

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
GRANT COUNTY ADMINISTRATION CENTER, 1400 HWY. 180 E., SILVER CITY, NM
August 24, 2021, 6:00 p.m.**

Present:

Ken Ladner, Mayor
Cynthia Ann Bettison, District 1
Lynda D. Aiman-Smith, District 2
Jose A. Ray, Jr., District 3
Guadalupe E. Cano, District 4

Also, present:

Alex C. Brown, Town Manager
James Reynolds, Town Attorney
Freddie Portillo, Police Chief
Jaime Embick, Community Development Director
Maria C. Sublasky, Admin Asst. to Exec. Department

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE - Mayor Ladner called the meeting to order at 6:00 p.m. and recognized the Administration of the Town naming Mr. Brown, Attorney Jim Reynolds and Chief Portillo.

2. CHANGES TO AGENDA - None.

3. CEREMONIES – None.

4. PROCLAMATIONS – None.

5. COUNCIL COMMENTS – Councilor Bettison indicated she had no comments to make. Councilor Aiman Smith stated that today was the formal filing day for candidates for elected officials in Municipalities and for school districts and water boards. She went on to say write in date was next week and those interested could contact the county clerk for more information. Secondly, she stated that the Pfizer Covid-19 vaccine was officially approved by the FDA and those concerned or waiting on the approval can now go out and get their vaccine today, at Walgreens and HMS Clinic. Councilor Cano thanked the Silver Police Department for what she said seems an improvement in the overall driving of the community. She was not sure if they were being cited or warned but she appreciated that their driving shows signs of improvement. Councilor Ray stated he wanted to comment and state his opinion on certain things and indicated his intent was not to offend anyone. He referred to the situation in Afghanistan and stated 20 years was in fact a long time to be involved in a conflict. As a Veteran, he did not agree with how it was handled and laid blame on President Biden. He stated there was only one authority and proceeded to read the ten commandments. Councilor Ray commented on the vaccine and mask mandate and stated he was not for it. He wears it as needed. He asked everyone to pray the rosary for world peace. He ended his commentary by stating that this past weekend his dogs alerted him to a commotion outside in the early hours of the morning. After investigating the cause, he came across the carcass of a small deer that appeared to be killed by a mountain lion. He said sightings were confirmed with the game department and the police department and he cautioned anyone going out to Boston Hill to be wary and to take precautions.

6. APPROVAL OF MINUTES – Regular Meeting on August 10, 2021. Mayor Ladner asked for a motion to approve the minutes. Councilor Aiman-Smith moved to approve the Minutes of the Regular Council Meeting of the Town of Silver City of August 10, 2021. Councilor Ray seconded the motion. No discussion. Mayor asked that all in favor say aye. All in favor. Mayor asked those opposed to say nay. There were none opposed. Motion carried.

7. PUBLIC INPUT -

Mayor Ladner stated the first person signed up for public input was Patricia Cano. Ms. Cano stated she came before the council as a matter of public safety. She was raised in the area of Perro's Bravos which is East of Hudson Street past Brewer Street. She stated this past winter a homeless shelter was opened in the area somehow, without having to come before the Council for approval. She stated that the quality of life in the neighborhood there had changed drastically and the neighbors did not feel safe. Her property had been broken into many times. The property behind hers was often used as a walking trail but the residents no longer feel safe nor do they allow their children to go there due to the amount of drug paraphernalia found in the area. She indicated she was not anti-homeless but she asked the Council to consider the

quality of life in the neighborhood. There are many elderlies residing in this older area and it is heartbreaking for her to think they will have to relocate as she did. She indicated she left the area as a result of the new Vista de Plata subdivision being built and rodents moving on to her property. She was never able to get rid of them and could not live there any longer. She stated that when the Town tries to improve things [in town] without considering everything else, they really just end with messing up the quality of life. She asked that when opening a shelter, that they consider the old neighborhoods. Mayor Ladner stated next the next person on the public input list was Jeffrey Castillo.

Mr. Castillo indicated he would pass on speaking and would like to just listen for now. If anything came up, he would come before the Council at the next meeting.

Carol Ann Fugagli, Education Director for the Upper Gila Watershed Alliance, reported on the result of the Climathon that focused on composting held in Silver City at the end of July. Silver City is tasked with being a leader in developing a pilot program in developing a civilian climate corps that will create a circular bio economy that transforms local waste biomass such a food and forest waste products into carbon solutions. The vision would be to have the climate corps stationed at Fort Bayard where the Forest Service will be relocating their offices to in the future. They will be managing a wildlife refuge of about 6,000 acres where the corps will envision community agriculture, erosion control, community composting as well as a place where visitors can be educated on these various topics. She indicated they are reporting with the hopes that the Town of Silver City would consider being a partner in their efforts. Ms. Fugagli indicated she had seven copies of the Climathon report that she would like to leave regarding the basic idea. She indicated more information was available on the website of the local radio station KURU.

9. PUBLIC HEARINGS –

A. Approval / Disapproval of Ordinance 1305: An Ordinance Amending Appendix C (Land Use and Zoning Code of 2010), Article IV (Overlay District Regulations), Section 4.2.6 C) 3) (*predominant use of compatible materials*), Section 4.2.6 (J) (*storage units/shipping containers*), Section 6.3.21 B) 2), Section 6.3.21 D) 3) and Section 4.1.2 definitions of the Town of Silver City Municipal Code and referred to the order and conduct of the public hearing. Mayor Ladner read the procedures for the public hearing on Ordinance 1305 and stated the Town Council would serve as the hearing board and he as Mayor, would be the presiding officer. He asked if any members of the hearing board had any ex parte discussion with any person regarding the subject matter of this hearing or had any communications from any party to this case. All four Councilors responded that they had not had any ex parte communications regarding this case. Mayor Ladner asked anyone giving testimony to approach the podium for swearing in by the Town Clerk. Jaime Embick, Community Development Director approached the podium and was sworn in. Mayor Ladner stated he was pleased to have Jaime Embick, the Community Development Director present tonight and asked her to give a brief synopsis of the application. Ms. Embick stated the Historic Design Review Committee has had issues come up regarding the section under their purview, that needed updating being the Land Use Code was adopted back in 2010. The first adjustment pertained to shipping containers that were not considered as prominent use when the code was written and therefore were not listed in the historic overlay districts instructions. Those who have them are now allowed to keep them providing they change the exterior appearance to match the neighborhood. In addition, she noted that some definitions were omitted from the 2010 Land Use Code and those were added in as well. She proceeded to state that Mural permits were listed as a “Public Hearing” in the Land Use Code but were never treated as such. Therefore, an adjustment was made to address that as well. She stated that sand blasting was not listed as an allowable cleaning process to clean the soft brick in the downtown area. It had been omitted previously, and was added so as not to damage the downtown district and to prevent damage to the structures. She stated that a Public Hearing was held by the Planning & Zoning Commission whereby they did fine tune the modifications on shipping containers and those changes were approved and passed by them. They recommended findings 1, 2 and 4. Mayor Ladner asked if there were any questions from the Council. Councilor Aiman Smith asked Ms. Embick to give details on the four overlay districts. Ms. Embick stated the four districts touch each other and are comprised of the Chihuahua District, the Blacks Edition, the Silver City District and North Edition District. She indicated the original platting of the town encompassed one square mile wherein the four districts were included. She went on to say that part of the historic downtown commercial district overlapped a couple of the district and stated that the zoning map on the Town’s

website shows them outlined. The Town of Silver City does not regulate the paint colors but they do regulate the exterior finish, setbacks and things of that nature. Ms. Embick confirmed that the Historic Review Design Committee meets twice monthly and discuss these issues with anyone that comes before them. Ms. Embick also stated the public was welcome to contact Community Development Department directly. Councilor Aiman Smith inquired on the shipping containers and asked if there was any idea how many people had them within these areas. Ms. Embick stated she did not have a number available, but did say there had become quite popular. Councilor Aiman Smith asked if Ordinance 1305 were to pass, who would be working with the public to educate and enforce it. Ms. Embick stated that enforcement would lie with Code Enforcement. She also stated that once the Ordinance goes into effect, those people who already have the containers will have six months to comply with making sure the materials on the exterior of the containers match their other structures. Mayor Ladner asked if there were any other questions or comments from the council. There were none. Mayor Ladner asked Ms. Embick if there were anything else, she would like reflected in the record. Ms. Embick stated that she would like it noted that the goal was not to punish the people who had containers but rather to simply adapt the code to include a use for containers that didn't exist within the code when it was written. The Mayor asked if there were any other questions or comments from the Council. There were none. He asked the hearing board if they were prepared to consider the application and render its decision. The clerk did a roll call vote. Councilor Bettison, Councilor Aiman Smith, Councilor Ray and Councilor Cano all stated they were prepared to render a decision. Mayor Ladner asked for a motion. Councilor Ray moved to approve Ordinance 1305: An Ordinance Amending Appendix C (Land Use and Zoning Code of 2010), Article IV (Overlay District Regulations), Section 4.2.6 C) 3) (predominant use of compatible materials), Section 4.2.6 (J) (storage units/shipping containers), Section 6.3.21 B) 2), Section 6.3.21 D) 3) and Section 4.1.2 definitions of the Town of Silver City Municipal Code. Councilor Bettison seconded the motion as stated. Mayor asked if there was any discussion, there was none. Mayor Ladner asked for a roll call. Councilor Bettison aye; Councilor Aiman Smith aye; Councilor Ray aye; Councilor Cano aye. Motion carried.

8. REPORTS –

A. Staff Reports. – Mayor Ladner apologized for skipping over staff reports and asked Mr. Brown to present his progress report on the new Recreation Center. Mr. Brown asked if he could do so under the discussion on the Bond Ordinance since it pertains to that as well. All agreed to his request. Mr. Brown stated he wanted to thank Jaime Embick for her service with the Town of Silver City who will be leaving us at the end of the week. Ms. Embick would be going to the Community Development Department in Safford, Arizona. He thanked her for all she has done for the Town and wished her the best of luck in the future.

10. UNFINISHED BUSINESS –

A. Approval/Disapproval of Ordinance 1304: An Ordinance Amending Chapter 4 (Alcoholic Beverages), Article I (In General), Sections 4-1 through 4-31, and Article II (Licenses), Sections 4-32 through 4-36 of the Municipal Code of the Town of Silver City, Grant County, New Mexico. Mayor Ladner indicated Councilor Bettison was the sponsor of this ordinance. Councilor Bettison asked if the Town Attorney Jim Reynolds would briefly explain the intent of the Ordinance which was basically to conform to the new changes made by Alcohol and Gaming. Mr. Reynolds indicated that the State Legislature had enacted a complete amendment of the Alcohol and Beverage statutes and made some changes to provide more flexibility in the restaurant area as well as cleaned up the language. He indicated the changes being made to the Ordinance were basically just to conform to what the State statute required and also indicated that any local violations would be referred to the State Police for enforcement. Mayor asked if there were any questions or comments from the Council or public. The Mayor asked for a motion. Councilor Bettison made a motion to approve Ordinance 1304-An Ordinance Amending Chapter 4 (Alcoholic Beverages), Article I (In General), Sections 4-1 through 4-31, and Article II (Licenses), Sections 4-32 through 4-36 of the Municipal Code of the Town of Silver City, Grant County, New Mexico. Councilor Cano seconded the motion as stated. There was no discussion. Mayor Ladner asked for a roll call. Councilor Bettison voted aye; Councilor Aiman Smith voted aye; Councilor Ray voted nay; Councilor Cano voted aye. Motion carried three to one with Councilor Ray dissenting.

11. NEW BUSINESS –

A. Approval/Disapproval of Notice of Intent -Ordinance 1306: An Ordinance authorizing the issuance and sale of the Town's Gross Receipts Tax bonds, Series 2021 in the amount of \$8,500,000 to finance improvements of certain capital improvements and refinance Series 2011 bonds. Mr. Brown stated this Ordinance to issue bonds was one of the first steps of the fiscal process required for the new Recreation Center Project. He indicated the 2011 Bonds originally issued for 8 million dollars, currently had a remaining principal balance of a little over 4.2 million dollars. The Town, in working with the State to secure funding for the new Recreation Center had committed to borrow 4 million dollars. Being that the interest rates were at a historic low, and that the Town's bond rating is getting stronger, he felt confident that the gross receipts taxes were strong and that the Town was in a good place to issue debt and meet the payment requirement. He went on to state that the current debt service payment of the 2011 Bonds averaged about \$364,000 a year depending on the interest rates at the time. Because the principal balance was 4.2 million, he intended to borrow the 8 million, as the debt service payment would continue to be in the range of \$460,000 to \$480,000. The Town would extend the payment by ten years, obtain the additional 4 million and keep the current debt service payment that is being paid out currently. He stated the process would be secured with the gross receipts tax portion as well as the 1/8th increment of capital infrastructure gross receipts taxes. He added that the Town would soon start seeing an increase in gross receipts taxes as a result of the internet proceed sales tax. Mr. Brown informed the Council that the Census population had come in under the 10,000 count at 9,704, and he would be starting to make the calls to see how the Town could recover the hold harmless withholding at 100%. This would inject another six to nine hundred thousand back into the budget causing him to feel very confident that the Town would be able to pay back the Bond Ordinance. Mayor Ladner asked if there were any questions. There were none. Mayor asked for a motion. Councilor Bettison moved to approve the Notice of Intent for Ordinance 1306 authorizing the issuance and sale of the Town of Silver City, New Mexico gross receipts tax improvement and refunding revenue bonds, Series 2021 in an aggregate principal amount not to exceed \$8,500,000 for the purpose to (1) finance acquisition, construction and improvement of certain capital improvements for the benefit of the Town and its residents, (2) to refinance, pay and discharge the Town's outstanding Series 2011 bonds maturing on and after June 1, 2022, and (3) pay costs of issuance of the Series 2021 bonds; providing that the Series 2021 bonds will be payable and collectible from and secured by a pledge of (1) the gross receipts tax distributed to the Town pursuant to section 7-1-6.4 NMSA 1978, as amended (the "state-shared gross receipts tax"), and (2) the 1/8th percent municipal gross receipts tax distributed to the town pursuant to section 7-19d-9 NMSA 1978, as amended, and Town Ordinance No. 722, as amended by Town Ordinance No. 1181; providing for the disposition of the receipts derived from said tax proceeds; approving the delegation of authority to make certain determinations regarding the sale of the Series 2021 bonds pursuant to the supplemental public securities act; providing for the terms and other details concerning the Series 2021 bonds; providing for certain documents pertaining to the Series 2021 bonds; ratifying action previously taken; repealing all actions inconsistent with this ordinance; authorizing the taking of other actions in connection with the issue and sale of the Series 2021 bonds. Councilor Aiman Smith seconded the motion. There was no discussion. Mayor Ladner asked for a roll call. Councilor Bettison voted aye; Councilor Aiman Smith voted aye; Councilor Ray voted aye; Councilor Cano voted aye. Motion carried.

Mr. Brown presented his report on the Recreation Center by saying that the Recreation Master plan was funded by Freeport McMoRan through the community investment fund. He stated that surveys were conducted throughout Grant County and identified the recreational assets and needs within Grant County under the Scope of work. The number one priority identified was an aquatic center, number two was additional basketball, volleyball, pickle ball activities, followed by a walking track and multi-use rooms that could be used for various purposes such as dancing or Audio Video clubs. Mr. Brown stated that they had already begun looking for a large plot of land estimating 7 acres that could accommodate the Recreation Center. The number one priority was a lot located at 32nd Street and Silver Street across from the Swimming Pool. The total area is approximately a little more than 13 acres in size and Mr. Brown had already begun negotiations with the Fowler's who were the property owners of approximately 6.5 acres of that area. A preliminary verbal agreement had been arranged and an appraisal was in the process of being completed. An alternate option had also been negotiated on the remainder of the land being that the recreation center would end up being a swimming pool facility, with a couple of rooms added on. This would go with the plan to incorporate the basketball courts and other activities rather than just an aquatic center that would end up costing about 12 million dollars. Mr. Brown stated the preliminary model had

come out to be a facility that was approximately 29,000 square feet, including three interchangeable full-size basketball/volleyball courts that would each be lined for pickle ball to allow for multiple games to be ongoing at the same time. Along the basketball courts will be a walking track. There would be five multi-use rooms, bathrooms, and concession stands as well as office rooms. Mr. Brown stated he was unable to get the preliminary plan sheet to have on hand for the meeting but will have it for the next meeting. He would also post it up on the website so the status of the project would be available to all, as well as allow for public comments. He asked if the Council had any other comments. Councilor Cano asked if accessibility had been considered to allow for spectators to go watch events while also addressing the safety of those that were using the walking track. Mr. Brown answered by stating that bleachers would be incorporated in the design as well as proposals to identify spaces for the handicapped or those in wheelchairs. Mayor Ladner asked if there were any questions. Councilor Aiman Smith asked for clarification on the vision of an Aquatic Center and how many pools would be included for the cost of 12 million dollars. Mr. Brown stated they had not gone that far into discussion on the planning phase but did say that discussion was held on having a full-size pool, a cold pool, a sauna and hot tub in nature and that slides were also mentioned. Councilor Aiman Smith made reference to capitol infrastructure and the need for continued maintenance thereof. She asked if that had been taken into account. Mr. Brown acknowledged that an Aquatic Center was much more expensive to operate than the type of center they were entertaining and that had been taken into account. Mayor Ladner asked if there were any other questions or comments from the Councilor or from the general public. Ms. Amanda Scruggs approached the podium and asked for clarification on the timeline of this project. Mr. Brown stated that an RFP was currently being worked on to obtain an Architect to draft the final design of the facility which he hopes would happen by mid-October. He said hopefully by Spring of 2022 all funds should be in place by then and the construction would be ready to move by Spring of 2023. Ms. Carol Ann Fugagli stated one of her concerns would be to consider how the pool would be heated and lighted, and whether it would be by renewable energies or by fossil fuels. She asked that this aspect really be considered so as to take climate control into consideration. Mr. Brown indicated the plan was to be LEED certified with the construction of the building, but it would all depend on what could be afforded within budget. Ms. Fugagli encouraged them to strongly consider solar or renewable energies or even consider making it a smaller project or work in steps. She was highly against designing a facility that was operating solely on fossil fuels.

B. Approval/Disapproval of Notice of Intent -Ordinance 1307: An Ordinance amending Appendix C, Land Use and Zoning Code of 2010, Article III, District Regulations, Section 3.2, Use Table, and Section 3.3, Use Regulations, Subsection 3.3.1, Use-Specific Standards, by adding a new paragraph 3.3.1 H), entitled “Cannabis Establishments,” of the municipal code of the Town of Silver City, Grant County, New Mexico, to provide Zoning and Regulation of Cannabis establishments pursuant to the Cannabis Regulation Act of 2021. Mayor Ladner stated that Councilor Cano was the sponsor of this Ordinance. Councilor Cano thanked Attorney Reynolds and Ms. Embick for their hard work on this ordinance being that the State Legislature gave a very short period of time for municipalities to draft their own local ordinances on the Cannabis Recreation Use Bill. She stated the Notice of Intent for Ordinance 1307 was to address changes to the existing Town regulations and stated it was very similar to the alcohol law in that purchases for Cannabis would be conducted at or within the same time frames of the day already allowed to purchase any alcohol. She indicated the Town of Silver City would not have designated consumption areas being the State had not determined those regulations for themselves. She stated she thought a map needed to be included as it was difficult to determine those locations from the current documentation. She also stated that larger manufacturers are allowed to be retail establishments but yet microbusinesses are not. She stated the microbusinesses needed to be included as retail places as well and the ordinance should be changed to indicate such. She then stated that the public would still have thirty days to comment. Mayor Ladner asked if there were any questions or comments from the Council or general public. There were none. Mayor Ladner asked for a motion. Councilor Cano made a motion to approve Notice of Intent for Ordinance 1307, an Ordinance amending Appendix C, Land Use and Zoning Code of 2010, Article III, District Regulations, Section 3.2, Use Table, and Section 3.3, Use Regulations, Subsection 3.3.1, Use-Specific Standards, by adding a new paragraph 3.3.1 H), entitled “Cannabis Establishments,” of the municipal code of the Town of Silver City, Grant County, New Mexico, to provide Zoning and Regulation of Cannabis establishments pursuant to the Cannabis Regulation Act of 2021. Councilor Aiman Smith seconded the motion as stated. There was no discussion. Councilor Bettison voted aye; Councilor Aiman Smith voted aye; Councilor Ray voted aye; Councilor Cano voted aye. Motion carried.

B. Approval/Disapproval of Resolution 2021-19: A Resolution establishing a Moratorium to prohibit building, constructing, and establishing community solar facilities until the New Mexico Public Regulation Commission (NMPRC) establishes its rules by April 1, 2022, and the Town's Community Development Department conforms its policies and procedures to the NMPRC rules. Mayor Ladner stated that Councilor Aiman Smith was the sponsor of this Resolution. Councilor Aiman Smith began by stating that both the State and Town love the idea of community solar whereby the idea of community solar was to have state authorization. She stated Community solar was described as a fairly small-scale solar production facilities originally appropriate for schools, home owners' associations, churches or places above and beyond "roof-top" solar panel array. She stated that since passing of the Community Solar Bill, a number of capital-intensive businesses had come into the community with the intent to develop Community Solar whereby they could then sell [energy] to the neighborhoods. However, the legislation was passed before the regulations were written. Being that the public regulatory commission would be responsible for establishing the basic rules, the PRC had until April, 2022 to do so. This ordinance will place a moratorium and give notice to the public that the Town will not proceed with permits for the purpose of building of any solar community establishments within the confines of the Town until the public regulator commission establishes the appropriate rules by April 1, 2022 and the Town's Community Development Department conforms it policies and procedures to the NMPRC's rules. Mayor Ladner asked if there were any questions or comments. There were none. Mayor Ladner asked for a motion. Councilor Aiman Smith moved to approve Resolution 2021-19: A Resolution establishing a Moratorium to prohibit building, constructing, and establishing community solar facilities until the New Mexico Public Regulation Commission (NMPRC) establishes its rules by April 1, 2022, and the Town's Community Development Department conforms its policies and procedures to the NMPRC rules. Councilor Ray seconded the motion as stated. Mayor Ladner asked if there was any discussion, and there was none. Mayor Ladner asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman Smith voted aye; Councilor Ray voted aye; Councilor Cano voted aye. Motion carried.

C. Appointment to the Cemetery Board- Mayor Ladner stated that the Chair of the Cemetery Board had made a recommendation that Donna J. Sebastian be appointed to the Cemetery Board. The Mayor indicated he concurred with the recommendation and stated if there were no objections from the Council, he would like to so appoint her. There were no objections. Seeing no objections, Mayor Ladner appointed Donna J. Sebastian to the Cemetery Board.

12. ADJOURNMENT - Mayor Ladner stated this was the conclusion of the business of the Town of Silver City, he thanked everyone for being present and asked for a motion to adjourn. Councilor Ray made a motion to adjourn at 7:10 p.m. Councilor Aiman Smith seconded the motion. Mayor Ladner asked if there were any comments or discussion, there were none. All in favor. Mayor asked all opposed say nay, there were none opposed. Motion carried.

(SEAL)

Ken Ladner, Mayor

Attest:

Maria C. Sublasky, Acting Town Clerk