City of Las Cruces®
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Council Action and Executive Summary

Item # 5 **Ordinance/Resolution#** 16-102

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of November 2, 2015 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: **A RESOLUTION REQUESTING A VARIANCE TO ALLOW WHITE SANDS CONSTRUCTION, INC. TO PLACE CONCRETE AND/OR PERFORM OTHER WORK AS PART OF THE EAST MESA PUBLIC SAFETY COMPLEX CONSTRUCTION PROJECT OUTSIDE OF THE HOURS OF 7:00 A.M. TO 6:00 P.M., BEGINNING NOVEMBER 2015 THROUGH JULY 2016; AS REQUIRED BY THE LAS CRUCES MUNICIPAL CODE, SECTION 19-131.**

PURPOSE(S) OF ACTION:

Request a variance.

COUNCIL DISTRICT: District 6		
Drafter/Staff Contact: Tomas Mendez, Architect 10-22-15	**Department/Section:** Public Works / Facilities Management	**Phone:** 541-2583
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

As part of the East Mesa Public Safety Complex construction project, White Sands Construction, Inc., has requested a variance to the Las Cruces Municipal Code (LCMC), Section 19-131 to allow placement of concrete and/or to perform other work related to the project outside the hours of 7:00 a.m. to 6:00 p.m. Based on the referenced code, work that disturbs the comfort of repose of others outside the defined hours is a code violation.

This variance will allow the project to proceed in a timely manner and allow proper construction of the building along with allowing truck access to the construction site without the delay of daily high-volume traffic congestion in the area. Some of the work may take place late evening, and possibly as early as 3:00 a.m. in the morning.

Staff reviewed the request, evaluated the potential impact to adjacent residential areas and concluded there would be minimal adverse impact to residents. As part of the process to inform adjacent citizens of project work that may affect their area, two (2) public meetings were held at the Dona Ana Community College East Mesa Campus.

(Continue on additional sheets as required)

The first meeting, held on September 1, 2015, was advertised in the Las Cruces Sun News and on the City of Las Cruces (City) website; no members of the public attended. A second meeting, held on October 13, 2015, was advertised in the Las Cruces Sun News, invitation postcards to 297 neighbors in two subdivisions, and through email to individuals identified as representatives of the neighborhood and property owners associations that adjoin the project site. One member of the public attended the second meeting and indicated that such work would not disturb him.

Design and Construction Services staff will coordinate, monitor conditions, and address any concerns raised as a result of the variance and then bring them to the attention of the appropriate White Sands Construction, Inc. management personnel for immediate corrective action. City staff also reserves the right to reduce or modify the extended construction work hours by written notice to White Sands Construction, Inc. if such conditions are not corrected.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Las Cruces Municipal Code Section 19-131.
3. Attachment "A", White Sands Construction, Inc. work hour's request.

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

(Continue on additional sheets as required)

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 resolution and a variance to the LCMC Section 19-31 for concrete placement and/or other work as part of the East Mesa Public Safety Complex construction project outside of the hours of 7:00 a.m. to 6:00 p.m.
2. Vote "No"; this will not approve the resolution nor a variance to the LCMC Section 19-31. This could delay the project and staff may need to seek alternative options.
3. Vote to "Amend"; this could delay the project and staff may need to review the schedule along with the project architect and contractor to make adjustments.
4. Vote to "Table"; this could delay the project and staff may need to review schedule along with the project architect and contractor to make adjustments.

REFERENCE INFORMATION:

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

1. N/A

(Continue on additional sheets as required)

RESOLUTION NO. 16-102

A RESOLUTION REQUESTING A VARIANCE TO ALLOW WHITE SANDS CONSTRUCTION, INC. TO PLACE CONCRETE AND/OR PERFORM OTHER WORK AS PART OF THE EAST MESA PUBLIC SAFETY COMPLEX CONSTRUCTION PROJECT OUTSIDE OF THE HOURS OF 7:00 A.M. TO 6:00 P.M., BEGINNING NOVEMBER 2015 THROUGH JULY 2016; AS REQUIRED BY THE LAS CRUCES MUNICIPAL CODE, SECTION 19-131.

The City Council is informed that:

WHEREAS, as part of the East Mesa Public Safety Complex construction project, White Sands Construction has submitted a request for a variance to the Las Cruces Municipal Code (LCMC), Section 19-131 which stipulates construction work must take place between the hours of 7:00 a.m. to 6:00 p.m.; and

WHEREAS, White Sands Construction, Inc. will need to place concrete and/or perform other work outside of the code defined hours on various occasions from November 2015 through July 2016 to ensure proper and timely construction of the building; and

WHEREAS, City staff has reviewed the request and evaluated the potential impact to adjacent residential areas and based on that review, staff concludes there will be minimal adverse impact to residents if late night/early morning work is permitted; and

WHEREAS, two (2) public meetings were held and City staff received comments from one resident that the proposed work would not disturb him, and otherwise, no other comments were received; and

WHEREAS, Design and Construction Services staff will coordinate and monitor the conditions and any concerns raised as a result of the variance and bring them to the attention of the appropriate management personnel of White Sands Construction, Inc., for immediate corrective action.

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

(I)

THAT White Sands Construction, Inc. is allowed to place concrete and/or perform other work late at night/early in the morning (outside of the hours of 7:00 a.m. to 6:00 p.m. as required by the LCMC, Section 19-131 on various occasions from November 2015 through July 2016.

(II)

THAT City staff will monitor any concerns raised as a result of the variance and reserves the right to reduce or modify the extended hours of operation by written notice to White Sands Construction, Inc. if such conditions could not be corrected.

(III)

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

DONE AND APPROVED on this _____ day of _____, 20__.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

ACTING _____
City Attorney

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

Exhibit "A"

DIVISION 2. - NOISE

Sec. 19-121. - Prohibited.

(1) It shall be unlawful for any person to make, continue or cause to be made any loud or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.

(2) It shall be prima facie evidence of a violation of this division if any loud or unusual noise is audible by any person or police officer at a distance of 30 or more feet from the source or causes a person or police officer to be aware of the vibration accompanying the sound at a distance of 30 or more feet from the source.

(Code 1988, § 21-76; Ord. No. 1722, § I, 2-1-99)

Sec. 19-122. - Illustrative enumeration.

The following sections of this division shall be an illustrative enumeration of noises prohibited by this division, but shall not limit the enforcement of this division.

(Code 1988, § 21-77)

Sec. 19-123. - Horns and signaling devices.

The sounding of any horn or signaling device of any automobile, motorcycle, truck or other vehicle on any street or public place except as a danger warning; the creation by means of any such signaling devices of any unreasonable, loud or harsh sound; the sounding of such devices for any unnecessary and unreasonable period of time other than by accident or mechanical, electrical or other difficulty or failure; and the use of any such signaling device where traffic is held up shall be deemed a violation of this division.

(Code 1988, § 21-78)

Sec. 19-124. - Radios and phonographs.

The use or operation of any radio, phonograph or other sound-producing machine in such a manner as to disturb the peace and quiet of neighbors shall be deemed a violation of this division.

(Code 1988, § 21-79)

Sec. 19-125. - Loudspeakers and amplifiers.

The use or operation or permitting to be played, used, or operated any radio, receiver set, musical instrument, phonograph, tape recorder, loudspeaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public in any residential area, except with the proper permit elsewhere prescribed in this Code, shall be deemed a violation of this division.

(Code 1988, § 21-80)

Sec. 19-126. - Yelling or shouting.

Yelling, shouting or creating other loud noises which annoy or disturb the quiet, comfort or repose of persons in any office, dwelling, hotel or residence or of any persons in the vicinity shall be deemed a violation of this division.

(Code 1988, § 21-81)

Sec. 19-127. - Animals.

The keeping of any animals which, by causing frequent or long continuous noise, shall disturb the comfort or repose of any persons in the vicinity shall be deemed a violation of this division.

(Code 1988, § 21-82)

Cross reference— Animals generally, ch. 7.

Sec. 19-128. - Schools, courts, churches, hospitals.

The creating of any excessive noise on any street adjacent to any hospital, school, institution of learning, church or court which interferes with the workings of such institution or which disturbs or annoys patients in a hospital shall be deemed a violation of this division.

(Code 1988, § 21-83)

Sec. 19-129. - Pounding.

The pounding or hammering on any metal object or thing, except inside a building or in connection with the construction or erection of a building, shall be deemed a violation of this division.

(Code 1988, § 21-84)

Sec. 19-130. - Mufflers and exhaust devices.

The use of defective mufflers and other exhaust devices designed to permit the creating and maintaining of loud and disturbing noises while any automobile, truck or motorcycle engine is in opera ation, which disturbs the peace and quiet of a neighborhood, shall be deemed a violation of this division.

(Code 1988, § 21-85)

Cross reference— Traffic, ch. 27.

Sec. 19-131. - Construction, repair or demolition work.

Construction, repair or demolition work to commercial or residential buildings, roadways, utility facilities or infrastructure other than between the hours of 7:00 a.m. and 6:00 p.m., which work disturbs the comfort or repose of others, shall be deemed a violation of this division except in case of urgent public necessity as determined by the city council.

(Code 1988, § 21-86; Ord. No. 1814, § I, 7-17-00)

Cross reference— Buildings and building regulations, ch. 30.

Sec. 19-132. - Limitations on the volume of sound emanating from vehicular sound amplification systems.

(1) It is unlawful for any person operating or controlling a motor vehicle in either a public or private place within the city to operate any sound amplifier which is part of or connected to any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle, in such a manner that, when operated, it is audible by any person or police officer other than the occupants of the motor vehicle at a distance of 30 or more feet from the source or when operated, causes a person or police to be aware of the vibration accompanying the sound at a distance of 30 or more feet from the source.

(2) The provisions of this section do not apply to:....

Attachment "A"

Barbara Gomez

From: Tomas Mendez
Sent: Friday, October 16, 2015 3:51 PM
To: Jessica Mueller
Cc: Barbara Gomez; Soo Gyu Lee
Subject: FW: EMPS Complex - work hours variance

From: Tomas Mendez
Sent: Friday, October 16, 2015 3:50 PM
To: Tomas Mendez <tmendez@las-cruces.org>
Subject: FW: EMPS Complex - work hours variance

From: Tomas Mendez
Sent: Friday, September 04, 2015 9:52 AM
To: Eric Martin <emartin@las-cruces.org>
Cc: Soo Gyu Lee (sglee@las-cruces.org) <sglee@las-cruces.org>
Subject: FW: EMPS Complex - work hours variance

FYI, this is attachment for work hours variance council packet.

From: Tomas Mendez
Sent: Thursday, July 02, 2015 11:14 AM
To: Soo Gyu Lee (sglee@las-cruces.org) <sglee@las-cruces.org>
Subject: EMPS Complex - work hours variance

Please consider the following in support of the resolution requesting a variance for construction work hours at the East Mesa Public Safety Complex:

During the pre-construction conference, WSCI requested a variance from the work hours allowed according to Section 19-131 of the City of Las Cruces Municipal Code. More specifically they requested to begin concrete placement no earlier than 3:00 a.m. on several occasions during construction. As the owner of the project and on behalf of the Contractor, the City requests a variance from Section 19-131 of the City of Las Cruces Municipal Code for construction of the East Mesa Public Safety Complex beginning no earlier than November 3, 2015 and continuing through July 31, 2016.

Thank you for your assistance,
Tomas Mendez, Architect
City of Las Cruces

(5)

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PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of November 2, 2015 (Adoption Date)

TITLE: A RESOLUTION REQUESTING A VARIANCE TO ALLOW WHITE SANDS CONSTRUCTION, INC. TO PLACE CONCRETE AND/OR PERFORM OTHER WORK AS PART OF THE EAST MESA PUBLIC SAFETY COMPLEX CONSTRUCTION PROJECT OUTSIDE OF THE HOURS OF 7:00 A.M. TO 6:00 P.M., BEGINNING NOVEMBER 2015 THROUGH JULY 2016; AS REQUIRED BY THE LAS CRUCES MUNICIPAL CODE, SECTION 19-131.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes ☐ No ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		x-2583	10.16.15
Department Director		x 3135	10-16-15
Other			
Assistant City Manager /CAO		x2078	10/19/15
Management & Budget Manager		x2106	10/19/15
Assistant City Manager/COO			10-21-15
ACTING City Attorney		10-23-15	2128
City Clerk - Interim		x 2115	10-23-15

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