

**Planning and Zoning Commission**  
**Silver City, NM**  
**Bylaws and Rules of Procedure**  
**Adopted January 4, 2000**  
**Amended November 1, 2005**

The Silver City Planning and Zoning Commission adopts the following rules, regulations, bylaws and rules of procedure for the conduct of business as provided for in Section 6.1.1 of the Land Use Code of the Town of Silver City, New Mexico.

**CODE OF ETHICS**

Members of the Planning and Zoning Commission occupy positions of public trust and should therefore act accordingly. A member of the Commission shall disqualify himself/herself from participating in any action or proceeding of the Commission in which his/her impartiality might be reasonably questioned. (Ref. Section 1.12 Disclosure.)

A member shall refrain from using his/her influence as a member of the Commission in an attempt to secure permits, variances or other favorable action for friends, customers, clients, family members or business associates and shall refrain from actions benefiting special interest groups at the expense of the Town as a whole. Members shall refrain from making use of special knowledge or information before it is made available to the general public. (Ref. Section 1.11 Ex Parte Communication and Conflict of Interest.)

**ARTICLE 1: GENERAL PROVISIONS**

**1.1 Meetings.**

- A. Meetings of the Commission shall be held in accordance with Section 6.2.9 of the 1999 Land Use Code and in compliance with the New Mexico Open Meetings Act, NMSA 1978, Article 10, Chapter 15.
- B. Planning and Zoning Commission meetings will be held the first Tuesday of every month, except for designated holidays. The Commission shall meet at 7:00 PM in regular session. Other meetings and work sessions may be called at any time, provided the effective open meetings requirements are met. In the event of a postponement or a holiday, the meeting will be rescheduled with proper public notification.
- C. All binding actions of the Commission shall be taken at regular meetings, special meetings or emergency meetings. Work sessions may be held for the purpose of examining issues, but no official action may be taken.
- D. The Commission may recess and reconvene a meeting to a subsequent date provided that prior to recessing, the Presiding Officer specifies the date, time and place for continuation. Notice for the reconvened meeting shall be immediately posted in City Hall and published as a legal advertisement in a newspaper of general circulation. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

- E. Public notice of all meetings shall be given in accordance with the Town's regulations for public meetings, including Section 6.2.10 of the 1999 Land Use Code and with the New Mexico Open Meetings Act, NMSA 1978, Article 10, Chapter 15.
- F. An agenda for the meeting shall be provided at the meeting and shall be adopted as first order of business after Commission members have been invited to amend it.

## **1.2 Attendance.**

- A. Members of the Commission are expected to attend all scheduled meetings and shall make every effort to attend all special meetings and work sessions.
- B. In the event a member misses three consecutive regular meetings without prior or subsequent notice to the Chair or staff, the member shall be deemed as resigned from the Commission. The minutes shall reflect the standing of the member's absence and the Chair shall notify the Mayor of the vacancy.

## **1.3 Officers.**

- A. The officers of the Commission shall consist of a Chair and Vice Chair.
- B. The officers shall be elected at the regular July meeting from among the members for a term of one year with the eligibility for re-election. Newly elected officers shall assume office immediately.
- C. In the event an officer resigns, a special election for the Commissioners shall be held to designate a successor to serve until the term expires.

## **1.4 Duties of the Chair or Presiding Officer.**

- A. The Chair, or in his/her absence the Vice Chair, shall serve as Presiding Officer at all meetings and public hearings of the Commission. In a case when both the Chair and the Vice Chair will be absent from a meeting, the Chair will appoint a Presiding Officer. If no Presiding Officer has been appointed, the attending commissioners will elect a Presiding Officer. The Presiding Officer will perform the following duties:
  1. Preserve order and decorum and have general direction of the Commission meetings.
  2. Announce the business before the Commission in the order in which it is to be acted upon.
  3. When necessary, swear in all people wishing to address the Commission or to speak on an application.
  4. Recognize the speakers entitled to the floor and guide and direct the proceedings of the Commission.
  5. Call for public input on agenda items.
  6. Decide all points of order, subject to appeal, unless he/she prefers to submit the question to the decision of the Commission.
  7. Put to vote all questions which are regularly moved or otherwise arise in the course of the proceedings.
  8. Sign disposition papers, such as a subdivision plat, and perform other duties as required.
  9. The Chair, along with one other Commission member and the Community Development Director, shall approve the agenda for submission to the Commission.

- B. The Presiding Officer shall be guided in such performance by Robert's Rules of Order (Scott, Foresman, Newly Revised Ninth Edition, 1990).

**1.5 Quorum.** A quorum must be present for a meeting or public hearing. A quorum is composed of a majority of the membership (four of the seven Commissioners).

**1.6 Public Hearings.** All matters including, but not limited to conditional use permits, variance requests, map amendments, major subdivision applications and administrative appeals, shall be considered at a public hearing called for that purpose. In the event a special hearing is requested, Community Development Department staff shall notify the Chair who shall poll the Commissioners. If four or more of the Commissioners agree to the need for said hearing, a special hearing will be held not later than 15 calendar days following polling of the Commissioners, with proper public notification.

**1.7 Conduct of Meetings and Public Hearings.** At all meetings and public hearings before the Commission, all individuals may have an opportunity to be heard. In the reception of testimony and evidence, the Commission shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than herein provided, but may make the investigation in such manner as in its best judgment is calculated to ascertain the substantial rights of the parties, to protect and promote the safety, health, morals and general welfare and to carry out the spirit of the State Statutes, Town of Silver City Land Use Code and Code of Ordinances regulating planning, platting and zoning.

**1.8 Adopted Rules.**

- A. Any matter not covered by these rules shall be governed by decision of the Presiding Officer, applying Robert's Rules of Order (Scott, Foresman, New Revised Ninth Edition, 1990).
- B. These rules or any part thereof may be amended, repealed, altered or rescinded by a vote of a majority of the Commission after notice of intended proposal. Such notice shall be presented at a regular meeting of the Commission.
- C. Except for Statutory or Ordinance provisions, these rules, or any part thereof, may be temporarily suspended by a majority vote of the Commissioners present. When the suspension of a rule is requested and no objection is offered, the Presiding Officer shall announce the rule suspended and Commission may proceed accordingly,
- D. Violation of these rules does not invalidate action of the Commission.

**1.9 Hearing Schedule.** In January of each year, the Commission shall adopt a hearing schedule outlining submittal requirements and staff review periods for applications to be heard by the Commission. This schedule shall remain in effect for that year, unless amended by a majority vote of the Commissioners. All applicants submitting items to the Planning and Zoning Commission for review and/or approval are required to comply with this schedule.

**1.10 Responsibilities of Commissioners.** In addition to other duties, responsibilities and rights given by the Chair or Presiding Officer, the Commissioners shall:

1. In all public statements, make clear that they speak only for themselves unless authorized by the Town Manager, a majority of the Commission or the Town Council.
2. Ensure that the Town Manager or the Community Development Director is informed, as soon as practical, of significant communications with outside entities, be they either directed or initiated by the Commission.

**1.11 Ex Parte Communication and Conflict of Interest.**

- A. The requirements of procedural due process necessitate a fair hearing before a reasonably impartial body. Any decisions must be based upon what is in the official public record. Ex parte communications involve one party talking or presenting information to a Commission member when the other party is not present to witness the conversations or does not receive the disclosed information.
- B. The Commission recognizes that the issue of ex parte communications may arise; therefore, in order to ensure a fair and open hearing and decision making process, the Commission will follow the protocol outlined below:
  1. Contacts with the public outside of the public hearing are to be kept to a minimum.
  2. If a Commissioner has ex parte contacts with either the applicant or opponent that result in new information, that Commissioner is required to disclose on record at the public hearing such contacts and information to give the other side an opportunity to refute. After a public hearing is closed, ex parte contacts are to be kept to a minimum.
  3. On final action items that are likely to generate continued discussion between the hearing and the vote, the Commission shall consider continuing the public hearing.
  4. The Commission shall request that comments or additional information be put in writing and sent to the Community Development Department for distribution to all Commissioners.
- C. Members of the Planning and Zoning Commission shall not:
  1. Communicate, directly or indirectly, with any party or his/her representative in connection with the merits of any issue before the Commission; or
  2. Use or rely upon any communication, reports, staff memos or other materials prepared in connection with a public hearing unless it is made part of the record; or
  3. Inspect the site at issue with any party or his/her representative, except as part of a publicized and organized visit involving the entire Commission, the public, and any other parties; or
  4. Disclose or use confidential information concerning the property, government, or affairs of the governmental body by which that official is employed or of which the official is a member in order to advance financial or other private interest of said official, members of the official's family or others; or

5. Vote or otherwise participate in the negotiation or the making of any contract by the Town with any business or entity in which the official or any members of his/her family has a private financial interest; or
  6. Represent private interests in any action or proceeding before the government body by which the Commissioner is employed or of which the Commissioner is a member, or any appeal of a decision by such body; or
  7. Accept or request any valuable gift whether in the form of service, loan or promise from any person, firm, or corporation which to the Commissioner's knowledge is interested directly or indirectly in any manner whatsoever in business dealing with the governmental body by which the Commissioner is employed or which the Commissioner is a member; or
  8. Use Town service, property or personnel for personal benefit, profit or convenience, except when such use is generally available to the public and is in accordance with any policies of the governmental body.
- D. Any action taken by the Commission where it later appears that a vote may have been tainted by the existence of a conflict of interest or any ethical violation by any Commissioner voting thereon may be subject to reconsideration and a new vote taken on the subject matter, after due consideration.
- E. This section shall not be read as prohibiting an incumbent or candidate for elective office from receiving reasonable and customary campaign contributions as permitted by law and in accordance with this code and any rules established by the government body. This section does not prohibit a Commissioner from receiving a commercially reasonable loan while in office, or from receiving an award publicly presented in recognition of the Commissioner's public service.

### **1.12 Disclosure.**

- A. As stated in Section 6.1.1(E) of the Land Use Code:  
A member of the Commission having a financial interest in the outcome of any policy, decision, or determination before the Commission shall, as soon as possible after such interest becomes apparent, disclose to each of the other members voting on the matter, the nature of his/her financial interest in the issue and shall be disqualified as a commissioner from participating in any discussion, decision or vote relating to that issue. This does not disqualify him/her from participating as a private individual.
- B. Upon appointment, Commissioners shall furnish the information set forth below to the Town Clerk:
1. Name;
  2. Professional, occupational, or business licenses held;
  3. Membership(s) on board(s) of directors of corporations, public or private associations or organizations.

## **ARTICLE II: PROCEDURES**

### **2.1 Preparation and Distribution of Agenda.**

- A. The Chair, the Community Development Director, and one other Commissioner selected by the Chair, shall prepare the agenda for all Commission meetings. In addition to submitted applications, the agenda may include matters placed on the agenda by the Community Development Director and/or the Commissioners.
- B. The Community Development Department shall assure that scheduled public hearings have been duly advertised.
- C. The agenda, along with staff reports and related materials, shall be made available to each member of the Commission at least seven days in advance of the meeting, with more advance time in the case of a major subdivision proposal being on the agenda.
- D. The Community Development Department shall give all information and materials presented in the Commissioners' packets to the Town Clerk for insertion in the Town Web site at least seven days in advance of the meeting.
- E. The agenda shall be posted in the Community Development Department at least 24 hours in advance of any meeting, except in the case of an emergency meeting for which timing shall be reasonable under the circumstances.

## **2.2 Minutes.**

- A. The minutes of meetings shall be maintained according to the New Mexico Open Meetings Act, NMSA 1978, Article 10, Chapter 15.
- B. Community Development Department staff shall be responsible for recording the minutes. A record of materials relevant to the business of the Commission shall be maintained in the Community Development Department Office.
- C. Minutes shall include at a minimum the date, time and place of the meeting, the names of the members in attendance and those absent, the substance of the applications considered and a record of any decisions and votes taken that shows how each Commissioner voted.
- D. Verbatim transcription of entire Commission proceedings will be prepared only upon request.
- E. Approval of the minutes shall be placed on the agenda. Unless a reading of the minutes is requested by a Commission member, the minutes of previous meetings maybe corrected and approved without a reading.
- F. Previously approved minutes may be corrected whenever an error is noticed.

## **2.3 Order of Business.**

- A. The order of business of the Commission shall be conducted in the following order, provided, however, that the Commission, by majority vote, may, during a meeting, rearrange items on the agenda to conduct the business before the Commission more efficiently:
  - Call to Order and Pledge of Allegiance
  - Approval of Agenda
  - Approval of Minutes
  - Old Items
  - New Items
  - Community Input
  - Reports from Staff

Reports from the Commission  
Adjournment

- B. All applications to the Planning and Zoning Commission shall be heard as follows at a public hearing:
1. All parties providing testimony are sworn in by the Presiding Officer and the packets provided to the Commissioners are made part of the record.
  2. The Community Development Director, or designated staff, shall present a written Staff Report which includes a narrative and/or graphic description of the application and recommendation.
  3. The applicant and staff shall answer questions and present any information required by the decision-making body.
  4. Public testimony shall be heard and the Presiding Officer may direct questions from the public to the applicant or staff.
  5. The applicant, if directed by the Presiding Officer, may respond and question any person providing testimony or evidence.
  6. The Community Development Director, Community Development Department staff, the Town Attorney, the Town Engineer and any other Town staff, if directed by the Presiding Officer, may respond to any statement made by the applicant or any public comment.
  7. The Presiding Officer shall entertain a motion, including applicable findings and conditions.
  8. Following receipt of a second, the Presiding Officer shall call for discussion.
  9. According to Section 10-15-1, Subsection H, 3 of the Open Meetings Act, a closed session may be called to deliberate on these items. A motion must be made referencing the section listed and the item to be discussed and a roll call vote must be taken.
  10. The Presiding Officer calls the question and announces the results of the vote. All decisions require stated findings.

**2.4 Motions.**

- A. **Main Motion:** A main motion presents a proposition for the passage, adoption, approval or rejection.
1. A main motion must be seconded before debate can take place and only one main motion may be on the floor at a time. A Commissioner may give brief explanatory comments before stating the motion but must refrain from debate until the motion has been seconded. In the absence of a second, the motion fails.
  2. Main motions are debatable, amendable, and can be reconsidered after adoption.
- B. **Substitute Motion:** A substitute motion may replace the main motion only as an alternative offer to a proposed motion. The Substitute motion must be seconded and may be amended one time. If the substitute motion fails, the original motion becomes the main motion; if the substitute motion passes, the original motion is discarded.
- C. **Withdrawal and Modification of Motions.** Until a motion is seconded and stated, the mover may withdraw or modify the motion without consent. When a motion is

seconded, it is in the possession of the Commission and can, therefore, be withdrawn or modified only by consent of the Commission.

- D. Wording of Motions. Motions become the official recorded statement of any action taken by the Commission. A motion should therefore be worded in a concise, unambiguous, and complete form appropriate to such a purpose.

## **2.5 Postponement of Action.**

- A. Postponement (to a definite time). The motion to postpone defers an action on a pending question to some definite day or meeting. When a question has been postponed to a certain time, it becomes an order of the day for that time and must appear on the agenda under "Old Business." When the time to which a question has been postponed arrives and the question is taken up, it can be postponed again if the additional delay will not interfere with the proper handling of the postponed questions. The motion to postpone is debatable, amendable and may be reconsidered.
- B. To Table (postpone temporarily). Any measure before the Commission may be tabled temporarily at the same meeting. Items must be removed from the table and acted upon prior to adjournment. The motion to table is not debatable, not amendable and cannot be reconsidered.
- C. To Remove from the Table (resume consideration). The purpose is to bring before the Commission for action a question that has previously been laid out on the table. The motion to remove from the table is not debatable, not amendable and cannot be reconsidered.

## **2.6 Reconsideration of Action.** The purpose is to permit the Commission to reconsider a vote on a previous action. A request to reconsider previous actions must be made no later than the next regular meeting and must be made by a Commissioner who voted on the prevailing side of the vote. Intent to propose reconsideration must be indicated as an agenda item. Upon passage of a motion to reconsider, the matter is returned to the table and must be acted upon prior to adjournment. The motion to reconsider is not amendable, cannot be reconsidered and is debatable only if the original motion is debatable.

## **2.7 Appeal a Decision of the Presiding Officer.** An appeal must be made promptly before any debate or other business has intervened. When an appeal is taken, the Presiding Officer should clearly state the decision being appealed and may state the reasons for the decision. If there is no debate, or when debate is concluded, the Presiding Officer may put the question to the Commission. A majority vote of those present sustains a decision of the Presiding Officer.

## **2.8 Amendments to Motions.**

- A. Every amendment proposed must be relevant to the subject of the proposition.
- B. A proposed amendment takes precedence over the original motion out of which it arises and must be voted upon before the original motion.

- C. After an amendment is adopted, the question as amended must be put to a vote.
- D. Rejection of an amendment leaves the pending question worded as it was before the amendment was offered.
- E. Amendments should be offered in a concise, unambiguous manner and in a complete form of a motion.
- F. In form, amendments may be divided into the following types:
  1. To add (that is to place at the end);
  2. To insert;
  3. To strike out; or
  4. To strike out and insert.
- G. Decisions on amendments are as follows:
  1. An amendment, once adopted, may not thereafter at the same meeting be changed or modified, except upon reconsideration of the vote by which it was adopted.
  2. When a proposed amendment has been defeated, the same amendment may not be proposed again without first reconsidering the vote by a member that voted in the negative in which the amendment lost.
- H. Withdrawing amendments and accepting modification shall take place as follows.
  1. Amendments may be withdrawn before being seconded and stated by the Presiding Officer. After it is seconded and stated, it is in the possession of the Commission and may be withdrawn only with the consent of the Commission.
  2. A member may modify an amendment before it is seconded and stated by the Presiding Officer. After it is seconded and stated, it is in the possession of the Commission and can be modified only with the consent of the Commission. The Presiding Officer may put the question of modification without waiting for a motion, if there is no objection.

**2.9 Appeals of Planning and Zoning Commission Decisions.**

- A. Any decision of the Planning and Zoning Commission, which is appealable under Section 6.3.4 of the 1999 Land Use Code, may be appealed to the Town Council according to Section 6.3.4 of the 1999 Land Use Code. The Presiding Officer may appoint himself or herself or another Commissioner to present the concerns of the Commission as a whole to the Town Council.
- B. Any other decision of the Planning and Zoning Commission that requires or could require action by the Town Council and which is not unanimous shall be handled as follows:
  1. Within five days of the meeting at which such decision is made, any Commissioner not voting with the majority may submit to the Chair a written response to the decision.
  2. Upon expiration of such five-day period, the Chair shall assemble the original decision, any dissenting Commissioner's comments, into one package. This document, along with a cover letter from the Chair, shall be submitted to the Town Council.
  3. The Chair or his/her designee shall attend the next Town Council meeting at which the item will be heard.

## **ARTICLE III: RULES OF ORDER**

**3.1 Rules of Debate.** Debate is the essential feature of a legislative body. It is the means by which the opinions of members are exchanged, questions deliberated and conclusions reached on the business before the body.

- A. To permit debate:
  - 1. There must be a debatable question before the Commission.
  - 2. Debate must be confined to the question before the Commission.
  - 3. The Presiding Officer may require that all debate must be addressed to him or her and not to the Commission.
- B. Time limits. The Presiding Officer may set time limits in debate.
- C. Call the Question (Previous Question). Debate must be closed immediately by calling the question. The motion for the call for the question may motivate unanimous consent to ending debate. Before such a motion has been seconded, the Presiding Officer may ask if there is any objection to closing debate. If there is no objection, the Presiding Officer shall immediately call the question. If one member objects, the Presiding Officer shall ask if there is a second to the motion. If there is a second to the call, he/she must immediately take a vote on whether to order the call for the question. The call for the question requires a majority vote on the question to which it applied. The call for the question is not amendable, not debatable and can be reconsidered.

**3.2 Rules of Voting.**

- A. Each Commissioner in attendance must vote for or against all measures before the Commission, unless there is a conflict of interest, for which abstention is recognized. Such conflict of interest shall be recorded in the minutes.
- B. A Commissioner shall not explain his/her vote during voting, which would be the same as debate at such a time.
- C. Except for procedural matters, voting shall be by roll call and each Commissioner's vote shall be recorded in the minutes. Actions declared as procedural by the Presiding Officer may be decided by the show of hands.

**3.3 Decorum.**

- A. The Presiding Officer may require that Commissioners must address all remarks through him or her.
- B. Members of the Commission shall confine their remarks to the item under discussion or debate, avoiding personal references or attacks on fellow members, staff members or members of the public. No member of the Commission shall

engage in private discourse or commit any other act tending to distract the attention of the Commission from the business before it.

- C. A Commissioner who resorts to persistent irrelevance or persistent repetition may be directed to discontinue his/her speech by the Presiding Officer.
- D. A Commissioner may call attention to the violation of the rules of or a mistake in procedure by rising to a point of order. The Presiding Officer may permit a full explanation before ruling on the claim and may submit the question to the Commission for decision by a majority vote. The Presiding Officer is not required to decide any point of order not directly present in the proceedings of the Commission. Such an assertion does not require a second, is not debatable or amendable and cannot be questioned.
- E. Questions of privilege do not relate to pending business but have to do with special matters of immediate and overriding importance which, without debate, should be allowed to interrupt the consideration of anything else. The Presiding Officer makes a ruling as to whether it is admitted as a question of privilege and whether it requires consideration before the pending business is resumed.

### **3.4 Public Hearing Procedures.**

- A. Reasonable efforts shall be made to give notice of public hearings to all interested people. Notice of public hearing shall state the subject, the time and place of the public hearing, the manner in which interested people may express their views and where interested people may obtain copies of the material which is the subject of the hearing.
- B. The Presiding Officer shall require that all people wishing to address the Commission be sworn in giving their names and the community in which they live prior to the discussion of any new item on the agenda. The Presiding Officer may ask whether they wish to speak as a proponent, opponent, or otherwise. Any person who fails to be sworn in shall not be permitted to speak until sworn in.
- C. The Presiding Officer may set the order of speakers so that testimony is heard in the most logical grouping, e.g. proponents, opponents, adjacent owners, vested interests, etc.
- D. The Presiding Officer will introduce the item, open the public hearing, request the pertinent staff member to present the application and call upon the applicant to describe the matter under consideration.
- E. Interested people shall have the opportunity to submit data, views or arguments orally or in writing. Questioning of a witness or people expressing their views shall be at the discretion of the Presiding Officer.
- F. The Presiding Officer may establish speaker time limits and otherwise control presentations to avoid repetition.
- G. After the proponents and opponents have had an opportunity to be heard, the Presiding Officer may call for rebuttal. A proponent or opponent speaking in rebuttal shall not introduce new material.
- H. After the Commission has heard all of the evidence, the Presiding Officer closes the public hearing and entertains a motion.
- I. Following the motion and its second, discussion occurs among the Commission.
- J. The Presiding Officer then calls the question.

