



City Council  
of the  
City of Las Cruces

Special Meeting

June 11, 2012

3:56 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 **Absent**
- 19 Councillor Gill Sorg, District 5
- 20 Councillor Sharon Thomas, District 6 **Absent**

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

**I. 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.*

28 Mayor Miyagishima asked if anyone had any conflicts with anything on the agenda?  
 29  
 30 None given.

**II. RESOLUTION FOR DISCUSSION**

**BEFORE CONSIDERATION OF THE FOLLOWING RESOLUTION NO. 12-205;  
 A PUBLIC HEARING MUST BE HELD:**

39 Mayor Miyagishima said the Public Hearing for Resolution No. 12-205 is now open. Is there anyone  
 40 who wishes on behalf of this Public Hearing?

42 Jimmy Nevarez, Member of the Public said I am with Planet Fireworks and we want to support the  
 43 City anytime we have extreme drought conditions but currently we only have moderate drought

1 conditions and in order to do a proclamation you have to go by the current drought indices which  
2 have to be either severe or extreme drought and not consider the fire dangers. This is a legal issue  
3 and we plan our year by the definitions that have been set by our State Code.

4

5 Gary Tindell, Member of the Public passed out a handout and said I am with Discount Fireworks and  
6 there was a news article that quoted the Fire Chief as stating that we are currently in moderate  
7 drought conditions and then four days later I get a notice of a meeting to discuss restricting the use  
8 of fireworks. I thought it is was odd that in four days the conditions had changed so much from  
9 moderate conditions. We have always gone by the Palmer Index and there are issues to the north of  
10 us but our town is currently in moderate conditions. I would ask that you look at the graph that I have  
11 handed out and make a decision on the information that is in front of you.

12

13 Mayor Miyagishima said we may be currently in a moderate drought but what if ten days from now  
14 it moves to severe drought conditions; the State requires that this be done twenty days in advance  
15 so if it rains enough within the next few days then the Council has the ability to rescind the  
16 resolution but we can't do it in reverse.

17

18 Jimmy Nevarez said my problem is that this would set a precedence for other areas. This area has  
19 always used the Palmer Index and now you are changing it on us.

20

21 Mayor Miyagishima said to me this is a common sense measure and it's not like we are banning all  
22 fireworks. We are asking that fireworks are done in a clear area and that people follow common  
23 sense measures. This would just add a little bit of protection.

24

25 Jimmy Nevarez said you can't use forest data, you have to use the drought indices which are  
26 provided by the Palmer Index. I do agree with the proclamation but my problem is with the legal side  
27 of it. I don't believe this is legal or valid because it isn't using the drought indices.

28

29 Mayor Miyagishima said we are just trying to make sure our community is safe.

30

31 Councillor Silva said we aren't banning fireworks, we are just making sure they are used in safe  
32 areas which I think is an appropriate action.

33

34 Mayor Miyagishima closed the Public Hearing for Resolution No. 12-205.

35

36

37 **Resolution No. 12-205:** A Resolution Authorizing the Issuance of a Proclamation  
38 Declaring Extreme or Severe Drought Conditions Within the City Limits and Imposing  
39 Restrictions on the Use of Fireworks Within the City Limits.

40

41 Councillor Sorg Moved to Adopt Resolution No. 12-205 and Councillor Smith Seconded the motion.

1

2

3

4 Ted Sweetser, Fire Marshal gave an overhead presentation and said this is asking for additional  
5 restrictions on fireworks for this year. We need to make this decision by State Statute no less than  
6 twenty days prior which is why we are here today. This proclamation would be in effect for thirty  
7 days and if needed we can add succeeding proclamations. If conditions do change then we can  
8 always go back and modify or rescind the proclamation. The findings of the City Council shall be  
9 based on the current drought indices published by the National Weather Service and any other  
10 relevant information supplied by the United States Forestry Division. We have provided Council  
11 with three different maps which we have been watching and they have steadily declined since the  
12 rains in May. The New Mexico Forestry has imposed fire restrictions including fireworks in Dona  
13 Ana County due to the drought conditions. El Paso County has prohibited the sale, use and  
14 possession of any and all fireworks or pyrotechnics within El Paso County for the next sixty hours  
15 with a possible extension to the 4<sup>th</sup> of July through the Governor. Mesilla and Dona Ana County will  
16 be proposing firework restrictions to their governing bodies this week. We currently have a lot of  
17 dead and dry vegetation and the National Weather Service has predicted that our temperatures will  
18 continue to be above normal with increased winds and poor chances for precipitation which has a  
19 significant threat to the health and safety of the Las Cruces residents. We are asking that there be a  
20 limit on the use of permissible fireworks to those areas in the municipal boundaries that are paved,  
21 barren, or have a readily accessible source of water and that there be a ban on the use of all fireworks  
22 within the areas that are covered wholly or in part by timber, brush or native grass. These restrictions  
23 will not restrict the permitted public displays or restrict the sale of fireworks that are currently  
24 permitted by vendors.

25

26 Councillor Silva said El Paso is restricting the sale of fireworks but our resolution does not restrict  
27 the sale of fireworks. We are just limiting the use of fireworks to areas that are paved, barren or have  
28 a readily available water source. We are just encouraging the responsible use of fireworks within our  
29 community.

30

31 Councillor Smith said I just want to make sure that we are doing this on a legal basis.

32

33 Mayor Miyagishima said all resolutions are gone through by our Legal Department prior to them  
34 coming before us to make sure they are legal.

35

36 Harry (Pete) Connelly, City Attorney said my opinion is that the first part states "the City Council  
37 is to always use the Palmer Index" and the second portion states "or any other relevant information  
38 provided by the Forest Service" so the information provided by the Forest Service states the Palmer  
39 Index is at seven and the next index shows the extreme conditions. That is the information that you  
40 can use which is "any other relevant information provided by the Forest Service" to enact this  
41 resolution which would then kick-in the proclamation.

1

2 Councillor Sorg said I have survived years of drought conditions and I had to make a lot of sacrifices  
3 so I see this as just something we must do to survive this drought.

4

5 Councillor Silva asked do the vendors feel that this will reduce their sales?

6

7 Jimmy Nevarez said usually there is a misrepresentation by the media and tomorrow's paper will  
8 read "Las Cruces bans fireworks" so that is what we are trying to avoid. This would set a precedence  
9 which makes it harder to sell in other areas. This would probably affect about 20% to 30% of our  
10 sales because the general public doesn't read beyond the newspaper headlines.

11

12 Gary Tindell said when you use the word "ban" then you're not asking them to use a reasonable  
13 approach so we are just fighting bad publicity.

14

15 Mayor Miyagishima said our wording doesn't include the word "ban."

16

17 Ron Camuñez, Member of the Public said I am for fireworks just like anybody else but when we are  
18 in this type of situation there comes a point when the government does need to intervene. I support  
19 Council this time and I don't see anything wrong with doing this proclamation.

20

21

-----

22

23 Mayor Miyagishima called for the roll on the Motion to Adopt Resolution No. 12-205 and it was  
24 Approved. 5-0 Councillor Small and Councillor Thomas were Absent.

25

26

-----

27

28 **Meeting Adjourned at 4:36 p.m.**