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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

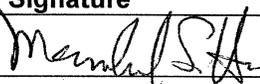
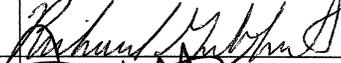
Item # 17 Ordinance/Resolution# 10-082 Council District:

For Meeting of September 8, 2009

(Adoption Date)

TITLE: A Resolution to rescind City of Las Cruces Resolution 85-005 and authorize the Las Cruces Utilities Board to establish utility deposit amounts and the rate of interest to pay on utility deposits.

PURPOSE(S) OF ACTION: To better establish deposit rate schedules as well as establish market interest rates to pay on utility deposits.

Name of Drafter: Robert Scaling, Treasurer 		Department: Financial Services		Phone: 541-2035	
Department	Signature	Phone	Department	Signature	Phone
Originating Department		541-2050	Budget		2300
			Assistant City Manager		2271
Legal		541-2128	City Manager		2074

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In July, 1984, the City Commission passed Resolution 85-005 to establish utility deposit rates as well as the rate of interest that would be paid on required customer utility deposits. The deposit rates that were established were in conformance to the Las Cruces Municipal Code and the interest rate that was established was consistent with market interest rates at that time. Over the years, market interest rates have fluctuated and the fixed interest rate established in Resolution 85-005 has been significantly higher than the City has been able to duplicate in it's investment management activities, resulting in a significant negative interest margin on the accumulated utility deposits. The State of New Mexico has a statute that specifically addresses adjustable interest rates on utility deposits that would more readily address the City's current position and our recommended change.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount

1. Resolution.
2. Resolution 85-005.
3. Las Cruces Municipal Code Section 28-87 and 28-88
4. State of New Mexico Statute 62-13-13
5. Las Cruces Utilities Board Resolution 09-10-009.

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. **VOTE "YES" - Will approve the Resolution and authorize the Las Cruces Utilities Board to establish utility deposit schedules in accordance with Las Cruces Municipal Code Sections 28-87 and 28-88. Such action will also authorize the Las Cruces Utilities Board to establish the rate of interest to be paid on customer utility deposits in accordance with State of New Mexico Statute 62-13-13.**

2. **VOTE "NO" - Will reject the Resolution and not change the current deposit rate schedules and interest rate paid on utility deposits. This action will adversely affect the City's goal of fiscal responsibility.**

A RESOLUTION TO RESCIND CITY OF LAS CRUCES RESOLUTION 85-005 AND AUTHORIZE THE LAS CRUCES UTILITIES BOARD TO ESTABLISH UTILITY DEPOSIT AMOUNTS AND THE RATE OF INTEREST TO PAY ON UTILITY DEPOSITS.

THE CITY COUNCIL IS INFORMED THAT:

WHEREAS, on July 16, 1984, the City Commission approved Resolution No. 85-005, adopting the utility deposit schedule and establishing interest rates of 6% to be paid on customer deposits, and said Resolution and deposit schedules and interest rates remain in effect today; and

WHEREAS, Section 28-87 and Section 28-88 of the Las Cruces Municipal Code establishes the City's right and responsibility to require a deposit from applicants for residential and nonresidential utility service, the amount to be set by City Council from time to time or, at the City's option, to be equal to the estimate of the sum of the two highest billing months; and

WHEREAS, New Mexico State Statute Section 62-13-13 states that, "interest on deposits shall be set annually at a rate equal to the federal five-year Treasury note rate as reported on the first day of the calendar year by the Federal Reserve Board of Governors and shall be paid on any deposit required of a consumer by any public utility as defined in Section 62-3-3 NMSA 1978 or by any telephone company as defined in Section 63-9-2 NMSA 1978 or by any waterworks organized under Chapter 62, Article 2 NMSA 1978"; and

WHEREAS, after further review by the Finance Department and with the Las Cruces Utilities Board recommendation in Resolution No. 09-10-009 that was approved on August 13, 2009, it is recommended that this Resolution be approved.

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

(I)

THAT, City of Las Cruces Resolution No. 85-005 is rescinded.

(II)

THAT, the Las Cruces Utilities Board is authorized to determine the required customer utility deposit schedule in compliance with Section 28-87 and Section 28-88 of the Las Cruces Municipal Code.

(III)

THAT, the Las Cruces Utilities Board is further authorized to approve the payment of interest on consumer deposits in compliance with State of New Mexico Statute Section 62-13-13.

(IV)

THAT, City staff is authorized to take all action necessary to implement this Resolution.

DONE AND APPROVED this _____ day of _____, 2009.

By _____
Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Archuleta: _____
Councillor Small: _____
Councillor Jones: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

Approved as to Form:

City Attorney

A RESOLUTION ADOPTING UTILITY DEPOSIT SCHEDULE AND ESTABLISHING INTEREST RATES THEREON.

THE CITY COMMISSION IS INFORMED THAT:

Utility deposit amounts and the interest rate thereon are established by official action of the City Commission of the City of Las Cruces; and

That the Governing Body has determined that the existing utility deposit amount is not sufficient to cover average current billings and that interest should be paid on deposits from deposit date on deposits held for over 90 days.

Proposed deposit amounts and interest rates are contained in Exhibit "A" attached hereto and incorporated herein.

NOW, THEREFORE, the City Commission of the City of Las Cruces, New Mexico, hereby determines, resolves, and orders as follows:

I

THAT the Utility Deposit Schedule, Exhibit "A" is hereby adopted and approved to become effective on August 1, 1984.

II

THAT the current active utility deposits shall have a beginning interest calculation date of the effective date of this resolution and that interest shall not be paid on any period of time deposits that were held prior to that effective date.

III

THAT the previously established utility deposit schedule will become null and void on August 1, 1984.

IV

THAT the Mayor, on behalf of the City of Las Cruces, is hereby authorized to execute appropriate documentation; City Clerk to attest thereto. The City Manager and staff are authorized to do all acts necessary in the accomplishment of the hereinabove.

DONE AND APPROVED THIS 16 day of July, 1984.

Dustin Steinborn
Mayor

ATTEST:

Karen Steinborn
City Clerk

(SEAL)

Moved by: Jenkins

Seconded by: Jones

Approved as to form:

[Signature]
City Attorney

VOYE:

Commissioner Jenkins: Aye
Commissioner Steinborn: Aye
Commissioner Jones: Aye
Commissioner Shelley: Aye
Commissioner Tomlin: Aye

CITY OF LAS CRUCES
DEPOSIT POLICY COMPARISON
JUNE 25, 1984

<u>RESIDENTIAL</u>	<u>CURRENT</u>	<u>PROPOSED</u>
1. Minimum Requirements	\$40.00	\$60.00
2. Optional Requirements	Amount equal to average of two month billing	Amount equal to average of two highest months billings.
3. Deposit Waived to	Owner	Credit History
4. Refund	At termination	At termination, or after 13 prompt monthly payments at customer request.
5. Interest	None	6 %
<u>NON RESIDENTIAL</u>		
1. Minimum Requirements	\$60.00	\$100.00
2. Optional Requirement	Amount equal to average of two month billing	Amount equal to average of two highest months billings.
3. Deposit waived to	Owner	Credit history for similar account
4. Refund	At termination	At termination, or after 13 prompt monthly payments at customer request.
5. Interest	None	6 %

ADDITIONAL CONSIDERATIONS

1. Where a deposit has been refunded and customer is subsequently delinquent for two consecutive months, a deposit may again be required.
2. Amount of deposit may be decreased at the discretion of the Customer Service Manager.
3. Interest will not be paid on deposits that are refunded within 90 days of the deposit date.
4. Deposits applied to final billings will earn interest to final service date.

amount due and shall be enforced and collected together with reasonable attorney fees in the manner provided by law.
(Code 1988, § 29-47)

Sec. 28-58. Voluntary discontinuance of service.

A consumer wishing to discontinue the use of any utility service shall give written notice thereof at the city hall. Failure to do so shall render the consumer liable for the payment of all bills until such notice has been given.
(Code 1988, § 29-48)

Secs. 28-59—28-85. Reserved.

DIVISION 2. DEPOSITS

Sec. 28-86. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chronically delinquent means those customers who have been disconnected for nonpayment or failed to make prompt payments on three or more occasions during any 12-month period.

Nonresidential customer means all who are not residential customers.

Prompt payments means payments made on or before the next billing date.

Residential customer means service to residential dwellings where no more than two single-family dwelling units are served by a single meter.

(Code 1988, § 29-61)

Cross reference—Definitions generally, § 1-2.

Sec. 28-87. Required for residential customers.

(a) Along with the application for utility service, all applicants for residential utility service shall be required to pay to the city a minimum deposit, which will be set by the city council by resolution from time to time, or, at the city's option, a deposit equal to an estimate by the city

of the sum of the two highest billing months. If actual billings increase above the initial estimated two highest months' billings in any 12-month period, the city, at its election, may increase the deposit to the sum of the actual two highest months' billings.

(b) If any residential customer's account becomes chronically delinquent, the city shall require the higher of the two options mentioned in subsection (a) of this section.

(c) In lieu of a deposit as required in subsection (a) of this section, the city may accept a recent credit history from another utility showing a prompt payment history.
(Code 1988, § 29-62)

Sec. 28-88. Required for nonresidential customers.

(a) Along with the application for utility service, all applicants for nonresidential utility service shall be required to pay to the city a minimum deposit, which will be set by the city council by resolution from time to time, or, at the city's option, a deposit equal to an estimate by the city of the sum of the two highest billing months. If actual billings increase above the initial estimated two highest months' billings in any 12-month period, the city, at its election, may increase the deposit to the sum of the actual two highest months' billings.

(b) If any nonresidential customer's account becomes chronically delinquent, the city shall require the higher of the two options mentioned in subsection (a) of this section.

(c) In lieu of a deposit as required in subsection (a) of this section, the city may accept an irrevocable letter of credit in a form acceptable to the city.
(Code 1988, § 29-63)

Sec. 28-89. Waiver or reduction.

The customer services manager for the city may, at his discretion, waive or reduce the deposit requirements set forth in this division.
(Code 1988, § 29-64)

62-13-13. Deposits; interest.

Interest on deposits shall be set annually at a rate equal to the federal five-year treasury note rate as reported on the first day of the calendar year by the federal reserve board of governors and shall be paid on any deposit required of a consumer by any public utility as defined in Section 62-3-3 NMSA 1978 or by any telephone company as defined in Section 63-9-2 NMSA 1978 or by any waterworks organized under Chapter 62, Article 2 NMSA 1978.

LAS CRUCES UTILITIES BOARD RESOLUTION NO. 09-10-009**A RESOLUTION ESTABLISHING INTEREST RATES IN ACCORDANCE WITH NEW MEXICO STATE STATUTE SECTION 62-13-13.**

The Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

WHEREAS, on July 16, 1984, the City Council approved Resolution No. 85-005, adopting the utility deposit schedule and establishing interest rates, which established an interest rate of 6% to be paid on customer deposits; said Resolution is still in affect today; and

WHEREAS, New Mexico State Statute Section 62-13-13 states" "Interest on deposits shall be set annually at a rate equal to the federal five-year treasury note rate as reported on the first day of the calendar year by the federal reserve board of governors and shall be paid on any deposit required of a consumer by any public utility as defined in Section 62-3-3 NMSA 1978 or by any telephone company as defined in Section 63-9-2 NMSA 1978 or by any waterworks organized under Chapter 62, Article 2 NMSA 1978."; and

WHEREAS, after further review by the Finance Department and with Utilities' concurrence, staff recommends approval of this Resolution which would be consistent with New Mexico State Statute and change the current fixed interest rate to one that would adjust annually.

WHEREAS, approval of this Resolution would further recommend to the City Council that Resolution No. 85-005 be rescinded.

NOW, THEREFORE, be it resolved by the Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces:

(I)

THAT the interest rates be set in accordance with New Mexico State Statute Section 62-13-13.

(II)

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

DONE AND APPROVED this 13th day of August, 2009.

By Francisco Cadena C
Board Chair Acting Chair

ATTEST:

[Signature]
Secretary

Moved by Cadena

Seconded by Moy

VOTE:

Chair DeMouche:	<u>Absent</u>
Vice-Chair Cadena:	<u>Aye</u>
Commissioner Archuleta:	<u>Aye</u>
Commissioner Jones:	<u>Aye</u>
Commissioner Little:	<u>Absent</u>
Commissioner Moy:	<u>Aye</u>
Commissioner Ries:	<u>Aye</u>

APPROVED AS TO FORM:

[Signature]
Utilities Attorney