



Sierra Vista City Council
Meeting Agenda
July 9, 2020

Call to Order: 5:00 p.m., City Hall Council Chambers, 1011 N. Coronado Drive, Sierra Vista, Arizona

Roll Call

Invocation

Pledge of Allegiance

Item 1 Acceptance of the Agenda

City Manager's Report: Upcoming Meetings, Bid Openings and Bid Awards

Item 2 Consent Agenda

Item 2.1 Approval of the City Council Regular Meeting Minutes of June 25, 2020

Item 2.2 Approval of the City Council Special Meeting Minutes of June 26, 2020

Item 2.3 Resolution 2020-041, Acceptance of a revised Ingress/Egress/Utility Easement, Plaza De Colibri Subdivision

Item 2.4 Resolution 2020-042, Pre-annexation Agreements for Parcel 106-71-201, 316 N 2nd Street and Parcel 106-71-200B, 314 N 2nd Street

Item 2.5 Resolution 2020-043, Pre-annexation Agreements for Parcel 106-70-097, 113 N 5th Street and Parcel 106-70-116A, 125 N 5th Street

Public Hearing(s)

Item 3 Resolution 2020-044, Approval of Big O Tires Annexation

Call to the Public

Comments and Requests of the Council

Adjournment

For special needs and accommodations, please contact Jill Adams, City Clerk, 72 hours prior to the meeting or activity at (520) 458-3315 or through the Arizona Relay Service at 1-800-367-8939, or by simply dialing 7-1-1.



Sierra Vista City Council
Meeting Minutes
June 25, 2020

Mayor Mueller called the June 23, 2020 City Council Meeting to order at 5:00 p.m., Council Chambers, City Hall, 1011 N. Coronado Drive, Sierra Vista, AZ

Roll Call:

Mayor Rick Mueller – present
Mayor Pro Tem Rachel Gray – present
Council Member William Benning – present
Council Member Gwen Calhoun – present
Council Member Sarah Pacheco – present 5:06 p.m.
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
Brian Jones, Fire Chief
Matt McLachlan, Community Development Director
Jeff Pregler, Planner
Sharon Flissar, Public Works Director
Laura Wilson, Leisure and Library Services Director
David Felix, Chief Finance Officer
Jennifer Osburn, Interim Budget Officer
Nathan Williams, City Attorney
Jill Adams, City Clerk

Invocation – Pastor Greg Rowles, God is Good Church, led all those present at the meeting in prayer.

Pledge of Allegiance – Council Member Wolfe led the Pledge of Allegiance.

Item 1 Acceptance of the Agenda

Mayor Pro Tem Gray moved that the Agenda for the Regular City Council Meeting of June 25, 2020, be approved as written. Council Member Umphrey seconded the motion. The motion passed by a 5/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Wolfe, and Calhoun.

City Manager's Report: Mr. Potucek announced that the City offices will be closed on Friday, July 3, 2020 in observance of Independence Day. The fireworks display is planned to go on, but the activities in the park have been suspended due to the pandemic. The next regularly

scheduled City Council Work Session will be held on July 7, 2020 at 3:00 p.m. in Council Chambers as well as the next regularly scheduled Council Meeting on July 9, 2020 at 5:00 p.m. He also reported that City Hall's north wing renovation project is underway that primarily involves the Finance and Procurement areas. He added that those employees will be working from home, which is not anything new since a lot of them having been doing so already.

Council Member Umphrey asked where people could go to watch the fireworks if they are unable to watch it from their homes. Mr. Potucek stated that people will be allowed to park in the area and congregate, but he encourages people to find other areas where they can spread out, i.e. Rothery Center or business parking lots. Council Member Benning added that the Sierra Vista Rotary is looking at having the fireworks live streamed on Facebook.

Public Hearing

Item 2 Resolution 2020-032, Interim Permit, new license, limited liability-type of ownership for a Series 12 Liquor License for Maria Guadalupe Ramos on behalf of Ramos Brothers SV LLC dba Taco Giro

Council Member Umphrey moved that Resolution 2020-032, Interim Permit, new license, limited liability-type of ownership for a Series 12 Liquor License for Maria Guadalupe Ramos on behalf of Ramos Brothers SV LLC dba Taco Giro, be approved. Council Member Benning seconded the motion.

Ms. Adams stated that the application is for an interim and new restaurant liquor license for Taco Giro. The business had another license in place, but the business has recently changed ownership to someone in the same family. A restaurant liquor license is not transferrable and therefore, they must get a new license. The notice of the public hearing was posted on the facility and to-date no comments have been received pro or con. The Police Department's background check has brought up no issues that would impede the license going forward to the State for final action if approved by Council.

The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

New Business

Item 3 Resolution 2020-033, Approval of the Tentative Budget

Council Member Benning moved that Resolution 2020-033, Fiscal Year 2020 - 2021 Tentative Budget, be approved. Mayor Pro Tem Gray seconded the motion.

Ms. Osburn stated that the City's Fiscal Year 2020-2021 Tentative Budget is proposed in the amount of \$86,748,629 through Council adoption of the proposed resolution and pursuant to ARS 42-171.05 the budget will be capped. The final budget may be less than or equal to the tentative amount but not exceeded. The State's forms and memorandum with the summary of changes from the Tentative Budget Book have been included with the resolution. There has been one public comment received. The approval of the final budget is scheduled for July 23, 2020 and the resolution to adopt the property levy is scheduled for August 13, 2020.

Michael De Carlo stated that he listened to the broadcast through the clicking sounds and he heard the Assistant City Manager state that the City could not account for man hours for public

service and at that point, there is a government that is unaccountable to the people. He added that government's time is everyone's time. He asked that Mayor and Council to represent the taxpayer before voting on the Tentative Budget.

Mayor Mueller stated that the City needs to improve its system so people may hear things properly. He noted that he does not recall a statement by the Assistant City Manager, but he will check. He added that there is money in the budget to enhance the broadcasting system if Council approves the resolution. The approval of the Tentative Budget caps the budget. The final vote will be later.

Council Member Calhoun noted that the budget has been discussed over the last three months and Council has gone over it in detail and asked staff many questions about the way monies are being proposed to be spent. Council does not go into this blindly and Council's vote is based off many months of discussion.

The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

Item 4 Approval of the City Council Regular Meeting Minutes of June 11, 2020

Council Member Umphrey moved that City Council Regular Meeting Minutes of June 11, 2020, be approved as written. Council Member Benning seconded the motion. The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

Item 5 Resolution 2020-034, Intergovernmental Agreement with Cochise County for Election Supplies and Services

Mayor Pro Tem Gray moved that Resolution 2020-034, Intergovernmental Agreement with Cochise County for election supplies and Services, be approved. Council Member Calhoun seconded the motion.

Ms. Adams stated that the intergovernmental agreement is a biannual restatement of a longstanding partnership that the City has with the Cochise County Elections Division for them to provide election services, voter registration etc., which has been very beneficial to the City over the years and cost effective as well. In the proposed agreement the City will pay the sum of seventy-five cents per registered voter in the City that is currently approximately 26,200. The bill for the County will be just under \$20,000 to run the election in November 2020. The remaining funds noted on the staff memo were put in the budget on the chance that there may be a Question, which would have required a publicity pamphlet as well as the Call to Election and financial statement publications.

During the Tuesday, June 23, 2020 work session, questions were asked about the vote centers, equipment, and the County's plans. At this point in time, the County is working through COVID just like everyone else and they do not know what will happen. Fortunately for the City's election, the County has the benefit of having the Primary in August that will enable them to see if there is a rise in the requests for mail in ballots, which is probably the biggest contingency that the County has. Mail in ballots are not a lifetime commitment and it is something that voters can do for an election cycle and then go back to the polls when it is safer, and it is entirely up to them.

Ms. Adams explained that the issues that happen at polls are not because there is a lack of equipment or places to vote. It is people who have mail in ballots who come to the polls to vote that must be processed as provisional, which takes time. People also come to the polls and are not ready to vote and that also takes a lot of time. Education is being looked at as the biggest contingency on top of mail in ballots to get through the elections in a painless as possible manner.

Council Member Wolfe asked if there is something that can be done if there are more people coming out to vote. Ms. Adams stated that it is unlikely at this point that there will be a Question on the ballot so that provides the City with an extra \$5,000 as far as a cushion if the City's obligation to the County goes up.

Council Member Pacheco stated that four years ago was the first time that vote centers were introduced as opposed to having assigned polling locations and asked if the County addressed how that works out or if changes are being made because of the wait times. Ms. Adams stated that it was unfortunate that there was a storm that hit during the 2016 election with the Presidential Election because no one foresaw that many people coming out to vote, a great thing, but the County was not prepared. The County has had several elections, i.e. midyear election cycle, Presidential Preference and they now have more experience as well as better educated poll workers. Sixty-five percent of the voters registered in Cochise County receive mail in ballots and that number is going up. Ms. Mara, County Elections Director, is optimistic that all the processes will be a lot cleaner because they have been able to see what did not work, what did work and make some adjustments for that. They also get the dry run of the Primary Election because the large election will be the General Election for the year, which will allow them to adjust after the August election if necessary.

The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

Item 6 Resolution 2020-035, Amendment to the City Board and Commission Guidelines

Council Member Calhoun moved that Resolution 2020-035, amendment to the City Board and Commission Guidelines, be approved. Mayor Pro Tem Gray seconded the motion.

Ms. Adams stated that with the change in the structure of the City Boards and Commissions that recently passed by Council, she was requested to revise the Commission Policy and Procedure Guidelines to separate out the differences between the two. The regulatory commissions are going to be operating as they always have and are under State Statutory obligations for the Open Meeting Law. Added to the guidelines were the altered regulations that affect the new nonregulatory commissions. Also, a final page added to the guidelines that breaks down the regulatory and nonregulatory commissions by department assignment.

The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

Item 7 Resolution 2020-036, Final Plat, Holiday at Pueblo Del Sol, Phase 5A, Lots 1-29

Council Member Wolfe moved that Resolution 2020-036, Final Plat, Holiday at Pueblo Del Sol, Phase 5A, Lots 1-29, be approved. Council Member Umphrey seconded the motion.

Mr. Pregler stated that Castle and Cooke has requested final plat approval of Holiday at Pueblo Del Sol, Phase 5A, located north of Canyon De Flores with access from Resort Drive and Great Basin Lane off to the east. The earlier phases of Holiday are to the east with the Canyon De Flores Commercial Center that contains McDonalds and the Diner to the south with Highway 92 to the west. The property is currently zoned Multi-Family Residence (MFR) and the developer is proposing to construct single family detached homes. The lot sizes will be a minimum of 4,500 square feet although, many of the lots are larger and there will be a total of 29 lots in this phase. All the roadways will be private and maintained by the Homeowners Association and the only public improvements will be the sewer lines. All the curbs, gutters and sidewalks are to be privately maintained by the Homeowners Association. The Pueblo Del Sol Water Company received a designation of adequate water supply on May 17, 2013; therefore, the developer is meeting the requirement from the Arizona Department of Water Resources (ADWR) and the City Development Code to ensure that there is adequate water supply for the spaces of Holiday.

Mr. Pregler further stated that the City Council approved the preliminary plat on October 10, 2019 and at that time there was a total of 59 lots. The developer is splitting the preliminary plat into two separate final phases, Phase 5A that is before Council and Phase 5B that will be coming before Council at some time in the future. He introduced Mr. Rick Coffman with Castle and Cooke and noted that the Development Review Committee approved the final plat for Phase 5A on June 17, 2020.

Mayor Pro Tem Gray asked Mr. Coffman if he has decided to split the development for market conditions. Mr. Coffman stated that she is correct because it is easier to develop a smaller phase. He added that they have the final plat and will be doing over 59 lots, and all will exceed the minimum 4,500 square feet. Some will be bigger than that because they had issues in the earlier phase due to the depth of the lots. Lastly, he stated that they are excited and noted that this is a good product, the market has improved significantly, and these lots will be more towards the affordable end.

Council Member Calhoun asked when the building would start and how long it would take. Mr. Coffman stated that they want to start quickly on the development and it is their hope to sell these out in a year and a quarter, but they would be back before Council for the next phase, the remaining 59 lots.

The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

Item 8 Resolution 2020-037, Approval of the Fry Boulevard and North Garden Avenue Intergovernmental Agreement

Council Member Pacheco moved that Resolution 2020-037, Fry Boulevard and North Garden Avenue Intergovernmental Agreement with the Arizona Department of Transportation, be approved. Mayor Pro Tem Gray seconded the motion.

Ms. Flissar stated that the item will approve Amendment No. 2 of the Intergovernmental Agreement between the City and the Arizona Department of Transportation for the Fry and North Garden Project. The major change is to extend the project timeframe by six months due largely to COVID-19 impacts. COVID has already resulted in a variety of delays and full impacts are not yet known. The other change is a modest amount of additional money from unobligated funding totaling under \$200,000. The total obligation authority now available through the Sierra

Vista Metropolitan Planning Organization is \$3.13 Million with about \$2.18 Million coming from the HURF Exchange Program.

Council Member Pacheco asked about the timeline. Ms. Flissar stated that this timeframe will put the design that was originally anticipated to be completed by the end of the calendar year, until the middle of next year, June 2021. By June 2021, the City must obligate funding for construction and construction would go for about a year from that point.

Mayor Mueller added that he keeps pushing them to get the design done as soon as possible so that funds can be obligated. He added that he would like to look at having some roadwork done next summer rather than waiting another year until the winter is over or after the monsoon season. Ms. Flissar stated that it is difficult to say what they will look like in three to six months.

Mayor Mueller stated that staff may be requesting another extension for another six months for the design. Ms. Flissar stated that the design group is in the same situation as the City in terms of impacts and those are being felt statewide/nationwide and it is difficult to ascertain what additional impacts may come.

In response to Council Member Pacheco, Ms. Flissar stated that they can send the project out to bid as soon as the design is complete. If the timeframe can be accelerated, the bid can go out sooner. Mayor Mueller noted that if there is not a completed design, staff will not be able to do a good estimate of the cost so an accurate bid cannot be done.

The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

Item 9 Resolution 2020-038, Amendment to the Development Agreement with Castle and Cooke for the Avenida Del Sol Interceptor

Council Member Umphrey moved that Resolution 2020-038, amendment to the Development Agreement with Castle and Cooke for the Avenida Del Sol Interceptor, be approved. Mayor Pro Tem Gray seconded the motion.

Mr. Felix stated that in 1999 the City and Castle and Cooke worked out a development agreement/annexation agreement for the property on the southern part of town, which includes the Tribute area. One of the items in the development agreement asked the City to construct the interceptor to service that area and extend service to the Golden Acres area. Castle and Cooke signed the agreement to pay an interest rate on the balance of the loan and to pay whatever outstanding balance was left after 20 years. The final payment per the agreement is due on July 20, 2020 and the current balance is \$1.6 Million.

Both the City and Castle and Cooke are in negotiations for amending the development agreement and it is in the best interest of the City and Castle and Cooke to extend the payment for six months until they can work through the negotiations. Part of their water right is for watering the golf course, but they have made changes since then and there is also discussion going on about the package plant that is required to be built, which may no longer be needed. The new development agreement will come before Council prior to the end of December 2020.

Council Member Wolfe asked why it would be in the City's best interest to extend the payment for six months. Mr. Felix stated that the negotiations in part have to do with water rights and the placement of the package plant. If the payment is extended, both parties may be able to work

out a beneficial agreement that could also help homeowners in saving money based on development cost that they may not have to incur. Mr. Potucek added that there are certain things within the development agreement that at the time were based on best practices for things going on in terms of not only development and water conservation, but for the San Pedro River. One of them is the requirement in the agreement to build a sewage package plant on the Tribute site and to take that treated effluent and move it up stream to the golf course. Subsequently, Castle and Cooke has put in some improvements to conserve water in terms of how that is being used on the golf course, and now the need for a package plant seems to have diminished. If a package plant was developed and paid for out of sewer connection fees, then the City would ultimately take over the responsibility for the operations and maintenance. By eliminating that and renegotiating, the City can save considerable funds in operations and maintenance for the sewer fund for the future.

Council Member Calhoun asked if it is likely that the negotiations would change the final payment to the City. Mr. Potucek stated that interest is still being accrued. Castle and Cooke are interested in getting this done because those funds continue to accumulate. The City is also anxious to get this finished, but an acceptable payment plan to satisfy the debt needs to be working out, which is what will be renegotiated as part of the agreement.

The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

Item 10 Resolution 2020-039, Second Amendment to the Intergovernmental Agreement with the Sierra Vista Metropolitan Planning Organization

Council Member Benning moved that Resolution 2020-039, amendment to the Intergovernmental Agreement with the Sierra Vista Metropolitan Planning Organization, be approved. Mayor Pro Tem Gray seconded the motion.

Ms. Yarbrough stated that staff has worked on updating the agreement over the past year with the Sierra Vista Metropolitan Planning Organization (SVMPO) Administrator. There are a few changes that overall are to better specify the terms and conditions under which the agreement is operated and to improve some practices. The three major changes in the agreement are to change from contributing a \$30,000 in-kind match, used for matches for projects that were being done each year, to a cash match that is tied exactly to the projects that are in the upcoming work plan for the year and any money left over could be rolled over to the next year for use to apply to other matches. Another change is how the office rental agreement amount is handled. The average cost of similar types of office space in the City was evaluated and a \$14 per square foot per year amount is being applied to the 340 square feet that the SVMPO uses for an amount of \$4,760 per year. The final major change is a 10 percent indirect cost de minimus method, a federally accepted method for assessing appropriate administrative costs, instead of using the in-kind match for administrative site services for the SVMPO. This would allow the City to change from tracking staff's hours specifically for SVMPO services and billing that amount per hour, depending on the staff, and assessing the hours to the 10 percent cost of their actual monthly expenditures.

The SVMPO Board approved the amended intergovernmental agreement on May 21, 2020 and the specific cost impacts to the City will be the cash match budgeted at \$50,345 for next year. The revenue to the City for site services is budgeted at \$68,663 and rental income at \$4,760.

The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Pacheco, Wolfe, and Calhoun.

Call to the Public

The following people praised the Sierra Vista Police Department and voiced their opposition to the elimination of choke holds, knee holds and firing weapons at moving vehicles in life threatening situations from the Police Department's authorized uses of force: Donna O'Daniel, Richard Prew and Tim Savage.

Council Member Wolfe stated that one of the things that makes the City's Police Department one of the strongest in the nation is that they are willing to take up these discussions. She added that she has never found Police Chief Thrasher to be unwilling to speak with her nor unwilling to discuss anything that would make the Police Department better. If Council is at the point, where it is not allowed or unwilling to speak to the Police Department about things that are going on across the nation, then she thinks that exactly what Ms. O'Daniel talked about would happen.

Comments and Requests of the Council

Council Member Wolfe stated that she is concerned that people believe that the life of one man and how he died does not matter. She further stated that she is worried about people unwilling to have a discussion between the Council and the Police Department because this needs to happen as people have agreed to be policed. If people do not agree with what the Police Department is doing, then they need to speak up because a country without police does not make sense. People need to agree with what the police are doing so that they can be fully supported in what they are doing. She added that she does not understand why such a discussion is scary and noted that she has a lot of respect for the Police Department. She shared that she is a former prosecutor and she has ridden along with police officers, attended several of their funerals, who were good friends, and explained that she is not against police officers in any way. In closing, she stated that the more that de-escalation is worked on, the safer police officers will be as well as the citizens. Discussions need to occur and if people are afraid to hold these because they are afraid that they may be offending a police officer, then that is a problem.

Council Member Pacheco thanked everyone for attending and sharing their thoughts because this is a part of the democratic process and it is good for Council to hear what they are thinking and feeling. She also stated that she is grateful that Council has had a lot of open discussion with Police Chief Thrasher, who has been very open in talking to Council and has offered Council to take a ride along with the police officers. She further stated that she has ridden with the Sheriff Department but has not yet ridden with the City's police officers and agrees with Council Member Wolfe in that this is an important discussion to have.

Council Member Umphrey stated that she appreciates people coming out to speak to Council and noted that it is good to see Mr. DeCarlo and Ms. O'Daniel. She further stated that she agrees in that the City has the best police force and she wants to keep it this way, thus the reason why Council is open to discussion. Council is always good at making good choices on a consensus of any changes for the community. She wished everyone a Happy and Safe Fourth of July.

Council Member Benning stated that the comments received were not the comments that he had expected, but he is glad that these people came out and spoke. He explained that Council is charged in bringing issues to the table and starting those hard discussions, whether someone likes them or not. It gets the community involved and he appreciates that. He thanked Council Member Wolfe and stated that he also appreciates the courage that it takes to stand up and state that conversation needs to take place. He thanked Police Chief Thrasher, Fire Chief Jones and the Sheriff Department and noted that discussions need to start, regardless of how good these people are. It is important for not only citizens to hold Council accountable, but for Council to hold themselves accountable. In closing, he stated that the City has decreased its budget by \$4.2 Million from last year and decreased debt by \$17.5 Million in nine years. However, one of the biggest things hurting the City is the PSPRS, which needs to be resolved. Council has looked at the budget and there are things that need to be done and it is time to start being individuals and standing for what is believed to be right or wrong.

Council Member Calhoun voiced her appreciation at a room full of people expressing their concerns about different issues, particularly the Police Department. She stated that she also agrees in that the City has a fine Police Department, but one thing that is important now is that this is a time of change in America. The way that something has always been done is not the way that it is always going to be done and there can be change, particularly when citizens and government work together. She further stated that Police Chief Thrasher has always been upfront with Council in explaining what happens with the Police Department and has gone on numerous forums in the community to talk about the Police Department, but there can be room for change. Council must go with what is best for the community and all citizens and what is being discussed is about what happens to minority people in the country. Maybe not as much in Sierra Vista, but the questions need to be asked to find out what is not only going on in the Police Department but what is going on across the board.

Mayor Pro Tem Gray stated that she is thankful for the freedom in this country that any movement no matter what the subject is has the right to peacefully protest just as it was seen in the City. She further stated that she is thankful for the freedom that Council Member Wolfe has, who asked for discussion on a hard topic. Regardless of what consensus Council comes to, there is the freedom to discuss these things. She is thankful for the Police Department, well trained and diverse that has a leader that is willing to talk to Council as a body and as individuals, and who is also willing to let her ride along and asks many questions. Lastly, she stated that she is also thankful to the Mayor and Council that is willing to also have those discussions and for a staff that is willing to be prepared for Council to hold those discussions.

Mayor Mueller stated that Council appreciates the Fire Chief too and noted that it is still Census time; although the statistics indicate that the City is ahead of where it was last year, it is still not 100 percent and so he encourages people to mail in their Census forms. He noted that a lot of the City's budget comes from its federal share of taxes that people send to Washington that have come back to be used locally, but if the numbers are low then someone else is spending that money. He added that it is a critical year for voting and noted that the City will not have a Primary but will have a General and there are other offices that are critical for people to go out and vote. He encouraged people to register to vote and noted that if people think that it is a good time to have a mail in ballot due to COVID, people need to request that. Lastly, he stated that the County needs help at the voting centers, a 16-hour day and announced that the July 4th festivities will be different this year. The Rotary Club along with the City is trying to their best because the key is to be safe. He noted that there are still restrictions on fireworks within the City and announced the Special Council Meeting scheduled for Friday, June 26, 2020 at 3 p.m. at City Hall in Council Chambers.

Adjournment

Mayor Mueller adjourned the June 23, 2020 meeting of the Sierra Vista City Council at 6:09 p.m.

Frederick W. Mueller, Mayor

Minutes prepared by:

Attest:

Maria G. Marsh, Deputy Clerk

Jill Adams, City Clerk



Sierra Vista City Council
Special Meeting Minutes
June 26, 2020

Mayor Mueller called the June 26, 2020 City Council Special Meeting to order at 3:00 p.m., Council Chambers, City Hall, 1011 N. Coronado Drive, Sierra Vista, AZ

Roll Call:

Mayor Rick Mueller – present
Mayor Pro Tem Rachel Gray – present
Council Member William Benning – present
Council Member Gwen Calhoun – present
Council Member Sarah Pacheco – present 3:05 p.m.
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
Jon Kosmider, Deputy Police Chief
Nathan Williams, City Attorney
Jill Adams, City Clerk

Item 1 Acceptance of the Agenda

Council Member Calhoun moved that the Agenda for the Special City Council Meeting of June 26, 2020, be approved as written. Council Member Umphrey seconded the motion. The motion passed by a 5/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Wolfe, and Calhoun.

Item 2 Resolution 2020-040, Authorization for the Mayor to declare a local emergency pursuant to ARS 26-311(A) and to issue an emergency order

Mayor Pro Tem Gray moved that Resolution 2020-040, authorization for the Mayor to declare a local emergency pursuant to ARS 26-311(A) and to issue an emergency order, be approved. Council Member Calhoun seconded the motion. The motion passed by a 6/0 vote of Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Umphrey, Wolfe, Pacheco, and Calhoun.

Mr. Potucek stated that since Governor Ducey declared a state-wide emergency and issued a Stay Home, Stay Healthy, Stay Connected Order, which was on March 30, 2020 regarding the Coronavirus pandemic the City has been operating under Governor Ducey's Executive Order by requiring social distancing and measures such as that. The City has been doing that faithfully throughout the pandemic. On June 17, 2020 Governor Ducey issued Executive Order 2020-040 containing the spread of COVID-19 continuing Arizona mitigation efforts in which he authorized

then counties, cities and towns to adopt policies regarding face mask coverings for the public to mitigate the spread of COVID-19. This was the first time that the Governor deviated from a one size fits all approach with regards to dealing with the virus across the State and giving local governments the option to do that.

Mr. Potucek stated that he mentioned during the Tuesday, June 23, 2020 Council work session, that there needs to be work done to the cleanup of some of the City's emergency operations language in the City Code, but for now Arizona Revised Statutes provides that a mayor of a city or town may with the vote of the Council then deem that an emergency condition exists within that city or town. The proposed resolution would allow that to occur for the period of the COVID-19 crisis until such time as the Governor declares the emergency over at that point.

The resolution authorizes the Mayor to be able to declare a local emergency in Sierra Vista with the vote of the Council and then the Mayor can address the emergency with a proclamation or an executive or as he deems appropriate. The emergency clause allows the Mayor to move immediately after the vote to issue any orders/proclamation that he deems necessary.

Mayor Mueller announced that the City's public system for broadcasting went off, which is funded in the budget for replacement. Different means are being done including Cool FM to record the Council Meeting to get the word out.

Mr. Wayne Gregan and Mr. Michael De Carlo voiced their opposition to the mandatory use of masks in public.

Mayor Mueller thanked Mr. Gregan and Mr. De Carlo for their comments and stated that he has thought about their concerns as well and his deliberation has not been hasty, which Council Members can attest to that. He thanked Council for considering his request for the authority to declare a local emergency, thanked the people of Sierra Vista and the Greater Sierra Vista community for doing those things that are required to help stop the spread of COVID-19. He encouraged everyone to wash and dry their hands regularly, stay at home to the maximum extent possible, maintain social distancing and wear masks where social distancing cannot be maintained and stated that while the citizens have been admirable in these efforts, COVID is persistent. The City's hospital, despite all and how well the community is doing in the local zip codes, which are monitored on a regular basis, is responsible for health care across Cochise County and beyond. However, charts on statewide hospital capacity have continued to decrease and while hospitals in Cochise County still have capacity, they are properly planning for a worst case. Canyon Vista Medical Center is concerned about the shrinking capacity and has started training their Ethics Board, a committee comprised of medical and hospital staff who have the tough mission of evaluating which patients will receive services and care when it may not be available, which includes rooms, equipment, incubators and etc.

Mayor Mueller stated that the fact that the hospital must train a committee to be prepared to act in a legal and responsible manner, gives him pause as it should for everyone and based on this information, and the continued growth of cases primarily in the 20 to 40 area year group, in areas in Cochise County and around the City, he feels that it is necessary to strictly follow the CDC guidelines completely. If the proposed resolution is passed, he will be establishing measures that will result in more effective use of masks to help deter the spread of COVID in the City. In closing, he asked Council for approval and thanked several folks that have helped him to make sure that the City has an implementable as well as enforceable to the most extent possible declaration, once it is in fact authorized and signed. He thanked Mr. Potucek, Ms. Yarbrough, Police Chief Thrasher, Fire Chief Jones, and Mr. Williams.

Council Member Benning stated that during the last couple of days, he has shared the same concern as his colleagues, and it is a big request to give away their elected voice for the people that want them to speak on their behalf. However, in times of an emergency, he understands that dire needs require immediate decisions before Council can come together as a body. He added that he has concerns and has spoken to his doctors on how to keep safe and healthy; however, he cannot expect others to do the same. He believes that the government should not interfere with people's lives in telling them what to do and what not to do and coming out and making this decision is hard for him. He further stated that this decision weighs heavy on him as well as the Mayor, but he also knows what it is to lose a loved-one and he does not want anyone to be in the hospital by themselves. Lastly, he asked the Mayor to consider all suggestions provided to him by Council before putting out a policy because this is not about wearing masks, it is about the community and the state that it is currently in.

Council Member Wolfe stated that she has seen throughout Arizona, those communities that have mandated the wearing of masks, different rules. She further stated that she wants to make sure that people understand the rules and asked about enforcement because she hopes that there is education and not a citation.

Council Member Calhoun stated that the decision being made as part of the Arizona Revised Statute is to protect public health while respecting individual rights. Just hearing that creates tension between the two, but people have been given their choice to the greater good of the public, and the decision that must be made is due to the pandemic. She further stated that she has heard repeatedly the pride felt by citizens about its city and that the community is the greatest place in the world to live in. Sierra Vista's citizens are caring and giving, whether it is in a crisis or for only one person, which has been seen through social media. Lastly, she asked for each person in the community to refrain from commenting to another person about whether or not they are wearing a mask because there are people who have legitimate medical reasons as to why they cannot wear a mask. People should do what they think is the right thing to do according to the Mayor's proclamation and leave others to do what they need to do.

Council Member Umphrey thanked the Mayor for calling a special meeting. She added that she understands that this decision was not easy, but Council is in an important position that takes sometimes a very courageous step to do what is in the best interest of the City. This is not a partisan issue it is a public health issue and that is sometimes lost in all the static that is heard. She thanked the Mayor for his careful consideration on this issue and stated that she trusts him in moving forward.

Council Member Pacheco stated that she had questions about enforcement and has shared her thoughts with Mr. Potucek. She shared that having worked in a healthcare setting for the last five years, she is in favor of policy being guided by recent, relevant, and accurate data and noticed this decision is not based on opinions. The decision is based on facts, numbers, and data, guided by professionals who work in the medical field, and she is grateful that they are having discussions. The Mayor has been in constant communication with the Health Department, hospital, healthcare professionals and that is who people need to be listening to. She explained that the research that she has seen show that the use of face coverings reduces transmission of COVID-19 by at least 50 percent and there is a lot of information to back that up. She added that when she is out in public, she wears a mask because she is a believer in the studies produced by the healthcare community and because she does not know whether she has been exposed, and it is clear that this disease can be spread by those who have no symptoms. Although, she has a household of healthy individuals, she wears a mask to be

considerate of her friends and neighbors who are caring for an elderly parent or compromised individual. She wears one because she wants the community to thrive, businesses to stay open and for employees to stay healthy. Wearing a mask is a small sacrifice to fight the spread of the disease in the community.

Mayor Pro Tem Gray stated that while hers and the Mayor's timing is not always in sync, she knows that the Mayor acts with every intention of what is best for the City. She reminded the public that she voted for Mayor Mueller and so did the majority of Sierra Vista and to her that means that they trust him, and all are aware of how much he loves Sierra Vista. She also stated that she has no doubt that Mayor Mueller will do what he believes is right and listen to the Council, the public and what they think is right in every decision that he makes and whole heartedly is in favor of giving him the authority to make this decision.

Mayor Pro Tem Gray further stated that there is a lot of information and she wonders if anyone can be certain of what it is that they must do until a vaccine comes out. In conjunction with staying home when necessary, washing hands and staying a safe distance away when needed, along with wearing a mask are all things that are known can help. Lastly, she stated that it behooves the City to do what is required to help each other and quoted Pastor Mark Perry, "that we are not doing this for ourselves, we are doing it for each other and to remember that in these times and all times that we are to love thy neighbor." This is what she believes Sierra Vista is and that is what they do, and she fully expects to have people who do not like it, but they need to understand the importance. This is something that must be done at this time.

Council Member Benning asked about the exception to wearing a mask while using sports or practice fields together. Mayor Mueller stated that it is primarily for the Little League. He added that once Council gives him the authority, he will issue a declaration, and if there are things in it that Council wants to discuss, he does not have a problem in amending the declaration. The declaration contains issues that have been talked about with staff, subject matter experts, etc. to make sure that the declaration is as accurate and clean as possible, where people needing exemptions have one. If this goes out today, commercial establishments will need ample time to comply with the order.

Council Member Wolfe stated that she does not like wearing a mask or having the government tell her what to do, but sometimes it is just the way that it has to be and she is thankful for the people in the community that are careful and hopefully the disease and some of the fear can stop.

Council Member Pacheco stated that she has not been out in public for the last three months to social distance and the wearing of masks is for when social distancing is not possible.

Mayor Mueller stated that if there is not a reasonable requirement, people are not going to obey/follow it and that is the thinking behind it.

Adjournment

Mayor Mueller adjourned the June 26, 2020 special meeting of the Sierra Vista City Council at 3:42 p.m.

Mayor Mueller read the Emergency Declaration (on file with the City Clerk).

Mayor Frederick W. Mueller

MINUTES PREPARED BY:

ATTEST:

Maria G. Marsh, Deputy Clerk

Jill Adams, City Clerk

EMERGENCY DECLARATION

WHEREAS, the COVID-19 pandemic conditions throughout the State of Arizona have resulted in widespread illness, business and services closures, health care saturation and many other conditions that pose significant threats to communities; and

WHEREAS, the COVID-19 pandemic has resulted in a condition of peril to the health and safety of many citizens as well as economic impacts to our businesses and tourism industry; and

WHEREAS, on June 17, 2020 Arizona Governor Ducey issued Executive Order 2020-40 "Containing the Spread of COVID-19 Continuing Arizona Mitigation Efforts"; and

WHEREAS, on June 26, 2020 the City of Sierra Vista issued resolution 2020-40, authorizing the Mayor of the City of Sierra Vista to declare a Local Emergency and recognizing the necessity of precautionary measures due to the threat COVID-19 poses to public health and safety;

NOW, THEREFORE, it is hereby declared that an emergency now exists in the City of Sierra Vista, Arizona;

IT IS HEREBY ORDERED;

Effective June 27, 2020 at 12:00 a.m.:

SECTION 1: Face Coverings or use of Shields in Public

- A. Wearing a Face Covering Or Using Shielding In Public Spaces. Every person over the age of ten (10) is required to make use of a face covering or shield in a Public Space when maintaining a six foot distance is not possible. Adults accompanying children shall use reasonable efforts to cause those children to wear face coverings when in public.
- B. Commercial Establishments. The wearing of face coverings is required in all commercial establishments located within the City of Sierra Vista when physical distancing is impossible to continuously maintain. Commercial Establishments have until midnight July 1, 2020 to fully comply with this order.
- C. Schools, Institutions of Higher Learning, Child Care Centers, Not for Profit organizations providing food and shelter, and Houses of Worship are requested to establish and publish their own guidelines for the proper wearing of face coverings in their spaces that are accessible to the public.
- D. Exceptions. Face coverings are not required: 1) When a person is at home; 2) When a person is alone in a vehicle or in a vehicle with people the person lives with; 3) When a person is at a commercial establishment for the purposes of eating, drinking or sleeping; 4) When a person is exercising outdoors alone or with people they live with, and while using public sports or practice fields; 5) While swimming; 6) In workspaces not open to the general public; 7) For any person who cannot wear a face covering

because of a medical condition, mental health condition or developmental disability, or who is unable to remove the face covering without assistance; and 8) In an emergency situation where the wearing of a face covering is not feasible.

- E. Definitions. 1) Public Space means: a) Indoor spaces that are overseen by the City of Sierra Vista where the public is allowed to enter. b) Outdoor spaces such as parks, playgrounds, parking lots, and other areas such as places where the public would gather while waiting to enter an establishment. c) In or on Public Transportation. 2) Person means: any person, regardless of whether they are a resident, employee, customer, vendor, visitor, invitee or other. 3) Face Covering means: a covering made of fabric or soft permeable material that covers the nose mouth and surrounding areas of the lower face. 4) Shield means an impermeable physical barrier designed to separate individuals from physical contact.

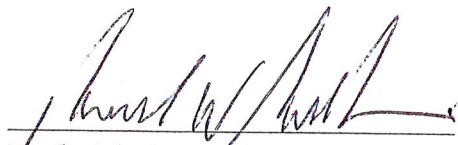
SECTION 2: Enforcement.

Any enforcement of this proclamation shall focus first on educating and working to promote best practices to accomplish the goal of mitigation. Before any action is taken to enforce this order under ARS Sub-Section 26-317 (a class 1 misdemeanor), a person shall be notified of the violation and be given an opportunity to comply.

SECTION 3. Duration.

The Order shall remain in effect until the earlier of the rescission of this Local Emergency Declaration by the Mayor of the City of Sierra Vista or the rescission of Executive Order 2020-40 by the Governor of the State of Arizona.

Dated this 26th day of June, 2020.


Frederick W. Mueller, Mayor

ATTEST:



Jill Adams, Sierra Vista City Clerk



July 9, 2020

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Matt McLachlan, AICP, Community Development Director

FROM: Jeff Pregler, AICP
Senior Planner

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
RESOLUTION 2020-041
Acceptance of an Amended Legal Description and Access
and Utility Easement
Plaza De Colibri Subdivision

RECOMMENDATION:

The City Manager recommends approval.
Director of Community Development recommends approval.

BACKGROUND:

The Plaza De Colibri commercial subdivision was originally platted back in 2001. At that time Quail Run Drive connected to State Route 92 and provided the primary access to the subdivision. In 2013, the owner of the subdivision requested that Quail Run Drive be abandoned and that a separate private roadway, which was to be constructed further north be approved. The purpose of the abandonment was to provide additional buildable area for the Culver's restaurant. The City Council did approve the abandonment and accepted an ingress/egress easement for the realigned private roadway. The ingress/egress access easement provided for legal public access onto the private roadway for perpetuity.

Since the private roadway was to connect to State Route 92, the Arizona Department of Transportation (ADOT) had the final decision on the location of the access. As the private roadway neared completion, ADOT made a final determination on the access point which



was 50-feet to the south of the original access point identified in the Plaza De Colibri subdivision plat. In fact, the subdivision plat identified a 1-foot no access easement at the proposed access location. Therefore, to legally locate the access at ADOT's recommended location, the subdivision plat needed to be revised to reflect the new access location and remove the 1-foot no access easement. On December 14, 2017, the City Council did vote to approve the revised subdivision plat and eliminate the 1-foot no access easement, allowing for the construction of the roadway to be completed. The ingress/egress access easement was modified in 2018, to reflect the new location of the proposed roadway and access.

After the roadway was constructed, it was realized that the revised ingress/egress access easement did not align with the roadway. In fact, portions of the easement extend into Lot 4 within the subdivision, limiting the developable area. As a result, the owner is requesting to once again revise the ingress/egress access easement to align with the roadway. There is an interest in selling the affected lot, hence the request to revise the easement. Utilities are also located within the easement area which is why the easement is identified as an ingress/egress and utility easement.

The map below identifies the existing and proposed locations of the ingress/egress access easement. The easement is moving 10 feet to the west and 12 feet to the north to ensure the easement is in-line with the roadway.



ATTACHMENTS:
Resolution
Exhibit A-Copy of the legal description and map Exhibit

RESOLUTION 2020-041

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; REAFFIRMING SETTLED POLICY ACCEPTING AN AMENDED LEGAL DESCRIPTION AN ACCESS EASEMENT, AS SHOWN ON EXHIBIT A; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, an access easement connecting Quail Run Drive and State Route 92 was originally approved by Resolution 2013-118; and

WHEREAS, the State Route 92 access providing access into the Plaza De Colibri subdivision was relocated by Resolution 2017-107; and

WHEREAS, the access easement and legal description were revised to reflect the new access location by Resolution 2018-007; and

WHEREAS, the private roadway connecting Quail Run Drive to State Route 92 was constructed and completed following approval of the access easement; and

WHEREAS, the access easement approved by Resolution 2018-007 will again be revised to align with the private roadway.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

That the settled policy for accepting easements, be, and hereby is, reaffirmed.

SECTION 2

That the amended legal description and vehicular access/utility easement as shown in Exhibit A, be, and hereby is, accepted and will replace Exhibit A of Resolution 2018-007.

SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 9TH DAY OF JULY, 2020.

FREDERICK W. MUELLER
Mayor

ATTEST:

APPROVED AS TO FORM:

JILL ADAMS
City Clerk

NATHAN WILLIAMS
City Attorney

PREPARED BY: Jeff Pregler,
Senior Planner

EXHIBIT A



DATE: 06/29/2020
PROJECT: 20040

LEGAL DESCRIPTION

INGRESS, EGRESS AND UTILITIES EASEMENT

AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS, AND UNDER ALL OF THAT PORTION OF LOTS 4 AND 5, OF THE AMENDED FINAL PLAT FOR "PLAZA DE COLIBRI", AS RECORDED IN BOOK 16 OF MAPS AND PLATS, PAGE 35, RECORDS OF COCHISE COUNTY, ARIZONA, SITUATED IN A PORTION OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 20 EAST OF THE GILA AND SALT RIVER MERIDIAN, COCHISE COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 4, BEING A 1/2" IRON REBAR WITH BRASS TAG, RLS 51130, FROM WHICH THE NORTHWEST CORNER OF SAID LOT 4, BEING A 1/2" IRON REBAR WITH BRASS TAG, RLS 51130, BEARS NORTH 89° 58' 10" WEST, A DISTANCE OF 299.75 FEET;

THENCE, ALONG THE EAST PROPERTY LINE OF SAID LOT 4, SOUTH 00° 03' 59" WEST, A DISTANCE OF 67.78 FEET, TO THE **POINT OF BEGINNING**;

THENCE, CONTINUING ALONG SAID EAST PROPERTY LINE, SOUTH 0°03'59" WEST, A DISTANCE OF 40.00 FEET;

THENCE, DEPARTING SAID EAST PROPERTY LINE, NORTH 89°58'21" WEST, A DISTANCE OF 239.75 FEET;

THENCE, SOUTH 0°03'56" WEST, A DISTANCE OF 206.16 FEET;

THENCE, NORTH 89°56'01" WEST, A DISTANCE OF 60.00 FEET, TO A POINT ON THE WEST PROPERTY LINE OF SAID LOT 5;

THENCE, ALONG SAID WEST PROPERTY LINE OF LOT 5, NORTH 0°03'56" EAST, A DISTANCE OF 66.00 FEET;

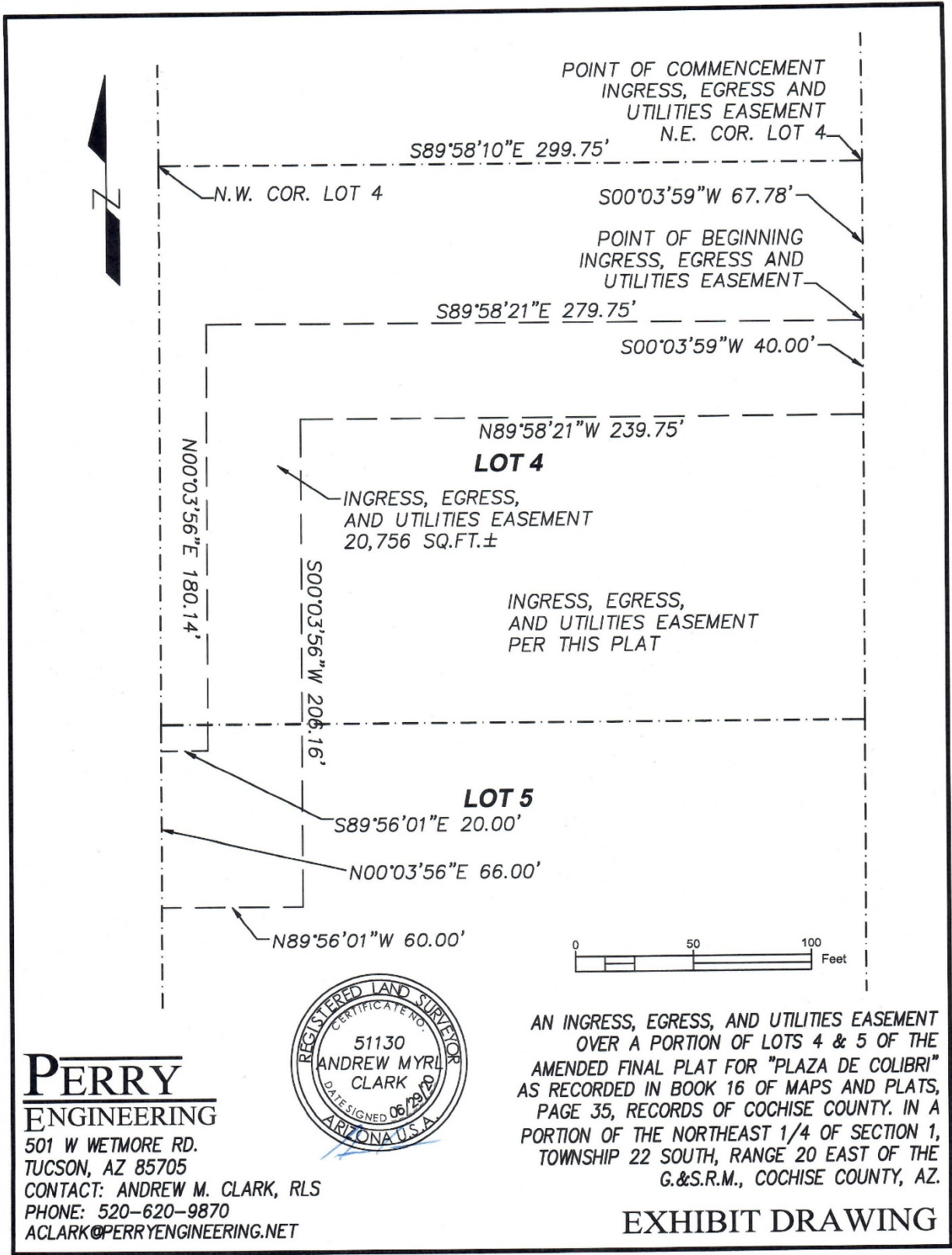
THENCE, DEPARTING SAID WEST PROPERTY LINE OF LOT 5, SOUTH 89°56'01" EAST, A DISTANCE OF 20.00 FEET;

THENCE, NORTH 0°03'56" EAST, A DISTANCE OF 180.14 FEET;

THENCE, SOUTH 89°58'21" EAST, A DISTANCE OF 279.75 FEET, TO THE **POINT OF BEGINNING**.

THE TOTAL PARCEL AREA CONTAINS 20,756 SQUARE FEET OR 0.48 ACRES, MORE OR LESS.





PERRY
ENGINEERING

501 W WETMORE RD.
TUCSON, AZ 85705
CONTACT: ANDREW M. CLARK, RLS
PHONE: 520-620-9870
ACLARK@PERRYENGINEERING.NET



AN INGRESS, EGRESS, AND UTILITIES EASEMENT
OVER A PORTION OF LOTS 4 & 5 OF THE
AMENDED FINAL PLAT FOR "PLAZA DE COLIBRI"
AS RECORDED IN BOOK 16 OF MAPS AND PLATS,
PAGE 35, RECORDS OF COCHISE COUNTY. IN A
PORTION OF THE NORTHEAST 1/4 OF SECTION 1,
TOWNSHIP 22 SOUTH, RANGE 20 EAST OF THE
G.&S.R.M., COCHISE COUNTY, AZ.

EXHIBIT DRAWING

July 9, 2020

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Matt McLachlan, AICP, Community Development Director

FROM: Blake Fisher, Planner I

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
RESOLUTION 2020-042, Pre-annexation agreements for Parcel
106-71-201, 316 N 2nd Street and Parcel 106-71-200B, 314 N 2nd
Street

BACKGROUND

The Cochise College Foundation has expressed an interest in connecting their two County properties, 314 and 316 N 2nd Street, to the City of Sierra Vista sewer system, which runs in front of both properties beneath 2nd Street. In exchange, staff has proposed that the Foundation sign a pre-annexation agreement.

The current property owners, the Cochise College Foundation, are a 501(C)(3) non-profit organization who promote student success, facilities development, and program support for Cochise College. One of their ongoing missions in the Fry Townsite has been to grant local students construction experience while reinvigorating the previously blighted spaces with new development. The City has a positive relationship with this organization and donated the aforementioned 314 N 2nd Street property to the Foundation in 2018.

The Fry Townsite itself contains many properties defined as being within Sierra Vista's Proactive Annexation Area. Recent attempts at annexing properties within this area have failed due to a lack of support from owners within. This agreement will circumvent the need for petitioning these two properties if an annexation attempt is done in the future, and the subject properties would automatically count as "yes" votes for the annexation, even after the properties are sold to private owners.

FINANCIAL IMPACT

The Cochise College Foundation will be responsible for paying the cost of any sewer connection they wish to add to the 314 and 316 N 2nd Street properties. Once connected, the property owners will, from that time forward, be required to pay for ongoing sewer service as other city residents with sewer service must.

Attachment: Resolution 2020-042: 316 & 314 N 2nd Street Pre-Annexation Agreement
Exhibit One – Pre-Annexation Agreement

RESOLUTION 2020-042

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE MAYOR TO EXECUTE A PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SIERRA VISTA AND THE COCHISE COLLEGE FOUNDATION, A 501(C)(3) NON-PROFIT ORGANIZATION, CONCERNING PROPERTIES LOCATED AT 314 NORTH SECOND STREET AND 316 NORTH SECOND STREET; SIERRA VISTA, ARIZONA, AND AUTHORIZING DIRECTION TO THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista and the Cochise College Foundation, owner of parcels numbered 106-71-201 and 106-71-200B, have reached a Pre-Annexation Agreement attached as Exhibit 1 to this Resolution and incorporated by reference, for the properties whose locations and boundaries are shown on the map attached as Exhibit "A" to the Pre-Annexation Agreement; and

WHEREAS, the execution of this Pre-Annexation Agreement is in the best interest of the City of Sierra Vista.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1

The Pre-Annexation Agreement between the City of Sierra Vista and the Cochise College Foundation, a 501(C)(3) non-profit organization, (with its Exhibit A), attached as Exhibit 1 to this Resolution, is authorized and approved.

SECTION 2

The Mayor is authorized and directed to execute the Pre-Annexation Agreement for and on behalf of the City of Sierra Vista and the City Clerk is authorized and directed to attest the same.

SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 9TH DAY OF JULY, 2020.

FREDERICK W. MUELLER
Mayor

APPROVED AS TO FORM:

ATTEST:

NATHAN WILLIAMS
City Attorney

JILL ADAMS
City Clerk

PREPARED BY:

Blake Fisher
Planner I

**PRE-ANNEXATION AGREEMENT BETWEEN
THE CITY OF SIERRA VISTA AND COCHISE COLLEGE FOUNDATION**

This Pre-Annexation Agreement (hereinafter, the "Agreement") is made and entered into as of (date) _____, by and between the City of Sierra Vista, Arizona, a municipal corporation organized under the laws of the State of Arizona (hereinafter, the "City") and Cochise College Foundation (hereinafter, the "Owner").

RECITALS:

A. Owner beneficially owns multiple, certain real properties, currently located in an unincorporated area of Cochise County and is contiguous to the exterior boundary of the City:

| APN# | SITE ADDRESS | COUNTY ZONING | COMPATIBLE CITY ZONE | LEGAL DESCRIPTION |
|-------------|----------------------------|----------------------|-----------------------------|-----------------------------------|
| 106-71-201 | 316 N. 2 nd ST. | MH-72 | MHR | SECOND ADDN TO FRY LOT 18, BLK 14 |
| 106-71-200B | 314 N. 2 nd ST. | MH-72 | MHR | SECOND ADDN TO FRY LOT 17, BLK 14 |

B. All properties are located in portions of Section 34, Township 21 South, Range 20 East, of the Gila River and Salt River Base and Meridian, and more particularly described in Exhibit A attached hereto and made part hereof (hereinafter, the "Properties").

C. City and Owner desire that the Properties be annexed into the corporate limits of the City and be developed as an integral part of the City and in accordance with VISTA 2030, the existing comprehensive plan for the City.

D. City and Owner have determined that entering into this Agreement will be in the best interest of the City, the public, and the Owner; will be proper and legal exercise of City power; will promote orderly development of the Properties and the surrounding area; will promote the health, safety and welfare and economy of the community in general; and meets the economic development goals of the City.

E. The City and the Owner are entering into this Agreement pursuant to the provisions of A.R.S. §9-500.05 in order to facilitate the annexation and development of the Properties by providing for, among other things:

1. Establishment of the terms for annexation of the Properties into the City.

AGREEMENT

In consideration of the foregoing premises, the mutual covenants and promises in this Agreement and the intent to legally bind City and Owner, the following is agreed:

1. **Annexation Consent.** Owner hereby consents to annexation of the Properties into the City of Sierra Vista pursuant to A.R.S. § 9-471. This consent to annex the Properties into the City shall operate as a covenant and shall run with the land and bind each of Owner's heirs, executors, administrators, successors and assigns to the Properties.
2. **Durable Special Power of Attorney.** To facilitate annexation of the Properties in a manner convenient to the City, Owner shall execute, simultaneously with the execution of this Agreement, a durable special power of attorney, attached and incorporated herein as Exhibit B, designating the City Clerk with the irrevocable power to sign and execute, on behalf of the Owner, any lawful annexation petition or other annexation document for the purpose of annexing the Properties into the City of Sierra Vista. Any successor(s) to Owner shall execute a similar annexation petition or documents necessary to accomplish the annexation.
3. **Applicable Zoning.** Pursuant to A.R.S. §9-471(L), upon annexation, the City shall adopt a City zoning classification for the Property that permits densities and uses no greater than those permitted by the existing Cochise County zoning (the "Original City Zoning").
4. **Private Property Rights Development Act.** By signing this Agreement, Owner agrees to waive claims for diminution in value under the Private Properties Rights Development Act in connection with annexation of the Properties as well as for any claim for diminution in value as a result of any subsequent rezoning of the Properties by the City.
5. **Entire Agreement.** This agreement sets forth the entire understanding between the parties concerning the subject matter of this agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties relating to the subject matter of this agreement other than those set forth herein. No modification or amendment of this agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
6. **Negotiated Effort.** The parties agree that this Agreement represents the negotiated joint efforts of the parties. In the event a court of competent jurisdiction finds ambiguity, this Agreement shall not be construed against either party in favor of a non-drafting party.
7. **Authority.** All persons executing this document for City and Owner have all necessary and legal authority to enter into this Agreement for their respective corporations and the individual(s) executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf such individual is signing.
8. **Covenants Running with the Land.** This Agreement is made as part of a common scheme or plan for the development of the Properties and a "Development Agreement" as defined in A.R.S. §9-500.05 and all rights and obligations hereunder subject to the provisions of Paragraph 3 contained herein shall be considered to run with the land and benefit and burden all owners of all or any portion of the Properties, including owners who acquire title to any portion of the Properties subsequent to the execution and recording of this Agreement. Nothing in this Agreement shall be construed as creating a partnership between Owner and the City.

9. **Governing Venue.** The laws of the State of Arizona shall govern this agreement and, in the event of a dispute, venue shall be in Cochise County, Arizona.
10. **Attorneys' Fees.** Should litigation be necessary to enforce any term or provision of this Contract, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorneys' fees will be paid to the prevailing party.
11. **Mediation.** If a dispute arises out of or relates to the Agreement or this Amendment, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Cochise County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.
12. **Notices.** Any notice required pursuant to the provisions of this Agreement shall be in writing and be sent by certified mail to the following addresses until notice of change of address is given and shall be deemed received on the fifth business day following deposit in the United States Mail.

| | |
|--|---|
| City Clerk City of Sierra Vista 1011 N. Coronado Drive Sierra Vista, AZ 85635 | <u>Cochise College Foundation</u> <u>Attn: Denise Hoyos</u> <u>4190 W. Highway 90</u> <u>Douglas, AZ 85607</u> |
|--|---|
13. **Non-Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable all other provisions hereof.
14. **Amendments, Modifications and Waivers.** This Agreement may not be amended, none of its terms may be modified and none of the provisions or any of its terms may be waived without the written consent of the parties hereto.
15. **Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.
16. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Section of this Agreement.
17. **Additional Documents and Acts.** The parties hereto shall execute, acknowledge, if applicable, and deliver such additional documents and do such other acts as may be reasonably required to fully implement the intent of this Agreement.
18. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
19. **Term.** The term of this Agreement shall commence on the date of execution by both parties hereto.



Exhibit A (map)

EXHIBIT B

DURABLE SPECIAL POWER OF ATTORNEY

Cochise College Foundation is the owner of the following real property:

| APN# | SITE ADDRESS | COUNTY ZONING | COMPATIBLE CITY ZONE | LEGAL DESCRIPTION |
|-------------|----------------------------|---------------|----------------------|-----------------------------------|
| 106-71-201 | 316 N. 2 nd ST. | MH-72 | MHR | SECOND ADDN TO FRY LOT 18, BLK 14 |
| 106-71-200B | 314 N 2 nd ST. | MH-72 | MHR | SECOND ADDN TO FRY LOT 17, BLK 14 |

I hereby appoint the CITY CLERK of the City of Sierra Vista, Arizona as its true and lawful Attorney for it and in its name, place, and stead, with full authority and full powers of substitution, to do and execute any or all of the following acts, deeds and things, relating to or in any way connected with the following described matter **AND NO OTHER:**

To execute all **ANNEXATION** documents, including, but not limited to, petitions, waivers, notices, grant all approvals or consents, and to do every act or perform everything necessary to authorize and achieve the **ANNEXATION** of the above described property into the boundaries and limits of the City of Sierra Vista, County of Cochise, State of Arizona. It is the express intention and desire that said property be annexed to the City of Sierra Vista.

I further certify that I have all necessary and legal authority to enter into this Durable Special Power of Attorney.

THIS SPECIAL POWER OF ATTORNEY SHALL NOT BE AFFECTED BY MY DISABILITY.

IN WITNESS WHEREOF, I have hereunto set my hand, this 5 day of MAY, 2020.

By: Denise N Hoyos

Print Name: DENISE N HOYOS

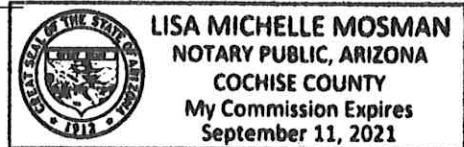
STATE OF ARIZONA)
)ss
COUNTY OF COCHISE)

On this, 5th May, 2020, before me, Lisa Michelle Mosman a Notary Public in and for the County of Cochise, State of AZ, on this day personally appeared Denise N. Hoyos to be the person whose name is subscribed to within this instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Lisa Michelle Mosman
NOTARY PUBLIC

My Commission Expires: 9.11.2021



July 9, 2020

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Matt McLachlan, AICP, Community Development Director

FROM: Blake Fisher, Planner I

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
RESOLUTION 2020-043, Pre-annexation agreements for Parcel, 106-70-097, 113 N 5th Street and Parcel 106-70-116A, 125 N 5th Street

BACKGROUND

Mr. Fix It Properties LLC, henceforth referred to as “Mr. Fix It”, has expressed an interest in connecting one of their County properties, 125 N 5th Street, to the City of Sierra Vista sewer system, which runs to the north and west of the property. In exchange, staff has proposed that Mr. Fix It sign a pre-annexation agreement for the 125 N 5th Street property *and* the 113 N 5th Street property that they own to the south. Currently, Mr. Fix It is not proposing a new sewer connection to the 113 N 5th Street property.

The current property owners, Mr. Fix It, are a commercial entity with estimated revenues, according to a Buzzfile.com report, of approximately \$250,000 a year. The City has worked with William Goethe, the proponent of this pre-annexation agreement from Mr. Fix It, in the recent past for the development of the 664 Bartow Drive Elite Cheerleading building. The proposed development on 125 N 5th Street is a similar metal building, which will be leased to local commercial businesses.

The Fry Townsite itself contains many properties defined as being within Sierra Vista’s Proactive Annexation Area. Recent attempts at annexing properties within this area have failed due to a lack of support from owners within. This agreement will circumvent the need for petitioning these two properties if an annexation attempt is done in the future, and the subject properties would automatically count as “yes” votes for the annexation, even after the properties are sold to new, private owners.

FINANCIAL IMPACT

Mr. Fix It will be responsible for paying the cost of any sewer connection they wish to add to the 125 N 5th Street property. Once connected, the property owners will, from that time forward, be required to pay for ongoing sewer service as other city residents with sewer service must. Once annexed, the subject commercial properties would be required to pay both property and sales tax to the City of Sierra Vista.

Attachment: Resolution 2020-043: 113 & 125 N 5th Street Pre-Annexation Agreement
Exhibit One – Pre-Annexation Agreement

RESOLUTION 2020-043

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE MAYOR TO EXECUTE A PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SIERRA VISTA AND MR FIX IT PROPERTIES LLC, A COMMERCIAL FIRM, CONCERNING PROPERTIES LOCATED AT 113 NORTH 5TH STREET AND 125 NORTH 5TH STREET; SIERRA VISTA, ARIZONA, AND AUTHORIZING DIRECTION TO THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista and Mr. Fix it Properties LLC, owner of parcels numbered 106-70-097 and 106-70-116A, have reached a Pre-Annexation Agreement attached as Exhibit "One" to this Resolution and incorporated by reference, for the properties whose locations and boundaries are shown on the map attached as Exhibit "A" to the Pre-Annexation Agreement; and

WHEREAS, the execution of this Pre-Annexation Agreement is in the best interest of the City of Sierra Vista.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1

The Pre-Annexation Agreement between the City of Sierra Vista and Mr. Fix It Properties LLC, a commercial firm (with its Exhibit A), attached as Exhibit One to this Resolution, is authorized and approved.

SECTION 2

The Mayor is authorized and directed to execute the Pre-Annexation Agreement for and on behalf of the City of Sierra Vista and the City Clerk is authorized and directed to attest the same.

SECTION 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 9TH DAY OF JULY 2020.

FREDERICK W. MUELLER
Mayor

APPROVED AS TO FORM:

ATTEST:

NATHAN WILLIAMS
City Attorney

JILL ADAMS
City Clerk

PREPARED BY:

Blake Fisher
Planner I

**PRE-ANNEXATION AGREEMENT BETWEEN
THE CITY OF SIERRA VISTA AND MR FIX IT PROPERTIES LLC**

This Pre-Annexation Agreement (hereinafter, the “Agreement”) is made and entered into as of (date) _____, by and between the City of Sierra Vista, Arizona, a municipal corporation organized under the laws of the State of Arizona (hereinafter, the “City”) and MR FIX IT PROPERTIES LLC (hereinafter, the “Owner”).

RECITALS:

A. Owner beneficially owns multiple, certain real properties, currently located in an unincorporated area of Cochise County and is contiguous to the exterior boundary of the City:

| APN# | SITE ADDRESS | COUNTY ZONING | LEGAL DESCRIPTION |
|-------------|--------------------------|----------------------|--|
| 106-70-097 | 113 N 5 TH ST | MH-72 | 1ST ADD TO FRY LOT 7 & BLK 7 10-04 LV COMMERCIAL |
| 106-70-116A | 125 N 5 TH ST | GB | FIRST ADDN TO FRY LOTS 3 4 5 BLK 8 |

B. All properties are located in portions of Section 34, Township 21 South, Range 20 East, of the Gila River and Salt River Base and Meridian, and more particularly described in Exhibit A attached hereto and made part hereof (hereinafter, the “Properties”).

C. City and Owner desire that the Properties be annexed into the corporate limits of the City and be developed as an integral part of the City and in accordance with VISTA 2030, the existing comprehensive plan for the City.

D. City and Owner have determined that entering into this Agreement will be in the best interest of the City, the public, and the Owner; will be proper and legal exercise of City power; will promote orderly development of the Properties and the surrounding area; will promote the health, safety and welfare and economy of the community in general; and meets the economic development goals of the City.

E. The City and the Owner are entering into this Agreement pursuant to the provisions of A.R.S. §9-500.05 in order to facilitate the annexation and development of the Properties by providing for, among other things:

1. Establishment of the terms for annexation of the Properties into the City

AGREEMENT

In consideration of the foregoing premises, the mutual covenants and promises in this Agreement and the intent to legally bind City and Owner, the following is agreed:

1. **Annexation Consent.** Owner hereby consents to annexation of the Properties into the City of Sierra Vista pursuant to A.R.S. § 9-471. This consent to annex the Properties into the City shall operate as a covenant and shall run with the land and bind each of Owner's heirs, executors, administrators, successors and assigns to the Properties.
2. **Durable Special Power of Attorney.** To facilitate annexation of the Properties in a manner convenient to the City, Owner shall execute, simultaneously with the execution of this Agreement, a durable special power of attorney, attached and incorporated herein as Exhibit B, designating the City Clerk with the irrevocable power to sign and execute, on behalf of the Owner, any lawful annexation petition or other annexation document for the purpose of annexing the Properties into the City of Sierra Vista. Any successor(s) to Owner shall execute a similar annexation petition or documents necessary to accomplish the annexation.
3. **Applicable Zoning.** Pursuant to A.R.S. §9-471(L), upon annexation, the City shall adopt a City zoning classification for the Properties that permits densities and uses no greater than those permitted by the existing Cochise County zoning (the "Original City Zoning").
4. **City Wastewater Services.** The City acknowledges that it has adequate wastewater capacity to provide wastewater service for the full development of the 125 N 5th ST property under the Original City Zoning as proposed by Owner. The City agrees to provide such wastewater services to Owner, should Owner so choose in the future. If Owner, in his sole discretion, decides to connect to City sewer in the future, Owner shall bear all costs associated with said connection.
5. **Future City Refuse Service.** Owner agrees that within one year following the date of annexation into the City, Owner shall secure refuse service from the City of Sierra Vista.
6. **Private Properties Rights Development Act.** By signing this Agreement, Owner agrees to waive claims for diminution in value under the Private Properties Rights Development Act in connection with annexation of the Properties as well as for any claim for diminution in value as a result of any subsequent rezoning of the Properties by the City.
7. **Entire Agreement.** This agreement sets forth the entire understanding between the parties concerning the subject matter of this agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties relating to the subject matter of this agreement other than those set forth herein. No modification or amendment of this agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
8. **Negotiated Effort.** The parties agree that this Agreement represents the negotiated joint efforts of the parties. In the event a court of competent jurisdiction finds ambiguity, this Agreement shall not be construed against either party in favor of a non-drafting party.

9. **Authority.** All persons executing this document for City and Owner have all necessary and legal authority to enter into this Agreement for their respective corporations and the individual(s) executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf such individual is signing.
10. **Covenants Running with the Land.** This Agreement is made as part of a common scheme or plan for the development of the properties and a "Development Agreement" as defined in A.R.S. §9-500.05 and all rights and obligations hereunder subject to the provisions of Paragraph 3 contained herein shall be considered to run with the land and benefit and burden all owners of all or any portion of the Properties, including owners who acquire title to any portion of the Properties subsequent to the execution and recording of this Agreement. Nothing in this Agreement shall be construed as creating a partnership between Owner and the City.
11. **Governing Venue.** The laws of the State of Arizona shall govern this agreement and, in the event of a dispute, venue shall be in Cochise County, Arizona.
12. **Attorneys' Fees.** Should litigation be necessary to enforce any term or provision of this Contract, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorneys' fees will be paid to the prevailing party.
13. **Mediation.** If a dispute arises out of or relates to the Agreement or this Amendment, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Cochise County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.
14. **Notices.** Any notice required pursuant to the provisions of this Agreement shall be in writing and be sent by certified mail to the following addresses until notice of change of address is given and shall be deemed received on the fifth business day following deposit in the United States Mail.

City Clerk
 City of Sierra Vista
 1011 N. Coronado Drive
 Sierra Vista, AZ 85635

Owner: MR FIX IT PROPERTIES LLC
2721 E Eagle Rock Drive
Sierra Vista, AZ 85650

15. **Non-Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable all other provisions hereof.
16. **Amendments, Modifications and Waivers.** This Agreement may not be amended, none of its terms may be modified and none of the provisions or any of its terms may be waived without the written consent of the parties hereto.

17. **Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.
18. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Section of this Agreement.
19. **Additional Documents and Acts.** The parties hereto shall execute, acknowledge, if applicable, and deliver such additional documents and do such other acts as may be reasonably required to fully implement the intent of this Agreement.
20. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
21. **Term.** The term of this Agreement shall commence on the date of execution by both parties hereto.

CITY OF SIERRA VISTA:

By: _____

Frederick W. Mueller, Mayor

STATE OF ARIZONA)
) ss
County of Cochise)

This instrument was acknowledged before me
this ____ day of _____, 20____, by

Notary Public

My commission expires:

By: _____
Signature

Print Name

Title

APPROVAL AS TO FORM:

By: _____
Nathan Williams
City Attorney

STATE OF ARIZONA)
) ss.
County of Cochise)

This instrument was acknowledged before me
this ____ day of _____, 20____, by

Notary Public
My commission expires:

STATE OF ARIZONA)
) ss.
County of Cochise)

This instrument was acknowledged before me
this ____ day of _____, 20____, by

Notary Public
My commission expires:



Exhibit A (map)

EXHIBIT B

DURABLE SPECIAL POWER OF ATTORNEY

MR FIX IT PROPERTIES LLC is the owner of the following real properties:

| APN# | SITE ADDRESS | COUNTY ZONING | LEGAL DESCRIPTION |
|-------------|--------------------------|----------------------|--|
| 106-70-097 | 113 N 5 TH ST | MH-72 | 1ST ADD TO FRY LOT 7 & BLK 7 10-04 LV COMMERCIAL |
| 106-70-116A | 125 N 5 TH ST | GB | FIRST ADDN TO FRY LOTS 3 4 5 BLK 8 |

I hereby appoint the CITY CLERK of the City of Sierra Vista, Arizona as its true and lawful Attorney for it and in its name, place, and stead, with full authority and full powers of substitution, to do and execute any or all of the following acts, deeds and things, relating to or in any way connected with the following described matter **AND NO OTHER**:

To execute all **ANNEXATION** documents, including, but not limited to, petitions, waivers, notices, grant all approvals or consents, and to do every act or perform everything necessary to authorize and achieve the **ANNEXATION** of the above described properties into the boundaries and limits of the City of Sierra Vista, County of Cochise, State of Arizona. It is the express intention and desire that said properties be annexed to the City of Sierra Vista.

I further certify that I have all necessary and legal authority to enter into this Durable Special Power of Attorney.

THIS SPECIAL POWER OF ATTORNEY SHALL NOT BE AFFECTED BY MY DISABILITY.

IN WITNESS WHEREOF, I have hereunto set my hand, this ____ day of _____, 2020.

By: _____

Print Name: _____

STATE OF ARIZONA)
)ss
COUNTY OF COCHISE)

On this _____, 20____, before me, _____, a Notary Public in and for the County of Cochise , State of AZ , on this day personally appeared _____ to be the person whose name is subscribed to within this instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC

My Commission Expires: _____

July 9, 2020

MEMORANDUM TO: Honorable Mayor and City Council

THROUGH: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Matt McLachlan, AICP, C.D. Director

FROM: Blake Fisher, Planner I

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
PUBLIC HEARING FOR BIG O TIRES
ANNEXATION
RESOLUTION 2020-044

RECOMMENDATION:

The Director of Community Development recommends approval.
The City Manager recommends approval.
The Assistant City Manager recommends approval.

INITIATED BY:

Cochise Roadworks LLC
1988 S Highway 92
Sierra Vista, AZ 85635

BACKGROUND:

In 2008, the City Council adopted an annexation policy and map to guide future decisions on changes to the City's corporate boundary. The goal of the policy is "to provide for an effective distribution of City services and the incorporation of quality, urban development standards. Further, a priority of the policy is the long-term elimination of the County Enclave areas."

As depicted on the Long-Term Annexation Map, the City's annexation policy established "proactive annexation areas" and "other annexation areas". The proactive annexation areas are those areas that the City will actively pursue annexation. They are characterized as "undeveloped land" and "county enclave areas". These areas provide the greatest strategic benefit to the City, such as economic benefits and connectivity to existing City areas, which allows for the logical extension of City services.

On September 12, 2019, the City of Sierra Vista agreed to construct and finance a driveway access located within the Avenida Cochise right-of-way for Big O Tires. The driveway was to provide access from the subject property to Avenida

Cochise. In return, the owner, Cochise Roadworks LLC, agreed to sign a pre-annexation agreement for the property. This decision was in line with ongoing annexation policy, which targets County Enclaves like Big O Tires.

Noting the completion of the driveway access, staff has proceeded with the filing of a blank petition with the Cochise County Recorder's Office on June 12th. The decision to proceed with the signing of the blank petition may be decided by City Council, which, if approved, can be done upon the end of the 30 day filing period (July 12th).

PROPERTY INFORMATION:

The background information being provided for this annexation is for the property in its current condition.

Existing Land Use Plan

Land Use Map 2 of the VISTA 2030 identifies this property as Commercial.

Existing zoning and its equivalent in the City

Cochise County currently has the property zoned as GB (General Business). The equivalent City zone is General Commercial (GC).

Existing Traffic Plan

The property's original sole access point was from Highway 92 (a principal arterial road) via the property to the north. An additional access was constructed off Avenida Cochise (a minor arterial road)

Existing Surface Water Plan

The property does not contain or is adjacent to a flood hazard zone. Drainage is directed to a rip-rap basin along the edge of the parking lot.

Existing Parks Plan

The closest park to this location is the County Club Park located at 2396 Cherry Hills Drive. Numerous multiuse paths are within walking distance of, but not directly adjacent to, this location

Existing Sewer Plan

There is a 12-inch sewer line to the south on Avenida Cochise.

Are there any agreements or outstanding issues with the county concerning the property?

No.

Are there any agreements made with the city regarding the property?

There is a pre-annexation agreement that was granted in exchange for financial and labor support with the construction of an Avenida Cochise-based access to the property.

FISCAL IMPACT ANALYSIS:

This property will add property tax, sales tax, and license fee revenues to the City however, this will also add service costs (i.e. police services). Service costs should be minimal as this is a single parcel already surrounded by City right of way and there are no more proposed infrastructure improvements. Estimates have shown revenue from annexation are expected to exceed initial investment costs of constructing the driveway access.

Annexing properties in the enclave areas is in keeping with the Annexation Policy.

Attachment: Resolution 2020-044: Big O Tires Annexation
Exhibit One - Legal Description and Boundary Map
Exhibit Two – Resolution 2019-072: Big O Tires Pre-Annexation w/
Supplemental Exhibits

RESOLUTION 2020-044

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING STAFF TO PROCEED WITH THE COLLECTING OF SIGNATURES FOR THE ANNEXATION OF THE SUBJECT PROPERTY, AS SHOWN ON EXHIBIT ONE; AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFERS AND AGENTS, TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista (hereinafter referred to as the City) wishes to promote the harmonious and unified growth of the community to include areas within the City and the developing areas surrounded by or adjacent to the City; and

WHEREAS, the City wishes to encourage the development of the urbanized community to consistent and harmonious urban standards that reflect the high standard of development and quality of life desired by its citizens; and

WHEREAS, the City wishes to avoid the problems experienced by urban communities that are divided under several governmental jurisdictions with conflicting policies, procedures, revenue sources, and interests; and

WHEREAS, the City wishes to expand its urban limits in order to guide, control, and assure its destiny through orderly, planned growth and redevelopment without undesirably increasing the financial burden for residents; and

WHEREAS, said property to be annexed is contiguous with or surrounded by the City; and

WHEREAS, the Mayor and City Council affirmed their desire to continue with the annexation process of this property; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

Section 1

By continuing with the processing of this annexation, the goals of Vista 2030, the City of Sierra Vista General Plan, are reaffirmed.

Section 2

That it is the intent of the Mayor and City Council to annex the property, as shown on the attached map (Exhibit One).

Section 3

The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposed and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 9TH DAY OF JULY 2020.

FREDERICK W. MUELLER
Mayor

Approved As To Form:

Attest:

NATHAN WILLIAMS
City Attorney

JILL ADAMS
City Clerk

Prepared By: Blake Fisher, Planner I

**LEGAL DESCRIPTION FOR CITY OF SIERRA VISTA
ANNEXATION BOUNDARY OF COMMERCIAL PROPERTY
1988 SOUTH HWY 92 (APN 105-16-013)
SIERRA VISTA, ARIZONA**

EXHIBIT "ONE"

PARCEL I:

That portion of the Northeast quarter of Section 12, Township 22 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the East quarter corner of said Section 12 as monumented by a 2-inch brass cap marked LS 8208;

THENCE due West along the mid-section line of said Section 12, a distance of 100.00 feet to a point on the Westerly right of way line of State Highway 92 and the TRUE POINT OF BEGINNING;

THENCE due West along said mid-section line, a distance of 250.00 feet;

THENCE North 00 degrees 01 minutes 06 seconds West, a distance of 440.00 feet;

THENCE due East, a distance of 250.00 feet to a point on the Westerly right of way line of State Highway 92;

THENCE South 00 degrees 01 minutes 06 seconds East, a distance of 440.00 feet along said Westerly right of way line parallel to and 100.00 feet distance West from the Easterly section line of said Section 12 to the TRUE POINT OF BEGINNING;

EXCEPT the North 200.00 feet thereof;

AND EXCEPT the South 75 feet more particularly described in that certain document recorded July 1, 1998, Instrument no. 9807-19549;

AND ALSO EXCEPT an undivided one-half interest in and to all mineral, oil and gas rights as reserved in Deed recorded in Docket 943 at Pages 20, 24, and 28, records of Cochise County, Arizona.

PARCEL II:

An Easement for ingress and egress over a portion of the Southeast quarter of the Northeast quarter of Section 12, Township 22 South, Range 20 East of the Gila and Salt River Meridian, Cochise County, Arizona, more particularly described as follows:

COMMENCING at the East quarter corner of said Section 12;

THENCE South 89 degrees 45 minutes 49 seconds West coincident with the East-West mid-section line of Section 12, a distance of 97.74 feet to a point on the West line of the Highway 92 right-of-way;

THENCE North 00 degrees 00 minutes 17 seconds East coincident with the West right-of-way of Highway 92, a distance of 240.00 feet;

THENCE South 89 Degrees 45 minutes 49 seconds West, a distance of 16.00 feet to the POINT OF BEGINNING;

THENCE continuing South 89 degrees 45 minutes 59 seconds West, a distance of 30.00 feet;

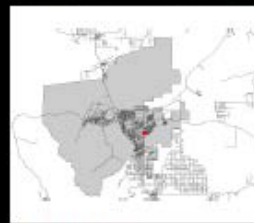
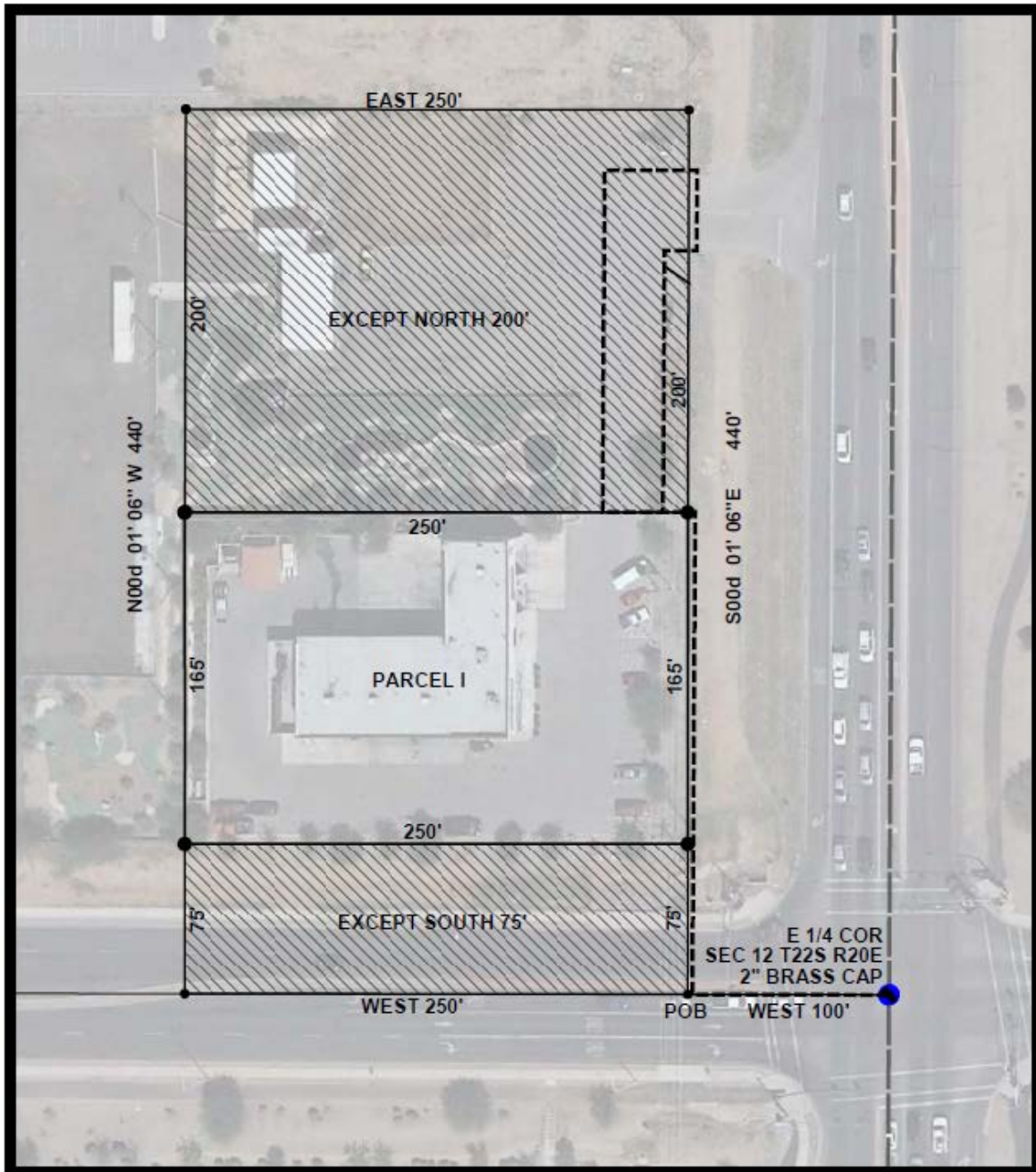
THENCE North 00 degrees 00 minutes 17 seconds East, a distance of 170.00 feet;

THENCE North 89 degrees 45 minutes 59 seconds East, a distance of 46.00 feet to a point on the West right-of-way of Highway 92;

THENCE South 00 degrees 00 minutes 17 seconds West coincident with the West right-of-way of Highway 92, a distance of 40.00 feet;

THENCE South 89 degrees 45 minutes 59 seconds West, a distance of 16.00 feet;

THENCE South 00 degrees 00 minutes 17 seconds West, a distance of 130.00 feet to the POINT OF BEGINNING.



105-16-013
Big "O" Tire
Annexation

This map is a product of the
City of Sierra Vista GIS



jodi.mcgrath, 2020-05-08 12:21:44
(pco-gis\GIS\Encompass\Users\jodi.mcgrath.mdb)

This document is a graphic representation only of best available sources.
City of Sierra Vista assumes no responsibility for any errors.

From: [Jill Adams](#)
To: [Maria Marsh](#)
Subject: FW: Sierra Vista city council, mayor backtrack decision, mandate face masks amid COVID-19 spike
Date: Wednesday, July 01, 2020 10:05:01 AM

From: Rick Mueller <Rick.Mueller@SIERRAVISTAAZ.GOV>
Sent: Wednesday, July 01, 2020 9:45 AM
To: ccrandal <ccrandal@hawaii.edu>
Cc: Jill Adams <Jill.Adams@SIERRAVISTAAZ.GOV>
Subject: RE: Sierra Vista city council, mayor backtrack decision, mandate face masks amid COVID-19 spike

MS Crandall, As requested, I will place your comments in the record of the 9 July 2020 City Council meeting. Rick Mueller

From: ccrandal [<mailto:ccrandal@hawaii.edu>]
Sent: Tuesday, June 30, 2020 6:11 PM
To: Rick Mueller <Rick.Mueller@SIERRAVISTAAZ.GOV>
Subject: Re: Sierra Vista city council, mayor backtrack decision, mandate face masks amid COVID-19 spike

I am sending you this link as part of my displeasure of the mandatory mask wearing mandate that you and the council recently signed. I want this email to be my testimony rather than to go in person to your open public meeting because social distancing is much more effective than mask wearing. If this email is not good enough to be accepted as testimony then let me know if I have to have this email notarized.

Testimony for the Call to the Public is on 9 July at the Council Meeting in Council Chambers at 5 PM.

From:
Carolyn Crandall
348 W Brown Dr
Sierra Vista AZ 85635
520-895-8878

To:
Mayor and Council of Sierra Vista, Arizona in reference to the mandatory mask wearing for an indefinite period of time until the "numbers go down for State of Arizona".

<https://technocracy.news/blaylock-face-masks-pose-serious-risks-to-the-healthy/>

In an article published by Technocracy News, Dr. Russell Blaylock wrote that the side effects from prolonged wearing of a face mask "can vary from headaches to increased airway resistance, carbon dioxide accumulation, to hypoxia, all the way to serious life-threatening complications."

"The researchers found that the mask reduced the blood oxygen levels (paO2) significantly. The longer the duration of wearing the mask, the greater the fall in blood oxygen levels," Blaylock wrote.

The potential for masks to reduce oxygen levels in the wearer are important not only because this can lead to passing out, but also because they have been linked to reduced natural immunity.

On 6/29/20 14:35, Rick Mueller wrote:

Ccrandal, I have yet to speak to KVOA on this subject. The next scheduled Call to the Pubic is on 9 July at the Council Meeting in Council Chambers at 5 PM.
Rick Mueller

From: ccrandal [<mailto:ccrandal@hawaii.edu>]
Sent: Monday, June 29, 2020 2:22 PM
To: Rick Mueller <Rick.Mueller@SIERRAVISTAAZ.GOV>
Subject: Re: Sierra Vista city council, mayor backtrack decision, mandate face masks amid COVID-19 spike

Thank you for replying to me. So you never talked to KVOA? And the quote is fake? Wow. But the order is real. A friend sent me the PDF and it was signed and sealed over the weekend. Will there be a future public comment in the future? If so via the internet, I would like to publicly comment.

Thank you again for your prompt reply to my inquiry.

On 6/29/20 11:58, Rick Mueller wrote:

ccrandal, I did not see the KVOA report. Thank you for making me aware of it. There was no prior decision that was changed and I am quoted, in your email, as saying something I did not say. Unfortunately this is the type of low quality coverage we have come to expect. Rick Mueller

From: ccrandal [<mailto:ccrandal@hawaii.edu>]
Sent: Saturday, June 27, 2020 10:31 AM
To: MayorAndCouncil
<MayorAndCouncil@SIERRAVISTAAZ.GOV>
Subject: Sierra Vista city council, mayor backtrack decision, mandate face masks amid COVID-19 spike

(EDIT: 2x typos fixed)

According to kvoa.com

It says, " a mandate that face masks are now required in public." but there is no official directive that I can find @ www.sierravistaaz.gov, please send link to official directive that hasn't been signed yet according to Adam Curtis who said Friday June 27, 2020, "The mayor's final order on the mask mandate still must be signed."

Is the following a typo?

"“Cases of COVID-19 are increasing rapidly throughout our state and we that have community spread in Sierra Vista,” said Mueller. “

Please clarify, "we that have community spread in Sierra Vista", when the numbers in Sierra Vista are very low percentage in comparison to Maricopa county where most of the cases are in prisons. Mueller's reasoning for the mandate is "Cases of COVID-19 are increasing rapidly throughout our state". It seems to me that mandating face masks in Sierra Vista where the numbers are low is akin to stopping at a green light because five blocks away there is a red light.

And as to the exceptions: it says:

When exercising outdoors alone and in work spaces not open to the general public.

Believe it or not Mr. Mueller, there are people who work HARD lifting 90 pound toilets inside a building in the freight department. Not to mention oversized cabinets, and other heavy lifting. Is that not 'exercise'? Generally working alone with no public access freight team puts the 'exerts' and 'exertion' in the word 'exercise'.

Was there ever an open for public comment period prior to the

mandate? It seems to me to have a Friday night mandate that is unsigned to be effective in 24 hours is an surreptitiously forced fed statute that is a Class 1 misdemeanor and that is not within the City of Sierra Vista rule making procedure

Or is this not even about public health but a form of tax revenue enhancement by going after low hanging fruit? What is the time period for the public to submit comments? Rules are adopted by a process known as "notice and comment" rulemaking. Did the mask mandate go through this process?