



Sierra Vista City Council
Work Session Minutes
November 10, 2020

1. Call to order

Mayor Mueller called the November 10, 2020 City Council Work Session to order at 3:30 p.m., Council Chambers, City Hall, 1011 N. Coronado Drive, Sierra Vista, Arizona.

Mayor Rick Mueller – present
Mayor Pro Tem Rachel Gray – present
Council Member William Benning – present
Council Member Gwen Calhoun – present
Council Member Sarah Pacheco – absent
Council Member Carolyn Umphrey - present
Council Member Kristine Wolfe – present

Others Present:

Chuck Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Adam Thrasher, Police Chief
Jennifer Osborn, Budget Officer
Tony Boone, Economic Development Manager
Matt McLachlan, Community Development Director
Jill Adams, City Clerk

2. Presentation and Discussion:

A. November 12, 2020 Council Meeting Agenda Items ([agenda attached](#))

Mayor Mueller stated that the Council Meeting for November 10, 2020 starts at 5:00 p.m. with roll call, invocation, pledge of allegiance, and the acceptance of the agenda. There were no changes made to the agenda.

In response to Mayor Mueller, Mr. Potucek stated that there will be a JPA Board Meeting for SEACOM on Thursday, November 12, 2020 and he will provide an update on that during the Thursday, November 12, 2020 Council Meeting.

Public Hearing Item 2 - Resolution 2020 - 065, Approval of Substantial Amendments to CDBG Five-Year Consolidated Plan (2019-2023) and Program Year 2019 Annual Action Plan

Mr. McLachlan stated that this amendment package concerns assigning the intended use of the second round of CARES Act funding via the City's Community Development Block Grant Program. Based on the direction that staff received during the Council's October 6, 2020 work

session, the full amount was advertised of \$239,351 being allocated towards the Emergency Crisis Fund for COVID-19 Response, which is reflected in the amendments. If approved, staff will amend the subrecipient agreement with United Way to assign the funding in accordance with the proposal that was presented to Council with the same reporting requirements. At this point, staff is anticipating that the funding to reach nonprofit partners starting next month. This arrangement has worked well in getting out assistance to community members in need in an efficient and effective manner.

Mayor Mueller stated that the City is required to have a five-day public comment period that will end on Thursday, November 12, 2020. Mr. McLachlan stated that the comment period has already ended, and the City has received no comments.

Council Member Benning stated that he will be recusing himself.

Public Hearing Item 3 - Resolution 2020 - 066, Interim Permit, new license, limited liability-type of ownership for a Series 10 Liquor License for Joey Jerome Danielson on behalf of GPM Southeast LLC dba Fast Market #4609

Ms. Adams stated that this is a record keeping change of ownership for the Fast Mart which is on the corner of Highway 92 and Fry Boulevard. It is the shopette at the Valero station at 3999 Fry Boulevard. The posting of the public meeting has been on the premise more than the required 20 days and no comments have been received from the public, pro or con. The Police Department has done the required background check and has no objection to this transfer moving forward, and if approved on Thursday, November 12, 2020, it will be forwarded back to the State for final action and issuance.

The following New Business Items were briefed:

Item 4 - Approval of the City Council Regular Meeting Minutes of October 22, 2020

Mayor Mueller asked if there were any changes to be made to the minutes. There was no response.

Item 5 - Resolution 2020 - 067, Intergovernmental Agreement with Cochise County for court co-location and operations

Ms. Yarbrough stated that this is an entirely new agreement from what Council saw in September; although fundamentally it has many similarities to the other agreements that Council has seen and considered. This is a co-location agreement and not a consolidated court agreement and it will allow the City to use the justice court space for four hours once a month to handle cases that come up from violations of City Codes or Ordinances, which run about eight to ten a year. Those are mostly property violations, animal control violations, and so on. The City does not have many of those cases that get cited into the magistrate court.

It also the City to directly appoint its City Magistrate through whatever means it desires. In this case the agreement appoints the Justice of the Peace Pro Tem and it also requires that the person be a lawyer. The County would then also cover the expense of the Pro Tem acting as the City Magistrate as well as providing all court staff services etc. for the operation of the magistrate court. It removes the Justice of the Peace from the equation entirely and they are not a signatory on the agreement.

Overall, there are not any other operational changes compared to the other agreements. The Police Department will cite cases into the Justice Court as they currently do.

Financially, the funding formula is also finished, and the methodology remained the same from what Council saw earlier, although it was simplified. The funding formula is applied to every other city in the County that uses the same type of setup as well. The percentage of cases that are cited into the Justice Court by the Sierra Vista Police Department were calculated out of all the cases that are cited into the court and the City makes up 46 percent of the total cases cited into the Justice Court. The percentage was applied to the total operational costs for the court and the revenue, which the revenue number was then subtracted from the City's share of the operational costs. The total number came out to \$276,807, which is paying for the City's share of the civil, civil traffic and misdemeanor cases that the Justice Court handles that the City could otherwise cite into a municipal court if one existed. This is the amount for Fiscal Year 21/22. The City will stay pay \$161,000 for the current fiscal year and moving forward, the formula would be applied by March 1, 2021 so that Council can see in the budget process what the City's amount would be for the next year based on the data collected from the previous fiscal year.

The term of the agreement would be from January 1, 2021 through June 30, 2022 with automatic one-year renewals each year after. The Cochise County Board of Supervisors will also consider this agreement on their November 17, 2020 meeting.

Council Member Calhoun asked if Council needs to appoint a magistrate. Ms. Yarbrough stated that the agreement appoints the magistrate as part of the agreement, and it would appoint the Justice of the Peace Pro Tem as the City Magistrate. That part is currently Judge Raemaker, who is the City's Interim City Magistrate.

In response to Council Member Calhoun, Ms. Yarbrough stated that the Council would not need to take the additional step in appointing a City Magistrate. The way that the agreement was set up for other communities is that if they desired, they could go out and do a request for proposals, accept applicants, interview, and enter into an agreement directly with a person to act as the magistrate and then pay that person separately. The way the agreement is set up is that by using the Justice of the Peace Pro Tem, they are already paid as a court employee and so the City of Sierra Vista would not have to pay additional money to appoint the person as the City's Magistrate.

Mayor Mueller asked if there is a separate need for Council to additionally appoint an individual by name as magistrate. He also asked if this is an option that Council may have. Ms. Yarbrough stated that it is an option that Council has, and the agreement could be adjusted if that is what Council wants. The way that the agreement that is proposed is set up, the agreement also appoints the City's Magistrate directly and Council would not have to take a separate action.

Council Member Calhoun asked about the use co-locating in the court. Ms. Yarbrough stated that the agreement separates out the Justice Court and the Magistrate Court. This allows the Magistrate Court to operate within the Justice Court for four hours a month, each month. The City does not typically four hours a month with eight to ten cases a year on average. This is co-locating that court, but it is keeping it separate. Council could appoint its own Magistrate if that is what is desired.

In response to Council Member Calhoun, Ms. Yarbrough stated that the previous agreement was a consolidated court agreement and therefore the County and the City and the Court were

agreeing that the Municipal Court was consolidated into the Justice Court and they were essentially one and the same. Mr. Potucek added that this brought in the need for the Justice of the Peace to sign off on the agreement. In wording it this way, the requirement is removed.

Mayor Pro Tem Gray stated that for the public's benefit because discussion is being held about different agreements, she would like to have an explanation as to why the same formula is being used even though it will now be a separate court. Ms. Yarbrough stated that the City is paying \$276,807 for its civil, civil traffic and misdemeanor cases that are cited into the Justice Court. Those are the cases that theoretically if the City did operate its own court could be cited directly into that court. The City is paying the County and the Justice Court for Precinct Five to handle those cases for the City. Mr. Potucek added that one of the goals was to be able to tell the public what they are paying for. This payment is for the civil cases, traffic cases, and misdemeanors. The City's extra payment is for that, but the taxpayers are paying for the rest of the court through their tax bill to the County. Now, the City can clearly define what the City is paying for and it is more than what the City was paying for, but this is a good deal.

Mayor Pro Tem Gray agreed with Mr. Potucek and stated that it is better to have clarity and transparency as well. Ms. Yarbrough added that there are 17 pages of detail in Exhibit A that shows how the numbers were obtained.

Mayor Pro Tem Gray thanked Ms. Yarbrough for working hard on this and getting the City to a place to where there can be transparency about what the City is exactly paying for.

Mayor Pro Tem Gray asked if the four hours roll over just in case the City needed eight hours one month for some reason. Ms. Yarbrough stated that she does not know if the hours roll over, but she suspects that the hours would be on a Friday and there are no cases heard on Fridays in the court. If the City needed additional time, she is sure that it can be worked out or if the time went over the exact four-hour allotment, she thinks that Judge Conlogue thought that it was best to specify a certain amount of time. However, she is sure that the City could work with them to get the time needed.

In response to Mayor Pro Tem Gray, Ms. Yarbrough stated that the number four was settled on because it would generally far exceed the amount of time that any of the cities would need. The eight to ten is relatively consistent, although other cities have less than that.

Mr. Potucek commended Judge Conlogue, who has been very helpful during the process. Rich Karwaczka, County Administrator, has been good to work with as well as Dan Duchon in working with Ms. Yarbrough, who also did a great job.

Item 6 - Resolution 2020 - 068, Proposed Amendments to Infill Incentive District Policy

Mr. McLachlan stated that staff is looking for Council's input and guidance on recommended policy adjustments to the Infill Incentive District. The policy is now 15 years old and there are parts that are no longer relevant and need updating. Staff understands that this is the first draft and may require additional discussion beyond the work session to hammer out the fine details. There is nothing rushing the resolution.

The purpose of the policy is to encourage the reuse and redevelopment of vacant and underutilized properties in the West Sierra Vista planning area and the Cloud Nine planning area. There are three categories of incentives that are authorized by State Statutes. One is relief from development standards, two is expedited permitting and three is waivers of municipal

fees.

Staff has provided a ~~strikeout~~ and underlined copy in the packet and the first area that requires feedback from Council concerns the Implementation Section. Currently incentives are authorized on a case-by-case basis through the development agreement process. There have been 15 agreements approved by Council since the policy was first enacted. The waivers that were granted generally concern Development Code requirements pertaining to setbacks, landscaping, parking areas, infrastructure, and drainage.

The focus of Council has been on streamlining and making the processes more predictable and efficient. It is through this lense that the Department has developed its annual work program with the Planning and Zoning Commission. The Department is asking Council to consider adding specific criteria to the policy that the City Manager would administer within the limits that Council sets. The flexibility that Council will appoint is most needed on the West End where the City is often dealing with first-time developers, and limited budgets with difficult properties. The City's Economic Development Team heavily promotes the West End as a great place to locate a business and the incentives that the City offers helps drive that conversation forward. While it may not break or make a deal, they do carry some weight in the decision-making process.

Mr. McLachlan stated that with respect to fee waivers, he wants to be crystal clear that the Department is not proposing a change to how development fee reductions are approved. That procedure is set in the Development Fee Ordinance, which mandates that any waiver approved must be approved by development agreement by the City Council. If the City Council grants an exemption, then the City must offset the amount of that exemption from the General Fund.

The proposal for the policy is a waiver to the permit application and plan review fees that are simply lost permit revenue to the City's General Fund. Essentially, commercial, mixed use or multi-family development projects would be eligible for a free site plan or building permit plan review using staff resources that are already on the payroll.

Project One eliminates blight, two adds employment, three substantially improves an existing vacant or underutilized property or makes the building or site conforming to currently adopted Building and Development Codes. The value of the incentive is going to vary based on the scope of the project. For a tenant improvement, i.e., 143 Tacos, the value of the fee waiver would amount to about \$4,500. For ground up construction, i.e., Tombstone Brewery, the permit and plan review fees are just over \$17,000. The City Manager will weigh the economic return to the City in determining the amount of the waiver that is granted.

With respect to policy, if Council wants to put in a maximum dollar amount or percentage cap on the amount of the waiver, staff can insert that limitation into the policy.

With respect to Development Code standards, the proposed policy specifically excludes single-family zoned property. Staff thinks that the Code amendments that Council previously approved provide the necessary relief within the Infill Incentive District. The challenge in setting up the evaluation criteria is providing definition without being over limiting. Every scenario cannot be anticipated that is going to arise.

Mr. McLachlan stated that for the initial draft, he borrowed criteria from a Community Development District in Florida where he previously worked as a director. The first criteria require the alternative to achieve the purpose of the requirement through superior design, efficiency or performance that requires the most professional judgment. Staff will need to

establish that the proposed alternative provides through means, methods, and materials the same or better outcome than the standard requires. It is written to encourage creativity and innovation. This provision can be amended or be stricken if it is not precise enough for Council as it relies on interpreting the spirit and intent of the applicable code provision.

The second criteria are like the standard that the City uses in various cases, which relates to the technical and practicalities that arise from the shape, size, and unusual characteristics of the lot.

The third waiver criteria pertain to the preservation/protection of viewsheds, natural features or important landmarks on property.

The proposed procedure is modeled after the current administrative modification process for amending setbacks. Neighboring property owners will be notified and will have appeal rights either to the City Council or the Administrative Hearing Officer. After some back and forth, staff is now recommending that the Administrative Hearing Officer adjudicate appeals and staff will make this change if Council agrees.

In response to Council Member Wolfe, Mr. McLachlan stated that the appeal process is for relief from Development Code provisions.

Council Member Wolfe asked if a person that got notice or the person that is applying defined as an "aggrieved person" that may file an appeal. Mr. McLachlan stated that it could be both.

Council Member Wolfe asked if there is an appeal process either way. Mr. McLachlan stated that there is. Mr. Potucek added that if a developer came in and wanted fee waivers, and he denied the request and the developer did not like that, it would not necessarily be telling them no. Staff would have to go back to them and tell them that if they want something else that there needs to be a development agreement and the Council would need to approve that agreement. In effect, Council would be the ultimate appeal if the developer did not like the administrative decision within the policy.

Mayor Pro Tem Gray stated that she believes that provisions on the relief from Development Code standards for numbers two and three because they are clear and defined. She asked Mr. McLachlan to repeat Provision One. Mr. McLachlan stated that what would need to be demonstrated by the applicant is that the proposed alternative that provides through means, methods, materials the same or better outcome than the standard requires. The purpose of this is to foster innovation and creativity. If there is a better way to accomplish the same standard, they would have to satisfy the staff who would be making recommendation to the City Manager that the alternative fulfills the intent of the Code provision.

Mayor Pro Tem Gray asked if superior design means better than the Code as it stands. Mr. McLachlan stated that she is correct.

Mayor Pro Tem Gray suggested a glossary of terms and asked how efficiency and performance would be judged. Mr. McLachlan stated that there is performance-based alternative in the Building Code, which would be extended to the Development Code. Superior, equal to, achieving the same performance as what would ordinarily be required through the Code requirement would have to be proven by the applicant. They would have to make a case, present that case, staff would evaluate the case based on the nature of the proposal, and decide on whether the performance meets or exceeds.

Mayor Pro Tem Gray stated that the City has worked hard on the Code to make things less subjective and she does not know about having a policy that is more subjective, referring only to standard one, not standards two and three. She added that she does not believe that it is fair to the City Manager, who will be responsible for making those decisions with the recommendation of staff or to a hearing officer. Developers and builders like to know going in what their expectations are. Lastly, she stated that she is having an issue with standard one because it is too subjective.

Council Member Umphrey suggested adding clarification that superior design in comparison to the standards in the Development Code so that the whole language does not have to be stricken out.

Mayor Pro Tem Gray stated that some things are easy. Efficiency and electricity are obvious in what superior is to the Code, but aesthetically it is not as clear. Council Member Umphrey added that there is too much interpretation.

Mr. Potucek noted that the City has design standards and asked if it would be better to call that out or guidelines. Mr. McLachlan stated that it does not apply only to building architecture because it could be site design.

Mayor Pro Tem Gray stated that one thing that came to mind when talking about the development fees when they are waived is advising Council of the number of years that it will take to return that. She asked if there is a policy in place. Mr. McLachlan stated that the Development Fee Ordinance outlines the types of community benefits that are eligible for consideration for a waiver to the development fees. Affordable housing does not necessarily return taxes back to the City and therefore it would not be applicable, but for commercial projects and involving the Infill Incentive District for blighted property would have multiple facets that would be evaluated in terms of the community benefit, fiscal being one of them, and the redevelopment objectives. This is by development agreement and all information would be presented to Council for their full consideration and the fiscal aspect would be a part of the staff report/presentation.

In response to Mayor Pro Tem Gray, Mr. McLachlan stated that development fee waivers by Code are only done through a development agreement. Mr. Potucek stated that development impact fees and development fees are different. Mr. McLachlan stated that these are plan review and permit fees.

Mayor Pro Tem Gray asked if there is a policy or develop a policy with a formula that fees can be waived up to a certain return. Mr. Potucek stated that currently there is a policy that he can grant fee waivers for these types of projects and he has typically done it for nonprofit. This would provide the opportunity to provide some sort of incentive for these types of projects, but what makes it difficult is that there are different projects and consistency is a problem. A small project is a small amount of fees versus a larger project.

Mr. Potucek stated that for him it is easier to state that Council has a policy and he either decides yeah or nay whether it is 100 or 50 percent of the fees. He further stated that he thinks that there should be a mechanism, be it an economic payback that can clarify.

Council Member Umphrey asked Mr. McLachlan if the numbers provided for 143 and Tombstone Brewery at 100 percent of the fees waived. Mr. McLachlan stated that the figures are the value of the site plan, building permit and plan review fees for those projects. None of

them had been waived.

Mr. Potucek stated that it is a tough balance because the City wants good projects in those areas and wants to provide an incentive.

Mayor Pro Tem Gray stated that it is why she was coming up with return on investment because that way no matter how big, how small, it helps the City. If a small business is going to bring in \$10,000 over five years, it stands to reason that a larger business is going to bring in \$20,000 within five years and that would be the amount waived with the expectation of their projections.

Mr. Potucek asked Mayor Pro Tem Gray if she is proposing a tie to sales tax production. Mayor Pro Tem Gray stated to include property tax and sales tax. There are ways of measuring these things along with employment to make it fair across the board.

In response to Mr. Potucek, Mr. Boone stated that the tax piece is easy. Staff could come up with a basis for the job side and infer the tax benefit of five jobs at \$50,000 each. Mayor Pro Tem Gray added and what that economic benefit is expected to be. She added that she does not want it to seem that the City is favoring big or small and that it is fair across the board.

Mr. Boone stated that he believes that on the retail sales for a food and beverage would be direct, but for a new construction project with jobs, staff will need to make a couple of basic assumptions of the types of jobs, income and what that would look like for the City.

Mayor Pro Tem Gray stated that they have a business plan. Mr. Potucek added that it would be better than making an arbitrary decision.

Mayor Mueller stated that a return on investment must be added component and suggested a five-year time frame.

Mr. Potucek stated that he will have staff run some numbers and have this item pulled from the agenda and brought back before Council during their next meeting.

Council Member Umphrey asked if Council would be told how much was waived on a project that happened to have their fees waived and then later comes before Council with a development agreement. Mr. Potucek stated that a development agreement is different because there is a give and take involved. Mr. McLachlan's proposal is a cleaner way of doing this because the City is putting out there that the City wants projects and is stating the criteria that qualifies for an incentive.

In response to Council Member Umphrey, Mr. Potucek stated that if a developer did not like it, they could ask for a development agreement and it is one or the other.

Mayor Pro Tem Gray stated that it is important to state the kind of incentives that State Law allows the City to give, another reason why this is being done. Mr. Potucek stated that he would like to add a provision for nonprofits.

Mr. McLachlan stated that as proposed there are four criteria associated with fee waivers, eliminating blight, adding employment, substantially improving an existing vacant or underutilized property, or making the building or site conforming to the Building Code. Not all redevelopment projects are going to involve retail enterprises. There could be medical, professional services where the return would be through property taxes and not sales taxes. He

asked Council to consider the other redevelopment goals together with the fiscal return to the City. Mr. Potucek stated that he believes that can be done because those are similar. He added that he would review a medical as a nonprofit because that is a benefit to that area to have a doctor's office.

Council Member Calhoun asked about the difference between incentives and gifts. Mr. Potucek stated that the City is permitted because it is an Incentive District that meets the low-mod income. Mr. McLachlan stated that the Arizona Legislature allows that as part of the growing smarter plus legislation from back in 2000.

Council Member Umphrey stated that she is glad that this can be done because they are mostly first-time small businesses and they do not have the unlimited funds that bigger businesses have.

Mayor Mueller stated that this item will come back to Council during the first work session in December.

Mayor Pro Tem Gray asked if there was a consensus in that the hearing officer would be agreeable. Mr. Potucek stated that he would like to think about this because he is not sure that there needs to be one. The default is to go to a development agreement and have Council review it.

B. Report on Recent Trips, Meetings and Future Meetings

Mayor Mueller announced that he will be attending the following meetings through Zoom: Leagues of Cities meeting, Arizona Regional EDF meeting, MPO meeting, USPP meeting/seminar, and a Regional Transportation meeting.

C. Future Discussion Items and Council Requests

Council Member Calhoun requested discussion on AMTRAK during the next Council Work Session to consider a resolution of support for rail efforts in Benson.

Council Member Wolfe asked if the item is only being discussed, but no approval taking place. Mayor Mueller stated that Council will talk about the proposal on the first meeting and if there is consensus of Council, it will stay on the agenda for action.

Council Member Umphrey asked about the resolution for the Hummingbird Capital. Council Member Calhoun stated that she believes that resolution will be ready by the first of December.

D. COVID-19 Status Report

Mr. Potucek stated that as it was reported in the newspaper and as Council is aware, there have been some incidents of positive tests occur primarily in the Police Department. All protocols and contact tracing has been taken and hopefully some of those people can be seen coming back next week. Primarily affected is Special Ops and Patrol and it is expected to see some more patrol issues, but Police Chief Thrasher assures that he has the scheduling worked out for patrol.

Cases have gone up statewide and in Cochise County. The City buildings will remain closed, which is not a change from where it was. It is anticipated to remain in effect until such time that

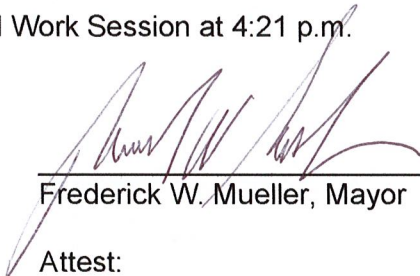
the vaccine that was reported comes into play, but that is still a few months out. There was incident that affected Special Ops and Patrol in the Police Department. Buildings will continue to stay closed until a new vaccine is out.

Mayor Mueller stated that he reinstated the mask order on Friday, November 6, 2020 out of an abundance of caution. When the emergency was initially declared, the City was at the point where the numbers were headed in the wrong direction and there was the start of being short on hospital space for local treatment. The City is not yet where it is critical for hospital space because of the advances in treatment and the fact that most of the folks are of a much younger age group and are not as drastically affected as the first go around. However, when he saw that the numbers significantly jumped in a three-day period, it cannot be long where there may be challenges with hospitalizations. This was pre-emptive in nature and he will not remove the order until the holidays pass and hopefully there is the availability of a vaccine.

Council Member Calhoun asked about the video for Veterans' Day. Mayor Mueller stated that the video will be up on the website at 6:00 a.m. on Veterans' Day.

3. Adjourn


Mayor Mueller adjourned the City Council Work Session at 4:21 p.m.



Frederick W. Mueller, Mayor

Minutes prepared by:

Attest:



Maria G. Marsh, Deputy Clerk



Jill Adams, City Clerk