

ORDINANCE NO. 1120

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, CHAPTER 54 (GENERAL UTILITIES; SEWERS)

WHEREAS, Article IV of the Charter of the Town of Silver City states that the Town Council shall have power by ordinance to make regulations to secure the general health of the inhabitants and to provide for the regulation of water supplies and water distribution systems; and,

WHEREAS, Section 54.04 of the Town of Silver City's Municipal Code states that the Town Council has the authority to establish rules, regulations regarding standards and specifications of any utility system owned and operated by the Town within or without the Town's boundaries; and

WHEREAS, Section 3-27-8 NMSA, further, states that any municipality owning or operating a municipal water utility may furnish or sell water to any person, association, or legal entity located outside the corporate limits under such terms and conditions acceptable to the municipality; and

WHEREAS, the Town Council of the Town of Silver City finds that a formal process should be adopted for determining the circumstances and conditions whereby Town-owned water shall be sold to persons and entities located outside the municipal boundaries of the Town; and

WHEREAS, said Town Council determined that the first priority of the Town is to provide for sufficient water supplies and infrastructure for the residents of the Town, with a view toward present and future needs; and

WHEREAS, the Town Council has carefully considered the subject and incorporated into

its considerations public input in several public work sessions; and

WHEREAS, the Town Council has given due consideration to comments made by Town staff, as well as independent consultants hired to assist the Town in its considerations; and

WHEREAS, the Town Council finds that the below-described amendments to the Municipal Code are in the public interest and further the Town Council's interest in providing for the health, safety, and welfare for its citizens, present and future.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:

Chapter 54, Section 54.040 B. is deleted.

Chapter 54, Section 54.043 (B) (1) is deleted, and Section 54.043 (B)(2) is renumbered to Section (B)(1).

Chapter 54, Section 54.085 (H) is modified by deleting the last sentence therein.

There is created a new subsection designated as Chapter 54, Section 54.086.

§54.086 SPECIAL PROVISIONS FOR EXTENSION OF WATER SERVICE OUTSIDE TOWN LIMITS

(A) The definitions, design standards, and other provisions not inconsistent with this section as set forth in Municipal Code Section 54.085 are hereby incorporated by reference as if set forth fully herein.

(B). Applications.

(1) Any person or entity, including water associations not currently served by contract with the Town, seeking an extension of water service outside Town limits or requesting that the town accept a water delivery system outside Town limits shall make written application to the

Utilities Director on a form approved by the Utilities Director. The application shall contain the following information:

- Applicant: Name and Address;
- Authorized representative: Name and Address;
- Business type;
- Ownership interest;
- Legal description and ownership of the property to be served:(Attach map or plat);
- Description of the desired point of connection to the town's existing line (Attach map or plat);
- Description of the proposed use for the requested water;
- Site water budget that has been approved by the Utilities Director and that has been calculated in accordance with Town regulations and criteria;
- Description of any currently existing water sources that may be available to the development;
- Any technical, environmental, or regulatory information pertaining to the land or development in question, including correspondence from any other government department or agency;
- If the application seeks to extend water service into a new, undeveloped area, applicant must submit a proposed plan showing transportation linkages between the new service area and major transportation corridors, as well as proposed extensions of infrastructure for other Town services;
- Payment of all required application fees;
- Such other information as the Utilities Director might reasonably require.

(2) All applications for extension of water service or acceptance of a water delivery system outside the Town's limits shall be accompanied by applicant's commitment to conform with the provisions and policies of the Code of Ordinances, all other applicable plans that have been adopted by the Town Council, and such other conditions as the Council may require. Any material misrepresentation made in the application or subsequent submissions shall be good cause for denial of such application or the rescinding of any approvals made on the basis thereof.

(3) Applicants for an extension of water service or for the Town's acceptance of a water delivery system outside of the Town's limits shall petition the Town requesting annexation of the lands to be served, and to otherwise refrain from opposing the Town in any effort it may make to annex those lands served or proposed to be served. Further, all the provisions of Section 54.043 (B), as amended, of the Municipal Code of Ordinances and its subsections shall apply.

(4) Applicants for extension of water service for a commercial use outside the town's limits may, at the Town Manager's discretion, be required to prepare a fiscal impact analysis of each agreement's effects on the Town's revenue projections. Such fiscal analysis shall become part of the record to be considered by the Town Council.

(5) If water service outside the Town's municipal boundaries is sought for any commercial use or for a project involving more than five (5) households, applicant must submit an impact study for the proposed use. The study shall contain recommendations on how to offset or minimize any potential adverse impact on the Town or existing users that may result from such extension of service. With regard to requests for commercial water service, this impact study shall be in addition to a fiscal impact analysis or any other submission required as described herein.

(6) Applications by parties related by family or business may be considered as one application, if it appears that a common scheme of development is anticipated.

(7) The Utilities Director will make the determination of when an application is complete and ready for Town Council consideration.

(8) The Utilities Director shall cause to be drafted a Staff Report analyzing the application. This Staff Report shall be forwarded to the Town Council with the application and shall become part of the record of the proceeding.

(9) Nothing in this ordinance shall be construed to impede or inhibit development of water supply and infrastructure agreements between political subdivisions in Grant County.

(C) Decisions on Applications.

(1) Decisions as to whether the Town will grant an application to extend water service or accept a water delivery system will be made by the Town Council at a public hearing based on a super majority vote. All public hearings shall follow the provisions of this section.

(a) When the Utilities Director determines that the application is complete, the hearing shall be scheduled for the next regular meeting according to the adopted schedule of the Town Council, providing adequate time to ensure that the public notice requirements can be satisfied and that the Utilities Director has ample time to complete the required staff report, or such later time as is mutually agreed upon by the applicant and the Utilities Director.

(b) The hearing shall be open to the public and all persons interested in the outcome of the appeal or the application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(c) The applicant or designated agent shall be present at the public hearings in order for the case to be heard by the decision-making body.

(d) Knowing and willful submission of false or misleading testimony or evidence shall be a misdemeanor under the Municipal Code. Testimony offered by any party or witness appearing during the course of an application proceeding shall be presumed to be true and correct. If reliable information, however, shall come to the attention of the Utilities Director, or the Town Council that false or misleading evidence was given by any person appearing in any proceeding, either in person or by written submission, where the false or misleading evidence was material to the outcome of the application process, the Utilities Director or the Town Council shall take steps as are required to investigate the matter. Applications shall remain pending during the investigation. Any application which has been found to have been affected by the false or misleading evidence shall be reconsidered by the adjudicating person or body, and the matter referred to the Town Council for consideration.

(2) The public hearing shall be conducted in the following manner:

(a) Testimony and evidence shall be taken under oath or affirmation.

(b) Any person may appear at a public hearing and submit evidence. If the person represents an organization, the Chairperson may request written evidence of that person's authority to speak on behalf of the organization in regard to the matter under consideration.

(c) Each person appearing at a public hearing shall state his or her name, state an address, and if appearing on behalf of an organization, state the name and mailing address of the organization.

(d) The order of the proceedings shall be as follows:

- (e) All parties providing testimony are sworn and the application, the Town staff report, and other information provided to Councilors at the public hearing are made part of the record.
- (f) The Utilities Director, or designated representative, shall present a written Staff Report that includes a narrative and/or graphic description of the application and a recommendation.
- (g) The applicant and staff shall answer questions and present any information required by the decision-making body.
- (h) Public testimony shall be heard, and the public may question the applicant or staff.
- (i) The applicant may respond and question any person providing testimony or evidence.
- (j) The Utilities Director, Utilities staff, the Town Attorney, the Town Engineer, and any other Town staff may respond to any statement made by the applicant or any public comment.
- (k) The Town Council may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.
- (l) The Town Council may continue the public hearing to a fixed date, time and place announced prior to recess. An applicant shall have the right to one continuance of the public hearing, if he or she so requests at least 72 hours preceding the hearing. Other postponements may be granted upon a showing of good cause by the applicant or Town. The request must be filed in writing with the Utilities Director.

Any subsequent continuances requested by any party shall be granted at the discretion of the body conducting the public hearing, and only upon a showing of good cause.

(m) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Town Council, whichever the case may be, the applicant may agree to modify his or her application, including the plans and specifications submitted. Unless such modifications are so substantial or extensive that the decision-maker cannot reasonably be expected to understand the nature and impact of the proposed changes without revised plans before it, the Town Council may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Utilities Director.

(n) The Town Council conducting the public hearing shall record the public hearing. The written or taped record of the proceedings, including testimony and statements of personal opinions, the minutes of the Secretary, all applications, exhibits and papers submitted, the staff report and the decision of the decision-making body shall constitute the record.

(o) All records of decision-making bodies shall be public records, open for inspection at the Clerk's Office during normal business hours upon reasonable notice.

(p) A copy of the public hearing record may be obtained by any person upon applying to the Clerk's Office and paying the cost for duplication of the record.

(3) Notices required pursuant to this Ordinance shall conform to the requirements of state

law and this section in order to afford the applicant, the public and interested citizens an opportunity to fully participate in the processes.

(a) All notices shall include the date, time and place of hearing, a brief description of the application or matter to be considered, and the place where copies of the application or information to be considered may be obtained.

(b) Notice of all public hearings shall be published one time in a paper of general circulation in the Town of Silver City at least 15 days prior to the date of the public hearing.

(c) Notice shall be provided to the applicant by certified mail return receipt requested at least ten days prior to the date of the public hearing.

(d) The Town shall endeavor to provide written notice to any person who has made a written request for notice and paid reasonable postage fees.

(e) Written notice shall be provided to the Grant County Board of Commissioners at least ten days prior to any public hearing.

(4) The decision will be made after consideration of the following factors:

- Town's available water supply.
- Town's available water rights.
- Town's existing demand.
- Town's encumbered demand.
- Proposed uses.
- Location and size of area proposed to be served.
- Current subdivision, zoning, and land use code compliance with all Town

and County ordinances, and relevant state statutes for all lots proposed to be served. This determination shall be made by the Town Council.

- Proposed conservation measures.
- Proposed disposition of sewage.
- Availability of return flow to the Town.
- Impact of proposed new water use on existing water users.
- Town's existing infrastructure for water service and other town services.
- Cost to the Town.
- Fiscal impact upon the Town.
- Applicant's financial fitness to complete the proposed development.
- Any other factor deemed relevant for consideration by any Council member.

(5) Unless an exception is expressly approved by the Town Council as herein provided, water line extensions shall be accompanied by sewer line extensions so the Town can capture return flow and improve groundwater protection. The costs for such sewer line extensions shall be borne by the applicant, and shall be constructed in accordance with the Town's design standards and all other relevant provisions of the Town's municipal ordinances. The criteria for granting the exception shall be as follows:

- (a) Granting of the exception is not detrimental to the public health, safety, and welfare of the Town and surrounding areas; and
- (b) Granting of the exception is consistent with the Town's and County's comprehensive plans; and
- (c) The actions of the applicant did not create the need for the exception.
- (d) An additional one-time fee will be levied in those areas that do not provide sewer

service that can capture return flows. That additional fee shall be equivalent to the value of the water that is lost to the return flow credit, which amount shall be determined by the Utilities Director, with the approval of the Town Council.

In the case of residential requests where the application requests service to more than five (5) dwelling units and the proposed project of the applicant can not be served by sewer and has been granted an exception to this requirement by the Town Council, a community liquid waste system approved by the Town shall be required. In the case of commercial usage where the proposed project of the applicant cannot be served by sewer and has been granted an exception to this requirement by the Town Council, the waste system shall be determined on a case by case basis by the Utilities Department with the approval of the Town Council

Such systems shall be in conformity with the requirements mandated by the State of New Mexico, but may be regulated by the Town with standards more strict than the State's. There shall be no variance or exception permitted from this requirement.

(6) After the close of the public hearing, the Town Council shall consider the application, the relevant supporting materials, the staff report and the public testimony given at the public hearing and shall render a decision or recommendation, as appropriate, either to approve, approve with conditions, or disapprove the application based on the standards of the Municipal Code.

(a) Decisions shall be reduced to writing and include findings of fact or other factors considered, whichever is appropriate, and a statement of the basis upon which such facts were determined, with specific reference to the relevant standards set forth in this Ordinance. A decision to grant a water main extension shall be supported by the

following findings, which shall be supported by substantial evidence:

- (1) The grant shall not degrade or otherwise diminish the quality of service to the existing users of the Town's water system;
- (2) The grant will be in accordance with the terms and conditions prescribed in this ordinance.
- (3) The grant will benefit the health, safety, and welfare of both the Town and its surrounding areas.

(b) The Utilities Director shall notify the applicant of the written decision by certified mail within ten (10) business days of the decision. A copy of the decision shall also be made available to the public at the office of the Clerk, during normal business hours.

(c) Thereafter the Town and Applicant shall execute an agreement reflecting the decision and terms and conditions of the Town Council's decision. The agreement shall include such financial guarantees as determined appropriate by the Utilities Director.

(D) Notwithstanding any other provision of this ordinance, the Town shall reserve and maintain ten percent (10%) of its total water rights to accommodate peak demand by existing users and to provide for unforeseen circumstances such as drought and increased hazards. No single application may be approved for more than ten percent (10%) of the Town's remaining unused water rights. Remaining unused water rights shall mean the total number of uncommitted water rights less the ten percent reserved for peak demand.

(E) Compliance. Water service shall not be extended into a subdivision nor a subdivision's

water delivery system accepted into the Town unless the subdivision complies with all applicable Town, County and State requirements as established by ordinance, regulation or statute, including but not limited to zoning, use, design, subdivision regulatory compliance, as well as construction, location, sewerage, and road standards. Determination of whether such compliance has been made shall be the responsibility of the Town Council.

(F) Notwithstanding any other provision of this section, in no event shall the town be obligated to approve any application if a finding is made that the proposed service will be detrimental to future development of the town or the maintenance of the health, welfare, and/or quality of life for its residents, or that the proposed extension would be impracticable based on consideration of the evidence.

(G) Nothing herein shall require the Town to reduce present commitments to existing water associations to whom the Town is obligated by contract to provide water. Any increase requested by such water associations shall be dealt with on a case-by-case basis, but in no event shall the Town grant an increased allocation which would impair present or future service to the Town, or would intrude upon the ten percent reserve mentioned in sub paragraph (D) herein. Any contracted increase in acre-foot-per-year allocation to a particular water association shall require the payment of water acquisition fees equal to the value of the water rights so committed.

A water service agreement associated with a preliminary plat will expire after one year of preliminary plat approval, unless the final plat is submitted or the preliminary plat is extended. In the case of commercial or industrial development, or in cases where no preliminary plat is required, the water agreement shall terminate and be of no force or effect if substantial development is not commenced within one year of such agreement. The Town Council has discretion upon a showing of good cause

to grant an extension of this requirement.

(H) No approval of any application confers any rights or obligations of approval for any other application, whether by an adjoining landowner, a similarly situated applicant, or any other person or entity.

(I) Each application shall be subject to the following fees and expenses:

(1) Water acquisition fee.

(a) For one single-family residential request outside the municipal boundaries, the water acquisition fee shall be equal to the value of a one-third (1/3) acre foot per year water right. The value shall be determined annually on July 1 by the Utilities Director, with the Town Council's approval, by using best available pricing data from the preceding twenty-four months, and any other formulation deemed appropriate by the Town Council. For the period commencing with the adoption of this ordinance through June 30, 2007, the water acquisition fee for a single-family residence shall be \$2,150.00.

(b) For all other residential water requests outside the municipal boundaries, there is hereby established a water acquisition fee equal to the value of a one-third acre foot per year water right multiplied by the number of residences to be served. The value shall be determined annually on July 1 by the director of the Utilities Director, with the Town Council's approval, by using the best available pricing data from the preceding twenty-four months, and any other formulation deemed appropriate by the Town Council. For the period commencing with the adoption of this ordinance through June 30, 2007, the water acquisition fee shall be fixed at

\$2,150 for each residential unit.

(c) Within 10 days after receipt of an application, including a site water budget, the Utilities Director will notify applicant of the water rights fee for the project.

(d) For commercial water requests outside the municipal boundaries, there is hereby established a water acquisition permit fee to be determined on the basis of anticipated water usage. The value shall be determined annually on July 1 by the Utilities Director, with the Town Council's approval, by using the best available pricing data from the preceding twenty-four months, and any other formulation deemed appropriate by the Town Council. For the period commencing with the adoption of this ordinance through June 30, 2007, the water acquisition fee shall be assessed at \$6,450 for each acre-foot of projected use by the applicant as determined by the Utilities Director, with a minimum fee of \$2,150.

(e) Fees in their entirety shall be due upon execution of the water service agreement executed in accordance with subsection (C)(6)(c).

(f) The transfer of water rights does not guarantee approval of subsequent applications for development necessary for such project(s).

(2) Alternative to water acquisition permit fee.

(a) As an alternative to all or part of the water rights or water acquisition permit fee, applicant may convey and legally transfer water rights to the Town sufficient to meet all or part of the site water budget for the project and the water rights fee will be reduced by a proportionate amount. The water rights in consideration must be filed in the Office of the State Engineer, must be permitted for municipal use, must be

eligible for transfer to the Town's well fields, and must be demonstrated as potable for humans. The Town Council will have sole discretion to determine the acceptability of any water rights tendered to the Town. Pending approval of the transfer of water rights, the Town Council, however, may permit the commencement of development if the applicant deposits into escrow an amount of money to equal the value of the water rights to be transferred, a letter of credit in the amount of the value of the water rights to be transferred, or a performance bond guaranteeing the payment of such amount.

(b) Applicant shall be solely responsible for any costs associated with the transfer of the water rights to the Town. If actual usage and committed water rights exceed eighty-five percent (85%) of water rights available to the Town through diversions at the Town's well fields, then the policy of allowing a fee in lieu of actually conveyed water rights shall be terminated. Final approval of the request for water shall be contingent upon the successful transfer of such rights.

(3) Incentives.

The water rights fee may be reduced by the Town Council to encourage affordable housing as defined by criteria developed by the U.S. Department of Housing and Urban Development (HUD), increased density, infill, conservation, and other policy goals of the council. This reduction is capped at a maximum of twenty-five percent (25%) of the water acquisition fees which would have normally been due.

(4) Infrastructure and utility extension expenses. If the requested service necessitates modification of existing facilities available to serve the property and/or installation of additional facilities, then the cost of such modifications or additions shall be paid

by applicant. The provisions of Municipal Code Section 54.085 are explicitly applicable. Further, in any event, the Connection Charge required by Sec. 54.041 shall apply.

(5) Meter fees. Applicant shall pay a charge in connection with the installation of a water meter or meters as set by regulation. Meter fees for all proposed meters in the project are due at time of application even if they will not be hooked up until a future date.

(6) Service fees. The fees and expenses necessary for approval of any application for water service are in addition to rates or charges assessed by the Town, on a periodic basis for such service.

(7) Consultants. Under certain circumstances, the Town Council may determine, in its sole discretion, that experts are required for consultation on technical matters. Applicant shall be notified that such consultation is required. Applicant shall be provided a description of the services required and an estimate of the cost. Such cost shall be borne by the applicant. If the Applicant wishes to proceed, applicant shall deposit an amount equal to twenty-five percent (25%) of the estimated cost. The applicant shall reimburse the Town of any amount in excess of the deposit within ten (10) days of each invoice submitted to the applicant. If the applicant fails to make the deposit, or declines the obligation of reimbursement to the Town, the Town may consider the application abandoned and shall be grounds for revocation of any approvals already made.

(8) Timing of payment of fees and expenses. Unless otherwise provided, the fees and expenses set forth herein shall be due and payable within ten days of request by the Town for payment. No approval of any application shall be granted unless all outstanding fees and other financial obligations to the Town have been paid in full.

(J) If provisions of this ordinance are found to be in conflict with existing provisions of the Municipal Code , this ordinance shall predominate. In the absence of conflict, provisions of the Municipal Code dealing with water line extensions, sewer line extensions, design, and construction standards are fully applicable.

PASSED, ADOPTED AND APPROVED by vote of the Town Council of the Town of Silver City, Grant County, New Mexico, this 11th day of September, 2006.

TOWN OF SILVER CITY

(Seal)

JAMES R. MARSHALL, Mayor

ATTEST: _____

Simon Wheaton-Smith, Town Clerk