City of Las Cruces®
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Council Action and Executive Summary

Item # 4 **Ordinance/Resolution#** 13-125

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of March 18, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING THE SECOND AMENDED BY-LAWS OF THE BOARD OF COMMISSIONERS FOR THE CITY OF LAS CRUCES UTILITIES.

PURPOSE(S) OF ACTION:

To approve amended By-Laws for the Utilities Board.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Marcia B. Driggers	**Department/Section:** Legal/City Attorney	**Phone:** 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Council Resolution No. 07-190 approved By-Laws for the Utilities Board. The By-Laws provided in Article VIII(B) that they could only be amended with Council approval. They were first amended by Council Resolution No. 08-187 to modify Article IV (Membership). Since then staff has become aware of other provisions that should be modified for the following reasons:

TITLE: To reflect that this is the Second Amended By-Laws.

ARTICLE III(A)(2): To delete the limitation for utility rates to be set only on a utility basis cost of service methodology, which process was followed for the water, wastewater and natural gas rate cases. The proposed change would allow utility rates to be set based on any industry accepted methodology as recommended by Utilities Department staff. It has become apparent that solid waste rates are not amenable to a utility basis cost of service rate setting methodology. The solid waste utility consists of collection vehicles, garbage cans, and employees, as opposed to the massive distribution and collection systems, and production and treatment facilities associated with the water, wastewater and gas utilities. The proposed change would give staff the flexibility to determine the best process to be followed in future rate cases.

ARTICLE III(A)(5): To allow the Utilities Board to seek, apply and accept small loans with the concurrence of the Finance Department. Existing Article III(A)(5) only allows the Board to seek and apply for small loans and reserves to the Council the authorization to accept those loans.

(Continue on additional sheets as required)

The word "small" is subject to interpretation so concerns about the Board creating an unacceptable level of debt should be resolved by having the Finance Department concur in the Board's small loan application and acceptance process.

ARTICLE III(A)(6): To eliminate the reference to the City's Water Committee which no longer exists. Council Resolution No. 09-095 amended the Certificate of Organization of the Las Cruces Special Water Users Association and replaced the Association's subcommittee, which was known as the Water Committee, with the Utilities Board so this amendment confirms what the Council has already approved.

ARTICLE III(A)(8): To make the word "budget" plural.

ARTICLE VI(C): To confirm that the appeals process from Board rate decisions would apply to any rate case or proceeding, and not to just rate cases following a utility basis cost of service methodology process.

ARTICLE VIII(B): To add new subsections (1) and (2) to keep track of the Council Resolutions that authorized amendments to the By-Laws.

The Utilities Board recommended Council approval of the proposed Second Amended By-Laws in Board Resolution No. 12-13-028 on February 14, 2013.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Second Amended By-Laws of the Board of Commissioners for the City of Las Cruces Utilities in legislative format.
3. Exhibit "B", Second Amended By-Laws of the Board of Commissioners for the City of Las Cruces Utilities in final form.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted? N/A			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____Fund.
Does this action create any revenue? N/A			
	Yes	☐	Funds will be deposited into this fund: _____in the amount of $_____for FY__.
	No	☐	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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Second Amended By-Laws as shown on Exhibit "A" in legislative format and on Exhibit "B" in final form.
2. Vote "No"; this will not approve the Second Amended By-Laws as shown on Exhibit "A" in legislative format and on Exhibit "B" in final form.
3. Vote to "Amend"; this could allow Council to propose modifications to the amendments shown on Exhibit "A" in legislative format and on Exhibit "B" in final form.
4. Vote to "Table"; this could allow Council to postpone consideration of approving the amended By-Laws as shown on Exhibit "A" in legislative format and Exhibit "B" in final form.

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

(Continue on additional sheets as required)

RESOLUTION NO. 13-125

A RESOLUTION APPROVING THE SECOND AMENDED BY-LAWS OF THE BOARD OF COMMISSIONERS FOR THE CITY OF LAS CRUCES UTILITIES.

The City Council is informed that:

WHEREAS, Council Resolution No. 07-190 approved By-Laws for the Utilities Board. The By-Laws provided in Article VIII(B) that they could only be amended with Council approval. They were first amended by Council Resolution No. 08-187 to modify Article IV (Membership). Since then staff has become aware of other By-Law provisions that should be modified for the reasons set forth below; and

WHEREAS, various provisions of the current Utilities Board By-Laws as identified below should be modified for the following reasons:

TITLE: To reflect that this is the Second Amended By-Laws.

ARTICLE III(A)(2): To delete the limitation for utility rates to be set only on a utility basis cost of service methodology, which process was followed for the water, wastewater and natural gas rate cases. The proposed change would allow utility rates to be set based on any industry accepted methodology as recommended by Utilities Department staff. It has become apparent that solid waste rates are not amenable to a utility basis cost of service rate setting methodology. The solid waste utility consists of collection vehicles, garbage cans, and employees, as opposed to the massive distribution and collection systems, and production and treatment facilities associated with the water, wastewater and gas utilities. The proposed change would give staff the flexibility to determine the best process to be followed in future rate cases.

ARTICLE III(A)(5): To allow the Utilities Board to seek, apply and accept small loans with the concurrence of the Finance Department. Existing Article III(A)(5) only

allows the Board to seek and apply for small loans and reserves to the Council the authorization to accept those loans. The word "small" is subject to interpretation so concerns about the Board creating an unacceptable level of debt should be resolved by having the Finance Department concur in the Board's small loan application and acceptance process.

ARTICLE III(A)(6): To eliminate the reference to the City's Water Committee which no longer exists. Council Resolution No. 09-095 amended the Certificate of Organization of the Las Cruces Special Water Users Association and replaced the Association's subcommittee, which was known as the Water Committee, with the Utilities Board so this amendment confirms what the Council has already approved.

ARTICLE III(A)(8): To make the word "budget" plural.

ARTICLE VI(C): To confirm that the appeals process from Board rate decisions would apply to any rate case or proceeding, and not to just rate cases following a utility basis cost of service methodology process.

ARTICLE VIII(B): To add new subsections (1) and (2) to keep track of the Council Resolutions that authorized amendments to the By-Laws; and

WHEREAS, the Utilities Board recommended Council approval of the proposed Second Amended By-Laws in Board Resolution No. 12-13-028 on February 14, 2013.

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

(I)

THAT the Second Amended By-Laws of the Board of Commissioners for the City of Las Cruces Utilities as shown in legislative format on Exhibit "A" and in final form on Exhibit "B" attached hereto is approved.

(II)

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

DONE AND APPROVED this _____ day of _____, 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Thomas: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

Asst. City Attorney

EXHIBIT A

SECOND AMENDED BY-LAWS OF THE BOARD OF COMMISSIONERS FOR THE CITY OF LAS CRUCES UTILITIES

ARTICLE I – NAME, AUTHORIZATION, AND ESTABLISHMENT

A. Name. The name of the board shall be the Board of Commissioners for the City of Las Cruces Utilities and shall hereafter be referred to as the "Utilities Board."

B. Authorization. The Utilities Board is collectively authorized by the following:

1. New Mexico State Statutes, specifically NMSA 1978, § 3-23-10 (2001) and § 3-48-3(A) (1965);

2. City of Las Cruces Ordinance No. 2222 adopted on August 1, 2005,which Ordinance approved a proposed City Charter amendment that would permit the City Council to delegate utility rate regulation to a municipal board of utility commissioners; and

3. The Home Rule Charter for the City of Las Cruces as revised in 2005, which revisions allow the City Council to delegate utility rate regulation to a municipal board of utility commissioners.

C. Establishment. The Utilities Board has been established in City of Las Cruces Ordinance No. 2342 adopted on December 4, 2006 as an operational board of the City of Las Cruces.

ARTICLE II – OBJECTIVES

A. General Objectives. The Utilities Board shall provide strategic policy direction to the City owned water, wastewater, gas and solid waste utility systems subject to the limitations set forth herein. Said utility systems shall hereafter be referred to collectively as the "Las Cruces Utilities."

B. Specific Objectives. The specific objectives of the Utilities Board shall be to accomplish the following:

1. Greater public access and participation in utility issues;

2. More independent oversight and accountability for utility policy decisions;

3. More time to focus on utility matters; and

4. Less political influence in business decision making.

ARTICLE III – AUTHORITY

A. Authority. The Utilities Board shall be authorized to provide strategic policy direction to the Las Cruces Utilities and shall be specifically authorized to do the following:

1. To develop long-range and strategic policy recommendations to the City Council of the City of Las Cruces for the Las Cruces Utilities;

2. To set City utility rates for the Las Cruces Utilities based on ~~a utility basis cost of service methodology~~ an industry-accepted methodology recommended by Las Cruces Utilities staff;

3. To set water and wastewater development impact fees in compliance with the City Development Impact Fee Ordinance codified as LCMC 1997, §§ 33-1 to 33-37 and as amended;

4. To seek, apply and accept grants that do not require a monetary match;

5. To seek, ~~and~~ apply and accept ~~for~~ small state loans and other non-bonded debt from such state agencies as the New Mexico Finance Authority within the limitations set forth in budgets approved by the City Council and with the concurrence of the City's Finance Department; ~~however, the Utilities Board is not authorized to accept such loans or debt;~~

6. To approve the acquisition of ground water and surface water rights ~~based upon the recommendation of the City's Water Committee or its successor committee~~;

7. To timely develop and recommend approval to the City Council of the City of Las Cruces of the annual budget for the Las Cruces Utilities;

8. To contract in the name of or on behalf of the City of Las Cruces or the Las Cruces Utilities within the limitations set forth in ~~the~~ budgets approved by the City Council; and

9. To approve operational agreements such as natural gas transportation service agreements with El Paso Natural Gas, if the agreements are recommended and approved by Las Cruces Utilities staff.

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B. Limitations on Authority. The Utilities Board shall have no authority to do the following, which responsibilities are specifically reserved to the City Council of the City of Las Cruces:

1. To create debt in the form of revenue bonds for the City of Las Cruces or for the Las Cruces Utilities;

~~2. To approve and accept small state loans and other non-bonded debt applied for by the Utilities Board;~~

2~~3~~. To obtain grants which require a monetary match for the City of Las Cruces or for the Las Cruces Utilities;

3~~4~~. To approve the final annual budget and all budget adjustments for the Las Cruces Utilities;

4~~5~~. To sell or otherwise dispose of assets owned by the City of Las Cruces for the benefit of the Las Cruces Utilities;

5~~6~~. To adopt resolutions, motions, or other policy statements in conflict with existing City resolutions or policies. However, the Utilities Board may make recommendations to the City Council that are potentially in conflict with existing City resolutions, ordinances, or policies;

6~~7~~. To initiate litigation in the name of the City of Las Cruces or in the name of the Las Cruces Utilities; and

7~~8~~. To approve the extension of City utility services to properties outside of the City limits.

ARTICLE IV – MEMBERSHIP

A. Initial Utilities Board. Initially the Utilities Board shall consist of the seven (7) members of the City Council. Effective July 1, 2007 the City Council shall appoint two individuals who are not City Council members to the Utilities Board to replace two of the City Council members. Effective July 1, 2008, the City Council shall appoint two individuals who are not City Council members to replace two of the five (5) remaining City Council members. Effective July 1, 2009 the City Council shall appoint one individual who is not a member of the City Council to replace one of the three (3) remaining City Council members.

B. Council Membership. After July 1, 2009 there shall always be two members of the City Council on the Utilities Board. The City Council members who remain on the Utilities Board after July 1, 2009 shall serve for the remainder of their then current term on the City Council. At the expiration of that term, the City Council may appoint each of the two City Council members to a four year term, or may appoint one or two other members of the City Council to a four year term on the Utilities Board. City Council members may serve unlimited four year terms on the Utilities Board as long as they remain City Councillors and subject to being reappointed by the City Council.

C. Number of Commissioners. The Utilities Board shall consist of seven (7) Commissioners who shall be appointed by the City Council to unlimited four year terms. Two of the Commissioners shall be members of the City Council and five

of the Commissioners shall be members of the public. Two of the public Commissioners shall be appointed effective July 1, 2007; two additional public Commissioners shall be appointed effective July 1, 2008; and one additional public Commissioner shall be appointed effective July 1, 2009.

D. Eligibility of Public Commissioners. To be eligible for appointment to the Utilities Board as a public member, said individuals shall meet and shall continue to meet the following criteria during their terms:

1. Be a registered voter and a customer of one or more of the Las Cruces Utilities for at least one year prior to appointment;

2. Not hold any elected or appointed public office or be a City employee; and

3. Not be a contractor or consultant or have a contractual relationship with the City for the benefit of the Las Cruces Utilities.

E. Qualifications of Public Members. To be qualified for appointment as public members of the Utilities Board, individuals shall have significant technical expertise in one or more of the following fields:

1. Banking/Finance;

2. Business;

3. Economics;

4. Engineering; and

5. Related utility management.

To the extent possible, the City Council shall appoint public members with diverse expertise.

F. Ex-Officio Members. The City Manager or designee and the City Utilities Director shall serve as ex-officio, non-voting members of the Utilities Board except when one of the Commissioners is unable to vote. If one Commissioner is unable to vote at a particular meeting or on a particular item, the City Manager or designee will become a voting member. The City Utilities Director shall serve as the secretary for the Utilities Board.

G. Compliance With Board Ordinance. The Utilities Board shall be an operational board of the City of Las Cruces, and the Commissioners of the Utilities Board shall comply with Division 1 of Ordinance Number 2113 known as the City Board Ordinance, except as modified in Ordinance Number 2342, which ordinance establishes the Utilities Board.

H. Representation. Each Commissioner of the Utilities Board shall represent all of the rate payers and customers of the Las Cruces Utilities without regard to City Council Districts.

I. Conflict of Interest. No commissioner of the Utilities Board shall vote on any issue in which he or she has a direct or indirect conflict of interest or the appearance of a conflict of interest other than as a rate payer and customer of Las Cruces Utilities' services.

ARTICLE V – MEETINGS

A. Compliance With Board Ordinance. The Utilities Board Ordinance shall comply with the provisions concerning meetings set forth in Division 1 of Ordinance No. 2113, known as the City Board Ordinance, except as modified herein.

B. Regular Meetings. The Utilities Board shall have at least one regular meeting a month. It shall annually establish the date, time, and location of each regular monthly meeting, and shall otherwise comply with the notice requirements of the New Mexico Open Meetings Act.

C. Special Meetings and Work Sessions. The Utilities Board may schedule special meetings or work sessions at the request of the Board Chair, or in his or her absence, by the Vice-Chair or by four (4) Commissioners.

ARTICLE VI – RATE AND FEE HEARINGS

A. Rate Hearings. The Utilities Board shall hold at least two public meetings to discuss any modifications in the rates charged for services provided by the Las Cruces Utilities.

B. Development Impact Fee Hearings. The Utilities Board shall comply with the requirements of the City Development Impact Fee Ordinance which ordinance requires the review and recommendations of the City's Capital Improvements Advisory Committee in order to extend or modify City water and wastewater development impact fees. Such fees are not subject to appeal to the City Council.

C. Appellate Review. An~~y~~ intervenor of record in~~rate class affected by~~ a utility basis cost of service rate case or a representative of a rate class in a non-utility basis cost of service rate proceeding such as a cash basis proceeding ~~utility rates~~ may appeal the~~such~~ utility rates set by the Utilities Board that directly and materially affect the intervenor or the rate class representative to the City Council in accordance with the~~an~~ appeals procedures ~~resolution to be~~ adopted in City Council Resolution No. 09-170 and as amended~~by the City Council~~.

ARTICLE VII – COMPENSATION

A. Compensation. The City Council members of the Utilities Board shall not receive compensation to perform their duties as members of the Utilities Board. The public members of the Utilities Board may receive nominal compensation to perform their duties as members of the Utilities Board in an amount to be determined by the City Council.

B. Reimbursement. Commissioners may be reimbursed for reasonable expenses incurred in performing their duties as Commissioners. Reimbursement must be approved by the Utilities Board.

ARTICLE VIII -- BY-LAWS EFFECTIVE DATE AND AMENDMENT

A. Effective Date. These By-Laws have been approved by the City Council of the City of Las Cruces in City Council Resolution No. 07-190 adopted on December 4, 2006. These By-Laws shall be effective when the Utilities Board is established.

B. ~~B.~~ Amendment. The Utilities Board shall not amend its By-Laws without approval of the City Council:

1. City Council Resolution No. 08-187 entitled "A Resolution Approving the First Amendment to the By-Laws of the Board of Commissioners for the City of Las Cruces Utilities" amended Article IV (Membership), Section F (Ex-Officio Members), which amendment is included herein.
2. City Council Resolution No. 13-____ entitled "A Resolution Approving the Second Amended By-Laws of the Board of Commissioners for the City of Las Cruces Utilities" further amended the original By-Laws approved in City Council Resolution No. 07-190, which amendments are included herein.

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ADOPTED AND APPROVED ON THIS _____ DAY OF MARCH, 2013, AT A REGULARLY SCHEDULED MEETING OF THE CITY COUNCIL OF THE CITY OF LAS CRUCES.

_____
Ken Miyagishima
Mayor of the City of Las Cruces

SECOND AMENDED BY-LAWS OF
THE BOARD OF COMMISSIONERS FOR THE CITY OF LAS CRUCES UTILITIES

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4. To seek, apply and accept grants that do not require a monetary match;

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6. To approve the acquisition of ground water and surface water rights;

7. To timely develop and recommend approval to the City Council of the City of Las Cruces of the annual budget for the Las Cruces Utilities;

8. To contract in the name of or on behalf of the City of Las Cruces or the Las Cruces Utilities within the limitations set forth in budgets approved by the City Council; and

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B. Limitations on Authority. The Utilities Board shall have no authority to do the following, which responsibilities are specifically reserved to the City Council of the City of Las Cruces:

1. To create debt in the form of revenue bonds for the City of Las Cruces or for the Las Cruces Utilities;

2. To obtain grants which require a monetary match for the City of Las Cruces or for the Las Cruces Utilities;

3. To approve the final annual budget and all budget adjustments for the Las Cruces Utilities;

4. To sell or otherwise dispose of assets owned by the City of Las Cruces for the benefit of the Las Cruces Utilities;

5. To adopt resolutions, motions, or other policy statements in conflict with existing City resolutions or policies. However, the Utilities Board may make recommendations to the City Council that are potentially in conflict with existing City resolutions, ordinances, or policies;

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2. Not hold any elected or appointed public office or be a City employee; and

3. Not be a contractor or consultant or have a contractual relationship with the City for the benefit of the Las Cruces Utilities.

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To the extent possible, the City Council shall appoint public members with diverse expertise.

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H. Representation. Each Commissioner of the Utilities Board shall represent all of the rate payers and customers of the Las Cruces Utilities without regard to City Council Districts.

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C. Special Meetings and Work Sessions. The Utilities Board may schedule special meetings or work sessions at the request of the Board Chair, or in his or her absence, by the Vice-Chair or by four (4) Commissioners.

ARTICLE VI – RATE AND FEE HEARINGS

A. Rate Hearings. The Utilities Board shall hold at least two public meetings to discuss any modifications in the rates charged for services provided by the Las Cruces Utilities.

B. Development Impact Fee Hearings. The Utilities Board shall comply with the requirements of the City Development Impact Fee Ordinance which ordinance requires the review and recommendations of the City's Capital Improvements Advisory Committee in order to extend or modify City water and wastewater development impact fees. Such fees are not subject to appeal to the City Council.

C. Appellate Review. An intervenor of record in a utility basis cost of service rate case or a representative of a rate class in a non-utility basis cost of service rate proceeding such as a cash basis proceeding may appeal the utility rates set by the Utilities Board that directly and materially affect the intervenor or the rate class representative to the City Council in accordance with the appeals procedures adopted in City Council Resolution No. 09-170 and as amended.

ARTICLE VII – COMPENSATION

A. Compensation. The City Council members of the Utilities Board shall not receive compensation to perform their duties as members of the Utilities Board. The public members of the Utilities Board may receive nominal compensation to perform their duties as members of the Utilities Board in an amount to be determined by the City Council.

B. Reimbursement. Commissioners may be reimbursed for reasonable expenses incurred in performing their duties as Commissioners. Reimbursement must be approved by the Utilities Board.

ARTICLE VIII -- BY-LAWS EFFECTIVE DATE AND AMENDMENT

A. Effective Date. These By-Laws have been approved by the City Council of the City of Las Cruces in City Council Resolution No. 07-190 adopted on December 4, 2006. These By-Laws shall be effective when the Utilities Board is established.

B. Amendment. The Utilities Board shall not amend its By-Laws without approval of the City Council:

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2. City Council Resolution No. 13-____ entitled "A Resolution Approving the Second Amended By-Laws of the Board of Commissioners for the City of Las Cruces Utilities" further amended the original By-Laws approved in City Council Resolution No. 07-190, which amendments are included herein.

ADOPTED AND APPROVED ON THIS _____ DAY OF MARCH, 2013, AT A REGULARLY SCHEDULED MEETING OF THE CITY COUNCIL OF THE CITY OF LAS CRUCES.

_____
Ken Miyagishima
Mayor of the City of Las Cruces