

Item #1
Regular Meeting
March 18, 2013



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

Regular Meeting

**March 18, 2013
1:00 P.M.**

Council Chambers, City Hall

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MEMBERS PRESENT:

STAFF:

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

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

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 Keith Whelpley and declared March 18 thru March 25, 2013 as Celebrating our Seniors Week.

Councillor Silva presented the Distinguished Budget FY 2012 Award to Dick Gebhart, Budget Director for the City of Las Cruces.

Councillor Silva presented a Certificate of Achievement for Excellence in Financial Reporting to Melissa Nelson, Government Funds Supervisor for the City of Las Cruces.

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

5
 6 Mayor Miyagishima asked if anyone had any conflicts with anything on the agenda?

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 8 None given.

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 12 **III. PUBLIC PARTICIPATION**

13
 14 Michael Shannon, Member of the Public said in July 2010 I was arrested on a warrant that has not
 15 been good since 2005. During my arrest I had a panic attack and I was taken to the hospital so now
 16 I am having my wages garnished to pay this hospital bill. I contacted the Risk Department and they
 17 told me it wasn't the City's fault and I need to contact MVRDA but when I tried to contact MVRDA
 18 I didn't get any response. I don't have the money to pay for this hospital bill and I don't want to have
 19 to get a lawyer but no one will respond to me.

20
 21 Mayor Miyagishima said give your information to the City Clerk and someone will respond to you.

22
 23 -----
 24
 25 **IV. ACCEPTANCE OF AGENDA: THOSE ITEMS ON THE AGENDA INDICATED BY**
 26 **AN ASTERISK (*) ARE ON THE CONSENT AGENDA AND WILL BE VOTED ON**
 27 **BY ONE MOTION.**

28
 29 Councillor Smith Moved to Approve the Agenda and Councillor Sorg Seconded the motion.

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 31 -----
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 33 Mayor Miyagishima called for the roll on the Motion to Approve the Agenda and it was
 34 Unanimously Approved. 7-0

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 38 **V. CITY COUNCIL MINUTES**

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 40 *(1) Regular Meeting of February 19, 2013

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

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4 *(2) Resolution No. 13-123: A Resolution Authorizing the Saratoga Room to Continue With the
5 Permitting Process to Allow for the Sale and Consumption of Alcoholic Beverages Inside
6 the Rio Grande Theatre, 211 North Downtown Mall, Las Cruces, New Mexico, Within a
7 Restricted and Secured Area, During a Comedy Show to be Held on April 6, 2013.

8

9 *(3) Resolution No. 13-124: A Resolution to Accept the Memorandum of Agreement Between
10 the Community Foundation of Southern New Mexico Unified Prevention (UP!) Coalition
11 and the City of Las Cruces, on Behalf of the Las Cruces Police Department and to Adjust the
12 FY 2013 Budget.

13

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

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18 (4) Resolution No. 13-125: A Resolution Approving the Second Amended By-Laws of the
19 Board of Commissioners for the City of Las Cruces Utilities.

20

21 Councillor Thomas Moved to Approve Resolution No. 13-125 and Councillor Small Seconded the
22 motion.

23

24

25

26 Dr. Jorge Garcia, Utilities Director gave an overhead presentation and said these are
27 recommendations for changes to the By-laws of the Utilities Board which can only be approved by
28 Council because the board can only make recommendations for changes, they cannot make the
29 changes to their By-laws. The changes are regarding flexibility in the approach to rates setting, refine
30 authority regarding small loans, incorporate clean-up language and the tracking of prior amendments.
31 The changes consist of Article III (A)(2) remove limitation of rate setting based on Utility Basis;
32 therefore allowing the use of cash basis or other industry accepted methodology in the upcoming
33 Solid Waste rate proposal; Article III (A)(5) is to provide the Las Cruces Utility Board with the
34 flexibility to seek, apply and accept small loans with the concurrence of the Finance Department;
35 Article III (A)(6) we want to eliminate the Water Committee which no longer exists; Article III(A)(8)
36 there are some word changes; Article VI (C) confirms that the appeals process from a Board decision
37 would apply to any rate case or proceeding; and Article VIII (B) adds new subsections (1) and (2)
38 to keep track of prior Council approved amendments to the By-laws.

39

40 Mayor Miyagishima said we are just making the wording so that it is consistent with the other
41 utilities and there is no additional fees being passed on to the consumer.

1
2 Jorge Garcia said you are right, there is no cost to the consumer and no changes to the way we deal
3 with our customers.

4
5 Councillor Smith said regarding deleting the Water Committee, considering our current water
6 concerns, is there another mechanism where we can work on a comprehensive plan for our future
7 water use or might this be an opportunity to reconfigure?

8
9 Jorge Garcia said the Utilities Board addresses the City's water rights issues and water planning.
10 Another venue is the Rio Grande Water Users which has membership from the City Council. When
11 it comes to water litigation, the board gets briefed but then we go to the City Council.

12
13 Councillor Small said regarding the rate flexibility, it makes sense to have that for the solid waste
14 and the desire to expand that to the other utility services. Do you mean to only limit that to those
15 items that are not tied to the depreciation of a plant? Do we foresee any unattended consequences
16 from expanding that to cover the other utilities?

DRAFT

17
18 Jorge Garcia said no, the way it is currently worded there is no way you can do a small adjustment
19 so it has to go through a full-blown rate case.

20
21 Councillor Sorg said as a board member for the utilities I have followed this closely and these are
22 very appropriate amendments which should be passed.

23
24 Councillor Silva said I do like how you are cleaning up number two regarding the service and
25 industry methodology and it does give you a lot of flexibility so good work.

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29 Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 13-125 and it was
30 Unanimously Approved. 7-0

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34 (5) Resolution No. 13-126: A Resolution Approving the Continued Assessment Through the
35 Budget Process of a Payment in Lieu of Property Taxes for City Real Property Used by the
36 Las Cruces Utilities.

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38 Councillor Silva Moved to Approve Resolution No. 13-126 and Councillor Small Seconded the
39 motion.

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1 Marcy Driggers, Assistant City Attorney gave a verbal presentation and said this is to continue what
 2 has already been in place and has been imposed on the Utilities Department through the budget
 3 process. It attempts to recover from Utilities Department charges of the money that the City would
 4 have received had utility properties not been tax exempt. County properties are assessed property tax
 5 and that tax is primarily used to fund school systems. Counties and municipalities are allowed to add
 6 incremental portions to that tax for their operational needs and properties that are tax exempt are
 7 valued but not assessed tax. The Utilities Department is to have no negative impact on the City's
 8 budget and it is to pay its own way so replacing the property taxes that would have otherwise been
 9 recovered from utility buildings being tax exempt is one way to keep the Utilities Department from
 10 not having any negative impact on the City's overall budget. With the help of Dick Gebhart, we've
 11 been able to show the amount of money that the City would have received if these properties had
 12 been privately owned so the City would have received those items that are listed on page three of this
 13 resolution. We are only seeking to recover the money that would have come to the City had those
 14 properties not been tax exempt. The City provides services such as fire and police protection to those
 15 properties which are not recovered by the General Fund because there's no property tax collected
 16 from those properties.

17 **DRAFT**
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20 Mayor Miyagishima called for the roll on the Motion to Approve Resolution No. 13-126 and it was
 21 Unanimously Approved. 7-0

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 25 (6) Council Bill No. 13-025; Ordinance No. 2680: An Ordinance Granting a Franchise to the
 26 City of Las Cruces on Behalf of the Las Cruces Utilities to Construct, Operate and Maintain
 27 said Utilities On, Under and Within City Owned Rights of Way and Within the Las Cruces
 28 Service Territories.

29
 30 Councillor Sorg Moved to Adopt Council Bill No. 13-025; Ordinance No. 2680 and Councillor
 31 Thomas Seconded the motion.

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34
 35 Marcy Driggers, Assistant City Attorney gave a verbal presentation and said there needs to be a
 36 minor change to this item which is for the February 19th packet, on page 75 it showed nine different
 37 funds that the franchise fees are collected from within the fund summary but it should only be five
 38 funds. So this ordinance, on page 75, contains only five funds which total about \$1.155 million and
 39 those are the revenues that are collected from City utility rate customers as a payment under what
 40 will be a franchise ordinance. This franchise fee ordinance it to make official what has been charged
 41 to utility rate customers for over twenty years so this is just formalizing that process. Every time the
 42 Utilities Department cuts into a street it reduces the life expectancy of that street so this franchise
 43 fee is a modest way for compensating the effect of the Utilities Department on City streets.

1
2 Councillor Sorg asked can you explain how this fee is collected and which fund is it put in?

3
4 Marcy Driggers said in the past the fund was incorporated to the rates charged and then backed out
5 for payment purposes internally but now there is a specific franchise fee charge of 2% on the utility
6 bills.

7
8 Jorge Garcia, Utilities Director said the transfer is analyzed and reconciled from each utility to the
9 General Fund and then to the Street Maintenance Fund.

10
11 Robert Garza, City Manager said the amount that we have been collecting from the "payment in lieu
12 of" has been shown as a transfer in our General Fund revenues and then it is transferred out of the
13 General Fund to the operations of streets.

14
15 Councillor Thomas said so people are now going to see a line item for franchise fees on their bill.

16
17 Marcy Driggers said currently under all four utility sections of the bill there is a franchise fee.

18
19 Jorge Garcia said there is no change in the bill. It is already in the bills and the numbers are not going
20 to change. We are just formalizing the process.

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24 Mayor Miyagishima called for the roll on the Motion to Adopt Council Bill No. 13-025; Ordinance
25 No. 2680 and it was Unanimously Approved. 7-0

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29 **VIII. BOARD APPOINTMENTS**

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31 Councillor Pedroza appointed Ken Wake as the District 3 representative to the Health & Human
32 Services Committee.

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36 Councillor Thomas moved to appoint Councillor Pedroza as the representative and Councillor Small
37 as the alternate to the Lower Rio Grande Water Users Group and Councillor Sorg Seconded the
38 motion.

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41 Mayor Miyagishima called for the roll on the Motion to appoint Councillor Pedroza as the
42 representative and Councillor Small as the alternate to the Lower Rio Grande Water Users Group
43 and it was Unanimously Approved. 7-0

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Mayor Miyagishima reappointed Michael Beckett (general public position) and Mark Santiago (tourism position) to the Convention and Visitors Bureau.

Councillor Silva moved to approve the Mayor's board reappointments of Michael Beckett (general public position) and Mark Santiago (tourism position) to the Convention and Visitors Bureau and Councillor Small Seconded the motion.

Mayor Miyagishima called for the roll on the motion to approve the Mayor's board reappointments of Michael Beckett (general public position) and Mark Santiago (tourism position) to the Convention and Visitors Bureau and it was Unanimously Approved. 7-0

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IX. NOTICE OF PROPOSED ORDINANCE(S) ----- 1.) There will be no public discussion. 2.) A councillor may ask staff for clarification on the proposed ordinance(s).

None Given.

X. CITY COUNCIL MEMBER BOARD REPORTS

None Given.

XI. GENERAL DISCUSSION

b.) City Council

Councillor Silva said the meeting we had regarding the fire truck at Klein Park was very successful and there is going to be some follow-up work done by myself and staff.

I'd like to thank the Las Cruces Bulldawgs for winning the championship on Saturday night.

I'd like to congratulate the NMSU Aggies for winning on Saturday.

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2
3 Councillor Smith said I attended two conferences in Washington, D.C. which were the
4 Transportation Infrastructure Committee meeting and the National League of Cities meeting. I'd like
5 to make a report on both of those meetings on April 1st.

6
7 We were following what was happening regarding the Hold Harmless legislation and my
8 understanding is that if the Governor signs the legislation then we would have the opportunity for
9 three years to add an additional 3/8% to our GRT not to include those things which are being
10 excluded, like food and medications, but that might give us an opportunity before the 2016 start date
11 and 15-year phase-out of the Hold Harmless. The Legislators thought this would give us time to
12 build up a sort of buffer before the phase-out started so that is something that I want us to start
13 thinking about, of course it will all be mute if the Governor does not sign it.

14
15 Earlier in our meeting we had someone come before us and mention a situation which I was in
16 conversation with that particular gentleman regarding his situation and the information I was given
17 was that he might be in the process of bringing forward litigation against the City so I referred him
18 to our Legal staff. I just want to be sure that if a situation like that comes up again, if that is the best
19 practice or approach to that kind of situation because I felt a little bit on the spot.

20
21 Mayor Miyagishima said I think you handled it correctly.

22
23 Councillor Smith said I had several people tell me that we had already done a 1% for Art ordinance
24 back in the 1990s which I was not aware of so if we can check on that because that would have
25 implications at multiple levels if indeed something like that has been in place this whole time.

26
27 Mayor Miyagishima said I think that was probably from the discussion of the whole package that
28 Council has been briefed on.

29
30 Councillor Smith said on Saturday between 1:00 and 5:00 p.m. in the Village of Mesilla is the Casa
31 de Antaño Tour of 2013 event will take place which is a tour of historic homes in Mesilla.

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34
35 Councillor Pedroza said I attended the Minds Interrupted presentation at the Rio Grande Theater and
36 it was an excellent presentation that raised awareness and money.

37
38 On March 20th at City Hall the Attorney General's Office is going to be presenting "Understanding
39 Human Trafficking" from 7:00 a.m. to 4:30 p.m.

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1 Councillor Small said I also want to congratulate the Bulldawg’s on their championship and it is
2 great that two of the folks at the very top of the City, their children helped lead the high school to
3 the championship. I’d also like to mention that Mr. Winson’s old high school back in Minnesota is
4 also headed to their state championship.

5

6 We’ve had several discussions regarding economic development and we are getting closer to that
7 opportunity for future steps to be taken. Hopefully there is a way for that to come before us as we
8 go into our budgeting process.

9

10 I’d like to ask that we get a type of debriefing of the State Legislature.

11

12 Robert Garza, City Manager said there was a lot of activity over the sixty-day session so we will be
13 bringing Larry Horan down to do a public presentation to Council.

14

15 Councillor Small said I would be interested in having a question and answer public forum with our
16 Legislators and other levels of governments.

17

18 I was struck by how successful our special work session was today and I think that applying that
19 model to other important questions that are coming before us could save us a great deal time and
20 have better outcomes.

21

22 I commend Council Silva and City staff for the dialog regarding the fire truck at Klein Park and may
23 be the fire truck can become a part of the City’s history.

24

25 I’d like to commend the sponsors and the attendees at the Hearts for Autism Benefit. It was truly an
26 incredible event and it is amazing to see what a giving community Las Cruces is.

27

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30 Councillor Sorg said I am looking forward to the City Manager’s report.

31

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33

34 Councillor Thomas said the J. Paul Taylor Symposium will be on April 5th and 6th and on Saturday,
35 April 6th they will be doing an empowerment congress on public transportation. On April 12th and
36 13th there will be a conference in Anthony at the Women’s Intercultural Center called “Ready to
37 Run”which is to encourage women to get involved with government and run for office.

38

39 I have been looking at the plan and the proposed schedule for the Comprehensive Plan and I would
40 like to request that the Council be involved a little earlier in the process.

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1 a.) Mayor

2

3 Mayor Miyagishima said I mentioned the Sequestration Cuts a few weeks ago and it looks like it is
4 moving ahead. Some cities in conjunction with large corporations were constructing buildings for
5 them under city tax exempt bonds so that is why they are trying to eliminate that loop hole but it is
6 messing it up for everyone else. This is a serious situation so I'd like to ask that you all contact
7 Senator Heinrich and Senator Udall or any other contacts you may have and let them know that we
8 need to maintain this tax exempt financing status.

9

10 I'd also like to congratulate the Bulldawgs and the Aggies.

11

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14 Councillor Silva said I'd like to thank Councillor Pedroza for reminding us of the presentation at the
15 Rio Grande Theater and I think that presentation was long overdue. I hope it takes us back to our
16 earlier discussion as we are building the Crisis Triage Center. I was in favor of having a 50-bed unit
17 and I think that discussion shows that the center should have at least 50 beds so maybe we can
18 reopen that discussion as we move forward with the Triage Center.

19

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22 c.) City Manager

23

24 Robert Garza, City Manager introduced Robert Kyle, Building Official to give a presentation
25 regarding the Erosion Ordinance.

26

27 Robert Kyle, Building Official gave an overhead presentation and said regarding our current Wind
28 Erosion Program, there are numerous items or actions that are implemented or that are going to be
29 implemented to help finalize this program. In 2012, the Community Development Department
30 received a codes officer as a codes liaison and since bringing that officer on board we have had a
31 much more proactive and quicker reactive response regarding enforcing the Wind Erosion Control
32 Act. Last year our Codes Officer spent a great deal of time out in the field with staff from Public
33 Works dealing with site specific issues, meeting with builders, reminding people that they need to
34 comply with the ordinance and when we did have violations we were able to use that position to try
35 to seek resolution to those issues in a more result oriented way rather than a punitive approach to
36 complying which is how we want to try to accomplish things in the Community Development
37 Department. We rotate officers on a yearly basis so starting this year we have a new Codes
38 Enforcement Officer, Officer Michael Roach, and he has been involved with numerous issues. We
39 are still implementing the ordinance through the plan review and building process with inspectors
40 and staff. One thing we have not done to date is fully implement the Wind Erosion Control Plan
41 requirement of the ordinance so we are doing what we have done in the past which is getting the
42 proposed control measures by the contractor when they are pulling their permits as well as using the
43 erosion control plans that are contained within numerous construction plans to ensure they are

1 following the intent of the ordinance. One of the reasons we have not fully implemented the
2 ordinance to the degree that I would like to at this point is that one of the key components of the
3 program is the hiring of an Environmental Compliance Officer and that decision will be tasked with
4 the administration of the Wind Erosion Control Ordinance as well as the City's Storm Water
5 Management Ordinance. We are hoping to be able to advertise that position by the end of this week
6 or next week at the latest. Also, we have entered into an agreement with NMSU and they are doing
7 a longer term study on the atmosphere conditions and the erosion control measures. As part of that
8 agreement the City, the University and several private land owners are working on dust
9 demonstration plots and they do currently have three sites but the control measures have not been
10 put in place yet.

11
12 Councillor Thomas said recently I have had quite a few complaints regarding places that have been
13 an issue for many years now and still nothing has been done. I think it is understood by most people
14 that it is the disturbed soil but some people aren't even aware that we have an ordinance so I think
15 we need to have some information available on our website or CLCTV.

16
17 Councillor Sorg said this ordinance went into effect October 1st of last year so why has it taken so
18 long to get the job description of the Environmental Compliance Officer position out?

19
20 Robert Kyle said staff started working on it at that time and staff has had to look up the criteria for
21 that position by doing things like looking at other jurisdictions so it has been difficult to get the
22 information. Also, we had to do a position analysis for HR which was turned into HR in December
23 and we received their first job description draft in February.

24
25 Carol Reynolds, Member of the Public said I live in the Pines and I have been involved with this dust
26 issue for some time. Recently along Sonoma Ranch there was some two feet fencing that went up
27 but the ordinance states it should be three feet fencing. I would urge that when City staff goes out
28 to a site that an effort is made to bring the parties together to resolve any issues.

29
30 Robert Kyle said the site that has the two feet fencing has been heavily chemically suppressed by the
31 developer and the silk fencing was put up prior to the ordinance and prior to them chemically
32 suppressing it. I think they have left the fencing up primarily to keep people out because chemical
33 suppression works best if no one touches the dirt.

34
35 Ed Bartley, Member of the Public said I live in Mesa Grande and we've been involved with Codes
36 and the Fire Department on multiple occasions. I'd like to know how the communication is breaking
37 down because we have called Codes and they've come out but we haven't been contacted as to the
38 results of their investigations so when we see the developer doing it again a few weeks later we don't
39 know if we should call Codes again or if what they are doing is okay.

40
41 Robert Garza said we should have a system in place but I can't tell what it is right now. We do have
42 a debriefing meeting after our Council meetings with staff and I will bring this issue up so we can
43 identify the procedure that is place and if there is not a procedure in place then I agree that we need

Regular Meeting
March 18, 2013

Page 12

1 to have one in place. I think we do at least owe you a call back to let you know what has taken place
2 regarding your concerns.

3

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6 **Meeting Adjourned at 2:59 p.m.**

DRAFT