RESOLUTION NO. 10-184

A RESOLUTION SUPPORTING AN AMENDMENT TO THE JOINT CITY/COUNTY EXTRATERRITORIAL ZONING AND SUBDIVISION AGREEMENT WHICH WOULD CREATE AN EXTRATERRITORIAL NEIGHBORHOOD ZONING AUTHORITY ADVISORY BOARD.

The City Council is informed that:

WHEREAS, the Extraterritorial Zoning Authority ("ETZA") was created in 1987 pursuant to a *Joint City/County Extraterritorial Zoning and Subdivision Agreement* entered into between the City of Las Cruces and Dona Ana County; and

WHEREAS, the ETZA was created as a joint City/County board of elected officials that coordinates and administers growth management, zoning and land use, and subdivisions for the five-mile perimeter surrounding the City of Las Cruces known as the Extraterritorial Zone ("ETZ"). The ETZA consists of two (2) members of the City Council of Las Cruces and three (3) members of the Dona Ana County Commission; and

WHEREAS, the City Council of the City of Las Cruces is desirous of creating an Extraterritorial Neighborhood Zoning Authority Advisory Board ("Neighborhood Advisory Board"); and

WHEREAS, the role of the Neighborhood Advisory Board will be to periodically meet and advise the ETZA on matters affecting the ETZ; and

WHEREAS, the Neighborhood Advisory Board shall have no authority to advise on pending cases that come or will come before the ETZA. The Neighborhood Advisory Board will only advise on issues of mutual concern to the City of Las Cruces and Dona Ana County; and

WHEREAS, the City Council of the City of Las Cruces desires that the City of Las Cruces and Dona Ana County engage in discussions to create such a Neighborhood Advisory Board; and

WHEREAS, the creation of the Neighborhood Advisory Board will require an amendment to the current *Amended Joint City/County Extra-Territorial Zoning and Subdivision Agreement*, dated February 3, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT the City Council of the City of Las Cruces supports the creation of an Extraterritorial Neighborhood Zoning Authority Advisory Board.

(II)

THAT the City of Las Cruces and Dona Ana County engage in discussions and amend the current *Amended Joint City/County Extra-Territorial Zoning and Subdivision Agreement*, dated February 3, 1997 to create such a Neighborhood Advisory Board.

(III)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution.

DONE AND APPROVED on this 19th day of January, 2010.

Mayor

ATTEST:

City Clerk

{SEAL}

Moved by: Thomas

Seconded by: Silva

Mayor Miyagishima:	Aye
Councillor Silva:	Aye
Councillor Connor:	Nay
Councillor Pedroza:	Aye
Councillor Small:	Aye
Councillor Sorg:	Absent
Councillor Thomas:	Aye

APPROVED AS TO FORM:

City Attorney

AMENDED JOINT CITY/COUNTY EXTRA-TERRITORIAL ZONING
AND SUBDIVISION AGREEMENT

THIS AGREEMENT entered into at Las Cruces, New Mexico, this 3rd day of February, 19 97, by and between the City of Las Cruces, a municipal corporation, hereinafter called "City" and the County of Doña Ana, a body corporate politic, hereinafter called "County" pursuant to the provisions of Sections 3-21-3, N.M.S.A., 1978, and the Joint Powers Agreement Act of the State of New Mexico, Sections 11-1-1 through 11-1-7, N.M.S.A., 1978.

WHEREAS, the City and County agree to amend the Joint Power Agreement which was approved on or about May 12, 1987; and

WHEREAS, the appropriate sections of the Joint Powers Agreement are amended as indicated below.

I. CREATION OF EXTRA-TERRITORIAL ZONING COMMISSION

A. The City and County hereby establish a Joint Extra-territorial Zoning Commission, hereinafter called "Commission". The Commission shall be organized as set forth herein and shall have legal authority as is expressly provided herein in addition to that authority provided in Sections 3-21-1 through 3-21-4, N.M.S.A., 1978, as amended. Commissioners shall serve for two years provided that the first members shall be appointed for initial terms that are staggered so as to provide continuity.

B. The Commission shall consist of 7 members, 3 of whom will be appointed by the Mayor with the advice and consent of the City Council, and 3 of whom shall be appointed by the County Commission. The 6 appointees thus appointed shall then appoint the 1 appointee who shall be a resident of the County, but not be

a resident of the area of the County that lies within the municipality nor be a resident of the extraterritorial area. Section II is hereby amended as follows:

II. CREATION OF JOINT MUNICIPAL-COUNTY ZONING AUTHORITY

A. The City and County hereby establish a joint Municipal-County Zoning Authority hereinafter called "Authority." The Authority shall have such legal powers as are specifically set out herein and have the legal powers given it in Section 3-21-1 through 3-21-4, N.M.S.A., 1978.

B. The Authority shall be made up of 2 members of the City Council and 3 members of the County Commission. The set number of members of the Authority is exclusive of the alternates designated pursuant to subparagraph C of this section.

C. The City Council and the County Commission shall each select one alternate member of the Extra-territorial Zoning Authority Board. The alternate member shall serve on the Extra-territorial Zoning Authority Board when a member of the Board is unavailable to attend a scheduled or special meeting. The sitting ETA member who is unable to attend a scheduled or special meeting shall designate the alternate to attend the meeting in his or her place within a reasonable amount of time prior to said meeting. Once the alternate member has been designated, the ETZ chairperson shall be notified. The alternate designee shall be a member of the City Council, when an Extra-territorial Zoning Authority Board member from the City Council is unavailable, and the alternate designee shall be a member of the County Commission, when an Extra-territorial Zoning Authority Board member from the County

Commission is unable to attend a scheduled meeting or special meeting.

III. EXTRA-TERRITORIAL JURISDICTION OF COMMISSION AND AUTHORITY FOR ZONING

A. The Authority and the Commission shall have jurisdiction with regard to zoning in that area lying outside the municipal boundaries and within five (5) miles of the municipal boundaries, except for areas within the corporate limits of the Town of Mesilla, as shown on the attached Exhibit A, such exhibit being incorporated into this Agreement.

B. Within 360 days of the appointment of the last member to be appointed, the Extra-territorial Zoning Commission shall recommend to the Joint Municipal-County Zoning Authority a Zoning Ordinance and Zoning District Map applicable to the area within the Extra-territorial Zone (ETZ) as shown on exhibit A. The ordinance shall provide for the manner in which the zoning regulations, restrictions and boundaries of the districts are determined, established, enforced and amended, supplemented or repealed. The Extra-territorial Zoning Ordinance adopted by the Authority shall be an ordinance of the municipality and an ordinance of the County as pursuant to Section 3-21-4, N.M.S.A., 1978.

C. The Commission shall administer the Extra-territorial Zoning Ordinance as adopted by the Authority.

D. The ETZ Zoning Ordinance and Map shall be prepared, adopted and enforced pursuant to Sections 3-21-1 and 3-21-4, N.M.S.A., 1978, as amended.

IV. AMENDMENTS AND APPEALS TO EXTRA-TERRITORIAL ZONING ORDINANCE, ENFORCEMENT AND ADMINISTRATION, APPEALS

A. All proposed amendments to the text of the Extra-territorial Zoning Ordinance shall be made to the Commission. The Commission shall then make a recommendation to the Authority. The Authority shall not adopt any amendment to the text of the Zoning Ordinance unless it has been reviewed with recommendations made by the Commission.

All zone change applications (amendments to the map) shall be made to the Commission. The Commission shall act on all proposed applications. The Authority shall not act on any proposed change to the zoning map unless it has received an affirmative recommendation from the Commission or has been appealed pursuant to Section IV G below.

B. For purposes of applications for rezoning within the jurisdiction of the Commission and the Authority, applications shall be filed with the *ETZ Zoning Administrator* and copies of those applications shall then be provided to the City and County Planning Departments. The City and County staff shall make necessary recommendations on each zoning application to the ETZ Zoning Administrator. The ETZ Zoning Administrator will then make a composite recommendation to the Commission, including City and County staff comments, so the Commission may take into consideration such staff recommendations in making its recommendation to the Authority. The City and County staff comments shall be made a part of the permanent case records.

C. The Commission shall hold a Public Hearing on all requests for zone changes and initial zonings and shall submit a report of the hearing along with its recommendations to the Authority for final action. However, if the Commission denies a zone request, then the applicant must appeal to the Authority subject to Section IV F below. A Commission recommendation for approval for a requested zone change shall be placed on the consent agenda of the Authority for passage unless removed from the consent agenda by one member of the Authority.

D. After receiving the recommendation of the Commission, the Authority shall conduct a public hearing on such rezoning applications and zoning ordinance text amendments and shall provide such legal notice as may be required by the Extra-territorial Zoning Ordinance.

E. The Commission and Authority shall be subject to the Open Meetings Act.

F. Appeals from a decision of the ETZ Zoning Administrator and the Commission shall be taken to the Authority. The Authority shall provide by resolution the procedure to be followed in considering appeals as allowed by Section 3-21-8(B) and 3-21-8(C), N.M.S.A., 1978.

G. The ETZ Zoning Administrator shall serve the ETZ Commission and Authority. The ETZ Zoning Administrator shall be supervised by the County Manager or his/her designee. The County shall provide an office and support for the Zoning Administrator, and provide all administrative support for the program, including assessing fees for zoning applications. The ETZ Zoning

Administrator or other appropriate designated County staff, shall be responsible for all administration and code enforcement of the ETZ Ordinance, for drafting the proposed ordinance, and for providing for appropriate review of all ETZ zoning actions by the City and County.

V. EXTRA-TERRITORIAL JURISDICTION OF SUBDIVISIONS WITHIN THE 5 MILE PLATTING AND PLANNING AREA

In addition to the powers and duties of the Extra-territorial Zoning Commission established by Section I through IV of this agreement, the Extra-territorial Zoning Commission shall have the following powers and duties relating to subdivisions within the extra jurisdictional area within five miles of the municipal boundaries, also as shown on the attached Exhibit A.

A. The City, in entering into this Agreement, acknowledges that, pursuant to Section 3-20-7, N.M.S.A., 1978, any person seeking the approval of a subdivision within the area lying between the municipal boundaries and five miles out therefrom, is required to seek approval of the Planning Authority of the municipality before the plat is filed in the Office of the County Clerk. In the interest of speeding up the administrative process and reducing the layers of government through which persons living in the extraterritorial platting and subdivision area must work in order to get a subdivision approved, the City hereby expressly delegates its authority to grant final approval of subdivision plan in the five mile area to the Commission, subject to the provisions set forth in Section VI.

B. The County, in entering into this Agreement acknowledges that, pursuant to Section 3-20-9, N.M.S.A., 1978, any person seeking the approval of a subdivision with the area lying between the municipal boundaries and five miles out therefrom, is required to seek approval of the Board of County Commissioners before the plat is filed in the Office of the County Clerk. In the interest of speeding up the administrative process and reducing the layers of government through which persons living in the extraterritorial platting and subdivision area must work in order to get a subdivision approved, the County hereby expressly delegates its authority to grant final approval of subdivision plats in the five mile zone to the Commission; subject to the provisions of Section VI.

C. Within 360 days of the appointment of the last member of the Commission, the Commission shall prepare Extra-territorial Jurisdiction Area Subdivision Regulations for presentation to the Authority. The Subdivision Regulations shall be prepared consistent with Section 3-19-6 and Sections 3-20-1 et seq., N.M.S.A., 1978, as amended.

VI. PROCEDURES FOR PROCESSING, REVIEW AND APPROVAL OF REQUESTS FOR SUBDIVISION WITHIN AN AREA LYING WITHIN FIVE MILES OF THE MUNICIPAL BOUNDARIES

A. Within an area within five miles of the municipal boundaries, subdivisions which are subdivisions as defined by either the Municipal Code or the New Mexico Subdivision Act, will be reviewed and acted upon by the Commission. Unless appealed to the Authority, Commission action will be final.

B. For purposes of application for subdivision approval within the jurisdiction of the Commission and the Authority, applications shall be filed with the Extra-territorial Jurisdiction (ETJ) Subdivision Administrator. Copies of those applications shall then be provided to the City and County Planning Departments. The City and County staffs shall make necessary recommendations on each subdivision application to the ETJ Subdivision Administrator. The ETJ Subdivision Administrator will then make a composite recommendation to the Commission, including City and County staff comments so the Commission will take into consideration such staff recommendations in considering subdivision applications. The City and County staff recommendations shall become a part of the permanent case records.

C. The Extra-territorial Jurisdiction Subdivision Administrator shall serve the ETZ Commission and Authority with subdivision review and processing. The ETJ Subdivision Administrator shall be supervised by the City Manager or his/her designee. The City shall provide an office and support for the Subdivision Administrator, and shall provide all administrative support for the program, including assessing fees for subdivision applications. The ETJ Subdivision Administrator, or other appropriate designated City staff, shall also be responsible for all administration, construction management and code enforcement of the Extra-territorial Jurisdiction Subdivision Regulations. Also, the ETJ Subdivision Administrator shall be responsible for drafting the proposed Subdivision Regulations, and for providing for appropriate review by the City and County of all proposed

subdivision applications, and any proposed amendments to the text of the Subdivision Regulations.

VII. COMPENSATION OF MEMBERS

Members of the Commission and the Authority shall serve without compensation, but may be reimbursed for budgeted expenses incurred in pursuit of their duties on the Commission or Authority, within the parameters and pursuant to the Per Diem and Diem and Mileage Act.

VIII. ORGANIZATION AND MEETINGS

The Authority shall establish their own rules of order and procedure by resolution as they may find necessary and proper to carry out their work. The Authority shall establish the rules, order and procedures for operation of the Commission, by resolution, as they may find necessary and proper for the Commission to carry out its work. The Authority and Commission shall meet at least monthly and as often as necessary to carry out their work. A majority of the members of the Authority and a majority of the members of the Commission shall constitute quorums for the transaction of business of the respective bodies. The respective bodies shall decide all matters coming before them on a majority vote of all members. Provided, however, concerning adoption of and amendments to the text of the Zoning Ordinance and Subdivision Regulations, the Authority shall adopt by at least a 2/3 vote of the majority of the entire membership of the Authority.

IX. LEGAL STAFF

The County shall provide legal staff assistance to the Commission and Authority for administration of the Extra-

territorial Zoning Ordinance. The City shall provide legal staff assistance to the Commission and the Authority for administration of the Extra-territorial Jurisdiction Subdivision Regulations.

X. TERMINATION

A. Either the City or the County may terminate this Agreement after giving not less than ninety (90) days notice, in writing, of its intention to withdraw. The notice shall be served on the Chairman of the County Commission or the Mayor of the City as the case may be, personally or by mail. The ninety (90) day notice begins to run from the date the notice is received. In any event, the City and County may, at any time without prior notice terminate this Agreement should the City and the County mutually agree to do so.

B. Termination of this Agreement shall not abrogate or impair any contract previously made by either of the parties. Letters of Credit or other development guarantee agreements shall be effective for their full term, and shall be maintained by either the City or County, as appropriate.

XII. AMENDMENTS TO THIS AGREEMENT

A. Exhibit A attached hereto will be automatically amended by any City of Las Cruces annexation, except as restricted by annexations and expansion of the Town of Mesilla. The additional areas added shall be under the control of the Extra-territorial Zoning Ordinance and Map, and the ETZ five mile planning and platting areas of the City and Commission.

B. This Joint Powers Agreement may also be amended from time to time, as necessary, as agreed to by the powers joined hereto.

XIII. SEVERABILITY

If any part of the application of this Agreement is held invalid, the remainder or its application to other situations or persons shall not be affected.

XIV. EFFECTIVE DATE

This Agreement shall become effective upon approval by the Secretary of the Department of Finance and Administration of the terms and conditions hereof.

IN WITNESS WHEREOF, the foregoing Joint City/County Extra-territorial Zoning Agreement is hereby executed by the undersigned, the Mayor of the City of Las Cruces, and the Chairman of the Commission of Doña Ana County, both of which signatures were authorized by resolution passed by the City Council of the City of Las Cruces and the Board of County of Commissioners of Doña Ana County.

CITY OF LAS CRUCES

By: _____

~~THE HONORABLE RUBEN SMITH~~
~~MAYOR, CITY OF LAS CRUCES~~
JACK L. VALENCIA, JR., MAYOR PRO TEM

ATTEST:

Shirley Clark
CITY CLERK

_____
Department Of Finance & Administration

COUNTY OF DOÑA ANA

By: _____

KEN MIYAGISHIMA
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

ATTEST:

_____
COUNTY CLERK

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 12 **Resolution# 10-** 184 **Council District:** ___

For Meeting of January 19, 2010
(Adoption Date)

A RESOLUTION SUPPORTING AN AMENDMENT TO THE JOINT CITY/COUNTY EXTRATERRITORIAL ZONING AND SUBDIVISION AGREEMENT WHICH WOULD CREATE AN EXTRATERRITORIAL ZONING AUTHORITY ADVISORY BOARD.

PURPOSE(S) OF ACTION: To support an amendment to the Joint City/County Extraterritorial Zoning and Subdivision Agreement. The contemplated amendment would create an advisory board to the Extraterritorial Zoning Authority ("ETZA").

Name of Drafter: Monica Campbell MC		**Department:** Legal		**Phone:** 541-2128	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Originating Department			Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The ETZA was created in 1987 pursuant to a *Joint City/County Extraterritorial Zoning and Subdivision Agreement* between the City of Las Cruces and Dona Ana County. The ETZA, which is comprised of joint City/County elected officials, coordinates and administers growth management, zoning and land use, and subdivisions for the five-mile perimeter surrounding the City of Las Cruces known as the Extraterritorial Zone ("ETZ"). The ETZA consists of two (2) members of the City Council of Las Cruces and three (3) members of the Dona Ana County Commission.

The City Council of the City of Las Cruces wishes to create an Extraterritorial Zoning Authority Advisory Board ("Advisory Board"). The Advisory Board would meet periodically and advise the ETZA on matters affecting the ETZ. The Advisory Board shall have no authority to advise on pending cases that come or will come before the ETZA, and it will only advise on issues of mutual concern to the City of Las Cruces and Dona Ana County.

The creation of an Advisory Board will require an amendment to the current *Amended Joint City/County Extra-Territorial Zoning and Subdivision Agreement* dated February 3, 1997.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution.

2. *Amended Joint City/County Extra-Territorial Zoning and Subdivision Agreement* dated February 3, 1997, Attachment "1".

OPTIONS / ALTERNATIVES:

1. Approve the Resolution. If approved, the City of Las Cruces and the County of Dona Ana shall engage in discussions to amend the current *Amended Joint City/County Extra-Territorial Zoning and Subdivision Agreement* dated February 3, 1997, to create the Extraterritorial Zoning Authority Advisory Board.

2. Do not approve the Resolution. This means that the City Council does not support the creation of an Extraterritorial Zoning Authority Advisory Board.

3. Modify the Resolution and provide further direction to staff.

(Continue on additional sheets as required)