



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

COUNCIL WORK SESSION SUMMARY ROUTING SLIP

Meeting Date October 24, 2016

TITLE: 2017 LEGISLATIVE PRIORITIES.

- Are there attachments to the Council Work Session Summary? Yes No
- Will there be a Video Presentation for this item? Yes No
- Will there be a PowerPoint Presentation for this item? Yes No
- If "yes", will a copy of the PowerPoint Presentation be included on the Council Work Session Agenda? Yes No

| DEPARTMENT / ORGANIZATION | SIGNATURE | PHONE NO. | DATE |
|---|---------------------|-----------|------------|
| Drafter/Staff Contact | <i>David Weller</i> | X-2078 | 10/20/2016 |
| Department Director | | | |
| Other | | | |
| Assistant City Manager/CAO (if applicable) | | | |
| Assistant City Manager/COO (if applicable) | | | |
| City Manager | <i>David Weller</i> | X-2078 | 10/20/2016 |



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Council Work Session Summary

Meeting Date: October 24, 2016

TITLE: 2017 LEGISLATIVE PRIORITIES.

PURPOSE(S) OF DISCUSSION:

- Inform/Update
- Direction/Guidance
- Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Attached to this Summary, is a report of various legislative items that staff will present. Our intent in the presentation is to highlight those legislative items (generally amendments to state statutes) that would better serve Las Cruces, the State of New Mexico (NM), and our residents. The items covered are:

1. Public Finance:
 - a. Capital Outlay (see separate listing of potential projects)
 - b. Hold Harmless Gross Receipts Tax (HHGRT) Protection
 - c. Debt issuance signatory authority
 - d. Tax Increment Development District (TIDD) continued state participation
 - e. Gross Receipts Tax reporting and data sharing between governments
 - f. Gross Receipts Tax reporting and data sharing related to exporting businesses
2. Public Utilities:
 - a. Funding for the continued water litigation associated with Texas v. New Mexico
 - b. Legislation that would limit rate cases by publicly regulated utilities
3. Alcohol Permitting:
 - a. NM produced spirits available for sale Beer & Wine establishments
 - b. Liquor license for lease for special areas (i.e. Downtown)
4. Public Safety/Law Enforcement:
 - a. Extended jurisdiction of Municipal Police Officers
 - b. Forfeiture Act Amendment to provide clarification regarding federal equitable sharing
 - c. Financial & operational feasibility of crime lab in southern NM
5. Health Care:
 - a. Enforcement of existing regulations related to physician reimbursements
 - b. Analysis of Physician Reimbursement Rates statewide
 - c. Expansion of physician residency program at Memorial Medical Center
 - d. Financial & operational feasibility of behavioral health hospital to serve southern NM
6. Public Records: Administrative cost allowance for Inspection of Public Records Act requests

(Continue on additional sheets as required)

7. Whistleblower Protections: Limitations and recourses available under the NM Whistleblower Protections Act

SUPPORT INFORMATION:

1. Attachment "A", 2017 City of Las Cruces Legislative Priorities Report
2. Attachment "B", Capital Outlay Project Listing

2017 City of Las Cruces Legislative Priorities

PUBLIC FINANCE

Specific Topic: **Capital Outlay**

As was evidenced in 2012 and again in a special legislative session in 2016, the management and implementation of capital outlays from the State are becoming more and more suspect in their long-term reliance by the City. From 2012, the City has worked hard to implement projects in a timely manner, and we are fortunate to have only lost one project during the 2016 special session due to legislative claw back. Staff will present a limited listing of potential capital outlay funds for presentation to the Legislative delegation. The listing of projects will be presented separately.

Specific Topic: **Hold Harmless Gross Receipts Tax Protection**

As was of concern throughout the last legislative sessions (both regular and special sessions in 2016), the preservation of the hold harmless distribution to the City from the State for the loss of revenue due to the removal of gross receipts tax on food and medicine is very important. While untouched through the special session, it is anticipated that the 2017 60-day legislative session will continue to involve solving the state's financial crisis and potential changes to the hold harmless distributions to county and municipal governments. Indications are that the state may look to eliminate the distributions to the local governments, in exchange for providing authority to place a local tax back on food and medicine. That presents great concern to staff as it is a regressive tax, would impact our lowest income residents the most, and doesn't guarantee that the City will be made whole. The State of New Mexico needs to look to comprehensive tax reform that ensures fair treatment across all entities.

Specific Topic: **Debt Service Signatory Authority**

As was introduced in the 2016 and 2015 Legislative Sessions, the Supplemental Public Security Act would allow a public body (i.e. the City Council), to adopt an authorizing instrument (i.e. ordinance) that would delegate to members of the body, specific officers or employees, the authority to sign a contract for the purchase or sale of public securities (debt issuance) or to accept a binding bid for public securities, in accordance with specific terms and conditions as outlined within the Act. If approved by the Legislature and enacted by the Governor, this Act would allow for the Las Cruces City Council and others, to streamline the City's debt issuance process and require fewer city council actions by special meetings.

Specific Topic: **Tax Increment Development District (TIDD) Continued State Participation**

The Las Cruces Downtown Tax Increment Development District (TIDD) has been in place since July 1, 2009. The TIDD relies on the increasing revenue generated by growth in gross receipts and property taxes. A main source of the growth is the investment that the City has made to improve the downtown and to restore it as a destination in the region.

The entire life of the district will be up to 25 years. The City and County are scheduled to contribute both gross receipts (GRT) and property tax revenues into the TIDD for the entire life of the district. However, the State only committed GRT and to participate for nine years. That participation ends December 31, 2018 along with a limited collection total of \$8.0m. To date, the State's contribution is \$7.1m, of which \$4.8m has been bonded against. It is projected that we will reach the \$8.0m cap well before the deadline. The question for Council's

consideration is how best to make a request during the 2017 60-day legislative session – cap limit increase, collection deadline extension, or both?

Specific Topic: **Gross Receipts Tax reporting and data sharing between governments**

Currently, Gross Receipts Tax reporting is provided by the State to the City monthly in the aggregate amounts by industrial classification. The City is unable to ascertain specifics by business due to restrictions mandated by the State. With minor revisions to the existing laws and through cooperative agreements with the local governments, opportunities exist to share data which would better insure that businesses are registered locally and reporting tax collections to the State. This would better allow the City to analyze specifics in our local business market.

Specific Topic: **Gross Receipts Tax reporting and data sharing related to exporting businesses**

Similar to the item immediately above, sharing of data between the State and City about exporting businesses would allow for the City and MVEDA to potentially better assist these companies with marketing their products to others. This is existing data that the State is already collecting from businesses on their tax reporting documents.

PUBLIC UTILITIES

Specific Topic: **Funding for the continued water litigation associated with Texas v. New Mexico**

Las Cruces supports continuing adequate funding for the Attorney General's office related to the water litigation for Texas v. New Mexico. Our support for this funding is submitted with proviso that it is either in support of litigation or settlement that protects the City's existing portfolio of water rights and the administration of our adjudication consent decree and existing permits. A brief position of the litigation is as follows:

- Texas claims in Texas v. New Mexico that post-1938 depletions of the Rio Grande below Elephant Butte Reservoir are taking surface water apportioned to Texas by the Rio Grande Compact after its release from Elephant Butte Reservoir. New Mexico needs to fully fund the litigation to defend and protect New Mexico's existing uses, including Las Cruces' existing water rights, including raising all affirmative defenses related to post-1938 depletions of the Rio Grande caused by Texas.
- Similarly, New Mexico needs to fund the litigation to defend and defeat the United States' claims that groundwater in storage in the Lower Rio Grande is "Project supply" for which contracts are required with the United States.
- Alternatively, these defenses must be raised and incorporated into a settlement agreement in negotiations. The best vehicle for that is the Settlement Framework drafted by the Lower Rio Grande Water Users' Association.

Specific Topic: **Legislation that would limit rate cases by publicly regulated utilities**

Las Cruces anticipates that there will be a new rate case presented to the New Mexico Public Regulation Commission in early 2017 by El Paso Electric. This is after a 2015 rate case that was introduced that wasn't settled until early 2016 and on-going interventions related to the company. The City would look to identify sponsors of legislation that would limit the number of rate cases that may be submitted within a specific timeframe (e.g. once every three years from the settlement of the previous rate case).

ALCOHOL PERMITTING

Specific Topic: **NM produced spirits for sale at Beer & Wine establishments**

A previously proposed bill would allow the sale of New Mexico produced spirits (i.e. hard liquor) to be sold automatically within establishments that are currently only allowed to sell beer and wine (i.e. restaurants). We are supportive of reintroducing this legislation as it provides for support of local businesses and industries.

Specific Topic: **Liquor license for lease for special areas (i.e. Downtown)**

A proposed bill would allow local governments to purchase and lease liquor licenses to a third party. As staff understands the proposal, the licenses can only be leased to establishments physically located and doing business in a Metropolitan Redevelopment Area (MRA), TIDD, or NM Main Street designated area. This could be allowed through one or multiple users for specific events throughout the designated area.

Staff anticipates the following two issues with the proposal. One, the liability on the government for a lessee misusing the license in any way. And two, negative feedback from other business owners who paid full price for their licenses.

PUBLIC SAFETY/LAW ENFORCEMENT

Specific Topic: **Extended Jurisdiction of Municipal Police Officers – Support of NM Municipal League (NMML) Resolution 2016-31**

NMML Resolution 2016-31 is concerning Extended Jurisdiction of Municipal Police Officers- to conduct investigation, arrest which has a direct "Nexus" to the Territorial Jurisdiction of their employing agency and the prosecution venue of such crimes within their Territorial Jurisdiction.

“Within the State of New Mexico, municipal police officers and county sheriffs are bound to “Territorial Jurisdiction,” regardless of the type and size of the law enforcement agency, and State legislative law enforcement authority exists only within those jurisdictions, with the exception of an agreement referred to as “Cross Commission”. If a Cross Commissioning agreement does not exist, then municipal law enforcement cannot leave their Territorial Jurisdiction to investigate crimes that may have occurred in their jurisdiction. Municipal officers not having cross commissioning at times will ask assistance from the neighboring jurisdiction to assist in investigating crimes that have occurred in their territorial jurisdiction but victims, witnesses or suspects may have left our territorial jurisdiction. Some neighboring jurisdictions having low staffing levels may not be able to assist us in following up on crimes so these crimes may pend while we wait for assistance.”

The paragraph immediately above was one of the introductory paragraphs of the NMML resolution that summarizes the problem or issue. Every four years, municipal law enforcement has to renew their cross-commissioning agreements with elected county sheriffs. Most of the time there are no issues; however, some elected sheriffs do not authorize cross commissioning that causes issues with follow up investigations or enforcing crimes as police officers may come across in the county (outside our territorial jurisdiction). This proposed resolution from NMML is not what we initially proposed but it gets our foot in the door. The proposed resolution supported by NMML allows each municipality to develop and implement policy and procedures to accommodate extended law enforcement authority, and place guidelines in which the primary goal is the focus of criminal investigations and prosecution for crimes that have a direct nexus to our territorial jurisdiction. This resolution does not answer the question about coming across a traffic violation while traveling in the county. It also mentions that jurisdiction of a municipal police officer may be extended beyond the municipal limits provided the governing body of the municipality employing the police officer has adopted this policy. No such policy has been presented by the City’s Police Department to the City Council for review and approval. This may not be a precedent that we may want to establish; however, the New Mexico Association of Chiefs of Police (NMACP) believe this is an initial step towards achieving state-wide authorization and supports this scaled-back version of what was initially presented to NMML.

Specific Topic: **Forfeiture Act Amendment to provide clarification regarding federal equitable sharing**

During the 2015 legislative session, House Bill 560 (HB560) was introduced that we believed was initially intended to amend or do away with DWI Seizure programs in New Mexico. Our state legislators missed the mark and amended the Forfeiture Act that has caused issues statewide with law enforcement. They added vague language to the Act that left the interpretation up to governmental attorneys statewide. Language was added to include abandoned property as items to be transported to the State Treasurers Office (STO) to be auctioned and placed into the state’s General Fund. All seizures of money related to drug crimes had to be place in the state’s General Fund. A “defendant” could come back at any time to petition the court to determine whether the forfeiture was unconstitutionally excessive pursuant to the state or federal constitution, this causes a potential liability to any agency that may have spent forfeited money on programs, thus requiring the governmental entity to reimburse a defendant any time in the future if a judge ruled in favor of a defendant. The biggest change was the proceeds from drug seizures had to be placed in the state’s General Fund which is a violation of the federal equitable sharing guidelines that requires the proceeds go back to the agency that seized them and not the state. With the added language, the federal government has stopped all equitable sharing in New Mexico.

A bill was introduced in the 2016 short session that didn't get any traction. The bill attempted to provide clarification on this issue and take out language that would resolve the issue with federal equitable sharing. The bill died during the session. NM HIDTA (High Intensity Drug Trafficking Area) has worked throughout the state to get support for this bill, but it appeared to be an unwelcomed bill in the Senate side of the Round House.

NMHIDTA is pushing again to get the bill introduced in the 2017 session and are attempting to have either Daniel Ivey-Soto or Andy Nunez introduce the bill to see if we can amend the Forfeiture Act; however, there is no firm word who may support this bill and introduce it for statewide law enforcement.

Specific Topic: **Financial & operational feasibility of crime lab in southern NM**

Currently, state-run crime labs are located in Santa Fe, Hobbs, and Las Cruces. The Santa Fe lab is the only lab that provides all laboratory services (i.e. drug, blood, and fingerprint). Las Cruces has considered constructing, through local sources, a lab that would better serve our needs and other parts of the state. However, before consideration of such an undertaking is considered, the financial and operational feasibility needs to be developed in partnership with the State of New Mexico, Las Cruces, Dona Ana County, other communities and counties in the state. Concerns exist about the State's ability to serve an expanded facility in Las Cruces.

HEALTH CARE

Specific Topic: Enforcement of existing regulations related to Physician Reimbursements

Existing regulations within the New Mexico Administrative Code are not being enforced that would assist the local health care community in the recruitment and retaining of qualified physicians. The specific areas are: Capitation Disbursements Requirements (i.e. gross receipts tax reimbursement to physicians – NMAC 8.308.20.9 B); Credentialing of physicians within 45-calendar days by Managed Care Organizations (NMAC 8.308.2.15 & 17); Payment of interest on late payments to physicians (NMAC 8.308.20.9.E); and Retroactive adjustments by the health care insurance within 18 months (NMAC 13.10.22.12.R).

Specific Topic: Analysis of Physician Reimbursement Rates statewide

As New Mexico and Las Cruces both see an increase in age of our physician labor force and a deficit of both primary and specialty care physicians, the New Mexico Legislature needs to have analyzed the cause and justification for differing physician reimbursement rates across the state. For physicians to maintain financial viability in Dona Ana County, Medicaid reimbursement rates must be at or above Medicare rates and must be equitable throughout the State.

Specific Topic: Expansion of the physician residency program at Memorial Medical Center

With the documented shortage of physicians in Dona Ana County, the continued expansion of the physician residency program at Memorial Medical Center would benefit the community. This allows for more physicians to be trained that, along with other legislative changes (outlined above), would remain and serve our community.

Specific Topic: Financial & operational feasibility of behavioral health hospital to serve southern NM

Currently, the only state-run behavioral health (mental) hospital is in Las Vegas, NM. Las Cruces has considered constructing, through local sources, a hospital that would serve all of southern NM. However, before consideration of such an undertaking is considered, the financial and operational feasibility needs to be developed in partnership with the State of New Mexico, Las Cruces, Dona Ana County, other communities and counties in the state, and the State Judiciary. Concerns exist about the State's ability to serve an additional facility and the overall ability to identify and hire the appropriate personnel should such a facility be built.

PUBLIC RECORDS

Specific Topic: **Administrative cost allowance for Inspection of Public Records Act requests**

The New Mexico Inspection of Public Records Act under NMSA 14-2-9 B. allows a custodian of public records (i.e. the City) to charge a reasonable fee for copying; however, the custodian may not charge a fee for the cost of determining whether any public record is subject to disclosure.

Currently, Las Cruces City Clerk's Office has processed 518 records requests from January 1, 2016 to October 4, 2016. These requests require staff time to review and redact (if necessary) video, audio, pictures and documents submitted for each request which can take anywhere from one hour to a week or more to process. We currently only charge copying fees which are fifty cents per page, five dollars per disk and twenty dollars per video disk.

The City would propose legislation allowing an IPRA administrative fee for administration staff time to process records requests would be appropriate. Specifically, the recommendation would be that: "Government entities may charge an IPRA administrative fee to help recover some of the administration staff time to process request which may not exceed \$100."

WHISTLEBLOWER PROTECTIONS

Specific Topic: **Limitations and recourses available under the NM Whistleblower Protections Act**

The City would propose to have the Whistleblower Protection Act NMSA Sec 10-16C-1 et. al. amended. Section 10-16C-3 of the Act is simply too broad. There have been document cases where an individual is claiming discrimination, brings a claim under the Human Rights Act, and then argues that the individual is protected under the Whistleblower Act as the individual communicated to the employer that he/she was being discriminated against. The remedies are not exclusive and therefore an individual could receive damages under both the Human Rights Act as well as the Whistleblower Protection Act for alleged retaliatory action. The Federal employee whistleblower act does a better job in actually defining what should be whistleblower protection and should be considered in amending the New Mexico Act. We would look to identify a potential legislative member to develop and carry such amendment forward.

**CITY OF LAS CRUCES, NEW MEXICO
2017 CAPITAL APPROPRIATIONS INFORMATION**

| CMO Priority | Project Request | Amount |
|-------------------------|---|---------------|
| | Community and Cultural Services | |
| Y | Branigan Cultural Center-To plan, remove, dispose of asbestos and replace ceiling | \$100,000 |
| | Branigan Library-to remove, dispose of existing and purchase and install first floor carpeting | \$100,000 |
| | Branigan Library-to design and rehabilitate parking lot | \$100,000 |
| | Branigan Cultural Center-to plan, design and repair stucco on exterior of building and repaint | \$100,000 |
| | Las Cruces Fire Department | |
| | Plan, design, replace, and construct the HVAC (Chiller and Heater) at Las Cruces Fire Department, Fire Station #1. | \$300,000 |
| Y | Plan, design, and construct the parking lot, drive pads and aprons, and ADA access for Las Cruces Fire Department, Fire Station #2 | \$100,000 |
| Y | To purchase a new squad vehicle -one ton chassis, equipped with a custom box to accommodate firefighting equipment and EMS equipment, and provide ability to transport patient if needed. | \$140,000 |
| | Las Cruces Police Department | |
| | Southern New Mexico Regional Training Facility-to plan, design, acquire land and construct | \$2,200,000 |
| | Southern New Mexico Regional Crime Laboratory | \$2,800,000 |
| | Las Cruces Police Department-to plan, design and renovate bathroom | \$125,000 |
| | Las Cruces Police Department-to plan, design and renovate stucco on outside of headquarters building. | \$95,000 |
| Y | Las Cruces Police Department-purchase and install 30 mobile data terminals in police units | \$105,000 |
| Y | Las Cruces Police Department-purchase additional body cameras for uniformed officers | \$40,000 |
| | Las Cruces Police Department-to purchase and equip a Mobile Operations Command Vehicle | \$400,000 |
| | Parks and Recreation | |
| | Plan, design, purchase, and install equipment for swimming pool improvements | \$50,000 |
| | Plan, design, construct, renovate, purchase and install equipment for park improvements | \$100,000 |
| | Plan, design, construct, and renovate recreation improvements | \$100,000 |
| Y | Plan, design, remove, construct, equip, renovate, and install playground equipment improvements | \$100,000 |

**CITY OF LAS CRUCES, NEW MEXICO
2017 CAPITAL APPROPRIATIONS INFORMATION**

| CMO Priority | Project Request | Amount |
|-------------------------|---|------------------|
| | Plan, design, demolish, remove, construct, renovate, purchase, and install equipment for ballfield improvements | \$100,000 |
| | Public Works | |
| | Plan, design, acquire right-of-way, and construct roadway and flood control improvements in the City of Las Cruces | |
| | Plan & Acquire Right-of-way for roadway and flood control improvements in the City of Las Cruces | \$350,000 |
| | Design roadway and flood control improvements in the City of Las Cruces | \$1,000,000 |
| | Construct-Phase 1 roadway and flood control improvements in the City of Las Cruces | \$3,000,000 |
| | Construct-Phase 2 roadway and flood control improvements in the City of Las Cruces | \$4,400,000 |
| | | |
| | Transportation | |
| | Plan, Design, and Construct Transportation System Modernization in the City of Las Cruces-INTERCONNECT improvements, ITS enhancements and signal upgrades | |
| | Plan & Design Transportation System Modernization in the City of Las Cruces | \$522,406 |
| | Installation of Fiber for Transportation System Modernization in the City of Las Cruces | \$6,007,669 |
| | Installation of Controllers and Switches for Transportation System Modernization in the City of Las Cruces | \$372,000 |
| | Installation of Detection System and PTZ/Radio for Transportation System Modernization in the City of Las Cruces | \$1,408,500 |
| | Testing and Implementation & Software Expansion for Transportation System Modernization in the City of Las Cruces | \$25,000 |
| | Telshor/Spruce Intersection Improvements | |
| | Plan, Design, and Construct Telshor/Spruce Intersection Improvements-modification of the Telshor/Spruce intersection to a "High-T" intersection. | \$60,000 |
| Y | Construct Telshor/Spruce Intersection Improvements-modification of the Telshor/Spruce intersection to a "High-T" intersection | \$200,000 |
| | Plan, Design, and Construct Brownfield Ponding Improvements-modification of the conveyance structures and ponding areas | \$200,000 |

**CITY OF LAS CRUCES, NEW MEXICO
2017 CAPITAL APPROPRIATIONS INFORMATION**

| CMO Priority | Project Request | Amount |
|-------------------------|--|---------------|
| | Plan, Design, and Construct Lohman/Walton and Lohman/Walnut Signal Improvements-replace signals and install FYA installations | \$600,000 |
| | Plan, Design, and Construct Traffic Building Bathroom and Office Remodel -bathroom and office remodel and to accommodate additional office space and break room | \$200,000 |
| | Plan, Design, and Construct Street Building Office Remodel - breakroom and office remodel to accommodate additional office space. | \$60,000 |
| | Plan, Design, and Construct Airport Aircraft Apron Improvements-to enhance the ability of all types of aircraft to park at the airport, reduce damage to aircraft from deteriorating pavement sections, as well as provide a safe and attractive gateway to Las Cruces via air travel. | |
| | Plan & Design Airport Aircraft Apron Improvements | \$175,000 |
| | Construction Phase 1-Airport Aircraft Apron Improvements | \$1,250,000 |
| | Construction Phase 2-Airport Aircraft Apron Improvements | \$1,250,000 |
| | Plan, Design, Construct, Furnish, and Equip CNG Infrastructure expansion to Fleet's Maintenance Shop-to accommodate certified CNG mechanic bay areas, a CNG fueling system, and training, equipment and tools necessary for CNG vehicles. | \$2,000,000 |
| | Utilities | |
| | Plan, design, and construct Sewer Systems for Top and High Priority Areas | \$3,198,900 |
| | Plan, design, and Construct Sewer Systems in Top Priority Areas | \$570,400 |