

ORDINANCE NO. 1126

TO ADOPT AN ORDINANCE AMENDING TITLE IX (General Regulations) OF THE TOWN OF SILVER CITY MUNICIPAL CODE TO PROVIDE FOR REGULATIONS GOVERNING THE SALE OR LEASE OF TOWN-OWNED REAL PROPERTY

WHEREAS, the Town of Silver City is the owner of various parcels of improved and unimproved real property located within and without the municipal boundaries; and

WHEREAS, Article VII, Section 7 (49) of the Charter of the Town of Silver City expressly grants authority to the Town Council to regulate the disposal of all lands belonging to the Town; and

WHEREAS, Section 3-54-1 of New Mexico Statutes grants authority to municipality to lease or sell, or exchange any of its real property; and

WHEREAS, the Town Council of the Town of Silver City having considered the present regulations governing the sale and lease of Town-owned real property believes that certain modifications for the purpose of clarification of policies and procedures are necessary; and

WHEREAS, the Town Council of the Town of Silver City finds that adoption of the amendments and modifications described herein are in the best interest of the Town, and provide generally for the health, safety, and well being of the Town.

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

Title IX be amended by adding a new “Chapter 96: SALE, LEASE, OR EXCHANGE OF TOWN-OWNED REAL PROPERTY”, which shall read as follows:

CHAPTER 96: SALE, LEASE, OR EXCHANGE OF TOWN-OWNED REAL PROPERTY

§ 96.01 DEFINITIONS.

APPRAISAL: The full value given to the property and its improvements by a New Mexico licensed appraiser using accepted methods.

MARKET VALUE: The “best guess” value given to the property and its improvements calculated by a licensed real estate broker based upon experience and anticipated price trends. For the purposes herein, at least three independent brokers shall be consulted when determining “market value”.

ESSENTIAL TO

THE TOWN: Continued ownership deemed necessary or of high importance to the Town, rather than merely beneficial, for a present or future municipal purpose.

NON-ESSENTIAL

TO THE TOWN: Continued ownership is not essential nor of high importance for a present or future municipal purpose, even though the ownership may appear to be beneficial.

MUNICIPAL

PURPOSE: That use which will further a goal or policy of the Municipality as described in the Town’s Comprehensive Plan, its Land Use Code, and other related master plans.

LEASEHOLD: A property interest in real property for a definite term that conveys no rights of ownership.

COMPETITIVE

BID: Solicitation of offers-to-purchase from the public after proper notice, pursuant to procedures defined by the provisions of the Municipal Code.

PRIVATE SALE: Solicitation of an offer-to-purchase or response to an offer-to-purchase a particular property where it has been determined that competitive bidding is inappropriate due to the size, shape, or location of the parcel, rendering it of true usefulness to only one party.

PUBLISH, OR

PUBLICATION: "publish" or "publication" means printing in a newspaper that maintains an office in the municipality and is of general circulation within the municipality or, if such newspaper is a nondaily paper that will not be circulated to the public in time to meet publication requirements or if there is no newspaper that maintains an office in the municipality and is of general circulation within the municipality, then "publish" or "publication" means posting in six public places within the municipality on the first day that publication is required in a newspaper that maintains an office in the municipality and is of general circulation within the municipality. One of the public places where posting shall be made is the office of the municipal clerk who shall maintain the posting during the length of time necessary to comply with the provisions relating to the number of times publication is required in a newspaper of general circulation within the municipality. The municipal clerk may, in addition to posting, publish one or more times in a newspaper of general circulation in the municipality;

§96.02. GENERAL PROVISIONS.

All Town-Owned real property, whether improved or unimproved, may be leased, sold, or exchanged subject to the provisions hereunder under such terms as the Town Council shall deem appropriate. All such sales, leases, or exchanges shall be through competitive bidding unless otherwise provided for herein. In all cases where a sale, lease, or exchange is proposed, the

Director of Community Development shall cause to be prepared a Staff Report regarding the proposed sale, lease, or exchange which will address the circumstances, the benefits, the disadvantages, the responsibilities, and the relationship with the goals and intent of the Town's master plans for development.

A person seeking to purchase, exchange, or lease Town-owned land shall submit an application in the form prescribed by the Director of Community Development and shall include an application fee of two-hundred fifty dollars (\$250.00). There shall be, however, no application fee for the sale, lease, exchange, or donation of Town-owned property where:

1. the applicant is a federal or state governmental entity, or
2. the subject property is to be used exclusively for affordable housing as defined herein, or
3. the subject property is to be used exclusively for an economic development project which will benefit the Town as herein described, or
4. the subject property has been acquired through funding provided by federal or state legislative allocation.
5. the subject property will be sold, leased, or exchanged pursuant to Economic Development Act or the Community Development Act.

§96.03 Town-Owned Real Property Located Within Municipal Boundaries

A. Town-Owned real property located within the municipal boundaries of the Town is presumed to be essential to municipal purposes and shall not be sold or exchanged, except under the following circumstances:

1. The subject property has minimal present or foreseeable benefit to the Town; and
 - a. The subject property is to be sold to an adjoining land owner; and
 - b. The subject property is harmonious with the adjoining land; and
 - c. The subject property increases the usability of the adjoining land which is presently rendered totally or partially unusable because of contour, grade, drainage, or other natural factors.

OR,

2. The subject property is to be used exclusively for affordable housing as such term is defined by H.U.D. regulations in effect at the time of the proposed sale.

OR,

3. The subject property is to be used exclusively for an economic development project which will benefit the Town by increasing the opportunity for jobs, business, and the general well-being of the Town.

OR,

4. The subject property has a value of \$10,000 or less.

OR,

5. The subject property has minimal value to the Town due to its size, shape or location.

B. Certain classifications of Town owned land, wherever located, shall not be sold, leased or exchanged. These classifications are as follows:

1. Land deemed necessary for present and future utility infrastructure or for the protection thereof;
2. Present and future parks and “open spaces”;
3. Land deemed necessary for present and future public buildings;
4. Land with improvements listed or designated as “historical sites”.
5. Park land acquired through park dedication as might be required from a sub-divider under the provisions of the Land Use Code.
6. Park land or open space land donated to the Town under use restrictions.

C. For purposes of this section, an easement granted to a utility operating under a franchise granted by the Town shall not be considered a sale, a lease or other conveyance.

D. Town owned property available for sale, lease or exchange shall be sold by competitive bid, unless the Town Council finds that competitive bidding is inappropriate due to the size,

shape, or location of the parcel, rendering it of true usefulness to only one party. Further, any sale as permitted above may be made by private sale when there is only one interested purchaser after required notice and publication. If there are two or more prospective purchasers, the sale shall be by competitive bid as described hereunder.

1. If private sale, the selling price shall be the appraised or fair market value, whichever is higher, plus the costs of appraisal, survey, legal review, and closing.
2. In the case of a proposed exchange of Town-owned property located within the municipal boundaries, the property offered in exchange must be located within municipal boundaries, except that the subject property may lie outside municipal boundaries where such property inures to the benefit of the Town's water, sewer, utility infrastructure, parks and "open spaces".
3. Town-owned real property located within the municipal boundaries of the Town may be leased under such terms and conditions as the Town Council believes appropriate, except that no such lease shall have an initial term of more than twenty (20) years. If there are competing offers to lease, there shall be competitive bidding for the leasehold in the same form and manner as that required for the sale of Town-owned property. Offers to lease for purposes which are determined to be beneficial to the Town's goals and policies shall be given preference.

§96.04 Town-owned property located outside the Town's municipal boundaries.

Town-owned property located outside the Town's municipal boundaries is presumed non-essential to the Town UNLESS such property inures to the benefit of the Town's water, sewer, utility infrastructure, parks, and "open spaces". Such property may be sold, leased, or exchanged under such terms and conditions that the Town Council deems appropriate. Such property shall be sold or leased by competitive bid, unless the Town Council finds that competitive bidding is inappropriate due to the size, shape, or location of the parcel, rendering it of true usefulness to only one party. For purposes of this section, an easement granted to a utility operating under a

franchise granted by the town shall not be considered a sale, a lease or other conveyance.

§ 96.05 Sale, lease, donation or exchange with other public entities or private entities funded through legislative allocations.

Real property, with or without improvements, of any value may be sold to, exchanged with, leased or donated to the state, any of its political subdivisions, to the Federal government, or to a private non-governmental entity where such property had been acquired through funding from a federal or state legislative allocation after a determination by the Council as provided herein that such sale, exchange, lease or donation is in the best interests of the Town. The referendum provisions described hereunder shall not apply. Any such sale, exchange, lease or donation, however, shall be by ordinance.

§ 96.06 Sale of property acquired by foreclosure.

Real property acquired by the Town through lien or mortgage foreclosure shall not be subject to this chapter in the event the sale of the property is to the foreclosure owner of same, and provided further that any such sale shall be for not less than the principal and interest due, unless otherwise provided by law.

§96.07 Real property sold, exchanged or donated pursuant to the Economic Development or Community Development Act.

Real property of any value may be sold to, exchanged with or donated to any qualified economic development project consistent with the Economic Development Plan adopted by the Town Council and in accordance with the Local Economic Development Act.(5 -10-1 thru 5-1-13 NMSA, 1978 as amended). Real property of any value may be sold to, exchanged with or donated to a private enterprise pursuant to provisions of the Community Development Act (3-60-1 thru 3-60-32 NMSA, 1978 as amended).

§ 96.08 Referendum required.

Any sale or exchange of any municipal utility facilities or real property, whether within or without municipal boundaries, having an appraised value in excess of fifty thousand dollars (\$50,000) by public or private sale or lease, shall be subject to the referendum provisions set forth in this section, unless otherwise provided in this Chapter. The value of municipal utility facilities or real property to be sold and exchanged shall be determined by the appraised value of the municipal utility facilities or real property and not by the value of the lease. An appraisal shall be made by a qualified appraiser and submitted in writing to the governing body. If the sale price is less than the appraised value, the governing body shall cause a detailed written explanation of that difference to be prepared, and the written explanation shall be made available to any interested member of the public upon demand. No lease shall be subject to the referendum provisions.

§ 96.09 Competitive bidding.

If a public sale is held, it shall be accomplished by competitive bidding. The bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the proposed sale, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, the municipality may reject all bids. Terms and conditions for a proposed public sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening. The successful bidder shall be responsible, in addition to the purchase price, to pay the costs associated with the sale, including but not limited to appraisal, survey, legal review, and closing.

§ 96.10 Sale or lease of utility facilities or real property shall be by ordinance.

Any sale or lease of municipal utility facilities or real property entered into pursuant to this Chapter shall be by ordinance, except where the value of the sale, lease or exchange is less than \$5,000.00. Such an ordinance shall be effective forty-five days after its adoption, unless a referendum election is held pursuant to this chapter. The ordinance shall be published prior to and after adoption in the manner prescribed in §3-17-3 NMSA, 1978, which is incorporated herein as if fully set forth. Such publications shall concisely set forth at least:

1. the terms of the sale or lease;
2. the appraised value of the municipal utility facilities or real property;
3. the time and manner of payments on the lease or sale;
4. the amount of the lease or sale;
5. the identities of the purchasers or lessees; and
6. the purpose for the municipality making the lease or sale.

§96.11 Use of Proceeds from sale or lease of Town-Owned Property

Ninety-five percent (95%) of revenues from property lease or sale shall be allocated to a trails, parks, and open spaces fund for management and maintenance of the Town's designated open spaces and future acquisition of open spaces, parks, and trail easements, unless there is a dedicated specific use of the sale or lease proceeds. The Town Council in its discretion, however, shall have authority to re-allocate the revenues to any other lawful purpose.

§ 96.12 Referendum.

(A) In order to call for a referendum election on a sale, a petition shall be filed with the municipal clerk:

- (1) no later than thirty days after the adoption of the sale ordinance;
- (2) containing the names, addresses and signatures of at least fifteen percent of the qualified electors of the municipality; and

(3) containing the following heading on each page of the petition reprinted as follows:

"PETITION FOR A REFERENDUM

We, the undersigned registered voters of (insert name of municipality) petition the governing body of (insert name of municipality) to conduct a referendum election on ordinance number Ordinance number would cause a (insert "sale" or "lease") of municipal (insert "real property" or "utility facilities").

Date Name (printed) Address Signature."

(B) Section 3-1-5 NMSA 1978 shall apply to all petitions filed calling for a referendum

election on a sale or lease ordinance.

(C) If the municipal clerk certifies to the municipal governing body that the petition does contain the minimum number of valid names, addresses and signatures required to call a referendum election on the sale or lease ordinance, the municipal governing body shall adopt an election resolution within fourteen days after the date the clerk makes such certification, calling for a referendum election on the sale or lease ordinance. The election resolution shall be adopted and published pursuant to the provisions of the Municipal Election Code governing special elections and shall also concisely set forth:

- (1) the terms of the sale or lease;
- (2) the appraised and market value of the municipal utility facilities or real property;
- (3) the time and manner of payments on the lease or sale;
- (4) the amount of the lease or sale;
- (5) the identities of all purchasers or lessees; and
- (6) the purpose for the municipality making the lease or sale.

(D) The referendum election on the sale or lease ordinance shall be held not later than ninety days after the election resolution is adopted. Such election shall be held at a special or regular municipal election and shall be conducted as a special election in the manner provided in the Municipal Election Code. Any qualified elector of the municipality may vote in such a referendum election.

If a majority of the votes cast are to approve the sale or lease ordinance, the sale or lease ordinance shall be effective after the election results have been canvassed and certified. If a majority of the votes cast are to disapprove the sale or lease ordinance, the ordinance shall not be effective.

PASSED, ADOPTED AND APPROVED by vote of the Council of the Town of Silver City, Grant County, New Mexico, this 13th day of March, 2007.

TOWN OF SILVER CITY

(Seal)

James R. Marshall, Mayor

ATTEST:

Anita Norero, Acting Town Clerk

