

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 12 Ordinance/Resolution# 13-067

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of November 5, 2012
(Adoption Date)

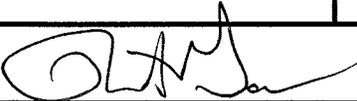
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING THE TRANSFER OF OWNERSHIP OF STATE LIQUOR LICENSE NO. 2779 TO M5 LLC D/B/A M5 MARTINI BAR, TO BE LOCATED AT 901 AVENIDA DE MESILLA, LAS CRUCES, NEW MEXICO.

PURPOSE(S) OF ACTION:

To approve or disapprove the transfer of a State Liquor License.

COUNCIL DISTRICT: 4		
Drafter/Staff Contact: Monica Campbell	Department/Section: Legal/City Attorney	Phone: 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for the transfer of ownership of a State liquor license must be accompanied by a resolution of the City Council approving of and consenting to the transfer after a public hearing.

M5 LLC d/b/a M5 Martini Bar applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico ("Alcohol and Gaming") for the transfer of ownership of State Liquor License No. 2779. The proposed location for the license is 901 Avenida de Mesilla, Las Cruces, New Mexico. Alcohol and Gaming granted preliminary approval on September 27, 2012.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the preliminary approval letter from Alcohol and Gaming. A public hearing to review this issue is scheduled during the regular City Council meeting to be held on Monday, November 5, 2012, beginning at 1:00 p.m. in the City Council Chambers, City Hall, 700 North Main Street, Las Cruces, New Mexico. Notice of this public hearing was published in the *Las Cruces Bulletin* on October 12 and 19, 2012, and in the *Las Cruces Sun-News* on October 14 and 21, 2012.

Council may approve or disapprove the transfer of the license. However, Council's disapproval must be based on substantial evidence that the transfer of the license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.

Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of Alcohol and Gaming may give final approval of the license.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A". Alcohol and Gaming's letter and the application.
3. Attachment "1". Notice of Intent to Adopt published in the *Las Cruces Bulletin*.
4. Attachment "2". Notice of Intent to Adopt published in the *Las Cruces Sun-News*.
5. Attachment "3". Traffic Impact Report from the Traffic Engineering Section.
6. Attachment "4". Liquor License Impact Report (zoning) from Development Services.
7. Attachment "5". Business Registration Report from Development Services.
8. Attachment "6". Criminal Activity Report from the Las Cruces Police Department.
9. Attachment "7". Fire and Safety Compliance Report from the Las Cruces Fire Department.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____.
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>1000-10180010-520002</u> in the amount of <u>\$300.00</u> for <u>FY13</u> .
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve of and consent to the transfer of ownership of State Liquor License No. 2779 and Alcohol and Gaming will continue with the application process.
2. Vote "No"; this must be based on substantial evidence that the transfer of the license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.
3. Vote to "Amend"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.
4. Vote to "Table"; this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A.

RESOLUTION NO. 13-067

A RESOLUTION APPROVING THE TRANSFER OF OWNERSHIP OF STATE LIQUOR LICENSE NO. 2779 TO M5 LLC D/B/A M5 MARTINI BAR, TO BE LOCATED AT 901 AVENIDA DE MESILLA, LAS CRUCES, NEW MEXICO.

The City Council is informed that:

WHEREAS, M5 LLC d/b/a M5 Martini Bar, to be located at 901 Avenida de Mesilla, Las Cruces, New Mexico, applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico (“Alcohol and Gaming”) for the transfer of ownership of State Liquor License No. 2779; and

WHEREAS, on September 27, 2012, Alcohol and Gaming granted preliminary approval for the transfer of the license; and

WHEREAS, pursuant to law, the application for such transfer of a liquor license must be accompanied by a resolution of the City Council approving of and consenting to the transfer after a public hearing upon reasonable notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable notice. The City Council has considered the transfer of the liquor license and it has determined that the approval of said license is not detrimental to the public health, safety or welfare of the City of Las Cruces.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the transfer of ownership of State Liquor License No. 2779 to M5 LLC d/b/a M5 Martini Bar, to be located at 901 Avenida de Mesilla, Las Cruces, New Mexico, as evidenced by Alcohol and Gaming’s letter and the application attached hereto as Exhibit “A”, is hereby approved.

(II)

THAT a copy of this resolution shall be conveyed to the Director of the Alcohol and Gaming Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504-5101.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED on this 5th day of November 2012.

APPROVED:

ATTEST:

Mayor

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Smith: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:

City Attorney

269

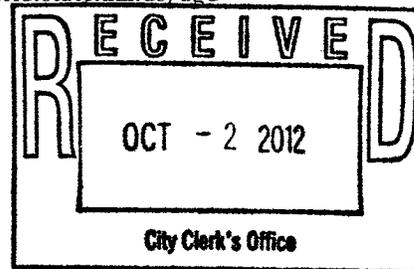
New Mexico Regulation and Licensing Department
ALCOHOL AND GAMING DIVISION

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87505
PO Box 25101, Santa Fe, NM 87504-5101
(505) 476-4875 ▪ Fax (505) 476-4595 ▪ www.rld.state.nm.us/agd

September 27, 2012

Certified Mail No.: 7009 2250 0000 9393 1998

City of Las Cruces
Esther Martinez, City Clerk
P.O. Box 20000
Las Cruces, NM 88004-0000



Re: License / Appl. No.: **License No. 2779 / Appl. No. A-798810**
Applicant Name: **M5 LLC**
Doing Business As: **M5 Martini Bar**
Proposed Location: **901 Avenida De Mesilla**
Las Cruces, New Mexico 88005

ATTENTION: Department or person responsible for conducting or preparing the public hearing for liquor license transfers or issuance of new liquor licenses.

Greetings:

The Director of the Alcohol and Gaming Division has reviewed the referenced application and granted Preliminary Approval; it is being forwarded to you in accordance with Section 60-6B-4 NMSA of the Liquor Control Act.

Within forty-five (45) days after receipt of a Notice from the Alcohol and Gaming Division, the governing body **shall** hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer. Notice of the Public Hearing required by the Liquor Control Act **shall** be given by the governing body by publishing a notice of the date, time, and place of the hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the territorial limits of the governing body, **which requires that two weeks of publication must be satisfied before a hearing can be conducted.** The notice shall include: (A) Name and address of the Applicant/Licensee; (B) The action proposed to be taken by the Alcohol and Gaming Division; and (C) The location of the licensed premises. The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. A record **shall** be made of the hearing.

THE APPLICANT IS SEEKING TRANSFER OF OWNERSHIP OF LIQUOR LICENSE NO. 2779 FOR WITH ON PREMISE CONSUMPTION ONLY.

The governing body may disapprove the issuance or transfer of the license if:



Susana Martinez
GOVERNOR

J. Dee Dennis, Jr.
SUPERINTENDENT

Mary Kay Root
DEPUTY
SUPERINTENDENT

James C. McKay
CHIEF GENERAL
COUNSEL

Mary Kay Root
ACTING DIRECTOR

Alcohol and Gaming Division
(505) 476-4875

Boards and Commissions Division
(505) 476-4600

Construction Industries Division
(505) 476-4700

Financial Institutions Division
(505) 476-4885

Manufactured Housing Division
(505) 476-4770

Securities Division
(505) 476-4580

Administrative Services Division
(505) 476-4800

- 1) The proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico. (The governing body may disapprove if the proposed location is within 300 feet of a church or school unless the license has been located at this location prior to 1981 or unless the Applicant/Licensee has obtained a waiver from the Local Option District governing body for the proposed licensed premises).
- 2) The issuance or transfer would be in violation of a zoning or other ordinance of the governing body. The governing body may disapprove if the proposed location is not properly zoned. Because this office is in receipt of a Zoning Statement from the governing body, this is not a basis for disapproval. Attached is a copy of a Zoning Statement from the local governing body.
- 3) The issuance would be detrimental to the public health, safety, or morals of the residents of the Local Option District. Disapproval by the governing body on public health, safety, or morals must be based on and supported by substantial evidence pertaining to the specific prospective transferee or location and a copy of the record must be submitted to the Alcohol and Gaming Division.

Within thirty (30) days after the Public Hearing, the governing body **shall** notify the Alcohol and Gaming Division as to whether the local governing body has approved or disapproved the issuance of transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notice of publication(s). If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may give Final Approval to the issuance or transfer of the license.

If the governing body disapproves the issuance or transfer of the license, it shall notify the Alcohol and Gaming Division within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to the Alcohol and Gaming Division with the notice of disapproval (Page 1 of the Application page noting disapproval).

Sincerely,



Rose L. Garcia
 Hearing Officer
 NM Regulation & Licensing Dept.
 Alcohol & Gaming Division
 Phone: 505-476-4552
 Fax: 505-476-4595
 Email: rosel.garcia@state.nm.us

Enclosures:

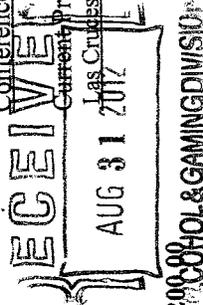
1. Original Page 1 of the Application (must be signed and returned).
2. Copy of Page 2 of the Application.

Record Owner of License Receivership Estate of Present
Present of Las Cruces, LLC

STATE OF NEW MEXICO
REGULATION AND LICENSING
DEPARTMENT
ALCOHOL AND GAMING DIVISION

P.O. BOX 25101 Santa Fe,
New Mexico 87504-5101
505-476-4570

Current D/B/A Name Day's Inn & Suites, Mesilla Valley
Conference Center
Current Premise Address 901 Avenida De Mesilla
Las Cruces, New Mexico



State Liquor License # 2779
Application Number A-665300
Local Option (AGD use) None

ENTERED
ADD

R# 1404358

Liquor License Application
Non Refundable Application Fee- \$200.00

Application is for: (check one) Change of Stock Transfer of Ownership and Location Change of Officers/Directors Other Transfer of Ownership of Existing License Issue New License

Applicant is: Individual Corporation Partnership (General or Limited) Limited Liability Company

NAME OF APPLICANT (company or individual): M5 LLC ADDRESS (INCLUDING CITY, STATE, ZIP) 3920 W. Picacho Street, Fairacres, New Mexico 88033 TELEPHONE NUMBER 575-644-0778
~~M5 LLC~~ M5 LLC 3920 W. Picacho Street, Fairacres, New Mexico 88033

Notice also to: Linda L. Aikin, Esq., 530B Harkle Road, Santa Fe, NM 87505 PH: 505-982-6224 FAX: 505-992-8378
DBA Name to be used: M5 Martini Bar Phone Number for licensed premises 575-644-0778
Physical Address Where License is to be used: 901 Avenida De Mesilla, Las Cruces, New Mexico 88005
(Street No./Highway No./State Road/City/County)

Mailing Address: po box 161, Fairacres, New Mexico 88033
(Street No./P.O. Box/City/State/Zip)

Are alcoholic beverages currently being dispensed at the proposed location? No If yes, give license number License No. 2779 is in suspension

Marci Dickerson as (title) President being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents thereof and that all statements therein contained are true. Applicant(s) agree(s) that statements or representations herein are found to be false, the Director may refuse to issue said license or may cause such license to be revoked at any time.

Signature of Applicant(s) [Signature] Date 7/25/2012

Notary Public Use Only

SUBSCRIBED AND SWORN TO before me this 25th day of July, 2012 by Marci Dickerson (Name of Person(s) Signing Above)
NOTARY PUBLIC: [Signature] My Commission Expires: 07.21.2015

Local Governing Body of: [Blank] (CITY OR COUNTY) Hearing Held on: [Blank]
PLEASE CHECK ONE: APPROVED DISAPPROVED CITY/COUNTY OFFICIAL (Signature and Title): [Blank]

AGD Use Only

APPROVED DISAPPROVED DIRECTOR APPROVAL DATE [Blank]



PREMISES LOCATION, OWNERSHIP, AND DESCRIPTION
 SS-60-6B-10

1. The land and building which is proposed to be the licensed premises is (check one):

Owned by Applicant Leased by Applicant (attach copy of deed or lease) Other (provide details)

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s) Southwest Lodge Inn of NM

B. Date and term of lease 5-years 10/1/2012

3. Premises location is zoned (example C-1) C-3

If the premises is zoned, attach zoning statement from local government giving location address and type of zone, stating whether alcoholic beverages are allowed at proposed location. If there is no zoning, attach confirmation from local government indicating there is no zoning.

4. Distance from nearest church *(Property line of church to licensed premises—shortest distance).

Miles/feet 1200 FT Name of church Heart of World Church Address/location of church 1605 South Valley Drive LC NMO

5. Distance from nearest school *(Property line of school to licensed premises—shortest distance).

Miles/feet 1000 FT Name of school SAN ANDRES School Address/location of school 2355 Ave De Mesilla Mesilla

6. Distance from military installation *(Property line of military installation to licensed premises—shortest distance.)

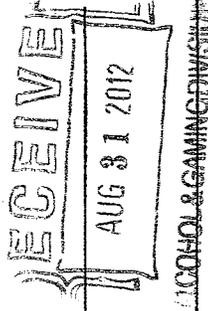
Miles 30 Name of Military Installation, circle one: White Sands Missile Range (Las Cruces), Holloman Air Force Base (Alamogordo), Cannon Air Force Base (Clovis).

7. Attach, on a separate sheet, the detailed floor plan for each level (floor) where alcoholic beverages will be sold or consumed. Show exterior walls, doors, and interior walls. This will be the licensed premises. The floor plan should be no larger than 8 1/2 x 11 inches, and must include the total square footage of premises.

*If the distance is beyond 300 feet, but less than 400 feet, a registered engineer or licensed surveyor must complete a Survey Certificate showing the exact distance.

8. Type of Operation:

Lounge Restaurant Package Grocery Racetrack Hotel Other (specify)





**AD FORM
LAS CRUCES BULLETIN
LEGAL CLASSIFIED**

City contact: Monica Campbell; 541-2014 / 541-2128

Proof of publication/bill to: City Clerk, PO Box 20000, Las Cruces, NM 88004

Dates to Publish: October 12, 19, 2012

Copy to publish:

NOTICE OF INTENT TO ADOPT

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Transfer of Ownership of Liquor License No. 2779 to M5 LLC d/b/a M5 Martini Bar, to be located at 901 Avenida de Mesilla, Las Cruces, New Mexico.

The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council scheduled for Monday, November 5, 2012, at 1:00 p.m. in the City Council Chambers, 700 North Main Street, City Hall. If passed, the State of New Mexico Regulation & Licensing Department may approve the transfer.

Witness my hand and seal of the City of Las Cruces on this the 5th day of October 2012.


Esther Martinez-Carrillo, CMC, City Clerk



AD FORM
LAS CRUCES SUN NEWS
LEGAL CLASSIFIED

City contact: Monica Campbell; 541-2014 / 541-2128

Account No. 26484 (Bill to City Clerk, PO Box 20000, Las Cruces, NM 88004)

Dates to Publish: October 14 and 21, 2012

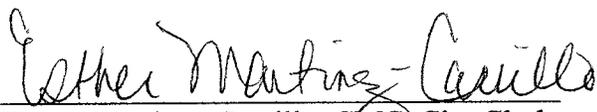
Copy to publish:

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The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council scheduled for Monday, November 5, 2012, at 1:00 p.m. in the City Council Chambers, 700 North Main Street, City Hall. If passed, the State of New Mexico Regulation & Licensing Department may approve the transfer.

Witness my hand and seal of the City of Las Cruces on this the 5th day of October 2012.



Esther Martinez-Carrillo, CMC, City Clerk



INTER-DEPARTMENTAL MEMORANDUM

TO: Harry "Pete" Connelly, City Attorney

FROM: Willie Roman, PE, Traffic Engineer, Transportation Dept. *WR*

DATE: October 18, 2012

SUBJECT: Traffic Investigation Report – Liquor License Transfer
901 Avenida de Mesilla

As requested, Traffic Engineering has completed a traffic investigation for M5 Martini Bar located at 901 Avenida de Mesilla, Las Cruces, New Mexico. The following information is submitted for review:

- The subject property is located at the southwest corner of the intersection of Avenida de Mesilla and Hickory Drive. The traffic volume on Avenida de Mesilla at this location is approximately 14,200 vehicles per day and the traffic volume on Hickory Drive at this location is approximately 5,100 vehicles per day.
- Avenida de Mesilla is classified as a principal arterial roadway by the MPO. Hickory Drive is not classified by the MPO. Both roadways primarily serve commercial properties.
- The subject property is accessed from Hickory Drive. The northern access driveway does not meet the minimum distance for driveway placement as specified in the City of Las Cruces Traffic Standards Section 32-404.2(g) and is a concern for traffic operations. No other potential sight distance or operational problems currently exist.
- The speed limit on Avenida de Mesilla is 40 mph. There currently is not a posted speed limit on Hickory Drive.

Although the location of the north driveway is a concern, the approval of a Liquor License Transfer at this location does not appear to adversely impact traffic operations along these segments of roadway. Should any additional information be needed, please contact me.



City of Las Cruces

To: Harry "Pete" Connelly, City Attorney
From: Lorenzo Vigil, Senior Planning Tech *LV*
Re: Liquor License Impact Report, M5 Martini Bar
Date: October 9, 2012

M-12-224

Development Services staff has reviewed the request for a transfer of ownership of Liquor License No. 2779 for M5 LLC, d/b/a/ M5 Martini Bar at 901 Avenida De Mesilla. Because this license is a transfer of ownership request and no actual change in the operation/activities at this location will occur, staff recommends approval of the request.

Cc: Katherine Harrison Rogers *KHR*
Robert Kyle, Building and Development Services Administrator *RK*
Vincent Banegas, Community Development Deputy Director

BUSINESS REGISTRATION REPORT – M5 MARTINI BAR

From: Kyle Metzgar

Subject: RE: Liquor license report request - M5 Martini Bar

901 Avenida de Mesilla has a current business registration.

From: Monica Campbell

Sent: Friday, October 05, 2012 1:04 PM

To: Lorenzo Vigil; Sara Gonzales; Kyle Metzgar

Cc: Robert Kyle

Subject: Liquor license report request - M5 Martini Bar

Attached is Alcohol and Gaming's letter and application about the transfer of a state liquor license to the M5 Martini Bar to be located at 901 Avenida de Mesilla.

Please review and prepare reports for 1) zoning and 2) business registration.

The report is due to the City Attorney on or before **October 18, 2012** in order to meet required time limits and other deadlines required by law. This matter will be submitted for the November 5, 2012 City Council meeting.

Monica Campbell
Legal Dept. Management Analyst
City of Las Cruces
575-541-2014 / 575-541-2128
Fax 575-541-2017



LAS CRUCES POLICE DEPARTMENT MEMORANDUM

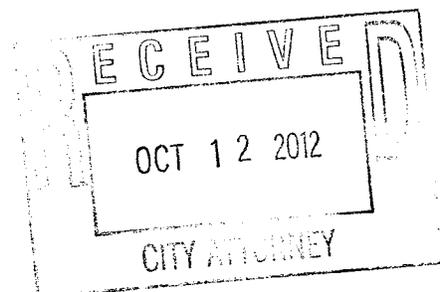


Date: October 9, 2012
To: Pete Connelly, City Attorney
From: Richard Williams, Police Chief *RSW*
Subject: M5 Martini Bar

I have reviewed all available statistical information obtained from the Las Cruces Police Department in reference to the attached liquor license application for M5 Martini Bar located at 901 Avenida De Mesilla, Las Cruces, NM 88005 .

No anomalies were found that would warrant denial of this license; therefore, I recommend the liquor license application for M5 Martini Bar be approved.

Richard Williams,
Chief of Police



FIRE SAFETY AND COMPLIANCE REPORT

From: Michael Danner
Subject: RE: Liquor license report request - M5 Martini Bar

This business meets compliance with the 2006 IFC requirements for a liquor license.

*Michael Danner
Fire Inspector
Las Cruces Fire Department
Station 1
201 E. Picacho Ave.
(575) 528-3473
(575) 528-4049 Direct
mdanner@las-cruces.org*

From: Monica Campbell
Sent: Friday, October 05, 2012 1:06 PM
To: Travis Brown; Ted Sweetser; Billy Chaires; Mary Helen Sarabia
Subject: Liquor license report request - M5 Martini Bar

Attached is Alcohol and Gaming's letter and application about the transfer of a state liquor license to the M5 Martini Bar to be located at 901 Avenida de Mesilla.

Please review and prepare a safety and compliance report.

The report is due to the City Attorney on or before **October 18, 2012** in order to meet required time limits and other deadlines required by law. This matter will be submitted for the November 5, 2012 City Council meeting.

Monica Campbell
Legal Dept. Management Analyst
City of Las Cruces
575-541-2014 / 575-541-2128
Fax 575-541-2017