we could be talking about a project that cost
40 \$1 million; is that correct?

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42 Augie Henry said no, we would be talking about a total amount of \$750,000 because it is a 50%
43 match. If we got \$500,000 from the Feds then we'd have to match \$250,000 as a minimum.

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Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 12-109 and it was Unanimously Approved. 7-0

(10) Resolution No. 12-110: A Resolution Authorizing the City of Las Cruces to Accept Section 5307 Formula Funding from the Federal Transit Administration in the Amount of \$394,000.00 with a Match Requirement of \$98,500.00 to be Used for the Intermodal Transit Center and to Adjust the FY 2012 Budget.

Councillor Small Moved to Adopt Resolution No. 12-110 and Councillor Sorg Seconded the motion.

DRAFT

Mike Bartholomew, Transit Director gave an overhead presentation and said on March 21, 2011, Council approved applying for this third planned funding component for the Intermodal Center. This grant uses non-competitive funds already apportioned to the City in the amount of \$394,000 and requires a local match of \$98,500, for a total of \$492,500. The match will come from the Facility Bond Fund and this is the final planned funding component for the Intermodal Center.

Councillor Small said hopefully this will lead to an increase in ridership of the City's transit and the intermodal types of transit.

Councillor Silva asked what is the timeline for this project?

Mike Bartholomew said once it gets started which we are hoping will be sometime in late February, it will be about a ten month project.

Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 12-110 and it was Unanimously Approved. 7-0

(11) Resolution No. 12-111: A Resolution Authorizing the City of Las Cruces to Accept Section 5307 Formula Funding from the Federal Transit Administration in the Amount of \$1,292,087.00 with a Match Requirement of \$1,286,807.00 for Transit Operational Costs and to Adjust the FY 2012 Budget.

1 Councillor Thomas Moved to Adopt Resolution No. 12-111 and Councillor Silva Seconded the
2 motion.

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6 Mike Bartholomew, Transit Director gave an overhead presentation and said this is a routine annual
7 obligation of Section 5307 Formula Funds that the City relies on for about 31% of Transit
8 operations. There is a match requirement of \$1,286,807 which there are sufficient eligible local funds
9 for the match amount.

10
11 Councillor Smith asked what are we doing to increase ridership and reduce the expenses of our bus
12 system?

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14 Mike Bartholomew said we are trying to add amenities to encourage ridership but there isn't any bus
15 system that is self sustaining.

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17 DRAFT
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19 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 12-111 and it was
20 Unanimously Approved. 7-0

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24 **VIII. BOARD APPOINTMENTS**

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27 Mayor Miyagishima said Councillor Smith is appointing Doug Boberg (District 2) to the Health and
28 Human Services Advisory Board.

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32 Mayor Miyagishima appointed Councillor Thomas to the Regional Leadership Committee for the
33 HUD Grant.

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37 Councillor Small Moved to Approve the Mayor's board appointment of Councillor Thomas to the
38 Regional Leadership Committee for the HUD Grant and Councillor Sorg Seconded the motion.

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1 Mayor Miyagishima called for the roll on the Motion to Approve the Mayor’s board appointment
2 Councillor Thomas to the Regional Leadership Committee for the HUD Grant and it was
3 Unanimously Approved. 7-0

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7 **IX. REVIEW OF PROPOSED ORDINANCE(S)**

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9 (12) Council Bill No. 12-021; Ordinance No. 2643: An Ordinance Amending Las Cruces
10 Municipal Code, Section 24-61, to Modify the Structure of the Selection Advisory
11 Committee to Reflect Organizational Changes Within the City of Las Cruces.

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13 Mayor Miyagishima and Council agreed to bring this item back.

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17 **X. GENERAL DISCUSSION**

DRAFT

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19 1. Mayor

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21 Mayor Miyagishima said I want to remind everyone about our work shop tomorrow at 9 o’clock.

22

23 I want to mention that there is a strong possibility that we might be able to rent out the City Office
24 Center to a school.

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28 2. City Council

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30 Councillor Silva said I’d like to introduce Mr. Dave Madison, he brought forth an idea regarding cell
31 phone driving that I think is worthy of addressing.

32

33 Dave Madison, Member of the Public said I am a retired Police Officer and there was a study done
34 by Virginia’s Transportation Department that concluded that 40% of the fatality accidents were
35 caused by people using cell phones. I came up with the idea that when an Officer stops someone and
36 gives them a ticket for using their cell phone that they also give that person a bluetooth and you
37 could add the cost of it to the ticket. Another idea would be that you change the offense to a
38 misdemeanor and confiscate their cell phone until they can provide proof that they have a bluetooth
39 to the court.

40

41 Councillor Silva said I know that El Paso does confiscate your cell phone if they catch you using it.

42

43 The Centennial Parade is this weekend from 10 a.m. to 1:00 p.m. and we have more than 100

1 entrants in the parade. We are going to have Mr. Henry Melendrez who is 94 years old, in the parade
2 and his family were the founders of this City. They are also going to have a platica of the Melendrez
3 family on Sunday at 3:30 p.m. at 302 Mesquite Street.

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7 Councillor Smith said the parade actually starts at 11:00 a.m. on Saturday and in addition to that we
8 are also having several other events. There will be a re-creation of President Taft at the Farm and
9 Ranch Museum on Friday at 11:00 a.m. which will be followed by a Centennial lunch at noon. There
10 is also going to be an Art Ramble on January 6th here on Main Street. Also, following the parade on
11 Saturday there is the Centennial Farmers Market and that evening there is going to be a Centennial
12 Event at the Amador Hotel.

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16 Councillor Pedroza said January 15th is Martin Luther King Day and there is going to be a March by
17 the NAACP south of the roundabout at 2 o'clock and on January 16th there is going to be a breakfast
18 at 7:30 a.m. at the Farm and Ranch Museum.

19

20 I think the City should be proud of itself for being able to provide a temporary shelter during the
21 winter for the homeless people in Las Cruces.

22

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25 Councillor Small said some of the potholes in our streets are getting bigger so I'd like to know what
26 is the time-frame of getting them filled?

27

28 Robert Garza, City Manager said Lisa Murphy reported that over the past week or two we've had
29 trouble getting the hot mix asphalt for our patch crews so they have been using cold mix asphalt
30 material to fill the holes which doesn't stay in the holes very well. It is my understanding that the hot
31 mix is now available so they are starting to use it again and that fills in the holes a lot better.

32

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35 Councillor Sorg said there was an article in the Sun News stating that firearms are a popular holiday
36 purchase and that really disturbed me.

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40 Councillor Thomas said I think we need to get more advertising of the Centennial parade on our
41 website.

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43 Regarding the airplane that has been flying around town, is there any progress on that situation?

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Cheryl Rodriguez, Airport Manager said as of this morning, I revisited all of our resources and all we've been told is that it is being used for geographical surveying but we don't know who the company is that is providing that service.

Councillor Thomas said I just want to say that it was a pleasure to read the Council Action Forms now that all of the changes have been made and I'd like to thank staff for making those changes.

3. City Manager

Robert Garza, City Manager said I want to remind Council that the Budget Retreat is tomorrow from 9 a.m. to 4 p.m.

I have handed out a copy of our Legislative priorities book which includes four projects of which two are policy issues and two are capital improvement projects and we will be meeting on Thursday at 7:30 a.m. with our area Legislators.

DRAFT

Meeting Adjourned at 3:34 p.m.