

JOHN F. COOK
MAYOR



JOYCE WILSON
CITY MANAGER

CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSIE BYRD, DISTRICT 2
EMMA ACOSTA, DISTRICT 3
CARL L. ROBINSON, DISTRICT 4
MICHIEL R. NOE, DISTRICT 5
EDDIE HOLGUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
CORTNEY CARLISLE NILAND, DISTRICT 8

**REGULAR COUNCIL MEETING MINUTES
COUNCIL CHAMBERS
OCTOBER 4, 2011
9:00 A.M.**

The City Council met in regular session at the above place and date. Meeting was called to order at 9:03 a.m. Mayor Pro Tempore Ann Morgan Lilly present and presiding and the following Council Members answered roll call: Emma Acosta, Michiel R. Noe, Eddie Holguin, Jr., Steve Ortega, and Cortney Carlisle Niland. Late arrivals: Susannah M. Byrd and Carl Robinson at 9:04 a.m. during Executive Session deliberations. Absent: Mayor John F. Cook requested to be excused. The invocation was given by Chaplain Lisle Davis, followed by the Pledge of Allegiance to the Flag of the United States of America.

MAYOR'S PROCLAMATIONS

1. **TOM LEA MONTH**
2. **ARCHTOBER MONTH**
3. **NATIONAL NIGHT OUT 2011**
4. **LAW ENFORCEMENT APPRECIATION DAY**

CALL TO THE PUBLIC – PUBLIC COMMENT

This time is reserved for members of the public who would like to address the City Council on items that are not on the City Council Agenda.

A sign-up form is available on line at https://www.elpasotexas.gov/muni_clerk/contact_public.asp for those who wish to sign up in advance of the meeting date and a sign-up form is available outside the City Council Chambers at the City Clerk table for those who wish to sign up on the day of the meeting.

Requests to speak must be received by 9:00 a.m. on the date of the meeting.

30 Minutes total is allotted for speakers.

Three to five minutes may be allowed for each speaker.

The following members of the public commented:

1. Mr. John Conwell
2. Mr. Roberto Castor
3. Mr. Ben Mendoza
4. Mr. Sal Gomez
5. Mr. Robert Pena
6. Mr. David Rodriguez
7. Ms. Connie Ramos
8. Ms. Lisa Turner
9. Mr. Raul Castaneda

Ms. Richarda Momsen, Municipal Clerk, commented.

CONSENT AGENDA

Motion made by Representative Holguin, seconded by Representative Ortega, and unanimously carried to **APPROVE, AS REVISED**, all matters listed under the Consent Agenda unless otherwise noted. (Items approved, postponed, or deleted pursuant to the vote on the Consent Agenda will be shown with an asterisk {*}).

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Noe, Holguin, Ortega, and Niland
NAYS: None

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1. APPROVAL OF MINUTES

*Motion made, seconded, and unanimously carried to **APPROVE** the Minutes for the Regular City Council Meeting of September 27, 2011.

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2. REQUEST TO EXCUSE CITY COUNCIL MEMBERS

*Motion made, seconded, and unanimously carried to **EXCUSE** Mayor John F. Cook from the Regular Council Meeting of October 4, 2011.

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3. MUNICIPAL CLERK

Motion made, seconded, and unanimously carried to **APPROVE** the submission of certified recall petitions for Mayor John F. Cook, City Representative Susie Byrd, District 2, and City Representative Steve Ortega, District 7, in accordance with City Ordinance # 008066.

Representative Holguin commented.

The following City staff members commented:

- 1. Ms. Joyce Wilson City Manager
- 2. Ms. Elaine Hengen, Senior City Attorney gave legal advice.
- 3. Ms. Richarda Momsen, Municipal Clerk

The following members of the public commented:

- 1. Mr. Eric Stoltz
- 2. Ms. Lisa Turner
- 3. Mr. Al Soto
- 4. Mr. Tom Brown
- 5. Ms. Sonia Brown

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4A. BOARD APPOINTMENT

*Motion made, seconded, and unanimously carried to **APPOINT** Samuel J. Barela to the Zoning Board of Adjustment, as an alternate member, by Representative Susie Byrd, District 2.

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4B. BOARD APPOINTMENT

*Motion made, seconded, and unanimously carried to **APPOINT** Armando Armendariz II to the Empowerment Zone Advisory Board by Representative Susie Byrd, District 2.

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4C. BOARD APPOINTMENT

*Motion made, seconded, and unanimously carried to **APPOINT** Scott Walker to the Zoning Board of Adjustment, as a regular member, by Representative Cortney Carlisle Niland, District 8.

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4D. BOARD APPOINTMENT

*Motion made, seconded, and unanimously carried to **APPOINT AS REVISED** Michele Aboud to the Retired and Senior Volunteer Program (RSVP) Advisory Council by Representative Cortney Carlisle Niland, District 8.

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4E. BOARD APPOINTMENT

*Motion made, seconded, and unanimously carried to **APPOINT** Hector Homero Galicia to the Empowerment Zone Advisory Board by Representative Ann Morgan Lilly, District 1.

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4F.

***RESOLUTION**

WHEREAS, the Development Corporation Act of 1979, Art. 5190.6, Texas Revised Civil Statutes, as amended, authorizes the creation of non-profit, non-member, non-stock corporations to act on behalf of political subdivisions of the State of Texas for the promotion of industrial development; and

WHEREAS, on August 28, 1979, the City Council of the City of El Paso, Texas, approved the creation of the City of El Paso Industrial Development Authority, Incorporated; and

WHEREAS, Article VII of the Articles of Incorporation, as amended effective December 21, 1993, vests powers of the Corporation in a Board of Directors, who are appointed by written resolution of the governing body of the City of El Paso, Texas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That John Bretting be appointed to the Board of Directors of the Industrial Development Authority, Incorporated, effective as of the date hereof, on behalf of Representative District 8.

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5. APPOINTMENT

*Motion made, seconded, and unanimously carried to **APPOINT** City Representative Steve Ortega to serve as the City of El Paso representative on the Board of Directors of Border Trade Alliance as recommended by the Committee on Border Relations.

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6A. – 6F. INTRODUCTIONS

Motion made by Representative Ortega, seconded by Representative Byrd, and unanimously carried that the following Ordinances, having been introduced pursuant to Section 3.9 of the El Paso City Charter, be **ADVERTISED** for public hearing:

6A. An Ordinance amending Title 18 (Building and Construction), Chapter 18.10 (Residential Code), of the El Paso City Code, by adding Section 18.10.265 (Protection of Water Service Entrance) and Section 18.10.266 (Plumbing within exterior walls) to help prevent pipes from freezing during severe weather, the penalty being as provided in Section 18.02.107 (Violations and Penalties) of the El Paso City Code.

6B. An Ordinance amending Title 18 (Building and Construction), Chapter 18.20 (Plumbing Code), of the El Paso City Code, by adding Section 18.20.240 (Protection of Water Service Entrance) and Section

18.20.250 (Plumbing within exterior walls) to help prevent pipes from freezing during severe weather, the penalty being as provided in Section 18.02.107 (Violations and Penalties) of the El Paso City Code.

- 6C. An Ordinance amending Title 18 (Building and Construction), Chapter 18.28 (Existing Building Code), of the El Paso City Code, by adding Section 18.28.060 (Plumbing Repairs) to help prevent pipes from freezing during severe weather, the penalty being as provided in Section 18.02.107 (Violation and Penalties) of the El Paso City Code.
- 6D. An Ordinance amending Title 18 (Building and Construction), Chapter 18.02 (Building and Construction Administrative Code) Section 18.02.108.5.1 (Bond Required), of the El Paso City Code, decreasing the required bond amount for contractors from \$50,000 to \$25,000 and allowing for additional exceptions to the \$25,000 bond requirement, the penalty being as provided in Section 18.02.107 (Violations and Penalties) of the El Paso City Code.
- 6E. An Ordinance granting a non-exclusive franchise to Cemex Construction Materials South, LLC, to operate and maintain a solid waste collection and hauler service within the City of El Paso subject to the terms and conditions described herein; the penalty as provided in Section 9.04.630 of the El Paso City Code.
- 6F. An Ordinance amending Title 18 (Building and Construction), Chapter 18.46 (Landscape) of the El Paso City Code, to modify the definition of landscapable area, reduce the required number of one gallon plant materials, reduce the height of one inch caliper project tree substitutions, allow project tree substitutions for five gallon plant materials, reduce the frontage landscape buffer for certain shopping centers, adopt a designated landscape infill development area, reduce the landscape requirements for properties within the area, and add a plant coverage option. The penalty being as provided in Section 18.46.180 (Violations – Penalty) of the El Paso City Code.

PUBLIC HEARING WILL BE HELD ON OCTOBER 18, 2011, FOR ITEMS 6A – 6F

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7A.

ORDINANCE 17651

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF LOT 1, BLOCK 1, PAISANO GREEN COMMUNITY, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM A-3 (APARTMENT) TO G-MU (GENERAL MIXED USE). THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.**

Mr. Philip Etiwe, Development Review Manager, commented.

Motion duly made by Representative Niland, seconded by Representative Ortega, that the Ordinance be **ADOPTED**. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Noe, Holguin, Ortega, and Niland
NAYS: None

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same are hereby **ADOPTED**.

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7B. PLANNING AND ECONOMIC DEVELOPMENT

Motion made by Representative Robinson, seconded by Representative Ortega, and unanimously carried to **POSTPONE** two weeks the public hearing on an Ordinance granting Special Permit No. PZST11-00008, to allow for a ground-mounted 75 foot Personal Wireless Service Facility on the property described as Tract 1M, Section 28, Block 81, Township 1, Texas and Pacific Railway Surveys, City of El Paso, El Paso County, Texas, pursuant to Section 20.10.455 of the El Paso City Code.

Representative Robinson commented.

Mr. Philip Etiwe, Development Review Manager, commented.

Mr. Ralph Jones, applicant, commented.

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7C. PLANNING AND ECONOMIC DEVELOPMENT

*Motion made, seconded, and unanimously carried to **POSTPONE** two weeks the public hearing on an Ordinance granting Special Permit No. ZON11-00003, to allow for Infill Development with Reduced Setbacks and a Parking Reduction on the property described as a portion of Lots 3 and 4, Block 6, Del Norte Acres, City of El Paso, El Paso County, Texas, pursuant to Section 20.04.320 of the El Paso City Code. The penalty being as provided for in Chapter 20.24 of the El Paso City Code.

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7D.

ORDINANCE 17652

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF LOT 2, BLOCK 2, KEYSTONE BUSINESS PARK REPLAT A, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM P-I/SC (PLANNED INDUSTRIAL/SPECIAL CONTRACT) TO C-3/SC (COMMERCIAL/SPECIAL CONTRACT) AND IMPOSING A CONDITION. THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.**

Representative Niland commented.

Mr. Philip Etiwe, Development Review Manager, commented.

Ms. Lisa Turner, citizen, commented.

Motion duly made by Representative Niland, seconded by Representative Noe, that the Ordinance be **ADOPTED, AS REVISED**. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Noe, Holguin, Ortega, and Niland
NAYS: None

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same are hereby **ADOPTED, AS REVISED**.

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7E.

ORDINANCE 17653

The City Clerk read an Ordinance entitled: **AN ORDINANCE CHANGING THE ZONING OF A PORTION OF TRACT 2C1, BLOCK 35, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS FROM**

A-M (APARTMENT/MOBILE HOME PARK) TO C-2 (COMMERCIAL). THE PENALTY IS AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

Representative Ortega commented.

Mr. Philip Etiwe, Development Review Manager, commented.

Motion duly made by Representative Ortega, seconded by Representative Noe, that the Ordinance be **ADOPTED, AS REVISED**. Whereupon the Mayor ordered that a vote be taken on the passage and adoption of the Ordinance which when so done resulted as follows:

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Noe, Holguin, Ortega, and Niland

NAYS: None

Whereupon the Mayor ordered that, the vote having been cast in favor of the Ordinance, the same be and the same are hereby **ADOPTED, AS REVISED**.

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ITEMS TAKEN TOGETHER 8A AND 8B

1st MOTION

Motion made by Representative Ortega, seconded by Representative Niland, and unanimously carried to **RETIRE** into **EXECUTIVE SESSION** at 11:42 a.m. pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Sections 551.071 (Consultation with Attorney).

2ND MOTION

Motion made by Representative Lilly, seconded by Representative Niland, and unanimously carried to **ADJOURN** the Executive Session at 11:56 a.m. and **RECONVENE** the meeting of the City Council.

NOT PRESENT FOR THE VOTE: Representative Robinson

8A.

R E S O L U T I O N

WHEREAS, the City of El Paso, Texas is a home rule municipality operating pursuant to its Charter and the laws of the State of Texas;

WHEREAS, pursuant to Texas Utilities Code Sections 11.003(18) 33.001, the City of El Paso is a regulatory authority having exclusive original jurisdiction over the rates, operations and services of an electric utility within the areas of the city limits;

WHEREAS, pursuant to a franchise granted on July 15, 2005 and predecessor franchises El Paso Electric Company, a Texas corporation is an electric utility operating within the City of El Paso, Texas;

WHEREAS, pursuant to the City Charter of the City of El Paso Section 1.4, the City of El Paso reserved until itself all authority to regulate and fix the reasonable rates to be charged by Public Utility Corporations for electric rates to consumes, subject to and in accordance with the laws of the State of Texas;

WHEREAS, the current base rates being charged for electric service within the City Limits of the City of El Paso were established pursuant to a resolution dated June 8, 2010;

WHEREAS, the City Council has reviewed the current base rates being charged to customers and consumers within the City of El Paso in accordance with the provisions of Texas Utilities Code Section 36.051;

WHEREAS, the City Council has reason to believe that the base rates being collected by El Paso Electric Company from customers within the City of El Paso result in the Company revenues being received by El Paso Electric Company which are greater than needed to provide a reasonable opportunity to earn a reasonable return on the invested capital used and useful in rendering utility service to the public above its reasonable and necessary operating expenses, as provided in Texas Utilities Code Sections 36.003 and 36.051, and therefore unreasonable;

WHEREAS, pursuant to the City Charter and Utilities Code Section 36.151, the City Council has determined that an inquiry should proceed to determine whether the rates being charged by El Paso Electric Company for service within the City of El Paso are just and reasonable; and

WHEREAS, the City Charter and Utilities Code Section 36.151 require reasonable notice to El Paso Electric Company before such a determination is made.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS THAT

Section 1. El Paso Electric is hereby Ordered to Show Cause why its base rates for electric service in the City of El Paso should not be lowered.

Section 2. Pursuant to Texas Utilities Code Section 36.153 El Paso Electric is ordered to file a rate-filing package with the City of El Paso no later than February 1, 2012.

Section 3. The City Council will make a final determination not later than the 185th day after the date that El Paso Electric files the rate-filing package.

Section 4. That the City Manager shall notify El Paso Electric Company of the Council's order to submit its rate filing package by having a copy of this Resolution delivered or mailed to the company's Chief Executive Officer.

Section 5. That the City Attorney be authorized to engage outside counsel and consultants to represent the City on this matter and evaluate the filing.

8B.

RESOLUTION

WHEREAS, the City of El Paso, Texas is a home rule municipality operating pursuant to its Charter and the laws of the State of Texas;

WHEREAS, pursuant to Texas Utilities Code Sections 11.003(18) and 33.001, the City of El Paso is a regulatory authority having exclusive original jurisdiction over the rates, operations and services of an electric utility within the areas of the city limits;

WHEREAS, pursuant to a franchise granted on July 15, 2005 and predecessor franchises El Paso Electric Company, a Texas corporation is an electric utility operating within the City of El Paso, Texas;

WHEREAS, pursuant to the City Charter of the City of El Paso Section 1.4, the City of El Paso reserved until itself all authority to regulate and fix the reasonable rates to be charged by Public Utility Corporations for electric rates to consumers, subject to and in accordance with the laws of the State of Texas;

WHEREAS, the current base rates being charged for electric service within the City Limits of the City of El Paso were established pursuant to a resolution dated June 8, 2010;

WHEREAS, the City Council has reviewed the current base rates being charged to customers and consumers within the City of El Paso in accordance with the provisions of Texas Utilities Code Section 36.051; and

WHEREAS, The City Council on October 4, 2011, initiated a proceeding pursuant to Texas Utilities Code Section 36.151 and ordered the El Paso Electric Company to file a rate filing package, and

WHEREAS, pursuant to Texas Utilities Code Section 36.155, the City of El Paso as Regulatory Authority may issue an interim order establishing temporary rates to be in effect until a final determination is made pursuant to the proceeding initiated pursuant to Texas Utilities Code Section 36.151, and

WHEREAS the City Council finds that setting a hearing to allow El Paso Electric Company to make a presentation regarding temporary rates is appropriate and in the public interest.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS THAT

Section 1. A Hearing concerning Temporary Rates is hereby scheduled as part of the Regular City Council meeting beginning at 9:00 A.M. on October 25, 2011.

Section 2. That the City Manager shall notify El Paso Electric Company of the Council's order by having a copy of this Resolution delivered or mailed to the El Paso Electric Company's Chief Executive Officer.

Representative Niland presented a PowerPoint presentation (copy on file in City Clerk's Office).

Representatives Holguin, Byrd, Ortega, Acosta, and Noe commented.

Mr. Norman Gordon, outside utility counsel, gave legal advice.

The following City staff members commented:

- 1. Ms. Joyce Wilson, City Manager
- 2. Mr. Charlie McNabb, City Attorney, gave legal advice.

The following members of the public commented:

- 1. Mr. David Stevens
- 2. Mr. Bob Cook, President and Chief Executive Officer of the El Paso Regional Economic Development Corporation (REDCO)
- 3. Mr. Richard Dayoub, Greater El Paso Chamber of Commerce
- 4. Mr. Bill Addington
- 5. Ms. Lisa Turner

3RD AND FINAL MOTION

Motion made by Representative Acosta, seconded by Representative Byrd, and unanimously carried to **APPROVE** the Resolutions.

9. MAYOR AND COUNCIL

Motion made by Representative Holguin, seconded by Representative Acosta, and unanimously carried to **DIRECT** the City Manager to dedicate City owned spaces as park space and to look at the possibility of the City leasing to a third party City owned property located at the intersection of I-10 and Zaragoza for use as a soccer field.

Representatives Holguin and Ortega commented.

The following City staff members commented:

- 1. Ms. Joyce Wilson, City Manager
- 2. Mr. Philip Etiwe, Development Review Manager
- 3. Mr. Alan Shubert, City Engineer
- 4. Ms. Lupe Cuellar, Assistant City Attorney, gave legal advice.

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10A. CITY MANAGER

Presentation and acceptance of Preliminary Design Plans for Renovation of San Jacinto Plaza.

Ms. Debbie Hamlyn, Deputy City Manager of Community Services, presented a PowerPoint presentation (copy on file in City Clerk’s Office).

Mr. Gerdo Aquino, SWA Landscape Architects presented a PowerPoint presentation (copy on file in City Clerk’s office).

Representatives Lilly, Ortega, Byrd, Acosta, Holguin, and Niland commented.

The following members of the public commented:

- 1. Mr. Al Soto
- 2. Ms. Norma Chavez
- 3. Ms. Lisa Turner
- 4. Ms. Heather McMurray
- 5. Mr. Bill Addington

Motion made by Representative Byrd, seconded by Representative Acosta, and unanimously carried to **SUSPEND THE RULES OF ORDER** to allow additional speakers after the sign up period.

NO ACTION, other than the above procedural Motion, was taken on the item.

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10B. CITY MANAGER

Motion made by Representative Noe, seconded by Representative Ortega, and carried to **DIRECT** the City Manager to begin the process to formulate the next Quality of Life Bond Election in November 2012.

AYES: Representatives Lilly, Byrd, Acosta, Robinson, Noe, Ortega, and Niland

NAYS: Representative Holguin

Ms. Carmen Arrieta-Candelaria, Chief Financial Officer of Financial Services, presented a PowerPoint presentation (on file in the City Clerk’s office).

Representatives Robinson, Ortega, Acosta, Niland, Noe, Lilly, and Byrd commented.

The following City staff members commented:

- 1. Ms. Joyce Wilson, City Manager
- 2. Ms. Debbie Hamlyn, Deputy City Manager of Community Services

Ms. Lisa Turner, citizen, commented.

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10C. CITY MANAGER

Motion made by Representative Acosta, seconded by Representative Byrd, and carried to **DIRECT** that prior to any demolition of the building that the City Manager go back out and vet the issue with the community showing the community what the City is proposing, and listening to what the community wants in the area, then come back to Council with a final recommendation, to include negotiation with the State and to include the Lincoln Park Conservation Committee and to send a letter to State Senator Jose Rodriguez to ask him to help the City identify funding.

AYES: Representatives Byrd, Acosta, Robinson, Noe, Holguin, Ortega, and Niland

NAYS: Representative Lilly

Ms. Debbie Hamlyn, Deputy City Manager of Community Services, presented a PowerPoint presentation (copy on file in City Clerk's Office).

Representatives Lilly, Ortega, Acosta, Byrd, Noe, Niland, Holguin, and Robinson commented.

The following City staff members commented:

- 1. Mr. Hector Gonzales, Lincoln Park Neighborhood Association
- 2. Mr. Joe Cardoza
- 3. Ms. Corrine Chacon
- 4. Miguel Juarez
- 5. Mr. Al Soto
- 6. Mr. Gabriel Gaytan, local artist
- 7. Mr. Bill Addington
- 8. Mr. Ray Mancera, representing LULAC

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Motion made by Representative Byrd, seconded by Representative Acosta, and unanimously carried to **ADJOURN** this meeting at 3:39 p.m.
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APPROVED AS TO CONTENT:

Richarda Duffy Momsen, City Clerk