

Capital Improvements Advisory Committee

Minutes for the Meeting on
June 22, 2023
1:30 p.m.
Utilities Center
Board Room 225

Committee Members Present:

Steve Newby, Committee Member
Zachery Frelinio, Committee Member
Doug Butler, Committee Member

Committee Members Absent:

Don Curnutt, Chairman

City Staff Present:

Jose Briones, LCU Administration
Melanie Castañeda, Administration
Sonya Delgado, Assistant City Manager
Isabel Garcia, LCU Administration
Abner Gomez, Accountant
Tibor Kocsis, Fire Department
Catherine Mathews, Landscape Architect
Robert Nunez, Interim Parks & Rec Director
Christine Rivera, City Clerk
Domonique Rodriguez, Utility Assistant
Director
Adrienne Widmer, Utilities Director

Others:

Becky Baum, RC Creations, LLC
Cassie McClure, Public Outreach Consultant
Greg Shervanick
Nanette Winter, Legal
Julie Herlands, TischlerBise
Mark O'Neill
Jason Lorenz
John Strain, JMS Construction
Ben Beard, LCHBA/Red Cliff Homes
Kelly Fort, LCHBA

Vice-Chair Newby called the regular meeting to order at approximately 1:37 p.m.

1. Conflict of Interest:

Vice-Chair Newby: Is there anyone here that has a Conflict of Interest, either the staff or our members that have any conflict with any of our agenda items? Sounds like none.

There were none.

2. Administration Items:

A. Welcome New Member Doug Butler.

Vice-Chair Newby: We'd like to welcome a new member. Bless his heart, he comes on a day there's only three of us, but that's good because he will have a lot more work to do. His name is Doug Butler. Doug, I'm just going to let you give them a little bit of what you've done the last 30 or 40 years. Why in the world you apply for this committee?

Butler: I wasn't prepared for that.

Vice-Chair Newby: I didn't want you to get stage fright.

Butler: Okay. I'm Doug Butler. I've got a long and checkered history. I am originally from Portland, Oregon, and moved here about eight years ago. While I was in Portland, I had worked as the Deputy Director of the Office and Planning Development, all of that, economic, housing, physical development, buildings, planning, all that. I also served as the Urban Renewal Director. Portland has a unique government. It's a regional government that actually manages much of the planning, garbage, parks, things that covered the whole metro area. I have started several businesses of my own, worked in real estate development, property management, a variety of things. I feel like I've heard most of the subjects, we'll find out soon enough whether I know anything about it.

Vice-Chair Newby: Doug. Thank you very much. I'm sure you will probably with that background be able to teach us a few things.

B. Present Mark O'Neill with a plaque for service on Committee.

Vice-Chair Newby: Also, we have a happy day here. One of our previous members who just recently resigned. He did tell me that he was in for a four-year term and he lasted five, and so that could be a record. Mark, you served gallantly here. Also, your time on the Parks and Recreation Board really helped this committee I think understand Parks and Rec a lot better than we had, and so we appreciate that expertise, too. We would like to present you a plaque if you can come forward.

O'Neill: Appreciate that.

Vice-Chair Newby: Nambé. I'm impressed. The City of Las Cruces, Mark O'Neill, CIAC member August 2018 to March 2023. Appreciate your service and dedication to the Utilities Department, City of Las Cruces.

O'Neill: Thank you very much. I really appreciate serving on the board. My affiliation with Mr. Newby and Mr. Freilino, I think I've served one meeting.

Freilino: One meeting with me.

O'Neill: We tried to do a diligent job and do a good job for the City as well as for the citizens during my tenure on the board. I'd like to thank Ken, the mayor, for

appointing me. I started actually with Gil Sorg a former City Councilman that recommended me for the Parks and Rec Board. I was with them for eight years. I was able to serve on the Capital Improvement Board. It's been a pleasure. It certainly has been. Thank you. Thank you all for this plaque and I will treasure it. Thank you staff or all you've done and all the presentations and so forth, it's been great. Good luck to the board. I know Don's going to do a great job.

Vice-Chair Newby: Don't leave yet because please stay, there's going to be reception at the end of the meeting. I understand it's what, steak and potatoes. Right out in the hall here. Please stay. Good point. Mark, thank you very much for your service.

O'Neill: Thank you.

3. Acceptance of the Agenda:

Vice-Chair Newby: Okay, at this point I'd like to have acceptance of the agenda. Any changes for anybody? If not, we'll call the roll.

Baum: I'm sorry, we need a motion and a second before you can call the roll.

Vice-Chair Newby: You were supposed to throw that ball at me if I didn't ask. Need a motion to approve the agenda.

Freilino: Aye for the agenda.

Butler: Second.

Vice-Chair Newby: Okay. That passed. We will vote.

The Agenda was Accepted Unanimously 3-0.

4. Acceptance of the Minutes:

A. Regular Meeting on May 25, 2023.

Vice-Chair Newby: Also, I need a motion for Acceptance of the Minutes from last month.

Freilino: I present minutes of last month.

Butler: Second.

Vice-Chair Newby: You're making a motion to approve. We're getting close. See how well this is working. Okay. I have a motion to second. All for approval of the minutes.

The Minutes were Approved Unanimously 3-0.

5. Public Participation:

Vice-Chair Newby: Okay, so first thing we've changed the agenda some and we've always had public participation, so we always left it till the very end. Sometimes people couldn't stay that long, and so we've moved public participation to the beginning of our regular meeting. Anyone in the audience that would like to say anything on any subject? Yes sir.

Beard: Are you accepting public comment now for the increase in utilities or do you want to have that at that discussion?

Vice-Chair Newby: Now would be good. During that if you have something that's brought up because of the presentation. If you would go to the microphone and identify yourself, please.

Beard: My name is Ben Beard. I'm the government affairs committee chair with the Las Cruces Home Builders Association. I wanted to read a letter that was sent or was supposed to be, and I don't know if it was ever sent to you all or not, but we had intended to send a letter to you all regarding the Utility Impact Fees that are set to be discussed today.

Attention CIAC Members. As the chair of the Government Affairs Committee at the Las Cruces Home Builders Association, I would like to bring to light some of my concerns over the proposed increases in the Water Impact Fees. As a committee we have reviewed the report from the consultant and feel there are some issues that should be corrected before recommendation can be made to the City Council.

Our first concern is that there has been no input from the public regarding a change in the impact fee, especially from the key stakeholders such as Home Builders Association or Las Cruces Association of Realtors, who have vital information relating to the amount of future development expected in our City. In reviewing the timeline proposed by TischlerBise, I don't know if I'm saying that correct, there does not appear to be any interest in seeking or receiving public input. That is particularly concerning given the disparities demonstrated in previous reports about their understanding the culture of our community. That's based on past impact fee studies, reports that have been done by that consultant.

Second, based on their Report Figure 17, the consultant expecting a growth on the City water system to increase by over 4,200 homes over the next nine years. While that growth rate is appropriate for the City as a whole, the majority of the growth happening in Las Cruces is outside of the Las Cruces City's Water District. The major growth areas include Metro Verde and surrounding areas on the East Mesa, which fall under Moongate Water, not City. The growth rate within the City Water District should be cut by at least half, if not 75%, in order to reflect the reality of future development inside the Las Cruces City Water District.

Additionally, the system cost increases for most of the infill areas inside the City Water District are proportionately smaller than growth around the periphery of the District as there is much more existing infrastructure into which future development can be connected. As an example, a 34-lot subdivision is currently under development inside the City Water District in which the main lines have already been running and servicing the area for many years. The new lots are simply connecting to that existing service and there's no additional cost to the utility. However, each of these homes will be contributing a full Water Impact Fee, even though the relative impact of each of those new homes is very miniscule. The same occur for other infill projects where proportionately higher fees are paid relative to the associated cost with those new projects.

We would ask that you, the CIAC, demand that the consultant revisit their growth assumptions, excluding completely any growth outside of the City Water district, and take into consideration the actual cost to the Utility of additional infill projects, which will occur only within the City Water District before the report and adjusted recommendations are presented to City Council for a final vote on any adjustment to the Water Impact Fee. Thank you. Ben Beard, Government Affairs Committee Chair, Las Cruces Home Builders Association.

Vice-Chair Newby: Okay, hang on a minute. Anyone have questions?

Freilino: Are you going to send that letter? Can we have a copy of that letter sent to us?

Beard: Absolutely.

Freilino: Thank you.

Beard: Get that over to you.

Vice-Chair Newby: It'd be good if you just got her e-mail address. She's the keeper of all things.

Beard: Perfect. Any questions?

Vice-Chair Newby: Ben, a couple of things. Thank you very much for coming. On your comment about public input. We also talked about notification at the last meeting, and we met with staff and are formulating ways to make sure that main stakeholders such as the Home Builders Association are advised and to give you links that you can go and get the entire book, all the consultant's presentations, etc. Because I'm like you, I believe in public input and asking the stakeholders is this good, is this bad, etc. We're just members that represent, if you will, all the development interest. It really helps us for you all to come, look, listen, raise your hand, throw things if you need to, because it could be a lot of money. Yes, we did. I think you were here at the last meeting; we did ask that specific question. If you could stay here on item eight, I'm

sorry item 6 C is an update on the Utilities Development Fee, for that question. Thank you for your input.

Beard: Thank you.

Vice-Chair Newby: Any other questions from the Board? Thank you very much.

6. City and/or Consultant Follow-Up:

A. Choose a date for Parks and Rec Tour: August 3rd or 10th or both:

Vice-Chair Newby: Okay, so now we're going to get into our main agenda. City Staff and Consultant Follow Up. The first one is choose the date for Parks and Rec tour, August 3, and/or 10th. Looks like Cathy Mathews from Parks will be our presenter.

Mathews: Sorry, I was making some notes.

Vice-Chair Newby: It's okay.

Mathews: My name is Cathy Mathews. I'm the landscape architect with Parks and Recreation. We had discussed with the Committee take a tour of some of the park projects which are supported by Park Impact Fees, and especially letting our new members know the kind of work we do, the kind of locations we have, and the kind of challenges we face. We propose a date in August, August 3rd or August 10th, which are both Thursdays. We're proposing in the morning. I have a proposed schedule; may I pass this to members the committee?

Vice-Chair Newby: Okay, please. Thank you.

Mathews: On whichever day the committee chooses, and of course, you can propose a different date if that will work for your schedules. I've outlined a basic timeline here; it's going very fast. We'll just be driving past most of these parks and facilities. Still, we'll take the entire morning to do a tour and just touch on some of the work that we do. I'd be happy to answer questions about the schedule, about the parks we're proposing, or about the dates that we're proposing.

Vice-Chair Newby: Do we any comments? Okay.

Butler: No questions.

Vice-Chair Newby: The only comment I have is I could not make the 10th; I could probably make the third.

Mathews: Okay.

Vice-Chair Newby: I don't want to sway you're vote.

Freilino: I can do either.

Butler: Either date works for me.

Vice-Chair Newby: Okay.

Castañeda They can e-mail me when the other members are here.

Vice-Chair Newby: Okay. Then why don't we temporarily set it then to the third. We can check with the other two members, and if that looks good, that will be it.

Mathews: Okay. Very good.

Vice-Chair Newby: We do not need a motion for that, do we? Okay.

Mathews: Thank you very much.

Vice-Chair Newby: Cathy. Thank you.

B. Discuss Annual Report:

Vice-Chair Newby: Okay, second there's a discussion of the annual report, the long-suffering annual report. I must say after four years, this is not unusual. I think you were the last one to write one last year I believe, but then it had been I think two years before. The Chair and I have met, I think, five times. Those of you who have met with the Chair you know he's very intense. This will probably be the annual report to end all annual reports. I think it will be similar to the Utilities Annual report in the brochure with colors and everything. The Chair and I have realized that the annual reports, when you look at the Ark of the Covenant book here, are pretty important. Does anyone read them? My guess is probably not. It doesn't matter, because nobody looks at that stuff until there's a problem. Then they look backward and go, Oh! Wow didn't see that coming. The Chair and I, I would love to give you a date, but it's already gone on I think three months or four months. We are working on it. It will be completed. It will of course be sent around for approvals etc. It will be this year; I can guarantee you that. Any comments or questions on the annual report? Any volunteers that would like to help? Okay, seeing none.

C. Utilities Impact Fee:

Vice-Chair Newby: So, we have no New Business. We're down to our Action Items. And one is -- I'm sorry, I'm sorry. I missed that. Utilities Impact. This is an update from our meeting last month to answer some questions we had.

Rodriguez: Good afternoon, Vice-Chair Newby and Committee. We did take your comments from the last meeting. We did send out e-mails to the Home Builders Association. We met this morning with a couple of them and went through

some of their concerns, kind of went through some of the numbers a little bit together. We do agree and so we are probably going to request that you table in your action item. Okay. I know there was questions about the Metro Verde area, which Julie will come and explain a little bit more about that land use assumptions. It is consistent among other impact fees, and so it's a more generalized, but because the growth is in that Metro Verde area, we'll need to run different numbers, okay, to kind of look at, oh, I'm sorry I didn't introduce myself, Domonique Rodriguez, Assistant Utilities Director. I apologize. We're going to run different numbers and use the land use as kind of the base and then go from there based on the service area that we have for our water system, which in some places are outside of City limits, so we're going to look at that specifically. Then also look at the permits that come into Community Development, then we'll be able to get those numbers specific for the Metro Verde area. Then it'll be a little bit different than what's here today. You know talking to the individuals that we did today, they felt that you know that would make sense, and then to bring that back for you to review, and then hopefully to move forward with it.

Vice-Chair Newby: Okay. In that regard, then you will be looking at the question specifically at Metro Verde about the growth and the houses that are serviced by a different firm than City of Las Cruces, by Moongate?

Rodriguez: Yes. Vice-Chair Newby. By pulling those out of the equation, then that addresses what is serviced by Las Cruces Utilities and not.

Vice-Chair Newby: You also mentioned that this was kind of a standard projection for all. Would we assume that the projections for Fire and Police would have this same problem? It shouldn't because Moongate doesn't do that.

Rodriguez: Right. Their function is different. This is the function, to me is the function of where our Utility customers are at and how this this will play into that.

Vice-Chair Newby: That won't change Fire. Okay.

Rodriguez: It shouldn't.

Vice-Chair Newby: Or Police or Parks.

Rodriguez: Right.

Vice-Chair Newby: Okay, because City serves all.

Rodriguez: It's different.

Vice-Chair Newby: Okay. Are there any questions?

Rodriguez: If I can just have Julie with TischlerBise just real quick recap that land use assumptions for you.

Vice-Chair Newby: Okay. Thank you.

Herlands: Hi. Good afternoon. I'm Julie Herlands, Vice President with TischlerBise. Yes, so the land use assumptions are one component of the Utilities Development Fee Report. However, the majority of the fee calculations do not use demand projections, growth projections to calculate the fee. They're based on the capacity of the system. You see gallons of capacity for the improvements, for the existing improvements, for the plan improvements. Then there's a cost per gallon of capacity. If someone's outside of the City limits, that's their cost. If someone's inside the City limits and getting served by City Utilities, that's their costs. The growth projections we use to show cash flow for revenue potential or potential demand and what those needs are. Yes, given the identification that some of those folks are not part of the system, we can pull those out. Again, that does alter the standing growth projections that are used in the other impact fee categories, infrastructure categories, but my numbers will change, but my assumptions are not going to be that much different. In fact, with some, there is a couple that are based on demand and the impact fees may actually go up, because it's going to be a lower denominator. Just so you know point of information. Just know that the calculation really heavily relies on the capacity of the system. It's a closed system, you're buying into what the City Utilities is providing, it kind of doesn't matter where the demand is, and who's demanding the use.

Vice-Chair Newby: I was not expecting a huge change.

Herlands: Correct.

Vice-Chair Newby: Because you all complied with one of my questions. Could you please give us the mathematics at the top of each.

Herlands: Yes.

Vice-Chair Newby: That's been very helpful, because just looking at a number you don't know where it comes from. By giving us the actual math was very helpful. I did that math.

Herlands: Good. Great.

Vice-Chair Newby: Based on some exceptions, and it will change. I just don't think it will change you know by 60% because it doesn't wipe out that entire piece, because your calculations take a lot of other things. On the other hand, it will be great because we can answer the Home Builders concern that they are only going to be paying their fair share, and their customers fair share and not paying for something that was provided by Moongate. Any other questions?

Butler: No.

Herlands: Thank you for the opportunity.

Vice-Chair Newby: Thank you very much. Anything else on Utilities Impact Fee? Okay.

7. New Business:

Vice-Chair Newby: We have no New Business.

8. Action:

A. Vote on Utilities Development Impact Fees:

Vice-Chair Newby: The next item was to be voting on Utility Impact Fees. I would entertain a motion to table that item.

Butler: So Moved.

Vice-Chair Newby: I forgot; do we have a time element that you might be coming back? If you don't know, that's fine.

Rodriguez: Let me ask a question really quick and I can give you a date.

Vice-Chair Newby: Okay.

Rodriguez: Vice-Chair. I think to pull the numbers and analyze everything, send it back to the Homebuilders Association as we have talked about, I would probably say three months would be a good timeframe, just to be on the safe side.

Vice-Chair Newby: A question. Does that affect any other deadlines that we have to meet?

Rodriguez: Not for utilities. No.

Vice-Chair Newby: Okay. This only affects Utilities, correct.

Rodriguez: Yes.

Vice-Chair Newby: Okay.

Rodriguez: Yes, sir.

Vice-Chair Newby: Okay. Then I would take a motion for a three-month table on item eight (8) A.

Butler: So Moved.

Freilino: Second.

Vice-Chair Newby: Okay, we'll vote on the motion. All in favor say aye.

Freilino: Aye.

Butler: Aye.

Vice-Chair Newby: Aye. It passes.

Table for Three Months the Vote on Utilities Development Fees Minutes were Approved Unanimously 3-0.

Rodriguez: Just to clarify, that will be for the meeting in September just so we have it in the minutes right.

Vice-Chair Newby: September. The 22nd.

Rodriguez: I retract, October.

Vice-Chair Newby: October. It's great to have help.

Rodriguez: Thank you.

Vice-Chair Newby: Thank you very much. Appreciate that.

9. Training Session by Nann Winter:

A. Robert's Rule of Order:

Vice-Chair Newby: Our next item is a training session by our best friend Nan Winter, which in your packets you have.

Winter: Good afternoon, gentlemen. I am Nan Winder with Stelzner, Winter Warburton, Flores and Dawes. Here to do phase two of our training. Remember last month we did Open Meetings Act and Inspection of Public Records Act, two very fundamental bodies of law that control the proceedings for all local government. Today, I'm going to visit with you a little bit about Robert's Rules of Order, and the Governmental Conduct Act which is kind of a fun thing. Robert's Rules, not so much for me.

Robert's Rules of Order is mandated in the Las Cruces Municipal Code, at section 2-189. It indicates that all boards shall be conducted under Robert's Rules of Order unless you develop your own policies. That hasn't happened in this case, as far as I know, so Robert's Rules of Order newly revised, usually applies. Where do you find Robert's Rules of Order? This is the first question I asked when one of these questions came up years ago for me, Amazon, of course, Amazon. You can get it for \$15. If you order it today you'll get it Saturday. I'm telling you right now it is not an easy read. It's awful, actually. You read it and you understand less than when you opened it, but some people like having it in their back pocket or on their desk. I think I gave my young associate attorney a copy when I asked him to do some research. He hated

me after that for a long time. It is a dense read, but it has, the guiding principles are this, it's to maintain order, making sure that you're considering one issue at a time, making sure that everybody gets heard, that each member gets to provide input, majority rules, and then the protection of minority positions right. Of course it's about courtesy.

I'm just going to do a couple pages here for you on how to do things. You have done this before, you have been on boards, you know how it goes and you get a feel for it. You probably are only going to use two or three motions that I'm going to go through in the next two slides. Just for fun, you know how to make a motion, you get recognized by the president or chair, you present your motion. And of course, the second is required. For almost any motion you make, whether that's today or in further meetings or on even some of the bizarre motions we'll talk about today, there's always a second recorded. There's a few that it isn't but I'm not even going to talk to you about those because they're way out there. Amending a motion is always a tricky thing, right. Everyone on every board I represent struggles with making a motion. If you want to change some of the wording of your motion under discussion, you have to first be recognized by the president or chair, and then move to amend by adding words, striking words, or striking and inserting, again this requires a second. It's really not as complicated as you might think. Sometimes we are you know adding few words here or taking out a few words here or there is not going to do the trick, so then you do a substitute motion. Right. The weird thing about a substitute motion is that it is heard and discussed at the same time your original motion is heard and discussed. Another motion you might make is more time to study. If you want more time to study you move to postpone to a definite time or date, and you did that already today. You clearly know how to do it. I strongly encourage that you have a date certain that you consider. Don't just table or defer without a date certain it really monkeys with staff for one thing, but it jeopardizes the pending action item as well.

Let's just say for fun you know another motion is you want to, you're tired of talking about what it is you're supposed to be talking about, you know like the impact fees for utilities and you're tired of it, you can move to limit debate to a set period of time. Somebody would say, hey we've been talking about utility impact fees for an hour and 45 minutes, you know I make a motion that we take one more speaker or we devote 10 more minutes of time to this. This does however require a supermajority, two thirds vote. Another motion you might make is postponing. It's also a move to table but there is a little trickiness to moving to table. You can make a motion to table, one item on business but it really has to have a deadline, otherwise you potentially kill it. This is the threat that I talked about earlier. If you don't do a time certain, you could potentially jeopardize the action you're trying to take.

Short break, move to recess for a set period of time. After you've been out going at it for you know two hours and everybody needs a break, somebody has to move, hey, let's take a 10 minute comfort break. That again has to be seconded. Need to clarify, if you need to clarify, if you're confused about

something that's going on about a procedure, you know potentially regarding an amendment or a substitute motion. You may, after recognition from the chair, call for a point of information or a point of parliamentary inquiry. The president or chair would ask you to state your question and hopefully the chair can answer your question. That's called a point of information or a point of parliamentary inquiry. Some boards like to really get into this language like point of parliamentary inquiry. Most folks just say, hey Mr. Chair, I'm confused. That's okay. I mean, it's the same thing. Some people like I said love this book and like to you know make a point of parliamentary inquiry.

Vice-Chair Newby: Tell us how you really feel.

Winter: I have a law partner who's just like, makes me crazy. Change of heart or mind. Okay, let's say you guys just voted on, you all just voted on tabling the utilities fees, you know fees that we're now going to be looking at in September/October. Now for some reason you've decided you made the wrong decision. If you are voting in the affirmative on the table or on whatever motion it is, you have the right to change your mind. You may move to reconsider. Again, you have to be on the winning side of the original action. If the majority agrees, the motion comes back on the floor as if a vote had never occurred. Those are the easy ones. There's about 10 more that you know that you'll find in Robert's Rules of Order, but I really picked the ones that I think you are going to be practicing the most.

One good thing about Robert's Rules of Order, no interruptions. There's not supposed to be interruptions, right. As in life, there are exceptions to everything. You can, and when I say interruptions, you can't just blurt out a motion, you have to ask for recognition from the chair. What I'm going to talk to you about now are those instances where you don't have to ask for recognition from the chair. Point of information or a point of parliamentary inquiry, which is essentially the I'm confused thing, right. You can interrupt or blurt that out. You don't have to say, I mean, you can say Mr. Chair I would like to be recognized as a matter of courtesy on a parliamentary inquiry, but you are allowed to interrupt a conversation or a discussion item with a parliamentary inquiry. If you can't hear or all of a sudden you smell natural gas, you're going to pose a question of privilege, right. You don't have to get chair's recognition for that. You turn your mic on and you say, I got a question of privilege. Okay, and then you blurt out your issue. If you see a breach of the rules, like for instance somebody didn't second, and that gets by us all the time, it gets by legal, it gets by staff. It almost happened here this morning. One of you could have caught that and one of you said I need a point of order. We need a motion and a second. Usually staff or legal catches that stuff. Any one of you can too right. If you disagree with the chair on a board ruling you appeal, and if you disagree with a call for a unanimous consent, you object.

That's I think all I have on Robert's Rules of Order. You know we could take questions now. We can take questions next month because we're going to have another training next month on why you exist and development fees act and

all that good stuff. That's kind of the basics. The Robert's Rules of Order is a really small little book, but again, for whatever reason, they have not updated the language and it's just not an easy read.

Vice-Chair Newby: I would to thank you for reducing because I have read Robert's Rules of Order more than once. Being able to reduce that to five minutes.

Winter: Well, I picked out the easiest, I picked out the stuff that you know that you're going to actually feel and see and touch. There's a lot more to it. Like I said, a lot of people like to really get into it. It's fundamentally just to keep order.

Vice-Chair Newby: Also like to take credit for seeing how good staff was with Robert's Rules of Order as well, I tried to break every so far. Thank you.

B. Governmental Code of Conduct:

Winter: Then I'm going to move into Governmental Conduct Act which is one of my more favorite New Mexico Government Acts. It's found in Section 10-16-1 of the New Mexico Statutes. It is called the Governmental Conduct Act. There is a link there to what is called the New Mexico Compliance Guide on Governmental Conduct Act. It looks like this. If you click that link, or download or cut, copy and paste that link, you'll find this little document. Honestly, it's 44 pages. No, I take it back, it's 54 pages. It is easier to digest than Robert's Rules of Order. It's about what you can't do as a Public Officer. You all are Public Officer s, because you are appointed. You're an appointed official of a local government. Whether you collect compensation in the form of a per diem or salary or not. If you are eligible to collect a per diem, you are a Public Officer bound by the Governmental Conduct Act.

Now, I did go look, and I did find that you are eligible for per diem per Las Cruces Municipal Code, 2-16 and 17. That being the case, whether you collect it or not, you are subject to the Governmental Conduct Act. That applies to every board of the City of Las Cruces.

Now, the City of Las Cruces has its own kind of guiding principles. It's not too much different from the Governmental Conduct Act at section 10-16-3, but I wanted to just give you what Las Cruces tells you, you can't do or should do. It's pretty fundamental right. Just be respectful. Never seek to knowingly mislead. Never delay or obstruct an application. You have to maintain privileged and confident, confidential information consistent with public disclosure laws. You can't use confidential information for personal gain or personal gain of an immediate family member. That really is kind of one of the primary focuses of the New Mexico Governmental Conduct Act. This one I'm going to focus on just one more sentence because you all do come into some confidential information. Not confidential in the sense that the public won't ever see it, but you might learn something before it ever becomes public, because of the reports that are generated here, like for instance, where development is likely to happen, or the cost of development in a certain area.

Now, that's not strictly confidential, because one day it's going to be public. You might though, and certainly staff will, have knowledge of this before it becomes public. That's something that I wanted to point out to you that you cannot use. You cannot use that for your personal or family gain.

You also have to perform the duties of your board membership with integrity and competence, and you have to abstain from offensive personal comments. Then refrain from making verbal or written statements to the Council or its members in support of or in opposition to the board's decision unless requested by the Council. I was happy to find that last one in the Las Cruces code because that actually has some ramifications for the Utility Board which is that when you act you're acting as advisory and unless the Council asks one of you to show up, you are not allowed to go to Council and trash a decision that the board collectively made, right, unless requested by the Council. I was glad to find this in the code because it actually has applications for another board here.

Vice-Chair Newby: Question on that.

Winter: Yes.

Vice-Chair Newby: If this board directed one of our members to go and present something to Council, under this we would still not be able to because Council has not requested it?

Winter: No, I think you as the Chair, if you request, you know I think the chair, I mean, everything you're going to do is by resolution. You as the chair would go present that resolution as the collective decision of the board. Now, let's say you guys got into a knockdown drag out, and that Zachary vehemently objected to something that the board collectively put together, he cannot show up for public comment to the Las Cruces City Council, right. Unless the Council said, hey, Zachary we need you to here to talk about this. You're not, you know you are acting as democracy, majority rules. You've got a collective advisory obligation and that's actually in the City code.

Vice-Chair Newby: So it does not take City Council requesting say one of us to come get this board said, Zachary, we want you to go represent us at City Council.

Winter: I would read it as if a dissenting member wanted to show up, that's what can't be done.

Vice-Chair Newby: Okay.

Winter: If the chair is going to present something to the governing body, that is appropriate, because then the chair is acting as - assuming the chair wasn't in the descent. The chair is representing the body right. Yes.

Vice-Chair Newby: Okay, thank you.

Winter:

Right. This is more or Las Cruces and it's about gifts. It's pretty close to what the Governmental Conduct Act requires, but no member shall request or receive or accept a gift, grant, or loan or personally or for another, unless somebody can prove that it's going to influence you. Yes. But I mean, it's kind of fundamental, right, you just don't take gifts. Now, again, there's exceptions. I can buy you a cup of coffee. Adrienne can buy you a cup of coffee. Adrienne could probably even buy lunch in Las Cruces for \$25. Can't do that in Albuquerque. An award, you can accept an award, we just did that today. Like I can't imagine, I mean you know there's no problem with plaques and recognition. You can accept a commercial loan in the usual course. You can even accept a political campaign contribution, as long as it goes directly to the campaign.

Now, that's Las Cruces, I want to jump right back into Governmental Conduct Act. I picked again the things that I think impact you the most, because there's a whole lot of what you can't do in the Governmental Conduct Act, but a lot of it doesn't apply to you. Some of it applies to legislators. Some of it doesn't apply to Public Officers. This is all about Public Officers because that's what you are. You have to make full disclosure of real or potential conflicts of interest, right. There's nothing shameful about it. You can even vote on a matter so long as you're not biased, and you disclose the potential conflict of interest, right. No Public Officer may request to receive money or value in exchange for an official act. I mean, do I need to say more about that? Yes, you know, that one's easy. You can't directly or indirectly coerce or attempt to coerce another Public Officer to contribute to a party, committee, or organization. Mr. Chair, you can't be asking Zachary to you know join your club. You know not that that's going to happen, but I'm just saying that's I think what they're trying you know trying to prevent there. Public Officers, no Public Officer may take an official act for the primary purpose of directly enhancing that officer's financial interest. That's just a hard no.

Las Cruces Municipal Code says the same thing. Unlike most other violations of the Governmental Conduct Act, this one actually is a fourth degree felony. This is the worst one, right. The rest of what you can't do are misdemeanors. This one's a fourth degree felony. I'm pretty sure that this has happened in New Mexico, and we've read about it No Public Officer may use or disclose confidential information. We kind of had a conversation about that, right. I mean, of all the things that you're going to be learning and doing in this job, you might hear something or know something well before the public knows it, and that's something you all have to guard against. Of course, no Public Officer or his or her business or family business may sell to an employee supervised by him or her or regulated by him or her. There's a little bit more to that but when it comes to family you have to be pretty careful. Family I believe is described as siblings, mom and dad, and maybe grandparents. I don't have it right in front of me. This one I lived myself personally, because my son's father-in-law sits on the governing body of one of my other clients. Somebody alleged that we had a conflict of interest. I had to go to the Governmental Conduct Act, looked up family, my son's father-in-law is not my family under

the code, under this Act. The issue popped up, it came and went, and he's still sitting on there and I'm still that governing bodies, attorney.

Vice-Chair Newby: Nan. One question on that, where it says of his or her business or family business may sell to employee. The verb sell. Can you sell what?

Winter: Anything, but there are exceptions and it's buried in the Governmental Conduct Act. I didn't put all the exceptions in there. In other words, you can't ask Adrienne to buy your wife's jewelry. Okay, now, let's say you have a business on Main Street, and she walks in but has no clue that you own the business. That is one of the exceptions.

Vice-Chair Newby: Okay.

Winter: Okay. If it's innocent, if it's innocent, or two you sell to the general public, or three she doesn't know that it's your business, then there's no issue with it. Those are exceptions in the code. I didn't put them all down there. Generally speaking, you can't be approaching staff and peddling whatever it is you're selling.

Vice-Chair Newby: Thank you.

Winter: Okay. You know, IPRA (Inspection of Public Records Act) is enforceable and if you remember Inspection of Public Records Act is enforceable. It's kind of a long drawn out process. It's not immediately obvious. Violations of the Open Meeting Act, you'll probably hear about those sooner than you would hear about a violation of the Inspection of Public Records Act. Enforcement of the Governmental Conduct Act has all kinds of enforcement in it. This one they take pretty seriously. I mean, they take them all seriously but this one's filled with both criminal and civil penalties. Secretary of State can refer any violation that they find about this to the Attorney General. Violation of any of this is grounds for dismissal, demotion, or suspension. Because it does apply to employees, right. These words dismissal, demotion, or suspension don't maybe technically apply to you, although you could be relieved of your duties on the board. The dismissal, demotion, and suspension probably more applies to employees who violate the Governmental Conduct Act. This, of course, may be enforced by the AG (Attorney General), just like the Inspection of Public Records Act and the Open Meetings Act. Any violation, knowing and willful violation is a misdemeanor, except for the one that I pointed out to you is a fourth degree felony. What is a misdemeanor? That's \$1,000.00 fine or imprisonment for not more than a year or both. Yes, you're going to jail, potentially. Then not only are you subject to criminal penalties, the AG can also take you to District Court for a permanent or temporary injunction, and you could be fined up to \$5,000.00 as a civil penalty. This one is chock full of more enforcement than the two we talked about last month. With that, I would stand for questions.

Freilino: None for me. Thank you.

Winter: Okay.

Butler: Thank you. Helpful.

Winter: Okay.

Vice-Chair Newby: You just scared us to death.

Winter: All right. Thank you.

Vice-Chair Newby: Thank you.

10. Board Comments:

A. Review City Staff and/or Consultant Follow-Up Items:

Vice-Chair Newby: Okay, now we will hear from Parks and Recreation regarding the PIF (Public Investment Fund) Capital Projects. Robert. I am so sorry. No, I was totally wrong. That was last month. Just see, she started coming up. She's saying, I didn't know. I didn't know I was supposed to speak. Yes, when the Chair reads the minutes he's just going to do this. Okay. On Board Comments, Review City Staff and Consultant Follow Up Items by Chair Curnutt. Obviously, the Chair is not here. The follow up items had been what we've already discussed as far as tours ago.

One of the other things I wanted to discuss was, and I'll be the first to admit I did not see the e-mail regarding pick a date for the Fire tour. It was I think one of you did, but no one else. I think it's been summarily canceled. Is that correct?

Castañeda Yes, but I did speak with Chief Smith and so he said that we can pick a date in July. He'll give me a date, because July is a busy month for him. If you guys could decide whether you want to do the tour of the Station 8 which is the only one being paid by Impact Fees or the driving tour of the ones that he listed.

Vice-Chair Newby: Okay.

Castañeda That way he knows the timeframe that he needs to.

Vice-Chair Newby: Okay. For our new committee member, the Chief had given us a couple of options. We'd like to go to places where capital improvements are spent.

Butler: Sure.

Vice-Chair Newby: It also gives us, as you saw on the Parks Development tour, there's a lot of those. The Chief said the only one so far that is used the Impact Fees is up on the East Mesa, No. 8, brand new facility. Then he gave us another list that

allowed us to look at other facilities, some new, some been around for a while, because that also gives us an idea of the multiple things that the Fire Department does. Those were our two choices. Do either one of the members have a recommendation for the Chief for which tour you might be interested in?

Freilino: No, I can do whenever you guys are available.

Vice-Chair Newby: Okay.

Butler: I have done tours of City's facilities before so I'm not feeling a need for something.

Vice-Chair Newby: Okay. It would probably, because I know the Chief is really busy, it would probably be best to do the one tour of the new facility there on East Mesa. You could just give us the dates then hopefully we will all answer.

Castañeda Mr. Butler. On behalf of Utilities Staff and Administration we'd just like to give you a swag bag of some gifts.

Butler: Thank you very much.

Castañeda Appreciate you.

Vice-Chair Newby: That did not cost more than \$25.00.

Butler: Is this legal?

Castañeda It did not cost more.

Vice-Chair Newby: \$24.99. We do get good swag here. Any other business to come before the committee?

11. Next Regular Meeting: July 27, 2023:

12. Adjournment:

Vice-Chair Newby: I would take a motion to adjourn.

Freilino: Second that.

Vice-Chair Newby: Somebody make a motion.

Butler: So Moved.

Freilino: Second

Vice-Chair Newby: Been moved and seconded to adjourn. All in favor.

Chairperson

DRAFT