

CITY COUNCIL AGENDA

Mayor
Ken Miyagishima

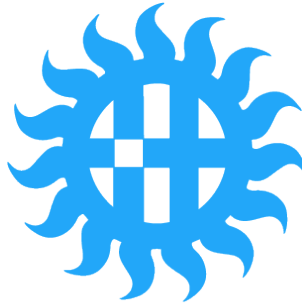
Monday, November 20, 2023 at 1:00 PM
Council Chambers

CITY HALL
P.O. BOX 20000
LAS CRUCES, NM 88004

700 N. Main St.
PHONE (575) 541-2067

Mayor Pro Tem
Kassandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores



CITY OF LAS CRUCES

If you need an accommodation for a disability to enable you to fully participate in this event please contact us 72 hours before this event at [541-2115/V](tel:541-2115).

CONSENT AGENDA

Minutes and Items on the Consent Agenda Are Considered Routine Items and Will Be Voted on with One Motion Unless a Councilor Requests That a Specific Item Be Removed. There Will Be No Discussion.

Page

1. OPENING CEREMONIES

- 1.1. Pledge of Allegiance - Councilor Bencomo.
- 1.2. Pets of the Week.
- 1.3. Jobs of the Week.
- 1.4. Presentation of Certificates of Appreciation/Proclamations - Councilor Bencomo.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

3. PUBLIC PARTICIPATION

4. READ CLOSED MEETING STATEMENT

- 4.1. Read November 13, 2023, Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

- 6.1. Work Session of October 10, 2023.

[Work Session - Oct 10 2023 - Minutes - Pdf](#)

4 - 16

- 6.2. Regular City Council Meeting of October 16, 2023. 17 - 40
[City Council - Oct 16 2023 - Minutes - Pdf](#)

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

- 7.1. RESOLUTION NO. 24-052: A RESOLUTION AUTHORIZING A CONTRACT FOR ELECTRONIC PAYMENT SERVICES WITH PAYMENTUS CORPORATION OF CHARLOTTE, NORTH CAROLINA, FOR A TERM OF FIVE (5) YEARS, IN AN AMOUNT NOT TO EXCEED \$600,000 ANNUALLY, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 23-24-003). 41 - 63
[Resolution No. 24-052 - Pdf](#)
- 7.2. RESOLUTION NO. 24-053: A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF \$250,000 ANNUALLY COMBINED FOR PRICE AGREEMENTS FOR AMMUNITION (PROCUREMENT NO. 23-24-011). 64 - 114
[Resolution No. 24-053 - Pdf](#)
- 7.3. COUNCIL BILL NO. 24-007; ORDINANCE NO. 3049: AN ORDINANCE APPROVING A ZONE CHANGE FROM UR (URBAN RANCH) TO EE (EQUESTRIAN ESTATE AND AGRICULTURE) FOR PROPERTY LOCATED AT 7332 SHANNON ROAD. SUBMITTED BY JOHN MAJOR, PROPERTY OWNER. 115 - 191
[Ordinance No. 3049 - Pdf](#)
- 7.4. COUNCIL BILL NO. 24-008; ORDINANCE NO. 3050: AN ORDINANCE REPEALING AND REPLACING DIVISION 17- BUILDING STANDARDS OF CHAPTER 30, BUILDINGS AND BUILDING REGULATIONS OF THE LAS CRUCES MUNICIPAL CODE TO ADOPT THE 2021 BUILDING CODES, AS AMENDED, AND AS ADOPTED BY THE STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION. 192 - 209
[Ordinance No. 3050 - Pdf](#)

8. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

- 8.1. RESOLUTION NO. 24-054: A RESOLUTION APPEALING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 26, 2023, FOR A 20-FOOT VARIANCE TO THE FRONT YARD SETBACK IN ORDER TO RETAIN A CONSTRUCTED CARPORT ADDITION ON A PROPERTY LOCATED AT 4053 WINTERS STREET. THE SUBJECT PROPERTY ENCOMPASSES 0.108 + ACRES AND IS ZONED R-1BC (SINGLE-FAMILY HIGH DENSITY- CONDITIONAL). SUBMITTED BY TRACIE STEVENSON, PROPERTY OWNER (23VO0500106). 210 - 246
[Resolution No. 24-054 - Pdf](#)
- 8.2. RESOLUTION NO. 24-055: A RESOLUTION APPROVING AND ADOPTING A REVISED RATE SETTING PROCESS. 247 - 270
[Resolution No. 24-055 - Pdf](#)
- 8.3. COUNCIL BILL NO. 24-009; ORDINANCE NO. 3051: AN ORDINANCE REPEALING AND REPLACING ARTICLE II OF CHAPTER 34, DRAINAGE AND FLOOD CONTROL OF THE LAS CRUCES 271 - 312

MUNICIPAL CODE TO AMEND THE FLOOD REGULATIONS TO
REFLECT HIGHER STANDARDS ON FLOOD MITIGATION.

[Ordinance No. 3051 - Pdf](#)

9. BOARD APPOINTMENTS

10. NOTICE OF PROPOSED ORDINANCE(S)

1) There will be no public discussion.

2) A Councilor may ask staff for clarification on the proposed ordinance(s).

10.1. COUNCIL BILL NO. 24-010; ORDINANCE NO. 3052: AN ORDINANCE
AMENDING LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED,
(LCMC) CHAPTER 11, FIRE PREVENTION AND PROTECTION,
ARTICLE II, FIRE PREVENTION CODE, BY REPEALING THE
ADOPTED 2015 EDITION OF THE INTERNATIONAL FIRE CODE AND
ENACTING THE 2021 EDITION OF THE INTERNATIONAL FIRE
CODE AS AMENDED WITH CERTAIN RELATED APPENDICES.

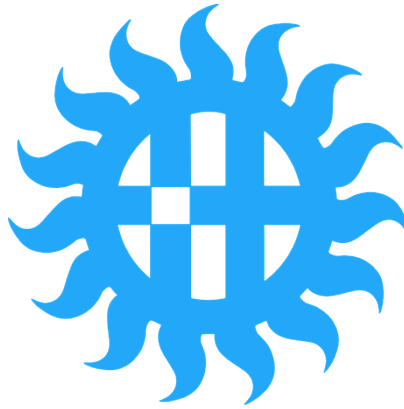
313 - 375

[Ordinance No. 3052 - Pdf](#)

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT



MINUTES

Work Session

Tuesday, October 10, 2023 @ 1:10 PM

City Council Chambers, City Hall

PRESENT: Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran

ABSENT: Mayor Ken Miyagishima

1. PETS OF THE WEEK

1.1

None.

2. JOBS OF THE WEEK

2.1

None.

3. AGENDA ITEM

3.1 ARPA - ED PROPOSAL

Chris Faivre, Deputy Director Economic Development gave overhead presentation.

Irene Parra, Workforce Administrator continued overhead presentation.

Councilor Flores asked are there any studies that show that most households all the adults in that household are working to support the family? Are there any studies in that regard? Any information that can be gathered in that regard?

Irene Parra said depending on the industry we could probably find some information. If there's a specific occupation that you're looking at, there's definitely demographic

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information available either through the Bureau Labor Statistics, State Workforce, Quarterly Labor Report Reviews we could definitely find that information for you.

Councilor Flores said what concerns me is adults in the household are working outside of the home and there's a need for childcare. Childcare is usually not affordable, and my fear is children will be left home alone. I've heard of and know of families where a child as young as five is left to tend for a toddler maybe even younger. What I raised was to have businesses, manufacturers whatever we bring into the City and maybe existing ones too, to provide inhouse childcare. Thank you so much for emphasizing that and bringing all the stats on that. It is very difficult, and I shared this before I had a car, childcare was not very far from my house, and I also had someone come in and help when my youngest was still a toddler. I was very fortunate and very privileged for that. Most people aren't that fortunate. The way things are today people don't have a choice to work every adult in that household is working and children are left alone. If we could get those stats if you could give them to us or do another presentation on that, that would be great. I would like as a matter of policy like to attract, put that as an ask or maybe a requirement if you want a business in our City you have to provide in-house childcare. Some of our businesses we've spoke about this before would be in West Industrial Park area and that's not really accessible even on a bus there's no public transportation that goes out there. Those are the issues that I see, and we really have to take care of our children.

Irene Parra said I think the more that we can continue to work with our local Chamber of Commerce and businesses is to find out how we can partner to address that issue the better served our residents will be absolutely.

Councilor Bencomo said I think from the very beginning when we received this huge ARPA allocation it was just a huge opportunity for our community. I really was of the belief that how do we make it go the furthest with the most impact. I love all five projects. I am curious about taking this million and dividing it up into these five projects. I'm by no means saying let's maybe focus on a couple and fund them more, because I feel you've done your research, but can we have that conversation a little bit? Can we just talk about your thought process in terms of these five. I'm sort of here like with the tension of doing oh my god they're so incredible and how do we not dilute this money and make it go the furthest that it can. If you feel funding these five projects is that then I'm all for it, I do just want to open up that conversation.

Irene Parra said that was definitely questions we were asking in the very beginning. We were looking forward to the opportunity to work with Bitwise and to help their apprenticeship program be a success. When this opportunity came back to us, we were also very grateful that we not only felt like there was one program that could do some good, but there were several and there was not just one partner we could be working with to make an impact there were several. In the larger scope we would be making a larger impact by trying to create more programs to assist more residents. In doing so identifying these very specific programs we were also very mindful that the participants of all of these programs could also benefit from the others. Those participating in the transitional job training program could also benefit from the childcare programs, could also benefit from the apprenticeship programs. We were very mindful that they would also be complimentary of one another. I think the idea of wanting to maintain the five in total that was really the driving force for us was we

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could see that they would be working collectively and complementary with one another. I hope that answers your question.

Councilor Bencomo said it totally did. I feel like you're already confident that these five this is a good use of this million dollars that was sort of what I was trying to get at to ease my own internal tension. The two first programs, number one and number two in our packets are incredibly well thought out. Have you been working on these a little bit longer than the other three? You are very thorough and the other three are still pretty thorough but not as much as the first two.

Irene Parra said yes the first two programs I have actually been researching for over a year now to see how we could fund them internally. When this money came up these were the first two at the top of my list. That's not to say that the other programs would not be ready to go as early as January 1. The partners are very confident based on their knowledge and expertise we would be able to do that.

Councilor Bencomo said perhaps even given the last 60 thousand I'm curious about marketing, how are we going to make sure people that need to hear about this are hearing about these opportunities number one. Then number two when can we expect an update, a report back from some of these?

Irene Parra said we definitely wanted to make sure we had a bit of a cushion so that 60 thousand can definitely help with any marketing we might be doing. There's going to be cross promotion as well with all the different partners involved. The programs are all very complementary it not going to hurt to promote one over the other. I think clients can benefit from all of them. Having more individuals involved in the promotion of that, also working with our Councilors to help promote it with their constituents in their districts. We're also hoping to leverage your connections as well. In terms of coming back can you clarify your question as far as an update.

Councilor Bencomo asked when would you expect the first time you report back to the Council on any of the particular programs?

Irene Parra said so we're hoping to launch these programs January 2024, and depending on the length of time for the different programs there'll be periodic updates. There'll be evaluations taking place especially on the new programs. There'll be regular updates being provided, as often as Council is hoping to receive them.

Councilor Bencomo said I just had read some stuff about potential claw backs from the Federal Government on un-spent ARPA dollars. Have you looked into that? Is this timeline still within?

Irene Parra said we would still be able to allocate those funds within the timeline.

Councilor Graham said I was doing some reading this morning and realizing workforce development training is such a huge task. I just read something that I hadn't thought of that we are trying to train people for jobs that we don't even know exist yet. The way technology is changing so quickly it's not just trying to predict the sorts of

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jobs we already know about. We're trying to make people ready to flex and adapt with an economy and world and technology landscape that's just so malleable. I really appreciate the nuts and bolts put into this. One question on project one, this one is definitely a little more open than the others in terms of it's not tied to any specific industry and I'm not quibbling with that. Is there a possibility of working with local employers to create programs where we know we have jobs waiting? Just from my other gig you know some of the best scenarios are an employer tells you exactly what they're looking for. You help that person get the exact skills and they will transition seamlessly into a job at the end. Do we have any ideas about partnerships on that?

Irene Parra said we have been in conversation with different businesses from the community. We've been communicating with our Chambers of Commerce. We were really just waiting for the green light to be able to say we're ready to do this to be able to bring them into the fold. There are a number of opportunities within this program that we are going to be inviting businesses to participate either on panel discussions to be able to talk about what the culture is within that particular industry or that particular business. Providing opportunities for networking as well as even job shadowing. We are absolutely wanting to make sure that's going to be a primary component of this program.

Councilor Graham said exactly what I would have wanted to hear. Also to hear you talking about the culture of workplaces I think soft skills is not the outdated term. I hear 21st century skills now. I think anything that can make the programing specific to workplaces and work cultures the folks are going to transition to locally is all the better. What we hear the most about up here is crime, the problems in our City and what are we doing. This is what we're doing these kind of programs dealing with root cause I'm going to borrow a phrase from my esteem colleague addressing root cause problems with long term solutions but also with short term strategic programing to make folks lives better right now. Thank you for being a part of that.

Councilor Abeyta said I do like that you looked at it in a really holistic way. We know during COVID all the kids were sent home. What I found in that community is a lot of individuals had to leave the workforce or adapt in different ways and change their whole career trajectory. Getting back into things has been very difficult for a lot of people and in particular women who often had the greater burden of that childcare issue. I like looking at that we're addressing and making sure we're helping not only with larger institutions for childcare but more of the at home facilities. I'm hoping this will give rise to care facilities that look at non-traditional hours for childcare too. So that we're looking at overnight type care, or evenings. So that way we can address different types of workforce as we're growing that too. Do we have any plans on any sort of the long term tracking of businesses retention? Like how after we do this training looking back in another 5 years seeing if these businesses are able to stay sustainable?

Irene Parra said absolutely. Part of the programing especially the pilot programs are going to have that follow-up component. Not only over a five year period but within the first year we want to be going back to these businesses and these employers to find out what successes they've had. We want to make these permanent, so we want to

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know what's working and what's not and be able to adjust where necessary.

Councilor Abeyta said even I would say for the job training programs to see how many individuals stayed in the profession that they went into that was based on the training or if they had to transition to something else.

Mayor Pro Tem Gandara said I want to speak to the first project. The treatment plan kind of a case manager. Who have you identified as an agency to do that, or will it be internal to DACC?

Irene Parra said it will be internal to DACC but also partnering with the organizations whose clients we've already identifies would be a good fit. It's going to be a multiple. Whatever DACC can address with them what they're not already through receiving their non-profit organization or assistance through New Mexico Workforce Connection office we will insure they are receiving that support that they need specific to their needs.

Mayor Pro Tem Gandara said I wanted to move into the childcare provider the microgrant program and then the childcare accelerator program. Something that is near and dear to me given my experience in the child welfare arena. Why this is so important to reduce child abuse and neglect and unfortunately we lose kids to people who are not fit to take care of children. I think parents are finding themselves single parents especially, I need to work but I'm going to leave my child with this individual who maybe they have not known too well and sort of had the training. This is really important to me, and I probably am getting into the weeds too much. I think I said more specifically at our Policy Review Committee that I feel really strongly that we have partners in community that have been working on this for a number of years and Ngage partnership would be one of them. I see Dr. Winters in the audience and would really like to hear from her and a number of them on how they plan to sort of move through this. I think all of them are important but this to me is something we've been working on decades. We know what the numbers are. We know that there is more in house programing then there is childcare bricks and mortar if you will. They have had a real difficult time and we also know we don't pay them enough money. I want to know what those thoughts are about how we're going to move in the direction of trying to mitigate some of these issues? I noticed you have some outcomes that have been listed here around staffing, clients and how many will be inhouse? How many will be childcare sort of centers if you will? I wonder if those things have been thought out? Really I don't see Ngage here. I think they've been doing this for years and collective impact module have seen such wonderful results. They already have the infrastructure in place and the research done.

Irene Parra said in talking to members from the coalition there is a wealth of information. I am still learning from them. They've been in the trenches for years like you said and they are the experts on the ground. We were talking about the business accelerator program in particular one thing that kept coming up was not just wanting to provide information on how to operate and facilitate a childcare center. How to provide quality care and what that looks like even for those who currently have a registered business or a licensed center what does quality care look like? Especially

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for those registered providers which are the home care providers the Abuelitas and the Tias that are taking care of kids what does that look like if they've never really received the kind of training, putting kids in the living room in front of the TV and go cook dinner or to go cook lunch that is actually something they really shouldn't be doing. That's not to say they're doing it to purposely endanger the child. But understanding what quality care looks like is what this program is going to help them understand. Leveraging the expertise of the members from the coalition that are helping to develop this program are really going to take that issue into consideration is providing that quality care and encouraging that to be the standard across the board for providers here in Dona Ana County and the City of Las Cruces.

Angela Garcia, Owner of the Toy Box and President of Full Circle said we met Miss Irene and were introduced to this project more recently with that particular focus in mind with how do we insure quality. A lot of our members are home providers. A lot of them don't have information or resources that allow them to have specific trainings or have specific supports within their homes to be able to insure quality programs that are existing within their programs. They are crucial to the infrastructure of childcare. I think City Councilor Abeyta mentioned it earlier. Having that outside hour care, having those smaller ratios is really important when you're talking about a center like mine. Some children can be over stimulated in a bigger group. These are very important parts to our overall holistic approach of childcare. However they often don't have as much access to different resources to quality trainings different things that we do at centers. It is the hope for us to join the City and partnering on that specific issue of quality. How can we support them at home so we can support the children in their programs.

Mayor Pro Tem Gandara said how are we addressing because I know there is such a need and lack of quality care like the graveyard shift. That seems to be ever an issue and I know that your experiencing. Who wants to do that during graveyard but it's necessary and the swing shift that's true. I'm really particularly interested in hearing what maybe is some thought around that? Providing childcare in those non-traditional hours?

Irene Parra said so part of the structure of the programming is going to be focusing on two main specific target populations. First it's those established registered home providers to help them really try to fine tune how they're operating their centers. The second is for those aspiring entrepreneurs who are interested in starting a program to help them understand where that need is and where the gaps are. To maybe look to consider to build their programs around those areas where we don't have as many that are meeting those late hour needs, over hour's needs, so that the program in general is going to establish or address the needs that our parents have in the community. It's not just the 8-5 provider. It's helping them understand that there is a need here that if you're available, you have the resources to do it this is where we need you to fill that need for our community.

Angela Garcia said if I can share a personal experience. I opened the Toy Box Too off of Roadrunner in 2019 it was my intention to have a 24 hour childcare center because of the need in our community. Unfortunately when we were building we had some

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issues. They were going to require me to have a 30,000 dollar fire sprinkler system installed because I now was going to be considered something other than a childcare. It was something overnight. I wasn't quite sure exactly but being totally honest I couldn't afford it. So I couldn't do it. I think that would be great to address some of those things in conversations of barriers to providing these overnight care for providers like myself even while we're creating capacity in homes that's very crucial. It could be greater capacity if we could get the barriers down for a lot of the providers that might want to do it in a bigger setting.

Mayor Pro Tem Gandara said that's very thoughtful. I didn't know that piece and it's a great thing to remember as we go forward. I want to hear from our folks from Jeff Watt and others in terms of what is the thought there related to the programing and transportation. I know the group has been working quite a bit on that. I want to give them an opportunity to speak.

Jeff Watt, Career Specialist with the ACE Team said I'll be honest with you finding kids right now that don't have cars that aren't in our program is kind of hard. They're in the middle of a schedule it's not like the University where now we go into the second semester and then everyone goes and re-does their schedule. We are trying to identify those kids. That's our main thing right now. It's impactful as you guys know across the county it's getting kids to experiences getting, them the jobs. What I've heard about everything is getting them there. That's what we're looking at I think a couple of our focus that we talked about. You have an amazing guy working for the City his name is Ryan Steinmitz. He's like the greatest thing for us because we work together. In my mind what I'd like to see is that group of kids kind of dropped off here at City Hall and then moved around through City departments here. Also all the way over to the Fire Department with Chief Smith's group. He's taken three kids this year he usually takes 6 I'd think this would be one hub where there'd be a little bit more support because that's kind of what we're looking for. Kids need support, a mentor, someone to say hey maybe you should do this. I think that's a big part of what we're looking at in the initial phases. The next phase it is working with the hospitals that's why Mr. Ogas he does a lot of our medical placements and this Miss Rachel Knight she does a lot of our Ag placements. But getting kids to the hospital so they can be CNA's before they graduate. We want kids to be EA's before they graduate high school. That way they enter and become a teacher just like anything else. I know we work with the Civilian Patrol, and we do some of those summer police officer things, I know we have bunch of those. We're trying to build those up. The goal of our program is to not just graduate but graduate ready to work. What we've noticed, I know it ties into what she talks about. I know that you see the ones without a degree and not getting paid as much over time. What we're noticing that if they come out with a skill there're going to go the next step, they don't stop. If they don't start with a skill they just don't know what the next step is. What our thing is exposing them. I know Mr. Ogas currently has two students in the Pharmacy Tech Program at Mesilla Valley Pharmacy. We're trying to find the local ones who can work with our kids. The local businesses are the lifeline to ACE that's why I would say dropping them off here and dispersing them in this area would be very helpful to us.

Mayor Pro Tem Gandara said the last question I brought up is an evaluation component. How do we know that this is working? People will ask you have given \$1

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million to these programs how do we know that we're improving skill sets sub-skilling those sorts of things?

Chris Faivre said so I've been talking with Leeann DeMouche in Finance on this component in our discussions it didn't seem like funds for evaluations could come out of the ARPA funds directly, so we've been looking for other paths to fund these evaluation sources. We're looking into working together on that piece to not only provide some more in depth evaluation of this program but potentially other ARPA programs as well. We're looking for the funding for that and trying to identify what that looks like. Since the last EDPRC Irene did reach out to someone at NMSU that does do evaluations and got a rough estimate for what it would cost to do this so we're trying to see if we could find funds that would not only cover that but potentially cover some of these other ones. It's a separate conversation from this specific funding item but we're definitely exploring those options as well.

Mayor Pro Tem Gandara said I appreciate the research to have that prepared for us today. I think it's so important because I heard the work sustain these projects moving forward. I really feel that we need to be able to show that we've made a difference in a variety of ways and not just like number of clients. I think we need a qualitative and information. Often I get frustrated that we don't have sort of that at our fingertips and we get a lot of pressure up here as to why are you spending money on this and poverty and crime. I truly believe and I won't get on my soap box because Councilor Graham did a very good job of explaining. I feel this is a way in conjunction with our Lift Up program and scaling that out. We're very committed to addressing poverty and this is the way to do it. We know these are all the elements that will play a huge part moving forward.

Chris Faivre said I just wanted to point out too that through the administrative funds that were set aside when we received ARPA funds that Finance is hiring someone that is going to work directly on oversight within the City staff on these particular programs so there will be that staffing component that will be working directly on these grants, oversight and evaluations and that component in addition to anything else we bring onboard as well.

Councilor Bencomo said just a couple of questions that popped up while my colleagues were asking their questions. Mayor Pro Tem Gandara and I recently met with the New Mexico Restaurant Association who I think if you haven't been in communications with them about this would be a good partner as well. They did mention to us that they were having a really hard time hiring folks after the pandemic in the hospitality sector. I was just wondering where those conversations are and if you have had them in relation to any of these programs?

Irene Parra said I have and there's a couple of areas that we're looking at working in partnership with them. The first is they expressed an interest in creating a separate apprenticeship program specifically for their industry. They really want to build long term career opportunities for our residents rather than just minimum wage paying job. They want to pay them a livable wage. The second we did mention this program to them and asking them once we get the green light to be one of those business

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partners to participate in it. To be willing to allow for job sharing opportunities to talk about the culture of what it is to work in their industry. We've definitely had those conversations with them, and they are very interested.

Councilor Bencomo said that's really important. I don't mean to get to political about some of these things either. Sometimes I feel like for those of us who are proponents of higher minimum wage and sometimes childcare facilities and restaurants, we don't always see eye to eye on these kind of things. I do also wonder how we better navigate those conversations in terms of well-paying jobs, paid sick leave, those kinds of things.

Irene Parra said those have been part of the questions in conversations that we've been asking them if they are interested in long term sustainability of the workforce there needs to be a wage that allows them to do that. They're talking about through the pre-apprenticeship program to create credentials and certifications that will allow the justification for an increase in wage. They're definitely interested in having the conversation now and we're taking full advantage of them.

Councilor Bencomo said just the last thing I wanted to flag from that meeting we had with them. One of the restaurant owners talked about something they've had a lot of success with was hiring folks who are re-entering citizens so re-entering after being incarcerated for a long time and the biggest piece of avoiding recidivism is having a job and housing. I do want to flag that I think there is a segment of the population that should have also a focus as we're talking about single parents, low income folks. That folks that are re-entering is also an important population to consider.

Irene Parra said the transitional job training program is the program we're hoping to expand to include those individuals that we know would definitely benefit from that training. That demographic has been part of the conversation.

Councilor Flores said the re-entry aspect Deloitte did a study on people who have been trafficked, the most un-employable people and I thought women and my little brown face isn't going to get employed. I was really surprised to hear that it's not that. It was people who were trafficked, people who have been in prison. They're not employable because they don't have a resume. That is something for employers to look at too, to determine you know their workforce or to get people a break. I don't know if that's been within the purview of what we're going after here, but I think those are factors that definitely have to be addressed.

Irene Parra said I couldn't agree with you more and I was actually looking for that handout they provided because I do feel that they would benefit from not just the transitional job training program but others as well. They are definitely on the radar.

Gentry Roberts, Executive Director of the Southern New Mexico Apprenticeship Program Electrical Trade School said I just wanted to include a little bit on the Electrical Trade School and apprenticeship side. Just to give you a little background we are of the other four year program. Partnering with the ACE program is a great opportunity for us as well. Really want to create that exposure. Pre-apprenticeship is a

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major buzz word right now especially in the public schools trying to get the trades exposed at the public school level, I'm really trying to introduce that. So we have a lot of really great opportunities at the IEC level like Irene had mentioned we're one of over fifty chapters nationwide. We have a national curriculum, run off the national electrical code and we do a lot of training there. With that being said we have pre-apprenticeship would be huge in the public schools in just introducing a lot of this conversation about the hands on. The curriculum that we have as far as the introduction into tool identification and material usage and identification in those sectors we are electrical specific but that doesn't necessarily mean that it can't go hand in hand across the trades. It could be a great start and great opportunity we appreciate this and the opportunity to be here.

Bryan Eichelberger, Board President, and Contractor Employer said I think I'm in a good position to speak to a lot of the things that I heard are concerns for all of you. Number one I get to see very closely the difference that these programs make for young men and women, young people, and older people those re-entering as well. I personally have been able to hire probably over the last several years. I would say a dozen or more people who have been in prison and come back out then get their journeymen's license and now have families, now they are a very beneficial part of the community and have turned their lives completely around thanks to this non-profit organization which is about education in the trades. There are a lot of different trades out there that all could benefit from this, and I'd like to see them benefit as well not just the electrical trade in itself. The trades in general get the attention that they deserve. It's a good honest living that these people can add something not just to their own lives but to others around them and it plays perfectly hand in hand with what I hope the City of Las Cruces will continue to do which is to build an economy that our young people can be a part of and that can continue to thrive and continue to refuel these same things over and over. I can't say enough good things. I personally went through the apprenticeship program myself right out of high school. My son who is about to graduate he'll be doing the same thing. That is a testament to how much I believe in it. My brother went through it and is now an electrical engineer. It's a great jumping off point as mentioned it leads to so many other good things. We appreciate you considering us for this, and we are very hopeful that we can utilize these funds in the best way possible for our community.

Mayor Pro Tem Gandara said 8 years ago we put together an apprenticeship program. It was a part of Council's priority and we started with our water tech program at Utilities. It's been a great opportunity. I'm so thankful we have the money to be able to do that. I think it so important that we look at other grant opportunities to expand this. It's important we need to keep our youth here, our students here. We train them up and they leave for better paying jobs. I think we are all very committed to this.

Jerome Hanway, Apprentice Program Coordinator for Southern New Mexico said we're partnering with Irene to make this happen and the school districts, the IEC schools. We're very excited about the program. To talk about one other thing before when you were mentioning Miss Flores doing resume and building all that for re-entry. Workforce does that, we offer those services for free. We actually cater to them and help them because their one of our most at risk. We definitely try to do that; we also

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bond, and any justice involved we'll insure them so they can go back to the workforce. There's also tax breaks for individuals that hire those individuals. There are programs already set up that we do offer every day for justice involved, for veterans so we do those programs already through the State. Those are things we're definitely excited about especially with Irene we try to partner some of these programs probably aren't very familiar or recognized by anybody. Through our partnership with the City we're definitely trying to expand that and push that into the community so they can understand that as well.

Mayor Pro Tem Gandara said thank you for reminding us about our veterans. My son was able to go into Workforce Connections in Albuquerque and he had this long resume. They helped him through. It was great service, and he was able to land a good job. I think that's another population that we want to see our veterans because it's so hard to leave the military and come back into the public if you will the community. It's a whole different scenario there are so many of our veterans suffering from depression and trauma things like that. I think it makes it a little more difficult. It's another cohort that we should definitely be paying attention to.

Nubia Martinez, Housing Director at La Casa said one of our performance is to make sure within our temporary housing is if we can find them employment, because it is temporary only up to 24 months. Helping our survivors of domestic violence their housing has changed due to domestic violence. They do go into our shelters. They also provide non-residential services. But our housing and our job is to be able to get them stabilized in their own housing. We do help them with that, and I know there is a huge need for project one especially for our projects and for our survivors to become successful and be able to maintain their own housing. I know that the stipends is going to be something our survivors are really going to benefit from it. We're looking at some barriers they might have. We talked possibly when their car breaks down that stipend would be ready good for them and to be able to maintain their job. I am looking forward to and please to be working on this project with them and I know our survivors will benefit from it.

Davin Lopez, MVEDA said let me just say I think the way the ED staff presented this is very prudent. It looks at a lot of different challenges that are out there. It looks at a lot of different opportunities to meet those challenges, so it really diversifies the dollars and I just think it's a smart approach overall. I think it hits the three things we've talked about on a regular basis our challenges with workforce it's hire wages. It's how do we create more opportunities to get rid of the impediments of joining the workforce and quite frankly just Councilor Graham as you said we're dealing with this on every conversation it seems like with manufacturers. Dealing with the jobs of the future and what they actually mean and what they require. In many cases industry is still trying to figure that out right now. It's interesting when we talk to manufacturers about especially with advanced manufacturing there's a unique opportunity although there are technical skills required. I think the real opportunity is they also tell us at the same time they just need people who are in a position to want to work and learn. They're dealing with equipment that no one has ever worked on in the world before. Whether you have an engineering degree or you're just out of high school they're willing to train you as long as you are willing to learn. I think those are some opportunities might be once in a generational time that we're going to be seeing these

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things. I don't know where things went array. Councilor Flores you talked about companies having on site care facilities. Twenty years ago when I first got into Economic Development at the State level there was a program out that encouraged and incentivized companies to open in house facilities. I don't know what happened to that either. I ask about that those who might have a memory of it, so nobody seems to. We use to have trades programs in high school and kids would graduate with certain skill sets that they could take. I don't know what happened to all these. We need to get back to them and I think this is an approach to really find out what's going to work here and then double down on that after that. We'll find out which of these programs really shines and which really work for our community. I think it's the opportunity to learn, discover and grow from it.

Mayor Pro Tem Gandara said I remember 2 or 3 years ago sitting in a meeting with you speaking to childcare and sort of what the possibilities could be if we had childcare in settings like the City, County these big manufacturing companies. Look and here we are I think it's an opportunity to explore and kind of shoot for the stars, there's no limit. It's a really cool opportunity for us to really be innovative and creative in the way we're looking at this. I'll just say to me demographically we have a lot of single mamas in the City and they're struggling. I'd really like to see more female electricians. Sort of building our childcare. I think industry is super important and particularly around paying them what they're worth. They do so much to prepare our kids. I'm a recipient of that, they took care of my kids in ways, while I worked. I always knew they'd be taken good care of, and they learned such valuable skills there and they do so much amazing work. We should pay them their worth.

Mary Ulrich, Dona Ana Community College said I just wanted to say as a representative of the college I wanted to thank the City for the partnership. I think we're making a lot of strides. I recently got back from a Workforce Development Conference on National Council for Workforce Education. We are well represented there. The programs people are talking about are these programs. It's really nice to see that we're in a peer group that we can present. I'd also like to see the City is really expanding efforts for educational opportunities for a term I learned and introduce it to you all, the new majority learner. We all talk about non-traditional students at the college level, but really non-traditional students are the majority of our students. There's a term new majority learners are single parents, justice involved individuals, veterans, people with disabilities. That's who we're serving and DACC is proud to be a member.

4. ADJOURNMENT

4.1

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to Adjourn at 2:27 p.m.

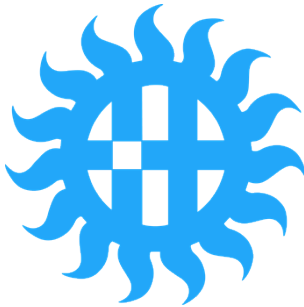
RESULT:	Carried
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Tessa Abeyta
AYES:	Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran

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ABSENT:	Mayor Ken Miyagishima
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Mayor

City Clerk



MINUTES

City Council

Monday, October 16, 2023 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

ABSENT:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR ABEYTA.

1.2 PETS OF THE WEEK.

Amy Defelix, Animal Services Center of the Mesilla Valley presented Pets of the Week.

1.3 JOBS OF THE WEEK.

Sarah Raney, New Mexico Workforce Connections presented Jobs of the Week.

1.4 PRESENTATION OF CERTIFICATES OF APPRECIATION/PROCLAMATIONS - COUNCILOR ABEYTA.

Presentation given by William Hawkins, Parade Chair for the Veteran's Day Parade Poster Contest winners.

Councilor Abeyta presented Sandra Day with a proclamation for Lights on Afterschool Day.

Councilor Abeyta presented Leah Kite with a proclamation for the Village at Northrise Week.

Councilor Abeyta presented Jessica Garcia with a proclamation for Red Ribbon Week.

Councilor Abeyta present Alina Bradley with a proclamation for Domestic Violence

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Awareness Month.

Anita Ward from Care Solace gave a presentation on Mental Health Care Solution for Cities over Zoom.

Anita Ward said that is correct.

Councilor Flores said I would like to share the story of my son who was a senior in high school, and he attempted suicide because he was bullied for being gay. He had been under psychiatric care, and he had called his father and he called me and I was away from my desk and I missed the call but he did get his father and his father called the ambulance. We were very fortunate that he was 17 at the time, and we lived near UCLA and his psychiatrist was there to and he was taken to the psychiatric ward for the juvenile. We were fortunate that his father's insurance covered all of that and we didn't pay. My question to you is do you work with insurance companies to extend coverage for their children because had this happened two and half months later, he would not have qualified because they tap out at 18. I know that a lot of insurance carriers have coverage for their children for glasses or something till they are 25 but do you do any of that work Anita because I think it is crucial for people to know that there is also hospitalization that they can seek.

Anita Ward said we do work with them. We work with individuals through their EAP program. If the resident were to call and they share where their employment is, we work through EAP programs. We will maximize their EAP and make sure where they have insurance coverage that we are working through their model but as importantly and maybe my heart tends to sit with those that are most vulnerable parts of our community. We also work with providers who take sliding scale. So those who can't afford it we never think that money should get in the way of care so we will navigate all the insurance in their behalf but we also have providers who will do pro bono work. We have providers that will navigate all the of the sliding scale which means that somebody may pay zero, \$5, but I think the maximum there is \$35. So, we will never let the financial part get in the way of saving a life.

1.5 SISTER CITIES PRESENTATION.

Mayor Miyagishima said we have two Sister Cities, one is Lerdo, Mexico and the other is Nienburg Germany and for those of you who may or may not be aware of Sister Cities it was started by President Eisenhower in 1956. After World War II ended, President Eisenhower wanted to have various countries both in the United States reach out to and usually cities of similar size to kind of get to know them brotherhood/sisterhood so there is no more wars. By doing so and learning different cultures would help us realize we are just one big huge family just spread out around this huge globe of ours. So that is how Sister Cities came to be.

Allison Smith gave a presentation on the Sister Cities Delegation Trip.

Dolores Archuleta, Mayor Pro Tem Emeritus said my husband was in the Army and spent four years in Germany. When we got married, he said one of these days I am going to take you back to Germany to the area where I was. Forty years later with

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Sister Cities that is when we went. It was absolutely fabulous. What happened there with him is that he didn't recognize any of the buildings that he left and that is because they were all restored. When he was there, they were bombed. I highly recommend to all of you who can please attend, it is fabulous.

Mayor Miyagishima said the city of Las Cruces is 174 years old and Nienburg is going to turn 1,000 in 2025.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Sarah Smith, Member of the Public said I was glad to hear your proclamation for Red Ribbon Week and a drug free community. I hope you will do more. As a mother of two children, I am concerned about the increased drug abuse issues in our community as well as the crime and homelessness that often come along with drug abuse. The city council has dedicated a lot of time and money in redeveloping the downtown mall on Main Street in order to revitalize this area. Yet numerous business owners have come to this council to report that they are suffering broken windows, robberies, harassment, public urination, and other issues. My kids are 13 and 16 years old and they attend a class in the downtown mall a few times a week. It is a mixed ages class with children down to 9 years old. The week before last, two homeless men were sitting outside of their class exchanging pills and cigarettes, smoking marijuana, and taking alcohol shots. This was in the middle of the afternoon. They were in full view of the children in the class. Then last week when my children were trying to go to class there was a drugged-out man in front of the door to the building screaming and gesticulating. My kids had to find another way to get into the building safely. They were able to make it inside and there was a young employee armed with a broomstick in case the drugged-out man tried to enter and cause a problem. I have heard other mothers expressing concern about safety of their children in the downtown mall as well and saying that they no longer use the splash pad because it does not feel safe. What will you do to fix this situation? I know that you are planning to invest more money in redeveloping El Paseo and Picacho like you did for Main Street but that will all fail if the crime, vandalism, drug abuse and homelessness are not remedied first. Giving housing to the homeless without sobriety is not the answer either as evidence of the problems of Desert Hope Homeless Housing Project that has ended up housing drug dealers. We know that mental health and drug addiction are the main causes of the problem that we are seeing. Instead of waiting on the state to fix this issue will you please prioritize mental health and substance abuse treatment over other projects even if it means stopping funding other projects in order to save up the money to do this for our community. This seems to be the most urgent need that we are facing right now. The City of Las Cruces could pave the way by making a commitment to stop or reduce funding to some other areas in order to focus on this urgent need. This would be responsible stewardship with the money that the city council is entrusted

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with for the good of our community. Las Cruces's children, families, and businesses are counting on you to make our community a safe place to live and work.

Mayor Miyagishima said one of the things that I was just mentioning with Mayor Pro Tem and City Manager, is I know that we use certain funding from our TIDD, to hire security but it looks like we may want to be 24/7 because in the past it was just kind of in the evening time. I think they are going to expand the hours so that can be addressed. Also, Mayor Pro Tem suggested that if you see anything just call 911, the LIGHT Project is going to kick in and they will let them know to send the members of our Fire

Response Team or Fire Department.

Juan Garcia, Member of the Public said it was sad to hear that a 14-year-old boy was killed by a 15-year-old on Saturday and the shooting on Sunday by Little Ceasar's in the Albertsons shopping center. The streets of Las Cruces are becoming less safe. I was asked to read the following letter in public comment. The owner of the business can't afford to close and come speak. The business is in city council District 5. "My name is Kenneth Okwunwanne and I am originally from Nigeria. I have been practicing pharmacy in Las Cruces for 18 years. I was a pharmacist at Kmart from 2005 to 2017. I made the decision to open Del Rey when Kmart operations stopped. Wednesday, October 18th will mark the 6th year of the Del Rey Pharmacy that has been serving the community. Since DRP inception burglary and vandalisms have really picked up in our community. In the past two years with employee vehicle windshields getting smashed. On May 22, 2023, the DRP glass front was smashed in, and the pharmacy was ransacked and burglarized. One week later on May 30, 2023, DRP glass front door was again cracked in a burglar attempt. No arrest have been made to date. I would like to point out that even the motion detector that the alarm triggered the video footage show that the burglar was in no hurry and took his time to ransack the place causing thousands and thousands of dollars in damages and losses. I believe that increase in police manpower and other resources will favorably impact to detour this current and very rampant burglary and vandalisms. As you can see in this photo the store front is covered by bars. It looks like a prison except that the victims are inside the building not outside. Our elected officials saw the rising crime over the last four years during your terms in office and well here we are. What can we expect in the next four years? Now we have a "epidemic of Fentanyl". ABC-7 learned that in 2019 3,300 pills were seized. In 2021 it went up to 22,000 and so far in 23 more than 50,000 pills have been seized. Legislative Session in 2023 had numerous bills that could have been passed and possibly impact the rising crime. All died in committee. With the continued rise in crime in this city every citizen in this community who qualifies for a concealed carry license should obtain one before the Governor continues her attacks on lawful gun owners in Dona Ana County and prohibits it."

Lori English, Member of the Public said two weeks ago I stood in this very same spot and I challenged you to take up the mantel and the banner to fight crime in the city of Las Cruces. Since then, two lives have been lost, numerous businesses have additionally been attacked, vandalized and its vandalism it's not robbery. It's not to gain anything, it's just to cause damage. Then to watch a forum of candidates sponsored by Channel 14 Fox News and have a candidate sit there and say I don't

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think there is any crime in Las Cruces. For months I have been coming to this council and have been speaking about Veterans and about the issues and absolutely nothing has been done. You have been hearing from literally hundreds of people both at council meetings and other venues about the crime problem in Las Cruces. First of all I would like to tell you if you don't already know we do have a crime problem in Las Cruces and I challenge the council to please act as councilors and again not as politicians and do not support political parties when you should be supporting the people and the citizens of Las Cruces, their lives and their properties.

Mayor Miyagishima said just a few clarifications. Violent crime is down a little bit but the other crimes I know are up a bit, so I just wanted to clarify that. I will also say, and I want the public to know this but if the crime is trespassing or breaking of windows and such is under \$1,000 it is a misdemeanor and that I something there the District Attorney doesn't prosecute. It's only when they become a felony. So, what I am trying to get at is that the City Council has nothing to do with the misdemeanors. I think a few months back, several months ago I introduced to you a name of a municipal judge that is no longer running for reelection, and I hope things are going to get a little bit better starting next year and I know that there a lot of challenges right now, but his council is working diligently to do everything the best that they can.

Councilor Bencomo translated for Karla Martinez, Member of the Public. Hi, my name is Karla Martinez my presence here is because I am a little bit confused. I was here three months ago when my business was vandalized. I am confused about the time given to us here today to name our complaints about the things happening in the city. If we are only here to be listened to how do I see the responses of what we are bringing here Monday to Monday? I see everyone here and you all just listen but nowhere to see your responses. I see that the Mayor has briefly spoken about response. I am just trying to understand how the city works. As a small business owner me and my daughter would like to get involved. We would like to understand how we can create change in the community towards the vandalism happening. And we would like to be part of something positive. I think we are all tired of seeing just the negative of happening in the city. I thank you for all you do. Thank you for all that is coming in the future and our kids don't deserve the Las Cruces that we have today. Thank you, I apologize not saying it in English, but it is easier to say it in Spanish.

Mayor Miyagishima said when members of the public come before us council can't all of us talk about it because state law prohibits us from discussing anything that wasn't on the agenda. Now for one person namely me I usually try to give some response. So how we would like it to work so if she leave her name and phone number and address with the City Clerk. Then we will determine who your city representative is so they will get a copy and as will I and how I typically like to handle it is let your representative listen first.

Councilor Bencomo said I would just like to clarify that I have spoken with her directly.

Mayor Miyagishima said then if there is something else I can do to help and then if there is something there that is going to require spending money then we can take it to put it on the agenda and discuss it. If it doesn't require that then usually the

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councilor can work with the City Manager and have staff take care of whatever it is if it doesn't require a whole lot of money.

Councilor Bencomo translated, she is asking if she can only have contact with me or anybody else?

Mayor Miyagishima said preferably the representative and then I will act as a second representative to ask someone from outside the district because their hands are full with their residents. That is why they are elected in districts, but I am elected At-large and I will be more than happy to.

Donald Wilson, Member of the Public said I am here today to speak on behalf of Velocruces. I just would like to take a point to since I did work at the Village of Northrise and you recognizing them. One of the things we did when I was there that I was take a small amount of time out of our year every year and thank those of you who have chosen to dedicate many hours of your time to the citizens of Las Cruces and we enjoyed having the Mayor and many of the city councilors come up and we would have a brief lunch and we always made the promise that we are not here to ask you for anything we just wanted to thank you for your service to the city. New Mexico ranks 46th in population density but it is ranked as the deadliest state in pedestrian fatalities per capita by the Governor's Highway Safety Association for the 6th year in a row. Principles of ethics should lead us to conclude that it is unacceptable for people be killed or seriously injured while moving throughout the road transport system when evidence shows us that road deaths and injuries are preventable. Velocruces is seeking partnership with community stakeholders to adopt Vision Zero. Vision Zero is a strategy to eliminate traffic fatalities and severe injuries among all road users and to ensure equitable mobility for all. Vision Zero is grounded in ethical belief that everyone has the right to move safely in their communities. Furthermore, the responsibility for transportation safety is shared by transportation safety system designers and road users. We are asking to partner with you and create a Vision Zero Coalition to Vision Zero goal. Together we will join Albuquerque, Denver, Tempe, Austin, and over 50 other communities in the United States and communities around the world in setting a Vision Zero goal to achieve zero traffic fatalities among all road users. As a first step in this process, we are asking Dona Ana County, the City of Las Cruces, and the Town of Mesilla to join the Vision Zero Network no later than January 1, 2024. Along with this first step we are asking that each government entity commit to the following three goals. Within 90 days of joining the Vision Zero Network we expect the formation of a multi disciplinary taskforce which is a collaboration of among relevant government agencies and community stakeholders to establish a framework of shared goals that focus on coordination and accountability. Within 9 months of the creating the Vision Zero taskforce the taskforce will produce the first Vision Zero Action Plan. This will be a written comprehensive plan committed to an equitable approach to Vision Zero through an inclusive and representative process with measurable, equitable outcomes and benchmarks. The end goal is to provide safe transportation options for all road users in all parts of the city, county, and township. If we take the steps outlined above, we could be celebrating the first year without any traffic fatalities or severe injuries in the Mesilla Valley by January 1, 2035. Additional information on Vision Zero can be found at the website we provide in the letter. Please reply to Velocruces to let us know if you are interested. And the letter is signed

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by our President, George Pearson who is also in the audience today.

Mayor Miyagishima said I did not realize what you were going to do today so council can't act on it. We can just listen to it. You are welcome to send this to me and then I can get it to the City Manager and such. If that is something there that council would want to move forward on, I mean I can bring it up to discuss and then we can have a little bit more of a formal meeting to discuss this.

George Pearson, Member of the Public said I am President of Velocruces a bicycle pedestrian advocacy organization. You recently held a Work Session looking at implementing speed cameras. I had heard some discussion about equity, but equity needs to be considered in creating any camera enforcement system. Fines should not be the only penalty but public service components similar to Mano y Mano Program should be available. Speed is a significant problem and causes more significant injury crashes including fatalities however enforcement cannot solve the problem and is only a tool. Staff has told you that tools are education, enforcement, and engineering. However, engineering has already failed and we need to look at reengineering. We need a Vision Zero Taskforce to start implying Vision Zero ideas so we can solve the epidemic problem of serious traffic injuries and fatalities. We have been talking about improving traffic safety but seems that there has been little actual action. Please authorize a Vision Zero Taskforce to implement safety improvements so that we can have a fatality free Las Cruces.

Jim Wilcox, Member of the Public said I am with Velocruces and helping them out and I am also on the MPO Bicycle and Pedestrian Advisory Committee, but I am not here to represent that group. I am here to represent a group that couldn't be here today and that is the dead. The people that were killed on our highways and could not be here today. They would support an effort towards Vision Zero. I don't like to come and give ideas and things that complain about something and not offer ideas. One of the things that I think could be improved, Bicycle and Pedestrian Advisory Committee has asked for the police reports for the fatalities, and we have been blocked. We do not get the information about what caused the fatality but our charge is safety and protecting lives. I know that this is not the MPO but you are a member of it. There are people who can lobby and help us with that. The other thing that I wanted to offer is the idea for a solution or at least address the problem. I understand that there is only two Police Officers assigned to traffic enforcement and while engineering is really a priority making our roads designed better there is not enough people on the roads enforcing speed limits, racing, dangerous driving. So, I would recommend that we increase the number of people, remember that an eight-hour shift just covers part of the day and there is a formula that the police work with on what the total amount of coverage they have per FTE police officers. My recommendation is at least 5 FTEs for the police officers to enforce traffic and when they are out there, they have a pretty good presence. They are seeing people who they pull over. They can also notice suspicious activity such as guns and drugs.

Mayor Miyagishima said I thought a few years back the city Police Department put on their website an opportunity to download or access the police reports online and I see it here, but I have not tried it. What I am trying to say is that you are eligible to get

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whatever information is there to the public but there may be some supplemental reports that might come along with that or not and if there are some supplemental reports that you didn't get because there could be a pending investigation open.

Jim Wilcox said there was a cyclist killed on Idaho and I followed up with that. I got the police report and I also got the police report from a pedestrian killed on Picacho but we are not given that on the BPAC and I feel uncomfortable trying to distribute that when it hasn't been endorsed by those who are managing the BPAC. So, my recommendation is when there is a fatality, Bicycle and Pedestrian Advisory Committee gets that report information. You can't operate in a vacuum, information provides us with what we need to know.

Mayor Miyagishima said I welcome you to email me with your specific questions or concerns. I will address it with management and see what exactly what can be shared and what isn't.

Jim Wilcox said I appreciate that. I know that there may be legal issues, but I would hope those could be put in context of the benefits of providing more information.

Jim Hoerst, Member of the Public said two weeks ago somebody spoke about whether the United States was a democracy, or a republic and I want to answer that. Thomas Payne answered this question in Rights of Man. What is a Republic? A Republic is a government that divides its power among persons. Rome was a Republic. The Senate selected the Ceasar, and authorized taxes and Rome was not a democracy because the Senate was not elected by the people but chosen by the autocracy. Rome was an autocratic republic. The few govern the many. Britain was neither a republic nor democracy. It was a monarchy, and all the power was dispensed at the pleasure of the king. The King's successor was chosen by birth or God depending on your point of view. Our founders rejected the model of Britain and chose the model for the USA after Rome and Athens. We would be a republic like Rome. We would divide power. Power is divided between the federal and state government. Federal government also divides power between the three branches. We would be a democracy like Athens in that the authority to govern would be derived by the consent of the governed. We the people is stated in the Declaration of Independence. Rome was an aristocratic republic and the United States would be democratic republic. We would be a democratic in that people would elect the President even if indirectly in the people would elect their national and state legislature. The democracy was flawed for certain at its start. Unfortunately, it took two centuries to correct most of the problems but we have nearly achieved our goal of universal eligibility to vote. Why would some of us want the USA to be called a republic rather than a democracy? First of all, they are redefining the word republic. Instead of defining the word republic as a government with divided authority they are defining it as a democracy light. They mean a system that is intentionally flawed and allows for a minority to assume authority over the majority. Those who deny our democracy would have us believe that our forefathers did not intend for us to be a democracy at all and that our founders meant for a minority to overrule the majority through devices like the antiquated electoral college, a senate that over represents conservatives and gerimandering legislatures. The democracy deniers think these

are features not bugs. Lincoln declared that the United States government is a government by, for, and of the people. That is a democratic republic.

4. **READ CLOSED MEETING STATEMENT**

4.1 **READ OCTOBER 10, 2023 CLOSED MEETING STATEMENT INTO THE RECORD.**

The Las Cruces City Council met in Closed Session and only discussed those limited items as stated in the posted notice to discuss pending litigation regarding:

- 1. To discuss pending litigation regarding Aaron Spaulding v. Johnny Estrada, et al., Case No. 2:23-CV-00391, which is closed pursuant to NMSA 1978, Section 10-15-1H(7).
- 2. To discuss pending litigation regarding Robert Ramzy, Jr. v. City of Las Cruces, Case No. D-307-CV-2022-00406, which is closed pursuant to NMSA 1978, Section 10-15-1H(7).
- 3. To discuss a meeting that is subject to attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant, which is closed pursuant to NMSA 1978, Section 10-15-1H(7).

5. **ACCEPTANCE OF AGENDA**

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to accept the agenda as presented.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

6. **CITY COUNCIL MINUTES**

- 6.1 **REGULAR CITY COUNCIL MEETING OF SEPTEMBER 5, 2023.**
- 6.2 **WORK SESSION OF SEPTEMBER 11, 2023.**
- 6.3 **REGULAR CITY COUNCIL MEETING OF SEPTEMBER 18, 2023.**

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

- 7.1 **RESOLUTION NO. 24-035: A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.**
- 7.2 **RESOLUTION NO. 24-036: A RESOLUTION TO ACCEPT THE REAUTHORIZED GRANT AGREEMENT SAP 23-H4099-GFR FROM THE STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT AND**

DESIGNATE THE AUTHORIZED SIGNER, OFFICIAL REPRESENTATIVES, AND DESIGNATED AGENT OF THIS AGREEMENT.

- 7.3 **RESOLUTION NO. 24-037: A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).**
- 7.4 **RESOLUTION NO. 24-038: A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF THE CONTRACT FOR OUTSIDE COUNSEL SERVICES WITH ROBLES, RAEL & ANAYA, P.C. TO \$500,000 PLUS NEW MEXICO GROSS RECEIPTS TAX ANNUALLY (PROCUREMENT NO. 23-24-021).**
- 7.5 **RESOLUTION NO. 24-039: A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 21-22-029 WITH GODFREY'S ASSOCIATES, INC. OF DALLAS, TEXAS TO ADD ADDITIONAL BUILDING, SPACE, AND BRANCH PLANNING TO THE PROJECT SCOPE; INCREASE THE CONTRACT AMOUNT BY \$26,948.00, INCLUDING GROSS RECEIPTS TAX FOR THE ADDITIONAL SERVICES; AND TO EXTEND THE CONTRACT TERM THROUGH DECEMBER 31, 2024.**

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

- 8.1 **RESOLUTION NO. 24-040: A RESOLUTION TO AWARD A PRICE AGREEMENT FOR ELECTRONIC FUEL CARD SERVICES TO WEX BANK DBA WRIGHT EXPRESS FSC (WEX) OF CAROL STREAM, ILLINOIS, IN AN AMOUNT NOT TO EXCEED \$350,000.00 ANNUALLY, FOR A TERM TO COINCIDE WITH NEW MEXICO STATE PURCHASING DIVISION (NMSPD) PRICE AGREEMENT NO. 20-00000-22-00058, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.**

Suri Molina, Buyer gave the overhead presentation.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Resolution No. 24-040.

RESULT:	Carried
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Becki Graham
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

- 8.2 **RESOLUTION NO. 24-041: A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAS CRUCES (CITY) TO ACCEPT FIRST QUARTER BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY’S ADOPTED FY2023-24 BUDGET, AND THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP).**

Rocio Gamboa, Budget Analyst gave the overhead presentation.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Resolution No. 24-041.

RESULT:	Carried
MOVER:	Councilor Tessa Abeyta

SECONDER: Councilor Becki Graham

AYES: Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.3 RESOLUTION NO. 24-042: A RESOLUTION APPROVING A HOUSING TRUST FUND LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THOMAS DEVELOPMENT CO. AN IDAHO CORPORATION, AS DEVELOPER OF THE MULTI-FAMILY AFFORDABLE HOUSING PEDRENA APARTMENT COMPLEX AND AMEND THE CITY'S ADOPTED FY2024 BUDGET FOR \$3,000,000.

Jan Lauterbach, Housing and Neighborhood Revitalization gave the overhead presentation.

Councilor Gandara asked you said this would be coming from the Telshor Fund, but it may at a later date be taken from the Trust Fund, is that because we have not sold the bonds yet for the six mill?

Jan Lauterbach said it is not due to the bonds on this one it is just on the way they are running the Telshor Facility Fund. They wanted to keep the money in there instead of so many disbursements. From what I understand, please correct me if I am wrong but it may get moved to the Affordable Housing Trust Fund for ease.

Councilor Gandara asked it may or it will? I am concerned about the language and when we would do that and who decides that? Which I thought council did.

Natalie Green, Housing and Neighborhood Revitalization Administrator said if the committee decides to allocate a portion of GO Bonds to this project then those expenses would specifically would get moved to the Affordable Housing Trust Fund. The advisory committee has not made that decision and neither has staff, so we just wanted to keep the option open. In the event the bonds are sold and the council chooses to allocate some of that funding to replace some of this Telshor Funding.

Councilor Gandara said I would really recommend, and I am not sure how the committee made the recommendation for it to be pulled from the GO that is why we have it, right? I think that is something that we want to continue to build for sure but also concerned that we have taken this money out and we just took out something similar for the Community of Hope Project there and obviously I voted yes for that because I know there is a need there but I want to make sure after we had a presentation as you know you participated in the Health Policy Review Committee we had a presentation specifically on the Telshor Funding and that would be my recommendation.

Councilor Abeyta said this project is going to be located in my district and I know a lot of individuals, I was just with community members just the other day and they were asking questions about it and what would it look like. Some were even inquiring of what was the age they had to be to be considered a senior for it. So, I know there are a lot of people that are really excited to see this type of housing go up in the area and so I just want to say thank you for that.

Councilor Flores said I would like to hear from Ms. DeMouche in so far as the question that Mayor Pro Tem posed.

Leeann DeMouche, Finance Director said what we are doing with the Telshor is the budget adjustment that Jan is bringing today is actually setting those funds away but what we are doing is we are setting them as expenses within the Telshor Fund. We are not transferring them out of the Telshor Fund into this fund and one of the reasons for that is because in the past when we were doing the asylum seekers, when we were doing the pandemic, we were having issues with trying to reconcile the Telshor Fund and see exactly what was left in the Telshor Fund and what is in and what is going out, what grants are coming in and so in order to make sure that we know what that corpus is we decided that it would be more advantageous and we talked to Mr. Pili and also with Ms. Bencomo and we came to the conclusion that why don't we just expense expenses within the Telshor and that way we know what is actually being spent and we aren't comingling any funds. So that way we know exactly what is in there and what is being spent and what it is being spent on. It helps us to keep up with what the numbers are and not putting it into other funds and not keeping up with it. So that is the only reason and that is why if and when, soon we are going to be bringing to council the fund for the bond for affordable housing. If council sees that some of the bond should be paid using this, then what Jan said we will just move the expense to that because those funds will go directly into that trust fund. That was actually set by ordinance or by council when we brought that to you. So that is the only reason for that is that we are just not transferring, what she is doing is she is bringing me in the expense, but we are leaving in the Telshor Fund, and she will just use the Telshor Fund for those expenses.

Mayor Miyagishima asked how many two bedroom and one bedroom are there going to be?

Jan Lauterbach said there is 44 one bedrooms and 36 two bedrooms.

Mayor Miyagishima asked what is the age?

Jan Lauterbach said it will be 62 and above.

Mayor Miyagishima asked are they allowed right now what the prices would be?

Jan Lauterbach said current prices are dependent upon your income level so there will be two different ones. We have some as low as \$363 for a one bedroom and that is if you are at 30% of area median income that would be \$436 for a two bedroom and if you go up the 60% of area median income you are looking at \$727 for a one bedroom and \$873 for a two.

Mayor Miyagishima said I found out recently that the state is looking for a lot of one bedroom for people that are self-sufficient, but they are only allowed I think like \$500 or \$600 but a lot of them are not 62 they are a little bit younger and there is no places in the city that they feel comfortable even at \$500 for a one bedroom so I was just curious what the prices are.

Tom Mannschrek, Thomas Development said today is the start of probably the last lap around the track for this development. You may not remember but we have been here before you a couple of times. This property needed to be rezoned. We had a teeny tiny density variance because the survey was 3.99 acres and not 4.0 and we asked for a small height variance. All of which Planning and Zoning and all of which City Council approved for which we thank you a great deal. I want to clarify two things. First a comment from Ms. Lauterbach, the age requirement is age 55 and not 62, and so Mayor if there is a group of people that would be in that age range then they would age qualify for the property. Also, even if our rents the lowest of the one-bedroom kind of fit that \$500 threshold we gladly accept Section 8 rental vouchers. If a person under the HUD guidelines and can only pay \$200 rent then the voucher makes up the difference. We really welcome that program particularly to our seniors because it is far too often that our resident profile is a single person generally a woman who is living on survivor social security benefits and that ain't very much. So, we have lots of seniors getting assistance from HUD with their rental assistance.

Mayor Miyagishima asked what was the total price that you were going to spend including the land?

Tom Mannschrek said until the construction contract is signed, I can't give you an exact answer. We are carrying a budget right now of \$25,400,000. The architecture and engineering plans have been submitted to the city. We had at least two meetings with those who review plans and approve them prior to submittal. There is a city requirement, the first set of plans that go in for permit review be 95% complete. Those were submitted at the very end of August. City staff was lightning fast in getting back to the architect and engineers on their comments. Their comments were fair. They were supported by provisions of the applicable codes. You can pretty quickly tell when a city has competent staff and whether they really want what you are bringing to town to be there. We are using HB Construction, Albuquerque, Las Cruces, El Paso based general contractor. We met with one of their guys earlier today. Bidding is going well. One of the things that we do with our generals is we require them to give us a list of subs and suppliers, the amount of the contract and also where they call home for their business and consistently whether it is Butte, Montana or Caldwell, Idaho or Albuquerque and I think also Las Cruces about \$0.80 to \$0.85 of the construction dollar will be spent with local subs and suppliers and we are very proud of that. Timing, we have the City of Las Cruces today, the State Board of Finance tomorrow, and then we finish up the short week with New Mexico MFA. We should have all of the capital sources approved which will be great because all of the docs are done and ready to sign anyways and so I hope we get approval. We should have building permits I would say within the next two to three weeks. HB Constructions with close financial resources probably by the end of November, the first of December. As a testament to HB's integrity when we were talking about staffing this job and getting started they told Angie and I we can start the first of December but the Superintendent, the onsite person that makes things happen and project manager are finishing a job and need some time off. We would rather start the latter part of January with the team that we think will best fit your needs and provide the best execution for this development. My other question was, Councilor we had probably four or five neighborhood meetings during the course of the planning and all of those sorts of

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things, I am going give my business card to the City Clerk and if you have constituents who have specific questions about who we are and what is going on if you could just refer them to me I will give it to Angie and she can answer the questions.

Mayor Miyagishima said that is great news about the different subs and different contractors you are using. Also, just for the heck of it I am sure already have these numbers based on the \$25,000,000 we are bringing in \$220,000 in property taxes of which the city gets about \$37,400 a year, thank you for that.

Tom Mannschrek said I hate to disagree with you but there is a New Mexico Statute that affordable housing if the ownership of the transaction is structured properly, we are exempt from property tax. New Mexico Legislature passed that twenty years ago. You have all read stories about rents going through the ceiling in Dallas and Pheonix and everywhere else in the country. Affordable housing rents have not but guess what? Our construction cost have gone up at the same level as market rate construction cost.

Mayor Miyagishima asked are you exempt from having to pay gross receipt tax on the construction?

Tom Mannschrek said I wish we were. It's about \$10 the square foot. The best thing the Governor could do to help affordable housing would be to exempt that.

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to suspend the rules to listen to Resolution 24-042 and Resolution 24-043 concurrently.

RESULT:	Carried
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Resolution No. 24-042.

RESULT:	Carried
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Becki Graham
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.4 RESOLUTION NO. 24-043: A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK LOAN (CDBG) AGREEMENT AND A HOME INVESTMENT PARTNERSHIPS (HOME) RECOVERABLE LOAN AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THOMAS DEVELOPMENT CO., AN IDAHO CORPORATION, AS DEVELOPER OF THE MULTI-FAMILY AFFORDABLE HOUSING PEDRENA APARTMENT COMPLEX.

Councilor Tessa Abeyta moved, seconded by Councilor Becky Corran, to

Approve Resolution No. 24-043.

RESULT:	Carried
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Becky Corran
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.5 RESOLUTION NO. 24-044: A RESOLUTION TO ADOPT A FEE STRUCTURE ASSOCIATED WITH MUNICIPAL COURT INDIGENT DEFENSE SERVICES.

Leeann DeMouche, Finance Director gave the overhead presentation.

Councilor Graham asked if I understand correctly that these have not been updated since 1990?

Leeann DeMouche said that is correct.

Councilor Corran asked the Municipal Court structures and money collected is outside of the city's financial reporting infrastructure, is that correct?

Leeann DeMouche said the revenue that they receive does come into the city. While they are not a city department if you look at the organizational chart, they are off over here but they have a budget that we budget for them and any revenue that they receive we budget that revenue and we show it in actuals. Some of it comes in and immediately goes to the state. You know there is different kinds of like you know DWI is one of them. It goes straight to the State. We don't keep any of it. We collect but we move it on.

Councilor Bencomo asked for court assigned council do you have like a pool of local attorneys who said, pick me?

Anthony Filosa, Municipal Judge II said currently there are four attorneys that we use on a rotational basis that are in private practice and that provide appointed counsel service to indigent defendants or defendants deemed indigent in the court and so one of the other recommendations in the audit is that we need to have more of a formal process with those attorneys. That is another piece of the audit that as a recommendation we welcome and we are going to work with Ms. DeMouche on in the future.

Councilor Bencomo asked is four enough and what is the recruitment for this? Do you think this will help?

Anthony Filosa said as far as four I think at this particular point, we keep them pretty busy from my estimation. Not every single case charged in the Municipal Court is eligible for appointed council. They have to be facing a possible term of incarceration, so you are looking at any offense charge in Chapter 19 of criminal offenses of the Municipal Code. Some in 27 which is more the driving traffic code of DWI ordinances and other driving on suspending revoked, some of those offenses. So, I don't know if I have the information at this time to say that we need more attorneys but we do keep

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them pretty well engaged.

Councilor Flores asked are those court appointed pro bono attorneys, or do they submit a bill?

Anthony Filosa said this fee structure that is before the council is to essentially determine their fees that they would invoice to the Municipal Court. I believe they submit an invoice once a month. They are not providing pro bono service, they are getting compensated. This particular resolution would update how they would be compensated.

Councilor Flores asked we don't have the specifics as to how they would be comped per hour, hourly fee? What is it? How do you do that now?

Anthony Filosa said so currently the resolution and I believe this issue was last before the council in 1990 and it was \$150 flat rate per case. It doesn't matter if they go to trial, it doesn't matter if the matter is appealed to the District Court the defendant is entitled to a de novo trial all over again and the District Court is \$150 but the fee structure that Ms. DeMouche has presented that essentially sets goal posts that the court can set policy pursuant to the Municipal Code that setting a fee per case so for example a DWI case which has in the Municipal Court carries jurisdiction to handle a DWI third case which carries the mandatory 60 days in jail up to 179 days. Right now, the attorney is just getting \$150 for that case instead of which those particular cases are complex. There is discovery review, the attorney might have to interview witnesses, there would be trial preparation but it is just a flat rate compared to a shoplifting case for example that might not have those complexities where it is on video, the defendant might make a confession during Miranda or something like that where it might be more easy to resolve with the city or with the deciding officer than with one of these DWI cases. What this does is if the proposed resolution the council would be setting goal post for the court to operate within but it would be \$1-\$300 if the case is terminated prior to trial, if is resolved, dismissed, or otherwise disposed of and if there is a trial \$1-\$400 and if there is additional post-conviction remedies \$1-\$150 and then if again Municipal Court is a court of limited jurisdiction we are not on the record, the defendants are entitled to a de novo appeal where they are entitled to a brand new trial in front of the District Court. They are entitled to counsel in that trial in the District Court, the city constitutionally has an obligation to provide that counsel and so they would be entitled to an additional fee in the District Court but this would just set goal post for the court to operate on with councils guidance.

Councilor Flores asked the pro bono attorneys they presumably come from well established law firms I don't imagine they are from the PD's office?

Anthony Filosa said correct, they are all in private practice from my understanding. They are all in private practice since they provide this service to the city currently at \$150 a case.

Councilor Flores asked aren't some attorneys required to do some pro bono work?

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Anthony Filosa said correct. I have not looked at the rules of professional conduct related to that in a while. I think it might be aspirational, but they are encouraged, attorneys are encouraged to provide pro bono service to the community. This doesn't, they are getting compensated.

Councilor Flores asked I think if it is a private firm it is probably a write off for them, right? I can't comprehend an attorney spending that much time and only receiving those nominal amounts so I am just wondering what has kept the program going. How long have you been with Muni Court?

Anthony Filosa said I was appointed I believe April 3rd this year and started May 1st. This is all kind of learning this.

Councilor Flores asked this is all new to you but in terms of the number of attorneys that are used and law firms that are used and stuff like that I am just trying to see if we are not going to dig ourselves into a hole and I believe that every indigent person should have a right to counsel especially a DWIs.

Anthony Filosa said the four attorneys that we commonly see in the Municipal Court I know that they may have other contracts with providing panel of representation in Federal Court I believe at least a couple of them do. Another one provides representation to other Municipal Courts within Dona Ana County so I know this isn't the only thing that they are doing.

Councilor Flores asked has there been a shortage of attorneys who are able to represent the indigent?

Anthony Filosa said I don't believe we have had a shortage. I don't know how long the four attorneys that we use have been at it.

Dawn Shultz, Court Manager said I have been with the courts since September of 2020, and we have had the same attorneys on our indigent panel so there has not been a shortage in any way. We did recently bring on another attorney and he changed his mind. We are staffed and have plenty of attorneys.

Councilor Flores asked if it isn't broke why fix it? I am not saying that attorneys don't deserve what they work for I am just saying, asking why based on all the information?

Anthony Filosa said the first thing that kind of spired this was the internal audit recommended that this come before the council to be updated and this tracks a state statute that is currently on the books that is in New Mexico Statute annotated 31-16-8. So, the recommendation in the audit was let's get in line with the state statute and so that is kind of why we are here. I do think it isn't a bad idea to not just give a flat rate and allow the court to put in place some policy where there might be a higher rate for more complex cases then just a pretty noncomplex simple case.

Councilor Flores asked do you think that will encourage more attorneys to participate in defending indigents?

Anthony Filosa said I don't know, I would hope so. I hope obviously we have got a problem if we can't provide indigent counsel. It is a constitutional right and as the council is aware. Hopefully we don't run into a situation where we can't provide counsel or no one wants to do this type of work because then we have a huge problem, a constitutional problem.

Councilor Becki Graham moved, seconded by Councilor Yvonne Flores, to amend Resolution 24-044 to add the word not and less than.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Yvonne Flores
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Approve Resolution 24-044 as amended.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

9. BOARD APPOINTMENTS

9.1

None.

10. NOTICE OF PROPOSED ORDINANCE(S)

- 1) There will be no public discussion.
- 2) A Councilor may ask staff for clarification on the proposed ordinance(s).

10.1 COUNCIL BILL NO. 24-006; ORDINANCE NO. 3048: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,600,000 FOR EQUIPPING FIRE STATIONS AND ACQUIRING FIRE TRUCKS AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

Council agreed to bring it forward.

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 MAYOR MIYAGISHIMA

There is going to be a Special Work Session next Monday from 10-12. It is regarding

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the nonbinding MOU with New Mexico State.

As I mentioned the November 11th Veteran's Day parade is at 11 o'clock in the downtown area.

11.2 COUNCILOR GANDARA

I along with the few of us got to participate in the first annual Pride Parade and it was such an amazing opportunity and I want to thank the community for coming together and really showing support for our members in the community. It was lovely to see staff there.

I want to report back that I met with Eric Sanchez from the Physical Science Laboratory, PSL and we talked about a program that he wants to help sponsor. It's the Youth Impact Program and I have some information here that I said I would give to you all when I found the flyers. I think it is a great opportunity. Former colleague and football player put together this impact program and would like to have that facilitated by the city and the schools and I think it would be a great opportunity. I think they need some startup funding and so I will leave it to you to reach out to Eric.

I want to report that our Health Policy Review Committee met October 4th. It was a great meeting. It is a continuation of our healthy Las Cruces and sort of the status of health care in Las Cruces. We had a couple of area hospitals present, Mountain View and Three Crosses. We learned a considerable amount about what specialty docs are lacking here in community. We saw very clearly that there is a considerable amount of leakage and I appreciate Dr. Torres coming and presenting and really having a good understanding about where particularly in the health care field we should focus our attention or at least that is what I got. We had Erika, thank you for participating and presenting on the Telshor Fund. There is a lot of conversation I think specifically about how to use that Telshor Funding particularly around I think the indigent population and we are just wanting to continue the conversation. We did a bit of a small SWOT analysis. Special thanks to my student, Alexis Espinoza for putting that together and we just want to continue with that conversation. I know Chris Faivre was there. Thank you, Chris, for being there and really looking at what kind of opportunities Economic Development Department can really capitalize on recruiting and retaining specialists around Ortho, GI, Cardiology and how we can work together with our specific hospitals.

Lastly, I would like to just announce that La Clinica de Familia Behavioral Health Wellness Center is having their grand opening on Tuesday at 3 at 760 Motel Boulevard. I know a number of folks came today to speak specifically about mental health and substance abuse and addiction, and I can assure you that we are working on council about trying to find a better way to address this. Ifo as I talk to you on our one on ones about our hygiene station and starting that with the Los Amigos Project. I know there has been some hiccups around that and maybe not so much around hiccups but trying to understand what is the best use of our money and how can we lift that particular program up to address substance abuse and addiction. I would just like a status report on that if I could.

Special thanks to the winners of the poster presentation. It is always nice to see our

youth here.

11.3 COUNCILOR FLORES

I want to report on our Animal Service Center. I went on the tour last week and the facility is absolutely beautiful and there have been some setbacks in time of the goal to open it and Clint very well explained exactly what the problems were. One thing, the cat cages had been a big issue because they were designed a certain way but then they were manufactured a different way. So that was a big setback. It was absolutely wonderful to be there and to see how much thought went into how the animals will be cared for and how they will be housed. I think there will be less euthanasia, less putting down of animals for lack of space because it has been an issue and that was wonderful and also on the animal services other activities going on is that we have been working on changing the joint powers agreement with the county and Ms. Bencomo has done a wonderful job laying everything out so the a memorandum of understanding is being worked on and we are also revising the ordinance again. We revised the ordinance back in 2020 I think and now we are doing it again. So there has been a lot of work on that.

The Economic Development PRC will not be meeting until the end of November for a variety of reasons but the Economic Development Department, kudos to that department and as you all saw last week when Irene Parra presented it was amazing how much talent we have in that department.

As far as the South Central we did not have a meeting last month. There weren't any agenda items there was no meeting.

11.4 COUNCILOR CORRAN

I also want to echo the Pride celebration and gratitude for Visit Las Cruces, LCPD who worked to really make that a great celebration that a lot of folks enjoyed. So, thank you to those folks who went above and beyond as well as City Communications staff who did a great job of sort of sharing information.

A few things in District 5, mineral bonding for a lot of streets. Some of these are in District 4 as well so just as a heads up. So, in District 5 some of these are intersecting with Peach Tree Hills what I would describe as monopoly streets that if you live on a monopoly street, you know which street I mean and a few on Metro Verde Park Lane specifically those are the general areas but social media and the City's PIO have released information on the specific roads. That starts this Wednesday and will go for about a week and there are specific things related to the mineral bond and if you look it up it will give you specific information about that. Also, on 70 New Mexico Transportation will doing pavement improvements from Rinconada to NASA they will be doing pavement management and litter control at various nights. They have heard from a lot of folks and especially to the litter there. We are always reminding them that it is not a city street and so the Department of Transportation is doing something to address that in particular. Future construction, the Department of Transportation will be funding construction along 70 from Three Crosses to Elks. It's out to bid I understand right now that will include new pedestrian infrastructure. It is not as ambitious as the fly over that proposed in our RAISE grant, but it will improve that section of our Highway 70/ North Main and that section towards Elks is probably one

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of the most hated intersections in the city with pictures of potholes all the time.

Also Thursday at Tierra Del Sol they are having a grand opening for their affordable housing project in District 5. That is very exciting for first time home buyers who earn 80% of the median income. You can purchase a home and build long term equity for your family. The groundbreaking will be from 11-2 at 4703 Bolero Road on Thursday and I do hope that folks will come out and join us. It is a really exciting project. I think affordable housing across the city is direly needed and is critically important and I am really excited for that grand opening. If folks are interested and might sort of meet the income requirements Tierra Del Sol Housing will sort of field some questions and be talking about how to apply for those homes at that time as well.

Parks and Recreation Board member who has served for quite some time is resigning from the Parks and Rec Board so I will be looking for new folks to consider to add to the Parks and Rec Board and I am actually going to go the parks and weirdly stalk people there and ask them if they want to be on the Parks Board because that seems like the most legit way Parks and Rec Board members.

The TSI PRC meeting will be November 7th, Election Day upstairs and we will have a special guest speaker Representative Rubio who has worked for the state a lot, equity and transportation and equity and outdoor recreation. So, she will be giving a preview of some of the priorities of the budget for the upcoming Legislative Session, especially related to equitable transportation and really equity as a foundation for transit and sustainability which is what the TSI PRC is about which should be really exciting and fun. The usual folks I am sure will show but in case anyone else wants to come and hear that presentation it will be at 8:30 on Tuesday, November 7th on the second floor.

11.5 COUNCILOR BENCOMO

I also went on the tour of our new Animal Service Center and as you can imagine I cried as I was walking through because it just is a really special building and I am honestly so excited for them to get moved in there. I think not only for the public but for the animals and for the staff. It is really staff friendly and they do tough jobs and so I am excited for that and really thankful for the voters for approving that.

Karen Woods was kind enough to invite me to an event that I attended this morning hosted by the United Military Women of the Southwest. They were sponsoring a Veteran Health and Welfare event at the American Legion Post No. 10 and I just stopped by there today and visited with some of the folks that were tabling some of the resources and it was really a great event and I hope they continue to have these but I wanted to bring up a couple of specific folks that I talked to because I think that it goes into this outreach or homelessness court that I have been talking about. All of you might know how incredibly successful specialty courts are and one of those here in Las Cruces is the Veteran's Treatment Court. I really love how they talk about Veterans as justice involved Veterans and I think that language really matters. They are just doing really incredible work and I just have a couple of things that I will be talking to Ifo about regarding Veteran's Court in Municipal Court and better collaboration between the two so that more Veterans that find themselves in the justice system can access the resources offered by Veteran Treatment Court but

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again I think it is such an important model to look at as we think about hopefully creating our own outreach and homelessness court at a Municipal Court but it is clear to me that these kind of specialty courts are tremendously helpful for people who keep finding themselves in this position.

My last thing is that I would request that we have maybe through PIO a translator or interpreter. While I don't mind, I am not the best interpreter.

Mayor Miyagishima said in the past they would say can we have an interpreter for the meeting, but I had no idea that Ms. Martinez was going to show. One question is do you have them here for the entire council meeting or maybe just here for the Public Participation? We will know by then if we are going to need the Spanish interpreter.

Councilor Bencomo said I think that if there was a staff person who spoke Spanish who wanted to become certified and then make more money than I think you would have to guarantee that the staff person would get a little bit of a raise bump. I think that would be ideal. So not just one specific staff just for that but if there is already a staff that wants to get certified I think that would be a good idea.

11.6 COUNCILOR GRAHAM

A big welcome to Grace Tellez. So happy to have you. We have all benefited from Grace's excellent work with LCPD Cares but now we will get to spend a little more time with her joining our community engagement team. If you hadn't had the chance to work personally, I just want to say what an incredible asset she is to the city and she was a highlight at the District 3 Community Chat and I am just absolutely delighted to have you on board although you know LCPD Cares loss, our gain.

11.7 COUNCILOR ABEYTA

I want to say thank you and welcome to Grace as well. I am announcing the Juvenile Justice Continuum Board is going to be meeting this Wednesday at 12 p.m. where we have been to have Grace's wonder talents over there too so happy to have you closer to us.

For Council there in your inbox should be the MVEDA annual report. It was sent to all of your inboxes if you would like to take a look.

On November 3rd I will be back in Santa Fe to chair a joint meeting between the counties and the cities as we look at our Legislative agenda items and how it compares for both of us and the last part is Mayor already mentioned about the TIDD, the Special Work Session but I did get a chance to join him and members from NMSU to ask some questions. So, I appreciate the Mayor calling for a Work Session so we can get some of those questions answered.

12. CITY MANAGER REPORT

12.1 IFO PILI

I just want to respond to some of the things that were brought up earlier. Mayor Pro Tem I know we have been going at it with the hygiene stations for a long time. Unfortunately, I really don't have much progress since the last time I have talked to

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you. The entity that we are working with we are still going back and forth on terms which is kind of where we are. We have looked at some other options. Natalie and her staff are working on that and maybe we will present some alternative options to the council as well. I will get you more info as that progresses.

We have talked about the translator. I think Christine mentioned in the last year we have had more this last year than her whole career, I think. I think we are going to need to really look at it. We have talked to communications and HR. That idea of having one of our staff members have something extra so that they can be available is probably the best idea that I think I have heard as we all have discussed this so we will have something in place.

Councilor Flores said there is a big difference between interpreter and translator. Translator is someone who interprets the written word and interpreter is someone who does the spoken word and the two are very, very different talents.

Ifo Pili said our Paternity Leave is up. Our city now offers that. It started off with Maternity Leave, that what was proposed and then it was brought up why don't we have Paternity Leave? The response back from our HR, we had talked about family. We have two dads, two moms and we have different families and so we have different situations, so this is probably the most inclusive. We have our policy right now.

Chris made me aware that he had the cost for around the clock security downtown because of the TIDD Fund and we are going to be moving forward on that. I know that we have had a tragic weekend. We do have a press conference involving the recent officer involved shooting tomorrow at 2:30. It's not going to talk about the events this past weekend but we are going to be discussing the recent officer involved shooting. Just an FYI our meetings with our Legislators have Commenced again. We are back at it and excited to see what our priorities are. I think we had a good year last year so we will give you more information. We may go back as we get into the legislative season. I know Barbara has been our point of contact there and been running lead with that so we will probably have more updates as we get into it.

13. ADJOURNMENT

13.1

Councilor Johana Bencomo moved, seconded by Councilor Tessa Abeyta, to Adjourned at 4:24 p.m.

RESULT:	Carried
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores
ABSENT:	Councilor Becki Graham

Mayor

City Clerk



24-052

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:	Adopted: November 20, 2023		
Drafter:	Donny Prosis	Department:	Financial Services
Program:	Purchasing	Line of Business:	Procure-to-Pay
Title:	A RESOLUTION AUTHORIZING A CONTRACT FOR ELECTRONIC PAYMENT SERVICES WITH PAYMENTUS CORPORATION OF CHARLOTTE, NORTH CAROLINA, FOR A TERM OF FIVE (5) YEARS, IN AN AMOUNT NOT TO EXCEED \$600,000 ANNUALLY, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 23-24-003).		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
To award a contract for electronic payment services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
In October of 2016, the Purchasing Program issued Request for Proposals No. 16-17-013 for electronic payment services. The requested services included processing City customers' debit and credit card payments, interfacing with the City's billing system through a web service Application Programming Interface (API), depositing payments collected each day into the City's designated bank account, providing daily electronic transaction files, and providing a client portal for City staff to view transactions and generate reports. In April of 2017, the City contracted with Paymentus Corporation of Charlotte, North Carolina, for those services.

The original agreement with Paymentus was extended while the City and Paymentus negotiated a replacement agreement to go into effect after the original agreement ended. The City's Purchasing Manager has approved a sole source determination in accordance with the City's Procurement Code, Las Cruces Municipal Code (LCMC) Chapter 24, Section 24-7 (a). The Financial Services Department, Las Cruces Utilities, and Paymentus have agreed to the terms and conditions of the replacement agreement, as outlined in Exhibit "A" for a term of five (5) years, subject to approved budget appropriations. Approval of an amount not to exceed \$600,000 annually is requested. Paymentus charges processing fees for each transaction. In fiscal year 2023, the City paid \$511,441.47 in processing fees, up from \$458,665.05 in fiscal year 2022. The amount has increased annually as more customers are paying their bills online or via telephone.

SUPPORT INFORMATION:
[Exhibit "A" - 23-24-003 Electronic Payments PSA - Paymentus](#)

PLAN(S):
None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: \$490,000 **AVAILABLE AMOUNT:** 0

EXPENDITURE AMOUNT:
\$600,000

Funding Source(s):

50834011-761000

Overall Budget Impact:

The Las Cruces Utilities Department will request purchase orders on an as-needed basis, subject to approved budget appropriations. A mid-year budget adjustment will be brought forward for these services.

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the contract for electronic payment services in an amount not to exceed \$600,000 annually with Paymentus Corporation, for a term of five (5) years.
2. Vote "No"; this will not approve the Resolution, which may have an adverse affect on payment processing, and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on direction from City Council to staff.
4. Vote to "Table"; this will delay the approval of the contract for electronic payment services, which will impact City operations, and City Council will need to provide alternative direction to staff.

RESOLUTION 24-052

A RESOLUTION AUTHORIZING A CONTRACT FOR ELECTRONIC PAYMENT SERVICES WITH PAYMENTUS CORPORATION OF CHARLOTTE, NORTH CAROLINA, FOR A TERM OF FIVE (5) YEARS, IN AN AMOUNT NOT TO EXCEED \$600,000 ANNUALLY, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 23-24-003).

The City Council is informed that:

WHEREAS, in October of 2016, the Purchasing Program issued Request for Proposals No. 16-17-013 for electronic payment services; and

WHEREAS, the requested services included processing City customers' debit and credit card payments, interfacing with the City's billing system through a web service Application Programming Interface (API), depositing payments collected each day into the City's designated bank account, providing daily electronic transaction files, and providing a client portal for City staff to view transactions and generate reports; and

WHEREAS, in April of 2017, the City contracted with Paymentus Corporation of Charlotte, North Carolina, for those services; and

WHEREAS, the original agreement with Paymentus was extended while the City and Paymentus negotiated a replacement agreement to go into effect after the original agreement ended; and

WHEREAS, the City's Purchasing Manager has approved a sole source determination in accordance with the City's Procurement Code, Las Cruces Municipal Code (LCMC) Chapter 24, Section 24-7 (a); and

WHEREAS, the Financial Services Department, Las Cruces Utilities, and Paymentus have agreed to the terms and conditions of the replacement agreement, as outlined in Exhibit "A" for a term of five (5) years, subject to approved budget appropriations.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the contract with Paymentus Corporation of Charlotte, North Carolina, for electronic payment services in an amount not to exceed \$600,000 annually for a term of five (5) years, as outlined in Exhibit "A", attached hereto and made part of this Resolution, is hereby 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

Agenda Item #7.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), made and entered into as of the date of last signature below by and between the CITY of Las Cruces, New Mexico, hereinafter called "CITY" or "Client" and Paymentus Corporation, of 11605 North Community House Rd, Suite 300, Charlotte, NC 28277 hereinafter called "CONTRACTOR" or "Paymentus".

1. PROJECT DESCRIPTION

The objective of this Professional Services Agreement is to obtain payment gateway services to process customers' debit/credit card payments utilizing the City's web portals for utility bills, general bills, building/construction permits, business registration/licenses, and development applications; to process and deposit client transaction payment into the corresponding CITY bank account(s); and provide the necessary electronic transaction files via system interfaces for relevant accounts. All previous Agreements and Amendments between the parties are superseded by this Agreement.

2. SCOPE OF SERVICES

See Exhibit B, 2.1 Scope of Services.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon 180 days previous written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of services under this Agreement as set forth in Exhibit A, attached hereto and made a part of this Agreement, plus applicable taxes. CONTRACTOR shall perform the services upon receipt of a Purchase Order from the CITY. The CITY cannot authorize costs to be incurred prior to such Purchase Order.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all applicable federal and state tax laws.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of services as reasonably required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on January 1, 2024 for a term of five (5) years.

CONTRACTOR shall perform the services in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes in writing within the general scope of the services plus may also request CONTRACTOR in writing to perform other extra services not incorporated within the services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY of that fact within thirty (30) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within thirty (30) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of services is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the services may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon 180 (180) calendar days written notice in the event of substantial failure. However, such written notice shall clearly

enumerate the details of the failure and provide an opportunity to cure within 90 days after receipt of such notice by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the services unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof during the term of the Agreement. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

The City must be named as additional insured on General Liability and Cyber Liability. This coverage must be as broad as the coverage provided to the insured; coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of endorsement for this coverage must be provided as a condition of this Agreement.

18. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

19. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the services unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Erika Jaquez, Treasurer

With Copies to: Purchasing Manager

TO CONTRACTOR: Paymentus Corporation
 11605 N Community House Road, Suite 300
 Charlotte, NC 28277
 ATTENTION: Paymentus CEO

With Copy To: Paymentus Legal at the same address

23. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement, to include Exhibit B, Paymentus Terms and Conditions as modified. In case of conflicting sections, Exhibit B, Paymentus Terms and Conditions will be applied. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

PAYMENTUS CORPORATION

CITY OF LAS CRUCES

BY: _____
 Jerry Portocalis
 Senior Vice President

BY: _____
 Alicia Hernandez
 Purchasing Manager

Date

Date

APPROVED AS TO FORM



City Attorney 8/22/23

EXHIBIT A

PAYMENTUS CORPORATION

SERVICE FEE SCHEDULE

Schedule A – Paymentus Service Fee Schedule

The Services will initially consist of the Services indicated by a check box on the following table. The Paymentus Fee will be as specified below, and will be paid by the Client, unless designated as a User paid fee.

Channels	Services	Payment Methods & Channels	Payment Types	Paymentus Fee	User Paid Fee
Instant Payment Network™	Ebill Presentment and Customer Engagement	All payment channels and methods offered under IPN such as PayPal, Venmo, PayPal Credit, Secure PDF Push, Chatbot, Advanced Notification Service (ECM), Text 2 Pay, Voice Assistants, Mobile Apps and others as offered by Payments from time to time	Utilities	\$1.95 of the Bill Amount for Qualified Credit/Debit Cards 2.45% of the Bill Amount for Non-Qualified Credit/Debit Cards \$0.95 flat fee for ACH/eCheck	☐
			Non-Utility	2.45% of the Bill Amount for Credit/Debit Cards \$0.95 flat fee for ACH/eCheck	☐
Direct Payments (Web, IVR, Recurring)	Ebill Presentment and Customer Engagement	Credit, Debit, ACH	Utility	\$1.95 of the Bill Amount for Qualified Credit/Debit Cards 2.45% of the Bill Amount for Non-Qualified Credit/Debit Cards \$0.95 flat fee for ACH/eCheck	☐
			Non-Utility	2.45% of the Bill Amount for Credit/Debit Cards \$0.95 flat fee for ACH/eCheck	☐

Note: Average Bill Amount: \$150.00 for Utilities and \$200.00 for Non-Utilities. Maximum Amount per Payment is \$5,000. Multiple payments may be made.

Paymentus may apply different limits per transactions for user adoption or to mitigate risks.

EXHIBIT B

PAYMENTUS CORPORATION

TERMS AND CONDITIONS

1 Definitions:

For the purposes of the Agreement, the following terms and words have the meaning ascribed to them, unless the context clearly indicates otherwise.

- 1.1 **"Affiliates"** means (i) any entities that control, are controlled by, or are under common control with a Party
- 1.2 **"Agent Dashboard"** means a web-based portal that enables Client to manage and monitor its' customers' payments and accounts including such features as the ability to add and manage users, look up payment schedules, make payments manually on behalf of the customers, and generate payment reports.
- 1.3 **"Agreement"** or **"Master Agreement"** means the Master Services Agreement between the Parties, as amended from time to time, including the Signature Page, these General Terms and Conditions and all Schedules.
- 1.4 **"Average Bill Amount"** means the total amount of Payments processed through Paymentus in a given month divided by the number of the Payments for the same month.
- 1.5 **"Custom Enhancement(s)"** means one or more enhancements to the Services which is either unique to Client, or which was expedited prior to being developed pursuant to a Statement of Work entered into by the Parties in which Client agrees to pay Professional Services Fees for the Work done in connection therewith.
- 1.6 **"Customer Information Files"** or **"CIF"** means a computerized file used by a company that stores all customer data such as the customer's personal and account information.
- 1.7 **"Custom Implementation"** means implementation of Client's Custom Integration and Custom Enhancements in accordance with the applicable SOW.
- 1.8 **"Custom Integration"** customization of the Platform to integrate with Client's billing system using non-standard file specifications or application programming interfaces ("APIs") supported by Client's billing system.
- 1.9 **"Effective Date"** has the meaning set forth on the signature page above, unless the Agreement is submitted to Client for acceptance in a manner that does not call for Paymentus to execute it, in which event the Effective Date shall be the date that Client signs the Agreement.
- 1.10 **"Excess Payment Amount"** means the Payment Amounts from Non-Qualified Transactions processed in a calendar month.
- 1.11 **"Fee Assumptions"** means information used to calculate the Paymentus Fee (as defined in Section 3.2) as provided by Client in good faith, including (i) the projected Average Bill Amount, and (ii) the projected payment method mix (credit vs debit vs e-check) of all card Payments processed that month.
- 1.12 **"IPN"** or **"Instant Payment Network"**TM means the network developed by Paymentus to enable customer engagement, bill presentment and receipt of payments by businesses through multiple channels as enabled from time to time by Paymentus.
- 1.13 **"Launch Date"** means the date on which Client completes the introduction to Users of all of the Services set forth on Schedule A or in any applicable SOW as of the Effective Date of this Agreement.
- 1.14 **"Minimum Monthly Commitment"** means a fixed amount agreed to by the Parties that is based upon the expected number of transactions to occur each month during the Term times the Average Bill Amount, as set forth in Schedule A.

- 1.15 **"Non-Qualified Transaction"** means any payment where the Paymentus Fee is lower than the cost of processing such payment (including the cost of Third Party Fees).
- 1.16 **"Payment"** means payment by a User through the Platform for Client's services, Client's bills, or other amounts owed to Client.
- 1.17 **"Payment Amount"** means the amount of a Payment.
- 1.18 **"Paymentus Authorized Processor"** means a Paymentus authorized merchant account provider or payment processing intermediary or gateway.
- 1.19 **"Paymentus Fee"** is the amount charged for the Services as set forth on Schedule A.
- 1.20 **"Platform"** is defined in Section 2.1.
- 1.21 **"Professional Services"** means the work to be performed for Client by Paymentus as described in the Statement of Work, which may be changed from time to time in accordance with the Change Order process described in the SOW.
- 1.22 **"Professional Services Fees"** means the fees charged for the Professional Services described on a Statement of Work.
- 1.23 **"Reversed or Chargeback Transactions"** means cancelled transactions due to User error, a User's challenge to Payment authenticity, or action by a financial institution or a Paymentus Authorized Processor (commonly referred to as ACH or eCheck returns or credit/debit card chargebacks).
- 1.24 **"Services"** means the performance by Paymentus of the payment and related services selected by Client as set forth in Schedule A and as provided in Section 2.2.1.
- 1.25 **"Standard Implementation"** means (i) the initial integration between the information systems of both Parties so that Paymentus can receive Client's customer data to be used in the provision of the Services, and Client can receive payment and other related data from Paymentus, (ii) the setup of the payment processor and bank deposit accounts, (iii) the setup of the payment channels described on Schedule A to this Agreement and (iv) the creation of business rules to be applied to the acceptance of payments, all as further described in the applicable SOW or Paymentus documentation. Any changes following the initial integration will be handled through the Change Order process.
- 1.26 **"Statement of Work"** or **"SOW"** means the statement of work entered into between the Parties, which shall be substantially in the form attached as Schedule C, which is attached hereto and incorporated herein by reference.
- 1.27 **"System Availability"** means that date on which Paymentus notifies Client's that the Platform is ready to process User data.
- 1.28 **"Term"** means the Initial Term and any renewal term as defined in Section 7.1 of this Agreement.
- 1.29 **"Third Party Fees"** is defined in Section 3.2.2 of this Agreement.
- 1.30 **"User"** means a Client customer who uses the Services to pay its Client bills.
- 1.31 **"Work"** or **"Work Product"** means the customizations that are performed by Paymentus as part of the Professional Services described in the SOW.

2 Description of Services to be Performed

2.1 Scope of Services

When selected on Schedule A, Paymentus will provide Users the opportunity to view and receive bills, make Payments using the payment methods provided under Schedule A and other payment methods and wallets as offered by Paymentus from time to time. The payment methods and other services provided may

be used within the channels described on Schedule A or on other websites or mobile/web apps or chatbots or voice assistants that are part of the Instant Payment Network, (collectively referred to as the "Platform"). Paymentus will provide a mechanism by which Client may select the channels and payment methods Client wishes to offer Users. Paymentus will be the exclusive provider to Client of all electronic bill payment and related services substantially similar to the Services.

2.2 Professionalism

Paymentus will perform the Services in a professional and commercially reasonable manner.

2.3 New or Enhanced Services

From time to time Paymentus may offer Client new or enhanced services, such as new functionality within the IPN, the ability to accept other payment methods, methods of bill presentment, the ability to access alternative payment processors or other service providers or Paymentus Authorized Processors or otherwise modify the terms and conditions under which the Services are provided ("Service Enhancements"). Paymentus will provide Client with notice through the Agent Dashboard disclosing the terms, including any contracts or contract amendments, under which the Service Enhancements will be made available. If the Service Enhancements will result in additional fees to or impose additional material obligations on Client or Users, Client will have thirty (30) days after the date the notice is posted on the Agent Dashboard to opt-out of the Service Enhancements in the manner provided in the notice. If Client does not opt-out in a timely manner, then when the Service Enhancements are introduced they will form part of the Services and Client will be bound by the additional terms as disclosed in the notice, and the Paymentus Service Fee (Schedule A) will be deemed amended to reflect changes in the Services and fees in connection with the Service Enhancements.

3 Compensation and Payment Terms

3.1 Implementation

3.1.1 Charge for Standard Implementation. Paymentus will charge the fees related to Standard Implementation that are set forth on the applicable Statement of Work.

3.1.2 Custom Implementation. If Client requests customizations during the implementation process, the SOW will contain an estimate of the amount of custom Work that will be required to be performed on a time and materials basis, which Work will be performed at a blended hourly rate set forth therein in accordance with the payment terms set forth in the SOW. If there are changes following the execution of the Statement of Work, the parties will follow the change order process detailed in the SOW. Custom implementation shall be billed as set forth in the SOW.

3.2 Paymentus Fee

3.2.1 Party to be charged the Paymentus Fee. The party to be charged the Paymentus Fee is identified on Schedule A.

3.2.1.1 Where the "User Box" is checked on Schedule A, User will be charged the Paymentus Fee.

3.2.1.2 If the "User Box" is not checked on Schedule A, Client will be charged the Paymentus Fee.

3.2.2 Third Party Payments. Paymentus will pay the corresponding processing and related fees to the applicable third parties out of the Paymentus Fee ("Third Party Fees"), except for fees related to Reversed or Chargeback Transactions.

3.2.3 Adjustments to the Paymentus Fee. The Paymentus Fee may be adjusted thirty (30) days following the date of delivery by Paymentus' of prior written notice to Client due to one of the following:

3.2.3.1 Mistake in connection with the Fee Assumptions. A mistake by either of the parties with respect to the Fee Assumptions, including but not limited to changes in (a) the average Payment Amount made by the Users, (b) the mix of payment methods utilized by the Users or (c) the interchange rates applied to transactions.

3.2.3.2 Charges for Non-qualified Transactions. Client will be billed additional Paymentus Fees equal to 2.85% of the Excess Payment Amount for each month.

3.2.3.3 Changes in Third Party Fees. Changes in the card or payment system rules, changes in payment processing fees or other changes in Third Party Fees that are outside of Paymentus' control that increase Paymentus' cost of processing transactions.

3.2.3.4 Changes due to increases in the Consumer Price Index. Beginning on the first anniversary of the Launch Date, and continuing on each anniversary of the Launch Date thereafter during the initial term and any renewal terms, the Paymentus Fee may be increased annually by a percentage equal to the increase in the Consumer Price Index, "U.S. City Average/All Items for All Urban Consumers (CPI-U) (1982-84 = 100)".

3.3 Payment Terms.

3.3.1 User Paid Invoices. When User pays the Paymentus Fees (as designated on Schedule A), User will pay the Paymentus Fees together with the corresponding Payment at the time of the transaction.

3.3.2 Client Paid Invoices. When Client is obligated to pay the Paymentus Fee (as shown on Schedule A), Paymentus will invoice Client promptly following the end of each full or partial calendar month during the Term and Client's bank account will be debited for Paymentus Fees. In addition, Client will be billed for applicable Professional Services Fees as described in the SOW in accordance with the terms set forth therein. Client shall notify Paymentus in writing of any alleged errors or discrepancies detected by Client in Paymentus' calculation of the Paymentus Fees, or Professional Services Fees contained in the applicable invoice(s) within thirty (30) days from the invoice date ("Due Date"). To the extent that any portion of an invoice is disputed in good faith ("Disputed Amount"), Client shall timely pay on or prior to the Due Date the undisputed portion of any invoice, and promptly notify Paymentus in writing of the Disputed Amount, providing a reasonably detailed explanation for such Disputed Amount ("Invoice Dispute Notice"). The parties shall work together in good faith to resolve all issues identified in the Invoice Dispute Notice within ten (10) days of Paymentus' receipt thereof. Charges on invoices which are not disputed within thirty (30) days of the invoice date shall be deemed accepted and Paymentus shall have no obligation to correct any calculation errors identified after such period. Invoices that are not timely paid shall be subject to interest from the Due Date at the higher of 18% per annum or the then current legal rate of interest.

4 Payment Processing

4.1 Integration with Client's Billing System

Paymentus will provide implementation services to Client in accordance with the terms of Schedule C, which is attached hereto and incorporated herein by reference.

4.2 PCI Compliance

To the extent that either Party receives payment card information subject to the Payment Card Industry Data Security Standards ("PCI-DSS") in connection with providing the Services, such Party will comply with all requirements of the PCI-DSS with respect to storage, transmission and disclosure of payment card information.

4.3 Explicit User Confirmation

Paymentus will electronically confirm to the User the dollar amount of all Payments, and when paid by the User, the corresponding Paymentus Fee to be charged for the transaction, and electronically obtain the User's approval of the charges prior to initiating payment authorizations transaction.

4.4 Merchant Account

If described as part of implementation services in the applicable SOW, Paymentus will assist Client in setting up a merchant account directly with the Paymentus Authorized Processor for processing and settlement of transactions.

4.5 Payment Authorization

For authorization purposes, Paymentus will electronically transmit all card or other payment transactions to the appropriate processing center, in real time as the transactions occur or as provided in applicable rules. In its sole discretion, Paymentus may refuse to process any transaction that it reasonably believes is (i) submitted in violation of its terms of use or (ii) necessary to protect Client, Users, itself or others from actual or potentially illegal, fraudulent or harmful activity.

4.6 Settlement

Paymentus together with a Paymentus Authorized Processor will forward the payment transactions, to the appropriate organizations for settlement directly to Client's depository bank account previously designated by Client ("Client Bank Account") as a positive amount of payment processing funds, net of any User paid Paymentus Fee and any Reversed or Chargeback Transactions (described below). When Client pays the Paymentus Fee, Paymentus will invoice Client and debit the fees from the Client Bank Account on a monthly basis.

Paymentus together with the Paymentus Authorized Processor will continuously review its settlement and direct debit processes for its simplicity and efficiencies. Client and Paymentus agree to fully co-operate with each other if Paymentus were to change its settlement and invoicing processes.

4.7 Reversed or Chargeback Transactions

With respect to all Reversed or Chargeback Transactions, Client authorizes Paymentus and Paymentus Authorized Processor (and/or the respective payment organizations) to debit the Client Bank Account for the Payment Amount and/or offset the Payment Amount against future payouts and Paymentus will refund the applicable amount to the payment organization for credit back to the User the corresponding Paymentus Fee, if any.

Paymentus together with Paymentus Authorized Processor will continuously review its processes for Reversed or Chargeback Transactions for simplicity and efficiencies. Client and Paymentus agree to fully cooperate with each other if Paymentus requires any change to its settlement and invoicing processes for these transactions.

5 General Conditions of Services

5.1 Service Reports

Paymentus will provide Client with reports summarizing use of the Services by Users for a given reporting period, which period shall be designated by Client during the Standard Implementation process. Such standard reports are available through the Agent Dashboard.

5.2 User Adoption Communication by Client

Client will prominently communicate the Services as a primary payment option to its customers wherever Client usually communicates its other payment options.

Client will make the Services known or available to its customers by different means of customer communication including (i) on the face of bills, invoices and other notices; (ii) on any marketing or advertising materials that include payment options; (iii) if direct payments have been activated, by providing Interactive Voice Response ("IVR") and Web payment details prominently on Client's website including a "Pay Now" or similar link on a mutually agreed prominent place on the web site; (iv) if IVR payments have been activated, through Client's general IVR/Phone system; and (v) other channels or means available to Client or reasonably suggested by Paymentus.

Paymentus will provide Client with logos, graphics and other marketing materials solely for Client's use in its communications with its customers regarding the Services and/or Paymentus.

5.3 Independent Contractor

Paymentus is an independent contractor. Paymentus is not acting as an agent or fiduciary of the Client or its Users.

5.4 Client's Responsibilities

In order for Paymentus to provide the Services, Client will fully cooperate with Paymentus by:

- (i) Entering into (and authorizing Paymentus to do so on its behalf) all applicable merchant processing, cash management, ACH origination, or kiosk agreements, provided that Client is given notice of and approves any additional fees associated with those agreements, and providing information and consents reasonably requested in connection with the agreements.
- (ii) Maintaining throughout the duration of the Agreement during which direct payments via the web is activated, a bill payment link connecting to the Paymentus Platform at a prominent and mutually agreed location on Client's website. If the IVR channel is activated, the phone number for IVR payments will also be added to the web site and as an option as part of Client's general phone system.
- (iii) Sharing User Adoption Communication as described in Section 5.2 (User Adoption Communication by Client).
- (iv) Providing Customer Information to Paymentus. As part of the information transfer required for implementation, Client will provide Paymentus with CIF on all Client customers serviced by Client. The CIF shall also identify customers by payment type.
- (v) Launching the Service within 30 days of System Availability. Paymentus will notify Client in writing of System Availability. Client will have ten (10) days following such notification to confirm that there are no material defects in the System ("Testing Period"). If material defects in the System are identified, Client shall provide reasonable detail to Paymentus about such defects, and the System Availability date will be extended until Paymentus notifies Client again of System Availability, and following an additional Testing Period, Client confirms there are no material defects in the System. If the Launch Date does not occur by the earlier of (i) thirty (30) days following final System Availability or (ii) 120 days following the Effective Date (as adjusted for any time required for Paymentus to cure applicable defects), Client shall be obligated to pay seventy-five percent (75%) of the Minimum Monthly Commitment Fees commencing the following month.
- (vi) Dedicating sufficient properly trained and fully engaged personnel to support the implementation process and its use of the Services in compliance with all laws applicable to its use of the Services.
- (vii) Providing Paymentus with the file format specification currently used to post payments to the billing system to allow Paymentus to provide Client with a posting file for posting to Client's billing system.
- (viii) Fully cooperating with Paymentus and securing the cooperation of its software and service providers and providing the information required to integrate with Clients' billing system.
- (ix) Fully cooperating with Paymentus to integrate its systems with the Paymentus Platform through the use of Paymentus' APIs to enable Client's access to the IPN, if selected.
- (x) Promptly provide Paymentus notice within a reasonable time (not to exceed 48 hours) if Client encounters a cyber-incident or a data security breach which could reasonably be expected to compromise Paymentus data.

6 Indemnification and Limitation of Liability

6.1 Paymentus Indemnification and Hold Harmless

Paymentus agrees to defend, hold harmless and indemnify Client and its directors, officers or governing officials, and employees (collectively, the "Client Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Client Indemnatee arising from a claim or demand brought by a third party to the extent such claim or demand alleges that the Services provided under this Agreement infringe the intellectual property rights of the third-party.

6.2 Client Indemnification and Hold Harmless

Client agrees to defend, hold harmless and indemnify Paymentus and its directors, officers, employees, and Affiliates (collectively, the "Paymentus Indemnitees") from and against all liabilities, demands, losses, damages, costs or expenses (including reasonable attorney's fees and costs), incurred by any Paymentus Indemnatee arising from a claim or demand brought by a third party to the extent the claim or demand relates to the underlying relationship or obligations of Client and its Users.

6.3 Indemnification Procedure

The indemnified party will give the indemnifying party prompt written notice of any claim for which indemnification is sought. The indemnifying party will have the right to control the defense and settlement of any claim, provided that any settlement that admits liability on behalf of the indemnified party, or adversely affects the indemnified party shall (i) require the indemnified party's prior written consent, which consent will not be unreasonably conditioned, delayed or withheld and (ii) to the extent legally permitted, shall remain confidential.

6.4 Warranty Disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, PAYMENTUS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED AND DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO CLIENT OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS, FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOOD PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THE AGREEMENT.

6.5 Limitation of Liability

NOTWITHSTANDING THE FOREGOING, PAYMENTUS WILL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS OR OTHER SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF OR COULD HAVE FORESEEN THE POSSIBILITY OF THESE DAMAGES. IN NO EVENT WILL PAYMENTUS BE LIABLE FOR ANY LOSSES OR DAMAGES RESULTING FROM THE ACTS, OMISSIONS OR ERRORS OF THIRD PARTIES OR OF CLIENT OR FOR PROVIDING AGREEMENTS, INSTRUCTIONS OR INFORMATION TO USERS AS INSTRUCTED BY CLIENT. PAYMENTUS' TOTAL LIABILITY FOR DAMAGES FOR ANY AND ALL ACTIONS ASSOCIATED WITH THE AGREEMENT OR THE SERVICES WILL IN NO EVENT EXCEED (I) FOR AN ERROR OR OTHER ACTION AFFECTING THE PROCESSING OF ONE OR MORE PAYMENTS, THE AMOUNT OF THE PAYMENTUS FEE ASSOCIATED WITH EACH PAYMENT, (II) FOR ALL OTHER CLAIMS, THE AMOUNT OF THE PAYMENTUS FEE (NET OF DIRECT PROCESSING AND OTHER FEES PAID BY PAYMENTUS) PAID TO PAYMENTUS ("NET FEES") IN THE SIX (6) MONTHS BEFORE THE EVENTS GIVING RISE TO THE CLAIM OR CLAIMS ARISING FROM THE SAME CIRCUMSTANCES; AND (III) IN NO EVENT, MORE THAN THE LESSER OF \$500,000.00 OR THE NET FEES UNDER THE AGREEMENT.

7 Term and Termination

7.1 Term

7.2 Material Breach

A material breach of the Agreement will be cured within 90 (ninety) business days ("Cure Period") after a Party notifies the other in writing of the breach in accordance with the Notice Provisions of this Agreement and with reasonable details regarding the material breach. In the event a material breach has not been cured within the Cure Period, the non-breaching Party can terminate the Agreement by providing the other Party with a 30 business days' written notice.

7.3 Upon Termination

Upon termination of the Agreement, the Parties agree to cooperate with one another to ensure that all Payments are accounted for and all refundable transactions have been completed. During any period between the date of the notice of non-renewal or termination, if applicable, and the termination date set forth therein, Client shall maintain transaction volumes materially consistent with historical usage of Paymentus' Platform. Upon termination, Paymentus will cease all Services being provided hereunder unless otherwise agreed in writing.

8. Confidentiality

The Parties agree that notwithstanding anything in this Agreement to the contrary, they will each abide by the terms of the Mutual Confidentiality Agreement or other mutual non-disclosure agreement signed by the Parties in connection with the commencement of the negotiation of this Agreement ("NDA"), which NDA shall be incorporated herein by reference, with the exception that the Term of the NDA shall be extended from the Effective Date of the NDA for three years following the termination or earlier expiration of this Agreement (the Confidentiality Period"). Furthermore, during the Confidentiality Period, Client will not for any purpose inconsistent with the Agreement disclose to any third party or use any Paymentus confidential or proprietary non-public information that Client has obtained during the procurement process or during the term of the Agreement about Paymentus' business, including the terms of the Agreement, operations, financial condition, technology, systems, know-how, products, Services, suppliers, clients, marketing data, plans, and models, and personnel. Except as required by law, Paymentus will not for any purpose inconsistent with the Agreement or its privacy policy in effect from time to time disclose to any third party or use any confidential User information it receives in connection with its performance of the Services other than as required in connection with the third parties described in Section 5.4(i) (applicable merchant processing, cash management, ACH origination, or kiosk agreements) above.

9. FOIA Requests

If a request for information is made to Client under any federal, state or other governmental freedom of information act or similar law, rule or regulation seeking disclosure of any of the confidential information of Paymentus, this Agreement or other information provided to Client before and after the Effective Date in connection with or pursuant to this Agreement, Client shall (i) promptly provide Paymentus written notice of (email shall suffice) such request (along with a copy of the request) so that Paymentus may seek, at Paymentus' sole expense, a protective order or other appropriate remedy to protect the requested information to the extent legally permitted and (ii) provide reasonable cooperation (at Paymentus' request and sole expense, including but not limited to Client's legal fees reasonably incurred to protect the requested information) to resist or limit any disclosure pursuant to this paragraph.

10. Intellectual Property

In order that Client may promote the Services and Paymentus' role in providing the Services, Paymentus grants to Client a revocable, non-exclusive, royalty-free, license to use Paymentus' logo and other service marks (the "Paymentus Marks") for this purpose only. Client does not have any right, title, license or interest, express or implied in and to any object code, software, hardware, trademarks, service mark, trade name, formula, system, know-how, telephone number, telephone line, domain name, URL, copyright image, text, script (including, without limitation, any script used by Paymentus on the IVR or the Website) or other intellectual property right of Paymentus ("Paymentus Intellectual Property"). All Paymentus Marks, Paymentus Intellectual Property, and the Platform and all rights therein (other than rights expressly granted herein) and goodwill pertain thereto belong exclusively to Paymentus.

11. Miscellaneous**11.1 Authorized Representative**

Each Party will designate an individual to act as its representative, with the authority to transmit instructions and receive information. The Parties may from time to time designate and notify the other Party of other individuals or change the individuals.

11.2 Notices

All notices of any type hereunder ("Notices") will be in writing and sent to the addresses indicated on the signature page and except as otherwise provided in these Terms and Conditions will be given by certified mail, a national courier or by hand delivery. Notices will be considered to have been given or received on the date the notice is physically received. Any party by giving notice in the manner set forth herein (or by electronic mail) may unilaterally change the name of the person to whom notice is to be given or the address at which the notice is to be received, by sending Notice to the other party. Notices to Paymentus shall also be copied to the attention of the Legal Department at the Paymentus address.

11.3 Interpretation

It is the intent of the Parties that no portion of the Agreement will be interpreted more harshly against either of the Parties as the drafter.

11.4 Governing Law**11.5 Severability**

If a word, sentence or paragraph herein is declared illegal, unenforceable, or unconstitutional, that word, sentence or paragraph will be severed from the Agreement, and the Agreement will be read as if that word, sentence or paragraph did not exist.

11.6 Attorney's Fees

Should any litigation or other dispute requiring the involvement of attorneys arise between the Parties concerning the Agreement, the Parties agree to bear their own costs and attorney's fees.

11.7 Force Majeure

Each of the Party's will be excused from performing the Services or other non-monetary obligations to the extent such Party's performance is directly delayed, impaired or rendered impossible due to acts of God or other events that are beyond such Party's reasonable control and without its fault or judgment, including without limitation, natural disasters, war, terrorist acts, riots, acts of a governmental entity (in a sovereign or contractual capacity), fire, storms, floods, labor strikes, labor walk-outs, pandemics or other wide-scale health crisis, quarantine and related restrictions, explosions, extra-ordinary loss of utilities (including telecommunications services), or external computer "hacker" attacks and/or delays of common carrier.

11.8 No Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer rights, benefits, remedies, obligations or liabilities on any person (including Users or customers of the parties) other than the parties or their respective successors and permitted assigns.

11.9 Entire Agreement

The Agreement represents the entire agreement between the Parties with respect to its subject matter and supersedes all prior written or oral agreements or understandings related to its subject matter and except as provided in the Agreement may be changed only by agreements in writing signed by the authorized representatives of the Parties. Paymentus may amend this Agreement as reasonably necessary to comply with laws, regulations or rules applicable to the Services provided under this Agreement.

11.10 Counterparts

The Agreement and any amendment or other document related to the Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. The

Agreement and any amendment or other document related to the Agreement may be signed electronically. A photographic or facsimile copy of the signature evidencing a party's execution of the Agreement will be effective as an original signature.



24-053

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		Adopted:	November 20, 2023
Drafter:	Suri Molina	Department:	Financial Services
Program:	Purchasing	Line of Business:	Procure-to-Pay
Title:	A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF \$250,000 ANNUALLY COMBINED FOR PRICE AGREEMENTS FOR AMMUNITION (PROCUREMENT NO. 23-24-011).		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
To authorize the annual amount of contracts for ammunition.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The New Mexico Administrative Code (NMAC) and the New Mexico Department of Public Safety (NMDPS) mandates basic firearm qualifications. NMDPS mandates annual qualifications and biennium training for Las Cruces Police Department (LCPD) officers.

It is essential to teach and maintain a standardized level of firearms proficiency that ensures public safety for all levels of LCPD officers. The Las Cruces Police Department utilizes firearms and ammunition to build the proficiency of the Las Cruces Police Department Academy cadets.

On June 16, 2023, the Purchasing Program issued an Invitation to Bid No. 23-24-011 for LCPD Ammunition. Seven (7) bids were received and evaluated. LCPD recommended the award of price agreements for ammunition to five (5) vendors: Arms Unlimited Inc., of Henderson, Nevada; Doña Ana Munitions LLC, of Las Cruces, New Mexico; Dooley Enterprises Inc., of Anaheim, California; Proforce Marketing Inc. dba Proforce Law Enforcement, of Prescott, Arizona; and RTP Armor LLC, of Lincoln, Nebraska. The Purchasing Program executed contracts with each vendor in August 2023 for a term of four (4) years.

LCPD is requesting authorization for a combined amount not to exceed \$250,000 annually, subject to approved budget appropriations, for ammunition expenditures.

SUPPORT INFORMATION:
[Attachment "A" - 23-24-011 LCPD Ammo - Arms Unlimited Inc](#)
[Attachment "B" - 23-24-011 LCPD Ammo - Dona Ana Munitions LLC](#)
[Attachment "C" - 23-24-011 LCPD Ammo - Dooley Enterprises Inc](#)
[Attachment "D" - 23-24-011 LCPD Ammo - Proforce Marketing Inc](#)
[Attachment "E" - 23-24-011 LCPD Ammo - RTP Armor LLC](#)

PLAN(S):

Agenda Item #7.2.

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: \$175,874 **AVAILABLE AMOUNT:** \$33,745 **EXPENDITURE AMOUNT:**
\$250,000

Funding Source(s):

10132001-701200

Overall Budget Impact:

Sufficient ammunition purchases against the City's previous contract have already been made for FY24, such that only \$10,000 more will be expended in FY24. This expenditure limit is being requested for future fiscal year purchases for the remainder of the contract term.

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the annual not-to-exceed amount of \$250,000 annually combined for price agreements for ammunition.
2. Vote "No"; this will deny the Resolution and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution, based on direction from City Council to staff.
4. Vote to "Table"; this will delay procurement for ammunition, which could have a negative impact on LCPD operations.

RESOLUTION 24-053

A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF \$250,000 ANNUALLY COMBINED FOR PRICE AGREEMENTS FOR AMMUNITION (PROCUREMENT NO. 23-24-011).

The City Council is informed that:

WHEREAS, the New Mexico Administrative Code (NMAC) and New Mexico Department of Public Safety (NMDPS) mandates basic firearm requirements; and

WHEREAS, NMDPS mandates annual qualifications and biennium training for Las Cruces Police Department (LCPD) officers; and

WHEREAS, it is essential to teach and maintain a standardized level of firearms proficiency that ensures public safety for all levels of LCPD officers; and

WHEREAS, on June 16, 2023, the Purchasing Program issued Invitation to Bid No. 23-24-011, for LCPD ammunition, and seven (7) bids were received and evaluated; and

WHEREAS, LCPD recommended the award of price agreements for ammunition to five (5) vendors: Arms Unlimited Inc., of Henderson, Nevada; Doña Ana Munitions LLC, of Las Cruces, New Mexico; Dooley Enterprises Inc., of Anaheim, California; Proforce Marketing Inc., dba Proforce Law Enforcement of Prescott, Arizona; and RTP Armor LLC, of Lincoln, Nebraska; and

WHEREAS, the Purchasing Program executed contracts with each vendor in August 2023 for a term of four (4) years; and

WHEREAS, LCPD anticipates expenditures in excess of the City Council approval threshold and is requesting authorization for a combined amount not to exceed \$250,000 annually, subject to approved budget appropriations.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the increase in the annual not-to-exceed amount of price agreements for ammunition to a combined total of \$250,000 annually, is hereby 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

Agenda Item #7.2.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



CITY OF LAS CRUCES

PRICE AGREEMENT

THIS AGREEMENT made and entered into on this 1st day of August 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Arms Unlimited Inc., of 2061 Pabco Rd., Henderson, Nevada, 89011, hereinafter called "CONTRACTOR".

1. PRODUCT DESCRIPTION

Las Cruces Police Department (LCPD) Ammunition

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall deliver PRODUCT as bid in response to the CITY'S Invitation to Bid No. 23-24-011 as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

In consideration for CONTRACTOR'S satisfactory performance agreed to herein, the CITY shall compensate CONTRACTOR based upon pricing offered in CONTRACTOR'S bid response, attached as Exhibit A. CONTRACTOR shall deliver product upon receipt of a purchase order from the CITY. The CITY cannot authorize costs to be incurred prior to such purchase order.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that are required by the CITY, and it will serve the CITY, diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of four (4) years. CONTRACTOR shall deliver PRODUCT in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY, with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY, for its convenience or because the PROJECT has

been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY, will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S, prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY, and shall be delivered to the CITY, when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY, CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY, by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY, shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

18. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

19. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

20. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

21. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Jeremy Story

With Copies to: Purchasing Manager

TO CONTRACTOR: Arms Unlimited
 2061 Pabco Rd.
 Henderson, Nevada 89011
 ATTENTION: Jack Chuang

22. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written

agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

23. SEVERABILITY

The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

24. CONFLICT OF INTEREST

CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

ARMS UNLIMITED INC.

BY: _____

Jack Chuang
Sales Specialist

8/28/2023

Date

CITY OF LAS CRUCES

BY: _____

Alicia Hernandez
Purchasing Manager

8/28/2023

Date

APPROVED AS TO FORM

for LS
City Attorney

8/28/2023

EXHIBIT A

CITY OF LAS CRUCES LCPD Ammunition

I. Introduction

The City of Las Cruces (City) is soliciting bids for the supply and delivery of ammunition for the Las Cruces Police Department (LCPD). The City may award contracts to multiple vendors to meet its needs and ensure product availability.

II. Price Agreement

The contract resulting from this solicitation will be for a base period of one (1) year from date of award with three (3) additional one-year renewal options to be initiated in writing by the City and mutually agreed upon by the City and awarded vendor(s).

III. Bid Items

ITEM	DESCRIPTION	EST QTY	BRAND / MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
1.	9mm 115 grain FMJ (1000 rounds/case)	300 cs	Magtech/S&B #9A	\$220.00	\$66,000.00
2.	.40 180 grain FMJ (1000 rounds/case)	10 cs	Magtech/S&B #40B	\$350.00	\$3,500.00
3.	.45 230 grain FMJ (1000 rounds/case)	10 cs	Magtech/S&B #45A	\$395.00	\$3,950.00
4.	.223 55 grain FMJ (500 rounds/case)	150 cs	Magtech/S&B #556A	\$475.00	\$71,250.00

(REQUIRED) TOTAL BID \$ 144,700.00

IV. General Specifications and Requirements

A. All ammunition shall be new and in original manufacturer's packaging. All cartridges shall be clean and free of oil and grease and other substances that will hinder the performance of the projectiles or the weapon. The City will not accept any:

1. Reloaded ammunition
2. Resized casings
3. Any other ammunition that is not consistent with newly manufactured and packaged product.

B. A sample of the proposed ammunition may be requested prior to approval.

C. Casing must be made completely of brass unless otherwise specified. Aluminum is not acceptable.

- D. There shall be no more than one (1) misfire per 2000 rounds.
- E. If defective ammunition is encountered, it shall be the responsibility of the vendor to remedy all problems in a timely manner. The City will not be responsible for charges incurred as a result of defective ammunition.

PRICE INCREASES:

All prices quoted shall be firm and fixed as bid for one year of the agreement. Pass-through price adjustments will be accepted after one year and on an annual basis thereafter provided said adjustments(s) are submitted in writing with thirty (30) calendar days' advance notice and are accompanied by written documentation of the manufacturer's price increase. Price adjustment requests shall be sent to the named buyer.

PRICE DECREASES:

If the offeror receives any cost decrease from the supplier of the goods sold to the City through a contract resulting from this request, the offeror shall notify the City within 24 hours of such decrease and pass such decreases to the City immediately.

"OR APPROVED EQUAL" CLARIFICATIONS:

Brand names are used for the purpose of describing the standard quality, performance, and characteristics required and are not intended to limit or restrict competition. Requests for approved equals, including detailed technical specifications, are to be submitted with the bid by the bid due date.

"Equals" or "Equivalents" to these specifications may be considered; provided bidder furnishes sufficient proof that their offer meets or exceeds the intent of these specifications. The acceptance or rejection of equals or equivalents shall be determined solely by the City of Las Cruces.



CITY OF LAS CRUCES

PRICE AGREEMENT

THIS AGREEMENT made and entered into on this 1st day of August 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Dona Ana Munitions LLC, of 6210 West Picacho, Las Cruces, NM 88007 hereinafter called "CONTRACTOR".

1. PRODUCT DESCRIPTION

Las Cruces Police Department (LCPD) Ammunition

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall deliver PRODUCT as bid in response to the CITY'S Invitation to Bid No. 23-24-011 as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

In consideration for CONTRACTOR'S satisfactory performance agreed to herein, the CITY shall compensate CONTRACTOR based upon pricing offered in CONTRACTOR'S bid response, attached as Exhibit A. CONTRACTOR shall deliver product upon receipt of a purchase order from the CITY. The CITY cannot authorize costs to be incurred prior to such purchase order.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that are required by the CITY, and it will serve the CITY, diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of four (4) years. CONTRACTOR shall deliver PRODUCT in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY, with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY, for its convenience or because the PROJECT has

been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY, will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S, prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY, and shall be delivered to the CITY, when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY, CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY, by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY, shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

18. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

19. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

20. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

21. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Jeremy Story

With Copies to: Purchasing Manager

TO CONTRACTOR: Dona Ana Munitions LLC
 6210 West Picacho
 Las Cruces, NM 88007
 ATTENTION: Paul C. McClarin

22. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written

agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

23. SEVERABILITY

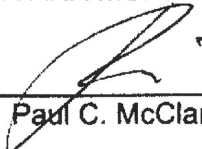
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

24. CONFLICT OF INTEREST

CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

DONA ANA MUNITIONS LLC

BY:


Paul C. McClarin

Date

8/29/2023

CITY OF LAS CRUCES

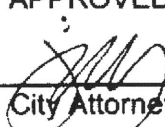
BY:


Alicia Hernandez
Purchasing Manager

Date

8/29/2023

APPROVED AS TO FORM


City Attorney

for LS 8/28/2023

EXHIBIT A

CITY OF LAS CRUCES LCPD Ammunition

I. Introduction

The City of Las Cruces (City) is soliciting bids for the supply and delivery of ammunition for the Las Cruces Police Department (LCPD). The City may award contracts to multiple vendors to meet its needs and ensure product availability.

II. Price Agreement

The contract resulting from this solicitation will be for a base period of one (1) year from date of award with three (3) additional one-year renewal options to be initiated in writing by the City and mutually agreed upon by the City and awarded vendor(s).

III. Bid Items

ITEM	DESCRIPTION	EST QTY	BRAND / MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
1.	9mm 115 grain FMJ (1000 rounds/case)	300 cs	MAGTECH	\$241.00	\$72,300.00
2.	.40 180 grain FMJ (1000 rounds/case)	10 cs	AMERICAN EAGLE	369.80	\$3,698.00
3.	.45 230 grain FMJ (1000 rounds/case)	10 cs	CCI BLAZER	459.80	\$4,698.00
4.	.223 55 grain FMJ (500 rounds/case)	150 cs	PMC BRONZE	212.45	31,867.50

(REQUIRED) TOTAL BID \$ 112,563.50

IV. General Specifications and Requirements

A. All ammunition shall be new and in original manufacturer's packaging. All cartridges shall be clean and free of oil and grease and other substances that will hinder the performance of the projectiles or the weapon. The City will not accept any:

1. Reloaded ammunition
2. Resized casings
3. Any other ammunition that is not consistent with newly manufactured and packaged product.

B. A sample of the proposed ammunition may be requested prior to approval.

C. Casing must be made completely of brass unless otherwise specified. Aluminum is not acceptable.

- D. There shall be no more than one (1) misfire per 2000 rounds.
- E. If defective ammunition is encountered, it shall be the responsibility of the vendor to remedy all problems in a timely manner. The City will not be responsible for charges incurred as a result of defective ammunition.

PRICE INCREASES:

All prices quoted shall be firm and fixed as bid for one year of the agreement. Pass-through price adjustments will be accepted after one year and on an annual basis thereafter provided said adjustments(s) are submitted in writing with thirty (30) calendar days' advance notice and are accompanied by written documentation of the manufacturer's price increase. Price adjustment requests shall be sent to the named buyer.

PRICE DECREASES:

If the offeror receives any cost decrease from the supplier of the goods sold to the City through a contract resulting from this request, the offeror shall notify the City within 24 hours of such decrease and pass such decreases to the City immediately.

"OR APPROVED EQUAL" CLARIFICATIONS:

Brand names are used for the purpose of describing the standard quality, performance, and characteristics required and are not intended to limit or restrict competition. Requests for approved equals, including detailed technical specifications, are to be submitted with the bid by the bid due date.

"Equals" or "Equivalents" to these specifications may be considered; provided bidder furnishes sufficient proof that their offer meets or exceeds the intent of these specifications. The acceptance or rejection of equals or equivalents shall be determined solely by the City of Las Cruces.



CITY OF LAS CRUCES

PRICE AGREEMENT

THIS AGREEMENT made and entered into on this 1st day of August 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Dooley Enterprises, Inc., of 1198 N Grove St., Ste. A, Anaheim, CA 92806, hereinafter called "CONTRACTOR".

1. PRODUCT DESCRIPTION

Las Cruces Police Department (LCPD) Ammunition

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall deliver PRODUCT as bid in response to the CITY'S Invitation to Bid No. 23-24-011 as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

In consideration for CONTRACTOR'S satisfactory performance agreed to herein, the CITY shall compensate CONTRACTOR based upon pricing offered in CONTRACTOR'S bid response, attached as Exhibit A. CONTRACTOR shall deliver product upon receipt of a purchase order from the CITY. The CITY cannot authorize costs to be incurred prior to such purchase order.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that are required by the CITY, and it will serve the CITY, diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of one (1) year through July 31, 2024, and has three (3) one-year renewable options to be exercised at the discretion of the CITY, upon mutual written consent. CONTRACTOR shall deliver

PRODUCT in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY, with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY, for its convenience or because the PROJECT has

been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY, will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S, prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY, and shall be delivered to the CITY, when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY, CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY, by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY, shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

18. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

19. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

20. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

21. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Jeremy Story

With Copies to: Purchasing Manager

TO CONTRACTOR: Dooley Enterprises, Inc.,
 1198 N Grove St., Ste. A
 Anaheim, CA 92806
 ATTENTION: Chris Dooley

22. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written

agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

23. SEVERABILITY

The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

24. CONFLICT OF INTEREST

CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

DOOLEY ENTERPRISES, INC.

BY: _____

Chris Dooley
President

8/29/23

Date

CITY OF LAS CRUCES

BY: _____

Alicia Hernandez
Purchasing Manager

9/6/2023

Date

APPROVED AS TO FORM

City Attorney

EXHIBIT A

CITY OF LAS CRUCES LCPD Ammunition

I. Introduction

The City of Las Cruces (City) is soliciting bids for the supply and delivery of ammunition for the Las Cruces Police Department (LCPD). The City may award contracts to multiple vendors to meet its needs and ensure product availability.

II. Price Agreement

The contract resulting from this solicitation will be for a base period of one (1) year from date of award with three (3) additional one-year renewal options to be initiated in writing by the City and mutually agreed upon by the City and awarded vendor(s).

III. Bid Items

ITEM	DESCRIPTION	EST QTY	BRAND / MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
1.	9mm 115 grain FMJ (1000 rounds/case)	300 cs	Winchester Q4172	\$244.00	\$73,200.00
2.	.40 180 grain FMJ (1000 rounds/case)	10 cs	Winchester Q4238	\$294.00	\$2,940.00
3.	.45 230 grain FMJ (1000 rounds/case)	10 cs	Winchester Q4170	\$328.00	\$3,280.00
4.	.223 55 grain FMJ (500 rounds/case)	150 cs	Winchester USA223R1K	\$223.50	\$33,525.00

(REQUIRED) TOTAL BID \$ 112,945.00

IV. General Specifications and Requirements

A. All ammunition shall be new and in original manufacturer's packaging. All cartridges shall be clean and free of oil and grease and other substances that will hinder the performance of the projectiles or the weapon. The City will not accept any:

1. Reloaded ammunition
2. Resized casings
3. Any other ammunition that is not consistent with newly manufactured and packaged product.

See Attachment #12

B. A sample of the proposed ammunition may be requested prior to approval.

C. Casing must be made completely of brass unless otherwise specified. Aluminum is not acceptable.

- D. There shall be no more than one (1) misfire per 2000 rounds.
- E. If defective ammunition is encountered, it shall be the responsibility of the vendor to remedy all problems in a timely manner. The City will not be responsible for charges incurred as a result of defective ammunition.

PRICE INCREASES:

All prices quoted shall be firm and fixed as bid for one year of the agreement. Pass-through price adjustments will be accepted after one year and on an annual basis thereafter provided said adjustments(s) are submitted in writing with thirty (30) calendar days' advance notice and are accompanied by written documentation of the manufacturer's price increase. Price adjustment requests shall be sent to the named buyer.

PRICE DECREASES:

If the offeror receives any cost decrease from the supplier of the goods sold to the City through a contract resulting from this request, the offeror shall notify the City within 24 hours of such decrease and pass such decreases to the City immediately.

"OR APPROVED EQUAL" CLARIFICATIONS:

Brand names are used for the purpose of describing the standard quality, performance, and characteristics required and are not intended to limit or restrict competition. Requests for approved equals, including detailed technical specifications, are to be submitted with the bid by the bid due date.

"Equals" or "Equivalents" to these specifications may be considered; provided bidder furnishes sufficient proof that their offer meets or exceeds the intent of these specifications. The acceptance or rejection of equals or equivalents shall be determined solely by the City of Las Cruces.



CITY OF LAS CRUCES

PRICE AGREEMENT

THIS AGREEMENT made and entered into on this 1st day of August 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Proforce Marketing, Inc. dba Proforce Law Enforcement, of 2625 Stearman Rd., Ste. A, Prescott, AZ 86301 hereinafter called "CONTRACTOR".

1. PRODUCT DESCRIPTION

Las Cruces Police Department (LCPD) Ammunition

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall deliver PRODUCT as bid in response to the CITY'S Invitation to Bid No. 23-24-011 as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

In consideration for CONTRACTOR'S satisfactory performance agreed to herein, the CITY shall compensate CONTRACTOR based upon pricing offered in CONTRACTOR'S bid response, attached as Exhibit A. CONTRACTOR shall deliver product upon receipt of a purchase order from the CITY. The CITY cannot authorize costs to be incurred prior to such purchase order.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that are required by the CITY, and it will serve the CITY, diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of four (4) years. CONTRACTOR shall deliver PRODUCT in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

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The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY, with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY, for its convenience or because the PROJECT has

been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY, will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S, prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY, and shall be delivered to the CITY, when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY, CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY, by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY, shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

18. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

19. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

20. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

21. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Jeremy Story

With Copies to: Purchasing Manager

TO CONTRACTOR: Proforce Marketing, Inc. dba Proforce Law Enforcement
 2625 Stearman Rd., Ste. A
 Prescott, AZ 86301
 ATTENTION: Amanda Cronkhite

22. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such

covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

23. SEVERABILITY

The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

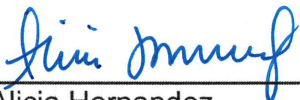
24. CONFLICT OF INTEREST

CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

PROFORCE MARKETING, INC. dba
PROFORCE LAW ENFORCEMENT

CITY OF LAS CRUCES

BY: 
Amanda Cronkhite

BY: 
Alicia Hernandez
Purchasing Manager

08/28/23
Date

9/6/2023
Date

APPROVED AS TO FORM

 fw LS 8/28/23
City Attorney

EXHIBIT A

CITY OF LAS CRUCES
LCPD Ammunition

I. Introduction

The City of Las Cruces (City) is soliciting bids for the supply and delivery of ammunition for the Las Cruces Police Department (LCPD). The City may award contracts to multiple vendors to meets its needs and ensure product availability.

II. Price Agreement

The contract resulting from this solicitation will be for a base period of one (1) year from date of award with three (3) additional one-year renewal options to be initiated in writing by the City and mutually agreed upon by the City and awarded vendor(s).

III. Bid Items

ITEM	DESCRIPTION	EST QTY	BRAND / MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
1.	9mm 115 grain FMJ (1000 rounds/case)	300 cs	FEDERAL AMERICAN EAGLE AE9DP	\$227.77	\$68,331.00
2.	.40 180 grain FMJ (1000 rounds/case)	10 cs	FEDERAL AMERICAN EAGLE AE40R1	\$345.56	\$3,455.60
3.	.45 230 grain FMJ (1000 rounds/case)	10 cs	FEDERAL AMERICAN EAGLE AE45A	\$380.00	\$3,800.00
4.	.223 55 grain FMJ (500 rounds/case)	150 cs	FEDERAL AMERICAN EAGLE AE223 500RD/CASE	\$243.33	\$36,499.50

(REQUIRED) TOTAL BID \$ \$112,086.10

IV. General Specifications and Requirements

- A. All ammunition shall be new and in original manufacturer’s packaging. All cartridges shall be clean and free of oil and grease and other substances that will hinder the performance of the projectiles or the weapon. The City will not accept any:
 - 1. Reloaded ammunition
 - 2. Resized casings
 - 3. Any other ammunition that is not consistent with newly manufactured and packaged product.
- B. A sample of the proposed ammunition may be requested prior to approval.
- C. Casing must be made completely of brass unless otherwise specified. Aluminum is not acceptable.

- D. There shall be no more than one (1) misfire per 2000 rounds.
- E. If defective ammunition is encountered, it shall be the responsibility of the vendor to remedy all problems in a timely manner. The City will not be responsible for charges incurred as a result of defective ammunition.

PRICE INCREASES:

All prices quoted shall be firm and fixed as bid for one year of the agreement. Pass-through price adjustments will be accepted after one year and on an annual basis thereafter provided said adjustments(s) are submitted in writing with thirty (30) calendar days' advance notice and are accompanied by written documentation of the manufacturer's price increase. Price adjustment requests shall be sent to the named buyer.

PRICE DECREASES:

If the offeror receives any cost decrease from the supplier of the goods sold to the City through a contract resulting from this request, the offeror shall notify the City within 24 hours of such decrease and pass such decreases to the City immediately.

"OR APPROVED EQUAL" CLARIFICATIONS:

Brand names are used for the purpose of describing the standard quality, performance, and characteristics required and are not intended to limit or restrict competition. Requests for approved equals, including detailed technical specifications, are to be submitted with the bid by the bid due date.

"Equals" or "Equivalents" to these specifications may be considered; provided bidder furnishes sufficient proof that their offer meets or exceeds the intent of these specifications. The acceptance or rejection of equals or equivalents shall be determined solely by the City of Las Cruces.

CITY OF LAS CRUCES LCPD Ammunition

I. Introduction

The City of Las Cruces (City) is soliciting bids for the supply and delivery of ammunition for the Las Cruces Police Department (LCPD). The City may award contracts to multiple vendors to meet its needs and ensure product availability.

II. Price Agreement

The contract resulting from this solicitation will be for a base period of one (1) year from date of award with three (3) additional one-year renewal options to be initiated in writing by the City and mutually agreed upon by the City and awarded vendor(s).

III. Bid Items

ITEM	DESCRIPTION	EST QTY	BRAND / MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
1.	9mm 115 grain FMJ (1000 rounds/case)	300 cs	AGUILA 1E097704	\$230.56	\$68,168.00
2.	.40 180 grain FMJ (1000 rounds/case)	10 cs	AGUILA 1E402110	\$345.65	\$3,456.50
3.	.45 230 grain FMJ (1000 rounds/case)	10 cs	AGUILA 1E452110	\$380.45	\$3,804.50
4.	.223 55 grain FMJ (500 rounds/case)	150 cs	AGUILA 1E223110 **1000 ROUNDS PER CASE**	\$453.41	\$68,011.50

(REQUIRED) TOTAL BID \$ \$144,440.50

IV. General Specifications and Requirements

- A. All ammunition shall be new and in original manufacturer's packaging. All cartridges shall be clean and free of oil and grease and other substances that will hinder the performance of the projectiles or the weapon. The City will not accept any:
 1. Reloaded ammunition
 2. Resized casings
 3. Any other ammunition that is not consistent with newly manufactured and packaged product.
- B. A sample of the proposed ammunition may be requested prior to approval.
- C. Casing must be made completely of brass unless otherwise specified. Aluminum is not acceptable.

- D. There shall be no more than one (1) misfire per 2000 rounds.
- E. If defective ammunition is encountered, it shall be the responsibility of the vendor to remedy all problems in a timely manner. The City will not be responsible for charges incurred as a result of defective ammunition.

PRICE INCREASES:

All prices quoted shall be firm and fixed as bid for one year of the agreement. Pass-through price adjustments will be accepted after one year and on an annual basis thereafter provided said adjustments(s) are submitted in writing with thirty (30) calendar days' advance notice and are accompanied by written documentation of the manufacturer's price increase. Price adjustment requests shall be sent to the named buyer.

PRICE DECREASES:

If the offeror receives any cost decrease from the supplier of the goods sold to the City through a contract resulting from this request, the offeror shall notify the City within 24 hours of such decrease and pass such decreases to the City immediately.

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Brand names are used for the purpose of describing the standard quality, performance, and characteristics required and are not intended to limit or restrict competition. Requests for approved equals, including detailed technical specifications, are to be submitted with the bid by the bid due date.

"Equals" or "Equivalents" to these specifications may be considered; provided bidder furnishes sufficient proof that their offer meets or exceeds the intent of these specifications. The acceptance or rejection of equals or equivalents shall be determined solely by the City of Las Cruces.



CITY OF LAS CRUCES

PRICE AGREEMENT

THIS AGREEMENT made and entered into on this 1st day of August 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and RTP Armor LLC, of 8309 S 62nd St., Lincoln, NE 68516 hereinafter called "CONTRACTOR".

1. PRODUCT DESCRIPTION

Las Cruces Police Department (LCPD) Ammunition

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall deliver PRODUCT as bid in response to the CITY'S Invitation to Bid No. 23-24-011 as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

In consideration for CONTRACTOR'S satisfactory performance agreed to herein, the CITY shall compensate CONTRACTOR based upon pricing offered in CONTRACTOR'S bid response, attached as Exhibit A. CONTRACTOR shall deliver product upon receipt of a purchase order from the CITY. The CITY cannot authorize costs to be incurred prior to such purchase order.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that are required by the CITY, and it will serve the CITY, diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of four (4) years. CONTRACTOR shall deliver PRODUCT in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY, with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY, for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY, will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S, prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY, and shall be delivered to the CITY, when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY, CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY, by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY, shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

18. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

19. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

20. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

21. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Jeremy Story

With Copies to: Purchasing Manager

TO CONTRACTOR: RTP Armor, LLC
 8309 S 62nd St.
 Lincoln, NE 68516
 ATTENTION: Shad Kearns

22. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written

agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

23. SEVERABILITY

The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

24. CONFLICT OF INTEREST

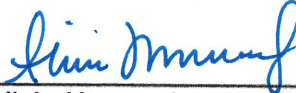
CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

RTP ARMOR, LLC

BY: 
Shad Kearns
CEO

8-29-2023
Date

CITY OF LAS CRUCES

BY: 
Alicia Hernandez
Purchasing Manager

8/29/2023
Date

APPROVED AS TO FORM

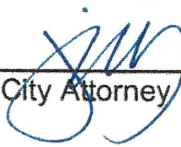
 for LS 8/28/2023
City Attorney

EXHIBIT A

CITY OF LAS CRUCES LCPD Ammunition

I. Introduction

The City of Las Cruces (City) is soliciting bids for the supply and delivery of ammunition for the Las Cruces Police Department (LCPD). The City may award contracts to multiple vendors to meet its needs and ensure product availability.

II. Price Agreement

The contract resulting from this solicitation will be for a base period of one (1) year from date of award with three (3) additional one-year renewal options to be initiated in writing by the City and mutually agreed upon by the City and awarded vendor(s).

III. Bid Items

ITEM	DESCRIPTION	EST QTY	BRAND / MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
1.	9mm 115 grain FMJ (1000 rounds/case)	300 cs	Magtech #9A	\$283.00	\$84,900.00
2.	.40 180 grain FMJ (1000 rounds/case)	10 cs	Federal #AE40R1	\$460.00	\$4,600.00
3.	.45 230 grain FMJ (1000 rounds/case)	10 cs	CCI Ammunition #3480	\$499.80	\$4,998.00
4.	.223 55 grain FMJ (500 rounds/case)	150 cs	PMC #223A	\$245.00	\$36,750.00

(REQUIRED) TOTAL BID \$ \$131,248.00

IV. General Specifications and Requirements

A. All ammunition shall be new and in original manufacturer's packaging. All cartridges shall be clean and free of oil and grease and other substances that will hinder the performance of the projectiles or the weapon. The City will not accept any:

1. Reloaded ammunition
2. Resized casings
3. Any other ammunition that is not consistent with newly manufactured and packaged product.

B. A sample of the proposed ammunition may be requested prior to approval.

C. Casing must be made completely of brass unless otherwise specified. Aluminum is not acceptable.

- D. There shall be no more than one (1) misfire per 2000 rounds.
- E. If defective ammunition is encountered, it shall be the responsibility of the vendor to remedy all problems in a timely manner. The City will not be responsible for charges incurred as a result of defective ammunition.

PRICE INCREASES:

All prices quoted shall be firm and fixed as bid for one year of the agreement. Pass-through price adjustments will be accepted after one year and on an annual basis thereafter provided said adjustments(s) are submitted in writing with thirty (30) calendar days' advance notice and are accompanied by written documentation of the manufacturer's price increase. Price adjustment requests shall be sent to the named buyer.

PRICE DECREASES:

If the offeror receives any cost decrease from the supplier of the goods sold to the City through a contract resulting from this request, the offeror shall notify the City within 24 hours of such decrease and pass such decreases to the City immediately.

"OR APPROVED EQUAL" CLARIFICATIONS:

Brand names are used for the purpose of describing the standard quality, performance, and characteristics required and are not intended to limit or restrict competition. Requests for approved equals, including detailed technical specifications, are to be submitted with the bid by the bid due date.

"Equals" or "Equivalents" to these specifications may be considered; provided bidder furnishes sufficient proof that their offer meets or exceeds the intent of these specifications. The acceptance or rejection of equals or equivalents shall be determined solely by the City of Las Cruces.



City Council Action and Executive Summary

3049; Council
Bill 24-007

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ N/A		
1st Reading:	November 6, 2023	Adopted:	November 20, 2023
Drafter:	Vince Banegas	Department:	Community Development
Program:	Community Planning	Line of Business:	Community Planning
Title:	AN ORDINANCE APPROVING A ZONE CHANGE FROM UR (URBAN RANCH) TO EE (EQUESTRIAN ESTATE AND AGRICULTURE) FOR PROPERTY LOCATED AT 7332 SHANNON ROAD. SUBMITTED BY JOHN MAJOR, PROPERTY OWNER.		

TYPE OF ACTION: ☐ Administrative ☐ Legislative ☒ Quasi-Judicial

PURPOSE(S) OF ACTION:

Zone change.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Council is required to review and take final action on zone changes per Section 38-10.B.2.b. and 38-13.A. of the 2001 Las Cruces Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulation uniformly governs the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from UR (Urban Ranch) to EE (Equestrian Estate and Agriculture) for property approximately 1.63 acres in size and located at 7332 Shannon Road. The existing UR zone represents a non-conforming zoning district designation that became defunct upon adoption of the 2001 Las Cruces Zoning Code, as amended. In order to fully develop the property, a zone change to an appropriate zoning designation is required. Due to the surrounding area and the development vision proposed by the property owner, the EE zoning district is an appropriate designation.

The EE district designation allows for the development of one-acre residential lots that maintain a semi-rural atmosphere and allow the keeping of large and small animals. Homes must be either site-built or manufactured homes. This development style is consistent with what the defunct UR zone allowed and is also consistent with many of the EE zoned properties in the immediate vicinity.

The subject property was given conditional approval of a building permit to allow the construction of a site-built home. The condition stipulates that an appropriate zone change be approved to remove the defunct UR zone.

The proposed zone change is consistent with the Elevate Las Cruces Comprehensive Plan and several goals, policies, and actions contained therein. Policy supporting the request speaks to encouraging the development of vacant/underutilized property, promoting building form and scale that complements surrounding neighborhoods, and providing a diverse range of housing options to accommodate residents at all stages in life. Furthermore, the property is within the Suburban Place Type, which encourages the development of low to moderate-density residential land uses consistent with the subject place type.

Agenda Item #7.3.

On July 25, 2023, the case was heard by the Planning and Zoning Commission at their regular meeting. The zone change request had no opposition from area residents. Ultimately, the Planning and Zoning Commission voted 6-0-0 (one Commissioner absent) to approve the request with no conditions.

SUPPORT INFORMATION:

[EXHIBIT "A" - Vicinity Map](#)

[EXHIBIT "B" - Findings of Fact](#)

[ATTACHMENT "A" - Approved 07.25.23 P&Z Minutes](#)

[ATTACHMENT "B" - Staff Report](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval. The subject property located at 7332 Shannon Road will be rezoned from UR (Urban Ranch) to EE (Equestrian Estates and Agriculture).

2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current non-conforming zoning designation of UR (Urban Ranch) will remain, requiring the property owner to seek an alternative zoning designation prior to development.

3. Vote to "Amend"; this could allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.

4. Vote to "Table"; this could allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3049; COUNCIL BILL 24-007

AN ORDINANCE APPROVING A ZONE CHANGE FROM UR (URBAN RANCH) TO EE (EQUESTRIAN ESTATE AND AGRICULTURE) FOR PROPERTY LOCATED AT 7332 SHANNON ROAD. SUBMITTED BY JOHN MAJOR, PROPERTY OWNER.

The City Council is informed that:

WHEREAS, Mr. John Major, property owner, has submitted a request for a zone change from UR (Urban Ranch) to EE (Equestrian Estates and Agriculture); and

WHEREAS, the subject property is approximately 1.63 acres in size, under development, and has a defunct zoning district in need of change to fulfill the proposed development potential; and

WHEREAS, the proposed EE (Equestrian Estates and Agriculture) zone is consistent with the Suburban Place Type per the Elevate Las Cruces Comprehensive Plan and is supported by various goals and policies contained therein; and

WHEREAS, the proposed zone change meets the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on July 25, 2023, recommended that the zone change request be approved by a vote of 6-0-0 (one Commissioner absent).

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT the land as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned EE (Equestrian Estates and Agriculture).

(II)

THAT the zoning is based on the findings contained in Exhibit "B", attached hereto and made part of this Ordinance.

(III)

THAT the zoning of said property be shown accordingly on the City Zoning Atlas.

(IV)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT “A” – Vicinity Map



Note: Subject property is outlined in red.

EXHIBIT “B” – Findings

FINDINGS

1. The property under consideration has a non-conforming zoning designation that no longer exists in the 2001 Las Cruces Zoning Code, as amended.
2. Prior to development, an appropriate zoning district designation needs to be established pursuant to code. The proposed EE district designation is the most appropriate zoning district given the surrounding area and the applicant's development proposal.
3. The subject property falls within the Suburban place type. This place type is characterized by low to moderate density residential land uses intermixed with areas of commercial development. This place type is consistent with what the proposed EE zone seeks to provide.
4. The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).
5. The surrounding area is developed as large lot single-family development consistent with the EE zoning district. Several parcels adjacent to the subject property are already zoned EE.



CITY OF LAS CRUCES

**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
July 25, 2023 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Vanessa Vega, Secretary
Connor Murray, Member
Vanessa Porter, Member
James Bennett, Member
Enrico Smith, Member

BOARD MEMBERS ABSENT:

Joaquin Acosta, Member

STAFF PRESENT:

Larry Nichols, Director Community Development Department
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Vincent Banegas, Interim Planner
John Castillo, Planner
Christina Abeyta-Corella, Planner
Jocelyn Garrison, City Attorney
Adrian Guzman, Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Welcome to July 25th Planning and Zoning Commission for the City of Las Cruces. We will go ahead and call this meeting to order. I was informed a minute ago that we have a bit of a time - the City hall security, they leave at 9:00 p.m. tonight, so hopefully we can get through everything in the next three hours.

2. CONFLICT OF INTEREST

Kaiser: Is there any conflict of interest from anyone on the Commission tonight? All right. Seeing none.

3. APPROVAL OF MINUTES – April 25, 2023

Kaiser: We will go to the approval of last month's meeting minutes from June 27th.

1
2 Bennett: I make a motion to approve last meeting's minutes.
3
4 Smith: I second.
5
6 Kaiser: I second.
7
8 Baum: Board Member Smith.
9
10 Smith: Yes.
11
12 Baum: Board Member Vega.
13
14 Vega: I'll abstain. I wasn't here.
15
16 Baum: Board Member Porter.
17
18 Porter: Yes.
19
20 Baum: Thank you. Board Member Bennett.
21
22 Bennett: Yes.
23
24 Baum: Board Member Murray.
25
26 Murray: Yes.
27
28 Baum: Chair Kaiser.
29
30 Kaiser: Yes.
31
32 Baum: Thank you.
33
34 Kaiser: All right. We have no postponements tonight.
35

36 **4. ACCEPTANCE OF THE AGENDA**
37

38 Kaiser: So we'll go ahead and get a motion to approve tonight's agenda.
39
40 Bennett: I make a motion to approve the agenda.
41
42 Vega: Second.
43
44 Baum: Board Member Smith.
45
46

1 Smith: Yes.
2
3 Baum: Board Member Vega.
4
5 Vega: Yes.
6
7 Baum: Board Member Porter.
8
9 Porter: Yes.
10
11 Baum: Board Member Bennett.
12
13 Bennett: Yes.
14
15 Baum: Board Member Murray.
16
17 Murray: Yes.
18
19 Baum: Chair Kaiser.
20
21 Kaiser: Yes.
22

23 **5. PUBLIC PARTICIPATION**
24

25 Kaiser: Okay, moving on to public participation. Is there anybody in the audience
26 tonight who wishes to speak on an item that is not for an agenda item? Yes,
27 please come up. Please state your name for the record. And I will give you
28 three minutes after I swear you in.
29
30 Pearson: My name is George Pearson. I'm disappointed that these P&Z meetings
31 are not being broadcast on the City's TV channel or YouTube. Since this
32 committee is recommending committee to City Council, I'd like to
33 recommend that you take action at a future P&Z meeting to send a message
34 to City Council asking that they broadcast these meetings and so that
35 they're available on YouTube. This meeting has, besides City Council, this
36 committee has the most direct impact on the citizens and I think it's
37 important that these meetings be publicly available. Thank you.
38
39 Kaiser: Thank you very much. And I would just like to say for the record that this
40 committee has asked that very question to staff as to why this meeting was
41 no longer being televised. So I would just continue to pose that question
42 and see if we can't come to some sort of resolution
43
44 Ochoa: Chairman Kaiser. Staff will speak with the PIO office on that matter again
45 and see what we can do, sir.
46

Kaiser: Thank you. All right, anybody else that wishes to speak on an item that's not on tonight's agenda. Okay. Seeing none,

6. CONSENT AGENDA

7. OLD BUSINESS

7.1 Case # 23ZO0500072: A zone change request from UR (Urban Ranch from the 1981 Zoning Code) to EE (Equestrian Estates) for property that is 1.65 acres in size and located 7332 Shannon Road. Submitted by Ryan Major, property owner. Council District 6.

Kaiser: We will go ahead and move on to old business, and item 7.1, which is a zone change request from urban ranch to equestrian estates. And I will turn it over to staff for presentation.

Banegas: Mr Chairman, Members of the Commission. Vincent Banegas, Interim Planner, presenting tonight's case regarding property located at 7332 Shannon Drive. This should be relatively quick and easy. It involves a conversion zone, zone change or rezoning of property from a defunct and UR zone which was urban ranch under the '81 code to the current equestrian estates version under the 2001 Code. It's Case 23ZO0500072.

Current conditions are as follows. Address again 7332 Shannon Drive. It's plus or minus 1.65 acres of land. Again, under a defunct UR zone designation. The UR zone back in the day allowed for one acre minimum lot size and the keeping of small and large animals in the semi-rural atmosphere. When the 2001 Zoning Code came into fruition, prior to its adoption, there was always an attempt to try and get property owners to come to the City and bring their soon to be defunct zone into compliance with the 2001 proposed zoning regime. The City staff also undertook significant efforts to go seek out these properties and then bring them into compliance once the 2001 Code was adopted. Obviously, there were some shortcomings associated with those efforts and we didn't catch all properties that needed to be rezoned.

The current property sits within what Elevate Las Cruces considers to be a suburban neighborhood place type. It's where you see low to moderate density residential uses with some areas of commercial zoning and land use. The property is currently vacant. And as shown on the attached map here, you have Beyer Road on the east side of the property, you got Shannon Road directly north of the subject property which is outlined in red, and further to the west you have Dunn Drive. You can see that the surrounding property, some of the larger tracts or parcels are EE zoning currently, with exception to this one REM which is residential estates mobile. So by converting this property which is UR presently to EE we will

1 be following right in line with what was intended pursuant to the 2001 Zoning
2 Code.

3
4 This is an aerial of the same property, again outlined in red showing the
5 vacant parcel amongst other several developed parcels. A lot of single-
6 family development that's shown and reflected on this aerial. The purpose
7 for the rezoning at this point in time is to facilitate the construction of a
8 proposed single-family site built home. In order to carry that out, the
9 applicant had to submit for a zone change and has done so obviously. And
10 they have also sought to start the construction of their home, in that this
11 proposal falls again right in line with what the 2001 Code calls out as EE
12 zoning and it's very much aligned with the UR zoning designation of old,
13 staff allowed the permit to proceed.

14
15 So this is a site plan of the property showing what they are proposing to do
16 on site, and that's again construction of single-family home, access to be off
17 of Shannon Road. A couple of photos showing the property again, this is
18 looking southeast. This is looking southwest, Shannon Road is right in front
19 of us here, Beyer off to the left here. When staff took a look at the proposal
20 and analyzed it there were no health, safety, or welfare related issues that
21 were of concern. The district that is proposed is definitely compatible to not
22 only what the use will be but what the neighborhood is. It falls within that
23 suburban place type in which there's a lot of consistency with the character
24 that's defined in the comprehensive plan. And the neighborhood itself as
25 shown on those maps is made up of large lots, majority of which are zoned
26 EE in the immediate area.

27
28 This case was noticed pursuant to code and as of this point in time staff had
29 not received any comment, pro or con, to the proposal. It was scheduled to
30 be heard on a previous agenda, in fact last month we had to pull it. But
31 even during that period of time there's been no input provided. So staff's
32 recommendation is to approve the case based on the findings as outlined
33 on this slide, and the next. Again, the property is nonconforming, so we
34 have a need to bring it into compliance. And certainly prior to development,
35 the property needs to be rezoned to something that is compatible to the
36 surrounding area, the EE zone being that designation. The suburban
37 neighborhood place type, again characterized by what is intended in terms
38 of development of the property and the area around it. And there are
39 several goals, policies, and actions from the comprehensive plan that
40 support the request, as well as the purpose and intent of the 2001 Las
41 Cruces Zoning Code as amended, and the municipal code. So the
42 surrounding area again, large lot, lot of consistency. And your options this
43 evening, is to vote "yes" and approve the proposal as presented, you can
44 vote "no" and deny, if you deny it then please provide findings of fact
45 contrary to those presented in this presentation or in the packet, you can
46 vote "yes" with conditions, or vote to table. We do have Mr. Major in

attendance this evening. He is the applicant for the proposal. And he could either come up and say a few words or just stand for questions if you have any of him. So at this point in time, staff stands for questions. Thank you.

Kaiser: All right. Thank you. Any questions from Commission? All right. Seeing none. I'll go to the public. Is there anybody here tonight who wishes to speak on this item? All right. Seeing none. We'll come back. And looking for a motion to approve.

Bennett: I make a motion to approve 7.1.

Vega: I second.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendations.

Baum: Board Member Vega.

Vega: Yes, based on staff recommendation and meets Elevate Las Cruces.

Baum: Board Member Porter.

Porter: Yes, based on staff recommendations.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation, this meets neighborhood character, Elevate Las Cruces, and the purpose and intent of the code.

Baum: Board Member Murray.

Murray: Yes, based on staff recommendation, the need to bring it up to compliance with current code.

Baum: Chair Kaiser.

Kaiser: Yes, based on staff recommendation and consistency with Elevate Las Cruces.

Baum: Motion passes.

8. NEW BUSINESS

8.1 Case #23CS0500012: A request to approve a preliminary plat known as Sierra Del Sol Subdivision. The subject property is located 350 feet south

of the intersection of Lewis Street and Spruce Avenue. The proposed subdivision encompasses 4.48 ± acres, is zoned R-1a (Single-Family Medium Density). The subdivision proposes 18 single-family residential lots, 0.75± acres for multi-family, and a privately owned and maintained park/open space/multi-use trail. Submitted by Souder Miller and Associates, representative. Council District 3.

Kaiser: Okay, moving on to new business. Next item is 8.1, a request to approve a preliminary plat known as Sierra Del Sol subdivision. Staff please take it away.

Castillo: Good evening Commission. John Castillo for the record. Today we have the Sierra Del Sol subdivision preliminary plat. The current conditions of the property is that it's currently zoned R-1a. It's a vacant undeveloped parcel of land that is approximately 350 feet from the corner of Spruce Avenue and Lewis Street. It is approximately 4.48 acres in size and is surrounded by single-family residential developments, and it's adjacent to Sierra Middle School. As we can see from the zoning map here, the property as highlighted. The aerial map shows the vacant property. A little bit of history behind this, it was a part of the school at one point. Through some land swapping and the City took ownership of that property. And we decided to maintain a street for the school. These are some street views of the property. So the proposal is for 18 single-family residential lots, a 0.75 acre lot for multifamily residential developments, three tracts of land that will be privately maintained that will be used for a park and open space drainage, and the development of a multiuse trail that's going to connect the existing neighborhood, the proposed neighborhood, to the school. This will be done through the back portion right along here. It also is going to have two tracts of land that will be dedicated to the City for drainage purposes. The development will also follow the Sierra Blueprint as well as the Infill Development Process for all future multifamily housing development.

As we can see here, here's the cover sheet of the proposed preliminary plat. This is the ultimate design for the subdivision. All City relevant staff reviewed the application and had no comments regarding the proposed establishment. Notice was sent to all surrounding properties within 500 feet. Staff did receive two phone calls regarding this one. One of them was about general questions and how it would impact their property. The other one was from a neighboring property down the street from them who was opposed to the development and was also informing us that there was not proper notification. Staff recommends approval based on the finding followings. The proposed preliminary plat known as Tierra Del Sol complies with the requirements and standards of the City of Las Cruces subdivision, based upon review by City relevant staff, the preliminary plat complies with all requirements of the 2001 Zoning Code as amended. And then on July 12, 2023, the DRC reviews and recommended approval of the preliminary

1 plat, it meets the intent and purpose of Elevate Las Cruces's comprehensive
2 plan because it is located within a suburban neighborhood. And it's also
3 adjacent to an active transportation route and bus route. The development
4 review committee, or DRC, on July 12, 2023, conducted a meeting. After
5 some discussion the DRC recommended approval of the proposed
6 preliminary plat. Your options today are to vote "yes" to approve, vote "no"
7 to deny, vote to amend, or vote to table. I also have a representative of City
8 staff here as well, as well as the representative for Tierra Del Sol.

9
10 Kaiser: All right, thank you. Any questions? Commissioner Bennett.

11
12 Bennett: I already approved this at one point. We did this once, right and so it there's
13 some changes. Is there a reason why we are changing the whole plan that
14 was approved previously?

15
16 Kaiser: I will have to defer that question to Adam Ochoa.

17
18 Bennett: Thanks.

19
20 Nichols: Mr. Chair. If I may, please. John, you mentioned that there was in the
21 notice that there was one complaint or one in opposition saying there was
22 not sufficient notice. But would you clarify if notice was properly given.

23
24 Castillo: Mr. Chair, Commission, Director Nichols. Yes, notification was sent out to
25 all properties within 500 feet. We also posted the notification in the Sun
26 News, as well as placing the notification on the property as well. The
27 neighbor in question, she did live outside of the 500 foot buffer. We did
28 explain to her about the other forms of notification as well as being on the
29 City's website. She did respond to those in a manner to where she does
30 not review those other agencies that we use.

31
32 Nichols: Thank you.

33
34 Ochoa: Chairman Kaiser, Commissioner Bennett. What you saw before is what
35 was called a blueprint for this property. It was kind of like a master plan, if
36 you will, for this property is what it was. It's how, and the reason I know this
37 is because I'm the one what wrote it. That's the reason why I'm very aware
38 of it. And yes, it was kind of a way for staff to kind of guide the development
39 of this property for the way it's being developed now. And it's following
40 actually that blueprint, which is another condition, a possible finding as well
41 that it does meet what's called the Sierra Blueprint, as well. So that's
42 essentially what you've seen in the past. It did change slightly, but it's still
43 essentially single-family residential homes with a street going through it, and
44 some areas saved for a trail, kind of community gardens and multifamily as
45 well.

Agenda Item #7.3.

1 Bennett: Okay. Cool. Thank you.
2
3 Ochoa: Yes, sir.
4
5 Kaiser: All right. Any other questions from the Commission? Just a couple of
6 questions. Was this entire subdivision affordable housing units or is it just
7 a component of that?
8
9 Castillo: No, it's going to be a lot of the affordable housing, as well as the missing
10 middle.
11
12 Kaiser: Okay, so the affordable housing, it's not the entirety of the project, there's
13 some market rate in there.
14
15 Castillo: No, it'll all be affordable housing. The developer is going to be Tierra Del
16 Sol.
17
18 Kaiser: Okay. Understood. Thank you. Do we have, and maybe this is in the Sierra
19 Blueprint, and I apologize, I'm not familiar with that. That's probably before
20 my time. The apartment or the multifamily component, how many units are
21 we expecting there?
22
23 Ochoa: Chairman Kaiser. They would have to essentially any type of development
24 they do for multifamily on that property, they'd have to come before you
25 again, through an infill development process proposal, through an IDP,
26 because the property is zoned R-1a, so they will have to come before you
27 and actually show you what density, how many units, height, and so on and
28 so forth like that, sir.
29
30 Kaiser: Okay, thank you. And then I think my final question, if you can go back to
31 the aerial image. Yes, that one. So the proposed trail is going to run along
32 the western edge of the property. And I see that it connects to not Webster
33 but the intersecting street there, how would that trail design actually facilitate
34 getting access to the middle school?
35
36 Castillo: Mr. Chair, Commission. I have Paul Pompeo, with Souder Miller and
37 Associates, and he'll be able to discuss the design aspect of it.
38
39 Pompeo: Good evening Mr. Chairman, Commissioners. Paul Pompeo, with Souder
40 Miller and Associates.
41
42 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
43 and nothing but the truth under penalty of law?
44
45 Pompeo: Yes, I do.
46

1 Kaiser: All right. Please.
2
3 Pompeo: Yes, as staff has pointed out there's a remnant street, and half the right-of-
4 way got vacated by the school, and so we're going to place that trail
5 between the fencing of the school, on our property, that's going to exit out
6 into this portion of the parking lot in the school property. The reason that is,
7 is because the entrance into the school is by gates in this area down here,
8 and so that was the logical place to direct that trail into.
9
10 Kaiser: Okay, that, yes, that's great. I just wanted to make sure that we weren't just
11 pushing them out to Spruce Avenue and they're on their own. So thank
12 you. That's it for me. We'll go ahead and open it to public comment.
13
14 Pompeo: I'm sorry, Mr. Chairman. I have a short presentation and then I can stand
15 for questions.
16
17 Kaiser: Please go ahead.
18
19 Pompeo: Thank you, Mr. Chairman. Once again, Paul Pompeo with Souder Miller
20 and Associates. I have a brief presentation so as not to duplicate what staff
21 had presented, and then I'd be happy to answer any questions the
22 Commission might have. Once again we can see that this project is located
23 directly east of Sierra Middle School in the area shown here in yellow. We
24 are planning on 18 single-family residential lots in this area. We have a
25 park area here, stormwater management containment area here, and then
26 of course this is the future multifamily, which once again is not zoned for
27 that now and will be subject to a future application for that property. As you
28 can see also on the plat that the trail that's coming off the end of the existing
29 City of Las Cruces right-of-way is located here, and entering into the
30 walkway that's along the fence here for the parking lot is at Sierra Middle
31 School. We'll design that trail pursuant to the City design standards and
32 that does provide that, I guess there's a lot of students that walk out of this
33 street down here. So that's why I wanted to make sure that pathway was
34 contiguous but not necessarily taking them through the subdivision.
35
36 As you can see, it's a cul-de-sac layout, as you can see here. So no through
37 streets for this application. Also, Mr. Chairman of note, one of the delays in
38 this project was because of the topography of this, wastewater had to exit
39 out of the cul-de-sac head here. And we have secured this easement with
40 the Las Cruces Public Schools to get that line in. So that's also part of this
41 project. With that, that concludes my presentation Mr. Chairman, and I'd be
42 happy to stand for any questions you might have.
43
44 Kaiser: There's one additional question on this. With a pedestrian topic, can you
45 go back to your site plan there? Will there be pedestrian access out of that

1 cul-de-sac into the parking lot or are they going to be required to come
2 around and use the trail?
3
4 Pompeo: They would be required to use the trail only because these lots and this end
5 of the street sit about for three to four feet above the parking lot grade. So
6 they would be required to - there'll be full sidewalks in this subdivision
7 meeting City standards, but they would be required to walk around.
8
9 Kaiser: Okay. Thank you. Any questions from the Commission? All right. Thank
10 you very much.
11
12 Pompeo: Thank you, Mr. Chairman.
13
14 Kaiser: We will go ahead and now open it to public comment. Is there anybody in
15 the audience tonight who wishes to speak on this agenda item? I see one.
16 Please come forward and state your name for the record.
17
18 Lozano: My name is Chad Lozano.
19
20 Kaiser: And do you swear or affirm that the testimony you're about to give is the
21 truth and nothing but the truth under penalty of law?
22
23 Lozano: Yes.
24
25 Kaiser: All right, I'll give you three minutes. Please go ahead.
26
27 Lozano: Okay, I won't be long. I actually live in the neighborhood. You know, I got
28 the notification about this, I just wanted to come and you know show support
29 for it. But I saw there's going to be a park. So hopefully you know it's a
30 good looking park, because I most likely will be using it with my dog or
31 something like that. So I just want to make sure it's not just going to be a
32 flat thing that is going to be ugly in the neighborhood. So that's really all I
33 had. I'm sure the people that bike in there will be sad, but there's other
34 places to bike around in the dirt area. So you know I see it more as a
35 positive thing for the neighborhood. So thank you.
36
37 Kaiser: Thank you. Anybody else who wishes to speak on this item? All right.
38 Seeing none. I will come back to the Commission. Any final questions?
39 Thoughts? Looking for a motion to approve.
40
41 Vega: Make a motion to approve item 8.1.
42
43 Murray: I second.
44
45 Baum: Board Member Smith.
46

1 Smith: Yes, based on staff recommendation. And also it meets exactly what we're
2 attempting to do with Elevate Las Cruces, creating new housing within
3 established neighborhoods. I'm really hoping that as this development goes
4 forward that there will truly be affordable housing, especially with their
5 proximity to a middle school to allow for short commutes of walking for the
6 students. So I think it's important that we continue to help the City bring
7 back you know true neighborhoods where we can, there's walkability and
8 bikeability.
9

10 Baum: Board Member Vega.

11
12 Vega: I vote yes based on site visit and staff recommendation.
13

14 Baum: Board Member Porter.

15
16 Porter: I vote yes based on staff recommendations and Elevate Las Cruces. I think
17 this is a great idea and hope it's approved, further meeting.
18

19 Baum: Board Member Bennett.

20
21 Bennett: I vote to approve based on staff recommendation, this means to Elevate
22 Las Cruces and the MPO Thoroughfare Plan.
23

24 Baum: Board Member Murray.

25
26 Murray: I vote yes to approve based on in line with Elevate Las Cruces and staff
27 presentation.
28

29 Baum: Chair Kaiser.

30
31 Kaiser: Yes based on staff recommendation, consistency with Elevate Las Cruces,
32 and the great need that we have for affordable housing in this community.
33

34 Baum: Motion passes.
35

36 **8.2 Case 23VO0500089:** A variance request to deviate 15 feet from the
37 required 25-foot front yard setback for a carport addition to a home located
38 at 1308 Delano Drive. The property is approximately 0.17 + acres in size
39 and zoned R-1a (Single-Family Medium Density Residential). Submitted by
40 Manuel Morales, property owner. Council District 3.
41

42 Kaiser: Okay, moving on to item 8.2, a variance request to deviate 15 feet from the
43 required 25 foot front yard setback for a carport at 1308 Delano Drive.
44

45 Abeyta-Corella: Hello, Board and Commission. Christina for the record. Today we will
46 be looking at 1308 Delano Drive. This is a request for a variance for a

1 carport. Currently the property is located on the west side of the intersection
2 of Delano Drive and Sandigale Drive. It is approximately 0.17 acres and it
3 is zoned R-1a with single-family medium density. It is a single-family
4 residence.

5
6 Here we have the aerial photo of where it is located. On this side you can
7 see that this is primarily residential. On this side we do have commercial.
8 Again, on the zoning map you can see the residential component of it and
9 the commercial component of that. The code requirements based off of
10 what the current zoning is, the car carport is not allowed. It does have to
11 maintain a 25 foot setback that is not going to be met. The applicant is
12 seeking to construct a carport addition to the existing dwelling in the front
13 yard of the subject property. The variance would allow the addition of the
14 carport to be constructed in the front yard with a 10 foot setback. So that
15 would be a 15 foot deviation.

16
17 Here is the site plan showing where the carport is going to be and the way
18 that they'd like to construct it and showing that 10 foot setback for that. This
19 is the type of structure that is being proposed to be placed on that property
20 in the front yard. The applicant's justification is they have medical reasons.
21 There is need for mobility assistance at times. The protected area of the
22 carport provides help and supports the applicant's safety. Staff's analysis is
23 there are no health, safety, or welfare issues identified. The request for the
24 15 foot variance to the minimum required 25 foot setback does not meet the
25 criteria for the decisions outlined by the 2001 Zoning Code. So staff is
26 recommending denial. The findings, a carport is required to meet a 25 foot
27 front yard setback, and all residential zoning. The request for the 20 foot
28 variance to the minimum required carport front yard does not meet the
29 criteria for that decision. In addition too, there is an existing garage at this
30 address. I'm not sure why it has it like this, but staff did receive public
31 notification. On that we did receive five calls on here, we had only identified
32 three at the timeframe. We received five calls in support of. We received
33 one e-mail in support of. We received one e-mail opposing. And before we
34 had an additional e-mail opposing. So it's totally 10 in support and two in
35 opposition. If the Commission does do an approval, we ask that conditions
36 be applied to this, that the sides can never be enclosed, it must be attached
37 to the home, and it must meet design standards. With that being said, you
38 have the options to vote "yes" to approve, "no" to deny, you can vote "yes"
39 with conditions, or vote to table.

40
41 Kaiser: All right. Thank you very much. Any questions from Commission?

42
43 Smith: I have one question. The building that, the structure that they showed is a
44 prefab carport, is there a way that a smaller structure could be used that
45 would meet the criteria for the City or is it's maybe not possible.
46

1 Abeyta-Corella: Commissioner. It would not meet because the setback is 25 feet and the
2 house, the existing garage is built to that 25 foot setback.

3
4 Smith: Okay, I needed clarification. That's what I thought. Thank you.

5
6 Abeyta-Corella: You're welcome.

7
8 Kaiser: Any other questions? All right. Do we have the applicant here who wished
9 ...? Okay. And before you begin, please state your name for the record.

10
11 M. Morales: Mannie Morales, owner of this property.

12
13 Kaiser: And do you swear or affirm that the testimony you're about to give is the
14 truth and nothing but the truth under penalty of law?

15
16 M. Morales: I do.

17
18 Kaiser: Okay. Please go ahead sir.

19
20 M. Morales: Okay, I have a correction. She said 20 foot, I asked for a 15 foot carport.
21 Okay. And it's on record because I haven't missed three other rounds
22 because of the 20 foot that I wanted. But I found a place that out of state
23 Coast to Coast that'll build me a 15 footer. And it meets the criteria for that
24 safety triangle, whatever that is. So from the other three rounds that I had,
25 I decided to change it to a 15 and see if that would satisfy the City and my
26 neighbor. Yes.

27
28 Okay, I've been a resident of Las Cruces since 1961, 62 years ago. And
29 for somebody else to come in from out of state and try to tell me what to do
30 with my property is, to me this ridiculous. Anyway. And I came here for a
31 better quality of life in a bigger City. I retired from the state. I was a surveyor
32 for the State of New Mexico. And when we were building the bypass, I
33 decided to build my home there close to I-25. I liked that residential area.
34 So I had my house built in 1972 by Eddie Binns. And I also help everybody
35 that comes in, if they want to be registered to vote in our district, and I do
36 everything possible to help them. And I know most of my neighbors, most
37 of them. Yes. So our house is our biggest investment. And it's valued at,
38 right now at 10 times what I paid for it in 1972. And I will never move out of
39 there except to the columbarium at Immaculate Heart of Mary. And that's
40 with the upgrades that I did and improvements. And I'm very proud to be a
41 citizen of Las Cruces.

42
43 I have been a safety watchdog helping hand for our neighbors, especially
44 when we have new neighbors that come in. I give them all the information
45 that I can about the City, about the trash collection, water, whatever. And I
46 also had the streetlights, I was very instrumental in having streetlights put

1 in our streets, Delano and Hillrise. And I also had a friend of mine, Dan
2 Soriano was a City engineer, I had had him do a traffic study and put some
3 common devices which we call speed humps, not bumps. And I was very
4 instrumental in that for the safety of our neighborhood. Okay. Okay, those
5 speed humps, we had them from Telshor to Hillrise, Delano to Missouri.
6 Very steep grade on Hillrise, then curves on to Delano and very fast drivers,
7 especially the people that don't live there. And they run out of control going
8 into the 1304 Delano which was Dr. Rudy's house, I worked for him and I
9 fixed those. I fixed fencing. I put guardrail posts with concrete behind and
10 that saved, I think that saved a couple of lives from them not going into the
11 tree. And so I still involved with that house. I advise them not to park in the
12 street, because of those fast drivers. And the last one incident was
13 November 2022. They went into the yard; they went over the guardrail
14 posts and all that and then into the driveway and damaged the vehicle and
15 got away like some of them have done.

16
17 I had the City do a traffic study. To this date I haven't heard anything. So
18 like I said I warned all the renters not to park in the street. And on 06/28/23
19 I delivered this copy to our Councilor counselor, Becki Graham. Hopefully
20 we can get that resolved and the street paved and all that stuff. Okay. Do
21 I have a time limit? No. Okay. I would not be here today, again, if I had
22 placed a carport like all around the City. Before I went years ago, after I
23 found out that there was a no, no with this regulation, I had over 100 carports
24 list. Most of them were up to the sidewalk. And when I went to the City,
25 they told me to take it to the code officer. He assigned a young man to
26 check into those. He only did the two in my neighborhood. And another
27 one, he said the list was too long. So anyway.

28
29 There was a list of over 100. And because the City did not have good
30 records, that's why they sent me over to the codes. So then, my next best
31 ammunition to get a carport without any negative comment would be the
32 carport at 2800 Claude Dove that was installed in May 2016 with a front six
33 foot wrought iron fence, which is a no, no. I know a lot of the codes. So
34 anyway. They did have him remove it or move it to the back yard. There's
35 no way to move it to the backyard, it won't do any good. So he removed it.
36 I'm sorry that I did that to that person. And the other one was on 2708
37 Crestview. And that was installed in October 2016. I was always keeping
38 records. And he went before the board after I did and they allowed him to
39 keep it. He didn't have a permit. And the reason that he had were that like
40 everybody else did not know the City regulations, unless you get all that
41 posting and all that stuff in front of your yard. And he was not told where he
42 bought it. And it cost a lot of money. So they did allow him. That was my
43 ammunition also. I mean why should he keep it; he didn't have a permit.

44
45 I've gone through this so many times. And really for the reason I opened
46 the garage, again was for my wife's benefit because of her illness. But I do

1 need a carport from for my other vehicles. And it will be a 15 footer not a
2 20 footer. I must. One more listing. At the City Council meeting which I
3 had, after the board meeting, they allowed Mr. Blickem, which was a renter
4 or something, and Eddie Binns, the builder of our house, developer, and he
5 happened to show up, but he spoke negative against the carports. But I
6 know that at the beginning of that residential area by Missouri there's about
7 eight houses that have carports that were built not with the houses, but later.
8 So you know. And so since the letter sent out for my meeting said, stated
9 no public input will be taken at this hearing except those that testified at the
10 March 28, 2017 board hearing. There was Camacho, Mel Sales, and my
11 good neighbor Mr. Mullins. So I lost round two again. I would say that the
12 office personnel to inform the chairman before the meeting about who can
13 speak and who cannot speak you know that would have saved me some
14 time too. So the mayor had me redo another meeting because of that,
15 because those people were allowed to talk in that City Council meeting,
16 which they weren't allowed and it was all negative. So I had a reprieve and
17 the same results.

18
19 Then in November, that reprieve, Camacho said that the carport garage will
20 removed at 2708 Crestview. Okay. It was not removed. The one that was
21 removed was on Claude Dove. I wanted to make a correction but my mayor
22 said he didn't allow me to speak. And I have a picture to show that I had
23 from the City, I had a picture of that carport, garage, because it's enclosed.
24 But I was not allowed to speak. And so I lost round three. So here we are
25 with round four. And since 20 foot length carport was no, no, I found Coast
26 to Coast contractor, they will build and install a shorter one, 15 foot length
27 and the roof color close to the house color. Should be okay. Should be
28 okay about the clear sight triangle unless they come up with something else.

29
30 But already said this, it's the start of the subdivision from Missouri north,
31 some carports were built with the house and some later. I have a list for the
32 builder, developer, because he was against the carports. Okay. I guess
33 seniority doesn't count that I've been here forever. I'm the longest and
34 probably the oldest resident in that area and I'll do whatever I can for
35 everybody, most everybody now. As far as, on my life. Like I said, I'll be at
36 84 years and three weeks. I'm bad diabetic. I take shots. Arthritis from my
37 hips, knees when I went out, when I was a surveyor. And I take injections
38 on my knees every six months because I don't want replacements. Our
39 summers are very hard on me, as you can see because I worked forever in
40 the sun and I can't take the sun anymore. So it would sure help for the rest
41 of my life, my life and my wife's to get a carport that'll serve its purpose to
42 protect the vehicles and myself and ours. I do my chores in the morning, if
43 possible and in the shade. My wife, like I said, has medical issues and
44 doing therapy for respiratory hypertension, and that's our reason that I
45 opened the garage again for her vehicle, at least for hers. God bless the
46 USA, land of the free. Thank you.

1
2 Kaiser: Thank you very much. And thank you for your contributions to the
3 community and neighborhood. Are there any questions from the
4 Commission? Commissioner Smith.

5
6 Smith: Yes. And also echo Commissioner Kaiser's comment about your dedication
7 to your community and to your neighborhood. You know, you stated that
8 your requesting for, you know for medical reasons, and you did state you
9 know for a skin condition and shade. But outside of that you know as far as
10 protecting your vehicles from the sun, you know are there any other medical
11 reasons that it would, that you need to have this size of a carport, maybe
12 possibly just a shade to cover your vehicle would suffice. But this is your
13 fourth round.

14
15 M. Morales: Yes.

16
17 Smith: And I mean, you're very determined to try to get this carport built. But you
18 know we need to have a reason to issue this type of variance. I mean 15
19 feet is a lot for a variance. So once again you know are there any really
20 medical reasons that you would have to have this the size of a carport?

21
22 M. Morales: Well, like I say I can't be out in the sun. And I we would rather have 15
23 degrees less heat temperature when we get our vehicles you know
24 especially my wife with her respiratory problems. I would say that would
25 really, at least I changed it from a 20 footer to a 15 because they came up
26 with that, it was, one of the Commissioners said 20 feet is 80% of your
27 driveway. We can't have that. So this is the reason I changed it to a 15 foot
28 see what would come out of that one. And there's no problem according to
29 the City stuff that I got the last time with the safety triangles or whatever.
30 That's my point.

31
32 Smith: All right. Thank you, sir.

33
34 M. Morales: You're welcome.

35
36 Kaiser: All right, we'll go to public comment. Is there anybody in the audience who
37 wishes to speak on this item tonight? Please raise your hand. Yes, sir,
38 please come down. Please state your name for the record so I can swear
39 you in.

40
41 Camacho: Good afternoon. My name is Sebastien Camacho and I live at 1306 Delano
42 Drive, which is adjacent to Mr. Morales's home.

43
44 Kaiser: And do you swear or affirm that the testimony you're about to give is the
45 truth and nothing but the truth under penalty of law?
46

1 Camacho: Thank you for asking that question. I definitely do.
2
3 Kaiser: Okay. I'll give you three minutes.
4
5 Camacho: Three minutes. Okay. Can I see something before we start the three
6 minutes?
7
8 Kaiser: Go ahead. Your time's going.
9
10 Camcho: Okay. So I know you guys been talking about the notification and stuff. And
11 I have been to the Commission. This would be my second time. And I've
12 been with the City Council three times. And, of course, I'll just read my
13 script. But I just want to let you know that I've never gotten the notification.
14 The only reason I found out about this, because I did look at it online. And
15 I know there's different things. But for some reason, the notifications don't
16 come to my mail, whether it's registered or not. But I do know that my utility
17 bills from the City and my property taxes do come to my home. It's just it's
18 just very unusual that this doesn't come to my house.
19
20 But anyway, let me begin. I'm not really prepared because of the short
21 notice. I actually thought I was going to come to the City Council. So my
22 apologies for not being as prepared. Again, this because of the notification.
23 But good afternoon. And I just put it down as the members of the board,
24 but the Commissioners. My name is Sebastian Camacho and I live at 1306
25 Delano Drive. I am here to express my concern and opposition for approval
26 of this item. I would like to first inform the board if the board does not already
27 know that this item has been before the board on three previous times, with
28 the board denying the request on all three occasions. I am here not as a
29 bad neighbor, but out of concern for my safety, the safety of my family, and
30 those that visit me and park in my driveway. You know, I scripted this
31 discussion to facilitate my position so please bear with me. You do have
32 some slides. And if you don't mind, just look at them because what I'm
33 going to be saying it's going to be referred to them, if you'd mind just looking
34 at it them, because I think they were, I think you have them but I can.
35
36 Kaiser: We have them.
37
38
39 Camacho: Yes. Yes. I think they're like, the way I have them, and I think they're
40 backwards. But I'm not going to kind of just go through it, if you don't mind
41 just looking at it real briefly. So I'll be talking about item number two, or
42 exhibit number two, shows that Mr. Morales has a temporary mini, well
43 actually, as you can see the exhibit number two provided, I enumerate the
44 areas that I would want to touch, as honest, to which I'm asking the Board
45 to deny this request again. And item two on the exhibit showed that Mr.
46 Morales has a temporary mini carport in his driveway already. I call your

1 attention to the date of the Google image 08/22. On item two on the exhibit,
2 I believe that Mr. Morales is already in violation of this ordinance even
3 though the board rejected his variance request prior to the date. I would
4 ask that the board to ask Mr. Morales why he believes that this board was
5 in error and thus puts up this temporary carport against the ordinance of the
6 board's direction. I would also like to point out that this is an eyesore and
7 devalues the neighborhood. Now I would call attention to number two,
8 which is one of the, as you can see Mr. Morales has a garage door. But I
9 believe that he uses his garage to move, to make it into a living space. As
10 you can see his cars are outside of the driveway instead of inside the
11 garage.
12

13 Kaiser: Just one second. I think our timer got messed up. So why don't you go
14 ahead and put two minutes on and we'll start the timer from there.
15

16 Camacho: All right. Thank you. I think you appreciate that. Just let me know when
17 you're ready.
18

19 Kaiser: One second, sorry. It did beep, so I just want to, for fairness I want to give
20 you the (*inaudible*). So please go ahead.
21

22 Camacho: All right, I would like, I would ask that the board to direct Mr. Morales to
23 remove the curb stops that are there. And I put A, B, C so he can park his
24 vehicles in the garage and I think that's just a barrier for him not to be able
25 to do that, but he does have those curb stops. Now let's discuss the details
26 as to why I believe that approval of the variance would impact my safety
27 even more it already is. If I can point out to, and then A, B, and C, some of
28 those dates in the afternoon he's parking is his truck. He's kind of like in
29 the, and where the walkway, he's just parking it and I think, I mean you'll
30 probably figure out why. So one of those things is going to even give him
31 more of a difficulty in seeing. So I know that he has the right to park in the
32 driveway, but if you allow a carport it would have an added obstacle of
33 columns that must now take into account. And it does not park in his
34 driveway then he parks in the street, that makes my sight distance worse.
35 All this would become a nonissue if he opened his garage and parked
36 inside. Even if he parks his truck as close as to the house possible, I still
37 have sight distance issues due to Mr. Morales, also having tall bushes in
38 the parkway as shown in the exhibit as the number two, as previously
39 shown.
40

41 I need to look past the vehicle and the bushes to maneuver out of my
42 driveway. I didn't cause for a carport only make visibility much worse. Also
43 has the City, Mr. Morales is in violation of the clear sight triangle with these
44 bushes. Now I would like to bring your attention to the second exhibit. I
45 think I'm just; I mean would point out that the neighbor (*inaudible*) pushes.
46 But let me just finish up. In closing the last time I spoke against this Mr.

1 Malloy spoke of personal issues about me that had no relation to the
2 variance request/ I asked the board not to allow Mr. Morales to speak of
3 any of my personal life in a public forum. I would also like to thank the board
4 in advance for recognizing that the ordinance are in place for the safety of
5 the public and ask that you deny the variance request for a fourth time.
6 Please send a message to Mr. Morales that when it comes to safety,
7 especially when safety is already compromised, as in this situation, that the
8 squeaky wheel does not get the grease. I would also like to ask the board
9 to send the clear message that carports will not be approved. You know.

10
11 Kaiser: Thank you. And that's time. I think our beeper is on silent, which is not
12 useful. So thank you very much.

13
14 Camacho: I can stand for any questions. Stand for any questions if you have any.

15
16 Kaiser: All right. Thank you very much. Is there anybody else in the audience who
17 wishes to speak on this item agenda? Please raise your hand just so I can
18 get a quick headcount. We got ... this gentleman, please come forward.
19 State your name for the record.

20
21 Blickem: Ryan Blickem.

22
23 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
24 and nothing but the truth under penalty of law?

25
26 Blickem: I do.

27
28 Kaiser: I'll give you three minutes.

29
30 Blickem: All right, I'll keep it simple and sweet. I'm here just to vehemently oppose
31 this application as it does not elevate Las Cruces neighborhoods. Me
32 personally, this is my fourth go around here in front of the Commission and
33 the City Council. It's gotten to the point like Mr. Camacho said, the squeaky
34 wheel gets the grease and I'm disappointed that I have to yet again stand
35 in front of the council and waste my time. And I had yet to hear any sort of
36 proper justification as to Mr. Morales's application. Also, as Mr. Camacho
37 alluded to, he currently has a temporary structure erected as a carport that
38 doesn't meet any sort of, that doesn't adhere to any current codes. Also, I
39 didn't see any sort of proper site plan or design submittal with the
40 application. And I'm trying to think of what else I've got here, and just
41 general line of sight issues that will be presented by this carport being
42 installed. So that's all I've got. I'll keep it simple and short. And I appreciate
43 the Commission's time.

44
45 Kaiser: Great. Thank you very much.

1 Blickem: Thank you.
2
3 Kaiser: Is there anybody else who wishes to speak tonight? With all due respect,
4 sir, you've already had your opportunity tonight. So I'm going to come back
5 to the Commission. Are there any additional comments or questions?
6 Sorry, okay, yes, ma'am, please come forward. Please state your name for
7 the record.
8
9 B. Morales: My name is Barbara Morales.
10
11 Kaiser: And do you swear or affirm that the testimony you're about to give is the
12 truth and nothing but the truth under penalty of law?
13
14 B. Morales: Yes, I do.
15
16 Kaiser: I'll give three minutes. Please go ahead.
17
18 B. Morales: Okay. First of all, I want to say that his family, the neighbors family do not
19 live there. He said it was for their safety. They don't live there. They only
20 go there for a little while to get the mail I guess, put out the trash. Whatever
21 they do, I don't know. But the point is, if it's for their safety, again they don't
22 live there. And the second thing I want to say is the thing that he was talking
23 about is just temporary, it for a yard sale that we want to do. It's not forever.
24 It's not a permanent. Thank you.
25
26 Kes Thank you. Okay, coming back to the Commission, any questions?
27
28 Vega: Thanks, Commissioner. Just a quick clarifying question for staff on our
29 options on how to vote once we get to that point. Thanks.
30
31 Abeyta-Corella: So again, the options are vote "yes" to approve, "no" to deny, vote "yes"
32 with conditions, or vote to table. And if it's approved with conditions, these
33 were the conditions that staff recommended, is it can never be enclosed,
34 must be attached to the home, and must meet design standards.
35
36 Ochoa: I'm sorry Mr. Chair. Point of clarity. Adam Ochoa again for the record with
37 Community Development. So your options again, is one to vote "yes." If
38 you do vote, "yes," that's against what staff is recommending, so you'd have
39 to provide new findings of facts in order to approve the proposed variance
40 as is or add conditions as well. If you vote "yes," as well, it approve with
41 conditions, you place those conditions and still state your new findings of
42 fact as well, just to clarify for you.
43
44 Kaiser: Thank you. Was that, clarify? Okay. Any other ... Commissioner Smith.
45

Agenda Item #7.3.

1 Smith: I just have a quick question regarding Ms. Morales's comment that they
2 don't live there. I want to ask Mr. Blickem if he lives in the neighborhood.
3 Okay. And Mr. Camacho, do you live in a neighborhood? Okay. I just
4 wanted to confirm you are both residents.
5
6 Kaiser: All right. So looking for ...
7
8 Nichols: Mr. Chair. May I - point of order.
9
10 Kaiser: Please.
11
12 Nichols: We'll need the two individuals to come to the podium to state the question
13 that Commissioner Smith had. Not to speak from the audience.
14
15 Kaiser: I believe the question for both these gentleman is are you residents of the
16 neighborhood? And before you answer that, can you please just state your
17 name for the record, and then you may give your answer.
18
19 Blickem: Yes. My name is Ryan Blickem. I live at 1301 Delano. And yes, I do live
20 there.
21
22 Camacho: Yes, my name is Sebastian Camacho. And I am in the homeowner of 1306
23 Delano. And I do live there and I do pay my taxes. I do travel, so maybe
24 that's why I'm not there. That's just my job, I have to travel. But I'm here
25 today, right. And if I didn't live here, then where would I be?
26
27 Kaiser: Thank you. Okay, so looking for a motion, just a reminder that the motion
28 needs to be in the affirmative, so it'd be a motion to approve.
29
30 Vega: Make a motion to approve item 8.2.
31
32 Bennett: I'll second.
33
34 Baum: Board Member Smith.
35
36 Smith: No.
37
38 Baum: Board Member Vega.
39
40 Kaiser: On, based on based on.
41
42 Smith: Based on staff recommendation. My apologies.
43
44 Baum: Board Member Vega.
45

Agenda Item #7.3.

- 1 Vega: I just want to thank everyone from the community for coming today and
2 sharing their feedback. And unfortunately, I will have to vote no based on
3 staff recommendation and due to the potential for any sort of.
4
- 5 Baum: Board Member Porter.
6
- 7 Porter: I vote no based on staff recommendations.
8
- 9 Baum: Board Member Bennett.
10
- 11 Bennett: I vote no based on staff recommendation.
12
- 13 Baum: Board Member Murray.
14
- 15 Murray: I vote no based on staff recommendation.
16
- 17 Baum: Chair Kaiser.
18
- 19 Nichols: Mr. Chair. If I can interrupt, please. The City attorney has asked to have a
20 little clarification on the manner in which we're voting on this, what yes would
21 mean and what no would, a denial would mean.
22
- 23 Garrison: Just to clarify based on some of your comments. If you're voting yes to
24 approve based on staff recommendation, the recommendation was to deny
25 the request. And so if you would like to deny the request, you're voting yes
26 to approve. And if you're voting no then you would need to state the specific
27 findings.
28
- 29 Kaiser: Yes, the motion was to approve the item, so a no vote would be to deny.
30
- 31 Garrison: I just wanted to make sure just based on some of the comments that that's
32 what your intent was.
33
- 34 Baum: And Chair Kaiser.
35
- 36 Kaiser: Vote no based on staff recommendation.
37
- 38 Baum: The vote was denied
39
- 40 **8.3 Case # 23VO0500090:** A variance request to deviate 14 feet from the
41 required 25-foot front yard setback for a carport addition to a home located
42 at 1016 Cedardale Drive. The property is approximately 0.23 + acres in size
43 and zoned R-1a (Single- Family Medium Density Residential). Submitted by
44 Celia Tahuahua, property owner. Council District 1.
45

1 Kaiser: Okay, moving on to item 8.3. This is a variance request to deviate 14 feet
2 from the required 25 foot yard setback for a carport addition at 1016
3 Cedardale Drive.
4

5 Abeyta-Corella: I am going to be presenting on 1016 Cedardale. They are requesting a
6 variance request for a carport. This one is about 239 feet west of the
7 intersection of Elks Drive and is on Cedardale. It is approximately 0.23
8 acres. It is zoned R-1a and is a single-family residence.
9

10 Here we have the aerial you can see Elks Drive and Cedardale. This is the
11 location where the carport was constructed. Here in the zoning map you
12 can see that the entire area is actually R-1a. This one, like the other, does
13 not comply with the Chapter 38 of the 2001 Zoning Code. The required
14 setback is a 25 foot setback. The proposal is to obtain permission to retain
15 an unpermitted carport. The variance would allow the carport to be in the
16 front yard with an 11 foot setback. Here is the site plan that was drawn up,
17 here is the carport and there is 11 feet here. Here are pictures that I went
18 out and got from the location. So this is what the carport looks like. You
19 can see here, the footage, this looks like it's going to have to meet the 11
20 feet based off of what was asked for on that variance.
21

22 The applicant's justification is to protect the vehicle from extreme heat and
23 to watch their grandchild play. Analysis, there are no health, safety, or
24 welfare issues identified by staff. The request is for a 14 foot variance to
25 the minimum required 25 foot setback for the carport to be installed or for it
26 to remain installed. Staff's recommendation is denial as it does not align
27 with the 2001 Zoning Code. The findings, a carport is required to meet the
28 25 foot front yard setback in all zoning districts that are zoned R-1a. The
29 request for the 14 foot variance to the minimum required front setback does
30 not meet that criteria. There is an existing garage at that address.
31

32 Public notice, we did get one inquiry and then in your packet you will see
33 that we did get one e-mail in support of. Conditions if approved, can never
34 be enclosed, must be attached to the home, must meet design standards,
35 and the front structure must be meet the proposed setbacks of the 11 feet
36 in the front and then it has to maintain the five foot setback requirement.
37 Your options today for voting would be "yes" to approve, if approved it would
38 need, I forgot the word, support to say why you're doing the approval for,
39 vote "no" to deny, vote "yes" with conditions, and vote to table. Those would
40 be the options today.
41

42 Kaiser: All right. Thank you very much. Coming to the Commission, are there any
43 questions? Seeing none. Was the applicant - did you wish to make a
44 statement? Please state your name for the record.
45

46 Tahuahua: Carlos Tahuahua.

1
2 Kaiser: And do you swear or affirm that the testimony you're about to give is the
3 truth and nothing but the truth under penalty of law?
4

5 Tahuahua: Yes, I do.
6

7 Kaiser: Okay, go ahead.
8

9 Tahuahua: Good afternoon. First of all, house was built in 1963 which I don't know
10 what type of cars they drove back then but our two vehicles will not fit in our
11 double car garage. It has two garage doors. In the past we've made the
12 attempt to put at least one car in there with very little space between the
13 garage door and the back of the vehicle. And not allowing us to actually
14 walk in front of the vehicle to close our garage door. Looking at all the other
15 carports that are in the neighborhood, I thought it was okay based on what
16 I've seen. Even one right down the street from us at Devendale and
17 Cedardale, which is probably closer to the roadway than ours is, but yet that
18 one still stands. We purchased the house in 2003 and we've never really
19 been able to put our cars in the garage. As you know, the way the summers
20 are, the way the winters are, we want to protect our property. We want to
21 protect our vehicles. I strive to keep a clean front yard, there's no weeds,
22 there's no trash, unlike other houses down the street from us that you know
23 for years now there's trash in front of their house. But yet, I build a carport
24 to protect my property and I'm here to present it today.
25

26 Kaiser: Thank you very much. Any questions for the applicant? All right, seeing
27 none. I'll go ahead and open up to public comment. Is there anybody in
28 the audience here who wishes to speak tonight? Please raise your hand
29 for a moment so I can get a headcount. So let's see one, two, three, four,
30 five, six folks. So we'll go ahead and give everybody two minutes to speak.
31 We're going to start on this side. So I'll go the - raise your hands once again.
32 Sorry, I don't have a photographic memory here. We're going to start in the
33 third row, the gentleman with the blue, nope, sorry, row, yep him right there.
34 Yes, you, come on down. Price is Right. There we go.
35

36 Dolly: Evening. My name is Mark Dolly.
37

38 Kaiser: And do you swear or affirm the testimony you're about to give is the truth
39 and nothing but the truth under penalty of law?
40

41 Dolly: I do.
42

43 Kaiser: All right, two minutes. Go ahead.
44

45 Dolly: 1014 Cedardale. Bought it in '92. I'm Charlie's next door neighbor. I am
46 the closest property to that structure we're talking about; I have zero

1 problems with it. It's beautiful. I will attest to his statement about trying to
2 park their cars in the garage. Years ago, Charlie paid a lot of money to
3 have a tree removed that was between our properties. And the tree had
4 pushed his driveway pad up to the point where he couldn't pull his truck into
5 his garage. So he had a lot of work done to get that driveway back down.
6 So he really tried to use that existing garage for his automobiles. And he's
7 right, he's right. I got a carport next to his, a part of the house, and I was
8 going to close it in when I bought the house but I realized I couldn't park two
9 cars in there and open the doors and do anything in the car in the garage.
10 So I did not close that carport in. I have no problems with his carport. It's
11 beautiful. It actually provides a little bit of early morning shade to a suffering
12 tree of mine in the front yard. Charlie and Sally are impeccable neighbors.
13 Excellent citizens. And I would hope you would vote in his favor.
14

15 Kaiser: Thank you very much.

16
17 Dolly: Thanks.

18
19 Kaiser: All right, then then we'll go to the gentleman that was in the aisle, yes,
20 please. State your name.

21
22 Parker: Timothy G. Parker.

23
24 Kaiser: And do you swear or affirm that the testimony you're about to give is the
25 truth and nothing but the truth under penalty of law?

26
27 Parker: Yes.

28
29 Kaiser: Please go ahead.

30
31 Parker: Okay, I've lived in that 1013 Cedardale, across and one house down. I've
32 lived in that house since 1965, when the neighborhood was new, since I
33 was a little kid. People do have - I've been trying to count I think about six
34 different people have lived in that house. And I don't recall any of them
35 being able to get a car in there on a regular basis. It's just tight. It's one of
36 those that's divided. And it's not a good garage at all. Also, I kind of as a
37 person I think rules should make sense. They should do something proper.
38 And in this case your rules of the setback don't serve any purpose. The
39 carport is not unsafe. It's not unsightly. It's fine. In this case, I think you
40 should make a difference because, you know make a variance because it
41 makes sense. I think the laws should make sense once in a while. And you
42 guys have the right and the ability to make things make sense. So I would
43 ask you to go ahead and do the right thing so this makes sense. The carport
44 is fine, it looks good. It's sturdy. I think you allow him to keep it. Thank
45 you.
46

1 Kaiser: Thank you very much. All right, now we'll go to the gentleman in the black
2 shirt. Please state your name for the record.
3
4 Davis: My name is Robert Davis. I live at 1015 Cedardale. I live directly across
5 from Mr. Tahuahua.
6
7 Kaiser: Do you swear or affirm the testimony you're about to give is the truth and
8 nothing but the truth under penalty of law?
9
10 Davis: I do.
11
12 Kaiser: Okay. Go ahead.
13
14 Davis: I mean, pretty much when the whole carport was built, I think pretty much
15 everybody around the neighborhood was actually really pleased with the
16 way it looked. And this is even pretty much like you've guys have seen
17 pictures. This is not even a finished product yet too. I mean there's
18 definitely plans for paint that you know that they do plan. So it really will
19 serve a beautiful purpose. And I know I keep hearing about this Elevate
20 Las Cruces thing and this is actually the first time I've heard about this. I've
21 lived here for 13 years. But I know that whole thing is Elevate Las Cruces,
22 Elevate Las Cruces, but really, as a homeowner you have I mean, you have
23 to really deviate from that and understand is that we have property that we
24 need to protect as well. And the way that their house is facing you do get
25 that hot sun directly, I mean directly right at their front door to where it very
26 much does. I've lived there for six years directly across the street, look out
27 my window, it's not an eyesore. And we've had actually our carport which
28 was attached to the house, actually enclosed about two years ago and
29 made into a garage. It's costly. And even so some of these other garages
30 or so, they say it's a double car garage, you can't fit two cars in there, you
31 can barely fit one. And I mean we have scraped the back of our cars before
32 just based on the garage door just because they're not built the way garages
33 are built today. Ours are built in '65. So I mean, we kind of run into the
34 same problems. I have a beautiful, brand new truck that I cannot fit in my
35 garage. And you know, so I think Charlie had done a smart thing by making
36 something outside that he can actually use for multiple different vehicles.
37
38 Kaiser: Thank you. All right, please state your name for the record/
39
40 Little: Karen Little.
41
42 Kaiser: And do you swear or affirm that the testimony you're about to give is the
43 truth and nothing but the truth under penalty of law?
44
45 Little: Yes, I do.
46

1 Kaiser: Okay. Go ahead.

2
3 Little: So I live at 1018 Cedardale on the other side of Charlie. And he has been
4 a wonderful neighbor and his yard is immaculate. I also, my house was built
5 in '65 and have a very small garage. I have very small cars so I can actually
6 get mine in there. But it is tight. And looking at what he's done, you know
7 it's not a problem. And if I look at that compared to some of the other stuff
8 that's going on in our neighborhood that codes doesn't do anything about,
9 we have flatbeds in people's yards, we have cars in people's yards. We
10 have a neighbor who has a pile of concrete, a torn up tree and rocks.
11 Nothing gets done about that. But yet his yard is really nice looking. And
12 so I'd like to support him and say that I think that it needs to stay. Thank
13 you.
14

15 Kaiser: Thank you. All right. Do we have one other person on this side? Yes,
16 please come on down. Please state your name for the record.
17

18 Hutto: Bertha Hutto.
19

20 Kaiser: And do you swear or affirm that the testimony you're about to give is the
21 truth and nothing but the truth under penalty of law?
22

23 Hutto: Yes.
24

25 Kaiser: Please go ahead.
26

27 Hutto: Okay, I've lived on Cedardale since 1968. And he put the carport, it's very
28 nice. It doesn't detract from anything; in fact it adds to the neighborhood
29 and I hope you will let him keep it. Thank you.
30

31 Kaiser: All right. Thank you. Okay, before I go to this side of the room, last call. All
32 right. Moving over, please come on down. And go ahead and just state
33 your name for the record and you may begin.
34

35 Camacho: My name is Sebastian Camacho. So unfortunately, you know I just really
36 believe that the ordinance are in place to follow. And allowing exceptions
37 or whatever that's just going to open it up for others to do the same. I know
38 I'm part of this community. I know Avondale, I know how the Glendales and
39 yes, I know that community well. So I just think that approving it would just
40 deviate from what we just heard previously. I mean if we're going to not
41 follow the variance, then we're just going to have a handful of people coming
42 in to get the setback approved because we got one approved, got another
43 one, not everybody's going to have this carports, which to me is not a good
44 look for Las Cruces. We want Las Cruces to be beautiful. We know and I
45 don't want to like say but there's some neighborhoods in the Telshor area
46 and the Hillrise area, uptown towards the Organ Mountains, you don't see

1 those carports. You don't see those people asking for a carport. You don't
2 see those people. And I mean, I'm sorry that I'm kind of like going against
3 the people who want to do this. You know, I just going to caution people,
4 you know, (*inaudible*) in Las Cruces and across New Mexico is high, having
5 your cars outside it's just another variable to look at, to have your car stolen
6 or vandalized. So that's all I have to say, I mean. Thank you.

7
8 Kaiser: Thank you. All right, coming back to the, or I guess, for I do that. Anybody
9 else on this side? Last call. Okay. Coming back to the Commission. Any
10 questions? Commissioner Smith.

11
12 Smith: I just have two comments to make. First of all, I mean, I respect, you know,
13 the need for shade and protecting your vehicle. I've lived here for 25 years.
14 I have a home that was built in 1948. There was no garage. I would love
15 to have a shade over my two vehicles that sit in my driveway. But because
16 of when my home was built, there was just no way I could ever, ever get a
17 variance to build a shade for my cars.

18
19 And secondly, you know, we talked about the homes, they're built in '64,
20 '65. I'm a senior citizen. I remember what cars look like back in 1964. And
21 they were wide. And they were low. And so the homes that were built in
22 1964 and '65, I'm sure they were made for one vehicle, because back then
23 most people just had one vehicle. So they're not two car garages. And,
24 you know we know how vehicles look today and trucks are six feet tall. And
25 you know there's just no way you could even attempt to get them in a
26 garage. So I'm sympathetic to the need you know for shade and be able to
27 protect your vehicles. But you know, we still have to follow you know the
28 ordinance. And like the gentleman said, Mr. Camacho, once you open a
29 door for one, you open up for all. So thank you.

30
31 Kaiser: All right. Any other questions? I've just one clarifying question for staff.
32 Just going back, we heard some comments from the public tonight just
33 about existing carports in the neighborhood. Any sense or any numbers on
34 what that might be? Are there, are there not? How many?

35
36 Abeyta-Corella: Commissioner. When I went out to do the site check, there were
37 additional carports that were in the front yard within that area.

38
39 Kaiser: Okay.

40
41 Abeyta-Corella: So his is not the only one.

42
43 Bennett: Did they, had they gotten variances or?

44
45 Abeyta-Corella: I didn't research the information. I just identified that there were, I
46 counted five that had carports in the front that did not meet the required

1 setback. I don't know if codes has gone out and talk to them. We did get
2 an influx of people coming in to get variances related to carports. But I did
3 not identify which ones were in that vicinity.

4
5 Kaiser: Understood. I'll just speak for myself. I think that information would actually
6 be helpful in this case. I mean not that we're trying to you know call people
7 out if they didn't follow the rules. But I mean, if we've already got something
8 established in the neighborhood, then maybe that changes the dynamic, I
9 don't know. But that would have been useful information at least from my
10 decision making.

11
12 The other point I just want to make briefly is you know there are rules for
13 these things. And you can't just go out and build a structure like this without
14 you know at least talking to the City first. And so you know it's unfortunate
15 that we're in this position, but I think a lot of this could have been avoided,
16 you know had the applicant come forward ahead of time to seek out
17 permission. I think there could have been a more sensible solution, as
18 opposed to just this yes, no. In this particular case, you spent money you
19 potentially might had to rip it out. So that's just something I want to throw
20 out there as well.

21
22 Ochoa: Mr. Chair. Point of clarity. To answer your previous question, that area,
23 staff has had history, either people going for variances, code enforcement
24 actually taking them to court. Wo waiting for court dates and so forth like
25 that for that. Additionally, staff does have the ability to provide what's called
26 administrative variances or flex development standards. If they're a couple
27 of feet away or inside, three feet inside, we could potentially approve that
28 administratively. So there may be multiple aspects of the house, some of
29 those carports are out there either variances, still in the process of going
30 through code enforcement, or possible administrative variances, sir.

31
32 Kaiser: Okay, thank you. Yes, I just think having that information as part of this staff
33 report would have been helpful. Because, I mean, if we've got six of these
34 that are exactly the same that have been approved at some level in the past,
35 I mean that changes the perspective a little bit versus you know another
36 situation where we had one single house in the entire neighborhood seeking
37 this relief, that does make a difference.

38
39 Bennett: And if we do denied today, he can appeal to City Council. Correct.

40
41 Ochoa: Mr. Chair, Commissioner Bennett. That is correct. He can appeal to City
42 Council. That is his right.

43
44 Bennett: Cool. Thank you very much. I know that we're kind of quasi judges and so
45 we're kind of confined with what the City provides us. So I know that City
46 Council has a little bit more leeway as to what they can do on ruling. So

1 just so you're aware. So if it doesn't go your way, you can appeal and I
2 would recommend doing that.
3
4 Kaiser: Okay. Any final questions, comments? All right. Again, looking for a motion
5 in the affirmative.
6
7 Bennett: I make a motion to approve 8.3.
8
9 Smith: I second.
10
11 Baum: Board Member Smith.
12
13 Smith: No based on staff recommendation.
14
15 Baum: Board Member Vega.
16
17 Vega: I vote yes, to approve but with the conditions outlined by staff.
18
19 Kaiser: Fortunately, the motion didn't have the conditions. So it would be just
20 approve without the conditions.
21
22 Vega: Then I vote yes to approve.
23
24 Baum: Board Member Porter.
25
26 Porter: I vote no based on staff findings.
27
28 Baum: Board Member Bennett.
29
30 Bennett: I vote no based on staff recommendation.
31
32 Baum: Board Member Murray.
33
34 Murray: I vote no based on staff recommendation for denial.
35
36 Baum: Chair Kaiser.
37
38 Kaiser: No, based on staff recommendation.
39
40 Baum: Motion fails.
41
42 **8.4 Case # 22ZO1000083:** A request to approve a Special Use Permit (SUP)
43 to allow a cannabis dispensary (retailer) less than the required 300-foot
44 buffer distance from another cannabis dispensary. The subject property is
45 located at 600 S. Solano, zoned C-2 (Commercial Medium Intensity), and

encompasses 0.259 ± acres. Submitted by Queen Bees Collective LLC, representative. Council District 3.

Kaiser: Okay, moving to item 8.4, a request to approve a Special Use Permit to allow a cannabis dispensary less than the required 300 foot buffer distance from another cannabis dispensary.

Castillo: Good evening Commission.

Kaiser: John, do you mind just moving the microphone a little bit closer? It's a little quiet. Thank you.

Castillo: No problem. So I have a request for a Special Use Permit to allow a cannabis retail establishment within the 300 foot buffer required distance located at 600 South Solano. The current conditions of the property is it's currently zoned C-2 which is our commercial medium intensity. It is a well-developed commercial shopping center that has continually been in use with various businesses going in and out of it. It's located on the corner of Solano drive and Kansas Avenue. It's approximately 0.25 acres in size and as being along Solano it is surrounded by retail office. And then there are some single-family uses following behind that. As you can see from the zoning map being along Solano, a mixed use corridor. It is primarily a commercially zoned area.

From the aerial map highlighted here, the subject property is going to be this more particular spot here that we're talking about in the corner near Kansas and Solano. These are going to be some street views of the business. As we can see right here it is located near the corner once again. The other cannabis establishment is going to be in this shopping center to the right of it. So the proposal is for a cannabis retail store. The distance between the new cannabis retail store and the closest one that is in existence is approximately 188 feet, or it's an approximate 188 foot deviation. There is about 112 feet between the two businesses. The code does require a minimum 300 foot buffer between cannabis retailers or cannabis micro businesses. We do differ from that to apply for a Special Use Permit. So all other buffer distances are met. So the distance between single-family zoning districts and schools and daycares will also follow all City of Las Cruces and State of New Mexico regulations governing cannabis and all its related retail activity.

So here's the map showing the 112 foot distance between the two cannabis establishments. At this time, all relevant City staff reviewed the application and had no comments regarding the proposed establishment. And notice was sent to all surrounding properties within 500 feet. Staff did receive an in person comment regarding the concern of the number of cannabis dispensaries that are located within the City. Also, he did point out that

1 there was a daycare. Staff looked further into that, it is outside the 300 foot
2 distance, so it is still in compliance with meeting the 300 foot required buffer
3 for the daycares.
4

5 Today staff's recommendation is based on the following findings. Staff does
6 recommend to provide a conditional approval. The business will need to
7 contact a design professional such as an architect or engineer to perform a
8 code analysis to look at life, safety, firewalls, and ingress and egress for the
9 compliance with the City of Las Cruces Municipal Code. Based on those
10 findings, the subject property meets the distance separation requirements
11 from any school, nursery, daycare, and single-family residential district. The
12 subject parcel as it exists is surrounded by commercial office uses. The
13 subject parcel is compatible with several other non-residential properties
14 with frontage along Solano Drive. The site is designed to attract vehicular
15 business primarily from Solano Drive. And it does meet the intent and
16 requirements of Section 38-2 of the 2001 Zoning Code. As stipulated before
17 it's going to meet all of the zoning code requirements and requirements of
18 the State of New Mexico. It's also located along a mixed use corridor, as
19 outlined in Elevate Las Cruces's future development map. Today your
20 options are to vote "yes" to approve, vote "no" to deny, or vote to amend, or
21 vote to table.
22

23 Kaiser: All right. Thank you very much. Any questions from the Commission? All
24 right, I will go ahead and turn to public comment. Is there anybody in the
25 audience who wishes to speak on this item? Please raise your hand.
26

27 Castillo: Mr. Chair, Commission. I also do have the applicant available as well if you
28 have questions for them.
29

30 Kaiser: Okay. Thank you. So I think one hand. Yes, please come on down. And
31 go ahead and state your name for the record.
32

33 Pearson: George Pearson.
34

35 Kaiser: And do you swear or affirm that the testimony you're about to give is the
36 truth and nothing but the truth under penalty of law?
37

38 Pearson: I do.
39

40 Kaiser: Go ahead.
41

42 Pearson: So City Council recently considered eliminating the 300 foot buffer between
43 cannabis and chose not to. So City Council is already pretty well directed
44 how this Commission should respond. The applicant then of course, could
45 appeal and the correct place I think for this to be decided is at City Council.
46 Thank you.

1
2 Kaiser: Thank you. Anybody else from the audience? Yes, please, come forward.
3 State your name for the record.
4
5 Eresco: My name is Zep Eresco.
6
7 Kaiser: And do you swear or affirm the testimony you're about to give is the truth
8 and nothing but the truth under penalty of law?
9
10 Eresco: Yes.
11
12 Kaiser: Please begin.
13
14 Eresco: I met Astrid about a year ago and I've been a medical patient of cannabis
15 for about six years now. For us cannabis patients we would prefer quality
16 over quantity. And ever since hanging out with Astrid from a personal scale,
17 I have seen her be an amazing business owner, an amazing mother. And
18 I would ultimately consider her the cannabis queen. She's very
19 knowledgeable in what she does. And if anybody deserves to have an open
20 dispensary here in town, I really strongly believe it should be her. You know,
21 we have bars that we all like to go to despite there being many multiple bars,
22 you know, we all have our preference and I think that the cannabis
23 community here really enjoys Astrid and her knowledge. And I think that I
24 would appreciate having an opportunity to decide where and who I
25 purchased my medicine from. And if anyone is more deserving, it should
26 be her. Thank you.
27
28 Kaiser: Thank you. Okay, last call. All right, coming back to the Commission. Any
29 additional questions? Commissioner Smith.
30
31 Smith: Only one quick question for staff. I know, I forget which meeting it was, but
32 we voted on the, a variance on cannabis businesses on Lohman. Do you
33 remember what the variance distance was on that one?
34
35 Castillo: Mr. Chair, Commissioner Smith. The variance was about 79 feet or 78 feet,
36 it was literally across the street.
37
38 Ochoa: And just a point of clarity about what was stated before, because I was at
39 the trenches trying to get rid of the SUP or that 300 foot buffer requirements
40 and before City Council. They did vote to deny that amendment and keep
41 the 300 foot. But on top of that, it still also keeps the Special Use Permit
42 process, which is in your all's purview to have final approval on. Just to get
43 clarity for you all.
44
45 Kaiser: Great. Thank you. On that point, I'm also a little unclear of what Council's,
46 what their goal is here, because they did have two opportunities to over or

1 to eliminate this requirement. They did not take either of those opportunities
2 to do so. Yet at the same time this body has I think in, except for not even
3 a handful of situations,. has unanimously approved these Special Use
4 Permits. So on the one hand you know we're approving them which de
5 facto means there is no buffer, and yet Council is saying no, we want the
6 buffer. So I guess if staff has any direction what Council prefers there, I'd
7 be interested to know what that answer is.

8
9 Ochoa: Mr. Chairman. From what I got from speaking to them, they wanted to keep
10 the 300 foot buffer to still keep that in in place and to have people try to find
11 somewhere that's at least 300 feet away from another retailer, micro
12 cannabis, whatever it is. That being said, they didn't want that to be the first
13 step. Second step would be if you cannot, you find a location that is within
14 the 300 feet, you have the ability to utilize the Special Use Permitting
15 processes and then give you all the power that you have per code to review
16 each item on a case by case scenario and see how it is. As a Special Use
17 Permit section reads in the code, make sure that it doesn't negatively affect
18 the neighborhood, the surrounding area, or just the City as a whole. So
19 giving you back your power essentially with the Special Use Permitting
20 process, sir.

21
22 Kaiser: Thank you for that explanation. I appreciate it.

23
24 Nichols: Mr. Chairman, if I may. One of the items that has brought about several of
25 these Special Use Permits regarding buffering or distancing is we have
26 about 132 applications for cannabis businesses currently on record. Sixty-
27 two have been issued. We have 62 retail and dispensary and pharmacy
28 cannabis businesses now. There has not been a single one that has built
29 a facility from ground up. They have found vacant buildings, vacant
30 commercial buildings. And what happens a lot of times with those vacant
31 buildings, commercial buildings, they are very close to residential
32 neighborhoods because they were built several years ago, or they are very
33 close to other vacant commercial buildings. And so this is the reasoning
34 behind the Special Use Permits coming before the Commission. I believe
35 the City Council was, one of their primary concerns on the vote that they
36 made to maintain the ordinance that we have is that their main concern was
37 residential, you know, the residential buffering and school daycare. I think
38 that's why they maintained; they voted not to amend. I guess I just wanted
39 to point out that the reason behind why we're getting so many, I think there
40 have been about 12 or 14 now. It's because the facilities they're moving to
41 are existing structures.

42
43 Kaiser: Thank you very much. All right. Any final questions? All right, seeing none.
44 Looking for a motion.

45
46 Bennett: I make a motion to approve 8.4 with conditions stipulated in the packet.

1
2 Murray: I second.
3
4 Baum: Board Member Smith.
5
6 Smith: Yes, based on staff recommendation.
7
8 Baum: Board Member Vega.
9
10 Vega: Yes, based on staff recommendation and Elevate Las Cruces.
11
12 Baum: Board Member Porter.
13
14 Porter: I vote yes based on staff recommendations and Elevate Las Cruces.
15
16 Baum: Board Member Bennett.
17
18 Bennett: I vote to approve based on staff recommendation.
19
20 Baum: Board Member Murray.
21
22 Murray: I vote yes based on staff recommendation.
23
24 Baum: Chair Kaiser.
25
26 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las Cruces.
27
28
29 Baum: Motion passes.
30
31 **8.5 Case # 23ZO5000069:** A request to approve an Infill Development Process
32 (IDP) proposal for three parcels within the Alameda Depot Overlay (ADO):
33 106 S. Miranda Street, zoned R-2, encompasses 1.85 + acres, requesting
34 additional office, commercial, and light industrial lot land uses in addition to
35 the existing permitted ADO-3 land uses; 630 W. Organ Avenue, zoned R-
36 2, encompasses 0.32 + acres, request to keep the existing parking lot; 710
37 W. Organ Avenue, zoned R-3, encompasses 0.32 + acres, request to keep
38 the existing parking lot. Submitted by 828 Productions, property owner.
39 Council District 4.
40
41 Kaiser: Okay, our final item this evening 8.5, a request to approve an infill
42 development process proposal for three parcels within the Alamea Depot
43 Overlay District.
44
45 Abeyta-Corella: Today, we're going to be discussing three different parcels of property,
46 106 Miranda, 630 West Organ, and 710 West Organ. It is an infill

development request. What they're looking to do is utilize a vacant building that has been vacant for approximately five years, to use it in a different land use per se. They also want to keep both of the parking lots that were existing for the previous church. With that I'd like to say the discussion tonight is only for the three properties listed below. There have not been any other formal submittals by the applicant. Other concerns have been brought forth and I like to make sure that we stay on direction of just talking about the three parcels and what has been proposed currently.

Here's an aerial map. This is the old church that is going to be repurposed. This is one of the parking lots which is literally the parking for the church. In addition to, they want to use this parcel of property and this parcel of property as parking, which was previously used as parking for the church. Here is the zoning map. And the reason that the two parking lots do not align with code is because they are zoned in the Alameda Depot Overlay 3. Next to it you will see that there is Alameda Depot 6 which encompasses another parking lot area, and a lot of commercial in this area.

Here we have ADO-2 a, which does allow some commercial use and then the rest of it is zoned residential, which would be the ADO-3. Section 38-48, the infill development does allow us to present this being that the property is an underdeveloped and underutilized parcel of property. The ADO-3 is a residential core with opportunities for live/work, and it does allow for office commercial light industrial land uses, but here they're asking for light industrial uses that are not necessarily aligned with R-2, but would be permitted related to the ADO-3 land uses. The soundstage for the proposal is going to be approximately 7,820 square feet, and they are going to use 22,394 square feet for office space. They have provided a couple of floor plans to pretty much give us an idea of what the setup would be within the church.

Analysis, all reviewing staff recommended approval of the case within the findings that the proposed land use would not impact health, safety, or welfare, and would encourage economic development in the City's core. The Historic Preservation Committee has reviewed and endorsed the redevelopment due to the age of the original structure and the applicant's acknowledgement that the façade is to remain unchanged.

Findings for approval the existing commercial building is located within the ADO and has been vacant for more than a year. The IDP facilitates mixed use development that will promote partnership with educational institutions, coordinate efforts to recruit businesses and industries, and generate employment growth enriching opportunities for the community. The request meets the intent of Elevate Las Cruces, fulfills the City's infill policy plan, and meets the purpose of Las Cruces municipal code 2-382. Public notice input, we did send out notification to the 500 feet surrounding the area. Staff

received five inquiries related to the infill. So they just wanted to know what was going on. Twenty-four calls opposing the proposal. Four calls in support of. We got a petition in support of that we received today, which is in your binders. We did get an additional e-mail in support. And we got another call in favor of. With that you do have the opportunity to vote "yes" to approve the infill development, "no" to deny the infill development, "yes" with conditions, or vote to table.

Kaiser: Thank you. Any questions from the Commission? I have a couple. I guess right off the bat, the 24 calls in opposition. Do you have any additional insight into that?

Abeyta-Corella: The biggest concern is the trucks that are using Miranda side of the property, and the parking directly in front of the church. Let me just go back so I can show you. So the concerns are the big trucks that are utilizing Miranda right here next to the residential corridor. And the big trucks that are being parked within this parking lot. Those were the largest concerns. I did get one call in reference to light pollution. But a majority of them were related to the vehicles.

Kaiser: And these truck traffic vehicle traffic is specifically related to this use that's before us?

Abeyta-Corella: Yes.

Kaiser: Okay.

Smith: I have a comment and follow up question. My daughter used to live in a house right across the street from the church, so I know on Miranda how narrow it is because many of the residents park on the street. And is there any way during this whole construction phase if this is approved that they can basically direct the trucks to use Melendres and force back. Because that's where majority of the parking is for that building. Is that a possibility? That would help alleviate some of the issues that residents have about the use of the large trucks on Miranda.

Abeyta-Corella: Chairperson, Commission. That is something that I have discussed with the applicant. And I do have them here where they can elaborate further as to how they would like to mitigate the traffic in the future. So that is something that they are open to.

Kaiser: So just to clarify, t this would be sustained truck traffic. So what I mean, or is it construction traffic. Just trying to understand, we say big trucks, are we talking semitrucks here. I'm just not sure what exactly we're talking about.

1 Abeyta-Corella: Chairperson. It would be big box vehicles. It's not necessarily semis,
2 and it's to get some of their equipment related to the industry in and out of
3 the location.

4
5 Kaiser: Okay, thank you. I've got a couple of other questions specifically related to
6 parking. What are the parking requirements per code for a facility like this?

7
8 Abeyta-Corella: Chair. It would be 1.5 parking stalls per square footage that's being used
9 for office space.

10
11 Kaiser: And so how many would that equate to?

12
13 Ochoa: I'm sorry, for clarity. Chairman Kaiser. It's one parking stall for every 350
14 square feet of office space. The auditorium, that's depending upon the
15 number of seats in the actual auditorium. I believe it's one parking slot is
16 required for every five seats in the auditorium.

17
18 Kaiser: Okay, so under this proposal that equal, how many parking spaces would
19 they be required to have?

20
21 Ochoa: Commissioner Kaiser. Do you have the square footage? No. We do not
22 have the, pardon me, we do not have the square footage. But when we did
23 work with the church previously, the church was required to be essentially
24 the same amount of parking spaces as well, per its size and per the uses
25 that they're using it. And that's why they had that overflow parking across
26 the street. Thank you very much. So 22,000, let's do a little bit of math.

27
28 Murray: If I can add input. Twenty-two-thousand divided by 350 would be roughly 62
29 parking spots. Auditorium does not show seat, so I can't contest to how
30 many there would be.

31
32 Ochoa: All right. Thank you for that, sir.

33
34 Kaiser: I like that we have someone fast with math on the Commissions. This is
35 great. Okay, so 62 parking spots. And do we have a site plan that tells us
36 how many parking spots they have? Looks like a lot more than 62.

37
38 Ochoa: Yes, sir. Chairman Kaiser. It looks like they have a pretty good amount of
39 parking on the actual property itself as well as their overflow parking on the
40 other sides. When we're looking at this previously, I believe was a school,
41 Larry that was potentially looking into going into this property. School
42 requires even more parking just because it's occupancy type. And they
43 were easily going to meet the minimum number of parking stalls required
44 because of the overflow parking as well.

- 1 Kaiser: Okay. My overall concern I think is just the amount of parking that we're
2 more being presented here for this infill development adjacent to downtown
3 in a historic overlay district. It seems to me that it would have been nice to
4 know whether or not the two additional parking lots would actually be
5 required either under the requirements of the code. Because if they didn't
6 need them, honestly, I think they shouldn't even be part of this application.
7 Because wouldn't the, if we were to approve this as is tonight, we're
8 essentially sort of entrenching two additional parking lots in this
9 neighborhood which is prime redevelopment area of the City. Is that what
10 we would be doing essentially is basically saying that those parking lots are
11 going to be there for however long?
12
- 13 Ochoa: Chairman Kaiser. The infill development process proposal is requesting
14 that for the current business itself. In the future, if they decide to sell, then
15 they could essentially develop that for the multifamily zoning that it's zoned
16 as they can develop multifamily. So it doesn't set this in concrete, just
17 allows it for this proposal right now. In the future if they do not want a
18 proposal and they want to redevelop that for multifamily, they'd have the
19 ability by right by the zoning code to do that, sir.
20
- 21 Kaiser: Okay, so future applicant comes in different use, if they wanted to have
22 those additional parking spaces, they would have to go through the same
23 IDP process for the parking lots.
24
- 25 Ochoa: Commissioner Kaiser. No, sir. If they were following the code on those
26 current properties, which is zoning designation, those properties which are
27 R-3 and R-2, they can develop that for multifamily, single-family homes that
28 are subdivided because they're allowed that by right. So they will not have
29 to come before you for any type of infill proposal. They may, let's say if they
30 want to increase their density on the property or possibly allow for smaller
31 lots on the property, then you could potentially see it again before you as
32 an infill development process.
33
- 34 Kaiser: Yes, I understand that. I guess let me rephrase my question. So by us
35 approving those two parking lots, we're saying that the parking lot use is
36 allowed under the current zoning, which it currently is not, correct. So if a
37 new applicant came forward, they can argue, well it's already an allowed
38 use based on our decision here, they would have to come before this body
39 to request that use for their future project.
40
- 41 Ochoa: Chairman Kaiser. So those parking lots are being requested with this in the
42 field proposal. You're correct. If they wanted something else, or to keep
43 them again, or to change them up somehow, then they would have to come
44 before you for another infill development. Yes, sir.
45

- 1 Kaiser: Thank you. Continuing on with parking lots, would they be required to come
2 into compliance with current parking lot design standards as far as
3 landscaping and all those things?
4
- 5 Ochoa: Chairman Kaiser. Yes, they would have to follow all current standards when
6 it comes to number of parking stalls, number of accessible parking stalls.
7 All that will be triggered if they do any type of building improvements and so
8 forth on the property, sir.
9
- 10 Kaiser: Okay, so even interior improvements would trigger them to come into
11 compliance with those parking lots?
12
- 13 Ochoa: Chairman Kaiser. Depends on the scope of work. We do have a 2015
14 International Existing Building Code, which we will look at the occupancy,
15 the changes of the inside the building, and so forth like that, then that what
16 would tell us the level of alteration that's going on, and it's the potential that
17 they'd have to come into compliance. Yes, sir.
18
- 19 Kaiser: Okay. I guess just one final thought on that point. I think if parking is truly
20 necessary, they deem it as we have to have these extra lots as part of our
21 business to be operational. You know, I would like to see some evidence
22 of that first of all, but at a minimum I would like to see you know regardless
23 of what kind of improvements they make to the interior part of the building,
24 I'd like to see as part of this application, if they're going to you know basically
25 retain two additional parking lots in a primary development area, I'd like to
26 at least see them come into compliance with the design standards, you
27 know adding additional landscaping which I'm sure would be required based
28 on the three lots that I'm looking at. So that would be something that I would
29 want to add as a condition here. You know again I think, honestly, they
30 could do without those other two parking lots. I think we could just deal with
31 the church lot; it seems like they have plenty of parking there. And let's see
32 if we can actually do something better than a parking lot in our downtown.
33
- 34 Ochoa: Chairman Kaiser. The applicant is here and they could possibly speak to
35 some of your concerns, sir.
36
- 37 Kaiser: Thank you. Before we go to you, any final thoughts or questions from
38 Commission? Okay. All right, sir, please come forward. If you want to
39 respond to anything I just said, or if you have your own presentation we can
40 certainly do that as well. And please state your name for the record.,
41
- 42 Sepp: Yes, sir. Commission, Commissioner. My name is Jonathon Sepp.
43
- 44 Kaiser: And do you swear or affirm that the testimony you're about to give is the
45 truth and nothing but the truth under penalty of law?
46

1 Sepp: I do.

2
3 Kaiser: Okay. Go ahead

4
5 Sepp: To touch base on the parking comments that you made, based off our code
6 summary that we ran off of our proposed land uses, it would require us to
7 have a total of 163 spaces. And with the two parking lots that are part of
8 the infill development process proposal, the parking lot that is adjacent to
9 the building, and then the two parking lots across the street that are not a
10 part of this infill development proposal, that would be a total of about 217.
11 So the numbers really do lend itself well to us needing to be able to be
12 allowed to park in those lots that are part of this plan. As it states right now,
13 in the ADO-3, we are not allowed to use those for parking.

14
15 And to touch base on the vehicle traffic on Miranda, our plan is not at all to
16 use that for truck or vehicle routing traffic. In our proposal, we actually
17 included our ideal pathway that would run along Mesilla Street up Organ
18 and then down the street to the south of 106 Miranda. And so my boss,
19 Todd Lundbohm could not be here today. He had to attend to some
20 personal matters out of state. But if I could have three minutes for him to
21 give a little present note talk on his behalf.

22
23 Kaiser: Yes, please go ahead.

24
25 Sepp: Absolutely. So this is a statement from Todd Lundbohm. "Good evening,
26 Commissioners. Please accept my apologies for not being able to attend
27 in person. I'm deeply appreciative to City staff like Christina Abeyta-Corella
28 for their time and attention to this infill development process. And thank you
29 Commissioners for reviewing our application. I hope this Commission, the
30 Alameda Depot neighborhood, and the Las Cruces community continues to
31 believe in this vision as much as I do. When I rolled into town for the first
32 time to attend a table reading for a film I was producing here in Las Cruces,
33 I quickly fell in love with everything about Las Cruces. This wonderful
34 experience continued as I began developing my initiatives here. It was easy
35 to see the magic of downtown Las Cruces and buildings like this vacant
36 church shouted at me to be revitalized. Having the opportunity and ability
37 to revive something as architecturally stunning as this church and utilize it's
38 space to bring together artists of all kinds is humbling. This ecosystem of
39 incredible opportunities we are growing for creatives in Las Cruces is firmly
40 rooted in the idea that we support and enhance the community in every way.
41 Our efforts surrounding 106 South Miranda Street are just the beginning of
42 our infrastructure and job creation commitment to Las Cruces and southern
43 New Mexico. I am beyond grateful to have been so graciously welcomed
44 by this community and will continue my promise to be a thoughtful champion
45 for the growth of the film and media industry in Las Cruces, as well as a
46 good neighbor to any community members we interact with. We look

1 forward to our continued partnership with the City of Las Cruces,
2 engagement with the community, and endeavor to create a pathway for
3 filmmakers and artists to prosper in southern New Mexico. Thank you, Todd
4 Lundbohm, CEO of 828 Productions."

5
6 Kaiser: Thank you. Any additional comments or?

7
8 Sepp: Yes, sorry.

9
10 Kaiser: Go ahead.

11
12 Sepp: And some additional comments for myself. Again, Chair, Commissioners
13 and City staff. It is a pleasure to be here with you today. We are very
14 excited to have made it to this point with you all. To start off, Todd
15 Lundbohm founded 828 Productions to help artists tell their stories across
16 genres, big or small. Since 2021, he has set his sights on Las Cruces for
17 the home base of this commitment. Like myself and many of my colleagues,
18 which quite a few of them are here with us today, we have made our own
19 commitments to living and thriving in Las Cruces. Given the opportunities
20 provided by 828 Productions, we're able to do just that.

21
22 I think it is important to note in fiscal year 2023, more than \$12 million was
23 spent in Las Cruces through film and digital media productions, and \$794
24 million throughout the entire state. Las Cruces makes up only 1.5% of the
25 total market share that the industry has in this state. Here at 828
26 Productions we see this as an opportunity that will allow our business to
27 blossom in a burgeoning creative economy that is on the horizon here in
28 Las Cruces. The infill development proposal will allow us to kickstart these
29 opportunities. With our approved land uses for 106 South Miranda, 828
30 Productions will be able to expand and scale our many ventures to provide
31 services to the film industry and create jobs for the residents of Las Cruces.

32
33 Our infill development plan aims to complement the existing neighborhood
34 in many ways. We plan to preserve the building's historical structure by
35 maintaining the brick architecture that makes up the east side of the facility.
36 Neighbors can look forward to a vibrant community of artists interacting with
37 those neighbors, interacting within their neighborhood. Those taking a walk
38 to downtown or Pioneer Women's Park, will be in creative company. These
39 strolls will likely encounter the next Steven Spielberg or even the current
40 Steven Spielberg. Additionally, we aim to be compatible with the
41 neighborhood character. Our journey into relationship building with the
42 Alameda Depot neighborhood began this past Saturday with a
43 neighborhood mixer hosted by our staff. We had the opportunity to engage
44 with supporters and those in opposition of our IDP. During this mixture, we
45 received 31 neighborhood signatures in support of our proposal in front of
46 you. Our conversations and participation within this tight knit community

1 will not end there. We have made a commitment to this neighborhood to
2 be transparent, friendly, and make best efforts to be accommodating. With
3 that, I'm happy to continue to take more questions. Thank you.
4

5 Kaiser: Thank you very much. Commissioner Vega.
6

7 Vega: Thank you Chair. So I attended the mixer. Mixer, so it was kind of early to
8 be a mixer, but it was like 8:30 on Saturday morning, and it was great to see
9 so much of the community come out and you know ask questions, can get
10 real answers. I think one of the questions that came up was around, what's
11 your vision? Like what do you see your well-being in our community, right.
12 Sadly, it turned into a really sad day later that day, with a really bad accident
13 on our street that took someone's life. That has nothing to do with this. But
14 to see our community come together with so much passion that morning,
15 and then something so tragic, it kind of just speaks to how much we care
16 about each other and how much we care about the neighborhood that we
17 live in.
18

19 I agree with what you're saying about something other than parking would
20 be great. But right now it's just being used as overnight sleeping for some
21 individuals. So even if we could fill it with cars and beautification, that would
22 be really helpful too. But anyway, so I just wanted to ask a little bit more
23 about your mission, your vision statement, I think like a lot of companies will
24 come in and say, you know we're going to give back to the community, we're
25 going to hire, we're going to do this, that, and the other. And then that's all
26 we ever hear about it. So it'd be nice to get a little bit more stats behind
27 that. Not that I'm a numbers person, but thank you.
28

29 Sepp: Absolutely. And I apologize that I don't have any concrete statistics for you
30 as to how many Las Cruces residents that we have hired so far and plan to
31 hire. In the plan we did note that we will be hiring 100 New Mexican
32 residents as part of our mission with our LEDA agreement with the State of
33 New Mexico. Myself, I am a Las Cruces resident. I am from here. They
34 put a camera in my hands when I was 11 years old over at Sierra Middle
35 School, and I knew what I was going to do for the rest of my life. And if it
36 wasn't for companies like 828 Productions, I wouldn't be able to do that. I
37 was very fortunate enough to spend six years with Film Las Cruces, growing
38 this industry and getting us to a point where we are today. This is a mission
39 that is very important to the creatives that at least I've come in contact with
40 over the many years of being involved in the film and media arts economy
41 here in Las Cruces. I believe every single staff member here today with
42 828 Productions was Las Cruces residents when they were hired by 828
43 Productions. And I think there are about eight of them with us here today.
44 And my boss is also texting me at the moment. And he might be providing
45 some statistics as well. Could I read some notes of things that he's texting
46 me?

1
2 Kaiser: Yes, please go ahead.

3
4 Sepp: Okay. Sorry, not stats, just thanking me for a good job. But so 828
5 Productions I can tell you from the bottom of my heart is dedicated to hiring
6 locally, that is the first thing we do. And as long as I'm here, I will make sure
7 that that is the first thing that we do is we make sure to look at our local
8 hires. But as seen by the staff that we currently have, and we're growing
9 and scaling, and when we do have the opportunity to start putting some of
10 our staff inside of the 106 South Miranda church, we will be able to scale
11 some of these businesses like our accounting company with which we have
12 one staff here in Las Cruces, one in Albuquerque, and one in Louisiana,
13 we'll be able to scale that and hire more Las Cruces residents. We'll be
14 able to scale our postproduction company, which only has one employee
15 right now outside of the State of New Mexico. But all of the people out of
16 New Mexico are intended to bring a skill set to our locals and to train them.
17 That is the heart of our mission when we hire these top level talent that
18 aren't from New Mexico, to be able to spread that knowledge to the future
19 Las Cruces, and then Doña Ana County employees that we hire. I hope
20 that answered your question.

21
22 Kaiser: All right. Any other questions?

23
24 Smith: I don't have a question. But I have a few comments to make. I've lived very
25 close to this church for 25 years. And first of all, I want to thank you for the
26 decision to preserve the original façade of that church. Many of you may
27 not be familiar with that church, but it's one of the oldest churches if not the
28 oldest church, maybe church in Mesilla maybe older, the Catholic Church.
29 But it's a very old church. And I've actually attended that church. It wasn't
30 my regular choice but you know my kids were involved with youth and so
31 we did a lot of kind of cross youth events with that church. And I always just
32 you know just appreciate that this was a church that was in the heart of
33 downtown, the old downtown. And so I was actually pretty sad when, you
34 know the church decided to move up Highway 70 and become a mega
35 church you know with church growth. And part of my sadness was that
36 there were a lot of people who are now seniors that you know supported
37 that church for decades and kind of had the rug pulled out from under them
38 because they live in that community. So they only had a two or three mile
39 commute to you know to go to church, and now they're driving up Highway
40 70 if they want to attend this church.

41
42 So I was a little surprised that this is how the building is now being used.
43 You know, I think my having, I go down the street all the time, weekly, you
44 know, I ride past that building, and always just have thoughts about how this
45 building is going to be used, whether it's going to be used as a church or
46 whether it's going to be used as a school. I never thought it would be used

1 as a production company. But I'm pleasantly you know surprised that you
2 know the plans that you have in place to be part of that area and establish
3 yourself as a good neighbor. That you know as Vanessa said, this is you
4 know community that's close as far as that neighborhood. I love living
5 downtown. Everything that happens downtown, that's you know been
6 detrimental, where we've lost buildings and churches have moved, has
7 affected me you know personally. And so to see that things are going to,
8 you know improve, especially in that particular area because it is kind of a
9 blight, it's just open parking lots, open building. I drive by there; I see activity
10 there. I wonder what's going on. So, you know I commend you for the plan
11 that you have in place. I hope that if it's approved that you know everything
12 will come to fruition and what you have created and on paper will become
13 a you know just an opportunity for downtown to continue to you know
14 revitalize yourself. But thank you.

15
16 Kaiser: Okay, go ahead.

17
18 Porter: So I'm reading that you're trying to support local middle schools and high
19 schools. Is it kind of like almost like an internship or are you trying to give
20 them like, skilled them with skills so that they can build that? Because I
21 know that there's a lot of hungry youth right now. And unfortunately, you
22 know sometimes they invested in areas that are not the best. So giving
23 them that kind of support, and those tools that they would need would be
24 amazing. So my question is, what kind of like support would you be
25 providing for them?

26
27 Sepp: Commissioner Porter. As much as we possibly can. I know with some of
28 the zoning restrictions, we aren't able to have K through 12 consistently in
29 the building working and learning with us, but we will make sure that it is as
30 intermediate as much as possible. We are already doing things like working
31 with the Doña Ana County internship program.

32
33 Porter: Okay.

34
35 Sepp: We had an intern from there at our offices in downtown Las Cruces. We
36 are working with some people over at the Las Cruces Public Schools
37 administration to set up internship type programs. And if for some reason
38 we can't have them take place at this facility, we have a few other facilities
39 and opportunities that we'll be able to drive those students to. So we are
40 very passionate about working with LCPS, GISD, New Mexico State
41 University, Doña Ana Community College, and the charter schools as well.

42
43 Porter: Awesome. Thank you so much, and also for providing jobs that are so well
44 needed here right now. So I appreciate that. Thank you.

1 Sepp: Thank you, Commissioner Porter. And one last thing on the jobs, but on
2 the support of educational efforts, it would be through on the job training, as
3 long as those students are above 18, and then internships as well. So it
4 would be all of the above.
5
6 Porter: Awesome. Thank you.
7
8 Kaiser: Okay, any other questions from Commission? All right, I'm going to turn it
9 over to public comment. Can get a raise of hands of folks who want to
10 comment on this item, one, two, three, four, five, six, seven, eight nine, nine
11 individuals. So we're going to go ahead and do two minutes each. And
12 we'll start with the lady in the green t-shirt. Please state your name for the
13 record.
14
15 Grider: My name is Jane L. Grider.
16
17 Kaiser: And do you swear or affirm that the testimony you're about to give is the
18 truth and nothing but the truth under penalty of law?
19
20 Grider: I do.
21
22 Kaiser: All right, please begin.
23
24 Grider: I have lived for 38 and a half years at 305 South Miranda which is one block
25 south of the zoning request area. Overall, I would like to say that everyone
26 that I have talked to in the neighborhood is very pleased that 828, the
27 production company is coming in. We see it as an asset to our community.
28 There are two items of concern. One is and I may be mistaken, but it's my
29 understanding that there is a residence that is directly south of the church,
30 which is long Miranda and May, which is included in this infill. If that is true,
31 there is concern in our community about giving infill permission to
32 residences that have always been used for residences that are not, have
33 not been vacant for a period of years. They have been used until fairly
34 recently, my understanding for residences. The second issue very definitely
35 is the parking and the traffic. That was a very big problem when the church
36 was there. Unfortunately, it continues to be. Just the other night I was
37 driving to my house south on Miranda, and there were about seven or eight
38 cars parked in front of the church. Unfortunately, cars are wider now. I
39 have an SUV, an SUV was coming northbound, I had to pull behind the line
40 of cars to wait till the other northbound car passed so that we didn't, we had
41 enough room for both to pass because people park in front of the houses
42 across from the church. What I would like to ask if it is possible for the
43 council to consider a, well I guess a stipulation that there be no parking in
44 front of the church from Organ down to May on Miranda. I would very much,
45 and everybody I've talked to would very much like to see the two parking

1 lots included in this infill request, because that provides additional parking
2 as needed. And if the council ...
3
4 Kaiser: I hate to cut you off, but our little beeper doesn't work, so you are at time.
5
6 Grider: Sorry. Okay.
7
8 Kaiser: I'll let you finish that thought, but please.
9
10 Grider: Yes, well, I was going to finish anyhow. Just in the name if the Commission
11 thinks, in the name of traffic safety, that that stipulation would be amenable,
12 we would be very pleased. Thank you.
13
14 Kaiser: Thank you very much. Commissioner Bennett.
15
16 Bennett: Christina, did you want to answer that question about the house, the
17 residence?
18
19 Abeyta-Corella: Commission. Yes, the house is not part of the infill development. So that
20 is not one of the components that we will be discussing tonight. It literally
21 is just the parcel of property for the church and these two parking lots. Okay.
22
23 Kaiser: Okay. I need to see a hands again, but I think gentleman in the black shirt,
24 come on forward. And I'm the beeper so if I cut you off your at time. But
25 please state your name for the record.
26
27 Steinborn: Mr. Chairman. I'm Senator Jeff Steinborn. Present from Las Cruces.
28
29 Kaiser: And do you swear or affirm that the testimony you're about to give is the
30 truth and nothing but the truth under penalty of law?
31
32 Steinborn: I do.
33
34 Kaiser: Go ahead.
35
36 Steinborn: Thank you, Mr. Chair, Commission. First of all, thank you for your public
37 service. I really value this Commission. And I know the important work that
38 you do as a fellow unpaid public servant. I just want to say you know Film
39 Las Cruces, on behalf of Film Las Cruces, we certainly support this
40 proposal. We are the City and the county's economic development
41 organization for film. This is a really exciting project for Las Cruces and for
42 the growth of our film industry. And I think it very well aligns with several
43 important City priorities. Number one, I think importantly, Mr. Chair, as
44 you've talked about, it is consistent with codes. I think the codes clearly
45 allow this. Number two, it preserves the historic structure. We just lost a
46 hundred year old structure, the Trost building in the country club. We would

1 have loved to have had a user of that building. It's kind of rare to find that
2 in a way. And so we're kind of blessed that we have an entity that needs a
3 bigger space that's taking over this space. Number three, from an economic
4 development standpoint, these are very desirable jobs. Film jobs, the
5 recent report and Jon quoted it, film job wages are definitely above average
6 wages. Their company specifically will bring several sectors of film,
7 postproduction, accounting, things that don't really exist in this community
8 that we're now going to have these anchors of film production, which aren't
9 just periodical film productions come there year round.

10
11 And finally, I just want to say, knowing the film industry as I've studied it a
12 lot, I think what's important to understand about this site as I understand it
13 is it's really going to be light industrial, at best most of the time. These are
14 above the line jobs that will be potted there, that will be coming in and out
15 of projects. Films do employ a lot of people and that's why the parking lots
16 are needed. It's funny when I drive by studios and I see cars in lots to me
17 it gets my glands going because it means that you're employing a lot of
18 people. So I think those are needed for the employment scenario we're
19 looking at and so I think it's a great project. And finally, it abuts to a
20 commercial corridor on Melendres which is where these parking areas are
21 so I think that's a good thing too. Thank you.

22
23 Kaiser: Thank you. I didn't have to cut off the senator so even better. Appreciate
24 that. Gentleman, sorry we'll go to the lady in front. Yes. Just please state
25 your name for the record.

26
27 A. Morales: My name is Annette Morales.

28
29 Kaiser: And do you swear or affirm that the testimony you're about to give is the
30 truth and nothing but the truth under penalty of law?

31
32 A. Morales: Yes, I do.

33
34 Kaiser: Go ahead.

35
36 A. Morales: Thank you. I wish you would have put this agenda item at the very
37 beginning, because we had to be here all night. Anyhow, my family has
38 lived in that area for pretty much most of my entire life. My mother lives on
39 Melendres Street. And then we have property on Bowman, by Jane's
40 house. Miranda has always had cars in that area because of the church.
41 We have the railroad tracks on the other side of Melendres that the train
42 drives by and those of you that live on Melendres know that you get used
43 to living with the train. One, I'm in support and my family's in part of the film
44 industry or the studio coming in because there's lately, for the last year since
45 the church hasn't occupied it, a lot of homeless people. I have an 86 year
46 old mother that lives literally a block on the other side of Melendres. And

1 there are homeless people that we have to call the church when they owned
2 it and occupied it to get rid of the carts and the mattresses and all the
3 homeless and I am fear for my mother's safety. So I think that the addition
4 of the studio is a big plus for our community. And the traffic if we change it
5 on Miranda, it's always been trafficked. There's always been cars parking
6 there from the neighborhood, in addition to that of the church. So I am, my
7 family and I are full support of the project. Thank you.
8
9 Kaiser: Thank you. All right, then we'll go to the gentleman behind. State your
10 name for the record.
11
12 Hara: Yes. My name is Andrew Hara.
13
14 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
15 and nothing but the truth under penalty of law?
16
17 Hara: Yes, I do.
18
19 Kaiser: Go ahead.
20
21 Hara: Yes. My name is Andrew Hara. I work on Film Las Cruces. I'm associate
22 film liaison. And I'm also a filmmaker. And I just wanted to show again from
23 Las Cruces in full support. And I'm also personally in support of the studio
24 there. There is a need for it. The productions that are coming in needed,
25 the filmmakers here are asking for it. And I think it's helping a lot. And also
26 working with 828 studios, they are here and just talking with them they seem
27 to be a company that is willing to invest in Las Cruces. I mean they already
28 have. And so it seems like they are trying to do the best thing for Las
29 Cruces. And I think that that's very important to support and very important
30 to throw our support behind it. And I also, when I was at Film Las Cruces I
31 worked under Mr. Sepp and anything that he supports, he's been working
32 for film in Las Cruces and for the community for longer than I can remember.
33 And so I think anything that he supports, I also am support of. And so I just
34 wanted to throw that out there. Thank you.
35
36 Kaiser: Thank you. All right, staying on this side, show of hands of folks that wanted
37 to speak. We'll go kind of circular here, so the lady in the far back.
38
39 Nichols: Mr. Chairman. As she's making her way down, if you want to speak to the
40 issue, if you could make your way to the front please, it'd be helpful for our
41 time constraints here.
42
43 Espiritu: Good evening. My name is Sandra Espiritu.
44
45 Kaiser: And do you swear or affirm that the testimony you're about to give is the
46 truth and nothing but the truth under penalty of law?

1
2 Espiritu: I do.
3
4 Kaiser: Go ahead.
5
6 Espiritu: So I'm a local resident. I've been here since I was nine years old. Love the
7 Alameda area since then. I remember going to Pioneer Park. As I grew up,
8 we had children, we actually took our kids to the church for the daycare. So
9 it holds a very special place in our heart. So it's amazing that the historic
10 building is going to maintain, that's a huge thing for us and our community.
11 So it's just wonderful. I personally met Todd and his team, Jesse, Robert,
12 Chris, and Jon. And they're just amazing individuals. And when you meet
13 people like that, that really truly care about the community as much as you
14 do, it's just an amazing collaboration. And what they have plans to do with
15 the buildings and collaborate with the schools and the students and the kids
16 and everything is just super inspiring. So I don't work for 828, but I have
17 worked with 828 with some real estate acquisitions and what they're doing,
18 and their vision is just phenomenal for Las Cruces. So we're definitely in
19 support. We live about two blocks away. And it's just been sad seeing the
20 church vacant for so long. Just to bring life back to it and just do amazing
21 things for it. So we appreciate your support.
22
23 Kaiser: Thank you. Okay, I think one more person on this side of the room. Please
24 state your name for the record.
25
26 Gonzalez: Felicia Gonzalez.
27
28 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
29 and nothing but the truth under penalty of law?
30
31 Gonzalez: Yes.
32
33 Kaiser: Go ahead.
34
35 Gonzalez: So I'm a business owner, and I own Ruby Sun, which is right on the corner
36 of West Griggs and West Organ. And at any given time we have about 15
37 to 20 clients that are in pain that need ADA access. And so my concern is,
38 if this does not get approved, that might encourage people to take the
39 parking that we have, which is very limited. So I really think that the area
40 needs the parking. We are very limited over there. We have all of the
41 residents that park on the side of the street, so I think this would be very
42 beneficial. Whatever project they had about a month ago, I saw that parking
43 lot that the church has and it was completely full, so that it's not really able
44 to be used as parking when they're using it. So having access over there
45 would really benefit my business, it just keeps everybody safe. It keeps
46 clients from having to walk down the road with a cast or whatever the need

1 is. So I think that it would be super beneficial. And I hope that it gets
2 approved, because everything that they're doing has really brought a lot of
3 life and safety to the area. It's great too, we're mainly female, so to have
4 just other people in the area to know that we're not the only business and
5 we're left alone there. We're really excited about that. So I hope that they
6 get the space that they need. Thank you.

7
8 Kaiser: Thank you. Okay, moving on to my right, gentleman right here in front come
9 forward. Please state your name for the record.

10
11 Howell: Edward Howell.

12
13 Kaiser: And do you swear or affirm that the testimony you're about to give is the
14 truth and nothing but the truth under penalty of law?

15
16 Howell: I do.

17
18 Kaiser: Go ahead.

19
20 Howell: All right. My wife and I own property about two blocks south of the church
21 on Miranda Street, we've owned it about four or five years. I've gone by that
22 building many, many times and have wondered, as someone who's been
23 involved in churches in El Paso, two large churches. There are very limited
24 uses for buildings like this. And what happens is, when they're left like this
25 one is and they're deserted, they just go to ruin. And so this is a perfect
26 opportunity to use that building in a way that's very constructive for the City.
27 Everyone's been talking about employment opportunities, and their
28 commitment to maintain the exterior of the building historically is great. So
29 I would encourage you all to vote to allow this. Thank you.

30
31 Kaiser: Thank you. All right. Anybody else on the side? Yes. And just a show of
32 hands, how many more after - okay about two more. All right. Thank you.
33 State your name for the record.

34
35 Kingsley: William Kingsley.

36
37 Kaiser: And do you swear or affirm that the testimony you're about to give is the
38 truth and nothing but the truth under penalty of law?

39
40 Kingsley: Yes.

41
42 Kaiser: Go ahead.

43
44 Kingsley: My wife and I have own property at 221 South Miranda, which is about two
45 houses down and across the street from the church. Now, we've always
46 called it the church. We remember when it was the church. And when the

1 traffic blocked the entire street you know, wasn't good. So you know
2 allowing this to go through and having the parking available for the
3 production company, I think is an excellent idea. The other thing that we
4 have seen is as since the church you know has been effectively abandoned,
5 the homeless locations. It's an old neighborhood, and there's a lot of little
6 nooks and crannies that people will get into. And when of these guys came
7 in and take over a lot of that disappears. And we still have problems over
8 there, everybody knows that. But I just think that the whole thing has been
9 a real positive influence in the neighborhood. And I would really like to see
10 this pass.

11
12 Kaiser: Thank you. All right, moving on back. And just state your name for the
13 record and you can begin.

14
15 Pearson: George Pearson. Just for, the packet says this is Council District 4, well,
16 it's still Council District 1 until the first of the year. The SUP as I understand
17 goes to the owner and not to the land. So I presume that if they actually
18 were sold out, Sony came in and bought them that we would be back here
19 again have this discussion. I think one of the problems that was pointed out
20 or scared people was the term light industrial that was in the packet. And
21 it's been explained to me, and I just want to put it on the record that the only
22 real reason for that, and maybe staff can affirm that, is because of the
23 capacity of the auditorium. That there is no intent to have industry there.
24 It's just a matter of being able to allow that auditorium to be there.

25
26 And there's been discussion about the Miranda side of the building. I guess
27 my question is, is the main entrance really will still be on the west side of
28 building and that's where access will be. At the neighborhood meeting, it
29 was mentioned that they're planning at some point to maybe build another
30 building in the parking lot. I suppose that might be allowed by right. I don't
31 know if we'll come back later because of that. And we'd also have to look
32 at how the ADA parking might be affected by that, because most of their
33 parking lot seems to be ADA. We talked about trucks. Mesilla is the truck
34 route. So I hope that they hear and direct their drivers that they come in on
35 Mesilla and turn on Organ and stay off of Melendres, and especially stay off
36 of Miranda. Talked about parking, well the Baptist destroyed the
37 neighborhood for the parking. So the parking is already, the neighborhood
38 has already been seeing the bulldozers because of that. There's a talk
39 about the 24 calls that came in. I think that was a lack of communication
40 from the company before the Saturday meeting that we had. On the
41 Saturday meeting I didn't tear anything. And I want to assure you if there
42 was going to be opposition from this neighborhood, they would be here. So
43 there is no opposition to speak of. And I look forward to being a good
44 neighbor with 828 Productions.

45
46 Kaiser: Thank you. All right, I think we have one more speaker.

1
2 Leslie: So Donald Leslie.
3
4 Kaiser: And do you swear or affirm that the testimony you're about to give is the
5 truth and nothing but the truth under penalty of law?
6
7 Leslie: I do.
8
9 Kaiser: Go ahead.
10
11 Leslie: Just a take on, I understand that this is providing a huge economic benefit,
12 but it's also a challenge for people who live there. I live one block south.
13 And I can stand on the corner of Miranda and May and there are now five
14 short term rentals. Three of those were single-family. And so the film
15 community is going to continue applying pressure of a sort to change the
16 character of the neighborhood from long term rentals to movie crew and
17 people who are coming to work. And I think they have to be very careful in
18 the way they relate to the neighborhood in that you know now basically the
19 neighborhood consists of almost exclusively of transients which is not a
20 neighborhood. So I think that was my concern. You know, I mean they're
21 providing a huge benefit, but they have to be really careful about the
22 impression they make on, and the impact that they're having on, you know
23 it's financially of benefit to these people who are now converting properties
24 and several of them, or did it specifically to support they believe the movie
25 community. So now my neighbors are all transients, or a lawyer and no
26 longer people who are living there and invested in the neighborhood. So
27 thank you.
28
29 Kaiser: Thank you. Okay, that will close public comments on this item. And we'll
30 come back to the Commission. Any additional comments or questions?
31
32 Smith: I just have one quick question. As far as the rental space. I mean are there,
33 representative, are there residences that have been purchased for short
34 term rental or that just you know just something that could, that they're
35 concerned about?
36
37 Sepp: I think the majority of it is a bit speculation, except for the one house property
38 that is to the south of the building that is kind of on that same block. We do
39 utilize that to house our directors and producers that are coming to town.
40
41 Smith: And I just want to make a comment, just to address the, just the traffic on
42 Miranda. As I stated earlier, I've been living in this neighborhood for 25
43 years. My daughter used to live right across the street from the church. I
44 walk my dog, when it's not 100 plus degrees, you know to Pioneer Park on
45 a regular basis. So I've seen that street on Sunday you know, at 11:00 a.m.
46 when the residents, the street does get choked out. And there are many

1 long term residents that have lived there. And I know that parking has
2 always been a concern on the street when the church was, you know it was
3 a living, breathing church. And, and so I hope that you know as you go
4 forward, that your company in conjunction with the City will address their
5 concerns about traffic. There could be some calming measures that can be
6 used, signage, certain hours, maybe that you know that if there are going
7 to be people associated with the production company that they would park
8 there at a certain time. So just the possibility of measures that could help
9 alleviate their concerns about traffic on Miranda. Thank you.

10
11 Sepp: Commissioner Smith. If I could add on to that, we would absolutely be
12 amenable to you know additional provisions along that Miranda Street. And
13 I think some of the concerns are some of the concerns that we have in our
14 even vehicles from our activities, especially as of recently we've had maybe
15 one or two cars going in and checking on that building that do park on the
16 west side parking lot. In addition to that, like the house that we own on that
17 block, we struggle with parking there as well and rarely can park ourselves
18 in that area. So that I think this is a concern that we share with the
19 community about access to that roadway.

20
21 Smith: Thank you.

22
23 Kaiser: I have one final question for staff. Bicycle parking, what would the
24 requirements be under current code for this project?

25
26 Abeyta-Corella: Give us just a minute, Adam will have to help me with that one.

27
28 Kaiser: Okay, let me just, will it be required, whatever the requirement is, will it be
29 required?

30
31 Ochoa: Mr. Chair. That is kind of a loaded question because essentially, in order
32 to come into compliance with any type of bicycle parking, sir, they'd have to
33 do something structurally to the building, an addition or alteration, a
34 structural alteration to the building that's more than 15% of what the existing
35 gross floor area is, then they would have to come into compliance with
36 bicycle parking. I believe they do have the numbers, I believe they're
37 proposing 10 bicycle parking stalls, which should get them right around
38 there. But again, if they're not really doing anything to the building, adding
39 or structurally modifying it, then essentially would not be required. But I
40 believe they are looking at putting those bicycle stalls in, sir.

41
42 Kaiser: Okay, I appreciate that. I mean, I raise it because you know I think maybe
43 part of my comments have been maybe taken in a different direction. And,
44 and really all I'm trying to say is that parking doesn't generate anything for
45 a City. It's a drain on resources. You've got two additional parking lots that
46 could be developed for a single-family home, multifamily home, that could

1 house 828 employees, that could then walk to work that wouldn't require a
2 car. So my point is, there's other ways to get around. There's other forms
3 of transportation. And I think it would be sort of a disservice to this
4 neighborhood to have this amazing project come in, and don't get me wrong
5 I think this is fantastic, but to then still kind of remain with sort of this
6 hollowed out you know area in our downtown that could really truly be
7 reimaged into being this amazing, beautiful urban neighborhood campus
8 that supports your operations and the rest of the City and the rest of the
9 neighborhood. And so that's really all I'm kind of getting at is I think there's
10 other ways to kind of think about this. You know, one option that I was
11 thinking about is you know perhaps floating a condition here to require you
12 know, to come into compliance with the existing design standards for
13 parking lots. I recognize there's a cost to that. And you know to be honest,
14 maybe it's not fair, maybe it's too high of a burden, but I can't really say that
15 because you said you were going to be at 217 spaces, which is about, if I
16 did my math correct, about 54 over what the code requires. You know, I
17 don't think it'd be fair to say hey, you need to go do you know landscaping
18 in all three of these parking lots, but it's hard to say what parking lots would
19 make sense.
20

21 So honestly, I think I would compromise and say I would like to see a
22 condition for 20 bicycle parking spots. As a form, you know to compensate
23 for these additional parking spots that you're going to be requiring allow,
24 you know your employees to have that opportunity for people who are
25 visiting your site. So you know I would like to you know float that as a
26 potential condition, which I think is certainly cheaper than having to
27 landscape a bunch of parking lots. So that would be something that I don't
28 know if just a nod of heads if people would be supportive of that. But that
29 you know, I think this is a great project. Again, I just would like to see you
30 know it's great that you're doing all this on the inside of the building, but
31 recognizing that you're going to be a long term tenant and resident of this
32 neighborhood, I think you should also consider you know at least on the
33 parking lot that's directly attached to the church, over time trying to beautify
34 that a little bit, adding some shade, street trees, that, you things of that
35 nature. So that's it for me/ I'll stand down. But I would like to I guess maybe
36 well I'll just do this; I'll make a motion to approve item 8.5 with the condition
37 that 20 bicycle parking spots are provided on the site.
38

39 Nichols: Mr. Chair. If I may please, a point of order. Normally, the Chair does not
40 make a motion. Maybe you could have one of your constituents make the
41 motion for you.
42

43 Kaiser: Even if I'm adding my own condition? I don't know if they agree with me or
44 not.
45

1 Nichols: Mr. Chair. I'll check the points of Robert's Rules of Order, but that's my
2 understanding. Was brought to my attention by City Clerk.
3
4 Kaiser: Fair enough. I'll wait for a motion.
5
6 Murray: Per code though isn't it say offices one space per 6,000 square feet more
7 or less, so they would only be required to have?
8
9 Ochoa: Mr. Chair, Commissioner Murray. Correct. I believe the numbers
10 calculation that they have, they're required to have 10 bicycle stalls. So
11 essentially five racks. So they would be meeting code with what they're
12 proposing. But if that was a condition it'd just be an additional five racks
13 that they have to add in order to do 20 stalls. That would increase the
14 bikeability I guess for the property is what we're looking at.
15
16 Kaiser: I guess just to clarify, but you said that if they don't make any exterior
17 alterations of the building, they wouldn't be required to provide bicycle
18 parking that, if it's not already existing, correct.
19
20 Ochoa: Mr. Chairman. That is correct. But they are actually proposing to provide
21 that themselves. They do want the stalls themselves, sir.
22
23 Kaiser: Okay. And I just I think you know to compensate for you know additional
24 parking lots, I think adding more bike parking would be I think a fair
25 compromise.
26
27 Ochoa: And the applicant is open to that condition actually. Just want to clarify that.
28
29 Smith: I have one more question concerning it. So at this stage, the way the plan
30 is being proposed, they are meeting the 10 parking stall condition, bike
31 stalls.
32
33 Ochoa: Mr. Chair, Commissioner Smith. That is correct, with the with the 10 stalls,
34 a.k.a., five racks that they're proposing. Yes, sir.
35
36 Smith: And then the applicant, they're saying that they would provide more bike
37 parking.
38
39 Ochoa: The applicant is open to the condition of Chairman Kaiser, yes, sir.
40
41 Smith: So as a Commissioner, I mean, we can vote to approve this proposal. But
42 I mean can abstain from requiring 20? Because if they're meeting the
43 requirement for 10, and they've already stated that they would provide
44 more, I mean is it necessary for us to even go through this process?
45

Agenda Item #7.3.

1 Ochoa: Mr. Chairman, Commissioner Smith. So the question was asked to add that
2 condition on there. They are proposing to provide the minimum required
3 number of bicycle parking stalls, but they're also amenable to adding that
4 condition for additional bicycle parking stalls as well. So that's kind of left
5 up to the Commission how you'd like to make a motion to just approve it if
6 you feel what they're proposing, the minimum is fine, or with that condition
7 to add the additional parking stalls.
8
9 Smith: Thank you.
10
11 Murray: So can I make a motion to approve action Item 8.5.
12
13 Vega: Second.
14
15 Ochoa: Okay, no condition.
16
17 Baum: Board Member Smith.
18
19 Smith: Yes, based on staff making recommendation and meeting the goals of
20 Elevate Las Cruces.
21
22 Baum: Board Member Vega.
23
24 Vega: Yes, based on site visit and staff recommendation.
25
26 Baum: Board Member Porter.
27
28 Porter: I vote yes based on staff recommendations and Elevate Las Cruces.
29
30 Baum: Board Member Bennett.
31
32 Bennett: I vote to approve based on staff recommendation, this complies with infill
33 development, Elevate Las Cruces and this is going to be just a huge, huge
34 spurring economic growth for our community.
35
36 Baum: Board Member Murray.
37
38 Murray: I vote yes to approve based on staff recommendations and Elevate Las
39 Cruces.
40
41 Baum: Chair Kaiser.
42
43 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
44 Cruces
45
46 Baum: :Motion passes.

9. ELECTION OF OFFICERS

Kaiser: All right, moving on. So it's the first day of school today so we're voting on officers. I guess we will start with chair. Is that normally what we start with? So we'll start with chair. Need a motion for someone to be chair.

Ochoa: Yes for point of clarity. Pardon me Mr. Chair. We do need a nomination and then a second. And that would be a vote on that on that appointment.

Kaiser: On the nomination.

Bennett: I'll nominate Kaiser for a chair.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Porter.

Porter: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Baum: Chair Kaiser.

Kaiser: Yes. All right, moving on to Vice-Chair. Need a nomination.

Bennett: I nominate Commissioner Smith.

Vega: I second.

Baum: Board Member Smith.

Smith: Yes.

Agenda Item #7.3.

1 Baum: Board Member Vega.
2
3 Vega: Yes.
4
5 Baum: Board Member Porter.
6
7 Porter: Yes.
8
9 Baum: Board Member Bennett.
10
11 Bennett: Yes.
12
13 Baum: Board Member Murray.
14
15 Murray: Yes.
16
17 Baum: Chair Kaiser.
18
19 Kaiser: Yes.
20
21 Baum: Passes.
22
23 Kaiser: All right. You can get paid back now; we're looking for Secretary.
24
25 Smith: I nominate Commissioner Bennett for Secretary.
26
27 Murray: I second.
28
29 Baum: Board Member Smith.
30
31 Smith: Yes.
32
33 Baum: Board Member Vega.
34
35 Vega: Yes.
36
37 Baum: Board Member Porter.
38
39 Porter: Yes.
40
41 Baum: Board Member Bennett.
42
43 Bennett: Yes.
44
45 Baum: Board Member Murray.
46

1 Murray: Yes.

2

3 Baum: Chair Kaiser.

4

5 Kaiser: Yes.

6

7 Baum: Passes.

8

9 Kaiser: All right

10

11 **10. STAFF ANNOUNCEMENTS**

12

13 Kaiser: And finally, staff announcements and discussion.

14

15 Nichols: Mr. Chairman. No staff announcements this evening.

16

17 Ochoa: I'm sorry. Point of order. My apologies Chair. Just wanted to give one
18 quick announcement. Staff, we're almost fully staffed now, now that I do
19 have almost a full staff of planners. What I'm trying to do is update all your
20 all codes. And I'm going to be hopefully making thumb drives and getting
21 you all updated codes, digital versions of Elevate Las Cruces, as many as
22 we can of our Blueprints on and so forth, that way you have all those codes
23 in the thumb drive for you. I promise this to our new Commissioners. But
24 when I was going through the documents that we had in there, some of
25 them were from the '70s, so I don't know how, there's people (*inaudible*) on
26 these things. So I definitely didn't want to do that. So just letting you know
27 staff is working on that, we'll hopefully get that to you all sooner than later.
28 Thank you.

29

30 Kaiser: Thank you. We look forward to the reading material.

31

32 **11. DISCUSSION**

33

34 **12. ADJOURNMENT (8:45)**

35

36 Kaiser: All right. Looking for a motion to adjourn.

37

38 Vega: Make a motion to adjourn.

39

40 Smith: I second.

41

42 Kaiser: All in favor.

43

44 MOTION PASSES UNANIMOUSLY.

45

46 Kaiser: We'll see you all next month. Thank you

Agenda Item #7.3.

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
-
- Chairperson



CITY OF LAS CRUCES

Planning & Zoning Commission 7/25/2023 **CASE 23ZO0500072: SHANNON DRIVE REZONING**

STAFF CONTACT:	Vincent Banegas, (575) 528-3058, vbanegas@las-cruces.org
OWNER:	John Major
REPRESENTATIVE:	Same
DISTRICT:	District #6
SITE ADDRESSES:	7332 Shannon Drive
EXISTING ZONING:	UR (Urban Ranch)
REQUEST:	Rezone from UR (Urban Ranch) to EE (Single-Family Equestrian Estate and Agriculture)
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF CASE 23ZO0500072:

A request to approve the rezoning of property from UR (Urban Ranch) to EE (Single-Family Equestrian Estate and Agriculture), located at 7332 Shannon Drive. The property is ± 1.63 acres in size and is within Council District 6. Submitted by John Major, property owner.

SUMMARY OF RECOMMENDATION:

Staff is recommending **APPROVAL** based on the findings listed below:

- The property under consideration has a non-conforming zoning designation that no longer exists in the 2001 Las Cruces Zoning Code, as amended.
- Prior to development, an appropriate zoning district designation needs to be established pursuant to code. The EE district designation is the most appropriate zoning district given the lot size, surrounding area, and development intentions stated by the owner.
- The subject property falls within the Suburban Neighborhood Place Type. This classification is characterized by low to moderate density residential land uses intermixed with areas of commercial development. The classification is consistent with what the EE zone provides.

- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).
- The surrounding area is developed as large lot single-family development consistent with the EE zoning district. Several parcels adjacent to the subject property are already zoned EE.

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

The property owner, is seeking rezoning from UR to EE in that the present UR district designation is a defunct zoning designation that does not exist within the 2001 Las Cruces Zoning Code, as amended. The UR district existed in an earlier zoning code having been eliminated under the current 2001 zoning code regime. At the time of code adoption, a two-year grace period allowed any non-conforming zoning to remain in full force and effect until rezoning or conversion of zoning took place. Staff initiated rezoning/conversion efforts for related properties and encouraged property owners to come forward with requests of their own to bring about compliance with the 2001 district standards. Due to the sheer number of properties that needed adjustment, staff could not reach out to all applicable property owners within the time frame provided even after extending the time frame for compliance. Originally, the UR district was intended to allow single-family ranchettes and farms (1 acre minimum) for families maintaining a lifestyle that included the raising and keeping of large and small animals in a semi-rural atmosphere. Changing the zoning to EE brings the zoning district into conformance while maintaining the semi-rural atmosphere and the keeping of large and small animals. One dwelling is allowed per lot and must be either site-built or a manufactured home meeting stipulated criterion.

LAND USE HISTORY:

The subject property is believed to have been created prior to approval of the East Mesa/US70 Annexation by City Council in 1986. The property is undeveloped and is located amongst several others that were initially zoned with the intention of establishing large residential lots that specifically permitted the keeping of large and small animals in a manner established prior to annexation.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
<u>Neighborhood Character and Compatibility</u>	Yes
<u>Elevate Las Cruces Comprehensive Plan</u>	Yes
<u>Thoroughfare Plans</u>	Yes
<u>Purpose and Intent of the Code: Section 38-2</u>	Yes
<u>Criteria for Decisions: Section 2-382</u>	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

In large part, the area surrounding the subject property consists of large lot residential development in the form of site-built, and manufactured homes. The zoning districts supporting the residential uses include UR (Urban Ranch), REM-C (Residential Estate Mobile-Conditional), and EE (Equestrian Estates). Given the development pattern described, there should be no impact to the surrounding neighborhood in terms of character and compatibility.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

According to the Future Development Map in the Elevate Las Cruces Comprehensive Plan, the subject parcel falls within the Suburban Neighborhood Place Type. The Suburban Neighborhood Place Type is characterized as providing low-to-moderate density residential land uses intermixed with areas of commercial development.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the proposed Zone Change:

- Community Environment:
 - Goal CE-1: Balanced Growth – Encourage efficient land use development patterns that accommodate projected growth in a sustainable manner.
 - Policy CE-1.2. – Promote investment within older areas of the city through redevelopment.
 - Action CE-1.2.3 - Partner with property owners of vacant land for infill opportunities.
 - Goal CE-5: Building and Site Design – Establish standards to integrate new development with surrounding built and natural features while mitigating long-term natural resources and climate impacts.
 - Policy CE-5.1 – Promote building form and scale that complements surrounding neighborhoods and creates strong linkages between the development site, the street, and other public grounds.
 - Action CE-5.1.2 – Provide gradual transitions between developments with residential lots of varying size and building heights.
- Community Prosperity:
 - Goal CP-9: Housing Diversity – Provide a diverse range of housing options to accommodate residents at all stages in life.
- Community Livability:
 - Goal CL-2: Neighborhood Conservation - Strengthen neighborhood condition through improvements to the built-environment.
 - Policy CL-2.2 – Encourage redevelopment of vacant properties within neighborhoods.

As the uses surrounding the subject property are congruous to the suburban place type and well supported by various comprehensive goals and policies, staff feels the application is justified and should pose no conflict with the existing neighborhood.

COMPLIANCE WITH THOROUGHFARE PLAN:

Access to the subject property will come from either Shannon Drive or Beyer Road. Both are partially improved local roadways that lack adequate right-of-way (ROW), curb, gutter, sidewalks, and lighting. Both roadways have approximately 20 feet of right-of-way width. Access to these roadways will primarily come from Dunn Drive. Dunn Drive, located west of the subject property is a fully improved designated minor arterial roadway within a constrained ROW width of approximately 60 feet. Although Shannon Drive and Beyer Road do not meet local roadway standards, they are adequate to accommodate any proposed single-family residential development that this pending rezoning action may facilitate in the near future.

CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:

Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed zone change include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- B. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- H. Encourage the conservation of energy in the use of structures, buildings, and land.
- J. Improve the design, quality, and character of new development.
- K. Encourage development of vacant properties within established areas.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- N. Conserve the value of buildings and land.

Review by City of Las Cruces staff determined the proposed zone change would not adversely impact the surrounding area. Future uses that may be authorized by the proposed district will be in keeping with the surrounding area per section 38-2 of the 2001 Zoning Code, as amended. Additionally, the proposed action will eliminate the issue with the property's non-conforming/defunct zoning district thus, allowing development pursuant to code.

CRITERIA FOR DECISIONS:

Per Section 2-382 of the Las Cruces Municipal Code, the Planning and Zoning Commission shall determine the following:

- A. The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:
 - 1. Impair an inadequate supply of light and air to adjacent property or otherwise adversely adjoining properties.
 - 2. Unreasonably increase the traffic in public streets.
 - 3. Increase the danger of fire or endanger the public safety.
 - 4. Deter the orderly and phased growth and development of the community.
 - 5. Unreasonably impair established property values within the surrounding area.
 - 6. In any other respect, impair the public health, safety, or general welfare of the city.
 - 7. Constitute a spot zone, and therefore, adversely affect adjacent property

values.

8. Be in harmony with the purpose and intent of the zoning code, sign code, design standards, and other companion codes.
- B. The commission shall take care that the development of the city, in accordance with present and future needs, best promotes the health, safety, morals, order, convenience, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.
- C. The commission shall encourage the proper use and development of land, shall seek to create, and maintain an aesthetic urban setting, and protect and preserve the quality of the water, air, and other environmental, natural, historical, and cultural resources for the city.
- D. The commission shall use the comprehensive plan as a guide in making all future decisions concerning land use and development, and in the financing and location of capital improvements.
- E. Before taking any action concerning land use and development and financing and location of capital improvements, the commission shall review the relationship between the proposed action and the comprehensive plan.

Upon internal review, Staff did not identify any issues that would deter the Planning and Zoning Commission from making an affirmative recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate with a recommendation of approval.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is currently zoned UR. The UR zoning district is a defunct designation requiring that it be brought into compliance with current code prior to any development taking place on-site. The proposed zone change to EE seeks to accomplish this in a manner that is compatible with the surrounding area.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

If the subject property is rezoned as proposed, the size of the lot and the access provided via Shannon Drive and Beyer Road allow future development of a residential use as envisioned by the property owner to take place. All development would then follow the requirements of the EE zoning district if approved.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water and gas is currently in proximity of the subject property and is accessible to the property owner. The available city utilities will not be negatively impacted by this zone change request and any resulting development. Septic tanks provide the means for sewer service and the subject parcels lot size will accommodate lot size standards established by the New Mexico Environment Department (NMED). Some area roadways as indicated earlier do not have the necessary improvements required by code for the designations they represent. Please be advised that said improvements are made when either property along said roadways subdivide or when City roadway projects and the necessary funding target these roadways for improvement.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notification letters were mailed to property owners within 500 feet of the subject property. Staff has not received any input regarding the pending zone change action as of packet preparation.

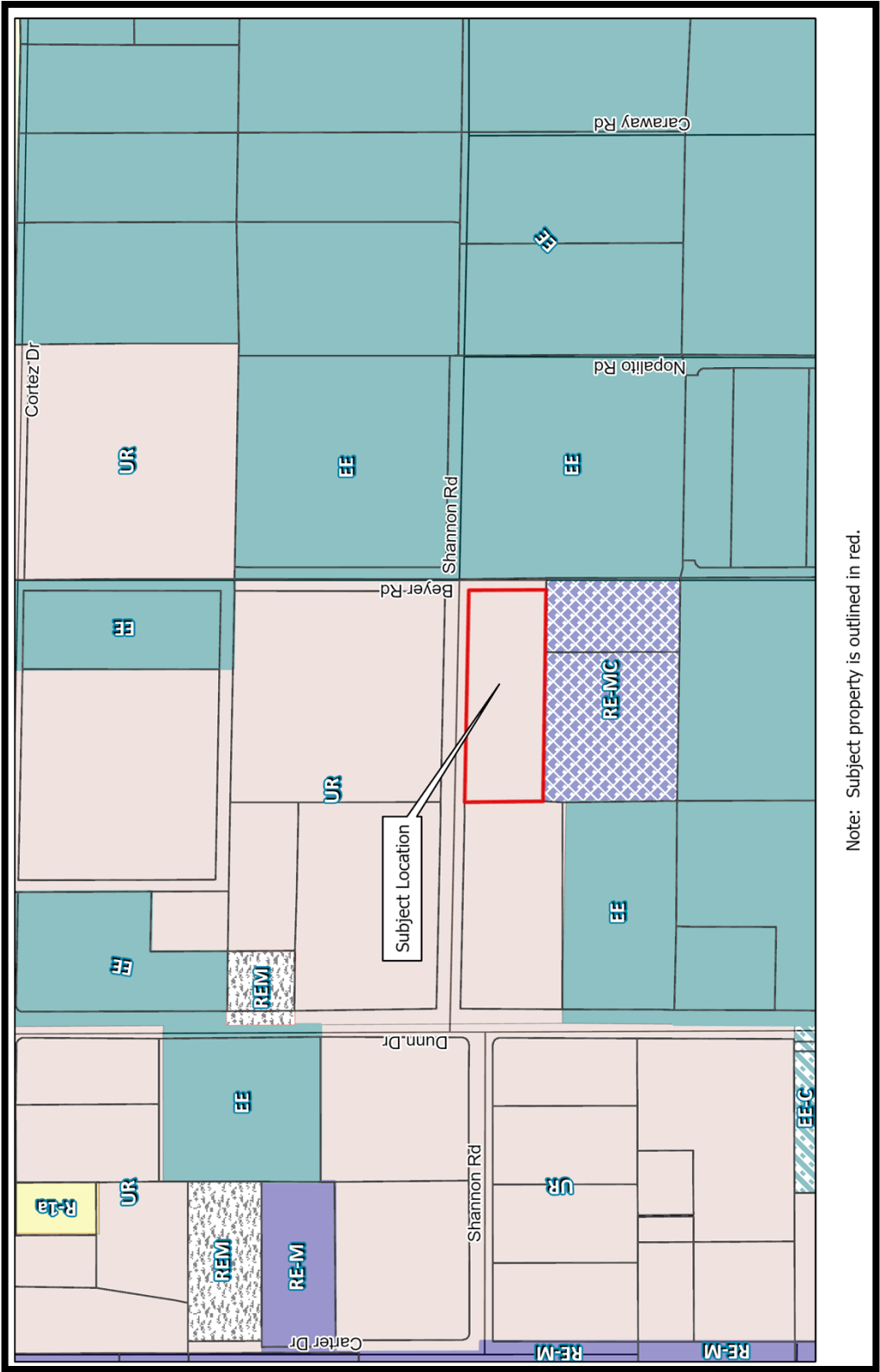
STAFF COMMENTS:

No reviewing department had any negative comments nor does any reviewing staff object to the proposed rezoning.

ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Department Review Comments

ATTACHMENT 1
Zoning Map



Note: Subject property is outlined in red.

ATTACHMENT 2
Aerial Map



Note: Subject property is outlined in red.

ATTACHMENT 3

Department Review Comments

Department: Planning

Status: APPROVED

Department: Transportation

Status: NOT REQUIRED

Department: Engineering

Status: NOT REQUIRED

Department: Utility

STATUS: APPROVED W/ CONTINGENCY

- 1) CLC Sewer is not available in the area. NMED septic tank permit will be required.

Department: Fire

Status: APPROVED

- 1) Recommend the installation of fire sprinkler system within proposed residence in that property is greater than 600 feet from the nearest hydrant.

Department: MPO

Status: APPROVED

Department: Flood Review

Status: APPROVED



City Council Action and Executive Summary

3050; Council Bill 24-008

Type of Action:

- ☐ Resolution
- ☒ Ordinance
- ☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	November 6, 2023	Adopted:	November 20, 2023
Drafter:	Larry Nichols	Department:	Community Development
Program:	Building Safety	Line of Business:	Las Cruces Development Center

Title:	AN ORDINANCE REPEALING AND REPLACING DIVISION 17- BUILDING STANDARDS OF CHAPTER 30, BUILDINGS AND BUILDING REGULATIONS OF THE LAS CRUCES MUNICIPAL CODE TO ADOPT THE 2021 BUILDING CODES, AS AMENDED, AND AS ADOPTED BY THE STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION.
---------------	--

TYPE OF ACTION: ☐ Administrative ☒ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
To adopt updated NM 2021 Building Codes.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
Residential and Commercial construction in Las Cruces currently apply the 2015 International Building Code and Residential Building Code and have found that those standards have contributed to building safe and sustainable structures. The 2021 International Building Codes will further enhance those best practices.

Public outreach included four meetings with the Las Cruces Home Builders Association (LCHBA) Government Affairs Committee, in March, May, July, and September of 2023, that discussed the forthcoming 2021 Building Code update adoption. Additionally, a public forum on September 28, 2023, was held at the LCHBA Event Room. The Community Development Department (CDD) has an announcement posted on the CDD web page.

The State of New Mexico's Regulation and Licensing Department - Construction Industries Division is the governing body for construction regulations and standards for all jurisdictions within New Mexico. In May 2023 the state adopted the 2021 International Residential Code (IRC), the 2021 International Building Code (IBC), and other related codes which will be in effect for building permits issued after March 31, 2024. This will include the recommendation provided by the Las Cruces Fire Department requiring fire sprinkler systems for residential one- and two-family dwellings. To remain in compliance the City will be required to adopt the building codes as shown in Exhibit "A".

SUPPORT INFORMATION:
[Exhibit "A" - Building Standards \(update version\)](#)
[Attachment "B" - Building Standards \(redline version\)](#)

PLAN(S):

Agenda Item #7.4.

Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; will adopt 2021 building codes and maintain compliance with state rules.
2. Vote "No"; will not approve the ordinance therefore the City's code will not be consistent with the State mandate and permits cannot be issued after March 31, 2024.
3. Vote to "Amend"; will amend the ordinance, as proposed, and require direction from City Council.
4. Vote to "Table", will delay the ordinance, require direction from City Council, will not be consistent with the State mandate and permits cannot be issued after March 31, 2024.

ORDINANCE 3050; COUNCIL BILL 24-008

AN ORDINANCE REPEALING AND REPLACING DIVISION 17- BUILDING STANDARDS OF CHAPTER 30, BUILDINGS AND BUILDING REGULATIONS OF THE LAS CRUCES MUNICIPAL CODE TO ADOPT THE 2021 BUILDING CODES, AS AMENDED, AND AS ADOPTED BY THE STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION.

The City Council is informed that:

WHEREAS, in March 2023, the State adopted the 2021 International Building Codes (IBC, IRC, IEBC, UPC, UMC, IPMC, IFC, 2020 NEC, 2018 IECC) and mandates their use for building permits issued after March 31, 2024; and

WHEREAS, the amendment adopts the regulations and standards as necessary to properly regulate construction activities in the City of Las Cruces; and

WHEREAS, the amendment will result in consistency between the State and the City regarding construction regulations; and

WHEREAS, the amendment is in accordance with the Construction Industries Licensing Act (CILA) and NMSA 1978, Section 3-17-6.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT Section 30-721, General Provisions, of Chapter 30 of the Las Cruces Municipal Code is hereby amended as shown on Exhibit "A", attached hereto and made part of this Ordinance.

(II)

THAT the adoption of the 2021 codes will become effective March 31, 2024.

(III)

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

Agenda Item #7.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

DIVISION 17. - BUILDING STANDARDS

Sec. 30-721. - General provisions.

(A) The following constitute, or are adopted by reference, as rules, regulations, and/or standards of the city building code and as further amended by this rule:

(1) 2021 International Building Code, as adopted by NMAC 14.7.2.8—14.7.2.45 (effective 7-14-23) excluding:

14.7.2.9 A (2), B (1-5), C-P.

(2) 2021 International Residential Code, as adopted by NMAC 14.7.3.8 - 14.7.3.28 (effective 7-14-23) excluding:

14.7.3.9 B (1-3), (6-7), C-N.

14.7.3.10 B (1-2).

14.7.3.11 G

14.7.3.22 add "Except that Section 2904 may be used to design fire sprinkler systems."

(3) 2018 International Energy Conservation Code, as adopted by NMAC 14.7.6.8—14.7.6.14 and NMAC 14.7.9.8—14.7.9.14 (effective 9-25-20) excluding:

14.7.6.9 A (1-3), C-G, I-J.

14.7.9.9 A (1-3), C-H, J-K

(4) 2021 International Existing Building Code, as adopted by NMAC 14.7.7.8—17.7.7.24 (effective 7-14-23) excluding:

14.7.7.9 A (1-3), B (1-3), (5), C-Q.

14.7.7.10 C

(5) 2021 New Mexico Earthen Building Materials Code, as adopted by NMAC 14.7.4 (effective 7-14-23) excluding:

14.7.4.2

(6) 2021 New Mexico Historic Earthen Buildings, as adopted by NMAC 14.7.8 (effective 7-14-23) excluding:

14.7.8.2.

(7) 2020 National Electric Code, as adopted by NMAC 14.10.4.8—14.10.4.21 (effective 3-28-23).

(8) 2021 Uniform Plumbing Code, as adopted by NMAC 14.8.2.8—14.8.2.30 (effective 3-10-22) excluding:

14.8.2.9

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14.8.2.10 A,

14.8.2.11

(9) 2012 New Mexico Swimming Pool, Spa and Hot Tub Code, as adopted by NMAC 14.8.3.8—14.8.3.15 (effective 5-1-15) excluding:

14.8.3.9

14.8.3.10 A

(10) 2021 Uniform Mechanical Code, as adopted by NMAC 14.9.2.8—14.9.2.28 (effective 3-10-22) excluding:

14.9.2.9

14.9.2.10 A

(11) 2012 Uniform Solar Energy Code, as adopted by NMAC 14.9.6.8—14.9.6.21 (effective 5-1-15) excluding:

14.9.6.9 A G

(12) Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1 2017, published by the American National Standards Institute, Inc.

(13) 2021 International Property Maintenance Code, published by the International Code Council.

(14) 2021 International Solar Energy Provisions, published by the International Code Council, is adopted as a code reference.

(15) 2021 International Fire Code, as amended by the City of Las Cruces.

(16) Design Standards, Chapter 32 LCMC, 1997 as amended, is adopted by reference.

(17) Current edition City of Las Cruces Standards for Roadway Construction, as amended.

(18) Current edition Las Cruces Utility Standards, as amended.

(19) Construction Site Materials (disposal), Sections 25-186 through 25-194, LCMC, 1997, as amended.

(20) National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. 5401 et seq.)

(21) Housing and Urban Development Zone Code II.

(22) Manufactured Housing Act (Chapter 60, Article 14 NMSA 1978).

(23) Any and all other sections of the Las Cruces Municipal Code (LCMC, 1997), as amended, that pertain to construction.

(B) Copies on file. True and correct copies of the codes, specifications and standards comprising the building code for the city, as amended, are on file and available for public examination during normal

Agenda Item #7.4.

business hours of the city at the Community Development Department, City Hall, located at 700 N. Main Street.

Sec. 30-722. - Amendments.

- (A) 2021 International Building Code. The Building Code adopted by reference in subsection 30-721(A),(1) is amended, altered and changed as follows:
- (1) Section 101 "General" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 103 "Code Compliance Agency" exclude in its entirety.
 - (3) Section 104 "Duties and Powers of the Building Official" See this Section and of the IBC and Chapter 30, LCMC 1997, as amended.
 - (4) Section 105 "Permits" exclude in its entirety except for 105.2.1 through 105.2.3 and see Chapter 30, LCMC 1997, as amended.
 - (5) Section 107 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (6) Section 110 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (7) Section 111 "Certificate of Occupancy" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (8) Section 112.3 "Authority to disconnect service utilities" is amended to read as follows:
The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section 112.1 or 112.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.
 - (9) Section 113 "Means of Appeals" is excluded in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (10) Section 3305 "Sanitary" is amended to read as follows:
New construction and additions/alterations shall have on-site portable bathroom facilities for each project. If owners and/or contractors wish to share facilities, a request in writing, submitted for approval by the Building Official, is required. Exception: Whenever arrangements have been made with the property owner, persons working on additions/alterations may use existing on-site facilities.
- (B) 2021 International Residential Code. The Residential Code adopted by reference in subsection 30-721(A),(2) is amended, altered and changed as follows:
- (1) Section R101 "General" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section R103 "Department of Building Safety" exclude in entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section R104 "Duties and Powers of the Building Official" See this Section and of the IBC and Chapter 30, LCMC 1997, as amended.

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- (4) Section R105 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (5) Section R106 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (6) Section R109 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (7) Section R110 "Certificate of Occupancy" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (8) Section R111.3 "Authority to disconnect service utilities" is amended to read as follows:
The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.
- (9) Section R112 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (10) [Table R301.2(1).]

TABLE R301.2(1)

CLIMATE AND GEOGRAPHIC DESIGN CRITERIA

Ground Snow Load	Wind Design			Seismic Design Category	Subject To Damage From		
5 psf	Speed (mph)	Topographic Effects	Wind-borne debris zone	C	Weathering	Frost Line Depth	Termite
	115	No	No		Negligible	6"	Moderate—Heavy

Winter Design Temp	Ice Barrier Underlayment	Flood Hazard	Air Freezing Index	Mean Annual Temp
18	No	See flood map	134	58.3

- (11)Section R318 "Protection Against Termites" is amended to read "Protection Against Termites and Pests" and further amended as follows:
R318.3 "Barriers" See the IRC and add the following to the end of the section: All penetrations within a slab on grade foundation shall be sealed in a manner to prevent the infestation of termites or other pests to include vermin into the interior of the structure.

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- (12) Section R319 "Site Addresses" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (C) 2018 International Energy Conservation Code. The International Energy Conservation Code adopted by reference is amended, altered and changed as follows:
 - (1) Section 103 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 109 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (D) 2021 International Existing Building Code. The International Existing Building Code adopted by reference is amended, altered and changed as follows:
 - (1) Section 103 "Code Compliance Agency" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 109 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (5) Section R111.3 "Authority to disconnect service utilities" is amended to read as follows:

The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.
 - (6) Section 112 "Means of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (7) Add Section 1201.1.1 Buildings of Historic Value. Buildings constructed in the Las Cruces Downtown Tax Increment Development District and Amador Proximo area prior to January 1, 1970 shall be considered buildings of historic value to the City of Las Cruces. These buildings shall qualify for all exceptions and preservation protocols established by this Chapter.
- (E) 2021 Uniform Plumbing Code. The Uniform Plumbing Code adopted by reference is amended, altered and changed as follows:
 - (1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

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- (4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (5) Table 104.5 "Plumbing Permit Fees" exclude in its entirety.
- (F) 2021 Uniform Mechanical Code. The Uniform Mechanical Code adopted by reference is amended, altered and changed as follows:
 - (1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (5) Table 104.5 "Mechanical Permit Fees" exclude in its entirety.
- (G) 2012 Uniform Swimming Pool, Spa & Hot Tub Code. The Uniform Swimming Pool, Spa & Hot Tub Code adopted by reference is amended, altered and changed as follows:
 - (1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (5) Table 104.5 "Swimming Pool, Spa and Hot Tub Permit Fees" exclude in its entirety.
- (H) 2012 Uniform Solar Energy Code. The Uniform Solar Energy Code adopted by reference is amended, altered and changed as follows:
 - (1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30 LCMC, 1997 as amended.
 - (5) Table 104.5 "Solar Permit Fees" exclude in its entirety.
- (I) 2021 International Property Maintenance Code. The International Property Maintenance Code adopted by reference in 30-721,(A) is amended, altered, and changed as follows:
 - (1) Section 102.3 "Application of Other Codes" interpret all references to the International Plumbing Code, the International Mechanical Code, and the International Zoning Code to be references to the corresponding codes adopted in LCMC, 1997 as amended.
 - (2) Section 103 "Code Compliance Agency" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 107 "Means of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 108 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

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- (5) Section 304.14 "Insect Screens" strike the words "During the period from [DATE] to [DATE],".
- (6) Section 602.3 "Heat Supply" replace the first [DATE] with November 1 and the second [DATE] with April 1.
- (7) Section 602.4 "Occupiable Work Spaces" replace the first [DATE] with November 1 and the second [DATE] with April 1.
- (8) Appendix A "Boarding Standard" is hereby adopted with this rule.

DIVISION 17. - BUILDING STANDARDS

Sec. 30-721. - General provisions.

(A) The following constitute, or are adopted by reference, as rules, regulations, and/or standards of the city building code and as further amended by this rule:

(1) ~~2015~~2021 International Building Code, as adopted by NMAC 14.7.2.8—14.7.2.445 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.2.9 A (2), ~~(5) (f)~~, B (1-5), C-~~OP~~.

(2) ~~2015~~2021 International Residential Code, as adopted by NMAC 14.7.3.8 - 14.7.3.28 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.3.9 B (1-3), (6-7), C-N.

14.7.3.10 B (1-2).

14.7.3.11 G

14.7.3.22 add "Except that Section 2904 may be used to design fire sprinkler systems."

(3) 2018 International Energy Conservation Code, as adopted by NMAC 14.7.6.8—14.7.6.14 and NMAC 14.7.9.8—14.7.9.14 (effective 9-25-20) excluding:

14.7.6.9 A (1-3), C-~~EG~~, ~~G-I-J~~.

14.7.9.9 A (1-3), C-H, J-K

(4) ~~2015~~2021 International Existing Building Code, as adopted by NMAC 14.7.7.68—17.7.7.24 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.7.9 A (1-3), B (1-3), (5), C-Q.

14.7.7.10 C ~~(1)~~.

(5) ~~2015~~2021 New Mexico Earthen Building Materials Code, as adopted by NMAC 14.7.4 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.4.2

(6) ~~2015~~2021 New Mexico Historic Earthen Buildings, as adopted by NMAC 14.7.8 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.8.2.

(7) ~~2017~~2020 National Electric Code, as adopted by NMAC 14.10.4.8—14.10.4.1121 (effective ~~2-1-18~~ 3-28-23).

(8) ~~2015~~2021 Uniform Plumbing Code, as adopted by NMAC 14.8.2.8—14.8.2.30 (effective ~~5-15-18~~ 3-10-22) excluding:

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14.8.2.9

14.8.2.10 A,

14.8.2.11

(9) 2012 New Mexico Swimming Pool, Spa and Hot Tub Code, as adopted by NMAC 14.8.3.8—14.8.3.15 (effective 5-1-15) excluding:

14.8.3.9

14.8.3.10 A

(10) ~~2015~~2021 Uniform Mechanical Code, as adopted by NMAC 14.9.2.8—14.9.2.28 (effective ~~5-1-15~~ 3-10-22) excluding:

14.9.2.9

14.9.2.10 A

(11) 2012 Uniform Solar Energy Code, as adopted by NMAC 14.9.6.8—14.9.6.21 (effective 5-1-15) excluding:

14.9.6.9 A G

(12) Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1-~~2009~~2017, published by the American National Standards Institute, Inc.

(13) 2021 International Property Maintenance Code, published by the International Code Council.

(14) 2021 International Solar Energy Provisions, published by the International Code Council, is adopted as a code reference.

~~(1315)~~ ~~2015~~2021 International Fire Code, as amended by the City of Las Cruces.

~~(1416)~~ (Design Standards, Chapter 32 LCMC, 1997 as amended, is adopted by reference.

~~(1517)~~ Current edition City of Las Cruces Standards for Roadway Construction, as amended.

~~(1618)~~ Current edition Las Cruces Utility Standards, as amended.

~~(1719)~~ Construction Site Materials (disposal), Sections 25-186 through 25-194, LCMC, 1997, as amended.

~~(1820)~~ National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. 5401 et seq.)

~~(1921)~~ Housing and Urban Development Zone Code II.

~~(2022)~~ Manufactured Housing Act (Chapter 60, Article 14 NMSA 1978).

~~(2123)~~ Any and all other sections of the Las Cruces Municipal Code (LCMC, 1997), as amended, that pertain to construction.

Agenda Item #7.4.

(B) Copies on file. True and correct copies of the codes, specifications and standards comprising the building code for the city, as amended, are on file and available for public examination during normal business hours of the city at the Community Development Department, City Hall, located at 700 N. Main Street.

Sec. 30-722. - Amendments.

- (A) ~~2015~~2021 International Building Code. The Building Code adopted by reference in subsection 30-721(A),(1) is amended, altered and changed as follows:
- (1) Section 101 "General" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - ~~(2) Section 102 "Applicability" exclude any reference to the International Property Maintenance Code.~~
 - (3) Section 103 "~~Department of Building Safety~~Code Compliance Agency" exclude in its entirety.
 - (4) Section 104 "Duties and Powers of the Building Official" See this Section ~~and~~ of the IBC and Chapter 30, LCMC 1997, as amended.
 - (5) Section 105 "Permits" exclude in its entirety except for 105.2.1 through 105.2.3 and see Chapter 30, LCMC 1997, as amended.
 - (6) Section 107 "~~Submit~~Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (7) Section 110 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (8) Section 111 "Certificate of Occupancy" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (9) Section 112.3 "Authority to disconnect service utilities" is amended to read as follows:
The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section 112.1 or 112.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.
 - (10) Section 113 "~~Board~~Means of Appeals" is excluded in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (11) Section 3305 "Sanitary" is amended to read as follows:
New construction and additions/alterations shall have on-site portable bathroom facilities for each project. If owners and/or contractors wish to share facilities, a request in writing, submitted for approval by the Building Official, is required. Exception: Whenever arrangements have been made with the property owner, persons working on additions/alterations may use existing on-site facilities.
- (B) ~~2015~~2021 International Residential Code. The Residential Code adopted by reference in subsection 30-721(A),(2) is amended, altered and changed as follows:
- (1) Section R101 "General" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

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- (2) ~~Section R102 "Applicability" exclude any reference to the International Property Maintenance Code.~~
- (3) Section R103 "Department of Building Safety" exclude in entirety and see Chapter 30, LCMC 1997, as amended.
- (4) Section R104 "Duties and Powers of the Building Official" See this Section and of the IBC and Chapter 30, LCMC 1997, as amended.
- (5) Section R105 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (6) Section R106 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (7) Section R109 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (8) Section R110 "Certificate of Occupancy" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (9) Section R111.3 "Authority to disconnect service utilities" is amended to read as follows:
The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.
- (10) Section R112 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (11) [Table R301.2(1).]

TABLE R301.2(1)

CLIMATE AND GEOGRAPHIC DESIGN CRITERIA

Ground Snow Load	Wind Design			Seismic Design Category	Subject To Damage From		
5 psf	Speed (mph)	Topographic Effects	Wind-borne debris zone	C	Weathering	Frost Line Depth	Termite
	115	No	No		Negligible	6"	Moderate—Heavy

Winter Design Temp	Ice Barrier Underlayment	Flood Hazard	Air Freezing Index	Mean Annual Temp
18	No	Public Works See flood map	134	58.3

Agenda Item #7.4.

- (12) Section R318 "Protection Against Termites" is amended to read "Protection Against Termites and Pests" and further amended as follows:
- R318.3 "Barriers" See the IRC and add the following to the end of the section: All penetrations within a slab on grade foundation shall be sealed in a manner to prevent the infestation of termites or other pests to include vermin into the interior of the structure.
- (13) Section R319 "Site Addresses" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (C) 2018 International Energy Conservation Code. The International Energy Conservation Code adopted by reference is amended, altered and changed as follows:
- (1) Section 103 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (2) Section ~~104~~105 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (3) Section 109 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (D) ~~2015~~2021 International Existing Building Code. The International Existing Building Code adopted by reference is amended, altered and changed as follows:
- (1) Section 103 "~~Department of Building Safety~~Code Compliance Agency" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (2) Section 105 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (3) Section 106 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (4) Section 109 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (5) Section R111.3 "Authority to disconnect service utilities" is amended to read as follows:
The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.
- (6) Section 112 "~~Board~~Means of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (7) Add Section 1201.1.1 Buildings of Historic Value. Buildings constructed in the Las Cruces Downtown Tax Increment Development District and Amador Proximo area prior to January 1, 1970 shall be considered buildings of historic value to the City of Las Cruces. These buildings shall qualify for all exceptions and preservation protocols established by this Chapter.
- (E) ~~2015~~2021 Uniform Plumbing Code. The Uniform Plumbing Code adopted by reference is amended, altered and changed as follows:

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- (1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (5) Table 104.5 "Plumbing Permit Fees" exclude in its entirety.
- (F) ~~2015~~2021 Uniform Mechanical Code. The Uniform Mechanical Code adopted by reference is amended, altered and changed as follows:
- (1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (5) Table 104.5 "Mechanical Permit Fees" exclude in its entirety.
- (G) 2012 Uniform Swimming Pool, Spa & Hot Tub Code. The Uniform Swimming Pool, Spa & Hot Tub Code adopted by reference is amended, altered and changed as follows:
- (1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (5) Table 104.5 "Swimming Pool, Spa and Hot Tub Permit Fees" exclude in its entirety.
- (H) 2012 Uniform Solar Energy Code. The Uniform Solar Energy Code adopted by reference is amended, altered and changed as follows:
- (1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
 - (4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30 LCMC, 1997 as amended.
 - (5) Table 104.5 "Solar Permit Fees" exclude in its entirety.
- (I) 2021 International Property Maintenance Code. The International Property Maintenance Code adopted by reference in 30-721,(A) is amended, altered, and changed as follows:
- (1) Section 102.3 "Application of Other Codes" interpret all references to the International Plumbing Code, the International Mechanical Code, and the International Zoning Code to be references to the corresponding codes adopted in LCMC, 1997 as amended.

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- (2) Section 103 “Code Compliance Agency” exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (3) Section 107 “Means of Appeals” exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (4) Section 108 “Board of Appeals” exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
- (5) Section 304.14 “Insect Screens” strike the words “During the period from [DATE] to [DATE],”.
- (6) Section 602.3 “Heat Supply” replace the first [DATE] with November 1 and the second [DATE] with April 1.
- (7) Section 602.4 “Occupiable Work Spaces” replace the first [DATE] with November 1 and the second [DATE] with April 1.
- (8) Appendix A “Boarding Standard” is hereby adopted with this rule.



24-054

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ N/A
1st Reading:				Adopted:	November 20, 2023		
Drafter:	Sara Gonzales			Department:	Community Development		
Program:	Community Planning			Line of Business:	Community Planning		
Title:	A RESOLUTION APPEALING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 26, 2023, FOR A 20-FOOT VARIANCE TO THE FRONT YARD SETBACK IN ORDER TO RETAIN A CONSTRUCTED CARPORT ADDITION ON A PROPERTY LOCATED AT 4053 WINTERS STREET. THE SUBJECT PROPERTY ENCOMPASSES 0.108 + ACRES AND IS ZONED R-1BC (SINGLE-FAMILY HIGH DENSITY- CONDITIONAL). SUBMITTED BY TRACIE STEVENSON, PROPERTY OWNER (23VO0500106).						

TYPE OF ACTION: ☐ Administrative ☐ Legislative ☒ Quasi-Judicial

PURPOSE(S) OF ACTION:
Appeal and Reversal of a Planning and Zoning Commission decision.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
City Council is required to review and take final action on variance appeals per Section 38-10(M) and 38-13(A) of the 2001 Zoning Code. A variance is defined as a variation in the numerical requirements of this Zoning Code, Sign Code, or the Design Standards (landscaping).

The proposed variance is for a carport located at 4053 Winters Street. The property is located approximately 200 feet north of the intersection of Holly Drive and Winters Street. The subject property is currently being utilized as a single-family residence and is zoned R-1bC (Single-Family High Density - Conditional). The applicant is seeking the proposed variance to retain a constructed carport to the front portion of the existing dwelling unit. The unpermitted carport encroaches twenty (20) feet into the required twenty-five (25) foot front yard carport/garage setback. If approved, the new carport will be five (5) feet from the front property line.

On September 26, 2023, the Planning & Zoning Commission (P&Z) denied the proposed variance request by a vote of 3-3-0 (one Commissioner absent) referencing the staff recommendation. Staff recommended denial because the proposed variance request did not meet the three (3) criteria in which a variance may be approved; physical hardship, spurs economic development, or considerable monetary hardship. Prior to the P&Z meeting, staff received three (3) letters in support with the original application and one (1) phone call from a neighboring property owner requesting clarification regarding the variance. The question was, if the carport variance was approved does that mean everyone else would be allowed one. Staff explained that variances are approved on a case-by-case basis and only applies to the address requesting the variance. During the meeting, P&Z listened to the applicant’s testimony as to why the structure was constructed without a permit. It was an anniversary gift from her late husband, and she was unaware that any permits were required since he had made the purchase prior to her knowledge. She went into further details about three gentlemen showing up to install the structure and how it would be hard to see the last thing given to her be torn down. Five

Agenda Item #8.1.

members of the public spoke that evening and did not have any issues with the proposed carport structure. Staff did indicate that if the carport was to be approved the structure should be reduced in size and located outside of the 12-foot utility easement. Structures are not permitted within the easement due to line utilities are laid within that easement and should be accessible for maintenance. The support information that staff received with the application is reflected in Attachment "A". A detailed summary of the discussion that took place at the P&Z meeting is reflected in Attachment "B".

On October 10, 2023, the applicant officially submitted an appeal of the P&Z decision for the proposed variance to City Council. The applicant is appealing the decision by P&Z stating the following: there were no complaints from the public prior or during the public hearing, there are no traffic visibility concerns, the structure is not impeding on utility infrastructure, and P&Z did not provide feedback per their decision at the public hearing. The reasons for retaining the carport structure are emotional, mental, and monetary. The applicant is willing to obtain a permit, pay all fees, and modify the structure if deemed necessary for the request to be approved. Please see Attachment "C" for the applicant's appeal and supporting documents.

City Council has broad statutory authority to grant a variance under Article 2, Section 38-10J. P&Z did not feel that the variance request met the criteria for approving the variance under Article 2, Section 38-10J and the proposed carport did not meet the minimum required setback in all zoning districts per Article 4, Section 38-31D.

A City Council majority vote may reverse, affirm, or make any change to the matter being appealed based on the denial of P&Z and shall decide whether the requested variance is appropriate at this location. If deemed suitable based upon the evidence presented, the City Council shall overturn the final determination on the request. It is possible for the City Council to modify the denial by removing or adding conditions. Furthermore, the City Council can approve the appeal; however, new evidence and facts (a.k.a. findings) must be articulated if the City Council reverses the P&Z decision.

SUPPORT INFORMATION:

[Exhibit "A" - Site Plan](#)

[Attachment "A" - P&Z Staff Report](#)

[Attachment "B" - P&Z Minutes](#)

[Attachment "C" - Appeal Documents](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

Agenda Item #8.1.

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will reverse the P&Z decision of denial of case 23VO0500106 and would allow the carport addition to remain on the subject property located at 4053 Winters Street.
2. Vote "No"; this will uphold the P&Z decision of denial of case 23VO0500106 and the carport would need to be removed from 4053 Winters Street.
3. Vote to "Amend"; this would reverse the P&Z decision of denial of case 23VO0500106 and would place conditions of approval on the permit.
4. Vote to "Table"; this could allow City Council to table/postpone the Resolution and direct staff accordingly.

RESOLUTION 24-054

A RESOLUTION APPEALING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 26, 2023, FOR A 20-FOOT VARIANCE TO THE FRONT YARD SETBACK IN ORDER TO RETAIN A CONSTRUCTED CARPORT ADDITION ON A PROPERTY LOCATED AT 4053 WINTERS STREET. THE SUBJECT PROPERTY ENCOMPASSES 0.108 + ACRES AND IS ZONED R-1BC (SINGLE-FAMILY HIGH DENSITY- CONDITIONAL). SUBMITTED BY TRACIE STEVENSON, PROPERTY OWNER (23VO0500106).

The City Council is informed that:

WHEREAS, the Planning and Zoning Commission (P&Z), after conducting a public hearing on September 26, 2023, denied the Variance by a vote of 3-3-0 (one Commissioners absent), for a property located at 4053 Winters Street; and

WHEREAS, Tracie Stevenson, property owner, submitted an appeal of the decision of the P&Z on October 10, 2023, based on the supporting documents outlined in Attachment "C".

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the decision of the P&Z on September 26, 2023, is hereby overturned and made part of this Resolution.

(II)

THAT the variance of 20 feet to the front yard setback is hereby approved for the subject property located at 4053 Winters Street reflected in Exhibit "A".

(III)

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

Agenda Item #8.1.

APPROVED

ATTEST:

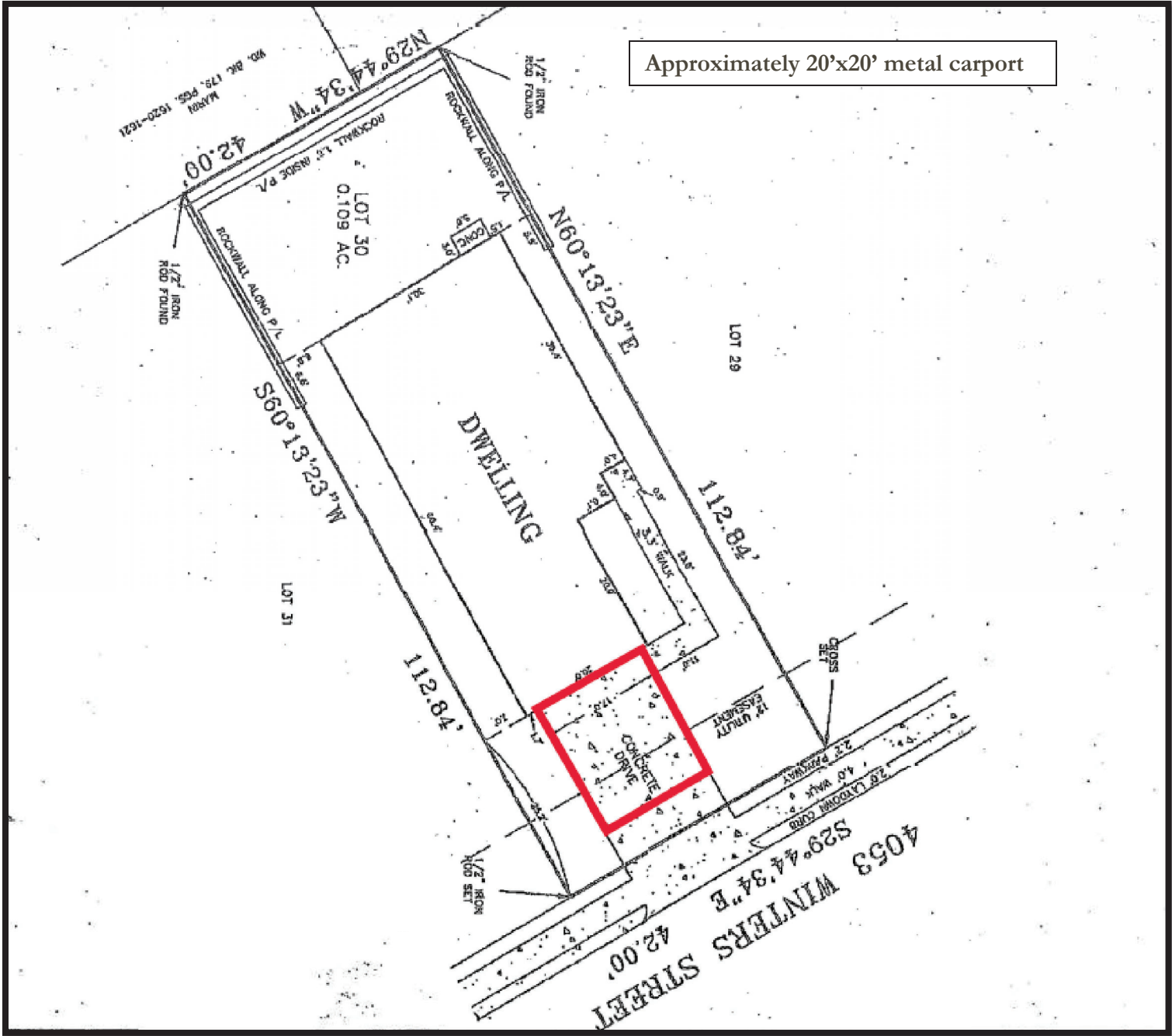
Moved by:

Seconded by:

AYES

NAYS

SITE PLAN





City of Las Cruces
MOUNTAINS OF OPPORTUNITY

Planning & Zoning Commission 9/26/2023

CASE 23VO0500106: VARIANCE

STAFF CONTACT: Sara Gonzales, (575) 528-3049,
sgonzales@lascruces.gov

OWNER: Tracie Stevenson

REPRESENTATIVE: Tracie Stevenson

DISTRICT: District #1

SITE ADDRESS: 4053 Winters Street

EXISTING ZONING: R-1bC (Single-Family High Density- Conditional)

REQUEST: A variance of 20-feet to the minimum required 25-foot garage/carport front yard setback

CONCURRENT APPLICATIONS: N/A

RECOMMENDATION: Denial

SUMMARY OF REQUEST CASE 23VO0500106:

A request to deviate twenty (20) feet from the required twenty-five (25) foot front yard setback for a carport addition to a home located at 4053 Winters Street. The property is approximately 0.108 + acres in size and zoned R-1bC (Single-Family High Density- Conditional).

SUMMARY OF RECOMMENDATION:

Staff is recommending **Denial** based on the findings listed below:

1. A garage/carport is required to meet a minimum 25-foot front yard setback in all zoning districts. (2001 Zoning Code Article 4, Section 38-31D)
2. The request for a 20-foot variance to the minimum required garage/carport front yard setback does not meet the criteria for decisions as outlined in Article 2, Section 38-10J of the 2001 Zoning Code, as amended.
3. The garage/carport was constructed without a building permit.

PROPOSAL AND LAND USE HISTORY

PROJECT DESCRIPTION:

A variance request to retain an already constructed metal carport that encroaches 20 feet into the required garage/carport front yard setback of 25 feet. The applicant has stated that the carport was an anniversary gift from her late husband to protect their vehicles from weather damage and it makes her feel safe, see attached letter.

HISTORY:

The subject property is located within an area that went through a zone change in 2003 from R-1aM to R-1bC. The developer requested the change to reduce the lot size from 5,000 square feet to 3,500 square feet.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Mesilla Valley Metropolitan Planning Organization (MPO) Thoroughfare Plan and Elevate Las Cruces Comprehensive Plan	Yes
Criteria for Decisions: Article 2, Section 38-10 (K) of the 2001 Zoning Code	No

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

The subject property is surrounded by single-family residential development. Based on the site visit and aerials of the neighborhood there are only two carports that have been constructed in the area, both of which did not receive building permits or variances prior to construction.

COMPLIANCE WITH MPO THOROUGHFARE PLAN:

Winters Street is classified as a local roadway, by the Mesilla Valley Metropolitan Planning Organization (MPO) and the Elevate Las Cruces Comprehensive Plan where single-family residences and their ancillary uses are encouraged.

CRITERIA FOR DECISIONS:

The Planning and Zoning Commission (P&Z) has the authority to grant variances to the numeric standards of the 2001 Zoning Code, as amended. Granting any variance shall not merely serve as a convenience to the applicant, but the variance shall be the minimum necessary for relief to accomplish the stated objective(s) of the applicant's request or demonstrable hardship. Hardships are not considered personal or monetary except as stated below. The P&Z shall review each request in relation to the goals, objectives and policies of the comprehensive plan, plan elements, other applicable plans, and the purpose and intent of this Code, section 38-2 and 36-1 of the Sign Code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria. Additionally, decisions for granting a variance shall be based on:

- 1. A physical hardship relative to the property (i.e., topographic constraints or right-of-way takes resulting reduced development flexibility, etc.) in question;

- The property is not constrained by a physical hardship such as topographic constraints, right-of-way takes resulting reduced development flexibility, or other physical constraints outside of the property owner's control such as excessive easements; and
- 2. The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted; and
 - Approval of the variance would not spur any economic development at a neighborhood or city-wide level; and
- 3. Monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.

Staff and most other reviewing departments of the City of Las Cruces did not identify any significant health, safety, or welfare concerns associated with this variance request. However, if the Planning and Zoning Commission decides to approve the variance Staff is requesting that the following conditions be placed on the property:

- a. Both sides of the structure must be open.
- b. The structure needs to be attached to the home.
- c. Must obtain building permit and all required inspections.
- d. Must be cut back out of the Utility Easement.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR CURRENT USE:

The subject property currently consists of a single-family residence, is zoned R-1bC, encompasses $\pm$ 0.108 acres and is accessed through Winters Street. As it currently exists, the single-family residence is an allowed land use on the property.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas, and sewer already serve the site and are adequate for the development. Winters Street provides adequate paved access to the property and is appropriate for the existing use.

FLOOD PLAIN:

The subject property is not located within the flood zone.

PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notice of a Public Hearing was mailed to all property owners within 500 feet of the subject property on September 11, 2023.

ATTACHMENTS:

- 1. Aerial Map
- 2. Statement of Hardship for Variance Requests
- 3. Site Plan
- 4. Department Comments
- 5. Neighborhood Signatures- Support

ATTACHMENT 1
Aerial Map



ATTACHMENT 2

Statement of Hardship

July 24, 2023

Letter of Justification and Hardship

Dear Mr. Miyagishima and Council members. My name is Tracie Stevenson and I live at 4053 Winters St. My husband and I have lived there since 2005.

I am writing respectfully requesting your consideration and understanding on my awning that was pre-arranged and paid for as an Anniversary gift from my husband for our 43rd wedding anniversary. Unfortunately, my husband passed unexpectedly on March 3, 2023. Our Anniversary was April 12; He never got to see my happy and emotional response from this wonderful gift. He knew I would love it. His passing has devastated me. Since this happened, I've been faced with many life changes. I am living on Survivor Benefits and faced with single handily managing my own life now. This awning was a vision we both shared for many years.

My awning provides many benefits. It shades our vehicles, it shields us from all seasonal weather elements, and helps keep my vehicles cooler. It was safely built and bolted down and masterfully designed for curb appeal. It is set back far enough from the sidewalk to allow all pedestrians walking and is handicap friendly.

It would be very hard to see it dismantled and hauled away. I would never recover financially, not to mention emotionally at a time where I am feeling broken, exposed, and vulnerable. The awning makes me feel safe in many ways. It is a constant reminder of my husband when I look at it, and the love and the life we shared together.

I've submitted my neighbors' statements regarding my awning. They've expressed that it doesn't propose any safety concerns or threat to their properties in any way. I am also submitting pictures of other similar awnings on my street and surrounding streets in my area that have been there for many years.

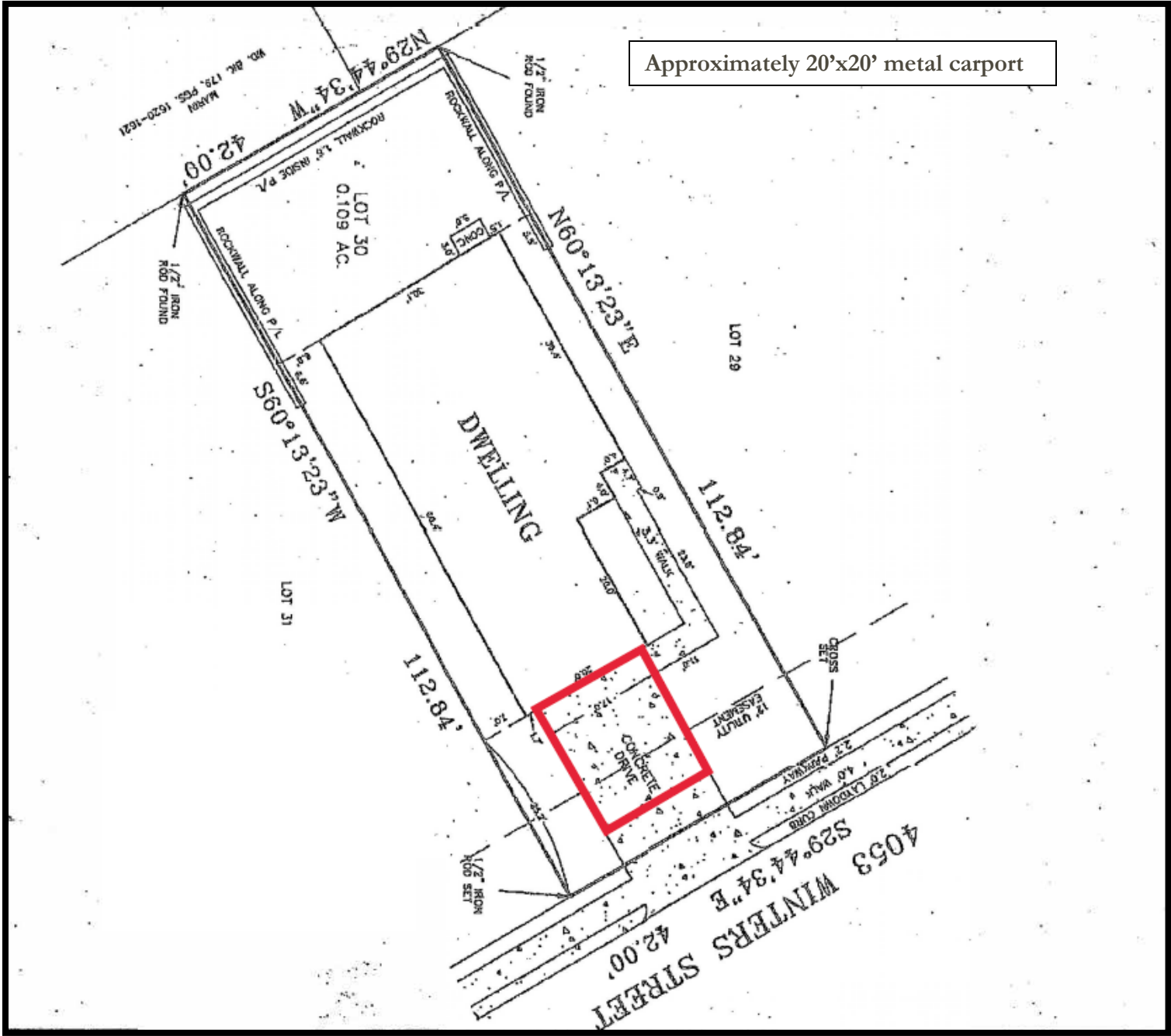
I want to apologize on my husband's behalf in not obtaining a permit. I know this was an oversite on his part. I know he wouldn't try to get away with anything. He simply did not know; he was very adamant about always doing things right.

I was informed by the city planner that my awning needs to be attached to my house. I've spoken with a contractor, and he says that it can be achievable and will be done. In closing, I hope you can find it in your heart to allow me to purchase a building permit for this will be the last gift I will ever receive from my husband and best friend in my lifetime. Thank you!

Sincerely,


Tracie Stevenson
4053 Winters St.

ATTACHMENT 3
Site Plan



ATTACHMENT 4

Department Comments

Department: Planning

Status: Approved with Contingencies

- a. Both sides of the structure must be open.
- b. The structure needs to be attached to the home.
- c. Must obtain building permit and all required inspections.
- d. Must be cut back out of the Utility Easement.

Department: Engineering

Status: Review Not Required

Department: Utility Engineering

Status: Approved with conditions, structures require an encroachment agreement within the designated Utility Easements.

Department: MPO

Status: Approved

Department: FIRE

Status: Approved

Department: TRANSPORTATION

Status: Not Required

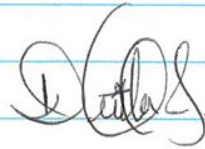
ATTACHMENT 5 Neighbors Signatures

(Neighbors Statements)

6/21/2023

I Deida Charira, live next door to Tracie Stevenson. She recently had an awning put up. It is very nice and presents no problem with me at all. If you have any questions you can call and ask me about it.

Thank you.



4049 Winters St.
(575) 993-8988

Deida Charira

(Neighbors Statements)

6-21-23

I Brynna Griego who lives next to Tracy Stevenson who recently put up an awning and I hereby state it is not a bother nor an impediment to me.



(575) 680 0612 4057 Winters

Las Cruces, NM

88005

(Neighbor's Statement)

6-21-23

Hello, my name is Christian Rausch. I live across from Tracie Stevenson located at 4056 Winters St. The awning located at Tracie's house is very nice and makes the house look wonderful. The awning does not pose any safety threat and is not an eye-sore. It's a great addition to the house and is more of a sentimental item. The area looks very nice and up-lifts how it looks. I would be really disappointed if the awning has to be dismantled.

My number is (575) 650-5742 if you have any more questions. Thank you



PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
September 26, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

- Scott Kaiser, Chair
- Enrico Smith, Vice-Chair
- James Bennett, Secretary
- Vanessa Vega, Member
- Joaquin Acosta, Member
- Connor Murray, Member

BOARD MEMBERS ABSENT:

- Vanessa Porter, Member

STAFF PRESENT:

- Tim Pitts, Deputy Director Building Development
- Adam Ochoa, Senior Planner/Building Inspection Supervisor
- Vincent Banegas, Interim Planner
- Brad Douglas, Deputy City Attorney
- Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening. It is 6:00 p.m. on September 26th and we will go ahead and call this meeting to order. It is the City of Las Cruces Planning and Zoning Commission meeting. Before we get started, we've got a couple of housekeeping items tonight. The first is I've been informed that I believe that big screen up there is out of order but we do have this smaller screen on either side of me so if you do want to move up or feel like you need to move up to be able to see the presentations tonight, I encourage you to do so.

The second item is I want to extend my thanks and gratitude to Commissioner Smith for covering last month while I was out. First month as Vice Chair and threw you into the deep end, and so I appreciate you covering for me and really did a great job. So thank you.

And then finally, if the rumors are true this is Commissioner Vega's final meeting with us here on the Commission. I speak for myself but certainly colleagues of up here, it's been a pleasure working with you the last year-

Agenda Item #8.1.

1
2 Kaiser: All right. Any other comments or questions from the Commission? We're
3 looking for a motion to approve.
4
5 Bennett: I make a motion to approve 9.3.
6
7 Vega: I second.
8
9 Baum: Board Member Acosta.
10
11 Acosta: I vote no to deny based on staff recommendation.
12
13 Baum: Board Member Smith.
14
15 Smith: Sorry. I vote no to deny based on staff recommendation.
16
17 Baum: Board Member Vega.
18
19 Vega: I vote no based on staff recommendation.
20
21 Baum: Board Member Bennett.
22
23 Bennett: I vote to approve based on monetary hardship and medical reasons.
24
25 Baum: Board Member Murray.
26
27 Murray: I vote is to approve based on medical reasons and monetary hardship.
28
29 Baum: Board Member Kaiser.
30
31 Kaiser: No, based on staff recommendation.
32
33 Baum: Motion denied.
34
35 **9.4 Case No. 23VO0500106:** A variance request to deviate twenty (20) feet
36 from the required twenty-five (25) foot front yard setback for a carport
37 addition to a home located at 4053 Winters Street. The property is
38 approximately 0.108 + acres in size and zoned R-1bC (Single-Family High
39 Density- Conditional). Submitted by Tracie Stevenson, property owner.
40 Council District 1.
41
42 Kaiser: Okay. Moving onto item 9.4. This is another variance request from the front
43 yard setback. This time 4053 Winters Street. Back to you staff.
44
45 Gonzales: Sara Gonzales, Senior Planner once again for the record. This is a variance
46 request for 4053 Winters Street. The property is approximately 200 feet

1 north of its intersection of Holly Drive and Winters Street. The property is
2 0.108 acres in size. Once again, is zone R-1bC which is single-family, high
3 density conditional and there is currently a single-family residence on the
4 property.

5
6 Here's an aerial map of the subject property. As you can see the carport is
7 highlighted essentially in white as to its location. Surrounding neighborhood
8 is residential in nature as all the adjacent properties are either single-family,
9 mobile home, or multifamily to the south.

10
11 Per code, Chapter 38, 2001 Zoning Code, the property is required to meet
12 the 25-foot yard setback for a garage or carport. And the applicant is
13 seeking to retain the carport addition that was put up into the front of the
14 property for the existing dwelling. The variance would allow the applicant
15 to maintain a five-foot setback from the property line. Here is a site plan of
16 the subject property. You can see we do have the 12-foot utility easement
17 that also runs along the front of Winters continuously through the
18 subdivision. The building or the structure is a 20 x 20 so that's why you
19 have a five-foot deviation as far as it coming from that 25-foot setback. So
20 all garages in this area were built at a 25-foot setback leaving no additional
21 room for any of these carports to be placed onto the property.

22
23 Here is an image of the property, as far as you can see here is the structure.
24 It is pushed back a little bit further. As you can tell there is a five-foot
25 setback from this property boundary. The applicant has provided the
26 justification in the letter that was provided within your staff report. It was an
27 anniversary gift to the applicant as part of the, for their anniversary to protect
28 their vehicles from weather damage. Once the structure did go up, it did
29 provide some type of safety as far as the applicant was concerned once it
30 was in place.

31
32 Staff did not identify any health, safety, or welfare issues. Once again, there
33 is that condition of where we see the 12-foot utility easement in which
34 structures are not to be constructed upon. We did see that the 20-foot
35 variance does not meet the criteria that is outlined within a variance. There
36 are no topographic constraints. We do not see any spur of economic
37 development, and the monetary hardship would be essentially from not
38 receiving a building permit prior to where they would be notified that the
39 monetary value would be essential.

40
41 Monetary hardship is definitely determined by if you had to do something
42 outside or make it impossible to reconstruct or build something on a
43 property then that is considered a monetary hardship. We had a previous
44 case to where it is, in order to construct a home, you had to move the well,
45 that is a monetary hardship constraint.

1 So with this staff is recommending denial based on the carport does not
2 meet the requirement of the 25-foot setback with any residential zoning
3 district. We also are saying that it does not meet the essential guidelines to
4 permit a variance request for the three identified as topographic, monetary,
5 or for a spur of economic development, and it was constructed without a
6 building permit.

7
8 Public notice was sent out. The same phone call was in direction to both
9 as these neighborhoods are very close to one another. Notification was
10 sent to everybody essentially twice. And so, it gave two opportunities for
11 everyone to be notified within the neighborhood.

12
13 Once again if Commission decides to approve this case, please be aware
14 to add the conditions as to the structure must remain open. The structure
15 needs to be attached to the home as it is not considered accessory
16 structure. It needs to be added. Must obtain a building permit and all
17 required inspections and be removed up until the 12-foot utility easement.

18
19 Your options are to vote "yes" and approve. If you choose to vote to
20 approve you do need to find new facts of finding not found within your staff
21 report. Vote "no" and deny, vote "yes" with conditions, or vote to table. The
22 applicant is here as well and I stand for any additional questions.

23
24 Kaiser: All right. Thank you. Coming to the Commission. Any questions?

25
26 Smith: Once again would you please go back to the photo of the, thank you. I have
27 a question for the applicant. Was this carport constructed by the same
28 people, person, because they look almost identical?

29
30 T. Stevenson: No, they are. They do ...

31
32 Kaiser: Before you answer that question, ma'am. Can you please state your name
33 for the record?

34
35 T. Stevenson: My name is Tracie Stevenson.

36
37 Kaiser: And do you swear or affirm that the testimony you're about to give is the
38 truth and nothing but the truth under penalty of law?

39
40 T. Stevenson: Yes, I do.

41
42 Kaiser: Go ahead.

43
44 T. Stevenson: This isn't, we don't have the same person who built, mine went up first in
45 our neighborhood. And actually, the way this all came about was back in
46 January my husband wanted to give, we were going to plan something for

1 our 43rd wedding anniversary. And I told him I'm putting this on you
2 because I plan them all and he said he'll do it.

3
4 And then didn't hear anything. February comes rolling around. I don't see
5 anything happening. Like he hasn't made any plans. And we had an
6 automotive business here in town and he was a very, very busy man. March
7 comes rolling around and March 3rd is a Friday and we were having
8 breakfast and he was getting ready for work, and he comes back in and he
9 has a massive heart attack right in front of me. And all my attempts to try
10 to save him were gone.

11
12 And you go through all the motions of a funeral and all and then I did. April
13 comes running around. My anniversary was April 12th. April comes
14 around, the first week of April and I get somebody rang my doorbell. I go to
15 the door and it was a grandfather, a father, and a son, and they said that
16 they were here to put up an awning for me. Well you can imagine how
17 excited I was because this was something we always wanted, both of us.
18 And I know Roger. Roger always liked to do things correct. He never, if he
19 knew he was supposed to have a permit, I know he would have looked into
20 that because he was very adamant about that kind of a thing.

21
22 And so, you can imagine how excited I was. I said yes, please put it up. I
23 was thrilled. A permit never even crossed my mind. It was just, I literally
24 got weak at the knees. Well next morning comes, I was there. They came
25 and put it up and I watched them. They did the first two poles there; I saw
26 them dig the holes. It's three feet down into the ground with, they put a lot
27 of cement. It's bolted towards the end of the garage very securely. I mean
28 it's not going anywhere. It's structurally sound.

29
30 And so, I was thrilled and then of course I was, codes comes probably about
31 three days later. I guess he said he was going through the neighborhood
32 and saw it. And he put a notice on my door. And so, then I right away called
33 here and said what do I need to do to get a permit for this? And he sent me
34 through all the motions and I did them all because I want to keep it. It's the
35 last gift I'll ever receive from my late husband and he was like my best friend.
36 And I just really feel, I just really don't want to see it dismantled and taken
37 away. It's that special.

38
39 Now, she said it didn't provide any safety features. Now, this does provide
40 safety features. Last winter, I actually slipped outside while we were
41 clearing off our windshields. And it does provide elements from the
42 weather. I mean it's a 20 x 20 and it's structurally, has beautiful curb appeal.
43 And I also presented some letters from my surrounding neighbors that it did
44 not even propose a threat to them. They were absolutely thrilled about it
45 and didn't give me any heartache about it whatsoever. I was just, I didn't
46 know.

1
2 So I just thought I would come here today and just kind of give you a little
3 bit of insight how special it really is to me. And I hope I'm able to keep it
4 and I hope you all can find it in your hearts to allow me to have it and maybe
5 purchase a permit and be able to keep it. We all don't know how long we're
6 going to be here. I mean everything we have can be gone just like that.
7 And I just want to present my case and see if that's obtainable.

8
9 Now it's not attached but I did get a contractor to come over and look at it.
10 And he said that is attachable. He said it's just so close and he said that he
11 would do that for me. So I'm willing to do what I have to do to keep it and
12 enjoy it for as long as I can. I don't plan on selling my home. I plan on living
13 in it. And now that I'm alone, it does provide some safety for me. I stand
14 up here literally broken going through all this. And I just have to let you
15 know that if you would allow me to obtain a permit, I would be forever
16 grateful respectfully. Thank you.

17
18 Kaiser: Thank you. Any other questions? Commissioners Smith.

19
20 Smith: Ma'am I just wanted to offer my deepest condolences to you and your family
21 for the loss of your husband. And I know that this carport means a lot to
22 you. It's difficult for us as a Commission here. We get many cases where
23 carports are built in the City without permission and it's a challenging job for
24 codes because they're doing their job. And although this has special
25 meaning to you, the carport is no different than the previous applicant as far
26 as the amount of the variance that you're requesting.

27
28 And so, our hearts are with you and your family. We have a decision that
29 we'll have to make and so it will be a difficult one but we'll make the best
30 decision that this Commission can make based on the information we've
31 been provided.

32
33 Vega: I also want to say that regardless of what decision we come to you can
34 always appeal to the City Council; is that correct? So that's just something
35 else to share with you as well.

36
37 Kaiser: I also extend my condolences as somebody who unexpectedly lost a family
38 member within the last year. I certainly understand what you've been going
39 through. I think the difficulty here is there's rules in place and it's the
40 responsibility of all of us to be aware. I know this seems like something you
41 probably would never think of but the reality is these types of home projects
42 they are regulated.

43
44 And honestly hearing you explain what they did to put the posts in the
45 ground, I'm just very thankful nobody hit something they would regret hitting

1 especially if they were not aware. So call before you dig. But I think this is
2 just kind of unfortunate but there are rules in place. So that's all I'll say.

3
4 Is there anybody in the audience who wishes to speak on this item? Yes,
5 ma'am. Please come forward and please state your name for the record.

6
7 Vulco: Sarah Vulco.

8
9 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
10 and nothing but the truth under penalty of law?

11
12 Vulco: Yes, sir.

13
14 Kaiser: I'll give you three minutes.

15
16 Vulco: Okay. So when Tracie called me and asked me to look at the scenario that
17 had been presented to her from the City, I was of course wanted to help in
18 any way that I could. My background is that I am a general contractor and
19 I'm also a civil engineer. I work for the City at one point in the Public Works
20 Department. And then at this point, I'm a Regional Project Manager for the
21 State of New Mexico.

22
23 Based on my background what I wanted to present respectfully is that in the
24 case of building \$30 to \$50 million structures for the State of New Mexico,
25 there are situations where User Department buys a plat of land and there is
26 a utility easement right down the middle of the property. And so, at that
27 point we're coming together and collaborating with the design professional
28 saying, my gosh, how do we build anything on this plat of land?

29
30 And so, we try to take a more ethical approach. And what we do is often
31 times we'll build a building maybe with an outdoor courtyard that's over that
32 easement. And what we tell the User Department at that time is that we will
33 build the structure but they will have to resume the cost of remove and
34 replacement in the case that the utility easement, a project comes through
35 that requires them to access the utility easement.

36
37 And so, a lot of times we construct these buildings like I said with the
38 courtyard in the middle and that's the portion that's over the easement so
39 that it's predominantly flat work which is sidewalks things like that. So the
40 User Department would then tear that up and remove and replace it. And
41 so, there's an addendum to the contract when we do something like that.

42
43 My request is that if Tracie would be willing to sign some sort of an
44 addendum or some sort of paperwork that would say in the case of these
45 utilities needing to be accessed that she would remove and resume the cost
46 of removing the carport at that time. This isn't saying that she keeps the

carport for 20 years. It's not saying that she keeps the carport forever. It's saying during this time when emotions are raw and there's newly broken hearts that they would be able to keep the carport. And that's my request. Thank you for your time and consideration.

Kaiser: Thank you. Anybody else in the audience that wishes to speak? Yes, ma'am. Please come forward. Please state your name for the record.

Morgan: My name is Vicki Morgan.

Kaiser: And do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Morgan: Yes.

Kaiser: You have three minutes. Please go ahead.

Morgan: I am writing this letter on behalf of Tracie, my dear friend since grade school, to attest to her impeccable character and extraordinary circumstances surrounding the awning in question.

Throughout our years of friendship, Tracie has consistently shown herself to be an individual of outstanding character. She possesses a rare combination of qualities that can only be described as extraordinary. She is caring, always placing the needs and concerns of others above her own. She exudes positivity even when faced with challenges that would overwhelm many. Her resilience, her generosity and her kindness are qualities I have witnessed firsthand for many years.

The awning which stands at the heart of dispute represents more than just a mere structure to her. It was one of the last gifts given to her by her late husband before his untimely passing. Every time she looks at it, she is reminded of the love they shared and the memories they created together. It's a testament to their bond and an emblem of the life they built. While some may view it as just an awning, for Tracie it holds profound sentimental value.

Furthermore, beyond the emotional significance, the financial burden of removing the awning would be undue and harsh especially given the heartache she has already endured. I kindly request that you consider the exceptional circumstances of this case. Removing the awning would not only be financially expensive for Tracie but would also mean erasing a tangible reminder of her husband. I sincerely hope that a compassionate resolution can be reached in this matter taking into account both the character of my dear friend and the significant emotional implications of

1 removing such a treasured memento. Thank you for your time and
2 consideration.

3
4 Kaiser: Thank you very much. Anybody else that wishes to speak? Yes, ma'am.
5 Please come forward. State your name for the record.

6
7 Gennings: Hi. My name is Lindsey Ray Gennings.

8
9 Kaiser: And do you swear or affirm that the testimony you're about to give is the
10 truth and nothing but the truth under penalty of law?

11
12 Gennings: Yes, I do.

13
14 Kaiser: Please go ahead.

15
16 Gennings: All right. So everybody has kind of hit upon the emotional aspect of Tracie
17 losing her husband which was very sad. But I would like to provide a
18 different perspective on the structure.

19
20 So I work for Wet Dog Mobile Grooming Services. And I am out there
21 probably at least once a month for the last seven years to groom her dogs,
22 make sure they're nice and clean. And I've never seen a weed in her yard.
23 Her house is always kept up really nice. That structure is really nicely built.
24 I complimented her on it the first time I came out and saw it. I was like this
25 is really nice.

26
27 It doesn't really block anybody's view. And it's so hot in Las Cruces that
28 Tracie likes to put out water for the stray cats in the neighborhood. And it's
29 very nice for me to see someone taking initiative to prevent unneeded
30 cruelty to the cats, where Las Cruces takes them and spays them, neuters
31 them and then places them back where they found them. We don't need to
32 be cruel to the cats so it's nice to see.

33
34 I've been out there several times. I get to see the cats getting a nice cool
35 drink of water. It provides shade for her car so the paint doesn't get eaten.
36 And it seems to me that if the utilities are underground already, they're going
37 to have to go under the concrete slab so I don't think that it's a problem
38 having the carport there. And I'm sure that if it is for the utilities in the future
39 that she would be willing to remove it or replace it or whatnot.

40
41 And I'm sure that she didn't know about a permit because of her husband
42 being the last gift that she was given from him. So I would like to see Tracie
43 be able to keep the carport. That's it.

44
45 Kaiser: Thank you. Anybody else? Please state your name for the record.

46

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1 Allen: My name is James Allen.

2
3 Kaiser: And do you swear or affirm that the testimony you're about to give is the
4 truth and nothing but the truth under penalty of law?
5

6 Allen: I do.

7
8 Kaiser: Go ahead.
9

10 Allen: So I do not know Ms. Tracie by any means or length measure. I did listen
11 to her testimony and narrative. There were some things that were brought
12 up to me knowing now she was in her emotional state after having recently
13 lost her husband. She was presented by three gentlemen. I know that in
14 Las Cruces having had family members who are small business
15 contractors, she was presented as that this was something that was
16 arranged for her.
17

18 She has stated that she is willing to retain a permit and take care of any
19 fees that were unnecessarily missed with this. But I do question, she was
20 presented with three individuals who were stated that they were contracted
21 to do this job. So with her emotional state at the time and with her
22 knowledge, I mean most people in town do not know building code but it
23 seems that she may have been led to believe that this was a permitted job
24 at the time. And she later found out that she did not have proper contractors
25 so I believe that is something to be taken into consideration in this case.
26

27 Kaiser: Thank you. Okay. Is there anybody else who wishes to speak? Yes, sir.
28 And before you come up can I just see hands so we just have an idea of,
29 okay. So this gentleman is going to be the last one. Please come forward.
30 Please state your name for the record.
31

32 B. Stevenson: Hi. My name is Brent Stevenson.
33

34 Kaiser: And do you swear or affirm that the testimony you're about to give is the
35 truth and nothing but the truth under penalty of law?
36

37 B. Stevenson: Yes.
38

39 Kaiser: Go ahead.
40

41 B. Stevenson: Yes. Well, I'm up here just to kind of talk. This is my mother and I do know
42 that my father after hearing or seeing that she did fall in the driveway. I
43 mean I know you took it upon himself to make sure that it will never happen
44 again. And I'm sure that's the reason why he did purchase this awning.
45

Agenda Item #8.1.

1 As her son and the rest of her family, we're concerned about her, about her
2 safety of course. And now that she does live alone, we are concerned that
3 we just want her to be safe. And I think that if you're able to grant this
4 variance I mean I know that she'll be more than grateful. We'll all be grateful
5 and we'll do whatever it takes to conform with your policies and everything
6 if that were possible. It does protect the driveway from its elements, from
7 snow, from rain, from the heat. I just see more positives with this and I just
8 wanted to talk about that. Thank you.
9

10 Kaiser: Thank you. Okay. Coming back to the Commission. Commissioner Smith.
11

12 Smith: I just have one more question for staff. Did you state that there was also a
13 12-foot easement with this property also, or it was just the previous
14 proposal?
15

16 Gonzales: Mr. Chair, Commissioner Smith. There is a 12-foot utility easement that
17 runs along every property within this subdivision in the front of those
18 property boundaries. A lot of times what we see in newer subdivisions is
19 that is essentially where all the utilities are being placed. There used to be
20 in the old part of town where we would get utility easements in the back, on
21 the side of the properties. Now everything is generally ran through the front
22 of the properties and it's 12 feet wide as generally the distance we see.
23

24 Smith: Okay. Thank you.
25

26 Kaiser: All right. Any other questions, comments? All right. Looking for a motion
27 to approve.
28

29 Vega: I make a motion to approve item 9.4.
30

31 Smith: I second.
32

33 Baum: Board Member Acosta.
34

35 Acosta: I vote yes to approve with the conditions that the City staff had outlined.
36

37 Kaiser: You need to provide a ...
38

39 Acosta: Sorry, can I go back to that page if that's the case? So I guess it would just
40 be all four lines of that. Should I read that out?
41

42 Kaiser: No. I was just looking for there, based on what was your rationale for voting
43 to approve with the conditions.
44

45 Acosta: I'm sorry about that. Okay. So just based on the emotional impact and the
46 willingness to work with City staff to keep the structure alive in whatever

Agenda Item #8.1.

compliant capacity and willingness to pay for that. So I think if they'd be willing to work under that condition then they need to perhaps preserve a structure that had that much more sentimental value.

Baum: Board Member Smith.

Smith: I vote yes to approve. I know that this case is very similar to the previous applicant. There are some extraordinary circumstances I think in this particular case based on the fact that the homeowner was not aware that she was even going to be receiving the carport. And that the people who presented it, who arrived to construct it may not have told her that whether they were actually contractors or not. And there is room for compassion, there is room for just the circumstances under which this particular carport was constructed as opposed to the previous one. And so, that is why I'm voting yes to approve.

Baum: Board Member Vega.

Vega: I echo Commissioner Smith's comments. I also vote yes to approve based not only on the financial hardship. Also, the suggestion for easement. I have an easement in my backyard, it's totally different but always something to consider. Thanks.

Vega: Board Member Bennett.

Bennett: I vote to deny based on staff recommendation.

Vega: Board Member Murray.

Murray: I vote to deny based on staff recommendation.

Vega: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion denies due to a tie.

9.5 Case No. 23VO0500107: A variance request to deviate one (1) freestanding sign to the maximum permitted two (2) freestanding signs and a to deviate seven (7) feet to the minimum required fifteen (15) foot freestanding sign front yard setback for a property located at 1300 El Paseo. The property is 5.50 + acres in size and zoned C-3 (Commercial High Intensity). Submitted by Burke Sign Company, LLC., representative. Council District 3.

Appeal to City of Las Cruces for Carport at 4053 Winters Street

Reasons Constituent is filing an appeal of variance to be heard by City Council:

- No complaints from the public regarding the structure during the public zoning meeting and/or via correspondence to the City of Las Cruces during the 14 day variance public notice period.
- No traffic visibility concerns are caused by the structure.
- No Utilities are being impeded by the structure; please see Exhibit A for photos of property locates as all utility infrastructure is in the street and all property owners' utility meters and connections are perpendicular to the structure.
- Zoning commission did not provide feedback per their decision at the public meeting.

Constituent pleadings to keep structure:

- Emotional/Mental/Monetary hardship; please see Exhibit B
- Constituent is workable and agreeable to obtain a permit and pay all fees associated with the structure as this item was missed by her late husband; please see reference Exhibit B for clarity.
- Constituent was made aware that the structure is encroaching on the utility easement by ¹/₈' and is willing to modify the structure to be outside the easement even though no current utilities are being impeded upon.
- Constituent is planning to paint carport steel to match house trim upon City approval.

Exhibit A

Agenda Item #8-1 NM811 LOCATE REQUEST

TICKET NUMBER: 23SE270344
Ticket Type: Standard Locate
Creation Date: 09/27/23 AT 10:57

Update of:

Excavator Information

Company:	SARAH VOLCKO	Main Contact Phone:	(575) 496-0877
Address:	4053 WINTER STREET	Secondary Phone:	5052319215
City, St, Zip:	LAS CRUCES, NM 88012	Main Contact Email:	SVOLCKO@HOTMAIL.COM
Company Phone:	5754960877	Alternate Contact:	
Company Fax:		Alternate Contact Phone:	
Main Contact:	SARAH VOLCKO	Alternate Contact Email:	

Work Information

State:	NM	Work To Begin:	10/02/23 AT 00:01
County:	DONA ANA	Expire Date:	10/23/23 AT 23:59
Place:	LAS CRUCES		
Address:	4053 WINTERS ST		
Intersection:	HOLLY DR		
Latitude:	32.351212	Longitude:	-106.786627
Secondary Lat:	32.35148	Secondary Long:	-106.786198
Work Type:	Replace - See Remarks	Working For:	SELF
Pre-marked:	NO	Mechanical Boring:	NO
Contact Prior to Locating:	NO	Contact After Locating:	NO

Location Information (Driving Directions)

Location Information (Spotting Instructions)

SPOT FRONT OF THE YARD AREA WILL BE MARKED IN WHITE

Location Information (Remarks)

WORK TYPE:RELOCATING POTION OF AWNING HAZARDS: NONE // ACCESS: OPEN // ANIMALS: NONE

TRSQ: [W8T22SR01ES36NE] [W8T22SR01ES36SE]

Utilities Notified:

Code	Name	Added Manually?
QLNS	CENTURYLINK LOCAL NETWORK SOUTH	False
DAMDW	DONA ANA MDWCA	False
ELEL	EL PASO ELECTRIC CO	False
ZDAC	ZIA NATURAL GAS - DONA ANA COUNTY	False
COLC1	CITY OF LAS CRUCES - PUBLIC WORKS	False
CCNM00	COMCAST*	False
COLC4	CITY OF LAS CRUCES - UTILITIES	False

Response Status As Of Monday, October 02, 2023 11:47 AM

Status	Code	Name	Facilities
Closed	QLNS	CENTURYLINK LOCAL NETWORK SOUTH September 28, 2023 4:42 PM by CLINK: UFO Cleared	Phone, Cable, Fiber
Closed	COLC1	CITY OF LAS CRUCES - PUBLIC WORKS September 27, 2023 11:02 AM by jgreen@las-cruces.org: UFO Cleared Jan	Electric, Fiber, Storm Drain, Traffic
Closed	COLC1	CITY OF LAS CRUCES - PUBLIC WORKS September 27, 2023 11:35 AM by mbencomo@las-cruces.org: UFO Cleared	Storm Drain
Closed	COLC1	CITY OF LAS CRUCES - PUBLIC WORKS	Street Lights, Traffic

Agenda Item #8.1.

Closed	COLC1	September 27, 2023 11:02 AM by jgreen@las-cruces.org: UFO Cleared jan CITY OF LAS CRUCES – Electric PUBLIC WORKS
Closed	COLC4	September 27, 2023 11:02 AM by jgreen@las-cruces.org: UFO Cleared jan CITY OF LAS CRUCES – Gas UTILITIES
Closed	COLC4	September 27, 2023 11:49 AM by begarcia@las-cruces.org: Site Marked 647 CITY OF LAS CRUCES – Water UTILITIES
Closed	COLC4	September 27, 2023 11:49 AM by begarcia@las-cruces.org: Site Marked 647 CITY OF LAS CRUCES – Waste Water – Sewer UTILITIES
Closed	CCNM00	September 27, 2023 11:49 AM by begarcia@las-cruces.org: Site Marked 647 COMCAST* Cable, Fiber
Closed	DAMDW	- September 28, 2023 4:42 PM by CMSNM: UFO Cleared - September 27, 2023 12:14 PM by Eloy@dawater.org: UFO Cleared out of area DONA ANA MDWCA Water, Waste Water – Sewer
Closed	ELEL	September 28, 2023 4:42 PM by USICLLC: UFO Cleared EL PASO ELECTRIC CO Electric
Closed	ZDAC	September 28, 2023 8:40 AM by atalamantes@zngc.com: UFO Cleared Zng clear AT ZIA NATURAL GAS – DONA ANA COUNTY Gas



Exhibit B

10/10/2023

Dear Miyagishima and council members. My name is Tracie Stevenson and I live at 4053 Winters Street.

My husband and I have lived there since 2005.

I'm respectfully requesting for your compassion and understanding on my situation that I'm about to present to you regarding my shaded structure that was pre-arranged and paid for as an anniversary gift from my late husband for our 43rd wedding anniversary.

Unfortunately, my husband passed away unexpectedly on March 3rd, 2023. Our Anniversary is April 12th. He never got to see my emotional and happy response from this wonderful gift that he arranged for us, which we both shared a vision for and wanted for our property. He knew I would love it.

Since his passing, this new change has absolutely devastated my life, he owned and managed his own automotive repair shop in Las Cruces. He strived to keep a 5-star rating through his google app and was able to achieve that by giving great customer service and keeping his customers very satisfied, he did so successfully.

His business was our sole income. I helped out with various tasks and enjoyed it. I now live on survivor benefits through social security, which is my main income. I'm faced with single-handedly managing my own life now. I also have a part-time job working for a book keeping business doing in-putting for their clients.

These awnings are being built in my surrounding areas and used for various reasons, mostly for shade for RVs, motor homes, recreational vehicles and personal vehicles. My home is about two miles from the Dona Ana County line, these structures provide many benefits, mostly shielding from all seasonal weather elements. Mine was built, bolted and cemented in and masterfully designed for curb appeal. It's set back is far enough from the sidewalk for pedestrians walking and handicapped friendly. It is structurally sound.

At our last meeting, before my appeal. There was conversation about utility lines. I'm happy to report that my shaded structure is not impeding on any utility lines. The electric, gas and cable company have all come out and marked them, as they are running perpendicular on my property and not posing any problems if any utilities needed to be repaired.

As far as my monetary hardship it would be very traumatic, devastating and emotional for me to see it taken down. To you it's an awning, for me it's a momentum from my late husband and the last gift I'll ever receive from him in my lifetime. It's a beautiful reminder for the love we shared and our successful relationship we had in our lifetime.

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I would like to apologize on my husband's behalf and not obtaining a permit. I'm not sure if it was in process or not. Either way it was an absolute oversight on his part. I know he would never try to pull anything over on anybody. He was very adamant in doing things right.

In obtaining my permit, I will pay all fees associated with my structure. I plan on painting it to match my home and maintaining it. If it needs to be attached to my home, that is attainable. I will make sure all of this is done upon city approval for my permit. In closing, I've submitted a copy of my marriage license, a copy of my husband's death certificate outlining the timeline in which the events have taken place. Everything in my statement is factual for my hardship and my justification letter to the city.

Thank you for your time, compassion and consideration on this matter.

Tracie Stevenson
4053 Winters St.
Las Cruces, NM 88005
575-621-7105

CERTIFICATE OF DEATH

New Mexico Vital Records and Health Statistics
State of New Mexico
United States of America

No.5254319

DECEDENT'S LEGAL NAME <<<Henry Rogers Stevenson>>>		IF FEMALE, MAIDEN NAME <<<>>	
DATE OF DEATH March 03, 2023	TIME OF DEATH 09:06 AM ☒ PM ☐	SEX Male	SOCIAL SECURITY NUMBER 459-29-8967
MARITAL STATUS Married	SURVIVING SPOUSE - If wife, maiden name <<<Tracie Mattox>>>		
DATE OF BIRTH June 16, 1961	BIRTH PLACE El Paso, Texas	SERVED IN U.S. ARMED FORCES Yes ☒ No ☐	
DECEDENT'S RACE White	TRIBE <<<>>	HISPANIC Yes ☒ No ☐	
DECEDENT'S RESIDENCE COUNTY Dona Ana		DECEDENT'S RESIDENCE STATE New Mexico	
MOTHER'S FULL MAIDEN NAME <<<Cecilia Munoz>>>		FATHER'S FULL NAME <<<Henry Rogers Stevenson>>>	
METHOD OF DISPOSITION ☒ Burial ☐ Donation ☐ Removal from State ☐ Other (Specify): ☒ Cremation ☐ Entombment		DISPOSITION LOCATION Bacas Sunset Crematory	
FUNERAL SERVICE FACILITY Baca's Funeral Chapels, Las Cruces		COUNTY OF DEATH Dona Ana	
PLACE OF DEATH 4053 Winters Street	TYPE OF PLACE Decedent's Residence	NAME OF PERSON CERTIFYING CAUSE OF DEATH <<<Jesus R. Duran III MD>>> Signature Electronically Authenticated	
MANNER OF DEATH ☒ Natural ☐ Accident ☐ Homicide ☐ Suicide ☐ Undetermined ☐ Pending Investigation			
CAUSE OF DEATH PART I. Events such as diseases, injuries, or complications that directly caused the death. a. Acute myocardial infarction b. Benign hypertension c. Diabetes Mellitus type II d. <<<>>			
PART II. Other significant conditions contributing to death. <<<>>			

File Number: 2023-003982

File Date: March 22, 2023

Order Number: 20230306561

Renee Valencia, State Registrar

CERTIFIED COPY OF VITAL RECORD

This is a true and exact reproduction of all or part of the document
officially registered and filed with the New Mexico Bureau of
Vital Records and Health Statistics, Department of Health.



Page 2 of 37

WARNING: IT IS ILLEGAL TO ALTER, COPY OR COUNTERFEIT THIS CERTIFICATE.
ADVERTENCIA: ES ILEGAL ATERAR, COPIAR O FALSIFICAR ESTE CERTIFICADO.

DATE ISSUED

No. 282



COUNTY OF
DONA ANA

STATE OF
NEW MEXICO

To any person Authorized by law to perform the Marriage Ceremony



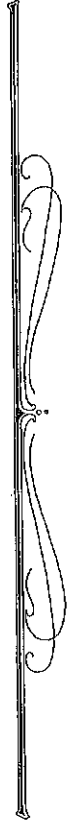
YOU ARE HEREBY AUTHORIZED TO JOIN IN MARRIAGE

HENRY ROGER STEVENSON, JR. of LAS CRUCES, NM
and TRACIE CHERYL MATTOX of LAS CRUCES, NM

and of this License you will make due return to my office within the time prescribed by law.

WITNESS my hand and seal of said Court at Las Cruces, New Mexico.

this 27th day of March 19 80
By *Karen S. Kosor* Deputy Delia Garcia Barncastle County Clerk.



Recorded March 27 19 80 at 11:45 A M., in Marriage Record Book No. 126 Page 282

By *Karen S. Kosor* Deputy Delia Garcia Barncastle County Clerk.

STATEMENTS
RECEIVED AND FILED
IN COUNTY CLERK'S OFFICE
AT March 27 19 80
11:45 O'CLOCK A
DATE OF PREMARITAL PHYSICAL
EXAMINATION
BRIDE 3-27-80
GROOM 3-27-80
COUNTY CLERK DONA ANA
BY *Karen S. Kosor* DEP



24-055

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1	☒ 2	☒ 3	☒ 4	☒ 5	☒ 6	☐ N/A
1st Reading:						Adopted:	November 20, 2023
Drafter:	Domonique Rodriguez			Department:	Utilities		
Program:	Rate & Economic Analysis			Line of Business:	Business Services		
Title:	A RESOLUTION APPROVING AND ADOPTING A REVISED RATE SETTING PROCESS.						

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
To approve and adopt a revised rate setting process.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
On May 16, 2016, per Council Resolution No. 16-22, Las Cruces Utilities ("LCU") staff researched and developed a streamlined and standardized utility rate-setting process. After the full set of rate reviews that were completed in 2022, LCU staff determined that the rate-setting process adopted in 2016 should be updated.

LCU staff brought updates to the Rate Setting Process to the LCU Board on July 13, 2023, where this resolution was tabled indefinitely with guidance to remove the Utilities Customer Advisory Group from the process. The LCU Board had a work session on August 10, 2023, to discuss and make changes to the Rate Setting Process that were to be incorporated into a formal resolution.

The proposed revised Rate Setting Process provides guidance by clarifying the adequate methodologies to be used, the order of rate reviews, approaches, and indexes that should be referenced to guarantee a complete rate review. The proposed revised Rate Setting Process also adds clarification to the LCU Board's role in performing customer outreach, gathering input, and incorporating input into the consultant(s) report.

This proposed Rate Setting Process also authorizes the LCU Board to approve an annual increase to utility rates not to exceed a predetermined percentage rate as outlined in Exhibit "A." The proposed revised rate-setting process continues to recognize that any utility Rate Setting Process should incorporate industry-accepted methodologies.

On September 14, 2023, Resolution No. 24-LCU008, was approved by the LCU Board, recommending to City Council to adopt a revised Utility Rate Setting Process.

LCU staff recommends that the revised Rate Setting Process attached hereto as Exhibit "A," be adopted by Las Cruces City Council.

SUPPORT INFORMATION:

Agenda Item #8.2.

[Exhibit "A" - Proposed](#)
[Attachment "A"- Redline](#)

PLAN(S):

Department Strategic Business Plan

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes" - Will approve the Resolution and adopt the revised Rate Setting Process.
2. Vote "No" - Will not approve the Resolution and not adopt the revised Rate Setting Process. Staff will require strategic guidance.
3. Vote to "Amend" - Will amend the Resolution and the revised Rate Setting Process.
4. Vote to "Table" - Will table the Resolution and staff will require strategic guidance.

RESOLUTION 24-055

A RESOLUTION APPROVING AND ADOPTING A REVISED RATE SETTING PROCESS.

The City Council is informed that:

WHEREAS, Las Cruces Utilities ("LCU") staff researched and developed a streamlined and standardized utility rate setting process, which process was ultimately adopted by the Las Cruces City Council on May 16, 2016, per Council Resolution No. 16-222; and

WHEREAS, LCU staff has determined that the rate-setting process adopted in 2016 should be updated; and

WHEREAS, the proposed revised Rate rate-setting process provides guidance by clarifying the adequate methodologies to be used, the order of rate reviews, approaches, and indexes that should be referenced to guarantee a complete rate review; and

WHEREAS, the proposed revised Rate Setting Process also adds clarification to the LCU Board's role in performing customer outreach, gathering input, and incorporating input into the consultant(s) report; and

WHEREAS, this proposed Rate Setting Process also authorizes the LCU Board to approve an annual increase to utility rates not to exceed a predetermined percentage rate; and

WHEREAS, the proposed revised rate-setting process continues to recognize that any utility rate-setting process should incorporate industry-accepted methodologies; and

WHEREAS, on September 14, 2023, Resolution No. 24-LCU008, was approved by the LCU Board, recommending to City Council to adopt a revised Utility Rate Setting Process; and

WHEREAS, LCU staff recommends that the revised Rate Setting Process attached hereto as Exhibit "A," be adopted by Las Cruces City Council.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the revised Rate Setting Process attached hereto as Exhibit "A" and made part of this Resolution be adopted by Las Cruces City Council.

(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

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



Las Cruces Utilities

Rate Setting Process

September 2023

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- 3. Financial Criteria..... Page 6

Glossary

- **2/12th:** A target minimum balance for a fund's expenditure level for a 2-month period.
- **Adjustment:** Known and measurable changes of the audited Fiscal Year data for the purposes of setting rates in a rate review.
- **Capital Improvement Projects:** Engineering and construction services for major new and/or rehabilitation projects on the utility's system and infrastructure.
- **Comprehensive Annual Financial Report (CAFR):** Governmental financial statements comprising the financial report of the City of Las Cruces (City) that adhere to the Governmental Accounting Standards Board.
- **Equipment Replacement Reserve:** Fund to purchase replacement vehicles, trailers, and major equipment used to maintain and operate each respective utility operation.
- **Fiscal Year (FY):** A 12-month period that begins on July 1 and ends on June 30.
- **Funds:** A group of related accounts that are used to record, administer and control categorization of revenue, expenditures, and resources for specific activities within each utility operation.
- **Rate Revenue:** All revenues collected through City approved rates, tariffs, or utility connection charges.
- **Rate Riders:** Las Cruces Utilities (LCU) Board approved mechanisms to recover or refund interim unexpected/unplanned costs or changes in costs.
- **Request for Proposal (RFP):** A proposal made by the City inviting bids from possible suppliers of products or services, which follow the City's Procurement Code.
- **Test Year:** Audited data for a FY as presented in the City's end of FY CAFR.
- **Transfers:** Amounts designated to fund capital improvement projects, equipment replacement reserve, or intergovernmental transfers to the General Fund to fund Department's utilization of City-wide common administrative resources.
- **Payment in Lieu of Transfers (PILT):** Amounts designated to the General Fund to pay for some or all of the property tax revenue due to tax exempt ownership or use of real property.

Rate Setting Process

1. Establish the requirement for a rate review:
 - a. Request submitted to LCU Board by LCU staff based on industry accepted methodology
 - i. For example, the “AWWA M1 Principles Water Rates, Fees, and Charges,” guidelines for water utilities.
 - ii. Appropriate training can be provided to the LCU Board before the next rate review.
 - iii. The training would not affect the rate review process itself.
 - b. LCU Board concurrence
 - c. LCU Board determines order of rate reviews based on staff’s recommendations
 - d. Rate reviews are broken out into two categories and performed in phases with minimal time in between the two categories.
2. Select consultant:
 - a. Identify Budget
 - b. RFP, follow established City Procurement Code
 - i. The RFP will address impartiality concerns for consultants used in prior rate reviews.
 - ii. This process is approved by Council Ordinance and is used for all Procurement of Professional Services.
 - c. LCU Board awards the contract to the consultant(s)
3. Perform rate review study:
 - a. LCU staff compiles financial data
 - i. The consultant will follow the LCU’s Financial Criteria to complete the rate review, which shall be the standard model for all rate reviews.
 - b. Consultant produces draft report
4. Results presented to LCU Board:
 - a. Draft report presentation to LCU Board
 - i. The consultant(s) will provide the results of the rate reviews (including any necessary alternative options) via a draft report and presentation to the LCU Board for direction.
 - ii. Regional rates will be compared within the report to include but not limited to Alamogordo, Deming, Silver City, Carlsbad, Albuquerque, New Mexico; Tucson, Arizona; and El Paso, Texas.
 - iii. Environmental Protection Agency affordability index will be provided in the report for comparison.
 - b. LCU provides direction to consultant
 - i. The LCU Board can make recommendations to modify the proposed rate adjustment options, request new rate adjustments options, modify the rate design, and/or reduce the number of options.
 - c. Consultant incorporates comments/recommendations based on LCU Board direction
 - i. After recommendations are incorporated, the consultant will provide another draft report.
 - d. LCU Board approves, disapproves, or modifies the report to be used for public outreach
5. LCU Board facilitates public input and feedback:

Agenda Item #8.2.

- a. LCU Board coordinates and hosts customer input meetings to gather commentary and feedback
 - i. Press releases, utility bill inserts, presentations, poster board, letters to the editor/guest editorials, and similar materials concerning rate reviews must receive LCU Board approval prior to publication. Press releases will be submitted to and issued by the City's Communication Office following standard City procedures. Utility bill inserts will be submitted to the Utilities Office of the Director staff and may be reformatted for consistency. All costs related to public outreach materials will be paid for by the Utilities Department.
 - ii. LCU Board will gather public input through at least one in person and/or online public meetings, and through a set comment period where input is also gathered through a generic email.
 - iii. Public outreach meetings will be hosted by the LCU Board with support provided by LCU staff.
 - iv. Once the public outreach period is complete, the LCU Board will review all public outreach comments.
6. Final report presented to LCU Board:
 - a. Summary of feedback from all parties is forwarded to the LCU Board to make a rate adjustment recommendation
 - i. LCU Board will receive the consultant's report, a brief summary of public outreach that was completed, and the feedback from the public outreach events.
 - ii. LCU Board will concur with an option presented by the consultant(s) or makes its own recommendation which must be supported by facts and data from the report.
 - iii. The rate review process will have an iterative process for LCU Board to evaluate and recommend documented solutions to Council. LCU Board can repeat outlined steps until satisfied with the Final Report.
 - b. LCU Board approves a Resolution recommending rate adjustments to the City Council
 - i. LCU Board makes a recommendation that is fair, reasonable, and balances the interests of the utility and the feedback provided by its customers.
7. City Council rate decision:
 - a. LCU staff will present the final report to City Council
 - i. City Council will receive the LCU Board's recommendation, the consultant's report, a brief summary of the public outreach that was completed, and the feedback from the public outreach events.
 - ii. LCU Board shall not appear before Council to voice their respective positions per Las Cruces Municipal Code Section 2-190 and the Governmental Conduct Act Section 10-16-3. The LCU Board shall not independently solicit any external consultant, representative or third-party not selected in accordance with this Rate Setting Process; this shall not preclude the public comment of any alternative perspective.
 - b. City Council approves new utility rate adjustment recommendation
 - i. City Council approves new utility rate adjustment based on consultant's recommendation or the LCU Board's recommendation.
 - ii. City Council may change the time frame (phased-in period) of approval for any of the options that were approved and recommended by the LCU Board, however, any City Council change proposing a different revenue requirement or

Agenda Item #8.2.

different rate design as between customer classes, will be remanded back to the LCU Board.

- c. City Council does not approve – remands back to LCU Board with strategic guidance
 - i. City Council has the prerogative to not approve the utility rate adjustment, in which case the matter will be remanded back to the LCU Board with strategic guidance.
 - ii. The rate review process will have an iterative process for LCU Board to evaluate and recommend documented solutions to Council. LCU Board can repeat outlined steps until satisfied with the Final Report.
 - iii. Submitted and remand loop between Council and LCU Board is a potential reality.

8. Tariff approval:

- a. When rates are approved by City Council, LCU will prepare updated tariff sheets to be approved by the LCU Board at the next available meeting
- b. Utility Rate Riders recover or refund interim unexpected/unplanned costs or changes in costs
 - i. Updates or revisions to the riders will be approved by the LCU Board.
- c. Annual Rate Increases
 - i. If a phased-in adjustment is approved, LCU Board has the authority to approve an annual increase not to exceed 5%.
 - ii. If a full implementation adjustment is approved, LCU Board has the authority to approve an annual increase based on the Consumer Price Index (CPI).

Financial Criteria

Criteria – Wages and Benefits:

- 1. Purpose: To establish utility rates to recover wages, salaries, benefits, and payroll tax expenses in a test period review year without incurring a deficit.
- 2. Justification: City Council authorizes increases in wages and benefits for all City employees. LCU personnel are on the same pay scale as all other City employees and LCU must recover this increase.
- 3. Calculation: Standardized Human Resources calculation based on hourly wage rates.
- 4. Example: Past years experienced an increase of 1.5% for the union contracts, a merit, and longevity increase for some City personnel. For example, Fiscal Year 2015 had increases in wages that amounted to:

	<u>FY15</u>	<u>FY16</u>	<u>% increase</u>
Gas & Energy	\$2,356,211	\$2,565,646	8.88%
Water	\$1,727,877	\$1,779,468	2.98%
Wastewater	\$1,790,252	\$1,875,240	4.75%
Solid Waste	\$1,582,370	\$1,704,854	7.74%

Criteria – Operating Expenses:

- 1. Purpose: To establish utility rates to recover on-going and recurring expenses to ensure a safe, reliable, and regulatory compliant operation of the utility.
- 2. Justification: LCU is an enterprise fund that must recover all operation and maintenance expenses through rates, in addition to equipment and capital funds, and Landfill Closure costs.
- 3. Calculation: Based on the most recent audited CAFR.
- 4. Example: Infrastructure repairs and maintenance expenses, materials, equipment, supplies, training, pumping and treatment expenses, and internal transfers, etc.

Criteria – Operating Fund Reserve:

- 1. Purpose: Achieve the targeted minimum fund balance that reasonably covers expenditures for 2 months out of a year (2/12th) or 16.67%, solely using the cash method. The requirement per the Department of Finance Authority and the City is to cover expenditures for 1-month out a year (1/12th). The CAFR currently calculates beginning fund balances using a modified accrual method, and this shall not be used in this criterion.
- 2. Justification: To ensure fund balance coverage is consistent with City budget requirements, which covers operational emergencies.
- 3. Calculation: Fund ending balance / (total expenditures - transfers).
- 4. Example: Water Operating Fund: \$1,321,163 / (\$14,845,122 - \$1,233,999) = 9.71%. The fund balance is below the target minimum balance of 16.67%.

Criteria – Administrative Transfer:

- 1. Purpose: Intergovernmental transfer(s) and PILT to the General Fund to fund the Department’s utilization of City-wide common administrative resources.
- 2. Justification: The Utilities Department is a part of the City organization and relies on administrative support from IT, Human Resources, Risk Management, and Legal.
- 3. Calculation: Executive budgetary action agreed upon by Budget, Finance, Department Directors, and the City Manager.

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4. Example: Gas & Energy FY2015 Administrative Transfer \$641,405 (5.70% of operational expenditures).

Criteria – Equipment Reserve Fund Transfers and Fund Balance:

1. Purpose: To fund current year rolling stock expenditures through funding transfers from respective Operating Funds to maintain an adequate reserve to mitigate the impact of expenditures based on LCU Replacement Schedule as approved by the LCU Board. The utility commits to maintain the industry average life of rolling stock.
2. Justification: Each operating utility's revenue stream funds the equipment reserve to ensure timely replacement of its equipment and vehicle stock in order to reliably operate and maintain each respective utility's system and service standards.
3. Calculation: (Current vehicle depreciation + $\frac{1}{2}$ year of depreciation for new vehicles + cost of new vehicles needed to be purchased in the upcoming year) x current price index factor.
4. Example: Wastewater: $(\$101,030 + \$64,056 + \$768,674) \times 1.02 = \$952,435$. For FY2015, the Wastewater Equipment Reserve Fund should have a minimum fund balance of \$952,435.

Solid Waste – Collections Vehicles:

1. Purpose: To fund current year collections vehicles and major equipment replacement expenditures through fund transfers from the Solid Waste Operating Fund to maintain an adequate reserve to mitigate the impact of expenditures based on LCU Solid Waste Replacement Schedule. The utility commits to maintain the industry average life of this rolling stock.
2. Justification: Solid Waste revenue stream funds the equipment reserve fund to ensure timely replacement of its collections equipment and vehicle stock in order to reliably operate and maintain Solid Waste service standards.
3. Calculation: [Current vehicle depreciation + $\frac{1}{2}$ year of depreciation for new vehicles + (actual new vehicles costs / average life)] x current price index factor.
4. Example: $[\$707,364 + \$68,333 + (\$1,500,000 / 8.5 \text{ years})] \times 1.02 = \$971,210.94$. For FY2015, the Solid Waste Equipment Reserve Fund would set a minimum fund balance of \$971,210.94.

Solid Waste – Light Duty Vehicles:

1. Purpose: Maintain the ability to fund recurring rehabilitation of light duty vehicle expenses and maintain an adequate reserve to fund planned expenditures based on LCU Solid Waste Replacement Schedule as approved by the LCU Board. The utility commits to maintain the industry average life of this rolling stock.
2. Justification: The capital fund will be used for the purchase of light duty rolling stock.
3. Calculation: (Current vehicle depreciation + $\frac{1}{2}$ year of depreciation for new vehicles + new vehicle cost) x current price index factor.
4. Example: $(\$100,000 + \$7,083 + \$85,000) \times 1.02 = \$195,924.66$. For FY2015, the Solid Waste Capital Fund would set a minimum fund balance of \$195,924.66.

Criteria – Capital Fund Transfers and Fund Balance:

1. Purpose: Maintain the ability to fund recurring rehabilitation expenses and maintain adequate reserve to fund impact of expenditures.
2. Justification: The capital fund funds the Capital Improvement Plan adopted by the City.
3. Calculation: Highest actual expense in a 5-year range - a minimum fund balance based on the average of 5-year actual recurring rehabilitation expenses.
4. Example: Highest actual Water expense in a 5 year range: \$2,682,625
5-year average of actual recurring rehabilitation expenses for Water: - \$1,716,358
\$ 966,267

the minimum fund balance is \$966,267. FY2015 the Water Capital Fund Balance was \$397,594.

Criteria – Debt Service:

1. Purpose: Maintain the ability to fund non-discretionary, non-recurring rehabilitation projects; new regulatory requirements; replacement of plant and facilities that do not reach their useful life; system expansion to existing or new service areas not paid by impact fees; and modernization of plant and infrastructure to integrate technological improvements. The ultimate level of borrowing will be determined pursuant to the Utilities Board recommendation and City Council authorization.
2. Justification: 1.4 debt service coverage is the recommended minimum by Moody's Bond Rating. However, LCU highly recommends maintaining a 1.6 debt service coverage.
3. Calculation: (utility service charges – operating expenses) / (debt service principal + debt service interest).
4. Example: Debt service to fund WWTF Primary Clarifier and Water Quality Laboratory Rehabilitation are non-recurring rehabilitation projects. Projects associated with NMDOT are non-discretionary projects.

Solid Waste:

1. Purpose: Solid Waste collection vehicles are the essential and major assets in this utility's operation.
2. Justification: Light duty vehicles and non-collections equipment will be primarily funded through rate revenue. Collections' vehicles and major equipment will be treated as capital and funded through operating fund transfers and debt may be considered during the annual budget review and the rate setting test period review.

Criteria – Rate Design

1. Rate design shall reflect the appropriate level of fixed and variable costs in the recovery of revenue requirement.
2. Rate design is an acceptable means to recover the cost of conservation measures or legislative mandates.



Las Cruces Utilities

Rate Setting Process

~~May 2016~~ September 2023

REDLINE

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REDLINE

Glossary

- **2/12th:** A target minimum balance for a fund's expenditure level for a 2--month period.
- **Adjustment:** Known and measurable changes of the audited Fiscal Year data for the purposes of setting rates in a rate review.
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- **Rate Revenue:** All revenues collected through [City](#) approved [rates](#), tariffs, ~~charges~~, or utility connection charges.
- **Rate Riders:** Las Cruces Utilities (LCU) Board approved mechanisms to recover or refund interim unexpected/unplanned costs or changes in costs.
- **Request for Proposal (RFP):** A proposal made by the City ~~of Las Cruces~~ inviting bids from possible suppliers of products or services, which follow the City's Procurement Code.
- **Test Year:** Audited data for a ~~Fiscal Year~~ as presented in the City's end of ~~Fiscal Year~~ [CAFR Comprehensive Annual Financial Report](#).
- **Transfers:** Amounts designated to fund capital improvement projects, equipment replacement reserve, or intergovernmental transfers to the General Fund to fund Department's utilization of City-wide common administrative resources.
- [Payment in Lieu of Transfers \(PILT\): Amounts designated to the General Fund to pay for some or all of the property tax revenue due to tax exempt ownership or use of real property.](#)

Rate Setting Process

1. Establish the requirement for a rate review:

- a. Request submitted ~~to by~~ LCU ~~Board by~~ LCU staff based on industry accepted methodology
 - i. For example, the “AWWA M1 Principles Water Rates, Fees, and Charges,” guidelines for water utilities.
 - ii. Appropriate training can be provided to the LCU Board before the next rate review.
 - ~~a.iii.~~ The training would not affect the rate review process itself.
- b. LCU Board concurrence
- c. LCU Board determines order of rate reviews based on staff’s recommendations
- ~~b.d.~~ Rate reviews are broken out into two categories and performed in phases with minimal time in between the two categories.

2. Select ~~c~~ Consultant:

- a. Identify Budget
- b. RFP, follow established City Procurement Code
 - i. The RFP will address impartiality concerns for consultants used in prior rate reviews.
 - ~~b.ii.~~ This process is approved by Council Ordinance and is used for all Procurement of Professional Services.
- c. LCU Board ~~awards the contract to the~~ ~~selects~~ consultant(s)

3. Perform rate review study:

- a. LCU staff compiles financial data
 - ~~a.i.~~ The consultant will follow the LCU’s Financial Criteria to complete the rate review, which shall be the standard model for all rate reviews.
- b. Consultant produces draft report
- ~~b.4.~~ Results presented to LCU Board:
 - a. Draft report presentation to LCU Board, ~~Utility Customer Advisory Group (UCAG), and public~~
 - i. The consultant(s) will provide the results of the rate reviews (including any necessary alternative options) via a draft report and presentation to the LCU Board for direction.
 - ii. Regional rates will be compared within the report to include but not limited to Alamogordo, Deming, Silver City, Carlsbad, Albuquerque, New Mexico; Tucson, Arizona; and El Paso, Texas.
 - iii. Environmental Protection Agency affordability index will be provided in the report for comparison.
 - b. LCU provides direction to consultant
 - i. The LCU Board can make recommendations to modify the proposed rate adjustment options, request new rate adjustments options, modify the rate design, and/or reduce the number of options.
 - c. Consultant incorporates comments/recommendations based on LCU Board direction
 - i. After recommendations are incorporated, the consultant will provide another draft report.

- ~~e.d.~~ LCU Board approves, disapproves, or modifies the report to be used for public outreach
- ~~4.5.~~ LCU Board facilitates ~~p~~Public input and feedback:
 - ~~a.~~ LCU Board ~~UCAG~~ coordinates and hosts customer input meetings to gather commentary and feedback
 - ~~i.~~ Press releases, utility bill inserts, presentations, poster board, letters to the editor/guest editorials, and similar materials concerning rate reviews must receive LCU Board approval prior to publication. Press releases will be submitted to and issued by the City's Communication Office following standard City procedures. Utility bill inserts will be submitted to the Utilities Office of the Director staff and may be reformatted for consistency. All costs related to public outreach materials will be paid for by the Utilities Department.
 - ~~ii.~~ LCU Board ~~will~~ gathers public input through ~~at least one~~ in person and/or online public meetings, and through a set comment period where input is also gathered through a generic email.
 - ~~iii.~~ Public outreach meetings will be hosted by the LCU Board with support provided by LCU staff.
 - ~~a.iv.~~ Once the public outreach period is complete, the LCU Board will review all public outreach comments.
- ~~5.~~ Results presented to LCU Board:
 - ~~a.~~ LCU, UCAG, public, and other interested customers
- ~~6.~~ Develop comments/recommendations:
 - ~~a.~~ Summary of feedback from all parties is forwarded to LCU Board
 - ~~b.~~ LCU Board provides direction to consultant
- ~~7.6.~~ Final ~~r~~Report presented to LCU Board:
 - ~~a.~~ ~~Consultant incorporates comments/recommendations based on LCU Board direction~~Summary of feedback from all parties is forwarded to the LCU Board to make a rate adjustment recommendation ~~a~~
 - ~~a.i.~~ LCU Board will receive the consultant's report, a brief summary of public outreach that was completed, and the feedback from the public outreach events.
 - ~~ii.~~ ~~LCU Board approves, disapproves, or modifies Report~~LCU Board will concur with an option presented by the consultant(s) or makes its own recommendation which must be supported by facts and data from the report.
 - ~~b.iii.~~ The rate review process will have an iterative process for LCU Board to evaluate and recommend documented solutions to Council. LCU Board can repeat outlined steps until satisfied with the Final Report.
 - ~~b.~~ LCU Board ~~accepts Report and~~ approves ~~a~~ Resolution recommending rate adjustments to the City Council
 - ~~e.i.~~ LCU Board makes a recommendation that is fair, reasonable, and balances the interests of the utility and the feedback provided by its customers.
- ~~8.7.~~ City Council ~~r~~Rate decision:
 - ~~a.~~ LCU staff will present the final report to City Council
 - ~~i.~~ City Council will receive the LCU Board's recommendation, the consultant's report, a brief summary of the public outreach that was completed, and the feedback from the public outreach events.
 - ~~ii.~~ LCU Board shall not appear before Council to voice their respective positions per Las Cruces Municipal Cide Section 2-190 and the Governmental Conduct Act Section 10-16-3. The LCU Board shall not independently solicit any external

consultant, representative or third-party not selected in accordance with this Rate Setting Process; this shall not preclude the public comment of any alternative perspective.

b. City Council approves new utility rate adjustment recommendations

i. City Council approves new utility rate adjustment based on consultant's recommendation or the LCU Board's recommendation.

a.ii. City Council may change the time frame (phased-in period) of approval for any of the options that were approved and recommended by the LCU Board, however, any City Council change proposing a different revenue requirement or different rate design as between customer classes, will be remanded back to the LCU Board.

c. City Council does not approve – remands back to LCU Board with strategic guidance

i. City Council has the prerogative to not approve the utility rate adjustment, in which case the matter will be remanded back to the LCU Board with strategic guidance.

ii. The rate review process will have an iterative process for LCU Board to evaluate and recommend documented solutions to Council. LCU Board can repeat outlined steps until satisfied with the Final Report.

iii. Submitted and remand loop between Council and LCU Board is a potential reality.

8. Tariff approval:

a. When rates are approved by City Council, LCU will prepare updated tariff sheets to be approved by the LCU Board at the next available meeting

b. Utility Rate Riders recover or refund interim unexpected/unplanned costs or changes in costs

i. Updates or revisions to the riders will be approved by the LCU Board.

c. Annual Rate Increases

i. If a phased-in adjustment is approved, LCU Board has the authority to approve an annual increase not to exceed 5%.

b.ii. If a full implementation adjustment is approved, LCU Board has the authority to approve an annual increase based on the Consumer Price Index (CPI).

Financial Criteria

Criteria – Wages and Benefits:

- 1. Purpose: To establish utility rates to recover wages, salaries, benefits, and payroll tax expenses in a test period review year without incurring a deficit.
- 2. Justification: City Council authorizes increases in wages and benefits for all City employees. LCU personnel are on the same pay scale as all other City employees and LCU must recover this increase.
- 3. Calculation: Standardized Human Resources calculation based on hourly wage rates.
- 4. Example: Past years experienced an increase of 1.5% for the union contracts, a merit, and longevity increase for some City personnel. For example, Fiscal Year 2015 had increases in wages that amounted to:

	<u>FY15</u>	<u>FY16</u>	<u>% increase</u>
Gas & Energy	\$2,356,211	\$2,565,646	8.88%
Water	\$1,727,877	\$1,779,468	2.98%
Wastewater	\$1,790,252	\$1,875,240	4.75%
Solid Waste	\$1,582,370	\$1,704,854	7.74%

Criteria – Operating Expenses:

- 1. Purpose: To establish utility rates to recover on-going and recurring expenses to ensure a safe, reliable, and regulatory compliant operation of the utility.
- 2. Justification: LCU is an enterprise fund that must recover all operation and maintenance expenses through rates, in addition to equipment and capital funds, and Landfill Closure costs.
- 3. Calculation: Based on the most recent audited CAFR.
- 4. Example: Infrastructure repairs and maintenance expenses, materials, equipment, supplies, training, pumping and treatment expenses, and internal transfers, etc.

Criteria – Operating Fund Reserve:

1. Purpose: Achieve the targeted minimum fund balance that reasonably covers expenditures for 2 months out of a year (2/12th) or 16.67%, solely using the cash method. The requirement per the Department of Finance Authority and the City is to cover expenditures for 1-month out a year (1/12th). The CAFR currently calculates beginning fund balances using a modified accrual method, and this shall not be used in this criterion.
2. Justification: To ensure fund balance coverage is consistent with City budget requirements, which covers operational emergencies.
3. Calculation: Fund ending balance / (total expenditures - transfers ~~non-cash expenses~~).
4. Example: Water Operating Fund: \$1,321,163 / (\$14,845,122 - \$1,233,999) = 9.71%. The fund balance is below the target minimum balance of 16.67%.

Criteria – Administrative Transfer:

1. Purpose: Intergovernmental transfer(s) and PILT to the General Fund to fund the Department's utilization of City-wide common administrative resources.
 2. Justification: The Utilities Department is a part of the City organization and relies on administrative support from IT, Human Resources, Risk Management, and Legal, ~~and Facilities Management~~.
 3. Calculation: Executive budgetary action agreed upon by Budget, Finance, Department Directors, and the City Manager.
 4. Example: Gas & Energy FY2015 Administrative Transfer \$641,405 (5.70% of operational expenditures).
- 4.

Criteria – Equipment Reserve Fund Transfers and Fund Balance:

1. Purpose: To fund current year rolling stock expenditures through funding transfers from respective Operating Funds to maintain an adequate reserve to mitigate the impact of expenditures based on LCU Replacement Schedule as approved by the LCU Board. The utility commits to maintain the industry average life of rolling stock.
2. Justification: Each operating utility's revenue stream funds the equipment reserve to ensure timely replacement of its equipment and vehicle stock in order to reliably operate and maintain each respective utility's system and service standards.
3. Calculation: (Current vehicle depreciation + ½ year of depreciation for new vehicles + cost of new vehicles needed to be purchased in the upcoming year) x current price index factor.
4. Example: Wastewater: (\$101,030 + \$64,056 + \$768,674) x 1.02 = \$952,435. For FY2015, the Wastewater Equipment Reserve Fund should have a minimum fund balance of \$952,435.

Solid Waste – Collections Vehicles:

1. Purpose: To fund current year collections vehicles and major equipment replacement expenditures through fund transfers from the Solid Waste Operating Fund to maintain an adequate reserve to mitigate the impact of expenditures based on LCU Solid Waste Replacement Schedule. The utility commits to maintain the industry average life of this rolling stock.
2. Justification: Solid Waste revenue stream funds the equipment reserve fund to ensure timely replacement of its collections equipment and vehicle stock in order to reliably operate and maintain Solid Waste service standards.

- 3. Calculation: [Current vehicle depreciation + ½ year of depreciation for new vehicles + (actual new vehicles costs / average life)] x current price index factor.
- 4. Example: [\$707,364 + \$68,333 + (\$1,500,000 / 8.5 years)] x 1.02 = \$971,210.94. For FY2015, the Solid Waste Equipment Reserve Fund would set a minimum fund balance of \$971,210.94.

Solid Waste – Light Duty Vehicles:

- 1. Purpose: Maintain the ability to fund recurring rehabilitation of light duty vehicle expenses and maintain an adequate reserve to fund planned expenditures based on LCU Solid Waste Replacement Schedule as approved by the LCU Board. The utility commits to maintain the industry average life of this rolling stock.
- 2. Justification: The capital fund will be used for the purchase of light duty rolling stock.
- 3. Calculation: (Current vehicle depreciation + ½ year of depreciation for new vehicles + new vehicle cost) x current price index factor.
- 4. Example: (\$100,000 + \$7,083 + \$85,000) x 1.02 = \$195,924.66. For FY2015, the Solid Waste Capital Fund would set a minimum fund balance of \$195,924.66.

Criteria – Capital Fund Transfers and Fund Balance:

- 1. Purpose: Maintain the ability to fund recurring rehabilitation expenses and maintain adequate reserve to fund impact of expenditures.
- 2. Justification: The capital fund funds the Capital Improvement Plan adopted by the City.
- 3. Calculation: Highest actual expense in a 5-year range - a minimum fund balance based on the average of 5-year actual recurring rehabilitation expenses.
- 4. Example: Highest actual Water expense in a 5 year range: \$2,682,625
5-year average of actual recurring rehabilitation expenses for Water: - \$1,716,358
\$ 966,267
the minimum fund balance is \$966,267. FY2015 the Water Capital Fund Balance was \$397,594.

Criteria – Debt Service:

- 1. Purpose: Maintain the ability to fund non-discretionary, non-recurring rehabilitation projects; new regulatory requirements; replacement of plant and facilities that do not reach their useful life; system expansion to existing or new service areas not paid by impact fees; and modernization of plant and infrastructure to integrate technological improvements. The ultimate level of borrowing will be determined pursuant to the Utilities Board recommendation and City Council authorization.
- 2. Justification: 1.4 debt service coverage is the recommended minimum by Moody’s Bond Rating. However, LCU highly recommends maintaining a 1.6 debt service coverage.
- 3. Calculation: (utility service charges – operating expenses) / (debt service principal + debt service interest).

4. Example: Debt service to fund WWTF Primary Clarifier and Water Quality Laboratory Rehabilitation are non-recurring rehabilitation projects. Projects associated with NMDOT are non-discretionary projects.

Solid Waste:

1. Purpose: Solid Waste collection vehicles are the essential and major assets in this utility's operation.
2. Justification: Light duty vehicles and non-collections equipment will be primarily funded through rate revenue. Collections' vehicles and major equipment will be treated as capital and funded through operating fund transfers and debt may be considered during the annual budget review and the rate setting test period review.

Criteria – Rate Design

1. Rate design shall reflect the appropriate level of fixed and variable costs in the recovery of revenue requirement.
2. Rate design is an acceptable means to recover the cost of conservation measures or legislative mandates.

Ancillary Components to Rate Setting

~~1. Consultant Selection:~~

~~a. Include UCAG and LCU staff in the two evaluator positions within the Procurement process.~~

~~UCAG will review and have input on the RFP.~~

~~b. The RFP will address impartiality concerns for consultants used in prior rate reviews. The RFP will address peer review of LCU's rate review request.~~

~~c. An alternate, peer review could be done by an independent entity, such as the NMSU Center for Public Utilities, at additional expense.~~

~~2. Process Sequence:~~

~~a. The rate review process will have an iterative process for LCU Board to evaluate and recommend documented solutions to Council. LCU Board can repeat outlined steps until satisfied with the Final Report.~~

~~b. Council makes the decision to approve or remand the Board's recommendation. LCU staff will present the Final Report to Council. LCU Board and UCAG are not allowed to appear before Council to voice their respective positions.~~

~~c. Submitted and remand loop between Council and LCU Board is a potential reality as is the case with the current process.~~

~~3. Ad Hoc Committee:~~

~~a. The UCAG can be established so that the appointments are valid for a series of rate reviews.~~

~~4. Rate Setting Methodology:~~

~~a. LCU will utilize industry accepted methodologies, for example the "AWWA M1 Principles Water Rates, Fees, and Charges," guidelines for water utilities.~~

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- ~~b. Appropriate training regarding different rate setting options can be provided to the LCU Board before the next rate review.~~
- ~~c. The training would not affect the rate review process itself.~~
- ~~5. Procurement Process:~~
 - ~~a. This process is approved by Council Ordinance and is used for all Procurement of Professional Services.~~
 - ~~b. UCAG can be part of the Procurement process, as there are two evaluator positions.~~
 - ~~c. Staff recommends this process to be used for the selection of the rate review process consultant.~~
- ~~6. Rate Riders:~~
 - ~~a. Utility Rate Riders recover or refund interim unexpected/unplanned costs or changes in costs.~~
 - ~~b. Updates or revisions to the riders will be approved by the LCU Board.~~
- ~~7. Council Voting:~~
 - ~~a. LCU Board Members who are also Councillors would abstain from participating and voting as Council Members~~



City Council Action and Executive Summary

3051; Council Bill 24-009

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A			
1st Reading:	November 6, 2023	Adopted:	November 20, 2023	
Drafter:	Tim Pitts	Department:	Community Development	
Program:	Land Development	Line of Business:	Development Center	
Title:	AN ORDINANCE REPEALING AND REPLACING ARTICLE II OF CHAPTER 34, DRAINAGE AND FLOOD CONTROL OF THE LAS CRUCES MUNICIPAL CODE TO AMEND THE FLOOD REGULATIONS TO REFLECT HIGHER STANDARDS ON FLOOD MITIGATION.			

TYPE OF ACTION: ☐ Administrative ☒ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
To adopt updated flood mitigation regulations.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City) participates in the National Flood Insurance Program (NFIP), which allows property owners to purchase affordable flood insurance. As a participant in the program, the City commits to take actions in order to reduce flood risks such as requiring flood-proof construction, elevating homes out of potential flood waters, and making sure stormwater is managed effectively. The City is already adopting higher standards in its Building Codes, the changes recommended here ensure that we get maximum credit from the Federal Emergency Management Agency (FEMA) for these changes.

Adoption of the revised LCMC Chapter 34 allows the City to continue to participate in the NFIP. The key amendments address comments provided by the New Mexico Department of Homeland Security and Emergency Management such as: 1) including a freeboard requirement of 1 foot above base flood elevation; 2) codifying the requirement to track 5 years of cumulative substantial building improvements; 3) requiring all plats to graphically indicate the location of any floodplains; and 4) updating various administrative edits.

Revisions to the ordinance will not impose any additional or new requirements affecting residential and/ or commercial development. On the other hand, these amendments will allow the City to improve the flood classification rating. With each increase in rating, an additional five percent (5%) discount on flood insurance is available to our citizens.

The Transportation, Sustainability, and Infrastructure Policy Review Committee voted 3-0 on Tuesday, August 1, 2023, to recommend bringing the proposed Ordinance forward for City Council consideration. This proposed Ordinance is in alignment with Elevate Las Cruces, Goal CE-13: Natural Features and Habitat, Action CE-13.1.5: Continue to prevent development within floodplain areas.

SUPPORT INFORMATION:
[Exhibit "A" Flood Standards \(adoption version\)](#)

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[Attachment "A" Flood Standards \(redline version\)](#)

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

TSI PRC

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes" will approve the Ordinance within LCMC Chapter 34, Article II to better comply with NFIP.
2. Vote "No" will not approve the Ordinance within LCMC Chapter 34, Article II with the potential of losing NFIP compliance.
3. Vote to "Amend" would allow City Council to modify the proposed ordinance.
4. Vote to "Table" would postpone the decision to amend the ordinance and would allow City Council to provide further staff direction.

ORDINANCE 3051; COUNCIL BILL 24-009

AN ORDINANCE REPEALING AND REPLACING ARTICLE II OF CHAPTER 34, DRAINAGE AND FLOOD CONTROL OF THE LAS CRUCES MUNICIPAL CODE TO AMEND THE FLOOD REGULATIONS TO REFLECT HIGHER STANDARDS ON FLOOD MITIGATION.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) desires to reduce or eliminate flood damage in our community; and

WHEREAS, the City participates in the National Flood Insurance Program (NFIP); and

WHEREAS, the NFIP allows property owners to purchase more affordable flood insurance; and

WHEREAS, the proposed amendments help to maintain and/or improve the flood insurance discount made available to Las Cruces residents; and

WHEREAS, the requirements to be enacted are already in place elsewhere in state statute and city ordinance; and

WHEREAS, the proposed amendments to Chapter 34 – Drainage and Flood Control address comments provided by the New Mexico Department of Homeland Security and Emergency Management to better comply with NFIP.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT Chapter 34 – Drainage and Flood Control, Article II – Flood Damage Prevention of the Las Cruces Municipal Code, is hereby repealed and replaced with Exhibit “A” attached hereto and made part of this Ordinance.

(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

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

ARTICLE II. FLOOD DAMAGE PREVENTION

DIVISION 1. GENERALLY

Sec. 34-31. Definitions.

Words or phrases used in this article, unless specifically defined below, shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by the high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appeal means a request for a review of the floodplain administrator's interpretation of any section of this article or a request for a variance.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of shallow flooding means a designated AO, AH, or VO zone on the City of Las Cruces's flood insurance rate map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within the City of Las Cruces subject to a one-percent or greater chance of flooding in any given year. The area may be designated as zone A on the Flood Boundary – Floodway Map (FBFM). After detailed rate-making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE, or V.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one-percent chance of equaling or exceeding that level in any given year - also called the Base Flood.

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Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Community Development Director means the director of the City of Las Cruces Community Development Department.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a building without a basement that has its lowest floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction means, for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the City of Las Cruces.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA) means the federal agency responsible for administering the National Flood Insurance Program.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (e.g., mudflow) or other flood-related erosion hazards.

Flood insurance rate map (FIRM) means the official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study (FIS) is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, the water surface elevation of the base flood, and the Flood Boundary-Floodway Map.

Floodplain or flood prone area means any land area susceptible to being inundated by flooding. *Floodplain management* means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinance (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power. The term describes such federal, state, or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within the City of Las Cruces subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot cumulatively.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface next to a finished structure's walls or, if the structure has not been constructed, next to the proposed walls of the structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of Interior; or,
- (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior or;
 - (b) Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.

Levee system means a flood protection system which consists of at least one levee and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area of a structure, including the basement. An unfinished enclosure, usable solely for parking or vehicles, building access, or storage in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of section 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, North American Vertical Datum of 1988 (NAVD 1988) or other datum, to which base flood elevations shown on the City of Las Cruces's Flood Insurance Rate Map are referenced.

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New construction means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by the City of Las Cruces and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulation adopted by the City of Las Cruces.

Public Works Director means the director of the City of Las Cruces Public Works Department.

Recreational Vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling by as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a portion of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. (see the definition of start of construction.) This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed (see the definition of substantial damage.) For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of federal, state, or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
- (2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Variance is a grant of relief to a person from the requirements of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. For full requirements, see section 60.6 of the National Flood Insurance Program regulations.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 or (other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Code 1988, § 11-25; Ord No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Cross reference— Definitions generally, § 1-2.

Sec. 34-32. Statutory authorization.

The Legislature of the State of New Mexico has in New Mexico Statutes Annotated 1978, § 3-18-7 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses, and it is determined to be in the public interest and in the best interest of the health, welfare and morals of the City of Las Cruces to establish the flood control damage prevention regulations in this ordinance.

(Code 1988, § 11-21)

Sec. 34-33. Findings of fact.

- (1) The flood hazard areas of the City of Las Cruces are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed, or otherwise protected from flood damage.

(Code 1988, § 11-22; Ord. No. 1933, § I, 8-19-02)

Sec. 34-34. Statement of purpose.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
- (7) Ensure that potential buyers are notified that property is in a flood area.

(Code 1988, § 11-23)

Sec. 34-35. Methods of reducing flood losses.

In order to accomplish its purposes, this article is intended to reduce flood losses by methods designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or that cause excessive increases in flood heights or velocities.
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.
- (4) Control filling, grading, dredging, and other development which may increase flood damage.

- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 1988, § 11-24)

Sec. 34-36. Applicability of article.

This article shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Code 1988, § 11-26)

Sec. 34-37. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, “The Flood Insurance Study (FIS) for the City of Las Cruces, Doña Ana County, NM, dated July 6, 2016, with accompanying Flood Insurance Rate Maps (FIRM) dated July 6, 2016 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

(Code 1988, § 11-27; Ord. No. 1933, § I, 8-19-02)

Sec. 34-38. Establishment of development permit.

A development permit shall be required to ensure conformance with the provisions of this ordinance prior to the commencement of any development activities.

(Code 1988, § 11-28; Ord. No. 1933, § I, 8-19-02)

Sec. 34-39. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

(Code 1988, § 11-29; Ord. No. 1933, § I, 8-19-02)

Sec. 34-40. Abrogation and greater restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing regulations, ordinances, easements, covenants, or deed restrictions. However, where this ordinance and the provisions of other regulations or ordinances conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Code 1988, § 11-30)

Sec. 34-41. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the City Council; and
- (3) Deemed neither to limit nor repeal any other powers granted under State Statutes.

(Code 1988, § 11-31; Ord. No. 1933, § I, 8-19-02)

Sec. 34-42. Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

(Code 1988, § 11-32)

Sec. 34-43. Lands to which this ordinance applies.

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Las Cruces, New Mexico.

(Ord. No. 1933, § 1, 8-19-02)

Sec. 34-44. Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas. For applications for reconstruction, rehabilitation, repair, alteration, addition or other improvement of existing buildings or structures located in flood hazard areas, the Flood Plain Administrator shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the Flood Plain Administrator determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this code, the building official shall require the building to meet the requirements. The cost used in the substantial improvement determination shall be the cumulative costs of all previous improvements for a specific building or structure occurring during the immediate past 5-year period.

DIVISION 2. ADMINISTRATION

Sec. 34-71. Designation of the floodplain administrator.

The Community Development Director hereby appoints a Floodplain Administrator who is certified to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Regulations) pertaining to floodplain management.

(Code 1988, § 11-41; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Cross reference— Officers and employees, § 2-56 et seq.

Sec. 34-72. Duties and responsibilities of the certified floodplain administrator.

Duties and responsibilities of the certified Floodplain Administrator under this article shall include but not be limited to:

- (1) Maintaining and holding open for public inspection all records pertaining to this ordinance;
- (2) Reviewing permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;
- (3) Reviewing and then approving or denying all applications for development permits required by this ordinance;
- (4) Reviewing permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies, (including section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1334) from which prior approval is required);
- (5) Making the necessary interpretation where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions);
- (6) Notifying, in riverine situations, adjacent communities and the State Coordinating Agency, which is the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
- (7) Assuring that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;
- (8) Obtaining, reviewing, and reasonably utilizing any base flood elevation data and floodway data available from a federal, state, local, or other source in order to administer the provisions of sections 34-101 through 34-105 when base flood elevation data has not been provided, in accordance with section 34-37;
- (9) Requiring that, when a regulatory floodway has not been designated, no new construction, substantial improvements or other development, including fill, shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
- (10) Assuring that, under the provisions of 44 CFR Chapter 1, Section 65-12, of the National Flood Insurance Program regulations, the City of Las Cruces may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevations of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

(Code 1988, § 11-42; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Sec. 34-73. Permit procedures.

- (1) Application for a development permit required under this ordinance shall be presented to the Floodplain Administrator on forms furnished by the property owner or the property owner's representative and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the development in relation to areas of special flood hazard. Additionally, the following information is required:
 - (a) Where base flood elevations have not been provided by the Federal Emergency Management Agency, a drainage study prepared and certified by a professional engineer registered in the state. The drainage study shall include:
 - (i) An aerial photo of the area to be developed and contributing watershed;
 - (ii) An up-to-date contour map of the site to be developed at a scale of one inch equals 100 feet and contour lines at intervals of no more than one foot and spot elevations at all breaks in grade along all drainage channels or swales and at selected points not more than 100 feet apart in all directions;
 - (iii) A contour map identifying the site to be developed and the entire watershed that contributes storm runoff to the development site;
 - (iv) Calculations showing the peak discharge and volume of runoff that will pond or pass through the development site from a one percent (100 year) storm; and
 - (v) Calculations showing the one percent (100 year) storm elevation in relation to mean sea level on the site to be developed.
 - (b) Elevation in relation to mean sea level of the lowest floor, including basement, of all new and substantially improved structures;
 - (c) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - (d) A certificate from a professional engineer or architect registered in the state that the nonresidential floodproofed structure shall meet the floodproofing criteria of subsection 34-102(2);
 - (e) A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
 - (f) Maintenance of a record of all such information in accordance with subsection 34-72(1).
- (2) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the sections of this ordinance and the following relevant factors:
 - (a) The danger to life and property due to flooding or erosion damage;
 - (b) The susceptibility of the proposed structure and its contents to flood damage and the effect of such damage on the individual owner;
 - (c) The danger that materials may be swept onto other lands to the injury of others;
 - (d) The compatibility of the proposed use with existing and anticipated development;
 - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;

- (f) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;
- (g) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (h) The necessity to the facility of a waterfront location, where applicable; and
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(Code 1988, § 11-43; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Sec. 34-74. Variance procedures.

- (1) The City Council shall hear and render judgment on request for variances from the requirements of this ordinance.
- (2) The City Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this article.
- (3) Any person aggrieved by the decision of the City Council may appeal such decision to the District Court within 30 days of the rendering of the decision.
- (4) Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (5) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic places without regard to the procedures set forth in the remainder of this ordinance.
- (6) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection 34-73(2) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (7) Upon consideration of the factors noted in this ordinance and the intent of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article stated in sections 34-34 and 34-35.
- (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (10) Prerequisites for granting variances shall be as follows:

- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Variances shall only be issued upon:
 - (i) Showing a good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, and extraordinary public expense, and create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (c) Any applicant, to whom a variance is granted, shall be given written notice of the permitted elevation of the lowest floor of the structure to be built, which shall not be more than two feet below the base flood elevation. The cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (11) Variances may be issued by the City of Las Cruces for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
- (a) The criteria outlined in subsections (1) through (10) are met; and
 - (b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Code 1988, § 11-44; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933 § I, 8-19-02)

Secs. 34-75--34-100. Reserved.

34-75 - Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- (2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
- (4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

DIVISION 3. FLOOD HAZARD REDUCTION

Sec. 34-101. General standards.

In all areas of special flood hazards, the following are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (8) Floodplain development shall follow the Federal Emergency Management Agency's letter of map change (LOMC) process (e.g., LOMA, LOMR, LOMR-F, CLOMR, CLOMR-F) as specified in 44 CFR. Floodplain information shall be required along with a Conditional Letter of Map Revision (CLOMR and CLOMR-F) and a Letter of Map Revision (LOMR and LOMR-F) for one-percent chance for storm flows of greater than 250 cubic feet per second (2.83 meters cubed per second), developments of five acres and larger, developments with fifty or more lots, and/or developments with any changes to the existing flow path in flood hazard zones AE, A, AH, AO, and D upon the submittal of any on preliminary and/or final drainage drawings for review. Information shall include peak discharges for the ten percent (10%), two percent (2%), one-percent (1%), and two-tenth percent (0.2%) chance storms for the floodplain inundation area and anticipated depth of floodwaters one foot and deeper. Standard step backwater models shall be used for flood depth determination. The Hydrologic Engineering Centers HEC-2 analysis method may be required. Improvements and subdivisions will not be accepted by the City until the flood study has been approved by the Federal Emergency Management Agency.
 - (a) A CLOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency prior to plan and/or final plat approval.
 - (b) A LOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency before acceptance by the City and before the

issuance of any Certificate of Occupancy. Costs incurred for the preparation of materials and fees paid to the Federal Emergency Management Agency will be borne by the developer.

(Code 1988, § 11-51; Ord. No. 1933, § I, 8-19-02)

Sec. 34-102. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in section 34-37, subsection 34-72(8), or subsection 34-103(3), the following are required:

- (1) *Residential construction.* All new construction and substantial improvements of any residential structure shall have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated at least one (1) foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in subsection 34-73(1)(a) is satisfied.
- (2) *Nonresidential construction.* All new construction and substantial improvements of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated at least one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one (1) foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification, which includes the specific elevation in relation to mean sea level to which such structures are floodproofed, shall be issued by the certifying professional to the Floodplain Administrator and be maintained by the Floodplain Administrator.
- (3) *Enclosures.* New construction and substantial improvements with fully enclosed areas below the lowest floor that are useable solely for the parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - (b) The bottom of all openings shall be no higher than one foot above grade; and
 - (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) *Manufactured homes.* *Manufactured homes are subject to the following regulations.*
 - (a) All manufactured homes to be placed within Zone A on a community's FIRM shall be installed using methods and practices which minimize flood damage.

For the purpose of this subsection, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

- (b) Manufactured homes in the following categories that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one (1) foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movements in accordance with subsection (4)(d) of this section:
 - (i) outside of a manufactured home park or subdivision,
 - (ii) in a new manufactured home park or subdivision,
 - (iii) in an expansion to an existing manufactured home park or subdivision, or
 - (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.
- (c) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zone A1-30, AH, and AE on the community's FIRM that are not subject to the provision of paragraph (4)(b) of this section must be elevated so that it meets the greater of either:
 - (i) the lowest floor of the manufactured home is elevated at least one (1) foot above the base flood elevation, or
 - (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement whichever is higher.
- (d) Ground anchoring systems shall meet the requirements outlined in the City manufactured housing installation code. Anchors and anchoring systems that do not meet these requirements shall be designed by a professional engineer registered in the state and approved by the Floodplain Administrator.
- (5) *Recreational Vehicles*. Recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
 - (a) Be on the site for fewer than 180 consecutive days,
 - (b) Be fully licensed and ready for highway use, or
 - (c) Meet the permit requirements of subsection 34-73, (1)(b), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Code 1988, § 11-52; Ord. No. 1933, § I, 8-19-02)

Sec. 34-103. Standards for subdivision proposals.

- (1) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with sections 34-33 through 34-35.
- (2) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet development permit requirements of sections 34-38 and 34-73, of this section.
- (3) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or five acres, whichever is less, if not otherwise provided pursuant to section 34-37 or subsection 34-72(8).
- (4) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards
- (5) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
- (6) All proposals for the development of subdivisions shall meet development permit requirements of sections 34-38 and 34-73, and this division, as well as the requirements of section 37-112.
- (7) All preliminary and final plats submitted for approval must have floodplain clearly graphically delineated and noted.
- (8) When developing property that extends into the city's regulatory floodplain, the floodplain shall be dedicated to the city in fee, as a flood water conservation easement, or as open space, as appropriate under the circumstances as determined by the Community Development Director. This area shall be shown on the subdivision map.

(Code 1988, § 11-53; Ord. No. 1933, § I, 8-19-02)

Sec. 34-104. Standards for areas of shallow flooding (AO/AH zones).

Located within the area of special flood hazard as established in section 34-37 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following apply to AO and AH zones:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one (1) foot of freeboard (at least three feet if no depth number is specified).
- (2) All new construction and substantial improvements of nonresidential structures shall:
 - (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one (1) foot of freeboard (at least three feet if no depth number is specified); or

- (b) Together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one (1) foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in subsection 34-73 (1)(a), are satisfied.
- (4) Adequate drainage paths around structures on slopes shall be required to guide floodwaters around and away from proposed structures.

(Code 1988, § 11-54; Ord. No. 1933, § I, 8-19-02)

Sec. 34-105. Floodways

Floodways located within areas of special flood hazard established in section 34-37 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply to the floodway:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (2) If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of section 34-101, section 34-102, section 34-103, section 34-104.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the City of Las Cruces may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through the Federal Emergency Management Agency.

(Ord. No. 1933, § I, 8-19-02)

Sec. 35-106. Severability

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Sec. 35-107 Penalties for non-compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations

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of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$10,000 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Las Cruces City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

Secs. 34-108—34-124. Reserved.

ARTICLE II. FLOOD DAMAGE PREVENTION

DIVISION 1. GENERALLY

Sec. 34-31. Definitions.

Words or phrases used in this article, unless specifically defined below, shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by the high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appeal means a request for a review of the floodplain administrator's interpretation of any section of this article or a request for a variance.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of shallow flooding means a designated AO, AH, or VO zone on the City of Las Cruces's flood insurance rate map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within the City of Las Cruces subject to a one-percent or greater chance of flooding in any given year. The area may be designated as zone A on the Flood Boundary – Floodway Map (FBFM). After detailed rate-making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE, or V.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one-percent chance of equaling or exceeding that level in any given year - also called the Base Flood.

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Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Community Development Director means the director of the City of Las Cruces Community Development Department.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a building without a basement that has its lowest floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction means, for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the City of Las Cruces.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA) means the federal agency responsible for administering the National Flood Insurance Program.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

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Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (e.g., mudflow) or other flood-related erosion hazards.

Flood insurance rate map (FIRM) means the official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study (FIS) is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, the water surface elevation of the base flood, and the Flood Boundary-Floodway Map.

Floodplain or flood prone area means any land area susceptible to being inundated by flooding. *Floodplain management* means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinance (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power. The term describes such federal, state, or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within the City of Las Cruces subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot cumulatively.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface next to a finished structure's walls or, if the structure has not been constructed, next to the proposed walls of the structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of Interior; or,
- (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior or;
 - (b) Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.

Levee system means a flood protection system which consists of at least one levee and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area of a structure, including the basement. An unfinished enclosure, usable solely for parking or vehicles, building access, or storage in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of section 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, North American Vertical Datum of 1988 (NAVD 1988) or other datum, to which base flood elevations shown on the City of Las Cruces's Flood Insurance Rate Map are referenced.

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New construction means, for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by the City of Las Cruces and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulation adopted by the City of Las Cruces.

Public Works Director means the director of the City of Las Cruces Public Works Department.

Recreational Vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling by as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a portion of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. (see the definition of start of construction.) This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed (see the definition of substantial damage.) For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of federal, state, or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
- (2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Variance is a grant of relief to a person from the requirements of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. For full requirements, see section 60.6 of the National Flood Insurance Program regulations.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 or (other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Code 1988, § 11-25; Ord No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Cross reference— Definitions generally, § 1-2.

Sec. 34-32. Statutory authorization.

The Legislature of the State of New Mexico has in New Mexico Statutes Annotated 1978, § 3-18-7 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses, and it is determined to be in the public interest and in the best interest of the health, welfare and morals of the City of Las Cruces to establish the flood control damage prevention regulations in this ordinance.

(Code 1988, § 11-21)

Sec. 34-33. Findings of fact.

- (1) The flood hazard areas of the City of Las Cruces are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed, or otherwise protected from flood damage.

(Code 1988, § 11-22; Ord. No. 1933, § I, 8-19-02)

Sec. 34-34. Statement of purpose.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
- (7) Ensure that potential buyers are notified that property is in a flood area.

(Code 1988, § 11-23)

Sec. 34-35. Methods of reducing flood losses.

In order to accomplish its purposes, this article is intended to reduce flood losses by methods designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or that cause excessive increases in flood heights or velocities.
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.
- (4) Control filling, grading, dredging, and other development which may increase flood damage.

- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 1988, § 11-24)

Sec. 34-36. Applicability of article.

This article shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Code 1988, § 11-26)

Sec. 34-37. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for the City of Las Cruces, Doña Ana County, NM, dated July 6, 2016, with accompanying Flood Insurance Rate Maps (FIRM) dated July 6, 2016 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

(Code 1988, § 11-27; Ord. No. 1933, § I, 8-19-02)

Sec. 34-38. Establishment of development permit.

A development permit shall be required to ensure conformance with the provisions of this ordinance prior to the commencement of any development activities.

(Code 1988, § 11-28; Ord. No. 1933, § I, 8-19-02)

Sec. 34-39. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

(Code 1988, § 11-29; Ord. No. 1933, § I, 8-19-02)

Sec. 34-40. Abrogation and greater restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing regulations, ordinances, easements, covenants, or deed restrictions. However, where this ordinance and the provisions of other regulations or ordinances conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Code 1988, § 11-30)

Sec. 34-41. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the City Council; and
- (3) Deemed neither to limit nor repeal any other powers granted under State Statutes.

(Code 1988, § 11-31; Ord. No. 1933, § I, 8-19-02)

Sec. 34-42. Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

(Code 1988, § 11-32)

Sec. 34-43. Lands to which this ordinance applies.

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Las Cruces, New Mexico.

(Ord. No. 1933, § 1, 8-19-02)

Sec. 34-44. Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas. For applications for reconstruction, rehabilitation, repair, alteration, addition or other improvement of existing buildings or structures located in flood hazard areas, the Flood Plain Administrator shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the Flood Plain Administrator determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this code, the building official shall require the building to meet the requirements. The cost used in the substantial improvement determination shall be the cumulative costs of all previous improvements for a specific building or structure occurring during the immediate past 5-year period.

DIVISION 2. ADMINISTRATION

Sec. 34-71. Designation of the floodplain administrator.

The ~~Public Works~~ Community Development Director hereby appoints a Floodplain Administrator who is certified to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Regulations) pertaining to floodplain management.

(Code 1988, § 11-41; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Cross reference— Officers and employees, § 2-56 et seq.

Sec. 34-72. Duties and responsibilities of the certified floodplain administrator.

Duties and responsibilities of the certified Floodplain Administrator under this article shall include but not be limited to:

- (1) Maintaining and holding open for public inspection all records pertaining to this ordinance;
- (2) Reviewing permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;
- (3) Reviewing and then approving or denying all applications for development permits required by this ordinance;
- (4) Reviewing permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies, (including section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1334) from which prior approval is required);
- (5) Making the necessary interpretation where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions);
- (6) Notifying, in riverine situations, adjacent communities and the State Coordinating Agency, which is the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
- (7) Assuring that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;
- (8) Obtaining, reviewing, and reasonably utilizing any base flood elevation data and floodway data available from a federal, state, local, or other source in order to administer the provisions of sections 34-101 through 34-105 when base flood elevation data has not been provided, in accordance with section 34-37;
- (9) Requiring that, when a regulatory floodway has not been designated, no new construction, substantial improvements or other development, including fill, shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
- (10) Assuring that, under the provisions of 44 CFR Chapter 1, Section 65-12, of the National Flood Insurance Program regulations, the City of Las Cruces may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevations of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

(Code 1988, § 11-42; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Sec. 34-73. Permit procedures.

- (1) Application for a development permit required under this ordinance shall be presented to the Floodplain Administrator on forms furnished by the property owner or the property owner's representative and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the development in relation to areas of special flood hazard. Additionally, the following information is required:
 - (a) Where base flood elevations have not been provided by the Federal Emergency Management Agency, a drainage study prepared and certified by a professional engineer registered in the state. The drainage study shall include:
 - (i) An aerial photo of the area to be developed and contributing watershed;
 - (ii) An up-to-date contour map of the site to be developed at a scale of one inch equals 100 feet and contour lines at intervals of no more than one foot and spot elevations at all breaks in grade along all drainage channels or swales and at selected points not more than 100 feet apart in all directions;
 - (iii) A contour map identifying the site to be developed and the entire watershed that contributes storm runoff to the development site;
 - (iv) Calculations showing the peak discharge and volume of runoff that will pond or pass through the development site from a one percent (100 year) storm; and
 - (v) Calculations showing the one percent (100 year) storm elevation in relation to mean sea level on the site to be developed.
 - (b) Elevation in relation to mean sea level of the lowest floor, including basement, of all new and substantially improved structures;
 - (c) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - (d) A certificate from a professional engineer or architect registered in the state that the nonresidential floodproofed structure shall meet the floodproofing criteria of subsection 34-102(2);
 - (e) A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
 - (f) Maintenance of a record of all such information in accordance with subsection 34-72(1).
- (2) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the sections of this ordinance and the following relevant factors:
 - (a) The danger to life and property due to flooding or erosion damage;
 - (b) The susceptibility of the proposed structure and its contents to flood damage and the effect of such damage on the individual owner;
 - (c) The danger that materials may be swept onto other lands to the injury of others;
 - (d) The compatibility of the proposed use with existing and anticipated development;
 - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;

- (f) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;
- (g) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (h) The necessity to the facility of a waterfront location, where applicable; and
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(Code 1988, § 11-43; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Sec. 34-74. Variance procedures.

- (1) The City Council shall hear and render judgment on request for variances from the requirements of this ordinance.
- (2) The City Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this article.
- (3) Any person aggrieved by the decision of the City Council may appeal such decision to the District Court within 30 days of the rendering of the decision.
- (4) Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (5) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic places without regard to the procedures set forth in the remainder of this ordinance.
- (6) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection 34-73(2) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (7) Upon consideration of the factors noted in this ordinance and the intent of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article stated in sections 34-34 and 34-35.
- (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (10) Prerequisites for granting variances shall be as follows:

- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Variances shall only be issued upon:
 - (i) Showing a good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, and extraordinary public expense, and create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (c) Any applicant, to whom a variance is granted, shall be given written notice of the permitted elevation of the lowest floor of the structure to be built, which shall not be more than two feet below the base flood elevation. The cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (11) Variances may be issued by the City of Las Cruces for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
- (a) The criteria outlined in subsections (1) through (10) are met; and
 - (b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Code 1988, § 11-44; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933 § I, 8-19-02)

Secs. 34-75--34-100. Reserved.

34-75 - Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- (2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
- (4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

DIVISION 3. FLOOD HAZARD REDUCTION

Sec. 34-101. General standards.

In all areas of special flood hazards, the following are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (8) Floodplain development shall follow the Federal Emergency Management Agency's letter of map change (LOMC) process (e.g., LOMA, LOMR, LOMR-F, CLOMR, CLOMR-F) as specified in 44 CFR. Floodplain information shall be required along with a Conditional Letter of Map Revision (CLOMR and CLOMR-F) and a Letter of Map Revision (LOMR and LOMR-F) for one-percent chance for storm flows of greater than 250 cubic feet per second (2.83 meters cubed per second), developments of five acres and larger, developments with fifty or more lots, and/or developments with any changes to the existing flow path in flood hazard zones AE, A, AH, AO, and D upon the submittal of any on preliminary and/or final drainage drawings for review. Information shall include peak discharges for the ten percent (10%), two percent (2%), one-percent (1%), and two-tenth percent (0.2%) chance storms for the floodplain inundation area and anticipated depth of floodwaters one foot and deeper. Standard step backwater models shall be used for flood depth determination. The Hydrologic Engineering Centers HEC-2 analysis method may be required. Improvements and subdivisions will not be accepted by the City until the flood study has been approved by the Federal Emergency Management Agency.
 - (a) A CLOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency prior to plan and/or final plat approval.
 - (b) A LOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency before acceptance by the City and before the

issuance of any Certificate of Occupancy. Costs incurred for the preparation of materials and fees paid to the Federal Emergency Management Agency will be borne by the developer.

(Code 1988, § 11-51; Ord. No. 1933, § I, 8-19-02)

Sec. 34-102. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in section 34-37, subsection 34-72(8), or subsection 34-103(3), the following are required:

- (1) *Residential construction.* All new construction and substantial improvements of any residential structure shall have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated ~~to or~~ at least one (1) foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in subsection 34-73(1)(a) is satisfied.
- (2) *Nonresidential construction.* All new construction and substantial improvements of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated ~~to or~~ at least one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one (1) foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification, which includes the specific elevation in relation to mean sea level to which such structures are floodproofed, shall be issued by the certifying professional to the Floodplain Administrator and be maintained by the Floodplain Administrator.
- (3) *Enclosures.* New construction and substantial improvements with fully enclosed areas below the lowest floor that are useable solely for the parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - (b) The bottom of all openings shall be no higher than one foot above grade; and
 - (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) *Manufactured homes.* *Manufactured homes are subject to the following regulations.*
 - (a) All manufactured homes to be placed within Zone A on a community's FIRM shall be installed using methods and practices which minimize flood damage.

For the purpose of this subsection, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

- (b) Manufactured homes in the following categories that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated ~~to or~~ at least one (1) foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movements in accordance with subsection (4)(d) of this section:
 - (i) outside of a manufactured home park or subdivision,
 - (ii) in a new manufactured home park or subdivision,
 - (iii) in an expansion to an existing manufactured home park or subdivision, or
 - (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.
- (c) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zone A1-30, AH, and AE on the community's FIRM that are not subject to the provision of paragraph (4)(b) of this section must be elevated so that it meets the greater of either:
 - (i) the lowest floor of the manufactured home is ~~at or~~ elevated at least one (1) foot above the base flood elevation, or
 - (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and ~~be~~ is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement whichever is higher.
- (d) Ground anchoring systems shall meet the requirements outlined in the City manufactured housing installation code. Anchors and anchoring systems that do not meet these requirements shall be designed by a professional engineer registered in the state and approved by the Floodplain Administrator.
- (5) *Recreational Vehicles*. Recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
 - (a) Be on the site for fewer than 180 consecutive days,
 - (b) Be fully licensed and ready for highway use, or
 - (c) Meet the permit requirements of subsection 34-73, (1)(b), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Code 1988, § 11-52; Ord. No. 1933, § I, 8-19-02)

Sec. 34-103. Standards for subdivision proposals.

- (1) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with sections 34-33 through 34-35.
- (2) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet development permit requirements of sections 34-38 and 34-73, of this section.
- (3) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or five acres, whichever is less, if not otherwise provided pursuant to section 34-37 or subsection 34-72(8).
- (4) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards
- (5) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
- (6) All proposals for the development of subdivisions shall meet development permit requirements of sections 34-38 and 34-73, and this division, as well as the requirements of section 37-112.
- (7) All preliminary and final plats submitted for approval must have floodplain clearly graphically delineated and noted.
- (8) When developing property that extends into the city's regulatory floodplain, the floodplain shall be dedicated to the city in fee, as a flood water conservation easement, or as open space, as appropriate under the circumstances as determined by the Community Development Director. This area shall be shown on the subdivision map.

(Code 1988, § 11-53; Ord. No. 1933, § I, 8-19-02)

Sec. 34-104. Standards for areas of shallow flooding (AO/AH zones).

Located within the area of special flood hazard as established in section 34-37 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following apply to AO and AH zones:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one (1) foot of freeboard (at least ~~two~~ three feet if no depth number is specified).
- (2) All new construction and substantial improvements of nonresidential structures shall:
 - (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one (1) foot of freeboard (at least ~~two~~ three feet if no depth number is specified); or

- (b) Together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one (1) foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in subsection 34-73 (1)(a), are satisfied.
- (4) Adequate drainage paths around structures on slopes shall be required to guide floodwaters around and away from proposed structures.

(Code 1988, § 11-54; Ord. No. 1933, § I, 8-19-02)

Sec. 34-105. Floodways

Floodways located within areas of special flood hazard established in section 34-37 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply to the floodway:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (2) If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of section 34-101, section 34-102, section 34-103, section 34-104.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the City of Las Cruces may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through the Federal Emergency Management Agency.

(Ord. No. 1933, § I, 8-19-02)

Sec. 35-106. Severability

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Sec. 35-107 Penalties for non-compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations

Agenda Item #8.3.

of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$10,000 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Las Cruces City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

Secs. 34-108—34-124. Reserved.



**3052; Council
Bill No. 24-010**

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A			
1st Reading:	November 20, 2023	Adopted:	December 4, 2023	
Drafter:	Justin Allen	Department:	Fire Department	
Program:	Community Risk Reduction	Line of Business:	Fire Prevention and Risk Reduction	
Title:	AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, (LCMC) CHAPTER 11, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE PREVENTION CODE, BY REPEALING THE ADOPTED 2015 EDITION OF THE INTERNATIONAL FIRE CODE AND ENACTING THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE AS AMENDED WITH CERTAIN RELATED APPENDICES.			

TYPE OF ACTION: ☐ Administrative ☒ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

Adopt the 2021 International Fire Code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces has been utilizing the 2015 edition of the International Fire Code (IFC) to govern the conditions hazardous to life and property. The 2015 edition of the IFC has been updated into the 2021 edition of the IFC by the International Code Council (ICC) which promulgates the IFC and publishes a new edition every three (3) years. The new edition is revised through code change hearings to keep code provisions updated and current. The IFC is one of several codes in the international family of codes. It is designed to be the companion document for the International Building Code (IBC) as well as the remainder of the international codes in publication.

Fire staff recommends the adoption of the 2021 edition of the IFC to provide consistency within the community. Most of the amendments are consistent with those currently in effect. The Community Development Department is also recommending the adoption of the 2021 edition of the IBC by a separate ordinance, simultaneously with this proposed ordinance. The adoption of the 2021 IFC would provide consistency between building code and fire code requirements within the City of Las Cruces' jurisdiction.

Staff has prepared this ordinance in a manner that would allow a grace period for enforcement of the proposed 2021 edition of the IFC from the date of adoption through **03/31/2024**. Until such time, a project may proceed under the 2015 or the 2021 edition of the IFC. This is beneficial for projects which may currently be in the design phase.

SUPPORT INFORMATION:

[Exhibit "A" - Chapter 11-FIRE PREVENTION AND PROTECTION](#)
[Attachment "A" - Chapter 11-FIRE PREVENTION AND PROTECTION](#)

Agenda Item #10.1.

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this action will amend the LCMC Chapter 11, Fire Prevention and Protection, Article II, Fire Prevention Code by repealing the adopted 2015 edition of the IFC and enacting the 2021 edition of the IFC as amended with certain related appendices.
2. Vote "No"; this action will not amend the LCMC Chapter 11, Fire Prevention and Protection, Article II, Fire Prevention Code. The adopted 2015 edition of the IFC will not be repealed and the 2021 edition of the IFC as amended with certain related appendices will not be enacted.
3. Vote to "Amend"; this could change the Ordinance based on City Council Direction.
4. Vote to "Table"; this would delay taking action until a further date.

ORDINANCE 3052; COUNCIL BILL NO. 24-010

AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, (LCMC) CHAPTER 11, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE PREVENTION CODE, BY REPEALING THE ADOPTED 2015 EDITION OF THE INTERNATIONAL FIRE CODE AND ENACTING THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE AS AMENDED WITH CERTAIN RELATED APPENDICES.

The City Council is informed that:

WHEREAS, the City of Las Cruces recognizes the need to have regulations governing conditions hazardous to life and property from fire, hazardous materials, or explosions; and

WHEREAS, the 2015 International Fire Code currently in adoption within the City of Las Cruces has been updated into the 2021 edition of the International Fire Code; and

WHEREAS, utilizing the 2021 International Fire Code will provide consistency with the building code adopted within the City of Las Cruces.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT LCMC Chapter 11, Fire Prevention and Protection, Article 11, Fire Prevention Code is hereby amended by repealing the adopted 2015 edition of the International Fire Code and enacting the 2021 edition of the International Fire Code as amended with certain related appendices as shown in Exhibit "A", attached hereto, and made a part of this Ordinance.

(II)

THAT the 2021 edition of the International Fire Code as amended with certain related appendices adopted herein will be fully enforced starting March 31st, 2024.

(III)

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

Agenda Item #10.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

PART II - MUNICIPAL CODE
Chapter 11 FIRE PREVENTION AND PROTECTION

Chapter 11 FIRE PREVENTION AND PROTECTION¹

¹Cross reference(s)—Alarm systems and private security firms, ch. 4; health and human services, ch. 12; woodburning, § 12-86 et seq.; smoking in public places, § 12-124; smoking in places of employment, § 12-125; smoking in city-owned buildings, § 12-126; buildings and building regulations, ch. 30.

PART II - MUNICIPAL CODE
Chapter 11 FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Secs. 11-1—11-25. Reserved.

ARTICLE II. FIRE PREVENTION CODE²

²Editor's note(s)—Ord. No. 2668, §§ I, II(exh. A), adopted Oct. 1, 2012, amended art. II in its entirety to read as herein set out. A grace period from the date of adoption will be in place allowing use of either the 2006 or 2009 editions until Jan. 1, 2013. 2009 editions will be fully enforced starting Jan. 1, 2013. Former art. II, §§ 11-26—11-117, pertained to similar subject matter and derived from: Code 1988, §§ 14-16—14-25; Ord. No. 1796, § I, adopted May 1, 2000; Ord. No. 2073, §§ I, II, adopted Jan. 5, 2004; and Ord. No. 2477, § II, adopted Nov. 17, 2008.

State law reference(s)—State fire prevention standards, NMSA 1978, § 59-17-13; local governments to comply with same, NMSA 1978, § 59-17-24.

PART II - MUNICIPAL CODE
Chapter 11 FIRE PREVENTION AND PROTECTION

DIVISION 1. GENERALLY

Sec. 11-26. Adopted.

- (a) The Las Cruces Fire Department is established for the purpose of protecting the health, safety and welfare of the citizens of Las Cruces by responding to fires, emergency medical calls, release of hazardous materials and other emergency and nonemergency incidents within the incorporated city limits. The Las Cruces Fire Department is further charged with preventing conditions hazardous to life and property from fire, hazardous materials or explosion through the adoption of that certain code known as the International Fire Code, 2021 edition, including the following appendix chapters:
- (1) Appendix B, Fire-flow requirements for buildings.
 - (2) Appendix C, Fire hydrant locations and distribution.
 - (3) Appendix D, Fire apparatus access roads.
 - (4) Appendix E, Hazard Categories
 - (5) Appendix F, Hazard Ranking
 - (6) Appendix G, Cryogenic Fluids-Weight and Volume Equivalents
 - (7) Appendix H, Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions
 - (8) Appendix I, Fire protection Systems-Noncompliant Conditions.
 - (9) Appendix K, Construction requirements for existing healthcare facilities.
 - (10) Appendix L, Requirements for Fire Fighter Air Replenishment Systems
 - (11) Appendix M, High rise buildings-retroactive automatic sprinkler systems.
 - (12) Appendix N, Indoor trade shows and exhibitions
- (b) The International Fire Code mentioned in subsection (a) of this section is adopted, save and except such portions as are deleted, modified or amended by section 11-33 and divisions 2 and 3 of this article. One copy of the code is filed in the office of the city clerk. The International Fire Code is adopted and incorporated as fully as if set out at length in this section, and the provisions thereof shall be controlling within the city limits.
- (Code 1988, § 14-16; Ord. No. 1796, § I, 5-1-00) Charter reference(s)—Code of technical regulations, § 2.12.

Sec. 11-27. Establishment and duties of fire prevention services.

The fire code as adopted in section 11-26 and as amended in this article shall be enforced by the fire prevention services in the fire and emergency services division of the city, which is established and which shall be operated under the supervision of the fire marshal.

(Code 1988, § 14-17)

Sec. 11-28. Definitions.

The following definitions shall be added to the fire code adopted in section 11-26:

Fire marshal is the chief of the fire prevention services; interchangeable with the term fire code official under this code.

Jurisdiction: This code shall be applicable to all property within the corporate limits of the City of Las Cruces, New Mexico.

(Code 1988, § 14-18) Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-29. Establishment of limits of districts in which storage of flammable or combustible liquids in outside above ground tanks prohibited.

The limits referred to in sections 5704.2.9.6.1 and 5706.2.4.4 of the fire code adopted in section 11-26, in which the storage of flammable or combustible liquids is restricted, is established as and shall be in accordance with the city's zoning code in chapter 38.

(Code 1988, § 14-19)

Sec. 11-30. Establishments of limits in which storage of liquefied petroleum gases prohibited.

The limits referred to in section 6104.2 of the fire code adopted in section 11-26, in which storage and use of liquefied petroleum gas is restricted, are established and shall be in accordance with the city's zoning code in chapter 38. The aggregate capacity of any one installation shall not exceed a 2,000-gallon water capacity in residential areas. Exception is a multi-container location such as a dispensing station, and bulk facilities.

(Code 1988, § 14-20)

Sec. 11-31. Establishment of limits of districts in which storage of flammable cryogenic fluids in stationary containers prohibited.

The limits referred to in section 5806.2 of the fire code adopted in section 11-26, in which storage of flammable cryogenic fluids in stationary containers is prohibited, shall be in accordance with the city's zoning code in chapter 38.

(Code 1988, § 14-21)

Sec. 11-33. Amendments.

The fire code adopted in section 11-26 is amended as set forth in this section. When an existing section number of the fire code is referred to in this section, the text in this section shall control. When a new section or subsection is referred to in this section it shall be added to the fire code as adopted. The fire code is amended and changed as follows:

Chapter 1 Scope and Administration.

Section 101.1 Title shall be amended to read as follows:

These regulations shall be known as the Fire Code of the City of Las Cruces, hereinafter referred to as "this code".

Section 104.6 Official records shall be amended to read as follows:

The fire code official shall keep official records as required by Sections 104.6.1 through 104.6.4. Such records shall be retained in accordance with the record retention requirements established by the City of Las Cruces and State of New Mexico.

Section 104.11.2 Fire prevention personnel and police authority is added to read as follows:

- A. Members of the fire prevention services shall have the powers of a police officer in performing their duties under this code when:
 - 1. Such members of the fire prevention services have been certified by a law enforcement academy authorized by the State of New Mexico; and
 - 2. Such members have been commissioned as police officers by the City of Las Cruces.
- B. Members of the fire prevention services who meet the requirement stated in paragraphs (1) and (2) of subpart A of this section shall have the following powers:
 - 1. Powers of arrest for criminal matters;
 - 2. Authority to carry such weapons and utilize such equipment necessary in the discharge of their duties pursuant to this code;
 - 3. Authority to investigate arson and related crimes if so appointed and authorized by the Las Cruces Police Chief.
- C. All other members of the fire department who do not meet the requirements of subpart A of this section shall have the power to issue citations only for violations of this code and chapter 11 of the Las Cruces Municipal Code.

Section 104.12.2 Obstructing operations shall be amended to read as follows:

No person shall obstruct the operations of the fire department in connection with extinguishment or control of any fire, or actions relative to other emergencies, nonemergency incidents or training, or disobey

any lawful command of the fire chief or member of the fire department or any lawful order of a police officer assisting the fire department.

Section 105.1 General shall be amended to read as follows:

Permits required by the fire code official shall be in accordance with section 105.

Exception: Permits issued by the City of Las Cruces Community Development Department.

Section 106 Construction documents shall be amended to read as follows:

Construction documents shall be in accordance with this section and requirements established by the City of Las Cruces Community Development Department.

Section 105 Required construction permits shall be amended to read as follows:

The fire code official is authorized to issue construction permits for work as set forth in Sections 105.1.1 through 105.6.24. Such permits shall be processed through the City of Las Cruces Community Development Department and shall be in conformance with the requirements established by this code and the Community Development Department.

Section 105.6.1.1 Design Safety Margin shall be added to read as follows:

Unless otherwise approved by the Fire Code Official all automatic sprinkler systems shall be designed with a minimum ten psi safety margin.

Section 105.6.1.2 Hydraulic calculations required shall be added to read as follows:

When required by the Fire Code Official, hydraulic calculations shall be provided for modification to an existing automatic fire-extinguishing system requiring the installation of additional heads when either of the following occur:

1. Number of heads being added exceeds ten.
2. Number of heads being added is greater than ten percent of total heads for the system.

The fire code official may require hydraulic calculations be submitted for any modification to an existing system when deemed necessary to adequately evaluate the impact on the system.

Section 111.1 Board of appeals established shall be amended to read as follows:

Whenever the Fire Chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, applicant may appeal from the decision to city council by writing to the fire chief requesting an appeal within 30 days of the aggrieved action.

Section 111.2 Limitations on authority shall be deleted in its entirety.

Section 111.3 Qualifications shall be deleted in its entirety.

Section 112.4 Violation penalties shall be amended to read as follows:

Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation for the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a petty misdemeanor, punishable by a fine of not more than \$500.00 or by imprisonment not exceeding 90 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section 113.4 Failure to comply shall be amended to read as follows:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be considered to be in violation of this code and shall be subject to the penalties as set forth in Section 112.4

Chapter 3 General Requirements

Section 315.1 is added to read as follows:

Electric Vehicles & Personal mobility devices. Electrically powered vehicles and personal mobility devices shall not be displayed, stored, or serviced indoors unless specifically authorized by the Fire Code Official or in conformance with the provisions of Appendix N.

Chapter 4 Emergency Planning and Preparedness

Table 405.3 Fire and evacuation drill frequency and participation shall be amended as follows:

Group H occupancies shall be included with Group A occupancies in the table.

Chapter 5 Fire Service Features

Section 505.1 Address numbers shall be amended to read as follows:

New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Numbers shall be not less than two inches in width and three inches in height. Address identification shall also conform to section 30-1 of the Las Cruces Municipal Code.

Section 507.5.1.2 Fire protection in recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots is added to read as follows:

Fire protection in recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots shall provide and maintain fire hydrants and access roads in accordance with sections 503 and 507.

Chapter 9 Fire Protection and Life Safety Features

Section 901.4.7 Pump and Riser room size shall be amended to read as follows:

Where provided, fire pump rooms and automatic sprinkler system riser rooms shall be designated with adequate space for all equipment necessary for the installation, as defined by the manufacturer, with sufficient working space around the stationary equipment. Clearances around equipment to the elements of permanent construction, including other installed equipment and appliances, shall be sufficient to allow inspection, service, repair, or replacement without removing such elements of permanent construction or disabling the function of a required fire-resistance rated assembly. Fire pump and automatic sprinkler system riser rooms shall be provided with a door(s) to the exterior and an unobstructed passageway large enough to allow removal of the largest piece of equipment.

Section 902.1 Definitions shall have the definition of Standpipe System, Classes of, amended to read as follows:

Standpipe classes are as follows:

Class I system. A system providing 2.5-inch (64 mm) hose connections to supply water for use by fire departments and those trained in handling heavy fire streams.

Class II system. A system providing 1.5-inch (38 mm) hose stations to supply water for use primarily by the building occupants or by the fire department during initial response. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.

Class III system. A system providing 1.5-inch (38 mm) hose stations to supply water for use by building occupants and 2.5-inch (64 mm) hose connections to supply a larger volume of water for use by fire departments and those trained in handling heavy fire streams. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.

Section 903.2 Exception shall be deleted in its entirety.

Section 903.3.9 Unservicable Fire Sprinkler Systems is added to read as follows:

Where a large concealed space, such as a shallow attic space, greater than 3000CF(85 M³), requires protection and the system is not serviceable in that area, as determined by the Fire Marshal, the area shall be designed such that sprinkler protection is not required as per NFPA 13.

Section 903.4 Exceptions shall be amended to read as follows:

2. Limited area systems serving fewer than 20 sprinklers in other than Group H and Group I occupancies.

Section 903.4.4 Multi Story Buildings shall be added to read as follows:

When required by the Fire Code Official, approved supervised indicating control valves shall be provided in multi-story buildings and attached tenant spaces. For the purpose of this section a basement shall be considered a story.

Section 913.4 Valve supervision shall be amended to read as follows:

Where provided, the fire pump suction, discharge and bypass valves, and the isolation valves on the backflow prevention device or assembly shall be supervised open by one of the following methods:

1. Central-station, proprietary, or remote-station signaling service.
2. Local signaling service that will cause the sounding of an audible signal at a constantly attended location when approved by the fire code official.

Numbers 3. and 4. shall be deleted in their entirety.

Chapter 10 Means of Egress

Section 1020.1.1 - Corridor Hold-Opens is added to read as follows:

Where a corridor is required to be fire rated as per Table 1020.1, Door hold opens are required on some or all rooms that the corridor serves, as determined by the Fire Marshal. The hold opens shall be released upon automatic smoke detection in the corridor.

Chapter 23 Motor Fuel-Dispensing Facilities and Repair Garages

Section 2306.2.3.1 Existing above-ground tanks used for dispensing into motor vehicles is added to read as follows:

Existing above-ground tanks shall comply with Section 2306.2.3

Chapter 24 Flammable Finishes

Section 2404.9.2 Frequency shall be amended to read as follows:

Spraying operations shall not be of a continuous nature and shall not exceed 9 square feet per day.

Chapter 56 Explosives and Fireworks

Section 5601.1.3 Exceptions shall be amended as follows:

Exception 2 shall be deleted in its entirety.

Chapter 61 Liquefied Petroleum Gases

Section 6108.1 General shall be amended to read as follows:

Fire protection shall be provided for installations having storage containers with a water capacity of more than 4,000 (15,140 L) gallons as required by Section 6.25 of NFPA 58.

(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)

Chapter 80 Referenced Standards

Add NFPA 1 – Most recent edition

Sec. 11-34. Penalties.

- (a) Any person who violates any of the provisions of the fire code as adopted and amended in this article, who fails to comply with the fire code, who violates or fails to comply with any order made under the fire code, who builds in violation of any order made under the fire code, who builds in violation of any detailed statement of specifications or plans submitted and approved under the fire code or any certificate or permit issued under the fire code and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by this article or by a court or competent jurisdiction, within the required time, shall severally for each and every such violation and noncompliance, respectively, be guilty of a petty misdemeanor, punishable by a fine of not more than \$500.00 or by imprisonment for not more than 90 days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.
- (b) The application of the penalty in subsection (a) of this section shall not be held to prevent the enforced removal of prohibited conditions.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Secs. 11-35—11-60. Reserved.

Se

Secs. 11-69—11-105. Reserved.

Secs. 11-118—11-145. Reserved.

ARTICLE III. FIREWORKS³

³Editor's note(s)—Ord. No. 1754, § I, adopted Aug. 2, 1999, repealed the former art. III, §§ 11-146—11-149, and adding a new art. III, §§ 11-146—11-150. Former art. III pertained to similar subject matter, and derived from Ord. No. 1650, adopted Dec. 15, 1997.

Sec. 11-146. Definitions.

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

Display fireworks means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than 130 milligrams of explosive composition; aerial shells containing more than 40 grams of chemical composition exclusive of lift charge; and other exhibit display items that exceed the limits of permissible fireworks.

Permissible fireworks for possession, use or sale means, in this article, fireworks legal for sale and use in the state under the provisions of NMSA 1978, § 60-2C-7, the Fireworks Licensing and Safety Act as amended, with the exception of all aerial devices and ground audible devices.

(Ord. No. 1754, § I, 8-2-99; Ord. No. 2154, §§ I, II, 12-6-04; Ord. No. 2226, §§ I, II, 8-1-05)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-147. Administration.

- (a) For the purposes of regulating fireworks within the city, the provision of the Fireworks Licensing and Safety Act, NMSA § 60-2C-1 et seq., as amended, shall apply except as indicated in this article.
- (b) Permissible fireworks may be sold at retail between June 20 and July 6 of each year and six days preceding and including New Year's Day and three days preceding and including Chinese New Year, the 16th of September and Cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism.
- (c) It shall be unlawful for a person to possess, use or sell all aerial devices and ground audible devices as outlined in NMSA §§ 60-2C-7(A)(2) and (A)(3).
- (d) All temporary fireworks sales stands used solely as fireworks sales stands shall not be set up more than one week prior to the approved sales periods and shall be dismantled or removed from the location within one week after the approved sales period.

(Ord. No. 1754, § I, 8-2-99; Ord. No. 2154, §§ I, II, 12-6-04; Ord. No. 2226, §§ I, II, 8-1-05)

Sec. 11-148. Drought conditions—Fireworks restrictions.

- (a) If extreme or severe drought conditions exist or potentially exist, the city council may hold a hearing and pass a resolution to issue a proclamation that would impose fireworks restrictions within the city limits.

- (b) The findings of the city council, in passing the resolution, shall be based on current drought indices published by the National Weather Service and any other relevant information supplied by the United States Forest Service.
- (c) Pursuant to the hearing, the city council shall issue a proclamation declaring extreme or severe drought conditions exist within the city limits.
- (d) The proclamation shall be issued no less than 20 days prior to a holiday for which fireworks may be sold, shall be effective for 30 days, and said proclamation may be modified or rescinded within the 30-day period by the city council upon conducting an emergency hearing to determine if weather conditions have improved.
- (e) The proclamation shall read as follows:

"WHEREAS, the City Council is the governing body of the City of Las Cruces; and

WHEREAS, the City Council has obtained information and forecasts from the National Weather Service concerning drought indices; and

WHEREAS, the City Council of the City of Las Cruces has obtained information and forecasts from the United States Forest Service concerning drought indices; and

WHEREAS, the City Council held a public hearing on _____ (date) _____, to determine whether the City of Las Cruces is affected by extreme or severe drought conditions and whether fireworks restrictions should be imposed within the municipal boundaries of the City; and

WHEREAS, the City Council made certain findings of fact based upon information provided during the public hearing and said findings are included in the resolution passed at the hearing authorizing this Proclamation; and

WHEREAS, the findings of the City Council was that the City of Las Cruces is affected by extreme or severe drought conditions based upon current drought indices published by the National Weather Service and other information supplied by the United States Forest Service.

NOW, THEREFORE, be it Proclaimed by the Governing Body of the City of Las Cruces, New Mexico;

- (I) THAT extreme or severe drought conditions exist within the municipal boundaries of the City of Las Cruces.
- (II) THAT in addition to any ordinance enacted pursuant to NMSA 1978 §60-2C-7.C, the sale and use within the municipal boundaries of the City of Las Cruces of missile-type rockets, helicopters, aerial spinners, and stick-type rockets, are prohibited by this Proclamation.
- (III) THAT in addition to any ordinance enacted pursuant to NMSA 1978 §60-2C-7.C, the sale and use within the municipal boundaries of the

City of Las Cruces of ground audible devices such as chasers and firecrackers, are prohibited by this Proclamation.

- (IV) THAT the Governing Body is authorized to and has limited the use of otherwise permissible fireworks, including cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinner, illuminating torches, toy smoking devices and wheels, to areas within the municipal boundaries that are paved, barren, or areas that have a readily accessible source of water.
- (V) THAT the Governing Body, having consulted with the state forester, is authorized to and has banned the use of all fireworks within areas that are covered wholly or in part by timber, brush or native grass.
- (VI) THAT the Governing Body is authorized to and has prohibited or restricted the sale or use of display fireworks.
- (VII) THAT this Proclamation is effective for a period for thirty days from this date unless a subsequent Proclamation is issued by the Governing Body.

APPROVED THIS _____ TH DAY OF _____, _____.

_____ Mayor

_____ Date

ATTEST:

_____ City Clerk

(SEAL)"

- (f) Items under the heading of "(V)" and "(VI)" of subsection (e) above, may be removed from the proclamation by the city council based on their findings of fact within the public hearing based on the drought conditions. If removed from the proclamation, subsequent headings within the proclamation shall be renumbered accordingly.

(Ord. No. 1754, § I, 8-2-99)

Sec. 11-149. Manufacture.

The manufacture of fireworks is prohibited within the city.

(Ord. No. 1754, § I, 8-2-99)

Sec. 11-150. Penalties.

Violations of this article shall be punishable pursuant to the provisions of section 1-10 of this Code.

(Ord. No. 1754, § I, 8-2-99)

Secs. 11-151—11-180. Reserved.

**ARTICLE IV. TRANSPORTATION OF DANGEROUS
SUBSTANCES⁴**

⁴Cross reference(s)—Traffic, ch. 27.

Sec. 11-181. Definitions.

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

Adjacent area means any area within five miles of the boundaries of the city.

Class A poisons means extremely dangerous poisonous gases or liquids of such nature that a very small amount of gas or vapor of the liquid, mixed with air, is dangerous to life.

Class B poisons means less dangerous poisonous liquids or solids, including pastes or semiliquids, that are less dangerous than class A poisons and that are chiefly dangerous by external contact with the body or by being taken internally, as in contaminated foods or feeds. The vapors of some of this class of poison are also offensive and dangerous, but to a lesser extent than class A poisons.

Class C poisons means tear gas or irritating substances in liquid or solid form which give off dangerous or intensely irritating fumes when exposed to air or upon contact with fire.

Class D poisons means radioactive material and substances which spontaneously emit radiations that are capable of penetrating and severely damaging living tissues and surrounding shipments.

Compressed gas means any material or mixture having in the container a pressure exceeding 40 pounds per square inch at 70 degrees Fahrenheit; or a pressure exceeding 104 pounds per square inch at 130 degrees Fahrenheit; or any liquid flammable material having a vapor pressure exceeding 40 pounds per square inch at 100 degrees Fahrenheit.

Corrosive material means any liquid or solid which will cause severe damage to living tissue and to freight by chemical action when in contact therewith; liquids which may also cause fire when in contact with organic matter or certain chemicals.

Explosive means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion.

Flammable liquids means any liquid which gives off flammable vapors.

Flammable solids means solids, other than explosives, which are liable to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from the manufacturing or processing of the commodity.

Oxidizing material means substances that yield oxygen readily to stimulate the combustion of organic matter.

Recreational vehicle means a vehicle composed of a chassis, or frame with wheels, which either has its own mode of power or is drawn by another vehicle, and a camping body primarily designed or converted for use as temporary living quarters for recreation, camping, or travel activities.

(Code 1988, § 14-61)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-182. Exceptions.

This article shall not apply under the following conditions and circumstances:

- (1) When any truck, trailer, motor vehicle or any other form of vehicle is carrying any of the material defined in section 11-181 to commercial consumers, domestic consumers, gasoline service stations or bulk stations located within the corporate limits of the city and adjacent areas.
- (2) When any truck, trailer, motor vehicle. or any other form of vehicle is carrying any of the material defined in section 11-181 for the sole purpose of propelling the truck, trailer, or motor vehicle.
- (3) When any truck, trailer, motor vehicle or any other form of vehicle loaded or partly loaded with any of the products defined in section 11-181 has stopped on any of the streets or highways designated as provided in section 11-183 at a gasoline service station or garage for necessary repairs. Under this circumstance the vehicle shall not remain at the gasoline service station or garage longer than 30 minutes unless the police department is notified that it is necessary to remain for a longer period than 30 minutes.
- (4) When any truck, trailer, motor vehicle or any other form of vehicle used for carrying any of the products defined in section 11-181 has broken down, has a flat tire, needs repair, needs gasoline for its own propulsion to the extent that it cannot be propelled with its own power, the necessary repairs can be made where the vehicle has been forced to stop, provided the vehicle can be repaired within a period of two hours. The driver of the vehicle shall immediately notify the police department of the forced stoppage, and during the period allowed for repair a police officer or someone designated by him shall remain at the place of stoppage to warn other persons using the street or highway of the danger.
- (5) When any truck, trailer, motor vehicle or any other form of vehicle needs immediate repairs and is not loaded or partially loaded with any of the products defined in section 11-181 and is on direct route to a garage or to the private property or place of business of the owner of the vehicle or the owner's place of business exclusively controlled by the owner.
- (6) When any truck, trailer, motor vehicle or any other form of vehicle is loaded or partially loaded with any of the products defined in section 11-181 has broken down and is in need of repair to the extent that the vehicle cannot be repaired within two hours. The police department shall be notified that the vehicle is being removed from the place of stoppage or breakdown to a garage or

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some other place within the corporate limits of the city and shall only be moved under the direction of the police department.

- (7) When any person who is engaged in the business of hauling any of the materials defined in section 11-181 has his place of business within the corporate limits of the city, he shall have a right to convey the truck, trailer, motor vehicle, or any other form of vehicle to his place of business without police protection.

(Code 1988, § 14-62)

Sec. 11-183. Vehicles used for carrying and travel routes.

- (a) It shall be unlawful for any person to drive or cause to be driven or operate or maintain any motor vehicle, truck, trailer or any other vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle used for the carrying of any of the materials defined in section 11-181 over any street, highway or alley within the corporate limits of the city, except:
 - (1) Those streets shown on exhibit A labeled "Hazardous Material and Intercity Truck Routes," incorporated in this section by reference.
 - (2) Other streets may be traveled upon when in the opinion of the traffic engineer and the city manager the safety of the property and its citizens demands it and when they are designated by the traffic engineer with the approval of the city manager by visible markers and signs.
- (b) In order to determine the truck routes and delivery routes of hazardous material, refer to section 12-10-3.1 of the Uniform Traffic Ordinance, as adopted in section 27-1 and as amended in section 27-2.

(Code 1988, § 14-63)

Sec. 11-184. Parking.

- (a) It shall be unlawful for any person to park or cause to be parked on the highway, street or alley within the corporate limits of the city any truck, trailer, motor vehicle or other form of vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle used for carrying any of the materials defined in section 11-181, whether loaded, partially loaded or empty of such products. This subsection shall not apply to the stopping of any vehicle on any of the streets and highways designated in section 11-183 at filling stations for service or because of breakdown of the vehicle on the designated streets or highways.
- (b) It shall be unlawful for any person to park or cause to be parked or to maintain any truck, trailer, motor vehicle or any other form of vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle filled or partially filled with any of the materials defined in section 11-181 on any street, alley, public place or any place within the corporate limits of the city.

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(Code 1988, § 14-64)

Secs. 11-185—11-210. Reserved.

***ARTICLE V. CHEMICAL EMERGENCY PREPAREDNESS
AND HAZARDOUS MATERIAL/CHEMICAL
INVENTORY/DISCLOSURE STATEMENT***

Sec. 11-211. Penalty for violation.

Violations of this article shall be punished as provided in section 1-10.

(Code 1988, § 14-91)

Sec. 11-212. Development of standard operating procedures.

The fire chief shall have the primary responsibility of developing standard operating emergency procedures, and the standard operating procedures for the purpose of chemical emergency planning within the city. A copy of the plan will be forwarded by the fire chief to the office of emergency preparedness for inclusion in the hazardous material/chemical emergency response plan.

(Code 1988, § 14-81)

Sec. 11-213. Emergency hazardous material/chemical response plan.

The designated emergency hazardous material/chemical response planning agency shall consist of state, county, and local officials; police, fire, public, health, civil preparedness, environmental, hospital, transportation officials; and certain private businesses. They shall evaluate and establish resources for preparing and responding to a potential chemical accident within the city. This plan is subject to the approval of the fire chief and shall include the following:

- (1) Identification of facilities and transportation routes for extremely hazardous substances through the city.
- (2) Development of emergency response procedures, on site and off site, in accordance with mandated regulations.
- (3) Development and maintenance of emergency notification procedures.
- (4) Development of methods for determining the occurrence of a release and the probable affected area and population.
- (5) Development of a training program for emergency response personnel, including schedules.
- (6) Presentation of methods and schedules for exercising emergency response plans.

(Code 1988, § 14-82)

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Sec. 11-214. Fire department response.

The fire department shall provide initial response to incidents involving hazardous materials and chemicals, as mandated by the hazardous materials emergency response (HMER) plan of the state Emergency Management Act, as amended in 1984.

(Code 1988, § 14-83)

Sec. 11-215. Training and certification for emergency response personnel.

Designated emergency response personnel shall complete training and receive certification specified by the hazardous materials safety board as consistent with emergency response functions to be performed during an emergency.

(Code 1988, § 14-84)

Sec. 11-216. Applicability of article; list of hazardous materials and chemicals.

This article shall apply to hazardous materials and chemicals that shall have been defined as such by the Environmental Protection Agency or the state environmental department, or both. The chief of the fire department shall be responsible on or before December 1 of every year to acquire from the state department of public safety and the environmental department information of chemicals and products defined by them as being hazardous, and shall make such information available, without charge, to all citizens of the city and to all persons or entities doing business within the city limits. Such information shall be recorded with the city clerk on or before December 10 of each year, and the list shall be in effect for the following year, but no list shall become obsolete until its successor is recorded.

(Code 1988, § 14-85)

Sec. 11-217. Declaration of inventory.

- (a) All persons, businesses or other entities possessing any of the products on the list referred to in section 11-216 must declare their inventory with the fire chief of such chemicals or products on or before March 15 of each year. An updated report of new or additional chemicals added to the inventory within the year must be reported to the fire chief within 15 days of acquisition of the chemicals.
- (b) Any person filing for business registration shall complete the inventory at that time. Such list shall be filed with the fire chief on a form to be approved by the fire chief. All other persons, organizations, or entities must submit a list to the fire chief by the effective date of the ordinance from which this article derives.

-
- (c) Any person or entity so filing shall also indicate the method by which such hazardous waste or chemicals or any waste generated on site therefrom are to be disposed of.
 - (d) There shall be no filing fee for the filing of such declarations.
 - (e) The fire chief will provide a copy of the hazardous materials/chemical facility inventory form to the office of emergency civil preparedness.

(Code 1988, § 14-86)

Sec. 11-218. Site inspection.

Inspection of each site on which materials are stored or disposed of pursuant to this article shall be made at least annually by the fire chief. The office of emergency civil preparedness and the local emergency planning committee will provide technical information and perform emergency planning. The fire chief shall forward the inspection form labelled "Emergency Civil Preparedness Copy" to the office of emergency civil preparedness. The city council, by ordinance, may adopt regulations establishing classification of material, by the nature of the material, the quantity stored, the area in which stored, and the potential for contamination of groundwater or any other significant factor which would increase the frequency of inspection according to the characteristics detailed in the regulations.

(Code 1988, § 14-87)

Sec. 11-219. Adoption of standards; enforcement.

- (a) The standards of the National Fire Protection Association (NFPA), rule 704, requiring the labeling of the buildings in which hazardous materials are stored, are specifically adopted and incorporated in this article by reference. Each site shall display metal signs in a readily visible location for emergency responders. The size and quantity of placards to be displayed will be determined at the discretion of the inspector at the time of the on-site inspection. Size of the placards will be a minimum of six inches by six inches to a maximum of 15 inches by 15 inches inside and outside.
- (b) The standards adopted in subsection (a) of this section and such amendments, updates or revisions thereof as may be adopted by resolution of the city council shall be enforced by the fire chief.

(Code 1988, § 14-88)

Sec. 11-220. Applicability of standards to facilities.

The standards adopted in section 11-210 shall be applicable to all facilities, as follows:

- (1) Those facilities that commence storage, manufacture or use of hazardous materials after November 28, 1989, must comply with the standards upon the effective date of the ordinance from which this article derives.

- (2) Those facilities that expand their physical plant for storage, manufacture or use of hazardous materials after November 28, 1989, or that add additional hazardous materials or increase their inventory or output of hazardous materials by at least 15 percent after November 28, 1989, must comply with the standards upon the date of such expansion, addition, or increase.
- (3) Those facilities which, before November 28, 1989, were of the type covered by the standards adopted in section 11-219 but which do not come under subsection (2) of this section must comply with the standards within 90 days of the effective date of the ordinance from which this article derives.

(Code 1988, § 14-89)

Sec. 11-221. Certification of compliance.

It is the responsibility of all facilities subject to this article to file a certification of compliance with this article with the fire chief on or before March 15 for each calendar year, or within 30 days of the commencement of activities bringing the facility under this article. Such certification shall be on a form acceptable to the responsible official, and such forms shall be made available as provided in subsection 11-217(e). There shall be no charge for the filing of this certification, which shall be filed with the responsible official.

(Code 1988, § 14-90)

Secs. 11-222—11-250. Reserved.

ARTICLE VI. FIRE LANES⁵

⁵Cross reference(s)—Traffic, ch. 27.

Sec. 11-251. Definitions.

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

Fire lane means any area appurtenant to a building deemed necessary by the fire chief to remain free and clear of parked vehicles for access to such building in case of fire or other emergency and designated by him as such, and may include sidewalks, driveways, portions of parking lots or any other area adjacent to or near a building or fire hydrant, as required by the fire chief.

Private property means property that is privately owned, but where numbers of persons work, live or congregate from time to time for any purpose, where the parking of motor vehicles or presence of other obstructions can interfere with the ingress and egress of emergency vehicles (police, fire, ambulance) for the protection of persons and property thereon, and shall include, but not be limited to, shopping centers, bowling lanes, theaters, hospitals, churches, factories, schools, lodginghouses, convalescent homes, hotels, asylums and public halls. Private property shall not include single-family dwellings, duplexes, fourplexes and condominiums.

Public property means property owned by any political subdivision not specifically exempted by state or federal law.

Shopping center means a group of commercial business establishments operated as a unit with off-street parking provided on the property, and related in locations, sizes and types of shops to the trade area that the unit serves.

(Code 1988, § 14-101)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-252. Authority to designate; maintenance responsibility.

The fire chief is authorized to designate fire lanes on property of shopping centers and other private or public property where such areas must be kept free of parked vehicles and other obstructions to provide ready access in such areas in case of fire or other emergency. The designation by the fire chief of such fire lanes shall never be held to make the city responsible for the maintenance of such fire lanes on private property, but the owner of such property shall continue to be responsible for the maintenance of such area. The official records of the designation and location of any such fire lanes shall be kept in the office of the fire chief.

(Code 1988, § 14-102)

Sec. 11-253. Shopping center construction or construction on private property.

Before plot plans of proposed shopping center construction or construction on private property are submitted to the Community Development Department for issuance of building permits, such plans shall be

submitted to the fire chief for his review and approval of the adequacy of the fire lanes provided therefor. The specific requirements of this section as applicable to a specific structure may be modified by the fire chief in recognition of varying occupancies, size, and hazards of buildings and the provision of other means of access or fixed fire protection.

(Code 1988, § 14-103)

Sec. 11-254. Submission of plot plan to fire chief required.

- (a) The fire chief may require the owners of existing shopping centers and existing facilities on private property to submit plot plans for his use in determining whether to designate fire lanes on the property. The fire chief may require that the fire lane for existing buildings be established to provide access for fire suppression operations by improving existing conditions.
- (b) Fire lanes established for new and existing structures shall conform to fire lane requirement applicable at the time of construction. If no fire lane requirements were applicable at the time of construction, the fire chief may require establishment of fire lanes to conform with the requirements of this section, insofar as is practicable without requiring any construction, structural modification or substantial financial hardship.

(Code 1988, § 14-104)

Sec. 11-255. No parking signs.

Upon the designation of a fire lane pursuant to this article, the fire chief shall give notice of such designation to the owner of such shopping center and other areas, directing the owner to cause signs to be posted, at the expense of the owner, at designated locations, and stating "No Parking At Any Time—Fire Lane (tow away zone)." Such signs shall be of a standard size and color, of standard lettering and mounting, conforming to specifications established by the traffic engineer and fire chief. It is unlawful to park any vehicle other than authorized emergency vehicles in a designated fire lane when such signs are in place.

(Code 1988, § 14-105)

Sec. 11-256. Unlawful parking.

It is unlawful to park any vehicle other than an authorized emergency vehicle in any fire lane established pursuant to this article, except as may be specifically permitted by the fire chief (i.e., an armored vehicle may park in the fire lane for a brief period of time during the performance of duty after obtaining a permit from the fire department).

Nothing in this section shall prohibit a city bus from stopping briefly in a fire lane for the purpose of dropping off or picking up passengers.

(Code 1988, § 14-106; Ord. No. 2508, § I, 3-2-09)

Sec. 11-257. Towing authorized.

Unauthorized vehicles parked in designated fire lanes that block fire department or other emergency vehicle access may be towed at the owner's expense to a designated storage facility by the authority of the fire chief and the police department.

(Code 1988, § 14-107)

Sec. 11-258. Removal of signs.

It is unlawful for any person, without lawful authority, to attempt to remove any sign designating a fire lane established pursuant to this article.

(Code 1988, § 14-108)

Sec. 11-259. Unauthorized signs.

- (a) It is unlawful for any person to place, maintain or display any unauthorized sign which purports to be or is an imitation of or resembles an official sign designating a fire lane.
- (b) Every such prohibited sign is declared to be a public nuisance, and the fire chief is empowered to remove the sign or cause it to be removed.
- (c) Undesignated fire lanes in compliance with the fire lane requirements shall meet the stipulations of this article. Failure to comply with proper fire lane establishment procedures shall, in addition to the provisions of this article, be prosecuted according to the limitations of this Code.

(Code 1988, § 14-109)

Sec. 11-260. Standards for markings and signs.

Fire lanes designated by the fire department, in accordance with this article, shall be posted in the following manner:

- (1) *Curb markings.*
 - a. The curb adjacent to an officially designated fire lane shall be painted red.
 - b. The legend "fire lane" shall be stenciled in white with four-inch upper case letters on the top and face of the curb adjacent to a fire lane. This legend shall be repeated at intervals of 50 feet.
 - c. No parking areas not officially designated as fire lanes shall not be painted red or marked in such a fashion as to be confused with an official fire lane.
 - d. No parking areas other than officially designated fire lanes should be painted yellow, to be consistent with city and state standards for establishing no parking areas.
- (2) *Signs.*

- a. The standard size of an official fire lane sign shall be 12 inches by 18 inches. An aluminum blank with rounded corners is recommended.
- b. The standard color of an official fire lane sign shall be follows:
 - 1. The background shall be reflective white.
 - 2. The lettering and border shall be red.
- c. The standard legend and lettering of an official fire lane sign shall be as shown on the approved drawing which is on file and available in the city offices.
- d. The standard fire lane sign shall be posted as follows:
 - 1. One sign shall be posted at each end of an official fire lane. Each sign shall have a single head arrow showing the appropriate direction of the fire lane.
 - 2. A fire lane longer than 150 feet shall have intermediate signs posted at even intervals. Intermediate signs shall have a double head arrow indicating the fire lane is continuous. The intermediate signs may be posted as necessary, but in no case shall the intervals between fire lane signs be greater than 100 feet.
 - 3. The fire lane sign shall be securely fastened to a suitable pole or support, with a minimum vertical clearance above the sidewalk of seven feet.
 - 4. When poles are used to mount fire lane signs, they shall be placed two feet and six inches behind the face of the curb. In accordance with the fire code, no pole or obstruction may be placed within three feet of a fire hydrant.
 - 5. Fire lane signs shall be posted parallel to the lane or curb to which they apply.
 - 6. When the distance between the curb and a building, light standard, or other structure is eight feet or less, the fire lane sign may be posted on the face of the building, light standard, or other structure. The bottom of the sign shall be located seven feet above the adjacent sidewalk.

(Code 1988, § 14-110)

PART II - MUNICIPAL CODE
Chapter 11 FIRE PREVENTION AND PROTECTION

Chapter 11 FIRE PREVENTION AND PROTECTION¹

¹Cross reference(s)—Alarm systems and private security firms, ch. 4; health and human services, ch. 12; woodburning, § 12-86 et seq.; smoking in public places, § 12-124; smoking in places of employment, § 12-125; smoking in city-owned buildings, § 12-126; buildings and building regulations, ch. 30.

PART II - MUNICIPAL CODE
Chapter 11 FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Secs. 11-1—11-25. Reserved.

ARTICLE II. FIRE PREVENTION CODE²

²Editor's note(s)—Ord. No. 2668, §§ I, II(exh. A), adopted Oct. 1, 2012, amended art. II in its entirety to read as herein set out. A grace period from the date of adoption will be in place allowing use of either the 2006 or 2009 editions until Jan. 1, 2013. 2009 editions will be fully enforced starting Jan. 1, 2013. Former art. II, §§ 11-26—11-117, pertained to similar subject matter and derived from: Code 1988, §§ 14-16—14-25; Ord. No. 1796, § I, adopted May 1, 2000; Ord. No. 2073, §§ I, II, adopted Jan. 5, 2004; and Ord. No. 2477, § II, adopted Nov. 17, 2008.

State law reference(s)—State fire prevention standards, NMSA 1978, § 59-17-13; local governments to comply with same, NMSA 1978, § 59-17-24.

PART II - MUNICIPAL CODE
Chapter 11 FIRE PREVENTION AND PROTECTION

DIVISION 1. GENERALLY

Sec. 11-26. Adopted.

- (a) The Las Cruces Fire Department is established for the purpose of protecting the health, safety and welfare of the citizens of Las Cruces by responding to fires, emergency medical calls, release of hazardous materials and other emergency and nonemergency incidents within the incorporated city limits. The Las Cruces Fire Department is further charged with preventing conditions hazardous to life and property from fire, hazardous materials or explosion through the adoption of that certain code known as the International Fire Code, 20~~21~~¹⁵ edition, including the following appendix chapters:

- (1) Appendix B, Fire-flow requirements for buildings.
- (2) Appendix C, Fire hydrant locations and distribution.
- (3) Appendix D, Fire apparatus access roads.
- (4) Appendix E, Hazard Categories
- (5) Appendix F, Hazard Ranking
- (6) Appendix G, Cryogenic Fluids-Weight and Volume Equivalents
- (7) Appendix H, Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions
- (84) Appendix I, Fire protection ~~S~~systems-Noncompliant Conditions.
- (95) Appendix K, Construction requirements for existing healthcare facilities.
- (10) Appendix L, Requirements for Fire Fighter Air Replenishment Systems
- (116) Appendix M, High rise buildings-retroactive automatic sprinkler systems.
- (12) Appendix N, Indoor trade shows and exhibitions

- (b) The International Fire Code mentioned in subsection (a) of this section is adopted, save and except such portions as are deleted, modified or amended by section 11-33 and divisions 2 and 3 of this article. One copy of the code is filed in the office of the city clerk. The International Fire Code is adopted and incorporated as fully as if set out at length in this section, and the provisions thereof shall be controlling within the city limits.

(Code 1988, § 14-16; Ord. No. 1796, § I, 5-1-00) (Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)

Charter reference(s)—Code of technical regulations, § 2.12.

Sec. 11-27. Establishment and duties of fire prevention services.

The fire code as adopted in section 11-26 and as amended in this article shall be enforced by the fire prevention services in the fire and emergency services division of the city, which is established and which shall be operated under the supervision of the fire marshal.

~~(Code 1988, § 14-17)(Ord. No. 2668, § II(exh. A), 10-1-12)~~

Sec. 11-28. Definitions.

The following definitions shall be added to the fire code adopted in section 11-26:

Fire marshal is the chief of the fire prevention services; interchangeable with the term fire code official under this code.

Jurisdiction: This code shall be applicable to all property within the corporate limits of the City of Las Cruces, New Mexico.

~~(Code 1988, § 14-18)(Ord. No. 2668, § II(exh. A), 10-1-12)~~

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-29. Establishment of limits of districts in which storage of flammable or combustible liquids in outside above ground tanks prohibited.

The limits referred to in sections 5704.2.9.6.1 and 5706.2.4.4 of the fire code adopted in section 11-26, in which the storage of flammable or combustible liquids is restricted, is established as and shall be in accordance with the city's zoning code in chapter 38.

~~(Code 1988, § 14-19)(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

Sec. 11-30. Establishments of limits in which storage of liquefied petroleum gases prohibited.

The limits referred to in section 6104.2 of the fire code adopted in section 11-26, in which storage and use of liquefied petroleum gas is restricted, are established and shall be in accordance with the city's zoning code in chapter 38. The aggregate capacity of any one installation shall not exceed a 2,000-gallon water capacity in residential areas. Exception is a multi-container location such as a dispensing station, and bulk facilities.

~~(Code 1988, § 14-20)(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

Sec. 11-31. Establishment of limits of districts in which storage of flammable cryogenic fluids in stationary containers prohibited.

The limits referred to in section 5806.2 of the fire code adopted in section 11-26, in which storage of flammable cryogenic fluids in stationary containers is prohibited, shall be in accordance with the city's zoning code in chapter 38.

~~(Code 1988, § 14-21)(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

~~Sec. 11-32. Reserved.~~

Sec. 11-33. Amendments.

The fire code adopted in section 11-26 is amended as set forth in this section. When an existing section number of the fire code is referred to in this section, the text in this section shall control. When a new section or subsection is referred to in this section it shall be added to the fire code as adopted. The fire code is amended and changed as follows:

Chapter 1 Scope and Administration.

Section 101.1 Title shall be amended to read as follows:

These regulations shall be known as the Fire Code of the City of Las Cruces, hereinafter referred to as "this code".

Section 104.6 Official records shall be amended to read as follows:

The fire code official shall keep official records as required by Sections 104.6.1 through 104.6.4. Such records shall be retained in accordance with the record retention requirements established by the City of Las Cruces and State of New Mexico.

Section 104.1~~10.2~~ *Fire prevention personnel and police authority* is added to read as follows:

- A. Members of the fire prevention services shall have the powers of a police officer in performing their duties under this code when:
 - 1. Such members of the fire prevention services have been certified by a law enforcement academy authorized by the State of New Mexico; and
 - 2. Such members have been commissioned as police officers by the City of Las Cruces.
- B. Members of the fire prevention services who meet the requirement stated in paragraphs (1) and (2) of subpart A of this section shall have the following powers:
 - 1. Powers of arrest for criminal matters;
 - 2. Authority to carry such weapons and utilize such equipment necessary in the discharge of their duties pursuant to this code;

3. Authority to investigate arson and related crimes if so appointed and authorized by the Las Cruces Police Chief.
- C. All other members of the fire department who do not meet the requirements of subpart A of this section shall have the power to issue citations only for violations of this code and chapter 11 of the Las Cruces Municipal Code.

Section 104.1~~21~~.2 Obstructing operations shall be amended to read as follows:

No person shall obstruct the operations of the fire department in connection with extinguishment or control of any fire, or actions relative to other emergencies, nonemergency incidents or training, or disobey any lawful command of the fire chief or member of the fire department or any lawful order of a police officer assisting the fire department.

Section 105.1 General shall be amended to read as follows:

Permits required by the fire code official shall be in accordance with section 105.

Exception: Permits issued by the City of Las Cruces Community Development Department.

Section ~~106~~105.4 Construction documents shall be amended to read as follows:

Construction documents shall be in accordance with this section and requirements established by the City of Las Cruces Community Development Department.

Section 105.7 Required construction permits shall be amended to read as follows:

The fire code official is authorized to issue construction permits for work as set forth in Sections 105.1~~7~~.1 through 105.6~~7~~.2~~1~~4. Such permits shall be processed through the City of Las Cruces Community Development Department and shall be in conformance with the requirements established by this code and the Community Development Department.

Section 105.6~~7~~.1.1 Design Safety Margin shall be added to read as follows:

Unless otherwise approved by the Fire Code Official all automatic sprinkler systems shall be designed with a minimum ten psi safety margin.

Section 105.6~~7~~.1.2 Hydraulic calculations required shall be added to read as follows:

When required by the Fire Code Official, hydraulic calculations shall be provided for modification to an existing automatic fire-extinguishing system requiring the installation of additional heads when either of the following occur:

1. Number of heads being added exceeds ten.
2. Number of heads being added is greater than ten percent of total heads for the system.

The fire code official may require hydraulic calculations be submitted for any modification to an existing system when deemed necessary to adequately evaluate the impact on the system.

Section ~~111.1108.1~~ *Board of appeals established* shall be amended to read as follows:

Whenever the Fire Chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, applicant may appeal from the decision to city council by writing to the fire chief requesting an appeal within 30 days of the aggrieved action.

Section ~~111.2108.2~~ *Limitations on authority* shall be deleted in its entirety.

Section ~~111.3108.3~~ *Qualifications* shall be deleted in its entirety.

Section ~~112.4109.3~~ *Violation penalties* shall be amended to read as follows:

Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation for the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a petty misdemeanor, punishable by a fine of not more than \$500.00 or by imprisonment not exceeding ~~179~~ 90 days, or both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section ~~113.4111.4~~ *Failure to comply* shall be amended to read as follows:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be considered to be in violation of this code and shall be subject to the penalties as set forth in Section ~~112.4109.3~~.

Chapter 3 General Requirements

Section 315.1 is added to read as follows:

Electric Vehicles & Personal mobility devices. Electrically powered vehicles and personal mobility devices shall not be displayed, stored, or serviced indoors unless specifically authorized by the Fire Code Official or in conformance with the provisions of Appendix N.

Chapter 4 Emergency Planning and Preparedness

Table ~~405.3405.2~~ *Fire and evacuation drill frequency and participation* shall be amended as follows:

Group H occupancies shall be included with Group A occupancies in the table.

Chapter 5 Fire Service Features

Section 505.1 Address numbers shall be amended to read as follows:

New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Numbers shall be not less than two inches in width and three inches in height. Address identification shall also conform to section 30-1 of the Las Cruces Municipal Code.

Section 507.5.1. ~~24~~ Fire protection in recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots is added to read as follows:

Fire protection in recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots shall provide and maintain fire hydrants and access roads in accordance with sections 503 and 507.

Section 507.5.7 Hydrant reflectors is added to read as follows:

~~Where new hydrants are required, an approved reflective marker shall be installed in fire department access roadways to make hydrants more discernible to approaching apparatus. Placement and location of markers shall be determined by the fire code official.~~

Chapter 9 Fire Protection and Life Safety Features

Section ~~901.4.7~~ 901.4.6 Pump and Riser room size shall be amended to read as follows:

Where provided, fire pump rooms and automatic sprinkler system riser rooms shall be designated with adequate space for all equipment necessary for the installation, as defined by the manufacturer, with sufficient working space around the stationary equipment. Clearances around equipment to the elements of permanent construction, including other installed equipment and appliances, shall be sufficient to allow inspection, service, repair, or replacement without removing such elements of permanent construction or disabling the function of a required fire-resistance rated assembly. Fire pump and automatic sprinkler system riser rooms shall be provided with a door(s) to the exterior and an unobstructed passageway large enough to allow removal of the largest piece of equipment.

Section 902.1 Definitions shall have the definition of Standpipe System, Classes of, amended to read as follows:

Standpipe classes are as follows:

Class I system. A system providing 2.5-inch (64 mm) hose connections to supply water for use by fire departments and those trained in handling heavy fire streams.

Class II system. A system providing 1.5-inch (38 mm) hose stations to supply water for use primarily by the building occupants or by the fire department during initial response. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.

Class III system. A system providing 1.5-inch (38 mm) hose stations to supply water for use by building occupants and 2.5-inch (64 mm) hose connections to supply a larger volume of water for use by fire departments and those trained in handling heavy fire streams. 1.5-inch hoses and hose cabinets shall not be provided, unless required by the Fire Code Official.

Section 903.2 Exception shall be deleted in its entirety.

Section 903.3.9 Unservicable Fire Sprinkler Systems is added to read as follows:

Where a large concealed space, such as a shallow attic space, greater than 3000CF(85 M³), requires protection and the system is not serviceable in that area, as determined by the Fire Marshal, the area shall be designed such that sprinkler protection is not required as per NFPA 13.

Section 903.4 Exceptions shall be amended to read as follows:

2. Limited area systems serving fewer than 20 sprinklers in other than Group H and Group I occupancies.

Section 903.4.4 Multi Story Buildings shall be added to read as follows:

When required by the Fire Code Official, approved supervised indicating control valves shall be provided in multi-story buildings and attached tenant spaces. For the purpose of this section a basement shall be considered a story.

Section 913.4 Valve supervision shall be amended to read as follows:

Where provided, the fire pump suction, discharge and bypass valves, and the isolation valves on the backflow prevention device or assembly shall be supervised open by one of the following methods:

1. Central-station, proprietary, or remote-station signaling service.
2. Local signaling service that will cause the sounding of an audible signal at a constantly attended location when approved by the fire code official.

Numbers 3. and 4. shall be deleted in their entirety.

Chapter 10 Means of Egress

Section 1020.1.1 - Corridor Hold-Opens is added to read as follows:

Where a corridor is required to be fire rated as per Table 1020.1, Door hold opens are required on some or all rooms that the corridor serves, as determined by the Fire Marshal. The hold opens shall be released upon automatic smoke detection in the corridor.

Chapter 23 Motor Fuel-Dispensing Facilities and Repair Garages

Section 2306.2.3.1 Existing above-ground tanks used for dispensing into motor vehicles is added to read as follows:

Existing above-ground tanks shall comply with Section 2306.2.3

Chapter 24 Flammable Finishes

Section 2404.9.2 Frequency shall be amended to read as follows:

Spraying operations shall not be of a continuous nature and shall not exceed 9 square feet per day.

Chapter 56 Explosives and Fireworks

Section 5601.1.3 Exceptions shall be amended as follows:

Exception 2 shall be deleted in its entirety.

Chapter 61 Liquefied Petroleum Gases

Section 6108.1 General shall be amended to read as follows:

Fire protection shall be provided for installations having storage containers with a water capacity of more than 4,000 (15,140 L) gallons as required by Section 6.25 of NFPA 58.

(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)

Chapter 80 Referenced Standards

Add NFPA 1 – Most recent edition

Sec. 11-34. Penalties.

- (a) Any person who violates any of the provisions of the fire code as adopted and amended in this article, who fails to comply with the fire code, who violates or fails to comply with any order made under the fire code, who builds in violation of any order made under the fire code, who builds in violation of any detailed statement of specifications or plans submitted and approved under the fire code or any certificate or permit issued under the fire code and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by this article or by a court or competent jurisdiction, within the required time, shall severally for each and every such violation and noncompliance, respectively, be guilty of a [petty](#) misdemeanor, punishable by a fine of not more than \$500.00 or by imprisonment for not more than ~~179~~ [90](#) days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.
- (b) The application of the penalty in subsection (a) of this section shall not be held to prevent the enforced removal of prohibited conditions.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Secs. 11-35—11-60. Reserved.

~~DIVISION 2. FIRE APPARATUS ACCESS ROADS~~

~~Sec. 11-61. Scope.~~

~~Appendix D of the fire code adopted in section 11-26 shall be amended to read as set forth in this division. In the case of conflict with differing codes, the most restrictive of code will prevail.~~

~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

~~Sec. 11-62. Required access.~~

~~Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34,050 kg).~~

~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

~~Sec. 11-63. Minimum specifications.~~

- ~~(a) Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 20 feet (6,096 mm).~~
- ~~(b) Fire apparatus access roads shall not exceed ten percent in grade unless approved by the fire code official.~~
- ~~(c) The minimum turning radius shall be determined by the fire code official.~~
- ~~(d) Dead-end fire apparatus access roads in excess of 150 feet (45,720 mm) shall be provided with width and turnaround provisions in accordance with City of Las Cruces Design Standards or as approved by the fire code official.~~
- ~~(e) Where required by the fire code official, gates securing the fire apparatus access roads shall comply with all of the following criteria:
 - ~~(1) The minimum gate width shall be 20 feet (6,096 mm).~~
 - ~~(2) Gates shall be of the swinging or sliding type.~~
 - ~~(3) Construction of gates shall be of materials that allow manual operation by one person.~~
 - ~~(4) Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.~~
 - ~~(5) Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be approved by the fire code official.~~
 - ~~(6) Manual opening gates shall not be locked with a padlock or chain and padlock unless they are capable of being opened by means of forcible entry tools.~~~~

- (7) ~~Locking device specifications shall be submitted for approval by the fire code official.~~
- (8) ~~Electric gate operators, where provided, shall be listed in accordance with UL 325.~~
- (9) ~~Gates intended for automatic operation shall be designed, constructed and installed to comply with requirements of ASTM F 2200.~~

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-64. Required signs.

- (a) ~~Where required by the fire code official, fire apparatus access roads shall be marked with permanent signs complying with chapter 11, article VI of the Las Cruces Municipal Code.~~
- (b) ~~Fire apparatus access roads 20 to 26 feet wide shall be posted on both sides as a fire lane.~~
- (c) ~~Fire apparatus access roads more than 26 feet wide to 32 feet wide shall be posted on one side of the road as a fire lane.~~

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-65. Commercial and industrial developments.

- (a) ~~Buildings or facilities exceeding 30 feet or three stories in height shall have at least two means of fire apparatus access for each structure.~~
- (b) ~~Buildings or facilities having a gross building area of more than 62,000 square feet shall be provided with two separate and approved fire apparatus access roads.~~

~~Exception: When approved by the fire code official, projects having a gross building area of up to 124,000 square feet (11,520 m²) that have a single approved fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems.~~

- (c) ~~Where two access roads are required, they shall be placed a distance apart equal to not less than one-half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.~~

(Ord. No. 2668, § II(exh. A), 10-1-12)

Sec. 11-66. Aerial fire apparatus access roads.

- (a) ~~Where required by the fire code official, buildings or portions of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway.~~

(b) ~~Fire apparatus access roads shall have a minimum unobstructed width of 26 feet in the immediate vicinity of any building or portion of building more than 30 feet in height.~~

(c) ~~At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building.~~

~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

~~Sec. 11-67. Multiple-family residential developments.~~

(a) ~~Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire access roads.~~

~~Exception: When approved by the fire code official, projects having up to 200 dwelling units may have a single approved fire apparatus access road when all buildings, including nonresidential occupancies, are equipped throughout with approved automatic sprinkler systems installed in accordance with Sections 903.3.1.1 or 903.3.1.3 of the fire code adopted in section 11-26.~~

(b) ~~Multiple-family residential projects having more than 200 dwelling units shall be provided with two separate and approved fire apparatus access roads regardless of whether they are equipped with an approved automatic sprinkler system.~~

~~(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

~~Sec. 11-68. One- or two-family residential developments.~~

~~Developments of one- or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with separate and approved fire apparatus access roads, and shall meet the requirements of subsection 11-65(c). For the purpose of this section a structure meeting the definition of a townhouse and constructed in accordance with the 2015 International Residential Code (IRC) shall be considered a one-family dwelling.~~

~~Exception 1. When approved by the fire code official, where there are 30 or more dwelling units on a single public or private access way and all dwelling units are protected by an approved automatic sprinkler systems, access from two directions shall not be required.~~

~~Exception 2. The number of dwelling units on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official.~~

~~(Ord. No. 2668, § II(exh. A), 10-1-12; Ord. No. 2802, § I(exh. A), 1-17-17)~~

~~Secs. 11-69—11-105. Reserved.~~

~~DIVISION 3. FIRE FLOW REQUIREMENTS FOR BUILDINGS AND FIRE HYDRANT LOCATIONS AND DISTRIBUTION~~

Sec. 11-106. Scope.

- (a) ~~Appendix B and C of the fire code adopted in section 11-26 shall be amended to read as set forth in this division.~~
- (b) ~~The procedure determining fire-flow requirements for buildings or portions of buildings constructed shall be in accordance with this division. This division requires that adequate fire flow be provided for protection of life and property. It establishes and develops guidelines and rules for providing fire hydrant locations.~~

~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

Sec. 11-107. 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:

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Fire-flow means the flow rate of water supply, measured at 20 psi residual pressure, that is available for firefighting.

Fire-flow calculation area means the floor area, in square feet, used to determine the required fire flow.

~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

~~Cross-reference(s)—Definitions generally, § 1-2.~~

Sec. 11-108. Modifications.

- (a) ~~*Increases.* The fire code official is authorized to increase fire flow requirements where conditions indicate an unusual susceptibility to group fires or conflagrations. An increase shall not be more than twice that required for the building under consideration.~~
- (b) ~~*Decreases.* The fire code official is authorized to reduce the fire flow requirements for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical.~~

~~(Ord. No. 2668, § II(exh. A), 10-1-12)~~

Sec. 11-109. Fire area.

- (a) ~~*Computation.* For the purpose of this division, the fire-flow calculation area shall be the total floor area of all floor levels within the exterior walls, and under the horizontal projections of the roof of a building, except as modified in type IA and type IB construction.~~
- (b) ~~*Area separation.* Portions of buildings which are separated by fire walls without openings, constructed in accordance with the International~~

Building Code are allowed to be considered as separate fire-flow calculation areas.

(c) ~~Type IA and type IB construction.~~ The fire-flow calculation area of buildings constructed of type IA and type IB construction shall be the area of the three largest successive floors.

Exception: Fire-flow calculation area for open parking garages shall be determined by the area of the largest floor.

(Ord. No. 2668, § II(exh. A), 10-1-12)

~~Sec. 11-110. Fire-flow requirements for one- and two-family dwellings.~~

The minimum fire-flow requirements for one- and two-family dwellings shall not be less than 1,000 gallons per minute. The fire-flow duration for one- and two-family dwellings shall not be less than that specified in Table A in section 11-117.

Exception: A reduction in required fire-flow of 50 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system.

(Ord. No. 2668, § II(exh. A), 10-1-12)

~~Sec. 11-111. Buildings other than one- and two-family dwellings.~~

The minimum fire-flow and flow duration for buildings other than one- and two-family dwellings shall not be less than that specified in Table A in section 11-117.

Exception: A reduction in required fire-flow of up to 75 percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with Sections 903.3.1.1 or 903.3.1.2 of the International Fire Code. The resulting fire-flow shall not be less than 1,500 gallons per minute in addition to the sprinkler demand for the prescribed duration as specified in Table A in section 11-117.

(Ord. No. 2668, § II(exh. A), 10-1-12)

~~Sec. 11-112. Fire hydrant location.~~

Fire hydrants shall be provided in accordance with Table B in section 11-117, for the protection of buildings or portions of buildings constructed. Fire hydrants shall be provided along required fire apparatus access roads and public streets.

(Ord. No. 2668, § II(exh. A), 10-1-12)

~~Sec. 11-113. Number of fire hydrants.~~

The minimum number of fire hydrants available to a building shall not be less than that listed in Table B in section 11-117. The number of fire hydrants available to a complex or subdivision shall not be less than that determined by

spacing requirements listed in Table B in section 11-117, when applied to fire apparatus access roads and perimeter public streets from which fire operations could be conducted.

{Ord. No. 2668, § II(exh. A), 10-1-12}

Sec. 11-114. Consideration of existing fire hydrants.

For the purpose of this division, existing fire hydrants on public streets are allowed to be considered as available when approved by the fire code official. Existing fire hydrants on adjacent properties shall not be considered available unless fire apparatus access roads extend between properties and easements are established to prevent obstruction of such roads.

{Ord. No. 2668, § II(exh. A), 10-1-12}

Sec. 11-115. Distribution of fire hydrants.

- (a) — Each new development will be analyzed for fire flow and fire hydrant needs. Fire hydrant requirements will vary with the size and layout of the buildings, building design and construction materials, and access from and proximity to the public right-of-way.
- (b) — The average spacing between fire hydrants shall not exceed that listed in Table B in section 11-117. Exceptions to this requirement are as follows:
 - (1) — Exception 1. The fire chief may accept a deficiency of up to ten percent where existing fire hydrants provide all or a portion of the required fire hydrant service.
 - (2) — Exception 2. The fire hydrant spacing in one- and two-family dwelling subdivisions may be increased to 600 feet.
- (c) — Regardless of the average spacing, fire hydrants shall be located such that all points on street and access roads adjacent to a building are within the distances listed in Table B in section 11-117.

{Ord. No. 2668, § II(exh. A), 10-1-12}

Sec. 11-116. Installation of fire hydrants.

Fire hydrants shall be installed in accordance with the city standards and policies and shall be available for use prior to the beginning of development or building construction.

{Ord. No. 2668, § II(exh. A), 10-1-12}

Sec. 11-117. Tables.

Table A and Table B referred to in this division shall be as follows:

TABLE A
MINIMUM REQUIRED FIRE FLOW AND FLOW DURATION FOR BUILDINGS

Fire Area (square feet)

x 0.0929 for m ²					Fire Flow (GPM) ²	
Type IA and IB ¹	Type IIA and IIIA ¹	Type IV and V-A ¹	Type IIB and IIIB ¹	Type V-B ¹	x 3.785 for L/min.	Flow Duration (hours)
Up to 22,700	Up to 12,700	Up to 8,200	Up to 5,900	Up to 3,600	1,500	2
30,200	17,000	10,900	7,900	4,800	1,750	2
38,700	21,800	12,900	9,800	6,200	2,000	2
48,300	24,200	17,400	12,600	7,700	2,250	2
59,000	33,200	21,300	15,400	9,400	2,500	2
70,900	39,700	25,500	18,400	11,300	2,750	2
83,700	47,100	30,100	21,800	13,400	3,000	3
97,700	54,900	35,200	25,900	15,600	3,250	3
112,700	63,400	40,600	29,300	18,000	3,500	3
128,700	72,400	46,400	33,500	20,600	3,750	3
145,900	82,100	52,500	37,900	23,300	4,000	4
164,200	92,400	59,100	42,700	26,300	4,250	4
183,400	103,100	66,000	47,700	29,300	4,500	4
203,700	114,600	73,300	53,000	32,600	4,750	4
225,200	126,700	81,100	58,600	36,000	5,000	4
247,700	139,400	89,200	65,400	39,600	5,250	4
271,200	152,600	97,700	70,600	43,400	5,500	4
295,900	166,500	106,500	77,000	47,400	5,750	4
Greater	Greater	115,800	83,700	51,500	6,000	4
"	"	125,500	90,600	55,700	6,250	4
"	"	135,500	97,900	60,200	6,500	4
"	"	145,800	106,800	64,800	6,750	4
"	"	156,700	113,200	69,600	7,000	4
"	"	167,900	121,300	74,600	7,250	4
"	"	179,400	129,600	79,800	7,500	4
"	"	191,400	138,300	85,100	7,750	4
"	"	Greater	Greater	Greater	8,000	4

¹Types of construction are based upon the building code.

²Measured at 20 psi (137.9 kPa). See the definition of fire flow in section 11-107.

TABLE B
NUMBER AND DISTRIBUTION OF FIRE HYDRANTS

Fire-Flow Requirement (GPM)	Minimum No. of Hydrants	Spacing Between Hydrants ^{1, 2, 3} (feet)	Maximum Distance From Any Point on Street or Road Frontage to Hydrant ⁴
x 3.785 for L/min.		x 304.8 for mm	
1,750 or less	1	500	250
1,750—2,250	2	450	225
2,500	3	450	225
3,000	3	400	225
3,500—4,000	4	350	210
4,500—5,000	5	300	180
5,500	6	300	180
6,000	6	250	150
6,500—7,000	7	250	150
7,500 or more	8 or more ⁵	200	120

¹-Reduce by 100 feet (30 480 mm) for dead-end streets or roads.

²-Where streets are provided with median dividers which cannot be crossed by firefighters pulling hose lines, or arterial streets are provided with four or more traffic lanes and have a traffic count of more than 30,000 vehicles per day, hydrant spacing shall average 500 feet (152.4) on each side of the street and shall be arranged on an alternating basis up to a fire-flow requirement of 7,000 gallons per minute (26 495 L/min.) and 400 feet (122 m) for higher fire-flow requirements.

³-Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 1,000 feet (305 m) to provide for transportation hazards or as required by the chief.

⁴-Reduce by 50 feet (15,240 mm) for dead-end streets or roads.

⁵-One hydrant for each 1,000 gallons per minute (3,785 L/min.) or fraction thereof.

(Ord. No. 2668, § II(exh. A), 10-1-12)

Secs. 11-118—11-145. Reserved.

ARTICLE III. FIREWORKS³

³Editor's note(s)—Ord. No. 1754, § I, adopted Aug. 2, 1999, repealed the former art. III, §§ 11-146—11-149, and adding a new art. III, §§ 11-146—11-150. Former art. III pertained to similar subject matter, and derived from Ord. No. 1650, adopted Dec. 15, 1997.

Sec. 11-146. Definitions.

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

Display fireworks means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than 130 milligrams of explosive composition; aerial shells containing more than 40 grams of chemical composition exclusive of lift charge; and other exhibit display items that exceed the limits of permissible fireworks.

Permissible fireworks for possession, use or sale means, in this article, fireworks legal for sale and use in the state under the provisions of NMSA 1978, § 60-2C-7, the Fireworks Licensing and Safety Act as amended, with the exception of all aerial devices and ground audible devices.

(Ord. No. 1754, § I, 8-2-99; Ord. No. 2154, §§ I, II, 12-6-04; Ord. No. 2226, §§ I, II, 8-1-05)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-147. Administration.

- (a) For the purposes of regulating fireworks within the city, the provision of the Fireworks Licensing and Safety Act, NMSA § 60-2C-1 et seq., as amended, shall apply except as indicated in this article.
- (b) Permissible fireworks may be sold at retail between June 20 and July 6 of each year and six days preceding and including New Year's Day and three days preceding and including Chinese New Year, the 16th of September and Cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism.
- (c) It shall be unlawful for a person to possess, use or sell all aerial devices and ground audible devices as outlined in NMSA §§ 60-2C-7(A)(2) and (A)(3).
- (d) All temporary fireworks sales stands used solely as fireworks sales stands shall not be set up more than one week prior to the approved sales periods and shall be dismantled or removed from the location within one week after the approved sales period.

(Ord. No. 1754, § I, 8-2-99; Ord. No. 2154, §§ I, II, 12-6-04; Ord. No. 2226, §§ I, II, 8-1-05)

Sec. 11-148. Drought conditions—Fireworks restrictions.

- (a) If extreme or severe drought conditions exist or potentially exist, the city council may hold a hearing and pass a resolution to issue a proclamation that would impose fireworks restrictions within the city limits.

- (b) The findings of the city council, in passing the resolution, shall be based on current drought indices published by the National Weather Service and any other relevant information supplied by the United States Forest Service.
- (c) Pursuant to the hearing, the city council shall issue a proclamation declaring extreme or severe drought conditions exist within the city limits.
- (d) The proclamation shall be issued no less than 20 days prior to a holiday for which fireworks may be sold, shall be effective for 30 days, and said proclamation may be modified or rescinded within the 30-day period by the city council upon conducting an emergency hearing to determine if weather conditions have improved.
- (e) The proclamation shall read as follows:

"WHEREAS, the City Council is the governing body of the City of Las Cruces; and

WHEREAS, the City Council has obtained information and forecasts from the National Weather Service concerning drought indices; and

WHEREAS, the City Council of the City of Las Cruces has obtained information and forecasts from the United States Forest Service concerning drought indices; and

WHEREAS, the City Council held a public hearing on _____ (date) _____, to determine whether the City of Las Cruces is affected by extreme or severe drought conditions and whether fireworks restrictions should be imposed within the municipal boundaries of the City; and

WHEREAS, the City Council made certain findings of fact based upon information provided during the public hearing and said findings are included in the resolution passed at the hearing authorizing this Proclamation; and

WHEREAS, the findings of the City Council was that the City of Las Cruces is affected by extreme or severe drought conditions based upon current drought indices published by the National Weather Service and other information supplied by the United States Forest Service.

NOW, THEREFORE, be it Proclaimed by the Governing Body of the City of Las Cruces, New Mexico;

- (I) THAT extreme or severe drought conditions exist within the municipal boundaries of the City of Las Cruces.
- (II) THAT in addition to any ordinance enacted pursuant to NMSA 1978 §60-2C-7.C, the sale and use within the municipal boundaries of the City of Las Cruces of missile-type rockets, helicopters, aerial spinners, and stick-type rockets, are prohibited by this Proclamation.
- (III) THAT in addition to any ordinance enacted pursuant to NMSA 1978 §60-2C-7.C, the sale and use within the municipal boundaries of the

City of Las Cruces of ground audible devices such as chasers and firecrackers, are prohibited by this Proclamation.

- (IV) THAT the Governing Body is authorized to and has limited the use of otherwise permissible fireworks, including cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinner, illuminating torches, toy smoking devices and wheels, to areas within the municipal boundaries that are paved, barren, or areas that have a readily accessible source of water.
- (V) THAT the Governing Body, having consulted with the state forester, is authorized to and has banned the use of all fireworks within areas that are covered wholly or in part by timber, brush or native grass.
- (VI) THAT the Governing Body is authorized to and has prohibited or restricted the sale or use of display fireworks.
- (VII) THAT this Proclamation is effective for a period for thirty days from this date unless a subsequent Proclamation is issued by the Governing Body.

APPROVED THIS _____ TH DAY OF _____, _____.

_____ Mayor

_____ Date

ATTEST:

_____ City Clerk

(SEAL)"

- (f) Items under the heading of "(V)" and "(VI)" of subsection (e) above, may be removed from the proclamation by the city council based on their findings of fact within the public hearing based on the drought conditions. If removed from the proclamation, subsequent headings within the proclamation shall be renumbered accordingly.

(Ord. No. 1754, § I, 8-2-99)

Sec. 11-149. Manufacture.

The manufacture of fireworks is prohibited within the city.

(Ord. No. 1754, § I, 8-2-99)

Sec. 11-150. Penalties.

Violations of this article shall be punishable pursuant to the provisions of section 1-10 of this Code.

(Ord. No. 1754, § I, 8-2-99)

Secs. 11-151—11-180. Reserved.

**ARTICLE IV. TRANSPORTATION OF DANGEROUS
SUBSTANCES⁴**

⁴Cross reference(s)—Traffic, ch. 27.

Sec. 11-181. Definitions.

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

Adjacent area means any area within five miles of the boundaries of the city.

Class A poisons means extremely dangerous poisonous gases or liquids of such nature that a very small amount of gas or vapor of the liquid, mixed with air, is dangerous to life.

Class B poisons means less dangerous poisonous liquids or solids, including pastes or semiliquids, that are less dangerous than class A poisons and that are chiefly dangerous by external contact with the body or by being taken internally, as in contaminated foods or feeds. The vapors of some of this class of poison are also offensive and dangerous, but to a lesser extent than class A poisons.

Class C poisons means tear gas or irritating substances in liquid or solid form which give off dangerous or intensely irritating fumes when exposed to air or upon contact with fire.

Class D poisons means radioactive material and substances which spontaneously emit radiations that are capable of penetrating and severely damaging living tissues and surrounding shipments.

Compressed gas means any material or mixture having in the container a pressure exceeding 40 pounds per square inch at 70 degrees Fahrenheit; or a pressure exceeding 104 pounds per square inch at 130 degrees Fahrenheit; or any liquid flammable material having a vapor pressure exceeding 40 pounds per square inch at 100 degrees Fahrenheit.

Corrosive material means any liquid or solid which will cause severe damage to living tissue and to freight by chemical action when in contact therewith; liquids which may also cause fire when in contact with organic matter or certain chemicals.

Explosive means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion.

Flammable liquids means any liquid which gives off flammable vapors.

Flammable solids means solids, other than explosives, which are liable to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from the manufacturing or processing of the commodity.

Oxidizing material means substances that yield oxygen readily to stimulate the combustion of organic matter.

Recreational vehicle means a vehicle composed of a chassis, or frame with wheels, which either has its own mode of power or is drawn by another vehicle, and a camping body primarily designed or converted for use as temporary living quarters for recreation, camping, or travel activities.

(Code 1988, § 14-61)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-182. Exceptions.

This article shall not apply under the following conditions and circumstances:

- (1) When any truck, trailer, motor vehicle or any other form of vehicle is carrying any of the material defined in section 11-181 to commercial consumers, domestic consumers, gasoline service stations or bulk stations located within the corporate limits of the city and adjacent areas.
- (2) When any truck, trailer, motor vehicle. or any other form of vehicle is carrying any of the material defined in section 11-181 for the sole purpose of propelling the truck, trailer, or motor vehicle.
- (3) When any truck, trailer, motor vehicle or any other form of vehicle loaded or partly loaded with any of the products defined in section 11-181 has stopped on any of the streets or highways designated as provided in section 11-183 at a gasoline service station or garage for necessary repairs. Under this circumstance the vehicle shall not remain at the gasoline service station or garage longer than 30 minutes unless the police department is notified that it is necessary to remain for a longer period than 30 minutes.
- (4) When any truck, trailer, motor vehicle or any other form of vehicle used for carrying any of the products defined in section 11-181 has broken down, has a flat tire, needs repair, needs gasoline for its own propulsion to the extent that it cannot be propelled with its own power, the necessary repairs can be made where the vehicle has been forced to stop, provided the vehicle can be repaired within a period of two hours. The driver of the vehicle shall immediately notify the police department of the forced stoppage, and during the period allowed for repair a police officer or someone designated by him shall remain at the place of stoppage to warn other persons using the street or highway of the danger.
- (5) When any truck, trailer, motor vehicle or any other form of vehicle needs immediate repairs and is not loaded or partially loaded with any of the products defined in section 11-181 and is on direct route to a garage or to the private property or place of business of the owner of the vehicle or the owner's place of business exclusively controlled by the owner.
- (6) When any truck, trailer, motor vehicle or any other form of vehicle is loaded or partially loaded with any of the products defined in section 11-181 has broken down and is in need of repair to the extent that the vehicle cannot be repaired within two hours. The police department shall be notified that the vehicle is being removed from the place of stoppage or breakdown to a garage or

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some other place within the corporate limits of the city and shall only be moved under the direction of the police department.

- (7) When any person who is engaged in the business of hauling any of the materials defined in section 11-181 has his place of business within the corporate limits of the city, he shall have a right to convey the truck, trailer, motor vehicle, or any other form of vehicle to his place of business without police protection.

(Code 1988, § 14-62)

Sec. 11-183. Vehicles used for carrying and travel routes.

- (a) It shall be unlawful for any person to drive or cause to be driven or operate or maintain any motor vehicle, truck, trailer or any other vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle used for the carrying of any of the materials defined in section 11-181 over any street, highway or alley within the corporate limits of the city, except:
 - (1) Those streets shown on exhibit A labeled "Hazardous Material and Intercity Truck Routes," incorporated in this section by reference.
 - (2) Other streets may be traveled upon when in the opinion of the traffic engineer and the city manager the safety of the property and its citizens demands it and when they are designated by the traffic engineer with the approval of the city manager by visible markers and signs.
- (b) In order to determine the truck routes and delivery routes of hazardous material, refer to section 12-10-3.1 of the Uniform Traffic Ordinance, as adopted in section 27-1 and as amended in section 27-2.

(Code 1988, § 14-63)

Sec. 11-184. Parking.

- (a) It shall be unlawful for any person to park or cause to be parked on the highway, street or alley within the corporate limits of the city any truck, trailer, motor vehicle or other form of vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle used for carrying any of the materials defined in section 11-181, whether loaded, partially loaded or empty of such products. This subsection shall not apply to the stopping of any vehicle on any of the streets and highways designated in section 11-183 at filling stations for service or because of breakdown of the vehicle on the designated streets or highways.
- (b) It shall be unlawful for any person to park or cause to be parked or to maintain any truck, trailer, motor vehicle or any other form of vehicle, except recreational vehicles, having thereon or attached thereto a tank or other receptacle filled or partially filled with any of the materials defined in section 11-181 on any street, alley, public place or any place within the corporate limits of the city.

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(Code 1988, § 14-64)

Secs. 11-185—11-210. Reserved.

***ARTICLE V. CHEMICAL EMERGENCY PREPAREDNESS
AND HAZARDOUS MATERIAL/CHEMICAL
INVENTORY/DISCLOSURE STATEMENT***

Sec. 11-211. Penalty for violation.

Violations of this article shall be punished as provided in section 1-10.

(Code 1988, § 14-91)

Sec. 11-212. Development of standard operating procedures.

The fire chief shall have the primary responsibility of developing standard operating emergency procedures, and the standard operating procedures for the purpose of chemical emergency planning within the city. A copy of the plan will be forwarded by the fire chief to the office of emergency preparedness for inclusion in the hazardous material/chemical emergency response plan.

(Code 1988, § 14-81)

Sec. 11-213. Emergency hazardous material/chemical response plan.

The designated emergency hazardous material/chemical response planning agency shall consist of state, county, and local officials; police, fire, public, health, civil preparedness, environmental, hospital, transportation officials; and certain private businesses. They shall evaluate and establish resources for preparing and responding to a potential chemical accident within the city. This plan is subject to the approval of the fire chief and shall include the following:

- (1) Identification of facilities and transportation routes for extremely hazardous substances through the city.
- (2) Development of emergency response procedures, on site and off site, in accordance with mandated regulations.
- (3) Development and maintenance of emergency notification procedures.
- (4) Development of methods for determining the occurrence of a release and the probable affected area and population.
- (5) Development of a training program for emergency response personnel, including schedules.
- (6) Presentation of methods and schedules for exercising emergency response plans.

(Code 1988, § 14-82)

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Sec. 11-214. Fire department response.

The fire department shall provide initial response to incidents involving hazardous materials and chemicals, as mandated by the hazardous materials emergency response (HMER) plan of the state Emergency Management Act, as amended in 1984.

(Code 1988, § 14-83)

Sec. 11-215. Training and certification for emergency response personnel.

Designated emergency response personnel shall complete training and receive certification specified by the hazardous materials safety board as consistent with emergency response functions to be performed during an emergency.

(Code 1988, § 14-84)

Sec. 11-216. Applicability of article; list of hazardous materials and chemicals.

This article shall apply to hazardous materials and chemicals that shall have been defined as such by the Environmental Protection Agency or the state environmental department, or both. The chief of the fire department shall be responsible on or before December 1 of every year to acquire from the state department of public safety and the environmental department information of chemicals and products defined by them as being hazardous, and shall make such information available, without charge, to all citizens of the city and to all persons or entities doing business within the city limits. Such information shall be recorded with the city clerk on or before December 10 of each year, and the list shall be in effect for the following year, but no list shall become obsolete until its successor is recorded.

(Code 1988, § 14-85)

Sec. 11-217. Declaration of inventory.

- (a) All persons, businesses or other entities possessing any of the products on the list referred to in section 11-216 must declare their inventory with the fire chief of such chemicals or products on or before March 15 of each year. An updated report of new or additional chemicals added to the inventory within the year must be reported to the fire chief within 15 days of acquisition of the chemicals.
- (b) Any person filing for business registration shall complete the inventory at that time. Such list shall be filed with the fire chief on a form to be approved by the fire chief. All other persons, organizations, or entities must submit a list to the fire chief by the effective date of the ordinance from which this article derives.

-
- (c) Any person or entity so filing shall also indicate the method by which such hazardous waste or chemicals or any waste generated on site therefrom are to be disposed of.
 - (d) There shall be no filing fee for the filing of such declarations.
 - (e) The fire chief will provide a copy of the hazardous materials/chemical facility inventory form to the office of emergency civil preparedness.

(Code 1988, § 14-86)

Sec. 11-218. Site inspection.

Inspection of each site on which materials are stored or disposed of pursuant to this article shall be made at least annually by the fire chief. The office of emergency civil preparedness and the local emergency planning committee will provide technical information and perform emergency planning. The fire chief shall forward the inspection form labelled "Emergency Civil Preparedness Copy" to the office of emergency civil preparedness. The city council, by ordinance, may adopt regulations establishing classification of material, by the nature of the material, the quantity stored, the area in which stored, and the potential for contamination of groundwater or any other significant factor which would increase the frequency of inspection according to the characteristics detailed in the regulations.

(Code 1988, § 14-87)

Sec. 11-219. Adoption of standards; enforcement.

- (a) The standards of the National Fire Protection Association (NFPA), rule 704, requiring the labeling of the buildings in which hazardous materials are stored, are specifically adopted and incorporated in this article by reference. Each site shall display metal signs in a readily visible location for emergency responders. The size and quantity of placards to be displayed will be determined at the discretion of the inspector at the time of the on-site inspection. Size of the placards will be a minimum of six inches by six inches to a maximum of 15 inches by 15 inches inside and outside.
- (b) The standards adopted in subsection (a) of this section and such amendments, updates or revisions thereof as may be adopted by resolution of the city council shall be enforced by the fire chief.

(Code 1988, § 14-88)

Sec. 11-220. Applicability of standards to facilities.

The standards adopted in section 11-210 shall be applicable to all facilities, as follows:

- (1) Those facilities that commence storage, manufacture or use of hazardous materials after November 28, 1989, must comply with the standards upon the effective date of the ordinance from which this article derives.

- (2) Those facilities that expand their physical plant for storage, manufacture or use of hazardous materials after November 28, 1989, or that add additional hazardous materials or increase their inventory or output of hazardous materials by at least 15 percent after November 28, 1989, must comply with the standards upon the date of such expansion, addition, or increase.
- (3) Those facilities which, before November 28, 1989, were of the type covered by the standards adopted in section 11-219 but which do not come under subsection (2) of this section must comply with the standards within 90 days of the effective date of the ordinance from which this article derives.

(Code 1988, § 14-89)

Sec. 11-221. Certification of compliance.

It is the responsibility of all facilities subject to this article to file a certification of compliance with this article with the fire chief on or before March 15 for each calendar year, or within 30 days of the commencement of activities bringing the facility under this article. Such certification shall be on a form acceptable to the responsible official, and such forms shall be made available as provided in subsection 11-217(e). There shall be no charge for the filing of this certification, which shall be filed with the responsible official.

(Code 1988, § 14-90)

Secs. 11-222—11-250. Reserved.

ARTICLE VI. FIRE LANES⁵

⁵Cross reference(s)—Traffic, ch. 27.

Sec. 11-251. Definitions.

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

Fire lane means any area appurtenant to a building deemed necessary by the fire chief to remain free and clear of parked vehicles for access to such building in case of fire or other emergency and designated by him as such, and may include sidewalks, driveways, portions of parking lots or any other area adjacent to or near a building or fire hydrant, as required by the fire chief.

Private property means property that is privately owned, but where numbers of persons work, live or congregate from time to time for any purpose, where the parking of motor vehicles or presence of other obstructions can interfere with the ingress and egress of emergency vehicles (police, fire, ambulance) for the protection of persons and property thereon, and shall include, but not be limited to, shopping centers, bowling lanes, theaters, hospitals, churches, factories, schools, lodgings, convalescent homes, hotels, asylums and public halls. Private property shall not include single-family dwellings, duplexes, fourplexes and condominiums.

Public property means property owned by any political subdivision not specifically exempted by state or federal law.

Shopping center means a group of commercial business establishments operated as a unit with off-street parking provided on the property, and related in locations, sizes and types of shops to the trade area that the unit serves.

(Code 1988, § 14-101)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 11-252. Authority to designate; maintenance responsibility.

The fire chief is authorized to designate fire lanes on property of shopping centers and other private or public property where such areas must be kept free of parked vehicles and other obstructions to provide ready access in such areas in case of fire or other emergency. The designation by the fire chief of such fire lanes shall never be held to make the city responsible for the maintenance of such fire lanes on private property, but the owner of such property shall continue to be responsible for the maintenance of such area. The official records of the designation and location of any such fire lanes shall be kept in the office of the fire chief.

(Code 1988, § 14-102)

Sec. 11-253. Shopping center construction or construction on private property.

Before plot plans of proposed shopping center construction or construction on private property are submitted to the ~~department of planning~~[Community Development Department](#) for issuance of building

permits, such plans shall be submitted to the fire chief for his review and approval of the adequacy of the fire lanes provided therefor. The specific requirements of this section as applicable to a specific structure may be modified by the fire chief in recognition of varying occupancies, size, and hazards of buildings and the provision of other means of access or fixed fire protection.

(Code 1988, § 14-103)

Sec. 11-254. Submission of plot plan to fire chief required.

- (a) The fire chief may require the owners of existing shopping centers and existing facilities on private property to submit plot plans for his use in determining whether to designate fire lanes on the property. The fire chief may require that the fire lane for existing buildings be established to provide access for fire suppression operations by improving existing conditions.
- (b) Fire lanes established for new and existing structures shall conform to fire lane requirement applicable at the time of construction. If no fire lane requirements were applicable at the time of construction, the fire chief may require establishment of fire lanes to conform with the requirements of this section, insofar as is practicable without requiring any construction, structural modification or substantial financial hardship.

(Code 1988, § 14-104)

Sec. 11-255. No parking signs.

Upon the designation of a fire lane pursuant to this article, the fire chief shall give notice of such designation to the owner of such shopping center and other areas, directing the owner to cause signs to be posted, at the expense of the owner, at designated locations, and stating "No Parking At Any Time—Fire Lane (tow away zone)." Such signs shall be of a standard size and color, of standard lettering and mounting, conforming to specifications established by the traffic engineer and fire chief. It is unlawful to park any vehicle other than authorized emergency vehicles in a designated fire lane when such signs are in place.

(Code 1988, § 14-105)

Sec. 11-256. Unlawful parking.

It is unlawful to park any vehicle other than an authorized emergency vehicle in any fire lane established pursuant to this article, except as may be specifically permitted by the fire chief (i.e., an armored vehicle may park in the fire lane for a brief period of time during the performance of duty after obtaining a permit from the fire department).

Nothing in this section shall prohibit a city bus from stopping briefly in a fire lane for the purpose of dropping off or picking up passengers.

(Code 1988, § 14-106; Ord. No. 2508, § I, 3-2-09)

Sec. 11-257. Towing authorized.

Unauthorized vehicles parked in designated fire lanes that block fire department or other emergency vehicle access may be towed at the owner's expense to a designated storage facility by the authority of the fire chief and the police department.

(Code 1988, § 14-107)

Sec. 11-258. Removal of signs.

It is unlawful for any person, without lawful authority, to attempt to remove any sign designating a fire lane established pursuant to this article.

(Code 1988, § 14-108)

Sec. 11-259. Unauthorized signs.

- (a) It is unlawful for any person to place, maintain or display any unauthorized sign which purports to be or is an imitation of or resembles an official sign designating a fire lane.
- (b) Every such prohibited sign is declared to be a public nuisance, and the fire chief is empowered to remove the sign or cause it to be removed.
- (c) Undesignated fire lanes in compliance with the fire lane requirements shall meet the stipulations of this article. Failure to comply with proper fire lane establishment procedures shall, in addition to the provisions of this article, be prosecuted according to the limitations of this Code.

(Code 1988, § 14-109)

Sec. 11-260. Standards for markings and signs.

Fire lanes designated by the fire department, in accordance with this article, shall be posted in the following manner:

- (1) *Curb markings.*
 - a. The curb adjacent to an officially designated fire lane shall be painted red.
 - b. The legend "fire lane" shall be stenciled in white with four-inch upper case letters on the top and face of the curb adjacent to a fire lane. This legend shall be repeated at intervals of 50 feet.
 - c. No parking areas not officially designated as fire lanes shall not be painted red or marked in such a fashion as to be confused with an official fire lane.
 - d. No parking areas other than officially designated fire lanes should be painted yellow, to be consistent with city and state standards for establishing no parking areas.
- (2) *Signs.*

- a. The standard size of an official fire lane sign shall be 12 inches by 18 inches. An aluminum blank with rounded corners is recommended.
- b. The standard color of an official fire lane sign shall be follows:
 - 1. The background shall be reflective white.
 - 2. The lettering and border shall be red.
- c. The standard legend and lettering of an official fire lane sign shall be as shown on the approved drawing which is on file and available in the city offices.
- d. The standard fire lane sign shall be posted as follows:
 - 1. One sign shall be posted at each end of an official fire lane. Each sign shall have a single head arrow showing the appropriate direction of the fire lane.
 - 2. A fire lane longer than 150 feet shall have intermediate signs posted at even intervals. Intermediate signs shall have a double head arrow indicating the fire lane is continuous. The intermediate signs may be posted as necessary, but in no case shall the intervals between fire lane signs be greater than 100 feet.
 - 3. The fire lane sign shall be securely fastened to a suitable pole or support, with a minimum vertical clearance above the sidewalk of seven feet.
 - 4. When poles are used to mount fire lane signs, they shall be placed two feet and six inches behind the face of the curb. In accordance with the fire code, no pole or obstruction may be placed within three feet of a fire hydrant.
 - 5. Fire lane signs shall be posted parallel to the lane or curb to which they apply.
 - 6. When the distance between the curb and a building, light standard, or other structure is eight feet or less, the fire lane sign may be posted on the face of the building, light standard, or other structure. The bottom of the sign shall be located seven feet above the adjacent sidewalk.

(Code 1988, § 14-110)