



## A G E N D A

Carlsbad City Council Regular Meeting  
Janell Whitlock Municipal Complex  
114 S. Halagueno Street  
Carlsbad, New Mexico

April 11, 2023 at 6:00 p.m.

Invocation – Pledge of Allegiance

1. Approval of Agenda
2. Consider Approval of Resolution 2023-15, a Resolution making certain Budgetary Adjustments to the 2022-23 Fiscal Year Budget
3. Routine and Regular Business

**All matters under this heading are considered routine by the City Council and will be acted upon in one motion. There will be no separate discussion of these items. If discussion is desired on a particular item, upon request, that item may be removed from the Routine and Regular Business and be considered separately.**

- A. **Minutes of the Regular City Council Meeting held on March 28, 2023**
  - B. **City Personnel Report**
  - C. **Purchasing**
    - 1) Consider Approval to Award RFP 2023-04 to Advantage Heating and Cooling for the provision and installation of HVAC units at the Walter Gerrells Performing Arts Center
    - 2) Consider Approval to Award RFP 2023-05 to Total Productions for Sound System upgrades at the Walter Gerrells Performing Arts Center
  - D. **Monthly Reports**
    - 1) Human Resources Department March 2023
  - E. **Set the Date: May 9, 2023**
    - 1) Ordinance rezoning part of "R-1" Residential 1 District to "C-2" Commercial 2 District for an approximately 0.76 acre property located at 206 E Rose Street
    - 2) Ordinance rezoning part of "R-R" Rural Residential District to "C-2" Commercial 2 District for an approximately 2.964 acre property located at 2013 San Jose Blvd
4. Consider Approval to accept Capital Outlay Grant from the New Mexico Aging and Long Term Services Department for kitchen equipment for the Alejandro Ruiz Senior Center

5. Consider Approval to accept a State of New Mexico Economic Development Department Grant for the installation of film projection system at the Cavern Theatre
6. Consider Approval of newly updated Drug and Alcohol Testing Policy recommended by the Federal Transit Administration for Carlsbad Municipal Transit
7. Consider Approval of Temporary Use Application to allow mobile sales (vending) on City property at the Carlsbad Beach Park located at 814 E Riverside Drive by The Frozen Cactus Owner: Dustin Bratcher
8. Consider Approval of Temporary Use Application to allow mobile sales (vending) of food and drinks within City streets throughout the City by The Ice Cream Man, LLC Owner: Jason Stearns
9. Consider Approval of Request from Milton's Brewery to serve alcohol (beer & wine) on City streets in the downtown area during a joint Milton's and Carlsbad Mainstreet Cinco de Mayo event
10. Consider Approval of Ordinance 2023-06, an Ordinance rezoning part of "R-R" Rural Residential District to "C-2" Commercial 2 District for an approximately 20.86 acre property located at 3618 and 3619 Harvest Lane Applicant: Thaddaeus Winn and Tara Lamb
  - A. Public Hearing
  - B. Approval of Ordinance
11. Consider Approval of Ordinance 2023-07, an Ordinance rezoning part of "C-2" Commercial 2 District to "R-1" Residential 1 District for an approximately 0.138 acre property located at 106 N Fourth Street Applicant: Ray and Korina Doporto
  - A. Public Hearing
  - B. Approval of Ordinance
12. Consider Approval of Resolution 2023-16, a Resolution to support and encourage the State of New Mexico to Re-Classify and Recognize the Carlsbad Police Department Telecommunicators as First Responders
13. Council Committee Reports
14. Adjourn



### FOR INFORMATION ONLY

The Ordinance rezoning part of "R-R" Rural Residential District to "C-2" Commercial 2 District for an approximately 2.965 acre property located at 2013 San Jose Blvd has been rescheduled to be heard at the May 9, 2023 City Council, notification will be republished.

The Ordinance rezoning part of "R-1" Residential 1 District to "C-2" Commercial 2 District for an approximately 1.66 acre property located at 209 W Pecan Street will be rescheduled

The Ordinance rezoning part of “R-1” Residential 1 District to “R-2” Residential 2 District for an approximately 0.142 acre property located at 1706 W Center Street has been cancelled by the Applicant

Agendas and City Council minutes are available on the City web site: [cityofcarlsbadnm.com](http://cityofcarlsbadnm.com) or may be viewed in the Office of the City Clerk during normal and regular business hours.

## **CARLSBAD CITY COUNCIL MEETING SCHEDULE**

- Regular Meeting - Tuesday, April 25, 2023 at 6:00 p.m.
- Regular Meeting – Tuesday, May 9, 2023 at 6:00 p.m.

If you require hearing interpreter, language interpreters or auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator’s office at (575) 887-1191 at least 48 hours prior to the scheduled meeting time.

**RESOLUTION NO. 2023-15**

**A RESOLUTION MAKING CERTAIN BUDGETARY  
ADJUSTMENTS TO THE 2022-23 FISCAL YEAR BUDGET**

WHEREAS, it is necessary to amend the 2022-23 fiscal year budget to adjust revenues, transfers and expenditures as reflected on the attached pages, and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD that the 2022-23 fiscal year budget be amended as attached.

INTRODUCED, PASSED, ADOPTED AND APPROVED this 11<sup>th</sup> day of April 2023.

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Mayor

ATTEST:

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City Clerk



**Budget Adjustments**

FY 2022-23

Description		Revenues & Transfers		Costs		Approvals		
Fund / Department	Item	Increase (Decrease) to Fund		Labor, Operating, Capital Increase (Decrease) to Fund		Dates		
		Amount	R or T	Amount	L, O, C	Budget Com	Council	DFA
<b>August 2022</b>								
Lodgers' Tax - Discretionary	Development of miniature golf course at Lake Carlsbad			(750,000.00)	C	-	9/13/2022	9/19/2022
<b>September 2022</b>								
Health Insurance	Transfer Out to General, Municipal Transit, Solid Waste, Sports Complex and Water & Sewer Funds for employee health insurance rebate.	(1,534,944.53)	T			9/23/2022	10/11/2022	10/18/2022
General Fund	Employee health insurance rebate	1,229,445.86	T	(1,229,445.86)	L	9/23/2022	10/11/2022	10/18/2022
Sports Complex	Employee health insurance rebate	20,295.99	T	(20,295.99)	L	9/23/2022	10/11/2022	10/18/2022
Municipal Transit	Employee health insurance rebate	38,510.87	T	(38,510.87)	L	9/23/2022	10/11/2022	10/18/2022
Water & Sewer	Employee health insurance rebate	188,134.28	T	(188,134.28)	L	9/23/2022	10/11/2022	10/18/2022
Solid Waste	Employee health insurance rebate	58,557.53	T	(58,557.53)	L	9/23/2022	10/11/2022	10/18/2022
General Fund - Parks	Increase Annual Park Improvements for donations received for HAP improvements	20,000.00	R	(20,000.00)	C	9/23/2022	10/11/2022	10/18/2022
General Fund - Public Safety	Shop with a Hero Grant from Walmart	4,000.00	R	(4,000.00)	O	9/23/2022	10/11/2022	10/18/2022
General Fund - Public Safety	FBI Funds received for local investigation	4,000.00	R	(4,000.00)	O	9/23/2022	10/11/2022	10/18/2022
General Fund - Alejandro Ruiz Senior Center	Aging & Long Term Services Grant for replacement of kitchen equipment at the Alejandro Ruiz Senior Center	7,811.00	R	(7,811.00)	O	9/23/2022	10/11/2022	10/18/2022
General Fund - North Mesa Senior Center	Private donations received for refelting of pool tables	1,500.00	R	(1,500.00)	O	9/23/2022	10/11/2022	10/18/2022
Street Improvements	Municipal Arterial Program Grant (NMDOT) for rehabilitation of Sixth and Pate Street. 25% City match - \$20,000	60,000.00	R	(80,000.00)	C	9/23/2022	10/11/2022	10/18/2022
Lodgers' Tax - Promotional	Walter Gerrells Performing Arts Center Advertising			(65,000.00)	O	9/23/2022	10/11/2022	10/18/2022
Lodgers' Tax - Promotional	Chamber of Commerce - Advertising Campaign			(20,800.00)	O	9/23/2022	10/11/2022	10/18/2022
Lodgers' Tax - Promotional	Chamber of Commerce- Green Chile Cheeseburger Cookoff Advertising			(5,000.00)	O	9/23/2022	10/11/2022	10/18/2022
Lodgers' Tax - Promotional	Cavern City Renaissance Festival Advertising			(20,000.00)	O	9/23/2022	10/11/2022	10/18/2022
Lodgers' Tax - Promotional	Boys & Girls Club - Gus Macker Basketball Tournament Advertising			(70,000.00)	O	9/23/2022	10/11/2022	10/18/2022
Lodgers' Tax - Promotional	Carlsbad MainStreet-MainStreet America			(9,500.00)	O	9/23/2022	10/11/2022	10/18/2022
Lodgers' Tax - Promotional	Milton's Brewing- 2nd Annual September Fest Advertising			(15,000.00)	O	9/23/2022	10/11/2022	10/18/2022
Solid Waste Fund	FY22 carryover for 4 ARC trucks			(1,800,000.00)	C	9/23/2022	10/11/2022	10/18/2022
Capital Projects Fund	Alejandro Ruiz Senior Center Parking Lot			(250,000.00)	C	9/23/2022	10/11/2022	10/18/2022
Lodgers' Tax - Discretionary	Transfer Out to General Fund for the construction of pickle ball courts	(150,000.00)	T			-	10/11/2022	10/18/2022

**Budget Adjustments**

FY 2022-23

Description		Revenues & Transfers		Costs		Approvals		
Fund / Department	Item	Increase (Decrease) to Fund		Labor, Operating, Capital Increase (Decrease) to Fund		Dates		
		Amount	R or T	Amount	L, O, C	Budget Com	Council	DFA
General Fund	Transfer In from Lodgers' Tax - Discretionary for the construction of pickle ball courts	150,000.00	T	(150,000.00)	C	-	10/11/2022	10/18/2022
<b>October 2022</b>								
GRT Capital Outlay	Replace the roof at the Alejandro Ruiz Senior Center			(375,000.00)	C	10/28/2022	11/8/2022	11/21/2022
Lodgers' Tax - Promotional	Carlsbad Community Concert Association - 2023 Concert Season Advertising			(47,000.00)	O	10/28/2022	11/8/2022	11/21/2022
General Fund - Museum	Art acquisition of Gary Niblett painting			(15,000.00)	C	10/28/2022	11/8/2022	11/21/2022
Landfill-Construction	FY22 carryover for Sandpoint Landfill construction costs			(1,000,000.00)	O	10/28/2022	11/8/2022	11/21/2022
<b>November 2022</b>								
Airport Improvements Fund	Airport Runway Reconstruction grant came in higher than anticipated	399,406.00	R	(361,527.00)	C	11/18/2022	12/13/2022	12/20/2022
Law Enforcement Protection Fund	Law Enforcement Retention Grant funds to be used for salaries and benefits in the Police Department	600,000.00	R			11/18/2022	12/13/2022	12/20/2022
General Fund - Fire	Surrender Safety Device Grant for the Fire Department for a Safe Haven Baby Box	10,000.00	R	(20,000.00)	C	11/18/2022	12/13/2022	12/20/2022
General Fund - North Mesa Senior Center	Aging & Long Term Services Grant for lighting upgrades at the North Mesa Senior Center	6,367.00	R	(6,367.00)	O	11/18/2022	12/13/2022	12/20/2022
Lodgers' Tax - Promotional	Chamber of Commerce- Christmas on the Pecos Advertising			(75,000.00)	O	11/18/2022	12/13/2022	12/20/2022
Capital Projects Fund	NMDOT Grant for the design of Dark Canyon Bridge	2,850,000.00	R	(3,000,000.00)	C	11/18/2022	12/13/2022	12/20/2022
Golf Pro Shop Fund	Increase operating due to expenditures coming in higher than anticipated			(150,000.00)	O	11/18/2022	12/13/2022	12/20/2022
Fire Protection Fund	Increase Metal Shelter project (50'x 55') due to bid coming in higher than budget			(193,387.00)	C	11/18/2022	12/13/2022	12/20/2022
<b>December 2022</b>								
General Fund - Library	Library Grant-In-Aid came in higher than budget	254.72	R	(254.72)	O	12/16/2022	1/10/2023	1/13/2023
General Fund - Library	Library grant to implement the Serving Communities Action Plan Program	1,000.00	R	(1,000.00)	O	12/16/2022	1/10/2023	1/13/2023
General Fund - Police/Fire	Donation from Devon Energy for the purchase of supplies for the police department and bullet proof vests for the fire department.	6,000.00	R	(6,000.00)	O	12/16/2022	1/10/2023	1/13/2023
Cannabis Revenue Fund	Budget state imposed administration fees for the cannabis tax			(10,000.00)	O	12/16/2022	1/10/2023	1/13/2023
Municipal Transit Fund	Additional funds awarded by NMDOT due to increase in price of vehicles	20,924.00	R	(20,924.00)	C	12/16/2022	1/10/2023	1/13/2023
Lodgers' Tax - Promotional	4th Annual Boys & Girls Club Fishing Derby Advertising			(5,000.00)	O	12/16/2022	1/10/2023	1/13/2023
Insurance Fund	Insurance payment for collision into the PFA building	20,070.00	R			1/4/2023	1/10/2023	1/13/2023
General Fund - Fire	Reimburse expenses for repair of PFA building caused by collision			(20,070.00)	O	1/4/2023	1/10/2023	1/13/2023
General Fund - Cemetery	Fencing at Carlsbad Cemetery			(230,000.00)	C	1/4/2023	1/10/2023	1/13/2023
Street Improvements	Increase annual street improvement project for additional street improvements			(1,000,000.00)	C	1/4/2023	1/10/2023	1/13/2023

**Budget Adjustments**

FY 2022-23

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Fund / Department	Item	Increase (Decrease) to Fund		Labor, Operating, Capital Increase (Decrease) to Fund		Dates		
		Amount	R or T	Amount	L, O, C	Budget Com	Council	DFA
Lodgers' Tax - Discretionary	New pedestrian bridge at Lake Carlsbad Beach area			(300,000.00)	C	1/4/2023	1/10/2023	1/13/2023
<b>January 2023</b>								
Sports Complex Fund	Increase operating due to an increase in utility rates			(50,000.00)	O	1/27/2023	2/14/2023	2/24/2023
General Fund - Fire	Increase operating due to an increase in utility rates			(80,000.00)	O	1/27/2023	2/14/2023	2/24/2023
General Fund - Golf	Increase operating due to an increase in utility rates			(20,000.00)	O	1/27/2023	2/14/2023	2/24/2023
General Fund - Library	Increase operating due to an increase in utility rates			(20,000.00)	O	1/27/2023	2/14/2023	2/24/2023
General Fund - Performing Arts Center	Increase operating due to an increase in utility rates			(30,000.00)	O	1/27/2023	2/14/2023	2/24/2023
General Fund - Alejandro Ruiz Senior Center	Increase operating due to an increase in utility rates			(30,000.00)	O	1/27/2023	2/14/2023	2/24/2023
General Fund - Parks	Increase operating due to an increase in utility rates			(70,000.00)	O	1/27/2023	2/14/2023	2/24/2023
General Fund - Golf	Salaries and benefits for 2 part-time pro shop attendants to assist at the miniature golf course			(43,559.28)	L	1/27/2023	2/14/2023	2/24/2023
General Fund - Police	Edward Byrne Grant for the enhancement of the license plate reader program	14,809.00	R	(14,809.00)	C	1/27/2023	2/14/2023	2/24/2023
Law Enforcement Retention Fund	Law enforcement retention differential disbursement received from the NM Department of Public Safety	25,565.15	R			1/27/2023	2/14/2023	2/24/2023
Law Enforcement Retention Fund	Transfer Out funds received from NM Department of Public Safety to be used for officer retention incentive pay	(25,565.15)	T			1/27/2023	2/14/2023	2/24/2023
General Fund	Transfer In funds received from NM Department of Public Safety to be used for officer retention incentive pay	25,565.15	T	(25,565.15)	L	1/27/2023	2/14/2023	2/24/2023
General Fund	Transfer Out to NMFA-Water & Sewer for future debt service payments	(7,000,000.00)	T			1/27/2023	2/14/2023	2/24/2023
NMFA-Water & Sewer	Transfer In from General Fund for future debt service payments	7,000,000.00	T			1/27/2023	2/14/2023	2/24/2023
Airport Improvements Fund	Annual Airport Maintenance Grant, State - \$20,000 / City match \$2,222	20,000.00	R	(22,222.00)	O	1/27/2023	2/14/2023	2/24/2023
Law Enforcement Retention Fund	Transfer Out funds received from the Law Enforcement Retention Grant	(600,000.00)	T			1/27/2023	2/14/2023	2/24/2023
General Fund	Transfer In funds received from the Law Enforcement Retention Grant	600,000.00	T			1/27/2023	2/14/2023	2/24/2023
<b>February 2023</b>								
General Fund - Museum	Carlsbad Community Foundation Catalyst Grant to facilitate Carlsbad Museum Tours for Carlsbad Municipal School students	2,000.00	R	(2,000.00)	O	2/24/2023	3/14/2023	3/23/2023
General Fund - Municipal Court	Install bullet proof glass at the municipal court front counter			(35,000.00)	C	2/24/2023	3/14/2023	3/23/2023
Lodgers' Tax - Discretionary	Transfer Out to General Fund for driving range upgrades	(325,000.00)	T			2/24/2023	3/14/2023	3/23/2023
General Fund - Golf Course	Transfer In from Lodgers' Tax - Discretionary for driving range upgrades at the golf course	325,000.00	T	(325,000.00)	C	2/24/2023	3/14/2023	3/23/2023
Lodgers' Tax Non-Promotional	Increase PRV Media Upgrades project			(70,000.00)	O	2/24/2023	3/14/2023	3/23/2023
Lodgers' Tax - Promotional	United Way Cinco de Mayo Golf Tournament advertising			(18,000.00)	O	2/24/2023	3/14/2023	3/23/2023

**Budget Adjustments**

FY 2022-23

Description		Revenues & Transfers		Costs		Approvals		
Fund / Department	Item	Increase (Decrease) to Fund		Labor, Operating, Capital Increase (Decrease) to Fund		Dates		
		Amount	R or T	Amount	L, O, C	Budget Com	Council	DFA
Lodgers' Tax - Promotional	City of Carlsbad Library advertising			(20,000.00)	O	2/24/2023	3/14/2023	3/23/2023
<b>March 2023</b>								
Capital Projects Fund	Regional Recreation Centers Quality of Life Grant to be used for the final phase of the Cavern Theatre rehabilitation project	3,324,166.00	R	(3,324,166.00)	C	3/24/2023		
Golf Pro Shop Fund	Increase operating to offset revenues coming in higher than anticipated			(95,000.00)	O	3/24/2023		
Law Enforcement Protection Fund	Additional law enforcement retention differential disbursement received from the NM Department of Public Safety	8,832.21	R			3/24/2023		
Law Enforcement Protection Fund	Transfer Out additional funds received from NM Department of Public Safety to be used for officer retention incentive pay	(8,832.21)	T			3/24/2023		
General Fund	Transfer In additional funds received from NM Department of Public Safety to be used for officer retention incentive pay	8,832.21	T	(8,832.21)	L	3/24/2023		

Description			Revenues & Transfers		Costs	
			Increase (Decrease)		Personnel, Operating, Capital	
Fund / Department	Increase/Decrease	Item	Amount	R or T	Amount	L, O, C
<b>September 2022</b>						
General Fund - Fire	Increase Capital	Transfer funds to cover restroom remodel due to sewer line problems	29,075.00		29,075.00	C
	Decrease Operating/Capital		(29,075.00)			O/C
General Fund - Fire	Increase Capital	Transfer funds to PFA Remodel project due to project being closed before all invoices were paid	4,475.85		4,475.85	C
	Decrease Operating		(4,475.85)			O
General Fund - Community Development	Increase Capital	Transfer funds from HAP Improvements project to Hall of Fame project	50,000.00		50,000.00	C
	Decrease Capital		(50,000.00)			C
<b>October 2022</b>						
Fire Protection	Increase Capital	Transfer funds to stabilization equipment project (Paratech stabilization for new rescue truck) due to equipment coming in higher than budget	10,000.00		10,000.00	C
	Decrease Capital		(10,000.00)			C
Solid Waste Fund	Increase Capital	Transfer funds to Project# 100812 to cover additional costs of container maintenance truck	60,000.00		60,000.00	C
	Decrease Capital		(60,000.00)			C
General Fund - Fire	Increase Capital	Transfer excess funds to vehicle project (Ram 2500) due to vehicle coming in higher than budget	9,886.33		9,886.33	C
	Decrease Capital		(9,886.33)			C
General Fund - Cemetery	Increase Capital	Transfer funds from fencing project to honor guard project for upgrades to committal structure at Cemetery	25,000.00		25,000.00	C
	Decrease Capital		(25,000.00)			C
General Fund - San Jose Senior Center	Increase Operating	Transfer funds from closed senior center to cover additional costs at the new facility	25,000.00		25,000.00	O
General Fund - Alejandro Ruiz Senior Center	Decrease Operating		(25,000.00)			O
<b>December 2022</b>						
General Fund - Street	Increase Capital	Transfer excess funds from backhoe projects in the Street and Construction departments to the Dump truck project in Streets due to quote coming in higher than budget	24,012.49		24,012.49	C
General Fund - Street & Construction	Decrease Capital		(24,012.49)			C
<b>January 2023</b>						
General Fund - Riverwalk Recreation	Increase Capital	Transfer funds from Riverwalk upgrades project to the Basketball Court Improvements project to cover increased cost of materials	3,500.00		3,500.00	C
General Fund - Riverwalk Recreation	Decrease Capital		(3,500.00)			C
Water & Sewer - Waste Water	Increase Capital	Transfer excess funds from Boiler project to Final Clarifier project to cover additional costs	155.91		155.91	C
Water & Sewer - Waste Water	Decrease Capital		(155.91)			C
<b>February 2023</b>						
General Fund - Police	Increase Capital	Transfer operating funds to the Police Vehicles project for the purchase of 4 Ford Explorers	151,236.00		151,236.00	C
General Fund - Police	Decrease Operating		(151,236.00)			O
Water & Sewer - Waste Water	Increase Capital	Transfer funds from the Fall Protect System to the Gravity Belt Project to cover additional costs	75,000.00		75,000.00	C
Water & Sewer - Waste Water	Decrease Capital		(75,000.00)			C
General Fund - Airport	Increase Operating	Transfer excess funds from the Charging Station and Carport projects to operating for the removal of 2 trees and trimming along the entryway.	8,000.00		8,000.00	C
General Fund - Airport	Decrease Capital		(8,000.00)			O
Solid Waste Fund	Increase Capital	Transfer excess funds from the Tire Shredder project to the Container Maintenance truck project to cover additional costs	15,000.00		15,000.00	C
Solid Waste Fund	Decrease Capital		(15,000.00)			C
Fire Protection	Increase Capital	Transfer funds from the Metal Shelter project to the Drive Pad project for cement work at Fire Station 1	25,000.00		25,000.00	C
Fire Protection	Decrease Capital		(25,000.00)			C
Fire Protection	Increase Operating	Transfer funds from the Metal Shelter project to operating to cover expenses through year-end	100,000.00		100,000.00	O
Fire Protection	Decrease Capital		(100,000.00)			C

Description			Revenues & Transfers		Costs	
			Increase (Decrease)		Personnel, Operating, Capital	
Fund / Department	Increase/Decrease	Item	Amount	R or T	Amount	L, O, C
<b>March 2023</b>						
General Fund - North Mesa Senior Center	Increase Operating	Transfer funds from the community development department to the north mesa senior center department to cover expenses through year-end			7,000.00	O
General Fund - Community Development	Decrease Operating				(7,000.00)	O
General Fund - Parks	Increase Capital	Reallocate funds from the Lower Tansill Improvements project to the Annual Park Improvements project for the completion of the pickle ball courts			194,277.40	C
General Fund - Parks	Decrease Capital				194,277.40	C
Airport Improvements Fund	Increase Capital	Transfer operating funds to the Resurfacing project to resurface the area in front of Native Air's Hangar			65,000.00	C
Airport Improvements Fund	Decrease Operating				(65,000.00)	O
Golf Pro Shop Fund	Increase Operating	Transfer excess funds from the closed Beverage Cart project to operating to cover expenses through year-end			7,343.00	O
Golf Pro Shop Fund	Decrease Capital				(7,343.00)	C
General Fund - Cemetery	Increase Capital	Transfer operating funds to the Honor Guard Cemetery project to cover shortfall			748.75	C
General Fund - Cemetery	Decrease Operating				(748.75)	O
Lodgers' Tax Promotional	Increase Capital	Transfer operating funds to the PRV Improvements project to cover shortfall			4,000.00	C
Lodgers' Tax Promotional	Decrease Operating				(4,000.00)	O

**LINKED MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL OF THE  
CITY OF CARLSBAD, NEW MEXICO, HELD IN THE JANELL WHITLOCK  
MUNICIPAL COMPLEX BUILDING ON MARCH 28, 2023 AT 6:00 P.M.**

Present:	Dale Janway	Mayor
	Lisa A. Anaya Flores	Councilor
	Edward T. Rodriguez	Councilor
	Jason O. Chavez	Councilor
	Wesley A. Carter	Councilor
	Mark C. Walterscheid	Councilor
	Jeff Forrest	Councilor
	Karla Niemeier	Councilor
	Judith E. Waters	Councilor

Absent:

Also Present:	John Lowe	City Administrator
	K.C. Cass	Deputy City Administrator
	Ted Cordova	Deputy City Administrator
	Denise Madrid-Boyea	City Attorney
	Nadine Mireles	City Clerk
	Angie Barrios-Testa	Director of Municipal Services
	Mike Abell	Director of Utilities
	Wayne Hatfield	IT Director
	Brent Griffith	IT Technician
	Melissa Salcido	Finance Director
	Ken Ahrens	Fire Chief
	Jeff Patterson	Planning Director
	Shane Skinner	Police Chief
	Patrick Cass	Public Works Director

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00      **Call Meeting to Order**

0:00:05      Invocation - Pledge of Allegiance

0:00:47      **Mayor Janway** introduced Missi Currier, the Vice President of Strategy 360, and asked her to give Council members a legislative update. **Ms. Currier** started with saying legislative session is held in Santa Fe for 60 days, and she thanked everyone

who went to Santa Fe to advocate on behalf of Carlsbad and Eddy County. She said she wants to thank the members who were helpful to their efforts including their local delegation. **Ms. Currier** reviewed Senate and House Bills beneficial to Carlsbad and Eddy County. She said Senate Bill 292 passed, and gave credit to Mayor Janway and City Administrator John Lowe for all of their work on this bill. She said destination sourcing continues to be a major issue for the City of Carlsbad. She said they tried to find a permanent fix for destination sourcing, but have not come to that point yet. She thanked local delegation leadership for trying to come up with a short-term fix that she is hopeful the Governor will sign into law before April 7, 2023, when the veto period ends. She said if this Bill passes, Carlsbad will receive \$25 million to make up from the short fall of destination sourcing.

0:12:50 **Mayor Janway** thanked Ms. Currier for everything she did in Santa Fe and then asked if anyone had any questions for her. **Councilor Forrest** asked Ms. Currier if it is true that minimum wage is being raised to a higher rate. **Ms. Currier** said that there were two major Bills that were considering minimum wage, House Bill 25 and House Bill 28. She said House Bill 25 would have raised minimum wage to a standard across the state and House Bill 28 would have raised minimum wage with certain amounts of indexing. She said the measures did not go forward because there were a lot of people that said the jump was too high and too much for New Mexico businesses to sustain.

0:14:39 **1. APPROVAL OF AGENDA**

0:14:40 **MOTION**

The motion was made by Councilor Carter and seconded by Councilor Waters to approve the Agenda.

0:14:45 **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:15:01 **2. CITY OF CARLSBAD FINANCIALS - FEBRUARY 2023 MRS. SALCIDO REVIEWED THE REVENUES AND EXPENDITURES AS OF FEBRUARY 2023 FOR THE GENERAL FUND, SELECTED ENTERPRISE AND SPECIAL FUNDS CONTAINED WITHIN THE CITY BUDGET**

0:16:36 **3. ROUTINE AND REGULAR BUSINESS**

- A. Minutes of the Regular City Council Meeting held on January 10, 2023
- B. City Personnel Report
- C. 1) Consider Approval of Amendment to Agreement between the City of Carlsbad and Southeast New Mexico Action Corporation for the Lease of Property for the Nutritional Meals Program
- D. Monthly Reports



- 1) Community Development Department February 2023
- 2) Municipal Services Department February 2023
- 3) Utilities Department February 2023

**Mayor Janway** asked Angie Barrios-Testa to briefly discuss Agenda item C1. **Mrs. Barrios-Testa** says this item is a request to amend a contract with the Southeast New Mexico Community Action Corporation for the Meals Program Lease. She explains there is a new appraisal for the Alejandro Ruiz Senior Center building that has to be incorporated. She said this amendment will change the location from the San Jose address to the 120 Kircher address, and it will update the market rental rate and it will include equipment. She said during the first phase of renovations, we received emergency funding from Aging and Long-term Services that has to be incorporated into the lease. She said we are expecting more Capital Outlay awards that will also have to be incorporated. She said we are pleased to continue to work with Southeast New Mexico.

0:18:29      **MOTION**

The motion was made by Councilor Rodriguez and seconded by Councilor Waters to approve Routine and Regular Business.

0:18:35      **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:19:02      **4.      CONSIDER APPROVAL OF REQUEST FOR A TEMPORARY USE BUSINESS LICENSE BY THE HEIGHTS LIONS CLUB FOR A CARNIVAL AT 300 AND 301 DIAZ STREET (RAY ANAYA/SAN JOSE PLAZA AND PARK)**

**Jeff Patterson** explained the Heights Lions Club has requested a business license to sponsor a carnival as a fundraiser for their organization on May 18, 2023 through May 28, 2023. He said the carnival presenter is Moore's Greater Shows LLC out of Lyford, Texas. **Mr. Patterson** said the Planning Department recommends approval of this request based on the following conditions; the applicant shall comply with all applicable requirements of Code of Ordinances, Chapter 28, Article 2; The applicant shall furnish the City with copies of all forms and inspections required under the Carnival Ride Insurance Act prior to operation, and the applicant shall insure that all trash is cleaned from the sight daily and at the end of the event.

0:20:20      **Jay Francis**, President of the Heights Lions Club, said Moore's Greater Shows LLC has sponsored their event for at least 20 years and they have always followed New Mexico statutes. He said the revenue from this event goes back to the community, highlighting donations to the Boys and Girls Club, Packs to Hunger, the Battered Family Shelter, Carlsbad Transitional Housing, Christmas Anonymous, Desert

Willow Wildlife, and Southeast New Mexico College. **Mr. Francis** said this event benefits the community in many ways.

0:22:11        **MOTION**

The motion was made by Councilor Carter and seconded by Councilor Rodriguez to approve the Request for a Temporary Use Business License by the Heights Lions Club for a Carnival at 300 and 301 Diaz Street (Ray Anaya/San Jose Plaza and Park).

0:22:17        **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:22:57        **5. CONSIDER APPROVAL OF DONATION OF REAL PROPERTY TO EDDY COUNTY FOR USE AS RIGHT-OF-WAY OVER U.S. REFINERY ROAD, AS PART OF PHASE III OF THE CR-605 WIDENING PROJECT**

**Mr. Lowe** said this is a request to donate approximately 6.58 acres of right-of-way to Eddy County, which is City owned property located outside of City limits along U.S. Refinery Road. He said this request will allow the County to widen a section of the East Loop Road Project.

0:23:34        **Wes Hooper**, Community/Administrative Services Director said this project has been going on for about 4 years. He said Eddy County has just received the last bit of funding to complete it, which will tie it into Highway 31.

0:24:08        **Mayor Janway** asked if there were any questions for Mr. Hooper. **Councilor Walterscheid** asked if the thought of going across the river is no longer in question. **Mr. Hooper** said they are looking at a Forney to get across the river and tie into the Southeast Loop because it would be easier to get across in the expense of bridges. **Mr. Walterscheid** asked if it would be a low-water crossing, and **Mr. Hooper** said that is a possibility.

0:25:01        **MOTION**

The motion was made by Mr. Forrest and seconded by Ms. Niemeier to approve the Donation of Real Property to Eddy County for use of Right-of-Way over U.S. Refinery Road, as part of Phase III of the CR-605 widening project.

0:25:09        **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:25:28        **6. CONSIDER APPROVAL OF ORDINANCE 2023-04, AN ORDINANCE FOR SAFE AND ANONYMOUS SURRENDER OF INFANTS**

0:25:42      **A.      Public Hearing**

**Denise Boyea-Madrid** stated the City of Carlsbad is committed to saving the lives of infants by providing mothers in crisis with a safe and anonymous plan for surrender. She said the state of New Mexico has enacted a Safe Haven Law, providing the foundation for an agreement. She said it is in the best interest of the public health, welfare, and safety, to eliminate unsafe and unlawful surrenders. She said the City has received grant funds for the expense of leasing and installing a baby box which was approved by City Council in January 2023. She said the City has negotiated a lease and service agreement with the Safe Haven Baby Boxes Inc.

**Councilor Rodriguez** asked Mrs. Madrid-Boyea, once the baby is safely taken in, what are the steps that follow. **Mrs. Madrid-Boyea** stated the child will immediately receive medical attention and then CYFD will be called to take custody of the child. **Councilor Forrest** asked if there were going to be more than one box. **Mrs. Madrid-Boyea** said there is going to be one box located at the primary Fire Station. She said it will be monitored, checked regularly and there will be safe guards in place. **Councilor Walterscheid** asked how will the Fire Department staff know there is a baby in the box. **Mrs. Madrid-Boyea** said there is an alarm on the box. She said it is a special box with a specific purpose. She said the box has an alarm, padding in the inside, and once there is a baby placed in there it won't be able to be reopened. She said it opens inside the building for the staff to receive the baby.

0:29:04      **B.      Approval of Ordinance**

0:29:05      **MOTION**

The motion was made by Councilor Rodriguez and seconded by Councilor Waters to approve Ordinance 2023-04, an Ordinance for Safe and Anonymous Surrender of Infants

0:29:10      **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:29:32      **7.      CONSIDER APPROVAL OF ORDINANCE 2023-05, AN ORDINANCE AUTHORIZING THE LEASE OF PROPERTY COMMONLY KNOWN AS PORT JEFFERSON AND TO ENTER INTO A LEASE AGREEMENT WITH THE CARLSBAD CHAMBER OF COMMERCE FOR CONCESSION SERVICES**

0:30:13      **A.      Public Hearing**

**Mr. Lowe** said this request is for a two-year agreement with the Chamber of Commerce for the lease of Port Jefferson. He said this lease will include the concession building and the boat docks.

**Chad Ingram**, Chamber of Commerce President, said the Chamber of Commerce is excited to provide their services and expertise in tourism in order to combine both sides of the river and make it the center of tourism in Carlsbad. **Mayor Janway** asked Mr. Ingram if they plan on running the boat rides throughout the year. **Mr. Ingram** said it is not certain yet, but that is what they plan for. He said they are looking at providing boat rides on the weekends during the summer, and they are also looking at different ways they can do sunset cruises throughout the summer. **Councilor Walterscheid** asked Mr. Ingram if the Chamber of Commerce is going to run concessions or if they are going to hire a third-party. **Mr. Ingram** said they are looking at the option of hiring a third party to run the concession.

0:31:49      **B.      Approval of Ordinance**

0:31:49      **MOTION**

The motion was made by Councilor Niemeier and seconded by Councilor Forrest to approve Ordinance 2023-05, an Ordinance authorizing the lease of property commonly known as Port Jefferson and to enter into a Lease Agreement with the Carlsbad Chamber of Commerce for Concession Services.

0:31:56      **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:32:13      **8.      CONSIDER APPROVAL OF RESOLUTION 2023-12, A RESOLUTION AUTHORIZING FILING OF AN APPLICATION TO THE NEW MEXICO TOURISM DEPARTMENT FOR THE FY 24 NEW MEXICO CLEAN AND BEAUTIFUL GRANT**

**Mr. Ivan Abell** said this Resolution is to ask for the permission to apply for the New Mexico Clean and Beautiful Grant from the Keep America Beautiful. He said this money will cover their registration and travel costs for the conference, advertising costs for Keep Carlsbad Beautiful, waste receptacles for Downtown Mainstreet Project and youth litter clean-ups.

0:33:27      **Mayor Janway** asked if there were any questions for Mr. Abell. **Councilor Niemeier** asked after Mary Garwood leaves the department, who will administer the grant. **Mr. Abell** said he will accept and work with the grant until they get a new Executive Director.

0:34:17      **MOTION**

The motion was made by Councilor Niemeier and seconded by Councilor Rodriguez to approve Resolution 2023-12, a Resolution authorizing filing of an Application to the New Mexico Tourism Department for the FY 24 New Mexico Clean and Beautiful Grant.

0:34:24       **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:34:50       **9. CONSIDER APPROVAL OF RESOLUTION 2023-13, A RESOLUTION REQUIRING THE REMOVAL OF THE RUINED, DAMAGED OR DILAPIDATED BUILDINGS OR STRUCTURE, RUINS, RUBBISH, WRECKAGE AND DEBRIS AT 505 MONTERREY STREET OWNERS: MARIA JESUS RUBIO AND ESTANISLADO F. AND YCELA SOSA**

**Denise Madrid-Boyea** said this is a proposed Resolution to require the removal of the ruined, damaged or dilapidated building or structure, ruins, wreckage or debris at 505 Monterrey Street. She said there appears to be a dilapidated structure and weeds that may have pre-existed a fire. She said the Eddy County Assessor's Office lists Maria Jesus Rubio, Estanislado and Ycela Sosa as either owning or having an interest in the property, and lists an address for them at 809 Alvarado Street in Carlsbad. She said Code Enforcement has been to the property, and a Notice of Violation was mailed certified to the owners on February 8, 2023. She said the property has been inspected by Code Enforcement, the Building Inspector and the Fire Chief and they found that the property remains out of compliance with applicable codes. **Mrs. Madrid-Boyea** said the property has been red tagged, although it has been secured. She said the Fire Chief found that the property presents an extreme fire hazard for responding fire fighters and emergency personnel, and recommends that the building be demolished, the property be cleaned, and the weeds and debris be removed.

0:37:19       **Mayor Janway** asked if there were any questions for Mrs. Madrid-Boyea. **Councilor Walterscheid** asked if the Resolution is for the structure and the property. **Mrs. Madrid-Boyea** answered yes, as well as to clean up outside the property and take down the building and level off the property. **Councilor Rodriguez** asked what would happen to the boat that is parked on the property. **Mrs. Madrid-Boyea** said if it is still there when the property is being cleaned, it will be hauled off. She said if there is a way to ascertain the owner, the City tries to work with them as much as possible.

0:38:55       **MOTION**

The motion was made by Councilor Forrest and seconded by Councilor Walterscheid to approve Resolution 2023-13, a Resolution requiring the removal of the ruined, damaged or dilapidated buildings or structure, ruins, rubbish, wreckage and debris at 505 Monterrey Street Owners: Maria Jesus Rubio and Estanislado F. and Ycela Sosa.

0:39:02       **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:39:20      **10. CONSIDER APPROVAL OF RESOLUTION 2023-14, A RESOLUTION REQUIRING THE REMOVAL OF THE RUINED, DAMAGED OR DILAPIDATED BUILDINGS OR STRUCTURE, RUINS, RUBBISH, WRECKAGE AND DEBRIS AT 2807 SAN JOSE BOULEVARD OWNER: VERONICA HERNANDEZ**

Mrs. Madrid-Boyea said this is a proposed Resolution to require the removal of the ruined, damaged, or dilapidated building or structure, ruins, rubbish, wreckage and debris at 2807 San Jose Boulevard. She said the Eddy County Assessor's Office lists a Veronica Hernandez as owning or having an interest in the property, and lists her address as PO Box 193 in Carlsbad. She said Code Enforcement has been to the property, a Notice of Violation was mailed by certified mail to the owners on February 1, 2023. She said fires have occurred at the property in May and August of 2020, which damaged the structure and some trailers that were on the property at the time. She said the property has been inspected by Code Enforcement, the Building Inspector, and the Fire Chief, and they found that the property remains out of compliance with applicable codes. She said the property is not secured and the Fire Chief finds that the property presents an extreme fire hazard for responding fire fighters and emergency personnel, and recommends that the building be secured and/or demolished, the property be cleaned, and the trash and debris be removed.

0:41:45      **MOTION**

The motion was made by Councilor Walterscheid and seconded by Councilor Rodriguez to approve Resolution 2023-14, a Resolution requiring the removal of the ruined, damaged or dilapidated structure, ruins, rubbish, wreckage and debris at 2807 San Jose Boulevard Owner: Veronica Hernandez.

0:42:23      **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid, Anaya-Flores; No - None; Absent - None; the motion carried.

0:42:42      **11. COUNCIL COMMITTEE REPORTS**

No reports

0:42:47      **Mayor Janway asked if anyone in the audience would like to address the Council. No one appeared.**

0:43:02      **12. ADJOURN**

0:43:02      **MOTION**

The motion was made by Councilor Anaya-Flores and seconded by Councilor Waters to adjourn.

0:43:09       **VOTE**

The vote was as follows: Yes - Chavez, Waters, Carter, Rodriguez, Forrest, Niemeier, Walterscheid. Anaya-Flores; No - None; Absent - None; the motion carried.

0:43:27       **ADJOURN**

There being no further business, the meeting was adjourned at 6:43 p.m.

\_\_\_\_\_  
Dale Janway, Mayor

ATTEST:

\_\_\_\_\_  
Nadine Mireles, City Clerk

CITY OF CARLSBAD  
**PERSONNEL REPORT**

April 11, 2023

**APPOINTMENTS:**

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
Sawyer Angelis	04/12/23	Water Park	Recreation Attendant
Arianna Archuleta	04/12/23	Water Park	Lifeguard
Korrine Bradford	04/12/23	Water Park	Lifeguard
Spencer Campbell	04/12/23	Transit	Transit Driver, on-call
Sophia Corder	04/12/23	Water Park	Head Lifeguard
Amber Easley	04/12/23	Water Park	Lifeguard
Virginia Estrada	04/12/23	Transit	Transit Driver, on-call
Jennifer Gonzalez	04/12/23	Water Park	Lifeguard
Antonio Hernandez	04/12/23	Golf	Seasonal Laborer
Payton Jones	04/12/23	Water Park	Lifeguard
Izabelle Kastenbader	04/12/23	Water Park	Lifeguard
Ty Longoria	04/12/23	Water Park	Lifeguard
Carla Martinez	04/12/23	Water Park	Lifeguard
Robert Naylor	04/12/23	Water Park	Head Lifeguard
Joicis Ornelas	04/12/23	Water Park	Lifeguard
Juan Palma	04/12/23	Solid Waste	ARC Driver
Gabriel Wittmayer	04/12/23	Water Park	Lifeguard
Hope Wittmayer	04/12/23	Water Park	Lifeguard
Emiliano Zapata	04/12/23	Water Park	Lifeguard

**TERMINATIONS:**

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>	<u>REASON</u>
Mary Garwood	03/31/23	Solid Waste	Code Enforcement Officer	Resigned
Dave Morgan	03/31/23	Museum	Museum Director	Retired

**INTERNAL TRANSFERS AND PROMOTIONS:**

<u>NAME</u>	<u>DATE</u>	<u>DEPARTMENT</u>	<u>CLASSIFICATION</u>
Vanessa Ornelas	04/03/23	Planning & Regulation	Secretary
Judith Webster	04/03/23	Municipal Court	Court Clerk



# CITY OF CARLSBAD

## RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

**TO:** The Honorable Mayor Dale Janway & Members of the City Council

**FROM:** Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova  
DN: cn=Ted Cordova, o=City of Carlsbad,  
ou=Community Development,  
email=tcordova@cityofcarlsbadnm.com,  
c=US  
Date: 2023.04.03 10:48:42 -0600

**SUBJECT:** Recommendation for Employment

**DATE:** 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

### General Information:

Name: Sawyer Angelis Classification/Position: Front Desk Attendant

Department: Water Park

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Regular             | <input type="checkbox"/> Full-time            | <input checked="" type="checkbox"/> Hourly \$ <u>12.00</u> per hour |
| <input checked="" type="checkbox"/> Seasonal | <input checked="" type="checkbox"/> Part-time | <input type="checkbox"/> Salary \$ _____ per annum                  |
| <input type="checkbox"/> Temporary           | <input type="checkbox"/> On call              |   |

### Education Level:

- |  |  |
|--|--|
| <input type="checkbox"/> High School Diploma                                     | <input type="checkbox"/> GED or equivalent |
| <input type="checkbox"/> Associates Degree _____                                 |  |
| <input type="checkbox"/> Bachelors Degree _____                                  |  |
| <input type="checkbox"/> Masters Degree _____                                    |  |
| <input checked="" type="checkbox"/> Other <u>Currently a high school student</u> |  |

### Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: He is a good worker. I would love to have him back.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.04.03 10:46:57 -0600

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Arianna Archuleta Classification/Position: Lifeguard

Department: Water Park

- Regular, Seasonal, Temporary, Full-time, Part-time, On call, Hourly \$12.00 per hour, Salary \$ per annum

Education Level:

- High School Diploma, GED or equivalent, Associates Degree, Bachelors Degree, Masters Degree, Other: Currently a high school student

Employment:

Present or last Employer: N/A
From to Classification:
Duties:

Related Experience: Interviewed for the position last year but had turned in her application a little too late.

Comments:

# CITY OF CARLSBAD

## RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

**TO:** The Honorable Mayor Dale Janway & Members of the City Council

**FROM:** Ted Cordova, Director of Community Development

**Ted Cordova**

Digitally signed by Ted Cordova  
DN: cn=Ted Cordova, o=City of Carlsbad,  
ou=Community Development,  
email=tcordova@cityofcarlsbad.com,  
c=US  
Date: 2023.04.03 10:49:00 -0500

**SUBJECT:** Recommendation for Employment

**DATE:** 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

### General Information:

Name: Korrine Bradford Classification/Position: Lifeguard

Department: Water Park

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Regular             | <input type="checkbox"/> Full-time            | <input checked="" type="checkbox"/> Hourly \$ <u>12.00</u> per hour |
| <input checked="" type="checkbox"/> Seasonal | <input checked="" type="checkbox"/> Part-time | <input type="checkbox"/> Salary \$ _____ per annum                  |
| <input type="checkbox"/> Temporary           | <input type="checkbox"/> On call              |   |

### Education Level:

- |  |  |
|--|--|
| <input type="checkbox"/> High School Diploma                                     | <input type="checkbox"/> GED or equivalent |
| <input type="checkbox"/> Associates Degree _____                                 |  |
| <input type="checkbox"/> Bachelors Degree _____                                  |  |
| <input type="checkbox"/> Masters Degree _____                                    |  |
| <input checked="" type="checkbox"/> Other <u>Currently a high school student</u> |  |

### Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: She is an outstanding guard. I would love to have her back.

# CITY OF CARLSBAD

## RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

**TO:** The Honorable Mayor Dale Janway & Members of the City Council

**FROM:** Patrick Cass, Director of Public Works *PC*

**SUBJECT:** Recommendation for Employment

**DATE:** March 30, 2023

The Following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to pre-hire medical examination:

### General Information:

Name: Spencer T. Campbell Classification/Position: On-Call Driver

Department: Transit

- |                                    |   |  |
|------------------------------------|---|--|
| <input type="checkbox"/> Regular   | <input type="checkbox"/> Full-time          | <input type="checkbox"/> Hourly \$ <u>18.63</u> per hour |
| <input type="checkbox"/> Seasonal  | <input type="checkbox"/> Part-time          | <input type="checkbox"/> Salary \$ _____ per hour        |
| <input type="checkbox"/> Temporary | <input checked="" type="checkbox"/> On call |  |

### Education Level:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> High School Diploma | <input type="checkbox"/> GED or equivalent |
| <input type="checkbox"/> Associates Degree              | _____                                      |
| <input type="checkbox"/> Bachelors Degree               | _____                                      |
| <input type="checkbox"/> Masters Degree                 | _____                                      |
| <input type="checkbox"/> Other                          | _____                                      |

### Employment:

Present or last Employer: NMSU Carlsbad

From 2013 to 2018 Classification: Music Director (Community Education)

Duties: Musician for Kenny Rogers, Amy Grant, many other world stars

Related Experience: Self employed from 1986-2023 as a musician assistance, experience working with adults and children

Comment: \_\_\_\_\_

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.04.03 10:48:53 -0700

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Sophia Corder Classification/Position: Head Guard

Department: Water Park

- Regular Full-time Hourly \$13.50 per hour
Seasonal Part-time Salary \$ per annum
Temporary On call

Education Level:

- High School Diploma GED or equivalent
Associates Degree
Bachelors Degree
Masters Degree
Other Currently a high school student

Employment:

Present or last Employer: Carlsbad Waterpark
From May 2022 to September 2022 Classification: Lifeguard
Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: She is an outstanding guard. I would love to have her back.

# CITY OF CARLSBAD

## RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

**TO:** The Honorable Mayor Dale Janway & Members of the City Council

**FROM:** Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova  
DN: cn=Ted Cordova, o=City of Carlsbad,  
ou=Community Development,  
email=tcordova@cityofcarlsbad.com,  
c=US  
Date: 2023.04.03 10:48:47 -0500

**SUBJECT:** Recommendation for Employment

**DATE:** 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

### General Information:

Name: Amber Easley Classification/Position: Lifeguard

Department: Water Park

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Regular             | <input type="checkbox"/> Full-time            | <input checked="" type="checkbox"/> Hourly \$ <u>12.00</u> per hour |
| <input checked="" type="checkbox"/> Seasonal | <input checked="" type="checkbox"/> Part-time | <input type="checkbox"/> Salary \$ _____ per annum                  |
| <input type="checkbox"/> Temporary           | <input type="checkbox"/> On call              |   |

### Education Level:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> High School Diploma                      | <input type="checkbox"/> GED or equivalent |
| <input type="checkbox"/> Associates Degree _____                             |  |
| <input type="checkbox"/> Bachelors Degree _____                              |  |
| <input type="checkbox"/> Masters Degree _____                                |  |
| <input checked="" type="checkbox"/> Other <u>Currently a college student</u> |  |

### Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: She is an outstanding guard. I would love to have her back.

# CITY OF CARLSBAD

## RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

**TO:** The Honorable Mayor Dale Janway & Members of the City Council  
**FROM:** Patrick Cass, Director of Public Works *PC*  
**SUBJECT:** Recommendation for Employment  
**DATE:** March 30, 2023

The Following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to pre-hire medical examination:

### General Information:

Name: Virginia C. Estrada Classification/Position: On-Call Driver

Department: Transit

- |                                    |   |  |
|------------------------------------|---|--|
| <input type="checkbox"/> Regular   | <input type="checkbox"/> Full-time          | <input type="checkbox"/> Hourly \$ <u>18.63</u> per hour |
| <input type="checkbox"/> Seasonal  | <input type="checkbox"/> Part-time          | <input type="checkbox"/> Salary \$ _____ per hour        |
| <input type="checkbox"/> Temporary | <input checked="" type="checkbox"/> On call |  |

### Education Level:

- |  |   |
|--|---|
| <input type="checkbox"/> High School Diploma     | <input checked="" type="checkbox"/> GED or equivalent |
| <input type="checkbox"/> Associates Degree _____ |   |
| <input type="checkbox"/> Bachelors Degree _____  |   |
| <input type="checkbox"/> Masters Degree _____    |   |
| <input type="checkbox"/> Other _____             |   |

### Employment:

Present or last Employer: Madrid Daycare

From 05-2022 to Present Classification: Caretaker

Duties: Part-time Caretaker of children, cleaning, cooking teaching, changing diapers

Related Experience: Experience with assisting children and adults

Comment: \_\_\_\_\_

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.03.28 12:48:56 -0600

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Jennifer Gonzalez Classification/Position: Lifeguard

Department: Water Park

- Regular Full-time Hourly \$12.00 per hour
Seasonal Part-time Salary per annum
Temporary On call

Education Level:

- High School Diploma GED or equivalent
Associates Degree
Bachelors Degree
Masters Degree
Other Currently a high school student

Employment:

Present or last Employer: Carlsbad Waterpark
From May 2022 to September 2022 Classification: Lifeguard
Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: She is an outstanding guard. I would love to have her back.



CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbadnm.com, c=US
Date: 2023.03.23 09:44:00 -0800

SUBJECT: Recommendation for Employment

DATE: 3/23/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Antonio "AJ" Hernandez Classification/Position: Seasonal Laborer

Department: Golf - 146

- Regular Full-time Hourly \$14.00 per hour
Seasonal Part-time Salary per annum
Temporary On call

Education Level:

- High School Diploma GED or equivalent
Associates Degree
Bachelors Degree
Masters Degree
Other Currently attending Carlsbad High School

Employment:

Present or last Employer: City of Carlsbad

From 5/2022 to 8/2022 Classification: Seasonal Laborer - Golf

Duties: Mow, edged, assisted with any assigned projects and ran errands

Related Experience:

Comments: Worked the position last year and would like to rehire for 2023

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.04.03 10:46:09 -0500

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Payton Jones Classification/Position: Lifeguard

Department: Water Park

- Regular, Seasonal, Temporary, Full-time, Part-time, On call, Hourly \$12.00 per hour, Salary \$ per annum

Education Level:

- High School Diploma, GED or equivalent, Associates Degree, Bachelors Degree, Masters Degree, Other: Currently a high school student

Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: She is an outstanding guard. I would love to have her back.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.04.03 10:47:42 -0500

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Izabelle Kastenbader Classification/Position: Lifeguard

Department: Water Park

- Regular, Seasonal, Temporary, Full-time, Part-time, On call, Hourly \$12.00 per hour, Salary per annum

Education Level:

- High School Diploma, GED or equivalent, Associates Degree, Bachelors Degree, Masters Degree, Other: Currently a high school student

Employment:

Present or last Employer: Carlsbad Waterpark
From May 2022 to September 2022 Classification: Lifeguard
Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: She is an outstanding guard. I would love to have her back.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.03.28 12:48:42 -0800

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Ty Longoria Classification/Position: Lifeguard

Department: Water Park

- Regular Full-time Hourly \$12.00 per hour
Seasonal Part-time Salary \$ per annum
Temporary On call

Education Level:

- High School Diploma GED or equivalent
Associates Degree
Bachelors Degree
Masters Degree
Other Currently a high school student. (Will graduate in May)

Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: He is an outstanding guard. I would love to have him back.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.04.03 10:47:05 -0600

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Carla Martinez Classification/Position: Lifeguard

Department: Water Park

- Regular Full-time Hourly \$12.00 per hour
Seasonal Part-time Salary \$ per annum
Temporary On call

Education Level:

- High School Diploma GED or equivalent
Associates Degree
Bachelors Degree
Masters Degree
Other Currently a high school student

Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: She is an outstanding guard. I would love to have her back.

# CITY OF CARLSBAD

## RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

**TO:** The Honorable Mayor Dale Janway & Members of the City Council

**FROM:** Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova  
DN: cn=Ted Cordova, o=City of Carlsbad,  
ou=Community Development,  
email=tcordova@cityofcarlsbad.com,  
c=US  
Date: 2023.04.03 10:48:18 -0500

**SUBJECT:** Recommendation for Employment

**DATE:** 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

### General Information:

Name: Robert Dane Naylor Classification/Position: Head Guard

Department: Water Park

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Regular             | <input type="checkbox"/> Full-time            | <input checked="" type="checkbox"/> Hourly \$ <u>13.50</u> per hour |
| <input checked="" type="checkbox"/> Seasonal | <input checked="" type="checkbox"/> Part-time | <input type="checkbox"/> Salary \$ _____ per annum                  |
| <input type="checkbox"/> Temporary           | <input type="checkbox"/> On call              |   |

### Education Level:

- |  |  |
|--|--|
| <input type="checkbox"/> High School Diploma                                     | <input type="checkbox"/> GED or equivalent |
| <input type="checkbox"/> Associates Degree _____                                 |  |
| <input type="checkbox"/> Bachelors Degree _____                                  |  |
| <input type="checkbox"/> Masters Degree _____                                    |  |
| <input checked="" type="checkbox"/> Other <u>Currently a high school student</u> |  |

### Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: He is an outstanding guard. I would love to have him back.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.04.03 10:47:51 -0600

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Joicis Ornelas Classification/Position: Lifeguard

Department: Water Park

- Regular, Seasonal, Temporary, Full-time, Part-time, On call, Hourly \$12.00 per hour, Salary per annum

Education Level:

- High School Diploma, GED or equivalent, Associates Degree, Bachelors Degree, Masters Degree, Other: Currently a high school student

Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: He is an outstanding guard. I would love to have him back.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ivan M Abell, Director of Utilities

Digitally signed by Ivan M Abell  
DN: cn=Ivan M Abell, o=City of Carlsbad, ou=City of Carlsbad, email=ivan.abell@carlsbadca.gov, c=US  
Date: 2023.03.28 14:48:20 -0700

SUBJECT: Recommendation for Employment

DATE: March 28, 2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Juan Palma Classification/Position: ARC Driver  
Department: Solid Waste

- Regular Full-time Hourly \$24.08 per hour
Seasonal Part-time Salary \$ per annum
Temporary On call

Education Level:

- High School Diploma GED or equivalent
Associates Degree
Bachelors Degree
Masters Degree
Other

Employment:

Present or last Employer: DHI-Dalbo Holdings, Inc.
From 07/03/2019 to 03/10/2023 Classification: CDL A/Winch Driver
Duties: Drive and operate trucks, verify weight of shipment, ensured that trucks had proper and current inspections, maintained driver qualification and driving records.

Related Experience:

Comments:



CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbad.com, c=US
Date: 2023.04.03 10:47:23 -0600

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Gabe Wittmayer Classification/Position: Lifeguard

Department: Water Park

- Regular, Seasonal, Temporary, Full-time, Part-time, On call, Hourly \$12.00 per hour, Salary per annum

Education Level:

- High School Diploma, GED or equivalent, Associates Degree, Bachelors Degree, Masters Degree, Other: Currently a high school student

Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: He is an outstanding guard. I would love to have him back.

# CITY OF CARLSBAD

## RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

**TO:** The Honorable Mayor Dale Janway & Members of the City Council

**FROM:** Ted Cordova, Director of Community Development

**Ted Cordova**

Digitally signed by Ted Cordova  
DN: cn=Ted Cordova, o=City of Carlsbad,  
ou=Community Development,  
email=tcordova@cityofcarlsbad.com,  
c=US  
Date: 2023.04.03 10:47:31 -0500

**SUBJECT:** Recommendation for Employment

**DATE:** 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

### General Information:

Name: Hope Wittmayer Classification/Position: Lifeguard

Department: Water Park

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Regular             | <input type="checkbox"/> Full-time            | <input checked="" type="checkbox"/> Hourly \$ <u>12.00</u> per hour |
| <input checked="" type="checkbox"/> Seasonal | <input checked="" type="checkbox"/> Part-time | <input type="checkbox"/> Salary \$ _____ per annum                  |
| <input type="checkbox"/> Temporary           | <input type="checkbox"/> On call              |   |

### Education Level:

- |  |  |
|--|--|
| <input type="checkbox"/> High School Diploma                                     | <input type="checkbox"/> GED or equivalent |
| <input type="checkbox"/> Associates Degree _____                                 |  |
| <input type="checkbox"/> Bachelors Degree _____                                  |  |
| <input type="checkbox"/> Masters Degree _____                                    |  |
| <input checked="" type="checkbox"/> Other <u>Currently a high school student</u> |  |

### Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: She is an outstanding guard. I would love to have her back.

CITY OF CARLSBAD

RECOMMENDATION FOR EMPLOYMENT

Dale Janway, Mayor

John Lowe, City Administrator

TO: The Honorable Mayor Dale Janway & Members of the City Council

FROM: Ted Cordova, Director of Community Development

Ted Cordova

Digitally signed by Ted Cordova
DN: cn=Ted Cordova, o=City of Carlsbad, ou=Community Development, email=tcordova@cityofcarlsbadnm.com, c=US
Date: 2023.04.03 10:47:16 -0600

SUBJECT: Recommendation for Employment

DATE: 3/28/2023

The following applicant has met all pre-employment requirements and is hereby recommended for employment with the City of Carlsbad subject to a pre-hire medical examination:

General Information:

Name: Emiliano Zapata Classification/Position: Lifeguard

Department: Water Park

- Regular Full-time Hourly \$12.00 per hour
Seasonal Part-time Salary \$ per annum
Temporary On call

Education Level:

- High School Diploma GED or equivalent
Associates Degree
Bachelors Degree
Masters Degree
Other Currently a high school student

Employment:

Present or last Employer: Carlsbad Waterpark

From May 2022 to September 2022 Classification: Lifeguard

Duties: Ensure patron safety and performed other cleaning tasks as instructed.

Related Experience: Was a lifeguard for the city in previous seasons.

Comments: He is an outstanding guard. I would love to have him back.

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM  
PURCHASING RECOMMENDATION

Council Meeting Date: 4/11/23

<b>Department:</b> Performing Art Center	<b>BY:</b> Matt Fletcher, CPO	<b>Date:</b> 4/05/23
<b>SUBJECT:</b> Equipment and Services <b>Description:</b> Award bid for the provision and installation of 8 new, 5 ton Heating and Cooling Units at WGPAC		

<b>SYNOPSIS:</b>	Qty <u>1</u>	Total Est. Cost <u>\$ 146,551.72</u>	Total Actual Cost <u>\$ 89,968.00</u>
	Budgeted Yes	Est. City Share <u>\$ 146,551.72</u>	Actual City Share <u>\$ 89,968.00</u>
	Account # <u>100737</u>	<u>\$ 146,551.72</u>	
	Account # _____	_____	
	Account # _____	_____	
	Account # _____	_____	
	<b>TOTAL</b>		<u>\$ 146,551.72</u>

**BACKGROUND, JUSTIFICATION AND IMPACT:** (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)

The City of Carlsbad desires to upgrade a total of eight, five ton heating and cooling units at the Walter Gerrells Performing Arts Center. The wear and tear on the current units is creating the need for frequent repairs and some of the units are beginning to fail entirely.

The City solicited bids for this project on 4/3/2023. The City received three bids. The low bidder was Advantage Heating and Cooling in the amount of \$89,968.00 excluding NMGRT.

The City recommends awarding the bid to Advantage Heating and Cooling.

<b>Requested action to be taken by Council:</b> Select one	<b>Council Action Taken:</b> Select one	<b>Date:</b>
---	--	--------------

**Reviewed by City Administrator:**

<b>POST BID/RFP RECOMMENDATION</b>	<b>Council Meeting Date:</b>
------------------------------------	------------------------------

<b>Requested action to be taken by Council:</b> Award Bid Number                      2023-04	<b>Council Action Taken:</b> Select one	<b>Date:</b>
--	--	--------------

**ADDITIONAL INFORMATION:**

**Reviewed by City Administrator:** /s/John Lowe 04/05/2023

ATTACHMENT(S):  Specifications  Bid/RFP Summary  Other: \_\_\_\_\_

**Bid Number**

**2023-04**

**Date: 4/03/2023**

**Time: 2:00 pm**

**Commodity: HVAC Replacement at WGPAC**

<b>Bidder Name</b>	<b>Rhodes Co.</b>	<b>Conti Energy Control</b>	<b>Advantage Heating &amp; Cooling</b>
<b>Base Bid (Excluding NMGRT)</b>	\$ 96,725.00	\$ 94,475.96	\$ 89,968.00
<b>Addenda Acknowledgment</b>	1,2	1,2,3,4	1
<b>Equipment Brand</b>	Carrier	Carrier	Carrier
<b>Days to Complete</b>	90 Days	35 Weeks	60 Days
<b>Bid Bond</b>	Yes	Yes	Yes

**CITY OF CARLSBAD**

**AGENDA BRIEFING MEMORANDUM  
PURCHASING RECOMMENDATION**

**Council Meeting Date:**

<b>Department:</b>	<b>BY:</b>	<b>Date:</b>
--------------------	------------	--------------

**SUBJECT:**  
Description:

<b>SYNOPSIS:</b>	Qty	Total Est. Cost	Total Actual Cost
	Budgeted	Est. City Share	Actual City Share
	Account #		
	Account #		
	Account #		
	Account #		
	<b>TOTAL</b>		

**BACKGROUND, JUSTIFICATION AND IMPACT:** (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)

<b>Requested action to be taken by Council:</b>	<b>Council Action Taken:</b>	<b>Date:</b>
---	------------------------------	--------------

**Reviewed by City Administrator:**

<b>POST BID/RFP RECOMMENDATION</b>	<b>Council Meeting Date:</b>	
<b>Requested action to be taken by Council:</b>	<b>Council Action Taken:</b>	<b>Date:</b>
<b>ADDITIONAL INFORMATION:</b>		
<b>Reviewed by City Administrator:</b> /s/John Lowe		04/05/2023

ATTACHMENT(S):    Specifications    Bid/RFP Summary    Other:

**City of Carlsbad  
Personnel Department**

**Action Report  
Month of March 2023**

City of Carlsbad  
 Personnel Department Action Report  
 Month of March 2023

<b>EMPLOYEE REPORT</b>	Beginning of Month	New Hires	Terminations	Transfers In	Transfers Out	End of Month
Full-Time Employees	427	2	6	0	0	423
Part-Time/Temp Employees	40	5	0	0	0	45
Total Employees	467	7	6	0	0	468
Administrative	19	0	0	0	1	18
Judicial	8	0	1	0	0	7
Finance	18	0	0	0	0	18
Police	99	1	0	1	0	101
Fire	67	0	2	0	0	65
Community Development	82	5	1	0	0	86
Planning & Regulation	15	0	0	0	0	15
Utilities	74	1	2	0	0	73
Transportation & Facilities	85	0	0	0	0	85
<b>TOTAL</b>	467	7	6	1	1	468

<b>WEEKLY INDEMNITY</b>	Beginning of Month	New Claims	Released To Work	Terminated	End of Month
Employees on WI	4	0	0	0	4

<b>UNEMPLOYMENT CLAIMS</b>	Claims Received	Claims Returned	Claims Denied	Claims Approved	Claims Pending	Claims Appealed
Current Month	0	0	0	0	0	0



<b>DRUG TESTS</b>	<b>Number Given</b>
Pre-employment	7
Probationary	0
Post Accident	19
Random	0
Periodic	0
Probable Cause	1

<b>PHYSICAL EXAMINATIONS</b>	<b>Number Given</b>
Pre-employment	7
Return to Work Evaluation	0
Functional Capacity Evaluation	0

<b>TESTING</b>	<b>Number Given</b>
None	

<b>VACANCIES BID</b>	<b>Department</b>
Caretaker	Golf
Customer Service Operator	Planning & Regulation
Foreman	Waste Water
Welder	Garage

<b>VACANCIES ADVERTISED</b>	<b>Applications Received</b>
ARC Driver	Pending
Caretaker	Pending
Electrician	Pending
Heavy Equipment Operator	Pending
Lifeguard	Pending
Patrolman	Pending
Pro Shop Attendant, p/t	6
Recreation Attendant, on-call	Pending
Seasonal Laborers	Pending
Transit Driver, on-call	Pending
Vactor Operator	Pending
Water Park Assistant Manager	Pending
Water Park Recreation Attendant	Pending
Water Operator	Pending

ORDINANCE NO. 2023-\_\_\_\_\_

AN ORDINANCE REZONING PART OF "R-1" RESIDENTIAL 1 DISTRICT TO "C-2" COMMERCIAL 2 DISTRICT FOR AN APPROXIMATELY 0.76 ACRE PROPERTY, LOCATED AT 206 EAST ROSE ST., LEGALLY DESCRIBED AS LOT 2, BLOCK 2, SOUTH Y SUBDIVISION PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that:

The official zoning map of the City is hereby amended to rezone part of "R-1" Residential 1 District to "C-2" Commercial 2 District for an approximately 0.76 acre property, located at 206 E. Rose St., legally described as:

Lot 2, Block 2, South Y Subdivision

INTRODUCED, PASSED, ADOPTED AND APPROVED this 9<sup>th</sup> day of May, 2023.

\_\_\_\_\_  
DALE JANWAY, MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

ORDINANCE NO. 2023-\_\_\_\_

AN ORDINANCE REZONING PART OF "R-R" RURAL RESIDENTIAL DISTRICT TO "C-2" COMMERCIAL 2 DISTRICT FOR AN APPROXIMATELY 2.964 ACRE PROPERTY, LOCATED AT 2013 SAN JOSE BLVD., LEGALLY DESCRIBED AS TRACT 4, OLD ROSE FARM #3 SUBDIVISION PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that:

The official zoning map of the City is hereby amended to rezone part of "R-R" Rural Residential District to "C-2" Commercial 2 District, for an approximately 2.964 acre property, located at 2013 San Jose Blvd., legally described as:

Tract 4, Old Rose Farm #3 Subdivision

INTRODUCED, PASSED, ADOPTED AND APPROVED this 9<sup>th</sup> day of May, 2023.

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DALE JANWAY, MAYOR

ATTEST:

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CITY CLERK

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 4/11/2023

DEPARTMENT: Municipal Services	BY: Angie Barrios-Testa, Director <i>ABT 4/3/2023</i>	DATE: 4/3/2023
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**SUBJECT: Accept a Capital Outlay Appropriation Grant Agreement No. A22G2019-G512 in the amount of \$7,811 for the Alejandro Ruiz Senior Center from the New Mexico Aging and Long Term Services Department**

**BACKGROUND, ANALYSIS AND IMPACT:** (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)

New Mexico Aging and Long Term Services Department (ALTSD) has allocated \$7,811 from the Laws of 2022, "to purchase commercial kitchen equipment for the Alejandro Ruiz Senior Center". The funding was originally requested through the NM Food Security Application process and although it was not funded under the program, the New Mexico Department of Finance identified the need as a project that could be funded under the New Mexico Aging and Long Term Services Department emergency program. The City was then invited to submit a request in August 2022.

In anticipation of this award, the City of Carlsbad has budgeted the funds under Project No.100841. The City will incur the expenditures upfront and will submit reimbursement request(s) to ALTSD as the funds are spent.

Staff seeks the City Council's consideration for acceptance and approval of the enclosed grant agreement, and to designate the Mayor to sign the grant agreement and any related documents.

**DEPARTMENT RECOMMENDATION:** City Council consideration to accept and approve the Grant Agreement from New Mexico Aging and Long Term Services Department.

**BOARD/COMMISSION/COMMITTEE ACTION:**

- |  |  |   |                                      |
|--|--|---|--------------------------------------|
| <input type="checkbox"/> P & Z         | <input type="checkbox"/> Lodgers Tax Board | <input type="checkbox"/> Riverwalk Rec Center Board | <input type="checkbox"/> APPROVED    |
| <input type="checkbox"/> Museum Board  | <input type="checkbox"/> San Jose Board    | <input type="checkbox"/> Water Board                | <input type="checkbox"/> DISAPPROVED |
| <input type="checkbox"/> Library Board | <input type="checkbox"/> N. Mesa Board     | <input type="checkbox"/> Beautification Committee   |                                      |

Reviewed by: City Administrator:/s/John Lowe	Date: 04/05/2023
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**AGING AND LONG TERM SERVICES (ALTS)**  
**REQUEST FOR STATEWIDE FUNDING**

In Laws 2022 Chapter 53, Section 5, - \$1,000,000 was identified for FY2023 through FY2026 for emergency requests to plan, design, renovate, improve, equip and furnish senior centers, including delivery and installation of building systems and purchase and installation of meals equipment, and to purchase and equip vehicles for senior centers statewide.

ALTS received a list of senior center capital needs identified through the Food Farm and Hunger Initiative (FFH) application which can be funded using this funding source that did not meet the \$10K threshold for capital outlay funding through the normal application process. Please complete this form and obtain the chief elected officials signature to allow ALTS to enter into contract. *\*Only include the items requested through the FFH funding application.*

Use of the asset must comply with NM Constitution Article IX, Section 14 (Anti-Donation Clause). A license to use agreement must be in place to allow a non-profit provider use of the asset. The asset must meet the useful life criteria of 7 - 10 years and the asset must be maintained by the local public body. Capital outlay funds cannot be used for indirect program costs, operating expenses, and items that are not tangible. The local public body must agree to the conditions and restrictions of the grant agreement. The expense must be made and reimbursement for qualifying expenses submitted on the prescribed forms, including the copy of the purchase order, copy of the invoice and copy of the canceled check within the quarter the expense was made.

DATE: August 23, 2022

APPLICANT NAME: City of Carlsbad CENTER NAME: Alejandro Ruiz Senior Center (aka San Jose Senior Ctr.)

CONTACT NAME: Angie Barrios-Testa PHONE NUMBER: (575) 234-7957 EMAIL: abtesta@cityofcarlsbadnm.com

**PROVIDE A BRIEF DESCRIPTION OF THE INDIVIDUAL REQUESTED ASSET, AGE OF THE ASSET (if applicable), AND JUSTIFICATION FOR NEED:**

The City of Carlsbad has recently renovated the Alejandro Ruiz Senior Center. Southeastern NM Community Action Corporation (SNMCAC) is the current non-profit contracted to provide the meals program for the City of Carlsbad and Eddy County. The City has committed to partner with SNMCAC to assist them in acquiring the most up-to-date and reliable equipment to ensure sustainability of the critical meals program. The current equip. needing replacement is a gas range which is approximately 17 yrs. old, and the gas oil fryer is over 12 yrs. old.

ASSET DESCRIPTION: (1) 60" W Gas Range with four casters. (2) 65-70 lb.Oil Capacity Gas Fryer

COST OF THE ASSET:	\$ <u>3,478.00</u>	\$ <u>4,333.00</u>	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____	\$ _____ TOTAL

AMOUNT OF THE REQUEST: \$7,811.00  
*(please provide copy of cost estimates or quotes in support of the request)*

**BRIEF DESCRIPTION OF THE OUTCOME OF NOT RECEIVING THE FUNDING:**

The current equipment owned by SNMCAC has past its normal life, is in fair condition at best, and is in need of replacement.  
The new equipment selected will be energy efficient and it will provide sustainability of the meals program serving the seniors in the region. Replacing the equipment will ensure that there is no interruption due to equipment disrepair or failure.  
As fiscal agent, the City of Carlsbad will ensure the equipment is maintained on a regular schedule to keep it in good working order.

PRINTED NAME: Dale W. Janway TITLE: Mayor

CHIEF ELECTED OFFICIAL SIGNATURE:

CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 4/11/2023

DEPARTMENT: Municipal Services	BY: Angie Barrios-Testa, Director	DATE: 4/3/2023
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*ABT* 4/3/2023

**SUBJECT: Accept a State of New Mexico Economic Development Department Grant Agreement in the amount of \$350,000 for the Cavern Theatre**

**BACKGROUND, ANALYSIS AND IMPACT:** (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)

Carlsbad MainStreet submitted a grant application in July of 2022 to the State of New Mexico Department of Economic Development requesting funding for the Cavern Theatre. The funds were allocated in the Laws of 2022, Chapter 53, Section 17, and Paragraph 1 in the amount of \$350,000 to purchase and install film projection system to include screens, projectors, software, speakers, and audio. The funding is made available to the City of Carlsbad in partnership with the Carlsbad MainStreet.

As part of the requirement, the City will provide a 20% match (\$70,000) of which at least 60% cash (\$42,000), and 40% in-kind services (\$28,000). The cash match has already been committed and funded with previous rehabilitation phases. In-kind will include volunteer, Carlsbad MainStreet, and City Administration hours on administering the project.

If accepted, the City of Carlsbad agrees to complete the project in accordance with all of the terms and conditions set forth in the enclosed agreement. Staff recommends acceptance and approval, as well as to designate the City Administrator's signature authority on the agreement and associated documents.

**DEPARTMENT RECOMMENDATION:** City Council consideration to accept and approve grant agreement No. 419-A22G2074-2304 from the State of New Mexico Economic Development Department.

**BOARD/COMMISSION/COMMITTEE ACTION:**

<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Riverwalk Rec Center Board	<input type="checkbox"/> APPROVED
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Beautification Committee	

Reviewed by: City Administrator: /s/John Lowe	Date: 04/05/2023
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**STATE OF NEW MEXICO  
DEPARTMENT OF ECONOMIC DEVELOPMENT DEPARTMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this 28th day of March, 2023, by and between the Economic Development Department, hereinafter called the “Department” or abbreviation such as “EDD”, and City of Carlsbad in partnership with and for the benefit of Carlsbad MainStreet, hereinafter called the “Grantee.” This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2022, Chapter 53, Section 17, Paragraph 1, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the Department has the authority to enter into grant agreements for the expenditure of legislative appropriations, as per Laws 2022, Chapter 53, section 17, Paragraph 1 and NMSA 1978, § 9-15-7 (2022).

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

STB22A G2074                      \$10,000,000.00

APPROPRIATION REVERSION DATE: 30-JUN-2026

Laws of 2022, Chapter 53, Section 17, Paragraph 1, ten million dollars (\$10,000,000.00), to plan, design, construct and improve infrastructure in downtown main street districts and in local arts and cultural districts statewide; and.

The Grantee’s total reimbursements shall not exceed three-hundred and fifty thousand dollars (\$350,000.00) (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup> zero dollars (\$0), if applicable, which equals three-hundred and fifty thousand dollars (\$350,000.00) (the “Adjusted Appropriation Amount”).

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<sup>1</sup> The AIPP amount is “an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000).” Section 13-4A-4 NMSA 1978.



In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. (SEE ATTACHMENT A) The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Carlsbad  
 Name: Angie Barrios-Testa  
 Title: Director of Municipal Services  
 Address: 101 N. Halagueno St., Carlsbad NM 88220

Email: abtesta@cityofcarlsbadnm.com  
Telephone: 575-887-1191 Ext. 7957

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Carlsbad  
Name: Melissa Salcido  
Title: Director of Finance  
Address: 101 N. Halagueno St., Carlsbad, NM 88220  
Email: mmsalcido@cityofcarlsbadnm.com  
Telephone: 575-887-1191

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Economic Development Department  
Name: Julie Blanke  
Title: Program Planning Specialist  
Address: EDD/MainStreet, PO Box 20003, Santa Fe, NM 87504-5003  
Email: Julie.blanke@state.nm.us  
Telephone: 505-753-8860

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party’s actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

**ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the “Reversion Date.” Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2025 the Reversion Date unless Terminated Before Reversion Date (“Early Termination”) pursuant to Article V herein.

B. The Project’s funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project’s Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

### **C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

## **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

**A. Database Reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

**B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

**ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.



- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any



or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

**ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

**ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

**ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

**ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Carlsbad in partnership with Carlsbad MainStreet may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Carlsbad in partnership with Carlsbad MainStreet’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Carlsbad in partnership with Carlsbad MainStreet or the Economic Development Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Carlsbad in partnership with Carlsbad MainStreet or the Department”

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under an Economic Development Department Grant Agreement. Should the Economic Development Department early terminate the grant agreement, the City of Carlsbad in partnership with Carlsbad MainStreet may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Carlsbad in partnership with Carlsbad MainStreet’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee’s sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department’s failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department’s obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

City of Carlsbad  
\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Date \_\_\_\_\_

*Susan Crockett*  
\_\_\_\_\_  
Signature of MainStreet President

By: Susan Crockett  
\_\_\_\_\_  
(Type or Print Name)

4-3-2023  
\_\_\_\_\_  
Date

**ECONOMIC DEVELOPMENT DEPARTMENT**

\_\_\_\_\_  
By:  
Cabinet Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
By:  
Legal Counsel – Certifying legal sufficiency

\_\_\_\_\_  
Date

<b>STATE OF NEW MEXICO CAPITAL GRANT PROJECT Request for Payment Form Exhibit 1</b>			
<b>I. Grantee Information</b> (Make sure information is complete & accurate) A. Grantee: _____ B. Address: _____ (Complete Mailing, including Suite, if applicable) _____ City State Zip C. Phone No: _____ D. Grant No: _____ E. Project Title: _____ F. Grant Expiration Date: _____	<b>II. Payment Computation</b> A. Payment Request No. _____ B. Grant Amount: _____ C. AIPP Amount (If Applicable): _____ D. Funds Requested to Date: _____ E. Amount Requested this Payment: _____ F. Reversion Amount (If Applicable): _____ G. Grant Balance: _____ H. <input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if first draw) I. <input type="checkbox"/> Final Request for Payment (if Applicable)		
<b>III. Fiscal Year :</b> _____ (The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)			
<b>IV. Reporting Certification:</b> <input type="checkbox"/> I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.			
<b>V. Compliance Certification:</b> <input type="checkbox"/> Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.			
<b>Grantee Fiscal Officer</b> or Fiscal Agent (if applicable)		<b>Grantee Representative</b>	
Printed Name _____		Printed Name _____	
Date: _____		Date: _____	
<b>(State Agency Use Only)</b>			
Vendor Code: _____		Fund No.: _____	
Loc No.: _____			
I certify that the State Agency financial and vendor file information agree with the above submitted information.			
_____ Division Fiscal Officer		_____ Division Project Manager	
_____ Date		_____ Date	



**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee [# 1]**

DATE: [ ]

TO: Department Representative: [ ]

FROM: Grantee: [ ]

Grantee Official Representative: [ ]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: [ ]

Grant Termination Date: [ ]

As the designated representative of the Department for Grant Agreement number [ ] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [ ]

Third Party Obligation Amount: [ ]

Vendor or Contractor: [ ]

Third Party Obligation Amount: [ ]

Vendor or Contractor: [ ]

Third Party Obligation Amount: [ ]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [ ]

The Amount of this Notice of Obligation: [ ]

The Total Amount of all Previously Issued Notices of Obligation: [ ]

The Total Amount of all Notices of Obligation to Date: [ ]

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: [ ]

Signature: [ ]

Date: [ ]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.



**EXHIBIT 3  
GRANTEE MATCH DETAIL FORM**

to be completed by the Grantee and *submitted with each Payment Request Form*

The Grantee is required to provide a matching contribution valued at two dollars (\$2.00) in match for every ten dollars (\$10.00) of the total Grant Amount. At least sixty percent (60%) of the Grantee's match must be in the form of cash, and the remainder may be in the form of in-kind contributions by the Grantee. Communities receiving funds for Great Blocks on MainStreet construction-ready documents must provide a full 20% cash match. Grantees are expected to keep accurate and timely records documenting matching contributions. The Grantee Match Detail form must be included with each Request for Reimbursement.

An in-kind contribution is any service or item of cost that is necessary for the completion of the work and that has a verifiable and accountable economic value. Some examples of in-kind contributions include:

- MainStreet Executive Director's time dedicated to coordinating project activities;
- Value of the time and cost associated with assigning municipal staff to project activities;
- Items of cost borne by the municipality or one of the municipality's partners in the project;
- Cost of publicizing notices of meetings and events.

**I. Grantee Information**

Grant Number \_\_\_\_\_ Grantee \_\_\_\_\_

Title of Project \_\_\_\_\_ Total Grant Amount \_\_\_\_\_

Total Payment Request \_\_\_\_\_ Date of Request \_\_\_\_\_

**II. Grantee Match Breakdown**

Cash Match *specify dollar amount* \_\_\_\_\_

In-Kind Match *specify value* \_\_\_\_\_

Total Match for this Payment \_\_\_\_\_ Total Match to Date \_\_\_\_\_

**III. Explanation of Grantee Match**

Provide a detailed explanation of grantee match for this payment

EXAMPLE

Item #	Description	Dollar Amount
1	Cash, GRT paid to contractor	\$3,500
2	In-Kind, MainStreet Manager's time: 30 hours at \$20.00/hour	\$600
	Total Match by Grantee for this Payment	\$4,100

To be filled out by Grantee

Item #	Description	Dollar Amount
1		
2		
3		
4		
	Total Match by Grantee for this Payment	





- Detailed budget breakdown of expenditures to date - if no expenditures to date, indicate your estimated timeline for spending the grant money

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- Description of any problems or delays encountered

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- Any other information that may be of assistance to the Economic Development Department in its evaluation of your progress

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2. Grant Amount \_\_\_\_\_

Expended to Date \_\_\_\_\_

Grant Balance \_\_\_\_\_

I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with the Project description (Exhibit A) of the executed Grant Agreement, and in compliance with all other applicable state statutory/regulatory requirements.

\_\_\_\_\_  
Name/ Title *please print*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT A  
PROJECT DESCRIPTION & SCOPE OF WORK**

Name of Grantee(s): City of Carlsbad in partnership with and for the benefit of Carlsbad MainStreet.

Grant Amount: \$350,000.00. Grantee to provide 20% match: at least 60% cash, 40% in-kind services

Project Name: Cavern Theater Renovation

Project Description: Purchase & installation of a film projection system to include screens, projectors, software, speakers & audio.



## **FY 2023 Capital Outlay Funding Application**

This application must be filled out based on the phase and size of their project and submitted via email to New Mexico MainStreet (NMMS) by July 29<sup>th</sup>, 2022 at 5pm. Carefully follow the instructions provided and answer each question that is relevant to the proposed project. Be sure to refer to the Invitation to Submit document and the application webinar for guidance around eligibility, definitions, and questions to address in your project narrative.

Please email your application and attachments to [Lucas.Pedraza@state.nm.us](mailto:Lucas.Pedraza@state.nm.us) by July 29<sup>th</sup>, 2022 at 5pm

### **Community and Project Contact Information:**

Community:Carlsbad MainStreet

Name of project:Cavern Theatre Rehabilitaion

Contact for Local NMMS Program:Kat Davis Executive Director

Email:carlsbadmainstreet@gmail.com

Phone:575-628-3768

Contact for Local Government Partner:Angie Barrios-Testa

Email:abtesta@cityofcarlsbadnm.com

Phone:(575) 887-1191 Ext 7957

### **1) Qualifying Public Infrastructure Projects**

Below is a list of Public Infrastructure projects that are eligible for funding through NMMS. Please check all boxes that apply to the proposed project.

Eligible Public Infrastructure Projects. Select the most appropriate category:

- Planning: 
  - Cultural Economic Development Plan for designated New Mexico Arts & Cultural District Start-Ups.

- Streets: 
  - Storm sewer and drainage projects; Water, electric, and sewer utilities; Broadband; and Pedestrian night lighting (and accompanying conduit and electrical cabling).
- Pedestrian Safety: 
  - including: sidewalks, curb extensions, road diets, pedestrian crossings and medians; traffic calming, traffic parking configuration, context sensitive solution projects; and complete streets projects.
- Street amenities: 
  - Wayfinding systems; benches; trash receptacles; tree canopy; and landscape buffers (including watering systems consistent with drought tolerant plantings that are consistent with the historic context of the project area, and if in an historic designated district, consistent with the appropriate period of significance as designated in the district nomination).
- Placemaking: 
  - Town Centers, Town Squares and Plazas; Public and Farmers Markets; Outdoor performance spaces and amphitheaters (placemaking projects must be able to directly demonstrate support for economic growth, property renovation, business development, and job creation within the district.)
- Great Blocks on MainStreet Projects with completed construction documents.
  - Construction Documents for new projects:
  - Construction Funding:

**2) General Project and Eligibility Questions**

- A. Does your MainStreet program currently have a full-time Executive Director? If your community has a population less than 5,000 people, does your MainStreet organization have an Executive Director that is at least half time? **Yes**  **No**
- B. Is your MainStreet program currently accredited? **Yes**  **No**
- C. Does this project align with your district's Metropolitan Redevelopment Area Plan (MRA), Master Plan, Or Cultural Economic Development Plan? **Yes**  **No**
- D. Will this project be completed by October 2024? **Yes**  **No**
- E. Is this project listed on the ICIP for your community? **Yes**  **No**
- F. Has this project received input or assistance through either a NMMS revitalization specialist or a NMMS staff? **Yes**  **No**

## **Project Phase and Size:**

The Department will review the submissions from an eligible organization and its local government partner for project proposals for two phases of infrastructure projects: 1. Design and planning phase; 2. Construction ready projects. All applications for infrastructure projects, regardless of overall size and scope, are expected to have a design phase where stakeholders and local governments can provide input to ensure that all NMMS projects meet community needs and develop construction documents that meet the engineering and design specifications of the project. In some cases, projects are small enough that NMMS can fund the project from design to construction in one round of funding, however, all projects are expected to begin in the design phase, and local MainStreet directors should begin this process with input from either NMMS Director or Project Coordinator.

This section of the application is designed to help categorize public infrastructure projects in the NMMS Public Infrastructure Pipeline. There are two phases and three sizes of projects. Only small infrastructure projects (category A) are eligible to receive design and construction funding in a single round of funding. Projects in either category B or C can only be in either Design or Construction phase. Please refer to the instructions in the Invitation to Submit document or the definitions provided in question 4 to select the appropriate phase and size of your project.

### **3) Project funding phase? (Select one option)**

A: Design Phase

B: Construction Phase

C: Design and Construction (only available to small scale infrastructure projects)

### **4) What is the size and scope of this project? (Select one option)**

A: Small Public Infrastructure Projects

This option is for smaller public infrastructure projects that need funding for planning, design, and/or construction funding. Some small projects that require minimal design/engineering work, can be eligible to receive funding that will cover cost of design and construction. Maximum proposed construction project amount requested from NMMS FY2023 for small infrastructure projects should not exceed \$350,000. This includes total cost for developing construction documents and construction costs. It is possible to get an entire project funded in this category from design to construction depending on availability of funds and scope of the project, however, responsibility for costs above \$350,000 are the local government and MainStreet partner's responsibility.

B: Medium to Large Public Infrastructure Projects

This category is for local communities that need funding for planning, design, or construction funding for medium or larger public infrastructure projects. Projects applying for construction phase funding should have completed (shovel-ready) construction documents. Maximum amount of construction funding requested from NMMS FY2023 per project should not exceed \$900,000 for large public infrastructure projects and should be no more than \$600,000 for medium sized infrastructure projects. Applicants should work with Local Government Partners and NMMS Staff to determine project funding needs to ensure applications are competitive and that the appropriate amount of funding is being requested.

**C: Great Blocks on MainStreet**

These projects are designed to dramatically upgrade a core three-block commercial area within a MainStreet District through the creative implementation of urban design, architecture, landscape architecture and creative economy projects. Selected MainStreet communities will receive \$110,000 in New Mexico MainStreet Public Infrastructure Capital Outlay funding to hire a design team to conduct a community-based planning, design and engineering process and develop plans and construction-ready drawings, which will be provided to the community as a “shovel-ready” project. This category can be used to apply as a new Great Blocks project and secure design funding, or for construction funding for a Great Blocks project that has construction documents ready. The maximum amount that can be applied for is \$1.6 million. **You must be invited to apply for this category by New Mexico MainStreet staff.**

**5) If your project is in the construction phase, and has multiple phases of construction please explain what phase of construction you’re applying for:**

We are applying for a portion of Phase 4B which is intended to be the last phase to get the theatre operational and open to the public. Phase 4A recently just got the selected bid approved and all parties are read move forward on the construction, the anticipated timeline for phase 4A to be completed is between 180 days- 6 months.

**6) For all projects: Please provide a brief breakdown of your total project’s budget and expected contributions for the complete project or phase:**

Source	Cash	In-Kind
Local City/Town Cash Contribution	\$4,906,378.00 (total funding to date) \$4,858,000.00 (total spent and encumbered to date) \$48,378.00 (total cash balance remaining)- Cash match requirement	500 hours- Volunteer (Ken Britt Cavern Theatre Task Force committee chair) = \$14,975.00 250 hours- City Staff (Angie Testa) = \$9,737 150 hours- MainStreet Director = \$5,288

		= \$30,000 in kind match requirement
County Contribution	N/A	N/A
New Mexico MainStreet Capital Outlay Being Requested and Services	\$350,000	
Private or Foundation Donation/Grant	\$10,003.46	
Other Grant or Spending	N/A	N/A
Total Cost of Project	\$7,500,000	
Gap	\$2,593,622.00 (Phase 5)	

**7) Please explain how you anticipate filling any funding gaps:**

The following section of the application is used to gather detailed information about your community's project. If your project is in the **Design phase**, please **only** fill out the questions in the **Design section**. If your project is in the **Construction phase** you will need to fill in **both** the **Design and Construction** sections. If you have applied for funding in the past you may use the same information that has been provided in past applications for the project, with updates, as needed. If you are applying for a **small infrastructure project** that is seeking **Design and Construction** funding fill in **both** sections of the application as it applies to your project.

**Design Phase Funding Project Narrative Section:**

**8) Please define the Public Infrastructure project and project area.**

Be sure to describe and explain the following in the list below. For this section you may attach photos and maps along with the narrative in a separate attachment. Please indicate in your email submission what attachments are being used to answer this section by clearly labeling the file with the question number from this document.

- a) Please include maps that establish the project area boundary.
- b) Identify historic and cultural properties.
- c) If in a historic district, provide the boundary of the district.
- d) Provide up to 12 photos that show existing conditions of the street for Public Infrastructure and buildings within the project area.
- e) Specify the improvements needed in the project area.
- f) Identify any recent or planned utility improvement projects in the area

g) Attach ICIP and MRA or Plans

**9) Explain how the Proposed Public Infrastructure Project meets your Economic Transformation Strategy?**

This project meets all three of our Economic Transformation Strategies.

ETS 1- Branding of Carlsbad MainStreet as the heart of Carlsbad small business, entertainment and community.

ETS 2- Become economic drivers that create a revenue stream and jobs.

ETS 3 (POPACD)- Promote and grow our diverse arts and cultural experiences for a thriving day and nighttime entertainment district.

The completion of the theatre rehabilitation project will see the Cavern Theatre serve as a multi-functioning performing arts center allowing for multiple forms of entertainment, programming and cultural experiences. To function, there must be jobs created to operate the theatre and that will open up a new sector of the creative economy that we have not seen in Carlsbad for many years. We also anticipate with the opening of the theatre, that it could foster the growth for entrepreneurs and other small business owners to consider the Downtown district in a different capacity as we know the draw that the entertainment and tourism aspect of the project should open up doors for new eateries and nightlife businesses as well as retail and day time businesses to grow within the district.

**10) Explain how the Proposed Public Infrastructure Project meets your MRA/Master Plan goals? How will your annual work plan change and what resources will your organization need to prioritize to complete the project? Please include a copy of the appropriate section of your MRA/Master Plan related to this project.**

As mentioned in question 8 narrative, our community doesn't have an adopted MRA plan, a designation report was done we hope that increased growth and activity within the proposed MRA boundary lines will help to see that report turn into a professional planning document that would be adopted by our City. In regards to Carlsbad MainStreet's Master Plan it is outdated, but we are in the process of having a Cultural Development Economic Plan done for our arts and cultural district,



one of the top priorities and goals that we have identified in the pre-planning process is the support of the Cavern theatre rehabilitation project.

**11) Describe how the Public Infrastructure investment will directly increase building rehabilitations and restorations in the project area. How will your organization identify those additional economic development projects?**

There are many under utilized, vacant, dilapidated buildings within our district boundaries. The investment into the completion of the theatre will help have our Downtown stand out from other areas where economic growth is happening within our community as enterpenurs and businesses owners will be able to see the bigger picture of how great of an asset that a multi functioning rehabilitated theatre will have for their own businesses growth and economic vitality.

**12) Describe how the Public Infrastructure investment will directly help expand businesses and or provide local entrepreneurs space opportunities for their start-ups. How will your organization identify strategies to implement business development strategies?**

The Cavern Theatre has the opportunity to be come a hands-on classroom for curriculum and studies with the newly established local community college, Southeast New Mexico College. Areas of study and possible internships could include: Theater Management and Operation as well as Theater Technical Direction and Film Courses. This partnership could foster the growth in our community for the thriving film industry in Northen New Mexico to expand to the Southeastern Region.

The Theatre will also have the capcaity to host conferences, speakers and workshops. Through our MainStreet program and additional partnerships with the Chamber of Commerce and Department of Development we could develop a program on workshops for entreperurs, business start ups, business management etc. which could provide these start ups the network and support needed to bring their business plan to fruition.

**Construction Phase Public Infrastructure Projects:**

**Projects in Category B or C are required to submit the following documents as attachments in your electronic submission.** If the project is in Category A and are seeking design and construction funding attach any preliminary/conceptual designs and budgets available, or if the project has completed construction/engineering or related documents, please attach those to the submission:

- Electronic copies of construction- ready documents and schematics signed by the appropriate licensed professionals – licensed architect, licensed landscape architect and/or engineer – for NMMS FY2023 Public Infrastructure funding with a current full construction budget (expenses and revenue).

- If this proposal is for one phase of a larger project, please submit the total budget as requested above and the scope of the project these funds are to be used for and a detailed breakout budget for the phase you are applying for.
- Or if a NM Department of Transportation funded project, the appropriate construction- ready certificate from the regional transportation district engineer for the proposed project. Construction- ready includes all survey, environmental assessments, 100% schematics, economic impact analysis, and, if appropriate, review and approval from NMDOT and the Historic Preservation Division (HPD), submitted as signed architectural and engineering documents with a current full construction budget (expenses and revenue).
- Great Blocks projects are expected to fill out this application and provide an additional attachment that further expands on the details of the project, and provides additional documentation, see Great Blocks section in the Invitation to Submit document.

**13) Please describe the public infrastructure construction work to be completed with this round of funding below:**

The public infrastructure construction work to be completed with this round of funding will include the theatres film projection system. This system will be a fixed asset of this rehabilitation project and will take the theatre from what it used to be, which was solely a movie palace to a state of the art multi-funcationing theatre which will host film, live music performances, theatre, opera, conferecnes and so much more. The film projection system will include screens, projectors, software, speaker & audio and installation.

**14) Will this project require additional funding after the current phase? Yes  No**

**If this project will require additional funding after this phase, please explain what work will be completed in those future phases:**

The completion of Phase 5 will be dependent on available funding. The following work for Phase 5 will result in an fully operational performing arts facility: construct concession stand, stage rigging and curtains, stage lighting, complete sound system, house lighting, celing and wall accoustic panels, final painting and seating.

**15) If yes to question 14, what is the strategy of the local MainStreet program and the local government partner to secure additional funding needed to complete additional phases of the project?**

**The funding strategy for Phase 5 will include any or all of the following sources and or efforts: Appropriation of the City of Carlsbad's non-promotional Lodgers Tax, seek grant opportunities through the City, Carlsbad MainStreet, other local related non-profit organizations. Potential fund raising/capitol campaign efforts by the City, Carlsbad MainStreet and or local related non-profit organizations.**

**16) After the project is completed, describe how your organization will work to build on this Public Infrastructure investment and how you will work with the local government partners and organizations to ensure that this investment creates new opportunities for your community to benefit from additional investments?**

**Carlsbad MainStreet in cooperation with the Pearl of the Pecos Arts and Cultural District will work to provide programming and arts and cultural experiences at the Cavern Theatre as well as support and promote all events and activities held at the theatre. In addition Carlsbad MainStreet and the Pearl of the Pecos will be active advocates promoting new business opportunities as well as supporting existing business within the district that will be mutually supportive of the theatre. By working with the City and organizations like Creative Carlsbad Arts Council, Downtown Carlsbad will be come a destination for arts and cultural experiences and commerce**

**The following section is for Great Blocks on MainStreet projects only**

**17) What are the partnerships and agreements that will be in place to ensure successful implementation of the project and the commitments to maintain the completed project?**

**18) Is your local Government partner willing to explore (with NMMS assistance) CDBG, LEDA, NMFA, DOT TAP, HPD grants, ICIP and/or other funding sources as appropriate for the proposed project?**

**Yes  No**

**19) Has your community been successful in completing a recent public infrastructure and economic redevelopment project? Yes  No  If yes please describe the project below:**

**20) Has your community been successful implementing any preservation projects that utilized (or qualified for) historic preservation tax credit? Yes  No  If yes, please describe the project below:**

**21) Is this project on the local MainStreet's project implementation plan? Yes  No**

A letter of support for the proposed project must be attached to this application from the local government's City/County manager and/or Mayor and an approved resolution from the Mayor/County and Council (since public right-of-way is mostly under local government jurisdiction and most state and federal funding will need to be administered through local government).

**CITY OF CARLSBAD**  
**AGENDA BRIEFING MEMORANDUM**

Council Meeting Date: April 11, 2023

<b>DEPARTMENT:</b> Transit	<b>BY:</b> Joshua Moore <span style="float: right; color: blue;">JPC</span>	<b>DATE:</b> April 3, 2023
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**SUBJECT:** Approval of newly updated Drug and Alcohol Testing Policy recommended by the Federal Transit Administration.

**BACKGROUND, ANALYSIS AND IMPACT:** (Safety and Welfare /Personnel)

On an annual basis, Carlsbad Municipal Transit traditionally receives operations funding assistance through the Federal Transit Administrations 49 U.S.C. Section 5311 Grant. This grant is awarded at a state level, to each states' individual Department of Transportation. In our case, (NMDOT) the New Mexico Department of Transportation. NMDOT in turn, awards the various agencies within the state their approved allocation for the year.

Not only is NMDOT responsible for dispersing this allocation, but they are also in charge of monitoring the different agencies performance on many levels, in order to make sure they are in compliance with all Federal and State requirements and regulations concerning this funding. One area that NMDOT assists with assuring compliance in is the Drug and Alcohol Testing Programs for each agency. As the requirements and regulations evolve, NMDOT will offer suggestions and/or updated templates for the agencies to utilize, helping to keep their policies up to date with all Federal and state requirements.

FTA has recently completed a review with the NMDOT; part of the audit was the FTA drug and alcohol policy. As a result we have been asked to update our current policy as soon as possible. We have made the updates according to RLS and Associates recommendations, which is the company that performed our audit for NMDOT. The changes are minor, mostly grammatical.

The policy submitted will go into effect immediately following council approval and will be in effect until the next mandatory update. This policy has been reviewed by the Personnel Department and approved by NMDOT prior to requesting Council approval.

**DEPARTMENT RECOMMENDATION:** It is recommended, that if it is the pleasure of the Council, to approve the federally recommended updates to Carlsbad Municipal Transit's Drug and Alcohol policy.

**BOARD/COMMISSION/COMMITTEE ACTION:**

P & Z	Lodgers Tax Board	Cemetery Board	}	APPROVED
Museum Board	San Jose Board	Water Board	}	
Library Board	N. Mesa Board	_____ Committee	}	DISAPPROVED

<b>Reviewed by:</b> City Administrator: /s/John Lowe	<b>Date:</b> 04/05/2023
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ATTACHMENT(S): Proposed Drug and Alcohol Policy

**DRUG AND ALCOHOL TESTING POLICY**  
**Carlsbad Municipal Transit**  
**Adopted as of [April 11, 2023]**

**A. PURPOSE**

- 1) Carlsbad Municipal Transit provides public transit and paratransit services for the residents of Carlsbad, NM. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, Carlsbad Municipal Transit declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.
- 2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result, or a refusal to test. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.
- 3) Any provisions set forth in this policy that are included under the sole authority of Carlsbad Municipal Transit and are not provided under the authority of the above-named Federal regulations are underlined. Tests conducted under the sole authority of Carlsbad Municipal Transit will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

**B. APPLICABILITY**

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties. See Attachment A for a list of employees and the authority under which they are included.

A safety-sensitive function is operation of public transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or persons controlling the movement of revenue service vehicles and any transit employee who operates a non-revenue service vehicle that requires a Commercial Driver's License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above-mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

### **C. DEFINITIONS**

*Accident:* An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

- a. An individual dies;
- b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- c. One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

*Adulterated specimen:* A specimen that has been altered, as evidence by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

*Alcohol:* The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.



*Alcohol Concentration:* Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

*Aliquot:* A fractional part of a specimen used for testing, It is taken as a sample representing the whole specimen.

*Canceled Test:* A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.

*Confirmatory Drug Test:* A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

*Confirmatory Validity Test:* A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

*Covered Employee Under FTA Authority:* An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

*Designated Employer Representative (DER):* An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

*DOT, The Department, DOT Agency:* These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of 49 CFR Part 40, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes. These terms include any designee of a DOT agency.

*Dilute specimen:* A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

*Disabling damage:* Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated



but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

*Evidentiary Breath Testing Device (EBT):* A device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations, and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

*Initial Drug Test: (Screening Drug Test)* The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

*Initial Specimen Validity Test:* The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid

*Invalid Result:* The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

*Laboratory:* Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

*Limit of Detection (LOD):* The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

*Limit of Quantitation:* For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

*Medical Review Officer (MRO):* A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

*Negative Dilute:* A drug test result which is negative for the five drug/drug metabolites but has creatinine and specific gravity values that are lower than expected for human urine.

*Negative result:* The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen. An alcohol concentration of less than 0.02 BAC is a negative test result.

*Non-negative test result:* A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.

*Oxidizing Adulterant:* A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

*Performing (a safety-sensitive function):* A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

*Positive result:* The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

*Prohibited drug:* Identified as marijuana, cocaine, opioids, amphetamines, or phencyclidine as specified in 49 CFR Part 40, as amended.

*Reconfirmed:* The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

*Rejected for Testing:* The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

*Revenue Service Vehicles:* All transit vehicles that are used for passenger transportation service.

*Safety-sensitive functions:* Employee duties identified as:

- (1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.

- (2) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Driver's License (CDL).
- (3) Maintaining a revenue service vehicle or equipment used in revenue service.
- (4) Controlling the movement of a revenue service vehicle and
- (5) Carrying a firearm for security purposes.

*Split Specimen Collection:* A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

*Substance Abuse Professional (SAP):* A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

*Substituted specimen:* A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

*Test Refusal:* The following are considered a refusal to test if the employee:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or the employer for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.

- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.
- (14) As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

*Vehicle:* A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit vehicle is a vehicle used for public transportation or for ancillary services.

*Verified negative test:* A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use at or above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

*Verified positive test:* A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use at or above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

*Validity testing:* The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

#### **D. EDUCATION AND TRAINING**

- 1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.
- 2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable

suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

## **E. PROHIBITED SUBSTANCES**

- 1) Prohibited substances addressed by this policy include the following.
  - a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1308.11 through 1308.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opioids, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. It is important to note that the use of marijuana in any circumstances remains completely prohibited for any safety-sensitive employee subject to drug testing under USDOT regulations. The use of marijuana in any circumstance (including under state recreational and/or medical marijuana laws) by a safety-sensitive employee is a violation of this policy and a violation of the USDOT regulation 49 CFR Part 40, as amended.

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines, opioids, and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

- b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a Carlsbad Municipal Transit supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

- c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances containing alcohol in a manner which violates the conduct listed in this policy is prohibited.

## **F. PROHIBITED CONDUCT**

- 1) Illegal use of the drugs listed in this policy and as defined in 49 CFR Part 40, as amended is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty if they have used a prohibited drug as defined in 49 CFR Part 40, as amended.
- 2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.
- 3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol
- 4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.
  - a. An employee with a breath alcohol concentration which measures 0.02-0.039 is not considered to have violated the USDOT-FTA drug and alcohol regulations, provided the employee hasn't consumed the alcohol within four (4) hours of performing a safety-sensitive duty. However, if a safety-sensitive employee has a breath alcohol concentration of 0.02-0.039, USDOT-FTA regulations require the employee to be removed from the performance of safety-sensitive duties until:
    - i. The employee's alcohol concentration measures less than 0.02; or
    - ii. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

- 5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- 6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- 7) Carlsbad Municipal Transit, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.
- 8) Consistent with the Drug-free Workplace Act of 1988, all Carlsbad Municipal Transit employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

#### **G. DRUG STATUTE CONVICTION**

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the Carlsbad Municipal Transit management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

#### **H. TESTING REQUIREMENTS**

- 1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49 CFR Part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.
- 2) A drug test can be performed any time a covered employee is on duty. A reasonable suspicion, random, or follow-up alcohol test can only be performed just before, during, or after the performance of a safety-sensitive job function. Under Carlsbad Municipal Transit authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.



- 3) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with Carlsbad Municipal Transit. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

## **I. DRUG TESTING PROCEDURES**

- 1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.
- 2) The drugs that will be tested for include marijuana, cocaine, opioids, amphetamines, and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) or Liquid Chromatography/Mass Spectrometry (LC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS or LC/MS test are at or above the minimum thresholds established in 49 CFR Part 40, as amended.
- 3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as



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- appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Carlsbad Municipal Transit. If a legitimate explanation is found, the MRO will report the test result as negative.
- 4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.
  - 5) Any covered employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Carlsbad Municipal Transit will ensure that the cost for the split specimen analysis is covered in order for a timely analysis of the sample, however Carlsbad Municipal Transit will seek reimbursement for the split sample test from the employee.
  - 6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled.
  - 7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

8) Observed collections

- a. Consistent with 49 CFR Part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:
  - i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Carlsbad Municipal Transit that there was not an adequate medical explanation for the result;
  - ii. The MRO reports to Carlsbad Municipal Transit that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
  - iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).
  - iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
  - v. The temperature on the original specimen was out of range;
  - vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
  - vii. All follow-up-tests; or
  - viii. All return-to-duty tests

**J. ALCOHOL TESTING PROCEDURES**

- 1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). A list of approved EBTs can be found on

ODAPC's Web page for "Approved Evidential Breath Measurement Devices". Alcohol screening tests may be performed using a non-evidential testing device (alcohol screening device (ASD)) which is also approved by NHTSA. A list of approved ASDs can be found on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

- 2) A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q. of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.
- 3) Carlsbad Municipal Transit affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.
- 4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

**K. PRE-EMPLOYMENT TESTING**

- 1) All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.
  - a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.
  - b. An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.
  - c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be provided with a list of at least two (2) USDOT qualified Substance Abuse Professionals. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
  - d. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA authority or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.
  - e. If a pre-employment test is canceled, Carlsbad Municipal Transit will require the applicant to take and pass another pre-employment drug test.
  - f. In instances where a FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
  - g. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative

dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

- h. Applicants are required (even if ultimately not hired) to provide Carlsbad Municipal Transit with signed written releases requesting USDOT drug and alcohol records from all previous, USDOT-covered, employers that the applicant has worked for within the last two years. Failure to do so will result in the employment offer being rescinded. Carlsbad Municipal Transit is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a USDOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a USDOT covered employer, the applicant must provide Carlsbad Municipal Transit proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

#### **L. REASONABLE SUSPICION TESTING**

- 1) All Carlsbad Municipal Transit FTA covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under Carlsbad Municipal Transits' authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty.
- 2) Carlsbad Municipal Transit shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An

employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to Carlsbad Municipal Transit.

- 3) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section Q of this policy. Carlsbad Municipal Transit shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the Carlsbad Municipal Transit. **Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority.** However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

## **M. POST-ACCIDENT TESTING**

- 1) FATAL ACCIDENTS – A covered employee will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle, whether or not the vehicle is in revenue service at the time of the accident, that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.
- 2) NON-FATAL ACCIDENTS - A post-accident test of the employee operating the public transportation vehicle will be conducted if an accident occurs and at least one of the following conditions is met:



- a. The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.
- b. One or more vehicles incurs disabling damage as a result of the occurrence and must be transported away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision, will be tested.

As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

In the rare event that Carlsbad Municipal Transit is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by

law enforcement agency), Carlsbad Municipal Transit may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

## **N. RANDOM TESTING**

- 1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees. Employees who may be covered under company authority will be selected from a pool of non-DOT-covered employees.
- 2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.
- 3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates set each year by the FTA administrator. The current year testing rates can be viewed online at <https://www.transportation.gov/odapc/random-testing-rates>.
- 4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.
- 5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under Carlsbad Municipal Transit authority.
- 6) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can only be performed just before, during, or just after the performance of a safety sensitive duty. However, under Carlsbad Municipals' authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.



- 7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

#### **O. RETURN-TO-DUTY TESTING**

All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety. The SAP will determine whether the employee will require a return-to-duty drug test, alcohol test, or both.

#### **P. FOLLOW-UP TESTING**

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

In the instance of a self-referral or a management referral, the employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-USDOT follow-up tests and all paperwork associated with an employee's return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations will be conducted under company authority and will be performed using non-DOT testing forms.

#### **Q. RESULT OF DRUG/ALCOHOL TEST**

- 1) Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position,

informed of educational and rehabilitation programs available, referred to a list of USDOT qualified Substance Abuse Professionals (SAPs) for assessment. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP and the employer.

- 2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- 3) Refusal to submit to a drug/alcohol test shall be considered equivalent to a positive test result and a direct act of insubordination and shall result in termination and referral to list of USDOT qualified SAPs. A test refusal is defined as any of the following circumstances:
  - a) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
  - b) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
  - c) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
  - d) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
  - e) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
  - f) Fail or decline to take a second test as directed by the collector or the employer for drug testing.
  - g) Fail to undergo a medical evaluation as required by the MRO or the employer's Designated Employer Representative (DER).
  - h) Fail to cooperate with any part of the testing process.
  - i) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
  - j) Possess or wear a prosthetic or other device used to tamper with the collection process.
  - k) Admit to the adulteration or substitution of a specimen to the collector or MRO.
  - l) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
  - m) Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

- 4) For the first instance of a verified positive random test result for any category of testing shall result in a disciplinary action against the employee to include:
  - a. A hearing with City Administration, in order to agree upon an appropriate disciplinary action based upon a review of the employee's personnel file and may result in a recommendation for discharge.
    - i. A verified positive test result during the probationary period will result in a recommendation for discharge.
  - b. Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return to duty agreement;
  - c. Failure to execute, or remain compliant with the return-to-duty agreement shall result in termination from Carlsbad Municipal Transit employment.
    - i. Compliance with the return-to-duty agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in this policy.
  - d. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.
  - e. A periodic unannounced follow-up drug/alcohol test which results in a verified positive shall result in termination from Carlsbad Municipal Transit employment.
- 5) The first instance of a verified positive post-accident or reasonable suspicion drug and/or alcohol test shall result in termination.
- 6) The second instance of a verified positive drug or alcohol test result for any category of testing shall result in termination from Carlsbad Municipal Transit employment.
- 7) An alcohol test result of  $\geq 0.02$  to  $\leq 0.039$  BAC shall result in the removal of the employee from duty for eight hours or the remainder or the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to a NON-DOT alcohol test with a result of less than 0.02 BAC.

- 8) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
- a. Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return-to-work agreement;
  - b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from Carlsbad Municipal Transit employment.
    - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in Section P of this policy; however, all follow-up testing performed as part of a return-to-work agreement required under section Q of this policy is under the sole authority of Carlsbad Municipal Transit and will be performed using non-DOT testing forms.
  - c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return-to-work agreement will be conducted under company authority and will be performed using non-DOT testing forms.**
  - d. **A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.**
  - e. Periodic unannounced follow-up drug/alcohol testing conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy.
  - f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Carlsbad Municipal Transit.
  - g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.
- 9) Failure of an employee to report a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

## **R. GRIEVANCE AND APPEAL**

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

## **S. PROPER APPLICATION OF THE POLICY**

Carlsbad Municipal Transit is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

## **T. INFORMATION DISCLOSURE**

- 1) Drug/alcohol testing records shall be maintained by the Carlsbad Municipal Transit Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.
- 2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.
- 3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need-to-know basis.
- 4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- 5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.

- 6) Records will be released to the National Transportation Safety Board during an accident investigation.
- 7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
- 8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- 9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Carlsbad Municipal Transit or the employee.
- 10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken
- 11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This Policy was adopted by the *City of Carlsbad, NM City Council* on //.

Date:

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Date:

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Date:

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Date:

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*[APPLICABLE SIGNATURES]*

## Attachment A

### Safety-Sensitive Positions at Carlsbad Municipal Transit System

All positions at Carlsbad Municipal Transit System were reviewed for safety-sensitive duties, as defined in 49 CFR Part 655, to determine the safety-sensitive positions. Additionally, any new positions created in the future will be reviewed for safety-sensitive duties. The following positions were determined to be safety-sensitive:

<u>Job Title</u>	<u>Job Duties</u>	<u>Testing Authority</u>
Dispatcher	Dispatching/Navigating	FTA
Transit Clerk	Dispatching/Navigating	FTA
Full-time Driver	Driving/Operating	FTA
Part-time Driver	Driving/Operating	FTA
On-call Driver	Driving/Operating	FTA
Lead Man/Mechanic	Maintenance/Repair	FTA
Mechanic	Maintenance/Repair	FTA



## **Attachment B: Contacts**

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

### **Carlsbad Municipal Transit Drug and Alcohol Program Manager**

Name: Joshua Moore  
Title: Transit Manager/D.A.P.M.  
Address: 510 N. Main  
Carlsbad, NM 88220.  
Telephone Number: 575-887-2121

### **Carlsbad Municipal Transit Designated Employee Representative**

Name: Katie Robb  
Title: Transit Clerk/D.E.R.  
Address: 510 N. Main  
Carlsbad, NM 88220.  
Telephone Number: 575-887-2121

### **Medical Review Officer**

Name: Dr. H. J Khella  
Address: Industrial Med Testing  
1451 Tallevast Rd  
Sarasota, FL 34243  
Telephone Number: (941) 753-9199, Fax (941) 753-9975

### **HHS Certified Laboratory Primary Specimen**

Name: Alere  
Address: 1111 Newton Street  
Gretna, LA 70053  
And/or  
450 Southlake Boulevard,  
Richmond, VA 23236  
Telephone Number: 1-800-433-3823, Fax (504) 361-8298

### **Primary Collection Site:**

Name: AAL Fire & Safety  
Contact: Sandra Fry  
Address: 1008 W. Pierce St  
Carlsbad, NM 88220  
Telephone Number: (575) 988-1421

Collection Site (5:00pm to 7:00am):

Name: AAL Fire & Safety  
Contact: Sandra Fry  
Address: 1008 W. Pierce St  
Carlsbad, NM 88220  
Telephone Number: (575) 988-1421

Alternate Collection Site:

Name: Mobile Safety  
Contact: Sandra Ballard  
Address: 314 W. Mermod  
Carlsbad, NM 88220  
Telephone Number: 1-855-214-5186

Alternate Collection Site (After 5:00pm to 7:00am)

Name: Mobile Safety  
Contact: Sandra Ballard  
Address: 314 W. Mermod  
Carlsbad, NM 88220  
Telephone Number: 1-855-214-5186

EMPLOYEE RECEIPT OF DRUG AND ALCOHOL TESTING POLICY

Return this completed form to your immediate supervisor

Employee Name: \_\_\_\_\_

Print \_\_\_\_\_

I have received and will read Carlsbad Municipal Transit's Drug and Alcohol Abuse Testing Policy. I understand that I will be held responsible for the content of the policy and I agree to abide by drug and alcohol testing policy. If I need any clarification or if I have any questions regarding the substance of the policy, I will address them with the company's program administrator.

This policy adheres to the Federal Transit Administration's mandated regulations for drug and alcohol testing.

Employee Signature: \_\_\_\_\_

Date Signed:

**CITY OF CARLSBAD**  
**AGENDA BRIEFING MEMORANDUM**

**Council Meeting Date: 4/11/2023**

<b>DEPARTMENT:</b> Planning & Regulation	<b>BY:</b> Jeff Patterson, Planning Director	<b>DATE:</b> 4/4/2023											
<p><b>SUBJECT:</b> Permission from the City Council to allow for mobile sales (vending) of food and drinks (non-alcoholic) on City property located at 814 E. Riverside Dr., the Carlsbad Beach Park, for The Frozen Cactus.</p> <p>The Frozen Cactus  Dustin Bratcher (owner)  206 Poplar St.  Carlsbad, NM 88220</p>													
<p><b>BACKGROUND, ANALYSIS AND IMPACT:</b> (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)</p> <p>The purpose of this request is to allow vending of food &amp; drinks on City-owned property in the parking area at the Carlsbad Beach Park. The applicant has provided a map showing where he would like to set up in his mobile trailer, and states in his letter provided that he will mainly set up on Friday evenings, Saturdays, and Sundays, with the occasional weekday evening. Section 56-80, regarding temporary uses, requires permission from the property owner in order to allow someone other than the property owner to utilize the property in this manner. In this case, the City of Carlsbad is the property owner. The applicant has submitted an application for an annual city business license. The applicant will also need to provide a certificate of liability insurance.</p> <p>The City Council has approved one other mobile vendor to operate within the Carlsbad Beach Park for 2023, The Cold Shoulder. The attached map shows where The Frozen Cactus would like to locate.</p>													
<p><b>RECOMMENDATION:</b> Approval of the request with the following conditions:</p> <ol style="list-style-type: none"> <li>1. The applicant shall not disturb the peace with a loud speaker, megaphone, bell, music or other disruptive noise.</li> <li>2. Approval of this request grants permission to the applicant to vend food and drinks (non-alcoholic) on City-owned property in the Carlsbad Beach Park parking lot from Wednesday, April 12, 2023, through Sunday, December 31, 2023.</li> <li>3. The applicant shall provide the City with a proof of liability insurance naming the City as additional insured.</li> </ol>													
<p><b>BOARD/COMMISSION/COMMITTEE ACTION:</b> N/A</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> P &amp; Z</td> <td><input type="checkbox"/> Lodgers Tax Board</td> <td><input type="checkbox"/> Cemetery Board</td> <td rowspan="2" style="vertical-align: middle;">} <input type="checkbox"/> APPROVED</td> </tr> <tr> <td><input type="checkbox"/> Museum Board</td> <td><input type="checkbox"/> San Jose Board</td> <td><input type="checkbox"/> Water Board</td> </tr> <tr> <td><input type="checkbox"/> Library Board</td> <td><input type="checkbox"/> N. Mesa Board</td> <td><input type="checkbox"/> _____ Committee</td> <td>} <input type="checkbox"/> DISAPPROVED</td> </tr> </table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED
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<p><b>Reviewed By:</b></p> <p><b>City Administrator:</b> <u>/s/John Lowe</u> <span style="float: right;"><b>Date</b> <u>04/05/2023</u></span></p>													

ATTACHMENT(S): Application, map



The Frozen Cactus LLC  
Dustin Bratcher  
206 Poplar St  
Carlsbad NM 88220

To Whom It May Concern,

I, Dustin Bratcher, owner of The Frozen Cactus (snow cone trailer), am writing to request your permission. The Frozen Cactus currently possess a City of Carlsbad business license for "All 2023 Events". Last year our permanent location aside from events was at 1020 N Mesa, the empty lot behind Ross, I do not feel that was an optimal location for business and service to our community. I have not renewed the license for that location, as I am seeking a more beneficial location. I am writing this letter to request permission to set up in the beach parking lot, 708 Park Dr. I am attaching a map with specific location request highlighted. I had approval last year, 2022, to set up there. I was only able to set up a few times due to the birth of my daughter. I feel this is one of the best locations to serve our community. I would set up mainly weekends (Friday evening, Sunday, and Saturday) with the possibility of an occasional week day evening, as I work a full time job at Hamilton Roofing as an assistant manager. I am in full understanding that if approved, the approval would not include special events or holidays and I would have to contact the event coordinator to request permission to set up with them.

Sincerely,

Dustin Bratcher










# Google Maps 708 Park Dr



Map data ©2023, Map data ©2023 Google 20 ft



## 708 Park Dr

-   
 Directions
-   
 Save
-   
 Nearby
-   
 Send to  
phone
-   
 Share

 708 Park Dr, Carlsbad, NM 88220

### Directory



CITY OF CARLSBAD
Planning, Engineering,
and Regulation Department
PO Box 1569, Carlsbad, NM 88221
Phone (575) 885-1185
Fax (575) 628-8379

TEMPORARY USE APPLICATION
Sec. 56-80 and Temporary Housing

Application Date: 4/4/23

Fee Paid (\$10.00):

TYPE OF USE REQUESTED:

- Carnival, Circus, Fair, Public Event
Parking Lot Sale
Garage, Estate, Yard Sale
Natural Disaster, Emergency Personal Assistance Location
Real Estate Sales Office
Temporary Housing
Other

APPLICANT INFORMATION:

The Frozen Cactus LLC.

Dustin Bratcher

206 Poplar St.

NAME

ADDRESS

Carlsbad NM

88220

575-706-9173

thefrozencactusco@gmail.com

CITY

STATE

ZIP

PHONE

EMAIL

PROPERTY OWNER INFORMATION\* (IF DIFFERENT FROM APPLICANT):

NAME

ADDRESS

CITY

STATE

ZIP

PHONE

EMAIL

\* A signed affidavit from the property owner(s), consenting to submittal of the application, must be included with the application.

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (FOR WHICH TEMPORARY USE IS REQUESTED):

904 E. Riverside Dr.

ADDRESS

LOT

BLOCK

SUBDIVISION

ZONING



**Description and Duration of Temporary Use:**

Providing sno-cones and other summer refreshments to our community while visiting the basketball courts, beach area, volleyball courts, and splash pad. Duration will be upon approval until September.

**Site Plan:**

See Attached.

**FOR OFFICIAL USE ONLY:**

Approved       Approved with Conditions       Denied      By: \_\_\_\_\_

Approval Date: \_\_\_\_\_      Permit Expiration Date: \_\_\_\_\_

Conditions of approval:





CITY OF RIVERSIDE

option  
↓ A,  
[ ]

← option  
B  
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814 B

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814 A

804

CITY OF CARLSBAD

CITY OF CARLSBAD CITY OF CARLSBAD

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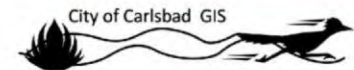


# The Frozen Cactus Carlsbad Beach Park



0 50 100 200 Feet

4/4/2023



**CITY OF CARLSBAD**  
**AGENDA BRIEFING MEMORANDUM**

Council Meeting Date: 4/11/2023

<b>DEPARTMENT:</b> Planning & Regulation	<b>BY:</b> Jeff Patterson, Planning Director	<b>DATE:</b> 4/3/2023											
<p><b>SUBJECT:</b> Permission from the City Council to allow for mobile sales (vending) of food (ice cream) and drinks (non-alcoholic) within City streets throughout the City, for The Ice Cream Man, LLC.</p> <p>The Ice Cream Man, LLC.                  Jason Stearns, owner                  5605 Carrick St. NW                  Albuquerque, NM 87120</p>													
<p><b>BACKGROUND, ANALYSIS AND IMPACT:</b> (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)</p> <p>The purpose of this request is to allow vending of food &amp; drinks within City streets around town. The applicant plans to take a mobile ice cream truck around town and vend ice cream and related treats in various neighborhoods. Section 56-80 of the Zoning Ordinance, regarding temporary uses, requires permission from the property owner in order to allow someone other than the property owner to utilize the property in this manner. In this case, the City of Carlsbad is the property owner. The applicant has submitted an application for an annual city business license. The applicant will also need to provide a certificate of liability insurance.</p>													
<p><b>RECOMMENDATION:</b> Approval of the request with the following conditions:</p> <ol style="list-style-type: none"> <li>1. The applicant shall not disturb the peace with a loud speaker, megaphone, bell, music or other disruptive noise.</li> <li>2. Approval of this request grants permission to the applicant to vend food and drinks (non-alcoholic) within City-streets from Wednesday, April 12, 2023, through Sunday, December 31, 2023.</li> <li>3. The applicant shall provide the City with proof of liability insurance naming the City as additional insured.</li> </ol>													
<p><b>BOARD/COMMISSION/COMMITTEE ACTION:</b> N/A</p> <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> P &amp; Z</td> <td><input type="checkbox"/> Lodgers Tax Board</td> <td><input type="checkbox"/> Cemetery Board</td> <td rowspan="2" style="vertical-align: middle;">} <input type="checkbox"/> APPROVED</td> </tr> <tr> <td><input type="checkbox"/> Museum Board</td> <td><input type="checkbox"/> San Jose Board</td> <td><input type="checkbox"/> Water Board</td> </tr> <tr> <td><input type="checkbox"/> Library Board</td> <td><input type="checkbox"/> N. Mesa Board</td> <td><input type="checkbox"/> _____ Committee</td> <td>} <input type="checkbox"/> DISAPPROVED</td> </tr> </table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED
<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> APPROVED										
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<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> DISAPPROVED										
<p><b>Reviewed By:</b></p> <p><b>City Administrator:</b> <u>/s/John Lowe</u> <b>Date</b> <u>04/05/2023</u></p>													

ATTACHMENT(S): Application, map





**CITY OF CARLSBAD**  
 Planning, Engineering, and Development Dept.  
 Phone: (575) 885-1185  
 Fax: (575) 628-8379

**NON-REFUNDABLE APPLICATION FEE:**

Date: 3-24-23

- \$25 Door to Door--City Solicitation License (as regulated by Sec. 28.161)
- \$25 Dance, per day
- \$200 Dance, per year
- \$50 Boxing, wrestling, fighting, or martial arts exhibitions or contests, per performance
- \$100 Carnival, circus, or menagerie, per day
- \$250 Pawnbroker, per year

**BUSINESS LICENSE  
 (SPECIAL EVENTS/PAWNBROKERS)  
 APPLICATION**

BUSINESS NAME:  
THE ICE CREAM MAN, LLC

TYPE OF BUSINESS/PURPOSE OF LICENSE:  
ICE CREAM MAN.

LOCATION OF BUSINESS (Physical Address):  
3105 NATIONAL PARK HWY

NM ID #:  
03615967006

MAILING ADDRESS:  
5605 CARRICK ST N.W.

BUSINESS OWNER:  
JASON STEURTS

DATES OF LICENSE USE:  
 \_\_\_\_\_

E-MAIL ADDRESS: JASON STEURTS76@GMAIL.COM  
 PHONE NUMBER: (505) 710-2577  
 APPLICANT'S SIGNATURE:  
[Signature]

**FOR OFFICIAL USE ONLY**

Solicitor's License?  Yes  No

Council Action:  Approved  Denied Date: \_\_\_\_\_

Conditions Required: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## CITY OF CARLSBAD PROCEDURES FOR APPLYING FOR BUSINESS LICENSE

**MEETING TIME AND DATE:** Business License Requests are presented to the City Council. This application will be set for Council on \_\_\_\_\_.

**DEADLINE:** The deadline for submitting applications for City Council is \_\_\_\_\_.

**APPLICATION FEE:** The Fee is due upon submission of application. Fees are listed on first page of application.

**LETTER OF INTENT:** A letter explaining the reason for the request must be submitted. The letter should be typed and addressed to the Carlsbad City Council.

**BOND:** (from Section 28-163 of the City of Carlsbad, Code of Ordinances, bold type added)  
"The provisions of section 28-162(a) shall not apply to any person if such person for himself, or through his employer, shall have:

(1) Posted a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, to the city and the residents of the city conditioned that the person posting the surety bond shall comply fully with all the provisions of the ordinances of the city and the statutes of the state regulating and concerning the business licensed, and guaranteeing to any resident of the city that all money paid will be accounted for and applied according to the representations of the licensee, and further guaranteeing to any resident of the city doing business with such licensee that the property or services purchased will be delivered or furnished according to representations made by the licensee, and will conform to such representation, whether such representations be oral or in writing, and that the licensee's contract in all respects will be fully performed. Action on such bond may be brought in the name of the city to the use and benefit of the aggrieved person or in the name of the aggrieved person. **The term of such bond shall be at least one year.**

a. Any employer may purchase such a bond for any person employed by him or representing him in any capacity. If such bond is purchased by an employer of **more than one employee**, he shall purchase one such bond in the amount of **\$2,000.00**, which bond shall cover all persons employed by him or representing him in any capacity."

**ATTACHMENTS:** Any additional information about business such as brochures, plans, or deeds should be submitted with the application.

**SUBMIT TO:** City of Carlsbad  
Planning, Engineering, and Regulation Department  
114 S. Halagueno (or mail to PO Box 1569)  
Carlsbad, NM 88220  
Phone: (575) 885-1185, Fax: (575) 628-8379

**PRESENCE AT MEETING:** The Carlsbad City Council will vote on the request during a regularly scheduled City Council meeting. The applicant or his/her representative must be present to address any questions that the Mayor or Council members may have.



## **CITY OF CARLSBAD**

*Planning, Engineering, and Regulation Department*

114 S. Halagueno, PO Box 1569

Carlsbad, New Mexico 88220

Phone (575) 885-1185, Fax (575) 628-8379

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### **BUSINESS LICENSE SOLICITOR REGULATIONS (Sec. 28-161 to 169)**

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1. Post a surety bond, with a surety licensed to do business in the state, in the amount of \$1,000.00, or \$2,000.00 for more than one employee, to the City; and
2. Obtain a City Business Registration; and
3. Obtain a Peddler's Identification Card. However, since the capability for issuance of Peddler Identification Cards no longer exists as detailed in Ordinance Section 28-163(3), the following information shall be displayed on the business registration:
  - a. the name and address of the bearer;
  - b. the name and address of the employer;
  - c. a "wallet-sized" photograph of the applicant;
  - d. the name and address of the bonding company;
  - e. the statement: "THE CITY OF CARLSBAD DOES NOT ENDORSE OR GUARANTEE THE PRODUCT OR SERVICE OF THE PERMITTEE OR HIS COMPANY." ; and
4. Hours of operation be limited to start no earlier than 10:00 AM and terminate each day no later than 9pm or ½ hour prior to sunset, whichever occurs first; and
5. Solicitors are prohibited from using a loudspeaker to announce or advertise his or her presence or otherwise disturb peace and tranquility; and
6. Solicitors shall not enter property unless requested or invited to do so by the owner or occupant of property. Solicitors shall not enter property if there is a sign posted in a conspicuous place that reads: "No Trespassing," "No Peddlers," "No Agents," "No Solicitors," "No Advertisements" or any similar notice.

**CITY OF CARLSBAD**

**AGENDA BRIEFING MEMORANDUM**

*Jeff Patterson*

**Council Meeting Date: 4/11/2023**

<b>Department:</b> Planning & Regulation	<b>By:</b> Jeff Patterson, Planning Director	<b>DATE:</b> 4/4/2023
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**SUBJECT:** Request by Milton’s Brewery to serve alcohol (beer & wine) on City streets in the downtown area during a joint Milton’s and Carlsbad MainStreet Cinco de Mayo event.

**BACKGROUND, ANALYSIS AND IMPACT:** *(Safety and Welfare/Financial/Personnel/Infrastructure/etc.)*

Milton’s Brewing is requesting permission from the City Council to host a beer garden within Mermod St. as part of a Cinco de Mayo event. Milton’s is partnering with Carlsbad MainStreet to hold this event on Friday, May 5, 2023. The event will operate starting at 2:00 PM and will end at 11:00 PM, with alcohol service within the beer garden starting at 4:00 PM and ending at 10:00 PM. The beer garden will be located within Mermod St. between Canal St. and Canyon St., as shown on the attached maps. The garden will have one controlled entrance, and security will be provided. Entrance to the beer garden will be limited to entrants 21 years or older, and entrants must provide a valid ID as proof of age. All approved entrants will be given a bracelet to wear and this bracelet will be a requirement to purchase beer or wine within the Beer Garden. All designated drivers that enter the Beer Garden will be given a separate bracelet as identification. No alcohol will be allowed to be taken out of the designated Beer Garden area.

There will also be a small car show and a band and dance area within Mermod St. during this event. Mermod St. will be closed from Canal St. to the west to Canyon St. to the east for the duration of the event.

**DEPARTMENT RECOMMENDATION:** If it is the will of the Council to allow beer and liquor sales and consumption within a Beer Garden located on City streets, City staff recommends the following requirements:

1. The alcohol server obtain all required licenses and permits;
2. Milton’s Brewing comply with all laws, rules, regulations, requirements and restrictions for service at the location (included, but not limited to fencing of service area, carding of customers, and providing appropriate security);
3. Milton’s Brewing shall name the City of Carlsbad as an Additional Insured on their general liability insurance and liquor server insurance in an amount to be approved by the City Administrator.

**BOARD/COMMISSION/COMMITTEE ACTION:**

<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board	} <input type="checkbox"/> <b>APPROVED</b>
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	
<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee	} <input type="checkbox"/> <b>DISAPPROVED</b>

<p><b>Reviewed by</b>  <b>City Administrator</b> <u>/s/John Lowe</u> <b>Date:</b> <u>04/05/2023</u></p>
---

ATTACHMENT(S): Event Request, Map



# CITY OF CARLSBAD FACILITY REQUEST FORM

*Request for Facility Use: (Check One)*

<input type="checkbox"/> Beach Bandshell	<input type="checkbox"/> Ray Anaya San Jose Plaza	<input type="checkbox"/> MLK Pavilion/Park
<input type="checkbox"/> Rifle Range (Please Specify)	<input type="checkbox"/> North Water Park Front	<input checked="" type="checkbox"/> Other (Please Specify): Downtown Carlsbad

Purpose of Use: CINCO DE MAYO EVENT  
 Event Date: 5/5/23 Event Time: 2pm - 10pm  
 Organization: CARLSBAD MAIN STREET  
 Contact of Person: KAT DAVIS  
 Address: 102 S. CANYON ST City/State: CARLSBAD, NM  
 Phone Numbers: 575 628 3768

***Release of Liability***

The City shall not be responsible for any personal injury, death, or property loss or damage to the persons or entities using the facilities, their agents, employees, officers, representatives, assigns, customers, patrons, guest, or invitees arising from any cause or causes whatsoever.

In consideration for the use of the City facilities named above, I do, for myself, the organization I represent, my heirs, executors and administrator, hereby release and discharge the City of Carlsbad, its officers, directors, employees, and agents from all manner of claims, liabilities, obligations, causes of action, damages, suits, losses, and expenses of every kind, which I and/or the organization I represent have now or hereinafter and which are associated, in any manner, with this Permit, the use of the facilities, or the event listed above.

Additionally, I and the organization I represent shall save, indemnify, and hold harmless the City, its officers, directors, employees, and agents from and against any and all claims, liabilities, obligations, causes of action, damages, suits, losses, and expenses of every kind, together with any attorneys' fees and litigation costs, made by or on behalf of any person or entity arising out of or in any manner associated with this Permit, the use of the facilities, or the event listed above.

*K. Davis*  
Signature

**FOR OFFICE USE ONLY:**

**ADDITIONAL INFO/REQUESTS:**

Road Closures  
Roll out trash cans

**APPROVED BY:**

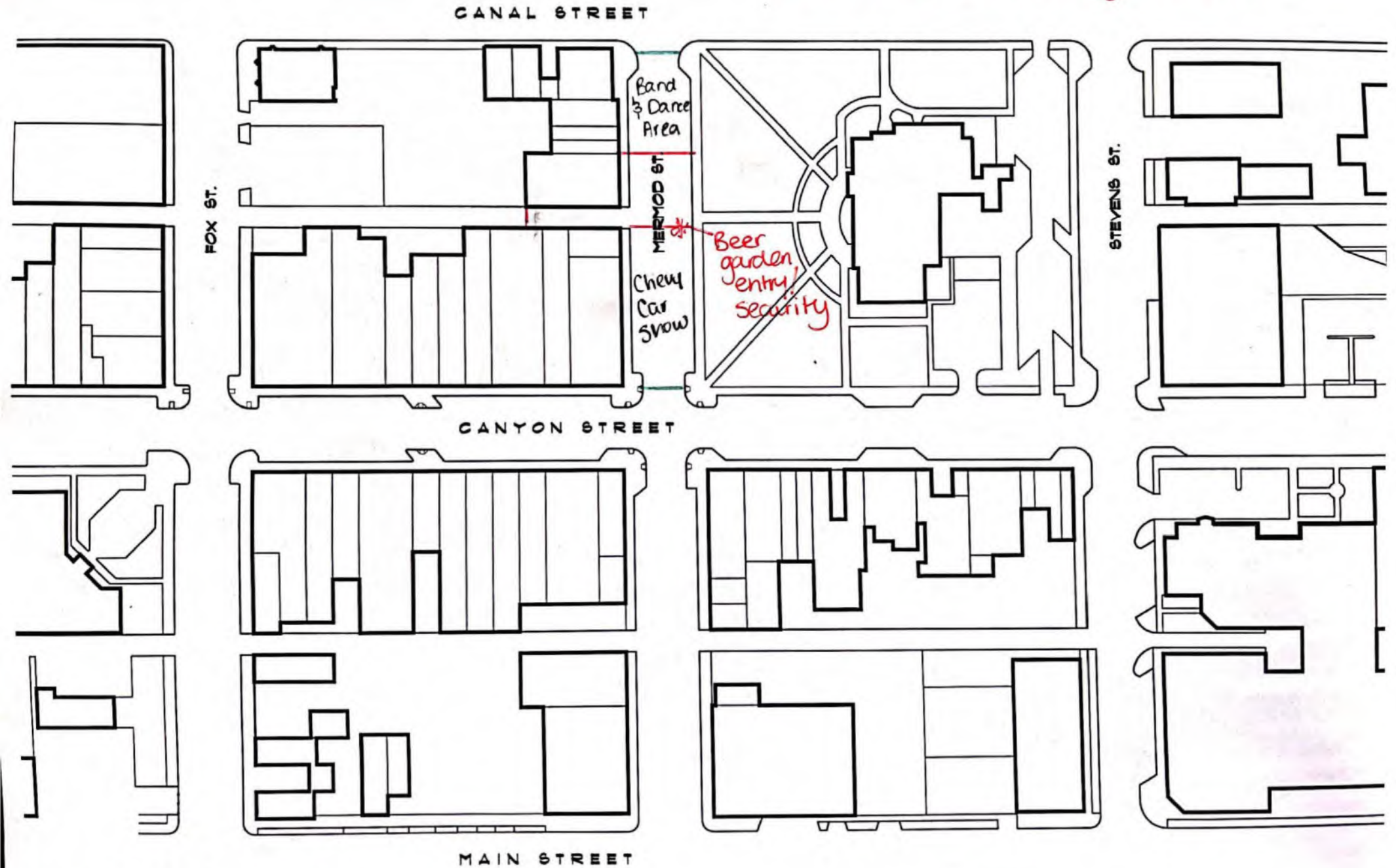
Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

Director: \_\_\_\_\_

City Administrator: \_\_\_\_\_



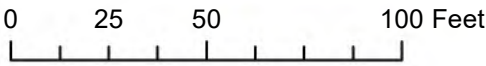
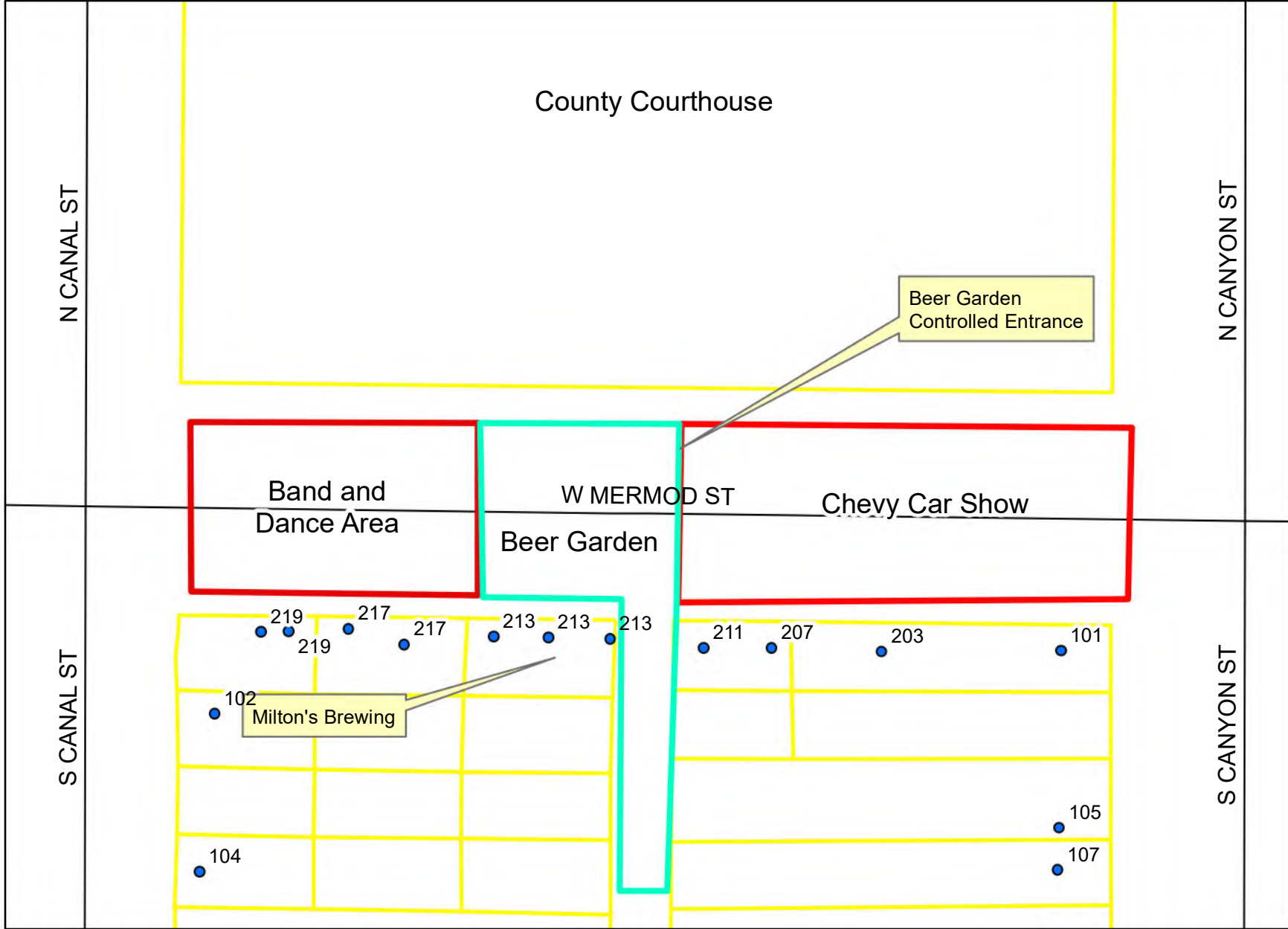
MAY 5<sup>th</sup> Cinco De Mayo Event



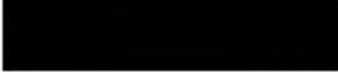
MAIN STREET DISTRICT

≡ : Road Closures

# Milton's & Carlsbad MainStreet Cinco de Mayo Event 2023



4/4/2023



**CITY OF CARLSBAD**  
**AGENDA BRIEFING MEMORANDUM**

Meeting Date: 4/11/2023

<b>DEPARTMENT:</b> Planning & Regulation	<b>BY:</b> Jeff Patterson, Planning Director	<b>DATE:</b> 4/3/2023
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**SUBJECT:** Request for a change of zoning from "R-R" Rural Residential District to "C-2" Commercial 2 District for approximately 20.86 acres, located at 3618 & 3619 Harvest Ln, legally described as Tract 1 & Tract 2, Thad Winn Tracts No. 2 Subdivision, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.

Applicant/Owner:  
Thaddaeus Winn & Tara Lamb  
1330 Tierra Verde Loop NW  
Los Lunas, NM 87031

***\*The applicant provided the required notification to property owners within 100' and agreed to post the required sign 5-days prior to the public hearing as required by Sec. 56-140(i). The City will notify the property owners' 15-days prior to the City Council hearing and publish notification in the newspaper 30-days prior to said hearing.***

**SYNOPSIS, HISTORY AND IMPACT** (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): Request for a change of zoning from "R-R" Rural Residential District to "C-2" Commercial 2 District for approximately 20.86 acres, located at 3618 & 3619 Harvest Ln, legally described as Tract 1 & Tract 2, Thad Winn Tracts No. 2 Subdivision

**Sec. 56-40(e) states:**

**(e) Commercial 2 (C-2) District.**

The Commercial 2 District is intended to accommodate community and regional-scale retail and commercial uses. Such uses are regulated in order to be compatible with surrounding uses and existing infrastructure.

The properties to the west & east are zoned "R-R" Rural Residential District; the properties to the north & south are out of city limits. This will create a spot zone.

Comprehensive Plan: Strategy 2040 goals and policies that are applicable to this request are:

**Chapter 5: Land Use**

**Objectives:**

- To meet the commercial market demand and needs of existing and future Carlsbad residents.
- To provide for the consistent application of land use and development regulations in areas adjacent to the existing municipal boundary.
- To encourage redevelopment of vacant or underutilized properties for residential, commercial, or mixed-use development.

**Chapter 6: Economic Development**

**Objectives:**

- To accommodate new businesses and industries that are looking to relocate or expand in the Carlsbad/Eddy county region.
- To encourage the redevelopment of vacant and/or underutilized properties for retail, food service, entertainment, and mixed-use development.

According to Zoning Ordinance **Sec. 56-150(b)(4). Amendments**, Findings Required, a statement of fact regarding each of the following findings is required:

- (a) The proposed amendment will or will not adversely impact the public health, safety or general welfare and will or will not promote the original purposes of the Zoning Ordinance; and
- (b) The proposed amendment responds or does not respond to changed conditions, such as changes in public capital investments, road locations or functional classification, population trends, density, use or further studies that have been completed since adoption of the Zoning Ordinance; and
- (c) The proposed amendment is or is not necessary in order to respond to State and/or Federal legislation; and
- (d) The proposed amendment provides or does not provide additional flexibility in meeting the objectives of this Zoning Ordinance without lowering the standards of the Zoning Ordinance; and
- (e) The proposed amendment is or is not in substantial compliance with the City's Comprehensive Plan or other City Master Plan; and
- (f) The proposed amendment will or will not adversely affect the implementation of the goals and policies of the City's Comprehensive Plan or other City Master Plan; and
- (g) The proposed amendment is justified in order to correct a mistake in the Official Zoning Map or the text of the Zoning Ordinance; and
- (h) The proposed amendment is justified in order to respond to changes in the City's Comprehensive Plan or other City Master Plan including, but not limited to, changes in land use assumptions, surrounding uses, population forecasts, rates of land consumption, anticipated community needs or other factors.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:** Based on review of the application and staff comments, at their meeting on March 6, 2023, the Planning and Zoning Commission considered this item and recommended approval with a vote of five (5) in favor of approval, none (0) against, none (0) absent and none (0) abstain.

**DEPARTMENT RECOMMENDATION (please check):**

	Approval	Denial	n/a		Approval	Denial	n/a
Public Works	X			Planning, Eng. & Reg. Dept			
Fire Department			X	Code Enforcement Division			X
Legal Department	X/comm			Planning Division	X		
Police Department	X			Projects Department			X
Utilities Department	X			Building Division			X

**DEPARTMENT COMMENTS:**

Public Works: Recommend approval.

Utilities Department: Recommend approval.

Building Department: No comments.

Fire Department: No comments.

Code Enforcement: No comments.

Legal Department: Recommend approval; a Master Plan for utilities should be provided when development begins

Planning Department: Recommend approval.

Police Department: Recommend approval.

Projects Department: No comments

**BOARD/COMMISSION/COMMITTEE ACTION:**

- |   |  |  |  |
|---|--|--|--|
| <input checked="" type="checkbox"/> P&Z | <input type="checkbox"/> Lodgers Tax Board | <input type="checkbox"/> Cemetery Board  | <input checked="" type="checkbox"/> APPROVED |
| <input type="checkbox"/> Museum Board   | <input type="checkbox"/> San Jose Board    | <input type="checkbox"/> Water Board     | <input type="checkbox"/> DISSAPPROVED        |
| <input type="checkbox"/> Library Board  | <input type="checkbox"/> N. Mesa Board     | <input type="checkbox"/> _____ Committee |  |

Reviewed by  
City Administrator /s/John Lowe Date: 04/05/2023

ATTACHMENTS: Application materials, Ordinance, P & Z Minutes.

ORDINANCE NO. 2023-06

AN ORDINANCE REZONING PART OF "R-R" RURAL RESIDENTIAL DISTRICT TO "C-2" COMMERCIAL 2 DISTRICT FOR AN APPROXIMATELY 20.86 ACRE PROPERTY, LOCATED AT 3618 & 3619 HARVEST LANE., LEGALLY DESCRIBED AS TRACT 1 & TRACT 2, THAD WINN TRACTS NO. 2 SUBDIVISION PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that:

The official zoning map of the City is hereby amended to rezone part of "R-R" Rural Residential District to "C-2" Commercial 2 District, for an approximately 20.86 acre property, located at 3618 & 3619 Harvest Lane., legally described as:

Tract 1 & Tract 2, Thad Winn Tracts No. 2 Subdivision

INTRODUCED, PASSED, ADOPTED AND APPROVED this 11<sup>th</sup> day of April, 2023.

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DALE JANWAY, MAYOR

ATTEST:

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CITY CLERK

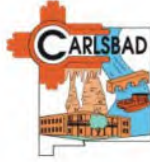
**MINUTES OF THE REGULAR MEETING OF THE**

**City of Carlsbad  
Planning & Zoning Commission**

**Monday, March 6, 2023 at 5:00 p.m.**

**Meeting Held in the Janell Whitlock Municipal Complex Council Chambers  
114 S. Halagueno St.**





CITY OF CARLSBAD  
CARLSBAD, NEW MEXICO

**PLANNING AND ZONING COMMISSION**

Monday, March 6, 2023 at 5:00 PM  
Janell Whitlock Municipal Complex Council Chambers  
114 S. Halagueno Street

1. Roll call of voting members and determination of quorum
2. Approval of Agenda
3. Approval of Minutes from the Meeting held February 6, 2023
4. Consider approval of a Conditional Use Permit to allow a Chickens for the property located at 513 N. Halagueno St., zoned "R-2" Residential 2 District zoning
5. Consider approval of a Variance to allow a 9' front setback for the property located at 900 Fountain Dr., zoned "R-1" Residential 1 District zoning
6. Consider approval of a Variance to allow a 4' side setback and a 4' rear setback for the property located at 3706 Saguaro Dr., zoned "R-1" Residential 1 District zoning
7. Consider approval of a Variance to allow the storage of an operable recreation vehicle (boat) in the front setback for the property located at 1108 Tracy Pl., zoned "R-1" Residential 1 District zoning
8. Consider a recommendation to Council for an application of zoning from "R-R" Rural Residential District to "C-2" Commercial 2 District for approximately 2.964 acres, located at 2013 San Jose Blvd, legally described as Tract 4, Old Rose Farm #3 Subdivision
9. Consider a recommendation to Council for an application of zoning from "C-2" Commercial 2 District to "R-1" Residential 1 District for approximately 0.138 acres, located at 106 N. Fourth St, legally described Lot 24, Block E, Hughes 2<sup>nd</sup> Subdivision
10. Consider a recommendation to Council for an application of zoning from "R-R" Rural Residential District to "C-2" Commercial 2 District for approximately 20.86 acres, located at 3618 & 3619 Harvest Ln, legally described as Tract 1 & Tract 2, Thad Winn Tracts No. 2 Subdivision



11. Consider a recommendation to Council for an application of zoning from “R-1” Residential 1 District to “C-2” Commercial 2 District for approximately 1.66 acres, located at 209 W. Pecan St., legally described as Lots 4 & 5, Block M, Hemler Subdivision
12. Consider a recommendation to Council for an Annexation of approximately 819.91 acres located west of Dona Ana St, Holland St, & Opal St.
13. Consider a recommendation to Council for an application of zoning from County to “I-Industrial” District for approximately 819.91 acres located west of Dona Ana St, Holland St, & Opal St.
14. Report regarding Summary Review Subdivisions
15. Adjourn



**FOR INFORMATION ONLY**

Agendas and Planning and Zoning Commission meeting minutes are available on the City web site:

[cityofcarlsbadnm.com](http://cityofcarlsbadnm.com)

or may be viewed in the Office of the City Clerk or at the Carlsbad Public Library during normal and regular business hours

**PLANNING AND ZONING COMMISSION MEETING SCHEDULE**

- Regular meeting – Monday, April 3, 2023 at 5:00 p.m.

<p>If you require hearing interpreter, language interpreters or auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator’s office at (575) 887-1191 at least 48 hours prior to the scheduled meeting time.</p>
---

**MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING &  
ZONING COMMISSION HELD IN THE JANELL WHITLOCK MUNICIPAL COMPLEX  
COUNCIL CHAMBERS,  
114 S. HALAGUENO STREET, MARCH 6, 2023 AT 5:00 P.M.**

**VOTING MEMBERS PRESENT:**

**JAMES MCCORMICK  
BRAD NESSER  
TRENT CORNUM  
LINDA WILSON  
VALERIE BRANSON**

**CHAIRPERSON  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER**

**VOTING MEMBERS ABSENT:**

**NONE**

**EX-OFFICIO MEMBERS PRESENT:**

**JEFF PATTERSON  
TRYSHA ORTIZ**

**PLANNING DIRECTOR  
DEPUTY PLANNING DIRECTOR**

**SECRETARY PRESENT:**

**JUDITH WEBSTER**

**PLANNING AND REGULATION  
DEPARTMENT SECRETARY**

**OTHERS PRESENT:**

**DENISE MADRID BOYEA  
RICHARD PACHECO  
SEAN HARPER  
ANGIE HARPER  
GEORGE DUNAGAN  
KORINA DOPORTO  
RAY DOPORTO  
BENJAMIN SANCHEZ  
STEPHANIE MERVINE  
DAWNA DOWNING  
EVELYN SALCIDO  
KAYLIE DOWNING  
JEANNIE KARTCHNER  
TODD KARTCHNER  
JULIE MEADORS  
JALIE MEADORS  
ADDIE AGUILAR  
MONICA SIAS  
KIRISTY ORTEGA  
NATHAN SIAS  
DEREK SENIOR  
CLARA SENIOR  
JUSTY VAUGHAN  
JULIE KLEIN  
SANDI WILKIE  
DEBRA SIMMONS  
THAD WINN  
TARA LAMB  
JAMES WILKIE**

**CITY ATTORNEY  
3706 SAGUARO  
900 FOUNTAIN  
900 FOUNTAIN  
212 W. STEVENS  
309 N. FIRST  
309 N. FIRST  
1108 TRACY PL.  
CARLSBAD DEPT. OF DEVELOPMENT  
3500 HARVEST LN.  
1108 TRACY PL.  
3500 HARVEST LN.  
2210 OPAL  
2210 OPAL  
513 N. HALAGUENO  
513 N. HALAGUENO  
210 L. ST.  
204 L. ST.  
204 L. ST.  
204 L. ST.  
904 FOUNTAIN DR.  
904 FOUNTAIN DR.  
816 FOUNTAIN DR.  
3113 DONA ANA  
3012 DONA ANA  
2302 OPAL  
3618 HARVEST LN.  
3619 HARVEST LN.  
2402 PANDANARAM**

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:02 Start Recording [5:00:15 PM]

0:00:04 **1. Roll call of Voting Members and Determination of Quorum**

Roll was called, confirming the presence of a quorum of commission members. The following members were present— **Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson**. Absent—None.

0:00:22 **2. Approval of Agenda**

**Mr. Patterson** states there is a correction on Item #13 on the Agenda; it should be “I-Industrial District” Zoning, instead of “R-R Rural Residential District” Zoning.

**Mr. Cornum** made a motion to approve the Agenda with the correction; **Ms. Wilson** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson**. No—None. Absent—None. Abstained—None. The motion carried.

0:01:20 **3. Approval of Minutes from the Meeting held February 6, 2023**

**Ms. Wilson** made a motion to approve the Minutes from the regular meeting held on February 6, 2023; **Ms. Branson** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson**. No—None. Absent—None. Abstained—None. The motion carried.

0:01:56 **4. Consider approval of a Conditional Use Permit to allow a Chickens for the property located at 513 N. Halagueno St., zoned “R-2” Residential 2 District zoning**

The applicant, **Julie Meadors**, comes to the podium. **Mr. Patterson** explains the request is to allow up to three chickens at the property, which requires a Conditional Use permit. The Planning Dept. recommends approval of this request. **Ms. Meadors** explains she just likes chickens and most of her neighbors are okay with her having chickens. Floor opened for public comment; there was none.

**Ms. Wilson** made a motion for approval; **Mr. Cornum** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson**. No—None. Absent—None. Abstained—None. The motion carried.

0:05:36 **5. Consider approval of a Variance to allow a 9’ front setback for the property located at 900 Fountain Dr., zoned “R-1” Residential 1 District zoning**

The applicants, **Sean and Angie Harper**, come to the podium. **Mr. Patterson** explains this request to reduce the front setback from 30’ to 9’ to allow a 29’ x 25’ enclosed garage to be built in front of the house. The Planning Dept. recommends denial of this request. **Mr. Patterson** states upon review of the request, there is already a garage at the property; and this would be just an extension into the setback. The ordinance does not allow for extensions into the setback unless there is a need based on the property itself; so this does not meet those requirements. **Mr. Harper** states he purchased the home a year ago, and has already spent about \$250,000 on renovations. The house was built in the 1970s and the garage is too small. He passes out photos to the commissioners showing improvements to the property. Floor opened for public comment. **Justy Vaughan** comes to podium stating she lives to the south, and she is in favor of

the garage being built. **Derek Senior** comes to the podium, stating he lives nearby and feels this would increase the value of all the properties nearby. He is very much in favor of this request. **Ms. Branson** asks what were the objections from the Public Works and Utilities Departments? **Mr. Patterson** states it is because it did not meet the criteria in the ordinance.

**Ms. Wilson** made a motion for approval; **Mr. Cornum** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No—None. Absent—None. Abstained—None. The motion carried.

0:17:08      **6. Consider approval of a Variance to allow a 4' side setback and a 4' rear setback for the property located at 3706 Saguaro Dr., zoned "R-1" Residential 1 District zoning**

The applicant, **Richard Pacheco**, comes to the podium. **Mr. Patterson** explains this request is to allow a 4' side setback as opposed to the required 5' and a 4' rear setback instead of the required 20' setback. He would like to place a 15' x 25' metal shed in the southeast corner of the property. After review, the Planning staff recommends denial of this request. **Mr. Patterson** states this is because it does not meet the criteria in the ordinance. **Mr. Pacheco** states his new house doesn't have room for storage. He wants to put his vehicles and tools in the shed, which will also be a garage. It will access from Saguaro St.; there will never be an alley or easement behind the property. Floor opened for public comment. There was none.

**Ms. Wilson** made a motion for approval; **Mr. Cornum** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— **Mr. Nesser.** Absent—None. Abstained—None. The motion carried.

0:24:55      **7. Consider approval of a Variance to allow the storage of an operable recreation vehicle (boat) in the front setback for the property located at 1108 Tracy Pl., zoned "R-1" Residential 1 District zoning**

The applicant, **Benjamin Sanchez**, comes to podium. **Mr. Patterson** explains the applicant currently is storing a boat in the front setback at this property. The Planning staff recommends approval. **Mr. Sanchez** states there is no access from the rear of the property; there is no alley, and there is no other place to store it. He has a carport and it has other vehicles, such as his ATV, parked in it. Floor opened for public comments. **John Bowen** comes to the podium. He states he has lived on Tracy Place for a number of years. He states the applicant could store the boat in the carport or somewhere else and keep with the ordinance. He states the applicant also has a utility trailer in the front as well. He is against this variance. He would like the ordinance to be enforced. **Mr. Sanchez** states he has the support of some of the neighbors; he uses the utility trailer for hauling trash, etc. and his neighbors have no problem with it. **Ms. Branson** states that she has noticed that many homes have boats, utility vehicles, and non-operable cars in the front of the house and the running vehicles are parked on the street. She notes this is all over Carlsbad. **Ms. Wilson** asks **Mr. Sanchez** if the boat is parked there currently. **Mr. Sanchez** says it is. **Ms. Wilson** states she has a house on Tracy Place that she is currently working on and she has not noticed **Mr. Sanchez's** boat. **Mr. Sanchez** says his boat is covered and well taken care of; and is placed up against the house. He states he has not had one single complaint from any neighbor. **Mr. Bowen** states he has noticed the parking of excess vehicles in Carlsbad, too; but it does not make it permissible. He states **Mr. Sanchez** and everyone should adhere to the ordinances and keep the city clean as it is supposed to be. He would like the Planning & Zoning Commission to enforce the ordinance. He asks **Ms. Wilson** if her house on Tracy Place is currently occupied. She states it is not. He comments there have been transients in the neighborhood. He notes there is also a utility trailer in the front yard of the applicant's house and he states there are storage facilities he could use instead. **Mr. Cornum** asks the applicant if he can fit the boat in the carport. The applicant states he could, if he moved other vehicles out. He has a motorcycle and a UTV that would have to be moved into the yard; but then he would be in violation again.



**Ms. Wilson** made a motion for approval; **Mr. Nesser** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Cornum, Ms. Wilson.** No— **Mr. Nesser, Ms. Branson.** Absent—None. Abstained—None. The motion carried.

0:38:28        **8.        Consider a recommendation to Council for an application of zoning from “R-R” Rural Residential District to “C-2” Commercial 2 District for approximately 2.964 acres, located at 2013 San Jose Blvd, legally described as Tract 4, Old Rose Farm #3 Subdivision**

The applicant does not attend. **Mr. Patterson** states that he spoke to the representative of the applicant and told them they needed to attend.

**Mr. Nesser** made a motion to table this item until the next meeting; **Ms. Branson** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion carried.

0:40:37        **9.        Consider a recommendation to Council for an application of zoning from “C-2” Commercial 2 District to “R-1” Residential 1 District for approximately 0.138 acres, located at 106 N. Fourth St, legally described Lot 24, Block E, Hughes 2nd Subdivision**

The applicants, **Ray** and **Korina Doporto**, come to the podium. **Mr. Patterson** explains this request is to correct a mistake in the zoning. He states it appears as if the Commercial zoning was applied incorrectly to the property. The applicants want to sell the property and need the Zoning corrected. The Planning Dept. recommends approval of this request. **Mr. Doporto** states he did not know it was zoned Commercial until selling it and the buyer wanted to change it to Residential. **Mr. McCormick** clarifies the address is 106 N. Fourth St. Floor opened for public comment. **Stephanie Mervine** of the Carlsbad Department of Development comes to the podium to support the zone change.

**Ms. Branson** made a motion for approval; **Mr. Nesser** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion carried.

**Mr. Patterson** tells the applicants that Zone Changes have to go to City Council for final approval. They will be scheduled on April 11, 2023.

0:45:31        **10.        Consider a recommendation to Council for an application of zoning from “R-R” Rural Residential District to “C-2” Commercial 2 District for approximately 20.86 acres, located at 3618 & 3619 Harvest Ln, legally described as Tract 1 & Tract 2, Thad Winn Tracts No. 2 Subdivision**

The applicant, **Thad Winn**, comes to the podium. **Mr. Patterson** explains this request is to change the property to Commercial Zoning from Rural-Residential to take advantage of the development that will follow the West Bypass completion. **Mr. Patterson** states this would create a spot zone. He states he had one phone call in opposition from Ray Trout, a nearby resident. Floor opened for public comment. **Dawna Downing** comes to the podium, stating she is a neighbor at 3500 Harvest Lane which borders Mr. Winn’s property. She has animals and does not want Industrial property next to her, or the access through her property to the Industrial area. She was unaware when she bought the property that they were going to put in a bypass road.

**Mr. Cornum** made a motion for approval; **Mr. Nesser** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion carried.

**Mr. Patterson** states this will go to City Council on April 11, 2023 for final approval.

0:54:42

**11. Consider a recommendation to Council for an application of zoning from “R-1” Residential 1 District to “C-2” Commercial 2 District for approximately 1.66 acres, located at 209 W. Pecan St., legally described as Lots 4 & 5, Block M, Hemler Subdivision**

The applicants, **Carolyn** and **Daniel Banks**, come to the podium. **Mr. Patterson** explains this request is for a Zone Change from Residential to Commercial Zoning. The Planning staff recommends tabling this item until the property is brought into compliance with City Codes and Ordinances. **Ms. Banks** states she raised her children in the house on the property, but does not want it to be used as a residence in the future, because of things that happened there in the past. She has a son-in-law who repairs appliances and needs to use the property for that; as well as a possible mechanic shop. **Daniel Banks** states the property is really two lots, not one, and the lot with the house on it is the one **Ms. Banks** wants to re-zone to Commercial. He states she wants to tear that house down and then build a commercial structure. He states he is unaware of the zoning violations; but they have received a number of letters from the City and has taken care of all of them. He states the area has many vagrants and the house has no utilities. He confirms that they want commercial zoning only on the one lot. **Ms. Banks** states the house has things in it from her son-in-law and wants it used for storage. **Mr. Patterson** states the accumulation of junk and debris on the property is the problem; and changing the zoning to commercial for a mechanic’s shop would increase the junk and debris accumulation. **Mr. Patterson** states his department has received numerous complaints on this property regarding the steady stream of people, the junk, and the garbage and trash. He states that Code Enforcement, Animal Control and the Building Dept. have all been involved, and the structure is red-tagged, meaning it is uninhabitable. He states the most appropriate course of action would be to have the property brought into compliance and then proceed with the Zone Change action. **Ms. Banks** states there is no one living in the house at this time. **Mr. Patterson** states when they visited the property there were two RVs with people living in them. **Mr. McCormick** clarifies that the recommendation is for the property to be cleaned up and brought into compliance before moving forward with the Zone Change application. **Ms. Wilson** asks if the entire property would become more valuable once the house is torn down. **Ms. Banks** states it is too expensive for them to tear it down themselves. She thinks the property would be ideal for a mechanic shop because O’Reilly’s is nearby. **Mr. Patterson** states the Building Official would have to determine if the structural integrity of the existing structure is failing, and then it could go to City Council for a Condemnation order. The property would then be cleaned up. **Ms. Ortiz** clarifies if they took a condemnation action it would apply to both lots; and then a lien would be placed against the property. **Mr. Cornum** asks about the process of condemnation. **Mr. Patterson** states the City has a contractor on call who would clean up the property and bill the City, the City pays the bill and the lien placed on the property in that amount. The applicants would have to consider the lien if they want to develop the property. Condemnations range anywhere from \$15,000 to \$30,000 depending on amount and weight of debris to be hauled away. They would not have to pay the lien immediately. **Mr. Patterson** states the condemnation would solve the immediate problem of clean up and eliminating the vagrants, the structure and the debris, but the City would not maintain the property afterwards. If the property accumulates debris again, The City would have to address it. **Mr. Patterson** states if they could find a buyer and settle the lien, then the property would have clean title. **Ms. Ortiz** reminds them that the Building Dept. makes the decision if the home needs to be torn down. The property could be condemned without tearing down the house if it is determined to be structurally sound. The burned out storage building behind the house and the debris around the house would be removed. **Ms. Banks** states the house is probably structurally sound. She states she may proceed with clean up. The floor opened for public comment. **Monica Sias** comes to the podium stating she lives at 204 L Street, which is behind the subject property, and **Addie Aguilar** comes to the podium stating she lives at 210 L Street. **Ms. Sias** has lived there for seventeen years and is a single mother. She states people come through her property to the subject property. She states they have fires and she feels bad for them. There is a bunch of drug activity and people walking around at all hours. She is opposed to the zone change because they cannot even get the property as it is cleaned up. **Ms. Aguilar** states there are people living in the RV with people coming and going all night long. **Ms. Sias** states they just want to voice their opinion regarding this property. **Nathan Sias** comes to the podium, he lives at 204 L Street, stating he walks his dog at night and sees people walking around and drug activity. **Mr. Patterson** states he will have the Building Dept. inspect the house to determine whether it needs to be torn down. **Mr. Banks** asks if it would buy them some time if

they tabled this request giving them time to take care of some of these issues. He says he knows there are issues. He feels bad for the neighbors on the other side of the fence. He is aware of the drug problem and he has told the people to leave. **Mr. Patterson** states his recommendation is that the item be tabled until Code Enforcement could verify that the code violations listed have been taken care of; and then the item come back to the Commission. **Mr. Banks** is informed that letters regarding these violations have been sent to them; but he states he hasn't received any letters. **Mr. Patterson** states the Code Enforcement violations are the same ones listed in the packet.

**Mr. Nesser** made a motion to table this item until the Planning Dept. brings it forward again; **Mr. Cornum** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No—None. Absent—None. Abstained—None. The motion carried.

1:27:48      **12. Consider a recommendation to Council for an Annexation of approximately 819.91 acres located west of Dona Ana St, Holland St, & Opal St.**

The applicant's representative, **George Dunagan**, comes to the podium. **Mr. Patterson** explains this request is to annex 819.91 acres west of Standpipe Rd. The property is contiguous with the current City limits that extend off Martin and Standpipe Rds. The Planning staff recommends approval of this request. **Mr. Dunagan** represents the owner, Nyman Limited Partnership. Floor opened for public comment. **Jeannie and Todd Kartchner** come to the podium, stating that they own 2210 and 2218 Opal St. Her current property is north of Hidalgo Rd., and they have acquired eight oil field companies in the last seven years all the way around their property. They would like to move to their house on Opal St. because it is peaceful. She states if they build an oil company near them, and they can't build a fence high enough. She has people dumping trash and using drugs, which she has tried to run off. She has talked to Mr. Nyman, and Mr. Nyman told her she could put a gate on Opal St. to keep people off. She does not want any more oil field development. **Mr. McCormick** states this is just a consideration for annexation. **Ms. Kartchner** asks if they would be forced to annex themselves and have to come into compliance with City rules, which she does not want. **Debra Simmons** comes to the podium, stating she owns 2302 Opal St. and has lived there for 30 years because she likes the privacy and has animals; she has an easement off Martin Ln. and is concerned with annexation bringing traffic and loss of privacy and peace. There is a pipeline east of her property going through the dike that concerns her as well. She states she does not want Opal St. annexed into the City. **Sandi Wilkie** comes to the podium stating she owns 3012 Dona Ana St. and 2402 Pandanaram St. She is against the annexation and has no interest in being part of the City. They are ranchers and wean calves there, they have five generations on that property. She is concerned about drawing the flood water diversion into the City limits. The diversion belongs to the Hackberry Draw Watershed District and has permanent easement in perpetuity and she states they were not notified of this meeting regarding annexation. The diversion was built in the 1960s and upgraded in 1982; it is a hundred year flood structure and is constructed to carry 4485 cubic feet per second during a 100 year event; it is 3.6 miles long and protects about 500 family homes and businesses. Any development around it, including the West Loop Road, could degrade it, and if it is degraded to the point it fails, it would impact this area all the way to Radio Blvd., where it goes into Boyd. It concerns her that the City has not approached the Hackberry Draw Watershed District about this. She understands per property is not part of the annexation at this point, but feels it will be in the future. She suggests if it does get annexed, it not be zoned Industrial because it impacts the safety of many people. **Julie Klein** comes to the podium, stating she lives at 3113 Don Ana St. Her concern is that she does not want to be annexed into the City. Her property is adjacent to the Nyman Tract. The Water Diversion Dike should concern everyone. **Rosemary Wilkie** comes to the podium. She states she lives on Pandanaram Ln. These houses around her are protected by the dike. The road is right up against it. She has seen the dike run completely full several times. There is a 40' drop in elevation from Dona Ana St. to Standpipe Rd. The dirt that comprises the dike is moving from the heavy equipment going over it. She is very much against being in the City limits, and five generations of her family have lived there. She is against the annexation. **Mr. McCormick** reminds the commission that this item is just for the Annexation of the Nyman Tract, not the Zoning. **Mr. Cornum** asks if there is a hard and fast rule about the City annexing properties. **Mr. Patterson** clarifies



that if the City annexes property, it is not allowed to create an “island” – an area of County surrounded by City. He speculates that if the properties south of Dona Ana were to annex, it may cause forced annexation. The action only concerns the Nyman Tract at this meeting. He states it would be a private agreement with land owners and Mr. Nyman regarding access of Opal St. He states if the County is not maintaining Opal St., then the City would not either. **Mr. Cornum** asks **Mr. Dunagan** if an easement around that dike has been discussed; the dike provided a large buffer to the residents. **Mr. Dunagan** does not come to the podium and his response is inaudible. **Mr. Patterson** affirms that the section with the dike must be annexed along with the part west of the dike because it is contiguous with the City limits. **Mr. Cornum** asks if there is any developable land to the east of the bypass; possibly providing a buffer and protecting the dike if not. **Mr. Cornum** states there is usually more maintenance and rules in the City, and the County has less restrictions. **Mr. Nesser** asks where the City boundary is to the east. **Ms. Wilkie** asks why the City would want to annex that land, it is just fields. **Mr. Dunagan** states Mr. Nyman is going to sell the property. There is more discussion in the gallery, but it is inaudible. **Mr. Nesser** states he is not comfortable voting without getting more information; he would like to table it to the May meeting. **Mr. McCormick** states once it is zoned Industrial they can do anything that fits that zoning. They are not required to give their plan for the property with the annexation action. **Mr. Patterson** suggests that if this is tabled, they need to give the applicants a list of questions to get answered. The commission cannot condition an annexation as to what the applicants can do with it. When they bring in plans for their development would be the time to address the criteria in the development. They can compile a list of concerns and questions for Mr. Dunagan and Mr. Nyman. **Mr. Cornum** states what is concerning him is the east area of the annexation, but he has no objection to the annexation. The unknowns on the east side of the bypass is his concern. He asks if **Mr. Patterson** has any knowledge the City force-annexing any property. **Mr. Patterson** states when the City annexed the property near Standpipe and Lea some properties were force-annexed into the City. He states the owner of the annexed property usually wants City services: water, sewer, police protection, etc.

**Mr. Cornum** made a motion for denial; **Ms. Wilson** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion for denial carried.

2:17:36            **13. Consider a recommendation to Council for an application of zoning from County to “R-R” Rural Residential District for approximately 819.91 acres located west of Dona Ana St, Holland St, & Opal St.**

**Mr. Patterson** explains this is on the Agenda, and must be voted on.

**Ms. Wilson** made a motion for denial; **Mr. Nesser** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion for denial carried.

2:20:50            **14. Report regarding Summary Review Subdivisions**

**Mr. Patterson** gave a report on the Summary Reviews. Nothing unusual was noted.

2:22:07            **15. Adjourn**

The meeting was adjourned.

2:22:17            Stop Recording [7:22:33 PM]



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Chairman

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Date

DRAFT



Receipt Date Stamp

CITY OF CARLSBAD
Planning, Engineering, and
Regulation Department
PO Box 1569, Carlsbad, NM 88221
Phone (575) 885-1185
Fax (575) 628-8379

ZONING CHANGE APPLICATION

Sec. 56-150(b)

Application Date: 2/2/23
Existing Zoning: R-R

Fee Paid (\$100.00):
Proposed Zoning: C-2

APPLICANT INFORMATION:

Thaddaeus Winn & Tara Lamb 1330 Tierra Verde Loop NW

NAME ADDRESS
Los Lunas NM 87031 (575) 200-2034 thadwinn@yahoo.com
CITY STATE ZIP PHONE EMAIL

PROPERTY OWNER INFORMATION (attach separate sheet for multiple owners):

Tara Lamb 1330 Tierra Verde Loop NW

NAME ADDRESS
Los Lunas NM 87031 (480) 329-0676 Tara.Lamb@env.nm.gov
CITY STATE ZIP PHONE EMAIL

\* A signed affidavit from the property owner(s), consenting to submittal of the application, must be included with the application.

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (INCLUDE A MEETS AND BOUNDS DESCRIPTION FOR UNPLATTED LAND, ATTACH SEPARATE SHEET, IF NECESSARY):

3618 & 3619 Harvest Lane Tract 1 & Tract 2, Thad Winn Tracts No. 2
ADDRESS LOT BLOCK SUBDIVISION

**REASON FOR THE REQUEST**

An amendment to the Official Zoning Map or to the Text of the Zoning Ordinance must be justified by one or more of the following. Check all that apply:

- The proposed amendment will not adversely impact the public health, safety or general welfare and will or will not promote the original purposes of the Zoning Ordinance.
- The proposed amendment responds to changed conditions, such as changes in public capital investments, road locations or functional classification, population trends, density, use or further studies that have been completed since adoption of the Zoning Ordinance.
- The proposed amendment is necessary in order to respond to State and/or Federal legislation.
- The proposed amendment provides additional flexibility in meeting the objectives of this Zoning Ordinance without lowering the standards of the Zoning Ordinance.
- The proposed amendment is in substantial compliance with the City's Comprehensive Plan or other City Master Plan.
- The proposed amendment will not adversely affect the implementation of the goals and policies of the City's Comprehensive Plan or other City Master Plan.
- The proposed amendment will correct a mistake in the Official Zoning Map or the text of the Zoning Ordinance.
- The proposed amendment is justified in order to respond to changes in the City's Comprehensive Plan or other City Master Plan including, but not limited to, changes in land use assumptions, surrounding uses, population forecasts, rates of land consumption, anticipated community needs or other factors.

**FOR OFFICIAL USE ONLY:**

**Required prior to P & Z:**

Complete Application Including:  Map  Fee  Letter  Notification  Sign Agreement

**Required prior to City Council:**

Council Hearing Date: \_\_\_\_\_ Publication Date: \_\_\_\_\_

Property Owner Notification Sent (within 100' minimum.): \_\_\_\_\_

ABM  Staff Comments  Application Packet  Draft Ordinance  P&Z Minutes

Council Action:  Approved  Denied  Other Ordinance No.: \_\_\_\_\_



# NOTIFICATION SIGN POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.

*Laura Cobb*  
 APPLICANT SIGNATURE

2/2/2023  
 DATE

Sign issued by: \_\_\_\_\_  
 Staff Member

Notification Agreement Rev. 10/11



Receipt Date Stamp

CITY OF CARLSBAD

Planning, Engineering, and Regulation Department
PO Box 1569, Carlsbad, NM 88221
Phone (575) 885-1185
Fax (575) 628-8379

ZONING CHANGE APPLICATION

Sec. 56-150(b)

Application Date: 2/2/2023
Existing Zoning: R-R

Fee Paid (\$100.00):
Proposed Zoning: C-2

APPLICANT INFORMATION:

Thaddaeus Winn & Tara Lamb 1330 Tierra Verde Ln NW
NAME ADDRESS
Los Lunas NM 87031 (575) 200-2034 thadwinn@yahoo.com
CITY STATE ZIP PHONE EMAIL

PROPERTY OWNER INFORMATION (attach separate sheet for multiple owners):

Thaddaeus Winn 1330 Tierra Verde Loop NW
NAME ADDRESS
Los Lunas NM 87031 (575) 200-2034 thadwinn@yahoo.com
CITY STATE ZIP PHONE EMAIL

\* A signed affidavit from the property owner(s), consenting to submittal of the application, must be included with the application.

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (INCLUDE A MEETS AND BOUNDS DESCRIPTION FOR UNPLATTED LAND, ATTACH SEPARATE SHEET, IF NECESSARY):

3618 & 3619 Harvest Lane Tract 1 & Tract 2, Thad Winn Tracts No. 2
ADDRESS LOT BLOCK SUBDIVISION

**REASON FOR THE REQUEST**

An amendment to the Official Zoning Map or to the Text of the Zoning Ordinance must be justified by one or more of the following. Check all that apply:

- The proposed amendment will not adversely impact the public health, safety or general welfare and will or will not promote the original purposes of the Zoning Ordinance.
- The proposed amendment responds to changed conditions, such as changes in public capital investments, road locations or functional classification, population trends, density, use or further studies that have been completed since adoption of the Zoning Ordinance.
- The proposed amendment is necessary in order to respond to State and/or Federal legislation.
- The proposed amendment provides additional flexibility in meeting the objectives of this Zoning Ordinance without lowering the standards of the Zoning Ordinance.
- The proposed amendment is in substantial compliance with the City's Comprehensive Plan or other City Master Plan.
- The proposed amendment will not adversely affect the implementation of the goals and policies of the City's Comprehensive Plan or other City Master Plan.
- The proposed amendment will correct a mistake in the Official Zoning Map or the text of the Zoning Ordinance.
- The proposed amendment is justified in order to respond to changes in the City's Comprehensive Plan or other City Master Plan including, but not limited to, changes in land use assumptions, surrounding uses, population forecasts, rates of land consumption, anticipated community needs or other factors.

**FOR OFFICIAL USE ONLY:**

**Required prior to P & Z:**

Complete Application Including:  Map  Fee  Letter  Notification  Sign Agreement

**Required prior to City Council:**

Council Hearing Date: \_\_\_\_\_ Publication Date: \_\_\_\_\_

Property Owner Notification Sent (within 100' minimum.): \_\_\_\_\_

ABM  Staff Comments  Application Packet  Draft Ordinance  P&Z Minutes

Council Action:  Approved  Denied  Other Ordinance No.: \_\_\_\_\_



CITY OF CARLSBAD
AFFIDAVIT BY PROPERTY OWNER(S)

IF AN APPLICATION IS MADE BY SOMEONE OTHER THAN THE PROPERTY OWNER THIS FORM MUST ACCOMPANY THE APPLICATION MATERIALS.

APPLICATION TYPE:

ZONING CHANGE [ ] CONDITIONAL USE [ ] VARIANCE [ ] TEMPORARY USE

STATE OF NEW MEXICO )
COUNTY OF EDDY ) SS

I (WE) HEREBY CERTIFY that I am (we are) the owners of record of the property described as follows:

ADDRESS OF PROPERTY: 3618 3619 Harvest Lane
STREET ADDRESS

LEGAL DESSCRPTION: Tract 1 Tract 2
SUBDIVISION BLOCK LOT OR TRACT

I (WE) HAVE AUTHORIZED the following individuals to act as my (our) agent with regard to this application.

AGENT: NAME PHONE ADDRESS

I (WE) UNDERSTAND, CONCUR AND AFFIRM:

That this application may be approved, approved with conditions or denied and that, as the property owner, it is my responsibility to ensure that any conditions are complied with and to ensure that the property is maintained in a condition so as not to jeopardize the health, safety or welfare of others and that compliance with all applicable City ordinances is required, and

I (WE) HEREBY EXECUTE THIS AFFIDAVIT in support of the proposed application as presented:

OWNER 1:
BY: [Signature]
SIGNATURE

BY: Thaddaeus Winn
PRINTED NAME

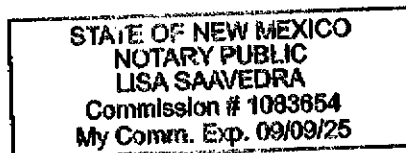
ACKNOWLEDGED, SUBSCRIBED, AND SWORN

to before me this 2nd day of February, 20 23, by Thaddaeus Winn

Notary Public Lisa Saavedra

My commission expires: 9/9/25

(ADDITIONAL OWNERS: ATTACH SEPARATE SHEETS AS NECESSARY)



# NOTIFICATION SIGN POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.

  
 \_\_\_\_\_  
 APPLICANT SIGNATURE

2-2-23  
 DATE

Sign issued by: \_\_\_\_\_  
 Staff Member

Date: \_\_\_\_\_

Dear Property Owner,

This letter serves as legal notification of a pending action before the City of Carlsbad Planning and Zoning Commission in accordance with Code of Ordinances Sec. 56-140(i). You are being notified because you are a property owner within one-hundred feet (100') of the subject site.

Applicant: Thaddaeus Winn & Tara Lamb  
Name Address Phone

Subject Site Location: 3618 & 3619 Harvest Lane

The proposed action is a:

Zoning Change from R-R to C-2 in accordance with Sec. 56-150(b).

Variance/Appeal from Sec. \_\_\_\_\_ in accordance with Sec. 56-150(c).

The purpose of the variance/appeal is:

\_\_\_\_\_  
\_\_\_\_\_

Conditional Use Permit in accordance with Sec. 56-150(f). The purpose of the permit is for a:

Home Occupation: \_\_\_\_\_

Other Use: \_\_\_\_\_

**The Planning and Zoning Commission will consider this request at a Public Hearing on:**

**Date:** March 6, 2023

**Time:** 5:00pm

**Place:** City Annex Planning Room

114 S. Halagueno St.

Carlsbad, NM 88220

The Code of Ordinances can be found on the City's website [www.cityofcarlsbadnm.com](http://www.cityofcarlsbadnm.com).

For details about this request contact the applicant OR contact the City Planner at

575-885-1185 or via email at [jepatterson@cityofcarlsbadnm.com](mailto:jepatterson@cityofcarlsbadnm.com).

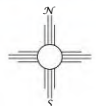
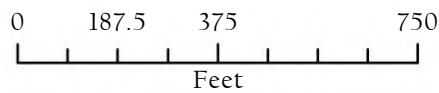
Sincerely,

Applicant/Agent





- Carlsbad Address
- Water Main
- Roads
- Parcel

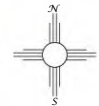
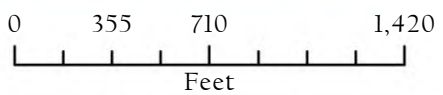


IMPORTANT: Maps, products and data are NOT surveyor quality and are only to be used as a reference.

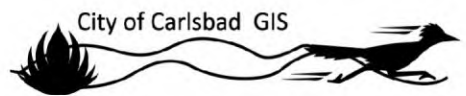




- Carlsbad Address
  - Water Main
  - Roads
  - Parcel
- |  |                      |
|--|----------------------|
| <ul style="list-style-type: none"> <li><span style="display: inline-block; width: 15px; height: 15px; background-color: #c08080; border: 1px solid black;"></span> I</li> <li><span style="display: inline-block; width: 15px; height: 15px; background-color: #90ee90; border: 1px solid black;"></span> R-R</li> </ul> | <p><b>Zoning</b></p> |
|--|----------------------|



IMPORTANT: Maps, products and data are NOT surveyor quality and are only to be used as a reference.





**CITY OF CARLSBAD**  
**AGENDA BRIEFING MEMORANDUM**

Meeting Date: 4/11/2023

<b>DEPARTMENT:</b> Planning & Regulation	<b>BY:</b> Jeff Patterson, Planning Director	<b>DATE:</b> 4/3/2023
--	--	-----------------------

**SUBJECT:** Request for a change of zoning from "C-2" Commercial 2 District to "R-1" Residential 1 District for approximately 0.138 acres, located at 106 N. Fourth St, legally described as Lot 24, Block E, Hughes 2nd Subdivision, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.

Applicant/Owner:  
Ray & Korina Doporto  
106 N. Fourth St.  
Carlsbad, NM 88220

***\*The applicant provided the required notification to property owners within 100' and agreed to post the required sign 5-days prior to the public hearing as required by Sec. 56-140(i). The City will notify the property owners' 15-days prior to the City Council hearing and publish notification in the newspaper 30-days prior to said hearing.***

**SYNOPSIS, HISTORY AND IMPACT** (SAFETY AND WELFARE/FINANCIAL/PERSONNEL/INFRASTRUCTURE/ETC.): Request for a change of zoning from "C-2" Commercial 2 District to "R-1" Residential 1 District for approximately 0.138 acres, located at 106 N. Fourth St, legally described as Lot 24, Block E, Hughes 2nd Subdivision

**Sec. 56-40(b) states:**

**(b) Residential 1 (R-1) District.**

The Residential 1 District is intended to accommodate moderate density single-family residential development and to provide land-use protection for areas that develop in such a manner. There shall be a maximum of one primary residence per lot for R-1 Residential District Zoning.

The properties to the north are zoned "R-1" Residential 1 District; the properties to the east, west & south are zoned "C-2" Commercial 2 District. This will not create a spot zone. The application of "C-2" Commercial 2 District zoning to this property looks to have been mistakenly applied.

Comprehensive Plan: Strategy 2040 goals and policies that are applicable to this request are:

**Chapter 4: Housing & Neighborhoods**

**Objectives:**

- *To encourage the on-going maintenance of rental and owner-occupied properties.*

According to Zoning Ordinance **Sec. 56-150(b)(4). Amendments**, Findings Required, a statement of fact regarding each of the following findings is required:

- (a) The proposed amendment will or will not adversely impact the public health, safety or general welfare and will or will not promote the original purposes of the Zoning Ordinance; and
- (b) The proposed amendment responds or does not respond to changed conditions, such as changes in public capital investments, road locations or functional classification, population trends, density, use or further studies that have been completed since adoption of the Zoning Ordinance; and
- (c) The proposed amendment is or is not necessary in order to respond to State and/or Federal legislation; and

- (d) The proposed amendment provides or does not provide additional flexibility in meeting the objectives of this Zoning Ordinance without lowering the standards of the Zoning Ordinance; and
- (e) The proposed amendment is or is not in substantial compliance with the City's Comprehensive Plan or other City Master Plan; and
- (f) The proposed amendment will or will not adversely affect the implementation of the goals and policies of the City's Comprehensive Plan or other City Master Plan; and
- (g) The proposed amendment is justified in order to correct a mistake in the Official Zoning Map or the text of the Zoning Ordinance; and
- (h) The proposed amendment is justified in order to respond to changes in the City's Comprehensive Plan or other City Master Plan including, but not limited to, changes in land use assumptions, surrounding uses, population forecasts, rates of land consumption, anticipated community needs or other factors.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:** Based on review of the application and staff comments, at their meeting on March 6, 2023, the Planning and Zoning Commission considered this item and recommended approval with a vote of five (5) in favor of approval, none (0) against, none (0) absent and none (0) abstain.

**DEPARTMENT RECOMMENDATION (please check):**

	Approval	Denial	n/a		Approval	Denial	n/a
Public Works	X			Planning, Eng. & Reg. Dept	X		
Fire Department	X			Code Enforcement Division			X
Legal Department	X			Planning Division	X		
Police Department			X	Projects Department			X
Utilities Department	X			Building Division			X

**DEPARTMENT COMMENTS:**

Public Works: Recommend approval

Utilities Department: Recommend approval

Building Department: No comments

Fire Department: Recommend approval

Code Enforcement: No comments

Legal Department: Recommend approval

Planning Department: Recommend approval

Police Department: No comments

Projects Department: No comments

**BOARD/COMMISSION/COMMITTEE ACTION:**

- |   |  |  |  |
|---|--|--|--|
| <input checked="" type="checkbox"/> P&Z | <input type="checkbox"/> Lodgers Tax Board | <input type="checkbox"/> Cemetery Board  | <input checked="" type="checkbox"/> APPROVED |
| <input type="checkbox"/> Museum Board   | <input type="checkbox"/> San Jose Board    | <input type="checkbox"/> Water Board     | <input type="checkbox"/> DISSAPPROVED        |
| <input type="checkbox"/> Library Board  | <input type="checkbox"/> N. Mesa Board     | <input type="checkbox"/> _____ Committee |  |

Reviewed by  
City Administrator /s/John Lowe Date: 04/05/2023

ATTACHMENTS: Application materials, Ordinance, P & Z Minutes.



ORDINANCE NO. 2023-07

AN ORDINANCE REZONING PART OF "C-2" COMMERCIAL 2 DISTRICT TO "R-1" RESIDENTIAL 1 DISTRICT FOR AN APPROXIMATELY 0.138 ACRE PROPERTY, LOCATED AT 106 N. FOURTH ST., LEGALLY DESCRIBED AS LOT 24, BLOCK E, HUGHES 2ND SUBDIVISION PURSUANT TO SECTION 3-21-1 ET. SEQ. NMSA 1978 AND SECTIONS 56-150(B) AND 56-140(I), CARLSBAD CODE OF ORDINANCES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, EDDY COUNTY, NEW MEXICO, that:

The official zoning map of the City is hereby amended to rezone part of "C-2" Commercial 2 District to "R-1" Residential 1 District, for an approximately 0.138 acre property, located at 106 N. Fourth St., legally described as:

Lot 24, Block M, Hughes 2nd Subdivision

INTRODUCED, PASSED, ADOPTED AND APPROVED this 11<sup>th</sup> day of April, 2023.

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DALE JANWAY, MAYOR

ATTEST:

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CITY CLERK

**MINUTES OF THE REGULAR MEETING OF THE**

**City of Carlsbad  
Planning & Zoning Commission**

**Monday, March 6, 2023 at 5:00 p.m.**

**Meeting Held in the Janell Whitlock Municipal Complex Council Chambers  
114 S. Halagueno St.**



CITY OF CARLSBAD  
CARLSBAD, NEW MEXICO

**PLANNING AND ZONING COMMISSION**

Monday, March 6, 2023 at 5:00 PM  
Janell Whitlock Municipal Complex Council Chambers  
114 S. Halagueno Street

1. Roll call of voting members and determination of quorum
2. Approval of Agenda
3. Approval of Minutes from the Meeting held February 6, 2023
4. Consider approval of a Conditional Use Permit to allow a Chickens for the property located at 513 N. Halagueno St., zoned "R-2" Residential 2 District zoning
5. Consider approval of a Variance to allow a 9' front setback for the property located at 900 Fountain Dr., zoned "R-1" Residential 1 District zoning
6. Consider approval of a Variance to allow a 4' side setback and a 4' rear setback for the property located at 3706 Saguaro Dr., zoned "R-1" Residential 1 District zoning
7. Consider approval of a Variance to allow the storage of an operable recreation vehicle (boat) in the front setback for the property located at 1108 Tracy Pl., zoned "R-1" Residential 1 District zoning
8. Consider a recommendation to Council for an application of zoning from "R-R" Rural Residential District to "C-2" Commercial 2 District for approximately 2.964 acres, located at 2013 San Jose Blvd, legally described as Tract 4, Old Rose Farm #3 Subdivision
9. Consider a recommendation to Council for an application of zoning from "C-2" Commercial 2 District to "R-1" Residential 1 District for approximately 0.138 acres, located at 106 N. Fourth St, legally described Lot 24, Block E, Hughes 2<sup>nd</sup> Subdivision
10. Consider a recommendation to Council for an application of zoning from "R-R" Rural Residential District to "C-2" Commercial 2 District for approximately 20.86 acres, located at 3618 & 3619 Harvest Ln, legally described as Tract 1 & Tract 2, Thad Winn Tracts No. 2 Subdivision

11. Consider a recommendation to Council for an application of zoning from “R-1” Residential 1 District to “C-2” Commercial 2 District for approximately 1.66 acres, located at 209 W. Pecan St., legally described as Lots 4 & 5, Block M, Hemler Subdivision
12. Consider a recommendation to Council for an Annexation of approximately 819.91 acres located west of Dona Ana St, Holland St, & Opal St.
13. Consider a recommendation to Council for an application of zoning from County to “I-Industrial” District for approximately 819.91 acres located west of Dona Ana St, Holland St, & Opal St.
14. Report regarding Summary Review Subdivisions
15. Adjourn



**FOR INFORMATION ONLY**

Agendas and Planning and Zoning Commission meeting minutes are available on the City web site:  
[cityofcarlsbadnm.com](http://cityofcarlsbadnm.com)

or may be viewed in the Office of the City Clerk or at the Carlsbad Public Library during normal and regular business hours

**PLANNING AND ZONING COMMISSION MEETING SCHEDULE**

- Regular meeting – Monday, April 3, 2023 at 5:00 p.m.

<p>If you require hearing interpreter, language interpreters or auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator’s office at (575) 887-1191 at least 48 hours prior to the scheduled meeting time.</p>
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**MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING &  
ZONING COMMISSION HELD IN THE JANELL WHITLOCK MUNICIPAL COMPLEX  
COUNCIL CHAMBERS,  
114 S. HALAGUENO STREET, MARCH 6, 2023 AT 5:00 P.M.**

**VOTING MEMBERS PRESENT:**

**JAMES MCCORMICK  
BRAD NESSER  
TRENT CORNUM  
LINDA WILSON  
VALERIE BRANSON**

**CHAIRPERSON  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER**

**VOTING MEMBERS ABSENT:**

**NONE**

**EX-OFFICIO MEMBERS PRESENT:**

**JEFF PATTERSON  
TRYSHA ORTIZ**

**PLANNING DIRECTOR  
DEPUTY PLANNING DIRECTOR**

**SECRETARY PRESENT:**

**JUDITH WEBSTER**

**PLANNING AND REGULATION  
DEPARTMENT SECRETARY**

**OTHERS PRESENT:**

**DENISE MADRID BOYEA  
RICHARD PACHECO  
SEAN HARPER  
ANGIE HARPER  
GEORGE DUNAGAN  
KORINA DOPORTO  
RAY DOPORTO  
BENJAMIN SANCHEZ  
STEPHANIE MERVINE  
DAWNA DOWNING  
EVELYN SALCIDO  
KAYLIE DOWNING  
JEANNIE KARTCHNER  
TODD KARTCHNER  
JULIE MEADORS  
JALIE MEADORS  
ADDIE AGUILAR  
MONICA SIAS  
KIRISTY ORTEGA  
NATHAN SIAS  
DEREK SENIOR  
CLARA SENIOR  
JUSTY VAUGHAN  
JULIE KLEIN  
SANDI WILKIE  
DEBRA SIMMONS  
THAD WINN  
TARA LAMB  
JAMES WILKIE**

**CITY ATTORNEY  
3706 SAGUARO  
900 FOUNTAIN  
900 FOUNTAIN  
212 W. STEVENS  
309 N. FIRST  
309 N. FIRST  
1108 TRACY PL.  
CARLSBAD DEPT. OF DEVELOPMENT  
3500 HARVEST LN.  
1108 TRACY PL.  
3500 HARVEST LN.  
2210 OPAL  
2210 OPAL  
513 N. HALAGUENO  
513 N. HALAGUENO  
210 L. ST.  
204 L. ST.  
204 L. ST.  
204 L. ST.  
904 FOUNTAIN DR.  
904 FOUNTAIN DR.  
816 FOUNTAIN DR.  
3113 DONA ANA  
3012 DONA ANA  
2302 OPAL  
3618 HARVEST LN.  
3619 HARVEST LN.  
2402 PANDANARAM**

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:02 Start Recording [5:00:15 PM]

0:00:04 **1. Roll call of Voting Members and Determination of Quorum**

Roll was called, confirming the presence of a quorum of commission members. The following members were present— **Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** Absent—None.

0:00:22 **2. Approval of Agenda**

**Mr. Patterson** states there is a correction on Item #13 on the Agenda; it should be “I-Industrial District” Zoning, instead of “R-R Rural Residential District” Zoning.

**Mr. Cornum** made a motion to approve the Agenda with the correction; **Ms. Wilson** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No—None. Absent—None. Abstained—None. The motion carried.

0:01:20 **3. Approval of Minutes from the Meeting held February 6, 2023**

**Ms. Wilson** made a motion to approve the Minutes from the regular meeting held on February 6, 2023; **Ms. Branson** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No—None. Absent—None. Abstained—None. The motion carried.

0:01:56 **4. Consider approval of a Conditional Use Permit to allow a Chickens for the property located at 513 N. Halagueno St., zoned “R-2” Residential 2 District zoning**

The applicant, **Julie Meadors**, comes to the podium. **Mr. Patterson** explains the request is to allow up to three chickens at the property, which requires a Conditional Use permit. The Planning Dept. recommends approval of this request. **Ms. Meadors** explains she just likes chickens and most of her neighbors are okay with her having chickens. Floor opened for public comment; there was none.

**Ms. Wilson** made a motion for approval; **Mr. Cornum** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No—None. Absent—None. Abstained—None. The motion carried.

0:05:36 **5. Consider approval of a Variance to allow a 9’ front setback for the property located at 900 Fountain Dr., zoned “R-1” Residential 1 District zoning**

The applicants, **Sean and Angie Harper**, come to the podium. **Mr. Patterson** explains this request to reduce the front setback from 30’ to 9’ to allow a 29’ x 25’ enclosed garage to be built in front of the house. The Planning Dept. recommends denial of this request. **Mr. Patterson** states upon review of the request, there is already a garage at the property; and this would be just an extension into the setback. The ordinance does not allow for extensions into the setback unless there is a need based on the property itself; so this does not meet those requirements. **Mr. Harper** states he purchased the home a year ago, and has already spent about \$250,000 on renovations. The house was built in the 1970s and the garage is too small. He passes out photos to the commissioners showing improvements to the property. Floor opened for public comment. **Justy Vaughan** comes to podium stating she lives to the south, and she is in favor of

the garage being built. **Derek Senior** comes to the podium, stating he lives nearby and feels this would increase the value of all the properties nearby. He is very much in favor of this request. **Ms. Branson** asks what were the objections from the Public Works and Utilities Departments? **Mr. Patterson** states it is because it did not meet the criteria in the ordinance.

**Ms. Wilson** made a motion for approval; **Mr. Cornum** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No—None. Absent—None. Abstained—None. The motion carried.

0:17:08      **6. Consider approval of a Variance to allow a 4' side setback and a 4' rear setback for the property located at 3706 Saguaro Dr., zoned "R-1" Residential 1 District zoning**

The applicant, **Richard Pacheco**, comes to the podium. **Mr. Patterson** explains this request is to allow a 4' side setback as opposed to the required 5' and a 4' rear setback instead of the required 20' setback. He would like to place a 15' x 25' metal shed in the southeast corner of the property. After review, the Planning staff recommends denial of this request. **Mr. Patterson** states this is because it does not meet the criteria in the ordinance. **Mr. Pacheco** states his new house doesn't have room for storage. He wants to put his vehicles and tools in the shed, which will also be a garage. It will access from Saguaro St.; there will never be an alley or easement behind the property. Floor opened for public comment. There was none.

**Ms. Wilson** made a motion for approval; **Mr. Cornum** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— **Mr. Nesser.** Absent—None. Abstained—None. The motion carried.

0:24:55      **7. Consider approval of a Variance to allow the storage of an operable recreation vehicle (boat) in the front setback for the property located at 1108 Tracy Pl., zoned "R-1" Residential 1 District zoning**

The applicant, **Benjamin Sanchez**, comes to podium. **Mr. Patterson** explains the applicant currently is storing a boat in the front setback at this property. The Planning staff recommends approval. **Mr. Sanchez** states there is no access from the rear of the property; there is no alley, and there is no other place to store it. He has a carport and it has other vehicles, such as his ATV, parked in it. Floor opened for public comments. **John Bowen** comes to the podium. He states he has lived on Tracy Place for a number of years. He states the applicant could store the boat in the carport or somewhere else and keep with the ordinance. He states the applicant also has a utility trailer in the front as well. He is against this variance. He would like the ordinance to be enforced. **Mr. Sanchez** states he has the support of some of the neighbors; he uses the utility trailer for hauling trash, etc. and his neighbors have no problem with it. **Ms. Branson** states that she has noticed that many homes have boats, utility vehicles, and non-operable cars in the front of the house and the running vehicles are parked on the street. She notes this is all over Carlsbad. **Ms. Wilson** asks **Mr. Sanchez** if the boat is parked there currently. **Mr. Sanchez** says it is. **Ms. Wilson** states she has a house on Tracy Place that she is currently working on and she has not noticed **Mr. Sanchez's** boat. **Mr. Sanchez** says his boat is covered and well taken care of; and is placed up against the house. He states he has not had one single complaint from any neighbor. **Mr. Bowen** states he has noticed the parking of excess vehicles in Carlsbad, too; but it does not make it permissible. He states **Mr. Sanchez** and everyone should adhere to the ordinances and keep the city clean as it is supposed to be. He would like the Planning & Zoning Commission to enforce the ordinance. He asks **Ms. Wilson** if her house on Tracy Place is currently occupied. She states it is not. He comments there have been transients in the neighborhood. He notes there is also a utility trailer in the front yard of the applicant's house and he states there are storage facilities he could use instead. **Mr. Cornum** asks the applicant if he can fit the boat in the carport. The applicant states he could, if he moved other vehicles out. He has a motorcycle and a UTV that would have to be moved into the yard; but then he would be in violation again.



**Ms. Wilson** made a motion for approval; **Mr. Nesser** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Cornum, Ms. Wilson.** No— **Mr. Nesser, Ms. Branson.** Absent—None. Abstained—None. The motion carried.

0:38:28        **8.        Consider a recommendation to Council for an application of zoning from “R-R” Rural Residential District to “C-2” Commercial 2 District for approximately 2.964 acres, located at 2013 San Jose Blvd, legally described as Tract 4, Old Rose Farm #3 Subdivision**

The applicant does not attend. **Mr. Patterson** states that he spoke to the representative of the applicant and told them they needed to attend.

**Mr. Nesser** made a motion to table this item until the next meeting; **Ms. Branson** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion carried.

0:40:37        **9.        Consider a recommendation to Council for an application of zoning from “C-2” Commercial 2 District to “R-1” Residential 1 District for approximately 0.138 acres, located at 106 N. Fourth St, legally described Lot 24, Block E, Hughes 2nd Subdivision**

The applicants, **Ray** and **Korina Doporto**, come to the podium. **Mr. Patterson** explains this request is to correct a mistake in the zoning. He states it appears as if the Commercial zoning was applied incorrectly to the property. The applicants want to sell the property and need the Zoning corrected. The Planning Dept. recommends approval of this request. **Mr. Doporto** states he did not know it was zoned Commercial until selling it and the buyer wanted to change it to Residential. **Mr. McCormick** clarifies the address is 106 N. Fourth St. Floor opened for public comment. **Stephanie Mervine** of the Carlsbad Department of Development comes to the podium to support the zone change.

**Ms. Branson** made a motion for approval; **Mr. Nesser** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion carried.

**Mr. Patterson** tells the applicants that Zone Changes have to go to City Council for final approval. They will be scheduled on April 11, 2023.

0:45:31        **10.        Consider a recommendation to Council for an application of zoning from “R-R” Rural Residential District to “C-2” Commercial 2 District for approximately 20.86 acres, located at 3618 & 3619 Harvest Ln, legally described as Tract 1 & Tract 2, Thad Winn Tracts No. 2 Subdivision**

The applicant, **Thad Winn**, comes to the podium. **Mr. Patterson** explains this request is to change the property to Commercial Zoning from Rural-Residential to take advantage of the development that will follow the West Bypass completion. **Mr. Patterson** states this would create a spot zone. He states he had one phone call in opposition from Ray Trout, a nearby resident. Floor opened for public comment. **Dawna Downing** comes to the podium, stating she is a neighbor at 3500 Harvest Lane which borders Mr. Winn’s property. She has animals and does not want Industrial property next to her, or the access through her property to the Industrial area. She was unaware when she bought the property that they were going to put in a bypass road.

**Mr. Cornum** made a motion for approval; **Mr. Nesser** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion carried.

**Mr. Patterson** states this will go to City Council on April 11, 2023 for final approval.

0:54:42

**11. Consider a recommendation to Council for an application of zoning from “R-1” Residential 1 District to “C-2” Commercial 2 District for approximately 1.66 acres, located at 209 W. Pecan St., legally described as Lots 4 & 5, Block M, Hemler Subdivision**

The applicants, **Carolyn** and **Daniel Banks**, come to the podium. **Mr. Patterson** explains this request is for a Zone Change from Residential to Commercial Zoning. The Planning staff recommends tabling this item until the property is brought into compliance with City Codes and Ordinances. **Ms. Banks** states she raised her children in the house on the property, but does not want it to be used as a residence in the future, because of things that happened there in the past. She has a son-in-law who repairs appliances and needs to use the property for that; as well as a possible mechanic shop. **Daniel Banks** states the property is really two lots, not one, and the lot with the house on it is the one **Ms. Banks** wants to re-zone to Commercial. He states she wants to tear that house down and then build a commercial structure. He states he is unaware of the zoning violations; but they have received a number of letters from the City and has taken care of all of them. He states the area has many vagrants and the house has no utilities. He confirms that they want commercial zoning only on the one lot. **Ms. Banks** states the house has things in it from her son-in-law and wants it used for storage. **Mr. Patterson** states the accumulation of junk and debris on the property is the problem; and changing the zoning to commercial for a mechanic’s shop would increase the junk and debris accumulation. **Mr. Patterson** states his department has received numerous complaints on this property regarding the steady stream of people, the junk, and the garbage and trash. He states that Code Enforcement, Animal Control and the Building Dept. have all been involved, and the structure is red-tagged, meaning it is uninhabitable. He states the most appropriate course of action would be to have the property brought into compliance and then proceed with the Zone Change action. **Ms. Banks** states there is no one living in the house at this time. **Mr. Patterson** states when they visited the property there were two RVs with people living in them. **Mr. McCormick** clarifies that the recommendation is for the property to be cleaned up and brought into compliance before moving forward with the Zone Change application. **Ms. Wilson** asks if the entire property would become more valuable once the house is torn down. **Ms. Banks** states it is too expensive for them to tear it down themselves. She thinks the property would be ideal for a mechanic shop because O’Reilly’s is nearby. **Mr. Patterson** states the Building Official would have to determine if the structural integrity of the existing structure is failing, and then it could go to City Council for a Condemnation order. The property would then be cleaned up. **Ms. Ortiz** clarifies if they took a condemnation action it would apply to both lots; and then a lien would be placed against the property. **Mr. Cornum** asks about the process of condemnation. **Mr. Patterson** states the City has a contractor on call who would clean up the property and bill the City, the City pays the bill and the lien placed on the property in that amount. The applicants would have to consider the lien if they want to develop the property. Condemnations range anywhere from \$15,000 to \$30,000 depending on amount and weight of debris to be hauled away. They would not have to pay the lien immediately. **Mr. Patterson** states the condemnation would solve the immediate problem of clean up and eliminating the vagrants, the structure and the debris, but the City would not maintain the property afterwards. If the property accumulates debris again, The City would have to address it. **Mr. Patterson** states if they could find a buyer and settle the lien, then the property would have clean title. **Ms. Ortiz** reminds them that the Building Dept. makes the decision if the home needs to be torn down. The property could be condemned without tearing down the house if it is determined to be structurally sound. The burned out storage building behind the house and the debris around the house would be removed. **Ms. Banks** states the house is probably structurally sound. She states she may proceed with clean up. The floor opened for public comment. **Monica Sias** comes to the podium stating she lives at 204 L Street, which is behind the subject property, and **Addie Aguilar** comes to the podium stating she lives at 210 L Street. **Ms. Sias** has lived there for seventeen years and is a single mother. She states people come through her property to the subject property. She states they have fires and she feels bad for them. There is a bunch of drug activity and people walking around at all hours. She is opposed to the zone change because they cannot even get the property as it is cleaned up. **Ms. Aguilar** states there are people living in the RV with people coming and going all night long. **Ms. Sias** states they just want to voice their opinion regarding this property. **Nathan Sias** comes to the podium, he lives at 204 L Street, stating he walks his dog at night and sees people walking around and drug activity. **Mr. Patterson** states he will have the Building Dept. inspect the house to determine whether it needs to be torn down. **Mr. Banks** asks if it would buy them some time if

they tabled this request giving them time to take care of some of these issues. He says he knows there are issues. He feels bad for the neighbors on the other side of the fence. He is aware of the drug problem and he has told the people to leave. **Mr. Patterson** states his recommendation is that the item be tabled until Code Enforcement could verify that the code violations listed have been taken care of; and then the item come back to the Commission. **Mr. Banks** is informed that letters regarding these violations have been sent to them; but he states he hasn't received any letters. **Mr. Patterson** states the Code Enforcement violations are the same ones listed in the packet.

**Mr. Nesser** made a motion to table this item until the Planning Dept. brings it forward again; **Mr. Cornum** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No—None. Absent—None. Abstained—None. The motion carried.

1:27:48      **12. Consider a recommendation to Council for an Annexation of approximately 819.91 acres located west of Dona Ana St, Holland St, & Opal St.**

The applicant's representative, **George Dunagan**, comes to the podium. **Mr. Patterson** explains this request is to annex 819.91 acres west of Standpipe Rd. The property is contiguous with the current City limits that extend off Martin and Standpipe Rds. The Planning staff recommends approval of this request. **Mr. Dunagan** represents the owner, Nyman Limited Partnership. Floor opened for public comment. **Jeannie and Todd Kartchner** come to the podium, stating that they own 2210 and 2218 Opal St. Her current property is north of Hidalgo Rd., and they have acquired eight oil field companies in the last seven years all the way around their property. They would like to move to their house on Opal St. because it is peaceful. She states if they build an oil company near them, and they can't build a fence high enough. She has people dumping trash and using drugs, which she has tried to run off. She has talked to Mr. Nyman, and Mr. Nyman told her she could put a gate on Opal St. to keep people off. She does not want any more oil field development. **Mr. McCormick** states this is just a consideration for annexation. **Ms. Kartchner** asks if they would be forced to annex themselves and have to come into compliance with City rules, which she does not want. **Debra Simmons** comes to the podium, stating she owns 2302 Opal St. and has lived there for 30 years because she likes the privacy and has animals; she has an easement off Martin Ln. and is concerned with annexation bringing traffic and loss of privacy and peace. There is a pipeline east of her property going through the dike that concerns her as well. She states she does not want Opal St. annexed into the City. **Sandi Wilkie** comes to the podium stating she owns 3012 Dona Ana St. and 2402 Pandanaram St. She is against the annexation and has no interest in being part of the City. They are ranchers and wean calves there, they have five generations on that property. She is concerned about drawing the flood water diversion into the City limits. The diversion belongs to the Hackberry Draw Watershed District and has permanent easement in perpetuity and she states they were not notified of this meeting regarding annexation. The diversion was built in the 1960s and upgraded in 1982; it is a hundred year flood structure and is constructed to carry 4485 cubic feet per second during a 100 year event; it is 3.6 miles long and protects about 500 family homes and businesses. Any development around it, including the West Loop Road, could degrade it, and if it is degraded to the point it fails, it would impact this area all the way to Radio Blvd., where it goes into Boyd. It concerns her that the City has not approached the Hackberry Draw Watershed District about this. She understands per property is not part of the annexation at this point, but feels it will be in the future. She suggests if it does get annexed, it not be zoned Industrial because it impacts the safety of many people. **Julie Klein** comes to the podium, stating she lives at 3113 Don Ana St. Her concern is that she does not want to be annexed into the City. Her property is adjacent to the Nyman Tract. The Water Diversion Dike should concern everyone. **Rosemary Wilkie** comes to the podium. She states she lives on Pandanaram Ln. These houses around her are protected by the dike. The road is right up against it. She has seen the dike run completely full several times. There is a 40' drop in elevation from Dona Ana St. to Standpipe Rd. The dirt that comprises the dike is moving from the heavy equipment going over it. She is very much against being in the City limits, and five generations of her family have lived there. She is against the annexation. **Mr. McCormick** reminds the commission that this item is just for the Annexation of the Nyman Tract, not the Zoning. **Mr. Cornum** asks if there is a hard and fast rule about the City annexing properties. **Mr. Patterson** clarifies



that if the City annexes property, it is not allowed to create an “island” – an area of County surrounded by City. He speculates that if the properties south of Dona Ana were to annex, it may cause forced annexation. The action only concerns the Nyman Tract at this meeting. He states it would be a private agreement with land owners and Mr. Nyman regarding access of Opal St. He states if the County is not maintaining Opal St., then the City would not either. **Mr. Cornum** asks **Mr. Dunagan** if an easement around that dike has been discussed; the dike provided a large buffer to the residents. **Mr. Dunagan** does not come to the podium and his response is inaudible. **Mr. Patterson** affirms that the section with the dike must be annexed along with the part west of the dike because it is contiguous with the City limits. **Mr. Cornum** asks if there is any developable land to the east of the bypass; possibly providing a buffer and protecting the dike if not. **Mr. Cornum** states there is usually more maintenance and rules in the City, and the County has less restrictions. **Mr. Nesser** asks where the City boundary is to the east. **Ms. Wilkie** asks why the City would want to annex that land, it is just fields. **Mr. Dunagan** states Mr. Nyman is going to sell the property. There is more discussion in the gallery, but it is inaudible. **Mr. Nesser** states he is not comfortable voting without getting more information; he would like to table it to the May meeting. **Mr. McCormick** states once it is zoned Industrial they can do anything that fits that zoning. They are not required to give their plan for the property with the annexation action. **Mr. Patterson** suggests that if this is tabled, they need to give the applicants a list of questions to get answered. The commission cannot condition an annexation as to what the applicants can do with it. When they bring in plans for their development would be the time to address the criteria in the development. They can compile a list of concerns and questions for Mr. Dunagan and Mr. Nyman. **Mr. Cornum** states what is concerning him is the east area of the annexation, but he has no objection to the annexation. The unknowns on the east side of the bypass is his concern. He asks if **Mr. Patterson** has any knowledge the City force-annexing any property. **Mr. Patterson** states when the City annexed the property near Standpipe and Lea some properties were force-annexed into the City. He states the owner of the annexed property usually wants City services: water, sewer, police protection, etc.

**Mr. Cornum** made a motion for denial; **Ms. Wilson** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion for denial carried.

2:17:36            **13. Consider a recommendation to Council for an application of zoning from County to “R-R” Rural Residential District for approximately 819.91 acres located west of Dona Ana St, Holland St, & Opal St.**

**Mr. Patterson** explains this is on the Agenda, and must be voted on.

**Ms. Wilson** made a motion for denial; **Mr. Nesser** seconded the motion. The vote was as follows: **Yes--Mr. McCormick, Mr. Nesser, Mr. Cornum, Ms. Wilson, Ms. Branson.** No— None. Absent—None. Abstained—None. The motion for denial carried.

2:20:50            **14. Report regarding Summary Review Subdivisions**

**Mr. Patterson** gave a report on the Summary Reviews. Nothing unusual was noted.

2:22:07            **15. Adjourn**

The meeting was adjourned.

2:22:17            Stop Recording [7:22:33 PM]

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Chairman

---

Date

DRAFT



CITY OF CARLSBAD
Planning, Engineering, and
Regulation Department
PO Box 1569, Carlsbad, NM 88221
Phone (575) 885-1185
Fax (575) 628-8379

ZONING CHANGE APPLICATION

Sec. 56-150(b)

Application Date: 2-13-2023
Existing Zoning: C-2

Fee Paid (\$100.00): 100.00 PAID CK#151
Proposed Zoning: R-1 JW 2-13-23

APPLICANT INFORMATION:

Ray Doportto & Korina Doportto 104 N. 4th st.
NAME ADDRESS
Carlsbad N.M 88220 575-302-3333
CITY STATE ZIP PHONE EMAIL

PROPERTY OWNER INFORMATION (attach separate sheet for multiple owners):

Ray Doportto & Korina Doportto 104 N. 4th st.
NAME ADDRESS
Carlsbad NM 88220 575-302-3333
CITY STATE ZIP PHONE EMAIL

\* A signed affidavit from the property owner(s), consenting to submittal of the application, must be included with the application.

LEGAL DESCRIPTION AND/OR STREET ADDRESS OF PROPERTY (INCLUDE A MEETS AND BOUNDS DESCRIPTION FOR UNPLATTED LAND, ATTACH SEPARATE SHEET, IF NECESSARY):

106 N. 4th street. 24 attached exhibit A Hughes 2nd
ADDRESS LOT BLOCK SUBDIVISION

**REASON FOR THE REQUEST**

An amendment to the Official Zoning Map or to the Text of the Zoning Ordinance must be justified by one or more of the following. Check all that apply:

- The proposed amendment will not adversely impact the public health, safety or general welfare and will or will not promote the original purposes of the Zoning Ordinance.
- The proposed amendment responds to changed conditions, such as changes in public capital investments, road locations or functional classification, population trends, density, use or further studies that have been completed since adoption of the Zoning Ordinance.
- The proposed amendment is necessary in order to respond to State and/or Federal legislation.
- The proposed amendment provides additional flexibility in meeting the objectives of this Zoning Ordinance without lowering the standards of the Zoning Ordinance.
- The proposed amendment is in substantial compliance with the City's Comprehensive Plan or other City Master Plan.
- The proposed amendment will not adversely affect the implementation of the goals and policies of the City's Comprehensive Plan or other City Master Plan.
- The proposed amendment will correct a mistake in the Official Zoning Map or the text of the Zoning Ordinance.
- The proposed amendment is justified in order to respond to changes in the City's Comprehensive Plan or other City Master Plan including, but not limited to, changes in land use assumptions, surrounding uses, population forecasts, rates of land consumption, anticipated community needs or other factors.

**FOR OFFICIAL USE ONLY:**

**Required prior to P & Z:**

Complete Application Including:  Map  Fee  Letter  Notification  Sign Agreement

**Required prior to City Council:**

Council Hearing Date: \_\_\_\_\_ Publication Date: \_\_\_\_\_

Property Owner Notification Sent (within 100' minimum): \_\_\_\_\_

ABM  Staff Comments  Application Packet  Draft Ordinance  P&Z Minutes

Council Action:  Approved  Denied  Other Ordinance No.: \_\_\_\_\_



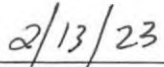
## NOTIFICATION SIGN POSTING AGREEMENT

Notification of Public Hearings before the City of Carlsbad Planning and Zoning Commission is required pursuant to Sec. 56-140(i).

- Signs shall be posted a minimum of 5 days prior to and shall be removed a maximum of 5 days after the public hearing.
- If the sign is not posted as required, the application will be delayed and will not be considered at the public hearing as scheduled.
- The sign shall be posted at the street side property line with a secure stake provided by the applicant.

I have read and understand these requirements. I understand where the sign is to be located and my obligation to post the sign prior to the public hearing and remove it afterwards.

  
 \_\_\_\_\_  
 APPLICANT SIGNATURE  


  
 \_\_\_\_\_  
 DATE

Sign issued by:   
 \_\_\_\_\_  
 Staff Member

Date: 2/13/2023

Dear Property Owner,

This letter serves as legal notification of a pending action before the City of Carlsbad Planning and Zoning Commission in accordance with Code of Ordinances Sec. 56-140(i). You are being notified because you are a property owner within one-hundred feet (100') of the subject site.

Applicant: Ray Doporito & Korina Doporito 104 N. 4th St.  
Name Address Phone  
Subject Site Location: 104 N. 4th St.

The proposed action is a:  
 Zoning Change from C-2 to R-1 in accordance with Sec. 56-150(b).

Variance/Appeal from Sec. \_\_\_\_\_ in accordance with Sec. 56-150(c).  
The purpose of the variance/appeal is:  
\_\_\_\_\_  
\_\_\_\_\_

Conditional Use Permit in accordance with Sec. 56-150(f). The purpose of the permit is for a:  
 Home Occupation: \_\_\_\_\_  
 Other Use: \_\_\_\_\_

**The Planning and Zoning Commission will consider this request at a Public Hearing on:**  
Date: 3/6/2023  
Time: 5:00pm  
Place: **City Annex Planning Room**  
**114 S. Halagueno St.**  
**Carlsbad, NM 88220**

The Code of Ordinances can be found on the City's website [www.cityofcarlsbadnm.com](http://www.cityofcarlsbadnm.com).  
For details about this request contact the applicant OR contact the City Planner at 575-885-1185 or via email at [jepatterson@cityofcarlsbadnm.com](mailto:jepatterson@cityofcarlsbadnm.com).

Sincerely,  
Ray Doporito  
Korina Doporito  
Applicant/Agent

- [Account Search](#)
- [View Created Report\(s\)](#)
- [Help?](#)
- [Eddy County Website](#)
- [County Treasurer](#)
- [County Assessor](#)
- [County Clerk](#)
- [Logout Public](#)

**Account: R048718 \*Mill Levy does not include Special District Rates such as Penasco, Carlsbad Soil & Water, Central Valley, Eagle Draw, PVC, Cottonwood, and Hackberry**

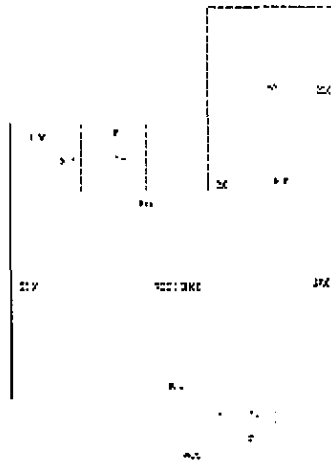
**1 of 3 Results [Next->](#)**

<u>Location</u>	<u>Owner Information</u>	<u>Assessment History</u>															
<b>Account Number</b> R048718 <b>Situs Address</b> 106 N FOURTH STREET <b>Tax Area</b> CI_R - CARLSBAD-IN (Residential) <b>Parcel Number</b> 4-156-127-151-241 <b>Legal Summary</b> Subd: HUGHES 2ND Lot: 24 Block: D LOT 24 MAP# 217-91-60 LOC 106 N FOURTH LOT SIZE 60' X 110' <b>Map Number</b> <b>Parcel Size</b>	<b>Owner Name</b> DOPORTO, RAY & KORINA <b>Owner Address</b> 309 N FIRST CARLSBAD, NM 88220	<b>Actual Value</b> (2022 - Residential Cap applied) \$61,315 <b>Primary Taxable</b> \$20,438 <b>Tax Area:</b> CI_R <b>Mill Levy:</b> 23.976000 <table border="1"> <thead> <tr> <th>Type</th> <th>Actual</th> <th>Assessed</th> <th>SQFT</th> <th>Units</th> </tr> </thead> <tbody> <tr> <td>Residential Land</td> <td>\$2,106</td> <td>\$702</td> <td></td> <td>7140.000</td> </tr> <tr> <td>Residential Improvement</td> <td>\$59,209</td> <td>\$19,736</td> <td>1508.000</td> <td></td> </tr> </tbody> </table>	Type	Actual	Assessed	SQFT	Units	Residential Land	\$2,106	\$702		7140.000	Residential Improvement	\$59,209	\$19,736	1508.000	
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Residential Improvement	\$59,209	\$19,736	1508.000														

<u>Tax History</u>	<u>Taxes</u>
Tax Year	Taxes
*2023	\$504.36
2022	\$504.36

- Images**
- [Sketch](#)
  - [GIS](#)

\* Estimated





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0410 0001 0173 2118  
02 0410 0001 0173 2132  
2 0410 0001 0173 2125

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<input type="checkbox"/> Adult Signature Required	\$0.00	
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<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$0.63	
Total Postage and Fees	\$8.13	
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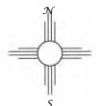
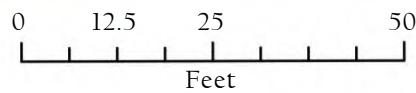


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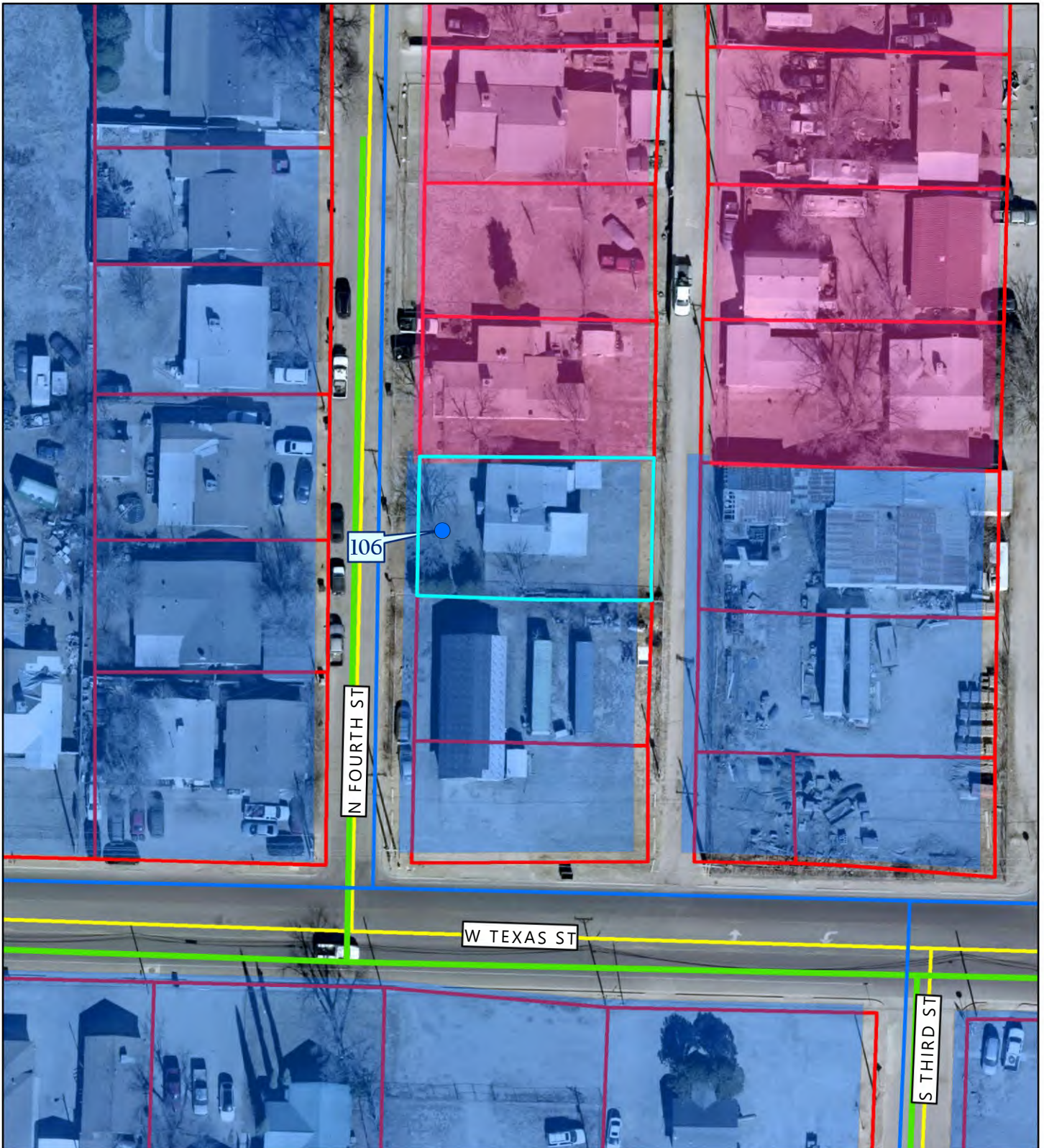


- Carlsbad Address
- Water Main
- Sewer Main
- Roads
- City Boundary
- Parcel

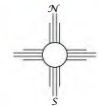
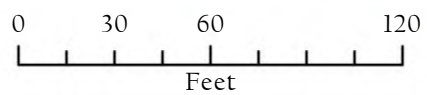


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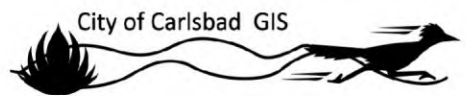




- Carlsbad Address
  - Water Main
  - Sewer Main
  - Roads
  - Parcel
- |                                     |     |
|-------------------------------------|-----|
| <b>Zoning</b>                       |     |
| <span style="color: blue;">+</span> | C-2 |
| <span style="color: pink;">+</span> | R-1 |



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CITY OF CARLSBAD

AGENDA BRIEFING MEMORANDUM

Council Meeting Date: 04/11/2023

<b>DEPARTMENT:</b> Carlsbad Police Department	<b>By:</b>  Shane Skinner – Chief of Police	<b>DATE:</b> 04/04/2023
<b>SUBJECT: Resolution to Support and Encourage the State of New Mexico to Re-Classify and Recognize the Carlsbad Police Department Telecommunicators as First Responders</b>		
<b>BACKGROUND, ANALYSIS AND IMPACT: (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)</b>		
<p>The proposed resolution is fundamentally symbolic and progressive in the effort to have our departmental telecommunicators, those from all over the state and those from around the nation to gain the support in being re-classified as a first responder. Telecommunicators are often the first person in person in crisis or a person in need will have contact with. They are the lifeline between the emergency at hand and the people who arrive on scene. Telecommunicators are subjected to the same stressors and traumas that all other first responders have to endure. They are required to attend formal training, continuing educational training hours and are entrusted with extremely confidential information and data.</p> <p>I am proud to support the local, state and national movement for this re-classification effort. In my humble opinion, this is an effort that is long overdue. The community of Carlsbad is the beneficiary of a rare local dispatch center that has continued to raise the bar in the realm of service standards to the general public. The Carlsbad Police Department Dispatch Center is currently in the process of becoming a state and nationally accredited program which exemplifies best practice standards.</p> <p>Many other municipalities and counties from around the State of New Mexico, as well as other states, have formally supported this movement via legislation and/or similar resolutions. I am confident the City of Carlsbad and this wonderful community would endorse supporting and encouraging the State of New Mexico to be progressive in how 911 operators are viewed and classified. If re-classified, this would allow telecommunicators to be moved to a retirement plan similar to first responders to include other crucial benefits such as mental health counseling.</p> <p>911 is a rapidly changing and evolving platform. The next generation of 911 will soon include text and video to 911 amongst other enhanced technological advances. These advances are inevitable but will automatically result in our telecommunicators being exposed to even higher levels of trauma. Therefore, now is the time to re-classify our telecommunicators as first responders within the State of New Mexico with the hope this will take root at the national level.</p>		
<b>DEPARTMENT RECOMMENDATION: I recommend the City of Carlsbad approve the Resolution to Support and Encourage the State of New Mexico to Re-Classify and Recognize the Carlsbad Police Department Telecommunicators as First Responders.</b>		
<b>BOARD/COMMISSION/COMMITTEE ACTION:</b>		
<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Cemetery Board
<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board
<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> _____ Committee
		} <input type="checkbox"/> APPROVED
		} <input type="checkbox"/> DISAPPROVED
<b>Reviewed by:</b> City Administrator: /s/John Lowe		
<b>Date:</b> 04/05/2023		

ATTACHMENT(S): Resolution

City of Carlsbad, NM  
Resolution No. 2023-16

A RESOLUTION ENCOURAGING THE STATE OF NEW MEXICO TO SUPPORT THE MOVEMENT TO RECLASSIFY 9-1-1 TELECOMMUNICATORS OF THE CITY OF CARLSBAD POLICE DEPARTMENT DISPATCH DIVISION AS FIRST RESPONDERS

WHEREAS, the City of Carlsbad recognizes that Public Safety Telecommunicators are the foundation of the public safety framework, and recognize that these selfless individuals make life saving split second decisions and those decisions greatly influence the outcome of the call; *and*

WHEREAS, the City of Carlsbad recognizes that 9-1-1 Telecommunicators provide care and compassion to our citizens often in their worst and most horrific moments. PTSD and vicarious trauma are real issues in the 9-1-1 profession; *and*

WHEREAS, the City of Carlsbad recognizes that Public Safety Telecommunicators serve as the community's public safety intelligence resource, collecting, analyzing and distributing data to those public safety officials who otherwise would not have access to the data; *and*

WHEREAS, the City of Carlsbad recognizes that the Carlsbad Police Department Dispatch Division go through extensive in-house training and training at the Law Enforcement Academy, and a background check; *and*

WHEREAS, the City of Carlsbad recognizes that our Public Safety Telecommunicators perform their duty with no formal protections or offers of individual sovereign immunity and that in the course of their good faith efforts, their public safety response that the communities rely on so heavily is not recognized by the Federal Government as a protected classification. Despite all these requirements, stress, education and training in Public Safety, the Federal Office of Management and Budget classifies this group of individuals as clerical staff; *and*

WHEREAS, the City of Carlsbad supports the national movement to re-classify Telecommunicators as first responders and truly recognize the work they do. Additionally, the City of Carlsbad supports the 911 Saves Act to properly classify the profession of 911 Telecommunicators; *and*

WHEREAS, the City of Carlsbad encourages the State of New Mexico to support the movement to re-classify Telecommunicators as first responders in addition to local and county government entities by recognizing the work they do.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, that it declare its support of this special group of dedicated individuals to be recognized officially as first responders.

INTRODUCED, PASSED, ADOPTED AND APPROVED this 11th day of April, 2023.

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MAYOR

ATTEST:

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CITY CLERK

# Committee Reports

# Adjourn





April 4, 2023

Mr. John Lowe  
City Administrator  
City of Carlsbad

Dear Mr. Lowe:

The following report is submitted to the City of Carlsbad to update the progress and status of the Carlsbad MainStreet Project for March 2023, per the Downtown Revitalization Services Contract. With this report, MainStreet is enclosing an invoice requesting the monthly allocation from the City of Carlsbad for \$7,500.00 based on the total annual services contract of \$90,000.

**NEW MEXICO MAIN STREET (NMMS) REQUIRED MEETINGS (MAINSTREET EXECUTIVE DIRECTOR):**

- Main Street NOW MainStreet America National Conference – March 27<sup>th</sup>- 31<sup>st</sup> Boston, MA. Kat, Eyenid and board vice president Damian Capello all attended this years Main Street America National Conference. The conference sessions were all very informative on different aspects of the organization from board, volunteers, projects and funding. Part of the National Conference was a state dinner hosted by the New Mexico MainStreet organization.

**EXECUTIVE DIRECTOR BOARDS AND COMMITTEES:**

- In addition to MainStreet activities, the Carlsbad MainStreet Executive Director serves on the following boards and committees related to downtown promotion and economic development and attends weekly and monthly meetings to support their priorities and activities:

*Carlsbad Area Art Association, Carlsbad Community Concerts Association, Cavern Theater Task Force, Carlsbad Downtown Lions Club, Pearl of the Pecos Committee, Chamber of Commerce Tourism Council, Chamber of Commerce Non-Profit Council, Chamber of Commerce Age Friendly Council, Eddy County DWI Mayors Fine Arts and Acquisition Committee (FAAV), Mayors Beautification Committee, Anti-Drug and Gang Coalition, Rotary, Chamber of Commerce, City Council, Eddy County Commission, Walter Gerrell's Civic Center Advisory Board, and Carlsbad Department of Development*

**ECONOMIC DEVELOPMENT-MAINSTREET STYLE**

***MainStreet Business/Merchants Economic Vitality***

- Met with New Mexico MainStreet Revitalization Specialist Sean O Shea to discuss conducting a market analysis for our community as well as updating our economic transformation strategies.
- Submitted service request to NMMS to work with Will Powell for façade improvements on 2 buildings in the district
- Worked with the Artist Gallery and Carlsbad Area Art Association to help improve their online presence and digital marketing.



- Met with Jeff Patterson to discuss matters of downtown maintenance / cleanliness
- Provided assistance and information to merchants on grants

#### ***Downtown MainStreet Rejuvenation Project***

- Kat met with Ted Cordova and John Lowe to discuss the public restrooms for the district at further length. We have identified the potential areas, cost and style that we would like request for and plan for it to go before the budget committee this month. The light poles and globes have also been assessed for a cost and they will be included as part of this request
- Identified problem areas within the district and partnered with Keep Carlsbad Beautiful to provide clean up services
- Met with Germ Busters, LLC to discuss regular maintenance and cleaning of the streets/ alleys

#### ***MainStreet***

##### ***Board Meeting – 4th Thursday of each month***

- March 23<sup>rd</sup>- Carlsbad MainStreet Board Meeting was held at the Riverside Country Club. During this meeting we introduced Victoria Martinez, our new Farmers Market Manager. The board also voted on a new board member to join, Caleb Cunningham. Caleb is very involved in other organizations through out the City and we are excited to have him on board.
- March 7<sup>th</sup> & 23<sup>rd</sup>- CavernFest Planning Committee Meetings

#### ***Pearl of the Pecos***

- Our March steering committee meeting was postponed until April 3<sup>rd</sup>
- POPup Art Event scheduled for 4/14
- Full report of POP work can be found in March report

#### ***City of Carlsbad***

- March 1<sup>st</sup>- Meeting with Ted Cordova and John Lowe on budget request
- March 7<sup>th</sup>- Lodgers Tax Annual Meeting
- March 7<sup>th</sup>- Walter Gerralls Civic Center BOD
- March 13<sup>th</sup>- FAAV Committee Meeting
- March 17<sup>th</sup>- Meeting with Jeff Patteson
- March 22<sup>th</sup>- Community Update Meeting

#### ***Eddy County***

- N/A

#### ***Chamber of Commerce***

- March 1<sup>st</sup>- Age Friendly council meeting

#### ***Department of Development***





- N/A

## **HAPPENING AT THE MAINSTREET OFFICE**

### ***Staff at the MainStreet office***

- Eyenid attended Fundraising Training in Albuquerque with New Mexico MainStreet. We were shown how to improve our websites to make it more accessible and online donation opportunities, new fundraising strategies, as well as our operating budgets. We also worked on creating solicitation and thank you letters to utilize when there are potential donors and how to improve verbally when articulating sponsorships.
- MainStreet has hired a new Farmers Market Manager for the upcoming season, we are excited to have Victoria Martinez on board with our organization and started work
- Attended the Alligable networking event that was held at the Carlsbad Museum, learned more about the organization and how it can be of value to our merchants and small business owners
- During our New Mexico MainStreet Winter Institute Kat gave a presentation on CavernFest
- Met with state Director Daniel Gutierrez about Carlsbad being the host of our Fall Conference this year
- Submitted outside agency funding request to the City of Carlsbad for FY 2023/2024

### ***Reporting***

- All monthly and quarterly reports have been submitted to the City and County
- Q1 NMMS was submitted on 3/31/23
- Capital Outlay progress report was submitted 03/31/23

### ***Speaking Opportunity***

- Community Impact Council Meeting- March 3<sup>rd</sup>
- New Mexico MainStreet Conference- March 9<sup>th</sup>

## **OTHER MAINSTREET ED MEETINGS AND ACTIVITIES:**

- Carlsbad MainStreet is working with Lovington, Artesia, Roswell and Ruidoso to create a "SENM summer events trail". A lot of signature events are within a few weeks of one another and we are working with our state program to come up with advertising materials to showcase the great events that we host in our corner of the state

## **PROMOTION FOR MAINSTREET and CARLSBAD**

### ***New Mexico Magazine***

- March digital ad running
- Full page CavernFest ad submitted

### ***Focus Magazine***



Carlsbad MainStreet Project  
102 S Canyon St  
Carlsbad, NM 88220  
Carlsbadmainstreet@gmail.com  
Office : 575-628-3768 Cell: 575-988-0145

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- Ad & Director's write up submitted for Focus on Artesia Spring Edition

***Texas Monthly***

- Submitted newsletter and digital advertising

***Carlsbad Local***

- Advertising bi-monthly

***Current-Argus***

- N/A

***Artesia Radio***

- N/A

***Carlsbad Radio***

- N/A

***KCC Radio***

- Scheduled community forum update on 4/4

If you have any questions, please feel free to contact me.

Respectfully,

***Kat Davis***

Kat Davis  
Executive Director