ORDINANCE NO. 1276

AN ORDINANCE AMENDING APPENDIX C (LAND USE AND ZONING CODE OF 2010), ARTICLE I (GENERAL PROVISIONS), SECTIONS 1.3.1, 1.5.2; ARTICLE II (DEFINITIONS), SECTION 2.2; ARTICLE III (DISTRICT REGULATIONS), TABLE 3.2, SECTION 3.3.2 C) 3) AND SECTION 3.4.1 C)14), TABLE 3.34.2, SECTION 3.4.2 A) 7); ARTICLE V (DEVELOPMENT STANDARDS) SECTION 5.9.1 B, 5.9.2 A) 6), SECTION 5.15; ARTICLE VI (ADMINISTRATION), SECTION 6.2.12 A), TABLE 6.3.1, SECTION 6.3.14 OF THE TOWN OF SILVER CITY MUNICIPAL CODE

The Council of the Town of Silver City, Grant County, New Mexico hereby gives notice of its intention to adopt proposed amendments to the Town of Silver City Code of Ordinances.

WHEREAS, in Ordinance No. 1174, dated December 14, 2010, the Town Council adopted a Land Use and Zoning Code ("LUZC") which was incorporated in the Town’s Municipal Code and identified as Appendix “C” thereto; and

WHEREAS, amendments to the LUZC may be initiated by the Town’s Community Development Director pursuant to Section 6.3.2 of said LUZC; and

WHEREAS, upon recent review, said Director found that modification of certain existing provisions is necessary to correct and update the LUZC in the interest of better serving the public; and

WHEREAS, the suggested amendment was presented to the Town’s Planning and Zoning Commission at its regular meeting on December 4, 2018, pursuant to the requirements of Section 6.3.2 of the LUZC, and the Director’s recommendation was approved; and

WHEREAS, the Town Council finds that amending the LUZC as described herein is necessary to the health, safety and welfare of the Town;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:
**Article I, Section 1.3.1** is amended by deleting the year 1996 and replacing it with the year of 2017.

**Article I, Section 1.5.2** is deleted in its entirety and replaced with:

1.5.2 Sections pertaining to subdivisions, specifically Section 5.1 through 5.8, 6.13.15, 6.13.16, and all applicable definitions in Section 2.2 of the Land Use Code, or as they may later be defined to allow flexibility on smaller divisions, also apply to the Town’s extraterritorial planning and platting jurisdiction (ETJ) which includes all territory within three miles of the municipal boundary and not within the boundary of another municipality. The Town of Silver City and Grant County share concurrent jurisdiction regarding certain subdivision plat approvals in this extraterritorial planning and platting area.

**Article II, Section 2.2** is amended by adding a new term and definition of “Short term rental unit” and a new term and definition of “Tiny house”, which shall read as follows:

*Short term rental unit.* A privately owned residential dwelling, such as but not limited to, a single family detached or multiple family attached unit, apartment, condominium, cooperative apartment, duplex, or any portion of such dwelling rented for occupancy for dwelling, lodging, or sleeping purposes for any period of thirty (30) days or less.

*Tiny house.* A dwelling that is 400 square feet or less in floor area excluding lofts placed upon a permanent foundation, but does not include structures on chassis with permanent axles or recreational vehicles. For the purposes of this definition, the definitions mentioned in NMAC 14.7.3.28 Appendix Q shall apply and are incorporated herein as if fully set forth.

**Article III, Table 3.2 (Uses)** is amended by including “Short term rental units” and “Tiny house” in Table 3.2, and shall appear as follows:
<table>
<thead>
<tr>
<th>Category</th>
<th>Specific Use Type</th>
<th>Ru</th>
<th>RA</th>
<th>RB-1</th>
<th>RB-2</th>
<th>RC</th>
<th>MU</th>
<th>C-HD</th>
<th>C-Lt</th>
<th>C-Hwy</th>
<th>I</th>
<th>Use-Specific Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td>A = Allowed, C = Allowed with Conditional Use Permit, X = Not Allowed</td>
<td></td>
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</tr>
<tr>
<td>RESIDENTIAL</td>
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<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Household Living</td>
<td>Tiny Home</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>C</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>COMMERCIAL</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Retail Sales and Service</td>
<td>Short Term Rental</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>A</td>
<td>C</td>
<td>C</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

**Article III, Section 3.3.2 C) 3)** is deleted in its entirety and replaced with:

3) Fences and walls eight feet or less in height, provided that a five-foot wide corridor is maintained between the fence or wall and the primary structure for the purpose of emergency access, and a clear-sight triangle is maintained in accordance with Chapter 42 of the Town of Silver City Code of Ordinances. A Zoning Permit is required for deviations from this regulation to ensure compliance with fire safety regulations. (Note that fences and walls over 6 feet tall require a building permit from the New Mexico Construction Industries Division).

**Article III, Section 3.4.1 C) 14)** is deleted in its entirety and replaced with:

14) Fences or walls eight feet or less in height, if otherwise allowed by Town regulations. (Fences and walls over 6 feet tall require a building permit from the New Mexico Construction Industries Division).

**Article III, Table 3.4.2 Density and Dimensional Standards** is amended by removing the Max. Height (feet) limitation of 50 feet from Zone Districts “C-Hwy” and “I”, so that said portion of the Table will appear as follows:
Table 3.4.2: Density and Dimensional Standards

<table>
<thead>
<tr>
<th>Zone District</th>
<th>Specific Use, as allowed</th>
<th>Floor Area Ratio</th>
<th>Min. Lot Area (sq. ft.)</th>
<th>Min. Street Frontage (feet)</th>
<th>Minimum Setbacks (feet)</th>
<th>Max. Height (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-Hwy</td>
<td>4</td>
<td>5,000</td>
<td>50</td>
<td>Set by street setback map</td>
<td>5*</td>
<td>N/A</td>
</tr>
<tr>
<td>I</td>
<td>1</td>
<td>N/A</td>
<td>100</td>
<td>50</td>
<td>20</td>
<td>50</td>
</tr>
</tbody>
</table>

**Article III, Section 3.4.2 A) 7)** is deleted in its entirety, and the subsequent sections are to be re-numbered accordingly.

**Article V, Section 5.9.1 B** is deleted in its entirety.

**Article V, Section 5.9.2 A) 6)** is deleted in its entirety.

**Article V, Section 5.15** and all subsections thereunder are deleted in their entirety and replaced with:

5.15.1 Purpose. The sign regulations of this chapter are intended to promote traffic safety and to enhance the visual appearance of the Town.

5.15.2 General Standards for All Signs. The following requirements shall apply to signs in all zoning districts unless otherwise indicated.

A) **Location.** All signs shall be located on the same parcel as the use to which they are associated, unless the signs qualify as off-premise signs under Section 5.15.6.

B) **Sign Measurement.** The total surface area of all on premise and off-premise signs on a parcel shall be counted in determining the maximum total surface area allowance. Signage is determined by parcel, unless the businesses on a parcel are detached, in which case, signage may be calculated according to the individual lot upon which the business is located. Sign height is measured as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade is defined as the existing grade prior to
construction or the newly established grade after construction, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating the sign. Street frontage on a corner parcel is measured linearly as the total frontage on all streets.

C) *Wind Load Standard.* All exterior signs shall be engineered to withstand a minimum wind load of 9.5 pounds per square foot.

D) *Illumination.* The light from any illuminated sign shall be shielded and directed so that the light intensity does not generate glare onto nearby adjacent residential areas or into roadways or directly upward. All service lines to signs shall be located underground.

E) *Clear-sight Triangle.* To ensure traffic safety, signs shall not impede the clear-sight triangle (see section 2.2, Definitions).

F) *Dangerous Signs.* No property owner shall retain on any premises any sign which is in a dangerous or defective condition. In cases of immediate danger to the public due to the defective nature of a sign, the Community Development Director may cause the immediate removal of the sign and may assess the costs of the removal against the owner of the property.

G) *Obsolete Signs.* Signs that identify businesses, goods, or services no longer provided on the premises shall be removed within 30 days after the business or occupancy ceases.

H) *Addresses.* At least one sign on each parcel shall prominently display the address of the parcel, with the exception of off-premise signs.

*Time Limits.* Temporary signs or banners may be erected for a period not to exceed 60 days.

**Article VI, Section 6.2.12 A)** is deleted in its entirety and replaced with the following:

A) Decisions and recommendations shall be reduced to writing and include findings of fact and other factors considered, and a statement of the basis which such facts or factors were determined, with specific reference to the application of those findings to the relevant standards
for approval or denial set forth in this Land Use Code.

Article VI, Revised Table 6.3.1 Procedural Chart/Administrative Procedures is amended by removing from the Table the term “sign permit” and all sign permit procedures mentioned thereafter.

Article VI, Section 6.3.14 and all subsections thereunder are deleted in their entirety.

Subsequent sections shall be renumbered.

PASSED, APPROVED, AND ADOPTED by vote of the Council of the Town of Silver City, Grant County, New Mexico, this ___ day of ____________________, 2019.

(Seal)

TOWN OF SILVER CITY

________________________
Ken Ladner, Mayor

Attest:

________________________
Ann L. Mackie, Town Clerk
STAFF REPORT TO THE TOWN COUNCIL

Mtg. Date  
February 26, 2019

Request:  
TA 18-01: A request for recommendation of an amendment to the text of the Land Use Code of 2010 to the Town Council. The applicant is the Community Development Department.

Analysis:  
The current Land Use Code was adopted in 2010. The Code was created to be a living document which may at times be adjusted to better fit the Town’s goals and existing conditions. The updated Town of Silver City Comprehensive Plan of 2017 requested the Land Use Code be reviewed and updated. After departmental review of the application, the Utilities Department, Fire, Public Works, Police, Engineering, Meters and Code Enforcement Divisions had no comment. Ordinance 1276 which details the changes is attached as Appendix A.

Notice Required: As required by §6.2.11 (2) of the LUC of 2010, The Community Development Department provided written notice to the Grant County Board of Commissioners at least 10 days prior to the public hearing to be held on amendments to the Land Use Code.

Findings:  
When the Planning and Zoning Commission makes its recommendation to the Town Council and when the Town Council makes the final decision about the request at hand, it shall, at a minimum, make at least one of the following findings:
1. The proposed amendment is in substantial compliance (or not in substantial compliance) with the Town’s Comprehensive Plan;
2. The proposed amendment will not adversely affect the implementation of the goals and policies of the Town’s Comprehensive Plan (or it will adversely affect the implementation of the goals and policies of the Town’s Comprehensive Plan);
3. The proposed amendment is justified in order to correct a mistake in the Town’s Comprehensive Plan (an error in the assumptions about the property, surrounding uses population forecasts, rate of land consumption or other factors);
4. The proposed amendment will not adversely impact the public health, safety or general welfare and will promote the original purposes of the Land Use Code (or it will adversely impact the public health, safety, or general welfare and will not promote the original purposes of the Land Use Code);
5. The proposed amendment responds to changed conditions, such as changes in assumptions on capital investments, road locations, population trends, land committed to development, density, use of further studies that have been completed since adoption of the Land Use Code, (or does not respond to changed conditions);
6. The proposed amendment is necessary in order to respond to state and/or federal legislation.
7. The proposed amendment provides additional flexibility in meeting the objectives of this Land Use Code without lowering the standards of the Land Use Code.
**Recommendation:** The Commission, with a unanimous roll-call vote of a quorum of three commissioners, hereby recommends to the Silver City Town Council that the applicant’s request for a Text Amendment be approved with findings one, two, four, five, six and seven:

1. The proposed amendment is in substantial compliance with the Town’s Comprehensive Plan.
2. The proposed amendment will not adversely affect the implementation of the goals and policies of the Town’s Comprehensive Plan.
3. The proposed amendment will not adversely impact the public health, safety or general welfare and will promote the original purposes of the Land Use Code.
4. The proposed amendment responds to changed conditions, such as changes in the assumptions on capital investments, road locations, population trends, land committed to development, density, use of further studies that have been completed since the adoption of the Land Use Code.
5. The proposed amendment is necessary in order to respond to state and/or federal legislation.
6. The proposed amendment provides additional flexibility in meeting the objectives of this Land Use Code without lowering the standards of the Land Use Code.

**Conditions:** None

Submitted by:

Jaime L. Embick  
Town of Silver City  
Community Development Director  
February 13, 2019
NOTICE OF DECISION

PLANNING & ZONING COMMISSION
TOWN OF SILVER CITY

Case No. TA 18-01

IN THE MATTER OF:

A request for recommendation of an amendment to the text of the Land Use Code of 2010 to the Town Council. The applicant is the Community Development Department.

BACKGROUND:

The current Land Use Code was adopted in 2010. The Code was created to be a living document which may at times be adjusted to better fit the Town’s goals and existing conditions. The updated Town of Silver City Comprehensive Plan of 2017 requested the Land Use Code be reviewed and updated. After departmental review of the application, the Utilities Department, Fire, Public Works, Police, Engineering, Meters and Code Enforcement Divisions had no comment. The complete list of proposed changes are attached to this report as Appendix A. Short descriptions of the proposed changes are as follows:

Section 1.3.1 – date change, standard update

Section 1.5.2 – updated wording for future changes

Section 2.1 – new definitions added

Table 3.2 – Use Table revised for the new definitions

Sections 3.3.2 C) 3)3) and 3.4.1 C) 14) 14) – Increase of allowed fence height to 8 feet in response to Variance requests.

Table 3.4.2 – Density and Dimensional Standards updated per the 2017 Comprehensive Plan

Section 3.4.2 A) 7) – Deletion and re-numbering of the subsequent Section. The parking requirements and best practices have changed.

Section 5.9.1 B – Deleted as it conflicts with the last update

Section 5.9.2. A) 6) – Deleted in tandem with Section 3.4.2 A) 7)

Section 5.15 – Completely restructured pursuant to the Supreme Court Decision in Reed et al. v. Town of Gilbert, Arizona, et al., (2015)
Section 6.2.12 A) – revised for ease of use for the Planning and Zoning Commission

Table 6.3.1 – Delete Sign Permits

Section 6.3.14 – Delete permit requirements for signs

THE EVIDENCE:

The Planning and Zoning Commission reviewed the application, deed, staff report, and other supporting documentation along with sworn testimony given at the public hearing.

Jaime Embick presented the staff report for the Community Development Department. The staff report included a listing of the required findings:

1. The proposed amendment is in substantial compliance (or not in substantial compliance) with the Town’s Comprehensive Plan;
2. The proposed amendment will not adversely affect the implementation of the goals and policies of the Town’s Comprehensive Plan (or it will adversely affect the implementation of the goals and policies of the Town’s Comprehensive Plan);
3. The proposed amendment is justified in order to correct a mistake in the Town’s Comprehensive Plan (an error in the assumptions about the property, surrounding uses population forecasts, rate of land consumption or other factors);
4. The proposed amendment will not adversely impact the public health, safety or general welfare and will promote the original purposes of the Land Use Code (or it will adversely impact the public health, safety, or general welfare and will not promote the original purposes of the Land Use Code);
5. The proposed amendment responds to changed conditions, such as changes in assumptions on capital investments, road locations, population trends, land committed to development, density, use of further studies that have been completed since adoption of the Land Use Code, (or does not respond to changed conditions);
6. The proposed amendment is necessary in order to respond to state and/or federal legislation.
7. The proposed amendment provides additional flexibility in meeting the objectives of this Land Use Code without lowering the standards of the Land Use Code.

Commissioner Castello asked for clarification of the definition of tiny houses. Commissioner Seibel asked how this will affect the current code. Ms. Embick stated that the State of NM has adopted the definition in 2018 and the Town has had two requests. The topic may need to be addressed in the future.

Commissioner Steven asked if the changes to the height of fences applies to fences that already exist. Ms. Embick stated that yes, it will. Commissioner Seibel asked if the Town will like to discuss the height of fences in front yards. Ms. Embick stated that it would be a good topic for neighborhood plans or public forums.

Notice of Decision: TA 18-01
Commissioner Seibel asked for clarification of the Alternative Parking Plan. Ms. Embick stated that it was instated in 2015 and allows for developers who can show their specific need for parking to receive adjustments.

Commissioner Castello asked if the sign permitting process is being removed. Ms. Embick stated, yes it is. Commissioner Seibel stated he has concerns about enforcing obsolete signs. He stated he is concerned with the vagueness of the wording. Commissioner Seibel would like to see the Town enforce the regulations and prevent property owners from only removing the face of the sign and not the derelict structure.

Commissioner Castello asked if real estate signs were still allowed. Ms. Embick stated that they are.

**FINDINGS OF FACT:**

The Community Development Director has requested a recommendation of an amendment to the text of the Land Use Code of 2010 to the Town Council.

The Planning and Zoning Commission has found that the proposed amendment;

- is in substantial compliance with the Town’s Comprehensive Plan,
- will not adversely affect the implementation of the goals and policies of the Town’s Comprehensive Plan,
- will not adversely impact the public health, safety or general welfare and will promote the original purposes of the Land Use Code,
- responds to changed conditions, such as changes in assumptions on capital investments, road locations, population trends, land committed to development, density, use of further studies that have been completed since adoption of the Land Use Code and
- 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 Land Use Code without lowering the standards of the Land Use Code.

These findings fulfill the requirements stated in Section 6.3.2 of the Land Use and Zoning Code of 2010.

**CONCLUSIONS OF LAW:**

Section 6.3.2 of the Land Use and Zoning Code of 2010 provides a means for amending the text of the Land Use Code.

**DECISION:**

Commissioner Steven made a motion to recommend request TA 18-01 for approval with findings one, two, four, five, six and seven. Commissioner Castello seconded the motion. Roll call vote was held and the motion passed 3/0.

Notice of Decision: TA 18-01
The Commission, with a unanimous roll-call vote of a quorum of three commissioners, hereby recommends to the Silver City Town Council that the applicant’s request for a Text Amendment be approved. The recommendation will be made to the Town Council when the request is heard for a final decision.

Sincerely,

Jaime L. Embick
Community Development Director
December 17, 2018

Nickolas Seibel
Commission Chair

Notice of Decision: TA 18-01